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Сотрудничество между Украиной и ЕАСТ

Partnership between Ukraine and EFTA

The article analyzes the legal instruments of Ukraine's European economic integration. It is determined that the European integration process started with the establishment of free trade areas. In the article, special attention is devoted to the investigation of the Agreement on Free Trade between Ukraine and the European Free Trade Association, which was signed June 24, 2010. It is shown that the requirements of the FTA with EFTA countries are step in the harmonization of Ukrainian legislation to the EU internal market. The integration processes that affect both economic, trade and political spheres characterize the modern world. Integration in the European Union passed the stages of a free trade area development, customs union, economic and monetary union to the political union functioning. In parallel with the development of the internal market in the EU are observed integration processes in the European Free Trade Association (EFTA) and the participation of third countries.

The first step of the integration processes in various fields is a free trade area (FTA).

Theoretical aspects of the European integration process laid in the scholars writings who advocated various theories of integration - from federalism (S. Mozler, K. Ofuls), functionalism (D. Mitrani), neofunctionalism (E. Haas, L. Lindenberg), institutionalism (K. Armstrong, S. Ballmer) to more modern theories of multilevel governance (F. Nelsen, J. Peterson) and liberal intergovernmental approach (E. Moravchyk). European economic integration problems deal with foreign and domestic economists who distinguish shapes and pattern of such integration. For example, B. Balassa works are devoted to the isolation level of European integration from free trade zones, through customs union, economic and monetary union to common market and political union. In practice, this model of European integration is reflected in the establishment and functioning of the European Union.

Some works of local scientists devoted to the analysis of certain European integration aspects, such as Prof. V. Muravyov, M. Mykiyevych, J. Berezovska, A. Shpakovych, A. Vyshniakova, R. Petrov, which in their writings investigate Ukraine's legal European integration. However, in practice, integration processes are continually transformed and perfected. There are new integration processes, which involve third countries, including Ukraine. Therefore, there are urgent research questions of legal mechanisms involving Ukraine in the process of European economic integration.

Research forms of cooperation between Ukraine and other countries on the free trade basis become relevant in view of the future Association Agreement with the European Union, which was based on deep free trade area¹. Because the conclusion of such a comprehensive agreement is complex and lengthy, Ukraine should use additional legal mechanisms towards European economic integration. Such instruments are cooperation with the countries of the European Free Trade Association. After Ukraine's accession to the WTO first agreement on a free trade agreement was with the EFTA countries, signed in the summer of 2010².

¹ Муравйов В. І. Гармонізація законодавства України з правом Євросоюзу / В. І. Муравйов // Україна – Німеччина: розвиток законодавства в рамках європейського права. – К., 2007.– С. 48.

² Постанова Кабінету Міністрів України від 15.10.2004 р. № 1365 «Деякі питання адаптації законодавства України до законодавства Європейського Союзу» // Офіційний вісник України. – К., 2004. – № 42. – С. 35.

Signing of this Agreement corresponds to Ukraine priorities for integrating into the European Economic Area that unites markets of EU member states and three countries – EFTA members in the common market of about 490 million consumers. The provisions of the Agreement concluded by the system comply with the WTO Agreements and obligations of the Parties under this international organization and provide deepening trade and economic cooperation; in particular, it is trade in goods (industrial, agricultural, fish and marine products), trade in services, intellectual property rights, public procurement and more.

The main purpose of the agreement is to increase the trade turnover between Ukraine and the countries – members of EFTA; export diversification of Ukrainian producers; foreign direct investment in Ukraine with the countries – members of EFTA, which are among the largest exporters of capital in the world. However, due to the different economic and social development degree of Ukraine and EFTA member states, Parties shall apply the asymmetric obligations principle of the Parties that allow our country to adopt trade with EFTA member countries to free trade conditions.

As a result of negotiations, created the preconditions for Ukraine market fish and seafood that is particular interest for both EFTA and Ukraine in view of the increase in world demand for fish and marine resources and tend to reduce their supply on the world market and the need to ensure Ukrainian refineries quality raw materials.

The parties agreed on rules of origin on the Protocol Euro-Med basis, which is used in the Euro-Mediterranean partnership in the EU and EFTA trade with a number of Mediterranean countries such as Turkey, Egypt, Israel, Syria, Tunisia, Algeria, Jordan, Lebanon, Morocco and the Palestinian Authority.

Parties positions to liberalize trade in services coincided. They are in need of maximum access liberalization to the market – not to exclude any industry or delivery method.

The parties confirmed their mutual interest in creating favorable conditions for the development of investment cooperation due to the common interests; in particular, the EFTA member states occupy a leading position in the world in terms of foreign direct investment, which requires an economy of Ukraine¹.

Ensuring a high level of intellectual property rights protection – is another area where the interests of the Parties match. The parties agreed to fix in future agreements highest standards of intellectual property protection, thus deepening the existing Parties obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The purpose of the Parties is effective protection and implementation of intellectual property rights that are conducive to trade and investment.

However, in practice, integration processes are continually transformed and perfected. There are new integration processes, which involve third countries, including Ukraine. Therefore, there is an urgent research question of legal mechanisms involving Ukraine in the process of European economic integration².

The integration process starts with the formation of a free trade area. According to Article XXIV of the GATT, free trade area is a group of two or more customs territories in which repealed the duties and other restrictive regulations of commerce on substantially all the trade between the constituent territories in respect of goods originating in such territories. As Professor O. Shnyrkov indicates, FTA requires less coordination of foreign policy, maintain the independence of customs policy formation towards third countries, and make it possible to avoid the question of membership within customs unions, common markets, economic unions and development of international integration simple forms. FTA focused on access to strategic markets, so often there is not obligatory geographical partner proximity. In contrast to the more complex forms of international integration, that provides, in principle, the existence of common

¹ Муравйов В. І. Європейське право: правова категорія, наука, доктрина [Текст] / В. Муравйов, К. Смирнова // Право України. – К., 2011. – №4. – С. 141.

² European Neighborhood and Partnership Instrument. Ukraine. Country Strategy. Paper 2007-2013. – [Електронний ресурс]. – Режим доступу: http://enpi_csp_ukraine_en.pdf.

borders¹. Thus, FTA is simple forms of international integration and focused on access to strategic markets. From another point of view can be noted that the FTA is an intermediate form of international economic integration as a mechanism for the transition to a more complex and advanced forms of economic cooperation between the countries.

FTA is a means of involving the country in economic integration processes. Depending on the purpose of FTA establishing, areas of such integration may vary. For example, the initial phase of deeper integration, transition to a customs union, economic and monetary union of internal market advocated European Economic Community (EEC), which was later transformed into the European Community. At present, this integration level reached a level of political union in the form of the European Union following the entry into force of the Lisbon Treaty, which granted international personality of European unification.

Another type of FTA depending on the purpose of the establishment is the EU association agreements with Central and Eastern Europe, EU association agreements with Mediterranean countries are positioned as a means of preparing and adapting to join the union of European integration – the European Union. The example of the Association Agreement between the EEC and Turkey can be seen that with this kind of cooperation aspects of their integration level can vary – from an FTA to a customs union².

This aspect should not be confused Association Agreements that have been signed with other EU third countries, which did not include admission to the EU.

Another example of cooperation between parties on a free trade zones basis is such FTA that does not involve integration with other structures or transition to more advanced integration forms. These FTA should include, for example, the European Free Trade Association. However, practice shows that such a model can integrate itself into the next level. An example of this is the Treaty establishing the European Economic Area (EEA) between the EU, its Member States and EFTA countries, which was signed in May 1992. At its core, EEA is a market in which there are common rules for relations regulation between entrepreneurs of all participants in the transaction. In this regard, one can fully agree with Professor V. Muravyov, which calls the agreement «a global association agreement, as it creates a status for the associated countries providing for the replacement of EU membership, not anticipating, however, the participation of these countries in the Institute of European integration organizations and cooperation in foreign and domestic policy»³. Thus, the conclusion of the Agreement on the EEA created the legal basis for the European economic integration extension, which is implemented in the European Union, to the associated countries by FTA within the EEA. Thus was the first step towards the creation of a single market, which covers the EU internal market and the associated countries markets. In other words, the EU and EFTA are formally legally different international organizations, but in fact in the economic sphere EFTA countries involved in the EU internal market with the freedom of goods, labor, capital and services movement. However, this is not about the abolition of border controls and a customs union establishment.

The parties agreed on the need to establish in the framework of the FTA Joint Committee Ukraine-EFTA, whose main task will oversee the execution and performance of the Agreement, consultations to solving urgent issues of cooperation, recommendations preparation for amendments to this Agreement and other matters of trade and economic cooperation. The parties also agreed on procedures to facilitate disputes resolution through consultation and approval of the relevant Commission decisions.

The agreement on free trade between Ukraine and EFTA provides the establishment of free trade area to liberalize trade in goods, services, eliminating barriers to trade and investment (Article 1.1 of the Agreement). Because the Swiss-Liechtenstein customs union established by

¹ Шнирков О. І. Україна – Європейський Союз: економіка, політика, право: Монографія / О. І. Шнирков, В. В. Копійка, В. І. Муравйов. – К.: Видавничо-поліграфічний центр «Київський університет», 2006. – С. 110.

² Право Європейського Союзу: навч. посіб.: за заг. ред. Р. А. Петрова. – К.: Істина, 2009. – С. 230.

³ Муравйов В. І. Міжнародні угоди Європейського Союзу та *acquis communautaire* [Текст] / В. І. Муравйов // Право України. – К., 2012. – № 3/4. – С. 306.

the Agreement of 29 March 1923 (paragraph 2 of Art. 1.2) Switzerland represents the interests of Liechtenstein on issues related to the FTA with Ukraine¹.

In the area of trade, free trade area extends to the category of goods under classes 25 to 97 according to the Harmonized System of Commodity Description and Coding; also apply to processed agricultural products (products of animal and vegetable origin), marine products and fish (Art. 2.1 Agreement). Herewith annex to the Agreement is establishing a detailed description of the goods which are excluded from the free trade area (for example some chemical products), the classification of goods belonging to processed agricultural products, marine products. Therefore, the deal will not include the abolition of duties on cars, agricultural machinery, and chemical products. The agreement also provides for mutual non-use of anti-dumping measures (Article 2.4 of the Agreement).

Article 2.1 (Section 2) of the Treaty provides that the free trade area establishing instrument between the parties, is signed bilateral agreements on trade in agricultural products, which are not included in the inventory of the Agreement. Thus, together with the signed FTA agreement, Ukraine signed another three agreements (with Iceland, Norway and Switzerland) on trade in agricultural products.

The agreement provides the creation of the Joint Committee of Ukraine-EFTA (Article 8 of the Agreement), which can create additional subcommittees or working groups. The Joint Committee has the authority to oversee the implementing process of this Agreement, enforce the parties of their obligations, and resolve disputes arising from the Agreement interpretation or application. It makes decisions and recommendations based on consensus, and has the right to make changes to the annexes and protocols (Section 7. 8), although changes to the Agreement require the expression of consent by ratification, acceptance or accession in accordance with domestic constitutional requirements (Article 10.5). In other words, the Joint Committee has the right to expand or narrow the scope of the FTA.

Thus, the FTA between Ukraine and EFTA countries establish free trade, including trade in goods (industrial and agricultural products, fish and other marine products), trade in services, including investment, intellectual property, government procurement and field competition. After the entry into force of industrial products, originating in Ukraine, receive duty-free treatment market access of EFTA countries (Chapter 2 of the Agreement). In most of these products, originating in the EFTA countries and imported to Ukraine, will be set zero rate of import duty, although for some products categories will be installed in the entire transitional period of 10 years as provided in Annexes III and IV to the Agreement².

Therefore, with the establishment of a free trade area between Ukraine and EFTA countries, acting on the internal market of the European Union pursuant to the Treaty establishing the EEA, Ukraine will actually work according to the rules of the internal market in the EU.

Thus, the FTA with EFTA countries is the first step in approaching the European Union and opens new opportunities for Ukraine to harmonize legislation in order to move to a new level of cooperation with the European Union. To form an effective process of Ukraine economic integration into the European Union, it would be useful experience of the FTAs with other countries. First agreement on FTA between Ukraine and EFTA countries will provide an opportunity to adapt Ukrainian legislation to EU internal market³.

¹ Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union. – Brussels, 15 April, 2008.

² General Affairs and External Relations Council (GAERC) 18/19 June 2007. Strengthening the European Neighborhood Policy/ Presidency Progress Report. – [Електронний ресурс]. – Режим доступу: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0536:FIN:EN:DOC>.

³ European Union External Action Service. List of the EU-Ukraine Association Agenda priorities for 2011-12. – [Електронний ресурс]. – Режим доступу: http://eeas.europa.eu/ukraine/docs/2011_12_eu_ukraine_priorities_en.pdf

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