

*Blue Ribbon Analytical and Advisory Centre
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UKRAINE'S SECOND YEAR IN WTO: TRENDS IN FOREIGN TRADE IN GOODS AND ANALYSIS OF COMPLIANCE WITH COMMITMENTS





Ukraine



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**UKRAINE'S SECOND YEAR IN WTO:
TRENDS IN FOREIGN TRADE
IN GOODS AND ANALYSIS OF
COMPLIANCE WITH COMMITMENTS**

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Authors:

Iryna Kobouta – Ph D (Econ.), Team Leader, International Integration Team,
Blue Ribbon Analytical and Advisory Centre

Vitaliy Zhygadlo – Analyst, Blue Ribbon Analytical and Advisory Centre

Tetyana Luzhanska – Analyst, Blue Ribbon Analytical and Advisory Centre

Edited by Marcin Swiecicki, Director of the Centre

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INTRODUCTION

The second year of Ukraine's membership in the World Trade Organisation has passed.

For Ukrainian economy this year was marked with a financial crisis, national currency devaluation, and people's declining purchasing power. For example, consumer price index in 2009 was 112.3% on the whole, whereas industrial producer price index totalled 114.3%. Disposable income that can be used by the population to purchase goods and services increased by 6%, whereas real disposable income determined with account of a price factor declined by 8.5%.

Retail trade turnover¹ during January-December 2009 amounted to UAH 442.8 bn, or 83.4% year-on-year. Physical amount of wholesale trade turnover amounted to 80.7% year-on-year. Overall, domestic industry saw 21.9% production output decline in 2009 compared to 2008. Over 2009, construction works were performed amounting to the sum that is 51.8% of the 2008 construction volume in comparative prices. Transport enterprises carried 695.7 mln t of freights in 2009, or 78.1% year-on-year. Freight turnover amounted only to 77.5% of the 2008 figure.

Early in 2010, Ukraine elected its new President. Following the election, a new Government was appointed that outlined directions of economic reforms in the country. New Presidential Administration and some Government representatives voiced intentions to revise the commitments undertaken at the accession to the WTO. The Russian Federation invited Ukraine to join the Customs Union with Belarus, Kazakhstan and Russia. The Presidents of Ukraine and Russia signed in April 2010 an additional agreement to the bilateral gas contract that provides for a 30% discount from the price of previous arrangements, which is a factor to improve competitiveness of domestic goods.

Authors of this publication present a review of compliance with the commitments undertaken by Ukraine at its accession to the WTO, analysis of foreign trade trends over the period of Ukraine's WTO membership, and results of evaluation of implementation by central executive authorities of action plans to adapt Ukraine's economy to the WTO requirements. Besides, they discuss possible consequences of Custom Union with Belarus, Kazakhstan and Russia, provide recommendations on improving cooperation with business, and comments concerning more active involvement in the Doha Development Round.

¹ Including retail trade turnover of retail trade enterprises, and estimated data on commodity sales at markets and by natural person entrepreneurs.

1. UKRAINE'S SECOND YEAR IN WTO: MAJOR TRENDS IN FOREIGN TRADE IN GOODS

1.1. General trends

A dominating factor determining trends in Ukraine's foreign trade during the second year of Ukraine's WTO membership consisted of a global financial crisis and its consequences. Such a situation complicated assessment of positive or negative effects of the accession to the WTO to some degree. This is confirmed by ambiguity of qualitative characteristics of relevant foreign trade indicators.

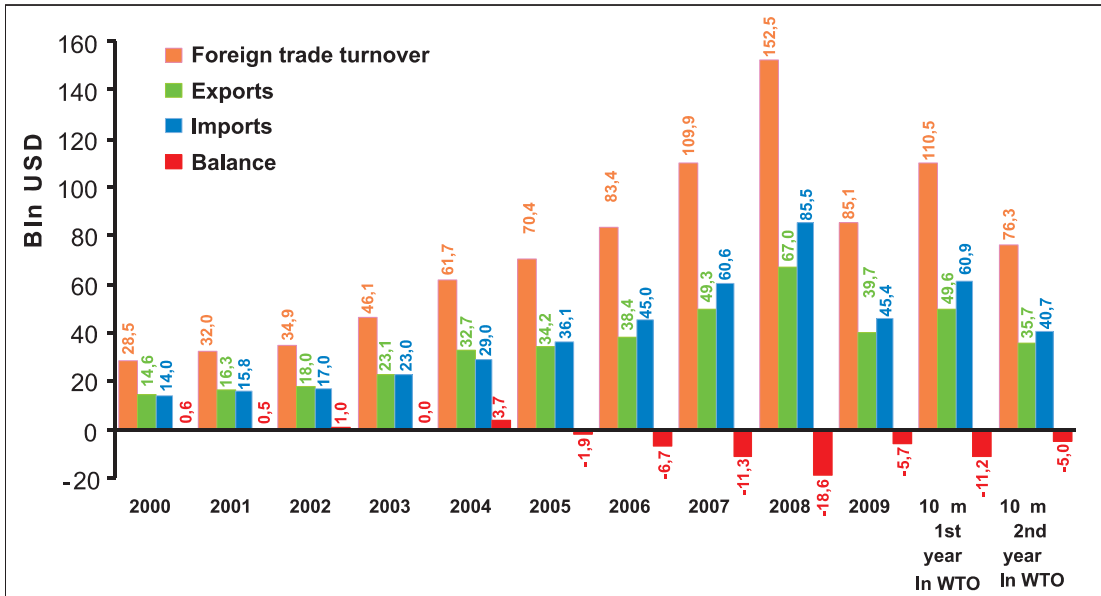


Fig. 1. Dynamics of major indicators of Ukrainian foreign trade in goods: 2000-2009, June 2008 – March 2009, June 2009 – March 2010

Source: State Statistics Committee of Ukraine

For example, demand decline and unfavourable price conjuncture at global commodity markets resulted in 28% decrease in export supplies (during the first ten months of the second membership year compared to the same period of the first year²), while import supplies to Ukraine dropped by 33% because of hryvnia devaluation and people's declining purchasing power. That is, commodity import decrease rates outstripped export decrease rates. As a result, although foreign trade balance remained negative, it decreased 2.3 times, from USD 11.2 to 5.0 bln (Fig. 1), and the foreign trade balance improvement concerned almost every branch of economy, except for metallurgical complex products. It allowed balancing Ukraine's national economy to a

² The second year of Ukraine's WTO membership is understood to consist of the period from June 2009 through May 2010, however, only statistical reports on foreign trade as of March 2010 inclusive was available at the moment of this study. That's why the authors operate in this work with statistical data for the first 10 months of the second membership year, assuming that foreign trade trends will generally not change during the remaining two months.

certain degree, improving payment balance indicators, particularly trade balance, and promoted domestic market development and further dissemination of import substitution processes. We should point out that decreasing negative balance in 2009 interrupted an increasing trend that had existed during previous 8 years (2000-2008).

1.2. COMMODITY STRUCTURE OF EXPORT

The export commodity structure generally remained unchanged during the period covering Ukraine's second year of the Organisation membership. Ferrous metals remain the main export commodity. Together with agricultural products, machine-building products, and chemical industry products, they cover more than 80% of Ukraine's entire export (Table 1).

Table 1

Ukraine: export commodity structure after Ukraine's accession to the WTO

	10 months of the 1 st year in the WTO June 2008 – March 2009		10 months of the 2 nd year in the WTO June 2009 – March 2010	
	bn USD	%	bn USD	%
Total	49.6	100	35.7	100
Ferrous metallurgy products	19.0	38	11.4	32
Agricultural products	9.9	20	8.2	23
Machine-building (machines and equipment; vehicles)	8.0	16	6.3	18
Chemical industry products	4.1	8	2.8	8
Energy commodities	3.0	6	2.3	6
Other	5.5	11	4.8	13

Source: State Statistics Committee of Ukraine

Metal products. Trends featuring reduction of ferrous metal products' share in export, seen in the first year of Ukraine's WTO membership, continued³. In particular, the share decreased by 6% during the second year as compared to the first membership year – down to 32% in the export structure. During 2005-2008, export supplies of metal products were within 41-43%.

Currency proceeds from metal exports during the period from June 2009 through March 2010 decreased by 40% compared to the same period of the first membership year whereas metal exports in quantitative terms actually remained at the same level, 23.2-23.3 million tons. That is, such a decline was caused by an unfavourable conjuncture of metal product prices as a result of general crisis occurrences in the global economy. For example, an average export price was at 734 USD/t in the first year of Ukraine's membership in the WTO but then dropped to 428 USD/t in the second year. The downfall of ferrous metal product prices forced Ukrainian producers into a tight spot. In such a situation, it would be natural to redirect the industry partially to domestic market needs.

³ One year of Ukraine's membership in WTO. Edited by Marcin Swiecicki. Team of authors: Iryna Kobouta, Vitaliy Zhygadlo, Andriy Zayika – Kyiv: 2009 – 44 p.

However, despite the country's potentially considerable internal demand for ferrous metal products, real domestic consumption is insignificant and mainly relies upon the needs of the construction sector that was in a critical condition during the "crisis-affected" 2008-2009 years. For example, volumes of performed construction works decreased by 15.8% in 2008 year-on-year and by 48.2% in 2009. Owing to such factors, Ukrainian metal enterprises reduced their production outputs: according to the State Statistics Committee of Ukraine, metallurgical output and production of finished metal articles in 2009 was 73.3% of the 2008 figure.

It should be noted that negative consequences of foreign markets loss could have been much more significant to Ukrainian metallurgists because some governments applied additional protectionist measures to protect their markets. However, Ukraine's membership in the WTO played its positive part in that aspect. After accession to the Organisation, Ukraine's metallurgical sector benefitted almost the most among other Ukrainian industry sectors: cancelling quotas at the EU markets, complicating antidumping investigation procedures, and establishing additional restrictions helped promote metal products considerably.

Still, we should note that the global financial crisis prevented Ukrainian metallurgists from benefitting the WTO membership in full.

Agricultural products. Agriculture is the only sector in Ukraine demonstrating growth during the financial and economic crisis: for example, gross output growth in 2009 was 0.1% year-on-year. All other sectors demonstrated production decline indicators. Positive results of agricultural operations became possible due to successful export activities as well.

As compared to the first year of membership, agricultural product export volumes in value terms decreased by 17% but such a result can still be regarded as successful: first of all, a generally positive trend in agricultural product export was observed during the year (Fig. 2) due to a favourable conjuncture of prices for grain crops, oil-bearing crops and sunflower oil; secondly, the considerable increase in export deliveries seen in the first year of the WTO membership was partially related to peak food prices in the world because of a "global food crisis" in 2007 and 2008.

The share of agricultural products in the general export structure increased from 20% in the first year of the WTO membership to 23% in the second year. Before the WTO membership the share was about 12-13%.

Reasons behind such an increase in export deliveries of agricultural products can be explained by the following factors:

- rich harvests of grain and oil-bearing crops in 2008-2009;
- favourable price conjuncture at global markets;
- hryvnia devaluation in 2008-2009 also improved competitiveness of Ukrainian-made agricultural products;
- due to a financial crisis, freight rates became substantially lower than before the crisis;

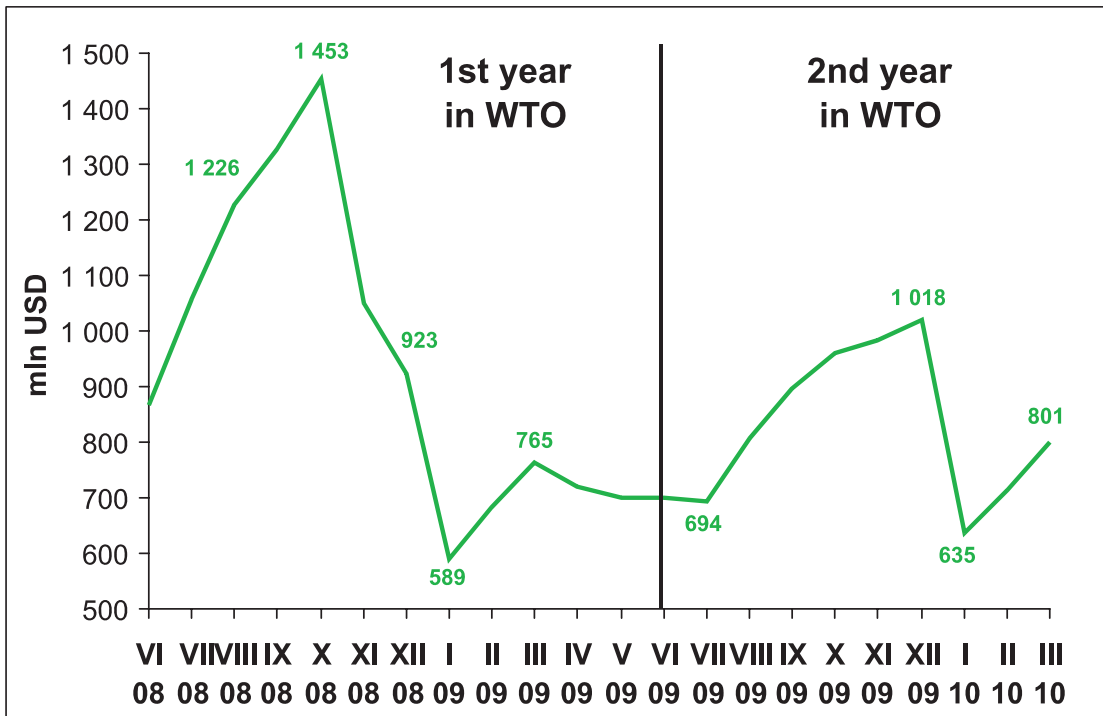


Fig. 2. Dynamics of agricultural product export after Ukraine's accession to WTO

Source: State Statistics Committee of Ukraine

- the fact that old quantitative export restrictions failing to meet the WTO requirements were removed and that the Ukrainian Government did not introduced new ones may be regarded as one of the most positive consequences of the accession to the Organisation.

The basis of the Ukrainian agrarian export consists of products with a low and medium processing rate such as grain and oil-bearing crops as well as sunflower oil. Their aggregate share totaled 66.5% over the period from June 2009 through March 2010.

These commodity categories are very sensitive to external factors and unstable in terms of a price component. This considered, it makes sense to develop domestic consumption so that, in case of worse conditions at external raw material markets, there was a possibility: first of all, to adjust product offering volumes to stabilise the price situation, and, secondly, to retarget commodity flows to sectors producing goods with greater added value, which would generally allow risks to be diversified.

For example, in our opinion, development of large-scale commodity production in dairy and meat industry has good prospects. It would allow correcting an internal misbalance between agricultural production and consumption and developing promising export areas. This opinion is also confirmed by the world trend of changing a food ration in favour of greater consumption of animal proteins. For example, according to the UN

Food and Agricultural Organisation (FAO)⁴, meat product consumption rates in the world will be growing by 1.9% annually until 2015, and by 1.5% in 2015-2030. These figures will be even higher for developing countries – 2.7% and 2.1%. At the same time, population development rates in the world are expected to reach 0.9% and 0.6% including 1.1% and 0.7% in developing countries. Hence, meat product consumption rates outstrip population development rates greatly. Such global changes in animal product consumption will certainly require adequate response on the production part.

As a positive example, we should mention experience of Ukrainian poultry producers that almost forced out imported products in the fresh or chilled poultry segment at the domestic market, and commenced large-scale commodity export deliveries since 2007, almost doubling them every year.

Industrial products (mechanical equipment; machines and mechanisms; electric equipment and parts thereof. Vehicles and road equipment. Optical devices and apparatuses, etc.). The country's industrial development is determined by the share of this sector's products in the general structure of export deliveries. Ukraine's industry lost almost a half of its capacity during 1995-1999; for example, industrial output index was within 49-51% in that period if we take the 1990 figure as 100%. Such trends adversely affected competitiveness of Ukrainian-made industrial products at the global markets.

Gradual restoration of the industry's positions began in 2000. During the period from 2001 through 2006, the share of machine-building products in the total export structure was stable varying within 12-14%. However, the share increased to 16-18% in 2007-2008, and such gain was also accompanied with growing absolute export indicators: for example, average annual growth rates in trade were at the level of 40%. A stimulating factor for such growth consisted of economic situation improvement in the CIS countries, first of all the Russian Federation, and, as a result, growing demand for investment-related products. The share of the CIS countries in the industrial product export structure was more than 70% during that period. Impact of the WTO membership upon trends in trade in such goods with the CIS countries was almost not felt in subsequent years because the import regulation regime with those countries did not change.

During the global financial crisis, such dependence of Ukrainian exporters on the CIS markets had negative consequences. Crisis occurrences in economy resulted in considerable decline of industrial output in the Russian Federation, a major consumer of Ukrainian-made machine-building products, which caused decrease in their export deliveries from Ukraine. For example, exports to the CIS countries dropped by 34% during the period from June 2009 through March 2010 compared to the corresponding previous period whereas their share in the structure decreased from 71% to 59%.

Such a drop was the main reason behind a 22% decrease in export deliveries of industrial products during the second year of Ukraine's membership in the WTO compared to the first one. At the same time, industrial product exports to the EU-27 countries remained actually at the previous period's level – USD 1.5 bn whereas the share in the

⁴ World agriculture: towards 2015/2030; an FAO perspective. Author: Bruinsma, Jelle. Corporate author: FAO. Imprint: London, Earthscan; Rome, FAO, 2003 - 432 p.

structure increased from 19% to 24%. Attention is drawn to increase in industrial product exports to Asia – by 1.6 times; as a consequence, their share in the structure grew from 5% to 11%. Major export goods delivered to Asian countries include boilers, machines, apparatuses and mechanical devices – 63%; electrical machines and equipment – 14%; optical devices and apparatuses – 12%; air navigation apparatuses or space vehicles – 7%.

Chemical industry products. In the period covering the second year of Ukraine's WTO membership, export deliveries of chemical products dropped by 33% compared to the corresponding period of the previous year. This is the second position in terms of export volume decline after metallurgical complex products. In addition to the general demand-reduction trend at global markets, increase of the Russian gas price by more than one-third also played its part. It became an essential reason of deterioration in characteristics of competitiveness of products made by the Ukrainian chemical industry enterprises, considering that production of mineral fertilisers, a key export product, is heat- and power-intensive, i.e. natural gas is both a fuel and a raw material for their production whereas its share in the cost of chemical industry products varies between 25% and 60%.

1.3. GEOGRAPHIC STRUCTURE OF EXPORT

All the transformations in the geographic structure of Ukrainian export during the second year of Ukraine's WTO membership should be considered with account of substantial reduction in its volumes – by 28% compared to the first year period. A decrease in Ukrainian-made product exports was seen in all regions of the world; it was the lowest in deliveries to Asian countries – by 14%, and the highest in deliveries to American countries – by 55%. Reduction in value of products exported to the CIS, EU-27 and Africa was 27%, 35% and 24%, respectively.

The geographic structure of export generally did not change in the second year of the WTO membership. Like in the previous years, key consumers of Ukrainian-made goods include the CIS countries – 35% in the structure, and the EU-27 – 24% (Fig. 3). We should note, however, that a decreasing trend in their specific weight continued.

The reduction in export deliveries to the CIS and EU-27 countries is related to limited demand for metal industry and agricultural products due to negative processes in the global economy caused by the economic crisis.

Subsequently, a main task for Ukrainian exporters will consist of maintaining the share of Ukrainian metallurgical and metal-working products at the markets of the EU countries. As far as agriculture is concerned, the European market is quite promising for building up export volumes provided, however, that relevant certificates are available and that Ukrainian products meet rather high standards of the European internal market.

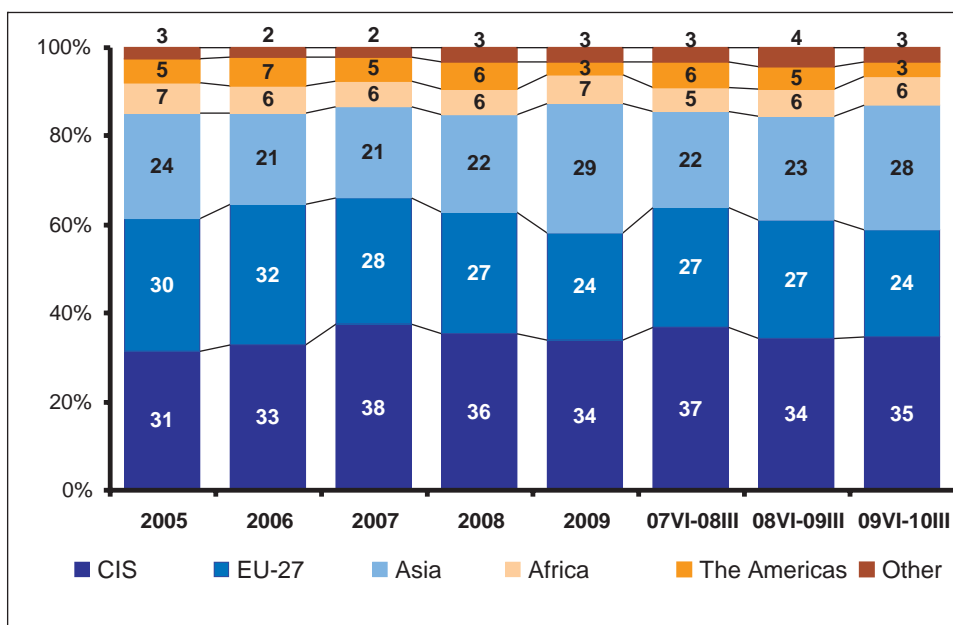


Fig. 3. Geographic structure of commodity export from Ukraine

Source: State Statistics Committee of Ukraine

Instead, an increasingly greater role is played by trade relations with Asian countries: for example, their share in total commodity exports increased by 5% during the second membership year compared to the first year, from 23% to 28%. Such an increase became possible due to traditionally considerable deliveries of metallurgical products (49% in the structure) and massive food supplies, mainly grain crops, oil-bearing crops and sunflower oil (27%); the share of industrial products increased two times, to 7%. Such revival in trade relations is important, considering a stable demand on the part of that region – even during a financial crisis – for food and products with an unfinished production cycle, on the one hand, and demand for technologies and developments in the following sectors, on the other hand: machine-building (including energy equipment), aircraft building, space industry, metallurgy, chemical industry (including mineral fertilisers), agriculture, etc.

1.4. COMMODITY STRUCTURE OF IMPORT

The dynamics and structure of import commodity deliveries to Ukraine during its second year of the WTO membership were mainly determined by impacts of a global financial crisis:

- industrial output decline caused a decrease in Ukrainian enterprises' demand for raw materials and energy resources;
- decreasing investment activity affected reduction in the needs for import of machine-building products, equipment, vehicles, and other technological goods;
- abrupt contraction in consumer lending and people's income caused a decline in importation of consumer goods: household appliances, motor cars, and foodstuffs;

- restricted access to financial resources necessary to carry out import transactions;
- hryvnia devaluation increased the cost of imported goods.

Such tendencies resulted not only in a drop of total imports by 33% compared to the period covering the first year of the WTO membership but also in certain structural changes that occurred, first of all, because of a 54% drop in machine-building product imports (Table 2).

Energy commodities. Energy material import reached the top position in the structure of commodity import to Ukraine – 31%; volumes in value terms decreased by 23% compared to the first year of the WTO membership.

It should be pointed out that impact of the country's WTO membership upon import of these products is minimal because the Russian Federation, not a WTO member, is the key exporter.

Industrial products (mechanical equipment; machines and mechanisms; electric equipment and parts thereof. Vehicles and road equipment. Optical devices and apparatuses, etc.). The share of these products in the import structure decreased by 9% compared to the previous period, to 20 percentage points in the general import structure, because of the same reasons mentioned above.

Table 2

Ukraine: import commodity structure after Ukraine's accession to the WTO

	10 months of the 1st year in the WTO June 2008 – March 2009		10 months of the 2nd year in the WTO June 2009 – March 2010	
	bn USD	%	bn USD	%
Total	56.9	100	40.7	100
Energy commodities	16.7	27	12.8	31
Machine-building (machines and equipment; vehicles)	17.8	29	8.2	20
Chemical industry	8.3	14	7.2	18
Other	8.5	14	5.6	14
Agricultural products	5.2	9	4.3	11
Ferrous metallurgy	4.4	7	2.5	6

Source: State Statistics Committee of Ukraine

Decrease in the importation amounts of most commodity items is not directly a consequence of the commitments undertaken at the accession to the WTO. Import decline of motor cars and refrigerating equipment is only partially related to introduction of a 13% provisional mark-up to the rate of import duties, which were reduced due to the accession to the WTO. The General Council of the World Trade Organisation on 3 August 2009

obliged Ukraine to cancel the above-mentioned restrictions by 7 September 2009 as being in conflict with the WTO rules. The Ukrainian party informed the WTO on 8 March 2009 on the implementation of such requirements. It should be noted that, having made a certain step towards integration into international structures, such as accession to the Organisation, Ukraine must use domestic market protection methods being not in conflict with the WTO rules.

Although implementation of such protective measures was not a main reason behind reduction of imports of these products, it did have certain restrictive impact. For example, the value of imported motor cars dropped 5.5 times and that of refrigerators by 1.5 times during 10 months of the second WTO membership year compared to the corresponding previous period.

Chemical industry. The share of products of this sector in the import commodity structure increased from 14% to 18%. It can be explained by the following reasons: first of all, by relatively minor reduction in import volumes – by 13% compared to the first membership year. Secondly, importation of pharmaceutical products having a considerable share in the chemical product import structure (27%) remained at the level seen in the first membership year – USD 1.96 bn against 1.94 bn in the first year. This fact was promoted, on the one hand, by internal factors: demand for medicines that are mainly not produced by domestic enterprises or produced at the level of process schemes, which are several generations outdated, failing to meet contemporary demand. In October-December 2009, domestic demand for pharmacological products and materials for their manufacturing was higher than usual due to the A/H1N1 flu virus epidemic and because of the introduction by the Ukrainian government of the highest level of threat in the country – level 3. On the other hand, Ukraine joined a number of sectoral “zero” arrangements within the WTO framework on reduction of rates, including for pharmaceutical products for which a zero rate is valid. Besides, Ukraine joined sectoral harmonisation on chemical goods (5.5-6.5%). An overwhelming majority of sectoral arrangements covers components and materials for manufacturing of technological products rather than consumer goods (we mean end-use products).

Agricultural products. Forecasts of massive importation of foodstuffs due to liberalisation of the customs regime of import as a result of Ukraine’s WTO membership both in the first and second years failed to come true.

During the period from June 2009 and March 2010, value of imported products of UKTZED groups 01-24 decreased by 17% compared to the corresponding previous period, and reduction of amounts was seen in almost every commodity group except UKTZED 07 (vegetables, root crops), UKTZED 08 (fruit and nuts, citrus plants), and UKTZED 17 (sugar and confectionery made thereof). The largest growth was seen in import of UKTZED group 02 products (meat and food by-products) – by 55%. These products caused the greatest concern in the first year of Ukraine’s membership in the Organisation because they were the major factor behind a 19% increase in food imports (compared to the corresponding pre-WTO period) – 81% in the total growth structure. Subsequent events confirmed

assumptions presented in the previous publication⁵, namely that the main reason for massive import of meat products in the first year of Ukraine's membership in the WTO consisted not of import tariff decrease but of internal misbalance between production and consumption of meat products.

Besides, a continuing tendency of growing imports of fresh vegetable and fruit products can be observed. Their imports dropped 2.6 and 2.2 times, respectively, during the period from June 2008 through March 2009 compared to the corresponding pre-WTO period. Such increase amounted to 25% and 4% for the similar period covering the second membership year compared to the previous period. The growth was predominantly caused by unsaturated demand for vegetables and fruit, especially in winter and spring, due to problems with Ukrainian-made product storage and owing to better availability of products not grown in Ukraine because of natural and climatic conditions, as a consequence of import tariff decrease resulting from Ukraine's accession to the WTO.

Twofold increase of imports of UKTZED group 17 products (sugar and confectionery made thereof) in value terms was caused by a domestic consumption deficit and high global sugar prices. For example, 89 thousand tons of white sugar at 566 USD/t were imported during the period from June 2009 through March 2010 against 37 thousand tons at 492 USD/t during the corresponding previous period. To satisfy domestic demand and cover the deficit it was possible to import raw cane sugar for further processing within the tariff quota limit but the possibility was not used to the end because of high prices of raw sugar at global markets and due to lack of coordination in stands taken by the Ministry of Economy and the Ministry of Agrarian Policy.

Acceding to the WTO, Ukraine undertook to provide a tariff quota for importation of raw cane sugar (code 170111 according to UKTZED) in the amount of 260 thousand tons with annual increase by 3.8 thousand tons in 2010. The Ministry of Economy distributed the quota in January 2009 but started to issue licenses for importation only in August 2009. A season of producing sugar from domestic sugar beets begins in Ukraine in September, that's why raw cane sugar in the amount of 40 thousand tons was only imported in December, i.e. the tariff quota was only 15% used.

1.5. GEOGRAPHIC STRUCTURE OF IMPORT

The global financial crisis also affected the geographic structure of import commodity deliveries to Ukraine. A tendency toward decrease in the CIS share, seen in the previous year, stopped (Fig. 4); besides, imports to Ukraine from the CIS countries in value terms declined the least as compared with other regions of the world – by 26%, whereas total import reduction amounted to 33%. Such trends are related to the fact that, first of all, decline of national currencies of the CIS countries relative to major world currencies – US dollar and euro – made goods produced by those countries more competitive, considering hryvnia devaluation, and, secondly, that a free trade regime is still active with the CIS countries and Ukraine.

⁵ One year of Ukraine's membership in WTO. Edited by Marcin Swiecicki. Team of authors: Iryna Kobouta, Vitaliy Zhygadlo, Andriy Zayika – Kyiv: 2009 – 44 p.

Growth in the CIS share took place mainly due to reduction of import from Asian states, the specific weight of which decreased from 18% to 15%, whereas imports in value terms dropped 1.8 times.

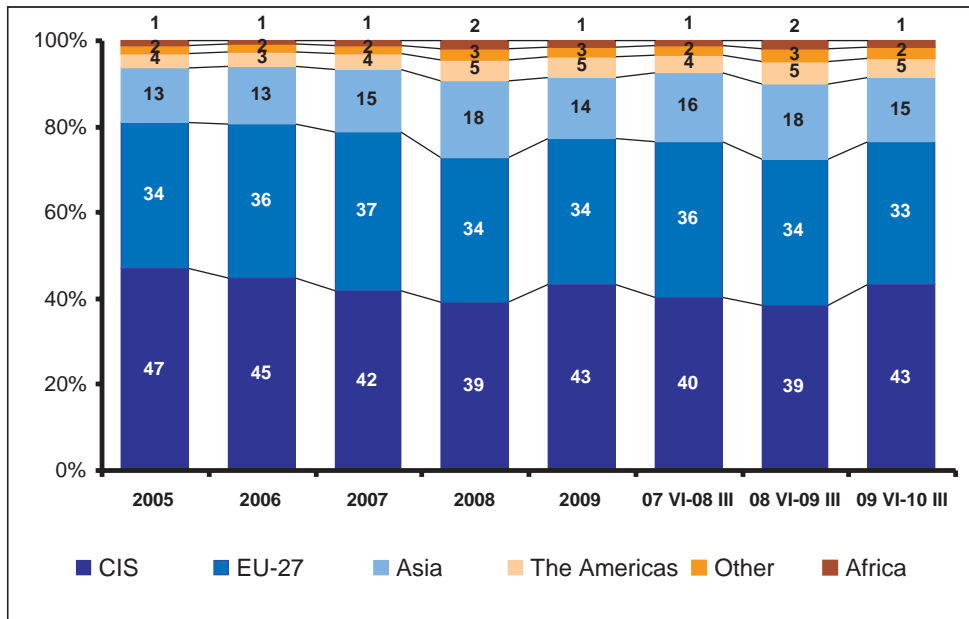


Fig. 4. Geographic structure of commodity import to Ukraine

Source: State Statistics Committee of Ukraine

Crisis occurrences in the country's economy during 2008-2009 stipulated tendencies towards more active processes of public discussion of domestic market protection means; in particular, a thesis on revision of "bound" import tariffs. It should be noted here that, first of all, Ukraine must act within the legal framework according to its commitments and, secondly, as analysis shows, Ukraine is gradually moving to a more opened market outside the WTO arrangements but within the bounds of free trade agreements. In particular, import deliveries within the framework of free trade with the CIS states were at the 43% level in the second year of Ukraine's membership in the Organisation; if we assume that FTA agreements with Canada, Turkey, Singapore, EU-27, and the European Free Trade Association (EFTA), negotiations with which are actively going on, are already in force, the share of import deliveries according to such agreements would potentially grow to 81%, which generally proves inexpediency of raising the issue on revision of "bound" import tariffs.

2. IMPLEMENTING THE COMMITMENTS ASSUMED AT ACCESSION TO THE WTO

2.1. ADOPTION STATUS OF DRAFT LAWS REQUIRED TO MEET THE COMMITMENTS AND TO BRING NATIONAL LEGISLATION INTO CONFORMITY WITH THE WTO AGREEMENTS

In 2008, eight laws were passed to comply with the commitments assumed at Ukraine's accession to the WTO (Table 3). Their list is presented in Table 1. A few more laws were left to be adopted in 2009. For example, as of early April 2009, five draft laws remained to be passed in order to implement the obligations undertaken at the accession to the Organisation. They included the following draft laws: *on Amending Article 1 of the Law of Ukraine on Safety and Quality of Foodstuffs as to Improving the Term "Standard" to Comply with Annex 1 "Terms and their Definitions..." to the WTO Agreement on Technical Barriers to Trade (No. 3322 of 28 October 2008)*; *on Amending the Law of Ukraine on Fish, Other Water Live Resources, and Food Products Made Thereof (No. 2297 of 31 March 2008)*; *on Amending Article 1 of the Law of Ukraine on Establishing a Tariff Quota for the Importation of Raw Cane Sugar to Ukraine (No. 3301 of 20 October 2008)* (Table 4).

Only one draft law of this list was passed in 2009 – *on Amending Some Laws of Ukraine (Concerning Principles of State Policy on Licensing)* (No. 1571-VI). Other draft laws were recalled from the Verkhovna Rada of Ukraine on 11 March 2010 because they had been initiated by the previous Cabinet of Ministers of Ukraine⁶.

Table 3

List of laws adopted in 2008 to meet the obligations assumed by Ukraine at accession to the WTO

No.	Law title	
1	<i>On Amending the Law of Ukraine on Amending the Law on Ukraine on Insurance</i> , 10.04.2008, No. 251-VI	The law abolished the requirement according to which permanent representations of insurance and reinsurance non-resident brokers had to provide services only via their permanent representations in Ukraine that must be registered as taxpayers according to the Ukrainian laws and included on the state register of insurance or reinsurance brokers.
2	<i>On Amending Some Laws of Ukraine on Protecting the National Commodity Producer against Subsidised, Dumping and Growing Import</i> , 10.04.2008 No. 252-VI	The law brought national legislative provisions on the application of antidumping, compensatory and special measures into conformity with the Agreement on Implementation of Article VI of the GATT 1994, SPS Agreement, and Agreement on Safeguards.

⁶According to Article 105 of the Regulations, draft laws submitted by the President of government are deemed recalled if powers of the President or the Cabinet of Ministers were terminated prior to their first-reading adoption. Such draft laws are withdrawn from consideration, and a relevant note is made thereon in the draft law database of the parliamentary site's electronic computer network. On 11 March 2010, factions of the Party of Regions, the Communist Party, Lytvyn's Bloc, and individual deputies established a coalition in the Verkhovna Rada consisting of 235 parliament members, following which the parliament terminated powers of the government headed by Yu.V. Tymoshenko, and approved the Cabinet of Ministers headed by M.Ya. Azarov.

3	<i>On Amending Article 16 of the Law of Ukraine on Foreign Economic Activity</i> , 10.04.2008 No. 253-VI.	The law prohibits any limitation of the importation of goods concerning which certain quotas are set, until the quotas have been fully used, and envisages that customs clearance of goods licensed and loaded in bulk may not be denied because of minor variations of cost, quantity or weight compared to the values specified in the licence.
4	<i>On Amending Some Laws of Ukraine on Intellectual Property Concerning Compliance with the Commitments Related to Ukraine's Accession to the WTO</i> , 10.04.2008 No. 254-VI	The law provides for legal protection of traditional geographic and non-geographic names originating from a certain geographic place as well as clarifies what documents foreigners should produce to obtain legal protection of the stated commodity origin in Ukraine.
5	<i>On Amending the Law of Ukraine on Standards, Technical Regulations, and Conformity Assessment Procedures</i> (concerning product conformity assessment), 10.04.2008 No. 255-VI	The law brings national legislative provisions concerning product conformity assessment procedures in full compliance with requirements of Article 6.1, TBT Agreement, as to acceptance of conformity assessment results in the WTO Member States, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.
6	<i>On Amending the Law of Ukraine on Veterinary Medicine</i> , 18.09.2008 No. 538-VI	The law provides for bringing terms "pollutant" and "maximum residue limits" as well as a provision on an animal identification system into conformity with the provisions and principles of the SPS Agreement, Codex Alimentarius, and the letter on SPS issues signed within the framework of the bilateral protocol on access to goods and services markets with the U.S. party.
7	<i>On Urgent Measures to Prevent Negative Consequences of the Financial Crisis and on Amending Some Legislative Acts of Ukraine</i> , 31.10.2008 No. 639-VI.	The law provides for further indirect support for agrarians under the WTO membership, particularly amending the Law of Ukraine on Value-Added Tax and the Law of Ukraine on Enterprise Profit Tax as to the cancellation of a zero rate and of subsidies to processing enterprises; extending of a special VAT payment regime existing for agricultural enterprises to cover all operations on supply of own-made agricultural products and their processing products, including milk and meat sale to processing enterprises and production of excisable goods; and introduction of a special VAT regime for activities in agriculture, forestry and fishing.
8	<i>On Amending the Law of Ukraine on the Customs Tariff of Ukraine</i> , 17.12.2008 No. 676	The law aimed to implement Ukraine's international arrangements on bringing import duty rates for products and goods into conformity with the level specified by the schedule of Ukraine's tariff commitments on goods for 2008.

Table 4

List of draft laws developed by the Cabinet of Ministers of Ukraine, which needed to be adopted in 2009 to meet the obligations assumed by Ukraine at accession to the WTO

	Registration number and date	Draft law title	Brief content of suggested amendments	Consideration status
1.	No 2297 of 31.03.2008	On Amending the Law of Ukraine on Fish, Other Water Live Resources, and Food Products Made Thereof	The draft assumes bringing Ukrainian legislative provisions into conformity with the requirements of the SPS Agreement and the EU <i>acquis</i> . If the draft is passed, no certificate of origin or warrant on recognition in Ukraine of a foreign certificate (for imported products) will be required.	<i>The draft law has been passed by the VRU in the first reading on 20 May 2008. It was withdrawn from consideration on 3 February 2009. Up to now (May 2010), it did not arrive to ministries for repeated consideration.</i>
2	No 2391 of 17.04.2008	On Amending Some Laws of Ukraine (Concerning Principles of State Policy on Licensing)	The draft assumes reduction of a list of economic activities subject to licensing and improvement of licensing in cryptographic protection of information in order to bring national legislative provisions into conformity with the country's commitments to cancel all restrictions on the importation of goods within the scope of the Information Technology Agreement.	The draft law has been passed as a whole on 25 June 2009, with number assigned 1571-VI.
3	No 3301 of 20.10.2008	On Amending Article 1 of the Law of Ukraine on Establishing a Tariff Quota for the Importation of Raw Can Sugar to Ukraine	If offers increase of a tariff quota for the importation of raw cane sugar by 3.9 thousand tons annually in 2009-2010 to meet the commitments assumed at accession to the WTO.	<i>The Committee of the Verkhovna Rada of Ukraine for Tax and Customs Policies considered the draft law at its meeting 19.11.2008 and decided to recommend the VRU to reject it. The draft law was recalled from the VRU on 11 March 2010.</i>

4	No 3322 of 28.10.2008	On Amending Article 1 of the Law of Ukraine on Safety and Quality of Foodstuffs	As to improving the term "standard" to comply with Annex 1 "Terms and their Definitions..." to the WTO Agreement on Technical Barriers to Trade. According to it, compliance with standards must be optional (to counterbalance technical regulations).	<i>The draft law was considered by a VRU plenary meeting 16 April 2009. The draft law was recalled from the VRU on 20 May 2009. The new draft law with No.6616 was registered in the VRU on 1 July 2010.</i>
5.	No 3444 of 04.12.2008	On Amending the Law of Ukraine on the Customs Tariff of Ukraine	To bring import duty rates into conformity with the level specified by the schedule of Ukraine's tariff commitments on accession to the WTO for 2009, and to bring the commodity classification into conformity with HS 2007 requirements in pursuance of international commitments.	<i>The draft was rejected by the VRU on 19 February 2009.</i>
6.	No 5480 of 24.12.2009	On Amending the Law of Ukraine on the Customs Tariff of Ukraine	In addition to creation of Ukraine's Customs Tariff with a new UKTZED version built on HS 2007 and the EU Combined Nomenclature, the draft law assumed bringing commodity import duty rates into conformity with the schedule of Ukraine's tariff commitments for 2010.	<i>The draft was recalled from the VRU on 11 March 2010.</i>

2.2. COMMITMENTS ON REDUCING AND BINDING IMPORT TARIFF RATES⁷

Analysis of Ukraine's second year in the WTO showed that Ukraine meets its obligations on gradual reduction of import duties for goods, concerning which transition periods are valid (Box 1).

The Action Plan to Adapt Ukraine's Economy to the World Trade Organisation's Requirements, approved by the Cabinet of Ministers' Implementing Order No. 1381-p of 30.10.2008, provides for the development of a new version of the Ukrainian Classification of Goods Relating to Foreign Economic Activity (UKTZED) based on the Harmonised Commodity Description and Coding System (HS 2007), and for the follow-up of consideration by the Verkhovna Rada of Ukraine of the draft Law of Ukraine *on Amending the Law of Ukraine on the Customs Tariff of Ukraine*.

The Government developed in 2009 a draft Law of Ukraine *on Amending the Law of Ukraine on the Customs Tariff of Ukraine* that, in addition to creation of the Customs Tariff of Ukraine with a new UKTZED version built on the HS 2007 and the EU Combined No, assumes also bringing commodity import duty rates into conformity with the schedule of Ukraine's tariff commitments to the WTO for 2010. The draft Law on Amending the Law of Ukraine on the Customs Tariff of Ukraine was registered in the Verkhovna Rada of Ukraine on 24 December 2009 under **No. 5480**. It was recalled from the VRU on 11 March 2010 because it had been initiated by the previous Cabinet of Ministers of Ukraine. In 2010, the Ministry of Economy prepared a new draft law on this subject for submission to the Verkhovna Rada of Ukraine.

In 2009, import duty was imposed on goods in accordance with the laws of Ukraine:

- on the Ratification of the Protocol on the Accession of Ukraine to the World Trade Organisation, No. 250-VI of 10.04.08;
- on the Uniform Customs Tariff, No. 2097-XII of 5.02.92,

at the rates approved by the Law of Ukraine on the Customs Tariff of Ukraine (No. 2371-III of 5.04.01) in the wording of the Law of Ukraine on Amending the Law of Ukraine on the Customs Tariff of Ukraine (No. 1109-V of 31.05.07) as amended and supplemented.

The goal of the Law of Ukraine **on Amending the Law of Ukraine on the Customs Tariff of Ukraine** (No. 676 of 17.12.2008) was to implement Ukraine's international arrangements on bringing the import duty rates for products and goods into conformity with the level specified in the schedule of Ukraine's commodity tariff commitments for 2008. This schedule is an integral part of the Protocol on the Accession of Ukraine to the World Trade Organisation but the Law started working only since 14 January 2009. However, as far back as when the Law was only a draft (No. 2351-1 of 13.05.2008), it was planned to give effect to its provision beginning from 1 January 2009, and new import duty rates for commodity groups 01-24 were expected to take effect on the day of Ukraine's accession to the WTO, i.e. 16 May 2008 (except for commodity items related to milk, dairy products, and wine materials).

⁷ Binding of import duty rates means that applied rates must not exceed the rate at which they were "bound".

Box 1. Key commitments on binding of import duty rates

Ukraine joined a series of sectoral zero (“0”) arrangements on rate reduction for the following commodity groups:

- steel, toys, wood, nonferrous metals, pharmaceutical products, paper, agricultural equipment, furniture, information technologies, scientific and medical equipment, construction machines,
- distilled alcohols – 3 years after the accession;
- civil aviation – until 2010.

Accession to sectoral harmonisation on chemical products (**5.5–6.5%**), textile and clothes (**0-17.5%**).

For some types of vehicles, a transition period is set until 2013 with step-by-step alteration of the import duty rate from **10%** at the accession down to **5%** as of the transition period end. For vehicles equipped with electric engines, a transition period lasts until 2010 with corresponding import duty reduction from **10% to 8%**.

Concerning meat, fish and finished foodstuffs, transition periods concerning liberalisation of access to the domestic market were arranged, which expire by 2010.

The arithmetic mean rate of Ukraine’s final bound import duty is **11.16%** for agricultural products and **4.85%** for industrial goods.

According to Article 1 of the Law of Ukraine on the System of Taxation, amendments and supplements to the tax laws of Ukraine concerning provision of tax exemptions, changes in taxes and fees (mandatory payments) and their payment mechanisms should be made according to the tax laws of Ukraine no later than 6 months prior to a new budget year and take effect on the new budget year’s beginning.

Already three years in a row, amendments to the Customs Tariff that must bring import duty rates for goods into conformity with the level specified by the annual schedule of Ukraine’s tariff commitments to the WTO fail to take effect as of the calendar year’s beginning. In 2009, the import duties contained in the Law of Ukraine on the Customs Tariff were not brought into conformity with the schedule of Ukraine’s tariff commitments to the WTO for 2009. The draft law *on Amending the Law of Ukraine on the Customs Tariff of Ukraine* (No. 3444 of 4.12.2008) as to bringing import duty rates into conformity with the level specified by the schedule of Ukraine’s tariff commitments on accession to the WTO for 2009 and bringing the commodity classification into conformity with HS 2007 requirements in pursuance of international commitments was rejected by the VRU on 19 February 2009. The following argument, given by the chairperson of the VRU Committee for Tax and Customs Policies, played its role: “... *it is not reasonable during an economic crisis to make any reduction in import duties for three thousand items as suggested by the government*”.

However, failure to pass the above-mentioned draft laws does not mean that Ukraine fails to meet its commitments on customs tariff transformation. The customs service office applies to commodity import into Ukraine the import tariffs operating pursuant to the Law of Ukraine on the Ratification of the Protocol on the Accession of Ukraine to the World Trade Organisation (No. 250-VI of 10.04.08).

According to Articles 26 and 27, *Vienna Convention on the Law of Treaties*, every treaty in force is binding upon the parties to it and must be performed by them in good faith. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Article 19, Law of Ukraine *on the International Treaties of Ukraine*, establishes that Ukraine's international treaties, agreed by the Verkhovna Rada of Ukraine as binding, shall form part of national legislation and apply according to the procedure specified for national legislative provisions.

On 7 September 2009, the validity period of the 13% surcharge to applied rates of import duties for a list of noncritical import goods brought into Ukraine's customs territory in the import regime, expired. That temporary measure was used because of the global financial crisis.

The 13% temporary surcharge to applied rates of import duties for a list of noncritical import goods brought into Ukraine's customs territory was introduced by the Law of Ukraine on Amending Some Laws of Ukraine to Improve Ukraine's Payment Balance Conditions because of the Global Financial Crisis (No. 923-VI of 4 February 2009). Experts cautioned that the surcharge was in conflict with the WTO rules.

Later on, the Government of Ukraine issued Resolution No. 230 of 18 March 2009 to cancel the 13% temporary surcharge to applied rates of import duties for imported goods, except refrigerators (code 8418 UKTZED) and motor cars (8703 UKTZED), reasoning its decision with economic inexpediency of keeping that measure in force.

The Constitutional Court of Ukraine on 23 June 2009 issued a Ruling No. 15-пр/2009 by which it deemed as unconstitutional provisions of some laws⁸ as related to delegation of the Cabinet of Ministers' powers to extend a temporary procedure of introducing, amending and cancelling a temporary surcharge to applied rates of import duties. It meant that, if the CMU Resolution No. 230 of 18 March 2009 had been cancelled, the 13% additional duty could have been resumed for more than 60 groups of imported goods.

The WTO agreements contain no provision that specifies rules of application of safeguards "*under a global financial crisis*". There are only some provisions that allow a WTO Member to implement certain restrictions on import in case of a worse payment balance situation. Provisions in Articles XII and XVIII GATT 94, the Understanding on the Balance of Payments Provisions of the General Agreement on Tariffs and Trade 1994, and Article XII of the General Agreement on Trade in Services (GATS) allow a WTO Member to introduce import restrictions due to payment balance complications. The above-

⁸ Subpara. 3.5 para. 3 Article 3 Final Provisions, Law of Ukraine on the Customs Tariff of Ukraine (No. 2371-III of 5 April 2001), in the wording of the Law of Ukraine No. 923-VI of 4 February 2009, and para. 8, part 2 Article 9, Law of Ukraine on Foreign Economic Activity (No. 959-XII of 16 April 1991) in the wording of the Law of Ukraine No. 923-VI.

mentioned provisions stipulate measures that are price-based (import surcharges (fees), import deposit requirements, etc.) or quantitative restrictions.

In June 2009, the WTO Committee on Balance of Payments Restrictions came to the conclusion that the measures in force in Ukraine could not be justified by Ukraine's current balance of payments in the meaning of Article XII GATT and that they were not applied according to the specified requirements. The WTO General Council approved the Committee's report in July; therefore Ukraine was obliged to cancel the 13% additional duty no later than 7 September.

According to Ukrainian laws in force, validity of that provisional measure expired six months after taking effect by the Law No. 923-VI (7 March 2009), or 7 September 2009.

However, two more draft laws were registered in the Verkhovna Rada in summer 2009: No. 4767 extending validity of such kind of temporary surcharges to import duty rates for at least 12 months, and No. 5033 also providing for a 12-month extension of the 13% surcharge to import duties but for a longer list of goods compared to the Cabinet of Ministers' Resolution No. 230 of 18 March 2009. There is another draft law submitted, No. 5080 on introducing two new tax levies on import (Table 5).

Table 5

List of draft laws registered in the VRU during 2009 that contain provisions on the introduction of temporary surcharges to import duty rates or of new levies on import

No.	Registration date	Subject with the right of legislative initiative	Initiators of the draft law	Results of consideration
4767	08.07.2009	People's deputy of Ukraine	S.A. Teryokhin	Rejected 03.11.2009
5033	29.07.2009	People's deputy of Ukraine	Ye.Ya. Sigal A.A. Davydenko	Not considered, under discussion in the committee
5080	01.09.2009	People's deputy of Ukraine	S.A. Teryokhin Ye.Ya. Sigal Yu.O. Lytvyn S.M. Tereshchuk V.H. Krainii	Not considered, under discussion in the committee

Draft laws Nos. 4767 and 5033. *First of all*, introducing a 13% surcharge on import would mean a conflict with the WTO that has already expressed a negative opinion on this matter. If validity of the 13% surcharge was extended the WTO Members would have the right to apply sanctions to Ukraine as compensation for import restriction, which can vary

at the bilateral level. The sanctions could include restriction on import from Ukraine, e.g. by means of reducing tariff quotas for Ukrainian grain or renewal by the European Union of quota arrangement for Ukrainian-made ferrous metal product import as response to discrimination of import of motor cars and refrigerators from the EU; or increase in import customs rates for ferrous metal import to China, the US, Turkey and Korea, and nonferrous metal import to Japan; or a requirement to compensate for importers' losses because of introduction of the above-mentioned surcharges.

No doubt, introduction of sanctions in response to the 13% surcharge on goods import to Ukraine could result in a worse economic situation in Ukraine because currency earnings from export would decrease. For example, ferrous metallurgy product exports from Ukraine are about 40% in total exports, being the leading commodity in exports to the above-mentioned WTO countries. In particular, the ferrous metallurgy's share in the commodity structure of Ukrainian exports to China is 58%.

Secondly, the additional 13% duty could become a barrier preventing the IMF credit resources from coming into Ukraine's economy⁹. The IMF loans cannot support any governmental decision that serves restriction on international trade in some or other way – these funds have a different purpose. This is the reason why the Memorandum of Economic and Financial Policies with the International Monetary Fund contains Ukraine's obligations on not applying new or not strengthening existing measures to restrict import for the purpose of balance of payments improvement, which include introduction of a temporary surcharge to existing import duty rates in the amount of 13% of the customs value of goods. When there are no other sources of credits available, the IMF loans comprise the most important way to rehabilitate a banking system, pay back currency loans, pay for imported gas, and slow down hryvnia devaluation.

Thirdly, when such measures are taken, the country's general image as a party to international treaties is affected.

Fourthly, it could have not a good impact upon the course of negotiations concerning the Association Agreement and the Free Trade Area with the European Union.

Fifthly, there was obvious and economic inexpediency.

Imports of goods to Ukraine over January-July 2009 dropped by 53.8% compared to the same period of 2008, including ground vehicles (incl. automobiles) – by 84.6%, electric and mechanical devices (incl. refrigerators) – by 63.7%, footwear – by 41.8%, sugar and confectionery – by 12.2%. Hryvnia devaluation played a very substantial role in this process. Indeed, imports decreased considerably in early 2009 due to devaluation of the national currency rate. **50% hryvnia devaluation in early 2009 as compared to early 2008 really had an effect of introducing additional surcharges to import tariffs even in the larger amount than 13%.**

Foreign trade deficit contracted 3.5 times during January-July 2009 year-on-year. The share of import in domestic consumption decreased considerably whereas consumption of Ukrainian-made products increased.

⁹ The IMF approved in November 2008 a two-year stand-by programme for Ukraine amounting to USD 16.4 bn to combat consequences of the global financial crisis. As of registration of these draft laws in the VRU, the Fund has already provided three tranches amounting to USD 10.9 bn.

A larger percentage of automobile imports to Ukraine goes from Russia and of domestic refrigerators from Belarus, with which Ukraine has free trade agreements working, and no 13% temporary surcharge to duties applies to imports from these two countries. In that way, the very idea of a 13% surcharge as a protective measure for domestic automobile and refrigerator producers was levelled down because the CIS countries export to Ukraine these goods from the same price category, close in terms of technical specifications, with no restriction.

Problems with the automobile industry exist in many countries during the global financial crisis. However, the countries address them with the aid of anti-crisis measures not violating the WTO rules. For example, Germany informed on stimulating car buyers by providing discounts on new cars provided that old ones are returned. France established an automotive industry restructuring fund amounting to EUR 300 million. China reduced taxes on sale of some motor cars, granted subsidies to peasants for procurement of modern vehicles, and decided to allocate 10 billion yuans during 3 years for the development of environmentally safe automobiles. Anti-crisis measures also include abandonment of non-competitive productions, engagement of investors to reequip factories and assemble new, more promising vehicle models and electric equipment, mergers with stronger companies, like, for example, in case of General Motors and FIAT.

Draft law No. 5080. According to the draft law, two new fees should be introduced beginning from 1 January 2010 for three years: a temporary agrarian due and a temporary automobile due amounting to 10%. These two taxes must be paid at the importation of a number of goods to the country's territory and at the supply of similar goods by their producers within Ukraine. The *transport fee* (10%) will be charged from transactions on supplies of vehicles and bodies for them whereas the *agrarian fee* (10%) will be charged from operations on supplies of pork carcasses, poultry parts, meat sausages, ready-made or canned fish, sturgeon caviar, fish products, etc. These fees are not customs fees, being internal taxes in their substance, because a taxation base for the agrarian fee is identical to the VAT base, whereas for the transport fee the taxation object and base are identical to those of the excise.

Authors of the draft law tried to avoid breaking the WTO rule on providing national treatment on internal taxation (*Article III GATT*): the new fees will be levied from import operations and from internal supplies of like products. At the same time, draft law No. 5080 has some "*loopholes*" to avoid paying the transport and agrarian fees for domestic commodity producers, namely para. 6(a) Article 21 and para. 16 Article 22 that are expected to supplement the Law of Ukraine on the System of Taxation. According to these paragraphs, agricultural producers that chose a special taxation regime pursuant to Article 8-1, Law of Ukraine on the Value-Added Tax, are exempted from payment of the agrarian fee whereas a domestic vehicle producer has the right to waive collection of a transport fee from a vehicle buyer.

These provisions of the draft law are discriminatory: there is no opportunity to avoid paying the fee at import of similar goods import of which is charged with a 10% fee whereas there is such an opportunity in operations related to supply of like Ukrainian-made products, i.e. there is a breach of Article III GATT.

Besides, subsidies to be paid to domestic vehicle manufacturers from the transport fee collected will get, according to the *WTO Agreement on Subsidies and Countervailing Measures*, into the category of “actionable subsidies giving grounds to apply countervailing measures”. According to the draft law, subsidization exceeds 5% of the value of one vehicle and is used to reduce value of Ukrainian-made vehicles, which can result in substantial understatement of the price of the commodity for which a subsidy is granted, both during sale in Ukrainian markets and in markets of other WTO Members. In case a fact of serious loss caused by such import to a foreign producer of such goods is confirmed, such a producer may apply to its country’s government and ask to use countermeasures against Ukrainian-made goods, and the government has the right, via a certain WTO procedure (after an investigation carried out according to the WTO), to apply countervailing duties to import of the subsidised commodity.

Budget-funded animal-breeding subsidies for which the draft law suggests using revenues from the agrarian fee collection belong, according to the procedure specified by Articles 13 and 15, Law of Ukraine on the State Support for Agriculture of Ukraine, to the “amber box” category, and they are restricted by an annual limit that Ukraine undertook, at the accession to the WTO, not to exceed.

That is, draft law No. 5080 can also lead to a conflict with countries, and consequences of introduction of the above-mentioned 10% fees will be negative for the Ukrainian economy as a whole¹⁰. The additional 10% fees (agrarian and transport) would result in higher prices of food and automobiles, which would worsen financial conditions of Ukrainian people even more.

Foreign countries, meanwhile, mainly encourage consumer demand for goods made by the branches that suffer from the global crisis most of all, rather than manufacturers themselves. In Ukraine, branches making poultry meat and ready-to-use canned food, which the draft law authors want to support by introducing the 10% fees and additional subsidies, do not decrease growth rates but, on the contrary, demonstrate positive growth dynamics even under the crisis. Besides, poultry meat has been the most subsidised agricultural product type in the country in recent years.

Therefore, introduction of an agrarian fee on import of meat and ready-to-use canned food in order to “support employment” in a growing business is not grounded.

Analysis showed that applying a surcharge amounting to 13% of applied import duties and introducing new 10% fees or other similar measures are not economically reasonable and can lead to the following:

- privileges of narrow producer groups at the expense of all consumers and other economic branches;
- further contraction of imports of goods enjoying people’s demand;
- limitation of the country’s export capabilities due to possible sanctions on the part of the WTO Member States;
- a risk of violating the agreement with the IMF and loss of subsequent tranches;

¹⁰ This draft law has not yet been considered by a VRU plenary meeting; probability of its consideration is high.

- reduction of the State Budget revenues;
- worsening of the country's international image.

Besides, they can cast doubt upon Ukraine's reliability as a partner in economic arrangements. In addition, the 13% surcharge is not an efficient protective measure for national producers of automobiles and refrigerators. The 10% agrarian fee would result in increase of foodstuff prices, especially of such important protein sources as meat and fish products. Meat sausages and canned fish are more consumed by poor population groups than expensive fresh meat and fish.¹¹ According to the State Customs Service, an economic effect from the 13% surcharge was minimal whereas a loss for the budget was serious enough.¹² In 2008, the State Budget received UAH 310 million from motor car and refrigerator import operations while the figure in 2009 was UAH 104 million only.

Generally, according to the WTO agreements, there are six ways to apply protective measures, each of which may be implemented given sound reasons:

- 1) Article VI GATT that allows governments to take measures in cases of dumping;
- 2) Articles XII and XVIII:B according to which a country may restrict import in order to protect its payment balance;
- 3) Articles XVIII:A and XVIII:C allow developing countries to provide governmental aid to promote economic development;
- 4) Article XIX allows countries to change their obligations on liberalisation if some product is being imported in considerable quantities as to cause serious injury to domestic producers of like or directly competitive products;
- 5) Possible revision of obligations according to Article XXVIII in order to reduce imports and increase bound import duty rates for some goods. Ukraine has the right to use provisions of this article no earlier than three years after its accession to the WTO. Besides, a change in tariff concessions would result in negotiations on **compensatory adjustment with respect to products** in order to maintain the general trade level.
- 6) Articles XX and XXI GATT – *General Exceptions and Security Exceptions*.

All conditions for the introduction of these protective measures are indicated in relevant articles of the WTO agreements and arrangements on their interpretation as well as in additional WTO explanations on their implementation procedure.

¹¹ The Analytical Centre suggested not to extend validity of the 13% surcharge to existing import duty rates (according to draft laws Nos. 4767 and 5033) and not to introduce new 10% import fees (according to draft law No. 5080). To regulate imports and support certain industries, the Centre suggested using experience of anti-crisis measures widely applied in other countries' practice and allowed by the WTO. Besides, it proposed to strengthen measures increasing flexibility of economy, namely: remove bureaucratic barriers for establishment of small and medium-size businesses, involve foreign investors, and secure state support for retraining or skills improvement of workforce. http://brc.undp.org.ua/ua/press/news/101?page_news_list=6

¹² Коммерсантъ/ № 135, 10.08.2009, <http://www.kommersant.ua/doc.html?DocID=1218795&Issued=7000196>

2.3. DOMESTIC SUPPORT OF AGRICULTURE

According to arrangements, Ukraine has no commitment to the WTO on reduction of domestic support provided through “amber box” measures. There is only a commitment not to exceed the annual support level expressed in the AMS indicator. The annual Aggregate Measurement of Support (AMS) for Ukrainian agriculture, which accumulates “amber box” support programmes, must not exceed **UAH 3.043 billion**. Besides, Ukraine may annually spend on “amber box” measures up to **5%** of the annual value of total agricultural production. If the annual value of total agricultural production is increased, opportunities of support for domestic agriculture within the *de minimis* level also grow. There is no restriction on the WTO side for funding of “green box” support programmes.

In June 2010, a preliminary notification was sent to the WTO Secretariat concerning domestic support for Ukrainian agricultural producers in the ACC/4 format from Ukraine, which was prepared by the Ministry of Agrarian Policy for 2009 reporting calendar year.

When a country becomes a WTO member, monitoring of compliance with commitments by the WTO Member States takes place through submission of notices (notifications) according to the Agreement on Agriculture. According to a decision made by the WTO Committee on Agriculture, a notification on domestic support for agriculture must be submitted by a Member State no later than within 90 days following the end of a reporting calendar period. If a notification sent to the Secretariat within 90 days is preliminary then a final notification must be submitted no later than within 120 days following the reporting year’s end.

Practice shows that traditional for the WTO is the situation when some members submit notifications on domestic support for agriculture with delays and for a few years at once. For example, Australia submitted its most recent notification on domestic support for agricultural producers to the WTO Secretariat on 13 July 2009 for the 2007/2008 fiscal year; Canada – on 25 January 2008 for 2004; the U.S. – on 19 January 2009 for 2006 and 2007 marketing years; the European Union (25 countries after 1 May 2004) – on 2 March 2009 for 2004/2005 and 2005/2006 marketing years.

Preliminary estimates prove that the Total AMS commitment level was not exceeded in 2009, first of all due to considerable underfunding of many budget programmes aimed to support agriculture. Therefore, Ukraine complied with its commitments in 2009 as to not exceeding the annual AMS of UAH 3.043 billion.

Price policy. Analysis of the government’s price policy in 2009 related to major agricultural product markets showed the following:

1) policy of minimum intervention prices for grain crops in 2009 had no effect of positive market price support (MPS); on most types of grain crops subject to state price regulation, a negative value of MPS was obtained;

2) any supplies of fuel or other inputs at state-regulated prices, which are lower than market prices, to use in the process of agricultural production in 2009 must be classified as subsidies for inputs and belong to “amber box” non-product specific support whereas the monetary estimate of such a measure must be included into the Current Total AMS;

3) state policy of minimal selling prices of sugar had in 2009 an effect of market price support for sugar and sugar beets, with its monetary estimate being about UAH 600 million¹³;

4) the government has an opportunity, under the WTO membership, to continue its policy of price support for the sugar branch via minimal prices, however in the amount determined by Ukraine's commitments to the WTO for the basic period. Or, the State can switch over to direct budget payments to sugar beets producers, but also within the basic-period AMS level for sugar, at the same time giving up minimal sugar selling prices in the domestic market. Simultaneous implementation of these measures will result in exceeding the Total AMS commitment level of Ukraine;

5) it is recommended to make a governmental decision on the minimal level of the sugar selling price in the domestic market only after expert examination of how that level would affect compliance with Ukraine's commitments to the WTO concerning the AMS for agriculture. If annual sugar production output grows, increase in minimal sugar prices will result in exceeding the market price support for sugar fixed in the basic period;

6) the domestic support of agricultural producers, which must be shown in Ukraine's notifications to the WTO, should include only those subsidies for partial compensation of interests on commercial bank loans that were paid for such a borrower category as producers of primary agricultural produce. Exclusion of the subsidies that were provided to processing enterprises and other borrowers, except for primary product producers, will allow decreasing the amount of the "amber box" non-product specific support limited for Ukraine by the *de minimis* level of 5% of the value of total agricultural production in reporting year and, accordingly, meeting Ukraine's commitments to the WTO on not exceeding the Total AMS commitment level.

Modernisation of the agricultural budget support policy remains a topical task for the Government. Ukraine's accession to the WTO and governmental commitments to this international organisation require new approaches to formulation of the state policy of support for Ukrainian agriculture.

These include, first of all, development of new "green box" programmes and upgrading of existing "amber box" support programmes into "green box" ones. The Programme of Economic Reforms put forward by the President of Ukraine specifies, among necessary steps, "improving the system of subsidies to increase the sector's competitiveness according to the WTO Agreement on Agriculture (retargeting subsidies to areas corresponding to the "green box" as per the WTO methodology)".

¹³ Ukraine's AMS calculation includes the amount of the market support price of sugar. It is calculated by determining a difference between the administrative (minimal) sugar selling price and the fixed external reference price of white sugar with subsequent multiplication of that price difference by the output of domestic sugar production from sugar beets in Ukraine. The support for the market sugar price is UAH 683.4 million per year on average (e.g. for 2004-2006 base period). The idea of a fixed external reference price consists of the fact that comparison of an actual administrative price of a reporting year with a fixed ERP allows monitoring compliance with commitments on the Total basic AMS. Several approaches exist to actual reduction of market price support. For example, a country can decrease an administrative support price to reduce a difference between the support price and the world price in a base period, or can limit output of production eligible to receive that administered price (or price of support).

Considerable increase in funding of the “green box” support programmes can be seen in Ukraine since 2003. The “green box” measures amounted to UAH 677.3 million in 2000-2002 (annual average) and UAH 2424.1 million in 2004-2006 whereas the budget for 2010 has UAH 4.4 billion, or 6 times more.

Most “green” budget funds in the country are directed to finance so-called “general services”, especially for educational purposes (higher, vocational and secondary education), services on general inspections (seed inspections, veterinary service, etc.), or scientific research. However, “green” programmes can also be direct payments. Before 2009 “green” direct payments to agricultural producers amounted to only 5% of the total sum of the “green box” financing. In other WTO member countries, direct payments to agricultural producers meeting “green box” criteria amount to the following percentage of the “green box” total: China – 15%, the U.S. – 17%, Canada – 56%, the European Union – 73%.

State support for insurance. Item 1.3 of the Action Plan to Adapt Ukraine’s Economy to the World Trade Organisation’s Requirements¹⁴ provides for improving an insurance policy in agriculture. The Ministry of Agrarian Policy developed in 2009 proposals to improve the agricultural product insurance system, which were partially reflected in the Law of Ukraine on Amending Some Laws of Ukraine to Improve Mechanisms of State Regulation of the Agricultural Product Market (No. 1447-VI of 4 June 2009), passed by the Verkhovna Rada of Ukraine, concerning agreement of some legal provisions, clarification of terminology in the existing version of Section III *State Regulation of Agricultural Insurance Market* of the Law of Ukraine on the State Support for Agriculture of Ukraine, and cancellation of the requirement on mandatory insurance of agricultural products at obtaining financial support from the state budget. Besides, the Law of Ukraine on Insurance was amended to exclude insurance of the harvest of agricultural crops and permanent plantings from mandatory insurance categories.

The existing mechanism of subsidies for insurance in the country as per the Law of Ukraine on the State Support for Agriculture of Ukraine belongs to the “amber box” measures. Compensation for insurance premiums belongs to those “not exempted from the reduction commitment”, as per the WTO classification, and is included in the AMS. It belongs to the category “reduction of production costs” because insurance payments are included in the cost of production by agricultural enterprises. Unlike state compensation for insurance premiums, the State’s financial involvement in payments to compensate losses from natural disasters will belong to the “green box” measures. Therefore, given considerable load of “amber box” programmes on the AMS in Ukraine, state support of insurance for agricultural enterprises can be transformed into a “green box” programme. For example, the WTO Agreement on Agriculture (AA) provides for possible inclusion of programmes aimed to compensate agricultural producers for losses caused by natural disasters into the “green box” if the programme meets the following criteria specified in para. 8 (a-e) Annex 2, namely:

¹⁴ The Cabinet of Ministers’ Implementing Order No. 1381-p of 30.10.2008.

- a) eligibility for such payments shall be determined by a production loss which exceeds 30% of the average of production in the preceding three-year period;
- b) payments shall be applied only in respect of losses of income, livestock, land or other production factors;
- c) payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production;
- d) payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in criterion (b) above;
- e) where a producer receives in the same year payments under this paragraph and under paragraph 7 (income insurance and income safety-net programmes), the total of such payments shall be less than 100% of the producer's total loss.

A natural disaster is an abnormal phenomenon, therefore it is suggested to establish a limit of abnormal costs, i.e. deviation from a norm. For example, eligibility for such payments to compensate for losses caused by natural disasters is determined by a production loss which exceeds 30% (or 40%) of the average of production in three years out of the preceding five-year period from which the lowest and highest values are excluded. The average of production in three years can be called "a guaranteed production level" secured with a certain level of technological provision in an individual economic entity. If a crop falls lower than the guaranteed level by more than 30% (or 40%), a farmer is entitled to obtain compensation. The compensation amount can also be established not at 100% but at 70-80% of a loss incurred.

An effect of the State's financial involvement in loss compensation will be greater than subsidies for insurance premiums because compensation sums are much larger than insurance premiums.

Besides, a problem consists not of the need to teach agricultural enterprises to work with private insurance companies but of the need to make insurance companies take interest in working where very high risks exist, like in case of bank lending for agricultural enterprises. Risk distribution between the State and private insurance companies, so-called reinsurance, can be suggested for that purpose.

Reinsurance means risk distribution among insurance companies. Some part of the insurer's risk is assumed by other companies in exchange for some part of insurance premiums obtained from the insured. Reinsurance coverage allows individual companies to work with clients whose total amount of risk under an insurance agreement can be a very large burden for one insurer.

For example, Canada has a crop insurance programme belonging to the "green box". This programme aims to stabilise farmers' earnings by minimising an economic effect of crop loss caused by natural disasters such as draught, hail, frost, flood, or pests. Farmers pay insurance premiums in full amount to the Programme Fund in exchange for adequate protection against natural disasters. The Programme is implemented individually by each province but the Federal Government assumes a certain part of financial liability. For example, five provinces have reinsurance agreements with the Federal Government, two provinces receive reinsurance coverage from the private sector, and the Federal Government shares reinsurance costs with provinces.

Subsidies per livestock head. In 2009 a new support measure emerged according to the Law of Ukraine on Amending Some Laws of Ukraine to Support the Agro-Industrial Complex under the Global Financial Crisis (No. 1782-VI of 22.12.2009), namely: “the VAT amount paid to the budget by processing enterprises of all ownership forms for their sales of milk, dairy products, meat, meat products, and other products resulting from processing of animals and poultry purchased in live weight (skins, byproducts, tankage), is directed to the State Budget’s special fund and subsequently used to pay supplementary payments per 1 cow available as of 1 January of a relevant year, based on certificates issued by village, settlement, city or city-district councils – for natural persons, and based on a copy of a report on animal production status (form No. 24 (annual)) concerning availability of cows certified by state statistics bodies – for legal persons, as per a procedure specified by the Cabinet of Ministers of Ukraine”.

The Law of Ukraine on the State Budget of Ukraine for 2010 envisaged UAH 1.350 billion for supplementary payments per 1 cow available as of 1 January 2010.

However, the Law of Ukraine on Amending Some Laws of Ukraine Concerning Support for Agricultural Commodity Producers (No. 2254-VI) postpones implementation of the new support measure to 2011.

That is, the existing system of subsidies via processing enterprises as per Article 11.21 Law of Ukraine on the Value-Added Tax is maintained in 2010, namely: “the amount of value-added tax to be paid to the budget by processing enterprises of all ownership forms for their sales of milk, dairy products, meat and meat products, shall be fully directed solely to pay subsidies to agricultural producers for the milk and meat in live weight sold by them to processing enterprises”.

First of all, the VAT amount accumulated by processing enterprises from milk and meat sales and then directed to pay subsidies to agricultural producers-suppliers of raw milk and meat reaches UAH 2-3 billion annually.

Secondly, the VAT amount subject to be paid to the budget by agricultural enterprises of all ownership forms, which did not choose a special regime of taxation in agriculture, forestry and fishing provided for by Article 8¹ of the Law on the Value-Added Tax and are regarded as VAT payers on general terms, for their sales of milk, livestock, poultry, wool as well as for the dairy and meat products made in their own processing works is completely left at the disposal of such agricultural enterprises and is directed to support their own production of animal products.

Thirdly, “amber box” measures prevail traditionally in the Ukraine’s state support of animal sector. Hence, the product specific AMS in the amount of three above-mentioned types of support for milk and meat, given their simultaneous implementation in any year, can exceed the product-specific AMS of the basic period (2004-2006) and, hence, the Total AMS commitment level, especially as the sum of subsidies via the VAT mechanism depends on permanently growing actual selling prices of agricultural products.

The text of the article (para. 3, Article 11.21, Law of Ukraine on the Value-Added Tax) does not make it clear for what purpose or purposes the above-mentioned subsidy (subsidy per livestock head) will be granted. Namely, allocation of some or other programme to “green box”, “blue box” or “amber box” as per the WTO classification depends on target of measures and on their appropriation procedure.

To avoid exceeding the product specific AMS for milk and the total AMS bound by commitments to the WTO, the Ministry of Agrarian Policy can elaborate a procedure of appropriation of budget funds for making supplementary payments per 1 cow available as per 1 January of a relevant year (as per para. 3 Article 11.21) in a way to meet the criteria of direct “green box” payments to producers specified in the WTO Agreement on Agriculture (AA), namely para. 5 Annex 2.

According to para. 5 *Direct payments to producers*, support provided through direct payments (or revenue foregone) to producers for which exemption from reduction commitments is claimed shall meet the basic criteria set out in para. 1 Annex 2 AA, plus specific criteria applying to individual types of direct payment as set out in para. 6-13 Annex 2. Where exemption from reduction is claimed for a new type of direct payment other than those specified in para. 6-13, it shall conform to criteria (b)-(e) in para. 6, in addition to the general criteria set out in para.1. According to para.1, domestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production. Accordingly, all measures for which exemption is claimed shall conform to the following basic criteria: (1) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and (2) the support in question shall not have the effect of providing price support to producers.

Since “*supplementary payment per 1 cow available as of 1 January of a relevant year*” is a new type of support, it must meet all the following criteria (b)-(e) in para. 6 *Decoupled income support*, Annex 2 AA:

- (b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.
- (c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.
- (d) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.
- (e) No production shall be required in order to receive such payments.

Only when all these criteria are met there will be an opportunity to include supplementary payments per head in the “green box” programme category.

Or, this new support must meet the “blue box” criteria to avoid also being included in the AMS, namely criteria set in para. 5, Article 6, Part IV AA. If livestock payments are made on a fixed number of head, then direct payments under such a programme shall belong to production-limiting programmes and shall not be subject to the commitment concerning “amber box” programmes.

Besides, such payments must be made on 85% or less of the base level of production. A mechanism of these direct payments requires identification of a basic period (e.g. 3-4 years for a period, obtaining grants from processing enterprises), registration of producers

(agricultural enterprises, farmers, personal subsidiary plots) to take part in such a subsidising programme, determination of a basic production level, fixing of livestock for further payments, and determination of a fixed rate of direct payments per cow. Conditions of such direct payments must specify that the payments are not linked to current or future production or to a price of any kind of product. These payments do not benefit any of agricultural goods because it has no requirement on mandatory production to obtain these direct payments. Accordingly, as this new scheme of direct payments is implemented, payments per head for increase of number of livestock in milk and meat sector, which were previously provided from the state budget, must be suspended because combination of these payments would mean violation of criteria specified in para. 5 Article 6 or para. 6 Annex 2 AA.

Complexity with implementation of such direct payment programmes is rather not technical but related to perception of such ideology both by domestic producers and by the government, especially by state control bodies.

Perhaps, it would be better to spend UAH 1.350 billion allocated in the State Budget, instead of paying UAH 500 per cow available as of 1 January 2010, on state assistance for construction of new farms or modernisation of new ones based on criteria of maintaining environmental conditions of a farm and livestock maintenance hygiene, which would meet European standards of safety of products made at such enterprises, that being especially important for production of milk as raw material for dairy products searching for access to the European market. If such funds are used to build new farms, with the state contribution being 30%, they would be enough to build up to 15 large stock-breeding complexes producing milk, 1000 head each, even if one project costs EUR 30 million.

Besides, in the EU, within the framework of the “*green box*” programme “Structural adjustment assistance provided through investment aid”, state aid is provided to modernise farms through subsidies or compensation of bank interest for these purposes, for procurement of equipment and animals and farm construction.

2.4. INDUSTRIAL SUBSIDIES

After the accession to the WTO, industrial subsidies must be provided according to the rules set in the WTO Agreement on Subsidies and Countervailing Measures. According to this agreement, WTO Member States, including Ukraine, have no right to use prohibited targeted subsidies envisaged by export indicators or by use of domestic goods in preference over imported ones. Examples may include provision of direct subsidies to enterprises or branches depending on export indicators, more beneficial rates of transportation or freight in export shipments compared to shipments inside a country, exemption or postponement of direct tax payments, etc.

In 2009, legislation provided for subsidies for shipbuilding, aircraft building, agricultural machine-building, coal mining, and book publishing. Prohibited subsidies were not used in Ukraine in 2008-2009.

For example, ***shipbuilding industry*** receives support according to the Law of Ukraine on Measures of State Support for the Shipbuilding Industry in Ukraine in the wording of 15 June 2004 No. 1766-IV, and the CMU Resolution No. 574 of 10 June 2009 *On amending the list of shipbuilding enterprises to which measures of state support for the shipbuilding industry*

are applied. The law provides for support for construction of marine and river vessels and for reconstruction of fixed production assets of shipbuilding enterprises through a mechanism of credit easing by means of partial compensation of the commercial bank interest rates. The state budget did not include funds for such compensation in 2009.

To implement investment projects in **aircraft building** aimed at modernisation, state enterprises obtain interest-free loans with 5 years maturity. This support is provided within the framework of the State Comprehensive Programme of Aviation Industry Development until 2010.

In **coal mining**, support is provided to restructure and modernise the coal sector, improve industrial safety, and increase the labour safety level.

In 2009, according to the CMU Resolution No. 69 of 28.01.09 *On the approval of the Procedure of using in 2009 the funds provided for in the state budget to grant state aid to coal-mining enterprises (including brown coal producing enterprises) for partial coverage of expenses related to production costs*, support was provided to coal-mining enterprises (including those producing brown coal) for partial coverage of expenses related to cost of production, including securing guarantee commitments on repayment of budget loans as well as discharging arrears for electricity formed in previous years.

The Law of Ukraine on the State Budget for 2010 (No. 835-VI of 26.12.08) envisaged the following:

- state support to coal-mining enterprises for partial coverage of expenses related to production costs – UAH 750 million;
- restructuring of coal and peat mining industry, including repayment of arrears for electricity consumed in previous years by state-owned coal-mining enterprises at which measures to prepare for liquidation are being taken, amounting to UAH 420.4 mln, – UAH 903.5 million;
- labour protection and improving occupational safety at coal-mining and mine-building enterprises (including those producing brown coal), including coal seam degassing – UAH 36 million.

Support to **machine-building** for the agro-industrial complex was to be provided according to the CMU Resolution No. 245 of 5.03.09 that approved the Procedure of using in 2009 the funds allocated in the state budget on some programmes of state support for domestic machine-building for the agro-industrial complex, including via a credit easing mechanism. The procedure assumes compensation of interest rates on the loans taken by enterprises of machine-building for the agro-industrial complex for the realisation of investment projects aimed at technological re-equipment of the above-mentioned enterprises.

According to the WTO Enquiry Point and Information Processing Centre, a notification concerning industrial subsidies in Ukraine for 2009 has already been prepared for the WTO Secretariat.

2.5. ACCESS TO THE SERVICE MARKET

According to the rules of the General Agreement on Trade in Services (GATS), Ukraine undertook to secure national treatment and access to market in 11 basic service sectors,

including professional services, communication services, construction and related engineering services, distribution, educational services, environmental services, financial services (insurance and banking), health related and social services, tourism and travel related services, recreational, cultural and sporting services, transport services, and in other branches including beauty and physical well-being services, hairdressing, spa and massage services.

In the above-mentioned sectors, free access to market must be provided to services and their suppliers, except where Ukraine specified in its commitments certain conditions, restrictions or requirements concerning access in a specific service sector.

Providing national treatment means that in the sectors inscribed, and subject to any conditions and qualifications set out in Ukraine's commitments, Ukraine shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

Besides, knowledge of one of the basic WTO principles – non-discrimination – allows Ukraine as a WTO Member State to protect its rights in obtaining, on the discriminatory basis, services from other WTO Members.

According to the Schedule of Specific Commitments in Services, foreign insurance companies may provide insurance services via branches only 5 years following Ukraine's accession to the WTO.

Work is going on in the country to improve the national legislation regulating service markets.

Further enhancement of the banking supervision system was taking place during 2009. The final wording of the draft Law on Amending the Law of Ukraine on Banks and Banking (concerning corporate management) is under completion with account of the provisions of the Law of Ukraine on Joint-Stock Companies that was approved by the Verkhovna Rada of Ukraine on 17 September 2008. A draft Law on Amending the Law of Ukraine on Banks and Banking (concerning consolidated supervision over bank groups) is under development.

To improve provision of insurance services in the country, it is necessary to pass a new wording of the Law of Ukraine on Insurance. The draft Law on Amending the Law of Ukraine on Insurance, developed by the State Commission for the Regulation of Financial Services Markets of Ukraine (reg. No. 1150), has not yet been considered at a meeting of the Verkhovna Rada of Ukraine.

Sometimes imperfect knowledge of the WTO agreements results in a situation when operations in the countries not being WTO members are restricted. For example, since the accession to the WTO Ukrainian insurers have lost the right to enter into reinsurance agreements with insurer companies registered in the countries not being WTO members (i.e. such Ukrainian partners as Azerbaijan, Belarus, Kazakhstan, Russia, Tajikistan, Uzbekistan).¹⁵

As a result, certain damage was caused to the financial services market. Nuclear,

¹⁵ Ukrainian insurers will be able to officially reinsure in the RF
http://www.vestnikao.com.ua/news/ukrainskie_strakhovshhiki_smogut_oficialno_perestrahovyvatsja_v_rf

aviation and industrial risks were mainly transferred to Russia for reinsurance. The existing prohibition resulted in a twofold decline of Russia's share in the Ukrainian reinsurance market. According to the State Commission for the Regulation of Financial Services Markets of Ukraine, Russia's share contracted from 20.3% in 2007 to 11% during January-September 2009.

On 16 April 2010, a draft law (reg. No. 6192) suggested making a number of amendments in the Law on Insurance aimed to enhance reinsurance opportunities, in particular remove a restriction on maintaining reinsurance in the WTO Member States only. In terms of its legal regulation subject, the draft law belongs to the financial services sphere that is regulated in the European Union by the Council Directive 64/225/EEC on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession; the First Council Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; and the Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance. The Committee members emphasised that the draft law is not in conflict with the European Union *acquis* and Ukraine's commitments within the WTO framework.

2.6. OTHER AREAS OF MEETING UKRAINE'S COMMITMENTS TO THE WTO

State trade

The WTO Members must provide conditions so that import or export operations of state and non-state enterprises having exceptional or special privileges take place pursuant to the non-discrimination principle and on the commercial basis. The WTO countries must notify on activities of such enterprises periodically. Ukraine has undertaken to send a notification and information to the WTO on activities of such enterprises within a year from the date of its accession. According to the WTO National Enquiry Point and Information Processing Centre, such a notification has already been prepared.

Government procurement

Ukraine has become an observer in the multilateral Agreement on Government Procurement since its accession and started negotiations to join the Agreement. During 2008-2009 Ukraine took part in a few meetings of the WTO Committee on Government Procurement. The Agreement on Government Procurement establishes an agreed-upon package of rights and obligations of its Members concerning their national legislation, procedures and practices on government procurement.

In order to secure proper compliance with the principle of non-discrimination and access of foreign goods, services and suppliers to government procurement, the Agreement attaches special importance to the rules that should ensure transparency of legislation, administrative procedures and practices on government procurement.

Albania, Georgia, Jordan, Kyrgyzstan, China, Moldova, Oman, and Panama are negotiating to accede to the Agreement. Ukraine and five more countries – Armenia, Macedonia, Mongolia, Saudi Arabia and Croatia – undertook to accede to the Agreement on Government Procurement in the protocols on their accession to the WTO.

The WTO Agreement on Government Procurement has also been joined, in addition

to the EU and its 27 members, by Aruba (represented by the Netherlands), Hong Kong (China), Israel, Iceland, Canada, Liechtenstein, Norway, South Korea, Singapore, the U.S., Switzerland and Japan.

The legislative process concerning the adoption by the Verkhovna Rada of a draft law on a procedure of government procurement in the country lasted for two years. When the Law of Ukraine on the Procurement of Goods, Works and Services for Public Funds lost effect in March 2008, the Cabinet of Ministers of Ukraine approved the Temporary Regulations on the Procurement of Goods, Works and Services for Public Funds based on the text of the Law on the Procurement of Goods, Works and Services for Public Funds, except some provisions being in conflict with the WTO requirements.

The new Law of Ukraine on Conducting Government Procurement was passed on 1 June 2010 with account of proposals of the President of Ukraine who, together with the EU and the World Bank, demanded revising principles of the establishment of a body of appeal against tender violations. Adoption of the law was one of the conditions for the granting by the European Union of a EUR 500 million aid to Ukraine. The Law of Ukraine on Conducting Government Procurement (No. 2289-VI) establishes legal and economic basics for conducting the procurement of goods, works and services for public funds. It aims to create a competitive environment in government procurement, develop fair competition, secure rational and efficient use of public funds, etc.

Tariff quotas

Ukraine undertook to apply a tariff quota for raw cane sugar (260 thousand tons annually at the import duty rate in two percent from its customs value according to the Law of Ukraine No. 404-V of 30.11.2006, beginning from 1 January of the year following the WTO accession year, with increase to 267.8 thousand tons in 2010). Besides, Ukraine undertook to allocate, as from its accession date, the tariff quota for raw cane sugar only in accordance with the WTO Agreement. Ukraine will not realise tariff quotas for any goods via auctions. During three years upon accession to the WTO, Ukraine will approve a procedure of allocation of the tariff quotas for the importation of raw cane sugar based on the "first come, first served" method.

According to the CMU Resolution *On the approval of the Procedure of distribution of the tariff quota for the importation of raw cane sugar to Ukraine* (No. 1002 of 12 November 2008), the tariff quota for the importation of raw cane sugar to Ukraine for 2009-2010 is currently distributed by the Ministry of Economy annually as follows:

- 260 tons of the total tariff quota amount until 1 January 2019 are allocated for Paraguay according to § 35 Doha Declaration and the arrangements reached during multilateral negotiations on Ukraine's accession to the WTO concerning more complete integration of small vulnerable economies into the multilateral trade system;
- 80 percent of the remaining tariff quota is allocated for supplier countries, 20 percent – for new supplier countries.

Percentages of the tariff quota for supplier countries are determined proportionally to the amount of importation to Ukraine of raw sugar originating from their customs

territories during 2001, 2003 and 2004 years when importation of raw sugar to Ukraine took place within the limits of the tariff quotas specified by national legislation (Table 6).

Table 6

**Allocation of the tariff quota for import
of raw cane sugar to Ukraine in 2009**

			(tons)
Total amount of the annual tariff quota			263,900.000
including: for Paraguay			260.000
Section 1 - 80% of the quota – for supplier countries			210,912.000
No.	Country of origin	Country's share in import for three years, %	Proportional distribution of the quota
1	Brazil	73.5812%	155,191.573
2	Columbia	3.0060%	6,339.969
3	Cuba	7.7928%	16,436.028
4	Salvador	2.7219%	5,740.740
5	Guatemala	3.8775%	8,178.035
6	Guyana	0.5373%	1,133.136
7	Latvia	1.1465%	2,418.210
8	Nicaragua	0.8252%	1,740.519
9	Peru	0.9732%	2,052.565
10	PAR	1.0090%	2,128.042
11	Switzerland	0.0538%	113.571
12	Thailand	4.2305%	8,922.702
13	USA	0.2448%	516.352
14	Denmark	0.0000%	0.015
15	The Netherlands	0.0003%	0.542
	Total	100.0000%	210,912.000
Section 2 – 20% of the quota – for new supplier countries			52,728.000

In 2009, only 40 thousand tons of raw cane sugar were imported in Ukraine (all from Brazil) and the distributed tariff quota for importation of raw cane sugar was not used in full (only 15% was used).

Although the tariff quota was distributed in January 2009 and the Ministry of Economy issued an order on a procedure of licensing¹⁶, licences for importation of raw sugar were not issued until September 2009.

On 27 March 2009, the Ministry of Economy of Ukraine informed on suspension of reception of applications for licences for the importation of raw cane sugar to Ukraine. That decision was made based on results of a meeting involving the Ministry of Economy and the Ministry of Agrarian Policy held on 25 March 2009. According to the decision, reception of applications for licences for the importation of raw cane sugar within the tariff quota, which was to begin to Ukraine on 2 April 2009 according to a previously published notice, was temporarily suspended.

When the price of white sugar produced from sugar beets started growing swiftly in the domestic Ukrainian market in summer 2009, i.e. late in a marketing year, the Ministry of Economy of Ukraine 4 August 2009 started registration of applications for licences for the importation of raw cane sugar. Only 40 thousand tons of raw cane sugar out of the 263.9 thousand tons of the distributed tariff quota amount for 2009 were imported by late 2009. A reason behind the minor import quantity consisted of very high world prices of raw sugar; besides, a new sugar refining season from the sugar beets harvest 2009 began in Ukraine in September-October.

The Ministry of Economy of Ukraine tries to improve legislation to settle the issue of using the distributed amount of the tariff quota. For example, the Order of the Ministry of Economy No. 96 of 8 February 2010 took effect on 10 March 2010, limiting a licence validity period, which, in combination with a simpler licence obtaining process, should promote expediting such operations. This order amends the Regulations on issuance of licences for the importation to Ukraine of raw cane sugar within the tariff quota, which was approved by the Order of the Ministry of Economy No. 15 of 20 January 2009.

According to the amendments, an applicant does not need to submit an original and a copy of a certificate of origin to obtain a licence for the importation of raw cane sugar within the tariff quota. Validity of a licence is 60 days (from signing) but no later than 31 December of the year for which it was issued, within the tariff quota. Besides, the order points out that foreign economic activity entities shall submit to the Ministry of Economy, no later than 15 days after expiry of a licence's validity period, information on actual importation of the commodity on a licence, specifying importation amounts.

Since such an instrument to stabilise the internal price situation as a tariff quota for the importation of raw cane sugar at a preferential tariff is used inefficiently, the Government probably should consider possible opening of a tariff quota for the importation of white sugar at a preferential import tariff instead of 50%, in the periods of an especially peak situation of high prices in the domestic sugar market.

¹⁶ On the procedure of issuance of licences for the importation to Ukraine of raw cane sugar within the tariff quota, No. 15 of 20 January 2009.

Internal taxes (VAT, excise)

A commitment in this part consists of the fact that Ukraine will apply taxes, including VAT and excise, on the non-discriminatory basis to imports from the WTO Member States and domestic-made goods. Ensuring a national treatment concerning internal taxation and regulation is a basic WTO principle, i.e. imported goods shall be granted no less favourable treatment than domestic ones. During 2009, the country ensured a national treatment concerning internal taxation and regulation.

Customs valuation, other customs formalities, and customs regulation

Ukraine undertook to comply with the Agreement on Customs Valuation in full from the date of its accession, and it adheres to this obligation. Articles 259-273 of the existing Customs Code of Ukraine (No. 92-IV of 11 July 2002) define the customs valuation rules that must be applied as a basic method of evaluation at the contract price (operation cost) and require compliance with a sequence of evaluation methods according to provisions of the WTO Agreement on Customs Valuation.

As to **customs clearance** of goods, all regulations, formalities and requirements related to import of goods, statistical control, documents, customs clearance, certification, inspection and analysis, or any changes in those regulations, formalities and requirements at customs offices must be published by a WTO Member State for timely notification of importers. Countries acceding to the WTO must apply them on the unified, objective and grounded bases throughout the country's customs territory, as required by the WTO according to Articles VIII and X GATT 1994.

The Cabinet of Ministers' Resolution No. 492 of 21 May 2009 *On amending the Procedure of customs clearance of goods imported into Ukraine's customs territory and subject to mandatory certification in Ukraine* was issued to simplify the procedure of certification and customs clearance of goods imported into Ukraine's customs territory, particularly to avoid dual interpretation of the "controlled goods" notion and reduce a burden upon foreign economic activity entities.

The Cabinet of Ministers' Resolution No. 499 of 21 May 2009 *On amending some resolutions of the Cabinet of Ministers of Ukraine* establishes that ecological control of vehicles and freights at the state border checkpoints can be carried out solely by officials of the State Ecological Inspectorate and prohibits involving other enterprises, institutions or organisations. The prohibition allows simplifying certain technological operations on ecological control, including radiation control, and reducing the time of customs clearance of vehicles and freights at the state border checkpoints.

The Cabinet of Ministers' Resolution No. 521 of 21 May 2009 *On amending the list of documents required for customs control and customs clearance of goods and vehicles moving across Ukraine's customs border* aims at simplifying customs control for economic entities at the Ukrainian state border checkpoints by means of shortening a mandatory list of documents required for customs control and customs clearance of goods and vehicles moving across Ukraine's customs border.

Antidumping regime, countervailing duty and safeguard measures

Ukraine's government carries out continuous work to protect national producers in the domestic market against manifestations of unfair competition and against growing imports through a mechanism of applying antidumping, anti-subsidy and special measures concerning import in Ukraine based on the WTO agreements. They establish certain rules that countries must observe when applying measures of protection against dumping imports, subsidised imports or growing imports that can cause damage to domestic producers.

Legislation, approximated to the WTO provisions, concerning antidumping, anti-subsidy and special investigations and application of relevant measures has been in force in Ukraine as far back as since 1998. Some provisions of these laws were amended prior to accession to the WTO to secure full compliance with the WTO agreements.

During 2009, the Government ensured carrying out work aimed to protect domestic producers against unfair (dumping, subsidised) and massive imports on the part of foreign producers and exporters. Total value of imports of goods to Ukraine, concerning which measures were in force in 2009, is about USD 360 million¹⁷.

Most investigations (more than 64%) in recent years were stopped without introducing any restriction against Ukrainian-made products. As of January 2010, no restrictive measure has been applied concerning Ukrainian-made products based on results of the investigations instituted against Ukraine in 2008-2009. For example, 5 out of 14 investigations instituted in 2008-2009 were stopped with no restriction on Ukrainian-made products, the rest still continuing. Due to application of the WTO provisions, a special duty on supplies of Ukrainian-made glass to Turkey was terminated in June 2009. According to the Ministry of Economy, all these measures ensured maintaining deliveries of Ukrainian products to foreign markets in the amount of more than USD 820 million per year¹⁸.

In 2009, according to decisions of the Interagency Commission on International Trade, 7 investigations as well as 3 revisions of previously applied measures were underway (Table 7).

Table 7

List of antidumping and special investigations concerning import of goods to Ukraine, conducted in 2009

	Activity name	Quantity	Goods concerning import of which investigation was conducted
1	antidumping investigations	4	<ul style="list-style-type: none">– lactic acid originated from the People's Republic of China;– pile fabrics, including 'long pile' fabrics and terry fabrics, knitted or crocheted, originated from the People's Republic of China and the Republic of Korea;

¹⁷ According to the Ministry of Economy, 13.01.2010 <http://www.me.gov.ua>

¹⁸ According to the Ministry of Economy, 13.01.2010 // <http://www.me.gov.ua>

			<ul style="list-style-type: none"> – syringes originated from the Kingdom of Spain, the Federative Republic of Germany, the United Kingdom, and the People’s Republic of China; – halves and quarters of chicken as well as chicken legs and cuts thereof originated from the United States of America and the Federative Republic of Brazil.
2	special investigations	3	<ul style="list-style-type: none"> – liquid chlorine regardless of a country of origin and export; – matches regardless of a country of origin and export; – float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked, exceeding 3,5 mm but not exceeding 4,5 mm, regardless of a country of origin and export.
3	revision of applied antidumping measures	3	<ul style="list-style-type: none"> – wood fibre boards (WFB) of the wet production process, hard, originated from the Russian Federation; – screw compressors produced by Remeza CJSC originated from the Republic of Belarus.
4	revision of special measures	1	<ul style="list-style-type: none"> – steel seamless standing and pumping-compressor pipes.

Besides, 3 investigations and 2 revisions of antidumping measures were initiated in 2009. Based on results of the investigations, 3 antidumping measures concerning import to Ukraine were applied in 2009:

- concerning lactic acid originated from the People’s Republic of China;
- pile fabrics, including 'long pile' fabrics and terry fabrics, knitted or crocheted, originated from the People’s Republic of China and the Republic of Korea;
- syringes originated from the Kingdom of Spain, the Federative Republic of Germany, the United Kingdom, and the People’s Republic of China; and

one special measure concerning import of matches to Ukraine regardless of a country of origin and export. Besides, preliminary special measures were applied within the framework of a special investigation against import of sheet glass to Ukraine.

Export duties

During 2008-2009, Ukraine adheres to its commitments on gradual decrease of export duties for sunflower seeds, live cattle, animal hide, ferrous and nonferrous metal scrap.

Table 8 presents transformation of export duty rates for the entire list of goods on export of which export duties are imposed as per legislation in force.

Table 8

Transformation of Ukrainian export duty rates after accession to the WTO

Commodity name	UKTZED code	Existing export duty rate			Final rate to meet the commitment, and the meeting date	According to the Law of Ukraine
		right after accession 2008	2009	2010		
Ferrous metal scrap and waste	7204 and subsequent ¹⁹	EUR 25/t	EUR 18/t	EUR 16.4/t	to EUR 10 in 2014	№ 400-V of 30.11.2006 and № 1105-V of 31.05.2007
Scrap of nonferrous metals and semi-finished goods	7202998000; 720421; 7204290000; and subsequent ²⁰	30%	27 %	24 %	by 3% annually	№441-V of 13.12.2006 and № 1106-V of 31.05.2007
Linseeds, sunflower seeds, false flax seeds	120400 120600 1207999900	14%	13%	12%	to 10% in 2012	№ 2773-IV of 07.07.2005
Live cattle	0102 90 05 00, 0102 90 21 00, 0102 90 29 00 and subsequent ²¹	50%	45%	40%	by 5 percentage points annually to 10%	№ 356-V of 16.11.2006
Raw hide	4101, 4102, 4103 90 00 00	30%	29%	28%	1 percentage point annually to 20%	№ 356-V of 16.11.2006

¹⁹ 7204 10 00 00; 7204 30 00 00; 7204 41 10 00; 7204 41 91 00; 7204 41 99 00; 7204 49 10 00; 7204 49 30 00; 7204 49 91 00; 7204 49 99 00; 7204 50 90 00;

²⁰ 7204 50 10 00; 7218 10 00 00; 7401; 7402 00 00 00; 7403 12 00 00; 7403 13 00 00; 7403 19 00 00; 7403 21 00 00; 7403 22 00 00; 7403 22 00 00; 7403 29 00 00; 7404 00; 7405 00 00 00; 7406; 7414 90 00 00; 7415 29 00 00; 7415 39 00 00; 7418 19 00 00; 7419; 750300; 7602 00; 7802 00 00 00; 7902 00 00 00; 8002 00 00 00; 8101 91 90 00; 8105 10 90 00; 8108 10 90 00; 8113 00 40 00 ;

²¹ 0102 90 41 00, 0102 90 49 00, 0102 90 51 00, 0102 90 59 00, 0102 90 61 00, 0102 90 69 00, 0102 90 71 00, 0102 90 79 00, 0102 90 90 00, 0104 10 10 00, 0104 10 30 00, 0104 10 80 00.

Export restrictions

After accession to the WTO, very important commitments of Ukraine on cancelling quantitative restrictions on commodity export were met, which surely had a substantial positive effect for business in the country. From the accession date, a prohibition on export of nonferrous metal scrap was abolished²². Besides, restriction on export of grain as well as precious metals and precious stones, except gold, silver and diamonds, was lifted.

The Government often introduced export quotas on oil-yielding and grain crops during 2006-2008 to curb growth of food prices in the country²³. In 2009 the Government abstained from introducing any quantitative restrictions (quotas).

Quantitative import restrictions, import licensing

From the date of its accession to the WTO, Ukraine undertook to cancel and not introduce any quantitative import restrictions or other nontariff measures such as licensing, quotas, prohibitions, permissions, requirements on preliminary authorisation, licensing requirements, or other restrictions with similar effects that may not be justified as conforming with the WTO agreements.

Hence, Ukraine must adhere to the WTO rules when applying any measure able to have a restrictive impact upon trade, particularly when licensing imports. Measures aimed to protect human or animal health or life, plants and environment should be taken according to the provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and the WTO Agreement on Technical Barriers in Trade.

Upon its accession to the WTO, Ukraine cancelled a prohibition on the importation of buses, trucks and motor cars that were more than 8 years old at the moment of importation. However, according to new rules, legalisation of a 8-years-plus automobile can cost its owner tens of times greater than of a new car with the same engine volume. Besides, restrictions in the form of environmental standards that every automobile imported into Ukraine's territory must meet were not eliminated.

The latter measures are justified from the viewpoint of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and the WTO Agreement on Technical Barriers to Trade because they are implemented in order to protect human health and environment.

²² Prohibition on export of nonferrous metal scrap was abolished after accession to the WTO by the Law of Ukraine No. 441-V of 13.12.2006.

²³ The amount of grain quotas was actually a prohibition of export because of a small amount allowed to be exported. The CMU Resolution No. 189 of 12 March 2008 *On the approval of the amounts of quotas for sunflower oil and sunflower seeds export of which is subject to licensing until 1 July 2008, and a procedure of licence issuance* approved export quotas for sunflower seeds in the amount of 1 thousand tons and for sunflower oil – in the amount of 300 thousand tons. The quotas were terminated by the Decree of the President of Ukraine No. 481 of 28 May 2008.

Technical barriers to trade

The WTO Agreement on Technical Barriers to Trade requires the WTO Member States to apply technical regulations and standards for non-protectionist purposes such as national security, prevention of deceptive practices, or protection of human, animal or plant life or health or of the environment, based on scientific justification and with no unnecessary obstacles to international trade. The WTO countries must prefer international standards and technical regulations taking them as a basis for the elaboration of national standards and regulation. A high level of harmonisation of national standards and technical regulations with international ones must guarantee compliance with these WTO requirements.

All national and regional standards shall be voluntary, except those referred to or those mentioned in technical regulations developed, inter alia, to protect national security interests, prevent deceptive practices, protect human, animal or plant life or health and environment.

The Action Plan to Adapt Ukraine's Economy to the World Trade Organisation's Requirements²⁴ provides for (para. 4.5) adoption and implementation of 18 technical regulations on industrial products, developed on the basis of the New Approach European directives that implement a modular approach to conformity assessment procedures (during 2009-2012). As of early 2010, 29 technical regulations have been approved in Ukraine by the Cabinet of Ministers' resolutions, including 10 technical regulations during 2009; 2 technical regulations have been implemented during 2009. The CMU Resolution No. 5 of 6.01.2010 approved the Technical Regulation on Energy Marking of Domestic Electric Equipment. Five more draft technical regulations are under elaboration in the Cabinet of Ministers. Ten draft technical regulations are under agreement with central executive authorities concerned²⁵.

According to Ukraine's commitment to the WTO Members, the State Committee of Ukraine for Technical Regulation and Consumer Policy (Derzhspozhyvstandart) will not require imported goods to be compliant with voluntary (non-mandatory) standards from the date of Ukraine's accession to the WTO (para. 313 of the Report on the Accession to the WTO). It is expected that the Ukrainian technical regulation system will become a system where technical regulations are mandatory. At the same time, compliance with a standard is not mandatory. Practice of recognising a supplier's (producer's) declaration of conformity must be expanded whereas a list of goods subject to mandatory third-party certification must be shortened.

However, state standards in Ukraine currently contain both mandatory and voluntary indicators. As of today, no technical regulation, which must contain mandatory indicators of safety for human health, has been approved for foodstuffs. Derzhspozhyvstandart uses this situation to justify the need to retain a mandatory certification function, referring to the fact that no technical regulations for food products has been approved as well as relying on requirements of Decree No. 46-93 *On standardisation and certification*

²⁴ CMU Resolution No. 1381-p of 30.10.2008 that approved the Action Plan to Adapt Ukraine's Economy to the World Trade Organisation's Requirements.

²⁵ Data by the Ministry of Economy of Ukraine.

concerning the provisions on certification as per the Law No. 2406 on the Confirmation of Conformity, which must be used until giving effect to a relevant technical regulation that must contain minimal specifications of quality and safety for food products. This does not mean, however, that there is currently no food product safety control in the country because the control is exercised pursuant to existing regulatory documents approved by the Ministry of Health.

Therefore, it is necessary to eliminate contradictions in legislative provisions in force, first of all the Law of Ukraine on Safety and Quality of Foodstuffs and the Law of Ukraine on Standardisation and Certification, as well as to bring subordinate regulatory legal acts into conformity with legislation in force and ensure compliance with the international commitments undertaken by Ukraine as a WTO Member.

According to the commitments undertaken at the accession to the WTO, Ukraine must keep reducing the number of goods subject to mandatory third-party certification as well as provide the WTO with a revised list of goods subject to mandatory certification by 31 January 2012 (para. 300 of the Report on the Accession to the WTO²⁶).

As of 31 December 2009, Derzhspozhyvstandart orders excluded from the List of products subject to mandatory certification in Ukraine, 122 product items with low risk, including 24 items from the list of products conformity of which can be confirmed by a supplier's declaration.

The commitments to decrease the number of goods subject to mandatory certification are based on the idea that the practice of recognition of supplier's declarations of conformity (SDOC or SDC) will be spreading in Ukraine instead of Derzhspozhyvstandart confirmation of conformity to (with issuance of a certificate of conformity) standards or technical regulations.

Ukraine's commitments to the WTO include no obligation to cancel mandatory certification of goods. Under the WTO membership, Ukraine has the right to apply mandatory certification of imported goods as well as certification of domestic production. At the same time, Ukraine undertook to cancel any Derzhspozhyvstandart powers to require testing or certification of some or other imported food products whereas imported food products will be subject to testing and certification only by a sanitary or veterinary service according to their competence, as specified by the Law of Ukraine on State Regulation of Agricultural Product Import and the Law of Ukraine on Safety and Quality of Foodstuffs. As to other (industrial) product categories, Ukraine assumed no such obligation.

Article 4 *Certification and control of importation of agricultural products* of the Law of Ukraine on State Regulation of Agricultural Product Import reads as follows: "Sanitary and epidemiological, and radiological control, and, in case of the importation of objects of state veterinary-sanitary control and supervision – goods of groups 1-5, 7, 10, 12, 14-16, 19,

²⁶ The Law of Ukraine on the Ratification of the Protocol on the Accession of Ukraine to the World Trade Organisation, No. 250-VI of 10.04.08.

21 and 23²⁷ of the Ukrainian Classification of Goods Relating to Foreign Economic Activity (UKTZED) – to veterinary control. In this case, foreign certificates shall be taken into account solely in the situations where mutual recognition of such certificates is provided for by relevant international treaties”.

However, analysing the question about liquidation of the Derzhspozhyvstandart’s function of carrying out mandatory certification of food products, both imported and domestic, one should consider that different agencies give different meanings to the *certification* notion according to legislation in force.

For Derzhspozhyvstandart, mandatory certification means testing and issuance of a certificate of conformity with all the mandatory requirements specified in relevant regulatory documents listed in the Derzhspozhyvstandart’s Order No. 28 of 1 February 2005 *On the approval of the List of products subject to mandatory certification in Ukraine*.

By now, the list includes only 10 foodstuff items, mainly baby food, alcoholic beverages and tobacco products:

1. Mixtures based on dry milk designed for infant and dietetic nutrition.
2. Canned vegetables, canned vegetables with fruits, canned vegetables with meat for infant nutrition.
3. Canned fruits and berries for infant nutrition.
4. Canned fish for infant nutrition.
5. Canned meat for infant nutrition.
6. Grape wines, fruit wines, champagnes and sparkling carbonated wines.
7. Vodkas, special vodkas, spirits and other alcoholic beverages.
8. Cognacs, cognac drinks.
9. Tobacco products.
10. Alcohols: ethyl rectified alcohol made of treacle; ethyl rectified alcohol.

Seventeen foodstuff items were withdrawn from the list of products subject to mandatory certification during 2009. As of middle 2007, the list contained 36 items.

When a certificate of conformity is issued, e.g. to mixtures based on dry milk designed for infant and dietetic nutrition, which are still subject to mandatory certification, products are tested for conformity with mandatory requirements specified in the following regulatory documents:

GOST²⁸ 21831-76 – Food concentrates, dry products for infant and dietetic nutrition supplied for export. Technical requirements;

GOST 30626-98 – Dry dairy products for infant nutrition. General specifications;

²⁷ UKTZED groups: 1 – live animals; 2 – meat and food bowels (byproducts); 3 – fish and cancroids, mollusks and other water invertebrates; 4- milk and dairy products; bird eggs; natural honey; 5 – other animal products not mentioned elsewhere; 7 – vegetables, plants, roots and food root crops; 10 – grain crops; 12 – seeds and fruits of oil-bearing plants; 14 – plant materials for basketry; other plant-based products not mentioned elsewhere; 15 – animal- or plant-based fats and oils; 16 – finished food products made of meat, fish or cancroids, mollusks and other water invertebrates; 19 – finished products made of grain crops, flour, starch or milk; flour-based confectionery; 21 – miscellaneous food products; 23 – residues and waste of food industry; finished animal feed.

²⁸ GOST – USSR State Standard

GN²⁹ 6.6.1.1-130-2006 – Permissible radionuclide content levels;

DSanPin 8.8.1.2.3.4-000-2001 – State sanitary rules and regulations. Permissible doses, concentrations, quantities and content levels of pesticides in agricultural raw materials, food products, workplace area, atmospheric air, basin waters, and soil).

The document *GOST 30626-98 – Dry dairy products for infant nutrition. General specifications* itself specifies that, in terms of microbiological indicators, dry dairy products for infant nutrition must comply with the requirements set by the State Sanitary and Epidemiological Surveillance bodies, whereas content of toxic elements, mycotoxins, pesticides, antibiotics, and radionuclides must not exceed the permissible levels established by sanitary rules and hygienic standard rates valid in the territory of Ukraine.

Article 6 of the Law of Ukraine on Safety and Quality of Foodstuffs identifies the State Sanitary and Epidemiological Service, together with other responsible public executive authorities, as developers of technical regulations establishing minimal quality specifications for foodstuffs. By now, no technical regulations for food products has been approved. This does not mean, however, that there is currently no food product safety control in the country because the control is exercised pursuant to existing regulatory documents approved by the Ministry of Health.

For the sanitary and epidemiological service, certification means issuance of an opinion (certificate) on conformity with quality and safety indicators as well as regulations established by sanitary legislation.

The State Sanitary and Epidemiological Service of Ukraine studies indicators according to the regulations established by sanitary legislation:

- minimal quality specifications;
- physicochemical safety indicators;
- microbiological safety indicators;
- radiological safety indicators.

In pursuance of the Resolution by the Chief State Sanitary Inspector of Ukraine No. 43 of 28.12.07 *On the realisation of Articles 6, 44 and 46 of the Law of Ukraine on Safety and Quality of Foodstuffs*, medical and sanitary control is accompanied by mandatory extended sanitary control of food products imported to Ukraine that carry in themselves a risk for human health. Selective extended sanitary control of food products controllable by the sanitary and epidemiological service is carried out free of charge, according to the programme specified by the Resolution.

According to sanitary rules, extended sanitary control is mandatory for freights with imported food products if (among other reasons) a food product is being imported to Ukraine's customs territory by a producer or supplier for the first time and has no producer's declaration³⁰ issued to that given supplier.

²⁹ Hygienic norms

³⁰ A producer's declaration is a document issued by a food producer. The producer confirms with this document that the food products are safe for consumers and meet sanitary legislation requirements. At the same time, the producer gives guarantees that his products have the same qualitative characteristics that he specified in the declaration.

Besides, the Ministry of Health established a percentage of controllable freights carrying a risk for human health and subject to mandatory extended sanitary control. This percentage must not exceed 20% for food products that usually pose a high risk for human health at import (dairy products, meat products, fish products, cookery, preserves, infant food, egg-made products, confectionery with cream); and 5% for food products that usually pose a low risk for human health (bread, bakery products, sugar, vegetables, soft and strong drinks, honey, canned food, dietetic food, etc). Standard sanitary control of food products made in Ukraine and food products in circulation is exercised within the framework of state sanitary and epidemiological surveillance rather than control.

The list of foreign economic activity entities by UKTZED codes that do not require state sanitary and epidemiologic examination (Resolution of the State Sanitary and Epidemiological Service No. 25 of 26 December 2008 *On the optimisation of state sanitary and epidemiological surveillance on foreign economic activity entities by UKTZED code*) includes certain categories of agricultural products in UKTZED groups 1, 5, 6, 7, 10, 12-15 and 23³¹ (but they are objects of veterinary control). Customs clearance of import for them is performed without submitting a separate sanitary and epidemiological opinion but provided that an importer produces to a customs body shipping documents bearing a permissive stamp of the MoH³² unit in which the number of the MoH opinion containing a list of products is indicated.

Medical and sanitary control of freights imported to Ukraine is exercised by specialists of the sanitary and hygienic examination departments of sanitary and epidemiological stations (SES)³³.

An opinion based on results of the SES **state sanitary and epidemiological examination** is a **permissive** document confirming conformity of an entity, documents or products with regulations in force. The expert opinion is either itself a kind of permission or serves as a ground for issuance of other document, e.g. a producer's declaration. Besides, the SES expert opinion should be received to obtain a certificate for a product, confirmation of its safety, non-toxicity of raw materials, etc.

For veterinary service, certification means issuance of a veterinary certificate based on veterinary control.

Passage of cargoes controllable by the state veterinary medicine service across Ukraine's customs border is only allowed from the countries trouble-free in epizootic terms, given an original veterinary certificate of the country of origin with mandatory identification of a specific recipient and subject to compliance with veterinary requirements concerning the importation to Ukraine of cargoes controllable by the state veterinary medicine service, after mandatory veterinary control.

³¹ UKTZED groups: 1 – live animals; 2 – meat and food bowels (byproducts); 5 – other animal products not mentioned elsewhere; 6 – live plants and floriculture products; 7 – vegetables, plants, roots and food root crops; 10 – grain crops; 12 – seeds and fruits of oil-bearing plants; 13 – gums, resins, and other plant-based juices and extracts; 14 – plant materials for basketry; other plant-based products not mentioned elsewhere; 15 – animal- or plant-based fats and oils; 23 – residues and waste of food industry; finished animal feed.

³² MoH – the Ministry of Health of Ukraine

³³ (<http://www.ses.gov.ua/?cont>).

A customs office of destination clears cargoes only given an F-2 (Ф-2) form certificate issued by specialists of structural units of regional services of state veterinary control on the state border and transport after veterinary and sanitary expert examination in a state laboratory of veterinary medicine at the cargo receipt place.

A laboratory of veterinary medicine is a properly equipped laboratory, accredited by the National Agency for Accreditation or by a relevant accreditation body of a foreign country, manned with specially trained staff competent in carrying out necessary technical procedure, and headed by a veterinary medicine physician.

Analysis of legislation and regulatory documents showed that all the food product types now contained in the List No. 28 for mandatory certification by Derzhspozhyvstandart are subject to control of safety and quality by veterinary and sanitary services at importation.

For reference: according to Article 44 *Border control of cargoes with food products being imported*, Law of Ukraine on Safety and Quality of Foodstuffs:

‘1. Any cargo of food products being imported shall be subject to border control by a sanitary or veterinary border inspector (hereinafter referred to as a relevant border inspector) in order to secure compliance with necessary sanitary measures and technical regulations valid at the moment of application.

2. All the cargoes with food products being imported shall be subject to standard veterinary or sanitary border control that shall be exercised at appointed border inspection posts and shall include examination of documents and visual inspection.

4. Cargoes with food products being imported and usually posing a high risk for human health shall be subject to extended sanitary control according to a plan based on results of previous extended sanitary control of such products imported from the same capacities (objects) of origin and/or by the same importer or exporter from a country of origin and/or from the same country of origin”.

For reference: According to the Law of Ukraine on Safety and Quality of Foodstuffs that took effect on 28 October 2005, the State Service of Veterinary Medicine shall exercise supervision over the following product types:

- *unprocessed food products of animal origin at an entity where they are manufactured;*
- *all plant products, agricultural products and unprocessed food products of animal origin at agricultural markets.*

Bodies of the State Sanitary and Epidemiological Services are authorised to exercise control only of processed (finished) food products. Supervision over safety and quality of raw materials is assigned to veterinary service.

Hence, provided that mandatory certification of food products by Derzhspozhyvstandart is cancelled, a multi-tier control of safety and quality of food products remains in Ukraine during customs clearance of goods, in production, and in wholesale and retail trade. After cancellation of mandatory certification, voluntary

certification remains in the country, and this allows implement mutual recognition of certificates of product conformity with other countries.

Analysis of legislation and regulatory documents showed that all the food product types now contained in the List No. 28 for mandatory certification by Derzhspozhyvstandart are subject to control of safety and quality by veterinary and sanitary services at importation.

Regarding unified authority for safety and quality control of all foodstuff types at the importation and in the domestic market, it is reasonable to consider the issue of creation of such authority on basis of the Ministry of Agrarian Policy control, because a larger part is already controlled by the agency subordinated to the ministry – the State Committee of Veterinary Medicine whereas such structural MAP units as the State Inspectorate for Control of Quality of Agricultural Produce, Department of Food Industry, etc., could assume functions of control over most processed food products instead of the Ministry of Health. In that case, the issue of establishing unified safety control of food raw materials and foodstuffs (finished food products including alcoholic beverages and tobacco products) will be settled and functionally assigned to the Ministry of Agrarian Policy.

At the same time, a system of market supervision must be implemented in Ukraine, and a relevant law should be passed.

In order to create a national system of technical regulation, adapted to the EU and WTO requirements, the Ministry of Economy prepared a Plan of Urgent Measures to Reform the Technical Regulation System, which was approved by the CMU Resolution No. 1070-p of 19.05.2010. The plan offers developing a series of legislative acts aimed to establish a system of state market supervision over safety of products placed in the market, instead of the existing system of state production control system; cancelling registration of product conformity declarations by producers/suppliers with a central executive authority on technical regulation; separating consumer rights protection functions from technical regulation, as well as separating state supervision of products in technical regulation from conformity assessment (certification) of products, metrology and standardisation, etc³⁴.

In order to realise the Plan, Derzhspozhyvstandart established a working group, including representatives of central executive authorities and public organisations, on drafting of laws on State Market Supervision; on General Product Safety; on a Supplier's Liability for Defective Products; and on Amending Some Laws of Ukraine (on registration of a producer's declaration of conformity).

The President of Ukraine submitted the draft Law on Market Supervision and Control of Products (reg. No. 6694 of 9 July 2010) to the Verkhovna Rada of Ukraine. The draft law specifies measures of market supervision and a procedure of their application by market supervision bodies; regulates a procedure of product characteristics verification, sample taking and sample expert examination and testing; regulates the issue of alerting consumers by market supervision bodies on any revealed hazard related to products, etc. Besides, the draft suggests implementing a European principle according to which market

³⁴ Report of the Ministry of Economy of Ukraine «About fulfillment of priority work activities and main tasks of the Ministry of Economy of Ukraine” - June, 2010, pp. 30-31

supervision is mandatory for products introduced in circulation and being distributed in the market. In this regard, product characteristics will be verified, first and foremost, at product distributors' entities. Producers will only be inspected only if products that are dangerous, pose a risk or fail to meet established requirements have been found in the market.

As advised by the Ministry of Economy, the draft Law of Ukraine on Amending Some Laws of Ukraine (on registration of a producer's declaration of conformity) has been submitted to the Cabinet of Ministers for consideration. The draft aims to prevent unjustified additional spending of time and funds by producers – economic entities on registration of declarations when products are being introduced into circulation, and to bring the Law of Ukraine on Standards, Technical Regulations and Conformity Assessment Procedures into conformity with the EU *acquis*. Cancellation of mandatory registration of declarations would allow producers and product suppliers to save tens of millions of hryvnias.

Free economic areas

According to the WTO rules, such economic zones should be managed in a way to prevent using in their territories any prohibited industrial subsidies (export or import-substituting), or prohibited investment measures related to trade. Besides, goods imported into or produced in special economic zones with customs or tax privileges must be subject to usual customs clearance when being imported to the rest of Ukraine's territory and with usual customs duties and taxes.

Ukraine has 11 free economic areas (FEA), most of which had a special customs area regime that was then cancelled by the Law of Ukraine on Amending the Law of Ukraine on the State Budget of Ukraine for 2005 and Some Other Legislative Acts of Ukraine (No. 2505 of 25.03.2005). Prior to adoption of this Law, 742 investment projects with USD 7.6 billion estimated cost (including USD 2.5 billion foreign investments) were approved in the FEAs and PDTs³⁵.

According to the Ministry of Economy of Ukraine, 241 investment projects were under implementation in the FEAs and PDTs in 2009 (115 – in PDTs, 126 – in FEAs), with USD 2.7 billion estimated cost (including USD 0.8 billion foreign investments, or 30% of the total estimated cost of the projects)³⁶.

The free economic areas are necessary to improve competitiveness of the Ukrainian economy but only provided that customs control on the FEA boundaries has been strengthened to a level corresponding to control on the borders with foreign countries; that tax privileges are provided depending on capital investments in a specific area subject to their certain level (50-70%); and that national FEA legislation matches the EU *acquis* in the light of a future free trade area agreement with the EU.³⁷

³⁵ PDT – priority development territories where a special investment regime was introduced.

³⁶ As of 1.09.2009.

³⁷ See an interview by Marcin Swiecicki during the debate "Free economic areas are necessary for increasing Ukraine's competitiveness" organized by the Foundation of Effective Governance (Kyiv, May 2010) http://debaty.org/speakers/ekon_zone/46-49.html

The Ministry of Economy is drafting a Law of Ukraine on Special Free Economic Areas that is expected to provide for optimal mechanisms of applying preferences for FEA entities. Besides, the Ministry has drafted a Law of Ukraine on Prospective Development Territories that will establish a special legal regime of economic activities in the PDTs.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Ukraine undertook to comply fully with the TRIPS Agreement from the date of its accession to the WTO, and the commitment is being successfully met. The State Department for Intellectual Property took active part in the work of the WTO Council for TRIPS as a WTO Member.

Meetings of regular and special sessions of the Council for Trade-Related Aspects of Intellectual Property Rights (the Council for TRIPS) took place in March and October 2009 in Geneva, Switzerland. The WTO Members discussed the following issues within the framework of the regular sessions of the Council for TRIPS: status of notifications according to the TRIPS Agreement; implementation of the TRIPS Agreement provisions by the WTO Member States; revision of the provisions of Article 27.3(b); relationship between the TRIPS Agreement and the Convention on Biological Diversity; protection of traditional knowledge and folklore; application of the TRIPS Agreement provisions concerning the protection of geographical indications, etc. Special sessions of the Council dealt with the establishment of a multilateral system of notifications and registration of geographical indications. Representatives of the State Department took part in sessions of the Council for TRIPS, represented Ukraine at the expert level, reported on the implementation of laws on intellectual property, and received positive mentions from the WTO Member States, particularly the EU, Switzerland and Canada. To meet Ukraine's commitments as per Article 63.2 TRIPS Agreement, the State Department in 2009 sent notifications concerning legislative acts and practices of application of national legislation on intellectual property, responded to requests from the WTO Member States, e.g. Argentina, on Ukraine's legislation concerning intellectual property.³⁸

Ukrainian business should be more active in initiating registration of national geographical indications. In the light of current negotiations between Ukraine and the EU on the Free Trade Area Agreement, the Ukrainian party even has nothing to oppose to the EU in the protection of geographical indications originating from the EU countries.³⁹

In the course of preparation for Ukraine's accession to the WTO, the Law of Ukraine on the Protection of Rights to Indications of the Origin of Goods was drafted and adopted regulating the legal protection of geographical indications of the origin of goods and meeting the TRIPS provision in full. Domestic commodity producers should engage more actively in the protection of their own geographical indications of the origin of goods according to a procedure specified by the Rules of Compilation, Submission, and Conduct of Expert Examination of a Qualified Indication of the Origin of Goods (Order of the

³⁸ Annual Report of the State Department of Intellectual Property in Ukraine, 2009, pp.45-47 (Річний звіт Державного Департаменту інтелектуальної власності України за 2009 рік, стор. 45-47).
http://www.sdip.gov.ua/i_upload/file/zvit_ua9.pdf

³⁹ "Business" No.15 dated 12 April 2010, pp.66-68 (Бизнес № 15/12.04.10 стор. 66-68)

Ministry of Education and Science of Ukraine No. 598 of 17.08.2001 *On the approval of the Rules of Compilation, Submission, and Conduct of Expert Examination of a Qualified Indication of the Origin of Goods and/or the Right to Use a Registered Qualified Indication of the Origin of Goods*). According to the Rules, registration in other country is only possible after registration in Ukraine. During the entire period of existence of the Law, only 10 geographical indications have been registered, of which only 2 may be deemed as protected in the EU.

Regional trade agreements. Customs Union.

The WTO rules require that the WTO countries, entering into free trade or customs union agreements, adhere to certain standards concerning coverage of a major part of trade in goods with preferential treatment and concerning non-aggravation of access conditions for third parties, i.e. customs duties and other trade regulation tools must not become higher or more restrictive.

Regular notifications on free trade agreements or customs unions are submitted by the Members to the WTO Committee for Regional Trade Agreements. Ukraine undertook to submit notifications and copies of its free trade and customs union agreements to the WTO as from the date of its accession. The WTO Enquiry Point and Information Processing Centre carried out considerable work in 2008-2009 to prepare notifications on all regional trade agreements between Ukraine and other countries of the world.

In 2009, a question about Ukraine's accession to the Customs Union with Russia, Kazakhstan and Belarus appeared.

If understood traditionally, **a free-trade area** means a group of countries that have eliminated among them import tariffs for all or most commodities and nontariff measures affecting trade among themselves. Free-trade areas do not have a common external tariff. The member countries of an area may apply their own tariffs of import duties to third-party countries.

According to *Article XXIV GATT*, customs unions and free-trade areas must eliminate the duties and other restrictive regulations of commerce "on substantially all the trade" between the parties to meet a free-trade criterion. Traditionally, free-trade agreements set a free-trade regime no less than for 90% trade with preferential partner countries. Ukraine already has bilateral free-trade agreements with the Russian Federation, Belarus and Kazakhstan that have founded a Customs Union recently. Ukraine has no free-trade agreement with the European Union so far. Negotiations began in February 2008. During the negotiations for preparation of a free-trade area agreement between Ukraine and the EU, both parties provide for liberalization of no less than 95% trade.

A future free-trade area between Ukraine and the EU does not require revision of Ukraine's existing free-trade agreements with other countries. Ukraine may have free-trade areas with the Russian Federation and the European Union at the same time. Besides, it may establish new free-trade areas in the future, e.g. with Israel or Canada. The EU has free-trade agreements with 24 countries and customs unions with three countries (Andorra, Turkey, San Marino). There are also a common market and a common customs

policy within the European Union, the policy providing for a common customs tariff in relation to third-party countries.

A **customs union** is a higher level of integration because, in addition to free trade among the union member countries, it establishes a common external tariff for third-party countries. Customs union members agree to eliminate all the tariffs among them. However, they replace their individual tariffs with common (unified) import tariff rates used by the customs union member countries to non-member ones. According to the WTO rules, such changes may not be used to increase a general level of internal market protection.

According to *Article XXIV GATT*, WTO members may have a preferential trade regime, particularly for parties to free-trade area or customs union agreements in the meaning of *Article XXIV GATT* and *the Understanding on the Interpretation of Article XXIV GATT, 1994*. Since 1947 till now, about 100 regional trade arrangements pursuant to *Article XXIV*, which grants a legislative right to exemption from the need of extending *the most-favoured-nation treatment* (MFT), have been notified to the GATT/WTO.

Ukraine is already a member of the World Trade Organization whereas the Russian Federation, Kazakhstan and Belarus are in the process of WTO accession negotiations. Each country formulates its own commitments and provides its own concessions during the WTO negotiations.

Subject to WTO membership of all these countries, a customs union among them may be established given the following conditions: a common external tariff for third-party countries must not be higher than a bound tariff of that one of the four customs union member countries that has agreed it upon at the lowest level when joining the WTO. At this point, Ukraine is a WTO member among the four countries in question, which means that two scenarios are possible if Ukraine joins the Customs Union:

- 1) either Russia, Kazakhstan and Belarus as the Customs Union members must adopt as common customs tariffs such tariff levels that will not exceed the bound Ukrainian tariff levels agreed upon when Ukraine joined the WTO, and must conduct further negotiations in the WTO based on the Ukrainian tariffs;
- 2) or, if they don't agree, Ukraine will have to withdraw the tariff concessions previously agreed upon within the WTO framework, that being a very unlikely step for Ukraine.

This way, compliance with *Article XXIV:5 GATT* will be ensured, namely: if economic integration blocs are established, the duties and other regulations of commerce imposed at the institution of a customs union in respect of trade with not parties to such union shall not on the whole be *higher or more restrictive* than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union. If a contracting party, being a WTO member, that joins a customs union or becomes a party to an interim agreement leading to a formation of a customs union, proposes to increase bound customs rates, it must act pursuant to provisions of *Article XXVIII GATT* concerning modifications of schedules of member country commitments. If a contracting party withdraws tariff concessions at negotiations, previously agreed upon within the WTO framework, the question arises as to securing compensation to the

countries whose trade could have suffered losses due to increase of customs rates. Ukraine will have to ensure compliance with this regulation.

Ukraine's accession to the Customs Union with Russia, Belarus and Kazakhstan would complicate for Ukraine the establishment of a free-trade area with the EU because the EU would have to establish a free-trade area only with the Customs Union in that case, not with an individual member state of the Union. The main requirement the EU sets for free-trade area agreements consists of WTO membership. The EU does not practise establishment of free-trade areas with any regional grouping of countries that includes non-members of WTO (like Russia, Kazakhstan and Belarus in case of the Customs Union). At the same time, establishment of a free-trade area between Ukraine and the EU will not hinder Ukraine's trade relationships with members of the Customs Union consisting of Russia, Belarus and Kazakhstan. The EU's policy provides for establishment of free-trade areas with many countries of the world, hence it can be foreseen that accession of the three countries (Russia, Belarus and Kazakhstan) to the WTO would open a way to negotiations on establishment of free-trade areas between them and the European Union.

Hence, it turns out that Ukraine's accession to the Customs Union with Russia, Belarus and Kazakhstan with no serious complication is possible subject to the following conditions being met:

- accession of Russia, Belarus and Kazakhstan to the WTO;
- adoption by Russia, Belarus and Kazakhstan of trade tariff barriers to third-party countries at a level not higher than adopted by Ukraine when joining the WTO;
- affiliation of Russia, Belarus and Kazakhstan, already as WTO members, to Ukraine's negotiations on a free-trade area (FTA) with the EU. If Ukraine has already had a FTA with the EU at that moment, the FTA will be established on terms agreed between the five countries.

If Ukraine acceded to the Customs Union with Russia, Belarus and Kazakhstan without the above-stated conditions, it would mean the following to Ukraine:

- dissolution of Ukraine's existing agreement with the WTO and commencement of negotiations with the WTO on new terms;
- complication of negotiations with the EU on a free-trade area and their postponement until Russia, Belarus and Kazakhstan join WTO.

3. THE WTO DOHA DEVELOPMENT ROUND: CERTAIN ASPECTS

3.1. Key components of negotiations

An opportunity for Ukraine to take part in the current WTO negotiations within the Doha Development Round framework as a full member to uphold its national interests is important.

Ukraine joined the Doha Round negotiations in the seventh year of these multilateral talks. The new round of multilateral negotiations commenced during the 4th WTO Ministerial Conference in November 2001 (Doha, Qatar). Therefore, Ukraine should now consider all the previous arrangements and compromises agreed by the WTO Member States to get things moving at the negotiations that should have been completed as far back as 2005. At the same time, Ukraine may voice in this stage of the Doha Round talks its general impression of the previous arrangements and express its personal opinion on certain provisions of the text of modalities by preparing a notification on its negotiation stand for the WTO Secretariat.

Key areas of multilateral negotiations in the Doha Development Round are as follows:

- implementation of the WTO Agreements;
- agriculture;
- access to the market of non-agricultural goods;
- rules of trade (antidumping, subsidies and countervailing measures, regional trade agreements, etc.);
- trade in services;
- trade-related aspects of intellectual property rights;
- settlement of disputes;
- promotion of trade including free transit; dues and formalities related to import and export; publication and application of the rules of trade;
- e-commerce;
- environmental protection;
- development issues (general principles, special and differential treatment, technical assistance, implementation, other development issues for the least developed countries).

Very hard and laborious work has been going on during recent years within the Doha Round framework: the WTO Members have been elaborating an updated Agreement on Antidumping Measures. Analysis of results of this work indicates existence of many principal differences in the understanding of the rules of trade by countries of the world.

The negotiations on the rules of trade should result in new wordings of the WTO Agreement on Implementation of Article VI GATT 1994 (known as the Agreement on Antidumping Measures), the WTO Agreement on Subsidies and Countervailing Measures as well as relevant provisions of the WTO Agreements on regional trade agreements.

Key areas of the Doha Round negotiations on trade-related aspects of intellectual property rights include: TRIPS and protection of public health; geographical indications;

relationship between the TRIPS Agreement and the Convention on Biological Diversity; protection of traditional knowledge and folklore.

A mandate for negotiations on the implementation and interpretation of the TRIPS Agreement provisions to strengthen protection of public health is defined in paragraph 17 of the Doha Declaration and in a separate Ministerial Declaration on the TRIPS Agreement and Public Health of 14 November 2001.

Despite completeness of the issues covered by TRIPS, this agreement failed to put an end to global regulation of intellectual property. Efforts of developed countries, which traditionally preferred raising intellectual property protection standards, continued also after signing of the agreement. For example, the EU and the US intensified their work via various initiatives to increase intellectual property protection levels as compared to the TRIPS Agreement, which resulted in a so-called TRIPS-Plus effect.⁴⁰ To have a chance to make an informed decision, Ukraine should study and assess thoroughly the impacts of the TRIPS-Plus rules emerging in the course of bilateral negotiations.

Negotiations are going on within the Doha Round framework to increase the protection level for geographical indications, particularly to establish a multilateral system of notification and registration of geographical indications for wines and alcohols as well as to apply an increased protection level to geographical indications for goods other than wines and alcohols. Negotiations on these matters are conducted separately.

Based on results of participation in the sessions of the Council for TRIPS, an opinion of the State Department on the agenda of the Doha Development Round was prepared, particularly on such matters as amending the TRIPS Agreement, relationship between the TRIPS Agreement and the Convention on Biological Diversity, establishment of a multilateral system of registration and notification of geographical indications, etc.

Trade in services is one of the problematic issues in the WTO talks, therefore reaching accords as soon as possible in this area is a precondition for successful general completion of the Doha Development Round. Improvement of conditions of access to service markets assumes expanding specific commitments on market access and national treatment (namely securing market access to new service subsectors; lifting restrictions on the participation of foreign capital or on increase of its participation level; providing foreign companies with relevant privileges granted to local companies; cancelling restrictions on market access and national treatment. A draft arrangement on problematic issues concerning completion of the negotiations on trade in services is presented in a report by the Chairperson of the Council for Trade in Services⁴¹.

A representative of the trade and economic mission within Ukraine's Permanent Delegation to the UN Office and other international organisations in Geneva (during a meeting of the NAMA negotiating group⁴² on 05.02.2010) made a statement on the Ukrainian party's support for a draft Understanding on the Interpretation of the WTO Agreement on Technical Barriers in Trade with respect to Labelling of Textiles, Clothing,

⁴⁰ Mohammed El Said (Lancashire Law School, University of Central Lancashire), *The European Union Free Trade Agreements and TRIPS-Plus: challenges and opportunities for Ukraine*.

⁴¹ Document TN/S/33 of 26.03.2008.

⁴² NAMA - non-agricultural market access.

Footwear, and Travel Goods. The Ukrainian party's stand is presented in the working document TN/MA/W/93/Rev.1/Add.1. This document is amended according to the proposals and observations of the countries that supported the joint US-EU initiative on simplification of the regime of trade in the above-mentioned goods. The Ukrainian party's support for the relevant initiatives requires further active involvement in upholding and promoting them within the NAMA negotiation framework⁴³.

3.2. Analysis of modalities for agriculture

As of late 2008, the year when Ukraine acceded to the WTO, there were already four versions of draft modalities for agriculture.

Analysis of the most recent version of draft modalities for agriculture dated 6 December 2008 (TN/AG/W/4/Rev.4) showed the following.

1) When analysing *Domestic Support* section of the modalities for agriculture, there is an impression that new provisions on reducing trade-distorting domestic support are strict enough. However, reaching a final accord on this matter within the Doha Round framework is also difficult because the *Market Access* section leaves for countries a possibility of a high level of domestic market protection due to insufficient liberalisation of import tariffs and other domestic market protection tools. If import tariff decrease is minor, this maintains an opportunity for countries to resort to granting subsidies to the sector via the "amber box", e.g. maintaining a great extent of such a measure as "market price support" that has effect only given rather high protection on the border. It would be desirable if provisions of the *Market Access* section were revised toward greater liberalisation. The Cairns Group came out during the Doha Round for more substantial improvement of market access, and stated in its documents, e.g. JOB (07)90/Rev.1 and JOB(07)/123, that elimination of special agricultural safeguards (SSG) is a very important and the only way to substantial improvement of market access. In this matter, Ukraine holds the same views as the Cairns Group countries and can join the Group's initiative. Analysis of the modalities showed that Ukraine must come out with a proposal to terminate Article 5 of the Agreement on Agriculture for the developed WTO Member States as of the first day of the implementation period. Besides, Ukraine should join the group of countries coming out against enlargement of tariff quotas and against the use of the *sensitive products* notion. However, analysis of the negotiating process indicated that the sensitive products and tariff quotas had been deemed a political need to complete the Round. In such a situation, Ukraine could come out against the right to declare any tariff lines as sensitive, regardless of whether a given tariff line was already indicated as a tariff quota subject in the pre-Doha period. Besides, Ukraine can suggest that tariff reduction within a tariff quota must be more substantial for developed countries, and, regardless of a tariff level within the tariff quota, the tariff must be decreased to zero in the first year of implementation of commitments.

2) Ukraine's interests are represented not in all sections and annexes of TN/AG/W/4/Rev.4. Some sections refer to Ukraine separately whereas some other refers to

⁴³ Report on implementing priority tasks of the Ministry of Economy of Ukraine (June, 2010).

the RAM group countries or to the VRAM group to which Ukraine belongs. However, RAM⁴⁴ includes both developing countries and emerging economies. Some provisions in the modalities – and they are many – apply only to developing countries and, therefore, can satisfy only some part of the developing RAM group countries. Most countries in the VRAM group⁴⁵ belong to emerging economies, except Tonga (developing country) and Saudi Arabia that is included by some international organisations in the developed countries category.

Provisions for developing countries do not apply to Ukraine within the WTO framework. Ukraine in 2008 acceded to the WTO on the developed country conditions. This is confirmed by the Agreement on Agriculture (AA) provisions applying to Ukraine that concern domestic support for agriculture, where a 5%+5% *de minimis* level is used rather than 10%+10% like for developing countries. It mainly happened because the Uruguay Round agreements refer only to two country categories: *developed* and *developing*. When the Uruguay Round agreements were approved, the WTO included no country like Ukraine, i.e. an emerging economy, for example, former Soviet Union countries, and there were only two country categories – *developed* and *developing*.

Therefore, Ukraine should insist on allocation of one more country categories, in addition to *developed* and *developing*, and on extension of some modality provision to that new country category. It especially applies to new provisions of specific and differential treatment, a new special safeguard mechanism (SSM), new provisions concerning “green box” programmes, etc.⁴⁶ For example, Ukraine can suggest including a new category of *emerging economies* in the text of modalities, specifying a list of WTO Members, including Ukraine, belonging to that group⁴⁷.

Draft modalities suggest allowing using some types of “green box” programmes only for developing countries. For example, they propose to supplement the list of “green box”

⁴⁴ The RAM group (*recently acceded members*) includes Ecuador, Jordan, Georgia, China (for non-governmental goods only), Mongolia, Oman, Panama, Taiwan, and Croatia.

⁴⁵ The VRAM group (*very recently acceded members*) includes Albania, Armenia, Vietnam, Georgia, Macedonia, Kyrgyzstan, Moldova, Saudi Arabia, Tonga, and Ukraine.

⁴⁶ See more details in the document «Аналіз проекту модальностей Доха Раунду-Розвиток в частині сільського господарства та експертні пропозиції щодо підготовки позиції України з цього питання» / Blue Ribbon Analytical and Advisory Centre / March 2010.

⁴⁷ As to the definition of an «*emerging economy*» or *Emerging Market Economies (EMEs)*:

«*Emerging economy*» or *Emerging Market Economies (EMEs)* is a country experiencing development and economic growth a country that is becoming industrialized and undergoing economic growth. *Emerging Market Economies (EMEs)* are characterized as transitional, meaning they are in the process of moving from a closed economy to an open market economy while building accountability within the system. Examples include the former Soviet Union and Eastern bloc countries. As an emerging market, a country is embarking on an economic reform program that will lead it to stronger and more responsible economic performance levels, as well as transparency and efficiency in the capital market. Although the term “*emerging market*” is loosely defined, countries that fall into this category, varying from very big to very small, are usually considered emerging because of their developments and reforms. An *emerging economy* is a country with income per head of population of \$9,265 or less (based on Gross National Income (GNI)). In 2008 for Ukraine GNI per capita, PPP (current international \$) is equal \$ 7,210 or GNI per capita, Atlas method (current US\$) is equal \$3,210 (2008)/<http://web.worldbank.org/WBSITE/External/Datastatistics>. Ukraine is included in the list of *emerging and developing economies* according to the International Monetary Fund's World Economic Outlook Report, October 2009. http://en.wikipedia.org/wiki/developing_country. The Organisation of Economic Cooperation and Development (OECD) also includes Ukraine in the “*emerging economies*” group.

programme areas in Annex 2 of the WTO Agreement on Agriculture with the following paragraph: “policies and services related to farmer settlement, land reform programmes, rural development and rural livelihood security in developing country Members, such as provision of infrastructural services, land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programmes, nutritional food security, issuance of property titles and settlement programmes, to promote rural development and poverty alleviation”.

For countries like Ukraine, i.e. emerging economies, ex-USSR republics, countries that carry out reformation from a closed planned economy into an open market economy, where privatisation of agricultural land is not yet completed, where there is no market of such land, where a process of creating new economic management forms in agriculture (e.g. farms) is going on, it is important to provide an opportunity of implementing these reform directions via “green box” support programmes, i.e. with no restriction or reduction.

Suggested amendments to the AA concerning such “green box” programmes as *Structural adjustment assistance provided through investment aids* and *Payments under regional assistance programmes* also apply to developing countries only. At the same time, these programmes could be successfully implemented in Ukraine. Subsidies under the regional assistance “green box” programme can be provided to agricultural producers in disadvantaged areas suffering from droughts (south of Ukraine) in the form of payments for support for cattle feeding. Due to continuous droughts, those areas feel permanent difficulties with fodder provision because low humidity destroys pastures. Or, it could be areas disadvantaged in terms of low soil fertility preventing cultivation of sufficient quantities of fodder crops.

Support under the *Structural adjustment assistance provided through investment aids* programme can be provided both through direct state financial aid to a farmstead to build a dairy farm, purchase cows or change the enterprise’s profile and through subsidies for compensation of interest on commercial bank loans taken by producers for the above-mentioned purposes. Physical restructuring of milk production in Ukraine can provide for building new farms, fitting farms with new equipment and machinery, constructing refrigerators, and procuring live cattle. This aid is granted subject to business plans explaining that a producer is non-competitive in the market not because of market conditions but due to an imperfect structure of the farm itself and improper management. The latter support area can include a subprogram of state support for young entrepreneurs who decided to start agricultural business.

To take Ukraine’s interests into consideration, Ukraine should insist on extension of these new provisions to the new group of countries, i.e. emerging economies, or the RAM group.

Another important point that Ukraine should try to uphold in the course of the Doha Round concerns a new special safeguard mechanism. **A special safeguard mechanism (SSM)** is a new mechanism for developing countries, which provides for possible increase of import tariffs if, according to a specified methodology, the volume of imports grows or the price of imported goods decreases.

This new mechanism was suggested by the G-33 group because most developing countries have no right to use **special safeguard (SSG)** as per Article 5 AA because SSG may only be used by the Members that performed “tariffication” of their quantitative restrictions during the Uruguay Round. Ukraine must insist that the right to use a SSM apply not only to *developing countries* but also to *emerging economies*.

For that purpose, Ukraine should join the G-33 initiative and carry out negotiations with the RAM and VRAM countries belonging to the *emerging economies* category (Albania, Croatia, Georgia, Kyrgyzstan, and Moldova).

According to para. 142 of the draft modalities on agriculture, increase of an imported customs tariff rate within the SSM system is limited by the pre-Doha bound tariffs. It means that the import duties now existing in the WTO Members’ commitments are maximal and may not be exceeded according to a new special safeguard mechanism (SSM). These conditions are not acceptable to Ukraine because it reduced customs tariff rates substantially in the accession process.

For example, according to the new SSM, if the volume of imports exceeds 110 per cent, the country may impose the maximum additional duty on applied import tariffs, which shall not exceed, say, 25 per cent of the current bound import duty. For countries belonging to the least developed countries (LCD) or to small vulnerable economies (SVE), it is possible to exceed the level of pre-Doha bound tariffs, e.g. by 20%. This provision would satisfy Ukraine completely because an argument to obtain such a right can consist of the fact that in Ukraine we observe export volume surges (by more than 110%) during the WTO membership period in 13 tariff lines of agricultural goods. For example, in Ukraine the volume of imports for group 0402 “milk and cream, concentrated or with addition or sugar” increased 33 times whereas the figure for group 0405 “dairy butter and other fats; milk spreads” grew 6 times in 2009.

At the same time, according to draft modalities of the Doha Round concerning agriculture, important commitments concerning a bound level of domestic support and import tariff rates remain unchanged for Ukraine. For example, Ukraine, as a very recently acceded WTO member, will not be required to undertake to reduce its final bound total AMS, i.e. it retains the right to an annual AMS with no reduction, UAH 3.043 billion. For Ukraine as a RAM/VRAM group country, there is no restriction of access to its *de minimis* right according to its accession conditions, i.e. it retains the right to use *de minimis* support with no reduction, in the amount of 5%+5%. Besides, Ukraine as a very recently acceded member will not be required to reduce final bound tariffs.

4. UKRAINE'S MEMBERSHIP IN THE WTO: ROLE AND INVOLVEMENT OF BUSINESS

The extent of successful utilisation of Ukraine's WTO membership factors greatly depends on the stand taken by branch civil society associations (unions, societies, etc. operating in the Ukrainian economy) and on efficiency of a dialogue between authorities and business.

Ukraine joined the World Trade Organisation not only with incomplete internal regulatory reforms (particularly, in technical regulation, improvement of a system of standardisation and certification, etc.) but also with an unshaped and institutionally unconsolidated system of mutual coordination of interests between public authorities, entrepreneurial structures, and civil society organisations.

Despite the priorities on establishing a fruitful dialogue between authorities and nongovernmental organisations and on bringing legislation on NGOs into conformity with European principles, declared in numerous draft policy documents of Ukrainian governments and in coalition agreements of the Ukrainian parliament, public associations in Ukraine (including sectoral, trade public organisations) have no regulatory act of their own that would regulate their activities. Owing to that, they have to be guided in their work by the Law of Ukraine on Public Associations No. 2460-XII of 16 June 1992 (*adopted mainly for political parties that were developing rapidly in recently declared independent Ukraine*) as amended and supplemented for many times.

For reference. The Law of Ukraine on Public Associations No. 2460-XII of 16 June 1992 contains a number of outdated provisions and registration barriers restricting people's rights. The European Court of Human Rights described the Law as undemocratic and being in conflict with the Convention for the Protection of Human Rights and Fundamental Freedoms.⁴⁸

A draft text of the new Law of Ukraine on Public Organisations has been under consideration in the Verkhovna Rada of Ukraine since 2007. A series of other draft laws aimed to improve a regulatory legal framework of civil society associations' activities have also not been adopted yet.

Besides, civil society organisations in the economic area are not structured; some of them duplicate functions within one sector thereby creating conjuncture-based competition. Business community in Ukraine has no system of its public representation and requires self-organisation.

In the course of the negotiation process on Ukraine's accession to the WTO, experts on civil society suggested establishing a single coordinating body like the European Economic and Social Committee that would serve as a kind of a negotiating site, an information analytical centre during the implementation of important socioeconomic transformations in Ukraine, etc. Such a Committee for Socioeconomic Development of Ukraine should be solely public and build its activities along the European standards.

⁴⁸ Ruling by the European Court of Human Rights, Council of Europe, 3 April 2008
http://www.echr.ru/documents/doc/new2009/koreckiy_v_ukr.htm

For reference. The European Economic and Social Committee is a consultative body of the European Union established in 1958 according to the Treaty Establishing the European Community to secure representation of interests of various economic and social groups.⁴⁹

The Committee's task is to give advice to the European Commission and the Council that are obliged to consult the Committee on social and economic matters. The Committee may also voice its opinion upon its own initiative. Hence, the European Economic and Social Committee (EESC), as a leading consultative body and official platform for declaring stands of nongovernmental stakeholders, plays a role of a bridge between the European Union and its citizens.

The Committee members meet at plenary sessions about ten times a year, and more often meet in smaller groups.

However, this proposal was not implemented, obviously because there are such entities as the Council of Entrepreneurs under the Cabinet of Ministers of Ukraine and the Council of National Commodity Producers' Associations under the Cabinet of Ministers of Ukraine.

By the way, the European Economic and Social Committee actively cooperates with Ukrainian civil society organisations, particularly with all-Ukrainian employers' associations and with other organisations within the framework of Ukraine's integration into the EU.

For example, a bilateral meeting was held in March 2010 between representatives of all-Ukrainian associations of employers' organisations and of the European Economic and Social Committee in the framework of preparation for a joint conference of the National Tripartite Social and Economic Council under the President of Ukraine⁵⁰ (NTSEC) and the EESC entitled *"EU-Ukraine relations: the role of the civil society. Industrial change and economic crisis in Ukraine"*.

For reference: one-third in the National Tripartite Social and Economic Council under the President of Ukraine consists of representatives of Ukrainian employers' associations.

The meeting considered NTSEC-EESC cooperation, progress in the negotiations on the Agreement on Association between Ukraine and the European Union, achievements of and barriers for social dialogue in Ukraine.

The conference *"EU-Ukraine relations: the role of the civil society. Industrial change and economic crisis in Ukraine"* that was held 25-26 March 2010 in Kyiv discussed such questions as civil society's involvement in the implementation of the EU-Ukraine Cooperation Agreement, civil society control of the negotiations on a Free Trade Agreement between Ukraine and the EU, establishment of a Joint Body between Ukraine and the EU, social consequences of the economic crisis in Ukraine in the context of

⁴⁹ European Economic and Social committee/<http://www.eesc.europa.eu/?i=portal.en.home>;
Європейський економічний і соціальний комітет у десяти запитаннях/
<http://www.ntser.gov.ua/assets/files/InternationalOrgs/EECK.doc>

⁵⁰ The National Tripartite Social and Economic Council was established upon the proposal of all-Ukrainian trade unions, employers' associations, and the Cabinet of Ministers of Ukraine as a consultative and advisory body under the President of Ukraine. It consists of representatives of the Cabinet of Ministers of Ukraine, all-Ukrainian trade unions and associations thereof, all-Ukrainian associations of employers' organisations pursuant to the Decree of the President of Ukraine *On the development of social dialogue in Ukraine* (No. 1871 of 29 December 2005).
<http://www.ntser.gov.ua/ua/home.html>

existing laws on labour and social dialogue, impacts of the economic crisis upon restructuring in major branches of Ukrainian industry, search for ways to speed up industry's recovery from the crisis.

This is, however, an episodic example of good international dialogue and a striking evidence of the international community's readiness for open partnership with our country and for promoting it in the European integration processes.

Unfortunately, no dialogue between public authorities and branch civil society associations in the form described as civilised and, hence, open, efficient and systematic, has been established in Ukraine so far. There is no institute of lobbying in Ukraine.

Certain attempts of the State to build a mechanism of dialogue between authorities and business are not consistent.

For example: at various times, Ukrainian governments either cancelled or renewed activity of the leading public body of business community – the Council of Entrepreneurs under the Cabinet of Ministers of Ukraine, which is now operating. Besides, one more consultative and advisory body is active – the Council of National Commodity Producers' Associations. However, the Cabinet of Ministers' Resolution *On liquidation of some consultative, advisory and other auxiliary bodies established by the Cabinet of Ministers of Ukraine* (No. 397 of 2 June 2010) dissolved some consultative, advisory and other auxiliary bodies established by the Cabinet of Ministers of Ukraine including the Council of National Commodity Producers' Associations. However, already in few days an extended meeting of the Council of National Commodity Producers' Associations (CNCPA) was held with support from the Ministry of Economy and involving the Council of Entrepreneurs under the Cabinet of Ministers of Ukraine, which resolved to maintain and continue CNCPA activities in the same composition and according to the same procedure. Realising the need for all-round promotion of enterprise development, improvement of an investment climate in the country, and establishment of partner-style relations between authorities and business, it was decided, upon a joint initiative of the Council of Entrepreneurs and the CNCPA members, to sign a memorandum of cooperation between these bodies. The document was concluded with account of both parties' interests, and it is designed to expand the range of entrepreneurs influencing the Government's decision-making process. In this way the business community in Ukraine has to struggle for its rights.

This is just one example that demonstrates lack of any clear mechanism of dialogue between authorities and business.

With such systemic shortcomings in relationships between public authorities and business community, Ukraine conducted and completed the process of its accession to the World Trade Organisation.

Given such preconditions, participation of the business public in the preparation process was not governed by any regulatory act.

The Government did not have any systematic consultations with branch civil society associations on shaping of conditions for Ukraine's accession to the WTO; the organisations' role was limited to episodic participation in meetings of working groups at relevant agencies, however, given lack of any well-established information collection and processing system, their conclusions, proposals and warnings were not always taken into consideration in the formulation of Ukraine's stand in some or other issue.

It became one of the substantial reasons for Ukraine's having failed to make better use of its potential advantages of the WTO membership.

For reference. In the Russian Federation, branch unions take active part in the shaping of the Russian business' stand within the WTO accession process, and a coordinating body is active – a working group of the Russian Union of Industrialists and Entrepreneurs for Russia's accession to the WTO, which operates with support from the RF Ministry of Economic Development and Trade (now it is the RUIE department for trade policy).

Representatives of the RF Ministry of Economic Development and Trade had about 800 consultative meetings in 2000-2009 with unions of exporters and importers as well as with commodity producers' associations.

The RF Chamber of Trade and Industries and sectoral unions are actively involved in the inter-agency division of duties on main areas of the negotiations on the Russian Federation's accession to the World Trade Organisation (the RF Government's Executive Order No. 126-p of 10 January 2001) concerning trade in goods and services.

This continuous dialogue results in an unhurried, consistent, weighed, even cautious approach to the conditions, terms and reasonability of Russia's accession to the WTO.

The situation in this matter did not improve after Ukraine's accession to the WTO.

Involvement of branch civil society associations in the process of adapting Ukraine's economy to the WTO requirements was to a certain extent possible as "taking measures to obtain proposals from Ukraine's business circles for their possible consideration by the Ukrainian representatives at the negotiations within the framework of the Doha Development Round and during elaboration of new agreements within its bounds" provided for in the Decree of the President of Ukraine No. 557/2008 of 17 June 2008 *On the measures related to Ukraine's accession to the World Trade Organisation*, and as "involving experts to secure the Ukrainian delegation's work for taking part in negotiations within the World Trade Organisation framework" provided for in the Decree of the President of Ukraine No. 767/2008 of 26 August 2008 *On the Ukrainian delegation for taking part in negotiations within the World Trade Organisation framework*.

However, relevant CMU Resolutions – No. 1381-p of 30 October 2008 *On the approval of the Action Plan to Adapt Ukraine's Economy to the World Trade Organisation's Requirements*; No. 1570-p of 17 December 2008 *On the approval of a plan of urgent measures on compliance with Ukraine's commitments within its WTO membership* – and the CMU Executive Order No. 141-p of 27 January 2010 *On amending the Action Plan to Adapt Ukraine's Economy to the World Trade Organisation's Requirements* did not provide for any participation of branch civil society associations in the implementation of measures to adapt Ukraine's economy to the WTO requirements, except for two metal industry associations, participation of which was provided for in the works aimed to prevent sale of products made by the domestic mining and metallurgical complex to the EU countries at prices lower than selling prices in the territory of Ukraine.⁵¹

It is essential that new Ukrainian authorities formulate and consolidate institutional frameworks to hold consultations with business community.

⁵¹ Paragraph 17 of the Action Plan to Adapt Ukraine's Economy to the World Trade Organisation's Requirements approved by the CMU Resolution No. 1381-p of 30 October 2008.

The reality itself stimulates authorities to broader cooperation with business community in a search for ways to recover the situation. The government should help business in looking for new sales markets and in protecting national interests because the government has an opportunity to carry out negotiations whereas business is able to provide reliable professional information to the government. For this purpose, associations themselves should have specialists on international trade fluent in the WTO agreements and procedures. Besides, when preparing and initiating draft laws, it is necessary to open the WTO agreements and not suggest measures that knowingly fail to meet the agreements, or to consult experts on these issues.

Some branch civil society associations in Ukraine have a rather strong potential: they have experience of work in international branch civil society associations, and services provided by some of them are recognised as meeting international quality standards. However, other branch civil society associations should also work at a proper level, continuously improving their expert level, their competitiveness, and their internal potential to carry out dialogue both with the national government and with foreign partners.

Ukrainian branch civil society associations should be more actively engaged in the participation in the events conducted by the WTO itself.

For the example, 152 nongovernmental organisations were accredited at the 7th Ministerial Conference held in Geneva late in 2009, and 362 representatives of 128 branch associations took part. Ukraine was represented only by a governmental delegation. None of more than 200 branch associations active in Ukraine was accredited to participate in the event whereas there were 42 associations from Canada, 42 from the U.S., 33 from India, 7 from Brazil, 4 from Argentine; even Russia, not being a WTO member so far, sent representatives of two branch associations.

Any civil society organisation can submit to the WTO a position paper on topical issues considered within the Organisation framework. In addition, a monthly list of NGO position papers received by the Secretariat of WTO is compiled and circulated for the information of Members. The Organisation's website has a freely accessible archive. Besides, a monthly electronic WTO newsletter is also accessible for nongovernmental organisations.

The WTO increased the number of briefings for nongovernmental organisations (NGOs) to inform them on results of all major WTO meetings, and a schedule of such briefings is presented at the WTO website. Besides, NGOs are always invited to the WTO to present their policy studies directly to representatives of the WTO countries.

The WTO organises its Public Forum annually. The next forum will take place on 15-17 September 2010, entitled *The Forces Shaping World Trade*. Representatives of civil society organizations, business groups, trade unions, academics and many others will have an opportunity to engage in open discussions, raise issues of interest to them and contribute towards the work of the WTO.

An important achievement of Ukraine's WTO membership consists of the work of the WTO National Enquiry Point and Information Processing Centre that was established in

Ukraine to meet a transparency commitment and to send notifications to the WTO as far back as 2005.⁵²

At the same time, the Centre has a powerful base of notifications received from other WTO Members. The base is a very important source of information for business, including on amendments in national legislations regulating various aspects of trade issues in the WTO Member States (Table 9).

Table 9

Information on the work of the WTO National Enquiry Point and Information Processing Centre in 2008-2010⁵³

Years	Number of notifications/documents submitted to the WTO	Number of notifications received from other WTO Members	Number of inquiries from business
2008	163	2200	27
2009	sent to the WTO: 95 documents including: 84 notifications; 8 draft evidential reports, information for the WTO Integrated Database (IDB) – 3 archives (tariffs for 2009 and import statistics for 2008)	2566	processed: 65 inquiries from the WTO Members, 10 inquiries from foreign companies and 5 from domestic ones, and 30 inquiries from the WTO Secretariat
2010 ⁵⁴	26 information for the WTO IDB – archives (tariffs for 2010)	995	3

During 2008, the Centre prepared and sent 163 notifications (scheduled and urgent) to the WTO Secretariat, processed 2200 notifications received from the WTO Member States, and prepared 27 responses to inquiries received from business⁵⁵. In 2009, 84 notifications were sent to the WTO; 2566 notifications were received from other WTO Member States; 65 inquiries from the WTO Member States, 10 inquiries from foreign companies and 5 from domestic companies as well as 30 inquiries from the WTO Secretariat were processed.

Another positive fact of appearance of information services on the part of the State upon accession to the WTO consists of the launch of the web portal *Comprehensive system*

⁵² CMU Resolution No. 408 of 31 May 2005.

⁵³ According to data provided by the WTO Enquiry Point and Information Processing Centre.

⁵⁴ As of 1 April 2010

⁵⁵ <http://www.nepu.com.ua>

of the information and consulting support for export development (www.ukrexport.gov.ua), which was developed and is maintained by the Ministry of Economy of Ukraine to promote information provision of Ukrainian exporters and producers of export-capable products. In particular, the Ministry of Economy and Derzhzovnishinform state enterprise continuously provide information according to the portal's information content structure approved by the Ministry of Economy Order No. 472 of 21.05.2009.

Opportunities of the country's WTO membership for national companies also include settlement of trade disputes through competent use of the WTO procedure.

According to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, a notification to the DSB⁵⁶ should give reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint. A responsible entity for this matter is the Ministry of Economy of Ukraine that must prepare a relevant request to the DSB. It should be desirable to establish a group of civil service specialists or experts with economic and legal education to protect domestic goods in case of a trade dispute. The group may formulate a request on necessary information to the concrete enterprises that felt discrimination on the part of the country they import products to.

Much depends also on successful completion and final results of the Doha Round on further liberalisation of global trade. An active stand taken by the Ukrainian government can help domestic business influence upon global protectionists within the Doha Round framework to make them open their internal markets (*see section on the Doha Round*).

Possible difficulties for business in years to come include tougher competition in the internal Ukrainian market because an average level of tariff protection of the domestic market against commodity imports in Ukraine is liberal. Revision of import duty rates is only possible after three years of the WTO membership according to Article XXVIII GATT, i.e. after 2011. However, business should realise that, increasing import tariff for some goods, the government will have to grant compensatory adjustment with respect to other goods in order to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than provided prior to such negotiations, and only based on arrangements with trade partners.

⁵⁶ DSB is the WTO Dispute Settlement Body

CONCLUSIONS

Impacts of the global economic crisis complicates assessment of the WTO accession effects for Ukraine's foreign trade in goods but the analysis conducted allows indicating some positive achievements of the second year of Ukraine's WTO membership:

- absence of quantitative export restrictions failing to meet the WTO requirements stimulated growth of export supplies of grain and oil-bearing crops as well as sunflower oil, which had no small share in the positive trends demonstrated by the agricultural sector during the financial crisis;
- cancellation of quotas in the EU markets, complication of antidumping investigation procedures, and introduction of additional restrictions considerably assisted in promotion of metallurgical products; if there had been no such factors, reduction of metal product export supplies could have been greater;
- forecasts on massive importation of "low-quality" food products due to liberalisation of a customs regime for import due to Ukraine's accession to the WTO did not come true both in the first and second membership years;
- Ukraine's foreign trade balance in the first year of Ukraine's membership in the WTO was negative, amounting to USD 11.2 billion; in the second year, the indicator improved to minus USD 5 billion, i.e. it decreased by USD 6.2 billion. Just before Ukraine's accession to the WTO, the balance of foreign trade in goods was also negative, minus USD 12.7 billion (during the period from June 2007 through March 2008);
- the fact of Ukraine's accession to the WTO means that the country accepts the system of the WTO commitments and rules that should become a component in state policy-making. That, in its turn, improves attractiveness and transparency of the Ukrainian market. Take, for example, the situation when the Ukrainian Government in 2009 initially introduced an additional 13% import duty but then had to cancel it as the WTO General Council declared such measures as being in conflict with the Organisation's rules.

The trends in foreign trade in goods seen during the two years of Ukraine's membership in the WTO indicate substantial progress in the volume and directions of trade, which is undoubtedly strengthened by the impacts of the global financial crisis and by a sharp slowdown in development of export-oriented economic sectors (Table 10).

Table 10

**Trends in foreign trade in goods
during two years of Ukraine's membership in the WTO⁵⁷**

Indicators	First year	Second year
exports	12% increase	28% decrease
<i>owing to</i>		
ferrous metallurgy products	4% increase	40% decrease
agricultural goods	73% increase	17% decrease
imports	7% increase	33% decrease
<i>owing to</i>		
energy commodities	15% increase	23% decrease
agricultural goods	34% increase	17% decrease
industrial products (machine-building and vehicles)	—	54% decrease
negative trade balance	12% decrease	56% decrease

In the period from June 2009 through March 2010, covering the second year of Ukraine's membership in the WTO, the following changes in foreign trade indicators were seen as compared to the same period of the previous year:

- export of goods from Ukraine decreased by 28%, import of goods contracted by 33%, and negative trade balance decreased by 56%;
- export of goods mainly decreased owing to outbound supplies of ferrous metal products that dropped by 40%; the lowest decline was seen in agricultural product exports, 17%;
- imports decreased mainly due to a decline in the importation of industrial products (machine-building products and vehicles) – by 54%;
- in geographical structure of export of goods, attention is drawn to a decline in the share of the EU-27 countries – from 27% to 24%, whereas the shares of the CIS countries and Asia increased – from 34% to 35% and from 23% to 28%, respectively;
- in value terms, Ukraine's export volume decrease was seen for all regions of the world; the largest supply decline was to the Americas – by 55% while the lowest decrease was seen in supplies from Asia – by 14%;
- geographical structure of imports featured an increase in the share of the CIS countries – from 39% to 43%; such growth mainly occurred due to declining supplies from the Asian countries – from 18% to 15%;

⁵⁷ The first year (06.2008-03.2009) compared to the previous similar period; the second year (06.2009-03.2010) compared to the previous similar period.

- in value terms, the volume of imports dropped from all regions, most of all from African states – by 50%, least of all from the CIS – by 26%.

Reasons for the lowest decline of export supplies of agricultural products from Ukraine can be explained by the following factors:

- high yields of grain and oil-bearing crops in 2008-2009;
- favourable pricing environment at global markets;
- hryvnia devaluation in 2008-2009 also improved competitiveness of Ukrainian-made agricultural products;
- due to the financial crisis, freight rates became substantially lower than before the crisis;
- lifting and non-introduction by the Ukrainian government of new quantitative export restrictions for agriculture that do not comply with the WTO requirements.

Dynamics and structure of import goods supplies to Ukraine during its second WTO membership year were mainly determined by impacts of the global financial crisis:

- decreasing investment activity affected reduction in the needs for import of machine-building products, equipment, vehicles, and other technological goods;
- industrial output decline caused a decrease in Ukrainian enterprises' demand for raw materials and energy resources;
- abrupt contraction in consumer lending and people's income caused a decline in importation of consumer goods: household appliances, motor cars, and foodstuffs;
- restricted access to financial resources necessary to carry out import transactions;
- hryvnia devaluation increased the cost of imported goods.

Ukraine's membership status allows using the WTO site to uphold its national trade interests. For example, Ukraine takes active part in the work of the WTO committees and subcommittees: Committee on Technical Barriers, Committee on Intellectual Property (TRIPS), meetings of the Council for TRIPS, Committee of Import Licensing, Committee for Regional Trade Agreements, Committee for Customs Valuation, Committee for Balance of Payments, Committee for Government Procurement, and Committee for Agriculture.

To secure realisation of its current and strategic trade and economic interests as well as to shape the most favourable treatment to promote goods and services to external markets within the WTO framework, Ukraine joined working groups of the countries negotiating to accede to the Organisation: Azerbaijan, Algeria, Andorra, Afghanistan, the Bahamas, Belarus, Bosnia and Herzegovina, Bhutan, Vanuatu, Equatorial Guinea, Ethiopia, Yemen, Iraq, Iran, Kazakhstan, the Comoros, Laos, Liberia, Lebanon, Libya, the Russian Federation, Samoa, San Tome and Principe, Seychelles, Serbia, Sudan, Tajikistan, Uzbekistan, and Montenegro.

On 24 June 2010 in Iceland, the Free Trade Agreement between Ukraine and the European Free Trade Association (EFTA) was signed⁵⁸. The Free Trade Agreement with the EFTA would not have been possible without Ukraine's membership in the WTO. This agreement coincides with Ukraine's European integration aspirations. Kostyantyn Hryshchenko, Minister of Foreign Affairs of Ukraine, emphasised in his speech at the signing: "We deem this agreement as one of the greatest achievements of Ukraine's membership in the World Trade Organisation. Signature of this document is especially important from the viewpoint of our nation's European integration aspirations. I am sure that efficient implementation of the agreement will promote Ukraine's integration in the European economic, hence political, area".⁵⁹

Negotiations between Ukraine and the EU on establishment of a free trade area are going on, which would be impossible without Ukraine's accession to the WTO; consultations are being held concerning conclusion of free trade agreements with Canada, Singapore, and Turkey.

Ukraine's accession to the Customs Union with Russia, Belarus and Kazakhstan would mean to Ukraine a complication of negotiations on the establishment of a free-trade area with the EU because the EU would have to establish a free-trade area with the Customs Union in that case, not with an individual member state of the Union. The main requirement the EU sets for free-trade area agreements consists of WTO membership. The EU does not practise establishment of free-trade areas with any regional grouping of countries that includes WTO non-members (like Russia, Kazakhstan and Belarus in case of the Customs Union). At the same time, establishment of a free-trade area between Ukraine and the EU will not hinder Ukraine's trade relationships with members of the Customs Union consisting of Russia, Belarus and Kazakhstan. The EU's policy provides for establishment of free-trade areas with many countries of the world, hence it can be foreseen that accession of the three countries (Russia, Belarus and Kazakhstan) to the WTO would open a way to negotiations on establishment of free-trade areas between them and the European Union.

Further successful use of the country's membership status in the World Trade Organisation requires focusing efforts of the Government and business on the implementation of the following promising measures:

- taking further measures to promote export of Ukrainian-made products to foreign markets, drafting a law on financial support for export (export insurance and lending);
- expanding a range of Ukrainian export goods by increasing supplies of hi-tech products;

⁵⁸ The European Free Trade Association (EFTA) is a free trade area of four European countries that did not join the European Union: Iceland, Lichtenstein, Norway and Switzerland. Three EFTA member states, namely Iceland, Lichtenstein and Norway, are members of the European Economic Area (EEA), an agreement on establishing which was signed in May 1992. The EEA unites markets of 27 EU Member States and 3 EFTA Member States into a common market amounting to about 490 million consumers; this makes it the world's largest regional integration association.

⁵⁹ <http://www.mfa.gov.ua/mfa/ua/news/detail/41044.htm>

- establishing a wide-scale information system on foreign trade, and encouraging small and medium-size business to export activities;
- carrying out state monitoring of global prices in certain commodity markets as well as monitoring and forecasting of conditions in domestic and foreign markets of industrial and agricultural products and providing information to enterprises;
- creating a transparent environment to provide services via Internet for such entrepreneurial activities as programming, translation, and design; promoting development of e-commerce using Internet;
- continuing participation in the Doha Development Round negotiations, first of all to consider national interests and obtain separate preferences for the country concerning its commitments;
- ensuring reformation of the national system of technical regulation according to the WTO and EU requirements;
- increasing the expert level of domestic business associations, and intensifying their participation in the WTO activities.

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