

# **EUROPEAN TRADE POLICY INSTRUMENTS IN THE CONTEXT OF THE HARMONIZATION OF FOREIGN TRADE RELATIONS BETWEEN UKRAINE AND THE EUROPEAN UNION**

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## **1. Introduction**

In the system of Ukraine's foreign policy priorities the processes of European integration occupy a special place. Ukraine's European choice is due to the understanding of integration as a factor of promoting the state independence, economic development and update of the European essence of the country. From an economic point of view the integration of Ukraine into the European Union (EU) gives not only the macroeconomic benefits, but also trading benefits associated with the possibility of products promotion to the European market without significant obstacles. To achieve an efficient trade with the eurozone countries, while developing foreign trade strategy, Ukraine must take into account existing EU trade policy instruments aimed at protecting the domestic market from foreign competition, as well as at increasing exports [1].

The EU foreign trade policy instruments are reflected primarily in the normative legal acts of the EU institutions: regulations, directives, and decisions. Regulations are adopted both by the Council of the European Union, and the EU Commission. In the field of trade policy, regulations issued by the Council play the main role in the legal regulation. Regulations issued by the Commission play a supporting role in relation to the regulations of the Council, providing concrete definition and specification of their rules. The directives also may be issued both by the Council and by the Commission. They harmonize the support of export between member states and third countries. In the form of decisions the institutes on behalf of the EU make a conclusion of international agreements, information and consultation procedures within the import and export regulation, etc. The works by P. Craig, G. de Burca, S. Inama, E. Vermulst are devoted to the analysis of methods of foreign trade regulation in the European Union [2; 3; 4].

The EU enlargement process, the creation of a single market in combination with external factors such as the WTO activities and the change in the overall political situation in the world led to a significant update of the normative legal base of the EU foreign trade policy. These new legal acts have become increasingly corresponding to the norms and principles of the international trade law. Since Ukraine aspires to integration into the European Union, it means that a certain part of the legal trade rules of the European Union should be incorporated into the Ukrainian foreign trade legislation. This is the part of legal trade rules that regulates various industries, markets and it is aimed at eliminating discrimination against companies from third countries. Ukraine thus can become an integral part of modern Europe. Harmonization of the national legislation with the EU trade law will increase the credibility to our country from trading partners [1].

The aim of the article is to study the basic tools of foreign trade policy, which are regulated by the legal acts of the European Union, for the harmonization of the Ukrainian trade legislation and forecasting of consequences of the foreign trade relations between Ukraine and the European Union.

The main purposes of the common commercial policy of the EU are the harmonious development of the world trade, the elimination of restrictions in the international trade and the reduction of customs barriers. This policy is aimed at establishing a close interrelation between the realization of trade policy and deepening of member countries' customs integration. The realization of foreign

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trade policy is carried out on the basis of drawing-up of certain normative acts. In these normative acts a particular attention is given to the regulation of import and export of goods, quotas and licensing, the system of trade protection measures.

## **2. The regulation of import of goods**

The regulation of import of goods is classified into tariff and non-tariff regulation [3; 4]. The most important instrument of the tariff regulation in the European Union is the Common Customs Tariff (CCT). Its introduction was an essential prerequisite to the formation of the customs union. The main objectives of CCT application and collection of customs duties include:

- increase of the cost of import goods and, thus, support of domestic production;
- receipt of revenues to the EU budget (90% of all flows of collected customs duties);
- fight against trade practices violating fair competition in the world trade (dumping, subsidies);
- achievement of political advantages: strengthening of positions in the global trading arena with the object of obtaining advantageous access to the foreign markets in international trade negotiations;
- creation of the mechanism for economic integration (customs unions, free trade zones) and for aid to developing countries;
- achieving a positive balance of payments by decreasing the volume of imports and thereby reducing the outflow of currency to the exporting countries;
- possibility of the introduction of emergency safeguard measures against products that harm domestic producers;
- possibility to respond to the breach of the obligations by the WTO partner countries;
- hardship of export of raw materials, foodstuffs and other goods at prices below world prices and, thus, prevention of the deficit of such goods on the domestic market (by collection export duties);
- stimulating progress of individual regions (free zones, special economic zones);
- stimulating progress of individual industries by granting favorable tariff regimes.

Following agreements reached within the GATT/WTO framework, the European Union consistently reduces the rates of import duties. A large number of goods receive tariff preferences in the European Union. These are preferential rates of customs duties with respect to import of goods from individual countries or groups of countries. They are autonomous (adopted unilaterally) and conventional (adopted on the basis of international agreements). The granting of tariff preferences should not contradict the most favored nation principle; therefore it is necessary to adhere to certain conditions, first of all, the rules of origin.

To limit the preferential access of goods the European Union uses mechanisms such as tariff quotas and autonomous tariff exemptions (temporary reduction of import or export duties). Most tariff exemptions are introduced by separate legal acts of the EU Council. Sometimes they are used in conjunction with tariff quotas, i.e. duties are reduced only until the volume of import (export) of goods does not reach a certain quantitative limit established for a given time period. As a rule, tariff exemptions are granted only to raw materials, semi-finished products and parts that have no analogs in the EU market.

Principles of non-tariff regulation of import of goods are stated in regulations, as well as in some other specific normative legal acts [3; 4]. The most important regulations are:

- Regulation No 260/2009 on the common rules for imports, which implements the provisions of the WTO Agreement on Safeguards in the European Union law;

- Regulation No 519/94 on common rules for imports from certain third countries (non-market economies and state trade). This Regulation does not apply to imports of textile products;
- Regulations on goods belonging to the category of textile are:
  - Regulation No 3030/93 on common rules for imports of certain textile products from third countries – for imports from countries which have concluded bilateral agreements with the European Union;
  - Regulation No 517/94 – for imports of other textile products mainly from non-market economies.

Thus, the application of these normative acts depends on three factors:

- the origin of goods, i.e. whether the country of origin of goods is country with the market or non-market economy;
- the category of import goods (the EU legislation uses different legal regimes for textile and non-textile products);
- in the regulation of import of the textile products it is important to know if there are special bilateral agreements between the country of origin (export) of goods and the European Union.

The purpose of such differentiated approach to the legal regulation of imports is the creation of an effective system of foreign trade management, the control over the structure and the volume of imports, the protection of economic interests of the EU and the interests of its domestic commodity producers.

The basic principle at import of non-textile products from the countries with market economy is that these products are imported to the EU freely, without any quantitative restrictions, and without the detriment to the rules of trade safeguard measures application.

The regulation establishes three procedures for the regulation of the volume of goods import in the European Union:

- information and consultation procedure that envisages, that the Commission shall be informed by the member states in cases when the trends in import of the goods necessitate of application of surveillance or safeguard measures;
- procedure of investigation – it is necessary if the Commission considers that surveillance or safeguard measures are necessary. The objective of investigation is the examination of the trend of imports, of the conditions in which they take place and of the serious injury or threat of serious injury to Community producers resulting from such imports.
- procedure of surveillance – the direct control over the volume of goods import.

### **3. The regulation of export of goods**

An important component of the EU trade policy is the regulation of the export [2; 3]. It is realized by means of Regulations, which establish general rules of the EU exports. As to tariff regulation of exports of goods, the EU consistently pursues a policy of refusal of export duties. This fully corresponds to the purposes and principles of the GATT. Export duties are applied only in exceptional cases to prevent the outflow of vital products from the European Union.

The basic principle is formulated in the Regulation – the principle of freedom of export and refusal of quantitative restrictions except the restrictions stipulated in the founding treaties. The information and consultation procedures necessary at export of goods are regulated in the Regulation. Also, there are rules for the application of protective measures of the EU as well as the rules on national restrictive measures of member states and rules of the export of agricultural

product. There are lists of goods that are excluded from the action of the principle of freedom of exports.

The Regulation also confirms the competence of member states to impose restrictions on exports for reasons of public morality, public policy, and public security, the protection of human life and health, the protection of national cultural, historical and archaeological values, the protection of industrial and commercial property.

A number of important goods for the EU are excluded from the overall export policy (agricultural products, metal ores and scrap metal, fuel, and others). There are some export restrictions related to the common foreign and security policy of the EU. In addition, the control over the export of certain goods through surveillance and safeguard measures is possible. However, these measures are not applied when the EU trade agreements with importing countries stipulate other export restrictions (quotas, export licenses, export permits, and others).

In order to prevent a critical situation because of lack of a vital product in the EU market, an export licensing system of such goods can be introduced. In the case where it is necessary for the European Union, the application of quantitative restrictions on export of goods may be used. Quantitative restrictions apply only to exports to certain third countries or apply to exports from certain regions of the EU. To determine the quantitative export restrictions the normal export volumes of goods existing before the critical situation are taken into account. Furthermore, the quantitative restrictions, that are set, should not be higher than it is necessary to achieve the goals of quantitative restrictions.

Special rules of export regulation exist in the EU for certain categories of goods, such as oil and products of its processing, food products, cultural goods, hazardous chemicals and dual-use goods.

#### **4. Quota and licensing system**

As already mentioned, in some cases, the European Union uses quantitative restrictions of import and export of goods. The most widespread form of quantitative restrictions is quoting and licensing.

The quota system is based on common commercial policy and considers the principle of free movement of goods within the EU. Regulation No 717/2008 provides the legal basis of the quotas. It establishes the common procedures for administration of quotas among importers (exporters). This Regulation does not apply to a number of agricultural products, textiles and some other goods, which are regulated by specific EU trade rules. Quotas may be administered using one of the following methods, or a combination of these methods:

- traditional allocation. This method is based on traditional trade flows. Quotas on imports (exports) are allocated on a priority basis among the so-called “traditional” importers (exporters). Importers or exporters deemed to be traditional are those able to demonstrate that in the course of a previous period, to be known as ‘the reference period’ they have imported into the European Community or exported from it the product or products covered by the quota. Where no applications are received from traditional importers or exporters, the importers or exporters that do apply shall have access to the whole quota or tranche concerned;
- allocation in the order of receipt of applications. This method is based on the order in which applications are submitted (on a “first come, first served” basis). Those applicants who have applied first for the allocation of quotas receive first their licenses;
- proportional. This is the method of allocation of quotas in proportion to the quantities requested when the applications are submitted. So, the information concerning the number of applications and requested amounts of the goods is collected. On its basis, the quotas are allocated proportionally to submitted applications.

Licenses are valid throughout the European Union, except the cases when they are granted to individual member states or regions of the EU. The duration of licenses is four months.

Now licensing also applies to some agricultural products on the basis of the Regulation No 376/2008. Importers (exporters) apply for the licenses in national agricultural administrations. The administrations send the applications to the Commission. The Commission arrives at a decision on the allocation of licenses in the form of Regulations. The licenses are issued by national administrations on the basis of the Commission Regulations.

## **5. The system of safeguard measures**

The system of safeguard measures in the European Union includes legal norms in the field of anti-dumping (Regulation No 1225/2009) and countervailing (Regulation No 2026/97) duties. By means of these legal norms the EU implemented the international agreements accepted under GATT. The rules of duty calculation are different in these regulations. But the questions of consideration of damages and procedural rules are regulated equally [7; 8].

Anti-dumping measures and measures, that compensate the subsidies, are directed on struggle against different types of unfair trade practice. Anti-dumping measures are directed on the compensation of balance of trade. These measures are caused by the actions of third-countries companies in the EU market. Countervailing measures have as its object the elimination of trade imbalance inside the European Union, which has arisen in connection with unfair subsidizing of export in the EU by the governments of exporting countries. Sometimes anti-dumping and countervailing measures intersect. The EU regulations prohibit the use of both types of safeguard measures concerning the same products. In practice the European Union applies only measures of anti-dumping protection in similar cases.

Besides the protection from dumping and subsidizing, the legislation of EU supposes application of the retaliatory measures directed on counteraction to the illegal restrictions of access of the goods from the EU to the markets of the third countries. Such restrictions are called “foreign trade barriers” and they include both tariff and non-tariff measures of third countries [6]. It is emphasized in Regulations No 3286/94 and No 356/95 that the term “foreign trade barriers” concerns any measures of trade regulation, permitted in other countries, however, prohibited by international trade law. It allows the interested sides to achieve elimination of such measures. The regulations also establish the rules and procedures on maintenance of the rights of the EU as a participant of the world trade, in particular, those rights, which are based on norms of the WTO.

To strengthen the rights of the EU within the limits of the international trading system, early in 2013 the European Commission initiated the new legislative initiative. The draft of the new EU regulation envisages vesting the Commission with the rights to take the operative unilateral retaliatory measures under the rules of the WTO, in the following cases:

- EU trade sanctions if the country does not execute the decision of the arbitration tribunals under the multilateral and bilateral dispute settlement rules;
- retaliatory measures in case of acceptance of bilateral/regional special safeguard measures by third countries without the acceptable compensation;
- the suspension of trade obligations of the EU regarding the WTO member which unilaterally has changed its levels of import tariffs in accordance with Article XXVIII of the GATT and has not provided the appropriate compensation to the European Union [5].

## **6. Conclusion**

The main trends in the development of foreign trade regulation in the European Union are the increase in liberalization of the world commodity markets and strengthening the role of the WTO and positions of integration associations in the world trade. Effective legal

regulation of foreign trade allows the EU to follow these trends. The adaptation of the trade law of Ukraine to the EU trade law is one of the directions of eurointegration strategy of Ukraine. This process can be realized through enactment of legislative and normative acts which are based on the appropriate norms of the European trade law, or by introduction of changes into the active legislation.

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## Summary

In the article, the author describes the normative legal acts regulating foreign trade of the European Union in the context of the harmonization of foreign trade relations between Ukraine and the European Union and the adaptation of the trade law of Ukraine to the European trade law.

**Key words:** trade policy instruments; integration of Ukraine into the European Union; trade law; adaptation of legislation; regulation of the import (export); safeguard measures.

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