

UKRAINE

In 1997, the U.S. trade deficit with Ukraine was \$10 million, a decrease of \$103 million from the U.S. trade deficit of \$113 million in 1996. U.S. merchandise exports to Ukraine were \$404 million, an increase of \$10 million (2.7 percent) from the level of U.S. exports to Ukraine in 1996. Ukraine was the United States' seventy-first largest export market in 1997. U.S. imports from Ukraine were \$414 million in 1997, a decrease of \$93 million (18.3 percent) from the level of imports in 1996.

Trade relations between the United States and Ukraine are governed by the U.S.- Ukraine Trade Agreement, signed on May 6, 1992 and approved by a resolution from the Cabinet of Ministers that same year. In the first paragraph of this bilateral agreement, both countries grant each other MFN status. Ukraine is in the process of acceding to the World Trade Organization (WTO).

IMPORT POLICIES

Most MFN tariffs in Ukraine range from zero to 30 percent, although tariffs on some items are 40-50 percent. In November 1997, Ukraine raised its tariffs on a number of agricultural products. Imports are also assessed a 20 percent VAT and, in some instances, an excise tax. In some instances, the VAT and excise tax are not applied in an even handed way to imports and domestic products. Among the products facing discriminatory taxation are agricultural products, alcoholic beverages, automobiles and electronic goods. The Cabinet of Ministers recently decreed that, as of February 1, 1998, VAT would not be applied to Russian imports in accordance with the terms of the Russian-Ukrainian Agreement on Free Trade and agreements reached by the two presidents during their meeting on November 16, 1997. Rather than basing customs levies and excise duties on the invoiced value of a product, the Ukrainians have begun applying minimum customs duties to certain products. Moreover, according to U.S. exporters, the minimum values are tied to specific marks, which can have the effect of discriminating against well-known U.S. brands.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

There are numerous problems associated with certification and licensing procedures in Ukraine: 1) lack of consistent, clearly defined standards and regulations; 2) registration schemes unfeasible for mass trade; 3) lack of procedural flexibility; 4) complex and lengthy import license procedures; 5) overly complex and expensive certification requirements; 6) uneven enforcement of requirements; and 7) inordinately high certification and licensing fees. The Ukrainian system of standardization, certification, and licensing of imported goods, because of its unpredictable processes, lack of transparency and overall complexity, has been a major hindrance to trade and investment in Ukraine and has been cited as a difficult problem by the U.S. business community there. Consumer goods and telecommunications equipment are two particularly problematic sectors. Many problems stem from certification procedures. The procedures are poorly defined and difficult to discover, and regulations are evolving constantly, often with little advance notice. For many imported products, multiple certificates are required and multiple agencies are involved in the certification process. Local, regional and municipal authorities frequently request additional documentation beyond what is mandated by the central agencies.

Sanitary and phytosanitary measures are another area of concern. Ukraine applies a range of measures which

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are not based on science or supported by risk assessment and which differ substantially from international standards. The certification and approval process is lengthy, duplicative and expensive. A new food law will apparently open the way for highly subjective interpretations of food safety regulations and could be used as a device for keeping imports out of the Ukrainian market.

GOVERNMENT PROCUREMENT

Ukraine has no central public procurement law with uniform standards. Regulations are the responsibilities of individual ministries, and are often not followed in practice. Among the problems faced by foreign firms are a lack of public notice of tender rules, the failure to state tender requirements, covert preferences in tender awards, awards made subject to conditions that were not part of the original tender and the lack of an effective avenue for firms to air grievances over contract awards or an effective means to resolve disputes.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Ukraine is a member of the World Intellectual Property Organization (WIPO) and has acceded to the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Madrid Agreement Concerning the International Registration of Marks, the Patent Cooperation Treaty, and the Convention for the Protection of New Varieties of Plants (UPOV), and is a signatory to the Trademark Law Treaty. With the help of appropriate legal bodies and comment from U.S. officials, Ukraine has implemented over the last five years a set of intellectual property laws that generally meets modern standards, including laws covering patents, industrial designs, trademarks, plant varieties, and copyrights. Among the gaps in the legislation is a lack of protection of U.S. copyrighted works created prior to 1973, however. The WTO TRIPs agreement (Ukraine is currently applying for WTO membership) requires protection of works created within the last 50 years as long as this work remains protected in the country of origin.

Enforcement of intellectual property legislation remains sporadic and severely inadequate. There is currently extensive piracy of U.S. video cassettes, films, music, recordings, books, and computer software in Ukraine. Television and radio outlets have been known to broadcast pirated products. The sale of imported counterfeit trademarked goods also is a problem.

INVESTMENT BARRIERS

Ukraine passed a law on foreign investment in 1997 (the current foreign investment law is the fourth of its kind in nearly five years) which provides certain protections, including general guarantees against expropriation, unhindered transfer of profits and post-tax revenues, and a ten-year guarantee against changes in legislation that affect companies operating in Ukraine. The United States and Ukraine have a Bilateral Investment Treaty in effect.

Major obstacles to investment are related to legislative instability, the absence of clear mechanisms to enforce intellectual property rights, a weak legal system, poorly defined and overly complex certification procedures, and retroactive changes in rules regarding investment. Investors have also expressed concerns about the incoherence and complexity of the taxation system and about pervasive corruption. Several U.S. companies have been involved in investment disputes in Ukraine which have centered around these issues.