

KOSOVO AS A FUTURE MEMBER OF THE WTO

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Abstract

Kosovo and its citizens need trade liberalization in order to get quality goods and also decrease the imbalance in foreign trade. Recent agreements with the European Union and future trade preferences will certainly help the trade between EU and Kosovo. With this step in hand and the already used CEFTA Agreement Kosovo will be in a much better situation than ever. As every other country after finishing its trade liberalization with its neighbors Kosovo will have to start to negotiate with the WTO since its membership is a prerequisite to join the EU. Rule of law is a very problematic issue which lacks some basic standards in this territory, until now this state responsibility was highly supported by the European Union Law Enforcement Mission in Kosovo (EULEX). Knowing this it is hard to understand why some basics of the WTO such as Intellectual property rights, Sanitary and Environmental issues are lagging far behind the WTO standards. As a non member of the UN Kosovo will have a specific status in negotiating with the WTO, certainly this will be determined mainly by the EU as it is under its interest sphere. Multilateral agreements for joining the WTO in this case will be determined mainly by negotiations with the EU. Certainly the outcome of this process will be in line with EU policies and WTO requirements as a constitutional and legal power. In this case EU will serve the function of the executive power in the system where WTO is a global trade authority. As an organization with the power to change state policies and laws the WTO will certainly reshape the Kosovo economy which will certainly be a benefit to its citizens and the end of illegal imports, sales and production.

Keywords: K12 Contract Law, K13 Tort Law and Product Liability, K22 Business Law, K23 Regulated Industries and Administrative Law, K33 International Law

Introduction

On the European continent we have a specific trade practice where we see that the EU (European Union) is the center of trade and a valuable trading partner for all countries which are its neighbors. Certainly the open system of trade is manifested in the relationship EU establishes with its neighbors. Some countries on the continent are not members of the EU but still have it as a major trading partner, it could be seen that some countries benefit from the presence of EU as a big consumer of all kinds of products. Still countries like Norway, Island and Switzerland have decided not to join the EU but to try to benefit from its hungry neighbor and save the amount of contributions an EU member pays. These countries need Europe and depend on it, but still in this work we will focus on countries which need Europe even more. We will focus on Kosovo which has EU as its future target and is even more controlled by EU and its standards than any country in the history. The most important and leading forces in Kosovo are the UNMIK (United Nations Mission in Kosovo) and EULEX (European Union Rule of Law Mission) which is among others helping the implementation of EU standards in Kosovo. The building of a free and democratic society is the basic for a country to join the world of free and liberal trade. Unfortunately such a small market with a very poor customer society does not allow much competition and investments. Property issues are a relevant factor in hindering big investments and the political situation

which is actually slowly improving. If we exclude the foreign help to Kosovo after the war we can still see that the country depends on high imports from EU but mainly from its neighbors. The industrial potential which was developed during the Yugoslav era is not functional in its real capacity and the lack of investments into this field has stopped the future development of Kosovo for more than 15 years by now. The demand for goods does not reflect the conditions of the society and is constantly growing and accordingly the need for imported goods is very big and on the other hand also making a huge opportunity for new enterprises. Kosovo is able to make cheap products but the consumer attitudes are in favor of the good quality cheap products coming from outside Kosovo. There is a clear benefit for Kosovo by being a member to CEFTA (Central European Free Trade Agreement) since a big amount of traded goods are coming from this community.

The future still stands under the wings of the EU and by saying this we also know that Kosovo will have to join the WTO (World Trade Organization) in the near future. It is obvious that Kosovo will not have many problems with protecting its market and have many issues with the implementation of the WTO rules. Still the most important thing is that in the case that the Kosovo industry will start working soon by having some investments it will raise a clear need of a broader market where products could be targeted. The main role of shaping the future of Kosovo in political, social and economic sense is with the EU policy makers and by now we came very close to the time where more concrete measures have to be implemented. A recent step of shaping Kosovo borders towards Serbia in order to control its customs has been finished and now the imports coming from the north are under the control of Kosovo institutions. Now the only major thing which is not specific just to Kosovo is to fight against the black market, counterfeit products and illegal imports of all kinds.

I.

Kosovo as a market

In order to explain what we are dealing with we will explain the structure of Kosovo market and that way depict its way forward. Some facts which are representing Kosovo are ” No of Inhabitants: 2.2 million, Surface Area: 10,908 km², GDP: 4.2 billion € (2010 est.), GDP economic growth rate:4.0% (2010 est.), GDP per capita:1909 € (2010 est.), GDP – by sector: agriculture 20%, industry 20%, services 60%,Unemployment rate around 40%, Inflation Rate: 3.5% (2010)”.³ These numbers are taken in order to depict and can be considerably changed since the citizens movement is very high and some citizens which are registered as Kosovo citizens do not live and have their main life activities on the territory. On the other hand products used on the territory are often bought into the territory of Kosovo and not all the imports have been registered since the borders with Serbia and the import procedures were not regulated and controlled. Recently with some agreements with Serbia the customs of Kosovo have been established on North Kosovo and there is a possibility to control and measure the imports. Still some routes are open for smuggling since the citizens of North Kosovo do not respect the Kosovo authorities and do not cooperate with them. In fact the unemployment is very high and it can have many reasons and grounds. An interesting fact is that some teachers working on the North were receiving double salaries from both the Kosovo and Serbian government. It was possible since these two authorities were not recognizing each other.

Kosovo has a traditional scheme of trading partners and it is very hard to change these partners in the future. These states are building up their presence on the market for a long

³ Ministry of foreign affairs Kosovo, Kosovo’s economy (2013) Vital economic statistics, <<http://www.mfa-ks.net/?page=2,119>> accessed on 05 December 2014

period of time and by using world trends these countries have as a target Kosovo as a small consuming market, it is targeted from all its neighbors.

The following table is taken from the web site of the ministry of foreign affairs of Kosovo and shows some figures of Kosovo trade:

“Main partners of Kosovo in export and import

No.	Countries	Export (000) €	Participation % in the total	Import (000) €	Participation % in the total
1.	Italy	80.193	27.1	100.603	4.7
2.	Albania	30.841	10.4	69.714	3.2
3.	Macedonia	26.308	8.9	319.313	14.8
4.	Switzerland	17.786	6.0	20.981	1.0
5.	Germany	15.587	5.3	280.617	13.0
6.	China	14.779	5.0	135.406	6.3
7.	Serbia	3.941	1.3	260.471	12.1

It can be seen that the main trading partners have different position on the market and by having in mind the in-balance in the foreign trade: “**Exports:** 295.0 million €(2010) and **Imports:** 2,157 million €(2010)”⁵ it puts Kosovo into a very hard position since this in-balance has roots in its undeveloped industry and a big demand for imported goods which could also be made in Kosovo. This great opportunity stands in front of Kosovo as helping and enabling business environment in order to change this in-balance and employ its citizens. Kosovo had some special and certain goods for import and the chance to renew its capacities for producing and importing these are very good. “**Energy and Mining** - Kosovo has great underground assets, with 14.700 million tons, it ranks fifth in the world for lignite reserves from which it also produces the highest amount of electricity.”⁶ The electricity producing infrastructure has been developed during the Yugoslav era and has been one of the centers of economy and employment. As an addition to this there are natural reserves “Besides lignite Kosovo is also rich in zinc, lead, gold, cadmium and bismuth, bauxite, nickel, etc. The culture of lignite extraction dates back to Roman times, modern extraction of minerals in Kosovo began in the 1930s, with the establishment of the Trepca complex.”⁷ A long debate has been going on for a long period of time or at least since the 2008 Kosovo declaration of independence. Namely these underground resources are blamed to be the cause of Kosovo attaining so much attention and being targeted by some western states. The production is very low now but in the future it can be a part of a well organized production line on Kosovo or just starting in Kosovo as a source of resources.

Kosovo and its current legal and trade related status

At this moment CEFTA (Central European Free Trade Agreement) has its focus on the Western Balkan region. The countries here have been just recently a part of the same economic system so it is not a surprise that they have a lot of common to trade. Kosovo was a part of Yugoslavia and it had a specific trading status for years, with having a lot of products placed from other parts of Yugoslavia on its market. The main engine of trade is CEFTA and it is of a high importance for Kosovo and also the procedure of following rules to join the EU (European Union) and WTO (World Trade Organization). “Monitoring and implementation

⁴ Ministry of foreign affairs Kosovo, Kosovo’s economy (2013) Main partners of Kosovo in export and import, <<http://www.mfa-ks.net/?page=2,119>> accessed on 05 December 2014

⁵ Ministry of foreign affairs Kosovo, Kosovo’s economy (2013) Vital economic statistics, <<http://www.mfa-ks.net/?page=2,119>> accessed on 05 December 2014

⁶ Ministry of foreign affairs Kosovo, Kosovo’s economy (2013) Some sectors of Kosovo economy, <<http://www.mfa-ks.net/?page=2,119>> accessed on 05 December 2014

⁷ Ministry of foreign affairs Kosovo, Kosovo’s economy (2013) Some sectors of Kosovo economy, <<http://www.mfa-ks.net/?page=2,119>> accessed on 05 December 2014

of the CEFTA agreement”⁸ is of a great concern for Kosovo, also this puts Kosovo into the same position it had earlier as part of Serbia. During years after 1999 Kosovo was under UNMIK administration and was considered as part of Serbia, so no taxes were applicable. For a long period of time after the declaration of independence Kosovo was not able to enforce its tax procedures on the North Kosovo border crossings. With some recent agreements starting from April 2013 the Kosovo and Serbian prime ministers have agreed that Kosovo laws will be applied on North Kosovo and the customs collected here will benefit the four municipalities of North Kosovo which have a Serbian majority. The municipalities may have different authorities in regard “economic development, education, health, urban and rural planning.”⁹ This agreement is not final and it is still unclear in details and how its implementation will look like. State authorities of Serbia do not have a legal basis to apply it but certainly the authority of the EU and the strong commitment to EU given by the Serbian government guarantees its implementation. All the laws in Serbia still consider Kosovo as Serbia and this is also supported by the Preamble of the Serbian constitution which clearly outlines this. A serious revision of the Serbian constitution is possible which will most likely affect the trade between these two countries.

CEFTA agreement is not mentioning Kosovo since it has not declared independence when it was signed in 2006. UNMIK administration was a legal representative of Kosovo at that time and according to the UN Resolution 1244 and the UN it is still needed to outline that its status is regulated by this document. One of the points from Resolution is” Comprehensive approach to the economic development and stabilization of the crisis region”¹⁰ One of the milestones was the declaration of independence after what some changes on the field have occurred “Since then, the objective of the Mission has been the promotion of security, stability and respect for human rights in Kosovo through engagement with all communities in Kosovo, with the leadership in Pristina and Belgrade, and with regional and international actors, including the European Union Rule of Law Mission in Kosovo (EULEX) the North Atlantic Treaty Organization (NATO) and the Organization for Security and Cooperation in Europe (OSCE). Meanwhile, KFOR has remained on the ground to provide necessary security presence in Kosovo. ”¹¹ EULEX is enforcing laws and it can be outlined that they have not been very successful and the one of the main focuses they have is: “EULEX prioritises the establishment of the rule of law in the north.”¹² The success of EULEX is highly dependent on the cooperation between the Kosovo and Serbian government and by now unfortunately has not solved many issues from the field it was targeting. It has a mandate until June 2014 and it can be predicted that as earlier this mandate will be prolonged.

After outlining the necessary legal background we can see how CEFTA looks at Kosovo. The agreement is focusing on : “Current membership criteria since Zagreb meeting in 2005: WTO membership or commitment to respect all WTO regulations, Having an European Union Association Agreement, Free Trade Agreements with the current CEFTA member states. At the EU’s recommendation, the future members will be prepared for membership by establishing free trade areas. A large proportion of CEFTA foreign trade is

⁸ Ministry of trade and industry of Kosovo, Trade in Kosovo (2014) <<http://www.mti-ks.org/en-us/Trade-in-Kosovo>> accessed on 05 December 2014

⁹ European Voice/EU, Text of historic agreement between Serbia and Kosovo, 19 April 2013, (2013) <<http://www.europeanvoice.com/page/3609.aspx?&blogitemid=1723>> accessed on 26 October 2014

¹⁰ Security Council, United Nations Resolution 1244, 10 Jun 1999, (1999) <<http://www.unmikonline.org/Pages/1244.aspx>> accessed on 06 December 2014

¹¹ UNMIK, United Nations Interim Administration Mission in Kosovo, UNMIK Mandate (2014) <<http://www.un.org/en/peacekeeping/missions/unmik/mandate.shtml> > accessed on 06 December 2014

¹² EULEX KOSOVO, What is EULEX? (2014) <<http://www.eulex-kosovo.eu/en/info/whatisEulex.php> > accessed on 06 December 2014

with EU countries.”¹³ The commitment of Kosovo is visible through its implementation of regulations which are in line with this requirement and in fact the laws are all in line with EU which is already a member of the WTO. This is one of the key points of this work and we will be dealing with it in more detail.

Trade between Kosovo and EU

Keeping in mind that Kosovo is wishing to join the EU and one of the first steps towards it has been made just recently “2013 has been a historic year for Kosovo on its path to the European Union. The decisions of the Council in June authorising the opening of negotiations for a Stabilisation and Association Agreement (SAA) represent the start of a significant new phase in EU-Kosovo relations. The negotiations will be formally opened this month. The Commission aims to complete these negotiations in spring 2014, to initial the draft agreement in summer and thereafter to submit the proposals for the Council to sign and conclude the agreement.”¹⁴ Liberalization in all spheres and in particular trade is necessary for Kosovo and its citizens to achieve a further level of development and come closer to EU standards. Keeping in mind that EU standardizes many things and in particular market economy and its features we can see that it will be a tremendous benefit to Kosovo consumers to come close to this point. Literally every step made towards the EU is making some benefits to citizens, consumers and trade. The implementation of the EU standards will be a long path but by acquiring the *acquis communautaire* many doors will open. One of the doors will certainly be the WTO since it is a must for every serious player in the field of global trade. It is very clear that the procedures in the future will have to be made with more local support and inputs but still it is not possible if the citizens will have some concerns and doubts. On the other hand we see what is the biggest requirement in this procedure and it is not the fault of the Kosovo government solely: “Kosovo needs to continue implementing the legal framework for trade, competition and the internal market.”¹⁵ By now Kosovo institutions do not have the full control and responsibility and as previously mentioned EULEX plays an important role and the final decision about its mandate will be known in summer 2014. The current status of the EU Kosovo relationship is pretty good and gives a great basis for future cooperation “Kosovo also enjoys customs-free access to the EU market for manufactured products and almost all agricultural products, through the EU's autonomous regime.”¹⁶ These criteria clearly show the determination of EU to help Kosovo and is accepting all the products which can be produced by the Kosovo industry.

Kosovo has a good position but still all the support is not really making the institutions stronger, in particular the Ministry of trade and industry (MTI) needs to take over its role and fully take the responsibility of any further steps planned. This requirement is connected to the most important part where international stakeholders have the main role, it is

¹³ Republic of Kosovo, Foreign economy, CEFTA (2014) <<http://www.rks-gov.net/en-us/bizneset/ekonomiajashtme/pages/cefta.aspx>> accessed on 06 December 2014

¹⁴ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, Enlargement Strategy and Main Challenges 2013-2014, page 38 (2013)<eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/strategy_paper_2013_en.pdf> accessed on 06 December 2014

¹⁵ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, Enlargement Strategy and Main Challenges 2013-2014, page 41 (2013)<eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/strategy_paper_2013_en.pdf> accessed on 06 December 2014

¹⁶ EU Commission, on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo (2012) COM(2012) 602 final <http://eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/ks_feasibility_study_2012_en.pdf> accessed on 06 December 2014

necessary to stop using the system established as a support but to fully engage it in decision making and taking over the responsibility. The present system looks more like a project where the success depends on the aid and support and the local possibilities and efforts are not getting a chance in the real life. Similarly the EU Free trade agreement (FTA) does not encourage the establishment of working places, entrepreneurship and the establishment of new companies, since the systematical improvements are far from optimal. **“EU FTA and other International Agreements** will support MTI to establish the necessary institutional structures and build the capacity to enter trade negotiations on an FTA with EU. It will help MTI and other Ministries with responsibilities in areas directly concerned by international trade negotiations to acquire a good understanding of the structures, contents and implications of a future EU-Kosovo FTA. With a perspective of later EU integration, it will also ensure that the public administration is well aware of the trade and trade-related chapters of the *acquis communautaire* with immediate focus on those areas than can be related to the EU FTA.”¹⁷ It is unclear why after so many years of international support the local staff and resources still lack the necessary level of development, policy and decision making capacity.

Kosovo’s steps towards trade liberalization

The procedure to join an international organization and agreement takes time and efforts, it is not always easy to follow the procedures and predict how much time a certain state will need to adjust. Every state has its specific circumstances, needs and capacities to comply with the requirements, the most important thing to mention here is that the requirement to join the WTO comes from above and Kosovo even by accepting the need has no resources to comply with the procedure at the moment. “Kosovo is not a member of the WTO and has taken no formal steps to join.”¹⁸ We can see that international institutions and we include here the EU as well has a certain key of how to proceed with the alike countries, problems and have a solution which can be widely applied. As a parallel we can have here the example of the Kosovo’s neighboring countries which have followed the same pattern to join EU or just to come as close as possible to this point. EU has for example made this approach and is successfully implementing it for decades, it accepts usually countries in one accession round which have a similar history, level of development or are neighboring countries. The same states for WTO where it has a path which have to be followed in order to become a member, most likely the experience of Serbia, Macedonia and Montenegro can be valuable for Kosovo since their markets are similar and have a very similar range of products offered.

One of the main points which are of great concern to EU and Serbia as a benchmark is that GMO is not accepted on these markets. Having in mind the specific status of decision making in Kosovo there will be no special requests on the side of consumers and citizens since they have no habit of questioning decisions which benefit the international positioning of the country. This can be also approached by the great popularity of the USA in Kosovo and their support to independent Kosovo. USA products can be found on the market and even agricultural products which probably would not be able to make it to the EU markets. As we know meat products are one of the main points of disagreements between EU and the USA. For now Kosovo is very open and USA goods can be found on the market and their presence will probably rise. “U.S. embassies are committed to supporting U.S. companies to start

¹⁷ EU trade policy project, Trade policy (2014) <http://www.eustrade-ks.eu/kosovo_nodecontent_3638444.html> accessed on 06 December 2014

¹⁸ Kosovo 2013 progress report, WTO issues (2013) <http://eeas.europa.eu/delegations/kosovo/documents/eu_kosovo/ks_progress_report_2013_en.pdf> accessed on 06 December 2014

exporting or grow their exports to Kosovo.”¹⁹ The focus here is not the importance of the Kosovo market but more the support of the USA and the possible future expansion of multinational companies on this territory.

At this moment the Kosovo legislation complies with EU rules and there is not much done for the WTO accession. Still at some points with the intention to apply EU rules some WTO compatible articles can be found. An example can be found in the Kosovo law on external trade. “The provisions that are listed in this law and in other legal acts and other international agreements shall remain in force in regard to external trade and are fully applicable and must be in accordance with WTO.”²⁰ It is hard to apply this law to other future interactions on international level since it is more a role of the constitution or a state policy. Still the Parliament and the Government will be making decisions and comply with the WTO requirements anyway having a focus on its future benefits.

As a conclusion we can see that the current level of development and application of trade agreements and local laws are all favorable for Kosovo and have it on a right track to join the WTO in the future. But before we approach this issue from the solely legal perspective of Kosovo joining the WTO we need to know that it is not all about law and its enforcement, there are many other important perspectives we need to focus on to predict when and what benefits Kosovo and its business and consumer population will have. From previous statistical data we can see and conclude that the level of development does not really require immediate work on starting the WTO procedure. Kosovo has some priorities and the ones related to trade are shortly stated as here: “The transport system is inadequate for business and trade needs and incompatible with European standards. As a landlocked country, Kosovo’s economy is dependent on adequate road transport and its integration into the networks of neighboring countries.”²¹ Kosovo was a part of a big economical system of Yugoslavia, huge efforts were made to advance the level of development of this territory which was at that time the least developed part of Yugoslavia. The dissolution of the state and the war from 1999 has just backed up the advancement of the state. By recent huge efforts of the international community a recent development in the road infrastructure has been made, a highway was build between Kosovo capital, Pristina and the Albanian capital Tirana and its harbor on the Adriatic Sea, Durres.

Benefits that WTO will bring to Kosovo

Knowing that the EU and WTO membership would bring to Kosovo new investments, help establishing new domestic enterprises and make monopolies disappear from the market. It will help to establish a stable system of dispute resolution, food quality and many other benefits for consumers. A recent trade dispute with one of the Kosovo’s most important suppliers shows that the political will to cooperate and trade easily falls behind daily political matters in the Balkan region. “The recent trade war between Macedonia and Kosovo is threatening to turn into a political confrontation after Skopje implemented a tax on Kosovar nationals crossing the border. Previously, Macedonia limited quantities of flour and wheat imported from Kosovo in order to protect domestic production, and Kosovo responded to this measure by banning food imports from Macedonia. Within a matter of hours, a EUR 2 tax was imposed on persons entering Macedonia (as well as EUR 5 for cars and EUR 10 for trucks and buses). Kosovo raised the stakes one last time by imposing a full embargo. In the past, trade between the two countries had been encouraged, but now each side accuses the other of escalating the dispute. The border between the two has become congested, with

¹⁹ Embassy of the United States, Pristina Kosovo, Exporting to Kosovo, (2014)
<http://pristina.usembassy.gov/doing_business_in_kosovo.html> accessed on 07 December 2014

²⁰ Kosovo Law on external trade, Law No.04/L-048, 14 November 2011, art 22

²¹ The World bank in Kosovo, Country snapshot (2013) page 9

many citizens crossing on foot, and the Commission is investigating the question of infringement of the Central European Free Trade Agreement (CEFTA).”²²

This case shows that state officials do not have much sense for trade related disputes and that there is a system needed such as CEFTA to train and teach them how to behave in a world where trade is an essential everyday activity vital for economy and citizens. Both for joining the EU and WTO the Kosovo administration needs to be trained in a manner to understand that every mistake and misuse has its outcome and penalizes the wrongdoing. One of the biggest weaknesses of the systems which use to punish states for wrongdoings is that officials do not always feel and pay for their mistakes. It is more a moral and professional thing to incorporate into the minds of state officials that they have responsibility and have to take care of state interests and international obligations.

The mechanism to deal with trade disputes on Kosovo for now is the alternative way through arbitrations. The state courts and in particular the Constitutional court does not have a certain level of development and trust to attract trade related issues. “The Constitutional Court of Kosovo was established in January 2009. With its authority to review legislation and individual complaints of rights violations, the Court is the ultimate check on legislative and executive power in Kosovo and the final arbiter of the meaning of constitutional provisions enshrining human rights and freedoms.”²³ The need for justice in Kosovo is very big and since it needs a lot of time for a system to start running and apply the Constitution in every sphere of life even the constitutional court states the human rights and freedoms as priority. The constitution of Kosovo does not mention trade as a particular field. It states in article 10: “A market economy with free competition is the basis of the economic order of the Republic of Kosovo.”²⁴ In a market economy we can still have monopolies or different subsidies which will not promote local, regional or international trade. Also the chapter 9 of the constitution tells us about the general principles in economic relations. The first principle reads as follows: “The Republic of Kosovo shall ensure a favorable legal environment for a market economy, freedom of economic activity and safeguards for private and public property.”²⁵ The wording found here “ensure a favorable” does not itself guarantee that it will be ensured and allows a claim for any breach. Certainly trade was not one of the main concerns of the constitution writers the state needs to establish itself on strong grounds. Future enactment of the trade related issues will happen in laws and the constitutional courts will have to invoke those particular laws and that way apply the constitution.

What path Kosovo will follow to reach the WTO and how its way will look like

Having explained the main statistical, legal and political issues present in the development strategy and future of the Kosovo state we now turn to see how the WTO will influence the legislation and changes in the way we can expect. The constitutional or quasi-constitutional function of the WTO agreement can be seen on many previous examples. One of the recent cases involve the Serbian last steps to join the WTO where the GMO issue plays an important role. It is not easy to finalize and make the last steps which are the hardest. “Members encouraged Serbia to adopt outstanding pieces of legislation and work closely with relevant members to conclude the remaining bilateral negotiations that could lead to its

²² European Parliament, Parliamentary questions, 19 September 2013 (2013) <<http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2013-010713&language=EN>> accessed on 07 December 2014

²³ Republic of Kosovo, Constitutional court, (2011) <<http://www.gjk-ks.org/?cid=2,1>> accessed on 07 December 2014

²⁴ Constitution of the Republic of Kosovo, 15 June 2008, art 10, page 3

²⁵ Constitution of the Republic of Kosovo, 15 June 2008, art 119/1, page 44

accession to the WTO in 2013.”²⁶ The outstanding legislation concerns mainly the GMO but some other features were present as well. A recent case from 2013 shows that life has many surprises to trade and one specifically bad year for agriculture had brought another problem, namely a very carcinogenic fungal byproduct of cattle feed, aflatoxin. “Contaminated milk has been pulled from the shelves in Serbia, so any new milk purchased should meet the strict Serbian threshold level for aflatoxin.”²⁷ The seriousness shows that the USA takes care of the well being of their citizens and informs them about a certain products harmful effects. The case was reported very late and the Serbian ministry for agriculture had taken measures which were in the favor of the trade and not consumers. “Minister of Agriculture, Forestry and Water Management Goran Knezevic said today that the government decided to change the Rules on the allowed amount of aflatoxin in milk from the current 0.05 micrograms per kilogram to 0.5 micrograms, as it was two years ago.”²⁸ This case shows that the government does not really care for standards and takes the measures which will cause the least harm to the state, but do not care for the citizens as it should. A similar outcome could be expected in Kosovo since a big quantity of milk has been imported from the Balkan region which was affected by aflatoxin. The level of development and consumer care is still not that developed in Kosovo and the trade related issues will have preference in order to again serve the government represent itself as doing everything to implement standards. The milk which was sold on Kosovo market was polluted and consumers could not change their buying habits since this milk was either partly from domestic production or cheap imports coming from the affected region of Balkan. It can be seen that the policy makers still have many things to acquire not just in legal sense but also a support of the industry, science and professionalism. “The capacity of Kosovo’s food laboratory was discussed, using the recent aflatoxin crisis as an example: whilst Kosovo’s laboratories can carry out the tests to detect positive or suspect samples, these need to be confirmed by a laboratory outside Kosovo. Once Kosovo’s laboratory is accredited (this year if all goes well) this will help Kosovo deal with crises such as these.”²⁹ So Kosovo will be able and has the necessary instruments and will to achieve and control the quality and structure of the products. Its readiness to act is always supported by the international community since the state itself does not always have the resources, instruments and personnel to achieve the EU and other standards. It is very hard to hire expert personnel and the ones working are “borrowed” from other states, mainly EU. The experts are involved in different kinds of activities which are needed for every independent state, EULEX has judges and other court staff and it deals with crimes and law enforcement. This model works since local personnel can learn from them and acquire the necessary skills and knowledge to serve this function in the future.

Kosovo and the constitutional or quasi-constitutional function of the WTO agreement

As we have previously discussed what Kosovo has in regard trade and trade regulation in the constitution and other acts, now we can turn to see what the WTO requirements are and how they can fit. By now the understanding and different approaches of WTO law has raised many trade cases involving many states and different issues. This trend will of course continue and there are new challenges in front of every state, be it part of the

²⁶ World Trade Organization, Serbia a few steps away from concluding WTO accession negotiations, 13 June 2013, <http://www.wto.org/english/news_e/news13_e/acc_srb_13jun13_e.htm> accessed on 08 December 2014

²⁷ Embassy of the United States Serbia, High levels of aflatoxin (2014) <<http://serbia.usembassy.gov/messages-and-notice-for-us-citizens/aflatoxins.html>> accessed on 08 December 2014

²⁸ Government of the Republic of Serbia, Legal level of aflatoxin in milk set at 0.5 micrograms, 28 Feb 2013 <http://www.srbija.gov.rs/vesti/vest.php?id=92434&change_lang=en> accessed on 08 December 2014

²⁹ Republic of Kosovo Ministry of European integration, EU Commission and Kosovo authorities reviewed progress in applying EU standards in agriculture and food safety, Brussels, 12 March 2013 <<http://mei-ks.net/?page=2,5,627>> accessed on 08 December 2014

WTO or not. Still the biggest influence on Kosovo trade, and also other regulation, will come from the EU. EU has a long time ago established trade practice with the necessary WTO requirements which are updated on a regular basis.

One of the most important things and leading idea in the Agreement establishing the WTO is its preamble. The whole idea and key to understanding the world of trade could be found here, it sometimes says more than we could understand and get out of it. Some of the key points mentioned in preamble are: raising standard of living, full employment and sustainable development. All these are so important for every state but still not reachable easily. Kosovo would make a big step forward by ensuring these ideas, but actually all of them go hand in hand and when you get closer to one of them the other will also pop up on the scale of standards.

Let us now turn to the legal text and apply it to the case of Kosovo. In article 2 the scope of the WTO is explained as follows: “The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.”³⁰ One of the most important requirements and benefits Kosovo will get is the establishment and strengthening of the institutions. The system of public administration has to be established on strong and sustainable basis, all the institutions will work in a system where it is easy to see and predict what has to be done in order to achieve certain outcomes. Institutional development is one of the priorities for Kosovo and it will certainly be based on EU standards and future WTO requirements.

Very important benefits for Kosovo could be the implementation of article 3 of the WTO which explains the functions WTO has. Form many the two most influential functions are the forum for negotiations among members and the trade policy review mechanism. The forum will help establish a systematized place to discuss and be able to approach issues or trade related problems on a level which can be the most effective. Establishing new and changing trade policies is also an important thing since it will help everyone have a say and respect the rights of all. The needs could be assessed from the right place and the best possible solutions could be achieved.

The mechanism of the WTO is present in article 11, paragraph 2 and could be applicable to Kosovo and says: “The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.”³¹ It shows that even when changes are made into the system the trading parties respect the needs of the least developed countries and make some excuses. Countries which belong to the system and are unable to accommodate the high standards are given some kind of waiver and will still be respected and helped in order to develop and advance with the whole system which in fact benefits everyone. The next is article 12 and it is about accession to the WTO agreement, actually this article will be applied to Kosovo one day. “Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.”³² As we have discussed previously Kosovo has achieved its customs unification and is about to enforce it now on its whole territory. The first steps are

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³¹ World Trade Organization, Agreement establishing the World Trade Organization, art 11, para 2 (2014) < http://www.wto.org/english/docs_e/legal_e/legal_e.htm> accessed on 10 December 2014

³² World Trade Organization, Agreement establishing the World Trade Organization, art 12, para 1 (2014) < http://www.wto.org/english/docs_e/legal_e/legal_e.htm> accessed on 10 December 2014

already being made and the most problematic border issue with Serbia in North Kosovo will function in cooperation with Serbia, respecting Kosovo rules with some benefits to the local communities on North Kosovo. In authors opinion the first step prescribed by the article of the WTO which explains the accession procedure is successfully finished by Kosovo.

As a last point which is very important to mention now are the explanatory notes on the end of the Agreement establishing the World Trade Organization text. The first paragraph of the explanatory notes reads: "The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO."³³ By saying this we can see that the territory of Kosovo could be recognized by the WTO as a separate country even though we know that Kosovo struggles to get a seat in the UN. The acceptance of Kosovo to the UN is not going to happen in the near future if we take into consideration the trend of accepting new states to the UN and all the issues they cause on the global political map. The trade issues will remain separate and this is a unique opportunity for Kosovo to join and be accepted in the world.

Conclusion

Small countries and markets such as Kosovo do not get much attention in the world of trade from big and influential partners. Still the unified world of trade needs to make a circle and absorb everyone to it to make trade a benefit for everyone. Kosovo is falling under the influence sphere of EU and is probably one day going to join it. The path leading to it will be lead by EU politicians and policy makers and most likely they will try to standardize Kosovo as much as possible and in line with EU requirements and other states level of development from the region. This process will lead Kosovo close to the WTO as well and as every other member country of the EU it will benefit from both at the same time.

Kosovo and its present status as a small market but valuable for its neighbors have to do much to develop and satisfy its citizens and consumers needs. Development at this moment depends much on foreign factors but soon the institutions, companies and the people will have to live on their own ideas and entrepreneurial skills. It is hard to achieve a high level of development but still every little step will be valuable and will make the system work better.

We can conclude that one of the biggest issues of Kosovo is to be recognized and from this work we can see that one of the ways to achieve that and be respected by its partners and neighbors for Kosovo is its trade regulation and status. Trade and production could help Kosovo gain its independence, still some issues like illegal trade which is the biggest concern of the EU has to be solved soon since without that this mission will make no sense.

The system of WTO law and the global trading partners are ready to accept Kosovo to the WTO. Even if some issues like the UN chair stays under debate Kosovo obviously has good grounds for the WTO and it is the right time to invest into this valuable future asset right now.

³³ World Trade Organization, Agreement establishing the World Trade Organization, explanatory notes, para 1 (2014)
<http://www.wto.org/english/docs_e/legal_e/legal_e.htm>accessed on 10 December 2014