UKRAINE

TRADE SUMMARY

The U.S. goods trade surplus with Ukraine was $645 million in 2011, an increase of $364 million from 2010. U.S. goods exports in 2011 were $2.1 billion, up 54.9 percent from the previous year. Corresponding U.S. imports from Ukraine were $1.5 billion, up 35.4 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 $902 million in 2010 (latest data available), up from $799 million in 2009.

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 Council on Trade and Investment, which addresses a wide range of trade and investment issues including market access, intellectual property, 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 October 2010.

IMPORT POLICIES

Ukraine continues to maintain import licensing requirements and fees on certain imports. Ukraine imposes several duties and taxes on imported goods: customs/import tariffs, value-added tax (VAT), and excise duties. Additionally, imports into Ukraine are subject to customs processing fees, a unified fee on vehicles crossing Ukraine’s borders, and port fees.

Customs/Import Tariffs

Imports from the United States are subject to Ukraine’s most favored nation (MFN) simple applied tariff rate, which slightly increased in 2011 to an average of 4.8 percent, up from 4.6 percent in 2010. For agricultural goods, the average applied tariff rate is 8.7 percent. For industrial goods the average applied rate is now 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 1.5 percent of tariff lines (down from 5.97 percent prior to Ukraine’s WTO accession) are subject to specific or combined rates of duty. These specific and combined rates apply primarily to agricultural goods that compete with agricultural goods produced in Ukraine, such as grains, sugar, and vegetables such as carrots and potatoes.

Although Ukraine's MFN tariff rates are relatively low, the Ukraine State Customs Service (SCS) continues to assign higher customs values to U.S. and other country imports, including to food and agricultural products and pharmaceuticals, than is declared in the import documentation. There are concerns about how the SCS is determining and/or calculating these values. For some shipments, it is alleged that the result is a customs valuation 100 percent higher than declared in the import documentation. Customs valuation decisions are not published, reducing transparency. Importers who have sought to appeal the assigned customs valuation have been instructed by the SCS to have the government from the country of the product’s origin provide verification. These practices have made the process of importing U.S. meat products, in particular, expensive and have impeded trade in these products. Importers complain that valuation and classification disputes with the SCS lead to extensive and costly delays in trade. In one case, a customs valuation dispute led to criminal charges against a local employee of a U.S. firm. Importers repeatedly single out the ports of Odesa and Illichivsk as notoriously difficult and delay-prone. The U.S. Government has raised its concerns about these valuation practices and clearance delays, including at Trade and Investment Council meetings.

Excise Duties

Ukraine applies excise duties to a limited set of goods, such as alcoholic beverages, tobacco products, motor vehicles, motorcycles, and petroleum products. Excise duties apply equally to imported and domestically manufactured goods. While excise duties are mainly specific, in the case of tobacco products both specific and *ad valorem* rates are applied. High excise duties hinder U.S. exports of wine and grape spirits and automobiles to Ukraine. Import tariffs on automobiles were significantly reduced to implement commitments Ukraine made in the context of its WTO accession; however, the government has introduced a registration fee that is higher for imported used cars and therefore discourages imports of foreign used cars. In addition, the government of Ukraine is currently conducting a safeguards investigation regarding the importation of passenger automobiles, which could increase the import duty on such vehicles.

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 2011, the list included printers' ink, paper with watermarks, optical media production inputs such as 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, salo, pig and poultry fat, fungicides, insecticides, herbicides, plant growth enhancers/regulators, and other selected industrial chemical products.

While these import licenses are granted automatically to applicants, some products require a separate licensing approval, which may or may not be automatic, 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 approvals that results in non-automatic licensing. The procedure is prescribed in the 1992 Law on Veterinary Medicine and 2009 Decree 652 of the Cabinet of Ministers and 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. and other 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 are potentially ozone-depleting. The stricter procedures continue to delay shipments and significantly increased business 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 years to three years and avoids the burden of certifying each shipment and 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.

Ukraine amended its 2010 government procurement law in June 2011 with respect to the definition of a state-owned company and the requirements for procurement for natural monopolies. The amendment has the potential, if properly implemented, to bring Ukraine's procurement procedures into greater conformity with the GPA by improving the definition of a state-owned company and the requirements for procurement of natural monopolies. Despite the amendment, important parts of government procurement, such as preparations for Euro 2012 (the European Championship for national soccer/football teams, for which Ukraine built two new publicly-funded stadiums), remain excluded.

Ukraine's government procurement 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) must be procured through competitive tenders. However, a large percentage of government procurement, including for Euro 2012, are 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 the state procurement of medicines for much of 2011, triggering shortages of important medications.

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 grain exporters 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. After imposing nontransparent and burdensome testing requirements, the government of Ukraine introduced grain export quotas in October 2010 in a nontransparent and arbitrary process that failed to allocate export quotas to most non-Ukrainian companies. The government of Ukraine lifted the export quotas on corn in May 2011, and on remaining products in June 2011. Effective July 1, 2011, the government of Ukraine imposed export duties on wheat (9 percent but not less than €17 per metric ton), corn (12 percent but not less than €20 per metric ton), and barley (14 percent but not less than €23 per metric ton). Export duties on corn and wheat were eliminated in October 2011. Export duties on barley expired January 1, 2012.

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 35 percent, will fall to 10 percent in 2016. The export duty on raw hides, currently at 27 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 2011 for ferrous metals was €14.8 per metric ton and 21 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 lowered from 17 percent to 14 percent in 2008. The export duties are subject to a 1 percent decrease annually until duties reach 10 percent. The export duty was 10 percent as of January 1, 2012.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Ukraine remained on the Watch List in the 2011 Special 301 Report. Key concerns cited in the report include weak enforcement, widespread retail piracy, the trans-shipment of pirated and counterfeit goods, piracy over the Internet, 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 United States-Ukraine Trade and Investment Council meeting, during which the two countries agreed to an IPR Action Plan. That plan identifies 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. The government of Ukraine formally adopted the IPR plan in February 2011.

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. A Ukrainian language content requirement also exists for radio and television broadcasting.

Financial Services

The United States continues to monitor Ukraine's actions with regard to electronic payments services. Ukraine's parliament is considering new legislation that would require all electronic financial transactions made in Ukraine to be resolved within the country at processing centers operated by the National Bank of Ukraine. This proposed change could increase costs and reduce the reliability of transactions, as well as restrict the ability of foreign firms to compete against local service providers. A ruling by the Ukrainian Anti-Monopoly Committee modified the National Bank of Ukraine's 2008 rules that required any bank that wished to bid on cash management contracts for state employee salaries to join the National System of Mass Electronic Payment (NSMEP). NSMEP operates as a domestic electronic payments system in Ukraine, competing against foreign service suppliers. Under the modified ruling, banks are still required to become members of NSMEP, but there is no provision to force them to issue payment cards exclusively through that system. However, Ukraine's parliament is considering legislation that would require all banks to join NSMEP and use that service exclusively for electronic payment transactions. This would force banks wishing to bid on government cash management contracts to base their bids on NSMEP-branded cards, thus shutting out foreign service suppliers.

INVESTMENT BARRIERS

The State Agency on Investment and National Projects is charged with helping attract foreign investment to the country. The government of Ukraine continues to have an advisory body composed of representatives from foreign and domestic companies to advise the President on efforts to improve the business and investment climate.

The United States has a bilateral investment treaty (BIT) with Ukraine, which took effect in 1996. The BIT guarantees U.S. investors non-discriminatory treatment, the right to make financial transfers freely and without delay, international legal standards for expropriation, including compensation, and access to international arbitration in the event of an investment dispute. There are a number of longstanding, and a number of new, U.S. company investment disputes. In most cases, there has been little progress toward resolution despite sustained advocacy by the United States.

Foreign companies/physical persons are prohibited from direct ownership or establishment of television stations in Ukraine. Ukrainian law also limits foreign investment in television stations, although it does not clearly state what these limits are. Ukraine also maintains domestic film broadcast quotas (at not less than 50 percent), and requirements for Ukrainian language in television broadcasts (at not less than 75 percent for nationwide television and radio stations).

Taxation

Companies report that Ukraine's taxation system is a major obstacle for U.S. investors doing business in Ukraine. Ukraine maintains a corporate profit tax (25 percent, which is scheduled to drop to 16 percent by 2014), a personal income tax (with a flat rate of 15 percent, scheduled to rise to 17 percent by 2014), a Value Added Tax (of 20 percent), and a payroll tax (varying between 33.2 percent and 49.6 percent) that funds pension and social insurance programs. An average Ukrainian business has to pay 99 separate taxes and its profits are taxed at an overall rate of 58.4 percent. Many analysts single out the payroll tax as being exceptionally high and the main reason why shadow wage payments remain common in Ukraine. Ukraine adopted a new tax code in 2010. However, the revised code has been criticized for expanding the authority of the State Tax Administration (STA), failing to address the system's high administrative costs and for suppressing the small and medium enterprise sector by making it harder to qualify for the simplified tax system and for making it more difficult for those under the simplified tax system to interact with businesses in the regular tax system.

In recent years, delays in the payment of VAT refunds to exporters have also 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 complained that they should have received cash rather than bonds. Additionally, some companies received reduced refunds or were refused refunds for arbitrary reasons. U.S. grain traders in particular claim several hundred million dollars in VAT arrears. In 2011, the STA instituted an automated system for VAT refunds, but nontransparent criteria have prevented most firms from participating in the system and receiving their refunds. 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, to aggressively inspect companies in an attempt to write-off claimed VAT payments for reasons that appear spurious, and to distribute VAT refunds in an arbitrary fashion that appears to favor companies connected to the government or those that pay bribes. Improvements to the system would have an important, positive impact on the investment climate.

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 a common abuse of privatization laws is 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. In 2010, the State Property Fund attempted to revoke the privatization of the Krivorizhstal factory (now named Arcelor Mittal Kryvyi Rih), claiming that Mittal Steel had failed to meet its contractual obligations. Ukraine's Commercial Court considered the case and ruled that the government had no basis to reclaim the facility.

The most notable privatization in 2011 was that of telecommunications company Ukrtelecom, in which 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.

The State Property Fund has also identified the Kryvorizhskyy Ore Mining and Processing Plant, and Turboatom (a producer of turbines for power plants), as priorities for privatization, but neither privatization has moved forward. Additionally, the government is in the early stages of privatizing the regional energy utilities (Oblenergos) and is currently vetting companies that offered bids for two such Oblenergoes (Kyivenergo and Zakhidenergo).

Although the government announced its intention to privatize all of the 112 coal mines still owned by the government in 2011, it conducted auctions for only 2 state-owned coal mines in 2011. There are concerns that a few Ukrainian and Russian firms are trying to acquire these mines without going through a fair, transparent privatization process. Industry analysts dismissed the announcement, as similar proclamations have been made in previous years without results. They believe that the majority of the state-owned mines are no longer economically productive, and would need to be bundled with other assets to attract investor interest.

Ukraine maintains a moratorium on the sale of agricultural farmland, which was recently extended to January 1, 2013. 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 raiding attempts 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 U.S. investors complain that the government protects raiders who are politically well connected.