

How the EU Association Agreement Makes Existing Ukraine-Russia Trade Links Impossible

Negotiations to Preserve Trade Links Between Ukraine and Russia are in Deadlock Because the EU and Ukraine Reject All Changes to an Association Agreement Whose Purpose is to Make Ukraine an EU Economic Colony

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The tripartite negotiations between Russia, Ukraine and the EU to resolve the problems thrown up by Ukraine's Association Agreement with the EU are going nowhere.

The Russians insist on changes to the text of the agreement. The Europeans categorically reject this, as do the Ukrainians.

In order to understand why there is this deadlock, it is necessary to say something about the nature of the Ukraine EU Association Agreement, since it is not very well understood.

Most people believe the agreement is intended to create a free trade area between the EU and Ukraine.

It is easy to understand why people think this since that is what the Association Agreement itself says in Article 25:

“The Parties shall progressively establish a free trade area over a transitional period of maximum 10 years starting from the entry into force of this Agreement, in accordance with the provisions of this Agreement and in conformity with Article XXIV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as ‘GATT 1994’).”

Establishing “a free trade area” (in the commonly-understood meaning of that term) between the EU and Ukraine is not however what the Association Agreement actually does.

At almost a thousand pages, the [text](#) of the Association Agreement is extremely long and uses convoluted and technical language.

This is intentional. The text has been deliberately made much longer and far more technical than it needs to be, precisely so as to confuse people.

It is certainly far longer and much more complex and technical than it would need to be if its purpose really was merely to create a free trade area. Here by comparison is the [text](#) of the EU Association Agreement with Chile. This too purports to be a free trade agreement between the EU and Chile.

Reading the two documents side by side, the similarities are obvious; but so are the differences. The Association Agreement with Ukraine is much longer and far more technical and complex.

What the EU officials who drew up the document have done is take a standard form of the Association Agreement the EU routinely uses when it negotiates free trade agreements with non-EU countries and graft onto it something completely different.

So what does the Ukraine EU Association Agreement actually do?

What it does is require Ukraine to adopt the whole body of EU law as it affects regulation of its economy.

EU officials call this body of EU law the *acquis*. Those with the time and inclination to read through the document will see this word appears constantly throughout the text.

The key omnibus provision is Article 56, in the section that deals with removing “technical barriers to trade”:

“2. With a view to reaching these objectives, Ukraine shall, in line with the timetable in Annex III [to this Agreement]: (i) incorporate the relevant EU *acquis* into the legislation of Ukraine.”

Since Ukraine is committing itself to make the *acquis* its law, it is surrendering regulation of its economy to the EU in Brussels. Questions of regulation of Ukraine’s economy will no longer be decided by the Ukrainian government and parliament in Kiev, but by the European Council and the EU Commission in Brussels.

Moreover what the EU decides will have the force of law. This is made quite clear by the single most important paragraph in the entire document (buried on page 187):

“Article 322

Dispute settlement relating to regulatory approximation

The procedures set out in this Article shall apply to disputes relating to the interpretation and application of obligations contained in relating to regulatory or legislative approximation contained in Chapter 3 (Technical Barriers to Trade), Chapter 4 (Sanitary and Phytosanitary Measures), Chapter 6 (Services, Establishment and Electronic Commerce) and Chapter 8 (Public Procurement) [of this Agreement].

Where a dispute raises a question of interpretation of an act of the institutions of the European Union, the arbitration tribunal shall not decide the question, but request the Court of Justice of the European Union to give a ruling on the question. In such cases, the deadlines applying to the rulings of the arbitration panel shall be suspended until the Court of Justice of the European Union has given its ruling. The ruling of the Court of Justice of the European Union shall be binding on the arbitration tribunal.”

Since the entire point of the Association Agreement is “regulatory or legislative approximation” through wholesale adoption of the *acquis* in the key economic areas

mentioned in Article 322, what this paragraph does is give the EU effective control of Ukraine's economy, with the EU's decisions having the force of law, with the right of enforcement given not to Ukraine's own courts, but to the European Court of Justice in Luxembourg.

To hide away this provision the Association Agreement creates an elaborate arbitration system to settle disputes. However, since in deciding legal questions the arbitration tribunal is bound by decisions of the European Court of Justice, the final decision always ultimately rests with the EU.

Other sections of the Association Agreement are equally far reaching, with Ukraine for example required to harmonize its foreign, defense, tax and transport policies with those of the EU, to base its intellectual property law on that of the EU, and even to allow unrestricted access to EU investigators undertaking "anti-corruption" investigations in Ukraine.

The Association Agreement does not therefore just create a free trade area. What it does – and what it is intended to do – is make Ukraine in effect a part of the European Economic Area and of the European Single Market administered by the EU Commission in Brussels.

It does so despite Ukraine remaining outside the EU. Ukraine is surrendering control of its economy to the EU without the corresponding benefit of EU membership.

Many people within the EU today complain about the power the democratically-unaccountable institutions of the EU have over their lives. They are however at least represented in the EU through their governments and can vote in elections to the European parliament. Ukraine's people will have no representation at all, and no say through their government in what the EU decides for them.

Once it is understood that what the Association Agreement actually does is not the creation of free trade area between the EU and Ukraine, but in fact makes Ukraine a part of the European Economic Area and the European Single Market, then the reason why talks with Russia are deadlocked becomes obvious.

The Russians complain that if the Association Agreement comes into force and Russia's trade relations with Ukraine are unchanged, then EU goods can enter Russia without hindrance because Ukraine and Russia have a free trade agreement. Russia does not have a free trade agreement with the EU, but once the Association Agreement comes into effect, it will in effect find itself in a *de facto* free trade area with the EU through its Ukrainian back door.

Understandably enough, the Russians say they will not let themselves be brought into a free trade arrangement (whose terms they have not negotiated) with the EU in this backstairs way, and that if no change is made to the Association Agreement to prevent this, then their free trade arrangements with Ukraine will end. They insist this problem can only be solved by making changes to the text.

The Europeans and Ukrainians refuse to change the text of the Association Agreement in any way. What they offer instead is a labeling system that would enable Russian customs officials to identify the provenance of any goods entering Russia through Ukraine, so as to separate those goods which are Ukrainian from those which are not.

This proposal illustrates everything that is wrong about the way the West treats Russia.

What the Ukrainians and the West never explain is why they think the Russians would agree to such a proposal. What it amounts to is a demand that Russia set up a cumbersome and expensive customs procedure, which would be very easy to evade just so Ukraine can distance itself from Russia and the EU can achieve its geopolitical goals.

As such, this is simply another in a long line of proposals that amount to the Ukrainians and the West demanding that Russia pay the cost of their anti-Russian policies. Not surprisingly, the Russians always say no. Amazingly, the Ukrainians and the West always then seem genuinely surprised, become furious, and accuse the Russians of harboring all sorts of sinister designs when the reason the Russians have said no is actually perfectly obvious.

This proposal however faces a more fundamental problem – that it is incompatible with the Association Agreement. Without rewriting its text it cannot work because the European Court of Justice will set it aside.

The European Court of Justice would be bound to find that the proposal is discriminatory and a barrier to trade and as such that it is incompatible with the rules and regulations of the European Economic Area and of the European Single Market (the *acquis*), which Ukraine has agreed to adopt. Since according to Article 322, decisions of the European Court of Justice are binding, any agreement made with Russia based on the proposal would then be set aside. Ukraine could not continue with it while it remained bound to observe the *acquis*.

The simple fact which neither the Ukrainians nor the Europeans want to face is that the Ukraine EU Association Agreement is incompatible with Ukraine's existing economic and trade links with Russia.

That of course is its whole point. There is no logic in the Ukrainians and the Europeans angrily complaining about this when that is precisely what the document they signed together is intended to do.

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