

CEFTA-2006 TOWARDS CREATION OF A REGIONAL ECONOMIC AREA¹

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ABSTRACT

The functioning of CEFTA-2006 within the 10-year period of its creation pointed out the low capacity and unsatisfactory performance of the region in regard of trade liberalization. In July 2017 under the Berlin Process, member-states decided to enhance mutual cooperation by taking the free trade area to a higher level – regional economic area - which should provide full liberalization in trade in goods and services; free movement of capital and labor and digital integration. For this purpose an Agreement on Amendment of and Accession to the Central European Free Trade Agreement is issued in which a new Protocol 5 on trade in goods is integrated, while Protocol 6 on trade in services is also planned to be adopted and integrated.

¹ Review article

The paper is going to give a brief overview of the achieved trade integration within CEFTA-2006; observation on the obstacles for full trade liberalization and trade facilitation by detection of non-trade barriers; and analysis of Protocol 5 that concerns deeper trade liberalization, as well as trade facilitation.

KEY WORDS: CEFTA-2006, regional economic area, non-trade barriers, trade facilitation, Protocol 5.

INTRODUCTION

After a whole decade since the creation of CEFTA-2006 it is evident that the integrative process and trade liberalization within the region are at a stand-still point. The total volume of the exchanged goods is moderate, and the same implies to the exchange of services as well. All CEFTA member-states have achieved better trade integration with EU trading partners with whom they exchange from 40% to 60% of their total trade exchange of goods in average.

The analysis for the poor performance of the free trade area of the Western Balkan countries in 2015 discovered many reasons that caused it, such as: weak economic structure of the countries in the region; outdated technology and low level of productivity; low level of factors employment; low level of finalization of manufactured goods; competitive instead of complementary structure of exchanged manufactured goods; low level of integration of the countries from the region and their industries within supply and value added chains; using the free trade area mostly as a market for the realization of the unprocessed agricultural goods of member-states; inappropriate transport and customs infrastructure; etc. Among the often quoted weaknesses that hindered deeper trade liberalization within the region was the existence of numerous hidden and difficult to discover non-trade barriers. Their existence nullified positive effects of elimination of qualitative and quantitative barriers in trade. With help of OECD and a creation of a monitoring tool, the non-trade barriers were detected, measured and divided in three groups: technical barriers, sanitary and phytosanitary barriers and administrative barriers in trade.

The analysis of the achieved level of trade liberalization among CEFTA member-states and the detected non-trade barriers where taken in consideration under the so called Berlin Process. Following the suggestions that derived from the Berlin Process in regard of enhancing trade liberalization and trade

facilitation within the region, representatives from all member-states met in Trieste in July 2017 and brought a mutual understanding to bring the process of regional integration to a higher level, i.e. to create a regional economic area. The regional economic area should provide not only full liberalization of trade in goods, but also a full liberalization of the trade in services, investment and labor. The region should also follow the good practices that derive from the new WTO Trade Facilitation Agreement and in this regard should provide elimination of administrative barriers to trade and full digitalization of all the Customs administrations in the region. For these purposes the CEFTA-2006 Agreement was amended and two new protocols were brought - Protocol 5 that concerns trade in goods and Protocol 6 that concerns trade in services. For the moment only Protocol 5 is published.

In this paper we are going to make a brief overview of the achieved trade liberalization and its effects upon trade exchange of goods and trade integration of the region in the past decade, the most important findings of the OECD monitoring tool on the existence of non-trade barriers in the free trade area, and the obligations that derive from Protocol 5 for overcoming non-trade barriers in the region as the most important precondition for further trade liberalization and achievement of trade facilitation.

Trade liberalization within CEFTA-2006 and effects thereof upon the regional trade exchange of goods

The CEFTA-2006 Agreement provided elimination of all qualitative and quantitative barriers in trade in goods and creation of a free trade area among the Western Balkan countries plus Moldova until 2010. It also indulged member-states to liberalize trade in services and to provide free movement of capital, as well as to guarantee investors' rights according to the provisions of the Agreement on Investment under the new GATT. The usage of compensatory tariffs was allowed for importers when they face subsidized exports of goods originating from a member-state.¹

In the first two years of the creation of CEFTA-2006 the elimination of qualitative and quantitative barriers in trade resulted in boosting up the volume of the total trade exchange of goods. For example, at the beginning of 2006 trade exchange of goods with Western Balkan countries created about 8% of the total

trade exchange of goods of Macedonia, while by the end of 2008 it created 28% of the total trade exchange of goods of the country and a surplus in the trade balance of about 600 million American dollars.² The trend of an increasing trade exchange of goods was present throughout the whole region with exception of Moldova, for which the countries from the region traditionally represented minor trading partners.

However, the financial and economic crises in the European Union from 2008 induced a negative trend of the total trade exchange of goods within CEFTA. After a period of a slight recovery in 2010 and 2011, the negative trend continued rapidly as the dead line of Croatia's accession within the European Union started to approach. Since 2012 the economy with the greatest economic potential and the biggest trader within the area diverted its interest from CEFTA trade liberalization issues and focused its energy on the final preparations for becoming a full EU-member. This had a strong negative impact on the total trade exchange of goods within the region, but also on the trade liberalization dialog. The accession of Croatia within the EU in the middle of 2013 was not the end of the troubles of CEFTA-2006. The year of 2014 brought new hurdles that affected the second biggest trader within the region – Serbia, as well as Bosnia and Herzegovina. Due to terrible floods, both of the countries faced new macroeconomic destabilization, further decrement of economic performance indicators, decrement of the total trade exchange within the region and total neglect of issues connected with further trade liberalization. Trying to keep their positions on the European market and not having a sufficient capacity to keep pace with the demand on CEFTA-2006 markets, all the countries from the free trade area started to divert their trade in goods towards the EU. This resulted in significant decrement of the total trade exchange of goods within CEFTA-2006.

Table 1 Total trade exchange of goods with the EU and with CEFTA-2006 by CEFTA-2006 member-states in 2013

	Total trade exchange with the EU		Total trade exchange with CEFTA	
	Exports	Imports	Exports	Imports
CEFTA countries				
Albania	77%	64%	11%	7%

B&H	73%	68%	16%	11%
Kosovo	40%	44%	36%	28%
Macedonia	73%	63%	17%	10%
Moldavia	47%	45%	0%	0%
Montenegro	49%	47%	43%	37%
Serbia	61%	62%	21%	5%

Source: Calculated according www.ceftatradeportal.com

In the years that followed the negative trend of the trade exchange of goods within the region continued. Immediately after the crisis, at the end of 2009, the trade surplus in the trade exchange of goods of Macedonia with CEFTA-2006 member-states went down to about 400 million American dollars. In 2013 the trade exchange of goods of Macedonia within the free trade area decreased to 14% of its total trade exchange of goods and by the end of 2014 there was a further decrement to 11.8% of the total trade exchange of goods of the country. Data for 2014 point out that even in absolute figures total trade exchange fell to a level lower than the one reached in 2006 when the free trade area had not been functional yet. Trade surplus completely melted down and by the end of 2014 it was converted into a deficit of about 80 million American dollars.³ It is also important to note down that this negative trend was not influenced by Croatia leaving the region. For Macedonia the two most important trading partners from the region were and still are Serbia and Kosovo. Those two countries comprise about 50-60% of the total Macedonian trade exchange of goods in CEFTA - 2006.⁴

Since, the total Macedonian trade exchange of goods within the region amounts about 11% of its total trade exchange of goods and the trade deficit amounts about 100 million American dollars. In the meanwhile Macedonian trade in goods experienced a very strong diversion towards the EU, especially on the export side where the trade diversion creates almost 80% of the total export from the country. This was mainly due to the functioning of the so called Technological Development Industrial Zones. These zones are an exemption from the Customs territory of the country and were created to attract foreign investors who would enjoy a lot of benefices and exemptions if they exported all of the output produced in the zones to foreign markets.⁵

Statistical data confirm that Macedonia is not an exemption from other member-states of the free trade area. CEFTA member-states exchange about 70% of their total trade exchange of goods with non-CEFTA trading partners. Majority of the countries in the region have highly integrated trade flows with the EU, where most of them realize from 40% to 60% of their total trade exchange of goods.⁶

The weak capacity of CEFTA-2006 member-states is evident when analysing the structure of the intra-regional trade of goods. Over half of the goods traded within the region consisted of intermediate goods. In 2010 intermediate goods created 59% of the total exchange of manufactured goods within the region. However, the supply chain in the industry “Food, Beverages and Tobacco” alone created 43%.⁷

Besides the industry “Food, Beverages and Tobacco”, CEFTA economies seem to be highly integrated also in “Textiles and Clothing”, but the integration within the supply chain of this industry covers only 5% of the intra-regional trade and is effectuated in final products, due to the specialization of the economies within the supply chain.⁸

At intermediate stages of production CEFTA member-states are mostly integrated in the medium-low technology industries such as “Basic Metals” and “Fabricated Metal Products”. However, in value terms the medium-high technology industries “Chemistry” and “Electrical Machinery” happen to be dominant. They made important amount of the regional trade exchange of manufactured goods of Croatia before its accession to the EU, as well of Serbia and partly of Bosnia. It is important to point out that the intra-regional trade structure is dominated in value terms by goods from the medium-high technology industries, but in volume absolutely dominant are the goods from medium-low technologies.⁹

Macedonia and Bosnia and Herzegovina were and remained the two most integrated economies within the CEFTA-region from the view-point of intra-CEFTA supply chains. In the Macedonian case this especially concerns the trade exchange of “Food, Beverages and Tobacco” of which 83% are realized within the region, followed by “Rubber and Plastic” with 62% and “Fabricated Metal Products” with 57%.¹⁰ For Macedonia the CEFTA region is to a certain extent also important for the trade exchange of drugs and cosmetics and construction materials.¹¹

The very traditional and technologically backward structure of the trade in goods is not typical only for the intra-regional trade of CEFTA-member states. About 70% of the intermediate products from the medium-low technology industries are still exported to trading partners out of CEFTA.¹² The weak economic potential of the countries in the region and the inconvenient structure of goods designed for exports do not allow member-states to keep their positions on the EU market and on the regional market at the same time. Trying to keep their positions or even to improve their performance on the EU market automatically diverts trade from regional to the EU level and vice versa. If from some reason demand on the EU market starts to decrease, exporting among CEFTA-2006 member-states starts to increase. This remains to be the core issue that concerns the low interest for trade liberalization in all of the member-states, but it also seriously affects trade facilitation at regional level.

The second major issue that negatively affected trade liberalization and trade facilitation was the existence of non-trade barriers. They were first detected and measured by a monitoring tool provided by the OECD in 2012. Using this tool the OECD repeated the measurement in 2014 in order to find out if there were any changes in regard of these barriers after Croatia became a full member of the EU, thus leaving the CEFTA-2006 Agreement.

Further in the text we are going to refer on the OECD findings on the non-trade barriers present within CEFTA-2006.

Non-trade barriers as an obstacle for trade liberalization and trade facilitation within CEFTA-2006

CEFTA member-states did not experience serious problems with the elimination of qualitative and quantitative barriers in trade. The real challenge, however, was and still is elimination of a variety of non-trade barriers (NTBs)* mostly hidden and difficult to detect. At the start of the functioning of the free trade area companies did not report or complain on the existence of those barriers, as they were used to treat these obstacles as the usual way of doing business within the region. The first to point out to these barriers were the economic chambers from the region. They asked for help in discovering and measuring the applied NTBs in order to enable negotiations on their elimination. Help was provided by the OECD with a creation of a monitoring tool for detection and measurement of

existing NTBs. The monitoring tool defined three groups of NTBs: technical standards, sanitary and phytosanitary standards and administrative barriers to trade.¹³

OECD findings on technical barriers to trade (TBT) in CEFTA-2006

Both of the reports issued by the OECD in 2012 and in 2014 confirmed that all CEFTA Parties were active in the process of adopting the EU acquis in regard of TBTs. However, as they have no common EU entry date, the pace of the adoption and transposition of EU legislation and standards varied from country to country. Being

* The authors use the term non-trade barriers instead of non-tariff barriers as they want to point out that these barriers were not created to regulate trade, but to regulate other issues instead.

not synchronized, the process of transposition of the EU legislation in this area created additional problems in regard with the existing TBTs. The countries made certain progress in regard of accreditation of new standards. However, their performance was the lowest in regard with the implementation of EU legislation and participation in the EU standardization bodies. It was confirmed that since 2012 significant progress has been done through the Multilateral and Bilateral Agreement on European Cooperation for Accreditation in aligning the conformity assessment systems within CEFTA. However, evidence confirmed the existence of conformity assessment bodies in all product areas in only few CEFTA member-states. It was also stated that the notification systems on new technical regulations, mandatory conformity assessment procedures and draft national standards were far from satisfactory. The leading country in the field of harmonization of TBTs in 2014 was Serbia, followed by Macedonia. Albania was slightly over the CEFTA average, while all of the other member-states were below it.¹⁴

OECD findings on sanitary and phytosanitary measures (SPS) within the free trade area

Similar to the case on TBTs, OECD confirmed that despite the continuous progress in legislation harmonization on SPS, there was a lack of implementation of the legislation already in place. Also the transposition of EU legislation relevant for this area in each member-state was done with a different pace which was a source of additional barriers to free trade.¹⁵

The SPS agencies especially suffered from a lack of risk analysis capacity meaning risk assessment, risk management and communication on risks. Instead of sharing important information on multilateral basis, member-states exchanged information on new legislation and measures in the area on bilateral basis and at informal meetings. Only in Macedonia the legislation in this area was harmonized by the end of 2012. No other country in the region managed to implement the legislation on risk assessment and risk management.¹⁶

All CEFTA member-states were lacking staff, adequate equipment and faced financial constraints needed for overcoming these shortages. Especially important finding was the non-existence of internationally accredited laboratories and lack of mutual recognition of national laboratories attests. Therefore, most of the member-states repeated the testing of the samples of imported products from the region, which increased costs and prolonged the importing procedure. Furthermore CEFTA member-states did not distinguish between conformities in food safety versus quality of food. Hence elimination of quality issues from import/export control of food was considered to be a priority.¹⁷

Except in Macedonia, there were not clear procedures on notification, as well as on implementation of relevant laws in regard with the WTO, CEFTA-2006 and EC Directive 98/34. Therefore, the establishment of information points which would enable regular exchange of information on the applied and on new SPS measures according to the international provisions and standards among all the member-states was considered to be necessary.¹⁸

OECD findings on administrative barriers in trade within the region

Administrative barriers in trade basically concern the performance of the customs administration. Within the contemporary international trade, the efficiency of the customs administration is considered to be especially important for the swift, safe and cost efficient cross-border movement of goods. The efficient performance of the customs administration can tremendously reduce export/import costs and thereby may influence the market competitiveness of products. The OECD monitoring tool defined nine indicators on administrative barriers within the assessment framework to be followed within CEFTA-2006 which are presented in table 2.

Table 2 OECD administrative assessment framework

Administrative barriers in trade	
1	Establishment and functioning of a national customs web-site
2	Establishment and functioning of enquiry points
3	Involvement of the trade community
4	Advance rulings
5	Appeal procedures
6	Fees and charges
7	Formalities: documents and automation
8	Customs procedures and processes
9	Domestic and cross-border/international agency coordination and cooperation

Source: OECD (2014)Source: OECD (2014): *Preliminary report on Elimination of Non-Tariff Barriers in Trade*, (Draft version), Paris, p. 63

In regard of the detected administrative barriers in trade, the OECD monitoring tool pointed out that all member-states tried to follow up international standards and multilateral regulative framework. However, they failed to provide their full implementation, even when national legislation was in place.

For example, proper functioning of national web-sites is considered to be a crucial part of the trade facilitation process, as it is the most important source of pre-arrival trade related information. Web-sites should comprise all necessary information on relevant trade regulation issues, as well as on simplified customs procedures. They should also be easily accessible and information should be delivered in a transparent and non-discriminatory manner. All of the CEFTA member-states had national web-sites in place, but the amount and the contents on relevant information were not unified and they were not up-dated on regular bases. The scope of trade related information was the largest in Macedonia and in Serbia, while only Bosnia and Herzegovina issued a manual on border crossing procedures. The effectuated assessment on administrative barriers in trade once again pointed out that it was very important to enable relevant information on binding tariffs (BTI), binding origin (BOI), customs value calculation and preferential rules of origin of member-states. The lack of the

necessary trade related information created serious obstructions and draw-backs of the trade facilitation process within the free trade area.¹⁹

Another barrier where no progress was registered was advanced rulings. Advanced rulings are an obligation which derives from GATT and the WTO, as well as from the Revised Kyoto Convention. All the member-states brought their legislation in line with the EU relevant customs regulations. Nevertheless, this instrument was not sufficiently used, as in all the countries in the free trade area it was issued only at request of traders. Partly, the insufficient usage of the advanced rulings was a consequence of a lack of special profiles of customs officers within the national customs services, such as technical engineers, chemists, textile production specialists, etc.²⁰

Appeal procedures were regulated with relevant provisions in all member-states and were published on their customs web-sites. However, in some of the member-states there were no independent authorities in charge of delivering second instance decisions in appellate procedures, although in all of the member-states legislation allowed to appeal to an independent judicial authority. This was not in line with the provisions of the Revised Kyoto Convention. Therefore, CEFTA member-states were expected to pay due attention to this issue.²¹

The issue of fees and charges applied by member-states was considered to be in line with international standards and provisions in regard of the method of their calculation, which was not on ad valorem basis and was limited to the approximate costs of services. However, no information on applicable fees and charges was available at regional level, and with exception of Macedonia, customs did not provide a comprehensive overview of types and amounts of all applicable fees and charges.²²

No progress was recorded also in regard of documentation formalities. CEFTA member-states had complicated documentation formalities due to the non-existence of electronic customs system, with exception of Macedonia. Therefore, the electronic exchange of documents was impossible within the region. Even more, despite of availability of customs declarations' electronic lodging and processing in all member-states, submission of paper-form documentation was mandatory for customs clearance, which complicated and prolonged customs

procedures. Digital signatures and digital certificates, as well as electronic payment of customs duties and fees were also not available within the free trade area. Both Montenegro and Serbia were over the average level in implementation of higher standards in this field. However, the single window was operational only in Macedonia.²³

Member-states were evaluated to have an especially weak performance in regard of functioning of enquiry points. Enquiry points were not functioning on unified terms and they basically covered customs legislation and procedures issues. Only in Macedonia there was a 24/7 hot line which covered other trade related issues as well. All member-states had not organized a one-stop shop for customs and agencies related in the clearance process, which prolonged customs procedures and increased costs.²⁴

Trade facilitation process with regard of administrative procedures is unimaginable without efficient risk management system. The customs risk management system is defined as systematic application of management procedures and practices which provide the customs with necessary information to address movements or consignments that present a risk (Standard 6.3. of the Revised Kyoto Convention). The risk management within the customs is also important for the post clearance audit. CEFTA member-states were fully aware of the importance of this issue. However, they all faced a lack of trained staff and expertise in this area. Therefore, the number of physical controls at the border was high above the international, as well as the EU standard. The member-states mutually exchanged information to help the process of risk management, though they had not been able to create joint risk profiles, and sophisticated centralized risk management IT system was not available. They depended on international expertise on creating the risk profiles instead.²⁵

The findings of the OECD monitoring confirmed the effort of all member-states in harmonizing their national legislation with EU standards and requirements. Despite all the efforts, some of the essential good practices within the region, such as: pre-arrival processing, good practices on customs release of perishable goods; the usage of simplified procedures and modernization of equipment and well trained personal in the customs laboratories, were still lacking. The problem with modernization of laboratories and equipping them with personal capable of expertise in different fields was considered to be a very serious one, as it was

fundamental for proper collection of customs duties. The problem was difficult to overcome, as it was financially intensive. Therefore, the OECD recommended that member-states should consider the possibility of specialization of certain national laboratories for certain types of goods and to recognize the specialized laboratories on mutual basis. It was also recommended to establish special organizational units in charge of simplified procedures in charge for licensing, control of shipments, risk profiling and conduction of post-clearance. There were also serious difficulties in implementing the concept of authorized economic operator. The AEO concept could not be fully implemented without mutual recognition of the gained status at national level. Nevertheless, member-states had not expressed any initiative on starting negotiations and defining priorities in this regard.²⁶

The report paid due attention to domestic and cross-border agency cooperation and confirmed that working hours of border agencies within CEFTA-2006 were not synchronized. Also the Parties did not provide one-stop shop for physical and documentary controls. The agencies were facing lack of technical and administrative capacities. From international perspective, national authorities did not achieve any agreement on joint customs controls or on strengthening the intensity of work of the CEFTA working group on risk management and providing joint risk profiling on regional level. Therefore, it was strongly recommended to make this top priority and to investigate the possibility of providing necessary information technology for ensuring interoperability and interconnectivity of the IT systems within the region.²⁷

Protocol 5 of the Amended CEFTA-2006 Agreement

The OECD's reports on non-trade barriers (NTB) within CEFTA-2006 pointed to a series of weaknesses of the free trade area that were preventing real trade liberalization and were disabling implementation of trade facilitation measures. Experts made numerous recommendations on how to overcome the insufficiencies and weaknesses in regard of implementation of good practices and established international standards in regard of TBT and SPS barriers, from setting national priorities in transposition of EU legislation to setting notification systems on adopted new standards and measures. Also there were specific recommendations on elimination of administrative barriers in trade. However, the original CEFTA-2006 Agreement did not dispose with a mechanism that

would oblige CEFTA member-states to follow OECD recommendations. The process of trade liberalization and facilitation depended upon the good will of all the Parties. Yet, they did not show sufficient capacity to deal with these highly important issues.

In 2015 all these issues were discussed within the so called Berlin Process. As a result of these discussions, prime ministers from all the member-states met in Trieste in July 2017 and brought a mutual understanding to bring the process of regional integration within CEFTA-2006 to a higher level, i.e. to create a regional economic area. The regional economic area should provide more intense trade liberalization by elimination of all trade and non-trade barriers in trade in goods. It should also lead to a full liberalization of the trade in services, movement of investment and movement of labor within the area. The region should follow good practices that derive from the new WTO Trade Facilitation Agreement and in this regard should provide elimination of administrative barriers in trade and full digitalization of all the customs administrations in the region. For these purposes the CEFTA-2006 Agreement was amended and two new protocols were brought - Protocol 5 that concerns trade in goods and Protocol 6 that concerns trade in services.

By adding Protocol 5 to the Amended CEFTA-2006 Agreement all CEFTA Parties have mandatory obligations that have to be fulfilled within a period of one, three or five years. The regional economic area should be fully operational in 2023.

Having on mind the misunderstandings of basic terminology that is a result of different pace of transposition of EU legislation concerning trade in goods in different member-states, at the beginning Protocol 5 defines what should be understood by the following terms: data; inspections; formalities; risk; risk management; risk assessment on pre-arrival data; authorized economic operators and border.²⁸ It provides general objectives, such as: simplification of inspections related to clearance procedures and reduction of formalities to the maximum possible extent; data exchange between customs authorities according to national legislation; and mutual recognition of the Authorized Economic Operator status.²⁹

For the purpose of speeding up movement of goods in transit and speeding up imports, all CEFTA Parties are due to recognize legal procedures and documents drawn by competent authorities from other CEFTA member-states if these procedures and documents are in line with national legislation of the exporting/importing member-state, as well as with the EU acquis. Mutual recognition of national procedures and documents would become possible by passing a relevant validation procedure which should be adopted by the CEFTA Joint Committee. All CEFTA Parties should make improvements of the frontier infrastructure and where it is technically possible they should open new frontier posts in order to speed up the flow of vehicles and goods. They are also due to guarantee free transit of goods.³⁰

Protocol 5 encourages cooperation of customs authorities with other control agencies and authorities for the purpose of achieving trade facilitation and security and safety in trade. Data among them should be exchanged electronically upon pre-arrival. In order to fully serve the purpose of trade facilitation, all these institutions are encouraged to align working days and hours; to align procedures and formalities; to develop and share common facilities; to perform joint controls; and to establish one-stop border post controls.³¹ It is also recommended whenever it is possible by delegation of other agencies or competent authorities and on their behalf, inspections to be delegated and carried out by the customs in order to produce necessary documents, to check the validity and authenticity of the documents already delivered and the identity of goods declared in them. In regard of food and beverages all member-states should apply common border procedures and uniform documentation requirements for their clearance on the national territory.³² Notifications or guidance for protecting of human, animal or planet life or health within the territory of a CEFTA member-state should be done electronically on the web-sites of competent authorities. All Parties should make a list of web-sites of their administration in their national language and in English which should be communicated for obtaining the necessary information on a certain notification. The list should be also published in the CEFTA Transparency Pack. A second test of the imported good could be done if the sample taken by a competent authority upon arrival shows adverse finding. The name and the address of any laboratory where the second test could be made should be also specified and published by each member-state. The country of

import is obliged to consider the result of the second test and accept its results for the purpose of clearance of the imported good.³³

The formalities on importation, exportation or transit should be simplified by making an endeavor by all CEFTA Parties to accept paper or electronic copies of supporting documents by the customs and other competent authorities. They are all obliged not to require an original or a copy of export declarations submitted to the customs of the exporting member-state as a requirement for importation into another member-state. This is not the case with the requirement of other documents for import purposes such as certificates, permits, licenses, etc. Mutual acceptance of paper or electronic documents would be provided by signing a Memoranda of Understanding between competent authorities of each member-state. The confirmation of the signature of the Memoranda should be sent in written to the CEFTA Committee of Trade Facilitation within six months since the entering in force of Protocol 5.³⁴

CEFTA Parties are encouraged to use relevant international standards for import, export or transit of goods and to coordinate their positions and prepare periodical review of relevant international standards. All relevant information and best practices in this area on adequate implementation of international standards should be shared within a procedure developed by the CEFTA Joint Committee.³⁵

In order to speed up customs procedures, CEFTA member-states should adopt and maintain procedures on release of goods prior to determination of customs duties, taxes, fees, and charges by their payment prior to or upon arrival of goods and providing a guarantee for any amount not determined in the form of surety, a deposit or another appropriate instrument.³⁶

By using the WCO Time Release Study member-states are due to measure and publish their average release time of goods periodically and to confirm in written the used methodology and scope of the measurement effectuated to the CEFTA Committee of Trade Facilitation. They should also share with the Committee all their experiences in the measuring and detected bottle necks and effects on efficiency.³⁷

All CEFTA Parties are obliged to publish all fees and charges imposed on imports/exports of goods, as well as penalties in electronic form on the websites of relevant authorities. The lists of fees and charges, as well as penalties, the reasons for their introduction and the way of their payment should be published in the national language and in English in the CEFTA Transparency Pack and should be revised once a year. Changes in this regard should be notified in a due time before implementation, except in urgent circumstances. Administrative decisions issued in regard of fees, charges or penalties could be appealed to an independent authority, higher than the one which issued the decision or to a court for judicial review of the decision.³⁸

Protocol 5 provides that all CEFTA Parties should confirm through written communication with the CEFTA Committee of Trade Facilitation no later than three years of its entering into force the establishment of a team on designing, reviewing and updating risk management systems of all competent authorities involved in clearance of goods; establishment of contact points of each competent authority responsible for risk management; and establishment of compatible risk management system for the entire customs territory. Member-states are due to exchange data needed for risk management in electronic form and for this purpose they should establish a joint risk-management system among themselves. They are also due to exchange to the maximum possible extent statistical data on the performance of the application of their risk analysis, as well as the results of their inspections and selectivity criteria in the clearance of goods. It is recommended that member-states should adopt procedures that would allow communication on information concerning risk among competent authorities involved in clearance of goods.³⁹

As CEFTA member-states are due to establish electronic exchange of data on customs-to-customs basis, they are also obliged to provide security of the data exchange electronic systems by the application of the Systematic Electronic Exchange of Data (SEED)/Virtual Private Network (VPN). They should secure data confidentiality and should provide uniform data structure, format and transfer.⁴⁰

It is also an obligation for all the member-states to adopt and maintain procedures on option for electronic payment of duties, fees, and charges collected by customs authorities on importation/exportation of goods. The

obligation should be fulfilled within a year period since enforcement of Protocol 5 by notification of the CEFTA Joint Committee.⁴¹

Special attention in Protocol 5 is given to the status of Authorized Economic Operator (AEO) that should be guaranteed by each CEFTA Party. The approved status of AEO should be mutually recognized by all member-states and they will inform each other on the identity of their AEOs on regular uniform terms. Suspension, rejection, revocation and annulment of the AEO status should be done according to ANEX III of the Amended CEFTA Agreement.⁴²

CONCLUSION

After almost a full decade of the enforcement of the free trade area among Western Balkan countries, their economies are still significantly better integrated with the EU member-states instead among themselves. This was to be expected, considering the weak economic capacity of CEFTA member-states, as well as the inconvenient structure of their industrial output and lack of capacity to get better integrated within global value chains. The unsatisfactory performance of CEFTA-2006 as a free trade area and detected obstacles in the process of further trade liberalization and trade facilitation in compliance with international standards and good practices jeopardises the future development and progress at regional level. But it also creates impediments that might have negative influence upon the performance and implementation of trade facilitation measures of the developed European countries whose goods have to transit through the region to reach their final destination.

Reaching consensus on the need of amending the CEFTA Agreement among the leaders of all CEFTA Parties in order to transform the free trade area into a regional economic area is a significant step forward towards full trade liberalisation of trade in goods, trade in services, movement of investment and movement of labour. The Amended CEFTA Agreement should also provide full trade facilitation by elimination of administrative barriers in trade and full digitalization of all customs administrations in the region. In order to oblige all CEFTA Parties to undertake necessary steps towards implementation of full trade liberalization and facilitation, the Amended Agreement introduces Protocol 5 that deals with issues on trade in goods and Protocol 6 that deals with issues on trade in services.

According to Protocol 5 the regional economic area should become fully operational by 2023. In the five year time - framework all CEFTA Parties are due to implement concrete measures that will enable elimination of non-trade barriers to trade by cutting down the number of physical controls at the borders and introducing joint customs controls. They are due to decrease requirements on the number of documents needed for customs clearance, to introduce paperless trade in goods and to provide possibility for electronic payment of customs duties, fees and charges within a year since the enforcement of the Amended Agreement. In the same period of time all member-states are due to implement the concept of Authorized Economic Operators (AEO) and to provide mutual recognition of gained AEO status at national level. They are also obliged to establish compatible risk management system that would enable creating a joint risk profile and risk management at regional level three years after the enforcement of the Amended Agreement.

Although at first glance Protocol 5 looks very promising, it is a fact that most of the improvements of customs and border infrastructure as well as introduction and use of advanced software and electronic platforms depend on the availability of recourses and additional investment. Knowing that all of the Parties of the regional economic area face severe budget constraints, the speed and success of full implementation of the Amended Agreement, especially in regard of trade facilitation measures, might depend on the accessibility to additional funds or multilateral donations.

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