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***On notorious declarations and clandestine actions:
The case of free trade between Baltic States
and the European Communities
(Are trade provisions under the EC-Baltic trade regimes as
liberal and effective as it is claimed?)***

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I. Introduction

The aim of the present paper is to demonstrate that, notwithstanding glamorous statements such as 'European integration' or 'unification of Europe', there are still substantial limits to the European Union's (EU) will to fully integrate the countries of Central and Eastern Europe (CEECs) into its system. In addition, the tools which are currently used in order to foster the accession of the CEECs to the EU, and which are deemed to be the most liberal and direct, - liberalisation of trade, - turn out to be not without obstacles. It goes without saying that economic integration is at the heart of the whole enlargement process¹, whereas other sides of it, such as, for example, political dialogue or co-operation in justice and home affairs, are corollary, although very important, effects. The Europe Association Agreements, the basis for the pre-accession process², provided for the establishment of free trade areas between the parties, which is seen as a first step to the accession countries joining the EU Single Market.³ However, after the first years of euphoria about the Europe Agreements, concern is growing in the countries of Central and Eastern Europe about the implications of these agreements. The revelations are not always as positive as they seemed to be some time ago. This paper is an attempt to provide some arguments to support this, using the Baltic states as an example.⁴

The structure of the paper is as follows: first, the legal basis for the EU-Baltic states trade relations is given, followed by an analysis of trade regimes in the specific groups of products and of obstacles to full liberalisation. The next chapter looks at the provisions on the uniform interpretation and application of the trade provisions under the Europe Association Agreements. This chapter is followed by a description of the inter-Baltic co-operation in the sphere of trade, proceeding to a comparison of trade regimes currently in place between the EU and the Baltic states, on the one hand, and the EU and other third states, on the other hand. A summary of the arguments and conclusions is given at the end.

II. Legal basis of the EU-Baltic states trade relations

¹ See, for example, Case C-63/99 *Gloszczuk*, on the interpretation of the Polish EA, Opinion of Advocate General Alber, para.46 'this Europe Agreement is intended *essentially* [author's emphasis] to promote the economic development of Poland'.

² Still, it was put clearly by the same Advocate General Alber that the Polish and Bulgarian EAs do not discuss *any* [author's emphasis] framework corresponding to the EC Treaty, rather they merely 'refer only to an expansion of trade and the provision of a framework for gradual integration into the Community', Case C-63/99 *Gloszczuk*, para.62, Case C-235/99 *Kondova*, para.71.

³ 'Access to the single market is generally seen as crucial for sustaining the process of integration with the western market economies and providing strong foundations for sustainable long-term growth at rates which will eventually close the gap in levels of income and development between east and west', *Economic Bulletin for Europe*, Vol.48 (1996), p.8.

⁴ The Baltic states (Estonia, Latvia, Lithuania) are among the other seven countries of Central and Eastern Europe, which concluded the Europe Association Agreements with the European Communities, i.e., Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovak Republic and Slovenia.

At present trade relations between the EU and the Baltic states are subject to the Europe Association Agreements⁵, concluded in 1995 between all three European Communities and each individual Baltic state. These agreements came into force in 1998, after their ratification by the parliaments of these states and the parliaments of all fifteen EU member states. Before that period, trade relations between the parties were governed by the 1992 Agreements on trade and commercial and economic co-operation⁶, later followed by the 1994 Agreements on trade and trade-related matters⁷. According to the former, the parties agreed to promote, expand and diversify their trade on the basis of equality, non-discrimination, mutual benefit and reciprocity⁸. However, textiles, apparel, agricultural products and products covered by the Treaty Establishing the European Coal and Steel Community, i.e., groups of possible major Baltic exports, were excluded from the undertaken liberalisation. The 1994 Agreements on trade and trade-related matters between the Communities and each Baltic state created, for the first time, the parties' objective of the establishment of the free trade areas between them.

The Europe Agreements, in contrast to the 1994 Free trade agreements, cover trade in substantially all products, although textiles and agriculture are subject to special provisions. While the transitional periods were laid down for the gradual establishment of free trade areas between the Communities and Latvia, and the Communities and Lithuania (four and six years respectively), Estonia is the only example of a state party to the Europe Agreement which actually undertook the abolishment of all barriers to trade simultaneously with the Communities.

III. Special regimes

III.1. Industrial products

Generally speaking, trade in industrial products is fully liberalised. If at the beginning of the 1990s the EC gesture granting the CEECs' industrial products free access to the EC internal market, was seen as an ingenious opening of the market, the data of the last

⁵ The Europe Agreement Establishing an Association Between the European Communities and their Member States, of the One Part, and the Republic of Latvia, of the Other Part, OJ No L026 p. 3, 2.2.1998; The Europe Agreement Establishing an Association Between the European Communities and their Member States, of the One Part, and the Republic of Lithuania, of the Other Part, OJ No L051 p. 3, 20.2.1998; The Europe Agreement Establishing an Association Between the European Communities and their Member States, of the One Part, and the Republic of Estonia, of the Other Part, OJ No L068 p. 3, 3.9.1998.

⁶ The Estonian Agreement on Trade and Commercial and Economic Co-operation, OJ L 403, p.2, 31.12.1992; the Latvian Agreement on Trade and Commercial and Economic Co-operation, OJ L 403, p.11, 31.12.1992; the Lithuanian Agreement on Trade and Commercial and Economic Co-operation, OJ L 403, p.20, 31.12.1992.

⁷ The Agreement on Free-Trade and Trade-Related Matters between the European Community, the European Atomic Energy Community and European Coal and Steel Community, of the One Part, and the Republic of Estonia, of the Other Part, OJ L 373, p.2, 31.12.1994; the Agreement on Free-Trade and Trade-Related Matters between the European Community, the European Atomic Energy Community and European Coal and Steel Community, of the One Part, and the Republic of Latvia, of the Other Part, OJ L 374, p.2, 31.12.1994; the Agreement on Free-Trade and Trade-Related Matters between the European Community, the European Atomic Energy Community and European Coal and Steel Community, of the One Part, and the Republic of Lithuania, of the Other Part, OJ L 375, p.2, 31.12.1994.

⁸ Second recital to the preamble in all three 1992 Agreements with the Baltic states.

decade (Table I) show that it is the Community whose exports (in value) to Latvia grew twice as fast as the export of Latvian commodities to the EC. This leads to a simple conclusion that the revenue obtained by the Community after introduction of free trade between the parties is twice as high as that enjoyed by Latvia.

Table I. Exports and imports of Latvian commodities to the EU¹ (thsd Lats²)

	1992	1993	1994	1995	1996	1997	1998
Export to EU	228354	225359	217044	303212	355457	474807	604459
Imports from EU	159770	174940	281685	478589	629465	841225	1039492

Source: Central Statistical Bureau of Latvia, <http://www.csb.lv>.

¹ Data for 1992 – 1994 are given in FOB values.

² According to Bank of Latvia, EUR 100 equals to Ls 0.5638500.

Table II presents data on the bilateral trade of all Baltic states with the European Union. It is interesting to see that data provided by the Baltic Statistical Offices are markedly different from that provided by the WTO.

Table II. Merchandise exports and imports from the EU to the Baltic states (million dollars)

	Exports			Imports		
	1997	1998	1999	1997	1998	1999
TOTAL	6830	7565	6330	5333	5509	6136
Estonia	2679	2965	2507 (2372.7*)	1872	2048	2340 (1843*)
Latvia	1728	1989	1682 (2027.9*)	1921	1791	1908 (1375.1*)
Lithuania	2423	2611	2111 (2247.7*)	1540	1670	1888 (1505.2*)

Source: WTO, *International Trade Statistics, 2000*, http://www.wto.org/english/res_e/statistics/stats2000_e.pdf, p.71-2.

* Data according to the Bulletin *Foreign Trade 1999. Estonia, Latvia, Lithuania*, Vilnius 2000, pp.28-30.

Recently, the attitude has started to change, in that Community officials admit that the launched liberalisation process is equally beneficial for the EU. Thus, for example, Commissioner Frits Bolkestein said last year⁹: ‘Let me say straight away that I am fully convinced that EU industry in general and its construction sector in particular stands to gain from Enlargement’.

III.2. Textiles

Trade in textiles (the Lithuanian main export category, second for Latvia, third for Estonia - see Table VIII below) between the parties is subject to Protocol 1¹⁰ in all three

⁹ Speech by Commissioner Frits Bolkestein delivered on a conference of ‘Beraad voor de Bouw’ in Hague, 10 October 2000, http://europa.eu.int/comm/internal_market/en/speeches/spch363.htm. Similarly, the Commission wrote in its *Internal Market: business satisfaction grows, EU enlargement largely seen as positive perspective*: ‘For the first time, businesses were asked their views on enlargement of the Union. Of those interviewed, 60% considered it favourable or very favourable. Less than a third (28%) were neutral in expecting neither favourable nor unfavourable results, and only 10% fear an unfavourable or very unfavourable outcome for their company’.

http://www.europa.eu.int/comm/internal_market/en/update/score/business.htm#4, 24 November 2000.

¹⁰ Later amendments were Council Decision 98/137/EC On the provisional application of certain Additional Protocols to the Free Trade and Europe Agreement with the Republic of Lithuania and the Republic of Latvia, OJ L41/81, 13.2.98; Council Decision 99/68/EC On the conclusion of certain Additional Protocols to the Free Trade and Europe Agreement with the Republic of Lithuania and the Republic of Latvia, OJ L28/65, 2.2.99. According to the Protocol, Annex V ‘List of textile products originating in Latvia and subject to Community tariff ceilings’ was abolished.

Baltic Europe Agreements. While, in general, providing for abolition of customs duties on certain groups of textiles and abolition of the quantitative restrictions, the texts of the Protocols are full of controversies. Thus, for example, in the case of Latvia, while declaring both a suspension in the application of quantitative restrictions to Latvian imports¹¹ and a Latvian obligation to exempt its exports from quantitative restrictions¹², the effect of these clauses is clearly undermined by the provision¹³ according to which the Community can introduce a quantitative limit. Further, if the Community finds that the level of imports in a given category exceeds the established rates, it can unilaterally adopt measures in order to restrain the import of the product in this category.¹⁴ The wording of the provision¹⁵, which specifies that in the case that the Community (and only the Community!) believes that the provisions of the Protocol are being circumvented, Latvia shall, *if so requested by the Community*¹⁶, take all necessary measures to ensure that adjustments of quantitative limits¹⁷ be carried out, is likewise biased. Moreover, the Protocol¹⁸ lists the Community's rights in the above-mentioned situation; however, these rights are not reciprocal... Article 10 of the Protocol is built along the same lines, regulating the situation where Latvian products are imported into the Community 'at a price abnormally lower than the normal competitive level and is for this reason causing or threatening to cause serious injury to Community producers'. It even provides that 'totally exceptional and critical circumstances' may arise within the Community, even where 'injury would be difficult to repair'! One can wonder how extensive Latvian exports have to be in order to reach these critical circumstances, especially given the fact that the wording of the provision implies that these exceptional circumstances have to arise in the Community *as a whole*, and not in the separate member states (see Table III where, according to the WTO, the share of imported textiles into the EU from each Baltic state does not exceed 0.2 per cent). One more point, while it is specified in detail what constitutes an abnormally low price (in practice this provision is applicable only to Latvia), nothing is said about the meaning of serious injury nor how to estimate it, leaving the Community with a wide scope for interpretation. Similarly, nowhere in the text of the Protocol is anything said about the possibility of serious injury suffered by Latvian producers due to the imports from the Community...

Table III. Textile imports from the Baltic states to the EU, 1999 (million dollars)

	Value	Share	Annual percentage change	
	1999	1999	1998	1999
LITHUANIA	133	0.2	26	8
ESTONIA	100	0.2	13	-9
LATVIA	85	0.2	69	-6

Source: WTO, *International Trade Statistics, 2000*, http://www.wto.org/english/res_e/statis_e/stats2000_e.pdf, p.144.

¹¹ Art.1(2) of the Protocol 1 to the Latvian EA.

¹² Art.2 (1) of the Protocol 1 to the Latvian EA.

¹³ Art.5(4) of the Protocol 1 to the Latvian EA.

¹⁴ Arts. 5(2), 5(4) of the Protocol 1 to the Latvian EA.

¹⁵ Art.6 (2,3) of the Protocol 1 to the Latvian EA.

¹⁶ Author's emphasis.

¹⁷ Set out in Art.5 to the Latvian EA.

¹⁸ Art. 6(4) of the Protocol 1 to the Latvian EA.

III.3. Agricultural products

Whereas quantitative restrictions had to be abolished by 1 January 1995 by the parties to the Baltic Europe Agreements in their trade in agricultural products, no provision stipulated an abolition of export and import duties. The Association Councils are empowered to consider the possibility of granting a more favourable regime, taking into account the sensitivity of the sector. If one of the parties to the Agreement considers that the sector in question is threatened, it can take the measures it deems appropriate¹⁹, pending a solution within the Association Council. However, as one could predict, in practice it is not easy for a small state to rely on this clause, even if the Commission itself fully admits the difficulties met by the Baltic states in restructuring their agricultural sectors.²⁰ Thus, for example, in spring 1999 the Latvian government introduced temporary safeguard measures on swine meat, which took the form of an additional duty of 70% for 200 days on an *erga omnes* basis in the framework of the WTO, consequently including the EC. In December 1999 the measures were extended to apply over another two years. According to the Commission²¹, Latvia failed to prove that swine meat originating in the Community has been imported in such increased quantities and under such conditions as to cause serious injury to Latvian producers of like or directly competitive products²². At the same time, the Commission claimed that the Community's operators suffer *substantial* losses. In order to prevent these losses, the Commission proposed suspending the agricultural concessions on butter which the Community had granted to Latvia.²³ Subsequently, the Latvian government did not have any choice but to suspend, and later to abolish, the application of these measures...

Table IV gives information about the relationship between export and import of agricultural products from the Baltic states to the Union in 1999. It is worthwhile stressing that imports always significantly exceed exports in all categories of products, with the exception of live animals and animal products where the CIS²⁴ countries still maintain a strong stand. Once again, a legitimate, albeit rhetorical question may be

¹⁹ Art.20 of the Estonian EA, Art.21 of the Latvian and Lithuanian EAs.

²⁰ For example, in the *2000 Regular Report from the Commission on Latvia's Progress Towards Accession*, the Commission wrote 'The agricultural sector has been declining dramatically... Low productivity, quality problems and increasing external competition have put the Latvian agricultural sector under constant and severe pressure', p.33, <http://www.europa.eu.int/comm/enlargement/docs/index.htm>.

²¹ Explanatory Memorandum to the Proposal for a Council Regulation suspending certain concessions set out in the EC-Latvia Europe Agreement, COM(2000) 129 final.

²² So far, the efforts of any CEEC to prove that EU imports to one of these states caused serious injury to its economy have failed. Thus, according to the Commission, also the Czech Republic has failed to prove that sugar imports from the EU caused serious injury as is required by Art.3 of the Czech EA, see *18th Annual Report from the Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities*, COM (2000) 440, p.114-5.

²³ 'It is appropriate to protect the Community's trade interests by suspending certain of the concessions set out in the Europe Agreement with Latvia, which are equivalent to the effect in trade value of the Latvian safeguard measures on pig meat on the Community's exports to Latvia', Proposal for a Council Regulation suspending certain concessions set out in the EC-Latvia Europe Agreement, COM(2000) 129 final, para. 7.

²⁴ CIS: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

raised: who benefits from the introduction of this partial free trade regime in agricultural products between the Communities and each Baltic state?..

Table IV. Baltic states exports from and imports to the European Union of agricultural products by sections of HS, 1999 (million dollars)

Country	Sections	Exports to the EU	Imports from the EU	Balance
ESTONIA	Live animals; animal products (I)	39.7	31.4	8.3
	Vegetable products (II)	10.5	68.8	-58.3
	Animal or vegetable fats and oils; prepared edible fats; animal or vegetable waxes (III)	0.1	16.1	-16.0
	Prepared foodstuffs; beverages, spirits and vinegar; tobacco (IV)	15.1	132.8	-117.7
LATVIA	Live animals; animal products (I)	17.0	20.5	-3.5
	Vegetable products (II)	3.0	67.2	-64.2
	Animal or vegetable fats and oils; prepared edible fats; animal or vegetable waxes (III)	0.1	25.7	-25.6
	Prepared foodstuffs; beverages, spirits and vinegar; tobacco (IV)	8.4	127.8	-119.4
LITHUANIA	Live animals; animal products (I)	40.6	32.6	8.0
	Vegetable products (II)	24.5	68.5	-44.0
	Animal or vegetable fats and oils; prepared edible fats; animal or vegetable waxes (III)	0.2	36.1	-35.9
	Prepared foodstuffs; beverages, spirits and vinegar; tobacco (IV)	33.5	104.5	-71.0

Source: Bulletin *Foreign Trade 1999. Estonia, Latvia, Lithuania*, Vilnius 2000, pp.28-30.

In conclusion, it can be said that the Baltic accession to the European Union implies a complete change in these countries' agricultural policies. This change will lead to protectionism and a very strongly supportive regime²⁵, which are similar to the ones currently in place in the EU. Fear is ripe amongst farmers, who are most likely to form the biggest group of those who will vote against each Baltic state joining the Union.

III.4. Wood

Wood and wood products, by far the largest Latvian export category to the EU (second main export category for Estonia and the fourth for Lithuania, Table VIII below), represented 54.1% of Latvian exports in the first quarter of 1999. It is exported mostly in untreated round-wood form, while imported mostly as processed. Paper industry experts calculated that the industry could raise the added value from wood exports ten-fold by processing the wood into paper before exporting it.²⁶ Fortunately, the situation is starting to change slowly. Thus, for example, the Commission admitted that, encouragingly, the share of processed timber in the total Estonian export of timber increased significantly from 50% in 1998 to 57% a year later.²⁷ However, the present situation still may be said to bear a strong resemblance to the 'consolidation of a colonial situation'²⁸, where the raw materials are exported in order to process them in the EU member states.

²⁵ U.Varblane, *Trade policy implications from EU membership for Estonia*, Baltic Journal of Economics, Vol.2, Winter 1999, p.260.

²⁶ M. Vipotnik and A.Robinson, *Market Reforms Bring Progress*, in *Financial Times Survey*, 6 July 1998.

²⁷ *2000 Regular Report from the Commission on Estonia's Progress Towards Accession*, p.30, <http://www.europa.eu.int/comm/enlargement/docs/index.htm>.

²⁸ W.Molle, *The Economics of European Integration*, Ashgate, 1997, 3rd ed., p.116.

Table V. Export and import of wood and wood products from the Baltic states to the EU by sections of HS, 1999 (million dollars)

Country	Sections	Exports to the EU	Imports from the EU	Balance
ESTONIA	Wood and articles of wood; cork and articles of cork (IX)	368.6	29.5	339.1
	Pulp of wood, paper and paperboard and articles thereof (X)	24.4	85.5	-61.1
LATVIA	Wood and articles of wood; cork and articles of cork (IX)	589.5	11.8	577.7
	Pulp of wood; paper and paperboard and articles thereof (X)	4.7	77.2	-72.5
LITHUANIA	Wood and articles of wood; cork and articles of cork (IX)	146.3	17.5	128.8
	Pulp of wood; paper and paperboard and articles thereof (X)	5.0	83.7	-78.7

Source: Bulletin *Foreign Trade 1999. Estonia, Latvia, Lithuania*, Vilnius 2000, pp.28-30.

IV. Obstacles to trade

According to the texts of the Europe Agreements, tariffs, duties and measures having equivalent effect were to be abolished in trade between the parties. However, there is still a rich arsenal of tools, the so-called 'contingent measures of protection', which are mainly clauses on safeguards²⁹ and anti-dumping³⁰, to which the parties may resort in order to restrain the flow of goods from the contracting party. Although, as has been demonstrated by the Latvian swine meat case, it is difficult, if not impossible, for a single state which is a party to bilateral agreement with the Community to apply these measures.³¹ Thus, for example, in 1999 definitive anti-dumping duties were imposed on imports of hardboard originating in Bulgaria, Estonia, Latvia, Lithuania, Poland and Russia.³² Polish and Latvian enterprises made an attempt to contest the adopted measures, but to no avail.³³ As Montaguti rightly pointed out, the main problem here lies in insufficient legal constraints on the application of these measures on a unilateral basis.³⁴ Thus, for example, after the agreement on the application of safeguard measures is achieved within the Association Council, the European Council, acting by a qualified majority, may still take a different decision!³⁵

²⁹ Art.29 of the Estonian EA, Art.30 of the Latvian and Lithuanian EAs.

³⁰ Art.28 of the Estonian EA, Art.29 of the Latvian and Lithuanian EAs.

³¹ A similar situation with the unsuccessful imposition of safeguard measures on swine-meat imports has been experienced by Slovenia and Slovakia, see *18th Annual Report from the Commission to the European Parliament on the Community's anti-dumping and anti-subsidy activities*, COM (2000) 440, p.117. See also Joined Cases T-33/98 and T-34/98 *Petrotub and Republica*, where the Romanian enterprises contested the Council Regulation on imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes, and where all the applicant's pleas have been rejected by the Court. Case T-104/99, *Bolderaja*, OJ C 226, p.30, 7.8.1999, where the Latvian enterprise contested Council Regulation on imposing definitive anti-dumping duties on imports of hardboard.

³² Council Regulation (EC) No. 194/99, OJ L 22, p.16, 29.1.99; Commission Decision No.1999/71/EC, OJ L22, p.71, 29.1.99.

³³ Case T-104/99, *Bolderaja*, OJ C 226, p.30, 7.8.1999.

³⁴ E.Montaguti, *The Europe Agreements' Anti-Dumping Provisions in EC-CEECs Relations*, p. 165, in M.Maresceau, *Enlarging the European Union*, Longman, 1997, p.1355.

³⁵ See, for example, Art.6 of the Council Reg. (EC) No. 596/98 of 9 March 1998 On certain procedures for applying the EC-Latvia Europe Agreement, OJ L79/9, 17.03.1998; Art.6 of the Council Reg. (EC) No. 594/98 of 9 March 1998 On certain procedures for applying the EC-Lithuania Europe Agreement, OJ L79/1, 17.3.1998; Art.6 of the Council Reg. (EC) No. 595/98 of 9 March 1998 On certain procedures for applying the EC-Estonia Europe Agreement, OJ L79/5, 17.3.1998.

In contrast, the clause on infant industries³⁶ is a measure of contingent protection for the CEECs, and not for the EU. To my knowledge, no action based on this provision has yet been taken by any of the Baltic states. 'This is partially explained by the fact that it [the infant industry clause] clearly cannot – nor is intended to – constitute a daily instrument of industrial or economic policy on the part of associated countries, not only because it is expressly termed as exceptional, but also due to its strictly temporary nature'.³⁷

IV.1. *Rules of origin*

The application of rules of origin under the Europe Agreements is governed by the separate protocols attached to them. In the case of the Community's trade regime with the Baltic states, these protocols have been changed twice since 1995, leading to more and more liberal cumulation rules. That is to say, in the initial version in the Protocol, only materials originating in the three Baltic states were subject to cumulation, whereas the 1997 amendments³⁸ introduced changes according to which the materials originating in other CEECs, Iceland, Norway and Switzerland are considered as originating in the Community or Latvia when incorporated into a product obtained there. The 1999 amendments³⁹ added Liechtenstein and Turkey⁴⁰ into this list, thus further promoting the establishment of the pan-European system of cumulation.

The most significant drawback with regard to rules of origin is that their provisions are suppressed in favour of a threshold expressed in terms of the value added to products originating in the Baltics: inputs imported from non-EC sources should not represent more than 40 or 50 per cent of the value of production.⁴¹ In sum, it imposes a local content requirement of 50-60%, which in practice is very difficult to fulfil. Such a requirement 'would be very damaging, both immediately and in the longer term, since such outward processing relationships are often the first stage in a longer term relationship'.⁴² The 1997 and 1999 amendments to the Protocols reduced the local content requirement down to 25% for some groups of products, however, failed to do it on a large scale.

³⁶ Art.27 of the Estonian EA, Art.28 of the Latvian and Lithuanian EAs.

³⁷ E.Montaguti, *The Europe Agreements' Anti-Dumping Provisions in EC-CEECs Relations*, p. 165, in M.Maresceau, *Enlarging the European Union*, Longman, 1997, p.1356.

³⁸ Decision 1/97 of the EC-Latvia Joint Committee of 20 March 1997 (97/268/ECSC, EC, Euratom), OJ L111, p.101, 28.4.1997, Decision 4/98 of the Association Council, OJ L6, p.10, 12.1.1999, Decision 1/97 of the EC-Estonia Joint Committee of 6 March 1997, OJ L11, p.1, 28.4.1997.

³⁹ See, for example, Decision 2/1999 of the EC-Latvia Association Council, OJ L5, p.46, 1.8.2000.

⁴⁰ With the exception of some products though, see Decision 2/1999 of the EC-Latvia Association Council, OJ L5, p.46, Annex V, 1.8.2000.

⁴¹ See Annex II to the Protocols, 'List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status'. See also P.A.Messerlin, *The Association Agreements between the EC and Central Europe: Trade Liberalisation vs Constitutional Failure?*, in J.Flemming, J.M.Rollo (ed.), *Trade, Payments and Adjustment in Central and Eastern Europe*, EBRD, 1992, p.129.

⁴² J.M.C.Rollo, *Integrating Eastern Europe into a Wider Europe*, in R.O'Brien (ed.), *Finance and the International Economy*: 5, OUP, 1991, p.87.

IV.2. Technical standards and regulations

Alignment of CEECs' legislation to that of the EU in the sphere of standards and regulations may be admitted to be one of the most difficult tasks in the whole enlargement process. Only upon the condition that these requirements are met, can the CEECs aspire to become a part of the Single Market. As Inotai put it, 'the EU has developed in parallel with its process of global tariff reduction a highly efficient second line of defence: a jungle of technical standards, environmental, veterinary and sanitary regulations and so on, of a kind that hardly exists in any of the CEECs'.⁴³ Thus, even in a situation where the Community gradually lifts its restrictions on imports of agricultural products, the Central European enterprises continue to face major problems complying with the standards applicable not only to the products themselves, but also to technical conditions, work safety requirements etc. Meeting these requirements (apart from the general task of adoption of the *acquis* by the legislative means) necessitates not only high expertise in each area concerned, but, more importantly, large financial costs⁴⁴ ...

V. Uniform interpretation and application of the Europe Agreements

The analysis of the provisions on the interpretation of the Europe Agreements in the course of the present paper is important for two reasons. Firstly, only upon condition that the provisions of the agreement are given the same meaning by both contracting parties, can consistency in the application of the agreement be secured.⁴⁵ Secondly, since the texts of the Europe Agreements do not vary significantly from country to country, it is important to ensure that these are applied in the same manner with regard to (and in) all CEECs, the Baltic states among them. The judicial resolution of the problem, both at the Community level and at the national level (similarly in the EU member states and in the applicant states), may serve as a precedent and as a case study for all countries involved in the accession negotiations.

That is to say, in contrast to the European Economic Area Agreement⁴⁶ and the EC-Turkey Association Agreement⁴⁷ (later complemented by the Customs Union

⁴³ A.Inotai, *From Association Agreements to Full Membership? The Dynamics of Relations Between the Central and Eastern European Countries and the European Union*, Hungarian Academy of Science, Institute for World Economics, WP No.52, June 1995, p.10.

⁴⁴ Thus, according to the calculations prepared by the Latvian Ministry of Finance, in 2001 and 2002, 296 million Lats will be spent for the adoption of EC standards in Latvia, R.Liepkalns, *Latvija pirmoreiz aprēķina ES integrācijas izmaksas*, Diena, 19 March 2000, www.diena.lv.

⁴⁵ See, for example, Case 218/83 *Les Rapides Savoyards Sàrl and Others*, ECR [1984], p.3105-3126, involving the Agreement between the EEC and Swiss Confederation, where the Italian Government said (p.3113): 'The question how and to what extent currency fluctuations must be taken into account in order to establish the proportion of non-Swiss products used in the manufacture of products imported from Switzerland is a problem which necessarily requires a uniform solution irrespective of the Member State into which the products are imported. *Otherwise trade will be deflected and competition distorted in a manner incompatible with the objectives pursued by the Community in concluding the Agreement*' (author's emphasis).

⁴⁶ Agreement on the European Economic Area, OJ No L001, p.3, 3.1.1994.

⁴⁷ 1963 Agreement establishing an Association between the European Economic Community and Turkey, OJ C 113, 1973.

Agreement⁴⁸), the provisions on the interpretation of the Europe Agreements by comparison may be considered non-existent. In brief, the clauses on interpretation are at the heart of the EEA Agreement, with the executive and legislative bodies (the Joint Committee and specially established EFTA Court) exercising the interpretation duty. This duty is strongly linked to the more general task of adoption of the EC legislation (as far as it concerns the Single Market *acquis*) by the EFTA countries⁴⁹. In the situation of possible conflict between the implemented EEA rules and other statutory provisions, the EFTA states introduce, if necessary, a statutory provision to the effect that EEA rules prevail in these cases.⁵⁰ Another extremely important aspect here is that the provisions of the EEA Agreement, as far as they are identical to the EC Treaty provisions, must be interpreted in conformity with the ECJ case-law, however, without prejudice to its future developments.⁵¹ A similar provision is also found in the EC-Turkey Customs Union Agreement, although without any timing restraint.⁵² Moreover, in both these cases, the parties to the EEA Agreement and the Turkish Association Agreement may apply to the ECJ on the interpretation of the issue in question.⁵³

The situation in relation to CEECs is quite the reverse.⁵⁴ Apart from the provision which permits the parties to refer a dispute relating to the application or interpretation of the Europe Agreement to the Association Council⁵⁵, nothing more is provided. Neither is there an obligation to interpret those provisions of the agreements which are worded identically to the EC Treaty provisions, in conformity with the ECJ decisions, nor is there a more general task to follow or pay due account to ECJ case-law, nor is there a right to address the ECJ on a disputable issue. On the contrary, the current situation may be described as similar to that in the *Polydor*⁵⁶ case, which concerned the interpretation of the 1972 EEC-Portugal Agreement. In this case, the Court said that 'the instruments the Community has at its disposal in order to achieve the uniform application of Community law and the progressive abolition of legislative disparities within the common market have no equivalent in the context of the relations between the Community and Portugal'. The EC failure to remedy the problem more than twenty years after the *Polydor* decision, by setting up common institutions which would be empowered to ensure the uniform interpretation binding on all contracting parties to the Europe Agreements, is striking. It is especially so after the precedent set by the EEA Agreement.

⁴⁸ Decision 1/95 of the EC-Turkey Association Council, OJ L35, 13.2.1996.

⁴⁹ EFTA (European Free Trade Area) included Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, Switzerland; Austria, Finland and Sweden opted out after they joined the EU in 1995.

⁵⁰ Protocol 35 to the Agreement On the implementation of EEA rules.

⁵¹ Art. 6 of the EEA Agreement. In this way the EFTA states tried to protect themselves against the decisions of the ECJ, which they cannot influence.

⁵² Decision 1/95 of the EC-Turkey Association Council, OJ L35, 13.2.1996, where Art.66 provides that the provisions of the Decision insofar as they are identical to the corresponding provisions of the Treaty establishing the EC are to be interpreted for the purposes of their implementation and application to products covered by the Customs Union, in conformity with the relevant decisions of the ECJ.

⁵³ Art. 111(3) of the EEA Agreement, Art. 25(2) of the EC-Turkey Association Agreement.

⁵⁴ Clauses on interpretation are identical in all EAs.

⁵⁵ See, for example, Art. 112(1) Estonian EA, Art. 113(1) Latvian EA, Art. 114(1) Lithuanian EA, Art. 25 EC-Turkey Association Agreement. See the following chapter of this paper on the role of the Association Council in trade dispute resolution.

⁵⁶ Case 270/80 *Polydor*, ECR [1982] p.329, para.20.

V.1. Direct effect of the Europe Agreements

Moreover, with accession to the European Union, the CEECs will have to adapt their legal systems to the concepts of direct effect⁵⁷ and supremacy⁵⁸ of EC law. According to the ECJ, which can rule on the agreements concluded by the European Council under Article 311 (ex 238) of the EC Treaty, since they form an integral part of the Community legal system⁵⁹, the provisions of the Association Agreements and the decisions of the Association Councils are directly effective 'when, regard being had to its [provision's] wording and the purpose and nature of the Agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure'.⁶⁰ However, in its Opinion 1/91⁶¹ on the first version of the EEA Agreement, the European Court refused to admit the provisions of the EEA Agreement as being directly effective.⁶² The EFTA Court, nonetheless, ruled against this on several occasions. Thus, in the *Restamark*⁶³ decision, it stated that 'it is inherent in the nature of Protocol 35⁶⁴ that individuals and economic operators, in case of conflict between *implemented EEA rules* and national statutory provisions, must be entitled to invoke and to claim at the national level any rights that could be derived from provisions of the EEA Agreement'.⁶⁵ This finding was later confirmed in *Sveinbjörnsdóttir*⁶⁶ case: 'the proper functioning of the EEA Agreement is dependent on those individuals and economic operators being able to rely on the rights thus intended for their benefit'.⁶⁷ Notwithstanding these EFTA Court's decisions, the ECJ continues to follow its own line of reasoning. In the *Andersson*⁶⁸ case, coming half a year after the *Sveinbjörnsdóttir* decision, the Court ruled that the EFTA state (Sweden), prior to its accession to the Union, is not liable toward individuals for damage caused to them by failure of the state to transpose the EC directive correctly into its national legal system, since this is an obligation of public international law. Thus, the Court denied the applicability of the principle of state liability which, alongside the principles of direct effect and supremacy, forms part of the EC law regime, for the EEA legal system.

⁵⁷ Case 26/62 *Van Gend en Loos*, ECR [1963] p.1.

⁵⁸ Case 26/62 *Van Gend en Loos*, ECR [1963] p.1, Case 6/64 *Costa v ENEL*, ECR [1964] p.1141-1168.

⁵⁹ Case 181/73 *Haegeman*, ECR [1974] p.449-465, paras.3-7, where the Court said 'This [Greek Association] Agreement is therefore, in so far as concerns the Community, an act of one of the institutions of the Community within the meaning of subparagraph (b) of the first paragraph of Article 177. The provisions of the Agreement, from the coming into force thereof, form an integral part of Community law'; Case 12/86 *Demirel*, ECR [1987] p.3719, para.7.

⁶⁰ Case 12/86 *Demirel*, ECR [1987], p.3719, para.2. See also Case C-192/89 *Sevince*, ECR [1990] p.I-346, para.13-26, C-262/96 *Sürül*, ECR [1999], p. I-2685, paras.48-74.

⁶¹ Opinion 1/91, ECR [1991] p. I-6079.

⁶² See para.28 of the Opinion, where the Court provides that 'it follows that compliance with the case-law of the Court of Justice, as laid down by Article 6 of the Agreement, does not extend the essential elements of that case-law which are irreconcilable with the characteristics of the Agreement'.

⁶³ Case E-1/94 *Restamark*, 1995, Reports of the EFTA Court [1994], p.15.

⁶⁴ *Supra*, n.50.

⁶⁵ Case E-1/94 *Restamark*, 1995, Reports of the EFTA Court [1994], p.15, para.77.

⁶⁶ Case E-9/97 *Sveinbjörnsdóttir*, Reports of the EFTA Court [1998], p.95.

⁶⁷ Case E-9/97 *Sveinbjörnsdóttir*, Reports of the EFTA Court [1998], p.95, para.58.

⁶⁸ Case C-321/97 *Andersson*, ECR [1999], p.3551, para.46.

From this closely analogous situation of the EEA Agreement, one can come to the simple conclusion that, as the situation stands at present, the ECJ is likely to be very reluctant to confer the basic characteristics of EC law, which it had developed in the course of the years, on the provisions - trade and trade-affecting provisions in particular⁶⁹ - of the Association Agreements, concluded by the Community with third states. However, while under the EEA Agreement, the EFTA Court is an institution which can depart from the ECJ's opinion and give an opposite ruling, there is no such institutional power under the Europe Agreements, where the interpretation is under threat of depending on the 'vagaries of political discretion'⁷⁰, rather than on the rule of law.

At the same time, it must be said that the situation in the accession countries with regard to the effect of the Community legal doctrines in their territories is not totally clear and unambiguous either. Thus, at the end of the 1990s, a submission was made to the Hungarian Constitutional Court in which the applicant⁷¹ argued that 'accepting and imposing on a law-enforcement authority [i.e., Hungarian Competition Authority] an obligation to make the assessment of cases on the basis of EC law criteria, including those formulated after the signature (entry into force) of the Europe Agreement... equals to transferring legislative power from Hungary to the EC.'⁷² Accordingly, the Constitutional Court was asked to rule⁷³ on what the criteria arising from the application of Articles 85 and 86 of the EC Treaty (rules on competition) (now - Articles 81 and 82), referred to by Article 62(2) of the Hungarian Europe Agreement (provisions on competition) cover, and how these criteria become effective in Hungarian law. That is to say, the Court had to assess whether the doctrines of direct effect and direct applicability had any effect in Hungarian law. The Hungarian Court established that the appearance of the above-mentioned criteria in Hungarian law enforcement 'does not fit into the order of effectiveness of international treaties'⁷⁴ (i.e., Hungary is a dualist country, where international law becomes effective upon its incorporation into national legal order, rather

⁶⁹ The situation in relation to the free movement of workers is somewhat different. Thus, the ECJ admitted non-discrimination provisions in the social security scheme of the EC-Morocco Co-operation Agreement, as being directly effective, Case C-18/90 *Kziber*, ECR [1991], p.I-199. With regard to the rules of establishment, both Advocates General Alber and Mischo came to the same conclusion that these provisions are directly effective under the Polish, Bulgarian and Czech EAs, Cases C-63/99 *Gloszczuk*, C-235/99 *Kondova*, C-257/99 *Barkoci and Malik*. Nancy Administrative Court of Appeal also admitted the provision on non-discrimination contained in Art.37 (treatment of Polish workers legally employed in the member states) of the Polish EA as being directly effective, Case *Mlle Lilia Malaja*, Decision of 3 February 2000, <http://jurisweb.citiweb.net/ce/99nc00282.htm>.

⁷⁰ S.Peers, *An Ever Closer Waiting Room?: The Case for Eastern European Accession to the European Economic Area*, CMLR : 187-213, 1995, p.205.

⁷¹ Professor B.Berke of the ELTE University (Budapest).

⁷² And further 'There was no constitutional empowerment in the Constitution of the Republic of Hungary to that effect', B.Berke, *Implementation of the Association Agreement, Approximation of Laws, Eventual Accession - Some Constitutional Implications*, in materials on 1996 ECSA Conference in Budapest, *On the State of the EU Integration Process - Enlargement and Institutional Reforms*, ELTE University, Budapest, 1997.

⁷³ The *Preliminary Issues Judgment*, Judgment 4 of 22 January 1997, and the *Europe Agreement Judgment*, Judgment 30 of 25 June 1998.

⁷⁴ As cited in J.Volkai, *The Application of the Europe Agreement and European Law in Hungary: the Judgment of an Activist Constitutional Court on Activist Notions*, Harvard Jean Monnet Working Paper 8/99, p.15.

by a mere fact of signing), whereas, following the wording of Article 62(2) and of the Implementing Rules, these criteria at the same time are such as 'require application in the procedure of the [Hungarian Competition Authority] without confirmation, incorporation, transformation or proclamation by a domestic law, which are necessary for the domestic effectiveness of international treaties under Hungarian law'.⁷⁵ The Court did not rule expressly that Article 62(2) of the Europe Agreement is unconstitutional; rather it said that 'it is a constitutional requirement that Hungarian law enforcement authorities cannot apply directly the application criteria referred to in Article 62(2) EA',⁷⁶ implicitly acknowledging the possibility that Article 62(2) is unconstitutional.⁷⁷ However, in the framework of this paper, it is more important that the Hungarian Court refused direct effect to the Europe Agreement's rules on interpretation.

It is difficult to speculate what a decision of any Constitutional Court in one of the Baltic states would be if a similar issue were at stake. However, it may merely be said that in all these three countries the relevant factors are similar to those which are in operation in Hungary: the wording of the Article 62(2) under the Hungarian Europe Agreement corresponds to that under the Baltic Europe Agreements⁷⁸, and all three Baltic states have a dualist system.⁷⁹ Accordingly, there is a high probability that the Constitutional Courts would come to the same conclusion.

I strongly believe that the CEECs' national courts have to admit to themselves that the fact of their governments' signing the Europe Agreements, which to a certain extent reproduce provisions of EC law, and the fact of gradual implementation of the Community law into their national legal systems, reflect 'the desire of the national legislature to afford to individuals falling within their scope the same treatment as that guaranteed by the Community legal order'.⁸⁰ Consequently, the right of private law subjects to rely directly on provisions of the Europe Agreements while trying to enforce and protect their rights, must be guaranteed. This point is further supported by the

⁷⁵ As cited in J.Volkai, *The Application of the Europe Agreement and European Law in Hungary: the Judgment of an Activist Constitutional Court on Activist Notions*, Harvard Jean Monnet Working Paper 8/99, p.15.

⁷⁶ As cited in J.Volkai, *The Application of the Europe Agreement and European Law in Hungary: the Judgment of an Activist Constitutional Court on Activist Notions*, Harvard Jean Monnet Working Paper 8/99, p.21.

⁷⁷ J.Volkai, *The Application of the Europe Agreement and European Law in Hungary: the Judgment of an Activist Constitutional Court on Activist Notions*, Harvard Jean Monnet Working Paper 8/99, p.21.

⁷⁸ These are Art. 63(2) of the Estonian EA, Art. 64(2) of the Latvian and Lithuanian EAs.

⁷⁹ See Art. 68 of the Latvian Constitution (Satversme): 'All international agreements which settle matters that may be decided by the legislative process shall require ratification by the Saeima [parliament]'; Art. 138 of the Lithuanian Constitution 'The Seimas shall either ratify or denounce international treaties of the Republic of Lithuania which concern:.. political cooperation with foreign countries... multilateral or long-term economic agreements. Laws and international treaties may provide for other cases in which the Seimas shall ratify international treaties of the Republic of Lithuania. International agreements which are ratified by the Seimas of the Republic of Lithuania shall be the constituent part of the legal system of the Republic of Lithuania'; Article 121 of the Estonian Constitution 'The Parliament shall ratify and denounce treaties of the Republic of Estonia: ... the implementation of which requires the adoption, amendment or annulment of Estonian laws, ...by which the Republic of Estonia joins international organizations or leagues, ... where ratification is prescribed'.

⁸⁰ Case C-321/97 *Andersson*, ECR [1999], p.3551, Opinion of the Advocate General, para.16.

provision of the Europe Agreements which stipulates that 'The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained'.⁸¹ Interestingly enough, this provision is identical to that contained in Article 10⁸² (ex Article 5) ECT, which has been used by the ECJ to impose on national courts the obligation of ensuring concepts of supremacy and direct effect, thus once again arguing for the direct effect of the Association Agreements.

V.2. Role of the Association Council in trade dispute resolution

One can get the impression after a superficial look at the Europe Agreements' provisions on the Association Councils⁸³ that the Councils are decision-making bodies vested with broad powers. However, although it is true to say that, once a dispute on trade matters has arisen between the parties, it has to be solved by means of consultations within the Association Council⁸⁴ which takes a decision⁸⁵ on this matter, the effect of such provision is clearly undermined by the power of the European Council to overrule such a decision.⁸⁶ Furthermore, even if a party wishes to contest the unilateral action undertaken by another party calling for arbitration⁸⁷, there is still little chance of dispute resolution. As a matter of fact, the hearing is supposed to be conducted by three arbitrators, the first one being appointed by the accession state, the second one by the Community, and the last one by the Association Council, which, theoretically, can block this third appointment through its non-agreement as between the Communities and the state concerned on the candidature. Moreover, there is little probability that any CEEC will go so far in its actions - there is no use in harming its relations with the Union, to which all of them seek accession.⁸⁸

⁸¹ Art. 122(1) Estonian EA, Art. 123(1) Latvian EA, Art. 124(1) Lithuanian EA.

⁸² Art. 10 ECT reads: 'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty.... They shall abstain from any measures which could jeopardise the attainment of the objectives of this Treaty'.

⁸³ These provisions are identical in all EAs.

⁸⁴ See, for example, Art.26 of the Estonian EA, Art.27 of the Latvian and Lithuanian EAs (consultations on agreements providing for establishment of customs unions and free trade areas); Art.32 of the Estonian EA, Art.33 of the Latvian and Lithuanian EAs (consultations on anti-dumping and safeguards measures).

⁸⁵ Art. 111 of the Estonian EA, Art. 112 of the Latvian EA, Art. 113 of the Lithuanian EA.

⁸⁶ See the earlier chapter on Obstacles to trade and Art.6 of the Council Reg. (EC) No. 596/98 of 9 March 1998 On certain procedures for applying the EC-Latvia Europe Agreement, OJ L79/9, 17.03.1998. See also Joined Cases T-33/98 and T-34/98 *Petrotub and Republica*, where the applicants, Romanian enterprises claimed that the procedure on involvement of the Association Council in settlement of a dumping case, as it is put down by the Europe Agreement, has not been observed by the Commission, paras. 34-51. In the given case the Commission took the decision unilaterally, whereas involvement of the Association Council in the consultations was achieved only at a later stage due to the pressure from the applicants' side.

⁸⁷ Art. 112(4) of the Estonian EA, Art. 113(4) of the Latvian EA, Art. 114(4) of the Lithuanian EA.

⁸⁸ Along the same lines: in its *Europe Agreement Decision*, the Constitutional Court of Hungary did not expressly admit Art.62(2) (rules on competition) as unconstitutional (see chapter on Uniform interpretation of this paper), notwithstanding the fact that there were all necessary preconditions to do so. As J.Volkai put it, the reasons 'for such self-restraint are manifold. First, in the light of the importance of the legal and *political* issues involved, the Court obviously wanted to adopt the outcome with the least interference with the *status quo*', and further, 'in order to soften the finding of unconstitutionality, it [the Court] adopted the arguments of the Ministries on the prevalence of public interest over private ones', J.Volkai, *The*

VI. Baltic regional co-operation

All three Baltic Europe Agreements have on several occasions fostered regional co-operation between these states.⁸⁹ A Baltic Common Economic Area has been introduced: the Baltic Free Trade Agreement was signed on 13 September 1993 and came into force on 1 April 1994; a free trade agreement in agricultural products was signed on 16 June 1996 and has been in force since 1 January 1997; the agreement on the abolition of non-tariff barriers to trade was concluded on 20 November 1997, and came into force on 1 July 1998⁹⁰, currently the possibility of unification of the excise taxation rates is analysed.⁹¹ However, the result of these achievements may be undermined overnight. Thus, according to the Commission's requirements, once one of the CEECs joins the Union, free trade with non-EU members will have to be suspended, therefore trade barriers towards goods coming from these countries will have to be introduced. The Commission's view is that the retention of free trade in such a case can jeopardise competition within the Union.⁹² The Latvian position until recently was that if it joins the European Union earlier than the other two Baltic states, it will ask for the retention of the Baltic Free Trade Agreement.⁹³ This position *is not* shared by the Estonian side any longer, strongly supported by the European Commission.⁹⁴ Interestingly, this political stance⁹⁵ not always is shared by the academia. Thus, U.Varblane (University of Tartu) holds that it is extremely important to save free trade agreements with neighbouring Baltic countries and the Ukraine.⁹⁶ Be this as it may, it is difficult to call the Commission's stance in this case consistent.

Table VI.1 and VI.2 below contain data on bilateral trade between three Baltic states.

Application of the Europe Agreement and European Law in Hungary: the Judgment of an Activist Constitutional Court on Activist Notions, Harvard Jean Monnet Working Paper 8/99, pp.21,23.

⁸⁹ 11th recital of the preamble to all Baltic EAs stipulates 'Recognising the need for continuing regional co-operation among the Baltic states, taking into account that closer integration between the European Union and the Baltic states, the Baltic states among themselves and also in a wider regional context, should proceed in parallel'. Further references are found in Art. 2(2) of these Agreements (general clause on interpretation), Art. 72(4) of the Latvian and Lithuanian EAs and Art. 71(4) of the Estonian EA (economic co-operation).

⁹⁰ *1999 Regular Report from the Commission on Latvia's Progress Towards Accession*, <http://www.europa.eu.int/comm/enlargement/docs/index.htm>, p.B.3.8.

⁹¹ A.Gunter, *Economic Forum Focuses on Excise Taxes*, The Baltic Times, April 12-18, 2001, p.7.

⁹² www.nra.lv, 26.05.2000.

⁹³ K.Plamse, *Eiropas Savienības dēļ Latvija gatava upurēt brīvās tirdzniecības līgumu*, Diena, 15 November 2000, www.diena.lv.

⁹⁴ www.nra.lv, 26.05.2000.

⁹⁵ However, Estonia's minister of economy, Mr. M.Parnoja, recently said: 'We (Estonia, Latvia and Lithuania) certainly have spheres where we compete, but I hope that... we'll turn this competition into a healthy force to drive our economies', in A.Gunter, *Economic Forum Focuses on Excise Taxes*, The Baltic Times, April 12-18, 2001, p.7.

⁹⁶ U.Varblane, *Trade policy implications from EU membership for Estonia*, Baltic Journal of Economics, Vol.2, Winter 1999, p. 266, and further - for Estonia, which does not have tariffs in trade with the EU, the move from the present situation to the EU trade policy system will be costly, whereas 'it requires implementation and maintenance costs, but is also associated with costs due to the decrease in allocative efficiency of production factors', p.251.

Table VI.1. Trade between the Baltic states, exports, 1997-1999 (thousands US dollars)

Country	1997		1998		1999	
	Value	%	Value	%	Value	%
ESTONIA						
Latvia (4)	253 006	8.6	306 205	9.4	256 168	8.7
Lithuania (8)	178 541	6.1	151 163	4.7	113 847	3.9
LATVIA						
Lithuania (4)	218 684	7.1	255 821	7.8	237 904	8.3
Estonia (7)	118 435	3.8	172 231	5.3	161 855	5.7
LITHUANIA						
Latvia (2)	332 321	8.6	410 087	11.1	383 750	12.8
Estonia (14)	97 315	2.5	97 569	2.6	70 612	2.4

Source: *Bulletin Foreign Trade 1999. Estonia, Latvia, Lithuania*, Vilnius 2000, pp.65-71.

Table VI.2. Trade between the Baltic states, imports, 1997-1999 (thousands US dollars)

Country	1997		1998		1999	
	Value	%	Value	%	Value	%
ESTONIA						
Latvia (11)	77 446	1.8	96 887	2.0	89 015	2.2
Lithuania (14)	67 317	1.5	78 462	1.6	67 339	1.6
LATVIA						
Lithuania (3)	226 874	5.2	332 511	6.6	320 328	6.9
Estonia (4)	255 712	5.9	329 889	6.6	308 203	6.7
LITHUANIA						
Latvia (14)	97 519	1.7	107 042	1.8	97 203	2.0
Estonia (18)	72 781	1.3	87 418	1.5	72 911	1.5

Source: *Bulletin Foreign Trade 1999. Estonia, Latvia, Lithuania*, Vilnius 2000, pp.65-71.

VII. Economic integration between the EC and third states

This chapter illustrates the differences between the trade liberalisation approaches applied by the EC in the Europe Agreements and those in some agreements concluded with third states other than CEECs. This will aid in understanding how the Community in general builds its trade relations with third states and, more importantly for the purposes of this paper, what the place of the CEECs in the hierarchy of these relations is.

The best example of the most extensive preferential trade regime that the EC applies to third states is the European Economic Area (EEA). By virtue of the EEA Agreement⁹⁷, the EFTA states joined to the EU Single Market⁹⁸, thus enabling themselves to benefit fully from the operation of all four freedoms. Whereas the provisions on abolition of trade barriers in the EEA Agreement generally correspond to the relevant provisions of the Europe Agreements, in contrast to them, the parties to the EEA Agreement undertook not to apply anti-dumping measures or countervailing duties between themselves.⁹⁹ As used to be in the case in the Community, the liberalisation in the agricultural sector was minimal, and future improvements were brought about only by the bilateral agreements between the EC and each EFTA state.¹⁰⁰ Apart from inclusion of the EFTA states into the Single Market, the EEA Agreement is characterised by high institutional

⁹⁷ Agreement on the European Economic Area, OJ L 1, 1994, p. 1.

⁹⁸ Art. I(2) of the EEA Agreement.

⁹⁹ Art. 26 of the EEA Agreement.

¹⁰⁰ For example, the EC-Norway Agreement concerning certain agricultural products, OJ L327, 1995, p. 21, EC-Iceland Agreement concerning certain agricultural products, OJ L327, 1995, p. 18, the EC-Iceland Agreement concerning fisheries, OJ L346, 1993, p. 20.

developments¹⁰¹, with the EFTA Court¹⁰² at the apex of this. Moreover, the EFTA states can participate in decision-making over the norms which concern them, although to a limited extent only.¹⁰³

That is to say, the trade regime established by the Europe Agreements is far from that brought about by the EEA Agreement, whereas looking at the aims of these two agreements, - under the EEA Agreement – promotion of trade and economic relations between the parties, under the Europe Agreements – eventual accession of each of the CEECs to the Union¹⁰⁴, the logical conclusion would be that the degree of integration in the trade sector between the parties to the Europe Agreements before the actual enlargement should be deeper than it is at present.

The 1963 EC-Turkey Association Agreement¹⁰⁵ put Turkey's accession to the Community as the parties' objective, although this aim has not been achieved almost forty years later! However, in order to foster the achievement of this goal, the parties provided for the establishment of a Customs Union (which came into force in 1996¹⁰⁶), rather than the establishment of a free trade area as under the Europe Agreements. In the agricultural sector, Turkey had a transitional period of 22 years in order to adopt the CAP measures, and free trade in this sector will come into being when the Association Council is convinced that Turkey has fulfilled all necessary requirements to this end. From its own side the Community promised to take Turkish agricultural interests and speed of development in this sector into account while adopting its own rules. Similarly to the situation with the EEA Agreement, Turkish officials have, albeit limited, rights to intervene in the decision-making process leading to the formulation of the rules of the Customs Union (through participation in meetings), while their colleagues from the accession countries do not enjoy this right.¹⁰⁷ However, even after the Customs Union came into being, the situation is not straightforward: 'Inevitably, such legal intimacy without formal EC membership entails a complex decision-making and dispute-settlement structure that is bound to fall short of that available to members. One is tempted to suggest that the Parties ... are 'living in sin''.¹⁰⁸

Comparing trade regimes which are in operation between Turkey and the Community, and between the CEECs and the Community, leaving aside the political perturbations and

¹⁰¹ There are the EEA Council, Art.89 (political impetus in the implementation of the Agreement) of the EEA Agreement; the EEA Joint Committee, Art.92 (agreement's implementation), Art.105 (uniform interpretation) of the EEA Agreement; the EFTA Surveillance Authority, Art.108 (insurance of fulfillment of obligations under the agreement and of legality of competition rules) of the EEA Agreement.

¹⁰² Art.106 of the EEA Agreement. See also chapter on uniform interpretation of this paper.

¹⁰³ Arts.99, 100 of the EEA Agreement.

¹⁰⁴ See preambles both to the EEA Agreement and to the Europe Agreements.

¹⁰⁵ OJ C 113, 1973, p. 2.

¹⁰⁶ The following documents provided special rules on establishment of a Customs Union: The 1970 Additional Protocol, OJ L 293, 1972, p.1, Decision 1/95 of the EC-Turkey Association Council On implementing the final phase of the Customs Union, OJ L 35, 1996, p. 1.

¹⁰⁷ The decisions within the Association Councils are to be taken in particular cases provided under the EAs, rather than on formulation of general rules, which would lead to the changes in trade regimes between the parties, see Art.111 of the Estonian EA, Art.112 of the Latvian EA, Art.113 of the Lithuanian EA.

¹⁰⁸ S.Peers, *Living in Sin: Legal Integration under the EC-Turkey Customs Union*, 7 EJIL (1996), p. 411.

considerations, it must be said that market integration under the Customs Union regime is deeper than it is in a free trade area. However, the Community did not follow this established practice with regard to the CEECs, clearly demonstrating its prudent and distrustful attitude toward closer economic co-operation with the CEECs.

For the sake of comparison, the Euro-Med Agreements¹⁰⁹ and the Agreements with the ACP countries¹¹⁰ should be mentioned, since here as well the Community is criticised for its approach in building trade relations. Due to the WTO requirements, the principle of reciprocity has to be secured in trade between the parties. This means that the Med and the ACP countries have to grant to Community products access to their markets free of import duty and quantitative restrictions, whereas before the conclusion of the Euro-Med Agreements in mid-1990s and according to the Fourth Lomé Convention¹¹¹, it was the Community which unilaterally granted to products coming from one of the states concerned, free access to the EU market. As usual, the agricultural sector is not subject to liberalisation. Further, the Euro-Med Agreements 'do little more than contain hortatory language as regards the liberalisation of service markets and foreign investment, something that is required to help ensure a supply response and create new employment opportunities'.¹¹² One group of authors even offers a number of models of how inward FDI may respond to the FTA¹¹³ (using the example of Tunisia). It is noteworthy to see that in all the models the benefits expected to accrue to the Union are far in excess of those to be obtained by Tunisia!¹¹⁴ The authors go even further and question the necessity of the Euro-Med Agreements, since they generally amount to the abolition of trade barriers by the Mediterranean countries. Instead, they propose that a better way would be to involve the multilateral reduction of trade barriers alongside the liberalisation of foreign investment policies.¹¹⁵ As with the CEECs, the Mediterranean states have made themselves extremely dependent on the EU market: e.g., in 1996 approximately 60 per cent of their exports and imports were from the EU, whereas for the EU the

¹⁰⁹ Euro-Mediterranean Agreement with Tunisia, OJ No L 097, 1998, p. 2, Euro-Mediterranean Agreement with Morocco, OJ No L 070, 2000, p. 2 (and later by Algeria, Egypt, Jordan, Israel, the Palestinian authorities, Lebanon and Syria).

¹¹⁰ ACP: African, Caribbean and Pacific.

¹¹¹ OJ L229, 1991, p.1, amendments OJ L156, 1998, p. 1.

¹¹² B.Hoekman and S.Djankov, *Catching Up with Eastern Europe? The European Union's Mediterranean Free Trade Initiative*, CEPR Discussion Paper Series, No.1300 (1995), p. 30.

¹¹³ D.K.Brown, A.V.Deardorff and R.M.Stern, *Some Economic Effects of the Free Trade Agreement between Tunisia and the European Union*, in A.Galal and B.Hoekman (eds.), *Regional Partners in Global Markets: Limits and Possibilities of the Euro-Mediterranean Agreements*, CEPR 1997, p. 78.

¹¹⁴ I.e., in one model it is predicted that welfare gain for EU-12 is \$2.4 billion compared to the \$26.8 million reduction in Tunisian welfare; in another model the Tunisian welfare is supposed to rise by \$430.3 million, whereas the EU-12 – by \$3.4 billion; in third model - \$15.0 million as opposed to EU-12 gains of \$5.9 billion, in D.K.Brown, A.V.Deardorff and R.M.Stern, *Some Economic Effects of the Free Trade Agreement between Tunisia and the European Union*, in A.Galal and B.Hoekman (eds.), *Regional Partners in Global Markets: Limits and Possibilities of the Euro-Mediterranean Agreements*, CEPR 1997, pp. 83, 85.

¹¹⁵ D.K.Brown, A.V.Deardorff and R.M.Stern, *Some Economic Effects of the Free Trade Agreement between Tunisia and the European Union*, in A.Galal and B.Hoekman (eds.), *Regional Partners in Global Markets: Limits and Possibilities of the Euro-Mediterranean Agreements*, CEPR 1997, p.94. See also *Economic Trends in the MENA Region*, The Economic Research Forum for the Arab Countries, Iran and Turkey, 1998, pp. 59, 73.

Mediterranean countries' share of its external trade was 6.1 per cent for imports and 9.1 per cent for exports¹¹⁶ as a decreasing trend. The difference in trade barriers applied by the Maghreb countries and the CEECs is also large - in the middle of the 1990s average taxes on trade were in the 15-20% range, and formed a significant component of government revenue (Tunisia – 28.3%, Morocco – 17.7%).¹¹⁷ The abolition of these tariffs by the countries of the region presupposes a transfer of that revenue from Mediterranean governments to EU exporters, and leads to the conclusion that the static benefits that arise from the FTA are unlikely to offset this loss.¹¹⁸

Literature on the Fourth Lomé Convention and the Partnership Agreements which will replace the Convention in 2007, also finds much to fault. The argument is that the Community still possesses quite a rich choice of measures for the protection of its domestic market that it can use against the ACP countries, especially when it comes to 'sensitive' products. To give an example, 'supposing that an ACP state has an export-oriented textile industry, it is probable that the Community would be obliged to ask it to apply voluntary restraint on its exports to the Community of certain highly sensitive goods'.¹¹⁹ As Grilli suggests¹²⁰, the EU has two main objectives in building its relations with the ACP countries: increasing the security of access to raw materials and maintaining global political influence in a world increasingly dominated by one or two superpowers. This very much corresponds to the findings made earlier in this paper: the EU has secured safe and easy access to the Baltic non-processed wood, whereas all current political decisions taken in these countries are based on very simple arithmetic: are they EU and NATO-friendly or not.

VIII. Summary of the arguments

The arguments can be summarised in a few paragraphs. Notwithstanding the optimistic declaration on the liberalisation of trade between the parties in the 1995 Baltic Europe Association Agreements, this is severely undermined by the texts of the Agreements themselves. The liberalisation also revealed the differences in the level of competitiveness between the parties, whereas the Baltic states continue to suffer a trade deficit (Table VII below, as well Tables II and VIII).

Table VII. External trade in Baltic states

¹¹⁶ Communication from the Commission *On the Euro-Mediterranean Partnership and the Single Market*, COM (1998) 538 final, Annexes.

¹¹⁷ Both data are taken from B.Hoekman and S.Djankov, *The European Union's Mediterranean Free Trade Initiative*, *The World Economy* (1996), 19, pp. 387, 396; see also Joffé, G., *The Euro-Mediterranean Partnership Initiative: Problems and Prospects*, in G.Joffé (ed.), *Perspectives on Development. The Euro-Mediterranean Partnership*, Frank Cass London, 1998, p. 256; *Economic Trends in the MENA Region*, The Economic Research Forum for the Arab Countries, Iran and Turkey, 1998, p. 73.

¹¹⁸ B.Hoekman and S.Djankov, *The European Union's Mediterranean Free Trade Initiative*, *The World Economy* (1996), 19, p. 389.

¹¹⁹ *The New Lomé Convention (IV)*, Study Compiled by P.Baragiola, 1989, Copyright Club de Bruxelles, p. 11.

¹²⁰ E. Grilli, *The European Community and the Developing Countries*, CUP, 1997, as cited in A.Winters, *EU Preferential Trade Agreements: Objectives and Outcomes*, in P.van Dijk and G.Faber, *The External Economic Dimension of the European Union*, Kluwer Law International, 2000, p. 204.

		Mio EURO						
		1993	1994	1995	1996	1997	1998	1999
ESTONIA	External trade							
	- Imports	764	1400	1830.9	2287	3113.1	3505.6	3223
	- Exports	687	1104	1270.3	1393.1	1882.6	2236.2	2203
	- Balance	-77	-296	-560.5	-893.9	-1230.5	-1269.4	-1020
		As % of total						
	Imports with EU-15	(EU-12) 23.3	(EU-12) 23.9	67.4	68.2	68.5	67.7	65
	Exports with EU-15	(EU-12) 17.8	(EU-12) 19	56.7	56.8	62.4	66.7	72.7
LATVIA	External trade							
	- Imports	809	1043	1390	1826	2399	2847	1148
	- Exports	855	832	998	1136	1473	1615	1616
	- Balance	-46	-211	-392	-690	-926	-1232	-1148
		As % of total						
	Imports with EU-15	(EU-12) 17.13	(EU-12) 24.9	49.9	49.2	53.2	55.3	62.5
	Exports with EU-15	(EU-12) 24.35	(EU-12) 27.9	44.0	44.7	48.9	56.6	54.5
LITHUANIA	External trade							
	- Imports	1926	1978	2789	3590	4997	5167	4537
	- Exports	1712	1706	2068	2643	3404	3310	2818
	- Balance	-214	-272	-722	-947	-1573	-1857	-1718
		As % of total						
	Imports with EU-15	(EU-12) 18.73	(EU-12) 26.4	37.1	42.4	46.5	50.2	49.7
	Exports with EU-15	(EU-12) 16.86	(EU-12) 25.7	36.4	32.9	32.5	38	50.1

Source: 1998, 1999 and 2000 Regular Reports from the Commission on Estonia's, Latvia's and Lithuania's Progress Towards Accession, <http://www.europa.eu.int/comm/enlargement/docs/index.htm>, Annex, Statistical data.

Not all trade is subject to free trade provisions. Special rules govern trade in sensitive sectors – agriculture, fisheries, textiles (steel, cars and chemicals in case of some other CEECs), i.e., sectors where these countries could be considered to be most competitive in international trade and which constitute their major export commodities. At the same time, the composition of exports to the EU from the Baltic states is dominated by low value added products¹²¹ (Table VIII). However, it must be recognised that modernisation and investments gradually lead to a progressive shift in the composition of exports, towards goods with higher value added.

Table VIII. Baltic states main imports to and exports from the European Union by sections of HS, 1999 (million dollars)

Country	Sections	Exports to the EU	Imports from the EU	Balance
ESTONIA	Total	1 843.0	2 372.7	-529.7
	Machinery and mechanical appliances; electrical equipment (XVI)	519.8	777.6	-257.8
	Wood and articles of wood, cork and articles of cork (IX)	368.6	29.5	339.1
	Textiles and textile articles (XI)	276.2	208.3	67.4
	Base metals and articles of base metal (XV)	174.4	190.6	-16.2
	Products of the chemical or allied industries (VI)	53.4	201.4	-148.0
LATVIA	Total	1 375.1	2 027.9	-652.8
	Wood and articles of wood, cork and articles of cork (IX)	589.5	11.8	577.7
	Textiles and textile articles (XI)	361.4	165.1	196.3
	Mineral products (V)	115.9	81.2	34.7
	Base metals and articles of base metal (XVI)	74.5	93.9	-19.4
	Machinery and mechanical appliances; electrical equipment (XVI)	40.8	398.5	-357.7

¹²¹ Along the same lines see U.Varblane, *Trade policy implications from EU membership for Estonia*, Baltic Journal of Economics, Vol.2, Winter 1999, p.253, 'There is a clearly visible cascade effect built into the tariff system of the EU, which means that tariffs on raw materials and semi-final products ... could not expect additional protection from EU tariff policy'.

LITHUANIA	Total	1 505.2	2 247.7	-742.5
	Textiles and textile articles (XI)	539.4	336.9	202.5
	Products of chemical or allied industries (VI)	186.3	277.7	-91.4
	Machinery and mechanical appliances; electrical equipment(XVI)	169.8	511.0	-341.2
	Wood and articles of wood, cork and articles of cork (IX)	146.3	17.5	128.8
	Vehicles, aircraft, vessels and associated transport equipment (XVII)	65.0	236.3	-171.3

Source: Bulletin *Foreign Trade 1999. Estonia, Latvia, Lithuania*, Vilnius 2000, pp.28-30.

Further, the agreements leave the parties with a potential scope to apply contingent measures of protection, whereas these measures are used not only as narrowly as trade policy instruments, but on a broader scale, as the parties' external policy instruments, thus blowing away the whole essence of a 'vital distinction', which must be drawn between the political and the juridical significance of an Association agreement.¹²²

With regard to the institutional arrangements, it can be said that the Association Councils are not really an institution where one can seek fair dispute resolution; rather they provide a solution imposed by the stronger side, and the possibility of referring the dispute to arbitration is almost negligible.

Finally, it is very difficult, if not impossible, for a single state to pursue its own trade policy in relation to the Community, unless this state 'unites' with other countries and the Community negotiates with 'equivalent bodies' of the newly established organisation (e.g., EFTA states). Unfortunately, Baltic states have failed so far to do so, and the Commission's policy fosters such dissent.

* * *

All three 2000 Commission's Regular Reports on Estonia's, Latvia's and Lithuania's progress towards accession wrote, 'Overall, an economy [of each Baltic state] will be better able to take on the obligations of membership [in the EU] the higher degree of economic integration it achieves with the Union prior to accession'.¹²³ Thus, in 1999, exports of the Baltic states to the Union amounted to 73 percent for Estonia, 55 percent for Latvia and 50 percent for Lithuania, and imports amounted to 65 percent, 63 percent and 50 percent accordingly, with an increasing trend (Table VII above). In comparison, in 1998, German overall exports to the EU amounted to 69.2 percent, UK exports – to 60.4 percent, French exports – to 70.5 percent. Furthermore, at the time when Spain joined the Union in 1985 the share of its exports to the EU was 58.8 percent, whereas when Austria and Finland joined the EU in 1995, their shares were 71 percent and 63.5 percent respectively. Thus, it follows from the above-mentioned examples that the requirement of closer economic integration which the Baltic states have to satisfy in order to join the Union, is nearly met. The data could be even higher if the remaining barriers to trade were eliminated, and this mainly concerns lifting of barriers in trade in agricultural products. However, the repeal of the remaining barriers depends primarily on the

¹²² Opinions of the Advocate General Alber in Case C-63/99 *Gloszczuk*, para.65, and Case C-235/99 *Kondova*, para.74.

¹²³ 2000 Regular Reports from the Commission on Estonia's, Latvia's and Lithuania's Progress Towards Accession, <http://www.europa.eu.int/comm/enlargement/docs/index.htm>, pp.28, 32 and 29 respectively.

Community, rather than on any Baltic country, since it is the Community which enjoys the greater bargaining power, and it is the Community which has so far failed to move. Moreover, the recent research, which was submitted to the Baltic Development Forum, shows, that in the long-term the EU-15 will gain significantly in comparison with what it has invested in the Baltic region during the pre-accession period.¹²⁴ To conclude, I return once again to the term 'European integration'. This entails gradual integration into all policies conducted within the Union. However, as has just been demonstrated, economic integration - the main integration tool - now taking place between the Union and the Baltic states, falls short of this in its operation within the Internal Market.

¹²⁴ U.Ellemans-Jensens, *Atsaldē Eiropas Ziemeļu Dimensiju*, Diena, 11.04.2001, p.2.

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