

EU-Ukraine Free Trade Agreement Negotiations Stakeholder Briefing Note 5

Sanitary & Phytosanitary Measures

Sanitary and Phytosanitary (SPS) measures or standards are applied to agricultural and food products to protect human, animal and plant life and health, and to help ensure that food is safe for consumption. Under World Trade Organization (WTO) rules governments must apply these measures, based on risk assessment processes so that they cannot be used as a barrier to trade (that is, there must be a valid reason to apply the SPS rules based on scientific evidence). However, although all countries generally apply these measures in accordance with WTO rules, the resulting product standards and requirements differ meaning that exporters must comply not only with their own national standards, but also with those of its export market(s). A free trade agreement (FTA) can be used to align the legislation and standards of both parties in order to facilitate and ease exports.

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Report Prepared by

Chris Cosgrove
&
Mark Hellyer
of

CTA
ECONOMIC & EXPORT ANALYSTS LTD

505 Pinner Road, Harrow HA2 6EH, United Kingdom

Tel: (+44) 870 199 5835 Fax: (+44) 870 383 5011

office@ctaeconomic.com

www.ctaeconomic.com

CURRENT SITUATION FOR UKRAINE

National

During the WTO accession programme, Ukraine implemented a comprehensive SPS reform programme that consolidated its legislation proscribing when and how SPS measures can be applied in three WTO compatible laws. These laws: a Law on Veterinary Medicine; a Law on Safety and Quality of Food Products and; a Law on Plant Quarantine, provide the legal framework for the development, application and enforcement of SPS measures and standards, including procedural and transparency aspects. Based on the WTO SPS Agreement, the main provisions are related to terminology; harmonization; equivalence in measures; risk assessment and appropriate level of protection; adaptation to regional conditions; transparency (enquiry and notification points); and inspection, control and approval procedures.

By 2005, Ukraine had introduced over 800¹ WTO compatible SPS norms to replace its existing standards; of these, 340 were approximated with those of the EU. In 2006, Ukraine planned to develop over 1000 more standards for agricultural and food products covering: margarine, butter, mayonnaise, sugar, beer, soft drinks, confectionary, alcohol beverages, spirits, animal feed and mixed fodder supplements and breeding systems for livestock.

A number of government agencies share responsibility for the introduction and enforcement of SPS measure for food safety, plant and animal health. These include, the Ministry of Agriculture (the State Service of Veterinary Medicine of Ukraine and the State Service of Plant Quarantine of Ukraine) and the Ministry of Health (i.e. the State Sanitary-Epidemiological Service of Ukraine).

EU-Ukraine Agreements

The Partnership and Cooperation Agreement (PCA) between the EU and Ukraine agrees to "the gradual approximation of Ukrainian standards to EU technical regulations concerning [...] agricultural food products including sanitary and phytosanitary standards."

The EU-Ukraine Action Plan reaffirms this commitment to increase food safety for consumers in Ukraine and facilitate trade through the harmonisation of legislation, norms and standards to those of the EU, and in the area of food safety to gradually converge towards the EU regulatory framework for food safety measures and institutional arrangements for food safety control.

Specifically, the Action Plan agrees the following:

Review a list of measures to be taken for gradual convergence towards the principles of the EU sanitary and phytosanitary control legislation and institutions, accompanied by timetables and a financing plan. Advance effective reform in this area (e.g. clear division of competences of institutions, principles of Directives 96/22/EC on prohibition of substances and 96/23/EC on monitoring the residues of substances);

Conduct comparative assessment of EU and Ukrainian legislation in the sphere of food hygiene, including food processing. If necessary

¹ Food and Agricultural Organisation of the United Nations (FAO) "The Challenge of Conforming to Sanitary and Phytosanitary Measures for WTO Accession and EU Exports: The Case of Ukraine" 2006

draw up measures for legislative approximation in this area, accompanied by a financing plan;

Progress in convergence with EU food traceability legislation; general food safety principles and requirements (Regulation (EC) No 178/2002); effectively implement the Hazard Analysis Critical Control Point system at enterprises and controlling bodies, including the fish industry.

WTO Commitments

All of Ukraine's existing sanitary and phytosanitary measures, including regulations, orders, decrees and other measures that directly or indirectly affect international trade in agricultural products have already been brought into conformity with the provisions of the WTO SPS Agreement. No transitional periods for compliance were applied.

Other Agreements

Ukraine is a member of the Codex Alimentarius, the Office of International Epizootics (OIE) and the International Plant Protection Convention (IPPC). These bodies primarily set international standards which can be used to guide and develop national standards.

ECONOMIC IMPACT (COST-BENEFIT)

The adoption of new and more stringent SPS standards will have a number of economic effects in Ukraine:

- improved food safety systems will better the health of Ukrainian citizens;

- approximation of standards will increase the ease of exports from Ukraine to the EU of those sectors which are harmonised as produces will not have to comply with different standards than those applied in Ukraine. Equally EU producers will find it easier to export to Ukraine;

- for those sectors which approximate with EU standards, there will be a cost to all companies (not just those exporting) in terms of upgrading/changing production to comply with new standards;

- increased investment to comply with new legislation may lead to increased costs (and failing enterprises who cannot comply) in the short run but longer term, is likely to increase efficiency and lower prices.

The extent of these effects will depend on the sub-sector involved and how close they are to EU standards already.

A number of recent studies on the EU-Ukraine FTA have examined some of the likely impacts of approximation of Ukraine's SPS norms and laws with those of the EU. Complete harmonisation and mutual recognition is expected to be costly, citing² the experience of Poland and Lithuania, this could be as much as 2-3 per cent of GDP, even though they received ! 172 and ! 205 million per annum from the EU respectively for six years.

In terms of specific impact by sub-sector:

² CEPS, IFW & ICPS (2006): The Prospects of deep free trade between the European Union and Ukraine

Cereals³: Ukraine already exports cereals to the EU and this trend is likely to continue since there are few technical requirements in the EU for these products.

Meat and meat products⁴: In the short-run costly investments in productive capacity and upgrading of outdated machinery to comply with EU food safety requirements will be necessary. In the longer run, Ukraine is expected to become a major exporter to the EU of meat, meat products and animal fats.

Fruit⁵: In the short-run, imports of fruit from the EU are likely to adversely affect Ukrainian production as producers struggle to meet EU SPS standards through investments. But as these are met, exports to the EU are expected to grow and result in a trade surplus. This will also support and extend exports of processed fruits to the EU.

EU APPROACH IN OTHER AGREEMENTS

Early EU FTAs such as those with Mexico and Chile concentrated on procedural aspects of SPS providing procedures for either party requesting separate agreements for equivalence of SPS measures and procedures for certification and verification of compliance with each other's SPS measures. These covered live animals, plant and meat products but excluded the following measures: Food additives (all food additives and colours); Processing aids; Flavours; Irradiation (ionisation); Chemicals originating from the migration of substances from packaging materials; Labelling of foodstuffs; Nutritional labelling; Feed additives; Animal feeding stuffs; Medicated feeds and premixes and; Genetically Modified Organisms (GMO's).

In the case of the Euro-Med and Western Balkan association agreements, agreement on SPS standards goes further agreeing to the "gradual harmonisation"⁶ of veterinary and phytosanitary standards.

³ Ibid.

⁴ ECORYS (2008): Trade Sustainability Impact Assessment for the FTA between the EU and Ukraine within the Enhanced Agreement

⁵ Ibid.

⁶ For example, Article 71 of the EU Jordan Association Agreement and Article 92 of the EU Croatia Stabilisation and Association Agreement

ISSUES FOR UKRAINE

What does this mean for stakeholders and negotiators in Ukraine:–

Implications: In term of harmonisation of SPS standards with those of the EU, there appears to be greater flexibility in this area in terms of the depth and coverage (sectors) of the provisions. For example, approximation of SPS norms would be less ambitious than mutual recognition whereby not only the standards are equivalent, but that the authorities in Ukraine certifying Ukrainian producers are accredited and approved by EU authorities:

What level of harmonisation?

What product/sector coverage should be included?

What timeframes for compliance?

Next Steps: Stakeholders need to engage with government negotiators in a positive way to agree the level, coverage and timeframe for harmonisation of SPS norms and procedures:

Representatives of producers should assess the potential for exporting to the EU, the cost of compliance with EU norms and the ability of the entire sector to comply. Based on this some firms will be in favour of deep harmonisation and others apposed. Others will agree with harmonisation but with reservations by sector and timing. Each group should articulate their positions based on data, facts and figures and present this to Ukrainian negotiators;

Government agencies responsible for implementing SPS measures should make the assessment on the practicality and costs of harmonisation (including mutual recognition and current testing capabilities of laboratories) and determine the extent and timing for harmonisation. The relative positions should be articulated to Ukrainian negotiators with facts and costings;

Ukrainian negotiators should then discuss with stakeholders the scope and coverage of SPS harmonisation over time with the aim of agreeing a common position for the negotiations.