UNIWERSYTET ZIELONOGÓRSKI

DYSKURS PRAWNICZY I ADMINISTRACYJNY 1/2019 ISSN 2657-926X

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The EU–Ukraine Dispute Settlement Mechanisms*

Keywords: Ukraine, the European Union, Association Agreement, dispute settlement, arbitration, mediation, essential close, trade dispute, timber

Abstract. The article analyses the essence of dispute settlement mechanisms existing in the framework of the EU–Ukraine relationship. It considers the evolution of the dispute settlement mechanisms over the last 30 years, types of mechanisms provided by the EU–Ukraine Association Agreement being in force. Particular attention is paid to the analysis of the first case of a trade dispute which is resolved using the arbitration procedure under the Association Agreement with Ukraine on the export of raw wood.

Mechanizmy rozstrzygania sporów UE–Ukraina

Słowa kluczowe: Ukraina, Unia Europejska, układ stowarzyszeniowy, rozstrzyganie sporów, arbitraż, mediacja, zamknięcie zasadnicze/niezbędne, spór handlowy, drewno

Streszczenie. Artykuł analizuje istotę mechanizmów rozstrzygania sporów istniejących w ramach relacji Unia Europejska–Ukraina. Uwzględnia ewolucję mechanizmów rozstrzygania sporów w ciągu ostatnich 30 lat, rodzaje mechanizmów przewidzianych w układzie o stowarzyszeniu UE–Ukraina. Szczególną uwagę zwraca się na analizę pierwszego przypadku sporu handlowego, który zostaje rozstrzygnięty w trybie arbitrażu w ramach Układu Stowarzyszeniowego z Ukrainą w sprawie eksportu surowego drewna.

Introduction

International dispute settlement has as a long history in international relations. It main objective is to provide legal means of solving differences between counterparts with the best possible outcome. The EU–Ukraine relations are not the exception. Over the last 30 years the parties came across several issues which needed the prompt and effective solution. But the recent EU–Ukraine Association

* With the support of the Erasmus+ Programme of the European Union within the Jean Monnet Centre of Excellence Project № 611625-EPP-1-2019-1-UA-EPPJMO-CoE "Advancing European Studies in Ukraine: Interdisciplinary Approach".

Agreement (hereinafter – AA) being considered as "the most ambitious agreement the European Union has ever offered to a non-Member State"[1] brought this issue to the completely new level.

The question of dispute resolution mechanisms was raised in the studies of M. Cremona and R. Wessel[2]. Researchers are analysing the current debate and the specific angles of the confusing link between dispute resolution at the EU level and the resolution of international disputes.

Particular attention is paid to the issues of dispute settlement mechanisms within free trade areas (hereinafter – FTA), concluded between the EU and other countries, in a study by I. Barcero[3].

The emergence of disputes and their resolution in accordance with the Association Agreement between Ukraine and the EU has been studied by such scholars as Ya.M. Kostyuchenko, Ya.P. Lyubchenko, N.A. Mazaraki, V.I. Muravyov, Yu. Rudyuk, O.V. Sviatun[4]. However, due to the dynamic development of these legal relations, this issue continues to be relevant for further research. In addition, the initiation of an arbitration procedure for resolving a dispute between the EU and Ukraine has not yet been covered in the doctrine at all.

The evolution of the EU-Ukraine dispute settlement mechanism. It is traditionally believed that bilateral relations between Ukraine and the EU consist of two stages of cooperation – under the Partnership and Cooperation Agreement (PCA) and the Association Agreement. However, the cooperation was started

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[1] Remarks by President of the European Council Herman Van Rompuy at the press conference of the Eastern Partnership summit in Vilnius, http://data.consilium.europa.eu/doc/document/ST-254-2013-INIT/en/pdf [access: 15.06.2020].

[2] M. Cremona, A. Thies and R.A. Wessel (Eds.), The European Union and International Dispute Settlement, Oxford: Hart Publishing, 2017.

[3] I.G. Bercero, *Dispute Settlement in European Union Free Trade Agreements: Lessons Learned?*, *Regional Trade Agreements and the WTO Legal System*, pp. 383-406, https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.1093%2Facprof%3Aoso%2F9780199206995.003.0017 [access: 15.06.2020].

[4] Я.М. Костюченко, *Особливості механізмів врегулювання суперечностей в процесі європейської економічної інтеграції України*, "Правова держава" 2016, № 21, С. 250-255; Я.П. Любченко, *Зобов'язання України у сфері альтернативних способів вирішення правових спорів, пов'язаних з укладенням Угоди про асоціацію*, "Часопис Київського університету права" 2015, № 4, С. 370-374; Н.А. Мазаракі, *Механізми вирішення спорів у рамках Угоди про асоціацію між Україною та Європейським Союзом*, "Право і суспільство" 2018, № 5, С. 212-216; В. Муравйов, *Способи і механізми врегулювання спорів в Угодах Європейського Союзу про асоціацію*, https://instzak.com/index.php/journal/article/view/524/543 [access: 16.07.2020]; Я.М. Костюченко, *Правові механізми вирішення спорів в Угоді про асоціацію між Україною та ЄС*, "Європейські перспективи" 2019, № 3, С. 179-185; Y. Rudyuk, *How the Trade Disputes between EU and Ukraine will be Settled under the EU-Ukraine Association Agreement*, "Lex Potus" 2017, № 2(4), p. 37-50; O. Sviatun, *The Role of Human Rights Clause in the EU Agreements with Third Countries. Uniwersalny i Regionalny wymiar ochrony praw człowieka. Nowe wyzwania – nowe rozwiązania*, t. 1, Warszawa: Wydawnictwo Sejmowe, 2014, P. 643-653.

a bit earlier. Therefore, it is worth paying attention to another agreement signed on December 18, 1989 which established relations between the USSR and the European Economic Community (**Agreement on Trade and Commercial and Economic Cooperation**)[5]. The importance of this Agreement is evidenced by its mention in the preamble to the Partnership and Cooperation Agreement as a basis for further strengthening and expanding ties.

Article 15 of the 1989 Agreement enshrined the obligation of the parties to avoid conflicts that require the use of safeguards in mutual trade. At the same time, in the event of a dispute, this article provides for a political model for its settlement, for instance the following:

- holding consultations within the Joint Committee;
- the right of the injured party to restrict the import of the relevant goods to the extent and for such period of time as is necessary to prevent or remedy the damage;
- the right of the party violating the agreement to waive its obligations to the injured party "in the amount of the equivalent volume of trade" in the event that the injured party applies the above protective measures;
- the right of parties in critical situations to apply protective measures on a temporary basis prior to consultations.

The **1994 Partnership and Cooperation Agreement** provided for a quasi-judicial mechanism (recommendations of peace mediators) in addition to political means of dispute settlement (recommendations of the Cooperation and Consultation Council). In general, such a mechanism is typical of first-generation partnership and cooperation agreements with post-Soviet states. According to Art. 96 of the Agreement, the parties may resort to the instrument of peaceful mediation if the Cooperation Council is unable to settle the dispute. At the same time, it is stated that the recommendations of peace mediators are not binding on the parties. Unfortunately, this provision eliminates the quasi-judicial nature of this mechanism. In addition, according to Art. 97 at the request of one of the parties, the parties shall hold consultations to discuss any issues concerning the interpretation or implementation of the Agreement[6].

[5] Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and commercial and economic cooperation, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-%3A21990A0315%2801%29 [access: 15.06.2020].

[6] Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, https://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=659 [access: 15.06.2020].

***Current Status*. The Association Agreement between Ukraine and the EU**[7] provides for two dispute settlement mechanisms. The first one concerns disputes regarding the whole AA, but without taking into account the free trade area (FTA), and the other covers the FTA itself in more detail.

The general dispute settlement mechanism. It is based on the general diplomatic means where the institutions introduced by AA play the major role.

One of the reasons for initiating the dispute between the EU and Ukraine is the infringement of "essential clauses" of the Agreement. These clauses are typical for the most agreements concluded by the European Union with the third countries.

Title I of the EU–Ukraine AA defines the general principles which form the basis for the domestic and external policies of the Association between the EU and Ukraine. For instance Art. 2 states that

Respect for democratic principles, human rights and fundamental freedoms, as defined in particular in the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990, and other relevant human rights instruments, among them the UN Universal Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute essential elements of this Agreement…

Art. 476 "Fulfilment of the Obligations" of the Association Agreement indicates that

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall ensure that the objectives set out in this Agreement are attained. 2. The Parties agree to consult promptly through appropriate channels at the request of either Party, to discuss any matter concerning the interpretation, implementation, or good faith application of this Agreement and other relevant aspects of the relations between the Parties. 3. Each Party shall refer to the Association Council any dispute related to the interpretation, implementation, or good faith application of this Agreement in accordance with Article 477 of this Agreement. The Association Council may settle a dispute by means of a binding ruling.

When a dispute arises between the Parties concerning the interpretation, implementation, or good faith application of this Agreement, they should apply Art. 477 of the AA:

any Party shall submit to the other Party and the Association Council a formal request that the matter in dispute be resolved... 2. The Parties shall endeavour to resolve the dispute by entering into good faith consultations within the Association Council… with the aim of reaching a mutually acceptable solution in the shortest time possible. 3. The Parties shall provide the Association Council and other relevant bodies with all the information required for a thorough examination of the situation. 4. As long as a dispute is not resolved, it shall be discussed

[7] Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014A0529(01)-20200201) [access: 15.06.2020].

at every meeting of the Association Council. A dispute shall be deemed to be resolved when the Association Council has taken a binding ruling to settle the matter as provided for in paragraph 3 of Article 476, or when it has declared that the dispute is at an end. Consultations on a dispute can also be held at any meeting of the Association Committee… as agreed between the Parties or at the request of either of the Parties. Consultations may also be held in writing.

The Article 478 states which measures should be applied in case of non-fulfilment of obligations:

A Party may take appropriate measures if the matter is now resolved through the dispute settlement mechanisms and if the complaining Party continues to consider that the other Party has failed to fulfil an obligation under this Agreement… In the selection of appropriate measures, priority shall be given to those which least disturb the functioning of this Agreement. Except in cases described in paragraph 3 of this Article 478, such measures may not include the suspension of any rights or obligations provided for under provisions of this Agreement, mentioned in Title IV (Trade and Trade-related Matters) of this Agreement. These measures shall be notified immediately to the Association Council and shall be the subject of consultations in accordance with paragraph 2 of Article 476 of this Agreement, and of dispute settlement in accordance with paragraph 3 of Article 476 and Article 477 of this Agreement.

The exceptions indicated in the Art. 478 include violation by the other Party of any of the essential elements of this Agreement, referred to in Article 2 of this Agreement[8]. It means that the new Agreement between the EU and Ukraine introduces a political dialogue for dispute settlement and does not provide for suspension or termination of the Agreement for the human rights violations.

In reality the European Union does not apply the suspension procedure quite often. Where a response is needed to address a specific human rights situation in a partner country, the EU prefers to use diplomatic means (e.g. through the Association Council or annual summit meetings) or limited prohibitions, such as embargoes for the sale of weapons, the freezing of assets or a visa ban. The general suspension or termination of the Agreement is considered as "nuclear" means which is better not to use.

In the modern history of the EU–Ukraine relationship the Union applied such approach regarding the imprisonment of the former Prime Minister Yuliia Tymoshenko and other opposition leaders in the time the Viktor Yanukovych's Presidency. In 2012-2013 the EU threatened to suspend the conclusion of the Association Agreement as a reaction for the "selective justice" in Ukraine.

Other dispute settlement procedures are provided for the application of technical barriers to trade, sanitary and phytosanitary measures, services, right of establishment, e-commerce, state procurement. All these areas are covered by regulatory convergence. In case of dispute resolution regarding interpretation of acts of the EU institutions relating to these areas, the arbitral tribunal is obliged to

[8] *Ibidem.*

apply to the European Court of Justice. The arbitration panel may not render its ruling until it has received the binding ruling of the Court of Justice for arbitration (Article 322).

The dispute settlement mechanisms in the FTA framework. If the diplomatic activities were unsuccessful, the unsatisfied party may resort to other mechanisms established in the framework of the free trade area (Chapter 14: Articles 303-323 AA).

The complaining party may apply for the arbitration panel to be established in order provide ruling on the dispute (Article 305 AA). The claim is prepared in writing and must contain a reference to the non-compliance of the measure with the provisions of the AA with the appropriate justification of claims. The claim is forwarded to the other party and the Trade Committee.

The arbitration panel consists of three arbitrators selected by the parties. One party cannot block the establishment of an arbitration panel, because if the parties fail to agree on an arbitration panel, its members will be selected by drafting of lots from a permanent list of arbitrators. The permanent list includes 15 arbitrators (five from each of the parties and five to be the nationals of neither party) who are recognised experts in the field of law and international trade. The list is formed by the parties within six months after the entry into force of the Agreement. The arbitrators shall be independent, act within their personal capacity and not on the instructions from any authority, and act in accordance with the requirements of the Code of Conduct annexed to the Agreement.

90 days after its establishment, the arbitration panel shall submit to the parties an interim report setting out the facts, the possibility of applying the relevant provisions, the reasons for the conclusions reached and the recommendations to the parties. Upon receipt of the interim report, each party shall provide comments on the materials received. Upon receipt of the parties' comments on the interim report, the arbitration panel may amend it and conduct any study it deems necessary.

120 days after its establishment, the arbitration panel shall render its ruling on the dispute between the parties. The arbitration panel shall forward its rulings to the parties and to the Trade Committee.

According to Article 310 AA rulings are binding on the parties who are given 30 days to enforce them.

In the event of non-compliance with the decisions of the arbitration panel, the winning party may impose sanctions on the other party which may include the suspension of its obligations under the Agreement, the provision of temporary compensation, etc.

In cases of urgent need to resolve disputes in the energy sector, the parties may request the chairman of the arbitration chamber to act as a mediator.

In the process of considering the dispute in the arbitration chamber, the parties may reach a mutually acceptable solution to the dispute. Upon reaching such a ruling, the parties shall notify the Trade Committee and the Chairman of the Arbitration Panel (Article 317).

It should be also considered that under the Article 326 AA recourse to the dispute settlement provisions of this Chapter 14 shall be without prejudice to any action in the WTO framework, including dispute settlement action. However, where one of the parties has, with regard to a particular measure, instituted a dispute settlement proceeding, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has been concluded. In addition, this party shall not seek redress of an obligation which is identical under the AA and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the party shall not bring a claim seeking redress of the identical obligation under the other Agreement to the other forum, unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation.

Mediation. The mediation mechanism is used in resolving disputes concerning the application of measures falling under Chapter 1 of Title IV (national treatment and market access of goods) and adversely affecting trade between the parties.

Before seeking mediation, a party may request information from the other party about measures that adversely affect trade or investment.

A party may invite the other party to contact a mediator. The proposal should be in writing, clearly identifying the measures that affect trade and investment, justifying their negative impact and showing the causal link between these measures and their negative impact.

The other party may agree in writing or refuse mediation.

In case of a positive answer, the parties must choose a mediator. If the parties fail to agree on the candidacy of the mediator, any of them may apply to the Chairman of the Trade Committee to determine by drafting of lots such a person from among the persons proposed by the parties included in the list of arbitrators. The mediator should help the parties to better understand the nature of the measures taken and their possible negative impact and to find a mutually acceptable solution. However, the mediator cannot provide advice or comments on the compliance of the measures with the provisions of the AA.

The settlement of the dispute may be reached by a decision of the Trade Committee. Among other ways to complete the mediation procedure, the AA indicates the adoption of a mutually acceptable decision by the parties, a written declaration of the mediator after consultation with the parties on the inexpediency

of further efforts, a written declaration of one of the parties after consideration of a mutually acceptable ruling.

After reaching a mutually acceptable solution, the parties must take measures to implement it within the period specified by them.

According to Article 333 AA procedures for the application of the mediation mechanism may not serve as a basis for dispute settlement procedures under the AA or with other agreements.

Dynamics of dispute settlement between Ukraine and the EU. For the EU, recourse to dispute settlement procedures set out in association agreements is an unusual practice. However, under the Association Agreement with Ukraine, the European Union for the first time applied in its practice this mechanism and initiated the establishment of arbitration. According to the EU, the dispute over the export of unprocessed timber failed to be resolved through consultations.

This dispute is the first trade dispute to be resolved through an arbitration procedure under the AA. The parties to the dispute are, respectively, the parties to the Agreement, namely Ukraine and the EU.

In January 2019, the EU Delegation to Ukraine sent a verbal note № 005/2019 to the Ministry of Foreign Affairs with a request to initiate consultations to resolve the dispute that arose in connection with the ban on exports of raw wood from Ukraine. On June 20, 2019, in accordance with Article 306 EU–Ukraine AA, the European Union initiated an arbitration procedure regarding restrictions applicable to Ukraine in respect of exports of certain types of wood products. Pursuant to the provisions of this Article, the EU, as the complaining Party, must submit to the respondent Party, Ukraine, as well as to the Trade Committee of the Association, both a request for the establishment of an arbitration panel and a summary of the legal grounds that gave rise to the dispute.

At present, examining the procedural aspects of the dispute between Ukraine and the EU within the framework of the AA, it should be generalized that the Parties resolve the dispute solely on the basis of the provisions of Chapter 14 "Dispute Settlement" of the AA:

(I) On 15 January 2019, the European Union requested consultations with Ukraine pursuant to Article 305 AA. The request for consultations was circulated as the Verbal Note of 15 January 2019, No 005/2019.

(II) Consultations were held on 7 February 2019 with the aim of reaching a mutually agreed solution. Unfortunately, these consultations failed to settle the dispute.

(III) On 20 June 2019, the European Union requested for the establishment of an arbitration panel pursuant to Article 306 AA, and according to the procedure for the composition of the arbitration panel pursuant to Article 307 AA and the relevant provisions in the Rules of Procedure for Dispute Settlement in Annex XXIV to Chapter 14 of the Association Agreement.

The request for the establishment of an arbitration panel was circulated by the Verbal Note of 20 June 2019.

(IV) approval of the composition of the arbitration group on January 29, 2020 and, accordingly, approval of the working procedure of the arbitration group, as well as the schedule of meetings of the arbitration group.

(V) The Parties reached the agreement to consider the Arbitration Panel as "established", pursuant to Article 307(6) AA, on 28 January 2020.

(VI) On 29 January 2020, during the first meeting of the Parties with the Arbitration Panel, pursuant to paragraph 8 of Annex XXIV to Chapter 14 of the Association Agreement ("Rules of Procedure for Dispute Settlement"), the Arbitration Panel adopted its Working Procedures and Timetable for the Panel Proceedings.

(VII) On 17 February 2020, the European Union filed its Written Submission.

In these proceedings the European Union claims that a "permanent prohibition on exports of timber and sawn wood species" (the "2005 export ban") and a "temporary prohibition, for a period of 10 years, on exports of all other unprocessed timber" (the "2015 export ban") constitute "prohibitions" on exports from Ukraine to the European Union within the meaning of both the first sentence of Article 35 AA and Article XI:1 of the GATT 1994 and as such, they are incompatible with Article 35 AA. In its Written Submission the European Union claims that mentioned above measures have a "manifest protectionist purposes" and "are not applied in conjunction with an effective restriction on domestic consumption".

In support of its position, the EU refers to the fact that the permanent ban on exports of timber and lumber, which was introduced in accordance with the Law of Ukraine № 2860-IV "On Elements of the State Regulation of Business Operators' Activities Related to the Sale and Export of Timber" dated 08.09.2005 (Article 2) and a temporary ban on the export of all other unprocessed wood for a period of 10 years in accordance with the Law of Ukraine "On Amendments to the Law of Ukraine "On Elements of the State Regulation of Business Operators' Activities Related to the Sale and Export of Timber" Concerning the Temporary Export Ban for Unprocessed Timber" dated 09 April 2015 (Article 2-1) are "bans" on exports from Ukraine to the European Union in the content of both the first sentence of Article 35 EU–Ukraine AA and Article XI: 1 GATT 1994 and as such are incompatible with Article 35 EU–Ukraine AA.

In its written submission, the European Union states that these measures have "clear protectionist objectives" and "are not applied in conjunction with an effective restriction of domestic consumption"[9]. It is worth recalling that Art. 35 EU-

[9] Written Submission of Ukraine dated 11 March 2020, https://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwjGytrKiovpAhXFoVwKHeTHC1EQFjABegQIAhAB&url=https%3A%2F%2Fme.gov.ua%2FDocuments%2FDownload

Ukraine AA prohibits the restriction of imports and exports of any goods destined for the territory of the other Party, with the exception of those specified in the AA or in accordance with Article XI of GATT 1994.

In this regard Ukraine considers the above measures to be a single measure as they both are aimed at regulating the national environmental protection. Namely, the main goal of the "measure" is primarily the regulation of the level of national environmental protection, the establishment of trends of environmental policies, the application of preventive measures to protect the environment, and the rational use of natural resources.

Ukraine submits that "2005 export ban" was not adopted in the pursuit of commercial or economic aims, but for environmental reason. In 2005 valuable and rare wood species were considered as species that are threatened and therefore having a high risk of extinction. Deforestation, degradation, wood harvesting and urban development are other significant threats. For threatened species, livestock farming, land abandonment and other ecosystem modifications are the major threats, affecting the survival of trees and their habitats. The important point is that mentioned wood species are not intended for the industrial production of sawn wood. As is apparent, their purpose is the production of fruits and nuts or other products from flowering.

However, Ukraine argues that such a ban was imposed by the fact that the export ban imposed by the state in 2005 did not provide for any commercial purposes, but was introduced for environmental reasons: in 2005 valuable and rare wood species were considered as species. endangered and therefore at high risk of extinction. And this, in turn, can lead to deforestation and other environmental problems. In addition, the Ukrainian side emphasizes that the 2005 export ban applies only to the export of lumber of valuable and rare species of wood. Ukraine is responsible for the conservation of these unique species, which make a major contribution to the country's ecosystem.

In this regard Ukraine submits that the forests are exhaustible natural resources and that the "2015 temporary export ban" was introduced in order to stop intensive deforestation, which could lead to unpredictable results (e.g. floods, habitat destruction, and general complicated ecological situation) and in order to protect these exhaustible natural resources.

As for the export ban, as regulated by the Law of Ukraine "On Amendments to the Law of Ukraine "On Elements of the State Regulation of Business Operators' Activities Related to the Sale and Export of Timber" on the temporary ban on the export of raw timber" dated 9.04.2015, Ukraine motivates its position by the fact

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that the measure is temporary, as it was introduced only for 10 years. In addition, a temporary ban on exports in 2015 was introduced in conjunction with restrictions on domestic production or consumption in accordance with the requirements of paragraph "g" of Article XX of GATT 1994, concerning the conservation of depleted natural resources.

For the reasons set out in this Submission, Ukraine considers that the measures are consistent with Ukraine's obligations under the Association Agreement while Ukraine submits that the measures fall within the exception under paragraphs (b) and (g) of Article XX of the General Agreement on Tariffs and Trade 1994 ("GATT 1994").

It's worth stating that in case the Arbitration Panel finds that Ukraine acted inconsistently with Article 35 of the Association Agreement and Article XI of the GATT 1994 Ukraine submits that measures are justified under Article 36 of the Association Agreement and Article XX of the GATT 1994. Ukraine recalls that the "2005 export ban" falls within the range of policies provided in subparagraph (b) while the "2015 temporary export ban" falls within the range of policies provided in sub-paragraph (g) and, at the same time, the requirements of the Article XX of the GATT 1994 are satisfied, taking into account that there are no less-trade restrictive alternatives available.

For the reasons set out in this Submission, Ukraine respectfully requests the Arbitration Panel to issue a ruling in accordance with Article 310 AA to the effect that (i) the "2005 export ban" and (ii) the "2015 temporary export ban" are in accordance with Article 35 AA (Article XI of the GATT 1994) or, in any case, apply consistently with Article 36 of the Association Agreement (Article XX of the GATT 1994).

Conclusion

Three years after complete entry into force of the EU–Ukraine AA proved that dispute settlement mechanism introduced by the Agreement can be applied in order to resolve trade disputes between the parties. The recent dispute over the export of unprocessed timber will be the first example of the practical application of the procedures provided for the AA. So, for the first time in its practice, the European Union has used the mechanism for resolving trade disputes and initiated the establishment of arbitration in accordance with the provisions of the Association Agreement. This dispute is the first commercial dispute to be resolved through an arbitration procedure under the Association Agreement. Currently, this dispute is procedurally at the stage of studying the positions of the parties. Given the date of the arbitration panel establishment, we could expect the final ruling to be deliv-

ered 4.06.2020. However, the date of the start of the hearing had to be postponed due to the coronavirus pandemic, so it is difficult to predict the date of the end of the arbitration proceedings. Nevertheless, it is obvious that the implementation of the ruling on this case will serve as evidence that AA produces legal consequences and its provisions are legally enforceable. We will be also able to see which of the mechanisms either of the AA or of the WTO will prove to be more successful and efficient for further development of the relationship between Ukraine and the EU.

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