

Agricultural Business: New Horizons and Challenges



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Agricultural business is not only struggling to survive in the rather harsh political and economic situation but to maintain the great honour of being one of the most promising areas in Ukraine.

The signing of the Association Agreement with the European Union has opened new markets for competitive Ukrainian agricultural products which, however, requires that Ukrainian companies and goods achieve a higher level of quality, as established by European standards.

Also, the general process of integration of Ukraine into the Transatlantic community entails complex changes in Ukrainian legislation, including those regulating the activities of agricultural companies.

This article aims to outline new horizons for Ukrainian agricultural business in the light of the Association Agreement, as well as to point out recent legislative challenges relating to agricultural companies.

Implementation of the EU Association Agreement

It is a well-known fact that by signing the economic part of the Association Agreement Ukraine and the EU undertook to reduce or even eliminate customs charges and duties which today exist between them.

In fact, the reduction of the customs tariffs will not be symmetrical, as the EU will eliminate or decrease most tariffs immediately, while Ukraine will reduce the tariffs step by step during the next 10 years.

In its turn, the EU will introduce tariff rate quotas for 33 goods for Ukraine while Ukraine will apply tariff rate quotas only to 3 product groups.

Implementation of non-tariff measures primarily concerns

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Ukraine, as Ukraine will be obliged to eliminate existing administrative and technical barriers, regulations, prohibitions and bureaucratic formalities restricting in any manner import of goods from the EU, or export or sale for export of any goods destined for EU territory.

Thus, we will feel the positive developments of cooperation with the EU agricultural market very soon.

It appears, if one is to believe official data¹, that such a positive effect is already here. For example, the core department of the Ministry of Economic Development and Trade of Ukraine informed that in 2014 the EU became Ukraine's biggest trading partner both for the import and

export of goods. As of the first quarter of 2015 the shares of Ukraine's trading partners changed, as the EU is now leading the pack with a share of 35.5%, CIS countries have a combined share of 29% while Asian countries are trailing with a share of 24%.

This means that 2014 became the first year of free export of Ukrainian goods onto the European market thanks to the effect of unilateral preferences of the EU which became live on 23 April 2014. Ukrainian producers have managed, to a large extent, to use the new opportunities. According to the statistical data, in the first 10 months of 2014 Ukrainian exports to the EU increased by an average of 10-12%, and this in-



crease was achieved by agricultural products.

Any further increase of exports to the EU will require speeding up adaptation of Ukrainian technical standards to European ones and getting necessary permits for the export of Ukrainian products.

Available statistical data points to an increase of Ukrainian exports, with Ukrainian producers making use of quotas for supply of goods under the EU duty zero tariff rate. This notwithstanding, the majority of quotas appears to have not been exhausted, and even more no supplies have been made under certain commodity items.

For example, exporters of honey, grape and apple juice, as well as marinated tomatoes, that have already been exporting goods to the EU and had established business ties, have used up quotas to the full. Full use of some quotas is viewed as a reason to enter into consultations with the EU to increase them.

Another successful commodity item is grains, where the quota has almost been exhausted.

Utilization of the quotas for most other commodity items ranges between 10% and 15%. However, non-

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existent utilization of quotas for some commodity items, in particular, dairy products, is understood as Ukraine has not yet received permission to export such products to the EU. Still, the prognosis for future years is good for both dairy and, in particular, meat products.

Legislative novelties

Following the requirements of the Association Agreement, Ukraine has started adapting its laws to EU standards. It is apparent that this is a long-lasting process which will take several years.

We provide a selective overview below of recent changes to the laws of Ukraine which have an impact on the agricultural business.

Tax innovations for farmers

As you may well be aware, starting from 1 January 2015 the fixed agricultural tax was superseded by a 4th group unified tax².

The 4th group unified tax is a tax, which is collected in relation to a unit of land area as percentage of its regulatory monetary value. Payment of the 4th group unified tax replaces the following taxes and charges:

- (a) corporate profit tax, including advance payment due at distribution of dividends;
- (b) land tax on land used for agricultural production;
- (c) charge for special use of water resources.

The 4th group unified tax is calculated based on the regulatory reference price of the agricultural land (arable, grassland, etc.) or water resources land (lake, pond, reservoir, etc.) used or owned by farmers.

The tax rate varies from 0.09% to 3% of the regulatory reference price of each hectare of the agricultural land plot depending on the type of the land and its location.

It is worth noting that the regulatory reference price is not a permanent amount as it is changed at least each 5-7 years subject to approval by the state or municipal authorities. Moreover, the regulatory reference price must be indexed each year.

For the purposes of the 4th group unified tax a calendar year is

defined as the basic reporting period. The tax is calculated by taxpayers as of 1 January of the current year.

The calculated amount of the 4th group unified tax is broken down by quarters as follows:

- (a) I and II quarters — 10% each;
- (b) III quarter — 50%;
- (c) IV quarter — 30%.

The quarterly tax is paid within 30 calendar days after the end of the respective quarter to the appropriate account of the local budget where the land plot is located.

According to numerous farmers, the introduced 4th group unified tax increased the tax pressure by three-fold or even more. Notwithstanding this, the provided 4th group unified tax is still more beneficial than the identical tax in most EU countries.

As a separate matter, farmers, who are payers of the 4th group unified tax, are obliged to register their land plots in the State Land Cadastre and in the State Register of Property Rights and Encumbrances, as the tax is calculated based on the information from these registers. In practice, such obligation raises a number of questions, in particular, what to do with unregistered (non-formalized) land plots, land shares (pais), land plots which are not registered in new registers and which have been leased from individuals for a long time. It is apparent that this obligation requires further clarifications or modifications to the law.

Registration of land lease agreements by notaries

Starting from 1 April 2015, Ukrainian notaries were granted the right to register agricultural land lease rights, whereas before this power fell exclusively within the competence of the State Registration Service.

It is apparent that such a novelty brings more advantages for farmers, especially those leasing land plots from numerous individuals. Indeed, in practice, nearly 7,000 private notaries may substantially facilitate the process for registration of land lease agreements.

It is worth noting one limitation which concerns agricultural lands only. The registration of such land plots can be performed by any notary who has an office in the same region as the location of leased land plot. All other land plots can be registered by notaries throughout Ukraine.



¹ See <http://www.me.gov.ua/?lang=uk-UA>.

² See *On Amendments the Tax Code of Ukraine due to the Tax Reform Act of Ukraine* No. 71-VIII, dated 28.12.2014.

Also, the right to lease can now be registered only after the registration of the title to the land, which allows a number of practical problems to be avoided. In particular, this relates to situations when farmers have no ability to register their lease rights as far hundreds or thousands of their landlord-individuals do not want to register their ownership rights. As a result, an unregistered land lease right cannot be protected properly in a court or with municipal and state authorities.

Now, farmers can register their lease rights and ownership rights of the landlord for the land plot which came into existence before 2013 simultaneously. Therefore, the lease right will be protected by laws.

Positive changes to the land lease

Land lease is the most popular title among agricultural business players. One of the difficulties of recent years is that state agricultural land located outside the boundaries of cities (the largest

Positive improvements in the land lease sphere are visible

area of agricultural land) is leased by the State Service of Geodesy, Cartography and Cadastre of Ukraine (formerly, the State Committee of Land Resources). As a result, potential lessees are forced to deal with red tape for many months.

However, there are some positive improvements in the land lease sphere. Under the *On Deregulation Act of Ukraine*³, the list of essential terms of land lease agreements was reduced, mandatory integral parts of land lease agreements were abolished. The rule which allowed invalidating the whole land lease agreement in case of absence of a single essential term was also abolished.

Parties to land lease agreements were allowed to define other contractual provisions and conclude one lease agreement for several land plots owned by one entity, municipal or state authorities.

³ See On Amendments the Laws of Ukraine due to the Simplifications of Business Conditions (Deregulation) Act of Ukraine, No. 191-19 of 1 February 2015.

⁴ See On Land Lease Act of Ukraine, No.161-XIV of 6 October 1998, as amended.

This innovation enables parties to land lease agreements to be more flexible while concluding agreements and to pay more attention to really significant details in land lease relations.

Minimum duration of agricultural land lease was introduced

Another positive change was introduced to the *On Land Lease Act of Ukraine*⁴ on April 2015, according to which the minimum duration of land lease agreements for certain types of agricultural land plots was fixed at 7 years.

This rule is positive for agricultural producers, especially those that lease land shares (*pais*) from individuals and that used to have to extend the agreements and register such extension in view of the short duration thereof and the peculiarities of cooperation with individuals-lessors.

Such a novelty will not only allow farmers to save time and money but will allow them to be more confident when planning areas for crops.

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