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TRADE POLICY PROJECT (TPP)

Quarterly Report 4 (January 1, 2016 – March 31, 2016)

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the U.S. Agency for International Development or the United States Government.

LIST OF ACRONYMS

AEO	Authorized Economic Operators
ASYCUDA	Automated SYstem for CUstoms DAta
CIS	The Commonwealth of Independent States
CVA	Customs Valuation Agreement
DCFTA	Deep and Comprehensive Free Trade Agreement
DS	Dispute Settlement
EIF	Economic Integrated Forum
GVC	Global Value Chains
IDG	International Development Group LLC
M&E	Monitor and Evaluation
MEDT	Ministry of Economic Development and Trade
MOU	Memorandum of Understanding
OECD	Organization for Economic Cooperation and Development
SFS	Ukraine State Fiscal Service
SME	Small and Medium Size Businesses
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TDI	Trade Defense Instruments
TFA	Trade Facilitation Agreement
TPP	USAID/Ukraine Trade Policy Program
TPR	Trade Policy Review
USAID	United States Agency for International Development
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

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PROJECT OVERVIEW

During this quarter, the Trade Policy Project (TPP) continued engaging counterparts at the Ministry of Economic Development and Trade (MEDT) and the State Fiscal Service as well private sector representatives and academia. With the support of the TPP:

1. MEDT submitted to the WTO the Government Report for Ukraine's first WTO Trade Policy Review.
2. Dispute Settlement course introduced into the curricula of the International Trade Regulation Master Program in the Institute of International Relations of National Taras Shevchenko University of Kyiv and a pilot was launched this semester.
3. Students' team participated in the Moot Court Competition on the Law of World Trade Organization (WTO) organized by the by European Law Students Association (ELSA) and proceeded to the semi-final taking the fourth place out of 14 competing teams across Europe.
4. MEDT is considering draft proposal for establishing National Committee on Trade Facilitation (NCTF), to fulfill WTO TFA, involving both relevant ministries and state bodies and the private sector.
5. Odessa Customs, as part of recruiting new customs officers, is subjecting potential candidates to general skills testing and testing to evaluate integrity, honesty, work ethics and values.

The TPP did not encounter during this quarter any significant problems in performing technical activities in Ukraine other than conflict between leadership of Odessa Customs and the State Fiscal Service.

PROJECT ACTIVITIES AND ACCOMPLISHMENTS

Component I: Expanded capacity to effectively utilize WTO tools

(1) Result: Overall engagement within the WTO developed

During this quarter, the TPP continued supporting Ukraine in greater engagement in the WTO system:

1. The TPP has assisted MEDT in preparing oral and written communications to the WTO:
 - Statement of Ukraine in the General Council meeting of Feb. 24, 2016;
 - Opening statement of the Government of Ukraine to the Trade Policy Review Body (to be read during the TPR meeting of April 2016); and
2. The TPP has been tracking key activities at the WTO of relevance to Ukraine and facilitated participation of MEDT in the following:
 - The Trade Remedies Department and the Head of the Market Access and WTO Cooperation Department of the MEDT attended the meeting of the WTO General Council in Switzerland from February 23-26, 2016.
 - TPP supported two members of the Ukraine delegation to the WTO General Council meeting where at the margins of the General Council meeting of February 24, 2016, the Ukraine delegation met and discussed the issues related to Trade and representatives of the delegations from US, EU, Turkey, Canada, Moldova, Montenegro, Mexico, Belarus, Norway, and Kyrgyzstan.

(2) Result: Appropriate utilization of the WTO dispute settlement (DS) and trade remedies system expanded

Trade Remedies

During this quarter, the TPP provided assistance the MEDT Department for Trade Protection. The work focused on improving the legal framework governing trade remedies through the preparation of the draft new CVD law,

preparation of materials for use in CVD investigations, and hands-on capacity building of officials serving in that Unit. The specific activities conducted by the TPP this quarter are as follows:

1. In close cooperation with MEDT, two lawyers for the TPP supported the drafting of a revised draft of CVD law. In addition, the TPP supported MEDT in developing a correlation table between the current and draft CVD law. The TPP started assisting MEDT in the preparation of the presentation of this initial draft to the Interdepartmental Commission on International Trade in mid-April 2016 for its review and comments. To discuss issues at technical level and develop content, meetings between TPP and MEDT officials were scheduled regularly (ten meetings of approximately 2.5-3 hours each in January and February).
2. The TPP prepared a comparative assessment of the AD law (provisions on dumping determination only) against the WTO AD Agreement and the EU basic regulation. TPP proposed changes too. Furthermore, the TPP assisted MEDT in developing the provisions on the dumping determination of the draft AD law (10 pages). In addition, MEDT assisted to adapt provisions of the draft CVD law to the AD context.
3. In March, MEDT continued to support the development of a draft Safeguards Law and one or more normative act regulating the Interdepartmental Commission on International Trade, in particular developing conceptual proposal for reforming Interdepartmental Commission on International Trade to become more effective. These drafts are expected to be completed during next quarter.
4. The TPP has contributed to the capacity building of the Trade Remedies Unit through the discussion of technical questions in several *ad hoc* meetings and through the provision of written advice. Several questions have been covered including procedural matters, determination of the product scope and injury assessment.
5. The TPP has continued to monitor the activities of the WTO Rules Division and Committees covering trade defense matters, keeping MEDT informed of any developments of interest to Ukraine. As indicated above, the TPP has commented on draft questions relating to an AD measure imposed by Pakistan.

Component II: Improved external and internal coordination on WTO issues

(1) Result: Cohesive and efficient coordination among relevant ministries and other governmental units established

During this reporting period, the TPP:

1. Ukraine experienced some turbulence in the Government that resulted in resignation of the Minister of Economic Development and Trade that was followed *inter alia* by a resignation of all deputy ministers who are now executing their duties as acting heads. This has put on hold activities related to institutional settings.
2. Assisted in developing short proposal for establishing National Committee on Trade Facilitation (NCTF) involving both relevant ministries and state bodies and the private sector.
3. On March 15, 2016 MEDT organized the TRADE DONORS meeting that was chaired by the Deputy Minister – Trade Representative of Ukraine. The meeting covered the topics on the trade and export development programs, goals and needs of the Ministry in 2016, trade policy formulation, trade defense instruments, export promotion portal, export strategy development and collaboration with international partners. Representatives of USAID, EU Delegation in Ukraine, CIDA, SIDA, WNISEF, GIZ, NBT and other donor organization participated in the discussions. The Deputy highly praised the achievements of the USAID Trade Policy Project. She stressed the genuine approach of the project to capacity building through learning by doing and daily cooperation of the local legal team and international advisors with the staff of MEDT.
4. The Department of the Public Procurement of the Ministry of Economy and Trade of Ukraine (MEDT) held the Donor's Meeting with the purpose to involve all the interested stakeholders in the process of the implementation of the new Government Procurement System. These reforms need a lot of attention and efforts and focusing on: Software development; Internal capacity building; creation of GPA Office; capacity building and certification center; monitoring development in Ukraine and central purchasing bodies piloting.

5. TPP provided MEDT with the full descriptive concept of the TDI and WTO Cooperation sections of the “new” MEDT website. The effort of the new MEDT website was later frozen by the Ministry.
6. TPP was requested by the Cabinet of Ministers of Ukraine to provide assistance in developing of the new web portal of the Government of Ukraine (gov.ua). TPP has assisted in forming selection committee and preparing the memorandum on the selection procedure.

(2) Result: Methods and quality of communication/consultation/coordination with external stakeholders and experts improved

1. Positive examples of cooperation:
 - MEDT has been able to collect useful information and evidence, through a temporary hotline established following the entry into force of the transit restrictions from WTO Member state, from Ukrainian businesses.
 - TDI department had actively started to collect necessary file for the evidences for the possible case at the WTO relate to the restriction on imports to WTO Country of food products and beverages.
2. TPP Legal Advisor managed training of the team to the moot court competition and coordinated relevant activity.
3. TPP Resident Attorney Advisor, Mr. Marius Bordalba conducted 3 training sessions with moot court team to guide on both substantive part of International Trade Law (subsidies and countervailing measures) and presentation aspects (performance, handling questions).
4. Continued updating, alongside the MEDT, the network database of external resources/stakeholders (private sector, experts, legal firms, academia, and think tanks) interested in trade policy, WTO, disputes, and trade defense instruments that now counts for more than 40 organizations and companies and 80 individuals.
5. Continuously engaged in coordination activities with a range of donor technical assistance projects, private sector, Government of Ukraine authorities, NGOs, and civil society. TPP continued regular coordination activities aimed at facilitation and support more events USAID funded projects (Local Economic Development-LEV and Western NIS Enterprise Fund-WNISEF namely). Coordination with other U.S. funded activities such as Commercial Law Development Program (CLDP) was conducted on a regular basis.

Component III: Expert Assessment and Improvement of Ukraine’s WTO compliance

(1) Result: Implementation of Ukraine’s extensive WTO legislative reforms assessed and strengthened

1. TPP supported MEDT in preparing the Government Report on Trade Policy Review. This is the first since the accession of Ukraine to the WTO in 2008. The Government and the WTO Secretariat reports were circulated to WTO members for submitting any questions to Ukraine by April 5, 2016 in preparation for the Trade Policy Review meeting scheduled to take place at the WTO Secretariat in Geneva on April 19-21, 2016.
2. The TPP advised MEDT on the need to withdraw draft Law No. 3868 which calls for increase export duties on scrap metals in violation of Ukraine’s WTO commitments. The Draft was submitted by parliamentarians.
3. TPP updated the draft assessment on the implementation of the legislative, regulatory, and policy reforms adopted to achieve and maintain compliance within the WTO regime.

(2) Result: Compliance with the WTO Trade Facilitation Agreement (TFA) assessed and improved

1. On March 22, 2016 three TPP representatives participated in the State Fiscal Service of Ukraine (SFS) meeting of the Management Assistance Group (MAG). This mechanism aims at coordinating donor activity, providing a forum for all relevant stakeholders to discuss customs issues, coordinating donor assistance, avoiding

- duplication of support, and facilitating information exchange. Inception meeting was aimed at identifying; discussing and addressing issues of common concern in the area of SFS related management in Ukraine.
2. The TPP reviewed revised draft amendments to the Customs Code provisions on Authorized Economic Operators (AEO) and found the revised text to be aligned with EU provisions on AEO as proposed by TPP.
 3. Assisted in developing short proposal for establishing National Committee on Trade Facilitation (NCTF) involving both relevant ministries and state bodies and the private sector.

Trade Facilitation Support at the Odessa Port

The TPP continued supporting the establishment of the Open Customs Area at the Odessa Port to facilitate trade. Support included activities related to legislative and institutional mechanisms, customs procedure, organization development, automation, facilities, awareness and capacity building as well as practical day-to-day advice and guidance to Odessa Customs. Specific activities are as follows:

1. The TPP provided daily support and mentoring to the Head of Odessa Customs and provided continuous on-the-job training throughout this quarter to the new management and technical leads at the Odessa Customs on best international practices for trade facilitations including those stipulated in WTO agreements and World Customs Organization (WCO) agreements.
2. The TPP helped with the draft and amendments to the Law on Temporary Special Regime of Customs Control and Customs Clearance in Odessa Region. On February 24, 2016 – the draft law was registered in the Parliament. The text of draft law numbered 4140 is published on the official website of Verkhovna Rada.
3. On March 1, 2016 - Verkhovna Rada legal experts' conclusion was provided and also published on official website. According to the experts' analysis, they recommend to amend the draft law mostly on formal grounds, e.g. to align the terminology, add provisions on Customs paid service with references to the Budget Code, relations with enforcement agencies, etc. The main concern is that the customs procedure shall be set forth by law, not but by a Resolution of the Cabinet of Ministers (referring to an Article of the Constitution). The TPP helped to amend the Draft Law according to Verkhovna Rada legal experts' requirements. The Draft Law is ready to be resubmitted to Verkhovna Rada.
4. The TPP helped in developing the Order of the Head of Odessa Customs on the List of Trusted Companies registered in Odessa Region. The Order provides that the goods imported by Odessa companies which met the below criteria shall be cleared based on primary customs valuation method – transaction value. The Order was adopted by the Head of Odessa Customs on March 16, 2016.
5. The TPP assisted in the preparation of the amendments to the Order of the Head of Odessa Customs regarding the inclusion of 7 new countries (Latvia, Lithuania, South Korea, Bulgaria, Serbia, Slovakia, and Slovenia) additionally to previous 30 countries on the list. The Order provides that the goods originating and directly imported from those countries shall be cleared based on primary customs valuation method – transaction value. The Order was adopted by the Head of Odessa Customs on February 8, 2016.
6. The TPP assisted in the preparation of the amendments to the Order of the Head of Odessa Customs on simplified customs clearance for raw material imported by traders with a status of large taxpayer for their own manufacturing. The Order instructs the customs posts in Odessa Region to strictly adhere clearance of raw materials based on primary customs valuation method – transaction value, if no violations or breaches in documents are identified. The Order was signed by the Head of Odessa Customs on February 8, 2016.
7. The TPP helped develop Draft of Order on the Head of Odessa Customs on Customs Clearance Within 1 Hour. Customs posts are instructed to strictly adhere to the primary method of customs valuation – transaction price regarding the goods imported from 37 trusted countries and/or by the companies falling under respective criteria set forth by respective orders of the Head of Odessa Customs. Such goods shall be cleared within 1 hour. The Order was signed by the Head of Odessa Customs on February 22, 2015.
8. The TPP organized the National Conference “Open Customs Area” held on January in Odessa. Participants of the conference were provided with presentation of new approaches and policies of customs formalities adopted by the new management of Odessa Customs. Problems and mistakes made by customs officers during the customs clearance procedures were discussed. The process of building the Open Customs Area on the premises of Odessa Morvokzal has been started. The TPP was involved in preparation of round table discussions.

9. USAID Trade Policy project is supporting integrity and capacity testing of new customs recruits at the Odessa Port. The candidates will now be screened by using new selection techniques namely OS general-skills testing and MIDOT testing. As a result of the conducted tests 130 new customs offices will be selected to take on their duties on the new established Odessa “Opened Customs Area.”
10. On March 21, 2015, the TPP held a meeting with Phyto-Sanitary Service to understand the process of goods clearance, and challenges faced by importers and discuss their suggestions.
11. On January 25, 2016 Governor of Odessa Region, Minister of Infrastructure and the Head of the Odessa Customs inaugurated the construction launch of the Open Customs Area at the Odessa Customs Forum.

USAID University Days

In the course of introducing main activities of TPP Legal Advisor delivered presentation on trade policy formulation and trade remedies to the group of around 40 students and professors. In line with TPP policy TPP Legal Advisor made a gender statement in trade policy formulation of Ukraine and stressed upon gender participation in trade matters. Four females and two male participants attended specific course of legal debates, including university professors, assistants, students and PhD students.

Internship Program

TPP implemented an internship program engaging interns with excellent command of English and elaborated knowledge of international trade law to the daily activities of the TPP. TPP is considering extending the internship program. During the internship program participants of the program were involved in different kinds of tasks that were successfully completed, particularly: drafting of the Syllabus on Dispute Settlement, drafting Analysis on Ukraine’s compliance with the WTO obligations, preparing legal analyses of legal acts related to trade policy issues, performing translation of various types of legal documents, participating in seminars, meetings and workshops, participating in USAID activities and assisting MEDT in updating its website.