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**THE EUROPEAN UNION  
AND CENTRAL AND EASTERN EUROPE:  
PRE-ACCESSION STRATEGIES**

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SEI WORKING PAPER NO. 15

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First published in 1996  
by the **Sussex European Institute**  
University of Sussex, Arts A Building  
Falmer, Brighton BN1 9QN

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## **Acknowledgements**

This paper draws on research projects being undertaken in the Sussex European Institute supported by funding from the ESRC Single European Market initiative (grant L113251007 to Peter Holmes and Alasdair Smith, grant L113251029 to Helen Wallace and Alasdair Young) and from the University of Sussex research development fund (supporting the research of Ulrich Sedelmeier and Edward Smith). Generous financial support from the Foreign and Commonwealth Office for the writing of this paper is gratefully acknowledged. We have benefited from the comments of Richard Portes, Bill Stow, and Alan Winters.

## **Summary**

In May 1995, the European Commission produced a White Paper on 'Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union', and the Madrid European Council in December 1995 moved towards setting out a timetable for accession negotiations with the central and eastern European countries (CEECs) which are applying for membership in the European Union (EU).

Drawing on several current research projects in the Sussex European Institute, this paper discusses the issues raised by the extension of the EU's single market to the CEECs and the relationship between the 'pre-accession strategy', of which the White Paper is a central element, and the accession itself. We pay particular attention to the lessons of previous episodes in the history of the Union – the '1992' programme, the European Economic Area (EEA), and the negotiation of the Europe Agreements (EAs) with the CEECs.

The White Paper sets out lists of matters which have to be dealt with by the CEECs as they integrate into the internal market and prepare for accession, but the decisions about priorities and speed are explicitly left to the CEECs to make. While at first sight this may seem permissive, in reality the CEECs are implicitly being required to take on obligations in advance of accession negotiations, while the EU side is absolved from matching commitments.

One lesson of the '1992' single market programme is the need to build political support for economic liberalisation, both in the member states and in the CEECs. Although in the long run the CEECs stand to gain from aligning their regulations with those of the EU, benefits must be evident in the short term if the CEECs are to embrace the pre-accession strategy as the way forward. The most problematic areas are social and environmental policy. Some harmonisation of environmental rules may be needed to prevent different regulatory standards acting as barriers to trade. In general, however, harmonisation of process regulation is not necessary to the functioning of the single market or of a customs union, and premature

harmonisation could damage the competitiveness of the CEECs. The issue of whether the politics and economics of the single market are compatible with allowing substantial derogations from process regulation for CEEC accedents is one of the central issues of the eastern accession, and it should be addressed in accession negotiations not foreclosed in the technical Annex to the White Paper.

The model of the EEA seems to offer a way forward by allocating legal rights at the level of economic operators, eliminating EU anti-dumping measures and countervailing duties, and limiting the use of safeguards. However, the difficult negotiation of the EEA clearly demonstrated the limits of the EU's flexibility. From an early stage, the supposed unlimited market access that the EEA would offer was made conditional on the full acceptance of internal market legislation by the EFTA side, and the two thousand pieces of Community legislation annexed to the final EEA Agreement are a sobering reminder of the EU's requirements. The same reluctance of the EU to enter into reciprocal obligations with non-members is explicit in the White Paper.

The negotiation of the EAs shows how difficult it is for the EU's policy-making process to rise above the political economy of sectoral interests, even when matters of the highest geo-political importance are on the agenda. Political control can be asserted, as in the revision of policy announced at the Copenhagen European Council of June 1993, but sustaining the momentum proves more difficult, since on each sectoral issue generosity is vulnerable to erosion under pressure from EU-based interests.

The experience of the EAs and of the EEA, the way the White Paper embraces a number of issues that should not be on the pre-accession agenda, the reluctance of the EU to admit to reciprocal obligations with respect to contingent protection, all point to the need to push the process forward in a way that generates a reciprocal response from the EU side to actions taken by the CEECs. The political economy of the EU argues for moving as fast as possible from sectorally dominated regulatory issues, where progress can be slow (as shown by the EEA negotiations), to accession negotiations, where political control is stronger, and swift deals can be made to overcome the stumbling blocks (as in the EFTA accession). There is a critical difference between the pre-accession phase, where measures are adopted by the CEECs on a more or less unilateral basis, and the transitional period after formal accession, where policy convergence is characterised by binding and reciprocal actions. The central question is at what stage the process shifts from one phase to the other. The binding commitments by the CEECs – adoption of the EU's competition policy, implementation of the core elements of the internal market, and accession to the customs union – come early in the process, and the other issues discussed in the White Paper can be dealt with in post-accession transitional arrangements. Our conclusion is therefore that the formal accession should come sooner rather than later.

The obstacles to full CEEC membership of the EU have been extensively aired – the cost of admitting the CEECs to the Common Agricultural Policy (CAP) and the structural funds, concerns about free movement of labour, and the difficulties of political structures within an enlarged Union. We suggest one element of a strategy for tackling the budget problem: a long transition in which derogations from strict EU process standards are matched by non-application of fiscal transfers. No doubt other feats of political engineering will be needed, and will need to be considered not as pre-accession strategies but in accession negotiations.

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## **1. Introduction**

As the relationship between the European Union (EU) and the Central and Eastern European countries (CEECs) develops, large questions of political and economic strategy are being posed for both sides of the relationship. In this paper, we look at how economic policies and rules in the CEECs are being brought into alignment with EU practice and the relationship of this policy alignment to the prospective accession to the EU of the CEECs.

We do not address all of the issues, economic and political, that surround eastern enlargement and its feasibility or time-scale. The focus is on 'pre-accession', current jargon for the efforts to prepare the CEECs for EU membership. 'Pre-accession' itself covers a range of issues – the Commission's progress report on pre-accession to the Madrid European Council of December 1995 includes discussion of the 'structured relationship' of ministerial meetings, the Phare financial and technical assistance programme, and agricultural policy, but in this paper we focus on the core of the pre-accession strategy: the alignment of the CEECs to the EU's internal market, as defined by the White Paper on 'Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union' produced in May 1995 by the European Commission (Commission, 1995).

As in all of the history of the EU, the issue of the accession of the CEECs intertwines politics and economics. The CEECs' desire to join the EU arises not only for economic reasons, but also because of genuine security concerns and because of a desire to use political symbolism to try to make irreversible the political and economic transformation that is taking place. What distinguishes this accession from previous accessions is the extent of the inequality, in both economic and political circumstances, of the two sides. The CEECs differ from early Southern accedents in two important respects. Spain, Portugal and Greece, though poor, had market economies; and they had quite extensive 'civil societies' and quite well embedded legal systems, however overlaid by the experience of dictatorship.

Policy convergence may serve several different purposes: (a) some may be justified purely on the basis of the political and economic needs of the continuing transformation of the CEECs; (b) some may be necessary in order to secure access to EU markets for CEEC products; but the most difficult issues are raised by (c) the convergence required to make the CEECs acceptable to the EU as members on the basis of quasi-parity. One issue for this paper is whether actions taken by the CEECs will induce a matching response from the EU. In particular, will the implementation of single market measures actually give the CEECs better market access in the EU, or will

the process be a unilateral one? Does the White Paper of May 1995 represent a signposting of the path to accession or an attempt to hold the CEECs at a staging-post outside the EU, undertaking obligations that previous applicants have taken on only as full members?

We ask what we can learn from previous episodes in the history of the Union. But there are difficulties in making analogies. Enlargements before '1992' (the process not the date) did not have to deal with the same range of issues concerning the regulation of the single market. The establishment of the European Economic Area (EEA) and the rapid subsequent accession of three EFTA countries has potentially interesting lessons, though the EEA countries had very different starting points from the CEECs, both in their levels of economic development and in their institutional relationship with the EU.

There has now been much discussion of the substantial barriers to EU membership for the CEECs – the Common Agricultural Policy, the budget, labour mobility, political structures – and it is recognised that these problems will need time to deal with. Many economists, such as Baldwin (1994), see unconditional free trade in non-agricultural products as a desirable and quickly attainable target for an enlarged Europe, and have advocated a pre-accession strategy focused on institutional mechanisms that will deliver that objective without being impeded by the obstacles to full membership. The difficulty with this is that the removal of non-tariff barriers and of recourse to contingent trade policy instruments are now associated in EU policy with attainment of something equivalent to the single market and not simply with a free trade area. It was precisely for this reason that the EFTA countries, which had had an industrial free trade area with the then EC since 1972, found themselves in the EEA negotiations.

The 1995 White Paper reflects the Commission's recognition that a free trade area would be insufficient for the CEECs, and that there is a need for more scope and stronger incentives for pre-alignment by the CEECs. The White Paper also makes it clear that the Commission's pre-accession strategy is not based on the creation of an EEA-like institutional arrangement – the date of accession to the single market and to the common commercial policy is unambiguously stated to be the date of accession to the Union.

Rather the White Paper strategy is to set out lists of matters which have to be dealt with by the CEECs as they prepare for accession, with the decisions about priorities and speed explicitly left to the CEECs to make. The Cannes European Council conclusions (Council, 1995) explicitly state that the White Paper does not anticipate or prejudge the accession negotiations and does not lay down further conditions for the negotiations, since adoption of the whole *acquis* (possibly subject to transitional periods) is required only on accession. While at first sight this may seem attractively permissive, in reality the CEECs' progress in implementing the programme of the White Paper will surely affect the timing and progress of accession negotiations. The White Paper seems to identify the list of policies and rules which need to be in place for accession to be negotiable. The CEECs are implicitly being required to take on obligations, while the EU side is absolved from matching commitments. This asymmetry is particularly clear in the crucial link between contingent protection and CEEC adoption of EU competition policies. In the pre-accession phase, measures are

adopted by the CEECs on a more or less unilateral basis; while in a transitional period after formal accession, policy convergence will be characterised by binding and reciprocal actions. The central question about pre-accession strategies becomes a question about the stage in the process at which a switch takes place from unilateral actions to reciprocal commitments through accession negotiations.

Our conclusion is that the binding commitments – accession to the customs union and adoption of the EU's competition policy – should come early in the process, that accession itself comes with these binding commitments, and that some of the issues discussed in the White Paper as pre-accession matters should actually be dealt with in post-accession transitional arrangements.

## **2. Sequencing and timing of policy convergence**

The process of aligning economic policy in the CEECs with EU policies serves more than one function. It creates rules in the CEECs where none existed before; it goes beyond the Europe Agreements (EAs) in facilitating trade between the CEECs and the EU through regulatory harmonisation, in the same way that the '1992' process was designed to facilitate intra-EC trade by taking the system beyond the tariff liberalisation of 1956-60; and it prepares the CEECs for membership of the EU.

A phased approach is needed for the adoption by the CEECs of EU policies: there is limited administrative expertise in the CEECs to introduce and to administer economic policy changes, there is a need not to impose too many simultaneous adjustment shocks on the CEECs whose economies are already going through unprecedented changes, and some elements of the *acquis* make sense only if others are already in place.

EU membership itself has to be a phased process: with freedom of movement of non-CAP goods, freedom of movement of services and of capital, and full integration into the customs union in the earlier stages; integration of the CEECs into the CAP and freedom of movement of labour some way behind; and economic and monetary union an even more distant prospect.

### **Which policies come first?**

Against this general background, the adoption of EU competition policy, controlling state aids as well as market power, should have top priority; as indeed is recognised by the fact that this stage in the adoption of the *acquis* was set out in the EAs of 1992, for implementation in the three years up to 1996. Competition policy rules are important: because the legacy of central planning is concentrated market structures; because there are strong pressures for state assistance to enterprises in difficulty, pressures which need to be disciplined (though not wholly resisted, of course) if restructuring is to be encouraged; and because the adoption of EU competition policy by the CEECs is a necessary (though probably not sufficient) condition for the EU to abandon contingent protection and give the CEECs unconditional market access.

Then comes the '1992' single market programme, rules on standards, on public procurement, on non-tariff border barriers, on services regulation, the core of the 1995 White Paper. Of course, the CEECs are not ready to take on every single aspect of the

single market or of EU competition rules, but different problems may call for different perspectives. Where single market rules cannot be applied because the CEECs do not have the appropriate testing and certification procedures in place, there may not be free circulation of goods, a fundamental requirement of the single market. In other cases, however, it may be the economic circumstances of the CEECs which make it *desirable* to modify the application of the single market rules – because financial deregulation needs to come late in the sequencing of economic reform, or because EU rules on vertical restraints are inappropriately demanding for economies that need rapid development of distribution networks, or because EU rules on state aids need to be modified in the light of privatisation and restructuring needs. Such derogations are not incompatible with the free circulation of goods in an enlarged single market, and a timetable for the elimination of the underlying problems and for the full harmonisation of rules could form part of the *post-accession* transition.

The conclusions of the Cannes European Council of June 1995 (Council, 1995) and the White Paper emphasise that it is for the CEECs themselves to make their decisions about the timetable and the sequence for adoption of the SEM rules. This may be right, but it should not be read as implying that the EU side should be wholly passive even in respect of strict SEM pre-accession matters. Decisions about what is an acceptable level of compliance with SEM standards will in some sectors, such as agricultural and food products, be intensely political decisions, and it is for the EU, especially the Commission, to ensure that decision-making is not hijacked by the lobbies of EU producer interests.

At what stage should the CEECs move from free trade area with the EU into a customs union in which their external trade policies are aligned with that of the EU? There are two conflicting precedents. The EU itself created its customs union long before it undertook the '1992' regulatory harmonisation, and the removal of residual features of non-harmonised external trade policy, notably the elimination of Article 115 protection, was a significant part of the '1992' programme; but the EEA had regulatory harmonisation without a common external policy, and therefore with border controls and rules of origin.

One set of reasons for the CEECs to join the EU customs union early arise from the fact that most of the CEECs (with the notable exception of the Czech Republic) have levels of protection that are significantly higher than that of the EU, and indeed that levels of protection have been raised in Poland, Hungary and Slovakia since 1990. There is a good public policy case for helping the adjustment of declining sectors in the CEECs, but import protection is likely to be a poor instrument for meeting that target, because in reality the pattern of protection is determined by political influence rather than economic needs and because it is oriented towards preserving existing dinosaurs rather than easing them gently into their graves (Drábek and Smith, 1995). CEEC governments need help in resisting sectoral producer pressures for special treatment, particularly made-to-measure protection for foreign investment. Early locking in to the EU's external trade policy can help strengthen governments' hands in their dealings with domestic interest groups and with foreign investors. Further, as free trade is established with the EU through the EAs, the contrast between zero tariffs with the EU and high tariffs with non-EU trading partners implies bigger distortions in the CEECs trading patterns: reducing protection to EU levels will reduce these distortions.

A second set of reasons arises from the border controls that are necessary to police a free trade area (FTA) that is not a customs union. Once goods are imported into or produced within a customs union, they should have unconditional access to markets throughout the union. Goods produced in a free trade area have to be inspected at the internal frontiers to ensure that they satisfy whatever rules of origin qualify them as products of the FTA partner or to impose import duties if they are not of intra-FTA origin and if the two FTA partners have different tariff rates. Rules of origin are a potent weapon of regulatory protection which can serve particularly to deter foreign investment in the CEECs. More generally, the regulatory uncertainty associated with rules of origin and other border barriers means that market access is conditional. (Note that this is a different issue from the role of rules of origin in 'hub-and-spoke' free trade arrangements discussed by Baldwin, 1994.)

This is not to say that a formal customs union should be an intermediate step towards formal accession: it is an argument for early accession if full membership of the customs union is one of the defining components of accession.

### **Which policies come last?**

The difficult policy areas are the process regulation issues of social policy and environmental policy. There may be elements of such policy areas which need attention early, as part of the creation of the single market in goods and services. As the White Paper points out, some harmonisation of environmental rules may be needed to prevent different regulatory standards acting as barriers to trade. (There may also be genuine concerns about cross-border spillovers, such as Austria's worries about nuclear power plants in Slovakia, but these really have nothing to do with European integration and can be dealt with entirely separately.)

Where the issues become problematic is when it is suggested that common social and environmental policies are a necessary and core part of the EU's arrangements. It is possible to argue that there is simply no economic case for harmonisation of environmental and social policy at any stage of European integration, and that opt-outs should be permanently permitted. (See Begg et al., 1993.) Within an integrated Europe, there is nothing unfair or unnatural about competition between the citizens of areas with differing climates, languages, educational systems. Where such differences confer competitive advantages on particular groups of workers, the advantaged workers can enjoy higher real wages than the less fortunate. Some groups of European citizens could choose to create competitive advantages for themselves by accepting lower environmental quality or poorer social protection. Forcing higher standards on them will force them to accept lower wages in order to compete, but they should be free to choose the balance of cash and non-cash rewards they receive.

Against this, it is argued that harmonisation of social and environmental policy prevents excessive competition between governments or between workers. Potential investors for whom social or environmental controls could be particularly problematic (activities which pollute, or which are suited to part-time or child labour) could seek to set one government in competition with another, and the deregulatory competition could easily end up in a prisoners' dilemma equilibrium where all CEEC governments have less regulation than the wishes and needs of their citizens would call for. This is a serious point, but given the strength of the countervailing danger of harmonised EU

regulation being inappropriate for CEEC conditions, it seems best to deal with this danger as a part of a disarmament agreement on investment incentives rather than through premature harmonisation of regulation. Similarly, it is argued that workers competing for jobs can individually compete away protections that they would collectively prefer to keep. Here however, the case for harmonisation at EU level exists only if there is labour mobility and/or monetary union. Given the wage differences between the CEECs and the EU and the possibility of large flows if labour mobility were permitted now, labour mobility is going to come late in the formal accession process (as it did with Spain and Portugal), and is certainly not on the pre-accession agenda, except insofar as elements of labour mobility are bound up in some parts of service sector deregulation (transport and building services). Thus this argument for process harmonisation carries no weight in the pre-accession stage.

Standards harmonisation is not simply a question of economics. For the CEECs, the politics of moving quickly to EU social and environmental standards is already a problem, both because of the cost and because of the persistent uncertainty about the *quid pro quo* of accession. Given these political and economic costs, it may be much more important for the EU to concentrate on the key issue of severe ecological damage than on the harmonisation of process standards.

Some see a degree of congruence in social conditions as an essential feature of social and political cohesion. Even if this argument is accepted, this part of the *acquis* should be far down the priority list, the subject of long-term derogations (rather than permanent opt-outs). It would be strange, in the name of cohesion, to impose income-reducing policies on European citizens whose incomes are already far below the European average. We should surely wait for a considerable degree of convergence in money incomes before seeking to impose such policies. The CEECs themselves might be seeking early improvements in environmental and social conditions and deserve EU assistance in doing so, but there is no case for requiring such improvements as part of the pre-accession strategy.

### **3. From trade liberalisation to regulatory alignment**

The European Commission's charting of a course for closer integration with the countries of central and eastern Europe (CEECs) has strong similarities to the path that was originally taken in western European economic integration, where the elimination of formal tariff and quota barriers to intra-Community trade was followed by the '1992' programme to eliminate regulatory and other non-tariff barriers to trade. Quotas and tariffs on CEEC-EU trade having been phased out in the EAs, the 1995 White Paper could be seen as the equivalent of the SEM programme.

Perhaps the most remarkable feature of the '1992' programme was the way that the technical issue of regulatory harmonisation, assembled into a list of legislative measures by Lord Cockfield, was harnessed by Jacques Delors to drive forward the political development of European integration. Could the same link be made in the development of the relationship between the CEECs and the EU? Is the White Paper part of a pre-accession strategy that aims to build political support both in the CEECs and the EU for an accession that could be presented as motivated ultimately by concerns for European security?

### **Internal threats to the pre-accession strategy**

If this is to be the case, those in favour of an eastern enlargement will have to sell a compelling case for greater integration with the CEECs. Because of the previously discussed absence of commitments on the EU side, this has not yet been necessary, but the White Paper is only one step in the pre-accession strategy. Advocates of enlargement will need to ensure that the White Paper does not become part of a 'prevent accession' strategy. There are two principal dangers: that the implementation of the White Paper will be distorted by pressures from sectoral interests within the EU; and that the White Paper will become a high hurdle that the CEECs must clear before accession negotiations begin.

At the centre of both of these dangers lies the issue of whether the EU will require the CEECs to adopt, prior to accession, standards in line with its measures, such as those governing environmental and social protection, that regulate production processes. As trade barriers have come down, concerns about the impact of divergent national regulatory regimes on firms' competitiveness have grown. Anxiety about environmental or social 'dumping' stems from the belief that producers in countries with less strict environmental or social protection regulations have an 'unfair' advantage in international trade because their production costs are consequently lower than those of producers in countries with stricter regulations. The solution, as seen by the plaintiffs, is either to lower the standards they face, to impose countervailing duties on the imports or to raise the standards faced by their competitors. As the first option is usually politically unacceptable and the second against (current) international law, governments' efforts tend to focus on trying to raise the levels of regulation in exporting countries. In most cases, the ability of one country to induce another to raise its process-oriented regulations is extremely limited. The supranational nature of the EU, however, provides mechanisms that have been used to significant effect by member states with high environmental standards to raise those of the other member states. Some within the EU would like to try to use the EU's more-than-normal-trade relations with the CEECs to require them to raise their process-oriented standards to EU levels.

Although it is possible to argue that the CEECs must eventually adopt such regulations as part of the *acquis communautaire* once they have joined the EU (probably after a suitable adjustment period), it is unreasonable to require them to do so in advance, particularly as some current member states have been given derogations from implementing particularly costly environmental regulations and the UK has opted out of the Social Chapter.

Signs that there is a risk of the pre-accession strategy losing its focus have been evident from the start. Sectoralisation of the pre-accession strategy is evident in the White Paper, where each chapter of the Annex was evidently the responsibility of a different part of the Commission's services. The almost inevitable, and potentially damaging, consequence is that each chapter (with one noble exception) offers its own list of 'stage 1' measures that the CEECs need to have underway as early as possible in the pre-accession process as essential to the functioning of the single market. Bureaucratic pride as well as concern for client groups makes it hard for a section of the Commission's services to say 'our area does not have priority'. Thus we end up with such confusions as safety at work being stated as 'obviously' a stage 1 matter because it is important, as if the authors of this part of the annex were unable to distinguish

between an issue that is important in itself, and an issue for which it is important that CEECs' policies be co-ordinated with EU policy in advance of formal accession to the EU!

The issue of whether the politics and economics of the single market are compatible with allowing substantial derogations from process regulation for CEEC accedents is one of the central issues of the eastern accession, and it should be addressed in accession negotiations not foreclosed in the technical Annex to the White Paper.

Despite assurances to the contrary from the Commission, government officials in at least some of the applicant countries fear that extensive approximation of national legislation with the Commission's White Paper will be a pre-condition for the start of accession negotiations. Pressure for a strict interpretation of approximation is coming from industries interested in protecting themselves from competition. At least some EU industry associations want the CEECs to take on board EU regulations as soon as possible in the hope that when accession comes their industries will enjoy only minimal advantages. The EU must look honestly at the enforcement records of its current members when the time comes to decide if the governments of the CEECs have transposed and enforced EU directives to a standard adequate to make them ready for membership. By 20 September 1995, Austria and Finland had adequately transposed only 80.5% and 86% respectively of the directives contained in the single market White Paper. The EU should not be caught saying 'Do as I say, not as I do'.

Some sections of the directorate general for industry (DG III) have begun to work with EU industry associations on how to move beyond the White Paper. This strategy focuses on what problems Western firms are encountering in the CEECs and how they might be resolved. Other EU industry associations are actively lobbying the CEEC governments to take the least intrusive interpretation of EU directives when adopting national legislation. Given the upper hand, mentioned earlier, that mobile capital has when dealing with governments eager to attract investment, expertise and jobs, there is a danger that the CEECs might adopt legislation that does not provide adequate levels of protection given their less developed regulatory regimes.

### **Selling the strategy in the EU**

In order to contain the pressures for sectoralisation and delay, advocates of enlargement need to press the case for the pre-accession strategy being a means of promoting economic opportunities, ensuring stability in the region and thereby fostering EU security. If the pre-accession strategy really is to lay the foundation for enlargement, it will have to build support among the member governments. An important degree of common ground does exist. Within most member governments there is an acceptance of the benefits of free trade, although perhaps not as emphatic as it was in the mid-1980s. Second, the 'front line' member states that border on the CEECs have a strong interest in ensuring their stability, not least because it would reduce the flow of immigrants. The German government, in particular, has played an important, if not invariably effective, role in encouraging a more generous EU policy toward the CEECs.

Mobilising support from outside interests can reinforce support among member governments. Advocacy by influential European business organisations – including the European Round Table, the Union of Industrial and Employers' Confederations of

Europe, and the EC Committee of the American Chamber of Commerce – helped to sell the '1992' programme to member state governments. A corps of EU firms with an interest in regulatory alignment (at least with regard to standards) already exists, but it is not yet effectively mobilised behind the Commission's pre-accession strategy. The most solid support for a pre-accession strategy will come from those EU producers that would benefit from improved access to the EU market for products from the CEECs. This group includes firms – such as Continental, Fiat and Siemens – that have established production in the CEECs to supply the EU market, and companies – including Audi, BMW, Thomson and ABB – that use CEEC companies for outward processing or to supply components.

### **Selling the strategy in the CEECs – improving on the status quo**

The CEEC governments are already aware of the advantages of aligning their regulations with the EU's. EU directives have served as useful templates for the CEECs in their transition from command economies to regulated market economies. As they intend to become members, the CEECs have a particularly strong incentive to model their laws on those of the EU rather than on those of other countries. Even where the governments have not adopted EU regulations, CEEC firms that export to the EU must produce products that meet EU standards. Consequently, to hold any attraction for the CEECs, the pre-accession strategy must offer more than the *status quo*.

As CEEC exporters to the EU already have to meet EU standards, alignment of regulations will not enhance their access to EU markets. The alignment of regulations would, however, force other CEEC producers to meet EU-equivalent regulations and might lead to an increase in the number of CEEC firms that export to the EU. A possible and beneficial side-effect would be that in aligning their regulations with the EU, the CEECs' regulations will also converge, thereby reducing non-tariff barriers to trade between them. What CEEC exporters really need, however, is EU acceptance of testing to EU standards of their products by CEEC testing agencies. Without it they must get their products tested by EU agencies. Obviously, the EU has valid reasons for wanting to be sure that products entering its market meet its requirements for safety, etc. Consequently, the EU will have to be sure that the CEEC certifications are adequately rigorous. This will require financial and technical assistance from the EU to help bring the CEEC agencies up to the required standard.

The EU should avoid requiring the CEECs to adopt process-oriented regulations as this would have a counter-productive effect on the building of political support. Having to adopt the EU's process standards could have a very negative impact on the CEECs' nascent market economies, requiring them to make extensive and expensive changes to their production processes and raising the cost of labour. If the White Paper really means what it says about it being for the CEECs to decide the timing of their regulatory harmonisation, there is no reason for the CEECs to harmonise process regulation in advance of accession.

As well as making adjustment to accession easier, regulatory alignment might help to build support for accession within the applicant countries. Alignment of regulations in the CEECs will start to create beneficiaries in both the EU and the CEECs that are able to plan their corporate strategies on the basis of the enhanced market access that it offers. The success of the policy will therefore partly depend on how far such

beneficiaries can be mobilised to press for the sustaining of the process. We do know that SEM regulatory harmonisation had an impact on business behaviour both by SEM-based companies and by those based in other countries. In fact, without concrete short-term measures to improve the access of eastern European goods to the EU market, the most likely principal beneficiaries of the pre-accession strategy are the EU firms that are engaged in the CEECs' markets. Without more reciprocity than has yet been apparent from the EU side, the pre-accession strategy provides the CEECs with little additional incentive to undertake the potentially painful reform of their regulatory regimes.

#### **4. Lessons from the EEA: regime performance and policy alignment**

The need to overcome narrow sectoral interests in the EU and the consequent pressures for contingent protection has prompted some authors to advocate the development of a more formal and binding trade arrangement as part of a pre-accession strategy. A model along the lines of the European Economic Area (EEA) has often been seen to offer such advantages by allocating legal rights at the level of economic operators, eliminating EU anti-dumping measures and countervailing duties, and limiting the use of safeguards (Baldwin 1994).

However, there are key features of the EEA that make it a questionable model for the CEECs (Rollo and Wallace, 1991). It linked to the EU a group of advanced, industrialised, export-oriented economies with already a high level of economic interdependence and industrial and corporate interconnection. The EFTA countries already had sophisticated market regulation with experienced administrative and legal infrastructures without which they could not have handled the often bizarre constraints imposed on them by the EU side.

To take the EEA as a model for EU-CEEC relations is to ignore some of the more salutary lessons from its history – lessons which have broader implications for the flexibility of the EU as a close trading partner. The difficult negotiation of the EEA clearly demonstrated the limits of such flexibility. From an early stage, elimination of EU contingent protection, and the supposed unlimited market access that the EEA would offer, was made conditional on the full acceptance of internal market legislation by the EFTA side. Derogations were ruled out, and transitional arrangements were in large part limited to two years. The two thousand pieces of Community legislation annexed to the final EEA Agreement serve as a sobering reminder of the limits of EU flexibility.

One must also be wary of seeing binding commitments on the EU solely in terms of limiting the use of trade policy instruments. As we demonstrate below, the operation of the agreement in practice, with asymmetric access to day-to-day decision-making, to information flows, and to policy-making arenas, gave a second class status even to the EU's closest trading partners. The sophistication of the Eftans' approach to the EEA exposed the lines of exclusion inherent in the regime's design and the extent of the Eftans' frustration generated by its inherent asymmetry. The fact that the Eftans could tolerate this, and indeed implement the agreement very successfully, reflects the operation of the EEA as a short-term transitional regime for EU membership. (For a more extended discussion of these issues, see Smith, 1995)

### Operation of the EEA regime

Set against initial aspirations, the EEA formulation failed to provide a durable regime for extending the EU internal market. For the EFTA states, the process did not match the specific combination of market access, preservation of sovereignty, and political voice which had to varying degrees been demanded from the start (Gstohl, 1994). As highlighted by the negotiation of the agreement, the Eftans' concern focused on the inadequate representation in the internal market policy-making process, as well as fears that a homogeneous application of the agreement depended heavily on the establishment, in practice, of an open relationship with the Commission and the ECJ (Pedersen, 1994). This was particularly important following the rejection by the ECJ of an overarching EEA Court to monitor the application of the EEA on both sides (ECJ 10/91).

The operation of the EEA regime confirmed some of the Eftans' initial fears. In parts the meshing of the two-pillar structure was patchy, reflecting pockets of inertia and inflexibility on the EU side. The legislative process was a particular source of grievance for the Eftans. Adoption of 'additional' legislation in the EEA Joint Committee (*acquis* not included in the original agreement) was characterised by one EEA official as a 'mechanistic hammering down of EU legislation on the EFTA side', highlighting the formality with which the process has been viewed by the EU. In this case the Janus-like role played by the Commission, acting as the initial arbiter of EEA-relevant legislation, as EFTA's only voice in Council working groups, and finally as the Council's negotiator in the EEA Joint Committee, constituted an extraordinarily opaque procedure from an EFTA perspective and one which generated considerable frustration. For example, Iceland's genuine concerns regarding the application of the Working Time Directive to its fishing industry were initially greeted with some sympathy from the Commission, only to be flatly denied in the EEA Joint Committee. As one Commission official remarked: 'if the UK could agree to it, then so could Iceland'.

EFTA's central dependence on the Commission generated additional frictions. Difficulties in the adoption and implementation of additional legislation on the EFTA side were met with a variety of 'informal' responses from the Commission. According to one EFTA official, EFTA's failure to agree on a system of veterinary border checks provoked the Commission to delay bringing new EU legislation to the Joint Committee in order to put pressure on the EFTA side. Delays in the Joint Committee also reflected the Commission's reluctance to transfer legislation still under consolidation in the EU, or where 'premature' incorporation in the EEA could undermine the fragile basis on which the action rested. A notable example of the latter was the Regulation on Maritime Cabotage (Council Regulation no. 3577/92) which should have been included in the interim package in March 1994, but which was excluded from it by Greece and Spain on the grounds that EFTA inclusion would upset the initial functioning of the regulation.

Similar problems beset the rather vague EEA decision-shaping process applying to new EU legislation. By oversight, the Commission did not automatically bring to the Joint Committee new draft legislation (from 1 January 1994) concerning EEA areas, making it difficult for the EFTA states to provide initial comment. Eftan participation in Commission committees was also strictly limited to the minimum prescribed in the Agreement. In particular, the Commission interpreted the Agreement as denying Eftan access to comitology committees beyond an initial consultation at the preparatory stage

of legislation. While in practice the Eftans were sometimes able to circumvent formal rules by establishing informal relations with the DGs concerned, such informality rarely extended to voting rights, particularly where the scope of the Committee went beyond the limits of the EEA agreement. According to one EEA official, this situation meant that the EFTA states were reluctant to accept certain legislation where they were denied access to the administrative committees overseeing that legislation. Lack of formal influence led EFTA states to seek alternative channels of representation, lobbying both the European Parliament and individual member states. While the latter provided an informal source of information on Council proceedings, influence was only gained to the extent that member states shared similar concerns. Recent attempts by Norway to upgrade the functions of the EEA Council to consider specific pieces of legislation met with lukewarm responses from the Commission.

### **The EEA as a transitional regime**

In the face of pronounced political and administrative handicaps, the achievements of the EFTA pillar have been notable. EFTA had an impressive record in harmonisation, measured by the amount of new legislation adopted and by legal conformity checking. Problem areas like the alcohol monopolies (Sweden, Norway, Finland, Iceland), environment (Austria), and social legislation (Sweden, Iceland) were encountered, but they were largely resolved via informal consultations with the EFTA Surveillance Authority. Tangible outputs were also matched by more intangible successes. Crucially, the Eftans proved remarkably adept not only in meeting the legal and procedural demands of the EEA, but also in generating and using informal contacts within the Commission and to a lesser extent among the member states. As noted above, this general ability of the EFTA states to 'fit in' undoubtedly softened some of the lines of exclusion established by the Agreement, and helped overcome pockets of inertia in the Commission's administration of the Agreement.

A more significant factor in the success of the EFTA pillar, however, was the operation of the EEA as a short-term transitional regime for EU membership. The influence of membership had three dimensions. First, the parallel accession process significantly altered the structure and operation of the EEA regime. While the Commission formally tried to keep the administration of the EEA separate from accession negotiations, the distinction was often a semantic one for prospective members. Problems with new legislation (such as the directive on weights and dimensions of lorries, as well as the problems over veterinary border checks) were either to be resolved in the context of accession negotiations or postponed until accession had taken place. Prospective membership also carried admission to all Commission committees as well as access to Council working groups, thereby eliminating the absence of EFTA voices in the EEA. Second, membership impacted on the administration of the agreement among EFTA governments. According to one Austrian official, the EEA was viewed as the penultimate 'fine tuning' stage in a process of policy alignment dating from the mid-eighties, enabling independent judgement on the extent of policy conformity. In this sense, the agreement also supplemented a process of administrative co-ordination within EFTA governments which was further accelerated by the prospect of membership. Similarly, the EEA enabled EFTA ministries, state governments, standards bodies and NGOs to diagnose more clearly internal market frictions, and to proffer remedies either in the context of the EEA, or in view of membership.

Beyond administrative consequences, however, the significance of such a transitional regime lay in its interactions with shifting patterns of interests in the domestic EFTA context. In most EFTA states, established processes of policy adjustment had been generated as a responses to the economic crisis in the early 1990s and the perceived crisis in systems of economic governance. In Sweden, the Royal Commission on Economic Reform had posed the problem thus: 'the current deep economic crisis has vividly revealed that the task is not simply to correct a few specific mistakes or omissions of economic policy. The crisis has roots which go back several decades and bring into question much of the existing institutional framework.' As a consequence, comprehensive reviews of regulatory policy were undertaken in Sweden, Finland and (to a lesser extent) Austria in the early 1990s reflecting ideological realignments among political and economic elites. Key union and business interests had become configured around a need to undertake sectoral and 'horizontal' policy deregulation, a shift which was also reflected in the 1991 elections in Sweden and Finland. For many business and political actors, the importance of membership had become viewed as an intrinsic part of an economic reform strategy aimed at maintaining European export markets, and stemming the flow of foreign direct investment out of the EFTA states. Important sectors in all EFTA states declared support for EU membership, along with a view that the EEA should act as a stepping stone to that goal.

In many ways, the asymmetric functioning of the EEA reinforced the attraction of membership, particularly among exporting sectors. A survey of business responses to the EEA undertaken by the Swedish Board of Trade (Kommerskollegium) catalogues a series of disadvantages encountered by Swedish export industries. It concludes that 'it would seem at first glance as if the EEA agreement would be sufficient in order to allow Swedish companies access to the internal market, but as noted there are still disadvantages such as border formalities. These weaknesses will be eliminated by obtaining full membership ... As for the new member states of the EU, membership will allow new possibilities to influence the development of the internal market. The follow-up to the EEA will provide an opportunity to point out and deal with trade obstacles.'

The domestic EFTA context into which the EEA entered therefore generates a possible rationale behind the agreement which goes beyond a model for managing economic interdependence. As argued here, the significance of the EEA lay in its ability to act as a transitional framework for catalysing political alignments both in the context of existing domestic programmes of regulatory reform, and in the context of the pre-accession strategies of four EFTA states. In either case, the agreement overlay an alignment of domestic interests which was very conducive to a process of harmonisation based asymmetrically on internal market rules. Where significant problems were encountered, for example the alcohol monopolies, the tight timetable for accession was effective in generating additional pressures and new configurations of interests behind alignment. As one EEA official remarked, the reform of the alcohol monopolies in Sweden and Finland reflected 'a political decision to abolish the alcohol monopolies in the context of accession.' (Lack of similar progress in Norway and Iceland perhaps reflected a lower set of incentives for membership.) Problems and frictions in the operation of the regime have been significant only insofar as they have reinforced an alignment of interests behind the option of membership. Thus, in a perverse sense, asymmetries in the performance of the EEA have served a purpose insofar as they have enlarged the constituency of gainers from EU membership.

When considering the development of the pre-accession strategy for the CEECs, however, this model of a transitional regime is less compelling. Configurations of interests, on both the EU and the CEEC side, around a process of policy alignment are less developed, possibly reflecting the stage of domestic reform in the CEECs. Patterns of interests generated by the process of domestic reform in the CEECs will interact with the provisions of a pre-accession regime in a far less determinate manner. In this context the operation of the regime itself becomes much more significant. Careful development of policy areas, and flexibility in the scope and enforcement of rules will have much greater impact in terms of developing the right incentives and patterns of interest alignment necessary for a successful process of policy alignment. The sort of inflexibilities which have characterised the EEA will have far greater costs if they are repeated in the pre-accession regime of the CEECs.

It is hard to imagine that a transitional regime for the CEECs could be quite as short-term an arrangement as it was for Austria, Finland, and Sweden; which emphasises the possibility that an EEA-like arrangement for the CEECs would provide an excuse to delay accession, while the unsatisfactory asymmetry of the arrangement could erode support in the CEECs for EU membership.

## **5. The Europe Agreements and the limits to conventional trade liberalisation**

EU-CEEC economic relations have a strikingly asymmetrical nature. The CEECs have become heavily dependent on the EU market; while for the EU economic relations with the East are still of marginal significance. Consequently, both the short to medium-term potential benefits from market access and the short-term costs of free trade would be felt very unevenly. In the EU only a limited number of sectors will be much affected, but the adjustment will be structural and across the board for the CEECs, affecting service sectors as well as industry and agriculture. In the design of the EAs, the EU took account of this asymmetry and did not insist on complete and direct reciprocity of market-opening. Only at the end of a ten-year transition period do the CEECs have fully to reciprocate liberalisation measures that the EU will have completed at an earlier stage in the process. However, there has been much criticism of the trade provisions of the EAs, focusing on the limited nature or the slow pace of trade liberalisation in sectors that are 'sensitive' in the EU, but account at the same time for the bulk of CEEC exports, and on the provisions for contingent protection such as safeguards, anti-dumping clauses and countervailing duties which give opportunities to EU producers to lobby for actions that will deter increased CEEC exports. (See, for example, Rollo and Wallace, 1991, Winters, 1992, Rollo and Smith, 1993.) These limitations imply that the asymmetrical benefits of the EAs might be more apparent than real.

There is a tension in EU policy-making between the logic of broad political and economic strategies and the political economy of sectional interests. Actual policy outcomes depend on how these conflicting forces are resolved.

### **The political economy of domestic interests**

Most commentators see this as the natural outcome of the political economy of trade protection. In the case of the association policy, lobbying incentives are much

stronger for those particular regions and sectors in the EU that perceive negative effects of liberalisation than for those sectors of industry or key firms which, as we saw in section 3 above, should be supportive of increased market access for CEEC exports to counterbalance protectionist pressures have insufficiently strong incentives to mobilise political support. The concentration of the expected negative effects in a few sectors on the EU side facilitates the effective organisation of producer interests, while, as always, consumer interests are poorly represented. While, the configuration of domestic interests creates strong pressures to limit market access for the CEECs, their importance should not be overstated.

The EU does have an interest in generating benefits for the CEECs in order to support their political and economic transformations. This interest stems from broader political considerations, including non-military security concerns, and a feeling that relations with the CEECs are qualitatively different from those with other trading partners or neighbours. Some features of the association process indicate that these considerations have a far from negligible influence on policy. Although the detail of the EAs reveals major flaws, the EU's sensitivity to the criticism of the EAs and its general readiness to 'learn' from the shortcomings of its approach indicate that, unlike in many other previous negotiations, the EU did not simply consider the EAs as a 'take it or leave it' offer. The endorsement of eventual membership and the acceleration of market access announced by the Copenhagen European Council illustrates this.

To treat strong domestic constituencies opposed to integration as imposing binding constraints on policy-makers is to draw over-deterministic conclusions about the ability of political motivations to overcome such constraints. There is a tension between the logic of broader political and economic strategies and the political economy of sectional interests. Policy outcomes depend therefore not only on the relative strength of 'veto groups' but also on the nature of 'veto points' in the policy process, where the mobilisation of opposition can obstruct broader policy intentions.

This section highlights some features of the institutional context in which the EAs have been formulated and developed. It identifies obstacles to advancing the association process that arise from the structure and process of EU decision-making, and it suggests how a different approach might mitigate these problems. The shortcomings of the EAs reflect an outcome specific to the choice of a conventional trade liberalisation approach to EU-CEEC relations. EU trade policy implies a 'vertical' approach to policy-making which magnifies the bias towards sectoral concerns inherent in the EU's fragmented institutional set-up. It is hard for broader political considerations to penetrate such disjointed sectoral policy-making, and for policy advances to be achieved.

### **Fragmented structures and institutions**

In EU policy-making, tensions between sectoral interests and broader political strategies exist within member states, within the Council, within the Commission, and between the Commission and the member states.

At the member state level, the more fragmented a country's approach to EU policy-making, the more this tends to feed positions which reflect particular interests into the European-level policy process. The German government, for example, is in

principle most receptive to CEEC demands for market access and early accession to the EU. Nevertheless, in the EA negotiations, German negotiators argued alongside more traditionally protectionist member states against greater market access in those sectors where German producers feared CEEC competition, such as coal, agriculture and steel. Broader considerations, such as enhancing economic opportunities, advancing industrial restructuring, or promoting geopolitical stability, seem to have been less relevant than fear of loss of jobs.

Policy processes and structures at the EU level, both within and between institutions, are still more fragmented and central political authority is considerably weaker. The fragmentation of 'the' Council of Ministers into a multitude of specialised Councils and preparatory Council working groups impedes the coherent treatment of issues across different subject areas. The ever expanding policy agenda has made the General Affairs Council less effective at providing a strategic overview (Hayes-Renshaw and Wallace, 1995). The striking absence of a trade ministers' council further accentuates the relative autonomy of departmental interests and makes it harder for a 'systemic' rationality to impose its logic.

In the Commission this is expressed in the sectoral division between Directorates-General (DGs) which makes it much harder for broader political strategy to influence the policy outcome in specialised policy areas and provides much greater leverage for special interests to find their way into the policy process. Unlike in national governments, mechanisms for inter-departmental co-ordination are not part of the official organisational structure (Spence, 1994). While the Commissioners' cabinets introduce an element of hierarchy into the process, no single DG, however powerful, can impose its views. Policy is subject to collective decision-making and simple majority voting in the College of Commissioners. In the case of the association policy, there were mixed results. The Commission's report for the Edinburgh European Council was voted through after a long discussion, against the resistance of some powerful players in the College. But, on the issue of tariff quotas on Czech and Slovak steel, Leon Brittan found himself in a minority of one.

When the history of the accession process is written, it will be interesting to see to what extent attempts by the Commission to be more receptive to the CEECs have been thwarted by member states. We need to distinguish between what policy-makers think is desirable and what they think is feasible.

### **Vertical decision-making processes**

The fragmented nature of the EU's institutional structure and of some member states' European policy-making processes works to the detriment of broader political strategy. The choice of procedure to formulate specific policies can then either accentuate or alleviate this bias. It is particularly important for the outcome of the policy process when a policy is 'multi-tiered' and innovatively broad, as the association policy was.

In the case of German unification, EU institutions showed considerable flexibility in setting up ad hoc intra- and inter-institutional arrangements and procedures to co-ordinate and negotiate the modalities of the former GDR's inclusion. The relative efficiency of these policy co-ordinating mechanisms enabled the EU to respond swiftly

to this unexpected challenge, despite its considerable complexity and difficult substance (Spence, 1991).

By contrast to fall back on a conventional trade policy-making approach for the negotiation of the Europe Agreements meant an implicit choice of a 'business-as-usual' approach, and consequently much less high-level steering than is the case on broad policy initiatives with an important impact on the integration process. Although the distinctiveness of the Association agreements meant that within the Council it was not the Article 113 Committee but the Eastern Europe Working Group which monitored the conduct of the negotiations, member states frequently delegated the lead on specific issues to officials from the capitals with narrow briefs. Obviously there is still scope for 'political engineering' when actors with political authority are willing and able to take a lead, but other political priorities distracted policy-makers during the formulation of the EAs: German unification and its consequences, the long-running GATT negotiations, and concerns about Russia. These distractions might help to explain why political actors did not make fuller use of their potential to shape the process.

The general framework of the EAs (which, at least at the time, seemed to its architects in both Commission and member states to respond to the needs of the CEECs) therefore still reflected the impact of broader political considerations. However, as concrete measures were developed in specific policy areas the influence of sectoral interests became more pronounced. This is not to belittle the achievements of a small and over-stretched team in DG I, which was the lead department until January 1995, operating on a sharp learning curve in often unfamiliar terrain. The structures of the Commission never make cross-DG co-ordination simple. Powerful DGs, such as DG VI (agriculture) and DG III (industry), have many opportunities to pursue contrary objectives; as do member state delegates. The personalities and interests of individual Commissioners (and their cabinets), as well as the varying extents to which they can lean on active support in the Council, of course make a difference and can tip the balance of the argument. The overall and day-to-day conduct of policy, however, depends on many other factors (Sedelmeier and Wallace, 1996).

It is thus not simply the unfavourable configuration of domestic interests that accounts for the restrictiveness of the EU's position in the EAs, but also the operation of institutional structures and decision-making procedures, against a background of the overloaded agendas of political actors.

### **Bargaining power in trade negotiations**

Since the EU's primary incentives for granting the CEECs market access rested on a different set of motivations than just the prospect of obtaining access to their markets in return, the CEECs lost much of their political-level capital through the framing of the EAs as trade negotiations. The asymmetry of bargaining power, and the absence of economic 'elites' on the CEEC side, further help to explain why the CEECs could hardly obtain any improvement on the EU's offer during the EA negotiations. Unlike other major trading partners of the EU, they could not trade access to sectors in which the EU was interested against access to the EU's sensitive sectors. The overall potential of the CEEC markets was too small for the EU and the costs of non-liberalisation would have been much higher for the CEECs. The CEECs' own restructuring strategies initially included very low external tariff levels, which in turn

might have lowered the incentive for EU industries to lobby for a reciprocal lowering of trade barriers.

Thus, given the asymmetry of the relationship, the CEECs were bound to lose out under the political-economy mode that generally prevails in the EU's commercial negotiations. Even the most alert negotiators for the CEECs found themselves repeatedly frustrated by the speed and focus of defensive sectoral lobbies on the EU side. Nor could they easily organise a counter-coalition – the two Visegrád memoranda were agreed only with some difficulty.

### **Overcoming the political economy mode of sectoral decision-making**

How can the predominance of a political economy rationality for policy-making towards the CEECs be mitigated or overcome? The interpretation above of the development of the Association policy suggests two distinct strategic directions: 'politicising' the issues or 'technicalising' them.

Politicising the issues seeks to assert the primacy of broader policy considerations. Simply redefining the agenda, so that all actors see the issues in strategic terms may be over ambitious. More modest and more attainable may be to try to avoid as much as possible the delegation of decisions, in order to limit the influence of sectoral networks.

It was an effort at explicit 'politicisation' that led to the revision of policy announced at the Copenhagen European Council of June 1993 (Sedelmeier, 1994). The Commission and foreign ministers had accepted the need to improve the offer to the associated countries and succeeded in winning the endorsement of heads of government. The result was both an explicit acceptance that association should pave the way for full EU membership and a series of specific commitments to improve the terms of market access. For a moment at least, policy was rescued from the normal political economy mode of trade negotiations and subject to a broader political framework. So far so good. The problem was how to sustain the 'politicisation' to enable promising words to be turned into good practice. This was to prove much more difficult, since on each sectoral issue generosity was vulnerable to erosion under pressure from EU-based interests and foreign ministers were much more distracted by other policy preoccupations, not least the war in Bosnia. Within the Commission the College could not easily cohere and the Commission President had competing claims on his attention. Exclusion of certain concerns from the policy process also raises questions about the sustainability of policy. The EA negotiations provide examples for this, such as the successful attempt by the Council presidency to isolate Spanish pressure for the inclusion of a specific safeguard clause in the steel protocol at the ministerial level by preventing a decision being reached at the lower level. This not only created considerable damage to internal EU solidarity, it also failed to prevent such a clause being inserted in the later EAs. Thus, though 'politicisation' served to adapt the form and symbolism of policy, it was not sufficiently firmly rooted to guarantee sequenced sectoral or inter-sectoral bargains.

The alternative is for political actors to choose a horizontal cross-section approach to policy decisions that impact on various sectors. A technical approach to policy might reduce the risk of alarming adversely affected interests which might attempt to politicise issues within a political economy perspective. Especially if a

'purely' economic rationality favours similar policy prescriptions to the systemic political rationality this might indeed be a more effective way to achieve the intended policy results.

This alternative approach is reminiscent of the strategy behind the '1992' SEM programme of regulatory adaptation and, in its application to external partners, in the EEA regime to extend the SEM to EFTA. The Commission's White Paper to integrate the CEECs into the internal market might seem to provide a promising approach along these lines. However, our analysis of the SEM programme and of the EEA has exposed the limitations of the technicalisation approach unless it is firmly linked to early accession, and we have noted that the White Paper itself shows that a horizontal approach to regulatory adaptation will by no means eliminate sectoral pressures. Politicisation and technicalisation are not really alternatives: the technicalisation approach only works if it is part of a controlled political strategy.

## 6. Competition policy: levelling the playing field?

The case of competition policy is worth particularly close scrutiny, because it is the one area of single market policy where regulatory convergence pre-dates the White Paper. The EAs with the Czech Republic, Hungary, Poland and Slovakia all call for the adoption within three years of their entry into force of legislation in each partner country to mirror the competition provisions (anti-trust and state aids) of the Treaty of Rome.

We argued above that it is desirable to seek early harmonisation of competition policy as a force for the promotion of economic efficiency. But it is important to remember that it has other roles. One of the features of EU competition law is that from the outset the criteria for decision used by the Commission and the Court were not strictly efficiency-based but tended to favour economic integration for its own sake (for example, the greater stress on intra-brand competition than in the USA).

A supranational competition policy was a central element in the political economy of the original EEC, reassuring member states that they would be protected against 'unfairness' by their partners. It could replace commercial policy instruments applied by national governments in trade relations between the member states of the EEC, doing away with many of the political economy problems associated with the process of trade policy formation.

Many hoped that in the transition towards CEEC accession, competition policy instruments could wholly replace commercial policy. This point of view was definitively rejected in the extraordinarily asymmetrical statement that surfaced first in a Commission communication in July 1994 (Commission, 1994), was reproduced almost verbatim in Annex IV of the Essen conclusions (Council, 1994), and is now quoted in paragraph 6.5 of the White Paper: 'once satisfactory implementation of competition and state aids policies (by the associated countries) *has been achieved, together with the wider application of other parts of Community law linked to the wider market*, the Union *could* decide to *reduce* progressively the application of commercial defence instruments for industrial products from the countries concerned' [emphases added].

This passage makes it clear that more than competition policy is needed: the EU is not going to be ready even to consider doing away with commercial policy instruments until the internal market *acquis* is applied fairly comprehensively. There is no logic to the apparent requirement that the CEECs complete their side of the bargain before the EU starts to respond, but there is logic to the inclusion of the internal market *acquis* beyond competition policy: there are many ways in which CEECs may be able to segment their markets or offer an 'uneven playing field' other than non-harmonised competition policy. The EU will allow wholly free trade only once these potential non-tariff barriers have gone.

In the area of state aids, there is a demand that the CEECs adopt a form of control that parallels that of the member states, with pre-notification of aids to a national body and an *implicit* expectation that there may be *ex ante* consultations between the Commission and the national surveillance authorities to ensure that the surveillance authority does not authorise an aid that will later be contested by the Commission. It is arguable that, even within the union, the main goal of state aids policy has become that of providing symmetrical conditions (a level playing-field for the different firms within any given industry) rather than regulating inter-industry distortions. Thus in practice state aid rules allow different levels of support to be given in different sectors, with cars and electronics being favourably treated. From the viewpoint of economic efficiency and the avoidance of distortions in the CEECs, the objective of policy should be to avoid favouring some sectors or some investors over others except where there is a case that one type of investment brings more positive spillover effects than others. But the use of the EU's existing procedures could lead the national authorities to be more concerned with the level playing-field aspects rather than the efficiency aspects, and one suspects that the avoidance of unfavourable effects on EU firms would dominate the agenda. Commission decisions on subsidies typically take account of considerations such as the amount of capacity in the sector and the likely growth of demand, and it would be natural for such considerations to be taken account of in state aid cases in such a way that a CEEC could be deterred from promoting and investing where it had a genuine comparative advantage but where this might imply that its output would displace output from existing capacity elsewhere in Europe.

Despite the anomalies in EU subsidy rules, the CEECs have something to gain from the application of a set of procedures to at least ensure transparency and predictability of subsidies. The subsidy area is also one where a direct pay-off might be expected: if the CEECs do adopt EU-type codes, it is possible to see the EU definitively relinquishing the use of countervailing duties. Though these are little used in practice, they now exist as a threat. However, there is limited value to the CEECs of the EU's eliminating one contingent protection instrument without also eliminating the possibility of anti-dumping actions.

### **Asymmetry of rules and of needs**

The obligation of the partner countries to adopt competition rules broadly comparable to those of the EU imposes a stricter formal requirement on the CEECs – to make their national regimes conform to the Treaty of Rome – than is imposed on existing EU member states. The White Paper notes, for example on state aids, that: 'A legal obligation for Member states to, align their legislation to the Community state aid control system does not exist and would indeed be superfluous because of the

Commission's role of the controlling authority under the EC Treaty.' In the section on articles 85 and 86 the White Paper states that '[s]uch an approximation is therefore necessary *inter alia* to ensure that economic operators can be sure to act on a level playing field, and in order to prepare the CEECs' economies for future membership.' The White Paper does not actually impose new conditions that were not in the EAs but it makes clear that these are to be strictly interpreted. The precedents of the Court of Justice are always to be used wherever relevant.

It is, however, arguable that in some areas of competition policy, the needs of the CEECs are for a more relaxed regime than in the EU. There is debate, for example, about what are the right rules for vertical restraints. Here the Commission is insisting that the CEECs adopt rules that match EU practices, including block exemptions. This is bureaucratically very demanding, and it is economically questionable, as economies with poorly developed distribution systems might want to encourage investment in distribution networks.

Telecommunications provides another example. The bold liberalisation of service provision in the EU is quite recent, following a long period of state monopoly. Voice telecommunications have still not been liberalised. Special provisions were made for Greece, for reasons which included the need for monopoly rents to be garnered in order to facilitate the rapid expansion of the network. Yet telecoms experts in the EU seem to be advising the CEECs to adopt more liberal policies than the EU has yet applied. This may actually be in the interests of the CEECs, but a political debate is thereby foreclosed and important issues of sovereignty are touched.

### **The role of competition policy in the integration process**

The Commission's aim is twofold. It seeks to help the CEECs take on a pro-integration and efficiency enhancing set of rules that will make eventual free trade and membership much easier. But at the same time it aims to provide EU firms with market conditions familiar to them and up to a point favourable to them.

The Commission's position makes a lot of sense if it succeeds in reassuring CEEC business interests that they need fear no regulatory asymmetries. But there is a downside risk that must be avoided: if harmonisation is pushed too far too fast without guarantees of eventual fully free trade or accession, an adverse reaction might set in with CEECs declining to comply and EU interests citing this as evidence of CEEC inability to adapt. The harmonisation of competition law must therefore be seen as part of a wider process.

## **7. Conclusions**

The objectives of pre-accession policy should be to provide a clear path for the continuing integration of the CEECs into the wider European political and economic system, tackling the obstacles to integration in a sensible order, building political support in both the EU and the CEECs, controlling sectoral pressures, developing institutional mechanisms, making policy harmonisation a mutual process, and bringing formal accession on to the agenda at the right stage.

There is a danger in formalising intermediate targets which may then become waiting rooms rather than staging posts. The EEA proved to be a very short-term transitional phase for Austria, Sweden and Finland; but that may have been partly because the remaining steps to full membership were much less problematic than they are for the CEECs. The EEA was not designed as a stepping stone to accession. For the CEECs, achievement of an EEA-type of arrangement could produce the response from the EU that "you now have most of what you need economically from the EU, so the difficult final pre-accession stages can wait until we are all ready" and there would continue to be many problems which would enable some to say that the time was not yet ripe. It is therefore to be welcomed that the White Paper sees the implementation of single market rules in the CEECs as a part of a continuous process, not the completion of a new institutional relationship that would fall short of accession.

The White Paper's identification of accession to the common commercial policy with accession to the Union has the rationale that adoption of the common commercial policy is a commitment much of whose value comes from the fact that it is binding and irreversible. (The same can be said of the adoption of EU competition policy, which, however, comes earlier in the sequence.) Accepting this logic, however, then allows us to answer the question of what goes into the pre-accession phase and what is left for post-accession transition by identifying what comes before or with the common commercial policy and what comes after it. The logic of the sequencing of pre-accession issues thus pushes the common commercial policy and a fairly tightly defined set of single market policies into an early position in the sequence, *with formal accession at that stage*, and it follows that the policies which come later in the sequence, notably social and environmental policy, are for the post-accession transition not the pre-accession phase.

The experience of the EAs and of the EEA, the way the White Paper embraces a number of issues that should not be on the pre-accession agenda, the reluctance of the EU to admit to reciprocal obligations with respect to contingent protection all point to the need to push the process forward in a way that generates a reciprocal response from the EU side to actions taken by the CEECs. It is desirable to move on as soon as possible from sectorally dominated regulatory issues where progress can be slow (as shown by the EEA negotiations) to accession negotiations where political control is stronger, and swift deals can be made to overcome the stumbling blocks (as in the EFTA accession). The political economy of EU decision-making argues for the development as early as possible of legal certainty through a relationship of quasi-parity. Neither the White Paper programme nor the 'structured dialogue' on the political side, innovative though both are, achieve that.

The White Paper is surely right to suggest that premature entry into the phase of binding and reciprocal commitments would be costly to the CEECs, and there are also the formidable economic obstacles to membership posed by the costs to the existing EU members of extending the CAP and the structural funds to the CEECs. If we are to have early accession negotiations in order to bind the EU into reciprocal obligations, these negotiations will have to find solutions to the CAP and the structural funds that are not impossibly expensive. The McSharry reforms of the CAP and WTO commitments are moving support from prices to incomes and allowing national differences in the level of agricultural support to be compatible with the single market. This move in the direction

of 'nationalisation' of the CAP reduces the problems associated with the accession of the CEECs.

On the structural funds, the Treaty on European Union (Article 130s (5)) gives an explicit role to the Cohesion Fund in helping offset the costs of implementing strict environmental standards in the poorer EU member states. The logical response to the conjunction of unsustainable regulatory costs on the CEEC side and unsustainable budgetary costs on the side of the existing EU is to seek a solution in precisely the opposite direction – a long transition in which derogations from strict EU process standards are matched by non-application of fiscal transfers. How to achieve the working arrangements for this depend on how the EU more broadly addresses the issue of differentiation in an enlarged EU. The weight of opinion is strongly in favour of devising inclusive arrangements in which all member states participate even if policy is applied differentially. (Ehlerman, 1995; Wallace and Wallace, 1995.) Feats of political engineering will be needed, and will have to be considered not as pre-accession strategies but in accession negotiations.

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