

DCFTA implementation in Ukraine: Assessment after one year

In January 2016 started the provisional application of the deep and comprehensive free trade area (DCFTA) between the EU and Ukraine. After one year, we assess the implementation of the treaty by Ukraine. More precisely, we review seven fields: market access, industrial product safety, food safety, customs, public procurement, protection of intellectual property rights and competition policy.

Overall, Ukraine is making good progress in the implementation of the treaty and work is mostly on track. The biggest success story relates to public procurement, in which new legislation and procedures create preconditions for the mutual opening of the public procurement market between Ukraine and the EU.

However, there were two explicit breaches regarding market access. First, the export duties for metal scrap were increased. Second, a ten-year ban on exports of wood logs was adopted, creating undue preferences to domestic wood processing companies.

In the fields of protection of property rights and competition policy, the legislation is already largely in line with the international norms. However, the real situation is still far from optimal and there is a need to enforce legislation more vigorously.

The DCFTA process

The provisional application of the DCFTA (as part of the Association Agreement) was planned to start in autumn 2014, as it was the case in Moldova and Georgia. However, the start of the provisional application was postponed until January 2016, in order to conduct trilateral consultations between the EU, Ukraine and Russia. The provisional application will last until the Association Agreement is ratified. Ukraine and all the EU member states, except for the Netherlands, have already completed the procedures.

In the following, we review the implementation progress in seven key fields regarding trade in goods.

Market access

Ukraine launched a gradual reduction of its import and export duties on January 2016 in line with commitments. In the first year, average import duties vis-à-vis EU dropped from 4.5% to 1.7%.

However, there have been already two cases of explicit violations of the commitments. In 2015, a ten-year ban on exports of wood logs was adopted, creating undue preferences to domestic wood processing companies. The abolishment of this ban is

currently included into the conditionality of the EU macro-financial assistance to Ukraine.

Second, in September 2016, a law setting a temporary increase of the export duty on ferrous metal scrap came into force.

Industrial product safety

To eliminate the non-tariff barriers to trade with the EU, Ukraine committed itself to harmonise its legislation and procedures related to safety of industrial and food products with the EU ones.

Although the task is huge, the progress has been surprisingly good. In the sphere related to industrial product safety, Ukraine has harmonised its horizontal legislation with the EU Acquis already before 2016. Eight of 27 technical regulations were made identical to the EU regulations, and another sixteen are enacted but need further aligning with the most recent EU regulations. Moreover, about 60% of all standards currently enacted in Ukraine are internationally aligned.

The institutional set-up also improved with the launch of the State Service for Food Safety and Consumer Protection (SPSA) as the key responsible authority in the area of market surveillance and the establishment of an independent National Standardisation Authority.

Ukraine has already asked the EU for the assessment of the progress in harmonisation as a background for the launch of the talks about the Agreement on Conformity Assessment and Acceptance of industrial products.

Food safety

The Comprehensive Strategy for Sanitary and Phytosanitary (“SPS”) Legislation Harmonisation was adopted in 2016 in line with commitments. The Strategy is extremely ambitious, envisaging a harmonisation with 255 EU regulations and directives by 2020. The task requires careful prioritisation to become manageable, especially given the currently observed speed of adoption of SPS-related draft laws already submitted to Parliament.

While the legal harmonisation aiming to create equivalent levels of food safety on both the EU and Ukraine markets is slowly moving on, the government and private enterprises successfully work together to create conditions allowing individual verification of supply chains for animal origin products, which can currently not easily be exported to the EU market. By now, Ukraine has authorised exporters for most of animal origin products devoted to human

consumption, like fish and fish products, poultry and products thereof, eggs, raw milk and dairy products.

Customs

Moving goods across borders remains quite costly in Ukraine, undermining potential gains associated with a gradual elimination of import duties.

In August 2016, the Government launched the “customs single windows” and introduced the principle of silent consent to facilitate trade. However, the changes have so far been only partly successful due to poor intra-governmental coordination and existence of conflicting legal acts.

The adoption of provisions of two transit-related conventions and the adoption of the New Computerised Transit System (NCTS) have been delayed, postponing the incorporation of Ukraine into the EU’s common transit system.

Competition and IPR protection

Competition and intellectual property rights (IPR) protection policies suffer from very similar problems. In both spheres, although some legal approximation is necessary, the Ukrainian legislation is mostly in line with international best practices.

The missing part is their effective enforcement that requires inter alia strengthening institutional set-up in the sectors. Recently, Ukraine moved forward with this task. In competition policy, transparency of the decision-making process of anti-monopoly authority increased, and procedures were simplified. In the IPR sphere, a comprehensive institutional reform was launched based on the adopted roadmap.

Still, the changes have not yet led neither to a lower monopolisation of the economy nor to the removal of the country from US Priority Watch List for pirating.

Public procurement

The adoption of the new Law on Public Procurement and the roadmap for further reforms paves the way for the implementation of the first phase of the mutual opening of the public procurement market between Ukraine and the EU.

Another important step was the launch of mandatory online public procurement procedures for over threshold purchases that allowed increasing efficiency and transparency of fiscal expenditures.

However, important problems remain. Some companies reported having been harassed by state institutions after winning tenders. Such cases if repeated will quickly overshadow gains associated with transparent and competitive procurement system. Thus, the absolute necessity is to strengthen the rule of law in the country.

Summary

The following table provides an overview of the DCFTA implementation in seven fields.

Policy field	Status
Market Access	On schedule, but measures violating DCFTA need revision
Industrial product safety	Ahead of schedule, challenge to maintain the reform speed
Food safety	On schedule, need prioritisation
Customs service	Delayed implementation of transit-related commitments
Public procurement	On schedule, rule of law is needed to protect achievements
IPRs protection	On schedule, need to focus on implementation
Competition policy	On schedule, need to focus on implementation

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A more comprehensive analysis is provided by the Policy Paper PP/04/2016 „[DCFTA implementation in Ukraine: Progress achieved and challenges ahead](#)“.

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