

EU-Ukraine DCFTA: Challenges and Opportunities

Nataliya Haletska, PhD, Lecturer, UCU Law School

October, 2022

Overview

1. russian economic and military aggression against Ukraine 2012-2022 as a factor shaping capabilities of Ukrainian producers.
2. EU-Ukraine DCFTA: opportunities.
3. EU-Ukraine DCFTA: challenges.
4. EU-Ukraine DCFTA: challenges and solutions.

1. russian Economic Aggression 2012-2022

Dimensions of the russian economic aggression against Ukraine:

- 1) Import ban and blockade of Ukrainian goods in transit;
- 2) Withdrawal of Russia from the CIS FTA;
- 3) Cyber attacks;
- 4) Energy crisis (energy infrastructure is being attacked);
- 5) Food crisis;
- 6) What is next?

1. russian Economic Aggression 2012-2022

2012 – cheese wars. Russia stated that Ukrainian cheese contains palm oil, thus it has introduced an import ban. Russia inspected Ukrainian cheese factories, but there were no breaches of safety standards. Ukraine started to import again (for a short period of time). The overall damages of Ukraine amount to 300 mln USD.



1. russian Economic Aggression 2012-2022



2013 – chocolate war and the continuation of the cheese war.

Russia stated that chocolate of Ukrainian origin contain benzopyren (carcinogenic) and it has introduced an import ban.

Russia stated that Ukrainian cheese contains antibiotics, thus it has introduced an import ban.

After the failure to sign EU-Ukraine Association Agreement it was stated that imports may be renewed, but they haven't been renewed.

1. russian Economic Aggression 2012-2022

August 14, 2014 – all Ukrainian importers have been considered as risky and russia blocked all Ukrainian imports, including in transit.

August 18, 2014 – Advisor to russian president Hlazyev states that in case EU-Ukraine Association Agreement is executed, customs formalities will be even more complex for Ukraine.

Russian authorities were constantly “blackmailing” Ukrainian government and Ukrainian authorities during autumn 2013.



1. Russian Economic Aggression 2012-2022

2016 – russia unilaterally suspends CIS FTA with Ukraine.

As a result Ukrainian exporters need to find new markets.

Ukraine challenges russia's measures in the WTO, but with no real effect.

Diversion of trade flows from traditional markets in CIS region to the EU was neither easy, nor cheap:

- 1) new standards;
- 2) new logistics;
- 3) more competitive market.

This has negatively affected the competitiveness of Ukrainian producers.

1. russian Economic Aggression 2012-2022

Example: safeguard investigation regarding cheese in Ukraine.

Launched in December, 2021. It is closed without any measures on September 7, 2022 (due to the discrepancy with national interests).

Key complaints of cheese producers:

- 1) Lost markets negatively affected their possibility to compete at the Ukrainian market;
- 2) difficult to compete with EU producers due to subsidies and other support;
- 3) it is impossible to support Ukrainian producers during martial law.

2. EU-Ukraine DCFTA: opportunities.

Ukraine is a natural EU partner. Several opportunities (more to come):

1. Energy partnership: ENTSO-E allowed for increasing Ukrainian export capacity to the EU.
2. Joint digital market.
3. Partnership in raw materials exploitation (Memorandum on Strategic Partnership in the raw materials sector).
4. Joint transit of goods (As of October 1, 2022 Convention on a common transit procedure has become effective for Ukraine).
5. Implementation of Green Deal through nearshoring in Ukraine.

3. EU-Ukraine DCFTA: challenges.

1. REGULATION(EU) 2022/870 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2022 on temporary trade liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement is valid only until June 5, 2023.

1) no legal certainty afterwards (no investments in Ukraine into export companies);

2) no real effect, as agricultural season for many export products will only start in April-May 2023.

3. EU-Ukraine DCFTA: challenges.

2. Transport permits liberalization is temporary

Agreement between the European Union and Ukraine on the carriage of freight by road is valid only until June 30, 2023.

1) no legal certainty afterwards (no investments in Ukraine into export companies);

2) no real effect, as agricultural season for many export products will only start in April-May 2023;

3) is not fully efficient due to the lack of border checkpoints.

3. EU-Ukraine DCFTA: challenges.

3. Lack of border checkpoints at the EU-UA (PL-UA mainly) border, which causes huge queues back and forth and increases expenses for logistics:

1) Opening of new border checkpoints is regulated under bilateral agreements. For example, new border checkpoint **Nyzhankovychi-Malhovychi** was agreed to be open in 2006 (exchange of diplomatic notes), but it is still under way of opening.

2) The operation of existing checkpoints is not always efficient (lack of personnel, e.g. Polish sanitary/phytosanitary service is not operational 24/7).

As a result: Ukrainian exporters decide not to produce goods for export (especially, perishable goods).

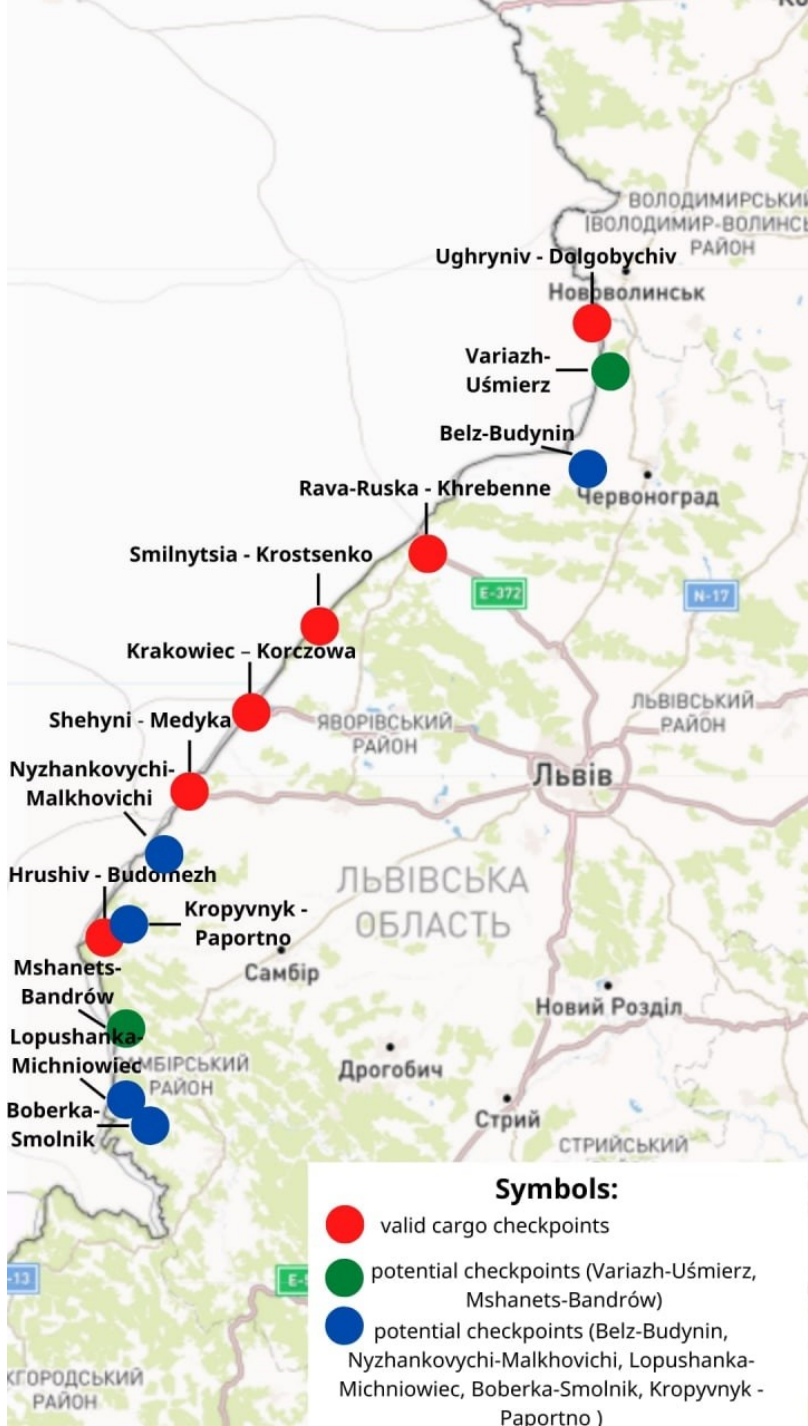
3. EU-Ukraine DCFTA: challenges.



3. EU-Ukraine DCFTA: challenges.



Existing and potential border checkpoints in Lviv region



3. EU-Ukraine DCFTA: challenges.

4. Impossibility to enter EU market under Ukrainian label: shortage of circulation funds, which makes is impossible getting necessary certification or investing into marketing.

Ukrainian Export Credit Agency does not possess enough funds.

Example: Ukrainian cosmetics producer Vesna relocated from Bucha (Kyiv).

3. EU-Ukraine DCFTA: challenges.

5. Lack of legal national producer protection instruments:

- no possibility to initiate trade remedy cases;
- no possibility to initiate dispute settlement cases;
- no funds for subsidies.

Fundamentally, is EU-Ukraine DCFTA operating?

Vicious circle: no opportunities for UA business – no donations to support army – more money and military support is needed to stop Russians in Ukraine from international community.

4. EU-Ukraine DCFTA: solutions to challenges.

1. Execution of ACAA as soon as possible (as an interim measure – allowing creation of EU laboratories' divisions physically located in Ukraine and providing services in Ukraine).
2. Facilitating customs clearance procedures (making sure all necessary control bodies are operating 24/7).
3. Opening new border checkpoints faster.
4. Operationalization of Ukraine's economic trade missions for MSE in the EU (at the regional level).
5. EU special fund with the purpose of Ukraine's economy recovery.
6. Local content requirement for goods made in Ukraine for the EU government procurement, tax benefits for private retail having shelves with UA goods.
7. Renewing Ukraine export tariffs for certain goods (national security exception under EU-Ukraine DCFTA).
8. Opening up EU services sector to offset losses in goods sectors (Nova Poshta delivery provider is entering Polish market).

Thank you!

Ukraine will win 😊

Russian Economic Aggression 2013-2021

DS499 – russia — Measures affecting the importation of railway equipment and parts thereof (2015-2020, AB Report adopted)

- Russia started suspending the conformity assessment certificates previously registered with the russian bodies to Ukrainian producers of railway products. The competent authorities in russia refused to recognize the certificates issued to Ukrainian producers by conformity assessment bodies located in Belarus and Kazakhstan under the respective newly adopted technical regulation of the CU.
- Finally, in February 2015, the russian authorities rejected applications for new conformity assessment certificates submitted under the new procedures by the Ukrainian producers without any explanation.

Ukraine has won the dispute but russia did not fully comply.

Russian Economic Aggression 2013-2021

DS512 - russia — Measures Concerning Traffic in Transit (2016-2019).
Interpretation of the WTO Panel has allowed Russia to use security exception under Article XXI of the GATT.

- Russia banned international cargo transit through its territory to Kazakhstan by road and rail networks (since January 2016) and on all road and rail transit to Kazakhstan and Kyrgyzstan since July 2016.
- Russia prohibited transit of Ukrainian goods through the checkpoints in Belarus and allowed such entry exclusively through checkpoints located at the Russian part of the external border of the Customs Union.

The Panel has opened Pandora's box in that case ('which it considers').
Interpretation of the WTO Panel has allowed Russia to use security exception under Article XXI of the GATT.

Potential violation of *jus cogens*?