

EU-Ukraine Free Trade Agreement Negotiations Stakeholder Briefing Note 6

Trade in Services

Liberalisation of services trade involves amending national legislation to allow foreign participation and/or national treatment of foreigners in the domestic market. Services trade is complex as for each service sub-sector there are a range of modes/methods in which they can be delivered/supplied (mode 1: cross border such as processed data being electronically transmitted; mode 2: consumption abroad such as foreign tourists visiting the country; mode 3: commercial presence such as branch offices of a foreign bank or; mode 4: temporary movement of natural persons such as use of foreign construction workers). However, unlike negotiations for goods, services negotiations usually involve a positive list approach, that is, only those services sector and mode of supply specified on the list are liberalised whereas for goods, all goods are liberalised except those on the list.

May 2008

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 its World Trade Organization (WTO) negotiations, Ukraine liberalised its services sector and as a result, has reportedly one of the most liberal and open services trade regimes. For most sectors, Ukraine has no restrictions on market access and national treatment for supply of services in modes 1-3¹. The only restrictions on services trade in Ukraine are summarised below:

Sector or subsector	Modes of supply			
	Cross-border supply	Consumption abroad	Commercial presence	Temporary presence of natural persons
Market access (MA)/national treatment (NT)				
BUSINESS SERVICES				
Legal Services			MA: Only Ukrainian citizens can supply notary services.	MA: Unbound NT: Unbound
Accounting	MA: Official Audit reports must be confirmed by an auditor from Ukraine or a Ukrainian audit firm.			MA: Unbound NT: Unbound
Medical and dental services and; Services provided by Midwives, Nurses, Physiotherapists and Paramedical Personnel			MA: Professional qualification requirements according with Ukrainian legislation. NT: Foreign service suppliers must speak Ukrainian.	MA: Unbound NT: Unbound
COMMUNICATION SERVICES				
Postal and Courier Services (including express delivery services)	MA: Licensing systems may be established for sub-sectors (i) to (iv) (addressed mail; addressed parcels, addressed press items and express delivery), for which a general Universal Service Obligations exists. These licenses may be subject to particular universal service obligations and/or financial contribution to a compensation fund. None for sub-sectors (v) to (viii).			MA: Unbound NT: Unbound
DISTRIBUTION SERVICES				
Wholesale trade services of books, newspapers, magazines (except stationary)			MA: Foreign participation is limited to 30% for five years after the date of accession. Thereafter, none.	MA: Unbound NT: Unbound
EDUCATION				
Primary and; Secondary and; Higher			MA: in line with Ukrainian legislation, only a citizen of Ukraine may be the head of an educational institution, notwithstanding the type of ownership.	MA: Unbound NT: Unbound

¹ For the most part, Ukraine has not made commitments for mode 4.

Sector or subsector	Modes of supply			
	Cross-border supply	Consumption abroad	Commercial presence	Temporary presence of natural persons
	Market access (MA)/national treatment (NT)			
FINANCIAL SERVICES				
Direct Insurance (Life and non-life)	MA: Unbound ²			MA: Unbound NT: Unbound
Insurance intermediation, such as brokerage and agency	MA: Unbound ³ After 5 years from the date of accession: none.			MA: Unbound NT: Unbound
Trading: - derivatives and; - exchange rate and interest rate instruments, including products such as swaps, forward rate agreements	MA: Unbound			MA: Unbound NT: Unbound
Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues			MA: Only legal persons engaged exclusively in issuance of securities, and banks.	MA: Unbound NT: Unbound
HEALTH RELATED AND SOCIAL SERVICES				
Hospital Services and; Other human health services	MA: Unbound NT: Unbound		MA: professional qualification requirements according with Ukrainian legislation.	MA: Unbound NT: Unbound
RECREATIONAL, CULTURAL AND SPORTING SERVICES				
Entertainment services (including theatre, live bands and circus services)	MA: Unbound			MA: Unbound NT: Unbound
Cinema theatre operations	MA: Unbound NT: Unbound	NT: Unbound	None, except for access to subsidies: unbound.	MA: Unbound NT: Unbound
Dance instructor services	MA: Unbound NT: Unbound			MA: Unbound NT: Unbound
News agency services			MA: Foreign investment is limited to 35%.	MA: Unbound NT: Unbound
Libraries, archives, museums and other cultural services	MA: Unbound NT: Unbound	NT: Unbound	NT: Unbound	MA: Unbound NT: Unbound
TRANSPORT SERVICES				

² except none for: - insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising there from.

³ except none for: - insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising there from.

Sector or subsector	Modes of supply			
	Cross-border supply	Consumption abroad	Commercial presence	Temporary presence of natural persons
	Market access (MA)/national treatment (NT)			
Maritime Cargo Handling Services and; Storage and warehousing Services and; Customs Clearance Services for Maritime Transport Services and; Container Station and Depot Services	MA: Unbound NT: Unbound			MA: Unbound NT: Unbound
Internal waterways - Passenger and freight transportation (excluding cabotage)	MA: Unbound NT: Unbound		MA: Unbound	MA: Unbound NT: Unbound
Air Transport Computer Reservation System	MA: Unbound NT: Unbound		MA: Unbound NT: Unbound	MA: Unbound NT: Unbound
Rail Passenger and freight transportation	MA: Unbound		MA: Unbound	MA: Unbound NT: Unbound
Road Passenger and freight transportation	MA: Unbound		None on condition of the registration as a legal entity.	MA: Unbound NT: Unbound
Services auxiliary to all modes of transport except Freight transport agency services	MA: Unbound NT: Unbound			MA: Unbound NT: Unbound
Other Services n.e.s.				
Beauty Services and; Massage Services and; Spa Services and; Hairdressing	MA: Unbound NT: Unbound			MA: Unbound NT: Unbound

In addition, unbound restrictions exist on horizontal issues such as foreign land ownership and; subsidies and state support for foreign service providers.

EU-Ukraine Agreements

Both the PCA and EU Ukraine Action Plan provide for the "Gradual abolition of restrictions to progressively allow the supply of services between the EU and Ukraine in certain sectors." The PCA specifies actions in a range of sectors including maritime transport, post services, education and financial services. In addition the Action Plan specifies legislative work across sectors to:

- ensure co-ordination between all relevant administrative entities in order to facilitate the supply of services and to eliminate barriers to trade in services;
- ensure effective implementation of legislation that sets out basic principles of non-discrimination, introducing more detailed secondary or sector-specific legislation as necessary.

WTO Commitments

Most commitments entered into force at the time of Ukraine's accession to the WTO. However, there are a few commitments which will be phased in, namely:

- Insurance intermediation, such as brokerage and agency: currently market access is unbound but within 5 years of accession, no restrictions/exceptions must be applied.
- Wholesale trade services/distribution of books, newspapers, magazines (except stationary): for five years after the date of accession foreign participation is limited to 30 per cent, thereafter, no restrictions will apply.

As a recent member of WTO whose services commitments are much deeper than the original signatories to the General Agreement on Trade in Services (GATS), Ukraine is unlikely to be required to liberalise further under any WTO Doha negotiations agreement.

Other Agreements

Ukraine has no other bi-lateral agreements relating to access to services markets.

ECONOMIC IMPACT (COST-BENEFIT)

Providing increased market access to foreign participation in services sector in Ukraine and national treatment will increase competition in these sectors which in turn will lead to lower prices, better quality and wider range of services. Approximation to EU legislation would further increase competition from both Ukrainian and EU service providers lowering prices even more.

Allowing the EU greater access to Ukraine will mean in turn that the EU will grant greater access to Ukrainian service providers and therefore, should lead to greater exports of Ukrainian services.

Whilst recent studies on the impact of a EU-Ukraine FTA all address services, they mainly provide an overview of the current situation in Ukraine by sector and sub-sector without detailing the potential benefits of further liberalisation.

However, a few key estimates are provided:

- Based on the experience of the integration of service sectors from central European countries with the EU, Ukraine's GDP could rise by 3-9 per cent⁴ based on full integration of services with that of the EU (liberalisation and approximation of all sectors).
- For distribution services,⁵ higher levels of competition lead to increased productivity but also to bankruptcy of firms after the introduction of the FTA.
- Domestic transport services⁶ providers in Ukraine are expected to experience a fall in output and employment in the short run, but with

⁴ Studies by Centre for Social and Economic Research (CASE) (2006) Prospects for EU-Ukraine Economic Relations

⁵ ECORYS (2008) Trade Sustainability Impact Assessment for the FTA between the EU and Ukraine within the Enhanced Agreement

⁶ Ibid.

growth in the longer run along with increased market shares for EU transport operators.

- EU market openings might have less positive effects on the EU transport sector⁷ if granted to Ukrainian operators without ensuring they meet EU quality requirements (requirements concerning access to occupation - financial standing, professional competence and good reputation, driver qualifications as well as technical and environmental vehicle standards etc). Such requirements are imposed on EU transport operators and not necessarily applicable to Ukrainian operators entering the EU market. A difference in the level of requirements imposed might give rise to a competitive advantage for Ukrainian operators and result in negative effects in the European transport sector.
- The estimated FTA impact on communication services⁸ are not expected to be large. Economically, competition will increase and prices are expected to drop, which will likely lead to increases in production and employment in the long run.
- Financial services providers in Ukraine are predicted to decline as a result of the FTA. Prices for financial services are expected to drop – which is expected to have a strong positive impact on the rest of the Ukrainian economy.

EU APPROACH IN OTHER AGREEMENTS

The EU's approach to trade in services within the context of FTA negotiations has been to agree a GATS plus agreement whereby sub-sector by sub-sector the degree of liberalisation is agreed and the method of access allowable proscribed in detail. This applies equally to both parties. This is the case for the EU-Chile FTA, as well as many of the Euro-Med agreements. However, the EU Association Agreement with Croatia goes further in specifying approximation of legislation and harmonisation in methods of regulation and control of services sectors with that of the EU. The EU Croatia Association agreement specifies provisions specifically for transportation services and financial services and provides for a transition time of four years.

⁷ Ibid.

⁸ Ibid.

ISSUES FOR UKRAINE

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

Implications: It appears likely that the EU will request that Ukraine makes more commitments than its WTO offer and that the FTA will go beyond the provisions in the Partnership and Cooperation Agreement (PCA) and Ukraine's WTO commitments:

- What further commitments may Ukraine have to make?
- Do any sub-sectors need to be protected still? On what basis?
- What service sectors in the EU would Ukrainian service providers like to liberalise?

Next Steps: Stakeholders need to engage with government negotiators in a positive way to agree the service sector liberalisation schedule for Ukraine and the EU:

- Representatives of providers who remain protected under the WTO commitments (see WTO GATS Schedule or summary table above) should assess the impact of further liberalisation with the EU. Those who believe these restrictions should remain, should justify their positions based on evidence, data and analysis (defensive interests);
- Representatives of providers who currently face market access or national treatment restrictions in EU markets (including freedom to use Ukrainian workers) should articulate their problems and request Ukrainian negotiators to include further EU liberalisation of those sectors (offensive interests);
- Ukrainian negotiators should match the needs of Ukrainian offensive and defensive interests with the WTO GATS schedules of Ukraine and the EU to derive a list of sectors for mutual liberalisation and access.

Implications: It appears likely that the EU will request that Ukraine further approximates its services legislation with that of the EU:

- What sectors and sub sectors should be included and what sub-sectors need reservations?
- What timeframe should be allowed for Ukraine to approximate?
- What level of capacity development will be required to comply?

Next Steps: Stakeholders need to engage with government negotiators in a positive way to agree the best timeframe and scope for adopting EU services legislation and enforcement:

- Representatives of providers who believe rapid introduction of EU legislation and enforcement in their sectors would be beneficial should articulate their case whereas those providers/sectors which feel the status quo should continue (e.g. need for continuing state monopolies, state aid or monopoly restrictions) should also articulate their case for exemption or longer transition;*
- Ukrainian regulators/line Ministries should determine whether or not any sectors should be excluded (if so they need to fully justify) and the capacity requirements and costs to implement EU approximation and enforcement practises;*
- Stakeholders can then prepare a joint position with the government on the timeframe for fully adopting EU services legislation and enforcement in specific sectors/sub-sectors and timeframes for implementation.*