AICEI PROCEEDINGS

The Lisbon Treaty and EU External Trade Policy: Should Western Balkan Countries Take It into Consideration?

Miodraga Stefanovska

Abstract

The Treaty of *Lisbon (ToL) is the EU's new legal framework. With its coming into force on December 1 2009, the way was paved towards a renewed EU institutional agenda and institutional and substantive changes in the status quo of external trade and investment policies. In this regard, two major questions arise: (1) The extension of the common commercial policy to FDI raises the question of whether the Lisbon Treaty intends to give the EU the exclusive competence to negotiate and conclude investment agreements which in turn may result in serious implications for the investment policy instruments of EU member states; (2) By bringing EU trade policy under the same EU external action heading as other elements of EU external policy, does the Treaty of Lisbon (ToL) increase the tendency of the EU to seek to use trade policy as an instrument in the pursuit of other external policy objectives?*

This paper aims to shed light on the likely effects of the treaty on EU external trade and investment policy formulation. Together with trade in services and intellectual property rights, the Lisbon Treaty brings FDI under the umbrella of Europe's common commercial policy, making it the exclusive competence of the European Community. Under Lisbon, EU member states have decided to delegate their prerogatives to negotiate BIT to the supranational level of EU governance, enabling the EP to gain considerable decision-making powers vis-à-vis the European Commission and the European Council. The practical implications of the Lisbon Treaty for Europe's external-investment policies remain uncertain, in part because of questions as to how the Treaty will be interpreted. Some of the following discussion highlights the impact of the Treaty on the Western Balkans and the EU.

***Keywords**: Treaty of Lisbon, Europe, agreement, European Council, governance.*

The aim of this paper is to provide an overview of changes in the external trade policy of the EU following the ratification of the Treaty of Lisbon (ToL). The motivation for this paper lies in its timing: it is written just months after the ratification and entry into force of the ToL, and also at a point in time which rounds up several anniversaries of the EU. Some of these anniversaries are remembered and some are forgotten, but each represents a certain contribution in reaching the point where the EU stands today. First there is the Treaty of Rome which is half a century behind us. The European customs union is more than 40 years old. The start of one of the most challenging chapters in EU history—the establishment of the EMU—is just three decades old. A little more than twenty years ago, a fundamental reform package of the EU budget and structural policies was introduced, and ten years later negotiations were begun on the biggest enlargement round of the EU.

The aim of the Lisbon Treaty is to make the European Union (EU) more efficient, more internally democratic and more coherent on the world stage. The Lisbon agenda deals with key problems of the economic development of the EU. It introduces a number of changes to modernize EU institutions and optimize working methods in the EU. The topic of the Lisbon Treaty has thus been highly relevant from the beginning; its details, however, have been—and to a somewhat lesser extent, remain—problematic (Szemlér, 2009). The Lisbon Treaty, at least in the area of the CCP, constitutes a benchmark and a shift of paradigms. Of all policies, the changes in the CCP seem to be the largest but the least discussed (Bungenberg, 2010).

This paper is organized in four main sections. The first part of this paper provides a brief presentation of the EU's external trade policy prior to the coming into force of the ToL. The second part of the paper covers the main provisions and changes of the Lisbon Treaty regarding the EU's external action, and the third part reviews the potential implications of the ToL for EU trading partners, with a special focus on the Western Balkans. The fourth and last section provides conclusion and recommendations.

The External Trade Policy of the European Union prior to the Treaty of Lisbon

Prior to the Treaty of Lisbon, the external trade policy process in the EU was conducted in compliance with the so-called 'Community method'. The implementation of this method meant that the Commission engaged in a

consultation process with member states and other relevant interest groups, on the basis of which the Commission drafted a negotiating mandate. After this document had been revised and approved, the Commission was authorized to negotiate trade agreements 'in consultation' with member states (a special committee appointed by the Council and composed of representatives of Member States).

At this point it is important to clarify two things. First, the authorization of the Commission to negotiate trade agreements was made by the Council of Ministers and the General Affairs and External Relations Council (GAERC), there being no trade council. They formally authorized the Commission and outlined the negotiation directives. Second, the phrase 'in consultation' means that the Commission has cleared all policy and important negotiating positions with the member states in the shape of the Article 133 Committee composed of high level national trade officials, or on major policy or very sensitive issues in the shape of the GAERC (Woolcock, 2010). There were two possible ways for making this authorization: either by Quality Majority Voting (on issues that are within the competence of the EC) or by the Council's reaching a decision on the basis of consensus (which is often the case in practice). This meant that a single member state was restricted from having the power to block the adoption of a trade agreement which was suitable for most other member states.[1] Negotiations were then conducted by the Commission and once they were concluded, the Council of Ministers adopted a decision with which it authorized the signing of the agreement.

The role of the European Parliament in this process was very marginal prior to the ratification of the Treaty of Lisbon. The approval of the EP was not required for the adoption of negotiating mandates, the conclusion of international trade agreements or for the routine conclusions of all trade agreements. However, the revision of the original EEC treaty introduced some changes in terms of the requirement of the assent of the European Parliament. This was related to the most important trade agreements, typically those with budgetary implications for the EU, new institutional arrangements, or changes in domestic legislation (in this case a co-decision was required by the EP and Council). Although the role of the EP in this period was very limited in regards to the external trade policy of the EU, exceptions can be noted in terms of association agreements and bilateral agreements. In addition, it is interesting to note the triangular relationship between the EP, the Commission and the Council. In practice, the Commission informed the

Parliament about its main strategies and ongoing negotiations while the Council gave instructions and directives concerning the negotiations. The consultation process on issues that are relevant to this paper have been increased in recent years, especially with the International Trade Committee (INTA). Some examples of this are negotiations on bilateral free trade agreements like the EPA (Economic Partnership Agreements) with ACP countries, which would have been presented to the EP for its assent by a simple majority of MEPs. It is very important to note here that prior to the adoption of the ToL, due to the lack of legal powers which underlined its non-credible veto power, the EP was not likely to refuse its assent to an agreement that had already been approved and accepted by the MEPs and the negotiating partners. It also did not have any powers in adopting trade legislation.

As presented above, the role of the EP before the ratification of the ToL was limited in terms of negotiation and the conclusion of trade agreements with third parties as well as in the conduct of an autonomous and conventional CCP. According to Krajewski (2005), Article 300 (3) EC, by stating that the Council must consult the Parliament before the ratification of an international agreement, reflects the classic doctrine of the necessity of unlimited and unchecked foreign affairs powers. As a result, this raised the issue of the democratic accountability of the EUCCP.

The process presented above related to an issue that was categorized as one of the internal factors inherent to the structure and functioning of the EU. This is the problem that arises from the EU institutional and decision making procedure. More precisely, the institutional and decision-making system was primarily designed to facilitate six member states. In spite of the reforms that have been introduced over the years, it still seems to have reached the limits of its functioning. Woolcock (2010) interestingly remarks that the cohesion of EU policy is not threatened by lack of competence, but by divergence of interests on certain issues. This was also noted in an earlier paper by Szemiér (2009). Even if compromises are reached between all the actors, still their implementation in practice is a very drawn out and challenging process. As the efficiency of the institutional and decision-making system is crucial for the proper functioning of the EU, a happy end to the saga of the Lisbon Treaty could only be highly welcome (Szemiér 2009).

Changes Introduced with the Treaty of Lisbon

In compliance with the changes that the ToL introduces to the external activity of the EU, reforms have been made to the way in which the CCP is shaped and operated. This part of the paper will discuss the main changes that have been introduced to the CCP with the ratification of the ToL and some immediate issues and concerns regarding their implementation. The changes were made with the overall goal of improving coherence and effectiveness and to address the long debated issue of democratic deficit in the EU in regards to reducing the number of voices speaking on behalf of the Union and ensuring consistency between different areas of EU external action (discussed in the previous section).

Overview of the Role of the European Parliament after the ToL

As the Treaty of Lisbon was introduced to the EU, the European Parliament was introduced to its new role. The new role of the Parliament in regards to the external trade policy of the EU can be summarized in three main categories: first, the new powers of the EP of adoption in trade related issues of EU legislation; second, the role of the EP in negotiating processes; and third, the enhanced role of the European Parliament in the ratification of trade agreements.

Trade-Related Issues of EU Legislation

As was mentioned in the previous section, before the ratification of the ToL the EP did not enjoy any powers of adoption in trade related issues of EU legislation. This position was enjoyed by the Council, while the EP was included only through a non-binding consultation procedure. The ToL grants joint powers to the Council and to the Parliament to adopt trade legislation through Article 207 (2), which states that the 'EP and Council acting by means of regulations in accordance with the ordinary legislative procedure (OLP) shall adopt the measures defining the framework for implementing the common commercial policy'. This means that all legislative acts will have to be adopted by the OLS (previously known as the 'co-decision procedure'); in other words, all legislation for implementing the CCP will be co-decided by the Council and the EP. This includes regulations defining trade protection

instruments, such as anti-dumping safeguards and the Trade Barriers Regulation (TBR), as well as autonomous trade measures such as the EU's Generalized System of Preferences (GSP) scheme. However it excludes international agreements.

The Negotiating Process

Article 207 (3) of the ToL envisages that in cases where agreements with one or more third countries or international organizations need to be negotiated, the Council still gives the mandate to the Commission; however, the Commission is to report to both the Council and the EP on the progress of the negotiations. More specifically, the Commission is to report to the special committee of the EP, to INTA, and to the Trade Policy Committee on the progress of the negotiations. However, these do not all have the same status. According to Woolcock (2010), although both bodies have the same information, this does not mean INTA will be able to engage in negotiations to the same extent as the Trade Policy Committee. The latter has the role of assisting the Commission in the negotiation process, is characterized by more expertise, institutional memory and a greater frequency of meetings (it meets on a weekly basis, while INTA meets on a monthly basis). However, it should be noted here that INTA was established in 2004 with the prospect in mind of a greater role for the EP in trade, but as a new committee with hitherto limited powers it has remained a rather junior committee. Now there is a potential for INTA to play a much bigger role than in the past.

One of the crucial changes in terms of negotiation is the requirement for the consent of the EP before the Council can adopt a decision on a certain number of agreements, more specifically on agreements where OLS applies in the adoption of EU internal legislation.[1] But before the assent of the European Parliament is sought, the Council and all of the EU's negotiating partners would have had to agree on the deal. In addition, the EP cannot amend the draft Treaty and can approve and reject the agreement on a 'take it or leave it basis' (Pollet-Fort, 2010). However, this is at the same time an alert that the EP must be well aware of the content of the agreement in order to avoid a situation in which the EP would block the agreement at the conclusion stage. In this case, a negative vote by the EP would simply not be a credible option (Woolcock, 2010).

Ratification of Trade Agreements

With the ratification of the Lisbon Treaty, The European Parliament also plays an enhanced role in the ratification of trade agreements. This is set out in Article 208 (6) (a), and (i) to (v), which states that the Council can adopt a decision by means of a simple majority of MEPs and conclude a trade agreement by QMV. This includes the conditions that previously required the EP's assent (association agreements, agreements establishing a specific institutional framework, and agreements with budgetary implications) as well as in situations when OLS applies to cases for external trade and investment. In that respect, the Lisbon Treaty formalizes current practice and provides it with a legal basis.

Extending the CCP System of Competences in the EU

The CCP is often seen as the external face of the single market. Eeckhout (1994) states that if the single market were a building, the CCP would be its façade. The Common Commercial Policy was under the exclusive competence of the European Union from 1957. This meant that the institutions of the EU bore responsibility for adopting EU legislation and engaging in bilateral and multilateral trade agreements. It is important to note that at this time international trade law had an explicit focus on goods, hence the EEC Treaty having explicit reference to trade in goods. However, as services, intellectual property and investment gained their share in the international economy, the extension of the scope of the exclusive competences of the EU became a major topic of debate. The Court of Justice pronounced its opinion on the issue that if trade and goods fell under the exclusive competence of the EU, this was only partly the case for services and intellectual property rights. This resulted in some services being EU, some in the competence of the EU, and others in mixed competence (Klages, 2008) The Maastricht, Amsterdam and Nice Intergovernmental Conferences resulted in only minor changes, meaning that the services and trade related aspects of intellectual property rights (TRIPs) remained under mixed competence. According to Bungenberg (2010), this resulted in an 'unreadable, unsystematic and complex system of competence rules'. The same author extends the argument and emphasizes that in practice "this meant that agreements containing provisions on trade in goods and services

or intellectual property aspects falling outside the European competence had to be so-called 'mixed agreements' that required the ratification of both EU institutions (i.e. the Council) and national parliaments. This meant that any national parliament of a Member State discontent with the provisions of a chapter could veto the agreement in its entirety" (Bungenberg, 2010).

This also had an impact in the area of investment; more specifically the implications of this division on the BIT resulted in the creation of the 'spaghetti-bowl effect'. Another characteristic of the pre-Lisbon period was that any trade agreement that contained provisions which applied to the transport area required mixed agreement.

The ratification of the Lisbon Treaty brings services, TRIPs and foreign direct investment (FDI) under exclusive EU competence.[1] As a result, all key aspects of trade, goods and services, commercial aspects of intellectual property and foreign direct investment fall under the exclusive competence of the European Union.[1] The ToL removes mixed competence for almost all trade agreements, except for non-trade-related intellectual property rights and transport policy issues.

The legal basis for the adoption of agreements is QMV for all aspects of trade policy, with small exceptions made in the services sectors. According to Article 207 (4), unanimity is required in decision making related to sensitive sectors like audio-visual, trade, health, education and social services. This means that the principle of unanimity will be applied when these trade agreements "risk prejudicing the Union's linguistic and cultural diversity" or "risk seriously disturbing the national organization of such services and prejudicing the responsibility of Member States to deliver them." One question remains open, however: Who will decide whether the aforementioned risks exist? (Vialle, 2009)

In addition, Article 207(4) states that "for the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules" in line with the so-called principle of parallelism of competences.

Bilateral Investment Treaties (BITs) and 'The Grandfathering Solution'

One of the most important features of the ToL by far is the inclusion of foreign direct investment (FDI) under the exclusive competence of the EU. FDI can be described as long-term investment in a foreign country (different from portfolio investment). Traditionally, the literature on international economic law draws a distinction between international trade agreements and international investment agreements. The former are in most cases regional and multilateral agreements that concern exchanges of goods and services across borders, while the latter are often bilateral agreements and concern the protection of investments in a relevant country. However, this does not exclude the possibility that investment and trade are closely linked and can overlap. As an example, Vialle (2009) mentions the WTO's Agreement on Trade-Related Investment Measures (TRIMs) aimed at investment measures which restrict trade.

Prior to the ToL, FDIs were an area of mixed competence; hence member states had the freedom to negotiate their own BITs outside of trade agreements. Under Article 207 (1) of the TFEU, the EU has exclusive competence over BITs in almost all sectors, which means that member states are no longer independent in concluding BITs unless they are empowered by the EU to do so. Bigennberg and Woolcock (2010) both note that the definition for FDI is not clear. According to the Lisbon Treaty, FDIs include investment protection and investment liberalization, which means that since the entry into force of the ToL most existing BITs are illegal under EU law. On the other hand, the Commission argues that FDI includes investment protection (with the exception of portfolio investments). Faced with the danger of litigation and seeking legal certainty, a so called 'grandfathering solution' will be adopted in the short term. This means granting exemptions that would allow existing BITs to be kept in place until the adoption of EU investment agreements. However, the details of this clause will be subject to discussion of the parties involved and will have to be clarified for existing BITs and for BITs under negotiation.

Another issue concerning BITs is the adoption of the Model-Investment-Protection Agreement as the basis for future agreements to be concluded by the EU (previously used by the USA). This Model Investment Protection Agreement will be applied for upcoming BITs and investment chapters in

FTAs. Although there has been a development of a common platform for investment in the EU and there have been a number of concluded FTAs with investment chapters, there is a need for the creation of a comprehensive EU approach to trade and investment that reflects the nature of the international economy in which trade and investment are inextricably linked (Pollet-Fort, 2010).

The Inclusion of Trade under the Common Heading of External Action by the EU

The Treaty of Lisbon regroups external relations provisions under a common title by creating and unifying a set of aims, objectives and procedures for all EU external trade policies.

According to Article 207(1), EU trade policy is henceforth to be conducted within the "context of the framework of principles and objectives of the EU's external action". According to Chapter 1 of Title V of the Treaty on European Union, this includes, *inter alia*, general aims such as support for democracy, the rule of law and human rights as well as more specific aims, such as the promotion of sustainable economic, social and environmental development, the integration of all countries into the world economy (including through the progressive abolition of restrictions on international trade), the progressive improvement of the environment and sustainable management of global resources and good global governance.

One of the questions raised in this context is whether the ToL will mean trade becomes more of an instrument of EU external policy (as defined in Article 21 TEU). This is a more specific rephrasing of the question as to whether trade will serve other policy objectives, such as foreign policy, environmental or development policy? Before the ToL came into force, the objectives of EU external trade policy also included foreign policy and strategic objectives and interests of the EU (one example is the Association Agreements, such as the one signed with Macedonia, which promotes political and economic stability that contributes to the wider European security area). Article 206 TFEU states that the specific objective of the CCP is "to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers"

while Article 207 (1) TFEU states that the CCP must be conducted in compliance with the aims and objectives of the EUs external action.

Other Novelties

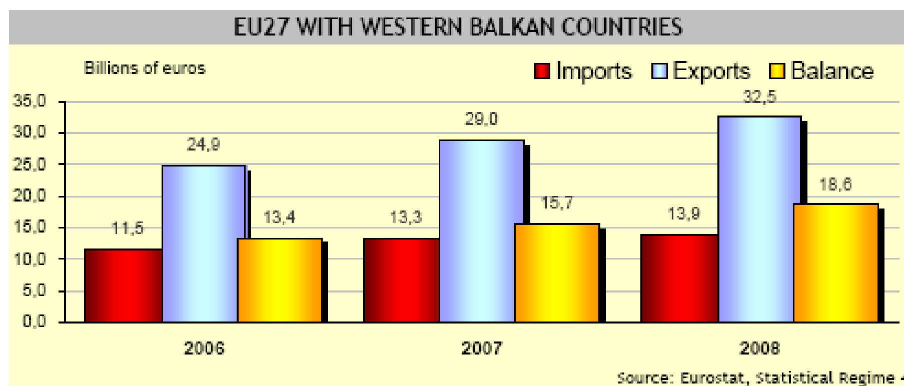
One of the main characteristics of the Lisbon Treaty is the ‘single legal personality’ which it grants to the EU according to Article 14 TEU. This means that in international law Europe will have a defined status and be able to negotiate international agreements in its own name. This also makes the representation of the EU in international organizations much easier.

The Treaty of Lisbon introduced two new position to the EU. The first one is the permanent President of the European Council (Herman van Rompuy). In cooperation with the President of the Commission, the President ensures the preparation and continuity of the Council’s work. The second position is a combination of the previous High Representative of Common Foreign and Security Policy and the Commissioner for External Relations. This position is called the High Representative for the Union’s Foreign and Security Affairs and is currently occupied by Baroness Catherine Ashton. Her tasks can be divided into internal and external ones. The internal tasks entail coordinating with the EU’s external actions as well as collaborating with Commissioners on policies with an external dimension (such as climate actions, trade, etc). The external tasks involve representing the EU. In the deliverance of external EU policies, the High Representative for the Union’s Foreign and Security Affairs will be assisted by the European External Action Service (EEAS). This body has not been established yet. According to Article 27 (3) TEU, the EEAS will be working ‘in cooperation with the diplomatic services of the Member States’ and will comprise ‘officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States.’ The EEAS will have a central role in efforts to enhance the coherence of the EU’s external relations. However, practical arrangements regarding the EEAS still need to completed.

The EU, Western Balkan Countries and the ToL

In his book ‘The Government and Politics of the European Union’, Neill Nuget used the term ‘*united front*’ to describe what the EU member states

present to the world in respect of international trade. The trade relations between the Western Balkans and this united front play a major role in the fostering of peace, stability, freedom and economic prosperity in this region. EU-Western Balkans trade is governed by Stabilization and Association Agreements (SAA). The agreements aim to progressively establish a free-trade area between the EU and the Western Balkan countries. Where trade is concerned, they focus on liberalizing trade in goods, aligning rules on EU practice and protecting intellectual property. Macedonia signed the SAA in 2001 and it entered into force in April 2004. Although SAAs have been offered to all the Western Balkan countries, the only trade protocols that are being executed are with Macedonia and Croatia (which signed the SAA in 2001). Agreement regarding SAA was made with Albania in 2006 and one year later with Montenegro. Until these agreements are fully ratified by member states, they become partially effective through Interim Agreements. The EU announced that SAAs would improve existing autonomous trade preferences for Western Balkan countries and provide autonomous trade liberalization for 95% of all their exports to the EU. In addition, Macedonia's EU-27 exports account for about 60% of total exports.



In February 2010, the EU extended *autonomous trade preferences* to all the Western Balkans until 2015. These preferences were granted for the first time in 2000 and allowed nearly all exports to enter the EU without customs duties or limits on quantities (with exception on wine, sugar, baby beef and certain fisheries products which entered the EU under preferential tariff quotas). In the period of their second renewal (2005 to 2010), they have contributed to an increase in the Western Balkans' exports to the EU by

approximately 8% per year. In 2008, the EU was the region's largest trading partner for both imports (61.3% or 32.5 billion euros) and exports (63.2% or 13.9 billion euros).[1]

In addition, there are two other sets of agreements that govern relations between the EU 27 and the Western Balkan countries. The Energy Community Treaty establishes a common regulatory framework for energy, environment and competition within EU legislation by extending the *acquis communautaire* of the European Union to the territories of participating countries. It covers electricity, natural gas and petroleum products. Macedonia signed the ECT in 2005. The second agreement is the European Common Aviation Area Agreement (ECAA). These are bilateral agreements between the EU 27 and countries outside the EU which envisage single marketing aviation services and build upon the *acquis communautaire* and European Economic Area. Macedonia signed the ECAA in 2006. According to these two agreements, all the signatory countries (including Macedonia) are obliged to adopt sector-specific regulation (energy until 2015 and aviation specific regulation until 2010). A similar approach is expected to be undertaken regarding the railway industry. In addition, the EU strongly supports the Western Balkan countries' membership of the World Trade Organization (WTO). Macedonia became a member of WTO in 2003.

The abovementioned agreements illustrate not just the magnitude of trade relations between the EU and the Western Balkans but also the efforts towards partial expansion of the EU Single Market as well as towards the pursuit of deeper integration in individual sectors that will significantly facilitate eventual EU membership. Therefore it is crucial to understand this nexus that envisages the need to assess and discuss the implications of the Treaty of Lisbon for Western Balkan countries and the aspirations of these countries to EU membership.

Implications

The main implications of the ToL for the EU’s trading partners, with a special focus on the Western Balkans, include the following:

(a) The Report of the DG Trade Civil Society Meeting (2010) highlights two main factors that should be taken into consideration as a result of the ‘superpowers’ that the EP enjoys. First, the increased role of the European Parliament may lead to a ‘politicization’ of the Common Commercial Policy

and the use of conditionality in trade policy may be reinforced. Second, the participation of more actors in the conduct of EU trade policy may also lead to longer lead-in times. This refers to the new inter-institutional arrangements that need to be defined since both the Council and the Parliament will give instructions and will be reported to by the Commission during the negotiation of trade agreements. EU trading partners will need to pay more attention to the EP in addition to their lobbying efforts towards the key players in the Commission and the Council. The key players in the International Trade Committee of the EP and the political leanings and mood of the EP will have an impact on the negotiations and conclusions of any trade agreement (Pollet-Fort, 2010). One example is the Resolution of the European Parliament in 2006 which announced that the only 'suitable' trade agreements for the EP would be ones that contain a human rights clause. The role of the EP is also important in terms of communication with candidate countries. According to reforms introduced by the Lisbon Treaty, candidate countries must primarily address the Council, which reaches its decision unanimously. Afterwards, the candidate country informs the EP and NPs (it is important to note that this is only informing since these two bodies do not play any role in the accession procedure).

(b) One of the most important matters which concerns the Western Balkan countries is that the ToL reexamines the EU's enlargement policy, thus becoming the first ever community treaty that addresses the Union's accession criteria and includes a withdrawal clause. Prior to its ratification, the ToL was largely discussed in terms of its effect on the future EU membership of Western Balkan countries. This was 'encouraged' by the 'no' vote given by Ireland to the Treaty of Lisbon and the debate during the referenda in France and the Netherlands concerning the EU enlargement of 2007. However, the ToL reexamines these considerations and Article 49 TUE states: '*the criteria of eligibility approved by the European Council are taken into account*.' In other words, this means that the ToL envisages the three main categories of criteria for EU enlargement known as the 'Copenhagen criteria'. In order to join the EU, a candidate country must fulfill political criteria (stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities), economic criteria (existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union) and '*community acquis*' criteria

(ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union).

(c) The ToL sets new issues that must be taken into account when negotiating bilateral trade agreements and investments agreements, as well as when formulating trade policy framework within the WTO. This means that account should be taken not only of objectives such as liberalization but also human rights, environmental policy and sustainable development, etc. Prior to the ToL, most of the BITs contained 'Most-Favored Nation' clauses. This creates new challenges for the Model-Investment Protection Agreement not only in terms of the most favored nations clause, but also in regards of dispute resolution and competence to regulate portfolio investments. 'Most-Favored Nation' clauses will either have to be restricted or excluded. Otherwise there would be a danger that third parties to EU investment agreements could invoke more favorable clauses as part of old BITs concluded by EU member states (Bungenberg, 2010). Cremona (2006) highlights that the links can be made between trade policy and other objectives of the EU, providing a basis for the application of the conditionality principle in the conduct of trade policy. In addition, bilateral free trade agreements now focus on economic criteria rather than economic and political objectives as was earlier the case.

(d) The single legal personality that characterizes the EU after the ratification of the ToL might result in fragmented representation in international bodies as member states will not always be willing to give up their voting rights and be presented by the EU in a 'one size fits all' manner. One of the risks concerning the new positions introduced by the ToL is that of the relations between the High Representative for the Union's Foreign and Security Affairs with the EU leaders and the President of the EU Council. The coherence of the EU's external representation is not clear and will depend on the ability of Baroness Catherine Ashton to define her role. However, both Woolcock (2010) and Pollet-Fort (2010) consider the uncertainties of EU trading partners to be located at the point of interaction of the key players in EU trade policy. The result may be just opposite of the promises: more people speaking in the area. The HRFSP and the Council will continue to make key political decisions, such as when to authorize the Commission to negotiate, where (multilateral or bilateral) and with whom, but with the institutional memory and expertise on trade remaining where it is one must expect DG Trade to shape the content of trade policy. (Woolcock, 2010)

(e) The fact that FDI is now an exclusive competence of the EU will also have several other consequences. In addition member states will no longer be able to conclude BITs unless they are empowered by the EU to continue or conclude such agreements. The opportunity and the form of such an empowerment will need to be worked out between the EU institutions and the member states.

(f) Although the Treaty of Lisbon is well known by name and by its presence in the news, it is still an assumption of this paper that the Western Balkan countries lack structured information about specific effects of this Treaty on their trade relations with the EU. Faced with the reality that there are no miracle cures for the challenges of EU integration, it may be suggested that there should be a wider, region-specific spread of simplified structured information regarding the ToL. In other words, the information should be designed in such a way that the importance and effects of the Treaty will be understood and considered by individuals, businesses and governments. This will facilitate the improvement of trade collaboration between the Western Balkans and the EU. This is also of crucial importance if the EU wants to synchronize the intra and extra EU decision making processes to work towards the goals of the Lisbon Treaty. In addition, this is important for planning and accomplishing comprehensive actions and reforms that are to be carried out jointly at national and supranational level.

Conclusion

At this point in time it is still hard to judge whether the Treaty of Lisbon is dominated by 'positive' or 'negative' attributes. It represents a new step in EU integration, introduces progressive change in the decision making process of the EU, extends the external competences of the CCP and strengthens the influence of the European Parliament. This integration is important for the EU citizens whom it affects. And given that the EU accounts for one quarter of the world's economy, half of world trade and one third of the world's capital markets, any changes in the way in which the EU conducts trade also undeniably affect non-EU countries and their citizens. Western Balkan countries need to understand how the Lisbon Treaty influences their trade relations with the EU. A lack of research and region-specific information leaves only room for questions and approximations, which underlines the need for the right information. This paper suggests that it is of crucial

importance to ensure a comprehensive understanding of the ToL if the EU wants to synchronize *intra* and *extra* EU decision making processes to work towards the goals of the Lisbon Treaty. Reforms bring solutions, but they also bring new challenges. To rephrase Rifkin (2004), a successful Europe needs visions and coordination; without these, any deepening or widening are called into question. In order to become driving forces for European integration, new visions need strong Europe-wide political and economic coordination.

Endnotes

[1] Apart from the adoption of negotiating agreements, QMV is also applied in authorizing negotiations for issues which are under the exclusive competence of the EC. In issues that were not under the excusive EC competence before the adoption of the ToL, e.g. intellectual property, there was a requirement for unanimity.
[2] Article 218(6), (a), (i) to (v) of the TFEU.
[3] Article 207 TFEU.
[4] Special provisions for culture and health no longer exist.
[5] http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/balkans/

References

Bungenberg, M.(2010). 'The Common Commercial Policy after Lisbon', *European Yearbook of International Economic Law*, vol. 1, 2010.
Cremona, M. (2006). 'A Constitutional Basis for Effective External Action? An assessment of the Provisions on EU External Action in the Constitutional Treaty'. *EUI Working Papers*, Law no. 2006/30
DG Trade Civil Society Meeting (2010). *The impact of the Lisbon Treaty on trade policy*, report published on 27 January 2010, 3.
Eeckhout, P. (1994). *The European Internal Market and International Trade*: *A Legal Analysis*. (Clarendon Press: Oxford), 344.
Klages, R. (2008). Promoting EU Interest at Global Level, *The EU Internal Market in Comparative Perspective, Economic, Political and Legal Analyses*, Cahiers du Collège d'Europe / College of Europe Studies, Vol. 9, Chapter 8.
Krajewski, M. (2005). External Trade Law and the Constitution Treaty: Towards a Federal and More Democratic Common Commercial Policy? *CML Rev*. (2005), 91 seq. (98).
Szemiér, T. (2009). Future Prospects Of the European Union, Institute for World Economics of the Hungarian Academy of Sciences
Pollet-Fort, A. (2010). Implications of the Lisbon Treaty on EU External Trade Policy. *EU center*, March 2010
European Parliament (2006) *Resolution* of the European Parliament of 14 December 2006, EP-Doc A 6 – 4/2006. Available at

http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145757.pdf, (accessed on: 25.03.2010).

Report of the DG Trade Civil Society Meeting (2010). *The impact of the Lisbon Treaty on trade policy*, Available at http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145757.pdf, (accessed on: 27.03.2010).

Rifkin, J. (2004). *The European Dream,* Tarcher/Penguin.

Treaty of Lisbon, Council of the European Union, Available at: http://www.consilium.europa.eu/showPage.aspx?id=1296&lang=en (Accessed on 23.03.2010).

Woolcock, S. (2010). EU Trade and Investment Policymaking After the Lisbon Treaty. *Intereconomics*, Springer Berlin / Heidelberg (1).