

**INTRODUCTION TO SERBIA'S
NEGOTIATIONS WITH THE EU
ON CHAPTER 30**

EXTERNAL RELATIONS

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LIST OF ABBREVIATIONS

ACP - Africa, Caribbean and Pacific group of countries

BIT - Bilateral Investment Treaties

CIS - Commonwealth of Independent States

COMECON - Council for Mutual Economic Assistance

EAC - Eastern African Community

EBA - Everything but arms

EC - European Community

ENP - European Neighbourhood Policy

EPA - Economic Partnership Agreement

EU - European Union

GATS - General Agreement on Tariffs and Trade

GATT - General Agreement on Trade in Services

GSP - General System of Preferences

LDCs - Least Developed Countries

MFN - Most Favoured Nation

PCA - Partnership and Cooperation Agreement

PTA - Preferential trade arrangements

SAA - Stabilisation and Association Agreement

SADC - South African Development Community

TFEU - Treaty on the Functioning of the European Union

TEU - Treaty on the EU

TRIPS - Agreement on Trade-Related Aspects of Intellectual Property Rights

TTIP - The Transatlantic Trade and Investment Partnership

WMD - Weapons of Mass-Destruction

WTO - World Trade Organization

EDF - European Development Fund

DAC - Development Assistance Committee

OECD - Organisation for Economic Cooperation and Development

INTRODUCTORY WORD

By removing political obstacles in the first half of 2013, Serbia has finally come to an opportunity to start accession negotiations with the European Union. Negotiations are divided into 35 chapters, some of which are perceived as more important, such as Chapter 23 - Judiciary and Fundamental Rights, and 24 - Justice, Freedom and Security, as well as Chapter 35 - Other issues (Kosovo). In the cases of the accession of other countries, the public and the expert community generally treated Chapter 30 - External relations, as “technical” and therefore easy to close. However, in the case of Serbia, this chapter applies to the economic aspects of cooperation with certain third countries, among which the most significant is certainly Russia. Furthermore, unlike other countries which were in the process of joining the EU, Serbia is not yet a member of the WTO.

Regardless of the steady increase in economic cooperation with the European Union and the neighbouring countries, which are also in the process of accession to the EU, our public and especially the media, often point out that exactly the cooperation with third countries is the key factor and the “opportunity” to boost economic development. Without denying the importance of cooperation with the markets of third countries, it is important to point out that Serbia, as a candidate member, will have to redefine the political and economic relations with them, and in a way that fits the common policies of the Member States implemented in the EU framework. This redefinition of relations does not necessarily have to be either challenging or dramatic, if politicians, businessmen and experts push for reforms on time, so that the state would be prepared and the interests of Serbia protected in a constructive way.

The purpose of this study is precisely to provide the first information about the content of negotiations in the Chapter 30, and provide the basis for the beginning of the public debate on these issues. The main challenges and dilemmas that await us as a country during the negotiations are presented in a concise manner. The publication is also the first product of the partnership and collaboration of the International and Security Affairs Centre (ISAC) and the European Policy Centre (CEP), regarding the support and following of the negotiations in the Chapter 30 in the subsequent period.

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PURPOSE OF THE PAPER

The following introductory paper aims to contribute to Serbia's efficient preparation for the imminent European Union (EU) accession negotiations under Chapter 30 "External Relations", via the negotiating framework of the EU. In this way, it also aims to contribute to a better understanding of the Chapter itself and implications that it has for Serbia and its economy. The paper will briefly present Serbia's state of affairs in regards to negotiating on the Chapter by following the main questions or "topics" the EU addressed in the negotiations with its most recent members (mostly Croatia but also the countries of the Eastern enlargement). These topics, apart from the EU's legislation in this area, also encompass a number of important topics such as Serbia's negotiations with the World Trade Organisation (WTO) and trade relations with Russia as well as countries which are a part of the Central European Free Trade Agreement (hereinafter referred to as CEFTA). The paper will reflect not only on the set of reforms needed for the successful closure of the Chapter but also on Serbia's future as a member of the EU.

1. INTRODUCTION

At this point in time, which is of great significance for Serbia given the recent start of EU accession negotiations, an attentive and elaborate strategy for the negotiation of all chapters needs to be developed and executed. It is essential for the strategy to be based above all on scientific research, in depth analysis of the current state of affairs and examination of previous negotiation experiences in order to be in a position to more effectively grasp the effects which are to be expected in the long run. During the last decade in Serbia, numerous socio-economic issues were often addressed separately and were treated as a single phenomenon, while little effort was taken to identify systemic errors and deficiencies that lie at the basis of those issues.

Chapter 30 "*External Relations*" of the negotiating framework refers mainly to the regulations of the common commercial policy of the EU, the regulations that apply to international trade - including duties and obligations attributed to the members of the WTO, all EU trade agreements with third countries - as well as development and humanitarian assistance to developing countries and least developed countries. Chapter 30 cannot be tackled through a "business as usual" method, but with a horizontal approach to policy making in this area. The topics covered by the Chapter are closely interconnected with the ones in other Chapters. Moreover, to these ends, an efficient administrative capacity that is able to tackle all the cross-sectoral issues is of paramount importance.

This particular negotiating chapter has been deemed relatively easy to close during accession negotiations with other states. Nonetheless, in the case of Serbia, it should not be undermined as it has significant influence both on the country's economy and its foreign relations. The *acquis communautaire* pertaining to Chapter 30 must be accepted in order for the negotiations to proceed, but the negotiating position of Serbia should be defended, specifically in regards to the implications which the application of the *acquis* could have on Serbia's economy. Despite the fact that the EU legislation in this area consists of directives and regulations, which for the most part have direct effect on

Member States, the challenges of their implementation, as well as their impact, should be examined and assessed from the perspective of Serbia.

As it is crucial to have a precise idea about the costs and benefits of adopting and implementing the EU legislation in order for Serbia to successfully approach the opening and negotiation of the chapter, all relevant EU legislation and the conditions it imposes have to be examined, as well as the influence that EU relations with some of its strategic commercial partners outside of the EU 28 Member States have upon Serbia.

Firstly, the chapter encompasses the European Common Commercial Policy issues such as trade and trade agreements with third countries which have derived, to a great extent, from international agreements i.e. the World Trade Organisation. Secondly, under development policy, the Chapter deals with relations with international organisations in the form of international development cooperation and humanitarian aid. Thus, the requirement is also to prove an adequate capacity of a Member State, which is necessary in order to proactively participate in the policy making and implementation of respective policies on the EU multilevel arena.

As the EU is a system in which horizontal measures are at the base of almost any legislation, Chapter 30 is not any different. As stated above, this Chapter is closely connected to other chapters, in the same way all EU policies are interconnected, precisely because of their horizontal effect. The issues of External Relations and Commercial Policies are closely connected to the policies and legislation governing the Single Market (mainly free movement of goods, services and capital) and to the legislation concerning EU's Customs Union, State Aid and Competition policies.

The functioning of the single market and the customs union is inseparably tied to the assurance of a single set of import and export regulations, such as the common customs tariff as the basis, rules on anti-dumping and safeguard measures, measures against subsidized imports or illicit trade practices. It also includes quantitative restrictions and trade bans as responses to foreign policy decisions so that the Member States would come forth as a unified front vis-à-vis third countries. Therefore, undoubtedly the aforementioned matters may be highly contentious, and therefore require thorough and in-depth examination of the implications for a certain acceding country in respect to adhering to a plethora of commercial agreements concluded with non-member countries. It is also relevant to note that the common commercial policy is of high political importance since it allows the EU to confirm its standing on the global trading arena and its *"trade not aid"* development policy, reflected among other in preferential treatment granted to exports from developing countries.

Consequently, Chapter 30 is quite extensive and entails that Serbia will have to embrace the Union's international commitments as well. This could initially present a burden for Serbia, but if the negotiations are constructed and concluded successfully, the topics covered in Chapter 30 might as well become one of the most important development engines in the future, guaranteeing Serbia recognition and access to the markets of certain countries in which it could not so easily embark on its own. It is, therefore, essential for Serbia to show how it intends to improve its policies in these areas.

Through bilateral cooperation during the past few years the European Commission applied numerous programs in order to achieve successful reforms of the legal institutional framework in Serbia. It was noted that in certain areas the adoption of legal amendments produced counter effects, consequently having a negative influence on the business environment. The reasoning behind such a sequence of events can be traced back to the weak reliance on analysis and unpredictability of certain factors, novel legal uncertainty, increased regulatory risk, and a number of other factors which in combination resulted in higher costs for businesses. Following the aforementioned consequences, such types of actions most certainly cause a great deal of harm to investors, the economy and the citizens overall. In such an unhealthy environment neither Serbian nor foreign investors can make their decisions based on the course of public policy. In effect, this will reflect negatively on the accession negotiation process between Serbia and the EU, as well as the country's position once it becomes a fully-fledged member state.

In this respect a paper such as this one, which also aims to provide a long term feasibility study of Serbia's external trade policies, could also be of great significance for the work of the Chamber of Commerce of Serbia. Moreover, it can provide a valuable insight into the manner in which Serbia's external relations and trade will change over time. These insights could prove to be a useful tool in elaborating the processes for the business and trade actors so as to familiarize them with the imminent changes which are expected on the market due to the accession process. Consequently, the paper will contribute to making the business environment more secure and predictable, therefore increasingly attractive to foreign direct investment which will in return also guarantee a steady and coherent progress towards EU membership.

2. EU EXTERNAL RELATIONS LEGAL FRAMEWORK

The principles guiding the EU's activity abroad are defined in the Treaty (TEU), and stated in the Article 205 of the Treaty on the Functioning of the European Union (TFEU):

“The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.”¹

Between 1993 and 2009, the EU consisted of three pillars: European Community, the Common Foreign and Security Policy, and Justice and Home Affairs. The three pillars respectively dealt with matters of economics, foreign policy and criminal justice. With the entrance in force of the Lisbon Treaty, the EU consolidated the three-pillar system and adopted one legal personality.

Title V² of the Treaty on European Union, introduced with the Lisbon Treaty sets out general provisions for the creation of a more coordinated external action of the Union.

¹ Source: http://eeas.europa.eu/background/index_en.htm

² Title V Treaty on European Union- General Provisions on the Union's External Action and Specific Provisions on the Common Foreign and Security Policy.

Furthermore it expands the role of the High Representative of the Union for Foreign Affairs and Security Policy, making this very important EU role responsible for not only organizing EU policy in matters of external action, but also represents the voice of the EU on matters of common foreign and security policy.

Furthermore, with the Lisbon Treaty, the EU became an even more important international actor by gaining a legal personality. This means that EU can conclude international agreements with other countries or international organizations. The legal framework on the Union's External Action is best described in the Part V of the TFEU, starting with the Art.205, previously quoted, and continuing on with the provisions regarding Common Commercial Policy (Art. 206-207), Cooperation with Third Countries (Art 208-213), Humanitarian Aid (Art. 214), Restrictive Measures (Art. 215) and International Agreements (Art. 216-219).³

GOODS OF DUAL USE

When taking into consideration the EU legal framework in the area of trade, it is very important to underline certain aspects where the EU plays a crucial role as a regulator, such as in Dual-use control.

Dual-use goods, as defended by the EU, are "goods, software and technology normally used for civilian purposes but which may have military applications, or may contribute to the proliferation of Weapons of Mass Destruction (WMD)."⁴ Since there is a large portion of EU export goods that come under this category, the control regime set up by the EU aims to help the industry, especially the one based on significant R&D, assuring innovation and competitiveness.

The EU export control regime is governed, binding and directly applicable Regulation (EC) No 428/2009.⁵ The Regulation sets EU control rules, including a control list and harmonised policies for implementation.

Nonetheless, it is very important to underline that the Member States still need to take certain complementary measures in order to insure the correct implementation of the Regulation's provisions, especially in regards to the breaches and applicable penalties. The EU published and updated the list of national measures.⁶

NEGOTIATION PROCESS

In regards to the negotiation process, the legal framework in Chapter 30 predominantly consists of directly applicable EU legislation. This legislation stems from multilateral and bilateral commitments of the EU in the field of trade, and also from a large number of autonomous trade measures. Some directives in the field of export credits and dual-purpose goods require transposition into national legislation.

³ Consolidated Version Of The Treaty On The Functioning Of The European Union

⁴ European Commission: <http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>

⁵ Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF>

⁶ For more information on Member State national measures, see: Official Journal of the European Union http://trade.ec.europa.eu/doclib/docs/2012/march/tradoc_149187.pdf

Candidate countries are required not only to gradually harmonize their policies towards third countries and their positions within international organizations, but also to harmonise the policies, practices and positions accepted at the EU level and in the other Member States.

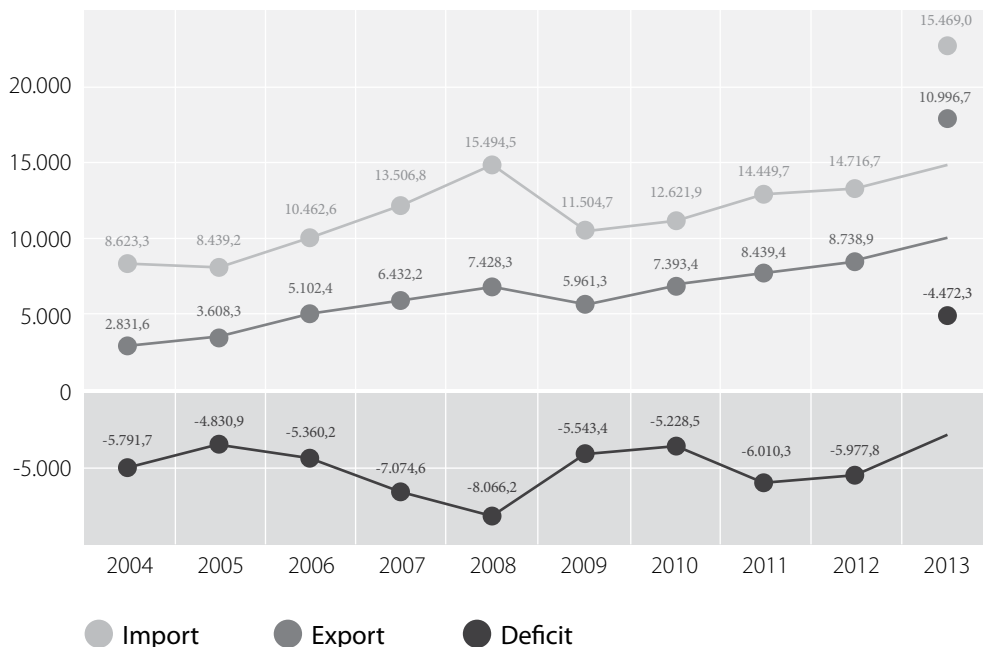
3. SERBIA AND CHAPTER 30: FACT AND FIGURES

Serbia, as every other candidate country, must indisputably accept the relevant acquis and ensure that its legislative and institutional frameworks are being successfully implemented. However, the consequences of the foreclosure of Serbia’s previous trade and economic agreements with third countries and the adherence to Union’s agreements and commitments are very delicate topics, as the further integration process will certainly impose changes and later on the closure of the same. The issues regarding the specific bilateral agreements will be address later on. In order to provide a better overview of Chapter 30 and all its different components, a list of most important questions in the negotiations will be presented and explained below.

FOREIGN TRADE POLICY REVIEW

The following overview of statistical data provided by the Statistical Office of the Republic of Serbia depicts a wholesome picture of Serbia’s trade movements in the past years, and more specifically in the year 2013.

Graph 1: Serbia’s foreign trade 2004-2013



Source: Statistical Office of the Republic of Serbia, August 04, 2014

Graph 2: Major exports products 2013 (in mil EUR)

MAJOR EXPORT PRODUCTS IN 2013	
ROAD VEHICLES (INCLUDING I AIR-CUSHION VEHICLES)	1.637,2
ELECTRICAL MACHINERY, APPARATUS & APPILIANCES	843,6
FRUITS AND VEGETABLES	503,6
CERELARS AND CERELAR PREPARATIONS	498,4
NON-FERROUS METALS	487,3
ARTICLES OF APPAREL AND CLOTHING	453,2
MISCELLANEOUS MANUFACTURED ARTICLES	386,2
RUBBER MANUFACTURES	348,6
IRON AND STEEL	306,2

Source: Statistical Office of the Republic of Serbia, August 04, 2014

Graph 3: Major import products 2013 (in mil EUR)

STRUKTURA UVOZA PO PROIZVODIMA U 2013. GODINI	
ROAD VEHICLES (INCLUDING I AIR-CUSHION VEHICLES)	1.901,4
PETROLEUM AND PETROLEUM PRODUCTS AND RELATED MATERIALS	1.458,8
GAS - NATURAL AND MANUFACTURED	693,7
ELECTRICAL MACHINERY, APPARATUS & APPILIANCES	661,4
MEDICAL AND PHARMACEUTICAL PRODUCTS	576,2
GENERAL INDUSTRIAL MACHINERY & EQUIPMENT	498,0
IRON AND STEEL	481,6
PLASTICS IN PRIMARY FORMS	459,7
NON-FERROUS METALS	447,6
MISCELLANEOUS MANUFACTURED ARTICLES	436,7

Source: Statistical Office of the Republic of Serbia, August 04, 2014

Graph 4: Major export countries 2013 (in mil EUR)

STRUKTURA IZVOZA PO ZEMLJAMA U 2013. GODINI	
ITALIA	1.790,7
GERMANY	1.306,5
BOSNIA AND HERCEGOVINA	904,1
RUSSIAN FEDERATION	799,9
MONTENEGRO	641,8
ROMANIA	590,9
FYR MACEDONIA	433,7
USA	368,6
SLOVENIA	359,8
CROATIA	313,1

Source: Statistical Office of the Republic of Serbia, August 04, 2014

Graph 5: Major import countries 2013 (in mil EUR)

STRUKTURA UVOZA PO ZEMLJAMA U 2013. GODINI	
ITALIA	1.776,5
GERMANY	1.697,8
RUSSIAN FEDERATION	1.429,1
CHINA	1.136,0
HUNGARY	763,9
POLAND	731,9
KAZAKHSTAN	671,9
AUSTRIA	476,9
FRANCE	453,6
ROMANIA	438,4

Source: Statistical Office of the Republic of Serbia, August 04, 2014

As the tables above depict, Serbia traded mostly with countries in relation to which it has signed free trade agreements, as it is also evident from the trade surplus of EUR 1.25 billion with the CEFTA countries.⁷ As stated by the Serbia Investment and Export Promotion Agency (SIEPA) Serbia's overall foreign trade for the period January-December 2013 amounted to €26.5 billion, a 12.8% increase, compared to the same period in 2012.^{8,9} EU Member States accounted for 62.8% of the overall trade. More specifically, the value of exports amounted to €11 billion, which shows an increase of 25.8% compared to year 2012. Furthermore, the value of imports amounted to €15.5 billion, showing an increase of 5.1% for the same period. The export - import ratio equalled 71.1% and was higher if compared to the same period last year when it was 59.4%, and the deficit amounted to €4.5 billion, showing a decrease of 25.2%.¹⁰

Serbia is the sole country in Europe, alongside a couple of countries of the loose association Commonwealth of Independent States (CIS) that concluded a free trade agreement with the Russian Federation. Namely, it dates back to the year 2000 and envisages that for goods whose origin can be traced back to Serbia in a ratio higher than 50%, there is no tariff on the Russian market. Finally, as there are implications for Serbia's relations with a number of countries with which it has concluded free trade agreements, mainly the following – Belarus (Free Trade Agreement, 2009), USA (General Preferential System, 2005), Turkey (asymmetric liberalization of trade, Free Trade Agreement, 2009), EFTA (i.e. Iceland, Liechtenstein, Norway and Switzerland, Free Trade Agreement, 2009) and Kazakhstan (Free Trade Agreement, 2010).

The trade relations of Serbia in respect to Russia and the CEFTA countries are the ones that need to be studied in greatest depth in the prospect of further EU integration by taking into account the relevant experience of Croatia and learning from these examples. The analysis of the economic implications stemming from the Croatian EU accession and withdrawal from CEFTA provides a valuable insight into the post-accession characteristics of trade with the non-EU countries in Southeast Europe. Moreover it provides possibilities to change the Stabilization and Association Agreements in order to make room for a transition period facilitating the acceding country's loss of CEFTA benefits and maintain its competitiveness on the CEFTA market despite the higher tariffs and quotas.

⁷ CEFTA ranked second among Serbia's trade partners.

⁸ Data used by SIEPA is provided by the Statistical Office of the Republic of Serbia. Available at: <http://webzrs.stat.gov.rs/WebSite>

⁹ SIEPA- <http://siepa.gov.rs/en/index-en/import-from-serbia/foreign-trade-data/2013.html>

¹⁰ Ibid.

4. SERBIA AND THE WORLD TRADE ORGANISATION

The World Trade Organization (WTO) is composed of both Member State governments and customs territories (such as the EU). The importance of the organization lies in the framework it sets for trade between its members which guarantees that the decisions on trade matters are taken on a consensus basis. Moreover, the WTO represents a forum for multilateral trade negotiations, it resolves trade disputes between States, sets legal ground-rules for trade in the form of Agreements and monitors carefully all members' trade policies through the 'Trade Policy Review Mechanism'. As is the case with the EU accession process, becoming a WTO member requires "compliance with the WTO rules in force and negotiations with the existing members on the acceding country's commitments."¹¹

Serbia has submitted its application to the WTO in 2004 and has since undergone a series of both legal and structural reforms in order to meet the criteria needed for the full membership in the organization. On June 13th 2013, the WTO Working Party Chairperson *H.E. Ms Marie-Claire Swärd Capra* called for a successful "Serbia's final lap of accession negotiations in order to carry Serbia's accession 'across the finishing line'".¹² Serbia's WTO membership is deemed as necessary for a number of reasons. Some of the more evident are certainly the prestige and the benefits of being a part of such an organization, while others are related to the reforms needed for a successful accession process towards the EU membership. Accession to the WTO is certainly expected to make a lasting contribution to the process of economic reform and sustainable development of the country.

The EU has surely been Serbia's greatest supporter in the accession negotiations with the WTO. Still, in cases of non-compliance of Serbian legislation with the EU *acquis*, such as the case regarding genetically modified organisms (GMO) of summer 2013, the EU firmly held its ground. It is predicted that Serbia will achieve WTO membership soon, if it adopts the necessary amendments to the law regarding the circulation of certain GMOs as well as the amendments to some other laws, such as the one regarding excise duty on alcoholic beverages.

4.1. MOST FAVOURED NATION TREATMENT

The principle of Most-Favourite-Nation (MFN) guarantees under all WTO agreements that "countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members."¹³ The core of the principle is that each member treats all the other members equally as "most-favoured" trading partners. If a country improves the benefits that it gives to one trading partner, it has to give the same "best" treatment to all the other WTO members so that they all remain "most-favoured".

¹¹ European Commission TRADE. Trade policy: EU and WTO. Available at: <http://ec.europa.eu/trade/policy/eu-and-wto/>

¹² WTO. Serbia a few steps away from concluding WTO accession negotiations. 13 June 2013. Available at: http://www.wto.org/english/news_e/news13_e/acc_srb_13jun13_e.htm

¹³ World Trade Organization. Principles of the trading system: Understanding the WTO. Available at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

The principle is of great importance in almost all WTO Agreements (GATT¹⁴, GATS¹⁵, TRIPS¹⁶), but it does slightly change in each of them.

It is important to denote that although MFN is a general principle, it also includes exceptions. As explained by the WTO “countries can set up a free trade agreement that applies only to goods traded within the group - discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. When it comes to services, countries are allowed, in limited circumstances, to discriminate”.¹⁷ However, these exceptions are allowed only under strict conditions. Usually what happens is that MFN principle comes through, meaning that “every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners - whether rich or poor, weak or strong.”¹⁸

4.2. GENERALISED SYSTEM OF PREFERENCES

The Generalised System of Preferences is an exemption system in regards to the most favoured nation principle (MFN) that obliges WTO member countries to treat the imports of all other WTO member countries no worse than they treat the imports of their “most favoured” trading partner. In essence, MFN requires WTO member countries to treat imports coming from all other WTO member countries equally, that is, by imposing equal tariffs. GSP exempts WTO member countries from MFN for the purpose of lowering tariffs for the least developed countries, without also lowering tariffs for rich countries.

As Serbia will be part of the customs union, it will have to apply all free trade agreements, and any individual (preferential and non-preferential) trade agreements that the EU grants to selected countries outside the EU, including the Generalized System of Preferences (Generalised System of Preferences - GSP). The system or scheme of preferences is largely used in the EU in order to allow developing country exporters to pay lower taxes on their exports towards the Single Market of the EU. As confirmed by the Commission, this is in order to provide these countries with the vital access to EU markets and to contribute to their economic growth.

The GSP includes three variants:

- » **Standard scheme** – offering generous tariff reductions to developing countries (by means of partial or total removal of tariffs).
- » **“GSP+”** – enhanced preferences entail full removal of tariffs, this variant follows the previous one, but it is granted only to those countries which ratify and implement international conventions relating to human and labour rights, environment and good governance.
- » **“Everything but Arms” (EBA) scheme** – grants to least developed countries (LDCs) duty-free quota-free access to all products, except for arms and ammunitions.

¹⁴ General Agreement on Tariffs and Trade (GATT), which governs trade in goods.

¹⁵ General Agreement on Trade in Services (GATS), which governs trade in services.

¹⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

¹⁷ World Trade Organization. Principles of the trading system. Available at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#seebox

¹⁸ World Trade Organization. Principles of the trading system. Available at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#seebox

The GSP has been recently reformed in the EU and the new preferences started being applied since the 1st January 2014 through the Regulation 978/2012. The scheme calls for an up to date revision as the situation in the developing countries is not a constant one. In order to show respect for the criteria¹⁹ and coherence in the preferences the EU, as well as other non EU countries practicing the Preference System, must constantly update and keep in check their list of “preference beneficiaries”.

The newly reformed scheme in fact poses more strict evaluations of the beneficiaries’ situations¹⁹ and reinforces actions that guarantee a better respect of human rights, as well as procedures which will become “even more transparent, with clearer, better defined legal principles and objective criteria”.²⁰

4.3. TRADE DEFENCE INSTRUMENTS

Under the concept of defence instruments, measures are introduced by the EU in order to protect its producers either against unfairly traded, or subsidised imports, or possible changes in trade flows which could have a harmful effect on the EU economy.

EU’s *Trade Defence Instruments*, which are also recognized by the WTO, are the following:

- » **Anti-dumping rules** – refer to any ‘dumping’ activity, meaning any activity that includes “exporting a product to the EU at prices lower than the normal value of the product (the domestic prices of the product or the cost of production) on its own domestic market.”²²
- » **Anti-subsidy rules** - these are rules against any ‘subsidy’, meaning any “ financial contribution made by (or on behalf of) a government or public body which confers a benefit to the recipient.”²³
- » **Safeguard instruments** - are in fact instruments which are used only in rare occasions where there is a situation in which EU industry could be “affected by an unforeseen, sharp and sudden increase of imports”.²⁴

These trade defence instruments were introduced by the EU mostly to re-establish and guarantee a competitive environment for the EU industry against possible harmful effects of trade. In 2012, the Commission proposed and later on held a public discussion on the topic of modernizing trade defence instruments. A modernization of these instruments was considered necessary so as to adapt the “EU’s rulebook to tackle unfair competition from dumped and subsidised imports to the contemporary challenges facing the EU’s economy.”²⁵

¹⁹ Criteria mainly refereeing to the development index, respect of human rights, and other criteria which is mostly based on the already existing one from the UN and its agencies.

²⁰ Economic, social, political etc.

²¹ European Commission. Trade - Generalised Scheme of Preferences (GSP).

Available at: http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm

²² European Commission. Trade.

Available at: http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-dumping/index_en.htm

²³ For further information please visit: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/anti-subsidy/>

²⁴ For further information please visit: <http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/safeguards/>

²⁵ European Commission. Trade. Press. 10 April 2013. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=885>

4.4. TRADE IN SERVICES

Trade in services refers to the trade of intangible goods between a producer and a consumer who are based in different countries. Trade in services versus trade in goods has a more specific and particular trade agreement called GATS – *General Agreement on Trade in Services*.

The definition of Services Trade and Modes of Supply of the GATS agreement (Article I: 2) includes the following four modes²⁶:

MODE 1: CROSS BORDER

A user receives services from abroad through its telecommunications or postal infrastructure. Such supplies may include consultancy or market research reports, telemedical advice, distance training, or architectural drawings.

MODE 2: CONSUMPTION ABROAD

Nationals have moved abroad as tourists, students, or patients to consume the respective services.

MODE 3: COMMERCIAL PRESENCE

The service is provided the state by a locally-established affiliate, subsidiary, or representative office of a foreign-owned and – controlled company (bank, hotel group, construction company, etc.)

MODE 4: MOVEMENT OF NATURAL PERSONS

A foreign national provides a service the state as an independent supplier (e.g., consultant, health worker) or employee of a service supplier (e.g. consultancy firm, hospital, construction company).

4.5. TRADE AND ADMINISTRATIVE CAPACITY

In the field of trade, administrative capacity plays a crucial role in the functioning and monitoring of export and import activities. In this sector, it can be said that Serbia needs further support to achieve a successful capacity building and the harmonisation of trade legislation with the EU *acquis* and WTO agreements. Moreover, for a candidate country to become a fully-fledged member of the EU, it must as stated in the Treaty of the EU “take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union”.²⁷ In order to do so it must have the administrative capacities which rise up to the expectations and challenges following the accession. Moreover, the candidate country needs to demonstrate that it is prepared to join in the decision and policy making arena of the EU's multilevel system. In respect to trade, since it is a horizontal issue which should be tackled across the government, effective administrative capacities as well as a robust policy making and coordination system are particularly relevant.

²⁶ The General Agreement on Trade in Services. An Introduction pp. 4. 29 March 2006 (3776.4).

²⁷ Consolidated version of the Treaty of the EU (TEU), Article 4(3) [ex article 10 TEC]

Since certain progress has been made in the establishment of functional market competition as well as in harmonizing the laws regarding technical aspects of the Free Movement of Goods, it is also necessary to strengthen the activities regarding trade in order to prepare the country to withstand international competition and market forces once it gets full membership in the EU. The export promotion strategy at State-level is needed and the institutional capacities for boosting and regulating export need to be more advanced and modernized. This in turn calls for additional training of government employees in the sector and an increase in the number of professional staff. Government agencies such as SIEPA²⁸, are essential for the promotion of trade and investment opportunities in Serbia, as well as for keeping the information up to date as it is essential for an efficient policy making and development strategies.

5. PREFERENTIAL TRADE AGREEMENTS AND SERBIA'S TRADE AGREEMENTS

Preferential trade arrangements (PTAs)²⁹ are stipulated in cases of unilateral trade preferences. They include Generalized System of Preference schemes (explained above), as well as other non-reciprocal preferential schemes granted a waiver by the General Council. The WTO must be notified of all the PTAs so as to include them in its PTA database, available for consultation at their webpage.³⁰ It is also important to mention in this context the RTAs or Regional trade agreements, between two or more partners, including free trade agreements and customs unions.

PTAs create a trading bloc that provides for preferential access to certain products from the participating countries. Preferential access usually entails a reduction of tariffs, without abolishing them completely. PTAs are seen as the first stage of economic integration between countries or 'members' and usually their main goal is to become a Free Trade Area (hereinafter referred to as FTA) which is done in accordance with the General Agreement on Tariffs and Trade. In fact all free trade areas, customs unions, common markets, economic unions, customs and monetary unions are considered as advanced forms of original PTAs.

PTAs can have a multilateral³¹ or bilateral³¹ form. In Serbia the legal basis for preferential origin rules is the following:

- » Customs Law ("RS Official Gazette" no 18/10), Article 37.
- » Regulation on customs-approved treatment of goods ("RS Official Gazette" no 93/10), Articles 66-97.
- » Trade agreements concluded and implemented by the Republic of Serbia and other countries or groups of countries allowing for preferential tariff treatment (free trade agreements contain protocols on origin which are a part of international agreement and specify requirements and rules for identifying origin of goods).³³

²⁸ Serbia Investment and Export Promotion Agency.

²⁹ Also 'preferential trade area.'

³⁰ <http://ptadb.wto.org/>

³¹ Example: Global System of Trade Preferences among Developing Countries

³² Example: European Union – ACP countries

³³ For further information please visit the following link: <http://www.upravacarina.rs/en/BusinessCommunity/OriginofGoods/Pages/OriginofGoods.aspx>

5.1 FREE TRADE AGREEMENTS IMPLEMENTED BY SERBIA

- » *Stabilisation and Association Agreement (SAA) between the European Union and Serbia enters (since 1st September 2013);*
- » *Agreement on the amendment of and accession to the original Central European Free Trade Agreement – CEFTA 2006;*
- » *Free Trade Agreement between the Republic of Serbia and Republic of Turkey;*
- » *Free Trade Agreement between the Republic of Serbia and the EFTA states;*
- » *Free Trade Agreement with the Russian Federation;*
- » *Free Trade Agreement with the Republic of Belarus;*
- » *Free Trade Agreement with the Republic of Kazakhstan.*

Table 1: Trade Agreements (2013)

Market	Trade agreement	Population
EU	The Stabilisation and Association Agreement (since Sepr 2013)	507,069,424
USA	Generalized System of Preferences	318,861,000
Russia, Belorussia and Kazakhstan	Free Trade Agreement	168,640,600
CEFTA	Free Trade Agreement	20,054,383
EFTA	Free Trade Agreement	13,389,956
Turkey	Free Trade Agreement	76,484,000
Total		1,104,499,363

Nota bene: At the begging of 2013 in respect to trade agreements with the EU, the Interim Trade Agreement was still in force while The Stabilisation and Association Agreement has been applied since Sep 2013.

5.1.1 STABILISATION AND ASSOCIATION AGREEMENT (SAA)

Since September 2013, the Stabilisation and Association Agreement (SAA) between EU and Serbia entered into force. As stated by the European Commission, “the agreement sets out the rules for a comprehensive partnership between Serbia and the EU, which will notably foster free trade between both sides”.³⁴ The effective application of the agreement from both sides brings concrete benefits in trade relations and in advancing the accession process. Serbia has been applying the Interim Agreement unilaterally since February 2009 and therefore has already built a positive track record in implementing obligations of the SAA. The free trade area between Serbia and the EU has been created to last for the next six years while the deadline for the liberalization of trade will be determined in accordance with the capacity of Serbian industry and agriculture to adapt to free trade, and also accounting for the country’s ability to deliver significant reforms in the accession process. In practical terms this means that Serbia has taken on an obligation to phase out tariffs on goods originating from the EU for a transitional period of six years (until January 2015) and the Union confirmed the free access of goods from Serbia to the EU market.

³³ European Commission. Press Release: EU and Serbia: enhanced cooperation rules enter into force. Brussels, 31 August 2013. Available at: http://europa.eu/rapid/press-release_IP-13-805_en.htm

The Interim Agreement defines three groups of industrial products which will, according to their sensitivity, respectively achieve trade liberalization after a period of two, five or six years. However, for products that are not on these lists, customs duties have been abolished at the moment the Interim Agreement came into force. The key sectors of domestic industry (such as automobile industry, ceramics etc.) still benefit from a high level of protection and will have the same treatment during the transitional period of five or six years.

As Serbia's European Integration Office noted in the application of the SAA, probably the most important sector will be the one of agricultural products.³⁵ The Commission in fact declared that "Serbia has witnessed a trade surplus in agricultural products in respect to the EU, which grew from € 200 million in 2009 to almost € 500 million in 2011".³⁶ As the SAA entered into force, the abolition of trade tariffs for agricultural products as well as for processed agricultural products, fish and fishery products will be achieved gradually over a transitional period of six years, while maintaining tariff protection for certain products (20% of products). These are mostly sensitive products such as milk, meat and wheat. What is important for Serbian agricultural "seasonal products" (fruits and vegetables), a seasonal protection system is ensured. The Agreement also includes larger export quotas on sugar and beef and for the first time also a guaranteed annual quota for export of wine which is aimed to result in increased investment in these sectors.

As stated before, a legislative harmonization in the area of competition protection, state aid allocation (subsidies), intellectual property rights, public procurement, standardization and consumer protection is essential as the *acquis* in these areas needs to be adopted in order for Serbia to enjoy full benefits of the SAA and future membership in terms of trade and production.

5.1.2 CEFTA - ORIGINAL CENTRAL EUROPEAN FREE TRADE AGREEMENT (CEFTA 2006)

The states of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia and UNMIK³⁷, have agreed to follow the example of the previous CEFTA agreement (between the states of the Czech Republic, Hungary, Poland, Slovakia, Slovenia, as well as Bulgaria and Romania) which contributed to the readiness of these states for membership in the European Union as witnessed by their later accession.

The CEFTA Agreement fully conforms to WTO and EU regulations, and therefore provides an excellent opportunity for the parties to prepare better for the EU and WTO accession.

Main objectives of the Agreement are "... *inter alia*, to expand trade in goods and services and foster investment by means of fair, stable and predictable rules, eliminate barriers to trade between the Parties, provide appropriate protection of intellectual property rights in accordance with international standards and harmonize provisions on modern trade policy issues such as competition rules and state aid. It also includes clear and effective

³⁵ SEIO. For more information please visit the official website at: <http://www.seio.gov.rs/info-service/questions-and-answers.259.html>

³⁶ *Ibid.*

³⁷ The United Nations Interim Administration Mission in Kosovo, on behalf of Kosovo in accordance with United Nations Security Council Resolution 1244

procedures for dispute settlement and facilitates the gradual establishment of the EU-Western Balkan countries zone of diagonal cumulation of origin, as envisaged in the European Commission's Communication of 27 January 2006.³⁶

Serbia's membership in the "free trade zone in South Eastern Europe" enables it to have tax-free access to a market of 25 million consumers. At the point when the EU is opening the negotiations with Serbia, it is of great importance to examine the manner in which Serbia can deal with these markets once it is a fully-fledged member of the EU. For this point, for instance, the recent Croatian example can provide significant answers which may guide the analysis and lead towards certain conclusions.

On 1st of July Croatia became the 28th Member State of the European Union, and consequently with its newly acquired status Croatia left CEFTA so as to comply with the trade agreements of the EU. Post accession, Croatian trade with its non-EU trade partners relies solely on each country's respective Stabilization and Association Agreement (SAA) as it does for other Member States. Therefore many Croatian exports face new or higher import tariffs and quotas in the CEFTA countries. This can prove to be very burdensome for a country, especially if there are large quotas of its imports and exports with the countries of CEFTA.

In case of Croatia's accession to the EU, the Commission has conducted a series of negotiations with other CEFTA countries, trying to negotiate certain changes in their Stabilization and Association Agreements in order to account for Croatia's EU accession. This was in order to "allow for a transition period for Croatia beyond July 2013".³⁹ However, no CEFTA country is neither eager nor pleased to renounce the preferential trade regimes which they get to enjoy against Croatia, having in mind the new situation. Other CEFTA countries see it as "an opportunity to gain a competitive edge against Croatian products and increase their market share on the CEFTA market".⁴⁰ In Croatia's case, for example, after the EU, Bosnia and Herzegovina is the second most relevant trade partner, which puts Croatia in a delicate position since, as the numbers show "in the first half of 2012, 59% of all Croatian exports to CEFTA were exported to Bosnia and Herzegovina, and 55% of all CEFTA imports in the country came, again, from Bosnia and Herzegovina".⁴¹ The agricultural products were the most problematic sector from Croatia, as 45% of Croatian exports in this sector were in fact intended for the CEFTA market.

Croatian products dominated the CEFTA market, but with the entrance to the EU and the adjustments of the tariffs, those products became more expensive, therefore less competitive on the CEFTA market. On the other hand, Croatia got full access to the Single Market with its 500 million consumers, but as a "newcomer" it still needs to establish a certain reputation for its products and become more competitive. Therefore a cost and benefit analysis of the accession in the matter of market access at this moment is hard to do. The exit of Croatia from CEFTA meant that in respect to other member countries which remained, the popularity of Croatian products (mostly due to the new

³⁸ CEFTA. For more information please visit the official website at: <http://www.cefta.int/>

³⁹ Ana Kotevska. Croatia's EU Accession: Economic Implications for the Balkan Countries. Business Report. Available at: <http://www.pecob.eu/croatia-eu-economic-implications-balkan>

⁴⁰ Ibid.

⁴¹ Ibid.

higher prices) will decrease. In fact, the Serbian Ministry of Foreign and Internal Trade and Telecommunications announced in late May 2013 that it fully expects Croatia's EU accession to bring about Serbian dominance in the CEFTA region. The Serbian Chamber of Commerce declared that it supported the newly established tariffs and quotas for Croatian products, in accordance with the Serbian SAA with the EU and that it believes that this regime will support and foster the domestic agriculture and food producers, and potentially increase export especially towards Bosnia and Herzegovina.

Even if at this moment Serbia may have the lead on the CEFTA market thanks to Croatia's exit, it also needs to learn from Croatia's example in order to more successfully approach the moment in which it will have to do the same and conceive an exit strategy. In fact, the recent Croatian example shows that the exit from CEFTA has some serious precautions of the agricultural sector, which could in the future also be problematic for Serbia. There is a greater impact on the agricultural products in comparison to other industrial ones, mostly because these products are regulated with special European regulations (veterinary, production, processing etc.) and quotas which CEFTA countries will have to meet in order to trade both on Croatian and EU market in the future.

In the Croatian Ministry of Agriculture preliminary assessments show, with the joining of the EU and the change of the trade regime with CEFTA, there is an expected increase in operating costs because of the growth of the customs duties. Nevertheless, as stated by the Ministry "...the Croatian food industry has enormous investments in certain neighbouring CEFTA countries so in that way too, through production in its own plants, it will manage to mitigate part of the negative effect."⁴² However these disturbances especially in the 'transition period' could lead to serious economic losses, and therefore Serbia needs to adjust its trade policies with CEFTA countries to its goals in the EU integration process.

5.1.3 RUSSIA

In August 2000 The Free Trade Agreement between the Russia and Serbia was signed. This particular Agreement is of great importance for the Serbian economy as it makes Serbia particularly attractive to foreign investors in the manufacturing sector. The Agreement stipulates "that goods produced in Serbia, i.e. which have at least 51% value added in the country, are considered of Serbian origin and exported to the Russian Federation customs free".⁴³ This agreement should in no case be underestimated since it is often quoted as one of the factors of the utmost importance for attracting foreign investment to Serbia.

The Agreement on Free Trade with Russia offers greater possibilities for increasing the competitiveness of these countries' industries, and it also provides for significant increase in exports. According to the agreement, the majority of goods are exempt from payment of customs duties. One of the conditions for the beneficial treatment for downsizing the customs duties (at the favourable rate of 1%) is the necessary proof that the goods originate from Serbia and that they are specifically intended for the Russian market. The list of products included or excluded from the Agreement is revised annually.

⁴² CEFTA after Croatia Joins the EU: Commotion at the Top., Business and finance, 24 December, 2013. Available at: <http://bif.rs/2013/12/cefta-after-croatia-joins-the-eu-commotion-at-the-top/#sthash.KDl1YHu9.dpuf>

⁴³ SIEPA. Available at: <http://siepa.gov.rs/en/index-en/invest-in-serbia/liberalized-trade.html>

The importance of such agreement lies also in the fact that Serbia is the only country (together with Montenegro) in Europe that has concluded an agreement on free trade with Russia. This agreement has an immense potential for the Serbian industry, as it enables foreign investors to make planned investments in production plants in Serbia, "... with the end goal of exporting these goods to the huge market of Russia, Belarus and Kazakhstan."⁴⁴

However, in regards to Serbia's process of accession to the EU, the FTA with Russia, as well as with Belarus and Kazakhstan, could turn not only problematic for the negotiations but also for the Serbian economy in the future. The benefits Serbia enjoys from this agreement will no longer apply, as it will have to conform to the agreements already in place between the EU and these countries. Looking at the numbers above, this could become a problematic issue for Serbia, as Russia and the territory of custom union of Russia, Belarus and Kazakhstan with its population of above 168mil represents a valuable export market for Serbia's goods.

Another problem which is largely discussed is the gas import from Russia. Serbia has an advantageous price of gas imported from Russia, which supplies many of its households and industrial productions as well. These advantages would certainly be lost with the adoption of the EU agreements with Russia, once Serbia becomes a fully-fledged member. However, the loss of good economic relations should be avoided. The benefits these relations could bring to Serbia as a Member of the EU, should always be emphasized in the negotiations, as it is in no case a benefit for the EU that any of its members, current or future, encounter economic losses that later reflect upon the stability of the Single Market. Therefore these problems need to be studied and dealt with great attention during the negotiation process.

5.1.4 BELARUS

The Free Trade Agreement with Belarus envisages the mutual abolishment of customs and non-customs duties in trade between the two countries. There are only a few exceptions to the Agreement, including sugar, alcohol, and cigarettes, as well as used cars, buses, and tires.⁴⁵

5.1.5 KAZAKHSTAN

A Free Trade Agreement between the Republic of Serbia and Kazakhstan was signed in October 2010; it almost immediately came into force when Kazakhstan entered the Customs Union with Russia and Belarus.

As with the Agreement with Belarus, parties will not "charge customs duties, fees and charges with equivalent effect for products originating in one party and intended for the market of the other party".⁴⁶ Exceptions were made for the products listed in the annexes of the agreements. All the products listed in annexes are subject to customs duties in accordance with the national legislations.

⁴⁴ Sasa Vracar. Agreement on Free Trade with Russia Expanded. JPM Newsletter. Avgust 2011. godine.
Dostupno na: <http://serbia-business.eu/wp-content/uploads/2012/12/agreement-on-free-trade-with-russia-expanded.pdf>

⁴⁵ Serbian Investment and Export Promotion Agency - SIEPA.

For more information on the Agency, please visit the official website: <http://siepa.gov.rs/en/index-en/invest-in-serbia/liberalized-trade.html>

⁴⁶ Ibid.

This Free Trade Agreement was concluded in order to improve and deepen mutual trade and economic ties between the two countries. Due to its positive effects “it allows Serbian goods to attract more buyers not only from Kazakhstan, but also from the Russian Federation and Belarus, as well as potential investors who are interested in opening their production in Serbia”.⁴⁷

5.1.6 USA

Trade with the United States is perused under the Generalized System of Preferences (GSP) previously described. This system provides for a “preferential duty-free entry for app. 4,650 products, including most finished and semi-finished goods and selected agricultural and primary industrial products”.⁴⁶ Some of the more ‘sensitive’ goods (e.g. most textile products, leather goods, and footwear) don’t benefit from this preferential treatment. The list of eligible goods that do is reviewed and adjusted twice per year, with the input from the U.S.

5.1.7 TURKEY

Trade between Serbia and Turkey is regulated upon the model implemented in trade with the EU. The bilateral economic free trade agreement is based on a “model of trade liberalization, which allows Serbian exporters to sell their products duty-free to the large Turkish market. Goods that are fully manufactured in Serbia, or that are using materials originating from the EU countries or countries that are in the process of joining the EU, are considered to be of Serbian origin, if they have gone through a *minimal additional work or processing in Serbia*”.⁴⁹ Imports of industrial products into Serbia are generally customs-free, but for a large number of goods customs duties will be progressively abolished over a six-year period, ending in 2015.

However, “trade in agricultural products customs duties remain in effect, with certain Most Favoured Nation reductions for a number of products”.⁵⁰

5.1.8 EFTA

Iceland, Liechtenstein, Norway, the Switzerland (EFTA States), on one side and the Republic of Serbia on the other signed a free trade agreement in Geneva, Switzerland, on 17 December 2009. The Agreement entered into force in October 2010 for Serbia, Liechtenstein and Switzerland, June 2011 for Norway and October 2011 for Iceland.

EFTA liberalises the trade of goods and abolishes all customs duties on Serbian industrial products, including fish and other marine products. Serbia has agreed to “gradually dismantle its customs duties for imports of industrial products from the EFTA States until 2014”.⁵¹ Also EFTA set a stage for additional agricultural agreements between the individual EFTA States and Serbia as an integral part of the instruments establishing the free trade area.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Regional Development Agency South. Available at: <http://rra-jug.rs/en/free-trade-agreements/>

⁵⁰ SIEPA. Available at: <http://siepa.gov.rs/en/index-en/invest-in-serbia/liberalized-trade.html>

⁵¹ EFTA. Available at: <http://www.efta.int/free-trade/free-trade-agreements/serbia>

As stated in the Agreement, the States recall “their intention to participate actively in the process of Euro-Mediterranean economic integration and expressing their preparedness to co-operate in seeking ways and means to strengthen this process”. EFTA in fact only strengthens Serbia’s position in the accession process toward EU, and prepares it for the type of economic relations EU has with these countries.

5.2 EU BILATERAL INVESTMENT AGREEMENTS

With the Lisbon Treaty, Member States conferred exclusive competence to the EU foreign direct investment (Article 207 TFEU), including extra-EU Bilateral Investment Agreements (BITs). It was a big change on a global level, as it changed the status of the extra-EU BITs already in existence at that moment (between Member States and extra-EU).

These kinds of changes and uncertainty complicate international business planning, especially regarding the legal protections that companies enjoy when they invest across borders. It is for this reason that the European Union, in order to ensure the legal security of Member States’ bilateral investment treaties (BITs), introduced, on December 12, 2012, a new Regulation (EU) No. 1219/2012. This Regulation “clarifies the legal status of bilateral investment treaties concluded between EU member states and non-EU countries (“extra-EU BITs”) and the role of the European Commission in such agreements.”⁵²

The Regulation allows EU Member States to enter into negotiations with a non-EU country, amend existing Agreements or enter into new ones only after notifying and receiving approval from the Commission. Even when the approval is granted, the member state must keep the Commission updated on the progress of the negotiations, and the Commission may request to participate in the negotiations. In any case before signing a new extra-EU BIT, the member state must transmit the text of the proposed BIT to the Commission, which will authorize the signature of the BIT if all necessary conditions are respected. Having in consideration the Treaty, the Regulation and the procedure a BIT requires, Member States are more frequently turning to EU for the conclusion of such agreements. This also creates a good “business climate” as the investors can now expect an increasing participation of the Commission in any disputes arising under extra-EU BITs.

The EU has negotiated and continues to negotiate several bilateral trade agreements. These agreements usually contain chapters on establishment and on services, as well as a chapter on capital movements and payments.

As written by the Commission⁵³, a typical agreement usually consists of the following provisions:

- » A provision to ensure that payment operations remain unrestricted
- » A provision ensuring that transactions related to direct investment made in accordance with the host country or in accordance with the provisions of the respective agreement remains free of restrictions.

⁵⁰ EC. Single Market. Available at: http://ec.europa.eu/internal_market/capital/third-countries/bilateral_relations/index_en.htm

⁵¹ Ibid.

- » A clause allowing time-limited safeguard measures in case of serious difficulties for the operation of monetary and exchange rate policy; and in some cases, there is a standstill clause.

EU's bilateral investment agreements are enacted under the following categories:

- » Free Trade Agreements – agreements striving for liberalisation of capital movements, while providing for necessary safeguard clauses. Some of EU's FTA's will be presented under.
- » Partnership and Cooperation Agreement (hereinafter referred to as PCA) – Is a type of agreement mostly used for European neighbourhood policy, but there is also a PCA currently negotiated with China. The negotiations have also started with Russia on an update of the existing PCA.
- » European Neighbourhood Policy (hereinafter referred to as ENP) – The Agreements under the ENP are probably one of the most important ones. They offer EU neighbours a privileged relationship and include elements of economic integration, as well as support for reforms to stimulate economic and social development. The policy is currently based on the PCA with Eastern European countries and Association Agreements with Mediterranean countries (Euromed) in addition to commonly agreed Action Plans to achieve these reforms.

A new deep and comprehensive agreement was being negotiated with Ukraine, however due to the troublesome political situation in the country the negotiations have stopped. Nonetheless the EU continues to hope that the agreement will be signed and that other neighbourhood countries may follow.

The most successful agreements are certainly implemented with Euromed countries, which have the potential to be gradually turned into FTAs.

- » Economic Partnership Agreement – are economic agreements promoting trade between EU and ACP countries (Africa, Caribbean and Pacific group of countries).

Since for further negotiations of Chapter 30, it is important that Serbia has a good knowledge of the agreements that are already concluded or that are being negotiated, a more detailed description of the EU trading agreements with third countries is provided.⁵⁴

5.2.1 FREE TRADE AGREEMENTS ALREADY IN PLACE

- a. **Colombia and Peru** – The FTA with the members of the Andean region, Colombia and Peru, has been provisionally applied with Peru since March 2013 and with Colombia since August 2013. The EU is the second largest trading partner of the Andean region after the US.

The improved, more stable conditions for trade and investment are expected to boost trade and investment between the two regions. The aim of the agreement between the EU, Colombia and Peru is also to foster regional integration. This agreement leaves the door open for the other Andean countries – Ecuador and Bolivia – to enter into the partnership.

⁵⁴ As described by the European Commission in the document, MEMO- The EU's bilateral trade and investment agreements – where are we? 18 October 2013

- b. **Central America** (Costa Rica, El Salvador, Honduras, Nicaragua and Panama) - The Association Agreement between the EU and Central American countries was approved by the European Parliament on 11 December 2012. The trade provisions of the agreement apply with Honduras, Nicaragua and Panama since August 2013 and with Costa Rica and El Salvador since October 2013. This agreement opens up markets on both sides, helping to establish a stable business and investment environment and foster integration between the EU and the whole of the Central America. The agreement is also meant to reinforce economic integration between the members of the Central American region. The EU is Central America's second biggest trading partner. In 2012, the total trade flows in goods amounted to €14 billion. Benefits of the agreement will be particularly tangible for the Central America's economy that is expected to grow by over two and a half billion Euros annually once the agreement applies to the entire region.
- c. **South Korea** – The EU-Korea Free Trade Agreement entered into force in July 2011. This has been the first of a new generation of free trade agreements that went further than ever before in lifting trade barriers and making it easier for European and Korean companies to do business together. As the FTA has lowered import tariffs for European products at the Korean border, EU exports to the Asian peninsular country have grown strongly giving the EU a trade surplus with Korea for the first time in 15 years.
- d. **Mexico** – Since this comprehensive Free Trade Agreement entered into force in October 2000, total bilateral trade has doubled, passing from €21.7 billion in 2000 to €47.1 billion in 2012. In the margins of the EU-CELAC summit in Santiago in January 2013, the EU and Mexico agreed to explore the options for modernisation of the EU-Mexico Agreement. The new talks should deepen the existing provisions but also cover areas not included in the existing agreement, such as services, investment, public procurement, trade rules, etc.
- e. **Economic Partnership Agreements** are being implemented in with three regions: the **Caribbean** (fifteen states that form a Forum of the Caribbean Group of African, Caribbean and Pacific states-CARIFORUM), the **Pacific** (the only country currently applying is Papua New Guinea) and **Eastern and Southern Africa** (four ESA countries - Zimbabwe, Mauritius, Madagascar, the Seychelles).
- f. **South Africa** – South Africa is the EU's largest trading partner in Africa. The Trade, Development and Co-operation Agreement, in force since 2000, established a free trade area that covers 90% of bilateral trade between the EU and South Africa. Liberalisation was completed by 2012. South Africa is now involved in further negotiations with the EU as part of the *South African Development Community (SADC) EPA Group*.
- g. **Chile** – The EU and Chile concluded an Association Agreement in 2002. It included a comprehensive Free Trade Agreement that covers all the areas of EU-Chile trade relations. It entered into force in February 2003. EU is Chile's second largest source of imports, after the USA. The EU is also Chile's third largest export market.

5.2.2 FREE TRADE AGREEMENTS FINISHED BUT NOT YET APPLIED

- a. **Eastern Neighbourhood** – The EU has recently concluded negotiations for a Deep and Comprehensive Free Trade Area (DCFTA) with Moldova and Georgia. The DCFTAs represent part of the Association Agreements with these three countries. On 27 June 2014, the EU, Ukraine, Georgia and Moldova signed an Association Agreement, setting up a bilateral Deep and Comprehensive Free Trade Area between them. It is expected to enter into force in autumn 2014. Once implemented, the DCFTAs would provide for a significantly improved mutual access for goods and services between the EU and its eastern neighbours. Furthermore, they will ensure an open, stable and predictable legal environment for the benefit of businesses and consumers on both sides. At the Eastern Partnership Summit in Vilnius in 2013, the EU and Armenia agreed on the need to update the EU-Armenia Action Plan and build upon the existing framework for cooperation.
- b. **Ukraine** – The EU and Ukraine concluded the negotiations for a deep and comprehensive Free Trade Agreement (DCFTA) in December 2011. On 15 May 2013, the Commission adopted the proposals for Council decisions on the signing and provisional application of the EU-Ukraine Association Agreement, including its trade part. The next step would have been the signature of the Agreement by the Council, once the political conditions are met. On 1 October 2013, EU Trade Commissioner Karel de Gucht visited Kiev to discuss the state of play with Ukrainian authorities. However, due to political instability in Ukraine, the FTA did not go through. This provoked resentment in the population and negative feelings towards the government contributed to ongoing protests. The negotiations were frozen for a while, but on 27 June 2014 Ukraine, alongside Georgia and Moldova signed an Association Agreement, setting up a bilateral Deep and Comprehensive Free Trade Area with EU. This was deemed a very important step and achievement for new Ukrainian authorities. And even if it is hard to make certain economic provisions due to the situation in Ukraine, the European Commission experts estimated that the deal will boost Ukraine's national income by 1.2 billion euros (\$1.6 billion) a year.
- c. **Singapore** – The negotiations for a Free Trade Agreement (FTA) between the EU and Singapore were concluded in December 2012 (IP/12/1380) and the agreement was initiated in Singapore on 20 September 2013 (IP/13/849). The procedures allowing the agreement to become effective are expected to be completed by late 2014.

This is the EU's second ambitious agreement with a key Asian trading partner, after the EU-Korea FTA, and the first with a member of the 10-country Association of Southeast Asian Nations (ASEAN). Once fully implemented, the deal will open up markets on both sides in a number of sectors. Singapore is by far its largest EU trading partner in the South-East Asia, accounting for about a third of EU-ASEAN trade in goods and services, and for more than three-fifths of investment stocks between the two regions. Over 9000 EU companies have set up their regional hub in Singapore
- d. **Central America** - The Association Agreement between the European Union and Central America is now in place for all countries involved except Guatemala. The procedures necessary for the application of this agreement to Guatemala are in progress and are expected to be finalised in the near future.

It should be noted that there are also five interim Economic Partnership Agreements with African, Caribbean and Pacific States that have been negotiated but have not yet entered into force. These are with Cote d'Ivoire, Central Africa (Cameroon), the Southern African Development Community, Ghana and the East African Community.

5.2.3 ON-GOING NEGOTIATIONS

a. **Canada** – POn 18 October 2013, Commission President José Manuel Barroso and Canadian Prime Minister Stephen Harper reached a political agreement on the key elements of a Comprehensive Economic and Trade Agreement (CETA). It will be the first free trade agreement between the EU and a G8 country. It will remove over 99% of tariffs between the two economies and create sizeable new market access opportunities in services and investment. Based on the political agreement, technical negotiations will have to be completed so as to finalise the legal text of the agreement.

In 2012 Canada was the EU's 12th most important trading partner, whereas the EU is Canada's second-largest trading partner, after the United States. In 2012, the value of bilateral trade in goods between the EU and Canada was €61.8 billion. An economic study jointly released by the EU and Canada before the negotiations showed that a comprehensive trade agreement could increase their bilateral trade by another €25.7 billion.

On 26 September 2014, an announcement was made by European Commission President José Manuel Barroso and Canadian Prime Minister Stephen Harper confirming the conclusion of negotiations on the EU-Canada Comprehensive Economic and Trade Agreement (CETA).

b. **United States of America** - The Transatlantic Trade and Investment Partnership (TTIP) talks started with a round held on 8-12 July 2013 in Washington, D.C. Negotiating groups set out respective approaches and ambitions in twenty various areas that the TTIP is set to cover, including custom duties and technical standards for goods produced on both sides of Atlantic. There have been seven negotiating rounds till now, with the last one held in late September 2014. The initiative of a transatlantic agreement is based on the recommendations of the EU-US High Level Working Group on Jobs and Growth that steered the deliberations on the future EU-US relations since late 2011. According to an independent study by the Centre for Economic Policy Research, London, an ambitious and comprehensive trans-Atlantic trade and investment partnership could bring the EU economic gains of €119 billion a year once the agreement is fully implemented. High hopes are placed in this agreement, since some of independent research shows that both economies could largely benefit from its implementation. Nonetheless, it is an agreement between two large economies with diverse regulatory systems, which in some areas largely differ and therefore we can still expect the negotiations to take some time.

c. **Japan** – The EU and Japan launched negotiations for a free trade agreement in April 2013 and have held so far six negotiating rounds (April, June, and October 2013 and January, March/April and July 2014). Fourteen working groups focused on various parts of the negotiated text including trade in goods, services, investment, competition, government procurement and sustainable development. Japan is the EU's second

biggest trading partner in Asia, after China. An FTA could increase EU GDP by 0.6% and boost EU exports to Japan by a third. 400,000 additional jobs are expected in the EU as a result of this deal. The Commission is aware of concerns in some Member States and industry sectors, particularly in regards to non-tariff barriers in Japan. This is exactly why the Commission agreed with Japan – even before potential negotiations started – that Europe could ‘pull the plug’ on negotiations after one year if Japan does not demonstrate that it is removing certain non-tariff barriers.

d. Association of Southeast Asian Nations (ASEAN) – The EU currently negotiates with four countries of the ASEAN region. The negotiations for a Free Trade Agreement with Singapore, launched in 2010, were concluded successfully in December last year and the agreement was initiated in Singapore on 20 September 2013. However, the talks on investment protection that started only after the Lisbon Treaty entered into force, giving the EU new competencies in this area, are still ongoing. On 18 October, the Council also adopted a mandate which allows the European Commission to start investment negotiations with other ASEAN countries. In the meantime, the negotiations for a Free Trade Agreement continue with Malaysia and Vietnam. Thailand started bilateral negotiations with the EU only in March this year and the second round of talks took place in Thailand on 16-20 September 2013.

The EU remains open to start negotiations with other ASEAN partners and hopes one day to integrate these deals into a global region-to-region trade agreement. As a whole, with €191 billion of trade in goods in 2012 and €51 billion services in 2011, ASEAN is today the EU’s third largest trading partner outside Europe, after the US and China and well ahead of other partners.

e. Southern Mediterranean - The EU has completed so far three rounds of negotiations for a Deep and Comprehensive Free Trade Agreement (DCFTA) with Morocco. The deal should strengthen EU Morocco trade relations building upon existing agreements, including the Association Agreement of 2000 and the agreement on agricultural, processed agricultural and fishery products of 2012.

Morocco is the first Mediterranean country to negotiate a comprehensive trade agreement with the EU. The Commission has also a mandate to start a similar process with Tunisia, Egypt and Jordan.

f. India - Substantive progress has been achieved since the beginning of the negotiations in 2007. Now both sides need to go the final mile to put the package together. India combines a sizable and growing market of more than 1 billion people and is an important trading partner for the EU as well as an emerging global economic power.

g. Southern Common Market (Mercosur)⁵⁵ – At the EU-Mercosur trade ministerial meeting held in Santiago on 26 January 2013, the EU and Mercosur agreed to exchange offers on market access concessions for goods, services and government procurement not later than in the last quarter of 2013. Work related to preparation of the offers on both sides is ongoing. Negotiations of an EU-Mercosur Association Agreement were

⁵⁵ Southern Common Market- an economic and political agreement among Argentina, Brazil, Paraguay, Uruguay and Venezuela, with Bolivia acceding.

launched in 2000, but suspended in 2004 due to substantial differences on the Trade part of the agreement.

Negotiations were resumed in May 2010. Since then, nine negotiating rounds were held between the EU and Mercosur, which have focused on the trade rules rather than customs duty reductions.

h. Gulf Cooperation Council – Negotiations for a free trade agreement were suspended by the Gulf Cooperation Council in 2008. Informal contacts between negotiators continue to take place.

i. African, Caribbean and Pacific countries (ACP) – Economic Partnership Agreements (EPAs) are trade and development partnerships between the EU and African, Caribbean and Pacific countries (ACP), based on the *Cotonou Agreement* concluded in 2000. The aim is to consolidate free access to the EU market for products from our ACP partners, foster trade-related cooperation and attract investment, in order to promote sustainable development. The negotiations started in 2002 and have covered seven regional groups: West Africa, Central Africa, Eastern and Southern Africa (ESA), Eastern African Community (EAC), South African Development Community (SADC), EPA Group, the Caribbean (CARIFORUM) and the Pacific. The EU continues the talks with all of them except CARIFORUM that signed a full Economic Partnership Agreement already in 2008.

The EU Negotiations are now entering a decisive phase in the Eastern African Community (EAC) and the Southern African Development Community (SADC) EPA Group. In the rest of Sub-Saharan Africa progress is uneven. From 15 to 19 July 2013, EU Trade Commissioner Karel De Gucht traveled to four African countries: Kenya (part of the EAC) and Namibia, Botswana and South Africa (members of the SADC EPA Group) and used this opportunity to discuss ways to strengthen trade and investment relations with the African regions, in particular through comprehensive trade and development partnerships under EPAs.

6. DEVELOPMENT POLICY AND HUMANITARIAN AID

The Union is highly dedicated to development which is one of the core policies of external action alongside foreign, security and trade policies.⁵⁶ More specifically, according to the European Consensus on Development the primary objective of European aid is eradicating poverty and in this sense the poorest countries get priority, the EU should increase and harmonise its aid and the its wider policies should support development in nine intervention areas: trade and regional integration, environment and natural resources, infrastructure, energy, rural development, governance, democracy and human rights, peace and security, human development, social cohesion and employment.⁵⁷ Namely, the EU is the world's largest aid donor if considering the Commission funds as well as the bilateral member state contributions which add up to more than 40% of official global humanitarian assistance and over half of official global development assistance.⁵⁸

In this view, the EU aims to contribute to the eradication of poverty, to stimulate sustainable development and work towards the advancement of the UN Millennium Development Goals for which the Union has put in place various instruments that will also help reinforce the impact of its action. DG Development & Cooperation – Europe Aid has the mandate for designing the EU development policy and delivering aid in Africa, Caribbean and Pacific (ACP); Asia and Central Asia; Latin America; Gulf region; EU neighbourhood and Russia with the help of other EU institutions, international organizations and civil society. Following the Treaty of Amsterdam where it is specifically stated in Art. 178 TEU, “if any other policy is deemed to have an effect on the developing countries, the objectives heralded by the development policy should be considered”. Policy Coherence for Development solidifies this approach and commitment to the minimization of contradictions between policies and facilitates their synergies in order to have an impact on the developing countries.⁵⁹

The main instrument for the provision of development aid to ACP states and OCT is the European Development Fund (EDF) which is funded by the Member States and does not fall under the general budget.⁶⁰ The financing instrument for development cooperation (DCI) streamlined the measures aimed at supporting geographic cooperation with the developing countries, which are identified as aid recipients by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC).⁶¹

DG Humanitarian Aid & Civil Protection – ECHO in its work follows the principles given by the European Consensus on Humanitarian Aid i.e. humanity, neutrality, impartiality and independence as a non-military means of intervening in third countries affected by a disaster or conflict. The strong presence of the EU in the provision of *ad hoc* humanitarian

⁵⁶ For more detailed information please see The European Consensus on Development Policy. 2006/C OJ 46/01. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:046:0001:0019:EN:PDF>; and The European Consensus on Humanitarian Aid. 2008/C OJ 25/01. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:025:0001:0012:EN:PDF>

⁵⁷ The European Consensus on Development Policy.

⁵⁸ European Commission DG ECHO. Available at: http://ec.europa.eu/echo/funding/finances_en.htm

⁵⁹ Policy Coherence for Development - Accelerating progress towards attaining the Millennium Development Goals [COM(2005) 134 final - not published in the Official Journal].

⁶⁰ Overseas countries and territories are linked to 6 Member States: Denmark, France, the Netherlands, Portugal, Spain and the United Kingdom.

⁶¹ Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation. OJ L 378, 27.12.2006

relief and assistance has solidified its image of a civilian power on the international arena. Since the Lisbon Treaty came into force, the European Union humanitarian aid action is ruled by Art. 214 TFEU, in legal terms it was for the first time separated from development policy. The activities of the Commission stretch beyond relief post disasters, namely the EU Civil Protection Mechanism covers the entire disaster cycle from prevention, preparedness, to response and recovery. Civil Protection was brought under the same hat so as to be able to more efficiently and effectively coordinate response and the use of resources.

Development and humanitarian aid policies, as other common policies of the EU, are reflected in the *acquis communautaire* which in other words means that the accession countries need to transpose and apply the relevant legislation, and upon accession participate in financing development assistance, related decision making and implementation. Thus, post accession a country needs to prove its ability to participate in the EU multi-level decision making arena on these issues. Moreover, an acceding country must have adequate administrative capacities to fulfill the obligations that EU membership instills in this area. In respect to the area of humanitarian aid and development policy pertaining to negotiating Chapter 30, Member States need not only to abide by the EU legislation and international commitments but also to commit themselves to adhere to the EU's development and humanitarian policies. As the policies and positions of the EU and its Member States change towards third countries and within international organisations, acceding countries are obliged to adhere to these policy changes.

Therefore, as the Eastern enlargement showed, it is relevant not to undermine the importance that this area bears for the accession countries. In the case of Serbia, the 2004, 2007 and the 2013 enlargement waves will be very useful and for the upcoming period and are worthy of thorough examination as the countries have a similar legacy and common challenges. It was noted that in the case of the Eastern enlargement, the EU realized quite late in the accession process the implications for the accession countries. Moreover, as the countries of the Eastern bloc had experience with development aid only through the Council for Mutual Economic Assistance (COMECON) which carried a political and ideological agenda, it was concluded that these countries have no significant tradition of development aid and no development cooperation policy in the modern sense of the concepts while the EU 15 have a long history of development cooperation policy driven by strategic, economic and security interests.⁶² Therefore, at the time of their accession, the Central Eastern European countries (CEEC) were "unique situation of being recipients of aid from the EU while simultaneously preparing to become donors."⁶³

First of all it should be noted that Serbia needs to establish a development policy of its own as cooperation with developing countries was dismantled upon the fall of socialism. Serbia is an aid recipient and has, in terms of development and humanitarian aid policies, to this date provided only limited ad hoc aid to non-EU countries on an individual case basis, particularly in response to natural disasters.⁶⁴ Since 2009 when Serbia adopted

⁶² Michaux, V. EU Enlargement: a brake on development cooperation?. The Courier ACP-EU, Jul -August. 2002.

⁶³ Carbone, M. "Development Policy" in EU Enlargement, N. Nugent (ed). Palgrave: Basingstoke, pp. 242-52. 2004

⁶⁴ European Commission. Commission Staff Working Paper. Analytical Report Accompanying the document. Communication from the Commission to the European Parliament and the Council. Commission Opinion on Serbia's application for membership of the European Union. Brussels, October 12, 2012. COM (2011) 668. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf

a Law on emergency situations, the Sector for Emergency Management was set up as an integrated emergency management system within the Ministry of Interior and is in charge of coordinating activities of all institutions in emergency situations. Still, there is no legislation on development policy and dispatching humanitarian aid and there are no relevant administrative structures set. This raises the need to develop the legal framework to cover these areas towards non-EU countries, in accordance with the EU relevant policies, objectives, and principles.

At the onset it was concluded that the accession countries need to have instituted the appropriate administrative infrastructure and possess the necessary understanding of the issues plaguing developing countries. Thereof, capacity building in the bureaucracy is necessary so as to recreate an institutional memory and still the EU values of donorship. Furthermore, a policy framework or sectoral regulation should be adopted so as to formulate the country's specific interests and preferences in the field of development cooperation which should in return also have a positive awareness-raising effect among the population. The focus should be placed on answering the following challenges: quantity of aid, quality of aid, and geographical focus and scope of aid.⁶⁵

In this sense, there is a possibility of forming a governmental body in Serbia that would be in charge and be competent for development cooperation and humanitarian aid, as for instance, the comparative practice shows in respect to Montenegro. For example, most new member states created a unit within the Ministry of Foreign Affairs. To this extent the European Consensus on Development should be examined as it brings forth the EU development strategy, objectives, common values and principles with the goal of incorporating these into the national foreign policy. Since Serbia does not have legislation on development and humanitarian aid, the possibility of conceiving a strategy for providing aid should be examined. Moreover, as previously stated, Serbia was until this date an aid recipient i.e. beneficiary and the possibility of becoming a contributor, and not only speaking of ad hoc matters, should be tackled. What is more, Serbia does not have any type of recognized framework for national non-governmental organizations which aim to provide assistance in third countries when the scholarship emphasizes the critical role that civil society plays in development policy.⁶⁶

⁶⁵ Carbone, M.

⁶⁶ Lister, M. and Carbone, M. "Integrating Gender and Civil Society into EU Development Policy" in: *New Pathways in International Development: Gender and civil Society in EU Policy*, M. Lister & M. Carbone (eds). Aldershot: Ashgate, pp. 1-16. 2006.

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