

The Estey

Journal of International Law and Trade Policy

Legalism Versus Diplomacy in Regional Agreements in Western Balkans Given a *Spaghetti Bowl* of Initiatives

Vesna Lukovic

Abstract

International organizations can play a key role in regional cooperation and integration in order to reach a cooperative equilibrium among countries. The European Commission has come up with many initiatives that were envisaged as a step towards integrating Western Balkans into the European Union (EU). This paper looks at two regional initiatives through the lens of their typology, scope and legalism, taking into account integration ambitions of candidate countries. The paper examines legal and financial implications of two different regional initiatives by focusing on their legal and financial outcomes. The finding is that a legalistic approach does not necessarily provide adequate legal certainty for regional exporters and importers of goods. As a result, this particular legalistic approach to regional trade integration does not seem to have stimulated regional cooperation to enhance preparation and integration into the EU.

Keywords: EU accession, integration, regionalism, trade

1. Introduction

Regional free trade agreements may be often evaluated in economic terms, although countries may pursue (trade) integration also for political reasons. In any type of regional cooperation with an aim of further integration, it is political will that is a key component in that process. There are also institutional aspects of regional integration. For example, the European Union believed that the Central European Free Trade

Agreement (hereinafter: CEFTA) signed in 2006 would make important contribution to economic development and regional co-operation in the Western Balkans (European Commission, 2006). That expectation was in line with the obligations from the Stability and Association Agreements signed between the European Union (hereinafter:EU) and all CEFTA parties (European Commission, 2021). In addition to regional trade cooperation, a country's satisfactory achievement in implementing its obligations under the Stabilisation and Association Agreement is one of the key elements in the EU accession process. The Stabilisation and Association Agreements between CEFTA parties and the EU go beyond trade as they also cover political dialogue and other harmonization and cooperation issues (SAA Kosovo, 2016).

However, policy cooperation and harmonization/integration agreements in general don't have to be accompanied by preferential trade liberalization set by agreements such as CEFTA. Policy cooperation/integration and policy harmonization agreements can stand alone. Countries can make agreements to cooperate in many economic and social aspects without necessarily linking them to trade preferences. For example, countries may conclude mutual recognition agreements for higher education certificates or policy coordination with regard to tourism. The Open Balkan initiative is such a policy integration initiative that aims at policy coordination and harmonization, but without linking that to (new) trade preferences. When the EU accession process was brought to a halt in 2019, the initiative Open Balkan was launched by Serbia, Albania and North Macedonia with an open invitation to other Western Balkan countries. The idea of the Open Balkan was to implement four freedoms of movement for people, goods, services and capital across the region of the Western Balkans (Simić, 2019; Government of Republic of Serbia, 2021; Open Balkan, 2021).

Since the inception of the World Trade Organization (hereinafter: WTO) there has been an explosive growth of many regional free trade agreements. They all have some form of dispute settlement mechanism. However, if neighbouring countries don't trust each other they may not reach a solution that would be a cooperative equilibrium with regard to regional integration and cooperation (Schiff and Winters, 2013). Potential disputes in international trade and other agreements may be either highly legalistic, envisaging tribunals, or more diplomatic, requiring only good-faith to resolve disputes through consultations (Smith, 2000). The new legal system for international trade disputes, established by the creation of the WTO as of January 1, 1995 as a result of the Uruguay Round of trade negotiations, has been seen as a "stunning victory" for international trade legalists (Shell, 1995).

Legalism in international trade is in this paper considered as an approach to international trade that is based on the rule of law, enabling predictability and stability.

Legalism in this paper is not understood as aggressive legalism as a response to aggressive unilateralism (Araki, 2004). The topic of legalism versus diplomacy in regional trade and other integration/policy harmonization agreements has not been researched to a great extent, particularly not with regard to the Western Balkans. Certain studies focused on different aspects of CEFTA (Efremov et al., 2020; Krizmanić, 2007) and the Open Balkan initiative (Simić, 2019; Tmušić and Rapačić, 2022; Dhimolea, 2022). Some authors have emphasized political realities with regard to the Open Balkan initiative (Jelisavac Trošić and Arnaudov, 2023), others have touched upon the Open Balkan initiative as part of the analysis of Western Balkans' road to EU accession (Steinbach, 2024). Although there is research with regard to comparing trade-related issues of CEFTA, Common Regional Market and the Open Balkan initiative (Ristovski, 2022; Semenov, 2022) there has not been any comparison between the two with a focus on their legalism with regard to the legal certainty for exporters/importers in countries belonging to these two initiatives. This paper aims to fill this vacuum. Drawing on theories on international relations, regional trade agreements, other agreements and legalism therein, the focus of the paper is on comparing the two mentioned regional initiatives. Although CEFTA is different from Open Balkans in terms of its typology, size and scope, both contain a certain degree of legalism that allows exporters and importers from countries that are parties to these initiatives to have legitimate expectations about legal certainty with regard to their rights and obligations. This paper compares the legalism of both regional initiatives by looking at the question: does the Open Balkan initiative offers a significantly weaker legal protection compared to CEFTA. The aim of the paper is to examine if CEFTA, the agreement that is financially and institutionally supported by the EU, is better suited, not only to provide adequate legal certainty for regional exporters and importers of goods, but also to move regional cooperation and trade integration forward so as to reach the goal of EU membership.

The paper is structured as follows: after the introduction, Section 2 briefly outlines the theoretical foundation and research context. Methodology is explained in Section 3 while Section 4 provides the typology of CEFTA and the Open Balkan initiative. Section 5 provides an in-depth analysis of both regional initiatives from the viewpoint of legalism and their implications. Research findings are discussed in Section 6. The final section summarizes the conclusions of research.

2. Theory and research context

Economists of the 18th and 19th centuries such as Adam Smith, David Ricardo, David Hume and John Stuart Mill have established that free trade with foreign countries would lead to reciprocal trade and that any obstacle which prevents this beneficial trade is

counterproductive for all participating states (Irwin, 2016). In addition to economic theories, this paper draws on theories on preferential trade agreements and regional integration (Hoeckman and Kostecki, 2009), typologies on trade agreements (Kang, 2016), “new generation” trade agreements (Council of Europe, 2017) and legalism in regional trade agreements (Shell, 1995; Smith, 2000).

According to theoretical literature on trade agreements, reciprocal tariff reductions are a better way to achieve reduction of trade barriers due to the external enforcement of trade agreements (Beskhar and Bond, 2019). Some have argued that the level of legalism in free trade agreements is related to the proposed depth of regional trade cooperation, liberalization and to the level of economic asymmetry among member states (Holbein and Carpentier, 1993). With regard to dispute settlement mechanisms in trade agreements they may vary from highly legalistic to more diplomatic mechanisms, resolving disputes through consultations (Smith, 2000). From the beginning of the multilateral trade system in 1947 under the General Agreement on Tariffs and Trade (GATT), the development of dispute resolution mechanisms in trade agreements has been influenced by a tension from those wanting a flexible, negotiation-based diplomacy on one hand, and those preferring a legalistic dispute resolution mechanisms, on the other hand (Reich, 1997).

In general, there has been a shift from diplomacy to law and the juridicization of international trade relations after WW2 (Reich, 1997). That is so because a legalistic approach in trade agreement has a binding normative arrangement with the “binding” character that aims to limit a certain behavior within the agreed framework. As a result, certain actions are constrained. Certain actions may no longer be legally possible within the framework of the arrangement (Shell, 1995).

The research context of this paper are two regional initiatives, CEFTA and Open Balkan that both aim at regional cooperation and integration. However, they have different typology, scope and financial and institutional settings. The current members of Open Balkan initiative are Albania, North Macedonia and Serbia. On the other hand, the current members of CEFTA are Moldova, Bosna and Hercegovina, Serbia, Montenegro, North Macedonia, Albania and Kosovo¹ (CEFTA Agreement, 2006).

3. Methodology

The methodological approach draws on theories of regional trade agreements, integration agreements and cooperation agreements. The research methodology evolves around some key research questions. These start with the question whether these two regional initiatives are comparable from the legalistic point of view. Do they aim to

achieve similar goals of further integration? Can their legalism guarantee legal certainty, which is crucial? What are their institutional and financial settings?

To answer these questions, the research applies qualitative methodology by first undertaking textual and interpretative analysis of relevant legal texts, reports and other sources. In line with the established methods of qualitative research in international relations and in political science (Blatter et al, 2016), the methodology touches upon relevant political phenomena. Institutional sources of data are the WTO, European Commission, European Parliament, Council of Europe and other EU institutions and authorities. Other data sources are news, press reports and similar.

The first step of qualitative methodology (i.e. textual and interpretative analysis of relevant texts) is followed by examining the typology, size, scope, institutional setting and external support of these two initiatives, the CEFTA and Open Balkan. This is then analyzed in the case study. The case study examines two instances of a violation of the CEFTA agreement: the case of punitive tariffs in 2018 and again a ban on imports in 2023. The case study method makes it possible to look at the importance of a policy formulation with regard to particular outcomes (George and Bennett, 2005).

The research then looks at numerical data with respect to the implications and the outcomes of both initiatives. This part of the analysis is based on the latest databases available as of June 2024 at the European Union's statistical office, the Eurostat. The research examines statistical data about the trade flows with regard to the case study so as to establish financial outcomes.

4. Typology of CEFTA and Open Balkan with regard to integration

CEFTA is a free trade agreement that establishes preferential trade liberalization among parties that are signatories of the agreement (CEFTA, 2006). CEFTA had to be notified at the World Trade Organization (WTO) (Table 1).

Regional agreements may have many forms such as trade agreements, cooperation agreements, policy harmonization agreements and similar. They vary in many ways, including with regard to their integration scope. Regional trade agreements have risen in number and reach over the years (WTO, 2024). Regional agreements which are reciprocal preferential trade agreements between two or more partners are one of the derogations of free trade and must be notified at the WTO (WTO, 2024). As of 1 May 2024, 371 regional trade agreements were in force. According to the information on the WTO website, these correspond to 609 notifications including agreements on goods, services and accessions separately (WTO, 2024).

Table 1: Part of notification of CEFTA at the WTO

Agreement name:	Central European Free Trade Agreement (CEFTA) 2006		
Coverage:	Goods	Type:	Free Trade Agreement
Status:	In Force	Notification under:	GATT Art. XXIV
Date of signature:	19-Dec-2006	Date of notification:	26-Jul-2007
Date of entry into force:	01-May-2007	End of implementation period:	01-Jan-2015 (end of tariff implementation)
Current signatories:	Albania; Bosnia and Herzegovina; Moldova, Republic of; Montenegro; North Macedonia; Serbia; UNMIK/Kosovo.		
All Parties WTO members?	No	Cross-Regional:	Yes
One of the RTA Provisions:			
<i>Dispute Settlement (DS)</i>			
Ad hoc Adjudicative Process			
Exclusive use of forum chosen			

The level of integration of the CEFTA agreement is that parties to CEFTA liberalize trade among themselves but keep their own tariffs towards the rest of the world, based on their legal commitments in other international agreements. The level of integration of CEFTA can be therefore described as market (trade) integration. In addition to trade liberalization, CEFTA is also tilted towards certain parts of EU's *acquis*, therefore clearly aiming at gradual integration into the EU's internal market once the accession process of each country reach that stage. CEFTA is a highly legalistic initiative, based on strictly defined rules, including ad-hoc tribunals in cases of potential disputes between the parties. With regard to the institutional support, the EU financially supports CEFTA and its secretariat in Brussels.

On the other hand, the Open Balkan initiative is not a free trade agreement offering special trade liberalization. It is a regional cooperation/policy harmonization initiative based on a number of agreements and memorandums aiming to facilitate trade and also enhance policy coordination in certain areas of mutual interest. Looking at the level of integration, the Open Balkan initiative is a policy harmonization and regional cooperation initiative. From the typology point of view, Open Balkan is therefore a policy coordination/harmonization regional agreement that is between the market (trade) integration on one side, and the functional/sectoral cooperation, on the other

side. Looking at the institutional aspect, Open Balkan has no formal financial and other support from the EU. In addition, Open Balkan also does not have any specific institutional setting dedicated to the Open Balkan initiative because there is no special secretariat established in order to support the operation of this initiative. However, the European Commission has acknowledged that the Open Balkan initiative has the potential to accelerate economic integration of the region, if it is done in an inclusive manner and based on the EU rules and the four freedoms of the EU's Single Market (European Western Balkans, 2020).

5. Analysis

5.1 Legalism of CEFTA

The most relevant sign of its legalistic character in the CEFTA signed in 2006 is its dispute resolution mechanism. It is a significant novelty compared to the CEFTA from 1992 (WorldTradeLawNet, 2022). CEFTA from 1992 was the first intra-trade regional agreement among countries from Central and Eastern Europe and was followed by the amended CEFTA agreement signed in 2006 (European Commission, 2006). Article 1 of the CEFTA agreement states that a free trade area shall be established in a transitional period ending at the latest on 31 December 2010 (CEFTA Agreement, 2006). The main text of CEFTA agreement is supplemented by a number of annexes and additional protocols in different areas.

The CEFTA agreement is very legalistic. Disputes between CEFTA parties may be resolved through consultations (including in the presence of a mediator) or arbitration. If any divergence on the interpretation and application of the Agreement arises, the CEFTA parties concerned shall make all efforts to resolve differences through cooperation and consultations. Article 42 in the first paragraph of the CEFTA agreement states that:

Should any divergence with respect to the interpretation and application of this Agreement arise, the Parties concerned shall make every attempt through co-operation and consultations, if necessary in the Joint Committee, to arrive at a mutually satisfactory resolution. (CEFTA Agreement, 2006, p.30).

Consultations concerning any actual or proposed measure or any other matter that a party considers might affect the operation of the CEFTA agreement may be requested in writing to the Chair in Office of the Joint Committee (Article 42(2)). The Joint Committee may recommend appropriate measures. Whenever the parties concerned agree, the consultations may take place in the presence of a mediator (Article 42(3)).

Unless they agree on a mediator within ten days of the request for mediation, he/she is to be appointed by the Chair of the Joint Committee.

Article 43 of the CEFTA stipulates that if the parties fail to reach agreement regarding the dispute through bilateral consultations and mediation, or through the Joint Committee, then they have the right to submit the dispute to an Arbitral Tribunal for a final resolution. Article 43 of the CEFTA envisages the possibility of an Arbitral Tribunal according to Annex 9 to the Agreement.

Some researchers have argued that although CEFTA has a legalistic system to resolve disputes, the preferred approach to resolve disputes in CEFTA is through consultation and cooperation (Efremov et al, 2020). The CEFTA dispute resolution mechanism has never been applied in practice, and for example, Kosovo's contested representation in CEFTA has not changed that (Balkan Policy Research Group, 2021). Despite its legalistic nature, the CEFTA agreement has no provisions and no procedural guidelines about what to do if a party to this agreement violates its obligations for political reasons only. In other words, if there is no trade-related dispute. The agreement also has no provisions about who pays for damages caused by a CEFTA party that is not a member of the United Nations (e.g. Kosovo) and violates the agreement. Logically, the agreement stipulates that disputes under consultation or arbitration within CEFTA cannot be submitted to the WTO for dispute settlement (Article 43 (4)).

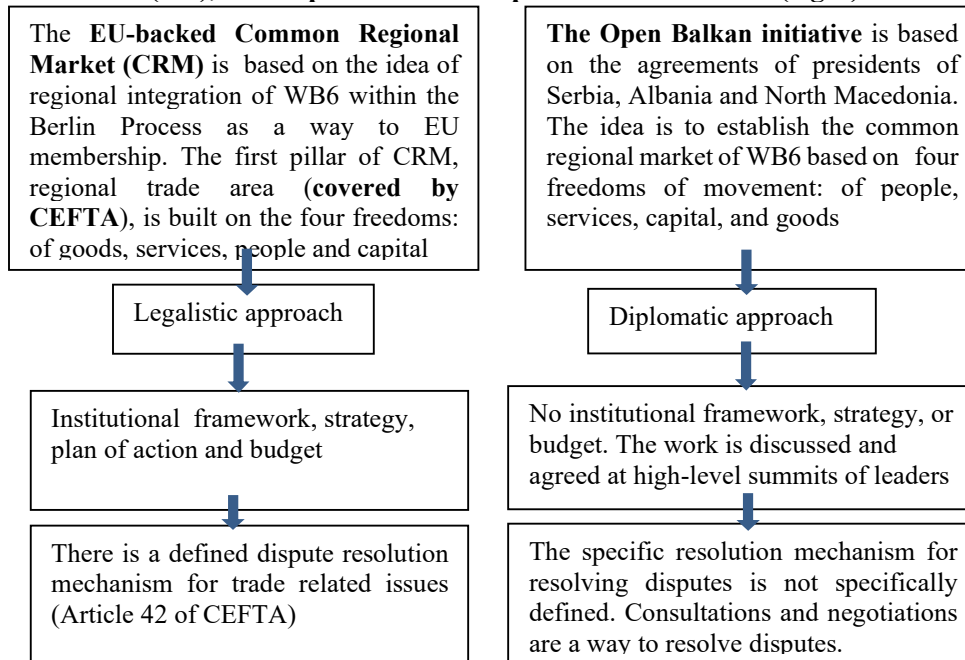
The main text of the CEFTA agreement is supplemented by a number of annexes and additional protocols in different areas. For example, in 2013 the Joint Committee adopted the Decision on Advance Notification of Legislation No. 2/2013 (CEFTA Decision 2013). According to this decision, CEFTA members must inform the Joint Committee on any proposed legislation, in particular that legislation which could have the effects of quantitative restrictions on exports and imports, before their adoption. In that way, the full knowledge of the consequences for the functioning of the agreement are known.

5.2 Legalism of the Open Balkan initiative

The Open Balkan initiative is not a free trade agreement. The Open Balkan does not offer new or additional trade concessions to those that have already been in force with all regional trading partners. The Open Balkan is an initiative that is based on a number of agreements that aim to enhance regional cooperation, facilitate trade flows, promote labour market cooperation, cooperate in the fields of tourism, culture and similar. The Open Balkan initiative is a way of good-faith measures that provide a basis for mutual cooperation and policy integration between parties to this initiative. Open Balkan initiative appears to be on the opposite side of the legalistic approach compared to CEFTA (Figure 1). Contrary to CEFTA, the Open Balkan's institutional and legalistic

format is less formal, but considerably more diplomacy-oriented and based on agreements among the leaders of this initiative (Government of the Republic of North Macedonia, 2022; Spasovski, 2022).

Figure 1: Common Regional Market, in part that is covered by CEFTA (left), in comparison to the Open Balkan initiative (right)



The Open Balkan initiative that was established and agreed between the three Presidents in the Western Balkans, appear to rely on diplomacy, consultation and good faith in cases of potential disputes in a common regional market. The full list² of agreed documents is available on the website of the Government of North Macedonia. It is also available on the website of the Chamber of Commerce and Industry of Serbia.

With regard to potential problems, agreements that have been signed within the Open Balkan initiative appear to largely depend on consultations and negotiations to resolve potential disputes. For example, in the Agreement on Cooperation in the Western Balkans in the field of mutual recognition of diplomas and scientific grades issued by higher education institutions and other authorized institutions, signed in 2022, Article 6 on Dispute Settlement clearly states that any dispute arising from the interpretation or application of that agreement should be settled through negotiations (Chamber of Commerce and Industry of Serbia, 2024). Another example is the Agreement on Mutual Recognition of Certificates of Authorized Economic Operators (AEOS) between Albania and North Macedonia, signed in 2021. This agreement in its

Article 10 stipulates that contracting parties will aim to solve any problems or uncertainties arising from this contract via mutual cooperation (Chamber of Commerce and Industry of Serbia, 2024). Similarly, Article 7 of the Memorandum of Understanding on cooperation in the field of tax administrations in the Western Balkans, signed in 2022, stipulates that any differences between the parties in the interpretation or application of this Memorandum would be settled amicably and with mutual consent (Chamber of Commerce and Industry of Serbia, 2024). Also, Article 9 of the Memorandum of Understanding on Cooperation on Facilitation of Imports, Exports and Movement of Goods in the Western Balkans stipulates that “any dispute that may arise in the application of this Memorandum shall be settled by mutual consent through the competent authorities of the Parties” (Chamber of Commerce and Industry of Serbia, 2024,6).

As in all other agreements and memorandums signed within the Open Balkan initiative, this statement neither precludes nor prejudices the fulfillment of the obligations of signatories of the documents they have committed to in any bilateral or multilateral international agreements. In other words, since Serbia, North Macedonia and Albania are also members of CEFTA, they must respect the rules and procedures of CEFTA agreements as well.

5.3 Case study

5.3.1 The problem

According to the European Commission, the CEFTA agreement aims to consolidate, simplify and modernise the region's “rule book” on trade, including on competition, government procurement and protection of intellectual property (European Commission, 2006). The agreement should bring economic benefits from increased trade and reduction of non-tariff barriers to trade. A rise in trade should have a positive impact on economic growth, job creation and employment, making the region more attractive for foreign investment.

However, it appears that not all understand the EU’s “rule book”, judging from the case of 100 percent punitive tariffs imposed by Kosovo on all imports of goods from Serbia and Bosnia and Hercegovina in 2018 and a similar ban on imports of certain goods from Serbia in 2023. Tariffs imposed in 2018 and a ban on certain imports from Serbia in 2023 had nothing to do with economics and/or protecting domestic production. Tariffs in 2018 were imposed in response to Serbia’s lobbying efforts to prevent Kosovo’s membership in UNESCO and Interpol (Gashi and Berisha, 2019). The then position of Kosovo was that the 100 percent tariff would be dropped if Serbia stopped lobbying against Kosovo’s joining international organizations and when it

recognizes its sovereignty (Euroactiv, 2018). Immediate diplomatic responses by the US and the EU were to call on Kosovo to abolish the tariffs. They were abolished only after 16-months of intense diplomatic pressure by the US and the EU (Hahn, 2018).

The ban on imports from Serbia imposed by Kosovo on 15 June 2023 had also nothing to do with economics, protecting domestic production or any other trade-related reason. The ban followed Serbia's arrest of three policemen from Kosovo who were captured in central Serbia and later freed to defend themselves (Ahmeti, 2024). Since then there were restrictions on imports from Serbia as only raw materials and half-products were allowed to enter Kosovo (Ahmeti, 2024). That has influenced the prices for Kosovo's consumers as importers have been forced to import products from other, more distant countries (Kosovo online, 2024). The prime minister Albin Kurti denied the fact that that ban was a commercial or trade-related ban, and stated that it was a security measure (Euronews Albania, 2023). However, security measures at the border usually target dangerous products (e.g. weapons), not final commercial goods that are used in people's everyday consumption. Further, the length and the nature of this ban indicate that it aims to hurt exporters from Serbia, particularly exporters of final products. Still, the ban hurts also importers and all people in Kosovo due to price increases and inadequate substitution of products that people were used to (Koha, 2023).

With these measures Kosovo violated not only CEFTA agreement, it also violated its obligations from the Stability and Association Agreement signed with the EU. That agreement contains clear provisions with regard to regional trade cooperation (SAA Kosovo, 2016).

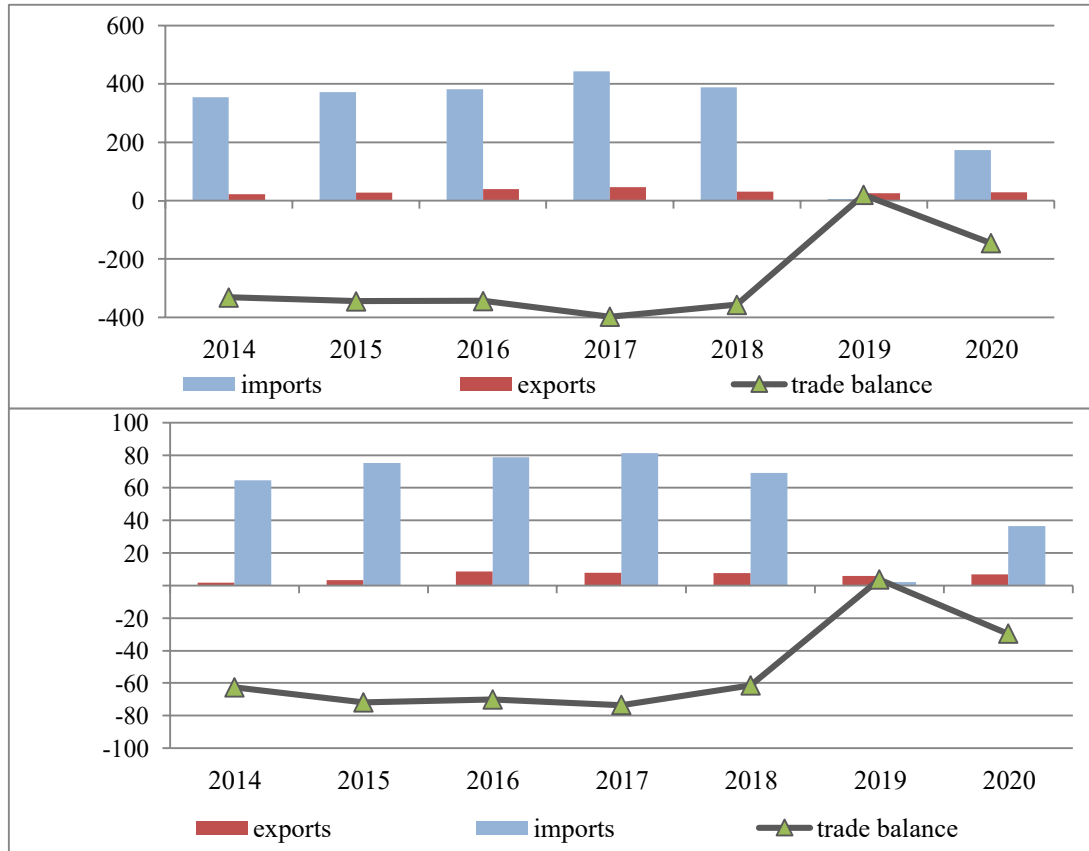
5.3.2 Data Analysis

Due to the 100 percent tariff at the end of 2018 the share of imports from Serbia and Bosnia and Herzegovina to Kosovo fell considerably in 2019 (Figure 2).

After that tariff was abolished 16 months later, imports recovered to some extent. Still, at the end of 2020 the share of imports from Serbia to Kosovo was lower than in the early years of the implementation of CEFTA agreement. The monthly impact of the 100 percent tariff hike imposed at the end of November 2018 is shown in Figure 3. Imports from Serbia were considerably smaller in January 2019 and January 2020 as well, compared to the average January imports in five years before, i.e. 2014-2018. Imports recovered in January 2021, but were still below the pre-tariff hike levels.

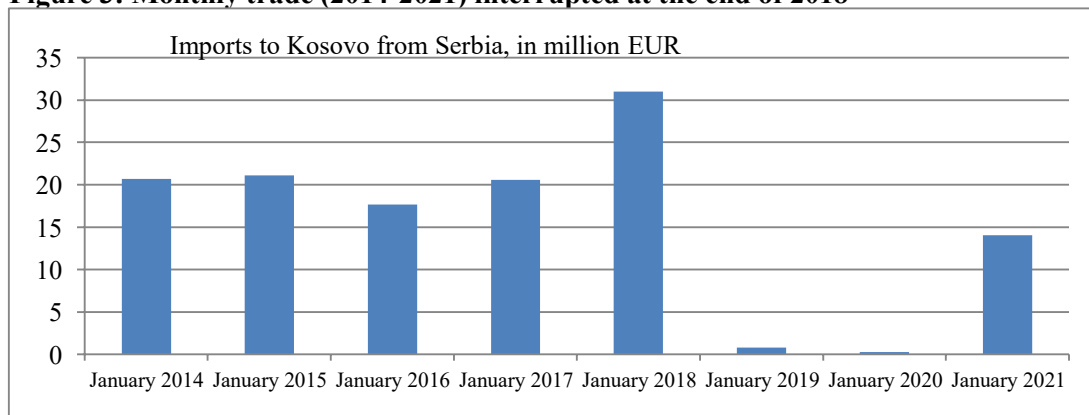
Similar impact was generated by the ban Kosovo imposed on imports from Serbia in June 2023. That ban reduced the imports of goods from Serbia by about two thirds compared to the previous monthly data (Figure 4). Exporters from Serbia lost hundreds of millions of euros as a result of measures enforced in 2018 and again in 2023.

Figure 2: Trade of Kosovo with Serbia (top) and Bosnia and Herzegovina (bottom) from 2014-2021 (in million EUR), yearly impact of tariff hike imposed at the end of 2018

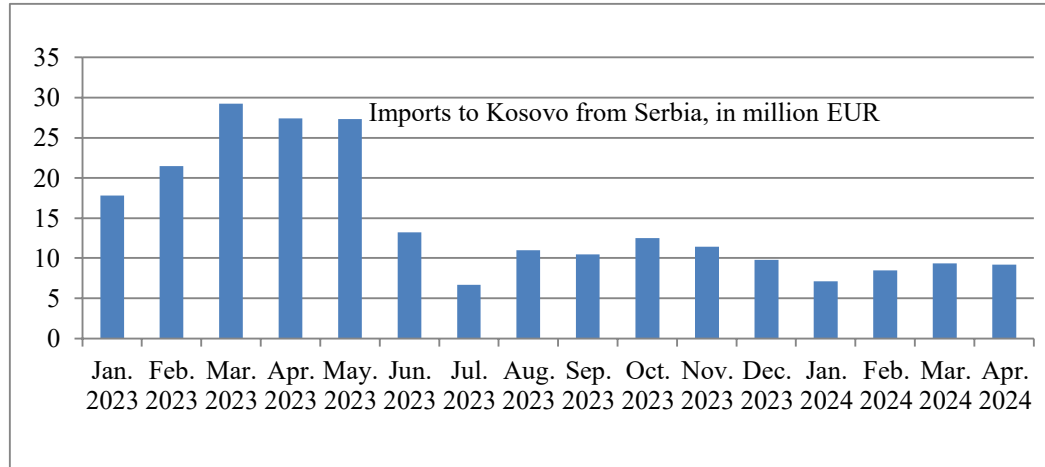


Source: Author's compilation of data from the Eurostat's database, 2023

Figure 3: Monthly trade (2014-2021) interrupted at the end of 2018



Source: Author's compilation of data from the Eurostat's database, 2023

Figure 4: Monthly trade before and after ban imposed in June 2023

Source: Author's compilation of data from the Eurostat's database, June 2024

5.3.3 Financial implications and legal certainty from the policy point of view

As mentioned above, the damage from these Kosovo's restrictions is measured in hundreds of millions of euros. Companies from Kosovo demanded the abolishment of the 100 percent tariff hike imposed in 2018 on products imported from Serbia and Bosnia and Herzegovina. They have also demanded the abolishment of the current ban on imports from Serbia. For example, the President of the Kosovo Business Alliance, Agim Sahini, said that goods that had been before imported from Serbia now arrive from other countries, and some food items in Kosovo have become more expensive than when imports from Serbia were allowed (Kosovo online, 2024a). He said that although the greatest harm has been suffered by Serbian producers and Serbian citizens living in Kosovo, who are used to using products from Serbia, Albanians were also consumers of these goods (Kosovo online, 2024a). He added that Kosovo businesses have also suffered, especially at the beginning, "until the Kosovo government changed part of the decision so that the ban does not apply to the import of raw materials from Serbia" (Kosovo online, 2024a). The President of the Chamber of Commerce of Kosovo Lulëzim Rafuna said that there were approximately 600 German companies in Serbia, together with many Italian, American and Turkish companies that export their products to Kosovo and other Balkan countries and distribute them in Europe. He added that many foreign companies that are located in Serbia, during the visit to the premises of the Chamber of Commerce of Kosovo, expressed their concern (KOHA, 2023).

Similarly, the American Chamber of Commerce in Kosovo also asked the Government of Kosovo to reconsider the “measures that limit imports from Serbia, and which hinder international commercial interests, by restricting the circulation of goods from world-renowned brands” (KOHA, 2023).

With regard to the legal certainty from the policy point of view, in both cases in 2018 and 2023, Kosovo violated CEFTA agreement. However, in both cases neither exporters nor importers could do anything about it. The states, parties to the CEFTA agreement, Bosnia and Herzegovina and Serbia, could not do anything about Kosovo’s 100 percent tariff hike in 2018 because the CEFTA agreement does not envisage a violation of the agreement for political reasons. Both countries could not start the dispute settlement process. Serbia could also not do anything about the ban on imports of its goods imposed by Kosovo in 2023. This ban, as of 1 July 2024, has been in effect a full year. Despite the fact that CEFTA agreement is a trade agreement that imposes clear legal and other obligations on the parties of the agreement, the CEFTA agreement is obviously not fit for purpose because it does not take into account the reality of the Western Balkans.

Comparing the CEFTA agreement with the Open Balkan initiative, legal certainty in the latter has a different dimension. Open Balkan is not a trade agreement and does not establish any trade liberalization concessions. It is a regional market/harmonization cooperation initiative aiming to enhance trade-facilitation and other non-trade related aspects of mutual interest. Being a harmonization policy/cooperation initiative only, it does not provide mechanisms to cause significant financial damage to other parties of the initiative. Still, the initiative has better legal clauses with regard to potential disputes or problems between parties. For example, Article 9 of the Memorandum of Understanding on cooperation on facilitation of imports, exports and movement of goods in the Western Balkans, signed in 2021, stipulates that any dispute that may arise in the application of that memorandum should be settled by mutual consent through the competent authorities (Chamber of Commerce and Industry of Serbia, 2024). Not only that, the same Article 9 in third paragraph states that the memorandum remains in force indefinitely unless one of the parties notifies its intention to withdraw from it, in which case the memorandum is terminated 30 days after the date of such written notification. In other words, should any party want to exit for any reason (that could potentially include political reasons), it is easy to exit by not hurting any signatory of the memorandum. Exporters and importers would know exactly when certain obligations within the memorandum would cease to exist. This is contrary to the violation of CEFTA agreement in 2018 when it was not clear when Kosovo would stop violating the agreement, despite the intense pressure from the US and the EU.

This is important for exporters and importers not only from the legal certainty point of view but also from the financial point of view. If they know that certain obligations or rights will cease to exist within a clearly defined time framework, they can plan and organize their procurement and other commercial processes accordingly, making potentially less financially damaging decisions.

6. Discussion

Are the two regional initiatives comparable from the legalistic point of view? Do they aim to achieve similar goals of further integration? Can their legalism guarantee legal certainty, which is the crucial? What are their institutional and financial settings? Answers to some of these research questions have already been provided above.

Both regional initiatives are comparable from the legalistic point of view. They aim to achieve similar goals pertaining to further integration. The CEFTA agreement is a free trade agreement. On the other hand, Open Balkan is a policy harmonization/cooperation initiative aiming at enhancing regional cooperation and facilitation of trade flows, culture, tourism, labor market, etc.

Can their legalism guarantee legal certainty, which is crucial? Both, CEFTA and Open Balkan are based on legal texts that determine rights and obligations of parties that are signatories of the agreements. Therefore, both have legal provisions that make CEFTA and Open Balkan legalistic enough to be comparable with each other. However, trade concessions in the CEFTA agreement enable considerably higher financial damages from the violation of the agreement compared to the potential damage of violating the Open Balkan initiative. That is so despite the fact that CEFTA is highly legalistic in comparison to the Open Balkan initiative.

Dispute resolution mechanisms aim to ensure an authoritative interpretation of the rules and norms of the agreement (Biuković, 2008). However, it is interesting that the CEFTA agreement has no provisions and no procedural guidelines about what to do if a CEFTA party violates its obligations for political reasons only. The agreement foresees that disputes under consultation or arbitration cannot be submitted to the WTO for dispute settlement (Article 43(4)). It is interesting that the EU was the institution initiating the CEFTA agreement which was signed in 2006, and which introduced a considerably more legalistic approach compared to the CEFTA signed in 1992, did not establish the principle that would follow the spirit of the WTO's dispute resolution approach which, according to researchers, clearly envisages that governments must amend domestic laws that are not consistent with world trade norms or risk imposition of trade sanctions (Shell, 1995).

What are the institutional and financial settings in CEFTA compared to Open Balkan? Schiff and Winters (2002) argued that international organizations and regional integration may bring countries to a cooperative equilibrium in the area of regional public goods. However, in this particular case it is not clear whether all parties understand their commitments under CEFTA agreement and its importance with regard to the Common Regional Market in the Western Balkans. The Berlin process from 2014 aimed to accelerate regional economic integration and deepen economic cooperation between the Western Balkans and the EU (European Parliament, 2017). Its aim was to move towards the Common Regional Market built on the achievements of the Regional Economic Area (REA), which European Commission saw as a successful initiative. The Common Regional Market was set as a priority (European Western Balkans, 2022).

For example, on 22 January 2024, North Macedonia hosted a summit in Skopje. The leaders of Western Balkans and the EU pledged to increase regional cooperation between states (Government of North Macedonia, 2024). The plan includes a 6-billion EUR assistance package over three years (2024-2027), depending on agreed reforms. Its main aim is to help double the Western Balkans' economy throughout the next decade. The plan, called Growth Plan for the Western Balkans, was envisaged by the European Commission in November 2023 with an aim to enhance economic integration with the EU's single market, accelerate key reforms and boost regional economic integration (Government of North Macedonia, 2024).

There have been many EU-led initiatives aimed at facilitating the accession of Western Balkans to the EU such as the Brdo-Process, Western Balkans Investment Fund, CEFTA and others. The European Commission has encouraged Western Balkans to make full use of the knowledge and expertise of the existing structures such as CEFTA. The EU pledged to continue to support CEFTA to enhance cooperation in the whole Western Balkans. The EU's Economic and Investment Plan of up to 30 billion EUR in investments was an integral part of the support to the Western Balkans to bring a deeper economic integration with the EU single market and help reach the ultimate goal, EU accession.

Some authors argued that the Open Balkan initiative has not brought about new ideas for the Western Balkans region or EU integration project and that the signed agreements under the Open Balkan were already planned and incorporated in the Common Region Market (Ristovski, 2022). Although it seems to duplicate some of the goals and tasks of the Common Regional Market, Open Balkan complements the Berlin Process (Gaarman, 2022). Good outcomes are expected from this initiative despite the fact that some academics see Open Balkan initiative coming from the President of Serbia as an out-ward directed political populism (Tmušić and Rapačić, 2022). One could

argue that this initiative can not bring anything completely new and different compared to the CEFTA (and its multi-annual action plans within the Common Regional Market and the Regional Economic Area (REA)). Regardless, it must be acknowledged that it is the first initiative coming from some Western Balkan countries agreeing on some core principles in regard to regional cooperation and integration.

It is interesting that regional authors that compared the Open Balkan initiative with the EU-supported trade liberalization agreement (CEFTA, i.e. Common Regional Market) never dwelled into the problem of violations of these agreements for political reasons. For example, Ristovski (2022) in his comparison between the Open Balkan initiative and Common Regional Market in the section on issues beyond trade barriers does not even mention the issue of hundreds of millions of euros lost due to trade barriers (e.g. 100 percent tariff hike in 2018-2019) that were not trade related. Instead, he talks about the grey economy which is in fact a much wider problem, not trade-related in this respect at all.

Other authors (Dhimolea, 2022; Semenov, 2022) have mainly focused on whether the Open Balkan initiative brings something new compared to other initiatives by examining political reasons for this initiative. On the other hand, Steinbach (2024) sees the deficiency of the Open Balkan initiative as being the initiative that “is not able to compensate for one of the core deficiencies of the cooperation frameworks under CEFTA and the Common Regional Market, which is the absence of an independent institution tasked with overseeing and implementing agreements” (p.21). One could assume that it is the European Commission or the CEFTA Secretariat that he understands to be an independent institution that is tasked with overseeing and implementing agreements under CEFTA or the Common Regional Market. However, as all authors cited above, he has not looked into the implementation of CEFTA and the Common Regional Market since 2018 to today, 30 June 2024. There have been serious trade violations of CEFTA agreement, confirmed by evidence and data, in 2018-2019 and 2023 to the present, and unfortunately, that independent institution that is understood to be responsible for CEFTA implementation, has not done much in that respect. It can therefore be concluded that the framework of CEFTA and the Common Regional Market are not sufficiently effective in practice to provide adequate legal certainty to exporters and importers in the region.

7. Conclusions

Both initiatives aim at greater cooperation and policy harmonization with an ultimate aim of integration into the EU. The purpose of CEFTA from 2006 is to enhance cooperation and trade among countries that were candidates or potential candidates to

join the EU. CEFTA from 2006 follows the aim of the first CEFTA agreement from 1992 that did not have a dispute settlement mechanism. The CEFTA agreement from 2006, despite its novelty of dispute resolution mechanism, is apparently not legalistic enough to deter significant violations of the agreement.

Further, CEFTA from 2006 has not brought EU candidates closer to the EU despite the fact that CEFTA is included in the EU-backed Common Regional Market that has aimed to bring Western Balkans closer to the EU. CEFTA is a modern regional free trade agreement which should provide a strong legal basis for policy formulation and implementation and play an important role in delivering a regional economic integration agenda, but data show that despite its legalistic approach, CEFTA is a time-consuming and other resources-consuming process that has not produced relevant measurable results.

On the other hand, the Open Balkan initiative aims to achieve the same as CEFTA and the Common Regional Market. By depending less on legalistic approach to solving disputes the Open Balkan initiative may have more effective ways to deal with potential disputes because a diplomatic approach to international trade and dispute settlement is typically more flexible, inexpensive, less lengthy and cumbersome.

Further, the CEFTA has significant institutional and financial support from the European Commission via the Common Regional Market. The Open Balkan initiative has nothing of that sort except the verbal support from the US and the EU (European Commission, 2022).

The Western Balkans has a complicated and difficult history. That is one of the key reasons why good initiatives may not succeed, even if backed by the EU. The current CEFTA needs an “upgrade” so as to take political realities into account on one hand, and to enhance legal certainty for exporters and importers of goods from CEFTA members, on the other hand. One way to do that is to make it clear what happens if there are trade violations due to political reasons. In addition, it is imperative to make it clear who pays for damages if a CEFTA party that violates the agreement for political reasons, is not a member of the UN.

Unfortunately, empirical analysis indicated that CEFTA, as it is now, does not provide more legal protection and certainty for exporters and importers of goods when compared to the Open Balkan initiative. And the stakes are higher for CEFTA members because that agreement carries with it significant financial implications due to trade liberalization and trade concessions. On the other hand, the Open Balkan initiative does not imply such a significant financial and legal uncertainty.

References

- Ahmeti, N. 2024. *Zabrana uvoza iz Srbije povećava cene na Kosovu*. <https://www.slobodnaevropa.org/a/zabrana-uvoza-iz-srbije-kosovo-povecanje-cena/32817596.html> (accessed 12 March, 2024)
- Araki, I. 2004. *Beyond Aggressive Legalism: Japan and the GATT/WTO Dispute*, Geral R. Ford School of Public Policy. <https://fordschool.umich.edu/rsie/Conferences/CGP/Mar2004Papers/Araki.pdf> (accessed 15 March, 2023)
- Balkan Policy Research Group. 2021. *Kosovo's contested representation in CEFTA. A political and legal overview, Report supported by Norwegian Embassy*. <https://balkangroup.org/wp-content/uploads/2021/11/Kosovos-Contested-Representation-in-CEFTA-151021.pdf> (accessed 8 June, 2022)
- Beshkar, M. and Bond, E. 2019. *Trade Agreements: Theoretical Foundations*. Oxford University Press
- Biuković, L. 2008. "The New Face of CEFTA and its Dispute Resolution Mechanisms". *Review of Central and East European Law* 33 (3): 257-294.
- Blatter, K. J, Haverland M., and Hulst V. M. 2019. *Qualitative Research in Political Science, Volume 1-4*, Sage Library of Political Science. SAGE Publications Ltd
- Brinkmann S., Jacobsen M.H., and Kristiansen S. 2014. *Historical Overview of Qualitative Research in the Social Sciencies*. The Oxford Handbook of Qualitative Research (ed Patricia Leavy). Oxford, July 2014
- CEFTA. 2006. *Central European Free Trade Agreement* <https://cefta.int/wp-content/uploads/2016/05/newsletter14-31march.pdf> (accessed 15 August, 2022)
- CEFTA Agreement .2006. *Agreement on Amendment of and Accession to the Central European Free Trade Agreement* <https://cefta.int/legal-documents/#1463498231136-8f9d234f-15f9> (accessed 8 October, 2022)
- CEFTA Decision. 2013. *Decision of the Joint Committee of the Central European Free Trade Agreement No.2 /2013 Adopted on 20 November 2013*, https://cefta.int/wp-content/uploads/2021/07/Decision-No.-2_2013-on-Advance-Notification-of-Legislation.pdf (accessed 18 December, 2023)
- CEFTA. 2022. *Home, What we do, Dispute settlement* <https://cefta.int/what-we-do/dispute-settlement/> (accessed 27 January, 2023)
- Chamber of Commerce and Industry of Serbia.2024. *Signed Agreements* <https://en.pks.rs/open-balkan-section/signed-agreements> (accessed 12 February, 2024)
- Chase, C., Yanovich A., Crawford, J.A. and Ugaz, P. 2013. *Mapping of dispute settlement mechanisms in regional trade agreements: Innovative or variations on a theme?* WTO Staff Working Paper, No. ERSD-2013-07, World Trade Organization (WTO), Geneva, 2013.

- Council of Europe.2017. “*New generation*” *trade agreements and their implications for social rights, public health and sustainable development* <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23489&lang=en> (accessed 18 April, 2023)
- Dhimolea, A. 2022. “Open Balkan. A step forward towards Common Regional Market.” Tirana : Foundation "Friedrich Ebert", December 2022. <https://library.fes.de/pdf-files/bueros/albanien/19888.pdf> (accessed 16 February 2023)
- Efremov, K., Veleviski, L., and Dimitrova, M. 2020. *History of CEFTA 2006-New challenges and dilemmas* AICEI Proceedings, ISSN 2671-3713, University American College Skopje, Skopje. Vol. 15 (1): 204-213
- Euroactiv. 2018.*Kosovo says to maintain its tariffs on Serbia despite EU pressure* <https://www.euroactiv.com/section/enlargement/news/kosovo-says-to-maintain-its-tariffs-on-serbia-despite-eu-pressure/> (accessed 5 March, 2022)
- Euroactiv. 2022. *Kosovo president criticizes Open Balkan, Serbia, and Albanian indifference* https://www.euractiv.com/section/politics/short_news/kosovo-president-criticises-open-balkan-serbia-and-albanian-indifference/ (accessed 8 October, 2022)
- Euronews Albania. 2023. *Trucks transporting Serbian goods denied entry to Kosovo even today* <https://euronews.al/en/trucks-transporting-serbian-goods-denied-entry-to-kosovo-even-today/> (accessed 12 May, 2024)
- European Commission .2006. *A New Regional Agreement to Develop Trade in South Eastern Europe*, Memo/06/490. Brussels, 14 December 2006. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_06_490 (accessed 15 November, 2022)
- European Commission. 2022. *Statement of Commissioner Olivér Várhelyi at the official opening of the Open Balkan Summit in Belgrade*, https://ec.europa.eu/commission/commissioners/2019-2024/varhelyi/announcements/statement-commissioner-oliver-varhelyi-official-opening-open-balkan-summit-belgrade_en (accessed 23 December, 2022)
- European Parliament.2017.*At a Glance. The Berlin Process and the Trieste summit 2017* https://www.europarl.europa.eu/RegData/etudes/ATAG/2017/608637/EPRS_AT_A%282017%29608637_EN.pdf (accessed 16 May, 2022)
- European Western Balkans. 2022. *Pisonero: Common Regional Market established in 2020 remains a priority* <https://europeanwesternbalkans.com/2022/06/09/pisonero-common-regional-market-established-in-2020-remains-a-priority/> (accessed 19 November, 2022)
- Gashi, P. ,and Berisha B. 2019. *The Impact of 100% Tariff on the Import of Goods from Serbia and Bosnia and Herzegovina*, GFA Consulting Group https://www.researchgate.net/publication/333458356_The_Impact_of_100_Tariff

- on the Import of Goods from Serbia and Bosnia and Herzegovina
(accessed 7 March, 2022)
- George, L.A., and Bennet. A. 2005. *Case studies and theory development in the social Sciences*, Cambridge, MA: MIT Press
- Gaarman, M.W. 2022. *The “Open Balkan” Initiative Complements the Berlin Process*. <https://www.swp-berlin.org/en/publication/the-open-balkan-initiative-complements-the-berlin-process>, (accessed 6 January, 2022)
- Government of the Republic of Serbia. 2021. *“Open Balkans” for better economic cooperation of Serbia, Albania North Macedonia*
<https://www.srbija.gov.rs/vest/en/181219/open-balkans-for-better-economic-cooperation-of-serbia-albania-and-north-macedonia.php>, (accessed 25 May, 2022)
- Government of the Republic of North Macedonia. 2022. *“Open Balkan”*
<https://vlada.mk/node/30372?ln=en-gb> (accessed 16 December, 2022)
- Government of North Macedonia. 2024. *Joint statement of the leaders of the Western Balkans (WB 6)*. https://vlada.mk/sites/default/files/img/joint_statement_wb_meets_eu_skopje_22_january_2024.pdf (accessed 18 February, 2024)
- Hahn, J. 2018. *EU’s Hahn Tells Kosovo to ‘Unblock Regional Trade’*, RadioFreeEurope, Radio Liberty. <https://rferl.org/a/eu-s-hahn-tells-kosovo-to-unblock-regional-trade-/29635359.html> (accessed 15 December, 2021)
- Holbein, J.R., and Carpentier, G. 1993. “Trade Agreements and Dispute Settlement Mechanisms in the Western Hemisphere”. *Case Western Reserve Journal of International Law* 25 (3): 531-570
- Hoeckman, B.M. and Kostecki, M.M. 2009. *The Political Economy of the World Trading System, Third Edition*, Oxford University Press, Oxford
- Irwin, D.A. 2016. *Adam Smith and Free Trade*, Hanley R.P. Adam Smith. Princeton University Press, Princeton, pp. 542-558.
- Jelisavac Trošić, S., and Arnaudov, M. 2023. “Open Balkans-Between Economic Opportunities and Political Reality. In *Proceedings of the International Scientific Conference “Social Changes in the Global World”* 2(10): 511-520.
- Kang, Y.D. 2016. “Development of Regionalism: Criteria and Typology”. *Journal of Economic Integration*. 31(2) :234-274
- Koha.2023. *Experts demand that the measure against Serbian goods be reviewed, they say that Kosovo is being harmed*.
<https://www.koha.net/en/arberi/392081/njohesit-kerkojne-qe-te-rishikohet-masandaj-mallrave-te-serbise-thone-se-po-demtohet-kosova> (accessed 12 March, 2024)
- Kosovo online. 2024. *Gradani i privrednici: Zabrana uvoza iz Srbije povećava cene na*
Kosovu. <https://www.kosovo-online.com/vesti/ekonomija/gradjani-i-privrednici-zabrana-uvoza-iz-srbije-povecava-cene-na-kosovu-13-2-2024>, (accessed 15 March, 2024)

- Kosovo online. 2024a. *Šahini: Zbog zabrane uvoza iz Srbije najviše štete za srpske građane, i Albanci kupovali tu robu*. <https://www.kosovo-online.com/vesti/politika/sahini-zbog-zabrane-uvoza-iz-srbije-najvise-stete-za-srpske-gradjane-i-albanci> (accessed 25 June, 2024)
- Open Balkan. 2021. *Press Statement by Prime Minister Edi Rama*. <https://www.kryeministria.al/en/newsroom/open-balkan-komunikimi-i-kryeministrit-median/> (accessed 5 September, 2022)
- Reich, A. 1997. “*From Diplomacy to Law: The Juridicization of International Trade Relations*”. *17 Nw. J. Int'l L. & Bus.* 775 (1996-1997)
- Ristovski, S. 2022. *Comparison of Open Balkan and Common Regional Market: What's new for the regional economic integration in the Western Balkans?* European Policy Institute Skopje. epi.org.mk/wp-content/uploads/Comparison-of-the-Open-Balkans-and-Common-Regional-Market_What-benefits-are-there-in-two-parallel-initiatives.pdf (accessed 15 September, 2023)
- SAA Kosovo. 2016. *Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo *, of the other part*, 16.3.2016, Official Journal of the European Union L 71, p.3-71.
- Semenov, A. 2022. “Open Balkan: objetivos y justificaciones” *Comillas Journal of International Relations* (24): 24–34. <https://doi.org/10.14422/cir.i24.y2022.002>
- Schiff, M. and Winters, L.A. 2002. *Regional Cooperation, and the Role of International Organizations and Regional Integration*, World Bank Group, Policy Research Working Papers. <https://doi.org/10.1596/1813-9450-2872>
- Shell, G.R. 1995. “Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization” *Duke Law Journal* 44: 829-927
- Simić, J. 2019. *Three countries agree mini Schengen in the Balkans*, Euroactiv, 14 October 2019
- Smith, J.M. 2000. “The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts”. *International Organization* 54 (1): 137-180
- Steinbach, A. 2024. “The rocky road to EU accession for Western Balkan countries: obstacles and lessons from the Eastern Partnership”. *Working Paper 08/2024, Bruegel*
- Tmušić, M.B, and Rapaić S. 2022. “The ‘Open Balkan’ Initiative: An outward-directed populism” *The Review of International Affairs* 1186: 5-31
- UN Resolution. 1999. *Security Council Resolution 1244 (1999) on the situation relating Kosovo* <https://peacemaker.un.org/kosovo-resolution1244> (accessed 15 September, 2022)
- World Trade Organization. 2023. *Database. Central European Free Trade Agreements (CEFTA) 2006* <https://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=4&lang=1&redirect=1> (accessed 16 December, 2023)

WTO.2024. *Regional Trade Agreements*.

https://www.wto.org/english/tratop_e/region_e/region_e.htm (accessed 5 June, 2024).

Endnotes

¹ Throughout this paper Kosovo is referred to and understood in accordance with the United Nations Security Council Resolution 1244/99 (UN Resolution, 1999).

² As of 27 January 2024, some of the agreements are the Memorandum of understanding on cooperation in the field of tourism in the Western Balkans, Memorandum of understanding on the cooperation of the taxation administrations in Western Balkans, Memorandum of understanding on cultural cooperation in the Western Balkans, Agreement on cooperation in the Western Balkans in the field of mutual recognition of diplomas and scientific grades issued by higher education institutions and other authorized institutions, Agreement on Protection from Disasters, Memorandum of Understanding on import and export of goods, Memorandum of Understanding for free access to labour market etc.