

HISTORY OF CEFTA 2006 –NEW CHALLENGES AND DILEMMAS

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ABSTRACT: This paper addresses some historical backgrounds, differences of the structure, opportunities, challenges and dilemmas encountered in the implementation of Agreement on amendment of and accession to the Central European Free Trade Agreement, called CEFTA 2006. In the past 13 years, implementation on the CEFTA 2006 would significantly contribute to the continual efforts for strengthening the regional trade and investment cooperation, further liberalisation of foreign trade exchange, and continuation of activities for harmonisation of trade rules with international and EU standards. Additionally, CEFTA 2006 provides a much more comprehensive framework for development of mutual relations and economic cooperation among the Parties, increasing competitiveness and integration of the Region into the European and global economies. At the same time, in a more of one decade of implementation of CEFTA 2006, Parties still have open dilemmas about the Agreement's proper implementation especially regarding non tariff barriers and consensus as a decision making concept. Climate change as a new threat in world economy is global challenge that will have long term influence into trade policy in the future within developing climate-friendly measures, as a most important priority for prosperity of the planet and humanity.

KEYWORDS: *CEFTA 2006, trade, non tariff barriers, regional ownership, climate change.*

INTRODUCTION

In the early 90's of the XX century, the Soviet Union collapsed and new states appeared on the world map. With the aim of moving away from communism and implementing the reforms required for full membership of the Euro-Atlantic institutions, four countries from Central Europe created the "Visegrad Group". It was established on 15 February 1991 at a meeting attended by József Antall, Prime Minister of Hungary, Lech Wałęsa, President of Poland, and Václav Havel, President of Czechoslovakia, in the Hungarian town of Visegrád. The members of the group are regarded as countries that, compared to others in the region, achieved distinct results in the areas of political and economic change of regime as well as progress towards acceptance by Europe (Gazdag, 1997).

The original CEFTA was signed in 21 December 1992, in Krakow, Poland, by Visegrad Group countries: Poland, Hungary, the Czech Republic and Slovakia (Dziuba, 2013). It entered into force in July 1994. Afterwards depending on the dynamics of fulfillment of conditions for membership and successfully completed negotiations for liberalisation, the following countries joined: Slovenia in 1996, Romania in 1997, Bulgaria in 1998, Croatia in 2002 and Macedonia in 2006.

Focus of CEFTA was to encourage regional trade and cooperation among countries of Central Europe, in the course of developing and fulfilling the political, economic, security and legal criteria for their subsequent integration in the European Union. As a result of the role it played in the pre-accession period for Central European countries, CEFTA is considered as a vestibule of the Union, and CEFTA membership is considered as a very important step in the process of integration into the European Union.

The main role of CEFTA was to ensure as high as possible level of mutual economic and trade integration of members, while at the same time harmonizing the political and social systems with the EU acquis. The three main preconditions that each country was to fulfill in order to become a CEFTA member were the following:

- To have concluded an Association Agreement with the European Union, in which a possibility for future membership is mentioned in some way. The existence of such an agreement demonstrated more sophisticated relations between the country and the EU on a significantly higher and better quality level.
- Membership of the World Trade Organisation (WTO) - The essence of CEFTA is based to a great extent on the efforts for economic integration and creation of a single free trade zone for member countries. It is of crucial importance that trade regimes of countries which are about to become members of CEFTA have similar level of compliance with the global rules for foreign trade, and the best guarantee for that is WTO membership.
- To have concluded free trade agreements with current CEFTA members (Tosheva, Efremov, 2007).

R.N. Macedonia (in this period Republic of Macedonia) was the last country to accede to the original CEFTA, in the short period between August and December 2006, the Agreement had four member countries. As of 1 January 2007, Bulgaria and Romania left the original CEFTA due to their membership of the European Union, leaving it only with two members, Croatia and Macedonia.

Concurrently with the accession of Macedonia to the original CEFTA with support of the international community, in particular the Stability Pact for South Eastern Europe, the process began for sign-

ing a single free trade agreement among the SEE countries/territories: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Serbia, Romania and UNMIK/Kosovo. The starting points of this process were founded on the following facts:

- The countries in the Region, though with different dynamics of reforms, have each achieved a particular level of economic and democratic development which in turn demanded further improvement of the quality of their mutual cooperation, that would concurrently be conducive to new business opportunities for each individual country and would additionally increase the competitiveness of the Region as a whole;
- CEFTA, as it was set up until that moment, did not represent an option for some of the countries in the Region as they did not comply with some of the membership criteria, i.e. they were not members of the WTO and had not signed Stabilisation and Association Agreements.

Under such circumstances, it was necessary to find a new flexible solution that would allow SEE countries to achieve a higher level of cooperation, but under terms that they could fulfil and satisfy at that time. The sequence of events and signed documents under which SEE countries, supported by the international community, were moving towards the realisation of the idea for a single regional agreement are the following:

- *Memorandum of Understanding on Trade Liberalisation and Facilitation* signed by SEE Foreign Trade Ministers on 27 June 2001 under the auspices of the Stability Pact for SEE (Pjerotic, 2008). It committed the Signatories to take concrete trade liberalisation and facilitation measures. These included: To complete a network of bilateral Free Trade agreements (FTAs)

between all countries of the Region by 31 December 2002, in accordance with specified provisions; To identify and abolish non-tariff barriers to trade; To assess the potential for regional co-operation on trade in services; To harmonise legislation across a number of trade related areas; To increase co-operation in areas such as standards and accreditation, competition and intellectual property rights; and to maintain open trade regime and pursue further trade liberalisation within the WTO context.

- *Ministerial statement on Trade Liberalisation in South Eastern Europe*. At the Ministerial meeting held in Sofia, on 10 June 2005, SEE Trade Ministers endorsed the Stability Pact Trade Working Group's 2005 Strategy and Action Plan, where in line with the long-term vision for the future of the Region, the importance was emphasized of regional cooperation in the further harmonisation and trade liberalisation in the Region, that would ensure an economically efficient free trade zone. Such an approach was in compliance with the interpretation of the European Council in Copenhagen and of the Thessaloniki Summit 2004, according to which SEE countries would approximate with the EU under a pace that would depend entirely on their individual economic growth and meeting of the European criteria. The Ministerial Statement also reaffirmed the implementation of bilateral FTAs, further work on Non Tariff Barriers to Trade (NTB) and it acknowledged the importance of trade in services. The decision was taken to move to a single FTA, setting the ambitious date for the completion of formalities (Kernohan, 2006).
- *Declaration of Prime Ministers of the CEFTA Member Countries*, adopted on 29 November 2005, in Zagreb, that allows for facilitation of the mem-

bership criteria for the countries of the Region in CEFTA (Busek, Kühne, 2010).

- *Declaration of Prime Ministers from the Region* adopted on 6 April 2006 in Bucharest. *SEE Prime Ministers and the Special Representative of the Secretary General on behalf of the United Nations Administration Mission in Kosovo, agreed to proceed with the recommendation of the Stability Pact Trade Working Group to create a single Free Trade Area in the region through the simultaneous enlargement and amendment of CEFTA. The Prime Ministers issued a Joint Declaration at the SEE Summit in Bucharest organised by the Romanian Government and the Stability Pact* (Tosheva, Efremov, 2007).

Considering that in the previous period, SEE countries under the auspices of the Stability Pact, had already signed bilateral free trade agreements, the negotiations on the simultaneous enlargement and amendment of CEFTA were held in four rounds. The CEFTA 2006 Agreement was signed in Bucharest, on 19 December 2006 by Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia and UNMIK/Kosovo. CEFTA 2006 officially entered into force on 26 July 2007 for five signatories (Albania, Macedonia, Moldova, Montenegro and UNMIK/Kosovo), for Croatia on 22 August 2007, Serbia on 24 October 2007 and for Bosnia and Herzegovina on 22 November 2007.

STRUCTURE OF CEFTA 2006

Originally CEFTA 2006 is consisted of a main text/consolidated version, nine annexes and four joint declarations (economy.gov.mk, 2007). The main text/consolidated version has 52 articles in total. They envisage the general provisions for all issues governed by the Agreement. The

areas that require a more detailed regulation are elaborated in the annexes:

- Annex 1 - lists the tariff lines, that is products from Chapters 25 – 97, regarded as agricultural products with an industrial component.
- Annex 2 - consists of lists of industrial products that would be gradually liberalised in the period between the date of entry into force of the Agreement to 31 December 2008.
- Annex 3 - covers concessions agreed among the CEFTA 2006 signatories for trade in agricultural products. As of the moment of membership on the Union, Romania and Bulgaria would trade with CEFTA 2006 countries under the same conditions envisaged for the remaining EU Member States.
- Annex 4 - sets forth the Protocol for Products with Origin and the Methods of the Administrative Procedure. It sets out in detail the rules for defining products with origin, evidencing and cumulation of origin, and methods of administrative cooperation among the competent authorities of the member countries/territories in the application and determination of origin.
- Annex 5 - governs the rules for mutual assistance and exchange of information among the institutions of the CEFTA 2006 signatories in charge of application of customs legislation.
- Annex 6 - provides for bilateral agreements for mutual cooperation and promotion of investments to be concluded among the signatories of CEFTA 2006.
- International agreements and conventions governing protection of intellectual property rights signed by the members of CEFTA 2006 are listed in Annex 7.
- Annex 8 - governs the procedure for appointing a mediator in case of differences between the Parties

as pertains to the application of the Agreement.

- The last annex, Annex 9 - regulates the rules for resorting to an arbitration tribunal as a means for resolution of disputes among the Parties (Report on the Foreign Trade of Macedonia, 2008).

The joint declarations contain a large number of agreements and statements by the members that allow strengthening and expanding their commitments in the pertinent fields. The first one is of particular interest, as the signatory members agree to apply the rules and procedures of the WTO, regardless the fact whether they are or are not members thereof. Eventual trade dispute among members should be resolved also through an international arbitration (Kikerkova, 2009).

Over the past 10 years of implementation of CEFTA 2006, it has undergone several amendments with the opening of new protocols in the other areas for greater economic cooperation. Compared to the old CEFTA from 1994 which had only a basic agreement with only 42 articles in the field of trade in goods, the new CEFTA 2006 is much more complex and covers more new areas such as intellectual property, promotion of intra regional investments, public procurement, and trade in services.

CEFTA 2006 CHALLENGES AND DILEMMAS

CEFTA 2006 has been created in line with the WTO legal framework, in particular Article XXIV of General Agreement on Tariffs and Trade (GATT) 1947 and the Agreement on interpretation of Article XXIV of GATT 1994. This legal setting allows for creation of trade areas (free trade zones and customs union) with preferential treatment to the contracting Parties compared to the other WTO members.

However, CEFTA 2006 also allows for trade protection among the Parties, although under special conditions, but this could also be a restraint to the trade integration of the Region (Efremov, 2015).

The classification shows that the interpretation of the trade protection measures vary among the Parties, in particular with regards to agricultural products. Such a situation was expected to occur, given the wide framework for trade protection provided under Articles 23 and Article 23-bis, as well as the differences in the Parties' policies, procedures and standards. Particularly harmful for the process of trade integration could be Article 23-bis, given the possibility for the Parties to undertake measures without prior consultation with others Parties. The general acceptance of Article 23-bis allows the introduction of protective measures, whenever there is a necessity, before starting the procedure. According to this Article, "given the particular sensitivity of the agricultural market, if imports of products originating in one Party, which are the subject of concessions granted pursuant to Annex 3, cause serious disturbance to the markets or to their domestic regulatory mechanisms, in another Party, both Parties shall enter into consultations immediately to find an appropriate solution. Pending such solution, the Party concerned may take the appropriate measures it deems necessary (Agreement on the Amendment of and Accession to the Original Central European Free Trade, 2007).

The successful implementation of CEFTA 2006 depends on the extensive harmonization of trade rules, procedures and standards in the Region. This is rather difficult to be achieved in a relatively short period of time, and it is a resource consuming process, but which evidently indicates the need for institutional and policy adjustment among the CEFTA 2006 Parties. On the other hand, the adjustment

or harmonization is closely linked with the importance of intra-regional trade for the countries - the more countries trade among each other, they would be more interested in simplification and unifications of rules and procedures (Mojsovska, Efremov, Acovska, 2011).

As the custom tariffs are reduced, greater role in the trade flows is given to the Non-tariff barriers to trade (NTB). Many of the measures which have the potential to restrict trade are imposed to mitigate the effects of genuine market failures. To NTB we include technical barriers, sanitary and phytosanitary and administrative barriers. Elimination of those measures between the CEFTA members leads to strengthening their international market competitiveness and their faster integra-

tion into the EU. Various studies identifies product characteristic requirements, labeling and/or packaging requirements, testing, inspection and quarantine requirements and traceability requirements as the main technical barriers.

Concerning the administrative barriers, *Trading across border indicator* measures the time and cost associated with three sets of procedures—documentary compliance, border compliance and domestic transport—within the overall process of exporting or importing a shipment of goods. Almost all CEFTA members (except Kosovo) are positioned in the first quartile of the global ranking considering all components of this indicator. Serbia and Moldova are leaders in this group.

Table 1.
Trading across border indicator

Economy	Time to export: Border compliance (hours)	Cost to export: Border compliance (USD)	Time to export: Documentary compliance (hours)	Cost to export: Documentary compliance (USD)	Time to import: Border compliance (hours)	Cost to import: Border compliance (USD)	Time to import: Documentary compliance (hours)	Cost to import: Documentary compliance (USD)
Albania	9	55	6	10	10	77	8	10
Bosnia and Herzegovina	5	106	4	92	6	109	8	97
Kosovo	28	105	38	127	16	128	6	42
Macedonia	9	103	2	45	8	150	3	50
Moldova	3	76	48	44	4	83	2	41
Montenegro	8	158	5	67	23	306	10	100
Serbia	4	47	2	35	4	52	3	35

Source: *The World Bank, Doing Business 2017*

Enabling Trade Index developed by World economic Forum, assesses the extent to which economies have in place the factors facilitating the free flow of goods over borders and to their destinations. It takes into consideration various factors, including domestic and foreign market access, border administration, transport and digital infrastructure and operating

environment. According to the sub-index 'Border administration' CEFTA 2006 Parties are ranked in the middle positions of the global ranking. Some of the members lack in customs transparent services comparing to the general score of border administration sub-index and they must further improve the reforms on customs administration.

Table 2.*Global Enabling Trade Index 2016 – Sub-index B: Border administration*

Rank	Economy	Score
1	Singapore	6.4
50	Albania	5.0
55	Montenegro	4.9
66	Serbia	4.7
69	Bosnia and Herzegovina	4.6
71	Macedonia	4.5
74	Moldova	4.5

Source: World Economic Forum, the Global Enabling Trade Report 2016

Business associations also opened a problem of identification of national laboratories that would fulfill the procedure of national certificates recognition. However, the problem is even more difficult than it seems, as traders in the Region got so used to the existence of the NTB that they have lost awareness of their actual presence. However, in the day-to-day practice some of these barriers completely prevent the free trade exchange of goods, which is especially evident in the food-processing industry.

Regional ownership is an area to which all Parties of CEFTA 2006 should pay more attention, especially in terms of capacity building of experts in the public administration in order to be competent and professional in implementing this very complex Agreement on regional cooperation. This refers also to the capacity of the members of the Joint Committee of CEFTA 2006, as the highest body responsible to professionally monitor the implementation of CEFTA 2006. Very important role is reserved for the expertise and competence of experts employed in the Secretariat that is headed by the Director and has a direct influence as a technical body providing support to the Joint Committee and its relevant bodies.

The implementation of the South East Europe (SEE) 2020 Strategy, as a strategy for the Region inspired and based on EU 2020 principles, reflects the determination of all Governments in SEE to facilitate integration into the EU. The SEE 2020 Strategy especially the integrated growth pillar is focused on promoting deeper regional trade and investment links and policies that are transparent and predictable and are not discriminatory. In order to reach the targets - create new jobs and prosperity, what is of key importance is larger volume of regional trade and investment that actually increase competitiveness and integration of the Region into the European and global economies. Unfortunately the current implementation of SEE 2020 shows that for some countries, the 2020 targets are too ambitious and it would be difficult to achieve the projected results (Efremov, Petrovska, Majstoroska, 2015).

The latest dispute happened in November 2018, when Kosovo increased its customs tariffs of 100% towards Bosnia and Herzegovina and Serbia because they were among the countries that had voted against Kosovo's membership in UNESCO and Interpol. This measure is against CEFTA 2006 rules, but the Government of Kosovo has stated that the tariffs will be

abolished once Serbia recognizes Kosovo as an independent country (Šiljak, 2019).

One of the biggest challenges for CEFTA is the fact that the Western Balkan countries are neighbors and they share a long history, which has caused political instability in the region.

CEFTA 2006 AND CLIMATE CHANGE CHALLENGES

In 8th December 2007 at the Informal WTO Trade Ministers' Dialogue in Bali, Paskal Lamy stress that Climate change is the biggest sustainable development challenge the international community has had to tackle to date. Measures to address climate change need to be fully compatible with the international community's wider ambitions for economic growth and human advancement. It is a challenge that transcends borders and requires solutions not only at national levels but at the international level as well. The WTO is one part of the architecture of multilateral cooperation. It provides a framework of disciplines to facilitate global trade and serves as a forum to negotiate further trade openness. Free trade is not an end in itself, it is tied to crucially important human values and welfare goals captured in the WTO's founding charter, the Marrakesh Agreement. Among these goals are raising standards of living, optimal use of the world's resources in accordance with the objective of sustainable development, and protection and preservation of the environment.

The multilateral trading system has a vital role to play in achieving the world's climate goals. Cooperative, multilateral approaches are essential for ensuring the effectiveness and fairness of emerging climate policies, especially where supply chains for products and services are distributed across the globe, and even those businesses most committed to climate

action have competitiveness concerns. On climate and trade, policy actions like climate waivers, climate clubs, carbon pricing and border-adjustment measures should all be carefully considered as a way of kick starting multilateral action. But a range of policies and initiatives could form part of the toolkit. On all these issues, policy proposals should be driven by the UN Sustainable Development Goals and should be people-centred. Climate actions should also not become backdoor protectionism (WEF, 2020).

Also sustainable development and climate friendly concept in EU trade policy will have influence in CEFTA 2006 in next decade. NTBs on environmental goods and services and supporting broader climate policy cooperation, should become standard in the future. The WTO Committee on Trade and Environment should strengthen its coordination with the UNFCCC, and its national Trade Policy Reviews should examine whether a country's trade policies are supporting, or hindering, its climate commitments. Supporting climate-friendly FTAs and introducing a climate waiver would be a pivotal step in aligning the global trade architecture with climatic realities. It would position trade as a solution to climate challenges, rather than a driver.

CONCLUSION

CEFTA 2006 opens opportunities for developing the cooperation among its Parties with a view to achieving progressive liberalization and opening of their markets for preferential access. It also provides opportunities for initiating concrete negotiations for liberalization of the trade in services among the members. CEFTA 2006 stipulates that its members shall encourage mutual investment initiatives through promotion of the conditions and shall facilitate investment administrative procedures in order

to create a transparent regional environment for investors. In this context, Parties are obliged to provide an equitable treatment, as well as full protection and security for investments coming from other members.

However, one of the challenges that should be dealt with immediately is existence of the NTB among the CEFTA 2006 Parties. They confirmed the problem of the use of technical barriers to trade and NTB, among which especially negative impact has sanitary and phytosanitary certificates. Although they all agreed at the beginning of the establishment of the free trade area, that they were going to fully remove them, the mutual recognition of technical standards, as well as sanitary and phytosanitary certificates also has to be reached.

The overall results of the implementation of trade liberalization are intertwined with a series of protective measures and blockades that the Parties applied to have adequate protection of the domestic industry. However, as regard rules and principles of CEFTA 2006, i.e. Article 23-bis, in the practice we have different interpretations by CEFTA 2006 Parties. At an expert level meeting, before the signing the CEFTA 2006, in 2006, one Party pointed out that this Article would be

susceptible to different interpretations and possibilities of implementation of protective measures and after ten years of implementation this provide to be true. Unfortunately, the political problems in the Region have a negative effect on the proper implementation of CEFTA 2006. Unfortunately, regarding of consensus as a main concept of decision in dispute settlement procedures, CEFTA 2006 does not have mechanisms to sanction Parties that derogated CEFTA 2006 rules and procedures. All disputes can be resolved only if the countries show a good will. Another important issue for CEFTA 2006 is the proper implementation of concept of regional ownership and the SEE 2020 Strategy by all Parties.

In the future the EU can influence its regional free trade agreements as a lever to push for the implementation of climate policies in its partner countries. In particular, the EU should review existing trade agreements for their “climate friendliness”. This means that in the next decade and CEFTA 2006, will be given more direction in building trade policy with climate-friendly measures. It is a global direction that has most important priority for the survival of the planet and humanity.

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