

**“EU–Ukraine negotiations on the DCFTA:
what is at stake for the business and industry?”**
(The summary of the discussions on 7th July 2010, Brussels)

The discussions took place at the same time as the 12th negotiating round on the DCFTA between Ukraine and the EU. The speakers presented the views of the official negotiating teams of both Ukraine and the EU, business and employers’ organizations, chambers of commerce and industry, businesses; the role of the European Parliament was highlighted by a representative of its secretariat.

The chief negotiators from both sides confirmed the willingness to conclude negotiations and to reach the highly ambitious agreement on trade (DCFTA) which will go much further than the existing free trade agreements between the EU and other countries.

This paper is aimed at summarising the main issues which have been touched upon during this meeting.

Situation as on 7th July 2010

At present out of 14 chapters of the DCFTA only 3 chapters are closed. At 12th negotiating round some progress was achieved on number of other chapters. For some chapters the lion share of provisions are agreed (in particular SPS, dispute settlement mechanism), there is a good progress on chapter on public procurement; but some sensitive issues are still under consideration (tariff offers; IPRs, GIs).

The Ukrainian business supports the DCFTA with the EU as a way to push for necessary trade and economic domestic reforms in Ukraine, to simplify the regulatory policy and regulatory framework, to help to the SMEs from both Ukraine and the EU to discover new opportunities for mutual trade and investment. In a nutshell, to turn Ukraine as a more business friendly country in line with modern standards.

The DCFTA negotiations with the EU are very ambitious so they require more time than it was needed to conclude the FTA negotiations between Ukraine and the EFTA (the agreement was signed on 24 June 2010 in Reykjavik). One should also take into account that the discussions with EFTA were started back to 2000. The agreement between the EU and Ukraine is by far more ambitious (thus more complex and challenging) in the sense that it provides for a regulatory convergence in between the EU and Ukraine in trade and trade-related areas. The FTA agreement between Ukraine and EFTA included the provisions on public procurement; they also foresee that both sides refrain from application of the trade defence measures between themselves.

In the relations with the EU the FTA agreement between Ukraine and EFTA sounds very good according to the EU, in particular as it will help to apply the diagonal cumulation of origin in the future under the DCFTA in future once the EU, Ukraine and the EFTA countries will be cross-connected through bilateral FTAs. This provision once in force will allow for economic opportunities in spreading over the supply chain of production within the zone at large (EU/ Ukraine/EFTA).

Ukraine is looking to review the existing agreements with Russia, Belarus and Kazakhstan which are more like partnership and cooperation agreements, they were concluded very long time ago and do not take into account the current state of the economic and trade cooperation, existing problems with access to the markets (non tariff barriers to trade). For Ukraine the Belarus, Kazakhstan and Russia all together are equally important trade partners as the EU.

Implementation: information and engaging business

Implementation of the future DCFTA is a key according to business representatives. The necessary measures should be taken in order to ensure that business is able to work efficiently, use in large extent the opportunities, and comply with new rules and requirements. Business cannot support the agreement if it is not transparent, clear, understandable, and it will be implemented in an efficient way.

The EU business experience with Ukrainian implementation of its WTO commitments is very disappointing. Tariff and non-tariff measures have been imposed in clear violation of WTO commitments. The EU business understands that Ukraine has been through a terrible financial crisis but that is not an excuse to change the rules and especially without any prior warning to business.

Securing the correct dialogue between Ukrainian business and the negotiators, involvement of Ukrainian business into consultations, providing Ukrainian business with information before and after the negotiating rounds, explaining to business the consequences, threats and opportunities of DCFTA is urgently needed. Such dialogue should be regular and effective.

Urge for such dialogue repeatedly expressed by both Ukrainian and the EU business. This issue was discussed and appeal for the regular consultations was included into the conclusions of the discussions organized by the European Economic and Social Committee (EESC) and the National Tripartite Social and Economic Council (NTSEC) (March, 2010, Kyiv).

The existing dialogue between the European Commission and the EU business on how to inform and involve the business can be taken as an example; the established cooperation in frames of the social dialogue and consultations between the Government of Ukraine and social partners (the Joint Representative Body of the Employers Organizations of Ukraine) should be used; the existing facilities and the experience of the Chamber of Commerce and Industry of Ukraine can be used to organize wide discussions, including at the regional level and with involvement of the SMEs.

Ukrainian business should also be proactive. On issues closely related to Ukraine's WTO obligations the Ukrainian business should more actively address the WTO inquiry point in Ukraine (under the Ministry of Economy of Ukraine).

Ukrainian business should be explained the benefits and eventual threats in a simple language. Authorities should consider how to get people's attention to explain why DCFTA is needed and what to do, how to use its benefits, what it gives and what it requires during next 5–10 years so the business have the confidence and can develop there long term strategies.

Implementation: business support programme

The implementation of the agreement puts a significant burden on the companies and businesses which should restructure to be competitive at the domestic market and to fully use the new opportunities to get their shares of the EU market.

The business support programmes, like those which the EU already provided for newly acceded and also Western Balkan countries, are needed. These programmes are aimed to secure the implementation of the EU legislation by strengthen the position of the business in the decision making process at the state level; to build the capacities for business organizations to be able to address effectively the concerns of the companies and to assist to the companies to use the opportunities from the DCFTA with the EU.

BUSINESSEUROPE has already proposed that the Commission creates a policy similar to the Business Support Programme used under the Enlargement Policy. This approach is cost-effective and it ensures that business is well informed of the negotiations. A project could involve the main employers and industry federations as well as the key branch organisations on both sides.

Especial attention should be paid to SMEs both Ukrainian and the EU to help them to increase their competitiveness and to use new opportunities from trade, investment, markets liberalization, better regulation and simplifying conditions of doing business.

Existing dialogues and cooperation between Ukraine's and the EU industrial organizations should be deepen and developed. The opportunities under the Eastern Partnership programme, in particular under Platform 2 on economic integration and convergence with EU legislation, and Trade Panel (business to business meetings) should be effectively used.

Procedural issues

DCFTA negotiations with Ukraine is a priority for the EU, if negotiations go properly then around 1 year as from now is required to complete them at technical level. Entering the agreement into force will take additional time.

The European Commission is consulting with the EU Member States and also the European Parliament (since the entry into force of the Lisbon Treaty) regularly during the negotiations.

The European Parliament should give its consent to the agreement, i.e. to say 'yes' or 'no' for whole text of the agreement; not only the economic substance but also political situation will be taken into account. If the EU business considers that their Ukrainian counterparts were not properly involved into the discussions on the agreement and that the provisions of the agreement are not likely to be implemented then the EU business will share its concerns with the European Parliament.

Businesses concerns

Tariffs. Ukraine already benefits from lower import duties into the EU while the EU already benefits from a decrease in Ukraine's import duties under Ukraine's WTO obligations. From a Ukrainian business perspective, it's mainly the removal or harmonization of non tariff barriers to trade which are of concern at present to business.

The proposal of the Ukrainian side to exclude certain tariff lines on automotive industry products from the DCFTA seems unjustified to the EU business. The market access for all

industrial products should be provided without exemptions. Avoiding reintroduction of surcharge to import duties on automobiles is important.

Non tariff and technical barriers to trade. At present compliance with EU standards for industrial products and the provisions of the REACH Directive present the biggest challenges for the import of Ukrainian industrial goods to the EU. A mechanism for early warning and discussions with the Ukrainian side under the DCFTA on changes in rules and regulations related to the application of the REACH directive should be applied.

The ongoing discussions in the EU on carbon tax can pose a threat to the import of Ukrainian industrial and energy consuming products. At the present time, the form that a carbon tax might take is not clear for the Ukrainian business. What is clear is that pressure from the EU member states and from the Commission and European Parliament for its imposition is mounting.

The EU side explained that Trade Defence Instruments (TDIs) will remain and Ukraine can continue to use them in relation to the EU import in case this is justified. It is unclear how the EU decision making procedure on TDIs is to work under the new Lisbon Treaty (which foresees greater power to the European Commission in this respect). This should be clearly explained to the Ukrainian side and Ukrainian business. Ukrainian business position is that undertakings from the Ukrainian side will always be a better option than antidumping measures.

Regulatory policy. The sooner Ukrainian business knows and understands which EU directives, standards and regulations are to be adopted in Ukraine and when they are to become effective, including those relating to social and corporate policy, the better it will be. Early and effective communication of the planned changes in the regulatory environment will save compliance costs and ensure the effective implementation of these regulations in the shortest time and allow the economic benefits of the DCFTA to flow to business and society.

Compliance with the EU standards, quality and safety requirements remain the main challenge for the Ukrainian industry, especially for the SMEs. The reform of Ukrainian national standardization system and infrastructure is needed. The attention should be paid to number of the Ukrainian industries which remain non-competitive: automotive industry; agriculture; food processing industry; textile industry.

Competition. Although the antimonopoly legislation of Ukraine is largely harmonized with the EU *acquis* in paper but it also should be implemented properly in practice. The antimonopoly regulations and Antimonopoly Committee of Ukraine should not be used to keep prices from growing if such trend is justified by market. Ukrainian oil market can be an example; the pricing for oil products is market driven and reflects European price trends, keeping unjustified low prices lead to abuse of the market position and distortion on the market.

Natural monopolies. The provisions on natural monopolies in Ukraine should specify the measures which help to stimulate the investments and development in this area on one side and to provide the fair level of tariffs which doesn't constitute the obstacle for trade. The Ukrainian railway company (Ukrzaliznyca) is a vivid example of what happens in case this principle is not applied. The natural monopolies should not abuse their position, sometimes in costs of state economic interest (UkrTransNafta as an example).

Subsidies and state aid. The state aid measures and subsidies should be considered to support those industries which will be most painfully affected by the adaptation and the enforcement of

the EU legislation in Ukraine. The experience of Eastern Germany might be useful to take into consideration.

IPRs enforcement in Ukraine remains one of the big concerns for the EU business.

Trade and investment. In spite of the crisis, EU companies remain committed and engaged in the Ukrainian market. Challenges with export credit finance or investment risks have not deterred their enthusiasm. However, there are major concerns with the business climate in Ukraine where problems with VAT-refunds, corruption, absence of a strong legal system, bureaucratic red-tape and customs problems abound.

Public procurement. In Ukrainian business point of view, equal access for Ukrainian companies to the EU public procurement market and understanding of the rules is important. This is an area to which priority should be given.

Energy: It's understood that Ukrainian industry faces difficulties with shifting to operate under the new rules for energy markets, to bring the tariffs on energy at market level. It is necessary to take into consideration, that low prices on energy were one of the main reasons for introduction of high antidumping duties by the EU on Ukraine's industrial products.

The mechanisms of working together to increase the energy efficiency and decrease the energy consumption should be developed.

It is essential that Ukraine continues its course of harmonizing fuel standards with the ones in the EU and completes full transition to Euro-4 without any delays, postponements or exemptions for any market player. The control and adequate responsibility for violation of regulation should be in place. One of possible solutions could be creation of National Quality Agency, co-funded by the state and fuel traders that would conduct independent control over the quality of oil products in Ukraine.

It is particularly important that the trade in energy chapter of the DCFTA should allow Ukrainian companies to increase the export of electricity to the EU (this process should start already as soon as Ukraine joins the European Energy Community later this year).

Beyond trade. Ukraine will face a major industrial challenge over the next few years as energy prices are aligned with the market. Ukraine has an incredibly energy intensive industry which will suffer from this change unless action is taken. Cooperation with EU industry which is a leader in energy efficient products and processes could help here. In addition, the EU could facilitate this cooperation by enabling EU companies to benefit from Emission trading scheme (ETS) certificates for major energy efficiency projects in Ukraine. This could fund the technology transfer required and have a significant impact on carbon emissions and energy security for Ukraine and the EU.

Mobility of people (visa issue). Although the DCFTA doesn't cover visa issues, the impact of visa application procedures on business activities should be taken into consideration because it is vital to achieving economic integration. Difficulties with getting visas constitute the real problem for effective use of market liberalization and gradual integration of the Ukraine's economy to the EU market both for the big companies and for the SMEs.

It has been good to see the positive developments in this area in the past few months and the recognition that visa free travel for Ukrainians is possible. From an EU perspective the key concern remains the integrity and security of Ukrainian borders and this is an area which will



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require further work from Ukraine to ease European fears of easy access to the EU for illegal immigrants via the backdoor.

The visa issue is dealt with in the EU Ukraine Association Agreement which is also under on-going negotiation and which the DCFTA will be part of.