

# FOREIGN DIRECT INVESTMENT DRIVES GROWTH IN UKRAINE

By Andrew Mac

For over a decade, Ukraine's economy has been growing steadily, with gross domestic product increasing an average of more than 7% per year. This strong growth has been driven by increasing domestic demand, improved productivity in the private sector, low unemployment, and rising wages.

In the first six months of 2008, Ukraine's strong and sustained growth rates continued to show dynamic upward momentum—with GDP growing at an annual rate of 7.1%. Ukraine's growth has persisted despite a global economic slowdown, continued political infighting at home, and a high inflation rate, which slowed dramatically over the summer and is projected to end 2008 at around 18-20%, far less than the 31% annual rate registered through May.

The country's success is attributable to several factors: a maturing private sector that is becoming increasingly globalized and transparent, the country's relatively inexpensive and well-educated workforce, and Ukraine's entry into the WTO on May 16th of this year.

All of these factors have sparked a growing interest on the part of international investors and have resulted in significant increases in foreign direct investment in the country. In the first half of this year, FDI in Ukraine was \$6.9 billion, up 170% from the same period in 2007, according to the latest figures from the State Statistics Committee. The European Union accounted for the majority of this FDI. In 2007, FDI was \$10.7 billion, well surpassing 2006 FDI of just under \$5 billion.



Andrew Mac, Partner at Magisters

Given the global liquidity and credit crunch, the impressive recent flow of investment capital into Ukraine suggests the country is increasingly seen as an attractive emerging market in which to invest.

Investment in Ukraine is coming from many foreign countries, but it is the EU that has been the source of the greatest amounts of FDI. Indeed, investments originating from EU member states account for approximately 75% of all FDI into Ukraine. Surprisingly, neighboring Russia only accounts for 5.6% of all FDI into Ukraine and the U.S. for 4.5%. Such statistics are broadly indicative, but are modified by the reality that many US-based multinationals and funds make their investments in Ukraine through their EU-based affiliates. Cyprus and Germany are the two leading sources of foreign investment in Ukraine, each with around 20% of total FDI. The Netherlands accounts for 8.2%, Austria comes in next with 7.4%, and the UK registers 6.5%.

### FOREIGN INVESTORS FOCUS ON DIVERSE SECTORS

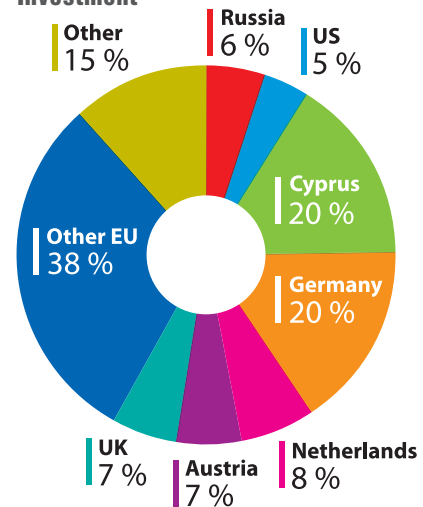
To date, the major sectors of Ukraine's economy that have attracted international investors have been banking and financial services, insurance, consumer goods, telecoms, and commercial real estate. There are also several major sectors in which investors are showing growing interest and that are ripe for investment.

These include high tech, hotels and hospitality, and—with the likelihood of new legislation in 2009—agriculture. Ukraine's soaring growth in machine-building industrial production is likely to attract new investors in the coming years.

Other sectors with high potential pose a more daunting challenge. Ukraine's energy sector has proved to be a difficult part of the economy to enter, as powerful national interests engage in rent seeking through their allies in government. Aerospace, too, is mired in red tape and inertia. Similarly, major objects of investor interest such as the Odessa port and the main domestic telephone service provider—Ukrtelekom, have seen their privatizations repeatedly delayed.

The Euro 2012 European soccer championships, scheduled to be co-hosted by Ukraine and Poland, will provide numerous and diverse opportunities for infrastructure development, including transportation (roads, rail, bridges, and airports), sports-related infrastructure (stadiums and associated retail facilities), and hospitality infrastructure. Many of these will be partially funded by the government and by multilateral institutions, and will take the form of public-private partnerships, thus mitigating the project risk profiles.

### Ukraine's Sources of Foreign Direct Investment



### REGULATORY AND LEGAL HURDLES

A major obstacle to investment in this lucrative market is navigating the country's regulatory and legal environment, which is undergoing evolution and transition as it becomes compliant with international norms of transparency and contract enforcement. Significant local expertise is not only helpful, but necessary to overcome challenges including contract enforcement, protection of majority as well as minority shareholder rights, and enforcement ▶

### IN THIS ISSUE:

Foreign Direct Investment Drives Growth in Ukraine	p. 1
Spotlight: Open Ukraine Foundation	p. 2
Magisters: Ukraine-Based, Globally Oriented	p. 3
Ukraine's Customs Service in Transition: Implications for Business and Trade	p. 4
Ukraine Joins WTO: Key Improvements for Investors	p. 6
Ukraine and the WTO: Legal Ramifications and Implications	p. 6
Magisters: Growth and Evolution in a Challenging International Setting	p. 7

of payments and/or attaching assets in the event of contractual nonperformance. Navigating the regulatory and legal mazes to enter Ukraine's lucrative market requires significant local expertise. One challenge is contract enforcement, a second is protecting majority as well as minority shareholder rights, and a third is enforcing payment or attaching assets in the event of contractual nonperformance.

Magisters, which has over a decade of experience in the Ukrainian market, recommends a range of legal instruments to protect foreign investor interests. One key measure is to structure transactions in an offshore entity which holds full ownership of the Ukrainian asset. Such a structure, established in an appropriate jurisdiction, can not only confer important tax advantages, it can also ensure that corporate governance is carried out using predictable outside rules. Moreover, contract enforcement protections can be reinforced through the inclusion of foreign arbitration clauses in contracts. In such cases, Stockholm, London, and Vienna are chosen as the most frequent venues for arbitration.

An additional means of enhancing protection for incoming international investors is to seek transactions with Ukrainian companies that have an international presence. One dimension of this approach is to ensure that potential partners in Ukraine have offshore assets. Additionally, Ukrainian company's contemplating international IPOs or those already listed on

foreign exchanges are recommended as reliable partners, as they must maintain a reputation as a company that observes best business practices to ensure strong share performance.

While there are many attractive assets in Ukraine, given the vagaries of the country's early privatizations, many such assets don't have a clear ownership structure and key documents may be missing. In such an environment, it is essential for investors to obtain the best legal advice and the most thorough due diligence. Enhanced protection is also required to mitigate the risk of government review of past privatizations. While most major Ukrainian political parties are committed to the development of a market economy and exhibit pro-business policies, populist stances by major leaders cannot be excluded.

### COMPLIANCE AND ANTI-CORRUPTION

A final consideration is Ukraine's high level of corruption. Companies entering Ukraine's market need the best advice on how to comply with international anti-corruption standards, such as the stringent U.S. Foreign Corrupt Practices Act. This means that in some sectors and in some cases, we advise clients to walk away from a deal. At the same time, protecting an investment requires strong relations with national and local government authorities, good corporate citizenship, and strong community support. As a firm that has grown indigenously with

Ukraine's emerging private sector, Magisters is well-equipped to advise on these dimensions of corporate success in Ukraine.

### WTO ACCESSION AND IMPROVED RULE OF LAW

This is one reason why Magisters' roll call of corporate clients includes Goldman Sachs, Advent, Citigroup, Shell, Imerys, Deutsche Bank, Yahoo, Sony, and Apple. Ukraine's legal system and government performs unevenly. Still, the problems and issues created by such uneven performance are being managed in Ukraine with the proper legal advice and with the use of an experienced and skilled legal team that is as comfortable with U.S. and British law as it is with Ukrainian jurisprudence.

Ukraine's legal system may be underdeveloped and at times difficult to navigate, but the new tools given to investors by Ukraine's accession into the WTO and the incremental improvements in Ukraine's rule of law mean that investments made into Ukraine's fast-growing economy can be well protected in the hands of a knowledgeable, experienced, and reputable legal team.

*Andrew Mac is a partner at Magisters, and heads its mergers and acquisitions practice. Mr. Mac, a US-born graduate of Vanderbilt Law School, has been working in Ukraine since 2002. ■*

## SPOTLIGHT: OPEN UKRAINE FOUNDATION

In 2007, Arseniy Yatseniuk, Speaker of the Ukrainian Parliament and a former minister of foreign affairs, and Zbigniew Drzymala, director and main shareholder of the Financial and Industrial Group "Inter Groclin" founded Open Ukraine, a nonpartisan international philanthropic foundation. The foundation's founding mission is to support public diplomacy and to raise Ukraine's profile internationally.

Open Ukraine currently has five key programs:

**International Dialogue**, which has several components, including:

- *The Kyiv Security Forum*, a yearly dialogue focused on issues of collective European security and a platform for representatives of regional and global organizations, government, and independent experts to discuss solutions to European security issues, including regional conflicts, illegal migration, energy security, organized crime, refugees, border management, corruption, terrorism, nuclear and conventional weapons proliferation, and human trafficking;

- *Diplomatic Club*, an informal forum on foreign policy for key Ukrainian opinion-makers. The Diplomatic Club aims to help Ukrainian leaders to understand better global developments and the foreign policy choices facing Ukraine and other countries. The club meetings convene

key Ukrainian government decision-makers, former ministers of foreign affairs, senior diplomats, independent analysts and journalists who report on international issues. Interactive meetings allow vibrant debate about international relations and Ukraine's role in the world. The Diplomatic Club is a joint initiative of the Open Ukraine Foundation and Victor Pinchuk Foundation;

- *Ukraine in Focus*, seminars abroad with key international policy centers and think-tanks to raise awareness about current developments in Ukraine's political, cultural, and economic spheres;

- *Grants program*: support of international civic initiatives of Ukrainian and international non-governmental organizations to enhance people-to-people contacts and to deepen international understanding of Ukraine's economic, political, and social transition.

**Migration Today** provides information and legal aid to Ukrainian migrant workers. The program includes an information hotline in partnership with the Ministry of Foreign Affairs, information campaign, and advice via regional migrant centers. The program also supports research focused on current Ukrainian labor migration, its motivations, correlation with regional migration trends and assesses the social and economic impacts of migration.



**Cultural Horizons**, a series of cultural events in Ukraine and abroad focused on modern Ukrainian literature, art, theater, film, music, and photography.

**Young Generation**, a nationwide program of support for young leaders of public organizations, business, and politics in their efforts to implement changes in key areas of public life. Open Ukraine will provide leadership training and financial assistance for innovative projects, among which is the "Space for Change" program, which aims to support successful young leaders and award regional initiatives that bring positive changes for local communities.

**Ukrainians Abroad**, a support program for Ukrainian diaspora centers worldwide, which includes assistance with launching new cultural heritage initiatives and development of special print and broadcast media projects in areas of large recent labor migrations.

In the year since it was created, under the leadership of Arseniy Yatseniuk, the Board of Directors, and Executive Director Orysia Lutsevych, Open Ukraine has emerged as one of the country's most creative and forward-thinking non-governmental organizations. Magisters is proud to serve as the pro bono counsel of this important addition to Ukraine's civic life. ■

# MAGISTERS: UKRAINE-BASED, GLOBALLY ORIENTED

by Oleg Riabokon

As Russia's and Ukraine's economies have experienced strong growth in the last decade, the market for legal services in these countries has also expanded. The result has been increased competition, improving legal standards, the need for highly-qualified attorneys and personnel, increased competition for clients, and a move toward western-style management and administration for Ukrainian law firms. Ukraine's WTO accession has further opened the country to international business and investment, speeding up reforms and resulting in the creation of more professional and valuable legal services in the market. And despite the market turmoil of the late summer, Russia's resource-rich economy and well-educated population continue to attract investors from around the world.

## TEN YEARS OF MAGISTERS — LOOKING BACK AND FORGING AHEAD

From our inception, Magisters has adopted a westward-looking orientation, and has staffed the firm with internationally educated and locally-experienced lawyers and operated offices in two East European capitals. Magisters has long been a go-to firm for international clients (almost 70% of Magisters clients are of Western European and North American origin), and in 2007, on the eve of our 10th anniversary, the firm's leadership team initiated a comprehensive transformation of our operations. We conducted a full-scale assessment of the Ukrainian and Russian legal services marketplaces and devised a new strategic direction for the firm, including our domestic and international operations.

We concluded that our western oriented and locally-experienced approach is applicable to the challenging legal markets of the former Soviet space. As a result, we decided to expand the firm's base of operations from Kyiv to other CIS capitals, while enhancing our visibility in the United Kingdom and United States. Magisters is the first to take such strategic direction—and this singles out us even among the large multinational firms with a global presence who have entered the Ukrainian market.

We intend to maintain our leading position in Ukraine and Russia while investing in other CIS capitals. Between 2006 and 2007, we increased revenues from our Moscow office by 70%, and created a strategic partnership with Pinsent Masons LLP to



*Oleg Riabokon, Founder and Managing Partner at Magisters*

work on transport, sport, infrastructure, and public-private partnership projects across Russia and the CIS. We have also established a representative presence in Washington, D.C. and New York with three main goals in mind: promotion of the firm in the US market; recruiting high-quality personnel; and provision of lobbying services.

## MAGISTERS AND THE GLOBAL LEGAL SYSTEM

In order to further strengthen our brand and communicate our international orientation, together with PricewaterhouseCoopers we initiated the establishment of the Ukrainian branch of the International Fiscal Association, with the goal of introducing and developing best-in-class standards of corporate finance and tax preparation. Ukraine became the 53rd country where IFA members have established branches.

Magisters has also joined Lex Mundi, an international network of independent law firms, and became its exclusive member in Ukraine. Lex Mundi applies stringent membership criteria, and selects only prominent local law firms recognized for the breadth and depth of their legal expertise, their reputations in their jurisdictions, and the quality of their client service. Lex Mundi membership is structured in such a way that member firms are exclusive representatives for their jurisdictions, and as such, must provide the full range of legal services required by commercial clients and

must be a leader in the use of technology as well as in law firm management.

Other global networks that Magisters is part of include Globalaw and Taxand.

## MAGISTERS MANAGEMENT: ADOPTING WESTERN STANDARDS

The past year has also seen changes in the firm's management structure, including the decision to hire Jason Bruzdinski, an American and a non-lawyer, to run the firm as chief operating officer. This move has allowed me and other Magisters partners to focus on client services, business development and strategic planning. In order to further adhere to western principles of management and to meet our strategic goal of recruiting, hiring, training, and retaining the best legal professionals on the market, we have also introduced a performance management system called the Platinum Standard, whose key principles are confidence and trust. We measure success strictly by our results and their outcomes — both internally and externally.

In 2007, we were the first law firm in the CIS and the first company in Ukraine to receive the international Investors in People award. The Investor in People Standard was developed in Great Britain in 1991 under the auspices of the British Trade Union Congress. Its fundamental belief is that the development of people, engaged in any area of business, is crucial to achieving a specific ▶

positive result. The Standard takes all staff-related issues into account: development, training, motivation, assessment, relations with company management and remuneration of labor. Compliance with this standard strengthens our professionalism with clients and increases the competitiveness of our firm.

### **GEOGRAPHIC EXPANSION OF MAGISTERS, 2008 AND BEYOND**

The firm continues to expand its practice areas in Ukraine and in other regions. In particular, the Real Estate, M&A and Corporate, Tax, and Intellectual Property practice areas are growing quickly. Volodymyr Baibarza, a partner with extensive experience working for a major US firm, has joined Magisters and established a first rate real estate practice. We are proud that our firm has the strongest dispute resolution and corporate teams in the country. Keeping a close eye on client needs and the market situation in Russia, Ukraine, and beyond, we are developing government relations, Public-Private Partnership (PPP) and anti-trust practices. In Russia in particular we are allocating significant resources toward developing our PPP practice. Our number of lawyers has increased from 100 to 130 (a 30% increase) over the past year.

In 2008, we have further improved the quality of our services and expanded our client portfolio through the deepening of relationships with existing clients and geographical expansion with possible physical presence in Kazakhstan and Belarus, as well as to some other CIS capitals. Our Moscow office will continue to experience significant growth in the number of lawyers.

### **MAGISTERS' FOCUS ON LEGAL EDUCATION**

Magisters also has as a strategic focus a program of legal education support, which has ambitious projects underway and in the pipeline. The mission of this program is to develop and maintain proactive and constructive relations with educational institutions and professional associations, decision-makers and other stakeholders on the national and international levels in order to enhance professional legal education in the CIS and ensure a favorable recruitment environment for the firm.

Magisters aims to be responsive to client needs by introducing best practices and developing the strongest, best qualified team of attorneys in this complex region. That is essential to the success of our clients and to the further growth of our firm.

*Oleg Riabokon is founder and Managing Partner of Magisters. ■*

# **UKRAINE'S CUSTOMS SERVICE IN TRANSITION: IMPLICATIONS FOR BUSINESS AND TRADE**

*by Myroslava Luzina and Adrianna Melnyk*

As Ukraine's economy has grown and become increasingly globalized, the country's volume of cross-border trade has expanded exponentially. This trend has elevated the importance of Ukraine's customs service in the economy.

Ukraine's customs service started with 49 border control posts that it inherited from the Soviet customs system, mostly at its western and southern borders. On June 25, 1991, the Parliament of Ukraine adopted a law establishing independent customs as one of the signs and bulwarks of state sovereignty. The State Customs Service of Ukraine (the SCSU) became an important early attribute of statehood and source of pride for its representatives. But with the economy and cross-border trade in decline in the early 1990s, the service was not at the center of public attention. Still, raising the standards of professionalism in the service was an important objective even before Ukraine's 2008 accession into the WTO and before the economic turnaround that began in the late 1990s. The Academy of Customs Service of Ukraine, which provides higher and continuous education for aspiring customs officers, was created in 1996.

### **UKRAINE'S SCSU: BATTLING CORRUPTION**

Today Ukraine's border crossing points number almost 200 and the staff of the Ukrainian customs service is comprised of nearly 20,000. Although the SCSU is still evolving, the service has suffered from a number of problems. The main one is related to corruption, the most discussed and main obstacle to doing business in the country. In the case of customs, there have been two main sources of corruption. The first source has been overregulation, namely, an immense number of so-called "sub-law" acts: regulatory documents that are not passed by Parliament, but issued by executive organs, in this case, by the State Customs Service of Ukraine itself. Sub-law acts are usually meant to detail provisions of laws or fill up gaps in legislation. Often, though, they end up violating certain rights of individuals or corporations by resulting in additional restrictions and invented procedures which were never intended by higher-level legislation.

The second historical source of corruption was the system of import tariffs, which was

characterized by a practice of granting selective exemptions to certain players in the market, thereby creating an unfair competitive environment. As part of the general Ukrainian problem of relatively high taxation, paying all required duties often meant that much business activity was by definition unprofitable. The remedy was predictable: a massive upsurge in smuggling enabled by corruption. Widespread smuggling created competitive pressure for other companies to seek similar "protection" in order to offset the unfair lead enjoyed by their competitors. As of 2004, smuggling accounted for anywhere between 30%-50% (according to different estimates) of all imports into Ukraine.

The issue of corruption was tackled head-on after the Orange Revolution, when the first government of Yulia Tymoshenko launched a program called "Smuggling - Stop!" The program, which also was backed by President Viktor Yushchenko, aimed at decreasing the number of requirements for customs clearance by implementing a "single counter" procedure, which cut down on the exhausting routine of approvals and regulation (which could be circumvented or accelerated with bribes to customs officers). A number of criminal investigations, many of them ending in indictments against customs officers, were conducted in many regional divisions of the SCSU. Within a year of the program's launch, almost all restrictive sub-law acts that ran contrary to official laws were repealed in cooperation with a Civil Council to the Customs Service (comprised of the representatives of the private sector).

### **INTERNAL CUSTOMS CLEARANCE**

Despite the rapid growth of the service, one major unsolved challenge is an underdeveloped border infrastructure. There are still not enough border stations and crossing points to accommodate the transport flows and conduct customs controls of Ukraine's booming trade. With the 2008 introduction of a new process of conducting customs control internally at customs clearance stations, measures were taken to partly solve this problem. This was especially helpful in reducing the procedures for goods imported by car or truck. Border stations let sealed trucks through, and customs control is carried out at customs centers within the country. However, this has caused difficulties for importers who had earlier built ▶



*Ukrainian customs steps up to the challenges of the increasing volume of international trade*

storehouses near the state border for proximity to the customs clearance points. These companies now have to transport the goods to the inner-country customs station and then back to their storehouses. This should not affect newcomers to the market, who will likely conduct their logistics planning with these recent changes in mind.

### **NEED FOR INFRASTRUCTURE DEVELOPMENT AND MODERNIZATION GROWS**

With Ukraine's WTO accession on May 16, 2008, because of an explosive growth of trade and the associated growth of transport flows, gains that had been made have experienced partial setbacks. Despite increased deregulation, there are now again delays and lines at all border crossing points.

Ukrainian customs steps up to the challenges of the increasing volume of international trade:

The need for infrastructure improvements is, therefore, urgent. Most needed are: new customs facilities, employee training, further simplification of clearance procedures, and the introduction of electronic systems for data processing, which is dependent on the introduction of additional changes to customs legislation. Since the European Union has a stake in the improved efficiency of trade with its neighbors, European countries can offer their assistance in implementing the necessary changes. Ukraine is aligning its efforts on the transition and improvement of its customs service with the European program "Customs 2013". As a result, the country can leverage the experience and knowledge of its European neighbors, which the latter had to acquire over time, but which Ukraine can do more quickly. Because of this added advantage, domestic customs officials as well as their European counterparts are optimistic that modernization of customs control procedures and a complete transition to Western standards is feasible within 5 years.

### **UKRAINE'S GOVERNMENT STEPS UP FUNDING FOR CUSTOMS**

Both modernization and the need to resolutely fight against corruption will require allocation of substantial resources. For 2008-2009, the Ukrainian government has prepared a program on combating smuggling and preventing violation of customs regulations. This program goes hand in hand with planned investment in customs infrastructure development. It is estimated that at least 3 billion hryvnias (about \$600 million) will be needed in 2009 to proceed quickly with infrastructure development. The recent trend of rapidly increasing customs duties receipts is likely to ensure that these funds will indeed be allocated.

As a result of both the simplification of customs procedures and a reduction in smuggling, the SCSU collection of customs receipts has been growing, in a YOY comparison, at least 1.5 times for each of the last several years. In 2008, growth has already exceeded 100%, rising rapidly after new WTO-compatible customs duties became effective. The upcoming Euro 2012 soccer championship, scheduled to be hosted by Ukraine and Poland, is another stimulus that will make the government work



*Since Valeriy Khoroshkovsky became head of SCSU in December 2007, the service has been making rapid progress toward increased professionalism*

actively on the modernization of Ukrainian customs system.

The current head of the SCSU is Valeriy Khoroshkovsky, who has significant private sector experience as well as leadership positions in the Ukrainian government. His appointment was met with some criticism on the part of those fearing a fusion of business interests with those of the government. However, today most observers believe that his background is allowing him to rebuild the customs agency with a strong understanding of business needs. One of his priorities is cutting the line of illicit orders, whereby corrupt officials from both government agencies and the parliament could, with a telephone call, achieve a duty-free customs passage for certain goods for "affiliated" companies. Thus, a crackdown on corruption is under way both on the top and the operational level. Khoroshkovsky favors strict standards for combating corruption and is actively hiring new staff chosen for its professionalism and integrity.

Cooperation with law enforcement agencies which come into contact with cross-border trade flows is also being stepped up. As a result, the situation is improving not only because of the growing professionalism of the customs service, but also because of improvements in other system processes. The Ukrainian Border Patrol Service, for example, has moved from a draft system of staffing border stations with border guards to a professional hiring and a 6-month training,—with the final draft conducted in 2007. Since 2001, smuggling rates have decreased over tenfold because of increased vigilance by border guards. The customs service is also strengthening ties with the State Security Service of Ukraine, which leads to better exposure of corruption schemes. Finally, the customs control procedures have been improved by measures taken by the Cabinet of Ministers to eliminate double-checks: i.e., if cargo documents for all types of good had earlier had to be signed by representatives of at least 4 different agencies (including ecological, radiological, phytosanitary control, etc.), now, officers of other services will be present only if there is an obvious need to do so, such as in case of importing livestock.

In the past three years, Ukraine's customs processes and system have seen many positive changes. There is clear political will on the part of the government to continue improvements as the country seeks to achieve greater integration into the global market. This also means that with appropriate legal advice and representation, business interests can be protected effectively. The overall impact is that businesses now entering or already in the Ukrainian market face fewer obstacles than before. All this is a positive sign that in this sphere, at least, Ukraine is moving towards free and competitive trade as its economy remains among the fastest-growing in Europe. ■

# UKRAINE JOINS WTO: KEY IMPROVEMENTS FOR INVESTORS

On May 16 of this year, Ukraine joined the WTO as its 152nd member. Although Ukraine's economy has been booming for the past decade and foreign investment has been rapidly growing, WTO accession will bring with it a new set of standards for Ukraine, resulting in even higher levels of FDI and further integration into the world economy. WTO countries in the region have seen an approximate doubling of FDI post-accession. The main terms of Ukraine's accession are market liberalization and non-discrimination in sectors including agriculture, manufactured goods, services trade, intellectual property protection and overall reform of the country's commercial environment, including mechanisms for dispute resolution and international enforcement procedures.

## ■ AGRICULTURE

Open access to Ukraine's agricultural market is one of the key terms of WTO accession. For foreign investors, a major obstacle to doing business in this sector had been the recent government-imposed export quotas and restrictions on grains, including wheat and rye. These quotas have now been lifted. In addition, minimum export prices have been revised, and tariff rate quotas for grains, sugar, and other

agricultural products have been reformed. Finally, Ukraine must now adhere to international standards for imports of beef, pork, poultry, fish, and biotech products.

## ■ MANUFACTURED/INDUSTRIAL GOODS

Ukraine has committed to a reduction of average bound tariffs on manufactured goods to 4.6%. In addition, the country joined many of the zero-tariff agreements including the Information Technology Agreement, and those applying to civil aircraft, chemicals, agricultural equipment and parts, construction products, scientific equipment, distilled spirits, pharmaceuticals, furniture, non-ferrous metals, paper, and toys. Export duties on steel scrap and non-ferrous metals will also be reduced.

## ■ SERVICES TRADE

In the service sectors, Ukraine had, for a long time, limited foreign equity rights. With WTO accession, Ukraine's core service sectors, including: banking, financial services (and within five years, insurance), business and professional services, telecommunications, construction and engineering, transport, education, distribution, energy, environmental, and many other services will be granted open access and 100% foreign ownership rights.

## ■ INTELLECTUAL PROPERTY PROTECTION

Ukraine has had a poor track record on protection of intellectual property. With WTO accession, the country has agreed to implement most WTO rules, including on intellectual property rights enforcement, customs valuation, technical barriers to trade, trade remedies, trade-related investment measures, and other requirements.

## ■ REFORM OF COMMERCIAL ENVIRONMENT

Perhaps the single most important provision for foreign investors of Ukraine's WTO accession is the country's commitment to reform its commercial environment. This provision encompasses two major tracks: 1) Reform of the country's internal commercial regime, including improved transparency and implementation of new laws and 2) Participation in WTO dispute settlement processes and bilateral consultations. Both internal reform and increased participation in and adherence to international enforcement procedures should reassure investors that there is now a lower risk to doing business in the country. ■

## UKRAINE AND THE WTO: LEGAL RAMIFICATIONS AND IMPLICATIONS

by Oleh Malskyy

Ukraine is a fast-growing emerging market whose recent accession to the World Trade Organization is making it all the more attractive to foreign investors. The country negotiated for 14 years to join the WTO, and is now committed to opening up its agricultural, manufactured goods, and services sectors. It is also now required to provide strong intellectual property protection, an area that had not been meeting international norms. Above all, WTO accession means that Ukraine is now linked to an international system of commercial law with a strong external mechanism to ensure enforcement and compliance with international standards.

Yet despite these gains, it is reform of Ukraine's internal commercial environment, and in particular, the legal infrastructure for trade, that will ultimately determine the pace of change in the country's economy.

### IMPLEMENTATION OF WTO LEGAL STANDARDS

With accession to the WTO, and with the adoption of a wide array of laws needed to



Oleh Malskyy, Associate at Magisters

comply with general WTO rules, Ukraine has become a better place to do business. Indeed, given the wide-ranging scope of measures and laws Ukraine has adopted, the country has committed to becoming one of the most open economies within the WTO.

However, the main question is not just how well the laws are written but how effectively

they will be implemented. It should be noted that a number of practical gaps still exist with regard to implementation of the said rules by state authorities. Foreign investors should understand that despite WTO membership, laws will need to be enforced and their interpretations tested in practice for the country to become fully compliant with WTO law and practice.

Unless challenged, inconsistencies and ambiguities in legislation most likely will not be removed by the authorities automatically. Therefore, prior to making an investment or trade decision, in-depth analysis of Ukraine's actual rules and legislation should be completed to confirm whether the applied rules and principles are WTO consistent. For example, laws will often grant hidden preference to local producers. In cases like this, consultations with law firms and with the Ukrainian government will be essential for reinstating equal terms for local and foreign entities. In other cases, companies may require public relations and lobbying services to ensure their rights. Finally, in some cases, drastic measures such as challenge in the courts may be required to secure due implementation.

### WTO DISPUTE RESOLUTION

Another important issue related to increased sales into the Ukrainian market is the possibility of these sales triggering trade ▶

remedy investigations (e.g. anti-dumping or safeguards investigations). Ukrainian regulators do not yet have full and sophisticated understanding of WTO laws and, more importantly, of the WTO dispute resolution process, to understand fully the mechanism of trade remedy investigations. As the country transitions and evolves in the post-WTO environment, Ukrainian authorities may tilt towards protection of national producers and initiate such investigations along with the application of inappropriate customs duties. These will require international investors and businesses working in the Ukrainian market to have a strong team of legal advisors.

### MAGISTERS' TRADE LAW CAPABILITIES

One of Magisters' key competencies is assisting multinational clients from such diverse sectors as financial services, pharmaceuticals, industrial production, and high technology with trade-related issues and with business operations and requirements in Ukraine's post-WTO environment. There is little doubt that Magisters is the most experienced trade counsel in the Ukrainian market. Since 1998, the firm's managing partner, Oleg Riabokon, has been consistently recognized by *The International Who's Who of Trade and Customs Lawyers* as a leading advisor on trade and customs, and has been described in that publication as one of the

"foremost legal practitioners in the trade and customs field internationally". Since 1997, the firm has been involved in trade-related cases, handling more than 80 anti-dumping and countervailing cases in the European Union, the United States, and in more than 20 jurisdictions worldwide.

Magisters has also conducted dispute resolution proceedings and appeals before the US Department of Commerce. The firm has advised sovereign governments and major industrial conglomerates in many of the most significant trade cases of the past decade, including the Ukraine-EU and Russia-EU Steel Agreements, Ukraine's formal recognition of Ukraine as a market economy, and the establishment of the new Common Economic Space between Belarus, Kazakhstan, Russia, and Ukraine.

Magisters' attorneys also assist government and multilateral organizations in the development of their international trade regulations and policies, and advised the Ukrainian Ministry of the Economy on the WTO accession process. Our attorneys have extensive experience in the iron and steel, metal and ore, and other industries subject to international trade regulation, and we have advised the Government of Ukraine on bilateral steel agreements with the USA, the EU, China and the Organization for Economic Co-operation and Development (OECD).

### MAGISTERS' SERVICES

The firm's services include:

- global customs strategies and management, including classification, valuation, customs fraud, and place-of-origin issues;
- international and regulatory compliance, including export controls and trade sanctions;
- analysis and advisory services on the WTO, multilateral and bilateral agreements, including analysis of competitive policies, representation in the WTO dispute settlements, and advice on various aspects of the WTO accession;
- anti-dumping and countervailing duty investigations, safeguard actions and trade remedies.

As a result of Ukraine's accession to the WTO, the coming years will be fruitful for investors working in Ukraine's growing market. As Ukraine's economy matures and adopts international WTO standards, there will also be some turbulence while the country's legal and regulatory systems struggle to keep up with the changes. To handle this transitional period, companies doing business in Ukraine will need to forge strong partnerships with effective legal advocates well versed in Ukraine's evolving trade and commercial law and practice.

*Oleh Malskyy is an attorney specializing in International Trade and Customs at Magisters. ■*

## MAGISTERS: GROWTH AND EVOLUTION IN A CHALLENGING SETTING



In 1997, Magister & Partners, Attorneys-at-Law was founded by two partners as a Ukrainian boutique firm specializing in international trade law. Within a decade our firm grew to a partnership of ten attorneys, and today offers a full range of CIS-based legal services supported by more than 120 attorneys. In 2008, our firm reintroduced itself to the marketplace as "Magisters". The revitalization was a response to an evolving legal market and an increasingly global client base, and reflects our plans for strategic expansion across the CIS. Magisters aims to be the preeminent CIS-based law firm serving clients worldwide. We pride ourselves on attaining deep understanding of client needs through close, continuous interactions that lead to highly successful results. Magis-

ters' "spiral development" highlights our tradition of excellence, underscores our maturity, and directly contributes to the expansion of our capabilities.

### SEEKING EXCELLENCE THROUGH MASTERY

Our firm's name is derived from the Latin word *magister* which translates as "master". In ancient Rome, the title of "magister" was associated with the highest appointed civil and military leadership positions, and reflected the trust of emperors. The definition of "magister" is at the core of our brand and it was chosen for simple reasons. Our firm's partners and I like to say that we, as a team, strive for "excellence through mastery". We strive to earn and maintain the "confidence and trust" of our clients. These objectives have remained constant since our firm's founding in 1997. Mastery in the field of legal services and professionalism (excellence) are at the core of what Magisters is all about. We seek to set the standard for world-class CIS-based legal services and to create a new level of value for clients who need trusted legal advisory services in unfamiliar terrain. Building strong, deep relations

*by Jason E. Bruzdinski*

with our clients is front and center. We believe in "straight talk" and performance by measurement of results, not efforts alone.

Our 2008 brand revitalization took place for a few simple reasons. While we were honored by our excellent international reputation and understood the need for continuity given our firm's successes, we sought to improve the consistency of media and market references to our firm. We, therefore, simplified the Firm's brand name to reflect how we have always been colloquially known in the marketplace — as "Magisters".

International branding has trended toward the adoption of simplified names and trademarks, allowing for easier identification. As examples, Kraft Foods is now known as Kraft, Andersen Consulting as Accenture, Apple Computer as Apple, and Deloitte & Touche Tohmatsu is known as Deloitte. Our conservative brand revitalization enhanced the recognition of our Firm while preserving our core identity. As Magisters expands its international client base, we realize the great importance of being easily identified and differentiated from a multitude of local and multinational law firms in the CIS. ▶

**EMPHASIS ON INTERNATIONAL EXPANSION**

Magisters' client base encircles the globe and is comprised of many multinational corporations that are expanding their operations into Russia, Ukraine, and other CIS countries. We are proud to have the confidence and trust of valued clients such as: ABN AMRO, Alfa Group Consortium, Apple, Bonduelle, Citigroup, Credit Suisse First Boston, Deutsche Bank AG, Gazprombank, Glaxo Smithkline, Goldman Sachs, Interpipe, JT International, Merrill Lynch, Microsoft, Mittal Steel, Morgan Stanley, Neusiedler, Shell, Takeda Pharmaceuticals North America, Inc., TNK-BP, U.S. Steel, Viacom and Yahoo! Inc.

**ENGLISH AS OUR FIRST LANGUAGE**

Over the course of our development Magisters made strategic decisions that accompanied our brand revitalization. As one example we adopted English as the Firm's official business language to reflect the international character of our work and client base. We believe that to best serve our clients we must continuously improve our performance and ensure clear and

regular communication. English must be our first language to achieve this objective in the globalized world.

Spiraling outward from Ukraine and Russia, Magisters is an international law firm with clients worldwide. Today, the overwhelming majority are European and North American. From humble beginnings Magisters has grown into a firm that is no longer local. While our professionals are fluent speakers of Ukrainian and Russian, we work with our Western clients in the world's most prevalent business language: English. Our clients can be assured that Magisters' approach to business is directly responsive to the marketplace and to the customers we serve.

Change is a hallmark of maturation and growth. Magisters' unique qualities differentiate the Firm from all others and point to an important competitive advantage: Magisters is an international firm, providing world-class legal services that are backed by unparalleled experience in CIS local legal jurisdictions. This rare blend of capabilities makes Magisters the CIS-based firm of choice for customers worldwide.



*Jason E. Bruzdinski is the Chief Operating Officer of Magisters. He is the first American non-lawyer to manage an international law firm in the Commonwealth of Independent States. ■*

**ABOUT MAGISTERS INSIGHT:**

**Magisters Insight** is a newsletter focused on the dynamic emerging markets of Eastern Europe, the Caucasus and Central Asia. Each issue will highlight a specific country (e.g. Ukraine, Russia) or theme (e.g., "Doing Business in Emerging Eastern Europe" or "Mergers and Acquisitions"). The newsletter is produced and edited by leading experts on the region, and will include special features and contributions by attorneys and specialists of the Magisters team.

**Magisters Insight online:** [www.magisters.com/insight](http://www.magisters.com/insight)

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53 Saint Mark's Place, #1  
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