

Kyiv National University of Trade and Economics

**DEEP AND COMPREHENSIVE FREE TRADE
AGREEMENT WITH THE EU:
ADVANTAGES AND DOWNSIDES
FOR THE UKRAINIAN SOCIETY**

Monograph

Edited by Ganna Duginets

Kyiv 2019

**All rights reserved; no part of this publication may be reproduced
or transmitted without prior permission
of Kyiv National University of Trade and Economics**

UDS 339.5.025.72

D 47

Authors: Duginets Ganna, PhD in International economics, Associate Professor of the International Economic Relations Department;
Mazaraki Nataliia, PhD in Law, Associate Professor of the International Private, Commercial and Civil Law Department;
Diachenko Olga, PhD in Economics, Associate Professor of the International Economics Department;
Golovachova Olga, PhD in International economics, Associate Professor of the International Economics Department,

Reviewers: Volodymyr Shchelkunov, Chairman, Adviser to Prime Minister of Ukraine, Doctor of Economics Science, Member of ICC World Council;
Olha Yatsenko, Doctor of Economics Sciences, Associate Professor, Professor of the Department of International Trade and Marketing Kyiv National Economic University named after Vadym Hetman;
Olha Bakalinska, Doctor of Law Sciences, Chair of the Department of international private, commercial and civil law Kyiv National University of Trade and Economics

*Recommended for publication by the Academic Board
of the Kyiv National University of Trade and Economics
(Minutes No. 2 of October 25, 2018)*

**D 47 Deep and comprehensive free trade agreement with the EU:
advantages and downsides for the Ukrainian society : monograph /
G. Duginets, O. Diachenko, N. Mazaraki, O. Golovachova ; edited
by Ganna Duginets. – Kyiv : Kyiv National University of Trade
and Economics, 2019. – 212 p.
ISBN 978-966-629-884-6**

This scientific work is a monographic research devoted to the study of the current state of implementation of the Deep and Comprehensive Free Trade Area (DCFTA) between Ukraine and the EU, aimed at assessing the current state of affairs as well as future prospects for Ukrainian enterprises. The main feature of studying the issues of the DCFTA is the constant systematization of the results obtained through studying ongoing processes, as well as their interpretation in accordance with the actual situation in the economy of both Ukraine and the European Union and the actual adherence to the commitments made for implementing the Agreement.

The text is printed in the author's edition

UDS 339.5.025.72

Монографічне дослідження, присвячене вивченню реалізації поглибленої та всеохоплюючої зони вільної торгівлі між Україною та ЄС, з метою здійснення оцінки поточного стану справ та перспективи розвитку українських підприємств в процесі її імплементації. Основною особливістю проведеного дослідження є постійна систематизація результатів, а також їх інтерпретація відповідно до реальної ситуації в економіці України та Європейського Союзу. Монографія є підсумком реалізації проекту, який здійснювався в КНТЕУ з вересня 2015 року по вересень 2018 року за підтримкою Європейського Союзу в рамках грантової угоди Програми Еразмус + Жан Моне.

Текст надруковано в авторській редакції

ISBN 978-966-629-884-6

© Duginets G., Diachenko O., Mazaraki N.,
Golovachova O., 2019

© Kyiv National University of Trade
and Economics, 2019

CONTENT

INTRODUCTION.....	4
Chapter 1. ASSOCIATION AGREEMENT BETWEEN UKRAINE AND THE EU.....	6
Chapter 2. CONSEQUENCES OF TARIFF LIBERATION FOR BRANCHES OF UKRAINIAN ECONOMY. MARKET ACCESS.....	30
Chapter 3. MEANS TO PROTECTING TRADE.....	61
Chapter 4. CUSTOMS ASPECTS AND PROMOTING TRADE	127
Chapter 5. TRADE AND STEADY DEVELOPMENT	140
Chapter 6. ESTABLISHING ENTREPRENEURSHIP, TRADING SERVICES AND E-COMMERCE	157
Chapter 7. LEGAL ASPECTS OF DCFTA.....	180
CONCLUSION	205

INTRODUCTION

Wide-spread and at the same time unique social and political changes began at the turn of the 20th and 21st centuries; they are connected to the transformation of the entire regional European space, the generating centre of which is the new Europe, namely the European Union – the centre of advancing civilization, an unprecedented international formation that appeared on the basis of long integration processes. EU today demonstrates the entire world the social, political and economic areas' development advantages, fulfilment of human rights, creating worthy living environment for the people.

The second decade of the 21st century became an exceptionally important period of modern history for Ukraine, because the country chose integration into the European economic, political and juridical space as the strategic direction for development. Deepening the cooperation with the EU is defined as the key foreign policy's priority and the strategic aim of Ukraine on both national and regional levels. As of today, relations between our country and the EU are at a new level of cooperation developing, especially in the context of the signed on March 21st 2014 political part and on June 27th 2014 – the economical part of the Association Agreement. Given that, the Ukrainian society requires educating and informing about the country's future in the context of forming a European model of regional development. Thus, disregarding the thorough support from the EU, every subject of the Ukrainian society has to understand, which advantages must be utilized in the context of bringing into reality the provisions for Deep and Comprehensive Free Trade Agreement (DCFTA), which is an integral part of Association Agreement. The module is dedicated to an in-depth analysis of key aspects of each part of the provisions with identifying opportunities and problems for the Ukrainian society. Considering the subject of the module, it is the Kiev National University of Trade and Economics that has a sufficient scientific and pedagogical potential for spreading the information in the

form of explanatory lectures and seminars for a wide range of population that is unfamiliar with the basis of the EU's operation.

The preparation of the monograph's contents was attended to by scientists of the Kyiv National University of Trade and Economics. Since the issues and individual conclusions presented in the monograph are of a controversial nature, the authors are open to communication and suggestions on further direction for scientific study.

The authors of individual chapters are:

Duginets Ganna – Introduction, Chapters 1, 2 and 5
(in co-authorship);

Golovachova Olga – Chapters 2 and 5 (in co-authorship); 6;

Diachenko Olga – Chapters 3 and 4;

Mazaraki Nataliia – Chapter 7.

Chapter 1

ASSOCIATION AGREEMENT BETWEEN UKRAINE AND THE EU

Modern scientific literature studies international economic integration as a result of two contradictory trends in the development of the global economy – globalization and fragmentation. At the same time, different approaches emphasize the one or the other aspect of integration, which per se fits into the general understanding of the international economic system. We, in turn, agree that international economic integration is a mutual interweaving of national production processes, based on the division of labor between national economies, and the establishment of stable relationships and various forms of interaction between them. The objective basis of integration is the high level of international division of labor and the internationalization of production.

In world practice, there are several successive stages of integration and the corresponding types of integration associations. These are represented by a free trade area, a customs union, a payment union, a common market, and an economic union. In the formation of zones of preferential and free trade and customs unions, international relations are related only to the sphere of exchange, that is, trade integration is developing. Deeper forms of intergovernmental coordination create conditions for integration in the sphere of production. The levels, forms and pace of international economic integration are closely interconnected. Today, regional trade integration – free trade zones and customs unions – prevails. In turn, the number of free trade zones by far exceeds customs unions. They make up almost 90% of all regional trade deals.

Globalization is the driving force behind regional integration processes, which are aimed at countries' finding their place in the world economic system through collective efforts. Since the

beginning of the 1990s, regional trade agreements, including FTAs and Customs Unions, have become the most common form of economic integration. An FTA means eliminating barriers to trade in goods and services between signatories of the agreement, whereas a CU includes not only the creation of an FTA, but also the maintenance of a common commercial policy in relation to third countries. Consequently, a customs union represents a higher level of economic integration and implies the positioning of individual states as a single entity in the world markets.

It should be noted that Europe became the first continent where integration processes began. The European Union (EU) is one of the largest and most powerful economic regions in the world. This means, in particular, high demand from companies, the public sector and consumers in this economic zone. As a result, the European Union countries are attractive markets for products and services from abroad.

In its development, the integration association underwent almost all the classic stages of international integration; meanwhile, the political union is only at the initial stage of formation. Since 2004, the process of adopting and ratifying the European Constitution goes on.

In today's conditions of development of European integration, characterized by the joining of countries with different levels of development, there is a need for defining models of differentiated integration and for experience in their practical implementation. Such studies may be extremely important for Ukraine in view of the gradual implementation of state policy in the field of European integration.

Differentiated integration is classified according to the criteria of time, space and subject. Accordingly, there are such concepts of differentiated integration as «multi-speed Europe», «European menu» (Europe «A La Carte», «sectoral», «selective» integration) and Europe of «variable geometries»¹ (Figure 1.1).

¹ Stubb A. (1998) The Amsterdam Treaty and Flexible Integration. ECSA Reviev. Vol. 11. N 2. P. 1–5.

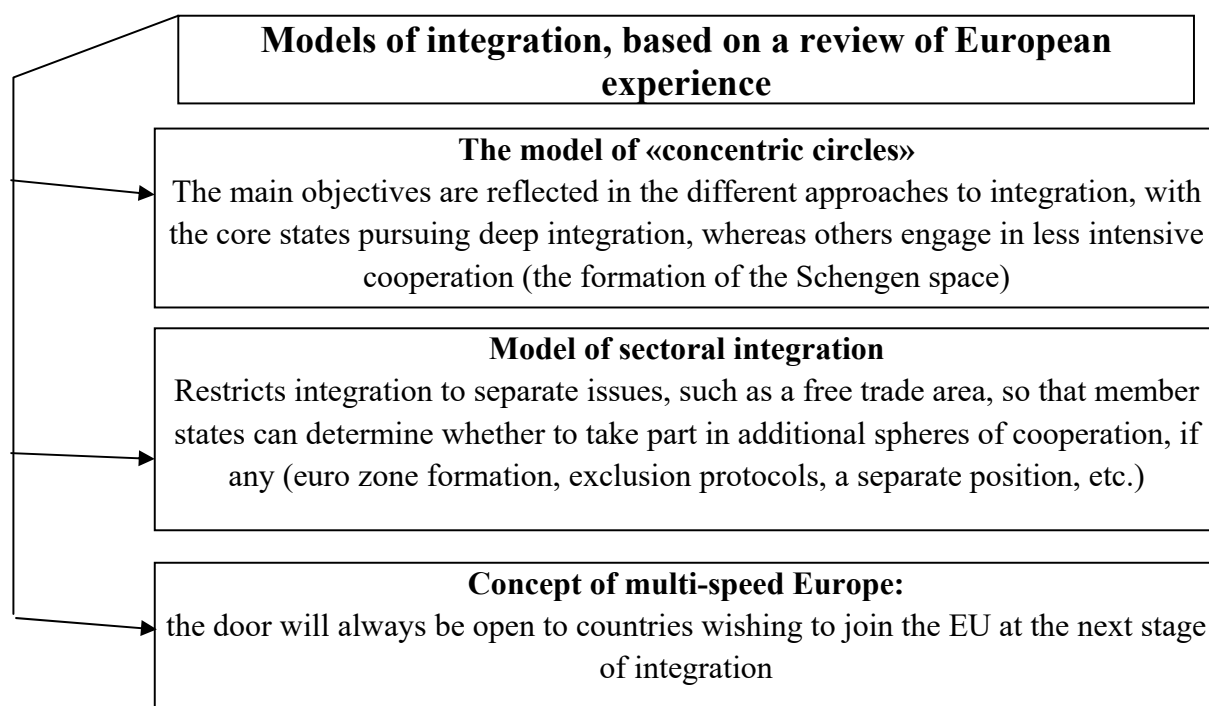


Figure 1.1. Models of integration, based on a review of European practice

Source: compiled by the author by²

It should be noted that the above models were effective at the end of the twentieth and in early twenty-first century. In the second decade of the twenty-first century, global transformational changes in the system of international economic relations led to the need for the formation of new models of integration interactions. At the same time, European integration remains a multi-speed process due to the heterogeneity of the continent. While Western Europe step by step created and expanded a zone of peace, security and prosperity, the states of Central and Eastern Europe have been separated from the European processes for four decades, under the Soviet military, political and economic hood. The strategy of «return to Europe», adopted by these states after 1989, has reached its main goal only in 2004–2007, although overcoming the imbalances between the old and new members of the EU remains an urgent task at the beginning of the 21st century.

² Stubb A. (1998) The Amsterdam Treaty and Flexible Integration. ECSA Reviev. Vol. 11. N 2. P. 1–5.

The dynamics of the association's foreign trade relations in the first 15 years of the XXI century were characterized by, first of all, rather considerable trends towards the growth of trade unevenness and the gradual weakening of the European Union's positions in the system of modern international commodity trade. Since the implementation of the plans for the fifth enlargement of EU membership in 2004, there has been a clear trend towards a decrease in the group's share in the value of global exports of goods – from 40.6% to 36.7% in the crisis year 2009 and to 32.7% in 2015. Similarly, there was a reduction of the EU's share in the cumulative value of world purchases of imports: from 39.8% to 36.9% and 31.4%, respectively³. While ongoing efforts to increase the number of EU member states in 2007 and 2013 had a temporary positive impact on the dynamics of external trade contacts of the European Union as the largest collective partner in the sphere of international commodity exchange, the overall downward trend remained quite tangible. Such a sharp decline in the EU's share in global merchandise trade is due to a fall in relative indicators of exports (imports) of goods of the flagship of the European economy – Germany, as well as of the leading EU exporters (importers) – France, the Netherlands, Britain, Italy, Belgium and Spain. In the aggregate, the losses in the contribution of the EU countries to world exports amounted to 6.8 percentage points (and in imports – 6.3). The situation wasn't remedied by the significant increase in export activity (after joining the EU) of such states as Poland and the Czech Republic, which finish the group of leaders in the EU's foreign trade. By the way, in general, the downward dynamics of the corresponding indicators are more typical for the «old» Europeans, while for the «new» Europeans it is, on the contrary, upward.

Equally noticeable was the trend in the geographical distribution of export-import commodity flows of the European Union, especially in the period after the global financial and economic crisis of 2008–2009. As seen in the calculated data of Table. 1.1, in the post-crisis years, the EU foreign trade structure

³ UNCTAD (2017), Key Statistics and Trends in International Trade 2016, United Nations Geneva. Electronic resource, URL : http://unctad.org/en/PublicationsLibrary/ditctab2016d3_en.pdf

saw a noticeable tendency towards a gradual decrease in both absolute and relative indices of commodity export and import carried out within the grouping.

After certain transformations, trade within the group decreased in its total value by more than 2 percentage points – to 61.2%, which is significant, given the shortness of the time period under review. Meanwhile, it should be noted that the global downward trend in 2015–2016 was more than a decline in the EU's international trade – it made it possible to increase the share of the EU in world trade during this period (Table 1.1).

Table 1.1

Dynamics of foreign trade of the European Union, 2011–2016

Indicators	2011	2012	2013	2014	2015	2016
Export, world, total, billion USD	18 081.1	18 367.9	18 868.9	18 877.8	16 345.4	15 767.9
EU exports, total billion USD	5 942.5	5 691.2	5 999.5	6 027.2	5 349.9	5 278.8
% of the world total	32.87	30.98	31.80	31.93	32.73	33.47
EU exports, total %, including:	100.00	100.00	100.00	100.00	100.00	100.00
Export of EU, within grouping, % of total	63.25	61.51	61.05	62.20	61.21	60.11
Export of EU, to other countries, % of total	36.75	38.49	38.95	37.80	38.79	39.89
Import, world, total, billion USD	18 321.9	18 511.4	18 892.4	18 933.3	16 548.1	15 830.2
EU imports, total, billion USD	6 146.1	5 741.6	5 838.7	5 916.8	5 193.2	5 083.1
% of the world total	33.55	31.01	30.91	31.25	31.38	32.10
EU imports, total %, including:	100.00	100.00	100.00	100.00	100.00	100.00
Import of the EU, within the union, % of the total	58.10	57.13	58.93	59.48	58.50	57.30
EU imports, from other countries, % of the total	41.90	42.87	41.07	40.52	41.50	42.70

Source: compiled and calculated by the author on the basis of⁴

⁴ United Nations. International Trade Statistics Yearbook 2016, New York, 2017. URL : <https://comtrade.un.org/pb/downloads/2016/ITSY2016Voll.pdf>

Accordingly, indices of EU merchandise exports to third (i.e. non-EU states) countries showed growth, which is most likely due to the desire of the EU members to expand and diversify external markets for their products. It is clear that in the conditions of instability of world prices for energy carriers and finished products, members of the European Union would look for new promising opportunities for selling their goods outside of the bloc.

In the sphere of import purchases of commercial products in 2011–2015, in general, there was a decrease in absolute value indicators, with some fluctuations, against the backdrop of a relatively stable state of share distribution of commodity flow both within and outside the European Union (see Table 1.1). However, while one can note fluctuations in the dynamics of cost parameters in trade contacts between the EU member countries, the imports from third countries show a steady decrease in the cost of commodity imports. At the same time, it should be borne in mind that a decrease in the volume of exports in 2015 was noted at the global, regional and country levels. At the heart of this laid a significant drop in prices for major commodity groups.

Also, the events that have occurred in the last few years on the European continent, such as «Brexit», the growing influence of populist anti-European political forces in member states, the spread of euroscepticism, and the migration crisis that has sharpened the issue of solidarity and of European countries' common values, have had a significant impact on the development of integration processes.

Brexit was, certainly, an unprecedented event in European history, being partly a manifestation of the EU's internal problems. If, theoretically, some country could leave the EU, it could only be Britain, which has always been an example of a country with a large number of exceptions from EU rules. As a consequence, under the circumstances of the migration wave crisis, increased terrorist activity and the intensification of disintegration processes in Europe, Britain, which has been one of the centers of support for the policy of EU expansion, implements a radical scenario of supporting primarily national security. It is highly unlikely that any country

would be able to repeat this in the future without significant negative consequences. Although in the case of Britain, too, one cannot exclude such scenarios as when these actions would lead not only to the partial disintegration of the EU, but also to the destruction of Britain's own unity (the possible referendum on the independence of Scotland). Despite Brexit, however, I must note that the EU-27 still represents one of the largest single markets, along with the United States, and most of the countries that are members of the EU know that they will lose more than they gain from exiting it.

Brexit changes the traditional configuration of forces in the EU. Now, the question of reviving the Franco-German axis is becoming urgent. But, in respect to the time of the EU's formation in the middle of the twentieth century, modern France and Germany have changed quite significantly. The weight of the latter on the world arena has grown significantly, and that of the former has decreased. In the future, for the informal harmonization of the EU's most important decisions, it will become necessary for a new leader to step up among other members of the association to join France and Germany. Time will tell whether it will be Italy, Spain or someone from the Visegrad4 countries. Speaking of which, it should be noted that the chairmanship of Slovakia, the smallest of the Visegrad4 countries and one of the youngest European states, has left behind no problems that Malta will have to solve. I think one can speak of a policy of real European balance, which began to form during the presidencies of the Visegrad4 countries. A third force is forming within the EU, aimed both at maintaining stability within the EU, and at creating a friendly atmosphere on its eastern borders.

The EU practices:

– Partnership and Cooperation Agreements – with Ukraine, Russia, Belarus, Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan, Moldova.

- Stabilization and Association Agreements – with Albania, Croatia, Macedonia, Bosnia and Herzegovina, Montenegro, Ukraine, Georgia, Moldova;
- Mediterranean Partnership Agreements (PAN-EURO-MED) – Algeria, Egypt, Israel, Jordan, Lebanon, Syria, Morocco, Tunisia, Palestine Autonomy, etc;
- Free Trade Agreements – with Switzerland, Ukraine, Georgia and Moldova;
- Agreements on a Customs Union – the Association Agreement with Turkey of 1963, which provides for trade relations with the EU under the terms of a customs union. Customs Union agreements are also concluded with Andorra and San Marino.

Taking into account the fact that the EU is one of the largest promoters of preferential trade in the world, modern trade policy introduced by the Union can be characterized as «the era of deep and comprehensive FTAs». Such tactics were chosen after the Doha round of the WTO negotiations, in which the EU promoted an all-encompassing deepening of international trade, came to a standstill. As a result, the EU is now party to more than 50 preferential trade agreements, including FTAs and customs unions.

Moreover, the EU builds preferential trade agreements in such a way that they become instruments for cooperation between the EU and its counterparts, and between the latter among themselves. One of the platforms for such cooperation is the Regional Convention on pan-Euro-Mediterranean preferential rules of origin («the Convention») (Figure 1.2), which is an instrument of the European Union for cooperating with its trading partners, as well as of the latter among themselves. It establishes unified rules of origin for trade in goods in the Pan-Euro-Mediterranean region and thus allows its participants to strengthen economic integration and trade relations. In particular, diagonal cumulation allows the use of raw materials from third countries that are not parties to the FTA under which trade is carried out during the production of the goods.



* The system of Pan-Euro-Mediterranean cumulation of origin operates between the 27 EU member states and the four EFTA member states (Iceland, Norway, Switzerland and Liechtenstein) and Turkey and the Faroe Islands and the Mediterranean countries signatories to the Barcelona Declaration (i.e. Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia and the Palestinian Authority of the West Bank and Gaza Strip) which will gradually be added to the EURO-MED cumulation network. Ukraine has become a full member on February 1, 2018.

*Figure 1.2. States-parties to the Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin**

Source: ⁵

It should be noted that for the application of diagonal cumulation in the Pan-Euro-Mediterranean region, it is necessary not only to accede to the Convention, but also to conclude separate FTA agreements with those parties to the Convention, with whom preferential trade and cumulation are to apply. For example, consider such a scheme of interaction: import of fabrics from Turkey, tailoring in Ukraine and export to the EU. In this case, Ukraine will have to: (1) become a party to the Convention (this has already been done in 2018); (2) conclude an FTA with the EU (this has already been done) and Turkey. As a result, clothing made in Ukraine from fabrics made in Turkey would be able to be imported into the EU at a 0% rate of import duty. At this stage, the Association Agreement does not allow for this.

As of the beginning of 2018, Ukraine has concluded relevant agreements with the EU, EFTA (Switzerland, Norway, Iceland, Liechtenstein), Montenegro, and Macedonia, as well as Moldova

⁵ <http://www.wcoomd.org/en/topics/origin/instrument-and-tools/comparative-study-on-preferential-rules-of-origin/specific-agreements/eur.aspx>

under the FTA of the CIS. In addition, negotiations on an FTA with Turkey and Israel are underway. Georgia is also joining the Convention, in which it would have a bilateral FTA with Ukraine.

By applying the results of empirical studies and facts onto the theoretical plane, one can single out the general elements of in-depth integration, which are the new components of the regulation provided by modern integration agreements, namely: technical regulation, liberalization of the service sector, harmonization of customs procedures, investment policy, competition policy, and protection of intellectual property rights, as well as the mechanisms for implementing of agreements and settling disputes.

Accordingly, the Association Institute provided for in Article 310 of the EU founding treaty is often considered equivalent to the status of Associate Membership in the European Union. In fact, it is an associated partnership that is implemented through specially created bodies (Councils, Association / Partnership Committees) and consists mainly of introducing various forms of economic integration: joining the European single market and forming a customs union or a free trade area with the EU (see for example⁶). In view of this, the partnership and cooperation agreements with the CIS countries should be considered the lowest level of association. In general, the conclusion of the European Union association agreements can be identified as a shift of its geo-economic boundaries. The accession to the European Union must be preceded by economic liberalization, which in turn requires the partner country to introduce many policies aimed at harmonizing antimonopoly legislation, corporate law, state subsidies, norms of intellectual property rights and consumer rights etc. Associated partnership also undoubtedly contributes to the economic modernization of the associated countries and their overall convergence towards the European Union.

At the same time, the actual fact of concluding an Association Agreement has limited influence on the initiation of the procedure for institutional accession to the EU, whereas the

⁶ Guy Isaac. *Droit communautaire general*. Paris: Armand Colin, 1998. C. 22

European Union's formal recognition of the «candidate» status of the country and the official request for membership by that country are much more important. In other words, the implementation of the associated partnership and the process of attaining membership are different, albeit related processes that can take place in parallel, as happened in the case of the Baltic States and Slovenia. Sometimes an Association Agreement is more likely to be the instrument of withdrawal of probable membership (the first «European» agreements with Poland and Hungary, the creation of a customs union with Turkey), an alternative to membership itself (the EEA agreement, possible neighboring agreements with the CIS countries) or simply a form of privileged relations with former colonies of the Southern Mediterranean, Tropical Africa or Latin America. In general, as in the case of a geopolitical Europe, the eastern geo-economic border of the European Community has so far settled on the western borders of the CIS⁷.

During the period of Ukraine's independence, there is a significant positive development of trade relations between Ukraine and the European Union. The Partnership and Cooperation Agreement concluded on June 16, 1994 replaced the Agreement on Trade, Commercial and Economic Cooperation concluded between the USSR and the EU on December 18, 1989. The Treaty entered into force on March 1, 1998, after the completion of all ratification procedures in Ukraine and EU member states. This Agreement regulates the terms of trade in goods and services, and contains provisions governing the movement of capital, protection of intellectual property rights, and regulations governing business activities, investments, etc. The agreement foresees the mutual provision of a maximum assistance regime and ensures free transit of goods, exemption from taxes and duties on goods imported temporarily, as well as the abolition of quantitative restrictions on imports.

The agreement, however, makes it possible for the parties to introduce prohibitions or restrictions on trade on grounds of

⁷ Volodymyr Posselsky. Road to a United Europe: stages and fundamentals
ECONOMIC ANNALS-XXI №1 2004 URL : <http://soskin.info/ea/2004/1/20040102.html>

public morality, state policy or state security, protection of health or life of people, animals or plants, protection of natural resources, protection of national treasures of artistic, historical or archaeological value, protection of intellectual property or the rules of trade in relation to gold and silver. The PCA has been concluded for 10 years, but since a new agreement had not yet been concluded and no party had withdrawn, it continued to operate until the Association Agreement between Ukraine and the EU came into action. It should be noted that the agreement does not contain any reference to the prospect of Ukraine's membership in the EU, as opposed to the European treaties for Central European States and the Stabilization and Association Agreements for the Western Balkans. In particular, the agreement provides for Ukraine's many obligations, but there is no complete integration mechanism as an incentive for Ukraine to faithfully implement the provisions of the document. The question of the prospect of membership is one of the indicators that Ukraine and the EU have asymmetric goals in bilateral relations.

Negotiations between Ukraine and the European Union on the conclusion of a new in-depth agreement to replace the Partnership and Cooperation Agreement began in March 2007 in accordance with the Ukraine-EU Action Plan. During 2007–2012, 21 rounds of negotiations on the Association Agreement and 18 rounds of negotiations on the section on the establishment of an in-depth and comprehensive Free Trade Area were held. From the end of 2012 to the middle of 2013, an official translation of the draft Agreement into Ukrainian and the languages of the EU member states was carried out. By the proposal of the EU, the title of the Agreement was articulated, and with the consent of the Ukrainian side, the agreement was finally officially entitled as the «Association Agreement between Ukraine, on the one side, and the European Union, the European Atomic Energy Community and their member states, on the other side». Formally, the Association Agreement between Ukraine and the EU consists of

7 chapters, 486 articles, 43 annexes, as well as additions, protocols and declarations⁸.

An important element of the Association Agreement between Ukraine and the EU is the establishment of an in-depth and comprehensive Free Trade Area (DCFTA+), which is to be implemented gradually over a period of ten years. The implementation of the DCFTA concerns trade, economic and sectoral cooperation between Ukraine and the EU as reflected in the content of the economic sections of the Association Agreement, Section IV, «Trade and Trade-Related Issues»:

- Chapter 1 «National regime and access of goods to markets»
- Chapter 2 «Means of Trade Protection»
- Chapter 3 «Technical Barriers to Trade»
- Chapter 4 «Sanitary and phyto-sanitary measures»
- Chapter 5 «Customs Issues and Trade Facilitation»
- Chapter 6 «Establishment of entrepreneurial activity, trade in services, electronic commerce»
- Chapter 7 «Current Payments and Movement of Capital»
- Chapter 8 «Public Procurement»
- Chapter 9 «Intellectual Property»
- Chapter 10 «Competition»
- Chapter 11 «Issues related to energy carriers»
- Chapter 12 «Transparency»
- Chapter 13 «Trade and Sustainable Development»
- Chapter 14 «Dispute Resolution»
- Chapter 15 «Mediation Mechanism»

The results of implementing the DCFTA+ between EU and Ukraine should manifest in close economic integration, creating essentially the same conditions for trade between Ukraine and the EU as within the EU, improving the investment climate and providing for more transparent business rules in Ukraine, increasing the variety, safety the quality of goods, securing lower

⁸ ASSOCIATION AGREEMENT between the European Union and its Member States, of the one part, and Ukraine, of the other part. URL : http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155103.pdf

prices for Ukrainian consumers, and the possibility of access not only to the EU market, but also to the markets of third countries for Ukrainian enterprises in connection with the transition to world-wide accepted standards.

The ratification of the historic document took place at a faster pace than was expected in Ukraine. However, an obstacle to the implementation of the historic agreement between Ukraine and the EU came from the Netherlands: according to the results of the referendum held in April 2016, 61% of the Dutch voted against the Association Agreement. As a result, at the end of 2016, a «Decision of the Heads of State and Government of the EU Member States» was issued, containing six provisions securing the norms already contained in the Agreement's text. In 2017, the Netherlands reapproached the ratification process, this time successfully and finally.

The Association Agreement between Ukraine and the EU became the largest document signed by Brussels with a state that wasn't part of an integration association. The peculiarity of this agreement is the fact that, while practically not differing in content from similar EU agreements with the states of the Middle East or Latin America, it imposes on Ukraine obligations characteristic of candidate countries, but does not contain any reference to the prospect of a full membership for Ukraine.

As a result of the findings of the study, one can determine that Ukraine's path towards Europe is distinguished by four essential features that were not typical of the vast majority of European states:

– first, despite the declarative nature of Ukraine's European choice, Ukraine has, in the long run, been maneuvering between the EU and Russia. The country's international integration strategy had a two-way character by 2014, manifested in participating in an FTA with the CIS countries and creating a DCFTA with the EU as the main partners.

Secondly, Ukraine's «movement» in the European direction is synchronized with a nation-building process that takes place in

a country where the Soviet sociological imprint still has a noticeable influence.

Thirdly, unlike the Central European and Balkan states, Ukraine's aim of integration with the EU is being challenged by Moscow, which has led to a worsening of relations between the EU and Russia and a crisis of European security.

Fourth, Ukraine differs from the above-mentioned states in that it was offered an alternative to EU membership, namely the Eastern Partnership as a component of the European Neighborhood Policy.

Ukraine's pro-European development direction became dominant and final only after the Revolution of Dignity. The processes taking place in the country are influenced by a search for identity and nation-building processes coming in conflict with the sociological marks of the Soviet era and the ideological pressure of the so-called «Russian world», a pressure that took material form in 2012, when Russia banned the import of certain types of Ukrainian products. And starting in 2014, along with the annexation of the Crimean peninsula and the war in the Donetsk and Luhansk regions (the total contribution of which amounted to 46.1% of the overall rate of export reduction⁹), the pressure from the Russian Federation became systematic and constant. This has led to a decrease in the volumes of Ukrainian export products by 29.5%, compared to the same period last year in the CIS countries.

On the whole, as Figure 1.3 shows, a significant GDP decline can be noted in two time periods: the first, in 2008–2009, is related to the reaction to the global financial crisis, while the second and more profound confirms the significant impact of the Anti-Terrorist Operation in the Donbas region.

Moreover, this influence was both direct (due to the destruction of production and transport infrastructure, the breaking of economic ties between regions etc.) and indirect (due to investors reevaluating geopolitical risks, the outflow of capital, the spread

⁹State Statistics Service of Ukraine. URL: <http://www.ukrstat.gov.ua/>

of a certain degree of panic in the population and the deterioration of business expectations).

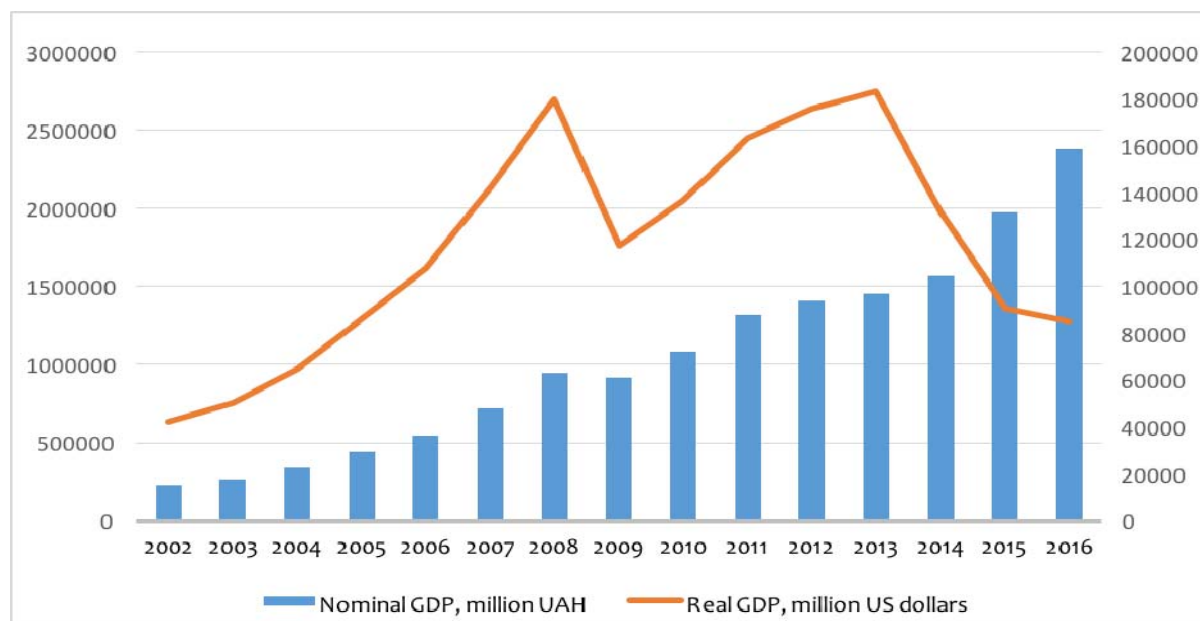


Figure 1.3. Dynamics of nominal and real GDP of Ukraine, 2002–2016

Source: compiled by the author on the basis of ¹⁰; ¹¹.

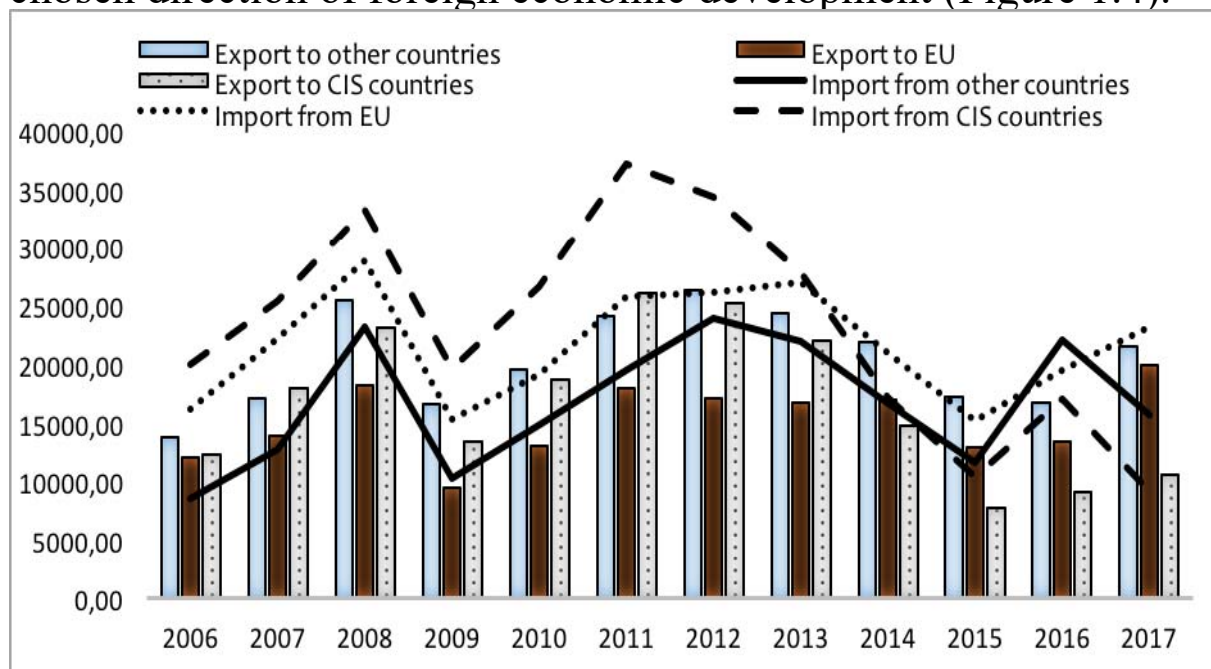
Other factors of the decline in real GDP since 2013 were the fall in prices in the world commodity markets, trade restrictions on the part of the Russian Federation (RF), restricted fiscal and monetary policies, and declining purchasing power of the population. All this was reflected in a significant decrease of private consumption, investment and exports, which was partially offset by a further drop in imports. It should be noted that the structure of GDP of Ukraine is as follows: 12% is formed by agriculture, 28% by industry, and 60% by the service sector.

These events have become an important factor in the westwards reorientation of Ukraine. The decrease of the CIS countries' share in Ukraine's foreign trade turnover, and an increase

¹⁰ Gross domestic product of Ukraine URL : <http://index.minfin.com.ua/index/gdp/>

¹¹ Ukraine's economy for 2016. URL : <https://ukurier.gov.ua/uk/articles/ekonomika-ukrayini-za-2016-rik/>

of the corresponding EU-28 countries' share taking place since the signing of the Association Agreement, are the results of the chosen direction of foreign economic development (Figure 1.4).



*Figure 1.4. Geographic structure of Ukraine's export and import of goods in 2006–2017, million USD**

* data for 2014–2017 does not account for the temporarily occupied territory of the Autonomous Republic of Crimea, the city of Sevastopol and parts of the anti-terrorist operation area.

Source: compiled by the author according to the data from the State Statistics Service of Ukraine.

In the total volume of export-import operations of Ukraine, the greatest share is represented by trade in goods. In particular, the share of goods in total exports exceeds 80%, and almost 90% in imports. The export of goods developed most dynamically in 2011–2012, of services – in 2012–2013. It should be noted that, compared to 2016, exports of goods increased by 19.0%, imports – by 26.4%. Over the entire period under study, the share of services in total exports increased from 18.3% in 2010 to 21.4% in 2016.

Moreover, compared to 2016, exports have increased by 5.9%, imports – by 0.6% (by 32.7 million dollars). (Figure 1.5).

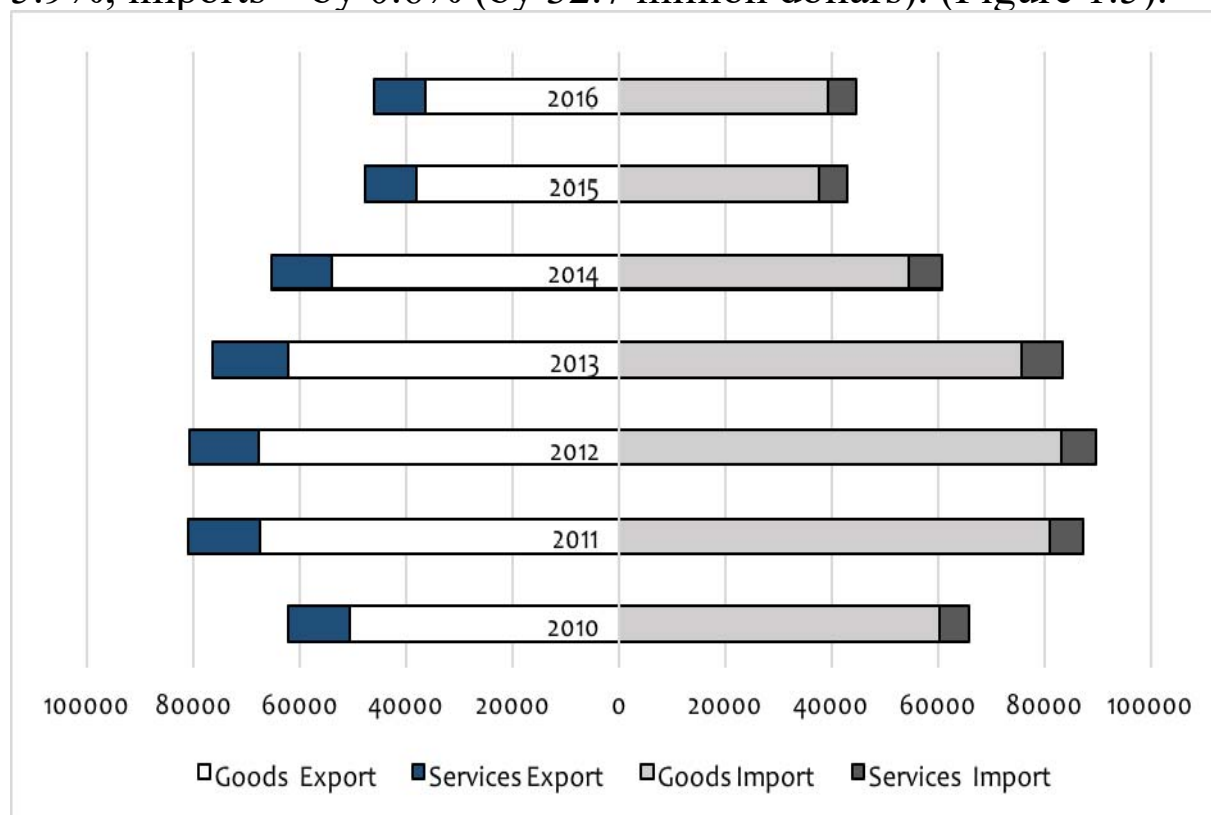


Figure 1.5. Dynamics of Ukraine's foreign trade in goods and services in 2010–2016, million USD

Source: compiled by the author according to the State Statistics Service of Ukraine.

The pace of change in the actual total volume of goods and services has a somewhat different dynamic: the volume of services in exports decreased by 15%, while the corresponding share in the imports remained almost unchanged. This indicates that, during the period under review, Ukraine's foreign trade in services was predominantly directed to European and other (non-CIS) countries, and not to the CIS countries as the external trade in goods.

The analysis shows that in 2017, compared to 2016, exports increased by 16.0%, and imports by 23.3%. But by the end of 2017, a negative foreign trade balance was formed (-2625.4 million USD) (Table 1.2).

Table 1.2

Geographical structure of Ukraine's foreign trade in goods and services in 2010–2017, million USD

Countries/ year	2010	2011	2012	2013	2014	2015	2016	2017
Export								
Total	62125.7	80941.8	80895.8	74832.3	64106.8	46804.2	45112.7	52329.6
Total Goods	50744.3	67594.1	67779.8	62305.9	53901.7	38127.1	36362.8	43266.6
CIS countries	18482.9	25835.8	24911.3	21672.1	14882.3	7806.1	6030.5	6917.5
Other countries	19345	23895.4	25930.6	24060.3	22016.5	17305.8	16834.6	18814.6
EU countries (28)	12916.4	17862.9	16937.9	16573.5	17002.9	13015.2	13497.7	17534.5
Total Services	11381.4	13347.7	13116	14233.2	11520.8	9736.6	9631.4	10446.6
CIS countries	5442.4	6041.1	5811.1	5814.9	4034.3	3544.8	3642.1	3737.7
EU countries (28)	3123.1	3532.9	3750.2	4195.7	3991.6	2927.9	2950.9	3379.3
Total Goods	2815.9	3773.7	3554.7	4222.6	3494.9	3263.9	3038.4	3329.6
Import								
Total	65754.1	87232.4	89774.6	83346.5	60750.6	42976.0	44571.1	54955.0
Total Goods	60352	81040.5	83135.4	75834.6	54428.7	37516.4	39248.6	49598.5
CIS countries	26607.2	37080.1	34317.9	27741.5	17276.9	10485.5	8563.8	11475.6
EU countries (28)	19004.2	25270.3	26033.9	26766.9	21069.1	15330.2	17138.2	17321.1
Other countries	14740.6	18690.1	22783.6	21326.2	16082.7	11700.7	13546.6	20795.8
Total Services	5402.1	6191.9	6639.2	7523	6373.1	5523	5304.7	5359.2
CIS countries	933.6	1166.3	1238.2	1466.5	1204	839.6	824.5	639.4
EU countries (28)	3000.3	3372.1	3641.2	4212	3148.8	2750.1	2336.7	2503.0
Other countries	1468.2	1653.5	1759.8	1844.5	2020.3	1933.3	2143.5	2216.8

End the Table 1.2

Countries/ year	2010	2011	2012	2013	2014	2015	2016	2017
Trade balance								
Total	-3628.4	-6290.6	-8878.8	-8514.2	3356.2	3828.2	541.6	-2625.4
Total Goods	-9607.7	-13446.4	-15355.6	-13528.7	-527	610.7	-2888.1	-6331.9
CIS countries	-8124.3	-11244.3	-9406.6	-6069.4	-2394.6	-2679.4	-2533.9	-4558.1
EU countries (28)	4604.4	5205	3147	2734.1	5833.8	5605.1	3288	-1981.2
Other countries	-6087.8	-7407.4	-9096	-10193.4	-4066.2	-2315	-3644.5	-3261.3
Total Services	5979.3	7155.8	6476.8	6710.2	5147.7	4213.6	4541.5	5087.4
CIS countries	4508.8	4874.8	4572.9	4348.4	2830.3	2705.2	3055.3	3098.3
EU countries (28)	122.8	160.8	109	-16.3	842.8	177.8	583.3	826.6
Other countries	1347.7	2120.2	1794.9	2378.1	1474.6	1330.6	894.9	1112.8

*To avoid double accounting, the total volume of goods and services is calculated by: total (goods + services) = total(goods) + total(services) – value of services for processing goods to be sold abroad.

Source: compiled by the author on the data provided by the State Statistics Service of Ukraine.

In general, Ukraine carries out foreign trade operations with partners from more than 200 countries of the world (in January-April 2017, there were 211 of them)¹².

As can be seen from the data presented in Table 1.2, in spite of certain difficulties and a significant drop in volumes of turnover over the last five years, the overall trend is positive. For example, in the total volume of foreign trade operations, the share of EU countries increased to 37.1% in exports and to 43.7% in imports, compared to 2015. In 2015, 34.1% and 40.9% respectively, and in 2014 – 31.5% and 38.7%.

According to the State Statistics Service, in the last three years, raw materials constituted the largest share of exported goods, while high-tech products and complex chemical compounds constituted the largest share in imports (Table 1.3).

¹² State Statistics Service of Ukraine. URL: <http://www.ukrstat.gov.ua/>

Table 1.3

**Main commodity groups of Ukrainian exports and imports
to Ukraine in 2004–2017***

Group of goods, by UCGFEA classification		export		import	
		Thousand USD	% of total	Thousand USD	% of total
2004	V. Mineral products	4323711.12	13.23	10845385.83	37.4
	VI. Production of the chemical and related industries	2782029.36	8.51	2248421.83	7.75
	XV. Non-precious metals and products from them	13050775.99	39.94	1752891.84	6.05
	XVI. Machines, equipment and mechanisms; Electrical equipment	3030986.36	9.28	4740678.63	16.35
	XVII. Vehicles and road equipment	2037331.81	6.24	2493628.08	8.6
	Total	32672318.23	100	28996030.72	100
2008	V. Mineral products	7046093.9	10.5	25441277.2	29.7
	XV. Non-precious metals and products from them	27593969.4	41.2	6390070.2	7.5
	XVI. Machines, equipment and mechanisms; Electrical equipment	6341139.6	9.5	13379839.3	15.6
	XVII. Vehicles and road equipment	4321339.2	6.5	12091413	14.1
	Total	66954429.8	100	85535356.4	100
2012	II. Products of plant origin	9213900.2	13.4	2429664.6	2.9
	V. Mineral products	7650416.9	11.1	27542301.8	32.5
	VI. Production of chemical and related industries	5058919.5	7.4	8586389.7	10.1
	XV. Non-precious metals and products from them	18889845.9	27.5	5238913.5	6.2
	XVI. Machines, equipment and mechanisms; Electrical equipment	7026670.7	10.2	13178672.5	15.5
	Total	68809810.6	100	84658059.9	100
2017	II. Products of plant origin	9215790.5	21.3	1388759.3	2.8
	III. Fats and oils of animal or vegetable origin	4586261.9	10.6	247992.7	0.5
	V. Mineral products	3937262.6	9.1	12498833.5	25.2
	VI. Production of chemical and related industries	1644131.6	3.8	6547008.0	13.2
	XV. Non-precious metals and products from them	10124389.6	23.4	3025511.2	6.1
	XVI. Machines, equipment and mechanisms; Electrical equipment	4283395.6	9.9	9919709.1	20.0
	Total	43266622.3	100	49598545.6	100

* data for 2016–2017 does not take into account the temporarily occupied territory of the Autonomous Republic of Crimea, the city of Sevastopol and parts of the Donetsk and Luhansk regions.

Source: compiled by the author according to the State Statistics Service of Ukraine.

Such a commodity structure of export-import operations is an indicator of the dependence of the foreign trade sector of Ukraine on changes in the external environment. The complex and difficult socio-political conditions over the last four years have led to deformation in the characteristics of concentration and diversification of Ukrainian exports. Ukraine's import remains much more advanced and broader in range than the export for a long time.

The transformation of the geographic structure of exports from the CIS to the EU has led to a reduction in the market for high value-added products and an increase in the supply of raw materials and low-grade products. The above makes it possible to assert that for Ukraine, the issue of diversification of the export basket is a strategically important task.

This is also confirmed by the findings of a number of researchers in the foreign trade sector of Ukraine (see, for example,¹³). Significance of this direction of the state's foreign trade policy is magnified by the peculiarities of modern development of the industrial sector. The growth of export diversification is possible only by way of expanding the product range of enterprises and production in general. Moreover, it is clear that diversification of domestic exports should be carried out by expanding exports of goods with a high level of value added.

The positive dynamics of foreign trade between Ukraine and the EU indicates an increase in the level of cooperation and the availability of potential for further cooperation. At the same time, the qualitative and structural characteristics of Ukraine's foreign trade with the EU testify to the existence of serious problems in this area that require an urgent solution. First of all, it is about the existing disparity in the foreign trade between Ukraine and the EU: for the investigated period (2010-2017), there is a positive trade balance in favor of the EU alone (see Table 1.2).

At that time, the overall balance of Ukraine's foreign trade was positive only during the period of 2014-2016. This situation

¹³ Goryanska, T. (2012) Competitive positions of the export-oriented sectors of the Ukrainian economy. *Economy of industry* (1-2). 57-58. Electronic resource, URL: http://nbuv.gov.ua/j-pdf/econpr_2012_1-2_19.pdf

arose in the context of a significant drop in volume of trade and the reduction of imports at a higher rate than exports (export volumes declined by 14% in 2014 and imports by 27%).

Taking into account the fact that trade flows between Ukraine and the EU always made up a certain part in Ukraine's international trade, the growth of the share of the EU's market with the start of the Agreement's implementation is an important imperative for the transformation of Ukraine's foreign trade relations. But the current existential crisis of the EU may impose significant restrictions cooperation possibilities for Ukraine.

On the other hand, there are significant factors behind the fall in exports from the Ukrainian side, which were partially mentioned above, namely:

- deteriorating financial situation of domestic enterprises and increasing costs of domestic products;

- restrictions on Ukrainian exports to the markets of the Customs Union, first of all through the Russian Federation. This has led to a decrease in the volumes of Ukrainian products exported to the CIS by 29.5% in 2014 compared to the same period in 2013;

- annexation of the Autonomous Republic of Crimea;
- the enactment of the anti-terrorist operation in the Donetsk and Luhansk regions, which caused suspension of production in most export-oriented enterprises. Moreover, the cumulative effect in the related industries from the exclusion of these export-producing regions of the country from foreign trade turnover should also be taken into account.

Among the main obstacles to further development of trade relations with the EU, the following should also be noted:

Firstly, in the period of preparation and early implementation of the Agreement, the preconditions for Ukraine's economic growth and growth of the populace' living standards have not been provided for. Stabilization and settlement of internal political confrontations, as well as dealing with the military threat is important for favorable economic development in the country.

Secondly, the uncertainty that manifests itself in poor awareness of the EU market and business conditions in the association's member countries. Lack of appropriate communication skills for staff, including fluency in the EU's languages, lack of close contacts with European business partners. In addition, most Ukrainian brands are unknown to European consumers.

Thirdly, low readiness to comply with market requirements – not only technical requirements, but also those relating to the timing of delivery etc. Ukrainian producers will have to transition to European standards of product quality, which requires significant financial costs. The majority of enterprises need to conduct almost complete modernization of production and teach staff to work with new technologies.

Fourthly, lack of real instruments of state support for the adaptation of small and medium-sized businesses to the conditions the DCFTA+ strives for.

Lastly, although the agreement potentially increases the access of Ukrainian enterprises to European loans, national producers in a difficult economic situation are high-risk investments and are therefore unlikely to claim European loans.

Chapter 2

CONSEQUENCES OF TARIFF LIBERATION FOR BRANCHES OF UKRAINIAN ECONOMY. MARKET ACCESS

An important place in the economic development of any country is international trade, which overcomes the limited resources and the narrowness of the domestic regional and national market, creates the possibility of mass production, increases the load on production equipment, increases the efficiency of the introduction of new technology, the accumulation of capital, the pace of economic growth, and stimulates more rational use of countries' resources. The development of international trade relations connects all countries of the world in one production chain, the operation of which causes the synchronization of economic cycles of national economies. The level of engagement in international trade determines the international competitiveness of a national economy, its readiness and ability to create developed competitive advantages.

During the 2008–2009 crisis, global GDP fell (albeit by only 0.1%) for the first time since the world wars, and world trade decreased by 11% – for the first time since 1982. And after the crisis, the very nature of the development of international trade has changed – since 2012 it began to grow at a slower pace than the world GDP (Figure 2.1). It is important to note that the main participants in international trade – developed countries – trade, in the first place, with each other. In 2015, their mutual trade accounted for 67.21% of external trade. However, in 2000, this figure was more significant – 75.79%, which suggests a strengthening role of third-world countries, and, first of all, of developing countries, which are to a greater extent oriented on trade with developed countries and, to a smaller extent, on countries with transition economies. In 2015, the share of these two groups of countries in foreign trade of developing countries accounted for 58.44%, slightly less than in 2000 (59.57%)¹⁴.

¹⁴ UNCTAD (2017), Key Statistics and Trends in International Trade 2016, United Nations Geneva. Electronic resource. URL : http://unctad.org/en/PublicationsLibrary/ditctab2016d3_en.pdf

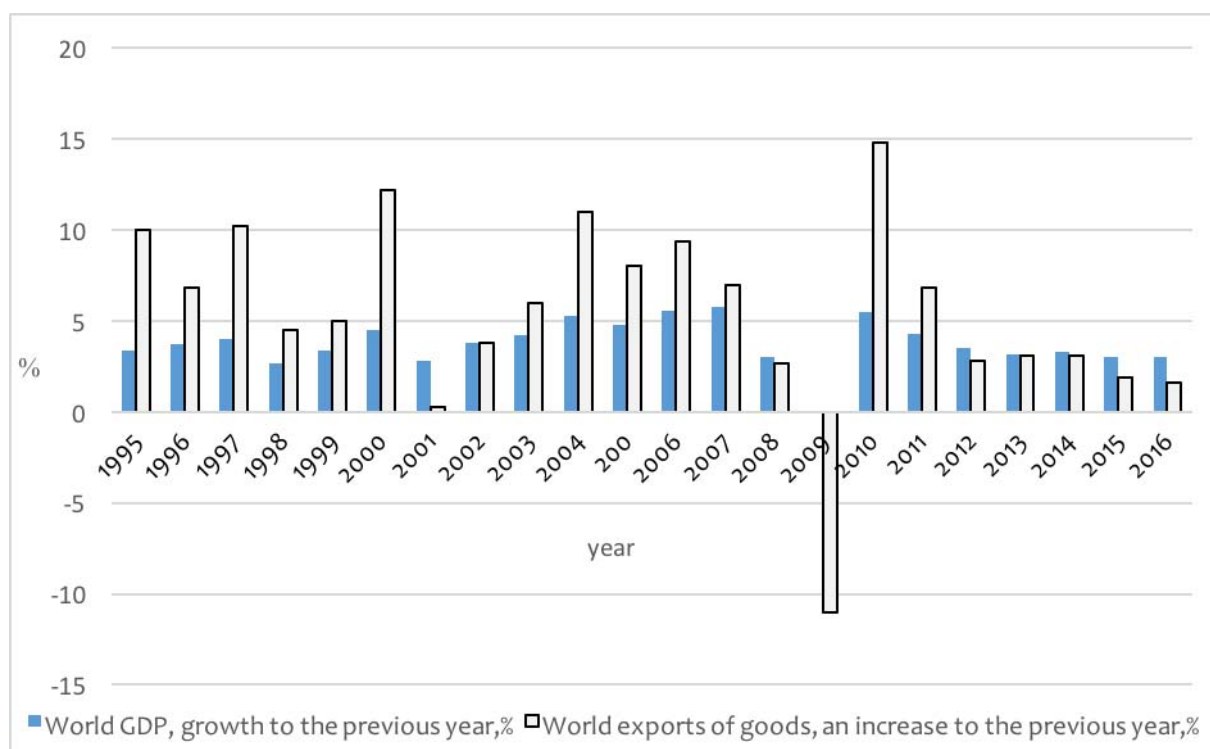


Figure 2.1. Dynamics of GDP and commodity exports of the world, growth in constant prices compared to the previous year, %, 1995–2016

Source: compiled by author with data from¹⁵

Transition countries are primarily focused on trade with developed and developing countries. Although the share of trade with developed and developing countries declined from 90.82% in 2000 to 85.31% in 2015¹⁶, it remains significant, indicating the priority role of countries not part of the transition countries group as foreign trade partners.

Given the commodity structure of international trade, the leading positions of developed countries are understandable. In particular, industrial products account for 64.8% of world exports, fuel – 16.7%, metals – 6.3%; agricultural raw materials – 1.5%, food – 7.9%¹⁷. Thus, it is the production of the manufacturing

¹⁵ UNCTAD (2017), Key Statistics and Trends in International Trade 2016, United Nations Geneva. Electronic resource. URL : http://unctad.org/en/PublicationsLibrary/ditctab2016d3_en.pdf

¹⁶ *ibid.*

¹⁷ *ibid.*

industry that forms the basis of international commodity exchange, and developed countries are key exporters of a significant assortment of goods with high added value. The share of developed countries in world exports of tractors amounted to 79.72% in 2014; spare parts of motor vehicles – 70.54%, medicines, including veterinary products – 90.42%; medical instruments – 76.38%; passenger and shuttle motor vehicles, including public transport vehicles – 81.38%¹⁸.

Moreover, developed countries occupy leading positions in the export of certain types of metals, as well as some food products and agricultural raw materials. In particular, developed countries account for 57.79% of world exports of aluminum, 56.88% of world exports of nickel and 62.51% of world exports of zinc. The share of developed countries in world exports of cheese and butter is 81.99%, meat of animals (fresh, chilled, frozen) – 63.17%; chocolate and cocoa products – 81.99%; Fish (fresh, chilled, frozen) – 51.57%. Export of animal fats by developed countries makes up 75.21% of world exports.

Foreign trade is also an important component of Ukraine's economy. The share of exports in GDP varies in different years around 50%¹⁹. It is important that Ukrainian exports contain a significant share of imported components, relied upon by numerous national enterprises. In recent years, significant changes have occurred in foreign trade activities, the consequences of which have a multi-vector impact on the economy of Ukraine.

Since the commencement of the Deep and Comprehensive Free Trade Area (DCFTA +) with the European Union, Ukrainian exporters and importers were able to integrate even more actively into world trade flows and European production networks. The European Union (EU) is the most important trading partner of 80 countries (for comparison: the US are the first trading partner of about 20 countries). In particular, the European Union is

¹⁸ UNCTAD (2017), Key Statistics and Trends in International Trade 2016, United Nations Geneva. Electronic resource. URL : http://unctad.org/en/PublicationsLibrary/ditctab2016d3_en.pdf

¹⁹ State Statistics Service of Ukraine. URL: <http://www.ukrstat.gov.ua/>

actively trading with developing countries, importing more from them than the United States, Canada, Japan and China, taken together²⁰. The EU is interested in maintaining a stable and harmonious external environment that would boost its prosperity.

As already noted, the creation of the DCFTA+ between Ukraine and the EU is to be gradual, over a period of 10 years. Among the planned results of its implementation is close economic integration and the creation of trade conditions between Ukraine and the EU practically equal to those within the Union. The peculiarity of this agreement is that it imposes obligations on Ukraine that are specific to candidate countries, but does not contain any reference to the prospect of Ukraine's full-fledged membership in the future. Taking this into account, it is better to perceive the DCFTA+ as an opportunity to achieve European quality standards in order to further enter not only the markets of the EU, but also the markets of other countries of the world.

An analysis of recent studies shows that the transformation of Ukrainian foreign trade flows is the subject of attention of a wide range of scholars. In addition, the relevance of the research problem is confirmed by the numerous attempts to conduct public discussions and meetings with the aim of identifying further joint actions of the authorities and business towards the fulfillment of the requirements of the EU (see for example^{21; 22; 23; 24}), as well as the work of scientific and public organizations (such as the International Institute of Advanced Research and the Institute of

²⁰ European Commission. EU-position in world trade 2017. Electronic resource, [Електронний ресурс]. – Режим доступу : <http://ec.europa.eu/trade/policy/eu-position-in-world-trade>.

²¹ Heyets V. Ostashko T. (2016) Implementation of the Association Agreement between Ukraine and the EU: Economic Challenges and New Opportunities : Scientific. National Academy of Sciences of Ukraine, Institute of Economics and Prognosis of the National Academy of Sciences of Ukraine, K.

²² Mazarakis A. (2016) Foreign Trade of Ukraine: XXI Century : Monograph. Kyiv : KNTU.

²³ Burakovsky I. Movchan, V. Viter O. (2004) Enlargement of the European Union: Influence on Ukraine's Relations with Central European Neighbors. K.: K.I.C.

²⁴ Movchan V. & Giucci R. (2011) Quantitative Assessment of Ukraine's Regional Integration Options: DCFTA with European Union vs, Customs Union with Russia, Belarus and Kazakhstan. Berlin/Kyiv: German Advisory Group, Institute for Economic Research and Policy Consulting, p. 6–12.

Economics and Forecasting of National Academy of Sciences of Ukraine).

Highly appreciating the contribution of the aforementioned scientists and the results of their research, it is to be noted that the questions regarding the imperatives of changes in foreign trade flows remain unresolved. The main obstacle, in the author's opinion, is the structural transformation in the Ukrainian economy and the growth of certain imbalances in the development of the EU as the main trade partner in recent years. Understanding the challenges and threats that currently exist in the EU would help to understand what is to be done in order to adjust the strategy of European integration in such a way as to achieve the maximum possible results. Equally, one can not ignore the fact that crisis phenomena continue to develop in the Ukrainian economy, which has significantly influenced the country's starting position at the time of signing the Association Agreement with the EU.

Ukraine's foreign trade with the EU countries resulted in negative trade balance before, and now this deficit is increasing. As the Ukrainian market opens for European companies, this deficit may increase even further. In this situation, it is important for Ukraine to increase exports to the levels of EU countries in time, otherwise a situation may arise when Ukraine's economy would be giving out ever increasing amounts of foreign currency for imports, without sufficient revenue generated through exports.

Among the products that determine the dynamics of exports to the EU are, first of all, the products of the agro-industrial complex and food industry – 31.5% of total exports (Table 2.1).

Agriculture is the main link in the field of food security and, therefore, is one of the most sensitive and vulnerable to changes in the foreign economic policy of the industries, since agricultural products need protection to revitalize their own production and maintain the competitiveness of the national commodity producer. In addition, all FTAs established between the EU and other countries and groups of countries have exceptions that are specific to agriculture. The conditions for trade in agricultural products to the FTAs that they create with future EU members are most liberalized.

In recent years, the role of agricultural exports has been increasing, so expanding the export of agricultural products in the EU has a significant impact not only on agriculture but also on the economy of the country. In 2016, the export of agricultural products (codes HTS 1–24) amounted to 15.3 billion USD, which is 42% in the structure of Ukraine's commodity exports, against 18.7% in 2011 (Table 2.2)²⁵.

Table 2.1

**Main commodity groups of Ukrainian exports to the EU
and of European exports to Ukraine in 2014–2017**

The name of the group of goods as in UCGFEA	Amount (million USD)			
	2014	2015	2016	2017
1	2	3	4	5
Total goods exported	17002.9	13015.2	13497.7	17533.4
Non-precious metals and products from them (groups 72–83)	3 890.2	3 064.1	3 092.4	3751.7
Products of plant origin (groups 6–14)	1 805.4	2 444.7	2 038.7	3025.4
Machines, equipment and mechanisms; Electrical equipment (groups 84–85)	1 649.5	1 797.3	1 978.8	2584.4
Mineral products (groups 25–27)	1 582.1	1 477. 4	1 453. 4	2286.4
Fats and oils of animal or vegetable origin (group 15)	793.0	678.4	1 204. 3	1475.6
Total goods imported	21069.1	15330.2	17138.2	20799.4
Machines, equipment and mechanisms; Electrical equipment (groups 84–85)	2 277.9	2 663. 0	3 624. 3	4535.7
Production of chemical and related industries (Groups 28–38)	3 416.6	2 641. 6	3 047. 2	3569.4
Mineral products (groups 25–27)	3 793.0	3 480. 6	2 603. 6	3117.6
Land, sea and air vehicles (groups 86–89)	1 198.8	867. 3	1 520. 6	2251.6
Polymer materials, plastics (groups 39–40)	1 470.4	1 283. 7	1 365. 9	1566.7

Source: compiled by the author according to data provided by the.²⁶

Thus, in 2016, the share of export of agricultural products in Ukraine's commodity exports exceeded the share of exports of

²⁵ State Statistics Service of Ukraine. URL: <http://www.ukrstat.gov.ua/>

²⁶ *ibid*

ferrous metals while the export of the agro-food sector of Ukraine is increasing annually and has a positive balance of trade balance.

Taking into account the considerable agricultural potential of Ukraine, the unstable demand in the world markets for metallurgical products, which prevailed in the structure of Ukrainian exports by 2012, as well as the increase in demand and the tendency of world prices for agricultural products, the role of agriculture in the formation of revenues from exports of goods will increase. In 2016, Ukraine imported agricultural products at 3.89 billion USD, or almost 10% of all imported goods.

On the other hand, agricultural products represent a significant part of the commodity trade between the EU and Ukraine. From 2012 to 2016 they amounted to approximately 28% in the structure of the value of Ukrainian exports of goods to the EU, and in 2016 – increased to 31.2%, despite the fact that the total value of exports decreased. Over the past 5 years, more than 40% of the value of Ukrainian agricultural exports was the export of grain (in particular corn, wheat, barley).

Table 2.2

**Imports of agricultural products by EU countries from
Ukraine, mln USD, 2012–2016.**

HS code	Name of commodity group	Import by EU from Ukraine, mln USD				
		2012	2013	2014	2015	2016
	Total	18735.55	18518.41	18460.26	14482.22	14770.89
	Agricultural products	5343.66	5175.01	5359.50	4567.51	4601.11
1–24	Share of agricultural products in total imports, %	28.52	27.95	29.03	31.54	31.15
'01	Live animals	1.27	1.14	1.19	0.91	1.03
'02	Meat and edible meat offal	0.05	0.58	57.52	89.02	90.69
'03	Fish and crustaceans, molluscs and other aquatic invertebrates	3.64	6.75	10.39	14.45	13.31
'04	Dairy produce; birds' eggs; natural honey;	29.83	55.68	77.76	70.05	92.19
'05	Products of animal origin	8.60	8.70	9.20	5.78	4.15
'06	Live trees and other plants; bulbs, roots and the like	0.09	0.49	0.40	1.27	1.20
'07	Edible vegetables and certain roots and tubers	40.76	29.84	33.45	14.75	25.11
'08	Edible fruit and nuts; peel of citrus fruit or melons	110.01	128.03	128.66	140.76	125.73

**Chapter 2. CONSEQUENCES OF TARIFF LIBERATION FOR BRANCHES
OF UKRAINIAN ECONOMY. MARKET ACCESS**

End the Table 2.2

HS code	Name of commodity group	Import by EU from Ukraine, mln USD				
		2012	2013	2014	2015	2016
'09	Coffee, tea, maté and spices	3.92	3.40	4.06	3.33	3.57
'10	Cereals	2128.66	2036.63	2209.73	1880.31	1529.51
'11	Products of the milling industry; malt; starches; inulin; wheat gluten	6.73	9.69	13.14	12.79	16.44
'12	Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit	1324.35	1445.25	986.01	732.52	628.46
'13	Lac; gums, resins and other vegetable saps and extracts	0.06	0.15	0.12	0.19	0.32
'14	Vegetable plaiting materials; vegetable products	63.95	81.99	105.53	68.94	36.27
'15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats;	841.57	628.53	839.17	743.48	1236.08
'16	Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	0.08	0.12	2.09	3.86	6.10
'17	Sugars and sugar confectionery	41.31	29.30	11.56	30.94	41.15
'18	Cocoa and cocoa preparations	11.06	9.83	14.31	17.92	27.15
'19	Preparations of cereals, flour, starch or milk; pastrycooks' products	21.31	26.03	28.05	45.12	51.31
'20	Preparations of vegetables, fruit, nuts or other parts of plants	44.77	47.98	70.44	69.29	85.26
'21	Miscellaneous edible preparations	19.34	21.01	26.58	25.64	29.37
'22	Beverages, spirits and vinegar	28.64	28.45	29.59	40.41	28.70
'23	Residues and waste from the food industries; prepared animal fodder	611.43	575.20	700.11	555.22	527.56
'24	Tobacco and manufactured tobacco substitutes	2.22	0.23	0.44	0.56	0.43

Source: compiled and calculated by the author according to the data Trade Map [Electronic resource]. URL: <http://www.trademap.org/Index.aspx>

Export of oilseeds was almost a quarter in the structure of agricultural exports to the EU. EU also buys edible fruits and nuts, confectionery. A small part of exports are alcoholic and non-alcoholic beverages, cocoa products, ready-made grain products.

Significant role is played by EU in the marketing of oilseeds (including rapeseed and sunflower seeds). Exports of fats from Ukraine to the EU are dominated by the export of sunflower oil.

As for imports from the EU, agricultural commodities for the last 5 years take 9–10% in the structure of imports from the EU (Table 2.3).

Table 2.3

**Exports of agricultural products from EU countries
to Ukraine, mln USD, 2012–2016.**

HS code	Name of commodity group	Exports from EU to Ukraine, mln USD				
		2012	2013	2014	2015	2016
	Total	30938.32	32159.28	22743.86	15691.45	18419.01
	Agricultural products	2874.64	2993.91	2378.47	1553.41	1776.81
1–24	Share of agricultural products in total imports. %	9.29	9.31	10.46	9.90	9.65
'01	Live animals	85.86	127.30	96.12	63.76	51.91
'02	Meat and edible meat offal	8.26	13.78	11.63	8.73	10.34
'03	Fish and crustaceans. molluscs and other aquatic invertebrates	93.65	106.85	76.35	47.45	41.81
'04	Dairy produce; birds' eggs; natural honey	53.51	63.26	60.74	22.49	24.73
'05	Products of animal origin	257.43	210.35	148.93	88.88	83.71
'06	Live trees and other plants; bulbs. roots and the like	99.79	103.89	86.45	77.87	77.54
'07	Edible vegetables and certain roots and tubers	183.10	252.71	246.35	115.51	105.24
'08	Edible fruit and nuts; peel of citrus fruit or melons	14.54	15.54	13.50	7.73	10.89
'09	Coffee. tea. maté and spices	206.80	232.19	170.15	130.73	198.92
'10	Cereals	25.14	23.95	16.26	11.87	15.30
'11	Products of the milling industry; malt; starches; inulin; wheat gluten	0.30	0.12	0.08	0.06	0.09
'12	Oil seeds and oleaginous fruits; miscellaneous grains. seeds and fruit	96.76	93.12	61.78	42.06	45.83
'13	Lac; gums. resins and other vegetable saps and extracts	40.25	42.50	32.49	17.47	24.44
'14	Vegetable plaiting materials; vegetable products	21.85	20.67	21.46	26.48	23.16
'15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats	221.34	225.82	183.84	132.33	176.14
'16	Preparations of meat. of fish or of crustaceans. molluscs or other aquatic invertebrates	81.38	102.70	83.84	47.38	59.88
'17	Sugars and sugar confectionery	123.40	119.60	100.10	63.32	63.56
'18	Cocoa and cocoa preparations	296.90	305.29	255.73	150.83	183.19
'19	Preparations of cereals, flour, starch or milk; pastrycooks' products	199.53	229.32	155.36	105.99	138.87
'20	Preparations of vegetables, fruit, nuts or other parts of plants	166.49	190.96	170.12	118.63	118.55

End of Table 2.3

HS code	Name of commodity group	Exports from EU to Ukraine, mln USD				
		2012	2013	2014	2015	2016
'21	Miscellaneous edible preparations	80.73	75.53	81.95	78.62	109.82
'22	Beverages, spirits and vinegar	97.96	106.29	80.23	60.79	60.01
'23	Residues and waste from the food industries; prepared animal fodder	340.32	237.09	146.14	86.37	79.92
'24	Tobacco and manufactured tobacco substitutes	79.38	95.09	78.87	48.05	72.97

Source: compiled and calculated by the author according to the data Trade Map [Electronic resource]. – URL : <http://www.trademap.org/Index.aspx>

In imports from the EU, cereals, seeds and fruits, oilseeds, cacao and products from it, various foodstuffs, etc. dominate. In 2016, imports of European products to Ukraine increased and amounted to \$ 1.9 bln USD. The balance of agricultural goods balance in trade with the EU is positive, while the balance of general trade in goods with the EU is negative. Thus, expansion of agricultural exports is a strategically important task for the creation of FTA with the EU. In the total volume of foreign trade operations, the share of EU countries in comparison with 2016 increased and made up 37.1% in exports, 43.7% in imports.

The Association Agreement, which the Deep and Comprehensive Free Trade Agreement is the part of, aims to introduce conditions for strengthening economic and trade relations that will lead to the gradual integration of Ukraine into the EU internal market and support Ukraine's efforts to complete the transition to a functioning market economy, including through the gradual adaptation of its legislation to the requirements of the EU.

The tools for this are the opening of markets through the consistent abolition of customs tariffs, the provision of duty free access within the framework of quotas, and the large-scale harmonization of Ukrainian legislation, norms and standards with those in force in the EU in various sectors, directly or indirectly related to trade²⁷.

²⁷ Dankevych Ie.M., Dankevych V.Ie. EU Association: Prospects and Risks for Manufacturers and Exporters of Agricultural Products [Electronic Resource]. – URL : <http://global-national.in.ua/archive/7-2015/08.pdf>

The creation of the DCFTA with the EU only partially eliminates the asymmetry of trade regimes between countries. Percentage of agricultural products for the DCFTA includes:

- Immediate cancellation of current import duties by 35.2% of commodity groups for Ukraine and 83.1% of commodity groups for the EU;
- the establishment by Ukraine of transitional periods from 1 to 7 years by 52% of the tariff lines: partial imports liberalization of 9.8% of tariff lines and duty-free tariff quotas by 3.2% of tariff lines.

Establishing transitional periods by the EU from 3 to 7 years by 2% of tariff lines and duty-free tariff quotas by 14.9% of tariff lines. Since the main cancellation of duties by the European Union falls in the first years of the implementation of the Association Agreement, the overall level of tariff protection of the EU has been significantly reduced since the first year, only slightly adjusting in the future. Already in the first year of the Agreement, the EU has reduced customs duties to zero for most commodity groups. The exceptions are cereals, various food products, vegetables and fruits, and beverages where the EU applies tariff quotas.

The introduction of tariff quotas means that certain Ukrainian goods will be supplied to the EU in certain volumes without the imposition of import duties. In this case, it is not about limiting the volume of imports, but only that imports of these goods over a certain amount will be taxed under the same conditions that apply to Ukraine today. Ukraine has set tariff quotas for three types of goods and provided the additional volumes for two of them (pork, poultry and semi-finished poultry, sugar) (table 2.4 and 2.5).

In general, statistics on the utilization of Ukraine's tariff quotas from 2014 shows a positive trend and the impact of the introduction of this instrument. In 2016, the quota for 11 product groups was fully utilized, indicating a significant acceleration of closing times, as in 2015, there were 8 groups of goods (99% sugar), in 2014 – 6 groups. The number of fully utilized quotas has increased, utilization rates have increased, new quotas are

being used in the EU every year, the share of EU countries in the agrarian export of Ukraine has increased²⁸.

Table 2.4

**Some tariff quotas for agricultural products provided
by the EU for imports from Ukraine**

Product	TRQ
Beef meat	12 000 tons/year
Pork meat	20 000 tons/year +20 000 tons/year for some commodity groups
Poultry meat and poultry meat preparations	16 000 tons/year increasing during 5 years up to 20 000 tons/year +20 000 tons/year for some commodity groups
Milk, cream, condensate milk and yougurts	8 000 tons/year increasing during 5 years up to 10 000 tons/year
Sheep meat	1 500 tons/year increasing during 5 years up to 2 250 tons/year
Butter and dairy spreads	1 500 tons/year increasing during 5 years up to 3 000 tons/year
Eggs and albumins	1 500 tons/year increasing during 5 years up to 3 000 tons/year
Honey	5 000 tons/year increasing during 5 years up to 6 000 tons/year
Sugars	20 070 tons/year
Food preparations	2 000 tons/year
Common wheat, flours and pellets	950 000 tons/year increasing during 5 years up to 1 000 000 tons/year
Barley, flour and pellets	250 000 tons/year increasing during 5 years up to 350 000 tons/year
Maize, flour and pellets	400 000 tons/year increasing during 5 years up to 650 000 tons/year
Brans, shaps and residues	16 000 tons/year increasing during 5 years up to 21 000 tons/year
Grape and Apple juice	10 000 tons/year increasing during 5 years up to 20 000 tons/year
Sugar processed products	2 000 tons/year increasing during 5 years up to 3 000 tons/year
Ethanol	27 000 tons/year increasing during 5 years up to 100 000 tons/year
Cigars and cigarettes	2 500 tons/year
Mushrooms	500 tons/year +500 tons/year for some codes
Processed tomatoes	10 000 tons/year

Source: compiled and calculated by the author according to²⁹

At the same time, for many types of products at the present stage of development of the relevant industries, the problem is not

²⁸ How did the first year of the Free Trade Area with the EU finish? [Electronic resource]. – URL: http://ucab.ua/ua/pres_sluzhba/novosti/yak_zakinchivsy_a_pershiy_rik_zoni_vilnoi_torgivli_z_es

²⁹ Appendix A – Indicative aggregate TRQs for imports into the EU [Electronic resource]. – URL : http://www.kmu.gov.ua/docs/EA/Annexes_title_IV/01_Annexes_Appendix%20I-A.pdf

so much in the volume of annual quotas, as in the inability to meet the requirements for quality and safety of products for obtaining export permits in the EU. Regarding products of animal origin, the permit from the veterinary services of the EU was obtained for the export of poultry products.

Table 2.5

**Some tariff quotas for agricultural products provided
by Ukraine for imports from the EU**

Product	TRQ
Pork meat	10 000 tons/year + 10 000 tons/year for some commodity groups
Poultry meat	8 000 tons/year with increase during 5 years up to 10 000 tons/year + 10 000 tons/year for some commodity groups
Sugars	30 000 tons/year increasing during 5 years up to 40 000 tons/year

Source: compiled and calculated by the author according to³⁰

Unfortunately, producers of pork, lamb and cattle have not yet completed their certification procedures for exporting to the EU. Thus, non-tariff barriers will remain the main barriers to the development of exports of domestic agricultural products to the EU markets. The technical, sanitary, and phytosanitary measures that EU countries use to protect their markets may restrain the growth of exports of domestic products within the limits of Ukraine's allocated quotas. The overcoming of non-tariff barriers for export to the EU, as shown by the experience of poultry producers, will require joint efforts of businesses and authorities to modernize production, improve the regulatory framework and conduct long-term negotiations with relevant EU services.

The main positive effects of the creation of the EU-Ukraine FTA for the foreign trade with agricultural products for Ukraine are partial cancellation of the asymmetry of trade conditions between the EU and Ukraine through several instruments, such as: reduction of the weighted average rate of duty on agricultural products; a wide range of tariff quotas from the EU side for Ukrainian products, in

³⁰ Appendix A – Indicative aggregate TRQs for imports into the EU [Electronic resource]. URL : http://www.kmu.gov.ua/docs/EA/Annexes_title_IV/01_Annexes_Appendix%20I-A.pdf

particular livestock products, cereals and certain food products; the EU's refusal to use export subsidies on agricultural products to be supplied to Ukraine; the right to use protective measures in trade; harmonization of national standards with European ones; improvement of the business environment; modernization of agrarian policy according to existing in the EU, etc.

According to some experts, if the investment climate is appropriate, an increase in investments in the domestic food industry of Ukraine from the EU countries can be expected. Significant prospects for increasing export supplies are opening for the domestic confectionery industry, producers of soft drinks, mineral waters, fruit and vegetable juices.

At the same time, there are some disadvantages and negative consequences for Ukrainian society. There is a danger of weakening the competitive position of domestic producers of meat and meat products, dairy products, vegetables and fruits as a result of increased imports from the EU, as well as weakening of the competitive position of domestic food processing enterprises, especially small and medium-sized ones, as a result of growing competition on the domestic market.

A number of provisions of the Association Agreement with the European Union is indirectly linked to the rural sector of the society, which will induce appropriate changes in the state regulation of this sector in Ukraine. In particular, financial support for adaptation of peasant commodity farms to modern sanitary and veterinary requirements in the production of agricultural products is estimated at 500 million UAH³¹.

Significant risks are associated with the high cost of adapting the Ukrainian legislation in the field of technical regulation to the EU legislation. Costs are related not so much to the legislative introduction of the relevant norms as to the introduction of new technologies into production, the purchase of equipment, training of personnel, etc.

³¹ Heyets V. Ostashko T. (2016) Implementation of the Association Agreement between Ukraine and the EU: Economic Challenges and New Opportunities: Scientific. National Academy of Sciences of Ukraine, Institute of Economics and Prognosis of the National Academy of Sciences of Ukraine, K.

Although the implications of signing the Association Agreement for rural development in the short term will be ambiguous, they will definitely be positive in the long run. DCFTA is a huge stimulus to the development of the economy, which requires harmonization of legislation, standards and procedures of certification, approaches to ensuring and controlling the quality and safety of the same food products.

As for **industrial goods and raw materials**, it should be noted that the average level of tariff protection in the EU market for Ukraine ranges from 4.4% to 5%. Therefore, the main obstacles in trade in industrial goods with the EU are not import tariffs, but technical barriers. The EU's technical regulation system is considered to be the most effective and successful example of removing technical barriers to trade. The main technical requirements are classified in the product safety sector, technical standardization, packaging and product labeling.

Prescribed by the DCFTA+ Agreement, the liberalization of tariffs and duties (taking into account WTO rules, volumes and schedule of implementation) will simplify and computerize customs procedures, which will help to overcome corruption and reduce the time and cost of processing, and consequently, the efficiency of customs work will increase. In addition, the recent changes in the customs legislation of Ukraine with a view to adaptation to international and European standards are also aimed at facilitating the implementation of foreign trade interactions. In particular, the process of granting the status of an authorized economic operator, the introduction of an approved exporters institution in Ukraine and an electronic data exchange system based on the «Single Window» principle. This will reduce the actual and administrative costs of business in the future.

Another aspect is the harmonization of the rules of origin of goods provided for by the Agreement and aimed at preventing the re-export of goods produced in third countries from the EU; Mutual recognition of certificates of origin, which involves close cooperation between the relevant authorities of Ukraine and the EU, Ukraine's accession to the Pan-Euro-Mediterranean cumulation

territory, which will allow the use of raw materials of European origin in production processes in Ukraine and further export to the EU at zero import duty rates. At the same time, there is a need for Ukraine to review the rules of origin of goods, which will force Ukrainian producers to more carefully choose the source of raw materials and at each stage of production to monitor the availability of all documents required for verification of origin. Despite the fact that such changes require additional expenditures from the state budget, only such an approach will allow Ukrainian producers to fully use the possibilities of preferential access to the European market.

Particular attention is required by domestic metallurgy. The significant energy intensity of the industry, high natural gas prices, low demand for steel products on the external market and insignificant volumes of domestic consumption considerably worsen the financial situation of the industry and increase the demand for state aid. However, unlike most countries, where the restructuring of metallurgy prior to the signing of the Agreement took place with the active participation of the state, the Ukrainian government was not significantly concerned with radical modernization of domestic metallurgical enterprises, placing the responsibility on the owners alone. This means that Ukrainian metallurgists have not received targeted aid for the modernization of production capacities from the state for almost the last 15 years.

At the same time, in accordance with the Agreement, there is no such opportunity at all. The only way to receive state aid that will not distort the conditions for competition will be to change the structure of state aid in Ukraine in favor of so-called horizontal goals – environmental protection, research and development and regional aid. But, unfortunately, these changes take time and cost. As an example, adopted on July 1, 2014, the Law of Ukraine «On State Aid to Business Entities», which sets the main legal framework for monitoring and control of state aid in Ukraine in accordance with the principles of the EU. After the three-year transitional period envisaged, the law fully came into force on August 2, 2017, and it deliberately does not cover

agriculture, fisheries and the defense industry in accordance with the requirements of the Association Agreement. An important feature of this law is that it is a framework law that will require substantial additions to the complex secondary legislation for a more detailed settlement of the actual rights and obligations of the providers and recipients of state aid, as well as restrictions on state aid in Ukraine, which would be imposed by the Antimonopoly Committee as the responsible regulatory body in Ukraine. For the possibility of such development, the law provides for a reasonable transitional period before coming into force. Meanwhile, the body authorized by the AMCU to create secondary legal acts is already in force and it is necessary to approve the detailed and comprehensive secondary legislation and implementation instructions as well as to establish an appropriate institutional framework for establishing an effective system for monitoring state aid to economic entities, according to the model of the system existing in the European Union. That is, there will be no significant changes in the area of state aid in the near future for Ukrainian enterprises.

As for raw materials, the export of certain types of commodities, in particular ferrous and nonferrous scrap and ferroalloys, has not significantly changed since January 1, 2016. Given the gradual abolition of Ukraine's export duty, this process will be carried out for a long time – three to ten years, and in case of exceeding the established volumes – up to 15 years, that is, the leading domestic producers of ferrous metals will not be fundamentally affected. The above refers to the enterprises of Dnipropetrovsk, Zaporizhzhya and partly Donetsk regions. Regarding metal scrap, the rest of the regions of Ukraine have roughly identical conditions, therefore, there have been no significant changes in 2016–2017.

One of the reasons behind the relatively high barriers to entry of domestic producers to the European market is that Ukraine is at a lower level of technological development than the EU.

It should be noted that the economy of Ukraine is characterized by technological multimodality, since its individual components correspond to different technological structures (waves

of innovations) – from the second to the fifth, which negatively affects the efficiency of the economy due to the fact that the cooperation of enterprises belonging to different technological processes leads to significant losses of resources. If Ukraine continues to strive to increase its exports of lower-end goods, it is threatened by the «dampening growth» effect described by well-known international trade theorist J. Bhagavatti³². In addition, the Ukrainian economy has certain conditions for the implementation of innovation potential, but there are problems with the creation of the necessary conditions for the efficient use of resources. This thesis is confirmed by the place of Ukraine on the global index of innovations, which has remained fairly low in recent years³³. Creating innovation parks and clusters, necessarily with the support of state, would help overcome the existing technological backwardness. That, in turn, would allow to reach a new level of Ukrainian exports – the export of goods with high added value. Now there is the threat of distortion of the country's exports in favor of trade in goods of low processing degree.

There are several preconditions affecting the emergence of this trend. The limitations caused by tense relations with the Russian Federation have caused a decline in the volume of production of machine-building products, which have traditionally been exported to the Russian market, whereas the prospects of modernizing this production and reorienting exports to other markets involves a large number of difficulties. The EU as a whole is more interested in preserving the raw material orientation of Ukrainian exports. In 2013, the share of industry in the structure of the Ukrainian economy amounted to 29%; in comparison, it had fallen to 24.4% by 2015³⁴. On the one hand, there is a theoretical probability of transferring some European production to Ukraine

³² Bhagwati Jagdish. Immiserizing Growth: A Geometrical Note, *The Review of Economic Studies*, Volume 25, Issue 3, 1 June 1958, Pages 201–205.

³³ The Global Innovation Index 2011–2017//The Human Factor in Innovation. – URL : <http://www.globalinnovationindex.org>

³⁴ Dabrowski M. Taran S. *The Free Trade Agreement between the EU and Ukraine: Conceptual Background, Economic Context and Potential Impact: CASE Network Studies & Analyses*. Warsaw: CASE. Center for Social and Economic Research, 2012. 35 p.

due to the relatively low cost of labor. On the other hand, the risk of investments in the light of the current state of affairs in the Ukrainian economy is a deterring factor. An alternative to attracting FDI may be a strategy of supporting domestic business by creating the conditions for withdrawing the own capital of Ukrainian enterprises from the «shadow» economy. As an example, Israel, a country in a state of permanent emergency, does not cease to show significant rates of socio-economic development.

Light industry deserves special attention. It should be noted that at the beginning of the DCFTA's implementation, the European clothing and footwear market was the largest regional market in the world with a steady growth in import demand. In particular, according to Eurostat ³⁵, external import of clothing and footwear in the EU has grown dynamically during the last 5 years (annually by 4.7% and 6.2% respectively). In 2015, clothing imports amounted to 83.3 billion EUR in clothing and 19.9 billion EUR in the footwear sector. Ukraine's share of external EU imports was negligible: 0.3% in the clothing segment and 0.4% in the shoe segment in 2015, and therefore, the growth potential for Ukrainian exports is real and very significant. Outer clothing and underwear dominate in the commodity structure of foreign imports of clothing in the EU countries (totaling to 56.9 billion EUR, or 68% of imports, in 2015). In the segment of footwear, the main import demand falls under the subgroup of «footwear, except sporting, protective and orthopedic footwear» – 15.3 billion EUR, or 77%. Ukrainian producers have certain advantages for entering the European market, for example, the short delivery time and small transport costs due to Ukraine's border with the EU. On the other hand, it should be borne in mind that the export of new products to the EU market is mainly due to the replacement of the existing volume of consumption on the target market ³⁶. The substitution potential depends mainly on the demographic characteristics of the target market segment

³⁵ European Commission (2017) EU-position in world trade. Electronic resource, URL: <http://ec.europa.eu/trade/policy/eu-position-in-world-trade>.

³⁶ Export of clothing to the European Union. A Guide for Ukrainian Entrepreneurs. – K.: FOP Klimenko Yu.Ya., 2017. 116 p.

(in particular, on age, income, sex, level of education of buyers etc). Various market segments can exhibit different sensitivity to various materials and design. Therefore, it is desirable for Ukrainian suppliers to know which segment they aim for and what is important for the relevant customer group. This will deepen the understanding of the competitor's position as an exporter (supplier) and may encourage the development of clothing offerings with integrated electronic devices («smart» clothing) (see Detail³⁷). Also, the inclusion of Ukraine in the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin would create the possibility of exporting clothing made in Ukraine from fabrics produced in Turkey into the EU at 0% import duty.

Another important aspect is the direct development of light industry in Ukraine. It is precisely in order to create the best conditions for this that additional terms of trade in second-hand are to be used. Ukraine's abolition of import duties for used clothing and other second-hand products (code UKT ZED 6309) would have certain features. Ukraine would cancel the import duty within five years, starting from January 1 of the year following the date of enacting the Agreement. Together with the annual reduction in import duty, Ukraine would introduce incoming prices, expressed in EUR, per kilogram of net weight, which would be determined as 30% of the average of the customs value of clothing for the previous year in accordance with the codes of the UCGFEA listed in the Agreement. This can be an incentive for domestic clothing production, giving preference to the domestic light industry and reducing the attractiveness of imported second-hand clothing. Also important in modern conditions is the development of mechanical engineering, which focuses mainly on the domestic market. The industry exports about 10–12% of its total production. But in the context of implementing the DCFTA, there are new opportunities for improving the situation. As of 2017, according to the State Statistics Service, about two-thirds of processed products are supplied to industrial consumers in the EU, which makes Ukrainian exporters part of the European

³⁷ Best Smart Clothes: Wearables to Improve Your Life, May 25 2016. – URL : www.pocket-lint.com/news/131980-best-smart-clothes-wearables-to-improve-your-life

production chains. Certainly, one of the most famous examples of Ukraine's participation in the EU production chains is the production of electrical equipment for the automotive industry (Table 2.6).

Table 2.6

Contribution of Ukraine to the world automotive industry

№	Enterprise	Location	Product	Customers
1	Association «Carpathians»	Ivano-Frankivsk	wiring	Porsche, Mercedes, Volkswagen, Skoda
2	Bader Ukraine	Gorodok (Lviv region)	car covers	Volkswagen Group
3	«Tochprilad»	Mukachevo (Transcarpathian region)	wiring, sound systems electronic components	BMW, Mercedes, Land Rover, Volkswagen
4	Costal Ukraine	Pereyaslav-Khmelnytsky (Kiev region)	electronics	Ford, Audi, BMW Volkswagen, Mercedes, Renault,
5	W.E.T Automotive Ukraine	Vinogradov (Transcarpathian region)	electronic seat heaters, touch car cables and sensors	Ferrari, Porsche, Opel, Mercedes, Volkswagen, BMW,
6	Kromberg&Schubert Ukraine	Lutsk (Volyn region)	electronics	Volkswagen, BMW, Audi, Mercedes
7	Tayko Electronics Ukraine Limited	Ivano-Frankivsk	wiring, convectors	BMW, Opel, Fiat, Mercedes, Skoda,
8	Sumitomo Electricity Bordnetse Ukraine	Ternopil, Chernivtsi	car cables	Volkswagen, Audi
9	SEWS Ukraine	Chernivtsi	car cables	Nissan Motor
10	Bosch Ukraine	Krakovets (Lviv region)	starters	Volkswagen, BMW, Mercedes and others

Source: compiled by the author by ³⁸

Meanwhile, the experience of Central and Eastern European (CEE) countries is of considerable interest for the formation of an effective strategy of entry of Ukrainian enterprises into European production networks. By the end of 1980, CEE countries were represented by low-efficiency manufacturing, poorly competitive goods, and a poorly developed service sector. At the end of the 20th and the beginning of the 21st century, as a result of joining

³⁸ <http://cardiagram.com.ua/vklad-ukrainy-v-mirovoy-autoprom-4790.html/2>.

the EU, the countries of the CEE entered a process of deep structural economic restructuring of foreign economic relations. The developed system of automobile and railway tracks, as well as the associated infrastructure, has successfully made the interaction between suppliers and manufacturers consistent with the concept of economical production and the «on time» system.

Foreign companies, coming to the CEE market through the «greenfield» (construction of new factories) and «brownfield» investments (forming joint ventures based on existing ones), gradually formed production that is often located in several countries (Table 2.7). The introduction of these steps would allow Ukrainian enterprises to take advantage of the benefits from the introduction of the DCFTA with the EU.

Table 2.7

**Stages of inclusion in global value chains (on the example
of the automotive)**

Stage	Stage description	Prerequisites and actions
I	Attraction of foreign TNCs	<ul style="list-style-type: none"> - favorable geographical location (border with Germany) - availability of sufficiently qualified technical personnel - low cost of labor - availability of cheap production facilities and developed infrastructure
II	Implementing a development strategy for the industry	<ul style="list-style-type: none"> - Government support for automotive development, use of assistance from EU structural funds - targeted government strategy for attracting foreign investment in the development of the industry - openness of the economy and accession of the countries to the EU - the ability of suppliers of automobile components to work in several assembly plants, supplying products to different countries - the transition from import dependence to an export-oriented economy
III	Specialization in technological and organizational innovation	<ul style="list-style-type: none"> - Opening new and supporting existing research centers through increased R & D investments - improvement of professional competence of the personnel, development of the market of electric cars and associated infrastructure

Source: compiled by the author

The expanded and in-depth nature of the DCFTA+ implies substantial national economy expenditures to adapt to the requirements of the EU common market. The capabilities of official EU assistance, national budget financing, expenditures of consumers and national producers are important in this process, but limited. As the experience of Central European countries shows, the attraction of foreign investments is essential, especially for modernizing the national economy. Creating an attractive domestic investment climate in Ukraine is becoming an urgent need for an economic association with the EU. On the other hand, guarantees for foreign investors regarding economic unity and indivisibility, preservation of the state borders of the investment field in Ukraine should be considered an important external factor for the implementation of the Association Agreement. This is especially true in the hybrid war conditions in the country.

Moreover, the lack of such guarantees significantly reduces the investment attractiveness of the Ukrainian economy for foreign investment, and hence the economic attractiveness of the association for Ukraine as a whole. Therefore, the development and substantiation of new political and security guarantees for the preservation of territorial unity and socio-economic stability in Ukraine can play an appropriate role.

Despite the complex socio-political conditions in the country, Ukrainian enterprises have considerable potential for entry into the European market, but there is also a number of obstacles to the further development of trade relations in the European direction³⁹. The most important is the need to eliminate the benefits of family ties over open (and, therefore, competitive) public relations networks in the public consciousness, as well as overcoming the tendency of prioritizing formal statutory signs over the real content (essence) of relations.

Another important issue is the need to change the socio-cultural orientation of entrepreneurial activity, namely, foster the

³⁹ Duginets G. (2015) Deep and Comprehensive Free Trade Area between Ukraine and EU (DCFTA): realities and prospects *Economic Annals-XXI*, 155(11–12), 10–13.

ability to think and behave strategically with a focus on long-term development goals. The very fact that the Association Agreement has an implementation term of ten years should lead to the development and implementation of long-term development strategies. For a long time, the country's economic development was sporadic and in line with the momentary goals of structures holding political power. In case of this Agreement, regardless of who the president will be, it is necessary to adhere to the conditions laid down therein. Incidentally, perhaps for the first in the modern history of Ukraine, there is an urgent need to develop effective development strategies at all levels – state, regional, sectoral (business associations), social and humanitarian (non-governmental organizations of various profiles). In the Ukrainian society, there is currently no general understanding of the fact that the Association Agreement applies to everyone. Indeed, the creation of a free trade area will primarily affect exporters of Ukrainian products, but large-scale harmonization of legislation, technical regulations, sanitary and phytosanitary standards will apply to those who sell products even on the domestic market.

In general, the expected effects of implementing the provisions of the Agreement and the author's assessment of the possibilities for their implementation in the current crisis conditions are presented in Table 2.8.

Table 2.8

**Possibilities of attaining certain integration effects in the
implementation of the DCFTA+ association agreement**

Theoretical effect	Manifestation of the theoretical effect expected at the time of signing the Agreement	Critical assessment of the possibility of achieving the desired effect in practice
The effect of «expansion of trade»	Increased exports of goods and services to the EU	Complexity of redirecting the CIS-oriented mechanical engineering products into EU markets due to the discrepancy between their technical characteristics and the relevant EU regulations
Expansion of specialization	Inclusion of Ukrainian producers in international production networks	The inclusion only of Ukrainian mining companies in the European production networks is very probable

End of Table 2.8

Theoretical effect	Manifestation of the theoretical effect expected at the time of signing the Agreement	Critical assessment of the possibility of achieving the desired effect in practice
«Deviation of investments» effect	Relocation of certain European production assets to Ukraine according to the advantages of specialization	In the long run, the transfer of European resource-intensive industries closer to Ukrainian mining enterprises is possible, but it is difficult to assess the rationality of such a relocation.
Effect of «Increasing Productivity»	Re-equipment and modernization of national production	In the current crisis conditions, Ukrainian enterprises have virtually no financial possibilities for re-equipment and modernization of production.
Increasing competitiveness	Introduction of European technical standards to the Ukrainian production	The widespread introduction of European standards involves considerable financial costs and requires time

Source: developed by the author on the basis of⁴⁰, p. 24.

Taking into account the fact that the implementation of the Free Trade Agreement with the EU is the most important imperative for the transformation of foreign trade flows, an analysis of its implementation allows the following conclusions to be drawn:

firstly, during the last four years, there have been significant changes in the starting conditions for the signing and implementation of the Agreement. The increase of imbalances in the European Union in 2016–2017 will lead to the formation of a balanced regional policy in the EU, which would take into account the socio-economic characteristics of the member states, in the near future;

secondly, stabilization and settlement of internal political conflicts and dealing with the external military threat are important for the country's favorable economic development; in the period of preparation and commencement of the implementation of the Agreement, the preconditions for the growth of the Ukrainian

⁴⁰ Dabrowski M. Taran S. (2012) The Free Trade Agreement between the EU and Ukraine: Conceptual Background, Economic Context and Potential Impact: CASE Network Studies & Analyses. Warsaw: CASE. Center for Social and Economic Research, 35 p.

economy and improvement of the population's standard of living have not been created;

thirdly, Ukrainian producers will have to move to European standards of product quality, which requires significant financial costs. Most enterprises need to undergo almost complete modernization of production and teach staff to work with new technologies;

fourthly, the agreement potentially increases the access of enterprises to European loans, but national producers in difficult economic situations are high-risk investments and therefore unlikely to be able to claim European loans;

fifthly, the implementation of DCFTA+ is rather to be perceived as a mechanism for comprehensive modernization, strengthening the competitiveness of domestic produce and further integration into the world economy – in particular, for deepening cooperation with the countries of the Asia-Pacific region.

It is also necessary to determine the main imperatives of the transformation of foreign trade flows of Ukraine – these are the global changes in the socio-political system of the world economy. For example, the future course of integration relations within the EU will depend on the correctness or the falsity of decision-making and the quality of regional and public administration. In any case, the European Union is moving towards a new level of development of relations with the urgent need to understand and accept the existing Euro-skepticism in member countries, and also the need to adapt the ruling political forces to new social expectations and, as a result, to transform the future EU policy.

In the Ukrainian economy, in turn, there have also been significant changes that, along with the acceleration of European integration processes, have influenced the transformation of foreign trade flows.

Major problems include the annexation of part of Ukraine's territory and a long-term military conflict in the eastern part of the country. Among the results are, firstly, the inhibition of the

processes of the domestic economy's structural adjustment and the high level of the economy's import dependence, and secondly, the deformation of the commodity structure of imports and exports, as well as their imbalance, which testifies to the need for urgent measures aimed at stimulating foreign economic activity in order to overcome the accumulated socio-economic problems. In the author's opinion, one of the promising directions is to increase both the production of value added in high-tech sectors and the export of intermediate and end-products in which it is embodied. This is primarily about the need to increase non-raw-material value added, that is, the added value of high-tech industries such as automotive, electrical equipment, and the chemical industry. This is due to the need to change both the sectoral structure of the economy and the structure created in high value added sectors.

The introduction of tariff quotas that allow zero-tariff exports to the EU within the quota creates opportunities for Ukrainian businesses to attain market gains. Technological and technical transformations of international relations at the beginning of the 21st century provide the ability procure information on European markets or connect with retailers, importers, and distributors without leaving the office. The main sources of information available on the Internet are:

1. Kompass (<http://ua.kompass.com>). A world-wide online database of over five million companies providing verified contact information (checked annually), profile of activities, websites, addresses, contact persons etc. The available functionality of sampling according to many criteria makes it easy to select clothing buyers in any country in the world. Access to this database is payment-based, but at the same time, one-time orders of samples with the contact details of up to 1000 companies are possible.

2. B2B Europages. (<http://www.europages.com.ru>) Online b2b directory containing data about 2.6 million companies from most countries of the world. Significant advantage of this resource is the free use of it under the condition of pre-registration. At the moment, the request «clothes» returns information about nearly 60 thousand companies. At the same time, these companies can be

structured according to their status (for example, agent / representative, retail sales, distributor, wholesale, manufacturer). Each company profile contains information about its specialization details, addresses, contact numbers, letterhead, website, and photos and videos of products. In addition to actively seeking customers, it is advisable to create a company profile for Europages, which would create an additional channel for possible requests to your business address.

3. Obtaining information through the network of the European Business Register (EBR) (<http://www.ebr.org>) The EBR is a network of national business registers or their designated information providers. However, the EBR members are not all EU member states. The list of members can be viewed at the bit.ly/EBRmembers link. Information from registers from other countries can be obtained through the official EBRD information distributors.

4. Organization of economic cooperation and development (<http://www.oecd.org>). Basic statistics and other country-specific information can also be found on the website of the Organization for Economic Cooperation and Development. In particular, in the «Countries» section, one can choose the target country and see its detailed statistical profile as well as other information.

5. EU SME ICE PORTAL (https://ec.europa.eu/growth/smes_en) Supporting the Internationalization of SMEs and Enhancing Co-operation between National Agencies and the European Commission

6. Export Helpdesk (<http://exporthelp.europa.eu>) Support service for export to the EU: requirements and taxes, customs tariffs on import of goods and other import rules, trade statistics, preferential agreements. This is a free online resource of the European Commission. To obtain the relevant information, one must enter (1) the 10-digit code of the goods according to UCGFEA, (2) the country of origin of the goods (Ukraine) and (3) the EU country into which the goods are imported. Also on the site one can find the necessary trading statistics (import-export).

7. Agreement on participation of Ukraine in the EU program «Competitiveness of Small and Medium Enterprises (COSME)

(2014-2020)» (COSME / Ministry of Economic Development and Trade of Ukraine). This program has a budget of 2.3 billion EUR aimed at strengthening the competitiveness of Ukrainian small and medium-sized enterprises (SMEs), encouraging entrepreneurial culture, and creating and expanding SMEs. Realization of these goals is ensured through:

- a) Improving access to financing for SMEs in the form of corporatization and guarantees on debt;
- b) improving access to markets, globally and within the European Union in particular;
- c) improvement of the basic conditions for competitiveness and sustainable development of enterprises of the European Union;
- d) promotion of entrepreneurship and the formation of a culture of entrepreneurial activity.

In Ukraine, the EEN-Ukraine consortium, which was established in 2011, was established in Ukraine to inform and involve Ukrainian companies in the use of COSME, HORIZON 2020 and all other EU financial support programs and projects available to Ukraine, among which are:

8. Enterprise Europe Network (EEN) (<http://een.ec.europa.eu>)
The European network of companies that provides partner search services in 65 countries worldwide, promotes innovation and technology transfer. The EEN network includes: information on support and business support organizations and network member organizations (more than 6,000 technological and more than 10,000 business profiles)

9. Organizations for support and development of trade – EPO (Ukraine, <http://www.epo.org.ua>) – Export Promotion Office under the Ministry of Economic Development and Trade of Ukraine is engaged in supporting Ukrainian exporters and promotion of Ukrainian goods and services abroad, as well as the development of export competences of Ukrainian business and increase of their international competitiveness in the market.

– CBI (the Netherlands, <https://www.cbi.eu>) – Center for promotion of imports from developing countries. This center

provides comprehensive support to exporters, with the goal of finding partners and concluding trade agreements.

– ITFC (Ukraine, <http://tradecenter.org.ua>). One of the functions of this organization is to assist in entering foreign markets, organizing business meetings abroad and finding potential partners.

10. Also, obtaining the necessary information about European markets is possible through participation in **sectoral and commodity trade associations**. In the EU, there are over 6,000 of them, and their main functions are: to represent the important interests of its members and industry; provide members with information on issues of interest to them; and to raise the voices of individual members on issues that affect them or their industry. Usually this is manifested in the implementation of targeted policies (lobbying for government changes to laws or the formation of new laws), general industry support (informing the public) and informing its members (market information and regulatory changes, training). For interaction at the European level, federations of equivalent national associations have been established in the EU. These associations can be useful to existing and potential exporters, and one can often get important information when communicating with them.

– Associations of the EU and / or their equivalents in member states are often able to provide a statement of requirements and compliance with EU legislation. Associations in the EU lobby for legislative changes and monitor laws on behalf of their members, they also understand the requirements well. They often publish guides and conduct training on how to comply with the rules and can provide such assistance to Ukrainian exporters;

– Members of national associations produce similar goods to Ukrainian producers, therefore they are the source of investments, joint ventures, outsourcing and other partnership agreements;

– EU associations and / or their equivalents in member states are often able to provide information on market requirements, trends and individual standards, which is very important for effective sales.

Members of national associations are potential exporters, their contacts are often listed on associations' websites. This is a list of potential buyers.

11. For presentation of products, platforms of international trade fairs can be used, which are the source of information and provide opportunities for sale. Each year, more than 10,000 such fairs are held in the EU. One example is the TradeFairDates online resource (<http://www.tradefairdates.com>), which contains regularly updated information about exhibitions and fairs in Europe and the world as a whole. The resource allows to search by country and city of conduct, as well as the planned date.

12. At the beginning of the 21st century, it is possible to use social networks to enter the foreign markets. **LinkedIn**, for example, allows to connect with retailers, importers, and distributors. The data available often includes even personal phone numbers. In addition, the site provides access to professional networks, which are potential buyers. Using **LinkedIn** can be effective in the context of finding individuals who represent companies of interest as potential buyers. So, knowing the name of the company, one can filter out the list of people who are its employees, with the goal of further establishment of business ties.

Chapter 3

MEANS TO PROTECTING TRADE

Traditional instruments of trade protection. Providing the interests of domestic producers is an integral part of the economic security of the state. Trade protection instruments applicable domestic market from the adverse effects of foreign competition. Such instruments include: special protective, anti-dumping and countervailing measures that are used in international trade practices to effectively neutralize the damage to industry from dumping, subsidized imports, or the sharp rise in imports of goods from foreign countries⁴¹.

Ukraine and the EU have confirmed the possibility of applying trade defense instruments in mutual trade. This obligation is not limited in time and makes it possible to apply such measures in the event of unfair competition.

Unfair competition is any action in competition that is contrary to the rules, trade and other honest practices in business. Trading measures are restrictions that can be imposed in specific circumstances to protect against imports.

The use of such trade defense instruments is provided in the Agreement:

- global trade measures implemented through the establishment of duties or quotas;
- bilateral trade measures established in the Agreement on cars;
- measures in connection with unfair competition – limitation of the quantity for the import of certain goods from certain third countries in order to protect European producers from mass imports at very low prices (antidumping duty or entering into a Covenant on price obligations), as well as compensatory measures (compensatory toll).

⁴¹ Kalinichenko A.I. (2016) Trade Defence Instruments in Ukraine's economic security of security providing. Law and innovative society. № 2. 35–41.

Dumping is the import of goods at a price lower than the comparative price for a similar product in the country of export⁴². Thus, the company arranges dumping if it exports goods to the EU at prices below the normal value of the product (domestic price or cost of production) in the domestic market of its country.

Anti-dumping measures can only be introduced after an investigation. The European Commission is responsible for anti-dumping investigations. The European Commission begins an investigation after receiving a complaint from the producers of a specific product within the Community, but it can also initiate it on its own initiative.

The European Commission publishes a notice in the Official Journal of the EU on the initiation of an anti-dumping proceeding after receiving a complaint from European producers of a particular product affected by dumping imports. The maximum term for such investigations is 15 months. The facts found in detail are published in the Official Gazette, for example, in the form of a resolution establishing anti-dumping duties or canceling the consideration without charge. The main stages of the introduction of anti-dumping measures are shown in Fig. 3.1.

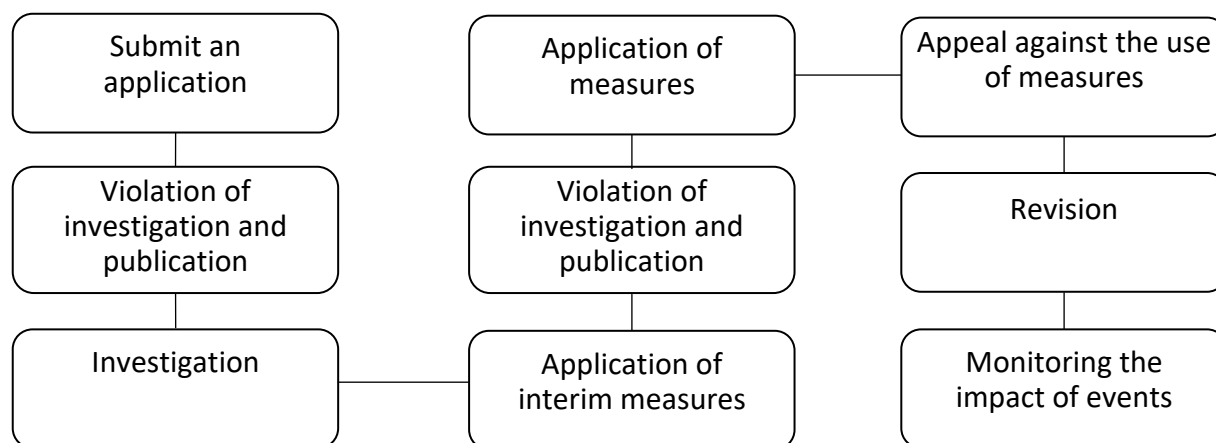


Figure 3.1. The main stages of the introduction of anti-dumping measures in the EU

Source: made by the author according to⁴³

⁴² Trade protection instruments. – URL : [http://bc.dniprorada.gov.ua/ attachments/article/869/3-Презентація_Суханов_Інструменти%20торговельного %20захисту.pdf](http://bc.dniprorada.gov.ua/attachments/article/869/3-Презентація_Суханов_Інструменти%20торговельного%20захисту.pdf)

⁴³ Protection of interests of domestic commodity producers in foreign markets. – URL : <http://me.gov.ua/Documents/Detail?lang=uk-UA&id=10f1852c-6b83-4573-9a08->

The application of antidumping measures in the EU countries is governed by the provisions of Council Regulation (EC) No 1225/2009 «On protection against dumped imports from countries not members of the European Community».

According to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade⁴⁴, before importing countries will be allowed to enter the anti-dumping duty investigation must prove that:

1) exporters use dumping. The dumping occurs when the export price of the product sold on the foreign market is lower than the price of the like product on the domestic market of the exporter, that is, below the normal price;

2) material damage was caused to a particular industry in the EU (the amount of «dumping margin» is calculated, determined by how much the exporter's internal price exceeds the export price. Dumping can be applied only to «similar goods». In order to determine the damage, it must be determined whether the imported product is a similar product made internally.

3) there is a connection between dumping and damage. It must be proven that damage is caused by dumping imports, and not by other factors. The key criterion for determining dumping is the ratio of export and «normal» prices, which is usually based on the prices paid for the product in the ordinary course of trade between an independent supplier and the buyer in the exporting country.

4) imposition of measures is not contrary to the interests of the EU.

If these 4 conditions are met during the investigation, anti-dumping measures may be applied to the import of the item being investigated. Antidumping duties or price obligations are such measures. The measures taken depend on the level of dumping or damage, based on the lesser.

5c753558d9e4&title=BukletzakhistInteresivVitchiznianikhTovarovirobnikivNaZovnishnikhRinkakh

⁴⁴ Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade, 1994. URL : http://zakon3.rada.gov.ua/laws/show/981_010

Antidumping duties are imposed by the EU country on the import of cheap products that fill the local market, and apply only to companies that are dumping. Duties charged by the internal customs authorities of a particular EU member state.

The antidumping procedure can be completed without the use of anti-dumping measures in the following cases:

- the fact of dumping is not confirmed;
- the dumping margin is minimal (less than 2% of the export price), or if the volume of imported supplies is insignificant (less than 3% of the total import of the similar product to the importing country):
- notice of termination of the procedure is published in the official publication of the EU.

Antidumping duties are subject to review every 5 years. During the review, the duty is canceled if there is no evidence that the country continues dumping and this dumping damages the local firms in the country of import.

The main purpose of the EU's antidumping policy is to make all market participants act on the basis of fair competition. The number of anti-dumping investigations and anti-dumping measures of the EU is given in Table 3.1.

Table 3.1

**Antidumping investigations and anti-dumping measures
of the EU, 1995-2017**

Years	Number of anti-dumping investigations initiated by the EU	Number of anti-dumping measures imposed by the EU	Number of anti-dumping investigations against the EU	Number of anti-dumping measures taken against the EU
1995	33	15	–	–
1996	25	23	1	–
1997	41	23	2	1
1998	22	28	4	1
1999	65	18	7	4
2000	32	41	9	4
2001	28	13	9	8
2002	20	25	10	6
2003	7	2	10	7
2004	30	10	3	6

The end of the table 3.1

Years	Number of anti-dumping investigations initiated by the EU	Number of anti-dumping measures were imposed by the EU	Number of anti-dumping investigations against the EU	Number of anti-dumping measures taken against the EU
2005	24	20	5	3
2006	35	12	3	3
2007	9	12	2	1
2008	19	16	4	3
2009	15	9	6	1
2010	15	5	9	4
2011	17	11	3	4
2012	13	3	5	8
2013	4	12	8	4
2014	14	1	8	6
2015	11	10	3	4
2016	14	5	7	5
2017	9	11	5	3
Total	502	325	123	86

Source: made by the author according to ⁴⁵

For the most part, investigations initiated by the EU concerned products such as precious metals and their products, chemical products, electrical equipment, textile products, polymer materials (Table 3.2).

Table 3.2

Antidumping investigations (AI) and anti-dumping measures (AM) of the EU

Section	Description	AI initiated by the EU	AM used by the EU	AI against EU	AM against EU
I	Live Animals; Animal Products	8	4	1	1
II	Vegetable Products	2	2	2	1
IV	Prepared Foodstuffs; Beverages, Spirits and Vinegar; Tobacco and Manufactured Tobacco Substitutes	2	1	2	–
V	Mineral Products	6	6	2	1
VI	Products of the Chemical or Allied Industries	95	64	62	47
VII	Plastics and Articles Thereof; Rubber and Articles Thereof	36	19	23	18

⁴⁵ World Trade Organization website. – URL : https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

**DEEP AND COMPREHENSIVE FREE TRADE AGREEMENT WITH THE EU:
ADVANTAGES AND DOWNSIDES FOR THE UKRAINIAN SOCIETY**

The end of the table 3.2

Section	Description	AI initiated by the EU	AM used by the EU	AI against EU	AM against EU
VIII	Raw Hides and Skins, Leather, Furskins and Articles Thereof; Saddlerly and Harness; Travel Goods, Handbags and Similar Containers;	4	2	–	–
IX	Wood and Articles of Wood; Wood Charcoal; Cork and Articles of Cork; Manufactures of Straw, of Esparto or of Other Plaiting Materials; Basketware and Wickerwork	9	9	1	–
X	Pulp Of Wood or of Other Fibrous Cellulosic Material; Recovered (Waste and Scrap) Paper or Paperboard; Paper and Paperboard and Articles Thereof	2	2	8	4
XI	Textiles and Textile Articles	43	23	4	1
XII	Footwear, Headgear, Umbrellas, Sun Umbrellas, Walking-Sticks, Seat-Sticks, Whips, Riding-Crops and Parts Thereof; Prepared Feathers and Articles Made Therewith; Artificial Flowers; Articles of Human Hair	9	7	–	–
XIII	Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials; Ceramic Products; Glass and Glassware	12	7	–	–
XV	Base Metals and Articles of Base Metal	193	134	13	11
XVI	Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducurs, Television Image and Sound Recorders and Reproducurs, and Parts and Accessories of Such Articles	58	32	2	–
XVI	Machinery and Mechanical Appliances; Electrical Equipment; Sound Recorders and Reproducurs, Television Image and Sound Recorders and Reproducurs, and Parts and Accessories of Such Articles	58	32	2	–
XVII	Vehicles, Aircraft, Vessels and Associated Transport Equipment	10	8		–
XVIII	Optical, Photographic, Cinematographic, Measuring, Checking, Precision, Medical or Surgical Instruments and Apparatus; Clocks and Watches; Musical Instruments; Parts and Accessories Thereof	1	2	3	2
XX	Miscellaneous Manufactured Articles	12	3	–	–
Total		502	325	123	86

Source: made by the author according to ⁴⁶

Most of the measures taken on the results of anti-dumping investigations have been applied to chemical products and polymer materials. During 1995–2017 123 countries of the world

⁴⁶ World Trade Organization website. – URL : https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

initiated anti-dumping investigations against the EU. As a result of investigations, 86 countries have taken anti-dumping measures (Table 3.3).

Table 3.3

Countries that initiated anti-dumping investigations and taken measures against the EU, 1995-2017

Initiated anti-dumping investigations		Anti-dumping measures have been taken	
country	N of measures	country	N of measures
Argentina	1	Brazil	5
Armenia ¹	1	China	22
Brazil	9	Egypt	3
China	27	India	49
Egypt	5	Indonesia	1
India	65	Israel	1
Indonesia	2	Malaysia	2
Israel	5	Mexico	1
Kazakhstan ²	1	Morocco	1
Kyrgyz Republic ³	1	Thailand	1
Malaysia	3		
Mexico	1		
Morocco	2		
Russian Federation ⁴	1		
Thailand	1		
Turkey	1		
Total	123	Total	86

¹ Armenia became a member State of the Eurasian Economic Union (EEU) on 02.01.2015. As of this date, anti-dumping actions are the same as those identified in respect of the Russian Federation, and operate at the level of the EEU.

² Armenia became a member State of the EEU on 02.01.2015. As of this date, anti-dumping actions are the same as those identified in respect of the Russian Federation, and operate at the level of the EEU.

³ The Kyrgyz Republic became a member State of the EEU on 12.08.2015. As of this date, anti-dumping actions are the same as those identified in respect of the Russian Federation, and operate at the level of the EEU.

⁴ All anti-dumping actions identified in respect of the Russian Federation (which became a WTO Member on 22.08.2012) for 2011-2014 operated at the level of the Customs Union of the EEU, i.e., also in respect of Belarus and Kazakhstan (then non-WTO Members). All actions identified in respect of the Russian

Federation for 2015 and thereafter operate at the level of the EEU, i.e., also in respect of Armenia, Kyrgyz Republic, Kazakhstan (which became a WTO Member on 30.11.2015), and Belarus (non-WTO Member).

Source: made by the author according to ⁴⁷

The EU abolishes trade restrictions on Ukrainian products gradually. However, in the EU, there are 2 anti-dumping measures

⁴⁷ World Trade Organization website. – URL : https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

on Ukrainian products (Table 3.4). Ukraine does not have anti-dumping measures on products from the EU.

Also, exporters can offer «take on price obligations» – for example, agree to sell at a minimum price. Imported goods will not be subject to anti-dumping duties if such a proposal is accepted.

Table 3.4

Existing EU anti-dumping measures on Ukrainian products

№	Product name	Active measures	Date of application / extension of measures	Validity of measures	Notes to measures
1	Seamless pipes and tubes (or iron or non-alloy steel)	Dnipropetrovsk Pipe Plant – 12,3%, Nikopol Steel Pipe Plant, Nizhnedneprovsky Tube-Rolling Plant – 13,8%, Nikopol Steel Pipe Plant, all other companies – 25,7%	06.2006/ 07.2012	07.2017	review continues In 2012 duty for companies Interpipe has been reduced from 25.1% to 17.7%, and then to 13.8%
2	Hot-rolled flat products of iron, non-alloy or other alloy steel	60,5 euro per ton	07.10.2017	06.10. 2022	—

Source: made by the author according to ⁴⁸

Compensation measures are applied to subsidized imports. Subsidy is a form of state incentives for exports at the expense of the budget. The notion of «subsidy» is enshrined in the GATT

⁴⁸ The Ministry of Economic Development and Trade of Ukraine. URL: https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

WTO (1994) Agreement on Subsidies and Countervailing Measures⁴⁹.

Export subsidies enable exporters to sell goods abroad at low prices.

World Trade Organization divides subsidies into one of two categories: prohibited and actionable (fig. 3.2).

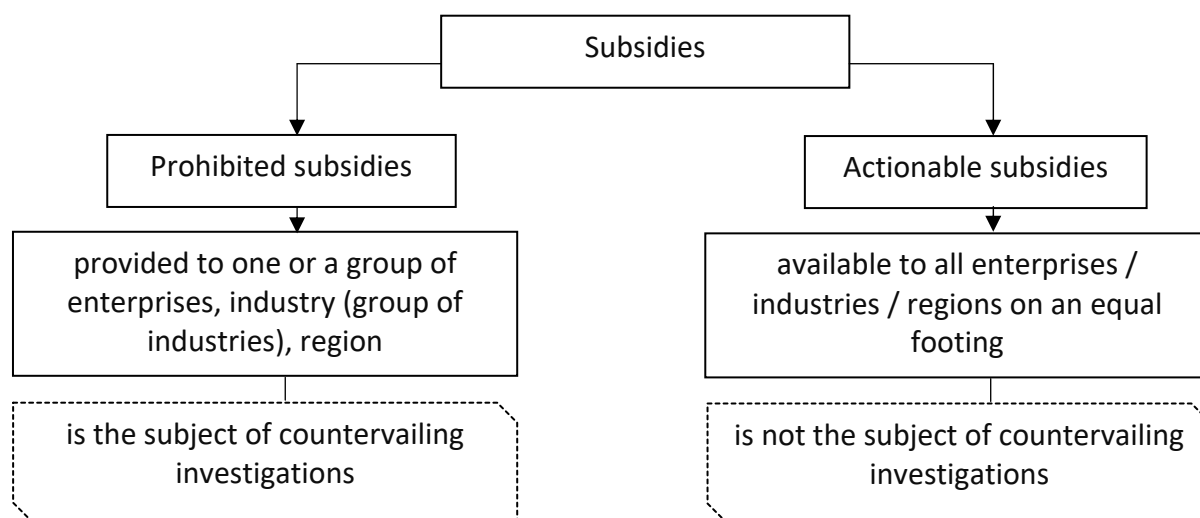


Figure 3.2. Categories of subsidies

Source: made by the author according to⁵⁰

An export subsidy that directly interferes in trade and actually discriminates against foreign partners with respect to a national producer is prohibited. The term «specificity» applies to such subsidies. Subsidies provided to an enterprise or industry or group of enterprises or industries are specific. Such subsidies are prohibited. Such subsidies are the subject of countervailing investigations, because they create unequal conditions of competition.

There are four types of «specificity»:

1. Enterprise-specificity. A government targets a particular company or companies for subsidization;

⁴⁹ The WTO Agreement on Subsidies and Countervailing Measures. URL : https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

⁵⁰ *ibid.*

2. Industry-specificity. A government targets a particular sector or sectors for subsidization.

3. Regional specificity. A government targets producers in specified parts of its territory for subsidization.

4. Prohibited subsidies. A government targets export goods or goods using domestic inputs for subsidization.

Actionable subsidies are «horizontal» in nature. They are available to all businesses / industries / regions on an equal footing. Unlike prohibited subsidies, they are not subject to countervailing investigations because they do not offer privileges to individual market players (Table 3.5).

Table 3.5

Types of subsidies

Subsidies that give grounds for taking action	Subsidies that do not give grounds for taking action
<ul style="list-style-type: none"> – grants, loans; – cancellation or reduction of taxes; – provision of goods (services) on preferential terms; – contributions to financial funds to support enterprises. 	<ul style="list-style-type: none"> – help research activities; – assistance to disadvantaged regions in the territory of a WTO member, which is provided as part of overall regional development, is not targeted; – facilitate the accelerated adaptation of existing capacities to new environmental requirements.

Source: made by the author according to⁵¹

In order to neutralize the impact of export subsidies, measures in the form of compensatory duties or in the form of price obligations are applicable. Compensation measures are aimed at compensating the exporter's benefits and depend on the size of subsidies, the type of subsidy (grants, loans, loan guarantees, government supplies of goods and services). The amount of the countervailing duty is equal to the amount of the subsidy granted per unit of the goods and is set for a period of no more than 5 years with the possibility of further extension of the

⁵¹ The WTO Agreement on Subsidies and Countervailing Measures. – URL : https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

review. The cancellation of the countervailing duty occurs in the event of termination of subsidization. The termination of subsidization means not termination of a legislative act under which a subsidy is granted, but the actual termination of the benefit granted to the recipient of the subsidy.

The procedure for conducting subsidies investigations is analogous to the anti-dumping procedure: measures must be taken to determine the damage, the suit of the EU interested EU producers, the investigation, decision-making by the EU institutions, and possible interim and final measures.

The four conditions are needed to determine the subsidies for which measures can be imposed:

- 1) the fact of providing state assistance or price support;
- 2) the specific nature of the subsidy;
- 3) the subsidy should bring benefits to its recipient (evaluation of such benefits is carried out in parallel with the assessment of the amount of the subsidy);
- 4) there must be no grounds excluding the use of protective measures.

Compensation measures are used less often than anti-dumping measures. They are also politically motivated, since the investigation actually provides an assessment not only to exporting producers in the exporting country but also to its government that provides financial support. (In the case of an anti-dumping investigation, the object of «criticism» is only the company, that is, the manufacturer-exporter.)

Thus, the main difference between dumping and subsidies is that dumping is an action carried out by a firm, while subsidies are actions taken by governments.

Ukraine and the EU have undertaken to cancel and continue to not introduce export subsidies or other equivalent measures intended for sale in the territory of the other party.

Protective measures are non-discriminatory, since they are equally applicable to all trading partners.

Ukraine and the EU have confirmed the possibility of applying anti-dumping and countervailing measures in the mutual

trade on the basis of the WTO Agreement on Safeguard Measures. This obligation is not limited in time and allows Ukrainian producers to initiate appropriate investigations in the event of unfair competition from EU producers, which has or may cause harm to national production. At the same time, European producers have the same right. Therefore, this part of the Agreement did not actually change the current regime for the use of anti-dumping and countervailing measures.

If the import of a commodity increases sharply in a short period of time, it can be ousted from the domestic market of the Ukrainian producer. To prevent this, special protective measures may be introduced.

The parties agreed that Ukraine may apply protective measures in the form of a higher rate of import duty on passenger cars originating in the EU countries for a period of 14 years starting from the second 12-month period from the date of entry into force of the Agreement, subject to fulfillment of several requirements⁵²:

- if the number of passenger cars imported from the EU has increased due to the reduction or cancellation of the duty and this has caused significant damage to the national producer (this condition does not apply during the transition period from 10 to 13 years);

- if the total volume of import of goods during the year reaches 45 thousand units;

- if the total volume of imports of goods (in pieces) during the last 12 months period exceeds the maximum percentage of all primary registrations of cars in Ukraine equal to: 20% during the second annual period from the date of entry into force of the Agreement; 21% during the third period; 22% during the fourth period; 23% during the fifth period; 24% during the sixth period;

⁵² Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. – URL : http://zakon0.rada.gov.ua/laws/show/984_011

25% during subsequent periods. The maximum import duty and additional charge shall not exceed 10%.

The transparency provisions for the application of protective measures against cars provide that Ukraine will inform the EU as soon as possible about the intention to apply the measures, provide relevant information, and also invite the EU to consult on the application of measures, and no measures will be taken within 30 days from the date of the invitation to consult.

Ukraine may apply protective measures against cars after the end of a transitional period of 10 to 13 years only after conducting the relevant investigation. The investigation should prove that the product is being imported in increasing volumes and this causes significant damage to the national producer. The relevant harm-related factors must be traced for at least three consecutive years.

The mechanism for the application of special protective measures provided for in the Agreement for certain types of goods subject to export duties, as a result of the implementation of the Association Agreement, has been developed.

It was also agreed that during 15 years special measures were applied in the form of an additional duty on export duty (if the total amount of exports from Ukraine to the EU for each defined code of UC G FEA exceeds the limit) with a gradual decrease of the amount of the additional fee to «0» for such goods : leather raw materials, sunflower seeds, scrap of doped ferrous and non-ferrous metals and semi-finished products with their use, stainless steel, copper.

Also, the gradual cancellation of export duty rates is foreseen for 10 years for such goods: live cattle, leather raw materials, seeds of certain types of oilseeds, scrap of doped ferrous metals, scrap non-ferrous metals and semi-finished products with their use, waste and scrap of ferrous metals⁵³.

Technical barriers in trade. The Association Agreement sets out the commitments of Ukraine and the EU, which should

⁵³ Report on Implementation of the Association Agreement between Ukraine and the European Union in 2016. – URL : <http://www.3dcftas.eu/system/tdf/2016%20Annual%20AA%20report.pdf?file=1&type=node&id=355&force=>

facilitate trade and lead to the removal of not only customs tariffs for products, but also the so-called «non-tariff», that is, technical barriers to trade. Elimination of technical barriers to trade in industrial (non-food) products is an essential condition for the effective functioning of an Deep and Comprehensive Free Trade Agreement (DCFTA) between Ukraine and the EU, the approximation of Ukrainian producers of industrial products to the EU market and the growth of Ukrainian exports of high value-added products.

Ukraine should have the same technical regulations and product standardization system with the EU in order to benefit from the abolition of customs tariffs and to export products to the EU countries.

According to Article 56 of Chapter 3 «Technical barriers to trade» of Title IV «Trade and Trade-related Matters» of the Association Agreement, Ukraine is obligated to ensure compliance with EU technical regulations and standardisation, metrology, accreditation, conformity assessment and market surveillance systems and adhere to the principles and practices set out in the applicable EU regulations. To this end, it is necessary to:

- implement relevant provisions of the EU acquis;
- carry out the necessary administrative and institutional reforms with a view of concluding the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA);
- introduce an effective and transparent administrative system.

According to the legislation approximation schedule, Ukraine must harmonise its horizontal legislation within one year of the effective date of the Agreement (by 2017), and its sectoral legislation covering 27 sectors — within 2–5 years of the effective date of the Agreement (2017–2020).

The timetable for fulfilling the commitments on harmonization of Ukrainian legislation with EU norms in the field of technical regulation is shown in Fig. 3.3.

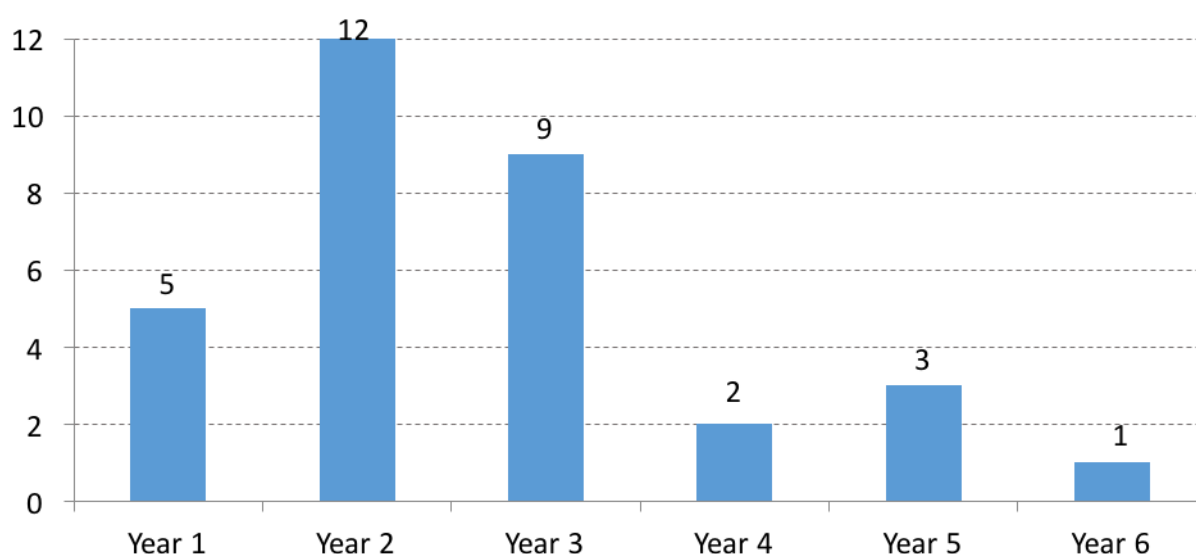


Figure 3.3. Timetable of fulfillment of obligations on harmonization of Ukrainian legislation with EU norms in the field of technical regulation

Source: ⁵⁴

The Ministry of Economic Development and Trade of Ukraine (the «Ministry of Economic Development») is responsible for fulfilling Ukraine's obligations regarding the harmonisation of its horizontal legislation, and the central executive authorities performing the functions of technical regulation in the specified areas are responsible for harmonising the sectoral legislation⁵⁵.

All goods imported into the EU customs territory must comply to requirements of the European Union. These requirements are aimed at ensuring consumer protection. These requirements vary considerably depending on the particular product, but in general can be grouped in the following areas: technical; ecological; requirements in the field of sanitary and phytosanitary measures.

⁵⁴ The economic component of the Association Agreement between Ukraine and the EU: the consequences for business, population and public administration. The Institute for Economic Research and Policy Consulting. – URL : <https://www.eurointegration.com.ua/files/a/2/a2732e1-economic-ied.pdf>

⁵⁵ Resolution of the Cabinet of Ministers of Ukraine from 16.12.2015 № 1057 On the definition of areas of activity in which the central executive authorities perform the functions of technical regulation. – URL : <http://zakon3.rada.gov.ua/laws/show/1057-2015-п>

The average level of tariff protection of the industrial goods market in the EU for Ukraine ranges from 4.4% to 5%. Therefore, the main obstacles in trade in industrial goods with the EU are not import tariffs, but technical barriers⁵⁶.

The EU's technical regulation system is considered to be the most effective and successful example of removing technical barriers to trade.

The main technical requirements are classified in the following sectors: product safety, technical standardization, packaging and product labeling.

General requirements in the field of product safety are defined by the Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. This legislation acts in the absence of specific rules governing the safety of certain categories of goods, or if specific rules (sectoral) are insufficient⁵⁷.

World practice shows that products must have documentation to confirm compliance with certain safety requirements when entering the external market.

According to the Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, dangerous products are any products with a high risk of composition, application, functional characteristics. A product is safe if it complies with the safety provisions of European law or, in the absence of such rules, provided that it complies with the national requirements of the Member State of the EU where it is sold or put into circulation. Also, the product is safe if it meets the European standard.

The EU has «Rapid Alert System for non-food products posing a serious risk» – RAPEX. The Rapid Alert System enables quick exchange of information between 31 European countries and the European Commission about dangerous non-food

⁵⁶ Technical regulation in the EU. URL : <http://ukraineeu.mfa.gov.ua/ua/Ukraine+-+EU+export-import+helpdesk+/Non-tariff+regulation/Technical+Regulation>

⁵⁷ Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. URL : <https://publications.europa.eu/en/publication-detail/-/publication/54d327d4-d684-4620-8cb4-c057d6c78d23/language-en>

products posing a risk to health and safety of consumers. The Rapid Alert System for non-food, dangerous products facilitates the rapid exchange of information between the national authorities and the European Commission on dangerous products found on the market. If a manufacturer or distributor finds out that one of their products on sale is dangerous, they have to inform the competent national contact in charge of receiving and dealing with alerts of dangerous non-food consumer products sent according to the General Product Safety Directive (2001/95/EC)⁵⁸.

The Commission publishes a weekly overview of the alerts reported by the national authorities, which include information on the dangerous products found, the risks identified and the measures taken in the notifying country in order to prevent or restrict their marketing or use. Measures can be ordered by national authorities («compulsory measures») or taken directly by economic operators («voluntary measures»). Each alert also includes information on other countries where the same product has been found and further measures taken.

The RAPEX system allows:

- to carry out an operational exchange of information between EU Member States on measures taken to prevent, restrict sales, use of products that poses a serious danger to the health and safety of consumers;
- to control the EU's trade relations both within the union and with third countries and collect information about unscrupulous suppliers;
- to monitor the measures taken on dangerous goods proposed by the national authorities and to monitor the measures taken by manufacturers and distributors on a voluntary basis.

Three European standardization organizations are the standards bodies in the EU – CEN, CENELEC and ETSI. They have been officially recognized by the European Union and by the European Free Trade Association (EFTA) as being responsible for developing and defining voluntary standards at European level.

⁵⁸ Official web portal of Rapid Alert System. URL : https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.listNotifications

European Committee for Standardization (CEN) is an association that brings together the National Standardization Bodies of 34 European countries (28 countries of the European Union, the former Yugoslavia, the Republic of Macedonia, Serbia, Turkey, and three EFTA countries: Iceland, Norway and Switzerland). CEN provides a platform for the development of European Standards and other technical documents in relation to various kinds of products, materials, services and processes. CEN supports standardization activities in relation to a wide range of fields and sectors including: air and space, chemicals, construction, consumer products, defense and security, energy, the environment, food and feed, health and safety, healthcare, ICT, machinery, materials, pressure equipment, services, smart living, transport and packaging⁵⁹.

European Committee for Electrotechnical Standardization (CENELEC) is responsible for standardization in the electro-technical engineering field. CENELEC prepares voluntary standards, which help facilitate trade between countries, create new markets, cut compliance costs and support the development of a Single European Market⁶⁰.

European Telecommunications Standards Institute (ETSI) is an independent, nonprofit organization. ETSI has over 800 members from 66 countries and across five continents. Any company or organization with an interest in the creation of telecommunications and related standards can become an ETSI member. This includes universities, research bodies, associations and public authorities, as well as industrial companies of all sizes. Indeed 25% of ETSI's members are small or medium-sized enterprises (SMEs).⁶¹.

So, the issue of product certification for the EU market is the main thing to Ukrainian exporters.

⁵⁹ Official web portal of European Committee for Standardization. URL : <https://www.cen.eu/Pages/default.aspx>

⁶⁰ Official web portal of European Committee for Electrotechnical Standardization. URL : <https://www.cenelec.eu>

⁶¹ Official web portal of European Telecommunications Standards Institute. URL : <https://www.etsi.org>

Certification is an assessment of the conformity of products to the established requirements and standards, confirmation of safety of goods or services for the health and life of a person, his property and the environment.

The state and consumer must be sure that the products are manufactured in accordance to the requirements of regulatory documents and world safety practices.

Certification may be obligatory and voluntary (Table 3.6).

Table 3.6

Differences between mandatory and voluntary certification

Sign	Types of certification	
	Obligatory	Voluntary
The purpose of certification	Prevention of the sale of products that is hazardous to the life, health and property of citizens and the environment	Assist the consumer in a competent choice of products; increasing the competitiveness of products in the commodity market
Authority performing certification	Exclusively state certification system	Bodies that are accredited in the state certification system; enterprises, organizations, other legal entities that have assumed the functions of voluntary certification
Applicant for certification	Manufacturers, suppliers of products	Producers, sellers, consumer products, state executive authorities, public organizations and individuals
Body that defines the certification scheme	Certification body	The applicant agrees with the certification body
Parameters to be checked	Parameters that are referred to normative documents as mandatory for execution	Parameters that are not classified as mandatory by law and regulations (at the choice of the applicant)
Certification object	Determined by the main national conformity assessment body	Determined by the applicant for certification

Source: ⁶²

There are two certification systems in the European Union – obligatory and voluntary. Obligatory certification operates at the national level.

⁶² Salukhina N. G., Yazvinska O. M. (2010) Standardization and Certification of Goods and Services: Textbook. K. : Center for Educational Literature, 336 p.

Regulatory acts and regulations of the EU are significant in volume of documents, in which the requirements for all parameters for products of various industrial markets are specified.

As a result of product compliance with the requirements of the EU market, there is a CE certificate issued by accredited European certification centers. The sign «CE» on the product means that it meets the requirements and can be sold and used throughout the united Europe.

CE (Conformité Européenne) is a special mark applied to products and confirms the conformity of products with the EU Directives and harmonized technical regulations in the EU. This means that the products have passed the certification or declaration procedure for the European market.

CE marking is the main indicator of the compliance of products with EU legislation, which allows the free movement of products in the European market. By placing the CE marking on products, the manufacturer declares under his responsibility the conformity of the product to all established requirements and, accordingly, guarantees the legality of the sale of this product throughout the European Economic Area (28 EU Member States, Turkey, EFTA countries – Iceland, Norway, Liechtenstein, Switzerland). This also applies to products produced in third countries sold in the European Economic Area.

Directive does not specify the technical conditions of production. Technical requirements for products are set out in harmonized European standards. Harmonized standards are not obligatory. The manufacturer can choose any technical solution that will allow the finished product to match the result.

CE marking is not an indication that the product is produced in the territory of the European Economic Area. It indicates that the product meets the essential requirements of the directives and harmonized standards of the European Union, as well as the fact that the product has passed the conformity assessment procedure.

Products to be labeled «CE»^{63, 64}: children's toys; construction products and materials; personal protective equipment; non-

⁶³ New Approach Standardisation in the Internal Market. URL : <http://www.newapproach.org>

automatic weighing instruments; hot water boilers; medical devices; equipment and protective systems for used in potentially explosive atmospheres; systems and equipment under pressure; radio equipment & telecommunications terminal equipment; measuring instruments; electromagnetic compatibility; machinery and equipment; low voltage electrical equipment; simple pressure vessels; appliances burning gaseous fuels; explosives for civil uses; cableway Installations to carry persons; active implantable medical devices; in vitro diagnostic medical devices; pleasure craft.

The CE marking indicates to the consumer that the goods are made of safe raw materials, and that the producer of this product complies with the necessary standards and has passed all necessary checks of compliance with the requirements of the directives. EU legislation on CE certification procedures is rather complicated.

The CE certification process consists of a series of stages (Fig. 3.4).

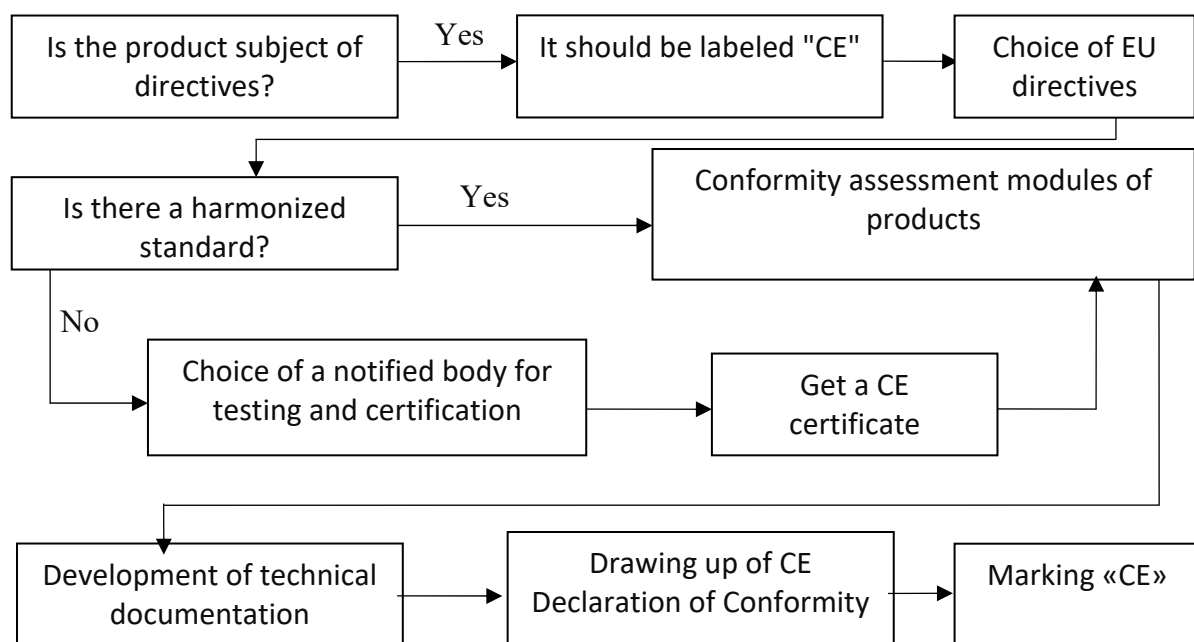


Figure 3.4. The general scheme of certification «CE»

Source:⁶⁵

⁶⁴ CE Marking. URL : <http://www.ce-marking.org>

⁶⁵ CCIS-Expertise. URL : <http://www.ccis-expertise.com/ru/certifikazia-ce>

Conformity assessment of products is divided into 8 modules, which relate to the phase of product development, production, and both phases simultaneously (Fig. 3.5).

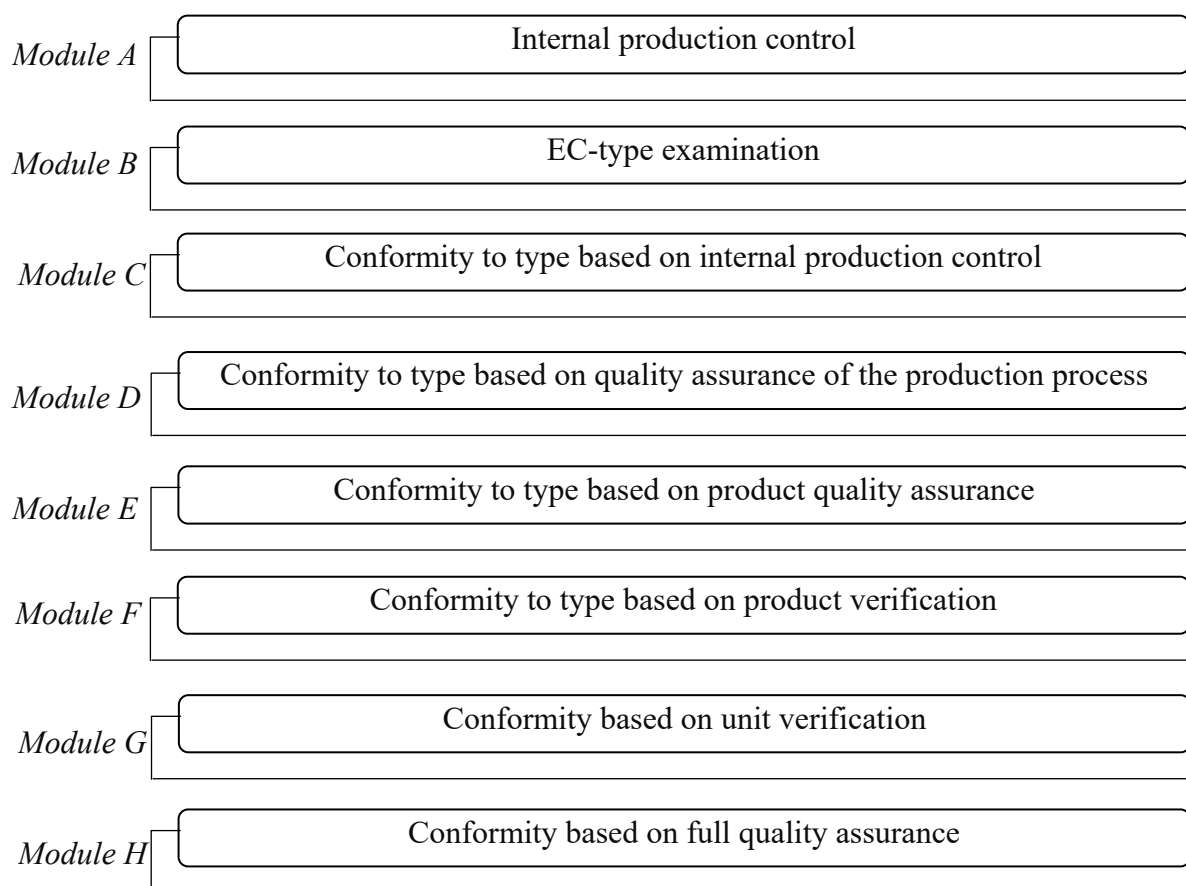


Figure 3.5. Conformity assessment modules of products

Source: made by the author according to⁶⁶

Module A covers both design production phase. The manufacturer ensures himself the conformity of the products to the legislative requirements. In the design phase he: identifies the applicable requirements, carries out an adequate analysis and assessment of the risk(s). In the production phase he: takes all measures necessary so that the manufacturing process ensures

⁶⁶ INTRODUCTION TO CONFORMITY ASSESSMENT AND CONFORMITY ASSESSMENT PROCEDURES OF THE NEW LEGAL FRAMEWORK (AS LAID DOWN IN DECISION 768/2008 OF THE NEW LEGAL FRAMEWORK). URL : <http://ec.europa.eu/DocsRoom/documents/6280/attachments/1/translations/en/renditions/native>

compliance of the manufactured products with the legislative instruments that apply to them; carries out detailed tests and controls; monitors the compliance of the products. This module does not require a notified body to take action (first-party conformity assessment). However the manufacturer must carry out himself all checks a notified body would do. Variants of module A are A1 (Internal production control plus supervised product checks) and A2 (Internal production control plus supervised product checks at random intervals).

Module B covers only the design phase. EC-type examination is the part of a conformity assessment procedure in which a notified body (third-party conformity assessment) examines the technical design of a product and verifies and attests that the technical design of the product meets the requirements of the legislative instrument that apply to it by issuing an EC-type examination certificate.

Module B is always followed by other modules by which the conformity of the products to the approved EC-type is demonstrated. This examination may be carried out in either of the following manners: examination of a specimen, representative of the production envisaged, of the complete product (production type – as existed under New Approach); assessment of the adequacy of the technical design of the product through examination of the technical documentation and supporting evidence plus examination of specimens, representative of the production envisaged, of one or more critical parts of the product (combination of production type and design type); assessment of the adequacy of the technical design of the product through examination of the technical documentation and supporting evidence, without examination of a specimen (design type).

Module B, tackles the need for greater flexibility to be provided for, through the extension of the concept of type examination to include not only the production type examination (as already existed under New Approach) but also the options of examining only the technical documentation and/or critical parts of the specimen. This concept is based on the example of the Measuring Instruments Directive and is designed to provide

sufficient flexibility to recognise relevant practice where the examination of a specimen «representative of the production envisaged» is either not economically viable or not necessary, such as for well-known products applying standard technology. As module B covers only the design phase, the manufacturer does not draft any declaration of conformity at this stage of the process and may not affix the notified body's identification number to the product.

Module C covers only the production phase and follows module B. The manufacturer ensures himself the conformity of the products to the type described in the EC-type examination certificate and to the requirements of the legislative instrument that apply to them. Its common point with module A is that the manufacturer ensures himself the conformity of his products; however under module C this conformity is evaluated against an approved EC-type resulted under module B (this notion does not exist under module A and variants as they cover both design and production phase) This module does not require a notified body to take action (first-party conformity assessment). However the manufacturer must carry out himself all checks a notified body would do. Variants of module C are C1 (Conformity to type based on internal production control plus supervised product testing) and C2 (Conformity to type based on internal production control plus supervised product checks at random intervals).

Module D covers only the production phase and follows module B. The manufacturer operates an approved quality system for the control of the production process (manufacturing part and inspection of final product). The notified body (third party conformity assessment) assesses the quality system in order to determine that this system ensures that the products are in conformity with the type described in the EC-type examination certificate and comply with the requirements of the legislative instrument that apply to them. Upon positive assessment, it is up to the manufacturer to ensure and declare on his sole responsibility that the products concerned are in conformity with the type described in the EC-type examination certificate and satisfy the

requirements of the legislative instrument that apply to them. If the manufacturers' quality system conforms to EN ISO 9001 (supplemented if necessary to take into account the specific nature of the products for which it is implemented), it is presumed to fulfil the requirements of the module. Variant of module D is module D1 – Quality assurance of the production process (manufacturing part and inspection of final product). Module D1 in comparison to module D provides for additional provisions containing the supplementary requirement that the manufacturer must draw up the technical documentation of the product design. The technical documentation is examined by the notified body.

Module E covers only the production phase and follows module B. The manufacturer operates an approved quality system for the control of the final product inspection and testing. The notified body (third-party conformity assessment) assesses the quality system in order to determine that this system ensures that the products are in conformity with the type described in the EC-type examination certificate and comply with the requirements of the legislative instrument that apply to them. Upon positive assessment, it is up to the manufacturer to ensure and declare on his sole responsibility that the products concerned are in conformity with the type described in the EC-type examination certificate and satisfy the requirements of the legislative instrument that apply to them. The idea behind module E is similar to the one under module D: both are based on a quality system and follow module B. Their difference is that the quality system under module E aims to ensure the quality of the final product, while the quality system under module D aims to ensure the quality of the whole production process (that includes the manufacturing part and the test of final product). E is similar to module D without the provisions relating to the manufacturing process. If the manufacturers' quality system conforms to EN ISO 9001 (supplemented if necessary to take into account the specific nature of the products for which it is implemented), it is presumed to fulfil the requirements of the module. Variant of module E is module E1 – Quality assurance of final product inspection and testing (like D1 without

the manufacturing part). Module E1 in comparison to module E provides for additional provisions containing the supplementary requirement that the manufacturer must draw up the technical documentation of the product design. The technical documentation is examined by the notified body (similar to D/D1).

Module F covers only the production phase and follows module B. The main idea behind module F is that a notified body (third-party conformity assessment) chosen by the manufacturer carries out appropriate examinations and tests in order to check the conformity of the products with the approved type described in the EC-type examination certificate and with the applicable requirements of the legislative instrument. The examinations and tests are carried out, at the choice of the manufacturer either by examination and testing of every product or by examination and testing of the products on a statistical basis. However, the legislator may specify this manufacturer's choice. Furthermore, the legislator determines the products concerned, the appropriate tests, the adequate sampling schemes, the operational characteristics of the statistical method to be applied and the corresponding action to be taken by the notified body and/or the manufacturer. Module F is very close to module C (and its variants). Both F and C (and variants) are based on product checks in order to determine the conformity of the product to the approved EC-type. However, under module F it is the notified body that checks completely this compliance and not the manufacturer as it is in C and its variants (in C1 the in-house or notified body checks only some aspects of the product, while in C2 it performs random checking). At the end, it is again up to the manufacturer to ensure and declare on his sole responsibility that the products concerned are in conformity with the type described in the EC-type examination certificate and satisfy the requirements of the legislative instrument that apply to them. Module F is not based on any quality assurance system. Variant of module F is module F1 – Conformity based on product verification). Module F1 in comparison to module F provides for additional provisions containing the supplementary requirement that the manufacturer must draw up the technical documentation

of the product design. The technical documentation is examined by the notified body (similar to D/D1, E/E1).

Module G covers both design and production phase. Here the main idea is that the notified body (third-party conformity assessment) examines every individual product and carries out the appropriate tests to ensure conformity with the relevant requirements of the directive. The notified body draws up a certificate of conformity concerning the tests carried out. However the manufacturer must, prior to the intervention of notified body: carry out an adequate analysis and assessment of the risk(s), take all measures necessary so that the manufacturing process ensures compliance of the manufactured products with the legislative instruments that apply to them, carry out detailed tests and controls, monitor the compliance of the products. This module is appropriate to be used for highly complicated and customised products with a very low series volume (e.g. turbines, expensive instruments).

Module H covers both design and production phase. The manufacturer operates an approved quality system for design, manufacture and final product inspection and testing of the products. The notified body (third-party conformity assessment) assesses the quality system in order to determine that this system ensures compliance of the products with the requirements of the legislative instrument that apply to them. Upon positive assessment, it is up to the manufacturer to ensure and declare on his sole responsibility that the products concerned satisfy the requirements of the legislative instrument that apply to them. Module H goes well beyond D1 (and E1). D1 requires for the design phase only the establishment of technical documentation. H goes well beyond that: product design is an integral part of the quality system. In this respect the quality system required under module H provides not only for the production and final product inspection and testing (as the quality system in module D1 does) but also for the design specifications, control and verification techniques. Under module H, there is no EC-type examination. If the manufacturers quality system conforms to EN ISO 9001 (supplemented if necessary to take into account the specific nature of the products

for which it is implemented), it is presumed to fulfil the requirements of the module⁶⁷. Variant of module H is module H1 – Conformity based on full quality assurance plus design examination).

In cases of placing on the domestic market of EU products subject to the EU Directives, which impose the CE marking, without proof of conformity and absence of CE marking, products are removed from the market.

For example, Asian manufacturers have the term «aeronautical production». Market research does not always provide the result of a particular product. The experimental batch is made for more understandable positions in the market of specific products. Chinese manufacturers intending to place their products on the domestic EU market at the pilot project stage will have to comply with harmonized EU standards and obtain the right to affix the CE mark (CE mark). This position of Chinese manufacturers gives positive results. They often fall into the EU market with new products and occupy a niche because consumer products are needed today, rather than when the manufacturer decides to conduct a certification process for the consumer market. Especially since the approval process takes some time. The general scheme of actions for obtaining a CE certificate is shown in Fig. 3.6.

The choice of the certification procedure depends on the technical specification of the product, as well as on its intended purpose. Only when these factors are clear can EU directives be defined (because the product may fall into the action of several directives at the same time), European harmonized standards and certification procedures applicable to the product. In many cases, the CE marking directives offer two or more certification procedures – at the manufacturer's option. The cost of each of these procedures is different, and this should also be taken into account.

⁶⁷ Introduction to conformity assessment and conformity assessment procedures of the new legal framework (as laid down in decision 768/2008 of the new legal framework). URL : <http://ec.europa.eu/DocsRoom/documents/6280/attachments/1/translations/en/renditions/native>

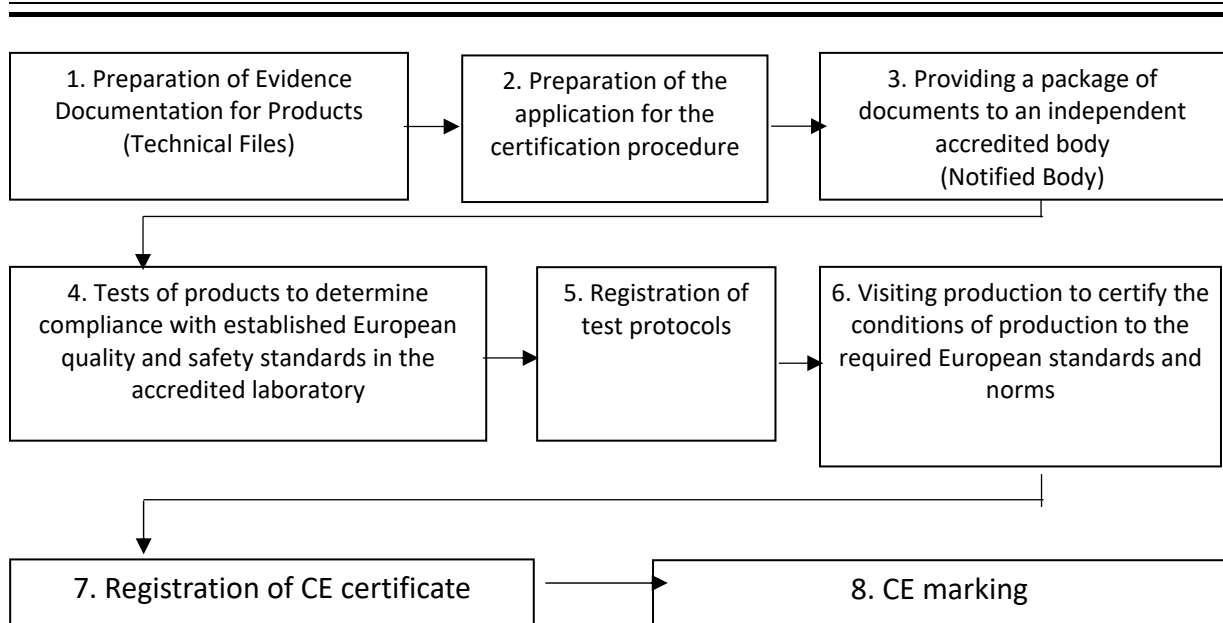


Figure 3.6. Basic steps for obtaining a CE certificate

Source:⁶⁸

The peculiarity of voluntary certification in the EU is its share in the overall conformity assessment. Obligatory certification is only 5%, voluntary – 95% certification in the EU.

The main tendency of voluntary certification of the European Union is the desire to unify the activities of voluntary conformity verification in order to facilitate the movement of goods between European countries.

Here are examples of some types of voluntary certification.

Fair trade is a social movement and a market model of international trade, which provides legal guarantees to actual producers of goods, an adequate price for this product and the protection of the environment.

In 2009, Fairtrade International along with the World Fair Trade Organization (WFTO) adopted the Charter of Fair Trade Principles, which provides a single international reference point for Fair Trade. The charter includes our common vision, definition of Fair Trade, core principles and the distinct approaches to Fair Trade.

⁶⁸ Official web portal of National Accreditation Agency of Ukraine. URL : <https://naau.org.ua>

Fairtrade International endorses the definition of Fair Trade and adheres to the Principles.

WFTO prescribes 10 Principles that Fair Trade Organizations must follow in their day-to-day work and carries out monitoring to ensure these principles are upheld ⁶⁹.

1. Creating Opportunities for Economically Disadvantaged Producers. Poverty reduction through trade forms a key part of the organization's aims. The organization supports marginalized small producers, whether these are independent family businesses, or grouped in associations or co-operatives. It seeks to enable them to move from income insecurity and poverty to economic self-sufficiency and ownership. The organization has a plan of action to carry this out.

2. Transparency and Accountability. The organization is transparent in its management and commercial relations. It is accountable to all its stakeholders and respects the sensitivity and confidentiality of commercial information supplied. The organization finds appropriate, participatory ways to involve employees, members and producers in its decision-making processes. It ensures that relevant information is provided to all its trading partners. The communication channels are good and open at all levels of the supply chain.

3. Fair Trading Practices. The organization trades with concern for the social, economic and environmental well-being of marginalized small producers and does not maximize profit at their expense. It is responsible and professional in meeting its commitments in a timely manner. Suppliers respect contracts and deliver products on time and to the desired quality and specifications. Fair Trade buyers, recognizing the financial disadvantages faced by Producers and Suppliers of FT products, ensure orders are paid on receipt of documents or as mutually agreed. For Handicraft FT products, an interest free pre-payment of at least 50 % is made on request.

⁶⁹ Official web portal of World Fair Trade Organization. URL : <https://wfto.com/fair-trade/10-principles-fair-trade>

4. Fair Payment. A fair payment is one that has been mutually negotiated and agreed by all through on-going dialogue and participation, which provides fair pay to the producers and can also be sustained by the market, taking into account the principle of equal pay for equal work by women and men. The aim is always the payment of a Local Living Wage. Fair Payment is made up of Fair Prices, Fair Wages and Local Living Wages.

5. Ensuring no Child Labor and Forced Labor. The organization adheres to the UN Convention on the Rights of the Child, and national / local law on the employment of children. The organization ensures that there is no forced labor in its workforce and / or members or homeworkers.

6. Commitment to Non Discrimination, Gender Equity and Women's Economic Empowerment, and Freedom of Association. The organization does not discriminate in hiring, remuneration, access to training, promotion, termination or retirement based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, HIV/AIDS status or age.

7. Ensuring Good Working Conditions. The organization provides a safe and healthy working environment for employees and / or members. It complies, at a minimum, with national and local laws and ILO conventions on health and safety.

8. Providing Capacity Building. The organization seeks to increase positive developmental impacts for small, marginalized producers through Fair Trade. The organization develops the skills and capabilities of its own employees or members. Organizations working directly with small producers develop specific activities to help these producers improve their management skills, production capabilities and access to markets – local / regional / international / Fair Trade and mainstream as appropriate. Organizations which buy Fair Trade products through Fair Trade intermediaries in the South assist these organizations to develop their capacity to support the marginalized producer groups that they work with.

9. Promoting Fair Trade. The organization raises awareness of the aim of Fair Trade and of the need for greater justice in world

trade through Fair Trade. It advocates for the objectives and activities of Fair Trade according to the scope of the organization. The organization provides its customers with information about itself, the products it markets, and the producer organizations or members that make or harvest the products. Honest advertising and marketing techniques are always used.

10. Respect for the Environment. Organizations which produce Fair Trade products maximize the use of raw materials from sustainably managed sources in their ranges, buying locally when possible. They use production technologies that seek to reduce energy consumption and where possible use renewable energy technologies that minimize greenhouse gas emissions. They seek to minimize the impact of their waste stream on the environment. Fair Trade agricultural commodity producers minimize their environmental impacts, by using organic or low pesticide use production methods wherever possible. Buyers and importers of Fair Trade products give priority to buying products made from raw materials that originate from sustainably managed sources, and have the least overall impact on the environment. All organizations use recycled or easily biodegradable materials for packing to the extent possible, and goods are dispatched by sea wherever possible.

There are distinct sets of Fairtrade Standards, which acknowledge different types of producers. One set of standards applies to smallholders that are working together in cooperatives or other organizations with a democratic structure. The other set applies to workers, whose employers pay decent wages, guarantee the right to join trade unions, ensure health and safety standards and provide adequate housing where relevant. Fairtrade Standards also cover terms of trade. Most products have a set Fairtrade Minimum Price, which is the minimum that must be paid to the producers. In addition producers get an additional sum, the Fairtrade Premium, to invest in their communities or businesses⁷⁰.

⁷⁰ Official web portal of Fairtrade international. URL : <https://www.fairtrade.net/about-fairtrade/what-is-fairtrade.html>

There are now thousands of products that carry the Fairtrade Mark. Fairtrade Standards exist for food products ranging from tea and coffee to fresh fruits and nuts. There are also standards for non-food products such as flowers and plants, sports balls and seed cotton.

The Forest Stewardship Council (FSC) is an international organization that has established a system of environmental and social responsibility for forest management. The FSC mark on wood or on the product made from it is an indication that the products come from the forest, which is an environmentally and socially responsible forestry. The FSC certificate is issued by an independent auditor based on a strict annual inspection of the forest harvesting site. It is a recognized mark of quality forestry products in 110 countries.

The two types of FSC certification are ⁷¹:

- for forest owners and managers, forest management certification is a guarantee your processes and operations meet FSC standards;

- for businesses manufacturing or trading forest products, chain of custody certification verifies that products are handled correctly at every stage of production – from forest to shelf.

The Forest Stewardship Council mission is to promote environmentally sound, socially beneficial and economically prosperous management of the world's forests.

Marine Stewardship Council (MSC) is a standard for sustainable fishing and seafood tracking. Sustainable fishing means leaving enough fish in the ocean, respecting habitats and ensuring people who depend on fishing can maintain their livelihoods.

The MSC is the world's largest program for certification and labeling of ecological seafood, whose purpose is to contribute to protecting the world's oceans by recognizing and promoting ecologically sound fishing practices, and influencing people's choices when buying seafood. When fisheries are independently assessed to the standard, three main principles are considered⁷²:

⁷¹ Official web portal of Forest Stewardship Council. URL : <https://ic.fsc.org>

⁷² Official web portal of Marine Stewardship Council. URL : <https://www.msc.org>

1. Sustainable fish stocks. Fishing must be at a level that ensures it can continue indefinitely and the fish population can remain productive and healthy.

2. Minimizing environmental impact. Fishing activity must be managed carefully so that other species and habitats within the ecosystem remain healthy.

3. Effective fisheries management. MSC certified fisheries must comply with relevant laws and be able to adapt to changing environmental circumstances.

OEKO-TEX® is a worldwide consistent, independent testing and certification system for raw, semi-finished, and finished textile products at all processing levels, as well as accessory materials used. Examples of articles that can be certified: raw and dyed/finished yarns, woven and knitted fabrics, accessories, such as buttons, zip fasteners, sewing threads or labels, ready-made articles of various types (garments of all types, domestic and household textiles, bed linen, terry products and much more)⁷³.

The precondition for the certification of products in accordance with OEKO-TEX® is that all parts of an article meet the required criteria – in addition to the outer fabric, for example, also the sewing threads, inserts, prints etc., as well as non-textile accessories, such as buttons, zip fasteners, rivets etc.

The textile industry is characterized by a form of cooperation in which each production stage from raw material to finished textile product is often located in a different place in the world. This extremely fragmented structure is reflected in the complex supply relationships between all the companies involved throughout the textile processing chain. On top of this, different environmental regulations apply in the individual countries involved in textile production.

This is where the basic concept of the OEKO-TEX® applies: The aim of the criteria catalogue is to level out global differences regarding the assessment of possible harmful substances in textiles. The OEKO-TEX® system can identify and eliminate potential sources of problematic substances at each processing stage. Testing

⁷³ Official web portal of OEKO-TEX. URL: <https://www.oeko-tex.com>

becomes necessary whenever a textile product is recomposed or a chemical change is made to its material.

Additional preconditions are the existence and application of operational quality assurance measures, as well as the legally binding signing of undertakings and conformity declarations by the applicant.

It should be noted that certificates for access to European markets are not always required. Therefore, you must first find out what certificates are needed and not start until they reach a partner who says that he really needs such a certificate. After all, many companies went through a very complicated way: they made certificates, and then, when they signed export contracts, it turned out that these certificates were not needed ⁷⁴.

There are two strategies: there are companies that receive many certificates. This is quite expensive, but after these companies have received certificates, they can collaborate with any customers. There is another logic: when sellers are oriented directly to the client and fulfill only those requirements that he proposes.

In addition, the certificate changes the price of insurance, for example, if someone becomes a victim of substandard products. If the certificate is available, the insurance will cost 0,3% of the sum insured, and if it is not present – 1% of the sum insured.

Today, certification is a special business model. In other words, certification is a part of the product.

It is desirable for Ukrainian exporters to carry out full certification of their products, because having obtained European quality certificates, it will be easier to find business partners in the EU, as well as European consumers with more confidence in products bearing European quality marks.

To test and certify products, you need to write a product description in English. It is possible to add photos or images. At this stage – without technical details. At the next stage, you need to choose a European testing center that deals with similar products. As a rule, these laboratories are specialized in industries. After receiving a package of documents from the Center for Testing

⁷⁴ Miroshnichenko O. «How to enter the EU markets» – a guide for businesses. URL: http://export-ua.blogspot.com/2015/12/blog-post_26.html

and European Certification in the presence of their accreditation certificates, it is necessary to send them for consideration the description of products. As a rule, the response from the laboratory about the possibility of researching the product arrives within a few business days. Together with the answer there is also a price list for services and instructions for further actions, namely – what samples of products are needed for laboratory tests, where and how to send them. The process of testing and issuing an expert conclusion will last for some time depending on the complexity of the process and the loading of this laboratory by orders. Further actions will depend on the results of testing: you can submit results to certification, provide data to partners in the EU, complete the revision and make changes to products (Fig. 3.7).

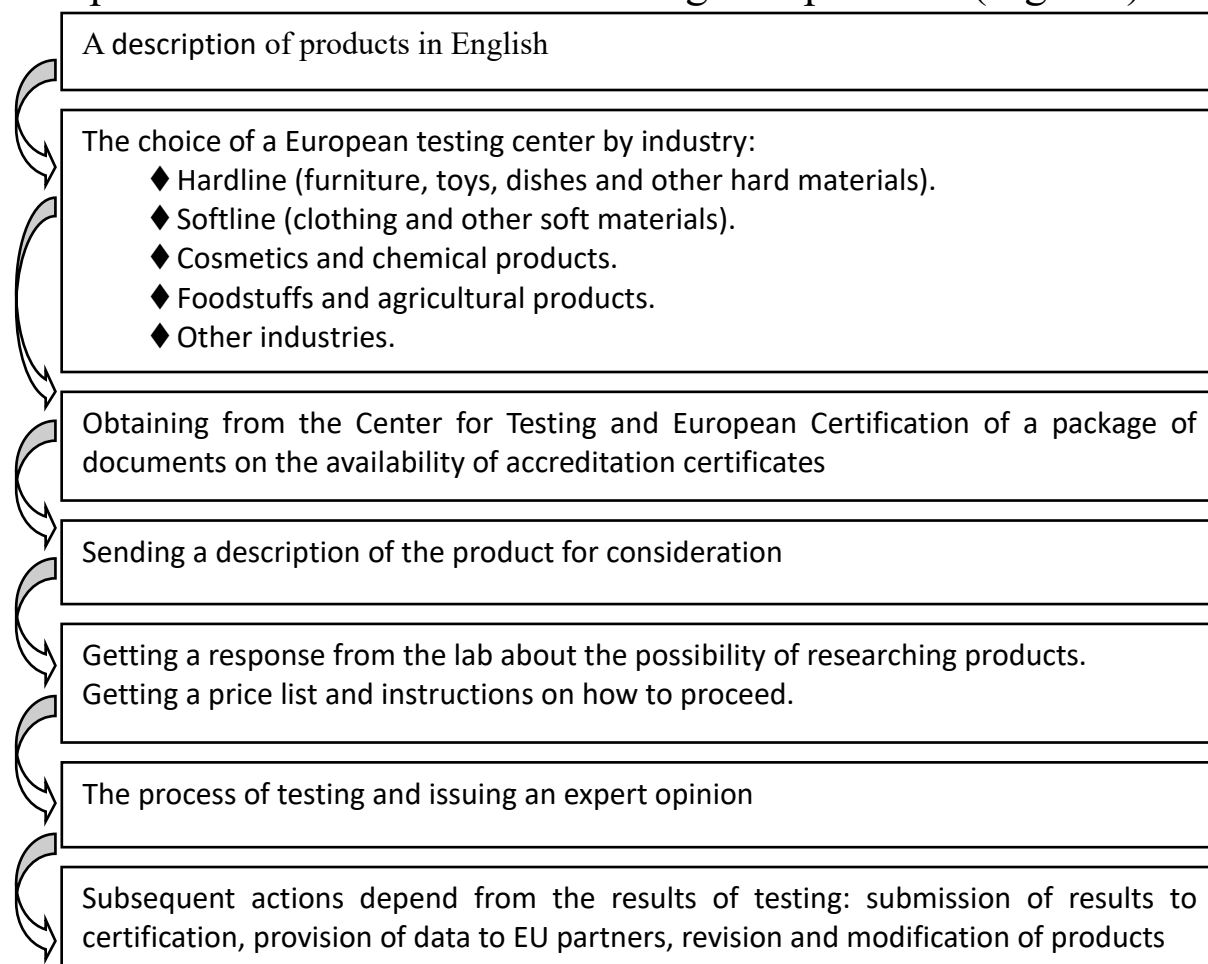


Figure 3.7. Basic stages of testing for certification of products

Source: ⁷⁵

⁷⁵ CCIS-Expertise. URL: <http://www.ccis-expertise.com/ru/certifikazia-ce>

There are two ways to test and certify: you can do this on your own and communicate directly with the testing and certification centers; you can contact the affiliates of international companies in Ukraine that have such laboratories in Europe and can carry out all of the above-described algorithms on request. In this case, you will only need to provide a description of the product in English with explanations.

Achievements of the reform of the technical regulation system are not always noticeable, but they are of strategic importance to business development. Only in 2016 was canceled more than 15,000 outdated interstate standards (GOSTs). Instead, over 2014-2016, more than 6,000 national regulatory documents were adopted, most of which were harmonized with international and European standards.

New basic laws for the legislative maintenance of reforms that introduce European principles in these areas were enacted⁷⁶:

- «On general safety of non-food products» (No. 2736-VI of 02.12.2010) implementing Directive 2001/95/EC;
- «On state market surveillance and control of non-food products» (No. 2735-VI of 02.12.2010) implementing Regulation (EC) 765/2008, Directive 2001/95/EC and Decision 768/2008/EC;
- «On accreditation of conformity assessment bodies» (No. 2407-III of 17.05.2001) implementing Regulation (EC) 765/2008;
- «On liability for damages caused by product defects» (No. 3390-VI of 19.05.2011) implementing Directive 85/374/EEC;
- «On standardization» (No. 1315-VII of 05.06.2014) implementing Regulation (EU) 1025/2012;
- «On technical regulations and conformity assessment» (No. 124-VIII of 15.01.2015, effective as of 10.02.2016) implementing Decision 768/2008/EC;

⁷⁶ Report on Implementation of the Association Agreement between Ukraine and the European Union in 2017. URL : http://www.3dcftas.eu/system/tdf/report_on_implementation_of_the_association_agreement_between_ukraine_and_the_european_union_in_2017.pdf?file=1&type=node&id=428&force=

– «On metrology and metrological activity» (No. 1314-VII of 05.06.2014, effective as of 01.01.2016) implementing Directive OIML D1.

Government resolutions adopted:

– «On approving the conformity assessment modules used to develop conformity assessment procedures and on approving the rules of use of the conformity assessment modules» (No. 95 of 13.01.2016) implementing Decision 768/2008/EC;

– «On approving the form and description of the mark of conformity with technical regulations and the rules and conditions of its application» (No. 1184 of 30.12.2015) implementing Decision 768/2008/EC;

– «On approving the special requirements for designated conformity assessment bodies» (No. 56 of 13.01.2016) implementing Decision 768/2008/EC.

The adopted legal acts regulate the issues of standardization, metrology, accreditation, conformity assessment and market surveillance systems.

In order to implement these laws, a number of regulations were adopted. In 2017, the regulations necessary to implement the Law of Ukraine «On technical regulations and conformity assessment» were passed. In particular, the criteria for assessing the degree of risk associated with conducting business activities in the area of assessing conformity with the requirements of technical regulations were adopted and the frequency of scheduled inspections (Resolution No. 384 of the Cabinet of Ministers of Ukraine of 31.05.2017) and the procedure and rules for compulsory insurance of professional liability of the designated conformity assessment bodies and recognised independent organisations for damage that may be caused to third parties (Resolution No. 751 of the Cabinet of Ministers of Ukraine of 04.10.2017) were determined.

In accordance with the adopted legislation, the European-level quality infrastructure is being established in Ukraine, which includes: the National Accreditation Agency of Ukraine (NAAU), the National Standardisation Body (SE UkrNDNC), the State

Service of Ukraine for Food Safety and Consumer Protection and other government market surveillance authorities.

Annex III to the Association Agreement requires, for 27 industrial product sectors, that the national legislation be aligned with the European vertical (sectoral) legislation and provides a timetable for its implementation. As of today, Ukraine has adopted 24 of 27 technical regulations referred to in Annex III (except for explosives for civil uses; packaging and packaging waste; high-speed railways). Due to changes in the European legislation, the approved technical regulations are being revised in order to bring them into conformity with the new EU directives and regulations.

As of the end of 2017, 5 of 12 technical regulations with a two-year implementation period as stipulated in Annex III were revised, namely on electromagnetic compatibility, low-voltage electrical equipment, safety of machinery, simple pressure vessels and lifts. Moreover, 3 of these technical regulations (on electromagnetic compatibility, low-voltage electrical equipment and safety of machinery) were submitted to the EU side for the analysis of their conformity with EU provisions. Other technical regulations – on transportable pressure equipment; toys; appliances burning gaseous fuels; marine equipment; personal protective equipment; hot-water boilers fired with liquid or gaseous fuels; energy efficiency requirements for household electric refrigerators and freezers – are at different stages of development.

At the same time, certain technical regulations were adopted or revised and aligned with applicable EU legal acts before the expiration of the periods specified in Annex III. This is particularly the case for the technical regulations on measuring equipment, non-automatic weighing instruments, radio equipment, equipment and protective systems intended for use in potentially explosive atmospheres, and others.

Further, the Draft Law of Ukraine «On basic requirements for structures and on conditions for placing on the market of construction products» (No. 7151), which is aimed at implementing Regulation (EU) No. 305/2011 laying down harmonized conditions for the marketing of construction products, was developed.

Pursuant to Article 56 of Chapter 3, Ukraine must transpose the European standards (EN) and withdraw conflicting national and interstate standards (GOST). As of the end of 2017, the following results were achieved:

- the national standards fund comprised 23,677 national standards, of which 13,211 were international and European standards transposed as national standards (as of 27.12.2017). In 2017, 1,439 national standards were adopted, of which 1,358 were international and European standards;

- 4,161 harmonised European standards were transposed as national standards with respect to all the technical regulations in Annex III (except for the standards for construction products). The application of these standards indicates that the products meet the requirements of the mentioned technical regulations (provides the presumption of conformity). The lists of national standards identical to the harmonised European standards were approved; thus, compliance with those national standards provides the presumption of conformity with the requirements of the technical regulations;

- all (14,475) the outdated interstate standards (GOST) developed before 1992 were withdrawn.

Furthermore, the creation of a new military standardisation system began, in the framework of which Ukraine will adopt NATO standards and standards in the field of defence of NATO Member States; more specifically, the Draft Law of Ukraine «On amending certain Laws of Ukraine concerning military standards», which is to be submitted soon to the Government for consideration, was developed.

In the area of metrology, the work on four state primary reference standards was completed, and auditor certification was introduced in 2017.

A significant progress was reached in ensuring the participation of national authorities in the European and international organizations for standardisation, metrology, conformity assessment and accreditation. In 2017, Ukraine, in particular, acquired the new status of a Companion Standardization Body (CBN) at the European Committee for Standardization (CEN) and

the European Committee for Electrotechnical Standardization (CENELEC) and also signed the Memorandum of Understanding between the National Standardisation Body and the European Telecommunications Standards Institute (ETSI) (in early January 2018), which will enable faster approximation of the Ukrainian standardisation system to the European model. In August 2017, the NAAU received the status of a signatory to the IAF Multilateral Recognition Arrangement (IAF MLA) on the mutual recognition of the results of conformity assessment activities in a variety of fields including products, management systems and personnel. The NAAU is also party to mutual recognition agreements with the European Accreditation Cooperation (EA) in all areas of accreditation and with the International Laboratory Accreditation Cooperation (ILAC). Membership of these international organisations means that the NAAU's activities are recognised at the European Union level.

During 2017, within the framework of the High-Level Ukraine-EU Dialogue in the industrial area, two meetings of the Working Group for the Elimination of Technical Barriers to Trade and Standardisation were held where the preparation for signing the ACAA was considered.

Under the ACAA, the priority industrial product sectors at the first stage are: low-voltage electrical equipment; electromagnetic compatibility; safety of machinery. In relation to these three sectors, the technical regulations were brought into conformity with the applicable EU legal acts, the conformity assessment bodies were designated, the lists of national standards were updated, etc.

The first phase of the formal assessment by the EU side of the horizontal and sectoral Ukrainian legislation in the three specified sectors began in 2017. The European side checked the progress of harmonising the Ukrainian legislative acts with the relevant EU legislation, provided comments and made requests for further clarifications. In general, the Ukrainian legislation was positively assessed; however, it was noted that full compliance of specific provisions of laws in the areas of technical regulations and conformity assessment, state market surveillance and control of non-food products with EU provisions still had to be ensured.

The delay by the Verkhovna Rada in adopting the relevant legislative amendments was one of the main obstacles that prevented the completion of the preparation for signing the ACAA in 2017.

The European experts further pointed out the need to clarify specific provisions of the three technical regulations: on low-voltage electrical equipment, electromagnetic compatibility and safety of machinery (the amendments to these technical regulations are being drafted).

Overall, as of 1 January 2018, 62% of Ukraine's five year obligations regarding the harmonisation of its technical regulation legislation with EU law were fulfilled. The progress in fulfilling the 2017 obligations is 59%⁷⁷.

The EU has common market. It is an unhindered movement of goods and the mutual recognition of European certificates. Usually this applies to products from countries such as Japan, Canada, USA, Australia, New Zealand, Switzerland, Israel. These countries recognize each other's products without additional certification. In order for Ukraine to join these countries and the business could without bar to sell products to the EU, it is necessary to reform the system of technical regulation.⁷⁸

The adaptation of technical regulations and the introduction of the harmonised European standards will ensure the European level of requirements for quality and safety of industrial products for customers in Ukraine, increase the competitiveness of Ukrainian products, open new markets for exporters and facilitate the innovative development of the industry.

Concluding ACAA, in turn, will ensure the mutual recognition of certificates of conformity by Ukraine and the EU in the specified industrial sectors. Ukrainian producers will be able to receive certificates of conformity in Ukraine that would be

⁷⁷ Report on Implementation of the Association Agreement between Ukraine and the European Union in 2017. URL : http://www.3dcftas.eu/system/tdf/report_on_implementation_of_the_association_agreement_between_ukraine_and_the_europe_an_union_in_2017.pdf?file=1&type=node&id=428&force=

⁷⁸ Technical regulation and standardization of products. URL : <https://www.eurointegration.com.ua/files/4/7/4737df6-techreg.pdf>

recognised in the EU and would not require an additional conformity assessment in the EU. This will allow businesses to reduce costs for obtaining relevant documentation and undergoing conformity assessment procedures (certification and testing).

Conditions for importation of goods related to food safety, animal health and plants. The EU is the largest importer and exporter of food products in the world. The European food safety system is considered the most reliable in the world. Therefore, the main condition under which the EU admits to its markets products from third countries: the life and health of European consumers should be as much as possible protected; products imported into the EU must meet all requirements, as well as products produced in EU countries⁷⁹.

The official purpose of the EU food security policy is to provide the consumer with the maximum benefit from health food and guarantee a high level of protection of his rights through maintaining strict standards in food production:

- an integrated approach to food safety («farm to table») is used throughout the food chain;
- producers are responsible for the safety of food products;
- national authorities in each EU country set up a food safety control system and carry out producers checks on compliance with this system; the main industry body – the European Food Safety Authority verifies the competence of the national control bodies⁸⁰.

Within the framework of the Agreement, Ukraine has committed itself to sanitary and phytosanitary measures (SPS):

- harmonise its SPS legislation with that of the EU;
- set up a SPS Sub-Committee;
- harmonize procedures for determining equivalence, certification, import controls and other procedures with relevant international principles.

⁷⁹ Levkivska O. Food safety URL : <http://s.siteapi.org/54cb4bcd8b43969.ru/docs/4645f27f06a1fe8bba189e044837a2aa3929f999.pdf>

⁸⁰ Official web portal of European Food Safety Authority. URL : <http://www.efsa.europa.eu>

The EU's basic requirement is that food products imported into the EU from third countries must meet the same high standards as the products produced in the EU.

The food safety system in the EU is based on two documents: Regulation (EC) No 178/2002 «Laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety»⁸¹ and Regulation No. 852/2004 «On the hygiene of foodstuffs»⁸². These documents outline the basic principles of the functioning of the EU sanitary and phytosanitary measures for the quality and safety of food products. More detailed information and requirements for a product are contained in the relevant EU regulations and directives.

According to Regulation (EC) No 178/2002 «food» (or «foodstuff») means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. «Food» includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment.

This regulation establishes 5 important principles:

- 1) food chain is a single unit (principle «farm to table»);
- 2) risk analysis is the basis of food safety policy;
- 3) market operator is responsible for the safety of food products;
- 4) products must be traced at all levels of the food chain;
- 5) consumer has the right to receive accurate and reliable information about the food product.

⁸¹ REGULATION (EC) No 178/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2002 «Laying down the general principles and requirements of food law, establishing the European Food

Safety Authority and laying down procedures in matters of food safety». URL : <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002R0178&from=EN>

⁸² REGULATION (EC) No 852/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 «On the hygiene of foodstuffs». URL : <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0852&from=EN>

Regulation (EC) No 178/2002 applies to all stages of the production, processing and marketing of food and feed intended for the cultivation of animals used for further food production. The regulation does not apply to the production of primary products for private domestic use, for homemade processing, storage of food for home-private use.

The EU legal framework for sanitary and phytosanitary measures includes the following groups⁸³:

- norms for product: permission for release on the market, prohibited substances (hygiene, microbiological indicators, additives and pollutants, GMO);
- norms for process: HACCP, traceability (principle «step back, step forward»);
- norms for informing of consumers: marking and product information;
- norms for procedures: official control.

At the same time, the approaches and procedures for granting permission in the EU vary depending on the types of imported goods that can be divided into three main groups:

- food products of animal origin (including live animals for slaughter);
- food products of plant origin;
- mixed products (contain components of plant and animal origin).

The safety of products in the EU must be guaranteed regardless of the country of production. The customs services of the EU countries are obliged to guarantee the security when exporting products from third countries to the EU countries.

The EU has one of the highest food safety standards in the world – largely thanks to the solid set of EU legislation in place, which ensures that food is safe for consumers. A key tool to ensure the flow of information to enabling swift reaction when risks to public health are detected in the food chain is RASFF –

⁸³ Maryuha N. European requirements for the quality and food safety, their international regulation and the possibility of use in Ukraine. URL: <http://aec.org.ua/pdf/conf1/marukhaua.pdf>

the Rapid Alert System for Food and Feed⁸⁴. This system is similar to RAPEX. Created in 1979, RASFF enables information to be shared efficiently between its members (EU-28 national food safety authorities, Commission, EFSA, ESA, Norway, Liechtenstein, Iceland and Switzerland) and provides a round-the-clock service to ensure that urgent notifications are sent, received and responded to collectively and efficiently. Thanks to RASFF, many food safety risks had been averted before they could have been harmful to European consumers.

Vital information exchanged through RASFF can lead to products being recalled from the market. A robust system, which has matured over the years, RASFF continues to show its value to ensure food safety in the EU and beyond.

RASFF was put in place to provide food and feed control authorities with an effective tool to exchange information about measures taken responding to serious risks detected in relation to food or feed. This exchange of information helps Member States to act more rapidly and in a coordinated manner in response to a health threat caused by food or feed.

The RASFF portal features an interactive searchable online database. It gives public access to summary information about the most recently transmitted RASFF notifications as well as the ability to search for information on any notification issued in the past.

According to the EU legislation, a country interested in delivering animal products to the EU market should be included in the list of countries authorized to carry out the relevant supplies. To this end, the country and enterprises wishing to supply should make the procedure for legalizing exports. In general, this procedure is to bring the production capacities of interested exporters, as well as the ability of the controlling authorities to comply with the norms and requirements of the EU legislation in the field of SPS. To this end, representatives of the EU specialized agencies are developing a plan for conducting

⁸⁴ Official web portal of Food and Feed Safety Alerts. URL : https://ec.europa.eu/food/safety/rasff_en

verification missions (inspections) to interested companies of the initiating country, during which appropriate recommendations are developed and the progress of their implementation is determined. After all the requirements have been met, the European Commission decides to grant the country permission to export a particular type of products of animal origin, which leads to the recognition of the relevant certificates of the national control bodies⁸⁵.

The subject of regulation in the EU are such food groups⁸⁶:

◆ Products of plant origin;

◆ Products of animal origin:

- fresh meat;
- meat of wild animals and poultry;
- meat products (semi-finished products, meat products, minced meat, «other meat products»);
- milk and milk products;
- fish and fish products;
- other products of animal origin (eggs, honey, natural shell, snails, frogs' legs, blood and blood products, bones, gelatin)/

Unlike products of animal origin, the export of vegetable products does not provide for a legalization procedure. Sufficient is to control products in accordance with the sanitary and phytosanitary requirements of the EU (depending on the type of product, the control procedure may be of different complexity). Responsible for compliance with the requirements of European legislation is the importer.

The export of mixed products must comply with the requirements established for each component of the product, including the export legalization procedure for the relevant component of animal origin.

⁸⁵ Official web portal of Mission of Ukraine to the European Union. URL : <https://ukraine-eu.mfa.gov.ua/ua/Ukraine+-+EU+export-import+helpdesk+/Non-tariff+regulation/SPS+measures>

⁸⁶ Maryuha N. European requirements for the quality and food safety, their international regulation and the possibility of use in Ukraine. URL: <http://aec.org.ua/pdf/conf1/marukhaua.pdf>

According to EU legislation, food products may be banned for placing on the market (detained), if any:

- does not meet the requirements and conditions defined by EU legislation or national rules;
- placed in places that are not approved or not registered;
- contains substances that are not approved or prohibited in the EU;
- contains substances in an amount that exceeds the established limits.

The import of animals and products of animal origin must be carried out in accordance with health standards and international obligations, including the following general rules:

- the exporting country should be included in the list of countries that have the right and permission to export the corresponding category of goods in the EU;
- products of animal origin may be imported into the EU only if they have been produced at the exporting producer of a third country that has been certified accordingly;
- the importation of animals and products of animal origin must be accompanied by a health certificate signed by an official of the competent veterinary authority of the exporting country;
- each party is checked for health at the border control post of the EU Member State.

When importing plants and products of plant origin (including fruits, vegetables and forest products) in the EU, it must be ensured that the products comply with the EU legislation on phytosanitary. The main objective of phytosanitary measures is to prevent the introduction and spread of organisms that cause damage to plants and products of plant origin in the territory of the EU

When imported into the EU plants and products of plant origin should be⁸⁷:

⁸⁷ Official web portal of General Directorate of State Service of Ukraine on Food Safety and Consumer Protection in the Vinnitsa region. URL: <http://www.vingudpss.gov.ua/news/fitosanitarni-vimogi-ievropeyskogo-soyuzu-korotko-pro-golovne>

- have a phytosanitary certificate issued by the competent authority of the exporting country;
- pass customs checks at the point of entry into the EU;
- the importer must be officially registered in a Member State of the EU;
- apply to the customs authorities before arriving at the checkpoint.

In the event of a problem on the territory of a third country that is likely to constitute a serious threat to the health of people, animals or the environment, the European Commission may adopt safeguard measures that impose special conditions or completely or partially suspend the importation of products from a third country.

Traceability is the ability to trace any product, feed, animal or substance to be used for consumption, at all stages of production, processing and marketing, at a minimum, based on the «step back, step forward» principle. In the case of risk detection, it must be possible to trace it from the consumer back to the source for rapid isolation of the problem and prevention of contaminated products (Fig. 3.8).

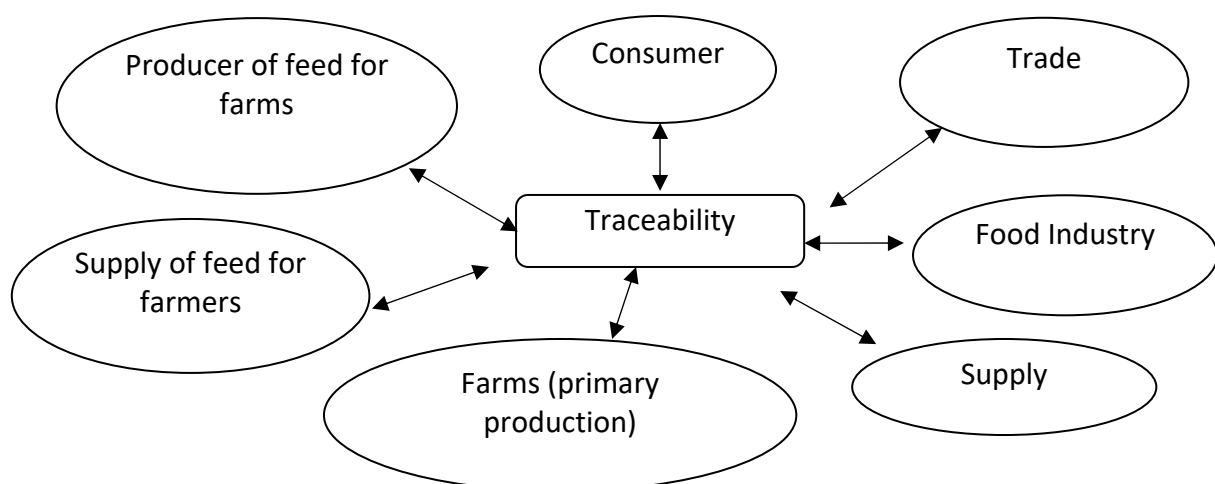


Figure 3.8. Food chain – from farm to table

Source:⁸⁸

⁸⁸ Requirements for producers-exporters of food products to the EU market.
URL : <https://www.slideshare.net/Europa-torgivlia/export-to-ec>

Among the legislative norms on food safety in the EU, the so-called official control is particularly important: Regulation No 82/2004 of the European Parliament and of the Council on official food and feed law enforcement, animal health and animal welfare regulations and Regulation No 854/2004 of the European Parliament and of the Council on the special rules for the organization of official control of products of animal origin.

Regulation No. 882/2004 is the main control document, it provides the basis for the establishment of national control systems that will improve the quality of control and increase the level of food safety in the European Union.

Regulation No. 854/2004 has a more specialized nature – it establishes special rules for the organization of official control over products of animal origin, applies only to activities of persons subject to EC Regulation 853/2004.

Official control is any form of control that the competent authority carries out to verify compliance with food and feed laws, animal health and welfare.

In particular, it has been established that routine surveillance checks and more intensive inspections, such as inspection, verification, audit, monitoring, sampling and testing of samples (Table 3.7).

Table 3.7

Methods of official control in the EU

Form of control	The essence of control	The purpose of control
Inspections	research of food, feed, animal health and rules of their retention	inspection of products for compliance with food legislation
Verifications	research and consideration of evidence of the fulfillment of certain requirements	
Audits	systematic and independent research	the establishment of conformity of actions and related results to the planned activities, as well as the effectiveness of these measures and their compliance with their goals

The end of the table 3.7

Form of control	The essence of control	The purpose of control
Sampling and testing of samples	taking samples of a food product, a feed or other substance related to the production, processing and marketing of the product	verification by analysis of compliance with food legislation
Monitoring	planned observations and measurements	getting information about their compliance with food legislation

Source: made by the author according to⁸⁹

Regulation No. 882/2004 does not set the frequency of official controls. However, it is expected that the frequency of inspections should be regular and proportionate to the existing risks, taking into account the results of the inspections carried out by food business operators under food safety programs. If there is a suspicion of non-compliance with the law, unplanned inspections should be conducted at any time, even in the absence of suspicion of non-compliance with the law. All types of control, exception of an audit, are conducted without prior notice of business entity.

Official control must be exercised by the competent authority. Control activities include the following actions:

- ◆ verification of control systems at enterprises;
- ◆ inspections:
 - producers of primary products and feed, including territory, premises, offices, equipment, transport;
 - raw materials, ingredients, auxiliary products and other products used for the production of food and feed;
 - semi-finished products;
 - materials and items that come in contact with the product;
 - products and tools for cleaning;
 - labeling, presentations and advertising.
 - hygienic status of enterprises;
- ◆ evaluation of procedures GMP, GHP and HACCP;

⁸⁹ Official web portal of Kherson Chamber of Commerce and Industry. URL : <https://www.tpp.ks.ua/poslugi/info-resurs-zelena-informatsiya/1585-2014-12-10zi.html>

- ◆ verification of documents relating to the assessment of compliance with rules and regulations;
- ◆ interviews with business operators and their employees;
- ◆ withdrawal of testimony from measuring devices of business operators and control with the help of measuring devices of the competent authority for verification of measurements of business operators.

If the national regulatory authority considers that the food business operator does not comply with the law, he must take steps to remedy these violations. In determining the steps to be taken, the competent authority must take into account the nature of the violations of the law, and also whether there were cases of non-compliance by the operator with the law earlier.

The possibility of taking such measures is foreseen:

- introduction of sanitary procedures or other actions deemed necessary for the safety of feed or food or compliance with feed and food law, health and animal welfare rules;
- restriction or prohibition of the placing on the market, import or export of feed, food or animals;
- monitoring and, if necessary, forcibly removing and (or) destroying food or feed;
- authorization to use feed or foodstuffs for purposes other than those for which they were originally intended;
- suspension of activity or full or partial closure of such enterprise for a certain period;
- suspension or cancellation of a formal permit for the exercise of activities;
- sending back products outside the European Union (for goods from third countries);
- any other measures that the competent authority deems necessary.

The vector of eurointegration demands from Ukraine the development of international norms and rules of economic activity. Certification of products for ISO has become commonplace for many businesses. But in the markets of Europe, in addition to the

concept of «quality»⁹⁰, there is the notion of «safety»⁹¹. «Safety» is the key to the risk management system in the food industry – Hazard Analysis and Critical Control Points (HACCP).

HACCP is a food safety management system that provides control at all stages of the food chain, at any point in the production process, as well as the storage and sale of products where there is a likelihood of a dangerous situation. This is a system that identifies, assesses and controls the risks posing a serious threat to food safety.

Today, many countries recognize the problem of quality and safety as one of the priority areas. Frequent outbreaks of food-borne illnesses indicate the need to change the approaches to their safety. HACCP is a food safety management system and one of the reliable ways to protect consumers. It guarantees the safety of products throughout the entire food chain, from the field to the table, since it allows you to identify all critical points that can affect the safety of the final product, eliminate them and constantly monitor⁹².

One of the key conditions for the export of Ukrainian food products to the EU market is their compliance with quality and safety standards, including the HACCP system.

The essence of the system is to identify all the critical points and factors that can affect the safety of the final product, control it or eliminate it.

HACCP related to product safety and does not related its quality. The basic principles of implementation, as well as the principles of HACCP, are reflected in international standards such as ISO 22000, IFS (International Food Standard), Codex Alimentarius⁹³.

⁹⁰ The quality of food products is a collection of signs of a unit regarding its compliance with certain and foreseeable requirements. (ISO 8402).

⁹¹ Food safety is to ensure that the product does not harm the consumer if it is cooked and consumed in accordance with the purpose (Codex Alimentarius).

⁹² About introduction of HACCP at Ukrainian enterprises in 2018. URL: <http://nyppoint.com/uk/o-vprovadzhenni-hassp-na-harchovyh-pidpriyemstvah-ukrayini>

⁹³ The Codex Alimentarius is a collection of internationally adopted food standards and related texts presented in a uniform manner. These food standards and related texts aim at protecting consumers' health and ensuring fair practices in the food trade. The publication of the Codex Alimentarius is intended to guide and promote the elaboration and establishment of definitions and requirements for foods to assist in their harmonization and in doing so to facilitate international trade. The Codex

The HACCP system has been approved globally, in particular by the Codex Alimentarius Commission and the European Union, as well as accepted by a number of countries, including Canada, Australia, New Zealand and Japan as mandatory⁹⁴.

HACCP is a systematic approach to the identification, evaluation, and control of food safety hazards based on the following seven principles⁹⁵:

1. Conduct a hazard analysis. The HACCP team conducts a hazard analysis and identifies appropriate control measures. The purpose of the hazard analysis is to develop a list of hazards which are of such significance that they are reasonably likely to cause injury or illness if not effectively controlled. Hazards that are not reasonably likely to occur would not require further consideration within a HACCP plan. It is important to consider in the hazard analysis the ingredients and raw materials, each step in the process, product storage and distribution, and final preparation and use by the consumer. When conducting a hazard analysis, safety concerns must be differentiated from quality concerns. A hazard is defined as a biological, chemical or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

2. Determine the critical control points (CCPs). A critical control point is defined as a step at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce it to an acceptable level. The potential hazards that are reasonably likely to cause illness or injury in the absence of their control must be addressed in determining CCPs. Critical control

Alimentarius includes standards for all the principle foods, whether processed, semi-processed or raw, for distribution to the consumer. Materials for further processing into foods should be included to the extent necessary to achieve the purposes of the Codex Alimentarius as defined. The Codex Alimentarius includes provisions in respect of food hygiene, food additives, residues of pesticides and veterinary drugs, contaminants, labelling and presentation, methods of analysis and sampling, and import and export inspection and certification.

⁹⁴ Official web portal of SE «Ukrmetrteststandard». URL : <http://www.certsystems.kiev.ua>

⁹⁵ Safe Food. How to do it in Ukraine. URL : <https://www.eurointegration.com.ua/files/4/e/4e344a6-ec-harchi-pr2.pdf>

points are located at any step where hazards can be either prevented, eliminated, or reduced to acceptable levels. Examples of CCPs may include: thermal processing, chilling, testing ingredients for chemical residues, product formulation control, and testing product for metal contaminants. CCPs must be carefully developed and documented. In addition, they must be used only for purposes of product safety.

3. Establish critical limits. A critical limit is a maximum and/or minimum value to which a biological, chemical or physical parameter must be controlled at a CCP to prevent, eliminate or reduce to an acceptable level the occurrence of a food safety hazard. A critical limit is used to distinguish between safe and unsafe operating conditions at a CCP. Critical limits should not be confused with operational limits which are established for reasons other than food safety. Each CCP will have one or more control measures to assure that the identified hazards are prevented, eliminated or reduced to acceptable levels. Each control measure has one or more associated critical limits. Critical limits may be based upon factors such as: temperature, time, physical dimensions, humidity, moisture level, water activity, titratable acidity, salt concentration, available chlorine, viscosity, preservatives, or sensory information such as aroma and visual appearance. Critical limits must be scientifically based. For each CCP, there is at least one criterion for food safety that is to be met.

4. Establish monitoring procedures. Monitoring is a planned sequence of observations or measurements to assess whether a CCP is under control and to produce an accurate record for future use in verification. Monitoring serves three main purposes. First, monitoring is essential to food safety management in that it facilitates tracking of the operation. If monitoring indicates that there is a trend towards loss of control, then action can be taken to bring the process back into control before a deviation from a critical limit occurs. Second, monitoring is used to determine when there is loss of control and a deviation occurs at a CCP, i.e., exceeding or not meeting a critical limit. When a deviation occurs, an appropriate corrective action must be taken. Third, it provides written documentation for use in verification.

5. Establish corrective actions. The HACCP system for food safety management is designed to identify health hazards and to establish strategies to prevent, eliminate, or reduce their occurrence. However, ideal circumstances do not always prevail and deviations from established processes may occur. An important purpose of corrective actions is to prevent foods which may be hazardous from reaching consumers. Where there is a deviation from established critical limits, corrective actions are necessary. Therefore, corrective actions should include the following elements: determine and correct the cause of non-compliance; determine the disposition of non-compliant product and record the corrective actions that have been taken. Specific corrective actions should be developed in advance for each CCP and included in the HACCP plan.

6. Establish verification procedures. Verification is defined as those activities, other than monitoring, that determine the validity of the HACCP plan and that the system is operating according to the plan. The major infusion of science in a HACCP system centers on proper identification of the hazards, critical control points, critical limits, and instituting proper verification procedures. These processes should take place during the development and implementation of the HACCP plans and maintenance of the HACCP system. Verification activities are carried out by individuals within a company, third party experts, and regulatory agencies. It is important that individuals doing verification have appropriate technical expertise to perform this function.

7. Establish record-keeping and documentation procedures. Generally, the records maintained for the HACCP System should include the following:

- a summary of the hazard analysis, including the rationale for determining hazards and control measures;
- the HACCP Plan (listing of the HACCP team and assigned responsibilities; description of the food, its distribution, intended use, and consumer; verified flow diagram; HACCP Plan Summary Table that includes information for: steps in the process that are CCPs, the hazard(s) of concern, critical limits, monitoring,

corrective actions, verification procedures and schedule, record-keeping procedures);

- support documentation such as validation records;
- records that are generated during the operation of the plan.

The seven principles of HACCP have been universally accepted by government agencies, trade associations and the food industry around the world.

Based on the HACCP concept, several standards have been developed that are used by individual countries and regions or at individual links in the food chain. The most commonly used are the following standards⁹⁶:

- ISO 22000:2005 Food safety management systems – Requirements for any food chain organization – A standard developed by the International Organization for Standardization (ISO);
- BRC – British Retail Consortium Global Standard;
- IFS – International Food Standard;
- Dutch HACCP – Dutch standard for the HACCP system;
- FSSC 22000:2010 – A standard for producers of certain categories of food products that combines the requirements of ISO 22000:2005 and PAS 220:2008, adopted by the association of food safety experts Global Food Safety Initiative (GSFI).

The benefits of introducing HACCP at Ukrainian enterprises can be as follows: improvement of product quality; increase of competitiveness; access to new markets; reduction of total costs; growth of investment attractiveness; the possibility to prevent the release of hazardous products; an effective control system; simplification of bureaucracy.

To implement HACCP it is necessary:

- quality equipment, repair of premises;
- development and implementation of the HACCP plan and training of employees (at the enterprise, after the introduction of HACCP, a worker who will control the production process must be constantly employed);

⁹⁶ Official web portal of SE «Ukrmetrteststandard». URL : <http://www.certsystems.kiev.ua>

– HACCP system support.

The cost of designing and implementing the HACCP, subject to the availability of appropriate facilities and equipment, may be on average 6000-8000 dollars USA⁹⁷.

Lack of HACCP complicates access to markets in Europe, the United States and Canada.

On September 20, 2016, Section VII of the Law of Ukraine «On Basic Principles and Requirements for the Safety and Quality of Food Products» entered into force. The law stipulates that all operators of the food market must have at least a program-preconditions for the implementation of the HACCP system. Also, the specified law establishes the terms – 3 years from the moment of entry into force of this norm, that is, until September 20, 2019. This term is a deadline for all market operators, while implementation itself will take place in several stages.

High-risk enterprises whose products contain active ingredients of animal origin must fulfill the requirement first. In particular, slaughterhouses, dairy and meat processing enterprises. They had a deadline of 20 September 2017. As stated in the Law, the HACCP is implemented «on facilities which carry out activities with foodstuffs, which contain raw ingredients of animal origin (raw milk, meat, fish, mollusks and crustaceans, in particular fresh, chilled or frozen, eggs, honey, their derivatives and other products made from parts of animals, their individual organs and / or tissues intended for human consumption). « That is, it is about raw materials.

A year later, until September 20, 2018, this procedure should be carried out by enterprises that carry out activities with food products, which do not contain raw animal ingredients (confectionery factories, processing and production plants for fruit and vegetables). In essence – finished products. The first two stages relate primarily to large enterprises. And by September 20, 2019, the system should be implemented at low capacities.

Despite the developed legislative framework, the level of implementation of HACCP at national food industry enterprises

⁹⁷ Safe Food. How to do it in Ukraine. URL : <https://www.eurointegration.com.ua/files/4/e/4e344a6-ec-harchi-pr2.pdf>

remains low. According to the State Service of Ukraine for Food Safety and Consumer Protection, in Ukraine, HACCP operates on 362 objects that belong to the first «wave» of implementation. Mostly these companies, which had experience in exporting food products to the markets of EU countries before the signing of the Association Agreement⁹⁸. At the same time, those falling into this category (but not yet implemented) – 867 objects. That is, more than two thirds of enterprises still failed to comply with the law⁹⁹.

The main problem in this industry in Ukraine is the lack of an effective system of product safety that would control the product from the raw material supplier to the place of sale of the finished product.

In order to ensure that all producers comply with the legislation on the implementation of the HACCP system, there is the State Service of Ukraine for Food Safety and Consumer Rights, which has already prepared 500 inspectors to verify the enterprises.

According to the Law of Ukraine «On state control over compliance with legislation on food products, feed, livestock products, animal health and welfare», according to the results of inspections, offenders will be punished: legal entities – in the amount of 30–75 minimum wages; Individuals-entrepreneurs – 3–15 minimum wages, as well as the threat of termination of work¹⁰⁰. Inspections should be scheduled. According to the results of inspections, the State Service of Ukraine for Food Safety and Consumer Protection will introduce enterprises into an integrated automated system of state supervision (control). The system will automatically identify enterprises that are subject to comprehensive, ongoing checks. Consequently, if such a large number of companies did not consider a serious requirement for the implementation of the

⁹⁸ Official web portal of State Service of Ukraine for Food Safety and Consumer Protection. URL: <http://www.consumer.gov.ua>

⁹⁹ Only 362 enterprises introduced the HACCP system in Ukraine. URL: <https://agropolit.com/news/7232-tilki-362-pidpriyemstva-zaprovadili-sistemu-nassr-v-ukrayini>

¹⁰⁰ Law of Ukraine «On State Control over Compliance with Legislation on Food Products, Feed, Livestock Products, Health and Animal Welfare», 18.05.2017, № 2042-VIII. URL: <http://zakon2.rada.gov.ua/laws/show/2042-19>

HACCP system, they would have to prepare for inspections and fines.

There are such planned measures of state supervision (control) that are carried out by the state supervision body (control) over the activities of economic entities¹⁰¹:

- for entities that belong to the high risk – not more often than once every two years;
- for economic entities that are at medium risk – not more often than once every three years;
- for business entities that are of a low risk profile – not more often than once every five years.

The implementation of HACCP is a rather lengthy process that applies to all services and personnel. It is not limited to the development of documentation and the introduction of elementary order in the production. It is important that all members of the food chain, up to the end user, are aware of their responsibility.

In the EU, the problem of food safety is approaching seriously. This is what they require from their new members as well. For example, in Poland, during the mandatory HACCP implementation period from 70 to 80% of enterprises that failed to implement the system were closed¹⁰².

In the EU, SPS controls are carried out by the competent authorities of the member States, coordinated by the European Food Safety Authority, EFSA, located in Parma, Italy. The Agency provides independent advice on all issues related to food safety and the risks of the so-called food chain – «from farm to table».

The tasks of the European Food Safety Authority are:¹⁰³

- development and provision of scientific opinions on the safety of food and feed for the interested parties;

¹⁰¹ The Law of Ukraine «On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity», 2007, № 877-V. URL : <http://zakon3.rada.gov.ua/laws/show/877-16>

¹⁰² Official web portal of General Directorate of State Service of Ukraine on Food Safety and Consumer Protection in the Zaporozhye region. URL: <http://gudpss-zp.gov.ua/index.php?page=news&id=262>

¹⁰³ Official web portal of European Food Safety Authority. URL: <http://www.efsa.europa.eu>

- development of best practices for risk assessment in areas that are part of the EFSA mission;
- search and analysis of scientific and technical data in all areas that directly or indirectly affect the safety of food and feed;
- at the request of the European Commission, to provide scientific and technical assistance in resolving crises authorized by the food safety and food safety commission;
- providing the public with clear, reliable and objective information in the areas of EFSA mission.

The introduction of European rules allowed the domestic business entities to obtain permits for the supply of poultry, fish and fish products, honey, eggs and egg products, milk and dairy products, collagen, intestinal raw materials, snails and non-food products of animal origin, for example down, feathers and raw leather, technical casein, etc. to the EU. Currently, 290 Ukrainian producers of animal products, including 110 producers of food of animal origin, have already passed the inspections and received the right to export animal products to the EU (Table 3.8).

Table 3.8

Information on the number of Ukrainian producers of food and non-food products of animal origin authorized to export their products to the EU market¹⁰⁴

Producers of food of animal origin		Producers of non-food products of animal origin	
Milk and milk products	19	Casein technical	41
Poultry meat and products from it	7	Feathers and paper raw materials	60
Fish and fish products	24	Raw leather	32
Eggs and egg products	4	Feed for unproductive animals	24
Honey	49	Subproducts non-food	12
Frog legs and snails	5	Other non-food products of animal origin	5
Collagen	1	Soil improvers	5
Intestinal raw material	1	Tribal material	1
Total	110	Total	180

Source: made by the author according to ^{105, 106, 107}

¹⁰⁴ As of May 2018.

However, many quotas are not used by Ukrainian exporters (mushrooms, garlic, beef, lamb meat, pork, products from processed milk, starch, and many other)^{108,109}. First of all, it is necessary that Ukrainian agrarian products meet European standards of safety and quality.

For example, in order to export beef to the EU, in Ukraine at the national level there should be a monitoring system for the disease of the spongiform encephalopathy of cattle. The work in this direction is conducted by the Ministry of Agrarian Policy, but it is a very long process and needs financing.

In order to export lamb to the EU, Ukraine should make conditions for slaughter of animals according to EU standards and increase its production.

Ukraine still does not use duty-free quotas for garlic, because this culture is complicated in processing, and careful development of processing technologies is necessary. The development of this trend will be successful for small and medium-sized producers.

As for the export of mushrooms, it should be noted that the markets of Europe are saturated with this commodity. Therefore, Ukrainian producers of mushrooms need to maximize the rate on the quality and competitiveness of this group in order to have a demand for international markets.

According to the Comprehensive Strategy for the Implementation of Chapter 4 (the «SPS Strategy») (Ordinance No. 228-p of the Cabinet of Ministers of Ukraine of 24 February 2016),

¹⁰⁵ The right to export food products in the EU has more than 60 Ukrainian enterprises. URL: <https://www.unian.ua/eurobusiness/2154241-pravo-na-eksport-produktiv-harchuvannya-v-es-mayut-ponad-60-ukrajinskih-pidpriemstv-torgpred.html>

¹⁰⁶ Almost 300 Ukrainian enterprises already have the right to export products to the EU. URL : <https://www.unian.ua/eurobusiness/1643971-mayje-300-ukrajinskih-pidpriemstv-vje-mayut-pravo-eksportuvati-produktsiyu-v-es.html>

¹⁰⁷ Permission to export products to the EU much easier access to markets in Asia, Africa and Latin America. URL: <http://dp.consumer.gov.ua/45822>

¹⁰⁸ Quotas and not only: where Ukraine can increase exports to the EU. URL : https://www.eurointegration.com.ua/experts/2016/11/8/7057104/view_print/

¹⁰⁹ In the Free Trade Zone. How has trade between Ukraine and the EU changed. URL : <https://agropolit.com/spetsproekty/368-v-zoni-vilnoyi-torgivli-yak-zminisya-torgi-mij-ukrayinoyu-ta-yes-za-tri-roki>

Ukraine must, by the end of 2021, implement into the national legislation more than 250 EU acts relating to the state control in the field of SPS, safety of food and feed, animal and plant health, etc. The SPS Strategy is also included in the Association Agreement Implementation Action Plan approved by the Resolution of the Cabinet of Ministers of Ukraine of 25 October 2017, which designated the Ministry of Agrarian Policy and Food of Ukraine, the State Service for Food Product Safety and Consumer Protection, the Ministry of Health of Ukraine and, in certain cases, the Ministry of Ecology and Natural Resources of Ukraine as bodies responsible for performing the obligations in this area.

The Association Agreement sets out a mechanism for recognising equivalence of SPS measures in respect of individual measures or a system applicable to a sector, sub-sector or commodities. The recognition of equivalence will duly simplify access to the EU market for the Ukrainian agri-food producers and also help reduce physical inspections at the border, simplify the issuance of certificates and facilitate the pre-export approval procedure. Since the recognition of equivalence and the right to export products to the EU market is an advantage in other markets, it will also allow the Ukrainian producers to enter new international markets.

In 2017, the SPS Sub-Committee of the EU-Ukraine Association Committee in its Trade configuration was set up. The Sub-Committee met twice during the year. Ukraine and the EU, within the framework of the SPS Sub-Committee, are currently still reviewing the wording of the SPS Strategy to approve it at the bilateral EU-Ukraine level as Annex V to Chapter 4 of the Association Agreement. In particular, the Ukrainian side proposed to amend the SPS Strategy as certain EU legal acts were updated, including amending the time-frames for harmonising its laws with those EU acts.

As part of carrying out the SPS Strategy, Ukraine has already adopted a number of legislative acts that provide the framework for reforming the food product safety system through

implementing basic European principles and practices. In particular, the Law of Ukraine «On basic principles of, and requirements for, food product safety and quality» introduces the European food product safety and quality model in Ukraine, which is based on the «farm to table» approach and the traceability requirements (in line with the provisions of Regulation (EC) No. 178/2002), and requires a gradual transition by market operators to the application of HACCP procedures. The laws concerning the introduction of mandatory identification and registration of all agricultural animals, management of animal by-products not intended for human consumption and harmonisation of the seed and planting material certification system with the EU requirements were also adopted¹¹⁰.

The following two pivotal legislative acts, which had been considered by the Parliament for a long time, were passed in 2017:

– the Law of Ukraine «On state control aimed at verifying compliance with the legislation on food and feed and animal health and well-being» (No. 2042-VIII of 18.05.2017) implementing Regulation (EC) No. 854/2004, Regulation (EC) No. 669/2009, Regulation (EC) No. 882/2004, Directive 97/78/EC and Commission Decision 2006/778/EC. Most provisions of the Law will enter into force in April 2018. The Law provides for a comprehensive reform of the state control system in line with EU legislation. In particular, the Law: introduces an integrated state control system that covers the entire food supply chain «from farm to table», including feed and food-producing animals; introduces the risk-oriented approach with respect to scheduled inspections; introduces inspections conducted without notice; establishes an exhaustive list of issues subject to inspections; increases producers' liability for violating the legislation in this

¹¹⁰ Report on Implementation of the Association Agreement between Ukraine and the European Union in 2017. URL: http://www.3dcftas.eu/system/tdf/report_on_implementation_of_the_association_agreement_between_ukraine_and_the_european_union_in_2017.pdf?file=1&type=node&id=428&force=

field; introduces a new procedure for carrying out state border control, etc.;

– the Law of Ukraine «On safety and hygiene of feed» (No. 2264-VIII of 21.12.2017), which will enter into force on 19 January 2020. The Law introduces the European requirements (in compliance with a total of 12 EU acts, including Regulation (EC) No 1831/2003, Regulation (EC) No 1831/2003, Regulation (EC) No 767/2009, Commission Directive 2008/38/EC, Commission Regulation (EC) No 429/2008, Commission Regulation (EC) No 378/2005, Regulation (EC) No 178/2002 and others) for the production and circulation of safe animal feed and is an important element of the whole system of food safety control «from farm to table». The Law in particular: requires that feed producers comply with the HACCP procedures and traceability requirements; introduces clear labelling requirements at all stages of feed production and circulation; sets out the procedure for the approval and registration of feed production and circulation facilities; sets out the requirements for feed export and import and hygiene requirements for feed production; introduces a simplified system of feed additive registration equivalent to the European system.

The harmonisation and proper implementation of those laws and regulations will result in introducing an effective and well-balanced state food safety control system in Ukraine, which complies with EU requirements and is recognised worldwide, ensures the proper level of protection of life and health of Ukrainian consumers and allows duly operating food producers to develop.

According to the time schedule of the current SPS Strategy, only one obligation scheduled for 2017 remained unperformed, namely the harmonisation of requirements for honey with the provisions of Directive 2001/110/EC. The Ministry of Agrarian Policy and Food of Ukraine prepared the Draft Order «On approving the requirements for specific quality indicators relating to honey», which was approved by the Ministry of Health of Ukraine subject to certain reservations. The Draft is now being discussed with the representatives of the beekeeping sector. As

part of negotiating the wording, the Ukrainian side submitted its proposal to the EU side to set the end of 2019 as the deadline for this task¹¹¹. The progress in fulfilling the 2017 in the field of SPS obligations is 33%¹¹².

Bringing Ukraine's sanitary and phytosanitary measures and Ukraine's system of food product safety control in compliance with the European requirements and practices will contribute to increasing the protection of life and health of people, animals and plants in Ukraine, increasing consumer protection in respect of food products, as well as expanding the export of agri-food products to EU and third countries¹¹³.

¹¹¹ Report on Implementation of the Association Agreement between Ukraine and the European Union in 2017. URL: http://www.3dcftas.eu/system/tdf/report_on_implementation_of_the_association_agreement_between_ukraine_and_the_european_union_in_2017.pdf?file=1&type=node&id=428&force=

¹¹² *ibid.*

¹¹³ If the company has a permission to export products to the EU, the countries of Asia, Africa and Latin America will also facilitate access to their own markets. This approach is due to the fact that the EU has high standards of quality and safety of food products that these countries trust.

Chapter 4

CUSTOMS ASPECTS AND PROMOTING TRADE

Customs cooperation: simplification of customs procedures and formalities. Introduction of transparent and simplified customs procedures and elimination of discriminatory requirements for import, export or transit of goods positively affects trade development. Chapter 5 «Customs and trade facilitation» of Title IV «Trade and Trade-related Matters» of the Association Agreement provides for cooperation between Ukraine and the EU in the field of exchange of information, development of joint initiatives, automation of customs and other trade procedures with a view to facilitating trade and, at the same time, striking a reasonable balance between trade facilitation and effective control and security¹¹⁴.

The Association Agreement explicitly states that customs procedures must be proportionate, predictable, applied uniformly and effectively and must facilitate the protection of legitimate trade, avoidance of unnecessary or discriminatory burdens on economic operators, fraud prevention, as well as provision of further facilitation for economic operators having a high level of compliance.

Changes in the customs sphere, in particular, the simplification of customs procedures and formalities, are one of the most important aspects of the adaptation of Ukrainian legislation to the requirements of the EU.

Customs procedures are a system of actions for goods and vehicles passing through the customs border, and consist of the following elements:

- customs control is carried out by specially designated places (zones of customs control) exclusively by the customs authorities in certain forms (checking of documents, oral questioning, checking

¹¹⁴ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. URL : http://zakon0.rada.gov.ua/laws/show/984_011

of customs funds, etc.) necessary for ensuring compliance with national customs legislation and international agreements;

- customs clearance, which consists in documentary fixing of information obtained during the customs control of goods moving through the customs border;

- payment of taxes and duties provided for by the national legislation of the state when goods moving through the customs border.

The term «simplification of customs procedures» is interpreted as «the process of eliminating all unnecessary and duplicate elements in formalities, processes and procedures». The term «harmonization» means «staying in agreement», «observance» or «coherence» with something ¹¹⁵. Thus, the harmonization of customs procedures is interpreted as the harmonization of common approaches to the implementation of customs procedures and documentation for international trade, bringing them closer to common standards.

In 1947, in Geneva, 22 countries signed the General Agreement on Tariffs and Trade (GATT)¹¹⁶. Within the framework of the GATT, the experts concluded that harmonization of international trade only with tariff-preferential measures is impossible. It is necessary to harmonize the practice of customs administration as the main tool for regulating international trade by national governments. The result was the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), which was signed in 1973 in Kyoto¹¹⁷. The new edition was approved by the World Trade Organization (WTO) in 1999 and came into force in 2006.

¹¹⁵ Denisenko S. I. (2015) International legal standards for the simplification and harmonization of customs procedures in the field of international trade: diss. ... k.ju.n. : 12.00.11. Odessa. 287 p

¹¹⁶ General Agreement on Tariffs and Trade (GATT 1947). URL : http://zakon0.rada.gov.ua/laws/show/995_264

¹¹⁷ International Convention on the Simplification and Harmonization of Customs Procedures, 18.05.1973. URL : http://zakon2.rada.gov.ua/laws/show/995_643

The rules for countries joining the Convention were fairly flexible: any state could choose such annexes and separate rules that were in line with its interests.

Ukraine joined the Kyoto Convention in 2006, however, as the Delegation of Ukraine to the EU has found, in violation of the established procedure. Therefore, Ukraine did not actually receive the status of a contracting party to the International Convention on the Simplification and Harmonization of Customs Procedures. On February 15, 2011, the Law of Ukraine «On Amendments to the Law of Ukraine» On Accession of Ukraine to the Protocol on Amendments to the International Convention on the Simplification and Harmonization of Customs Procedures» was signed¹¹⁸. By adopting this law, the legislator eliminated certain procedural inconsistencies.

The main principle of the Kyoto Convention is related to the need to simplify customs procedures to accelerate foreign trade, promote trade and eliminate unwarranted administrative barriers.

Kyoto Convention elaborates several key governing principles – chief among these are the principles of:¹¹⁹

- transparency and predictability of Customs actions;
- standardization and simplification of the goods declaration and supporting documents;
- simplified procedures for authorized persons;
- maximum use of information technology;
- minimum necessary Customs control to ensure compliance with regulations;
- use of risk management and audit based controls;
- coordinated interventions with other border agencies;
- partnership with the trade.

¹¹⁸ The Law of Ukraine «On Amendments to the Law of Ukraine «On Accession of Ukraine to the Protocol on Amendments to the International Convention on the Simplification and Harmonization of Customs Procedures», 15.02.2011, № 3018-VI. URL : <http://zakon0.rada.gov.ua/laws/show/3018-17>

¹¹⁹ Official web portal of World Customs Organization. URL : http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx

According to Convention, Member States should bring customs rules into line with the standards of the Convention by amending their national customs legislation in order to simplify and harmonize customs procedures.

At present, 67 states have joined the Kyoto Convention, including such leading countries as the United States, Canada, Japan, Australia, China, countries of European Union, and others.

A fundamentally new approach to customs management practices is the Framework of Standards to Secure and Facilitate Global Trade (SAFE) developed by the World Customs Organization and approved in 2005. One of the elements of the Framework is the privileges provided by the customs services to companies that adhere to the minimum security standards in the supply chain and use efficient methods of work.

Ukraine has implemented such privileges in the Customs Code. The section on Authorised economic operator (AEO) provides that conscientious taxpayers – entities of foreign economic activity can pass customs procedures under a simplified scheme, and therefore, save on logistics costs, optimize time and human resources, and so on.

The UE status is a set of benefits when interacting with the customs that can be obtained by a law-abiding enterprise. The specific set of customs simplifications depends on the type of certificate that the company can receive (a certificate for facilitations with regard to customs controls; relating to security and safety; for facilitations with regard to customs controls relating to security and safety).

The AEO concept is based on the Customs-to-Business partnership introduced by the World Customs Organisation (WCO). Traders who voluntarily meet a wide range of criteria work in close cooperation with customs authorities to assure the common objective of supply chain security and are entitled to enjoy benefits.

An entity may be issued the following AEO Certificates:

- for facilitations with regard to customs controls;
- relating to security and safety;

– for facilitations with regard to customs controls relating to security and safety.

Special simplifications are different from the type of certificate¹²⁰.

1. Special simplifications, which may be granted to authorised economic operator qualified for facilitations with regard to customs controls, shall include:

- preferential customs control;
- placement of goods in temporary storage (closed facilities) without prior approval of the revenue and duties authority;
- exemption from providing guarantees covering the domestic customs transit of goods other than excisable ones if the declarant is authorised economic operator;
- customs clearance of goods at the facilities of authorised economic operator;
- lodging of a single customs declaration when the goods are several times imported into or exported from the customs territory of Ukraine by the same person under the same foreign trade agreement within the period of time agreed with the revenue and duties authority.

2. Special facilitations, which may be granted to authorised economic operator qualified in terms of security and safety, shall include:

- the reduced volume of information to be supplied to the revenue and duties authority before the goods and means of transport for commercial use enter and/or leave the customs territory of Ukraine;
- temporary warehousing of goods, means of transport for commercial use placed under customs control in the premises, open and closed storage facilities of authorized economic operator;
- the removal of customs instrumentality without prior approval of the customs office;

¹²⁰ Customs Code of Ukraine. URL : <http://zakon0.rada.gov.ua/laws/show/4495-17>

– the shipment of goods from the premises, open and closed storage facilities of authorized economic operator without presenting them to the revenue and duties authority.

3. An authorised economic operator qualified for facilitations with regard to customs controls relating to security and safety may be granted special simplifications referred to both.

To qualify for AEO Certificate an entity shall meet the following requirements:

1) an appropriate record of foreign economic activity for no less than three years prior to the application date;

2) clearance of any customs charges and penalties, tax clearance as of the application date;

3) a sufficient proof that its officials were not held administratively liable for the violation of customs rules;

4) a satisfactory system of goods accounting enabling to reconcile the documents and information presented to the customs authorities for customs control and customs clearance to those on economic activities;

5) clearance of any financial obligations found in the course of documentary examination as of the application date.

But the Ukrainian Institute of AEO still does not work because of legislative problems: the required regulatory framework is under development.

Taking into account the active signing of free trade agreements with the countries in which the AEO is already in operation, the absence of such an institution in Ukraine has a destructive effect on the competitiveness of domestic enterprises in world markets. In order for the AEO Institute finally to work, it is necessary not only to approve the bill, but also to ensure its qualitative implementation taking into account Ukrainian realities. Otherwise, Ukraine will be forced to recognize other AEO, instead of giving this status to Ukrainian enterprises. The introduction of requirements of AEO in Ukraine equivalent to European will promote mutual recognition, and Ukrainian enterprises will be able to obtain certain simplifications in the implementation of customs

procedures abroad. The status of AEO is international practice and its implementation is a matter of time.

An important achievement in the area of facilitating access to EU markets was the introduction of an «authorized (approved) exporter» institution. The status of the approved exporter provides advantages in obtaining tariff preferences, the essence of which is that the Ukrainian exporter does not issue a certificate for the transport of the EUR.1 form, and independently determines and declares the origin of the goods in commercial / shipping documents, which facilitates the acceleration of the export procedure (Table 4.1).

To obtain the status of an approved exporter, such documents must be submitted to the customs authorities:

- 1) application, filled in by the established form, signed by the head and stamped by the exporting company;
- 2) certified copies of such documents:
 - foreign economic agreement (contract) for goods of preferential origin from Ukraine;
 - documents on preferential origin of goods from Ukraine, exported under terms of agreements;
- 3) if the exporter is not a producer of the goods, the manufacturer's declaration is attached to the application.

Table 4.1

Advantages status of «approved exporter»

Exporter who does not have status	Exporter who has the status
<ul style="list-style-type: none"> - The exporter can independently declare the country of origin of the goods if the value of the goods does not exceed 6000 euros. - If the value of the goods exceeds 6000 euros, the exporter must provide a certificate of origin EUR.1 issued by the competent authority of the country of export. 	<ul style="list-style-type: none"> - The exporter independently declares the origin of the goods regardless of its value. - The exporter (if desired) may provide a certificate of origin EUR.1 issued by the competent authority of the exporting country, instead of the invoice declaration.

Source:¹²¹.

¹²¹ Official portal of the State fiscal service of Ukraine. URL : <http://sfs.gov.ua>

To qualify for status of «approved exporter» an entity shall meet the following requirements:

- an appropriate record of foreign economic activity with goods of preferential origin from Ukraine for no less than 1 years prior to the application date;
- the absence of violations of the rules for determining the preferential origin of goods identified by the verification (validation) of certificates of origin (transportation) of goods from Ukraine and / or declarations prior to the application date;
- export of goods that conforms to the rules for determining the preferential origin of goods established by the agreements;
- ensuring the access of the customs to the monitoring of the production of goods and the primary documentation related to such production, confirming the preferential origin of goods from Ukraine.

The status of the approved exporter is given to the company by the customs within 30 calendar days from the date of submission of the application. Expiry date of the approved exporter is not limited in time.

During 2016–2017 156 Ukrainian companies received the status of an approved exporter.

One of the tools for rapid and unhindered border crossing is «ATA Carnet» – an international customs document used both as a customs declaration and a financial guarantee for paying customs fees for goods that are temporarily imported into the customs territory of the country party to the Convention On Temporary Admission, Istanbul¹²².

Carnets apply to three broad categories of merchandise: commercial samples, professional equipment, and goods for use at exhibitions and fairs.

Temporary import without paying customs duties is an important incentive for the development of economic activity in

¹²² Convention On Temporary Admission, 26.06.1990. URL : <http://www.wcoomd.org/en/about-us/legal-instruments/~media/2D53E23AA1A64EF68B9AC708C6281DC8.ashx>

the country and is designed to minimize the cost of crossing the border¹²³.

The use of ATA Carnet when temporarily importing goods is not mandatory. The declarant himself decides to use it as an ATA Carnet, or to undergo customs clearance procedures according to national rules of destination and transit countries. But the benefits of using ATA Carnet are quite substantial¹²⁴:

- conditional full exemption from payment of import duties, customs duties and taxes in case of temporary import of goods for a term up to one year. There is no need to provide deposits, bank guarantees as a guarantee of customs payments, since ATA Carnet is an international guarantee. The recipient of the ATA Carnet pays only for the services of the organization that issued it;

- there is no need to fill in the national customs documents at each point of passage through the customs border, since the ATA Carnet is filled up in advance and contains tear-off sheets for the customs authorities of each participating country whose customs border intersects;

- one ATA Carnet may be issued for a cargo that is temporarily imported (or transit) into (through) several ATA member countries;

- goods covered by the ATA Carnet can be exported and returned in one or more batches.

Thanks to these benefits, ATA carnets are extensively used in many countries around the world. A.T.A. Carnet is used in the territory of 67 countries¹²⁵ – in Europe, North America, South America, Asia, Africa and Oceania.

The Ukrainian Chamber of Commerce and Industry is the authorized body issuing an ATA carnet in Ukraine.

A prerequisite for the use of the carnet A.T.A. is that the goods must be returned in the same state as imported into the

¹²³ Perepelitsa G.V., Perepelitsa V.I., Kornienko D.A., Maltseva Y.A. Mechanisms to simplification of customs procedures. Handbook for exporters. URL : http://exportua.com/files/dataplace/SimplifyingMechanisms_ver2015.pdf

¹²⁴ Official portal of the Ukrainian Chamber of Commerce and Industry. URL : <http://ata.ucci.org.ua/ua/start/>

¹²⁵ Position as regards signatures, ratifications and accessions. Convention on temporary admission. URL: <http://goo.gl/kaVOi7>

country of destination, that is, without any changes and modernization. In the event that goods brought under the ATT carnet can not be returned due to their destruction, loss, theft, they are taxed automatically by customs payments.

Such goods cannot travel under an ATA Carnet:

- perishable goods and goods intended for consumption;
- brochures, leaflets, flyers, since such products are usually not returned;
- goods imported for processing, modernization and repair;
- consumable items (agricultural products, alcohol, tobacco, gasoline, etc.).

In August 2016, the «single customs window» and the principle of tacit consent in the absence of the response of the customs authorities within 4 hours was introduced. Additional video monitoring for increased transparency and fraud prevention and the creation of special mobile anti-corruption and smuggling teams have also been established ¹²⁶.

In 2016, the share of cargoes processed through the «single window» was about 20%. In 2018, this indicator is 85%¹²⁷. The use of the «Single Window» information system by enterprises and public authorities became mandatory since February 1, 2018.

To simplify exports to the EU in 2016-27, Ukrainian customs authorities issued over 50,000 certificates in the form EUR.1 for Ukrainian goods exported to the EU. EUR.1 allows goods of Ukrainian origin after their introduction into the EU territory to enjoy preferential trade conditions.

Under of the Association Agreement, Ukraine is required to gradually harmonise its customs legislation with the EU customs legislation over a period of three years as set out in Annex XV to the Agreement. Taking into account recent changes in EU law, the final list of the documents, the provisions of which are to be implemented, is as follows:

¹²⁶ Implementation of the DCFTA in Ukraine: Assessment of progress and challenges ahead. URL: https://www.beratergruppe-ukraine.de/wordpress/wp-content/uploads/2016/12/PP_04_2016_ua.pdf

¹²⁷ TOP-5 main achievements of SFS in the customs direction. URL : <http://sfs.gov.ua/media-tsentr/novini/print-338616.html>

- Convention concerning the simplification of formalities in trade in goods and Convention on a common transit procedure;
- Regulation 952/2013 laying down the Union Customs Code;
- Regulation 1186/2009 setting up a Community system of reliefs from customs duty (Titles I and II);
- Regulation 608/2013 concerning customs enforcement of intellectual property rights.

Customs control simplifies communication with the New Computerized Transit System (NCTS) and the introduction of a single administrative document (SAD). These requirements are set out in the Conventions on a single regime for transit and facilitation of trade in goods.

Accession to the Conventions on a single customs transit regime and the simplification of formalities in trade in goods is possible only after Ukraine receives an appropriate invitation from the EU side stipulated by the provisions of these international legal acts.

One of the conditions for obtaining such an invitation, in addition to bringing national legislation in line with the provisions of these Conventions, is to ensure the test operation of the New Computerized Transit System of the EU (NCTS) at the national level for one year.

The Government announced the adoption in 2017 of subordinate legal acts aimed at the implementation of a set of legal, organizational and information technology tasks necessary for the proper implementation of communication with the New Computerized Transit System of the EU and the introduction of a single administrative document. However, the analysis of the current legislation shows that there are no regulatory acts aimed at the introduction of both NCTS and a single administrative document or its model¹²⁸.

NCTS and the Unified Automated Information System of the State Fiscal Service of Ukraine are different in terms of

¹²⁸ What Ukraine did not have time to do in 2017 within the framework of the Association Agreement. URL: <https://taxlink.ua/ua/blog/tsho-ukraina-vstigla-ne-zrobiti-za-2017-rik-v-ramk.htm>

functionality and capabilities. In addition, the concern of the European community at international meetings every time caused the issue of data protection relating to confidential information of foreign economic operators, collected and used by customs administrations solely for customs purposes. As to the need to strengthen data protection, including by taking measures to bring the Ukrainian system for the protection of personal data in line with EU standards, it was still in the process of preparation for the signing of the Association Agreement – the relevant issue was included in the Association Agenda of Ukraine, approved by the Council on issues of cooperation between Ukraine and the EU.

The Cabinet of Ministers of Ukraine submitted to the Verkhovna Rada of Ukraine Draft Law No. 4777 «On amending the Customs Code of Ukraine with respect to the authorised economic operator and simplification of customs formalities» and Draft Law No. 5627 «On amending the Customs Code of Ukraine with respect to aligning transit procedures with the Convention on a common transit procedure and the Convention concerning the simplification of formalities in trade in goods» for consideration. Unfortunately, there was no progress in the adoption of the above mentioned Draft Laws by the Verkhovna Rada of Ukraine, which rendered it impossible to take actions to draft regulations and introduce other practical measures, in particular:

- approving the forms necessary for the transit under the provisions of the Convention;
- establishing the procedure for exchanging specimen impressions of special stamps;
- determining the mechanisms for mutual assistance in submitting claims under the provisions of the Convention;
- establishing the procedure for completing customs formalities under the provisions of the Convention;
- defining the rules of use of the electronic transit system with a view to completing customs formalities, etc.

For this reason, the arrangements set out in the operational conclusions of the Customs Sub-Committee on cooperation between Ukraine and the EU of 15 June 2017 could not be performed fully in 2017; according to the arrangements, the EU

encouraged Ukraine to quickly adopt and implement the legal provisions concerning authorised economic operators, and Ukraine also undertook to continue its preparations for the secondary legislation implementation measures in this field.

Among the positive developments in this direction, it is possible to distinguish only the bringing of the codes of certain documents and types of customs declarations into the Convention on a Single Customs Regime of Transit and the Facilitation of Trade in Goods¹²⁹.

Implementation of customs obligations in the area of simplification of customs procedures and formalities was almost non-existent. The pace of implementation of customs obligations are the slowest among other spheres provided for in the Association Agreement and occur in violation of the time defined in the Agreement¹³⁰. Overall, as of 1 January 2018, 29% of Ukraine's obligations regarding the approximation of its customs legislation to EU law were fulfilled¹³¹.

Among the factors that hamper the implementation of the Agreement are insufficient staffing capacity of responsible institutions, too bureaucratized procedure for the adoption of legislative acts, conflicts of interest between different public authorities regarding the division of powers¹³².

¹²⁹ Order of the Ministry of Finance of Ukraine «On Approval of Changes to Certain Departmental Classifiers of Information on State Customs Matters Used in the Process of Issuing Customs Declarations», dated December 28, 2016 № 1193. UR : <http://sfs.gov.ua/zakonodavstvo/mitne-zakonodavstvo/nakazi/70797.html>

¹³⁰ Results of the year: successes and failures in the implementation of the Association Agreement. URL : <https://www.eurointegration.com.ua/articles/2017/12/15/7075035/>

¹³¹ Report on Implementation of the Association Agreement between Ukraine and the European Union in 2017. URL: https://eu-ua.org/sites/default/files/imce/layout_16_02_final.pdf

¹³² Ukraine fulfilled only 11% of the planned commitments under the Association Agreement with the EU. URL : <http://europrojects.org.ua/2017/12/25/україна-виконала-лише-11-від-планових-30/>

Chapter 5

TRADE AND STEADY DEVELOPMENT

A prioritized task for a country that is in the early stages of formation is a well-founded choice of partners. From the fact, on what values will the state orientate when forming the model of the state administration and at the stage of laying the foundations of economic development, the possibility of achieving the compensation of the instruments of society and business depends.

Ukraine has now definitively determined the strategic partnership vector, thereby declaring its focus on the introduction of European values and intention. Thus, the preamble of the signed treaty has a reference to an agreement of both parties to adhere to the common values on which the current EU is based, namely democracy, respect for human rights and fundamental freedoms and the rule of law¹³³.

The focus on social and environmental investments, the realization of which will ensure the welfare of future generations can be called as one of the priorities of the development of European countries. Entered upon the path of co-integration into the EU, Ukraine has also committed itself over complying with this paradigm, which creates new opportunities for the country and instigates new challenges. In this regard, according to Section 1 of the Association Agreement, the key elements of maintaining and expanding EU-Ukraine relations are the principle of a free market economy, good governance, the fight against corruption and various forms of transnational organized crime and terrorism, promoting sustainable development and effective multilateral contacts.

The relationships between Ukraine and the European Union are strategic: not only short-term goals and objectives are important for partners, but also opportunities to achieve the

¹³³ The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/984_011

interests of both partners in the future integration process. Thus, we can state that the development of Ukrainian-European partnerships is based on the key principles of the concept of sustainable development.

Despite the fact that by its nature the concept of sustainable development belongs to the humanitarian sphere, in recent years its interpretation has deepened considerably, evolving to an interdisciplinary level. Today, sustainable development is a management paradigm that achieves a balance between tactical and strategic interests in the economic, social and environmental spheres.

For Ukraine, observance of the key ideas of the concept of sustainable development in building relations with the European Union is extremely important given that at the current stage, it is the domestic economy that is the main bienfizer of the development of economic and political cooperation: in such circumstances, significant risks are the adoption of conditions that contradict the long-term interests of the country and put it in excessive dependence on the policy of the European Union. The above determines the need to take into account the balance of current and strategic interests of Ukraine and the EU in the course of the integration process.

Today, economic cooperation is a key element of the partnership between Ukraine and the EU. Given the extremely difficult situation in the Ukrainian economy, it is not possible to overcome the existing crisis on its own, which makes cooperation with the European Union an instrument for restoring economic stability in the country. Thus, according to official data for the period of cooperation between Ukraine and the EU, the regulatory technical base includes 119 international agreements (worth more than 3.2 billion euros) aimed at achieving such goals of sustainable development of participants as economic and social development, solving environmental problems the environment and improvement of the mechanisms of combating the consequences of natural disasters and man-made disasters; solution of social problems, including through support of public

initiatives and projects; improvement of the cultural environment; reforming the system of public administration, justice and ensuring law and order; improving the conditions for trade and private sector development; ensuring energy efficiency¹³⁴.

According to the Section 6 of the Agreement, Ukraine has access to existing mechanisms and funding instruments. At the same time, the priority areas of EU financial assistance to Ukraine should be adapted to the current situation in the country and identified in the relevant indicative programs. It is also a characteristic feature that EU assistance will be implemented in conjunction with other donor countries in accordance with the world's principles of aid effectiveness.

The argument in favor of building relations between Ukraine and the EU on the basis of sustainable development is that investments with the EU can be increased with the help of the Investment Fund of Neighborhood, in which Ukraine can participate: this institution is called to mobilize additional funds to cover Ukraine's investment needs for the development of transport and energy infrastructure, environmental protection and social issues, that is, directly those problems in the focus of the sustainable development strategy.

The problem is the Ukraine's loss of autonomy in making a large part of the decisions in the field of state policy: EU financial assistance, which should provide the basis for the restoration of the economy, can only be obtained if measures are adopted that were recognized by European partners as necessary to exit Ukraine from the crisis. At the same time, the overwhelming part of such actions negatively affects the welfare of the population, which significantly reduces the effectiveness of Ukraine-EU relations from a social point of view¹³⁵.

Sustainable development as a concept for the functioning of the EU is reflected in the Europe 2020 strategy, which priorities

¹³⁴ Website of the Delegation of Ukraine to the European Union and the European Community on Atomic Energy [Electronic resource]. – Access mode : <http://ukraine-eu.mfa.gov.ua/ua/ukraine-eu/eu-policy/assistance>

¹³⁵ Association Agreement. Government portal [electronic resource]. URL : <https://www.kmu.gov.ua/ua/diyalnist/yevropejska-integraciya/ugoda-pro-asociacyu>

are to ensure the growth of intelligent, that is, knowledge-based and innovation-based sustainable development, provided by efficient use of resources, increase of ecological economy; the global character of development, that is, the focus on ensuring a high level of employment and the development of backward regions to ensure social cohesion and economic convergence. At the same time, building partnerships with Ukraine, the European Union is also at the forefront of the achievement of the stated goals, which pays much attention to the reform of the public administration system and the creation of opportunities for the improvement of the institutions of power.

The European Union is a socially-oriented integration association, the highest value of which is the proclamation of the interests of citizens of European countries. The EU focuses on the dialogue between institutions and citizens, the development of social infrastructure and the widening of the range of opportunities for different segments of the population. At the same time, in the process of interaction with Ukraine, ensuring social stability is also one of the priorities of the EU, although in the short term the economic stabilization is fundamental, the achievement of which may be related to rigorous measures that will lead to decline of population's living standard.

In general, the EU and Ukraine's intention to build a relationship on the principles of sustainable development is stated in Chapter 13 of the Association Agreement.

Thus, by signing the Association Agreement, partners confirmed their obligations regarding the establishment of monitoring tools, including those that involve the involvement of foreign experts, which will provide the participants of the integration process with recommendations to ensure the priorities of sustainable development. In addition, the Treaty states that reforms that will take place in the process of expanding the integration process should not prevent the effective observance of the core conventions of the International Labor Organization, as well as the Declaration on Fundamental Rights and Freedoms in the Labor. Thus, the parties create a legitimate basis for protecting the

interests of citizens in the field of labor relations, which fully corresponds to the existing concept of sustainable development.

It is also important to note that the Treaty places great emphasis on environmental issues. So, both the European Union and Ukraine reserve the right to implement multilateral environmental agreements in force, as well as to introduce best practices in the field of forestry and fisheries, which has a significant impact on the state of the ecosystem. In addition, the parties undertake to constantly improve existing legislation, providing a higher level of protection of social and environmental interests.

Summarizing the text of the Treaty between Ukraine and the EU, it can be stated that the main agreements in the sphere of sustainable development are:

- the fullest possible consideration of the economic, social and environmental interests of not only their respective population, but also future generations and a guarantee that economic development, environmental and social policies are maintained together;
- approximation of Ukraine's laws, regulations and administrative practices to the EU;
- an inadmissibility of using labor standards for protectionist purposes in trade;
- the formation of environmental policy on the precautionary principle and using preventive measures, introduction of mechanisms for compensation in the priority order of harm caused to the environment, in particular by paying fines by polluting the environment;
- Promotion and encouragement of trade and foreign direct investment in environmentally friendly goods, services and technologies, the usage of balanced renewable energy sources and energy-saving products and services, as well as environmental labeling of goods;
- Simplification of trade in commodity to promote sustainable development, including goods that are the subject of «fair and ethical trade» and corporate social responsibility;

- assistance in the management of fish stocks on the basis of sustainable development (introduction of monitoring and control of trade in fish resources, full compliance with appropriate conservation and control measures adopted by regional fisheries management organizations, trade protection measures to combat illegal, untargeted and unregulated fishing) ;

- refusal of alleviation or reduction the level of environmental protection or labor provided for by law in order to improve trade or investment;

- taking into account scientific and technical information, relevant international standards, guidelines or recommendations.

In general, the focus of Ukraine and the EU not only on cooperation with a view to obtaining short-term benefits and solving current problems creates a number of positive and negative consequences for the population, business and the state as a whole. The positive aspects of sustainable development as the basic concept of free trade between Ukraine and the EU are, first of all, improving the quality of goods and services that will be offered to consumers.

Currently, Ukraine does not have strict requirements for products offered to customers, which means both food products and industrial goods, the use of which often leads to threats for consumers. The implementation of European standards implies an increase in the quality of products that will be presented on shelves, which will have a positive impact on the health of the population. At the same time, along with the emergence of an unquestionably positive long-term effect, the introduction of stringent requirements for the quality of products will have a significant impact on its price, as well as lead to the withdrawal from the market of non-competitive producers. Therefore, the gradual introduction of new quality standards is needed to ensure that positive effects are overcome negative effects.

One of the elements of the agreement is also the requirement for the introduction of environmental labeling of goods. Such measures will allow consumers to get complete information about the products they receive, which will allow them to make

informed choices among the various products, and will enable them to monitor what they are consuming.

The introduction of new approaches for doing business will require the training of specialists who will have the skills and competences necessary for working in the new environment. Accordingly, there will be a reform of the education system for its modernization and transition to a qualitatively new level. This, in turn, will solve the problem of youth employment, which is one of the most important for Ukraine and the EU. At the same time, given the demand for new staff, there is a high probability of reducing demand of older professionals: while in the EU such a problem has already been solved through lifelong learning programs, there is currently no such practice in Ukraine, which necessitates the study of positive experiences The EU and gradually implement it.

Another phenomenon that is happening today in Ukraine and progressing in the process of developing relations with the EU is the growing influence of civic organizations. Military actions in the East of the country have increased the level of civic consciousness, which was reflected in the emergence of various civil organizations and volunteer movements. Taking into account that in the European Union the role of such associations is sufficiently tangible, one can predict that their active development will continue to be observed in Ukraine.

Public organizations are able to provide effective control for public administration, as well as to provide funding for projects that are beyond the focus of official institutions, by accumulating resources of individuals and legal entities. This is due to the fact that the level of trust in such associations is currently high enough and the purposeful nature of their activity allows to purposefully collect the funds that are received at the disposal to achieve certain goals. At the same time, it should be noted that in such conditions, the likelihood of the use of public organizations for money laundering and the implementation of shadow schemes is high, this indicates that the need of radical changes in legislation at this area.

It should also be noted that the focus on sustainable development has a significant impact on the quality of state institutions, which, according to the requirements of the Contract, must be transformed and adapted to the current situation on the basis of transparency and efficiency. The corruption of government, the prevalence of governmental structures in individuals associated with domestic business structures or those that inherited the Soviet tradition of state administration has a negative impact on the course of reforms in Ukraine. In view of this, the changes initiated by the integration processes must have a positive impact on the quality of management of key institutions.

An important element of the association agreement, which is a manifestation of the concept of sustainable development, is the introduction of high environmental standards. In this case, this is said about all sectors of the national economy, respectively, environmental standards will be implemented / raised for both business and the population.

An ambiguous manifestation of the concept of sustainable development when signing an association agreement is to increase the pressure on environmentally harmful production as a result of the application of preventive measures and compensation of harm caused to the environment. From the point of view of long-term benefits, such a consequence of the implementation of the Association Agreement is unquestionably positive, however, at the current stage, only a limited number of enterprises in Ukraine can really bear the costs associated with environmentalization. Thus, there are high risks of going out from the market of a large number of enterprises, which will have negative consequences for the national economy.

In addition, it should be noted that the introduction of environmental standards can lead to a significant increase in the cost of enterprises extracting industry, electricity, gas and water, chemical industry, metallurgical production, which will increase the cost of their products and services, and, accordingly, reduce their price competitiveness. in foreign markets. As for the

domestic market, such situation in the short term also provoked significant threats for the national economy due to the insolvency of the population and business, whose financial status is critical, to raise costs.

At the same time, with the introduction of environmental standards in the medium term, one can expect a dynamic development of business related to renewable energy sources, and so on. Now there are opportunities for the implementation of such projects in Ukraine, and there is also a significant interest in this area from the side of European investors. In our opinion, even with the use of financial resources of foreign enterprises for the development of this direction, the positive consequences for Ukraine will be high.

In our opinion the dynamic development of small and medium-sized businesses, which is oriented towards the production of ecological products, which is already taking place, and will substantially improve over the coming years is also positive. With a growing focus on the environmental characteristics of the goods offered to consumers, the market appeared a niche that easily fills more flexible and mobile compared to large enterprises small and medium businesses. It should be noted that products manufactured in compliance with European requirements, have all the necessary supporting documents, issued by manufacturers themselves. Such goods are quite competitive both on the domestic and foreign markets, with the proceeds from sales of such enterprises usually directed to development, thus forming a solid foundation for strengthening the position of Ukraine in the market of environmental products.

A similar situation is also taking place in the organic farming market: the majority of small and medium-sized enterprises are fixed in this niche, offering high-quality organic products both for domestic consumption and for export.

The aggravation of relations with the main supplier of energy resources and the signing of the Association Agreement

necessitates the development of energy saving technologies in Ukraine. This process is hampered today by the high costs that need to be borne in order to move the economy to thoughtful energy consumption.

Considering the influence of the concept of sustainable development on the state, one can state that observance of its principles will allow to balance the interests of society, business and the country as a political entity, however it is possible only with the logical and consistent implementation of measures aimed at radical change of the existing political and economic system.

Ukraine as an independent state is considerably younger than the countries that are leaders of the world community, and its economy is only at the stage of formation. However, taking into account the processes which are taking place in the world, now it is not enough to concentrate only on strengthening the economic potential: it is also necessary to ensure high social standards, as well as supporting those initiatives developed by countries whose economies are strong and stable. It greatly complicates the development process of Ukraine, however, at the same time, it gives it the opportunity to use the positive experience of the countries that have passed the implementation of the concept of sustainable development earlier.

Ukraine is now in difficult conditions which demand decisive action. It is obvious that operation under the old scenario will not allow the country to reach a new stage of development, and it is important to find new tools and approaches which are capable for ensuring the achievement of high results in the future. It is important to realize that when applying the concept of sustainable development, the main idea is to create the long-term benefits which are necessary to provide the basis for the state's future functioning, thus, in a situation when it comes to state building, this concept is optimal. At the same time, it is necessary to take into account that the economic component is fundamental, it enables to ensure achievement of the goals in the social and environmental spheres. Thus, in order to achieve high results, the

country's efforts now must be aimed at strengthening the economy and ensuring its competitiveness, rather than the primary satisfaction of the interests of citizens under the slogans of the priority of this element of the concept of sustainable development. The basis of this paradigm, which is fully correlated with the association agreement signed by Ukraine and the EU, is to provide the preconditions for the country's future development, which can only be achieved if a stable economy exists.

Today, Ukraine needs a complete transformation of the paradigm of development: subject to compliance with the existing scenarios, the result will not be different, economic problems and, accordingly, social tensions will sink, which will lead to the complete collapse of the country as a sovereign political entity.

The concept of sustainable development is one of the most promising for Ukraine, as it focuses on long-term goals: investing in the benefits that future generations will be able to use is just the way that Ukraine needs to go.

The problem for Ukraine is that for the introduction of radical reforms the authorities have to go on a series of unpopular decisions, which will lead to a significant decrease in its rating. In addition, even in the context of the necessary reforms, the likelihood that the chosen vector will be maintained for a period sufficient to obtain positive results is insignificant. The aforesaid thus testifies the need to solve internal problems related to the formation of political and economic culture, as well as to overcoming corruption, before implementing measures within the concept of sustainable development.

In our view, the fact that relations with a key partner are formed in line with the concept of sustainable development, necessitates the need, even in spite of resistance among certain populations and businesses, to be at the stage of improving the economic system. New business opportunities, the development of dialogue between the government and representatives of civil society, the opportunities for small and medium business

development, and the strengthening of the quality requirements for products produced by enterprises in the long run will have a positive impact on the situation in the country and its position in the system of international economic relations. At the same time, it is undoubtedly important question about forming of a positive attitude towards such changes among the population, as well as ensuring their implementation in accordance with the interests of the country.

An important aspect of the dialogue between Ukraine and the European Union is the issue of business ecologization and strengthening requirements in this area the Inasmuch that Ukraine has a common border with the EU, preventing the deterioration of the environmental situation in its territory is the utmost importance from the point of view of safeguarding the interests of the European countries themselves. In addition, at the present stage, Ukrainian enterprises are suppliers of a significant amount of raw materials for producers from Europe, which makes it important to increase the level of environmental friendliness of Ukrainian products. At the same time, the introduction of new rules for Ukrainian companies creates opportunities for increasing competitiveness and entering new markets as full competitors – for those industries that will not rely but will adopt new rules, changes in the regulatory field can be favorable.

In general, summarizing the research, it can be stated that the signing of the Association Agreement, and in particular the functioning of FTA +, initiated a new stage in the development of the Ukrainian economy. The document, which confirms the integrationist aspirations of Ukraine and their recognition and support of Europe, gives Ukraine the opportunity to change the world, identify and solve key problems, build a new system that will function effectively, creating the basis for the country's prosperity in the future.

Today Ukraine has a choice: to make efforts to use this opportunity, or, complaining about the stiffness of the requirements, to continue to carry out chaotic reforms, failing to radically change

the situation. The concept of sustainable development, which lies in the main trade relations between Ukraine and the EU after the signing of the Association Agreement, is, in our opinion, optimal for the achievement of the country's long-term goals and ensuring its development in the future.

An important aspect of implementing the DCFTA is the definition of the rules for setting prices for energy carriers, their transportation and transit. Objective tendencies in the development of the world economy at the end of the twentieth century and at the beginning of the XXI century have brought the energy sector into the focus of world politics. It should be noted that, according to the expert assessment of the European Commission, the EU today depends to a large extent on imports of energy carriers, which account for 53% of its energy consumption; in monetary terms, it is about € 400 billion annually. The EU imports almost 90% of its crude oil, 66% of its natural gas, 42% of its coal and other solid fuels, as well as 40% of its uranium and other nuclear fuel¹³⁶. Taking into account the fact that Ukraine is among the main countries of energy carrier transit, the issue of developing the energy sector within the framework of the agreement on DCFTA deserves considerable attention. This development is possible in the context of developing cross-border electricity markets, and, subsequently, the gradual formation of a single energy market with the EU. By joining the Energy Community in 2012, Ukraine has pledged to gradually adapt its legislation to the requirements of the Third Energy Package. The ultimate goal of implementing this regulation in the EU itself was to create a common energy market with unified rules of work for the development of competition, investment and consumer protection.

Increasing efficiency and competitiveness of the Ukrainian energy sector can be secured through the harmonization of the regulatory environment in the electricity market with the EU

¹³⁶ European Commission. EU-position in world trade 2017. Electronic resource, URL : <http://ec.europa.eu/trade/policy/eu-position-in-world-trade>

rules, integrating electricity grids and ensuring the security of nuclear energy. There are, however, only little chances for Ukrainian energy companies to export electricity due to underdeveloped infrastructure and the differences in technical standards and rules that the energy markets of the EU and Ukraine operate upon. For example, in 2015, Ukraine reduced its export of electricity by 54.8% compared to 2014. Electricity supply to Poland decreased by 10.3 times (619.3 million kWh) – down to 66.5 million kWh. In 2015, 0.8 million kWh were supplied to Belarus, whereas to Moldova – 17.6 million kWh, compared to 2401 and 730.7 million kWh in 2014, respectively. The export of Ukrainian electricity to the Russian Federation amounted to 3.8 million kWh¹³⁷.

Despite this trend, the entire volume of electricity exports from Ukraine is carried out by enterprises of the DTEK Group, which have a complete cycle of electricity generation and distribution, from energy carrier supply for electricity production to its distribution on the domestic and foreign markets – this indicates a monopoly position of the company in the export of electricity. In this context, Ukraine's obligations to harmonize its regulations with the EU Electricity Directive 2009/72 / EC would lead to a more effective and regulated competition in the electricity market and better price offers for consumers. So far, Ukraine has not fulfilled this commitment.

It should also be noted that Ukraine is not yet fully compliant with the requirements of the Third Energy Package of the Energy Community, which provides for the separation of energy production from its transportation and marketing. In December 2016, a draft document for the forthcoming Fourth Energy Package appeared. «Clean energy for all Europeans» – so is named the document presented by the European Commission. It is to determine the energy policy of the united Europe for the next ten years.

¹³⁷ K.Markevich, V.Omelchenko (2016) Pricing in energy markets: experience of the EU and Ukraine. Analytical Report. Kyiv: Testament, 56 p.

The proposals presented in the draft document relate to issues of energy efficiency, renewable energy sources, the overall structure of the electricity market and energy supply and management rules. The purpose of the new document is to increase the European Union's share of renewable energy generation to 50% of all energy produced in the EU member states by 2030. There are also support schemes that are to promote the integration of renewable energy sources into the general electricity market, while at the same time guaranteeing the ability of manufacturers to respond to renewable energy sources in the general market situation. It notes that any support should be provided openly, transparently and cost-effectively. The energy package also deals with energy efficiency: 40% of energy consumption in Europe takes place in buildings, most of which are ineffective energy-wise. The proposal of the European Commission for amending the energy efficiency of buildings seeks to accelerate the reconstruction of already existing buildings and provide for the energy efficiency of new ones through the use of modern technologies. This requires Member States to create mechanisms that would encourage investors to finance the reconstruction of such buildings. Thus, it is planned to achieve a widespread energy efficiency rating of 30% by 2030. The proposal also designates the requirement to equip electric vehicle chargers to new residential and non-residential buildings with more than 10 parking spaces each¹³⁸.

The above makes relevant again the task of implementing a number of EU directives on renewable energy, within the framework of which Ukraine has pledged to reach 11% of renewable energy (RES) in the overall energy consumption structure by 2020. At the end of 2014, the National Renewable Energy Action Plan for the period up to 2020 (NAPDEV) was approved, which upholds the said objective (Table 5.1)¹³⁹.

¹³⁸ Materials of the Round-table «Free Trade Area between Ukraine and the EU: Experiences and Strategies» URL: http://financial.lnu.edu.ua/wp-content/uploads/2015/10/ЗБІРНИК-МАТЕРІАЛІЙ_КРУГЛОГО_СТОЛУ.pdf

¹³⁹ National Action Plan for Renewable Energy for the period up to 2020 URL: <http://zakon3.rada.gov.ua/laws/show/902-2014-p>

Table 5.1

**National indicative target of renewable energy sources (RES)
in gross final consumption of energy by 2020, %**

Area of use of energy from renewable sources	2009	2014	2015	2016	2017	2018	2019	2020
RES in heating and cooling systems	3.4	5.7	6.7	7.7	8.9	10.0	11.2	12.4
RES in the electricity supply	7.1	7.6	8.3	8.8	9.7	10.4	10.9	11
RES in the transport sector	1.5	4.1	5	6.5	7.5	8.2	9	10
Total share of RES	3.8	5.9	6.7	7.4	8.3	9.1	10.1	11

The «Ukraine-2020» strategy also identifies energy independence, participation in trans-European networks and energy sector reform among important priorities. It should be noted that the market for the production and consumption of heat from renewable sources did not actually exist until 2014 due to the lack of a financial basis for its development and the continued subsidization of natural gas consumption by the population, enterprises of the budget sphere and housing and communal services. A significant proportion of biomass briquettes and pellets produced in Ukraine was exported to the EU, but exports were gradually decreasing due to the growing demand on the domestic market, as well as the discrepancy between domestic pellets and the European ENplus standard.

The significant increases in heat tariffs enabled renewable energy sources, including biomass, to compete at market prices. In addition to rising gas prices, another reason was the establishment of administrative limits on gas consumption, in particular a 30% reduction for industry, the state budget-sponsored sphere, and housing and communal services, and a 10% reduction for the population. In 2015, the minimum heating gas tariff for the population was raised as well.

In general, as part of RES development, the Association Agreement between Ukraine and the EU can objectively become a

driving force for the development of the renewable energy market in Ukraine, as well as create the preconditions for the effective adaptation of domestic legislation to the European one. Due to rising prices for natural gas and electricity, biomass-based generation of heat has attained certain benefits. Motor biofuel is almost not produced in Ukraine at all due to imperfections in domestic legislation; without overcoming them, the implementation of the Association Agreement between Ukraine and the EU would not help. The expected reform of the electricity market may have a negative impact on the development of the RES-electricity market in Ukraine, and a suspension of the growth of the RES-energy market would complicate the implementation of the provisions of both the NAPEDE and the Strategy of Sustainable Development of Ukraine until 2020.

In accordance with Article 269–280 of the Agreement, gas and electricity prices for industrial customers should be determined solely on a market basis (based on supply and demand). As an exception to the rules of market trading of energy carriers, the state may impose obligations on companies that are subjects of so-called «general economic interest». In the case of applying regulated prices for gas and electricity in the domestic market, the state must ensure that the methodology for calculating the regulated price will be made public before the prices come into effect, and not vice versa.

Implementing said norms in the national legislation will require Ukraine to undertake radical reformation of the natural gas and electricity markets based on the model introduced today in the EU (under the 2nd and 3rd Energy Packages of legislation). Moreover, applying the principle of market-driven pricing would be impossible without legally and organizationally separating the vertically integrated monopolies in the gas and electricity markets, which today dominate the said markets in Ukraine, in the segments of extraction (generation), transit and supply.

Chapter 6

ESTABLISHMENT OF ENTREPRENEURIAL ACTIVITY, COMMERCIAL SERVICES AND ELECTRONIC COMMERCE

Today Ukraine's system of international relations is at the stage of the transformation: there is a change in the priorities of the country in this area, as well as a restructuring of the regulatory field, one of the reasons of which is the functioning of the free trade zone between Ukraine and the EU.

Taking into account the structure of Ukrainian foreign trade flows, the current issue is the regulation of foreign trade in services, and, in particular, those that ensure the functioning of the national economy (Fig. 6.1).

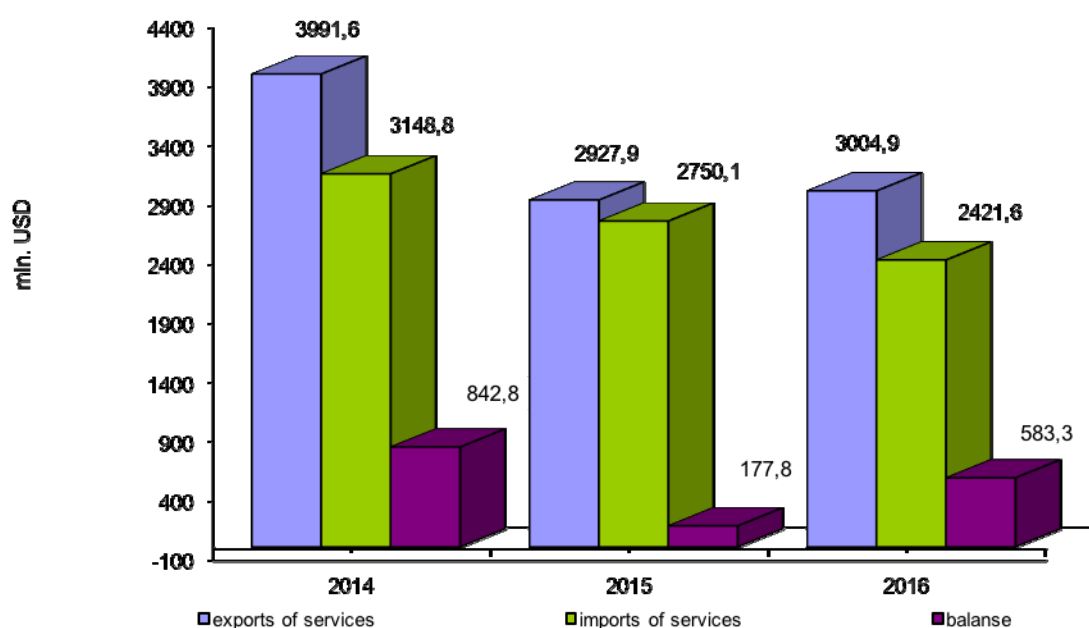


Figure 6.1. Exports and imports of services of Ukraine with EU countries in 2014–2016

Source: ¹⁴⁰

¹⁴⁰ Cooperation between Ukraine and EU countries / State Statistical Service of Ukraine [Electronic resource]. – Access mode: <http://www.ukrstat.gov.ua/>

One of the important issues that significantly influences the level of development of the Ukrainian services market and the competitiveness of service exports is the regulation of the relevant markets. According to the Association Agreement, changes in the regulatory system include the gradual mutual liberalization of entrepreneurial activity, cross-border provision of services, cooperation in e-commerce, the basis for trade in other services and liberalization of the parties' arrangements for entry and temporary stay in their territory by service providers (Fig. 6.2).

Thus, according to Chapter 5 of the Agreement, Ukraine is obliged to provide European affiliated enterprises, branches and legal entities with a regime that is no less favorable than that granted to domestic enterprises or companies from countries not part of the European Union. It should also be noted that similar operating conditions should also be ensured for European companies operating in Ukraine prior to the signing an Agreement. This condition puts European and domestic service providers in a level playing field, stimulating international competition in the Ukrainian market¹⁴¹.

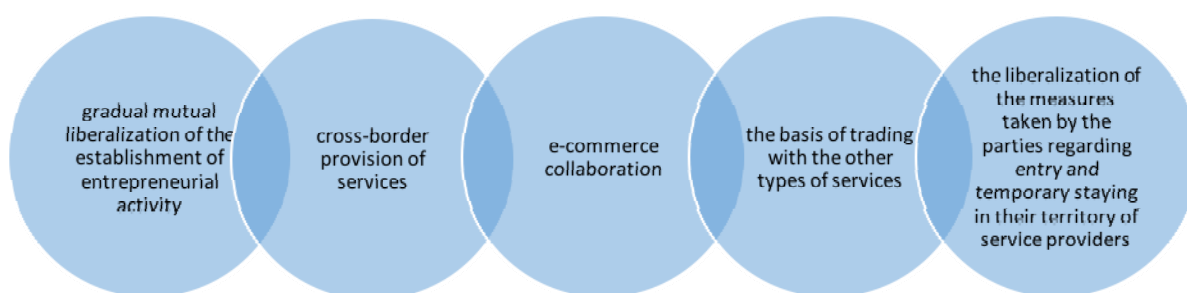


Figure 6.2. Measures of changing the regulatory field of trade in services between Ukraine and the EU in the context of the Association Agreement

Source: made by author on the basis of DCFTA between Ukraine and EU countries

¹⁴¹ Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/984_011

Taking into account the fact that implementation of such changes takes time, the Association Agreement stipulates that Ukraine and the EU will continuously review the legal framework for assessing progress in changing the regulatory field.

Despite the fact that in general, the process of establishment of enterprises in the territory of Ukraine in accordance with the Agreement will be liberalized, the country will have tools to control their activities. Thus, in the context of securing the interests of the country, after proper justification, specific requirements for the establishment and activities may be introduced for foreign enterprises wishing to carry on business activities in Ukraine. At the same time, the difference in the regime should not go beyond what is absolutely necessary due to such legal and technical differences, or, in the case of financial services, for prudential purposes¹⁴².

Today, infrastructure services play an exceptional role for the domestic market, because the quality of the provision of national economic relations depends on their effective functioning. One of these areas is the field of postal items, which provides communications for individuals and legal entities both within the country and with foreign counterparties.

Investigating the legal nature of international postal items, first of all it is necessary to investigate the definition of this concept in the legislation of Ukraine. Thus, Article 4 of the Customs Code of Ukraine defines the concept of «international postal items – packaged and executed in accordance with the requirements of the Acts of the Universal Postal Union and the Rules for the provision of postal services, letters, postcards, parcels, special bags marked «M», small packages, shipping with declared value, postal parcels, grouped mailings with the sign «Consignment», sending of international express mail «EMS», which are accepted for sending outside of Ukraine, are delivered to Ukraine or move through the

¹⁴² Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/984_011

territory of Ukraine by transit by postal operators ¹⁴³. In addition, paragraph 14.1.113 of Article 14 of the Tax Code of Ukraine also refers to the definition of the concept under investigation in the Customs Code ¹⁴⁴. Thus, the main features of international postal items can be considered their implementation by postal operators, compliance with the requirements for packaging and registration of objects of departure, as well as the fact of their transfer of the customs border of Ukraine.

Providing postal services in Ukraine in accordance with the provisions of the Agreement is liberalized. Provided that if postal or courier services are provided by a foreign supplier on the partner territory through cross-border shipments, both Ukraine and the European Union apply a regime that is no less favorable than that established for national enterprises, as the other for postal services is not provided for by the annexes to the agreement.

In this case, with a view to the gradual liberalization of trade in postal services, the Trade Committee regularly reviews the list of obligations of the parties. This review takes into account the level of progress in the transposition, implementation and enforcement of EU legal acts and their impact on eliminating the remaining obstacles to the cross-border provision of services between Ukraine and the European Union ¹⁴⁵.

An important role in the liberalization of the market for postal and courier services is played by the regulation of the temporary movement of persons. So, according to the text of the Agreement, the enterprises of Ukraine and the EU have the right to employ one of their subsidiaries, affiliates and representative offices established in the territory of the partner country of

¹⁴³ Customs Code of Ukraine dated March 13, 2012 № 4495-VI (as amended by the editors from 03.12.2017) [Electronic resource]. – Access mode : <http://zakon5.rada.gov.ua/laws/card/4495-17/paran316>

¹⁴⁴ The Tax Code of Ukraine dated 02.12.2010 No. 2755-VI [Electronic resource]. URL. <http://zakon0.rada.gov.ua/laws/show/2755-17/paran5483#n5483>

¹⁴⁵ Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. URL. http://zakon3.rada.gov.ua/laws/show/984_011

employees who are foreign nationals, provided that these employees are the main personnel, they work exclusively on legal entities, subsidiaries, affiliates and representative offices. The period of validity of the work permit and residence of such personnel shall not exceed the period of hiring. Entry and temporary stay of such staff is a period of up to three years¹⁴⁶.

In addition, legal entities of both parties to the Agreement have the right to employ one of their subsidiaries, affiliates and representative offices established on the territory of another partner of graduate students who are citizens of Ukraine and the European Union member states respectively, subject to that they work exclusively for legal entities, subsidiaries, affiliates and representative offices. Each of the parties to the Agreement also allows for the temporary entry into its territory of business services vendors for up to 90 days within 12 months¹⁴⁷.

Considering that hiring foreign workers can lead to aggravation of social problems, a number of requirements are set for job-seekers for enterprises providing courier and postal services abroad. Yes, such citizens must have a diploma of higher education or qualifications attesting the knowledge of the appropriate level and professional qualifications when required to perform activities in accordance with the laws, regulations and legal requirements of the party in which the services are provided. At the same time, both Ukraine and the EU have the right to demand that individuals have the necessary qualifications and / or professional experience required in the territory in which the services are provided for this sector of activity. Countries have the right to encourage relevant professional bodies in their respective territories to make recommendations on the mutual recognition of documents that certify the level of qualification.

It should be noted that, in accordance with the text of the Agreement, each party has the right to take measures to prevent the participation or continuation of monopolistic practices of

¹⁴⁶ Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. URL. http://zakon3.rada.gov.ua/laws/show/984_011

¹⁴⁷ *ibid.*

suppliers who, individually or collectively, have the opportunity to significantly influence the conditions of participation in the relevant market of postal and courier services as a result of using their positions on the market. The introduction of such condition stimulates competition in the relevant market, as well as deprives the possibility of establishing control centers for the strategic industry. Ukraine and the EU also agreed that it is possible to apply the concept of so-called «universal service» (the standard of provision of postal services of a certain quality at all points at reasonable prices for all users) on the market of postal and courier dispatches. The requirements that meet the yardstick of «universal service» will not be considered monopolistic, provided that they are applied in a transparent, non-discriminatory and neutral way to the competition. At the same time, it should be noted that the fact that the EU market is more developed than domestic, the use of the concept of «universal service» can significantly impede the access of domestic companies to the market¹⁴⁸.

Communication services are now playing a significant role for Ukraine and the EU. Particularly important, given the strategic importance in this sphere, is the issue of its regulation within the framework of a new format of cooperation. At the current stage, Ukraine and EU countries have engaged themselves to ensure the legal separation of regulators in the field of electronic communications services and their functional independence from any service provider that provides electronic communications services.

The text of the Agreement stipulates that the regulatory body of each party will have sufficient powers for effective regulation. In Ukraine, such a governing body is currently supported by the National Commission for State Regulation in the Area of Communication and Informatization (NCCR), a state collegiate body subordinated to the President of Ukraine and accountable to the Verkhovna Rada of Ukraine.

¹⁴⁸ Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. URL. http://zakon3.rada.gov.ua/laws/show/984_011

3. Currently the main tasks of the NCCR are:

1) ensuring the implementation of a unified state policy on state regulation in the field of telecommunications, informatization and development of the information society, use of radio frequency resource, provision of postal services;

2) implementation of state regulation and supervision in the field of telecommunications, informatization, use of radio frequency resources, provision of postal services, use of infrastructure in order to maximize the satisfaction of consumers' demand for communication services and information services, creation of favorable conditions for attraction of investments, increase of volumes of services and enlargement of their quality, development and modernization of telecommunication and information and telecommunication networks taking into account interests of national security;

3) ensuring efficient use of the radio frequency resource and functioning of the telecommunication, information and telecommunication, information services and postal services market on the basis of balancing the interests of society, business entities and consumers of these services;

4) promotion the development of competition and entrepreneurship, ensuring equal conditions for the activities of subjectsmanagement of all forms of ownership, improving the mechanism of regulation of market relations in the field of telecommunications, information, use of radio frequency resource and provision of postal services;

5) ensuring the systematic, comprehensive and coherent development of informatization and information society in the state¹⁴⁹.

Under the current conditions, provided that the regulator identifies the fact of an imbalance of the competitive environment in the relevant market, its function is to establish service providers

¹⁴⁹ The site of the National Commission, which carries out state regulation in the field of communication and informatization [Electronic resource]. Access mode: <http://nkrzi.gov.ua/index.php?r=site/index&pg=17&language=uk>

with significant market power and to justify specific regulatory obligations to stabilize the situation.

At the same time, in order to take into account the interests of both the countries in the territory of which the problem is identified and foreign suppliers of services, those who laughs last are given the right to express their comments on the draft regulatory measures that may be applied. Regulatory authorities must provide a response (with the exception of cases when the materials are considered confidential).

Discussion is about the provisions of the Agreement, which relates to the obligation for all market participants to provide all necessary information, in particular financial statements, for the analysis of their activities by the regulator. However, despite significant controversy over the course of the negotiations, this item is fundamental giving the need to give the regulatory authority the opportunity to arrive at sound conclusions.

The Parties undertake to provide, subject to the detection of imbalances in the competitive situation, the availability of the necessary powers to the regulatory body to establish such requirements for mutual connection and / or access:

- the obligation about excluding the discrimination so that operators apply equivalent requirements in similar circumstances to other service providers providing equivalent services and provide other services and information on the same conditions and in the same quality as they provide for their own services; or services of its affiliates or partners;

- an obligation to provide a vertically integrated company in order to ensure the transparency of its own wholesale prices and its own internal transfer prices in cases where there is a requirement to ensure non-discrimination or to prevent unwarranted cross-subsidization. The regulatory body can determine the format and methodology of accounting that will be used;

- Obligation to meet reasonable requests for access and use of specific elements of the network and related equipment, in particular subscriber line sharing, interalia, in situations where the regulatory authority considers that refusal to grant access or to

raise unwarranted claims; and conditions that will have such effects will prevent the emergence of a sustainable competitive market at retail level or will not meet the users' end interests;

- an obligation to provide certain services on a wholesale basis for resale by third parties; provide free access to technical interfaces, protocols or other important technologies that are necessary to ensure the interoperability of services or virtual network services; provide for joint deployment or other forms of sharing equipment, including sharing of cable channels, buildings or antennas; to provide the specified services necessary to ensure end-to-end service compatibility for users, in particular, means for providing intelligent network services; provide access to operational support systems or similar software systems that are necessary to ensure fair competition in the provision of services; to ensure the interconnection of networks or network equipment;

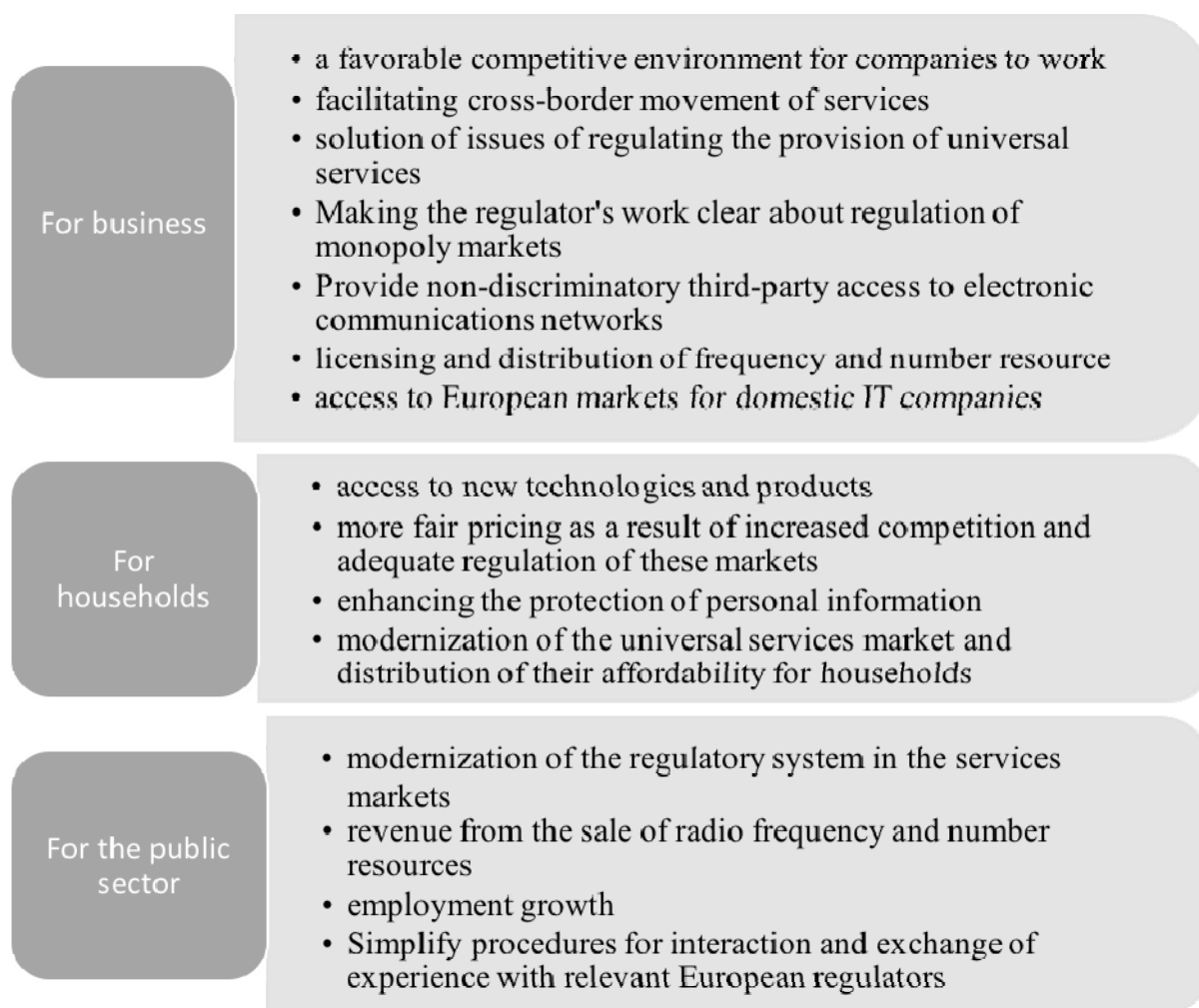
- Obligations for cost recovery and price control, in particular requirements for linking costs to costs and requirements for cost accounting systems, for providing specific types of interconnection and / or access, in situations where market analysis indicates that there is no effective competition, and the maintenance by the relevant operator of excessively high prices or the use of price squeeze, which is detrimental to the interests of end users;

- an obligation to disclose specific obligations imposed on service providers by the regulator, indicating specific products / services and geographic markets. The updated information, provided that it is not confidential and contains no business secrets, should be made public in a manner that guarantees all interested parties free access to this information.

- the transparency obligation requires that operators be required to disclose certain information and, in particular, when the operator has an obligation to ensure non-discrimination, the regulator may require that such an operator publish a reference offer that should be sufficiently distinct in order to: ensure that service providers do not have to pay for services that are not necessary to obtain the required service, with a description of the

relevant component offerings according to market needs and related conditions, in particular prices¹⁵⁰.

Given that the telecommunications sector is a very capital intensive, the Agreement provides that the regulator should take into account the investments made by the operator and give him the opportunity to benefit from their implementation (Fig. 6.3).



*Figure 6.3. Consequences of changes in the regulatory field
in the field of providing postal and courier services
and telecommunication services*

Source: ¹⁵¹

¹⁵⁰ Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. URL. http://zakon3.rada.gov.ua/laws/show/984_011

In general, the implementation of these measures will positively affect the competitive environment in Ukraine and will create a number of positive effects for business, population and the state as a whole. In particular, the implementation of the provisions of the Agreement will improve the parameters of the competitive environment, eliminate the barriers for the cross-border movement of services, introduce practices in the development of universal service standards in Ukraine, improve the quality of functioning of regulators, and increase the opportunities for Ukrainian companies to enter the European market.

Accordingly, individuals will have access to new technologies and products, the ability to receive services at adequate prices due to improved pricing mechanisms, improved personal information protection standards and increased penetration rates.

Positive consequences for the state in this case will be the modernization of the regulatory system in the service markets, revenue from the sale of radio frequency and number resources, and the creation of new jobs.

The development of the financial services market also plays an important role for Ukraine at the present stage of development. In accordance with the provisions of the Agreement, any financial service, including insurance and insurance-related services, banking and other financial services, is recognized as a financial service (fig.6.4).

In accordance with the provisions of the Agreement, Ukraine and the EU should make efforts to ensure the implementation of international standards of regulation and supervision in the field of financial services and to combat tax evasion throughout its territory. Such international standards include, in particular, the Basel Committee's Basic Principles for Effective Banking Supervision, the Basic Insurance Principles of the International Association of Insurance Supervisors, the «Objectives and Principles of the Regulation of the Securities Conversion» of the

¹⁵¹ The economic component of the Association Agreement between Ukraine and the EU: implications for business, population and public administration. K.: Institute for Economic Research and Policy Consulting, 2014. 141p.

International Organization of Securities Commissions, the OECD Exchange of Amounts Taxation Information », Statement by the Group of Twelve Member States on Transparency of Information and Exchange of Information for Tax Purposes and Forty Recommendations and Nine Special Recommendations regarding combating terrorist financing «of the Financial Action Task Force on Money Laundering (FATF) ¹⁵².

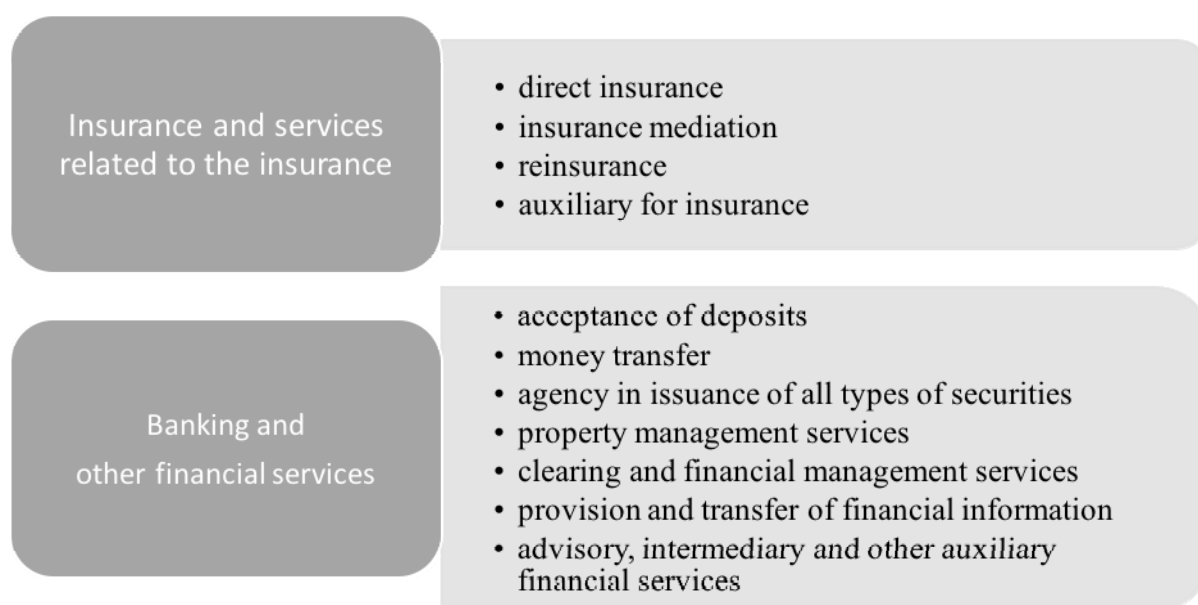


Figure 6.4. Financial services in accordance with the text of the Association Agreement between Ukraine and the EU

Source: made by author on the basis of DCFTA between Ukraine and EU countries

In addition, given the dynamism of the financial market, each of the parties of the agreement remains open to expand the range of services. In this case, countries have the right to independently determine the legal form of the provision of services and may require prior authorization for the provision of such a service.

In accordance with the provisions of the Agreement, in order to liberalize trade in financial services, the parties are obliged to ensure the establishment of a national regime for suppliers of banking, insurance and other types of financial services, guarantee

¹⁵² Overview of the banking sector. Issue 6 [Electronic resource]. URL : <https://bank.gov.ua/doccatalog/document?id=64628171>

free access to the market through cross-border provision of financial services, provide an opportunity to establish a regime or measures of prudential supervision in the financial services market (which should not be burdensome or discriminating against financial service providers) in order to protect investors, depositors, policy holders or agents acting on behalf of financial service providers and ensuring the integrity and stability of the financial system. The obligations of the parties also include the non-disclosure of information about personal data and accounts of individual consumers or any other confidential information accessed by public authorities, the possibility of requiring registration of cross-border financial service providers, ensuring transparent review of regulatory decisions, in particular by providing opportunities all interested parties to comment on the planned events to be published by official publication or in other written or electronic form. Providing information on requirements for completing an application, obtaining a financial service permit and the status of processing the application (at the request of the applicant), and implementing and applying in its territory the best international standards for regulation and supervision of the financial services sector, as well as measures to combat tax evasion¹⁵³.

Implementation of the measures envisaged by the Association Agreement has led to significant changes in the banking sectors of Ukraine. Thus, the situation in the financial services market has normalized in recent years, and in 2017, almost all key indicators of the work of financial institutions had a positive dynamics. Consumer lending substantially revived from the beginning of the year, corporate hryvnia loans began to recover in the second half of the year, indicating a gradual recovery of the economy as a whole.

The fund base remained stable since the signing of the agreement, although interest rates on deposits declined due to increased inflation expectations and the resulting increase in the discount rate of the NBU. The financial result of the banks remained negative, but it was caused by significant losses of only four banks.

¹⁵³ Overview of the banking sector. Issue 6 [Electronic resource]. URL : <https://bank.gov.ua/doccatalog/document?id=64628171>

The key risks of the sector's development are the substantial presence of the state and the high proportion of non-performing loans in the banks' balance sheets. Additional risk for 2018 – possible deterioration of business and population expectations in the absence of cooperation by international financial organizations (IFIs).

One of the EU requirements for the financial services market is its cleaning and rehabilitation. The reaction to this was the withdrawal of 2017 from the market of 14 banks (4 of them were reorganized by financial companies, 1 bank joined another), which at the beginning of the year accounted for 1.7% of net assets. In general, it can be argued that the implications of the implementation of the DCFTA provisions in the banking sector are unification of Ukrainian banks to survive in the new conditions of competition, to reduce the number of safe banks, to increase the transparency of the banking sector, to improve the quality of customer service and to expand the product range or, conversely, to occupy the highly specialized Niches (Table 6.1).

Table 6.1

**Consequences of the introduction of the DCFTA
for the financial services market**

Advantages	Challenges
Increasing the reliability of the financial system Creation of a more effective system of state prudential supervision on the basis of international standards and a more transparent permitting system Opportunities for the development of new types of financial services Opportunities for attracting investment Guarantees of free access to payment and clearing systems and to the channels of financing and refinancing	Strengthening of the competition Systemic risks inherent in modern financial systems

Source: made by author on the basis of DCFTA between Ukraine and EU countries

From the beginning of 2018, the NBU is actively implementing the EU directives and the Basel recommendations. During the year a new LCR liquidity norm will start to operate. New

rules for calculating regulatory capital, in particular the acceptability of its components, will be prepared. Also, the NBU launches an annual assessment of financial institutions' sustainability, which will consist of an analysis of the quality of assets (for all banks) and stress testing (for 25 banks that account for 95% of the sector's assets). The key challenges for the banking sector is the high share of non-working loans, mainly in state-owned banks. Banks should work more actively with such loans and determine the plans to reduce their volume throughout the year¹⁵⁴.

In order to bring the system of regulation of the financial services market of Ukraine closer to the requirements of the EU, implementation of the following EU Directives is being implemented in the domestic legislation of Ukraine: Directive 2014/59 / EC dated April 25, 2014, which establishes framework regulations for the improvement and rehabilitation of credit institutions and investment companies (changes envisaged by the Law of Ukraine «On Measures to Promote the Capitalization and Restructuring of Banks»), Directive 2001/24 / EU of 4 April 2001 on the reorganization and liquidation of credit institutions, Directive 2002/87 / EU of 16 g Directive 2002/44 / EU of the European Parliament and of the Council of 6 May 2009 amending Directive No 98/26 / EU of the European Parliament and of the Council of 6 May 2009 on the supplementary supervision of credit institutions, insurance companies and investment firms in a financial conglomerate, EU on settlement finality in payment systems and securities settlement systems, Directive No 2007/64/EU of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, Directive 2009/110/EU of the European Parliament and of the Council of 16 September 2009 on the taking up and pursuit of the business establishments to work with electronic money and prudential supervision, Directive 2015/849/EU of 20 May 2015 on prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

¹⁵⁴ Financial Stability Report [Electronic resource]. URL : <https://bank.gov.ua/doccatalog/document?id=60764561>

In addition, in order to realize the goals envisaged by the Agreement, it is necessary to pass laws for the effective operation of the banking sector in the coming years (currently, several important bills are registered in the Parliament regarding the improvement of debtor bankruptcy procedures, the restructuring of foreign currency mortgage loans to individuals, and the management of bad debts. They remain without consideration, although their adoption is extremely important for restoring the stability of the banking system. Another important issue is the consolidation of regulation of the financial services market.

According to the National Bank of Ukraine, the issue of finalizing the Strategy for the development of state-owned banks and its gradual introduction, adoption of a law introducing independent supervisory boards in state-owned banks is also urgent. It is also necessary to adjust the Strategy of reforming the state banking sector in accordance with the new circumstances in the work of state-owned banks. In this document it is necessary to clearly define how the state banks will co-exist in the market and the timing, when the state will begin to gradually reduce its presence in the banking sector. This requires the adoption of a law that will change the rules for the formation of supervisory boards of state-owned banks.

Today it is necessary to improve the conditions for managing the funds of local communities at the only treasury account and in banks, to make scheduled expenditures more even and predictable. Most of the funds accumulated at the end of the year at the only treasury account and are rapidly being spent during the last month of the year are owned by local communities. High monthly payments in December create risks for the currency market and liquidity in the banking sector.

Taking into account that the virus-attacks that took place in 2017, to improve the security of the financial market, it is necessary to increase the country's resilience to cyber-rhizomes. Regulators must adequately assess cyber-risk, have a system for reporting on the threat, control and responding to threats, regularly check (test) the stability of information and communication systems and the

availability of vulnerabilities in them, and strengthen international co-operation in the field of cyber security¹⁵⁵.

In general, a change in the financial services regulation system will allow the state to obtain a number of positive effects, presented in Fig. 6.5.



Figure 6.5. Consequences of the process of liberalization of the financial services market in accordance with the provisions of the AA between Ukraine and the EU

Source:¹⁵⁶

¹⁵⁵ Financial Stability Report [Electronic resource]. URL : <https://bank.gov.ua/doccatalog/document?id=60764561>.

¹⁵⁶ The economic component of the Association Agreement between Ukraine and the EU: implications for business, population and public administration. K.: Institute for Economic Research and Policy Consulting, 2014. 141p.

For business, the positive consequences of signing the Association Agreement will be creation of an adequate system of prudential supervision, creation of a transparent permit system and elimination barriers in the development and implementation of new financial services, creation of favorable business environment, attracting investments to the Ukrainian financial market. The population will have access to new technologies and financial products, fair pricing as a result of increased competition and adequate regulation of these markets, increased volumes and lower costs of consumer lending and increased protection of personal information. Additional positive consequences for the country will be: modernization of the national regulatory system and prudential supervision system. ensuring transparency of regulatory decisions. better development of the financial sector in the form of an increase in lending to the population and mitigating exchange rate fluctuations.

The level of development and liberalization of the financial services market greatly affects the problems of the movement of capital between Ukraine and the EU. Given the fact that the movement of financial resources is one of the four freedoms of the EU, much attention has been paid to this issue in the text of the Agreement.

Capital Free Movement – Prohibition on any restrictions on the movement of capital and payments within the EU and between EU Member States and third countries. Capital flows between EU countries include direct foreign investment, real estate investments, portfolio investments, international loans and loans and private financial transactions (Fig. 6.6).

Free movement of capital creates significant opportunities for all actors involved in economic processes, as well as for the state as a whole. Thus, for individuals, liberalization of the movement of capital means getting the opportunity to conduct operations abroad, opening bank accounts, buying shares of foreign companies, buying real estate, etc.

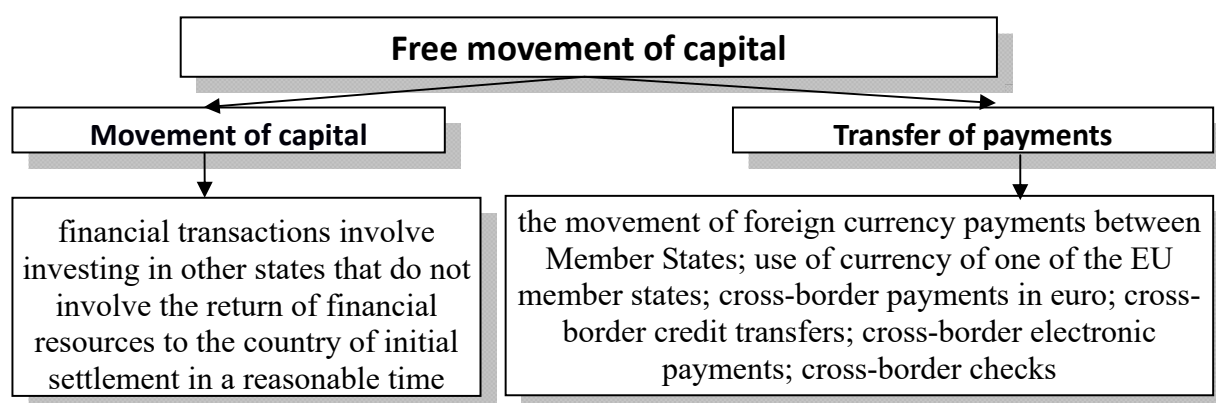


Figure 6.6. Forms of free movement of capital

Source: made by author

For economic entities, the free movement of financial resources opens up the opportunity to obtain the possibility of buying and managing companies in other EU countries, opening up enterprises in the countries with the most favorable conditions for this. At the same time, for the governments of the countries, the free movement of capital creates the preconditions for obtaining the possibility of attracting loans at the lowest cost.

Capital flight liberalization for Ukraine is extremely important in view of the EU's exceptional importance in securing the country's investment needs (Fig. 6.7).

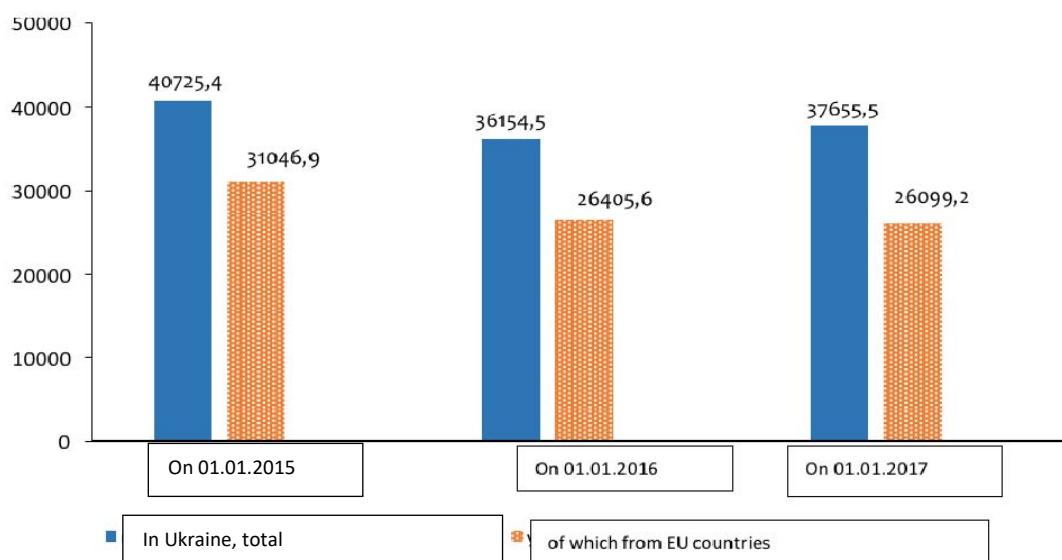


Figure 6.7. Foreign direct investment in the economy of Ukraine in 2015–2016

Source: ¹⁵⁷

¹⁵⁷ Cooperation between Ukraine and EU countries. State Statistical Service of Ukraine [Electronic resource]. URL : <http://www.ukrstat.gov.ua/>

As can be seen from the presented picture, the main investor for the country at this stage is the European states themselves, although the geographical structure is currently prevalent in Cyprus, whose funds are essentially financial resources of Ukrainian origin, located abroad (Fig. 6.8).

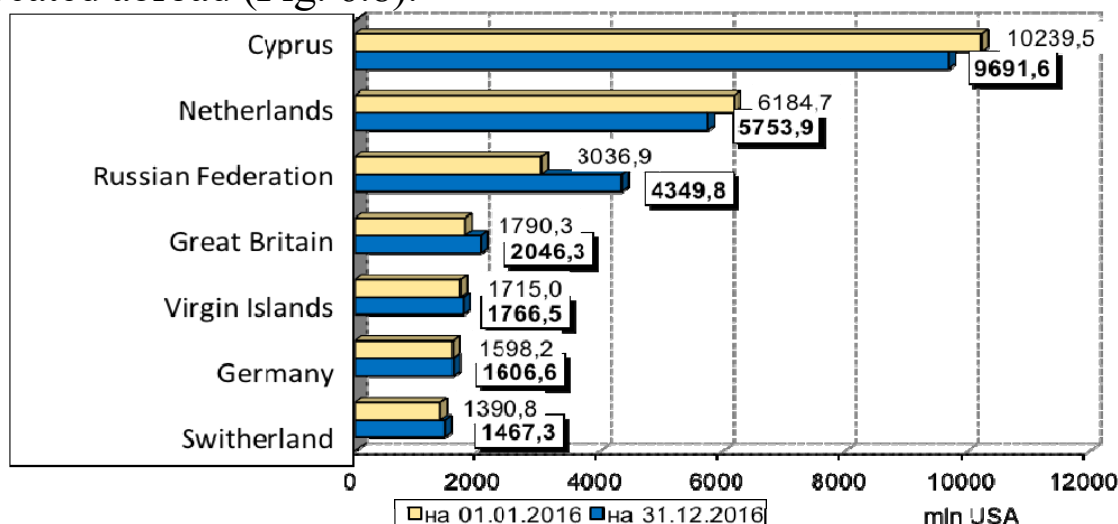


Figure 6.8. Foreign direct investment from some EU countries to Ukraine in 2015–2016, mln USD

Source: ¹⁵⁸

It is characteristic that today the largest volumes of funds are currently directed to the financial sector (27.4%), there is also a significant share of industry (25.4%), which is attractive to European investors as well (14.6%) (Fig. 6.9).

According to the text of the Agreement, Ukraine and the EU undertake not to restrict and authorize any payments and transfers in freely convertible currency on current balance of payments accounts. With regard to operations on the account of operations with capital and balance of payments financial account, from the date of entry into force of the Agreement, Ukraine and the EU countries should ensure the free movement of capital related to the direct investment in accordance with the legislation of the host country and the payment or repatriation of these invested capital, and any -any profit received from them. As for other operations in

¹⁵⁸ Cooperation between Ukraine and EU countries. State Statistical Service of Ukraine [Electronic resource]. URL : <http://www.ukrstat.gov.ua/>

the account of operations with capital and financial account of the balance of payments, for both of them both parties should ensure:

- free movement of capital related to the provision of loans related to commercial operations or the provision of services involving a resident of one of the partner countries,
- free movement of capital associated with portfolio investment and financial loans and investor loans.

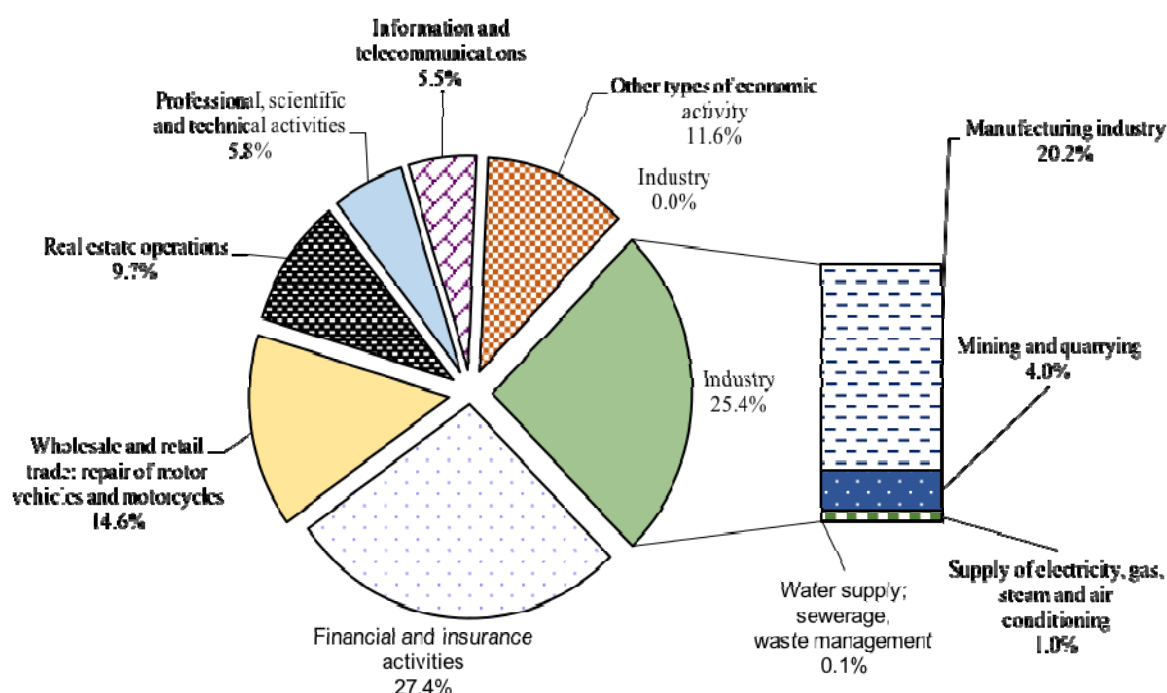


Figure 6.9. Structure of direct investments (share capital) in the economy of Ukraine by types of economic activity as of December 31, 2016

Source: ¹⁵⁹

Ukraine undertakes to complete the liberalization of operations on the account of capital operations and the financial account of the balance of payments in line with the level of liberalization in the EU. In addition, the parties are obliged not to introduce any new restrictions on the movement of capital and current payments. However, if in special circumstances, payments and movement of capital between Ukraine and the EU countries cause or threaten to cause serious difficulties in terms of the implementation of

¹⁵⁹ Investments of foreign economic activity of Ukraine. State Statistical Service of Ukraine [Electronic resource]. URL : <http://www.ukrstat.gov.ua/>

exchange or monetary policy operations, countries may resort to special measures for a period not exceeding six months if such measures are extremely necessary¹⁶⁰.

In view of the need to take into account the interests of both Ukraine and the EU, the parties should consult with each other in order to facilitate the movement of capital. During the first four years from the date of entry into force of the Agreement, the main task for its participants is to create conditions for the further gradual application of EU rules on free the movement of capital. By the end of the fifth year, in view of the results achieved, the conditions for further liberalization should be determined¹⁶¹.

In general, the liberalization of capital movements within the framework of the Association Agreement will reduce the likelihood of the introduction of restrictions on current payments, which contradict the current international obligations of Ukraine and the payment for treatment, study abroad, the purchase of goods and services over the Internet. For the state as a whole, such measures will create a more effective mechanism for monitoring compliance with international obligations (Fig. 6.10).

Thus, the analysis carried out has shown that the Association Agreement between Ukraine and the EU requires from our state significant changes in the regulatory field. In this case, the issue is not so much about liberalization, as the measures in this direction were actively implemented at the time of the country's accession to the WTO, but about the improvement of the regulatory system, its transformation into a more efficient and transparent ecosystem that adapts to the needs of the participants and allows protection of the interests of all sub Objects: Citizens, Business and State.

It can be noted that today there are significant changes in the banking sector regulation, as evidenced by the results of reforms implemented by the National Bank of Ukraine: the strengthening of requirements for banks and targeted actions to clear the

¹⁶⁰ Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/984_011

¹⁶¹ *ibid.*

banking system allowed to revive the pace of lending to the population and businesses that were in the post-crisis period extremely low. In addition, despite the fact that the national currency rate remains extremely low, there has also been an increase in macroeconomic stability, which suggests a gradual increase in investment from EU countries.

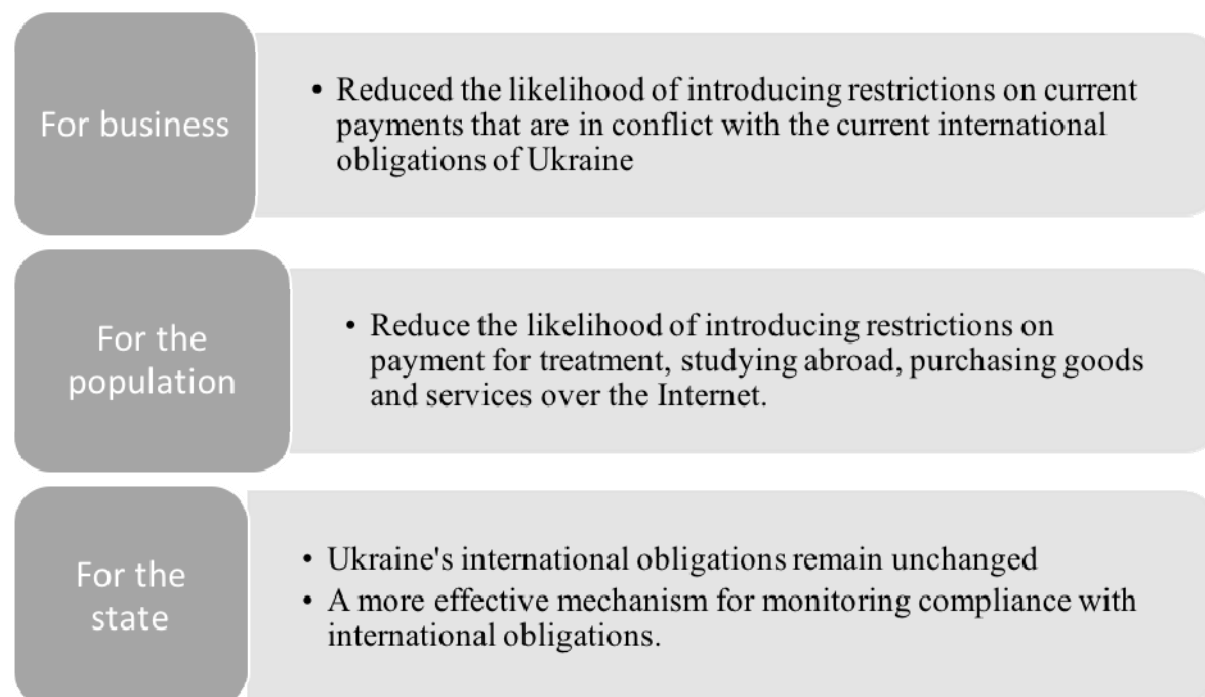


Figure 6.10. Implications of the liberalization of capital flows between Ukraine and the EU after the signing of the Association Agreement

Source: ¹⁶²

The gradual implementation of the measures envisaged by the Agreement will allow the country to significantly improve the competitive environment and improve the quality of services that are offered to consumers. Despite the fact that in such conditions the risks for Ukrainian companies are growing significantly, the undoubted positive effect is the development of internationally competitive Ukrainian companies and the expansion of their opportunities to achieve success not only in Ukraine but also in the markets of EU countries.

¹⁶² The economic component of the Association Agreement between Ukraine and the EU: implications for business, population and public administration. K.: Institute for Economic Research and Policy Consulting, 2014. 141 p.

Chapter 7

LEGAL ASPECTS OF DCFTA

An essential aspect of the implementation and achievement of the objectives of the Association Agreement (hereafter – AA) is to bring domestic legislation in line with the EU acquis. A full and well-balanced implementation of EU norms and standards can provide solutions to the urgent socio-economic problems of Ukrainian society, public administration and entrepreneurial activity¹⁶³ (p. 257).

According to the Art. 474, Ukraine will carry out gradual approximation of its legislation to EU law as referred to in Annexes I to XLIV to this Agreement, based on commitments identified in Titles IV, V and VI of this Agreement, and according to the provisions of those Annexes.

The provisions on approximation of legislation vary in degree of detail, in some areas annexes contain detailed lists of relevant EU legislation, while others are more general or even lack clear legal approximation obligations. The specified reasons are mainly due to certain differences for the purposes of the relevant Chapters of the Agreement.

Thus, 28 spheres of legal regulation require the adaptation of Ukrainian legislation to the EU acquis, the text of the AA contains detailed lists of EU legislative acts (in total circa 350 EU regulations and directives, as well as other acts of the EU acquis, international treaties and standards), which should be implemented into the Ukrainian legislation according to certain terms. Another feature of adaptation is the need to take into account the practice of applying EU law, which is reflected in the decisions of the CJEU.

In support of these thoughts the Art. 153 AA can be cited: «Legislative approximation shall be carried out in consecutive phases as set out in Annexes In this process, due account shall

¹⁶³ Analytical Report to the Annual Address of the President of Ukraine to the Verkhovna Rada of Ukraine «On the Internal and External Situation of Ukraine in 2017». National Institute for Strategic Research, 2018 URL. http://www.niss.gov.ua/public/File/book_2017/Poslanya_druk_fin.pdf

be taken of the corresponding case law of the European Court of Justice and the implementing measures adopted by the European Commission as well as, if this should become necessary, of any modifications of the EU *acquis* occurring in the meantime».

Moreover, it should be taken into account that the EU law is not static, which complicates the adaptation process to a certain extent, especially given the generally slow pace of legislative activity in Ukraine. For example, during the discussions of the AA test Ukraine was complying with Basel I rules in the field of banking regulation, while the EU introduced newer capital adequacy requirements – Basel II, and the AA obliged Ukraine to ensure harmonization with these standards. Nevertheless, since then, the EU has moved to the latest international standard, namely Basel III, while the previous legislation has been abolished¹⁶⁴ (p. 142).

In the text of the UA itself and in numerous scientific and other publications on the subject of EU-Ukraine relations a number of practically synonymous terms are used: «Adaptation of the law», «Harmonization», «Unification», «Implementation», «Approximation», «Coordination», «Achievement of conformity», «bringing the legislation into conformity», «regulatory convergence», «implementation at the national level of the relevant international standards», etc.

Taking into account the ultimate goal of the processes that describe the above-mentioned terms – the creation of a unified legal environment in the areas of public relations covered by the AA, one can speak of a certain synonymy of these terms. Given the prevalent use of the term «adaptation» in the Preamble of the AA, as well as the National Program of Adaptation of Ukrainian Legislation to the legislation of the European Union, in our study, we will consider the term «adaptation» as a general term¹⁶⁵.

¹⁶⁴ Emerson M. Movchan V. Deepening EU-Ukrainian Relations: What, why and how? Kyiv, 2016. 240 p. URL. http://www.3dcftas.eu/system/tdf/ua_Deepening-EU-UKR.pdf?file=1&type=node&id=257&force=

¹⁶⁵ On the National Program of Adaptation of Ukrainian Legislation to the Legislation of the European Union. Law of Ukraine No 1629-IV, 18.03.2004 p. URL. <http://zakon2.rada.gov.ua/laws/show/1629a-15>

The provisions of the AA for the adaptation of Ukrainian legislation to the EU acquis are of a framework character, and their implementation is carried out through:

- 1) adoption of new regulatory acts;
- 2) amendments to the current Ukrainian legislation;
- 3) the establishment of the necessary institutional mechanisms;
- 4) the accession of Ukraine to legal acts that establish international standards in certain field.

The process of adaptation is clearly defined by the legislation of Ukraine, for example, the National Program of Adaptation of the Ukrainian Legislation to the legislation of the European Union defines the following sequence:

- definition of acts of the *acquis communautaire* governing the legal relationship in the relevant field;
- translation of certain acts into the Ukrainian language (we note that the Cabinet of Ministers of Ukraine has published translations of a significant number of Directives and Regulations that need to be implemented) ¹⁶⁶;
- complex comparative analysis of regulation of legal relations in the relevant spheres in Ukraine and in the European Union;
- development of recommendations for bringing the legislation of Ukraine in line with the *acquis communautaire*;
- conducting economic, social and political analysis of the implications of implementing recommendations;
- definition of the list of draft laws;
- preparation of draft laws of Ukraine and other normative legal acts included in the list of draft laws and their adoption;
- monitoring of the implementation of legislative acts of Ukraine.

An element of legislative approximation should be the examination of draft laws of Ukraine and other normative legal acts on their compliance with the *acquis communautaire* in order

¹⁶⁶ <https://www.kmu.gov.ua/ua/diyalnist/yevropejska-integraciya/perekladi-aktiv-acquis-yes>

to prevent the adoption of acts that are contrary to the *acquis* of the European Union¹⁶⁷.

To fulfill the obligations of Ukraine within the framework of AA, the Cabinet of Ministers has developed and published the Road Map of the legislative provision of the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other side for 2018–2019 years¹⁶⁸. This document lists the draft laws prepared for consideration in the session hall of the Verkhovna Rada of Ukraine.

Also, the Cabinet of Ministers of Ukraine approved The Plan of Measures to implement the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other. The implementation of this plan will ensure the continuity of the process of fulfilling Ukraine's commitments throughout the period of the Association Agreement between Ukraine and the European Union, the availability of information on its implementation, clarity of response mechanisms and the adoption of urgent measures necessary to ensure the proper implementation of its provisions¹⁶⁹.

Statistics on Ukraine's pace of implementation are complex and controversial, for example, in the 2017 the Annual Report on the implementation of the UA, prepared by the Government Office for the Coordination of European and Euro-Atlantic Integration with the support of the EU Delegation in Ukraine and the Association4U project, estimates the overall progress of the UA in 41%. At the same time, such an on-line tool as the «Association Navigator» allows us to calculate that as of July 9, 2018, Ukraine complied with 112 obligations of 1941¹⁷⁰.

¹⁶⁷ On the National Program of Adaptation of Ukrainian Legislation to the Legislation of the European Union. Law of Ukraine No 1629-IV, 18.03.2004 p. URL: <http://zakon2.rada.gov.ua/laws/show/1629a-15>

¹⁶⁸ <https://www.kmu.gov.ua/storage/app/media/uploaded-files/karta-prioritetnikh-zakonoproektiv-u-sferi-evropeyskoi-integratsii.pdf>

¹⁶⁹ <https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi-storoni>

¹⁷⁰ Agreement Navigator URL: <http://navigator.eurointegration.com.ua/tasks>

However, the wide character of the content of the Agreement and the multi-stage implementation by Ukraine of its obligations necessitates the study of the pace and nature of the implementation of the Agreement in each particular area, therefore, the overall indicators are too averaged and may distort reality.

Nevertheless, more and more researchers are observing the insufficient rate of legislative activity in Ukraine in the sphere of adaptation of Ukrainian legislation to EU law, and among the main negative factors of this process are called:

- in the field of development of normative legal acts (inconsistent plans, translation problems, low level of normative design);
- in the field of monitoring and management (unrealistic deadlines, poorly implemented public hearings, lack of political interest);
- in the area of checking compliance with EU law, as well as legislative procedure in the Verkhovna Rada (different priorities with the government, lack of a single plan, failure by deputies to verify compliance with EU law of their bills, insufficient attention of politicians to the implementation of the agreement).

That is why there are more and more discussions among scientists and practitioners concerning the direct effect of AA norms for individuals and legal entities in the case that the current national legislation contains provisions that are not in line with the norms of the AA.

From one point of view, the AA is part of the national legislation of Ukraine (in accordance with Part 1 of Article 9 of the Constitution of Ukraine), and if the international treaty of Ukraine establishes rules other than those provided for by the relevant act of the national legislation, then according to the provisions of Art. 10 of the Civil Code of Ukraine, Art. 19 of the Law of Ukraine «On International Treaties of Ukraine», the rules of the relevant international treaty of Ukraine – the Association Agreement shall apply.

From another point of view, there is the position of the Plenum of the High Specialized Court of Ukraine for the

consideration of civil and criminal cases, according to which the rules of direct action are subject to application by the court, in particular the norms of international treaties of Ukraine, which establish human rights and fundamental freedoms, and the overwhelming part of the rules of the Association Agreement not related to human rights and fundamental freedoms.

Significant in this aspect is the case number 910/14972/17 on termination of the certificate of Ukraine № 168112 on the trademark «bio CRYSTAL», in which the court investigated issues regarding the rules applicable to the controversial legal relationship. The Kyiv Economic Court of Appeals has determined that Article 198 of the Association Agreement can be applied as a rule of direct effect, since it establishes new standards for the protection of intellectual property rights. In addition, Chapter 9 «Intellectual Property» of Section 4, «Trade and Trade-related Issues», the Association Agreement, does not list the legislation and the timing of implementation.

Public procurement. According to the Association Agreement, Ukraine ensures fair and transparent government procurement of goods and services, modernizes its tendering procedures in accordance with the EU norms. The main objective is to create competition in the procurement process in the public sector in order to get the best deal for taxpayers' money. In Chapter 8 of the AA, EU and Ukraine have agreed to ensure mutual access to public procurement markets based on the principle of national regimes at the national, regional and local levels for government contracts and concession contracts in traditional sectors of the economy as well as in the utilities. This Chapter applies to any public authority or local government body, including public bodies and private enterprises, which operate on the basis of special and exclusive rights.

Art. 148 AA provides for the following stages of procurement reform in Ukraine: the progressive approximation of the public procurement legislation in Ukraine with the EU public procurement acquis, an institutional reform the creation of an

efficient public procurement system based on the principles governing public procurement in the EU.

Within the framework of adaptation of Ukrainian legislation, provisions of a number of EU Directives should be implemented:

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance;

- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC;

- Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;

- Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors;

- Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security

- Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts;

- Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement

From the Ukrainian side, the provisions of the Association Agreement provide for a transitional period of up to eight years to fully adapt the system of public procurement of Ukraine to the EU standards.

Ukraine's public procurement obligations are significant in scope, for example, the result of a comparative analysis of compliance (1) with EU Directive No 2014/24 / EC on public / public procurement; (2) EU Directive No89 / 665 / EC on remedies in the public sector of the EU; and (3) EU Directive No 2014/25 / EC on public utilities procurement, carried out under the «Harmonization of the Public Procurement System in Ukraine with EU Standards» project, showed a significant number of both minor and global differences between Ukrainian legislation and European directives, the need to introduce qualitatively new mechanisms, taking into account the numerous exclusions that do not comply with the provisions of the EU directives, especially in the area of communal services.

The experts further emphasize the need for harmonization of valuation rules and the conclusion of mixed agreements provided by the EU procurement directives. Moreover, many aspects point to the need to introduce a variety of new concepts and definitions in Ukrainian legislation, for example, definition of «relevant activities in the housing and utilities sector».

The introduction of such concepts and definitions in practice will require considerable effort. In this regard, the recommendations developed in the result of the analysis emphasize the need for legislative reform, which will provide the basis for further institutional development and capacity building. The existing system of mandatory electronic auctions in Ukraine conflicts with the requirements of the EU Public Procurement Directives – especially with regard to non-price appraisals and the criteria for selecting a winner in procurement above the threshold of the EU¹⁷¹.

It should be noted that the sphere of public procurement is considered one of the most successful components of Ukraine's fulfillment of commitments within the framework of the AA. According to the report of the Ministry of Economic Development

¹⁷¹ Updated report on the results of comparative analysis of Ukrainian legislation in the field of state / public procurement and EU Directives on state / public procurement URL : http://eupublicprocurement.org.ua/wp-content/uploads/2017/02/UPDATED-REPORT-ON-PP-GAP_ANALYSIS_UKR.pdf

and Trade of Ukraine for 2017, savings in purchases amounted to 8.19%, which in absolute terms makes UAH 27.09 billion. The biggest savings in 2017 were in the procurement of construction works and maintenance, oil products, fuel, electricity and other sources of energy, as well as medical equipment, pharmaceuticals and the purchase of personal hygiene products¹⁷². DP DZHP SpetsTechnoEksport, a part of the State Enterprise «Ukroboronprom», became the first Ukrainian company to obtain a contract from a state-owned European company after the accession of Ukraine to the WTO Agreement on Public Procurement (GPA) from a state-owned European company to supply components to tanks T-72 during 2017–2019¹⁷³.

The most important components of public procurement reform in Ukraine should include the following:

1) The Verkhovna Rada of Ukraine adopted the Law of Ukraine dated December 25, 2015, No. 922-VIII «On Public Procurement», which establishes legal and economic principles for the procurement of goods, works and services to meet the needs of the state and territorial communities. The purpose of this Law is to ensure efficient and transparent procurement, create a competitive environment in the field of public procurement, prevent corruption in this area, and develop fair competition;

2) Within the framework of the implementation of the provisions of Art. 152 AA was adopted by the Order of the Cabinet of Ministers of Ukraine dated February 24, 2016, No. 175 «On the Strategy for the Reform of the Public Procurement System (Roadmap)». The Public Procurement Reform Strategy and the plan for its implementation include all activities, responsible executives and the time frame required to implement the provisions of the EU Directives (Directives 2014/24 / EC,

¹⁷² Analysis of the functioning of the public procurement system. Report for 2017 year URL <http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=86f9b4de-bb4c-4004-a563-cd4fe4fa4773&title=ZvitSferiPublichnikhZakupivelZa2017-Rik>

¹⁷³ The Ukrainian company won for the first time in an international tender for public procurement URL [c9784238bf29&title=UkrainskaKompaniiaVpershePeremoglaUMizhnarodnomuTenderiPublichnikhZakupivel](http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=86f9b4de-bb4c-4004-a563-cd4fe4fa4773&title=ZvitSferiPublichnikhZakupivelZa2017-Rik)

2014/25 / EC, 89/665 / EEC, 92/13 / EEC, 2007/66 / EC) into national procurement law.

3) The Ministry of Economic Development and Trade of Ukraine is appointed as the Authorized Body in the field of public procurement, and one of its areas of activity is ensuring the predictability and stability of the regulatory framework on the basis of harmonization of the national legislation with EU rules, adaptation of key concepts, concepts and alignment of procurement procedures in accordance with international standards;

4) Since 2016 open procedures and competitive selection are conducted only by electronic means (ProZorro). The portal prozorro.gov.ua is an open resource that offers access to all information from the central database on electronic tenders that were announced on July 31, 2016. ProZorro's electronic public procurement system has gained international recognition. In 2016, ProZorro was awarded the World Procurement Awards 2016 in the Public Procurement nomination and was also recognized as the winner of the Third Annual Open Government Awards 2016. At the moment, there are 24 Prozorro electronic platforms¹⁷⁴.

5) The Dozor portal for monitoring purchases functions through the creation of a unique database of real assessments of purchasers, suppliers and individual tenders.;

6) since 2017 Ukraine switched to the use of the CPV product and service classifier to determine the procurement subject;

7) electronic procurement system has been integrated with the Unified State Register of Legal Entities and Individual Entrepreneurs and the State Medicines Registry of the Ministry of Health of Ukraine;

8) the Prozorro system is integrated with the E-data portal, which allows users to track the payment of the State Treasury of Ukraine for contracts concluded as a result of auctions;

9) The peculiarities of the conclusion and execution of framework agreements that allows the conclusion of contracts up to 4 years are regulated, in particular, it will eliminate the

¹⁷⁴ <https://prozorro.gov.ua/majdanchiki-prozorro>

necessity of annual procurements for goods and services that are cyclical in nature.

10) Centralized Procurement Organization was created. The Ministry of Economic Development and Trade of Ukraine identified the legal entity responsible for the functions of the centralized procurement organization (hereinafter referred to as the CPO) during the implementation of the pilot project – the State Institution «Professional Procurement» and approved the list of goods and services that can be procured by the above-mentioned CPO¹⁷⁵

Among the most important achievements of the State Institution «Professional Procurement» experts note:

- 13 open tender procedures for the purchase of office paper, office supplies and computer equipment have been successfully conducted. According to the results of completed procedures, 22 contracts were concluded. Savings of budget funds under concluded contracts is UAH 1 029 949, or 13.14% of the expected value of procurement items;

- Significant reduction of administrative expenses for the procurement due to the use of a unified nomenclature, standardization of tender documentation and contract terms;

- effective practices and methods have been put in place to ensure high efficiency of the CPO's activities, in particular, the transfer of the procurement function of the CPO, the principles of categorical management in procurement, cooperation with suppliers and the involvement of the expert environment, the use of a unified nomenclature and tender documentation, etc.¹⁷⁶.

Among the next steps in the adaptation of Ukrainian legislation in the field of public procurement, experts highlight the preparation of a new version of the core law that will be

¹⁷⁵ Orders of the Ministry of Economic Development and Trade of Ukraine dated January 12, 2017. No. 20 «On the organization of activities of a centralized procurement organization within the framework of the implementation of a pilot project» and dated 02.10.2017, No. 1435 «On amendments to the List of goods and services procured by a centralized procurement organization»

¹⁷⁶ Analysis of the functioning of the public procurement system. Report for 2017 year URL <http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=86f9b4de-bb4c-4004-a563-cd4fe4fa4773&title=ZvitSferiPublichnikhZakupivelZa2017-Rik>

conceptually consistent with the Directives 2014/23 / EC, 2014/24 / EC, 2014/25 / EC, 92/13 / EEC and 89 / 665 / EEC. The law should take into account the implementation of the basic concepts and requirements for the preparation of technical specifications, criteria for the qualification of participants and evaluation of their proposals, other elements of public procurement regulation provided for by the EU directives and AA.

Intellectual Property. Achieving an adequate and effective level of protection of intellectual property rights as defined by the purpose of Chapter 9 of the AA will potentially improve the investment climate and Ukraine's reputation in the international arena. Thus, the provisions of the AA contain Ukraine's obligations regarding copyright and other rights: cinematographic and audiovisual works, computer programs, databases, related rights, patents, trademarks, trade names, design, topographies of integrated circuits, geographical indications, plants varieties, indications of origin, undisclosed information, etc. The AA Action Plan on Intellectual Property covers more than 130 tasks, the deadline for which is determined by the end of 2023. At the same time, such slow pace of modernization of legislation is an additional factor in the unsatisfactory situation in Ukraine with regard to the protection of intellectual property rights, which negatively affects the reputation of the state and the conditions of foreign economic activity for Ukrainian enterprises. In particular, the Special Report of the Office of the United States Trade Representative for 2018 states that Ukraine has no tangible progress in the protection and protection of intellectual property rights, and stresses the unjust and opaque administration of the system of collective management organizations; on the widespread use of unlicensed software in public institutions; the failure to implement effective measures to combat online piracy¹⁷⁷ (p. 56). Therefore, the US abolished trade preferences within the General System of Preferences (duty free import) for 155 types of Ukrainian goods and left Ukraine on the

¹⁷⁷ 2018 Special 301 Report. Office of the United States Trade Representative [Електронний ресурс]. – Режим доступу : <https://ustr.gov/sites/default/files/files/Press/Reports/2018%20Special%20301.pdf>

Priority Watch List. Published in February 2018, the Report of the European Commission on the Protection of Intellectual Property Rights in Third Countries notes the transfer of Ukraine to the list of countries «Priority 2» from the «Priority 3» list due to the high level of counterfeiting and piracy, non-fulfillment of obligations under the AA. The European Commission notes that the situation with the collective management organizations is so critical and causes significant losses to thousands of Ukrainian and foreign copyright holders¹⁷⁸.

The main bills aimed at fulfilling obligations of the AA, which are currently under consideration by the Verkhovna Rada of Ukraine:

1) «On the effective management of economic rights of holders of copyright and (or) related rights» (registration number 7466) must take into account the provisions of the EU Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market» at the legislative level to resolve issues of collective management organizations in Ukraine to ensure transparency of collective management organizations. However, numerous comments on the quality of the bill are delaying its adoption¹⁷⁹;

2) «On Amending Certain Legislative Acts of Ukraine Regarding Improvement of the Legal Protection of Intellectual (Industrial) Property» (Reg. No. 5699 dated January 23, 2017), which is aimed at bringing the legislation of Ukraine into line with the protection of rights to trade marks and industrial designs to the EU legislation, as well as the functioning of an effective mechanism for combating «patent trolley». At the same time, the provisions of the draft law do not take into account the requirements of Directive

¹⁷⁸ Report on the protection and enforcement of intellectual property rights in third countries. Commission staff working document [Електронний ресурс] http://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156634.pdf

¹⁷⁹ Draft Law on Effective Management of the Rights of Owners in the Sphere of Copyright and (or) Related Rights No. 7466 dated 12/28/2017 URL : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63283

2015/2436 of the European Parliament and of the Council of 16 December 2015 on the approximation of the laws of the Member States relating to trade marks (new edition) and Regulation (EC) 2015/2424 of the European Parliament and of the Council December 16, 2015, amending Council Regulation (EC) No 207/2009 on Community trade marks and amending Regulation (EC) No 2868/95 as regards the implementation of Council Regulation (EC) No 40/94 on the Community Trade marks and the withdrawal of the Community Trade Mark Regulation (EC) No 2869/95 of the Commission fees to be paid to the Office for Harmonization in the Internal Market (trade marks and industrial designs)¹⁸⁰;

3) «On Amending Certain Legislative Acts of Ukraine on Improving the Legal Protection of Inventions and Utility Models» (Reg. No. 7538 of 01.02.2018) aimed at harmonizing the provisions of the current legislation of Ukraine in the field of intellectual property with the EU directives and regulations, the implementation of the relevant provisions of the UA in the legal protection of inventions and utility models. Considering the requirements of European Union law in the field of protection of the rights to inventions and utility models, as well as the provisions of the Association Agreement, the draft Law proposes, in particular, the following innovations: the expansion of the list of technology objects that are not subject to legal protection; the possibility of filing applications in electronic form; the right to submit to the examination institution a reasoned objection to the application within six months from the date of publication of the information about the application for invention; the procedure for granting additional protection of the rights to inventions is specified; an expanded list of rights and obligations of subjects of the rights to inventions (utility models); the possibility of

¹⁸⁰ Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving the Legal Protection of Intellectual (Industrial) Property No. 5699 dated January 23, 2017 URL : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60982

recognizing the rights to an invention and utility model invalid by administrative procedure («post-grant opposition»)¹⁸¹;

4) «On Amendments to the Customs Code of Ukraine regarding the Protection of Intellectual Property Rights in the Movement of Goods through the Customs Border of Ukraine» (Reg. No. 4614 of 06.5.2016), which provides for the implementation of the provisions of Regulation (EC) No 608/2013 of the European Parliament and of the Council of 12 June 2013 on customs control of enforcement of intellectual property rights and the Implementing Regulation of the Commission (EC) No 1353/2013 laying down the forms for the documents provided for in Regulation (EC) No 608/2013 of the European Parliament and of the Council of 12 June 2013 on the customs control of the observance of intellectual property rights in the national legislation. At the same time, the Verkhovna Rada of Ukraine did not even begin its consideration within two years¹⁸²;

It should be noted separately about such aspect of Ukraine's obligations as the protection of geographical indications. Thus, in accordance with Article 204 of the UAA, the parties agreed to protect the geographical indications given in Annexes XXII-C and XXII-D to the Agreement against:

(a) any direct or indirect commercial use of a protected name for comparable products not compliant with the product specification of the protected name, or in so far as such use exploits the reputation of a geographical indication;

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated, transcribed, transliterated or accompanied by an expression such as «style», «type», «method», «as produced in», «imitation», «flavour», «like», or similar;

¹⁸¹ Draft Law «On Amending Certain Legislative Acts of Ukraine on Improving the Legal Protection of Inventions and Utility Models» (Reg. No. 7538 of 01.02.2018) URL http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63398

¹⁸² Draft Law «On Amendments to the Customs Code of Ukraine on the Protection of Intellectual Property Rights in the Movement of Goods through the Customs Border of Ukraine» (Reg. No. 4614 dated 06/06/2016) URL : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59005

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, in advertising material or documents relating to the product concerned, and on the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the consumer as to the true origin of the product.

According to the provisions of the Agreement, Ukraine undertakes to stop using about 3000 geographical indications used in EU countries. Given the importance for the EU of a given segment of intellectual property rights, the EU has provided technical assistance in the amount of around 3 million Euros to develop a system of protection of geographical indications. The Ukrainian side for the implementation of the UA has developed a bill (at the time of preparation of the study it was adopted only in the first reading) regarding the improvement of the legal protection of geographical indications¹⁸³. Despite individual comments by experts, the bill takes into account the requirements of the AA and Regulation (EU) No. 1151/2012 on the definition of the terms «geographical indication», «the name of the place of origin of the goods», «the name that has become a species»; the peculiarities of the registration of rights to use the geographical indication; a special authorized body; rights arising from the registration of a geographical indication; terms and conditions for the refusal to provide legal protection; requirements for specification of the goods; grounds for denial, etc.

In May 2017, the constituent meeting of the EU-Ukraine Sub-Committee on Geographical Indications was held, during which the European side provided updated information on the geographical indications of the EU in order to allow Ukraine, in accordance with national legislation, to initiate opposition proceedings for new names and for any procedures, required for the subsequent modification of the Association Agreement, Annexes XXII-C and XXII-D.

¹⁸³ Draft Law of Ukraine «On Amending Certain Legislative Acts of Ukraine on Improving the Legal Protection of Geographical Indications» (Reg. No. 6023 of 02.03.2017) URL : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=6023&skl=9

By 2018, 201-211, Annex XXII, Chapter 9, Section IV of the Association Agreement provides for the exchange of information on geographical indications for the purpose of defining their protection in accordance with the Agreement, ensuring the exchange of information, experience and data between public and private institutions on the development of legislation and policy and practice of geographical indications, informing business circles about the use and protection of geographical indications, assisting producers and their associations in rebranding relevant products for implementation of the provisions on transitional periods in accordance with Art. 208 Agreements and promotion of new product names on the markets of Ukraine, the EU and third countries.

Dispute settlement mechanisms provided by the Association Agreement

The Association Agreement has an ever-increasing influence on the nature and legal regulation of social relations in our country, which actualizes scientific, theoretical and applied research on the content and implementation of the provisions of this international legal instrument.

Despite the relatively short time of full implementation of the provisions of the Agreement, some contradictions between Ukraine and the European Union have already been significantly developed, for example, regarding the introduction by Ukraine of a moratorium on exports of round timber¹⁸⁴ (at the time of publication of this study, the media announced the commencement of the work of the arbitration group to resolve the dispute)

The provisions of the Agreement provide peaceful, out-of-court methods of resolving disputes, which to some extent remain novels for national reality, at the same time, must necessarily gain proliferation, first of all – mediation.

¹⁸⁴ On Amendments to the Law of Ukraine «On the Specifics of State Regulation of Activity of Business Entities Related to the Implementation and Export of Timber» concerning the Temporary Ban on the Export of Timber Products in Crude form: the Law of Ukraine № 325 on the 09.04.2015 [Електронний ресурс]. – режим доступу : <http://zakon.rada.gov.ua/laws/show/325-19>

Disputes and misunderstandings, obviously, are an integral part of contractual relations, therefore, an effective, fast and fair mechanism for resolving disputes is necessary.

The regulation of international trade is unique in that, within this field, it has become standard practice for agreements to feature dedicated dispute settlement mechanisms, rather than referring disputes to external institutions¹⁸⁵. The EU's widespread practice is the inclusion in free trade agreements and association agreements of provisions on the mechanism of peaceful and quasi-court dispute resolution. The institutional mechanisms for dealing with disputes are formally created in all large-scale international agreements on partnership, cooperation and association.

However, there is no universal model for such a mechanism. Mechanisms for resolving disputes concerning the interpretation and implementation of the provisions of the said cooperation agreements have certain similar features and differences¹⁸⁶.

A comparative analysis of the free trade agreements and association agreements concluded by the EU points to the prevailing inclusion of dispute settlement mechanisms similar to the dispute settlement mechanism of the World Trade Organization¹⁸⁷.

The typical features of the Dispute Settlement Mechanisms provided by the Agreement are: a sufficiently wide range of methods, their clear regulation and detailization depending on the nature of the dispute, the creation and regulation of procedures of special dispute resolution bodies, the settlement of the procedure for enforcing decisions in disputes and the consequences of failure to comply with such decisions (for example, according to the Art. 478 A Party may take appropriate measures, if the matter at issue is not resolved within three months of the date of notification of a formal

¹⁸⁵ Geraldo Vidigal; Why Is There So Little Litigation under Free Trade Agreements? Retaliation and Adjudication in International Dispute Settlement, *Journal of International Economic Law*, Volume 20, Issue 4, 1 December 2017, Pages 927–950, <https://doi.org/10.1093/jiel/jgx037>

¹⁸⁶ Muravyov V. (2014) Methods and mechanisms for settling disputes in the agreements of the European Union on association // Scientific notes of the Institute of Legislation of the Verkhovna Rada of Ukraine. No. 6. P. 69–74. URL : http://nbuv.gov.ua/UJRN/Nzizvru_2014_6_16

¹⁸⁷ Understanding on rules and procedures governing the settlement of disputes Retrieved from https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm

request for dispute settlement according to Article 477 of this Agreement and if the complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement).

An analysis of the text of the Agreement provides grounds for arguing that potential disputes may arise regarding the interpretation, implementation or fair use of this Agreement and other relevant aspects of the relations between the Parties. The agreement provides for a general procedure for resolving disputes in Art. 476-478 and regulates the peculiarities of resolving certain types of disputes in Section 4 of the Agreement, in turn Annex XXIV contains the «Rules of Procedure for Dispute Resolution».

The main methods for resolving disputes provided by the Agreement are: consultations (Art. 50 bis on disputes concerning specific issues that may arise regarding the application of trade remedies, e.g. the methodology followed to calculate margins of dumping, including various adjustments, the use of statistics, the development of imports, the determination of injury and the application of the lesser duty rule.; Art. 304 on dispute concerning the interpretation and application of the provisions of Title IV of this Agreement);

Arbitration procedure (Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Art. 305 of this Agreement, the complaining Party may request the establishment of an arbitration panel. The procedure of Composition of the arbitration panel is prescribed in Art. 307).

Conciliation for urgent energy disputes (Art. 309). Either Party may request the chair of the panel to act as conciliator concerning any matter relating to the dispute by making a request to the panel. The conciliator shall seek an agreed resolution of the dispute or seek agreement on a procedure to achieve such resolution. If within 15 days of his or her appointment the conciliator fails to secure such agreement, he or she shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide on the terms and conditions to be observed from a specified date which he or she shall specify until the dispute is resolved.

Mutually agreed solution. According to Art. 317 The Parties may reach a mutually agreed solution to a dispute at any time. They shall jointly notify the Trade Committee and the chairperson of the arbitration panel, where applicable, of any such solution.

Mediation mechanism (Chapter 15), for example, for disputes on measures that adversely affect trade or investment between the Parties.

For all methods of resolving disputes, the deadlines have been set, for example, Art. 50 bis – 21 days from the moment the Party has notified the violation of the special investigation, Clause 3 of Art. 304 – 30 days from the receipt of a written request by the Party in respect of the disputed measure and the provisions of the Agreement, Clause 4 of Art. 304 – 15 days for disputes on issues requiring immediate resolution, in particular perishable or seasonal goods), p.5 st.304 – 3 days for disputes relating to energy).

The Agreement also defines the bodies to resolve disputes, including by issuing a binding decision for the Parties: the Committee on Trade, the Association Council, the Association Committee (other relevant bodies referred to in Article 466 of this Agreement – special committees, subcommittees etc.), in order to achieve a mutually acceptable solution in the shortest possible time.

A dispute shall be deemed to be resolved when the Association Council has taken a binding decision to settle the matter as provided in paragraph 3 of Article 477 of this Agreement, or when it has declared that the dispute is at an end.

Figure 4.1 shows the algorithm for resolving disputes according to Art. 476–478 of the Agreement.

Also, the provisions of the Agreement provide for the consequences that may arise in the event of non-fulfillment of obligations. Thus, st. 311 leaves for the respondent in the dispute the choice of measures necessary for the fair implementation of the ruling of the arbitration panel, and also provides that the parties will endeavour to agree on the period of time to comply with the ruling.

According to the Art. 478 A Party may take appropriate measures, if the matter at issue is not resolved within three months of the date of notification of a formal request for dispute settlement according to Article 477 of this Agreement and if the

complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement.

It should be noted that the content of Article 311 of the Agreement reflects the nature of the dispute settlement within the framework of the WTO and the established practice of the Court of Justice.

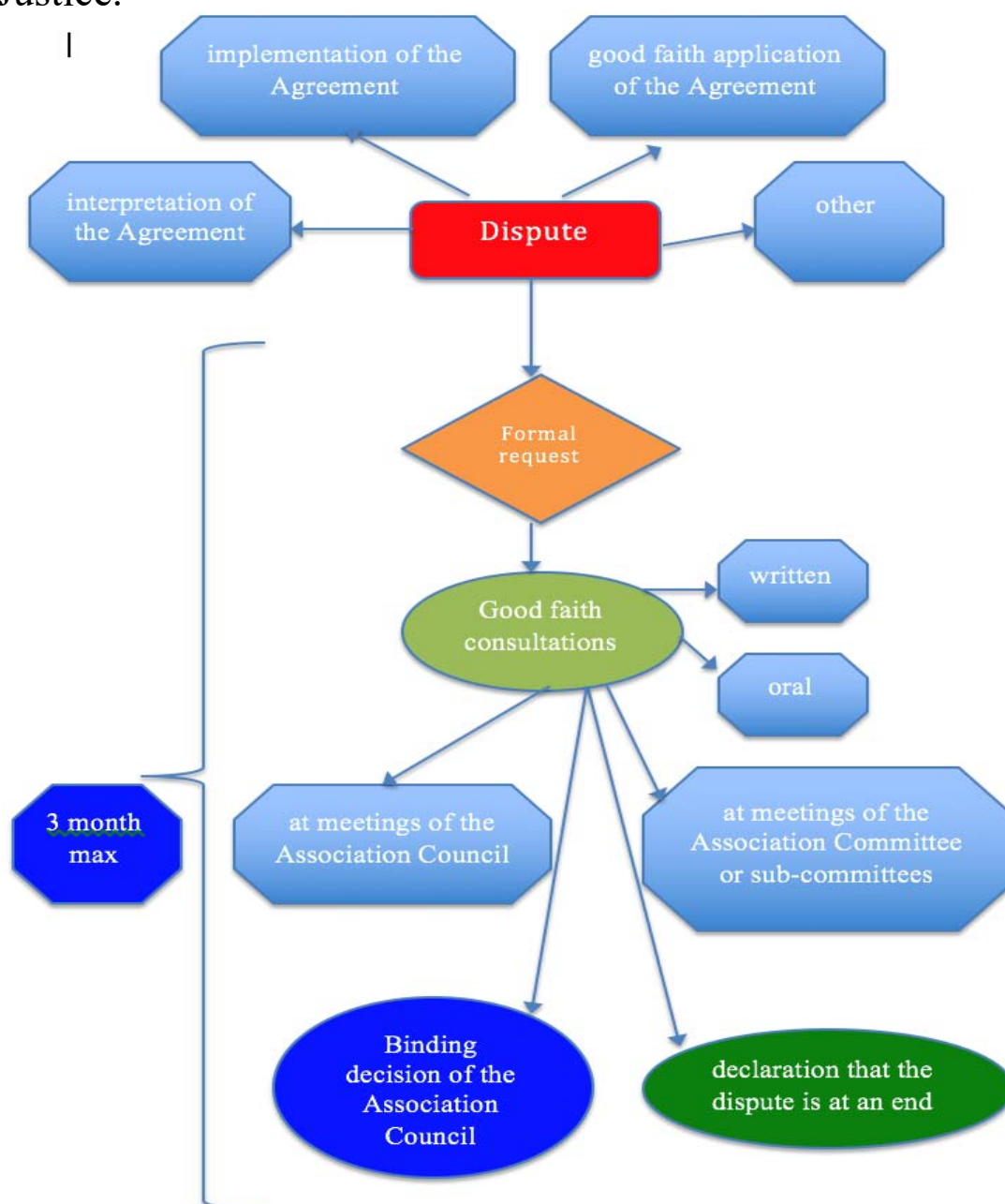


Figure 4.1 The algorithm for resolving disputes according to Art. 476–478 of the Agreement

Source: made by author

Thus, Art. 19 of the Understanding on rules and procedures governing the settlement of disputes states «In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations» In the event of disagreement between the guilty party and the decision, the Agreement provides for three possible options: appeal to the ruling, compensation and suspension of concessions.

In its turn, the EU Court of Justice in the Case C-149/96 Portugal v. Council supported the opinion that the decision of the chairman of the dispute resolution body does not oblige the guilty party to fully comply with his recommendations, there is the possibility of compensation and termination of the concession. The above mentioned judgment of the Court of Justice embodies the general doctrine of the EU competence regarding the content and implementation of the provisions of international treaties, in particular those made within the framework of the WTO.

In its turn, the EU Court of Justice in the Case C-149/96 Portugal v. Council supported the opinion that the decision of the chairman of the dispute resolution body does not oblige the guilty party to fully comply with his recommendations, there is the possibility of compensation and termination of the concession. The above mentioned judgment of the Court of Justice embodies the general doctrine of the EU competence regarding the content and implementation of the provisions of international treaties, in particular those made within the framework of the WTO.

The Agreement provides for a special resolution procedure for disputes concerning:

- - the application of trade defense remedies (Article 50 bis), the stress has been made on the need to ensure the prompt resolution of the dispute and ensure transparency (Articles 41 and 47 of the Agreement);

- interpretation and application of the provisions in Title IV «Trade and trade-related matters», where shorter time limits for resolving disputes are needed for issues that require immediate resolution, in particular perishable or seasonal goods as well as

energy carriers through networks (the latter provision is specific to the EU-Ukraine Agreement and has been included through the Ukraine-Russia natural gas disputes). In addition, disputes under the provisions of Chapter IV may be settled in the arbitration procedure (Part 1, Chapter 14, Section IV). This mechanism is developed in accordance with the WTO Dispute Resolution Mechanism, since the procedure for determining the composition of the arbitration group, the strict regulation of the terms of all stages of the dispute resolution, the provision by the arbitration group of the preliminary report to the Parties, etc., is similar. According to the Art. 315, if the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that any measure notified under Article 313(1) of this Agreement is inconsistent with that Party's obligations, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of the arbitration panel ruling under Article 313 of this Agreement that a measure taken to comply is inconsistent with the provisions of this Agreement referred to in Article 304, the complaining Party shall be entitled, upon notification to the Party complained against and to the Trade Committee, to suspend obligations arising from any provision contained in the Chapter on the free-trade area at a level equivalent to the nullification or impairment caused by the violation;

- regulatory approximation (Art.322). disputes concerning the interpretation and application of a provision of this Agreement relating to regulatory approximation contained in Chapter 3 (Technical Barriers to Trade), Chapter 4 (Sanitary and Phytosanitary Measures), Chapter 5 (Customs and Trade Facilitation), Chapter 6 (Establishment, Trade in Services and Electronic Commerce), Chapter 8 (Public Procurement) or Chapter 10 (Competition), or which otherwise imposes upon a Party an obligation defined by reference to a provision of EU law. Where a dispute raises a

question of interpretation of a provision of EU law referred to in paragraph 1, the arbitration panel shall not decide the question, but request the Court of Justice of the European Union to give a ruling on the question. In such cases, the deadlines applying to the rulings of the arbitration panel shall be suspended until the Court of Justice of the European Union has given its ruling. The ruling of the Court of Justice of the European Union shall be binding on the arbitration panel.

Such provisions are included for all the two international agreements of the European Union (similar provisions are contained in Art. 403 of the Association Agreement between the EU and the Republic of Moldova¹⁸⁸. No other agreement concluded by the EU grants the arbitration panel the competence to apply to the Court of Justice for a preliminary ruling.

In a limited number of other EU integration agreements, the Court of Justice can respond to preliminary questions from a national court or tribunal (for example, Art. 107 of the EEA Agreement¹⁸⁹, Protocol 34¹⁹⁰ of the EEA Agreement) foresees, under certain conditions, the possibility for national courts or tribunals of the ECAA Partners to ask the Court of Justice for a preliminary ruling (see Art. 16(2) and Annex IV ECAA). That is crucial to preserve the Court of Justice's exclusive jurisdiction to interpret the EU acquis.¹⁹¹

¹⁸⁸ Association agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [Электронный ресурс]. – Режим доступа : <http://dcfta.md/uploads/0/images/large/eu-md-aa-dcfta-en.pdf>

¹⁸⁹ Agreement on the European Economic Area [Электронный ресурс]. – Режим доступа : <http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAagreement.pdf>

¹⁹⁰ Protocol 34 On the possibility for courts and tribunals of EFTA states to request the court of justice of the European communities to decide on the interpretation of EEA rules corresponding to EC rules [Электронный ресурс]. – Режим доступа : <http://www.efta.int/sites/default/files/documents/legal-texts/eea/the-eea-agreement/Protocols%20to%20the%20Agreement/protocol34.pdf>

¹⁹¹ Guillaume Van der Loo, Peter Van Elsuwege and Roman Petrov. The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument. European University Institute Working Paper LAW 2014/09 [Электронный ресурс]. – Режим доступа : http://cadmus.eui.eu/bitstream/handle/1814/32031/LAW%20_WP_2014_9%20.pdf

We should note that the provisions of Art. 324 for the possibility of resolving a dispute within the framework of the Agreement itself or in accordance with the World Trade Organization framework.

The parties to a dispute are free in their choice, however, where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under Article 306(1) of this Agreement or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, a Party shall not seek redress of an obligation which is identical under this Agreement and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation».

CONCLUSIONS

Taking into account the fact that the implementation of the Free Trade Agreement with the EU is the most important imperative for the transformation of foreign trade flows, an analysis of its implementation allows the following conclusions to be drawn:

firstly, during the last four years, there have been significant changes in the starting conditions for the signing and implementation of the Agreement. The increase of imbalances in the European Union in 2016–2017 will lead to the formation of a balanced regional policy in the EU, which would take into account the socio-economic characteristics of the member states, in the near future;

secondly, stabilization and settlement of internal political conflicts and dealing with the external military threat are important for the country's favorable economic development; in the period of preparation and commencement of the implementation of the Agreement, the preconditions for the growth of the Ukrainian economy and improvement of the population's standard of living have not been created;

thirdly, Ukrainian producers will have to move to European standards of product quality, which requires significant financial costs. Most enterprises need to undergo almost complete modernization of production and teach staff to work with new technologies;

fourthly, the agreement potentially increases the access of enterprises to European loans, but national producers in difficult economic situations are high-risk investments and therefore unlikely to be able to claim European loans;

fifthly, the implementation of DCFTA+ is rather to be perceived as a mechanism for comprehensive modernization, strengthening the competitiveness of domestic produce and further integration into the world economy – in particular, for deepening cooperation with the countries of the Asia-Pacific region.

The main advantage of the DCFTA with the EU for agricultural trade is the partially eliminated asymmetry of trade conditions between the EU and Ukraine, which has intensified after

Ukraine's access to the WTO. The lack of symmetry is reduced due to: duty-free access to Ukrainian agricultural goods within tariff quotas; the EU's refusal to use export subsidies for agricultural products when exported to Ukraine; consolidation of the right of Ukraine to use protective measures and additional terms of trade.

In the market of crop production, a clear advantage for expansion of exports is the introduction of quotas for export of grain to the EU at a zero import duty rate. After the creation of a free trade zone between Ukraine and the EU, under the condition of a proper investment climate, it is possible to expect an increase in investments from the EU countries in the domestic food industry. Considerable prospects for increasing export supplies after the creation of the DCFTA with the EU are opened for the domestic confectionery industry. Moreover the producers of soft drinks, producers of fruit and vegetable juices have the opportunity to increase their exports to the EU after the creation of the DCFTA.

The prospects of rural development in Ukraine are related to the possibility of introducing institutional models and mechanisms approved in the EU countries into the domestic practice of rural development and the possibility of attracting EU funds to solve the problems of rural development in Ukraine.

At the same time, an increase in exports of domestic agricultural products to EU markets will be curtailed due to the volume of import tariff quotas of the EU for duty-free import of products from Ukraine and the failure of most domestic producers today to meet the technical, sanitary and phytosanitary conditions for the export of their products to the EU markets.

There is a danger of weakening the competitive position of domestic producers of meat and meat products, dairy products, vegetables and fruits as a result of increased imports from the EU.

A number of provisions of the Association Agreement with the European Union are indirectly linked to the rural sector of the society, which will induce appropriate changes in the state regulation of this sector in Ukraine. Significant risks are associated with the high cost of adapting the Ukrainian legislation in the field of technical regulation to the EU legislation.

To sum up, although the consequences of signing the Association Agreement for rural development in the short term will be ambiguous, they will definitely be positive in the long run. DCFTA is a huge stimulus to the development of the economy, which, of course, requires harmonization of legislation, standards, certification and approaches to the provision and control of quality and safety of agricultural products.

Providing the interests of domestic producers is an integral part of the economic security of the state. To do this, the Agreement applies instruments of trade protection of the domestic market from the adverse effects of foreign competition. These instruments include special protective, anti-dumping and countervailing measures that are used in international trade practices to effectively neutralize the damage to industry from dumping, subsidized imports, or the sharp rise in imports of goods from foreign countries.

The Association Agreement sets out the commitments of Ukraine and the EU, which should facilitate trade and lead to the removal of not only customs tariffs for products, but also the so-called «non-tariff», that is, technical barriers to trade. Elimination of technical barriers to trade in industrial (non-food) products is an essential condition for the effective functioning of an Deep and Comprehensive Free Trade Agreement between Ukraine and the EU, the approximation of Ukrainian producers of industrial products to the EU market and the growth of Ukrainian exports of high value-added products. The achievements of the reform of the technical regulation system are of strategic importance to business development. The field of technical regulation has the best results both in terms of adaptation of legislation and the introduction of new norms in practice.

The EU's basic requirement is that food products imported into the EU from third countries must meet the same high standards as the products produced in the EU. The harmonisation and proper implementation of laws and regulations will result in introducing an effective and well-balanced state food safety control system in Ukraine, which complies with EU requirements and is recognised worldwide, ensures the proper level of protection of life and health of Ukrainian consumers and allows duly operating food producers

to develop. Bringing Ukraine's sanitary and phytosanitary measures and Ukraine's system of food product safety control in compliance with the European requirements and practices will contribute to increasing the protection of life and health of people, animals and plants in Ukraine, increasing consumer protection in respect of food products, as well as expanding the export of agri-food products to EU and third countries.

Introduction of transparent and simplified customs procedures and elimination of discriminatory requirements for import, export or transit of goods positively affects trade development. The Association Agreement explicitly states that customs procedures must be proportionate, predictable, applied uniformly and effectively and must facilitate the protection of legitimate trade, avoidance of unnecessary or discriminatory burdens on economic operators, fraud prevention, as well as provision of further facilitation for economic operators having a high level of compliance. Implementation of customs obligations in the area of simplification of customs procedures and formalities was almost non-existent. The pace of implementation of customs obligations are the slowest among other spheres provided for in the Association Agreement and occur in violation of the time defined in the Agreement. Among the factors that hamper the implementation of the Agreement are insufficient staffing capacity of responsible institutions, too bureaucratized procedure for the adoption of legislative acts, conflicts of interest between different public authorities regarding the division of powers.

An ambiguous manifestation of the concept of sustainable development when signing the Association Agreement is to increase the pressure on environmentally harmful production as a result of the application of preventive measures and compensation for harm caused to the environment. From the point of view of long-term benefits, such consequence of the implementation of the Association Agreement is unquestionably positive, however, at the current stage, only a limited number of enterprises in Ukraine can really bear the costs associated with environmental production. Thus, there are high risks of exit from the market of a large number

CONCLUSIONS

of enterprises, which will have negative consequences for the national economy.

In addition, it should be noted that the introduction of environmental standards can lead to a significant increase in the cost of enterprises extracting industry, electricity, gas and water, chemical industry, metallurgical production, which will increase the cost of their products and services, and, accordingly, reduce their price competitiveness in foreign markets. As for the domestic market, such situation in the short term also could provoke significant threats to the national economy due to the insolvency of the population and business, whose financial status is critical, to raise costs. At the same time, with the introduction of environmental standards in the medium term, one can expect a dynamic development of business related to renewable energy sources, etc. In Ukraine, there are now opportunities for the implementation of such projects, and there is also a significant interest in this area from the side of European investors. In our opinion, even with the use of financial resources of foreign enterprises for the development of this direction, the positive consequences for Ukraine will be high.

Positive, in our opinion, is also the dynamic development of small and medium-sized businesses, which is oriented towards the production of ecological products, which is already taking place, and will substantially improve over the coming years. With a growing focus on the environmental characteristics of the goods offered to consumers, the market appeared a niche that could be easily filled by small and medium businesses in a more flexible and mobile way compared to large enterprises. It should be noted that products manufactured in compliance with European requirements, have all the necessary supporting documents, issued by manufacturers themselves. Such goods are quite competitive both on the domestic and foreign markets, with the proceeds from sales of such enterprises usually directed to development, thus forming a solid foundation for strengthening the position of Ukraine in the market of environmental products.

One of the elements of the agreement is also the requirement for the introduction of environmental labeling of goods. Such measures will allow consumers to get complete information about

the products they receive, which will allow them to make informed choices among the various products, and will enable them to monitor what they are consuming.

The introduction of new approaches to doing business will require the training of specialists who will have the skills and competences necessary for work in the new environment. Accordingly, there will be a reform of the education system with a view to its modernization and transition to a qualitatively new level.

According to the Association Agreement, changes to the regulatory system include the gradual mutual liberalization of business establishment, cross-border provision of services, e-commerce cooperation, the basis for trade in other services, the liberalization of the parties' arrangements for entry and temporary stay in their territory, and the liberalization of the movement of capital.

In general, the implementation of these measures will positively affect the competitive environment in Ukraine and will create a number of positive effects for business, population and the state as a whole. In particular, the implementation of the provisions of the Agreement will improve the parameters of the competitive environment, eliminate the barriers for the cross-border movement of services, introduce practices in the development of universal service standards in Ukraine, improve the quality of functioning of regulators, and increase the opportunities for Ukrainian companies to enter the European market.

Accordingly, individuals will have access to new technologies and products, the ability to receive services at adequate prices due to improved pricing mechanisms, improved personal information protection standards and increased penetration rates. Positive consequences for the state in this case will be the modernization of the regulatory system in the services markets, revenue from the sale of radio frequency and number resources, and the creation of new jobs.

For business, the positive consequences of signing the Association Agreement will be to create an adequate system of public prudential supervision, create a transparent permit system and remove barriers in the area of development and introduction of new financial services, create a business-friendly environment,

attract investment in the Ukrainian financial market. The population will have access to new technologies and financial products, fair pricing as a result of increased competition and adequate regulation of these markets, increased volumes and lower costs of consumer lending and increased protection of personal information. Additional positive consequences for the country will be: modernization of the national regulatory system and prudential supervision system, ensuring transparency of regulatory decisions, better development of the financial sector in the form of an increase in lending to the population and mitigating exchange rate fluctuations.

In general, the liberalization of capital movements within the framework of the Association Agreement will reduce the likelihood of the introduction of restrictions on current payments, which contradict the current international obligations of Ukraine and the payment for treatment, study abroad, the purchase of goods and services over the Internet. For the state as a whole, such measures will create a more effective mechanism for monitoring compliance with international obligations. The gradual implementation of the measures envisaged by the Agreement will allow the country to significantly improve the competitive environment and improve the quality of services offered to consumers. Despite the fact that in such conditions the risks for Ukrainian companies are growing significantly, the undoubted positive effect is the development of internationally competitive Ukrainian companies and the expansion of their opportunities to achieve success not only in Ukraine but also in the markets of EU countries.

The introduction of the practice of extrajudicial settlement of disputes in the field of European integration should be an additional stimulus for the development of similar institutions at the national level, in particular, building trust in mediation. The mechanisms for resolving disputes within the framework of the Association Agreement are aimed at ensuring: reasonable timelines for resolving disputes (in particular, impossibility to block the resolution of a dispute by one of the parties to the dispute, for example, due to the non-appointment of arbitrators), professionalism in resolving disputes, the general atmosphere of cooperation in the relations of the parties Agreements.

Наукове видання

ДУГІНЕЦЬ Ганна,
ДЯЧЕНКО Ольга,
МАЗАРАКІ Наталія,
ГОЛОВАЧОВА Ольга

**ПОГЛИБЛЕНА ТА ВСЕОХОПЛЮЮЧА ЗОНА
ВІЛЬНОЇ ТОРГІВЛІ МІЖ УКРАЇНОЮ
ТА ЄВРОПЕЙСЬКИМ СОЮЗОМ:
ПЕРЕВАГИ ТА НЕДОЛІКИ ДЛЯ УКРАЇНСЬКОГО
СУСПІЛЬСТВА**

Монографія

(Англ. мовою)

Комп'ютерне верстання І. І. Віннік
Дизайн обкладинки К. М. Заровної

Формат 60x84/16. Ум. друк. арк. 10,95. Тираж 300 пр. Зам. .

Видавець і виготовлювач

Київський національний торговельно-економічний університет
вул. Кіото, 19, м. Київ-156, Україна, 02156

Свідоцтво суб'єкта видавничої справи серія ДК № 4620 від 03.10.2013 р.