

NEAR EAST UNIVERSITY
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MASTER'S THESIS

**HARMONIZING THE EUROPEAN UNION LAW WITH LEGAL
ECONOMIC REGULATORY STRUCTURES OF TURKMENISTAN**

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Abstract

The basic economic goal of developing countries is to develop and growth. The development of the modern world economy is impossible without foreign investment. Turkmenistan like many other states attracts external sources of financing necessary to accelerate the socio-economic development. One of the problem for the realization of this investment legal structure. The Foreign policy of neutrality, which is relate to the economic policy of increased national independence and sovereignty by using the country's natural gas income. Turkmenistan Foreign trade is one of most dynamically developing sectors of the Turkmenistan.

Turkmenistan should pay special attention to the experience of foreign countries in the implementation of its investment policy. In this circumstances the EU legal system presents a unique example for studying the experience for the development of the economy political union on the issue to attracting investments as a stimulus for the development of Turkmenistan. EU policy to attract FDI is very consistent and methodological. Discussed what are the barriers and obstacles faced by foreign investment and how it will be diminished.

key words: foreign investment, economy, development.

Öz

Gelişmekte olan ülkelerin temel ekonomik hedefi, gelişmek ve büyüktür.Modern dünya ekonomisinin gelişimi, yabancı yatırım olmadan mümkün değildir.Diğer birçok devlet gibi Türkmenistan da sosyo-ekonomik kalkınmayı hızlandırmak için gerekli dış finansman kaynaklarını cezbetmektedir.Bu yatırımın gerçekleşmesinde sorunlardan biri yasal yapıdır.Tarafsızlık dış politikası,ülkenin doğal gaz artan gelirini kullanarak ulusal bağımsızlık ve egemenlik ekonomi politikasıyla ilgilidir.Türkmenistanın Dış ticareti en dinamik gelişen sektörlerinden biridir.

Türkmenistan, yabancı politika uygulamasında yabancı ülkelerin tecrübelerine dikkat etmelidir. Bu şartlar altında, AB yasal sistemi, Türkmenistan'ın gelişimi adına için bir teşvik olarak yatırımları ülekye çekmek için ekonomi politik birliđinin geliştirilmesi konusundaki deneyimini incelemek için benzersiz bir örnek sunmaktadır. Dolayısıyla, AB'nin doğrudan yabancı yatırımları çekme politikası tutarlı ve metodolojiktir. Dış yatırımın karşılaştığı engellerin ve engellerin neler olduğunu ve nasıl azaltılacağını tartışıldı.

Anahtar kelimeler: yabancı yatırım, ekonomik, gelişme.

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LIST OF ABBREVIATIONS

ADB-Asian Development Bank

BIT - Bilateral Investment Treaty

CCP –Common Commercial Policy

CETA- Comprehensive Economic and Trade Agreement

CIS - Commonwealth of Independent States

CNPC- China National Petroleum Corporation

EC-European Community

EU-European Union

EUMS- European Union Member States

FDI-Foreign Direct Investment

FTA- Free Trade Agreement

ICS- International Court System

IDB- The Islamic Development Bank

ISDS- Investor-State Dispute Settlement

OECD- Organization for Economic Co-operation and Development

SCRME- State Commodity and Raw Materials

TAPI-Turkmenistan-Afghanistan-Pakistan-India

TEC- Treaty Establishing the European Community

TFEU- Treaty on the Functioning of the European Union

TIPT- Transatlantic Trade and Investment Partnership

WTO- World Trade Organization

Introduction

The basic economic goal of developing countries is to develop faster. Development is synonymous with structural change, especially industrialization. However, the fact that these countries are able to become industrialized can only help them to reach a constantly rising rate of investment. One of the problem for realization of this investment is legal structure. Modern Turkmenistan, like many other states, attracts external sources of financing necessary to accelerate the socio-economic development. Attraction of foreign investments into the economy of Turkmenistan has become a strategic direction of the investment policy of the state.

The role of investment in the modern world economy is extremely important. At present, worldwide attention is paid to legislation, aimed to improve the development of the infrastructure of the financial service market, including the improvement of legal regulation.

In the first part of the thesis will explain Turkmenistan conducts of foreign policy based on the principles of neutrality, good-neighborliness and mutually beneficial cooperation, continues to purposefully develop relations with foreign countries both bilaterally and within the framework of international organizations, trying to consolidate one of the leading positions in the world fuel and energy market.

The second part of the study, firstly, will explain the Turkmenistan Foreign trade as one of most dynamically developing sectors of the Turkmen economy. Foreign trade at the currents stage plays an increasingly important role in the economic development of countries and the whole world community. Turkmenistan foreign trade during the period of 1991-2015 years and foreign trade in services structure and partners period during 1991-2015 years. Secondly, will explain about General investment and Foreign Investment Law in Turkmenistan.

The third part of the study will present European Economic Policy. Firstly, explain Common Commercial Policy and Foreign Investment Law. Secondly, will explain Single Market and how it is work.

Will be explained in the last chapter of the thesis would explain: “What Can Turkmenistan learn from EU economic Policy?”. In this part will explain: Investment Barriers Policy of Turkmenistan and Economic Advantage for Turkmenistan of EU single market. Turkmenistan and European Countries attracting foreign investment. However, in European MS foreign investment more than Turkmenistan. Therefore, the EU legal system in these circumstances presents a unique example for studying the experience for the development of the economy political union on the issue to attracting investments as a stimulus for the development of any region.

The aim of this research:

Firstly, it looks at the general idea behind the development economy with regard foreign trade of Turkmenistan after the Soviet Union from its inception till date and finding out what is the different barriers and challenges facing Turkmenistan in foreign investment and trade.

Secondly, the aim of the study is the system of legal regulation of investment activities in the European Union and Turkmenistan. To create a broader picture of investment law in Turkmenistan that is different from European Union investment law and to acquire a perspective on attempts to understand differences between two structures.

Lastly, the aim of this work to find and make suggestion also recommendation based on the findings of this work in order to further promote that the idea that attract investment would improve if Turkmenistan investment law were amended.

To find the answer of key issues: The initial argument of the study is the possibility of Harmonization of the economy legal structure of Turkmenistan with Europe.

The main questions are as follows: What will be focus in this research?

1. What is the Economic Policy of Turkmenistan ?
2. How Turkmenistan can attract more investment?
3. Why Turkmenistan has barriers in foreign investment ?
4. What can Turkmenistan learn from EU Economic Policy?

At the end of this dissertation, these questions are expected to be answered in the light of the findings

Previous Studies

The development of the modern world economy is impossible without foreign investment, which has led to increase in the role of interstate cooperation in the field of foreign investment and its legal regulation. The legal norms governing the development and protection of investment activities can affect the quality and quantity of investments and thus stimulate trade relations.

Turkmenistan occupied a favorable geographical position as it is a "bridge" between Europe, CIS European countries, the central part of Russia and the large areas of Central and South Asia. Geographical arrangement of Turkmenistan takes advantageous position as the transit country, therefore, the intensive development of transport network and geographical diversification of export is an important part of the external economic policy.

According to K. Babayev, "Foreign Investment the role and importance in the economic development in Turkmenistan", Master Thesis, Dokuz Eylul University, 2009. *"Constant legal regulations are being developed to make the Turkmenistan's economy attractive for foreign investments. The infrastructure is being established to protect the interests of investors"*

According to K. Yazmurad, "Attraction of foreign investments in the oil and gas complex of Turkmenistan", Master Thesis, Russia, Russian State University of Oil and Gas named I.M. Gubkin. *"There are some problems in geographical position that need to be addressed in order to improve the investment attractiveness of Turkmenistan. Turkmenistan has no direct access to the World Ocean, moreover, it is quite far from the main consumer gas markets."*

"Turkmenistan is surrounded by oil and gas producing countries, which are its competitors in the regional and global markets. In the south, Turkmenistan borders with Iran, which has super-giant gas fields and in the north with Uzbekistan and Kazakhstan . In the western part of Turkmenistan is Caspian Sea that borders with Azerbaijan., which plans to strength its position in the Turkish market and wants to enter the European gas market as a stand-alone player."

"It is necessary to improve the procedures for foreign investors to enter the Turkmen market. For example, the registration procedure for an investor is a long and laborious process, including, obtaining approvals from various agencies and ministries."

In this context, the previous study of the candidate of jurisprudence M.P. Lukinskaya is especially relevant, since it reveals the most important aspect of the functioning of the European Union as a single financial and economic complex. Investment falls within free movement of capital, one of the four freedoms, the approximation of the legislations of the EU member states in relation to the status of investors and investments.

The practical importance of this work is also determined, firstly, by the fact that the European Union has recently entered the implementation phase of the Lisbon Treaty, which brought about significant changes in the functioning of the CCP in EU.

The apparent advantage of the work is analysis of the innovations of the Lisbon Treaty in the context of the legal relationship. As the author points out, "the Union has the exclusive competence to conclude international agreements on foreign direct investment." This confirms the conclusion M. P. Lukinskoy that with the entry into force of the Lisbon Treaty the European Union has become an important subject of international investment law.

According to A. Dimopoulos, *EU Foreign Investment Law*, US, Oxford University, 2011. "The EU member states have created national schemes of guaranteeing investments which protect investments of the EU citizens. To facilitate the operation of these schemes, most BITs include subrogation provisions that allow the state of origin to prosper in the investor's requirements against the host state, thereby confirming the role of guarantee as a very important determinant of foreign investment. Multilateral Investment Guarantee Agency provides the most important guarantee legal sources of insurance of political risks, a World Bank institution that suggest insurance of political risks for investment projects in a wide range of sectors in 143 developing member countries".

This research study will employ "exploratory search" method. It will use mainly secondary sources as the main tool of research. It is based on the examination of information or data that was either assembled by another research or researchers (e.g., analysts, organizations, and so forth). This study will also use both primary and secondary source.

The primary source of data will include legislation .The secondary sources will include textbooks, journals, articles, magazines and internet.

Comparative method: The comparative method will be useful to analyze differences between two sides and lessons for Turkmenistan from EU.

Chapter 1

Turkmenistan Foreign Policy

1.1 Historical Background

Turkmenbashi, the first president of Turkmenistan, pursued a foreign policy of neutrality, which was related with the economic policy of increased national independence and sovereignty by using the country's natural gas income. Turkmenistan was more diplomatically active in 2007 and 2008 following the death of President Saparmurat Niyazov in December 2006. After Niyazov Turkmenistan slowly began to integrate itself to the world and improve its relations with the neighbours. Gurbanguly Berdimukhamedov, the following president, run more active diplomacy in foreign policy but country's economic development prospects remained dependent on the gas. It can be said that the changes of Turkmenistan's foreign policy are closely related to the pipeline agreements. It increased Turkmenistan gas production which gives a leverage to the country to have multilateral relations.

Turkmenistan is the second largest Central Asian country. Four-fifths of Turkmenistan is a lunar-like desert called the Karakum which conceals unexploited oil and gas fields.¹ The country is thinly populated and its citizens Turkmen. Turkmenistan is geographically close to the conflicted area of Afghanistan. Anxiety over border security was heightened by an event in October 1993 when two Afghan jets bombed the Turkmen land, despite a meeting with Afghan officials aimed at ensuring equality and non-interference.²

In 1995 the United Nations officially recognized Turkmenistan's declaration of "permanent neutrality".³ Its neutral foreign policy has a significant place in the country's constitution.

Poor economic state of affairs increased dependence on gas exports and on Russia because it managed Turkmenistan gas pipelines. With the post-1998 energy boom provided,

¹*The times of Central Asia*, 2001 <http://www.times.kg/?D=cg&c=5&d=&m=&dt=>, (accessed 16 September 2016).

² *Foreign policy*, <http://countrystudies.us/turkmenistan/31.htm>, (accessed 16 September 2016).

³ *The World Community Recognized it 9 Years ago*, 2004, <http://www.turkmenistan.ru/en/node/3757> (accessed 16 September 2016).

Turkmenbashi became increasingly isolationist in his foreign policy, particularly in affairs with the country's neighbors.⁴

1.2 Turkmenistan Relations with Neighbors States

Good relations with neighboring countries are important to every country and any country, as a part of the global community. Of course, it should be noted that having good and positive relations with neighbors is a strategic element of foreign policies of countries. In foreign relations diplomacy is conducted through cooperation and debate. States generally conduct diplomacy in one of the following manners: unilaterally, bilaterally and multilaterally.

Uzbekistan

One of the neighbors of Turkmenistan is Uzbekistan. Their relations today is different than 10 years ago, after the death of President of Turkmenistan S. A. Niyazov when Berdymuhamedov came to power promoted a thaw between Ashgabat and Tashkent. Their bilateral relations are "quite stable businesslike and trustworthy", said Farkhad Tolipov, a Tashkent based political analyst.⁵ Uzbek President Islam Karimov and Berdymukhammedov had two days talks on March 11 2008 by signing a series of agreements on improving bilateral relations.⁶ The meetings had been taken under consideration in Moscow, Washington, and Beijing. Berdymukhammedov's first executive visit to Uzbekistan had opened a new period in Turkmen-Uzbek relations. It was very important for Turkmenistan to cooperate with Uzbekistan to benefit from exporting its energy resources. The high dynamics of the relations between countries is a regular political dialogue at various levels of communication, the parties' desire to expand areas of trade and economic corporation, as well as closer cooperation in the cultural sphere. One of the most important factors contributing to sustained and fruitful development of bilateral ties, are warm and trusting relationship between the heads of the states. In particular, Tashkent and Ashgabat

⁴P.Richard, "Turkmenistan's Foreign Policy", *China and Eurasia Forum Quarterly Journal*, vol 6, no. 4, p.19.

⁵M.Sadykov, *Turkmenistan & Uzbekistan: Cold Leaders, Warm Ties*, <http://www.eurasianet.org/node/67828> (accessed 19 September 2016).

⁶G.Saidazimova, *Central Asia: Uzbek, Turkmen Leaders Pursue Better Relations*, <http://www.rferl.org/content/article/1079620.html>, (accessed 19 September 2016).

have matching approaches on issues related to the joint fight against threats such as international terrorism and extremism, drug trafficking, transnational organized crime. It is necessary to emphasize that trade and economic relations are developing in dynamic pace. Turkmenistan exports to Uzbekistan chemical products, construction materials, agricultural machinery, metal products, mineral fertilizers, equipment and vehicles, etc. In turn Uzbekistan exports to Turkmenistan to petroleum products, plastics and plastic products, services, products of inorganic chemistry and so on. National exhibitions in the territories of the two countries, through which entrepreneurs have ample opportunity to showcase their products and establish contacts with partners from the neighboring state is yet and the tool to improve bilateral relations.⁷

Afghanistan

After its independence in 1991, Turkmenistan started to developing relations with its neighbors.⁸ It should be noted that Afghanistan was among the first countries to officially recognize the independence of Turkmenistan. The economic and trade ties constitute the main part of the Afghan-Turkmen relations.. The territory of Turkmenistan is one of the main transit routes for Afghan goods. Also Afghanistan is still highly dependent on the Turkmen fuel. At present, Turkmenistan provides electricity to several provinces in Afghanistan and delivers a large amount of gasoline and liquefied gas. After the of Taliban, along with political and economic agreements, cooperation in the fields culture and science was established. Turkmenistan, particularly under the new President Berdymuhamedov has aided Afghanistan in development and reconstruction. Ashgabat withdrew humanitarian aid to Afghanistan and forgiven much of Kabul's debt for Turkmen electricity.⁹ Turkmenistan continues to provide energy to Afghanistan at a lowered rate. Ashgabat reconstructed a part of the railway that connects the two countries. Additionally, the Turkmenistan-Afghanistan-

⁷ G.Saidazimova, *Central Asia: Uzbek, Turkmen Leaders Pursue Better Relations*

⁸ F.Sabir, *Turkmenistan and Afghanistan: from neutrality to cooperate* <http://afghanistan.ru/doc/23210.html> (accessed 18 October 2016)

⁹ *Turkmenistan and Afghanistan*, <http://www.understandingwar.org/turkmenistan-and-afghanistan> (accessed 18 October 2016)

Pakistan-India (TAPI) pipeline project has been under discussion for almost 20 years.¹⁰ The pipeline poses constitutes an opportunity energy security across South Asia.

Kazakhstan

Kazakhstan and Turkmenistan are related not only geographically, but also culturally and historically . Turkmenistan and Kazakhstan established diplomatic relations in 1992. Turkmen-Kazakh friendly dialogue is mostly driven by personal trust relationships that exist between the leadership of the two countries. The president of Kazakhstan Nursultan Nazarbayev repeatedly visited to Turkmenistan to participate, both in bilateral and multilateral negotiations. The government of Turkmenistan h also repeatedly visited Kazakhstan. Thus, the first President of Turkmenistan Niyazov made a formal visit to Kazakhstan in 1997 and 2001, and also took part in an informal summit of CIS countries in Almaty in February-March 2002 .¹¹

The current president of Turkmenistan Gurbanguly Berdimuhamedov visited Kazakhstan in May 2007, the results of which gave a new impetus to the development and deepening of the Kazakh-Turkmen cooperation. During the visit, they signed six bilateral agreements, on trade-economic, scientific-technical and cultural cooperation until 2020. Very important mechanism contributing to the development of Kazakh-Turkmen cooperation in trade and economic sphere, is the bilateral intergovernmental commission on economic cooperation.¹² In the export of Turkmen predominate oil, cotton and textile products, natural gas, liquid pumps, construction materials. Turkmenistan imports metal, calcium phosphate, natural, wood and articles of wood, metal, as well as flour, bread, pastry products, fruit juices and in Kazakhstan exports dominated mainly vegetable products.

Cooperation in the energy sector is one of the priorities of the Kazakh-Turkmen cooperation. In particular, Kazakhstan and Turkmenistan are both transit states to deliver their

¹⁰ R. Palau, The TAPI Natural Gas Pipeline: Status & Source of Potential Delays, *The Quaterly Journal*, 2012, p.1.

¹¹ Eurasian University named LN Gumilyov, *Kazakhstan and Turkmenistan: cooperation and future development*, <http://www.enu.kz/ru/> (accessed 18 September 2016).

¹² Askar Mamin participated in the 9th meeting of the Kazakh-Turkmen Intergovernmental Commission in Ashgabat, 2017, https://primeminister.kz/en/news/mezhdunarodnie_otnosheniya/askar-mamin-prinyal-uchastie-v-9-m-zasedanii-kazahstansko-turkmenskoi-mezhpravitelstvennoi-komissii-v-ashhabade-14513 (accessed 5 May 2017)

energy resources to foreign markets. So, Kazakh oil becomes transferred to the south towards the Persian Gulf through Turkmenistan. At the same time, Kazakhstan is a transit state for Turkmen natural gas that is delivered to the North, i.e. to Russia and then Europe. One of the most striking manifestations of the Kazakh-Turkmen cooperation in the energy sphere is an agreement between Kazakhstan, Russia and Turkmenistan on construction of the Caspian gas pipeline to increase export of Turkmen gas to the north. The agreement was signed during the above-mentioned Russian-Kazakh-Turkmen summit in Turkmenbashi in May 2007¹³

1.3 The Hegemony of Turkmenistan: Moscow, Bilging, Washington?

The bilateral relations between Turkmenistan and the United States are based on the continuing benefits. Trade and economic collaboration are priorities of bilateral cooperation.¹⁴ One may wonder about the importance of geographic position of Turkmenistan for Washington? Turkmenistan, plays a very important role because it has one of the longest borders with Afghanistan through which Turkmenistan has access to Afghanistan normally, it must be done through. It is extremely difficult to deliver goods, for example, Uzbekistan or Tajikistan. Turkmenistan plays important role as having "convenient and safe transit route". Turkmenistan is also the main component in the formation of stabilized Afghanistan within the context of the regional strategy.¹⁵ The U.S. is not looking for new permanent military bases in Central Asia to supply their troops to Afghanistan. The U.S. is interested to increase the number of logistics transit points. Similar transit points available throughout the region - and in Tajikistan, and Uzbekistan, where most recently have become more of such objects. In Kyrgyzstan, where the most famous of such transit centers located inside the airport Manas.

¹³ Dr. Thrassy and N. Marketos "Eastern Caspian Sea Energy Geopolitics: A litmus test for the U.S.-Russia-China Struggle for Geostrategic Control of Eurasia", *Caucasian review of International Affairs*, vol.3,no.1, 2009, p.3.

¹⁴ V.Zhavoronkova, *Relations between Turkmenistan and the United States have great potential - President Berdymukhamedov*, <http://www.trend.az/regions/casia/turkmenistan/2021617.html>, (accessed 23 October 2016).

¹⁵ *Turkmenistan will play a very important role in the formation of a new regional strategy to stabilize Afghanistan*, 2011, <http://www.cisnews.org/expert-opinion/2281-turkmenistan-budet-igrat-ochen-vazhnuyu-rol-pri-formirovanii-novoy-regionalnoy-strategii-po-stabilizacii-afganistana-direktor-iiss-london.html>, (accessed 23 October 2016)

Turkmenistan plays an important role for Washington mainly geographically, because it ensures safety for the Coalition troops in Afghanistan. The logistic points and relations between the United States and Turkmenistan in this area is close.¹⁶

Russia continues to maintained a strong influence over Turkmenistan by controlling its energy-transport infrastructure. In 2007,Russia tried to strengthen this control by agreements on the Caspian Coastal Gas Pipeline construction and extension of the duct “Central Asia-Centre” built during the Soviet era. However, neither of the agreements came into force.

On March 11, 2008 Turkmenistan, Kazakhstan and Uzbekistan notified Russia that starting from 2009 gas would be sold only at the European prices. In 2009 the pipeline Dauletabad-Daryalyk blew up. The Turkmen leadership blamed Gazprom for this disaster. Though the Turkmen leadership agreed to reduce the prices, in 2010 Gazprom was able to sign a contract only for 10 billion cubic meters. Russia ceased being the major buyer of Turkmen gas.¹⁷

In the EU the Trans-Caspian and Nabucco pipeline projects have been actively discussed yet , as result of which Russian Gazprom’s role may continue to decrease . Russia may lose the last instrument of exercising influence over Turkmenistan. However, rising influence over Turkmenistan can be helpful for Russia for two reasons. Firstly, Russia cannot ignore such significant source of hydrocarbons. Secondly, Turkmenistan is located in the strategically important region for Russia due to its borders with Iran, Afghanistan and post-Soviet Central Asia on land, as well as a maritime border with the South Caucasus. Cooperation with Turkmenistan is crucial for Moscow in the sphere of security. Turkmenistan needs to cooperate with Russia, since Russia is a traditional partner in transportation of hydrocarbons along the northern route. Also Russia can play a crucial role in ensuring security of independent Turkmenistan mainly after the U.S. remove their troops from Afghanistan. Arkady Dubnov emphasizes that “Russia's policy towards Turkmenistan is primarily determined by gas interest in Turkmen but the question is how to figure out, since Turkmen gas is no longer holds interest for Russia”.¹⁸ After the world economical crisis in 2008, the priority of Moscow was to prevent the construction of the Trans-Caspian , as well as

¹⁶ *Turkmenistan will play a very important role in the formation of a new regional strategy to stabilize Afghanistan*

¹⁷A. Kazantsev,*Turkmen-russian relations in the Post-Soviet era*,
http://russiancouncil.ru/en/inner/?id_4=87#top,(accessed 24 October 2016).

¹⁸R. Genté, *Russia is Abandoning Turkmenistan*,
<http://www.chrono-tm.org/en/2014/01/is-russia-abandoning-turkmenistan/>,(accessed 24 October 2016).

the Nabucco pipeline. The underlying reason is that these pipelines would transport Turkmen gas to European markets where they would compete with Gazprom.

In the 2007-2017 stage in the history of cooperation between Turkmenistan and China may be one of the most successful examples of a balanced, politically and economically established partnership model of the two countries. The main tool in the foreign policy strategy of Turkmenistan is gas. A number of factors influence Turkmenistan's economic growth most notably cooperation with China with its growing economy is tremendous importance.¹⁹The People's Republic of China is very progressive, purposefully and effectively increasing its presence and influence in the region. It shows not only in the energy sector, which is critical for the Chinese interest, but also in other areas, for example, in the military.

China is actively developing its economic and political relations with the countries of Central Asia. As a consequence in a short time Turkmenistan, Uzbekistan, Kazakhstan and China may cooperate in the military field. Clearly, Russia is not welcoming the fact that China is expanding its presence in the region. China with its rapid economic development and its increasing political influence in Central Asia and particularly in Turkmenistan can be a challenge to Russia.²⁰

The Turkmen foreign policy in the XXI century is determined by such factors as neutral status of Turkmenistan, huge reserves of natural gas in the country and the desire to maximize its export. Turkmenistan's neutral status was recorded in December 1995 in a special UN General Assembly resolution № 50/80., which was then endorsed by 185 countries.²¹ One of the main objectives of its foreign policy in Ashgabat was defined as the development of constructive and mutually beneficial cooperation with all foreign partners on the basis of equality and mutual respect. Today, Turkmenistan is developing equal and mutually beneficial cooperation with Russia, China, the United States, and the European Union.

For several years, Russia was the only route to transport the Turkmen gas, its most significant economic source, internationally. However, the Turkmenistan-Kazakhstan-China

¹⁹ M.Gochiev, *Turkmenistan-China: prospects of bilateral relations*, http://www.gundogar-news.com/index.php?category_id=1&news_id=2374 (accessed 24 October 2016).

²⁰ M.Gochiev, *Turkmenistan-China: prospects of bilateral relations*,

²¹ "Z. Agamamedova, *Neutrality of Turkmenistan*, <http://www.intertrends.ru/three/012.htm>, (accessed 26 April 2017)

pipeline, which has been operative since 2009, decreased Turkmenistan's dependency on Russia nowadays it is possible to reach a great market like China.

It is important to understand the competing powers in the region; Moscow, Beijing and Washington DC. Although there is no fierce competition on Turkmenistan at the moment may arise in the following years. China's influence in Central Asia may increase thus making China the dominant power in the region.. Moreover, given the fact that the development of energy resources of Turkmenistan at an early stage, Ashgabat can dictate their terms, as many trump cards in the big geopolitical game in the hands of Turkmenistan. Geographical position Turkmenistan plays important role for U.S. because neighbor of Afghanistan. Turkmenistan its potential in energy supplies to Europe and it supplies gas to Russia. With respect to all the major centers of power in the region, Turkmenistan is in an advantageous position.

Chapter 2

Turkmenistan Economy Policy

2.1. Foreign Trade

During the Soviet period, the Turkmen USSR was a source of raw materials (mainly cotton and energy), which was sent to other Soviet republics for processing. Until the end of 1991, Turkmenistan never conducted independent trade with other countries.

In the mid-1990s, the government intensified its foreign economic activities with the aim of concluding trade agreements and organizing joint ventures with foreign companies in such sectors as light and food industries, exploration and development of energy resources.

Turkmenistan occupies a favorable geographical position and is objectively a "bridge" between Europe, CIS European countries, the central part of Russia and large areas of Central and South Asia. The role and importance of foreign economic capacities for the development of the economy of Turkmenistan are determined by a set of factors and conditions. For Turkmenistan is primarily favorable economic and geographical position, development of the system of transport communications and industrial infrastructure in general a multi industrial complex.²²

Turkmenistan is the 4th biggest producer natural gas in the world. The country is a major producer of electricity. After independence in year Turkmenistan rejected to application of the IMF program. Turkmenistan chose an inward-looking economic politics.

Between the year of independence and 1996 year in year the Turkmen production of natural gas was relatively stable. In 1997 year there was a considerable fall of both export, and production of natural gas due to the insolvency of traditional consumers, Commercial complex of the former USSR when deliveries were performed on a single pipeline system Central Asia.²³

²² K.Babayev, "Foreign Investment the role and importance in the economic development in Turkmenistan", Master Thesis, Dokuz Eylul University, 2009, p.81.

²³ I.Jumaev, *Turkmenistan's foreign trade: trends, problems and prospects*, Kyrgyz Republic, University of Central Asia, 2012, p.8.

Geographical arrangement of Turkmenistan enjoys an advantageous position as a transit country, therefore, intensive development of transport network and geographical diversification of export is an important direction of the external economic policy. Development of foreign trade activity of a state is determined by the quantity of export-import transactions, structure and a geographical orientation of flows of commodities, balance of payments

Foreign trade is one of most dynamically developing sectors of the Turkmen economy. Foreign trade at the current stage play an increasingly important role in the economic development of countries and the whole world community .

Economic situation deteriorated after 1990, however the overall standard of living did not drop as sharply as in other former Soviet republics. Due to state subsidies ,basic food was available despite the high inflation. Until 1991 the balance of foreign trade remained negative. After its independence, notable shifts of Turkmenistan's relations with foreign states occurred. The number of participants in foreign economic activity increased significantly, the Bank for Development and Foreign Economic Affairs was established , and direct connections with foreign company were established.²⁴

In 1993,an important shift accrued in the economic policy. President Niyazov ordered natural gas, water, and electricity to be delivered to all homes in Turkmenistan for an undefined period at an extremely low cost. Petrol and other fuels also stayed cheap, comparing to the neighboring republics.²⁵ Rich reserves of mineral raw resources and their efficient increased the level of exports.

Turkmenistan's state sovereignty and its economic independence promoted its entry into the global economic market. After Turkmenistan started to follow market economy the structure of employment of the population significantly changed. For example, the active investment policy of the state fostered increase in employment in various sectors of economy. Since 1991 during 10 years the number of the workers occupied in non-state sector

²⁴United Nations Development Program ,*Assessment of the impact of trade on human development Turkmenistan*, Slovak Republic ,2010, p.29.

²⁵*Economic Structure*, 2016, <http://countrystudies.us/turkmenistan/24.htm> (accessed 10 November 2016).

of economy, increased by 2,7 times, and total number of workers has increased 2010 up to 75%²⁶

Between 1992 and 1998, Turkmenistan's government admitted that natural resources were irreplaceable. Thus, a notable volume of its resources were used to create an economic infrastructure and establish a national industry that would process the natural resources of the country.

In 2008 Turkmenistan experienced high inflation. However, it occurred due to internal financial and economic conditions rather than external factors such as world's financial crisis.

On the one hand foreign trade became a powerful factor of Turkmenistan's economic growth. On the other hand, dependence on international trade increased. Turkmenistan follows a multifaceted foreign trade policy, which is designed to strengthen the country's role in the world community the expansion and development of the legal framework of international cooperation.

Turkmenistan Foreign Trade in Services: Structure and Partners

The major purpose of Turkmenistan's foreign economic policy is to expand foreign markets : Oil and oil products, cotton and textile, gas. Between 1992 and 1993 significant improvements were observed in the country's economy and trade balance specifically because Turkmenistan started to export gas on the world prices.

Cotton and gas sales play a crucial role in the foreign income of the country. Gas constituted about 70% of foreign trade. In 1994, the pipeline Kazakhstan and Uzbekistan exported natural gas to CIS countries. The second largest export product is cotton.²⁷ In 1994 Turkmenistan had the following Trade Partners: Iran, Italy, Japan, Latvia, Lebanon, Lithuania, Malta, Poland, Slovakia, Sweden, Switzerland, UK, US, Turkey.

²⁶I.Jumaev, *Turkmenistan's foreign trade: trends, problems and prospects*, p. 8.

²⁷M. Ferman, *Turkmenistan Export Market Research*, Istanbul, Istanbul Chamber of Commerce Publications, 1995, p.6.

In 1996, the Turkmen Government initiated reforms in the foreign trade and exchange rate regime. Since 1997 the level of inflation was at an acceptable rate. However in the same year harvest from agriculture was poor, and administration of gas through Russia to the CIS countries stopped, which led to decrease of GPA by 17%. In this regard the Korpeje–Kurtkui pipeline provided aid, which allowed to export natural gas to Iran.

Turkmenistan, especially after the increase in world prices of natural gas, energy, agriculture and consumer goods as a result of large investments in the sector in 1999 while the 2000 has finished with a growth rate

Between 2005 and 2010, imports became dominated by investment products, which represented up to 78% of total imports. The share of machines and equipments was 27-30%, while raw materials and semi-products were 25-35%²⁸. The high demand of imports was on the household appliances and other electrical goods televisions, washing machines, fridges.

2008 was a unusually active period for foreign relations of Turkmenistan. President Berdymuhamedov made 15 trips abroad on state, official and working visits. President visited Russia, Uzbekistan, Afghanistan, Turkey, Azerbaijan, Romania, Kazakhstan, China, Kyrgyzstan, South Korea, Germany and Austria.²⁹ In that year Turkmenistan traded with 96 countries: Europe accounted for 65.5% of exports, Asian countries for 33.9% and CIS countries was 57.2%. Asian countries represented 51.7% of imports, 40% from European countries and CIS were 29.5%.³⁰ The balance of trade consistently positive because export exceed its imports.

In 2010 second Iran-Turkmenistan pipeline Dauletabad-Sarakhs-Khangiran pipeline was inaugurated. Iranian President Mahmoud Ahmadinejad said: "This pipeline will be a good stimulus for energy co-operation between Turkmenistan and Iran, as well as for delivery of Turkmen gas to the Persian Gulf and the world market."³¹ The result of new pipelines gave

²⁸L. Zs. Vasánczki, *Gas Exports in Turkmenistan*, Institut français des relations internationales, 2011, p.12.

²⁹ *Overview: Foreign Relations of Turkmenistan in 2008*, 2008, [http://www.turkishweekly.net/2009/01/28/news/overview-foreign-relations-of-turkmenistan-in-2008\(9](http://www.turkishweekly.net/2009/01/28/news/overview-foreign-relations-of-turkmenistan-in-2008(9) September 2016)

³⁰ United Nations Development Programme, *Assessment of the impact of trade on human development Turkmenistan*, p.39.

³¹ "Turkmenistan opens new Iran gas pipeline", *BBC news*, 6 January 2010, <http://news.bbc.co.uk/2/hi/asia-pacific/8443787.stm> (accessed 9 November 2016)

Turkmenistan more power in negotiations with Russian energy giant Gazprom, which now had to agree to pay higher prices for Turkmen gas.

To develop of new fields of gas it needs investment. China has funds for investment in this regard, the interests of the two countries coincided. Turkmenistan has a richest stock of natural gas and plays an important role in this area. In September of 2010, Turkmenistan launched a natural gas compression station in Bagtyyarlyk, which is considered an important part of the Turkmen and China natural gas transportation system. In 2011, Turkmenistan started re-pumping natural gas to the Jingbang station in China, which supplies natural gas to Beijing. Considering the economic growth of China, its demand for natural gas is expected to consistently grow.³²

In 2010, Turkmenistan had 108 trade partners, mostly states in Asia and Europe. The most significant trade turnover comes from Iran, Russia, Turkey and China. The primary importer of Turkmen textiles is Turkey.

Between 2010-2011, Turkmenistan continued to increase its macroeconomic performance. This is due to the increase in gas exports to China and Iran, and active growth in areas, such as, construction, services, agriculture and public investment.³³

In 2013, Turkmenistan established a Government Commission to research subjects related to entry of Turkmenistan to the WTO and the relevant negotiations. Foreign Economic Relations of Turkmenistan continues to develop. Russia took second place among the largest trade partners of Turkmenistan, giving first place to China.

In 2013, bilateral trade and economic cooperation was carried out with 110 countries: with 24 States signed intergovernmental agreements on trade economic cooperation; with 7 - Free Trade Agreement; with 21 - Agreement on encouragement and mutual protection of investments; with 13 - Agreement on the elimination of double taxation.

³² I.Jumaev, *Turkmenistan's foreign trade*, p. 10.

³³ L.D.Pushchaeva, *Socio-Economic Development of post-Soviet countries: results of the twentieth anniversary*, Moskova, Russian Academy of Sciences Institute of Economics, 2012, p.322.

The main consumers of Turkmen goods and services in 2013: China, Turkey, Italy, Great Britain, Kazakhstan. In 2013, imported goods to Turkmenistan came from the following countries: Turkey, Russia, China, Germany, Ukraine.³⁴

Turkmenistan ranks the 91st largest export economy in the world. In 2014, the trade partners of Turkmenistan were 100 countries. The largest share of the foreign trade of the country occupied by Asia and Europe. Turkmenistan exported \$10.6B and imported \$7.42B, resulting in a positive trade balance of \$3.2³⁵In 2014, Turkmenistan exported \$10.6B over the past five years the exports increased. Form a national foreign policy, created the organizational and institutional foundation foreign economic relations.

In the socio-economic sphere of the country's leadership the implementation of the economic a development model continued in 2015, which provides for a gradual reform of the national economy for entry into the world economy, based on a gradual transition to market relations, while maintaining the basic principles of social policy. The construction of the scale projects in Turkmenistan were continued at the gas field "Galkynysh". In the structure of fuel and energy products constitute exports over 90% of commodity. The main export partners are China, Iran, Russia, Azerbaijan and Afghanistan. In the commodity structure more than 80% of imports are occupied by the production for industrial purposes.

In Turkmenistan the course towards the integration into the global economy, characterized by buildup of foreign trade activity. Turkmenistan created intergovernmental commissions on trade and economic cooperation, in which work is underway to establish and expand the economic, business and cultural ties.³⁶

2.2.Turkmenistan Foreign Investment

Turkmenistan to attract external funding are required to accelerate their socio-economic development. The Attraction of foreign investments into the economy of Turkmenistan has become a strategic direction of the investment policy of the state. The active involvement of

³⁴ *Turkmenistan*, 2014, http://www.kaznexinvest.kz/napr/analytics/export/cr/turkmenistan_2014.pdf (accessed 10 September 2016).

³⁵ *Tutkmenistan*, 2015, <http://atlas.media.mit.edu/en/profile/country/tkm%20/> (accessed 10 September 2016).

³⁶ *Business the guide in Turkmenistan*, 2015, http://91.206.121.217/TpApi/Upload/e0fb3f8f-3cb6-4c56-b62f-081f6d0c6777/Turkmenistan_Businessguide_2015.pdf (accessed 13 accessed 2016).

foreign capital will ensure rapid economic growth and the implementation of a number of oil and gas projects. The head of the country Berdimuhamedov in speeches repeatedly emphasized that the main aim of the investment policy is to maintain a process of modernization of existing production facilities, promotion of investments in to new production, taking into account sector and territorial diversification of the economy.

The aim of Turkmenistan's investment policy: creating a favorable environment, conducive to increased investment activity in the private sector, orientation of priorities the investment policy for the gradual leveling of social and economic development of the regions, bringing the living standards up to the level of the developed countries in the world. The attracting foreign investment is an important aspect in Turkmenistan investment policy. After the proclamation of independence, foreign investment policies were successfully implemented. This was facilitated by the rapid development of economy and trade surplus, the political stability in the country, as well as the presence of large reserves of minerals. During the period between 1999 and 2000 foreign direct investment was USD100 million.³⁷ The major part of the investments are connected to the oil and gas. Since 2000, Foreign Investments in oil and gas exploration and production the cumulative total of USD 500 million. Other sectors of foreign investment are cotton and textiles.

Turkmenistan has created a favorable investment climate at low investment risks. It is determined by the following fundamental factors: the dynamic economic development of the country, the availability of abundant natural resources, skilled labor force, advanced production and social infrastructure, a favorable geographical position, providing good opportunities for exports and imports. The analysis of an investment of the foreign equity in the economy of Turkmenistan shows that the amount of foreign investments exceeds their size in 2007 approximately at 8-10 times.

Foreign investments increased sharply in 2009 - to \$ 4.5 billion, which is 72% higher than revenues in 2008. A major role in this growth was played by the Chinese investments in oil and gas areas. According to the United Nations Conference to the trade and development,

³⁷ B.Ozsu, *Turkmenistan Country Study*, Istanbul, Istanbul Chamber of Commerce, 2003, p.91.

in 2012 the volume of foreign direct investments in Turkmenistan amounted to 15.6% of its GDP.³⁸

In Turkmenistan foreign investors use optimum conditions, performing the activities in the territory of free economic zones. In particular, foreign companies, working on the of free economic zones territory of the National Tourist Area "Avaza". In addition, the country has several territorial economic free zones, as well as a number of enterprises with the industry status of free economic zones.

The development of offshore fields in the Caspian shelf is providing in attracting FDI. The proof of it is successful experience in this sphere realizing large investment projects of such foreign companies as "Dragon Oil" (UAE-Great Britain), "Petronas" (Malaysia), RWE (Germany) and Itera (Russia) and the Production Sharing Agreement projects operate on the mainland of hydrocarbon deposits are carried out by British company «Burren Energy», the Italian company «Eni» and the Chinese company «CNPC».³⁹

The international financial institutions participate actively in lending and financing of a number of investment programs and projects. For instance; the European Bank for Reconstruction and Development took part in financing more than 30 projects, The Islamic Development Bank (IDB) and The Asian Development Bank (ADB) participated in financing of the construction project of the Turkmen site of the railroad Kazakhstan, Turkmenistan and Iran. In the country, there are more than 800 joint ventures and foreign enterprises and more than 1,000 branches and representative offices of foreign companies, more than 70 countries in 2015.⁴⁰

Turkmenistan Foreign Investment Law: Definition and Scope.

The Law of Turkmenistan on Foreign Investment came into force in 1993 . On 18 March, 2008, the new Foreign Investment Law entered into force.⁴¹This law aims to

³⁸ United Nations Conference on Trade and Development, 2013, *World Investment Report 2013: Global Value Chains: Investment and Trade for Development*, http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf, (accessed 20 December 2016).

³⁹ K. Babayev, "Foreign Investment the role and importance", p.91.

⁴⁰ V. Trapeznikov, *Foreign investments for development of national economy*, <http://www.turkmenistan.gov.tm/?id=8081>, (accessed 20 December 2016).

⁴¹ "Turkmenistan Foreign Investment Law", *Neutrality Turkmenistan Newspaper*, 18 Mart 2008, p.p.2.3.

encourage foreign investors and attract more foreign investment into Turkmenistan. This Law establishes the legal basis of activity foreign investor enterprise with foreign investments in Turkmenistan. For attract foreign hi-tech technologies in the national economy and effective use of foreign investment.

Foreign Investment and Investors

Foreign Investments means all kinds of material properties and intellectual values invested by foreign investors for the purpose of establishing venture or other activities on the territory of Turkmenistan. Investments that foreign investors can make: Foreign currency and other monetary values, which are in circulation in Turkmenistan; Real estate and related property rights; Stocks, treasuries, other valuable papers belonging to the business or forms of participation; All kinds of intellectual property including copyrights, inventions, trademarks, company title, industrial samples and technical information; Including the exploration, extraction, and operation of natural resources received, by Law or agreement.⁴²

In the Law concept, foreign investors enter the foreign legal entities and foreign physical persons. Foreign legal entities includes international institutions and organizations as well as states. Foreign physical persons including foreign citizens or persons without citizenship.

Law aspects of Foreign Investment

The Law "On Foreign Investment in Turkmenistan" provided regulation of labor relations and social security. Foreign investors are required to pay social security contributions for their employees, who are citizens of Turkmenistan, in the amount of 20% of their monthly salary.⁴³

Foreign investors have to provide accounting statements in accordance with accounting regulations of Turkmenistan. Foreign investors must obtain a license to carry out any activity in Turkmenistan, however, from this requirement are exempted suggesting investors to carry out their activities on the territory of free economic zones. In the Law of Turkmenistan "On Hydrocarbon Resources", investors should receive the license for exploration and

⁴² Turkmenistan Foreign Investment Law 2008,(Turkmenistan)s1 Art 1

⁴³ Turkmenistan Foreign Investment Law 2008,(Turkmenistan)s1 Art 3

development after the signing of the contract with state agency for management and use of hydrocarbon resources under the President of Turkmenistan.

Investment Guarantees

Foreign Investment Law of Turkmenistan provides a number of guarantees for foreign investors in Turkmenistan. The legislation of Turkmenistan provides following state guarantees for foreign investments: Guarantee legal protection of foreign investors; Guarantee of compensation if the requisition foreign property investor; Guarantee the export of equipment and information in documentary form or in the notation on electronic media; Guarantee of transfer payments associated with foreign investments; A guarantee of protection of intellectual property rights; A guarantee of rights and obligations of foreign investors and enterprises with foreign investment to another person.

Section III. State Guarantees of Foreign Investment Protection

According to article 23, it provides grant the right to open bank accounts in national and foreign currencies, the right to repatriation of investments, as well as the right to exchange and re-investment, transfer income profits.⁴⁴

In the Article 20, it is provided transfer of the right and obligations under the investment contract. According to law of the conditions for foreign investors if get worse compared to the conditions that existed at the time of registration , will be applied for another 10 years.⁴⁵

Solutions of Dispute of The Foreign Investor

The Article 32 provides the possibility of resolving disputes in the Arbitration Court of Turkmenistan or by agreement of the parties through commercial arbitration. Turkmen courts supported arbitration agreements and the choice of foreign legislation to regulate contracts. Turkmenistan is a party to the Convention on the International Centre for Settlement of Investment Disputes. Turkmenistan has signed more than 20 bilateral investment treaties that

⁴⁴*Turkmenistan Foreign Investment Law 2008,(Turkmenistan)s3 Art 23*

⁴⁵ *Turkmenistan Foreign Investment Law 2008,(Turkmenistan)s3 Art 20*

allow investors from the countries participating in the Convention on the International Centre for Settlement of Investment Disputes.

A new stage in the investment policy of Turkmenistan began with the coming to power of Gurbanguly Berdymukhamedov. In the beginning of 2013, Turkmenistan established the Agency for Protection from Economic Risks for control international investments.⁴⁶ The main objective of the agency - the analysis of the risks involved in the national economy: political, economic, financial, legal and regional. According to the agency the reliability of a foreign company is being verified from a financial point of view. Thus, are developed and continue to be developed to ensure investment security of the country.

Registration

According to the Foreign Investment Law of 2008, all foreign and domestic companies and foreign investments must be registered with the Ministry of Economy.⁴⁷ Turkmenistan demands that all export-import contracts and investment projects be registered at the State Commodity and Raw Materials Exchange (SCRME) and in the Ministry of Economy.

Foreign investments in Turkmenistan must be registered: as a project (when no new legal entity is being created or a stake in the company is acquired) or as legal entity (when creating a new legal entity or acquiring a stake in the company). Such a person can be created in the form of an office, a branch, a limited liability company or a joint-stock company.

Foreign companies have the right to establish subsidiaries in the territory of Turkmenistan with the right of a legal entity, as well as establish branches and representative offices that are not legal entities. The State Commodity and Raw Materials Exchange belongs to the state and is the only exchange in the country. All import contracts must be registered before the goods are delivered to Turkmenistan.

Right to Private Ownership and Establishment

In Turkmenistan domestic and foreign persons have the right to create their own business. 2000 Law on Enterprises defines the legal forms of public and private enterprises.

⁴⁶*Turkmenistan investment climate statement 2015*, USA, U.S. Department of State, 2015, p.3.

⁴⁷ *Turkmenistan Foreign Investment Law 2008*, (Turkmenistan) s 2 Art8

The law include: Subsidiaries and Company must be registered in registration Chamber at the Ministry of Economy.⁴⁸

The 2008 Law on Licensing Certain Types of Activities listed 44 types which require of state licenses.

The Law on Enterprises and the Law on Corporations provide for acquisitions and mergers but Turkmenistan's legislation is unclear about acquisitions and mergers with foreign parties and also does not have special provisions relating to interests in business enterprises, how local and with foreign.

⁴⁸ *Turkmenistan Company Laws and Regulations Handbook* , USA, International Business Publications,2008,p.33.

Chapter 3

European Union Economic Policy

3.1. General European Union

The European Union is the most successfully functioning and rapidly developing international and regional organizations, which has considerable specificity as the institutional construction and the political legal order. When talking about the sources of European Union law, then immediately close attention shall be paid to its homogenous. It confirms the existence of the so-called of polysystemic European regulatory of structure.

The European union really is one of the most important directions, from that it is not needed to lose investors that want to extend activity all over the world. The abundance of natural resources and constantly growing sectors really does it to one of the preferable directions for investments in the modern world. There is no such sector in the EU where you can't invest and every industrial sector in the EU takes place for expansion and in need of foreign investments.

Foreign Direct Investment made with the intention to receive long-term financial interest in the economy. If made strategically, then such direct investments can really bring enormous benefits to investors. Europe Union integrated 28 states which made it one of the preferable places for investments. European Union considers Foreign Direct Investment not only as means of investment, but also as a method of assistance to economic and social growth and development. European Union investment policy is directed to provide the investor with a certain stability and legal certainly in combination with the favorable conditions for business according to international law. All trade barriers with EU are canceled which were acting as an obstacle for free trade. Besides, the most European Union Member States also accepted common currency which was the main incitement to the expansion of trade in the European Union.⁴⁹

⁴⁹ C. Ionesc and W.Wereda, "What are the Investments Opportunities in the European Capital Regions?" *Acta Universitatis Danubius: Oeconomica*, vol. 9, no. 4, 2013,p.11.

3.2. Common Commercial Policy and Foreign Direct Investment

The objectives set forth in the EU treaties are achieved through several types of the legal act: directive, regulations, decisions, recommendations, opinions. Regulations are adopted both by the Council of the European Union and the EU Commission.

The Common Commercial Policy one of the significant and active fields of the EU External Relations. In 1957 CCP include international trade and economic relations. The EU foreign trade and economic relations have major changes to adapt to the internal and international disputes. After entry into force of the Lisbon Treaty includes FDI under CCP.⁵⁰

EU law does not provide a definition of foreign investment. Before the entry into force of the Lisbon Treaty, the foreign investment did not appear in the Treaties the Lisbon Treaty introduces for the first time an explicit reference to foreign investment to FDI. The Treaty of Lisbon for the first time establishes accurate competence concerning foreign investments by inclusion it to the sphere of general trade policy. Before hand every EU MS had its own FDI policy.

In 2007 The Treaty of Lisbon was signed by 27 Member States of the Heads of State EU. The Treaty to enter into force on 1 December 2009 and EU post created in the frame Treaty, exactly the President of the European Council and the High Representative of the Union for Foreign Affairs and Security Policy. European the Head of State selected Belgian Prime Minister Herman Van Rompuy to be the European Council's first permanent president. European trade commissioner Catherine Ashton was assigned as the following High Representative for the European Union's Foreign Affairs and Security Policy.

Investment is currently included in the EU Common Commercial Policy. CCP is one of the fields EU's the external relations. The CCP is mentioned in Article 3 of the TFEU. European Union has exclusive competence therein.⁵¹ This means that only the Union may

⁵⁰ A.Dimopoulos, The Common Commercial Policy after Lisbon: Establishing parallelism between internal and external economic policy, in T.Perisin (ed.), *Croatian Yearbook of European Law and Policy*, Croatia, University of Zagreb, 2008, p.102.

⁵¹ A.Kaczorowska-Ireland,,*European Union Law*,New York,Routledge,2016,p.181.

legislate and accept legally obligatory acts. The inclusion of investment in CCP implies a competence regarding FDI.

The Lisbon Treaty incorporates foreign direct investment in the Common Commercial Policy which outlined in the Treaty on the Functioning of the European Union .The CCP is presented by the Article 206 TFEU and Article 207 TFEU. This two Articles include FDI. The Article 207 TFEU includes important changes to goals and nature to the Common Commercial Policy.⁵²

Article 206

By creating a customs union in accordance with articles 28 to 32, the Union contributes to the common interest, to the harmonious development of world trade, the gradual abolition of restrictions on international trade and foreign direct investment, and the reduction of customs and other barriers.⁵³

It is plain that Article 206 of the TFEU sets out the objectives of common commercial policy. This follows prior article 131 of the TEC however including "foreign direct investment" parallel to "international trade" where is Union intends to gradually forbiddance limitation. Article 206 TFEU indicates that the Union aims to contribute to the progressive liberalization of FDI.⁵⁴

Article 207

(I)The common trade policy should be based on unified principles, especially with regard to changes in tariff rates, the conclusion of tariff and trade agreements related to trade in goods and services, as well as commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity of liberalization measures, Export policies and trade protection measures, such as those that should be adopted in the event of dumping or subsidies⁵⁵. The general trade policy should be conducted in the context of the principles and objectives of the external activities of the Union.⁵⁶

⁵² T. Moerenhout, and F.Pérez Aznar, *Competence shift on FDI from the EU member states to the EU* ,Geneva Switzerland, , The Graduate Institute of International and Development studies ,2010,p.8.

⁵³ *Treaty on the Functioning of the European Union* (EU)Art 206

⁵⁴ J.P. Bonde (ed.),*Consolidated Reader-Friendly Edition of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as amended by the Treaty of Lisbon (2007)*, Denmark, Foundation for EU Democracy, 2008, p.112.

⁵⁵ *Treaty on the Functioning of the European Union* (EU) Art 207

⁵⁶ August Reinisch, "The EU on the Investment Path - Quo Vadis Europe? The Future of EU BITs and other Investment Agreements", *Santa Clara of Journal of International Law*, vol.12 ,no.1,2014,pp. 181-182.

Under article 207 of the TFUE and made significant changes to the scope, nature, and objectives of the Common Commercial Policy in order to clarify and simplify previous complex rules. It follows ex Article 133TEC but joins "foreign direct investment" in the coverage of the CCP. Paragraph is the most important since it defines the scope of the policy that FDI is part of the CCP.⁵⁷The wording of Article 207, by referring more widely to the Common Commercial Policy, in the literature article make it clear that there is a consensus that the competence on FDI includes not only liberalization but also investment protection.⁵⁸

According to these articles, that Union stipulated that all restrictions on foreign direct investment must be abolished. The CCP must be based on the principles and goals of EU external policy.

3.3. The Single Market of The European Union

The single market of the European Union has become one of the most significant integration projects in Europe. Its foundations were laid down by the Treaty of Rome on the establishment of the European Economic Community in 1957. The terms "common market", "single market" and "internal market" are now almost synonymous. Historically, the term "common market" has been applied in European integration practice, which is known in integration theory as the third stage of integration development following the free trade zone and the Customs Union. It determined the strategic goal of forming a common market with the free movement of four factors - goods, services, capital, and individuals.⁵⁹ Free movement of goods, workers, services and capital are the four freedoms and fundamental elements of the EC and the EU. The free movement facilitates the achievement of central aims of the EU such as peace and economic growth.

⁵⁷Laura Cogo, "Genetically-Modified Organisms in the Transatlantic Trade and Investment Partnership (TTIP)", Master's Thesis, Università Ca' Foscari Venezia, 2016, p.25.

⁵⁸ *Graduate Institute of International and Development Studies*, 2011, http://graduateinstitute.ch/files/live/sites/iheid/files/sites/ctei/shared/CTEI/Law%20Clinic/Memoranda%202011/European_Commission_Project.pdf, (accessed 09 Jan .2017).

⁵⁹ A.V. Sotnikov et al., "Achievements and challenges in the creation of the European single market", *Russian Foreign Economic Journal*, no. 9, 2015, p.109.

Free movements of capital is enshrined in Article 63 TFEU .It cover foreign investment in a host state. Since 1992, the Treaty of Maastricht the free movement of capital included capital movements between the EU Member States and non-member states. Capital movements relating to internal and external FDI fall within the framework of capital movements. Member States are precluded from taking any action that may interfere with the freedom of capital. The Article 63 TFEU does not differentiate between intra - EU and third country capital movements. Thus Article 63 TFEU applies equally to capital movements to and from third countries.⁶⁰

Most of EU Member States are members of the Organization for Economic Cooperation and Development (OECD).The Code for the Liberalization of Capital 2010 is a legally binding instrument for 34 OECD member countries. Article 1a of the Code prescribes that OECD member states to abolish restrictions on the movement of capital among themselves in the measure necessary for effective economic cooperation. To date, almost all OECD countries have abolished capital controls. The OECD survey states: The Code is the only effective multilateral treaty that has an impact on the liberalization of transactions with capital account.⁶¹

The free movement of services is set down in Article 56 TFEU⁶². According to Article 56 of the Treaty on the Functioning of the EU, restrictions on the freedom to provide services in the territory of the European Union is prohibited. It applies to natural and legal persons that in a EU Member State. This article does not allow any discrimination on the basis of nationality in the provision of services. It covers general services educational, in the field of health, social services, audio-visual services, including cinematographic, gaming, notaries services, job search agencies, private security services and financial services.⁶³ In Article 57 TFEU in the meaning of the Treaty, "services" are those services that are usually rendered for remuneration, to the extent that they are not subject to the provisions on the free movement of goods, capital, and persons.⁶⁴

⁶⁰ *Treaty on the Functioning of the European Union*(EU)Article 63

⁶¹ M.P. Lukinskaya, *Legal regulation of investment activity in the European Union*, Moscow, Moscow: Norma, 2013,p.18.

⁶² *Treaty on the Functioning of the European Union* (EU)Article 56

⁶³ Á.E.Hrafnadóttir “Towards a better functioning Single Market for Services”, Master’s Thesis, Lund University, 2012,p.27.

⁶⁴ K.L.Varvne “Free movement of services and nondiscriminatory collective action”, Master’s Thesis University of Gothenburg, 2011,p.10.

Free movement of workers is one of the four freedoms that EU citizens to seek employment in other state MS of EU. Freedom of movement of workers in the EU recognized more than 50 years ago.⁶⁵ According Article 45 TFEU the free movement of workers must be guaranteed in EU.⁶⁶ Such freedom of movement shall include the abolition of any discrimination on the basis of nationality for the workers of the Member States in respect of recruitment, remuneration and other conditions of work and employment. The movement of workers, according to the same article, includes, limited by considerations of public order, public safety and health, the right: accept the work actually offered; to move freely for these purposes through the territory of the Member States; to stay in one of the Member States, working in accordance with the legislative ,administrative and administrative provisions governing the employment of citizens of the state; Stay in the territory of one of the Member States after the completion of work in that State, under conditions that will be determined by the regulations.⁶⁷ Moreover, the provisions of Article 45 are not applicable to work in the public administration.

The central policy of the European Union was the creation of a single market in which the free movement of goods, persons, services and capital is ensured. The Treaty on the Functioning of the European Union gives clear instructions on how the single market should work and, in particular, how the free movement of goods should be ensured. The European Court supported the implementation of a single market and the free movement of goods. Articles 28–30 of the Treaty defined the frame and content of the principle by restrictive unwarranted restrictions on EU trade. In accordance Article 28 TFEU, the Union includes a customs union that extends to all turnover and involves the prohibition between the Member States of customs duties on imports and exports and any equivalent charges, as well as the adoption of a common customs tariff in their relations with third countries.⁶⁸ According Article 30 customs duties on imports and exports or equivalent charges are prohibited between Member States. This prohibition also applies to customs duties of a tax nature.⁶⁹ Free movement of goods is carried out not only by the removal of financial barriers, as well as by the removal of non-tariff barriers. Articles 34 and 35 of the TFEU prohibit any form of

⁶⁵ P.Indre, “The Legitimacy of the Provision of the Article 45(4) of the Treaty on the Functioning of the European Union”, Master’s Thesis, university of Oslo,2014,p.7.

⁶⁶ *Treaty on the Functioning of the European Union* (EU) article 45

⁶⁷ J.P. Bonde (ed.),*Consolidated Reader-Friendly Edition*,pp.64-65.

⁶⁸ TFEU Provisions related to Internal Market and Competition (EU)Article 28

⁶⁹ The customs union (EU) Article 30

quantitative restrictions on imports and exports and to some extent having an equivalent effect of quantitative restrictions. Quantitative restrictions are measures that limit the number of goods that can be imported or exported, for example, through quotas, licenses, or explicit prohibitions. In Case 124/81, the commission against the UK found that the import license acted as a quantitative restriction on importers, even if the licenses were a mere formality and issued on demand.⁷⁰

3.4. Principles of Protection and Guarantee for Investors

“Features and principles of protection of investors rights” in the EU are devoted to one of the most important aspects of the Union's work protection of investors' rights. Directive 97/9 / EC defined compensation schemes for the protection of rights Investors. In 1997 compensation schemes protection of investors' rights in all EU member states was introduced and were established. In the case of impossibility of a firm performing their obligations to customers, investors have the right to resort to compensation scheme to cover their losses.⁷¹

One of the main characteristics of foreign investment is the admission of risk. A part of economic risks, investors shall be aware of possible political risks as well. Guarantee schemes have emerged in order to cover the costs of political risk. EU Member States have created national schemes of guaranteeing investments which protect investments of the citizens. To facilitate the operation of these schemes, most BITs include subrogation provisions that allow the state of origin to succeed in the investor's requirements against the host state, thereby confirming the role of guarantee as a very important determinant of foreign investment. The insurance of political risks at the international level is ensured by the Multilateral Investment Guarantee Agency, a World Bank institution that suggest insurance of political risks for investment projects in a wide range of sectors in 143 developing member countries.⁷²

Creation of schemes insurance of the investments financed by the state was a priority in the many EU Member States exporting investments. For example: The Italian investment

⁷⁰ M. Janku, *EU Business Law* ,Praha, 2016, p.14.

⁷¹K.Gibbons, EFDI 2016 International Conference and Annual Meeting, *The Europeanisation of Investor Compensation –Why is not materialised?*, Vilnius, Lithuania, 2016, p.3

⁷²A. Dimopoulos, *EU Foreign Investment Law*, US, Oxford University, 2011, p.57.

insurance agency SACE (Servizi Assicurativi del Commercio Estero), Austria (OEKB – Oesterreichische Kontrollbank AG), Belgium (ONDD – Office National du Dueroire/ Nationale Delcrederedienst), Czech Republic (EGAP – Export Guarantee and Insurance Corporation), Denmark (EKF – Eksport Kredit Fonden), Finland (FINNVERA PLC), France (COFACE – Compagnie Française d’ Assurance.⁷³ The investment insurance system is organized by different structures .While the existence of public intervention in investment insurance is general to all systems, the extent and nature of such intervention varies widely among the Member States. For example of this category presents the UK Export Credits Guarantee Department, authority of that are exactly definite in the Export and Investment Guarantees.

Export policy includes investment guarantee schemes. EU was actually competent with regard the CCP to adopt independent measures and complete international agreements directed by the harmonization of Member States’ export policies affirmed Opinion 1/75 of the European Court of Justice.⁷⁴ Thus, investment guarantees are the political tool for stimulation of export of FDI. Guarantee schemes operate in the majority of EU member states to support internationalization of national business.⁷⁵

3.5.Dispute Settlement

The new policy reformed in 2015 provides dispute settlement mechanism for the establishment of a permanent investment court system (ICS), this policy more clear rules for the protection of investments.⁷⁶ The EU new policy progressing and included in the Comprehensive Economic and Trade Agreement (CETA) with Canada and the EU-Vietnam FTA and including the transatlantic trade and investment partnership (TIPT) with the United States.

⁷³ Dimopoulos, *The Common Commercial Policy after Lisbon*,p.15.

⁷⁴ *European Court Reports 1975 -01355*,(EU) Opinion 1/75

⁷⁵ J. R. Basedow,“The European Union’s international investment policy. Explaining intensifying Member State cooperation in international investment regulation”,Thesis PhD,London, London School of Economics and Political Science, 2014,p.57.

⁷⁶ *Dispute settlement, European Commission* ,2017, <http://ec.europa.eu/trade/policy/accessing-markets/dispute-settlement/> (accessed 23Feb.2017).

The mechanism for resolving investment disputes proposed by the EU for inclusion in the TTIP, instead of ad hoc arbitration provides for the creation of a permanent Investment Court System. This system will include the First Instance Tribunal and the Appeals Tribunal.

To emphasize the difference between the new system and the old one, the project uses the word "judges" instead of "arbitrators". They are appointed for a 6-year term by a special committee consisting of representatives of the EU and the United States. Thus, the right of the investor to appoint his own arbiter is a thing of the past. Of the 15 judges of the First Tribunal, 5 must be EU citizens, 5 - the United States, the remaining 5 - third countries. For 6 judges of the Appeals Tribunal, this ratio will be by two. The presidents of the tribunals of both instances must be citizens of third countries. The new Appeal Tribunal would be operating on similar principles to the WTO Appellate Body.⁷⁷

The new system would also feature: a new mediation mechanism to help solve disputes amicably and avoid litigation and disputes will be resolved within two years, including appeals.

⁷⁷*Creating more investment opportunities in the EU and the US*, 2015, http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153996.5%20Investment.pdf, (accessed 23 February 2017)

Chapter 4

What Can Turkmenistan learn from EU economic Policy

4.1. Investment Barriers Policy

Turkmenistan regularly declares its desire to attract more foreign investment, but also tight state control over the economy, slow economic reforms, a restrictive visa regime created, high administrative barriers for trade activities and ignorance international business norms a complex foreign investment climate.

Turkmenistan has slow bureaucratic procedures. These procedures have caused barriers in investment and foreign trade. At the arrival and departure of Turkmenistan one must fill out a customs of declaration in duplicate to declare the exact amount of foreign currency, import and export from the country.

The country officially does not impose tariffs on imported goods but current excise regime establishes excise taxes on certain imported goods.

Turkmenistan supports a considerable number of non-tariff barriers to trade. One of the requirements is registration of commercial contracts and investment projects. Foreign enterprises must register in the central authorities system that regulates foreign trade and investment the State Commodity and Raw Materials Exchange

The SCRME often poses difficulties for both domestic as well as for foreign trade institutions. The Presidential Decree on July 29, 1994 provided the SCRME the power to regulate prices of Turkmenistan commodities and exported from country. Furthermore this body establishes the prices and demands from them to sell in that prices which specified in the contract. Registration in the SCRME usually a very long process, which delays the movement of goods and services to consumers.⁷⁸

Foreign companies that conduct business in Turkmenistan experience very complicated customs procedures. To pass through customs import, goods must submit the following documents: Trading contract registered SCRME, the contract should contain

⁷⁸ *The state commodity and raw materials exchange of Turkmenistan*, 2017, <http://exchange.gov.tm/en/> (accessed 01Oct.2016)

information on the quantity of the goods and the cost in hard currency, which will be the basis for customs value and the waybill with similar information on prices and costs.

Form of the Customs cargo, which can be obtained from the company Ashgabat-examination of the Chamber of Commerce. Cargo customs declaration and invoice on shipment will only be accepted in English or Russian language. Other documents must be in Russian. Translated copies must be certified by the Chamber of Commerce. Certification fee varies from 1 to \$ 2 per page. Fax and blueprints will NOT be accepted as official documents.

The most important factors that prevent foreign investors from investing in Turkmenistan is: The sovereignty of the government is regulating economic and commercial transaction; The guarantees given for foreign investors are not clearly defined, the current foreign investment legislation is not reassuring to investors; Lack of technical and financial experience in managing international tender; The process of privatization of medium and large-scale companies is very slow, as the state does not want to lose the majority feeling in these companies; Strict restrictions on robust currency trading; Turkmen limiting foreign ownership in the joint-stock company.

4.2.Economic advantages for Turkmenistan of EU single Market

Turkmenistan and European Union Member States attract foreign investment. However, in EU MS foreign investment is more than Turkmenistan. Therefore, the EU legal system in these circumstances presents an example for studying the experience of the development of this economic and political union, including on the issue of attracting investments as an incentive for the development

The single market is one of the most important achievements of the European Union. Single Market has guaranteed the free movement of people, goods, services and capital in the European Economic Area since 1993.

According to foreign researchers, limiting the powers of states to interfere in the activities of foreign investors reduces the political risks associated with investing, which will

increase investment in a particular economy. Turkmenistan should pay special attention to the experience of foreign countries in the implementation of its investment policy. Thus, EU's policy of attracting FDI is particularly consistent and methodological.

There are some tasks that need to be addressed in order to improve the investment attractiveness of Turkmenistan in the oil and gas . There are some tasks in geographical position that need to be addressed in order to improve the investment attractiveness of Turkmenistan. Turkmenistan has no direct access to the World market , moreover, it is quite far from the main consumer gas markets.⁷⁹

Turkmenistan is surrounded by oil and gas producing countries, which are its competitors in the regional and global markets. In the western part, the country borders the Caspian Sea with Azerbaijan, which plans to strengthen its position in the Turkish market and wants to enter the European gas market as a stand-alone player.⁸⁰ In the south, Turkmenistan borders on Iran, which has super-giant gas fields. Uzbekistan and Kazakhstan are also oil and gas producing states, although they do not have such significant reserves, but also plan to expand their exports to the same markets as Turkmenistan. .But if Turkmenistan created single market enter easily can export in world market using neighbor state.

Now Turkmenistan depend of China because China is one of the main Investors and its disadvantage for Turkmenistan because China give the price of gas. However if single market will be with Iran, Turkmenistan easily export gas to Turkey and Europe without any payments. Firstly Single Market with Iran is advantageous without visa it means free movement of services and workers who will build this pipeline. Secondly for gas export it means free movement of goods. Also Turkmenistan buy from Iran Industry, gold, carpets free movement of goods make foreign trade easy.

Single Market if will be with Kazakhstan and Uzbekistan using these neighbors to export gas to Russia. Its means free movement of goods, workers, services, capital. From Uzbekistan, Turkmenistan buy transport it means free movement of goods without

⁷⁹ K. Yazmurad, "Attraction of foreign investments in the oil and gas complex of Turkmenistan", Master Thesis, Russia, Russian State University of Oil and Gas named I.M. Gubkin, 2016, p.36.

⁸⁰ O.M Halov, D.K Polaeva, "Diversification of the routes of export of Turkmen gas to the world market" in S.V. Zhukov (ed), *Transformation of world energy: market mechanisms and state policy*, Moscow ,IMEMO RAN, 2016, p.28.

registration procedure it is advantage of single market. Turkmenistan should provide investors with legal systems that offered stability, freedom and protection of incoming and outgoing investments. If Turkmenistan make single market with these neighbors it means it will not be dependent on one country.

About the single market with Afghanistan it is not secure because the Afghan-Turkmen relations in which have been observed in recent years ups and downs , still according to many experts, remain very limited. There are many reasons that impede their development. One of the reason was border problems Turkmen military are being shot on the border with Afghanistan.⁸¹

It is necessary to solve the task of improving the procedures for foreign investors to enter the Turkmen market. For example, to get a visa to Turkmenistan is very difficult and the process lasts sometimes more than a month, the registration procedure for an investor is a long and laborious process, including obtaining approvals from various agencies and ministries. In this example advantage single market free movement of workers, goods, capital and services. If Turkmenistan also created single market with neighbor state and main investors country of Turkmenistan. Because all these procedures require a lot of time and registration of the mass of documents, so it is expedient to simplify this process. Single market it is will be help to simplify this process and step for attract more investment.

4.3.Recommendations

A number of recommendations on improving the mechanism for attracting foreign investment:

Adaptation of the legislative framework regulating the activities of foreign investors, to international norms that requires greater openness. It is advisable to facilitate the registration of real estate through the development of relevant legislation.

It is necessary to solve the task of improving the procedures for foreign investors to enter the Turkmen market. For example, the registration procedure for an investor is a long and laborious process, including obtaining approvals from various agencies and ministries. All

⁸¹ V.Panfilova, *Turkmen military shot at the border with Afghanistan*,2016, http://www.ng.ru/cis/2016-08-11/1_turkmenia.html (accessed 19.04.2017)

these procedures require a lot of time and registration of the mass of documents, so it is expedient to simplify this process.

The creation of two new agencies: 1) the insurance of investment risks to increase the protection of the legitimate interests of the insured; 2) information and investment, which will inform the foreign businessmen on the investment projects in the country, to assist in the implementation of investment projects within the country and abroad.

Finally, the active involvement of foreign investment in Turkmenistan will ensure accelerated growth of the economy, expansion of production and increase in the number of jobs, also bring about a weakening of dependence on foreign markets .Turkmenistan needs to improve the legal regulation of investment activities.

Chapter 5

5.1 Conclusion

The development of the modern world economy is impossible without foreign investment, which has led to increase in the role of interstate cooperation in the field of foreign investment and its legal regulation. The legal norms governing the development and protection of investment activities can influence the quality and quantity of investments and thus stimulate trade relations. Firstly, the purpose of the study was to identify the general idea behind the development economy with regard foreign trade of Turkmenistan after the Soviet Union from its inception till date and finding out what is the different barriers and challenges facing Turkmenistan in foreign investment and trade.

Secondly, the aim of the study to provide a system of legal regulation of investment activities of the European Union for Turkmenistan. Europe is one of the continent where the integration 28 countries really made it one of the preferable directions in the world for investments. The European Union considers Foreign Direct Investment not only as means of investment but also as a method of assistance to economic and social growth and development. Therefore, the EU legal system in these circumstances presents a unique example for studying the experience for the development of the economy political union on the issue to attract investments as a stimulus for the development of Turkmenistan.

Today, in the condition of the world globalization of the economy, the integration of financial markets, one of the priorities of the European Union. The gradual transition to the single market, which is reflected in the consolidation of a significant number of relevant legal norms in supranational legislation. It is determined the strategic goal of forming a single market with the free movement of four factors - goods, services, capital, and individuals .EU member states have created national schemes of guaranteeing investments which protect investments of the citizens and most important aspects protection of investors' rights. Turkmenistan should pay special attention to the experience of foreign countries in the implementation of its investment policy. So, EU policy to attract FDI is very consistent and methodological.

This thesis argues that Turkmenistan needs the creation new agencies: the insurance of investment risks to increase the protection of the legitimate interests of the insured; information and investment, which will inform the foreign businessmen on the investment

projects in the country, to assist in the implementation of investment projects within the country and abroad. Turkmenistan should provide investors with legal systems that offered stability, freedom and protection of incoming and outgoing investments. Consequently, states play the role of a kind of "system suppliers", who were able to attract investments. Turkmenistan needs to improve the legal regulation of investment activities like following examples of EU. For instance, advantage single market free movement of workers, goods, capital and services. If Turkmenistan will create single market with neighbor state the main investors of the country will easily overcome barriers. All these procedures require a lot of time and registration of the mass of documents, so it is expedient to simplify this process. Single market will help to simplify this process and step for attract more investment.

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