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The EU-Ukraine Agreement on Deep and Comprehensive Free Trade Area (DCFTA) as an example of a new generation of preferential agreements

Introduction

The EU trading policy is based on the assumptions that free trade and market access to the co-operation with other countries and regions have positive impact on economic growth and the creation of work places. The opening of the European market is a process that has significantly gained in momentum in the last decade. At the end of 2013 there were 28 trade agreements of EU with third countries. After a successful conclusion of the negotiations that are now under way the free trade agreements will account for two thirds of the EU trade¹. One of the latest concluded agreements is the agreement with Ukraine. Currently, Ukraine is in a difficult political and economic situation which – among other effects – results in the decrease of the Polish-Ukrainian trade. In January 2013, the share of Ukraine in the Polish exports and imports amounted to 1.3% and 0.8%, respectively². That means a decrease in comparison to January 2014 and a fall of Ukraine in the ranking list of Poland's trading partners in which Ukraine is ranked 18th (the exports) and 23rd (the imports). However, it should be pointed out that the political reorientation of Ukraine is accompanied by the change in the exports trends. The position of Russia as the main trading partner has been weakening. Ukrainian companies, which are deprived of the possibility to sell their products in the East, are naturally forced to make attempts at exporting the goods to the EU market. A complex political situation and a poor condition of the economy do not eliminate future Ukrainian opportunities regarding the vast and close, both geographically and culturally, European market. The chances of the expansion of the mutual trade and the increase of direct investment have been noticed by business³. The EU-Ukraine Association Agreement, and particularly its part on the creation of Deep and Comprehensive Free Trade Area (DCFTA) aims at supporting the fulfillment of such goals.

¹ The European Union Explained: Trade, European Commission, Publication Office of the EU, Luxembourg 2014, www.europa.eu/pol/index_en.htm (Accessed: 18.02.2015), p.10.

² Obroty handlu zagranicznego ogółem i według krajów w styczniu 2015, GUS, www.stat.gov.pl/obszary-tematyczne/ceny-handel/obroty, (Accessed: 15.04.2015).

³ Cf.: M. Duszczyk, Polskie firmy mają szansę wprowadzić Ukrainę do Unii, [in:] Rzeczpospolita, 18 December 2014, p. B10-B11.

The aim of the paper is to analyze the EU-Ukraine agreement in the context of the present trade relations and to determine its impact on the future economic trends in Ukraine. The analysis of the DCFTA agreement will help in the determination of the scope of the proposed convergence of the regulations and procedures that are in force in the area under integration.

1. EU free trade policy

Article XXIV of the General Agreement on Tariffs and Trade (GATT) makes it possible for regions to enter free trade agreements. They are accepted if they aim at the facilitation of trade (and not the creation of new barriers), they cover the whole range of trade and are notified by the World Trade Organization (WTO). The number of regional trade agreements has been increasing in the last two decades. The main reasons for signing that type of agreements include:⁴

- expectations as regards economic benefits, such as the increase of investment attractiveness, the expansion of the market, the creation of the scale effect;
- the necessity to adapt to the decisions made by main trade partners;
- the aim to strengthen or accelerate internal reforms by accepting legal and organizational standards of the other party;
- the attempts to improve the negotiation position in the relations with other countries.

At present, due to a low level of taxes in GATT/WTO countries, tariff preferences do not play a significant role in the stimulation of trade. Greater importance is attached to the removal barriers that are technical, legal or organizational in character⁵. Consequently, the founders of new free trade areas focus on the strategy of ensuring market access rather than on the removal of customs duties or political goals. As a result, the agreements themselves should have a more complex form and cover a significant number of various areas of regulations. One should not ignore the fact that the increase of the popularity of regional trade agreements is largely the result of the successful economic integration of Europe. Apart from the disputes as regards its real effects, there is no doubt that the foundation of EEC (1957), the European tax

⁴ E. Kawecka- Wyrzykowska, Preferencyjne porozumienia handlowe: ułatwienie czy bariera dla wielostronnego systemu handlowego WTO oraz handlu międzynarodowego, paper for the PAN and RAN scientific conference, June 2013, www.kawecka.eu/files/preferencje_porozumienia_handlowe-2013.pdf, pp. 5-7.

⁵ R. Baldwin, Economics, [in:] Preferential Trade Agreements Policies for Development. A Handbook, (ed.) J. -P. Chauffour, J.- Ch. Maur, World Bank, Washington 2011, p.69.

union (1968) and the single European market (1993) and a further integration (including the enlargement of EU by new members) resulted in the development of trade, the economic growth and the increase of the welfare in EU member-states⁶.

According to the European Commission, the fundamental objective of free trade agreements is to open new markets for goods and services, increase investment opportunities, make trade cheaper by reducing customs duties and bureaucracy, make trade faster by facilitating goods' transit through customs and setting common rules on technical and sanitary standards, make the policy environment more predictable by taking joint commitments on areas that affect trade such as intellectual property rights, competition rules and the framework for public purchasing decisions and support sustainable growth by promoting co-operation, transparency and dialogue as regards social and environmental issues⁷. So far, EU has signed free trade agreements with the following European countries (regions): Iceland, Norway, Switzerland and the Faroe Islands, and customs unions with Andorra, San Marino and Turkey. In 1995-2002, within the partnership with the Mediterranean countries, EU signed agreements with Algeria, Egypt, Israel, Jordan, Libanon, Morocco, Palestine, Syria and Tunisia. The treaties on stabilization and association with the West Balkans also include free trade agreements. EU-South Africa free trade area has been existing since 2000, since 2011 there has been an agreement with South Korea. The first agreements with the Latin America countries were signed with Mexico (in force since 2000) and Chile (since 2003). There has been a significant progress recently as regards the relations with this region. In 2012, EU signed an agreement with Peru and Columbia (in force since 2013); Ecuador made a decision to join the agreement and in 2014 it completed the negotiations with EU. Moreover, in 2012 such Central American countries as Guatemala, Nicaragua, Honduras, Costa Rica, Panama and Salvador signed association agreements with EU (in force since 2013). EU signed some other agreements which are not in force yet. This applies to the agreements with Singapore, Canada and West Africa. At present, agreements are being negotiated with India, there are negotiations with the ASEAN (Association of Southeast Asian Nations) countries – Malaysia, Vietnam and Thailand, the

⁶ B. Mucha – Leszko, Korzyści międzynarodowej integracji gospodarczej a osiągnięcia i problemy Unii Europejskiej, [in:] Przyszłość integracji europejskiej – konkurencyjność i rynki, (ed.) W. Bieńkowski, S.I. Bukowski, G. Olszewska, Wyd. Cedetu, Warszawa 2012, 19-22.

⁷ The European Union Explained: Trade, , op. cit. p.7.

MERCOSUR countries (Argentina, Paraguay and Uruguay), and with Japan and the United States (TTIP).

At present, the European Union is constructing a program of entering into or expanding agreements on free trade with its main trade partners⁸. The declared objective is to open the markets in order to increase bilateral trade. The East-European direction is one of the crucial directions of the EU trade policy. So far, EU has completed agreements on establishing Deep and Comprehensive Free Trade Area with Moldavia, Georgia and Armenia. The provisions of the agreements with Moldavia and Georgia have been applied temporarily since 2014, while the agreement with Ukraine will come into force on 1 January 2016. Armenia decided to resign from the association with E and joined the customs union with Russia.

1. The characteristic features of trade relations between EU and Ukraine

In 1990s the relations between EU (the European Community at that time) were based on the Treaty on Partnership and Cooperation of 14 June 1994, which came into force on 1 March 1998. However, it did not provide any special conditions, either in the economic or political area⁹. A certain breakthrough was created by the project of the so called Eastern Partnership presented by Poland and Sweden, which concerned Ukraine and some other post-Soviet countries. The project aimed at improving the cooperation with the new partners, however, without the prospect of EU membership. The proposal included, among other things, the removal of visas, establishment of free trade areas, harmonization of legal systems and the cooperation in the fields of politics, economy and social issues. Ukraine joined the Eastern Partnership during the Prague summit in 2009. That fact did not involve an automatic acceptance of any particular solutions but it enabled the commencement of talks concerning association agreements. The negotiations between EU and Ukraine lasted from 2007 till the end of 2011 and the agreement itself was initialed in 2012.

So far, from the EU point of view, the trade with Ukraine has been comparatively insignificant (1.1% of its turnover). Ukraine ranks 27th and 19th in its share in EU imports(0.8% and exports 1.4%), respectively. From the perspective of Ukraine, the situation is different as

⁸ Ibid, pp.10-11.

⁹ A. Staszczuk, Stanowisko Parlamentu Europejskiego wobec procesu stowarzyszeniowego z Unią Europejską, [in:] Polityka i Społeczeństwo, No 3(11)/2013, p.101.

the single European market is one of the two main points of reference. In 2013 the total value of trade the total value of Ukraine's foreign trade with EU amounted to as much as 31.4%, which made EU a major trade partner, before Russia (27.3%) and China (7.6%) [Table 1]. Other trade partners of Ukraine are: Turkey, Belarus, USA, Egypt, India and Kazakhstan. It should be emphasized that there are two dominating directions in the Ukrainian trade: EU and Russia, which together account for over half of the trade value. The value of trade with other countries is insignificant or even marginal [Tab. 1].

Table 1. Top trading partners of Ukraine by total trade value (2013, in mln euro)

Partner	Value	Share
1. EU	33.589	31,2%
2. Russia	29.368	27,3%
3. China	8.149	7,6%
4. Turcja	4.339	4,0%
5. Belarus	4.286	4,0%
6. USA	2.807	2,6%
7. Egypt	2.191	2,0%
8. India	2.157	2,0%
9. Kazakhstan	2.149	2,0%
10. Japan	1.107	1,0%

source: DG TRADE Statistics¹⁰

The most significant role in the structure of the imports from Ukraine to EU is played by the products from section XV of the Harmonized System, which includes base metal and articles thereof (25.5%), by vegetable products (19.9%) and mineral products (18.8%) [Table 2]. Thus, they are products of low level of processing. The main products that are exported by EU to Ukraine include: machinery and appliances (23.8%), vehicle, etc. (10.70%), products of the chemical or allied industries (15.40%) and mineral products (10.6%). [Table 2]. The figures imply the dependency of Ukrainian economy on the exports of vegetable products, metallurgical products and iron ores.

Table 2. Structure of EU-Ukraine trade in 2013 (in mln of euro)

Section Number in Harmonized System (HS)	Products	Imports to EU	Share %	Exports from EU	Share %
Section I	Live animals; animal products	42	0,30	432	1,80
Section II	Vegetable products	2.747	19,90	753	3,10
Section III	Animal or vegetable fats and oils	464	3,40	70	0,30
Section IV	Foodstuffs, beverages, tobacco	532	3,80	958	4,00
Section V	Mineral products	2.602	18,80	2.549	10,60
Section VI	Products of the chemical or allied industries	532	3,80	3.677	15,40

¹⁰ http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf (Accessed: 18.02.2015).

Section VII	Plastics, rubber and articles thereof	75	0,50	1.548	6,50
Section VIII	Raw hides and skins, and saddlery	114	0,82	177	0,70
Section IX	Wood, charcoal, cork and articles thereof	548	4,00	241	1,00
Section X	Pulp of wood, paper and paperboard	44	0,30	707	3,00
Section XI	Textiles and textile articles	342	2,50	1.185	4,90
Section XII	Footwear, hats and other headgear	77	0,60	216	0,90
Section XIII	Articles of stone, glass and ceramics	47	0,30	396	1,70
Section XIV	Pearls, precious metals, stones and articles thereof, coins	30	0,20	74	0,30
Section XV	Base metals and articles thereof	3.519	25,50	1.194	5,00
Section XVI	Machinery and appliances	1.202	8,70	5.698	23,80
Section XVII	Vehicles, aircraft, vessels and other transport equipment	175	1,30	2.572	10,70
Section XVIII	Optical and photographic instruments, etc.	24	0,20	469	2,10
Section XIX	Arms and ammunition	3	0,02	17	0,07
Section XX	Miscellaneous manufactured goods (furniture, lamps, toys)	127	0,91	628	2,60
Section XXI	Works of art, collectibles and antiques	7	0,05	10	0,03
Section XXII	Not classified	568	4,10	370	1,50
Razem		13.820	100,00 %	23.942	100,00 %

źródło: DG TRADE Statistics¹¹

The development of mutual EU – Ukraine trading relations is hindered on the Ukrainian part by such system issues as the delayed tax refunds to exporters, the changing and obscure legal provisions, complicated and unclear administrative procedures, corruption and inefficient judiciary system¹². The access to the Ukrainian market is also restricted by a number of barriers that are both of tariff and non-tariff character. There are customs duties imposed on the exports of some breeding animals, raw hides, oil seeds, base metals, scrap metal and natural gas. Moreover, the development of mutual trade is not supported by the obligation of technical certification of the imported goods, a system of licenses and quotas, the obligatory registration of certain contracts as well as veterinary requirements. The application of different and unique solutions by Ukraine in this area obstructs significantly the development of trade with EU.

¹¹ http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113459.pdf (Accessed: 18.02.2015).

¹² Informacja o stosunkach gospodarczych Polski z Ukrainą, www.mg.gov.pl/files/KW%20Ukraina%2018%2009%202014.pdf (Accessed: 18.02.2015).

2. Main provisions of the DCFTA agreement

The DCFTA agreement constitutes a part of the EU-Ukraine Association Agreement¹³. It is predicted that the ratification process in all member-states will be completed and will come into force by the end of 2015. It should be pointed out that the EU-Ukraine agreement does not exclude the possibility to maintain or create free trade areas or even customs unions with third countries unless the resulting commitments are contradictory. Apart from an extensive political part of the association agreement itself with declarations concerning common values (of freedom, justice and security), mutual cooperation, dialogue, the support of Ukrainian reforms and the cooperation in the areas of foreign and security policies, the agreement includes a comprehensive Title IV (*Trade and Trade-related Matters*). Its main provisions concern the formation, along article XXIV of GATT, of a free-trade area covering EU and Ukraine within 10 years. That implies, first of all, a mutual preferential treatment of imported goods that comply with the territorial requirement. Moreover, the agreement provides for a gradual removal of customs duties in line with the accepted schedule of liberalization, the reduction of the so called technical barriers in trade, the facilitation in the application of sanitary and phytosanitary measures, the convergence of customs regulations, the protection of intellectual property and other other specific provisions.

In the short term, the provisions concerning the removal of the import and export duties by EU and Ukraine are the most significant element of the DCFTA agreement. These provisions regard customs duties, surtaxes and additional payments charged for the imported or exported goods with the exception of internal taxes, anti-dumping and countervailing duties as well as handling fees. Annex I-A to Chapter 1 includes separate for EU and Ukraine tables of the removed duty rates. Three methods of their reduction has been provided for. Firstly, by a single decrease to a particular duty rate, e.g. 0 or 5%. Secondly, by declaring a percentage decrease in a given period of time, e.g. “ a decrease by 50% within 7 years”. Finally, in the case of sensitive products, a decrease may consist in the determination of tariff quotas in terms of particular volume, e.g. “120 000 tons/year expressed as net weight” The quotas regarding the imports of goods to Ukraine have been determined for pork, poultry and sugars. In the case of the exports to the EU area the list is much wider and includes pork, beef, mutton, poultry, milk, cream, milk powder , butter, eggs, honey, sugars, cereals and cereal products, fruit and vegetable

¹³ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part , Official Journal of EU L 161, 29.05.14.

products, ethyl alcohol. Due to the fact that Ukraine applies export duties, the DCFTA agreement provides a schedule of their elimination. The decrease from the level of 23% to zero is to be achieved within 10 years and should cover all products that are subject to such duties at present, i.e. domestic cattle, sheep, lin, sunflower and rapeseeds, rawhide, waste and scrap of iron, copper, nickel, aluminum, zinc and lead, tin, tungsten, titanium and cermet.

Several specific provisions of DCFTA concern technical aspects of the trade:

- classification of products based on Harmonized System,
- complete removal of export duties,
- no subsidies for the exports of agricultural products,
- the acceptance of the prohibitions and restrictions provided by article XI of GATT,
- the confirmation the right to implement security measures provided for by annex 1A of the WTO Agreement ¹⁴ (i.e. the anti-dumping and countervailing duties),
- the agreement to apply higher duties on EU cars by EU Ukraine.

It should be noted that the majority of the above arrangements constitute a confirmation of the commitments of EU and Ukraine that result from their membership in WTO. However, some of them are the result of a compromise. Particularly, the following two are worth mentioning. Ukraine committed itself to a complete resignation of exports duties and taxes. However, in the transition period of 15 years following the agreement's coming into force, Ukraine can apply additional exports duty as a security measure. That refers to such products as raw hides, sunflower seeds, iron and base metal scrap, stainless steel and copper. As regards the imports, a similar measure will be applied to cars imported by Ukraine from EU. In this case, Ukraine retains the right to impose higher duties on imported products in a 15-year transition period. Such an option can be applied after a one-year grace period and requires the fulfillment of some additional conditions :

- when the volume of the imports of passenger cars is significant in comparison to the Ukraine's production and, consequently, may pose a danger to the country's industry,
- when the volume of the imports exceeds the limit and percentage value as defined in the table of duty rates (annex II to the agreement).

¹⁴ Annex 1 A of the WTO Agreement approved by the decision of the Council (CE) 94/800/WE of 22 December 1994 includes The General Agreement on Tariffs and Trade 1994 (GATT 1994) , Agreement on Agriculture, Anti-dumping Agreement of 1994, Agreement on Subsidies and Countervailing measures, Official Journal of EU, L336, 23.12.1994.

Ukraine committed itself to harmonize gradually its technical regulations and market surveillance procedures in terms of standardization, accreditation, metrology and conformity assessments with EU provisions. That means the acceptance of the surveillance system provided for by the Decision No 768/2008/EC of European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products and the Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products¹⁵. According to the DFCTA provisions, Ukraine should gradually transfer European standards to its legal system and, at the same time, to withdraw all other contradictory standards, both national and international in character. The agreement was supplemented by a protocol: Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). It was decided that the implementation of changes aiming at the adjustment of the Ukrainian legislation to EU standards should proceed comparatively promptly. According to the accepted schedule, only within a year after entering the agreement into force, Ukraine should adopt horizontal legislation as regards products, i.e. the provisions concerning general safety of products, accreditation and market surveillance related to launching new products, units of measurement and the responsibility for faulty products. However, in the longer, three- to five-year periods, sector regulations should be adjusted. They include – among others – regulations regarding appliances, electromagnetic compatibility, pressure appliances and containers including transportable equipment, lifts, safety of toys, electrical equipment, appliances burning gaseous and liquid fuels, energy efficiency for household refrigerators, measuring equipment, non-automatic weighing instruments, medical devices, marine equipment, radio and telecommunication instruments, construction products and packaging.

Both parties decided on the convergence of provisions as regards sanitary and phytosanitary legislation. That means, first of all, the implementation by Ukraine of the provisions resulting from the commitments accepted within the framework of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the so called SPS agreement)¹⁶. The facilitation of trade between EU and Ukraine of products that are subject to sanitary and phytosanitary supervision will be achieved mainly by the convergence of regulations that are in force in both areas and by the harmonization of the procedures concerning imports control,

¹⁵ Cf. Com (2013)75 final, 2013/0048 (COD), Product Safety and Market Surveillance Package, European Commission, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0075:FIN:EN:PDF> (15.04.2015).

¹⁶ Op. cit. annex 1A of the WTO Agreement

certification, issue of document and the mutual verification of the implemented supervisory system. Moreover, as regards GMO, Ukraine committed itself to a complete adjustment of its regulations to the EU legislation.

3. The accepted changes in the Ukrainian trade and customs procedures

The DCFTA Agreement provides also for the harmonization of the Ukrainian trade and customs provisions to EU standards. The objective is to establish a possibly homogenous operational environment for business in the new free trade area. The convergence of regulations and customs procedures is crucial as it eliminates a significant administrative barrier in trade. Apart from general declarations, the DCFTA Agreement provides for several practical solutions. In fact, they consist in accepting the legacy and organization system of WTO, UN and EU by Ukraine, which decided on accepting particular procedures and regulations. Thus, Ukrainian commitments include:

- the use of uniform administrative document for customs applications in line with the international standard,
- the implementation of modern customs techniques such as selective inspection based on risk assessment and ex post audits,
- the implementation of the provisions of international conventions regarding customs and trade area such as Framework Standards to Secure and Facilitate Global Trade (WTO, 2005), the Istanbul Convention on temporary admission (1990), the International Convention on the Harmonized Commodity Description and Coding system (1983), the International Convention on the Harmonization of Frontier Control of Goods (1982), the Kyoto Convention on the simplification and harmonization of Customs procedures (1973),
- the development of binding tariff and binding origin information,
- the implementation of simplified customs and border procedures,
- the participation in the electronic transit system within a common transit procedure,
- the guarantee of the right to appeal from unfavorable decisions and actions of authorities,

- the acceptance of the EU customs policy¹⁷.

The convergence schedule of the provisions provides for the introduction of adequate regulations to the Ukrainian legislation within 1 – 3 years. The convergence of the legal systems is intended to regard first of all the Union Customs Code, the Convention of 20 May on the simplification of formalities in trade in goods, the Convention on a common transit procedure, the Regulation on a Community system of reliefs from customs duty, the regulations on intellectual property protection¹⁸.

Conclusion

Several conclusions can be drawn from the above analysis. First of all, the DCFTA agreement between EU and Ukraine covers the whole area of regulations that are related to launching imported goods on the markets of EU and Ukraine. Secondly, the implementation of the agreement will require the acceptance of EU legal and organizational standards by Ukraine, which will adapt its products and trading and administrative procedures to the requirements of the EU market. An actual approach of Ukraine towards the requirements resulting from its membership in the GATT/WTO system will be an indirect consequence of the DCFTA agreement. Thus, the agreement on the creation of a free trade area that includes EU and Ukraine is a project which is a part of EU strategy aiming at opening new markets and developing closer trade relations with other, especially neighboring, regions. It should be noted that the case under analysis is a new type of an agreement where the parties do not only liberalize their customs duties or the import restrictions but make an attempt to make a comprehensive agreement that concerns technical arrangements for mutual access to the markets. In this case, that means practically the acceptance of the standards that are in force in the significantly larger EU economy. One can expect that DCFTA Agreement between EU and Ukraine will result in the increase of the trade and a real economic reorientation of Ukraine.

¹⁷ Cf. Regulation No. 1294/2013 of the European Parliament and of the Council of 11 December establishing an action program for customs in the European Union for the period 2014 – 2020.

¹⁸ Cf. Regulation No. 450/2008 of the European Parliament and of the Council, Council Regulation No. 1383/2003, Commission Regulation No. 1891/2004

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Abstract

The paper analyzes the EU-Ukraine agreement on the creation of Deep and Comprehensive Free Trade Area (DCFTA), which is a part of the EU -Ukraine Association Agreement. The agreement is an example of a new generation of preferential agreements which regulate in a complex way the issues regarding the access to markets. The analysis of the agreement is presented in the context of the current EU-Ukraine trade relations and the objectives of the EU trading policy.