

# UKRAINE

## TRADE SUMMARY

U.S. goods exports in 2014 were \$1.3 billion, down 33.6 percent from the previous year. Ukraine is currently the 75th largest export market for U.S. goods. Corresponding U.S. imports from Ukraine were \$934 million, down 9.9 percent. The U.S. goods trade surplus with Ukraine was \$344 million in 2014, a decrease of \$544 million from 2013.

The stock of U.S. foreign direct investment (FDI) in Ukraine was \$931 million in 2013 (latest data available), down from \$935 million in 2012.

### **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, and a meeting is planned for the first half of 2015. At the 2012 TIC meeting, the chairs established the Trade Experts Working Group, a working-level government-to-government mechanism to discuss impediments to increased trade and investment between TIC meetings.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### **Technical Barriers to Trade**

For some goods, a product certification is a prerequisite for an import license. To obtain this certification, an importer 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. However, the U.S. distilled spirits industry reports that this option usually involves a burdensome and costly inspection visit by Ukrainian government officials.

### **Sanitary and Phytosanitary Barriers**

The Ukrainian State Veterinary and Phytosanitary Service issues import permits for all commodities subject to veterinary control, including shipments where 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.

## IMPORT POLICIES

### **Tariffs and Customs Issues**

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 9.2 percent, while for industrial goods,

the average applied rate is 3.8 percent. Ukraine applies preferential tariff rates to imports from its 12 FTA partners and certain Commonwealth of Independent States countries. Most MFN customs tariffs are levied at *ad valorem* rates, and only 1.0 percent of tariff lines (down from 5.97 percent prior to Ukraine's WTO accession) are subject to specific rates of duty, which apply to some agricultural goods, such as wine and tobacco.

On September 12, 2012, Ukraine notified the WTO that it intended to renegotiate more than 350 tariff bindings on key agricultural and industrial products under Article XXVIII of the GATT 1994. More than 125 WTO Members, including the United States, raised serious concerns about Ukraine's proposed action, and the U.S. government repeatedly urged Ukraine not to pursue it. On October 21, 2014, Ukraine informed the WTO General Council that it was withdrawing its notification under Article XXVIII of the GATT 1994.

On December 28, 2014, President Poroshenko signed into law a one-year tariff surcharge of 10 percent on agriculture products and 5 percent on non-agriculture products (exempting specified "vital commodities"). The law provides that the surcharge is implemented pursuant to Article XII of the GATT 1994 to address Ukraine's balance of payments crisis. On February 16 Ukraine's Cabinet of Ministers adopted the tariff surcharge measure and implemented the surcharge effective as of February 25, 2015.

Although Ukraine's MFN applied tariff rates are relatively low, U.S. businesses have raised concerns that the State Fiscal Service (SFS) (formerly the Ministry of Revenues and Duties) rejects the declared customs value provided in the import documentation in favor of higher customs values, resulting not only in higher customs but higher value-added tax (VAT) payments as well. Changes made in 2012 to the Customs Code reduced the frequency with which SFS rejected importers' declared values, but importers continue to report that the customs valuation process remains uncertain.

Importers of U.S. goods have reported that inspection officials at port are taking excessive sample sizes of products from each "allotment" (a term broadly defined based on slaughter/production dates) for "laboratory testing" -- in some cases more than 7 kilograms of every "allotment", despite Ukrainian regulations recommending that only 150 grams of any product be taken as a sample. In addition, importers report that they are charged laboratory fees but receive no official report of the findings of laboratory tests. The enlarged sampling of imported products (especially of expensive products such as caviar, fish, or chilled meat) and testing fees in Ukraine pose a significant burden on the importer. According to stakeholders, importers often request U.S. exporters to put as few "uniform allotments" as possible into a container to reduce the number of samples taken.

### **Price Controls**

The Cabinet of Ministers of Ukraine passed a resolution in June 2014 that introduced a minimum wholesale and retail price for hard liquors and wine. The price floor for whiskey was established at approximately \$34 per liter of pure alcohol, whereas the floor price as set at \$26.50 per liter of pure alcohol for cognac (brandy) and \$15.30 per liter of pure alcohol for vodka. U.S. stakeholders claim that the higher minimum price for whiskey discriminates against imports because all whiskey is imported, whereas brandy and vodka are produced domestically. The establishment of minimum prices has resulted in 50 percent drop in the sales of U.S. whiskey in Ukraine.

### **GOVERNMENT PROCUREMENT**

Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but has held observer status since 2009. Ukraine commenced negotiations to accede to the GPA in February 2011, in accordance with its commitment when it became a WTO Member. The United States will continue to encourage Ukraine to complete its GPA accession process.

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. However, a large percentage of government procurement is exempted from the procurement rules and can be conducted using sole-source contracts.

On April 20, 2014, the Ukrainian parliament introduced a number of controversial provisions to the 2010 procurement law, reducing transparency in government procurement and expanding 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 with respect to these entities.

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. Problems faced by foreign firms include: (1) the lack of public notice of tender rules and requirements; (2) nontransparent preferences in tender awards; (3) the imposition of conditions that are 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**

Although Ukraine has eliminated export duties on numerous products, they remain on natural gas, livestock, raw hides, some oil seeds, and scrap metal. In addition, Ukraine requires an export license for a wide variety of products. According to the Ministry of Economic Development and Trade, the majority of export licenses are automatic.

In addition to being an export duty, exports of ferrous scrap metal are further burdened by the requirement that scrap export contracts be registered by the Ministry of Economic Development and Trade. In 2013 and 2014, the Ministry's failure to perform timely registration of contracts for ferrous scrap exports resulted in reduced exports, raising concerns among U.S. stakeholders of possible market distortions.

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

In 2013 the U.S. Trade Representative downgraded Ukraine's status to "Priority Foreign Country" (PFC) in its annual Special 301 report, marking Ukraine as the only nation receiving the lowest ranking on its protection and enforcement of intellectual property rights (IPR). Ukraine also had PFC designation from 2001 to 2005. The PFC designation is reserved for countries with the most egregious IPR-related acts, policies, and practices with the greatest adverse impact on relevant U.S. products, and that are not entering into good faith negotiations with the United States or making significant progress in negotiations to provide adequate and effective IPR protection. The three grounds for Ukraine's PFC determination were: (1) the unfair, nontransparent administration of the system governing collecting societies; (2) widespread use of infringing software by the Ukrainian government agencies; and (3) failure to implement an effective and systemic means to combat the widespread online infringement of copyright and related rights in Ukraine.

Following the PFC designation and pursuant to statute, the Office of the U.S. Trade Representative concluded a Section 301 investigation of Ukraine's IPR acts, policies, and practices concluded in March 2014. . The U.S. Trade Representative determined that while IPR problems persisted no adverse actions would be taken against Ukraine because of the political situation in Ukraine at that time. The 2014 Special

301 Report, published only a few weeks later, reiterated the severe deficits in Ukraine's IPR protection and enforcement. Ukraine has persistently failed to meet its commitments to improve IPR protection, including commitments made as part of a 2010 United States-Ukraine IPR Action Plan. The Action Plan 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. Online markets in Ukraine were identified on USTR's 2015 Notorious Market List. The need to improve Ukraine's protection and enforcement of IPR has been, and will continue to be, a major theme of the U.S. government's bilateral engagement with Ukraine.

## **SERVICES BARRIERS**

### **Audiovisual Services**

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

## **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 VAT to foreign invested exporters have been a problem. Although the SFS instituted an automated system for VAT refunds, nontransparent criteria have prevented many firms, and particularly smaller firms, from receiving their refunds. Delays in reimbursement have become an important cost factor for many foreign companies.

In addition to accumulating substantial new arrears in VAT refunds to U.S. and other companies, the government of Ukraine has engaged in other problematic treatment with regard to VAT refunds, such as demanding prepayment of the corporate profits tax in exchange for the same amount of refunds; writing-off claimed VAT payments for spurious reasons; offering to pay arrears with financial promissory notes; and distributing VAT refunds in an arbitrary fashion that appears to favor companies connected to, or otherwise favored by, the government. The U.S. government is working with the new Ukrainian government to reform and rationalize its VAT refund system.

### **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 often arbitrarily adjusted to fit the characteristics of a pre-selected bidder. For example, the privatization of a major electricity generation company, Donbasenergo, included the requirement that the winning bidder had mined a certain amount of domestic coal during previous years. This criterion effectively limited the pool of bidders to a short list of actors already present in Ukraine's coal mining and electricity production markets. The State Property Fund is under a great deal more scrutiny following recent protests and associated activity, and 2015 energy privatizations will serve as important indicators of the new government's willingness to reform.

In July 2014, the government issued a resolution calling for the privatization of 169 companies, including electric generation companies, the Azovmash machine-building plants and Odesa-Portside plants. However, the actual privatizations were postponed due to unstable conditions in the country. For example, one of the largest Odesa Portside plants that was originally planned for privatization is very close to the

military conflict in Donbas. The government announced plans in September to reduce the list of companies banned from privatization, and reiterated that intent in the government's national plan for 2015, released in December 2014.

### **Agricultural Land**

In 2013, Ukraine extended its moratorium on the sale of agricultural farmland until January 1, 2016. This provision blocks private investors from purchasing any 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 land. 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**

Over the years Ukraine has had 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 practice 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.

### **Local Content**

In 2012, Ukraine adopted amendments to its Law on Electricity, applicable to all new investments in energy power plants, which established 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. In early 2014 the government stated that it was reconsidering this policy, and would not apply a local content requirement.