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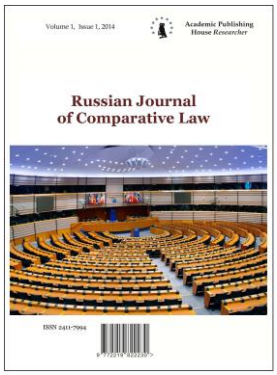

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Ten Years of the Cefta 2006: Legal Aspects

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Abstract

The aim of this work is to determine, from a legal point of view, validity of the CEFTA 2006 ten years after it started, that is, whether this agreement fulfilled its essential goal as well as declared main objectives. The essential goal of the CEFTA 2006 is harmonization of trade regulations of the CEFTA 2006 parties to the international legislation and proper implementation of the regulations. Namely, the parties are in the similar stages of the process of joining the EU market and their cooperation under the agreement should prepare them for participation in the market. The main objectives are improvements of the parties in the fields of liberalization, trade in services, investment, public procurement and intellectual property rights. In the article it was researched whether in the given period any improvement was accomplished in the observed areas of the parties. According to the results obtained, it is concluded that the CEFTA 2006 in general met the expectations during the previous decade. Namely, there were significant results achieved in the observed areas of the parties. However, it is concluded that there is a space for further improvement, especially regarding investment, public procurement and protection of intellectual property rights.

Keywords: The CEFTA, the EU, the Western Balkans, free trade agreement.

1. Introduction

The CEFTA (Central European Free Trade Agreement) was founded by member states of the so-called Visegrad Group (Poland, the Czechoslovakia, and Hungary) on December 21, 1992 in Krakow. Later on, Slovenia (1996), Romania (1997), Bulgaria (1998), Croatia (2002) and the Republic of Macedonia (2006) became members, but then all the member states excluding Macedonia joined the EU and, for that reason, left the agreement. At the same time, from 2001 the Balkan countries have concluded 32 bilateral free trade agreements within the Stability Pact of South East Europe. Therefore, at the summit of Prime Ministers of South East Europe, held on April 6, 2006 in Bucharest, the Declaration on the enlargement of the CEFTA was adopted. It included Albania, Bosnia, and Herzegovina, Moldova, Serbia, Montenegro and United Nations Interim Administration Mission in Kosovo on behalf of Kosovo in accordance with United Nations Security Council Resolution 1244 (hereinafter: Kosovo). The CEFTA amendment (Annex I) named the CEFTA 2006 (hereinafter: CEFTA) was signed on December 19, 2006 at the summit of Prime

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Ministers of South Eastern Europe, in Bucharest, and the new agreement was put into effect on May 1, 2007 1.

The primary goal of the CEFTA is to define general obligations which refer to trade in all goods. The general rule is that quantitative limitations, customs and other export and import costs will be abolished in trade between parties of the region and new constraints will not be introduced. The agreement processes technical obstacles in trade as well as new areas which have not been in touch with bilateral agreements on free trade: trade in services, investments, public procurement, the protection of intellectual property rights as well as arbitrage in case of a dispute. Also, operative rules on the origin of goods have been defined as well as the cooperation of customs administration, competition rules, state aid and the rules of protection.

During the period of the previous ten years (2007-2017), the implementation of the agreement has contributed, along with other factors, to the realization of the essence and general goals of the agreement which is reflected in the improvement of harmonization to international legislation and implementation of the trade regulations of the parties. This improvement can be followed through the corresponding reports on accession to the EU and other reports of relevant international organizations.

2. Methods and Materials

Having in mind characteristics of the subject of our research, we used the text analysis method, the formal-legal method, comparative method and the historical method, while as materials we analyzed the text of the agreement, scientific literature in this area and reports of international organizations. As sources we used the text of the CEFTA 2006, with all additional Annexes and Protocols, as well as other international agreements and strategic documents in the field, relevant scientific literature and the reports of international organizations, primarily of the entities and bodies of the EU (European Commission) and UN (WTO, World Bank, OECD), as well as the regional bodies.

3. Discussion

Legal framework

The Agreement consists of the main text, the Annexes (1-10) and Protocols (I-IV). In the Preamble, the parties defined they wish to contribute to the development of each Party's relation to the European Union and integration into the multilateral trading system. As the objectives of the Agreement are noted: consolidation in a single agreement the existing level of trade liberalization achieved through the network of bilateral free trade agreements; improving conditions further to promote investment; expand trade in goods and services and foster investment by means of fair, clear, stable and predictable rules; elimination of barriers to and distortions of trade and facilitation of the movement of goods in transit and the cross-border movement of goods and services; providing fair conditions of competition affecting foreign trade and investment and gradually open the government procurement markets of the parties; providing appropriate protection of intellectual property rights; providing effective procedures for the implementation and application of the Agreement; and contribution thereby to the harmonious development and expansion of World trade.

The parties agreed to determine „basic duties“, that were duties which actually applied to trade between the Parties on the day preceding the entry into force of this Agreement, and to which the successive reductions set out in this Agreement were to be applied. Also, the parties abolished all quantitative restrictions on imports and exports, customs duties on exports, and customs fees which were contrary to the WTO rules, as well as all measures having equivalent effects on trade between the parties on the date of entry into force of this agreement. For the import customs parties agreed to a standstill, i.e. that no new customs duties on imports, or charges having an equivalent effect, and import duties of a fiscal nature had to be introduced, nor would those already applied been increased, in trade between the parties as of the day preceding the signature of the agreement [1, Art. 2-6].

Considering industrial products the parties agreed to abolish all customs duties on imports, and all other import duties of a fiscal nature in trade on the date of entry into force of this agreement, except the products listed in Annex 2, which had to be abolished till the end of 2008. For agricultural products listed in Annex 3, the parties determined to reduce or abolish the import

customs and all other duties with the possibilities of granting to each other further concessions no later than 1 May 2009. Also, the parties agreed that all issues between the Parties relating to the application of sanitary and phytosanitary measures, as well as technical barriers to trade, had to be governed by the Agreement on the Application of Sanitary and Phytosanitary Measures [2], and the Agreement on Technical Barriers to Trade [3] (with the certain exceptions) [1, Art.7-13].

The Annex 4 (Protocol) laid down the rules of origin of goods, and the methods of administrative co-operation in customs matters, while Annex 5 brought the common rules on mutual administrative assistance in customs issues. It was stipulated that the parties should have to harmonize their application of the Annexes, and to simplify and facilitate customs procedures and to reduce, as far as possible, the formalities imposed on trade. The fiscal discrimination between the products originating in the parties was forbidden, as well as all forms of restrictions on the grant, repayment or acceptance of short and medium-term credits to trade. On the other side, the payments in freely convertible currencies relating to trade in goods between the parties and the transfer of such payments to the territory of the Party enabled to be free from any restrictions [1, Art. 14-16].

The parties agreed to adjust the functioning of any State monopolies of a commercial character or state-trading enterprises in accordance with WTO provisions and to refrain from introducing any new measure which is contrary to such principles. Also, the agreement brought rules on competition concerning undertakings, state aid, and contingent protection rules (anti-dumping measures, general safeguards, conditions and procedures for taking measures, the balance of payments difficulties) in accordance with the adequate WTO provisions [1, Art. 19-25].

On services, the agreement stipulates that trade in services is defined in accordance with the relevant provisions of the General Agreement on Trade in Services, of the WTO, i.e. that the parties will gradually develop and broaden their co-operation with the aim of achieving a progressive liberalization and mutual opening of their services markets, in the context of European integration, taking into account the rules of the GATS [1, Art. 26-29]. Also, the agreement regulates investments in a way that each party has to ensure fair and equitable treatment and full protection and security to investments of the investors of the other parties, in accordance with its domestic laws and regulations by investors of the other parties, and the treatment can't be no less favourable than that granted by each party to the investments made by its own investors [1, Art. 30-33]. Besides, the parties agreed that the provisions of this agreement apply to all laws, regulations, procedures or practices regarding any procurement by central or sub-central government entities or other relevant entities 1, Art. 34-36. On intellectual property rights the provisions stipulate that industrial property rights, copyright and related rights, topographies of integrated circuits, as well as protection against such unfair competition should be in accordance with the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights [1, Art. 37-39].

European integration

The CEFTA parties are in the similar phase of economic development and have the mutual goal to become members of the European Union. In order to accomplish this, regional cooperation is directed towards the areas which have the goal of promoting better economic relations between the member countries except in the trade area and other areas such as investment, services, public procurement, intellectual property, etc [4, p. XII].

The EU integration as a target of socio-economic integration of the countries in region SEE is not only reflected in CEFTA but also in the document SEE 2020: "The SEE 2020 Strategy outlined in this document reflects the determination of all the governments in South East Europe to embrace the bold policy approaches required to attain the levels of socioeconomic growth necessary to improve the prosperity of all its citizens and to facilitate eventual integration with the European Union (EU)" [5, p. 4].

In Albania domestic consensus on the fundamentals of a market economy was broadly maintained in 2007 [6, p. 19]. In the meantime, Albania significantly improved in completing obligations within the European integrations. Therefore, in the report of the EU in 2015 it was stated that Albania is moderately prepared for the development of the functional market economy [7, p. 4, 33].

At the beginning of the observed period (2007), Bosnia and Herzegovina in general, had a lack of coherence and consensus on economic policies, which prevented the acceleration of reforms

at State, Entity and other government levels [8, p. 19]. However, according to the report of the EU in 2015, a certain improvement in the economy was made [9, p. 4, 40].

In a report of the EU in 2007, it is stated that FYR Macedonia generally accomplished an improvement in the implementation of the SAA and regarding the majority of its obligations [10, p. 5]. Additionally, the report of the EU from 2015 stated: "Regarding the economic criteria, FYR of Macedonia is on a solid level of preparation in the development of functional market economy" [11, p. 25].

According the EU report in 2007, in Montenegro in general, macroeconomic stability has been maintained. However, there were reported some remained risks to macroeconomic stability in the medium term, such as the large external deficit and the surge in consumer loans [12, p. 22]. On the other hand, according to report 2015, Montenegro was evaluated as moderately prepared country in developing a functioning market economy. Some progress was made in addressing some economic challenges, in particular on fiscal consolidation and the business environment [13, p. 23].

At the beginning of the particular period (2007-2016), Serbia was about to sign the SAA, that is, at the time still did not become a candidate country. Therefore, at the end of 2007, the European Commission declared that "a stable and prosperous Serbia fully integrated into the family of European nations is important for the stability of the region. In this regard, it encouraged Serbia to meet the necessary conditions to allow its SAA rapidly to be signed" [14, p. 4, 5]. According to the last report of the EU about Serbia (2015) regarding its European integrations, it is stated that the European Council approved the status of Serbia as a candidate country in 2012. The SAA between Serbia and the EU came into force in September 2013, the negotiations on association started in January 2014 and analytical review of legal achievements of the EU (the screening process) was completed in March 2015. Furthermore, it is stated that Serbia is committed to its strategic goal of accessing the EU and continues to carry out the obligations from SAA in a time record [15, p. 4].

The EU 2007 report evaluated that overall, the economy and economic policies in Kosovo* were affected by the uncertainty over the future status of Kosovo. Within this context, the policies in place were broadly sound and market-oriented. However, economic policy coordination remained weak [16, p. 24]. In 2015 it was reported that Kosovo is at an early stage in developing a functioning market economy, and that some progress was made, particularly on facilitating business creation, improving the legal system and on financial sector stability, but the persistent trade deficit reflects a weak production base and lack of international competitiveness [17, p. 30].

Liberalization

The CEFTA parties achieved the complete liberalization of trade in goods (industrial and agricultural) in February and March 2015 by signing the Additional Protocol 4 CEFTA regarding the last remaining quotas on wine between the Republic of Macedonia and the Republic of Moldova. Besides removing custom tariffs, in order to achieve much better trade, the Western Balkan countries developed the Systematic Electronic Exchange of Data (SEED) which is already established in the countries with technical and financial aid from IPA European commission [18, p. 6].

To further enhance intra-CEFTA trade, progress needs to be made in the reduction and elimination of Non-Tariff Barriers (NTBs). Therefore a negotiating framework for the elimination of NTBs has been established between the parties, but, given the technical nature of NTBs, their elimination on a multilateral basis has been relatively slow. Another complexity in reducing NTBs lies in the fact that the CEFTA parties are simultaneously pursuing regional trade integration and integration with the EU and are therefore in the process of adopting the relevant EU acquis. While the most of the parties are moving toward alignment with the EU norms in terms of procedures and regulations, the unsynchronized and multi-speed adoption of the EU *acquis* is generating additional barriers to trade among the parties. Therefore, it is essential that the parties take a coordinated approach to tackling NTBs [19, p. 15].

Also, the parties have improved their negotiations on the Protocol 5 which will help simplify border procedures in all phases, increase the electronic exchange of information, and it will also provide mutual recognition of economic affairs. Within the support of the Protocol 5 negotiations, the parties also considered the improvement of information flow through providing mutual standards which refer to data and efficient and effective technique solutions for data exchange [18, p. 7].

Trade in services

Negotiations on trade services of the Parties officially began in July 2014, primarily, to secure gradual liberalization and mutual service market opening by eliminating barriers. Four series of

negotiations were held in 2015 when relevant improvement regarding the offers and requests for market opening in ten services subsectors was achieved (business and professional services, tourism, environmental, cultural, communication and construction, and distribution, educational and health services). Also, the draft text of the Additional Protocol on Trade in Services and Annex 1 on Temporary Entry and Stay of Natural Persons for Business Purposes were finished. It is expected that negotiations will have been completed by the end of 2016 while the Additional Protocol on Trade in Services is expected to be implemented from 2017 [18, p. 7].

The CEFTA Subcommittee on Trade in Services and its working groups have undertaken various activities to improve the quality of trade in services statistics across the CEFTA region and harmonize them with those of the European Union. Also, they initiated discussions on the mutual recognition of professional qualifications. Both issues have been very important to the capacity of the Parties to implement the Additional Protocol on Trade in Services [18, p. 7].

The first meeting of the Working Group on Trade in Services Statistics was held in October 2015 when the main tasks of the Working Group were agreed: reviewing the quality and coverage of available trade in services statistics; identifying priorities for further development of statistics for commonly agreed areas; meeting the needs of users with regard to analysis of trade in services and investment; and setting up an operational reporting system of statistical data and a sustainable dissemination platform to be managed by the CEFTA Secretariat; working on improvement of the availability and quality of FDI data with a view to develop a first regional report on investment expected to be published in 2017 [18, p. 7, 8].

The present expansion of trade in services in the CEFTA economy is the result of investment increase and the development of their services sectors as well as their opening to foreign competition. Regarding the WTO and EU association, the parties obliged themselves to reforms for the improvement of market openness with the aim of facilitating foreign proprietorship and eliminating policies which discriminate foreign companies. However, various barriers in institutional and legal frameworks still restrain the expansion of the trade in services. Regarding the general barriers, the movement of workforce/professionals is a providing services regime with the largest limitation level in the region since getting a work permit for foreign citizens, even for temporary jobs, is a long, complicated and expensive process. The accreditation of diplomas and certificates is another important obstacle in the way of foreign citizens who provide services. Further, in the construction sector there are limitations for over-border, providing services and recognition of foreign licenses. In passenger and especially rail traffic there is a high regulation degree, market protection and the presence of state monopolies which all together limit the possibility of trade in services. However, the largest limitations are imposed on trade in legal services where trade is practically limited to the local population. Namely, foreign citizens can only provide legal consulting services. On the other hand, IT services are less regulated and trade in this sector depends, to a large extent, on other elements such as technological achievements (to exist demand in these services) and protection of intellectual property. Therefore, if the parties decide to promote trade and the integration of their service sectors, the next step would be a detailed review of domestic legislation in analyzed sectors. Afterward, excessive and economically unnecessary regulations will need to be eliminated [20, p. 80, 81].

Investment

In the given period the CEFTA parties have taken over a series of commitments for the establishment of a free and an open investment regime which facilitates free investment flow in the whole region. A lot of activities conducted in accordance with other CEFTA priorities such as trade, help and transparency will improve the investment climate in the region. The zone of single cumulation has the potential to improve its approach in the region and in the market of its leading trade partners, which is the EU, EFTA, and others, and to improve the integration into a global economy. Therefore, the countries requested UNCTAD to take over the overview of the Investment policy which can give a detailed analysis of investment policies in the South East European region and give a suggestion for the improvement of investment policies and reforms on the individual level of the economy and also through the synergy mechanisms of the regional cooperation [18, p. 8, 9].

Additionally, in 2015 the CEFTA Joint Working Group on Investment Policy and Promotion was created with two primary goals: the coordination of investment policies which provides greater security for investors and investments; and coordination for the promotion of activities for investments with the aim of facilitating free investment flow in the region. In regards to the

investment policy coordination, the Joint Working Group has a goal to coordinate investment policies, develop guidelines of an adequate practice for FDI motivating plans and programs, achieve non-discrimination in domestic treatment of investors, increase the transparency of investment incentives, provide the same protection level for all investors and their investments, etc. The JWG has three primary goals to accomplish regarding the coordination activities for the promotion of investments: the development of a product for the promotion of investments and the establishment of mechanisms/instruments for mutual promotion; further strengthening of cooperation between IPAs on every level; and the establishment of investment concept for increasing the involvement of regional priority sectors in regional chains and global supply networks [21].

In the Republic of Serbia, several crucial and serious challenges have been determined. They present a threat to the economic development of the parties and they can be solved with the increase of direct foreign investments. These are high unemployment rate, relevant foreign trade deficit, relevant structural and competitive problems which the industry deals with. On the other hand, there are listed factors which can cause the increase in direct foreign investments. It is, primarily, a program of law reform in order to accomplish the standards of the European Union not only in the economic sphere but also in other social spheres. Also, new knowledge and technologies, based on inventive and innovative development, applied in production and the process of creating new products and services can increase the total competitiveness of Serbian economy in global frameworks. Encouraging direct foreign investments requires at the same time activities and partnership of all characters: the Central Government, local authority, and foreign companies [22].

In the EU report 2007 on Albania, it was stated that Albania signed the Stabilization and Association Agreement with the EU, however, the revision of the legislative framework for the complete liberalization of capital movement was still in progress given the fact that Albanian economy was generally based on cash payment at the time [6, p. 28]. However, in Albania in 2015 a certain improvement has been accomplished regarding the capital movement, mostly in the fight against money laundering [7, p. 33].

Bosnia and Herzegovina according to the EU progress report 2007 continued to apply relatively liberal rules on capital flows, yet, certain limitations remained 8.Although, the SAA between Bosnia and Herzegovina and the EU was put into force on June 1, 2015, regarding the capital movement, Bosnia and Herzegovina continues to apply relatively liberal rules on capital flows, but the legal framework has not coordinated the legislation of the EU [9, p. 40].

During 2007 in Macedonia, the improvement was not noted in the area of capital movement and payment, or that "the preparations in the area of free movement of capital are still lagging behind" 10, p. 28. At the end of the seen period (2015), the EU reported that "limited progress took place on capital movements and payments" [11, p. 35].

In Montenegro in 2007 it was evaluated that overall, preparations for implementing the SAA in the area of free movement of capital were on track, but preparations on the fight against money-laundering were at a very early stage [12, p. 27]. In 2015 the progress on free flow of capital was reported, namely, it was evaluated that Montenegro is moderately prepared in this area, because some progress was made on payment systems [13, p. 32].

In Serbia in 2007 the evaluation of the EU stated that it was necessary to further improvement for the absolute liberalization of investment in accordance with the SAA [14, p. 34]. Therefore, in 2015 the report evaluated that the improvement achieved by adopting the Law on Payment Services, and during the following year Serbia should conduct further liberalization on short-term capital movement and strengthen the Agency for preventing money laundering [15, p. 33].

In Kosovo* in 2007 in the field of free movement of capital, overall, very little progress could be reported in this area [16, p. 31]. In 2015 some progress was made, namely, it was stated that, capital movements remain largely free, with no restrictions on foreign ownership or investment in the financial sector, and the central bank's capacity to supervise the sector remains sufficient [17, p. 40].

Public procurement and intellectual property rights

At the beginning of the period Albania took steps towards the approval of the new law on public procurement with the aim of harmonizing its legislation with the legislation of the EU. Additionally, further capacity strengthening of the copyright office was still necessary since piracy and forging were widespread [6, p. 31]. However, in 2015 Albania has reached a certain level of

preparation in public procurement, particularly through the adoption of the amendment of the Law on Public Procurement. Also, Albania also reached a certain improvement regarding the intellectual property, but still has not completed its obligations under article 73 of the Stabilization and Association Agreement [7, p. 36].

Bosnia and Herzegovina according to the EU progress report 2007 improved in the area of public procurement, but there was a strong need for capacity improvement of consumers to efficiently run the procurement procedure as well as strengthening administrative capacities on all procurement levels. Moreover, a small improvement was accomplished regarding the intellectual property [8, p. 36]. In the report from 2015 it is stated that solid improvement was accomplished, especially through putting into force the new law on public procurement, however, the country is still in an early phase of harmonization with the *acquis*. Additionally, it is stated that Bosnia and Herzegovina is moderately prepared in the area of intellectual property rights since a certain progress has been accomplished in this area, but additional efforts, especially on improving implementation and coordination [9, p. 44].

In Macedonia in the area of public procurement was not noted a progress in 2007. Additionally, it was stated that the preparations in the area of copyright and other related rights were in a backlog [10, p. 30]. Some improvement was achieved in the area of public procurement, especially through the mandatory usage of electronic procurements, but recent amendments to the Law on public procurement reduced the level of harmonization with the legal achievements of the EU. Furthermore, it was established that the area of copyright and related rights was correlated with the rules of the EU for legal protection. This is related, for example, to computer programs, broadcasting, brands, biotechnological inventions and pharmaceutical products [11, p. 38].

In Montenegro, in 2007 some legislative progress could be reported, because the PPL was based on the relevant EC directives in the areas of public authorities, utilities and remedies [12, p. 29]. In 2015 it was stated that in public procurement, Montenegro is moderately prepared on public procurement, because good progress was achieved with the adoption of amendments to the public procurement law at the end of 2014. However, more work is needed to prevent corruption occurring during the procurement cycle. Also, alignment with the *acquis* on concessions is at an early stage. Therefore, it is concluded that more work is needed to strengthen implementation and enforcement capacity at all levels [13, p. 32].

According to EU 2007 report, Serbia did not have a consistent, efficient and completely independent system of public procurement with efficient procedures for contract award, therefore, additional efforts were necessary for harmonizing legislation, implementation strategy of public procurement and capacity strengthening for the conducting of operations from the SAA. Additionally, it was estimated that in the area of intellectual property was necessary to make additional efforts in order to accomplish the harmonization between the domestic legislation and the required achievements, as well as its usage, especially for the purpose of eliminating piracy and forging [14, p. 37]. In the area of public procurement which is especially susceptible to corruption, Serbia is, according to the 2015 report, moderately prepared, and as the result bigger efforts are necessary, even though a solid improvement was accomplished during the previous year by adopting changes and additions of the Law on Public Procurement [15, p. 35]. Also, the evaluation is that Serbia has achieved a solid level of preparation regarding the harmonization of intellectual property with the legislation of the EU while in the next year it should: additionally harmonize the Law on Author's Rights, topography of semiconductor products, patents and protective signs with legal achievements of the EU, including the Directive on IPR [15, p. 35].

In Kosovo*, according to the 2007 report, it was stated that overall, some progress could be reported in the field of public procurement. Preparations for alignment with the European standards in this field were starting [16, p. 33]. The EU reported in 2015 that Kosovo* is at an early stage in this area. Effective implementation remains a major challenge and procurement is particularly vulnerable to corruption. Some progress was achieved, especially in enforcement of a centralized public procurement system. However, considerable efforts are still needed to use public procurement efficiently [17, p. 41, 42]. Also, in 2007 Kosovo* has some level of preparation in the area of intellectual property rights. Some further progress was made in this area [17, p. 43].

3. Results

Bearing in mind the geographical, historical and infrastructural advantages comparing to the other parties of this agreement, Serbia has managed to build more favourable conditions, both in terms of the legal framework and the capacities suitable for trade in the region and beyond, as well as for investment. Also, the Republic of Serbia has successfully adopted international standards in the fields of public procurement and protection of intellectual property rights, but in these fields further progress is expected soon.

4. Conclusion

According to the text of the CEFTA and the conducted analysis of its impacts on the economies of the CEFTA parties, we can conclude that the agreement in the previous ten years, in general, fulfilled the expectations, that is, it partially met not only the general, essential objective, that is European integration of the parties, but also the declared main goals, i.e. improvement in the fields of liberalization, investment, public procurement, as well as intellectual property rights. Namely, based on the reports of the European Commission for each of the parties, it can be stated that they made significant improvement in the European integration process. Furthermore, the increase in the very important services sector, as well as in financial direct investments, is evident. Also, all the parties made some progress in the fields of investment, public procurement and protection of intellectual property rights, but in these areas there is a lot of space for further improvement.

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