

UKRAINE

TRADE SUMMARY

U.S. goods exports in 2013 were \$1.9 billion, down 0.7 percent from the previous year. Corresponding U.S. imports from Ukraine were \$1.0 billion, down 23.3 percent. The U.S. goods trade surplus with Ukraine was \$888 million in 2013, an increase of \$301 million from 2012. Ukraine is currently the 63rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Ukraine was \$840 million in 2012 (latest data available), up from \$690 million in 2011.

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, value-added tax issues, and specific business disputes. The TIC 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 TIC last met in July 2012. At that meeting, the chairs established the Trade Experts Group (TEG), a working-level government-to-government mechanism to discuss impediments to increased trade and investment between Council meetings. The first TEG meeting was held on February 5, 2013.

IMPORT POLICIES

Tariffs/Customs

U.S. exports are subject to Ukraine's most favored nation (MFN) applied tariff rate. The average applied rate for imported goods is 4.5 percent. For agricultural goods, it is 9.5 percent, while for industrial goods, the average applied rate is currently 3.67 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 follows 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, raised serious concerns about Ukraine's proposed action, and the U.S. Government has repeatedly urged Ukraine not to pursue it. In 2013, Ukraine did not take any steps to implement its proposal to renegotiate tariff bindings, but did not rescind the notification either.

Although Ukraine's MFN applied tariff rates are relatively low, U.S. businesses in the past often raised concerns that the Ministry of Revenues and Duties (MRD) 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 MRD 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

Ukraine requires import licenses for some goods. The Cabinet of Ministers reviews and amends annually the list of goods covered by the licensing regime and the license terms. In 2013, the list included printer ink; paper with watermarks; optical media production inputs (*e.g.*, polycarbonate); equipment for the production of compact discs; pharmaceuticals; paints and lacquers, dyes; hygiene products including shampoos, cosmetic products, pedicure and manicure products, toothpaste, detergents, 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; self-defense aerosol products; poultry meat and related products; pig and poultry fat; fungicides; insecticides; herbicides; plant growth enhancers and regulators; and other selected industrial chemical products. Imports of coke and coking coal became subject to licensing and import quotas in March 2013. 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 is authorized to issue import permits (approvals) under Ukraine's Law on Veterinary Medicine. Approvals are required for all commodities subject to veterinary control. Approvals are needed even for cases in which a bilateral veterinary certificate is issued by the country of origin. U.S. exporters have faced delays and difficulties in obtaining permits for imports of meat products.

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. If approved, the supplier receives a certificate of conformity that is valid for two to three years and avoids the burdens of certifying each shipment and undergoing mandatory laboratory testing of its goods upon arrival in Ukraine. The U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials.

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. Ukraine has held observer status in the GPA since 2009.

The Ukrainian government adopted its basic law on Government Procurement in 2010. The law outlines major requirements for government 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 Hryvnia (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. Complaints must be filed on tight timelines, often within 14 days of the alleged violation.

During summer 2012, the Ukrainian parliament introduced a number of controversial provisions to the 2010 law, leading to reduced transparency in government procurement. The amendments have expanded the range of government procurements that can be excluded from public tender requirements. The amendments limited the requirement to use open tender procedures and publish information on procurement by state-owned companies only to procurement using state budgetary funds; however, there is no mechanism to allocate state 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 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 (silver and gold); unrefined oil and gas; scrap metal; slag and ash containing zinc and copper; printers' ink; optical polycarbonates for laser reading systems; optical disc manufacturing equipment; paper with watermarks; pharmaceuticals; paints and lacquers; dyes; cosmetic products; pedicure and manicure products; hygiene products including shampoos, toothpaste, and detergents, 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; aerosols used for self-defense; poultry meat and related products; pig and poultry fat; fungicides; insecticides; herbicides; plant growth enhancers and regulators; and other selected industrial chemical products. 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. Exports of ferrous scrap from Ukraine are subject to export licensing and in 2013, a failure by the government of Ukraine to issue new licenses led to an effective ban on ferrous scrap exports.

Live Cattle, Sheep, Hides, and Skins

Export duties remain in place on live cattle, sheep, hides, and skins. 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 25 percent, will fall to 10 percent in 2016. The export duty on raw hides, currently at 25 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 €0.20 per metric ton to €0.80 per metric ton over a period of 5 years (2008 to 2013) for nonferrous metals. Export licenses that restrict exports of scrap, however, may nullify the trade liberalizing effect of the export duty reductions Ukraine agreed to as part of its 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 in 2013.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In May 2013, Ukraine was designated as a Priority Foreign Country in the 2013 Special 301 Report. This determination was based on three issues: failure to implement an effective and systemic means to combat widespread online infringement of copyrights and related rights, widespread use of unlicensed software by the Ukrainian government, and unfair and nontransparent administration of collecting societies for copyright royalties.

The need to improve its protection and enforcement of intellectual property rights (IPR) was a major theme of the bilateral 2010 and 2012 TIC meetings. During the 2010 TIC meeting, the United States and Ukraine agreed to an IPR Action Plan which identified steps to be taken by Ukraine with respect to IPR public awareness, enforcement, passage of pending legislation, violations of data protection, pharmaceutical patents, and government use of unlicensed 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 and found a lack of measurable progress on the Action Plan, despite intensive U.S. engagement. Online and physical markets in Ukraine were identified on USTR's 2014 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

Ukraine's non-banking financial services sector remains small and fragmented. Application of international regulatory standards in terms of capitalization, quality of assets, and protection of consumer rights is needed. Local and international banks note deficiencies in the market infrastructure of the Central Depository system which impede smooth operations.

INVESTMENT BARRIERS

Taxation

Companies report that Ukraine's taxation system is a major obstacle to doing business in Ukraine. In recent years, delays in the payment of refunds for the value-added tax (VAT) to foreign invested exporters have been a problem. In 2011, the State Tax Administration (now part of the Ministry of Revenues and Duties (MRD)) instituted an automated system for VAT refunds, but nontransparent criteria have prevented many firms, and particularly smaller firms, from receiving their refunds. While overall VAT refund volumes increased in 2013, suggesting some improvement in the VAT refund system, Ukraine's inability to refund VAT in a timely manner remains a problem. Delays in reimbursement have become an important cost factor for many foreign companies.

The government of Ukraine continues 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; write-off claimed VAT payments for spurious reasons; and distribute VAT refunds in an arbitrary fashion that appears to favor companies connected to, or otherwise favored by, the government. With respect to arrears, the government floated the possibility of repaying the VAT refund arrears with financial promissory notes to be issued in 2014. It is uncertain whether such a mechanism will be workable, and the MRD admitted that they saw no demand from business for such notes in 2013.

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. Only a 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 2013, the large electricity company Donbasenerho was privatized. The privatization involved restrictive pre-bid qualification criteria that limited participants to companies that currently produced power or coal in Ukraine. The privatization was conducted at what analysts consider a below-market price.

In April 2013, the Ukrainian government postponed the privatization of state-owned coal mines and stopped the process of transforming the mines into joint stock companies. This action was taken concurrently with trade restrictions on imports of coke and coking coal.

In 2013, Ukraine extended its moratorium on the sale of agricultural farmland 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. Currently, investors rely on long-term lease agreements to accumulate their land portfolios. Legislation on the tradability of such lease agreements, as well as land registration rules, is often unclear and frequently amended, requiring investors to dedicate additional resources to monitor the legal status of their land portfolios.

Corporate Raiding

Ukraine continues to have high-profile problems with corporate raiding activities. Some researchers claim that thousands of Ukrainian enterprises have suffered from such activities in recent 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 government has taken little action to stop this phenomenon, and some foreign investors complain that the government protects raiders who are politically connected. The government has now created a special Interagency Commission on Anti-Raiding to examine numerous raiding cases in Ukraine, with focus on industrial property and real estate raiding. In December 2013, amendments to the Criminal Code were enacted which envisage criminal responsibility for corporate raiding in cases where fraudulent documents and seals are used.

Local Content

In 2012, Ukraine adopted amendments to its Law on Electricity, applicable to all new investments in energy power plants, which set out a 50 percent "local component requirement" for the fixed assets of the plant, services acquired by the plant's owners, and all material inputs used in power production. Additionally, the amendments to the law introduce a Feed-In-Tariff (FIT) for the production of electricity from renewable sources. The granting of the FIT is conditional to the fulfilment of the local content requirement in the production of such electricity.