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UKRAINE'S TRADE EVOLUTION: FROM LEGISLATION ALIGNMENT TO OVERCOMING THE GRAIN CRISIS

On its way to acquiring membership in the European Union, Ukraine is working on conforming its legislation to the union laws. Since the implementation of the Association Agreement, which strengthened trade relations between the EU and Ukraine, this legislative compatibility process has become essential to guaranteeing seamless import and export operations between the sides.

To understand Ukraine's current trade policies, it is crucial to examine its historical evolution. Ukraine's history, including periods of Soviet influence and post-Soviet independence, has left a lasting imprint on its trade strategies. The Soviet era brought about central planning and trade policies that prioritized the Soviet bloc, restricting Ukraine's international trade for a long time. As a result of the Soviet past, Ukraine lacks the institutions and traditions required for a legal system that could support the developing market economy [1, p.173]. Until recently, the CIS countries remained Ukraine's largest trade partners. However, over the course of past years, the country has been strengthening trading links with the West.

As a result of this development The Deep and Comprehensive Free Trade Area (DCFTA) was applied as a part of Association Agreement (hereinafter referred to as "AA") between the EU and Ukraine. The Ministry of Foreign Affairs of Ukraine at the time described it as "one of EU's most ambitious bilateral agreements" [2]. It may be so, as the DCFTA helps Ukraine promote its trade relations while also allowing both concerned sides to trade goods without having to pay customs tariffs and quotas.

Adoption of European standards as national standards intends simultaneous cancellation of conflicting national standards. According to Association Agreement, Ukraine must ensure compliance of its legislation, infrastructure, and practices to EU standards. Per AA, Ukraine must adapt its sanitary and phytosanitary laws to the EU requirements (hereinafter referred to as "SPS"). Implementation of a significant part of the SPS strategy is executed at the level of normative legal acts of the responsible central bodies of executive power. Such adjustments in the system would not only improve the level of health care in Ukraine, but they would also facilitate the export of agricultural produce and food to the EU and third countries.

The EU is one of Ukraine's largest commercial partners. Thus, there are numerous opportunities to import and export to Ukraine from the EU and vice versa. Yet, several factors impede the competitiveness of Ukraine-produced agricultural products on foreign markets. These factors include high transportation costs, technical barriers, stringent phytosanitary regulations, and, more importantly, underdeveloped infrastructure and

importing countries' protectionism policies. As part of the grain conflict, the latter two played critical roles in impeding Ukraine's international exports.

The grain crisis occurred when Ukraine's EU neighbours unilaterally embargoed grain exports. Since not being able to export goods through its Black Sea ports, Ukraine has been heavily reliant on its closest Western neighbours to deliver the produce to the EU and further. The aforementioned states expressed their dissatisfaction with the lifting of the export ban, since the exported grain, meant to eventually reach other EU countries, infiltrated their domestic markets. Consequently, significantly reducing the price of locally-produced items by as much as half.

Differing production standards again come into play in this case, as agricultural products from Ukraine are lower in price because of production costs in the country. Therefore, cheap grain from Ukraine caused a significant distortion of affected states' markets. Restriction of the import of Ukrainian grain by this group of countries focused on protecting each state's domestic market from foreign competition and, for this reason can be regarded as protectionism. However, the decision to ban grain imports was unilateral. Thus, Ukraine filed a lawsuit to the World Trade Organisation, stating that such actions can be considered a violation of international obligations by its EU neighbours.

WTO law states that "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party" [3]. Therefore, if an EU member state imposes a unilateral ban on the exports of a non-EU European state, it would be in violation of its WTO commitments unless it can justify the ban under WTO-recognized exceptions. Overall, this situation could have been resolved more quickly or prevented altogether if there were alternate transit routes, EU neighbours ensured their domestic markets were fully saturated with locally produced goods, and the exporting side - that is, Ukraine - provided reports on the amount of grain exported and the amount of grain received by the countries it was originally intended for.

Strengthening of trading links as a result of the application of DCFTA was achieved. Furthermore, it is customary to view the signing of AA with a non-EU state as a stepping stone to becoming a member of the union. However, the EU-Ukraine AA avoids any specification as to whether or when Ukraine will be given a chance to enter the EU. Therefore, the AA agreement is not a pre-accession to the EU formality, yet neither does it exclude a membership opportunity for Ukraine in the future. As with facilitated trading, Ukraine's partial integration into the EU can be ensured by aligning the Ukrainian judiciary and law enforcement systems with European standards. The process of legislative approximation is prognosed to take a long time and involve Ukraine's revision of its views on democracy, fundamental freedoms, respect for human rights, etc.

Overall, the DCFTA's impact on EU-Ukraine trade has been relatively positive. Although, the cooperation primarily relies on a single conditionality, allowing Ukraine to access the EU internal market once it approximates its national legislation with EU law. Therefore, legislative alignment of Ukrainian law to the EU requirements is unavoidable and is going to involve constitutional adjustments ratified by the Verkhovna Rada of Ukraine. As of now, international agreements, laws, and treaties are not compulsory for Ukrainian

legislation until they are adopted by the Verkhovna Rada, meaning that only after ratification the EU-Ukraine AA will be an integral part of the Ukrainian legal order.

So, since becoming a WTO member Ukraine has been faced with improvements as well as hardships in its trading business. The practical application of AA along with DCFTA expanded Ukraine's prospects of free trade and entailed the need for Ukraine to gradually implement various changes into its legal system with the end goal of completing the process of legislative approximation to the EU law. The AA and DCFTA combined constitute a viable instrument for encouraging economic reforms in Ukraine and help to partially integrate Ukraine into the EU Internal Market. The grain crisis clarified that Ukraine lacks transportation routes and suitable infrastructure for exporting its goods effectively to Central, Western Europe and beyond. The current grain crisis in Ukraine, characterized by logistical challenges and threats to grain shipments, can be resolved through a constructive approach involving the use of barges under the United Nations flag and the deployment of mobile air defence systems on board.

References:

1. Ukraine: Accelerating the Transition to Market, International Monetary Fund, World Bank, United States, 1997, ISBN9781557756190
2. Ministry of Foreign Affairs of Ukraine Ukraine-EU Association Agreement from 04.08.2021, [Electronic resource]. – Website. – Access mode: <https://mfa.gov.ua/en/about-ukraine/european-integration/eu-ukraine-association-agreement#:~:text=The%20Deep%20and%20Comprehensive%20Free,the%20most%20ambitious%20bilateral%20agreements.> - (date of application 22.09.2023).
3. ASSOCIATION AGREEMENT [Electronic resource]: [Document]. Access mode <https://www.kmu.gov.ua/storage/app/sites/1/uploaded-files/ASSOCIATION%20AGREEMENT.pdf>.
4. О. Гаманюк, С. Таран, М. Хорунжа, О. Шепотило, П. Яворський. Експорт України до ЄС: вплив нетарифних заходів [Electronic resource]: [Report]. – Kyiv. – Access mode https://kse.ua/wp-content/uploads/2020/02/EU-NTMs_2020-02-18_new-1.pdf.
5. Guillaume Van der Loo, Peter Van Elsuwege and Roman Petrov The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument [Electronic resource]: [Report]. – European University Institute, Florence, 2014. – Access mode https://cadmus.eui.eu/bitstream/handle/1814/32031/LAW%20_WP_2014_9%200.pdf?sequence=1&isAllowed=y.
6. Jacek Lepiarz, Bernd Riegert, Rober Schwarz Ukrainian grain: Why are eastern EU members banning imports? [Electronic resource]: [Article]. – DW, 2023. – Access mode <https://www.dw.com/en/ukrainian-grain-why-are-eastern-eu-members-banning-imports/a-66872238>.
7. World Trade Organisation The General Agreement on Tariffs and Trade (GATT 1947) [Electronic resource]: [Article]. — Access mode https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm.