

SYSTEM OF THE PREFERENTIAL AGREEMENTS AMONG THE EUROPEAN UNION AND THE MEDITERRANEAN COUNTRIES

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Abstract in original language:

Rövid dolgozatomban bemutatom az Európai Unió és a mediterrán országok közötti preferenciális megállapodások első (1973-1978) és második generációját (1994-2001). Ezek lényeges elemeit összevetem a WTO szabályokkal, majd a GATT/WTO Doha Fordulóra tekintettel ismertetem az ezen megállapodások körében mutatkozó új tendenciákat, kitérve az érintett országok egymás közötti jelentősebb megállapodásaira is. Melyek – összefüggésben a krízissel és újfajta protekcionizmust megvalósítva – igazolják azon megállapításomat, hogy a multilaterális megállapodások helyét, a bilaterális egyezmények veszik át.

Key words in original language:

Preferenciális megállapodások, regionális megállapodások, Európai Unió, mediterrán térség, a GATT-WTO, társulási szerződés, az Euro-Mediterrán Partnerség, vámunió, a GATT XXIV. cikkelye, szabadkereskedelmi megállapodások, vitarendezési mechanizmusok.

Abstract:

In my brief paper I present the first (1973-1978) and second generation (1994-2001) of the agreements among the European Union and the Mediterranean Countries. I compare the essential elements of them with the WTO rules, then I review the new tendencies appearing in the cycle of these agreements, in consideration of the GATT/WTO Doha Round, adverting to the agreements of greater significance of the concerned countries as well. These tendencies – bearing a relation to the crisis and following out a novel protectionism – confirm my statement that the bilateral agreements take over the place of multilateral ones.

Key words:

Preferential agreements, regional agreements, European Union, Mediterranean area, the GATT-WTO, Association Agreements, The Euro-Mediterranean Partnership, customs union, the Article XXIV GATT, free-trade agreements, the dispute settlement mechanisms.

The Mediterranean area is an important partner of the European Union because of the a thousand-year-old historical, economical, cultural traditions and the geographical closeness as well.¹ The states constituting this area have strengthened their relations with the Union in different rate and manner; Italy as a founder, Spain, Portugal, Greece, Cyprus and Malta as members participate in the Union.

The Treaty of Rome, Establishing the European Community has already touched this area in its effect and regulation, since it shall be applied to Algeria as a French overseas department

¹ On Mediterranean countries I mean Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Israel, Jordan, Lebanon, Libya, Mauritania, Monaco, Montenegro, Morocco, the Occupied Palestinian Territories, Syria, Tunisia and Turkey in my paper.

as well (Article 227). One of the Rome Declarations affixed to the Treaty offered the possibility of associating to Libya, however it has not happened.

Two levels of relations not involving membership but possibly leading to it can be differentiated on the grounds of the Treaty: tariff and trade agreements Article 133 (ex Article 113), and association agreement Article 310 (ex Article 238).

The first generation of agreements:

The Union entered into an Association Agreement with Greece in 1962, with Turkey in 1963, with Malta in 1970 and with Cyprus in 1972. Portugal signed a free trade agreement as a member of EFTA, and Spain had no institutional relations with Western European organizations until it joined to the Union.²

The common element in these agreements –which is also important in respect of the aim of my paper–, is that these first agreements have not realized customs union yet, but only prescribed reductions and the abolishment of tariffs for longer or shorter periods. However, these can also be regarded as (tariff) preference agreements according to classical regional theories³. On the other hand, these agreements contain the possibility of forming associations later. In general, the creation of the customs union is set as a direct aim, and the schedule needed to achieve this purpose was included in the individual agreements.⁴ As an example we can mention the case of Turkey, where the customs union has de facto come into existence in 1995 as a consequence of the agreement signed in Ankara in 1963.

The multilateral agreement envisioned by the Global Mediterranean Policy declared in 1972 did not come into effect, the states rejected it in 1973. Further agreements called bilateral 'association agreements' were contracted with the Maghreb⁵ countries (more favorable conditions with) and the Mashrek⁶ countries between 1973 and 1978. Due to political reasons there was only a symmetrical free trade agreement signed with Israel in 1975.

Second generation: The Euro-Mediterranean Partnership

The Euro-Mediterranean Partnership was developed based on the declaration and the work program adopted from the Barcelona Ministerial Conference, attended by the then 15 EU Member States, and the 12 Mediterranean partners (Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey). The involved states entered into an agreement regarding political and economical cooperation, and

² Ernő, Várnay-Mónika Papp: *Az Európai Unió joga*. Budapest: Complex 2006. 53. p.

³ Viner, Jacob: *The Customs Union Issue*. New York: Carnegie Endowment for International Peace, 1950. 41-81 p.

⁴ Tamás Szigetvári: *Euro-Mediterrán Partnerség* Budapest 2002. PhD. dissertation 65 p. http://www.lib.uni-corvinus.hu/phd/szigetvari_tamas.pdf

⁵ Algeria, Morocco, Tunisia

⁶ Jordan, Syria, Egypt, Lebanon

within that framework they established individual, free trade agreements as well. (Tunisia: 1998, Israel: 2000, Jordan: 2002, Egypt: 2001, etc).

Following the launch of the process in Barcelona, there have been more Euro-Mediterranean Conferences of Foreign Affairs Ministers organized at various intervals. A conference that was held in Barcelona on November 27 and 28, 2005 declared the reaffirmation of a free-trade area by 2010. To achieve this goal they developed the following plans: a) conclude free-trade agreements between the Mediterranean countries, b) insert the PanMediterranean Protocol in the cumulation of origin to promote intra- and interregional integration.

Within the framework of bilateral cooperation with the Mediterranean countries the Euro-Mediterranean agreements were signed one after one⁷. These introduce relations based on reciprocity, partnership and the respect for democratic principles and human rights, and – like other agreements concluded earlier with countries in the region – provide for among others: regular political dialogue, the gradual establishment of a free-trade area, the enhancement of economic cooperation, and financial cooperation.⁸

As a launching further of the Euro-Mediterranean Partnership and for the implementation of the European Neighbourhood Policy the establishing of the Union for the Mediterranean was decided on 13 July 2008, which will have 16 partner members besides the now included 27 member states of the European Union.

The cooperation according to the Joint Declaration of the Paris Summit does not touch upon the tariff preferences, consequently the agreements signed before remain in effect, but their cycle is completed with the ones contracted with Albania (2009), Bosnia-Herzegovina (2008), Croatia (2009), Montenegro (2009). The cooperation with Mauritania goes on in the ACP system and the relations with Libya are being built even at the present time.

The principle, that the concerned countries are entitled to make preferential agreements also with each other as well, also belongs to these agreements. Consequently we have to mention the Arab Common Market (ACM 1964. Egypt, Israel, Jordan, Lybia, Mauritania. Syria, Jemen), the Cooperation Council for the Arab States of the Gulf (GCC or CCASG), which is a customs union from 2007 (1981 Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates), the Greater Arab Free Trade Area Agreement (GAFTA 2005 with 18 Arab League members), and the Union of The Arab Maghreb (UMA 1989 Algeria, Lybia, Mauritania, Tunisia, Morocco) as well. The Agadir Agreement for the Establishment of a Free Trade Zone between the Arabic Mediterranean Nations was signed in Rabat, Morocco on 25 February 2004. The agreement aimed at establishing a free trade area between Jordan,

⁷ EC-Tunisia Euro-Mediterranean Association Agreement, signed 17 July 1995, in force 1 March 1998

EC-Israel Euro-Mediterranean Association Agreement, signed 20 November 1995, in force 1 June 2000

EC-Morocco Euro-Mediterranean Association Agreement, signed 26 February 1996, in force 1 March 2000

EC-Jordan Euro-Mediterranean Association Agreement, signed 24 November 1997, in force 1 May 2002

EC-Egypt Euro-Mediterranean Association Agreement, signed 25 June 2001, in force 1 January 2004

⁸ <http://europa.eu/generalreport/en/2005/rg97.htm> (visited 13 May 2009)

Tunisia, Egypt and Morocco and it was seen as a possible first step in the establishment of the Euro-Mediterranean free trade area as envisaged in the Barcelona Process.

Mediterranean agreements listed up to this point - although being varied in the respect of their origin - have one feature in common: they are all free trade like agreements (already realizing free trade or resulting in it), within the meaning of Article XXIV. GATT as well.

In the system of the GATT-WTO the agreements including free-trade areas, customs unions and other preferencies are often commonly called – as a contrast to the global GATT agreement – regional (commercial) agreements. These can deal with – besides the trade of goods – the trade of services, applying already the rules of the GATS.

It was typical of the early regional agreements in general that they were made in bilateral or multilateral relations between neighboring states or between ones which are at least in regional closeness with each other (agreements made in the framework of the Euro-Mediterranean Partnership are examples for this). However - as a new tendency – ulterior states or regional agreements establish preferential relationships with each other (e.g.: EU-MERCOSUR), as it were enmeshing the world as a net. But for the members of the GATT the Article XXIV and the Understanding On The Interpretation of Article XXIV also must be applied. Even though Paragraph 4 of the Article XXIV GATT 9 itself does not contain any explicit legal commitments, it has special significance for the member states since it shows an obligatory line of bearing which all member has to act upon.

However, the free-trade agreements of the EU go well beyond the requirements of the Article XXIV GATT, since they often include principles concerning the trade of services and/or envisage common disciplines in a number of regulatory areas (standards, procurements, competition policy, investments, etc.).¹⁰

Besides, EU is the only customs union which in its own right is the member of the WTO¹¹, furthermore its members are also the founders of the WTO, thus that strange situation would occur that the EU and its members do not stand for the same interests in the WTO. The number 1/94 opinion of Court of Justice of the European Communities has helped to solve the problem thereby in this case the Communities and its member states have a shared cognizance

⁹ 4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories

¹⁰ Ignacio Garcia Bercero: *Dispute Settlement in European Union Free Trade Agreements: Lesson Learned?* in *Regional Trade Agreements and the WTO Legal System* edited by Lorand Bartels and Frederico Ortino. Oxford. Oxford University Press 2006. p. 384

¹¹ Art XI WTO Agreement

for making WTO agreements by this opinion. However it comes true that the European Commission discusses and makes agreements, the member states rarely have real function.¹²

Henceforth I will review the agreements made in the framework of the Euro-Mediterranean Partnership in respect of the law of WTO.

In the free trade agreements the reductions of tariffs and the rules of origin between the partners do not conflict with the regulations of Paragraph 5 (b) of the Article XXIV GATT, that is the duties and other regulations of commerce existing in all constituent territories of the free-trade area shall not be higher or more restrictive to the trade of contracting parties not included in such area or not parties to such agreement than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be.

However it seems that in respect of the dispute settlement mechanisms we can not speak about the total consonance of the rules of the EU and those of the WTO. Thus the CEFTA and EFTA agreements have not mentioned yet the dispute settlement mechanism of GATT/WTO (GATT 1994. ANNEX 2: Understanding on Rules and Procedures Governing the Settlement of Disputes), but they only regulate the information change and consultation between the signatories with the contribution of a commission formed by the members.¹³

A solution like this occurs in the joint agreements of Hungary, Poland, Cyprus, Malta and their states, with the difference that here the governments of the member states held their consultations in the Joint Council (Europe Agreement Art. 107) established by the Council and the Committee of European Union, however also not mentioning the Settlement of Disputes of the GATT/WTO.

The mechanism of GATT/WTO is not applied in the agreements made with Mediterranean countries as well. Instead of this – like the European Agreement – the Joint Council is the organization for dispute settlement, which, however in contrast to what is included in the European Agreement – can make decisions with legal binding effect.¹⁴

¹² Eeckhout Piet: The EU and its Member States in the WTO – Issues of Responsibility. In Regional Trade Agreements and the WTO Legal System edited by Lorand Bartels and Frederico Ortino. Oxford. Oxford University Press 2006. p. 450

¹³ CEFTA Agreement: *Article 34* The Joint Committee

1. The Parties agree to set up the Joint Committee composed of representatives of the Parties.
2. The implementation of this Agreement shall be supervised and administered by the Joint Committee.
3. For the purpose of the proper implementation of the Agreement, the Parties shall exchange information and, at the request of any Party, shall hold consultations within the Joint Committee. The Committee shall keep under review the possibility of further removal of the obstacles to trade between the Parties.
4. The Joint Committee may take decisions in the cases provided for in this Agreement. On other matters the Committee may make recommendations.

¹⁴ in Article 79

This latter model has occurred too already in the negotiations going on with the the GCC and Syria, showing a gradual approach to the regulations of the WTO.¹⁵

The question is to be raised: how does the WTO relate to the increasing number of free-trade agreements (more than 400) and to the free-trade agreements partly contradictory with the WTO regulations? The answer can be only theoretical till the closure of the Doha Round. It seems that the WTO temporarily does bear these deviations, but it inspires its members to avoid manifest conflicts while making their regional agreements, respectively to carry out adequate modifications in their extant agreements for the sake of the cause.

The establishing and integration of the Mediterranean Union is significantly influenced by the the world economic events as well besides the politics and agreements of the Union. So do the problems of the Doha Round of the WTO and the crisis.

After the Uruguay Round the members of the organization decided about the starting of a new Round on the Fourth Ministerial Conference of the WTO held in Doha on 9-14 November 2001. Among the themes of the negotiations is also the thinking over of the regulations concerning the regional trade agreements in the point 29.16 These in Round substantially concern the regulations included in Article XXIV GATT/WTO. On the World Economic Forum held in 2004 in Davos the idea has been yet that the states modify the matter of Article XXIV in a short time. The speech of Supachai Panitchapakti WTO ex Director-General also alluded to this, calling upon the members to suspend their negotiations concerning the new regional trade agreements till the Doha Round succesfully comes to an end.¹⁷ The ex

1. The Association Council shall consist of the members of the Council of the European Union and members of the Commission of the European Communities, on the one hand, and of members of the Government of the Kingdom of

Morocco, on the other.

2. Members of the Association Council may arrange to be represented, in accordance with the provisions laid down in its Rules of Procedure.

3. The Association Council shall establish its Rules of Procedure.

Article 80

The Association Council shall, for the purpose of attaining the objectives of this Agreement, have the power to take decisions in the cases provided for therein.

The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken. The Association Council may also make appropriate recommendations. It shall draw up its decisions and recommendations by agreement between the two Parties.

¹⁵ Ignacio Garcia Bercero: *Dispute Settlement in European Union Free Trade Agreements: Lesson Learned? in Regional Trade Agreements and the WTO Legal System* edited by Lorand Bartels and Frederico Ortino. Oxford. Oxford University Press 2006. p. 404

¹⁶ „29. We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.” http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm (visited 14 May 2009)

¹⁷ Christian Pitschas: *Freihandelszonen aus der Sicht des WTO-Rechts* in: Ehlers/Wolfgang/Lechleitner (Hrsg.): *Rechtsfragen des Zolls in globalen Märkten*. Frankfurt am Main: Verlag Recht und Wirtschaft 2005. p. 118

Director-General of the WTO considered the regional trade agreements a dangerous institution for the world trade and the world economy as well, as these agreements undermine free trade in his opinion.¹⁸ Since then we know that the Doha Round is certainly not at its successful ending for the present and a deep world economic crisis has also developed. It seems that the even the WTO members did not take the call of the Director-General seriously, since their economic interests have the immediate steps in their favor. Thus the European Community in the meantime – as we have seen above – made newer bilateral agreements not only with the Mediterranean countries, and started negotiations with the MERCOSUR states, moreover, with Moldavia, Georgia, Armenia, Ukraine, Belorussia and Azerbaijan as well in the framework of its European Neighborhood Policy.

The serial inefficiency of the negotiations of the Doha Round and the multiplying bilateral agreements seem to prove the permeation of protectionism, which otherwise is a tendency in world crises. This tendency is also intensified by the race for raw materials, for energy, these together jeopardize thus the globalization itself, the free trade and its institutions.¹⁹ Towards the obviating of this danger the most important partners of the world trade, the European Union, USA, Japan, China, India, Brazil can take important steps.

Hence in 2009 also in Davos the trade ministers of more member states of the World Trade Organization (WTO) have identified themselves with the explicit and regulated international trade norms, which is the basic condition of economic growth, of creating new places of work. Accordingly all WTO members were called upon to keep from launching new restrictive measures in the international trade, as that would only deepen the today crisis.

However the European Union – although it accepted the abolition of agrarian subventions – does not give up its policy aiming at bilateral agreements; the Joint Declaration of the Prague Eastern Partnership Summit signed in Prague on 7 May 2009 serves as a fresh proof for this, in the 1-4 points of which the emphasis is on the establishing and deepening of bilateral relations, as it were giving a dismissive answer to the Davos requests.

Summary

Accordingly I can not write else as the closure of my contribution than the study of the Mediterranean and other regional agreements also leads to the problems that the world economy is getting to grips with. Although these agreements as legal means are not the causes of the world economic crisis, however their existence and permeation set back and slow down the early lapse of the crisis. Hence, if the states see one of the egresses from the crisis in the

¹⁸ Supachai Panitchapakti „There is a bigger danger. By treating some countries preferentially, bilateral and regional deals exclude others — fragmenting global trade and distorting the world economy. Instead of liberalizing trade — and widening growth — they carve it up. Worse, they have a domino effect: bilateral deals inevitably beget more bilateral deals, as countries left outside are forced to seek their own preferential arrangements, or risk further marginalization. This is precisely what we see happening today. There are already over two hundred bilateral and regional agreements in existence, and each month we hear of a new or expanded deal. There is a basic contradiction in the assumption that bilateral approaches serve to strengthen the multilateral, rules-based system. Even when intended to spur free trade, they can ultimately risk undermining it.” http://www.wto.org/english/news_e/spsp_e/spsp22_e.htm Speech on the 26 February 26-i in the National Press Club — Washington D.C. (visited 14 May 2009)

¹⁹ Marján Attila: Európa sorsa. Az öreg hölgy és a bika. Budapest: HVG Kiadó Zrt., Budapest, 2009 p. 93

liberalisation of the world trade, it will be necessary then to think over and reevaluate the regional agreements, in the process of which a global instrument, perhaps the Doha Round or something other (which does not need 5-8 years) can give assistance to us.

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