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# TRADE POLICY PROJECT (TPP)

Quarterly Report 4 (April 1, 2016 – June 30, 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
EEU	Eurasian Economic Union
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
NCTF	National Committee on Trade Facilitation
OCA	Opened Customs Area
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 Project
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. Ukraine successfully completed its first WTO Trade Policy Review.
2. Single Window preliminary concept adopted by the Cabinet of Ministers to facilitate trade.
3. Six major interventions by Ukraine at the WTO have taken place this quarter.
4. Draft resolution and concept prepared for establishing an Interagency Working Group ‘National Committee on International Trade to increase inter-ministerial cooperation and fulfill WTO TFA requirements.
5. Two draft proposals for reforming customs legal regime taking into account EU DCFTA, WTO and revised Kyoto Convention and developing an interactive map of customs entry and clearance points were included in the Draft Government Program on Customs Reform.
6. Hiring of new recruits for Open Customs Area at the Odessa Port completed.
7. Two new universities are interested in the introducing Dispute Settlement course: of Uzhhorod National University and Chernivtsi National University.
8. Students' team of the Tarasa Shevchenka University participated in the Final Oral Round of Moot Court Competition on the Law of World Trade Organization (WTO) organized by the by European Law Students Association (ELSA) and was ranked 16<sup>th</sup> out of 100 teams worldwide.
9. Odessa Customs, as part of legal support of opening of Open Customs Area, recruiting new customs officers, drafting of the Cabinet of Ministers Regulation On Simplified Customs Procedures in Odessa Region.

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*

1. During this quarter, the TPP continued supporting Ukraine in greater engagement in the WTO system and in identifying opportunities for cooperating with other Members:
  - Two statements of the Ukraine Trade Representative to the Trade Policy Review Body;

- On 25-28 April, 2016 at the meeting of the WTO Committee on Anti-Dumping Practices Ukraine drew attention to the systematic violation of WTO rules by the Eurasian Economic Union (EEU) while conducting anti-dumping investigations; and
2. The TPP has been tracking key activities at the WTO of relevance to Ukraine and facilitated participation of MEDT in the following:
    - Mr. Vyacheslav Tsymbal, Director, Department of Market Access and WTO Cooperation; Mr. Vitaliy Kunatenko, Deputy Head, Monitoring of Agreements Implementation Division, Department of Market Access and WTO Cooperation; Ms. Olena Chumakova, Chief Specialist, Monitoring of Agreements Implementation Division, Department of Market Access and WTO Cooperation; Mr. Leonid Vitkin, Director, Department of Technical Regulation; Taras Krykun, Deputy Director of Legal Department MEDT to attend the Trade Policy Review (TPR) Meeting in Geneva, Switzerland from April 17/18-22, 2016
    - TPP supported five members of the Ukrainian delegation where on April 19, 2016, the first session of Ukraine's Trade Policy Review (TPR) was held at the WTO Secretariat in Geneva, Switzerland. The Head of Delegation, Trade Representative of Ukraine, Mrs. Natalia Mykolska delivered the opening statement stressing the main legal and economic reforms undertaken by Ukraine since its accession to the WTO in 2008. Twenty-six countries made statements, most of which were positive.
  3. The TPP continued work in compiling an e-library concerning disputes comprising forms and templates, questionnaires, case law and useful links.

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

### **WTO Dispute Settlement**

During this quarter, the TPP continued assisting MEDT in building capacity in the WTO Dispute Settlement area and in analyzing potential dispute settlement cases. The TPP specifically conducted the following activities during the second quarter of 2016:

1. On June 1, 2016, the Cabinet of Ministers approved the Draft Order prepared, with the support of TPP, by the Ministry of Economic Development and Trade on Protecting the Interest of Ukraine using World Trade Organization (WTO) Legal Instruments.
2. Throughout this quarter, the TPP has continued monitoring the activities of the DSB, in particular the requests for establishment of panels, and regularly kept the MEDT informed of ongoing and new disputes of interest to Ukraine.
3. Through the actions undertaken during this quarter, the TPP has effectively and significantly contributed to the capacity building of MEDT's Dispute Settlement (DS) Unit through learning-by-doing/on-the-job training. By working hand-in-hand with the Unit, TPP has helped improve the Unit's capacity to *inter alia* analyze international agreements and legal precedent as well as drafting skills of formal documents and prepare for consultations. The newly hired officials have played a leading role in preparing documents for submission to the WTO which shows that the capacity building actions are contributing to the strengthening of the DS Unit of the Department on Trade Protection of the MEDT.

The TPP reviewed the draft Guidelines on Dispute Settlement Procedures in the WTO for the private sector in Ukrainian and formulated comments thereon.

**Trade Remedies** The specific activities conducted by the TPP this quarter are as follows:

1. In close cooperation with MEDT, three lawyers for the TPP supported the review and finalization of the draft AD and CVD laws. The TPP further assisted in the review of the Ukrainian texts of both drafts (work ongoing at the end of June). The TPP assisted MEDT in the preparation of the presentation of this initial draft to the Interdepartmental Commission on International Trade for its review and comments. To discuss issues at technical level and develop content, meetings between TPP and MEDT officials were scheduled regularly (twenty-six meetings of approximately 2.5-3 hours each in May and June).
2. In May and June, the TPP continued to support the development of a draft Safeguards Law and one or more normative acts regulating the Interdepartmental Commission on International Trade, in particular developing conceptual proposals for reforming Interdepartmental Commission on International Trade to become more effective. Proposals for reforming contained three options based on the analysis of best practices worldwide. These drafts are expected to be completed during next quarter.
3. The TPP has contributed to the capacity building of the Trade Remedies Unit through the discussion of technical questions in several *ad hoc* meetings. Several questions have been covered including procedural matters and determination of the normal value.
4. 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.

## **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. Continued supporting the development of a concept for establishing National Committee on Trade Facilitation (NCTF) involving both relevant ministries and state bodies and the private sector. The NCTF is called for under the WTO Agreement on Trade Facilitation. TPP reviewed and commented on a concept and a draft resolution to establish an Interagency Working Group ‘National Committee on International Trade.
2. TPP supported and facilitated two days of roundtables in support of preparation of Ukraine’s Trade Policy Review involving over 50 representatives of several ministries and departments.
3. TPP participated in the presentation and discussion of the priority work of the MEDT for 2016 presented by the Vice-Prime Minister- Minister of Economic Development and Trade Mr. Stepan Kubiv. TPP participated in the panels related to the Public Procurement and Export promotion (e.g. TFA implementation, Trade Defence use and capacity building).

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

1. During this reporting period, the TPP has continued to support MEDT’s efforts to strengthen cooperation with the private sector and liaise and communicate on DS cases and other trade defense instruments activities.
2. TPP supported MEDT activities related to preparation of on-line questionnaire for seeking input from traders in support of trade policy review of other countries.

3. TPP moved forward in increasing the number of universities utilizing Dispute Settlement Course Syllabus prepared by project. Two TPP representatives met with the representatives of International Law Department and Department of Economic Theory of Uzhhorod National University. As a result of the meeting TPP shared with the University Syllabus on Dispute Settlement as well as additional materials. TPP is planning to facilitate introduction through a series of lectures to instructors and supporting materials.
4. TPP supported the participation of students' team in the Final Oral Round of the Moot Court Competition on the Law of World Trade Organization (WTO) organized by the European Law Students Association (ELSA). The competition was held in Geneva, Switzerland on June 7-12, 2016. The Team successfully represented Ukraine and based on the results of the competition was ranked 16th overall out of 100 participating teams.
5. TPP Legal Advisor Anna Gladshtein supervised substantive preparation of the team to the competition and coordinated relevant activity. TPP Resident Attorney Advisor, Mr. Marius Bordalba conducted a number of training sessions with the moot court team to guide on both substantive part of International Trade Law (subsidies and countervailing measures) and presentation aspects (performance, handling questions).
6. 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 90 individuals.
7. 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.
8. In an effort to make the MEDT website more useful and informative for stakeholders in private sector and public sector, TPP prepared and passed to MEDT materials (35 documents). MEDT has started uploading these documents on its website.
9. On May 17-18, 2016, TPP representatives participated in Information Fair-2016 at the premises of Verkhovna Rada of Ukraine. This event was organized by USAID Rada Project.
10. ELSA National Council Meeting: on May 6 - 7, 2016 Maria Usatenko and Oksana Kornieva took part in ELSA National Council Meeting, where the Board presented the results of its activity during its term. Along with that, different workshops were held, where each representative of the Board had the possibility to share his/her knowledge and experience with the Members of local group, ELSA Members and others. The elections of the new Board of the Council were held as well. They also had a meeting with the Uzhhorod National University Representatives, namely with Faculty of Law and the Faculty of International Economic Relations, during which they shared the Syllabus on Dispute Settlement and additional materials accordingly.

### **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 finalizing the Report of the Government of Ukraine, as well as the oral statement of the Ukraine Trade Representative before the TPR Body. This is the first since the accession of Ukraine to the WTO in 2008.



2. TPP supported MEDT in preparing responses to over 300 questions to the both Government and Secretariat Reports on Trade Policy Review.
3. TPP supported the participation of five members of the Ukrainian delegation at the two rounds of Trade Policy Review meetings in Geneva held on April 19 and 21 and assisted in the preparation of the two statements made by the Representative of Ukraine. The Trade Policy Review of Ukraine was successfully concluded.
4. On April 27, 2016, a report on the results of the first Trade Policy Review of Ukraine since accession to the World Trade Organization (WTO) was presented at the Cabinet of Ministers meeting. This exercise would both facilitate improvement of Ukraine's WTO compliance as well as galvanize external and internal coordination on WTO-related issues.
5. 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. TPP continued promoting the need to establish a National Committee on Trade Facilitation (NCTF) involving both relevant ministries and state bodies and the private sector. The NCTF is called for under the WTO Agreement on Trade Facilitation. Based on TPP proposal, the Prime Minister agreed to move forward with forming an Interagency Working Group 'National Committee on International Trade. TPP reviewed and commented on a concept and a draft resolution to establish such.
2. For the purpose of facilitating trade and increasing transparency, the TPP provided, per request of the Prime Minister Advisor on Customs Affairs:
  - Initial review of the necessity to reform customs sublegal acts and comply with the DCFTA Customs related provisions, the WTO Trade Facilitation Agreement, and Revised Kyoto Convention.
  - Proposal for developing an interactive map concerning customs entry and clearance points.

The aforementioned two TPP proposals (52 pages) were fully integrated in the Government Customs Reform Program (93 pages).

3. Per request of the Prime Minister Advisor on Customs Affairs, TPP reviewed a draft resolution for automating customs border clearance steps with the aim toward supporting Single Window.
4. TPP supported MEDT in developing an initial Single Window Concept, a preliminary version of which was adopted by the Cabinet of Ministers in June 2016. TPP continues to work with MEDT on further development of this initial concept.
5. TPP contributed to the statement of MEDT concerning Single Window delivered at the International Transport Week (May 31-June 2, 2016) held in Odessa and informally briefed the Deputy Minister of Infrastructure concerning regional and bilateral transit and transport arrangement including TRANsport Corridor Europe-Caucasus-Asia (TRACECA).

### *Trade Facilitation Support at the Odessa Port*

1. The TPP continued supporting the establishment of the Open Customs Area at the Odessa Port to facilitate trade. TPP additionally provided practical day-to-day advice and guidance to Odessa Customs.
2. Human Resources Department of Odessa Customs has concluded the selection of new customs officers for the Open Customs Area (OCA) at Odessa Port. As a result, 130 candidates were officially employed as of April 29, 2016. The full list of selected candidates was published on the OCA website. On May 10, 2016 newly employed officers started 30 days extensive training in Khmelnytsky in State Fiscal Services special educational training Centre. It is planned that after completion of this training the officers will undergo additional 1-month training in Odessa at the premises of OCA. The candidates were initially screened by using new selection techniques namely OS general-skills testing and MIDOT testing (evaluates integrity, honesty, work ethics and values of potential candidates). TPP financed the activities related to the performance of the testing and is already very active in providing support in establishing the OCA.
3. TPP prepared cost estimates to assess the possibility of conducting a Country scale screen of all Customs officers by using new selection techniques namely OS general-skills testing and MIDOT testing (evaluates integrity, honesty, work ethics and values of potential candidates).
4. On April 13, 2016 the TTP participated in the business trip to Kyiv, where Ms. Yulia Marushevskaya made a presentation of the draft Law with the Anti-Corruption Committee of Verhovna Rada (subject to invitation from Mr. Egor Sobolev). TPP reviewed and provided guidance to improve the draft law.
5. The TPP helped with drafting an order for opening the “Open Customs Area”
6. The TPP helped with the draft and amendments to the Resolution of the Cabinet of Ministers of Ukraine on Simplified Regime of Customs Clearance in Odessa Region (around 50 pages). On June 30, 2016 the draft Resolution was presented by Ms. Marushevskaya to the Minister of Finance.
7. The TPP assisted in drafting and review of job descriptions for the newly hired customs officers at Customs Station “Open Customs Area.”
8. The TTP provided legal support of the opening of Odessa Customs Call Center “Help” including reviewing of agreements concluded with hired lawyers and operators, confidentiality agreement, etc.
9. The TTP participated in a meeting with Ms. Yulia Marushevskaya and Ms. Inese Voika, representative of Transparency International and Embassy of Latvia in Ukraine on discussion of the anti-corruption strategy.
10. On May 25-26 the TTP participated in the Workshop on Interagency Border Cooperation organized by CLDP in Odessa, where copies of the TTP TFA compliance were distributed.
11. TPP reviewed and commented on the draft agreement between Odessa Customs and UNCTAD concerning transferring the right to own, use, and modify ASYCUDA software.
12. TPP co-funded two 2 days of training “Fundamental principles of service behavior of custom’s employee”, and ‘Change management for implementation and maintenance of service behavior in customer units’ for 110 Odessa customs employees and management. Training will be executed in June and July 2106.