

**Free Zones Synergies**  
**(Prof. Mario Pines)**

**General Instruments and Local Opportunities in a Synergetic approach to  
Multimodal Corridors back office activities.<sup>1</sup>**

**1. Free Zones activities - Industrial commercial hubs.**

*Cross-border Free Zones*, not necessarily *off-shore* tax avoidance heavens, may be also understood and structured as:

- *hubs providing services activities*: back office financial services, marketing and trading, especially to support the many Central and Eastern European and Asia *Free Zones*, planning to expand their production base and playing an active role in supplying counterparts in the enlarging economy, targeting the developed countries markets;

- *manufacturing industrial facilities* (direct or outsourced): finishing, inward / outward processing, *industrial and commercial outsourcing for third parties*, seeking progressive integration, likely in countries not yet associated to the major trade areas but wishing to become full members;

- *trading and commercial centres*: *practising trading, countertrade, switch* and other merchandise and financial compensation<sup>2</sup> transactions, related to goods and commodities processed and stored and tenderable on the basis of bills of lading and transferable letters of credit, dematerialized and electronically and digitally finalized and conveyable.

This perspectives and different functions apply whatever legal framework the *Free Trade Zone* may be using: *USA FTZ* (Free Trade Zone), or *Off-shore zones*, as the *International Financial Center of Vancouver*<sup>3</sup>, or the *ISBI Istanbul Atatürk Airport Free*

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<sup>1</sup> The multimodal corridors to be considered are mainly the Pan European Corridors.

<sup>2</sup> The relatively rigidities of barter may be counterbalanced by operations such as swap, bilatera clearing arrangement, and switch trading, which are carried out when goods destined to original counterparts are compensated or substituted so reducing transport and conservation costs. For example, if a Mexican operator providing oil to a German and Ukraine client has a supply in Cuba, the Mexican oil can be send to Cuba and the Ukraine oil to Germany.

<sup>3</sup> <<http://www.ifcvancouver.com/>>

*Zone Founder and Operating Co*<sup>4</sup>, or some peculiar regime as the Austrian *Sachtel Privileg Facilities* listed in the Ecofin Report, adopted by the Council on 28 February 2000.

In the Eu there are several strategic regions which still apply some *Special Zones* legislations where the licensee companies locally perform *subsidiary* or *branches* coordinating activities throughout many foreign locations.

As a general rule, all the EU Countries:

- do not allow the creation of similar conditions in other zones within the EU;
- are very sensitive about any competing activity or project promoting similar international headquartering facilities.

In a highly competitive international environment, the *global* operators nevertheless constantly need companies to carry out activities over the home country, and look for facilities to store goods and merchandise waiting for a buyer, run administrative and financial *back office* activities, or *outsourcing* production segment activities and spare parts warehousing closer to their relevant foreign markets.

Global players locate their headquarters, mainly, in response to tax incentives on foreign income generated by related holdings, subsidiaries, branches and permanent establishments, generally subject to the principle of World wide taxation, mitigated by the Treaties against the potential double taxation. Apart from the 95% participation dividends exemption, the Italian tax rates on foreign *branche* income is generally higher than the one applied abroad, therefore a tax credit<sup>5</sup> would not have been only practical and formal, but basic to overcome the cautious pioneer attitude of international investors, whose headquarters mostly are located in the Middle and Northern Europe, very often in the Netherlands, in Luxembourg and often in the free from taxes Channel Islands.

However, these Treaties are ineffective if the host country applies very high taxing rates and if the financial administration is slow to refunding overdue tax credits. On the contrary, hosting Free Zones, from Poland to Turkey, offer more favorable tax regimes excluding annoying taxing rules and eventually applying very low corporate tax rates.

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<sup>4</sup> <<http://www.isbi.com.tr/news.html>>

<sup>5</sup> One must opt for the principle of the location, instead that for the world wide taxation principle, which is not uniformly operational in the EU territory.

The EU, Directives 69/73, 76/119, 79/802 classify regulate Free Zones dealing with Inward - Outward Industrial Forwarding Processes. These are occasionally granted a more favorable tariff regime in consideration of the actual backwardness of areas such as Madera and the Azores and several other recesses.

In this case, special local considerations have allowed a mixture of a *Free Zone* and an *Off-shore regime*.

## **2. Inland Bonded Warehouses.**

To allow logistics in after sale and local delivery facilities, a free zone facility may eventually be proposed in Italy within the provision of a inland Bonded Warehouse, law 18 February 1997 no. 28 which has firmly established the special VAT (*Value added tax*) warehousing regulation.

These warehouses, providing VAT together with the Customs duties facilities, allow all the logistic activities and most of the provisional or final processing and trading operators to introduce, store and process VAT free, both EU and no EU goods with the exception of those bound to consumption within the same warehouses area<sup>6</sup>.

In Italy, the special Bonded Warehouses have already been ruled by a Royal Decree-Law 1 July 1926, no. 2290. Art. 1 of the above mentioned Law states that:

In Bonded Warehouses the following activities may be carried out:

- *custody and conservation of stored national and foreign goods;*
- *issue of special documents like the possessory warrant and the lien bond at the consignors' request;*
- *sale or auction forced sale of stored good according to the provisions of the Code of Commerce.*

As far as the legal transfer of the stored goods is concerned, the Italian Civil Code<sup>7</sup> provides for the circulation of the accepted written titles to goods stored in Bonded

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<sup>6</sup> The Fiscal VAT warehouses are disciplined by art. 50-bis of *D.L. 331/1993*, which, provides for rules on establishing and managing such warehouses and recalls the endorsement of special decrees about the administrative and accountancy rules to be applied.

<sup>7</sup> Art. 1790 Possessory Warrant.

(I). At the consignor's request, Bonded Warehouses shall issue a possessory warrant to the stored goods. [II]. The possessory warrant shall indicate: 1) the surname, name or company [2563 et seq.] the residence

Warehouses and the circulation of the connected lien titles, on which occasional bonds against goods may be issued.

In our legal system, any *warrant* equivalent document<sup>8</sup>, is recognised as a *possessory warrant*, which embodies a documentary title and is not merely an empowering title, therefore the transfer of such a document finalizes the execution of the commitment of the seller, that must tender the goods represented<sup>9</sup> and such document may be seized as well as the *bill of lading*<sup>10</sup>.

Relatively to the documentary titles - *holder warrants and ownership warrants* – and, generally speaking, to the legitimization titles, which are not ownership titles but just common circulation documents in the daily forwarding agents practice, such as the *transferable declaration of having power over* and similar related international trade forms and expressions, their circulation may relay over two kind of instruments: the

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[43] of the consignor; 2) the place of storage; 3) the nature and quantity of the stored goods and other identification signs; 4) if customs duties have been levied and if the goods have been insured (1).

(1) V. art. 13 R.D.L. 1° July 1926, no. 2290; art. 5 et seq. R.D. 17 March 1938, no. 726; art. 17 et seq. R.D. 17 June 1938, no. 856.

Civil Code (1942) Art. 1791

Mortgage bond.

(I). To the possessory warrant [1790] is attached the mortgage bond, in which the indications required by art. 1790 are repeated. [II]. The possessory warrant and the mortgage bond shall be tear out of the same register, to be conserved in the Bonded Warehouses.

<sup>8</sup> “Con riguardo a compravendita di beni mobili, che siano depositati presso un terzo, il venditore si libera dell'obbligo della consegna, secondo la previsione dell'art. 1527 c.c., rimettendo al compratore il titolo rappresentativo della merce (fede di deposito e nota di pegno), e non anche, pertanto, nel diverso caso in cui rimetta un mero documento di legittimazione (nella specie, buono contenente l'ordine al depositario di dare la merce ad un determinato incaricato del compratore), il quale resta soggetto ai principi generali della compravendita mobiliare, con la conseguenza che l'obbligazione del venditore può considerarsi adempiuta solo con la consegna dei beni al compratore.” So has stated the Cassazione civile, Sec. II, 15 February 1984 no. 1140, in the case “Consorzio italiano combustibili vs. Società SOCO petrol”, in Giust. civ. Mass. 1984, fasc. 2.

<sup>9</sup>U.C.C. - Article 3 – Negotiable Instruments Part 4. Liability Of Parties § 3-416. Transfer Warranties.

A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:

- (1) the warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

<sup>10</sup> "Bill of lading" or "bill" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an air consignment note or air waybill.

creation of an issuing and trading clearing market for credit letters, as originally planned in the article 3 of the Italian law 19/91 and the dematerialization<sup>11</sup> of the documentary titles representing goods and merchandises, in order to allow their flow through *IT* devices with certified and registered electronic signatures and date stamps.

Potential circulation of the letters of credit, according to the provision of the *ICC Uniform Customs and Practice for Documentary Credits UCP500* edition 1994, mainly arise from art. 48 on credit transfer<sup>12</sup>; originating so far all possible countertrade activities.

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<sup>11</sup> In 1990 the C.M.I. (International Maritime Organization, 4 Albert Embankment, London SE1 7SR) published its Rules for Electronic Bills of Lading, which represent an ingenious method of overcoming the problems of proving title to goods by electronic means. The essence of the system is as follows. Article 4 provides for an electronic document containing information similar to that on a paper bill of lading to be sent by the carrier to an electronic address specified by the shipper. In addition a private key is sent to the shipper to be used in subsequent transactions. The private key is known only by the shipper and the carrier. The shipper (and any subsequent holder) can transfer what the C.M.I. calls the "Right of Control and Transfer" to a subsequent holder (Clause 7(b)):

<sup>12</sup> ICC Publication No. 500 Effective January 1, 1994 *Transferable Credit*

Article 48

Transferable Credit

A. A transferable Credit is a Credit under which the Beneficiary (First Beneficiary) may request the bank authorized to pay, incur a deferred payment undertaking, accept or negotiate (the "Transferring Bank"), or in the case of a freely negotiable Credit, the bank specifically authorized in the Credit as a Transferring Bank, to make the Credit available in whole or in part to one or more other Beneficiary(ies) (Second Beneficiary(ies)).

B. A Credit can be transferred only if it is expressly designated as "transferable" by the Issuing Bank. Terms such as "divisible", "fractionable", "assignable", and "transmissible" do not render the Credit transferable. If such terms are used they shall be disregarded.

C. The Transferring Bank shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank.

D. At the time of making a request for transfer and prior to transfer of the Credit, the First Beneficiary must irrevocably instruct the Transferring Bank whether or not he retains the right to refuse to allow the Transferring Bank to advise amendments to the Second Beneficiary(ies). If the Transferring Bank consents to the transfer under these conditions, it must, at the time of transfer, advise the Second Beneficiary(ies) of the First Beneficiary's instructions regarding amendments.

E. If a Credit is transferred to more than one Second Beneficiary(ies), refusal of an amendment by one or more Second Beneficiary(ies) does not invalidate the acceptance(s) by the other Second Beneficiary(ies) with respect to whom the Credit will be amended accordingly. With respect to the Second Beneficiary(ies) who rejected the amendment, the Credit will remain unamended.

F. Transferring Bank charges in respect of transfers including commissions, fees, costs or expenses are payable by the First Beneficiary, unless otherwise agreed. If the Transferring Bank agrees to transfer the Credit it shall be under no obligation to effect the transfer until such charges are paid.

G. Unless otherwise stated in the Credit, a transferable Credit can be transferred once only. Consequently, the Credit cannot be transferred at the request of the Second Beneficiary to any subsequent Third Beneficiary. For the purpose of this Article, a retransfer to the First Beneficiary does not constitute a prohibited transfer.

Fractions of a transferable Credit (not exceeding in the aggregate the amount of the Credit) can be transferred separately, provided partial shipment/drawings are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the Credit.

In order to activate a letter of credit market, a much discussed profile is that of the issuing bank rejection of the ordinary transfer request when made by the beneficiary of a transferable credit.

The prevailing doctrine underlines a strict connection between arts. 48 a) *UCP500* (*the beneficiary may request the bank authorised* ) and art. 48 c) *UCP500* (*the transferring bank shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank*) and appears to support the refusal hypothesis: in this case, a formal bank consent declaration for the eventual transfer request is, therefore, needed.

This point of view explains the decision of the International Chamber of Commerce to replace the clause “*right to give instruction*”, which implied an acquired right to obtained the transfer, with the alternate clause “*right to request*”, as a consequence of the position of the ICC Bank Commission<sup>13</sup> admitting thus the discretion of transfer.

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H. The Credit can be transferred only on the terms and conditions specified in the original Credit, with the exception of:

- the amount of the Credit,
- any unit price stated therein,
- the expiry date,
- the last date for presentation of documents in accordance with Article 43
- the period for shipment, any or all of which may be reduced or curtailed.

The percentage for which insurance cover must be effected may be increased in such a way as to provide the amount of cover stipulated in the original Credit, or these Articles.

In addition, the name of the First Beneficiary can be substituted for that of the Applicant, but if the name of the Applicant is specifically required by the original Credit to appear in any document(s) other than the invoice, such requirement must be fulfilled.

I. The First Beneficiary has the right to substitute his own invoice(s) (and Draft(s)) for those of the Second Beneficiary(ies), for amounts not in excess of the original amount stipulated in the Credit and for the original unit prices if stipulated in the Credit, and upon such substitution of invoice(s) (and Draft(s)) the First Beneficiary can draw under the Credit for the difference, if any, between his invoice(s) and the Second Beneficiaries(ies') invoice(s).

When a Credit has been transferred and the First Beneficiary is to supply his own invoice(s) (and Draft(s)) in exchange for the Second Beneficiary's(ies') invoices(s) (and Draft(s)) but fails to do so on first demand, the Transferring Bank has the right to deliver to the Issuing Bank the documents received under the transferred Credit, including the Second Beneficiary's(ies') invoice(s) (and Draft(s)) without further responsibility to the First Beneficiary.

J. The First Beneficiary may request that payment or negotiation be effected to the Second Beneficiary(ies) at the place to which the Credit has been transferred up to and including the expiry date of the Credit, unless the original Credit expressly states that it may not be made available for payment or negotiation at a place other than that stipulated in the Credit. This is without prejudice to the First Beneficiary's right to substitute subsequently his own invoice(s) (and Draft(s)) for those of the Second Beneficiary(ies) and to claim any difference due to him.

<sup>13</sup> <[http://www.iccwbo.org/home/statements\\_rules/statements/2003/banking\\_documents.asp](http://www.iccwbo.org/home/statements_rules/statements/2003/banking_documents.asp)>

The Bank being free to accept or refuse the beneficiary transfer request is therefore in a more advantageous position. From this angle, the ICC and some authors have highlighted the necessity of limiting the bank discretion and at the same time to safeguard the first beneficiary's interest deriving from the transfer clause, through the obligation of the motivation of the bank's refusal<sup>14</sup>. These remarks will obviously affect the second beneficiary at most or in general previous negative experiences leading the bank to consider the transfer dangerous<sup>15</sup>.

These conclusions are clearly opposing the provisions of art. 48 of the UCP500 which involves the non-estrangement of the first beneficiary.

The first beneficiary shall neither allow the consignment of documents which are different from those specified in the letter of credit, nor modify the quality of the goods indicated in the same documents. The only modifications permitted by art. 48 h) are those relative to the amount of the credit or the unit price, which may be reduced in order to achieve the brokerage fees represented by the difference between the buying price and the supplying price.

According to this principle, and with the procedures specified in art. 48 of the UCP500, a secondary market for the emission and circulation of the letters of credit is possible, and would be wisely located in a multimodal corridor intersection and this was at the basis of the provision of art. 3 of Law 19/91, when outlining the creation of such a market in the Free Port of Trieste.

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<sup>14</sup> It would be obviously advisable the stipulation of a convention with credit institutions willing to back the procedure and to stand surety for it as to the circulation, according to the filière principle or any other similar transfer procedure, of the connected credits before the collection.

<sup>15</sup> Besides, as far as the legal nature of such operations is concerned, there are today contrasting opinions. The Italian jurisprudence speaks of assignment of credit (*cessione del credito*) therefore the first beneficiary is substituted by cessionary creditor in all the relationships with the bank. So has stated the Corte di Cassazione in the sentence no. n. 2449 of 22 July 1953: in case of credit transfer, "the obligation of the bank to pay to the cessionary debtor of the beneficiary, regards the internal mandate with the buyer and not the mandate with the transferee. Thus the bank shall account for the performed operations, especially those of documentary control, to its sole mandatory and not to the transferring beneficiary. In fact, the credit transfer clause allows the beneficiary to transfer his credit, but, once the credit has been transferred, the beneficiary has no longer relations with the bank as he is substituted by the cessionary creditor. The nature of the transfer is therefore a assignment of credit and the beneficiary has no right to ask the bank to account for the way the bank itself has executed the mandate, as this right belongs only to the buyer".

### 3. Commodity Exchange.

Within the synergies of a multimodal corridor, since in Italy and in the whole Southern Europe, there is neither a Commodity spot and Futures Exchange such as the *NYBOT* nor a relevant financial futures market, the chances to activate a commodities trading activity is real and growing. The only ever previous operating market has been the Austro Hungarian *Trieste Commodities Futures Exchange* active in Trieste up to the First World War.

The get-up-and-go of the market was due to a clearing house named *Cassa di Liquidazione per gli Affari a Termine in Merci Alla Borsa di Trieste S.p.a.* established in the year 1907, and specialised in South American unwashed *robusta* green coffee and raw cotton over which a relevant contracts volume was developed.

Today, a futures market, to be eventually established in the Trieste *Free Zone* should be disciplined by the provisions of Decision no. 11768 of 23 December 1998 of the *Commissione Nazionale per le Società e la Borsa*: Regulation implementing the decree 24 February 1998, no. 58, and the decree 24 June 1998, no. 213, on financial markets.

#### Art. 4 (Minimum Capital)

1. *The minimum capital of the management trust is fixed at 5 mils. Euros.*
2. *The minimum capital of the management trust performing also the activities as to art. 5, paragraph 1, f), trust is fixed at 12 mils. Euros.*

#### Art. 5 Omississ....

Par. f) *institution and management of compensation and guarantee systems for the operations regarding financial instruments admitted to market negotiation according to art. 70 of the Finance Code<sup>16</sup> and implementing provisions;*

after the law on financial services, also all the contracts related to the transactions concerning goods are considered *financial instruments*:

*d.l. 24.2.1998, n. 58 art. 1 Omissis*

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<sup>16</sup> Legislative decree 58/1998.

f) the <<futures>> *contracts on financial instruments, interest rates, exchange rates, goods and connected index* , even when the executions occurs trough the cash differentials payment;

g) *swaps and equity swaps contracts, even when the executions occurs trough the cash differentials payment;*

h) *forward contracts regarding financial instruments, interest rates, exchange rates, goods and connected index, even when the executions occurs trough the cash differentials payment;*

*option contracts to buy or sell the instruments indicated in the above mentioned letters and the relative index, as well as the option contracts on interest rates, exchange rates, goods and connected index, even when the executions occurs trough the cash differentials payment;*

*j) the combination of contracts or titles specified in the above mentioned letters.*

Clearly, all the transactions carried out in unregulated structures, or the direct cash transactions or transactions finalized trough intermediaries, even trough a deferred settlement, may be performed without a specific ruling framework, if they involve neither a public offering nor use denominations or structures typical of the formal Commodity Exchange.

At first, a commodity warehousing and negotiation structure should be established on the basis of the dematerialization of the property and ownership title with an electronic trading system open to brokers dealing within Central and Eastern Europe, mainly in the sectors of end users, *countertrade*, barter and *switch* transactions.

Secondary, it would be recommendable to actuate an over the counter Commodity and Services Exchange provider, based on computer trading platforms, in transport, warehousing and negotiation services applying a modern technology - *business to business hub* – such as *Bolero (Bill of Lading Europe)*<sup>17</sup>, electronic network – established by the *Through Transport Club - TT Club*<sup>18</sup> and *Swift*<sup>19</sup>, to which 16 large industrial groups belong (among those the Italian *Eni*), as well as the four world most important forwarders (Allport, Mercantile, Panalpina e Sumitrans), six maritime transport

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<sup>17</sup> <http://WWW.BOLERO.NET/>

<sup>18</sup> <http://www.ttclub.com/>

<sup>19</sup> <http://www.swift.com/>

companies (Apl, Maersk, Mitsui O.S.K., NYK, Evergreen e "K" Line) and thirteen relevant international bank.

Electronic documentary networks have become real with the issuance of the Community Directive 1999/93 on electronic signatures, modifying the Commission proposal about art. 250 paragraph 2 of the EEC Treaty, in force in Europe since 19 January 2001 and applied on 19 July 2001.

All the paper documentation like warrants, bills of lading, or land or air carriage transport documentation etc. may flow through an electronic platform, therefore the actual proximity to related markets would represent the most important strategic asset in the financial, insurance and logistic services with regard to international trade and to the outsourcing processes sector. Everybody knows how far the Outward Industrial Processing Forwarding<sup>20</sup> has been taking off.

Another very successful synergetic activity has been the so called Outward Industrial Forwarding, regulated by artt. 145-160 of the Community Customs Code, Regulation 2913/92/EEC and by artt. 748-787 of the implementing provisions, Regulation 2454/93/EEC, which allow all the operators to temporarily export goods out of the Community Customs territory in order to manipulate and process those goods and re-introduce the finished products in total or partial exemption from import excises.

This is part of the outsourcing process, analysed by Nasbitt at the beginning of the '80ies<sup>21</sup> anticipating the actual phase of globalisation appears as a consequence of the IT progress supported by the containerization of sea and land transportation processes.

With regard to outsourcing, the strategic plan of the North Adriatic Fifth Paneruoepan Multimodal Corridor Cervignano - Monfalcone - Gorizia and the connected special legal

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<sup>20</sup> <http://www.mincomes.it/temporance/perfpass.htm>  
The Community legislation of Outward Processing is given by:

- Reg. EC 3036/94 of 8/12/94
- Reg. EC 3017/95 of 20/12/95.

Following the enactment of the Reg. 3017/95 the Italian Ministry of Foreign Trade has issued the implementing Memorandum no. 2/95, followed by that of the Ministry of Finance, Customs Department no. 332/D of 27/12/95.

The above mentioned Regulations innovate with respect to the previous regulation (Reg. EC 636/82 and 1828/83 – Memorandum of the Italian Ministry of Foreign Trade no. 18 of 21/6/90 and of Ministry of Finance, Customs Department no. 32 of 24/8/83).

<sup>21</sup> John Nasbitt Megatrends, Warner N.Y. 1984

and logistic infrastructures, as well as the proximity to Slovenia, represent a rare and unique chance certified by the:

- association Agreement Slovenia - UE;
- Port of Monfalcone, Interporto of Cervignano, Ronchi Airport facilities;
- good telecommunications services, the proximity to Austria and Slovenia, both rail and road to and from the Centre of Europe in general;
- the especial regime of the Free Port Zones in Trieste;
- human resources and local linguistic knowledge, valuable assets in the Centre and East of Europe;
- Regional technological infrastructures like Informest<sup>22</sup>, Insiel<sup>23</sup>, and CEI.<sup>24</sup>

In the light of all these elements, the art. 108 of the Law 108/98 ratifying the Association Agreement of Slovenia - EU could be implemented by choosing inland cross border areas as the location of the specified *Free Zones*, whose legal regime could be extremely worthwhile by the application of the incentives of Law 19/91, to be reinstated when applying the Cross-border zones Law.

In conclusion, the synergetic importance of a potential rekindling of the Trieste Free Port, within the Fifth Multimodal Corridor regimes should be highlighted, as it represents a compromise between the barrier of the Maastricht pillars and the need to balance the asymmetries surfacing in the long process of association of the Central European States to the EU and the softening of the World trade barriers.

This compromising solution would allow to maintain a presence in the inevitable economic integration process of areas which have played a very important frontier role in the latest centuries but are close enough to the Mediterranean starting point of all the culture and values in Europe. The set of the above listed laws and bylaws encourage to undeniably consider consistent, with the foundation of the association instruments, the main beliefs of the delicate role that the Republic of Slovenia has been assuming as an essential interface between Western and Central and Eastern Europe, surfacing after half a century of self segregation and cold war, marked by isolation and autarchy and from a

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<sup>22</sup><http://www.informest.it>

<sup>23</sup><http://www.insiel.net/>

<sup>24</sup><http://www.ceinet.org/>

social system characterized by progressive decline and worsening of most of material and moral social prerequisite.

As the Association of new States to the EU and that of the Republic of Slovenia, has actually improved the integration processes of distinct economies within the EU single market, the merchandises and services flow, activated by further progressive integration of the remaining Central and Eastern European areas, will start to press over the North Eastern Adriatic and the fifth Pan-European corridor in the *Giuliana* Region, which is the Region receiving most of Mediterranean free zones productions.

#### **4. Logistic centre – Downsizing European asymmetries.**

The area *Giuliana* and the Multimodal Corridors will become henceforth natural hubs calling for adequate logistic infrastructures and operating competitive frameworks.

Equally, since China has become a full WTO member and has become actively present over the European market, already overridden by marginal activities in the field of restoration and retail distributions activities, the progressive economic Asian expansion and particularly the Chinese one, , will not take too much time to jam the Suez canal in direction of the Adriatic sea and toward Central Europe, where Northern East bordering areas of Italy and Slovenia are the natural best hubs for goods coming from Middle and Far East along the Southern Rim.

At same time, the well established Northern Conference system, supplying transportation, logistic, maritime, and railways joint shipping services, in the Belgium, Dutch and Hanseatic cities area, ever since supported by the preferential German railways tariffs system, has been progressively attracting most of the European traffics and, in the Fall 1999, as a indicative example, the huge German *Eurokai-Eurogate* conglomerate, owning the Hamburg harbour and shareholder of the Bremenhaven and Antwerp harbours, pursuing the control of the logistics and European transportation

industry, has stretched its tariff over the Atlantic and the Eastern transportation routes to and from continental Europe<sup>25</sup>.

On the same geographical path and within the new logistic and transportation infrastructures system, also reappears, full up with synergetic logistics potential the hypothesis of a *Transversal Trans Siberian*, otherwise known as *Trans Siberian Land Bridge*, or *Euro Asiatic Development Bridge* which, in rail terms, represents the evolution of Sir Halford John Mackinder<sup>26</sup> predictions. In the year 1904 he was already considering the connection of continental Europe with the Euro Asiatic mass and, through this platform, with all the Pacific coast countries. Such a hypothesis would rekindle a renowned *Heartland*, the hinge of the world, opposing the *Rimlands*, which represents the necessary alternative communication ways essential in the infrastructural integration of Eurasia on the Southern borderline up to the Suez Canal.

Along the transversal Trans Siberian road to Brest in Byelorussia, the railways link would require about two weeks, from Brest the forwarding of the merchandise would follow the Warsaw direction to connect to the strategic 3<sup>rd</sup> corridor, Kiev-Warsaw-Berlin-Paris, already in an advanced construction phase. Along these tracks a huge amount of segment activities could be performed within free logistic zones capable of industrial final and midway stage operations.

Actually, in the unavoidable process of integrating Western and Eastern economies, the Donetz, Persia, India, and China road, a likely Southern alternative to the Trans Siberian backbone, seems cheaper and easier and faster joining the Mediterranean to Europe and to the most developed side of Southern Asia in comparison with any Northern alternative; in this perspective, the 5<sup>o</sup> corridor would require a Southern link to connect the growing Donetz area in Ukraine, the most industrially developed area in the country.

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<sup>25</sup> "In the last decades many changes occurred in the liner shipping industry as well as in the market structure and in the organization of port terminal operators. Due to the necessary linkage existing between liners and port operators - it is not by chance that efficient ports are those in which goods pass through from ships to inland means of transport as smoothly as possible - the latter changes may be often considered as answers to changes occurring in liner shipping." Claudio Ferrari & Marco Benacchio, Market structure in container terminal operators and port services, in *Iame (International Association of Maritime Economists) "The Maritime Industry into Millennium"*, Naples 13-15 September 2000.

<sup>26</sup> Halford J. Mackinder, *Democratic Ideals and Realty*, 1981, Westport, CN.

Even if a railway unit cannot load more than 30 TEU of 91 m<sup>3</sup>, this size could allow a shipment transcontinental volume of multi - units ready for fast delivery at fast rotation, a kind of priority vehicular shuttle flow that, given the volume of potential interchange would assume characteristics of high speed and heavy load transportation within the inevitable integration process going on between East and West. In the coming years several *district-parks* will be available in the oriental EU border line, now in progressive approaching to the Far East areas. Some of these logistic instruments are already operative in Rumania, Hungary, Poland but several *district-parks* are foreseeable also in Ukraine, Croatia e Bulgaria, such instruments allow easy reconsideration and might obtain a free-zone status.

Considering the current industrial evolution and the high intensive technological manufacturing volume, the potential market for forward outsourcing processes is overall swelling and represents, at this day and age, a highly relevant competition factor, assuming the asymmetric lower wages in all these countries, where quality is anyway increasing, when compared to the western standards and the persistent expressed willingness to lower economic conflicts among countries, WTO mission<sup>27</sup>.

The impressive goods flow between Central Asia and Europe is at this time supplied by almost three operators: the Swiss corporation ICF *Mixed Block Trains*, the German *Transchaft International*, a division of the DB-Cargo *Ganzzugverkehr* and the Polish *Polzug Silk Road Express*: they provide integrated shipment services on the routes *Ostwind*, currently to almost all the European operators interested in the globalization processes.<sup>28</sup>

In China, in the developing huge trade volume, now mostly promising but already very significant, the investments in infrastructures are heading toward the logistic delivering hubs of *Shenzen*, Peking, to the free zone in Shanghai and the pot seems enormous as large investments have been made to create networks of pan-Chinese logistic hubs by the principal world-wide operators as *APL American President Line*,

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<sup>27</sup> “The WTO aims to foster dialogue between nations, where governments come together and sort out the trade problems they encounter with one another, rather than engage in trade disputes”. <<http://en.wikipedia.org/wiki/WTO#Mission>>

<sup>28</sup> Some new positive attitudes appear also at scientific and institutional level: Jagdish Bhagwati, *In Defense of Globalization*, NY 2004.

*Maersk, P&O e la NYK Nippon Yusen Kaisha supporting all existing free zones and district parks along their routes.*

Presently, nevertheless, over70% of the incoming and outgoing European traffic passes trough the *Northern Range* gates, leaving only the left 30% to the Mediterranean harbours, which fact has been worsening the European asymmetries.

### **Major harbours world containers traffic, year 2002**

#### **World**

<b>Ranking</b>	<b>Port Name</b>	<b>Trade Region</b>	<b>Total TEU</b>
1 (1)	Hong Kong	East Asia	19144000
2 (2)	Singapore	South East Asia	16800000
3 (3)	Busan	North East Asia	9453356
4 (5)	Shanghai	East Asia	8610000
5 (4)	Kaohsiung	East Asia	8493000
6 (8)	Shenzhen	East Asia	7613754
<b>7 (6)</b>	<b>Rotterdam</b>	<b>Northern Europe</b>	<b>6515449</b>
8 (7)	Los Angeles	North Am. West Coast	6105863
<b>9 (9)</b>	<b>Hamburg</b>	<b>Northern Europe</b>	<b>5373999</b>
<b>10 (11)</b>	<b>Antwerp</b>	<b>Northern Europe</b>	<b>4777387</b>
11 (12)	Port Klang	South East Asia	4533212
12 (10)	Long Beach	North Am. West Coast	4526365
13 (13)	Dubai	Mid-East	4194264
14 (17)	Yantian	East Asia	4181478
15 (14)	New York/New Jersey	North Am. East Coast	3749014
16 (18)	Qingdao	East Asia	3410000
<b>17 (15)</b>	<b>Bremen/Bremerhaven</b>	<b>Northern Europe</b>	<b>3031587</b>
18 (20)	Gioia Tauro	West Mediterranean	2954571
<b>19 (16) *</b>	<b>Felixstowe</b>	<b>Northern Europe</b>	<b>2750000</b>
20 (19)	Tokyo	North East Asia	2712348

<<http://www.ci-online.co.uk/>>

<b>Top 15 Ports in TEUs (millions)</b>				
<b>Ranking</b>	<b>Port</b>	<b>2003</b>	<b>2002</b>	<b>Percent Change</b>
1	<b>Hong Kong, China</b>	20.45	17.8	14.89%
2	<b>Singapore</b>	18.41	15.57	18.24%
3	<b>Shanghai, China</b>	11.28	6.33	78.20%
4	<b>Pusan, South Korea</b>	10.41	7.91	31.61%
5	<b>Kaohsiung, Taiwan</b>	8.84	7.54	17.24%
6	<b>Los Angeles, USA</b>	7.18	5.18	38.61%
7	<b>Rotterdam, Netherlands</b>	7.11	6.10	16.56%
8	<b>Hamburg, Germany</b>	6.14	4.69	30.92%
9	<b>Antwerp, Belgium</b>	5.45	4.22	29.15%
10	<b>Yantian, China</b>	5.25	4.19	25.30%
11	<b>Dubai, U.A.E.</b>	5.15	3.50	47.14%
12	<b>PortKelang, Malaysia</b>	4.84	3.76	28.72%
13	<b>Long Beach, USA</b>	4.66	4.46	4.48%
14	<b>Qingdao, China</b>	4.24	3.41	24.34%
15	<b>NY/NJ, USA</b>	4.07	3.32	22.59%

**Source: Joc Weekly 2003**

Ranking developed through original research by the Journal of Commerce.

Implausible, even 40% of the Italian outward export traffic asymmetrically gravitate towards the *Northern Range* harbours: the reason lies with the remarkably higher Italian railways fees: from Munich, Bavaria, it is cheaper to send goods to Rotterdam than to La Spezia or Trieste, although there are 300 more km; from Milan, often *Northern Range* harbours are preferred in despite of the Adriatic or Liguria harbours; these bizarre situation is likely due to the unfinished Italian railways deregulation, and to the stratified and consolidated advantages and subsidies of the *Northern Range* railways and related maritime facilities, which have been growing and capitalizing since the end of the second world war. In Italy, the enormous and insane volume of road trucking and Lorries

servicing the major volume of transported goods has not been helping the evolution toward a more competitive transport industry in a highly competitive opening market.

Such a peculiarity and lack of multimodal hub facilities, especially supported by free zones status, has not been helping the progress of Italian harbours and the presence of the Italian transport industry in the world wide growing competitive market. All the Italian harbours, furthermore seem to be engaged in a national devastating competition, discouraging any rational restructuring design of the transport industry in the global arena.

Apart from being a road and railway communication framework, the Northern part of the Adriatic Sea and the inland neighbourhoods of Gorizia, Koper and Trieste, have potentially become a synergetic industrial and commercial intermodal system within the fifth corridor system, exploitable in the circulation and handling of merchandise and goods through physical, geographical and temporal transformations, which extent would not exclude the interaction through *spot* and *forward* exchange transactions related to commodities to be transformed in order to obtain by the local custom authorities the free circulation on goods coming from any region of the world outside the EU status.

For the next 20-30 years very little will be made on the Northern transcontinental corridors side, which likely might be joining Rotterdam to Pusan, Shanghai and to Japan through the third multimodal corridor and the trans-Siberian route, as above reminded and, in any case, the existing infrastructures would not be able to attract and support the huge merchandise volume stemming from the Pacific side of Asia, estimated at this moment in 20 million TEU per year, and whose growth rate is close to 10% considering the fact that China has joined the WTO.

The pressure from Europe will not walk off soon toward the *Silk Road*, and will only slowly surface in the South of Ukraine, in the Donetsk industrial region in terms of complementary branch to the third and fifth corridors final stations in North Ukraine at Kiev, terminal of the projected *Trans Siberian Landbridge*.

In this framework, still relevant appears the potential inland role with the favourable condition of Trieste with its special and uncommon border line legislation, providing facilities to the advanced logistic activities.<sup>29</sup> This hub, close to the harbour system of the

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<sup>29</sup> See on this subject: <[www.frezones.org](http://www.frezones.org)>

North Adriatic and serving the Mediterranean, Suez and Gibraltar, on an evident geographical and economic position supremacy, will not fail to affirm itself as happened during the first globalization process in the Austro Hungarian empire, whose impressive architectural remnants are still visible in the city's Port facilities and as it has been the case after the Balcan war at the beginning of the 21<sup>st</sup> century.

Back in the most longest European peace period, after a century and a half of world wars, hot and cold, rekindling the Suez Canal opening period, when the first circumnavigation of the globe by Massimilian of Habsbug, sailing on the Novara warship from Trieste in the year 1857 and returning to the town in 1859, imperial ambassador of the importance of the Adriatic sea terminals in the global economy, the Trieste region with its deep sea waters and seaside piers re-emerges over the scene, considering its potential double European area, stretching from the North Adriatic toward East and toward North. On one side the surfacing south – North connections trough Central Europe, on the other the Central - Eastern Europe after the collapsing Berlin wall, never politically united despite the global dreams of Cesar, Napoleon and ... many others.

At this moment, the European Continent has to reconsider the new role of the Mediterranean Sea in the developing West - East merging economies and the Adriatic may slowly become the sea highway whose main gate, located in the far North East has been noticeably assuming a growing potential role, as the overwhelming particular Hanseatic harbour facilities and price structures are somehow to be balanced. On her side, the area *Giuliana* has the impressive geographical location, the riches, history and culture of its *microcosm*, ever since polyglot and multilingual where three European DNAs, always characterized by their belligerent nature, now eventually converge.

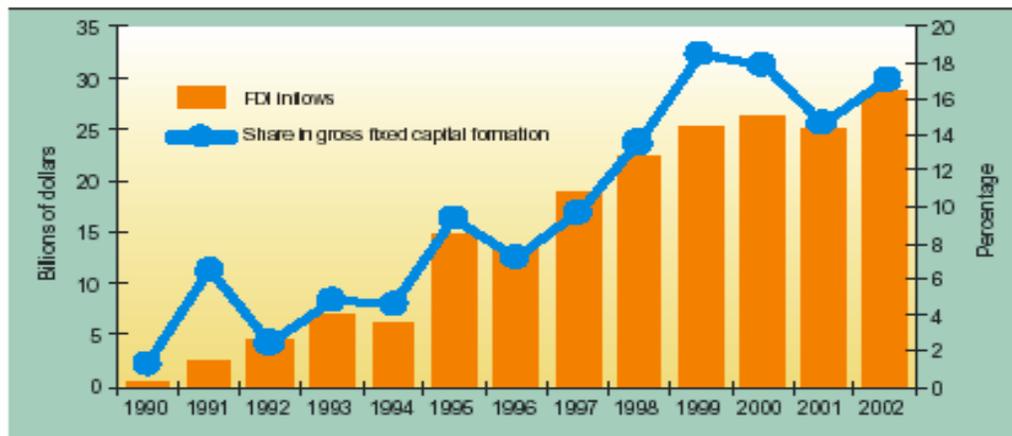
What yet has to be discovered, clear of prejudices and misbelieves is the exceptional meaning of the special legal framework that belongs to the *Giuliana* area, as above considered and outlined, which, for various reasons and conflicting interests, have never been either applied or challenged by any competent legal authority, apart from the only related *Maltese* judgment, issued by the Court of Appeals of Trieste and its specific outstanding significance<sup>30</sup>.

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<sup>30</sup> LS 2 August 1947 n. 811 I.  
TI 10 February 1947 PARIGI

Let alone the huge ancient grouping of logistic and transportation activities, extraordinary in the region forming the *Northern Range* (Belgium, The Netherlands, Germany) not less asymmetric appears the logistics of the domiciliary and financial activities with respect of the Foreign Direct Investment activities in Central and Eastern Europe, and the annexed holding location which means residing in the low concurring local and international taxation systems, prevailing in some Northern countries when agreements against double taxation meet the *Participation Exemption* provisions, on foreign subsidiaries income. With a shrewd legal framework, stemming from post war emergencies, The Netherlands, Luxembourg, the U.K., Austria and Belgium, among others, are providing special taxation features to foreign activities with respect to the global operators. The holding status when exemption from foreign produced incomes and no withdrawal taxation, has been progressively attracting global operators scared by the complex Latin taxing attitudes, hardened by the prevailing public deficits, stability pacts and often impenetrable and complex legal rulings and compliances.

Figure II.19. CEE: FDI inflows and their share in gross fixed capital formation, 1990–2002



Source: UNCTAD, FDI/NC database (<http://www.unctad.org/fdistatistics>).

TI 5 October 1954 LONDRA

*Ai punti franchi del porto di Trieste si applica la disciplina prevista dal trattato di pace di Parigi del 10 febbraio 1947 (all. VIII), così come confermato dal "memorandum" d'intesa di Londra del 5 ottobre 1954 (par. 5), con la conseguenza che le operazioni portuali svolte in dette aree possono avvenire senza ingerenza delle autorità doganali.* (Trieste Courtyard, 13 May 1997 Soc. Crossbow c. Min. fin. and another Foro it. 1998, I,1318 note (MALTESE)

Central Europe appears today as the centre of the potential whole world's foreign investment flow: according to the Conference on Trade and Development of United Nations, in the dynamic of FDI in the ex COMECON<sup>31</sup> area a spectacular rate of growth has been observed and an asymmetric pattern, notwithstanding the stagnation global FDI phase.

In the study of all the historical available data, considering financial flows, related to the foreign direct investments in Central Europe, seem surprisingly recurring the steady constant presence of The Netherlands location as a source of capital, Country affirming itself over its actual financial structure – the land has only 17 millions inhabitants out of the 337 millions before the 2004 European enlargement corresponding to 4,2% - and has always been on top inside the financial statistics of the European Union, as detailed in the table considering the Czech Republic, or more in general in the evolution of all the European Union financial flows stemming from the most developed and relevant areas supporting global firms as shown in the following table.

In the case of the Czech republic, the evolution of the 1993-2003 data, confirms the effect of the Netherlands appealing services to the global enterprises, searching for strategic headquartering paths reflecting the desire to reach satisfactory tax planning schemes, as well as the relevant presence of the German industry, perceptibly active in the outsourcing processes.

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<sup>31</sup> [Brian Carnell](http://www.overpopulation.com/articles/2003/000071.html), *World Investment Fell Everywhere But Central and Eastern Europe in 2002*. <<  
<http://www.overpopulation.com/articles/2003/000071.html>>>