UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was $584 million in 2012, a decrease of $97 million from 2011. U.S. goods exports in 2012 were $1.9 billion, down 9.4 percent from the previous year. Corresponding U.S. imports from Ukraine were $1.4 billion, down 7.2 percent. Ukraine is currently the 61st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine was $737 million in 2011 (latest data available), up from $651 million in 2010.

The United States-Ukraine Trade and Investment Cooperation Agreement

The United States and Ukraine signed a Trade and Investment Cooperation Agreement (TICA) on April 1, 2008, establishing a forum for discussion of bilateral trade and investment relations. The TICA established a joint United States-Ukraine Trade and Investment Council (TIC), which addresses a wide range of trade and investment issues, including market access, intellectual property rights protection, tax policy, and specific business disputes. The Council seeks to increase commercial and investment opportunities by identifying and working to remove impediments to trade and investment flows between the United States and Ukraine. The Council last met in July 2012. At that meeting, the chairs established the Trade Experts Group, a working-level government-to-government mechanism to discuss impediments to increased trade and investment between Council meetings.

IMPORT POLICIES

Tariffs/Customs

U.S. exports are subject to Ukraine's most favored nation (MFN) applied tariff rate. For agricultural goods, the average applied tariff rate is 8.8 percent. For industrial goods, the average applied rate is currently 3.6 percent. Ukraine applies preferential tariff rates to imports from its 12 FTA partners and certain Commonwealth of Independent States (CIS) countries. Most MFN customs tariffs are levied at *ad valorem* rates, and only 0.9 percent of tariff lines (down from 5.97 percent prior to Ukraine's WTO accession) are subject to specific rates of duty. These specific rates apply primarily to agricultural goods that compete with agricultural goods produced in Ukraine, such as grains, sugar, and vegetables, including carrots and potatoes.

On September 12, 2012, Ukraine notified the WTO that it intends to renegotiate more than 350 tariff bindings on key agricultural and industrial products under Article XXVIII of the GATT 1994. If Ukraine carries through with its proposed action, it is likely to have negative systemic implications for the multilateral trading system. More than 125 WTO Members, including the United States, have raised serious concerns about Ukraine's proposed action, and the U.S. Government has repeatedly urged Ukraine not to pursue it.

Although Ukraine's MFN applied tariff rates are relatively low, U.S. businesses in the past often raised concerns that the State Customs Service of Ukraine (SCSU) assigns higher customs values to imports, including food, agricultural products and pharmaceuticals, than are provided in the import documentation. However, it appears that changes to the Customs Code made in 2012 have had a positive effect. According to the State Custom Service and a recent survey of U.S. businesses, customs valuation now appears to be determined by transaction value provided on the customs declaration in nearly 90 percent of cases. The amended Customs Code also streamlined customs clearance procedures. The average time for customs clearance of imported goods is now less than two hours. In addition, the new procedures provide for a review of denials of customs clearance within 24 hours, and reduce the number of documents required for customs clearance.

Import Licenses

Import licenses are required for some goods. The list of goods covered by the licensing regime and the license terms are reviewed and amended annually by the Cabinet of Ministers. In 2012, the list included printers' ink, paper with watermarks, optical media production inputs (*e.g.*, polycarbonate), equipment for the production of CDs, pharmaceuticals, paints and lacquers, dyes, hygiene products, cosmetic products, pedicure and manicure products, shaving aerosols and deodorants, lubricants, waxes, shoe polishes, insecticides, solvents, silicone, fire extinguishers and the chemicals that fill extinguishers, refrigerators and freezers, air conditioners, humidifiers, poultry meat and related products, pig and poultry fat, fungicides, insecticides, herbicides, plant growth enhancers and regulators, and other selected industrial chemical products. Applicants must obtain permits for these and other products from the relevant administrative agency before receiving the necessary import license from the Ministry of Economic Development and Trade.

The Ukrainian State Veterinary and Phytosanitary Service established a procedure of import licensing approvals – prescribed in the 1992 Law on Veterinary Medicine and 2009 Decree 652 of the Cabinet of Ministers – that covers all commodities subject to veterinary control. Approval is needed even for cases in which a bilateral veterinary certificate is issued by the country of origin. In 2010, the Chief State Inspector of the Veterinary and Phytosanitary Service of Ukraine canceled the authority of regional veterinary offices to issue permits for imports. Since this decision, U.S. exporters have faced substantial delays and difficulties in obtaining permits to import meat products.

In December 2010, the Ministry of Environment renewed and clarified strict procedures for obtaining its approval to import goods that it considers potentially ozone depleting. The stricter procedures continue to delay shipments and increase costs for importers of a wide range of goods, including aerosols, refrigerators, mascara, lipstick, toothpaste, and coffee makers.

For some goods, product certification is a prerequisite for an import license. Importers can request that a foreign facility be certified as in compliance with Ukraine's technical regulations that apply to imports. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials. If approved, the supplier receives a certificate of conformity valid for two to three years and avoids the burdens of certifying each shipment and undergoing mandatory laboratory testing upon arrival in Ukraine.

GOVERNMENT PROCUREMENT

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but it commenced negotiations to accede to the GPA in February 2011, in accordance with its commitment when it became a WTO Member.

In 2010, Ukraine adopted a new law on government procurement, outlining major requirements for governmental procurement and tender procedures largely in line with international standards. This law requires that all government procurement of goods and services valued at more than Ukrainian Hryvna (UAH) 100,000 (approximately $12,500) and public works valued at more than UAH 300,000 (approximately $38,000) be procured through competitive tenders. However, a large percentage of government procurement is exempted from the procurement rules and can be conducted using sole-source contracts. Open international tenders are used where procurement is financed by an entity outside of Ukraine. The Anti-Monopoly Committee of Ukraine has the authority to review disputes arising from public procurements. Courts may also hear government procurement-related cases. Cases must be filed on tight timelines, often within 14 days of the alleged violation. Implementation of the law since its adoption in 2010 has been uneven, and Ukraine's efforts to reform procurement in the health care sector resulted in the suspension of government purchases of medicines for much of 2011, triggering shortages of important medications.

On August 1, 2012, the Ukrainian president signed into law controversial amendments to the 2010 law, expanding the range of government procurements that can be excluded from public tender requirements. The amendments limited the requirement to use open tender procedures by state-owned companies only to procurement using state budgetary funds; however, there is no mechanism to limit funds to specific procurements within such companies, making the open tender requirement meaningless.

Ukraine's procurement rules generally do not restrict foreign enterprises from participating in government procurement, but in practice, foreign companies claim that they are rarely able to compete on an equal footing with domestic companies. Foreign companies generally win only a tiny fraction of total procurements. Among the problems faced by foreign firms are: (1) the lack of public notice of tender rules and requirements; (2) nontransparent preferences in tender awards; (3) the imposition of conditions that were not part of the original tender requirements; and (4) ineffective grievance and dispute resolution mechanisms, which often allow a losing bidder to block the tender after the contract has been awarded.

EXPORT BARRIERS

Exports of some categories of products are subject to registration by the Ministry of Economic Development and Trade. Products that must receive a license prior to export from Ukraine include precious metals and stones, cast iron, ferronickel, ferrotitanium, ferroalloys, steel, copper, aluminum alloys, lead, some metallurgy equipment, unrefined oil and gas, scrap metal, printers' ink, optical polycarbonates for laser reading systems, optical disc manufacturing equipment, and paper with watermarks. The government has eliminated most export duties, with the notable exception of duties on natural gas, livestock, raw hides, some oil seeds, and scrap metal.

Export Restrictions on Grains

Ukraine ranks among the top exporters of grain in the world, but has periodically resorted to grain export restrictions. The supply of products deemed "socially important" (*e.g.*, vegetable oil, bread, and sugar) is controlled by the government through price controls and restrictions on exports.

Ukraine's major grain exporters, which include a number of U.S. companies, experienced severe difficulty exporting grain in the 2010/2011 marketing year. In July 2012, Ukraine signed a Memorandum of Understanding (MOU) with grain traders regarding the introduction of informal grain export restrictions. This MOU also specified that the total grain export volume for the season would be limited to approximately 20 million tons, of which wheat exports could comprise four million tons (later increased to 5.5 million tons). The export restrictions have remained informal, and no official administrative measures have been taken to enforce the export restrictions.

Live Cattle, Sheep, Hides, and Skins

Export duties remain in place on live cattle, sheep, hides, and skins. However, trade in these products has been negligible. Pursuant to its WTO accession commitments, Ukraine continues a staged reduction of these export duties. Export duties on live calves, cows, and sheep, currently at 30 percent, will fall to 10 percent in 2016. The export duty on raw hides, currently at 26 percent, will fall to 20 percent in 2018.

Scrap Metal

Upon WTO accession, Ukraine lowered export duties on ferrous scrap exports to €25 per metric ton for ferrous metals and to 30 percent *ad valorem* (with minimum specific rates for some products) for nonferrous metals. Laws passed in 2006 and 2007 as part of the accession process provide for staged duty reductions to €10 per metric ton over a period of 6 years (2008 to 2014) for ferrous metals and reductions to 15 percent *ad valorem* but not less than €0.2 to €0.8 per metric ton over a period of 5 years (2008 to 2013) for nonferrous metals. According to Ukrainian law, the export duty in 2012 for ferrous metals was €13.2 per metric ton and 18 percent *ad valorem* for nonferrous metals (with minimum, specific rates for some products), matching the level committed to at the time of accession.

Sunflower Seed, Flaxseed, and Linseed

Sunflower seed, flaxseed, and linseed have been subject to an export duty since June 2001. As required by its WTO accession agreement, the export duty on sunflower seed was 10 percent as of January 1, 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In April 2012, Ukraine was elevated to the Priority Watch List in the 2012 Special 301 Report. Key concerns cited in the report include weak enforcement, continuing use of pirated software within the Ukrainian government, widespread retail piracy, the trans-shipment of pirated and counterfeit goods, high levels of piracy over the Internet, the lack of an authorized music royalty collecting society representing rights holders, and inefficiencies in the judicial system. The need to improve its protection of intellectual property rights (IPR) was a major theme of the bilateral 2010 and 2012 Trade and Investment Council (TIC) meetings. During the 2010 TIC meeting, the two countries agreed to an IPR Action Plan. That plan identified steps to be taken by Ukraine with respect to various matters, including public awareness, enforcement, passage of pending legislation, violations of data protection, pharmaceutical patents, and government use of illegal software. At the July 2012 TIC meeting, the U.S. Trade Representative and the Deputy Prime Minister of Ukraine reviewed the Action Plan and its implementation. There has been little to no measurable progress on the Action Plan, despite intensive U.S. engagement. Statistics from the Ministry of Interior show that IPR-enforcement related arrests and prosecutions declined considerably in 2012 compared to 2011. Online and physical markets in Ukraine were identified on USTR's 2012 Notorious Market List, and other concerns remain unaddressed.

SERVICES BARRIERS

Audiovisual Services

Ukrainian law requires film prints and digital encryption keys to be produced in Ukraine, each of which is a significant impediment for distributors of foreign films. Ukrainian law also imposes a language content requirement for radio and television broadcasting.

Financial Services

On September 18, 2012, Ukraine's parliament adopted legislative amendments increasing the authority of the National Bank of Ukraine (NBU) over electronic payments. The amendments allow the NBU to impose limits on cash payments and are intended to expand the market for electronic payments. The amendments also authorized the NBU to operate a central processing center for electronic financial transactions. These latter amendments raise concerns regarding possible uncompetitive behavior by the NBU with respect to other international payment systems operating in this market.

Distribution Services

A Ukrainian by-law restricts the sale of biologically active food supplements (BAFS) products to pharmacies or specialized retail stores. This distribution restriction limits the ability to sell products in this market through direct selling.

INVESTMENT BARRIERS

Taxation

Companies report that Ukraine's taxation system is a major obstacle for U.S. investors doing business in Ukraine. In recent years, delays in the payment of VAT (value-added tax) refunds to exporters have been a problem. While the government of Ukraine finally refunded a large proportion of VAT refund arrears through a VAT bond scheme in August 2010 (some of these claims had been pending for over two years), the manner in which refunds were distributed was not transparent, and the firms involved complained that they should have received cash rather than bonds. In 2011, the State Tax Administration (STA) instituted an automated system for VAT refunds, but nontransparent criteria have prevented most firms from participating in the system and receiving their refunds, although recent data from STA suggests some improvement in use of the system. Ukraine's inability to refund VAT in a timely manner remains a problem, and delays in reimbursement have become an important cost factor for many foreign companies. Since the issuance of bonds in 2010, the government of Ukraine has continued to accumulate substantial new arrears in VAT refunds to U.S. and other companies, demand prepayment of the corporate profits tax in exchange for the same amount of refunds, aggressively inspect companies in an attempt to write-off claimed VAT payments for reasons that appear spurious, and distribute VAT refunds in an arbitrary fashion that appears to favor companies connected to the government or those that pay bribes.

Privatization

The State Property Fund oversees the privatization process in Ukraine. Privatization rules generally apply to both foreign and domestic investors, and, in theory, a relatively level playing field exists. Observers claim, however, that the terms of a privatization contest are arbitrarily adjusted to fit the characteristics of a pre-selected bidder. Few major new privatizations have been conducted since the privatization rush of 2004, with the most notable being the privatization of telecommunications company Ukrtelecom in 2011. In this case, a 97 percent stake was sold to a small Austrian investment firm for $1.3 billion in a nontransparent one-bid auction. Strict tender conditions restricted potential buyers.

In 2012, most regional gas distribution companies were privatized and the State Property Fund launched the privatization of heating plants with the sale of the heating plant in Kharkiv, in eastern Ukraine, in November. Both privatizations were conducted at what analysts considered below market prices.

The Ukrainian government has announced its intention to privatize all 112 state-owned coal mines by 2014. In a September 2012 resolution, Ukraine's Cabinet of Ministers began the process of transforming the mines into joint stock companies to prepare them for privatization. The Cabinet of Ministers also permitted the majority of state-owned mines to transfer their assets into concessions. There are concerns that well-connected Ukrainian firms are trying to acquire these mines without going through a fair and transparent privatization process.

Ukraine maintains a moratorium on the sale of agricultural farmland, which was recently extended to January 1, 2016. This provision blocks private investors from purchasing some of the 33 million hectares of arable land in Ukraine and constitutes an obstacle to the development of the agricultural sector. However, the government of Ukraine's draft "Law on the Land Market," which would end the moratorium, includes problematic provisions such as prohibitive taxes on re-selling land and the creation of a State Land Bank with the exclusive right to issue land mortgages. While essential in the long term, concerns exist that land privatization under current circumstances could lead to widespread corruption, nontransparent privatizations, and disruptions in the productive utilization of agricultural land.

Corporate Raiding

Ukraine continues to have problems with corporate raiding activities. Some researchers claim that thousands of Ukrainian enterprises have suffered from such activities in the last several years. These raiders frequently purchase a small stake in a company, and then take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of the company to the detriment of rightful shareholders. This development harms investors, including U.S. companies and shareholders, and has damaged the image of Ukraine among foreign investors. The Ukrainian government has taken little action to stop this phenomenon, and some foreign investors complain that the government protects raiders who are politically well connected.