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Harmonisation of the Hungarian Legal Order with the EU's Common Commercial Policy

Abstract. In this essay is analysed the conceptual relation between the common commercial policy (CCP) of the European Union and the Hungarian foreign trade law, illustrating the dynamic extension of the CCP and the character of the competences in this field. Moreover the reader can get an insight into the so-called “rest competences” of the member states. In consequence of the nature and logic of the CCP was induced the mostly deregulatory modifications in the Hungarian legal order and the functional alteration of the foreign trade administration of Hungary. The author highlights this complex question consisting of the required modifications of the international conventional engagements and the harmonisation of Hungarian foreign trade material and procedural law in relation to the accession. He comes to conclusion that Hungarian accession to the EU might even be advantageous and it opens up a new prospect. Therefore the Hungarian foreign trade administration and diplomacy have to recognise the opportunity within the framework of the decision-making procedures of the Community as an initiative canalizing and enforcing the interests of the Hungarian producers and other market participants in all cases, when any kind of intervention is necessary in the relation of the third states.

Keywords: European Union, European law, community law, exclusive competences, common commercial policy, foreign trade law, enlargement of the EU

1. Introduction

The interactions between states of the ‘global world market’ are most likely to become more difficult and manifold in the next decade. However, among these ties—which result in a stronger inter-dependence between countries—the interactions of external economy, especially the foreign trade interactions remain determinative presumably. Therefore it can be expected that the normative system regulating foreign trade processes should also be modified, in accordance with the conditions of the ‘new world order’ and the new needs. In case we would like to consider this topic from the aspect of the new *EU 25*: the starting point of the disquisition is the common commercial policy (CCP)

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and its normative base, Art. 133 of the Treaty establishing the European Community (TEC), but we try to concentrate on the specific segment of this problem. In the following will be introduced those questions, how can be implemented the common commercial policy from Hungarian point of view, particularly the necessary changes of legal framework of the Hungarian foreign trade after the EU's enlargement.

2. The Functional Alteration of the Hungarian Foreign Trade Administration

In relation to our accession to the EU, it is the transformation of the Hungarian foreign trade law, the effect of which was rather considerable already on the day when the Accession Treaty entered into force. The logic of the Hungarian *Act III of 1974 On Foreign Trade* was irreconcilable with our EU accession, since the common commercial policy requires an absolutely different activities by the national foreign trade administration and a different functioning of the foreign trade law itself. The new function is nothing else but the requirement of the application of the *acquis communautaire*. This means that by the day of the accession, the national foreign trade administration had to be transformed to be appropriate for the efficient implementation of Community law instruments of the customs union and common commercial policy. From that date on, the Hungarian foreign trade administration is allowed to take autonomous measures only within a narrow compass, similarly to the administration of the other member states.¹

From this point of view, this change can be said to be outstanding. It is sufficient to think over that our export into other EU member states, and the import from those states—which forms a considerable part of the commerce crossing our borders—today, in reality, does not come under the ruling of the foreign trade law which is subordinated to the new function, but falls within the uniform internal market regulation. As a practical illustration of this function alteration, we can refer to the reformed Hungarian institutional system of customs authorities, the function of which is increasingly resembles a market-like service organisation, taking into consideration that the customs clearance of the import crossing the customs frontier of the EU can occur in any member state according to the general rules, but the state of the authority

¹ See below: the possibility of derogation is only permitted in certain cases: usually in relation with special group of products (e.g. commerce of war supplies), or in special circumstances (e.g. crisis, natural catastrophe).

who executes the clearance is allowed to keep a certain proportion of the customs revenues.² In a figurative meaning, the Hungarian customs authorities lost their 'monopoly', that is why, if the Hungarian budget intends to claim the above mentioned revenues, it has to establish and operate an administration system which—in relation to the authorities of the other states—can be considered as competitive.³

3. The Cornerstone of the CCP: Exclusive Competence on the Art. 133 TEC

Art. 133 of TEC contains general guidelines for the CCP, in fact it is the external trade policy of the European Union towards third countries. Or in an other approach: it is the external side of the economic and social policy of the European Union.⁴ The opinion of the European Court of Justice confirmed that CCP holds exclusive competence as regards trade in goods, but specified that member states and the Union share joint competence to deal with trade that does not involve goods.⁵ This 'exclusiveness'⁶ also includes the competence of

² 75% of the customs revenues will be the part of the EU budget, the member state is allowed to keep 25% in its own budget, but only to finance the maintenance of the customs administrative system. The previous calculations expect a 60 billion Forint fall in revenue a year. <http://www.vaminfo.hu/Art.s/vamunio.php> (17/05/2005).

³ That is why it is unquestionable, that in the early days of the accession, the crashing of the domestic informatic customs management system did not inspire confidence. However, we can add that this is the way how the aspiration, which covers that customs clearance of import that enters the EU from the Far-Eastern markets should be executed by the Hungarian authorities and later they want to reach the receiving markets of the other states from Hungary as a regional logistic distribution centre, gets into the center e.g. of the Hungarian foreign trade diplomacy.

⁴ Ipsen, H. P.: *Europäisches Gemeinschaftsrecht*. Tübingen, 1972. 815.

⁵ ECJ *Opinion*, No. 1/94, World Trade Organization, [1994] *European Court Reports* I-5267. See Pescatore, P.: Opinion 1/94 on Conclusion of the WTO Agreement: is there an escape from a programmed disaster? *Common Market Law Review*, 1999. 387–405.

⁶ Generally for the EU's competences in the CCP see: Cremona, M.: Policy of Bits and Pieces? The Common Commercial Policy After Nice. *Cambridge Yearbook of European Legal Studies*, Vol. 4., 2001. 61–91., Griller, S.–Gamharter, K.: External Trade: Is There a Path Through the Maze of Competences? In: Griller, S.–Weidel, B.: *External Economic Relations and Foreign Policy in the European Union*. Vienna–New York, 2002. 66–111., Herrmann, Ch. W.: Common Commercial Policy after Nice: Sisyphus Would Have Done a Better Job. *Common Market Law Review*, 2002. 7–29., Krenzler, H. G.–Pitschas, Ch.: Progress or Stagnation?: The Common Commercial Policy After Nice. EFAR, 2001. 291–

the European Union in relation to GATT/WTO.⁷ At this point, we can refer furthermore to the view formed after the *Opinion No. 1/94* of the European Court of Justice, according to which the exclusive competence of the commercial policy only refers to the traditional area of regulations of the CCP, to the ones affecting trade. In the new fields of the CCP—such as trade of services—that gained increasing importance in the last decade of the previous century, the CCP has no exclusive competence. This idea has been transplanted into the primary law by the Amsterdam and Nice amendments of the founding treaties.

Art. 133 (1) TEC lists several areas in which the CCP of the EU is to be applied, but this enumeration is non-exhaustive, i.e. intended only as illustrative and not as limitative.⁸ Regardless of the discussion on the substance of the CCP, two advising remarks concerning the list of commercial areas in Art. 133 (1) are justified. Firstly, the list clearly indicates that the EU derives its powers to take both autonomous (change of tariff rates and measures to protect trade) and conventional (conclusion of tariff and trade agreements) measures to implement its commercial policy from Art. 133. Secondly, changes in tariff rates must necessarily be made in accordance with the Treaty's Part 3, Title 1, Chapter 1, entitled 'The Customs Union', which again has to be enacted consistently with WTO provisions and international agreements concluded by the Union.

The norm groups related to the CCP can be categorised as follows: (a) single import system, (b) single export system, and (c) system of international trade agreements. Essentially, the following comments can be made on these categories.

a) It is a common—supposedly constant—experience that states try to provide the possible greatest protection for their own producers. This is true for the European Union, as well; the obvious methods are to regulate the import and to apply different safeguards to limit the competence of the foreign partner states on the market, and in consequence of this the majority of restrictions regards the relations of import. However, as time passed by, it was realised that the excessive import protection, the protectionism has negative consequences

313., Neframi, E.: La politique Commerciale Commune selon le Traité de Nice. *Cahiers de Droit Européen*, 2001. 605–646. The art of the CCP's exclusiveness has been pointed out also in the Hungarian literature, see Horváthy, B.: A kereskedelempolitika dinamikus értelmezése a közösségi jogban [The Dynamic Interpretation of the Commercial Policy in the Community Law]. *Jogtudományi Közlöny*, 2004/10.

⁷ „The Community has assumed the powers previously exercised by the Member States in the area governed by the General Agreement GATT” C-21 and 24/72 *International Fruit Company v. Produktschap voor Groenten en Fruit*, [1972] *European Court Reports*, 1219 at para. 18.

⁸ See *Opinion No. 1/78*, *International Agreement on Rubber*, [1979] *European Court Reports*, 2871.

for all states and induces slower economic growth. Therefore, an international regulation (GATT) on import protection has been established, which is an international field of force with a significant impact on the import regime of the European Union, as well. Its regulation frame is changing, which is necessarily going to bear upon the related regulation of EC Law. Hence it is also necessary to examine the related international law frames, by showing the Community regulations on customs, the system of administrative barriers, and the normative frames of the trade safeguards.

More concretely, the most important type of measures in this category concerns the EU's Community Customs Code and Common Tariffs (CCT). The cornerstones are the Regulation on the tariff and statistical nomenclature and on the Common Customs Tariff,⁹ the Regulation establishing the Community Customs Code,¹⁰ and the Regulation on its provisions for the implementation,¹¹ completed with many regulations and directives which previously govern customs procedure and other administrative aspects of customs law. The other set of rules deals with the autonomous protective measures of the EU against the import arising from third countries causing damages to Community actors¹² or/and against unfair trade practices.¹³

b) Increasing export is one of the main objectives of trade policy, therefore—unlike in the case of import—not the confinement, but the incentive is the most common ambition. Regarding the amount of relevant regulations within Community Law, there are significantly less regulations on export system than on e.g. the import regime. Most of the regulations relate to incentives: especially the topic of the subventions is of great significance, which is also well regulated

⁹ *Council 2658/87/EEC Regulation* of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, and see also: *Commission 1359/95/EC Regulation* of 13 June 1995 amending Annexes I and II to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, and repealing Regulation (EEC) No 802/80.

¹⁰ *Council 2913/92/EEC Regulation* of 12 October 1992 establishing the Community Customs Code.

¹¹ *Commission 2454/93/EEC Regulation* of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code.

¹² See Art. 16 *et seqq.* of the *Council 3285/94/EC regulation* of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94.

¹³ *Council 384/96/EC regulation* of 22 December 1995 on prohibition against dumped imports from countries not members of the European Community; *Council 2026/97/EC regulation* of 6 October 1997 on protection against subsidized imports from countries not members of the European Community.

by the international law within our scope.¹⁴ Still, there are regulations for the export confinement (e.g. regulation on the dual use products) but only with smaller significance.

c) Numerous trade agreements in different commercial subjects and with various parties settled around the world were concluded by the European Union.¹⁵ In the literature, the authors have come up with numerous systematizations and classifications of the EU's trade agreements. On the basis of the so-called 'concentric circles theory'¹⁶ four types of the agreements can be distinguished: the innermost circle consist of the Agreement on the European Economic Area, the second one of the European Agreements, thirdly the development associations¹⁷ can be mentioned, and the last circle comprises diverse forms of trade and co-operation agreements with countries in the Americas, Asia, Far-East etc.¹⁸

It has to be added that between the first and second circles the agreement on EU-Turkey relations must be mentioned which was in fact, based originally on a 'European Agreement', but today, extending this agreement, it already means a legal ground establishing the single bilateral customs union relation of the EU with third country. Stressing the importance of this fact, the EU-Turkey customs union consequently implies more than a normal European Agreement (second circle).

¹⁴ See above: in the import regime mentioned antisubvention action means the inverse measure of this. *Viz.* in a given case, against the EU's not allowed subvention can be applied antisubvention measure by a third country on the conditions of the import regulations of the country concerned.

¹⁵ For the whole system of trade agreements see: *Directory of Community legislation in force Chapter 11.: External relations*. The document is accessible on the following page: http://www.europa.eu.int/eur-lex/lex/en/report/index_11.htm

¹⁶ The theory was worked out by Verloren van Themaat former ECJ's Advocate General. See: Kapteyn, P. J. G.–Verloren van Themaat, P.: *Introduction to the Law of the European Communities*. London–The Hague–Boston, 1998. 3rd ed. 1328 et seq. The system of trade EU's agreements was summarized in the Hungarian literature by Balázs Péter first member of Republic Hungary in the Commission, see Balázs, P.: *Az Európai Unió külpolitikája és a magyar-EU kapcsolatok fejlődése* [The EU's Foreign Policy and the Evolution of the Relation EU-Hungary] Budapest, 2002.

¹⁷ A traditionally important part of the external relations of the European Union is the support provided for the developing countries. The evolution of the common development policy has been supported by the tendencies appearing from the 60s and by the increasing role of the developing countries. Elements of the EC-law, like GSP system, the former Lomé Convention and the its successional Cotonou Agreement (see below at para. 6.2.a.) should be mentioned in this scope.

¹⁸ *Ibid.*

Finally, it is to be remarked that the second circle naturally also embraces the latest forms of the association agreements concluded in the preceding years which intend to set up in many cases not only the free trade between the EU and the country concerned but the fulfilling other objects as well (to stabilize an democratic political system, e.g. in the so called Stabilisation and Association Agreements¹⁹).

4. Residual Competences of the Member States Relating to CCP

4.1 It also appears that the above-mentioned function alteration can be derived from the exclusive character of the common commercial policy. This means that the exclusiveness of the commercial policy competences results in the fact that national authorities that possessed competence before the accession are deprived of their right to determine the framework of commercial policy and to issue measures after our accession. Naturally, this can be perceived in a way that this is the price of our accession to the customs union and the single market. Not to speak of the fact, that a considerable part of the commercial policy instruments – e.g. the commercial defensive measures – were applied by Hungary with low efficiency,²⁰ this way the fact that the determination of commercial policy was transferred onto the level of a more active participant, namely the EU, might provide an essentially greater security for the Hungarian market.

4.2 In the case of member states, the remaining competences only mean implementing authorities and, in a rather narrow circle, certain regulative ‘residual competences’, as well. The commercial policy competences that can be exercised on the level of member states are the following:

a) Originally in practice, and later in the parallel competence cases, proposed in the Opinion No. 1/94 of the ECJ. These cases, after the amendment of the

¹⁹ See Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part. *Official Journal*, L 026 28/01/2005. 1., Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part. *Official Journal*, L 084 20/03/2004. 13.

²⁰ Since 1994 for instance there has been no example of any antidumping duty. As a reason for this, we can mention that in the multilateral global commercial scope, the ability of our country to enforce interest is rather insignificant. Otherwise, in certain cases, the compensation of the applied market protection measures or the retorsion imposed against it would have struck the domestic producers with serious consequences.

TEC are defined by the primary law. In these fields, the internal competences of the member states are established; e.g. in the subjects concerning the trade of certain services;

b) The transposition into the national law of the rules of EC Law referring to this field, (if it is necessary);

c) The fulfilment of obligations under EC law, e.g. determining the amount of the customs bond, or the establishment of the institutional framework (operation of customs authorities, etc.);

d) Taking measures, referring to the third countries, if EC Law makes it possible, and if the measure is not under the effect of Art. 133;

e) Similarly to delegation, the member states had the opportunity to maintain those commercial agreements that had been concluded in the transition period, namely before 1 January, 1970. For the prolongation of these agreements the delegation of the community is necessary in each case.²¹ This delegation is bound to the condition that the relationship of the member state maintained with the third country does not contravene the CCP;

f) The so-called *actio pro communitate*, when the Community is unable to exercise its otherwise exclusive competence because of some sort of objective reasons (usually in the field of international law)²² and therefore in fact the member states stand up in the name of the Community;

g) The determination of the import and export of arms, munitions and war equipment, if the applied measures do not have a negative effect on the competition within the common market in view of the products that are not explicitly for military goals (Art. 296 of the EC Treaty);

h) The member states are allowed to apply temporary measures extensively in order to maintain the public order (e.g. in the case of war), this way they can deviate from the CCP – in principle, these measures might also affect the common market disadvantageously, if a member state can secure acceptance of

²¹ See *Council 2001/855/EC Decision* of 15 November 2001 authorising the automatic renewal or continuation in force of provisions governing matters covered by the common commercial policy contained in the friendship, trade and navigation treaties and trade agreements concluded between Member States and third countries. *Official Journal*, L320 05/12/2001 13.

²² As a historical example one may recall the special contact established between the EC and the Eastern-European–former ‘Soviet Bloc’–countries: because refusing the EC’s legal personality by these countries in the 1970s, the technical agreements on field of the commercial policy were concluded between the country concerned and the member states (and not the EC). *Id est* the exclusiveness of the competence apparently was infringed, but it was absolute necessary to arrive at an agreement. Kapteyn: *op. cit.* 1323.

these measures during the consultations with the other member states (Art. 297 TEC);

i) The literature²³ mentions in this sphere measures that can be applied against other member states which are made possible by Art. 28 TEC. The measures issued in accordance with the legal interests based on the Art. 30 TEC and which do not require harmonisation,²⁴ are valid to third countries, as well.²⁵

The above-mentioned cases do not mean that in the listed spheres the member states are able to maintain their regulative authority unconditionally, since each and every exception requires the individual delegation or the contribution of the Community,²⁶ or in special cases the rest of the member states have the right to appeal against the measure of the member state at to the European Court of Justice.²⁷

However, the question is whether the residual competences can be constitutive or their executive character only empowers them with declarative characteristics? From the above introduced list the character of the parallel competences,²⁸ the subject out of the effect of Art. 133,²⁹ the permitted exceptions,³⁰ the restrictions affecting the commerce of war material,³¹ the measures taken on behalf of the public order³² seem to be self-evident: if a member state fulfils the special formal requirements (e.g. the contribution of the Community or the other member states), then the measure applied by it means an independent, constitutive practice of competence. However, the cases

²³ See e.g. Hohmann, H.: *Angelassene Außenhandelsfreiheit im Vergleich*. Tübingen, 2002. 218.

²⁴ *Ib.* According to Hohmann, if harmonisation in this field shall be required, the member states lose their own regulatory competence.

²⁵ Cf. with *Council 2603/69/EEC Regulation* of 20 December 1969 establishing common rules for exports, Art. 11.: „Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by a Member State of quantitative restrictions on exports on grounds of public morality, public policy or public security ; the protection of health and life of humans, animals or plants ; the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property.”

²⁶ Paras. (b)–(f).

²⁷ Paras. (g) and (h).

²⁸ Para. (a).

²⁹ Para. (d).

³⁰ Para. (e).

³¹ Para. (g).

³² Para. (h).

of the *actio pro Communitate*³³ have to be perceived as declarative, specific executive measures, since in this case the exclusive competence still exists on the level of the Community. The only difference is that the vindication becomes possible only by the above introduced intercalation of the member states.

4.3 In the case of CCP the role of the direct enforcement—namely enforcement by the Community authorities—is less significant. In contradiction, we can speak of indirect enforcement when the enforcement of the Community law—in certain cases the CCP, as well—is accomplished through the bodies member states. One case of this is the above-mentioned para. (c), when during the implementation, the member state authorities directly apply Community law having direct effect, which means that the task of the member state legislator only expands to the establishment of the institutional system, while it is not necessary to transpose the Community law norm. As opposed to this, para. (b) covers the cases—considered to be exceptional in the CCP—when on the member state level the Community norm has to be transposed by a legislative act, that is, the latter will be applied by the local authorities through national law.

As it has already been mentioned, the implementation of the CCP is an obligation of the member states,³⁴ deriving from EC Law. This results partly from the supremacy doctrine of the EC Law³⁵ and partly from Art. 5 TEC. In special cases, the European Court of Justice concretised the general formula of Art. 5. This way, referring to the CCP, the implementation contains the following obligations:

- the national law has to indicate the enforcement authorities,³⁶ which have to be created by the member states in a way that they are able to function effectively.³⁷

³³ Para. (f).

³⁴ The executional framework of the Community Law in the earlier literature was assumed by Zuleeg (*Das Recht der Europäischen Gemeinschaften im innerstaatlichen Bereich. Kölner Schriften zum Europarecht*, 9, 1969), basing on this theory, Pescatore divided the execution and application of the EC-law in levels (*Das Zusammenwirken der Gemeinschaftsrechtsordnung mit den nationalen Rechtsordnungen. Europarecht*, 1970. 307. et seq.)

³⁵ Weatherhill, S.–Beaumont, P.: *EC-law*. 2nd ed., London, 1995. 307 *et seqq.* In the Hungarian literature to this subject see: Kende, T.–Szűcs, T.: *Európai közjog és politika* [European Public Law and Policies]. Budapest, 2002. 559. et seq.; Kecskés, L.: *EU jog és jogharmonizáció* [EU Law and Harmonisation of Law]. Budapest, 2003. 368.

³⁶ 66/79. *Amministrazione delle finanze dello Stato v. Salumi* [1980] *European Court Reports*, 1237

- provided that are more national authorities being responsible for the enforcement, the member states are obliged to circumscribe the powers of the different bodies.³⁸
- the enforcement authorities have to be put under effective supervision,
- the measure of necessity has to be taken into consideration while creating the member state enforcement regulations, this means that only those norms have to be issued that are absolutely necessary for the effectiveness of the EC Law norm,
- the member state authorities are obliged to apply the community regulations, they cannot be subdivided, and there cannot exist any member state regulation that would effect the force of the community regulation in a unilateral way.³⁹

5. The Order of Foreign Trade of Hungary after the Accession to EU

5.1 It belongs to the traditional sovereign rights of the Hungarian Republic – and derivable from the Hungarian Constitution, as well – that it influences the foreign trade and economy with appropriate legal measures, with the aid of administrative institutions. However, because of the above-mentioned reasons, and because of the fact that the EU also forms a customs union which has to operate properly, the member states are not allowed to practice their sovereign rights, which means that the guidance of the procedures occurs through harmonised and unified community means.

However, the disbelief, according to which the transposition of the focal point of foreign trade and economy activities can be evaluated as a loss of sovereignty, has to be dispelled. It is more accurate to say that the Republic of Hungary did not lose its sovereignty after the accession to the EU in this field, but changed its mode of practice, and in the future, on behalf of our EU

³⁷ See Hilf, M.: Möglichkeiten und Grenzen des Rückgriffs auf nationale verwaltungsrechtliche Regeln bei der Durchführung von Gemeinschaftsrecht. In: Schwarze, J. (ed.): *Europäisches Verwaltungsrecht im Werden. Schriftenreihe des AEI*. Band 14. Baden-Baden, 1982. 71. Also the national legal framework of the procedures should be disposed on the method which ensures the efficiency of the Community Law having direct effect, see 118/76 *Balkan Import Export v. Hauptzollamt Berlin Packhof*. [1977] *European Court Reports*, 1177.

³⁸ 240/78. *Atalanta Amsterdam BV v. Produktschap voor Vee en Vlees* [1979] *European Court Reports*, 2137.

³⁹ 39/72. *Commission v. Italy* [1973] *European Court Reports*, 101., 93/71. *Leonensio v. Ministero dell' Agricoltura e Foreste* [1973] *European Court Reports*, 101.

membership, it will practice them together with the other member states and with the EU itself. This view can be derived from the Hungarian Constitution's Art. 2/A, paragraph 1, according to which: "By virtue of treaty, the Republic of Hungary, in its capacity as a Member State of the European Union, may exercise certain constitutional powers jointly with other Member States to the extent necessary in connection with the rights and obligations conferred by the treaties (...)" This common exercise of competences can be realised in a way that in the case of a concrete task, only the bodies of the Community will proceed (e.g. the European Commission in the case of an antidumping procedure).⁴⁰ These are also in conformity with that constitutional obligation of Hungary, which declares that "The Republic of Hungary shall take an active part in establishing a European unity in order to achieve freedom, well-being and security for the peoples of Europe".⁴¹

5.2 This type of transformation of the practice of sovereignty occurred with our Accession Treaty.⁴² According to the facts emphasised above, the CCP has to be homogeneous; theoretically, after our accession there is no possibility of derogation from its rules. There is only one real exception to this: not later than 1 May 2007, the Hungarian foreign trade administration is allowed to establish an annually decreasing customs contingent in the case of raw aluminium.⁴³ Because of our accession to the CCP, the transformation of the system of means became necessary. According to the *Act XXIX of 2004 On the accepted amendments concerning the accession* Art. 140 paragraph 1: "the export and import of commodities, services and rights representing material value in intercommunication and the transference of them through the Hungarian Republic can be restricted only in accordance with an international treaty". Consequently, according to the main rule the overturn of foreign trade is free, but as the emphasis put on 'international treaty' refers to the fact that today the influencing or restricting of foreign trade (through customs, allowances, etc.) can occur mainly by the rules laid down in international law

⁴⁰ *Hungarian Constitution*, Art. 2/A para. 1. last sentence: "(...) these powers may be exercised independently and by way of the institutions of the European Union".

⁴¹ *Hungarian Constitution*, Art. 6. para. 4.

⁴² *Act XXX of 2004* on the promulgation of the Accession Treaty.

⁴³ See Annex X, Section 9 of the *Accession Act* which belongs—as an integral part—to the Accession Treaty promulgated by the Act XXX of 2004. Practically, this 'temporal derogation' affects directly only the Hungarian aluminium imports from Russia, it amounts to saying that three years *moratorium* is allowed to Hungary to find alternative stock sources/exporters *in lieu* of the Russian one (e.g. from a number of countries bounded by bilateral free trade agreements to the EU can be imported customs-free aluminium).

and in the Accession Treaty (and EC law) and not by the autonomy of the country.

5.3 In our foreign trade law, our obligation of modification because of the accession is being dealt with two regulation levels. On the one hand, we had to harmonise our international law obligations of commerce subject with the CCP, and on the other hand, on the level of our national law, namely: our customs law, our foreign trade licensing system, the application of the quantitative measures, and in the imposition of the protective measures, it was necessary to implement some corrections until the end of the accession procedure. In some cases, the obligation could only be fulfilled by deregulation, but in other cases we had to perform a positive legislative task. The particular fields can be surveyed according to the above introduced grouping in the following points.

6. The Harmonisation of our International Treaties with the CCP

6.1 Among the contractual means, it was the multilateral framework, more precisely the WTO–GATT rules that raised several questions concerning our accession. Both Hungary and the Community are founding members of the WTO, consequently both the WTO agreement and its annexes have to be applied, the change had occurred only in the sense of legal techniques.

This legal technical change basically refers to the relationship between the national law and the norms of WTO, since all the obligations originating from WTO membership, for example, the decision of the dispute settlement body today, is not directly embraced by the international law–Hungarian law *forlula*, but it is represented as an obligation through the EC Law, as a special *transmitter medium*. This theoretical problem is one of the controversial questions of the CCP, a lot of monographs and studies deal with this problem. According to the technical literature, there are two major extremes in this question: on the one hand, WTO obligations can be perceived in the relationship between the international law and the EC Law, but on the other hand, there is another view, which is increasingly accepted: the WTO norms access directly onto the level of EC Law norms and assert themselves through a special direct effect.⁴⁴ The answers given to these seemingly theoretical questions have

⁴⁴ This problem is assumed by OTT, A: *GATT und WTO im Gemeinschaftsrecht*. Köln–Berlin–Bonn–München, 1997. Also see Zonnekeyn, G.: EC Liability for Non-implementation of Adopted WTO Panels and Appellate Body Reports. In: Kronenberg, V. (ed.): *The European Union and the International Legal Order: Discord or Harmony?* The Hague,

serious practical consequences, as well: for example, whether it is possible to refer to WTO norms in the processes of the European Court of Justice depends on this factor.

It was indispensable for Hungary—on a multilateral level—to form an identical level concerning the facultative obligations, as well. Thus, our individual commitments to GATT in 1994 could not have been maintained after our accession: for example, we have to adopt the system of the tariff commitments in its entirety. The analyses made before our accession point out that in the case of Hungary and other non-EU member commercial partner countries, it will result in the decrease of the customs level.⁴⁵ However, we have to add that our international trade before the accession—showing one of the highest rates among the candidate countries—was mainly carried out with the member states of the EU; therefore this change of our multilateral level obligations only affected the importers and exporters in their relationship with the third states. Naturally, the change of the average customs level induces demands of compensation; however, the undertakings concerning this do not belong to the competence of the national foreign trade administration, but that of the EU.

At this point, it is useful to mention the commodity agreements. The requirement of the harmonisation emerges in this case as well. According to the practice of the European Court of Justice, the commodity agreements connected with the operation of the UNCTAD belong to the sphere of CCP.⁴⁶ However, there is a difference in the commodity agreements concerning the

251–272.; Royla, P.: *WTO-Recht-EG-Recht: Kollision, Justizialität, Implementation*. Europarecht, 2001/4. and Sander, G.: Zur unmittelbaren Anwendbarkeit der WTO-Abkommen in der europäischen Rechtsordnung. *Verfassung und Recht in Übersee*, 2.

⁴⁵ Ld. Jánoszy, Á.–Meisel, S.: *Magyarország EU-csatlakozásának WTO-összefüggései* [The WTO-aspects of the Hungarian Accession to the EU]. Budapest, 1999. According to calculations based on the year 2001, after the accession, there will be only approximately 1600 higher EU-MFN tariffs than the Hungarian equivalent.

⁴⁶ See ECJ *Opinion*, No. 1/78. Upon a request by the European Commission, the ECJ to give an opinion on the compatibility of the TEC with the Treaty of the draft international agreement on natural rubber which was the subject of negotiations in the UNCTAD, and whether the Community is competent to conclude the agreement in question. See para. 45 of the opinion: “Art. 113 empowers the Community to formulate a commercial “policy” based on “uniform principles” thus showing that the question of external trade must be governed from a wide point of view and not only having regard to the administration of precise systems such as customs and quantitative restrictions.” and para. 63. “(...) The envisaged International Natural Rubber Agreement, in spite of the special features which distinguish it from classical trade and tariff agreements, comes under the commercial policy as it is envisaged in Art. 113 of the EEC Treaty.”

question whether only the EU has the right to become a member of the multilateral agreements, or the member states have this opportunity as well? In the case of the former, the membership of Hungary could not outlast the accession (e.g., the sugar agreement), but in the case of the latter, our accession inferred that we become members in certain commodity agreements, which had not been accepted yet, because of the marginality of the national interest on those fields (e.g., tropical tree agreement).

6.2 Our accession also implicitly affected the bilateral agreements, like the free trade agreement. The reason for this is that the maintenance of these is contrary to the principles of CCP, therefore, they could not remain in force after 1 May 2004.⁴⁷ However, the change here is a question of legal techniques, as well, since for instance, the CEFTA member states having remained outside the present enlargement circle made an association agreement with the EU, thus the only factor that will change is the legal basis of the liberalised trade. However, the change caused some problems in practice. Here, we can refer to the Hungarian–Romanian circulation of commodities which until our accession was regulated by the CEFTA-agreement. Although Romania made an association agreement ('Europe-agreement') with the EU on 1 February 1993 which, regarding the accession, was amended, it has not been reinforced by the European Parliament yet, thus it has not come into force. In the above-mentioned modification, the original preferences of the CEFTA were also included, but because of the duration of the ratification process the present trade is on a normal customs level, it seems to be in a 'vacuum'. This situation—based on the pre-accession customs level—causes considerable damage both to Hungary and to Romania, in the relation, which is one of the highest volume circulations among the CEFTA members. However, this case is a good example for the fact that the Hungarian foreign trade administration is not capable of stepping up, even under the pressure of the national producers, to solve this problem, since it does not possess any direct means for this because of the exclusive competence character of the CCP.⁴⁸

⁴⁷ *Accession Act*, Art. 6. (1): „With effect from the date of accession, the new Member States shall withdraw from any free trade agreements with third countries, including the Central European Free Trade Agreement (...).”

⁴⁸ The Hungarian influence is possible only in an indirect form, like the pressing of the ratification by the Hungarian members of the European Parliament, which was done in this case, see The European Parliament has ratified the extension of the Romanian association agreement. *BRUXINFO* (23. 02. 2005.)

Besides, we can refer to the fact that our member state status resulted our accession to several bilateral trade agreements. Accordingly, Hungary became (and will become) a part of the system of the preferential and other bilateral agreements of the EU. These agreements may come under the following four categories:

a) Firstly, as an individual category the so-called Cotonou Agreement should be mentioned,⁴⁹ to which Hungary (with the other new member states) acceded 'automatically' by the Accession Act as of 1 May 2004.⁵⁰

b) The Agreement on the European Economic Area⁵¹ belongs—technically speaking—to an other group. The new member states can accede under special conditions laid down in Art. 128 of this Agreement.

c) Thirdly, the accession to a number of agreements and conventions shall be agreed by a conclusion of a protocol between the Council, acting unanimously on behalf of the member states, and the third country, countries or international organisation concerned. The Commission have to negotiate these protocols on behalf of the Member States on the basis of negotiating directives approved by the Council, acting in unanimity, and in consultation with a committee comprised of the representatives of member states.⁵² It is particular in these cases that the new member states have to apply the provisions of the agreements at issue, as from the date of accession, and pending the conclusion of the necessary protocols referred above.⁵³ Strictly speaking, it means that the new member states have to implement the provisions of these agreements in their national legal order temporarily.⁵⁴ As a special example the

⁴⁹ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part. The agreement was signed on 23 June 2000 in Cotonou (in the 'administrative'—but non official—capital of Republic of Benin). See *Official Journal*, L 317 (15. 12. 2000.) 3.

⁵⁰ See *Accession Act*, Art. 6. (4)

⁵¹ Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Kingdom of Sweden, *Official Journal*, L 1 (3. 1. 1994.) 3. Hungary will accede prospectively to EEA Agreement in the course of 2005. See The Agreement between Hungary and EEA can be signed in Mai 2005. *BRUXINFO* (12. 04. 2005.) and Decision of the Hungarian Parliament 4/2004. (III. 2.).

⁵² Cf. with *Accession Act*, Art. 6. (2)

⁵³ *Accession Act*, Art. 6. (6)

⁵⁴ Agreements and conventions of this art are in force in relation with the following countries for instance: Algeria, Armenia, Azerbaijan, Bulgaria, Croatia, Egypt, FYROM, Georgia, Israel, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Mexico, Moldova, Morocco,

association agreement between the Community, its member states and the Republic of Turkey can be highlighted, which was amended by a protocol establishing as of 1996 Customs Union. But the extension of this agreement to the new member states could not have hitherto come into force owing to Turkish foreign policy: namely, this act would be interpreted as a *de facto* recognition of the Republic of Cyprus. In spite of this fact, as is to be expected, Turkey will sign the new protocol of the agreement before engaging in accession negotiations on 3 October 2005. Up to that date the system of bilateral free trade agreements between Hungary and Turkey remains in force⁵⁵ in which, naturally, the provisions of the EC Law were implemented before our accession. Namely, the level of the liberalization in the relations of Turkey and Hungary is as the same as after the extension of the Ankara Agreement, and that is the most important difference between the position of the above outlined CEFTA Agreement and the other multilateral agreements concluded before the enlargement. We had to denounce the first one, before accession, but in the relations concerned by the second group of agreements we can maintain the agreement until the conclusion between the 'EU25' and the third country in question.

d) The fourth category consists of agreements concluded formally in the same procedure as stated in the preceding paragraph (c) (the Commission negotiates a protocols on behalf of the Member States on the basis of negotiating directives approved by the Council etc.), but the principal difference is in the legal consequences, i.e. the new member states are not obliged to apply these agreements by way of temporarily transplanting their provisions into the national legal order.⁵⁶ The agreements concluded with Switzerland, Belarus, Chile, China, or the agreement negotiated with the Mercosur countries belong to this group.

Romania, the Russian Federation, San Marino, South Africa, South Korea, Syria, Tunisia, Turkey, Turkmenistan, Ukraine and Uzbekistan. In fact, all of the agreements on textil goods signed by the Community before enlargement belong to this category, *cf.* with *Accession Act*, Art. 6. (7). But we can add that the importance of these textil agreements decreased significantly because of change of the multilateral legal framework at the beginning of 2005.

⁵⁵ See *Act XX of 1998*. On the promulgation of the Free Trade Agreement between Republic of Hungary and Republic of Turkey.

⁵⁶ *Accession Act*, Art. 6. (2)

7. The Harmonisation of Hungarian Foreign Trade Material and Procedural Law and their Framework after the Accession

7.1 By our accession, the logic of the regulation of our foreign trade material and administrative law has utterly changed. This naturally can be derived from the above-mentioned function alteration. The stages of the regulatory process concerning our foreign trade administrative law are the following:

a) On the top level of the hierarchy is the primary legislation of the EU, this way the forming of our foreign trade administration can only happen in accordance with the rules of the primary EC Law. Among the regulations of the primary sources of EC Law (founding treaties, the amendments, attached protocols etc.) the following ones are rather fundamental from the point of view of this field: Art. 23–31. TEC (The Customs Union), Art. 131–135. TEC (Common commercial policy, Customs cooperation), Art. 296–298. TEC (national reservation in certain cases, internal market “safeguard clause” etc.), Appendix IV of Accession Act, para. 5. (the effects of the accession on the customs union), Appendix X (*Ad interim* provisions regarding Hungary), Accession Act Art. 27. para. 1. (Application of customs and customs reduction in the field of the EURATOM) and Art. 37. (provisional safeguard clause).

b) The obligations of the international law (GATT–WTO etc.) are on the second level. However, if these obligations refer to the field that is not regulated by the EC Law, affect the competence of the Hungarian authorities, and by the omission of the next level, namely the EC Law level, they affect directly the Hungarian regulatory level, and hereby the operation of national authorities. It also follows from the rulings of the objective effect⁵⁷ of our new customs act. A similar case can only exist, if the given question does not belong to that central core of the CCP, which substantiates the exclusive competence of the Community, inasmuch as in a case of a norm of the international law is only allowed to oblige the Community and not a member state or a member state body.

c) It is the EC-law that contains the core of substantive law of the customs and the administration of customs, the regulation of the export and import regimes and the common executive regulations.

d) The next level is the national regulatory level, which can be divided into two other levels: e.g., in the case of Hungarian customs law, the central norm

⁵⁷ Act CXXVI. of 2003. On the implementation of Common Customs Code Art. 2. (1): “This act, and the provisions of international treaties having effect in Hungary (...) shall be applied to the subjects not regulated in the Community law (...).”

is the *Act CXXVI of 2003 On the implementation of Common Customs Code* and the implementation regulations belong here, as well.⁵⁸

7.2 As it has already been mentioned, the implementation of the rules and instruments of CCP can occur in diverse ways. There are some instruments, e.g. the international agreements discussed in the section of the contractual instruments, the implementation of which can only take place with the co-operation of community bodies. Contrarily, it is more typical that the implementation of the norms mentioned above is possible by the cooperation of the bodies of the Community and the member state institutions, or it happens exclusively on a member state level. The antidumping measure can be mentioned as an example for the previous one, since the course of the proceedings and the imposition of the antidumping duty belong to the community bodies (Commission, Council). However, the real execution and collection of the antidumping duty happens through the authorities of member states. In the case of the latter, we can mention as a good example the regulation that intends to hinder the marketing of the piratical products, since in this case the execution process happens completely through the member state authorities.

7.3 The harmonisation of the national customs law had already started before the accession negotiations; therefore, the national customs law was able to apply the institutions of the EC Law before our accession. The *Act C of 1995* has been worded according to the Community Customs Code and it deviates from it only in some points, e.g. in the regulations of the customs-free zones. By the accession, the above-mentioned community customs rules, mainly the Community Customs Code, its enforcing regulation and the common tariff possess direct effect, so the pertinent regulations of our customs law and customs tariff had to be overruled.⁵⁹ Besides, the transformation of the organisation system of the customs administration has begun earlier, as well. In this process, the

⁵⁸ E.g. processual frameworks of *ex-post* controlling, warehousing system, the interpretation of the customs tariffs etc.

⁵⁹ The above-mentioned pre-accession analysis concluded that the reception of the common customs tariff results in the decrease of 5500 customs items and the increase of 1600. However, it was already obvious at that time that it would not considerably affect the export-import rates, since the latter was mostly realized in the direction of the member states of the EU. This was determined before our accession—primarily among the industrial commodities—by the free trade commissions of our association agreement, in relation to which this way our integration to the internal market did not result in any considerable position change.

sources provided by the PHARE tenders, and the participation in other programs financed by the European Commission, also helped.⁶⁰ In accordance with this, our new customs act⁶¹ was accepted by the Hungarian Parliament at the end of 2003, the most fundamental aim of which was to insure the functioning of the unified internal market and the implementation of the community customs law. The area of application of the act expands to the territory of the Republic of Hungary and the proceedings of customs offices established abroad. The technique of regulation follows the well-settled method of other member states; namely, it attaches the national executive procedure norms directly to certain provisions of the Customs Code.⁶² This means that it explicates some commissions of the Community Customs Code, and if it is possible, it determines some complementary regulations (e.g. the caritative usage of the to-be-abolished commodities).

The realization of the rules of the community customs law and the national implementation rules occur through the organisational system of the *Customs and Excise Guard* (CEG).⁶³ The role, the operation and the organisational system of the CEG is determined in the *Act XIX of 2004*. The elements among the scope of duties that are in closer relation with the implementation of the CCP are the following:

- the customs control of the circulation of commodities and passengers through the customs borders, the imposition and collection of the non-community charges and duties in connection with the customs process and the customs dues;
- directly or indirectly – in a certain special circle–the examination of the identity of goods (quality, classification according to tax rules) and the examination of the fact whether or not the examining process have taken place;
- the customs and statistics oriented checking, correction, registration, totalizing, data processing and deliverance of the data of the customs documents;

⁶⁰ E.g. a project, directly supported by one the European Commission which advances the connectivity of the informatic systems and the accession of them into the European systems of the Hungarian customs management.

⁶¹ *Act CXXV of 2003*. On the implementation of common customs law.

⁶² The subsidiary background norm to-be-applied is the *Act IV of 1957* On the general rules of the administrative procedures.

⁶³ 'Vám- és Pénzügyőrség' in Hungarian.

- the fulfilment of the taxing, controlling and post-controlling tasks determined by customs, tax and other legislations.⁶⁴

7.4 The transformation of the export and import regime happened according to the logic of the customs administration concerning our accession. The import and export rules of the Community as the elements of the CCP of exclusive character prevailed directly after 1 May 2004.

Within this field the most important segment is the sphere of commercial defensive devices, which directly affects the Hungarian market, as well. Since the gaining of membership, the more or less 140 protective measures (anti-dumping and countervailing duties) of the Union that are in force against third states function as a 'protective shell' around the Hungarian market, as well.

The transformation of the licensing administration happened in connection with the implementation of the export and import regime. As a successor of the Licensing and Administrative Office of the Ministry of Traffic and Economy the *Hungarian Commercial Licensing Authority* (HCLA) was created⁶⁵ as a central office possessing a nationwide competence. The most important part of its activity—in relation to our topic—is the fulfilment of the import and export licensing tasks referring to certain goods or countries and being derived from the community law and the international economic agreements. To make it clear, besides the customs authorities the HCLA is the executive basis of the CCP. Relating to the implementation of the CCP, as its most fundamental competence, it fulfils the import and export licensing tasks referring to the implementation of the restrictions and those referring to certain goods or countries and being derived from the EU Law, the international economic agreements and separate legislation. However, it also operates the licensing order on fields that only partly belong to the CCP (the foreign trade of the dual-use products and technologies⁶⁶) or do not belong to it at all (e.g., the trade of certain military engineering, the prohibition of chemical weapons). Though it does not belong to our topic closely, it is worth mentioning that the HCLA accomplishes

⁶⁴ See *Act XIX of 2004* Art. 2. Besides the tasks enumerated above, the CIG exercises other—in our examination not relevant—types of powers, e.g. implementation of the common agricultural policy, investigation authority in revenue tax cases, completion of other international cooperative tasks etc.

⁶⁵ *Governmental Decree* No. 36/2004. (III. 12.). On Hungarian Commercial Licensing Authority.

⁶⁶ *Governmental Decree* No. 50/2004. (III. 23.). On Licensing of the foreign trade of the dual-use products and technologies.

authorial registration tasks and functions as a permissive authority regarding certain internal and foreign economic affairs.⁶⁷

It is the *Governmental Decree No. 110/2004. (IV.28) on Export and Import of Commodities, Services and Rights Representing Material Value* ('licensing decree'–LD) that created the harmonised frames of the licensing order. This LD does not use the expression 'foreign trade' any more, since the more comprehensive notion of 'trade' both refers to the internal market-oriented–this way it does not cross the common customs borders–import and export.

The force of LD affects the following fields:

a) Commodities, services and rights representing material values, which means that

- export to other member states of the EU crossing the border of the Republic of Hungary, or its import from the other member states. In the case of certain commodities, the same rules are valid to the contracting countries of the so-called European Economic Area as to the member states;⁶⁸
- export to countries outside the EU crossing both the frontier of the Republic of Hungary and the common customs frontier, or its import from such countries;
- the transition of it through the Republic of Hungary.

b) Enterprising export and import.

The circulation licence and the function licence belong to the force of LD, according to the previous practice. It is the obligation of request for licence that is–directly and occasionally–attached to the affair of the export, import or transit of the commodities in the case of circulation licence. However, in the case of a function licence obligation, the import, the export or the transit cannot be carried out without a function licence.

The circulation licence commodities can be classified into the following two groups:

- The export⁶⁹ of certain commodities from the territory of the Republic of Hungary (including re-export) to such countries that are not members of the EU, or the import⁷⁰ of these goods from those non-member countries. The commodities belonging to here e.g., the pyrotechnical devices (gun-

⁶⁷ E.g. the licensing of public depositories, of acquirement of timeshare properties, enrollment of some activities (tour operators and guides etc.).

⁶⁸ Besides the 25 member states, Norway, Iceland and Liechtenstein.

⁶⁹ See LD Appendix 2 (a).

⁷⁰ See LD Appendix 2 (b).

powder, fireworks), safety equipment (bullet-proof waistcoat, gas mask), and goods that are doubly dangerous to public safety and certain fire-arms that are permitted for civil usage.

- The export of certain goods from the territory of the Republic of Hungary (including re-export) in any sort of relations, and in any respect, the import of these goods into the territory of the Republic of Hungary and this transport⁷¹ through country (certain pyrotechnic devices and services and e.g. the special safety paper that is used for printing money).

There are some sorts of activities that can only be performed by possessing a function licence,⁷² e.g. in connection with certain radioactive materials, pyrotechnics, certain fire arms, with doubly dangerous-classified devices, with military engineering-defence technology and definite commercial activities related to safety papers.

The LD contains the sanctions of the violation of the licence obligation, as well. According to this, the issue of the licence can be denied and the issued licence can be withdrawn, if

- the functioning of the entitled of the licence is contrary to the law or any other rule, including the regulations of the EU,
- the circumstances at the time of the issue have been altered in a way that the denial of the petition would be appropriate and the licence does not fulfil the regulations determined in this order or the conditions determined in the permission,
- the petitioner reported unrealistic data,
- the petitioner does not possess the necessary official licence.

Nevertheless, any sort of foreign trade activity without an official licence can be considered to be a crime, since according to the *Act IV of 1978 on the Criminal Code* Art. 298 (“Foreign Trade Activities without Licence”), the person, who engages in foreign trade activities subject to licence without a licence, or exports or imports goods without a licence for exportation or importation, commits a felony, and shall be punishable with imprisonment of up to three years. Although the elements of the crime have been mitigated in 1993, but the seriousness of the sanction still conjures up the pre-1990 period when the foreign trade activity was a state monopoly.

Besides the CEG and the HCLA there are more organisations and institutions that have a role in the implementation of the devices of the CCP. In a

⁷¹ See LD Appendix 2 (c)

⁷² See LD Appendix 3.

wide sense of implementation, the role of the Hungarian legislative authorities can be taken into consideration when the issue of national law is also necessary to the appropriate transposition of the CCP. Besides, there are a lot of co-operating authorities which – during the implementation process – help the job of certain institutions as subsidiary authorities, or their initiation into the proceedings is indispensable. Thus, in the licensing process of certain goods the preliminary agreement of the *National Headquarters of the Police*, the preliminary opinion of the *Expert's Institute of the National Security Service*, or the opinion of the *Hungarian Financial Supervisory Authority* and the *National Bank of Hungary*. The aspects of certain military products are elaborated by the *Interministerial Committee on Foreign Trade of Military Technology* which is composed of the representatives of certain Ministries.

8. Closing Remarks

Consequently, it is obvious that the commercial policy authority of the EC is exclusive, as a general rule, any national legislation cannot be executed and in the moment of the entry into force of the accession treaty, the complete CCP legal material is gradually constructed on the national law and order in a determinant way. The Hungarian foreign trade administration is the indirect and internal executor of this commercial policy law material.

Before our accession to the EU, the importance, the scope for action of the foreign economic policy and, consequently, the ability to enforce interests of Hungary was rather negligible (e.g., if we consider the regional tension—e.g. Hungarian-Polish relations—which had not been resolved within the framework of the CEFTA). From this point of view, our accession to the EU might even be advantageous, since the central factor in our ability to enforce interests against the third states is the Union. However, the aim of the EC is not to create a ‘pan-European-like view’ on its own, beside its autonomous intention, but these ambitions—thanks to the decision-making mechanism of the CCP—can be directly traced back to the intentions of member states.

Therefore, that is what the foreign trade administration and diplomacy have to recognise, and stand up—within the framework of the decision-making procedures of the Community—as an initiative canalizing and enforcing the interests of the Hungarian producers and other market participants in all cases, when any kind of intervention is necessary in the relation of the third states.

Naturally, it can be derived from the character of certain devices of the CCP that not only the foreign trade administration, but also the market participants

need to observe the processes affecting them more actively, and they have to take the opportunity and initiate the launching of these processes at the European Commission in cases when the conditions of application of directly applicable common devices (anti-subsvention and antidumping procedures, trade barrier regulations) prevail. However, to reach this, a more active maintenance of the relationship between the national market participants and the representative organisations of certain common branches of industry is essential (e.g., EuroFer, COLIPA, COTANCE); the success of the action can only be assured in this manner.