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The Visegrad Countries of Central Europe - Integration or Isolation

Vincent John Ella

Notes

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INTRODUCTION

On December 21, 1992 the "Visegrad Four"[1] countries of Central Europe — Hungary, Poland, the Czech Republic and Slovakia — signed the Central European Free Trade Agreement (CEFTA) in Krakow, Poland.[2] This new agreement will help rebuild trade relations within Central Europe and spur economic growth in these countries. Ultimately, however, the goal of each of the Visegrad countries is to join the European Community.

This Note will examine the Visegrad countries' role in the new dynamics of European trade, and suggest that, while the new CEFTA is a laudable initiative, the countries of the Visegrad Four should continue to strive for full membership in

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1. The term "Visegrad Three" was coined by the press when Czechoslovakia, Poland and Hungary met in Visegrad, Hungary in February, 1991 to discuss cooperation in European integration. At that meeting the parties signed the "Declaration of the Hungarian Republic, the Czech and Slovak Federative Republic and the Polish Republic on Cooperation Leading to European Integration." This Note refers to these four countries (the Czech Republic, Slovakia, Poland and Hungary) as the Visegrad Countries, Visegrad Group, or Visegrad Four. Before the division of Czechoslovakia on January 1, 1993, they were known as the Visegrad Three and sometimes referred to as the Visegrad Triangle or Visegrad Troika. *See generally* Lidiya Kosikova, *Eastern Europe: The Visegrad Triangle — A New Cooperation Structure in Europe*, Reuter Textline Foreign Trade (USSR), Apr. 19, 1992, *available in* LEXIS, World Library, Allwld File.

These four countries constitute "Central Europe." "Eastern Europe" refers to Central Europe plus the Balkan states of Bulgaria, Romania, Albania and the former Yugoslavia. This Note focuses only on the Visegrad nations of Central Europe because they have made more progress in reforming their economies and political systems, and show the most promise for further development. Nations like Romania, Bulgaria and Slovenia will likely follow a path similar to that of the Visegrad Four but at a slower pace. The experience of the Visegrad Four should be instructive for these other formerly communist countries.

2. *See infra* part II.

the European Community. Russian demand for Visegrad exports has dried up and the European Community has been reluctant to open its markets to Visegrad products in sensitive areas such as steel and agriculture. Full membership in the European Community would guarantee markets for Visegrad goods and give the Visegrad Four a firm footing for economic growth. Despite the European Community's already large burden of responsibilities and challenges, this Note will also assert that it is in the European Community's own interest to grant the Visegrad Four full membership in the European Community by the end of the century. In the meantime, the European Community should abide by the spirit of its Europe Agreements[3] with the Visegrad Four and allow greater access to its markets.

Part I of this Note gives a brief history of trade relations between Eastern and Western Europe. Part II examines the advantages and disadvantages of the new CEFTA agreement and its effect on intra-regional trade. Part III looks at the current Europe Agreements between the Visegrad Four and the European Community. Part IV discusses the Visegrad Four's path toward EC membership. It concludes that EC membership by the year 2000 is economically feasible, beneficial to the Visegrad Four and has several advantages for the European Community.

I. OVERVIEW OF EAST-WEST TRADE RELATIONS IN EUROPE

A. HISTORY OF EAST-WEST TRADE: 1945-1989

Forty years of Soviet domination severely disrupted traditional trade patterns in Central Europe. Before World War II, Czechoslovakia, Hungary and Poland had industrial market economies and traded freely with the rest of Europe.[4] After the war, however, these countries were gathered under the economic umbrella of the Soviet Union. Despite their geographic, historic and cultural proximity, the countries of Central Europe and the countries of Western Europe were separated by a formidable trade barrier — the Iron Curtain.

Trade among Communist countries was controlled by the Council for Mutual Economic Assistance (CMEA).[5] The CMEA

3. *See infra* part III.

4. *See, e.g.*, Anthony Robinson, *Parting Is Such Sweet Sorrow*, FIN. POST, Jan. 2, 1993, at 59 (stating that "between the wars Czech industry was technically as proficient as Germany's").

5. The Council for Mutual Economic Assistance, also known as COMECON or the CMEA, was created in 1949 and officially dissolved on June

devised a trading system in which the countries of Eastern Europe were dependant on the Soviet Union for most of their trade.[6] Meanwhile, the countries of Western Europe, in the process of rebuilding their economies, also created new forms of supra-national economic cooperation, namely the European Economic Community (EC),[7] and the European Free Trade Area (EFTA).[8]

For many years after World War II, formal trade relations between the European Community and the Council for Mutual Economic Assistance virtually did not exist.[9] The Council for Mutual Economic Assistance initially refused to recognize the European Community,[10] and the European Community believed that the Council for Mutual Economic Assistance lacked the authority to make external trade agreements for its members.[11] As a result, the first EC - CMEA joint declaration did not occur until June 1, 1988,[12] only three years before the Council for Mu-

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28, 1991. 1 GATT INTERNATIONAL TRADE 1990-91 16 (1992). Its members were Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, the Soviet Union, Cuba, Mongolia, and Vietnam.

6. Under this system, Eastern Europe typically imported petroleum and other raw materials from the U.S.S.R. in exchange for agricultural products and some manufactured products. SUSAN S. NELLO, THE NEW EUROPE: CHANGING ECONOMIC RELATIONS BETWEEN EAST AND WEST 73 (1991). In 1985, the Soviet Union accounted for 37.8% of Poland's imports, 45.8% of Czechoslovakia's imports and 30% of Hungary's imports. *Id.* at 76.

7. The European Communities are the European Coal and Steel Community (ECSC), the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC). TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY [ECSC TREATY]; TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY [EURATOM TREATY]; TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EC TREATY]. Most aspects of these three bodies were merged in 1971. This Note refers to the European Economic Community simply as the European Community (EC). There are currently twelve members in the European Community: Belgium, France, Italy, Luxembourg, the Netherlands, Germany, Great Britain, Ireland, Denmark, Greece, Spain and Portugal.

8. The European Free Trade Area (EFTA) was formed in 1959. It is composed of the nations of Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, and Switzerland.

9. NELLO, *supra* note 6, at 15.

10. *Id.* at 18 (stating that the Soviet Union at one point considered the European Community an "organ of West European monopoly capitalism doomed to an inevitable destruction because of its internal contradictions.").

11. David Kennedy & David E. Webb, *Integration: Eastern Europe and the European Communities* 28 COLUM. J. TRANSNT'L L. 633, 636 (1990). The European Community did conclude a number of bilateral sectoral agreements with individual Soviet Bloc nations on products such as steel and agriculture. NELLO, *supra* note 6, at 34-36.

12. Council Decision 88/345 of 22 June 1988 on the Conclusion of the Joint Declaration on the Establishment of Relations Between the European Eco-

tual Economic Assistance was dissolved.[13]

Technically, trade relations between the European Community and the Visegrad countries are also subject to the General Agreement on Tariffs and Trade (GATT).[14] Poland and Hungary were allowed to join GATT in 1967 and 1973 respectively. This was partially due to political pressure by the United States which wished to reduce Soviet influence in Poland and Hungary.[15] Czechoslovakia joined GATT a few months before the Communists consolidated power in 1948, and remained a member until it divided into the Czech Republic and Slovakia on December 31, 1992.[16]

The European Community developed special mechanisms for dealing with state-run economies under GATT.[17] For example, the European Community routinely set quantitative restrictions on products from Eastern Europe[18] to ensure reciprocal gains in trade with the centrally planned economies of Eastern Europe, and as a means to protect Western industries.[19] Western countries also imposed restrictions on the sale or transfer of sensitive goods and technology from the West to the Eastern Bloc as a security measure during the Cold War era.[20]

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nomic Community and the Council for Mutual Economic Assistance, 1988 O.J. (L 157) 15 (stipulating that cooperation would be developed in "areas of mutual competence and interest.").

13. GATT INTERNATIONAL TRADE 1990-91, *supra* note 5.

14. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. pts. 5, 55 U.N.T.S. 187 [hereinafter GATT].

15. Leah Haus, *The East European Countries and GATT: The Role of Realism, Mercantilism, and Regime Theory in Explaining East-West Trade Negotiations* 45 INT'L ORG. 163 (1991); *see also* Janos Martonyi, *Eastern European Countries and the GATT, in* THE POLITICAL AND LEGAL FRAMEWORK OF TRADE RELATIONS BETWEEN THE EUROPEAN COMMUNITY AND EASTERN EUROPE (Marc Maresceau ed., 1987).

16. Haus, *supra*, note 15, at 164. On February 9, 1993, a session of the GATT Council approved a text of a protocol on the Slovakia and the Czech Republic joining GATT. *GATT Council Approves Protocol on Czech and Slovak Republics*, BBC, Feb. 13, 1993, *available in* LEXIS, World Library, Allwld File.

17. The GATT is structured for countries with market-oriented economies. Its signatories, however, devised special procedures to deal with centrally planned economies. NELLO, *supra* note 6, at 29; *see also*, GATT, *supra* note 14, art. VI, para. 1, subparas. 1, 2; *Agreement on Interpretation and Application of Articles VI, XVI and XVIII of the General Agreement on Tariffs and Trade*, B.I.S.D. 26th Supp. 56-83 (1980) (GATT Subsidies Code, pt. IV Special Situations); *see generally* Haus, *supra* note 15.

18. NELLO, *supra* note 6, at 4; Haus, *supra* note 15, at 176.

19. Quantitative restrictions are generally not allowed under GATT. Haus, *supra* note 15, at 176.

20. The Coordinating Committee for Multilateral Export Controls, or COCOM, sets limits on exports of "strategic" items and certain technologies to

The European Community also frequently brought antidumping complaints against Eastern Europe.[21] Because prices of Eastern goods were not determined by market forces, almost any East European import risked an antidumping attack. The "normal value" of goods imported from Communist countries was determined by using the cost of the same or equivalent product in a third country with a market economy.[22] The European Community continues to use antidumping complaints against countries in Eastern Europe, although the number of such complaints has decreased since 1985.[23]

East-West trade relations began to thaw even before the people of Eastern Europe overthrew their communist governments in 1989 and 1990. The European Community first signed bilateral trade and cooperation agreements with Czechoslovakia and Hungary in 1988, and with Poland in 1989.[24] These first generation agreements began to normalize trade relations by reducing the amount of quantitative restrictions on Eastern products.[25] The agreements included typical safeguard clauses, however, which allowed either party to limit imports which would cause "serious injury" to its own producers. Similar clauses have been retained in second generation "Europe Agreements" which replaced the first generation agreements.[26]

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certain nations. Japan, Australia, all EC members except Ireland, and all NATO members except Iceland are bound by COCOM. Kennedy & Webb, *supra* note 11, at 643. COCOM has lifted all restrictions on trade with Hungary, and has promised to do so for Poland as soon as it passes the necessary safeguard legislation. *Poland Attends Cocom Forum for First Time*, BBC Summary of World Broadcasts, Dec. 10, 1992, *available in* LEXIS, World Library, Allwld File. The current status of the Czech Republic and Slovakia under COCOM is not clear.

21. Kennedy & Webb, *supra* note 11, at 641.

"Dumping" is the practice of exporting goods at lower prices than normal domestic value. Antidumping complaints are allowed under GATT, the EC Treaty, and the ECSC Treaty. GATT, *supra* note 14, art. VI; EC TREATY, *supra* note 7, art. 113; ECSC TREATY, *supra* note 7, art. 74. From 1970 until 1982, there were 122 EC antidumping actions against Central and Eastern Europe. In 1981, Central and Eastern European countries comprised 69% of all EC antidumping complaints. NELLO, *supra* note 6, at 51.

22. Kennedy & Webb, *supra* note 11, at 641.

23. NELLO, *supra* note 6, at 51. Steel will likely be a target area for future antidumping measures by the European Community. *See infra* part III.

24. Council Decision 89/215, 1989, 32 O.J. (L 88) 1 (Czechoslovakia); Council Decision 88/595, 1988 31 O.J. (L 327) 1 (Hungary); Council Decision 89/593, 32 O.J.(L 339) 1 (1989) (Poland).

25. Gerwin Van Gerven & Takao Suami, *New Legal Framework for Trade Relations Between the EC and the Central and Eastern European Countries*, INT'L BUS. L., Mar. 1991, at 155.

26. *See infra* part III.

B. ASSISTANCE TO EASTERN EUROPE

The industrialized countries of the West responded to the 1989-90 revolution in Eastern Europe by initiating a number of programs designed to assist the East with its economic and social transformation. The two most important early initiatives were the PHARE program (Poland and Hungary — Aid to Reconstruct Economies) and the EBRD (European Bank for Reconstruction and Development).

The PHARE program was created in July 1989 to assist Poland and Hungary.[27] One year later it expanded to cover Czechoslovakia, Romania and Bulgaria.[28] It is coordinated by the EC Commission on behalf of the European Community,[29] the members of the Organization for Economic Cooperation and Development,[30] and the International Monetary Fund.[31]

PHARE provides food aid, assistance for agricultural restructuring, environmental cooperation, vocational training, and investment promotion.[32] The PHARE program eliminated quantitative restrictions for some Visegrad products,[33] and granted generalized system of trade preferences (GSP) status on others.[34] Trade relations between the European Community and the Visegrad countries are now covered by interim Europe Agreements.[35]

The European Bank for Reconstruction and Development

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27. *Trade Relations Eastern Europe*, Coopers & Lybrand EC Commentaries, Sept. 3, 1992, *available in* LEXIS, World Library, Allwld File [hereinafter *Trade Relations*].

28. *Id.*

29. The EC Commission is the body responsible for drafting EC legislative proposals and negotiating international agreements. The fact that the European Community was chosen to direct the PHARE program highlights the European Community's leadership position in this process of reintegrating Central and Eastern Europe with the West. Kennedy & Webb, *supra* note 11, at 649.

30. The member countries of the OECD are Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Convention on the Organization for Economic Cooperation and Development, Dec. 14, 1960, 12 U.S.T. 1728.

31. The International Monetary Fund (IMF) was created at the Bretton Woods Conference in 1944. It is a supranational organization committed to stabilizing the international monetary system through short-term lending and other measures.

32. *Trade Relations*, *supra* note 27.

33. Van Gerven & Suami, *supra* note 25, at 152.

34. *EEC/Eastern European Relations*, Commission of the European Communities, May 21, 1992, *available in* LEXIS, World Library Allwld File.

35. *See infra* part III.

was formed on April 15, 1991. Its mission is to assist Eastern Europe's transition market economies, promote private and entrepreneurial initiatives, and encourage investment in Eastern Europe.[36] The Bank has an operating budget of 10 billion ECU,[37] 70% of which is to be held in reserve and 30% is to be loaned out immediately.[38] Forty percent of the Bank's total financing is allocated for the public sector and 60% is allocated for the private sector.[39] The EBRD provides important financial stability to the Visegrad group as it undergoes the difficult task of creating a market economy.

Although these temporary aid programs have been beneficial, they have treated the Visegrad Four more like developing countries requiring unilateral assistance than full-fledged participants in the economic structure of Europe.[40] The long-term economic prosperity of the Visegrad Group will depend on external trade, especially with the European Community.[41] Thus, aid programs such as PHARE and the EBRD were not enough for the Visegrad Group to continue their transformation. Due to their geographic and historic position and their successful political and economic reform, the Visegrad countries sought closer ties to the European Community, including greater access to its markets and eventual membership. In response to these requests,[42] representatives from the European Community and each of the Visegrad countries drafted Association Agreements,

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36. *Trade Relations*, *supra* note 27; *see also* NELLO, *supra* note 6, at 91.

37. European Currency Units (ECU). The ECU is based on "basket" of EC member currencies and used by the European Community for budget purposes and statistical valuations. As of April 6, 1993, one ECU equaled approximately U.S. $1.21. WALL ST. J., Apr. 6, 1993, at C13.

38. NELLO, *supra* note 6, at 190.

39. *Trade Relations*, *supra* note 27.

40. These programs can be compared to the European Community's Lomé Convention (first signed in 1975, and most recently expanded in 1990) which is directed at a number of developing countries in Africa and the Caribbean, and provides free trade access to EC markets for selected products, as well as financial and technical aid, but does not create reciprocal free trade benefits for the European Community and certainly does not foresee EC membership for the participating nations. *See* RALPH H. FOLSOM, EUROPEAN COMMUNITY LAW IN A NUTSHELL 226-31 (1991).

41. JOHN PINDER, THE EUROPEAN COMMUNITY AND EASTERN EUROPE 31 (1991); Jonathan Lynn, *West Must Open Markets to E. Europe — Economists*, Reuters, Dec. 8, 1992, *available in* LEXIS, World Library, Allwld File (quoting Andras Inotai, director of Hungary's Institute for World Economics: "[Exports are vital,] without exports as engine of growth I really don't see how we can make a successful recovery.").

42. *See* Draft of Europe Agreement, *infra* note 95, at the preamble.

later renamed Europe Agreements, in 1991.[43] These agreements are designed to lower trade barriers on both sides and to increase political cooperation. They do not, however, include a solid commitment to eventual EC membership.[44]

C. AFTER THE REVOLUTIONS: EAST-WEST TRADE 1989-1993

Partly as a result of early EC assistance such as the PHARE program and the EBRD, historic East-West trade patterns quickly began to reestablish themselves after the fall of communism in 1989-1990. Eastern European trade with the former Soviet Union declined sharply, while trade with the European Community increased dramatically.[45]

In 1990, EC imports from Poland increased 54%; imports from Hungary increased 31%; and imports from Czechoslovakia increased 20%.[46] From the second quarter of 1991 through the second quarter of 1992, EC imports from the Visegrad Group continued to increase by a rate of nearly 30%.[47] In 1992, Poland exported an average of $700 million in goods to the European Community *per month*.[48] Germany in particular accounts for a large portion of Visegrad trade.[49]

The increase in East-West trade seems certain to continue. Current East-West trade in Europe is only about one-fifth of what it was before World War II,[50] and it is estimated that EC exports to Eastern Europe could exceed those to the United

43. *See infra* part III.

44. *See infra* part III.

45. In 1990, Eastern European imports from the USSR fell 25% and Eastern European exports to the USSR fell 12%, GATT INTERNATIONAL TRADE 1990-91, *supra* note 5, at 18. Czech, Hungarian and Polish exports to the European Community increased 20%, 21% and 54% respectively. *Id.* at 17.

46. *Id.* When the increases are broken down by sector, the importance of agriculture, steel and textile exports for these countries is obvious. Agriculture: Hungary up 10%, CSFR up 8%, Poland up 43%. Iron and Steel: Hungary up 46%, CSFR up 26%, Poland up 57%. Textiles (clothing): Hungary up 40%, CSFR up 42%, Poland up 77%. *Id.*

47. Richard W. Stevenson, *Eastern Europe Says Barriers to Trade Hurt Its Economies*, N.Y. TIMES, Jan. 25, 1993, at A1 (citing OECD statistics).

48. *Id.*

49. In fact, trade with Germany accounts for a larger share of the Visegrad countries' economies than the economies of France or Denmark. Trade with Germany (exports and imports) accounts for 12%-15% of the GDP of the Visegrad Group, but only 4-12% of the GDPs of Britain, Italy, France or Denmark. *Europe's Hard Core*, ECONOMIST, Nov. 21, 1992, at 78.

50. Garath G. Cook & Tim Snyder, *Western Europe's Economic Might Is Key to Stability in the East*, CHRISTIAN SCI. MONITOR, Jan. 12, 1993, at 19 (based on data from the League of Nations); Anthony Robinson, *The European Market*, FIN. TIMES LTD., Nov. 9, 1992, at 2. Before the 1930s, 17% of German ex-

States in fifteen years.[51] Continued growth will depend, however, on the willingness of the European Community to abide by its Europe Agreement commitment to open markets. Assuming it does, one study predicts that in the long run, EC exports to the Visegrad Group will increase 872% and Visegrad exports to the European Community will increase 804%.[52]

II. THE CENTRAL EUROPEAN FREE TRADE AGREEMENT

While increased Visegrad trade with the West is not a negative development, it has come at the expense of intra-regional trade.[53] Since the fall of communism and the dissolution of the Council for Mutual Economic Assistance, the countries of Central Europe have been trading more with Western Europe than with each other. Three factors contributed to this shift in trading patterns. First, former members of the Council for Mutual Economic Assistance started demanding that payment settlements be made in hard currency after the Council was dissolved.[54] Second, Eastern consumers had a pent-up demand for Western goods.[55] Third, the Visegrad countries negotiated trade concessions as part of the Europe Agreements with the European Community and agreements with EFTA, but erected high tariff barriers among themselves.[56] This meant that goods from

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ports went to Eastern Europe and the Soviet Union. In 1989, the figure was approximately 4%. PINDER, *supra* note 41, at 4.

51. NELLO, *supra* note 6, at 92.

52. CENTRE FOR ECONOMIC RESEARCH AND DEVELOPMENT, IS BIGGER BETTER? THE ECONOMICS OF EC ENLARGEMENT 81 (1992) [hereinafter CEPR] (stating that "the opening of the East could provide export market opportunities to Western economies on a scale unprecedented in modern history.").

53. Intra-regional trade among CMEA countries declined 20% in 1990. GATT INTERNATIONAL TRADE 1990-91, *supra* note 5, at 15.

54. *Id.* at 16. Before the collapse of the CMEA, payment accounts were settled in convertible rubles. The collapse of this system caused each former CMEA member country to demand payment in hard currency, while reserving its own scarce hard currency for crucial imports from the West and petroleum from the former Soviet Union. Since then, new procedures have been developed and this process should be facilitated by the CEFTA agreement. Eventually, all four members expect to make the transition to full convertibility.

55. Dr. Peter Rutland, *Czechoslovakia*, *in* EASTERN EUROPE AND THE COMMONWEALTH OF INDEPENDENT STATES 145 (1992); NELLO, *supra* note 6, at 76.

56. According to one 1992 report, imports from other East European countries cost 2-3 times more than those from the EC countries partially because of higher "import taxes." In Hungary these "taxes" were about 10-13% while West European goods were taxed at 4%. Polish tariffs on Eastern goods were about 15%. Czechoslovakia, which began liberalizing early, had significantly lower tariffs, about 4.7%, which caused stiff competition for its domestic produ-

the European Community became cheaper than goods from former CMEA members,[57] causing intra-regional trade to decline dramatically.[58] The Central European Free Trade Agreement[59] should help correct this distortion.

A. STRUCTURE

The new CEFTA agreement should bring intra-Visegrad tariffs in line with Visegrad-EC tariffs.[60] Tariff reductions under the agreement are currently set to take place over an eight-year period. As a result of lobbying by the representative from the Czech Republic, however, all four parties signed a declaration of commitment to talks aimed at reducing the transition time to no more than five years.[61]

Until recently, two of the Visegrad countries, the Czech Republic and Slovakia, were parts of the same country. Both governments have indicated that it is their intention to maintain a customs union and to allow the free movement of goods and people between the two newly independent countries.[62] This should not conflict with the larger aims of the CEFTA, and in fact the two arrangements should reinforce each other.

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cers. Thus, Czechoslovakia had a large incentive to harmonize tariffs with other Visegrad nations as part of CEFTA. Kosikova, *supra* note 1, at 4-5.

57. Miroslaw Glogowski, *Free Trade in Central Europe*, WARSAW VOICE, Jan. 10, 1993, *available in* LEXIS, World Library, Allwld File (citing the example of Hungarian pharmaceutical products being forced out of the Polish market).

58. Intra-regional trade decreased 20% in 1990. *Id.* Polish Economist Dariusz Rosati estimates that the collapse of East Bloc trade accounted for one-third of Poland's 1991 drop in GDP. Poland's GDP fell 20% over 1989-91. Lynn, *supra* note 41.

59. An official text of the agreement is not yet available in the United States. Telephone Interview with Barnabas Nemeth, Embassy of Hungary Trade Representation, Washington, D.C. (Feb. 4, 1993). For a description of the terms of the agreement, see generally Glogowski, *supra* note 57.

The charter members of the CEFTA are Hungary, Poland and Czechoslovakia (now the Czech Republic and Slovakia). The Hungarian Minister for Foreign Affairs, Geza Jeszensky, has indicated that the agreement might be extended to include Slovenia. *Czech Premier Objects to Visegrad Cooperation*, GAZETA WYBORCZA No. 8, PAP, Jan. 11, 1993, *available in* LEXIS, World Library, Allwld file [hereinafter *Czech Premier Objects*]. Because the agreement is meant to be a temporary arrangement until the Visegrad Four are allowed to join the European Community, it is unlikely that its membership will expand.

60. Under both the CEFTA and the Europe Agreements, all non-agricultural tariffs are scheduled to be eliminated over periods from five to ten years.

61. *Czech, Slovak Republics Join Free Trade Zone Agreement*, CTK National News Wire, Dec. 21, 1992, *available in* LEXIS, World Library, Allwld File.

62. Robinson, *supra* note 4.

The CEFTA places most products into one of three categories.[63] Group A includes many raw materials as well as finished and unfinished products which are not seen as competing with various domestic industries, such as cellulose, silk, wool, asbestos, some pharmaceutical products, and spare parts for cars. Products in group A became duty free March 1, 1993.[64]

Group B includes industrial goods such as lighting equipment, medical and ceramic products, and train wagons and locomotives. Customs duties on products in group B will be reduced to 66% of the original tariff by 1995, to 33% of the original by 1996, and completely eliminated by 1997.[65]

Group C includes sensitive products such as textiles, steel and televisions.[66] Customs duties on products in group C will be reduced by 10% in 1995 and 15% annually thereafter until January 1, 2001 when all customs duties on non-agricultural Visegrad products will be eliminated.[67]

The CEFTA makes separate provisions for automobiles and agricultural products.[68] The current 35% nominal charge on automobile imports will be reduced annually by 5%.[69] Total reductions on agricultural tariffs under the current Agreement are not great — only 20 to 50% by the end of the phase-out period. In addition, the Agreement introduces quantitative restrictions on many agricultural products.[70] Intra-Visegrad trade in agriculture, however, should increase as a result of the Agreement.[71]

B. BENEFITS OF THE CEFTA

The CEFTA will spur intra-Visegrad trade by allowing increased specialization and economies of scale among its members.[72] For example, Poland predicts that reducing tariffs by

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63. Glogowski, *supra* note 57.
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Free Trade Agreement of Visegrad Three: The First Common Step Towards European Integration, Says Kadar*, MTI Hungarian News Agency, Dec. 21, 1992, *available in* LEXIS, World Library, Allwld File [hereinafter *First Common Step Says Kadar*].
72. The goal and justification of every free trade area is a more efficient allocation of resources. This may not be the result if the effect of a free trade area is to cause more *trade diversion* than *trade creation*. Free trade areas comprised of countries of roughly equal economic development, such as the Visegrad Four, are less likely to be trade diverting and more likely to be trade

one-third will result in a 10% increase in Polish exports to Hungary, Slovakia and the Czech Republic, and that a two-thirds reduction will increase these exports by 30%.[73] The greatest profit for Poland should come from the sale of fuel, raw materials and chemicals.[74] Hungary predicts that the free trade area will be particularly good for its agricultural exports.[75]

For many years, Poland, Hungary and the former Czechoslovakia had close economic relations as part of the Council for Mutual Economic Assistance, including specialization and cooperation in manufacturing and the joint processing of raw materials.[76] Slovakia and the Czech Republic, of course, have extensive economic ties. Due to nationalist jealousies, however, these ties may be better encouraged and continued under the auspices of a multinational agreement.[77] Until their currencies become convertible, the Visegrad countries need to continue to devise methods of mutual payment settlements.[78] In sum, these countries should not immediately abandon all past trade relationships for new contacts with the West.

The CEFTA should improve Visegrad relations with Western Europe. All four signatories seek the stability and benefits of full membership in the European Community. Together, rather than separately, they wield more political bargaining power in negotiations with the European Community. As the Visegrad countries begin drafting new legislation suitable for market economies, the CEFTA will help coordinate efforts to develop these laws and industrial standards to conform to EC norms.[79] This will facilitate the process of application for EC

creating. Direct competition in similar industries is more likely to expose competitive disadvantages. Because the Visegrad economies are highly industrialized they will compete directly with the European Community as well, so that the EC-Visegrad Europe Agreements are unlikely to create much trade diversion either. For the seminal work on the issue of trade diversion versus trade creation, see generally JACOB VINER, THE CUSTOMS UNION ISSUE (1950). Regarding increased benefits for countries with similar economic development, see *id.* at 51.

73. Glogowski, *supra* note 57 (predicting that a total lifting of duties for economic exchange in the [Visegrad] region would give Poland profits of 4.75 trillion Zlotys).

74. *Id.*

75. *First Common Step Says Kadar*, *supra* note 71.

76. Kosikova, *supra* note 1. For example, landlocked Hungary, Slovakia and the Czech Republic can gain access to Poland's Baltic Sea ports.

77. Susan Greenburg, *Switzerland: Open Markets Fear Free Trade Failure*, Reuter Textline, Feb. 6, 1993, *available in* LEXIS, World Library, Allwld File.

78. *See generally* Kosikova, *supra* note 1.

79. *Free Trade Agreement at Centre of Polish Premier's Talks on Hungary*, BBC, Sept. 28, 1992, *available in* LEXIS, World Library, Allwld File.

membership. The agreement also demonstrates to the European Community the Visegrad Countries' ability to work together and compromise, as well as their commitment to free trade.[80] Finally, these four countries together comprise a market of 65 million people — a more attractive market to foreign investors than three small countries and one medium-sized one.[81]

In addition to liberalizing trade and improving ties with the West, the Visegrad agreement is also aimed at increasing intra-Visegrad political dialogue.[82] The CEFTA may serve as a forum for discussion on issues such as Slovakia's treatment of its large Hungarian minority, or the construction of the controversial Gabcivkovo dam between Hungary and Slovakia.[83] Also, all four Visegrad countries are wary of the rising economic hegemony of Germany, and may find security in mutual cooperation.[84]

C. Resistance to the CEFTA

Some resistance to regional cooperation in Central Europe still exists, and one should not over-estimate the signatories' commitment to joint negotiations with the European Community. Any of the signatories would probably jump ship if offered membership in the European Community before the others.[85] Ideally CEFTA will be only a temporary agreement until the Visegrad Four are able to join the European Community. In the meantime the Agreement is a positive development for European trade.

III. THE EUROPE AGREEMENTS

The basis for present day trade relations between the Euro-

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80. *First Common Step Says Kadar, supra* note 71.

81. *Id.* Population, in millions: the Czech Republic 10.4, Hungary 10.4, Poland 38.2, Slovakia 5.3. *Check, O Slovakia*, ECONOMIST, June 27, 1992, at 55; CEPR, *supra* note 53, at 61.

82. *Free Trade Agreement at Centre of Polish Premier's Talks on Hungary, supra* note 79.

83. *Central Europe Trade Pact Should Be Signed Next Week*, Reuter Library Report, Dec. 17, 1992, *available in* LEXIS, World Library, Allwld File.

84. *United in Rivalry*, ECONOMIST, July 11, 1992, at 27.

85. *Czech Premier Objects, supra* note 59, (quoting Czech Prime Minister Vaclav Klaus). Klaus said that the Visegrad Group was a process artificially created by the West, that the "Czechs were not interested in it" and that in two or three years "the Czech Republic would be able to join the European Community on its own." *Id.* Klaus' comments have been discounted by officials from the Czech Republic and other CEFTA member countries, but they point to a cynical belief by some that the West is trying to relegate the Visegrad Countries to a "poor man's Club." *Polish, Czech Views on Visegrad Grouping — In Focus*, CTK National News Wire, Feb. 4, 1993, *available in* LEXIS, World Library, Allwld File (quoting Polish president Lech Walesa).

pean Community and the Visegrad countries is the "Europe Agreement." On December 16, 1991, foreign ministers from Czechoslovakia, Poland and Hungary each signed bilateral second-generation association agreements, called Europe Agreements, with the European Community.[86] Each Agreement still must be ratified by the national parliaments of the particular Visegrad country and all twelve EC member states.

Until the permanent Europe Agreements are formally ratified, their trade provisions have become effective under "Interim Agreements" signed between the European Community and Czechoslovakia, Poland and Hungary.[87] Because the European Community has exclusive authority to conduct common

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86. The European Community is authorized to form reciprocal association agreements with a "third state or union of states." EC TREATY, *supra* note 7, art. 238.

Free trade areas and customs unions are allowed as an exception to the most favored nation (MFN) principle under GATT. GATT, *supra* note 14, art. XXIV.

The Europe Agreements will have the effect of creating four free trade areas, one between each Visegrad signatory and the European Community. They do not create a customs union (i.e. a free trade area with common external tariffs), nor does the CEFTA arrangement. According to GATT, Article XXIV para. 8(b), in order to qualify as a free trade area the arrangement must eliminate duties and other restrictive measures of commerce on "substantially all the trade" between the parties. The meaning of "substantial" in this context has never been fully determined, although virtually all efforts to establish free trade areas in the past have gone unchallenged under GATT. JOHN H. JACKSON & WILLIAM K. DAVEY, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 454-63 (2d ed. 1986).

The United States has, however, reacted to these agreements with some alarm. The Commerce Department believes that they are biased against American goods and has indicated that the United States will pursue a GATT complaint regarding the Agreements. *U.S. Officials See Bias Against U.S. in EC Trade with Nations of East Europe*, 9 Int'l Trade Rep. (BNA) 1560, Sept. 2, 1992.

Former President George Bush proposed the creation of a free trade zone between the United States and the Visegrad nations in September 1992. The Czech Foreign Ministry said that the proposal "falls in no way within the context of Czechoslovakia's effort to build intensive economic relations in the framework of Europe, particularly with the [EC and EFTA]." *Czechoslovakia-U.S. Trade*, CTK National News Wire, Sept. 13 and 14, 1992, *available in* LEXIS, Europe Library, ALLEUR File.

87. Council Decision 92/228 of 25 February 1992 on the Conclusion by the European Economic Community of the Interim Agreement Between the European Economic Community and Poland on Trade and Trade-related Matters, 1992 O.J. (L 114) 1 [hereinafter Poland Interim Agreement]; Council Decision 92/229 of 25 February 1992 on the Conclusion by the European Economic Community of the Interim Agreement Between the European Economic Community and the Czech and Slovak Federal Republic on Trade and Trade-related Matters, 1992 O.J. (L 115) 1 [hereinafter Czechoslovakia Interim Agreement]; Council Decision 92/230 of 25 February 1992 on the Conclusion by the European Economic Community of the Interim Agreement Between the European Eco-

external commercial policy on behalf of its member states,[88] it quickly ratified the trade aspects of the Europe Agreements by creating Interim Agreements.[89] The Europe Agreements also extend to political and other non-trade matters, and thus must go through the longer ratification process described above.

The division of Czechoslovakia into two new countries has delayed ratification of what will now be four Europe Agreements, because European parliaments had planned to ratify all of the Agreements together.[90] The Czech Republic and Slovakia are now re-negotiating separate Agreements.[91] In order to allow time for negotiations, the EC Council has extended the validity of all four Interim Agreements indefinitely.[92] The Interim Agreement signed with Czechoslovakia will be valid with respect to both the Czech Republic and Slovakia until new Agreements are negotiated.[93]

The European Community may take advantage of the opportunity to make the new Czech and Slovak agreements more strict by conditioning trade concessions on guarantees concerning matters such as human rights, the environment, and arms sales, or by tightening restrictions on products such as steel.[94] For the purposes of this Note, however, the trade aspects of the Interim Agreements and the Europe Agreements are presumed to be the same unless otherwise noted.

A. STRUCTURE

Each Europe Agreement calls for the creation of an "Association Council" composed of members of the Council of the European Community and the individual Visegrad government.[95]

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nomic Community and Hungary on Trade and Trade-related Matters, 1992 O.J. (L 116) 1 [hereinafter Hungary Interim Agreement].

88. EC TREATY, *supra* note 7, art. 113.

89. The Interim Agreements took effect on March 1, 1992. *EEC/Eastern European Relations*, supra note 34.

90. *EC Council Extends Interim Agreements with Poland, Hungary and Czechoslovakia for Indefinite Period*, Reuter Textline, Dec. 8, 1992, *available in* LEXIS, World Library, Allwld File.

91. *Reports on Czech and Slovak Republics, Czechoslovakia's Provisional Agreement with EC Extended to Cover the Split*, BBC Dec. 21, 1992, *available in* LEXIS, World Library, Allwld File.

92. *Id.*

93. *Id.*

94. *EC/Eastern Europe: European Community Member States Set Steel Quotas*, European Information Service, Jan. 6, 1993, *available in* LEXIS, World Library, Allwld File (regarding the potential for new "tariff quotas" on Czech and Slovak steel) [hereinafter *Steel Quotas*].

95. *Draft of Agreement Establishing an Association Between the European*

The Council will be responsible for examining any issues arising within the framework of the agreement, settling disputes and continuing a political dialogue between the European Community and the Visegrad governments.[96]

The goal of these Agreements is to gradually establish a free trade area between the European Community and each Visegrad country over a transitional period lasting a maximum of ten years.[97] In addition to decreasing trade barriers, the Europe Agreements encourage economic cooperation, provide technical and financial aid, establish projects to improve infrastructure, and provide for political, informational and cultural exchanges.[98] The free movement of workers is not envisaged under the agreements.[99]

The Agreements are based on the principle of asymmetry. That is, they call for the European Community to lower trade barriers more quickly than the Visegrad side, so that Central European industries will have more time to become competi-

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Community and Poland, arts. 28, 102 [hereinafter Draft of Europe Agreement] (Draft available from Delegation of the European Communities, Washington, D.C.). The analysis in this Note is based on the draft of the EC-Poland agreement received from the EC Delegation in Washington, D.C.; all three original agreements are virtually identical in structure. The new agreements with the Czech Republic and Slovakia could differ significantly, however.

96. *Id.* art. 105.

97. *Id.* art. 7.

98. *Id.* tit. VI, arts. 71-101. Specifically, cooperation will focus on: industrial cooperation, investment promotion and protection, approximation of standards, science and technology, education and training, agriculture, energy, nuclear safety, the environment, water management, transportation, telecommunications, broadcasting, banking, insurance, monetary policy, audit and financial control, money laundering, regional development, social cooperation, tourism, customs, statistical cooperation, economics, and drugs.

99. The agreements provide only for the transferability of pension, medical and insurance payments, freedom from discrimination, and employment for spouses of those already legally working within the other party's borders. *Id.* arts. 37, 38. While the Visegrad countries have asked for greater mobility for their workers, some have suggested that this type of mobility could lead to a "brain drain" as skilled Eastern professionals seek higher wages and greater opportunities in the West. *Will More Be Merrier?*, ECONOMIST, Oct. 17, 1992, at 75. The European Community is also concerned about increased immigration from the East. *Id.*

In its report, IS BIGGER BETTER?, the CEPR examines the relationship between trade and investment on one hand, and emigration (legal or illegal) on the other. If workers in Central Europe have reason to expect more jobs due to capital investment from increased trade, they will be less likely to emigrate west. This in turn raises the amount of available workers and ultimately keeps wage rates down which encourages more capital investment. CEPR, *supra* note 52, at 57.

tive.[100] Existing trade barriers on the Visegrad side, however, are often three times as high as those on the EC side, so the ultimate gain for the European Community is arguably greater.[101] EC tariffs on most goods from the Visegrad countries will be immediately abolished upon each agreement's entry into force.[102] EC tariffs on certain industrial products from the Visegrad countries will be reduced by 50% immediately, and completely eliminated after one year.[103] Tariffs on other products will be reduced progressively by 20% per year for four years.[104] All EC tariffs on Visegrad goods other than textiles, coal, steel and agriculture will be eliminated within five years.[105] All EC quantitative restrictions will be eliminated on the date each Agreement enters into force, except for those on agricultural products, and some restrictions on textiles, coal and steel.[106] Most Czech, Slovak, Hungarian and Polish customs duties will be decreased 20% per year, starting three years after the Agreements take effect.[107] Free trade in all areas except agriculture is planned after the end of the ten-year adjustment period.

Each Europe Agreement contains a safeguard clause in Article 30. [108] Parties to the agreements may also bring antidumping complaints under GATT Article VI[109] when a product is imported in such quantities that it causes "serious injury or dis-

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100. HUNGARIAN CHAMBER OF COMMERCE, EC-HUNGARY 1992 2 (1992) [hereinafter Hungarian Chamber of Commerce]; *Hungary: No Excitement About EC Association Agreement*, Figyelo Reuter Textline, Nov. 21, 1991, *available in* LEXIS, World Library, Allwld File.

101. *Hungary: No Excitement About EC Association Agreement*, supra note 100 (comparing Hungarian tariffs to EC tariffs).

102. *Draft of Europe Agreement*, *supra* note 95, art. 9, paras. 1, 4.

103. *Id.* art. 9, para. 2.

104. *Id.* art. 9, paras. 2, 3.

105. *Id.* art. 9, para. 3.

106. *Id.* art. 9, para. 4.

107. *Id.* art. 10, para. 3.

108. Where any product is being imported in such increased quantities and under such conditions as to cause or threaten to cause: [A] serious injury to domestic producers of like or directly competitive products in the territory of one of the Contracting Parties, [or] [B] serious disturbances in any sector of the economy or difficulties which could bring about serious deterioration in the economic situation of a region, the Community or [the Visegrad nation] may take appropriate measures . . . in accordance . . . with Article 33.

Id. art. 30. This safeguard clause does not apply to coal, steel, textiles or agriculture. These product areas are covered by separate protocols which contain similar safeguard clauses.

109. *Id.* art. 29; GATT, *supra* note 14, art. VI.

turbance" to the domestic industry of the contracting party.[110] Antidumping or serious injury complaints must first be brought before the Association Council.[111] If no satisfactory solution is reached within thirty days, the importing country is allowed to adopt the "appropriate measures."[112]

The Visegrad countries are allowed an additional safeguard option under the agreements which allows them to impose increased customs duties in order to protect certain industries.[113] These infant industry safeguard measures may be applied for a maximum period of five years, or until the end of the transitional period, whichever comes sooner. They are limited to 25% ad valorem, and 15% of the total imports of industrial products from the European Community. A country wishing to implement these restrictions must first inform and consult the Association Council.[114]

B. PROBLEM AREAS

The Europe Agreements make special arrangements for trade in four key areas: steel, coal, agricultural products, and textiles. Each of these areas is covered by a special protocol and is not subject to the standard tariff reduction schedule otherwise established by each Europe Agreement.[115] Unfavorable treatment of these industries by the European Community has hampered the Visegrad countries' ability to increase exports to Western Europe; these products comprise a large part of the Visegrad countries' exports[116] because they are areas in which the countries have a comparative advantage.[117]

Restrictions in steel, coal, agriculture, and textiles have led to much friction between the two sides. The Visegrad Four have demanded further concessions, while EC steel, agricultural and

110. *Draft of Europe Agreement*, *supra* note 95, art. 29.

111. *Id.* art. 33.

112. *Id.* art. 33(3)(b).

113. Article 28 of each Agreement provides that any Visegrad nation can take "exceptional measures of limited duration . . . in the form of increased customs duties. These measures may only concern infant industries, or certain sectors undergoing restructuring or facing serious difficulties, particularly where these difficulties produce important social problems." *Id.* art. 28.

114. *Id.* art. 28.

115. *Id.* art. 16, protocol 2 (ECSC Products); *id.*, art. 17, protocol 3, annex VII, chpt. II, arts. 18(1)(2), 19, 20 (Agricultural Products); *id.* art. 15, protocol 1 (Textiles).

116. GATT, INTERNATIONAL TRADE 1990-91, *supra* note 5, at 23.

117. Cook & Snyder, *supra* note 50. Visegrad exports in all of these areas increased substantially before the Interim Agreements took effect in 1991:

textile interests have called for further tightening of restrictions. The European Community's protectionist attitude, along with its apparent willingness to invoke safeguard clauses, has created a "nuclear deterrence" effect (i.e., one does not have to use it for it to work), discouraging new investment in Central Europe.[118] A main reason for this friction is the recession plaguing the European Community.[119] At the same time, Central Europe is adapting to free market capitalism better than expected, and proving very competitive, especially in steel and agriculture.[120] Ironically, Central Europe now has freer markets than Western Europe.[121] EC protectionism for steel producers and farmers is perceived as hypocritical by Visegrad governments, which had been lead to believe that Western economies were based on free market ideals.

1. *Steel*

Although Eastern European steel comprises only a small portion of EC steel imports,[122] EC steel interests are lobbying

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VISEGRAD 3 EXPORTS TO EC BY PRODUCT (in $ Millions)

	Czechoslovakia	Hungary	Poland
Food			
1988	$193	$685	$787
1989	249	801	977
1990	270	884	1396
Iron & Steel			
1988	311	128	166
1989	354	140	227
1990	446	204	356
Textiles			
1988	186	83	75
1989	179	85	73
1990	229	128	108

GATT INTERNATIONAL TRADE 1990-91, *supra* note 5, at 25.

118. Stevenson, *supra* note 47, at C8.

119. Lionel Barber, *Brussels Cuts EC Growth Forecast to 0.8% in 1993*, FIN. TIMES, Jan. 13, 1993, at 1. Economic growth for the European Community for 1993 is predicted to be only about 0.8%. This is partly a result of Germany's high interest rates, which in turn have been a consequence of Germany's goal of preventing inflation in the wake of massive spending on reunification. *Id.*

120. Stevenson, *supra* note 47.

121. *Europe's Hard Core*, *supra* note 49, at 77 (stating that state subsidies to industry in the former Czechoslovakia of 4.5% of GDP were two-thirds the level of those in Italy). *Guilt by Association*, ECONOMIST, July 11, 1992, at 25 (regarding drastic cuts in Hungarian and Polish farm subsidies to levels well below those in Western Europe).

122. In 1990, Eastern European countries (including non-Visegrad countries like Bulgaria and Romania) accounted for 10% of EC imports of iron and steel. GATT INTERNATIONAL TRADE 1990-91, *supra* note 5, at 17. Czechoslovakia alone accounted for 3.8%. *Id.* at 53. Current estimates put steel imports from

strongly to prevent Visegrad access to their protected market.[123] The European Community steel industry is currently in the midst of a transitory stage marked by overproduction.[124] Every steel producer in Western Europe is losing money,[125] and plans are being made to close a number of factories and to lay off as many as 50,000 steelworkers.[126] Steel imports from Eastern European producers are perceived as a major cause of this market downturn.[127] Eastern steel is of inferior quality to Western steel, but it is also less expensive and therefore a competitive threat to EC producers.[128] EC steel producers claim that Visegrad steel is heavily subsidized, and thus deserves retaliatory measures from the European Community.[129]

Quantitative restrictions on Hungarian, Polish and Czech steel are scheduled to be eliminated when each Association Agreement goes into effect.[130] Tariffs on Visegrad steel are scheduled to be reduced by 20% annually and completely eliminated after five years.[131] The Czech Republic and Slovakia, however, must renegotiate their agreements and may receive less generous concessions.[132] Despite the elimination of restrictions and tariffs called for under the Interim Europe Agree-

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Eastern Europe and the former Soviet Union together at about 4% of EC sales. Tom Redburn, *Pillar of European Unity, Steel Now Divides East and West*, INT'L HERALD TRIBUNE, Jan. 28, 1993, at 1. Another estimate puts Visegrad exports at 3% of the EC's annual output. *Feeling Sorry for Steel*, ECONOMIST, Oct. 3, 1992, at 69. In 1992, the EC Commission asserted that Czechoslovakia "had acquired up to 27% [sic] of the market" in steel. Peter Blackburn, *EC Seeks to Curb Steel Imports from East Europe*, Reuter Business Report, Dec. 3, 1992, *available in* LEXIS, World Library, Allwld File.

123. Some have called for the EC Commission to declare a "manifest crisis" and impose set prices and production quotas under article 58 of the European Coal and Steel Treaty. *Smeltdown*, ECONOMIST, Feb. 13, 1993, at 68.

124. *Id.* (estimating the European Community's excess capacity in raw steel at 25.8 million tons out of a total capacity of 190 million tons).

125. Redburn, *supra* note 122.

126. *Smeltdown*, *supra* note 123, at 68; Andrew Hill, *Brussels Calls for Broader Cuts in EC Steel Industry*, FIN. TIMES LTD., Feb. 18, 1993, at 1.

127. *Feeling Sorry for Steel*, *supra* note 122.

128. *See Feeling Sorry for Steel*, *supra* note 122 (stating that East European steel sells for 25% less than the cheapest EC steel); *Trade Relations*, *supra* note 27, at 7.

129. Hill, *supra* note 126.

130. Czechoslovakia Interim Agreement, *supra* note 87, protocol 2, art. 4, para. 1; Hungary Interim Agreement, *supra* note 87, protocol 2, art. 4, para. 1; Poland Interim Agreement, *supra* note 87, protocol 2, art. 4, para. 1.

131. Czechoslovakia Interim Agreement, *supra* note 87, protocol 2, art. 2; Hungary Interim Agreement, *supra* note 87, protocol 2, art. 2; Poland Interim Agreement, *supra* note 87, protocol 2, art. 2.

132. Steel Quotas, *supra* note 94.

ments, the European Community has retained the right to impose safeguard measures and antidumping actions on Visegrad steel.[133] In August 1992, Germany, Italy, and France tightened restrictions on steel imports from Czechoslovakia, after the European Community gave them permission based on the safeguard clause in the Czech Interim Europe Agreement.[134] The EC Commission has also placed restrictions on imports of Czech steel tubing.[135] Such actions do not point to a commitment on the part of the European Community to assist its Eastern Neighbors in their transitions.

2. *Coal*

The coal industry in Europe, like the steel industry, is being restructured. The recent decision to close a number of inefficient coal mines in the United Kingdom led to protest over thousands of lost jobs.[136] Thus, it is understandable that British labor interests would resent the import of cheap brown Polish coal which is of inferior quality to English coal. Meanwhile, Eastern Europe is switching from heating with coal to natural gas as quickly as possible in order to resolve air quality and other environmental problems.[137]

EC tariffs and quantitative restrictions on some Polish and Czech coal products are scheduled to be progressively abolished after one year, while others are to be abolished after four years.[138] EC tariffs on Hungarian coal products will be reduced by 50% in January 1994, and eliminated at the end of 1995.[139] Quantitative restrictions on some Hungarian coal products will be abolished after one year. Restrictions on the rest will remain in place for four years.[140] The European Community also retains the option of invoking safeguard measures on coal and steel products.[141]

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133. Czechoslovakia Interim Agreement, *supra* note 87, protocol 2, art. 6; Hungary Interim Agreement, *supra* note 87, protocol 2, art. 6; Poland Interim Agreement, *supra* note 87, protocol 2, art. 6.

134. *Trade Relations*, *supra* note 27, at 7 (citing 1992 O.J. (L 56)).

135. *Id.* (citing Commission Decision 92/433/EEC).

136. Neville Nankivell, *Keeping Uneconomic Coal Mines Open Is the Pits*, FIN. POST, Jan. 27, 1993, at 11.

137. STATE OF THE WORLD 30 (Lester R. Brown et al. eds., 1992).

138. Czechoslovakia Interim Agreement, *supra* note 87, protocol 2, ch. II, arts. 5 and 7; Poland Interim Agreement, *supra* note 87, protocol 2, ch. II, arts. 5 and 7.

139. Hungary Interim Agreement, *supra* note 87, protocol 2, ch. II, art. 5.

140. *Id.* art. 7.

141. Czechoslovakia Interim Agreement, *supra* note 87, protocol 2, art. 6;

3. *Agriculture*

Agriculture represents Eastern Europe's greatest potential for increased exports to Western Europe.[142] The European Community is, however, extremely protective of its farmers under the Common Agricultural Policy (CAP), and a full range of free trade in agriculture is not envisaged under the Europe Agreements.[143]

Import restrictions on most Visegrad agricultural products under the Europe Agreements are covered by product-specific annexes. Hungary, for example, is limited to selling only 5,000 tons of beef to the European Community during the first year of the agreement, and only 6,000 tons per year after five years.[144] This is a significant constraint considering that in the mid-1970s, Hungary had been selling 100,000 tons of beef per year to the European Community, which then had fewer members.[145]

The Agreements do make some attempts at liberalizing trade in agriculture. GSP status[146] on a limited number of "minor" Visegrad agricultural products, which were originally introduced under the PHARE program, will be continued under the Europe Agreements.[147] In addition, paragraph 5 of Article 20 of each Agreement calls for each side to "examine on a regular basis . . . product by product . . . the possibilities of granting each other further concessions" in agriculture.[148]

Hungary Interim Agreement, *supra* note 87, protocol 2, art. 6; Poland Interim Agreement, *supra* note 87, protocol 2, art. 6.

142. *Guilt by Association*, *supra* note 121.

143. CEPR, *supra* note 52, at 82.

144. *Trade Relations*, *supra* note 27.

145. *Id.*

146. GSP status allows selected products to enter the EC duty-free or at significantly reduced tariff rates. GSP status is typically granted on products from developing countries. FOLSOM, *supra* note 40, at 208.

147. HUNGARIAN CHAMBER OF COMMERCE, *supra* note 100. The European Community has granted the Visegrad Group "concessions" on minor agricultural items such as geese, mushrooms, and soft fruit. PINDER, *supra* note 41, at 64; NELLO, *supra* note 6, at 115. Hungary and Poland, however, would like to see greater concessions for major products such as cereals, beef, lamb and dairy products. PINDER, *supra*. The European Community, on the other hand, may be more willing to budge on items such as pork, game, fruits and vegetables. *Id.*

148. *Draft of Europe Agreement*, *supra* note 95, art. 20, para. 5. Article 21, however, provides that if any imports of agricultural products "cause serious disturbances to the markets in the other party, both parties shall enter into consultations immediately to find an appropriate solution. Pending such solution, the party concerned may take the measures it deems necessary." *Id.* art. 21.

4. *Textiles*

Textiles are also given special treatment under the Europe Agreements.[149] Most tariffs on Visegrad clothing and textiles will be progressively reduced over a seven year period.[150]

Theoretically, the Visegrad countries have a comparative advantage in the textile industry because it is labor intensive.[151] If all trade barriers in textiles are removed, it is feared that EC firms will move into the Visegrad countries and set up factories at the expense of jobs in the European Community.

The future of East-West trade in textiles in Europe will be determined largely by the results of the GATT Uruguay Round negotiations. Current Interim Agreements provide for a new protocol on textiles to be negotiated as soon as an agreement on the Uruguay Round is reached.[152] The Uruguay Round proposes to eliminate the current Multifibre Arrangement (MFA)[153] and allow increased textile exports from developing countries to industrialized countries.[154] One European textile organization has issued a statement calling on the EC Commission to push for a continuation of the MFA: "[t]he European textile . . . market, which is already considerably open, cannot absorb [an increase in imports from Asian countries] and at the same time import

149. Tariffs on some Visegrad textiles will be reduced to five-sevenths of the basic duty upon entry into force of the agreement, to four-sevenths of the basic duty at the start of the third year, and reduced by one-seventh of the original tariff each year thereafter until they are completely eliminated at the beginning of the seventh year. Czechoslovakia Interim Agreement, *supra* note 87, protocol 1, art. 2; Hungary Interim Agreement; *supra* note 87, protocol 1, art. 2; Poland Interim Agreement; *supra* note 87, protocol 1, art 2.

150. *Id.*

151. Actually, the "clothing" or "apparel" industry is labor intensive, while the textile industry per se is much less so. The term as commonly used often includes finished apparel. Protocol 1 of each Europe Agreement and Protocol 1 of each Interim Agreement applies to "textile and clothing products." Interestingly, none of the Visegrad nations appear on the list of the top forty world textile exporters. GATT INTERNATIONAL TRADE 1990-91, *supra* note 5, at 62. Textiles, however, make up approximately 15% of Hungarian exports. Hungarian Chamber of Commerce, *supra* note 100, at 2.

152. Czechoslovakia Interim Agreement, *supra* note 87, protocol 1, art. 3, para. 2; Hungary Interim Agreement, *supra* note 87, protocol 1, art. 3, para. 2; Poland Interim Agreement, *supra* note 87, protocol 1, art. 3, para. 2 (stipulating that any new tariff phase-out period will be equal to one-half of the period decided in Uruguay Round negotiations).

153. The Multifibre Arrangement was first negotiated under the GATT in 1974 and allows countries broad discretion to control textile imports. Agreement Regarding International Trade in Textiles, B.I.S.D. 21st Supp. 3 (1975); amended July 31, 1991. B.I.S.D. 38th Supp. 113 (1992).

154. Vera Eckert, *GATT Official Makes Case for Free Textiles Trade*, Reuters, Sept. 29, 1992, *available in* LEXIS, World Library, Allwld File.

products from Central Europe . . . ."[155] If the MFA is eliminated, the Visegrad countries will face stiff competition from Asia and may be priced out of the West European market. Thus in the short term, it is in the Visegrad countries' interest to push for unilateral trade concessions in textiles, rather than elimination of the MFA.[156]

5. *Resolution?*

In order to generate the hard currency necessary to pay for Western imports and to pay back Western loans, the Visegrad Group needs to exploit its comparative advantage in agriculture, steel and textiles.[157] In the long run, both sides are formally committed to eliminating all barriers in steel, coal and textiles trade, and at least some barriers in agricultural trade. Recent limits on Czech steel and other actions by the European Community, however, cast doubt on the European Community's sincerity in this matter. Loosening restrictions in these areas would not create an unbearable burden on EC industries.[158] In fact, EC consumers would benefit from cheaper food, clothing and steel, and EC taxpayers would benefit from reduced subsidy payments.

C. VISEGRAD — EFTA AGREEMENTS

In June 1990, all three Visegrad countries signed declarations of cooperation with EFTA in the areas of trade, tourism, transportation and the environment,[159] and agreements with in-

155. *EC: Textile Trade Unions Denounce Lack of Social Europe Progress and Imports from Third Countries*, Reuter Textline, Dec. 4, 1992, *available in* LEXIS, World Library, Allwld File.

156. In the long run, however, the Visegrad countries would benefit from a GATT agreement in trade with non-EC countries. *More EC Accords and GATT*, Financial Times Limited — East European Markets, Nov. 27, 1992 *available in* LEXIS, World Library, Allwld File (quoting Andrzej Olechowski, economic advisor to Polish President Lech Walesa, explaining that in the short term, countries with an association agreement actually gain from the lack of global trade liberalization because they have secured better access to EC markets than competitors, but states that "lack of a GATT agreement in the long run, however, would complicate our trade relations with partners other than the EC.") *Id.*

157. Stevenson, *supra* note 47.

158. *See, e.g., EBRD Watch*, Apr. 20, 1992, at 6, *available in* LEXIS, World Library, Allwld File (citing "rough estimates" that the maximum cost of a full liberalization of the four EC sectors which will compete with Visegrad exporters (agriculture, steel, textiles and chemicals) would be, at the maximum, a decrease in EC sectoral output in agriculture and textiles [apparel] of 2% to 4%).

159. Tadeusz Lamacz, *Poland-EFTA Free Trade Agreement*, Polish News Bulletin, Dec. 15, 1992, *available in* LEXIS, World Library, Allwld File.

dividual EFTA members on agriculture.[160] Czechoslovakia's agreement with EFTA took effect in July 1992,[161] and Poland's Agreement took effect in December 1992.[162] As of December 1992, Hungary was still finalizing the negotiations for its agreement.[163] These agreements are designed to be very similar to the Europe Agreements with the European Community. For example, EFTA tariffs will be phased out more quickly than those on the Visegrad side, following the principle of asymmetry.[164] EFTA has also retained some restrictions on coal, steel and textiles similar to those in the Europe Agreements.[165]

IV. EC MEMBERSHIP FOR THE VISEGRAD FOUR

The European Community has been described as a "pole of attraction" for the countries of Eastern Europe.[166] All four Visegrad countries, as well as a large number of other European states, have asserted that it is their hope and intention to join the European Community.[167] This Note takes the position that the European Community should allow the Visegrad Four to become full members around the year 2000. This will allow the European Community to complete negotiations on the Maastricht Treaty,[168] and then expand to include most EFTA countries in 1995 or 1996.[169] On the Visegrad side, it will provide time

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160. EFTA does not have an equivalent to the Common Agricultural Policy and thus is unable to negotiate in this area on behalf of its members. Poland, for example, has completed bilateral agreements on trade in agricultural products with Iceland, Norway, Switzerland, Sweden and Austria. A Poland-Finland agreement has not yet been completed. *Id.*

161. *Id.* The agreement is now valid with respect to the Czech Republic and Slovakia.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. Kennedy & Webb, *supra* note 11, at 649 (calling the European Community a "pole of attraction"); *id.* at 652 (quoting EC Commission President Jacques Delors who called the European Community a "lodestar" for Eastern Europe); FOLSOM, *supra* note 40, at 312 (comparing the EC to a "magnet").

167. Many of the EFTA nations, as well as Malta, Turkey, and Cyprus, have indicated that they wish to join the Community. *EC: Europe Documents; No. 1790 — Commission Report on the Criteria and Conditions for Accession of New Members*, Reuter Textline, July 3, 1992, *available in* LEXIS, World Library, Allwld File. In the long term, countries such as Slovenia, Croatia, Romania, Bulgaria, Latvia, Lithuania, and Estonia may be also be considered; *see, e.g.*, John Palmer, *EC: More Countries Clamour to Join the Community*, Reuter Textline, Mar. 21, 1991, *available in* LEXIS, World Library, Allwld File.

168. *See infra* note 220.

169. *See infra* note 219.

for rebuilding economies through increased trade under the Europe Agreements and the Central European Free Trade Agreement.

A. BENEFITS OF VISEGRAD MEMBERSHIP IN THE EUROPEAN COMMUNITY

Bringing the Visegrad Four into the European Community makes sense for the same reasons the Common Market made sense in the first place: increased economies of scale,[170] larger markets, exploitation of comparative advantages, increased competition and harmonization of standards.[171]

In addition, EC producers would gain access to well-educated but inexpensive labor in Eastern Europe.[172] Germany's extremely high labor costs make its products expensive on the world market and give it a competitive disadvantage.[173] Even in eastern Germany, wages are higher than in Britain.[174] While German laborers would not like to see jobs move to the Czech Republic, Western Europe must act to supplement the labor supply which is forecast to shrink over a full percentage point by the year 2015.[175]

Central Europe also represents an opportunity for EC investors. As Central European countries begin to rebuild their economies over the next twenty years, the Visegrad countries will inevitably need to purchase large amounts of Western goods and services. As part of the European Community, they would naturally be more inclined to sign contracts with EC firms.[176] If the European Community hesitates, however, Japanese and American firms could receive many of these contracts instead. Already, Japan has become the largest foreign investor in Hungary.[177] Without open access to EC markets, the Visegrad Four simply will not be able to prosper economically, provide a

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170. Susan Greenburg, *Switzerland: Open Markets Fear Free Trade Failure*, Reuter Textline, Feb. 6, 1993, *available in* LEXIS, World Library, Allwld File.

171. *See, e.g.*, EC TREATY, *supra* note 7, art. 2.

172. *Europe's Hard Core*, *supra* note 49, at 77.

173. *Id.*

174. *Id.*

175. *Before the Flood*, ECONOMIST, Nov. 28, 1992, at 75.

176. Firms doing business in the Visegrad countries as part of the EC would benefit from Community commercial legislation and standards, and the free movement of capital and services. *See* EC TREATY, *supra* note 7, art. 58 (right of establishment), art. 59 (free movement of services), arts. 67-70 (free movement of capital).

177. Kosikova, *supra* note 1.

market for EC goods or pay back Western loans.[178]

Another important consideration is the trend toward three major global trading blocs: the North American Free Trade Area,[179] Japan/South East Asia, and the European Economic Area.[180] If the Visegrad countries are not included in the European trading bloc, their trading opportunities could be significantly limited. From the European Community's perspective, Central Europe is a huge potential market right next door. Just as the United States is focusing more on Latin America to buy its exports,[181] the European Community may find itself looking to sell more to Central Europe as access to North American or Asian markets decreases.

There are also political and security reasons for increasing economic cooperation with Central Europe. It is in the European Community's interest to have stable, democratic, peaceful and economically prosperous neighbors. Ethnic conflicts in the former Yugoslavia, now considered by some to have been a direct result of the European Community's premature recognition of Bosnia-Hercogovina,[182] demonstrate the fragility of new democracies in Eastern Europe. Because the European Community appears incapable of forming a strong foreign policy, it should be better able to ensure the stability of these new countries as fellow members of the European Community.[183] For example, Slovakia faces problems with its minority Hungarian population and with restructuring its large arms industry.[184]

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178. Stevenson, *supra* note 47.

179. The North American Free Trade Agreement (NAFTA) proposes to create a free trade area among Canada, Mexico and the United States. The Agreement was completed on Sept. 6, 1992 and was signed on December 17, 1992. The Agreement has not yet been adopted. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Mexico-Canada (Draft of Sept. 6, 1992).

180. For a discussion of the EEA see *infra* note 219. For an interesting perspective on the inter-relationship between these three major trading groups (written before the revolutions in Eastern Europe) see generally KENICHI OHMAE, TRIAD POWER: THE COMING SHAPE OF GLOBAL COMPETITION (1985).

181. Gero Smith et al., *Multinationals Step Lively to the Free Trade Bossa Nova*, BUS. WK., June 15, 1992, at 57.

182. *See, e.g.*, *The Yugoslav Drama: Account by Former Ambassador to the EC*, European Information Service, Jan. 13, 1993 (reviewing LE DRAME YOUGOSLAVE, a book written by former Yugoslav ambassador to the European Community, Mihailo Crnobrnja); Edward Mortimer, *What We Should Have Done: Western Governments Must Learn from Their Failures in Yugoslavia to Prevent Similar Tragedies Elsewhere*, FIN. TIMES, Jan 6, 1993, at 12.

183. Robert J. Samuelson, *Europe, Our Former Ally*, WASH. POST, Nov. 18, 1992, at A23.

184. Andrew Nagorski, *The Price of Disunity*, NEWSWEEK (International Issue, Special Edition), Jan. 4, 1993, at 13.

Moreover, political or economic instability in Central Europe will inevitably produce immigration to Western Europe. The European Community can encourage Central Europeans to stay home by helping them achieve domestic stability as part of the Community.

Environmental pollution produced by poor and inefficient economies presents another serious problem which has already crossed the extensive Visegrad/EC border. For example, West European forests have been severely damaged by airborne pollution released from the industrial "death triangle" formed by Germany, Poland and the Czech Republic.[185]

The Visegrad countries have few reasons to hesitate joining the European Community. Any perceived loss of sovereignty will be outweighed by increased political participation in European affairs. In addition, full membership would give these countries the stability they so desperately need. The possibility of being overwhelmed by Western goods,[186] and the loss of protectionist options are more than counterbalanced by access to EC markets and the benefit of regional development funds. Those countries which have joined the European Community since it was first created in 1958 have benefitted from a much higher rate of economic growth after their accession to the Community.[187]

B. COSTS OF VISEGRAD MEMBERSHIP

The greatest obstacle preventing the Visegrad countries' membership in the European Community is their relatively weak economic condition and the large resulting cost of their assimilation into the Common Market.[188] The immediate cost to the European Community of including the four countries is estimated at eight billion ECU per year.[189] It has proven difficult, however, to predict the cost of rebuilding Eastern Europe. Germany is spending between $78 and $98 billion annually on eco-

185. PINDER, *supra* note 41, at 95.

186. *Europe: Chances Slim for Central European Countries to Join EC*, Inter Press Service, Oct. 20, 1992, *available in* LEXIS, World Library, Allwld File.

187. CEPR, *supra* note 52, at 64.

188. *Id.* at 59-73.

189. *Id.* at 72. This figure was derived from calculating the (negative) net contribution that would accrue to each nation under the European Community's current budgetary structure, including receipts for development assistance and the Common Agricultural Policy (based on 1989 agricultural output levels). *Id.* Broken down by nation and source the figures are as follows (in Millions of ECU. Figures for Czechoslovakia are before breakup):

nomic reforms and subsidies in the former East Germany.[190] This experience has made the European Community wary of the ultimate costs of a Visegrad expansion of the European Community.

The bulk of the cost to the European Community of a Visegrad expansion would be development assistance. Poorer EC members see the Visegrad countries competing for a piece of finite EC regional development funds.[191] Currently, any region with a per capita GDP of less than 75% of the EC average qualifies for "least-favored" status and receives aid under the European Regional Development Fund.[192] Spain, Italy, Portugal and Ireland will also receive development funds through the Maastricht Treaty.[193] If the Visegrad countries joined the European Community, the European Community's average GDP would fall, causing some regions to become ineligible for development funds. Of course, these criteria would probably be changed. For example, the new (former East) German *Länder* are not now included in calculations of the EC average GDP for the purpose

Country	Contribution	Receipts from Develop. Assistance	Receipts from CAP	Total
Czechoslovakia	(617)	1,360	446	1,189
Hungary	(341)	1,255	544	1,458
Poland	(817)	4,600	1,409	5,192
				7,839

Interestingly, under the current structure of the CAP, the net transfer to the Visegrad Four would be about the same if their incomes and agricultural output both doubled. *Id.* This is because the reduction in developmental assistance would be canceled out by an increase in agricultural price support.

190. *Helmut Kohl's Hour of Need*, ECONOMIST, Oct. 31, 1992, at 47.

191. The poorer EC members have also expressed concern that the Visegrad Four will cut into their market share for certain low cost products. The CEPR has concluded that Visegrad membership would not lead to significantly increased competition with the exports of the poorer of the existing EC members, however. CEPR, *supra* note 52, at 79.

192. The European Community has what is known as a "regional policy," under article 130(a) of the Treaty of Rome, committed to reducing economic disparities between regions. EC TREATY, *supra* note 7, art. 130(a). A region is "least favored" (meaning it qualifies for aid) if its per capita income is less then 75% of the EC average. Currently, the Mezzogiorno region of Italy, most of Portugal, Greece and Ireland, and parts of other member states are receiving assistance under this program. FOLSOM, *supra* note 40, at 178-179 (stating that any member country with a GDP less than 50% of the European Community's average GDP is eligible); *For Richer, for Poorer*, ECONOMIST, Jan. 30, 1993, at 72 (stating that the standard is now 75% of the EC average).

193. A new "Cohesion Fund" allocates funds for those member nations with GDP per capita below 90% of the EC average. This is essentially an incentive to ensure their approval of the Maastricht Treaty. *For Richer, for Poorer*, *supra* note 192, at 72.

of determining development fund eligibility.[194] Also, if any EFTA countries join the European Community, they will have a counterbalancing positive effect on average GDP, and could also contribute approximately four billion ECU annually for development funds.[195] These amounts will not be enough to completely offset the cost of absorbing the Visegrad countries, however.[196]

Wealthier EC members are wary of a Visegrad expansion of the European Community because they will shoulder the cost of development assistance.[197] The European Community, however, is already committed to providing some financial assistance for Central Europe, through the EBRD, PHARE and Europe Agreements.[198] Whether or not this aid is instead channeled through regional development funds as part of internal EC policies, does not change the recognized need and commitment of the European Community to support Central Europe. In fact, the real issue is whether Central Europe will be able to repay these loans and other forms of assistance through expanding exports, or whether it will be shut out of EC markets. The European Community cannot give "aid, not trade" to the Visegrad Four, it must provide "aid *and* trade." If the European Community provides both aid and trade, the short-term cost will be returned manyfold through new markets and political security.

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194. *Id.*

195. CEPR, *supra* note 52, at 72. According to this estimate, if Switzerland, Norway, Finland, Sweden and Austria joined the European Community, they would be net annual contributors to the tune of 3,512 ECU. *Id.* The EFTA nations may resent this demand on their resources. Indeed, one reason Switzerland may have vetoed the EEA proposal is because it would have called for them to contribute to regional development programs already in effect in the European Community. Frances Williams, *Swiss No to Closer Ties Leaves EFTA Picking up the Pieces*, FIN. TIMES, Dec. 10, 1992, at 7.

196. CEPR, *supra* note 52, at 73.

197. The Centre for Economic Policy Research (CEPR) has concluded that the cost of immediate EC membership for Poland, Hungary, the former Czechoslovakia, Romania and Bulgaria is too high to be feasible without a change in the EC budgetary mechanism. CEPR, *supra* note 52, at 73. This Note considers only the prospects for membership of the Visegrad Four, however, and suggests that a change in the EC's Common Agricultural Policy, combined with other special provisions for the Visegrad Four, could add up to an acceptable package for Visegrad membership somewhat sooner than the twenty-year waiting period recommended by the CEPR.

198. *Trade Relations*, *supra* note 27, at 14. Other than PHARE and European Investment Bank loans, the EC Commission alone guaranteed $1 billion to Hungary. *Id.* at 15. On October 9, 1989, the Council decided that Eastern Europe was eligible for 1.7 billion ECU from the European Investment Bank. *Id.* at 15.

Another obstacle to Visegrad membership is the EC's Common Agricultural Policy (CAP).[199] The Visegrad Four are relatively dependant on agriculture,[200] and their high agricultural output will only increase as they introduce more efficient methods of production and market forces.[201] Their surplus will only add to current problems with the European Community's overburdened CAP.[202] Under current terms and agricultural output, the Visegrad Four would be eligible for 2.4 billion ECU in annual subsidies from the CAP.[203]

The CAP is already under considerable strain, and the European Community will probably have to reexamine its agricultural policy soon, whether or not the Visegrad countries join the European Community. To expect the European Community to completely restructure its CAP is unrealistic, especially if France continues to dominate EC agriculture policy. Germany could, however, assert itself as a countervailing voice.[204] Germany has a great interest in being able to buy cheaper agricultural products from Eastern Europe, and in increasing the wealth of East European farmers who will then be able to purchase German products.[205]

The European Community currently spends approximately 65% of its budget on the CAP.[206] Each EC household pays $500 per year in taxes and higher food prices to support EC farmers who make up only nine million of the European Community's 320 million people.[207] According to one estimate, if the EC's Common Agricultural Policy did not exist, EC food prices would decrease by 40% and the Visegrad countries would see two per-

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199. EC TREATY arts. 38-42. For a description of how the CAP functions, see generally FOLSOM, *supra* note 40, at 194-200; NELLO, *supra* note 6, at 107-145 (regarding the CAP and Eastern Europe); John F. Hudson, *The European Community's Common Agricultural Policy* (1984), *excerpted in* JACKSON & DAVEY, *supra* note 88, at 965.

200. Percentage of Labor force in Agriculture: Poland 27%; Portugal 19%; Hungary 19%; Spain 16%; Czech and Slovak Federal Republic 12%; Italy 10%; France 9%; Denmark 6%; Germany 5%; MARK S. HOFFMAN, WORLD ALMANAC AND BOOK OF FACTS 747-799 (1993).

201. CEPR, *supra* note 52, at 83 (citing estimates that by the year 2000 the countries of Eastern Europe will be net exporters of wheat and possibly other grains and livestock and that the opening of the Eastern economies to world trade will reduce world prices of wheat by 5%, pork by 5%, and beef by 1%).

202. *Id.*

203. *Id.* at 72.

204. *See Europe's Hard Core*, *supra* note 49, at 77.

205. *Id.*

206. FOLSOM, *supra* note 40, at 331.

207. *All Eyes on France*, WALL ST. J., Nov. 24, 1992, at A14.

centage points a year added to their GDP through increased agricultural sales.[208]

C. REQUIREMENTS FOR MEMBERSHIP

Although it is generally accepted that the Visegrad countries will eventually join the European Community, the European Community has not set a timetable, specified what criteria membership would be based upon, or even made a formal commitment.[209] The Visegrad-EC Europe Agreements, considered by some to be a "first step" to EC membership, mention the possibility only once, in the preamble: "[Recognizing] the fact that the final objective of [Poland, Hungary, Czech Republic, Slovakia] is to become a member of the Community and that this association, in the view of the Parties, will help to achieve this objective . . . ."[210] It is unclear exactly what sort of obligation this clause creates on the part of the European Community. Turkey has had a similar clause in its Association Agreement since 1963,[211] and is probably still farther from membership than are the Visegrad countries.[212]

Article 237 of the Treaty of Rome governs application for EC membership. It states, "Any European state may apply to become a member of the Community. The conditions of admission and the adjustments to this Treaty necessitated thereby shall be the subject of an agreement between the Member States and the applicant State."[213] No such agreement has yet been established. Frans Andriessen, EC Commissioner for Foreign Relations, believes that there is little chance of membership before the end of the century.[214] He said that while the European Com-

208. *Europe's Hard Core*, *supra* note 49, at 77.

209. Remarks of Speaker, 1992 O.J. (Annex 3-413) 256 (Apr. 18, 1991) (Debates of European Parliament).

210. *Draft of Europe Agreement*, *supra* note 95, at 3.

211. Agreement Establishing an Association Between the European Economic Community and Turkey, Sept. 12, 1963, No C 113/2, at 1, (reading in pertinent part, "RECOGNIZING that the support given by the [EC] to the efforts of the Turkish people to improve their standard of living will facilitate the accession of Turkey to the Community at a later date").

212. Turkey's membership is problematic for the following reasons, *inter alia*: It has a large and growing population and a relatively low per capita GDP, it has a large percentage of labor force in agriculture, it has certain cultural, ethnic and religious differences with the European Community, and a historical enmity with Greece, which has consistently opposed its application for membership.

213. EC TREATY, *supra* note 7.

214. *Europe: Chances Slim for Central European Countries to Join EC*, *supra* note 186.

munity is eager to have closer relations with the Visegrad Group, it is against any "immediate" membership initiatives.[215] One major study contends that the Visegrad countries will be too poor for the next twenty years to be accepted for membership.[216]

The EC Commission, while asserting that the Visegrad countries are not now ready for membership, has recognized that they have needs "which go beyond the possibilities of existing agreements."[217] The Commission has made the suggestion that perhaps the Visegrad countries could be granted "partner-member" status, with the possibility to "participate, (but not to vote) in certain Community meetings on subjects of trans-European interest."[218]

The European Community currently faces a number of challenges that distract it from the question of Visegrad membership. These include: membership applications from Turkey, Malta, and Cyprus; the burden of already existing subsidies for Portugal, Greece, Spain, Italy, Ireland, and the former East Germany; the Uruguay Round of GATT negotiations; the proposed new European Economic Area (EEA);[219] ethnic conflicts in the

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215. *Id.*

216. *See generally* CEPR, *supra* note 52. The CEPR report is an in-depth economic analysis of the prospect for a Visegrad expansion of the European Community. It concludes that under current political and budgetary constraints the European Community cannot now afford to accept the Visegrad Four, but should immediately expand the Europe Agreements in the form of a "European Economic Space" with free trade in all agricultural and non-agricultural products, services and capital, but not labor. Based on predictions of Visegrad Economic growth, it recommends that the Visegrad Four will have caught up to Portugal's then economic level in about twenty years (i.e. 2012) and should not be accepted before this occurs. This Note asserts that Visegrad accession should take place earlier, i.e. approximately the year 2000. The exact year that the Visegrad Four eventually join the European Community is less important than a firm commitment on the part of the European Community to such a union.

217. *EC: Europe Documents; NO. 1790 — Commission Report on the Criteria and Conditions for New Members*, Reuter Textline Agence Europe, July 3, 1992, *available in* LEXIS, World Library, Allwld File.

218. *Id.*

219. On May 2, 1992, the EC and EFTA concluded an agreement creating a "European Economic Area" (EEA) comprising both groups and representing 40% of the world's trade. Robert Powell, *EC and EFTA Join to Form Huge European Market*, Reuter Library Report, May 2, 1992, *available in* LEXIS, World Library, Allwld File.

The EEA will allow the free movement of all non-agricultural goods, labor, services and capital between the European Communities and the European Free Trade Area. *See generally* EFTA BULLETIN 2/92, *Joint Press Release Drafted by the Council Secretariat of the EC and the EFTA Secretariat* (giving a former Yugoslavia and a major recession in Western Europe. However, the two most immediate issues facing the European Community are the Maastricht Treaty[220] and applications for membership by most of the EFTA countries.[221]

1. *The Maastricht Treaty*

Various spokesmen for the European Community have stated quite clearly that it must first resolve the Maastricht Treaty before it can add the EFTA applicants, much less consider membership for the Visegrad countries.[222] This is often referred to as the "deepening vs. widening" controversy.[223] "Deepening" refers to strengthening ties among existing members as proposed by the Maastricht Treaty.[224] "Widening" means expanding outward to bring in the EFTA countries, the Visegrad Four and other European countries not currently in the European Community. These two processes are not mutually exclusive. The controversy lies in how to allocate political energy and attention.

In a sense, the debate over whether the European Community should deepen or widen has already been decided. Four of

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detailed description of the terms of the Agreement). The EEA was scheduled to take effect on January 1, 1993. In December of 1992, however, the citizens of Switzerland vetoed the proposal in a referendum. Williams, *supra* note 195. This has caused some uncertainty as to the future of the Agreement. Nevertheless, officials feel certain that the proposal can be renegotiated, with or without Switzerland, and should take effect some time in 1993. *Id*; *See also EC Will Kick off Formal Enlargement Talks on February 1*, Agence France Presse, Dec. 12, 1992, *available in* LEXIS, World Library, Allwld File [hereinafter *EC Enlargement Talks*].

220. The Maastricht Treaty was proposed On December 11, 1991 in Maastricht, Netherlands. Its basic elements are: committing the European Community to a common currency for at least some member nations by 1999; establishing common foreign and defense policies for member states; increasing the European Community's role in social policy; increasing aid for Ireland, Greece, Spain and Portugal; and increasing the powers of the European Parliament. Danish voters rejected the Maastricht treaty on June 2, 1992, causing turmoil within the European Community. France subsequently narrowly approved the proposal, however, giving the proposal new life. *See generally* Walter Goldstein, *Europe After Maastricht*, FOREIGN AFF. Vol. 70 , Winter 1992/93.

221. *See infra* note 231 and accompanying text.

222. *See, e.g., Visegrad Group States Membership in EC to Be Decided in 1995*, PAP Polish Press Agency, PAP Newswire, Jan. 26, 1993, *available in* LEXIS, World Library, Allwld File (quoting British Secretary of State for Foreign Relations Douglas Hurd); *EC/Visegrad States: Delors Promises List of EC Membership Criteria for Edinburgh*, European Information Service, Nov. 3, 1992 *available in* LEXIS, World Library, Allwld File (quoting Jacques Delors).

223. *See, e.g.*, Cook & Snyder, *supra* note 50.

224. *See generally* Goldstein, *supra* note 220.

the EFTA applicants seem sure to join by 1996. Plans for a monetary union should not conflict with a Visegrad expansion, because even some of the current EC members would not immediately be eligible for such a plan.[225] This type of "deepening" will probably take place at different speeds in different countries.[226]

2. *EFTA*

It has been suggested that the Visegrad countries should join EFTA before they join the European Community, and that EFTA could serve as a door into the greater European Economic Area (EEA), and as a training ground for full EC membership.[227] After all, the Visegrad countries account for a larger proportion of EFTA members' trade than they do for that of EC members,[228] and Austria and Switzerland especially are increasing their trade with the Visegrad Group.[229] In absolute terms, however, the European Community is a much more important trading partner for the Visegrad countries.[230]

The Visegrad Four should concentrate on joining the European Community rather than EFTA. The primary reason for this is that EFTA is dissolving. Five of the seven members of EFTA (Austria, Finland, Norway, Switzerland and Sweden) have formally applied to join the European Community. Only Iceland and Liechtenstein have not.[231] It would be futile for the Visegrad Four to join a Free Trade Area which will likely consist only of Liechtenstein and Iceland, even if it were part of the larger European Economic Area. It makes more sense to join the European Community directly than to add another hurdle to

225. *Id.* at 125.

226. *Id.*

227. Robert Evans, *EFTA Viewed as Eastern European Training Ground for EC Entry*, Reuter Library Report, June 21, 1992, *available in* LEXIS, World Library, Allwld File; Howard LaFranchi, *Free Trade Zone from Lisbon to Helsinki Waits in the Wings*, CHRISTIAN SCI. MONITOR, Dec. 30, 1992, at 10 (quoting Nic Gronvall, Swedish Commissioner to the EEA surveillance authority); Williams, *supra* note 201.

228. Evans, *supra* note 227.

229. *Id.*

230. *Id.*

231. *EC Enlargement Talks*, *supra* note 219. Formal negotiations were to begin on February 1, 1993 to bring in Austria, Sweden and Finland into the Community. Norway's application has not yet been approved by the European Commission, but it was expected to begin negotiations in March 1993. Membership for these four nations is envisaged for 1995, but Switzerland is in a more precarious position, having recently said "no" to the proposed EEA.

the process.[232]

D. THE MEDITERRANEAN PRECEDENT

The accession of three Mediterranean countries, Portugal, Spain, and Greece, and the non-accession of another, Turkey, present useful comparisons for the Visegrad countries. Greece, Portugal and Spain all joined the European Community approximately a decade after the restoration of democracy in each country.[233] If the Visegrad Four followed a similar schedule, membership for these countries would happen in approximately the year 2000.

Portugal and Spain faced obstacles in the 1980s very similar to those facing the Visegrad countries today: the United Kingdom worried about low-wage industries, such as textiles, France and Italy worried about agricultural surpluses,[234] Germany was concerned about an influx of migrant workers, and the whole Community doubted Spain's highly protected automobile and steel industries' ability to compete in the EC market.[235] But Spain and Portugal have adjusted well to the single market.[236] They achieved their success with long adjustment periods, gradual tariff phase-outs, a restructuring of the EC's Common Agricultural Policy, and regional assistance.[237] A Visegrad accession would likely follow a similar adjustment period. This would be in addition to the adjustment mechanism preceding membership under the Europe Agreements. Greece preceded its 1981 EC accession with an association agreement which lasted for twenty years.[238]

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232. EFTA does offer some lessons for the Visegrad Four, however. The EFTA nations made a priority of integrating EC technical standards, laws and regulations, as well participating other European "clubs" and organizations to emphasize its members' equal status as European nations. The Visegrad countries should emulate this strategy by beginning now to harmonize laws and regulations, as well as by participating in other European organizations.

233. CEPR, *supra* note 52, at 60.

234. Christopher Johnson, *Portugal and Spain Prepare for Entry into Common Market; Community, also Must Make Concessions to Accommodate New Members*, AM. BANKER, Dec. 16, 1981, at 12; *see also* PINDER, *supra* note 41, at 72.

235. Johnson, *supra* note 234.

236. Spain had the fastest growing Economy in the European Community between 1986 and 1991. Only in 1992 have there been signs of a slowdown as its economy matures. Roger Cohen, *Spain's Progress Turns to Pain*, N. Y. TIMES, Nov. 17, 1992, at C1. Portugal's GDP grew at a similar pace after accession. CEPR, *supra* note 52, at 64.

237. *See generally* FERNANDO A. ILERA, EL RETO DE EUROPA: ESPANA EN LA CEE, (Editorial Sintesis, Madrid 1988).

238. Greece signed the agreement in 1961 and joined in 1981. Agreement

One reason Spain, Greece and Portugal were accepted into the European Community was to aid in the stability of their newly democratic governments.[239] For example, the European Community temporarily suspended trade relations with Greece under its association agreement when Greece suffered a relapse from democracy.[240] The same motivation may convince the European Community to bring in the Visegrad Four. The European Community claims to have a strong interest in supporting democracy in Europe.[241] Accepting the Visegrad countries into the European Community would be a strong demonstration of this commitment.

Turkey concluded an Association Agreement with the European Community in 1963, and formally applied for membership in 1987.[242] The European Community is still keeping Turkey's application under consideration but membership does not seem likely anytime soon.[243] The Visegrad Four could languish, as Turkey is, in the limbo of "association" without receiving the stability of full membership they desperately need. More likely, however, they will strengthen ties through the Europe Agreements over a period of a decade or so, as Greece did, and then make the transition to membership, followed by another adjustment period like that allowed for Spain and Portugal.

Although the Visegrad Group is attempting to coordinate the application process among its members, there may be drawbacks to collectively applying for EC membership as Spain and Portugal did. Because the Visegrad countries have similar economies, problematic areas like steel and agriculture will be compounded by a factor of four. Similarly, when Spain and Portugal joined the European Community (only five years after Greece), the European Community was faced with a surplus of Mediterranean agricultural products such as wine, olives and citrus fruit.[244]

Establishing an Association Between the European Economic Community and Greece, July 9, 1961, 63/107/EEC.

239. Johnson, *supra* note 234.

240. PINDER, *supra* note 41, at 61. EC relations with Greece were frozen from 1967 to 1974 during the "Colonel's rule." RAND MCNALLY WORLD FACTS IN BRIEF 36 (1986).

241. *Id.* at 37.

242. FOLSOM, *supra* note 40, at 19.

243. *See supra*, note 212.

244. ILERA, *supra* note 237, at 67-69.

E. PROSPECTS BY COUNTRY

Regardless of whether the Visegrad Four apply for EC membership as a group, each country will have to fulfill certain criteria on its own.[245] The only legal condition for membership in the European Community is that the applicant state be "European."[246] Realistically, the decision is primarily based on the economic strength of the applicant, because wealthier countries are less of a burden on the European Community's budget.

According to the Centre for Economic Policy Research, the only previously successful applicants for EC membership whose per capita GDP was less than 80% of the poorest incumbent (Ireland and Portugal) were small enough that their burdens on EC resources were easily absorbable.[247] It follows, therefore, that those Visegrad countries with either small populations or relatively high per capita GDP have a better prospect for membership than those with larger, poorer populations.

The Czech Republic has perhaps the best potential for early EC membership because it is the wealthiest of the Visegrad Four. In 1992 Czechoslovakia's per capita GDP was $3,400.[248] The corresponding figure for the Czech Republic alone will be somewhat higher, because it was the wealthier half of the former nation.[249] This would probably place it near Portugal with a per capita GDP of $3,800.[250] Furthermore, the new Czech Republic's population of 10.4 million[251] is almost exactly the same as Portugal's. As of May 1992, the Czech Republic's unemployment rate was among the lowest in Europe at about 3.2%.[252] The Czech Republic is also the Visegrad country least dependant on agriculture, which means it would be less of a drain on the CAP.

245. Remarks of Jensen, 1992 O.J. (Annex 3-404) 260 (Apr. 18, 1991) (Debates of European Parliament: "I would urge you not to put all the countries of Central and Eastern Europe in the same basket. We must look at each country individually both now and in the future. The last country to become economically and politically ready to apply for membership should not be allowed to hold up all the others.").

246. EC TREATY, *supra* note 7, art. 237.

247. CEPR, *supra* note 53, at 59.

248. CEPR, *supra* note 52, at 61. This figure is used in the interests of consistency with those cited for the other Visegrad nations. Economic data for Central Europe is difficult to determine. THE ECONOMIST has estimated GNP per capita for the Czech Republic at $2,346. *Check, O Slovakia*, *supra* note 81, at 55.

249. *Check, O Slovakia*, *supra* note 81, (estimating 1990 GNP per capita at $2,346 for the Czech Republic and $1,943 for Slovakia).

250. CEPR, *supra* note 52, at 61.

251. *Check, O Slovakia*, *supra* note 81.

252. *Id.*

Despite these positive indicators, Prime Minister Klaus' statement that the Czech Republic would join the European Community in "two or three years"[253] is overly optimistic. The Czech Republic must renegotiate its Europe Agreement and its future will continue to be strongly influenced by the actions of Slovakia on human rights and other issues.

With a per capita GNP of $2,600 and a population of 10.4 million, Hungary is the second wealthiest Visegrad member in per capita terms.[254] Hungary's per capita GDP, however, is far less than that of Portugal ($3,800),[255] and far below the 1990 EC average of $18,400.[256] Hungary has set a goal of membership by 1996.[257] Former EC Commissioner for Trade Relations, Willy de Clerq, said he believed that Hungary was in the best position for potential membership, because of its good international credit rating.[258] Even so, he believes that Hungary would not be economically ready for at least ten years.[259]

Poland faces the most problematic prospects for membership because it is the largest and poorest of the Visegrad Four. Poland has a population of thirty-eight million people, more than the other three Visegrad countries combined, and a per capita GDP of $1,900.[260] Poland's economy has recently been doing remarkably well after a headlong rush into capitalism. Its economy is forecast to grow by as much as 2% in 1993.[261] It posted a $750 million trade surplus in 1992 and its unemployment rate has fallen to about 12%.[262] However, inflation is climbing to near 50% and Poland's budget deficit for 1992 was about 7% of its GNP, and may rise to 10% in 1993.[263]

Figures for Slovakia's GDP are not yet available, but its GNP per capita has been estimated at $1,943.[264] Slovakia has indicated less of a commitment to economic reform then any other

253. *Czech Premier Objects*, *supra* note 59.

254. CEPR, *supra* note 52, at 61.

255. *Id.*

256. EUROSTAT, BASIC STATISTICS OF THE EUROPEAN COMMUNITY 40 (29th ed. 1992) (based on a figure of ECU 14,488 and a 1990 exchange rate of US $1.27 per ECU).

257. *Europe: Chances Slim for Central European Countries to Join EC*, *supra* note 186.

258. *Id.*

259. *Id.*

260. CEPR, *supra* note 52, at 61.

261. Barry Newman, *Vital Signs Point to Poland's Recovery*, WALL ST. J., Oct. 22, 1992, at A12.

262. *Id.*

263. *Id.*

264. *Check, O Slovakia*, *supra* note 81.

of the Visegrad countries.[265] While the Czech Republic is predicting economic growth in 1993, Slovakia will probably see a 10-15% drop in GNP.[266] The unemployment rate in Slovakia is almost four times higher than that in the Czech Republic.[267] While the future of Europe's newest country is uncertain, Slovakia may be able to join the European Community as soon as the other Visegrad countries.[268] Despite its low per capita GDP, its population of 5.3 million should be easily absorbable.[269] Slovakia's Prime Minister, Vladimir Meciar, has indicated that Slovakia will cut its military production,[270] and guarantee protection for its Hungarian minority.[271] Meciar has also begun limiting freedom of the press, however, which does not endear him or his tiny country to the West.[272] Because of the extensive economic ties between the Czech Republic and Slovakia, it is difficult, but by no means impossible, to imagine one joining the European Community without the other.

CONCLUSION

The fall of Communism has brought democracy and free market reforms to the Visegrad Countries of Central Europe. These countries will not be able economically to stand on their own, however. Increasing external trade will be a critical component of their continued economic growth. The former Soviet Union, which used to be Central Europe's largest trading partner, is now facing severe economic and political problems of its own. Therefore the Visegrad Four have redirected their efforts at trade expansion toward the European Community.

Europe Agreements between each Visegrad country and the European Community will establish a solid basis for EC-Visegrad trade relations. The next step should be a commitment by the European Community to full EC membership for the Visegrad Four, preferably by the end of this century. EC mem-

265. *Id.*; *see also* Robinson, *supra* note 4.

266. Nagorski, *supra* note 184.

267. Currently unemployment in Slovakia is approximately 11.8%. *Check, O Slovakia*, *supra* note 81.

268. *France to Support Slovak Entry into EC — Dumas*, Reuter Library Report, Jan. 12, 1993, *available in* LEXIS, World Library, Allwld File. *But see Slovakia Disintegrating After Three Months*, LONDON OBSERVER, Apr. 4, 1993.

269. *Check, O Slovakia*, *supra* note 81.

270. *EC: Slovak Prime Minister Does Not Foresee Early EC Membership*, Reuter Textline, Feb. 25, 1993, *available in* LEXIS, World Library, Allwld File.

271. *Id.*

272. Church, *Editor's Dismissal Arouses Fears for Slovak Press*, Reuter Library Report, Jan. 5, 1993, *available in* LEXIS, World Library, Allwld File.

bership would help stabilize new democratic governments in these countries and at the same time strengthen the security of Western Europe. It would also facilitate economic growth for the Visegrad Four and create significant trade and investment opportunities for the European Community.