

DOI: 10.55643/fcaptop.5.52.2023.4139

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Received: 11/08/2023

Accepted: 27/09/2023

Published: 31/10/2023

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INTERNATIONAL DIGITAL TRADE & DIGITAL ECONOMY AGREEMENTS: CHALLENGES AND PROSPECTS FOR UKRAINE

ABSTRACT

The article examines the prospects for the digital transformation of Ukraine's foreign economic policy in the context of international digital trade/economy agreements, especially the Digital Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine. The economic and legal effectiveness of these agreements in the process of digital transformation of foreign economic policy (foreign trade) in Ukraine and at the international level is proven. To increase their effectiveness and accelerate implementation, the political and legal framework is of great importance. Under other circumstances, the realisation of such agreements will be complicated by the need to bring domestic legislation in line with their provisions, as the case of Ukraine shows. It is substantiated that the implementation of the Digital Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine is complicated by the lack of national legislation regarding electronic document management in cross-border trade; the slow pace of implementation of international legislation, for example, on personal data protection; the existence of differences in the legislative approaches of the European Union and the United Kingdom of Great Britain and Northern Ireland regarding certain issues of trade in goods and services etc. It is emphasized that certain norms of the agreement are declarative and that it does not address some important issues that can be of great value for cross-border trade in the future.

The expediency of Ukraine's constant participation in international cooperation in order to modernize foreign economic and national economic policy, taking into account the requirements of international documents and current challenges, is reasoned. In this context, constant monitoring, study of foreign experience and analysis of the consequences of resolving such important issues as cross-border transfer of information by electronic means, localization of data and entities that provide their transfer, non-discrimination, etc. are vital.

Keywords: digital agreement, digital trade, foreign economic policy, foreign economic relations, artificial intelligence, cross-border data flows, personal data protection, e-commerce, electronic document management, technology

JEL Classification: K33, F13, F53

INTRODUCTION

Digitalisation is a recognised mechanism for increasing the efficiency of foreign economic activity, including foreign trade, due to the positive impact of technologies on its implementation. For this reason, Ukraine strives to meet new requirements and integrate into the international digital economic space as soon as possible. One of the tools that allows moving in this direction is digital trade or digital economy agreements (DTAs/DEAs). As practice shows, the purpose of their conclusion is to optimise foreign economic relations and take advantage of the global digital economy and the modern world.

Ukraine has recently signed the Digital Trade Agreement with the United Kingdom of Great Britain and Northern Ireland (UK-Ukraine DTA). This was reported on the official government websites of both countries at the end of March 2023 (UK-Ukraine DTA, 2023). This is the first digital trade agreement for our country. It contains a number of

commitments aimed at supporting the development of a modern digital economy and shaping rules in the following areas: open and inclusive digital markets; data flows; consumer and business safeguards; digital trading systems; financial services; technological partnership (UK-Ukraine DTA AE, 2023).

This Agreement is another step in securing modern, large-scale trade agreements after the Digital Economy Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Singapore (UK-Singapore DEA) that entered into force in June 2022. However, does the conclusion of such agreements really correspond to the stated goal? This question requires all possible analysis, in particular through the prism of events in the world, differences in legal systems, etc. In today's changing environment, it is extremely important to assess the economic and legal impact of DTAs/DEAs. This explains the necessity and significance of research in this area.

LITERATURE REVIEW

It should be noted that scientific interest in assessing the economic and legal impact of international DTAs/DEAs on foreign economic relations between countries, modernisation of legislation, etc. has only increased in recent years. This interest is a result of the active digitalisation of economic relations in the world. Theoretical and practical data, as well as the experience of other countries in this area, can become the basis for substantiating scientific and practical proposals, the implementation of which will contribute to the digital transformation of Ukraine's foreign economic policy and increase the country's competitiveness at the international level.

An analysis of the publications of a number of foreign and national researchers shows that specific international investment, trade and economic agreements in combination with WTO legislation do not meet expectations regarding the regulation of cross-border data flows, foreign investment, trade and other complex issues. Therefore, some countries try to regulate these issues at the level of national legislation (Sheng L., 2022).

The scientific work of Julien Chaisse "The Black Pit: Power and Pitfalls of Digital FDI and Cross-Border Data Flows" (Chaisse J., 2023) is particularly noteworthy. This publication provides a brief analysis of the interaction between national and international legal norms in the context of the digital transformation of foreign economic policy (foreign investment policy). The author also emphasises the need to update existing international agreements and laws in order to take into account the peculiarities of such a transformation. At the same time, an increasing number of national rules can lead to unjustified barriers to digital trade (RCD, 2023).

In this regard, some governments have started to develop and sign new DTAs/DEAs. According to Vlassis, the main goal of such agreements is to become a normative model for bilateral and multilateral trade negotiations generating new standards for the area of digital technologies (Vlassis A., 2022). The key advantages of DTAs/DEAs include ensuring ethical and collaborative use of advanced technologies, promoting e-commerce using interoperable systems and maintaining a balance among ease of trade, firm productivity and cybersecurity (Lim J. Z., Toh M. H., & Xie T., 2022). DTAs/DEAs can be considered a new, deeper and integrated level of regulation of digital relations between countries. Compared to traditional free trade agreements (FTAs), DTAs/DEAs can facilitate the development of new products and services more effectively by promoting data-driven innovation across borders (Cheung P., & Taojun X., 2023). This approach is general and applies to agreements not only in Singapore and the ASEAN region but also in other regions of the world. For example, the Trans-Pacific Partnership (TPP) Agreement shows the transition from treating digital trade mainly as a traditional trade issue to considering its unique digital nature and modernizing the rules (Gao H., 2018). There is another point that deserves special attention. The parties of DTAs/DEAs may have fundamental differences in the level of economic and digital development, as well as the impact on international economic processes as a whole. On the one hand, it allows stronger states to dictate the negotiations and export their regulatory approaches to weaker parties (Elsig M., & Klotz S, 2021). With the formal equality of parties, actual inequality remains. On the other hand, for weaker states DTAs/DEAs can serve as a catalyst for digital development and a significant impetus for economic growth.

In other words, these agreements are critical institutional mechanisms to support the ongoing digitalisation of national and international trade and to address the many challenges associated with this transition. Currently, digital transformation reforms are mostly focused on the technical adaptation of digital trade and adding a new fifth freedom, namely the free flow of data across borders, to the four existing freedoms (free flow of goods, services, technology and to a lesser extent people) (Ciuriak D, 2018; Suslenko V., Zatonatska T., Dluhopolskyi O., & Kuznyetsova A., 2022). Consequently, DTAs/DEAs parties should pay more attention to users' concerns if they really want to achieve the "free flow of data with trust" (Aaronson S. A., 2023).

In this context, Stephanie Honey assesses the interrelationships between the provisions of free trade agreements and innovative "digital" agreements that demonstrate to other players what can be achieved with goodwill and creativity in digital policymaking. The author also notes that the views of businesses and government on barriers to digital trade may differ significantly (Honey S., 2021). There are other works by scholars trying to determine the prospects for concluding DEAs/DTAs (Ciuriak D., 2022).

It is believed that the issues of digitalisation of foreign economic policy, in particular trade policy, are more fully addressed in the Digital Economy Partnership Agreement (DEPA) (Ciuriak D., 2022). At the same time, Marta Soprana (Soprana M., 2021) in her paper "The Digital Economy Partnership Agreement (DEPA): Assessing the Significance of the New Trade Agreement on the Block" draws attention to the fact that the scientific work on the latest regulatory approach to digital trade by WTO members - the Digital Economy Partnership Agreement (DEPA) - is still quite limited. In an attempt to fill this gap, the author seeks to assess the significance of this first standalone monothematic agreement by comparing it with five recently concluded preferential trade agreements. At the same time, there are studies by scholars who analyse the provisions of the DEPA in order to assess the feasibility of accession by certain countries, including Canada, and come to positive conclusions (Fay, R., & Ciuriak, D., 2022).

Meanwhile, an analysis of recent publications has shown that there are no studies devoted to studying the prospects for digital transformation of Ukraine's foreign economic policy in the context of international DTAs/DEAs, namely the UK-Ukraine DTA. Accordingly, the above data and arguments support the need for the proposed study.

AIMS AND OBJECTIVES

The main purpose of this article is to analyze the prospects for the digital transformation of Ukraine's foreign economic policy in the context of international DTAs/DEAs, in particular the British-Ukraine DTA.

METHODS

To achieve the aim of the article and ensure the scientific validity of the research results, the authors used a set of methods, among which the hermeneutic, comparative and generalising methods are important. The use of hermeneutic and comparative methods made it possible to compare the international experience of countries that have concluded DTAs/DEAs (Singapore, Australia, Chile, New Zealand, the United Kingdom, and Canada), analyse the content of such agreements and determine the prospects for digital transformation of Ukraine's foreign economic policy in the context of the UK-Ukraine DTA. The conclusions, recommendations and proposals are formulated by way of generalisation.

The choice of studying the experience of Singapore, Australia, Chile, and New Zealand was made because the DTAs/DEAs between these countries entered into force in 2020-2021. This makes it possible to analyse the economic and legal effects of their (agreements) conclusion. In turn, the experience of the United Kingdom and Canada was chosen for comparison because they were among the first countries with which Ukraine signed or announced the signing of relevant agreements.

RESULTS

Establishing and expanding effective foreign economic relations has always been an important task for Ukraine. As it integrates into the digital era, the country is also interested in cooperating with its foreign partners to develop the digital economy. The signing of the UK-Ukraine DTA is another step in this direction. Digital trade opens up many prospects for both countries. It offers unprecedented opportunities to revolutionise the way goods and services are delivered in almost every sector of the economy. In addition, digital trade can contribute to growth and job creation not only in the financial and professional business services sectors, but also in retail, healthcare, education, engineering, agriculture, manufacturing, creative industries, and many other industries.

For Ukraine, the digital agreement with the UK is also important because it can potentially help cope with the consequences of the war, and restore and even improve pre-war development indicators. In particular, in the current conflict digital trade is vital, because damage to Ukrainian infrastructure makes it harder to trade physically. Using digital tools Ukraine can continue to get necessary goods and services (EM, 2022). It is expected that Ukraine will have access to financial services crucial for reconstruction activity by means of facilitation of cross-border data flows and Ukrainian businesses will have the opportunity to trade more efficiently and cheaply with the UK through electronic transactions, e-signatures and e-contracts (H DTA, 2023).

The future benefits of digital trade will depend heavily on international dialogue on approaches that ensure the interoperability of differing regulatory regimes and technologies (González J. L., & Ferencz J., 2018). It can be assumed that this problem goes far beyond bilateral or even regional DEAs. Furthermore, the application of different approaches may theoretically result in a situation where existing DEAs are an obstacle to the conclusion of new agreements with other countries. For this reason, the issue of digital trade integration is becoming increasingly urgent. In the literature, there are five basic elements of digital trade integration, namely reducing digital trade barriers, digital trade facilitation, digital trade regulatory frameworks and digital trust policies, digital development and inclusion, and institutional coordination. Given the fact that preferential trade agreements do not provide full digital trade integration (Mitchell F. & Mishra N., 2020), DEAs are promising from the point of comprehensive integration and creation of a single digital market.

UK-Ukraine DTA will be the first big step towards integration into the international digital market for Ukraine. Despite the fact that this is only a bilateral treaty, it has significant potential for Ukraine's adaptation to universally recognized standards, regulatory approaches and best practices in this area.

Firstly, the UK-Ukraine DTA contains references to different international regulations regarding electronic invoicing, paperless trading and personal data protection. For instance, each party of the agreement shall take into account international frameworks when developing measures related to electronic invoicing. In addition, the agreement obliges the Parties to recognize the importance of international cooperation with a view to developing international frameworks to govern free, fair and inclusive digital trade.

Secondly, most of the provisions of the UK-Ukraine DTA are identical or similar to other DTAs/DEAs in which the United Kingdom or its partners participate. This creates the effect of having a normative model that is dynamic and constantly improving. In this context, it is worth emphasizing the high level of similarity of the provisions of UK-Ukraine DTA and UK-Singapore DEA relating to customs duties, national electronic transactions framework, electronic invoicing, paperless trading, cross-border transfer of information by electronic means, location of computing facilities, etc.

Thirdly, the United Kingdom, Singapore, the Republic of Korea and some other countries are key trading partners of the European Union (EU) and demonstrated a high level of convergence with the EU's approach to digital trade. This is explained by the fact that the EU-UK Trade and Cooperation Agreement includes comprehensive rules on digital trade, and Singapore and the Republic of Korea have signed the Digital Trade Principles with the EU (RCD, 2023). By promoting its principles and approaches in this way, the EU influences not only its partners directly, but also those countries that conduct digital trade with them. With such an indirect regulatory "expansion", the probability of contradictions with the core elements of the EU approach to digital trade is not completely excluded, but it is significantly reduced. This can be considered one of the manifestations of the "Brussels effect", which is mentioned in the literature (Rakesh V., 2022).

It should be noted that a Joint Declaration on the Conclusion of Negotiations for the Modernization of the Free Trade Agreement between Canada and Ukraine was signed on 11 April 2023. One of the sections includes the Digital Trade Agreement, which outlines all the fundamental freedoms in this area (U&C FTA). The new digital trade chapter substantially changes and expands the previous chapter on electronic commerce. This chapter includes commitments relating to cross-border data flows, data localization, source code disclosure, open government data and personal data protection. The main aim of these changes is to improve the regulatory conditions for companies in the digital markets of both countries. Another important novelty of the updated Free Trade Agreement between Canada and Ukraine is a new chapter on telecommunications that is directly related to digital trade. It is expected that improved provisions will allow telecommunications service suppliers to operate more efficiently in Canadian and Ukrainian telecommunications markets and ensure an influx of investments (Government of Canada, 2023).

Ukraine's actions are one of the driving factors in the digitalisation of foreign economic relations, as the country lags far behind its partner countries in this area. This is evidenced by data on the degree of readiness of countries (Ukraine, the UK and Canada) to switch to paperless cross-border trade (Figure 1).

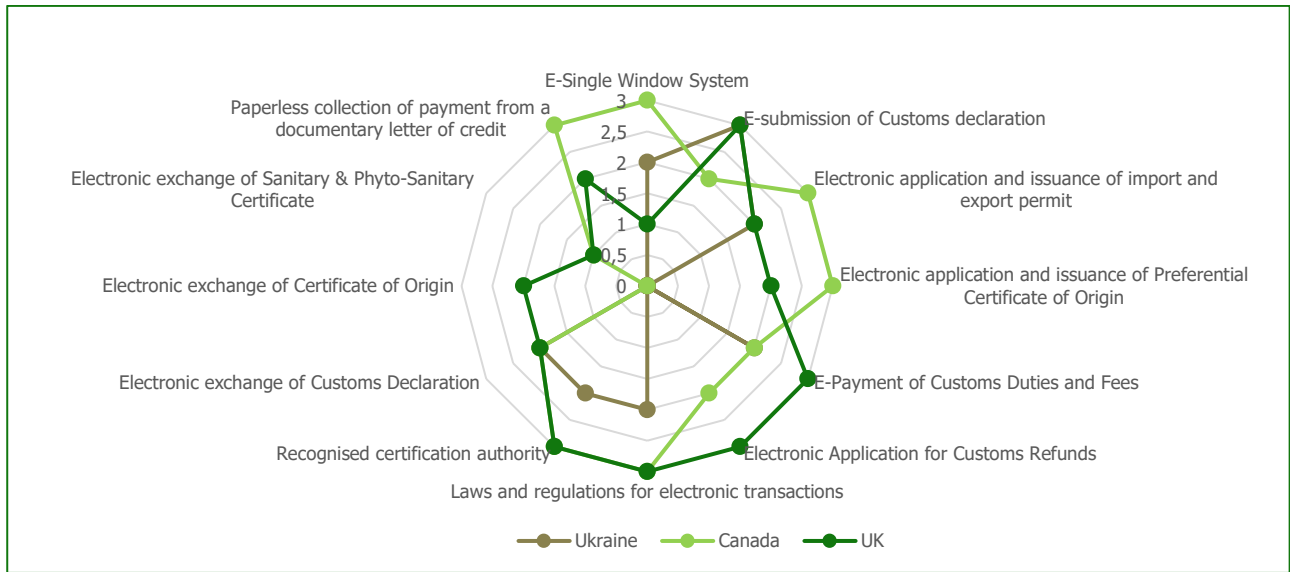


Figure 1. Comparison of Trade Facilitation and Paperless Trade Implementation, 2023. Note: Data on the following 3 economies have been included to generate the above visualization: Ukraine, Canada, United Kingdom. The following scoring has been applied: 0: Not implemented; 1: Planning stage; 2: Partially implemented; 3: Fully implemented. (Source: compiled from the data of the website: <https://www.unftsurvey.org/>)

Some data from previously concluded DTAs/DEAs may confirm positive developments (legislative, economic, etc.) in the digitalisation of foreign economic relations after the countries conclude DTAs/DEAs. In particular, the Digital Economy Partnership Agreement (DEPA) (entered into force for Singapore, New Zealand and Chile on 7 January 2021), the Singapore-Australia Digital Economy Agreement (SADEA) (entered into force on 8 December 2020) have proven to be effective for the parties to the agreements. For example, as shown in Figures 2 and 3, there is a positive trend in the degree of digitalisation and trade facilitation between Australia, Chile, New Zealand and Singapore.

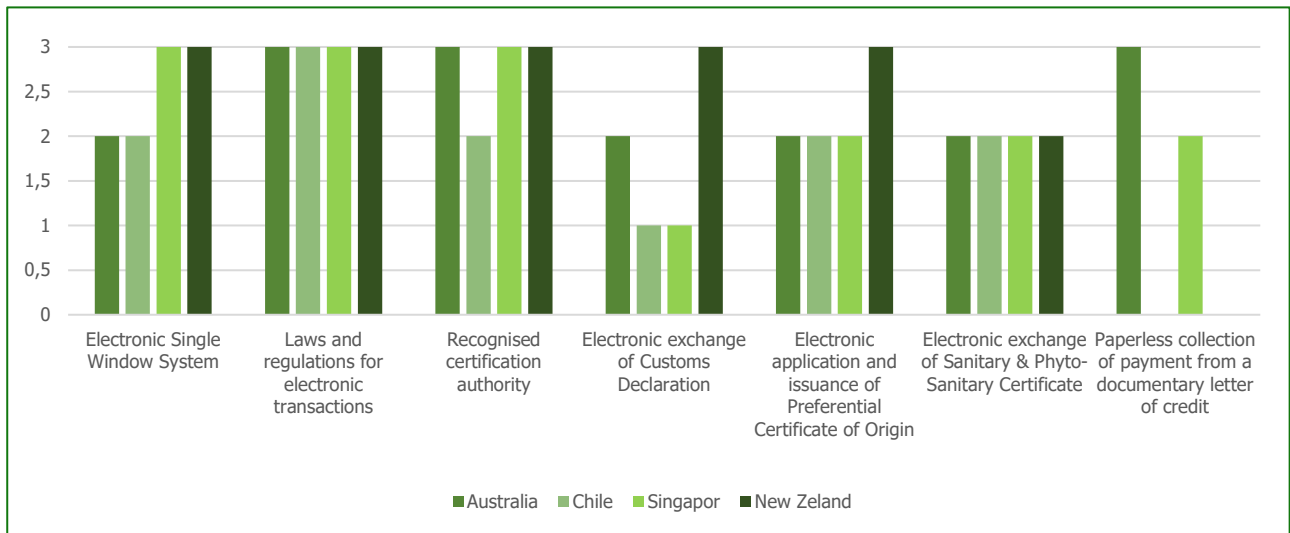


Figure 2. Comparison of Trade Facilitation and Paperless Trade Implementation 2019 (Australia, Chile, Singapore). Note: to generate the above visualization the following scoring has been applied: 0: Not implemented; 1: Planning stage; 2: Partially implemented; 3: Fully implemented. (Source: compiled from the data of the website: <https://www.unftsurvey.org/>)

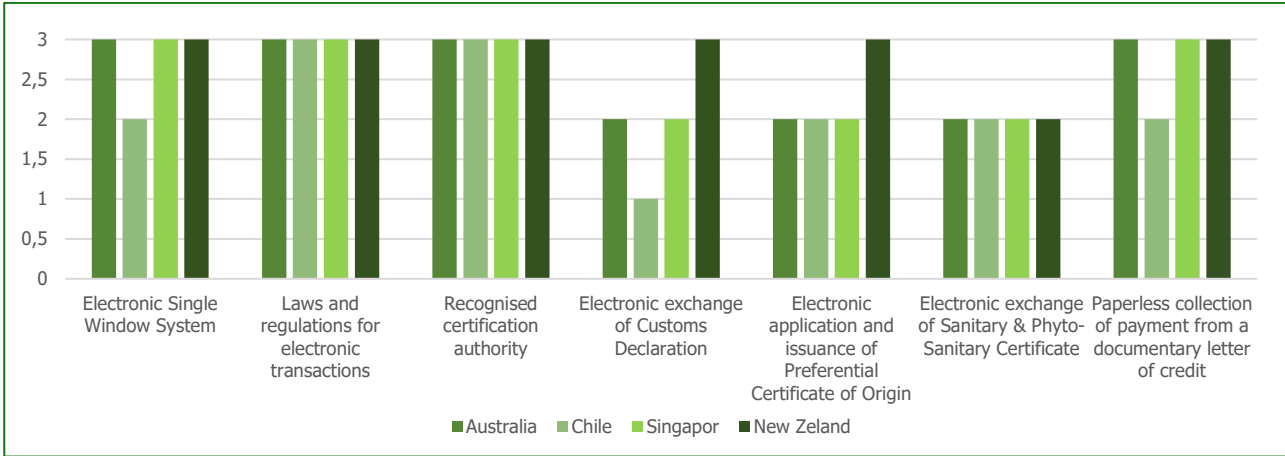


Figure 3. Comparison of Trade Facilitation and Paperless Trade Implementation 2023 (Australia, Chile, Singapore). Note: to generate the above visualization the following scoring has been applied: 0: Not implemented; 1: Planning stage; 2: Partially implemented; 3: Fully implemented. (Source: compiled from the data of the website: <https://www.unftsurvey.org/>)

In addition, it is worth noting the positive dynamics of exports/imports between Singapore, Australia, Chile, and New Zealand after the entry into force of DEPA and SADEA (in 2021-2022) (Figures 4, 5). The exception is the dynamics of exports to Singapore from New Zealand. This is mainly due to the following. The main products that New Zealand exported to Singapore were concentrated milk (USD 295 million), bovine, sheep and goat fat (USD 115 million), and refined oil (USD 92.1 million) (S vs. NZ). The fall in export earnings during this period was caused by a drop-in export prices for the relevant products (NZ export, 2021).

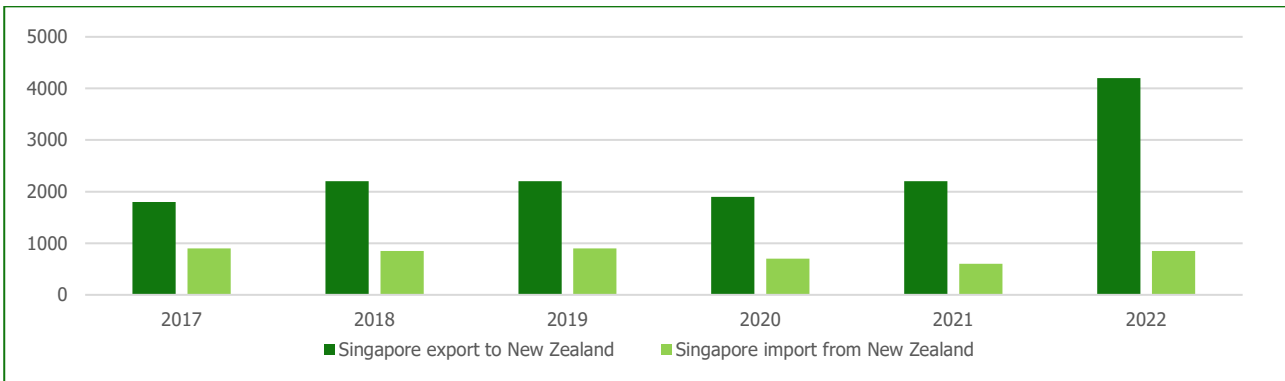


Figure 4. Singapore vs. New Zealand (export/import 2017-2022), USD million. (Source: compiled from the data of the website: <https://www.trademap.org>)

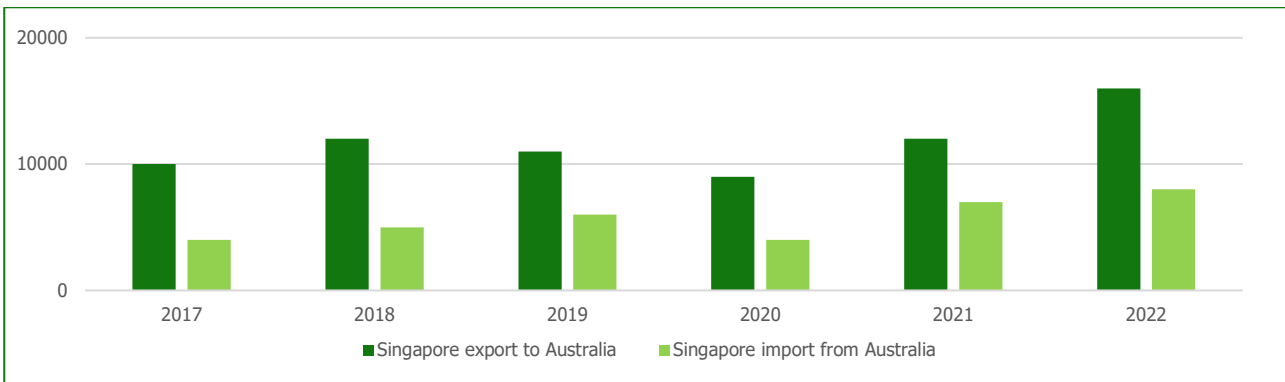


Figure 5. Singapore vs. Chile (export/import 2017-2022), USD million. (Source: compiled from the data of the website: <https://www.trademap.org>)

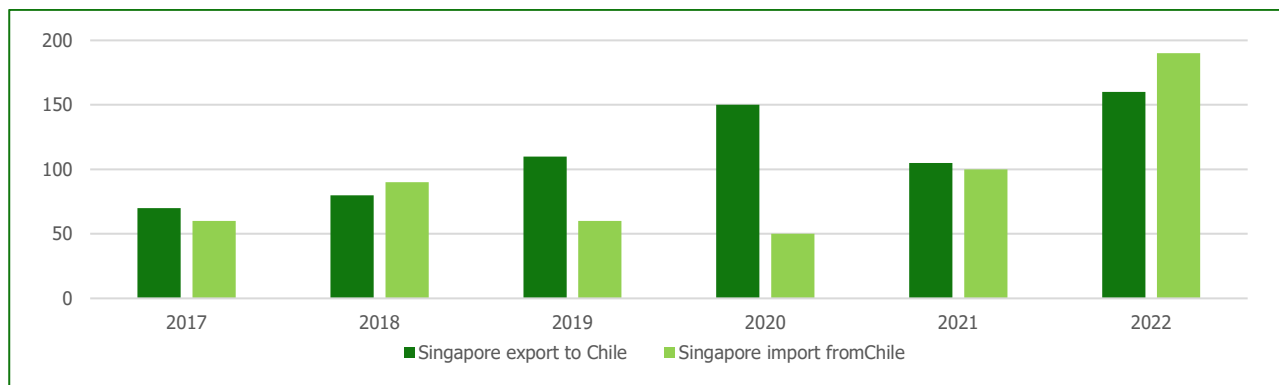


Figure 6. Singapore vs. Australia (export/import 2017 -2022), USD million. (Source: compiled from the data of the website: <https://www.trade-map.org>)

Structure and analysis of UK-Ukraine DTA

According to the Explanatory Memorandum, the UK-Ukraine DTA is an ambitious digital agreement in the form of a treaty amending the Political, Free Trade and Strategic Partnership Agreement.

Annex A to the UK-Ukraine DTA contains provisions on open digital markets; data flows; consumer and business safeguards and trust; digital trading systems; and cooperation on digital issues. These provisions will replace the existing provisions of Section 6 (E-Commerce) of Chapter 6 (Establishment, Trade in Services and E-Commerce) of Title IV of the UK-Ukraine DTA.

Annex B to the UK-Ukraine DTA contains provisions amending Section 1 (General Provisions) and Section 6 (Financial Services) of Section 5 (Regulatory Framework) in order to ensure that the UK-Ukraine DTA is consistent and workable in line with the new commitments set out in Annex A and establish new commitments on digital elements of financial services, such as fintech and electronic payments.

In addition to supporting Ukraine's reconstruction and economic recovery, Annex A also contains provisions to promote cooperation in the field of cybersecurity. This will ensure that both the UK and Ukraine are well-positioned to counter emerging cyber threats, including those linked to Russia (UK-Ukraine DTA, 2023).

A preliminary analysis of the provisions of the UK-Ukraine DTA leads to the conclusion that they are mostly not innovative for national legislation (some of them are partially regulated by national legislation, and the vast majority are under implementation). However, some of them actualise the expediency of developing and adopting new regulations.

The agreement focuses on the technical aspects of cross-border e-commerce, including the provision of (1) electronic trade document management, (2) electronic invoicing and an expedited framework for express deliveries, as well as (3) appropriate conditions for cross-border payments. These issues require increased attention in Ukraine, since the norms of national legislation regulating the peculiarities of management of trade documents (bills of lading, promissory notes, etc.) and basic laws defining the legal principles of (1) electronic document management (the Law of Ukraine "On Electronic Documents and Electronic Document Management"), (2) e-commerce (the Law of Ukraine "On Electronic Commerce"), (3) providing electronic trust services (the Law of Ukraine "On Trust Services"), etc. are insufficient for a practical transition to electronic document management in the relevant field. Unfortunately, national laws and regulations do not define the peculiarities of electronic trade document management. In this case, the experience of the UK, where a special Electronic Trade Documents Act regulates this issue, may be useful for Ukraine. It should also be noted that automatic recognition of electronic signatures and seals will not happen despite the fact that the peculiarities of their use are already regulated at the national level.

The UK-Ukraine DTA sets out a number of principles to be applied to electronic payments (interoperability, reliability, accuracy, etc.). Accordingly, a key issue for the agreement will be ensuring that electronic payment regulatory measures aimed at implementing these principles are proportionate to the risks. One area that may be of great importance for cross-border trade in the future, but which is not covered by the Agreement, is digital currencies. Such currencies are only now being introduced through pilot projects and are subject to close monitoring by central banks.

As mentioned above, the document pays considerable attention to the specifics of simplifying and increasing data exchange. At the same time, personal data protection is considered as a special case of application of additional restrictions that are justified. Article 132-J of the UK-Ukraine DTA provides general conditions for the development of personal data

protection legislation. This legislation should be based on the following principles: collection and usage limitation; data quality; purpose specification; security safeguards; transparency; individual participation; accountability; introduction of non-discriminatory practices to personal data protection etc., as well as cooperation to promote interoperability and compatibility of data protection regimes. This is in line with the European trend of strengthening personal data protection, especially Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). However, it is well known that the UK is no longer an EU country and has its own UK General Data Protection Regulation. It mostly does not differ from the EU regulation, but at the same time contains some differences (Greenberg E., 2023), which can create serious problems for business entities operating in the EU countries and the UK, as well as in non-EU countries. Thus, Ukraine should take a more careful approach to modernising its personal data protection legislation, as it is a Party to the Association Agreement with the EU and has recently acquired the status of EU candidate country. Article 15 of the Association Agreement binds the Parties to ensure an adequate level of protection of personal data in accordance with the highest European and international standards, including the Council of Europe instruments (AA EU&Ukr). At the same time, Ukraine must avoid discrepancies with EU legal requirements on the relevant issues and take into account its own interests.

This position should also be applied to legislation on new technologies (Article 132-V UK-Ukraine DTA). For example, there are certain differences between the legislative approaches to artificial intelligence between EU legislation (Proposal for a Regulation of the European Parliament and of the Council Laying down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts, COM/2021/206 final) and the approaches of the UK (Hudima T., & Kamyshanskyi V., 2023).

Returning to the issue of modernising personal data protection legislation, it is noteworthy that at the national level, this process is already underway, albeit at a rather slow pace. The new draft law No. 8153 "On Personal Data Protection" was submitted to the Verkhovna Rada of Ukraine in October 2022 and is still being considered by the the Verkhovna Rada Committee on Human Rights, De-occupation and Reintegration of the Temporarily Occupied Territories of Ukraine, National Minorities and Interethnic Relations (DL PDP). In the opinion of the Council of Europe, the general approach of this draft law is quite close to European standards, in particular the Convention for the Protection of Individuals with regard to the Processing of Personal Data (ETS No. 108) and the General Data Protection Regulation (ODL PDP, 2022). In turn, the absence of updated legislation on personal data protection in line with international requirements can, if not block, at least slow down and complicate foreign economic relations with Ukraine. The export of personal data from the UK to Ukraine should be preceded by a risk assessment, namely the ability of public authorities to access large amounts of data. In this case, it is worth mentioning the well-known case of Data Protection Commissioner v Facebook Ireland Limited and Maximilian Schrems (Schrems, 2020). In other words, the UK-Ukraine DTA is another impetus for personal data protection reform. At the same time, the speed of implementation of its provisions will depend only on Ukraine.

In this case, attention should also be paid to the provisions of the agreement that contain requirements for the location of data storage. Paragraphs 1, and 2 of Article 132-L UK-Ukraine DTA provide for both a prohibition on the establishment of own regulatory requirements for the use of computing facilities on the territory of one party as a condition for conducting business in that territory and the possibility to introduce exceptions to this rule if they are justified and meet the purpose.

However, Article 23(3) of the Law of Ukraine "On State Regulation of Activities on Organising and Conducting Gambling" requires a gambling organiser to process information in its online system exclusively in Ukraine. This raises the question of whether such a ban is justified under the UK-Ukraine DTA.

Legislative restrictions on digital trade may apply not only to data residency but also to the residency of legal entities and individuals. As an example, Article 19(2) of the Law of Ukraine "On Electronic Communications" establishes the exclusive right of legal entities and individual entrepreneurs who are residents of Ukraine to provide electronic communication services on the territory of Ukraine. Nonetheless, Article 16 of the Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine requires that the Parties shall not introduce or support measures restricting the cross-border provision of electronic communication services. At the same time, the agreement stipulates that the confidentiality of electronic communication will be ensured without restricting trade in services.

The UK-Ukraine DTA touches on but does not develop cybersecurity issues, limiting itself to one article on cooperation (Article 132-Q of the UK-Ukraine DTA). Currently, this is only a guideline. Cybersecurity promises to be a major area of future foreign trade policy development. It is closely linked to national security, especially in the context of the Internet of Things, although it is not a cross-border issue. Countries' restrictions on international supply chains in fifth-generation (5G)

mobile telecommunications networks due to cybersecurity concerns are just one example of the importance governments are placing on this issue (Kono K., & Colatin S. D. T., 2023).

One of the most important issues (extremely complex areas) of the UK-Ukraine DTA, which is also not sufficiently detailed in the document, is the cooperation in the development of new technologies (Article 132-W UK-Ukraine DTA). Perhaps, in the future, it will be more detailed and include the specifics of the development of financial technologies, artificial intelligence, etc. The rather general approach to the regulation of this extremely complex area in the current version of the UK-Ukraine DTA may indicate that the approaches in this area have not been sufficiently developed both by the parties to the agreement and globally at the international level. As noted above, today there are no common approaches to the regulation of artificial intelligence. "At the same time, as the international tensions over technology escalate and as artificial intelligence improves, the continued trade in AI is likely to face more severe hurdles — on both the export restriction side and the market acceptance side". (Fay R., & Ciuriak D., 2022).

DISCUSSION

The possibility of obtaining reasonable conclusions in this research is significantly limited by the lack of data on the effectiveness of already concluded DTAs/DEAs. To some extent, this limitation is compensated by data on the degree of readiness of some countries to switch to paperless cross-border trade, as well as data that reflect general economic indicators or progress in certain directions over a short term. However, considering the fact that DTAs/DEAs are the new instrument for the development of international digital trade, there are no reliable data on the economic and legal impact of these agreements in the medium and long term.

Moreover, for the same reason, there are certain limitations in the use of previous publications that do not take into account recent changes regarding the conclusion or implementation of DTAs/DEAs. This does not reduce the theoretical value and methodological significance of many of the presented results but requires their adaptation to the current situation.

It is also important to pay attention to the fact that a number of issues that actually relate to digital trade remain mainly outside the scope of the agreements considered in this research. For example, this applies to electronic communications, cybersecurity, etc. On the one hand, in this situation, it is necessary to go beyond the formal framework and consider different aspects of international digital trade in their interconnection. On the other hand, an important task is an objective assessment of the potential of existing DTAs/DEAs to increase in the future.

CONCLUSIONS

This article analyses the economic and legal impact of DTAs/DEAs (DEPA; SADEA) and the UK-Ukraine DTA provisions (in order to critically assess the content of such an agreement, as well as to assess the compliance of national legislation with its provisions).

The analysis proves the positive changes (legislative, economic, etc.) in the digitalisation of foreign economic relations after the conclusion of DEPA (Singapore, New Zealand and Chile), and SADEA (Singapore, Australia). The dynamics of the degree of digitalisation and trade facilitation (including the legislative level), the increase in imports/exports between the respective countries - parties to such agreements and the share of imports/exports in the total for each of them are strong evidence of this. Ukraine's efforts to expand its digital trade/economy partnership through DEAs/DTAs are a promising starting point, but preliminary political and legal conditions are needed. In other circumstances, the implementation of such agreements will be complicated by the need to bring legislation in line with their provisions.

Thus, the implementation of the UK-Ukraine DTA provisions is complicated by:

- the lack of national legislation regarding electronic document management in cross-border trade (unlike the UK, where there is a special Electronic Trade Documents Act);
- the slow pace of implementation of international legislation, especially on personal data protection. For instance, the draft law "On Personal Data Protection" registered in October 2022 is still under consideration by the committee (August 2023);

- differences in the legislative approaches of the EU and the UK regarding certain issues (personal data protection, artificial intelligence) and the expediency of avoiding discrepancies with EU legislative requirements for Ukraine (taking into account the Association Agreement between Ukraine and the EU, and the recently acquired status of EU candidate country);
- the existence of certain discrepancies between the provisions of the UK-Ukraine DTA and national legislation. National requirements for the location of data storage in Ukraine and the lack of criteria for the validity of the requirements are illustrative examples of this. As noted earlier, this legislative restriction applies to gambling organizers. In contrast, the agreement prohibits the parties from establishing their own regulatory requirements for the use of computing facilities on the territory of one party as a condition for conducting business in that territory and allows the parties to introduce certain exceptions to this rule (Article 132-L UK-Ukraine DTA, paragraphs 1, 2). Another example is national restrictions on the residency of legal entities and individuals, especially regarding the exclusive right of residents of Ukraine to provide electronic communication services in Ukraine (Article 19(2) of the Law of Ukraine "On Electronic Communications"). Instead, DTAs/DEAs require the confidentiality of electronic communications to be ensured without restricting trade in services.

In addition, the analysis of the UK-Ukraine DTA shows that it does not cover important issues that can be of great value for cross-border trade in the future, such as cooperation in harmonising approaches to the circulation of digital currencies. The analysis also demonstrates that some of the UK-Ukraine DTA provisions are declarative, including provisions on cybersecurity and cooperation in the development of new technologies (for example, artificial intelligence).

Therefore, Ukraine should take a more active part in international cooperation to develop its foreign and national economic policy in line with the requirements and modern challenges. In this area, it is important to carry out constant monitoring, study foreign experience and analyse the consequences of resolving such sensitive issues as cross-border transfer of information by electronic means, localization of data and entities that provide their transfer, non-discrimination, etc.

ADDITIONAL INFORMATION

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УГОДИ ПРО МІЖНАРОДНУ ЦИФРОВУ ТОРГІВЛЮ ТА ЦИФРОВУ ЕКОНОМІКУ: ВИКЛИКИ Й ПЕРСПЕКТИВИ ДЛЯ УКРАЇНИ

У статті досліджено перспективи цифрової трансформації зовнішньоекономічної політики України в контексті міжнародних угод у сфері цифрової торгівлі / економіки, зокрема Угоди про цифрову торгівлю між Сполученим Королівством Великої Британії та Північної Ірландії й Україною. Доводиться економічна та правова ефективність відповідних угод у процесі цифрової трансформації зовнішньоекономічної, зокрема зовнішньоторговельної, політики в Україні та на міжнародному рівні. Для підвищення їхньої ефективності й прискорення реалізації важливого значення набуває політичне та правове підґрунтя. За інших обставин реалізація таких угод буде ускладнюватися необхідністю приведення національного законодавства у відповідність до їхніх положень, як це відбувається наразі в Україні. Обґрунтовано, що реалізація положень Угоди про цифрову торгівлю між Сполученим Королівством Великої Британії та Північної Ірландії й Україною може бути ускладнена відсутністю національного законодавства щодо електронного документообігу при здійсненні транскордонної торгівлі; повільними темпами імплементації міжнародного законодавства, зокрема про захист персональних даних; відмінностями в законодавчих підходах Європейського Союзу й Сполученого Королівства Великої Британії та Північної Ірландії щодо врегулювання окремих питань тощо. Наголошується на тому, що окремі норми угоди є декларативними й не стосуються деяких важливих питань, які можуть мати велике значення для транскордонної торгівлі в майбутньому.

Аргументовано доцільність постійної участі України в міжнародному співробітництві з метою модернізації зовнішньоекономічної та внутрішньої економічної політики з урахуванням вимог міжнародних документів і викликів часу. Важливого значення в цьому напрямі набуває постійний моніторинг, вивчення зарубіжного досвіду та аналіз наслідків регулювання таких важливих питань, як транскордонне передавання інформації за допомогою електронних засобів, локалізація даних та суб'єктів, які забезпечують їх передавання, недискримінація тощо.

Ключові слова: цифрова угода, цифрова торгівля, зовнішньоекономічна політика, зовнішньоекономічні відносини, штучний інтелект, транскордонні потоки даних, захист персональних даних, електронна комерція, електронний документообіг, технології

JEL Класифікація: K33, F13, F53