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**Deep and Comprehensive Free Trade
Agreements (DCFTA) as a tool of EU trade
policy**

Diplomová práce

Praha 2017

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Rok obhajoby: **2017**

Bibliografický záznam

ŽIGA, Matús. *Deep and Comprehensive Free Trade Agreements (DCFTA) as a tool of EU trade policy*. Praha, 2017. 79 s. Diplomová práce (Mgr.) Univerzita Karlova, Fakulta sociálních věd, Institut politologických studií. Katedra mezinárodních vztahů. Vedoucí diplomové práce PhDr. Irah Kučerová, Ph.D.

Abstrakt

Předložená diplomová práce se zabývá komplexními dohodami o volném obchodu (CFTA) a hlubokými a komplexními dohodami o volném obchodu (DCFTA) uzavřenými nebo navrženými Evropskou unií. Její cílem je identifikovat podmínky nezbytné pro zahájení jednání o DCFTA, definování oblastí, kterými se (D)CFTA zabývá a posoudit jestli má (D)CFTA nějaký dopad na postavení EU v mezinárodním prostoru. V první části diplomové práce je představen teoretický rámec potřebný pro výzkum. Koncepce měkké síly, kterou definuje Joseph Nye, je blíže rozpracována. Induktivní metoda je použita pro analýzu komplexních dohod o volném obchodu mezi EU a Kanadou, Kolumbií, Ukrajinou, Moldavskem, Gruzii a Tuniskem. Výzkum ukázal, že EU nikdy nezačala jednání o DCFTA s autoritářským režimem. Nejedná se však o jedinou podmínku pro zahájení vyjednávání DCFTA a jsou definovány čtyři další podmínky. Je demonstrován široký rozsah (D)CFTA nad rámec otázek souvisejících s tarify. DCFTA a CFTA se liší především v jejich vztahu k *acquis communautaire*. Aproximace k evropskému právu ve vybraných oblastech je povinná v rámci DCFTA. Prostřednictvím CFTA byla EU schopna prosazovat evropské standardy a mezinárodní normy a podporovat základní lidská práva. I v důsledku toho měkká síla EU skrze (D)CFTA vzrostla.

Abstract

Presented master's thesis deals with comprehensive free trade agreements (CFTA) and deep and comprehensive free trade agreements (DCFTA) concluded or proposed by the

European Union. Its objective is to identify necessary conditions for initiation of (D)CFTA negotiation, determine areas covered by (D)CFTAs and contemplate an effect of (D)CFTAs on EU's position. In the first part of master's thesis, theoretical framework needed for research is introduced. The concept of soft power as defined by Joseph Nye is presented. The inductive method is applied to scrutinize comprehensive free trade agreements between the EU and Canada, Colombia, Ukraine, Moldova, Georgia, and Tunisia, respectively. The research proved that the EU has never started DCFTA negotiation with an authoritarian regime. However, it is not a single condition for initiation of DCFTA negotiation, and four more conditions are defined. A broad scope of (D)CFTAs beyond tariff-related issues is demonstrated. DCFTA and CFTA differ about their relation to EU acquis. Approximation in selected areas is compulsory under DCFTA. Through CFTAs, the EU was able to uphold EU and international standards and promote fundamental rights. Consequently, the EU's soft power has been enhanced thanks to (D)CFTAs.

Klíčová slova

EU, obchodní politika, DCFTA, standardizace, netarifní bariéry, CETA

Keywords

EU, trade policy, DCFTA, standardization, non-tariff barriers, CETA

Rozsah práce: 151 188 znaků

Prohlášení

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3. Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 17. 5. 2017

Matůš Žiga

Poděkování

Na tomto místě bych rád poděkoval PhDr. Irah Kučerové, Ph.D. za vedení, konzultace a přínosné komentáře k mé práci. Také bych rád poděkoval Mgr. Vierě Knutelské, Ph.D. za to, že ve mně vyvolala zájem o zkoumání politik Evropské unie a vyučujícím předmětu *Researching International Politics: Qualitative Methods*, kteří mi svými poznatky velmi pomohli při výzkumu. Poděkování patří i mým rodičům, kteří mě během celého studia podporovali.

Projekt závěrečné diplomové práce

Katedra mezinárodních vztahů IPS FSV UK v Praze

Příjmení, jméno Žiga, Matúš

Studijní obor Mezinárodní vztahy (NMgr.) **Typ práce** diplomová práce

Ak. rok podání 2015/2016

Předpokládaný termín dokončení LS 2017

Název práce

Deep and Comprehensive Free Trade Agreements (DCFTA) as a tool of EU trade policy

Vedoucí práce PhDr. Irah Kučerová, PhD. **Semestr zadání** letní

Zdůvodnění výběru práce

O problematiku zmlúv o voľnom obchode sa zaujímam dlhodobo. Už počas bakalárskeho štúdia som písal seminárnu prácu o NAFTA a TTIP, počas magisterského štúdia som sa začal zaoberať dohodou s Kanadou (CETA). Neskôr som sa rozhodol zamerať na zmluvy o voľnom obchode Európskej únie vo všeobecnosti a tému som spracoval v rámci povinne voliteľného predmetu. V mojej diplomovej práci by som chcel môj záujem o danú oblasť ešte viac rozšíriť a zároveň poskytnúť verejnosti akademický text, ktorý podľa môjho názoru v súčasnej dobe chýba. Pri získavaní informácií pre potreby mojich seminárnych prác na danú tému som zistil, že do dnešného dňa nebol publikovaný žiadny odborný text s podobným zameraním ako bude mať moja diplomová práca. Väčšina textov sa zameriava na konkrétne dohody (CETA, TTIP, TPP..) a ich výhody a nevýhody alebo sa na dohody pozerá z hľadiska ich ekonomického dopadu. Ja by som sa chcel pozrieť na *podrobné a komplexné dohody o voľnom obchode* ako na jeden z nástrojov zahraničnej obchodnej politiky Európskej únie. Jedná sa o tému aktuálnu a veľmi dôležitú, pretože obchodné dohody EÚ za posledné desaťročie výrazne zmenili svoj charakter a začali sa využívať na dosahovanie nielen ekonomických záujmov, ale i presadzovanie európskych štandardov.

Předpokládaný cíl - téza, výzkumné otázky (max 1000 znaků):

Cieľom mojej práce je dokázať alebo vyvrátiť tézu – „*Európska únia využíva DCFTAs na presadzovanie európskych štandardov vo svete a upevniť tak svoju pozíciu soft power*“. Vo svojej práci sa pokúsím nájsť odpoveď na otázky:

- Sú klasické dohody o voľnom obchode postačujúce v dnešnej dobe? Ak nie, ktoré oblasti v súčasnosti dohody upravujú a v minulosti to nebolo zvykom? Prečo dochádza k takémuto posunu, a čo tým krajiny sledujú?
- Slúžia dohody „iba“ na presadzovanie obchodných záujmov. A predovšetkým – dajú sa tieto dohody účinne využívať ako nástroj zahraničnej politiky? Môže si vďaka nim Európska únia posilniť svoju pozíciu soft power vo svete? Ako EÚ využíva dohody

na presadzovanie európskych štandardov i mimo Európu? Aké výhody plynú pre EÚ z tejto aktivity?

- Ako sa pozerá na DCFTAs WTO, a aký dopad majú dohody na liberalizáciu medzinárodného obchodu?

Metodologie práce (max 1500 znakov):

V mojej práci budem využívať metódu komparácie a multiple-case study. Pri spracovávaní mojej práce budem uplatňovať liberálny prístup v medzinárodných vzťahoch. Čo sa týka teoretického základu, budem vychádzať z konceptu soft power definovaného Josephem Nyem v 90. rokoch. V práci budú v rámci empiricko-analytického prístupu využívané nasledovné metódy slúžiace k potvrdeniu platnosti tézy. Hlavnou metódou je analýza primárnych a sekundárnych zdrojov zaoberajúcich sa danou problematikou. Z primárnych zdrojov sú to predovšetkým texty dohôd, koncepcia obchodnej politiky EÚ, oficiálne brožúry a vyhlásenia politických predstaviteľov. Sekundárne zdroje predstavujú monografie, zborníky príspevkov, články v periodikách a na internete, predovšetkým stránkach Európskej únie.

Základní charakteristika tématu (max 1500 znakov):

V najbližších 10 až 15 rokoch bude 90% svetového dopytu generovaného mimo Európu. To je jedným z hlavných dôvodov, prečo je pre Európsku úniu jednou z kľúčových priorít zabezpečiť svoj ekonomický rast tým, že vytvorí v zahraničí obchodné príležitosti pre európske spoločnosti. Jedným zo spôsobov, ako je to možné dosiahnuť, je prostredníctvom vyjednávania s kľúčovými partnermi. Keďže tarify sú v súčasnosti vo svete veľmi nízke, bariéry obchodu ležia za colnými hranicami. Európska únia sa preto zameriava na uzatváranie Podrobných a komplexných obchodných dohôd, ktoré okrem odstraňovania cieľ smerujú aj k otváraniu trhu so službami, investíciami, verejným obstarávaním a zahŕňajú aj otázky regulácie. Európska únia sa vďaka týmto dohodám snaží o otváranie nových trhov, zvyšovanie investičných príležitostí a vytváranie predvídateľného podnikateľského prostredia s vysokými a podobnými štandardmi.

Předpokládaná struktura práce (max 1400 znakov):

- Koncept soft power
- Zahraničná obchodná politika
- (DC)FTA ako nástroj zahraničnej politiky
- FTA vs DCFTA
- Spoločné znaky DCFTA
- DCFTA z pohľadu WTO

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List of abbreviations

CETA – Comprehensive Economic and Trade Agreement

CFTA – Comprehensive Free Trade Agreement

CU – Customs Union

DCFTA – Deep and Comprehensive Free Trade Agreement/Area

(D)CFTA – (Deep and) Comprehensive Free Trade Agreement

FTA – Free Trade Agreement/Free Trade Area

GATS – General Agreement on Trade in Services

GATT – General Agreement on Tariffs and Trade

GI – Geographical Indication

IPR – Intellectual Property Rights

ISDS – Investor-State Dispute Settlement

PCA – Partnership and Cooperation Agreement

SPS – Sanitary and Phytosanitary

TBT – Technical Barriers to Trade

TRIPS – Agreement on Trade-Related Aspects of Intellectual Property Rights

WIPO – World Intellectual Property Organization

WTO – World Trade Organization

Introduction

In the next 5 to 10 years, 90% of world demand will originate outside Europe.¹ This is one of the main reasons why it is one of the top priorities for the European Union to secure its economic growth by creating business opportunities for European companies abroad. One way to achieve it is by negotiating with the major partners. Since tariffs are currently very low in the world, barriers to trade lie beyond the customs boundaries. Therefore, The European Union has focused on the conclusion of comprehensive free trade agreements which, in addition to tariff elimination, are also aimed at opening up the market for services, public procurement, increasing investment opportunities, and creating a predictable business environment with high and similar standards.

I have been interested in the issue of free trade agreements for a long time, and I wrote a seminar works on NAFTA and TTIP during the bachelor study. Two years ago I became interested in the Comprehensive Economic and Trade Agreement (CETA). Later on, I decided to focus on the EU's Free Trade Agreements in general, and I covered this topic in an elective course. In my master's thesis, I would like to expand my interest in this area even more while providing the public with an academic text which, in my view, is currently lacking. While I was looking for sources needed for my seminar papers on this topic, I found that most of the papers are focused on specific agreements (e.g. CETA, DCFTA with Ukraine) and their advantages and disadvantages, or they were looking at the economic impact of agreements. I would like to cover comprehensive free trade agreements as one of the instruments of the European Union's trade policy. I believe it is a topical and important issue, as EU trade agreements have changed dramatically over the last decade and have begun to be used not only to achieve economic interests but also to promote international and European standards.

My master's thesis deals with comprehensive free trade agreements (CFTA) and deep and comprehensive free trade agreements concluded or proposed by the European Union. Its objective is to identify necessary conditions for initiation of (D)CFTA negotiation, determine areas covered by (D)CFTAs and contemplate an effect of (D)CFTAs on EU's position. In

¹ EUROPEAN COMMISSION. *The EU's Bilateral Trade and Investment Agreements – Where Are We?*, http://europa.eu/rapid/press-release_MEMO-13-1080_en.htm (accessed on 14/05/2017).

my research, I am going to apply a neoliberal approach to international relations and the concept of soft power, which are the most appropriate for explaining the phenomenon.

Taking to the consideration thesis' topic, defined objectives, and theoretical approach I propose three hypotheses which I am going to prove

- 1) **“The EU negotiates DCFTAs only with countries whose democratic qualifications are satisfactory.”;**
- 2) **“(D)CFTAs negotiated by the EU cover areas well beyond tariff issues.”;**
- 3) **“(D)CFTAs enhance soft power of the EU.”;**

and three research questions which I am going to answer in my thesis

- 1) *Under what conditions the does EU initiate negotiation of (D)CFTA?*
- 2) *What areas do (D)CFTAs cover?*
- 3) *Do (D)CFTAs affect EU's position in the international system?*

In the thesis six (D)CFTAs will be examined and compared – Comprehensive and Economic Trade Agreement with Canada (CETA) as the most ambitious FTA ever concluded², Comprehensive Free Trade Agreement with Colombia as one of the first and at the same time very controversial CFTA signed by the EU³, DCFTA with Ukraine, DCFTA with Georgia, DCFTA with Moldova and proposed DCFTA with Tunisia as the first DCFTA to be negotiated with non-European country.

Literature review

The concept of soft power was coined on the example of the United States, but since then it has been used by scholars also to examine a soft power of the EU. So far, the most extensive debate on EU's soft power was conducted at the conference *The EU as s Model of Soft Power in the Eastern Neighborhood*⁴ in Iași. However, they mostly focused on the application of soft power by the EU and nobody covered if and how EU's soft power could be enhanced.

² PELKMANS, Jacques et al. *Tomorrow's Silk Road: Assessing an EU-China Free Trade Agreement*, Brussels: CEPS, 2016, 78.

³ EUROPEAN PARLIAMENT. *Labor Rights in Colombia in the Perspective of a Free Trade Agreement with the EU*, [http://www.europarl.europa.eu/thinktank/en/document.html?reference=LDM_BRI\(2012\)120312](http://www.europarl.europa.eu/thinktank/en/document.html?reference=LDM_BRI(2012)120312) (accessed on 14/05/2017).

⁴ FRUNZĂ, Ramona et al. *The EU as s Model of Soft Power in the Eastern Neighborhood*, Iași: 2013.

Deep and comprehensive free trade agreement (DCFTA) is a relatively new phenomenon in international relations, and so far just a few authors have scrutinized it. Wolfgang Koeth approached DCFTA in his paper *The 'Deep and Comprehensive Free Trade Agreements': an Appropriate Response by the EU to the Challenges in its Neighborhood?*⁵ as a specific instrument of the EPN reacting to the lack of interest from the majority of partner countries to carry out the necessary reforms on the one hand, and growing assertiveness of Russia on the other.

When the impact of DCFTA was discussed, scholars usually focused on a single country and/or sector as it is in the case of *Ukrainian Sanitary and Phytosanitary Laws Approximation to EE Acquis under Association Agreement including Agreement on Deep and Comprehensive Free Trade Area (DCFTA)*⁶ by Taras Kepyck and *Research of DCFTA Impact on Georgian Small-Holder Farmers*⁷ by Economic Policy Research Center. If they covered more than one DCFTA simultaneously, they assessed them using economic models as in *Trade Openness and Investment in North Africa: A CGE Application to Deep and Comprehensive Free Trade Areas (DCFTAs) between the EU and respectively Egypt, Morocco, and Tunisia*⁸ by Pierre Boulanger et al.

Finally, there is an article by Panagiota Manoli⁹, who claimed that Common Commercial Policy is the strongest soft power tool of the EU's foreign policy and as the first presented political economy aspects of DCFTAs. By now, there has been no research paper aimed either at the analysis of all DCFTAs, their commonalities, conditions necessary for the initiation of negotiations or comparison with CFTAs.

⁵ KOETH, Wolfgang. *The 'Deep and Comprehensive Free Trade Agreements': an Appropriate Response by the EU to the Challenges in its Neighborhood?*, http://www.eipa.eu/files/repository/eipascope/20141120085243_EIPASCOPE_2014_WKO.pdf (accessed on 14/05/2017).

⁶ KEPYCH, Taras. "Ukrainian Sanitary and Phytosanitary Laws Approximation to EE Acquis under Association Agreement including Agreement on Deep and Comprehensive Free Trade Area (DCFTA)", *EU Agrarian Law* Vol. III, No. 2, 2014, 79-89.

⁷ EPRC. *Research of DCFTA Impact on Georgian Small-Holder Farmers*, http://www.eprc.ge/admin/editor/uploads/files/ENG_Oxfam.pdf (accessed on 14/05/2017).

⁸ BOULANGER, Pierre et al. *Trade Openness and Investment in North Africa: A CGE Application to Deep and Comprehensive Free Trade Areas (DCFTAs) between the EU and respectively Egypt, Morocco and Tunisia*, http://ageconsearch.umn.edu/bitstream/152361/2/B.2.3_presentation_Boulanger_Seville2013.pdf (accessed on 10/05/2017).

⁹ MANOLI, Panagiota. "Political Economy Aspects of Deep and Comprehensive Free Trade Agreements", *Eastern Journal of European Studies* Vol. 4, Iss. 2, 2013, 51-73.

Structure

In the first part of this master's thesis, I am going to introduce theoretical concepts of soft power, EU's trade policy, and DCFTA. Theoretical part will be divided into three chapters. The first one will deal with the term soft power, its definition, and distinction from hard power. In the following chapter, I am going to focus on the EU's position as an actor in trade negotiations and evolution of EU's trade policy. In the last chapter, I am going to present types of agreement utilized by the EU and introduce the concept of DCFTA. The six selected comprehensive agreements that serve as case studies will be examined in the second part of the thesis. The trade background will be presented, followed by an analysis of selected (D)CFTA. If I find certain covered area to be more relevant for my thesis, I will elaborate on that. In the third part, I will perform the synthesis of findings observed in the second part. I will also provide the answers to research questions and outcomes of research in the last part.

Methodology

In order to prove my first hypothesis – **“The EU negotiates DCFTAs only with countries whose democratic qualifications are satisfactory”** – I am going to use a comparative method defined by John Stuart Mill¹⁰ to find out causes of the political event, in my case it is a decision to initiate negotiation of DCFTA. Firstly I will identify indicators which are relevant for my research and are in compliance with the neoliberal theoretical approach. Then, I am going to apply a method of agreement to find out a necessary condition for initiation of negotiation without which a DCFTA negotiation would never be initiated. And then, I am going to utilize a method of difference, to discover if certain conditions are sufficient and in their presence, the initiation of negotiation will always happen.

In order to prove my second hypothesis – **“(D)CFTAs negotiated by the EU cover areas well beyond tariff issues”** – I am going to apply an inductive method to analyze a phenomenon of Deep and Comprehensive Free Trade Agreements (DCFTA). Induction or inductive reasoning is used as a mode of inquiry in which a researcher moves from the particular to the general. In other words, general principles are derived from a set of specific observations based on pattern representing a certain degree of order among all the examined cases. Thanks to it, a researcher is able to find a pattern, but it is not able to explain what the

¹⁰ CLARK, William et al. *Principles of Comparative Politics*, London: 2012, 39-40.

reasons for its existence are or why this pattern exists.¹¹ Donald Williams points out that there is another drawback of induction – that even if we observed certain events in the past always at the same time and through induction discovered their pattern, we are not able to predict that these events will occur in the future.¹² In the second phase, I am going to conduct synthesis which is a counterpart to analysis. It is a mostly inductive process of seeking and linking of relevant outcomes from the analytical phase to create a coherent image.¹³ Each of selected agreements will be analyzed as a descriptive case study to find out what areas are covered by the examined Agreements and what they have in common.

In order to prove my third hypothesis – “**(D)CFTAs enhance soft power of the EU**” – I am going to use a comparative method once again to find whether EU’s position as a soft power is boosted thanks to the (D)CFTAs. Firstly I will identify indicators which are relevant for my research and are in compliance with the concept of soft power. Then, I am going to apply a method of agreement to find out if conditions necessary for the enhancement of soft power are met through (D)CFTAs.

¹¹ BABBIE, Earl. *The Practice of Social Research*, Belmont: 2007, 22.

¹² WILLIAMS, Donald. “Induction and the Future”, *Mind* Vol. 57, No. 226, 1948, 226.

¹³ RAGIN, Charles. *Constructing Social Research: The Unity and Diversity of Method*, London: Pine Forge Press, 1994, 188.

1. The concept of soft power

Power is defined as the ability to influence the behavior of others to earn desired outcomes. There are several means how to affect others' behavior. We can coerce somebody using threats or convince them by side-payments, or on the other hand, we can use our attraction to make them want what we want. In this indirect way, the goals can be achieved even if we have no tangible threats or payoffs at our disposal. If we set a right agenda, other countries are likely to follow us. Their admiration for our values or level of prosperity persuades them to emulate our example. Consequently, states promulgate more similar preferences and their goals can be more easily achieved. Therefore, if we are able to change preferences of other countries, we will in long term gain more than by using coercive methods. However, soft power and influence are not the same, since the influence can be also earned by coercive methods of hard power. Soft power is not only about persuasion using arguments, but it composes an important part of it. In order to utilize a full potential of noncoercive methods, we need to be able to attract others. If we are successful in doing so, we can more simply get acquiescence. Soft power uses different means to stimulate cooperation among countries. Attraction to shared values makes countries keen to contribute in order to achieve and sustain these values. Resources necessary for soft power are often linked with the cooperative end of the spectrum of conduct. In the area of international politics, resources of soft power arise from the practices and policies set by a country and in the way how it conducts its relations with other countries. The high presence of a country at negotiating tables enhance its usefulness, relevance and value for the members of international community.¹⁴

The concept of soft power was firstly developed by Joseph Nye in book *Bound to Lead* in 1990. In the following years, this term appeared in the public discourse and since then has been used not only by academic and editorial writers all around the world, but also by political leaders and representatives of powerful nations, e.g. U.S. Secretary of State and the British Minister of Foreign Affairs. Back then, Nye defined soft power as an ability of a state to achieve what it desires using its attractions rather than coercive methods or side payments. This power is rooted in the attractiveness of a country's policies, political thoughts, and the most important, culture. When practices and policies of a particular country are understood

¹⁴ NYE, Joseph. *Soft Power: The Means to Success in World Politics*, New York: Public Affairs, 2004, 1-3.

by other countries as positive and legitimate, its soft power is boosted. Soft power is considered to be more cost-efficient than hard power since when others do what you want because they admire you, you do not have to spend as many resources on sticks and carrots to persuade them to follow your preferences. Power resources are not always sufficient to provide desired outcomes. One of the best examples is that the United States was not able to win the Vietnam War, despite the fact that it has more power resources than Vietnam.¹⁵

Nye claims that institutions are able to enhance soft power of a country. For example, the United Kingdom and the United States in 19th, respectively 20th century were quite successful in promoting their values via the establishment of a structure of international institutions and rules which were consistent with nature of economic systems of the United States and the United Kingdom. The UK contributed to the worldwide spread of free trade and the gold standard and the USA stood at the birth of the United Nations, the World Trade Organization, and International Monetary Fund. It proves that if country succeeds in making its culture and ideology attractive for other countries, they will readily follow it. If a country is able to create international rules based on its interests and preferences and then abide these rules, it makes them more acceptable for other countries. When other countries channel their activities through these established rules and institutions, the abovementioned country does not need to use as many carrots and sticks which cost it more resources and these resources can be spent more efficiently. Nye claims that the soft power of a country is based on three resources – culture, political values, and foreign policies.¹⁶

Nowadays, the term soft power is widely used in academia and foreign policy discourse despite disputes over its meaning and utility. Markos Kounalakis sees power in international relations as spectral – hard power on one hand and soft power on the other. Sometimes, soft power is understood as a form of meta power. Because of that, neoliberal and constructivist paradigms are utilized for analyzing the concept of soft power.¹⁷ Kroenig, McAdam, and Weber agree with Nye’s interpretation of soft power and further define it as a coordinated attempt by the state to persuade other countries to do what would they otherwise have not

¹⁵ Ibid., XI.

¹⁶ Ibid., 10-11.

¹⁷ KOUNALAKIS, Markos. Ambassador Andras Siminyi. “The Hard Truth About Soft Power”, *CPD Perspectives on Public Diplomacy* No. 5, 2011, 14.

been willing to do via instruments which do not directly affect counterpart's material resources. In other words, countries use non-material means to accomplish specific foreign policy goals.¹⁸ Edward Lock criticizes the notion of soft power for its ambiguity and conceptual problems. Critique from the perspective of realism is provided by Christopher Layne, who argues that there is almost no evidence that states make decisions based on their attraction to other states, and not solely on their national interests.¹⁹

Today, the United States is the only superpower in the sense of military resources and its capabilities to intervene around the world. However, in the area of interstate economic relations, there is no single superpower, but a multipolar distribution of power. And that is the breaking point when the European Union becomes relevant as a power. In order to get desired outcomes on financial regulation, trade or antitrust issues the United States cannot act alone without the agreement and approval of the European Union.²⁰ The EU members have quite often used their soft power to gain their goals in multilateral institutions. The EU soft power has been few times used to raise the price of unilateral actions of the United States.²¹

There is not a single European country which could compete with the United States in its military resources or size, but when the European Union is considered as a whole, the size of its market and population is higher. According to Khanna, the European Union can be seen as the most successful and popular empire in human history because it spread its influence not by domination, but discipline since it has no burden as have its member states.²² There is a broad consensus among scholars that the European Union is inter alia a normative actor which soft power dominates over hard one and the EU does not aim to be a military power.²³ Despite the fact, that the European Union is a unique actor in international relations, it posses

¹⁸ KROENIG, Matthew et al. "Taking Soft Power Seriously", *Comparative Strategy* Vol. 29, No. 5, 2010, 413.

¹⁹ LOCK, Edward. "Soft power and strategy: Developing a 'strategic' conception of power", in *Theoretical, historical, and contemporary perspectives*, Routledge: 2009, 3.

²⁰ NYE, Joseph. *Soft Power*, 4.

²¹ *Ibid.*, 77-82.

²² LABEŞ, Sebastian-Andrei. "Rise of BRICS: Opportunity or Threat for The European Union", in *The EU as a Model of Soft Power in The Eastern Neighborhood*, 2013, 117.

²³ SCHMIDT, Siegmur. "Soft Power or Neo-colonialist Power? – African Perceptions of the EU", *Review of European Studies* Vol. 4, No. 3, 100.

similar soft power resources as states.²⁴ Moreover, the European unification process constitutes for a great deal of soft power. For instance, in the 90s Eastern European countries saw a great opportunity in joining the European Communities. Their admiration for the EC made them modify their domestic laws and policies to be compatible with the Community standards. When Ukrainian president decided not to sign an association agreement with the EU despite the public approval and support for this agreement, the desire to join the European Union even led to the revolution in Ukraine in winter 2013. The EU leaders are aware of EU's soft power card and have been willing to use it in order to gain preferred policy goals, e.g. over the USA during Iraq Invasion in 2002 and over Turkey during migratory influx in 2016. All around the globe, the European Union is seen as a solver of world problems via trade, diplomacy, and development aid. A balanced approach of the EU on the regulation of the market and social safety nets serve as a role model for more developing countries than the American one, despite its successful economy and better ability to create jobs. The EU increases its soft power not only because of its attractive domestic policies and culture, but also thanks to its foreign policy which often leads to global development. The credibility of the EU derives from its approach to international law, climate change, and human rights issues. In addition, the EU member states provide 70 percent of development aid to developing countries what makes the EU more attractive and its policies acceptable in those countries. The European Union is quite achieved in wielding its influence abroad thanks to trade and aid. The utilization of multilateral approach in international relations results in the attractiveness of EU policies in other countries. Thanks to its potential and capabilities the European Union is skillful in using soft power in the areas where hard power had its place in the past, e.g. in Ukraine via the European Neighborhood Policy.²⁵

Main strengths of the European Union lie in its non-military areas – economy, culture, norms, and values. According to Nye, soft power should not be understood as a normative concept, but rather as a description, since not only morally correct values might be attractive. Sometimes it is rather difficult to distinguish between soft and hard power since most of the

²⁴ HÎNCU, Roxana. "The Soft Power Sources of the European Union: Challenges and Opportunities", in *The EU as a Model of Soft Power in The Eastern Neighborhood*, 2013, 249.

²⁵ERDEMİR, Halil. Buğrahan Nuri Erdemir. "The EU's Soft Attraction of Eastern Neighbors and Its International Consequences as in the Example of Ukraine" in *The EU as a Model of Soft Power in The Eastern Neighborhood*, 2013, 237.

resources can form a basis for both kinds of power.²⁶ According to Laïdi, the EU promotes norms on the world system with the aim to cope with two issues. Firstly, EU wants to uphold European norms to avoid a comparative advantage of new emerging powers and persuasive power of the USA. Secondly, norms serve the EU as a compensation for its lack of hard power.²⁷

²⁶ NYE, Joseph. *Future of Power*, New York: Public Affairs, 2011, 81.

²⁷ LAÏDI, Zaki. "European preferences and their reception", *EU Foreign Policy in a Globalized World*, 2008, 10.

2. Trade policy of the EU

Trade relations of the European Union with non-EU countries are conducted through EU (foreign) trade policy. The competencies of the European Union in the area of negotiating and concluding international agreements are laid out in the Treaty on Functioning of the European Union (TFEU) in Articles 216 – 219. According to TFEU, common external trade policy is in exclusive competence of the EU.²⁸ EU Trade and (Investment) Strategy presents the major objectives of trade policy of the EU – creation of a global system of fair and open trade, opening up markets with strategic partner countries, enforcing same rules for all actors, guaranteeing that trade helps secure sustainable development and deepening of cooperation in the area of regulation. Trade and investment policy of the EU is developed and implemented by the Directorate-General for Trade of the European Commission. The overall direction of trade policy is to play a major role in keeping markets open all around the globe and revitalizing Europe's economy after the 2008 economic crisis.²⁹

Since the establishment of the European Community (external) trade policy was seen as the most important and efficient way of achieving foreign policy goals of the EC. External trade policy became a competence of the EU after the Treaty of Rome which entered into force in 1959. The Common Commercial Policy (CCP) laid out three major principles of external trade – common external tariff, common trade agreements with states which were not a part of the European Economic Community; and the same application of trade instruments by all member states. Uniform application of common principles did not prevent member states from signing investment treaties with other states. Since only some powers were delegated to the EC level, for so-called mixed agreements, ratification by the European Parliament and the Council was not sufficient, and ratification by national parliaments was required, too. If one of the Member States was interested in a trade agreement with a non-member state, it had to channel it through the European Commission, which was responsible for negotiation of an agreement. If a Member State was not satisfied with the proposed agreement, it could veto either in the Council or the national parliament. If it did so, the Commission negotiated

²⁸ EUROPEAN UNION. *Consolidated Version of The Treaty on The Functioning of the European Union*, 2012., 98-100.

²⁹ EUROPEAN COMMISSION. *Trade – Policy*, <http://ec.europa.eu/trade/policy/> (accessed on 27/03/2017).

until all Member States were satisfied. Without that, a negotiated agreement could not be ratified.³⁰

The European Commission started to negotiate on behalf of the European Community during the Kennedy Round of the GATT. The EC became recognized as an actor different from its member states. Even, the EC replaced member states during the quadrilateral negotiations in GATT during the 1980s. However, the situation was different in the Organization for Economic Cooperation and Development, where the EC lacked recognition and acted only in the role of observer. Nowadays, the European Union participates in several groups discussing trade. In this area, the EU is usually represented by European Commissioner for trade. The EU is a founding member of the World Trade Organization and thanks to that it has legal personality in the area of trade.³¹

Thanks to the increasing authority of the European Union in the area of trade and trade-related issues, more countries recognized it as a sole negotiator on behalf of the member states, whose competences in this area decreased. Article 113 of the Treaty of Rome established an exclusive competence of the European Economic Community for the common commercial policy. Since the international trade has deepened since then, the member states have pragmatically decided to widen the Commission competencies in order to take full advantage of their collective influence. The most of the EU's negotiating partners recognized its authority in new areas, such as investment issues, intellectual property rights, and services. Therefore, the EU was recognized in the field of international trade and trade-related issues both de iure and de facto. Based on that, the EU was chosen as the sole negotiator on behalf of the member states in multilateral trade negotiations.³²

After we came to the conclusion that the European Union is an important and relevant actor in trade negotiations, we need address whether the EU is capable of usage of its power and influence. Its capability is mainly dependent on its degree of autonomy as agent vis-à-vis its principals – member states. Actorness of the EU is partially constrained by the limited

³⁰ ILKO, Ihor. “The European Union’s External Trade Policy After the Treaty of Lisbon: A Neo-Gramscian Perspective“, *Codrul Cosminului* Vol. XXI, No. 1, 2015, 64-65.

³¹ LEAL-ARCAS, Rafael. “The European Union’s Trade and Investment Policy after the Treaty of Lisbon”, *The Journal of World Investment & Trade* Vol. 11, Iss. 4, 2010, 469.

³² Ibid.

autonomy of the Commission to negotiate. However, this limitation is not distinctive only for the EU, but in greater or lesser degree also for all trade actors as it was proven during Doha Round negotiations. Early after the establishment of the European Economic Community, its trade policy was a result of finding compromises between protectionist and liberal interests of member states across individual sectors. Widening *acquis communautaire* since the 1980s has caused that nowadays trade policy positions are more based on common EU policies. It is not only in the area of competition and government procurement but also, more significantly in the area of services, subsidies and technical barriers to trade, where the *acquis* has gradually replaced national policies of member states since the 1960s.³³

The Treaty of Lisbon brought changes to the operation of the European Union and among other things extended the exclusive competences of the EU to new areas of policy and modified the mechanism of decision-making. Under updated Common Commercial Policy, ratification by national parliaments is no longer needed for trade agreements only for mixed agreement. Decreased influence of the EU Member States and increased competencies of the Commission and other EU institutions in the area of trade agreements were supposed to make the EU more competitive in a global market.³⁴

The European Union is an important actor of world trade, particularly thanks to its substantial market power which increased with the deepening and widening of the EU internal market in the 1980s and early 1990s. Because of that, the EU was rather successful in the shaping of the international trade regime for its benefit. However, at the beginning of new millennium EU's relative market power slightly decreased because of growing importance of emerging markets with higher tariffs. Bearing in mind its diminishing leverage, the EU initiated discussion with its trading partners aimed at adopting standards and rules dealing with regulatory and non-tariff barriers. Before and during the Doha Round of WTO negotiations, the EU tried to increase its negotiating leverage in the area of agriculture in order to push for progress in issues introduced in Singapore agenda e.g. trade facilitation, investment, completion and government procurement. Nevertheless, the EU was not able to shape multilateral trade agenda as it wished because of the opposition from the United States and

³³ LEAL-ARCAS, Rafael. "The European Union's Trade and Investment Policy after the Treaty of Lisbon", 470-471.

³⁴ ILKO, Ihor. "The European Union's External Trade Policy After the Treaty of Lisbon", 65-66.

emerging markets. According to Meunier, in the 1970s the European Community was effective in defending its interests, particularly in agricultural trade negotiations. The evidence also shows that the EC also effectively pursued its offensive interests during Uruguay Round in government procurement, services, and other areas. In the 2000s, the EC was not successful in achieving goals of its comprehensive multilateral agenda not because of lack of the effectiveness, but ineffective negotiating and the opposition from emerging markets. Therefore in 2006 after not-so-successful negotiations in the multilateral arena of WTO, the EU shifted its focus on the use of bilateral free trade negotiations.³⁵

In the first years of EC trade policy, its scope was aimed at the tariff preferences and the common agricultural policy. More shared norms and standards have been codified in the *acquis* since the implementation of the Single Market. Despite the fact that *acquis* has still not been completed, it provides an extensive basis for common EU external policies in the area of trade and trade-related issues. Furthermore, the European Union has served as a model for regional integration in Latin America, Asia, and Africa. A distinctive European approach has been characteristic by the achieving economic benefits and at the same time defending shared social and environmental norms. Therefore, in the area of trade policy, the EU enjoys shared norms and standards.³⁶

³⁵ LEAL-ARCAS, Rafael. "The European Union's Trade and Investment Policy after the Treaty of Lisbon", 467-468.

³⁶ *Ibid.*, 472-473.

3. EU's trade agreements

Article XXIV of the General Agreement on Tariffs and Trade (GATT) allows regions to negotiate and conclude agreements resulting in the creation of free trade areas, and specify the conditions which need to be met in order to be in compliance with WTO rules. Among other things, the agreement shall lead to facilitation of trade, no new barriers to trade shall arise, and WTO needs to be notified.³⁷

The trade policy of the EU has changed depending circumstances and time. Trade and economic agreements of the EU moved from the Customs Unions to the Free Trade Agreements. In addition to domestic issues, such as low economic growth rates in the EU and economic crisis of 2008, this change was also affected by external factors. The global economy has moved to the Far East and CUs with regional partners would no longer be able to provide desired outcomes. Moreover, European Commissioner for Trade, Pascal Lamy who was a proponent of the CUs was replaced by Peter Mandelson who favored more active policy and saw an opportunity in FTAs.³⁸ As James Lake proved in his study, FTAs are more flexible in comparison with CUs since members of FTA are allowed to establish their subsequent agreements whereas CU members have to jointly engage in potential agreements due to common external tariffs.³⁹

According to the DG for Trade, in its trade relations with third countries, the EU recognizes and utilizes three major types of agreement:

- 1) *Customs unions* wherein customs duties are eliminated and common tariffs for foreign importers are established;
- 2) *Economic Partnership Agreements, Association Agreements (AA), Stabilization Agreements (SA) and (Deep and Comprehensive) Free Trade Agreements (DCFTA)* which aim at removing and reduce customs tariffs, but do not establish common tariffs for foreign importers; and

³⁷ WTO. *The General Agreement on Tariffs and Trade (GATT 1947)*, https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXIV (accessed on 28/03/2017).

³⁸ İNCEKARA, Ahmet. Ustaoglu, M. "European Union's Multilateralism on Trade Policies, Custom Unions and Free Trade Agreements; Comparative SWOT Analyses of Turkey and South Korea's Automotive Industries", *Procedia – Social and Behavioral Sciences* Vol. 58, 2012, 466.

³⁹ LAKE, James. *Why don't more countries form Customs Unions instead of Free Trade Agreements? The role of flexibility*, Dallas: 2016, 27.

3) *Partnership and Cooperation Agreements* which provide a general framework for bilateral trade relations, although they do not change customs tariffs.

Free trade agreement (FTA) is one of the most frequently used tools of trade policy. FTAs are negotiated and concluded between countries with a clear intention for liberalization of global trade and substantial elimination of standing discriminatory measures and/or preventing new discriminatory measures. Unlike the United States of America which negotiates all its FTAs using NAFTA as a model template, the scope of EU agreements varies significantly from one case to another and is tailor-made in pursuance of partner's level of development.⁴⁰ Despite the fact, that each of signed EU free trade agreement is unique, there is evident gradual development since the Common Commercial Policy was established. Currently negotiated agreements are wider and deeper than were agreements concluded in the past. The areas covered by the previous agreements are still included in newly negotiated agreements, though they are approached more comprehensively, and their reaching impact is expected to be higher. In the first FTA there were no provisions on services, but over time they became a common component of agreements, nowadays they liberalize services in more than hundred sectors. In addition to more comprehensive provisions, recent FTAs introduced more efficient tools for implementation and enforcement. A number of areas covered by new agreements rose significantly. From liberalization of trade in goods at the beginning to liberalization in trade in services, and capital in later stages. Nowadays, it is quite common that they also deal with issues which are not directly linked to trade, e.g. intellectual property rights, government procurement, environment, etc. Martin Katunar, Miheal Maljak and Stefan Martinic claim that free trade agreements gradually “...became a major political weapon with great social, environmental and cultural consequences.”⁴¹

Deep and Comprehensive Free Trade Agreement (DCFTA) is a relatively new concept applied in the trade policy of the EU. The term deep free trade area firstly appeared in the 1990s during the Barcelona Process when the EU began to negotiate trade agreements with non-EU Mediterranean countries. Since then, it has gradually become a part of the European

⁴⁰ WOOLCOCK, Stephen. “European Union policy towards Free Trade Agreements”, *ECIPE Working Paper* No. 3, 2007, 3.

⁴¹ KATUNAR, Martin et al. “The Evolution of the EU’s Foreign Trade Policy”, *Pravnik* Vol. 47, Iss. 2, 2014, 142.

Neighborhood Policy (ENP). When the EU decides whether to initiate traditional FTAs or advanced DCFTAs with a third country, its interest goes beyond economic incentives. The EU is only interested in DCFTAs with countries, whose democratic qualifications are satisfactory. That is the main reason, why there are currently no negotiations on a comprehensive trade agreement with Belarus and Azerbaijan.⁴²

Besides common objectives of trade agreements, such as opening new markets for goods and services, the EU announced more ambitious goals – set common rules on technical and sanitary standards and support sustainable development.⁴³ DCFTAs go beyond reducing and eliminating customs tariffs since they also deal with non-tariffs of trade (NTBs), liberalization of trade in services, and extensive harmonization and mutual recognition of regulations. For instance, DCFTAs negotiated by the EU also cover sanitary and phytosanitary (SPS) requirements. In the course of negotiating DCFTAs, the EU has taken advantage of the experience gained during the building of the Single Market in 1990s.⁴⁴ On the one hand, it is apparent that these agreements offer many benefits to EU's partners, yet the contents and implementation of DCFTAs are quite controversial. These agreements have been seen as a tool for aligning legislation of partner countries with the EU legislation by imposing European norms and standards.⁴⁵

Nowadays, the European Union has trade agreements with 138 countries, what is the highest number of preferential trade agreements out of all WTO members. So far, the EU has established customs unions with Andorra, San Marino, and Turkey and signed FTAs with following European countries: Faroe Islands, Iceland, Norway and Switzerland and DCFTA with Ukraine. The EU also concluded Association Agreements with nine Mediterranean countries – Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Syria, and Tunisia. In addition, the EU established cooperation in a trade with other countries, e.g. Chile, Colombia, Ecuador, Mexico, Peru and South Korea, etc. The most comprehensive

⁴² MANOLI, Panagiota. "Political Economy Aspects of Deep and Comprehensive Free Trade Agreements, *Eastern Journal of European Studies* Vol. 4, Iss. 2, 2013, 66.

⁴³ EUROPEAN COMMISSION. *Trade – Policy*, <http://ec.europa.eu/trade/policy/> (accessed on 27/03/2017).

⁴⁴ DABROWSKI, M. Taran, S. "The Free Trade Agreement between the EU and Ukraine: Conceptual Background, Economic Context and Potential Impact", *CASE Network Studies & Analysis* No. 437, 2012, 6-7.

⁴⁵ RAU, Marie-Luise. "Conquering the EU market with new comprehensive trade agreements – Simulating DCFTAs between the EU and neighbor countries", *Agricultural Economics* Iss. 8, 2014, 2.

economic and trade agreement was concluded in 2016 with Canada. FTAs with Singapore and Vietnam are finalized but not yet applied.⁴⁶

By 2013, the EU had concluded negotiations on establishing DCFTAs with Armenia, Georgia, Moldova, and Ukraine. However, in 2013 Armenia decided not to ratify the agreement and rather joined the customs union with Russia. Boguslaw Plonka argues that agreements with the East European countries are one of the most important for the EU.⁴⁷ Based on conclusions of Ludmila Borta's article, it is possible to claim that the European Union perceives bilateral trade agreements with its neighboring countries as a first step that needed to be taken in order to be better prepared for next round of multilateral negotiations under the WTO. Furthermore, through bilateral treaties, the EU is trying to address issues that are yet not ready for multilateral discussions.⁴⁸

⁴⁶ EUROPEAN COMMISSION. *Trade – Agreements*, <http://ec.europa.eu/trade/policy/countries-and-regions/agreements/> (accessed on 27/03/2017).

⁴⁷ PLONKA, Boguslaw. *The EU-Ukraine Agreement on Deep and Comprehensive Free Trade Area (DCFTA) as an example of a new generation of preferential agreements*, <http://zeszytnaukowy.pl/download.php?article=1131> (accessed on 27/03/2017).

⁴⁸ BORTA, Ludmila. "The EU's Neighborhood Trade Arrangements", *CES Working Papers*, Vol. VII, Iss. 4, 2015, 850.

4. (Deep) and comprehensive free trade agreements

4.1. CETA with Canada

In 2015 Canada belonged to the top EU's trading partners, ranking as the 12th most important one. Trade with Canada accounted for 1.8% of the EU's total external trade. For Canada, the trade with the EU was even more important since the EU ranked as the Canada's second most important trading partner, right after the United States. The value of bilateral trade in goods between the EU and Canada amounted to €63.5 billion in 2015, whilst the value of bilateral trade in services was €27.2 billion in 2014. In the matter of direct investments, European direct investments in the Canada amounted closely to €274.7 billion in 2014 and Canadian investors held investments worth €166 billion in Canada.⁴⁹

Until Canada ratifies the brand-new Comprehensive Economic and Trade Agreement (CETA) the trade relations of EU with Canada are conducted under the Framework Agreement for Commercial and Economic Cooperation which entered into force in 1976. Bilateral summits between the EU and Canada take place once a year and issues dealing with EU-Canada trade and economic relations are discussed and reviewed by the Joint Cooperation Committee. Since 1976, the EU and Canada have negotiated and concluded a few additional bilateral agreements which have further reduced barriers to trade and made trade between them easier. In 1997, they agreed on a more intensive cooperation between customs officers in the EU and Canada. The Veterinary Agreement which entered into force in 1999 helped to improve bilateral trade between partners in the field of livestock and animal products. After concluding another agreement related to trade in goods, specifically with alcoholic beverages in 2003, partners decided to cover also an area of air transport signing the Civil Aviation Safety and the Comprehensive Air Transport Agreement in 2009. Provisions of first two agreements dealing with the trade in goods (The Veterinary Agreement and the Wine and Spirits) were during recent negotiations reassessed and will become a part of the CETA.⁵⁰

Inter alia, the CETA is important since it was one of the first comprehensive trade agreements negotiated by the Commission on behalf of the EU Member States after the ratification of

⁴⁹ EUROPEAN COMMISSION. *Canada*, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/canada/> (accessed on 14/05/2017).

⁵⁰ Ibid.

the Treaty of Lisbon. In its essence, the CETA together with TTIP introduce a brand-new model for a new generation of free trade agreements. Since the TTIP negotiations are on hold, the CETA presents the only successfully negotiated and concluded agreement of this kind. For instance, the unprecedented access to public procurement at the sub-state level is now almost certainly going to be present at the EU's table during future negotiations with USA, Japan and other developed countries.⁵¹

In 2009, when a situation in multilateral trade environment was marked by long-lasting negotiations of Doha Round and the global economic crisis has at its peak, the European Union and Canada announced the start of negotiations leading to establishment of free trade area between two of them. They believed that such agreement would be economically beneficial to both areas and would stimulate economic growth. At the very beginning, they agreed that CETA should be more ambitious than any economic agreements of the EU and Canada concluded to date and go further beyond WTO commitments.⁵²

Nowadays, when we go through a period of to some extent fractured globalization, CETA might serve as a model example of a modern approach to international trade (negotiations). In comparison to NAFTA, CETA goes further in its scope and adequately react to needs and challenges of 21st century. Since the tariffs between the EU and Canada were rather low, CETA needed to do more than just to eliminate tariffs to encourage trade between them. Hence, the EU and Canada negotiated a deeper agreement which covers public procurement, mutual recognition of professional degrees and other issues which are not or just remotely linked to the area of trade. Moreover, they agreed on the establishment of a platform for cooperation in the field of regulation and non-tariff barriers to trade. This step may lead to two positive outcomes. Firstly, they will not adopt contradictory regulations harming mutual trade in the future, and secondly, this cooperation in regulation might serve as an example in other bilateral trade agreements and also other trade partners of the EU, and Canada may join

⁵¹ ACKHURST, Kevin. Natrass, S. and Brown, E. "CETA, the Investment Canada Act and SOEs: A Brave New World for Free Trade", *ICSID Review* Vol. 31, No. 1, 2016, 58-59.

⁵² HEALY, Teresa. "Canadian and European Unions and the Canada – EU CETA Negotiations", *Globalizations* Vol. 11, No. 1, 2014, 59.

this collaboration leading to establishment a common more or less global platform for regulation.⁵³

In the area of technical regulations, CETA enshrines provisions whose goal is to increase transparency and promote more intensive contacts between the EU and Canada. CETA leads to removing barriers to FDI both in specific sectors and horizontally what makes the business environment more predictable and improves legal certainty. CETA covers all areas of services, but the EU or Canada can decide to exclude a particular service from coverage. Never before has any of them given such a favorable access to services and investments to a trading partner. The EU became the first partner of Canada that put on the table such substantive and binding provisions on qualifications and licensing. Since then, Canada attempts to include this kind of provisions also in trade negotiations with other partners.⁵⁴

CETA is rather innovative bilateral agreement in terms of issues covered. For instance, the Chapter 22 deals with the area of Intellectual Property Rights (IPRs) and pays attention to setting common standards for IPRs and measures of enforcement. This chapter of CETA was included to achieve two goals – on the one hand to simplify the production and commercialization of creative and innovative products between the European Union and Canada, and on the other hand to secure an effective and sufficient level of protection and enforcement of IPRs between the partners. CETA calls for compliance of the EU and Canada with numerous international intellectual property treaties such as the Berne Convention, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty.⁵⁵ CETA requires both partners to modify legislations (if necessary) to be in compliance with the Singapore Treaty of the Law of Trademarks and to assent with the Madrid Protocol. CETA will introduce a specific system of trademark registration wherein an applicant can make an appeal against a refusal to register a trademark, oppose a registration of trademark filled by another company; and creates an electronically available

⁵³ KRANC, Joel. *CETA Hails New Era of Bilateral Trade Deals*, <https://www.gfmag.com/magazine/march-2017/ceta-hails-new-era-bilateral-trade-deals> (accessed on 14/05/2017).

⁵⁴ BORTA, Ludmila. “CETA – Bilateral Trade Agreement Between the EU and Canada”, *CES Working Papers* Vol. 1, 2014, 25-27.

⁵⁵ FAN, Nathan. “A Look at IP Rights under the New Comprehensive Economic and Trade Agreement”, *IP Litigator*, November/December, 2014, 10.

database of trademark registrations and trademark applications. The EU also strongly pushed for and made a part of the CETA a concept which is well-known and enforced in the Single Market of the EU – geographical indication (GI). It is a tool used by producers of agricultural products or food with specific characteristics attributable to its geographical origin to prevent the utilization of the GI in a manner that is misleading or in a different way creates unfair competition. In Annex I, Part A the EU specified 173 EU’s GIs of agricultural products which should be protected also in Canada. So far, Canada has not suggested any GI originating on the Canadian territory to be covered by the CETA. However, the Annex I can be amended at any time, and GIs may be added or removed provided that the CETA Committee on Geographical Indications recommends that.⁵⁶

CETA also call for parties to accede to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Design. This requirement was proposed by the European Union which as a whole became a party to the 1999 Geneva Act in 2008. This agreement makes possible to register an industrial design in more than one country at the same time using only a single application. Canada’s legislation dealing with an industrial design has not changed since 1985 and is still not a party to the 1999 Geneva Act of the Hague Agreement.⁵⁷ Thanks to CETA, pharmaceutical patents will be provided a period of *sui generis* protection which grants the same rights as are granted by the patents. This protection is aimed to cover the time period from the date when a company applies for patent protection and the date on which an authorization to enter the market is granted. Furthermore, CETA obliges the parties to arrange for procedures for enforcement of IPRs that are just, as straightforward and cheap as possible and do not take more time than it is common for a civil enforcement proceedings in a given country.⁵⁸

The European Union also added into the CETA a provision which requires that competent border authorities to detain goods which may infringe IPRs. If the authorities determine that suspected goods violate IPRs, administrative penalty and destruction of goods are required.

⁵⁶ EUROPEAN COMMISSION. *Comprehensive Economic and Trade Agreement (CETA)*, http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf (accessed on 14/05/2017).

⁵⁷ FAN, Nathan. “A Look at IP Rights”, 12.

⁵⁸.Ibid., 13.

So far Canada's laws have not addressed this issue and a bill needs to be passed in order to be in compliance with the CETA.⁵⁹

After the Chapter dealing with the investment was leaked, specifically, the part outlining investor-state dispute settlement mechanism was subject to criticism by the citizens and NGOs both in the EU and Canada, both partners decided to reassess it during the legal review phase. The role and competencies of governments in the area of regulation were strengthened. Moreover, they agreed on the establishment of institutionalized, the permanent dispute-settlement tribunal which shall be more transparent, since the selection process of judges will be more open, there will be stricter conditions for their ethics and possibility to appeal against the judgment. The EU will work hard to implement this mechanism also in bilateral free trade agreements with other partners, with an ultimate goal of establishment of a multilateral investment tribunal.⁶⁰

⁵⁹ BORTA, Ludmila. "CETA", 29.

⁶⁰ VAN DE KLETERSTEEG, Devon. "Canada and EU announce completion of CETA legal review", *Canadian Sailings*, March 14, 2016, 53.

4.2. CFTA with Colombia

The Andean Community, formerly called the Andean Pact was founded in 1969 by five South American countries – Bolivia, Chile, Colombia, Ecuador, and Peru. In 1973 Venezuela joined the Pact, however, withdrew from it in 2006. One of the founding members – Chile also announced its decision to withdraw from the Andean Community. Nowadays, the Andean Community comprises of four original members – Bolivia, Colombia, Ecuador and Peru and thanks to its cooperation agreement with Mercosur, in 2005 Argentina, Brazil, Paraguay, and Uruguay gained the status of associate members.⁶¹

The European Union commenced its dialogue with the Andean Community in 1996. Since the negotiations of Association Agreement failed in 2008, the EU decided to introduce new format of negotiations by creating two separate forums of discussion – on one hand with the Andean Community as a whole through the Political Dialogue and Cooperation Agreements, and on the other more comprehensive trade negotiations compatible with WTO rules in multilateral format with as many Andean countries willing to accomplish comprehensive free trade agreement as possible. In February 2009, three members of Andean Community decided for more advanced cooperation in the area of trade and the European Commission launched multilateral negotiations. Nevertheless, Ecuador shortly after the talks started decided not to longer participate in negotiation conferences and comprehensive free trade agreement was eventually successfully concluded only with Colombia and Peru in 2011 and then signed in June 2012. The Comprehensive Trade Agreement started to be provisionally applied with Peru in March 2013 and with Colombia in August 2013. Ecuador later reevaluated its approach and decided to join trade agreement between Colombia, Peru and the European Union. The negotiations related to Ecuador's accession to this Agreement were concluded in summer 2014, and the Protocol of Accession for Ecuador was approved by the Council and the European Parliament at the end of 2016. For Ecuador, the trade agreement started to be provisionally applied in January 2017.⁶²

⁶¹ COMUNIDAD ANDINA. *Somos Comunidad Andina*, <http://www.comunidadandina.org/Seccion.aspx?id=189&tipo=QU&title=somos-comunidad-andina> (accessed on 10/05/2017).

⁶² EEAS. *Andean Community*, https://eeas.europa.eu/headquarters/headquarters-homepage/2049/andean-community_en (accessed on 10/05/2017).

In terms of trade, the EU is the third largest partner and one of the most significant investors in the region. Total trade of the EU with the Andean countries amounted €27.7 bn in 2015. From the Andean countries, the EU imported mostly primary products (agricultural products, mineral ores, and fuels), whereas manufactured goods (transport and machinery equipment) and chemical products were the main components of the EU exports.⁶³

The primary objective of the comprehensive trade agreement between the Colombia, Peru and the EU is to considerably improve market access for EU companies exporting to Colombia and Peru. Tariff elimination makes up an important part of the agreement, however it could not be sufficient enough to facilitate market access for EU exporters. In terms of customs duties, EU producers of manufactured goods will be relieved from paying customs duties in Colombia and Peru. Since the tariffs will be eliminated gradually, the full impact of trade liberalization should be visible after approximately 15 years. At the latest in 2030, the EU exporters should save more than €270 million a year only thanks to tariff elimination. Besides tariff elimination, the Agreement also aims at the elimination of technical and procedural obstacles. In this area, parties decided to deal with issues beyond existing commitments in the WTO. The EU would like to enhance its communication and cooperation with Colombia and Peru in the area of standards, technical regulations, and conformity assessment. The EU calls for adaptation of agreed regional and international standards by authorities of these two countries, and it is willing to mutually accept the results of specific conformity assessment procedures. The Agreement also introduces new rules dealing with labeling and marking of products reducing the quantity of information provided and eliminating labels that are not relevant to consumers. In the area of public procurement, the EU was more successful during the negotiations than the United States or Canada and gained access to public procurement market even at the level of local municipalities. The EU was able to secure its particular interests in the area of services through the opening of market access to Colombia and Peru for cross-border services, e.g. professional services, maritime transport, financial services and telecommunication services. Also as in a case of other comprehensive trade agreements, the EU pushed for protection of intellectual property rights. The Agreement should ensure a high level of protection of commercial property, intellectual

⁶³ EUROPEAN COMMISSION. *Andean Community*, <http://ec.europa.eu/trade/policy/countries-and-regions/regions/andean-community/> (accessed on 14/05/2017).

and industrial rights including protection of geographical indications (GIs) in the markets in Colombia and Peru. IPR holders from the EU will be provided with the necessary tools to defend their rights via civil procedures and administrative measures. Border enforcement measures enshrined by this Agreement will cover trademarks, copyrights, and GIs – going beyond procedures covered by the multilateral IPRs treaties. Competition clause is also present in the Agreement, demanding Parties to eliminate harmful anticompetitive practices through their national legislations to avoid cartels, restrictive agreements or abuse of monopoly. The independent competition authorities in respective countries are also obliged to review mergers of companies that could significantly hinder competition. The provisions covering subsidies are rather strict and ask governments to regularly deliver comprehensive reports dealing with providing of subsidies – what is the legal basis for a specific subsidy, the amount of aid and to whom money are sent. The agreement established the dispute settlement mechanism which is in accordance with WTO principles and secures the transparency via open hearings and sequencing – until non-compliance with the verdict is not verified, none of the parties has a right to impose retaliation measures. In its final part, the Agreement mentions sustainable development as an important issue which should be guaranteed by all parties through promoting and preserving a high level of environmental and labor standards. It especially requires parties to refrain from lowering protection standards with the intention of encouraging trade or investment. The Agreement also establishes two mechanisms composed of arbitration system and an engagement process with civil society for addressing any issues dealing with the contradiction of trade and environmental objectives which may appear later.⁶⁴

Despite its primarily economic focus, the CFTA with Colombia and Peru defines enforceable human rights obligations and sustainable development provisions. Without appropriate accompanying safeguards and measures, the Agreement may lead to substantial impacts on labor standards, human rights and environmental standards in Colombia.⁶⁵ Article 1 presents

⁶⁴ EUROPEAN COMMISSION. *Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part*, http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf (accessed on 14/05/2017); EUROPEAN COMMISSION. *Highlights of the Trade Agreement between Colombia, Peru and the European Union*, http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149598.pdf (accessed on 14/05/2017).

⁶⁵ EUROPEAN COMMISSION. *EU-Andean Trade Sustainability Impact Assessment –Final Report, 2009*, http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146014.pdf (accessed on 14/05/2017).

a standard human rights clause since it calls for respect for fundamental human rights and democratic principles as they are defined by the Universal Declaration of Human Rights. These principles are not further defined, but they are conventionally understood as all democratic principles and human rights that have been so far recognized by the international community. As soon as the negotiations with Colombia started, the proposed trade agreement found its critics among NGOs and MEPs who were not satisfied with the level of protection of human rights in Colombia. The usually applied clause on human rights was found to be insufficient and the European Parliament approved some extra measures targeted on confronting human rights violation in Colombia. Since then improving protection of human rights has become essential for full application of the agreement. Even if the document defining reforms proposed by the Colombian government is not legally binding, it seems that economic incentives resulting from the application of comprehensive trade agreement with the EU are sufficient for Colombian government to keep its promise.⁶⁶

Sustainable development provisions of the Agreement also deal with economic, civil and social rights and particularly focus on labor standards. The positive impact of human rights clause on the situation was visible already during negotiations since Colombian government made certain progress in the field of labor law and proposed reforms that should be in compliance with ILO standards and should secure that trade union activists can freely exercise their rights without fear of being persecuted.⁶⁷ The most interesting and significant aspect, is the provision that obliges (central) government not only to behave according these principles, but also observe whether all regional and local authorities, and even non-delegated bodies executing delegated powers of government respect and promote them. If a Party of the agreement discovers any non-compliance it has to take necessary measure to correct it. The trade agreement also establishes the intergovernmental sub-committee on trade and sustainable development which shall meet at least once a year and discuss the implementation

⁶⁶ COHA. *Human Rights Considerations in the E.U.-Colombia Trade Agreement*, <http://www.coha.org/human-rights-considerations-in-the-e-u-colombia-trade-agreement/> (accessed on 10/05/2017).

⁶⁷ DG EXTERNAL POLICIES. *European Union: "Trade Agreement" with Colombia and Peru*, <https://eulacfoundation.org/en/system/files/EU%20Trade%20agreement%20with%20Colombia%20and%20Peru.pdf> (accessed on 10/05/2017).

of individual provisions with scholars, non-governmental organizations, and the general public. One of the goals of these sessions is also to share best practices in the related area.⁶⁸

⁶⁸ EUROPEAN ECONOMIC AND SOCIAL COMMITTEE. *EU-Colombia/Peru FTA*, <http://www.eesc.europa.eu/?i=portal.en.international-trade-monitoring-eu-colombia-peru-joint-meetings> (accessed on 14/05/2017).

4.3. DCFTA with Ukraine

The Eastern Partnership (EaP) which was firstly introduced in 2008 by Foreign Ministers of Poland and Sweden with the firm support of Visegrad states. At the Prague Summit in 2009, the initiative was launched and set as its primary goals to establish a framework for cooperation and discussions of trade issues, travel agreements and economic strategy between the European Union on one side and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine on the other.⁶⁹ The primary motivation for the establishment of the Eastern Partnership was the territorial enlargement of the European Union in 2004 and 2007 which moved the EU's border further to the east. In this context, the EU started to negotiate the Association Agreements (AA) with the six countries of the Eastern Partnership whose aim was to strengthen cooperation between them. In order to facilitate trade relations, the Deep and Comprehensive Trade Agreements (DCFTAs) became a part of the AAs. Not all partner countries have been eager to provide the EU open access on their national markets to the same extent or harmonize their legal and economic frameworks with the EU. Armenia, Azerbaijan, and Belarus desired only sectoral cooperation (SMEs, energy, visa liberalization) and had shown no interest in a comprehensive integration with the EU. Hence, the intense dialogue continued further only with Georgia, Moldova, and Ukraine and AAs were successfully concluded. The ultimate goal of this enhanced cooperation is to prepare EaP countries for future economic and political integration with the EU. The EU perceives Ukraine as a prominent partner in the EaP and believes that Ukraine's example can serve as a model for remaining countries in their efforts to achieve convergence with the EU rules and regulations.⁷⁰

Ukraine's market is one of the most important one for the EU Member States and for Ukraine the EU presents the crucial ally in the region and the largest trading partner, since more than 40% of its trade was with the EU in 2015. Exports from the EU to Ukraine amounted to more than €13.9 bn in 2015 and consisted mainly of chemicals, transport equipment, machinery and manufactured goods. Contrariwise, Ukraine exported primarily raw materials, machinery and chemical products in the amount of €12.7 bn in respective year. The EU companies are

⁶⁹ COUNCIL OF THE EUROPEAN UNION. *Joint Declaration of the Prague Eastern Partnership Summit*, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/107589.pdf (accessed on 10/05/2017).

⁷⁰ VOŠTA, Milan et al. "Ukraine-EU Deep and Comprehensive Free Trade Area as Part of Eastern Partnership initiative", *Journal of International Studies* Vol. 9, No. 3, 2016, 21-23.

the largest investors in Ukraine with their investments assets worth around €16.4 bn. Since 1993, Ukraine companies exporting chemicals, base metals, textiles, oils, machinery and mechanical appliances, and plants have profited from the EU's Generalised System of Preferences (GSP) which, as agreed in DCFTA, will be gradually ended by December 2017. Since January 2016, Deep and Comprehensive Free Trade Agreement which is a part of the Association Agreement has been provisionally applied by the EU and Ukraine. This agreement sets foreseeable and enforceable trade rules for trade in goods and services.⁷¹

The EU-Ukraine Deep and Comprehensive Free Trade Agreement comprises of 15 chapters, 14 annexes and 3 protocols. DCFTA covers elimination of customs duties on exports and imports; trade defense instruments and establishment of mechanism for cooperation on trade remedies; elimination of technical barriers to trade (TBT); provisions on sanitary and phytosanitary measures; instruments for simplification of customs requirements and formalities; right of establishment in services and non-services sectors; safeguards on free movement of capital; access to public procurement markets; intellectual property rights including geographical indications; alignment of Ukraine's competition law with EU acquis; trade related energy issues; review of administrative actions covered by the agreement; shared commitment to sustainable development; dispute settlement procedure; and finally mediation mechanism. DCFTA with Ukraine is the first ever FTA which contains provisions on trade-related energy issues. Since Ukraine has already been a member of the Energy Community Treaty (EnCT), it was obliged to implement EU acquis on electricity and gas. Parties agreed on the prohibition of dual pricing of energy products and the establishment of early warning mechanism which should be triggered in a case of a security of supply problem. In order to ensure competition, they committed themselves to establish functionally independent and legally distinct regulator.⁷²

DCFTA with Ukraine shall lead to gradual elimination of tariff and non-tariff barriers to trade and better harmonization of regulation. However, this would no longer be sufficient neither if the Ukraine's ultimate goal is to become a member of the EU nor for such ambitious and

⁷¹ EUROPEAN COMMISSION. *Ukraine*, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/> (accessed on 14/05/2017).

⁷² EUROPEAN COMMISSION. *EU-Ukraine Deep and Comprehensive Free Trade Area*, https://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150981.pdf (accessed on 14/05/2017).

complex instrument as DCFTA aims to be. DCFTA covers also the issues of antimonopoly legislation, veterinary control of animal and plant production, public procurement and border and customs control procedures. As it is in a case of CETA, also DCFTA with Ukraine provides for liberalization in all areas of services and deals with investment, protection of intellectual property rights, geographical indications, competition rules, public procurement, regulatory transparency, and sustainable development. The EU and Ukraine also agreed on a common platform for discussion and prevention of potential future regulations which may harm liberalization and harmonization process, e.g. technical barriers to trade, accreditation, standardization and sanitary and phytosanitary measures. Full access to the EU's internal market is conditioned by successful implementation of these measures, particularly sanitary and phytosanitary measures.⁷³

While bilateral free trade areas produce net benefits to both partners, the potential gains and to costs caused by adjustment are greater for a smaller partner as it is in the case of Ukraine which entered into the DCFTA with a higher number of initial barriers to trade and its exposure to bilateral trade is also higher. If the initial expenditures are so high and expected gains are not coming after few months, what are the main advantages conveyed to Ukraine through DCFTA with the EU? Thanks to harmonization with EU standards, Ukrainian enterprises will gain better position when entering the EU Single Market, but also markets of third countries with the same or similar standards. Due to this better access, Ukrainian companies will improve their position in the global trade. The mutual opening of markets gives impetus to competition, resulting in better choices for consumers. As the EU standards are adopted and implemented in Ukraine, the quality and safety of goods produced domestically will get better. The harmonization with the EU regulatory and institutional standards will lead to the better business environment. Thanks to more predictable and enforceable business climate the inflow of FDI will be higher. Consequently, there will be more financial resources available for modernization of Ukraine's economy. Also, the institutional provisions of the DCFTA serve as an external anchor to domestic regulations and policies, promoting anti-corruption behavior, the rule of law and transparency of national

⁷³ EUROPEAN COMMISSION. *Trade and Trade-related Matters*, http://eeas.europa.eu/archives/docs/ukraine/pdf/5_ua_title_iv_trade_and_trade-related_matters_en.pdf (accessed on 14/05/2017).

policies.⁷⁴ The effects of implementations of DCFTA will be observable especially in the area of telecommunication, banking sector, and courier and postal services, since thanks to legislative approximation these sectors will be integrated with the EU's services market. Moreover, due to its geographic closeness to the EU, Ukraine might become an appealing location for cheaper production of goods which would be sold in the EU's Single Market. EU's technical regulations and norms which Ukraine needs to implement in order to be able to access the Single Market are recognized also by some other countries. It opens possibilities for Ukraine to easily negotiate free trade agreements with Canada, USA, South Korea, Japan and others. Thanks to adoption of these recognized standards, Ukrainian enterprises would be allowed to access also to some markets outside the Europe.⁷⁵

Despite the fact that Ukraine is well-known for its agricultural and food processing sectors, only a few farmers and manufacturers were immediately after the DCFTA provisionally entered to force eligible to export their products to the EU Member States since they did not meet criteria and standards enshrined in the EU *acquis* and Ukrainian legislation on food safety was inconsistent with the European laws.⁷⁶ The Parliament of Ukraine passed the new law on food safety (Law no. 1602-VII of 22 July 2014). The experts from the field of agrarian law helped to draft this groundbreaking legislation. The reform was more than necessary since Ukraine had not amended food safety control system since 1991. In 2014, the European Union funded a project which was aimed at improvement of the food safety system in Ukraine by amending legislation, institutional infrastructure of Ukraine to be in compliance with relevant international and European standards. This law also introduced comprehensive requirements dealing with state control procedures for foodstuffs according to European practice. Likewise, the Ukrainian legislation covering animal identification and registration precluded export of meat and dairy products to the EU as it was inconsistent with EU legislation.⁷⁷

⁷⁴ DABROWSKI, Marek. Taran, S. "Is Free Trade with the EU Good for Ukraine?", *CASE Network E-briefs* No. 6, 2012, 3.

⁷⁵ SZELIGOWSKI, Daniel. "The DCFTA's Impact on the Modernisation of Ukraine's Economy", *PISM Bulletin* No. 33, 2016, 1-2.

⁷⁶ KEPYCH, Taras. "Ukrainian Sanitary and Phytosanitary Laws Approximation to EE *Acquis* under Association Agreement including Agreement on Deep and Comprehensive Free Trade Area (DCFTA)", *EU Agrarian Law* Vol. III, No. 2, 2014, 79-80.

⁷⁷ 82-84

4.4. DCFTA with Georgia

Despite the geographical distance between the Georgia and the EU Member States, the EU is the most important trade partner for Georgia, since approximately 32.6% of Georgia's trade is realized with the EU. The volume of trade with two important economies in its neighborhood – Russia and Turkey is significantly lower – 17.2% with Turkey and 8.1% with Russia. From a trade perspective, Georgia does not belong to EU main trade partners, since only 0.1% of EU's total trade is with Georgia.⁷⁸ However, Georgia is an important partner country within the Eastern Partnership. In 2015, Georgia exported to the EU primarily mineral ores, chemical products, and agricultural products and imported from the EU transport equipment, machinery and appliances, optical and medical equipment, furniture, plastics and beverages and spirits.⁷⁹ Even before Georgia successfully concluded the process of ratification of the Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU, Georgian exporters had already benefited from preferential treatment under Generalized Scheme of Preferences (GSP). Thanks to its good governance and substantial progress in the implementation of international agreements on human rights, labor rights, and environment, Georgia was eligible for Generalized Scheme of Preferences Plus what provided it with almost tariff-free trade with the EU.⁸⁰

In June 2014, an Association Agreement (AA) between the EU and Georgia was signed and entered into force in July 2016. As a part of the Association Agreement, the free trade area was set up between the EU and Georgia. Its main goal is to gradually integrate Georgia's economy with the economy of EU.⁸¹ DCFTA with Georgia in many aspects resembles DCFTA with Ukraine since both of them aim to establish a new framework for a political and economic relationship with the EU. According to Chapter 1 of the Agreement, all customs duties on goods are removed between partners. For industrial goods import duties were immediately removed on both sides when the Agreement entered into force. Regarding

⁷⁸ EUROPEAN COMMISSION. *Georgia*, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/georgia/> (accessed on 14/05/2017).

⁷⁹ EEAS. *Georgia and the EU*, https://eeas.europa.eu/headquarters/headquarters-homepage/1237/georgia-and-eu_en (accessed on 10/05/2017).

⁸⁰ EUROPEAN COMMISSION. *Generalised Scheme of Preferences (GSP)*, <http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/> (accessed on 14/05/2017).

⁸¹ EUROPEAN COMMISSION. *EU-Georgia Trade: Deep and Comprehensive Free Trade Area (DCFTA)*, http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153435.pdf (accessed on 14/05/2017).

non-tariff barriers, the Agreement incorporates rules established by WTO, such as national treatment of goods produced abroad. Trade remedies chapter discuss traditional trade defense instruments as they are known from WTO framework – anti-subsidy, anti-dumping and safeguard measures, but goes beyond WTO rules in terms of the application of these instruments. Certain conditions which are already standard in EU legislation, are specifically pointed out in this chapter – any instruments used against subsidy or dumping must be lower in their value than were market-harming measures initiated by a partner country. Also before invoking defense instruments, parties are advised to take into account all interests at stake and look at the possible impact on exporting/importing companies. If a Party at the end decides to use trade remedied it is required to notify its partner, disclose findings and provide an opportunity to react. In the area of technical barriers to trade, parties decided to reiterate their commitments under the WTO Agreement of TBT and significantly harmonize their standards, technical regulations, conformity assessment procedures and apply similar requirements for industrial goods. Georgia is obliged to gradually align its standards and related infrastructure with the EU acquis. Parties agreed on the possibility to negotiate an Agreement on Conformity Assessment and Acceptance of Industrial Products thanks to which trade in specified sectors would be conducted under the same conditions as are established for trade between the EU Member States. Since the trade in plants and animal, and products of plant and animal origin would not be facilitated with different sanitary and phytosanitary measures in place, Georgia is by Chapter 4 obliged to amend its SPS legislation in order to be complying with the EU's. The EU and Georgia agreed to establish a special SPS Sub-Committee responsible for implementation of SPS provisions introduced in the DCFTA and supervising of reforms in Georgia. The Sub-Committee will oversee advancement on the approximation of legislation and capacity of implementation, propose recommendations, improve procedures and offer a platform for addressing SPS issues. Chapter 5 on customs and trade facilitation introduces the protocol on mutual administrative assistance in customs matters which should arrange correct application of customs legislation and avoid infringements. The partners also decided to let each other's officials take part in administrative investigations in the other party's territory. These provisions are of particular importance due to duty-free trade relationship between them. Customs authorities in both the EU and Georgia are responsible for guaranteeing that only EU or Georgian goods gain

benefits under DCFTA.⁸² In order to oversee the implementation and administration of customs measures, partners agreed to set up a special Customs Sub-Committee. With a view to improve transparency and predictability of legal environment for investors and services providers in Georgia, Chapter 6 introduced provisions on domestic regulation, postal and courier services, financial services, international maritime transport and electronic commerce services. Georgia committed itself to align its legislations in these areas of services with existing and future EU legislation. Once this commitment is fulfilled, investors from EU countries, but also investors from other countries accustomed to EU regulations, will experience the same regulatory environment in Georgia. The chapter on Intellectual property rights (IPR) defines how should be IPR enforced in Georgia, based on the EU's internal rules. The DCFTA incorporates a previous agreement between the EU and Georgia on Geographical Indications. Regarding competition law, Georgia will propose new legislation in order to ensure that EU companies in Georgia are not hampered by discrimination caused by the presence of monopoly. Chapter 11 deals with trade-related energy and calls for parties to reiterate obligations introduced in GATT and the Energy Charter Treaty. Parties also agreed on instituting of functionally independent and legally distinct regulator to guarantee efficiently functioning energy market. Trade and sustainable development chapter calls for the implementation of ILO conventions and the ILO Decent Work Agenda. Its provisions prohibit partners to derogate from environmental and labor protection with the goal to boost trade or investment. DCFTA provides for dispute settlement mechanism based on the WTO Dispute Settlement Understanding and mediation mechanism. Also, it introduces provisions which make them faster and more efficient. The last chapter of the DCFTA defines general provisions on the approximation of Georgia's legislation with the EU *acquis* in selected trade-related areas.⁸³

⁸² ADAROV, Amat. Havlik, P. *Benefits and Costs of DCFTA: Evaluation of the Impact on Georgia, Moldova and Ukraine*, Vienna: 2016, 174.

⁸³ EUROPEAN COMMISSION. *EU-Georgia Deep and Comprehensive Free-Trade Area*, http://eeas.europa.eu/archives/delegations/georgia/documents/eap_aa/dcfta_guide_2014_en.pdf (accessed on 14/05/2017).

Since the AA/DCFTA negotiations with Georgia started, great focus has been given to public procurement chapter.⁸⁴ The reason is quite evident – public procurement market in the EU accounts for approximately 18% of GDP and offers great opportunities for Georgian companies.⁸⁵ Public procurement chapter defines clear and transparent rules built on EU practice on tendering procedures. Partners decided to give each other access to public procurement on all levels – national, regional and local above a specified threshold value. Access to EU procurement market is highly conditioned on institutional reforms in Georgia. Lowering or eliminating of thresholds will depend on the progress of Georgia in approximating procurement rules of the EU *acquis* and institutional reforms.⁸⁶ Georgia's public procurement law underwent considerable reforms to make it as much as possible in compliance with EU and international standards. A major reform of the public procurement system came with the establishment of the Unified Electronic System of State procurement which aims at improving transparency and simplicity of the procurement process but also increasing accessibility by reducing administrative costs.⁸⁷ However, if Georgia wants to be fully compliant with EU standards, its current legislation on public procurement needs to be further improved. Georgian legislation has to better ensure the principles of proportionality and equal treatment and prolong the time limits for submission of offers. The definition of contracting authorities should be brought in compliance with EU definition. The different types of EU contract procedures (competitive, open, restricted, and negotiated) has to be incorporated in the Law on State Procurement.⁸⁸ In spring 2016, Georgia presented its Action Plan and Roadmap for the implementation of the public procurement which should

⁸⁴ EEAS. *EU – Georgia relations: Challenges and Opportunities in a new Global context*, https://eeas.europa.eu/delegations/georgia/19772/eu-georgia-relations-challenges-and-opportunities-new-global-context_en (accessed on 10/05/2017).

⁸⁵ EUROPEAN COMMISSION. *Enlargement and European Neighborhood Policy*, https://ec.europa.eu/growth/single-market/public-procurement/international/european-neighborhood-policy_en (accessed on 14/05/2017).

⁸⁶ KAWECKA-WYRZYKOWSKA, Elżbieta. “The EU-Georgia Association Agreement: An Instrument to Support the Development of Georgia or Lip Service?”, *Comparative Economic Research* Vol. 18, No. 2, 2015, 77-97.

⁸⁷ TRANSPARENCY INTERNATIONAL. *Georgia's Public Procurement System*, http://www.transparency.ge/sites/default/files/post_attachments/State%20Procurement%20Report%20ENG.pdf (accessed on 14/05/2017).

⁸⁸ EMERSON, Michael. Kovziridze T. *Deepening EU-Georgian Relations: What, why and how?*, Brussels: CEPS, 2016, 23-25.

eventually lead to full compliance with the EU directives in this area.⁸⁹ The European Commission is responsible for overseeing that the regulatory procurement framework in Georgia is correctly implemented and that the necessary institutions are set up.⁹⁰ Technical assistance with the implementation of due reforms and sharing of best practices is provided by the European Union.⁹¹

⁸⁹ EEAS. *Joint Staff Working Document – Association Implementation Report on Georgia*, https://ec.europa.eu/sites/eeas/files/1_en_jswd_georgia.pdf (accessed on 10/05/2017).

⁹⁰ APRIASHVILI, Mariam. *Implementation of the DCFTA by Georgia*, Latvian Institute of International Affairs, <http://liia.lv/en/analysis/implementation-of-the-dcfta-by-georgia-460> (accessed on 10/05/2017).

⁹¹ EUROPEAN SERVICES FORUM. *EU-Georgia Deep and Comprehensive Free Trade Area*, <http://www.esf.be/new/esf-eu-trade-policy/eu-free-trade-agreements/eu-georgia-dcfta/> (accessed on 14/05/2017).

4.5. DCFTA with Moldova

The European Union and Moldova have profound and complex relations which were established more than 20 years ago. Their cooperation was strengthened in July 1998 when Partnership and Cooperation Agreement between these partners entered into force and created a framework of political and economic relations. Since then the volume of trade between the EU and Moldova had grown and received another critical impulse in 2008 when the EU decided to introduce autonomous trade preferences for the Republic of Moldova. The EU has gradually become Moldova's biggest trade partner. In 2015, 46.4% of Moldova's total annual trade was with the EU. The EU's trade with Moldova constitutes for 0.1% of its total foreign trade. Moldova's export to the EU consists primarily of animal and vegetable products, beverages and textiles and textile products. Whereas the EU's export to Moldova mainly entails transport equipment, machinery and appliances, and chemical products.⁹²

In June 2014, the EU and Moldova signed the Association Agreement (AA) whose essential part is the Deep and Comprehensive Free Trade Agreement. Despite the longer ratification process of AA which was concluded only in 2016, DCFTA provisions have been fully applied since September 2014. The Republic of Moldova is a partner country within the framework of the Eastern Partnership and benefits from several EU-funded projects.⁹³

As in all previously mentioned DCFTAs, the first chapters deal with traditional trade rules as they are known from WTO platform. The EU and Moldova agreed on gradual elimination of all customs duties on imports and exports. In regards to non-tariff barriers, the Agreement calls for incorporation of basic WTO rules such as national treatment of goods produced abroad which must not be discriminated on partner's domestic market, prohibition of excessive barriers to trade with regard to requirements for industrial goods. As it is already standard in EU legislation, trade defense instruments are allowed to be invoked only when it is necessary and it must be ensured that all parties are treated equally and fairly. Provisions dealing with the introduction of such measures are formulated in a way which should lead to better transparency in their application and provide opportunities for consultation. The

⁹² EEAS. *The Republic of Moldova and the EU*, https://eeas.europa.eu/delegations/moldova/1538/republic-moldova-and-eu_en (accessed on 10/05/2017).

⁹³ EUROPEAN COMMISSION. *Moldova*, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/moldova/> (accessed on 14/05/2017).

Parties agreed on the reiteration of their obligations under the WTO Agreement on Technical Barriers to Trade with an ultimate goal to eliminate unnecessary technical regulations and cooperate on TBT issues in order to avoid preventable divergence of technical requirements. The EU and Moldova emphasized the importance of regulatory cooperation, and Moldova is obliged by Chapter 3 to step by step bring into line its standards, technical regulations and associated infrastructure with those defined by EU acquis and practices. Labeling provisions covered in the Agreement are meant to ensure that there will be no unnecessary requirements on imported products affecting bilateral trade. Moldova understands that for full liberalization of trade in agricultural products, it needs to align its sanitary and phytosanitary standards with those which are binding and used in the EU. On the other hand, the EU recognized that in certain sectors Moldovan plant and animal health standards could be recognized as equivalent to the EU standards after they are assessed and approved by relevant experts. The process aiming at the recognition of equivalence of SPS standards is derived from principles of the WTO SPS Agreement. Special SPS Sub-Committee will be established to advise on the implementation of necessary reforms and to oversee the development of the legislative approximation in Moldova. Parties would like to improve cooperation in customs related matters and set common customs formalities and requirements, but at the same time to take necessary measures to avoid customs frauds. Based on existing customs cooperation they want to further align their legislation and procedures by incorporating internationally recognized trade facilitation procedures and practices. Since customs authorities play an important role in guaranteeing that only products of Moldovan and EU origin are eligible for benefits under DCFTA, the EU and Moldova came to the conclusion that participation of each other's officials in administrative enquiries is beneficial for both of them, and therefore they will mutually allow their presence in each other's territory. In order to ensure transparency and predictability of the business environment, Moldova is required to bring its legislation on financial services, postal and courier services, electronic commerce services, and international maritime transport into line with existing EU legislation and closely follow any developments in this area in the future in order to amend its legislation accordingly. Thanks to the same regulatory environment in both areas, the attractiveness of Moldova for

investors is expected to rise.⁹⁴ Chapter 7 presents standard safeguards on free movement of capital which can be invoked when the stability of the financial system is threatened. The Parties agreed that the Moldovan procurement system needs to be gradually modernized in order to be in compliance with the EU public procurement system. Before this alignment of legislation and practices is achieved, Moldovan investors can participate only in tenders above a certain threshold value. Provisions on intellectual property rights (trademarks, patents, copyright and geographical indications are based on obligations arising from commitments under the WTO TRIPS Agreement. They further define that IPRs will be severely enforced based on EU internal rules to ensure that products infringing IPRs will not be allowed to get on the EU or Macedonian market. In this area, the DCFTA fully incorporates the Agreement on the Protection of Geographical Indications of Agricultural Products and Foodstuffs which has been applied since April 2013. In the area of competition law, Parties agreed that Moldova would without delay introduce a subsidy control system comparable to the EU's and set up an independent authority for overseeing state aid. The DCFTA also covers pricing practices for energy resources (natural gas, crude oil, and electricity), their transit and set up fast-track dispute settlement procedure triggered in case of obligations under the Energy Charter Treaty are breached. The EU and Moldova agreed that the process of implementation of the DCFTA has to be transparent and ensure that all relevant information will be accessible to the stakeholders. The chapter on Sustainable development requires that liberalization of trade will be performed in accordance with social, labor and environmental obligations under respective international treaties. For settlement of disputes, the DCFTA introduces enhanced mechanism based on WTO practices, but with faster and more effective procedure. The mediation mechanism presented in the Agreement can be initiated to solve trade-hindering issues.⁹⁵

⁹⁴ EUROPEAN COMMISSION. *EU-Republic of Moldova Deep and Comprehensive Free-Trade Area*, http://trade.ec.europa.eu/doclib/docs/2014/february/tradoc_152194.pdf (accessed on 14/05/2017).

⁹⁵ EUROPEAN COMMISSION. *The Association Agreement between the European Union and the Republic of Moldova*, http://eeas.europa.eu/archives/docs/moldova/pdf/eu-md_aa-dcfta_en.pdf (accessed on 14/05/2017).

In 2014, Moldovan government faced a difficult decision whether to sign AA/DCFTA with the EU or become a part of the customs union with Russia and other states of Central Asia.⁹⁶

Since the offer to join the Russian-led Customs Union was not compatible with the planned DCFTA with the EU, Moldova had to choose which partnership would help it better to achieve its strategic policy goal of maximizing trade. The integration with the Customs Union would lead to the transfer of Moldavian sovereignty on tariff matters to the Customs Union. Therefore EU-Moldova bilateral trade agenda would no longer be possible.⁹⁷ In addition, Moldova would not be able to conclude any new free trade agreements with other countries and need to align its tariff commitments agreed during its accession negotiations to the WTO with those of the Russian-led customs union. This would not be possible without compensation for other WTO members which would incur the loss. If Moldova joined the CU, it would not provide it any additional trade benefits in comparison with the existing CIS free trade area.⁹⁸ It would have to increase its external tariffs, and its competitiveness would decrease.⁹⁹ Even before Moldova concluded and signed an agreement with the EU, it had already been threatened by Russia which had been trying to halt any further cooperation between Eastern Europe states. From all states negotiating an agreement with the EU, Moldova was by far the most affected by Russian threats since its export to Russia was very important for Moldova's small open economy, especially in the agricultural sector. Russia stated that it might introduce export bans, tighten immigration rules and strengthen its support for separatist movements.¹⁰⁰ Russian intimidations intensified in May 2013 when Russian Deputy Prime Minister Dmitry Rogozin visited the separatist region of Transnistria and

⁹⁶ WARREN, Adrienne. *Russia, the EU, and Moldova's 'Irreversible Choice'*, <http://www.eastbook.eu/en/2013/09/17/russia-the-eu-and-moldovas-irreversible-choice/> (accessed on 14/05/2017).

⁹⁷ TSERETELI, Mikheil. *Georgia and Moldova: Staying the Course*, <https://www.silkroadstudies.org/resources/pdf/publications/11-1409GrandStrategy-Georgia.pdf> (accessed on 14/05/2017).

⁹⁸ RADEKE, Jörg et al. *Moldova's trade policy: Strategy, DCFTA and Customs Union*, http://www.berlin-economics.com/download/policypapers/Moldova_PP_03_2013_en.pdf (accessed on 14/05/2017).

⁹⁹ MINISTRY OF ECONOMY. *Advantages of Deep and Comprehensive Free Trade Area EU-Moldova versus Customs Union (Russia-Kazakhstan-Belarus)*, http://www.mec.gov.md/sites/default/files/dcfta_advantages_vs_customs_union_moldova.pdf (accessed on 14/05/2017).

¹⁰⁰ BIRNBAUM, Michael. *Russian pressures Moldova and Ukraine ahead of signing of E.U. Association Agreement*, https://www.washingtonpost.com/world/europe/russia-pressure-moldova-as-date-for-signing-of-eu-deal/2014/06/25/0d9ed50f-42d3-47db-90f6-3073c03746b1_story.html?utm_term=.5cab86c53955 (accessed on 10/05/2017).

threatened to cut off the supply of natural gas to Moldova. In September 2013, just two months before the Eastern Partnership Summit in Vilnius, at which Moldova was expected to sign AA/DCFTA with the EU¹⁰¹, Russian authorities declared that Moldavian wines did not longer meet newly introduced food-safety standards.¹⁰² Since 29% of Moldovan wine exports went to Russia, it was a huge blow for Moldovan wine producers. However, this move on Russian side backfired, since it encouraged the European Union to completely liberalize imports of Moldovan wines to the EU without waiting for the provisional application of DCFTA in order to help Moldovan wine exporters who lost their traditional market.¹⁰³

¹⁰¹ EUROPEAN COMMISSION. *Third Eastern Partnership summit, Vilnius 28-29 November 2013*, http://europa.eu/rapid/press-release_IP-13-1169_en.htm (accessed on 14/05/2017).

¹⁰² THE ECONOMIST. *Why has Russia banned Moldovan wine?*, <http://www.economist.com/blogs/economist-explains/2013/11/economist-explains-18> (accessed on 14/05/2017).

¹⁰³ EUROPEAN COMMISSION. *European Union to open fully its market to Moldovan wines*, http://europa.eu/rapid/press-release_IP-13-872_en.htm (accessed on 14/05/2017).

4.6. Proposed DCFTA with Tunisia

The European Union and Tunisia have long-lasting and intensive trade relations which started in 1969 when for the first time the trade agreement between European Economic Community and Tunisia was signed. Cooperation framework between them was strengthened in 1995 when they signed the EU-Tunisia Association Agreement which entered into force in 1998 and established a Free Trade Area between the EU and Tunisia. Hence, Tunisia became the first partner country of Euro-Mediterranean Partnership which concluded and implemented a free trade area with the EU.¹⁰⁴ For Tunisia, the EU is its largest trading partner, 65.5% of Tunisia trade was with the EU. Tunisia is ranked as the 32nd trading partner of the EU, accounting for 0.6% of the EU's global trade. Total trade in goods amounted to almost €20 billion and in services to €3.6 billion between the EU and Tunisia in 2016.¹⁰⁵

After the 2010/2011 Tunisian revolution which led to overthrow of the non-democratic government and subsequent building of a pluralistic democracy in the country, the EU decided to take this opportunity to broaden and deepen cooperation with Tunisia and proposed the Privileged Partnership Agreement in November 2012. Its goal is to even more boost relations between the two parties among other things through advanced economic integration represented by the Deep and Comprehensive Free Trade Agreement (DCFTA). This proposed Agreement is anticipated to go beyond free trade issues and converge Tunisia's economy with the EU Single Market. Free Trade Area for manufactured products will be extended to the new areas – agriculture and services. It will be done in an asymmetric way in favor of Tunisia. The process of further integration will be accompanied by harmonization of regulations in the integrated sectors. The negotiations were launched in October 2015, and so far one round of political negotiations took place in April 2016 in Tunis and in February 2017 experts from Tunisia and the EU met in Brussels to discuss technical information related to the proposed Agreement.¹⁰⁶

¹⁰⁴ EEAS. *Tunisia and the EU*, https://eeas.europa.eu/delegations/tunisia/24118/tunisia-and-eu_en (accessed on 10/05/2017).

¹⁰⁵ EUROPEAN COMMISSION. *Tunisia*, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/tunisia/> (accessed on 14/05/2017).

¹⁰⁶ EUROPEAN COMMISSION. *EU-Tunisia Deep and Comprehensive Free Trade Area (DCFTA)*, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1380> (accessed on 14/05/2017).

As it was in the previous comprehensive free trade agreement (CFTA) negotiations, the European Commission is responsible for negotiating on behalf of the European Union. Its negotiations are conducted in compliance with the negotiating directives which were formulated by the Council. In addition, on 25th February 2016, the European Parliament adopted a resolution in which it expressed its conditions and recommendations for negotiations with Tunisia.¹⁰⁷ Despite that this resolution is not legally binding, the negotiators are expected to take it into account, since the final text of the agreement needs to be also approved by the Parliament.

The Parties agreed that the liberalization of trade would follow the law and practice of the WTO and DCFTA should cover all essential parts of the trade. The liberalization of customs duties will be aimed at a high level of ambition. Regarding statistics, Tunisia and the EU will provide each other data on imports (total imports, imports from Tunisia/EU and the other eight major trading partners). Both parties are willing to significantly liberalize customs duties on agricultural products, fisheries products, and processed agricultural products with some exceptions on each side using transparent negative list approach. Negotiations in this area will focus on the list of sensitive products and their treatment (tariff quotas), the implementation schedules, the transition period for Tunisia and adjustment of the entry price regime.¹⁰⁸ The parties confirm the rights and obligations resulting from Article XIX of the GATT 1994 and the Agreement on Safeguards in Annex 1A of the WTO Agreement. Trade defense instruments (antidumping, anti-subsidy and safeguard measures) may be used only in exceptional circumstances. The EU proposes to increase transparency of trade defense procedures by improving the exchange of information and ensuring that the least disruptive measures are invoked. In order to avoid over-restrictive measures, the Agreement should go beyond WTO requirements by applying the public interest test and the lesser duty rule.¹⁰⁹ In

¹⁰⁷ PARLEMENT EUROPÉEN. *Résolution du Parlement européen du 25 février 2016 sur l'ouverture de négociations pour un accord de libre-échange entre l'Union européenne et la Tunisie (2015/2791(RSP))*, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0061+0+DOC+XML+V0//FR> (accessed on 14/05/2017).

¹⁰⁸ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie - le commerce de produits agricoles, de produits agricoles transformés et de produits de la pêche – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154485.pdf (accessed on 10/05/2017).

¹⁰⁹ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – les mesures commerciales – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154490.pdf (accessed on 10/05/2017).

regard to technical barriers to trade, the Parties agree to make the best use of good regulatory practices in the development, adoption, and enforcement of technical regulations, as provided for in the TBT Agreement. Tunisia shall take the necessary measures to progressively comply with the EU technical regulation, and EU procedures for standardization, metrology, accreditation, conformity assessment, market surveillance and they try to minimize the marking and labeling requirements.¹¹⁰ In the area of the Sanitary and Phytosanitary measures, the Parties reaffirm their rights and obligations under the SPS Agreement of the WTO. Tunisia shall gradually align its SPS with the EU acquis. The SPS subcommittee shall periodically monitor the implementation of these measures and provide guidance and recommendations. The parties may recognize the animal health status, the concept of disease-free areas and the principle of compartmentation defined by the OIE. They also want to establish a dispute-settlement mechanism for resolving issues in SPS area.¹¹¹

The Parties agree that their respective customs and trade laws and related provisions and procedures shall be proportionate, transparent, predictable, non-discriminatory, impartial and applied in a uniform and effective manner. Customs officers should be authorized to check product safety and non-violation of IPR. Tunisia shall progressively approximate its customs legislation with the customs legislation of the EU.¹¹² Parties want to create a better business environment and achieve progressive liberalization of trade in services, investment, and e-commerce. The EU proposes a set of principles for market access – national treatment and the most favored nation treatment. Tunisia is expected to approximate its regulations in the maritime, postal and courier and electronic communication services. Recognizing that e-commerce enhances market opportunities in many sectors, the Parties agree to encourage its development among themselves.¹¹³ They call for the approximation of Tunisian procurement

¹¹⁰ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – les obstacles techniques au commerce – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154489.pdf (accessed on 10/05/2017).

¹¹¹ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – les mesures sanitaires et phytosanitaires – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154488.pdf (accessed on 10/05/2017).

¹¹² COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – les procédures douanieres et facilitation des échanges – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154483.pdf (accessed on 10/05/2017).

¹¹³ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – le commerce des services, investissement et commerce électronique – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154487.pdf (accessed on 10/05/2017).

procedures to EU and international standards. The partners are supposed to mutually open their public procurement above a certain threshold at all levels of government without any discrimination. The parties shall apply rules prescribed by specific articles of the WTO Agreement on Government Procurement (GPA).¹¹⁴ The Parties shall endeavor to improve the protection of intellectual property rights with a view to providing a level of protection similar to the highest international standards, including effective enforcement. Therefore they would like to establish a permanent framework for cooperation in IPR regulations.¹¹⁵ The EU would appreciate if Tunisia harmonized its competition rules with those of EU by adopting antitrust and merger legislation, establishing independent competition authority and independent state aid authority in line with the EU acquis.¹¹⁶

The trade-related energy chapter was not originally proposed by the Commission. However the European Parliament in its resolution asked the Commission to propose an ambitious chapter on energy resources (gas, electricity) and create favorable conditions for scientific cooperation in the area of renewable resources.¹¹⁷

Furthermore, Parties should ensure that all documents relevant to the implementation of the Agreement are electronically available and they should exchange information and good practices on their regulatory reform processes and on regulatory impact assessments.¹¹⁸ Parties should not lower their domestic labor and environmental protection in order to encourage trade or investment and should respect their obligations under international agreements which they have ratified. The institution for cooperation, overseeing and

¹¹⁴ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – les marchés publics – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154484.pdf (accessed on 10/05/2017).

¹¹⁵ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – les droits de la propriété intellectuelle – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154484.pdf (accessed on 10/05/2017).

¹¹⁶ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – la concurrence et autres dispositions économiques – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154481.pdf (accessed on 10/05/2017).

¹¹⁷ Parlement européen, *Résolution du Parlement européen du 25 février 2016 sur l'ouverture de négociations pour un accord de libre-échange entre l'Union européenne et la Tunisie (2015/2791(RSP))*, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0061+0+DOC+XML+V0//FR>

¹¹⁸ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – la transparence – proposition de texte*, http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154491.pdf (accessed on 10/05/2017).

implementation of sustainable development provisions and a formal mechanism to resolve disputes should be established.¹¹⁹

After the Tunisian Revolution, the EU decided to become the main sponsor of Tunisian democratic transition. The Revolution brought convergence between the goals of the EU presented in the ENP and call for democracy by Tunisians. The EU supported Tunisian transition by providing guidance to the newly established authorities, helped to build capacity in democratic institutions and promoted democratic norms and values. This caused a change in perception of the EU in Tunisia and better political cooperation. DCFTA negotiation is a great possibility to make relations with Tunisia more participative and inclusive. In spite of its preponderantly trade liberalization scope, it may lead to other important reforms and improvement of welfare in Tunisia thanks to its conditionality and linkage of issues.¹²⁰

¹¹⁹ COMMISSION EUROPÉENNE. *ALECA entre l'UE et la Tunisie – le commerce et développement durable – proposition de texte*,

http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154482.pdf (accessed on 10/05/2017).

¹²⁰ AYADI, Rym. *EU policies in Tunisia before and after the Revolution*, Brussels: 2016, 28-32.

5. (D)CFTA as a tool of EU's trade policy

5.1. Conditions for negotiation of (D)CFTA

Hypothesis I – “The EU negotiates DCFTAs only with countries whose democratic qualifications are satisfactory.”

Indicators	1	2	3	4	5	6	7	8	9	10	Explanations
Country											
Armenia	✓	✓	✓	✓	✗	✓	✓	✓	✗	✗	1 – EU is an important trading partner of a given country (among top 3 countries in volume of external trade)¹²¹ 2 – democratic regime or hybrid regime (democracy index >4.0) before negotiation was initiated¹²² 3 – partner country under European Neighborhood Policy (ENP)¹²³ 4 – European country¹²⁴ 5 – OECD member state¹²⁵ 6 – WTO member state¹²⁶ 7 – country with high (>0.700) human development index (HDI)¹²⁷ 8 – EU had already had partnership and cooperation agreement (PCA) with a given country before (D)CFTA negotiations started¹²⁸ 9 – EU had already had association agreement (AA) with a given country before (D)CFTA negotiations started¹²⁹ 10 – EU had already established free trade area (FTA) with a given country before (D)CFTA negotiations started¹³⁰
Azerbaijan	✓	✗	✓	✓	✗	✗	✓	✓	✗	✗	
Belarus	✓	✗	✓	✓	✗	✗	✓	✗	✗	✗	
Canada	✓	✓	✗	✗	✓	✓	✓	✓	✗	✗	
Chile	✓	✓	✗	✗	✓	✓	✓	✓	✗	✗	
China	✓	✗	✗	✗	✗	✓	✓	✓	✗	✗	
Colombia	✓	✓	✗	✗	✗	✓	✓	✓	✗	✗	
Ecuador	✓	✓	✗	✗	✗	✓	✓	✓	✗	✗	
Egypt	✓	✗	✓	✗	✗	✓	✗	✓	✓	✓	
Georgia	✓	✓	✓	✓	✗	✓	✓	✓	✗	✗	
Japan	✓	✓	✗	✗	✓	✓	✓	✓	✗	✗	
Jordan	✓	✗	✓	✗	✗	✓	✓	✓	✓	✓	
Moldova	✓	✓	✓	✓	✗	✓	✗	✓	✗	✗	
Morocco	✓	✓	✓	✗	✗	✓	✗	✓	✓	✓	
Peru	✓	✓	✗	✗	✗	✓	✓	✓	✗	✗	
Singapore	✓	✓	✗	✗	✗	✓	✓	✓	✗	✗	
Tunisia	✓	✓	✓	✗	✗	✓	✓	✓	✓	✓	
Ukraine	✓	✓	✓	✓	✗	✓	✓	✓	✗	✗	
United States	✓	✓	✗	✗	✓	✓	✓	✓	✗	✗	
Vietnam	✓	✗	✗	✗	✗	✓	✗	✓	✗	✗	

¹²¹ EEAS. *EU in the World*, <https://eeas.europa.eu/headquarters/headquarters-homepage/area/geo> (accessed on 10/05/2017).

¹²² THE ECONOMIST INTELLIGENCE UNIT. *Democracy Index 2016*, http://pages.eiu.com/rs/783-XMC-194/images/Democracy_Index_2016.pdf (accessed on 14/05/2017).

¹²³ EUROPEAN COMMISSION. *European Neighborhood Policy*, https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/overview_en (accessed on 14/05/2017).

¹²⁴ UN STATISTICS DIVISION. *Methodology: Standard Country or Area Codes for Statistical Use*, <https://unstats.un.org/unsd/methodology/m49/overview/> (accessed on 14/05/2017).

¹²⁵ OECD. *List of OECD Member Countries*, <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm> (accessed on 14/05/2017).

¹²⁶ WTO. *Members and Observers*, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (accessed on 14/05/2017).

¹²⁷ UNDP. *Human Development Reports*, <http://hdr.undp.org/en/composite/HDI> (accessed on 14/05/2017).

¹²⁸ EEAS. *EU in the World*, <https://eeas.europa.eu/headquarters/headquarters-homepage/area/geo> (accessed on 10/05/2017).

¹²⁹ Ibid.

¹³⁰ WTO. *Regional Trade Agreements Information System (RTA-IS)*, <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx> (accessed on 14/05/2017).

Important trading partner

The European Union has negotiated comprehensive free trade agreements (CFTA) only with states for which it is a major trading partner. The EU usually ranks as the most important trading partner for European and Mediterranean countries, as the second trading partner for North and South American countries and as the second or third most important import market for Central and Eastern Asian countries. So far, the EU has not initiated a negotiation of CFTA with a country for which it is not in a top three of exports destination. Therefore, we can conclude that being a major trading partner for a given country is a **necessary condition** for a start of CFTA negotiation.

Democratic regime

The European Union claims that it is not negotiating deep and comprehensive free trade agreements with authoritarian regimes. This statement has been so far truthful since the EU has not initiated or concluded any DCFTA with a country which had an authoritarian regime at the beginning of a negotiation or its overall score of democratic index decreased below 4.0 during negotiations – Azerbaijan and Belarus. However, this statement is not valid for comprehensive agreement negotiations, since the Council authorized the European Commission to negotiate comprehensive investment agreement with China and CFTA with Vietnam, whose democratic index score was below 4.0. Therefore, democratic regime is a **necessary condition** for initiation of DCFTA negotiation. However, it is not a requirement for comprehensive agreement negotiation.

European Neighborhood Policy (ENP)

All countries with which the EU has concluded, initiated or considered DCFTA negotiation are partner countries under European Neighborhood Policy (ENP). So far, the EU has not considered or labeled any agreement with a non-ENP country as a deep and comprehensive, despite the fact that “only” comprehensive trade agreements concluded with Canada (CETA) and Andean Community cover almost the same areas and at the similar depth of commitments and enforceable obligations. Therefore, being a partner country under ENP is a **necessary condition** for a conclusion of DCFTA.

European country

There is no specific geographic condition required from a potential partner country to initiate a DCFTA negotiation with. On the other hand, a country is required to be a partner under ENP what implies certain geographic boundaries since ENP governs relation only with the closest Southern and Eastern neighbors – Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia on the south, and Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine on the east. It differs from a condition for a country to apply for EU membership which requires that country is a European state. Therefore, to be a European country in order to conclude a DCFTA **is not a necessary condition**. For a CFTA, geographic location is completely irrelevant.

OECD membership

Being a member country of the Organization for Economic Cooperation and Development (OECD) is no requirement for a partner country to conclude neither DCFTA nor CFTA. Both types of an agreement have also been signed with non-member countries. On the other hand, CFTAs signed with OECD member states tend to be more comprehensive and have a broader scope.

WTO membership

Unlike the OECD membership, the WTO membership is a **necessary condition** for a country to sign either DCFTA or CFTA with the European Union. All countries with which the EU initiated a negotiation were member states of WTO. The EU is a vocal proponent of an accession of new countries to WTO. For instance, the EU is giving technical assistance to Azerbaijan and supporting Belarus which are undergoing accession process into WTO. The EU has never started a CFTA negotiation with a non-WTO member state and refused to establish closer partnership and cooperation with a state which had not even started to negotiate WTO accession process.

Human development index (HDI)

The European Union has commissioned the Sustainability Impact Assessment (SIA) in support of negotiations of DCFTA with Egypt and Morocco and concluded a DCFTA with Moldova which HDI is between 0.550 and 0.700 what puts them in the medium human

development category. This does not preclude potential partners from concluding DCFTA, though it suggests that DCFTA needs to provide for asymmetrical liberalization in favor of EU's partner and best practices and financial resources in order to not further worsen a situation. In addition, the EU has never explicitly required a high or very high HDI from its negotiating counterparts. Accordingly, at minimum human HDI **is not a necessary condition** neither DCFTA nor CFTA.

Previously signed Partnership and Cooperation Agreement (PCA)

The EU had already signed some form of PCA before it decided to strengthen its cooperation with a partner country through DCFTA or CFTA. The PCA with Belarus was not ratified by the EU since Belarus was not sufficiently willing to become more democratic and did not provide required political and civil rights. The EU has never concluded DCFTA/CFTA without previous positive experience in cooperation under PCA. Therefore, previously implemented PCA is **a necessary condition** for the start of DCFTA negotiation.

Previously signed Association Agreement (AA)

The EU had already signed AAs with Mediterranean countries (Egypt, Jordan, Morocco and Tunisia) before it initiated DCFTA negotiation with them. On the other hand, Eastern European countries (Armenia, Georgia, Moldova, and Ukraine) had not had AAs with the EU at the beginning of the negotiation process. In the case of the Eastern European countries, the concept DCFTA was introduced as a part of AAs. Likewise, there was no AA between EU and any partner with whom the EU has initiated or concluded CFTA. Therefore, previously implemented AA **is not a necessary condition** for negotiating a DCFTA/CFTA.

Previously established Free Trade Area (FTA)

The EU had already established FTA with Mediterranean countries (Egypt, Jordan, Morocco and Tunisia) before DCFTA negotiations started. On the other hand, the EU had not had FTA with Eastern European countries (Armenia, Georgia, Moldova, and Ukraine) before DCFTA negotiation with them was initiated. Furthermore, the EU had not created FTA with Canada or Colombia before it started to negotiate CFTA with them. Therefore, previously established FTA **is not a necessary condition** for negotiating a DCFTA/CFTA.

Finding

I proved that my first hypothesis – “*The EU negotiates DCFTAs only with countries whose democratic qualifications are satisfactory*” – is correct. The EU has never started DCFTA negotiation with an authoritarian regime. However, it is not a single condition for initiation of DCFTA negotiation. Therewith, at least four other conditions need to be met – 1) the EU needs to be an important trading partner of a given country, 2) country has to be a partner under ENP, 3) country needs to be a member of WTO and 4) the EU and a counterpart had had effective PCA.

5.2. Areas covered by EU's (D)CFTAs

Hypothesis II – “(D)CFTAs negotiated by the EU cover areas well beyond tariff issues.”

Agreement/Area	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
CETA - Canada	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	
CFTA - Colombia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	
DCFTA - Ukraine	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
DCFTA - Georgia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
DCFTA - Moldova	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
DCFTA - Tunisia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
AA/FTA Tunisia ¹³¹	-	✓	✓	✓	✗	✓	✓	✓	✗	✓	✓	✗	✗	✓	✓	✗
FTA Switzerland ¹³²	-	✓	✓	✗	✗	✓	✗	✓	✗	✗	✓	✗	✗	✗	✗	✗

Explanations

1 – National/preferential treatment and market access for goods; 2 – Trade remedies; 3 – Technical barriers to trade; 4 – Sanitary and phytosanitary measures; 5 – Customs and trade facilitation; 6 – Establishment, trade in services and electronic commerce; 7 – Current payments and movement of capital; 8 – Public procurement; 9 – Intellectual property; 10 – Competition; 11 – Trade-related energy; 12 – Transparency; 13 – Trade and sustainable development; 14 – Dispute settlement and mediation mechanism; 15 – Other areas (human rights/temporary entry and stay of natural persons for business purposes/mutual recognition of professional qualifications/...)

National/preferential treatment and market access for goods

All agreements mentioned above, except for proposed DCFTA with Tunisia calls for the establishment of a free trade area in conformity with the provisions of the GATT. Their goal is to eliminate customs duties, fees and other charges and Parties are mutually obliged to provide national treatment or in the case of FTA with Switzerland and FTA with Tunisia most-favored-nation treatment to the goods of counterparts. Parties are not allowed to adopt

¹³¹ EUROPEAN COMMISSION. *Agreement between the European Communities and the Republic of Tunisia*, http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127986.pdf (accessed on 14/05/2017).

¹³² EUR-LEX. *Agreement between the European Economic Community and the Swiss Confederation*, [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399542828541&uri=CELEX:21972A0722\(03\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1399542828541&uri=CELEX:21972A0722(03)) (accessed on 10/05/2017).

or maintain unjustified import or export restrictions. This type of agreement does not preclude Parties maintain or establish customs union or other free trade agreements so far as they are not in conflict with this Agreement.

Trade remedies

Safeguard measures may be used by either Party, though it is obliged to notify the other Party about initiation of a safeguard investigation. The Party initiating investigation should provide all necessary information laid out in the Agreement and offer to hold consultation with the other Party. When imposing safeguard measures, a Party should impose them in a way which affects trade at least. Antidumping and countervailing measures should be used in compliance with respective treaties, based on transparent and fair system and cannot exceed the margin of dumping or subsidy. They may not be applied if it evident, that they are not in the public interest.

Technical barriers to trade

The Parties decided to reaffirm their existing rights and obligations under the TBT Agreement and incorporate it into this Agreement. They agreed to cooperate in the area of technical regulation, standardization, conformity assessment, accreditation, border control and metrology in order to facilitate access to their markets and better understand each other's system. Provisions on labeling aim to reduce undue obstacles to trade by minimizing their requirements for labeling and marking. Under CETA and CFTA with Colombia, Parties decided to cooperate in order to safeguard that their technical regulations are compatible and use international standards when preparing technical regulations. DCFTAs call for the approximation of technical regulations, standards and conformity assessments with EU acquis.

Sanitary and phytosanitary measures

The Parties reaffirmed their rights and obligation under the SPS Agreement. They want to facilitate trade in animals, animal products, plants and plant products while safeguarding human, animal, and plant health or life. Parties recognized the concept of pest-free and disease-free areas and set up SPS Sub-committee. They laid out the procedure under which SPS measure of the exporting Party shall be recognized as equivalent to its own. They also agreed on improving cooperation and communication on sanitary and phytosanitary

measures. In addition to the previously mentioned, under DCFTAs EU's counterparts are obliged to gradually align their SPS measures and legislation with the EU's.

Customs and trade facilitation

Parties recognized the importance of cooperation in customs and trade facilitation issues in bilateral trade. They agreed to establish efficient, simplified and transparent procedures based on international standards in the area of customs and trade. The Sub-committee on Customs, Trade Facilitation and Rules of Origin shall oversee implementation of customs-related provisions and provide a forum for discussion and consultation. Parties agreed to provide expertise and capacity building, enhance institutional cooperation and discuss the application of modern customs techniques in order to prevent the incorrect application of customs legislation and customs fraud. Moreover, under DCFTAs EU's counterparts are obliged to gradually approximate their customs legislation not only with international standards but also with the EU's.

Establishment, trade in services and electronic commerce

Parties reaffirmed their commitments under the WTO Agreement and agreed on progressive mutual liberalization of establishment and trade in services and cooperation on electronic commerce. They agreed on service sectors in which they provide each other most-favorable-nation treatment and national treatment. They recognized a need to regularly review establishment of a legal framework and improve the attractiveness of environment for reciprocal investment. In cross-border services, Parties granted each other's service providers treatment no less favorable than they accord to their own service providers. They also defined under which conditions may natural persons providing services entry and temporary stay in their territory. Cooperation platform aimed at the elimination of obstacles to trade in services was set up. In addition, under DCFTAs EU's counterparts committed themselves to align their legislation on international maritime, postal and courier, financial and electronic commerce services with existing and future EU legislation.

Current payments and movement of capital

The Parties are obliged to authorize any payments and transfers in freely convertible currency and ensure the free movement of capital relating to direct investments. In exceptional circumstances, when capital movements cause serious difficulties for the operation of

exchange rate or monetary policy, Parties may take safeguard measures not exceeding certain period. If a Party decides to adopt or maintain safeguard measures it has to without delay inform the other Party of their relevance and scope. Parties shall regularly consult possibilities for further facilitation of capital movement between them and support stable framework for long-term investments.

Public procurement

Parties provided each other access to public procurement market on the basis of the principle of national treatment at a national, regional and local level for public tenders. They agreed on transparent minimum rules on tendering procedures and threshold value above which tenders are open to other Party's providers. Procuring entities are not allowed to adopt technical specifications which would create unnecessary obstacles to international trade. The Parties agreed to work jointly and exchange information with the goal of facilitating access for small and medium enterprises to public procurement. Sub-committee on public procurement was established to evaluate the implementation and discuss broadening the coverage. Moreover, under DCFTAs EU's counterparts are obliged to align their existing and future legislation on public procurement with the EU public procurement acquis.

Intellectual property

The Parties reaffirmed the rights and obligations under TRIPS Agreement and other multilateral IPR agreements to which the Parties are a party. With respect to trademarks, parties laid out registration requirements and registration procedure decided to cooperate in the protection of well-known trademarks. Parties defined the scope of protection of geographical indications (GI) and agreed on the possibility to add new geographical indications. They agreed on the duration of authors' rights, protection of cinematographic and audiovisual works and duration of related rights. In addition, they covered patents, designs. Authorities should strongly enforce intellectual property rights including at customs border to ensure that no counterfeit products enter or exit the territory. Parties' experiences and information on their practices and policies affecting the transfer of technology should be exchanged.

Competition

The parties agreed that any agreement, decision, concerted practice or recommendation which impedes, restrict or distort competition, as well as abuse of a dominant position are inconsistent with their Agreement. They recognized the importance of cooperation and coordination between their competition authorities. Parties are obliged to establish or maintain appropriately equipped authorities for the effective enforcement of their competition laws. Competition law should also apply to designated monopolies and state enterprises. They acknowledged the importance of technical assistance and right to request a consultation to address a specific issue. Parties also covered subsidies and how they should be granted in order not to distort competition. In addition, DCFTAs deal with an approximation of Partner's competition laws and enforcement practices with the EU acquis.

Trade-related energy

Trade-related energy (natural gas, crude oil, and electrical energy) is covered only by DCFTAs. Parties agreed that price for the supply to enterprises should be determined by supply and demand, and not be regulated by state authorities. Neither party is allowed to measures resulting in a higher price of energy exports than those on the domestic market. Customs duties and quantitative restrictions are prohibited, as well as interrupting of the transit of energy goods. Parties reiterated their obligations under Energy Charter Treaty and Article V of GATT and agreed on expedited dispute settlement procedure for solving energy-related issues. They acknowledged that independent and legally distinct regulator should be maintained to ensure effective competition.

Transparency

The Parties agreed to cooperate with the aim to increase transparency in trade-related matters. They should ensure that any measures of general application (including legislation, regulations) are without any delay made available to interested persons. Each Party should provide a chance for these persons to comment on any proposed law, regulation or procedure and attempt to take into account their comments. Parties recognized the need to exchange information and promptly respond to any question relating to any matter affecting their Agreement. Each Party should maintain impartial and independent tribunals responsible for prompt review and potential correction of administrative actions.

Trade and sustainable development

Parties recalled declarations and agendas related to environment, development and decent work and reaffirmed their commitment to sustainable development. They agreed to promote international trade in a way which contributes sustainable development. Each Party has the sovereign right to regulate in compliance with recognized international standards and principles. Parties are not allowed to reduce the levels of protection provided by their environmental and labor laws in order to encourage trade or investment. They agreed on setting up a Subcommittee on Trade and Sustainable Development to monitor the implementation of this agenda and resolve any difficulties that may arise. They should also provide opportunities for civil society involvement.

Dispute settlement and mediation mechanism

Dispute settlement mechanism outlined in the Agreements is based on the WTO rules but introduces a faster procedure. Parties should attempt to resolve any dispute through consultations. If they decided not to engage in consultation or consultation is not able to come up with a solution, the dispute is referred to an arbitration panel composed of three arbitrators. A ruling should be made within 120 days from the panel was established and if a Party breach the Agreement it needs to take all necessary measures to comply with the ruling within an agreed period. They also presented a mediation mechanism aimed at resolving issues hindering trade in goods.

Other areas

Despite its rather uniform form, agreements differ in scope or attention paid to certain areas. For example in the Agreement with Colombia (and Peru) human rights clause is more extensive and detailed than it is common. In addition, CETA provides for mutual recognition of professional qualifications, different investor-state dispute settlement. In the case of DCFTAs with Ukraine, Georgia, and Moldova which are a part of Association Agreements, other issues (e.g. political cooperation, visa-free travel regime) are covered by different parts of AA, and therefore they cannot be understood as directly linked to a DCFTA part.

Finding

I clearly demonstrated a wide scope of (D)CFTAs and its coverage of issues which are not related to tariffs. Therefore, I found my second hypothesis to be correct. Based on scrupulous analysis of six agreements negotiated by the EU, I am able to discuss the difference between comprehensive free trade agreements (CFTA) and deep and comprehensive free trade agreements (DCFTA). Both are “comprehensive” in the sense that they cover a broad scope of policy areas beyond trade-related issues and “deep” because of the depth of its commitments and enforceable obligations. (D)CFTA provides for tough enforceable obligations of WTO-plus-plus nature in both trade-related issues and regulatory area and sets up joint bodies to oversee progress, solve disputes and discuss technical issues. It also arranges for further deepening of cooperation and commitments over time what makes it a so-called living agreement.¹³³ So what makes CFTA distinct in comparison with agreements named by the EU as DCFTA? I came to the conclusion that it is their relation to the EU acquis. While I find no reference to the EU acquis in the former, later one mentions the EU acquis quite often. Ukraine, Georgia, Moldova (and Tunisia) are obliged to approximate their legislation with the EU’s one, Canada and Colombia are not.

¹³³ PELKMANS, Jacques et al. *Tomorrow’s Silk Road*, 78.

5.3. (D)CFTAs as enhancer of EU’s soft power

Hypothesis III – “(D)CFTAs enhance soft power of the EU.”

Indicators Agreement	1	2	3	4	5	6	7	8	9	10
CETA - Canada	✓	✓	✓	✓	✓	✓	✓	✓	X	✓
CFTA - Colombia	✓	N/A ¹³⁴	✓	✓	✓	✓	✓	✓	X	✓
DCFTA - Ukraine	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DCFTA - Georgia	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DCFTA - Moldova	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DCFTA - Tunisia	N/A ¹³⁵	N/A ¹³⁶	✓	✓	✓	✓	✓	✓	✓	✓

Explanations

1 – Agreement was signed and ratified voluntarily without coercion by the EU; 2 – Public opinion in a partner country is in favor of the Agreement; 3 – Import duties on products exported from the EU to a given country are eliminated or significantly reduced; 4 – Technical barriers to trade are eliminated or significantly reduced; 5 – EU service providers gain freedom of establishment in services in a given country; 6 – EU suppliers and service providers gain full access to public procurement market; 7 – Provision on regulatory cooperation; 8 – Upholding of international treaties; 9 – Approximation and implementation of EU acquis/standards (in selected areas); 10 – Promotion of human/labor/political rights

Conditions at the conclusion of the agreement

Comprehensive Economic and Trade Agreement was signed on 30th October 2016 during the European Union – Canada Leaders’ Summit in Brussels by the Canadian Prime Minister Justin Trudeau who claimed that the CETA was a result of tough and honest negotiations and it created many opportunities for Canadians.¹³⁷ Comprehensive Free Trade Agreement with Colombia (and Peru) was signed on 26th June 2012 in Brussels by Colombian President Juan Manuel Santos who said that the CFTA was beneficial to Colombia and he was eagerly

¹³⁴ A public opinion survey on the perception of CFTA was not conducted.

¹³⁵ The Agreement has not yet been concluded.

¹³⁶ A public opinion survey on the perception of DCFTA was not conducted.

¹³⁷ GOVERNMENT OF CANADA, *Canada and EU sign historic trade agreement during EU-Canada Summit*, <http://pm.gc.ca/eng/news/2016/10/30/canada-and-eu-sign-historic-trade-agreement-during-eu-canada-summit> (accessed on 14/05/2017).

expecting its ratification by the EU.¹³⁸ On 27th June 2014, the Association Agreements with Georgia and Moldova were signed. At this occasion, Georgian Prime Minister Irakli Garibashvili said that it is a big step for Georgia and that the country was given an opportunity to return to its natural environment.¹³⁹ His Moldavian counterpart Iurie Leanca claimed that the EU makes Moldova stronger and the EU is a model for Moldova.¹⁴⁰ On the same day, Ukrainian president Petro Poroshenko signed the economic part of the AA establishing DCFTA and said that it is the most important day for Ukraine since its independence and that it was a sovereign choice of Ukraine to sign this agreement.¹⁴¹ Consequently, Canada, Colombia, Ukraine, Moldova, and Georgia signed the respective agreement as a demonstration of their sovereign wish and were not threatened to do so.

Public support

According to the public opinion survey conducted by the Angus Reid Institute, 55% of Canadians supported CETA in February 2017.¹⁴² In June 2014, 47% of Moldovans believed that the Agreement is beneficial for Moldova, while 28% thought that it is against Moldova's interests.¹⁴³ In February 2014, 70% of Georgians fully supported an association with the EU, 18% somewhat supported, 3% somewhat opposed, 4% strongly opposed and 5% did not know. The majority of the respondents expected benefits after the AA was signed, 9% expected no benefits and only 1% was afraid that relations with Russia would worsen.¹⁴⁴ In March 2014, 53% of Ukrainians thought that the authorities should sign AA with the EU as soon as possible, 33% were against. When the respondents were asked whether Ukraine

¹³⁸ PETERSSON, Olle "FTA with European Union beneficial for Colombia: President Santos", *Colombia Reports*, <http://colombiareports.com/tlc-with-european-union-beneficial-for-colombia-santos> (accessed on 14/05/2017).

¹³⁹ CIVIL GEORGIA. *Georgia, EU Sign Association Agreement*, <http://www.civil.ge/eng/article.php?id=27417> (accessed on 10/05/2017).

¹⁴⁰ IPN. *Moldova signed Association Agreement with European Union*, <http://www.ipn.md/en/politica/62815> (accessed on 14/05/2017).

¹⁴¹ BBC. *EU signs pacts with Ukraine, Georgia and Moldova*, <http://www.bbc.com/news/world-europe-28052645> (accessed on 10/05/2017).

¹⁴² ANGUS REID INSITUTE. *CETA: As support softens, Canadians still back trade deal with Europe 5-to-1 over those who oppose it*, <http://angusreid.org/ceta-trudeau-europe/> (accessed on 10/05/2017).

¹⁴³ NATIONAL DEMOCRATIC INSTITUTE. *Public Perceptions of Politics and Government*, <https://www.ndi.org/sites/default/files/LRP%20Analysis%20of%20Survey%20Findings%20-%20NDI%20Moldova%20Public%20Version%20082614.pdf> (accessed on 14/05/2017).

¹⁴⁴ IPR. *Public Opinion Survey – Residents of Georgia (February 3-28, 2015)*, http://www.iri.org/sites/default/files/wysiwyg/iri_georgia_public_2015_final_0.pdf (accessed on 14/05/2017).

should create DCFTA with the EU or join a customs union with Russia, 52% were in favor of DCFTA and 27% in favor of customs union.¹⁴⁵

Import duties

CETA, CFTA with Colombia, DCFTAs with Georgia, Moldova and Ukraine and proposed DCFTA with Tunisia eliminate or significantly reduce import duties on products exported from the EU. This means several million euros of savings for EU exporters. The price of products originating in the EU may decrease on partner country's domestic market. Thanks to that competitiveness and presence of EU products will increase. The presence of quality and affordable EU products may lead to increased attractiveness of the European Union.

Technical barriers to trade

All discussed agreements provide for cooperation on TBT issues. Its goal is to reduce obstacles to trade by simplifying and avoiding redundant difference of technical requirements. Mutual recognition and harmonization of technical standards significantly decrease existing non-tariff barriers. Alignment of legislation related to sanitary and phytosanitary measure will facilitate trade in plants and plant products, animals and animal products. Since the EU has high and respected SPS standards, it usually means that a partner country needs to approximate its standards with those of the EU.

Establishment in services

All six agreements have provisions which allow establishment in services for EU companies. This means that the EU services providers can offer their services in a partner country, especially in the area of accountancy, transport, legal services, and telecommunication services. Thanks to that the EU presence in a given country will increase. If EU service providers take full advantage of this opportunity, the attractiveness of EU approach and the EU itself may be enhanced.

¹⁴⁵ IPR. *Public Opinion Survey – Residents of Ukraine (March 14-26, 2014)*, <http://www.iri.org/sites/default/files/2014%20April%205%20IRI%20Public%20Opinion%20Survey%20of%20Ukraine%2C%20March%2014-26%2C%202014.pdf> (accessed on 14/05/2017).

Access to public procurement market

Since under (D)CFTAs provisions the EU gained access to public procurement market of its counterparts and allowed its partners to tender in its public procurement market, it inevitably led parties to need to define what conditions and requirements should public tenders fulfill. Public procurement market in the EU has been increasingly regulated due to its importance for the Single Market. Access to public procurement market for EU companies will lead to increased competitiveness on partners' market and decreasing prices of public tenders. Since it will be beneficial for governments and local people, the perception of the EU might be better.

Regulatory cooperation

All agreements between the EU and its partners call for regulatory cooperation. This cooperation is not compulsory beyond the scope of TBT Agreements, the GATT 1994, the GATS and the SPS Agreement. Nevertheless, Parties recognized the value of regulatory cooperation between them. Mutual cooperation may build trust and help each other to better understand regulatory governance on partner's territory. Since Partners would like to reduce unnecessary differences and duplicative regulatory requirements, they need to come up with regulation based on mutual acceptance, and there is a place for the EU to promote its approach as a better one.

Relation to international treaties

In all concluded, but also negotiated agreements, the EU ensures that a free trade area is established in compliance with Article XXIV of GATT 1994 and Article V of the GATS and calls on Partners to reaffirm existing obligations under WTO Agreement. Throughout agreements, there are references to GATT 1994, Anti-dumping Agreement, TRIPS Agreement, SPS Agreement, Safeguards Agreement, Import Licensing Agreement, Agreement on Agriculture, Rules of Origin Agreement, TBT Agreement and other WTO agreements. In addition to WTO agreements, the EU calls for compliance with obligations under IMF, ILO, CITES, Kyoto Protocol and respect of other international labor and environmental standards. Promotion of international standards based on EU standards and practices is one of the most efficient ways how to strengthen the perception of the EU as a soft power.

EU acquis and standards

DCFTAs with ENP partners include provisions on approximation and implementation of EU acquis in selected areas. Hence, the EU is able to some extent influence legislation of these countries. However, it is optional, not compulsory. If they wish to gain access to EU market for certain categories of products or reduce thresholds for public procurement tenders, they are expected to approximate their standards or laws to those of the EU. It is an attractiveness of the refined EU standards and vision of better conditions for their producers and service providers what make them amend their standards and laws, not coercion or threats.

Promotion of rights

In addition, to its economic and trade interest, the EU takes (D)CFTAs as an opportunity to promote human rights, labor rights and political rights on partner's territory. The scope and importance of this kind of provisions are directly linked to existing conditions in a given country. While in the case of CETA, the partners did not need to go further than to reaffirm their strong attachment to fundamental human rights, in the case of Colombia whole negotiations of the Agreement were marked by criticism of human rights violation in Colombia. Therefore, the Commission came up with a more accurate human rights clause which says that respect for human rights constitutes an essential element of that Agreement and in the case of violation of human rights, the EU may unilaterally suspend the Agreement. This shows how the EU is able to promote human rights or any other democratic principles through CFTAs.

Finding

I demonstrated that the DCFTAs negotiated by the European Union have been able to do more than just liberalize trade and open markets. The politicians in partner countries gladly welcomed proposed Agreements and signed them without being pressured by the EU, or what is even more important despite being threatened by Russia. Public support in Ukraine for the Agreement with the EU was so huge that the decision of former Ukrainian President Viktor Yanukovich not to sign the Agreement led to the 2014 revolution and subsequent election of pro-European politicians. Thanks to the reduction of barriers to trade and approximation of legislation, the presence and impact of the EU in partner countries have increased. Through CFTAs, the EU was able to uphold EU and international standards and

promote fundamental rights. Therefore, my third hypothesis was correct – (D)CFTAs have enhanced soft power of the EU.

Conclusion

In the first part of my master's thesis, I introduced a theoretical framework needed for my research. I presented the concept of soft power as Joseph Nye defined it in his book *Bound to Lead* in 1990. I mentioned Nye's claim that if a country is able to formulate standards based on its interests and preferences and make them attractive for other countries to follow them, its soft power is boosted. Then I discussed how EU's soft power has so far evolved. In the second chapter, the evolvment and legal basis of EU's trade policy were outlined. For instance, that the Directorate-General for Trade of the European Commission is responsible for development and implementation of EU's trade policy. Traditionally, the EU supported multilateral trade liberalization. However, it changed its focus to the bilateral free trade negotiations after it was not able to pursue its goals in the Doha Round of WTO negotiations. In its trade relations with third countries, the EU nowadays recognizes and utilizes three main types of agreements – customs union, (deep and comprehensive) free trade agreements and partnership and cooperation agreements. Deep and Comprehensive Free Trade Agreement (DCFTA) is a relatively new concept which goes beyond reducing and eliminating customs tariffs, and it has gradually become a part of the European Neighborhood Policy (ENP). As of May 2017, the EU had DCFTAs with Georgia, Moldova, and Ukraine.

In the second part, firstly I presented an overview of trade relations of the EU with Canada, Colombia, Ukraine, Moldova, Georgia, and Tunisia, respectively. Then using the inductive method, I scrutinized comprehensive agreements signed with a respective country. During analysis, I elaborated on intellectual property rights and investor-state dispute settlement mechanism under the CETA and human rights clause under the Agreement with Colombia. I focused on the approximation of sanitary and phytosanitary measures in the case of Ukraine and the approximation of public procurement legislation in Georgia. Moreover, finally, I paid attention to the involvement of Russia during DCFTA negotiation in Moldova and discussed how the EU became the main sponsor of Tunisian democratic transition.

Finally, in the third part, I selected indicators in compliance with neoliberalism and soft power concept. Trough applying of these indicators on my case studies I approached my previously stated hypotheses and found all three of them to be correct. The EU has never started DCFTA negotiation with an authoritarian regime. However, I showed that it is not a

single condition for initiation of DCFTA negotiation. Therewith, at least four other conditions need to be met – 1) the EU needs to be an important trading partner of a given country, 2) country has to be a partner under ENP, 3) country needs to be a member of WTO and 4) the EU and a counterpart had had effective PCA.

I also demonstrated a broad scope of (D)CFTAs and its coverage of issues which are not related to tariffs. I showed that both – CFTA and DCFTA are “comprehensive” in the sense that they cover a broad scope of policy areas beyond trade-related issues and “deep” because of the depth of its commitments and strong, enforceable obligations of WTO-plus-plus nature in both trade-related issues and regulatory area. They also provide for the establishment of joint bodies to oversee progress, solve disputes and discuss technical issues. This type of an agreement also arranges for further deepening of cooperation and commitments over time what makes it a so-called living agreement. I came to the conclusion that DCFTA and CFTA differ about their relation to the EU acquis. While I found no reference to the EU acquis in the former, later one mentions the EU acquis quite often. Ukraine, Georgia, Moldova (and Tunisia) are obliged to approximate their legislation with the EU’s one (in selected areas), Canada and Colombia are not.

I showed that the DCFTAs negotiated by the European Union have been able to do more than just liberalize trade and open markets. The politicians in partner countries gladly welcomed proposed Agreements and signed them without being pressured by the EU, or what is even more important despite being threatened by Russia. Public support in Ukraine for the Agreement with the EU was so massive that the decision of former Ukrainian President Viktor Yanukovich not to sign the Agreement led to the 2014 revolution and subsequent election of pro-European politicians. Thanks to the reduction of barriers to trade and approximation of legislation, the presence and impact of the EU in partner countries have increased. Through CFTAs, the EU was able to uphold EU and international standards and promote fundamental rights. Therefore, I came to the conclusion that (D)CFTAs have been able to enhance soft power of the EU.

To conclude, this master’s thesis proved that (D)CFTA is an important tool of the EU’s trade policy which helps it not only to liberalize and facilitate international trade but also enhances its position as a soft power. The findings at which I have arrived are of general application

and can be used to examine other similar cases. However, I have to admit that I see some reserves in my thesis which could be approached in further research – more indicators could be chosen to establish a stronger correlation between (D)CFTA and enhancement of soft power.

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