



European
Commission



EU-Ukraine Deep and Comprehensive Free Trade Area

Trade

EU-Ukraine Deep and Comprehensive Free Trade Area

Reading guide

The Deep and Comprehensive Free Trade Area (DCFTA) is part of the Association Agreement (AA) between the EU and the Republic of Ukraine, one of EU's the most ambitious bilateral agreements yet. The DCFTA will offer Ukraine a framework for modernising its trade relations and for economic development by the opening of markets via the progressive removal of customs tariffs and quotas, and by an extensive harmonisation of laws, norms and regulations in various trade-related sectors, creating the conditions for aligning key sectors of the Ukrainian economy to EU standards.

The DCFTA consists of 15 Chapters, 14 annexes and 3 protocols.

This document gives an overview of the key elements.

Chapter 1 Market Access for Goods

Chapter one aims to remove customs duties on imports and exports. The vast majority of customs duties on goods will be removed as soon as the Agreement enters into force. Overall, Ukraine and the EU will eliminate respectively 99.1% and 98.1% of duties in trade value.

For industrial goods, the calendar for liberalisation foresees the immediate removal of existing tariffs on most products, with exceptions for a few for which a transition period exists, in particular for the automotive sector in the case of Ukraine.

For agricultural goods, ambitious concessions have been made taking into account specific sensitivities. Thus, duty-free tariff rate quotas been granted to the Ukraine for cereals, pork, beef, poultry and a handful of additional products, while for others the progressive elimination by the EU of the custom duties will occur over a longer transition period (generally 10 years). This means that for particularly sensitive sectors, the DCFTA gives producers more time to adapt to a more competitive environment while offering consumers a wider choice of products at lower prices.

As regards non-tariff barriers (NTB) on trade in goods, the Agreement incorporates fundamental WTO rules on NTBs, such as national treatment, prohibition of import and export restrictions, disciplines on state trading etc. Export duties will be prohibited from day one, with some temporary exceptions for Ukraine on a few agricultural and metal products.

FOCUS ON THE ELIMINATION OF CUSTOMS DUTIES

The FTA will create opportunities for trade by lowering tariffs on imports. Ukrainian exporters will save €487m annually due to reduced EU import duties. Ukraine will remove around €391m in duties on imports from the EU, with longer transition periods than the EU for certain goods.

Agriculture

Ukrainian agriculture will benefit most from cuts in duties: €330m for agricultural products, and €53m for processed agricultural products. New market opportunities in the EU and higher production standards will spur investment, stimulate the modernisation of agriculture and improve labour conditions.

Industrial

Both sides will fully liberalise trade in industrial products, with Ukraine reducing duties on machinery and appliances by €75.2m. There are some exceptions for cars, but Ukraine will still cut duties on vehicles by €117.3m.

The textiles sector will be fully liberalised from day one with Ukraine and the EU cutting duties worth €8.7m and €24.4m respectively. Special conditions will apply for five years to second-hand clothing.

Reduced EU tariffs on chemicals will cut duties paid by Ukrainian exporters by €26.8m, while Ukraine will cut duties by €64.3m.

Chapter 2 Trade Remedies

This chapter covers traditional trade defence instruments (anti-dumping, anti-subsidy and global safeguard). WTO rights and obligations will be applied to ensure fair treatment, for example, anti-dumping duties will be capped to the level of dumping or subsidy. A public interest test may be carried out before imposing any measures. The DCFTA will increase the transparency of investigations and Parties will set up a mechanism for cooperating on trade remedies.

An agreement on cars will allow Ukraine to apply a well-defined safeguard measure for 15 years on cars imported from the EU. In the reference period 2002-2010, Ukraine imported on average 41.000 cars a year from the EU, 12.9% of the Ukrainian market.

Chapter 3 Technical barriers to trade

This chapter aims to reduce obstacles to trade arising from Technical Barriers to Trade (TBT): technical regulations, standards, conformity assessment procedures and similar requirements.

The parties reiterate their commitments under the World Trade Organisation Agreement on TBTs and agree to cooperate on TBT issues to simplify and avoid unnecessary divergence of technical requirements.

Ukraine will progressively adapt its technical regulations and standards to those of the EU. Future negotiation of an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) will provide that in specific sectors covered by it trade between the Parties will take place under the same conditions as between EU Member States.

Provisions on labelling seek to keep it to a minimum to make it non-discriminatory.

Harmonisation and/or mutual recognition of technical standards should cut existing non-tariff barriers in the agri-food sector by half and 35% in other sectors compared to 2004.

Chapter 4 Sanitary and phytosanitary (SPS) measures

This chapter aims to facilitate trade in SPS related goods including animals, animal products, plants and plant products, whilst safeguarding the Parties' level of protection. The Parties will seek a common understanding on animal welfare standards taking into account developments in the World Organisation for Animal Health (OIE). They will align legislation and conclude a veterinary and phytosanitary chapter.

The process covers:

- Commitment to respect the principles of the WTO/SPS Agreement;
- Ukrainian commitment to align its SPS and animal welfare legislation to the EU's;
- Setting up a rapid consultation mechanism to solve trade irritants in SPS related goods;
- Setting up a rapid alert and early warning system for veterinary and phyto-sanitary emergencies. Under certain conditions, the relevant EU systems for early warning could also be opened to Ukraine's participation.

The SPS Chapter will be implemented by a new Subcommittee on SPS measures which will monitor progress, provide recommendations, develop procedures, and provide a forum addressing problems.

The SPS chapter will deal with verification procedures, listing of establishments, levels of checks, and settlement of trade problems. It covers all trade-related animal and plant health, food safety and animal welfare measures.

Chapter 5 Customs and trade facilitation

This chapter seeks to enhance co-operation in customs and customs-related matters and to simplify customs requirements and formalities, while at the same time preventing fraud.

Building on current cooperation on customs matters, the Protocol on mutual administrative assistance in customs matters provides a stronger legal framework for efforts to ensure the correct application of customs legislation and the fight against infringement. Both sides will supply each other with all relevant information needed to conduct investigations, including the possibility for officials of the one Party to participate in administrative enquiries in the territory of the other Party.

The DCFTA contains a provision for temporary withdrawal of preferences as a safeguard in the event of insufficient cooperation.

Chapter 6 Establishment, trade in services and electronic commerce

This chapter aims at integrating Ukraine as much as possible into the EU market. Unlike classical FTAs, it provides for both the freedom of establishment in services and non-services sectors, subject to limited reservations, and the expansion of the internal market for a set of key services sectors once Ukraine effectively implements the *EU-acquis*.

The agreement provides for a right of establishment (as opposed to commercial presence) in services and non-services sectors. This right is subject to a number of reservations identified in a negative list. This approach is unprecedented for the EU and guarantees automatic coverage for new services and further liberalisation not listed as exceptions. Provisions for domestic regulation, postal and courier services, financial services and telecommunication services will improve transparency and legal certainty for EU investments in Ukraine. The focus here is on "behind the border" issues.

The DCFTA is complemented by a process of legislative approximation in financial services, telecommunications services, postal and courier services, and international maritime services. The Ukraine is committed to take over the existing and future EU-acquis in those sectors and, when it has done so, Ukrainian firms will be granted access to the EU internal market for the sectors concerned: this is an unprecedented level of integration. The approximation process will also mean that EU investors in those sectors will find the same regulatory environment in Ukraine as in the EU.

Chapter 7 Current payments and movement of capital

Provisions on free movement of capital will include standard safeguards with a possibility to apply measures to ensure the stability of the financial system.

Chapter 8 Public procurement

Ukraine will, over several years, adopt current and future EU legislation on public procurement. With the exception of defence procurement, Ukrainian suppliers and service providers will have full access to EU public procurement markets, and EU suppliers and service providers will have the

same to the Ukrainian procurement market. The chapter is an unprecedented example of the integration of a Non-EEA-Member into the EU Single Market.

Chapter 9 Intellectual property

This chapter includes provisions on particular copyright, designs (including unregistered ones), patents and geographical indications (GIs) which complement and up-date the TRIPS Agreement. The chapter has a strong section on enforcement of IPRs based on the EU's internal rules.

All agricultural GIs, not only those relating to wines and spirits, will have the same high level of protection. The protection will be immediate for most EU GIs, but some names long-used by Ukrainian producers will be phased-out over different periods of time:

- 10 years for Champagne, Cognac, Madeira, Porto, Jerez /Xérès/ Sherry, Calvados, Grappa, Anis Portugues, Armagnac, Marsala, Malaga and Tokaj
- 7 years for Parmigiano Reggiano, Roquefort and Feta.

There will be updates and regular consultations to add new products to the list of protected GIs.

Chapter 10 Competition

Here, the Parties prohibit and sanction certain practices and transactions which could distort competition and trade. Anti-competitive practices such as cartels, abuse of a dominant position and anti-competitive mergers will be subject to effective enforcement action.

The Parties agree to maintain effective competition laws and an appropriately equipped competition authority. Both Parties agree to respect procedural fairness and firms' rights of defence. Ukraine will align its competition law and enforcement practice to that of the EU *acquis* in a number of fields. Competition law will apply to state-controlled enterprises. This ensures that companies of both Parties have equal access to each other markets and there is no discrimination by monopolies. Provisions set out the main principles for consultations and cooperation between the Parties.

The Parties agree to remedy or remove distortions of competition caused by subsidies where these affect trade, and to subject these commitments to the dispute settlement mechanism. Ukraine commits itself to adopting a system of control of state aids similar to that in the EU, including an independent authority. It will prohibit certain types of particularly distortive subsidies. Both Parties will report annually the total amount, types and the sectoral distribution of subsidies and will provide further information on subsidies or schemes on request. The rules on subsidies apply to all areas liberalised in the DCFTA except agriculture and fisheries.

Chapter 11 Trade-related energy

This is the first FTA to include specific provisions on trade related energy issues. The chapter takes into account that Ukraine is already a member of the Energy Community Treaty (EnCT), which imposes an obligation to implement the most relevant EU energy *acquis* on electricity and gas. The chapter covers electricity, crude oil and natural gas (in gaseous state or as LNG), its provisions being subject to dispute settlement procedure.

The four pillars of the trade-related energy chapter are:

- Rules on pricing of energy goods. The Parties commit themselves to let market prices prevail on the domestic gas and electricity markets and not to regulate prices for industry. Neither Party will impose prices for exporting energy products which are higher than domestic prices (prohibition of dual pricing).
- Transport and transit of energy goods. The chapter reiterates obligations laid down in Article V GATT and Article 7 of the Energy Charter Treaty. Interrupting transit or taking energy goods from transit that are destined for the other party is prohibited. An Expedited (fast track) Dispute Settlement procedure will allow for quick intervention if these rules are breached. An Early Warning Mechanism lays down standards for diplomatic consultations in the event of a security of supply problem.
- Parties commit themselves to setting up a legally distinct and functionally independent regulator to ensure competition and an efficient functioning of the gas and electricity markets.
- Rules on non-discriminatory access to the exploration and production of hydrocarbons (gas and oil). Once an area has been made available for exploration and production, nondiscriminatory access and licensing should be provided to entities from both Parties.

Chapter 12 Transparency

The Chapter sets out:

- Commitments allowing interested parties to comment on proposed regulations.
- The establishment of enquiry or contact points to respond to questions arising from the application of regulations.
- Due process requirements regarding administrative proceedings, including the review or appeal of administrative actions in areas covered by the FTA.

Chapter 13 Trade and sustainable development

Key elements of the Trade and Sustainable Development Chapter include:

- Shared commitment to the core labour standards of the International Labour Organisation (ILO) and the ILO Decent Work Agenda.

- Commitment to implement all multilateral environment agreements to which the EU and Ukraine are party, and to promote sustainable management of forestry and fisheries.
- Confirmation of the Parties' right to regulate, while aiming at a high level of environmental and labour protection, and a commitment to refrain from waiving or derogating from such standards in a manner that affects trade or investment between the parties.
- Strong monitoring mechanisms, building on public scrutiny through civil society involvement. Each side will designate and convene a new or existing civil society Advisory Group, including independent organisations representing sustainable development interests. The two Advisory Groups will meet annually in an open civil society forum to discuss the implementation of the sustainable development aspects of the chapter.

Chapter 14 Dispute Settlement

The Dispute Settlement mechanism is based on the model of the WTO Dispute Settlement Understanding, but with faster procedures. Consultation is followed, if unsuccessful, by referral to an arbitration panel composed of three experts chosen by the parties, or selected by lot from an agreed list. The panel can receive *amicus curiae* submissions (contributions from stakeholders, such as the business community or the public at large, who are not a party to the case). Its ruling, delivered within 120 days, is binding, the party in breach having a reasonable period to bring itself into compliance. If it does not, the complainant is entitled to impose proportionate sanctions. Time-limits of the arbitration procedure are reduced in urgent cases, with further reductions for urgent energy disputes.

Chapter 15 Mediation mechanism

A mediation mechanism allows Parties to tackle adverse effects on trade in goods. The aim is not to review a measure's legality, but to find a quick and effective solution to market access problems.

The Parties will be assisted by a mediator they have jointly chosen or selected by lot from an agreed list. The mediator can advise and propose a non-binding solution within 60 days. Mediation does not preclude recourse to dispute settlement.

Protocol I - Rules of origin

Rules of origin define the 'economic nationality' of products needed to determine the duties applicable to them when traded. In the DCFTA, the rules are based on the usual criteria.

Protocol II - Mutual administrative assistance in customs matters

It sets out a legal framework for cooperation between the Parties' competent authorities in tackling customs irregularities and fraud.

Protocol III - Protocol on a Framework Agreement between the European Union and Ukraine on the General Principles for the Participation of Ukraine in Union Programmes

It sets out core principles for Ukraine's financial contribution and participation in monitoring current and future EU programmes.

The Institutional Framework

The ad hoc institutional context for future EU-Ukraine relations will include the EU-Ukraine Summit, an Association Council - with the power of taking binding decisions - responsible for meetings at ministerial level, and a supporting Association Committee which will meet at least once a year. A Parliamentary Association Committee will bring together members of the European Parliament and the members of the Ukrainian Parliament and will be able to make recommendations to the Association Council. A Civil Society Platform will consist of members of the European Economic and Social Committee and the representatives of Ukrainian civil society.

