Legislative reform in Ukraine and its implications for EU food industry

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In the past, Ukraine had a record of being blamed for non-compliance with international standards. On top of that, Ukrainian food legislation has been rather restrictive. But recent legislative updates which were largely prompted by the EU-Ukraine Association Agreement have brought about a huge change in Ukrainian food law, which may result in new export opportunities, as Katia Merten-Lentz of international law firm, Keller & Heckman, explains.

For decades, the main trading partners of Ukraine were CIS countries, with Russia being its main international market. As the food safety and quality control systems in these countries were similar in many respects, there was no urgency for significant legislative changes in the area of food law and many food safety requirements had not been revised for a long time.

This all changed when a growing amount of non-Ukrainian trade partners started urging the country to have Ukrainian food legislation aligned with international standards. Accounts of Ukraine’s accession negotiations to the WTO show that there were complaints from WTO members about burdensome government regulations causing damage both to foreign and domestic producers.

WTO accession

Ukraine’s accession to the WTO in 2008 accelerated further legislative changes directly impacting the food industry. In 2012, a study by the European Parliament highlighted that although Ukraine has been actively updating its legislation to a WTO-compliant system largely resembling that of the EU, implementation and enforcement of that legislation had not yet taken place.

This has also been recognized by the country which has expressed its commitment to bring the current legal framework “into full compliance with European requirements to ensure safety and quality of food products of a new generation”.

Association Agreement and DCFTA

In 2014-15, the food safety system modification process was sped up by political developments related to the signature of the EU-Ukraine Association Agreement, which has been fully in force since 1 September 2017.

However, most of the Association Agreement had already been operational by that time with many political and sectoral parts of the agreement being provisionally applied since 1 September 2014. Its section on trade, known as the Deep and Comprehensive Free Trade Area (DCFTA), has been provisionally applicable as of 1 January 2016.

The Association Agreement offered Ukrainian authorities a framework for an extensive harmonisation of legislation, including the one on food safety.
EU food safety concerns

Food safety is a key feature of EU policy on consumer protection and health. Strict import rules set by the EU with respect to food safety aim to ensure that all imports fulfil the same high standards as products from the EU itself. Against this background, the EU food industry as well as some members of the European Parliament have questioned on numerous occasions the safety of food from Ukraine.

These questions are legitimate as indeed there have been unfortunate incidents with exported Ukrainian food products, such as the detection of antimicrobial substances in bee honey of Ukrainian origin, which was exported to the Czech Republic.

After the problems were detected, the Ukrainian authorities suspended the export of honey. However, the very fact that such situations occurred has undermined the confidence of EU consumers and food business operators in Ukrainian food products.

Harmonisation of legislation

Encouraged by the perspective of having closer ties to the EU in the framework of the EU-Ukraine Association Agreement, Ukraine has introduced significant changes to the Ukrainian sanitary and phytosanitary regulation, recognising that food safety is one of its priorities.

Needless to say, changes brought by the amendments of Ukrainian legislation have a significant practical impact for European producers. A good example is the regulation on the use of food additives. In Ukraine, only additives which have been included into the State Register of Food Additives Allowed to be Used in Food are permitted for use in food and manufacture of food.

However, following amendments to the Law of Ukraine no. 771/97-BP, the State Register now also comprises additives which have been approved in the EU as safe for human consumption. That allows food additives compliant with Regulation (EC) No 1333/2008 to be regarded as permitted under the Ukrainian law.

Latest legislative updates

On 18 May 2017, the Ukrainian parliament adopted the Law of Ukraine no. 2042-VIII of 18 May 2017 “On the state control over compliance with the legislation on food, feed, by-products of animal origin, health and welfare of animals”, which has been developed with an objective to harmonise the Ukraine food safety system with the EU rules set by the Regulation (EC) No 854/2004, Regulation (EC) No 882/2004 and Regulation (EC) No 669/2009. The document contains in particular a set of requirements for the organisation of state control of food, feedstuff and animals by representatives of a single controlling authority, which will perform checks of food products - a necessary pre-requisite for Ukrainian exports to the EU. Importantly, the adoption of this law will introduce a system of control of food safety in Ukraine which is supposed to be similar to the European one.

The law is one of the obligations for Ukraine under the Association Agreement and its adoption has been positively seen by the European Commission. It is expected that the implementation of the law, which will enter into force on 4 April 2018, will facilitate the activity of food business operators.
Future perspectives

As indicated by the latest available Eurostat data, EU trade with Ukraine has increased since 1 January 2016, when the Deep and Comprehensive Free Trade Area (DCFTA) was first provisionally applied. With 37.1% of Ukrainian total exports in 2016, the EU has become the largest export partner of Ukraine. Yet, the increase in trade had been marked by relatively moderate values.

One of the achievements of the DCFTA application is a facilitated access of Ukrainian food business operators to the Union’s market. On one hand, this access is based on the conditions of compliance with stringent European requirements, which result in high costs of reforms for Ukraine and its food industry. On the other hand, compliance with the EU rules could help Ukrainian manufacturers gain other international markets. In fact, deep harmonisation of Ukrainian food and consumer safety legislation with the EU system could be a better stimulus for food trade growth than a decrease in tariffs.

For EU food manufacturers, the outlook also seems to be positive. As Ukrainian legislation has progressively been brought in line with EU standards, EU exporters will encounter less technical trade barriers. Similar regulation will help to reduce costs for EU food business operators and will create favourable conditions for investment. That having said, the risk of proper implementation and enforcement of new Ukrainian food legislation remains a concern for EU business.