



-Ukraine-

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GENERAL FEATURES OF TRADE POLICY

Ukraine started upon independence in 1991 its political and economic transition process. Ukraine maintains close relations with the Commonwealth of Independent States (CIS), in particular with Russia. At the same time, Ukraine has followed since 1991 an European orientation in its economic and foreign policies which have become stronger after enlargement took place on 1.5.2004, when the EU replaced Russia as Ukraine's first commercial partner, accounting for around 38% of its external trade in 1993. Both parties are therefore interested in maintaining and strengthening solid, predictable, transparent and open trade relations.

The EU considers that a key element to anchor Ukraine into the European economic space is the successful completion of the ongoing domestic reforms. This will allow Ukraine to take full advantage of EU enlargement - as outlined in the Commission's Communication on Wider Europe. The EU also supports Ukraine's efforts to join the WTO as soon as possible in commercially viable terms.

Ukraine is undergoing a crucial phase of economic development and reforms. Six years after the 1998 financial crisis, Ukraine continues to recover strongly. In 2003 real GDP grew by 9.4 %, despite a poor harvest and through June 2004, GDP increased by 12.7 % on an annual basis. Growth in 2003-04 has been prompted by favourable external demand, a competitive cost structure, and dynamic domestic demand. Rapid growth in China has produced a remarkable increase in the price of Ukraine's steel exports, while continued growth in Russia has benefited Ukraine's machinery exports. Export growth has averaged 25 % (year-on-year) since end-2002, yielding a sizeable current account surplus. Exporters' profits have helped fuel an investment and construction boom, which in turn has boosted manufacturing through increased demand for machinery. In addition, a sharp increase in credit to the private sector and rising disposable incomes have supported domestic demand. Despite the strong growth, unemployment remains high at about 9 %, according to International Labour Organization's definitions.

Parliamentary approval of the government's economic reform strategy and wide-ranging tax and pension reforms, progress in eliminating VAT refund arrears, and the strengthening of banking sector capitalisation are welcome steps. Looking forward, the government's plan to improve governance and enhance the business climate will be key to ensure that Ukraine sustains its medium-term growth potential.

EU- UKRAINE TRADE RELATIONS

EU trade relations with Ukraine are based on the Partnership and Co-operation Agreement (PCA) which entered into force in 1998 for an initial period of ten years.

The PCA highlights respect for shared fundamental values as an essential element of the EU-Ukraine

relationship. Concerning trade relations, the PCA provides for mutual Most Favoured Nation treatment. The provisions governing goods, services, labour, and capital introduce extensive, legally binding commitments with considerable implications for the domestic legislation of Ukraine. The PCA is an important instrument in bringing Ukraine into line with the legal framework of the EU's single market and of the WTO system. It also contains a number of evolutionary clauses, including the prospect of establishing a free trade area. A possible source of concern, though, are the frequent changes in regulations affecting trade and investment, lack of transparency, failings in implementation and corruption.

In 2003 both sides agreed on a joint assessment of the implementation so far of commitments under the PCA, highlighting the need for continued action and the scope for further co-operation

A Protocol to the PCA was signed by the EU and Ukraine on 30 March 2004 to extend the application of the agreement in full to the 10 new EU Member States from 1 May 2004.

Bilateral trade

The European Union is Ukraine's largest trading partner since the recent enlargement to 25 Member States. However this trade remains marginal for the EU (0,8% of the EU external trade in goods in 2003). In 2003, EU(25) - Ukraine total bilateral trade in goods amounted to around €14.52 billion, constantly growing since the economic crisis in 1998. EU exports to Ukraine represented €8.8 billion (1% of extra EU exports) and imports from Ukrainian reached €5.73 billion (0.61% of extra EU imports).

Ukraine's manufacturing and trade structures are unbalanced. Energy and agricultural products accounted for around 32% of the Ukrainian exports to the EU, whilst machinery and chemical products appear prominently in EU exports to Ukraine. EU-Ukraine trade in services is very limited in value terms, below € 1.1 billion in 2002, and the level of foreign investment in Ukraine also remains low.

EU imports from Ukraine are to a very large extent liberalised. The only exception is trade in certain steel sector products, which is governed by a bilateral agreement initialled on 22 June 2004, providing for a quota of 606,824 tonnes for imports from Ukraine in 2004. Trade in textile products has been liberalised following the implementation of the bilateral agreement signed on 19 December 2000. This agreement provides for reciprocal liberalisation of textiles and clothing trade from 1 January 2001. In accordance with the terms of the Agreement, Ukraine implemented tariff reductions for EU exports of textiles products from 23 February 2001 and the EC lifted all quantitative import restrictions on 26 March 2001. Further to this tariff reduction, Ukraine continues to reduce its maximum tariff rates until 2004 to align with EU tariffs. Surveillance mechanisms are maintained for a limited number of textile products.

UKRAINE'S ACCESSION TO THE WTO

A key focus is on negotiations for Ukraine's accession to the WTO, where agreement has already been reached on bilateral terms for market access in goods and services, and where the EU is supporting the Ukrainian government in its task of alignment to the multilateral rules of the WTO system. Recent discussion has focussed on further progress on the protection of intellectual property rights, and elimination of conditions that discriminate between foreign and domestic operators in the automobiles industry sector. The EU also expects Ukraine to lift other export restrictions, and to eliminate export duties such as those currently applied to ferrous scrap and to sunflower seeds. The EU has also pointed to the need to improve the investment climate, to reduce VAT arrears and to tackle corruption that acts as a significant deterrent for foreign investors. The Commission has indicated in a final assessment on the Ukrainian request to be given 'market economy status' under the EU trade defence rules that there must first be a tightening of bankruptcy rules and the elimination of state-interference in pricing in the metal and fertiliser sectors.

The following table is an overview of the tradeflow between the European Union and Ukraine

Section	Year	Import(Euro)	Export(Euro)
Animals & animal products	1996	5,624,050	51,916,150
	1997	7,461,670	67,118,260
	1998	5,892,950	51,521,280
	1999	5,620,810	16,060,240
	2000	24,387,570	25,193,100

	2001	36,332,100	31,421,000
	2002	6,747,550	49,591,380
	2003	6,345,760	49,111,520
Vegetable products	1996	163,031,530	41,545,720
	1997	243,897,450	44,357,550
	1998	209,157,230	34,867,790
	1999	131,043,280	29,601,720
	2000	152,491,480	48,224,540
	2001	334,553,370	56,873,730
	2002	632,176,950	95,111,760
	2003	190,610,240	84,969,960
Animal or vegetable fats	1996	952,620	11,911,230
	1997	639,710	8,752,360
	1998	1,088,780	7,633,100
	1999	1,846,970	6,065,150
	2000	11,023,070	5,903,880
	2001	20,339,010	6,855,730
	2002	96,741,290	9,445,760
	2003	166,476,430	2,889,480
Prepared foodstuffs	1996	36,253,380	242,328,260
	1997	30,404,050	239,665,800
	1998	36,366,500	157,747,830
	1999	19,300,560	73,943,370
	2000	33,052,720	103,409,700
	2001	51,484,090	104,583,940
	2002	40,006,200	123,745,990
	2003	59,622,560	189,869,600
Mineral products	1996	140,413,570	31,378,330
	1997	161,397,870	69,959,650
	1998	169,786,500	63,291,330
	1999	244,596,410	48,107,320
	2000	379,384,740	48,709,680
	2001	815,579,950	43,620,470
	2002	1,045,598,290	47,139,360
	2003	716,344,780	41,854,140
Chemical products	1996	171,143,490	238,426,560
	1997	142,899,630	402,975,540
	1998	162,328,390	384,475,620
	1999	173,253,950	291,662,010
	2000	213,050,840	378,737,720
	2001	227,863,130	522,904,250
	2002	165,929,070	632,640,180
	2003	203,596,200	687,349,300
Plastics & rubber	1996	6,175,440	78,812,960
	1997	11,527,330	148,521,800
	1998	21,367,160	142,522,130
	1999	9,681,940	129,359,830
	2000	9,718,240	199,912,800
	2001	15,461,440	254,584,130
	2002	21,573,330	276,168,640
	2003	19,996,650	334,058,220
Hides & skins	1996	73,014,160	18,458,000
	1997	107,458,710	20,676,910
	1998	71,867,610	24,656,920
	1999	59,105,730	20,778,860
	2000	126,858,100	32,331,360
	2001	120,142,400	51,961,300
	2002	121,863,780	46,764,720
	2003	114,560,310	47,768,800
	1996	18,306,620	9,418,830
	1997	22,432,050	17,976,910

Wood & wood products	1998	40,523,330	19,458,230
	1999	84,816,150	13,109,460
	2000	102,049,390	17,028,070
	2001	127,797,340	24,770,950
	2002	143,962,250	26,779,960
	2003	166,017,520	31,039,620
Wood pulp products	1996	1,061,700	73,298,740
	1997	1,613,220	114,788,290
	1998	928,360	114,883,900
	1999	1,101,620	102,175,860
	2000	924,940	138,246,700
	2001	1,667,220	173,155,730
	2002	2,564,610	204,255,150
	2003	3,094,260	210,713,200
Textiles & textile articles	1996	36,544,950	71,055,440
	1997	45,632,280	111,468,060
	1998	54,448,710	136,886,930
	1999	35,917,770	127,112,820
	2000	57,135,490	177,909,520
	2001	63,549,150	259,451,780
	2002	66,286,390	314,334,740
	2003	64,235,950	330,070,540
Footwear, headgear	1996	16,031,700	32,626,850
	1997	16,038,640	44,189,590
	1998	13,971,580	51,052,140
	1999	17,477,850	34,689,080
	2000	19,989,870	48,063,380
	2001	20,944,230	59,812,620
	2002	24,946,670	75,401,450
	2003	16,990,820	73,731,300
Articles of stone, plaster, cement, asbestos	1996	2,531,770	34,125,820
	1997	2,248,800	55,349,460
	1998	3,830,390	61,318,170
	1999	4,802,300	50,979,620
	2000	7,225,180	63,397,210
	2001	9,410,620	95,047,080
	2002	7,096,880	97,668,310
	2003	6,488,410	109,889,040
Pearls, (semi-)precious stones, metals	1996	39,201,450	30,268,510
	1997	54,503,840	37,712,040
	1998	32,746,240	43,499,850
	1999	61,194,290	73,418,730
	2000	129,292,950	106,275,070
	2001	68,693,560	76,935,230
	2002	53,821,640	88,350,610
	2003	55,321,570	91,076,160
Base metals & articles thereof	1996	272,776,650	149,058,810
	1997	486,636,890	133,453,310
	1998	708,870,430	131,920,980
	1999	607,337,790	100,539,610
	2000	825,566,900	178,385,700
	2001	843,812,270	201,951,430
	2002	816,663,440	207,971,200
	2003	723,530,710	263,659,240
Machinery & mechanical appliances	1996	41,815,300	626,540,480
	1997	58,348,100	821,639,770
	1998	82,724,850	932,274,410
	1999	70,654,310	702,027,150
	2000	81,720,740	992,447,580
	2001	90,753,900	1,514,105,920
	2002	100,470,350	1,666,680,160

	2003	139,602,580	1,936,576,540
Transportation equipment	1996	50,686,220	217,211,310
	1997	39,857,740	359,796,610
	1998	35,541,490	374,124,830
	1999	28,808,530	158,502,130
	2000	35,089,300	267,755,340
	2001	45,852,610	493,139,900
	2002	45,239,980	558,585,000
	2003	59,364,660	646,019,350
Instruments - measuring, musical	1996	3,131,210	65,595,220
	1997	4,144,840	80,437,030
	1998	3,287,020	95,647,110
	1999	3,544,030	62,939,830
	2000	3,676,060	73,854,660
	2001	4,080,950	117,173,580
	2002	11,870,840	111,815,410
	2003	22,660,340	133,847,520
Arms & ammunition	1996	649,740	2,112,590
	1997	561,560	1,604,940
	1998	989,560	2,400,930
	1999	137,000	2,991,490
	2000	334,390	3,417,740
	2001	316,780	3,187,510
	2002	406,010	3,939,470
	2003	306,410	4,362,130
Miscellaneous	1996	11,951,100	89,033,580
	1997	18,333,840	104,461,450
	1998	24,259,330	106,817,770
	1999	27,043,700	87,665,960
	2000	43,668,080	102,378,560
	2001	51,138,170	157,846,520
	2002	55,211,950	157,672,480
	2003	62,324,970	171,707,660
Works of art	1996	201,340	185,800
	1997	300,390	1,373,660
	1998	236,440	620,980
	1999	567,070	4,182,120
	2000	208,810	2,443,290
	2001	330,140	481,650
	2002	218,480	938,240
	2003	371,120	1,494,170
Other	1996	14,846,400	35,350,150
	1997	12,296,260	24,704,660
	1998	17,060,260	23,021,340
	1999	15,867,650	21,733,290
	2000	17,649,410	25,165,700
	2001	13,408,350	33,377,430
	2002	15,165,870	31,271,940
	2003	22,003,940	25,161,200

Automotive last updated on 2001-11-15

Certification for commercially imported cars is onerous and time consuming with type-approval certificates having a limited validity (3 years). Ukraine has now signed the 1958 UN-ECE Agreement, and that is supposed to take steps to ensure that validity of the type approval should extend to the vehicle's whole life-cycle. Additionally, a number of European manufacturers have to pay more money for obtaining a type approval than other manufacturers for similar cars. Foreign and Ukrainian producers of motor vehicles and spare parts, with an investment not less than USD 150 million on the sector, are entitled to a number of fiscal privileges. These privileges are granted until 1.1.2008.

last updated on 2001-11-15 As from 1st July 1997 certain imported construction materials have to go through a new pre-market third party certification procedure. The procedures have been described by the European exporters as particularly costly and time consuming.

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TARIFFS AND DUTIES

Ukraine frequently introduces new tariff changes, targeting imported goods. Another important element are the seasonal taxes which, in principle, can be used to any product in HS chapters 1 to 97. Ukraine has applied to join the WTO.

Internal Taxation

● 970169- Import and excise duties [2002-09-25]

Ukrainian Law on "the rates of excise duty and import tax on certain means of transport and their tyres" n° 216/96-VR of 24.5.96 and Law on "the rates of excise duty and import tax on certain products" n° 313/96-VR of 11.7.96 set import and excise duties for a wide range of products from tobacco to office furniture.

Most of these are specific duties. The laws foresee temporarily lower or zero excise duties for domestic producers on: new and used motor vehicles from 1000cm³, colour TVs, magnetic tape recorders and certain fur clothing, furniture items and luxury foods incl. chocolate and coffee (domestic exemption until 2000).

New discriminations were introduced by the Presidential decree 737 of 4 July 1998 aimed at stimulating the production of colour television sets in Ukraine provides for discriminatory exemption from excise duties for local made television sets.

This was followed by a Law of 20 November 1998 which maintains the exemption.

The situation is aggravated by another regulation which decreases customs duties on spare parts of colour television sets imported for production in Ukraine (resolution of the Cabinet of Ministers N. 965 of 27 June 98). The rationale appears to be the same as for the Daewoo case: to give an advantage to national production over imported products. The discriminatory exemption from excise duties for locally-made television was due to be removed by December 1999. Among the conditions set by the IMF for the EFF is the requirement to eliminate excise duties on TV sets (Indeed excise duties should be removed from all products except five).

The law n° 311/13 of 11 December 1998 sets up higher preferential excise duty rates for a number of spirits and alcohol beverages manufactured in Ukraine, against imported products where higher rates are imposed. For example: imported grape wine - 0.4 ECU/l, local grape wine: 0.01 ECU/l.

Further amendment to law 178/96 "On excise duty rates and import duty rates for ethylic alcohol and alcoholic beverages" of 7.12.2000 foresees increase of import duty rates for must from 0.05 Euro per 1 lt to 0.2 Euro per 1 lt.,

and prolongs discriminatory excises for wines till 2004 (0.8 UAH for imported wines compared with 0.25 UAH and 0.50 UAH for dry and sweet domestic wines, respectively).

On November 19, 1999 the Ukrainian President signed two Laws adopted by the Rada (Ukrainian Parliament) reducing the scope of excisable goods. From January 1, 2000 only 5 CN groups will remain in the list of excisable goods: alcohol (including beer), tobacco, jewelry, petroleum products and cars. Import duties for the goods no longer subject to excise will not be changed. This is a positive measure that simplifies the excise system in Ukraine, as requested by the Commission and the IMF.

As for the second law "On excise duties and import duties on tobacco products", the changes envisage an impressive overall reduction of excise duty rates and their fixing in UAH. The Law contained a discrimination between locally produced (without filter) cigarettes for which an excise duty of 7 UAH per 1.000 pieces was foreseen, whereas imported ones were subject to 10 UAH per 1.000 pieces. This discrimination was presented as a temporary measure expiring on July 1, 2000, and it has been removed by the law n. 2138 of 7.12.2000 which do not contain discriminatory provisions.

In July 2002, Parliament rejected proposal to authorize Cabinet to change import duty rates. The parliament has refused to authorize the Cabinet of Ministers to establish and change the rates of import duty on all goods, excluding those subject to excise duty.

- During bilateral meetings between the European Commission and the Ukrainian authorities in June and September 2004, the Ukrainian side explained that apart from automobiles, no discrimination on excise duties would persist upon Ukraine's accession to the WTO. Consultations on excise with Ukraine continue.

● 040104-VAT- arrears [2004-10-08]

Arrears of VAT refunds to exporters have built up in Ukraine, with significant economic impact on companies (both domestic and foreign) operating in Ukraine. Pressure from the international community, notably from the EU and the IMF, resulted in the Ukrainian government addressing this issue in the 2004 budget law, (thereby meeting a key IMF condition). The 2004 budget law stipulated that five-year domestic bonds will be issued in the amount of refund arrears accumulated as of November 1, 2003 and not paid back before January 1, 2004.

The Commission is however concerned as it appears that the government's solution does not address the problem of how the new arrears will be handled. The latest indications from EU industry are that despite the issuing of government bonds to deal with VAT arrears accumulated up to end 2003, this continues to be an issue, and new arrears are building up. This is obviously problematic for EU exporters.

The European Commission has been dealing with this issue at several levels in the framework of the bilateral EU-Ukraine Agreement on Partnership and Co-operation (APC) and most recently at the Sub-Committee on Trade and Industry under the APC which took place on 14 June 2004 in Brussels. The Commission again urged Ukraine, inter alia, to ensure that new VAT arrears are not allowed to build up. Discussions on the subject are going on.

Agriculture and Fisheries

Internal Taxation

970179- spirits - excise tax and stamps [2004-09-30]

Discriminating **excise taxes** on spirits is one of the longstanding issues between the EU and Ukraine :

- The Law of Ukraine on the rates of excise duty and import tax on ethyl alcohol and alcoholic beverages No 178/96-VR of 7 May 1996 has imposed import and excise duties on spirits. The Law foresees temporarily lower or zero excise duties for domestic producers. Where imported spirits are taxed from 0.15 ECU to 3 ECU per litre of pure alcohol, domestic spirits are taxed from 0.02 ECU to 0.25 ECU until 2000.

Although Ukraine has agreed to reduce the import tariff (i.e. 7.5 Euros per litre of pure alcohol (lpa)) in three equal annual instalments to zero commencing upon WTO accession, the discriminatory measures have been repeatedly extended.

The law n° 311/13 of 11 December 1998 sets up higher preferential excise duty rates for a number of spirits and alcohol beverages manufactured in Ukraine, against imported products where higher rates are imposed. For example: imported grape wine - 0.4 ECU/l, local grape wine: 0.01 ECU/l.

These discriminatory excise rates, which were due to expire in 2000, were extended for another three years and expired on 1.1. 2004. However, the discriminatory treatment of foreign alcoholic beverages has been maintained under another law (number 2137-III) in December 2000 to be valid until Ukraine's WTO accession. For **ethyl alcohol** discriminatory excise taxes have been removed in the budget law 2004.

The measure violates the principle of national treatment and runs counter to the Partnership and Cooperation Agreement (PCA) and WTO rules. It is regularly tackled by the EC both under the PCA and during the ongoing negotiations on Ukraine's WTO accession. During bilateral meetings in The Commission has asked that Ukraine remove remaining discriminations on alcoholic beverages as soon as possible. During bilateral consultations in Brussels in June and September 2004, the Ukrainian side explained that no discrimination on excise duties on imported alcohol products would persist upon Ukraine's WTO accession. Consultations continue.

- Moreover, regarding alcoholic beverages, the EC is concerned about the mandatory 'excise stamp' which exporters of alcoholic beverages to Ukraine must place on the bottle before importation takes place, while domestic traders must only place it before commercialisation. This is overly burdensome for business, and is de facto discrimination, since in practice it means that importers are obliged to affix the stamp prior to importation, whereas domestic producers do so before commercialisation. **The EC has asked that the stamp to be affixed before commercialisation, regardless of the origin of the product.**

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TRADE DEFENCE INSTRUMENTS

Safeguard Measures

010003-Application of special investigation procedures [2002-04-24]

Art. 18 of the Partnership and Co-operation Agreement (PCA) with Ukraine allows the parties to take appropriate measures (including the restriction of imports) in case goods from the other party to the agreement are imported in increased quantities and under such conditions as to cause or threaten to cause substantial injury to domestic producers of like or direct competitive products. During the last months Ukraine has engaged in 4 Special

Investigation procedures for the following products:

Automobiles
Polyurethane products
Magnesium fire resistant bricks
Disposable syringes

The first two procedures were concluded with the recommendation to take no additional measures. The Commission was notified about the investigation pertaining to magnesium fire-resistant bricks in October 2000 and about the one on syringes in January 2001. The Inter-Agency Commission on International Trade decided in June 2001 to introduce quotas on import from the EU of syringes.

The investigations on automobiles, polyurethane and on magnesium fire-resistant materials were concluded without action on EU import.

The Commission is concerned that a reasonable amount of evidence be gathered prior to the investigation procedure so as to avoid any abusive use of this instrument and any unjustified disruption of trade.

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NON TARIFF BARRIERS

Ukraine's regulatory environment is chaotic and foreign firms regard the production certification system and licensing procedures as extremely problematic and burdensome to trade and investment. Businesses identify the following as the leading problems: lack of constant, clearly defined standards and regulations; registration schemes unfeasible for mass trade; lack of procedural flexibility; complex and lengthy import licensing procedures; overly complex and expensive certification requirements; uneven enforcement of requirements and high certification and licensing fees.

During 2000, Ukraine was rated the third most corrupt nation by Transparency International. A joint World Bank/EBRD study of selected countries concluded that Ukraine ranked near the top of the study group both in terms of "administrative corruption" (the taking of bribes, etc.) and "state capture corruption" (the ability of well-connected individuals to usurp areas of government activity or even sectors of the economy for their own benefit).

Burdensome customs procedures resulting in very long waiting periods are reported to occur regularly. Complexities arising from the Customs Union with Russia have worsened this situation.

The Government of Ukraine stipulates that procedures on standards and conformity assessment in Ukraine should be harmonised to follow EC directives. Implementation of this decree is proceeding slowly.

Standards and Other Technical Requirements

970170- Industrial Standards and Conformity Assessment [2004-09-30]

The horizontal problems, as identified by the European business on Ukraine's conformity assessment system, relate to:

- a lack of transparency: with unclear and continually changing regulations, adopted without enough lead-time given to companies to comply with these changes;
- a very large number of standards exist, which are not separable from technical regulations and have a limited degree of harmonisation with international standards;
- onerous pre-market, third party certification, in areas generally not subject to such procedures (i.e. foodstuffs and consumer electronic products), combined with an under-developed post-market surveillance system, and model or individual importer approval, is used instead of type approval, with no possibility of granting an approval for the whole life-span of a product, resulting in long time delays and unnecessary costs for companies. Furthermore, Ukraine continues to require mandatory certification for a number of lower risk products, which does not correspond to internationally accepted practices, although the list of products subject to this requirement has started to be reduced. This amounts to a violation of the WTO TBT Agreement principles of proportionality and least trade-restrictiveness.
- In addition, Ukrainian certification procedures often lack transparency and the fees requested for conformity assessment are not always proportional to the services rendered. This is in breach of Partnership and co-

operation Agreement Article 16, which refers to GATT article VIII. The same applies to registration procedures, where applicable and to legislative or regulatory changes, which are often published very late.

- There is furthermore a concentration of all regulatory functions (standardisation, metrology, conformity assessment, market-surveillance, consumer rights protection) in DSSU/Derzhstandart (web site of the State Committee of Ukraine for Technical regulation and consumer's rights protection). This concentration is contrary to European and international (TBT/WTO) practice.

The Commission has been dealing with this issue for many years, both under the Partnership and Association Agreement (PCA) and in the framework of the ongoing negotiations on Ukraine's WTO accession .

At a first stage, the Ukrainian Government Decree no. 244 of March 1997 stipulated that procedures on standards and conformity assessment in Ukraine should be harmonised to follow EC directives. In addition, Ukraine's bid to join the WTO implies in particular compliance with the agreement on Technical Barriers to Trade (TBT). Ukraine has, as a consequence, undertaken to reduce the differences between the EU's system of standardisation and conformity assessment and its own by "encouraging the use of internationally agreed instruments in this field" (art. 56 PCA) and has also committed itself to "ensure that its legislation will be gradually made compatible with that of the Community", notably in the field of "technical rules and standards" (art. 51 PCA).

The legislative progress in Ukraine has been steady, with the approval in 2002 of horizontal legislation which has been positively assessed by the Commission's services :

- The approval of the laws on standardisation, on conformity assessment and on accreditation constitutes an important move in the approximation of Ukraine with the EU systems. The introduction of the principle that standards are voluntary and the move towards a system of optional conformity assessment modules, when implemented, will be important achievements.
- European legislation is used as the basis in a number of important areas, in particular:
 - Application of the same conformity assessment modules, as used in the EU (Council Decision 93/465/EEC);
 - Ten draft technical regulations will be based on "new approach" directives;
 - The Ukraine has stopped working on their own product liability legislation and will instead base their law on the EC's product liability legislation (Council Directive 85/374/EEC);
 - An analysis is underway on the adoption of the provisions of the General Product Safety Directive (2001/95/EC).

Nevertheless, the situation in Ukraine in the area of industrial products requirements is quite unclear currently. On the one hand, the approved horizontal legislation is considered quite adequate and compatible with the EU system (New Approach), and the EC has made available the resources for carrying out the work (a large new TACIS project is functioning).

But, on the other hand, the declared progress is deceiving, e.g. it appears that there had been no progress compared with the situation in autumn 2002 . The Commission has also received information that there are important institutional resistances to the work of the TACIS consultants and that, on the ground, the changes have not yet been felt.

Intensive consultations between the European Commission and the Ukrainian authorities are going on on the status and the monitoring of Ukraine's legislative and enforcement process.

Agriculture and Fisheries

Quantitative Restrictions and Related Measures

020061-Quotas on agricultural import [2002-05-13]

The law n. 468/97 of July 1997 "on state regulation of agricultural imports", subsequently amended by the law n.32/98 of January 98, restricts the imports of live stock products through annual quotas, from 1997 until 2003. The Ukrainian authorities have indicated that the law is not actually implemented, whereas quotas are limited to 10% of the Ukrainian production. Despite the fact that the law has not yet been implemented, a threat remains to economic operators.

Standards and Other Technical Requirements

000001- Restrictions on food additives [2002-05-07]

Decree N° 4 of the Cabinet of Ministers of 4 January 1999 on a new list of food additives and the Order N° 9 published in October 1999 regarding state control and registration of special food products, biologically active additives and food additives. The continued sale of foodstuffs containing food additives that are approved and recognised as safe throughout the world, but are not currently listed as approved additives in Ukraine, is currently being threatened by existing Ukrainian legislation and positions of Ukrainian Government Agencies.

The list of food additives introduced by the Decree of the Cabinet of Ministers adopted on 4 January 1999 seems to be more restrictive than that of the EU as compared to the +/- 300 food additives authorised for use in the EU, the Decree lists +/- 200 food additives only. Unlike most

food additives regulations, however, the Decree does not contain any conditions or levels of use for the listed food additives, nor does it contain any provisions concerning the possibility to obtain approval (and eventually the listing) of new (non-listed) food additives. Moreover in late October 1999, the NCA published an Order N° 9 regarding state control and registration of special food products, biologically active additives and food additives. This Order organises a very burdensome procedure for the state examination and then the state certification of food additives. Also, the Order does not contain any link with the 4 January 1999 Decree of the Cabinet of Ministers with the consequence that it is not clear whether only additives that are not listed in the Decree are subject to the Order nor whether registration under the Order will lead to listing under the Decree. It is also not clear how either text affect foodstuffs containing unlisted additives.

This situation creates confusion on the market, and it is reinforced by the conflicting positions taken by the relevant Ukrainian Governmental Agencies. In particular the Ministry of Health does not seem to accept registration certificates from the NCA as sufficient to import and sell newly registered products in Ukraine. Moreover the Ministry of Health seems to take the position that it is bound by the 4 January 1999 Decree and the provisions mentioned above prohibiting the sale of foodstuffs containing unlisted additives and, therefore, that it does not intend to issue Hygiene Certificates, that would permit to market in Ukraine products containing additives registered by the NCA but not listed in the 4 January 1999 Decree. In summary, importers of foodstuffs containing 1 of the 100 EU approved food additives that are not listed in the Ukrainian Decree are threatened by a ban of their products from the Ukrainian market as from 4 January 2000, whereas these products are marketed freely throughout the world, based on the safety evaluation made on their additives at international (JECFA and CODEX) and EU (SCF) level. Although a further 23 products were added to the approved list in 2000, this list is still more restrictive than that in the EU and the procedure for approval of additives is cumbersome and expensive.

Sanitary and phytosanitary measures

040028-Ukraine- Live bovines, bovine products and derivates [2005-01-20]

Import ban on Live bovines, bovine products and derivates (including milk and dairy products, medicines, cosmetics, and food products and perfumes containing ruminant albumen because of BSE;

EU countries banned: DE, DK, FR, UK (in the case of FR meat of ovine is also banned)

- General statement on BSE to all Third Countries on 17/03/2004 in reaction on the statement of the USA.

During the XXXI SPS Committee in October 2004 the Commission has given a general statement on BSE (Bovine Spongiform Encephalopathy). Some WTO members started to lift the ban due to BSE for some EU live ruminants and ruminant derived products (e.g.: China, New Zealand, Brazil, Philippines). The EC requested other WTO members to follow the same line and to respect guidelines as set up by international organizations (OIE).

040011-Ukraine- Dairy products [2005-02-01]

Dairy products, request of health certificate additional sampling

- The problem has been solved by the competent authorities of the two countries in the year 2004 by agreeing on a certificate. However the demands for heavy metals are more strict as foreseen in the EU regulation.

Automotive

Standards and Other Technical Requirements

020062-Certification for imported cars [2002-05-17]

In the automobile sector, certification for commercially imported cars is onerous and time consuming with type-approval certificates having a limited validity (extended to 5 years on 15.1.01).

Ukraine has recently signed the 1958 UN-ECE Agreement, and it should take steps to ensure that validity of the type approval should extend to the vehicle's whole life cycle.

Manufacturers must perform conformity tests even when ISO 9000 certificate is given.

In addition, all factories of car producers exporting cars to Ukraine are subject to inspections by the Ukrainian officials, with costs borne by the respective manufacturer.

Services - Transport

GATS Specific Measures

● 970178- Aviation : Discriminatory fees [2004-05-04]

Decree of the Cabinet of Minister on the creation of a special State Fund for the financing of state aviation expenses and the participation of Ukraine in international aviation organisations n° 819/93 of 28.9.93 has been amended 6 times since 1993.

The latest version of 05.08.2000 still provides for:

- different fees for certification for domestic and foreign applicants;
- different fees for registration/ re-registration/taking out of registry of the plane for domestic and foreign applicants;
- a separate paragraph providing for permission for foreign operator to operate in Ukraine (permission to work in Ukraine territory for foreign operators is 37.8 untaxable minimum wages (17 UAH = 3.5 USD) plus 1600 USD).

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RESTRICTIVE EXPORT MEASURES

The Commission is extremely concerned about the proliferation of restrictive export measures imposed by Ukraine on a large number of products. Export restrictions from Ukraine are recurrent, are linked to frequently changing legislation and may vary in nature, ranging from export prohibitions, discriminating export licences, export licences fees and "indicative" export prices to export duties. The latter vary in relation to revenue objectives set by the government. The level of these duties is often prohibitive, with a strong trade-distorting impact, and in some cases prohibitive for trade.

Iron, Steel and Non-Ferrous Metals

Export Prohibition and Other Quantitative Restrictions

● 020070-Export ban on non-ferrous scrap [2004-10-03]

The "Law on scrap metal" of May 1999 imposed restrictive conditions, including an export licensing mechanism, on trade of non-ferrous scrap.

Since August 2000, the Ukrainian Cabinet of Ministers has imposed a full ban on exports of non-ferrous scrap metal. Particular concern relates to copper scrap. It is usually justified on public order grounds.

The issue is regularly addressed during bilateral meetings, lastly at the PCA Trade Subcommittee in April 2004, and in the framework of Ukraine's WTO accession negotiations in July and September 2004.

- This ban is incompatible with Ukraine's obligations under the Partnership and Co-operation Agreement (PCA) and WTO rules. The Commission has continued to stress, both under the PCA and the discussions on Ukraine's WTO accession, that the ban has to be lifted. In September 2004 Ukraine confirmed that it would propose its replacement by export duties before its WTO accession, with a gradual reduction to be agreed. The issue continues to be dealt with.

● 990062- Export duties on ferrous scrap and waste [2004-10-08]

The EC/Ukraine Steel Agreement commits both Parties to abstain from applying restrictions on the bilateral trade of ferrous scrap and waste.

However :

- The Ukraine "Law on scrap metal" N° 619-XIV of 5 May 1999 introduces restrictive conditions on the export of scrap metal. It prohibits the export of non-ferrous scrap metal in non-dismantled condition. It empowers the Cabinet of Ministers to introduce quotas or full ban on exports of ferrous scrap metal.
- On 13 December 1999, the Cabinet of Ministers of Ukraine further adopted Resolution N° 1395 on the export of ferrous scrap, which also provides for an export monitoring mechanism, and entitles the Ministry of Industrial Policy to take the necessary steps to ensure that domestic needs are satisfied in priority.
- In the beginning of 2002, the Cabinet of Ministers proposed to Parliament to adopt a law tightening the conditions for issuance of licences to collectors of scrap metal. The draft law envisaged issuing licences only to those enterprises that own equipment for processing scrap

metal and transport facilities.

- Moreover, despite a draft agreement of November 2001 providing for full liberalisation of scrap metal commerce between EU and Ukraine, this latter delays instead the reimbursement of VAT (21%) to Ukrainian operators exporting scrap, imposing de facto a tax to export. Thus scrap exporters are less and less interested in exporting and therefore are encouraged to trade domestically. This suits the domestic steel industry that has at its disposal relatively cheap scrap. (Because of this practice, export of scrap metal into the EU has decreased in 2001 by 17% in comparison with 2000 et in 2002 by 52% in comparison with 2001.)

- As to the VAT reimbursement for scrap metal exporters, the Ukrainian side promised at the Trade Sub-committee under the EU-Ukraine Agreement on Partnership and Cooperation (PCA) , in July 2002, to refund VAT for those scrap metal exporters, which are not "suspected for fraudulent behaviour".

- In the end of November 2002, Parliament once again established a 30 € per ton export duty on ferrous metal scrap, overcoming the President's veto. 357 MPs voted in favor of overturning the President's veto of the law "On Export Duty for Wastes and Scrap of Ferrous Metals," exceeding the required qualified majority of 300 votes that was needed to pass this bill into law. The products concerned are :

HS positions

7204.1000 -Waste and scrap of cast iron

Waste and scrap of alloy steel:

7204.21 -- Of stainless steel

7204.2110 - - - Containing by weight 8% or more of nickel (ECSC)

7204.2190 - - - Other (ECSC)

7204.2900 - - Other

7204.3000 -Waste and scrap of tinned iron or steel (ECSC)

Other waste and scrap:

7204.41 - - Turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles

7204.4110 - - - Turnings, shavings, chips, milling waste, sawdust and filings (ECSC)

- - - Trimmings and stampings:

7204.4191 - - - - In bundles (ECSC)

7204.4199 - - - - Other

7204.49 - - Other:

7204.4910 - - - Fragmentised (shredded) (ECSC)

- - - Other:

7204.4930 - - - - In bundles (ECSC)

- - - - Other:

7204.4991 - - - - - In bundles (ECSC)

7204.4999 - - - - - Other

7204.50 - Remelting scrap ingots:

7204.5010 - - Of alloy steel (ECSC)

7204.5090 - - Other

According to the relevant provisions of the EU-Ukraine Partnership and Co-operation Agreement (PCA), export restrictions shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties. Therefore, Ukraine has been asked to amend the law n. 180/96 by removing export duties for live animals, hides and skins, and remove the additional restrictions on export. Therefore, the Commission has asked Ukraine to submit a phasing-out scheme as soon as possible.

The issue continues to be regularly addressed during the relevant bilateral meetings under the EU-Ukraine PCA as well as in the framework of the ongoing negotiations on Ukraine's WTO accession in Geneva. The latest discussions took place in April and June 2004 in Brussels, and in September 2004 in Geneva.

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**Textiles and
Leather**

Export Taxes

🍌 970146- *Raw hides & skins: Export taxes and minimum prices [2004-11-24]*

- The law N. 180/96 of 07.05.96 introduced export duties and a minimum export price on live animals, hides and skins. Despite an EC request to remove these restrictions, the Ukrainian

Verkhovna Rada approved on 14.02.97 a law modifying some individual taxes but maintaining in general the former export duties.

- Conditions set by the IMF for the 1998 EFF loan required the elimination of export duties on animal hides and skins for 15 November 1998. Therefore a draft removing these restrictions was presented to the Ukrainian Parliament. However, in May 2001, the Ukrainian government introduced a ban on 'tolling contracts' for hides and skins. Since then, several drafts have been put forward by the Government to the Rada to decrease/eliminate the duties with no result.

Export duty rates are currently :

HS position 41.01 - Cattle hides : 30 % of customs value / minimum 400 €/ton

HS position 41.02 - Sheep or lamb skin : 30 % of customs value / minimum €1/animal

HS position 41.03.90000 - Pigskin only : 27% of customs value / minimum 170 €/ton.

This issue is regularly dealt with both under the Partnership and Co-operation agreement and in the framework of Ukraine's WTO accession negotiations.

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INVESTMENT RELATED BARRIERS

Foreign investment in Ukraine is very low compared to other countries in the region. European FDI flows to Ukraine are still just above €100 Million in 2002. Moreover, capital flight is significant. An improvement of the investment climate, notably through a more effective enforcement of legislation adopted and the completion of the reform process, is essential for Ukraine to attract more investment.

This issue has been raised repeatedly at all levels. Ukraine has not created the conditions to attract investors. Fiscal and other advantages offered to individual investors have not paid off, and run counter to international obligations. The creation of "Free Economic Zones" lacks transparency, raises doubts in the WTO, and has failed to bring in investments.

The main obstacles faced by EU investors are frequent changes in regulations affecting foreign trade, lack of transparency, failings in implementation of laws, discriminatory regulation and corruption. The European Business Association in Ukraine was established in 1999 as a forum for discussion and resolution of issues facing the European private sector in Ukraine. As of February 2001, it brings together representatives of 143 companies operating in Ukraine.

The Partnership and Co-operation Agreement commits Ukraine to providing the same treatment for EU investors (Community companies, subsidiaries and branches) as for its own companies. With few exceptions, the problems faced by EU companies in Ukraine are also common to domestic investors. The unsatisfactory climate for investment is therefore non-discriminatory.

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IPR

Membership in multilateral agreements

Universal Copyright Convention (May 1973);

World Intellectual Property Organization (1970);

Paris Convention for the Protection of Industrial Property (1991);

Madrid Agreement Concerning the International Registration of Marks (1991);

Patent Cooperation Treaty (1991);

Agreement on Measures Related to the Protection of Industrial Property and the Establishment of the Interstate Council for the Protection of Industrial Property in the Commonwealth of Independent States (1993);

International Convention for the Protection of New Varieties of Plants (1995);
Berne Convention for the Protection of Literary and Artistic Works (1995);
Trademark Law Treaty (1996);
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedures (1997).

Ukraine is committed under the terms of the Agreement on Partnership and Cooperation with the EU and its Member States (PCA) to adopt a level of protection similar to that in the Community by the end of 2001, and to accede to a number of international conventions on IPR (Art. 50 and Annex III).

In January 2002, the United States Government placed prohibitive tariffs on approximately \$75 million worth of metals, footwear, and other imports from Ukraine because of its failure to enact legislation to crack down on sound recording and optical media piracy.

MEGISLATIVE DEVELOPMENTS IN UKRAINE

• Copyright and related rights

- Ukraine is party to the Berne Convention (BC), Paris Act, since 1995. The BC requires no specific transposition into national law. Therefore, Ukraine complies with Article 9(1) TRIPs.
-The dispositions of Articles 9(2), 10, 11, 12, 13 and 14 TRIPs are transposed in the new Copyright Act that was, according to our information, promulgated in 2001 (although the version obtained from WTO is marked as a draft, dated 26 July 2001).
-The new Copyright Act correlates also to most of the EC acquis in the domain of copyright, notably directives 91/250, 92/100, 93/98, 96/6, 2001/29 and 2001/84. The situation is somewhat unclear with regard to directive 93/83, given that the Ukrainian law makes reference only in general terms to "broadcasting", but not to "satellite broadcasting and cable retransmission". Nevertheless, the level of protection appears, in principle to be "similar" to what is foreseen by the EC acquis.

• Trademarks

Notwithstanding past commitments of the Ukrainian government, it seems that the trade mark law of Ukraine is still a long way off the minimum standards of protection as specified in the TRIPs Agreement. Ukraine has joined many of the IPR treaties and conventions relating to Trade Marks. Ukraine is a Member to the Madrid Agreement (1991) and Madrid Protocol (2000) and in 1996 Ukraine ratified the Trademark Law Treaty (TLT).

Law No 3689-XII dated 15/12/1993 "On Protection of Rights on Marks for Products and Services" came into force on 01/06/1994. Unfortunately, the translation of this law that we have received via WTO appears to be of a very poor quality. For this reason, it is - with regard to some points - rather difficult to understand the exact meaning of some of the provisions, and to assess their conformity to TRIPs.

Main weaknesses of the law appear to be:

-Trademark protection is ensured only in view of identical, not in view of similar signs,
-It is unclear how a third party may petition for the cancellation of a trademark
-It is unclear how well-known trademarks are to be protected

• Geographical Indications

The Ukrainian Law on Protection of Rights to the Origin of Goods does not yet appear to comply to the standards set by TRIPs.

Notably, it appears that protection is only granted for a limited period (whereas TRIPs foresees no such limitation), and only for geographical names (whereas TRIPs foresees protection also for names that are not in the strict sense geographical). As a general observation, some of the concepts used in the Ukrainian law appear somewhat unclear, and there is also no clear information on the procedures foreseen (e.g. : is there a right for foreign right holders to oppose the registration of a geographical indication?).

• Industrial Designs

The Ukrainian Law 3688-XII on Industrial Designs, last amended in December 2000, is closely linked to patent legislation, and largely makes use of a very similar set of terms. Notably, "patents" can be obtained for industrial designs, but these patents are not identical to those granted for inventions. This terminology could, at first sight, mislead. Nevertheless, the legislation grosso modo seems in line with TRIPs.

- **Patents**

The Ukrainian Law 3687-XII on Protection of Rights to Inventions and Utility Models, adopted in 1993, has been amended in 2000 and appears, in its present version, to comply with the requirements of TRIPs.

- **Layout Designs (Topographies)**

Ukraine has a Law on the Protection of Rights to Integrated Circuit Designs, last amended in December 2000, complying with Art. 35 to 38 TRIPs. Protection is made dependent of registration. The protection period is 10 years.

- **Enforcement**

Needs to be developed.

- The 'umbrella' law of May 2003, amending existing legislation in order to make it TRIPs compatible, does not appear to match the set purpose. Please ask for some updated information.

Enforcement problems on IPR

980138- piracy [2004-10-08]

The Commission is concerned about the situation in Ukraine. While Ukraine has made considerable progress in adopting a legislative framework that complies with the requirements of TRIPs and the PCA, the lack of enforcement of IPR and, resulting thereof, the high level of piracy and counterfeiting, remains a real concern for the EU and its enterprises. The Commission continuously receives complaints from various sectors of the EU industries. The present situation represents an important obstacle to investment and results in major losses for right-holders on both sides.

On the market of phonograms, for instance, there massive and apparently unhindered activities of pirates and counterfeiters in Ukraine. The situation appears to be specifically grave with regard to the production and placing on the market of counterfeited compact discs.

In December 2001, the US government imposed trade sanctions , in view of the “failure of Ukraine to properly regulate optical media production and to engage in effective enforcement of copyright law”. These sanctions were in addition to the complete withdrawal of trade benefits from Ukraine. In order to appease the situation, Ukraine adopted in February 2002 a law regulating the manufacture, export and import of compact discs. This law foresees a licensing system for producers, importers and exporters of CDs and imposes severe financial sanctions on offenders.

Concerning the enforcement legislation, there is only the text of a law 2362-III, of 5 April 2001 , increasing the sanctions foreseen in the Criminal Code, the Code on Administrative Violations and the Customs Code for IPR infringement. Although this law must be seen as a positive step, this is certainly not providing a complete picture of the legal framework.

According to information received from Ukraine, a set of new legislation on IPR enforcement, in order to comply with TRIPs, is currently in the process of adoption. The Commission has requested to be informed which measures precisely are envisaged and whether drafts (in English) could be obtained.

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