CHAPTER 5. UKRAINE’S ACCESSION TO THE WTO: COMPLETING THE NEGOTIATIONS AND MAXIMIZING THE BENEFITS OF MEMBERSHIP

5.1 Ukraine has been seeking membership in the World Trade Organization (WTO) for over a decade and now appears to be reaching the end of accession negotiations. This chapter takes stock of reforms Ukraine has made and identifies the remaining obstacles to accession. It summarizes findings from several recent specialized reports produced by international consultants as part of various ongoing donor assistance programs. It also suggests ways that Ukraine can meet the challenges posed by implementation of WTO agreements so as to maximize the benefits of its membership.

5.2 The main messages presented in this chapter are the following:

- Ukraine has introduced a considerable number of new laws that move the country closer to compliance with WTO norms. However, to complete accession negotiations, Ukraine will need to concentrate first on completing remaining legal reforms.
- Passing the remaining legislation will require the direct involvement of the top political leadership of the country. Mobilizing political constituencies behind these legal reforms and providing stronger internal support for the negotiating team are the key ingredients to completing accession negotiations; this is not a problem of inadequate technical assistance.
- Negotiating remaining bilateral market access protocols is a lower priority task at this stage: tariff concessions to trade partners do not compensate for a weak domestic institutional environment.
- Ukraine will benefit from WTO agreements on intellectual property rights, standards, and customs in the long run only if the country accelerates institutional reforms; donor assistance will be critical to support these reforms over time.

5.3 The first half of the chapter looks at the accession negotiations, reviewing what has been done to date and what remains to be done. WTO membership is not an end in itself, so the second part addresses institutional reforms needed for Ukraine to benefit economically from WTO membership.
A. WTO ACCESSION NEGOTIATIONS

WTO Accession Requirements

5.4 What must a country do to join the WTO? The formal requirement is that the candidate country demonstrates that its policies conform to the General Agreement on Tariffs and Trade (GATT) and other WTO agreements. First, the candidate country submits a written application and a complete description of the all policies that affect international economic transactions (the Memorandum of the Foreign Trade Regime). The WTO convenes a working party (made up of all interested WTO members) to consider a new application. This working party then negotiates the terms and conditions of membership with the candidate country; these become the protocol of accession. When the working party is satisfied, it recommends the application to the WTO General Council (the collection of all WTO members). Once approved, the applicant must ratify the protocol of accession within three months.

5.5 The salient feature is that new members negotiate the conditions of their membership. There are no WTO rules specifying universal, objective membership criteria such as, for example, maximum tariff levels or maximum amounts of domestic support to agriculture. Each new member's protocol of accession is different. Nevertheless, some trends in membership requirements have emerged during the WTO's first decade. In general, new WTO members have agreed to:

- bind all tariff lines at levels close to currently applied rates;
- bind at zero (i.e., permanently eliminate) all "other duties and charges"—taxes, surcharges, fees, and the like imposed on imports;
- bind at zero all export taxes and any export subsidies on manufactured goods;
- commit to keeping domestic support to agriculture at or below \textit{de minimis} levels;
- make binding commitments to provide non-discriminatory access and national treatment in most major service sectors; and
- forego transitional periods for implementing WTO regulatory agreements (e.g., TRIPS) that were given to developing and least developed countries in the Uruguay Round.

5.6 To some extent, these trends reflect an escalation in the demands that existing WTO members place on candidate countries. Some complain that new members must commit to greater liberalization and internal reforms than existing members agreed to undertake in past negotiating rounds. For example, most candidate countries are pressured to join the Government Procurement Agreement, a code that is optional for current members. WTO members have

\footnote{Moreover, only the candidate country makes concessions during accession negotiations.}

\footnote{The \textit{de minimis} is a threshold used when calculating levels of trade distorting subsidies, which varies by country. In general, developed countries are to keep the total value of trade-distorting domestic support below five percent of the value of agricultural output, while developing countries commit to a 10 percent \textit{de minimis}. Ukraine is negotiating accession as a developed country.}

\footnote{Signatories to the Government Procurement Agreement (GPA) agree to certain disciplines designed to increase transparency of the process and to expand market access to other signatories (countries that do not sign the GPA do not gain more access to tenders in countries that have signed). Signatories include the EU (all 25 members) and most other OECD countries. Several CIS and Eastern European countries are negotiating accession (Moldova, Bulgaria, Georgia, Kyrgyzstan, and Albania) or are observers to the GPA (Croatia and Armenia), suggesting a willingness to join in the future. The other major countries who are observers or are negotiating accession include China, Taiwan, and Turkey.}

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agreed to moderate their demands with respect to least developed country (LDC) candidates. This does not apply to Ukraine, however.

What’s Been Done

5.7 There are two tracks to the WTO negotiations: (i) legal reforms to ensure conformity with WTO rules, which are negotiated multilaterally through the working party process; and (ii) market access commitments, which take place bilaterally. This section reviews progress made by Ukraine on both fronts.

5.8 Ukraine submitted its application to join the GATT in 1993 and its memorandum on its foreign trade regime in 1994. Progress stalled in 1998–99 after several rounds of negotiations. The past three years have seen a renewed commitment by Ukraine to complete the negotiations and reforms necessary for WTO accession. Negotiators have met regularly with the working party and the pace of signing bilateral market access protocols picked up noticeably in 2003.

5.9 A draft report of the working party was issued in September 2004. Once completed, the working party report will contain information about policies Ukraine has undertaken or promised to implement during the course of negotiations. The working party held its thirteenth meeting in September 2004. The next is tentatively scheduled for the first quarter of 2005.

Market Access

5.10 Ukraine set import tariff rates fairly low after independence and average rates have remained more or less at the same level during the course of negotiations (see Chapter 2). During the course of accession negotiations Ukraine also eliminated a number of trade barriers, including:

- all quantitative import restrictions on trade in goods except as regards goods affected by safeguard and anti-dumping measures,
- discriminatory excise taxes on many alcoholic beverages and petroleum products, and
- local content requirements in auto manufacturing.

5.11 The Government has gradually increased protection of certain agricultural products during the course of negotiations, however, and it also introduced various export restrictions. These measures have become a source of tension in the negotiations, as discussed below.

Legal Reforms

5.12 During the past decade Ukraine has introduced many changes to bring its trade regime into conformity with WTO norms and to accommodate requests of its WTO working party. Ukraine’s WTO filings list over 200 existing and draft laws relevant to WTO accession. Below are the highlights of reforms made in several key areas.

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5.13 **Customs.** The customs code was recently prepared to bring Ukraine in compliance with the WTO Agreement on Customs Valuation, the TRIPS Agreement, and GATT norms on fees. This new customs code went into effect on January 1, 2004. Among other things, it eliminates the use of minimum values, establishes fees based on the cost of rendering services, and empowers customs officials to enforce intellectual property rights laws. The Government has been drafting additional amendments to the Customs Code to address several remaining issues, such as, for instance, enforcement of rules of origin.

5.14 **Intellectual Property Rights.** Ukraine has acceded to major international intellectual property rights conventions. Between 1995 and 2003, Ukraine had drafted or adopted 37 laws to establish rights for specific forms of intellectual property (e.g., plant varieties, integrated circuit designs, and utility models). The Government also revised the basic legal codes (civil code, criminal code, customs code, and civil and criminal procedures codes) to enforce intellectual property rights. Ukrainian negotiators report that 100 normative by-laws were adopted to regulate intellectual property rights protection. Finally, the Government has introduced policies that go beyond the literal requirements of TRIPS to satisfy concerns raised by the working party, including licensing, and other controls on trade in optical discs and their components.

5.15 **Standards.** Since 1995, Ukraine has drafted or passed about two dozen laws related to the WTO Agreements on Technical Barriers to Trade (TBT) and on Sanitary and Phytosanitary Measures (SPS). Some laws reformed the institutional structure of the standards regime. The Law on Accreditation, for example, created an accreditation body that operates independently of conformity assessment and standardization organizations in line with international norms. In addition to administrative reorganization, Ukraine has begun incorporating international (e.g., ISO) and Western European standards into Ukrainian standards. The Government is currently working with the United States Agency for International Development (USAID) to review all regulations covered by the SPS Agreement. As of October 2004, new SPS framework laws are in draft form. The European Union’s TACIS program has been working with individual testing facilities to help them gain recognition from European accreditors.

5.16 **Services.** Ukraine passed framework laws governing regulation of key service sectors, such as banking, insurance, auditing, and legal services. In 2001, Ukraine passed laws eliminating the 49 percent cap on foreign ownership in various service sectors (e.g., insurance, telecommunications). Draft laws were prepared to amend the Law on Banks and Banking Activity to permit the establishment of foreign banks’ branches in Ukraine and disallow state ownership of commercial banks. Other draft laws are pending in the Rada that would eliminate citizenship requirements in auditing and legal services.

**Market Access Offers**

5.17 Ukraine has signed bilateral market access protocols with 25 WTO members, as of September 2004. These are listed in Table 5.1 below. Negotiations continue with Australia.

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70 The main examples include the Laws on Accreditation, Standardization, and Conformity Assessment. These were passed as one step toward harmonizing Ukraine’s laws with those of the European Union.
China, Dominican Republic, Taiwan, Honduras, Iceland, Japan, Turkey, Moldova, Panama, Norway, Kyrgyz Republic, Ecuador, Columbia, and the United States. The table shows that the pace of negotiations picked up sharply in 2003.

<table>
<thead>
<tr>
<th>Year</th>
<th>Country 1</th>
<th>Country 2</th>
<th>Country 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>Lithuania</td>
<td>Malaysia</td>
<td>Paraguay</td>
</tr>
<tr>
<td></td>
<td>Argentina</td>
<td>Switzerland</td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>Brazil</td>
<td>Bulgaria</td>
<td>Cuba</td>
</tr>
<tr>
<td></td>
<td>Czech Republic</td>
<td>Estonia</td>
<td>European Union</td>
</tr>
<tr>
<td></td>
<td>Hungary</td>
<td>Israel</td>
<td>Poland</td>
</tr>
<tr>
<td></td>
<td>Slovak Republic</td>
<td>Thailand</td>
<td></td>
</tr>
<tr>
<td>2002</td>
<td>Canada</td>
<td>Georgia</td>
<td>India</td>
</tr>
<tr>
<td></td>
<td>Latvia</td>
<td>Slovenia</td>
<td>South Korea</td>
</tr>
<tr>
<td>2001</td>
<td>Before 2002</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mexico</td>
<td>New Zealand</td>
<td>Uruguay</td>
</tr>
</tbody>
</table>

*Source: Media reports through October 15, 2004.*

5.18 Ukraine submitted a consolidated offer on tariffs in 1999, which it revised in 2001 and 2002. These offers incorporate on an MFN basis all commitments made during the bilateral negotiations. The tariff offer promises significant liberalization in ad valorem tariffs. Information provided by the Ministry of Economy and European Integration (MEEI) indicates that the average bound rates will fall from an initial level of 9.04 percent to 6.28 percent over an eight-year transition period. The maximum bound rate will be 10 percent for most manufactured goods and 20 percent for most agricultural products. Tariffs will be bound at ceiling levels close to the currently applied MFN rates in most chapters of the tariff code: 57 out of 96 total chapters will have average bound rates below current average applied rates at the beginning of the eight-year transition period; 74 chapters will have average bound rates below current average applied rates at the end of the transition period. Ten chapters will be bound at zero. The tariff on sugar, the subject of much discussion during working party meetings, will be bound at a ceiling of 50 percent. Ukraine’s tariff offer also includes joining 16 of the 19 sectoral initiatives, including in information technology, steel, textile and clothing, chemical harmonization, and non-ferrous metals.

5.19 Liberalization will also come through the conversion of specific tariffs on many agricultural products to ad valorem duties. Duty rates will then be reduced substantially. Table 5.2 shows the planned reductions in tariff for certain agricultural products, after converting the current specific tariffs to their ad valorem equivalents.

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Table 5.2: Planned Reductions in Agriculture Tariffs

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Percentage Tariff Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunflower seed</td>
<td>90</td>
</tr>
<tr>
<td>Sunflower oil</td>
<td>80</td>
</tr>
<tr>
<td>Potatoes</td>
<td>67</td>
</tr>
<tr>
<td>Sugar</td>
<td>50</td>
</tr>
<tr>
<td>Meat</td>
<td>50</td>
</tr>
<tr>
<td>Butter</td>
<td>50</td>
</tr>
</tbody>
</table>

Source: Reported by Ukrainian negotiators in WTO report number WT/ACC/URU/110/Add. 1, October 24, 2002.

5.20 WTO members reportedly are quite pleased with Ukraine’s services offer. Ukraine submitted its first services offer in February 1997. It has revised this offer several times, most recently in April 2004. Bilateral negotiations on services have been completed with most members. During the course of negotiations, Ukraine has increased the breadth and depth of its services offer, which now makes commitments in 139 out of 155 services sub-sectors. It includes full market access commitments in key sectors such as banking and telecommunications. Many limits on market access listed in the initial services offer have subsequently been eliminated. For example, the 1997 offer restricted foreign ownership of service providers operating in many communications, insurance, and transport sub-sectors to 49 percent; in the current offer, a foreign equity cap exists only in news services.

B. REMAINING ROADBLOCKS TO ACCESSION

5.21 Ukraine has worked quite actively in its pursuit of WTO membership during the past few years, most visibly in the negotiation of bilateral market access protocols. Yet this level of activity has not been matched by concrete progress. A final decision on accession appears to be still some distance away. Thus, it should be admitted that the accession process cannot be completed in 2004 (as was envisioned by the earlier government decision). The next section focuses on steps Ukraine may need to take to reach the end of negotiations.

5.22 Discussions with those close to negotiations suggest that WTO members are generally satisfied with Ukraine’s market access offers, although a few trade policy measures cause frictions in the negotiations. However, the main issues still outstanding in the negotiations lie elsewhere. WTO members are primarily concerned about more general problems with economic conditions in Ukraine, e.g., high transaction costs caused by weak legal institutions, vested interests, corruption, frequent changes in government policies, lack of transparency, etc. These do not result from discriminatory trade practices and therefore violate no WTO rules. They do, however, raise the costs for those wanting to export to or invest in Ukraine, making them a trade policy issue for WTO member countries. More importantly for the purposes of this study, they create unnecessary barriers to Ukraine’s integration into the world economy. Finally, some complain about what they perceive as a lack of clarity in Ukraine’s trade policy. This lessens the credibility of the Government’s commitment to implement promises made during accession negotiations.
Market Access Barriers

5.23 Ukraine has reportedly addressed most members’ concerns about tariffs and other market access barriers. About 95 percent of tariff rates in Ukraine’s goods offer have been accepted by other WTO members (OECD, 2003). Nevertheless, a few measures continue to attract controversy and pose obstacles to completing accession negotiations. Chief among these are interventions in sugar trade and export duties on metal scrap, hides, and certain agricultural products.

5.24 Sugar. The Ukrainian government uses several measures to intervene in sugar markets:

- The 1999 Law on Regulation of Sugar Production and Sale allows imports of raw sugar only on the condition that all output of refined sugar produced from this imported inputs is subsequently exported.

- A tariff rate quota (TRQ) is imposed on sugar imports: the 125,000 tons of within-quota imports face a relatively low €30/ton duty and a high €300/ton duty is levied on any imports in excess of the quota. Licenses to import under this quota were auctioned off for €60/ton. At current world spot prices, the ad valorem equivalent of the within-quota duty plus license is 38 percent and the above-quota duty is equivalent to a 127 percent ad valorem tariff.

- The Government sets minimum procurement prices on sugar beets and sugar refined from beets in domestic markets. In WTO filings the Government estimated that price controls on sugar beets represented a subsidy (using the WTO’s methodology) that averaged 59 percent of the total value of beet production during 2000–02.

5.25 WTO members contest these measures, complaining that they violate rules on subsidies, local content requirements, and national treatment. The government acknowledges the requirement to export all sugar refined from imported cane indirectly violates the Agreement on Agriculture’s prohibition on the use of non-tariff measures. Ukraine’s negotiators dispute that other policies violate WTO rules, however, and they defend them based on the need to provide

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72 Such policies are not unique to Ukraine, of course.
73 The within-quota quantity of 125,000 tons represents a small fraction of total domestic demand, which is estimated at 1.8 million tons (Dow Jones, October 12, 2004). The GOU recently rejected a proposal to relax the quota during the coming year (Ukrainian News, September 15, 2004).
75 The International Sugar Organization reports that the closing price of sugar was 8.8 cents/pound on October 13, 2004. (Dow Jones Commodity Wire, October 14, 2004). At a dollar/Euro exchange rate of 0.82, this translates into a price of €236 per metric ton. Sugar prices are extremely volatile, however, and the economic impact of a specific duty varies with the price. In May 2004 the world price was 6 cents/pound (International Sugar Organization, “Quarterly Market Outlook,” September 2004). The ad valorem equivalent of the quota license and duty on within-quota imports is 56 percent when measured at this world price, and the above-quota duty is equivalent to an ad valorem tariff rate of 186 percent.
76 According to news reports, the minimum price for beets is currently US$31/ton (Reuters, October 14, 2004), and the Government has been buying and selling sugar to stabilize the domestic market price at UAH 2,370/ton, which is around €445/ton at current exchange rates -- well above the world price (Dow Jones Commodity Wire, October 12, 2004).
economic support for the domestic sugar industry. Whether or not a given policy is WTO-
compliant ultimately depends on the findings of a WTO dispute settlement panel. In the absence
of such a ruling on Ukraine’s sugar policies, this debate involves pitting one lawyer’s
interpretation against another’s. As a practical matter, this legal debate is not central to either
completing the accession negotiations or determining the best economic policy for Ukraine. The
combination of trade restrictions and domestic price interventions distorts Ukraine’s sugar
markets, leading to misallocations of land, labor and capital, and transferring money from a large
number of consumers to a small number of sugar producers. Even if there are externalities that
prevent a competitive domestic market from emerging or social policy objectives that require
transferring resources to sugar producers, trade restrictions and price controls are not efficient
ways to solve these problems.

5.26 Ukraine’s tariff offer relaxes the TRQ on sugar, expanding the quota to 260,000
tons/year and setting customs duties at 2 percent on the within-quota imports and at 50 percent
on above-quota shipments.79 WTO filings indicate that at least one member has asked Ukraine to
foreswear the use of TRQs entirely. WTO rules currently permit existing members to use TRQs
on agriculture, although some countries have proposed eliminating them and many candidate
countries have agreed not to use them.80 Trade economists oppose TRQs because their economic
effects are far less transparent than those of a simple tariff and because they require
administrative interventions to allocate quota rights which may themselves be costly.

5.27 Ukraine’s economy would benefit from gradually replacing all existing instruments of
protection of the sugar market with those that are more WTO-consistent and create fewer market
distortions. The TRQ and non-tariff trade barriers should be replaced with a simple tariff. The
minimum price regime should be replaced with other forms of support, such as programs for
regional development programs in respective regions, direct income support for farmers that is
decoupled from current production levels or prices, and expenditures on environmental
protection and agricultural research.

5.28 Export Restrictions. Export restrictions represent a second market access dispute.
Ukraine employs export taxes, outright bans, minimum prices, and customs fees that act as
additional export taxes. In 1996, Ukraine reintroduced export duties on the following agricultural
products (after having eliminated them in December 1993):

- *Live cattle and sheep:* ad valorem duties of 50–75 percent with minimum specific duties
  of €390–1,500 per ton, depending on the type of animal.
- *Skins or hides of cattle, sheep and pigs:* ad valorem duties of 27–30 percent with
  minimum specific duties that vary with the type of skin.
- *Flax, sunflower, and false flax seeds:* ad valorem duties of 17 percent.

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79 The price of quota licenses must be added to the statutory tariff rate to determine that full level of protection on within-quota
imports. The auction price for quota licenses will naturally change as the statutory duty falls and the quota expands.
80 None of the CIS members that have entered the WTO to date (Armenia, Moldova, Georgia, and Kyrgyzstan) employ TRQs,
although the record in general on TRQs and accession is more mixed -- 8 of 18 new members entering through 2003 included
TRQs in their goods schedules (Brink, 2003).
5.29 Ukraine also introduced a €30/ton export duty on scrap metal on January 1, 2003 (and at times it has maintained a complete ban on exports of various types of scrap metal). In addition, the Government charges a customs clearance fee for scrap metal that is five times higher than similar fees on other exports.\textsuperscript{81} Ukraine’s export license fees in general come under fire because the fees are set on an ad valorem basis (0.1 percent of the transaction value), which violates the GATT norm that such fees must correspond to the cost of providing a service. Finally, the Government employs minimum indicative prices to simplify calculation of export duties and prevent fraud.\textsuperscript{82} These various export restrictions drive down domestic prices below world prices, favoring domestic users at the expense of foreign buyers.\textsuperscript{83}

5.30 Some WTO members, most notably the European Union, complain that Ukraine’s export taxes are too high—so high as to be prohibitive in some cases. They have requested that Ukraine eliminate all export duties by the date of accession and bind them at zero (i.e., commit never to reintroduce them in the future). Ukraine defends these taxes on classical mercantilist grounds— that they discourage raw material exports to encourage more domestic processing. Negotiators justify the export tax on oilseeds, for example, because this reduces the domestic price of seeds and thereby increases domestic production of oils, margarine, and fats. A tax on ferrous metal scrap has a similar effect on steel production. Although this alters domestic prices in favor of domestic manufacturing, it does nothing to help favored industries operate more competitively. Other economic reasons against using export taxes are presented in Chapter 2.

5.31 While the GATT does not prescribe export taxes per se (any more than it bans import tariffs), their use is the topic of several cases before WTO dispute panels.\textsuperscript{84} For example, the EU has requested consultations (the first stage of the WTO dispute settlement process) with several countries that impose export taxes on animal hides: India (1998), Pakistan (1997), and Argentina (1999). Some of the other CIS countries (e.g., Kyrgyzstan) that have joined the WTO agreed to bind export taxes at zero upon accession. Even if Ukraine succeeded in entering the WTO with its export taxes intact, it would remain vulnerable to WTO-legal trade sanctions in the future. One should also note that very few other countries in the world employ export duties. Most that do are the least developed countries. In only one case (Ivory Coast) do export duties represent a significant share of government revenues (13–15 percent during 1997–2001).\textsuperscript{85}

5.32 Ukraine will need to come to some accommodation with WTO members on these market access issues if it is to gain their approval for WTO accession. One could argue that, apart from ad valorem licensing fees, these measures do not violate WTO rules per se. Instead these disputes are more akin to standard WTO negotiations over the level of import tariffs: import-competing domestic industries want protection, foreign exporters want protection eliminated, and the Government must weigh political costs of supporting certain domestic

\textsuperscript{81} This fee is scheduled to expire on January 1, 2005.
\textsuperscript{82} Minimum prices are also used for export of steel and other products subject to anti-dumping duties in importing country markets.
\textsuperscript{83} For example, the president of a Ukrainian scrap metal association reported that the Government’s export restrictions kept domestic prices at €100/ton, well below the world price of 160 Euro/ton ("Squaring the Circle," Metal Bulletin, November 20, 2003).
\textsuperscript{84} One should note that taxing exports is no less a departure from free trade than taxing imports. In principle they are even identical: an across-the-board ad valorem import tariff is equivalent in all respects to a uniform export tax of the same rate, holding other factors constant and assuming that tax revenue is redistributed to consumers in lump-sum fashion (the Lerner Symmetry Theorem).
\textsuperscript{85} World Development Indicators, 2003.
producer groups against the economic benefits to the economy as a whole. Sugar is a clear case where politicians need to determine whether helping one domestic interest group is more important than achieving broader economic policy priorities. Does Ukraine’s economic future depend critically upon sugar? If so, it must find ways of supporting the development of the sugar industry that do not create frictions with trade partners and minimize costs imposed on consumers.

5.33 Support for domestic automobile industry. The Ukrainian Law “On Stimulation of Automobile Production” adopted in 1997 provided domestic automobile producers with a major package of tax exemptions. The new Law “On Development of Automobile Industry in Ukraine” adopted in March 2004 was expected to bring government policies in the sector in line with WTO norms. However, this did not happen. For the companies in the sector which had been established before 2004, the new Law extended the period of effectiveness of their tax privileges for an additional five years. De facto, the Law established a dual investment regime in the sector, which is much less favorable to all potential new entries. Simultaneously, a new amendment to the Law “On the Customs Tariff” was passed that introduced significantly higher customs tariffs on imports of automobiles and parts.

Principal Domestic Reform Issues

5.34 WTO members have made it clear that Ukraine’s concessions on market access will not substitute for progress in implementing legal and institutional reforms. The major ones discussed here are standards, intellectual property rights, and agriculture subsidies.\(^{56}\)

Standards

5.35 The domestic standards regime is the set of institutions that arguably least conform to WTO principles. Despite passing new framework laws, Ukraine’s standards regime continues to exhibit many traits inherited from the Soviet GOST system: In practice, standards are set by the state, most existing standards are treated as mandatory requirements, and firms generally must satisfy these requirements through state certification. Mandatory technical specifications substitute for supplier liability laws. They are also used to regulate product quality in Ukraine, a task performed by consumer choice in market economies. The national standards agency views its role as primarily a regulatory enforcer rather than a service provider. It continues to perform many functions that are usually performed by the private sector—both private enterprise and civil society—institutions in market economies. Taken as a whole, the existing standards regime adds to the cost of doing business in Ukraine and hinders the country’s integration into the world economy. This is clearly evident in business surveys (see Chapter 2) and problems with the standards regime have therefore become a negotiating issue for Ukraine’s trade partners.

5.36 The official negotiating record contains many complaints by WTO members about overly restrictive technical regulations in Ukraine. A frequent rebuttal is that these regulations are applied to foreign and domestic firms without partiality and are therefore WTO-compliant. This simply hurts both domestic and foreign firms, of course, which is not the sort of national

\(^{56}\) WTO members have also taken issue with many other internal policies that affect trade. These include issues such as industrial subsidies, trade safeguards procedures, currency convertibility, and the operation of free economic zones.
treatment trade negotiators had in mind when they drafted the standards codes. WTO members have voiced complaints about some specific measures as well as the general procedures that are employed in Ukraine. The most common complaints are the following:

- Until recently, all Ukrainian standards were mandatory and Ukraine had no technical regulations and standards in the conventional usage of these terms. (see Box 5.1).
- Risk is not adequately taken into account by the existing system. All agricultural products require certificates of conformity. All consignments of imported food products of animal origin must undergo laboratory testing. All imports are subject to radiological testing.
- Multiple agencies require certification or inspection of certain products.
- Measures are not “least trade restrictive.” For example, Cabinet of Ministers Resolution No. 1611 requires that goods subject to mandatory certification be accompanied by the original, state-issued certificates.
- Sanitary standards are too restrictive and not necessarily science-based. WTO members point to a long list of banned food additives and restrictions on dried-egg products, pork, red meat, and poultry as examples.

5.37 In general, Ukraine presently does not recognize equivalent regulations of other countries. Instead Ukraine relies solely on mutual recognition agreements (MRAs) as an alternative to local certification. WTO agreements explicitly encourage unilateral recognition of equivalent regulations as an alternative to MRAs. In recent years many countries have turned to multilateral accreditation arrangements (e.g., European Accreditation and International Laboratory Accreditation, due in part to frustration with the lack of success of MRAs as an avenue for facilitating trade. The State Committee of Ukraine on Technical Regulations and Consumer Policy (DSSU) defends its policy of recognizing conformity assessments conducted either locally or under an MRA on the grounds that this is necessary to protect its markets from low quality and unsafe products.

5.38 In the absence of an MRA, only Ukrainian residents may conduct conformity assessment in fulfillment of mandatory state standards. This restriction is inconsistent with Ukraine’s services offer (specifically those made in the technical services sector) and WTO agreements. Apart from its importance as an obstacle to WTO accession, this practice reduces the competitiveness of the domestic market for conformity assessment services, thereby raising

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87 “Agriculture” is defined as goods in Chapters 1–24 of the Harmonized System.
88 Ukrainian negotiators acknowledged this in writing: “Thus, for example, imported food of animal origin was subject to certification by the Ministry of Health and authorization by the State Committee on Standardization, the certificate was checked at the Health Border Point and the product, including collection of a sample, at the Veterinary Border Point, followed by surveillance in the market by the Epidemiological Unit, the Veterinary Service and the Association of Consumers’ Rights.” (WTO, “Draft Report of the Working Party of the Accession of Ukraine to the World Trade Organization,” Report Number WT/ACC/PEC/UKR/5, Geneva: WTO, March 16, 2004, paragraph 131).
89 See Article 6.1 of the TBT Agreement.
90 Articles 10 and 12 of the Law on Conformity Assessment.
91 Article 6.4 of the TBT Agreement encourages WTO members to recognize certificates issued by other members’ conformity assessment bodies.
the cost of doing business in Ukraine, which in turn makes Ukrainian goods less competitive in world markets.

5.39 The WTO-mandated enquiry points for the TBT and SPS agreements are not yet fully operational. These entities are expected to notify other WTO members about new regulations and respond to members’ comments, and they increase the transparency of the domestic standards regime. WTO members have pressed Ukraine to establish functioning enquiry points by the date of accession. The Government has taken some steps to do so and is receiving some assistance from foreign donors.

5.40 Some problems in these areas can be addressed quickly. For example, the MEEI has the authority to shorten the list of goods requiring mandatory inspection.92 DSSU reports plans to eliminate several categories of goods from this list.93 However, it will take time to review all SPS and TBT measures and eliminate those objectives that can be achieved in a less trade-restrictive manner (as required by the TBT agreement). USAID is funding a project to review all laws and government measures relevant to the SPS agreement and recommend steps to bring them into compliance. This project is expected to conclude in 2005. The process of reviewing standards relevant to the TBT agreement will take much longer due to the large number of existing mandatory technical specifications inherited from the USSR.

Box 5.1: Technical Regulations versus Standards

“Standards” and “technical regulations” have very precise definitions in WTO agreements. Following international convention, the WTO defines a standard as a “document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory.” A technical regulation “lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory.”

Technical regulations are promulgated by governments. Standards, in contrast, can be developed by any body of experts, and as international standards are generally developed through consensus, they are self-enforcing.

The WTO limits the legitimate use of technical regulations to certain public policy objectives that are unrelated to trade: ensuring national security; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. Mandatory technical requirements that have other objectives and restrict trade can be challenged by other WTO members.

5.41 As of September 2004, efforts were underway to consolidate all existing rules governing SPS provisions, which currently appear in over a dozen laws and decrees, into three framework laws—one on veterinary medicine, one on food safety, and a third dealing with plant quarantine. These three would become the only laws governing such issues, and they would incorporate all requirements of the WTO SPS Agreement, including procedural and transparency requirements, and would cover the following areas:


93 These include tractors and agricultural machine engines, electrical machines, cinema and photographic equipment, and an additional 20 products with low consumer risk from other product categories.
• WTO terminology;
• harmonization;
• equivalence in measures;
• risk assessment and appropriate level of protection;
• adaptation to regional conditions;
• transparency – availability of enquiry and notification points; and
• inspection, control and approval procedures.

5.42 The new draft SPS laws provide for the radical reduction in documentation requirements for imported food products, clear delineation of authorities between different government agencies, and streamlined border control procedures.

5.43 The Government could take additional steps to demonstrate its commitment to reforming the standards regime and, thereby, increase the momentum of WTO accession. The short-term priority measures are as follows:

• Amend the laws on conformity assessment and accreditation to eliminate the requirement that only Ukrainian firms may conduct conformity assessment in the legally regulated sphere.

• Identify a set of low-risk products for which no Ukrainian conformity assessment certificate will be required if the product has already been tested to international standards in the country of origin (e.g., if it bears the EU’s mark).

• Establish and maintain a website with draft texts of all proposed technical regulations translated into at least one of the three official WTO languages.

Intellectual Property Rights Protection

5.44 The highest profile obstacle to accession at the moment relates to the dispute over the production and export of counterfeit optical discs (CD-ROMs and DVDs with movies, software, and music). Ukraine is allegedly one of the world’s leading violators of intellectual property rights in the area of optical media and one of the largest exporters of counterfeit optical discs. 94 This dubious honor aggravates trade relations with the US, which in 2001 named Ukraine the worst offender on its list of countries employing (what it considers to be) unfair trade practices. As a consequence, the US revoked Ukraine’s access to duty-free treatment under the Generalized System of Preferences (GSP) 95 in 2001 and imposed punitive customs duties worth $75 million annually on imports from Ukraine. The US renewed these sanctions in 2004. It is inconceivable that WTO members will approve Ukraine’s membership until this issue has been addressed to their satisfaction.


95 The Generalized System of Preferences is a system of non-reciprocal tariff treatment granted by industrial countries to many products from developing countries. Each industrial country sets its own rules on which goods from which countries will qualify for GSP treatment. The United States’ GSP program grants duty-free treatment to approximately 4,650 products.
5.45 As noted above, Ukraine has passed many new laws in recent years to bolster intellectual property rights. At the April 2004 working party meeting, several key members praised Ukraine's progress in conforming its laws to the TRIPS agreement. WTO members continue to insist, however, that Ukraine pass revisions to the optical disc licensing law as a condition of WTO accession. This bill has been held up in the Rada on procedural grounds and it is difficult to predict when the Rada may finally approve it.

5.46 Working party members also complain that, in their opinion, enforcement of new IP laws remains weak. Specific problems cited are the following:

- law enforcement agents and judges lack sufficient expertise in intellectual property matters;
- civil and criminal procedures codes have provisions for ex-parte search and seizure which have never been used for these purposes;
- the Ministry of Health does not validate patents when issuing clearances to manufacture pharmaceuticals; and
- police and customs officials, in practice, require intellectual property rights holders to file a complaint before launching an investigation even though current laws grant police ex-officio authority to initiate intellectual property cases on their own and confiscate counterfeit items.

5.47 The Government openly acknowledges many of the shortcomings caused by lack of administrative capacity. The State Department of Intellectual Property reports that it has been working with the EU to train judges, for example. Improving the capacity to manage and enforce new laws will require more technical assistance.

5.48 The single most important step Ukraine can take in the short run to facilitate WTO accession is for the Rada to pass the optical disc licensing law. A second important measure would be to revise law enforcement operating procedures to take practical advantage of powers provided by recently adopted intellectual property rights laws.

5.49 In the long run, however, the GOU must also pay attention to the commercial dimension of intellectual property. As discussed below, stronger enforcement of intellectual property rights, in and of itself, does not create economic incentives to invest in knowledge creation or new technologies. This is not a legal problem but a commercial problem—one of turning new ideas into marketable products. And this is where Ukraine will ultimately benefit from legal reforms mandated by the TRIPS agreement.

Agricultural Subsidies

5.50 Domestic subsidies to agriculture create another source of friction in Ukraine's accession negotiations. On the surface, negotiators are debating the choice of base years to use

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96 "On Introducing Amendments to Certain Legislative Acts of Ukraine," 24 February 2003, No. 3155. While not addressing intellectual property rights per se, the law would help the GOU monitor optical disc production and, by extension, crack down on exports of counterfeit discs.
for computing base levels of the aggregate measure of domestic support for agriculture (AMS).\textsuperscript{97} Ukraine wants to use 1994-96 as the base year; many WTO members argue it should use a more recent period. The WTO Agreement on Agriculture introduced a set of benchmarks for WTO members in 1994-96 at the conclusion of the Uruguay Round, but this did not address how new members were to be treated. The WTO Secretariat’s guidelines for accession countries suggest (but does not require) using the three years prior to the commencement of a candidate country’s negotiations on agriculture. On these grounds, Ukraine argues that 1994-96 are the appropriate years. WTO members counter that these years were characterized by unusual macroeconomic fluctuations, that recent years are more representative of “normal” economic conditions, and that too much time has elapsed since 1996 to justify using those years as the basis for future subsidy commitments. Table 5.3 shows commitments made by other countries that have joined the WTO since the Uruguay Round. Most countries used base years that were more recent than what Ukraine proposes, but the historical record remains rather mixed on this point.

5.51 This is not just an academic debate: new members must commit to reducing support when total AMS exceeds the country’s de minimis level. The OECD reports that if 1994–96 are the base years, the total AMS is over US$1 billion, compared to less than US$100 million when the 1997–99 period is used. Thus, using 1997–99 would cap Ukraine’s future agricultural support at a much lower level. The latest calculations submitted to the WTO show that the sum of product-specific AMS and non-product specific AMS was 11 percent of the value of production during the base years, so Ukraine will likely need to negotiate a reduction in support levels as well.\textsuperscript{98}

5.52 Ukraine’s case for binding subsidies at a high level relies in part on the premise that current support levels are high for transitory reasons: it must make one-time expenses to write off old debts, rebuild infrastructure, complete the process of land reform, and invest in technological modernization. Its negotiators also argue that Ukraine should be permitted to maintain AMS above the de minimis for reasons that apply equally to all countries and all times: compensation for seasonal demands for credit, volatility in world commodity prices, and weather-related uncertainty. Finally, negotiators argue that Ukraine should be allowed to retain current AMS levels because they have made large concessions in other areas of agricultural policy — it has offered to bind export subsidies at zero, forgo the right to apply special safeguards, and bind tariffs on important agricultural commodities well below their currently applied rates.

5.53 The new Law on State Support of Agriculture in Ukraine was adopted in June 2004. The Law immediately raised several concerns from WTO members who believe that most of the instruments of government support to the sector, which are declared in the Law, are classified by the WTO as subsidies from the so-called “yellow basket”, while members would like to see more progress toward less distortive policies (“green basket”) and general sectoral liberalization. In addition, several clauses of the new Law are in direct contradiction with WTO norms. This

\textsuperscript{97}AMS includes tax breaks, price supports, and off-budget assistance targeted at the production of given crops, not just explicit subsidies.

\textsuperscript{98}WTO, “Accession of Ukraine: Domestic Support and Export Subsidies in the Agricultural Sector, Revision,” report number WT/ACC/SPEC/UKR/1/Rev.9, Geneva: WTO, April 11, 2004. Total AMS reported in Table DS4 is US$1.36 billion and the value of agricultural production is US$12.54 billion.
includes: (i) Article 3.1 that provides for use of minimum and maximum prices in the process of agricultural exports and imports; and (ii) Article 8.2 that allows the GOU to introduce quotas for imports and exports. Another concern relates to future operations of the new Agrarian Fund, which could become a potential source of considerable market distortions through excessive price and procurement interventions. In addition, the Law did not address an important separate sectoral issue that creates considerable problems for Ukraine’s WTO negotiations – abolishing the requirement for obligatory use of domestically grown tobacco by the Ukrainian tobacco industry.

Table 5.3: Agriculture Commitments by New WTO Members, 1995–2003

<table>
<thead>
<tr>
<th>Member</th>
<th>Accession Year</th>
<th>Base Years</th>
<th>de minimis level</th>
<th>Base AMS exceeds de minimis?</th>
<th>Reduction commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cambodia</td>
<td>2003</td>
<td>1998–2000</td>
<td>10 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Nepal</td>
<td>2003</td>
<td>1996–1998</td>
<td>10 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Macedonia</td>
<td>2003</td>
<td>1998–2000</td>
<td>5 percent</td>
<td>yes</td>
<td>0 percent</td>
</tr>
<tr>
<td>Armenia</td>
<td>2003</td>
<td>1995–1997</td>
<td>10 percent/5 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Taiwan</td>
<td>2002</td>
<td>1990–1992</td>
<td>5 percent</td>
<td>yes</td>
<td>20 percent</td>
</tr>
<tr>
<td>China</td>
<td>2001</td>
<td>1996–1998</td>
<td>8.5 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Moldova</td>
<td>2001</td>
<td>1995–1997</td>
<td>5 percent</td>
<td>yes</td>
<td>20 percent</td>
</tr>
<tr>
<td>Lithuania</td>
<td>2001</td>
<td>1995–1997</td>
<td>5 percent</td>
<td>yes</td>
<td>20 percent</td>
</tr>
<tr>
<td>Croatia</td>
<td>2000</td>
<td>1996–1998</td>
<td>5 percent</td>
<td>yes</td>
<td>20 percent</td>
</tr>
<tr>
<td>Oman</td>
<td>2000</td>
<td>1994–1996</td>
<td>10 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Albania</td>
<td>2000</td>
<td>1996–1998</td>
<td>5 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Georgia</td>
<td>2000</td>
<td>1996–1998</td>
<td>5 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Jordan</td>
<td>2000</td>
<td>1994–1996</td>
<td>10 percent</td>
<td>yes</td>
<td>13 percent</td>
</tr>
<tr>
<td>Estonia</td>
<td>1999</td>
<td>1995–1997</td>
<td>5 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Latvia</td>
<td>1999</td>
<td>1994–1996</td>
<td>8 percent/5 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>1998</td>
<td>1994–1996</td>
<td>5 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Panama</td>
<td>1997</td>
<td>1991–1993</td>
<td>10 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Mongolia</td>
<td>1997</td>
<td>n.a.</td>
<td>10 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1996</td>
<td>1986–1988</td>
<td>5 percent</td>
<td>yes</td>
<td>79 percent</td>
</tr>
<tr>
<td>Ecuador</td>
<td>1996</td>
<td>n.a.</td>
<td>10 percent</td>
<td>no</td>
<td>0 percent</td>
</tr>
</tbody>
</table>

* Date of accession protocol.

b Armenia’s de minimis level is 10 percent through 2008 and 5 percent thereafter; Latvia’s de minimis was set at 8 percent through 2002 and 5 percent thereafter.

Source: Brink (2003) based on WTO accession protocols. Information on Nepal and Cambodia are taken directly from WTO accession packages.

5.54 It seems unlikely that Ukraine will be able to enter the WTO without having to commit to reducing AMS. Transition economies entering the WTO in recent years with AMS above de minimis had to reduce AMS by twenty percent. Although, as Ukrainian negotiators rightly point out, major industrial countries maintain high levels of subsidies, their unwillingness to commit to reductions at the Cancun Ministerial is precisely what halted progress on the Doha Round.
negotiations. Policy makers should seek ways to replace current subsidies with a program of support that does not distort production and trade.\(^99\)

5.55 Overall, our analysis suggests that agricultural issues could become a major separate sticking point in the remaining negotiations (similar to certain legislative changes). First, the Government tariff offer provides for a major reduction in agricultural protection, and it may apparently need time and a strong political strategy to get sufficient Rada backing for such a proposal. Second, in the past the liberalization in agriculture proved to be difficult. The Rada defeated a bill repealing the law on export duties for hides and live cattle in January 2000. The Cabinet of Ministers rejected a similar measure in April 2002. This calls for the need for a strong awareness campaign related to the role of agriculture in the WTO agenda. However, so far the issue remains quite remote from the core domestic discussions on WTO accession.

C. REACHING THE END OF NEGOTIATIONS

5.56 The negotiating team has made considerable progress with foreign partners. What remains to be done is mostly an internal issue—negotiating the WTO agenda with domestic constituencies, including the Rada and individual interest groups. This is not a technical job, and it requires a major effort at the top political level of the country. In other words, the negotiation team now needs considerable help from the political leadership to push the WTO agenda through the Government and Rada, strengthen inter-agency coordination of government efforts, improve communications, and adopt strategic decisions on capacity building.

5.57 Ukraine’s first priority should be the legal reform agenda. The Government must move more aggressively with both acceleration of adoption of WTO-compliant laws that are still missing, and enforcement of laws that are already in place. Apart from a few specific trade restrictions, such as sugar tariffs and export taxes, WTO members are reportedly rather satisfied with the pace of bilateral negotiations on market access. In contrast, they remain concerned that liberalization at the border is being derailed by problems in the domestic regulatory environment. This implies that the WTO unit in the MEEI might focus less on negotiating additional bilateral protocols and more on championing domestic reforms.\(^100\)

5.58 In many cases the primary task is to eliminate objectionable policies. Much has been done to identify which laws need to be revised. A recent USAID-funded assessment of Ukraine’s WTO accession lists specific laws that need revision to ensure Ukraine’s conformity to WTO norms, and it proposes a timeline for adopting these laws. UEPLAC has also produced analyses of WTO-related legislation. The MEEI should move quickly to ensure that the necessary draft legislation is prepared and ultimately passed. The ministry has some grant funding to conduct additional legal assessments, including one to revise the framework Law on Foreign Economic

\(^99\) The development of Ukraine’s agricultural sector ultimately depends on successful institutional reforms such as land reform, improved property rights, and the development of rural credit markets. Subsidies will not help resolve these more fundamental problems.

\(^100\) The WTO Secretariat’s guidelines for accession imply that the proper order of negotiations is to first complete the multilateral (legal reform) agenda and only then conclude bilateral market access negotiations: “When the working party has made sufficient progress on principles and policies, parallel bilateral talks begin between the prospective new member and individual countries. They are bilateral because different countries have different trading interests.” WTO, “Accession to the World Trade Organization: Procedures for Negotiations under Article XII,” Document number WT/ACC/1, Geneva: WTO, March 24, 1995.
Activity, as well as of more specialized legislation (e.g., on intellectual property rights). It should make every effort to facilitate rapid completion of these assessments.

5.59 How can Ukraine accelerate the tempo of legal reform? The first concern must be to focus political will on WTO accession. Many WTO-compliant laws have been blocked and many non-compliant laws have been passed, not because those drafting the laws were unclear on WTO obligations, but because of domestic political considerations. Box 5.2 presents several examples of draft legislation facing problems in the Rada, including the CD-ROM licensing law. If Ukraine is serious about joining the WTO, those advocating accession will need to devote more political capital to this task and communicate its political importance to the Rada and general public more effectively.

5.60 Several additional factors impede progress toward WTO accession. In particular, it is clearly held back by insufficient cooperation between the lead government agency — the MEEI — and the other participating agencies, between the GOU and the Rada, and between the public and private sectors. The Interagency Commission on Ukraine’s WTO accession reportedly has become moribund.\textsuperscript{101} While virtually all the controversial points enumerated above require the attention of more than one government agency, there is ample evidence that agencies affected by WTO accession often do not contribute to the negotiations or do not take into account the results of negotiations. For example, the Government’s revenue projections reportedly do not reflect the import tariff reductions that negotiators have already promised.\textsuperscript{102} To a large extent, effective interagency coordination also hinges on political will. Currently the MEEI is not getting sufficient political support necessary for efficient mobilization of all government entities to work as a team. This lack of political support to WTO negotiators to a large degree explains the major delays with the resolution of core bottlenecks of the accession process.

5.61 Box 5.2 presents the list of the most important pending policy issues related to WTO accession. It contains a sub-sample from the longer list of government tasks outlined in the Government Decree No. 325-p of May 28, 2003 On Approving an Action Plan to Ensure Ukraine’s Accession to the WTO. This Decree introduced a deadline of the end of 2003 for completion of all identified actions. As can be seen from Box 5.2, a number of core actions remain incomplete (as of September 2004). Most of this unfinished agenda relates to cases where new legislative proposals have been prepared by the Government, but are pending in the Rada to be debated and voted upon. This indicates that, despite the number of decrees and strongly worded declarations issued at various recent occasions, the Rada does not consider WTO-related issues an overwhelming priority in its day-to-day operations. The attention of the top decision makers in the country is naturally attracted by some other pressing issues, including those related to the proposed constitutional changes and presidential elections. This explains why the pace of Ukraine’s accession has been slower recently relative to Russia’s, for example.

5.62 Information sharing between the GOU and other stakeholders, including the Rada, is also weak. Many key players (e.g., business leaders, parliamentarians, and government officials)

\textsuperscript{101} The Commission was originally established by the Government decision in September 1993. It was later restructured by the Presidential Decree No 619/99 of February 19, 1996.

\textsuperscript{102} Some argue that, in practice, large reductions in many agricultural tariffs will not affect revenue collections either because they are currently set at prohibitive levels or because smugglers currently evade customs authorities. Such claims would be more convincing, however, if backed up by empirical evidence.
remain uniformed about both the actual state of Ukraine's WTO negotiations, as well as of the implications—positive or negative—of membership. There are many indications that the MEEI is holding much of the information about WTO negotiations too close to its chest. For example, a Rada member responsible for advancing legislation needed to ensure WTO compliance claimed not to have seen the USAID’s comprehensive analysis of Ukraine’s legal compliance with WTO rules. In part the existing communication problems reflect the lack of empirical economic analysis conducted on WTO accession. The analysis to be conducted over the next year through a Dutch government’s grant should fill some of the current gaps in knowledge.

5.63 Furthermore, MEEI’s current public awareness efforts operate in only one direction — information flows from the state to the private sector. Discussions with MEEI officials uncovered no institutionalized mechanism for the MEEI to incorporate information from the exporters into the trade policy process. The Government needs to establish institutional mechanisms for regular input by members of the public, including small and medium enterprises and civil society organizations. Doing so will help the Government strengthen the constituency for WTO accession, and also help improve commercial diplomacy in general.

5.64 Finally, progress is thwarted by a general lack of consistency in Ukraine’s trade policy-making, which is related in part to unfocused policy priorities in general. Trade policies in Ukraine change too frequently. The Government has introduced a number of new trade barriers during the course of accession negotiations. Often multiple laws address the same topic but in inconsistent ways.103 Ukraine has been pursuing several international integration agendas simultaneously — toward Russia, toward the EU, and toward the world economy generally — that at times appear to conflict with each other (see Chapter 6.)

103 Conflicts across existing SPS laws have been mentioned and these are being addressed in the new draft framework laws. Some observers also find inconsistencies between IPR provisions in the Civil and Commercial Codes.
### Box 5.2: Some pending policy issues related to WTO accession.

<table>
<thead>
<tr>
<th>Legislation to be amended</th>
<th>Issue</th>
<th>Current status, as of September 1, 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation on establishing and functioning of free economic zones and territories of priority development</td>
<td>Elimination of privileges</td>
<td>Draft law amendments were worked out at the Ministry of Economy but returned for further elaboration by the Government</td>
</tr>
<tr>
<td>Law on “On Stimulating the Development of Agriculture for the 2001-04 period”</td>
<td>Abolishing the requirement for obligatory use of domestically grown tobacco by the Ukrainian tobacco industry</td>
<td>New Law “On Foundations of State Agricultural Policy” was adopted in June, 2004 but did not address this issue.</td>
</tr>
<tr>
<td>Law on “On Audit”</td>
<td>Abolishing the requirement that auditing activities can be conducted only by persons who are citizen of Ukraine</td>
<td>Draft Amendments were submitted to Parliament.</td>
</tr>
<tr>
<td>Legislation on Principles of delivering health care services</td>
<td>Amending definition of the term “medical services” and “medical care”</td>
<td>Draft amendments were submitted to Parliament.</td>
</tr>
<tr>
<td>Law “On Television and Radio Broadcasting”</td>
<td>Increasing the share of foreign capital in the charter capital of television and radio broadcast organizations up to 35 percent</td>
<td>Draft amendments were approved by Parliament in the 14th reading on November 20, 2003.</td>
</tr>
<tr>
<td>Law “On Value-added Tax”</td>
<td>Abolishing VAT privileges for domestic producers</td>
<td>The draft amendments were approved by Parliament (Law #4000-1). However, the adopted version preserved some sectoral tax privileges (automobile industry, book publishing). The President vetoed the new Law on March 1, 2004. At the same time, the 2004 annual Budget Law suspended VAT privileges to the shipbuilding, automotive and aircraft industries envisioned by the VAT Law.</td>
</tr>
<tr>
<td>Legislation regarding foreign trade in optic disks</td>
<td>Strengthening licensing and supervision of export and import of disks for laser reading systems to improve enforcement of the IPR legislation</td>
<td>Draft amendments were submitted to Parliament</td>
</tr>
<tr>
<td>Legislation on food safety</td>
<td>Strengthening responsibility/control for food safety on the basis of European Directives 85/374/EEC and 2001/95/EEC</td>
<td>A new package of SPS laws was submitted to the Cabinet of Ministers.</td>
</tr>
<tr>
<td>Legislation on government support for domestic automobile industry</td>
<td>Elimination of tax preferences for specific domestic automobile manufacturers</td>
<td>The new Law “On Development of Automobile Industry of Ukraine” (#1624-IV) was adopted in March 2004. For enterprises which were established before January 1, 2004, the Law extended for an additional five years (till the end of 2008) all the tax privileges introduced by the 1997 Law “On Stimulation of Automobile Industry”</td>
</tr>
<tr>
<td>Law “On Export Duty on Ferrous Metal Waste and Scraps”</td>
<td>Reduction in the export duty rate and ultimate elimination of the export duty</td>
<td>The MEEI submitted to the government a new draft law, which suggests a reduction in the export duty rate from 30 Euro/t to 18 Euro/t and restricts the period of validity of the Law. Besides, an alternative draft Law “On making amendments to the Law of Ukraine “On Export Duty on Ferrous Metal Waste and Scraps” (#4132) was submitted by MPs to Parliament on Sept. 8, 2003.</td>
</tr>
</tbody>
</table>

*Source: Government Decree No. 325-p of May 28, 2003 On Approving an Action Plan to Ensure Ukraine’s Accession to the WTO MEEI, staff analysis.*
Although capacity constraints within the GOU do exist, additional technical assistance would probably not accelerate the WTO negotiating process. Ukraine already receives assistance to help with negotiations, drafting laws, and public education from several donors:

- the Dutch government has provided a grant to the MEEI to support rewriting trade-related laws;
- DFID provides a variety of assistance to the MEEI on WTO issues;
- the EU provides legal advice through the UEPLAC and technical assistance to several trade-related agencies through TACIS projects;
- USAID conducted a comprehensive legal review of WTO compliance and is funding the revision of SPS laws; and
- other U.S. government agencies are assisting with both WTO negotiations and general development of commercial laws to support a market economy.

The total amount of external assistance ought to be sufficient to support the completion of negotiations. The burden is on the Government to use this assistance more efficiently.\textsuperscript{104}

In summary, despite the number of Government decrees, new laws, and bilateral protocols in recent years, Ukraine's progress toward membership has been slow. Even if political will is mobilized and cooperation among stakeholders is improved, it will likely take at least twelve to eighteen months to work through the full agenda of legal reforms. The 2004 presidential election understandably takes attention away from foreign trade policy concerns. In addition, many of the necessary reforms are politically sensitive, thus, it may be difficult for the authorities to push for their adoption before the presidential elections. In this case, it would be practical for the GOU to admit that completion of the WTO accession in 2004 is out of reach, and adjust the overall timetable for WTO accession, switching to a later completion date.

### D. REAPING THE BENEFITS OF WTO MEMBERSHIP

WTO members will not admit Ukraine into the WTO until its laws comply with WTO rules. Compliance alone does not guarantee economic benefits. This section discusses areas where the Government must undertake additional institutional reforms to maximize benefits of membership. It begins with a review of what countries expect to gain from membership.

Countries usually expect to gain four benefits when they join the WTO:

(i) \textit{Improved market access:} WTO members grant each other MFN access to their markets (i.e., trade restrictions apply without discrimination);

(ii) \textit{External policy anchor:} membership provides discipline to implement trade liberalization and sustain domestic policy reforms;

\textsuperscript{104} Assistance has not always been used very efficiently in the past, and implementation of donor-backed programs was slow.
Access to binding dispute settlement: members can present disputes before an impartial panel; and

A seat at the table: WTO members set rules that govern much of world trade.

5.70 One must recognize that membership alone will not deliver any better tariff treatment for most Ukrainian products. Most of its current exports enter CIS countries duty-free. Ukraine already enjoys nondiscriminatory (MFN) or better access to markets of WTO members. What will change is that Ukraine’s MFN access will become guaranteed and permanent once Ukraine becomes a WTO member. Furthermore, the US and EU currently impose quotas on Ukrainian steel. These would violate WTO rules if imposed on a WTO member, so these countries will need to either eliminate them once Ukraine joins or replace them with a presumably less onerous safeguard measure. In addition, the US withdrew GSP and imposed trade sanctions in 2001 in retaliation for optical disc counterfeiting in Ukraine. Since compliance with TRIPS is a condition of membership in the WTO, one could expect the US to restore GSP to Ukraine once Ukraine joins the WTO. One benefit of membership is that Ukraine will be able to address such unfair trade practices through the WTO’s binding dispute resolution process. (Naturally this will not apply to Ukraine’s trade disputes with either Belarus or Russia, unless they also join the WTO.)

5.71 WTO membership has the potential to lock in Ukraine's post-socialist economic reforms by making it more difficult to reverse both the domestic reforms and the trade liberalization undertaken since independence. Particularly in the case of former centrally planned economies, this irreversibility makes a Government’s commitment to liberal economic policies more credible and sends an important signal to market participants. It is also a precondition for accelerating integration with the EU, which some see as ultimately the more important objective of Ukraine’s foreign policy.

5.72 WTO members establish the rules and institutions that govern much of the world’s trade. As a member, Ukraine will have the opportunity to influence these rules and the terms of its access to other WTO members’ markets.

5.73 What will it take to exploit these benefits? First, Ukraine must first increase its capacity to conduct effective commercial diplomacy. Elements of this were discussed above in the context of completing the accession negotiations. They include improved coordination of trade policy across ministries, better communication between the executive and legislative branches, and institutionalized public engagement. In addition, the GOU should develop mechanisms through which Ukrainian exporters can report foreign trade barriers so that trade negotiators can address them through the appropriate dispute settlement procedures.

5.74 Second, Ukraine will need to preserve the trade liberalization accomplished during the accession process. Once Ukraine is a member, any backsliding on its commitments will open the door to sanctions from WTO members. Reforms to integrate Ukraine into the world economy must not end once the WTO accession protocol is agreed and signed.

Guaranteed MFN access to the US market could possibly come earlier than accession: in March 2004, both houses of the U.S. Congress introduced legislation to grant Ukraine permanent MFN treatment. Unfortunately, this draft legislation also contains provisions providing for recourse to special safeguards against Ukraine in the event of import surges (H.R. 3958, Section 5, and S. 2201, Section 5). Similar language appears in draft legislation that would give permanent MFN status to Russia.
5.75 Finally, Ukraine will need to undertake substantial administrative and institutional improvements to benefit from several WTO regulatory obligations. The most significant of these are WTO codes on intellectual property rights, standards, and customs. The rest of this section focuses on these implementation requirements.

**Living with the TRIPS Agreement**

5.76 The TRIPS Agreement embodies the intellectual property rights rules that evolved during the last several hundred years in market economies. The agreement presupposes the existence of a state apparatus to administer these intellectual property rights and adjudicate disputes. It also presupposes the existence of market institutions that give commercial value to intellectual property rights, such as venture capital markets, copyright collection societies, networks that connect inventors to entrepreneurs, and the like. When these preconditions are satisfied, implementing the TRIPS Agreement encourages investment in knowledge-intensive industries and greater integration into the world economy. When they are not met, as is the case in most transition and developing countries, a government must first devote time and money to implementing the agreement, and the initial economic effect is primarily the transfer of rents to companies in industrial countries. The fact that the US imposed trade sanctions on Ukraine over weak intellectual property rights enforcement reveals the economic importance of these transfers. In the longer term, implementation of the TRIPS is critical for realization of Ukraine’s high-tech aspirations that call for accelerated development of knowledge-intensive sectors in the economy.

5.77 For these reasons, the TRIPS Agreement can cause economic harm to Ukraine if compliance is not supplemented with additional institution building. During negotiations to date, the GOU has focused on approving and enforcing laws protecting intellectual property. These measures address the diplomatic problem of protecting intellectual property owned by foreign companies. In and of themselves, the new laws will not stimulate new investment into research and creativity-intensive industries. Net benefits from TRIPS compliance will come only if these new property rights laws are matched by the development of institutions that help rights owners earn money from their rights. This will require first increasing the Government’s capacity to process patents and copyrights, enforce laws, adjudicate disputes, educate rights-holders, and so on. Department of Intellectual Property officials reported that they have been working with a number of other Government agencies (Customs, Interior, Justice, etc.) to establish specialized bodies to handle intellectual property issues, for example, laboratories for testing suspected counterfeit products. They pointed to weaknesses in the judicial system as a major obstacle, citing the need to establish local patent courts in all oblasts of Ukraine, as well as a supreme appeals court. The department is working with NGOs to train judges, but more technical assistance is needed in this area. Table 5.4 below shows the administrative start-up costs of intellectual property projects funded by the World Bank in Mexico, Indonesia and Turkey that one might take as examples of what Ukraine can expect to spend to complete introduction of world-class intellectual property protection.

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106 In this sense multilateral property rights harmonization differs fundamentally from multilateral tariff liberalization: for absent market failures, the latter increases total welfare while the former transfers rents from one country to another.

107 These are components of World Bank projects that also contained much larger components to fund industrial research and development.
### Table 5.4: Intellectual Property Projects

<table>
<thead>
<tr>
<th>Country</th>
<th>Project Components</th>
<th>Cost</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mexico</td>
<td>Train patent office staff</td>
<td>$32.1 million</td>
<td>1992–96</td>
</tr>
<tr>
<td></td>
<td>Automate patent office procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>Draft new copyright laws and regulations</td>
<td>$14.7 million</td>
<td>1997–2003</td>
</tr>
<tr>
<td>Turkey</td>
<td>Draft new patent laws</td>
<td>$19.3 million</td>
<td>1997–present</td>
</tr>
<tr>
<td></td>
<td>Reorganize patent office</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public education campaign</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sources: World Bank project documents.</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

5.78 Even if Ukraine could enforce intellectual property rights to the satisfaction of WTO members, its economy at the moment lacks many of the complementary institutions that give commercial value to legal intellectual property rights. These institutions include venture capital markets, autonomous copyright collection societies, educational institutions teaching intellectual property law and management, information networks linking inventors with investors, agents who represent inventors and creators, and so on. These are not institutions that the Government can create with the stroke of a pen. The state can—and should—play an important facilitating role, however, through market-friendly investment policies, educational policies, and other measures. In addition, these institutions must be embedded in an environment of the rule of law and Government regulations conducive to market entry. Building those institutions will take time and cost money.

### Institutional Reform for TBT and SPS

5.79 It is estimated that eighty percent of world trade is affected by technical regulations and standards. Product standards are generally designed to solve information and coordination problems that often arise in decentralized markets. In established market economies, some technical specifications are set and enforced directly by Governments, typically as part of broader public health and safety regulations (and military procurement). State-managed mandatory standards represent the minority of standards in most market economies, however. The overwhelming majority of standards are set and enforced solely within the private sector—by scientific organizations, trade associations, and private laboratories. Adherence to such standards is generally voluntary. The state’s role is limited to indirect activities (e.g., handling contractual disputes or enforcing truthful advertising laws). This limited state involvement in

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108 Collection societies channel payments from copyright users to copyright owners in decentralized markets. Private sector performance rights organizations (PROs) in the entertainment industry are the most visible examples of such organizations, but they also exist in other copyright industries. It appears that the only collection society in Ukraine is a government entity (Ukraine Agency for Copyright and Related Rights). The Government should investigate what is needed for private sector PROs to enter this market and affiliate with international bodies.


110 For example, software programmers are entirely free to write HTML code (for websites) that do not fully conform with the current HTML standard, as set by members of the World Wide Web Consortium, and post them on the world wide web. Doing so limits the usability of the product, of course.
standards reduces the scope for rent-seeking and allows standards to enhance the efficiency of the private sector.

5.80 Although technical regulations and standards are supposed to increase economic welfare, they can easily be manipulated to serve as trade barriers. They are the grounds for many of the trade disputes taken to the WTO. Technical barriers to trade are far worse than traditional protectionist policies (such as import tariffs, quotas, or export taxes) since firms must devote real resources and skilled personnel to satisfying a standard. The Uruguay Round introduced GATT disciplines on such regulations through TBT and SPS Agreements.

**TBT Agreement**

5.81 The goal of the TBT agreement is to reduce the adverse effects that industrial product standards can have on international trade. The TBT agreement requires that WTO members commit to applying technical regulations fairly and transparently: regulations must not discriminate by country of origin, foreign products must be treated no less favorably than domestic ones, and members must notify others of proposed regulatory changes, allowing other WTO members the opportunity to comment. The agreement encourages harmonization of regulations across countries—members are supposed to adopt international standards wherever possible. It also exhorts governments to adopt technical regulations that impose the least possible restrictions on international trade, though in practice it appears that the WTO standards agreements are legitimizing more strict standards.

5.82 WTO rules require liberalizing technical regulations only as they apply to imports. From the perspective of a transition economy, a sensible implementation of the TBT agreement affects more than imports, however: it should also facilitate exports and reduce costs of using standards in the domestic market. Standards are particularly important in production of technologically sophisticated goods. Building a certification system that is recognized by other countries will increase Ukraine’s competitiveness in world markets.

5.83 What has Ukraine accomplished thus far and what remains to be done? The GOU has publicly committed itself to harmonizing its technical standards regime with that of the EU. These were outlined above in this chapter. Several years ago the Rada passed a number of new laws governing accreditation, standardization and conformity assessment. These need additional revision. In 2002, the Government formally separated the accreditation agency from the state committee overseeing standardization and certification. This body is now seeking to join international accreditation arrangements as one step toward gaining recognition in the EU for tests conducted in Ukrainian laboratories.

5.84 Some of the measures needed to implement the TBT agreement are in place, but more remains to be done to create a standards regime that will help markets work more efficiently. Work is needed in all areas: standards harmonization, certification, organizational restructuring, and improved legal environment.

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111 The WTO itself does not set these standards. A large number of other bodies are involved in establishing standards.
Standards Harmonization

5.85 The process of standards harmonization works far too slowly. The Government is committed to adopting 500 international standards a year to implement its PCA commitments. As of October 2004, Ukraine has adopted 1,950 national standards harmonized with European and international standards. At this pace it will take more than a decade to complete this part of the harmonization process. When confronted with this same problem, a number of the new EU members in central and eastern Europe adopted an accelerated process of harmonization: international standards were accepted as national standards “as-is”—in their original language and without revision. Given that local standards generally should not differ fundamentally from international standards, this procedure could be an effective way for Ukraine to economize on scarce administrative resources. Some in Ukraine advocate this approach because it also prevents translation errors from being incorporated into local statutes (a problem that has occurred in the past in Ukraine). The stock of official standards continues to include 18,750 GOST standards from the Soviet Union. DSSU reports that these are being gradually abolished. Given the dynamic nature of international markets, accelerating the retirement of GOST standards would facilitate Ukraine’s integration into the world economy.

Conformity Assessment

5.86 While the GOU is in the process of harmonizing the content of its technical standards with those of international standards, it must also reform the process by which manufacturers comply with those standards to gain the full economic benefits of standards harmonization. Ukraine’s present technical standards regime relies almost entirely on mandatory certification, i.e., virtually all products are obliged to meet technical specifications set by the Government and, furthermore, to employ third-party testing to show that the product does in fact comply with the standards. In contrast, the vast majority of standards in the US and EU are voluntary. The GOU must take care that, in the process of standards harmonization, it does not transform the body of voluntary international standards into mandatory technical regulations.

5.87 The provision of conformity assessment services is plagued by monopolization. The absence of market competition is pervasive in many post-socialist economies, and the market for conformity assessment services (testing and certification) in Ukraine is no exception. The Government is attempting to address one pathology of monopolies—higher prices—by establishing a committee that will regulate the level of fees that providers charge companies for testing and certification. This is only a short-run solution, however. In the long run, greater competition is needed through the entry of new providers. To some extent, entry is hampered by restrictions on foreign conformity assessment service providers in the Law on Conformity Assessment, as was discussed earlier.

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112 Box 6.4 in the next Chapter discusses the recent delays in implementation of the EU’s “New Approach” technical regulatory regime.  
113 The Government has been reducing the scope of mandatory certification as part of WTO accession negotiations.  
114 The biggest exception to this generalization involves military procurement specifications, which represent the bulk of mandatory standards in the US (National Research Council, 1995).
Accreditation

5.88 The flip side of recognizing foreign conformity assessment providers is gaining recognition by other countries of Ukrainian testing results. The National Accreditation Agency of Ukraine (NAAU) has been working to join International Laboratory Accreditation Center (ILAC), a multilateral accreditation institution. Membership will help Ukrainian laboratories that are NAAU-accredited to gain recognition in markets of other ILAC members (and vice versa). The German accreditation agency has been providing technical assistance to NAAU to prepare for ILAC membership. TACIS is funding efforts to improve facilities at some key food processing and toy testing laboratories, a prerequisite to their gaining accreditation from EU accreditation agencies.

Organizational Reform

5.89 In market economies the different responsibilities for managing the standards regime are spread across many different organizations, some private and some public. Ukraine seems to be moving in the opposite direction: the DSSU is accumulating more new functions than it is shedding. Although the accreditation function was transferred from DSSU to NAAU in 2002, the DSSU has expanded its mission into new directions, such as intellectual property rights enforcement. Consumer rights are now an important theme of its work. And its still maintains responsibility for overseeing conformity assessment services. A more sensible approach would be to divide rather than join: the Government should separate regulatory responsibilities from advice, extension, and advocacy. Where possible, it should move responsibilities to civil society and private enterprise. For example, the standards development process need not be conducted by a government agency at all. Certainly it should be independent of regulatory agencies or other bodies of executive power.

5.90 The organizational responsibility for notifying new regulations to WTO members merits special attention. WTO filings report that notifications under the TBT Agreement will be handled by DSSU’s National Information Center. The organization has plans to post translations of draft technical regulations on its website in line with WTO requirements, but as recently as October 2004, attempts to find more than translations of the basic laws on the website were unsuccessful. More recently, the MEEI has indicated that a unified TBT-SPS enquiry point will be established in the MEEI, which in turn will liaise with the DSSU and other technical agencies. Where it is housed is perhaps less important than how its mission is defined. The enquiry point should be designed to provide two-way notification. It should be designed from the ground up as an institution that channels other countries’ notifications to the business and technical community in Ukraine, and not solely to respond to other countries’ requests for information. The trade team at the MEEI should then incorporate feedback from the private sector into its commercial diplomacy.115

115 Two mechanisms that might serve as useful models are the US government’s “Report a Trade Barrier” website and its “Export Alert” e-mail distribution system for TBT and SPS notifications that other countries submit to the WTO. These are at http://www.tcc.mac.doc.gov/ and http://ts.nist.gov/ts/htdocs/210/ncsci/export-alert.htm.
Technical Assistance

5.91 Building a market-oriented industrial standards regime will require more than the harmonization exercises taking place in the context of WTO accession and PCA implementation. Both public and private sector investment will be needed. Donors can contribute to institutional reform through technical assistance and lending programs. Table 5.5 below lists some measures undertaken in World Bank-funded standards development projects during the 1990s in Turkey, Russia, and Indonesia. These give some indication of the scale of funding that could be required.

<table>
<thead>
<tr>
<th>Country</th>
<th>Project</th>
<th>Cost (US$)</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey I</td>
<td>Construct facilities, procure equipment and train staff at metrology and quality campus</td>
<td>$74.2 million</td>
<td>1991–97</td>
</tr>
<tr>
<td></td>
<td>Reorganize management of standards institute</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Establish independent accreditation organization</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>ISO9000 (quality management) extension services</td>
<td>$5 million</td>
<td>1995–2001</td>
</tr>
<tr>
<td>Russia</td>
<td>Establish WTO enquiry point</td>
<td>$34 million</td>
<td>1996–99</td>
</tr>
<tr>
<td></td>
<td>Harmonize standards</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gain international accreditation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkey II</td>
<td>Procure metrology equipment</td>
<td>$42.5 million</td>
<td>1999–present</td>
</tr>
<tr>
<td></td>
<td>Reorganize management of metrology institute</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: World Bank project documents.

SPS Agreement

5.92 Most, if not all, countries have laws governing food, plant and animal hygiene, and just as many countries accuse others of applying such laws to protect domestic producers rather than public health. The Uruguay Round introduced new rules to impose disciplines on national laws in those areas. As with other WTO agreements, the SPS agreement requires WTO members to apply their laws transparently, without discrimination between different exporting countries, and treating imported products no less favorably than domestic products. According to accounts of Ukraine’s accession negotiations, WTO members frequently complain about onerous existing government regulations (e.g., rules on meat inspections). The response is typically that these meet conditions of national treatment, transparency, and nondiscrimination and are therefore WTO-compliant. As with technical regulations, this is “fairness” that hurts foreign and domestic firms alike, and is not the sort of national treatment that those drafting the SPS agreement had in mind. In addition to the standard clauses on transparency and fairness, the SPS agreement also requires that members should:
• base their regulations on principles of “sound science” and existing international standards;\textsuperscript{116}

• introduce hazard control and risk-assessment procedures;

• recognize the concept of disease and pest-free areas;

• write SPS rules that impede trade flows to the minimum extent possible (without sacrificing national health objectives); and

• establish enquiry points and notify other WTO members about proposed new regulations.

5.93 These points imply the need for governments to devote legal, administrative, and scientific resources to rewriting laws, establishing new regulatory oversight bodies, outfitting laboratories and pest control facilities, and expanding agricultural extension activities. One should not infer from these comments that the SPS agreement is onerous, but rather that implementing it is not a cost-free exercise.

5.94 On its surface, the SPS agreement appears to favor developing countries (especially food exporters) at the expense of richer countries, where consumers have most aggressively introduced restrictive food safety laws — the agreement seemingly blocks importing countries from imposing arbitrary and capricious food safety rules at the border. In practice, however, the SPS agreement seems to be contributing to a “race to the top” in food safety regulations.\textsuperscript{117} The agreement explicitly recognizes certain international agreements establishing food safety rules, which generally codify the generally stricter standards developed by OECD countries. Those standards are presumed to be already SPS-compliant, while other countries face the burden of proving that their standards are also compliant. Meeting importing countries’ standards requires exporting countries to upgrade their systems for disease control and prevention. The administrative cost of improving a SPS regime obviously depends on the nature of a country’s agricultural industries and exposure to pests. World Bank projects in developing countries to eradicate diseases after they’ve broken out have consumed hundreds of millions of dollars. Argentina spent US$150 million per year during the early 1990s to eliminate foot and mouth disease and thereby enable the ranchers to export fresh beef to the US and Western Europe.\textsuperscript{118} Algeria spent US$112 million in 1988–90 to fight a plague of locusts (World Bank, 1993). Preventing future outbreaks is somewhat less expensive, and involves improving quarantine facilities, vaccination programs, capacity building, improving veterinary and agricultural extension services, and public education campaigns.

5.95 In Ukraine, USAID is currently funding a project to revise laws relevant to the SPS agreement, harmonize all Ukrainian SPS measures with international standards, and ensure compliance with WTO norms. TACIS has a SPS project that will help create an information center and introduce hazard analysis and critical control point systems. Compliance with international trade rules is the first step toward integration into world food products markets. It

\textsuperscript{116} The WTO does not set these standards, but instead recognizes rules established by the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention.

\textsuperscript{117} See for example Otsuki et al. (2001a and 2001b).

\textsuperscript{118} “Beef Exports Are Back,” \textit{IDBAmérica} (August 1997). This “elimination” was short-lived—trade was halted a few years later when foot-and-mouth disease resurfaced in Argentina.
must be supplemented with improvements in the general agriculture and food-processing supply chain.

**Modernization of Customs and Border Processing**

5.96 WTO rules place two main requirements on member countries’ customs practices. First, members must value imports according to the price paid or payable for the good in the market, rather than establishing non-market reference prices. Second, apart from ordinary customs duties, any fees, charges, etc. that a member levies on imports or exports—including customs clearance fees—must reflect the Government’s cost of providing the relevant service. Ukraine’s new customs code (described earlier) establishes the legal basis for compliance with these requirements.

5.97 Slow clearance and other institutional problems appear to impose greater barriers to trade than non-compliance with WTO rules. Delayed clearance increases the costs of conducting international trade—time is money—and prevents Ukrainian producers from integrating into international supply chains where just-in-time inventory management, rapid replenishment, and other modern supply management techniques are prevalent. In many countries, slow clearance enables inspectors to extort bribes from traders. In Ukraine, according to State Customs Service (SCS) officials, if all paperwork for all agencies (not just customs) conducting border clearance is in order, clearance can take one day. If not, it may take several weeks. Contrast this with clearance statistics of 50–100 minutes for most border points in Southeastern Europe, as reported by the South East Europe Trade and Transport Facilitation Project. Clearance times have dropped to around 30 minutes at many of these posts.119

5.98 SCS officials acknowledged problems with slow clearance, identified several contributing factors, and described the following measures the SCS is taking to speed up border processing and customs clearance:

- The practice of physically inspecting all shipments drives up clearance times. The SCS has established a risk analysis unit to lay the groundwork for more selective physical inspections.

- Currently at least six government agencies may need to conduct clearances at the border. In addition to inspections by the border guard and the SCS, the State Tax Administration, DSSU, Ministry of Health, Ministry of Agriculture, and the veterinary inspector may need to clear shipments. The SCS proposed centralizing all control procedures under the SCS, but was rebuffed by the other agencies. The SCS is preparing a new proposal to at least allow it to conduct a unified clearance check for low-risk goods.

- The SCS lacks the information technology infrastructure to automate clearances. In addition, existing laws restrict its authority to conduct post-clearance audits of traders, thereby, acting as a de facto barrier to fuller automation of clearance procedures. SCS officials said they are unable to address these legislative reforms.

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119 See [http://www.seerecon.org/ttse](http://www.seerecon.org/ttse). This comparison of clearance times should be taken as only a rough estimate as the calculation of total clearance times is quite sensitive to the methodology used.
5.99 More general progress with civil service reforms may also be necessary, including improved personnel management, hiring practices, training, and pay scales. Civil service reform is often an important ingredient in successful customs modernization programs. Pay levels reported by SCS officials seem lower than in some other CIS countries, though perhaps higher than in some other Ukrainian government agencies.

5.100 Both the US and the EU have been providing training for customs valuation as part of WTO-related assistance. In addition, both recently started large assistance projects related to customs and border clearance, which could be summarized as following:

- Last July TACIS signed a two-year, €2 million project (called “Customs-7”) to provide technical assistance for the modernization of Ukraine’s customs service. In November 2003, the European Commission promised to spend €16.5 million to improve the physical infrastructure of border posts in Yahotyn, Rava-Ruska and Uzhhorod, and bring those posts into conformity with EU standards.

- The US recently began working on the regional trade and transport facilitation project for GUUAM countries, modeled after the project in Southeastern Europe. The SCS reportedly requested US$40 million from the US for customs modernization.

- In addition, customs authorities in CIS countries recently signed a customs cooperation agreement and pledged to both simplify and harmonize clearance procedures in member countries.

E. CONCLUSIONS

5.101 This review of Ukraine’s WTO accession reveals that much has already been done in the name of WTO accession. The Government has passed hundreds of new laws and written thousands of pages in response to questions from WTO members about its trade policies. These do not yet add up to a protocol of accession, but the end appears to be in sight. To bring negotiations to a successful conclusion, the Government will need, first of all, to concentrate on the domestic reform agenda: negotiating the WTO agenda with domestic constituencies, including Rada and individual interest groups. Legal analyses have been conducted. A roadmap for legal reforms is with the MEEI. What remains is to mobilize the political will behind successful passage of these laws. If Ukraine is serious about joining the WTO, the top country leadership advocating accession will need to devote political capital to this task and communicate its political importance to the Rada and general public more effectively. This legal agenda should take precedence over bilateral market access negotiations—generous tariff concessions will not compensate for a weak legal environment. The trade agenda will also need higher priority in the legislative program of the Rada.

5.102 Priority measures to accelerate WTO membership include the following:

120 Investments in infrastructure improvements alone do not, in and of themselves, lead to quicker clearance. Customs experts note that simply changing the traffic flow pattern, without necessarily investing any money in physical infrastructure, often brings the largest reductions in clearance times.

121 European Report (July 19, 2003).

122 BBC Monitoring: Ukraine and Baltics (November 17, 2003).
• rewriting the Law on Foreign Economic Activity;
• eliminating all non-tariff interventions in the sugar market;
• reducing/eliminating export taxes;
• shortening the list of goods requiring mandatory certification or inspection;
• passing amendments to the CD-ROM import licensing law; and
• passing amendments to the law on the automobile industry.

5.103 The Government has to improve its intra-agency cooperation with respect to resolving the pending issues of the WTO agenda. The MEEI needs to get additional political support from top government officials for efficient mobilization of all government entities to work as a team. Stronger engagement of the private sector in both domestic policy dialogue and commercial diplomacy abroad is also desirable. There is a need to advance and expand public discussions on the role of agricultural issues in the WTO accession process.

5.104 Even if the political will is mobilized and cooperation among stakeholders is improved, experts suggest it will likely take at least another twelve months to work through the full agenda of legal reforms. The GOU should be realistic and adjust the overall timetable for WTO accession accordingly. But delaying accession at this stage would cause Ukraine to forego an important opportunity to integrate into the world economy. All around the world, countries are making concerted efforts to open their markets and reap the benefits of a more open international economy.

5.105 Full legal compliance with WTO rules will satisfy WTO members, but will not automatically yield benefits for the Ukrainian economy. To take advantage of dispute settlement mechanisms available to WTO members, the MEEI will first need to enhance its capacity to conduct commercial diplomacy. More effective public engagement and better inter-agency coordination will help the MEEI address foreign countries’ unfair trade barriers. More importantly, the Government will need to undertake significant institutional reforms to implement WTO regulatory rules in ways that facilitate integration into the world economy. Customs modernization and standards reform will likely yield the biggest payoffs.

5.106 WTO accession and addressing the post-WTO accession agenda are critically dependent upon availability of relevant international expertise. Currently the GOU has access to a broad range of donor-funded sources of technical expertise, but it is not always using this assistance efficiently. More technical assistance may be needed over the next several years, but the Government will have to upgrade its capability to channel donors’ programs toward the critical components of its own agenda and avoid delays in the implementation of assistance programs.