

REPLIES BY THE REPRESENTATIVE OF UKRAINE AND ADDITIONAL COMMENTS

Madam Chairperson, Distinguished Delegates,

In the second session of the Ukraine's first Trade Policy Review, allow me to thank those WTO Members who participated in our first session on Tuesday this week and those representatives who are present here with us today. We would also like to express our sincere appreciation to the Ambassador Winzap's insightful and thoughtful analysis.

This statement today provides Ukraine with the opportunity to outline the progress achieved and bring your attention to the challenges facing us in improving our trade and investment environment. Your active participation and constructive comments during our first session are highly appreciated and valuable to us, as they will help us to assess and further improve our trade regime and business climate.

I wish to reiterate that for Ukraine, this exercise in transparency is of the highest importance as we are on our path of structural reforms aiming at becoming a more reliable trading partner and strengthening cooperation with our WTO trading partners.

In this regard, we truly appreciate the positive feedback received from the participants of the Tuesday's session, among others, on Ukraine's accession to the Protocol amending the TRIPS Agreement, our ratification of the Trade Facilitation Agreement, and our accession to the Government Procurement Agreement.

Ukraine also wants to draw Member's attention to the fact that we have been implementing a more comprehensive and consistent trade policy, in particular by: 1) maintaining one of the most liberal tariff regimes in the WTO; 2) introducing measures in a transparent manner; 3) withdrawing a request to renegotiate 371 bound tariff lines; and complying in a timely with a DSB decision. These points were acknowledged by most of the delegations on Tuesday. In addition, Ukraine revoked the temporary import surcharge on time and conditions as declared.

Ukraine carefully pays attention to the process of accession and engages in constructive dialogue and fair negotiations with acceding countries. Ukraine also commits to developing a clear export strategy together with an action plan and enhancing its trade promotion activities.

As was mentioned by many of you, in the recent years, Ukraine has undergone a number of challenges, including the aftermath of financial crisis, political and economic instability, as well as effects of illegal occupation of Crimea and the conflict in some areas of the Donetsk and Luhansk regions. Despite all, we have undertaken major reforms, and we truly appreciate the support and recognition of our efforts and improvements by many WTO Members. We also appreciate that Members highlighted the certain areas in which more reforms are expected in the future.

[A Ukrainian proverb says that the friend is not the one spreading honey on your bread, but the one telling your truth. Thus, I believe that I see here friends of Ukraine that would like to see even much brighter picture of prosperous Ukraine.]

I would like to turn now to providing clarifications regarding issues and concerns raised during the meeting on Tuesday. Several recurrent themes were evident in Members' statements. I will seek to address the most common of them, while others will be responded in due course in

writing.

On EU-Ukraine DCFTA

Reflecting on the points made with respect to the EU-Ukraine DCFTA, we would like to stress that Ukraine will ensure that its WTO commitments and obligations will not be violated in the implementation process.

In our joint effort with the EU to address today's and tomorrow's challenges together, we have signed an Association Agreement, one of the most significant parts of which is the Deep and Comprehensive Free Trade Agreement. The Agreement is provisionally applied starting from 1st January 2016. This Agreement offers Ukraine a framework for modernising its trade relations and for economic development by opening markets via the progressive removal of customs tariffs and quotas, with a great focus on regulatory reforms.

Harmonization with EU in the context of the DCFTA will entail major legal and institutional reforms covering areas such as customs, intellectual property, government procurement, sanitary and phytosanitary measures, and technical barriers to trade. At the beginning of the 2016, the Government of Ukraine adopted an action plan of the DCFTA implementation for 2016-2019 years.

In 2015, the EU was Ukraine's first largest trading partner with exports amounting to USD 15 billions, with share of 33%. Major Ukrainian export included ferrous metals, grain, machine building, as well as iron and ore.

On VAT refund

We note that several WTO Members sought clarifications with respect to the Ukraine's VAT refund process. Ukraine understands the importance of this issue and its impact on attracting investors and facilitating trade. I would like to emphasize that Ukraine has taken significant positive steps in this regard.

A new transparent process for VAT refund was introduced by the Ministry of Finance Order No. 1128 and major progress has been achieved in 2015 in this regard. The current timeframe for processing VAT refund applications has been reduced to around two months.

In addition, recent amendments to the Tax Code have introduced an updated procedure for VAT refund aiming at further optimization of the process and achieving greater transparency. According to these amendments, VAT refund requests will be processed in the chronological order. Online tracking of the application status will also be available.

Overall, VAT refunds are being reimbursed either in cash or applied against the tax liabilities of VAT tax payers. The average monthly return on accounts of taxpayers in January-February this year amounted to 8 billion UAH. In January and February 2016 the total amount declared for refund amounted to 13.6 billion UAH, while the fiscal service was able to reimburse 16 billion UAH. Even more, 8.1 billion UAH reimbursed in February 2016 is twice as much as in February 2015. (January-February - 1.8 times, February - 1.9 times).

On customs matters

Turning to the next point, Ukraine's customs administration system is undergoing considerable reforms. As recently announced by the Prime Minister, customs reform is a top priority for the new Government.

During accession to the WTO Ukraine brought all customs procedures in line with its WTO commitments. In 2012, Ukraine adopted a new Customs Code to align with EU Model Customs law and introduce key WCO Revised Kyoto Convention procedures. Ukraine retained in the new Code full legal compliance with the WTO Agreement on Implementation of Article VII of GATT 1994 and other customs-related WTO Agreements. The Code provides, as required under WTO agreements, for administrative and judicial appeals, advance rulings, transparency, and confidentiality.

Currently Ukraine is in the process of strengthening the capacity of customs officers on customs valuation in accordance with the WTO Agreement on Implementation of Article VII of GATT 1994.

Traders have a possibility to lodge an administrative or judicial appeal regarding customs issues including valuation.

Additionally, in order to simplify the customs procedures and diminish the number of permits required for customs clearance Ukraine has introduced a mechanism for issuing advance rulings on origin and classification available to traders. Ukraine plans to build greater awareness of this mechanism within the business community.

More importantly, Ukraine has launched the implementation of the WTO Trade Facilitation Agreement. The highest priorities are to modernize the risk management system and develop a program for authorized economic operators. Ukraine developed draft amendments to the Customs Code in order to strengthen the provisions related to AEO. These amendments are planned to be adopted in 2016. Ukraine envisions an operational AEO program in 2017. Concurrently, advance processing of goods and post clearance audit will be introduced.

Customs officers are required to follow risk management with the aim of accepting transaction value for majority of import transactions.

Additionally, Ukraine will be strengthening internal audit and control functions within the State Fiscal Service and is paying significant attention to the development of human resources within Customs.

On anti-corruption activities

With regard to the anti-corruption activities, there are several successful examples.

There were more than 1000 corruption-related crimes registered during 2015, and according to these cases, 1199 people have already been brought to justice. This includes 334 civil servants, 7 judges, 116 law enforcement agents, and there are still 12 regional officials, 15 officials of city and town authorities, 25 officials of district administrations and 70 officials of village authorities who are presently facing prosecution.

A number of measures have been implemented in order to tackle corruption such as the establishment of corruption-free police in 16 major cities (29 to be added in 2017). The National Anti-corruption Bureau with over 70 new detectives has been launched. The “lustration” program has been launched under which over 800 civil servants have been dismissed.

It is important to note that the reform effort, including deregulation and reduction in requirements, will tremendously reduce corrupt practices. Further, the plan to introduce e-government and automation of certain procedures will further reduce the level of interaction between businesses and government officials.

During the last year, we have dramatically streamlined and reduced regulatory requirements to reduce the cost of doing business and facilitate market entry. These include:

- The reduction of administrative services from 11 000 to 3000;
- The reduction of regulatory requirements (e.g. licensing); and
- The launching of a New State Portal of e-Services.

Initial steps toward e-government and automation have been introduced. These include:

- On-line business registration. Businesses can now register in 2 days; and
- In the sphere of public procurement, the e-procurement system ProZorro has been created and made operational.

Ukraine has also adopted, updated, and amended relevant legislation to remove the possibility of corruption schemes, namely, the Law ‘On Lustration’, the Law ‘On the Fundamentals of Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014-2017’, “On the Anti-Corruption Strategy for 2015-2017”, the Law ‘On the National Anti-Corruption Bureau of Ukraine’, the Law ‘On Prevention of Corruption’, the Resolution ‘On Establishment of the National Agency for the Prevention of Corruption’, the Law ‘On Open Use of Public Funds, and the Draft Law ‘On State Bureau of Investigations.’ Amendments providing for state financing of political parties were adopted in 2014. Such amendments were designed according to the best global practices to combat corruption, and along with the new body the National Council for Anti-Corruption Policy, are aimed to ensure the elimination of any possible corruption schemes in Ukraine.

Major anti-corruption efforts have been exerted in specific areas of economy, namely the gas sector where important market liberalization and good corporate governance practices of state-owned enterprises have been introduced.

On banking sector reforms

I would like now to take an opportunity to reflect on banking sector developments. As was several times highlighted, due to economic and financial crises faced at the end of 2013, the National Bank of Ukraine had to apply a range of forced temporary restrictions in the foreign exchange market so as to stop unjustified outflow of capital, eliminate pressure on Ukraine’s balance of payment and avoid panics on the foreign exchange market. Ukraine’s realises the impact such measures may have on exporters, importers and other foreign exchange market players.

In this regard, during the last two years some of the restrictions were partly liberalized, and even more according to the Letter of Intent of 21 July 2015 and the Memorandum on Economic and Financial Policies of Ukraine under the IMF EFF program a gradual lifting of administrative restrictions in the area of foreign exchange regulation and control is planned, including a number of temporary administrative restrictions in the foreign exchange market (introduced at the beginning of 2014) and fundamental restrictions (implemented from early 1990s). Such decisions will be taken based on the roadmap developed in cooperation with the IMF and under appropriate market conditions.

Additionally, the National Bank of Ukraine in cooperation with a group of Ukrainian and foreign experts has launched a project on liberalization of foreign exchange regulation and free flow of capital under the IMF EFF program, the EU-Ukraine Association Agreement and the Comprehensive Program of Ukraine’s Financial Sector Development Until 2020. Action plans

adopted within these documents foresee gradual and stepwise liberalization of foreign exchange regulation linked to achievement of certain macroeconomic indicators and delivery of required conditions rather than to strict deadlines.

On enforcement of IP rights

Ukraine realises the present challenges in this area and understands importance of Intellectual Property (IP) rights protection and enforcement for investment attractiveness. Thus, Ukraine has adopted several laws and regulations in the field of intellectual property rights, and amended its Civil, Criminal and Custom Codes so as to bring relevant provisions in line with the WTO TRIPS Agreement.

Under the DCFTA with the EU, Ukraine seeks to approximate its Intellectual Property Rights legislation with the *acquis communautaire*.

On 28 January 2016 the Parliament of Ukraine adopted the Draft Law "On State Support of Cinematography" in the first reading. This draft law also introduces amendments to the Law "On Copyright and Related Rights" concerning protection of copyright and related rights in the Internet. Governmental Draft Law "On amendments to certain Acts on protection of copyright and related rights in the Internet" is under discussion in the relevant Parliament's committees. To this end, the following draft amendments aim to further approximate Ukrainian legislation with EU regulations:

- Draft Law “On Amendments to Certain Legislative Acts of Ukraine (concerning strengthening the enforcement of intellectual property)”, which envisages modifications to the Civil, Economic, Civil Procedure and Economic Procedure Codes concerning the procedure of compensation of harm for infringement of intellectual property rights, the circle of persons who have the right to apply for their rights protection, soliciting the evidence and securing the right to be provided with information in the cases of intellectual property rights infringement;
- Draft Law “On Amendments to Certain Legislative Acts of Ukraine on Regulation of Copyright and Related Rights”, which is aimed at introducing transparent, predictable and effective mechanism of ceasing violations of intellectual property rights and eliminating violations of IPRs in the Internet;
- Draft Law “On Collective Management Organizations”, which envisages actions to stop the uncontrolled growth in the number of collective management organizations.

Border enforcement of Intellectual Property Rights

With respect to the border enforcement of IP Rights, Ukraine has recently developed the Draft Law “On Amendments to the Customs Code of Ukraine concerning Protection of Intellectual Property Rights in Crossing Border of Ukraine” as of December 21, 2015. It implements provisions of Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights. The draft law among other issues expands the list of objects of intellectual property subject to protection when crossing the national border; introduces new definition of terms; strengthens measures to prevent and timely respond to movement of counterfeit goods in international mail or international express shipments; and introduces the option of pre-scheduled release of goods subject to customs clearance suspension based on suspicion of violating intellectual property rights.

Thus, the implementation of the EU IP policies and enforcement of WTO rules and in particular strengthening enforcement capacity, are among the top priorities of Ukrainian Government.

Ukraine pays significant attention to enforcement of current Ukraine legislation in the IPR area, including within the framework of the judicial system reform.

Before moving further to Agriculture, I would like to assure you that we are not here to make idle promises. There is a great Ukrainian folk song “You’ve lied to me”. And this song is about a young man being in love with a young lady dreaming out of going out with her. He invites her out every single day the whole week and she promises to come but never does. Just a small quote of English translation of this beautiful song.

You said that on Monday
We would come together for flowers
I came but you didn't
You've lied, you've let me down
You've lied to me
You've let me down
You've driven me,
An young one, crazy

You've said that on Tuesday
You would kiss me 40 times
I came but you didn't
You've lied, you've let me down
You've lied to me
You've let me down
You've driven me,
An young one, crazy

What I can promise you is that Ukraine is in the WTO neither to lie to you, not to let you down, nor to make you crazy...

And now let's get back to business.

On agriculture sector

As Ukraine's agricultural sector has a global importance, we understand why so many questions were raised on this matter. We view it as an engine of economic development, and the whole world sees it as a guarantee of food security. Ukraine can contribute significantly to overcoming hunger and malnutrition worldwide. The Government currently implements a forward-looking structural reform of the agriculture focused on the future: comprehensive legislative and regulatory improvements form the basis for a sharp quality growth. This includes, among others, resolution of the long-term issue of private ownership of agricultural land; introductions of a system of WTO-consistent tax incentives for the development of the processing industry and agroIT; a program of systemic measures to promote Ukrainian goods in promising foreign markets; a program to protect soil fertility and ensure environmental safety; and the ongoing program for the development of agricultural cooperation. Besides, we bring our current system

into full compliance with European requirements to ensure safety and quality of food products of a new generation.

Tax reform

Rationalisation of the taxation system in the agricultural sector with elimination of existing drawbacks will make it fairer, reduce the share of the shadow economy and cut down the tax burden on legally operating entities. All this will improve the conditions for further development of agribusiness and export capacity.

VAT regime

The Tax Code establishes a special VAT regime for agriculture, fishery, and forestry, which is valid only until 1 January 2017. Under the special regime, a certain percentage of VAT is paid to the budget and the rest goes to a special account for the company's own use. The regime is only granted to companies with at least 75% of the costs of their goods and services related to agriculture.

Deregulation, privatisation and good governance

Deregulation and privatisation help to boost productivity and eliminate corruption in the agriculture sector.

The major deregulation measures implemented in 2015 in this field include:

- quarantine certificates were abolished for internal transportation of grains and oilseeds, the timeframe for the issuance of phytosanitary certificates was reduced from 5 days to 24 hours;
- 14 types of mandatory permitting documents and 6 types of mandatory licenses were abolished;
- more than 50 other amendments to legislation were implemented.

Further measures are being taken to eliminate excessive regulation and administrative burden, improve technical regulations and licensing procedures, simplify customs and tax regulation and eradicate corruption.

Reform and privatization of state-owned enterprises represents a major objective and challenge in the agricultural sector. Out of 86 specific companies, 14 are in the process of being privatized. A major challenge in this complex process is to ensure that best management practices are applied by these firms. In this regard, managers of 90 state-owned agricompanies were appointed based on results of open competitions. Financial decentralization is also underway with transparent competition for government support and equal access for all entities.

All these measures have radically reduced corruption in agriculture.

Further measures require legislative and regulatory adaptation to EU standards.

Strategy 2020

Following inclusive consultations with Ukraine's civil society, business, international donors and other stakeholders, the Ministry of Agrarian Policy and Food drafted the Strategy for Agricultural and Rural Development for 2015–2020.

The Strategy covers 10 strategic directions, provides an integrated, inclusive, equitable and realistic strategic vision and policy framework for reforms in the agricultural sector.

The reforms are aimed to enhance competitiveness and efficiency of the agricultural sector, modernise it and strengthen its market positions, create favourable conditions for doing business.

On sanitary and phytosanitary service measures

Turning to SPS measures. We stress again that ensuring an appropriate level of protection for human health as well as for animals and plant life is a core governmental responsibility. Ukraine is investing best efforts to guarantee complete transparency in application of sanitary and phytosanitary measures. This is based on our commitment to give priority to international standards developed by the Commission on Codex Alimentarius, the World Organisation for Animal Health (International epizootic bureau) and International Convention on Plant Protection.

Within the DCFTA framework, Ukraine will further embody principles of the WTO SPS Agreement and critically establish mechanisms and procedures to assistance and foster an appropriate trade in the covered products. Within the DCFTA framework, Ukraine will further implement principles of the WTO SPS Agreement to establish critical mechanisms and procedures of assistance and promotion of trade in the covered products. To achieve the desired results it is necessary to gradually align the respective Ukrainian legislation with the EU regulations.

The newly established supervisory authority – the State Service of Ukraine on Food Safety and Consumer Protection became operational as of 6 April 2016. The service represents Ukraine's competent authority in the field of sanitary and phytosanitary measures. The new service is committed to taking into full account risk-based approaches, transparency, impartiality and non-discrimination.

And now, to sum-up on agriculture and to keep you awake – an interesting fact. According to the World Street Journal and the Economist, beer and burgers sold in Ukraine are the cheapest in the world.

On technical barriers to trade

Ukraine would like to draw Members' attention to positive gains of the reforms in the sphere of technical regulations, standards and conformity assessment that took place in accordance with the TBT Agreement and DCFTA.

Ukraine further commits to continue the process of reforms in this sphere in a transparent manner. These progressive steps will be undertaken in line with the Strategy on reforming of the technical regulation system till 2020, adopted by the Government in 2015, pursuant to the provisions of the WTO TBT Agreement, and in accordance with Article 54 of DCFTA.

Ukraine confirms that in accordance with the effective Law of Ukraine "On Standardization", priority is attached to the development of voluntary standards for application of national standards and aligned with international standards. If international standards are not taken as the basis for national standard, the National Standardization Body provides for a written explanation related to the request of all interested parties.

According to requirements of the WTO TBT Agreement and the Code of Good Practice for Standardization Ukraine sends notifications to the ISO and IEC on availability of working programme for national standardization and its annexes indicating sources where it is published

and available. The catalogue of national standards adopted in Ukraine is available on the website of the National Standardization Body.

As of now Ukraine is not aware of any Members' requests for draft standards included in our established working programme for national standardization - either via national inquiry point or ISONET center. Ukraine confirms that when such requests are received related to Ukraine national standards, Ukraine will provide for appropriate response, review comments and engage in consultations interested parties.

On trade remedies

We are pleased to have an opportunity to increase public awareness about Ukraine's trade remedies legislation, practices, and policy. Ukraine would like to reassure Members that when adopting any trade relevant measure Ukraine takes into account its WTO obligations. We would like to stress that Ukraine will continue using available WTO trade remedies instruments to ensure fair trade and competition. In this regard, we consider that Ukraine's current measures comply with these obligations.

In addition, as acknowledged by several Members, Ukraine respects rulings by the DSB and in this regard Ukraine has undertaken to bring its measure into compliance with WTO DSB rulings.

On SOEs reform and privatization

SOEs reform and privatization was another concern raised. Members are aware of this historical background where soviet centrally planned economic policy created a very large number of SOEs on Ukraine territory, roughly 30 000 enterprises. After a series of privatization stages the number has been significantly downsized to a total of around 3 500 SOEs at this point which still makes such numbers extremely large.

Ukraine acknowledges that SOEs are generally understood to be non-efficient, tending to have corrupt practices, and due to the strong propensity for continual lossmaking very burdensome for Ukraine's economy.

Further reform of SOEs is one of the top priorities for the Ukrainian Government in 2016. The goal of reform is to build a healthy and transparent SOE management system that will enable Ukraine to apply best global management practices including OECD Guidelines.

Practically speaking, SOE reform is concentrated on improvement of their efficiency as well as transparent privatization of non-strategic SOEs.

Improvement of efficiency and reconsideration of corporate governance may be illustrated by recently adopted new transparent procedures of CEOs appointment, establishment of market level salaries for the CEOs of the largest SOEs, publication of annual reports on top-100 SOEs by the Ministry of Economic Development and Trade of Ukraine, requirements for independent audits of SOEs financial reports, determination of clear objectives and corporate standards for SOEs.

Such initiatives significantly improved financial performance of SOEs, for instance top 17 SOEs turned 500 mln USD losses in 2014 into 100 mln USD profits in one year.

9 new CEOs of the largest SOE's have already been selected in 2015 and 3 in 2016, and by the way two of the latest were appointed just yesterday as CEOs of two biggest state employers

Ukrzaliznytsia and Ukrposhta. *[This comments is addressing the concerns of some delegations that our Report covered development only Ukrspyrt SOE].*

We are also waiting in the short run final adoption of a new law allowing introduction of supervisory boards in state unitary enterprises making corporate governance structure similar to that of joint stock companies, increase of share of independent directors in supervisory boards of all SOE's to the majority and mandatory information disclosure for all SOE's.

Ukraine reckons that only strategic enterprises should be owned by State. Presumable grounds for that include such measures as preservation of critical infrastructure or supporting national security.

We believe that privatization of all non-strategic SOEs will allow to attract FDI and best international practice, eliminate corruption and bring additional revenues to the budget.

In 2015, we have reduced the list of SOEs banned for the privatization, and cancelled the mandatory sale of 5 and 10% of shares in SOE's capital before the privatization. In addition, State Property Fund capacity in terms of staff and advisors has been increased. Another good news for foreign investors, with new amendments in place parties are free to choose governing law and arbitration in the contract for purchase of objects subject to privatization.

Availing of this opportunity we would like to bring additional attention of WTO members towards upcoming privatization of Odessa Port Plant and Centrengo power generating company, which have been estimated by the Ukrainian Government as 2 of the 22 most attractive privatization assets.

Conclusion

Madam Chairperson, in this statement I have tried to respond to the most salient themes from written questions and verbal interventions. I am aware that several other specific questions were raised by Members and I can assure you that Ukraine has either already responded in writing or will do so in the upcoming weeks as per the relevant guidelines.

I would like to close my statement by extending my gratitude to all of our team who participated to respond to WTO Member's questions. We deeply appreciate the serious interest of and engagement of all WTO Members in this review. And finally, tremendous appreciation for the excellent and competent work goes to the Secretariat who enabled this review, as well as to our talented Discussant and the Chair for successfully guiding us through this worthwhile process.

This is the path. This is the time. This is the opportunity. Ukraine is changing.

Thank you!