

# Turning Crisis into Opportunity: Unfolding Ukraine's Trade Potential with the Canada-Ukraine Free Trade Agreement<sup>1</sup>

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**Abstract:** To offset the devastating effects of the trade war waged by the Russian Federation, Ukraine has undertaken laudable efforts since 2014 to negotiate new trade agreements with other states. Against this background, the negotiations of the Canada-Ukraine Free Trade Agreement were finalized and the agreement came into force on 1 August 2017. This article explores the positive impact of this agreement on bilateral trade flow between the states and describes its potential contribution to unfolding Ukraine's trade potential.

**Keywords:** Ukraine, Canada, trade, CUFTA, technical assistance.

## INTRODUCTION

**C**anada has traditionally been one of the main strategic partners of Ukraine. The recently signed Canada-Ukraine Free Trade Agreement (CUFTA) reinforces the existing political and economic co-operation between the countries. The agreement was signed and brought into force against the background of a trade war waged by the Russian Federation against Ukraine, an event that expedited the latter's search for alternative long-term trading partners. This article reviews Ukraine's participation in international trade and analyzes trade relations between Ukraine and Canada against this backdrop. Potential implications of the recently signed

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CUFTA on bilateral trade flows and on domestic reforms in Ukraine are examined. The working hypothesis of this article is that the CUFTA would marginally improve bilateral trade flow between the countries. However, it might have a positive impact on domestic reforms in Ukraine, including alignment of standards to curtail non-tariff barriers, lowering of trade costs by reducing red tape, and preservation of environmental and labour standards.

## METHODOLOGY

This article employs the method of historical analysis to examine Ukraine's participation in international trade and to describe the unfolding of the trade war between Ukraine and the Russian Federation. In addition, the method of doctrinal ("black letter") research is used to review the substantive provisions of the CUFTA and their potential contributions to an improvement in the regulatory environment in Ukraine. Furthermore, secondary data analysis is applied in several parts of this paper. For example, the available literature on the impact of the CUFTA on trade relations between Ukraine and Canada is briefly summarized. To guide the analysis, a number of interviews were conducted with Canadian government officials responsible for the trade co-operation between Ukraine and Canada.

## I. UKRAINE'S INTERNATIONAL TRADE RELATIONS

Before 2014 Ukraine was heavily dependent on trade with the Russian Federation. Geographical proximity, lack of alternative sources of energy, as well as similar standards, technical regulations, and associated conformity assessment procedures were factors that determined this dependence. The Revolution of Dignity in 2013-14 fundamentally turned Ukraine's foreign policy toward closer co-operation with the European Union (EU), resulting in a military and diplomatic conflict with the Russian Federation. Access to new markets and export-led growth compelled Ukraine to develop and implement a new international trade policy, as outlined below.

### 1. UKRAINE'S PARTICIPATION IN INTERNATIONAL TRADE

After the breakup of the Soviet Union in 1991, Ukraine declared its independence. Since then, Ukraine has maintained trade relations with both the former Soviet republics and other trading partners. Trade relations with

the post-Soviet states are regulated by either bilateral agreements<sup>2</sup> or by Ukraine's participation in various economic integration projects under the aegis of the Commonwealth of Independent States (CIS).<sup>3</sup> The main principles of relations between Ukraine and the European Union (EU) were agreed upon in 1994 and enshrined in the Partnership and Cooperation Agreement between the European Communities and Ukraine that came into force in 1998 (Partnership and Cooperation Agreement). With the launch of the European Neighbourhood Policy in 2004 and against the background of Ukraine's demands for closer co-operation with the EU, the negotiation of a new association agreement was initiated in 2007 (Van der Loo and Van Elsuwege 422).

In 2008, by acceding to the World Trade Organization (WTO), Ukraine assumed numerous obligations under agreements that regulate trade in goods and services and protection of intellectual property rights.<sup>4</sup> Ukraine also submitted to an institutionalized system of interstate trade dispute settlement.<sup>5</sup> In addition, Ukraine signed the Trade and Investment Cooperation Agreement with the United States in 2008 and continued to negotiate an Association Agreement with the EU that was finalized in 2011. In parallel to negotiations with the EU, the Ukrainian government was

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<sup>2</sup> Ukraine signed bilateral free trade agreements with Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, the Russian Federation, Tajikistan, Turkmenistan, and Uzbekistan.

<sup>3</sup> The Commonwealth of Independent States was created in December 1991. In the early 1990s, the participating countries negotiated a number of official documents, which mainly focused on the development of stronger economic relations and the facilitation of further economic integration between the former Soviet republics. For example, CIS members signed a free trade agreement on 15 April 1994. Due to numerous obstacles, the free trade agreement was not ratified by the signatories. In 1999, CIS members negotiated additional amendments to the free trade agreement signed in 1994. From the early 2000s till 2009, CIS members adopted numerous declarations and programs of co-operation. The CIS Free Trade Agreement was signed in 2011 and came into force on 20 September 2012. Member countries are Ukraine, Azerbaijan, Belarus, Armenia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, and Uzbekistan.

<sup>4</sup> A state can become a WTO member only after accepting the whole package of legal agreements, including trade in services, trade-related intellectual property rights, and various non-tariff measure agreements.

<sup>5</sup> Ukraine, as a WTO member, is obligated to decide all disputes arising under the WTO covered agreements in accordance with the provisions of the Understanding on rules and procedures governing the settlement of disputes.

considering participation in Russian-led economic integration projects<sup>6</sup> (Dragneva and Wolczuk 689-93).

Until 2013, Ukraine cautiously balanced its economic integration commitments to Russia with the desire to preserve its political independence (Dragneva and Wolczuk 683-93; Svoboda 1688-93). The reasons behind these policies were twofold: Ukraine's strong dependence on a supply of energy resources from Russia and the avoidance of commitments that might threaten Ukraine's sovereignty (Dragneva and Wolczuk 680).

Against this background, several studies were published discussing the economic, legal, and political implications of Ukraine's choice between the two possible pathways—either closer economic integration with the EU or further integration with the post-Soviet states through participation in Russian-led economic integration endeavours. Some analyzed prospective legal obligations under both integration plans and emphasized the impossibility of pursuing both integration options (Van der Loo and Van Elsuwege 443). Other surveys outlined the economic repercussions of both integration options and concluded that closer economic co-operation with the EU would be more beneficial to Ukraine (ECORYS; Institute for Economic Research and Policy Consulting).

In late 2013 Ukraine was at a crossroads: the country had to choose either closer economic and political integration with the EU or the Russian-led Eurasian Customs Union (subsequently transformed into the Eurasian Economic Union). While numerous economic studies emphasized the benefits of deeper integration with the EU, the Ukrainian political leadership was concerned with the short-term goals of securing access to cheap Russian gas and preserving tariff-free access to the Russian market (Dragneva and Wolczuk 692). Thus, the Ukrainian government suggested a middle ground in the negotiations with Russia—a free trade agreement between Ukraine and the members of the Eurasian Customs Union (Shumylo-Tapiola 20). This offer was declined.

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<sup>6</sup> A Customs Union between Belarus, Kazakhstan, and Russia was established in 2011; it was programmed to evolve into a Single Economic Space (SES) in 2012 and, ultimately, into the Eurasian Economic Union (EEU) by 2015. The Eurasian Economic Union (EAEU) was created in 2015, initially by Russia, Belarus, and Kazakhstan, and later joined by Armenia and Kyrgyzstan. The EAEU replaced the previous integration initiatives—the Customs Union (2010-11) and the Single Economic Space (2012-14)—that were in effect between the same states. The ambition behind this economic integration was to move from the customs union toward further integration into a single market with the “four freedoms”—goods, services, labour, and capital.

## 2. DETERIORATING TRADE RELATIONS WITH THE RUSSIAN FEDERATION

In late 2013-early 2014, several events were unfolding with astonishing speed. Ukrainian President Viktor Yanukovich made an infamous move to postpone the signing of the Association Agreement between Ukraine and the EU. This act was perceived as a shift toward closer economic co-operation with the Russian Federation and, as a result, a partial loss of sovereignty. Massive demonstrations in Ukraine were followed by the Russian annexation of the Crimean Peninsula and a military conflict in the eastern part of Ukraine. In the midst of the political and military turmoil, the bilateral trade relations between Ukraine and the Russian Federation significantly deteriorated. The Trade Policy Review Report prepared by the WTO in March 2016 provides the following data: “Imports from the Russian Federation fell from US\$23.2 billion in 2013 to US\$12.7 billion in 2014; exports to the Russian Federation dropped from US\$15.1 billion in 2013 to US\$9.8 billion in 2014” (15).

The decrease in bilateral trade was further augmented by economic sanctions imposed by both sides. Some of these restrictive measures were explicitly declared as economic sanctions,<sup>7</sup> while other restrictions were hidden under a veil of sanitary/phytosanitary measures, technical regulations, and customs procedures (Cenusa et al.; Svoboda 1695-98). For example, in July 2013, the Russian Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (*Rospotrebnadzor*) imposed a ban on the import of confectionery produced by the Ukrainian Company Roshen<sup>8</sup> (Svoboda 1695). To exert additional pressure, in August 2013, when the Ukrainian president was still hesitant to sign the Association Agreement with the EU, Russian customs officials started inspecting all goods imported from Ukraine (Panin). This caused significant delays at the border, and Ukrainian exporters incurred heavy losses (Olearchyk). According to some estimations “around 1,000 Ukrainian trucks and railway wagons remained backed up on the Russian-Ukrainian border” (Svoboda 1696).

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<sup>7</sup> In the midst of the military tension between the countries, both countries introduced special laws to regulate (i) the imposition of unilateral economic sanctions, (ii) the circumstances that justify such measures, and (iii) the forms that such measures might take. Ukrainian law regarding sanctions—№ 1644-VII—is effective from 14 August 2014. The Russian law regarding “measures of reaction (counteraction) against unfriendly actions of the United States of America and (or) other foreign states”—№441399-7—was adopted in May 2018.

<sup>8</sup> This company is owned by Petro Poroshenko, who was actively engaged in Ukrainian politics, including during the time of the Revolution of Dignity, and subsequently became a Ukrainian president.

Another illustrative example was the suspension of conformity assessment certificates that had been issued to Ukrainian producers of railway equipment from late 2013 (Cenusa et al. 2). This suspension was followed by a refusal to issue new certificates after the Ukrainian exporters filed new applications (WTO, *Russia—Measures Affecting the Importation*). Ukraine filed a complaint with the WTO, questioning the legality of such actions.<sup>9</sup>

Yet the matter did not rest there. After Ukraine and the EU signed the Association Agreement and started to apply it provisionally in January 2016, Russia suspended the CIS Free Trade Agreement with respect to Ukraine (“Russia Suspends”; “EC Says”). According to the Russian president, this decision was justified because the economic interests of the Russian Federation might be potentially threatened by an influx of cheap goods that originated in the EU.<sup>10</sup> Moreover, starting from January 2016, Ukraine was added to the Russian blacklist of countries subject to an import ban on certain food and agricultural products (*Resolution of the Government*) and severe transit restrictions applied not only to goods originating in Ukraine but also to goods that were transported through its territory (*Decree of the President of the Russian Federation*). Ukraine retaliated in kind and prohibited imports from Russia (Oliphant). The Ukrainian import ban covers various categories of goods originating from the Russian Federation (Kabinet Ministriv Ukrainy, *Postanova vid 30 hrudnia 2015*).

The remaining trade between Ukraine and the Russian Federation exemplifies Ukraine’s strong dependence on a supply of energy resources, coal, and nuclear fuel from Russia (Antonenko et al.). Furthermore, the increased dependence on coal from Russia reflects economic implications of the conflict in the east of Ukraine, a region that traditionally supplied coal to other parts of the country. However, Ukraine has diversified its supplies of energy resources and nuclear fuel since 2014 (Antonenko et al.).

Ukraine and Russia both questioned the legality of each other’s trade-restrictive measures before the WTO. There were five such trade disputes. Two of these disputes were terminated at the stage of consultations.<sup>11</sup> In the

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<sup>9</sup> Both the WTO panel and the Appellate Body concluded that the Russian Federation breached its obligations under WTO law.

<sup>10</sup> Annex 6 of the CIS FTA allows a party to revert to less favourable tariffs if another party concluded an agreement with a third party that resulted in higher volumes of imports to an extent that caused harm or danger of harm to the industry.

<sup>11</sup> DS525: Ukraine—Measures relating to Trade in Goods and Services (the Russian Federation filed a request for consultations to discuss various trade-restrictive measures introduced by Ukraine; this request was not followed by the formal initiation of a dispute); DS532: Russia—Measures Concerning the Importation and Transit of Certain Ukrainian Products (Ukraine submitted a request for consultations

dispute wherein Ukraine questioned the legality of conformity assessment procedures applicable to Ukrainian suppliers of rolling stock, railroad switches, and other railroad equipment, some of the measures undertaken by the Russian Federation were acknowledged to be inconsistent with WTO law (WTO, *Appellate Body Report, Russia*). In the remaining two disputes Ukraine was not successful. In the dispute initiated by Russia, both the panel and the Appellate Body found that Ukraine had violated some of its WTO commitments<sup>12</sup> (WTO, *Appellate Body Report, Ukraine*). In the dispute filed by Ukraine, the panel ruled that Russian restrictions on transit were justified on national security grounds<sup>13</sup> (Bogdanova).

### 3. UKRAINE'S TRADE POLICY SINCE 2014

The current state of Ukraine's international trade reflects the long-term absence of structural economic reforms. According to the World Bank report, the following negative trends have dominated Ukrainian trade relations:

- Primary goods comprised over 80 percent of total exports on average over the last 10 years; as a result, exports have fluctuated considerably in line with the volatility in global commodity prices (World Bank, *Ukraine—Systematic Country Diagnostic* 17);
- Ukraine has made limited progress in diversifying its export base and enhancing the sophistication of its exports (World Bank, *Ukraine—Systematic Country Diagnostic* 18);
- The distribution of output and exports across oblasts (administrative regions in Ukraine) suggests that Ukraine has not made sufficient progress in moving beyond commodity exports and leveraging its other comparative advantages (World Bank, *Ukraine—Systematic Country Diagnostic* 19).

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with respect to measures concerning trade in juice products, beer, beer-based beverages, and other alcoholic beverages, confectionary products, wallpaper, and similar wall coverings from Ukraine; this request was not followed by the formal initiation of a dispute).

<sup>12</sup> Both the WTO panel and the Appellate Body found that Ukraine breached a number of substantive and procedural obligations under the WTO Anti-Dumping Agreement.

<sup>13</sup> DS512: Russia—Measures Concerning Traffic in Transit (a dispute initiated by Ukraine to question restrictions on transit; the WTO panel found that these restrictions breach WTO obligations, yet they were justified on national security grounds because of a situation of “emergency in international relations” between both states).

Since 2012 Ukraine's exports of iron and steel, which have traditionally been Ukraine's main export products, have declined (WTO, Trade Policy Review Body, *Trade Policy Review of Ukraine*, Report 15). On the other hand, exports of agricultural products have been booming, in particular, grains and oilseeds (WTO, Trade Policy Review Body, *Trade Policy Review of Ukraine*, Report 15).

In 2012-18, Ukrainian exports of railway and tramway locomotives, nuclear reactors, boilers and machinery, mineral fuels and oils, articles of iron and steel, and fertilizers have significantly decreased (Table 1).

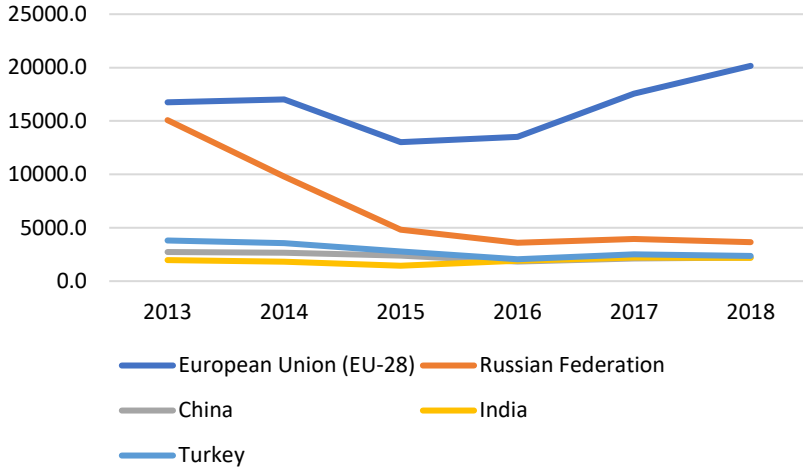
**Table 1. Top 10 categories of Ukrainian exports in 2012 and 2018. (Source: Dabrowski et al.)**

Exports	Trade (\$mlns) 2012	Trade (\$mlns) 2018
Iron and steel	15,328	9,937
Cereals	6,971	7,241
Animal or vegetable fats and oils	4,171	4,497
Railway and tramway locomotives	4,107	253
Nuclear reactors, boilers, and machinery	3,787	1,724
Mineral fuels and oils	3,640	861
Ores, slag, and ash	3,306	3,035
Electric machinery and equipment	3,231	2,930
Articles of iron and steel	2,837	1,110
Fertilizers	1,786	70

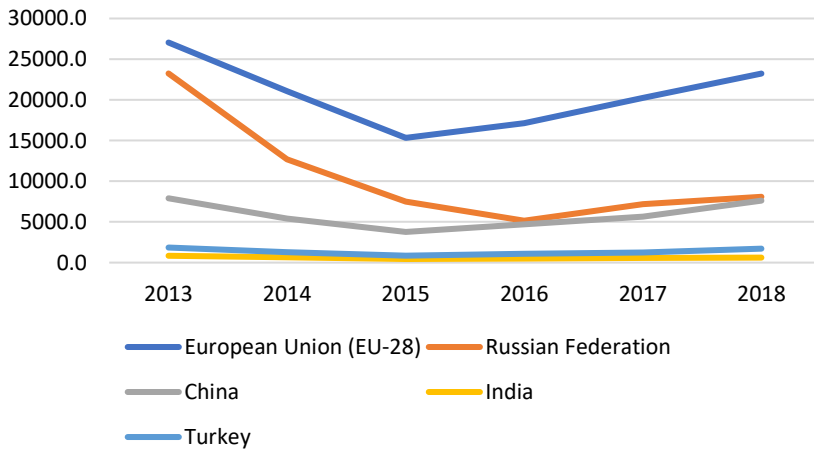
Since 2013, Ukraine's trade patterns have changed drastically: both imports from and exports to the Russian Federation decreased, whereas trade with the EU intensified. Graph 1 and Graph 2 illustrate these trade patterns.



**Graph 1. Ukraine exports of goods by destination, 2013-18 (based on data from the World Bank World Integrated Trade Solution [WITS]).**



**Graph 2. Ukraine imports of goods by origin, 2013-18 (based on data from the World Bank World Integrated Trade Solution [WITS]).**



Starting from 2014, Ukraine has been implementing a trade policy based on the following premises: reap the benefits of the Association Agreement with the EU,<sup>14</sup> negotiate new free trade agreements with other states in order to secure preferential market access,<sup>15</sup> accede to new WTO agreements,<sup>16</sup> and defend Ukrainian interests in trade disputes with the Russian Federation at the WTO.<sup>17</sup> In 2014 Ukraine established an Office of Trade Representative; the trade representative is appointed by the highest executive body in Ukraine—the Cabinet of Ministers (Kabinet Ministriv Ukrainy, *Postanova vid 16 zhovtnia 2014*).

Export-led growth, a regulatory environment conducive to trade facilitation, and more active participation in global value chains are areas of significant importance in improving Ukraine's terms of trade (Hoekman et al.). In a similar vein, the World Bank recommends that quality and standards be strengthened and harmonized to tap into the potential of international trade agreements (World Bank, *Ukraine—Systematic Country Diagnostic 11*).

Against this background, the reorientation of exports is a core priority for Ukraine (Sardak et al.). Specifically, the country should improve its trade relations with the EU and with other major economies (Sardak et al.). This objective was reflected in the Export Strategy of Ukraine, 2017-21, and was reinforced by the creation of the Export Promotion office in 2018.

To enable Ukraine's participation in global value chains, priority should be given to the alignment of standards, technical regulations, and associated conformity assessment procedures, in addition to improvements in the regulatory environment. Hence, it is important to analyze the potential of the

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<sup>14</sup> The Association Agreement with the EU entails not only lowering the tariff barriers in trade between Ukraine and the EU, it also aligns Ukraine's technical regulations and standards with those of the EU. Furthermore, Ukraine is committed to implementing the EU's *acquis communautaire*.

<sup>15</sup> The Israel-Ukraine Free Trade Area Agreement was concluded on 21 January 2019 and is expected to come into force in 2021 ("Netanyahu: Israel to Complete Ratification"). Ukraine and Turkey are at the final stage of concluding a bilateral Free Trade Agreement ("Negotiations on FTA"). Ukraine and the United Kingdom signed the Political, Free Trade and Strategic Partnership Agreement in October 2020. This agreement delivers the same level of liberalization in trade, services, and public procurement that was agreed upon under the existing EU-Ukraine Association Agreement ("UK and Ukraine"). Some Ukrainian scholars argue that this development could increase Ukrainian exports (Shvorak).

<sup>16</sup> Ukraine joined the WTO Trade Facilitation Agreement in 2015 and the plurilateral Agreement on Government Procurement in 2016.

<sup>17</sup> For more details on trade disputes between Ukraine and Russia and their outcomes, see the subsection "Deteriorating Trade Relations with the Russian Federation."

recently signed Canada-Ukraine Free Trade Agreement (CUFTA) in light of the foregoing prescriptions for exports and trade relations and particularly in view of the fact that despite strong diplomatic relations with Canada and numerous, politically active Ukrainian diaspora in Canada, Ukraine trades below its potential with Canada (Ministry of Economy of Ukraine). In section III, the extents to which the CUFTA is conducive toward redirecting Ukrainian exports to Canada and improving the regulatory environment in Ukraine are examined.

## II. TRADE RELATIONS BETWEEN UKRAINE AND CANADA

### 1. HISTORICAL BACKGROUND

In the late nineteenth century, Ukrainian immigrants, mostly from the western part of the country, began to settle in Canada. Before the outbreak of World War I, more than 170,000 Ukrainians had arrived in Canada (Luciuk, *Searching for Place* 11). At that time the Canadian government supported policies conducive to the promotion of such immigration. The rationale behind those policies was well captured by Lubomyr Luciuk: "Ukrainians and other Slavic immigrants were allowed in only because they were deemed essential for populating Canada's Northwest, to keep it from remaining 'sterile and unproductive for centuries to come'" (*Searching for Place* 15).

During World War I, many Canadian settlers of Ukrainian descent were incarcerated because they were former citizens of the Austro-Hungarian Empire, i.e., "enemy aliens" (Luciuk, *Searching for Place* 16-25). Even after the war, Ukrainian Canadians were treated in an unjust manner.<sup>18</sup> Despite these injustices, failed attempts to establish an independent state (known as

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<sup>18</sup> "Those released, either during the war or just after, were never compensated for the indignities they had suffered as internees, for the injustice of their incarceration, for the lost years of their lives, or for their labour; nor were they refunded funds that had been taken from them upon their arrest, wealth administered by the Custodian of Enemy Alien Properties, some of which remains in Ottawa's coffers to this day" (Luciuk, *Searching for Place* 22).

the Ukrainian War of Independence of 1917-21)<sup>19</sup> and World War II<sup>20</sup> sparked new waves of Ukrainian immigration to Canada.

Canadians of Ukrainian ancestry constitute more than 1.3 million of present-day Canadians (Statistics Canada). It is no surprise that Canada was the first country to officially recognize Ukraine as an independent state in 1991 (McDougall). Ukraine's independence marked a new period of bilateral co-operation between the countries (Kordan). It must be noted that Canada was one of the first countries that responded to ongoing tensions between Ukraine and the Russian Federation by imposing unilateral economic sanctions against the latter (Government of Canada, "Canadian Sanctions").<sup>21</sup> Furthermore, since 2014 Canada has provided assistance programs worth more than 785 million Canadian dollars to Ukraine (Government of Canada, "Canada's Engagement").

## 2. CANADA-UKRAINE FREE TRADE AGREEMENT: GENERAL OVERVIEW

The CUFTA was signed on 11 July 2016 and came into force on 1 August 2017.<sup>22</sup> The agreement consists of nineteen chapters and annexes. The CUFTA covers trade in goods. Although new commitments for trade in services were not negotiated, a review clause was incorporated in the agreement, allowing parties to negotiate new rules for cross-border trade in financial services, investment, telecommunications, temporary entry, and other areas of interest to the parties (Government of Canada, CUFTA,<sup>23</sup> article 19.2). This clause allows parties to negotiate new commitments within two years of the CUFTA's entry into force. Although this time has

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<sup>19</sup> Dzyra mentions that the reasons behind such migration were diverse: economic, social, and political. Myron Gulka-Tiechko assessed the impact of Canadian migration policies, in particular, the Railways Agreement, on the economically-driven migration from Ukraine in the interwar period.

<sup>20</sup> Lubomyr Luciuk observed that "some 35,000-40,000 Ukrainian refugees would relocate in Canada" ("Unintended Consequences in Refugee Resettlement").

<sup>21</sup> On 17 March 2014, the Special Economic Measures (Russia) Regulations came into force. The Regulations were amended several times. The sanctions included an asset freeze and a prohibition of dealings with designated individuals and entities; restrictions on certain sectors, such as the financial and energy sectors; prohibition of the export, sale, supply or shipping of certain (listed) goods to Russia or to any person in Russia for their use in offshore oil (at a depth greater than 500 m), shale oil, or Arctic oil exploration and production.

<sup>22</sup> The negotiations between Canada and Ukraine were launched in 2010. After six rounds of negotiations, they were concluded in July 2015.

<sup>23</sup> All subsequent references will be cited as CUFTA.

lapsed, each signatory has expressed a desire to initiate a new round of negotiations to liberalize trade in services and to promote investment. In July, 2019, Canadian Prime Minister Justin Trudeau and Ukrainian President Volodymyr Zelens'kyi agreed to expand and modernize the CUFTA, and in February 2020, Canada launched public consultations to this end ("Minister Ng"). It is expected that future negotiations will liberalize investment, trade in services and e-commerce, and temporary entry of persons, and promote inclusive trade ("Consulting Canadians").

When Ukraine joined the WTO in 2008, it had to liberalize its trade in services more than the original members, such as Canada. In fact, Ukraine undertook commitments in all the services sectors.<sup>24</sup> As a result, the country has little to offer in terms of additional market access in services. This adds to the disparity in bargaining powers between Ukraine and Canada. This being said, the reforms announced by the new Ukrainian government are expected to create new investment opportunities for Canada. For example, privatization of Ukrainian state-owned enterprises is in process, with the vested interests of rent-seeking elites being the major stumbling block (Dabrowski et al.). Despite this opposition, the need for a post-Covid-19 economic recovery might inspire the Ukrainian government to accelerate privatization. In view of this, new standards of investment protection that might be potentially agreed upon by Ukraine and Canada can serve as additional guarantees for Canadian investors and might encourage them to invest in Ukraine.<sup>25</sup>

The CUFTA prescribes asymmetrical tariff elimination commitments. Thus, 98.1% of Canada's goods became duty-free immediately, sixteen tariff lines will become duty-free in 2024, and the remaining 111 tariff lines (1.5%) will remain dutiable (WTO, Committee on Regional Trade Agreements, *Free Trade Agreement between Canada and Ukraine* 9). Canada excluded sensitive goods such as dairy, poultry, and eggs from its tariff commitments.<sup>26</sup> For its part, Ukraine committed to a gradual tariff elimination by 2024. Upon the CUFTA's entry into force, 72.6% of Ukraine's

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<sup>24</sup> The WTO Secretariat classification of services sectors is comprised of twelve sectors and according to its accession documents, Ukraine undertook commitments in all services sectors (WTO, Working Party on the Accession of Ukraine).

<sup>25</sup> In 1994, Ukraine and Canada signed the Agreement between the Government of Canada and the Government of Ukraine for the Promotion and Protection of Investments, which came into force in 1995. This bilateral treaty prescribes a number of obligations to protect investments; such obligations comprise the most-favoured-nation (MFN) and national treatment clauses, fair and equitable treatment, and the prohibition of expropriation.

<sup>26</sup> Canada has implemented a supply management system for dairy, poultry, and eggs, and avoids trade commitments for these products.

goods became duty-free; the rest of the tariffs will be gradually eliminated (WTO, Committee on Regional Trade Agreements, *Free Trade Agreement between Canada and Ukraine* 11). Duties will continue to be levied for 101 tariff lines (WTO, Committee on Regional Trade Agreements, *Free Trade Agreement between Canada and Ukraine* 11). It is noteworthy that the tariffs levied on the goods for which there are no tariff elimination commitments are significantly different in each country. In Canada, average tariffs range between 218% and 228.9%, while in Ukraine they vary between 7.8% and 45.5% (WTO, Committee on Regional Trade Agreements, *Free Trade Agreement between Canada and Ukraine* 10, 12). The CUFTA does not contain Trade and Gender chapter as do other agreements recently signed by Canada.<sup>27</sup>

The substantive obligations of the CUFTA can be classified into three categories: obligations that reinforce WTO commitments, WTO-minus obligations (provisions that allow to deviate from standard WTO rules), and WTO-plus obligations (obligations that expand existing WTO commitments). The agreement stipulates that in the event of an inconsistency between the agreement between Canada and Ukraine and the WTO agreements, the agreement between Canada and Ukraine prevails, except otherwise explicitly provided in the CUFTA (CUFTA; article 1.2).

**Table 2. Substantive provisions of the CUFTA.**

**Obligations that reinforce WTO commitments.**

<b>Article 2.3</b>	National treatment in accordance with Article III of the General Agreement on Tariffs and Trade (GATT) 1994.
<b>Article 2.5</b>	Prohibition of Quantitative Restrictions enshrined in Article XI of the GATT 1994 is incorporated, with some exceptions.
<b>Article 2.6</b>	Article VIII of the GATT 1994 is incorporated.
<b>Article 2.7</b>	Balance-of-Payments rules are incorporated (the conditions established under the GATT 1994, the Understanding on the Balance-of-Payments Provisions of the GATT 1994, and the Declaration on Trade Measures Taken for Balance of Payments Purposes).

<sup>27</sup> In its recent Trade Policy Review of Canada, the WTO pointed out: “Canada showed leadership by expanding its internal impact assessment process to include labour and gender, and by incorporating Trade and Gender chapters in its new or revised FTAs” (9).

<b>Articles 2.8, 4.4</b>	The Customs Valuation Agreement governs the customs valuation rules.
<b>Article 2.9</b>	Parties may apply export duties in accordance with their rights and obligations under WTO law.
<b>Article 5.2</b>	The rights of the parties under Article XIX of the GATT 1994 and the Agreement on Safeguards are explicitly acknowledged. Furthermore, disputes with respect to those matters are excluded from the dispute settlement mechanism prescribed by the agreement. Special bilateral emergency actions are also permitted (as discussed in WTO-plus obligations).
<b>Article 5.8</b>	Anti-dumping and countervailing measures apply in accordance with Article VI of the GATT 1994, the Anti-Dumping Agreement, and the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Disputes with respect to those matters are excluded from the dispute settlement mechanism prescribed by the agreement.
<b>Article 6.1</b>	The Parties affirm their rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Furthermore, the Parties shall use WTO dispute settlement procedures for formal disputes regarding SPS measures.
<b>Article 7.2</b>	The WTO Agreement on Technical Barriers to Trade, excluding Articles 10 through 12 (information and assistance), Article 13, some of Article 14 (institutions, consultations, dispute settlement), and Article 15 (final provisions) is incorporated.
<b>Chapter 10</b>	The parties' commitments on government procurement replicate, to a large extent, those made under the revised Government Procurement Agreement, in which both parties participate.
<b>Article 11.2</b>	The Parties affirm their rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Additional commitments prescribed by this chapter are discussed in WTO-plus obligations.
<b>Articles 18.2, 18.3</b>	Article XX of the GATT 1994 is incorporated for the purposes of Chapters 2 (national treatment and market access), 3 (rules of origin and origin procedures), 4 (trade facilitation), 5 (safeguard measures), 6 (SPS measures), 7 (technical barriers to trade [TBT]), and 8 (electronic commerce). A national security exception similar to Article XXI of the GATT 1994 is also incorporated.

**WTO-minus obligations: commitments that allow measures that would be WTO-inconsistent otherwise.**

<b>Article 1.3</b>	Obligations under Multilateral Environment Agreements prevail over the relevant trade commitments under this agreement and if “the measure taken is necessary to comply with that obligation, and is not applied in a manner that would constitute, where the same conditions prevail, arbitrary or unjustifiable discrimination or a disguised restriction on international trade.” The list of such Multilateral Environment Agreements is incorporated in Annex 1-A.
<b>Article 2.3, Annex 2-A</b>	The national treatment obligation does not apply to measures set out in Annex 2-A. Annex 2-A contains a list of Canadian measures; for example, the use of ships in the coasting trade of Canada and the internal sale and distribution of wine and distilled spirits.
<b>Article 2.5, Annex 2-A</b>	Additional exceptions to the rules on import and export restrictions. These rules do not apply to a measure set out in Annex 2-A. Exceptions to the prohibition on export restrictions, listed in Annex 2-A, include measures in respect of exports of logs of all species and exports of unprocessed fish.

**WTO-plus obligations: commitments that impose either more stringent requirements on a party or cover additional areas that are not covered by the WTO agreements.**

<b>Article 2.10</b>	Prohibition of agricultural export subsidies; such prohibition applies to export subsidies on an agricultural good that is exported or incorporated in a product that is exported, to the territory of the other party after the other party has, immediately or after the transition period, fully eliminated the tariff on that agricultural good in accordance with Annex 2-B.
<b>Article 2.11</b>	Parties lifted their right to rely upon special safeguards on agricultural goods (Article V of the WTO Agreement on Agriculture) for goods that are subject to tariff elimination according to their commitments under the agreement.
<b>Chapter 3</b>	Detailed disciplines on the rules of origin and origin procedures.
<b>Chapter 4</b>	Trade facilitation Chapter: some of the commitments go beyond the provisions of the WTO Agreement on Trade Facilitation.
<b>Articles 5.3-5.7</b>	Bilateral emergency actions (i.e., bilateral safeguards): the parties can suspend the reduction of a tariff or alternatively impose a higher tariff if certain preconditions are met. Such measures may be imposed only during the transition period.



<b>Articles 6.3-6.4</b>	Additional cooperation on SPS matters: the parties designate sanitary and phytosanitary contact points to facilitate communication and agree to resolve SPS issues expeditiously through discussion between regulatory officials.
<b>Articles 7.6-7.8</b>	In the technical barriers to trade (TBT) Chapter, the parties agree to cooperate on conformity assessment and to recognize conformity assessment bodies located in the territory of the other party under certain conditions. Moreover, each party shall accept the results of conformity assessment procedures conducted by conformity assessment bodies located in the other party's territory, which have been recognized by the other party, under conditions no less favourable than those applied to the acceptance of the results of conformity assessment procedures conducted by recognized conformity assessment bodies in its territory. The parties should designate contact points to facilitate communication.
<b>Article 8.2</b>	The Chapter on electronic commerce has only one substantive obligation: "a party shall not apply a customs duty, fee or charge on a product delivered electronically."
<b>Chapter 9</b>	The Chapter on competition policy, monopoly, and state enterprises prescribes that the parties agree to adopt or maintain measures to proscribe anticompetitive business conduct and take appropriate actions with respect to such conduct; stipulates rules on the functioning of a privately owned monopoly and a government monopoly; obligates the parties to ensure that a state enterprise it maintains or establishes acts in a manner that is not inconsistent with the party's obligations under the CUFTA when it exercises delegated governmental authority.
<b>Chapter 11</b>	The Chapter on intellectual property contains additional obligations. For example, parties agree to protect geographical indications (GIs) of wines and spirits originating in the territory of the other party. The Chapter contains specific provisions on requirements related to border measures, criminal procedures, and penalties, in particular in connection with unauthorized copying of a cinematographic work from a performance in a movie theatre (camcording) or with copyright infringement on the Internet or other digital networks. Contact points to facilitate communications on intellectual property should be designated.
<b>Chapter 12</b>	The Chapter on the environment.
<b>Chapter 13</b>	The Chapter on labour.
<b>Chapter 14</b>	The transparency Chapter consists of two subchapters: Section A prescribes rules for publication, notification, and administration of laws; Section B obligates the parties to tackle corruption.

### III. THE POTENTIAL OF THE CUFTA TO UNLEASH UKRAINE'S TRADE CAPACITY

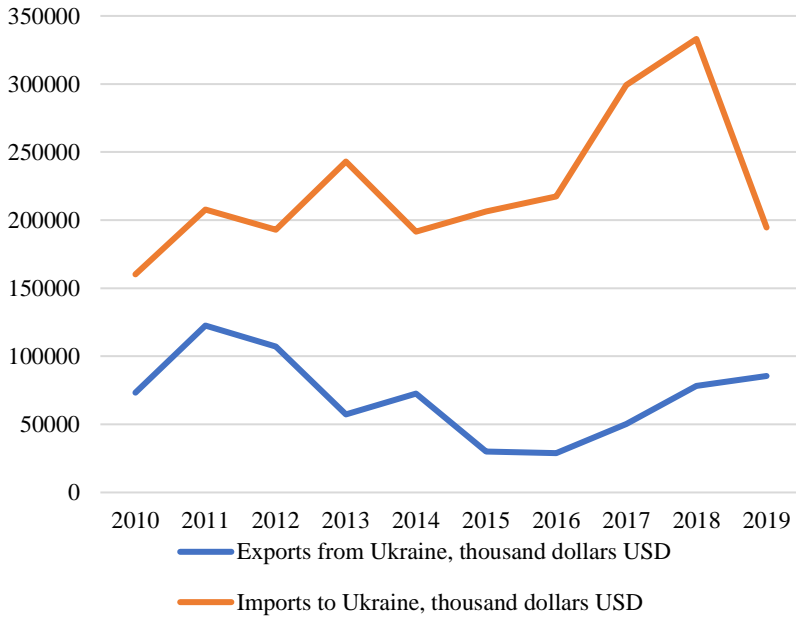
The CUFTA can make a positive contribution to the growth of Ukraine's trade potential by increasing bilateral trade flow. Additionally, the CUFTA might also promote Ukrainian domestic reforms. Both effects are considered in the subsequent analysis.

#### 1. IMPACT OF THE CUFTA ON EXISTING TRADE RELATIONS BETWEEN UKRAINE AND CANADA

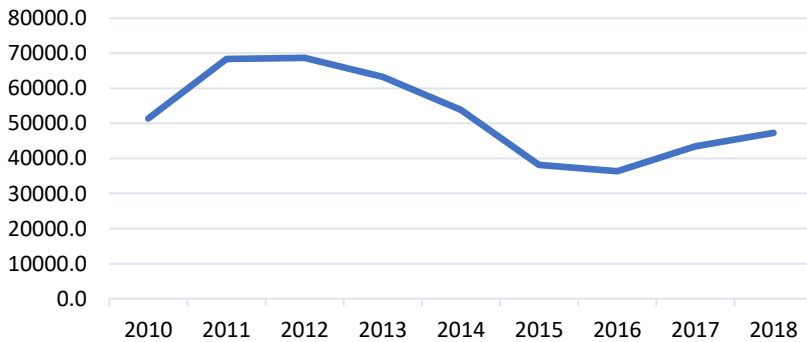
The elimination of tariffs by Canada could increase existing Ukrainian exports by 3.5%; furthermore, the reduction of tariff barriers enables new categories of goods to be exported from Ukraine to Canada (Ministerstvo ekonomichnoho rozvytku i torhivli Ukrainy, *Uhoda pro vil'nu torhivliu* 16). Data from Canada indicate that bilateral trade between the states increased from \$278 million in 2015 to \$346 million in 2018 ("Minister Ng"). A gravity model developed by researchers in the Kyiv School of Economics estimates that the CUFTA increased total Ukrainian exports to Canada by 6.5% from 2016 to 2018 (Hamaniuk et al. 28). The impact of the CUFTA on Canadian exports is more nuanced: the gravity model does not predict a significant effect on the dynamics of Canadian exports to Ukraine; however, some categories of Canadian goods benefitted from this new agreement, e.g., fish (HS03), pharmaceutical products (HS30), electrical machinery (HS85) (Hamaniuk et al. 28). As the effect of bilateral free trade agreements is observed over time, benefits to Canadian exports might be observed in the future (Hamaniuk et al. 29).

After the CUFTA came into force on 1 August 2017, Ukrainian exports to Canada increased (Graph 3). However, Ukrainian exports have been growing in general, including exports to Canada (Graph 4). Thus, the observed growth in exports can be explained by economic recovery as well as by the preferential market access granted under the CUFTA.

**Graph 3. Ukrainian exports to and imports from Canada, 2010-19 (based on data provided by the State Statistics Service of Ukraine).**



**Graph 4. Ukrainian exports, 2010-18 (based on data from the World Bank World Integrated Trade Solution [WITS]).**



The impact of the CUFTA on bilateral trade relations between Ukraine and Canada has been discussed by several scholars. Sidorov contends that the positive contribution of the CUFTA to Ukraine's economic prosperity should be evaluated against the background of the Association Agreement signed between the EU and Ukraine and the recently signed Comprehensive Economic and Trade Agreement between Canada and the EU (CETA). In a similar vein, Brovko points out the possibility of creating a Ukraine-EU-Canada trade triangle, a point to which I return later in this subsection. Vodop'ianova emphasizes that easier access to foreign markets, including the Canadian market, might boost export-oriented development in Ukraine. Her argument is that the Ukrainian domestic market is constrained by low population and low purchasing power, while preferential access to other markets might encourage Ukrainian producers to increase their production (Vodop'ianova). A study by Serpukhov demonstrates a slight increase in Ukraine's exports to Canada which, according to the author, might be attributed to the CUFTA. Yet, raw materials and semi-finished goods with low added value dominate these exports (Serpukhov). Among the negative repercussions of the CUFTA, scholars point out the potential increase in Ukraine's trade deficit with Canada, which has existed since 2007 (Zhurba).

A recent study noted that: "Ukraine's exports to Canada have been steadily growing and expanding much faster compared to other trade partners—up by 70% in 2017, 55% in 2018 and 9.4% in 2019 vs Ukraine's total export growth up by 19% in 2017, 9.42% in 2018, and 5.8% in 2019" (Hamaniuk et al. 17). Canadian exports also increased "from USD 90 million in 2016 to USD 115 million in 2019 or by 28%"; however, decreasing coal supplies from Canada resulted in a significant drop in Canadian exports in 2018-19 (Hamaniuk et al. 17-18). It was also reported that Ukraine's export of the following product groups expanded more in 2019 than in 2016: iron and steel (HS72), copper and articles (HS74), preparations of vegetables (HS20), machinery and mechanical appliances (HS84), vehicles (HS87) (Hamaniuk et al. 7).

Research was conducted to identify groups of goods for which export to Canada should be prioritized by Ukraine (Koval'ov et al., *Vyznachennia*). Analysis therein focused on particular categories of goods belonging to machine-building and food industries. The analysis revealed that 18 categories of goods have considerable potential to increase Ukrainian exports to Canada (Table 3).

**Table 3. Prospective commodity items for the development of exports to Canada (Koval'ov et al., *Vyznachennia* 7-9).**

<b>Code</b>	<b>Category of goods</b>
0811	Fruits and nuts, raw or cooked, frozen
1517	Margarine
1704	Sugar confectionery without cocoa content
1806	Chocolate
1902	Yeast-free dough products; couscous
1905	Bakery products, rice paper
2001	Vegetables, cooked or canned with vinegar
2002	Tomatoes, cooked or canned without vinegar
2009	Fruit juices or vegetables, unfermented, without alcohol
2208	Ethyl alcohol, undenatured, less than 80% vol.
7322	Radiators for central heating, non-electric air heaters, made with black metals
8432	Machines and agricultural, garden, or forestry equipment to prepare or process soil; road rollers for sports playgrounds
8450	Washing machines
8474	Equipment to work with soil, stones, ores, and other mineral materials
8516	Electric heating devices and apparatus; electric irons
8544	Wires isolated; cables and other isolated electric conductors; fibre-optic cables
8545	Carbon electrodes, carbon brushes, carbon for lamps or galvanic elements
8607	Parts of railway locomotives or tram motor cars or rolling stock

Six groups of services (computer, research and development, professional and consulting, scientific and technical, audio-visual and related, cultural and recreational) were identified as bearing high export potential (Koval'ov et al., *Vyznachennia* 13).

One more positive contribution of the CUFTA to unleashing Ukrainian trade potential deserves attention. The Comprehensive Economic and Trade Agreement negotiated between Canada and the EU (CETA) might be beneficial for Ukraine. The EU-Ukraine Association Agreement, the CUFTA,

and the CETA have each had a positive impact on Ukraine's trade, in particular on Ukraine's participation in value chains (Koval'ov et al., *Tovary ukrains'koho eksportu*). Specifically, 9 commodity items produced in Ukraine—plastic articles for use in construction (3925), new pneumatic tyres of rubber (4011), men's or boys' suits, overalls, and shorts (6203), women's or girls' suits, dresses, and skirts (6204), refrigerators, freezers, and heat pumps (8418), machine tools for working stone, ceramics, concrete, asbestos cement or for cold working glass (8464), parts to rail locomotives or motor tram cars or rolling stock (8607), apparatus based on the use of X-rays, and apparatus based on the use of alpha, beta or gamma radiation (9022), instruments for measuring electrical quantities and instruments for measuring or detecting ionising radiations (9030)—with the intermediary goods imported from the EU and then exported to Canada can benefit from the reduced tariffs under the EU-Ukraine Association Agreement and the CUFTA (Koval'ov et al., *Tovary ukrains'koho eksportu* 12-13). 28 intermediary commodity items (Table 4) exported from Ukraine to the EU and then exported to Canada as a component of EU-produced goods benefit from the reduced tariffs (Koval'ov et al., *Tovary ukrains'koho eksportu* 19-24). 5 commodity items produced in Ukraine—ammonia, anhydrous or in aqueous solution (2814), sulphonated, nitrated or nitrosated derivatives of hydrocarbons (2904), detonators, capsules, fuses, fire-conducting cords (3603), parts of footwear, gaiters, leggings (6406), yachts and other vessels for leisure or sports; rowing boats and canoes (8903)—with the intermediary goods imported from Canada and then exported to the EU enjoy the benefits of the preferential treatment granted under these agreements (Koval'ov et al., *Tovary ukrains'koho eksportu* 29).

This assessment of existing trade patterns between Ukraine, the EU, and Canada reveals positive contributions to the existing goods-producing value chains. Additionally, closer trade co-operation between the EU and Canada that entails an alignment of various standards (non-tariff measures) might enable Ukrainian exporters to comply with either EU or Canadian standards, acquiring preferential market access to both markets (Guitton and Martin).

**Table 4. Intermediary goods from the value chain Ukraine-EU-Canada that enjoy benefits under the EU-Ukraine Association Agreement and the CETA (Koval'ov et al., *Tovary ukrains'koho eksportu* 19-24).**

HS Code	Category of goods
2501	Salt and pure sodium chloride, sea water
2601	Iron ores and concentrates
2602	Manganese ores and concentrates

**Table 4 cont.**

<b>HS Code</b>	<b>Category of goods</b>
2803	Carbon
2833	Sulphates; alums; peroxosulphates
2902	Cyclic hydrocarbons
2904	Sulphonated, nitrated or nitrosated derivatives of hydrocarbons
2923	Quaternary ammonium salts and hydroxide; lecithins
3206	Other colouring matter (dye materials)
3823	Industrial fatty acids; acid oils; industrial fatty alcohols
4104	Tanned hides and skins of bovine or equine animals, but not further prepared
4106	Tanned hides and skins of other animals, but not further prepared
4107	Leather further prepared after tanning, skin of bovine or equine animals
7201	Cast iron
7202	Ferroalloys
7206	Carbon steel
7207	Semi-finished products of carbon steel
7208	Flat-rolled products of non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated
7209	Flat-rolled products of non-alloy steel, of a width of 600 mm or more, cold-rolled, not clad, plated or coated
7222	Other bars and rods of stainless steel; angles, shapes and sections of stainless steel
7228	Other bars and rods of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel
7507	Nickel tubes, pipes and tube or pipe fittings
7603	Aluminium powders and flakes
7801	Unwrought lead
8482	Ball or roller bearings
8517	Electrical apparatus for line telephony or line telegraphy; Videophones
8544	Insulate wires, cables and other insulated electric conductor; optical fibre cables
9401	Seats and parts thereof

## 2. CONTRIBUTION OF THE CUFTA IN PROMOTING DOMESTIC REFORMS IN UKRAINE

To focus on trade in goods and services with high value-added content,<sup>28</sup> Ukraine's economy would require significant structural changes. This is viable only as a long-term strategy. At the moment, Ukraine can reap the benefits of an abundance of skilled labour and relatively low wages. The economic attractiveness of these factors is further enhanced by the geographic proximity of the EU market and by the recently signed EU-Ukraine Association Agreement. This agreement grants not only preferential market access but also invites gradual alignment of standards and technical regulations (WTO, Committee on Regional Trade Agreements, *Deep and Comprehensive Free Trade Area*).

Furthermore, preferential access to the Canadian market might increase Ukraine's chances to promote itself as a potential participant in global value chains. To follow this path, Ukraine should improve its infrastructure (such as roads and railways), significantly reduce trade costs, and simplify customs procedures.

### 2.1 Reduction of Trade Costs and Red Tape

Ukraine has high trade costs (Hoekman et al.). Furthermore, inefficient customs procedures remain an impediment to developing Ukrainian exports (Ministry of Economy of Ukraine 53). Additionally, Ukrainian customs valuation procedures have been a substantial barrier to the country's active engagement in international trade. During a meeting of the Trade Policy Review Body in April, 2016, several WTO members expressed concerns about the application of customs valuation methods by Ukrainian customs officials (WTO, Trade Policy Review Body, *Trade Policy Review of Ukraine*, Minutes).

To illustrate the need for a reduction in trade costs and red tape, data from the World Bank publication *Doing Business 2020* are presented in Table 5. Documentary compliance is evidently burdensome to Ukrainian exporters and importers.

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<sup>28</sup> Trade in primary commodities is particularly vulnerable to external factors, such as world prices. Furthermore, Ukraine has had significant trade deficits since 2005, and a heavy reliance on commodity trade makes the country sensitive to external shocks.



**Table 5. Ukraine's performance in the category "Trading across Borders," *Doing Business 2020*.**

Indicator	Ukraine	Europe and Central Asia	OECD High Income	Best Regulatory Performance
Time to export: Border compliance (hours)	6	16.1	12.7	1 (19 economies)
Cost to export: Border compliance (USD)	75	150.0	136.8	0 (19 economies)
Time to export: Documentary compliance (hours)	66	25.1	2.3	1 (26 economies)
Cost to export: Documentary compliance (USD)	192	87.6	33.4	0 (20 economies)
Time to import: Border compliance (hours)	32	20.4	8.5	1 (25 economies)
Cost to import: Border compliance (USD)	100	158.8	98.1	0 (28 economies)
Time to import: Documentary compliance (hours)	48	23.4	3.4	1 (30 economies)
Cost to import: Documentary compliance (USD)	162	85.9	23.5	0 (30 economies)

An in-depth analysis undertaken by the Institute for Economic Research and Policy Consulting states that the reform of Ukrainian customs and the transparency and efficiency of its operations are essential steps in a reduction of Ukraine's trade costs (Instytut ekonomichnykh doslidzhen' ta politychnykh konsul'tatsii). A survey of Ukrainian importers and exporters noted that customs procedures could be shortened by implementing automated customs procedures, by minimizing the human factor, by submitting all documents in electronic form, and by establishing the personal liability of customs officers for damages caused (Instytut ekonomichnykh doslidzhen' ta politychnykh konsul'tatsii 21). Elimination of

the abovementioned obstacles to international trade would contribute to export-led growth, lower the price of imports, and might have a positive effect on integrating Ukraine into international or regional value chains. In this regard, obligations undertaken by Ukraine according to the trade facilitation chapter of the CUFTA might be helpful.

The commitments imposed on the parties by the trade facilitation chapter of the CUFTA are more stringent than the relevant provisions of the WTO's Trade Facilitation Agreement (TFA). First, in the CUFTA, each party agrees to use "existing international trade and customs instruments and standards as a basis for its import, export and transit requirements and procedures, unless they would be an inappropriate or ineffective means for the fulfilment of the legitimate objective pursued" (CUFTA; par. 5, article 4.1). The comparable provision in the TFA uses "best endeavour" language.<sup>29</sup> Second, in the CUFTA, to facilitate trade, the parties agree to adopt and maintain simplified customs procedures for the efficient release of goods (CUFTA; article 4.3). This obligation entails a number of commitments on the fast release of goods (CUFTA; par. 1, article 4.3), and express shipments are subject to even more simplified procedures (CUFTA; par. 2, article 4.3). Third, the CUFTA obligates the parties to use information technology solutions that expedite their domestic procedures for the release of goods (CUFTA; article 4.7). The TFA does not entail such obligation.

The commitments under the trade facilitation chapter of the CUFTA establish an additional set of international obligations for Ukraine that, along with the relevant obligations under the TFA and the Association Agreement with the EU, urge Ukraine to make progress with the reform of customs authorities and to enhance the transparency and efficiency of their work. Furthermore, the parties confirmed their mutual desire to improve their bilateral co-operation in customs matters. Toward this end, the relevant part of article 4.12 of the CUFTA states: "The Parties shall develop a technical cooperation program in customs matters under jointly decided terms as to the scope, timing and cost of cooperative measures." Along with this, the parties are committed to engaging in the development of further co-operation on trade facilitation matters (CUFTA; article 4.13). At the time of writing, there is no information about a program to increase technical cooperation in customs matters or in trade facilitation.

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<sup>29</sup> TFA, Article 10.3.1. reads as follows: "Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement."

## 2.2 Alignment of Standards to Curtail Non-tariff Barriers

A formidable barrier for Ukrainian exporters is the lack of recognition of national conformity assessments abroad, which urges exporters to seek competent international expertise that is costly (Ministry of Economy of Ukraine 55). Ukraine inherited the Soviet Union system of burdensome and compulsory technical regulations. Such regulations were neither consistent with the WTO Agreement on Technical Barriers to Trade (TBT Agreement), nor were they compatible with similar standards prepared by more developed WTO members, such as the EU. Before acceding to the WTO, Ukraine amended its domestic standards regulations to align them with the requirements enshrined in the TBT Agreement (WTO, Trade Policy Review Body, *Trade Policy Review of Ukraine*, Report 63). The recently signed Association Agreement with the EU paved the way for a new wave of standards modification. This development has been described as follows: “The revision of Ukraine’s basic legal framework during 2014 and 2015 forms part of a progressive adaptation of Ukraine’s TBT regime to the EU principles of market supervision and consumer rights protection, including an overhaul of the technical regulations framework” (WTO, Trade Policy Review Body, *Trade Policy Review of Ukraine*, Report 65).

The CUFTA does not prescribe commitments with respect to the alignment of standards. Despite this, a number of important obligations were agreed upon. First, the parties agreed to appoint special contact points to facilitate bilateral co-operation on the technical barriers to trade (CUFTA; article 7.8) and sanitary and phytosanitary measures (CUFTA; article 6.3). Additionally, the parties consented to co-operate on prevention and resolution of sanitary and phytosanitary issues through discussion between regulatory officials (CUFTA; article 6.4). Regarding technical barriers to trade, Ukraine and Canada confirmed their intention “to identify, develop and promote bilateral initiatives regarding standards, technical regulations, accreditation, conformity assessment procedures and metrology that are appropriate for particular issues or sectors” (CUFTA; article 7.4). Notably, the parties committed to recognizing each other’s conformity assessment bodies on conditions no less favourable than the conditions applied to conformity assessment bodies located in their respective territories (CUFTA; article 7.6). Such recognition entails that the results of the conformity assessment procedures conducted by recognized conformity assessment bodies should be accepted (CUFTA; article 7.6).

Although the abovementioned provisions do not imply significant alignment of standards or automatic recognition of their equality, these undertakings can provide a foundation for close co-operation between regulatory agencies. Ukrainian exporters are in dire need of this. As Denys Krasnikov, the vice president of the Ukrainian League of Industrialists and

Entrepreneurs, points out, “the Canadian market in general is much more closed to foreign goods and services than some other countries, because of non-tariff barrier regulations” (Timtchenko). Given this, effective communication and co-operation through designated contact points can enable Ukrainian exporters to access more accurate information about Canadian non-tariff barriers.

### *2.3 Improvements in the Regulatory Environment in Ukraine*

The CUFTA chapters on environment and labour reflect the values of Canadian society and, as a result, the demands of Canadian consumers. Thus, Ukrainian exporters might promote their goods to the Canadian market by emphasizing that they are produced in an environmentally-friendly way and in compliance with international labour standards. The following subsections discuss the impacts of environment, labour, and transparency chapters on domestic regulations and practices in Ukraine.

#### *2.3.1 Environment Chapter of the CUFTA*

Environmental policies play a significant role in Canada’s trade policy (WTO, Trade Policy Review Body, *Trade Policy Review of Canada* 30-31). Thus, Canada customarily incorporates environment chapters in its free trade agreements (WTO, Trade Policy Review Body, *Trade Policy Review of Canada* 34).

The environment chapter of the CUFTA outlines the following broad principles of environmental protection: (i) the parties have sovereign rights to conserve and protect their environment and sustainably manage their natural resources (CUFTA; article 12.2); (ii) each party has a right to establish its own level of environmental protection and shall strive to gradually promote higher levels of environmental protection (CUFTA; article 12.3); (iii) each party has a duty to effectively enforce environmental laws and to remedy violations through judicial, quasi-judicial, or administrative proceedings (CUFTA; article 12.4); (iv) the parties agree to avoid lowering their environmental standards in order to encourage trade and investment activities (CUFTA; article 12.5).

The following obligations could have a significant impact on improving compliance with environmental laws in Ukraine:

- The parties are obliged to conduct an environmental impact assessment of proposed projects that might cause significant adverse effects on the environment, to make information about environmental impact assessment publicly available, and to

promote public awareness of environmental legislation (CUFTA; article 12.6, article 12.7). Additionally, there is a duty to provide environmental information upon the request of any interested person, even if such person resides in the other contracting party (CUFTA; article 12.13).

- The parties should enable domestic private actors to request an investigation of any alleged violation of environmental laws and, in particular, to enforce environmental laws through the private parties' access to administrative, quasi-judicial, or judicial proceedings (CUFTA; article 12.8). Such proceedings are subject to the procedural guarantees enumerated in Article 12.9 of the CUFTA.
- The parties agreed to monitor the implementation of the environment chapter through the establishment of a Committee on the Environment (CUFTA; article 12.16); this committee will undertake a review of the implementation of the environment chapter (CUFTA; article 12.17). A dispute resolution mechanism was also established (CUFTA; article 12.21).

The provisions of the CUFTA that entail (i) an obligation to conduct an environmental impact assessment and (ii) a duty to provide environmental information upon a request of any interested person, came at an appropriate moment for Ukraine. In May 2017, the Ukrainian Parliament adopted the Law of Ukraine "On Environmental Impact Assessment" No. 2059-VIII, which came into force in December of the same year (Verkhovna Rada Ukrainy). This law replaced the Law of Ukraine "On Ecological Expertise" No. 45/95-BP enacted in February 1995.

The new law makes environmental impact assessment compulsory, not only for legal entities engaged in certain activities but also for public authorities and local government bodies (Verkhovna Rada Ukrainy). Among the obvious positive contributions of the law are enhanced public participation in an environmental impact assessment and tightened sanctions for failure to comply with the prescribed environmental impact assessment procedures (Verkhovna Rada Ukrainy).

Despite Ukraine's ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) in 1999 and the adoption of the Law "On Access to Public Information" in 2011, access to information, including information about the protection of the environment, is not always guaranteed. In particular, the World Bank, in its Environmental Analysis of Ukraine in 2016, drew attention to the following:

Over the past years, civil society organizations noted some challenges in receiving information, which include absence of responses from the state authority or just partial answers; failure to comply with the terms of

replying; scrambling ecological information by the state bodies and using a “classified information” stamp; restrictions on receiving information about draft strategies, programs, and plans (*Ukraine Country Environmental Analysis* 67).

A study by the DiXi Group emphasizes that certain information about projects that might have a significant impact on the environment was not provided by Ukrainian government agencies (40).<sup>30</sup>

The CUFTA reinforces the ongoing regulatory changes in Ukraine by adding an additional layer of binding international obligations. In particular, the abovementioned commitments impose additional duties on Ukraine and empower both domestic and foreign private actors, thus contributing to a better implementation and enforcement of existing environmental laws in Ukraine.

### 2.3.2 Labour Chapter of the CUFTA

The labour chapter is comprised of four sections: obligations, institutional mechanisms, procedures for labour consultations and dispute settlement, and general provisions. Obligations to protect labour rights reflect the basic principles embedded in the core conventions of the International Labour Organization (CUFTA; article 13.3). The labour chapter prohibits derogation from the labour law in order to encourage trade and investment (CUFTA; article 13.4).

The labour chapter obligates parties to undertake various government enforcement actions (CUFTA; article 13.5) and prescribes an obligation to guarantee a right of access to administrative or tribunal proceedings to any interested person if such person intends to enforce and give effect to the rights protected by the labour laws (CUFTA; article 13.6). Both of these obligations are subject to guarantees of fair, equitable, and transparent proceedings (CUFTA; article 13.7).

The parties introduced the following institutional mechanisms to monitor the enforcement of labour commitments: a Labour Ministerial Council (CUFTA; article 13.9), a National Administrative Office that serves as

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<sup>30</sup> “Officially, however, the public was unable to have access to up-to-date texts of the signed PSAs [Production Sharing Agreements], in which Environment-People-Law, an international charitable organization saw a violation of the Aarhus Convention and sent a relevant communication to the International Secretariat of the said Convention. This communication was preceded by a number of requests for information from Environment People-Law ICO, placed with the Secretariat of the Cabinet of Ministers, the Ministry for Environmental Protection and the State Service for Geology and Subsoil, and lawsuits complaining about the refusal by these government agencies to provide the texts of the PSAs” (DiXi Group 40).

a point of contact for labour affairs (CUFTA; article 13.10), co-operative activities for the promotion of the objectives of the chapter (CUFTA; article 13.11, annex 13-A), an obligation to engage in public communications on labour matters (CUFTA; article 13.12), and general consultations on labour issues between the parties (CUFTA; article 13.13).

In addition, special dispute settlement rules were entrenched in the agreement (CUFTA; articles 13.14-13.16). These rules prescribe that a review panel may be established only if the subject matter is trade-related (CUFTA; article 13.15). If one of the parties neglects to comply with its obligations and does not comply with an action plan prepared by the review panel to remedy the non-compliance, the other party is entitled to a monetary assessment that should be paid to it (CUFTA; annex 13-C).

Labour relations in Ukraine are regulated by the Labour Code of Ukraine, adopted in 1971 when the country was a part of the Soviet Union. The law is outdated, and attempts to modernize the regulation of labour relations and bring the law into conformity with the new reality have been unsuccessful. In this regard, the International Labour Organization reports: "After several unsuccessful attempts to adopt the new legislation in 2003, 2009 and 2016, the Ukrainian Government initiated an entirely new draft law in late 2019." Current efforts to update the relevant regulations are closely followed by the international organizations present in Ukraine. Among other things, these organizations have emphasized that the preservation of the fundamental rights of workers should be a key priority in the ongoing reforms (United Nations Ukraine, "UN Position Paper").

Undeclared work, which is estimated to be equivalent to 15-21 percent of total employment, is among the recent challenges that Ukraine is facing (International Labour Organization). A report released in 2021 by the United Nations describes the scale of this problem: "Less than half of working age people (12.8 million out of 28.5 million) worked with protection guarantees of their labour rights in 2019. Another 15.7 million (65% of the total) worked unprotected, without employment contracts" (United Nations Ukraine, "Ukraine Common Country Analysis" 41). The ongoing reform should address this problem among other pressing issues.

The provisions of the CUFTA do not prescribe stand-alone norms of protection guaranteed to Ukrainian workers, and any such pronouncement would go beyond a bilateral trade agreement that does not establish a common economic area. However, the basic principles embedded in the CUFTA create a "safety net" by declaring the lowest standards of treatment that Ukraine cannot infringe, thus, adding to the relevant international obligations of Ukraine.

### 2.3.3 Transparency Chapter of the CUFTA (Section B—Anti-Corruption)

This section designates certain conduct to be a criminal offence under domestic law and provides a list of such offences (CUFTA; article 14.9). Moreover, parties are obligated “to provide protection against any unjustified treatment of a person who reports, in good faith and on reasonable grounds, facts to the competent authorities concerning offences referred” (CUFTA; article 14.9). Alexander MacLaren, a former Canadian diplomat who was engaged in the CUFTA negotiations, emphasized the following: “The obligations that were eventually incorporated in the agreement reflect the maximum extent of commitments that might be prescribed by such type of provisions in trade agreements. Anything that would go beyond is a violation of the principle of non-intervention and impedes national sovereignty.”

To enforce their anti-corruption commitments, the parties established rules for dispute settlement proceedings (CUFTA; annex 17-B). These rules prescribe two types of consultations that can take place between parties in dispute (CUFTA; annex 17-B, pars. 1-2). If consultations fail, parties can refer the matter to a review panel (CUFTA; annex 17-B, par. 3). The review panel provides a report that contains: (a) findings of fact; (b) the review panel’s determination as to whether there has been a violation of an obligation; and (c) if a violation has been found, the review panel’s recommendations for the resolution of the matter (CUFTA; annex 17-B, par. 14).

In various global rankings on corruption, Ukraine scores high (World Bank, *Ukraine—Systematic Country Diagnostic*). In the last few years, new anti-corruption institutions, including the High Anti-corruption Court of Ukraine, have been established (Lough and Dubrovskiy; Kuz and Stephenson). Additional obligations under the CUFTA, which are subject to compulsory dispute settlement provisions, can also contribute to the fight against corruption in Ukraine.

#### IV. TECHNICAL ASSISTANCE PROGRAMS PROVIDED BY CANADA TO UKRAINE

In the CUFTA, Canada and Ukraine have endorsed future trade co-operation and have agreed to a list of areas in which trade-related co-operation could be increased: 1. Support for small and medium-sized enterprises (SMEs); 2. Agriculture; 3. Standard-setting (CUFTA; annex 15-A). To promote closer trade co-operation, the Canada-Ukraine Trade and Investment Support (CUTIS) project was developed. The CUTIS aims to promote Ukraine’s sustainable economic growth through exports to Canada and Canadian investments in Ukraine. This project is a five-year development assistance initiative financed by the Canadian government.



Since its launch in 2016, the CUTIS has initiated educational campaigns for Ukrainian exporters interested in exploring the potential of the Canadian market. To this end, numerous publications were prepared. For instance, “I Can Export” is a publication specially prepared for Ukrainian small and medium enterprises that are interested in exporting goods and services to Canada. It includes a general overview of the benefits of the CUFTA, instructions for small and medium enterprises on how to evaluate their readiness to export to Canada, step-by-step guidelines for the process of exportation, and examples of business entities that successfully export to Canada. Subsequent publications have focused on more narrow areas: rules of origin under the CUFTA; guides on how to export certain categories of goods such as confectionery, apparel, footwear, furniture; and guidelines for exporting information and communication technology services (CUTIS, “Export Guides and Reports”).

The export support program U CAN Export was created to provide support for Ukrainian small and medium businesses in the priority sectors. Among recent projects sponsored by the CUTIS was a trade mission organized for representatives of the Ukrainian information technology (IT) industry, which included participation in a Canada-Ukraine business forum, B2B meetings, and visits to Canadian IT companies (Ofis z prosvannia eksportu).

Furthermore, under the aegis of the CUTIS project, various activities were undertaken to promote gender equality. In particular, the project supports a new SheExports Platform and examines the barriers that constrain women from engaging in exporting (CUTIS).

MacLaren pointed out that the technical assistance programmes supported by the Canadian government are driven by self-interest and internal political pressure. Canada protects its interests in Ukraine by establishing rules and legal guarantees equivalent to those in Canada. Simple, clear, and transparent rules that can be enforced by Ukrainian courts are a desirable outcome of such programs. Canadian domestic pressure is explained by the fact that there are 1.3 million Canadian Ukrainians who are not only members of the diaspora that has strong connections with its historical motherland but who also have voting power inside Canada.

Strong support from the Ukrainian diaspora in Canada is channelled through political advocacy and through the willingness of Ukrainian Canadians to buy goods that originate in Ukraine. Indeed, Ukrainian exporters emphasize that the Ukrainian diaspora formed the core of their consumers at the initial stages of exporting to Canada. Tetiana Abramova, a co-founder of the Ukrainian clothing manufacturer “RITO,” emphasized this fact in her interview for the brochure *I Can Export* (Ministerstvo ekonomichnoho rozvytku i torhivli Ukrainy 18-19). Orest Rozhankivsky, the export director of “Chumak,” one of Ukraine’s largest food producers, stated:

“The core business is around what is called ‘ethnic distribution,’ as there are a lot of people in Canada of Ukrainian origin” (Timtchenko). Yet, Rozhankivsky pointed out that the diaspora market might not be large enough for a producer as big as “Chumak” (Timtchenko).

## V. CONCLUSION

The military and political conflict with the Russian Federation in 2014 had detrimental effects on an already weakened Ukrainian economy. In particular, bilateral trade relations between the states significantly deteriorated, and Ukraine began to search for new markets for its goods and services. As Ukraine perceives Canada to be a reliable partner and a friendly political ally due to a large Ukrainian diaspora, the Canada-Ukraine Free Trade Agreement (CUFTA) was a welcome initiative, especially when relations between Ukraine and Russia deteriorated. Canada and Ukraine are now engaged in a number of initiatives to promote bilateral trade and Canada has become one of Ukraine’s priority trading partners.

As this article demonstrated, the positive impacts of the CUFTA could be observed in an increased bilateral trade flow between the countries, in a reduction of trade costs and red tape, and in improvements in Ukraine’s regulatory environment. Commitments made in the trade facilitation chapter urge Ukraine to make progress with regard to its reform of the state customs service while obligations under environment and labour chapters might help further the current domestic reforms in Ukraine. Furthermore, enhanced co-operation between the regulatory authorities on the technical barriers to trade and on prevention and resolution of sanitary and phytosanitary issues supply the Ukrainian exporters with access to more accurate information about Canadian non-tariff barriers, which could reduce the time necessary to resolve disagreements.

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