

Ukraine's Membership in the World Trade Organization

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ABSTRACT. The WTO is a multilateral organization that seeks to ensure that international trade relations are governed by the rule of law and not by the rule of power. It comprises a network of contractual rules and commitments capable of being monitored and enforced multilaterally. Ukraine's accession to the WTO has been marked by notable achievements in the areas of legislation and bilateral agreements with member-states regarding market access. Outstanding issues in Ukraine's accession include agriculture, industry policy, trade-related investment measures (TRIMs), technical barriers to trade (TBT), sanitary and phyto-sanitary (SPS) measures, and intellectual property rights. While completion of the process relies on Ukraine's efforts alone, progress is being made and is expected to reach a successful conclusion.

KEY WORDS. Ukraine's accession to the WTO; Working Party on the Accession of Ukraine; legislation; bilateral market access agreements; agriculture; industry policy; trade-related investment measures (TRIMs); technical barriers to trade (TBT); sanitary and phyto-sanitary (SPS) measures; intellectual property rights.

Since its independence in 1991, change has been Ukraine's constant companion as it confronts a number of enormous challenges. These include, first, political and institutional challenges as Ukraine reintegrates in its own right into the group of independent nations and establishes a whole set of democratic institutions. Second, Ukraine has had to make significant adjustments to its economy, moving from a centrally-planned, industrial and agricultural structure fully integrated within the Soviet Union (where it contributed

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more than one-quarter of total Soviet agricultural output and was responsible for a significant share of the heavy industry equipment and raw materials) to a radically different, market-driven post-Soviet model. This process of economic adjustment and reform associated with the instability of Commonwealth of Independent States (CIS) markets was accompanied by serious difficulties and monetary policies which led to high rates of inflation. It only was in 2000 that Ukraine was able to experience sustained economic growth, fuelled by domestic demand, low rates of inflation, and consumer and investor confidence. Although several of Ukraine's structural reforms have yet to be completed, the next frontier is in sight: the full integration of Ukraine in the world trading system through its accession to the World Trade Organisation.

In this article I address three elements of Ukraine's WTO accession. In the first section, I will provide some background information on the WTO, as well as a general description of Ukraine's accession process. In the second section, I will present the key technical issues under review by the WTO Working Party on Ukraine's accession. Finally, I will highlight the next steps on the road to the completion of Ukraine's accession process.

The WTO

With the establishment of the WTO in 1995, the world community added to its toolbox an effective framework to govern world trade. This framework, building on the long-established General Agreement on Tariffs and Trade (GATT) to cover as well trade in services and trade-related aspects of intellectual property, for the first time provided a truly multilateral set of rules to ensure that international trade relations were governed by the rule of law and not by the rule of power.

The WTO system is essentially a network of contractual rules and commitments capable of being monitored and enforced multilaterally. Its central feature is predictability and certainty in conditions and terms of trade. It guarantees the business community and consumers that governments will maintain open, transparent and accountable trade regimes.

The universal nature of the WTO is best illustrated by its membership which comprises 128 countries and customs territories. The on-going interest on the part of a number of countries and customs territories to join the organisation demonstrates the continued attractiveness of the WTO. Since 1995, twenty new Member countries and customs territories have joined the WTO, Nepal and Cambodia being the most recently accepted Members. In addition, some thirty

economies at different levels of development are currently seeking accession to the WTO, ranging from large countries such as the Russian Federation and Ukraine, to small ones like Vanuatu and Seychelles.

Accession to the WTO comes with benefits: a guarantee of predictability and market access to other WTO markets. It also comes with an «entrance fee:» candidates for accession need to demonstrate their commitment to the principles of the WTO Agreement by consolidating trade liberalisation and implementing a WTO-consistent foreign trade regime prior to accession. Such compliance is ensured through the terms of accession negotiated between the WTO and the applicant government. These terms may include bindings on import duties on agricultural and non-agricultural goods at a level acceptable to other WTO Members, horizontal and specific sectoral commitments on trade in services, consistency of domestic laws on a wide range of issues such as sanitary, phyto-sanitary and technical standards, customs procedures, import licensing, subsidies and other non-tariff measures consistent with WTO agreements. It is only once WTO Members are satisfied with the terms of accession that the process is completed. In other words, the pace of the accession process is very much in the hands of the acceding country by way of the extent to which it complies with the terms negotiated.

Ukraine and the WTO

It is against this background that Ukraine's accession process to the WTO can be examined. The economy, the politics and the integration of Ukraine in the world economy are all linked together in the process of accession.

In this respect, it is evident that Ukraine's process of economic reform and transformation to a market economy need to be consolidated through its participation in the multilateral trading system and on equal footing with other WTO Members, especially Ukraine's key trading partners and competitors. The early application for accession submitted by Ukraine and the establishment of a representative inter-agency body, the Governmental Commission on Accession to the WTO, illustrate Ukraine's sustained commitments to integrate rapidly and fully into the mainstream of international trade and economic relations.

These commitments are also illustrated by Ukraine's active participation in regional initiatives. Indeed, it is worth praising Ukraine's continuous efforts to further liberalize trade with its immediate neighbours. These regional efforts, if consistent with WTO principles and commitments, could be complementary with the multilateral trading system.

Indeed, much has been accomplished since the establishment of the Working Party on the Accession of Ukraine to the GATT in 1993 (replaced by a WTO Accession Working Party in 1995). In particular, the Working Party Members have noted as important Ukrainian contributions to the process of accession, *inter alia*, a survey of legislation related to the foreign trade regime, an analysis of compliance with the requirements of the WTO agreements, a schedule for the approval of draft laws and normative acts in the trade field by Ukraine's parliament, the Supreme Council, a legal framework for law enforcement and numerous pieces of legislation. In just 2001-2002, some sixteen important legislative texts, including the Customs Code, were enacted and are already in place. In its latest version, the Legislative Action Plan lists some fourteen legislative texts, including the Tax Code, which are due to be enacted. However, while these are encouraging developments, the legislation needs to be accompanied by effective implementation.

Progress was also significant with respect to bilateral market access negotiations on tariff concessions for goods and commitments on trade in services between Ukraine and individual WTO Members. Specifically, Ukraine has concluded bilateral agreements with about half the Member-states, including Bulgaria, Canada, the European Union, Georgia, India, Korea and Mexico, who have expressed an interest in bilateral negotiations with Ukraine. Other negotiations are near conclusion, while intensive bilateral discussions are still underway with key trading partners such as the USA, China, Australia and closer partners such as Lithuania and Moldova.

Outstanding Issues in the Accession Process

Market access commitments are only one element of Ukraine's accession package. Several issues remain to be addressed in order to complete Ukraine's accession process. I would like to briefly highlight some of these issues in the following six areas: agriculture, industry policy, trade-related investment measures (TRIMs), technical barriers to trade (TBT), sanitary and phyto-sanitary (SPS) measures, and intellectual property rights.

Agriculture

Over the past decade, Ukraine's effort to reform its agricultural sector has been astonishing. As part of this process, Ukraine has privatised some 85 to 90 per cent of its agricultural enterprises and

state farms. In addition, Ukraine does not accord export subsidies and its domestic support regime is largely considered to be consistent with the disciplines set out in the provisions of the WTO Agriculture Agreement. However, there are still differences of views between Ukraine and a number of WTO Members as to the definition of what constitutes a «fully representative period,» an important question for ensuring the consistency of Ukraine's regime with WTO agreements. In addition, Ukraine's proposed tariff quotas on raw sugar and on livestock imports have been controversial with some exporting Members.

Industrial Policy

The Working Party has examined the subsidy programmes for ship-building, coal mining, energy, steel, cars, aircrafts, space activities, chemicals, construction and pharmaceuticals. These include deferred tax payments, tax exemptions, customs duty exemptions, etc. In this respect, certain subsidies terminate in 2003 or will be terminated in 2005. Furthermore, some Members of the Working Party have sought a commitment from Ukraine that from the date of accession it would not maintain subsidies, including export subsidies which already meet the definition of a prohibited subsidy, in conformity with the Agreement on Subsidies and Countervailing Measures and that it would not introduce such prohibited subsidies in the future. Moreover, these attempts have also included securing agreement on Ukraine's part that export financing and other export promotion policies would be operated in conformity with WTO provisions.

Trade-Related Investment Measures

Some Members of the Working Party consider that the legislation accompanying the October 1997 Law on the Stimulation of Automobile Production in Ukraine and regulations regarding the pre-owned car market provided a set of discriminatory advantages to one company, Daewoo - AvtoZaZ, contrary to WTO rules. These Members requested Ukraine to remove certain elements of the current regulation, such as provisions regarding the local content requirement and certain discriminatory exemptions of indirect taxes. Since then, some progress has been achieved with legislative amendments passed by the Supreme Council, notably with respect to the local content requirements (although the issue of exemptions on VAT and excise on sales of new vehicles produced by privileged enterprises remains to be addressed).

Technical Barriers to Trade (TBT)

Members of the Working Party have raised numerous questions regarding Ukraine's TBT regime. These include remaining requirements and restrictions in the area of conformity assessment and mandatory standards/technical regulations that Ukraine has maintained, as well as mutual recognition arrangements. A general concern is expressed about the conformity of these requirements with international standards. Many of these questions reflect a need to better understand Ukraine's regulatory framework with respect to technical requirements.

As part of its efforts at European integration, Ukraine has adopted or is planning to adopt standards established by European organisations. However, several Members have encouraged Ukraine to use international standards as a benchmark instead. Questions have also been raised concerning the inclusion of «protection of property» as a legitimate objective for developing technical regulations, the requirements for Ukrainian residency to be able to perform conformity assessments, and the lack of details on the criteria for determining when a technical regulation is required.

Sanitary and Phytosanitary (SPS) Measures

In the context of the Working Party, Members have extensively reviewed Ukraine's regulatory framework with respect to SPS measures to better understand the characteristics of the regime and its conformity with the WTO Agreement on SPS Measures. In this regard Ukraine is still in the process of reforming its legislation and Members have encouraged Ukraine's efforts in this area. Issues discussed to date focussed on transparency and non-discrimination in the application of SPS requirements and the use of European standards (as opposed to international standards) as the benchmark for Ukraine's SPS requirements.

Trade Related Aspects of Intellectual Property Rights (TRIPS)

Together with TBT and SPS measures, the implementation of the TRIPS Agreement has been one of the most controversial areas of discussion in the Working Party. Some Members have argued that, although it has made some legislative progress, the Government of Ukraine has been complacent regarding the implementation and enforcement of intellectual-property related legislation, in particular copyright protection of information reproduced on optical disks.

Ukraine indicated that the July 2001 Law on Copyright and Related Rights (N° 2627 - III) and the Civil Code of Ukraine are in compliance with Articles 1 through 21 of the Berne Convention with the exception of Articles 6 bis and 9.1. In addition, a joint «Agreement on Cooperation in the Field of Assigning SID Codes of Ukraine» had been signed by the State Department of Intellectual Property, the International Federation of Phonogram Industry (IFPI), and Philips Company, in accordance to which the State Department received a package of Source Identification (SID) codes for assignment to Ukrainian manufacturers of discs for laser-readable systems. In 2002, state control of illicit production and sale of counterfeit products in Ukrainian territory intensified as evident in active monitoring of activities of economic actors in the field of intellectual property, the pursuit of criminal proceedings, and the withdrawal of illicit audio cassettes and discs for laser-readable systems.

Future Steps

It is clear that a significant amount of work remains to be done in the Working Party to allow it to conclude its mandate. It is not possible to forecast when the accession of Ukraine will be completed. Indeed, it is principally Ukraine that will determine the speed with which we move forward. WTO Members have made it clear that progress depends on completing the bilateral market access negotiations and successfully addressing the challenges regarding the completion of the legislative and enforcement work in keeping with the contractual obligations of the WTO Agreements.

However, we should be able to conclude our common task successfully because the outstanding issues are being addressed with cooperation, flexibility and a spirit of compromise from all sides. In fact, the Ukrainian administration should be commended for the political will that it has demonstrated in joining the WTO, and the priority it has attached to this file. As Chairman, I have enjoyed full cooperation with and access to its senior leadership.

In light of the progress achieved thus far and in pursuance of its mandate, the Working Party was in a position to task the WTO Secretariat with the preparation of Elements of the Draft Report of the Working Party, with a view to help the development of what would ultimately become the Protocol of Accession of Ukraine to the WTO. This document covers issues discussed in the Working Party such as privatisation, pricing policies, registration, fees, other duties and charges, internal taxes, import licensing, customs valua-

tion, technical barriers to trade, sanitary and phyto-sanitary measures, trade remedies, rules of origin, and intellectual property.

The preparation of the Elements of the Draft Report has been greatly assisted by the action plans prepared by Ukraine. Members are seeking further clarification as to exactly how and when the implementation and the enforcement of WTO consistent legislation will be effected. The Elements of the Draft Report will in due course become the draft Working Party Report incorporating the commitments made by Ukraine, notably how Ukraine will fully incorporate WTO disciplines in its domestic legislation.

The WTO is still an incomplete family and Ukraine has an important contribution to make to the club and the multilateral trading system. Moreover, accessions of such important countries would provide the WTO with some much-needed energy in the post-Cancun period. As the Chair of the Working Party on the Accession of Ukraine to the WTO, I believe that the sustained commitment shown by the Ukrainian authorities towards the process, as well as the constructive engagement of its trading partners, will lead us to a successful conclusion. Our commitments to this joint-endeavour only serve to strengthen these efforts.

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