

Montenegro on the way to the EU's single market: the importance of Intellectual Property for the development of SMEs

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Abstract

This thesis analyses the Montenegrin legislative framework in the area of Intellectual Property (IP) given that its successful implementation is one of the conditions for the integration of the country into the European Union. Having started the accession negotiations, the establishment of a sound and complying legislative framework is an essential tool towards its final integration. Hence, the question to be answered is what level of compliance has the IP legislation in Montenegro reached until now and what are the potential consequences of these legal reforms for the future of its entrepreneurial activity.

To understand better the prevailing situation in this future European Union Member State, this thesis gives a hindsight into the historical development of IP legislation in the country, assesses the level of improvement of IP infrastructure and identifies the prevailing fallacies, and concludes by offering a viewpoint on the potential benefits and costs of joining the EU's single market for SMEs from the perspective of stricter IP policies.

The findings of this thesis convey that from a theoretical point of view, Montenegro has undertaken significant progress in the area of IP law, though there is still space for improvement in the area of enforcement, specifically in the adequate preparation of the technical staff. Many SMEs are expected to shut down their operations in the short run, while in the long run, the benefits are expected to accrue in the form of FDI, technology transfer, and product diversification which will advance their positioning in the EU's single market.

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List of abbreviations

CEFTA	Central European Free Trade Agreement
EU	European Union
EUROSTAT	European Statistical Office
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IP	Intellectual Property
IPR	Intellectual Property Rights
IPOM	Intellectual Property Office of Montenegro
MONSTAT	Montenegro Statistical Office
MNE	Montenegro
MS	Members States
R&D	Research and Development
tFEU	Treaty on the Functioning of the European Union
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UN	United Nations
WCO	World Customs Organization
WIPO	The World Intellectual Property Organization
WTO	The World Trade Organization

Introduction

European Integration implies a standardization of the political, economic, legal, and industrial activities of its member states. Since 1992, when the signing of the Maastricht Treaty set the ground for the creation of the European Union,¹ the focus was on the establishment of a single market which would lead to the reduction of any barriers that could threaten the successful completion of the European goal of unification. The process of the EU integration is a highly complex one and requires a structural devotion of the potential candidates to engage themselves in the successful completion of the requirements for their final integration, i.e. implementation of EU rules and their incorporation in the national legislation. According to the Treaty on the Functioning of the European Union,² any European country can apply for membership upon successfully meeting the Copenhagen criteria i.e. establishment of a stable democracy, market economy, rule of law, and adoption of EU legislation.

With a communist past and a short history as an independent country,³ Montenegro currently finds itself at crossroads of significant challenges and obstacles on its way to the European Union. This process has up to date been smooth; however, the toughest part is yet to come. After signing the Stabilization and Association Agreement on 15 October 2007,⁴ the country received official candidate status on December 2010.⁵ It was June of last year when the accession negotiations and the screening process started.⁶ In order to pass the screening process successfully, Montenegro has a lot to undertake on matters of building the adequate

¹ "Europe without Frontiers." *Europa*. Web. 30 May 2013.

² The treaty on the Functioning of the European Union is the founding legislative act of the European Union, which provides for all the criteria and requirements that countries that wish to join the Union have to fulfill.

³ Montenegro declared independence from Serbia on June 3 2006, after a referendum held on 21 May.

⁴ "The Stabilization and Association Agreement between the European Communities and the Republic of Montenegro." Web. 30 May 2013.

⁵ "Commission Opinion on Montenegro's Application for Membership of the European Union." European Commission, 2010. Web. 30 May 2013.

⁶ "Council Conclusions on Montenegro." Council of the European Union, 26 June 2012. Web. 30 May 2013.

institutional framework, drafting the corresponding policies, and harmonizing the national legislation to the EU standards.

In the case of Montenegro, within its process of economic transition and accession to the EU, Small and Medium Enterprises have been recognized as the driving force of the country's economic activity. Expectations from this segment of the economy are high and as such are defined in all basic development strategies and documents related to the country's long term development agenda. Despite their decision to expand activities beyond the borders or operate exclusively in the domestic market, the idea of integration into the single market emphasizes once more the necessity for these SMEs to become competitive in the international arena. As such, the need for the utilization of IP has become a matter of immense priority.

On the other side, EU, given the fast pace of changes around the globe, must take a moment to orchestrate its internal policies on matters of innovation and entrepreneurship in order to handle decently this stage of global development. As a unique member of WTO and a standing representative of the Union in global trade affairs, the unification of trade principles is crucial to the finalization of its project of a wide European integration. While, on one hand, IP protection is seen as the driving force of innovation, on the other hand, IP enforcement is essential on matters of offering higher security and fighting piracy or counterfeiting of products circulating within the single market. Failing to unify the efforts in the promotion of IP could be detrimental to the prosperity of a member state's economy, and then, to the whole Union, ultimately. It is because of these reasons that elaborating on and emphasizing the importance of IP protection and their enforcement at this stage of the

Montenegro's integration, could play a pivotal role for building a higher investment, business, and economic security in the future.⁷

Consequently, in order to present this issue coherently, Chapter 1 will elaborate on the current state of IP legislation in Montenegro by providing hindsight into the historical development of the IP in the country. Considering that IP as such has started gaining importance back when Montenegro was still part of the State Union with Serbia, this part of the thesis will briefly elaborate on this matter and extend on addressing the establishment of the IP framework which the country adopted as an independent and sovereign country ever since the declaration of its independence.

Chapter 2 goes on by clarifying the role that IP plays for the future of the EU and then for Montenegro itself. The content of this chapter specifies the reasons why IP, as an issue of a rather international level, has become such a vital ingredient for the further development of the EU's single market and the future of the Union itself. On a parallel scale I will evaluate the level of readiness of Montenegro to handle the pressures of these strict requirements smoothly, while identifying the loopholes in the process of IP enforcement and utilization.

Ultimately, Chapter 3 is highly focused on elaborating the reasons why SME matter for the EU's and Montenegro's economy, and in due course focuses on understanding the implications of a stronger IP regime for the development of Montenegrin SMEs in today's knowledge based economies. By analyzing the structure of SMEs in Montenegro and referring to the findings of different IP related studies, I will give a reflection on the potential role that IP could have on their positioning in the domestic and the EU's single market.

⁷ "The EU at a Glance - Europe in 12 Lessons - The Single market." The EU at a Glance - Europe in 12 Lessons - The Single market. Web. 30 May 2013.

Chapter 1:

A historical representation of Montenegro within the IP framework

The chapter of EU accessions of South Eastern European countries will soon mark its beginning with Croatia paving the way for its neighboring countries.⁸ Considering the reports of the European Commission, Montenegro stands next in line, though there is no indication of any potential or official dates. Given that it has only recently started the accession negotiations,⁹ Montenegro still has significant tasks to handle and manage before the completion of the integration process. Opening up the economy to trade has marked a significant step forward with the last year's official membership of the country in WTO.¹⁰ This movement serves as a good indicator for the ability of the country to cope with the pressures of the EU's single market. Article 75 of the Stabilization and Association Agreement between the EU member states and Montenegro pertains specifically to the area of IP.¹¹ From the perspective of EU, IP is of high significance because, on one hand, it is one of the conditions which EU has to meet successfully in order to enjoy the benefits of WTO membership; while on the other hand, IP is crucial for the completion of the single market project and is the key ingredient for increasing the Union's competitiveness and the level of innovation.

Despite the fact IPR as such is a thoroughly discussed topic in the developed countries, the importance of IP protection in this part of the world is not highly emphasized and even less understood by all the stakeholders. It is not extreme to say that the countries of

⁸ Croatia is the first of the South Eastern European Countries to join the EU. After the European Commission has adopted the last Monitoring Report in the preparations for EU, the country is set to enter the Union on July 1, 2013.

⁹ "About Montenegro." *About Montenegro*. CEFTA, n.d. Web. 30 May 2013.

¹⁰ "World Trade Organization." *WTO*. Web. 30 May 2013.

¹¹ Under Article 75 of the SAA, Montenegro agrees to harmonize its IP legislation in terms of substantive laws and the enforcement mechanisms with that of the EU level. The period granted to do so was 5 years, which, considering that the agreement was signed in 2007, implies that the country should now receive the evaluation of the progress marked in this area.

this region have started to comprehend and grasp the importance of IP rights only after the initiation of the negotiations for entrance into the EU, and as a result of that, their required membership in the relevant organizations, conventions and treaties which cover the area of IP law and enforcement.

To trace back to the beginnings of the introduction of IP laws in Montenegro appears to be a little complicated due to the country's historical past. However, in the state union between Montenegro and Serbia, to which Montenegro was a member before its independence, the protection of IP rights was guaranteed, though, the management of IP enforcement seems to have been hindered by the then prevailing arrangement of this area by the state union and the two member states. What is worth emphasizing, is the fact that the area of IP in this country is not an alien topic, however, its importance for the country's further economic prosperity and the future within the single market has become obvious only in the recent past.

1.1 Retrospective into the IP laws and regulations prevailing in Montenegro

Populated by approximately 650,000 inhabitants,¹² Montenegro's been serving as a role model on matters of EU integration for prospective EU member countries. In order to assure stabilization in the region and reach the European family at a faster pace, the country needs to undertake major measures to improve its legislation to conform to the EU standards.

Up until 2006, Montenegro's past needs to be analyzed in relation with other countries of the region, due to the fact that it has been moving through different kinds of political symbiosis, all the way from the period of the Kingdom of Yugoslavia until the last form of political cohabitation, i.e. State Union of Serbia and Montenegro.¹³ For the sake of this paper, the analysis will only pertain to the latest period before the independence and the

¹² "Central Intelligence Agency." *CIA*. Web. 30 May 2013.

¹³ "BTI 2012: Montenegro Country Report." 2012. Web. 5 May 2013.

period after the independence which came as a result of the national referendum in May of 2006.

During the period of the state Union between Serbia and Montenegro, the IP area was managed by two main stakeholders, the State Union itself and the Members States. While the substantive laws would be adopted by the State Union Parliament, the IP office was managed by the Union itself. On the other hand, the penal legislation and the legislation pertaining to public prosecution, judiciary, police, etc. were at the state member level. This dichotomy in the administration of IP laws made this area of law less efficient. Back in those times, the substantive laws were in compliance with TRIPS provisions; moreover, there were specifically adopted laws which are believed to have contributed to a more efficient enforcement. An example of such laws would be the law pertaining to the indemnification of right holders,¹⁴ specifying:

If the infringement was done intentionally or by gross negligence, the plaintiff may, instead of indemnity for material damage, claim from the defendant up to threefold amount of customary remuneration that would have been paid had the concrete protected subject matter been used lawfully.

This just to exemplify that IP law was long existent. More importantly, it was drafted into details and given considerate attention. However, given the flow of political happenings, the IP framework had to be drafted all over again as a result of Montenegro becoming an independent country. Today, considering that Montenegro functions as a separate and a completely sovereign unit from Serbia with its own laws, the protection of intellectual property is guaranteed in the constitution under Article 76 on the Freedom of Creation.¹⁵

¹⁴ "Report on some aspects of enforcement of intellectual property rights in Serbia and Montenegro*." *Advisory committee on enforcement*. 30 may 2013. Print.

¹⁵ Constitution of the Republic of Montenegro. Print.

In the Screening Report submitted to the European Council in May 2012,¹⁶ Montenegro has reported that it has adopted all the relevant legislation pertaining to IPR. Moreover, in 2006 the country has also managed to get a membership in WIPO.¹⁷ In addition, the country has drafted a National Strategy on IPR (2012-2015),¹⁸ which has the aim of facilitating the path of full compliance with EU *acquis*. Nonetheless, in spite of all these taken measures, the overall number of granted patents remains low while, at the same time, the awareness of importance of IPR for further growth seems to be stagnant and trapped at very low levels. The substantive laws have been successfully integrated and thoroughly drafted while based on the Law on the Enforcement of Intellectual Property Rights,¹⁹ the innovators are assured the acquisition and are made avail of IPR in Montenegro.

The country is currently really focused on the area of enforcement, which is essential for this part of the region where the laws exist on paper but their enforcement is majorly contested and criticized. It is worth mentioning that Montenegro is mobilizing all its potential in this direction. It has specifically given the inspectors, police and the customs the authority to engage in through investigations, while the adoption of the TRIPS Regulation on Border Measures has further strengthened the level of protectionist measures at the custom level. Moreover, in order to enhance and increase the efficiency of protection in the customs, the Customs administration has submitted in 2007 a letter of intend to accept the Secure Standards²⁰ adopted by the World Customs Organization (WCO).²¹ One of the most critical

¹⁶ "Screening Report Montenegro Chapter 25: Science and Research." European Commission, 5 Nov. 2012. Web. 30 May 2013.

¹⁷ "Montenegro." *WIPO-Administered Treaties*. Web. 30 May 2013.

¹⁸ The goals of the strategy are: enhanced enforcement of intellectual property rights, increasing economic growth through the effective use of intellectual property; Improved methods of acquiring and managing intellectual property; better understanding of the use and value of intellectual property of the company and the public, as well as the importance of the implementation of intellectual property rights; improvement and modernization of information systems respect to intellectual property issues.

¹⁹ Law on the Enforcement of Intellectual Property Rights. No. 45/05. Dated: 28 July 2005

²⁰ These standards are aimed at providing uniformity to the conduct of trade by ensuring security for the passing of goods at the border

areas in the Montenegrin market is the counterfeit and piracy of Optical Disks,²² which as of 2006 is regulated by the Law on Optical Disks.²³ For cases related to piracy and counterfeit, Criminal Code of Montenegro entitles inspectors to confiscate the counterfeited goods as well impose strict criminal penalties on the pirates.²⁴

That Montenegro is really committed to enhancing the enforcement of the IP protection within its territory is also clear from the fact that it has required the police, inspectors and employees working in the area of IP within the Ministry of Economic to attend workshops and informative sessions in order to increase the level of awareness and knowledge.²⁵ Nonetheless, despite this bright picture and very positive and serious steps taken towards improving the IP environment, the efficiency of enforcement is questionable. On the other hand, Montenegrin entrepreneurs continue to hesitate to utilize the benefits of this newly reformed IP system.²⁶

1.1.1 IP laws in the Union of Serbia and Montenegro

During the period of the State Union between Serbia and Montenegro, the IP area of law was managed by the Intellectual Property Office of Serbia and Montenegro. The fact that this office was established in 1925²⁷ implies that the area of IP was introduced in this region long time ago, however, it gained importance only recently. Moreover, the tendency to comply the legislation with the international standards came only in September of 2003 with

²¹ "2013 Investment Climate Statement - Montenegro." *U.S. Department of State*. U.S. Department of State, Apr. 2013. Web. 30 May 2013.

²² The Law on Optical Disks was adopted in December 2006; it requires the registration of business activity when reproducing optical disks for commercial purposes and provides for surveillance of optical disk imports and exports, and imports and exports of polycarbonates

²³ Law on Optical Discs. no.2/2007 .

²⁴ Criminal Law. No. 70/2003, 13/2004, 47/2006

²⁵ "Montenegro Cannot Yet Effectively and Efficiently Fight Counterfeiting and Piracy"-EU Ambassador Maurer." Web. 30 May 2013.

²⁶ "2012 Investment Climate Statement - Montenegro." *U.S. Department of State*. U.S. Department of State, Web. 30 May 2013.

²⁷ "Intellectual Property Office (Serbia)." Intellectual Property Rights for SEE, Web. 5 May 2013.

the implementation of CARDS 2002 Regional Programme. This was a development agenda financed by EU and aiming to assist the region, including Serbia and Montenegro, with the goal to facilitate and encourage projects in the area of IP.²⁸

After the independence of Montenegro, following the referendum in 2006, this office continued to exist but now belongs to Serbia only. This meant that Montenegro had to establish its basis for IP protection within its territories. Through the Regulation on the Implementation of Intellectual Property Rights, Montenegro submitted to WIPO in December 2010 its declaration that the treaties signed under the Union of Serbia and Montenegro shall have direct applicability in Montenegro after becoming an independent country.²⁹ This meant that the IPR holders were not obliged to submit new applications for the extension of the protection of their rights in the newborn country until those rights would expire.³⁰

1.1.2 Montenegrin IP office

As a separate sovereign entity, Montenegro consequently established its own IPR office which deals exclusively with IP related matters. The Montenegro IP Office started its operations in 2008 and is ever since the principal administrative body for IP related matters in the country.³¹ For revalidation in Montenegro, all pending applications had to be re-filed with the IP Office of Montenegro within a period of no longer than six months, which was then extended for an additional year through a decree on amendments.³² Supervised by the Ministry of Economy, the aim of the office is the harmonization and adaptation of the

²⁸ "Support to the Education and Information Centre of the Serbian Intellectual Property Office." IPA Centralized Programmes, n.d. Web. 5 May 2013.

²⁹ "TANA Intellectual Property." *TANA Intellectual Property*. Web. 30 May 2013.

³⁰ "Montenegro." *Regulation on the Implementation of Intellectual Property Rights September 20, 2007, as Amended on October 30, 2008*. N.p., n.d. Web. 30 May 2013.

³¹ "Intellectual Property Office of Montenegro." Web. 30 May 2013.

³² *Ibid.*

adequate legislation, which is handled through intensive cooperation with WIPO and EPO, as well as, with the support of EU funded projects.

1.2 Membership in the IP international treaties and organizations

For a country to be successful in the building of its IP framework, it is essential to achieve full compliance with the widely recognized IP international standards, which ultimately have to be translated into the national legislations with the ultimate aim of operative national enforcement.³³

Montenegro is a signatory to 22 WIPO administered bodies, 44 IP relevant multilateral treaties, and 3 IP relevant bilateral treaties.³⁴ Of all the 25 WIPO administered units, including the WIPO convention, Montenegro has not adopted yet only three treaties, i.e. Beijing Treaty on Audiovisual Performances, Singapore Treaty on the Law of Trademarks, and the Washington Treaty.³⁵ As the policies and laws of IP protection within the EU single market aim to be in compliance with the provision of the TRIPS and the WIPO, member states have to surrender their IP laws to the basic requirements of these two main sources of IP protection. While the TRIPS is under the administration of World Trade Organization, the WIPO is a specialized agency operating under the umbrella of UN as a regulatory body in the area of IP law. However, both work towards the establishment, unification, and enforcement of IP rights. Montenegro is a member state of WTO, hence, the TRIPS provisions are automatically applicable and need to be embraced by the national legislations. The policies adopted under WTO and TRIPS provide for minimum assurance that Montenegro has to offer to investors. Though, on its way to EU, it is the bilateral and the free trade agreements that have enhanced even further the importance of stricter IP

³³ James Andrew Lewis. *Intellectual Property Protection: Promoting Innovation in a Global Information Economy*. Washington, DC: Center for Strategic and International Studies, 2008. Print.

³⁴ "Montenegro(19 Texts)." *Montenegro: IP Laws and Treaties*. Web. 30 May 2013.

³⁵ "WIPO-Administered Treaties." *WIPO-Administered Treaties*. Web. 30 May 2013.

regulations. Montenegro, with its membership in these two principal institutions in the world of IP law, seems to have a reasonable and satisfactory foundation for further expansion in terms of building the necessary infrastructure for the protection of IP rights.

On the other hand, the extension of EPO to Montenegro was lacking until very recently. Only as of October 2010, Montenegro has gained extension agreement with the EPO, which means that now Montenegro appears in the list of the designated countries for the European patent application.³⁶ The Extension agreement between Government of Montenegro and EPO entered into force on 1 March 2010, while the work of the IP expert in Montenegro is now focused on the accession to EPC and becoming EPO member state.³⁷

1.3 Laws and institutions in the current IP framework

The substantive IP laws in Montenegro have been carefully drafted with the goal of being completely harmonized with the international standards and the EU requirements. The framework is quite complex and comprehensive. At this point, it is worth distinguishing that the term of a patent protection is 20 years, 10 years in case of trademarks, 25 years for industrial design, while the rights on the Indication of Geographical Origin belong to the right holder under no limitation. In addition, copyright is deposited with the Intellectual Property Office and is protected for 70 years after the death of the author.³⁸ Following is a table which summarizes the existing IP related laws, as well as, summarizes all the institutions which are granted a stake in the management of IP related issues.

³⁶"Extension of European Patents to Montenegro (ME)." *EPO*. Web. 30 May 2013.

³⁷ "IPR System in Montenegro." *UNECE*. Intellectual Property Office of Montenegro, n.d. Web. 5 May 2013

³⁸ For the texts of the laws, see: <<http://www.ziscg.me/index.php/en/legislation>>

Table 1: **Existing IP legislative and institutional framework in Montenegro**

Legislative framework	Institutional framework
Law on patents Law on Geographical Indication of Origin Law on trademarks Law on legal protection of design Law on topographies of semi-conductors Law on Copyright and Related Rights Law on optical discs Law on cinematography Law on Customs Criminal Code Regulation on providing application of the rights in the IPR area Regulation on actions of the customs authority with the goods suspected to infringe the IP rights	Ministry of Economy (Division for Internal Market and Competition, Section for Intellectual Property) Intellectual Property Office Customs Directorate Police Directorate Market Inspectorate Courts (Commercial Court- Podgorica, district courts)

Source: *Intellectual Property Office of Montenegro*

While the enforcement institutional framework appears quite satisfying, it is the lack of a specialized IP court is what one can notice. Nonetheless, given this legal composition and considering Montenegro's membership in TRIPS and WIPO as the two highest bodies of regulatory tools in the area of IP, one dares to say that the country is on the right way for becoming a success story in the arena of Intellectual Property Rights. Though, the enforcement part is a documented rather than a completely implemented truth.³⁹ However, considering the information presented in this chapter, one can easily identify that the IP substantive laws are successfully ingrained into the country's legislative framework.

Now, in order to understand how efficient and successful these laws are the next chapter will address this, whereby I elaborate on why IP, which seems to be a subject of international concern, does matter profoundly for EU integration up to that level that it becomes decisive for the finalization of the entire process of accession.

³⁹ In Montenegro 2012 Progress Report, the European Commissions concluded that despite the progress marked in the area of IP, further efforts are needed in terms of the enforcement; in general terms, Montenegro scores at satisfying levels.

Chapter 2:

Evaluation of the integration process into the single market with a focus on IP

The new IP framework in Montenegro comes as a result of the willingness of the country to open up its economy, as well as, as a direct consequence of the big desire to enter soon the EU's single market. On its way to the EU, the integration of Montenegro's national economy into the European Market has gained full meaning. It is at this stage that by the adoption of the regulatory reforms, the creation of the favorable business environment, reduction of the barriers for doing business, and offering a safe environment for investors has become the country's priority. These elements, help the expansion of the business sector and at the same time contribute to the attraction of foreign investment, which introduces new technologies, goods, and services in the economies of the emerging markets.

By opening the borders to the EU's single market, despite the decision to export or not, the local SMEs will be automatically exposed to the incoming competition. Hence, it is of utmost importance to prepare them at the domestic level and offer them a comparable level of business environment, so they can face the competition that is approaching. At this point, the focus of the policy makers should be towards utilizing IP for the best enhancement of the opportunities that are available as a result of a stricter IPR system. Until Montenegro reaches the EU's single market, the preliminary exercises that it is undergoing should serve the purpose of preparation for the well establishment of its SMEs in the future within the single market.

2.1 Implications of Montenegro's accession to the EU's single market

The EU's single market is an 'idealistic' project of the European Union to bring down trade barriers and make the member state's economies interdependent in order to avoid any potential conflicts in the future. The idea behind the often referred to 'internal market' is to merge the economies of the single European states into one economy with common goals for the benefit of the entire union. With the introduction of the Single European Act,⁴⁰ the goal of EU was to reach the highest level of harmonization amongst member states; however, many of the goals remain documented rather than implemented, as only some sectors such as the European Customs Union, the Schengen Convention, the single currency, etc. have been established 'successfully'.

Participation in the EU's single market will become an instant reality with the accession of Montenegro to the European Union, however, the question one needs to address at this stage is to identify whether the benefits of this accession do indeed outweigh the costs. On one hand, individual consumers will reap the most of benefits given that the membership in the market and the opening of the country's economy will bring them a diversity of products, a bigger array of choices, more freedom to move, etc. On the other hand, the entrance to the market is seen as a great prospectus for enterprises to expand, achieve economies of scale, and serve to a market of 500 million consumers.⁴¹ Though, benefits don't come without costs. In order to survive the giant forces coming from the fierce competition in this liberalized and barrier-free market, enterprises, as well as, the country itself, need to commit towards increasing the level of their competitiveness. Otherwise, the opening of the economy will turn into a curse rather than a blessing. Indeed this movement will result in a fatal outcome for many, but for many others, it can be a real momentum if utilized smartly.

⁴⁰ "European Single market." *Politics.co.uk*. Web. 30 May 2013.

⁴¹ "Glossary:Unemployment." *Statistics Explained RSS*. Web. 02 June 2013.

By becoming an official Member State, Montenegro stands to benefit from increased FDI and more incoming structural funds, new business opportunities, better standards in general, and also, significantly lower transaction costs.⁴²

Now, as previously hinted to, Montenegro has to meet a certain number of goals, where the upgrading of the IP system is one of them. It is interesting to note that Intellectual Property as such was not a chapter in itself for the first waves of EU integrations, while now it stands as a separate firm requirement in the Stabilization and Association Agreements between EU and the potential members. Given the fact that EU gives it a separate emphasis, leads us towards concluding that IP do indeed matter for the future of the Union and hence the newcomers should be prepared accordingly. Though, the tests that the country is undergoing were strategically sketched to be led by previous preparatory measures such as by instructing the Balkan countries to sign bilateral agreements and become members of free trade areas, such as is the case with CEFTA.

2.2 Importance of IP for European integration

Intellectual Property refers to any creative work of the mind starting from inventions of different kinds and including the designs and techniques used in commercial activities. Industrial property and copyright are two categories of IP, whereby the former includes patents, utility models, trademarks, geographic indications of source, and industrial designs, while the latter covers literary and artistic works.⁴³ IP rights give their owners the right to exclude the others from making, using, importing, and selling their inventions during the period of protection. As such, they are seen as a reward for the innovators and moreover, as a suitable tool to extract profits.

⁴² Malgorzata Markiewicz, and Ivana Vojinović. "Potential Fiscal Costs of the EU Accession for Montenegro." Institute for Strategic Studies and Prognoses, 2006. Web. 5 May 2013

⁴³ "What Is Intellectual Property?" *What Is Intellectual Property?* WIPO, Web. 30 May 2013.

Now, the completion of the Single market project is heavily dependent on the harmonization of the laws on IP. Single market cannot afford different levels of IP enforcement and protection within its boundaries, as this would ultimately translate into trade deterioration, which is in direct contradiction with the goal of the single market.⁴⁴ IP lies at the core of the foundation of the EU itself as Article 118 tFEU⁴⁵ establishes measures for the creation of European intellectual property rights and provides for uniform protection of intellectual property rights throughout EU. Mere compliance with the international treaties and conventions on IP seems not to be enough for the ambitious goals of the EU. The Union goes a step or even two further by engaging all the necessary measures to provide for a sound and a cohesive IP environment which aims to translate into increased levels of innovation, entrepreneurship, and competitiveness. All these are of crucial importance to the future of the EU which currently stands in a fragile comparative position compared to the rest of the world.⁴⁶

However, the idea that EU is represented as a single entity in all the political, economic, social and cultural international levels enhances the importance of a decent representation as being fundamental to its further development. The EU's single market is crucial to the existence of EU and to the survival of the idea of European unity. Massive internationalization creates the need to engage in precautionary measures in order to maintain a competitive edge. In these terms, intellectual property rights have come to gain historical importance. With respect to this, the idea that EU as a single entity is a signatory to the WTO⁴⁷ itself encourages its institutions to push for even higher levels of IP protection than

⁴⁴ Keith E. Maskus, and Mohan Penubarti. "How Trade Related Are Intellectual Property Rights?" *Journal of International Economics* 39 (1995): 227-48. Print.

⁴⁵ "Consolidated version of the treaty on the functioning of the European Union." *Official Journal of the European Union* (2010).Print.

⁴⁶ Klaus Schwab. "The Re-emergence of Europe: Restoring Europe's Competitiveness." *The Huffington Post*. TheHuffingtonPost.com, 17 Jan. 2013. Web. 30 May 2013.

⁴⁷ To understand the implications of the EU's membership in WTO, see: "The Impact of the WTO on EU Decision-making. Available at: <<http://centers.law.nyu.edu/jeanmonnet/archive/papers/00/000601-02.html>>

what the countries need to comply with under WIPO administered treaties or the TRIPS agreement. As a result we have today the Copyright Directive,⁴⁸ or the so called InfoSoc, calling for uniform and harmonized copyright laws across EU. At the same time, the Community Trademark Directive⁴⁹ is just another example of the EU efforts to harmonize the IP legislation within its boundaries. These Directives are intended to approximate laws of the Member States of the European Union that relate to copyrights and trademarks. The goal of EU is now to also unify the Patent system, which turned out to be a somewhat more difficult task for the policy makers. Though, what is worth specifying, is that these uniform measures lead to significantly lower costs of IP obtainment, reduce administrative barriers, and decrease transaction costs, which finally translates into increased trade transactions and higher entrepreneurial activity within the Single market.

A further measure undertaken for the successful preparation of the potential member states is the idea to have them become members of free trade and bilateral agreements which serve the purpose of a preparatory exercise for the sake of a successful integration. Ultimately, the unification of laws serves the purpose of inducing growth, eradicating barriers, opening up opportunities for those who stand to utilize IP smartly, offering higher quality products and services, protecting consumers, and most importantly, inducing innovation which is a factual underpinning for the further development of the Union as such.

2.2.1 Membership in CEFTA – a preparatory exercise for Montenegro

In addition to the international treaties and conventions which directly pertain to IP, to which I referred in the first chapter, EU requests its future members to also sign free and

⁴⁸ See: Directive 2004/48/EC on the Enforcement of Intellectual Property Rights
Directive 2001/29/EC Copyright Directive of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society

⁴⁹ See: Community Trademark Directive 2008/95/EC on approximation of the laws of the Member States relating to Trade Marks

bilateral trade agreements. Consequently, Montenegro is today a party to such free trade and bilateral agreements which put a significant emphasis on the utilization of IP.

CEFTA is a free trade agreement initially signed by the Visegrad Countries,⁵⁰ which are now all members of the European Union. Given their successful integration, the idea was to have the South Eastern European countries undergo a similar process of preparation for integration into the single market. It is considered by the EU structures that by passing successfully this preparatory exercise,⁵¹ which pushes the countries to elevate their economic, legal, social and political standards to the EU levels, the integration process would be smoothened.

Montenegro officially joined CEFTA in May 2007.⁵² In the document of the agreement the signatories by Article 37 of the CEFTA 2006 Agreement commit themselves to “appropriate protection of intellectual property rights in accordance with international standards”⁵³ as well as, to harmonize their IP laws to the obligations arising out of 25 international conventions specified in the Annex 7 of the agreement. Article 38 sets the objectives of IP protection in this agreement and requires for universal compliance of laws with the provisions of TRIPS specifically; whereas Article 39 stipulates that offering a third party additional benefits or advantages in terms of intellectual property rights above what was agreed in this agreement implies for the need to extend this opportunity to the other members as well.⁵⁴ As a consequence, disparities and different levels of protection are considered to be to the detriment of free trade, hence this article focuses on the need for same level of

⁵⁰ CEFTA was initially signed by Bulgaria, the Czech Republic, Hungary, Slovenia, Slovakia, Romania, and Poland. After the successful integration of these countries in EU, their membership ended. Now, the parties of the new CEFTA agreement signed in 2007 are: Montenegro, Croatia, Kosovo, Albania, Serbia, Macedonia, Moldova, and Bosnia and Herzegovina. As soon as these countries’ enter EU, the CEFTA membership is finalized.

⁵¹ On CEFTA serving as an adequate exercise for EU’s Single market, see: Anna Maria Mostetschnig. “*CEFTA and the European Single market: an appropriate preparatory exercise?*” Available at: <<http://www.coleurope.eu/sites/default/files/thesis/files/mostetschnig.pdf>>

⁵² CEFTA 2006 Agreement: Text. Print.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

protection and implementation. With this being said, one can understand that the protection and enforcement of IPR within this economic unit is of crucial importance for the development of free trade in the region.

Montenegro is taken as a success story which is highly committed towards full and complete satisfaction of this task. The country went further in terms of comprehensively adopting the IP obligations by also working seriously in terms of combating infringements. It has introduced laws which authorize the respective institutions to prescribe monetary punishment and imprisonment for the infringers. This has also started to be seen in practice, where just recently the customs police at Podgorica International Airport confiscated goods in the value of 5000Euro in suspicion of infringement of intellectual property.⁵⁵ This indicates that counterfeiting and piracy continues to be present in the country, though at the same time, the enforcement tools are increasing their effectiveness.⁵⁶ As such, CEFTA exercise seems to have served the purpose in this area and that indeed; not only Montenegro, but also other countries which are members of it constantly prove significant improvements in terms of their commitments.⁵⁷

2.2.2 SAA and membership in bilateral agreements

The establishment of a free trade zone and the harmonization of laws with *acquis* are two of the undertaken obligations of Montenegro after signing with EU the Stabilization and Association Agreement (SAA) and the Interim Agreement on Trade-Related Matters in 2007. Article 40 (SAA 75) of the Interim Trade Agreement⁵⁸ provides that Montenegro is obliged to undertake all the necessary measures to offer a level of IP protection conform the levels of

⁵⁵ "Oduzeta Roba Vrijedna Oko 5.000 Zbog Povrede Prava Intelektualne Svojine." *Vijesti.me*. 17 May 2013. Web. 30 May 2013.

⁵⁶ "Montenegro Tops Software Piracy." *Balkan Insight*. N.p., 14 Jan. 2008. Web. 02 June 2013.

⁵⁷ "Intellectual Property Rights in the CEFTA 2006 Signatory Parties." *CEFTA*. Web. 30 May 2013.

⁵⁸ "Interim agreement on Trade and Trade-related Matters between the European Community, of the One Part, and the Republic of Montenegro, of the Other Part The European Community." *Official Journal of the European Union* (2007): Print.

EU. In the meantime, Montenegro is obliged to join the enlisted multilateral agreements in Annex VII of the agreement, which are also signed by the EU member states.

These kind of bilateral agreements of developing countries with developed ones (in our case with EU as a single entity) are classified in the category of TRIPS plus agreements. What they basically hint to, is indeed a higher level of protection of IP rights. The importance of these measures, as seen from the policymakers, stand in that they serve as substitutes for TRIPS provisions which risk to be outdated by now due to the rapid changes in technology and development.⁵⁹ Furthermore, in the words of EU representatives, “Building a portfolio of free trade agreements that include language on trade and innovation as well as IP can help place [developing countries] in a better place to negotiate at the WTO.”⁶⁰ Consequently, these agreements help countries such as Montenegro on a better positioning on their way to EU.

Other bilateral and multilateral trade agreements signed by Montenegro are with Turkey, EFTA, Russia, etc.⁶¹ Each of them obliges the parties to undertake all the necessary measures to protect IP rights as required by TRIPS and all the IP related international standards. In doing so, Montenegro positions itself as a country that is open and committed to a fair treatment of its trade partners, which aids the country in this period of EU integration.

2.3 Assessment of the Montenegro’s IP legislation

Accession to EU implies many risks and rewards at the same time. The country needs to mobilize all its capacities in order to meet satisfactorily the duties it is confronted with. The outlays can be seen in many areas and in different forms. Despite the accession costs

⁵⁹ "Stronger IP Enforcement Finds A Home In Bilateral Trade Agreements | Intellectual Property Watch." *Intellectual Property Watch RSS*. N.p., 21 Apr. 2009. Web. 02 June 2013.

⁶⁰ *Ibid.*

⁶¹ "About Montenegro." *About Montenegro*. CEFTA, n.d. Web. 30 May 2013.

expected to amount to 1.8% of its GDP,⁶² the restructuring of public administration, and the costs of establishing the adequate infrastructure and harmonization with all EU standards and policies, are amongst few of the obligations for the country on its way to EU. How Montenegro will be able to respond to these requirements and in what way will they impact the country is a topic for separate consideration. Our focus in this part is rather to understand whether Montenegro has marked progress and if so, to what extent, in the adoption and enforcement of IP laws, which is one of the many conditions that the country has to meet.

2.3.1 Substantive laws

In terms of substantive laws, as already established in the first chapter, Montenegro has managed to complete successfully all the imposed requirements.⁶³ It has adopted all the necessary and relevant pieces of legislation, such as the Law on Patents, Trademark Law, Law on Copyright and related rights, etc. which are completely harmonized with the WIPO and the TRIPS principles, and also, has met the obligations arising out of EU and other country specific bilateral agreements. All this goes to the benefit of the Montenegrin economy, which despite not being a member of EU; stands to enjoy the same level of utilization and protection as any other member state. Excluding industrial design protection and Community Trademark, which will only extend to Montenegro after full membership, the country and its entrepreneurs can already reap the benefits of IP. Nonetheless, the level of domestic applications for IP remains at almost inferior levels.

As can be seen in the following table, the frequency of applications by resident innovators is drastically low.

⁶² Malgorzata Markiewicz, and Ivana Vojinović. "Potential Fiscal Costs of the EU Accession for Montenegro." Institute for Strategic Studies and Prognoses, 2006. Web. 5 May 2013.

⁶³ It is worth mentioning that in Montenegro, business methods and computer programs do not qualify for patent protection. This is specifically stated in Article 5(4) of the Law on Patents. This is important in the case of Patent Law unification efforts, given that two of the EU countries, i.e. France and Britain have extended the umbrella of protection by patent to these types of inventions. Differences in legislations and policies are one of the reasons why there is still no agreement as to a unified patent legislation in EU.

Table 2: Number of IP applications by residents and non-residents in the IPOM

Year	2006	2007	2008	2009	2010	2011
Patent (resident)	-	-	3	-	23	20
Patent (non - resident)	-	-	914	-	136	83
Issued Patents (resident)	-	-	-	-	5	12
Issued Patents (non -resident)	-	-	-	-	259	394
Trademark application (resident)	-	-	96	-	66	94
Trademark application (non-resident)	-	3,851	12,832	4,040	3,871	4,091
Trademark registered (resident)	-	-	-	-	52	16
Trademark registered (non-resident)	-	3,849	11,572	4,036	3,712	6,510
Industrial design application (resident)	-	-	-	-	2	4
Industrial design application (non - resident)	-	353	371	243	264	250
Industrial design registered (resident)	-	-	-	-	-	-
Industrial design registered (non-resident)	-	353	361	243	254	270

Source: *WIPO*

Also, the number of applications from nonresidents is vividly surpassing that of the residents. Moreover, the overall picture conveys no constant trend of applications, meaning that, there is no consequential increase or decrease in the number of the applications in either of the categories, which gives no ground to establish any relationship between the enhancement of the IP laws and the number of applications. Obviously, trademarks are the most utilized IP in Montenegro. However, an increased trend in all the categories is seen by the residents, which is most explicit in the case of patents – from 3 in 2008 to 23 in 2010, and then 20 in 2011. The fact that Montenegro is not yet a full member of the European Patent Convention, which indeed is not a requirement of *acquis*, could be a very legitimate reason behind low levels of patent utilization. What is worth mentioning is the fact that there is significant difference between the number of applications and the number of registered rights,

which can lead us to believe that many of the inventions don't satisfy the criteria for obtaining protection.

Ultimately, reasons behind low applications can be many, but non satisfying enforcement of the existing laws, the unfair competition, the high costs of applications, the length of administrative procedures, the low level of awareness for importance of IP, and ultimately lack of finance and R&D commitment in entrepreneurial circles, could be the areas of concern for policy makers.

2.3.2 Enforcement of IP laws

Having established that the sound foundation is set, I move towards analyzing the level of enforcement of IP in Montenegro. Montenegro has amended the national laws with the requirement of Directive 2004/48/EC pertaining to the enforcement of intellectual property rights.⁶⁴ As such, the national framework is built in such a way that Civil Procedure Law⁶⁵ pertains to general laws in terms of enforcement; Enforcement Law⁶⁶ governs evidence management and injunction; and ultimately Law on Obligations⁶⁷ regulates damage compensation. Ever since the country's independence, the Commercial Court, which is the legally competent court for matters of IP infringement between legal entities, received 22 cases related to protection of property law.⁶⁸ IP infringement involving natural persons are under the reign of courts of general competence. As is clear from this, the country doesn't have an IP specialized court dealing exclusively with IP cases, which to some extent represents a difficulty for a prompt enforcement of laws and leaves the bigger IP picture incomplete. In addition, civil proceedings are made available to right holders against infringers, while preliminary injunctions and the necessary measure to secure evidence are

⁶⁴ Directive 2004/48/EC on the Enforcement of Intellectual Property Rights

⁶⁵ Law of Civil Procedure, No: 01-460/2. Dated: 29 March 2004

⁶⁶ Enforcement Law, No. 23/2004. Dated: 5 April 2004

⁶⁷ Law on Obligations. No. 01-1540/2. Dated: 4 August 2008

⁶⁸ Montenegro 2012 Progress Report. European Commission. (Brussels, 10.10.2012). 30 May 2013.

guaranteed by the respective IP laws, i.e. the Law on Patents in the case of patent infringement. Furthermore, administrative courts are entitled to deal with validity matters, while, the civil court deals with issues of infringement. In overall terms, the problem stands in the enforcement capacity, which pertains to a lack of a specialized IP court, as well as, lack of sufficient well equipped staff and legal personnel to handle IP matters.⁶⁹

On the other hand, in terms of enforcement mechanisms, Montenegrin IP legislation provides for preliminary injunctions. They can be executed in different arrangements⁷⁰ and are used from the appellants to initially prohibit any further infringement from the infringers, who can benefit from the possibility to delay proceedings by choosing to initiate administrative court proceedings for annulment of the infringed patent. Appellants are also made avail of the preliminary injunctions, which can be granted even before the initiation of the law suits so long as the lawsuit will start no later than 30 days from the execution of the injunction. Whereas, a permanent injunction can be ordered only in the court judgment and will take effect once the judgment is legally valid and binding. In average, it can take more than two years to obtain a first instance decision.⁷¹ In order to expedite the proceedings, it is possible in respect of the legal grounds of the claim to ask the court to issue a partial decision, while the compensation for damages can be determined during further proceedings. This gives us to understand that, despite the availability of injunctions, which serve as a great tool to prevent infringements to cause additional losses to right holders, the fact that proceedings can last for such a long time, exposes the parties involved to high time and financial costs that can be highly detrimental to the Montenegrin entrepreneurs.

⁶⁹ The ministry of economic affairs is the body to appeal in case of dissatisfaction with the decision of the IP office.

⁷⁰ Actions available to applicants in case of infringement of their rights by infringers: seizure/withdrawal from the market of products made or obtained by patent infringement, seizure/withdrawal from the market of implements predominantly used in the protection of infringing products; prohibition of further infringing acts.

⁷¹ Samardzija & Popovic Law Firm. *Interview*.

On the other hand, according to the Law on Patents⁷², the following remedies are available for infringement claims: 1) establishment of the fact of a patent infringement; 2) prohibition of patent infringement acts; 3) seizure and/or destruction of material or articles predominantly used in the creation of infringing products (compensation excluded); 4) seizure and/or destruction of products made or obtained by means of patent infringement (compensation excluded); 5) compensation for damages caused by infringement; and 6) publication of the court decision at the defendant's expense. Whereas, in terms of damages, the relevant provisions of the Law on Contracts and Torts apply.⁷³ Damages normally include actual loss and lost profits. If the infringement was committed intentionally or as a result of gross negligence, the plaintiff may claim up to the triple amount of the actual losses and lost profits. Consequently, one can derive that Montenegrin IP infrastructure is indeed satisfactory and that the major obstacle to the effective enforcement is the lack of specialized personnel and experienced practitioners. This is also in line with the findings of the European Commission Report 2012.

The Report confirms that there is major progress marked in terms of substantive laws, while the capacity of the administrative and the judicial system remains weak. There are no specialized IP courts in Montenegro, and that the competent authority to appeal against IP Office decisions is the Ministry of Economic Affairs. Another challenge is the lack of registered IP professionals able to represent legal or natural persons in proceedings before the competent authority. As such, the Commission recommends that more work is needed to align with the *acquis* in this area and to implement it effectively in the medium term.⁷⁴

⁷² Law on Patents. Available at: < http://www.ziscg.me/doc/IP_legislativa/Patent.pdf >

⁷³ Law on torts. Montenegro. Print.

⁷⁴ Montenegro 2012 Progress Report. European Commission. (Brussels, 10.10.2012). 30 May 2013.

2.4 Reasons behind low utilization of IP

“Complexity of advice offering, lack of strategic business advice, and cost of IP management”⁷⁵ are identified as three areas which cause difficulty to the SMEs in general. Obviously, the cost of managing IP in conjunction with the complexity of the IP itself, are a legitimate excuse for SMEs to not engage in IP utilization. In the case of Montenegro, the issue of low IP applications is rather a well-established fact now, however, the reasons behind could be many. After elaborating on substantive laws and the level of enforcement, this section analyzes complementary areas of relevance which stand in direct relationship with IP development and see how they are impacting the utilization of IP in Montenegro. Some of the factors which can explain the low levels of IP applications in Montenegro are corruption, innovators choosing other alternatives to protect inventions, lack of IP experts, low share of GDP spent on R&D, the education system, etc.

To start with, usually low levels of trust in the legal system of the country keep the individuals away from establishing any close relationship with its institutions. Considering the ranking of Montenegro in the Corruption Perception Index⁷⁶, i.e. it ranked 75 out of 176 countries included; the corruption continues to be a prevalent problem, though at a decreasing trend. Nonetheless, there was still no such time available as to help in building the trust of the people in the institutions. As such, innovators and enterprises will tend to choose other alternatives to protect themselves, as would be the case of trade secrets.

Trade secrets are seen as the best solution in cases when entrepreneurs are not willing to share the information in public, but also, when the invention does not really fulfill the requirements for patenting. Considering the still present low efficiency of IP enforcement in

⁷⁵ "From Ideas to Growth: Helping SMEs Get Value from Their Intellectual Property." *Intellectual Property Office*. N.p., Apr. 2012. Web. 30 May 2013.

⁷⁶ "What Is the Corruption Perceptions Index?" *2012 Corruption Perceptions Index*. N.p., n.d. Web. 30 May 2013.

the country, exposing your secrets on the patent application can lead to unfair exploitation of your invention from the side of the unfair competition. Moreover, the costs of obtaining IP protection and the required specialization for respecting the application procedures, while there is a vivid lack of such expertise in the market, can be no less but a very plausible explanation behind the low applications for IP in Montenegro. The verification and certification costs for documents, in conjunction with the costs to obtain expert opinions, represent a relatively high financial and time wise burden. The ease of IP obtainment and the effectiveness of defending the patent claims are two elements that one can look to when trying to find an answer to the low utilization of IP in a country.⁷⁷ While the time for obtaining a patent in Montenegro still depends on case by case circumstances, the courts, in case of trial proceedings for IP infringement, will tend to side with the domestic companies, which reduces the need for residents to apply for patent rights and as such deteriorates the market for IP.

To search further, the low percentage of GDP spent on R&D is the main explanation behind the lack of innovations in the country, and as a consequence, of the low applications for IP. Montenegro's expenditure in R&D is almost negligent and is significantly lower than 0.1% of GDP.⁷⁸ Given the last figures, in 2011 there was a considerate increase in investment in R&D up to 0.43% of GDP compared to 0.13% in 2010.⁷⁹ Nonetheless, the country still lags behind the other countries in the region. Except for Albania, most of them spend around 0.5% of GDP in R&D, while Croatia and Slovenia reached the levels of 1% of GDP.⁸⁰ As such, Montenegro's goal is to increase the amount of investment in R&D up to a level of 1.4% by 2016, whereby the public sector is expected to provide 70% of the overall funding,

⁷⁷ "Improving the competitiveness of SMEs in developing countries: The Role of Finance To Enhance Enterprise Development." United Nations, 2001. Web. 30 May 2013.

⁷⁸ "Screening Report Montenegro Chapter 25: Science and Research." European Commission, 5 Nov. 2012. Web. 30 May 2013.

⁷⁹ MONSTAT

⁸⁰ Igor Brkanovic. "Small and Medium-sized Enterprises and Intellectual Property." Center for Development of Entrepreneurial Society, n.d. Web. 3 June 2013.

while the private sector the remaining part.⁸¹ That investment in R&D is important for productivity growth, is also supported by the fact that studies show that investment of levels of 2.3-2.6 % of GDP on R&D contribute to a sustainable productivity growth in the long run.⁸² Except for Mansfield, who found that US growth is majorly explained by R&D spending, the argument has been extended to apply in the case of developing countries as well.⁸³

It is also important to mention that of the amount dedicated to R&D, it is the government sector that consumes as much as 50% of the total amount. Which is contradictory to the fact that more than 50% of the researchers work in the higher education institutions, approximately 32% operate in the government sector, only 8% are spent in the enterprise sector, while as few as 0.6% go to the private nonprofit sector.⁸⁴ Nonetheless, considering the mobilization of the main stakeholders to build strategic goals for further enhancement of R&D in the country, increased trends in the numbers of scientists working in the country are identified. Despite being still few in numbers, the number of scientists in the country marked an increase from 800 in the year of 2009, to 1191 in 2011.⁸⁵

In addition to all these elements, the education system which is not structured as such as to respond to the needs of the market, the lower standard of living causing for the presence of brain drain, hardship of finance access, and other social factors, can be taken as reasonable explanations behind the low levels of innovation in the country, and consequently the low

⁸¹ "Screening Report Montenegro Chapter 25: Science and Research." European Commission, 5 Nov. 2012. Web. 30 May 2013.

⁸² Bee Yan Aw, Mark J. Roberts, and Daniel Yi Xu. 2011. "R&D Investment, Exporting, and Productivity Dynamics." *American Economic Review*, 101(4): 1312-44. 30 May 2013. Print.

⁸³ Mansfield, Edwin. 1972. "Contribution of Research and Development to Economic Growth of the United States." Cited in "The Impact of Innovation and the Role of Intellectual Property Rights on U.S. Productivity, Competitiveness, Jobs, Wages, and Exports." *Global Intellectual Property Center*. Web. 02 June 2013.

⁸⁴ MONSTAT

⁸⁵ "Screening Report Montenegro Chapter 25: Science and Research." European Commission, 5 Nov. 2012. Web. 30 May 2013.

levels of IP utilization. Ultimately, by trying to give an answer to the low applications for IP in Montenegro, it all comes down to the low level of awareness, high costs of applications, low levels of R&D, and ultimately, lack of IP specialized courts and legal representatives.

What one comes to understand at this point is that despite the great achievements in terms of complying with the *acquis*, the complementary institutions in the country play a crucial role for a fruitful and comprehensive utilization of this stricter IP system. Considering that the relevant framework is well established, one becomes curious to understand how it will ultimately impact the economy of the country. With this being said, I move to the next chapter whereby the importance of IP for SME development in Montenegro is analyzed.

Chapter 3:

IP and their influence on the development of SMEs in Montenegro

What can be seen to this point is that Intellectual Property law was indeed a rooted area of law in the region; however, it is only with the initiation of the EU accession negotiations that IP gained importance. As a precondition to join EU and consequently to become a competitive member in it, Montenegro has no choice but to upgrade its IP system by putting all the efforts to comply with the international standards and respond promptly to the EU goals. It is expected that, “over the next two years, 90% of world demand will be generated outside the EU”,⁸⁶ which serves as a wakeup call for EU to mobilize in its entirety and as such take measures that anyone who joins it is able to contribute to a higher level of competitiveness. Therefore, EU pushes for the unification of standards and policies, and ultimately its focus is heavily concentrated in the unification of the IP system.

IP has been widely criticized and seen in a somewhat contradictory relationship to what is the aim of competition law, since scholars⁸⁷ suggest that by introducing IP in the market we have deliberately opened the way to the creation of monopolies. However, understanding whether this is indeed true or false is a matter of separate discussion which goes beyond the scope of this paper. What matters here is that, when undergoing structural reforms, there are expected outcomes which cause changes in the flow of activities, and so is the case with the Montenegrin SMEs. Considered as the main pillar of the economy in the country, and having been criticized for low levels of competitiveness, there is no other way but to start engaging in the improvement of their competitive level. Whether the new IP system will help them in this regard, is what interests us in this chapter.

⁸⁶ "The EU's Free Trade Agreements – Where Are We?" *EUROPA*. N.p., n.d. Web. 02 June 2013.

⁸⁷ Stiglitz, Joseph E. "Intellectual-Property Rights and Wrongs." *Project Syndicate RSS*. N.p., 5 Aug. 2005. Web. 30 May 2013.; See also: PA Geroski, "Intellectual Property Rights, Competition Policy and Innovation: Is There a Problem?", (2005) Available at: <<http://www.law.ed.ac.uk/ahrc/script-ed/vol2-4/geroski.asp>>

At this stage, SME's are identified as the backbone of the economy and the main potential for the sustainable development of the country. It is important to note the fact that the entrance to EU and the opening of the economy to the single market imposes a threat to many Small and Medium Enterprises.⁸⁸ This not only due to the stricter requirements in terms of enforcement of IP, but also and mainly due to the fierce competition and higher standards required from EU. Yet, the enforcement and protection of IP rights and the utilization of this now completed legal infrastructure would be the most strategic and wise action to take, in order for Montenegrin SMEs to at least try to catch up with their fellow entrepreneurs already operating in the EU's single market and start with the commercialization of their ideas and products for their private, but also, the overall social benefit.

To understand the implications of the IP chapter within the framework of the EU-Montenegro negotiations, I will first elaborate on the importance of SMEs in the European and Montenegrin economy. Then, by analyzing the structure of the market for SMEs in Montenegro, I will identify main challenges vis-à-vis the EU integration requirements and ultimately list the potentials and opportunities that SMEs can derive from utilizing IPR.

3.1 Role of SMEs in the single market and the importance of IP for their development

The role of SMEs in Europe's future is undisputable. In today's massively referred to global 'knowledge dependent' economy, the fact that 1.4 million of European SMEs operate in the creative sectors of industry,⁸⁹ conveys the message that SMEs are currently seen as the engine of growth and the impetus for creating satisfactory conditions to position EU as a

⁸⁸ To see how SMEs of accession countries are expected to be affected by entering EU, see "Assessment of the Impact of EU Accession on Croatian SMEs." Available at: <<http://server05.globaldizajn.hr/sme-observatory/UserDocsImages///Assessment%20of%20the%20Impact%20of%20EU%20Accession%20on%20Croatian%20SMEs.pdf>>

⁸⁹ "Reform of the Patent System in Europe and Accompanying Measures." *EUR-Lex*. N.p., n.d. Web. 02 June 2013.

competitive unity in the global trade transactions. In total numbers, SMEs account for 99.8%⁹⁰ of the EU businesses and as such are the main sources of growth, R&D, and most importantly, innovation. Moreover, as seen in the table below, it is these SMEs which are the main source of employment counting for as much as 67.4% of employment in 2011 or, more specifically, 87 million employees across all 27 EU Member States. Also, in terms of the gross value added, SME's in 2011 contributed with approximately 58.1%.

Table 3: **European Union SME statistics for 2011**

	Micro	Small	Medium	SMEs	Large	Total
Number of enterprises						
Number	19,143,521	1,357,533	226,573	20,727,627	43,654	20,771,281
%	92.2	6.5	1.1	99.8	0.2	100
Employment						
Number	38,395,819	26,771,287	22,310,205	87,477,311	42,318,854	129,796,165
%	29.6	20.6	17.2	67.4	32.6	100
Gross Value Added						
EUR Million	1,307,361	1,143,936	1,136,244	3,587,540	2,591,732	6179271.4
%	21.2	18.5	18.4	58.1	41.9	100

Source: **EUROSTAT**

That the focus of EU policy makers is in the development of SMEs is seen also from the fact that SMEs captivated a crucial role in the Lisbon Strategy and are now highly considered in the Europe 2020 strategy, with the last one focusing on the future goals of the Union.⁹¹ Moreover, in order to provide for uniform development of SMEs, in 2008, the

⁹⁰ "Facts and Figures about the EU's Small and Medium Enterprise (SME)." - *Small and Medium Sized Enterprises (SME)*. N.p., n.d. Web. 02 June 2013.

⁹¹ In 2000, through the Lisbon Agenda, EU stated the goal to become "the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion," which was an answer to the low productivity and low levels of growth in EU. However, by 2010, it was stated that the Agenda was not completed successfully. Hence, the follow up 10 years strategy, i.e. the Europe 2020, set new goals for the Community, whereby increased spending of GDP for R&D is seen as strategic to the future of the Union. Based on the Strategy, MS should reach the target of 3% of GDP investment on R&D.

European Commission launched the Small Business Act which is a tool provided by the Commission to the Member States in order to harmonize the development of these enterprises for the ultimate benefit of the entire community. It is not for a reason that SMEs are given such an enhanced role in the future of the economy. Considering their dominant position in the market, except for being present in great numbers, the level of employment they contribute to the economy, and their participation in the countries' export activities, SMEs are the main impetus for growth due to their huge potential to create and innovate.

Through innovation, SMEs not only improve their competitiveness in the market, but they also play a crucial role in the entire industry through knowledge spillover, which is essential and profound to the future of Europe.⁹² Regardless of the area of activity or the kind of goods and services provided, when operating in the single market, SMEs are instantly pushed to seek for continuous innovation which will help their product be differentiated and gain a strong position in the it. Given this, the protection of IP laws becomes a matter of utmost priority. Leaving aside the new phenomena in the area of IP utilization, i.e. utilizing IP for winning legal disputes and as such squeeze the competition,⁹³ protection of IP and an efficient enforcement of theirs has historically proven to serve the purpose of inducing innovation and creativity of the peoples' minds. Therefore, the Commission is devoted to promoting the unification of IP laws for the successful functioning of a single market with the aim of boosting the innovation levels, as well as, fighting piracy and counterfeiting for the ultimate goal of protecting the European consumers.⁹⁴ A fragmented legislation in this area

⁹² "EU SMEs in 2012: At the Crossroads Annual Report on Small and Medium-sized Enterprises in the EU, 2011/12." European Commission, Sept. 2012. Web. 30 May 2013.

⁹³ See Bessen, James, and Robert M. Hunt. "An empirical look at software patents." Federal reserve bank of Philadelphia, mar. 2004. Web. 7 apr. 2013.

⁹⁴ "A Single market for Intellectual Property Rights Boosting Creativity and Innovation to Provide Economic Growth, High Quality Jobs and First Class Products and Services in Europe." European Commission, 24 May 2011. Web. 30 May 2013.

would simply impose higher transaction costs for the small and medium enterprises, which are amicus to creation and invention.⁹⁵

Considering that EU's aim is to operate as a single, indivisible and unified area, especially with regards to trade, the performance of each of the member states constituting it is essential to the future of the Union. Hence, with Montenegro striking to join soon, the Montenegrin SMEs need to adapt to the higher and stricter requirements, in order to contribute with as much as potential they have to the future of the community. On this path, IP will definitely not be sufficient, however, it can very well play an essential role in the advancement of the entrepreneurial activity by triggering the wheel of innovation.

3.2 Montenegro's economic framework

To understand the existing structure and the operations of the SME sector in Montenegro it is necessary to start from a somewhat bigger picture. With a GDP of 3,234 million EUR in 2011 and a per capita GDP of 5211 Euro,⁹⁶ Montenegro is classified in the group of low to middle income countries.⁹⁷ After declaring independence, Montenegro managed to become one of the most prosperous economies with impressive growth rates of GDP, i.e. 8.6%, 10.7% and 6.9%, from 2006 through 2008.⁹⁸ At the same time, the country was one of the main receivers of incoming FDI that in 2011 accounted for 25% of GDP.⁹⁹ Though, most of this FDI was in the form of the privatization of the state enterprises. Hence, the level of Greenfield investments¹⁰⁰ is almost unrecognizable. Given the structure of the economy, the lack of diversification is highly vivid, and hence providing stimulation for the

⁹⁵ "Opportunities and challenges for a single market for ipr." *EUR-Lex*. N.p., n.d. Web. 30 May 2013.

⁹⁶ "Montenegro's 2011 GDP Increases by 3.2%." *Government of Montenegro*. N.p., n.d. Web. 02 June 2013.

⁹⁷ World Bank Classification

⁹⁸ MONSTAT

⁹⁹ "BTI 2012: Montenegro Country Report." N.p., 2012. Web. 5 May 2013.

¹⁰⁰ According to Investopedia: "A form of foreign direct investment where a parent company starts a new venture in a foreign country by constructing new operational facilities from the ground up."

development of SMEs with a focus on innovation and continuing to attract FDI, now in the form of Greenfield investments, is what the country is focused on.

With this being said, IP is one of the tools to help the country reach these goals. As already established, Montenegro has already adopted the necessary IP legislation; however, its low level of innovation is hurting the country by leaving it behind in terms of reaching satisfying levels of competitiveness, which will be crucial for the survival of its enterprises when the country joins EU. In the Global Competitiveness Index of 2011-2012,¹⁰¹ Montenegro reached the 60th position out of 138 listed countries, while it lost 11 positions compared to the previous year. In terms of innovation and sophistication, it ranked as the 59th country in the same report.¹⁰² On the other side, with regards to the conditions for doing business in the report of the World Bank – Doing Business 2013,¹⁰³ Montenegro is ranked in the 113th position out of 185 countries. These figures don't seem promising, and immediate measures should be taken to improve them.

Though, one should not forget the young history of the country given its recent independence and the creation of it as a separate sovereign and functional unity. Therefore, in one way or another, Montenegro is still in a period of transition. Currently, tourism is the most advancing sector, counting for 10% of GDP in 2011,¹⁰⁴ followed by mining, and manufacturing; while agriculture processing and aluminum and steel production count for the major contributors to the industrial production.¹⁰⁵ With regards to this, considering the focus of the country on highly dull structure of the economic activity, it is about time for Montenegro to work on the diversification of its production, which should be achieved

¹⁰¹ According to the Report: Montenegro is ranked in the second stage of economic development when “the key investment is in human resources training, creating quality products, creating a climate conducive to attracting foreign direct investment (reduction of customs duties, taxes, administrative procedures), acceptance of new technologies in production processes, and the stability of financial markets.”

¹⁰² "The Global Competitiveness Report 2011-2012 | World Economic Forum - The Global Competitiveness Report 2011-2012." *The Global Competitiveness Report 2011-2012*. N.p., n.d. Web. 30 May 2013.

¹⁰³ "DOING BUSINESS 2013 Smarter Regulations for Small and Medium-Size Enterprises." World Bank, 2013. Web. 2 June 2013.

¹⁰⁴ "Montenegro Profile." *Trading Economics*. N.p., n.d. Web. 30 May 2013.

¹⁰⁵ "Montenegro Economic Performance Assessment." *USAID*. N.p., Mar. 2006. Web. 30 May 2013.

through the advancement of the SMEs, considering their potent role in the country's economy, and ultimately their importance in the EU's single market towards which the country is heading.

3.3 Current picture of the SME sector in Montenegro

The SMEs in Montenegro, just as is the case with the European figures, constitute as much as 99% of the total business activity in Montenegro. This implies that when one talks about the commercial activity in Montenegro, one needs to address the small and medium enterprises. It is estimated that they counted for 61.83% of employment in 2011,¹⁰⁶ with the wholesale and retail sector, agriculture, and real estate contributing most to GDP (see *Appendix 1*). The future of these enterprises is dependent on the state policies which have to be in compliance with the EU standards and principles and also should have for aim the inducement of entrepreneurial activity and innovation. That Montenegro is taking their advancement seriously can easily be identified in the Strategy for Development of Small and Medium Size Enterprises 2011-2015.¹⁰⁷ In this strategy, development of SMEs through IP promotion is highly emphasized and the benefit from their utilization is specifically emphasized.

In 2011, there were 21,127 SMEs operating in Montenegro, which marked an increase from 2010 when the total number of SMEs amounted to 19,398 (see *Appendix 2*). Based on their participation in the market, it is obvious that the wholesale, repair and retail constitute for the main business activity in Montenegro amounting to as much as 42%, followed by hotels and restaurants and arts and entertainment with approx. 10%, and then construction and scientific activities with around 8% (see *Appendix 3*). From these data, it is interesting to

¹⁰⁶ MONSTAT

¹⁰⁷ Strategy for Development of Small and Medium Enterprises 2011-2015. Directorate for Development of SMEs – Montenegro. January 2011. 2 June 2013.

note that there is a significant increase in activity in two sectors which are directly related to IP, i.e. arts, entertainment, and professional and scientific activities. This allows us to derive that in fact with the mobilization of the all the relevant stakeholders, the completion of the legal infrastructure and the fact that EU final integration is approaching, the innovative activity is marking increasing trends.

At this point it is also highly important to mention the fact that compared to 2010 when SMEs contributed to exports with 24.85%, there was a marked increase in this activity as well, reaching now 31%.¹⁰⁸ Seemingly, there is an improved activity of the SMEs in the country, however, given their massive participation in the market, their share in exports is still dissatisfying and hence there is a need to address this matter sooner rather than later. Montenegrin enterprises must now commit their resource towards increasing the quality of their goods and adjusting prices in order to be able to respond to domestic competition and the challenges of the EU's single market. Therefore, their goal should be the engagement in innovative activities, as innovation is crucial for increasing the competitiveness of a company and is even more significant in the creation of an entrepreneurial economy based on knowledge.

SMEs present the framework of economic growth of Montenegro and together with FDI have great importance for its economic and social progress. They even provide crucial contribution for the regional development. Montenegrin SMEs are a stable source of employment and have social and cohesion role especially in the rural areas which are not interesting for multinational companies and incoming FDI. That expectations from this sector are high is also clear from the fact that the Commission has set some targets which should be met by 2015, i.e. "a 25% increase in the number of SMEs, a 17% increase in the number of

¹⁰⁸ Strategy for Development of Small and Medium Enterprises 2011-2015. *Directorate for Development of SMEs – Montenegro*. January 2011. 2 June 2013.

employees within the SME sector and a 35% increase in contribution to exports by SMEs.”¹⁰⁹

SMEs in Montenegro, nonetheless, still hesitate to utilize the IP tools that they already have in place. Despite many projects aimed to assist them in terms of obtaining finance¹¹⁰ and having a more favorable environment for innovation, they insist on producing rather low or non-technological products, which have barely any signs of innovative activity attached. This statement is rather confirmed by Montenegro scoring only 40.1 out of 100 in terms of innovation as evaluated by the Global Innovation Index 2012.¹¹¹ As such, Montenegrin SME’s competitiveness level remains worrying and becomes an issue for policy consideration on the way of the country to the EU’s single market. Consequently, demand for the transfer of technology is somewhat higher. Enterprises, universities, and research centers, by not engaging in common projects, miss the chance to make the best use of their resources, which this is then reflected in lower technological capabilities and less innovation. With consideration of this fact, the development of SMEs depends heavily on scientific research work which leads to the economic development of Montenegro. In this context, the protection of intellectual property is of great importance for their development. It enables easier access to financial resources, contributes to an increase in the market value of enterprises, brings more profitability, and offers better marketing and differentiation of goods and services, through finding partners and suppliers and higher export levels.

By analyzing the IP legal infrastructure in the country, I have previously established that despite the already well founded IP legislation and the increased efficiency in terms of enforcement of IP laws, though somewhat hampered by the still low human capital

¹⁰⁹ "EU Delegation." *Delegation of the European Union to Montenegro*. N.p., n.d. Web. 30 May 2013.

¹¹⁰ Montenegro presented a voucher system to assist companies interested to engage in innovative products and services. For further information, see: <<http://www.nasme.me/eng/projects/education/ed11en.php>>

¹¹¹ "The Global Innovation Index 2012 Stronger Innovation Linkages for Global Growth." WIPO, 2012. Web. 3 June 2013.

qualifications and incomplete administrative structure, the level of domestic applications for IPR in Montenegro remains at very low levels. To understand how this new regime of IP will affect the entrepreneurial activity in the country and identify the reasons why IP matters now that the business sector is opening to a huge market such as the single market, I will continue by offering a comparative analysis based on expected costs and potential benefits by relying on the current situation and considering the future trends.

3.3.1 Costs of a stricter IP system

In case of Montenegro, IP requirement could very well be a double edged sword, as on one hand it is a condition subsequent for the opening of the economy to trade in the single and the international markets, while on the other hand, a stricter protection fades away the possibility for many to inexpensively obtain the benefits of a weaker IP enforcement, i.e. imitating over innovating.¹¹² To evaluate precisely the impacts of the stronger IP system in the progress of the economic performance in Montenegro is rather an ambitious plan, given the fact that the country has not yet closed the chapter on IP within its EU agenda and that the real impacts are yet to be seen, though this could very well be an interesting topic for study in the future.

Considering the piracy reports and the structure of the enterprise activity in the country, the sectors to be mostly impacted by the recent changes in IP laws, are the ones which are heavily reliant on copyright and trademark protection. Based on the BSA Global Software Piracy Study, Montenegro has been evaluated to hover at 69%, while at the same time it is acknowledged for a high sale of pirated software, CDs, and DVDs, and also counterfeit trademarked goods, mainly clothing.¹¹³ Many of the enterprises relying on this

¹¹² Robert L. Ostergard, Jr., "Economic Growth and Intellectual Property Rights Protection: A Reassessment Of the Conventional Wisdom" in Daniel Gervais, *Intellectual property, trade and development* (2007) pp. 115.

¹¹³ "Embassy Of The United States Podgorica, Montenegro." *Doing Business in Montenegro*. N.p., n.d. Web. 02 June 2013.

activity will not see a bright future under the new laws. The indicated activities are a direct infringement of the copyrights of many creators and innovators, which leads to a direct reduction in the artistic and technological activity in the country. Indeed, many of the SMEs relying on ‘copying’ and with low capacity to innovate will face an unhappy ending with the enforcement of the IP laws, especially when reaching the level of accession to the EU’s single market. Piracy and counterfeiting, by allowing infringers to offer the pirated and counterfeited goods at more affordable prices, seem to be not only in the interest of the infringers, who get to benefit through high levels of profit margins, but also are a great deal for the citizens, considering the standard of living and the average wage of 477 Euro.¹¹⁴ It is precisely this one of the explanations for low scientific and academic publications in the country (see *Appendix 4*), as well as, for the hindered activity of performers and artists. Not enforcing IP would mean to destroy the incentive of these people to create.

As imitation is a significant source of technological development in Montenegro and the developing countries in general, providing stronger IPR protection to foreign firms is expected to impair the activity of the ones previously relying on piracy. In effect, a stronger regime would act to transfer profits to firms outside the country rather than encouraging domestic innovative activity,¹¹⁵ particularly in emerging economies such as Montenegro, where alternatives to the imported goods are few.¹¹⁶ One should not forget though that the ability of local creative talents to present new works is inhibited by the faced competition with cheap and inferior works produced by pirates, who quickly take over the market and who do not pay royalties to the local creators.¹¹⁷ What is essential here is that, the IP laws will now cause increased costs for these enterprises as they will have to pay royalty fees for

¹¹⁴ MONSTAT. Net Average Wage - statistics for April 2013

¹¹⁵ Alan V. Deardorff, "Welfare Effects of Global Patent Protection." *Economica* ns 59.233 (1992): 35-51. JSTOR. Web. 2 June 2013.

¹¹⁶ David M. Gould, and William C. Gruben. "The Role of Intellectual Property Rights in Economic Growth." *Journal of Development Economics* 48.2 (1996): 323-50. Print.

¹¹⁷ "Strong Intellectual Property Protection Benefits the Developing States." National Law Center for Inter-American Free Trade, n.d. Web. 02 June 2013. <<http://db.natlaw.com/interam/mx/ip/sp/spmxip11.htm>>.

the exploitation of the protected rights. A stricter IP regime can have three plausible outcomes in this context: 1) destruction of piracy based SMEs, 2) increased revenues for right holders in the country, 3) increased payments for royalties and fees flying outside the country and putting a higher burden on the country's balance of payments.

In the short run, a stronger IP system is expected to cause increase in the number of imports and FDI compared to the improvement in the domestic innovation and production. Hence, stronger IPR will rather lead to such results where benefits in terms of higher FDI will be offset by reductions in the local production.¹¹⁸ This is also evident from data across developing countries, which indicate that recently an increase in net payments for royalty fees has been marked, hinting to the idea that IP indeed matter in the context of SMEs trying to enter fast moving markets.¹¹⁹

Another expected challenge, especially after EU accession, is the heightened level of international competition from foreign firms. However, if SMEs are willing to response to the needs and changes in the market, they can manage to thrive both locally and abroad. Also, by working collaboratively with other companies both large and small, SMEs can increase their ability to succeed internationally.¹²⁰ Consequently, Montenegrin SMEs, which rarely engage in innovation and tend to free ride on the inventions of the others for the pursuit of their economic profit, cannot expect to survive the forces of a well-founded IP system in the country. Unfortunately, despite the existing will of some, many of the SMEs will be driven out of market, unless they don't engage in strategic reconstruction of their entrepreneurial activity. Therefore, since accession to EU is still a far reaching goal, the period in between could very well be used by the SMEs in ways demonstrated in the following section.

¹¹⁸ Falvey, Rod, Neil Foster, and David Greenaway. "Intellectual Property Rights and Economic Growth." *Review of Development Economics* 10.4 (2006): 700-19. Print.

¹¹⁹ Keith E. Maskus "The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer." N.p., 1997. Web. 2 June 2013.

¹²⁰ Karen Wilson. "Chapter 2: Encouraging the internationalisation of SMEs." N.p., n.d. Web. 2 June 2013.

3.3.2 Benefits of a stricter IP system

While addressing some of the potential costs of a stricter IP system, the potential benefits could hypothetically accrue in different forms. Under this stricter IP system of laws, Montenegrin SMEs are expected to benefit from FDI, technology transfer, diversified exports, and other significant improvements in terms of differentiating their products in the market. The process of economic development in a country is rather a long term project which needs to be based on sustainable policies. It is predicted that, accession countries are expected to lose their comparative advantage in simple assembly manufacturing operations based on low wages,¹²¹ hence the need to enhance the productivity and diversify the production of SMEs in Montenegro. While as previously established, many SMEs will run the risk of exiting the market, allowing further ‘free riding’ would hamper the country’s performance by increasing the costs in the long run due to the dependency on the foreign sources and outdated technologies.

Unless IP won’t be utilized, Montenegro risks “remaining dependent on dynamically inefficient firms that rely on counterfeiting and imitation.”¹²² It is further argued that weak IP stimulates imitation over innovation, which causes for the industries to be unwilling to engage in long term development of more advanced goods and services¹²³. With this being said, one can assume that the stronger IP system in place in Montenegro will actually push the entrepreneurs to invest more on innovation and fight away the practice of copying or simply adapting.

¹²¹ Karen Wilson. "Chapter 2: Encouraging the internationalisation of SMEs." N.p., n.d. Web. 2 June 2013.

¹²² Keith E. Maskus. *Intellectual Property Rights in the Global Economy*. Washington, D.C.: Institute for International Economics, 2000. Print.

¹²³ "Strong Intellectual Property Protection Benefits the Developing States." National Law Center for Inter-American Free Trade, n.d. Web. 02 June 2013

3.4.2.1 FDI

Montenegrin SMEs' activity is mainly based on lower technology goods. In the words of Maskus and Yang, investment in these sectors, i.e. textile, distribution, hotels, etc. is more dependent on costs of inputs and market opportunities, however, when firms decide to invest in local R&D, a lot of consideration is given to the level of IP protection.¹²⁴ Though, FDI in developing countries is heavily dependent on other factors¹²⁵ which are conducive to a favorable business climate that need to be in place for attracting FDI.¹²⁶ The Strategy for Scientific Research Activities 2012-2016 in Montenegro identifies energy, identity, ICT, competitiveness, medicine and health, science and education, new material, products and services, sustainable development and tourism, and agriculture and food transports as the priorities for the development of the country.¹²⁷ These can be developed only by attracting FDI, which needs a well domestically established economic environment that in the case of all these priorities will be heavily dependent on the protection of IP.

As suggested by Mansfield,¹²⁸ in the high tech industries as is the case with ICT, identified as one of the priorities of the Montenegrin economy, the decision of investors to follow with FDI or technology transfer is heavily dependent on the structure of the IP in the country. That ICT, a sector heavily reliant on IP, has already attracted the biggest share of FDI in Montenegro, is clear from the FDI investments in the two biggest mobile companies, i.e. Telenor and T-com (see *Appendix 5*). ICT on the other hand, despite capturing only 2.1% of the enterprise activity in 2011, it is one of the major contributors to GDP with as much as

¹²⁴Keith E. Maskus, and Guifang Yang. "Intellectual Property Rights, Foreign Direct Investment, And Competition Issues In Developing Countries." N.p., Aug. 1997. Web. 2 June 2013.

¹²⁵ Maskus and Yang suggest: "this broad package would include promoting political stability and economic growth, encouraging flexible labor markets and building labor skills, continuing to liberalize markets, and developing forward-looking regulatory regimes in services, investment, intellectual property, and competition policy."

¹²⁶Maskus, Keith E. "The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer." N.p., 1997. Web. 2 June 2013.

¹²⁷ "Montenegro." *Erawatch*. N.p., n.d. Web. 02 June 2013.

¹²⁸ Edwin Mansfield, "Intellectual Property Protection, Direct Investment, and Technology Transfer: Germany, Japan and the United States," International Finance Corporation Discussion Paper 27, The World Bank (1995): Print.

5.7% in 2010 and 2011.¹²⁹ That FDI inflow was most focused in ICT,¹³⁰ can be mainly explained by investments in this sector and not really because of IP. Other elements, such as cheap labor and taxes can play a significant role. But one should not neglect the role of the stricter and safer IP environment. Indeed, the policymakers should see this as a great opportunity to advance this sector in the future.

Many analysts, however, claim that strong IPRs play a significant role in conveying a message of stability and no government interruption in the business activity to potential investors.¹³¹ In connection with this, efforts should be put in highlighting the main advantages of the country,¹³² i.e. it's geographical positioning, the educated workforce, the good climate, the favorable tax environment, and by doing so, Montenegro could create favorable conditions for its small scale SMEs to benefit from FDI. It is a well-established fact that SMEs have increasingly engaged in cross-border strategic alliances through merger and acquisitions, joint ventures, or other forms of inter firm collaboration, which are beneficial in terms of improved distribution channels, more financial resources, increased specialization, and better conditions for R&D.¹³³ One of the promising alternatives for Montenegrin SMEs to increase their competitiveness is to engage in establishing joint ventures, which are conducive to better networking, improved marketing, expanded markets, and increased opportunities to engage in innovative activities.¹³⁴ This way Montenegrin SMEs could be positioned as the local partner that has the networking potential, while the foreign companies, especially the ones coming from EU, which is an expected outcome after the opening of the economy to the single market, will contribute with capital and also the know-how.

¹²⁹ MONSTAT

¹³⁰ "MONTENEGRO Investment Opportunities 2009." Ministry For Economic Development, 2009. Web. 30 May 2013.

¹³¹ R.M. Sherwood, *Intellectual Property and Economic Development*. USA. 1990. Westview Press. Print.

¹³² "MIPA, 11 Reasons to Invest in Montenegro." *MIPA, 11 Reasons to Invest in Montenegro*. N.p., 2010. Web. 30 May 2013.

¹³³ Karen Wilson. "Chapter 2: Encouraging The Internationalisation Of SMEs." N.p., n.d. Web. 2 June 2013.

¹³⁴ *Ibid.*

Currently, the structure of FDI is as such that, most of it comes as a result of privatization of the domestic companies, which might be acceptable in the short run, however, in the long run the country needs to focus on diversifying its FDI portfolio and increasing the chance for SMEs to attract investors.

3.4.2.2 Transfer of technology

In addition to the inflow of investments, the countries' with a sound IP system give the domestic enterprises the chance to access technologies and know how at lower transaction costs. Direct investment evaporates the costs of contracts and increases the probability of better access of know how. This is also supported by Rapp and Rozek,¹³⁵ who in addition claim that a country investing in IP stands to benefit from positive returns to economic growth in the long run. On the other hand, strong intellectual property protection, which associates inventive efforts with economic returns, works as an effective tool in stimulating the private sector's interest in inventive activity, thereby leading to the introduction and diffusion of new technologies.¹³⁶ Where intellectual property protection is adequate, the advanced technology that is transferred serves as the basis for further local innovation, greater technological self-reliance and dynamic economic growth. Where the protection is inadequate, advanced technology is not transferred and, even when it is introduced into the economy, it is not on terms that are conducive to long-run economic development.¹³⁷ Whatever the mode of transfer will be, under stricter IPR, an increase in the transfer of more advanced technologies,¹³⁸ as well as, higher quality ones¹³⁹ is expected. All these elements are of essential importance to the Montenegrin SMEs at their current stage of development.

¹³⁵ Ronald T. Rapp and Richard P. Rozek, "Benefits and Costs of Intellectual Property Protection in Developing Countries," *Journal of World Trade*, Volume 24, pp.75-102 (October 1990). Print.

¹³⁶ "Strong Intellectual Property Protection Benefits the Developing States." National Law Center for Inter-American Free Trade, n.d. Web. 02 June 2013.

¹³⁷ *Ibid.*

¹³⁸ Keith E. Maskus, and Guifang Yang. "Intellectual Property Rights, Foreign Direct Investment, And Competition Issues In Developing Countries." N.p., Aug. 1997. Web. 2 June 2013.

¹³⁹ Sharmila Vishwasrao. "Intellectual property rights and the mode of technology transfer," *Journal of Development Economics*, Elsevier, vol. 44(2), pp.381-402, (August 1994). Print.

Considering their low capacity to expand an inflow of technologies and know how is of utmost importance for their further positioning and success in the market. Ultimately, indeed the imports will increase in the short run, but these could very well translate into a flow of better and new technologies, more capital goods, and improved productivity of the firms, in our case, SMEs.¹⁴⁰

3.4.2.3 Product and export diversification

The strength of IPR protection impacts also the trade activity.¹⁴¹ However, while we would naturally expect for the export activity to increase in the market where IP is strongly protected, exporters “may choose to reduce their export sales in a foreign market in response to stronger IPR protection, because their market power increases as the ability of local rivals to imitate the firm’s product is curtailed.”¹⁴² Whatever the decision of Montenegrin SMEs, the utilization of IP will certainly translate into better products for the domestic economy as well.

What is of utmost concern is the fact that constant massive trade deficits¹⁴³ have been characterizing the country before and since its independence. In 2010, the imports were covered by exports in the amount of 24.9%, which marks an improvement of 5.9% compared to the previous year.¹⁴⁴ However, trade deficits persist, amounting to – 1,368,957 EUR in 2011 and -1,453,933 EUR in 2012;¹⁴⁵ one can see that the figures are gradually going for worse. According to the structure of exports by groups of countries, Montenegro exports

¹⁴⁰ Bernard Hoekman, Keith Maskus, and Kamal Saggi *Transfer of Technology to Developing Countries: Unilateral and Multilateral Policy Options*. World Development . (2005). Print.

¹⁴¹ Keith Maskus and Mohan Penubarti. *How trade related are intellectual property rights?*. Journal of International Economics. Vol 39 (3-4). Pp. 227-248, (November 1995). Print.

¹⁴² Falvey, Rod, Neil Foster, and David Greenaway. "Intellectual Property Rights and Economic Growth." Review of Development Economics 10.4 (2006): 700-19. Print.

¹⁴³ In 2008, IMF in its World Economic Outlook publication ranked Montenegro one of the countries scoring worst in terms of their trade account. Then, Montenegro’s share of foreign deficit in GDP was -67.49, and it was the highest since 2000. In 2009, the share of foreign trade deficit in GDP was 33.4%, which marks a significant improvement; however, the figures continue to be worrying for the future macroeconomic stability of the country.

¹⁴⁴ MONSTAT

¹⁴⁵ "Montenegro EU bilateral trade and trade with the world." N.p., 23 May 2013. Web. 2 June 2013.

majority of goods to the countries of the European Union, which represents 43.2% of total exports.¹⁴⁶ The rapid growth in exports is mainly reflecting strong foreign demand, but also could indicate a better access to the market as a result of EU enlargement.¹⁴⁷ One can easily establish that the country is heavily dependent on the foreign economies. The biggest concern is indeed the structure of the country's exports, which is really narrowed and represents a major obstacle for the improvement of the trade picture (See *Appendix 6*). Currently, intermediate goods and raw materials capture the biggest share of exports.¹⁴⁸ Reliance on these exports is not promising and cannot be expected to increase the competitiveness of the enterprises in the single market.

Also, the sector distribution of SMEs is highly concentrated and on top of it, the proportion of domestic sales to the international exports is almost 8:2,¹⁴⁹ which indicates that SMEs in Montenegro face significant barriers to enter the international markets. As such, by entering the single market, the need to increase the level of competitiveness is more than a matter of urgency. This is why Montenegro has set a target for SMEs to increase considerably their share of exports to GDP by 2016. It is the moment for the SMEs to start adapting and incorporating new technologies in their methods of production which will increase the quality of their products, as well as, they should put the maximum of their efforts to differentiate these products in the EU's single market.

All in all, with the strengthening of the IP infrastructure in the country, the benefits need to be weighed against the costs. To assign numbers and values at this point of development is rather impossible, as the IP system was under major intervention until much

¹⁴⁶ "Montenegrin Foreign Trade Statistics Analysis Using General And Special Trade Systems." Central Bank of Montenegro, May 2010. Web. 2 June 2013.

¹⁴⁷ Karen Wilson. "Chapter 2: Encouraging The Internationalisation Of SMEs." N.p., n.d. Web. 2 June 2013.

¹⁴⁸ Strategy For Enhancement Of Competitiveness At The Micro level 2011-2015. Directorate for Development of SMEs – Montenegro. June 2011. 2 June 2013.

¹⁴⁹ Strategy For Enhancement Of Competitiveness At The Micro LEVEL 2011-2015. Directorate for Development of SMEs – Montenegro. June 2011. 2 June 2013.

recently and continues to be. In this stage, one thing is clear that considering the current structure of the SME activity in Montenegro, the IP seem not to be crucial to their operations. However, the requirement of a stricter IP, in order to join the EU and consequently become a member of the single market, is expected to bring benefits to the country and to its entrepreneurs in the long run. These benefits are expected to accumulate in the form of higher FDI, technology transfer, and production diversification, which are essential to the development of the SMEs in Montenegro towards reaching the goal of increased competitiveness. All these elements will most certainly help these enterprises towards a better and a stronger positioning in the EU's single market.

Policy recommendations and suggestions for further research

Considering the findings of this paper, following is a list of some policy recommendations which could be attractive and suitable in this stage of the country's development and could lead to a higher utilization of IP.

Establish an IP specialized court

A study on Specialized Intellectual Property Courts has found that having an IP specialized court is of a great benefit to the well-functioning of the IP system. In addition, an IP court is seen as beneficial not only to the IPR holders but to the governments as well. The findings of the report suggest that:"1)IPR courts lead to the creation of subject matter experts/expertise; 2)IPR courts often make quicker and more effective decisions, 3)IPR courts allow governments to create special court procedures to enhance efficiency and accuracy; 4)The creation of an IPR court increases the consistency of case outcomes; 5)Because their subject matter is concentrated, specialized IPR courts are better equipped to remain current on new IPR issues and laws, and finally, 6)Government investment in specialized intellectual property courts signals to the public that intellectual property rights will be enforced.”¹⁵⁰

Establish Business Angels Networks

“Business angels are individual investors, usually with business experience, who provide capital for start-up firms.”¹⁵¹ These investments are expected to help start-up entrepreneurs overcome the difficulties of accessing finance.¹⁵² As such, many that have the ideas but don't have the money to commercialize them could look to this alternative. In this context, the utilization of IP rights can elevate at higher levels.

¹⁵⁰ "Do We Need Specialized Intellectual Property Courts?" HG Global Legal Resource, n.d. Web. 02 June 2013.

¹⁵¹ "Business Angels." *Access to Finance*. N.p., n.d. Web. 02 June 2013.

¹⁵² Stephanie A. Macht, John Robinson, (2009) "Do business angels benefit their investee companies?", *International Journal of Entrepreneurial Behaviour & Research*, Vol. 15 Iss: 2, pp.187 - 208

Innovative based education strategy

This is a rather macroeconomic policy matter; however, considering the movements in the globalized world that we are living, the necessity to diversify the education profiles in the country is more important than ever. Policies that the country could undertake are: providing subsidies for certain academic programs which will generate the scientists and the engineers of the future that today are in few numbers; give scholarships for students interested in these areas of study; organize seminars and workshops which will focus on emphasizing the importance of innovators and creative minds for the future of the country within EU, etc.

Introduce utility models

Utility models, surprisingly enough, are not protected in many developing countries despite the advantages that this form of protection can bring to them. Utility models, also known as petty patents, are less stringent than patents, in that the scope, length, and the need for novelty and inventive step are less stringent compared to what is needed for a patent application. Moreover the application processes is much simpler and faster. As suggested by WIPO, “utility models are considered particularly suited for SMEs that make ‘minor’ improvements to, and adaptations of, existing products.”¹⁵³ This recommendation is also in line with the study of Kim, who suggests that “where [innovative R&D capacity] is weaker, a system of IPRs that protects minor, incremental inventions is more conducive to innovation technological diffusion, and economic growth.”¹⁵⁴

In addition, considering that this paper was a rather analytical approach on the current IP system and its potential impact on the country’s economy with a focus on SMEs, further research could focus on calculating the monetary value of these changes in terms of the

¹⁵³ WIPO

¹⁵⁴ Kim, Yee Kyoung, Keun Lee, Walter G. Park, and Kineung Choo. "Appropriate Intellectual Property Protection and Economic Growth in Countries at Different Levels of Development." *Research Policy* 41 (2012): 358-75. Print

registered amount of inflows and outflows of IP related royalties; follow the trends in the number of IP applications and see whether indeed there is an increased number in those sectors where there is more inflow of FDI; see which sectors are applying for more IP and understand their contribution to GDP; and/or analyze the trends of SMEs operations with respect to their activity and understand how much IP related they are.

Conclusion

Having moved to an era of a knowledge based society, the commercialization of ideas will serve as the main competitive advantage of the countries and intellectual property seems to have a significant stake at this. As the physical borders have basically been eradicated completely, the need to be identified and stand uniquely in the market, to protect the consumers and to fight counterfeiting and piracy, are essential and more than necessary for a safe and successful operation of the EU's single market. With Montenegro aiming to become a member of EU, there are a number of tasks that the country needs to finish successfully before reaching the goal of final integration.

This paper focused on the case of Montenegro with the aim of understanding the implications that a stricter IP regime, as one of the conditions for the country's accession to EU, is expected to have on the development of the Small and Medium Enterprises that are identified as the main accelerator for its economic growth. The findings suggest that indeed the importance of IP has only gained in value with the initiation of the accession negotiations for Montenegro on its way to EU, however, IP infrastructure was in a quite satisfying shape even well before. As such, the transition from the pre-EU negotiations era to the current phase was practically smooth with regards to the adoption of the substantive laws. However, in terms of the enforcement levels and mechanisms, there is still space for improvement as is also evidenced from the reports and assessments of the European Commission.

On the other hand, the area of IP is admittedly a matter of international policy making; however, it has now become a matter of substantial importance for the further advancement of the EU. As the success of the idea of the single market rests in a unified representation and uniform collaboration, EU policymakers cannot afford to allow for different levels of policies to prevail, and as such, the future member countries are expected

to live up to the same standards so in the end the Union altogether improves its positioning in the international arena. Hence, IP stands today as a separate chapter in the negotiations between EU and the accessing countries considering its importance for inducing innovation. Going back to Montenegro, while the IP laws are now completely harmonized with the EU standards and reach the adequate level of conformity with the TRIPS and WIPO provisions, the level of IP utilization at the national level is low. The explanations behind could be many, however, I suggest that the level of corruption, other means of protecting inventions, administrative barriers, low percentage of GDP spent on R&D, etc. can be very legitimate reasons for Montenegrin inventors not to utilize IP.

Ultimately, the increased level of IP protection is expected to impact the SMEs in Montenegro. This due to the fact that, SMEs constitute 99% of enterprises in MNE, contribute with a 31% share in exports, and provide for more than 60% of employment. The stricter IP regime in the short run is expected to wipe out a considerable number of them from the market, especially those which rely heavily on imitation; while, in the long run, the main benefits are expected to accrue in the form of higher FDI, more technology transfer, diversified production, and higher level of innovation. All these factors are expected to increase the current low level of competitiveness of the Montenegrin SMEs and help them towards a better positioning in the EU's single market. However, the main benefit of the stricter IP regime at this stage of Montenegro's development is that it will facilitate its process of European integration.

Finally, there are two sides to intellectual property, the legal and the economic, and in order to make the best use of them, one should know how to combine both of the aspects. At the current stage of Montenegro's development, given that the intellectual legal framework has been fully established, the focus should switch towards increasing the awareness of the

Montenegrin companies to make use of the economic value that IP can assign to their entrepreneurial activity.

Appendices

Appendix 1: SME contributions 2011

Description	Gross output		Gross Value Added		GDP structure		Real growth rate
	2010	2011	2010	2011	2010	2010	
Agriculture, forestry, and fishery	385,320	424,997	239,495	256,726	7.7	7.9	11.2
Mining and quarrying	66,472	69,729	37,702	35,725	1.2	1.1	1.5
Manufacturing	545,881	558,502	144,512	162,535	4.7	5	10.9
Electricity, gas and water supply	323,132	272,954	199,836	170,378	6.4	5.3	-23.9
Construction	566,991	548,109	151,904	158,080	4.9	4.9	15.8
Wholesale and retail trade, repair	752,059	771,102	348,770	391,686	11.2	12.1	13.5
Transportation	308,344	316,847	144,915	150,880	4.7	4.7	-2.5
Hotels and restaurants	260,929	279,739	154,425	161,170	5	5	7.3
Information and communication	311,775	298,835	176,614	164,957	5.7	5.1	2.5
Financial intermediation	195,351	196,551	124,515	131,839	4	4.1	1.7
Real estate activities and renting	250,075	281,281	183,605	219,875	5.9	6.8	6.1
Public administration and social security	409,462	401,996	255,073	255,517	8.2	7.9	2.1
Education	153,187	153,518	138,877	139,271	4.5	4.3	-0.7
Health and social work	221,388	215,209	135,589	131,653	4.4	4.1	-3.2
Other community, social, personal services	26,228	41,373	13,899	19,637	0.4	0.6	4
Households with employees	-	-	-	-	-	-	-
Exterritorial organizations and bodies	-	-	-	-	-	-	-
Professional, scientific, & technical activities	232,567	227,888	72,737	88,175	2.3	2.7	2.8
Arts, entertainment and recreation	88,092	93,313	39,710	39,809	1.3	1.2	-19.2
Administrative and support service activities	62,570	87,671	25,059	26,755	0.8	0.8	16.1
Total	5,159,823	5,239,614	2,587,237	2,704,668	100%*	100%*	
*when taxes on products less subsidies are calculated							

Appendix 2 – Number of SMEs, FDI inflows, R&D expenditure as a percentage of GDP, and GDP real growth rate on a yearly basis in Montenegro (2007-2012)

Year	GDP	FDI	R&D	SMEs
2006	8.6		1.24	
2007	10.7		1.15	
2008	6.9	960,423,121	0.1	
2009	-5.7	1,527,258,438		20,241
2010	2.5	760,440,980		19,398
2011	3.2	558,052,752		21,127
2012				22,313









Appendix 3: Montenegrin SME structure 2009-2011

Description	Frequency/Percentage					
	2009		2010		2011	
	Freq.	Porc.	Freq.	Porc.	Freq.	Porc.
Agriculture, forestry, and fishery	223	1.00%	184	0.800%	192	0.90%
Mining and quarrying	53	0.20%	53	0.20%	56	0.20%
Manufacturing	1,932	9.50%	1,736	8.90%	1,709	8.00%
Electricity, gas and water supply	32	0.10%	29	0.10%	62	0.20%
Construction	1,589	7.80%	1,583	8.10%	1,854	8.70%
Wholesale and retail trade, repair	8,873	43.70%	8,369	43.10%	8,880	42%
Transportation	1,809	8.80%	1,716	8.80%	1,456	6.80%
Hotels and restaurants	1,955	9.60%	1,921	9.90%	2,241	10.60%
Information and communication	-	-	-	-	450	2.10%
Financial intermediation	146	0.70%	140	0.70%	137	0.60%
Real estate activities and renting	2,792	13.70%	2,811	14.40%	788	3.70%
Public administration and social security	66	0.30%	65	0.30%	69	0.30%
Education	38	0.10%	37	0.10%	39	0.10%
Health and social work	86	0.40%	80	0.40%	58	0.20%
Other community, social, personal services	679	3.30%	657	3.30%	564	2.60%
Households with employees	1	0.00%	1	0.00%	3	0.00%
Exterritorial organizations and bodies	20	0.10%	16	0.00%	15	0.00%
Professional, scientific, and technical activities	-	-	-	-	1,694	8.00%
Arts, entertainment and recreation	-	-	-	-	234	10.00%
Administrative and support service activities	-	-	-	-	626	2.90%
Total	20,294	100.00%	19,398	100%	21,127	100%

Appendix 4: Number of publications in Montenegro in 2011

Field science	Scientific papers published in scientific periodicals			Scientific papers in publications from the Web of Science list	Published scientific monographs		
	Total	In Montenegro	Abroad		Total	In Montenegro	Abroad
TOTAL	1 051	547	504	173	131	98	33
Natural sciences	215	164	51	36	7	3	4
Engineering and technology	286	121	165	74	17	10	7
Medical sciences	60	10	50	28	9	6	3
Agricultural sciences	51	12	39	9	4	4	-
Social sciences	340	154	186	24	70	51	19
Humanities	99	86	13	2	24	24	-

Appendix 5: Main FDI investments in Montenegro

	€22 mil in hotel industry – investment in both the North and South of Montenegro		In 2002 it became the majority owner, with 54.4% shares in Jugopertol AD Kotor. Hellenic paid €65 mil for shares and invested €35 mil more.
	Societe Generale Group purchased 64.4% shares of "Podgoricka banka" at €358 /share		Belgian Interbrew bought Trebjesa brewery in Niksic for €21.5 mil
	Owner of three hotels: "Bluestar", "Montenegro" and "Splendid", over € 100 mil		Telenor Mobile Communication AS is a 100% owner of the first mobile operator in Montenegro. A total of €90.0 mil invested so far.
	T-mobile purchased 51% of Telecom shares for €114 mil, additional 22% shares in stock market. €67.3 mil investment planned over the next 5 years		Hypo Alpe-Adria-Bank Group opened leasing and Bank in Montenegro

Appendix 6: Structure of exports (main contributors)

Exports	2005	2006	2007	2008	2009
Food and Drinks	35,316	36,172	35,959	40,217	39,314
Industrial material	282,549	362,626	377,632	323,343	184,451
Fuels and lubricants	3,697	4,205	8,014	12,492	8,425
Capital Goods	7,467	10,580	9,769	17,379	21,126
Vehicles and parts	3,206	8,562	3,983	4,418	4,417
Products for general consumption	21,734	16,429	13,733	15,937	17,705
Products (not else specified)	15,353	2,558	5,649	2,381	1,573

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