

BRIEF CONSIDERATIONS ON THE TRADE RELATIONS BETWEEN ROMANIA AND THE EUROPEAN UNION AFTER 1989

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Abstract

In 1980, a Trade Agreement was concluded between the European Community and Romania. This Agreement was then suspended by the Community because of human rights violations during the communist regime. After a failed debut in 1990, Romania's relations with the EU found gradual improvement. In 1991, the Commerce and Cooperation Agreement came into force; it was replaced by the Interim Agreement, which was, in turn, replaced, on 1 February 1995, with the Europe Agreement. These are the three great moments that have marked the evolution of the relations between Romania and the EU, moments which we characterize briefly below.

Keywords: *Trade Agreement; European Union; trade relations; Romania.*

1. Introduction

After the fall of the Berlin Wall, the collapse of the USSR and the breakup of Yugoslavia, the CMEA ceased to exist. The consequences of the disappearance of that organization resulted in the fact that in Eastern Europe, the trade was no longer subject to administrative measures and no longer took place within an integrated market, turning into international trade, conditioned by market forces, practices, and legal rules of world trade. Given that reality, Romania had to turn to a market economy and to European integration, along with other countries in Central and Eastern Europe. Given the fact that Romania's economic system based until 1989, on centralized planning, was about to radically change, it was necessary to renegotiate the Protocol from 15 October 1971 on the accession of Romania to the General Agreement on Tariffs and Trade (GATT)¹ because “it was based on quantitative commitment, and by eliminating the centralized planning in the Romanian economy (...), compliance with the obligation assumed by Romania (...) became practically impossible”². It is interesting that, from legal point of view, “GATT was a simplified agreement “run by an interim commission”³. Therefore, states that acceded to the Agreement were not becoming GATT members, but “contracting parties”.

The renegotiation process was developed in parallel with the implementation of the Uruguay Round⁴, at the end of which the World Trade Organization (WTO) was formed. In that situation, Romania, as part of the GATT, became a founding member of the WTO.

We consider that our membership in the WTO has naturally influenced the trade policy of our country after 1989. In this regard, we take into consideration the possibility of concluding a series of economic agreements, of which the most important, in our opinion, is the European Agreement of Romania's Association to the European Communities.

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¹ Published in the Official Gazette no. 9 of January 27, 1972.

² Adriana Giurgiu, “Comerțul intraeuropean. O nouă perspectivă asupra comerțului exterior al României”, Economic Publishing House, Bucharest, 2008, p. 181.

³ De Grégoire Bakandéja wa Mpungu, *Le droit du commerce international: Les peurs justifiées de l' Afrique face à la mondialisation des marchés*, Afrique Editions, Kinshasa, 2001, p 15.

⁴ For details on the rounds of multilateral trade negotiations (1947-1993).

2. Romania and the European Communities

Diplomatic relations between Romania and the European Communities were resumed in 1990, and resulted in the signing of the Agreement between Romania, on the one hand and the European Economic Community and the European Atomic Energy Community, on the other hand, on trade, and commercial and economic cooperation⁵.

In 1993, the Interim Agreement on trade and trade -related matters between Romania, on the one hand, and the European Economic Community and the European Coal and Steel Community, on the other hand⁶, was signed in Brussels. That Agreement replaced the one signed in 1990.

It is easy to notice that the most important Agreement signed by Romania with the European Community after 1989 is, in our opinion, the European Agreement establishing an Association between Romania, on the one hand and the European Communities and their Member States, on the other hand⁷, signed in Brussels, on February 1st, 1993.

Under Article 1 of the Agreement, the objectives of that association between Romania and the Community were the following:

- ensuring an appropriate framework for political dialogue between the parties ;
- promoting the development of trade and harmonious economic relations between the parties, supporting, thus, the economic development of Romania;
- ensuring the prerequisites for economic, social and cultural cooperation;
- supporting Romania's efforts to develop the economy;
- completing the transition to a market economy and strengthening the democracy and
- creating the necessary institutions to concretely achieve that association;
- providing a framework for the gradual integration of Romania in the Community. The Agreement was concluded on an indefinite period and can be terminated unilaterally by either party; when reaching the six months from the notification to the other party, the Agreement will cease to have legal effect.

With the entry into force of the European Association Agreement, on February 1st, 1995, conditions for the following aspects were created:

- Romania's participation to the structured dialogue EU - associated countries at all levels;
- improving the access of Romanian products on the Community market by aligning, from January 1st, 1995, our country to the liberalization timetable applied to Poland, Hungary, Czech Republic and Slovakia;
- including our country in projects aimed at expanding and developing trans-European infrastructure networks (transport, communications, energy) and
- Romania's participation to various Community programs (culture, research, education, training, youth, energy, environment and small and medium enterprises).

Regarding the **movement of goods**, the Agreement "contained detailed provisions on trade policy measures, namely: customs duties and direct quantitative restrictions"⁸. In that sense, the Agreement established several measures regarding the normal functioning of mutual trade flows. Among them, we can mention the following:

- internal taxation, regulated in article 27. The article stipulates for the parties' commitment not to adopt and enforce national legal rules in the taxation area which, would directly or indirectly, favor its own products over those originating from the other party;

⁵ Ratified by Law no.23/1991, published in the Official Gazette of Romania, Part I, no. 51 of 15 March 1991.

⁶ Ratified by Law no.16/1993, published in the Official Gazette of Romania, Part I, no. 66 of 30 March 1993.

⁷ Ratified by Law no.20 /1993, published in the Official Gazette of Romania, Part I, no. 73 of 12 April 1993.

⁸ Mirela Diaconescu, "Asocierea României la Uniunea Europeană. Implicații economice și comerciale", Economic Publishing House, Bucharest, 2003, p. 200.

- procedures for conducting public procurement. Under article 68, companies in Romania have access to public procurement carried out according to Community rules, under the same conditions as those applicable to companies, situation that occurs within the Communities. In turn, Romania had to offer the same treatment to companies in the Communities, the latest, at the end of the transitional period provided in the Agreement (31 December 2002);

- the setting up and enforcement of standards and technical, sanitary and phyto-sanitary, veterinary, packaging and labeling regulations etc. Although this aspect is not expressly covered in the Agreement, it results from its economy that both Romania and the European Community and its Member States are contracting parties to the agreements concluded in the Uruguay Round, on the application of sanitary and phyto-sanitary measures and technical barriers to trade⁹. In this regard, we remind the fact that the Agreement provided the progressive and asymmetric creation of a free trade area, within a period of nine years divided into two successive stages of 5, respectively 4 years each. It is important to note that that provision was in full compliance with Article XXIV of GATT on the achieving of a free trade area;

- customs formalities. This aspect too is not expressly covered in the Agreement; however, it should not be overlooked that both parties to the Agreement, are also parties to the agreements of the Uruguay Round on customs evaluation and inspection before delivery.

Since January 1st, 1996, under the principle of asymmetry of the European Agreement, the EU has proceeded unilaterally to bringing forward the liberalization of trade in Romania, by eliminating tariff and non-tariff barriers to imports from Romania. Romania had to eliminate, in turn, those obstacles in the second stage. We mention that “in the period 1997-2001, an increase in the value volume of export of Romania in EU member states is recorded, i.e. from 4768 million in 1997 to 7720 million in 2001. In 1997, Romania's exports to the EU countries represented 56.6 % of its total exports, while in 1998, they were of 64.5 %, in 1999 of 65.5%, in 2000, of 63.8%, and in 2001 of 67.8 %¹⁰.

As mentioned, the main objective of the Agreement referring to trade was to achieve a free trade area between the contracting parties, by eliminating all tariff and non-tariff barriers to trade. During more than 10 years, the parties of the European Association Agreement had to mutually enhance, different types of concessions, such as: “the reduction or abolition of customs duties or charges having equivalent effect, the reduction of various levies and moveable element for some agricultural products; the gradual abolition of quantitative restrictions or of measures having equivalent effect to them”¹¹. In order to establish those concessions and furthermore, to implement them, the Agreement divided products into two categories, namely: industrial and agricultural products. The industrial products, in turn, were also divided into two categories: textile and steel products, on the one hand and industrial products, other than textiles and metals, on the other hand. Regarding the concessions granted by the European Community for textile products, they were included in Protocol no. 1 of the Agreement. To a careful analysis of the Protocol, we notice the following: all textile products of Romanian origin, imported into the Community, 6 years after the entry into force of the Agreement, were fully exempted from customs duties; economic operators benefited from the gradual reduction of customs duties; from the date of entry into force of the Agreement, Romanian products were imported into the European Community with customs duties reduced by 2/7, and after three years, they have been annually reduced by 1/7.

⁹ According to Mirela Diaconescu , *op. cit.*, p. 200.

¹⁰ Octavian Gh. Botez, Madalina Militaru, “Comerțul internațional și comerțul exterior al României”, 3rd edition, Publishing House of Romania de Maine Foundation, Bucharest, 2006, p. 103.

¹¹ *Ibid.*, p 204.

In the steel sector, Romanian steel products were imported into the Community with a 20% reduction of customs duties, since the entry into force of the Agreement. Subsequently, after a period of six years, the customs duties were, finally abolished.

For industrial products other than textiles and steel products, the concessions granted to Romania, by the Community, under the Agreement were the total abolition, for more than 90 % of those products, of customs duties existing at the entry into force of the Agreement and the suspension of customs duties for about 5% of the products included in the combined Nomenclature, originating from Romania, within some quantitative limits.

Regarding Romania and the regime offered for the import of industrial products from the European Community, there are 3 types of concessions, as follows: for a number of products that our country did not manufacture, Romania had to eliminate customs duties since the entry into force of the Agreement; for another group of complementary products, Romania would gradually eliminate the customs duty in the first five years, according to a schedule established by the Agreement¹²; for a group of products that needed protection from the entry into force of the Agreement, the customs duties were reduced, in several phases¹³.

The European Association Agreement provided the legal and institutional framework for the Romanian - Community relations aiming fundamentally at preparing Romania's accession to the European Union.

According to the Agreement, the following joint bodies were created, at governmental and parliamentary level: the Association Council¹⁴, the Association Committee¹⁵ and the Parliamentary Committee of Association¹⁶.

In accordance with the Agreement provisions, at the annual meetings of the EU - Romania Association Council, the Association Committee and Sectoral Association Subcommittees, issues such as the implementation of the Agreement provisions and developments in the preparation of the accession were analyzed.

According to the provisions of the Agreement, the Association Council supervised the implementation of the Agreement. The Association Council was meeting, at ministerial level, once a year and also whenever needed. Its main task was to examine any major issues which arose in the Agreement and in other bilateral or international issues of mutual interest. The Council was made up of members appointed by the Government on the one hand, and members of the Council of the European Union and the European Commission, on the other hand. Members of the Association Council could decide to be represented, in accordance with terms of the rules of procedure. The Council established its own rules of procedure. The Presidency of the Council was provided, in turn, by a member of the Romanian Government and a member of the European Union, in accordance with provisions of the rules of procedure. The European Investment Bank (EIB) could also participate to the work of the Association, as an observer. In order to achieve the objectives of the Agreement, the Council was entitled to take decisions on matters specifically provided in the Agreement. The decisions taken were binding only on the parties. They were obliged to take all necessary measures in order to concretize the decisions taken. In carrying out its duties, the Board, in addition to taking decisions, could also make recommendations. The Council's responsibilities included also the dispute settlement. Thus, any of the two parties could submit to the Council, any dispute concerning the application or interpretation of the Agreement. The dispute was settled by a decision of the Council. Parties were obliged to take the necessary measures to

¹² To 80 % at the entry into force of the Agreement, to 40% after 3 years and 0% after 5 years.

¹³ At the end of the third year, after the entry into force of the Agreement, the application of a fee equaling 80% of the tax base, reducing it gradually to 60 % at the end of the fifth year, to 50 % at the end of the sixth year, until the abolition of the tax at the end of the ninth year of transition (Source: Mirela Diaconescu, *op. cit.*, pp. 205-206).

¹⁴ Article 106 of the Agreement.

¹⁵ Article 110 of the Agreement.

¹⁶ Article 112 of the Agreement.

comply with the decision. Where it was not possible to solve a dispute in accordance with the foregoing, each party could notify the other of the appointment of an arbitrator. The other side had at its disposal two months, during which it had to appoint a second arbitrator. For that procedure to be applied, it was considered that the EU and Member States constituted a single part. In its turn, the Association Council called a third arbitrator. The arbitrators' decisions were taken by majority of votes. Each party involved in the dispute had to take the necessary measures to comply with the decision of the arbitrators.

In carrying out its duties, the Association Council was assisted by an Association Committee. Thus, under the Agreement, the Committee was composed of representatives of the Government of Romania, on the one hand, and representatives of the Council of the European Union and members of the European Commission, on the other hand, and they usually were senior officials. By its rules of procedure, the Association Council established the responsibilities of the Association Committee. Among these, we mention the preparation of meetings of the Association Council and the functioning of the Committee which had an important place. The Association Council had the capacity to delegate to the Association Committee, any of its prerogatives. In that case, the Association Committee took its decisions in accordance with the conditions specified in the Agreement.

Also, under the Agreement, a Parliamentary Committee of Association was set up. The Committee was a forum in which members of the Romanian Parliament and the European Parliament could meet and exchange ideas. The Committee used to meet at intervals self-established (usually quarterly). The Parliamentary Committee of Association comprised members of the Romanian Parliament, on the one hand, and members of the European Parliament, on the other hand. The Committee established its own rules of procedure. The presidency of the Committee was provided, in turn, by the Romanian Parliament and the European Parliament in accordance with provisions established by its rules of procedure. The Parliamentary Committee of Association could request information regarding the application of the Agreement by the Council of Association, information which in that case was delivered. Committee meetings ended with the adoption and signing of a final document, as recommendation and that document had political value.

In February 2000, on the initiative of both parties, a Joint Romania-EU economic and social Committee was formed with an advisory role for the EU- Romania Council of Association.

Creating joint bodies had as purpose, facilitating the communication and political dialogue at parliamentary and governmental level, between Romania and the European Communities.

In parallel with the European Agreement of Association, Romania began negotiations with countries of the European Free Trade Association (EFTA)¹⁷ to become part of the Free Trade Agreement. To a careful analysis of the two agreements, we observe that they contained similar provisions, and tariff concessions were the same. The main differences aimed at including concessions concerning industrial products, on different lists. Regarding the agricultural products, it should be emphasized that, "while transformed agricultural products were negotiated in the EFTA, concessions for basic agricultural products were the object of bilateral agreements concluded with each EFTA state"¹⁸.

In 1995, on June 22, our country applied for EU membership. Two years later, in accordance with provisions of Art. O of the Treaty of Maastricht and, at the request of the Council, the Commission prepared an opinion on Romania's application for membership and

¹⁷ Law no.19/1993 ratifying the Agreement between Romania and the European Free Trade Association (EFTA) and bilateral agricultural arrangements referred to in the Agreement, signed in Geneva on 10 December 1992, published in the Official Gazette of Romania, Part I, no. 75 of 16 April 1993.

¹⁸ Adriana Giurgiu, *op. cit.*, p. 191.

the opinion was published on 16 June 1997, in the Agenda for 2000¹⁹. In preparing that document, the Commission applied the criteria set in the meeting of the European Council in Copenhagen, in June 1993, namely:

- the political criterion which aims at the stability of institutions guaranteeing democracy, the rule of law, human rights, minority rights and their protection;
- the economic criterion which refers to the existence of a functioning market economy and to the capacity to cope with competitive pressure and market forces in the Union and
- the criterion of the Community/ European Union acquis and of the administrative capacity; this criterion refers to the ability to assume the obligations of EU member, among which the accession to the purpose proposed by the political, economic and monetary Union.

Romania's capacity to assume the acquis was evaluated based on several indicators, namely:

- the obligations set out in the European Agreement of Association, particularly those relating to the establishment of companies, national treatment, free movement of goods, intellectual property and government procurement;
- the implementation of measures envisaged in the White Paper²⁰, essential for the Single Market and
- the progressive transposition of other parts of the acquis.

A decision on these three groups of criteria depends also on the potential of administrative and legal systems of a country to implement the principles of democracy and those of the market economy, and also to apply and implement the acquis.

According to the considerations contained in the Opinion of the Commission, the executive in Brussels believed that: "negotiations for Romania's accession to the European Union will be open as soon as there will be significant progress in the fulfillment, by Romania, of EU membership conditions so as defined by the European Council in Copenhagen".

According to the same Opinion of the Commission, "the enhanced pre-accession strategy will help Romania to be better prepared to fulfill the obligations arising out of the membership and to act in order to do away with deficiencies identified in the Opinion".

On August 1st, 1996 came into force the Additional Protocol to the European Agreement establishing an Association between Romania, on one hand, and the European Communities and their Member States, on the other hand²¹, signed on 30 June 1995. Under Article 1 of the Protocol, "Romania may participate in the FPs, specific programs, projects or other Community actions in the fields of research and technological development, information services, environment, education, training and youth, social policy and health, consumer protection, small and medium enterprises, tourism, culture, audiovisual sector, civil protection, trade facilitation, energy, transport and the fight against drugs and drug addiction.

On July 25, 1996, Romania's response to the European Commission's questionnaire on the preparation of the opinion on the application for EU membership was filed in Brussels.

The conclusion and entry into force of the European Agreement of Association made possible the accession of our country to the Central European Free Trade Agreement (CEFTA), in 1997. The Czech Republic, Poland, Slovakia and Hungary were the founders of CEFTA which was signed on 21 December 1992 and entered into force on 1 January 1993. The objective of the Agreement was to facilitate intraregional trade and economic cooperation and thus, to support the economic development of the participating countries. By setting, as objective, a free trade area, the Agreement was considered as a legal tool that contributed to

¹⁹ COM (97) 2000.

²⁰ Cited above.

²¹ Ratified by Law no. 41/1996, published in the Official Gazette of Romania, Part I, no. 112 of 31 May 1996.

preparing the participating countries for their accession to the European Union. The appropriate argument to support this idea is that according to which the Central European Free Trade Agreement was accessible only to those states that had already concluded an Agreement with the EU, from which it resulted their quality of associated state of the Union. Subsequently, CEFTA was extended by the inclusion of Slovenia, Romania²², Bulgaria and Croatia²³.

Further, we note that in 1998, the European Commission prepared and submitted the Report on the progress of our country concerning our candidacy to the European Union. In the second Report, published in October 1999, the European Commission recommended the opening of accession negotiations with Romania, conditioned, however, by two issues: improving the situation of children in institutions and developing a medium-term strategy for solving this problem.

The European Council from December 1999, reunited in Helsinki, decided to start, *de jure*, the accession negotiations with our country. However, *de facto*, they started, on 15 February 2000. The negotiations were long and complex, involving a series of serious institutional, economic and social reforms. Referring to negotiations with the European Union in areas of interest for our approach, we make the following clarifications:

- according to the position Paper²⁴, Romania accepted the Community acquis on Chapter 1 - Free movement of goods, in force on 31 December 2000 and did not request transition periods or derogations, stating that it would fully adopt the Community acquis, at the date of accession. Romanian legislation in the field was, mostly, compatible, with components of the Community acquis and the full alignment with EU regulations would occur no later than at the date of accession. The alignment with the Community acquis concerned, mainly, the statistical licensing system and certain measures restricting the export of logs and the import of second-hand goods;

- regarding the common commercial policy, Romania had to make its goals and positions compatible with the ones of the European Union within the World Trade Organization. At the same time, the bilateral trade agreements concluded with third countries should not contain provisions diverging from those of the European Union;

- concerning the customs union, Romania fully accepted the Community acquis in force on 31 December 1999 and did not request any transition period or derogation, stating that it would be able to fully implement the acquis, at the date of accession²⁵. From the point of view of Romania's position as a candidate, customs union negotiations included not only the adoption of the acquis, but also demonstrated the operational capacity of the customs administration in areas such as: the full implementation of computer applications for customs services to ensure the proper implementation of the acquis, the implementation of measures to reduce waiting times at the border, measures for the protection of copyrights and industrial property rights, measures to combat economic crime, to improve internal coordination within the customs administration, as well as between the administration and other institutions responsible with law enforcement (police and judicial authorities) and the adoption of legal and institutional measures necessary to ensure the collection and control of EU revenue and to efficiently manage the common agricultural policy²⁶.

²² Law no. 90/1997 ratifying the Agreement deciding Romania's accession to the Central European Free Trade Agreement (CEFTA), Krakow, December 21, 1992, signed in Bucharest on 12 April 1997, published in the Official Gazette of Romania, Part I, no. 108 of 30 May 1997.

²³ Grigore Silasi, Philippe Rollet, Nicu Trandafir, Ioana Vădăsan, "*Economia Uniunii Europene: o poveste de succes?*" Universitatea de Vest Publishing House, Timisoara, 2007, p 342.

²⁴ [http://www.clr.ro/menu1/Capitole % 20negociere/CAP01-DP.pdf](http://www.clr.ro/menu1/Capitole%20negociere/CAP01-DP.pdf).

²⁵ According to the position paper for Chapter 25 - Customs Union ([http://www.clr.ro/menu1/Capitole % 20negociere/CAP25-DP.pdf](http://www.clr.ro/menu1/Capitole%20negociere/CAP25-DP.pdf)).

²⁶ For details, see ***, "*Politica privind comerțul și dezvoltarea*", the European Institute from Romania, Bucharest, 2005 (http://www.ier.ro/documente/formare/Comert_si_dezvoltare.pdf).

The formal conclusion of the accession negotiations in December 2004 marked a new stage in the evolution of the accession process. Thus, since December 2004, Romania started formalities for drawing up the Accession Treaty. On 22 February 2005, the European Commission gave a positive opinion to signing the Accession Treaty with Romania, followed by the assent of the European Parliament, on 13 April 2005. The Accession Treaty was signed on 25 April 2005.

With the accession of Romania to the European Union, on January 1st, 2007, the European Association Agreement ceased to have effect. Also at that time, our country renounced at the quality of state party to CEFTA, and the Free Trade Agreement with EFTA countries was renegotiated.

3. Conclusions

In conclusion, the legal instrument that marked the trade between Romania and the European Union was the European Association Agreement, which aimed at achieving a free trade area for industrial products by the end of 2001, and at adopting strict competition rules, to eliminate trade distortions through unfair and anti-competitive practices.

Through its content, the Agreement was preferential and its application led to the gradual liberalization of trade between the parties, under a schedule. In that context, any other international legal instrument that Romania would have wanted to be part of, had to be reported, including to the objective of our country, namely the accession to the European Union, and that because, once the European Association Agreement entered into force, Romania acquired the EU membership. As shown, the acquisition of this membership has helped also to becoming member state of CEFTA and EFTA partner.

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