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HARMONIZATION OF THE UKRAINIAN LEGISLATION WITH THE LEGISLATION OF THE EUROPEAN UNION WITH REGARD TO TRADE DEFENCE

1. A BASIS FOR HARMONIZATION OF THE UKRAINIAN LEGISLATION

Creating a common legal space to regulate trade defense measures through harmonization of Ukrainian legislation with the legislation of the European Union is an objective requirement in the context of ratification of the Association Agreement between Ukraine and the EU and further Ukrainian Euro-integration aspirations.

The issue of the necessity of approximation, adaptation or harmonization of the Ukrainian legislation with the EU legislation was given a leading place in many normative legal documents, such as those adopted earlier, in particular, the Program of Ukraine's integration into the European Union, the EU-Ukraine Action Plan, the Law "On the National Program of Adaptation of Ukrainian Legislation to the legislation of the European Union", as well as in the Association Agreement between Ukraine and the EU. It should be stated that adaptation of Ukrainian legislation in many spheres is now an important priority of reforming Ukraine's legislation. Many scholars hold this opinion, emphasizing that it is one of the necessary and powerful factors for Ukraine's integration into the European Union, as well as the first stage of a long process of approximation of the national legal system to the European Union's system in accordance with the criteria set by the EU regarding states who intend to join it. Thus, it can be said that the purpose of harmonization of Ukrainian legislation to the legislation of the European Union is to achieve the conformity of the law of Ukraine with the law of the Union.

As for legislation of the European Union, it comprises the term "acquis communautaire" which, according to the definition of Professor V. Muravev, is a "common product, which, forming the basis of EU law, contains: first, the norms

of treaties and decisions of the EU institutions; second, declarations and resolutions adopted within the framework of the EU, and third, the practice of the EU Court”.¹ That is, this term means basically a set of legal norms of the European Union, EU legislation in a broad sense. According to clause 1 of Section II of the National Program for the Adaptation of Ukrainian Legislation to the Law of the European Union, approved in 2004, the term *acquis communautaire* is the EU legal system, which contains acts of EU legislation (but not limited to them), adopted within the framework of the European Community, the Common Foreign and Security Policy and Justice and Home Affairs Cooperation.²

For the other hand, it is worth mentioning that terms “harmonization”, “rap-prochement”, “adaptation”, “mutual recognition”, etc., were used more often to refer to the process of bringing legislation of the associated countries into conformity with the EU law.³ As an example, the process of economic integration of the Central European and Baltic countries to the EU was accompanied by the gradual mandatory application of EU legislation in the field of trade relations, comprising anti-dumping, countervailing measures and safeguards.⁴ For example, during the second stage of the approximation of the legislation of the Republic of Poland with the EU legislation, based on the proposals of the White Paper on the Single Internal Market, adopted by the EU Commission in 1995 Cannes, defining main priorities how to harmonize Central and Eastern Europe states’ legislation with the legislation of the Union, common commercial policy laws was transposed when the country became a member of the Union.⁵

The process of harmonization of Ukrainian legislation with the law of the European Union has officially began when the Ukraine-EU Interim Trade Agreement, signed in 1995, entered into force. It appeared to be the first official doc-

¹ В. Муравйов, *Право Європейського Союзу* [V. Muraviov, *Pravo Yevropeys'koho Soyuzu*] [V. Muraviov, *Law of the European Union*], Kyiv 2011, pp. 704–775.

² Закон України «Про Загальнодержавну програму адаптації законодавства України до законодавства Європейського Союзу» [Zakon Ukrainy «Pro Zahal'nodержavnu prohramu adaptatsiyi zakonodavstva Ukrainy do zakonodavstva Yevropeys'koho Soyuzu»] [Law of Ukraine “On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union”], <http://zakon5.rada.gov.ua/laws/show/1629-15>.

³ В. Муравйов, *Гармонізація законодавства і Європейська інтеграція* [V. Muraviov, *Harmonizatsiya zakonodavstva i Yevropeys'ka intehratsiya*] [V. Muraviov, *Harmonization of legislation and European integration*], “Право України” [“Pravo Ukrainy”] [“Law of Ukraine”], Kyiv 2013, issue 6, pp. 13–49.

⁴ В. Тихонович, *Аналіз державних механізмів стимулювання співробітництва з країнами Європи* [V. Tikhonovych, *Analiz derzhavnykh mekhanizmv stymulyuvannya spivrobitnystva z krayinamy Evropu*] [V. Tikhonovich, *Analysis of State Mechanisms for Encouraging Cooperation with European Countries*], “Науковий вісник Академії муніципального управління” [“Naukovyy visnyk Akademiyi munitsypal'noho upravlinnya”] [“Scientific Bulletin of the Academy of Municipal Administration”], Kyiv 2012, issue 3, pp. 259–271.

⁵ E. Latoszek, *The EU's Common Commercial Policy and its Post-Entry Implications for Poland's Trade*, “Polish Quarterly of International Affairs” 1999, p. 14.

ument to emphasize on the need to harmonize legislation on competition and intellectual property rights with the EU law. Later, the Partnership and Cooperation Agreement between the European Communities and their Member States and Ukraine dated 16 June 1994, which entered into force on 1 March 1998, was the legal basis of Ukraine-EU trade relations was for a long time.⁶ The Agreement was the main legal instrument for bilateral cooperation and operated until the entry into force of the EU-Ukraine Association Agreement, creating main prerequisites for harmonization of Ukrainian legislation with the law of the European Union. In particular, approximation of Ukrainian legislation with the legislation of the European Union in the field of trade was identified as one of the cooperation under this Agreement, whereas Article 51 provided for Ukraine's commitment to gradually bring national legislation into conformity with the Community law in certain areas.⁷ Article 19 of the Partnership and Cooperation Agreement governed the investigation of antidumping or subsidy cases, in particular, it was noted that each Party agrees to consider the submission of the other Party and notify the Parties concerned of the essential facts and considerations on the basis of which the final decision will be taken and make every effort to achieve a solution to the problem.

Later, on February 21, 2005, the EU-Ukraine Action Plan was adopted within the framework of the European Neighborhood Policy. Here gradual approximation of the Ukrainian legislation, norms and standards to norms and standards of EU legislation was one of the main objectives.⁸

The Free Trade Agreement with the European Union is an important component of the EU-Ukraine Association Agreement, which offers Ukraine a framework to modernize its trade relations and gradual harmonization of laws and by-laws in accordance with the standards of the Union. According to Professor V. Muraviev "The Agreement will create preconditions for deeper implementation of the *acquis communautaire* into Ukrainian legal system",⁹ which will positively affect Ukrainian legislation, provide a basis to enhance trade relations. Thus, the agreement will allow to liberalize trade relations with the EU, and also pro-

⁶ В. Муравйов, *Європейське право: право Європейського союзу* [V. Muravyov, *Yevropeys'ke pravo: pravo Yevropeys'koho soyuzu*] [V. Muraviev, *European Law: European Union Law*], Kyiv 2015, p. 111.

⁷ *Угода про партнерство та співробітництво між Україною і Європейськими Співтовариствами та їх державами-членами* [Uhoda pro partnerstvo ta spivrobitnytstvo mizh Ukrayinoyu i Yevropeys'kymy Spivtovarystvamy ta yikh derzhavamy-chlenamy] [Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States], http://zakon2.rada.gov.ua/laws/show/998_012.

⁸ *План дії Україна – Європейський Союз* [Plan diy Ukrayina – Yevropeys'kyu Soyuz] [Action Plan Ukraine – European Union], http://zakon2.rada.gov.ua/laws/show/994_693.

⁹ В. Муравйов, *Європейське право: право Європейського союзу* [V. Muravyov, *Yevropeys'ke pravo: pravo Yevropeys'koho soyuzu*] [V. Muraviev, *European Law: European Union Law*], Kyiv 2015, p. 111.

vides for a deep regulatory approximation, that is, the harmonization of rules and procedures and convergence with the EU internal market. Since the Association Agreement provides for harmonization of legislation in almost all spheres, it is an extremely important component of mutual cooperation and a prerequisite for possible further integration of Ukraine into the EU. The goal of harmonization within the framework of cooperation between Ukraine and the EU is both economic integration, reform of the national economy and the legal system of Ukraine,¹⁰ including the creation of favorable conditions for access of Ukrainian producers and providers to the markets of the EU and European enterprises to the Ukrainian market. Professor V. Muraviev also points out that in the EU itself the harmonization of the internal law of the member states with the law of the European Union covers, first of all, the sphere of functioning of the EU internal market, whereas means of harmonization comprise implementation of the provisions and directives of the Union into domestic law.¹¹

2. DIFFERENT VIEWS ON THE TERM

It should be noted that the Association Agreement does not define the notion of “harmonization”, but only refers to such concepts as “rapprochement”, “legislative approximation”, “adaptation”, “transposition”. Scholar views differ in this regard. A scholar S. Stanik uses the notion “approximation”, referring to the approximation of law, legislative acts of Ukraine to the EU legal system.¹² Also, Y. Kapitsa believes that it is better to use the term “approximation” too

¹⁰ Н. Мушак, *Гармонізація законодавства України з «acquis» Європейського Союзу та правовими стандартами ради Європи* [N. Mushak, *Harmonizatsiya zakonodavstva Ukrainy z «acquis» Yevropeys'koho Soyuzu ta pravovymy standartamy rady Yevropy*] [N. Mushak, *Harmonization of Ukrainian legislation with the EU acquis and Council of Europe legal standards*], “Право України” [“Pravo Ukrainy”] [“Law of Ukraine”], Kyiv 2013, issue 6, p. 83.

¹¹ В. Муравйов, *Гармонізація законодавства і Європейська інтеграція* [N. Muravyov, *Harmonizatsiya zakonodavstva Ukrainy z «acquis» Yevropeys'koho Soyuzu ta pravovymy standartamy rady Yevropy*] [V. Muravyov, *Harmonization of legislation and European integration*], “Право України” [“Pravo Ukrainy”] [“Law of Ukraine”], Kyiv 2013, issue 6, p. 20.

¹² В. Гомонай, *Проблема юридичної термінології в процесі зближення законодавства України з правовою системою Європейського Союзу* [V. Homonay, *Problema yurydychnoyi terminolohiyi v protsesi zblizhennya zakonodavstva Ukrainy z pravovoyu systemoyu Yevropeys'koho Soyuzu*] [V. Homonay, *The Problem of Legal Terminology in the Process of Approximation of Ukrainian Legislation with the Legal System of the European Union*], (in:) *Інституційні та нормотворчі аспекти адаптації національних законодавств до норм та стандартів ЄС. Матеріали міжнародної конференції* [Instytutsiyni ta normotvorchi aspekty adaptatsiyi natsional'nykh zakonodavstv do norm ta standartiv YES. Materialy mizhnarodnoyi konferentsiyi] [Institutional and regulatory aspects of the adaptation of national legislation to EU norms and standards. Materials of international conference], Kyiv 2009, p. 213.

the terms “approximation” and “harmonization” are used in the EU law dealing about approaching one or another level of conformity.¹³ However, according to Professor V. Muravev’s conclusion, the term harmonization of legislation, i.e. bringing legislation of the member states and non-member countries in line with the requirements of the European Union based on the legal acts of the European Union, is more widely used in Ukrainian literature.¹⁴ Also according to the “Dictionary of Terms and Concepts on International and European Law”, harmonization of legislation is defined as bringing legislation of the Member States and non-member countries into conformity with the requirements of the EU on the basis of its legal acts.¹⁵

On the other hand, the term “adaptation” is also often used both in Ukrainian sources and in official documents, in particular, in the Law of Ukraine “On the National Program for the Adaptation of Ukrainian Legislation to the Law of the European Union” dated March 18, 2004, Resolution of the Cabinet of Ministers of Ukraine “Some Issues of Approximation of Ukrainian Legislation to the Legislation of the European Union” dated October 15, 2004, etc. The law states that the term adaptation of legislation is “a process of bringing the laws of Ukraine and other normative legal acts in line with the *acquis communautaire*”.¹⁶ Even earlier, in 1999, the Concept of Adaptation of Ukrainian Legislation to the Law of the European Union was adopted, approved by the Resolution of the Cabinet of Ministers of Ukraine in 1999, stating that the adaptation of the legislation was carried out in order to ensure compliance of the Ukrainian legislation with the obligations arising from the Agreement on Partnership and Cooperation, other international agreements regarding Ukraine’s cooperation with the EU, development of national legislation in the direction of its rapprochement with the legislation of the Union.¹⁷ Besides, the Strategy of Ukraine’s Integration into the European

¹³ *Ibidem*, p. 214.

¹⁴ В. Муравйов, *Європейське право: право Європейського союзу* [V. Muravyov, *Yevropeys'ke pravo: pravo Yevropeys'koho soyuzu*] [V. Muraviev, *European Law: European Union Law*], Kyiv, 2015, p. 356.

¹⁵ *Законотворчість. Словник термінів і понять з міжнародного та європейського права* [Zakonotvorchist'. Slovnyk terminiv i ponyat' z mizhnarodnoho ta yevropeys'koho prava] [Legislation. Glossary of terms and concepts in international and European law], Kyiv 2005, p. 160.

¹⁶ Закон України «Про Загальнодержавну програму адаптації законодавства України до законодавства Європейського Союзу» [Zakon Ukrainy «Pro Zahal'nodержavnu prohramu adaptatsiyi zakonodavstva Ukrainy do zakonodavstva Yevropeys'koho Soyuzu»] [Law of Ukraine “On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union”], <http://zakon3.rada.gov.ua/laws/show/1629-15?test=4/UMfPEGznhh.Sn.Zim-coWnbHI4bos80msh8Ie6>.

¹⁷ *Концепція адаптації законодавства України до законодавства Європейського Союзу* [Kontseptsiya adaptatsiyi zakonodavstva Ukrainy do zakonodavstva Yevropeys'koho Soyuzu] [The concept of adaptation of the legislation of Ukraine to the legislation of the European Union], <http://zakon2.rada.gov.ua/laws/show/1496-99-%D0%BF>.

Union states: “adaptation of the Ukrainian legislation to the EU legislation is in line with the modern European system of law”.¹⁸

Some scholars, for instance, prof. V. Beschastny, identify adaptation of Ukrainian legislation to the EU legislation as a “set of interrelated organizational, legal, socio-economic, scientific and technical processes and measures aimed at bringing Ukraine’s legislation closer to the modern European system of law by designing a new one and amending the current legislation of Ukraine, taking into account common European standards reflected in the current legislation of the European Union and the EU member states”.¹⁹

However, many scholars, in particular, N. Malyshev, emphasize that harmonization of legislation should provide mechanisms for obtaining the highest level of harmonization and compatibility of harmonized systems.²⁰ Also, L. Lutz and L. Baymuratov adhere to the same opinion, noting that “in the course of harmonization there is a convergence of law and legislation, elimination of contradictions”.²¹ Moreover, O. Kiyevets shares the opinion that, in the case of harmonization, the creation of a legal regime with the help of similar legal norms based on the standard.²² In my opinion, the process of bringing Ukrainian legislation in line with the legislation of the European Union is appropriate to determine as harmonization of legislation. The same opinion is held by V. Gomonai, N. Mushak, R. Petrov, and others. Furthermore, the scholar K. Trychlib confirms this thesis, arguing that the main instrument of rapprochement and harmonization of legal systems of states is precisely the harmonization of laws, which consists of transformation of legal norms by bringing them into conformity with other norms.²³

¹⁸ В. Бесчасний, *Право Європейського Союзу* [V. Beschastnyy, *Pravo Yevropeys'koho Soyuzu*] [V. Beschastny, *European Union Law*], Kyiv, 2011, p. 366.

¹⁹ *Ibidem*, p. 342.

²⁰ Н. Малишева, *Теоретичні аспекти гармонізації національного законодавства з міжнародним правом* [N. Malysheva, *Teoretychni aspekty harmonizatsiyi natsional'noho zakonodavstva z mizhnarodnym pravom*] [N. Malysheva, *Theoretical Aspects of Harmonization of National Legislation with International Law*], (in:) *Проблеми гармонізації законодавства України з міжнародним правом: матеріали міжнародної науково-практичної конференції* [Problemy harmonizatsiyi zakonodavstva Ukrainy z mizhnarodnym pravom: materialy mizhnarodnoyi naukovo-praktychnoyi konferentsiyi] [Problems of Harmonization of Ukrainian Legislation with International Law: Materials of an International Scientific and Practical Conference], Kyiv 1998, p. 88.

²¹ Л. Луць, *Основні заходи та способи Європейської правової інтеграції* [L. Luts', *Osnovni zakhody ta sposoby Yevropeys'koyi pravovoyi intehtratsiyi*] [L. Luts, *Main Measures and Methods of European Legal Integration*], “Право України” [“Pravo Ukrayiny”] [“Law of Ukraine”], Kyiv 2002, issue 5, p. 147.

²² О. Київцев, *У пошуках міжнародного права: переосмислюючи джерела* [O. Kyivets', *U poshukakh mizhnarodnoho prava: pereosmyslyuyuchy dzhherela*] [O. Kievets, *In Search of International Law: Rethinking Sources*], Kamianets-Podilskyi 2011, p. 406.

²³ К. Трихліб, *Гармонізація законодавства України і законодавства ЄС: наближення загальноправової термінології: монографія* [K. Trykhlіb, *Harmonizatsiya zakonodavstva*

According to R. Petrov's definition a concrete form and direction of harmonization and convergence of the legal systems of states is the transposition, which is a process aimed at achieving adaptation, convergence, harmonization with the EU law and involves application of many methods and methods for achieving the goal of transfer EU *acquis* in the legal systems of third countries.²⁴ Also, prof. Y. Shemshuchenko emphasizes that the main ways of harmonization is adopting by our state internal legal acts aimed at ensuring legal approximation and harmonization of domestic sectoral legislation.²⁵

3. HARMONIZATION OF LEGISLATION IN THE FIELD OF TRADE DEFENCE

If talking about trade law and trade defence legislation, in particular, in order to bring Ukraine's legislation closer to EU legislation in the area of trade defence measures in the light of the Association Agreement, Ukraine needs to adopt a number of internal regulatory acts against dumping, subsidies and massive imports, despite the fact that the Association Agreement between Ukraine and the European Union does not directly oblige Ukraine to harmonize its domestic legislation on trade defense measures with the EU legislation.

Legislation of the Union in the field of trade defense measures, as S. Osik notes, since the adoption of the first European legal instrument on protection against dumping and subsidies in 1968, all the legal acts were amended and supplemented, systematization and analysis of the application of norms has been conducted.²⁶ It means that the procedural rules were clarified and refined to provide more complete protection of the parties' rights to antidumping, anti-subsidy and

Ukrayiny i zakonodavstva YES: nablyzhennya zahal'nopravovoyi terminolohiyi: monohrafiya [K. Trichlieb, *Harmonization of Ukrainian and EU Legislation: Approximation common law terminology: thesis*], Kharkiv 2015, p. 42.

²⁴ Р. Петров, *Транспозиція права як складова процесу приведення законодавства України* [R. Petrov, *Transpozitsiya prava yak skladova protsesu pryvedennya zakonodavstva Ukrayiny*] [R. Petrov, *Transposition of Law as a Component of the Legislative Process of Ukraine*], "Право України" ["Pravo Ukrayiny"] ["Law of Ukraine"], Kyiv 2013, issue 6, p. 72.

²⁵ Ю. Шемшученко, *Наукова доповідь «Механізми гармонізації законодавства України з європейським та міжнародним правом»* [YU. Shemshuchenko, *Naukova dopovid' «Mekhanizmu harmonizatsiyi zakonodavstva Ukrayiny z yevropeys'kym ta mizhnarodnym pravom»*] [Yu. Shemshuchenko, *Scientific Report "Mechanisms of Harmonization of Ukrainian Legislation with European and International Law"*], Kyiv 2011, p. 27.

²⁶ С. Осыка, *Основы и особенности права США, Канады и Европейского Союза по защите от демпингового импорта* [S. Osyka, *Osnovy i osobennosti prava Ssha, Kanady i Yevropeyskogo Soyuzha po zashchite ot dempingovogo importa*] [S. Osyka, *Fundamentals and Features of the Law of the USA, Canada and the European Union on the Protection against Dumping Imports*], Kyiv 2005.

safeguards investigations, in particular the latest changes were made by the Union at the end of 2017.

Thus, one of the ways of harmonization in this regard may be transposition of the norms of EU legal acts into the national legal order of Ukraine, in particular the provisions of the current regulations of the Union – Regulation (EU) 2017/2321, Regulation (EU) 2016/1036 and Regulation (EU) 2016/1037, on the protection against dumping, subsidies and mass imports into the laws of Ukraine “On the protection of the national producer from dumping imports”, “On the protection of national producers from subsidized imports” and “On the application of special measures for the import into Ukraine”.

This work has partly started at the moment. In particular, at the end of 2017 the Ministry of Economic Development and Trade of Ukraine developed and placed on the official website of the Ministry a new Law of Ukraine “On Amendments to the Law of Ukraine “On the Protection of the National Commodity Producer against Dumped Imports” in order to bring current legislation in the field of trade defence in accordance with the provisions of the WTO Agreements and the international practice of conducting anti-dumping investigations. This bill was discussed in expert circles, in particular, during a meeting of the Public Council under the Ministry of Economic Development and Trade of Ukraine, a meeting of the Public Council under the Cabinet of Ministers of Ukraine, the American Chamber of Commerce, etc. The explanatory note to the bill states that the draft Law is designed to improve the mechanism of anti-dumping investigations, as well as the mechanism of application of anti-dumping measures and conducting investigations taking into account international practice.²⁷ Thus, the main task of it’s adopting would be to increase the transparency of anti-dumping process and predictability for all of its parties. One of the most positive new rules of the bill is increasing transparency of investigation procedures, for example, improving the procedure for informing interested parties about the progress and results of the process, obtaining better access to information, as well as the possibility to participate in hearings. In addition, the new law clarifies rights and obligations of parties to the anti-dumping proceeding, establishes a new rule on the return of a previously paid duty in the event of non-application of final measures, and improves the procedural deadlines for all parties and authorized bodies. It foresees clear deadlines for investigation stages, for example, publications in official

²⁷ Пояснювальна записка до проекту Закону України «Про внесення змін до Закону України «Про захист національного товаровиробника від демпінгового імпорту» [Роз’яснювальна записка до проекту Закону України «Про внесення змін до Закону України «Про захист національного товаровиробника від демпінгового імпорту»] [Explanatory Note to the Draft Law of Ukraine “On Amendments to the Law of Ukraine “On Protection of the National Producer from Dumping Imports”], <http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=2d92511f-c6fa-468a-97f3-bc353742db15&title=ZakhystInteresivNatsionalnikhTovarovirobnikivNaVnutrishnomuRinku>.

sources, providing information on the course of the investigation, holding consultations with the parties, etc.

At the same time, in mid-2017 the Ministry of Economic Development and Trade also developed the Draft Law of Ukraine “On Amendments to the Law of Ukraine On the Protection of a National Producer from Subsidized Imports” also in connection with the need to bring norms of the current legislation in the field of trade defence in conformity with the provisions of the WTO Agreements and international practice of conducting antisubsidy investigations.²⁸ The drafters of the bill consider it necessary to take into account the interests of all interested parties of the process, such as domestic producers, importers, consumers, small and medium enterprises, similar to the practice of the EU, and the task of adopting the bill is to increase transparency in the provision of anti-subsidy investigations. Thus, the draft law provides for: details of the stages of anti-subsidy investigations; specifying rights and responsibilities of competent authorities; extending rights of parties concerned during investigations; improving mode of use of measures; implementation of methods to ensure customs payments in the form of a cash deposit or debt obligation.²⁹

In addition, the Government of Ukraine has drafted a draft Law of Ukraine «On Amendments to the Law of Ukraine «On the Application of Special Measures on Imports into Ukraine», setting it in the form of a new Law «On Safeguards». One can agree with this approach of the Government, which finally proposes to change the current wording of this type of trade defense measures from «special measures» in accordance with the current law to the term «protective measures», which corresponds to GATT / WTO terminology, as well as of others states, international organizations, particularly, the European Union. The Explanatory Note to the new draft law on safeguards also states that it has been designed to improve the mechanism for conducting investigations, as well as

²⁸ Пояснювальна записка до проекту Закону України «Про внесення змін до Закону України «Про захист національного товаровиробника від субсидованого імпорту» [Poyasnyval'na zapyska do proektu Zakonu Ukrainy «Pro vnesennya zmin do Zakonu Ukrainy «Pro zakhyst natsional'noho tovarovyrobnyka vid subsydovanooho importu»] [Explanatory Note to the Draft Law of Ukraine “On Amendments to the Law of Ukraine “On Protection of National Producer from Subsidized Import”], <http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=cf-27c8a4-b833-418b-9048-2b8d92138213&title=ProektZakonuUkrainiproVnesenniaZminDoZakonuUkrainiproZakhistNatsionalnogoTovarovirobnikaVidSubsidovanogoImportu>.

²⁹ Аналіз регуляторного впливу до проекту Закону України «Про внесення змін до Закону України «Про захист національного товаровиробника від субсидованого імпорту» [Analiz rehulyatornoho vplyvu do proektu Zakonu Ukrainy «Pro vnesennya zmin do Zakonu Ukrainy «Pro zakhyst natsional'noho tovarovyrobnyka vid subsydovanooho importu»] [Analysis of the regulatory impact on the draft Law of Ukraine “On Amendments to the Law of Ukraine “On Protection of National Commodity Producer from Subsidized Imports”], <http://www.me.gov.ua/Documents/Detail?lang=uk-UA&id=cf27c8a4-b833-418b-9048-2b8d92138213&title=ProektZakonuUkrainiproVnesenniaZminDoZakonuUkrainiproZakhistNatsionalnogoTovarovirobnikaVidSubsidovanogoImportu>.

the application of measures in order to take into account the interests of all interested parties, while the general objective of this bill is to increase the transparency of the investigations and its predictability for all interested parties.³⁰

It can be agreed that the adoption of the bill will help to improve the mechanism for conducting such investigations, in particular, by increasing the transparency of the investigation itself, legitimate expectations of all parties, providing for the possibility of consultation with the parties, etc. Thus, the draft law envisages improvement of the procedure for informing all parties of the process through the provision of simplified access to information, the broader possibility of interested parties to participate in the process. The document more broadly describes rights and obligations of all parties to the process, including the competent authorities, as well as clarifies some terms, establishing clear time limits for all procedural stages of the investigations. Also, expanded terminology, added some legal regulation of concepts, in particular, regarding the similarity of goods, the period of investigation. Nevertheless, it is considered necessary to align the definition in the draft law with the provisions of the WTO Agreement on Safeguards, for example, the definition of the term “safeguard” as “an action to restrict growing imports to the customs territory of Ukraine, which is applied by the Commission in accordance with this Law...” does not correspond to the terminology of the Agreement on safeguards. The draft law in Articles 2 and 3 adds the rights and responsibilities of the special authorities, namely, the Ministry and the Interdepartmental Commission for International Trade, and their powers are more clearly limited, comparing with the previous version of the Law. The draft law on special measures also should increase transparency and predictability of the application of measures. And better access to information involves the publication of a non-confidential version of the front-end and final report on the results of the investigation to familiarize with it all interested parties.

4. CONCLUSIONS

Thus, it may be noted that the adoption of amendments to the Laws of Ukraine «On the Protection of the National Producer against Dumped Imports», «On Pro-

³⁰ Пояснювальна записка до проекту Закону України «Про внесення змін до Закону України «Про застосування спеціальних заходів щодо імпорту в Україну» [Пояснювальна записка до проекту Закону України «Про внесення змін до Закону України «Про застосування спеціальних заходів щодо імпорту в Україну»] [Explanatory Note to the Draft Law of Ukraine “On Amendments to the Law of Ukraine “On Protection of the National Producer from Dumping Imports”], <http://me.gov.ua/Documents/Detail?lang=uk-UA&id=ae06901d-23f0-4978-a69c-b9d4b75f5b2c&title=ProektZakonuUkrainiproVnesenniaZminDoZakonuUkrainiproVnesenniaZminDoZakonuUkrainiproZastosuvanniaSpetsialnikhZakhodivSchodoImportuVUkrainu>.

tection of the National Producer from Subsidized Imports» and «On the Application of Special Measures on Imports into Ukraine» are extremely timely, requiring their prompt adoption by the Verkhovna Rada of Ukraine. The relevant Committee of the Verkhovna Rada of Ukraine on Industrial Policy and Entrepreneurship has also recommended on May 23, 2018 to recommend the adoption of these bills in the first hearing on May 23, 2018. It is expected that these legislative changes will modernize and improve procedure for applying trade defense measures and increase the effectiveness of anti-dumping, countervailing and safeguard measures in Ukraine.

As a result, harmonization of the Ukrainian legislation with the EU law in the field of trade defense measures is an important step towards gradual rapprochement between Ukraine and the EU, which is particularly relevant in the context of the Deep and Comprehensive Free Trade Area. It is related with the creation of an appropriate common legal framework with the European Union on anti-dumping, countervailing and safeguards closely connected with with the Association Agreement. Such a legal framework in this area will help to achieve other goals, in particular, further integration, improving trade relations between Ukraine and the European Union, as well as promoting more effective protection of national producers.

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HARMONIZATION OF THE UKRAINIAN LEGISLATION WITH THE LEGISLATION OF THE EUROPEAN UNION WITH REGARD TO TRADE DEFENCE

Summary

The issue of the necessity of approximation, adaptation or harmonization of the Ukrainian legislation with the EU legislation has been tackled by a number of scholars in Ukraine. A number of normative documents also paid considerable attention to this issue in general. However, there is still an issue of defining the most suitable term which would better purpose bringing legislation into conformity with the requirements of the EU.

According to some scholars the notion “harmonization” could better reflect this process. This view is also shared by the author of this article.

The article also discusses the importance and the need to pass new draft laws in the field of trade defence in Ukraine, in particular, regarding anti-dumping, countervailing measures and safeguards. Since some of the new articles correspond to similar provisions in the EU directives, this is viewed as an important step to harmonize the Ukrainian legislation with the legislation of the European Union in this sphere.

KEYWORDS

harmonization, trade defence, antidumping measures, countervailing measures, safeguards, European Union, Ukraine

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harmonizacja, obrona handlu, środki antydumpingowe, środki antysubsydyjne, gwarancje, Unia Europejska, Ukraina