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Investment Climate in Ukraine as Seen by Private Businesses

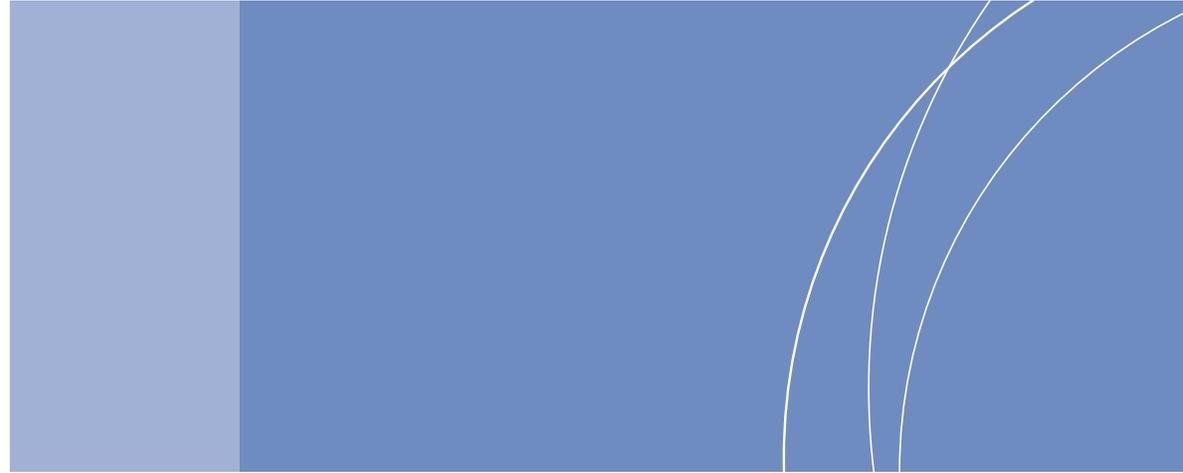
October 2009

Investment Climate Advisory Services in Europe and Central Asia



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Investment Climate Advisory Services in Europe and Central Asia



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The materials contained in this report are presented as an overview of results from a survey that was conducted in December 2008–March 2009 among managers and owners of about 2,000 enterprises and sole proprietors in Ukraine. The information in this report is presented in good faith for general information purposes. IFC, the World Bank Group, the Canadian International Development Agency (CIDA), the Agency for International Business and Cooperation of the Dutch Ministry of Economic Affairs (EVD), and the Swedish International Development Cooperation Agency (SIDA) shall not be held liable for any of the information contained herein.

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The report is available in Ukrainian and in English, in printed and electronic form. Electronic version of this report can be downloaded at: <http://www.ifc.org/Ukraine/bee>.



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Foreword and acknowledgements

IFC, with the support of Canadian International Development Agency (CIDA), the Agency for International Business and Cooperation of the Dutch Ministry of Economic Affairs (EVD), and the Swedish International Development Cooperation Agency (SIDA) presents the results of the eleventh survey of Ukraine's business environment and investment climate. IFC's Ukraine Investment Climate Project undertook the survey. Its objective was to assess the existing conditions for doing business in Ukraine in 2009 and to develop recommendations for improving them.

This report is based on the results of a survey of Ukraine's 360 individual entrepreneurs (sole proprietors) and of the managers of 1,673 legal entities that was conducted from December 2008 to March 2009. The survey covered 25 regions and seven key economic sectors. It presents detailed information about the realities of the business enabling environment that enterprises and individual entrepreneurs face. Policymakers and business people can use the survey's empirical data to identify ways of making binding constraints so that measures can be taken to improve the business environment and investment climate by making procedures more efficient and transparent.

During IFC's 13 years of involvement in improving Ukraine's business environment and investment climate, it has benefited from close interaction with numerous public and private institutions and international organizations that work in the country. The IFC Ukraine Investment Climate Project would like to thank the Parliament's Committee on Industrial and Regulatory Policy and Entrepreneurship, the office of the President of Ukraine, the Ministry of Economy of Ukraine, the State Committee of Ukraine for Regulatory Policy and Entrepreneurship, the State Fire Safety Department of the Ministry of Emergency Situations of Ukraine, and the State Committee of Ukraine for Labor and Industrial Policy. They have been crucial partners during the last several months of the project's work.

Numerous individuals and organizations contributed generously to the preliminary review of this report, including IFC staff in the Central and Eastern Europe region: Boris Divjak of the IFC Azerbaijan Investment Climate project, Vsevolod Payevskiy and Alexey Novikov of the IFC Uzbekistan Investment Climate project, Wendy Werner of the IFC Tajikistan Investment Climate project, Sanda Liepina, Christopher Miller, Sanjukta Mukherjee and Florentin Blanc from IFC Moscow office.

Kyiv, 2009

ABOUT IFC

IFC, a member of the World Bank Group, creates opportunity for people to escape poverty and improve their lives. We foster sustainable economic growth in developing countries by supporting private sector development, mobilizing private capital, and providing advisory and risk mitigation services to businesses and governments. Our new investments totaled \$14.5 billion in fiscal 2009, helping channel capital into developing countries during the financial crisis. For more information, visit www.ifc.org.

Ukraine became a shareholder and a member of IFC in 1993. As of October 1, 2009, IFC has invested about \$1.2 billion in 48 projects in such sectors as agribusiness, financial markets, construction materials, retail trade and services, energy, and infrastructure. IFC is also conducting an extensive advisory program in Ukraine. We have focused our advisory services on priority areas to improve the business enabling environment, strengthen financial institutions and the competitiveness of producers in key industries, and introduce new financial products. For more information, visit www.ifc.org/ukraine.

ABOUT THE INVESTMENT CLIMATE ADVISORY SERVICES OF THE WORLD BANK GROUP

The Investment Climate Advisory Services of the World Bank Group helps governments of developing and transition countries improve and simplify business regulations, attract and retain investments, helping clients foster growth and create jobs. It is funded by three World Bank Group members—the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the World Bank—and by several donor partners who collaborate with us through the multi-donor FIAS platform.

The findings, interpretations and conclusions included in this report are those of the authors and do not necessarily reflect the view of the Executive Directors of the World Bank Group or the governments they represent.

IFC UKRAINE INVESTMENT CLIMATE PROJECT

The project works to improve Ukraine's environment for business and investments, making it conducive to the development of small and medium businesses. Its objectives are to: (a) contribute to streamlining the regulatory framework for inspections, permits, technical regulations, insolvency and food safety systems, aligning them with international best practices; (b) monitor the businesses environment through representative surveys; and (c) conduct outreach, advocacy, and awareness-raising activities to ensure reforms are implemented.

ABOUT THE DONOR PARTNERS

The Canadian International Development Agency (CIDA)

The Canadian International Development Agency is a Canadian governmental agency whose mandate is to support sustainable progress in developing countries in order to reduce poverty and contribute to a more secure, equitable and prosperous world. One of its objectives is to work with countries in transition to stimulate growth through building self-sustainability among local population and mobilizing available resources. CIDA supports foreign aid projects in many countries around the world. For more information, please visit www.acdi-cida.gc.ca/index.htm.

The Dutch Agency for International Business and Cooperation (EVD)

The Agency for International Business and Cooperation is part of the Dutch Ministry of Economic Affairs. Its mission is to promote and encourage international business and international cooperation. As a government agency and a partner to private and public sector organizations, it aims to help them achieve success in their international operations. For more information, please visit www.evd.nl.

The Swedish International Development Cooperation Agency (SIDA)

The Swedish International Development Cooperation Agency is a government agency that reports to the Ministry for Foreign Affairs of Sweden. SIDA is responsible for most contributions of Sweden to international development work with the goal to improve the standard of living of poor people and eradicate poverty. For more information, please visit www.sida.org.



Glossary and abbreviations

GENERAL TERMS

The investment climate is a set of political, economic, social and technological forces that are largely outside the control and influence of a business and that can potentially have both a positive and a negative impact on the business and on their overall investment attractiveness. This report covers the impact of three key regulatory procedures on business operations and overall investment climate.

Enterprise (or company) – in this report “enterprise” refers to a legal entity. The term does not include sole proprietors.

Sole proprietor – an individual entrepreneur who owns an unincorporated business by him/herself. A person who solely owns a legal entity is not a sole proprietor under this definition.

Business means economic activities conducted legally with the purpose of earning a profit or providing other benefits. In this report “business” and “businesses” refer to both enterprises and sole proprietors collectively.

Economic activities are activities that business entities undertake to produce and sell output, perform work, or render services that can be measured in monetary terms.

The agricultural sector includes enterprises whose activities correspond to sections “A” and “B” according to NACE (Nomenclature Generale des Activites Economiques dans les Communautés Europeennes)¹.

The food processing industry includes enterprises whose activities correspond to section “DA” according to NACE. It also includes agricultural enterprises that process food in addition to agricultural production².

¹ http://ec.europa.eu/environment/emas/pdf/general/nacecodes_en.pdf

² http://ec.europa.eu/environment/emas/pdf/general/nacecodes_en.pdf.
Refer to the Summary of survey methodology for detailed description.

PERMITS

A **permit document** is a permit, certificate, approval, or the like that authorizes a business to perform certain business operations.

Permit-issuing authorities are executive power bodies, local governments and their officials, and enterprises, entities, and organizations that the law authorizes to issue permits.

Self-certification is a mechanism by which a business can acquire the right to start operations without obtaining a permit. It does this by notifying an administrator at a one-stop shop or an appropriate permit-issuing agency of its compliance with specific regulatory requirements. At the moment, the State Fire Safety Department of the Ministry of Emergency Situations offers self-certification.

The **"silence is consent"** principle allows businesses to start up without getting a permit back from the relevant permit agency. Once an entrepreneur submits all the necessary documents to obtain a permit, it is considered granted if he does not receive official rejections from the permit agency within 10 working days.

INSPECTIONS

Controlling authorities (inspections agencies) include executive power bodies and their local offices, local governments, and other bodies the law authorizes to perform state supervision (control) functions.

Control measures include examinations, inspections, revisions, supervision, product sampling and the like on the part of controlling bodies.

State supervision (control) refers to initiatives undertaken by the state authorities, authorized by the law, to monitor compliance of businesses with regulatory requirements. These activities are aimed at preventing violations that might pose risk on society and the environment.

State control system is an aggregate of relations regulated by law that arise between business entities and state supervision (control) bodies in the course of the state supervision (control) performed by the latter.

A risk-based inspection planning system is one that takes into account risk. It undertakes control measures more frequently in situations when risk is higher, and focuses more on higher-risk businesses.

A checklist is a unified inspection form that lists certain questions / issues to be inspected in accordance with legal requirements in a specific area of business operations.

TECHNICAL REGULATIONS (*according to Ukrainian law*)

Technical regulation means legal regulation of relations in the establishment, enforcement and observation of mandatory requirements for products and related processes, systems and services, and personnel. It also implies checking for compliance by means of conformity assessment and/or market supervision. (This and the following definitions are provided in accordance with the Law of Ukraine “On Standards, Technical Regulations, and Conformity Assessment Procedures”).

A standard is a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or the characteristics of activities or their results. Standards exist for products, processes and services. They are not mandatory, according to the Law of Ukraine “On Standardization.”

A **technical regulation** is a legal or a regulatory document approved as a law or by the Cabinet of Ministers of Ukraine that defines the characteristics of a product or its related processes or manufacturing methods. It also defines requirements for services, including relevant mandatory regulations.

Standardization refers to the system that governs the development, implementation, and use of standards.

A **conformity confirmation** (also known as a declaration of conformity or conformity certificate) is a document issued in response to the completion of conformity assessment procedures.

Conformity assessment is the process of providing evidence that requirements applicable to products, processes, systems, individuals, or authorities are fulfilled. Assessment is performed through testing, control, or certification.

Certification refers to the procedure whereby an appropriately appointed body certifies in documentary form, that products, quality systems, quality management systems, environmental management systems and personnel policies conform to legal requirements³.

A **certificate of conformity** confirms that products, quality systems, quality management systems, environmental management systems, and personnel policies conform to the requirements of a specific standard or another regulatory document specified by law.

Conformity declaration is a procedure in which a manufacturer or a person authorized by the manufacturer (hereafter also referred to as the manufacturer) confirms in documentary form that a product conforms to legal requirements, and assumes full responsibility for this conformity.

Internal control of production refers to conformity assessment procedures with which the manufacturer guarantees that specific products conform to relevant applicable regulation. The manufacturer marks each item with a national conformity mark and prepares a conformity declaration.

A **national conformity mark** is a unified mark used for marking products to show that they meet regulations. The individual or legal entity that applies the mark or is responsible for testing the product confirms that it complies with all relevant technical regulations and that all conformity assessment procedures that the regulations specify have been passed.

Market surveillance means continuous monitoring of products on the market for conformity with technical regulations. It also involves checking the appropriateness of the national conformity marking systems and for the completeness and reliability of information about products.

UkrCEPRO is the Ukrainian national product certification system.

³ According to the Law of Ukraine “On Conformity Assessment.”

DEFINITIONS OF EU TECHNICAL REGULATIONS TERMS⁴

Accreditation is a procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks.

Certification is a procedure by which a third party gives written assurance that a product, process or service conforms to specified requirements.

Conformity assessment is any activity concerned with determining, directly or indirectly, that relevant requirements are met⁵.

Essential requirements are requirements that represent the core of European Union law around which an effective policy has been developed in matters of safety, health and other issues for those areas covered by the New Approach Directives.

A **European Directive** is a legislative instrument within the European Union (EU) that is binding for Member States with regards to the objective to be achieved but that lets national authorities choose the forms and methods used to attain that objective within their domestic legal systems. The objective is agreed at the EU level.

A **European Standard** is a standard adopted by CEN/CENELEC that a nation must implement as a national standard, withdrawing conflicting national standards.

A **harmonized standard** is a technical specification adopted by European Standards Organizations that is developed under the mandate of the European Commission and/or European Free Trade Association, in support of essential New Approach Directive requirements.

A **standard** is a document, established by consensus and approved by a recognized body that provides for common and repeated use and establishes rules and guidelines for, or the characteristics of, activities or their results. Standards aim achieving the optimum degree of order in a given context.

Innovative activities refer to scientific, technological, organizational, financial, and marketing measures that aim at developing and implementing innovations. They include conducting scientific surveys or purchasing the results of such surveys, instituting new technologies, doing industrial design work, setting up facilities for manufacturing new products, implementing new manufacturing methods, procuring machinery, equipment, and other such assets, and making capital expenditures related to implementing innovations and performing marketing and advertising activities⁶.

⁴ European Committee for Standardization (CEN), <http://www.cen.eu/boss/glossary.asp>.

⁵ Activities related to conformity assessment include sampling, testing and examination, assessment, verification and assurance of conformity (supplier's declaration or certification), registration and approval or a combination thereof.

⁶ According to the State Statistics Committee of Ukraine's definition.

LIST OF ABBREVIATIONS

- ACAA** – Agreement of Conformity Assessment and Acceptance of Industrial Products
- BEEPS** – Business Environment and Enterprise Performance Survey
- CEN** – European Committee for Standardization
- CIDA** – Canadian International Development Agency
- CIS** – Commonwealth of Independent States
- CMU** – Cabinet of Ministers of Ukraine
- DB** – Doing Business Report
- EBRD** – European Bank of Reconstruction and Development
- EU** – European Union
- EVD** – Agency for International Business and Cooperation of the Dutch Ministry of Economic Affairs
- GDP** – Gross Domestic Product
- FAO** – Food and Agriculture Organization
- Fire Safety** – State Fire Safety Department of the Ministry of Emergency Situations of Ukraine
- FDI** – Foreign Direct Investments
- HACCP** – Hazard Analysis and Critical Control Points
- HoReCa** – hotels, restaurants and catering businesses
- IFC** – International Finance Corporation
- ISO** – International Standardization Organization
- LLC** – Limited Liability Company
- MMC** – Minimum Charter Capital
- NACE** – Nomenclature Generale des Activites Economiques dans les Communautés Europeennes – Statistical Classification of Economic Activities in the European Communities (now the European Union)
- OECD** – Organization for Economic Cooperation and Development
- SES** – State Sanitary and Epidemiological Service
- SIDA** – Swedish International Development Cooperation Agency
- SME** – Small and medium enterprise
- State Committee for Standardization** – State Committee of Ukraine for Technical Regulation and Consumer Policy
- Tax / Tax Authority** – State Tax Administration of Ukraine
- UAH** – Ukrainian hryvnya
- UN** – United Nations
- USD** – U.S. dollar
- USSR** – Union of Soviet Socialist Republics
- WB** – World Bank
- WTO** – World Trade Organization
- WHO** – World Health Organization



Summary of Survey Methodology⁷

Objectives of the study

This study's main objectives were to identify and measure the barriers to business growth in Ukraine as well as to diagnose what created them and formulate policy recommendations that will improve Ukraine's business environment and overall investment climate.

Table 1	Quick facts about the survey	
	Method	Face-to-face structured interviews
	Geography	All Ukrainian oblasts, including the Autonomous Republic of Crimea; all types of settlements
	Target population	447,500 enterprises and 998,500 sole proprietors that run active operations ⁸
	Sample	1,673 enterprises and 360 sole proprietors. Random sample, stratified by oblast, business sector, and number of employees
	Respondents	Top management of companies and individuals – sole proprietors
	Reference period	2008
	Fieldworks timeframe	December 2008 – March 2009
	Contact rate	48 percent of processed contacts were reached
	Cooperation rate	39 percent of the respondents reached agreed to participate
	Response rate	18 percent of processed contacts resulted in completed interviews

⁷ Please refer to Annex 1 for detailed description of survey methodology.

⁸ The procedure for constructing the sample was based on State Statistics Committee of Ukraine data as of January 1, 2007 (there were 438,000 private active enterprises at the time the sample was put together, according to the latest available data). The figure used during the analysis was actual as of January 1, 2008 (when there were a total of 447,500 private active enterprises). Since the State Statistics Committee does not provide data on active sole proprietors, this sample was built based on the findings of omnibus research undertaken in March 2006 (477,000 active sole proprietors). The results of the Ukraine Tax Compliance Cost Survey, conducted by the World Bank Group's Investment Climate Advisory Services, which became available in April 2009, were used for data analysis (998,500 active sole proprietors).

Value added

IFC performed the most recent comparable business survey for Ukraine in 2006. Newer data were needed to form a basis for future policy decisions and to estimate the impact of those initiatives implemented during 2006-2008.

Conventions and terminology used in the report

ENTERPRISES AND SOLE PROPRIETORS

For the first time in Ukraine, the IFC survey included sole proprietors among the sample. The survey treated sole proprietors independently of legal entities to allow for comparison with previous years, when the survey covered only legal entities. The analysis that this report presents differentiates between the two groups.

The term “enterprise” or “company” is used in this report to label legal entities and the term “sole proprietor” denotes an individual entrepreneur. A sole proprietor is an individual who owns an unincorporated business by him/herself. If a person is the sole owner of a legal entity, he/she is not a sole proprietor⁹. For procedures or regulations relevant to both legal entities and sole proprietors, the terms “businesses” or “business entities” are used.

THE AGRICULTURAL SECTOR AND FOOD PROCESSING INDUSTRY

Agriculture is one of the seven economic sectors used for stratification¹⁰. Since this sector is of a particular interest, it is presented as part of the sector-disaggregated analysis throughout the report.

A separate chapter covers food processing enterprises¹¹. These enterprises represent the next link of the food supply chain up from agriculture producers, and are part of the manufacturing sector. In this survey report, however, the “food processors” sub-sample also includes certain agricultural producers who practice food processing but are formally registered as agricultural producers.

The term “agricultural sector” therefore denotes agricultural producers and the term “food processing industry” denotes a sub-set of the sample that has been constructed partially from food industry enterprises that are part of the manufacturing sector and partially from agricultural producers that also process food. Neither group includes sole proprietors; both are composed of legal entities only.

⁹ <http://www.irs.gov/businesses/small/article/0,,id=98202,00.html>

¹⁰ The agricultural sector corresponds to sections “A” and “B” of NACE (http://ec.europa.eu/environment/emas/pdf/general/nacecodes_en.pdf). Other stratification sectors include manufacturing, construction, trade, hotels and public catering, transportation, and services. All seven sectors are mutually exclusive. Please refer to Annex 1 Survey Methodology, for detailed descriptions.

¹¹ The food processing industry corresponds to section “DA” of NACE (http://ec.europa.eu/environment/emas/pdf/general/nacecodes_en.pdf).

DIRECT COST CALCULATION METHODOLOGY

The report presents data on the total direct costs of particular regulatory procedures for average enterprises or sole proprietors that these procedures affected in 2008.

The total direct cost includes labor costs associated with the procedure and direct expenses (both official and unofficial).

The cited enterprise labor costs are based on survey data about the average salaries of employees, plus payroll charges of 37.5 percent¹². The cost of sole proprietors' time is based on the average 2008 salary as reported by the State Statistics Committee. It is therefore a conservative estimate.

The total cost to the private sector of compliance with various regulatory procedures was estimated by taking into account the number of active entities, the level of coverage that each procedure involves, the average number of times the entity undertakes the procedure annually, the number of employee workdays the procedure necessitates, labor costs, and average direct expenses; resultant total cost was then discounted by the average profit tax for both populations to derive the final estimates¹³.

The full time employees' equivalent of the total cost incurred by the private sector was estimated based on the average 2008 salary as reported by the State Statistics Committee, plus payroll charges (37.5 percent).

Exchange rate (UAH/\$)

U.S. dollar figures were derived from Ukrainian hryvnya (UAH) figures using the average weighted exchange rate for 2008 as reported by the National Bank of Ukraine (5.2672 UAH/\$)¹⁴.

¹² The rate of 37.5 percent is typical and includes the employer's payment to the pension fund and other social insurance funds.

¹³ Please refer to Annex 3 for detailed calculations of the total cost for the private sector of three procedures, performed separately for enterprises and sole proprietors. Data for 447,500 active private legal entities were used for the estimate. Source: State Statistics Committee of Ukraine. There were a total of 998,500 sole proprietors. Source: Ukraine Tax Compliance Cost survey conducted by the Investment Climate Advisory Services of the World Bank Group, 2009.

¹⁴ Source: http://www.bank.gov.ua/Statist/Statist_Data/Exchange_r.xls.



Executive Summary

- Implementation of key 2005 and 2007 laws on permits and inspections remains limited. Where implementation has progressed, the results are positive and entrepreneurs need less time in which to comply with regulations, such as permits and inspections. Nonetheless, a burdensome and overly prescriptive regulatory system remains a problem for Ukrainian businesses. The slow pace of reforms threatens the ability of Ukraine's businesses to compete in the international marketplace and to cope with the ongoing crisis.
- The existing technical regulations system is complex and costly for businesses, impeding their competitiveness and discouraging innovation. The Law of Ukraine "On Consumer Rights Protection" mandates compulsory standards for domestic companies, which hinders introduction of new products and consequently slows down domestic business development.
- Ukraine's accession to the World Trade Organization (WTO), expected to provide momentum for reform efforts, has changed the situation very little. Ukraine has not fulfilled commitments to harmonize its regulatory framework with WTO requirements, most notably in the areas of technical regulation and food safety.
- Overcoming these challenges can unlock potential growth in key economic sectors, including agriculture, but reform will require sustained commitment from policymakers and individual agencies. A renewed effort to meet Ukraine's WTO obligations must be a priority, and existing laws must see implementation.

This report of the World Bank Group's Investment Climate Advisory Services, prepared by IFC, continues the review of the Ukrainian business environment reform process, following the structure of the reports that IFC produced and delivered in previous years (2000, 2002, 2004, 2007)¹⁵. These reports function as reference points and benchmarks for recording progress in this critically important area.

The previous IFC reports showed that the existing system of government regulation and control was impeding sustainable economic development, particularly among small and medium enterprises (SMEs), and eroding Ukraine's competitiveness in the international marketplace. The regulatory inhibitors of the business environment and investment climate as identified by businesses include the taxation system, the permit regime, the inspection process, and technical regulations (such as mandatory certification and de facto mandatory standardization).

The 2007 survey report looked at these obstacles¹⁶ and established a list of 12 short-, medium-, and longer-term recommendations that, if implemented, could significantly enhance Ukraine's business environment and investment climate. Some of these key recommendations included, among others, introduction of a standard procedure for issuing permits, changing the approach to inspections by a stronger emphasis on promoting compliance with requirements through information, clearer definition of "permit" and a general transition to a risk-based regulatory system, as opposed to an attempt to control everything at all times.

Progress has been made against most of the 2007 short-term recommendations, although implementation is not consistent among all agencies. The medium-term and long-term recommendations have not yet been addressed. For a full list of the 2007 recommendations and their implementation status, refer to Annex 2.

The 2009 survey updates the analysis of the time and cost for businesses to comply with government regulations and examines the situation regarding implementation of both Ukraine's existing laws and previous IFC recommendations.

This survey focuses on the key regulatory obstacles, including permits, inspections, and technical regulations, in addition to a special focus on the food processing sector and agricultural enterprises, which was chosen for the following reasons:

- Agriculture and food processing together made up 20 percent of GDP and employed 10 percent of the country's workforce in 2007.
- The sector's export potential is currently underdeveloped. This is due primarily to the limited competitiveness of Ukrainian goods, failure to comply with international food quality and safety standards, and existing legal and practical barriers to trade.
- In recognition of the agribusiness sector's untapped growth potential, and of the crucial need to relieve Ukrainian business of unnecessary administrative burdens in preparation for economic recovery after the current financial crisis, the government of Ukraine has undertaken significant initial steps to reform the sector regulatory framework. It has found support in this work from the World Bank, the IFC, and the rest of the international community.

¹⁵ Previous reports are available through the IFC Ukraine Investment Climate Project's Web site: www.ifc.org/Ukraine/bee.

¹⁶ The IFC 2009 survey did not take into account the taxation system. The Ukraine Tax Compliance Cost survey conducted by the World Bank Group's Investment Climate Advisory Services analyzes the tax administrations burden on Ukrainian businesses. The report will be available on the same Web site in November 2009.

The 2009 IFC survey studied sole proprietors for the first time. The results are presented separately from the results for enterprises (legal entities). This was done to facilitate examination of the unique issues that sole proprietors encountered and to identify key regulatory burdens among this group.

Finally, the 2009 IFC survey also asked, for the first time, about the gender of business owners and managers¹⁷, with the objective of identifying gender-based differences in regulatory procedures and business structures and sectors.

The 2009 IFC survey looked at three regulatory procedures: permits, inspections and technical regulations because they continue to be some of the most burdensome procedures identified by businesses. Compliance with the taxation system is another area that is considered by businesses to be one of the highest barriers to business development in Ukraine. It is not, however, covered in this report. Because of its complexity and specificity, the tax administration burden has been analyzed separately by the Investment Climate Advisory Services of the World Bank Group in two surveys that assessed the cost of complying with taxation procedures to both enterprises and sole proprietors. The reports on Ukraine Tax Compliance Cost for enterprises and sole proprietors will be available in November 2009.

Key findings

Permit, inspection, and technical regulations systems remain major regulatory barriers to business development and steady growth. Despite a number of laws, decrees, and regulations that have been passed to address these issues over the past five years, implementation remains slow, leaving businesses to navigate an opaque and costly regulatory environment.

IFC estimates that enterprises and sole proprietors that underwent permit, inspection and technical regulations procedures in 2008 incurred a total cost of \$1.55 billion¹⁸ to comply with them. Given that these three are not the only regulatory procedures that entrepreneurs need to follow in order to start and operate businesses, it is clear that private businesses face significant cost in complying with regulations. To highlight the scale of the cost of permits, inspections and technical regulations procedures for the private sector, it is helpful to consider the full-time employee's equivalent of \$1.55 billion, which is about 275,000 people (Figure 1)¹⁹.

¹⁷ IFC performed gender disaggregated analysis of the data available through 2004 and 2006 surveys (providing a basis for comparison). Only the 2009 survey, however, asked specific gender-related questions.

¹⁸ Refer to Summary of Survey Methodology, Annex 1 (Survey Methodology) and Annex 3 (Costs Calculation) for a detailed description of assumptions and calculations.

¹⁹ The same as above.

Figure 1

The direct cost of complying with permit, inspection and technical regulations procedures incurred by Ukraine's private sector in 2008



■ Share of each of the three regulatory procedures for enterprises and sole proprietors in total cost.
 ■ Number of full time employees (equivalent of total cost).
 ■ Yearly estimated direct cost of the three regulatory procedures for private sector in 2008

The current economic crisis is exacerbating the effects of overregulation on the most vulnerable businesses, including small and medium sized enterprises. Even businesses in more developed countries are struggling to weather the current downturn. Ukrainian private enterprises are being particularly hard hit. They are dealing with market and liquidity challenges even as they spend time and money complying with national regulations. The government needs to streamline the regulatory environment and ease the compliance burden to address the needs of Ukrainian entrepreneurs during these difficult times.

This report contains immediate and medium-term recommendations for policymakers to take actions to improve the permit, inspection, and technical regulations systems. It also offers specific policy recommendations for improving regulations in the food processing sector.

PERMITS: PROGRESS IN IMPLEMENTING THE 2005 PERMIT LAW BUT MORE ACTION IS REQUIRED TO COMPLETE THE REFORM

Although some areas of the permit system have improved since 2006, the main finding is how little of the 2005 Law "On the Permit System for Business Activity" (the Permit Law) has been implemented among the various permit-issuing agencies.

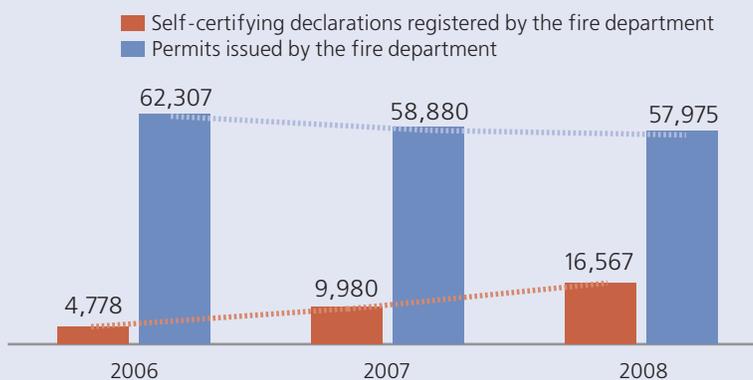
In some areas, significant reform has begun, but the private sector has yet to feel its results. The total number of permits and other approvals in Ukraine was reduced from around 1,200 to 140, for example. Despite this reduction, however, the average number of permits required by enterprises was the same in 2008 as it was in 2006.

Although implementation of the law remains slow, it has been shown to have an impact where it has been implemented. Notably, according to State Fire Safety Department data, the use of self-certification is roughly doubling every year (there were 9,980 self-certifications in 2007 and 15,667 in 2008), which suggests that it is popular among entrepreneurs who are aware that it exists. This should encourage further implementation of the Permit Law provisions.

Figure 2

According to State Fire Safety Department, the number of registered self-certifying declarations is doubling every year, while the number of permits is gradually decreasing

Number of registered self-certifying declarations and issued fire permits in 2006-2008



Source: State Fire Safety Department of Ukraine.

2008 saw a strong uptake in the use of self-certification, which costs businesses less in time and money

The self-certification procedure that the Fire Safety Department offers as an alternative to the usual permit process increased its coverage by 66 percent in 2008 compared to 2007. The procedure benefits both fire inspectors and entrepreneurs, reducing time spent and costs for both parties. Eighty-one percent of enterprises and sole proprietors that self-certified spent no money at all during the process. The procedure's popularity suggests that businesses support introducing self-certification to other agencies.

Figure 3

Self-certification takes much less time than the permit procedure

Total time in calendar days needed to prepare, submit necessary documents and obtain a fire permit or register a fire declaration in 2008



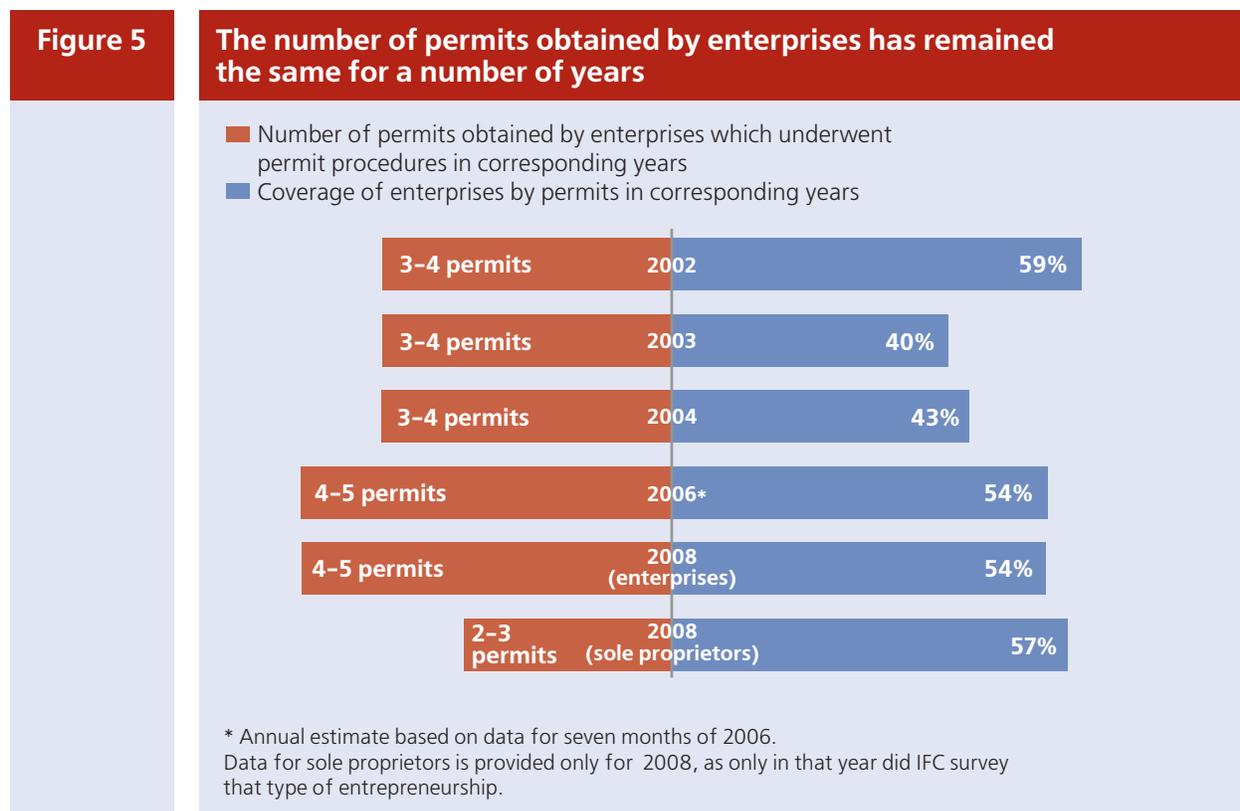
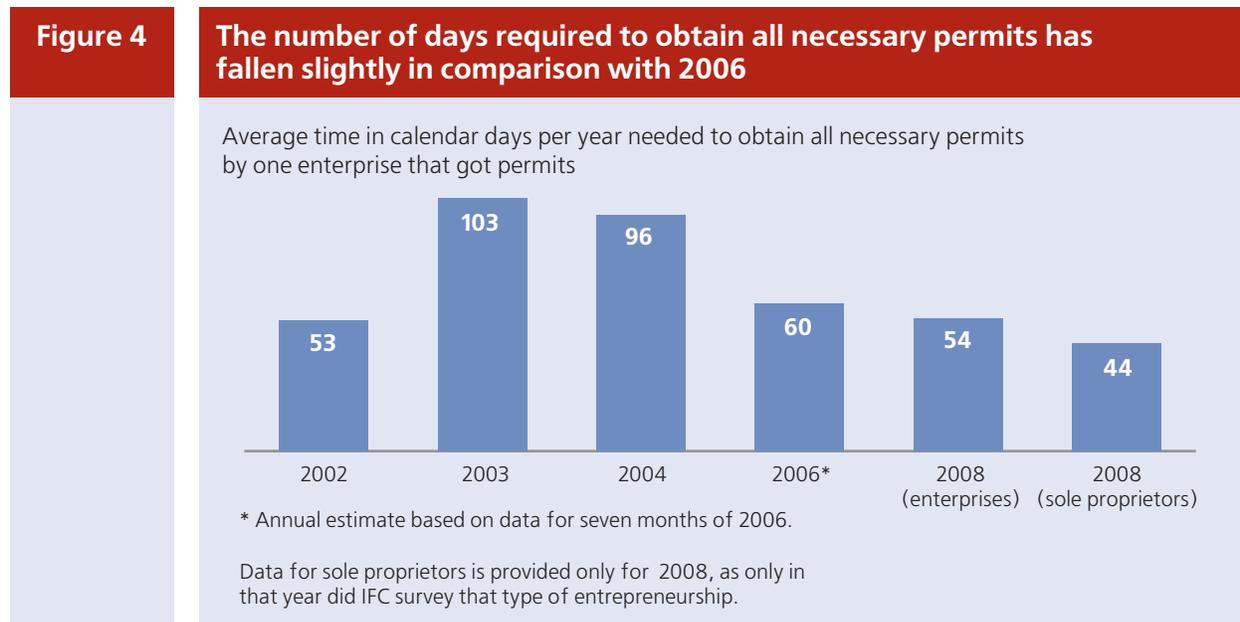
Source: Hereafter, the IFC survey is the source of data presented in the charts, unless otherwise indicated.

Box 1

The 2005 Permit Law calls for the introduction of a self-certification mechanism. **Self-certification** is a simplified permit procedure in which an entrepreneur assesses on his or her own whether his or her premises and/or documentation comply with legal requirements. The entrepreneur then submits a self-assessment declaration to the permit agency and within two to three working days receives either permission to startup or a rejection. To date, implementation of this provision has been extremely limited with only the State Fire Safety Department offering it to Ukrainian businesses.

The number of days required for sole proprietors to get all permits and the number of permits they obtain per year is quite large. This is all the more remarkable given that sole proprietors often pose little or no risk to society or the environment. Moreover, sole proprietors face slightly higher coverage with permits than enterprises do.

Though an enterprise needed the same number of permits in 2008 as it did in 2006, the number of days required to obtain them fell slightly



The survey indicates that the total cost of the permit procedure for the private sector was about \$570 million. The cost was more or less equally distributed between enterprises and sole proprietors.

The cost of obtaining permits was higher in construction than in any other sector, averaging \$3,010. The lowest direct cost of permit procedure was in the hospitality sector (hotels, restaurants, cafes, public catering), averaging \$750.

Introducing the "silence is consent" mechanism to the Permit Law in June 2009²⁰ is an encouraging step toward permit reform. If properly implemented, it could lower the amount of time and money businesses spend obtaining permits.

Box 2

"Silence is consent" allows businesses to start up without getting a permit back from the relevant permit agency. Once the entrepreneur submits all the documents necessary to obtaining a permit, that permit is considered granted if he or she receives no official rejection from the permit agency within 10 working days.

INSPECTIONS: SOME IMPROVEMENTS SINCE 2006 BUT KEY CHALLENGES IN IMPLEMENTING THE LAW ON INSPECTIONS REMAIN

Ukraine's legacy inspections regime, which consists of 85 controlling agencies, currently inspects a larger share of the nation's businesses, and with greater frequency, than the regime of any other post-Soviet country. In 2008, three fourths of all enterprises faced at least one inspection. On average, an enterprise was inspected more than five times and spent almost three weeks under inspection. Sole proprietors faced almost the same inspection burden. They faced an average of seven inspections annually and were under inspection for three weeks out of the year. These inspections did not address risk factors and in some cases had nothing to do with improving public safety.

The inspections system is particularly burdensome to businesses because of the difficulty of complying with complicated, and in most cases outdated, requirements. Nearly 80 percent of safety and labor protection requirements were passed prior to 1992, for instance, and in many cases entrepreneurs must pay even to get access to the requirements. One effect of this is the considerably high incidence of corruption in the inspection process. Twenty percent of enterprises and sole proprietors reported that unofficial payments were solicited from them in the course of inspections.

In 2007 Ukraine's government passed the Law "On Fundamental Measures of State Control over Business Activity" (the Law on Inspections) which addresses many of these problems. It calls for a risk-based inspections planning system and checklists, among other improvements. Implementation, however, remains slow. As of August 1, 2009, 42 of the 85 controlling agencies had started to introduce risk groupings and only six had approved lists of questions (checklists) to be used during inspections.

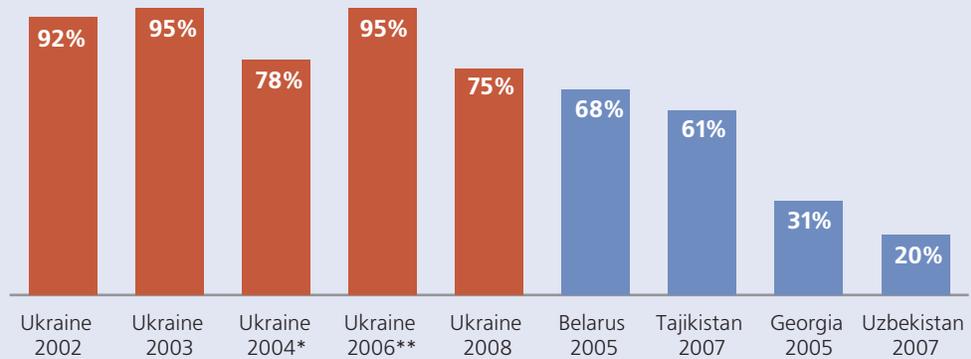
²⁰ Subsequent to this narrative on the amendments to the Permit Law (adopted on June 25, 2009) being written, the amendments in question were cancelled on October 9, 2009 by the Parliament of Ukraine.

The percentage of enterprises that underwent inspection fell by 21 percent and the average number of inspections fell by 15 percent compared with 2006. But Ukraine still fares unfavorably in this regard in comparison with other countries

Figure 6

Inspections coverage of enterprises in Ukraine versus that in other post-Soviet countries

% of inspected enterprises



*Inspections coverage could have been lower than usual due to political instability associated with the Orange Revolution, which disrupted the usual activities of state bodies in the last quarter.

**Annual estimate based on data for seven months of 2006.

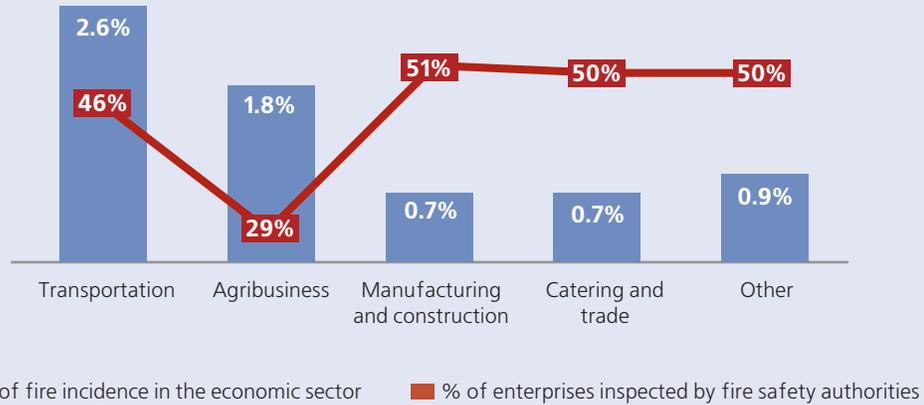
Source: IFC surveys for relevant countries in relevant years.

State inspections coverage of enterprises decreased from 95 percent in 2006 to 75 percent in 2008. This indicates that controlling agencies have started to implement the Law on Inspections. Despite these positive steps, inspected enterprises still faced inspection five to six times per year on average, leading to lost time and money.

The total direct cost of inspections for the private sector was about \$463 million. Enterprises carried roughly 40 percent and sole proprietors roughly 60 percent of this cost.

Figure 7

Frequency of inspections does not depend on potential risk



Source: IFC survey data for 2008; official information of the Ministry of Emergency Situations
<http://www.mns.gov.ua/firestat/2002.ua.php?m=B4&p=1#1>

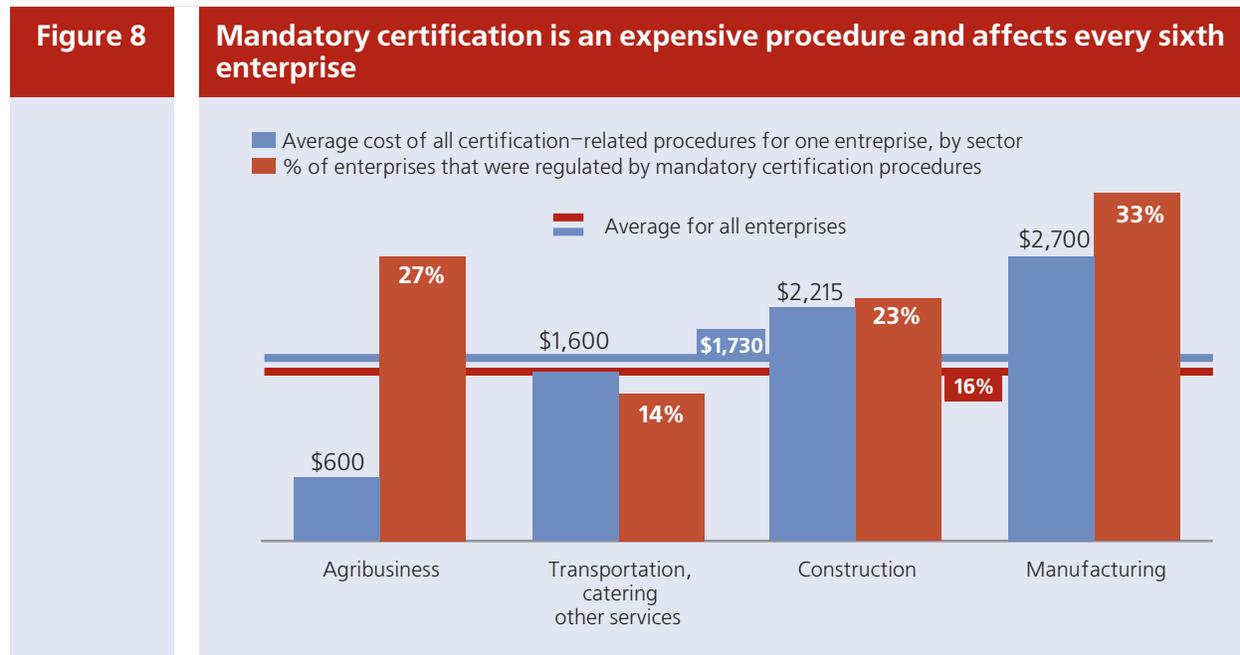
If implemented, the risk-based approach to inspections that the 2007 law calls for would allow controlling agencies to concentrate their resources on businesses with the greatest risk of non-compliance, thus increasing agency efficiency and freeing less-risky businesses from a significant, and unnecessary burden.

TECHNICAL REGULATIONS: AN OUTDATED SYSTEM THAT HARMS LOCAL COMPANIES AND DAMPENS INNOVATION

Technical regulations and mandatory product and service standards affect a significant percentage of Ukrainian businesses. While 41 percent of enterprises on average must comply with some form of technical regulations, in some sectors the figures are much higher. The manufacturing sector, for example, is highly regulated, with 67 percent of the products regulated by either mandatory standards or technical specifications. Registering a technical specification or standard is the only way businesses can introduce innovations into their products. Doing so, however, is very costly in terms of time and money. In 2008 an average enterprise registering technical specifications bore the average direct cost of \$2,960 and devoted more than 12 weeks to the chore.

In addition, the legislation requires Ukrainian products to conform without fail to standards. This puts Ukrainian manufacturers at a competitive disadvantage, as they are subject to a higher compliance burden than manufacturers in other countries. This is all the more of a problem because many of the existing standards are obsolete, most of them dating back to the Soviet era.

Mandatory certification procedures affect a significant percentage of Ukrainian enterprises, including those that other state agencies already regulate. This is redundant and takes a toll on enterprises' resources



In 2008 each enterprise which obtained mandatory certificates, incurred an average direct cost of about \$1,730 for all certification-related procedures. The highest costs were the manufacturing (\$2,700) and construction (\$2,215) sectors.

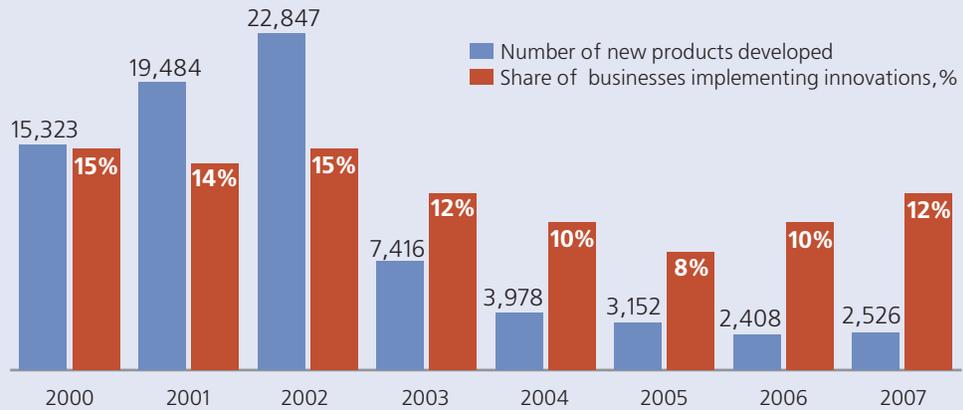
Enterprises incurred a total direct cost of over \$525 million for all technical regulations procedures in 2008²¹.

²¹ This figure does not include cost for sole proprietors. Cost estimates were not calculated for sole proprietors because coverage was small (less than two percent for each technical regulations procedure) meaning that little data was available.

The technical regulations burden not only imposes costs by making businesses comply with existing product standards, it also discourages innovation

Figure 9

There are fewer businesses implementing innovations²² and fewer new products are being developed than at the start of the decade



Source: the State Statistics Committee of Ukraine, <http://www.ukrstat.gov.ua/>

Nine times fewer new products were registered in Ukraine in 2007 than in 2002. Innovation has decreased annually at a steady rate.

FOOD PROCESSING: A HEAVIER REGULATORY BURDEN THAN IN OTHER SECTORS IS UNDERMINING POTENTIAL FOR GROWTH

The food processing sector provides a good example of what consequences an excessive regulatory burden creates for entrepreneurs. Food production and processing have the potential to contribute much more to Ukraine's economy, taking advantage of the country's abundant natural resources and favorable climate for agriculture. Yet the average growth rate of agricultural output over the past 15 years has been minus three percent. Among other barriers to development of the sector are several regulatory burdens including high rates of exposure to permits, inspections, and technical regulations requirements; limited understanding of internationally accepted food safety regulations; and an outdated food safety control system.

²² For details on innovations please refer to the Technical Regulations chapter of this report.

Figure 10

Food processing enterprises are covered with permit, inspection, and standardization procedures more extensively than are all businesses on average

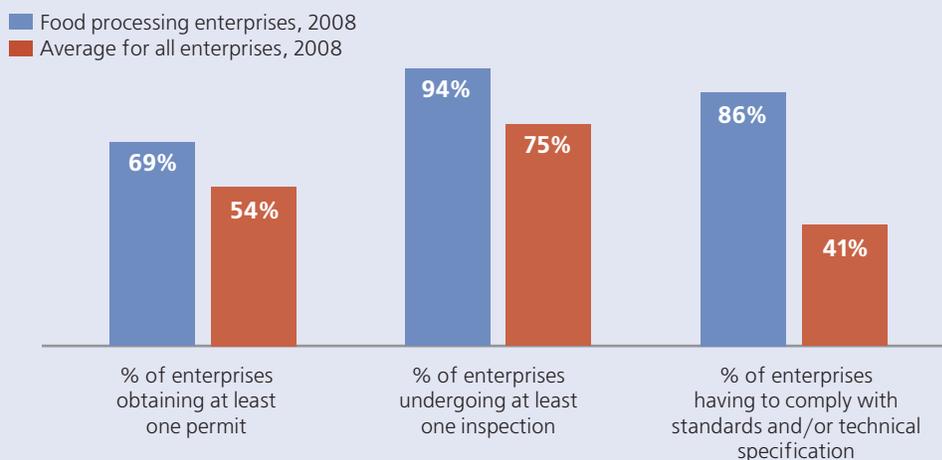
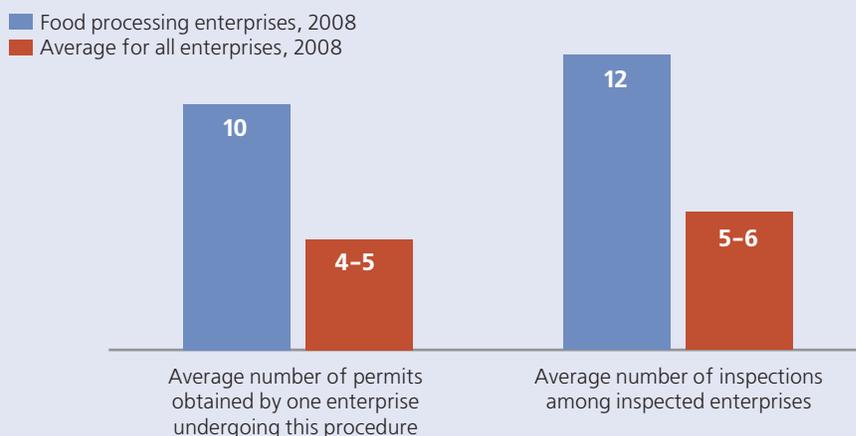


Figure 11

Food processing enterprises require more permits and undergo more inspections than do all enterprises on average



Some 94 percent of food processing enterprises underwent at least one inspection in 2008. Additionally, food processing enterprises face twice as many average inspections (12 versus 5-6) and their inspections last longer (28 days, as compared to the overall average of 14 days²³).

²³ In the EU and other developed countries, of course, food processing enterprises are always inspected more often than enterprises in other industries, in line with strict hygiene regulations and food safety requirements. The problem of excessive food controls in Ukraine is that several control authorities duplicate each other in this area, increasing by at least two to three times what is already a heavy regulatory burden for businesses in general.

More than 85 percent of food processing enterprises had to comply with mandatory standards and/or technical specifications in 2008, while only 41 percent of entities did on average. Such compliance costs time and money. On average a food processing enterprise spent up to three months (100 days) preparing and registering technical specifications, at a direct cost of about \$4,200. Most importantly, the current system of standards for food products in Ukraine contradicts the internationally accepted practice of having voluntary food product standards (with the exception of mandatory requirements only for labeling, packaging and testing methods in the EU).

Box 3

Safety regulations a burden for dairy industry enterprises

A 2009 IFC policy paper examined safety regulations throughout the dairy industry sector, studying the regulatory framework for the entire milk-processing value chain. The study looked at each stage of dairy production from raw milk production on farms through manufacture of a final product and shipment to a retail location. The study found that, on average, a typical milk-processing value chain needs to:

- comply with up to 120 permits, authorizations, and other regulatory requirements;
- comply with an average of 50 mandatory product standards for each dairy product produced;
- comply with up to 52 orders and mandatory guidelines from the SES, Ministry of Health, and other supervision agencies for each dairy product;
- comply with around 110 prescribed testing methods, 63 percent of which are not in line with international standards;
- receive repeated and overlapping inspections from several inspecting agencies.

This level of regulation has implications for both the finances and competitiveness of Ukrainian dairy producers. The total shared cost that enterprises throughout a typical value chain must incur to comply with these regulations is estimated at \$1.9 million. The overall burden is estimated to be 23 percent of the Ukrainian dairy sector's total annual turnover.

Source: Preliminary findings from an assessment of the overall administrative burden and economic impact of food safety regulation on dairy businesses in Ukraine, conducted by IFC in March–April 2009.

GENDER ASPECTS OF ENTREPRENEURSHIP

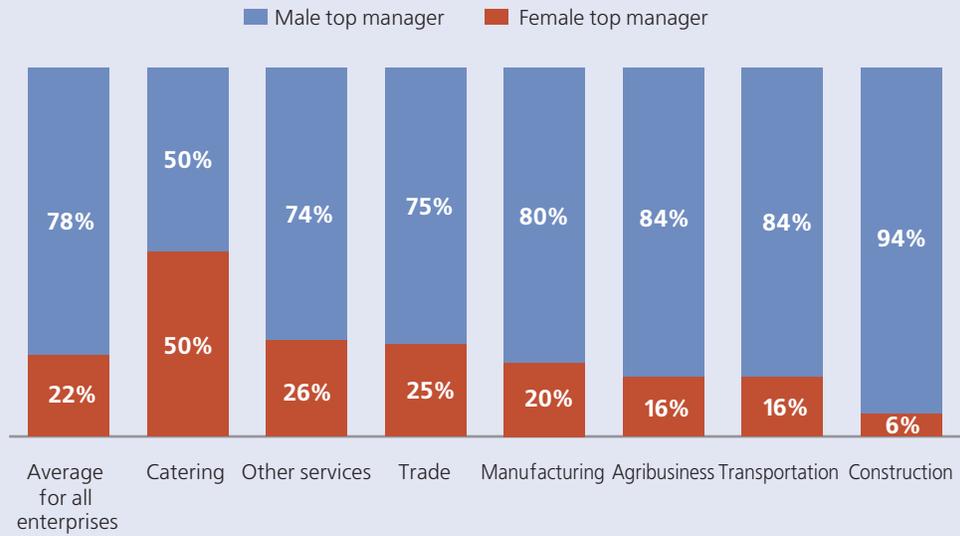
For the first time, the IFC survey included demographic information on the gender of the owners and top managers of the businesses surveyed. These data make it possible to determine in which sectors and types of businesses female entrepreneurs are most represented. Some of the key findings from the analysis included:

- Female presence among top managers varies quite significantly by sector from 6 percent in construction to 50 percent in hotels, restaurants, and catering. The trade and services sectors also have high rates of female management.
- Enterprises that have at least one woman among their owners are eight times more likely to hire female top managers. Almost half of enterprises with females among their owners are run by women (45 percent). At the same time, only 5.6 percent of companies owned solely by men are managed by women.

The report also analyzes differences in enterprise size, profitability, and exposure to permits, inspections, and technical regulations. The sector concentration of male and female entrepreneurs explains many of these differences.

Figure 12

Female-run enterprises are most represented in catering services and least represented in construction



Summary of key problems in and recommendations for the private sector

Problem	Recommendation	Impact
PERMITS		
The permit system is regulated by over 200 legal documents ²⁴ , apart from local authorities' documents. The total number of permits has not yet been defined.	Define a unified and exhaustive list of all permits at the legislative level, make it shorter by using a risk-based approach.	Approving the Law "On the List of Permits" will complete the permit system legal framework and streamline the permit procedure making it more transparent and clear. Reducing the number of permits will ease the business start up process by reducing the time and money that businesses must spend.
The existing permit system puts heavy regulatory burdens on businesses. Permits are excessive, and consume time and money. Permit-issuing agencies are also victims of the system, incurring heavy workloads that lead to large state budget expenditures.	Adopt self-certification as an alternative to permit process at the majority of permit-issuing bodies.	This will significantly simplify the permit process for businesses now at low risk. Self-certification will cut the amount of time and money that businesses spend in following traditional permit procedures. It will increase responsibility and accountability on the part of businesses, because an enterprise that self-certifies undertakes full responsibility for its operations.

²⁴ According to the legal database Liga Zakon.

Problem	Recommendation	Impact
INSPECTIONS		
<p>The Law on Inspections' mandate that agencies adopt a risk-based approach to inspections has seen only partial implementation. Forty-two out of 85 inspectorates have developed risk criteria and divided businesses according to the social risks they pose.</p>	<p>The remaining 43 inspections agencies should develop and adopt risk-group criteria (specifically indicating the frequency of inspections).</p>	<p>Inspectorates will be able to perform more thorough and focused inspections. Risk-focusing will help in planning, organizing, and conducting inspections; in implementing transparent mechanisms of state control; and in reducing the coverage, duration and frequency of inspections.</p>
<p>Businesses in Ukraine still suffer from excessive and overlong inspections. The inspection process is neither structured or focused on specific (potentially dangerous) issues. Only six of the inspections agencies have adopted specific lists of questions/issues that are to be checked (checklists) during inspection.</p>	<p>All 85 inspections agencies should develop and approve checklists.</p>	<p>Introducing checklists should standardize inspections, focus attention on potentially dangerous issues, and reduce the duration of inspections. Also, checklists will help businesses fulfill regulatory requirements, because enterprises will have access to them and this will make key requirements easy to understand.</p>
<p>Many inspections agencies' regulatory requirements date back to the Soviet era and are not aligned with the realities of today's business development (which is characterized by innovations, new technologies and materials and so on). For instance, almost 80 percent of all safety and labor protection rules and norms were approved before 1991. The sanitary, construction and fire safety spheres contain outdated requirements as well.</p>	<p>Inspections agencies should review their regulations, eliminating outdated requirements.</p>	<p>Revised and updated requirements will focus more on public and environmental safety and will correspond to up-to-date realities.</p>

Problem	Recommendation	Impact
TECHNICAL REGULATIONS		
Mandatory certification, which is a market mechanism in developed economies, in Ukraine has become an instrument of state control. Four hundred products are listed for mandatory certification ²⁵ , including low-risk products and those that are already regulated in other ways. Contrary to international practices, services and food products must also be certified. The mandatory system makes developing new products and implementing new technologies too cumbersome and costly.	The State Committee of Ukraine for Technical Regulation and Consumer Policy should reduce the scope of mandatory certification of selected goods and services.	Changes in this area would generate immediate, considerable cost savings for Ukrainian businesses, enabling them to invest in business development.
Standards in Ukraine are mandatory for all goods and many services; in most of the world, on the other hand, compliance with standards is optional. This is particularly harmful for the development of domestic producers.	Amend the Law "On Consumer Rights Protection" to make standards voluntary while retaining and strengthening compulsory safety and information requirements.	Such an approach to consumer protection and public safety is more effective and less expensive for the state. It is based on assessing the risk/safety level for each category of products/services.
The current state control system fails to effectively focus on real product safety issues and to ensure consumer safety. The majority of non-compliance cases identified by the State Committee of Ukraine for Technical Regulation and Consumer Policy during inspections mostly concern failure to comply with formal requirements rather than product safety.	To adopt the draft law "On Market Surveillance" which will introduce a new control system and ensure that finished products conform to key consumer safety requirements.	Such a state surveillance system will ensure consumer safety and reduce the excessive inspection burden on businesses.
The State Committee for Technical Regulation and Consumer Policy is responsible for developing and approving standards, issuing certificates, controlling producers, ensuring market surveillance, performing metrology and protecting consumer rights. This is a combination of responsibilities and authorities that creates conflict of interests.	The functions of the State Committee of Ukraine for Technical Regulation and Consumer Policy should be divided among four independent agencies responsible for (1) metrology, (2) standardization, (3) market surveillance and consumer rights protection, and (4) conformity assessment.	This will eliminate conflict of interests, ensure the transparency of the technical regulations system, and reduce corruption.

²⁵ Adopted by Order of the State Committee of Ukraine for Technical Regulation and Consumer Policy #28 of February 1, 2005 with subsequent amendments.



Introduction

Lack of systemic reforms has made Ukraine more vulnerable to the global economic crisis

1. General economic conditions in Ukraine: from recovery to recession
2. SMEs are a key part of the Ukrainian economy but the crisis is compounding already existing problems
3. A pro-business operating environment would help increase productivity and trigger investments
4. Ukraine's reform progress: more support, less regulation needed to spur lasting changes

1. General economic conditions in Ukraine: from recovery to recession

Over 2005–2007 Ukraine enjoyed a period of sustained economic recovery from the crisis of the 1990s and increased foreign direct investment, fuelled by strong domestic demand and the global price of steel

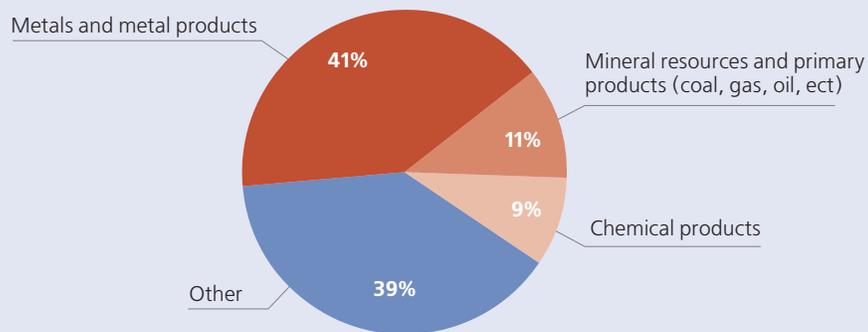
During the period of 2000-2007 GDP growth in Ukraine averaged 7.5²⁶ percent per year, but despite this, GDP in 2008 was still only 74.1 percent of 1990 GDP²⁷.

Economic recovery after the steep decline of the 1990s was limited by minimal improvements of the regulatory environment, low productivity increases, and incomplete structural economic reforms. The Ukrainian economy was growing mostly due to favorable external factors, such as a boom in global demand and prices, in particular for steel, a world credit bubble and a strong inflow of foreign capital combined with energy prices that remained below world levels. This last point was significant, since Ukraine's export revenues were highly concentrated in energy-intensive heavy industries (in particular in ferrous metallurgy and chemical industry).

Figure 13

Almost two-thirds of Ukraine's export revenues are concentrated in energy-intensive products and mineral resources

Export structure in 2008, share in total volume



Source: State Statistics Committee of Ukraine

These industries are the backbone of the Ukrainian economy, but their modernization is incomplete and they have remained highly energy-intensive, which harms their competitiveness. For instance, in 2005-2006, smelting one ton of Ukrainian steel (which is Ukraine's primary export commodity) required five times more energy than in the EU countries²⁸.

²⁶ State Statistics Committee of Ukraine.

²⁷ State Statistics Committee of Ukraine.

²⁸ "Economic growth and European perspective", speech of the Ukraine Representative to EU, Roman Shpek, at the Ukrainian Investment Forum of Adam Smith, May 22-24 2006.

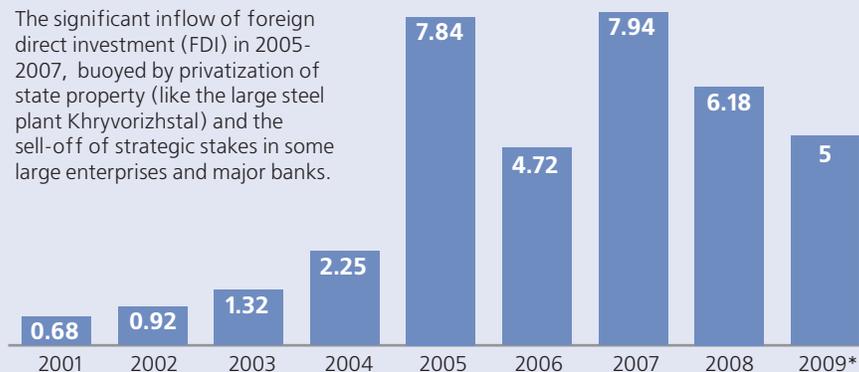
Ukraine's competitiveness overall has remained rather low, with the country ranking only 82 out of 133 countries in the World Economic Forum's Global Competitiveness Index²⁹. The level of innovations was also lower even than in the 1990s³⁰. Crucially, productivity growth started being slower than wages growth, making any catching up in competitiveness even more difficult³¹.

Privatization of state assets and inflows into the financial sector spurred foreign direct investment growth. The amount of green-field investment was low, however, confirming Ukraine's poor investment climate.

Figure 14**FDI inflow to Ukraine was largely due to sales of state assets**

Foreign direct investment, USD billion

The significant inflow of foreign direct investment (FDI) in 2005-2007, buoyed by privatization of state property (like the large steel plant Khryvorizhstal) and the sell-off of strategic stakes in some large enterprises and major banks.



Source: Ministry of Economy of Ukraine.

*Expert prognoses.

The Ukrainian economy was also fuelled by a rapid inflow of foreign credit to the corporate and banking sector (the amount rose about seven times over the last five years, reaching \$78 billion³²). This participated in clear overheating of the economy, which resulted in a rapidly worsening current account deficit, and acceleration of inflation up to 22.3 percent in 2008 (slowing down to 15 percent in the first half of 2009)³³. The sudden breakdown in the international financial markets at the end of 2008 caused credit markets to collapse and resulted in a liquidity squeeze in the Ukrainian economy.

²⁹ The Global Competitiveness Report 2009–2010, World Economic Forum.

³⁰ For details – see chapter “Technical regulations” of this report.

³¹ “Are Wages in Ukraine too Low? And What Could Be Done to Increase Them?” by Martin Raiser, World Bank, April 2007. http://siteresources.worldbank.org/UKRAINEEXTN/Resources/wages_in_ukraine_eng.pdf.

³² National Bank of Ukraine.

³³ National Bank of Ukraine.

The subsequent freeze in credit activity exacerbated worsening economic conditions. These included the Ukrainian currency's depreciating by more than 50 percent relative to the U.S. dollar in the fourth quarter of 2008. In the first three months of 2009, industrial production fell by 32 percent and construction by 57 percent³⁴, dragged down by the collapse in export demand and in credit availability. Key industries like metallurgy and machinery started to lay off personnel and real wages started to decrease (by 13 percent in January–February 2009) for the first time in the last 10 years³⁵.

As a result, in the first quarter of 2009, Ukrainian GDP fell by 20.3 percent year on year and was the worst indicator in Europe and CIS³⁶.

Figure 15**Real GDP fell by over 20 percent in the first quarter of 2009**

Real GDP change, %



Source: State Statistics Committee of Ukraine

*WB projections, Ukraine Economic Update, July 16, 2009

Ukraine's vulnerability to the world crisis was aggravated by lack of systemic regulatory reforms. Ukraine failed to complete structural reforms to strengthen the role of the private sector, especially small and medium sized enterprises (SMEs), to simplify state regulations, and to improve productivity and the overall business climate toward creating a solid background for future economic growth.

The government needs to take immediate actions to mitigate the effects of severe financial and economic downturn

The World Bank estimates that in 2009 Ukraine's GDP will shrink by 15 percent³⁷. The UN rates Ukraine, Kazakhstan and the Russian Federation as the three CIS countries mostly affected by the global recession and declining investment climate³⁸.

³⁴ State Statistics Committee of Ukraine. See Figure 80 in Annex 13.

³⁵ State Statistics Committee of Ukraine

³⁶ Press-release of Interstate Statistical Committee of the CIS.

³⁷ WB projections, Ukraine Economic Update, April 7, 2009.

³⁸ United Nations, World Economic Situation and Prospects 2009, <http://www.un.org/esa/policy/wess/wesp2009files/wesp2009.pdf>.

Box 4**Economic recovery needs to be assisted by structural reforms**

“Economic recovery needs to be assisted by structural reforms aimed at improving productivity. Ukraine’s 2010 and medium-term growth prospects depend heavily on its ability to improve productivity growth by removing regulatory obstacles for business entry, reducing regulatory operational costs, fostering fair competition...”

Source: World Bank, Ukraine Economic Update, July 16, 2009

Ukraine’s government urgently needs to develop and implement a comprehensive, interlinked, and consistent “crisis response” program of measures and reforms that will lay the foundation for the country’s recovery from the current economic downturn. Smarter regulation and improving the business environment and overall investment climate deserve special attention.

2. SMEs are a key part of the Ukrainian economy but the crisis is compounding already existing problems

Following the 1990s transition, private sector enterprises now make up the bulk of the Ukrainian economy, providing jobs and driving economic growth. There are about 450,000 active private companies, of which 43,000 are farms, and up to one million active sole proprietors currently operating in Ukraine. These figures refer to economically active businesses, and the number of registered (both active and inactive) legal entities and sole proprietors is significantly larger³⁹.

Box 5**Only half of registered sole proprietors are actively involved in entrepreneurship**

Only half of registered sole proprietors (which amounts to slightly under one million entrepreneurs) actively conduct their own businesses⁴⁰. The rest of them exist only on paper or use their entrepreneurial status for other purposes. For instance, individuals often obtain sole proprietor status for tax purposes and companies “employ” them (but formally they are not employees) to take advantage of the simplified tax regime that sole proprietors enjoy. Another reason so many sole proprietors are inactive is the rather complex procedure that regulates liquidation of sole proprietor status. People often prefer to pay a low fixed monthly tax rather than to spend months trying to liquidate their sole proprietorship status.

Source: Ukraine Tax Compliance Cost survey of sole proprietors, World Bank Group’s Investment Climate Advisory Services, 2009.

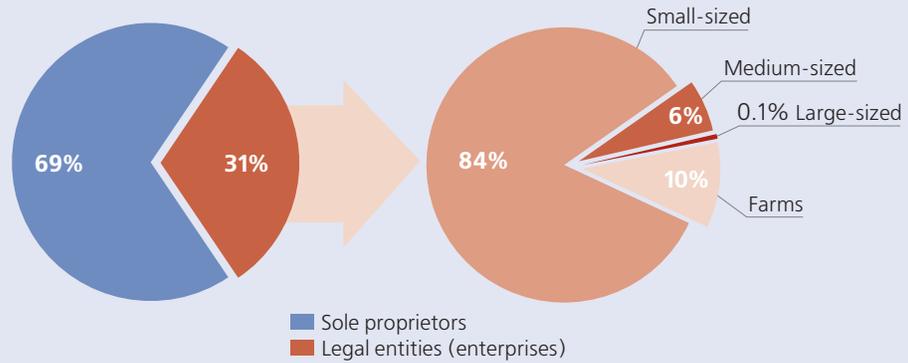
³⁹ There were about 2.2 million sole proprietors and 740,000 private legal entities registered as of 01.01.08 according to the State Statistics Committee of Ukraine (latest available data). Number of active legal entities is based on State Statistics Committee data, number of active sole proprietors was estimated according to the data of the Ukraine Tax Compliance Cost survey of sole proprietors, 2009, conducted by the Investment Climate Advisory Services of the World Bank Group.

⁴⁰ This number (998,500 entrepreneurs) does not include those sole proprietors, who are employed by other firms for tax simplifying reasons (regardless of their active / non-active status in 2008, since they do not perform entrepreneurial activity).

Figure 16

Small enterprises and sole proprietors form the vast majority of private businesses

Breakdown of active business entities by size



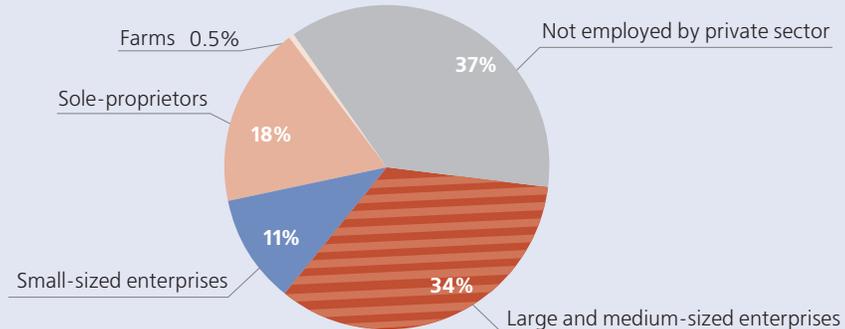
Source: Estimates based on the data from the national report "On the current status and development trends of entrepreneurship in Ukraine" by the State Committee of Ukraine for Regulatory Policy and Entrepreneurship, 2009 (taking into account the Law of Ukraine "On Amendments to Some Legal Acts of Ukraine Governing Entrepreneurial Operations" dated September 18 2008 №523-VI), Ukraine Tax Compliance Cost survey, World Bank Group's Investment Climate Advisory Services, 2009.

Ukrainian business provides jobs for two thirds of the country's economically active population: in 2007 legal entities and sole proprietors employed almost 13 million people. Large and medium-sized enterprises accounted for over a half (almost seven million) of all employees working in the private sector. Small enterprises and sole proprietors provided the remaining six million jobs.

Figure 17

Sole proprietors and small enterprises employ close to one third of the economically active population in Ukraine

Share of economically active people in 2007



Source: State Statistics Committee of Ukraine, National report "On the current status and development trends of entrepreneurship in Ukraine", State Committee of Ukraine for Regulatory Policy and Entrepreneurship, 2009 (taking into account the Law of Ukraine "On Amendments to Some Legal Acts of Ukraine Governing Entrepreneurial Operations" dated September 18 2008 №523-VI).

This ratio is similar to the one in the EU, where half of private sector jobs are created by micro and small businesses (in Ukraine – 43 percent of all private sector jobs are created by small-sized enterprises and sole-proprietors)⁴¹. Official statistics of the contribution of small-sized enterprises and sole proprietors to the Ukrainian GDP is unfortunately not available.

The crisis is particularly acute for SMEs. Many of them are experiencing liquidity shortages and have lost access to credit. Large companies often find it easier to refinance. Many SMEs have been forced to suspend operations as a result of their inability to find financing.

The key problem in Eastern Europe is to regain competitiveness while solving a huge public finance crisis at the same time. Most new EU member states already have large budget deficits. They are trying to find ways to make their products more competitive on the market without increasing public spending or reducing taxes. One possibility is to follow the example of South Korea in the aftermath of the 1998 Asian Crisis. That country's government instituted radical regulatory reform, reducing the number of permits, licenses, regulations, administrative procedures, and the like by 50 percent within the space of a couple of years. It thus increased the competitiveness of all of its businesses.

Western European governments have greater capacity to support their economies. Stimulus plans therefore constitute a large component of the crisis response, but regulatory reform is also important. Most countries are trying to find new areas for growth by removing some regulatory obstacles. France, for instance, recently made store opening hours more flexible. This could create jobs as stores decide to remain open on Sundays. Ukraine already has flexible opening hours: what is needed now is to reduce the bureaucratic steps that must be taken to open and run a business.

The problem in Ukraine is that the crisis is severe on all fronts: demand for traditional Ukrainian exports (steel in particular) has collapsed, external credit (which fueled the consumption boom of the last years) has dried up, and Ukraine's competitiveness was already low. Ukrainian businesses need to increase their productivity, by investing in newer technologies, in particular becoming more energy efficient – but they find it extremely difficult to do so right now due to the credit crunch. Making Ukrainian goods cheaper through devaluation has already happened: this can be no long term remedy, just a short term boost, and further devaluation would have many adverse consequences (increased inflation and difficulty in reimbursing loans in foreign currency being some of them). State finances are in a very difficult position, therefore any kind of stimulus through state spending is unlikely to be possible. In this situation, one of the few obvious ways of helping businesses weather the crisis is to reduce the regulatory barriers that increase the cost of doing business in Ukraine, and thus the price of Ukrainian goods and services, making them less competitive.

⁴¹ See Figure 83 in Annex 13.

3. A pro-business operating environment would help increase productivity and trigger investments

In 2009 IFC estimated the effects of the existing regulatory environment and of the current economic crisis on the revenues and profits that businesses generate. It also compared the effects of each. Entrepreneurs were asked to hypothesize what their revenues and profits could be if there were no crisis and if the regulatory environment were conducive to business development. The responses were particularly striking: Ukrainian businesses admitted that the existing regulatory environment could have the same negative effect on their profitability as the economic crisis. This could also mean that up to 20 percent of the private sector profitability is eaten up by ineffective regulations.

Obviously, such answers should not be taken at face value, and estimating potential profits in a changed situation is notoriously difficult, whereas the crisis impact is fully real and can be measured. These figures, however, give an indication of how serious entrepreneurs consider the regulatory problem to be.

Table 2	Ukrainian businesses estimate that the existing regulatory environment has a negative effect on their profitability comparable to that created by economic crisis	
	What would your profit and revenue be in 2008 if there were no economic crisis?	
	Company revenue would be 25% higher	Company profit would be 20% higher
	What would your profit and revenue be if the overall business climate (state regulations) were conducive to business?	
	Company revenue would be 20% higher	Company profit would be 20% higher

For a number of years now, IFC surveys have shown that businesses view a stable set of regulatory procedures as barriers to their sustainable development. At issue in particular are the existing taxation system, permit procedures, inspection regime for businesses and technical regulations procedures (including mandatory certification and compliance with de facto mandatory standards).

Figure 18**Most burdensome regulatory procedures as seen by businesses**

% of entrepreneurs view these procedures as obstacles for their business development



Source: IFC Surveys data for 2004-2006.

Box 6**Compliance with tax, permit-issuing, inspections and technical regulation procedures is too costly for private sector of Ukraine**

According to the Ukraine Tax Compliance Cost survey carried out by the World Bank Group's Investment Climate Advisory Services, the annual tax compliance burden for all Ukrainian enterprises was \$1.16 billion in 2007. Sole proprietors spent up to \$370 million on complying with taxes in 2008, according to the same survey. Compliance with permits, inspections and technical regulations cost enterprises and sole proprietors \$1.55 billion in 2008⁴².

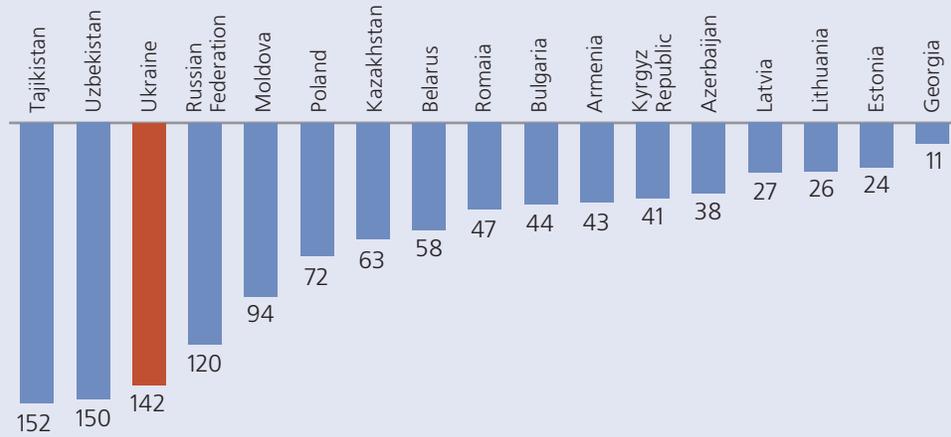
Source: Ukraine Tax Compliance Cost survey, World Bank Group's Investment Climate Advisory Services, 2009; data of IFC 2009 survey.

Ukraine's international rankings reflected these unfavorable business development conditions. For instance, the IFC-World Bank "Doing Business 2010" report (which analyzes regulatory conditions for starting, doing and closing business worldwide according to 10 criteria) ranks Ukraine 142 out of 183 countries surveyed. Ukraine's regulatory system is rated as one of the most burdensome in Eastern Europe and the post-Soviet zone.

⁴² Refer to Annex 1 (Survey methodology) and Annex 3 (Cost Calculation).

Figure 19

Ukrainian business regulations are among the most burdensome in Eastern Europe and among CIS countries



Source: IFC, World Bank "Doing Business 2010"

For instance, the Ukrainian tax administration system for businesses is ranked as the second burdensome in the world. With 736 hours per year needed to undergo all necessary procedures to pay 147 tax payments, Ukraine is at the bottom of 181 country followed only by Venezuela and Belarus.

Box 7

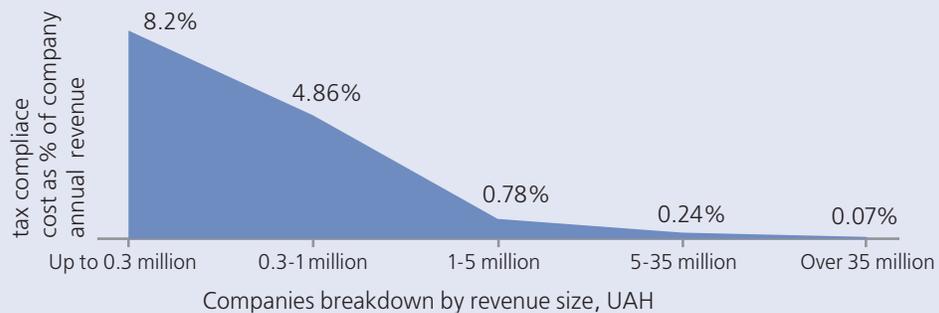
The complexity of complying with Ukrainian tax legislation increases the tax burden for small companies

Ukrainian tax regulations significantly affect business operations, especially for small enterprises. A company's tax burden includes not only the actual taxes, but also the time and money used for paying them.

The actual expenses connected with paying taxes are larger for large companies, but the relative costs of tax compliance are much higher for small enterprises.

The smaller the company's revenue, the heavier tax compliance burden it suffers

Tax compliance cost as a share of company revenue in 2008



Source: Ukraine Tax Compliance Cost survey, World Bank Group's Investment Climate Advisory Services, 2009

The permit-issuing regime also ranks high among barriers to business development in Ukraine. *“Doing Business”* ranks Ukraine’s construction permits system as the third worst in the world. To obtain all permits to build a warehouse in Kyiv, a company has to complete 30 procedures, which takes 476 day⁴³.



As a result of excessive bureaucratic interference, corruption is a significant problem for businesses in Ukraine. According to Transparency International’s Corruption Perception Index, Ukraine (together with Nicaragua, Pakistan and Comoros) ranked 134 among 180 countries⁴⁴.

The IFC surveys indicate that every year businesses admit having had to make unofficial payments to speed up the process to obtain a permit or certificate, register product standards, pass inspections. Every third surveyed enterprise in Ukraine reported referring to “unofficial ways” of solving issues with state officials.

⁴³ IFC, World Bank “Doing Business 2010” www.doingbusiness.org.

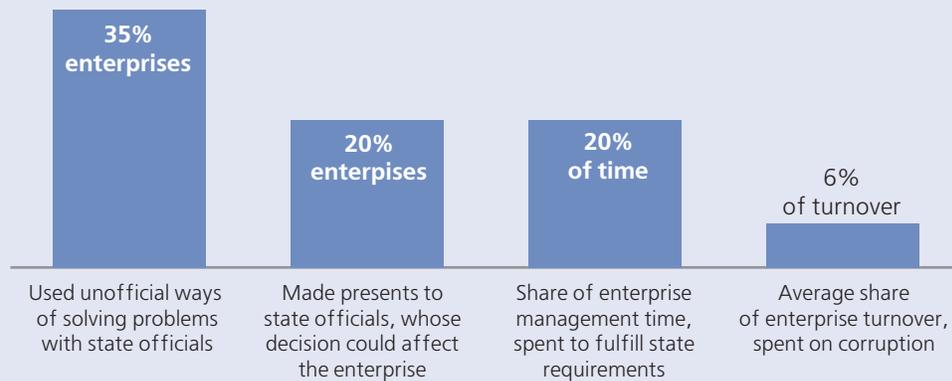
⁴⁴ Transparency International, corruption perception index, 2008. Refer to Figure 81, Annex 13.

In 2008, the so-called “corruption tax” (the share of turnover, spent on unofficial payments) added up to about six percent of the annual revenue of an average Ukrainian enterprise. Meanwhile, 20 percent of management time was spent on dealing with various “unofficial ways” of solving problems with state officials in 2008.

Figure 21

Corruption is an integral component of the Ukrainian business environment

Indicators of corruption in 2008



According to the Business Environment and Enterprise Performance Survey (BEEPS) 2008, every second entrepreneur considered corruption to be a major constraint to doing business in Ukraine⁴⁵.

Box 8

Bureaucracy generates corruption

“To start a business in Ukraine, you need to pass through dozens of offices, obtain a stack of different documents. But it is possible to shorten this marathon through the corridors of the state office buildings by using bribes... It is a game with no rules on the market: bureaucrats require bribes in nearly each office.

They [entrepreneurs] literally bring money in boxes: only cash is accepted... It all amounts to a sad story: people borrow money from each other for bribes, businesses stop running, no one can pay their debts and there are no obvious prospects...”

Source: «Ukraine’s Brand – Bureaucracy», «Glavred» magazine, #30, July 27 2009.

⁴⁵ Business Environment and Enterprise Performance Survey (BEEPS) 2008, World Bank, EBRD.

As a result, one third of Ukraine's economy remains in the shadow⁴⁶.

Box 9**Ukraine shadow sector varies from 40 to 70 percent**

"The structure of the illegal economy is rather complicated, so the estimated size of the shadow sector [of Ukraine] varies from 40 to 70 percent".

Source: National report "On the current status and development trends of entrepreneurship in Ukraine," by the State Committee of Ukraine for Regulatory Policy and Entrepreneurship, 2009

Ukraine is outperformed by its more reform oriented neighbors

Ukraine is not the only country that inherited the legacy of soviet-type legal and regulatory systems. But despite difficulties other countries are moving forward adapting and simplifying their regulations. Ukraine continues to lag behind its neighbors in the effort to improve investment-friendliness. The issue is not so much to know what needs to be done, but has more to do with an apparent lack of will or of urgency (or both) to bring about the reforms necessary in order to start moving Ukraine up the ladder of business-friendly nations.

Box 10**The experience of neighbors: top-reformers**

Azerbaijan's public credit registry enhanced access to credit information by giving banks online access to the database, providing more data on borrowers, and introducing penalties for banks that send late or incorrect information. The time required to clear goods and get them across borders was shortened by regrouping various agencies into a single customs service window.

Areas of Reform: Getting credit (information), Trading across borders

Rank in Doing Business 2010: 38

The **Kyrgyz Republic** eased the process for getting construction permits by streamlining the fee structure, introducing a risk-based system of approval and building control, allowing low-risk projects to conduct an internal building control process, and simplifying the process for obtaining utility connections. Requirements relating to redundancy dismissals and worker reassignment were eased. Access to credit was enhanced by making secured lending more flexible and allowing general descriptions of encumbered assets and of debts and obligations. In addition, amendments to the Civil Code provide for automatic extension of security rights to proceeds of the original assets. The tax burden on businesses was eased by reducing the rates for several taxes. Surveying and notarization requirements were made optional for property registration, and business start-up was eased by eliminating the minimum capital requirement, reducing the registration time, and abolishing various post-registration fees and the need to open a bank account before registration. The elimination of six previously required documents and the simplification of inspection procedures has sped up trading across borders.

Areas of Reform: Starting a business, Dealing with construction permits, Employing workers, Registering property, Getting credit (legal rights), Paying taxes, Trading across borders

Rank in Doing Business 2010: 41

⁴⁶ Ministry of Economy of Ukraine, analytical note "Tendencies of the shadow economy of Ukraine in 2008." See Figure 84 in Annex 13.

Belarus eased the process for getting construction permits by simplifying approval processes. Restrictions relating to redundancy dismissals were eased by raising the threshold for prior notification requirements. Tax payments were made more convenient through increased use of electronic systems—reducing tax compliance times—while lower ecological and turnover tax rates and a reduction in the number of payments for property tax reduced the tax burden on businesses. Property registration continues to improve, with faster processing and elimination of the requirement for notarization. Business start-up was eased by simplifying registration formalities, abolishing the minimum capital requirement, limiting the role of notaries, and removing the need for a company seal approval. Implementation of a risk-based management system and improvement of border crossing operations reduced transit times for trade.

Areas of Reform: Starting a business, Dealing with construction permits, Employing workers, Registering property, Paying taxes, Trading across borders

Rank in Doing Business 2010: 58

Source: IFC, World Bank “Doing Business 2010”.

4. Ukraine's reform progress: more support, less regulation needed to spur lasting changes

The overall outlook regarding new legislation adopted in 2007-2008 is not encouraging: no new laws supporting business development were passed. Only in June 2009 was the draft law "On Amendments to Some Laws to Support Entrepreneurial Activity" finally adopted⁴⁷. This draft law made essential changes to three laws: "On the Permit System for Business Activity," "On Licensing," and "On Companies."

Table 3	Key provisions of the draft law of Ukraine on "On Amendments to Some Laws to Support Entrepreneurial Activity"
	<p>1. Amendments to the Law On Companies:</p>
	<ul style="list-style-type: none"> • Minimum charter capital of the limited liability company (LLC) is reduced from 100 minimum salaries to one (approximately from \$8,300 to \$83).
	<p>2. Amendments to the Law On Licensing:</p>
	<ul style="list-style-type: none"> • The list of licensed types of activities is shortened by eight activities;
	<ul style="list-style-type: none"> • All licenses should be issued without term of validity (except those fixed by the Cabinet of Ministers, in which a case, the term of validity should not be less than five years).
	<p>3. Amendments to the Permit Law:</p>
	<ul style="list-style-type: none"> • A precise new definition of permits is provided;
	<ul style="list-style-type: none"> • All permits (with the exception of certain permits mentioned in specific laws) should be issued within 10 days;
	<ul style="list-style-type: none"> • The "silence is consent" mechanism is introduced, meaning that if an applicant does not receive either a positive or negative response from the permit issuing office, the permit is considered granted.

To estimate the potential influence of the reform on the decision to start a business, IFC conducted a small survey⁴⁸ to analyze how the reduction of charter capital of the limited liability company (LLC) could influence the growth of new businesses.

The IFC survey showed that the 100 times reduction of minimum charter capital to start an LLC is expected to strongly increase the number of new business start-ups. It is estimated that the number of actively operating enterprises (of all legal forms) could grow by up to 10 percent reach-

⁴⁷ Subsequent to this narrative on the draft law "On Amendments to Some Laws to Support Entrepreneurial Activity" (adopted on June 25, 2009), the draft law in question was cancelled on October 9, 2009 by the Parliament of Ukraine.

⁴⁸ Gfk-Ukraine conducted the survey (omnibus) among Ukraine's adult population in March 2009. The sample included 1,000 individuals aged 15-59 years old and was representative of age, sex, rural/urban location, and size of settlement. Sampling was based on probability and random route selection. Interviewing was done face-to-face at the respondent's residence. The survey indicated that the adult population would register more businesses if LLC capital requirements decreased.

ing the rate of 8.4 enterprises per 1,000 population⁴⁹. This is in comparison with four percent “baseline” increase, which represents “status quo” with current level of minimum charter capital (see Figure 23)⁵⁰. According to Doing Business 2009, reduction of minimum charter capital (MCC) in different countries led to increase in new registration from 13 to 81 percent⁵¹.

Box 11**Experience of other countries**

After Madagascar reduced its minimum capital requirement by more than 80 percent in 2006, the rate of new registrations jumped from 13 to 26 percent.

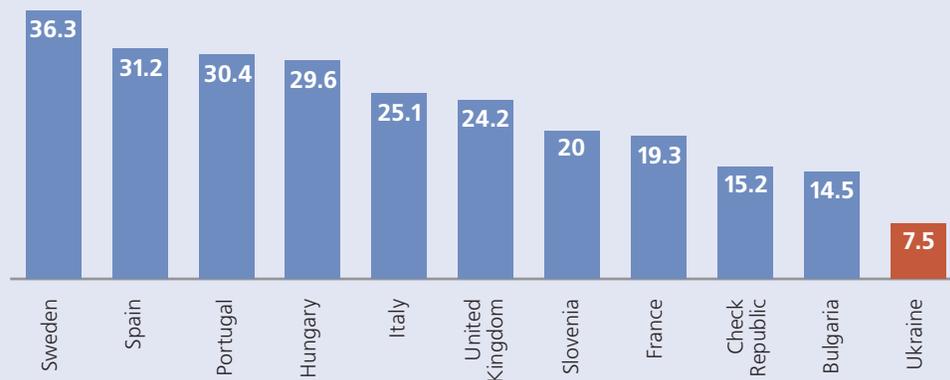
After Tunisia reduced its requirement, new registrations increased by 30 percent between 2002 and 2007. That encouraged the country to abolish it altogether in 2008. A reduction in the minimum capital requirement was followed by an increase in new company registrations by 55 percent in Georgia and 81 percent in Saudi Arabia.

Source: IFC, World Bank “Doing Business 2009”.

Comparison with European countries shows that there is an ample room for growth in the number of active enterprises in Ukraine. Currently Ukraine is far behind all European countries in terms of the number of actively operating enterprises per 1,000 people. The gap is evident even taking into account the huge differences in investment climate.

Figure 22**Ukraine lags behind European countries in terms of the number of actively operating enterprises**

Number of active legal entities (excluding sole proprietors) per 1,000 people, 2006*



Source: EUROSTAT
(http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/data/database),
State Statistics Committee of Ukraine
*Sectors “C” to “K” according to NACE

⁴⁹ For purposes of comparison with EU countries, the agriculture, health, and education sectors have been excluded from the total number of active private enterprises. EU data accounts for sectors “C” to “K” according to NACE – Statistical Classification of Economic Activities.

⁵⁰ Due to limited available data, and uncertainties around economic development indicators, the estimates were made according to the following three scenarios: “baseline” (the number of enterprises will remain at the level of the first six months of 2009, no changes are expected to occur in the near future); “low” (the estimate is based on historical ratio between the number of new LLCs registrations and the size of the charter capital); and “high” (the estimate is based on omnibus survey tasked to register any changes in an intent to form an LLC before and after the reduction of charter capital requirement). The estimated level of growth in the number of active enterprises is 4 percent, 6 percent and 10 percent respectively.

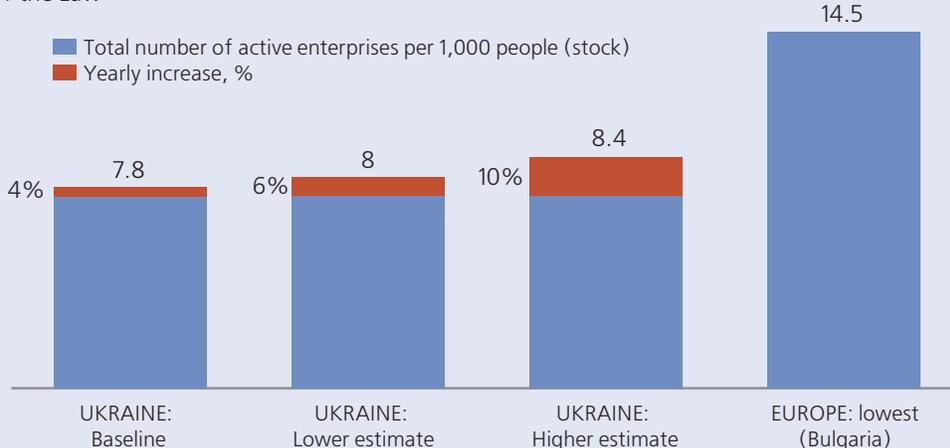
⁵¹ IFC, World Bank, “Doing Business 2009”.

These data show that even taking the lowest indicator for Bulgaria, the number of active enterprises in Ukraine is far too low and, under favorable conditions, should double, resulting in about one million active enterprises as opposed to current 450-500 thousands.

Figure 23

Reducing the charter capital requirement is expected to increase the number of active enterprises⁵²

Estimated yearly increase in the number of active enterprises in Ukraine after adoption of the Law*



Source: IFC estimates based on omnibus Survey data, March, 2009; State Statistics Committee of Ukraine; EUROSTAT.

*2006 data is used as benchmark

Some other amendments to existing laws have been adopted as well, such as the “Amendments to Some Legal Acts Governing Entrepreneurial Operations”. These changed the existing definitions of small and medium enterprises, harmonizing them with EU standards. But no new laws beyond that addressed barriers to business development, such as permits, inspections, and technical regulations. Regulatory reform activities centered on implemented laws that had been passed earlier, such as the Permit Law (passed in 2005) and the Law on Inspections (passed in 2007).

The implementation of the Permit Law, however, is proceeding very slowly. Despite almost four years having passed since the law was adopted, the permit authorities have not implemented all of its norms. Only one permit agency, for example, the State Safety Fire Department, has introduced the self-certification procedure that gives business a permit-free option. Other agencies seem reluctant to ease the permit burdens for Ukrainian businesses.

A number of bylaws were adopted with the goal of implementing the Law on Inspections. Among them are 38⁵³ Decrees of the Cabinet of Ministers of Ukraine that divide businesses into risk-groups and establish inspection periodicities for the three groups. Such legal progress in inspection reform is welcome, but the overall reform rate and pace of progress remain too slow.

⁵² To enable comparison with EU countries, the total number of active enterprises covers sections “C” to “K” according to NACE (i.e. excludes agriculture, health and education sections). For similar purpose, the 2006 data on the total number of active companies is used, being the latest available data provided by Eurostat. The level of growth was estimated based on the data available for the first six months of 2009. It is shown along with 2006 data to enable demonstration and comparison.

⁵³ as of August 1, 2009.

No measures that would improve the technical regulation system to align it with the EU's have been adopted since the IFC survey 2007 was conducted. Ukraine's accession to the WTO in May 2008 generated high hopes and expectations of improvement. On April 10, 2008, Ukraine adopted the Law "On Ratifying the Protocol on Ukraine's Accession to the WTO," with which the country committed to aligning its technical regulation system with international rules and standards. But policymakers have since taken no reform-minded steps to fulfill these commitments.

Major legislative acts that could positively impact the investment climate and which were introduced during 2007 – 2008 and the first half of 2009

Document	Date of adoption	Content
Draft Law of Ukraine "On Amendments to Some Laws to Support Entrepreneurial Activity"	June 25, 2009 ⁵⁴	<p>Minimal required charter capital for LLCs was reduced hundredfold from 100 minimum wages to one minimum wage (from \$8,300 to \$83);</p> <p>The list of licensed activities was shortened by eight activities (out of 66);</p> <p>No validation term for licenses (except those fixed by the Cabinet of Ministers, but the validation term of such licenses should not be less than five years);</p> <p>All permits should be issued within 10 working days (with exceptions for certain permits mentioned in specific laws).</p> <p>For the first time ever the «silence is consent» principle is introduced, meaning that if an applicant does not receive either a positive or a negative response from a permit issuing office, the permit is considered granted.</p> <p>"Permit" was clearly defined.</p>
Law of Ukraine "On Ratifying the Protocol on Ukraine's Accession to the WTO"	April 10, 2008	<p>Ukraine committed itself to aligning its technical regulations system with international standards. International standards take priority over regional and national standards.</p> <p>Ukraine shall abide by all clauses of the TBT Agreement.</p> <p>All existing national and regional standards shall be voluntary.</p> <p>Ukraine shall continue to shorten the list of products subject to mandatory third-party certification.</p> <p>The State Committee of Ukraine for Technical Regulation and Consumer Policy shall cancel mandatory certification of imported food and agricultural products.</p>

⁵⁴ Subsequent to this narrative on the draft law "On Amendments to Some Laws to Support Entrepreneurial Activity" (adopted on June 25, 2009) being written, the draft law in question was cancelled on October 9, 2009 by the Parliament of Ukraine.

Document	Date of adoption	Content
Four President's Decrees on simplifying of the business environment and improving Ukraine's regulatory system	2007 – July 2009	<ol style="list-style-type: none"> 1. «On Some Measures for Improving of Business Regulation “ as of April 28 2007, № 363/2007. 2. “On the Concept of Improving the State Regulation of Businesses” as of September 27 2007, №921/2007; 3. “On Immediate Actions to Improve State Regulation of Businesses” as of August 9 2008, №698/2008; 4. “On encouraging business development under condition of the world financial crisis” as of June 22 2009, № 466/2009. <p>These Decrees concentrate attention of Cabinet of Ministers, Parliament, ministers and state bodies on the entrepreneurs' problems and necessity of further business environment reform, namely permits and licenses system, state control system and technical regulations reforms.</p>
The Decree of the Cabinet of Ministers of Ukraine “On Measures for Streamlining the Procedure for Issuing Permit Documents in Business Activity”	May 21, 2009	Defines the list of 66 permit documents to be issued via permit centers only. This list is a significant step toward the existence of an exhaustive list of permits.
Two resolutions of Cabinet of Ministers of Ukraine approving product sampling procedures and compensation of related expenses.	April 2007 – July 2009	Approve product-sampling procedure during inspections and compensation related procedures. Now, product sampling to be completed at state budget expense and in case of discovered violations – at entrepreneurs expense.
38 Decrees of the Cabinet of Ministers of Ukraine on dividing of all businesses into risk-groups and on identifying the periodicity of inspections for each group	November 2007 – June 2009	<p>Controlling agencies divided all businesses into risk-groups and specified how often they should be inspected.</p> <p>This approach to inspections will, if implemented, significantly reduce the number of enterprises inspected every year.</p>

Document	Date of adoption	Content
17 normative acts that amend or approve new inspection process instructions	July 2008 – July 2009	Various controlling agencies have changed their inspection processes in compliance with the Law on Inspections.
Amendments to Some Legal Acts Governing Entrepreneurial Activity	September 18, 2008	Harmonizes definitions for small and medium enterprises with European ones.

Ukraine has made significant progress in implementing previously enacted laws, however the progress was poor in terms of adopting new legislative initiatives. Unless and until this situation improves, Ukraine cannot look forward with confidence to improving its competitiveness and attractiveness as a business-friendly investment destination.



1 Permits

**Progress has been made,
but sustained reform efforts
are required**

- 1.1. Legal framework
- 1.2. Permit reform progress: reduction in the time spent on obtaining permits
- 1.3. Outstanding reform issues: permits remain a hindrance to business development
- 1.4. Policy recommendations

KEY FINDINGS:

- 54 percent of enterprises in Ukraine underwent at least one permit-issuing procedure in 2008. These enterprises had to obtain four or five permits on average;
- Obtaining all the permits necessary to start and operate cost an enterprise \$1,300 and took calendar 54 calendar days⁵⁵;
- 57 percent of sole proprietors obtained at least one permit in 2008. On average each of those sole proprietors obtained two or three permits;
- Obtaining all necessary permits cost sole proprietor \$475 and took 44 calendar days⁵⁶;
- The total cost of permit procedures for the private sector was about \$570 million, more or less equally distributed between enterprises and sole proprietors;
- The self-certification procedure for starting up a business is gaining popularity. In 2008, 22 percent of businesses self-certified instead of obtaining fire permits⁵⁷. The Fire Safety Department, however, is the only state agency that provides this opportunity.

⁵⁵ Includes \$740 in direct expenses and \$560 in labor costs.

⁵⁶ Includes \$210 in direct expenses and \$265 in labor costs.

⁵⁷ According to the State Fire Safety Department of the Ministry of Emergency Situations.

Ukraine's permit system acquired a clear legal foundation after the Permit Law was adopted in 2005. The law initiated reform of the national permit system by defining state policy principles and the main requirements for permits and permit-issuing procedures. The Permit Law was subsequently amended in June 2009 to provide a clear definition of a "permit", to introduce the "silence is consent" mechanism, and to establish a 10-day term for issuance of permits, except in specific cases that need to be specified by law⁵⁸.

The reform started four⁵⁹ years ago and has achieved visible results since then. However, a lot remains to be done to improve the overall permit system. Top priorities for further advancing permit reform include substantially reducing the number of permits and creating an exhaustive list. Permits should be aligned with the potential risk that a certain activity poses to society and to the environment.

It should be noted that a permit is a protective mechanism rather than another way of imposing costs on enterprises. All permits the purpose of which the relevant state agencies cannot explain or justify should be eliminated. It is essential that the pace of permit reform accelerates, especially during this period of severe downturn. This will help Ukrainian businesses weather the current economic difficulties. Despite permit reform progress, indeed, the 2009 IFC survey indicates that entrepreneurs still view the current permit system as a barrier to business development.

1.1. Legal framework

The Permit Law governs the permit system. It is, however, only a framework law. This means that if it is to be fully implemented, permit-issuing agencies need to align their internal regulatory documents (such as decrees, resolutions, and internal instructions) with it.

To date the process of alignment has been slow, hampering the full scale permit reform. According to the State Committee of Ukraine for Regulatory Policy and Entrepreneurship (SCURPE) by the end of 2008 only four laws were in line with the Permit Law⁶⁰ and only two draft laws out of 60⁶¹ necessary drafts were adopted. Twenty-two Cabinet of Ministers draft resolutions on aligning permit procedures with the Permit Law were developed, but only four of them saw approval.

The current legal framework also impedes permit system reform by allowing ambiguous interpretation of the norms regulating permit issue, re-issue, and cancellation. This could be one of the reasons that permit agencies commit administrative abuses and that rent-seeking remains widespread.

⁵⁸ Subsequent to this narrative on the amendments to the Permit Law (adopted on June 25, 2009) being written, the amendments in question were cancelled on October 9, 2009 by the Parliament of Ukraine.

⁵⁹ Since the Permit Law was adopted in 2005.

⁶⁰ Law "On Fire Safety," Law "On Quarantine of Plants," Law "On Lease of State and Municipal Property," Law "On the State System of Bio-Safety During the Creation, Testing, Transportation, and Use of GMO."

⁶¹ "The Reform of the Permit System for Business Activity," National Report on the Development of Entrepreneurship in Ukraine and its Perspectives by the State Committee of Ukraine for Regulatory Policy and Entrepreneurship, Kyiv 2009, <http://www.dkrp.gov.ua/control/uk/doccatalog/list?currDir=118304>.

Box 12**Permit system reforms in other post-Soviet countries**

Georgia: Rapid permit/license reform gave Georgia an opportunity to become one of the top 25 most business-friendly countries worldwide according to the World Bank Doing Business 2008 ranking⁶². The elimination of licenses and permits the existence of which could not be properly explained and justified led to a significant decrease in the number of licenses/permits: from 909 to 137. The “silence is consent” and “one-stop shop” mechanisms have become mandatory, making permit/license procedures clear and transparent.

Georgian businesses reported that since September 2005, thanks to the above-mentioned mechanisms, they spent on average 10 days in obtaining a license and 12 days in obtaining a permit. In 2003 the same indicators were 16 and 27 days, respectively. The results of the reform were significant. In 2003, before the adoption of the Law of Georgia “On Licenses and Permits,” 12 percent of SMEs obtained licenses/permits. In 2005, after the Law was adopted, the figure fell to 6 percent⁶³. In 2008 only 10 percent of businesses identified permit/license procedures as a major constraint to doing business in Georgia. In Ukraine 32 percent did⁶⁴.

Kazakhstan: A Permit System Improvement Concept was approved in 2008. A 50 percent reduction in the number of permits followed introduction of an inventory of permits. In addition, a moratorium on new permits came into effect and self-certification was implemented. It was also mandated that permit-issuing procedures are to be governed only by law.

Kyrgyz Republic: Kyrgyzstan was rated among the top three reform leaders in 2008 (of 181 countries rated in total). Permit-issuing procedures in the construction sector underwent efficient reforms. A “one-stop shop” for permits was created, reducing the number of procedures from 25 to 13. The length of the procedures fell from 280 days to 60–70 days and they now cost 30–70 percent of what they used to, depending on the construction stage. The “silence is consent” mechanism was introduced: now, should a competent authority fail to take a decision within the timeframe specified for a certain procedure, it will be assumed that the answer was positive. This mechanism may be used to obtain opinions from the fire safety, sanitary and epidemiology, and environmental protection authorities.

Source: IFC analytical material.

⁶² Doing Business 2008: Georgia Ranks 18th Globally in Ease of Doing Business; Among Top Ten Reformers for Three Consecutive Years. [http://www.ifc.org/ifcext/georgiasme.nsf/AttachmentsByTitle/DB08GeorgiaPressReleaseEng.pdf/\\$FILE/DB08GeorgiaPressReleaseEng.pdf](http://www.ifc.org/ifcext/georgiasme.nsf/AttachmentsByTitle/DB08GeorgiaPressReleaseEng.pdf/$FILE/DB08GeorgiaPressReleaseEng.pdf)

⁶³ Georgia: After Three Years of Licensing Reforms. [http://www.ifc.org/ifcext/georgiasme.nsf/AttachmentsByTitle/LicensingPolicyPaperEng/\\$FILE/LicensingPolicyPaper.pdf](http://www.ifc.org/ifcext/georgiasme.nsf/AttachmentsByTitle/LicensingPolicyPaperEng/$FILE/LicensingPolicyPaper.pdf)

⁶⁴ Enterprise Survey 2008, the World Bank, EBRD, <http://www.enterprisesurveys.org/ExploreTopics/?topicid=2&direction=Desc&sort=4>

1.2. Permit reform progress: reduction in the time spent on obtaining permits

The first element of the permit reform process was an attempt to inventorize permits. This was the first step toward identifying the number of permits and other permit-related documents that a business needs to operate legally. The list was made several times shorter, falling from more than 1,200⁶⁵ permits to only 139 permits⁶⁶. This reduction is to a large extent the effect of consolidating similar permits, that were issued under different names in different regions – and to a lesser extent of eliminating permits, that are not required by Law (and that the Permit Law thus renders illegal). However, mentioned list of these 139 permits is not officially binding as it is only a draft law and is waiting for adoption by the Parliament. As a result such uncertainty caused situations when permits, which are not stipulated by any law, continue to be issued. For instance, some municipalities are still issuing a trade permit that is not foreseen in any law. Some 21 percent of enterprises and 35 percent of sole proprietors reported obtaining the municipal trade and service permit in 2008. While the reduction looks significant, the list is still very long compared to more advanced countries.

The essence of a permit is to ensure safety and control the risks that certain business activities pose. Permits for business activities that pose no considerable risk to society should be eliminated. Then there are licenses – separate authorization documents that enterprises must obtain for certain activities in addition to permits. Ukraine today requires licenses for up to 70 business activities, and obtaining them also consumes time and money⁶⁷. The permit system represents only part of the business operation burden, and when reducing or simplifying the permitting process the whole system must be taken into account. When it is, it becomes evident that permit reduction must continue.

The Permit Law allowed for determining the timeframe within which permit authorities must grant or reject a permit. This is an improvement given the amount of time that enterprises usually spend in obtaining a permit. This mechanism does not always work in practice, however, and many entrepreneurs report that permit-issuing agencies fail to adhere to the legally specified terms.

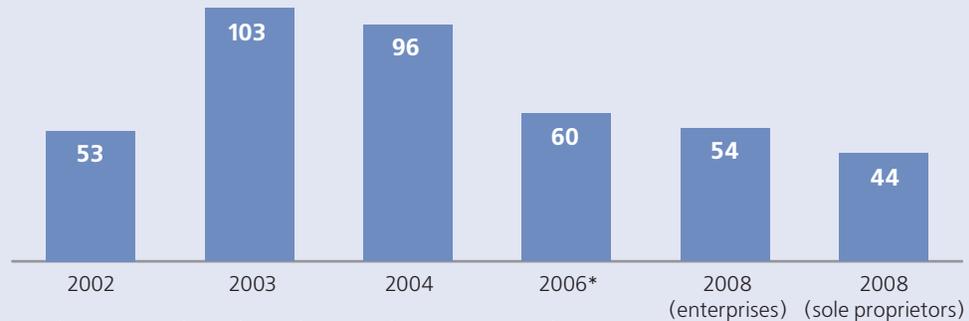
⁶⁵ Business Permit System Reform is a Precondition for the Creation of an Enabling Entrepreneurial Climate in Ukraine. Tretyakov, S 2004 Priorities 12(18) p.6.

⁶⁶ This is the number of permits indicated in the draft law “On the List of Permit Documents in Business Activity” which has been placed on SCURPE web site http://www.dkrp.gov.ua/control/uk/publish/article?art_id=100119&cat_id=55922

⁶⁷ Considering that the license system in Ukraine is regulated by the separate Law “On Licensing of Certain Types of Business Activities,” it is considered to be separate from the permit system despite that world practice considers permits and licenses to be a single indissoluble system.

Figure 24**The time it takes to issue a permit has decreased to some extent**

Average time in days per year needed to obtain all necessary permit documents by one enterprise that got permits



Data for sole proprietors is provided only for 2008, as only in that year did IFC survey that type of entrepreneurship

* Annual estimate based on data for seven months of 2006

In general, Permit Law provisions have, where implemented, reduced the time it takes to get a permit. In 2004, enterprises spent an average of 96 calendar days to obtain the permits they needed, while in 2008 they spent only 54 days. This number is lower for sole proprietors – 44 days per year. This is only marginally lower, given that individual entrepreneurs are often involved in micro and small business that should not require as many permits as larger enterprises do. Comparison of the numbers for 2008 and 2004 (before the Permit Law was adopted) indicates that waiting time has been significantly cut. Unfortunately, the improvement process slowed in 2008. It must accelerate to capitalize on earlier successes.

IMPLEMENTATION OF THE SELF-CERTIFICATION PROCEDURE

The Permit Law introduces self-certification, one of its major innovations⁶⁸. The majority of permit-issuing bodies, including local authorities, are eligible to adopt it. So far, however, only one agency is pioneering this reform: the State Fire Safety Department of the Ministry of Emergency Situations. In 2006 it aligned its internal legal documents to enable enterprises to choose the self-certification option.

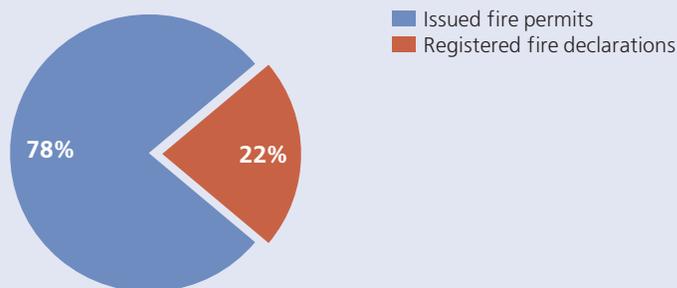
According to the Fire Safety Department, self-assessment declarations accounted for 22 percent of the business start-up documents it registered in 2008 (Figure 25).

⁶⁸ With self-certification, a business entity starts doing business in the absence of a permit or of authorization. The business simply notifies the administrator or authorizing body that it is conforming to the law's requirements.

Figure 25

Self-certifying declarations accounted for 22 percent of all permit documents that the Fire Safety Department issued in 2008

Percentage of fire permits issued and self-certifying declarations registered in 2008



Source: Statistics of the State Fire Safety Department of Ukraine for 2008

The self-certification procedure is becoming more popular among businesses every year because it costs less time and money than the permit procedure.

The survey showed that an enterprise needed on average four days to prepare the necessary self-certifying documents and obtain a registered copy of a declaration. Sole proprietors spent the same amount of time on self-certification. An enterprise spent almost five times more time to obtain a permit (19 days). A sole proprietor, meanwhile, spent an average of 25 days to get a Fire Safety Department permit (Figure 26).

Figure 26

Self-certification takes much less time than does the permit procedure

Total time in calendar days needed to prepare, submit necessary documents and obtain a fire permit or register a fire declaration in 2008



Self-certification does not require that a fire safety expert examine the applicant’s premises (rather, conformity with fire safety regulations is assessed during inspections). An enterprise must, however, submit a costly expert fire safety appraisal certificate when applying for a permit. That certificate is part of the document package, along with a general application and other necessary papers. Here again, therefore, self-certification is cheaper than getting a permit. Self-certifying does incur expenses when third-party liability insurance is required, but such cases are rare⁶⁹.

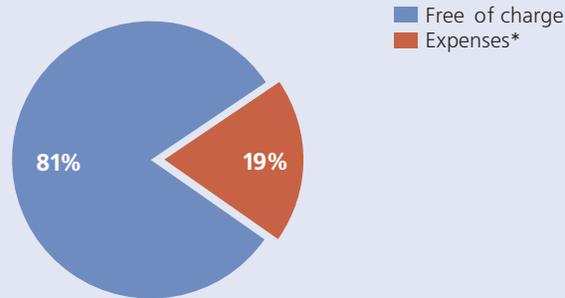
⁶⁹ The Decree of the Cabinet of Ministers #150 on Permit Issuing Procedure by State Fire Authorities dated 14.02.2001 stipulates only one case when the third party liability insurance is required while self-certifying – it is only for premises of significant fire risk.

Eighty-one percent of the surveyed enterprises and sole proprietors who self-certified incurred no expenses when self-certifying. Nineteen percent of enterprises typically spent \$95 when they self-certified. Sole proprietors typically spent \$40⁷⁰. Expenses varied depending on whether parties needed to consult experts when preparing self-certification declarations or sign third-party liability insurance contracts.

Figure 27

The vast majority of declarations impose no expenses on businesses

% among enterprises and sole proprietors having registered fire self-certifying declarations in 2008



* Expenses vary widely for both enterprises and sole proprietors depending on the type of facility in question and on whether expert advice about that facility's characteristics is required.

The number of self-certification cases doubles every year, while the number of permits issued is gradually falling.

The State Fire Safety Department also claims that self-certification significantly reduces the workload of fire inspectors, letting them focus on high-risk businesses. The procedure is therefore beneficial for everyone involved, and the successes that the Department has achieved in less than three years should stimulate other agencies to follow this example.

Figure 28

According to the Fire Safety Department, the number of registered self-certifying declarations is doubling every year

Number of registered self-certifying declarations and issued fire permits in 2006-2008



Source: State Fire Safety Department of the Ministry of Emergency Situations.

⁷⁰ For comparison – to obtain one fire permit an average enterprise spent \$320, and an average sole proprietor – \$135. These are only direct expenses, and do not account for labor costs.

1.3. Outstanding reform issues: permits remain a hindrance to business development

In spite of the improvements mentioned above, reform is taking place slowly. Ukraine's construction sector permit procedures, for example, are among the world's most time-consuming and complicated (see Table 4). The Business Environment and Enterprise Performance Survey (BEEPS) 2008 showed that a third of all business people in Ukraine cited the permit system as the main impediment to the development of their businesses⁷¹.

Table 4		Country rating regarding the ease of carrying out business activity (permit issue procedures in the construction sector)⁷²	
Country	Construction permit procedures – rating among 183 countries of the world		
Georgia	7		
Estonia	20		
Belarus	44		
Kazakhstan	143		
Tajikistan	177		
Ukraine	181		
Russian Federation	182		
Source: IFC, World Bank "Doing Business 2010" Ranking.			

PERMIT-ISSUING ACTIVITIES OF GOVERNMENT AGENCIES ARE STILL EXCESSIVE

The IFC survey indicates that in 2008 permit coverage of enterprises and the number of permits remained at the same levels as two years ago. In 2008, just as before, every second enterprise had to undergo permit-issuing procedures and had to obtain on average four or five permits per year.

The number of permits that enterprises obtained in 2006-2008 was higher than it was in 2002-2004, before the Permit Law went into effect. This could be because enterprises that used to operate in the shadows chose to apply for permits after the Permit Law made the permit process easier and cheaper. Permit coverage of enterprises has remained at the same level throughout the period during which the Permit Law has been in effect, indicating that the Laws' intent, which was to decrease the number of permits needed by businesses, has not been fulfilled.

⁷¹ Business Environment and Enterprise Performance Survey (BEEPS) 2008, the World Bank, EBRD, <http://www.enterprisesurveys.org/ExploreEconomies/?economyid=194&year=2008>.

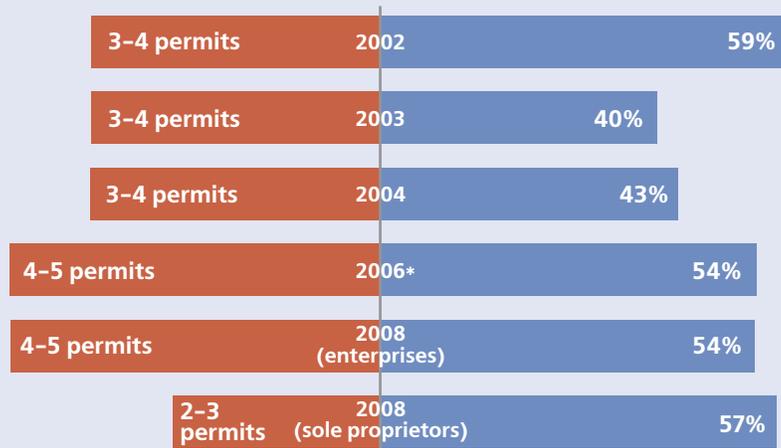
⁷² "Doing Business 2010," the World Bank, International Finance Corporation, <http://www.doingbusiness.org/Downloads/default.aspx>.

Fifty-seven percent of sole proprietors underwent a permit-issuing procedure in 2008, obtaining on average two or three permits.

Figure 29

Coverage and the number of permits businesses obtained has remained the same for several years

- Number of permits obtained by those enterprises that underwent permit procedures in corresponding years
- % of enterprises which obtained permits in corresponding years

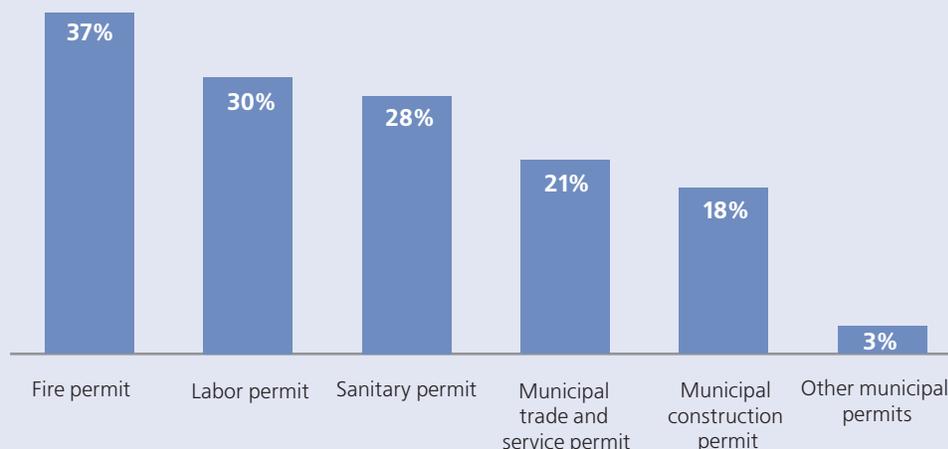


* Annual estimate based on data for seven months of 2006

The agencies that businesses most frequently approached for permits in 2008 were the State Fire Safety Department, the State Committee of Ukraine for Industrial and Labor Safety, the State Sanitary and Epidemiological Service (SES), and municipal authorities. The latter, for instance, continue issuing a trade permit, which is not foreseen by any laws. This is not surprising since these agencies issue permits that businesses most often require. The situation is pretty much the same as it was in previous years.

Figure 30**The permits most frequently required from enterprises in 2008 do not change from year to year**

% of enterprises, obtained each kind of permit in 2008

**THE LIST OF PERMITS NEEDS FURTHER SHORTENING**

It is estimated that there are as many as 140⁷³ permits currently legally in force in Ukraine. One of the reasons why the precise number is still unknown is because the word “permit” was insufficiently defined in the existing legislation. The situation is expected to change soon with the adoption of amendments⁷⁴ to the Permit Law (June 2009) that clearly define what a “permit document” exactly is. The revised definition is expected to bring more transparency to the permit process and to reduce the prevalence of informal payments and other “solutions”. It is expected to eliminate cases when permit-issuing agencies refuse to recognize a required document as a permit and establish their own different procedures (concerning the necessity for permits, terms, frequency, fees and so on)⁷⁵.

The Decree of the Cabinet of Ministers “On Measures for Streamlining the Procedure for Issuing Permit Documents in Business Activity”, adopted in May 2009, specifies which permit documents should be issued only via permit centers (one-stop shops). This list is a significant step forward in advancing permit system reform as it defines 66 permit documents that are to be issued only through permit centers.

⁷³ Estimates of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship.

⁷⁴ Subsequent to this narrative on the amendments to the Permit Law (adopted on June 25, 2009) being written, the amendments in question were cancelled on October 9, 2009 by the Parliament of Ukraine.

⁷⁵ One of the agencies that used to follow its own procedures regardless of the Permit Law was the Sanitary-Epidemiological Service of the Ministry of Health. In its letters #05.03.01.23/54-587 dated October 26, 2007 and #05.03.01-23-16/852-19/434 dated June 12, 2008, the Ministry of Health stipulates that conclusions of the sanitary-epidemiological expertise are not considered permit documents. This continuously creates conflicts.

PERMIT PROCEDURES: COMPLICATED, COSTLY, AND LENGTHY

Over 200 legal documents⁷⁶ regulate the permit system apart from documents that municipal authorities issue. The large number of legal documents and the contradictions they sometimes contain often make it very difficult to find clear answers to questions about permits, payments, or re-registration. Businesses therefore have to rely fully on the expertise and advice of permit agencies, which leaves them open to official misconduct.

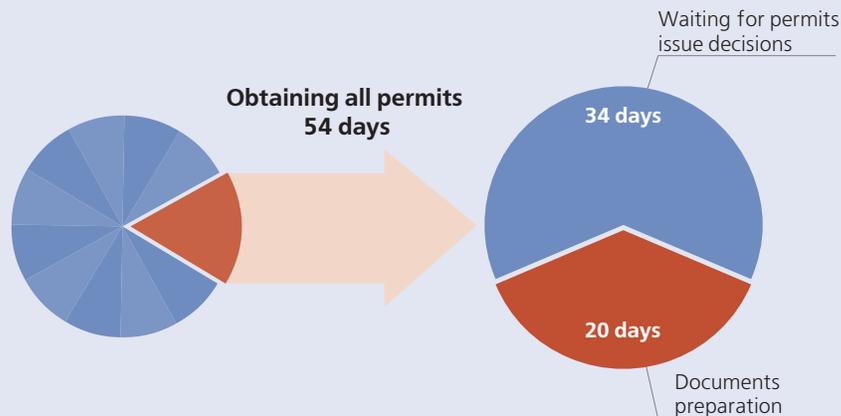
The IFC survey indicates that up to one fourth of sole proprietors admitted having had to make unofficial payments to speed up permit procedures. Approximately every third enterprise and every fourth sole proprietor in Ukraine reported using “unofficial ways”⁷⁷ of solving issues with state officials relating to regulatory procedures overall (permits, inspections, etc.).

In 2008, an enterprise incurred an average cost of \$1,300 and spent an average of 54 days to get all the permits it needed. A sole proprietor incurred an average cost of \$475 and needed 44 days. One of the costs of permits to businesses might be that during the permit process entrepreneurs often have to pay (officially) to some consultants which are somehow affiliated with permit issuing bodies, and thus act as “facilitators”.

Figure 31

Ukrainian enterprises spent almost two months obtaining the permits they needed to carry out business activity in 2008

Average time in calendar days that one enterprise spent obtaining all necessary permits in 2008



This means that businesses have to spend 1.5–2 months per year awaiting permits. This situation is expected to improve soon, as the “silence is consent”⁷⁸ mechanism was recently adopted⁷⁹. It is expected that this mechanism will cut by up to 20 percent the time applicants spend on waiting for answers from permit-issuing agencies⁸⁰.

⁷⁶ According to the legal database Liga Zakon.

⁷⁷ “Unofficial ways” include solving problems with help of friends, relatives, etc., making unofficial payments, payments to different funds that are linked to state agencies, provision of services and different types of goods to state agencies for free.

⁷⁸ The “silence is consent” mechanism provides for business to commence operations after submitting all necessary documents toward obtaining a permit. If they receive no rejection from the permit agency within a period of time specified by the Permit Law, it means the permission to operate has been granted.

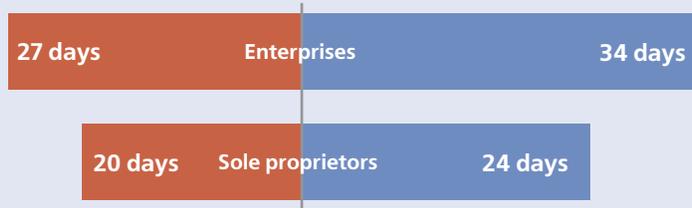
⁷⁹ Subsequent to this narrative on the amendments to the Permit Law (adopted on June 25, 2009) being written, the amendments in question were cancelled on October 9, 2009 by the Parliament of Ukraine.

⁸⁰ From the moment all documents for obtaining a permit are submitted.

Figure 32

Expected time savings by businesses after the “silence is consent” mechanism goes into effect⁸¹

■ Expected time a business waits to obtain all permits, after “silence is consent” implementation; calendar days
 ■ The time a business waits to obtain all permits, current situation; calendar days



Permits in the construction sector were the most expensive and took the longest to obtain, due to the peculiarities of the sector’s regulations.

Figure 33

Cost of permits depends on the peculiarities of the sector’s regulation

Cost of obtaining permits in 2008 (includes direct expenses and labor cost), \$



The Law of Ukraine “On Territory Planning and Construction” stipulates that municipal site-development recommendations are developed and approved at the municipal level. Although these recommendations should conform to regional rules – which in turn are developed on the basis of standard regional development recommendations – each city enjoys a degree of independence in determining certain construction-related procedures.

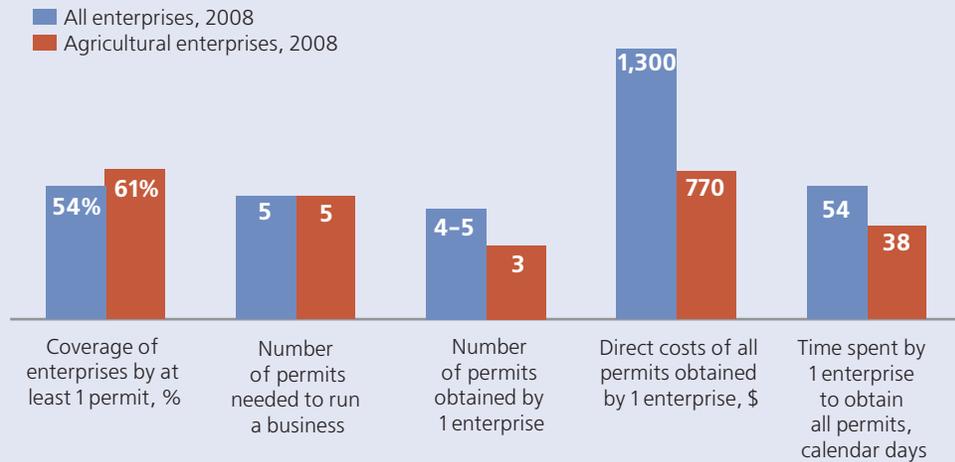
In practice this means that the number of permits needed to perform this or that construction-related step may vary (by one permit or more) from city to city. For instance, a business must perform approximately 100 procedures to obtain permits in Dnepropetrovsk. In Kyiv, some investors have cited as many as 150–300 procedures, and sometimes more than 600⁸².

⁸¹ To estimate time savings, the waiting time that respondents reported was scaled down to the maximum waiting time the Law envisages, for each permit type separately. The difference between the current average total waiting time (for all types of permits) and the same indicator calculated with down-scaled components, represents the estimated time savings. It was assumed that permits of the same type are obtained in parallel, while the waiting time for different types of permits was aggregated to estimate total waiting time.

⁸² “Core problems of the permit system in the construction sphere of Ukraine and proposals for overcoming them.” Data provided by the Academia analytical center, <http://www.academia.org.ua>.

Figure 34

Agricultural sector – permit coverage is higher, but the process is cheaper and faster



The IFC survey indicated that the permit situation in the agricultural sector does not differ much from that in other sectors. The permit process in agriculture is characterized by higher coverage, but it is cheaper and faster than in other sectors.

1.4. Policy recommendations

Permit system reform commenced in 2005, but it cannot be brought to completion without further legislative changes and implementation efforts. The authorities should take the following steps (at a minimum) to ensure that reform is efficiently completed:

1 Define a unified and exhaustive list of all permits at the legislative level, making it shorter by using a risk-based approach. Permits that are not stipulated by any law should stop being issued

What will it lead to?

Approving the Law “On the List of Permits” will complete the permit system legal framework and streamline the permit procedure, making it more transparent and clear. Reducing the number of permits will ease the business start-up process by reducing waiting times and costs for businesses. This will also prevent issuance of any illegal permits (not listed in law).

2 The majority of permit-issuing bodies should adopt self-certification as an alternative to permitting

Simplifying permit procedures by expanding self-certification further will decrease compliance costs and reduce the time tax during start-up. Some categories of businesses will need no permits to start up: self-assessment and certification will be sufficient for them and they will assume full responsibility for any danger or harm they cause.

What will it lead to?

This will significantly simplify the permit process for businesses that pose little risk. Businesses will spend less time and money than they did when following classical permit procedures. It will increase business’ responsibility and accountability for their operations, because a self-certifying enterprise undertakes full responsibility for its operations.



2 Inspections

Implementation of reform is happening slowly, and should be accelerated

2.1. Legal framework

2.2. Initial results of state inspection system reform:
progress has been made, but reform is far from
complete

2.3. Outstanding issues and barriers to reform

2.4. Policy recommendations

KEY FINDINGS:

- 75 percent of enterprises and 72 percent of sole proprietors faced inspection by at least one state agency in 2008;
- Each inspected enterprise underwent five to six inspections per year (on average) and had to operate in “inspection mode” for almost three weeks;
- Sole proprietors faced on average seven inspections per year and were in “inspection mode” for three weeks;
- The average total direct cost associated with inspections was \$650 per inspected enterprise and \$330 per inspected sole proprietor;
- Inspections procedures cost a total of about \$463 million for businesses in 2008. Enterprises made up to 40 percent and sole proprietors 60 percent of this total;
- The most active inspectorates in 2008 were:
 - Tax and Fire safety authorities – each inspected every second enterprise;
 - SES – which visited every third enterprise;
 - Labor safety inspectorate which visited every fourth enterprise;
 - Standardization, metrology, and consumer rights protection authorities – which inspected every sixth enterprise.

2.1. Legal framework

Ukraine started reform of its state inspections system only in 2007 when the Law on Inspections was adopted. This framework law aims to streamline the business inspections regime and to significantly reduce the inspections burden under which businesses have suffered for years.

Box 13

Inspections reform started earlier in many countries in the region:

- Latvia and Croatia – 1999
- Armenia – 2000
- Russia – 2001
- Romania – 2003
- Poland – 2004

Source: IFC analysis.

Reform should help inspection agencies use limited state resources rationally, standardize the way their staff inspects, and improve their efficiency. It would also benefit businesses by reducing inspection coverage on lower risk businesses, making inspections less frequent and shorter, and promoting compliance more effectively, thus eventually easing the financial burden on business. Some progress has been made in aligning regulatory documents with the Law on Inspections. As of August 1, 2009 the following legal documents had been adopted:

- Two decrees of the President of Ukraine approving the concept of state control of businesses and declaring that the government and other agencies should obligatory comply with the Law on Inspections;
- Thirty-eight CMU resolutions that classify businesses into groups (according to the risk they pose to the public) and regulate the maximum frequency of inspections for each group;
- Two CMU resolutions approving product sampling procedures and compensation of related expenses;
- Seventeen regulations that amended existing inspections procedures or approved new ones for specific controlling bodies to follow (as of January 1, 2009);
- Six regulations that specify a list of questions (“checklists”) that inspectors should use during their work. The content of the lists of questions that were developed is, however, too general and superficial. It is not fully appropriate to a risk-oriented state control system. The lists evince a “tick the box” approach to complying with the Law on Inspections on the part of inspectorates in question.

2.2. Initial results of state inspection system reform: progress has been made, but reform is far from complete

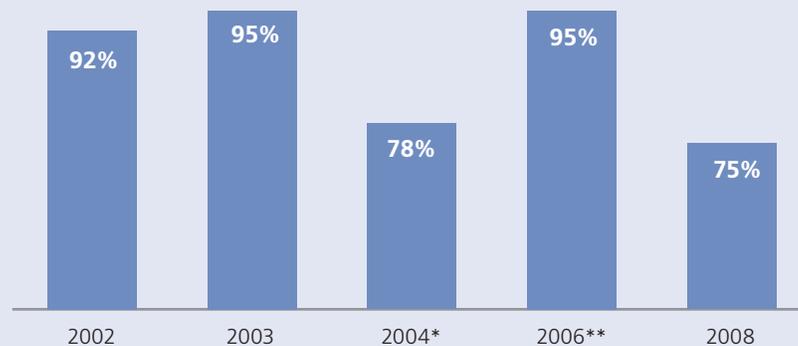
INSPECTION COVERAGE OF ENTERPRISES HAS SOMEWHAT DECREASED

The survey shows that coverage by inspections reduced from 95 percent to 75 percent of enterprises in 2008 compared to 2006 and 2003 (Figure 35). Coverage of sole proprietors by inspections was 72 percent in 2008, which did not differ significantly from coverage of enterprises. Given that sole proprietors do not, in most cases, pose a large risk to society, health or environment, 72 percent figure is still far too high. It indicates that a risk-based approach to inspections is lacking and that no specific criteria govern the planning of inspections.

Figure 35

Inspections coverage of enterprises has decreased

% of inspected enterprises in corresponding years



* Inspections coverage could have been lower than usual due to political instability associated with the Orange Revolution, which disrupted the usual activities of state bodies in the last quarter.

** Annual estimate based on data for seven months of 2006.

Despite this improvement, Ukraine is still a “leader” in inspection coverage of enterprises among post-Soviet countries (even using for comparators previous years’ data, which further reform is likely to have improved) (Figure 36).

Figure 36

Ukraine has one of the most burdensome inspections regimes among selected post-Soviet countries

% of inspected enterprises in corresponding years in selected countries (latest available data)

**Box 14**

In advanced economies, inspection coverage of enterprises is low and the inspections regime does not burden businesses. There are therefore no specific combined statistics on coverage in those countries available to compare with Ukrainian statistics. The available data on certain inspectorates in European countries show that the total share of businesses covered each year by inspections does not exceed 10 to 15 percent at most⁸³.

THE FREQUENCY OF INSPECTIONS IS SLOWLY DECREASING

Each inspected enterprise underwent on average five to six inspections in 2008 (Figure 37), which means a new inspection commenced every two months. Compared to the situation a couple of years ago, this must be considered an improvement. Sole proprietors are inspected even more frequently than legal entities. In 2008, each was visited by inspectorates an average of seven times. That amounts to an inspection every seven weeks.

⁸³ For example, the General Tax Directorate of France’s coverage of businesses in 2007 was around 1.8 percent. http://www2.impots.gouv.fr/documentation/rapports/activities/dgi/2007/english_version/dgi_stats_07.htm and http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&id=219; Inspections coverage by Environment Agency of England and Wales is about 3.2 percent of the total number of businesses. Office of National Statistics of the United Kingdom, <http://stats.berr.gov.uk/ed/sme> and according to Martin Bigg, Head of the Industry Regulations Environment Agency of England and Wales.

Figure 37

The frequency of inspections has decreased slightly

Number of inspections at each inspected enterprise in a year



* Annual estimate based on data for seven months of 2006.

INSPECTIONS REMAIN LENGTHY

The survey showed that in 2008 the average duration of all inspections performed at one enterprise was 14 working days (about three weeks out of the year). This figure is almost the same for sole proprietors. Moreover, the overall duration of all inspections at one inspected enterprise has remained almost the same for a number of years.

Ukraine performs significantly worse than other countries when it comes to the burden of inspections' duration. Other countries' inspection agencies spend less time on inspections than Ukraine's do. They spend almost 30 percent less time in Uzbekistan, 35 percent less time in Belarus, 55 percent less time in Georgia, and almost 65 percent less time in Tajikistan (Figure 38). While spending significant time on in-depth inspections of high risk businesses could make sense, this very high total reflects simply an excessive number and duration of inspections "across the board" and regardless of risk levels.

Figure 38**Total inspections duration is significantly longer in Ukraine than in other countries**

Length of all inspections per one inspected enterprise, working days per year, 2008

**MOST INSPECTIONS ARE PERFORMED BY THE FIVE MOST ACTIVE CONTROLLING AUTHORITIES**

IFC estimates show that approximately 85 state controlling agencies, all with the authority to inspect businesses, were operating in Ukraine in late 2008⁸⁴. The top five inspectorates in 2008 were as follows (Figure 39):

1. State Tax Administration (inspecting every second enterprise)
2. State Fire Safety Department (inspected every second enterprise)
3. State Sanitary and Epidemiological Service (inspected every third enterprise)
4. State Committee of Ukraine for Labor and Industrial Safety (inspected every fourth enterprise)
5. State Committee of Ukraine for Technical Regulation and Consumer Policy (inspected every sixth enterprise)

⁸⁴ These are agencies whose authority to inspect businesses is established by Ukrainian laws (for details, see Annex 4). Agencies whose authority is established by bylaws or agencies that are exempt from the Law are in a separate category.

Figure 39

The State Tax and Fire Safety inspectorates continue to top the list of agencies inspecting businesses the most

% of inspected enterprises, 2008



In 2008 the State Sanitary and Epidemiological Service inspected 31 percent of enterprises, as compared with 51 percent in 2006 (Figure 40). The situation as regards SES inspections has however not changed much in comparison with previous years, such as 2003 and 2004.

Figure 40

Sanitary and Epidemiological Service significantly reduced inspections of enterprises in 2008 in comparison with 2006

% of inspected enterprises in corresponding years



* Inspections coverage could have been lower than usual due to political instability associated with the Orange Revolution, which disrupted the usual activities of state bodies in the last quarter.

** Annual estimate based on data for seven months of 2006.

The State Tax Administration has been developing a risk-oriented inspection planning system for scheduled (also known as “planned”) inspections for more than five years now⁸⁵. This has not, however, significantly reduced the coverage of businesses by inspections⁸⁶ (Figure 41). This is in large part because “scheduled inspections” are only a minority of all tax inspections in Ukraine – most controls fall into different categories of “unplanned”.

This points to a problem with management and planning (the vast majority of inspections should, in fact, be “planned” ones) and with a potentially very misleading reporting system (if the Tax Administration emphasizes only its “scheduled” inspections, it shows only a minority of its work). In addition, the majority of documents that were approved on risk-based planning are more recommendations than legal documents of a mandatory character.

The situation concerning tax inspection coverage of sole proprietors is even worse than for legal entities. In 2008, 56 percent of sole proprietors underwent tax inspections (while 50 percent of legal entities did).

Figure 41**Tax inspections are becoming less frequent, but only very gradually so**

% of enterprises inspected by tax authorities in corresponding years



* Inspections coverage could have been lower than usual due to political instability associated with the Orange Revolution, which disrupted the usual activities of state bodies in the last quarter.

** Annual estimate based on data for seven months of 2006.

What is risk?

Risk is the probability of an adverse event multiplied by the cost of that event

⁸⁵ The latest include the State Tax Administration orders dated June 30, 2006, #373 “On Approval of Methodological Guidelines for the Procedure of Taxpayer Categorization by Degree of Attention”; dated July 16, 2007, #432 “On Approval of Methodological Guidelines for the Organization of Inspections of Member Enterprises of Financial and Industrial Groups, Other Amalgamations, and Large Taxpayers”; and dated March 28, 2008 #201, “On Approval of the New Version of Methodological Guidelines for the Compilation of the Plan for Regular On-site Inspections of Business Entities.”

⁸⁶ In EU countries, fully and correctly implemented risk-oriented tax inspection systems usually cover no more than 3-5 percent of businesses. The General Tax Directorate of France’s coverage of businesses in 2007, for example, was around 1.8 percent. http://www2.impots.gouv.fr/documentation/rapports/activites/dgi/2007/english_version/dgi_stats_07.htm and http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&id=219.

The Fire Safety Department has been eager to reform its inspections system and was the first inspectorate to adopt a risk-based inspections approach⁸⁷. It was also the first agency to introduce amendments to its inspections regulation, aligning it with the Law on Inspections⁸⁸. The results of these initiatives are starting to be visible – inspection coverage by the fire safety inspectorates fell from 57 percent in 2006 to 47 percent in 2008 (Figure 42). Forty-seven percent is still too many enterprises, of course, which is perhaps a result of the Department’s only partial compliance with the procedure⁸⁹ that the Law on Inspections specifies.

Figure 42

The Fire Safety Department now inspects a lower percentage of enterprises, but still close to 50 percent

% of enterprises inspected by fire safety authorities in corresponding years



* Inspections coverage could have been lower than usual due to political instability associated with the Orange Revolution, which disrupted the usual activities of state bodies in the last quarter.

** Annual estimate based on data for seven months of 2006.

Fire safety authorities inspected 33 percent of sole proprietors in 2008. This percentage is lower than that of legal entities, but it is still very high, especially considering that most sole proprietors have very few employees and smaller premises and their business activities mostly have a very limited fire safety risk.

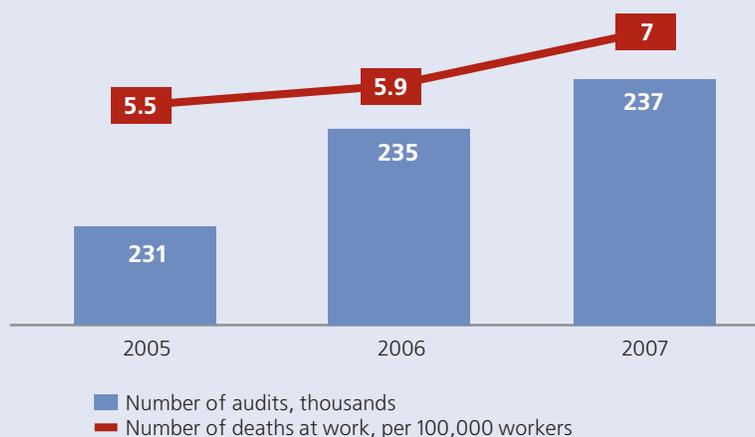
⁸⁷ See the “Procedure of Business Entity Categorization by the Level of the Fire Risk of Their Economic Activities for the Life and Health of the Population and the Environment,” approved by the Resolution of the Cabinet of Ministers of Ukraine #1324 of November 14, 2007.

⁸⁸ See “Changes and Amendments to the Orders of the Ministry of Emergency Situations of Ukraine,” approved by the Order of the Ministry of Emergency Situations “On Protection of the Population from the Consequences of the Chornobyl Accident of Ukraine” #128 of February 18, 2008.

⁸⁹ See chapter 3.3 “Instruction on operations of state fire safety authorities,” adopted by order #59 of the Ministry of Emergency Situations of Ukraine, dated February 6, 2006.

Box 15**Frequent inspections do not guarantee public safety**

Proponents of frequent inspections say they safeguard public safety. But inspecting many enterprises has never proven to be an effective tool, as opposed to a risk-based inspection regime. In fact, a recent report by the Ukraine's Committee for Labor and Industrial Safety showed that more inspections appeared in fact to correlate with higher workplace accident rates.

Incidence of lethal accidents at industrial enterprises kept increasing while the number of inspections went up⁹⁰

The consequences of this inefficiency are startling. In 2007, the Social Insurance Fund had to pay out over UAH 2.7 billion (about \$0.5 billion) in social services and insurance compensation to those injured in industrial accidents, or to their families.

Incidence of industrial injuries is several times higher in Ukraine than in developed countries. The risk of death and injury at work (per 100,000 workers) in Ukraine is twice as high as in Germany and three times as high as in Japan.

In 2005, officers from the State Committee of Ukraine for Labor and Industrial Safety performed 230,500 comprehensive, special purpose, and ad hoc audits. In 2006 they performed 234,900 and in 2007 they performed 237,100 such audits. The audits' results indicated that **increasing the number of inspections has no significant impact on the incidence of industrial injuries.**

Source: Report on the effectiveness of the funds allocated for inspections from the State Budget of Ukraine for the State Committee of Ukraine for Labor and Industrial Safety, approved by Resolution of the Chamber of Accounts #20-2 of September 9, 2008. Note: bold text in the source document.

⁹⁰ According to a report on the effectiveness of the funds allocated for inspections from the State Budget of Ukraine for the State Committee of Ukraine for Labor and Industrial Safety, approved by Resolution of the Chamber of Accounts #20-2 of September 9, 2008.

2.3. Outstanding issues and barriers to reform

THE UKRAINIAN INSPECTION SYSTEM IS CHARACTERIZED BY DUPLICATION AND OVERLAP OF FUNCTIONS

The structure and scope of responsibilities of Ukrainian controlling authorities often lead to duplication of functions, when up to four or even eight different inspectorates (with similar functions and mandates) inspect the same aspects of business activities. For instance, land use is simultaneously controlled by six inspectorates⁹¹ (in addition four more inspectorates control the use of minerals), six inspectorates oversee paying taxes and duties, compliance with standards is controlled by five inspection agencies, four inspectorates control generation and use of electric power, eight different controlling authorities inspect plant cultivation and seed-production (for a detailed list of inspectorates please refer to Annex 4).

Box 16

Number of inspectorates overseeing similar issues of business activity:

In the area of:

- communication and radio broadcasting – 4
- compliance with labor related legislation – 6
- environment and subsurface use – 4
- compliance with standards – 5
- transportation – 5
- education, science, and intellectual property – 6

Inspection functions also present many overlaps, not quite complete duplication of duties but “gray areas” where the same topic can be controlled by several agencies, from different perspectives – for instance fire safety rules (controlled by fire safety authorities) show many overlaps with labor safety requirements (controlled by labor safety inspectorate). A similar situation exists between labor safety and sanitary requirements (the latter being inspected by SES). In practice, due to the absence of clear and specific boundaries in inspections functions of the above inspectorates, inspectors of some controlling agencies check issues that other controlling agencies are also authorized to control – and sometimes their findings, recommendations and orders can be different.

The vast responsibilities of the State Committee for Technical Regulation and Consumer Policy mean that its work often duplicates entirely what other agencies do, for instance SES’s work on safety of goods (particularly food) and Labor Safety on the use of certified equipment.

While this problem is known in many countries where the inspections system is in needs of reform, it is particularly acute in Ukraine, because it has from two to five times more controlling agencies than other countries.

Box 17

In Ukraine as of 2008 approximately 85 state agencies had a mandate to inspect businesses. For comparison’s sake, there are 16 similar authorities in Latvia, 30 in Serbia, 26 in Montenegro, 26 in Slovenia, 44 in Uzbekistan, approximately 40 in Belarus, 31 in Tajikistan, 31 in Albania, 22 in the Kyrgyz Republic, 19 in Armenia, and 20 in Georgia.

⁹¹ Although there is legally no such thing as a land market in Ukraine.

Box 18**An example of good practice:**

In 1999, Croatia took the novel step⁹² of consolidating numerous inspection processes into a single autonomous agency, the State Inspectorate, which manages a large proportion of the inspections to which an investor is subject.

Formerly a department of the Ministry of Economy, the State Inspectorate is today responsible for 11 inspections and three “technical” inspections, including those previously conducted by the Ministries of Economy, Forestry and Agriculture, Tourism, and Work and Social Welfare.

The system has not only reduced the number of visits that a business is likely to endure, but also has saved considerable budgetary resources. The number of units that conduct inspections has been reduced from 110 to 49, and the number of county offices from 22 to five.

Other countries, such as Bosnia and Herzegovina and Mongolia, subsequently consolidated controlling authorities as well.

IFC, Good Practices for Business Inspections: Guidelines for Reformers (page 52).

This all puts additional administrative pressure on business by increasing coverage, number, frequency and duration of inspections. It also reduces the effectiveness of state inspection system when one and the same issue is inspected by different inspectorates.

THE EXISTING INSPECTION SYSTEM IS COSTLY – FOR BOTH STATE AND BUSINESSES

The current system requires the state to allocate significant human and financial resources and its efficiency is low. It also imposes fines, penalties, unofficial payments and labor cost on enterprises.

The survey shows that even direct costs alone associated with inspections were already significant. In 2008 each inspected enterprise on average spent approximately \$420 on fines and unofficial payments. Each incurred an average labor cost of \$230. This means that each inspected enterprise (75 percent of all enterprises) incurred a total cost of \$650 as a result of inspections⁹³. And this is without taking into account indirect costs, i.e. potential profit lost as a result of activities being interrupted or disrupted.

Each inspected sole proprietor on average spent approximately \$85 on fines and unofficial payments and incurred an average labor cost of \$245. This means that each inspected sole proprietor (72 percent out of all sole proprietors) incurred a total cost of \$330 as a result of inspections.

⁹² Since then this has been imitated in Bosnia and Herzegovina (with great success) and in Mongolia (reform is still ongoing).

⁹³ For calculations of the direct inspection costs that private businesses incurred, see Annex 3.

Box 19

For comparison: the overall direct cost associated with inspections of private business in 2008 in general is enough to pay the average monthly salaries of 82,000 full-time employees, or over 0.4 percent of Ukraine's total working population.

Source: official data of the State Statistics Committee of Ukraine; IFC survey data for 2008.

REFORM IS SLOW AND MANY CONTROLLING AUTHORITIES IMPEDE IT, HOWEVER, ENCOURAGING RESULTS ARE BEING SEEN

The Law on Inspections was adopted more than two years ago⁹⁴, but it remains far from fully implemented. As of August 1, 2009, for example, only 42 controlling agencies (out of 85) had classified businesses into risk groups and specified the frequency of inspections for each group, and only six agencies had approved lists of questions to be used during inspections. Many of these risk group categorizations, moreover, are far from adequate (lumping most businesses indiscriminately into "medium" or "high" risk categories), and likewise not all "checklists" adopted so far correspond to good practice.

CONTROLLING AGENCIES ARE ATTEMPTING TO STAY OUTSIDE THE SCOPE OF THE LAW ON INSPECTIONS

Certain inspectorates are attempting to exempt themselves from the Law on Inspections. At the moment, for instance, at least eight⁹⁵ draft laws currently under Parliament's consideration propose to exclude certain inspection agencies from the scope of the Law (mainly in the areas of taxation, sanitary supervision, and labor safety).

These draft laws are initiated by state authorities. The Resolution of the National Security and Defense Council of May 30, 2008, for example, charged the Cabinet of Ministers with developing a number of draft laws that would exempt certain provisions regarding control in the sphere of labor protection from the Law on Inspections.

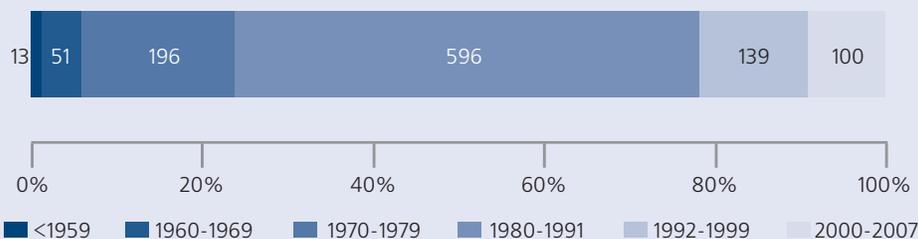
It is quite likely that these draft laws could be adopted and that the agencies in question would be outside the scope of the Law on Inspections – and it would effectively mean that these agencies could "opt out" of the reform process. This indicates how reluctant some inspectorates are to change their inspections practices.

OUTDATED REQUIREMENTS HAVE NOT BEEN REVISED

Businesses are still obliged to conform to Soviet regulations that date back to the 1970s and 1980s. Almost 80 percent of Ukraine's safety and labor protection rules and norms were approved before 1991 (Figure 43). The situation in the sanitary, construction, fire safety, and other spheres is pretty much the same.

⁹⁴ The Law was approved on April 5, 2007.

⁹⁵ As of January 1, 2009.

Figure 43**Many safety and labor protection requirements need revision**

State Register of Regulation on Labor Protection, approved by the order #102 of the State Committee of Ukraine for Labor and Industrial Safety dated June 20, 2006.

Access to the majority of documents that specify inspections requirements remains restricted. These documents cannot be obtained through open sources⁹⁶ and an entrepreneur must pay for access to them⁹⁷. Access is restricted to the following documents:

- Safety and labor protection rules;
- Construction and design requirements;
- Sanitary requirements;
- Fire safety requirements;
- Other similar mandatory documents.

Inspected businesses often do not know what is required of them and thus fail to comply. The result is numerous violations and an increase in the probability of accidents and industrial injuries, plus additional disruption of business activity and opportunity for corruption. In most countries these documents are publicly available for businesses⁹⁸.

Box 20**Russian experience**

Core principles for protecting the rights of legal entities and sole proprietors during state control (supervision) include:

"...openness and accessibility, for legal entities and sole proprietors, to Russian Federation regulations and municipal legal documents, compliance with which is inspected in the course of state control (supervision) and municipal control."

Source: Article 3 of the Federal Law of the Russian Federation on the Protection of Rights of Legal Entities and Sole Traders in the Course of State Control (Supervision) and Municipal Control No 294-Ф3 as of December 19, 2008.

⁹⁶ A party needs to apply to the inspectorates or to business entities that inspectorates themselves have established to obtain the required documents.

⁹⁷ For example, par. 8 of p. 1 of the "List of Paid Services to Be Provided by Budget-Financed Institutions and Organizations under the Authority of the State Committee for Water Resources, upon Request of Legal Entities and Individuals," approved by Resolution of the Cabinet of Ministers #1379 of July 29, 1999, which classifies information services related to the provision of regulatory documents as a paid service.

⁹⁸ Not to mention that charging for access to legislation is contradicting basic democratic principles.

INSPECTIONS PLANNING IS NOT BASED ON RISK

The IFC survey showed that inspections frequency or duration does not depend on the size of the business or on the risk it poses to the public. (See Figures 44 and 45). Therefore, inspections agencies are not focused on enterprises that pose high risk on society.

Figure 44

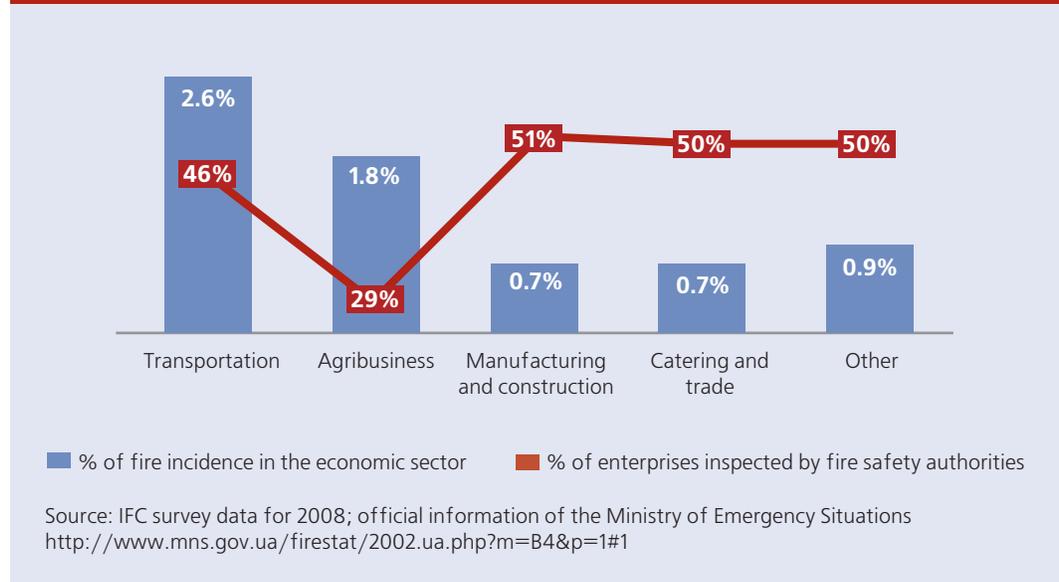
The scope, frequency, and duration of inspections do not depend on the size of business



Sole proprietors are inspected with almost the same rigor and frequency as legal entities are, and sometimes their inspections burden is even heavier. This proves that Ukraine’s inspections agencies are not taking a risk-based approach in most cases.

Figure 45

Frequency of inspections does not depend on potential risk



Absence of a risk-oriented approach means that low-hazard businesses are subject to the same and sometimes even higher levels of administrative pressure than high-hazard ones.

Box 21**Risk oriented inspections systems in the EU****England and Wales**

As of January 1, 2008 there were 4.25 million businesses in England and Wales⁹⁹. That is too many to be checked for conformity with requirements. At the same time, it is every inspectorate's mandate to ensure social and environmental safety. What to do? The Environment Agency of England and Wales organized its activities the following way¹⁰⁰:

- They identified 500,000 businesses that pose no considerable risk to society and decided not to inspect those businesses at all;
- They identified the most risky businesses, which would face inspection most frequently. There were 1,500 such businesses (less than 0.04 percent of the total);
- They perform about 135,000 inspections every year. That adds up to about 3.2 percent of the total number of businesses.

Latvia

Latvia's State Labor Inspectorate (SLI) is a state supervision and control institution that has 121,095 organizations employing 955,818 workers under its purview. It performs its functions with a staff of only 95 inspectors.

A rating system was developed for planning targeted inspection visits. The SLI identifies newly established organizations and assesses them according to predefined risk criteria, entering data into a rating system. The rating system is based on an evaluation/assessment that inspectors complete during their first visit to an organization. The organizations are evaluated on a scale of 100 (minimum) to 600 points (maximum) according to seven criteria:

6. Safety risk – inspectors assess occupational safety and any other potential safety risks at the workplace.
7. Danger – inspectors assess risks that may arise during work with dangerous items, such as noxious chemicals and electrical gear. The most attention is devoted to assessing how dangerous it is to work at the organization.
8. Health risk – inspectors assess whether working conditions could pose a long-term health risk and lead to occupational illnesses.
9. Health danger – inspectors assess whether a danger to health exists at present. The inspector devotes his/her attention to situations in which employees work with chemicals that could cause health risks in the absence of proper ventilation systems or individual protective apparatus.
10. Welfare – inspectors assess management of social aspects, such as social benefits (for example, health insurance), rest areas, and so on.
11. Management – inspectors assess management of labor legal relations. Attention is devoted to observance of mandatory Labor Law requirements, such as employment contracts, control over working hours, and so on.
12. Safety of society – inspectors assess the potential risk to and impact on society at large.

If the rating is high (that is, occupational safety risks are high), the organization will be targeted for on-site inspection once a year. For medium ratings, the organization will be inspected once in two years. Organizations with low ratings will be subject to alternative monitoring methods.

Source: Good Practices for Business Inspections: Guidelines for Reformers (page 100, 106); Small and Medium Enterprise Department, World Bank Group, 2006.

⁹⁹ According to the Office of National Statistics of the United Kingdom <http://stats.berr.gov.uk/ed/sme>

¹⁰⁰ According to a presentation by Martin Bigg, Head of the Industry Regulation Environment Agency of England and Wales at the Conference on Inspections Reform, organized in Amman, Jordan, by the Ministry of Industry of Jordan and IFC, May 2009.

Box 22

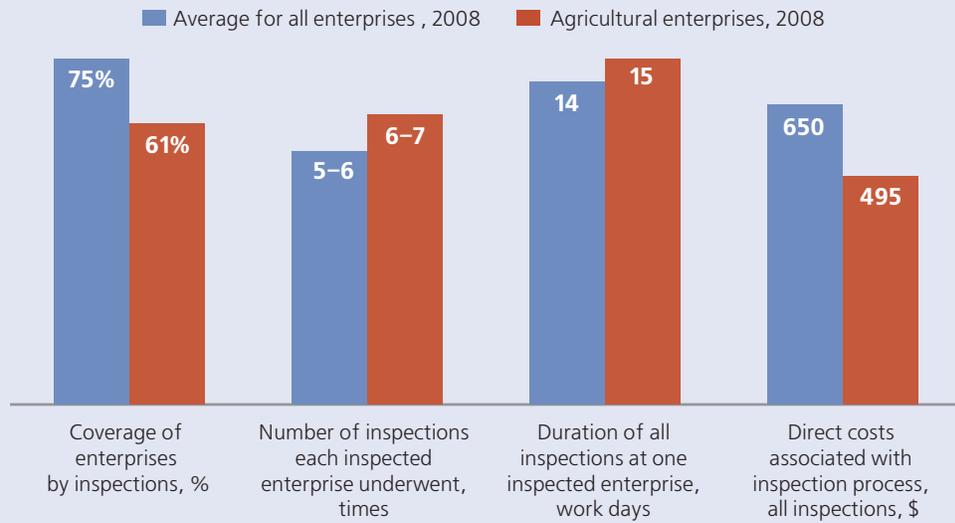
Agricultural sector – inspections are longer and more frequent

The survey showed that agricultural enterprises underwent 20 percent fewer inspections than did enterprises in other sectors in 2008. Location might explain this: most agricultural enterprises are located rurally, far from territorial inspectorates.

Agricultural enterprises, however, underwent longer (by almost seven percent, on average) and more frequent (by 13 percent, on average) inspections than did enterprises on average.

Figure 46

Agricultural enterprises have undergone longer and more frequent inspections than have enterprises on average



2.4. Policy recommendations

State inspections system reform is proceeding, but at a very slow pace. Further immediate steps are necessary if it is to continue.

1 Establishing a risk-based inspection planning system

Inspections agencies subject to the Law on Inspections should develop criteria for categorizing businesses according to the risk they pose and establish how often they are to be inspected. They should submit these schedules to the Cabinet of Ministers for approval.

What will it lead to?

Full-scale adoption of a risk-based inspections planning system will lead to more efficient use of limited state agency resources and reduce costs for businesses, because they will no longer be distracted from their operations as often as they are distracted now.

2 Develop and approve inspections checklists

Each inspections agency should develop and approve checklists for inspections. So far only six out of 85 agencies have approved them (as of December 2008).

What will it lead to?

Checklists will standardize inspections, focusing them on the most important issues. They will reduce the duration of inspections. They will also motivate businesses to do self-checks and avoid penalties or fines by meeting all necessary requirements.

3 Inspections agencies should align their regulatory documents with the Law on Inspections

All inspections authorities need to comply with the Law on Inspections, developing and amending the necessary legal documents and adopting them for execution.

What will it lead to?

Full compliance with the Law on Inspections by all relevant inspectorates will reduce inspections coverage and cut the duration and frequency of inspections. It will also reduce how much money businesses spend on inspections every year.

4 Reduce the number of controlling agencies and review their functions to eliminate duplication and overlaps

The Cabinet of Ministers and Parliament should reduce the number of state authorities that have the right to inspect businesses. This can be done by consolidating inspections agencies (as was done in Croatia, Bosnia and Herzegovina, and Mongolia). Ukraine currently has four different inspectorates in the power industry, six in the vegetable and seeding industries, five for standards, and six for labor safety. (For details please refer to Annex 4.)

What will it lead to?

This will reduce administrative pressure on businesses, increase the efficiency of inspections, and reduce costs for businesses and the state. It should also improve public safety.

5 Ensure open and free-of-charge access to all information that businesses need to prepare for inspections

Access to information that could help businesses comply with legal requirements should be free of charge. Documents could be placed on the Web sites of the relevant state authorities or on the Parliament's Web site.

What will it lead to?

Businesses will have better knowledge of the legal requirements they must comply with. This will reduce the number of violations they commit and cut penalties and fines.

6 Review inspections agencies' regulatory and legislative acts to reduce their number, to eliminate redundancies, and to cancel outdated requirements and rules

What will it lead to?

This will reduce administrative pressure on businesses and the frequency and overall duration of inspections. It will also cut enterprises' expenses and should stimulate businesses to comply with necessary requirements and procedures. Revised and updated requirements will be more focused on public and environmental safety and will reflect up-to-date realities.



3 Technical Regulations

Burdensome regulations and procedures hamper business activity and innovation

- 3.1. Overview of the current technical regulations¹⁰¹ system in Ukraine
- 3.2. Main survey findings – lack of reform impedes enterprises' growth and competitiveness
- 3.3 Policy recommendations

¹⁰¹ "Technical Regulations" means (here and throughout the report) a system of legal regulations for goods, related production processes, systems, services, and personnel; it implies checking for compliance through conformity assessment and/or market surveillance.

KEY FINDINGS:

- On average products manufactured by 41 percent of enterprises of all sectors and products manufactured by 67 percent of industrial enterprises are regulated either by mandatory standards or by technical specifications;
- Preparation and registration of necessary technical specifications cost enterprises on average \$2,960¹⁰² and lasted 88¹⁰³ calendar days in 2008;
- Ukrainian legislation requires all domestic products to conform to standards, which discourages introduction of new products and consequently slows down domestic business development;
- The total cost of compliance with technical regulations procedures (technical specifications, certification, etc.) for business in Ukraine was over \$525 million in 2008¹⁰⁴.

¹⁰² A five percent trimmed mean is used because of high variance of the parameter and relatively small number of observations.

¹⁰³ Median value is used here for the same reasons.

¹⁰⁴ This sum is the direct cost incurred by enterprises. Sole proprietors are not accounted here. Please refer to Annex 3 for detailed cost calculation.

3.1. Overview of the current technical regulations system in Ukraine

In most countries the state regulates only the safety of consumer goods and consumer information – the latter to prevent fraud on the part of producers or sellers. It does not regulate the so-called “quality” of products or services. In international practice, standards are technical documents that contain information on production procedures or on product specifications that producers can choose to follow. Compliance with them is not, however, directly relevant to the safety of the produced good. Standards are voluntary by definition and enterprises are free to choose either to comply with them or not. The vast majority of international standards (ISO, CEN, CENELEC etc.) exist to allow different producers to interact with each other in international supply chains, by ensuring that products are compatible and all meet certain specifications. A certain number of standards deal with the characteristics and safety of the end product, but they are by no means compulsory, they are just one possible way to meet safety rules in force in each country.

Ukraine’s technical regulations system is based on centralized planned economy principles and substantially replicates the system that existed in the former Soviet Union. Standards are not voluntary but compulsory. They include technical production process details, such as recipes of food products, the specificities of materials that should be used, and so on. Ukrainian producers have to comply with those standards and cannot choose their own production methods. The system differs radically from analogous systems in developed (and even in many developing) countries¹⁰⁵ and is considerably more burdensome for businesses, even as it fails to ensure consumer safety.

The system poses substantial barriers to business development. In 2008, complying with technical regulation procedures cost Ukrainian enterprises at least \$525.6 million in direct costs only (direct expenses and labor costs). Furthermore, there are substantial indirect costs resulting from the technical regulations procedures, such as delayed or even cancelled market entry, reduced innovation, reduced competitiveness and hindered integration in international trade, etc¹⁰⁶.

The current technical regulations system restricts innovation and makes it difficult to launch new products¹⁰⁷. An enterprise can introduce innovations in a product or process only by registering either a technical specification or a standard. The registration process is long and costly and only a few enterprises go through with it – and they only do so if the market potential appears overwhelming, never for a product that would fill a niche, or would be a genuine novelty. As a result, new technologies are not widespread in Ukraine and new products are rarely introduced to the market. According to Ukraine’s State Statistics Committee, the number of enterprises conducting innovative activities decreased from 18 percent in 2000 to 14.2 percent in 2007¹⁰⁸. In 2006 only 11.2 percent of enterprises introduced innovations¹⁰⁹. In EU countries the percentage of enterprises introducing innovations in products or processes is steadily growing – and these enterprises already make up an overwhelming majority.

¹⁰⁵ In such countries the state inspects ready-to-use products to ensure the compliance of mass-use products with technical regulations and the legality of products that receive the national conformity mark, and to verify product information. The state does not oversee compliance with standards.

¹⁰⁶ These costs were not calculated in this survey.

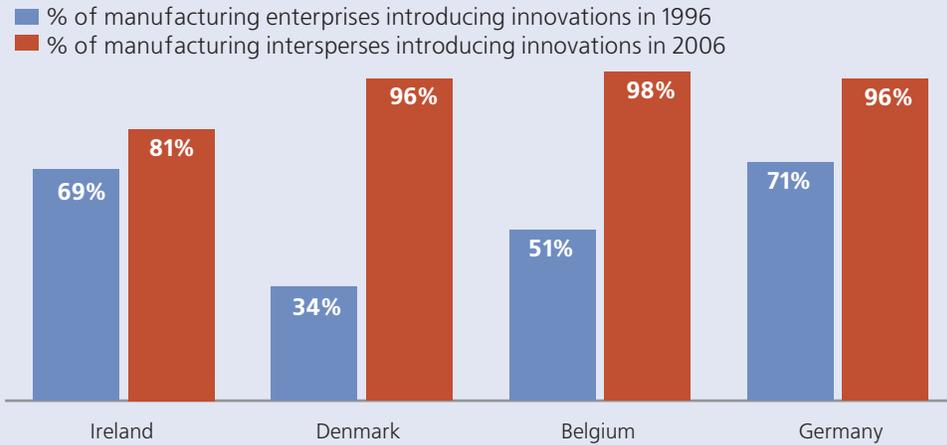
¹⁰⁷ According to the State Statistics Committee of Ukraine, http://www.ukrstat.gov.ua/operativ/operativ2005/ni/ind_rik/ind_u/ind_met.html;
An innovation is a new or significantly improved product or process. It is considered to be introduced once it reaches the market or is used in manufacturing processes. Innovative activity is a complex of measures aimed at developing and introducing innovations. It does not necessarily lead to the introduction of innovations.

¹⁰⁸ In 2000 the State Committee for Consumer Protection and the State Committee for Standardization, Metrology, and Certification were combined in a single agency by the President’s Decree N 926/2000 of July 26, 2000. The Decree cannot be considered the single cause of the decline in question, but it is definitely one of the reasons.

¹⁰⁹ State Statistics Committee of Ukraine, <http://www.ukrstat.gov.ua/>. Innovative enterprises introduce new or significantly improved products.

Figure 47

Share of EU manufacturing enterprises introducing innovations¹¹⁰ is steadily increasing

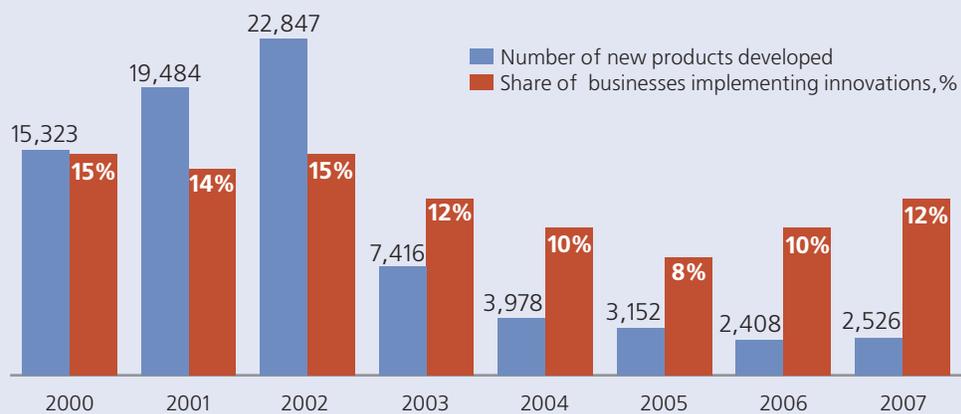


Source: Eurostat, http://epp.eurostat.ec.europa.eu/portal/page/portal/science_technology_innovation/data/database

The number of new locally manufactured products continues to decrease in Ukraine. Though there was slight growth in the number of new products introduced in 2007, that number is significantly lower than it was in the early 2000s (Figure 48). One reason for that is the complicated procedure that governs launching new products. Many documents must be compiled, forms filled in, approvals received, and money spent.

Figure 48

The percentage of enterprises introducing innovations and the number of new products in Ukraine are both low compared with the early 2000s



Source: the State Statistics Committee of Ukraine, <http://www.ukrstat.gov.ua/>

¹¹⁰ Innovative enterprises introduce new or significantly improved products (goods or services) to the market or implement new or significantly improved processes. Innovations are based on new technological developments, on new combinations of existing technology, or on the use of other knowledge the enterprise has acquired. The term "innovative" covers all types of innovator, whether product innovators, process innovators, or enterprises with either on-going and/or abandoned innovation activities. http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/en/inn_cis5_sm1.htm.

Ukraine's international trade patterns also reflect a relatively low level of high-tech innovation (Table 5).

Type of product	Percent of total exports	Percent of total imports
Vegetal products (unprocessed)	8.3%	1.7%
Non-organic chemical products (unprocessed)	2.4%	0.4%
Non-precious metals and products made from them (semi-finished products)	41.2%	7.5%
Chemical products (semi-finished products and chemical fertilizers)	6.1%	2%
Total for unprocessed and semi-finished products	58%	11.6%
Mechanical equipment: machines and tools, electrical machines and components; facilities for recording and playback of video and sound	9.5%	15.6%
Transportation vehicles and road equipment	6.5%	14.1%
Total for machinery	16%	29.7%

Source: the State Statistics Committee of Ukraine, <http://www.ukrstat.gov.ua/>

As Table 5 shows, export of goods characterized by a higher level of processing is considerably lower than that of raw materials (the level of processing tends to be related to the level of innovation – the higher the level of processing, the higher the level of innovation). Meanwhile, high-technology products mostly account for imports. What causes this situation is an outdated, restrictive technical regulations system that impedes the manufacture of a new product for which no national standard exists.

The above also generates a lack of competition on the internal market and leads to significantly higher production costs. The lack of consumer choice that the inadequate technical regulations system creates affects consumers in the form of higher prices. For reference, the total direct cost of complying with technical regulations procedures for Ukraine's private business sector in 2008 (over \$525 million) accounted for 0.62 percent of the year's total retail sales (\$85.3 billion¹¹²) – the impact of indirect costs, in terms of reduced innovation and competition, were themselves way larger.

¹¹¹ This table does not provide an exhaustive list of Ukraine's exports/imports in 2008.

¹¹² State Statistics Committee of Ukraine, <http://www.ukrstat.gov.ua/>.

Indeed, the system means that new technologies cannot be legally implemented until the regulatory agencies approve them. Registering technical specifications with the State Committee for Standardization takes considerable time and money. This delays the modernization of Ukrainian companies, the introduction of new technologies, and the introduction of new consumer products. Competition is limited and prices remain higher than they could be.

A CONTRADICTION LEGAL FRAMEWORK AND A FAILURE TO COMPLY WITH REGULATORY CHANGES

The decision to reform the technical regulations system and to align it with the European approach has been already approved repeatedly at the highest national level. Appropriate regulations are contained in a number of Ukrainian laws adopted in 2001–2005 (Box 22) and in numerous concepts and bylaws.

Unfortunately, newer laws that envisage voluntary compliance with standards are contradicted by earlier laws and regulations (dating from 1991-1993), which have never been formally abrogated and are still being enforced. For instance, the 1993 Decree of the Cabinet of Ministers “On Standardization and Certification” #46-93 and the Law of Ukraine “On Consumer Rights Protection” #1023-XII both stipulate mandatory conformity of products to standards.

Box 23

The Legal Framework for Technical Regulation¹¹³

1. The Law of Ukraine “On Consumer Rights Protection” #1023-XII of May 12, 1991.
2. The Decree of the Cabinet of Ministers “On State Supervision of Conformity with Standards, Norms, and Rules, and Responsibility for Their Violation” # 30-93 of April 8, 1993.
3. The Decree of the Cabinet of Ministers “On Standardization and Certification” #46-93 of May 10, 1993.
4. The Law of Ukraine “On Standardization” #2408-III of May 17, 2001.
5. The Law of Ukraine “On Conformity Assessment” #2406-III of May 17, 2001. #30-93
6. The Law of Ukraine “On Accreditation of Conformity Assessment Bodies” #2407-III of May 17, 2001.
7. The Law of Ukraine “On Standards, Technical Regulations, and Procedures of Conformity Assessment” #3164-IV of December 1, 2005.

Ukraine appears to be failing in achieving its self-assigned goal of reforming the technical regulations system. A good illustration of this failure is the very low level of implementation seen by the Concept of Development of Technical Regulation and Consumer Policy in 2006-2010¹¹⁴ (Table 6).

¹¹³ Note: many of these laws have been amended repeatedly, but all the problematic provisions that this chapter considers have been retained throughout all amendments.

¹¹⁴ Adopted by the Cabinet of Ministers Resolution N 267-p of May, 11 2006.

Table 6	Level of implementation of the Concept of Development of Technical Regulation and Consumer Policy over 2006–2010		
	Activity stipulated in the Concept	Timeframe stipulated in the Concept	Status of implementation
	Develop a draft law on state market surveillance of the safety of goods, works, and services	IV quarter of 2006	No draft law has been developed by the government or executive bodies. The draft law “On Market Surveillance” (registration #1365) was submitted by the President to the Parliament on January 17, 2008. The Parliament has not yet considered it.
	Prepare, adopt, and implement technical regulations subject to EU directives	Implement three technical regulations in 2007, eight in 2008, four in 2009, and five in 2010	No technical regulation has been implemented (many of technical regulations have been adopted, but none had been enacted as of January, 2009).
	Review the USSR’s state and industry standards	2006–2010	628 new standards were adopted in Ukraine in 2006, 935 in 2007, and 1,052 in 2008. Yet plans were for 1,500 to be adopted annually.
	Annually develop and adopt 1,500 standards	2006–2010	
	Reduce the list of goods subject to mandatory certification	2006–2010	Only a nominal reduction has taken place since 2006 (39 positions were excluded from a list containing 400 items and three items were added).
	Add to the effective legislation’s requirements a procedure for declaring conformity for goods with a low consumer risk level	2006	Implemented in part. As of May 2007, 32 types of goods were subject to conformity self-declaration and about 400 types of goods remained subject to compulsory certification. Even so, all conformity declarations are subject to compulsory registration with the State Committee for Standardization, which contradicts the spirit of self-certification.
	Split the certification and state supervision functions and establish state market surveillance agencies on the basis of the state authorities for supervising compliance with standards, norms, and rules, the state metrological control, and local bodies for protecting consumer rights	2008-2010	The split has not even been started.

None of the above list's tasks has been fully completed over the course of three years. The majority of them have not even started yet. As a result, Ukraine's existing technical regulations system has been holding back the country's economic progress for years now. Nor can the lack of implementation be explained, as is often done, by a "lack of means". Most of the items in this action plan require only limited means, and technical assistance has been amply made available.

3.2. Main survey findings – lack of reform impedes enterprises' growth and competitiveness

ALL LOCAL PRODUCERS MUST MANUFACTURE PRODUCTS IN CONFORMITY WITH NATIONAL STANDARDS

Several laws that Ukraine adopted between 2001 and 2005 that envisage voluntary compliance with standards are contradicted by other laws and regulations that are still in effect. For instance, paragraph 3 of Article 11 of the Law of Ukraine "On Standardization" reads, "Standards are applied on a voluntary basis unless technical regulations require the standards to be applied".

Meanwhile, the Law of Ukraine "On Consumer Rights Protection" contains provisions that:

- Require that all domestic products, with no exceptions, conform to standards or technical specifications and that the products carry markings of conformity (paragraph 1 of Article 15);
- Envisage the possibility of banning the production or sale of goods that do not meet the existing standards or technical regulations (paragraph 1 of Article 14)¹¹⁵;
- Require state examination of technical documents for any new (updated) product (paragraph 6 of Article 14).

This law means that production and/or sale of any good for which no standards exist can be halted on the basis of the above. No proof is needed that the products are dangerous to consumer or the environment¹¹⁶.

Producers must therefore manufacture products in conformity with Ukraine's national standards. Companies that wish to innovate face the prospect of having their new products banned until standards can be developed and approved – a process that might take years and adds significantly to the time and cost of product development. Alternatively they can develop technical specifications that "comply with the standards" (Article 7 of the Decree of the Cabinet of Ministers "On Standardization and Certification") – which also takes time and money.

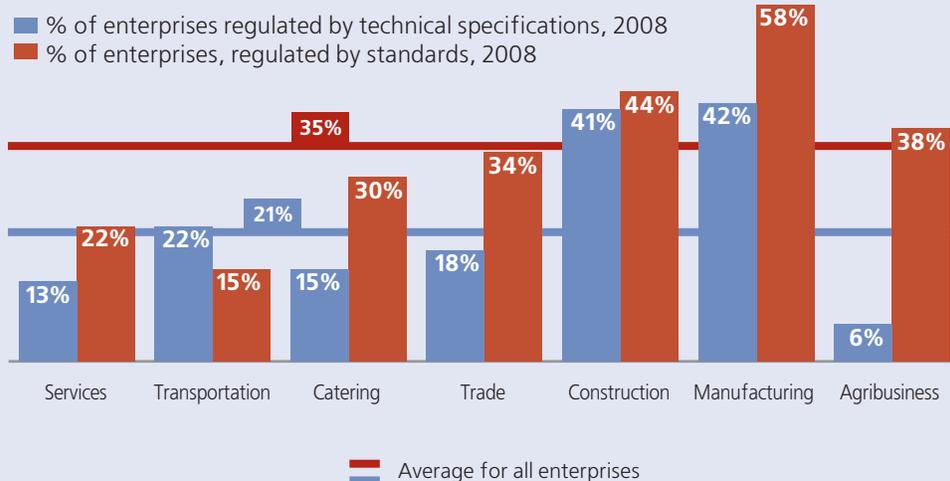
The law extends the rule of compulsory standards to virtually any good, and the IFC survey showed that respondents themselves confirmed that national standards regulate the products of more than half of Ukraine's industrial enterprises (see Figure 49).

¹¹⁵ According to the Law, "If no regulatory documents or legal acts exist... appropriate state executive bodies... should immediately prohibit manufacture and sale of the product."

¹¹⁶ This is envisaged by the Decree of the Cabinet of Ministers "On State Supervision over Conformity with Standards, Norms, and Rules, and Responsibility for Their Violation" #30-93 of April 8, 1993 (Article 6), as well as by the Law "On Consumer Rights Protection."

Figure 49

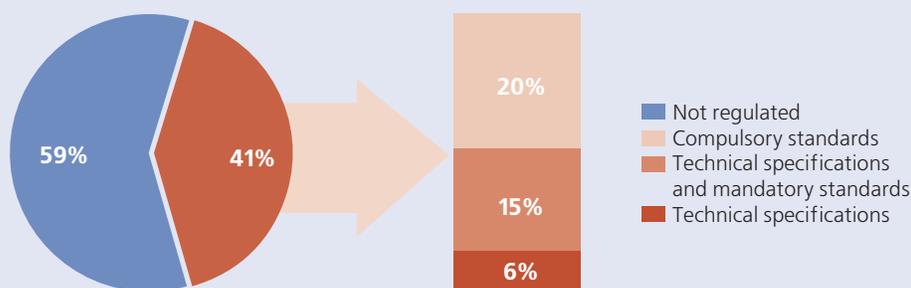
Share of enterprises whose products or services are regulated by either national standards or technical specifications¹¹⁷ – manufacturing and construction enterprises are regulated most



In the private sector overall, 41 percent of enterprises must comply with either standards or technical specifications based on standards (Figure 50).

Figure 50

Forty-one percent of all enterprises are regulated by either technical specifications or mandatory standards, 2008



HARMONIZATION WITH INTERNATIONAL STANDARDS IS VERY SLOW

Using national, specific standards for the majority of goods in today’s internationally integrated supply chains makes very little sense, and is harming the competitiveness and potential of domestic enterprises. Thus, the fact that Ukraine still compels its producers to use standards that are mostly dating from the USSR, or specific only to Ukraine or the former Soviet Union, is definitely a problem. Because standards are still treated as compulsory rules, furthermore, they have to be adopted through a lengthy procedure, and in the national language. On the other hand, countries in Eastern Europe who already joined the EU, or are candidates for accession, have moved very fast

¹¹⁷ There is some overlap between the number of enterprises that are regulated by standards and the number of enterprises that are regulated by technical specifications, therefore these two numbers cannot be added. The appropriate numbers that take into account overlapping are shown in Figure 50.

to recognize the entire body of international standards, either in translations (for the minority) or in their original language (for the vast majority). Since these standards are in any case voluntary, enterprises that want to use them will hire translators as needed.

In Ukraine, on the other hand, the pace of harmonization is very slow. In 2006 Ukraine adopted 628 new standards, in 2007 it adopted 935, and in 2008 it adopted 1,052¹¹⁸. The remaining approximately 13,000 standards are Soviet-era standards (so-called GOSTs – an abbreviation of State Standard) developed between 20 and 40 years ago. This makes it more difficult for Ukrainian enterprises to access international standards (they have to purchase the text abroad, and these are often not translated) and, because compliance with national standards remains compulsory in Ukraine, it often prevents them from manufacturing competitive products. To give perspective, the International Standardization Organization (ISO) publishes an average of 1,100 new documents every year and there are a total of 17,500 ISO International Standards¹¹⁹. There are also several other international standardization bodies in addition to the ISO: the EU, for instance, has three such bodies in the CEN, CENELEC, and ETSI¹²⁰. In 2008, CEN produced 1,144 documents, bringing the total number of available documents to 13,547 (at the end of July 2009)¹²¹. CENELEC finished 2008 with a total of 5,525 active standards. During 2008, 493 standards were published¹²². ETSI published 1,463 standards and reports in 2008. By year's end there existed over 21,000 standards, specifications, reports, and guidelines¹²³.

While Ukraine has slowly increased its number of internationally harmonized annual standards, it continues to lag behind regional and global standards agencies (Figure 51).

Figure 51

Ukraine has been slow in harmonizing standards in comparison with international agencies



Source: Official data of the State Committee on Standardization and the International Standardization Organization http://www.dssu.gov.ua/control/uk/publish/article/bottom?art_id=125042&cat_id=106931
http://www.iso.org/iso/iso_catalogue.htm.

¹¹⁸ http://www.dssu.gov.ua/control/uk/publish/article/bottom?art_id=125042&cat_id=106931.

¹¹⁹ http://www.iso.org/iso/iso_catalogue.htm.

¹²⁰ CEN – European Committee for Standardization, CENELEC – European Committee for Electrotechnical Standardization, ETSI – European Telecommunications Standards Institute.

¹²¹ <http://www.cen.eu/cenorm/aboutus/statistics/index.asp>.

¹²² <http://www.cenelec.eu/Cenelec/CENELEC+in+action/News+Centre/CENELEC+in+figures/Default.htm>.

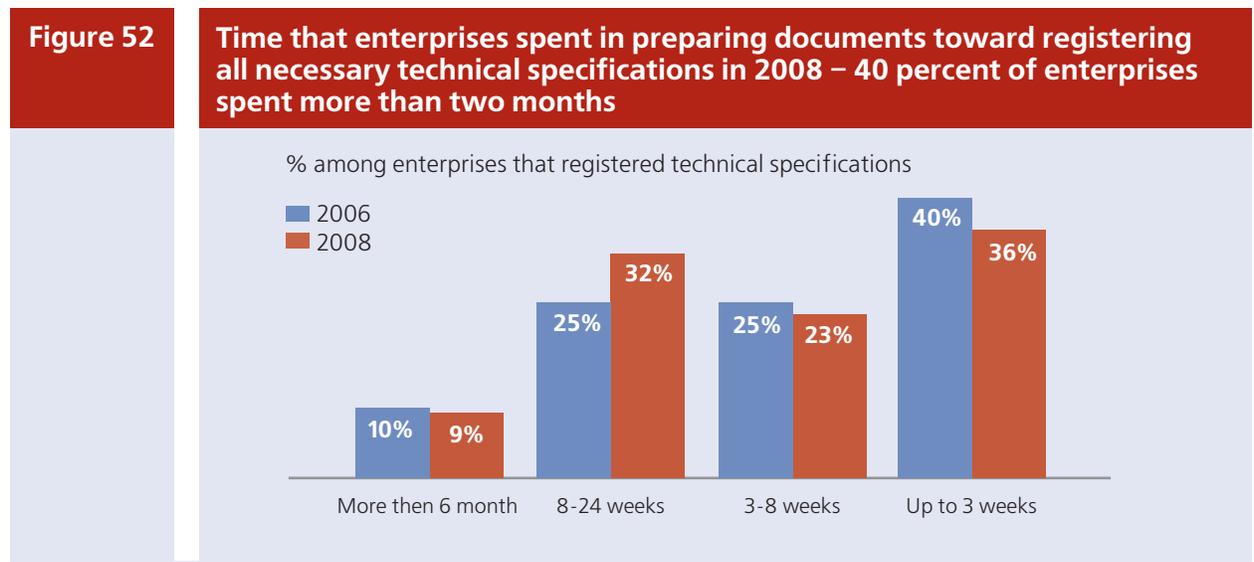
¹²³ http://www.etsi.org/WebSite/document/aboutETSI/Annual_report/Annual_Report_2008_english.pdf.

THE SYSTEM IMPOSES SIGNIFICANT COSTS ON BUSINESSES

The coercive nature of standardization in Ukraine is evidenced by the fact that only 8.4 percent of enterprises that have acquired national standards did so to gain access to information, with the aim of improving their products, for instance. The remainder did so to meet the current legislation’s requirements. Standards in Ukraine provide no new or useful information for producers, which should be their purpose; rather, they prescribe obsolete or formal requirements that do not help competitiveness¹²⁴ or modernization.

Introducing innovations and new products in conformity with the existing standards is difficult. Enterprises are forced to register technical specifications that diverge from the existing standards using “unofficial problem-solving methods” (gifts, bribes, and so on). Forty-three percent of the enterprises that registered technical specifications in 2008 reported turning to unofficial methods.

Ukrainian enterprises spend much time and effort registering technical specifications. A typical business spends 88 calendar days per year in preparation of necessary documents and registering them with the State Committee for Standardization. Over 40 percent of enterprises spent more than two months only preparing all the documents necessary for registering specifications, and about nine percent spent more than six months (Figure 52).



Ukrainian enterprises incurred the cost of \$49.1 million on standardization procedures and \$381.2 million on developing and registering technical specifications, for a total of \$430.3 million in 2008.

Far from stimulating domestic production, this lowers innovation rates and ultimately slows economic growth.

¹²⁴ For instance, the National Standardization Strategic Framework paper “Standards and innovation,” http://www.bsigroup.com/upload/Standards%20&%20Publications/Government/Standards_and_Innovation.pdf, describes standards as “a form of embodied technical knowledge accessible to all types of business that enables more effective product and process development. By their precision of specification, standards let enterprises and their customers economize on gathering product information and on testing for reliability and compatibility.”

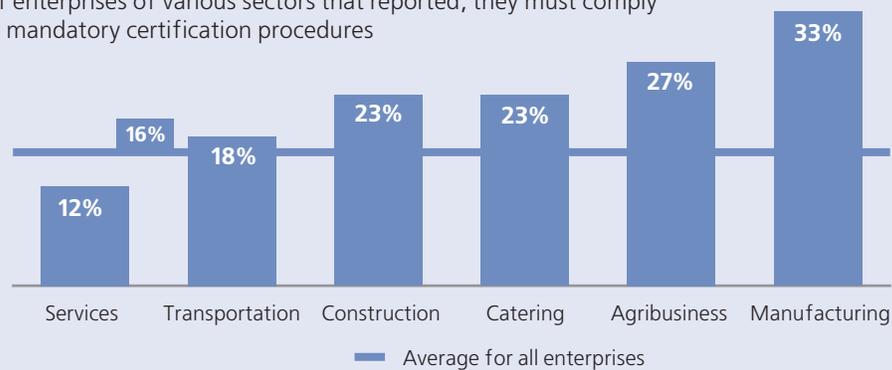
THE LIST OF PRODUCTS SUBJECT TO MANDATORY CERTIFICATION IS TOO LONG

The list of products subject to mandatory certification¹²⁵ includes more than 400 items classified into 36 product groups. Contrary to international practice, the Ukrainian regulations require services and food products to be certified as well. The survey found that products or services of 16 percent of enterprises were subject to mandatory certification in 2008 (12 percent of service enterprises and 33 percent of industrial enterprises).

Figure 53

Share of enterprises whose products or services were subject to mandatory certification in 2008 – manufacturing enterprises were regulated the most

% of enterprises of various sectors that reported, they must comply with mandatory certification procedures



Products subject to mandatory certification account, on average, for 78 percent of these enterprises' total sales.

A considerable percentage of the goods sold in Ukraine are subject to burdensome and costly procedures for complying with prescriptive and, in most cases, outdated requirements. In contrast, in international practice, most lower-risk goods can be marketed using self-certification of conformity, and only high risk goods have to be verified by third-party certifiers.

Box 24

For comparison's sake, Ukrainian and EU requirements for fans can be considered

In Ukraine, five standards define the compulsory requirements for fans that are subject to mandatory certification (GOST 27570.13 - 88 (MEK 342-1-81), GOST 23511 - 79, GOST 30320 - 95, DSTU CISPR 14-1:2004). They were adopted in 1979, 1981, 1988, 1995, and 2004, respectively.

The EU's requirements for electrical tools (low-voltage equipment), including household appliances, are defined by 11 paragraphs in a set of general regulations. In Ukraine a producer must comply with all the above-mentioned standards and apply for third party certification, while a producer in the EU can decide individually how to meet the general directive requirements, and can use a simplified conformity self-declaration procedure (see Annex 10) .

¹²⁵ Adopted by the State Committee for Standardization Order #28 of February 1, 2005, with consecutive amendments up to 2009.

In other countries, services are not subject to mandatory regulation standards. It remains a completely voluntary procedure within the scope of the private sector rather than of the state. The Ukrainian government, on the other hand, spends resources on defining how many hangers hotel room closets must contain in accordance with the DSTU 4269 -2003 standard – and businesses in Ukraine subsequently spend further resources complying with such a norm. All Ukrainian hotels must be certified for conformity with this standard. While hangers might be important to hotel guests, decisions about their quantity should be left to hotel managers.

Best international approaches to food safety, similarly, do not rely on the use of compulsory certification to prove conformity to a rigid set of standards, which are like “recipes” for specific food products. On the contrary, they rely on a strict set of safety parameters, and on supervising the safety of production processes and ensuring traceability, so that the causes of potential problems can be tracked if necessary¹²⁶.

Though Ukraine’s regulatory documents and senior government officials declare an intention to reduce the number of products subject to mandatory certification¹²⁷, the State Committee for Standardization appears very reluctant to follow through on the intention. It has made few changes to its Order defining what products are subject to mandatory certification. Indeed, the list was even expanded in 2009 by two types of goods¹²⁸. The insignificant reductions made for the last time by State Committee for Standardization Order #221 of September 13, 2007, were not systematic and did not take into account the potential risk inherent in products. The Order, for instance, excluded “electrical dryers for footwear” from the list but left “electrical dryers for clothes” on it. These products are nearly identical, making it unlikely that dryers for clothes pose a larger risk to consumers than dryers for footwear. One would expect the same control mechanisms for both products. Of course, clothes dryers are far more frequent, and therefore constitute a far larger market, meaning considerable income in terms of certification costs.

The cost of procedures related to mandatory certification is substantially high for enterprises. On average an enterprise spends about three weeks in preparing the necessary documents to obtain necessary certificates from the State Committee for Standardization. Ten percent of enterprises spent more than two months on this.

Figure 54

Time that enterprises spent preparing the documents necessary to obtain compulsory certificates in 2008

% of enterprises among those, which obtained compulsory certificates



¹²⁶ For more details please refer to Chapter 4 (Food Safety Regulations) of this report and to the background policy paper “Reforming Food Safety Regulation in Ukraine: Proposals for Policymakers,” available on www.ifc.org/ukraine/bee.

¹²⁷ In addition to the Concept mentioned above, please see President Victor Yushchenko at the Business and State are Partners forum, http://www.ua-today.com/modules/myarticles/article_storyid_14501.html.

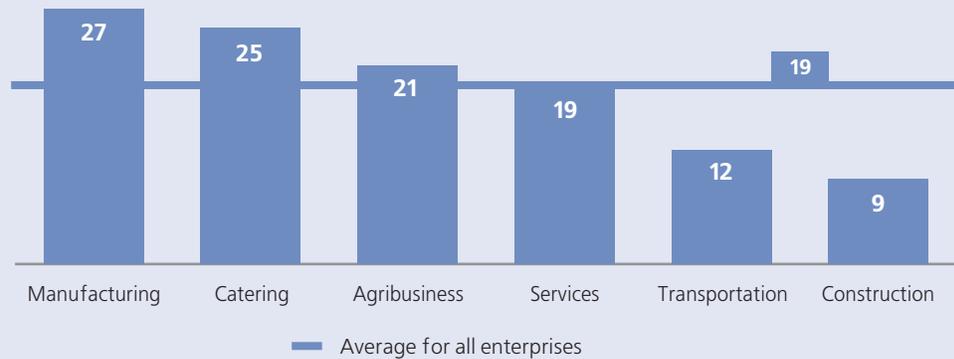
¹²⁸ According to State Committee for Standardization Order #137 of April 7, 2009.

Moreover, due to bureaucratic procedures and low competition in the market for conformity assessment service providers, there is a long wait for conformity assessment certificates (Figure 55) (only certification bodies functioning within the UkrCEPRO¹²⁹ system’s framework are allowed to perform certification of goods that are subject to mandatory certification – for details, please refer to the section on the technical regulation system’s institutional structure).

Figure 55

Mandatory certification is time-consuming for enterprises

Waiting time to obtain all compulsory certificates, calendar days, 2008

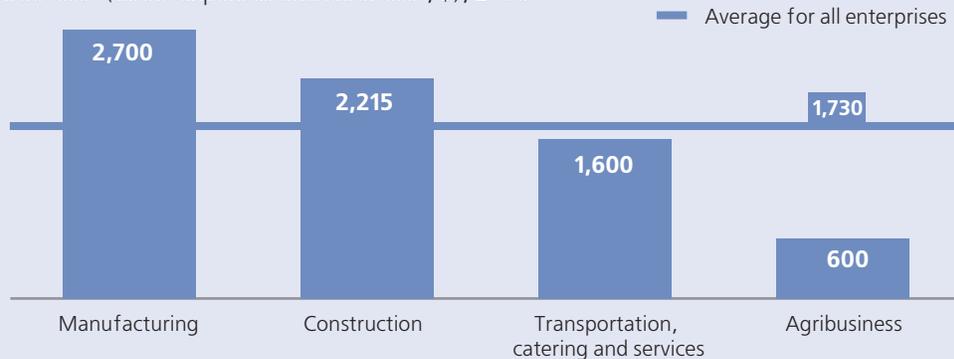


As a result, in 2008 the direct cost of collecting mandatory certificates incurred by an average enterprise exceeded \$1,730. The direct cost for mandatory certificates in manufacturing was up to \$2,700 (Figure 56).

Figure 56

The cost of complying with compulsory certification procedures is very high, especially in the manufacturing and construction sectors

Direct cost (direct expenses and labor cost, \$), 2008



¹²⁹ The State System of Products Certification, created according to the Decree of the Cabinet of Ministers “On Standardization and Certification” #46-93 of May 10, 1993.

The total direct cost of mandatory certification procedures incurred by Ukrainian enterprises was \$95.3 million in 2008.

The expense, complexity, and scope of mandatory certification make it a phenomenon unique to Ukraine and a few other post-Soviet countries. The list of products subject to it must be shortened urgently.

Box 25**The slow pace of technical regulations development and implementation hinders the process of transitioning from mandatory certification to conformity assessment**

As of April 21, 2009, 22 technical regulations had been adopted by Resolutions of the Cabinet of Ministers. These regulations are based, to a certain extent, on the European Directives of the New Approach¹³⁰, which sets out mandatory requirements for the safety of specific types of products.

In addition, the Cabinet of Ministers adopted the Resolution #1585 of October 7, 2003 "On Adoption of Technical Regulation of Conformity Assessment Modules and Requirements for Marking with the National Conformity Mark Which are Applied in Technical Regulations," which determines conformity assessment procedures for different types of products. None of these regulations, however, is yet in force. As a result, local producers cannot apply a simplified conformity declaration procedure instead of going through the costly mandatory certification process.

Box 26**Quite often technical regulations adopted by Ukraine differ from the same EU New Approach Directives**

In some cases, the content of the adopted technical regulations differs from that of the respective EU New Approach Directives and the standards do not conform to the EU's harmonized standards. As a result, these regulations and standards are unacceptable for the export of goods to the European Union¹³¹. For example, the Technical Regulation for Personal Protective Equipment adopted by Resolution of the Cabinet of Ministers #761 of August 27, 2008 establishes three categories of protective equipment. The corresponding EU Directive, however, recognizes only two categories¹³². Ukraine's technical regulation includes helmets and helmet plates for motorcycle riders, whereas the European Directive does not.

Such at first glance insignificant differences contradict Ukraine's intention of entering the EU internal market and the Partnership and Cooperation Agreement between the EU and Ukraine, which stipulates "the approximation of laws [...] in particular: [...] technical rules and standards" and promotion of "the use of EU technical regulations and the application of European standards." Consequently, a Ukrainian producer exporting to the EU would be obliged to comply with both Ukrainian and EU legislation, and to prove that compliance. This would substantially increase both production costs and compliance costs.

¹³⁰ The "New Approach," defined in a Council Resolution of May 1985, represents an innovative method of technical harmonization. It introduces, among other things, a clear separation of responsibilities between the EC legislator and the European standards bodies CEN, CENELEC, and ETSI in the legal framework allowing for the free movement of goods.

¹³¹ As the objective of this survey is not an analysis of the contents of technical regulations or standards for their compliance with international or European documents, only a general comparison is included.

¹³² Council Directive of December 21, 1989 "On the Approximation of the Laws of the Member States Relating to Personal Protective Equipment 89/686/EEC."

THE INSTITUTIONAL STRUCTURE OF THE TECHNICAL REGULATIONS SYSTEM GENERATES CONFLICT OF INTERESTS AND SHOULD BE REFORMED¹³³

According to Section 1 of the Regulation on the State Committee of Ukraine for Technical Regulation and Consumer Policy¹³⁴ the Committee is a specially authorized executive power body working in the spheres of consumer rights protection, standardization, metrology, and conformity confirmation.

Contrary to other countries' practice and EU requirements, the State Committee for Standardization is responsible for all areas of technical regulation, except for accreditation – but even on this last function, the existence of the UkrCEPRO¹³⁵ system gives a duplicate responsibility to the State Committee:

Legislative functions	Standardization
	Approval of the list of products subject to compulsory certification
	Legislative metrology
Control functions	Certification
	Registration of declarations of conformity
	State supervision over conformity with standards, norms, and rules
	Protection of consumer rights
	Metrology supervision
Market access	Registration of bodies that confirm conformity with the UkrCEPRO mandatory certification system, which is a form of accreditation
Scientific functions	Scientific metrology

This scope of responsibilities creates conflict of interests. A single state agency – the State Committee for Standardization – encompasses all the technical regulation functions, from standards development and approval to market surveillance to consumer rights protection. This means that the same agency develops rules (adopts standards and the list of goods subject to compulsory certification), assesses conformity with these rules, controls and checks this conformity, and controls other conformity assessment bodies. This practice is not in line with EU approaches or with those of other developed countries (please refer to the international best practice of the EU's technical regulation system's institutional structure in Annex 11). This creates considerable potential for conflict of interests – and considerable risks for public safety: for instance, third-party certifiers are normally under the supervision of state regulators that can check whether they comply with rules. It is unclear how this control will be performed when it is one and the same institution controlling itself.

¹³³ See also IFC Survey "Technical Regulation in Ukraine: How to Ensure Development of the Economy and Protection of Consumer Rights" and Assessment of the Ukrainian Quality Infrastructure: Challenges Imposed by the WTO and Commitments to EU Accession by the World Bank.

¹³⁴ Approved by the Decree of the President of Ukraine of March 18, 2003 #225/2003 with changes and amendments introduced by the Decrees of the President of Ukraine of March 5, 2004 #280/2004 and of January 10, 2005 #18/2005.

¹³⁵ The chart reflecting the structure of the State Committee for Standardization is in Annex 6, the UkrCEPRO system structure is in Annex 7.

In addition, only certification bodies functioning within the UkrCEPRO system's framework (that is, bodies that the State Committee for Standardization approved and registered) are allowed to assess conformity (perform certification) of goods that are subject to mandatory certification. Even though the State Committee for Standardization lacks responsibility for accreditation *de jure*, it does have it *de facto*, as it registers enterprises¹³⁶. To certify goods that are subject to mandatory certification, the National Agency for Accreditation of the Ministry of Economy should accredit a conformity assessment body that the State Committee for Standardization should include in the UkrCEPRO system. This duplicates accreditation. It also violates two fundamental principles of accreditation: the accreditation body should not depend on, or have as part of it, the bodies that it accredits; and accreditation bodies should not accredit their own laboratories or agencies. As a consequence private certification centers have a very low share of the conformity assessment market and of the number of certificates issued¹³⁷.

Finally, the State Committee for Standardization exercises state control not only over goods already on the market but also over the pre-market process of producing those goods¹³⁸. Pre-market control duplicates the control of ready-to-use goods and is extremely burdensome for business. State inspectors have the right to inspect all design documentation and production processes, even though such inspections have nothing to do with consumer safety.

If Ukraine is to develop its export potential and integrate into the EU community, the national technical regulation system must correspond to universally accepted standards and best practice. The following reforms are necessary:

1. Quasi-accreditation in the UkrCEPRO system should be cancelled. Issuing permits for performing certification should follow the same procedure as does appointing the bodies that assess conformity with technical regulation requirements in accordance with the Law of Ukraine "On Standards, Technical Regulations, and Procedures of Conformity Assessment."
2. The State Committee for Standardization should be divided into several independent bodies that perform specific technical regulation functions:
 - Metrology agencies should be taken out of the State Committee for Standardization structure. Legal and scientific metrology functions should also be separate.
 - The body responsible for standardization should not have other functions.
 - Market surveillance and consumer rights protection agencies should be separated from the State Committee for Standardization.
 - The State Committee for Standardization's conformity assessment-related services should be split up in several entities to increase competition.

The above restructuring should serve to establish separate and independent bodies, each assuming one of the following functions:

- Standardization;
- Metrology;
- Market surveillance and consumer rights protection;
- Conformity assessment.

This structure will make it possible for Ukraine's trade partners to recognize its national system. It will be transparent and will avoid conflicts of interests.

¹³⁶ According to the Decree of the Cabinet of Ministers On Standardization and Certification #46-93 of May 10, 1993.

¹³⁷ According to the Committee for Standardization only 24 out of 117 conformity assessment bodies suffered to conduct compulsory certification in the UkrCEPRO system are private, and others are state owned. <http://www.dssu.gov.ua/document/128434/perelik%20os%20sistem.doc>.

¹³⁸ According to the Decree of the Cabinet of Ministers On State Supervision over Conformity with Standards, Norms, and Rules and Responsibility for Their Violation #30-93 of April 8, 1993.

THE EXISTING SYSTEM CONTRADICTS WTO RULES AND FUNDAMENTAL EU PRINCIPLES

Ukraine has declared that it intends to join the EU, but it has taken no steps toward reforming its technical regulations system, which is the basis for Europe's single market. If the national system is not brought into conformity with European standards, Ukraine cannot be admitted even into a free trade area.

Ukraine has already failed to fulfill its obligations to the WTO (in accordance with the Report of the Task Force for the Entry of Ukraine into the World Trade Organization, ratified by the Law of Ukraine "On Ratifying the Protocol on Ukraine's Accession to the WTO" #250-VI of April 10, 2008)¹³⁹.

In accordance with paragraphs 306, 310, and 313 of the Law, Ukraine was obliged to cancel mandatory food products certification starting on the date of entry (May 16, 2008). Its failure to fulfill this obligation could lead to litigation on the part of trade partners. Potentially, Ukraine could face countermeasures and limitations, including imposition of additional import duties on goods or quotas. Ukrainian exporters of metals, chemicals, and light industrial products could then be the first to suffer from such measures.

None of this would strengthen Ukraine's economy. Such punitive measures could be catastrophic for Ukraine's export-dependent economy, especially during a severe credit crunch. Imposition of penalties, meanwhile, does not release the violating country from its obligation to meet all WTO requirements. In its best interests, Ukraine should meet all WTO requirements and bring its legislation into conformity with WTO agreements.

Furthermore, failure to meet WTO and EU organizational structure requirements makes it impossible to establish free access for Ukrainian goods to the European market. Specifically, it impedes the signing of an ACAA agreement (Agreement of Conformity Assessment and Acceptance of Industrial Products) and the creation of a free trade area.

¹³⁹ <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=250-17>.

3.3 Policy recommendations

The existing technical regulations system should be a serious cause of concern for Ukrainian policymakers. Failure to advance major reforms soon will lead to further scaling down of Ukraine's export potential and investment attractiveness.

Several immediate steps are necessary to align the national technical regulations system with the European one and advance technical regulations system reform.

1 Cancel the requirement for mandatory application of standards and the requirement that locally produced goods be marked to show that they conform to specific standards or regulations

To implement this recommendation the amendments to the Law "On Consumer Rights Protection" should be adopted.

What will it lead to?

It will make it easier for enterprises to implement innovations and reduce the costs they incur in complying with mandatory standards. It will also eliminate discrimination against local producers, as imported goods are exempt from such requirements. This will lead to increased competition on the market, introduction of innovative and new products, and lower consumer prices.

2 Cancel mandatory certification of lower-risk goods, food products and all services

Such certification should be cancelled for all food products and for goods which are not subject to third party conformity assessment in the European Union. To ensure consumers safety valid technical regulations that set out requirements for product safety should be implemented. To implement this recommendation the amendments to the Order #28 of the State Committee for Technical Regulation and Consumer Policy should be adopted.

What will it lead to?

This will release costs that enterprises incur in complying with mandatory certification, make it easier to place new goods on the market, and simplify the innovation process. This in turn will lead to lower prices for goods and especially services.

3 Introduce a new market surveillance system

The new system will control the conformity of finished products with key safety requirements rather than regulate the production process and ensure product conformity with outdated national standards. It will replace a burdensome current system characterized by all-embracing state supervision from the design stage to the production stage to the market stage. To implement this recommendation the new Law "On Market Surveillance" should be adopted and the Decree of the Cabinet of Ministers "On State Supervision of Conformity with Standards, Norms, and Rules, and Responsibility for Their Violation" of April 8, 1993 should be eliminated.

What will it lead to?

This step will ensure quality checks for products on the market, improve consumer safety, and eliminate the extremely burdensome and obsolete pre-market control system. It will encourage new product design and innovation and reduce costs that enterprises incur during the state control process. This could lead to lower costs and consumer prices.

4 Reform the State Committee of Ukraine for Technical Regulation and Consumer Policy by dividing it into four independent bodies responsible for (1) metrology, (2) standardization, (3) market surveillance and consumer rights protection, and (4) conformity assessment

This is needed to avoid the conflict of interests peculiar to Ukraine's current technical regulations system and make it commensurable to the European one.

What will it lead to?

This will improve the quality of public administration in this sphere and reduce risks and opportunities for conflicts of interest and corruption. Compatibility with the European system will create the possibility for deeper economic integration with the EU, such as the signing of an ACAA and the creation of a free trade area. Regulation-related costs for businesses will fall, lowering consumer prices in turn.



4 Food Safety Regulations

Outdated and inefficient regulations are hampering the food processing sector's competitiveness¹⁴⁰

4.1. Sector overview

4.2. The food industry faces more permit, inspection, and technical regulations than do average Ukrainian enterprises

4.3. Policy recommendations

¹⁴⁰ The main findings and conclusions presented in this chapter have largely benefited from a policy paper on a similar topic entitled "Reforming Food Safety Regulations in Ukraine: Proposals for Policymakers," developed by the IFC Ukraine Investment Climate project (IFC, April 2009).

KEY FINDINGS:

- Ukraine's agricultural sector is operating way below its production frontier and producing only 22 percent of the output it could, given its factor endowments;
- Outdated and internationally non-harmonized food safety regulations generate additional costs for enterprises that have to comply with Ukrainian state regulations; these costs may be up to seven percent of product cost in the food sector;
- On average, the food enterprises face more permits, inspections, and technical regulations than an average Ukrainian enterprise; meanwhile, the current food safety control system fails to achieve higher public health and safety results than do analogous systems in other countries;
- Ukraine's food safety control system, comprised of at least four regulatory agencies with duplicated functions, lacks a clear organizational structure. That leads to excessive control over food-processing enterprises. They are inspected twice as much as other entities, and each enterprise spends almost a month under inspection. This relatively confused institutional structure also means that state regulation is less effective;
- Standards and technical specifications add up to a mandatory regulatory system rather than to a voluntary quality assurance compliance instrument. All certification procedures in the food industry took about 20 percent more time than they do in general: 20 against 16 working days for preparation and 25 against 19 calendar days of waiting.

4.1. Sector overview

The food processing industry is an important part of the Ukrainian economy. In 2007, agricultural production amounted to about seven percent of GDP, and food processing to roughly eight percent of GDP. If the industries upstream from agriculture (farm machinery, fertilizer, agricultural chemicals) are added in, the agricultural and food processing sectors together hold a share of GDP that approaches 20 percent. In 2007, 10 percent of the country's active population worked in agriculture and food processing, and 32 percent of the Ukrainian population overall lived in rural areas¹⁴¹.

Despite Ukraine's favorable climatic conditions, good geographic location and extremely fertile land, the sector's performance remains rather below its potential. In fact, according to the World Bank study, agriculture is operating below its production frontier and producing only 22 percent of the output it could, given its factor endowments¹⁴². The sector's export potential is not completely realized because of the limited competitiveness of Ukrainian goods, failure to comply with international food quality and safety standards, and existing legal and practical barriers to trade. Ukraine is currently constrained to export most livestock products (meat, milk) only to a limited number of countries (mainly CIS and African countries), while safety issues prevent from trade with the EU and other advanced economies: in 2008 dairy exports to EU totaled a mere 11.6 percent of the sector's exports¹⁴³.

Outdated and not internationally harmonized food safety regulations severely undermine Ukraine's potential and competitiveness in agriculture and food production. They do so by imposing unnecessary costs on businesses and duplicating regulatory requirements: the cost of compliance with Ukrainian state regulations in the food sector may be up to seven percent of product cost. For exporters, who have to cope with a double layer of regulations, the costs associated with complying with both national and EU standards are even higher: in the manufacture of food products and beverages, because of unnecessary duplication, it is 10.4 percent of product cost¹⁴⁴.

Given the current global crisis, it is crucial to relieve Ukrainian business (especially in strategic sectors such as agriculture and food processing) of harmful administrative burdens and to reform the sectoral regulatory framework. Doing so would help the sector prepare itself to compete globally in view of the possible economic recovery. Fully harmonizing Ukrainian food safety regulation with WTO commitments¹⁴⁵ would reduce standardization costs for agricultural and food products by 30 percent. In the case of harmonization under the EU-Ukraine Extended Free Trade Agreement, costs would fall by up to 50 percent¹⁴⁶.

¹⁴¹ World Bank Sustainable Development Unit, Ukraine Agricultural Competitiveness, 2008 (based on data from the State Statistics Committee of Ukraine).

¹⁴² «Ukraine Agricultural Competitiveness Report» Europe and Central Asia Region, Sustainable Development Unit, The World Bank, June 2008.

¹⁴³ Monitoring of the dairy and dairy products market in Ukraine. Ukrainian Union of Dairy Enterprises, 2008 (based on data from the State Statistics Committee of Ukraine).

¹⁴⁴ Trade Sustainability Impact Assessment for the FTA between the EU and Ukraine within the Enhanced Agreement, ECORYS Research and Consulting, 2007.

¹⁴⁵ After 14 years of negotiations, Ukraine officially joined the WTO on May 16, 2008 through ratification of the report of the working party on Ukraine's accession to the WTO, WT/ACC/UKR/152. The guiding principle as expressed in relevant WTO and Codex Alimentarius Commission provisions is that "such systems should be no more restrictive of trade than is necessary to achieve the required level of protection." See Codex Alimentarius Commission Standard "Principles for Food Import and Export Inspection and Certification," CAC/GL 20-1995, para 10.

¹⁴⁶ Trade Sustainability Impact Assessment for the FTA between the EU and Ukraine within the Enhanced Agreement, ECORYS Research and Consulting, 2007.

4.2. The food industry faces more permit, inspection, and technical regulations than do average Ukrainian enterprises

Although Ukraine has the potential to become one of the world's major food producers, the average growth rate of agricultural output for the last 15 years was minus three percent per year. The major impediments to the sector's development in Ukraine are the poor quality of food products by the standards of international food safety regulations and the outdated food safety control system.

In this context, food companies often see regulatory issues as a critical constraint. Overall, the main characteristics of the Ukrainian food safety regulatory system are:

- Primary and secondary legislation is fragmented and contradictory;
- Mandatory product-focused standards (GOST and DSTU)¹⁴⁷ and other requirements are numerous, outdated, and overly prescriptive;
- There is little appropriate communication or coordination between food safety government agencies, resulting in scattered and overlapping competencies, redundant inspections, and overall inefficient control;
- Safety regulation is based mainly on pervasive sample collection, compulsory certification, and frequent on-site inspection instead of a comprehensive and robust risk-based safety management system (such as HACCP), combined with traceability.

Regulation in the food processing sector is even stricter and more complicated than it is in other sectors. It is burdensome and costly for producers, and the current system is not aligned with WTO rules and best international practices. In addition to the overall already heavy administrative burden with which all Ukrainian companies must cope, food processors have to comply with multiple regulatory agencies that set an extensive range of food safety regulations, with more complicated procedures, more documentation, and more frequent and longer inspections. The real problem, however, is that the current food safety control system still does not achieve higher public health and safety results than exist in other countries. Nor has it helped prevent food-related diseases and poisonings.

Box 27

Ukraine's Ministry of Health annually registers approximately 1,500 food-related poisonings. About 70 percent of them are attributed to factory-produced food products. The situation is especially troubling in terms of the increasing number of enteric infections in children. The number of registered cases of such infections increased from 541 per 100,000 in 2002 to 768 per 100,000 in 2005, or by 43 percent.

¹⁴⁷ A GOST (Gosudarstvennyi Standard – State Standard) is a pre-1991 standard used in the former Soviet Union. Many GOSTs (50 percent of them) remain valid. The term now refers to a set of technical standards maintained by the Euro-Asian Council for Standardization, Metrology, and Certification (EASC), a regional standards organization of the Commonwealth of Independent States (CIS). A DSTU (Derzhavnyi Standart Ukrainy – State Standard of Ukraine) is an official standard that has been developed and used in Ukraine since independence.

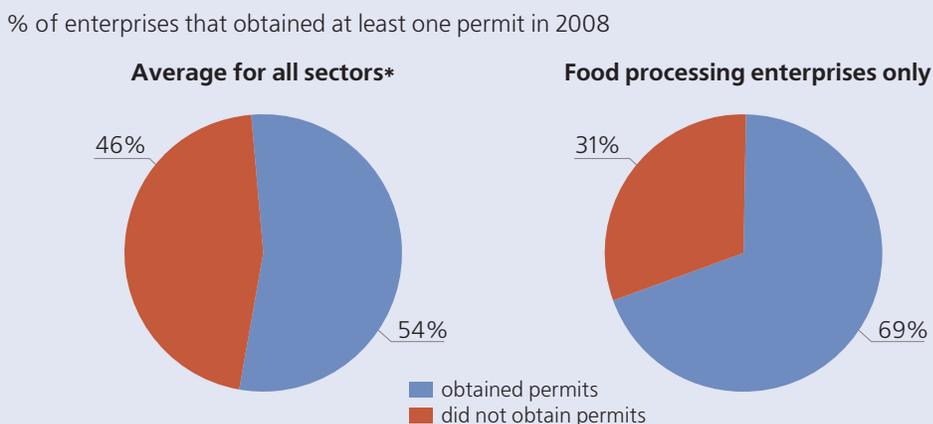
PERMITS FOR FOOD-PROCESSING ENTERPRISES: MORE FREQUENT, LONGER, AND MORE EXPENSIVE PROCEDURES

The massive use of permits in the agriculture and food industry as a control mechanism to ensure public health and safety has proven to be ineffective in properly regulating businesses' entry into, and operations on, the food market; supporting a modern food safety control system; and facilitating trade¹⁴⁸.

On average, the permit-issuing regime is much stricter for food processing enterprises than for other sectors: two thirds of such enterprises obtained at least one permit in 2008, whereas across all sectors, permits covered only about half of companies.

Figure 57

Permit coverage in the food processing sector is higher than for the private enterprises in general



*Here and elsewhere: "Average for all sectors" includes food processing as well

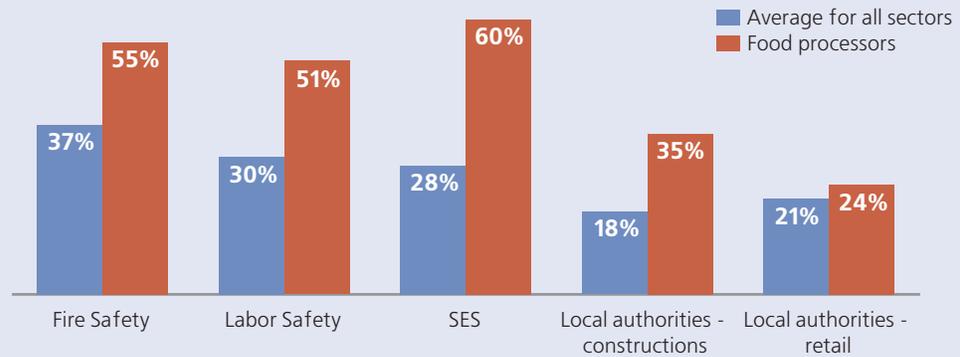
On average, regulatory agencies require permits from food processors more often than they do from enterprises from all sectors.

¹⁴⁸ The IFC analytical policy paper "Reforming Food Safety Regulation in Ukraine: Proposals for Policymakers," 2009 which can be found on www.ifc.org/Ukraine/bee.

Figure 58

Permit coverage of food processing enterprises is even higher for the agencies that are not directly responsible for food safety regulation

% of enterprises that obtained permits in 2008, by agencies

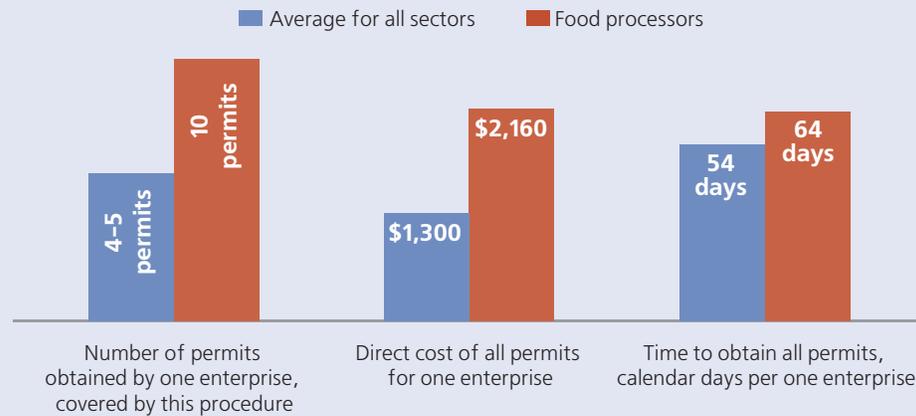


The number of permits required from food processors is twice the average required from all enterprises. In 2008 a typical Ukrainian food processing enterprise had to deal with four agencies to obtain an average of ten permits. The process of preparing and issuing permits is also longer for food producers – about two months per enterprise, resulting in total direct cost of \$2,160, including all expenses and labor costs.

Figure 59

Permit-issuing procedures are much more burdensome for food processing enterprises

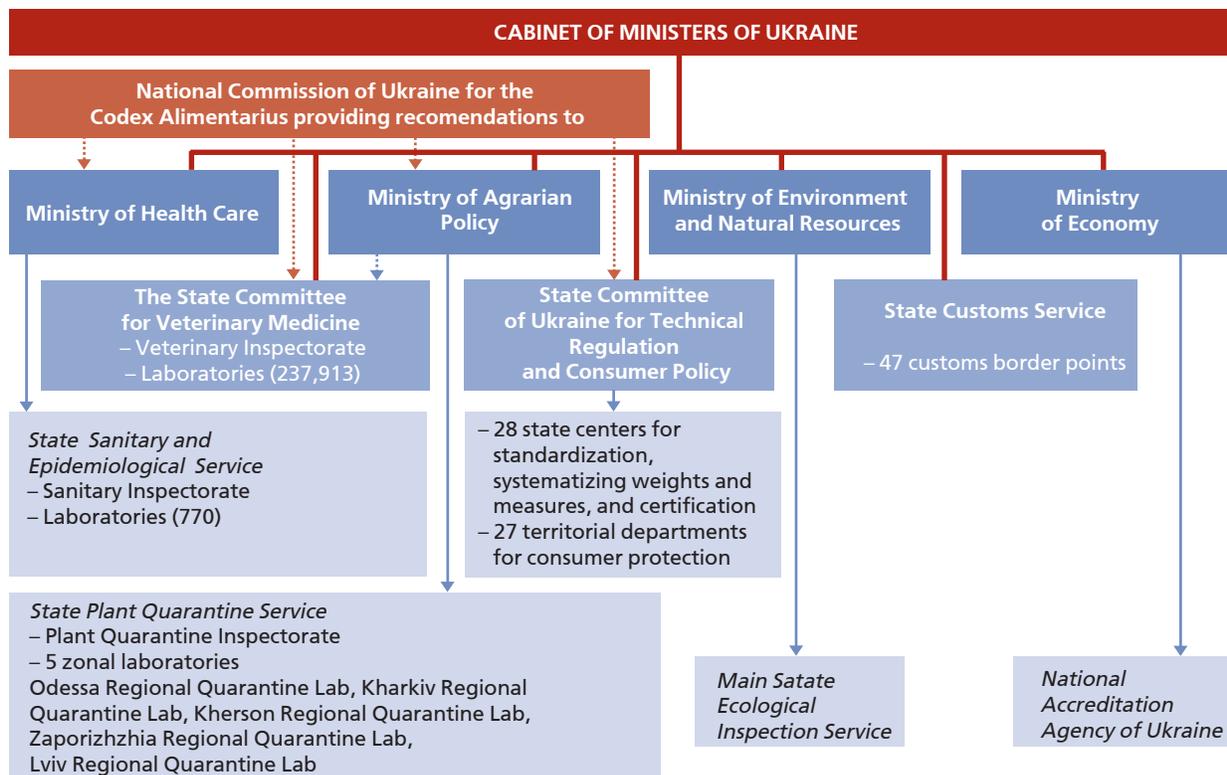
Permit procedures in 2008



STATE CONTROL OF FOOD PROCESSING ENTERPRISES: MULTIPLE AGENCIES AND FREQUENT LENGTHY INSPECTIONS

Ukraine's food safety system comprises four ministries, seven committees and services, and almost a thousand regional agencies and laboratories. All of these regulate the activities of food processing enterprises and interfere significantly with their production processes.

Food Safety Governance Structure in Ukraine



Ukraine's state food safety control system can be characterized as follows:

- There is no clear organizational structure, no coordination or systemic exchange of information at the national level (due to duplication of controlling bodies' functions),
- No proper planning system exists that can meaningfully evaluate efficiency and results,
- Implementing a risk-based approach to food safety control has been very slow.

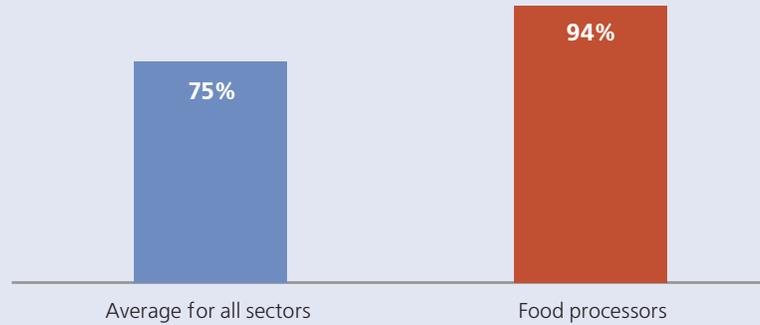
The share of all businesses inspected in Ukraine fell by 20 percent points from 2006 to 2008¹⁴⁹. Yet food processing enterprises saw no positive changes. The rate with which they are inspected has not declined. In 2008, nearly all of them faced inspections.

¹⁴⁹ See more comparative data in Chapter 2 (Inspections) of this report.

Figure 60

Food processing enterprises were inspected on a massive scale in 2008

% of inspected enterprises in 2008



Food processing businesses face more frequent and longer inspections than other businesses do.

Figure 61

Food processing enterprises are inspected two times more than other enterprises; all inspections together take almost one month

■ Average for all sectors
■ Food processors



The State Sanitary and Epidemiological Service (SES) visited the average food processing enterprise about four times per year, making it the most active regulating agency. Other active regulating agencies visited food processors about twice per year.

As the survey revealed, the lack of rational and reasonable system of planning and conducting inspections in the food processing industry generates a surprising result: not only SES, but also the fire and tax authorities perform excessive control over food enterprises (Figure 62). It is hard to believe that this industry is more prone than other industrial sectors to fire risk or tax compliance issues.

Figure 62

The SES, the fire safety and tax authorities conducted the greatest number of inspections in 2008

% of food processors inspected in 2008



A preliminary analysis suggests that the following factors account for the large scale, over-comprehensiveness, and inefficiency of Ukraine's food safety inspections system:

1. Control authorities do not use risk-based criteria in planning inspections

At present, the frequency with which an enterprise is inspected is not usually pegged to the risk that enterprise poses. The Sanitary and Epidemiological Service¹⁵⁰ and the State Veterinary Committee have introduced risk criteria, but have been very slow to implement them.

2. The legislation does not contain key provisions that are important for creating a solid legal foundation for government control measures

In particular the legislation lacks:

- a detailed description of the rationale for inspections and clear procedures for assigning and conducting them. Despite some preliminary progress with adopting the Law on Inspections, which mandated introduction of risk categories from January 1, 2008, the situation in practice however has not significantly changed;
- a clear definition of the rights and responsibilities of the officials who conduct inspections. The existing legal framework does not address the liability of inspectors who break the law;
- a clear division of the responsibilities of inspecting authorities and a scheme for coordinating between them.

The legislation mandates duplication of regulatory functions for the same product specifications at different stages of the production process. The result is that businesses are often inspected or assessed by more than one agency for the same issue.

3. Performance evaluation criteria for regulatory agencies have long been based on how many inspections are held and on how much money in fines is collected, rather than on indicators that ensure food safety – for example, the level of food-borne disease.

¹⁵⁰ SES authorities introduced risk criteria in February 2008 by decision of the chief health officer. It was not consistent with the legal procedure stipulated in the Ukrainian Law "On Fundamental Measures of State Control over Business Activity", #877-V of April 5, 2007.

Box 28**International best practices in food regulation**

The experience of other countries has shown that necessary and adequate levels of safety can be achieved without restrictive, inflexible, and highly administrative processes that negatively affect the competitiveness of the private sector and impose costly barriers to trade.

Widely accepted international food safety trends are characterized by the following principles:

- Food safety management has been shifted from government-imposed end-of-pipe controls to prevention throughout the food supply chain. Basic responsibility for food safety compliance has shifted to the private sector, with the government taking on advisory, oversight, rule-making, and enforcement roles.
- Risk analysis and cost-benefit assessment are the main building blocks for food safety policymaking. They include risk assessment, risk communication, and risk management. EU law uses risk analysis to balance efficiency with the imperatives to protect health and consumer interests.
- An integral “farm to fork” approach to food safety controls. EU members, for example, are in the process of creating or have already created either single controlling bodies or integrated food control systems that regulate and trace the entire production chain, starting with the field and ending with retail trade.
- The EU approach to food safety control is risk-based and employs mainly general “horizontal” legislation covering common food industry issues, such as food additives, labeling, and hygiene. There is also “vertical” legislation where necessary, applicable only to specific products, such as milk, meat, and poultry. This scheme regulates and prescribes norms only so far as they are necessary for safety, making it more cost-effective and business-friendly.
- Regulatory impact analysis is used – that is assessment of the costs and benefits of newly-proposed regulations. It allows for mutually beneficial policymaking and management in food safety and agricultural health for three key players: consumers, private enterprises, and the government.

TECHNICAL REGULATIONS FOR FOOD PROCESSING ENTERPRISES: OUTDATED, LENGTHY, AND EXPENSIVE PROCEDURES

STANDARDS AND TECHNICAL SPECIFICATIONS ADD UP TO A MANDATORY REGULATORY SYSTEM RATHER THAN TO A VOLUNTARY QUALITY ASSURANCE COMPLIANCE INSTRUMENT

The GOST/DSTU system of standards inherited from the Soviet Union consists of thousands of standards that combine technical prescriptions, quality parameters, agricultural health, and safety standards. Standards are compulsory for many goods and services, whereas in most of the world compliance with standards (such as provisions developed by Codex Alimentarius Commission)¹⁵¹ is mandatory only for critical safety parameters.

Table 7		
So far, non-conformity of local norms and approaches with international rules and principles remain striking		
Procedure	Best international practices	Ukrainian practices
Standards	<p>The food safety system in the EU and other developed countries is grounded on safety requirements and norms related to food processing, that are compulsory in order to secure food safety: such as hygienic regulations, microbiological requirements, threshold levels of contaminants, etc.</p> <p>Many of these safety requirements have been gradually harmonized internationally as part of the work on the Codex Alimentarius led by the WHO and the FAO.</p> <p>The Codex Alimentarius norms are also referred to as “standards” but they are not detailed prescriptions of how to produce certain goods, but only norms on what are acceptable levels of contaminants.</p> <p>In addition to these safety requirements, there are some standards which govern the way testing laboratories work – not the way food is produced!</p>	<p>Standardization in Ukraine is not a voluntary procedure by means of which manufacturers can ensure the specific properties of a process or product. Nor is it a system primarily based on the needs and initiatives of manufacturers and consumers. Ukrainian standards are highly detailed, prescriptive technical requirements with which products must comply in all respects; they do not focus on end results (guaranteeing that products are safe under specific conditions of use) but rather prescribe use of specific materials, quantities, and so on.</p>

¹⁵¹ The Codex Alimentarius Commission (CAC) was established in 1963 by the Food and Agricultural Organization of the United Nations (FAO) and the World Health Organization (WHO) to protect the health of consumers and ensure fair practices in food trade. The Codex Alimentarius (Latin for “food code”) is the result of the work of the Commission and its technical committees: a collection of internationally adopted food standards, guidelines and codes of practice. Codex standards are voluntary and non-binding recommendations and their implementation is not controlled but many governments implement them because they see the benefit of it for their consumers and their trade. Codex standards and guidelines and more information material are available on the Codex Web site <http://www.codexalimentarius.net>.

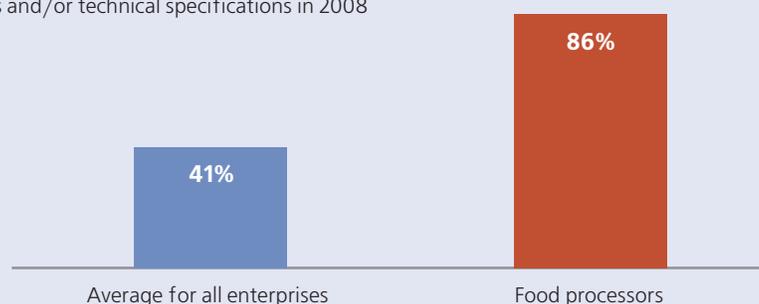
Procedure	Best international practices	Ukrainian practices
	<p>There is also a set of rules on packaging and labeling, which aim to ensure that there is no contamination of foods, and that consumers are properly informed of what the food is. Producers have freedom to introduce new products, as long as they are safe, but if they use specific names for their products (e.g. "olive oil") then this product should correspond to what it is called. Not all food names are regulated in this way: only those that are considered to add a "premium" to the food, i.e. to command higher prices.</p> <p>A crucial part of the best international practice in food safety is traceability, which is compulsory at all stages of the food chain (producers, processors, distributors): all are responsible for maintaining an 'unbroken chain' of information along the whole production process (from raw materials to the final product) allowing to identify the origin of the food, so that any contamination problem can be addressed effectively and any hazard, once identified, be eliminated swiftly from the market.</p>	<p>The mandatory technical standards for foodstuffs such as they prevail in Ukraine thus specify exactly how each type of food (e.g. pickled cucumbers) should be produced, with which amount of salt, vinegar etc. They thus regulate taste parameters and prevent any innovation on the market. They are not focused on health issues, and on the contrary can prevent the introduction of more modern and safer techniques.</p> <p>Mandatory safety requirements do exist in Ukraine, but standards do not add to these, and are just a hindrance for the development of food processing and distribution. There is, on the contrary, not enough focus on improving compliance with international approaches, and on traceability.</p>
Conformity assessment/ Certification	<p>According to best practices that are commonly applied in OECD countries and in the EU, food products do not require certification. Certification is used almost exclusively for export-import operations (and only if the importing country requires it – i.e. not, by definition, inside the EU – and very rarely between countries with effective food safety regimes).</p>	<p>Certification (conformity assessment by a third party) in Ukraine is not primarily a voluntary procedure by which a business seeks to demonstrate to the consumer the safety and higher quality or reliability of its products, services, or processes.</p> <p>In contradiction to the usual practice in the EU and OECD countries, in Ukraine, compulsory certification is applicable to food products for which international practice foresees a completely different regulatory approach. Compulsory certification in Ukraine virtually fixes the food recipe in stone, but it does little to ensure real consumer safety since it provides neither a real system for monitoring hazards on an ongoing basis, nor a traceability mechanism – nor do the certification parameters (i.e. the standards on which the certificate is based) emphasize safety, since in fact they are more a "standard recipe" for the product.</p>

It is important to note that the term “standard” as it has been historically used in Ukrainian legislation (largely inherited from the Soviet times) refers to a set of extremely prescriptive norms and where manufacturers are allowed to produce only products that are aligned with these detailed specifications approved by the state. This meaning differs from what Codex Alimentarius and other internationally accepted regulations call “standards” in food safety, which includes recommendations and parameters for groups of products focusing only on acceptable (or unacceptable) levels of contaminants (be they chemical, bacteriological etc.), leaving the producer the opportunity to choose between range of materials and inputs but still providing the same level of food safety.

Figure 63

Over 80 percent of food processing enterprises must comply with mandatory standards or technical specifications

% of enterprises whose outputs were regulated by standards and/or technical specifications in 2008



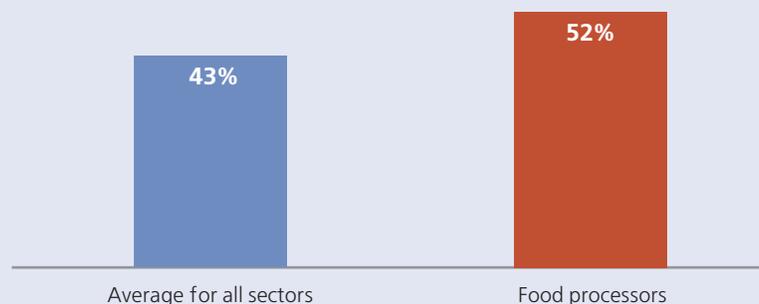
On average, food processing enterprises had to spend about three months (100 days) to prepare and register all technical specifications in 2008. This cost them on average \$4,200 (including expenses and labor costs).

Given such lengthy, expensive, complex and highly prescriptive procedures, it is not surprising that corruption and “unofficial” methods of solving enterprises’ problems with standardization bodies are more widespread for food producers than they are in general. More than half of respondents admitted that they were supposed to (or asked to) pay unofficial fees to authorities. Across all sectors, on the other hand, 43 percent of respondents reported having been caught in the same situation.

Figure 64

Long, complex standardization procedures in the food processing industry result in more unofficial payments

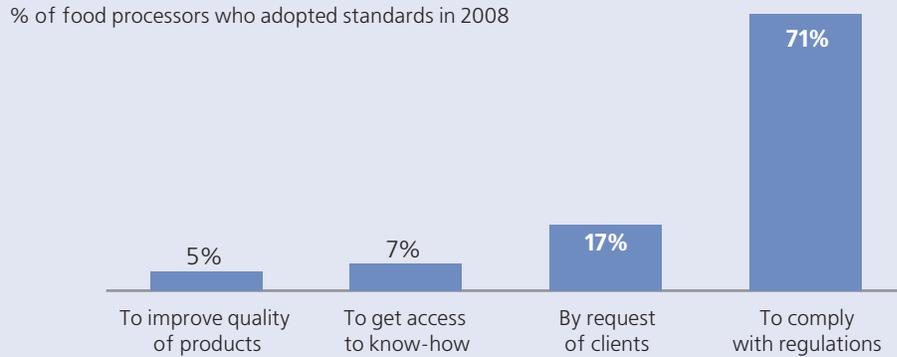
% of enterprises, paid unofficially in 2008



Only five percent of food processors see standards as a voluntary tool with which to improve product safety and quality. The state standardization system, with its excessive control, leaves producers with no choice: they must accept the (quasi-voluntary) state standards¹⁵² (Figure 65).

Figure 65

Food producers adopt standards because they are, de facto, a mandatory regulatory procedure rather than because they represent a voluntary instrument for ensuring quality

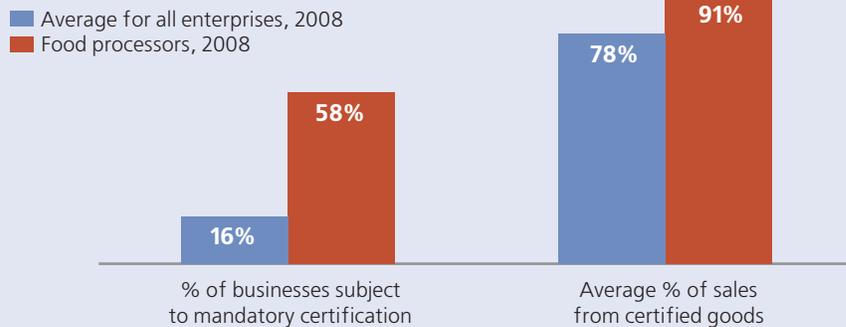


MANDATORY CERTIFICATION IS AN OUTDATED AND INEFFECTIVE SAFETY TOOL

Food products are subject to mandatory certification in Ukraine, turning such certification into an additional – unnecessary and ineffective – product control mechanism.

Figure 66

The majority of food processing enterprises must certify almost everything they produce



Food producers obtained an average of nine certificates in 2008, at a total direct cost of \$1,800. All certification procedures in the food industry took about 20 percent more time than they do in general: 20 as against 16 working days for preparation and 25 as against 19 calendar days in waiting time.

¹⁵² Paragraph 2 of Part 1 of Article 14 of the Law “On Consumer Rights Protection” #1023-XII from May 12, 1991, says: “Failure to provide standard documentation or regulations specifying compulsory requirements for products that may do harm to the well-being or health of consumers, the environment, or property, shall result in an immediate ban on the production or sale of such products by the executive authorities in charge of consumer protection.” In practice this means that all standards are de facto mandatory and are not in line with international agreements.

4.3. Policy recommendations

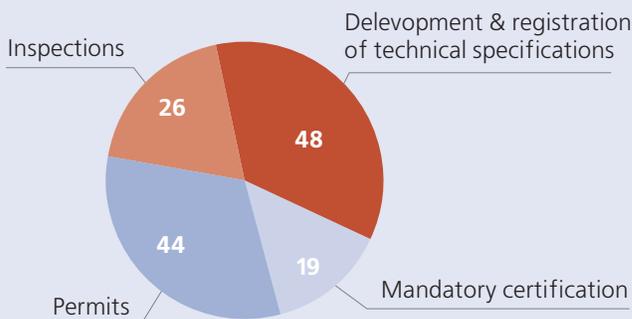
The food industry needs to be better regulated in line with international food safety best practices. The already significant administrative burden on regular businesses is even bigger for food processors: the more permit-issuing, technical regulation, and controlling agencies are at work in this sector, the harder it makes it for producers to comply with the hundreds of existing requirements. To keep running and to stay profitable, businesses often have to find informal ways to solve their issues with regulatory authorities. The current regulation system in the food industry creates even more opportunities for corruption than do the regulation systems in the rest of the economy.

In addition, food enterprises have to comply with specific and complicated food safety requirements. They spend more time and resources than enterprises in other sectors in dealing with the various regulating agencies that are part of the Ukrainian bureaucracy.

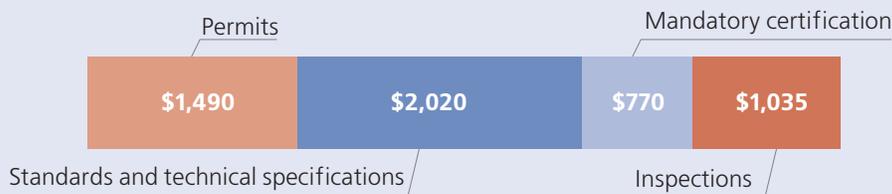
Figure 67

In 2008 the average food processing enterprise spent from four to five months and \$5,315 on four regulatory procedures (permits, inspections, standardization, and mandatory certification)

Procedures duration, calendar days in 2008



Average direct cost of procedures in 2008, \$



Note: the duration and cost of every regulatory procedure is weighted by the coverage of each of them to calculate total time and cost parameters per an average food processor.

In view of the current global financial crisis, and of its adverse effects on the Ukrainian economy's productive base, it is crucial to relieve Ukrainian business (especially in strategic sectors such as the food industry) from unnecessary regulatory and administrative burdens. It is also important to reform the sectoral regulatory framework in preparation for recovery.

To build consumer confidence, it is imperative for Ukraine to proceed expeditiously to a substantial reform of the food safety regulatory system according to international best practice standards, norms, and principles.

Ukraine should take the following immediate steps, which are necessary to improve the situation:

1 Establish an integrated inter-agency food control system or set up one food control agency in accordance with international best practices

What will it lead to?

When duplication of controlling bodies' functions is eliminated, the food safety regulation system will acquire a clear organizational structure and will better coordinate control activities at the national level. This will allow for a proper traceability system and implementation of the "farm to fork" principle.

2 Completely eliminate mandatory certification of food products and avoid applying different approaches to compulsory certification to domestic products on the one hand and imported products on the other

What will it lead to?

This will relieve food processing businesses from unnecessary costs related to mandatory conformity assessment by governmental bodies. Lower product prices and wider consumer choice will result.

3 Harmonize Ukraine's hygienic and sanitary norms and standards with international and EU requirements

What will it lead to?

Harmonization of domestic food safety norms with modern international practices will help to ensure higher food product safety and quality. A science-based approach will be taken and best hygienic and manufacturing practices, including HACCP, will be instituted.

Eliminating the double tier of regulations will also enhance the competitiveness of Ukrainian producers and facilitate international trade.



5 Gender aspects of entrepreneurship

5.1. Overview

5.2. Gender-based analysis of key regulatory issues

5.3. Conclusions and recommendations

KEY FINDINGS:

- Gender gap in top management in Ukrainian enterprises has remained unchanged over the past several years¹⁵³: 78 percent of all enterprises are led by males, 22 percent by females¹⁵⁴;
- Female-run enterprises are predominantly concentrated in the hospitality sector (hotels, restaurants etc.), trade and services;
- On average, a female-run enterprise, compared to its male counterpart, is smaller by size and consistently less profitable, regardless of sector, size, and turnover;
- Enterprises with women in ownership appeared to be eight times more likely to hire a female top manager;
- The percentage of women entrepreneurs having a sole proprietor status is marginally higher than that of male entrepreneurs (55 percent versus 45 percent respectively). Female sole proprietors more frequently operate in trade (67 percent), hotels, restaurants, catering (68 percent), and services (52 percent);
- Sectors predominantly occupied by women (for both female-headed enterprises and female sole proprietors) are more affected by regulatory barriers than average – in hotels, restaurant and catering (HoReCa) inspections coverage is 85 percent, while permit coverage is 74 percent. This supports findings concerning the higher rate of inspections (80 percent) and permit coverage (59 percent) for female-managed enterprises versus male-managed ones in general (74 percent and 53 percent respectively);
- In more regulated sectors (those with higher shares of female-run enterprises and with higher female employment rates) more unofficial payments were registered. In HoReCa, for example, almost 40 percent of enterprises reported having had to make gifts to representatives of the control authorities. That rate is twice higher than in other sectors on average.

¹⁵³ IFC performed gender disaggregated analysis of the data available from the 2004 and 2006 surveys (which provides a basis for comparison); however, specific gender-related questions were asked only in 2008.

¹⁵⁴ According to the IFC survey 2007 (reference period – 2006), 76 percent of top-managers were male, 24 percent – female.

5.1. Overview

This chapter presents gender-disaggregated data about legal entities and sole proprietors, followed by a brief outline of particular regulatory issues (permits, inspections, and technical regulations) as identified by businesses.

For the purposes of this analysis, “female-run” or “male-run” enterprises are companies with female/male top managers. The analysis was conducted separately by type of business – that is, for legal entities (enterprises) and sole proprietors. For both types the data was disaggregated by enterprise size (number of employees), sector, and financial results (sales/turnover and profit).

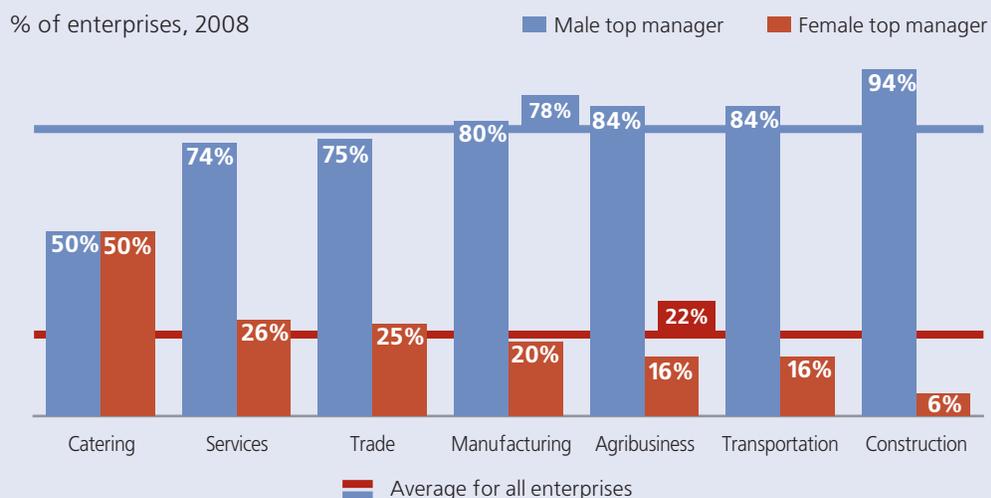
LEGAL ENTITIES

According to the IFC survey, 22 percent of enterprises have female top managers (Figure 68).

The female presence among top managers varies by sector quite significantly: from six percent in construction to 50 percent in hotels, restaurants, and catering (HoReCa). This indicates that women tend to concentrate in the HoReCa sector, as well as in trade and other services. There are more female top managers in these fields than in other sectors on average. Women also have a considerable share of top positions in sectors that are traditionally considered to be dominated by men: transportation (16 percent) and manufacturing (20 percent).

Figure 68

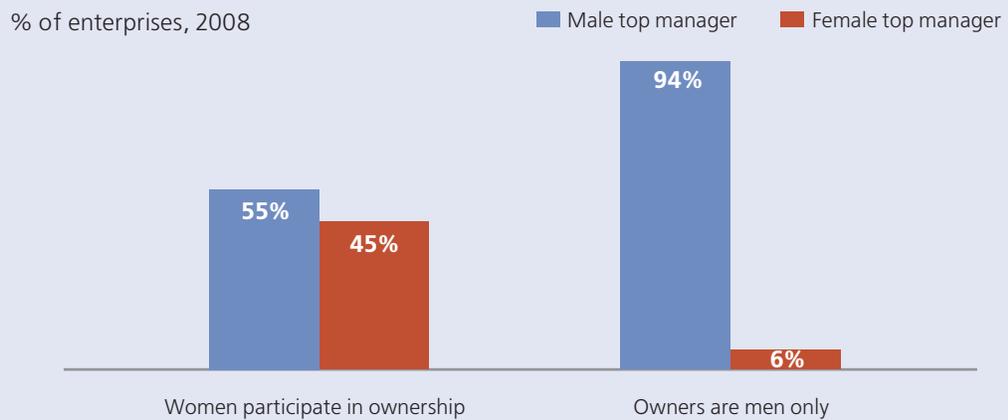
Female-run enterprises are most represented in catering services and least represented in construction



Enterprises that have at least one woman in the ownership structure¹⁵⁵ exhibit no gender preferences when hiring employees: almost half of enterprises with female owners are run by women (45 percent). Interestingly, only six percent of entities without a female in the ownership structure are headed by women, whereas enterprises with female owners are eight times more likely to hire a female top manager. From a different angle, 84 percent of enterprises with female top managers have women in the ownership. Only 27 percent of enterprises with male managers have women among their owners (Figure 69).

Figure 69

Enterprises with exclusively male ownership tend not to hire female top managers



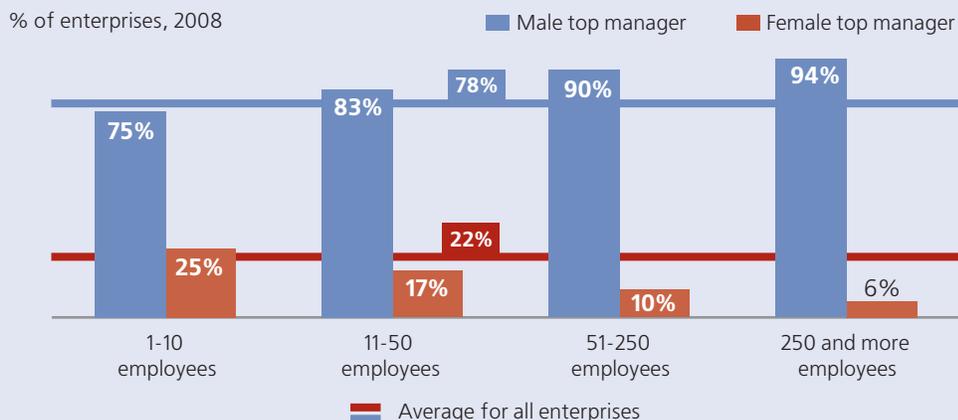
Interpreting ownership data should be done carefully, because in practice ownership may be held only in name or in lieu of someone else. For instance, a female owner could simply be standing in for a male relative. These examples may help explain high shares of female ownership in sectors with relatively few female managers, such as transport. Forty percent of transport enterprises have women in their ownership structures, while only 16 percent have a female top manager.

The survey shows that enterprises that are managed by men are generally larger by number of employees and sales volume and more profitable than those managed by women (see figures 70 and 71).

¹⁵⁵ Female participation in ownership was defined by the presence of at least one woman among an enterprise's owners. That is, even if there was only one female out of 10 owners/shareholders, the business was deemed as having "woman-inclusive ownership."

Figure 70

The bigger an enterprise, the smaller the chance that it is headed by a woman

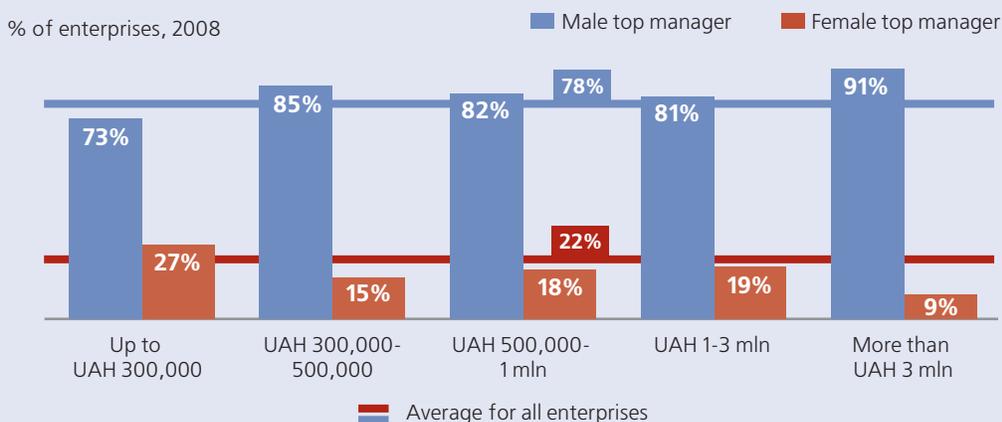


Analysis of average sales/turnover in 2008 shows that typically male-run enterprises are consistently more profitable, regardless of sector, size, and turnover, whereas female-run entities are typically confined to less profitable enterprises. This could be because women are excluded from top positions in enterprises in advanced, high profitability sectors and because women are typically engaged in less profitable sectors.

Figure 71 demonstrates the gender gap in profitability, broken down by sales band. Annex 12 provides more data on this point.

Figure 71

Female-run enterprises typically generate lower sales and profits*



*Data given in thousands UAH according to gender in each sales band

The data shows that the typical female-led enterprise is small (under 50 employees) with annual sales under \$95,562. The explanation could be the concentration of female entrepreneurs in sectors and businesses with lower revenues and smaller employment workforce.

Female managers tend to hire more female employees than do male managers. The survey identified that 70 percent of the employees of a typical female-run enterprise are females, as opposed to 35 percent of employees at an enterprise managed by a man. This can be primarily explained from the sector perspective: both women managers and employees tend to gravitate to same sectors, such as HoReCa, trade, and services. It could also be because of so-called “emotional trust” of people of the same gender: such people are “easier to understand” and therefore more predictable.

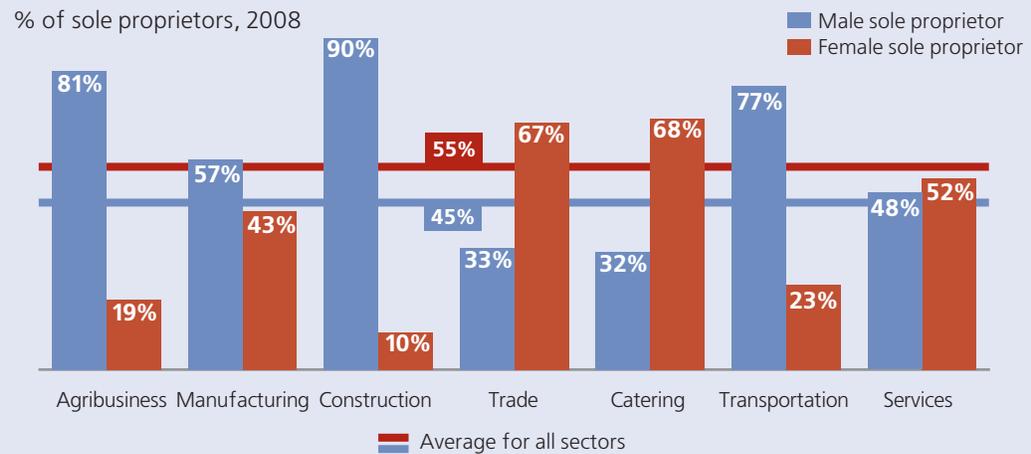
Turnover, number of employees, and type of settlement (for example, urban versus rural areas) are not significant factors in hiring people of different genders.

SOLE PROPRIETORS

Gender disaggregated data on sole proprietors (Figure 5.5) show that the figures for female and male entrepreneurs testify to little gender difference: 55 percent of individual entrepreneurs are female and 45 percent are male. Sector analysis by gender illustrates that female sole proprietors more frequently operate in trade (67 percent), hotels, restaurants, catering (68 percent), and services (52 percent) – see Figure 72.

Figure 72

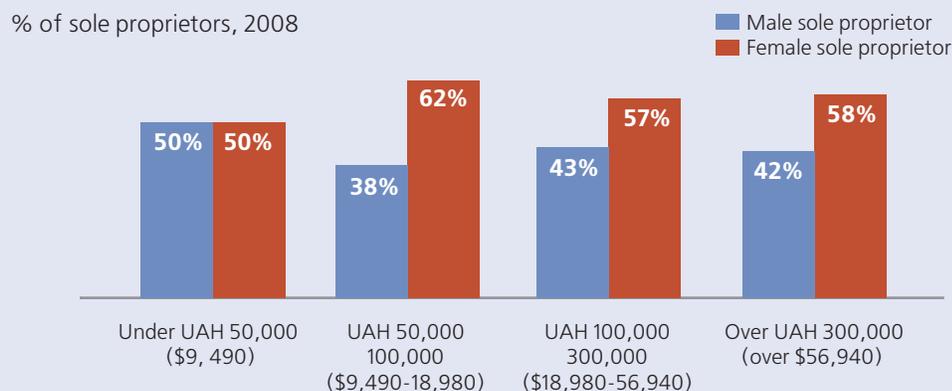
Female sole proprietors more frequently operate in trade, catering, and services



There are more female individuals in all income strata, except for the lowest, under \$9,492, where the breakdown is almost equal – around 50 percent men and 50 percent women (Figure 73).

Figure 73

Female sole proprietors generate more sales than their male counterparts do



Female sole proprietors show higher sales revenue than men, most probably due to their concentration in sectors where average turnover rate is normally higher (such as trade) than in other industries. On the other hand, they tend to generate profit at the similar level.

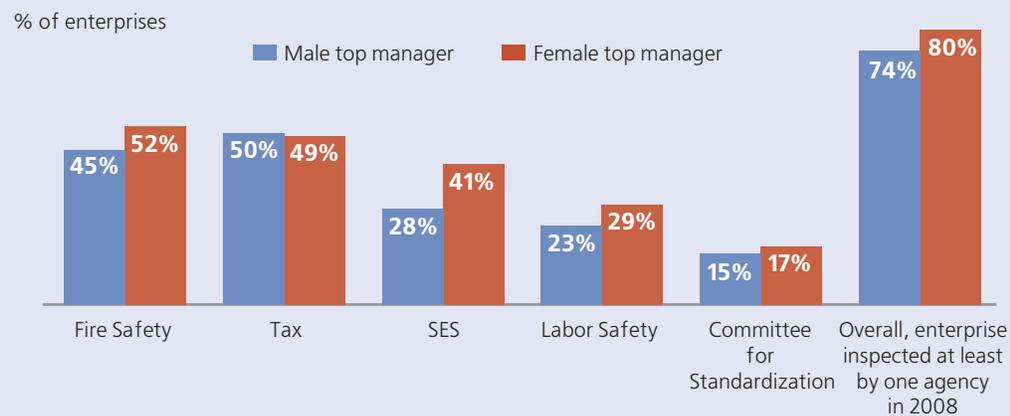
5.2. Gender-based analysis of key regulatory issues

INSPECTIONS

Coverage. The coverage of inspections conducted by the top five agencies appears to be higher in female-run businesses, for both legal entities or sole proprietors (Figure 74).

Figure 74

The share of female-managed enterprises covered by inspections in 2008 was higher than the share of male-managed enterprises



The biggest gap was found in State Sanitary and Epidemiological Service inspections: SES visited over 40 percent of female-managed enterprises but only 28 percent of male-managed ones. When controlled for sectors, a significant difference between male and female-managed enterprises is found only in trade (33 percent of male-managed inspected versus 51 percent of female-managed), while hotels, restaurants, catering and services are inspected by SES with the same level of attention regardless of the manager's gender. Therefore, the overall difference is primarily caused by sectoral concentration of female enterprises: hotels, restaurants, catering, trade and services are generally more inspected by SES than other sectors, and, as shown above, female-managed enterprises tend to be more represented in these sectors.

Penalties. A higher percentage of enterprises headed by female managers paid penalties as a result of inspections, when compared to male-managed entities. The survey showed that sector-wise a larger share of companies headed by female managers paid penalties following inspections in trade and manufacturing sectors. In terms of enterprises' size a higher percentage of small-sized companies headed by female managers paid penalties following inspections.

Frequency and time spent. Although the differences are not particularly large, SES inspects enterprises managed by women twice as frequently as it does those run by men. The most inspected sectors are trade, services, and HoReCa (facing roughly between two to four inspections a year).

Female sole proprietors also faced significantly more inspections by SES, the State Tax Administration, and the Fire Safety Department. On average, they received twice as many visits as male sole proprietors¹⁵⁶.

Whereas female-run and male-run enterprises spent almost the same amount of time undergoing inspection, female sole proprietors spent significantly more time undergoing them than did male sole proprietors. The SES and Tax Authority performed the longest inspections, especially for sole proprietors.

PERMITS

Coverage. According to the survey, permitting is a more burdensome procedure for female-headed enterprises: 53 percent of male-managed and 59 percent of female-managed companies obtained at least one permit in 2008. This is because HoReCa enterprises, which tend to have more female directors, had the highest coverage rate: 74 percent of them had to obtain at least one permit in 2008. The same proportions apply for sole proprietors.

In 2008, in distinction to male-managed enterprises, female-managed ones reported that they most often had to obtain permits from the Fire Safety Department, SES, the Labor Safety agency, and local self-governance bodies (when it came to placing retail outlets). With some variations, the same trend applies for sole proprietors (see Table 8).

¹⁵⁶ Coverage becomes particularly comprehensive in the HoReCa sector: 74 percent of female entrepreneurs were inspected by SES and 71 percent by the tax authorities. Overall, in 2008 HoReCa was inspected the most out of all sectors, with 85 percent of its enterprises admitting that they received at least one visit from a control authority. The average across all sectors was 75 percent.

	Male-run enterprises	Female-run enterprises	Male sole proprietors	Female sole proprietors
Fire	35%	43%	29%	34%
SES	25%	42%	19%	27%
Labor safety	30%	32%	14%	16%
Local authorities – trade	20%	25%	28%	40%

Total cost and duration. Costs for obtaining all types of permits were usually a bit higher for male-headed enterprises. This is because cost correlates with size and men traditionally operate bigger enterprises – those that are both more profitable and larger in terms of number of employees (see Annex 12).

Legal entities	Male-run	Female-run
Total direct cost (all permits), \$	1,490	670
Total duration (all permits), days	55	50
Sole proprietors	Male	Female
Total direct cost (all permits), \$	470	490
Total duration (all permits), days	34	51

On the other hand, although sole proprietors generally had to obtain fewer permits, the gender misbalance among them appears to be significant. A typical individual female entrepreneur had to get three permits within the course of a year instead of the one permit required of a typical male sole proprietor. When controlled for sectors, significant differences are found in trade sector (number of permits obtained by typical sole proprietors in this sector is the same as overall: three for females, and one for males). Since about 70 percent of sole proprietors are working in trade, the limited number of observations in other sectors didn't allow for gender disaggregation – however, differences found in trade show that permits constitute a larger burden for female sole proprietors than for males.

TECHNICAL REGULATIONS

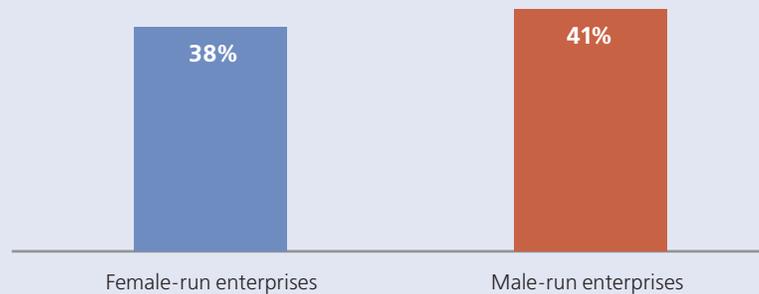
Standardization. In 2008, 21 percent of female-run and 30 percent¹⁵⁷ of male-run enterprises had to purchase state mandatory standards or technical specifications or had to register new technical specifications (with the State Committee for Standardization).

Practically the same number of male and female enterprises reported that their products are regulated by compulsory standards and/or technical specifications (Figure 75).

Figure 75

The burden of compliance with compulsory standards or technical specifications is roughly equal for female- and male-run enterprises

% of enterprises whose output was regulated by compulsory technical norms in 2008



Certification. Female-managed enterprises were regulated by compulsory certificates in 2008 slightly more often than their male-managed counterparts (18 percent as against 15 percent). At the same time, they are less vulnerable to compulsory certification when controlled for share of turnover that comes from products subject to certification (67 percent as against 82 percent) (Table 10).

Table 10

Female-run and male-run enterprises have similar coverage of compulsory certification

	Male-run enterprises	Female-run enterprises
Percentage of enterprises whose outputs were subject to compulsory certification in 2008	15%	18%
Share of enterprises' turnover that comes from products subject to certification	82%	67%

¹⁵⁷ Among those, whose products are subject to mandatory standardization.

In male-headed enterprises the average annual direct cost of certification in 2008 was \$675, whereas the cost that female-headed enterprises incurred to certify their products was \$530. Both types of enterprises had to obtain about two¹⁵⁸ compulsory certificates.

UNOFFICIAL WAYS OF SOLVING REGULATORY ISSUES – GENDER ASPECTS

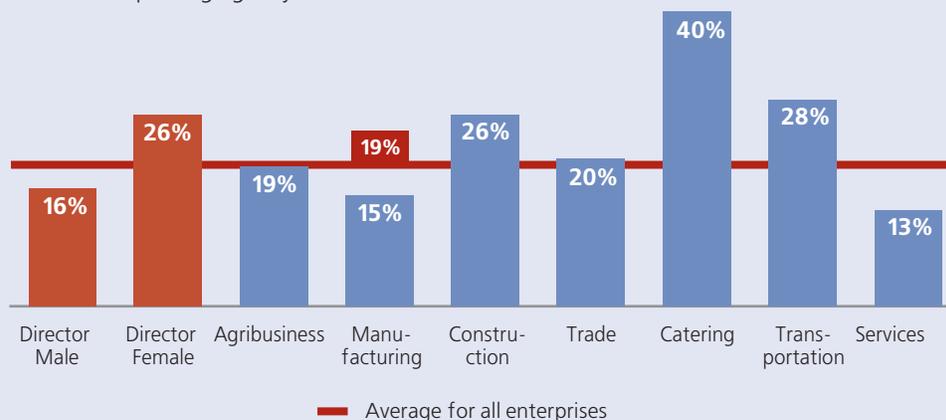
Legal entities. The survey shows that typical female- and male-managed enterprises spend the same percentage of turnover on unofficial payments to state officials: three percent for the former and two percent for the latter. Similarly, 20 percent of both female-run and male-run enterprises reported giving gifts to officials¹⁵⁹. In hotels, restaurants and catering, a moderate 38 percent of entrepreneurs reported using unofficial means. Agribusiness (54 percent) and construction (46 percent) registered the highest incidences of corruption.

Inspection is another area in which unofficial payments are expected from female-run enterprises (26 percent) more often than from male-run entities (16 percent) (Figure 76). When controlled for sectors, significant differences between male and female headed enterprises are found in trade and services. In these sectors female-managed enterprises are systematically more frequently reporting corruption during inspections. In hotels, restaurants and catering sector the limited number of observations does not allow for making gender disaggregation. Summarizing the above, the higher reporting of corruption appears primarily linked to gender, and also to sector concentration, since, as noted above, females tend to be managing enterprises that are traditionally more exposed to corruption during inspections.

Figure 76

In the catering sector, enterprises reported making the most unofficial payments

% of enterprises that admitted that unofficial payments were solicited from them by at least one inspecting agency in 2008



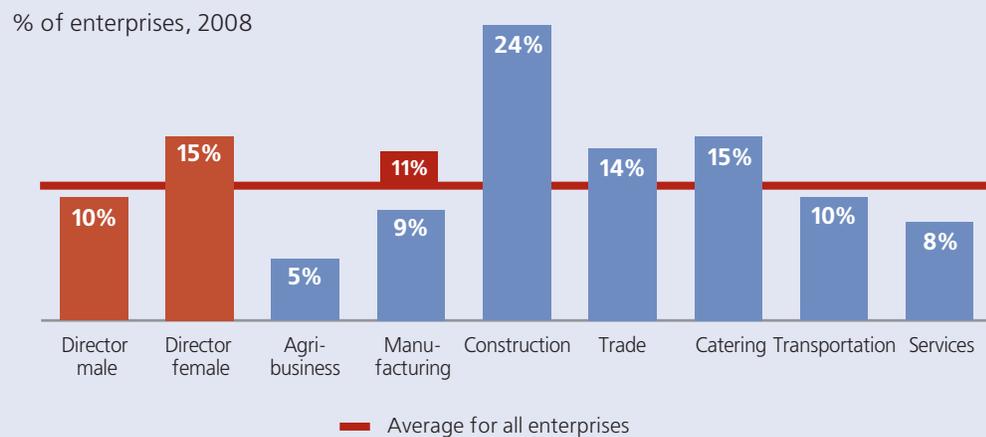
¹⁵⁸ The figures reported are for typical enterprises (medians).

¹⁵⁹ "Refuse to answer" was treated as implicitly positive and counted as a «yes» response.

Every tenth male top manager and every seventh female top manager admitted having encountered corruption in permit procedures. Again, this is not surprising given that trade and HoReCa were among the top three sectors (construction was the third) in which rent-seeking practices were reportedly most widespread. The level of unofficial payments and gifts in permit-obtaining procedures ranges from 5 percent to 24 percent across different sectors. Regulation and permits in the construction industry seem to be the most complicated, and thus the most prone to corruption. Traditionally female-dominated sectors, such as HoReCa, trade, and services evince a slightly lower level of permit-procedure corruption: 15 percent, 14 percent, and eight percent, respectively.

Figure 77

Share of enterprises that reported at least one permit-issuing body expected unofficial payments from them (of those who obtained permits)

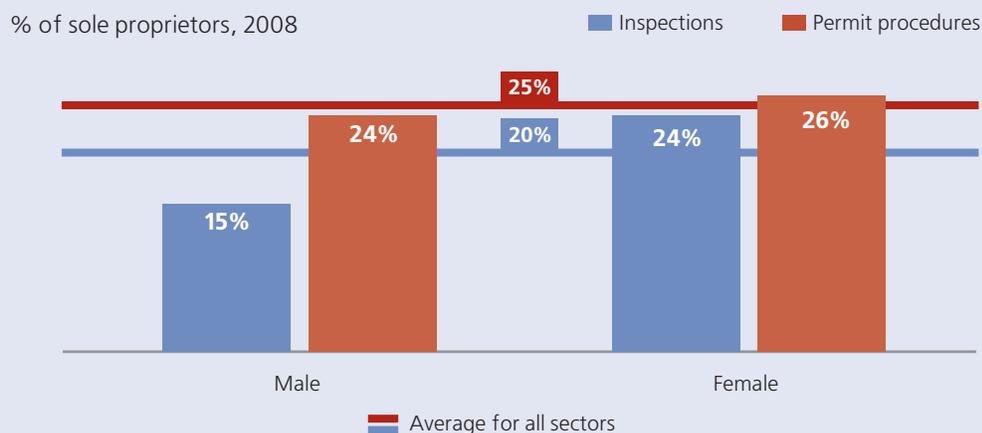


Sole proprietors. The analysis clearly shows that there is a difference between legal entities and sole proprietors in terms of the costs they incur as a result of administrative burdens. Typical legal entities (whether female- or male-run) spend much more time on this than sole proprietors do.

Female sole proprietors report that they have to use unofficial ways during inspections more frequently than male entrepreneurs. Women say the level of various non-official payments and gifts is essentially the same for both inspection and permits. Male sole proprietors indicate that they face more additional burdens during permit procedures than during inspection.

Figure 78

Share of sole proprietors who reported that unofficial payments were expected from them (during inspection and permit procedures)



5.3. Conclusions and recommendations

Gender disaggregated analysis confirms that the gender gap is real and not just a matter of perception. In particular:

- Men are more highly represented among top decision makers, including top managers and owners of legal entities, than are women.
- Enterprises with women in ownership are eight times more likely to hire a female top manager.
- Female top decision makers more often work in the trade, services, and HoReCa sectors. They are rarely found in construction.
- Female sole proprietors show higher annual turnover and lower profit than do male entrepreneurs, whereas female-headed legal entities demonstrate sub-optimal performance in terms of both annual turnover and profit.
- The most problematic regulatory issues for female-headed enterprises are coverage and frequency of inspections and coverage by permit procedures. Female-headed entities are expected to make unofficial payments more often than are male-headed ones.

Overall, analysis of the gender dimension of regulatory environment leads to two key recommendations:

1 Improve the regulatory environment for micro-, small and medium-sized enterprises, as well as for individual entrepreneurship

2 Improve the regulatory environment for the service, trade, and catering sectors

What will it lead to?

This will lead to increased opportunities for women as entrepreneurs and increased job creation in sectors with a high percentage of female workforce.



Annexes

- [Annex 1.](#) Survey methodology
- [Annex 2.](#) Status of implementation of 2007 IFC survey recommendations
- [Annex 3.](#) Direct cost of compliance with three regulatory procedures incurred by private sector in 2008
- [Annex 4.](#) The list of state inspections agencies authorized by law to control business activity
- [Annex 5.](#) The list of state inspections agencies that divided businesses into risk groups
- [Annex 6.](#) Structure of the State Committee of Ukraine for Technical Regulation and Consumer Policy
- [Annex 7.](#) UkrCEPRO state certification system
- [Annex 8.](#) Ukraine's commitments to the WTO
- [Annex 9.](#) List of technical regulations approved by CMU resolutions
- [Annex 10.](#) EU Directive on electrical equipment
- [Annex 11.](#) International Experience and EU Requirements for Establishing a Technical Regulation System
- [Annex 12.](#) Annual turnover of typical enterprise in 2008
- [Annex 13.](#) Statistical data

Annex 1

Survey methodology

Objectives of the study

This study's main objectives were to identify and measure the barriers to the growth of businesses in Ukraine as well as to diagnose their causes and formulate policy recommendations that would improve Ukraine's business environment and overall investment climate.

Value added

IFC performed the most recent comparable business survey for Ukraine in 2006. Newer data were needed to form the basis for future policy decisions and estimate the impact of those initiatives implemented during 2006–2008.

Quick facts about the survey:

Method	Face-to-face structured interviews
Geography	All Ukrainian oblasts, including the Autonomous Republic of Crimea; all types of settlements
Target population	447,500 enterprises and 998,500 sole proprietors that run active operations ¹⁶⁰
Sample	1,673 enterprises and 360 sole proprietors. Random sample, stratified by oblast, business sector, and number of employees
Respondents	Top management of companies and individuals – sole proprietors
Reference period	2008
Fieldworks timeframe	December 2008 – March 2009
Contact rate	48 percent of processed contacts were reached
Cooperation rate	39 percent of the respondents reached agreed to participate
Response rate	18 percent of processed contacts resulted in completed interviews

¹⁶⁰ Sample construction procedure was based on State Statistics Committee of Ukraine data as of January 1, 2007 (overall 438,000 private active enterprises – latest available data at the time of sample construction), while the figure used during the analysis is more actual – as of January 1, 2008 (overall 447,500 private active enterprises). Since the State Statistics Committee of Ukraine does not provide data on active sole proprietors, this sample was constructed based on the findings of omnibus research undertaken in March 2006 (477,000 active sole proprietors). Results of the Ukraine Tax Compliance Cost survey conducted by Investment Climate Advisory Services of the World Bank Group, which became available in April 2009, were used for data analysis (998,500 active sole proprietors).

GENERAL POPULATION AND TARGET POPULATION

The General Population consisted of enterprises and sole proprietors. According to the Commercial Code of Ukraine, "Enterprise is an independent subject of economic activity, created by the competent public authority or by the organ of local self-government, or other subjects, for the satisfaction of public and personal needs by the systematic realization of productive, research, trade, or other economic activity in an order foreseen by this Code and other laws"¹⁶¹. A sole proprietor is defined as a "Natural person performing his or her right to conduct entrepreneurial activity upon registration according to the order specified by the law of Ukraine"¹⁶².

The Target Population for the survey consisted of all officially registered businesses that meet the following "filtering criteria":

- Were active during the reference period – that is, submitted tax reports and worked in at least one quarter of calendar year 2008 (reporting non-zero income or profit¹⁶³).
- Were fully or partially privately-owned.
- Were profit-generating businesses, as opposed to not-for-profit organizations, political parties, etc.
- Work in all economic activity sectors, excluding public administration and extraterritorial activity. Enterprises with missing information about activity sector were also excluded.
- Sole proprietors performing entrepreneurship activities (in other words, those sole proprietors, who are working as employees of other enterprises, and use this legal form to minimize tax liabilities of their employers, are not a part of target population).

SAMPLE

Determination of Target Sample Size

The minimum sample size was determined to generate enough sample size to conduct statistically robust analyses with at least 7.5 percent precision for a 90 percent confidence level about¹⁶⁴:

- a) Estimates of population proportions (percentages); and
- b) Estimates of the population mean.

Precision of estimates for subsets of the whole sample with the fixed confidence level may differ from the general sample precision and from each other depending on the variance of the parameter that is being estimated within each of these subsets.

When determining the minimum sample size, the size required for proportions may differ from the size required for mean. Choosing the maximum of the two values guarantees that both of the above requirements are met.

The following formula is used to determine minimum sample size for proportion:

$$n = \frac{z^2 pqN}{\Delta^2 N + z^2 pq}$$

¹⁶¹ Commercial Code of Ukraine as of January 16 2003, №436-IV.

¹⁶² Civil Code of Ukraine as of January 16 2003, №435-IV.

¹⁶³ The study has shown that enterprises that do not report on either income or profit (or report zero) tend not to report on number of employees. Since enterprises with unreported number of employees were designated into a separate group, the above filter was not applied to them.

¹⁶⁴ A 7.5 percent precision of an estimate with a 90 percent confidence level means that we can guarantee that the population parameter is within the 7.5 percent range of the observed sample parameter, except in 10 percent of the cases.

where:

n – minimum sample size;

z – the value of the normal standard coordinate for a desired level of confidence (equals 1.64 for 90 percent confidence level);

p – proportion in the population (for maximum variability – 0,5);

$q = 1-p$;

N – population size;

Δ – precision of the estimate (calculated based on 7.5 percent value).

The following formula is used to determine minimum sample size for mean:

$$n = \frac{z^2 s^2 N}{\Delta^2 N + z^2 s^2}$$

where:

n – minimum sample size;

z – the value of the normal standard coordinate for a desired level of confidence (equals 1.64 for 90 percent confidence level);

s – standard deviation of estimated parameter for the population (can be estimated from previous surveys)

N – population size

Δ – precision of the estimate (calculated based on a 7.5 percent value).

Note: The formulas given above are used for sampling without replacement (when probability of selecting each element differs from probabilities of selecting the other elements). The formula for sample size calculation used for sampling methodology with replacement (when each element has the same probability of being selected) is $n = (z^2 s^2) / (\Delta^2)$. The difference between the two formulas (the one in the main text and the one presented here) is made of a coefficient of correction for a finite population [$n_c = n / (1 + n/N)$], which eliminates the difference in probability of each element to be selected. However, for big N ($N > 100,000$), results obtained with both formulas will be equal due to the very small probability of each element being selected.

In order to derive the final sample size, it is necessary to account for possible non-response rate based on experience from previous surveys. Non-response here accounts for “non-meaningful” answers like “refuse,” “don’t know,” and so on. Additionally, one needs to adjust for incidence (“coverage”) rate, since detailed questions about certain procedures are asked only of the respondents who are subject to them.

The following formula is used to derive to final sample size (same for mean and proportion):

$$n_f = \frac{n}{(1 - R_n)(1 - I_n)}$$

where:

n_f = final sample size,

n = sample size without non-response rate (above),

R_n = non-response rate,

I_n = incidence rate.

Because the total population for the survey is considered as a sum of three sub-populations, the minimum required sample size will be determined for each of these sub-populations:

- all enterprises without agribusiness (Subset 1);
- agribusiness enterprises (Subset 2); and
- sole proprietors (Subset 3),

where the total sample size will be a sum of those.

All enterprises without agribusiness (Subset 1).

$$N_1 = 375,000.$$

Assuming maximum variance for **proportions** estimate, the minimum sample size for proportions would be **477**. After non-response adjustment (maximum 10 percent for proportions) we derive to the final sample size of **530** respondents.

In order to estimate the minimum sample size for **mean**, the indicator "Total duration of all inspections" is used. This indicator is chosen based on expert opinion that it is the one that represents the required precision for the project's current policy focus. Based on previous surveys, the following data is available: trimmed mean = 6.8; standard deviation = 9.7 (outliers were filtered for the purpose of this calculation). Based on these data, the minimum sample size for the mean would be **970**. After non-response adjustment (51 percent for previous surveys, including incidence and item non-response adjustment) we derive to the final sample size of **1,960** respondents.

As noted above, we are using the larger figure, 1,960, which provides the required precision and confidence level for both mean and proportion.

Agribusiness enterprises (Subset 2).

$$N_2 = 63,000.$$

Assuming maximum variance for **proportions** estimate, the minimum sample size for proportions would be **474**. After non-response adjustment (maximum 10 percent for proportions) we derive to the final sample size of **525** respondents.

Due to the absence of historical survey data for this population and the assumption that variability within the group is significantly less than in the Subset 1 population, sample size calculation for this population is based on proportions.

Sole proprietors (Subset 3).

$$N_3 = 477,000$$

Assuming maximum variance for the **proportions** estimate, the minimum sample size for proportions would be **477**. After non-response adjustment (maximum 10 percent for proportions) we derive to the final sample size of **530** respondents.

For the same reasons as above, sample size calculation for this population is based on proportions.

Target total sample size

Considering above calculations, the target sample size should include **3,015** respondents. Due to time and budget constraints and the fact that actual variability might not always be at its maximum (as assumed in above calculations), it was decided to limit the size of target sample to **2,200 total respondents** with the corresponding proportional distribution between subsets:

- all enterprises without agribusiness (Subset 1) – **1,500**;
- agribusiness enterprises (Subset 2) – **350**; and
- sole proprietors (Subset 3) – **350**.

Sample size at regional, sector, and size level is presented at the end of this annex (details on the deviation of achieved sample from the theoretical are provided further).

Proportional distribution reflects actual population structure in terms of regional, sector, and size distribution. This can't be used for sample construction as it is, however, because it would give inadequate precision for smaller regions and sectors. For example, few respondents in the group of biggest enterprises would make comparison across different size bands impossible. Thus, final distribution represents a balance between population structure and desired level of precision on the regional, sector, and size levels.

During data analysis stage, number of observation for disaggregated analysis was controlled. In case of large variance and insufficient number of observations to ensure the proper level of precision, specific results were not used in the report. For the same reason, regional distribution is presented for information only. The report does not contain any regional comparison due to sub-optimal precision of estimates.

Sampling

The database of "the Common State Registry of Enterprises and Organizations of Ukraine" maintained by the State Statistical Committee of Ukraine was used as a source for the enterprises sampling frame. Estimates of the Target Population were based on State Statistical Committee data for 2007¹⁶⁵. Selection of respondents was done only among those businesses that reported to the State Statistical Committee in 2007 (latest available data at the time of field works start).

The population was stratified based on three key parameters:

1. Size (number of employees):

- Micro (1-10 employees)
- Small (11-50 employees)
- Medium (51-250 employees)
- Large (more than 250 employees)
- Information unavailable (businesses that do not report).

¹⁶⁵ Sample construction procedure was based on State Statistics Committee of Ukraine data as of January 1, 2007 (overall 438,000 private active enterprises – latest available data at the time of sample construction), while the figure used during the analysis is more actual – as of January 1, 2008 (overall 447,500 private active enterprises). Changes in the size of the surveyed population did not cause any significant change in its structure at the level of regions, sectors, or groups defined by number of employees. Since the State Statistics Committee of Ukraine does not provide data on active sole proprietors, respective sample was calculated based on the findings of omnibus research undertaken in March 2006 (477,000 active sole proprietors). Results of Tax Compliance Cost Survey among Sole Proprietors, which became available in April, 2009 were used for data analysis (998,500 active sole proprietors).

2. Sector of economic activity:
 - Agriculture (including fishing and forestry)
 - Manufacturing (including extracting activities)
 - Construction
 - Trade
 - Catering (including restaurants and hotels)
 - Transportation
 - Financial and other services
3. Region (25 oblasts of Ukraine).

Sampling of enterprises was conducted in three steps:

Step 1. Enterprises were grouped by the stratification criteria.

Step 2. Enterprises were included based on “filtering criteria” defining Target Population.

Step 3. Inside each group the needed number of enterprises was selected at random (using generator of random numbers) according to the size of stratum.

Since official information was not available, sampling of sole proprietors was conducted either by the routing method (for the retail sector) or from a sampling frame built based on publically available information (for all other sectors). This decision was motivated by the fact that the retail sector employs nearly 70 percent of all sole proprietors, leaving only one or two sole proprietors in each oblast to be sampled in other sectors.

To ensure random selection, sole proprietors in the retail sector were selected for surveying by the routing method. Selection of respondents was done through the shopping malls, markets, or stand-alone trade outlets selected. No more than two sole proprietors in one area could be interviewed, provided they were located in different parts of the area (a market or a shopping mall). No more than two surveyed sole proprietors in one oblast sell one and the same good.

Deviation of the achieved sample from the theoretical

Deviation of the achieved sample of enterprises from the theoretical is related, first of all, to the fulfillment of the stratum “size (number of employees)”.

- Based on fieldwork progress reports, it was decided to reduce the sample of enterprises with unavailable information about number of employees. Simultaneously, considering this, the weightiest group of “non-agri” enterprises with 1-10 employees in the general population was expanded by 100 enterprises.
- Moreover, the final sample was smaller in absolute values than the theoretical in the category “251 and more employees.” In the fieldwork stage interviewers faced the problem of recruiting large enterprises. The main reasons are primarily related to the “informational isolation” of larger enterprises and to confidentiality. Moreover, the structure of large enterprises implies a whole range of formal procedures through which “access” to their management is available, and it may take quite a while to get the necessary approval to see top management.

Official statistical data on the overall number of sole proprietors are based on tax authority data on the number of registered sole proprietors. It means that sole proprietors that are not actually operational (for example, sole proprietors that were opened for tax optimization purposes) are also included. In March, 2009, as part of the project “Tax Compliance Costs Survey of Sole Proprietors in Ukraine,” active sole proprietors were counted. Based on that survey, the theoretical sample of sole proprietors has been adjusted. Since the selection of sole proprietors was done with the help of actual contact information, no significant deviation in the final sample from the theoretical one was observed.

Response rates

The database of contacts of enterprises sampled included 14,616 units, out of which about 63 percent were processed. Eighteen percent of them resulted in completed interviews.

Type of lists	Overall enterprises	Processed	Completed interviews
Main list	12,725	7,252	1,385
Complementary list	1,891	1,888	288
Total	14,616	9,140	1,673

The main reason for the low response rate was the low contact rate. The contact rate (computed as reached businesses to total processed contacts) was 48 percent for legal entities. The sub-optimal quality of the contacts database (especially the part containing the contacts of enterprises with no information about number of employees) was the main reason for the low contact rate.

The Cooperation Rate (computed as completed interviews to reached respondents) equals 39 percent, which is quite a solid indicator for business surveys in Ukraine generally, suggesting that high confidence can be placed in the information gathered.

The group "Information Unavailable" shows the lowest response rate. Respondents in this group most often refused to participate in the survey because management or other competent employees were absent.

Number of employees	Contact Rate	Cooperation Rate	Response Rate
1-10 employees	41%	41%	17%
11-50 employees	52%	38%	20%
51-250 employees	68%	43%	29%
More than 250 employees	71%	35%	25%
Information unavailable	35%	29%	10%
Average	48%	39%	18%

Sector	Contact Rate	Cooperation Rate	Response Rate
Catering	49%	39%	19%
Transportation	53%	40%	21%
Manufacturing	53%	38%	20%
Services	51%	37%	19%
Construction	47%	38%	18%
Agribusiness	38%	45%	17%
Trade	47%	36%	17%
Average	48%	39%	18%

Region	Contact Rate	Cooperation Rate	Response Rate
East	45%	33%	15%
West	53%	43%	23%
South	44%	45%	20%
Center-North	48%	35%	17%
Average	48%	39%	18%

Notwithstanding the difficulties the project faced (including the quality and validity of the database of enterprises, the high refusal rate among larger companies – mostly in the retail sector – and the general negative background posed by the global financial crisis), the survey results can meet the study's objectives, in the opinion of the company in charge of fieldwork.

Computation of weights

As was already mentioned, to maintain an acceptable level of precision across all sizes and sectors, strata with small numbers of enterprises were oversampled. The weights were computed according to the following formula to bring the sample structure to the structure of the target population:

Weight of stratum = Portion of stratum in the Target Population / Portion of stratum in the sample.

The triangular cross-table "region, sector, number of employees, and type of inhabited area" was created on the basis of general statistical data (registered active enterprises).

Table 15

Cross-table template "region, sector, number of employees, type of inhabited area"*

Region	Sector	Number of employees	Oblast capital	Other city, town, village
Region X	Sector Y	1-10 employees	N1	N2
		11-50 employees	N3	N4
		51-250 employees	N5	
		More than 250 employees	N6	
		Information unavailable	N7	

* N1-N7 is number of enterprises in the respective strata of the population/ sample.

Usage of the triangular instead of the rectangular table was necessitated by the asymmetric distribution of the studied population by number of employees: the categories "51-250" and "more than 250" have a much smaller representation in the population studied than do other categories.

As for the category "Information unavailable," data on the type of inhabited areas were combined because of the low representation of this group compared to its representation in the studied population (for the causes of this deviation please see the part "Deviation of the Achieved Sample from the Theoretical" in this section).

The rectangular cross-table "sector, region" was created for sole proprietors, reflecting that the structure of the achieved sample was close to the structure of target population.

Table 16

Cross-table template "sector, region"*

Sector	West	North and Center	East	South
Agribusiness	N11	N12	N13	N14
Manufacturing	N21	N22	N23	N24
Construction	N31	N32	N33	N34
Trade	N41	N42	N43	N44
Catering	N51	N52	N53	N54
Transportation	N61	N62	N63	N64
Services	N71	N72	N73	N74

* N11-N74 is number of sole proprietors in the respective strata of the population/ sample.

Analysis of data, presented in this report, was performed separately for legal entities and sole proprietors (individual persons). None of the indicators calculated based on survey data, is reported for a merged group of both types of businesses.

Main reasons for using such approach are:

- All previous surveys covered only legal entities, and for the sake of correct comparison across years (since the essential part of the report covers this issue), analysis was run and presented separately for legal entities and sole proprietors;
- While the database of legal entities is available from the State Statistics Committee of Ukraine, there is no such database of sole proprietors available. Therefore sample construction procedures, including sample stratification, availability of sampling frame, recruitment of respondents, and weights construction were performed separately for these two groups.

Definitions

Definitions of major terms (permits, inspections, technical specifications, certificates, and so on) are presented in the Glossary.

Questionnaires

Four questionnaires were developed separately for subset 1 and 2 and two questionnaires for subset 3.

1. Questionnaire #1 – for enterprises of all sectors except agribusiness;
2. Questionnaire #2 – for agribusinesses enterprises;
3. Questionnaire #3 – for sole proprietors of all sectors except agriculture;
4. Questionnaire #4 – for sole proprietors in agriculture.

Approximately 80 percent of the questions were the same across the four questionnaires. Each was accompanied with a set of cards for respondents, a letter bearing information about the project, and an interviewer's briefing book.

Interviewers

The survey was performed by 191 specifically trained interviewers organized into 26 interviewing teams.

Control of the interviewer's work

Interviewers' work was controlled in a number of ways:

1. Routine monitoring by telephone interview (10 percent of respondents of each interviewer).
2. Control over the use of the contacts database.
3. Control over the interview after the encoder checked the questionnaires.
4. Control over the logic of the answers.

In addition to telephone monitoring, the controller personally visited an enterprise if he/she was unable to get in touch by phone.

Control (both telephone monitoring and personal visits) was performed by specifically trained controllers. Overall, six people performed telephone monitoring and 38 people performed personal visits. As a result of this control, 145 questionnaires of Subset 1, 10 questionnaires of Subset 2, and five questionnaires of Subset 3 were removed from the dataset.

Statistical data – sample distribution

Table 17	Sample distribution by region (oblast)		
	Region (oblast)	Enterprises	Sole proprietors
	Crimea	84	15
	Vinnytsia	61	14
	Volyn	63	12
	Dnipropetrovsk	78	15
	Donetsk	73	16
	Zhytomyr	65	15
	Zakarpattya	56	12
	Zaporizhya	64	17
	Ivano-Frankivsk	57	12
	Kyiv	132	30
	Kirovohrad	57	12
	Lugansk	60	17
	Lviv	60	15
	Mykolayiv	64	14
	Odesa	83	15
	Poltava	63	14
	Rivne	54	13
	Sumy	62	12
	Ternopil	51	10
	Kharkiv	73	16
	Kherson	67	14
	Khmelnyskiy	63	13
	Cherkasy	59	13
	Chernivtsi	58	12
	Chernihiv	66	12
	Total	1,673	360

Table 18		Enterprises sample distribution by size and sector of operations							
Number of employees	Agribusiness	Manufacturing	Construction	Trade	Catering	Transportation	Services	Total	
1-10 employees	96	72	55	138	100	62	163	686	
11 – 50 employees	90	61	77	85	59	56	100	528	
51 – 250 employees	85	53	37	61	14	34	54	338	
More than 250 employees	26	41	13	21	2	6	12	121	
Total	297	227	182	305	175	158	329	1,673	

Table 19		Sole proprietors sample distribution by presence of employees and sector of operations							
Number of employees	Agribusiness	Manufacturing	Construction	Trade	Catering	Transportation	Services	Total	
No employees	19	6	19	72	5	20	26	167	
1-3 employees	11	21	11	31	18	16	19	127	
4-10 employees	4	12	5	7	12	2	13	55	
11-20 employees	0	1	1	0	2	1	1	6	
More that 21 employees	2	1	0	0	0	1	0	4	
Other (no information)	0	0	0	1	0	0	0	1	
Total	36	41	36	111	37	40	59	360	

Annex 2

Status of implementation of 2007 IFC survey recommendations

Objective	Actions	Status
SHORT TERM		
Expand the scope of the self-certification	Delete from regulations governing declarations any clauses that can lead authorities to attach conditions that effectively make the declaration a permit by another name. The self-certification should be simple and universal and therefore applicable to most permits.	Implemented by only one permit agency – the State Fire Safety Department of the Ministry of Emergency Situations in Ukraine. No other permits agencies have foreseen the use of self-certification as an alternative to permits in their documents.
Introduce a standard procedure for issuing permits	Amend the Law “On Permit System for Business Activity” by setting out a standard procedure for issuing permits and adopting the “one-stop-shop” and “silent consent” mechanisms.	The Law “On Permit System for Business Activity” was amended in June 2009 which introduced the “silence consent” mechanism. The law has not been enforced yet. Subsequent to this narrative on the draft law “On Amendments to Some Laws to Support Entrepreneurial Activity” (adopted on June 25, 2009) being written, the draft law in question was cancelled on October 9, 2009 by the Parliament of Ukraine. “One-stop-shops” operations are improved by adoption of the list of permits subject to issuing by one-stop shops only (Decree of the Cabinet of Ministers as of May 21 2009, №526).
Clarify the definition of “permit” as distinct from other documentation	Amend the Law “On Permit System for Business Activity” to clarify the definition of a permit and thus distinguish it from other types of documents.	The Law “On Permit System for Business Activity” was amended in June 2009, it clarifies the definition of “permit”. The Law has not been enforced yet. Subsequent to this narrative on the draft law “On Amendments to Some Laws to Support Entrepreneurial Activity” (adopted on June 25, 2009) being written, the draft law in question was cancelled on October 9, 2009 by the Parliament of Ukraine.
Create a solid framework for effective government control	Develop and approve criteria for classifying business activities according to the level of risk to the public and/or the environment. Classify all business activities according to risk categories.	In total 85 inspection agencies have to develop and adopt risk criteria for enterprises. As of July 1 2009, 42 inspection agencies have done it. However, only 22 of those 42 documents fully comply with the Law on Inspections.
Establish control regime for each business category	Establish a maximum frequency of inspections for all risk categories. Establish a maximum duration for inspections.	

Objective	Actions	Status
Introduce checklists	Develop and approve a list of issues to be checked by each control authority (checklists).	None of the 85 inspection agencies have developed and adopted complete checklists. As of July 1 2009, five inspections agencies adopted a list of questions that are to be checked during inspection. However, these lists of questions are very general (somewhat superficial) and they do not comply with the requirements of the sound risk-orientated inspection system.
Introduce universal inspection procedures	Develop and approve standard procedures for conducting inspections and presenting inspection findings.	As of July 1 2009, amendments were made to 17 inspection procedures or new procedures were introduced.

MEDIUM TERM

Reduce the range of permits and approvals	Cancel permits with no direct relevancy to public safety and those serving purely informational purposes. In particular, in amending the appropriate laws, it will be necessary to ensure that the necessity for trade patents and permits for retail and service outlets are canceled.	Not implemented.
Approve a single, complete list of all permits and approvals	Approve a single, complete list of all permits and approvals issued by government authorities by adopting the Law "On the List of Permits and Approvals."	Not implemented.
Eliminate duplication in inspections	Amend legislation to set out specific authorities and the scope of inspections of each inspection agency.	Not implemented. As of July 1 2009 none of the 85 inspections agencies analyzed their legal base to reduce duplication of inspections.
Revise the requirements on which inspections are based	Review legislation to identify obsolete, bureaucratic, unrealistic, and unjustifiably costly requirements. In amending legislation based on this review, emphasize the intended result of the requirements rather than the process of achieving compliance with them.	Not implemented.

LONG TERM

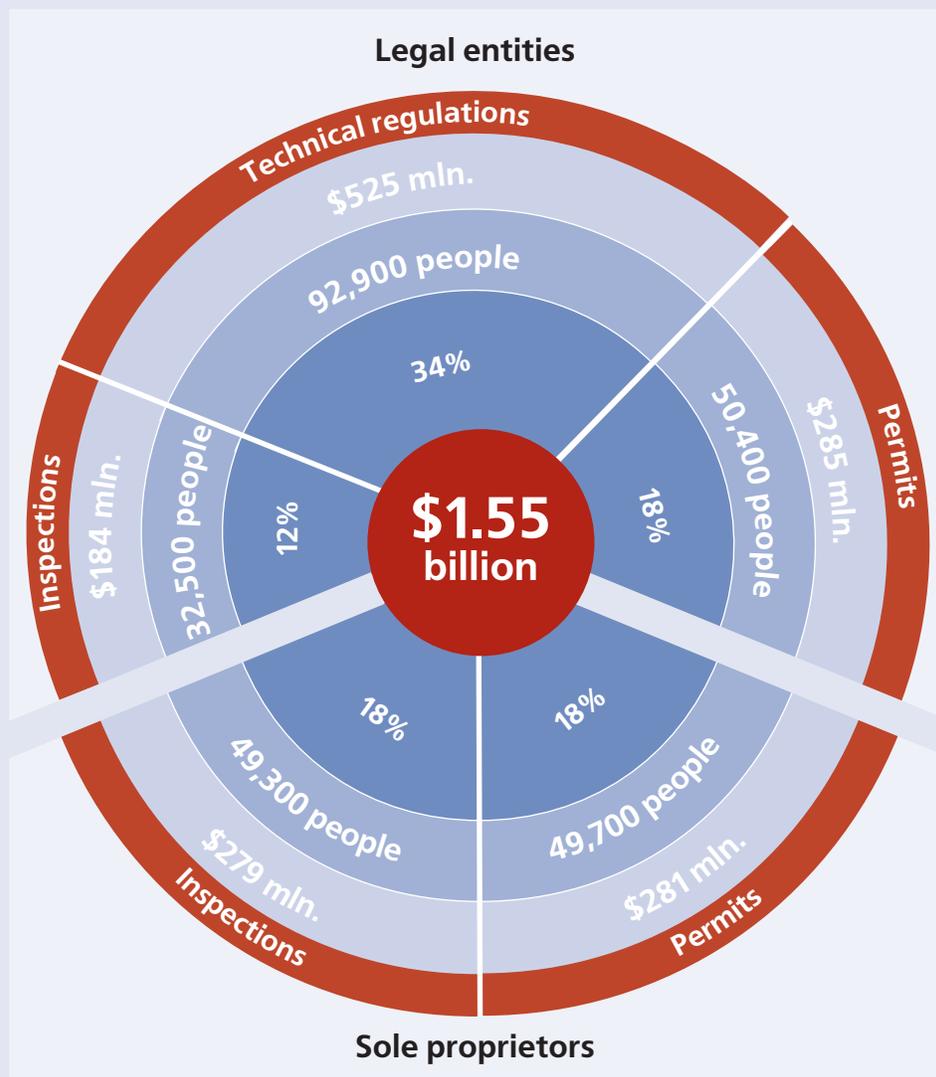
Streamline technical regulation standards	Conduct an inventory of mandatory technical requirements with a view to simplifying and updating them. This will be particularly important for requirements that business must meet in order to start-up.	Streamlining commenced. However any changes that have been implemented so far are not part of a systemic and structured process but rather a set of ad hoc activities.
Change the approach to inspections from imposing sanctions to providing advice and preventing violations	Instead of the current approach to inspection aimed at detecting violations and imposing sanctions, provide advice to businesses and focus on enhancing prevention.	Not implemented.

Annex 3

Direct cost of compliance with three regulatory procedures incurred by private sector in 2008

Figure 79

In 2008 private sector in Ukraine incurred direct costs associated with just three regulatory procedures of \$1.55 billion



- Share of each regulatory procedure for enterprises and sole proprietors in total cost.
- Number of full time employees (equivalent of total cost).
- Yearly estimated direct cost of regulatory procedures for private sector in Ukraine, 2008

The total cost for private sector is estimated for both sub-populations (legal entities and sole proprietors), and for each of three regulatory procedures separately. Detailed calculations are presented below.

These estimates do not include indirect cost (delayed entry cost, and losses incurred due to suspension of activities), and cover **only direct costs** incurred by businesses, thus being very conservative estimate.

The **total direct cost** includes **labor cost** associated with the procedure and **direct expenses** (official and unofficial together presented as a lump-sum).

$$\text{Total Direct Cost} = \text{Cost of Labor} + \text{Lump Sum Expenses (official and unofficial)}$$

The full time employees equivalent was estimated based on average salary rate for 2008 reported by the State Statistics Committee of Ukraine, increased by payroll charges (37,5 percent).

INSPECTIONS

Enterprises

Code	Input data	Indicator value	Source
A	Share of inspected enterprises in 2008	75%	IFC Survey, 2009
B	Number of active enterprises, 2008 (survey target population)	447,500	State Statistics Committee of Ukraine
C	Average number of inspections (at one inspected enterprise), 2008	5.5	IFC Survey, 2009
D	Average number of employee work-days dedicated to one inspection, 2008	3.4	IFC Survey, 2009
E	Average direct expenses per one inspection (UAH), 2008	415	IFC Survey, 2009
F	Average daily salary of employees involved in inspections (UAH, including payroll charges of 37.5% ¹⁶⁶), 2008	64.7	IFC Survey, 2009
G	Average profit tax for enterprises, %	17.5%	Ukrainian Legislation, State Tax Administration data ¹⁶⁷

¹⁶⁶ 37,5 percent is the typical total rate of payments to the pension fund and other social insurance funds, paid by employer.

¹⁶⁷ According to the Law of Ukraine "On Enterprise profit tax" as of December 28, 1994, № 334/94-BP (with amendments) the profit tax rate of enterprises make up to 25%. 17,5% was calculated based on Tax State Service of Ukraine data on share of enterprises, which use different tax regimes (70% of enterprises pay profit tax – 25% tax rate; 30% of enterprises use simplified tax regime paying unified tax (according to the Decree of the President of Ukraine "On the simplified taxation, accounting, and reporting system for small business entities" as of July 3, 1998, №727/98 (with amendments) or fixed agricultural tax (according to the Law of Ukraine "On fixed agricultural tax" as of December 17, 1998, №320-XIV (with amendments)), were amount of tax paid does not depend on amount of profit, and that is why for such enterprises increase in administrative costs does not lead to reduction of tax paid). $25\% \times 70\% = 17.5\%$.

Sole proprietors

Code	Input data	Indicator value	Source
A	Share of inspected sole proprietors in 2008	72%	IFC Survey, 2009
B	Number of active sole proprietors, 2008 (survey target population)	998,500	Tax Compliance Cost Survey, Investment Climate Advisory Services, World Bank Group, 2009
C	Average number of inspections (per one inspected sole proprietor), 2008	6.9	IFC Survey, 2009
D	Average number of employee work-days dedicated to one inspection, 2008	2.4	IFC Survey, 2009
E	Average direct expenses per one inspection (UAH), 2008	96	IFC Survey, 2009
F	Average daily cost of sole proprietor working time (UAH), 2008	86	State Statistics Committee of Ukraine ¹⁶⁸
G	Average profit tax for sole proprietors, %	1.5%	Ukrainian Legislation, State Tax Administration data ¹⁶⁹

¹⁶⁸ Cost of sole proprietors' working time is estimated at the level of average salary rate for 2008 reported by the State Statistics Committee, thus representing conservative estimate.

¹⁶⁹ Average tax rate for sole proprietors was calculated based on share of sole proprietors, who pay 15% tax (according to the Law of Ukraine "On the taxation of natural persons" as of May 22 2003, №889-IV with amendments). However, there were only 10% such sole proprietors in 2008. The rest 90% of sole proprietors used simplified systems of taxation. They paid unified tax according to the President of Ukraine Decree "On the simplified taxation, accounting, and reporting system for small business entities" as of July 3, 1998, №727/98 (with amendments) or fixed tax (by purchasing patent) according to the Cabinet of Ministers Decree "Personal income tax" as of December 26 1992, №13-92 with amendments). The size of unified tax or of fixed tax does not depend on amount of profit, and that is why for such entities administrative costs do not lead to reduction of tax paid. $10\% \times 15\% = 1.5\%$.

PERMITS**Enterprises**

Code	Input data	Indicator value	Source
A	Share of enterprises, which obtained permits in 2008	54%	IFC Survey, 2009
B	Number of active enterprises, 2008 (survey target population)	447,500	State Statistics Committee of Ukraine
C	Average number of permits (obtained by one enterprise covered with this procedure), 2008	4.8	IFC Survey, 2009
D	Average number of employee work-days dedicated to obtaining of one permit, 2008	9.2	IFC Survey, 2009
E	Average direct expenses associated with obtaining of one permit (UAH), 2008	914	IFC Survey, 2009
F	Average daily salary of employees involved in permit obtaining procedures (UAH, including payroll charges of 37.5%), 2008	69.2	IFC Survey, 2009
G	Average profit tax for enterprises, %	17.5%	Ukrainian Legislation, State Tax Administration data

Sole proprietors

Code	Input data	Indicator value	Source
A	Share of sole proprietors, which obtained permits in 2008	56.5%	IFC Survey, 2009
B	Number of active sole proprietors, 2008 (survey target population)	998,500	Tax Compliance Cost Survey, 2009
C	Average number of permits (obtained by one sole proprietor covered with this procedure), 2008	2.9	IFC Survey, 2009
D	Average number of employee work-days dedicated to obtaining of one permit, 2008	6.4	IFC Survey, 2009

Code	Input data	Indicator value	Source
E	Average direct expenses associated with obtaining of one permit (UAH), 2008	357	IFC Survey, 2009
F	Average daily cost of sole proprietor working time (UAH), 2008	86	State Statistics Committee of Ukraine
G	Average profit tax for sole proprietors, %	1.5%	Ukrainian Legislation, State Tax Administration data

TECHNICAL REGULATIONS¹⁷⁰

Standards

Code	Input data	Indicator value	Source
A	Share of enterprises, which purchased standards from Ukraine's State Committee on Standardization in 2008	9%	IFC Survey, 2009
B	Number of active enterprises, 2008 (survey target population)	447,500	State Statistics Committee of Ukraine
C	Average number of standards (obtained by one enterprise having purchased those), 2008	5.2	IFC Survey, 2009
D	Average number of employee work-days dedicated to the procedure, 2008	(not required)	IFC Survey, 2009
E	Average direct expenses associated with purchasing of one standard (UAH), 2008	1,543	IFC Survey, 2009
F	Average daily salary of employees (UAH, including payroll charges of 37.5%), 2008	(not required)	IFC Survey, 2009
G	Average profit tax for enterprises, %	17.5%	Ukrainian Legislation, State Tax Administration data

¹⁷⁰ Technical regulation part was estimated only for legal entities. Sole proprietors incur certain cost as well, however due to very small coverage with each procedure (standards, technical specifications, certification – less than 2%), which resulted in few available observations, the technical regulations compliance cost for sole proprietors was not estimated. Estimation represents conservative approach.

Technical specifications (TS)

Code	Input data	Indicator value	Source
A	Share of enterprises, which purchased or registered TS in Ukraine's State Committee on Standardization in 2008	5.6%	IFC Survey, 2009
B	Number of active enterprises, 2008 (survey target population)	447,500	State Statistics Committee of Ukraine
C	Average number of purchased / registered TS (by one enterprise, which undergone this procedure), 2008	11.4	IFC Survey, 2009
D	Average number of employee work-days dedicated to this procedure, 2008	67.5	IFC Survey, 2009
E	Average direct expenses associated with purchasing / registering one TS (UAH), 2008	2,938	IFC Survey, 2009
F	Average daily salary of employees involved in these procedures (UAH, including payroll charges of 37.5%), 2008	82.9	IFC Survey, 2009
G	Average profit tax for enterprises, %	17.5%	Ukrainian Legislation, State Tax Administration data

Certification

Code	Input data	Indicator value	Source
A	Share of enterprises, which obtained mandatory certificates in 2008 (excluding trade)	10%	IFC Survey, 2009
B	Number of active enterprises (excluding trade), 2008 (survey target population)	304,600	State Statistics Committee of Ukraine
C	Average number of obtained certificates (by one enterprise having obtained those), 2008	6.8	IFC Survey, 2009

Code	Input data	Indicator value	Source
D	Average number of employee work-days dedicated to this procedure, 2008	5.8	IFC Survey, 2009
E	Average direct expenses associated with obtaining of one certificate (UAH), 2008	2,409	IFC Survey, 2009
F	Average daily salary of employees involved in these procedures (UAH, including payroll charges of 37.5%), 2008	70.9	IFC Survey, 2009
G	Average profit tax for enterprises, %	17.5%	Ukrainian Legislation, State Tax Administration data

The direct cost for each regulatory procedure / sub-population is estimated as follows:

$$\begin{aligned} \text{Cost of Labor} &= (A \times B \times C \times D \times F) \times (1 - G) \\ \text{Direct Expenses} &= (A \times B \times C \times E) \times (1 - G) \\ \text{Total Direct Cost} &= \text{Cost of Labor} + \text{Direct Expenses} \end{aligned}$$

Estimation of total direct cost, UAH per year¹⁷¹

Regulatory procedure	Enterprises	Sole proprietors	Total
Permits	1,502 million	1,481 million	2,982 million
Inspections	969 million	1,469 million	2,438 million
Technical regulations including	2,768 million		2,768 million
Standards	258 million		258 million
Technical specifications	2,008 million		2,008 million
Certification	502 million		502 million
Total	5,239 million	2,950 million	8,189 million

¹⁷¹ Exchange rate (UAH/USD) over 2008 was 5.2672UAH/1\$. Refer to Summary of Survey Methodology for details.

Annex 4

The list of state inspectorates authorized by law to control business activity

THE LIST OF STATE INSPECTIONS AGENCIES AUTHORIZED TO CONTROL BUSINESS ACTIVITY ACCORDING TO THE LAWS OF UKRAINE AND COVERED BY THE LAW ON INSPECTIONS¹⁷²

In the area of electric energy industry

1. National Commission for Regulation of Electric Energy Industry of Ukraine (in addition performs the functions of licensing authority)
2. State Inspectorate for Exploitation of Electric Stations and Networks
3. State Inspectorate for Supervision of the Consumption of Electric and Thermal Energy of the Ministry of Fuel and Energy
4. State Energy Saving Inspectorate

In the area of plant cultivation and seed production

5. Ministry of Agrarian Policy of Ukraine (licensing authority)
6. State Plant Quarantine Service of Ukraine under the Ministry of Agrarian Policy
7. Ukrainian State Pomological and Ampelographical Inspectorate under the Ministry of Agrarian Policy
8. Ukrainian State Seed Inspectorate under the Ministry of Agrarian Policy
9. Ukrainian State Flower and Decorative Plant Seed Inspectorate under the State Committee of Ukraine for Housing and Municipal Services
10. Ukrainian State Forest Seed Inspectorate
11. State Service for Protection of Seeds Breeders' Rights
12. State Plants Protection Inspectorate of the Ministry of Agrarian Policy

In the area of communication and radio broadcasting

13. National Commission for Regulation of Communications (in addition performs the functions of licensing authority)
14. State Communications Inspectorate
15. State Service for Special Communications and Information Protection of Ukraine (in addition performs the functions of licensing authority)
16. National Television and Broadcasting Council of Ukraine

¹⁷² The list is tentative as separate authorities can control several areas simultaneously. As of September 1, 2009.

In the area of industrial safety and emergency situations

17. State Fire Safety Department of the Ministry of Ukraine on Emergency Situations (in addition performs the functions of licensing authority)
18. State Civil Protection and Technical Safety Inspectorate of the Ministry of Ukraine on Emergency Situations
19. State Committee of Ukraine on Industrial Safety and Labor Protection (in addition performs the functions of licensing authority)
20. State Paramilitary Emergency and Rescue Services (units)
21. State Department of the Documentation Insurance Fund of the Ministry of Ukraine on Emergency Situations
22. State Technical Inspectorate of State Department of the Documentation's Insurance Fund of the Ministry of Ukraine on Emergency Situations

In the area of compliance with labor related legislation

23. Ministry of Labor and Social Policy of Ukraine (performs functions of licensing authority)
24. State Department for Oversight of Labor Legislation Compliance under the Ministry of Labor and Social Policy
25. State Employment Legislation Compliance Inspectorate under the State Employment Service of the Ministry of Labor and Social Policy
26. Medical and Social Expert Commissions
27. Units of the State Labor Conditions Assessment Agency under the Ministry of Labor and Social Policy
28. Ukrainian Fund for Social Protection of Disabled People under the Ministry of Labor and Social Policy

In the area of taxes, duties, and mandatory payments

29. State Tax Service of Ukraine (including Tax police)
30. Department of Oversight of the Production and Circulation of Spirits, Liquor, and Tobacco Products of State Tax Administration (performs functions of licensing authority)
31. Ukrainian Pension Fund
32. Ukrainian Fund for Social Insurance for Industrial Accidents and Occupational Diseases
33. Ukrainian Fund for Mandatory State Social Insurance for Unemployment
34. Ukrainian Fund for Social Insurance for Temporary Disability

In the area of use of land

35. State Committee of Ukraine for Land Resources (performs functions of licensing authority)
36. State Inspectorate for Land Use Control and Land Protection under the State Committee for Land Resources
37. State Committee of Ukraine for Water Management (performs functions of licensing authority)
38. State Forestry Committee of Ukraine (performs functions of licensing authority)
39. State Forest Protection Service under the State Forestry Committee of Ukraine
40. State Service for Protection of Natural Reserved Fund of Ukraine

In the area of environment and subsurface use

41. Ministry of Environmental Protection of Ukraine (performs functions of licensing authority)
42. State Environmental Inspectorate of the Ministry of Environmental Protection of Ukraine
43. State Geological Service of the Ministry of Environmental Protection of Ukraine
44. Service for State Geological Supervision of Geological Exploration (mining operations, etc) of Subsurface

In the area of foreign economic activity

45. State Customs Service of Ukraine (in addition performs the functions of licensing authority)
46. State Service of Export Control
47. State Service for Control of Cultural Values Crossing the State Border under the Ministry of Culture and Tourism of Ukraine

In the area of compliance with standards

48. State Committee of Ukraine for Technical Regulation and Consumer Policy
49. State Inspectorate for Drugs Quality Control of the Ministry of Health of Ukraine
50. State Service of Drugs and Medical Products of the Ministry of Health of Ukraine (performs functions of licensing authority)
51. State Architecture and Construction Inspectorate of the Ministry of Regional Development and Construction of Ukraine
52. Authorities of the State Assay Control Office

In the area of transportation

53. Ministry of Transport and Communications of Ukraine (performs functions of licensing authority)
54. Chief State Inspectorate for Automobile Transport Safety of the Ministry of Transport and Communications (in addition performs functions of licensing authority)
55. State Aviation Administration of the Ministry of Transport and Communications (in addition performs functions of licensing authority)
56. State Administration for Naval and River Transport of the Ministry of Transport and Communications (performs functions of licensing authority)
57. State Port Control Inspectorate

In the area of livestock-breeding and fishery

58. State Committee on Veterinary Medicine of Ukraine (in addition performs functions of licensing authority)
59. Chief State Livestock-Breeding Inspectorate of the Ministry of Agrarian Policy of Ukraine
60. State Committee for Fisheries (performs functions of licensing authority)

Law enforcement agencies

- 61. Security Service of Ukraine (performs functions of licensing authority)
- 62. Ministry of Internal Affairs of Ukraine (performs functions of licensing authority)
- 63. Criminal and Enforcement Inspectorate

In the area of education, science, and intellectual property

- 64. Ministry of Education and Science of Ukraine (performs functions of licensing authority)
- 65. State Department of Intellectual Property of the Ministry of Education and Science
- 66. State Educational Institutions Inspectorate of the Ministry of Education and Science
- 67. Book Chamber of Ukraine
- 68. State Service for Land-Surveying, Cartography and Cadastre under the Ministry of Environmental Protection (performs functions of licensing authority)
- 69. State Land-Surveying Inspectorate of the Chief Department of Land-Surveying, Cartography and Cadastre the Cabinet of Ministers of Ukraine

In other areas

- 70. State Sanitary and Epidemiological Service of the Ministry of Health of Ukraine
- 71. Ministry of Justice of Ukraine (performs functions of licensing authority)
- 72. Ministry of Economy of Ukraine (performs functions of licensing authority)
- 73. State Department for Bankruptcy of the Ministry of Economy (performs functions of licensing authority)
- 74. State Pricing Inspectorate of the Ministry of Economy;
- 75. Ministry of Health of Ukraine (performs functions of licensing authority)
- 76. State Committee for Narcotics Control of the Ministry of Health (in addition performs the functions of licensing authority)
- 77. Ministry of Family, Youth, and Sports of Ukraine (performs functions of licensing authority)
- 78. State Property Fund of Ukraine
- 79. National Space Agency of Ukraine (performs functions of licensing authority)
- 80. Ministry of Finance of Ukraine (performs functions of licensing authority)
- 81. State Service for Tourism and Resorts of the Ministry of Culture and Tourism of Ukraine (performs functions of licensing authority)
- 82. Ministry on Housing and Municipal Services of Ukraine (performs functions of licensing authority)
- 83. State Pricing Inspectorate of the Ministry of Economy
- 84. Local self-governance authorities
- 85. Council of Ministers of the Autonomous Republic of Crimea, Oblast state administrations, Kyiv and Sevastopol city state administrations (perform functions of licensing authority)

Annex 5

The list of state inspections agencies that divided businesses by risk groups

THE LIST OF STATE INSPECTIONS AGENCIES THAT DIVIDED BUSINESSES BY GROUPS DEPENDING ON THE DEGREE OF RISK ASSOCIATED WITH THEIR ACTIVITY AND DETERMINED SPECIFIC PERIODICITY FOR CONDUCTING SCHEDULED INSPECTIONS FOR EACH GROUP¹⁷³

	Inspections authority	Approved	
1	State Fire Safety authorities (Ministry on Emergency Situations)	Resolution of the Cabinet of Ministers of Ukraine as of November 14, 2007. №1324	
2	State Inspectorate for Exploitation of Electric Stations and Networks of the Ministry of Fuel and Energy	Resolution of the Cabinet of Ministers of Ukraine as of February 22, 2008, №75	
3	State Environmental Inspectorate of the Ministry of Environmental Protection	Resolution of the Cabinet of Ministers of Ukraine as of March 19, 2008 №212	
4	State Geological Service of the Ministry of Environmental Protection		
5	National Commission on Regulation of Communications	Resolution of the Cabinet of Ministers of Ukraine as of April 9, 2008, №315	
6	Ministry of Transport and Communications	Resolution of the Cabinet of Ministers of Ukraine as of April 17, 2008, №365	
7	State Pricing Inspectorate of the Ministry of Economy	Resolution of the Cabinet of Ministers of Ukraine as of May 21, 2008, №483	
8	State Civil Protection and Technical Safety Inspectorate of the Ministry on Emergency Situations	Resolution of the Cabinet of Ministers of Ukraine as of May 28, 2008, №493	

¹⁷³ In chronological order of adoption of respective documents (from earliest to the most recent ones).

Risk groups and periodicity of inspections, times per year ¹⁷⁴	Name of document
H – mandatory once a year; M – mandatory once every 3 years; L – mandatory once every 5 years	PROCEDURE for distribution of businesses by the degree of risk-associated with their business activity – to the safety of life and health of population and environment with regard to fire safety
H: 1) no more than 3 times a year; 2) no more than 2 times a year; M – mandatory once every 3 years; L – mandatory once every 3 years	CRITERIA for distribution of businesses by the degree of risk-associated with their business activity – in the area of electric energy and heat supply and determination of periodicity for undertaking measures of state supervision (control)
H – no more than once a year; M – no more than once every 2 years; L – no more than once every 3 years	CRITERIA for distribution of businesses by the degree of risk (resulting from business activity) to the environment and periodicity for undertaking measures of state supervision (control)
H – none; M – no more than once every 3 years; L – no more than once every 5 years	CRITERION for assessing the degree of risk resulting from the activity of businesses in the area of communications and postal services
H – mandatory once a year; M – no less than once every 1.5 years; L – no less than once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity and determining the periodicity of measures of state supervision (control) in the area of railway transport
H – mandatory once a year; M – mandatory once every 2 years; L – none	CRITERIA used for assessment of the degree of risk resulting from business activity and determining periodicity of scheduled measures related to state supervision (control) over compliance with the procedure for setting and using of prices (tariffs)
H – mandatory once a year; M – mandatory once every 3 years; L – mandatory once every 5 years	CRITERIA for distribution of businesses by the degree of risk (resulting from business activity) to the safety of life and health of population and environment, and periodicity for undertaking measures of state supervision (control)

¹⁷⁴ **H** – high risk group; **M** – middle level risk group; **L** – low level risk group.

	Inspections authority	Approved	
9	State Service for Special Communications and Protection of Information	Resolution of the Cabinet of Ministers of Ukraine as of August 6, 2008, №698	
		Resolution of the Cabinet of Ministers of Ukraine as of August 6, 2008, №699	
10	State Department for Bankruptcy of the Ministry of Economy	Resolution of the Cabinet of Ministers of Ukraine as of August 27, 2008, №747	
11	Ukrainian Pension Fund	Resolution of the Cabinet of Ministers of Ukraine as of September 3, 2008, №775	
12	Chief State Inspectorate for Automobile Transport of the Ministry of Transport and Communications	Resolution of the Cabinet of Ministers of Ukraine as of September 3, 2008, №790	
13	Ministry of Health of Ukraine	Resolution of the Cabinet of Ministers of Ukraine as of September 10, 2008, №843	
14	State Inspectorate for Drugs Quality Control of the Ministry of Health		
15	State Committee for Narcotics Control of the Ministry of Health		
16	State Service of Drugs and Medical Products of the Ministry of Health		
17	National Commission for Regulation of Electric Energy Industry	Resolution of the Cabinet of Ministers of Ukraine as of September 17, 2008, №835	

Risk groups and periodicity of inspections, times per year	Name of document
H – mandatory once a year; M – mandatory once every 3 years; L – mandatory once every 5 years	CRITERION used for assessing the degree of risk resulting from business activity in the area of cryptographic protection of information and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – mandatory once a year; M – mandatory once every 3 years; L – none	CRITERION used for assessing the degree of risk resulting from business activity in the area of technical protection of information and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – mandatory once a year; M – mandatory once every 3 years; L – none	CRITERION used for assessing the degree of risk resulting from business activity in the area of electronic digital signature’s services and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – mandatory once a year; M – mandatory once every 1.5 years; L – mandatory once every 3 years	CRITERIA on assessment of the degree of risk resulting from business activity of court-appointed manager/administrator (asset manager, financial restructuring manger, liquidator) and determination of periodicity for undertaking measures of state supervision (control)
H – no more than once a year; M – no more than once every 2 years; L – no more than once every 5 years	CRITERION used for assessing the degree of risk resulting from business activity and determining the periodicity for undertaking scheduled measures related to state supervision (control) in the area of mandatory state pension insurance
H – mandatory once a year; M – mandatory once every 3 years; L – mandatory once every 5 years	CRITERIA for distribution of businesses by the degree of risk resulting from their business activity in the area of automobile transport and determination of periodicity for undertaking measures related to state supervision (control)
H – no more than once a year; M – no more than once every 3 years; L – no more than once every 5 years	CRITERION used for assessing the degree of risk, resulting from business activity in area of health care, to the safety of life and health of population and determining the periodicity of scheduled measures related to state supervision (control)
H: 1) no more than twice a year; 2) mandatory once a year; M – no more than once a year; L – no more than once every 2 years	CRITERIA for assessing the degree of risk resulting from business activity subject to licensing by the National commission for regulation of electric power industry

	Inspections authority	Approved	
18	State Committee for Veterinary Medicine	Resolution of the Cabinet of Ministers of Ukraine as of September 24, 2008, №848	
19	State Aviation Administration of the Ministry of Transport and Communications	Resolution of the Cabinet of Ministers of Ukraine as of October 8, 2008, №895	
20	State Assay Control Office of the Ministry of Finance	Resolution of the Cabinet of Ministers of Ukraine as of October 16, 2008, №909	
21	State Energy Saving Inspectorate of National Agency of Ukraine for Securing Effective Use of Energy Resources	Resolution of the Cabinet of Ministers of Ukraine as of October 22, 2008, №935	
22	State Plant Quarantine Service of the Ministry of Agrarian Policy	Resolution of the Cabinet of Ministers of Ukraine as of October 30, 2008, №947	
23	Ministry of Labor and Social Policy of Ukraine (with regard to control of business activity in the area of intermediacy in employment abroad)	Resolution of the Cabinet of Ministers of Ukraine as of November 19, 2008, №1013	
24	Ministry of Family, Youth, and Sports of Ukraine	Resolution of the Cabinet of Ministers of Ukraine as of December 17, 2008, №1097	
25	State Committee of Ukraine for Water Management	Resolution of the Cabinet of Ministers of Ukraine as of December 27, 2008, №1139	

Risk groups and periodicity of inspections, times per year	Name of document
H – no more than 4 times a year; M – no more than twice a year; L – mandatory once a year	CRITERIA for assessing the degree of risk resulting from business activity subject to state veterinary and sanitary control and supervision
H – no more than once every 1.5 years; M – no more than once every 3 years; L – none	CRITERIA for assessing the degree of risk resulting from business activity in the area of civil aviation and determining the periodicity for undertaking measures related to state supervision (control)
H – mandatory once a year; M – mandatory once every 3 years; L – mandatory once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity (except extraction) related to precious metals, precious stones, precious stones of organogenic origin, semiprecious stones, manufacture of such metals and stones, manufacture of products from such metals and stones, collection and primary processing of their wastes and scrap, trade of such metals or stones in both processed and unprocessed form, as well as for determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – mandatory once a year; M – mandatory once every 3 years; L – mandatory once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity related to trade jewelry and household products manufactured from precious metals, precious stones, precious stones of organogenic origin, semiprecious stones, as well as for determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – no more than once a year; M – no more than once every 3 years L – no more than once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity in the area of energy efficiency and energy saving
H – no more than twice a year; M – no more than once every 2 years; L – no more than once every 5 years	PROCEDURE for distribution of businesses by the degree of risk resulting from their activity in the area of plans' quarantine.
H – no more than once a year; M – none L – none	CRITERIA for assessing the degree of risk resulting from business activity in the area of intermediacy in employment abroad and determining the periodicity for undertaking measures related to state supervision (control)
H – no more than once a year; M – no more than once every 3 years; L – none	CRITERIA for assessing the degree of risk resulting from business activity in the area of physical culture and sports and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – mandatory once a year; M – mandatory once every 3 years; L – mandatory once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity in the area of use and protection of water resources and restoration of water resources, as well as for determining the periodicity for undertaking scheduled measures related to state supervision (control)

	Inspections authority	Approved	
26	State Committee for Technical Regulation and Consumer Policy	Resolution of the Cabinet of Ministers of Ukraine as of December 27, 2008, №1164	
27	State Housing and Municipal Services Inspectorate of the Ministry of Housing and Municipal Services	Resolution of the Cabinet of Ministers of Ukraine as of January 14, 2009, №16	
28	State Service for National Cultural Heritage of the Ministry of Culture and Tourism	Resolution of the Cabinet of Ministers of Ukraine as of January 21, 2009, №21	
29	State Service for Tourism and Resorts of the Ministry of Culture and Tourism	Resolution of the Cabinet of Ministers of Ukraine as of January 21, 2009, №25	
30	Ministry of Finance of Ukraine	Resolution of the Cabinet of Ministers of Ukraine as of April 2, 2009, №303	
31	Ukrainian Fund for Mandatory State Social Insurance for Unemployment	Resolution of the Cabinet of Ministers of Ukraine as of April 15, 2009, №345	
32	Ministry of Labor and Social Policy of Ukraine (Department for policy of state social insurance, Control and audit department, and State department for oversight of labor legislation compliance)		
33	Ministry of Justice of Ukraine	Resolution of the Cabinet of Ministers of Ukraine as of April 15, 2009, №353	

Risk groups and periodicity of inspections, times per year	Name of document
H – no more than once a year; M – no more than once every 2 years; L – no more than once every 3 years	CRITERIA for assessing the degree of risk resulting from business activity related to manufacturing and sale of products (fulfillment of works, provision of services) and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – no more than twice a year; M – no more than once a year; L – no more than once in 2 years	CRITERIA for assessing the degree of risk resulting from business activity in the area of drinking water supply and water drainage and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – no more than 3 times a year; M – no more than once every 3 years; L – none	CRITERION for assessing the degree of risk resulting from business activity and determining the periodicity for undertaking scheduled measures related to state supervision (control) with regard to the objects of cultural heritage
H – no more than once a year; M – no more than once every 2 years; L – no more than once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity in the area of tourism and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – no more than once a year; M – no more than once every 3 years; L – no more than once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity related to the issue and conducting of lotteries, and for determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – no more than once a year; M – no more than once every 3 years; L – no more than once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity related to gambling games (except lotteries) and determining the periodicity for undertaking scheduled measures related to state supervision (control)
H – no more than once a year; M – no more than once every 2 years; L – no more than once every 5 years	CRITERION for assessing the degree of risk resulting from business activity and determining the periodicity for undertaking scheduled measures related to state supervision (control) in the area of mandatory state social insurance against unemployment
H – mandatory once a year; M – mandatory once every 2 years; L – mandatory once every 5 years	CRITERIA for assessing the degree of risk resulting from business activity related to collection, processing, storage, and use of information which, constitutes credit history, and determining the periodicity for undertaking scheduled measures related to state supervision (control)

	Inspections authority	Approved	
34	Ukrainian State Seed Inspectorate of the Ministry of Agrarian Policy	Resolution of the Cabinet of Ministers of Ukraine as of April 28, 2009, №406	
35	State Committee of Ukraine on Industrial Safety and Labor Protection	Resolution of the Cabinet of Ministers of Ukraine as of April 28, 2009, №413	
36	State Inspectorate for Land Use Control and Land Protection under the State Committee for Land Resources	Resolution of the Cabinet of Ministers of Ukraine as of May 26, 2009 №477	
37	State Plants Protection Inspectorate of the Ministry of Agrarian Policy	Resolution of the Cabinet of Ministers of Ukraine as of May 27, 2009, №513	
38	Fund for Social Insurance for Industrial Accidents and Occupational Diseases	Resolution of the Cabinet of Ministers of Ukraine as of June 3, 2009, №540	
39	Ministry of Finance	Resolution of the Cabinet of Ministers of Ukraine as of June 3, 2009, №546	
40	Fund for Social Insurance for Temporary Disability	Resolution of the Cabinet of Ministers of Ukraine as of June 3, 2009, №547	

Risk groups and periodicity of inspections, times per year	Name of document
<p>H – no more than twice a year; M – no more than once a year; L – no more than once every 2 years</p>	<p>CRITERION for assessing the degree of risk resulting from business activity in the area of agricultural seed growing and determining the periodicity for undertaking scheduled measures related to state supervision (control).</p>
<p>Two different periodicities have been established depending on what is the object of inspection (an enterprise itself or its certain part): 1) inspection of business entity: H – no more than once a year; M – no less than once every 3 years; L – no less than once every 5 years. 2) inspection of production unit (territory, workshop, building, unit, etc.), which belongs to a business entity: H – no more than once every 3 months; M – no more than once every 12 months; L – as a rule, during scheduled comprehensive inspection of business entity</p>	<p>CRITERIA for assessing the degree of risk resulting from business activity in the area of industrial safety and workplace safety and determining the periodicity for undertaking scheduled measures related to state supervision (control)</p>
<p>H – no more than once a year M – no more than once in 2 years L – no more than once in 5 years</p>	<p>CRITERIA for assessing the degree of risk resulting from business activity and determining the periodicity for undertaking scheduled measures related to state supervision (control) of land use and protection.</p>
<p>H – no more than once a year; M – no more than once in every 2 years; L – no more than once in every 5 years</p>	<p>CRITERIA for assessing the degree of risk resulting from business activity and determining the periodicity for undertaking scheduled measures related to state supervision (control) if sphere of state mandatory social insurance for industrial accidents and occupational diseases.</p>
<p>H – no more than once a year; M – no more than once in every 2 years; L – no more than once in every 3 years</p>	<p>CRITERIA for assessing the degree of risk resulting from business of producing securities, documents of strict accountability and determining the periodicity for undertaking scheduled measures related to state supervision (control)</p>
<p>H – no more than once a year; M – no more than once every 2 years; L – no more than once every 3 years</p>	<p>CRITERIA for assessing the degree of risk resulting from business of design, production and certified testing of holographic protective elements and determining the periodicity for undertaking scheduled measures related to state supervision (control)</p>
<p>H – no more than once a year; M – no more than once in every 2 years; L – no more than once in every 5 years</p>	<p>CRITERIA for assessing the degree of risk resulting from business and determining the periodicity for undertaking scheduled measures related to state supervision (control) in sphere of state social insurance for temporary disability and expenses caused by birth and funeral</p>

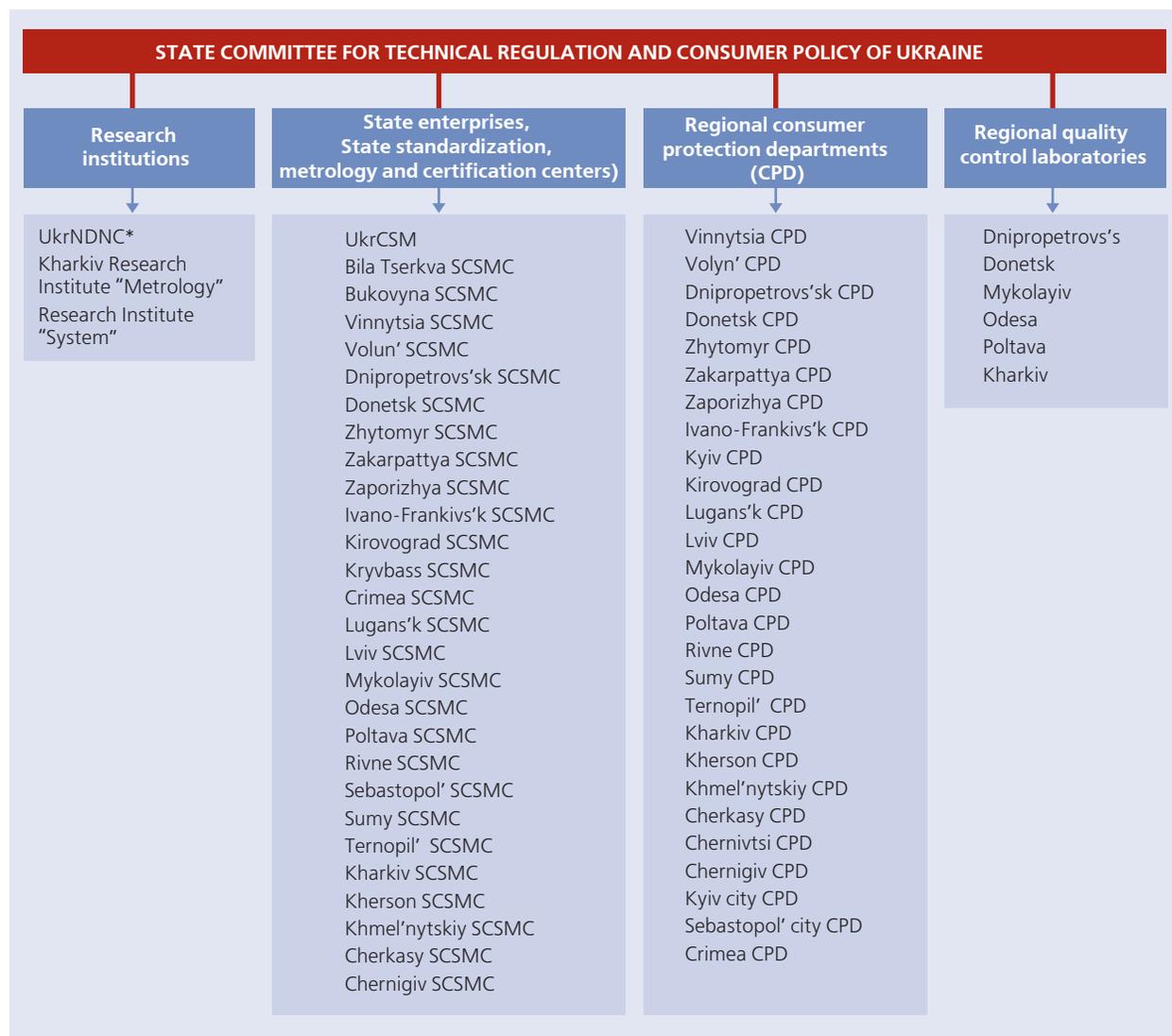
	Inspections authority	Approved	
41	State Department for Naval and River Transport of the Ministry of Transport and Communications	Resolution of the Cabinet of Ministers of Ukraine as of June 3, 2009, №546	
42	State Inspectorate for quality control of agricultural products and its market monitoring of Ministry of Agricultural Policy	Resolution of the Cabinet of Ministers of Ukraine as of July 1, 2009, №656	
1	State Sanitary and Epidemiological Service of Ukraine	Resolution of the Chief State Sanitary Officer dated February 14, 2008, №8.*	
2	State Inspectorate for Supervision of the Consumption of Electric and Thermal Energy of the Ministry of Fuel and Energy	Order of the Ministry of Fuel and Energy of Ukraine dated June 25, 2008, №345*	

* Is not a document approved pursuant to the requirements of the Law of Ukraine "On Main Provisions of State Surveillance (Control) over Business Activity", since the specified document is not the Resolution of the Cabinet of Ministers of Ukraine as mandated by clause 2 of article 5 of the above mentioned law. Therefore, scheduled inspection of businesses by specified controlling authority must be conducted not with periodicity established in the approved document (subordinate legal act), but with periodicity established by clause 3 of article 22 of the above mentioned Law, i.e. once every 5 years.

Risk groups and periodicity of inspections, times per year	Name of document
<p>H – no more than once a year; M – no more than once every 2 years; L – no more than once every 3 years</p>	<p>CRITERIA for assessing the degree of risk resulting from business in sphere of naval and river transportation and determining the periodicity for undertaking scheduled measures related to state supervision (control)</p>
<p>H – no more than once a year; M – no more than once a year; L – no more than once a year;</p>	<p>CRITERIA for assessing the degree of risk resulting from business related to resource creation of agricultural products and to their quality identification and determining the periodicity for undertaking scheduled measures related to state supervision (control)</p>
<p>H – mandatory 4 times a year; M – mandatory 2 times a year; L – mandatory once a year</p>	<p>Distribution of objects of state sanitary and epidemiological supervision by degree of risk to health of people</p>
<p>All business entities are broken down into 2 types: 1) Electric energy: H – 6 periodicity groups (from no more than once a year to no more than once every 5 years); M – 2 periodicity groups (no more than once every 4 years and no more than once every 5 years); L – 2 periodicity groups (no more than once every 6 years and no more than once every 7 years). 2) Thermal energy: H – 9 periodicity groups (from no more than once a year to no more than once every 6 years); M – 2 periodicity groups (no more than once every 3 years and no more than once every 5 years); L – no more than once every 7 years.</p>	<p>TIMEFRAME for undertaking scheduled measures related to state energy supervision</p>

Annex 6

Structure of State Committee of Ukraine for Technical Regulations and Consumer Policy¹⁷⁵



*State enterprise "Scientific research institute and training center for standardization, certification and quality problems"

¹⁷⁵ <http://www.dssu.gov.ua/document/37496/Shema11.doc>

Annex 7

UkrCEPRO state certification system¹⁷⁶



*State enterprise "All-Ukrainian state research and production center for standardization, metrology, certification and consumers' rights protection"

¹⁷⁶ http://www.dssu.gov.ua/control/uk/publish/article/main?art_id=33603&cat_id=32891

Annex 8

Ukraine's commitments to the WTO

Extract from the Report of the Task Force on Ukraine's accession to WTO ratified by the Law of Ukraine № 250-VI "On Ratification of the Protocol regarding Ukraine's Accession to the World Trade Organization" dated April 10, 2008 № 250-VI.

№ in the Report	Content	Fulfillment date in accordance with commitments	Possible consequences of non-fulfillment for the economy of Ukraine
280	The representative of Ukraine confirmed that, from the date of accession, Ukraine would give priority consideration to international (over regional and other countries' national) standards, guidelines and recommendations, as a basis for Ukraine's own standards, technical regulations and associated conformity assessment procedures. The Working Party took note of this commitment.	As of the date of accession to WTO	Unlike foreign producers, national manufactures will have to continue complying with outdated post-Soviet standards, which will decrease the competitiveness of Ukrainian products in domestic market and make it impossible to export such products.
281	Ukraine will not resort to mandatory certification, if goals and objectives stipulated by the law can be achieved through the means, which are less burdensome for trade.	As of the date of accession to WTO	Since certification procedure is applied to both imported and domestically manufactured products, such procedure cannot serve as a means for protecting domestic market. At the same time, an additional administrative barrier results in increased prices for respective products.

№ in the Report	Content	Fulfillment date in accordance with commitments	Possible consequences of non-fulfillment for the economy of Ukraine
299	The representative of Ukraine confirmed that from the date of accession, all existing national and regional standards would be voluntary, except those referred to or set out in technical regulations intended inter alia to protect national security interests, prevent deceptive practices, protect the life and health of people, animals or plants, as well as protect the environment.	As of the date of Ukraine's accession to WTO	
299	With regard to products, which are subject to compliance assessment and standards for which are yet to be harmonized with respective international standards, the representative of Ukraine confirmed that as of the date of Ukraine's accession to WTO imported products will be considered as products that comply with respective Ukrainian standards or technical regulations, if compliance assessment authorities recognized in Ukraine confirm that such products comply with respective international standards, or regional/national standards which are identical to international standards.	As of the date of Ukraine's accession to WTO	The use of this requirement is essential, first of all, for domestic producers, since in other countries standards are already voluntary. Thus, non-fulfillment of this requirement will only lead to inability of national producers to manufacture new types of products for which there are no standards.
300	Thus, notwithstanding the timetable outlined in document WT/ACC/UKR/129, Ukraine would comply with all provisions of the TBT Agreement and would abide by the provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards (i.e., Annex 3 to the TBT Agreement) as of the date of accession without recourse to any transitional arrangements.	As of the date of Ukraine's accession to WTO	All above mentioned consequences.

№ in the Report	Content	Fulfillment date in accordance with commitments	Possible consequences of non-fulfillment for the economy of Ukraine
300	Ukraine would also continue to reduce further the number of categories of products subject to mandatory third party certification with a view to the broadest possible acceptance of manufacturer's supplier's declaration of conformity (SDOC), without requiring registration with or approval from Ukrainian authorities, in relation to the relevant technical regulation, prior to the end of year 2011.	Until the end of 2011	Unnecessary mandatory certification results in increased cost of respective products.
302	In addition, the representative of Ukraine confirmed that, pursuant to Article 6.1 of the TBT Agreement, Ukraine would accept, whenever possible, the results of conformity assessment procedures in other Members, even when those procedures differed from its own, provided Ukraine was satisfied that those procedures offered an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.	As of the date of Ukraine's accession to WTO	<p>Actually this provision means that declaration of compliance by a producer can be applied to imported products.</p> <p>Meanwhile, domestically manufactured products will be subject to mandatory certification, which will increase the cost of Ukrainian products and decrease their competitiveness.</p>

№ in the Report	Content	Fulfillment date in accordance with commitments	Possible consequences of non-fulfillment for the economy of Ukraine
	Sanitary and Phytosanitary (SPS)		
306	The representative of Ukraine noted that the Government agencies responsible for food safety, plant and animal health included, each within its own sphere of competence, the Ministry of Agriculture (i.e., the State Service of Veterinary Medicine of Ukraine and the State Service of Plant Quarantine of Ukraine) and the Ministry of Health (i.e., the State Sanitary-Epidemiological Service of Ukraine).	As of the date of Ukraine's accession to WTO	This commitment envisages exclusion of the State Committee of Ukraine for Technical Regulation and Consumer Policy (State Standardization Committee) from the process of control over the safety of food products. Non-fulfillment of this commitment would mean that the cost of control and certification by State Standardization Committee will be further on included in the price of products.
310	the State Standards Committee is not authorized to impose mandatory requirements on the import of food and agricultural products and that the State Standards Committee would not regulate the import of such products from WTO Members or require imports to comply with voluntary standards from the date of accession.		
313	State Standards Committee was not authorized to impose mandatory requirements on the import of food and agricultural products, and that the State Standards Committee would not regulate the import of such products from WTO Members or require imports to comply with voluntary standards from the date of accession. He further confirmed that, nevertheless, the Ukraine Derzhspozhivstandart would adopt an Order, effective by the date of accession, removing any authority for the State Standards Committee to require testing or certification of any imported food product. As a result, imported food products would be subject to testing and certification only by the sanitary service or veterinary service, as appropriate.		

Annex 9

List of technical regulations approved by CMU resolutions¹⁷⁷

1. Dated April 8, 2009 № 332
On Approval of Technical Regulation on Essential Requirements to Measuring Equipment
2. Dated March 25, 2009 № 268
On Approval of Technical Regulation on Safety of High Pressure Simple Vessels
3. Dated March 11, 2009 № 190
On Approval of Technical Regulation on Non-automated Weighing Devices
4. Dated January 14, 2009 № 13
On Approval of Technical Regulation on Names of Textile Fibers and Labeling of Textile Goods
5. Dated December 27, 2008 № 1144
On Approval of Technical Regulation on Labeling of Household Bulbs with regard to Efficient Electricity Consumption
6. Dated December 3, 2008 № 1057
On Approval of Technical Regulation on Limitations on Usage of Some Hazardous Substances in Electric and Electronic equipment
7. Dated November 5, 2008 № 967
On Approval of Technical Regulation on Self-moving Equipment Operating under Pressure. (Example of conformity mark for Technical Regulation on Self-moving Equipment Operating under Pressure).
8. Dated October 8, 2008 № 901
On Approval of Technical Regulation on Toys Safety
9. Dated October 8, 2008 № 898
On Approval of Technical Regulation on Protection Equipment and Systems Designed for Employment in Potentially Explosive Environment
10. Dated September 24, 2008 № 856
On Approval of Technical Regulation on Equipment Operating on Gaseous Fuel
11. Dated September 3, 2008 № 787
On Approval of Technical Regulation on Maximum Permissible Consumption of Electricity by Refrigerating Equipment
12. Dated August 27, 2008 № 761
On Approval of Technical Regulation on Personal Protection Equipment
13. Dated August 27, 2008 № 748
On Approval of Technical Regulation on Hot-water Boilers Operating on Fluid or Gaseous fuel
14. Dated August 20, 2008 № 717
On Approval of Technical Regulation on Detergents

¹⁷⁷ As of April 21, 2009

15. Dated July 16, 2008 № 641
On Approval of Technical Regulation on Medical Supplies for in vitro Laboratory Diagnostics
16. Dated July 9, 2008 № 621
On Approval of Technical Regulation on Active Medical Implant Supplies
17. Dated June 11, 2008 № 536
On Approval of Technical Regulation on Medical Supplies
18. Dated December 5, 2007 № 1382
On Approval of Technical Regulation on the Closed Sources of Ionizing Radiation
19. Dated September 5, 2007 № 1103
On Approval of Technical Regulation on Marine Equipment
20. Dated July 18, 2007 № 939
On Approval of Technical Regulation on Containers for Storage and Disposal of Radioactive Waste and its Implementation Action Plan
21. Dated December 20, 2006 № 1764
On Approval of Technical Regulation on Construction Goods, Buildings and Constructions
22. Dated October 7, 2003 № 1585
On Approval of Technical Regulation on Modules of Assessment of Compliance and the Requirements to Labeling with the National Mark of Compliance, Applied in the Technical Regulations

Annex 10

EU Directive on electrical equipment**DIRECTIVE 2006/95/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS OF DECEMBER 12, 2006 ON THE HARMONIZATION OF THE LAWS OF MEMBER STATES RELATING TO ELECTRICAL EQUIPMENT DESIGNED FOR USE WITHIN CERTAIN VOLTAGE LIMITS PRINCIPAL ELEMENTS OF THE SAFETY OBJECTIVES FOR ELECTRICAL EQUIPMENT DESIGNED FOR USE WITHIN CERTAIN VOLTAGE LIMITS****1. General conditions**

- (a) The essential characteristics, recognition and observance of which will ensure that electrical equipment will be used safely and in applications for which it was made, shall be marked on the equipment, or, if this is not possible, on an accompanying notice.
- (b) The brand name or the trademark should be clearly printed on the electrical equipment or, where that is not possible, on the packaging.
- (c) The electrical equipment, together with its component parts, should be made in such a way as to ensure that it can be safely and properly assembled and connected.
- (d) The electrical equipment should be so designed and manufactured as to ensure that protection against the hazards set out in points 2 and 3 of this Annex is assured, providing that the equipment is used in applications for which it was made and is adequately maintained.

2. Protection against hazards arising from the electrical equipment

Measures of a technical nature should be prescribed in accordance with point 1, in order to ensure:

- (a) that persons and domestic animals are adequately protected against the danger of physical injury or other harm that might be caused by direct or indirect contact;
- (b) that temperatures, arcs, or radiation that would cause danger are not produced;
- (c) that persons, domestic animals, and property are adequately protected against non-electrical dangers caused by the electrical equipment that are revealed by experience;
- (d) that the insulation must be suitable for foreseeable conditions.

3. Protection against hazards that may be caused by external influences on the electrical equipment

Technical measures are to be laid down in accordance with point 1, in order to ensure:

- (a) that the electrical equipment meets the expected mechanical requirements in such a way that persons, domestic animals, and property are not endangered;
- (b) that the electrical equipment shall be resistant to non-mechanical influences in expected environmental conditions in such a way that persons, domestic animals, and property are not endangered;
- (c) that the electrical equipment shall not endanger persons, domestic animals, and property in foreseeable conditions of overload.

International Experience and EU Requirements for Establishing a Technical Regulation System

Because an efficiently operating system of technical regulation is the basis for the common market's functioning, the EU pays significant attention to it, demanding not only from EU members but also from its trade partners' national technical regulation systems that follow certain standard patterns.

First of all, the EU demands clear institutional separation of the regulatory, standardization, accreditation, and conformity assessment functions. Fulfillment of this requirement is an absolute necessity for implementing appropriate directives.

Ideally, the state authorities should supervise only the legal support and control functions (market supervision). They should also ensure the system's appropriate functioning, that is, the technical competence and independence of the process for approving the conformity of goods with requirements established by third parties.

Even if a country does not intend to join the EU, it should ensure access to the European market for its national goods by establishing efficient trade with the EU (in particular by creating the conditions necessary for the signing of a free trade zone agreement).

The best way to reach this objective is to sign Agreements on Conformity Assessment and Acceptance of Industrial Products (ACAAs). The action plan for free trade of industrial products (preparation of an Agreement on Mutual Recognition and Acceptance of Industrial Products between Ukraine and the EU) was signed by State Standardization Committee and the General Directorate of the EC on December 19, 2005.

The EU also has clear and strict requirements concerning adequate infrastructure for standardization, accreditation, conformity assessment, and metrology in partner states¹⁷⁸. This infrastructure should be in place even before the formal negotiations for signing are initiated.

Furthermore, the following requirements should be met:

- All appropriate European harmonized standards should be implemented and conflicting standards should be cancelled;
- The competence of the conformity assessment bodies that must be established has to be proven;
- An appropriate market supervision system should be implemented. Moreover, all local procedures that contradict the system (such as Ukraine's system of pre-market conformity control) should be terminated.

It is evident that these requirements cannot be met without reforming the national technical regulation system's institutional structure.

This structure is also subject to clear requirements: segregation of regulation functions, standardization, accreditation, and certification is necessary for the correct implementation of the ACAA.

¹⁷⁸ See Commission of the European Community, Commission Staff Working Paper Agreements On Conformity Assessments and Acceptance of Industrial Products (ACAAs), Brussels, August 25, 2004, Sec(2004)1071.

The requirements for each sphere are provided below.

Standardization

The EU demands that the national body for standardization comply with the following criteria:

- It should be independent and preferably private, without being dominated by the state;
- All decisions should be taken by consensus and transparently;
- All interested parties should have representation in both the executive and management bodies;
- Stakeholder involvement should be voluntary;
- Performance results should be available to the public.

Accreditation

The EU demands that the national body for accreditation should be independent and efficient and cooperate with the European Union and internationally.

Accreditation should not generate profit. No competition or unnecessary separation or duplication of functions should be allowed. The accreditation and conformity assessment functions should be clearly differentiated.

Conformity Assessment

The EU demands that testing, inspection, and certification should be done by different conformity assessment bodies, including labs for testing and measuring, inspection and certification bodies which should be accredited based on their technical competence, independence, and objectiveness. However, accreditation is not mandatory in the New Approach Directives sphere.

Metrology

According to EU requirements state authority should comprehend only legal metrology and exclude industrial and scientific metrology.

Normally, conformity assessment in the legal metrology sphere is performed with state bodies' participation, though some EU member states have privatized this sphere.

Market Supervision

In accordance with EU requirements, market supervision is most important in spheres that lack procedures for market coordination or approval. Control over compliance with the legislation in this sphere comes under the purview of the state.

The supervisory bodies should be independent and act objectively and without prejudice, and their infrastructure should ensure the supervision's efficiency.

If supervisory bodies and assigned bodies are subordinated to the same state authority, any conflicts of interest should be eliminated.

Annex 12

Annual turnover of typical enterprise in 2008¹⁷⁹

Enterprise size or sector	Top manager of enterprise	
	Male	Female
	\$ '000	
1-10 employees	\$38	\$38
11-50 employees	\$209	\$152
51-250 employees	\$949	\$949
More than 250 employees	\$2,278	\$1,899
Agribusiness	\$27	\$152
Manufacturing	\$114	\$57
Construction	\$171	\$40
Trade	\$95	\$57
Catering	\$85	\$38
Transportation	\$190	\$27
Services	\$47	\$38
Average, all enterprises	\$85	\$51

¹⁷⁹ Turnover of a typical enterprise (median value) is given in this table, since a) median is less sensitive to outliers; b) turnover data is more reliable than profit data due to underreporting and high non-response rate (higher than for turnover).

Annex 13

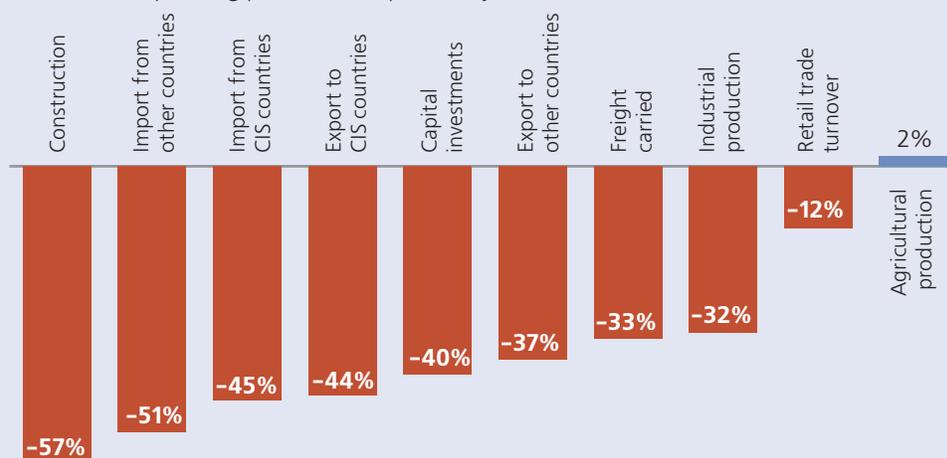
Statistical data

Introduction

Figure 80

The country is now facing a period of significant economic downfall

Main macroeconomic indicators of Ukraine January-March 2009
% of the corresponding period of the previous year



Source: Interstate Statistical Committee of the CIS, State Statistics Committee of Ukraine.

Figure 81

Corruption perception index

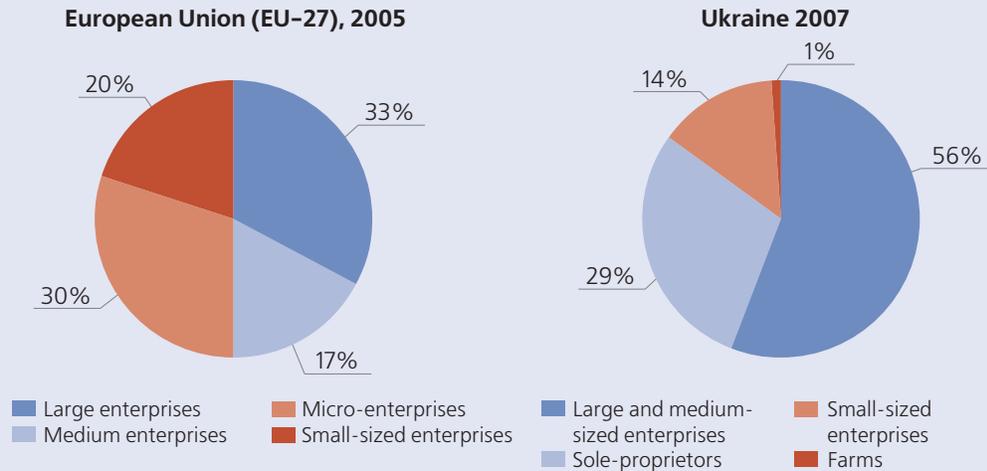


Source: Transparency International, corruption perception index, 2008.

Figure 82

Ukraine's structure of private sector employment as compared to that of the EU

% of employed by private sector



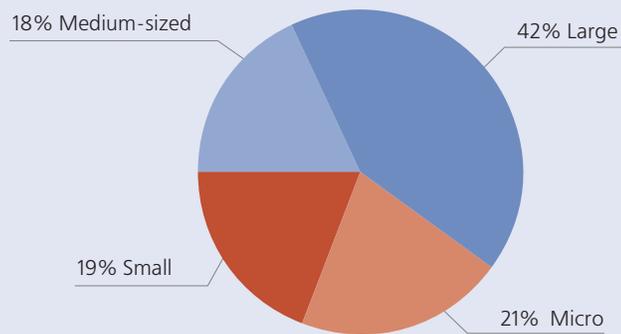
Source: "Key Figures on Europe," 2009 edition, Eurostat Pocketbooks.

Source: State Statistics Committee of Ukraine, National report "On the current status and development trends of entrepreneurship in Ukraine," State Committee of Ukraine on Regulatory Policy and Entrepreneurship, 2009 (taking into account the Law of Ukraine "On Amendments to some legal acts of Ukraine governing entrepreneurial operations" dated 18.09.08 №523-VI).

Figure 83

In the EU micro- and small-sized enterprises generate 40 percent of GDP

Value added breakdown by enterprise size, non-financial business economy, EU-27, 2005



Source: "Key Figures on Europe," 2009 edition, Eurostat Pocketbooks.

Figure 84

About one-third of Ukraine's economy remains in shadow

Integrated index of shadow economy of Ukraine, % of GDP



Source: Ministry of the Economy of Ukraine, analytical note "Tendencies of the shadow economy of Ukraine in 2008."

Permits

Figure 85

Number of permits, and share of enterprises and sole proprietors having obtained permits in 2008

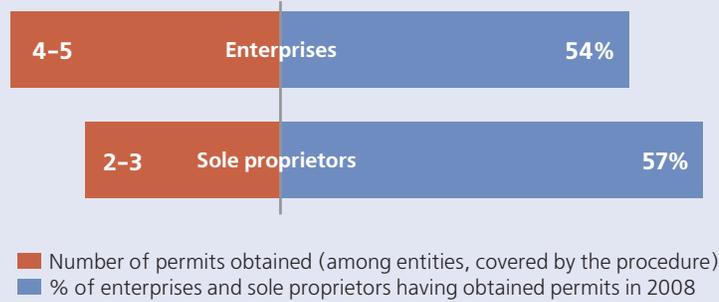
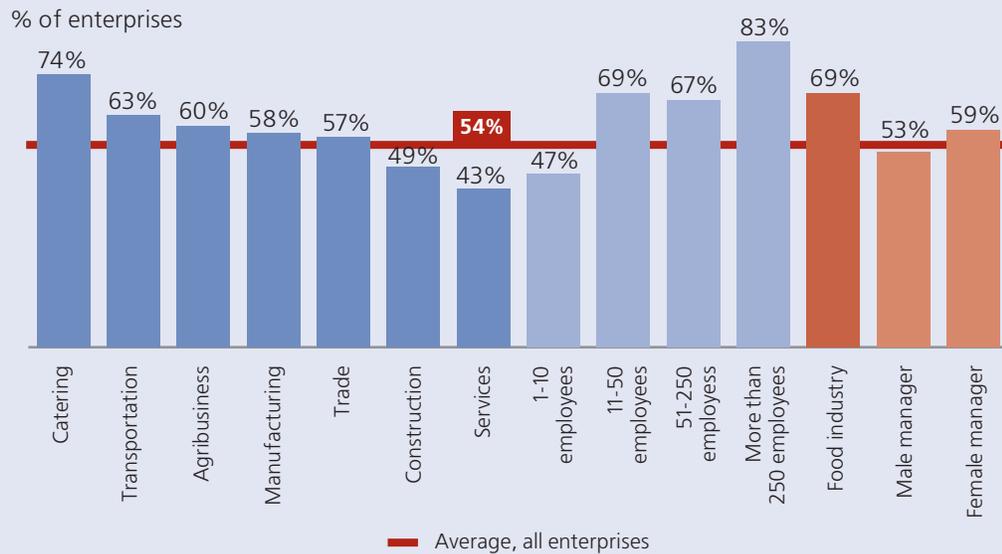


Figure 86

Share of enterprises which obtained permits in 2008¹⁸⁰



¹⁸⁰ Hereinafter “food industry” is separated. It partially consist of agricultural and industrial enterprises. The rest of sectors are mutually exclusive. For more details see Annex 1 “Survey Methodology” and “Summary of Survey Methodology”.

Figure 87

Number of permits obtained by one enterprise in 2008, among covered entities

Number of permits, obtained by one enterprise in 2008 (among covered by this procedure)

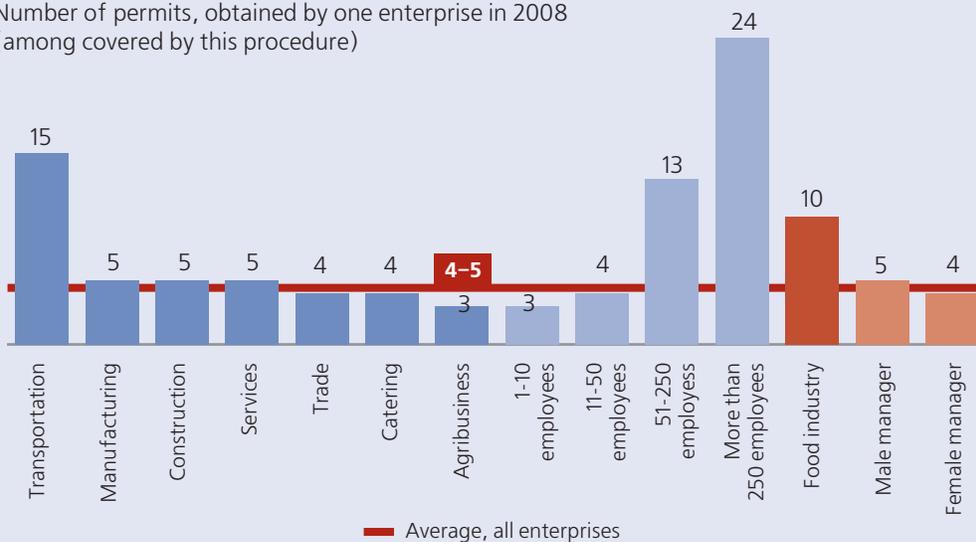


Figure 88

Number of working days for documents preparation to obtain all permits and direct expenses associated with obtaining all permits by one enterprise and sole proprietor in 2008 (among entities, covered by the procedure)



■ Number of working days to prepare documents for all permits needed by one entity
 ■ Direct expenses associated with obtaining of all permits by one entity, UAH*

* Hereinafter direct expenses do not include cost of labor.

Figure 89

Time spent preparing documents needed to obtain all permits in 2008 (by one enterprise covered by this procedure)

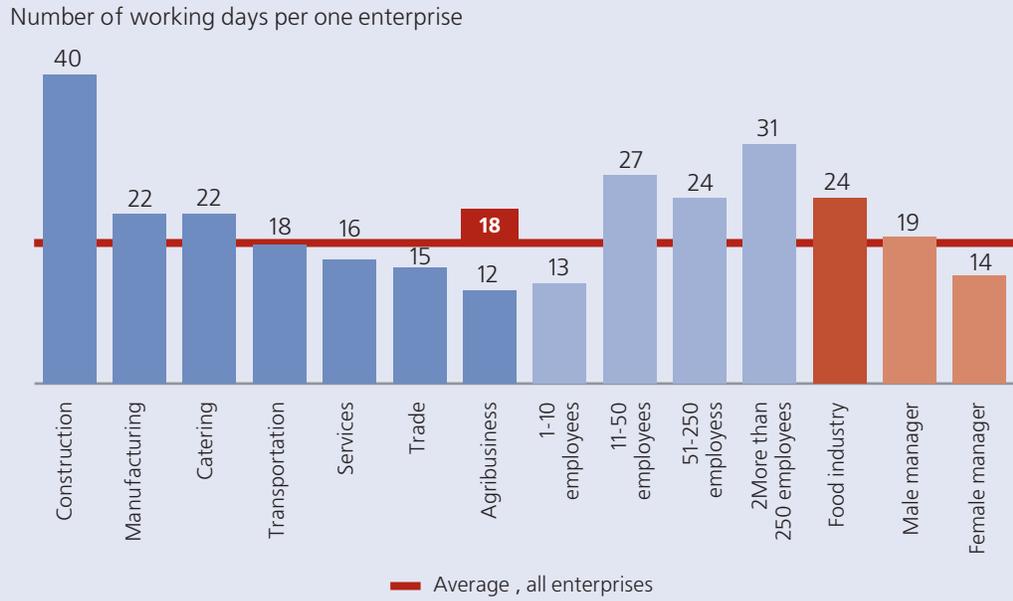


Figure 90

Direct expenses associated with obtaining of all permits in 2008 (for one enterprise covered by this procedure)

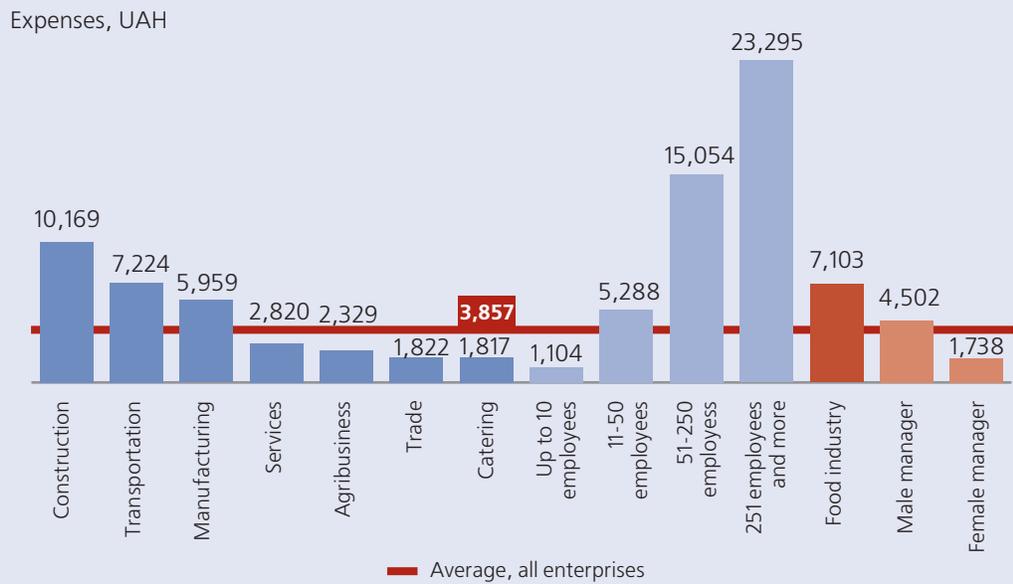


Figure 91

Waiting time spent by enterprises and sole proprietors to obtain all permits in 2008 (among entities covered by this procedure)

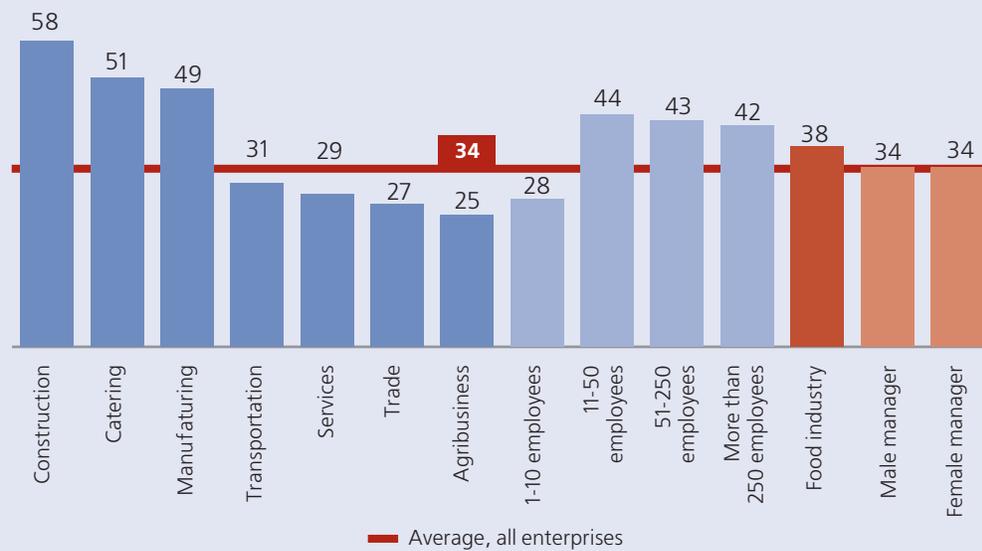
Number of calendar days



Figure 92

Waiting time spent by enterprises to obtain all permits in 2008 (among enterprises covered by this procedure)

Number of calendar days per one covered enterprise



Inspections

Figure 93

Number of inspections, and share of enterprises and sole proprietors inspected in 2008



Figure 94

Share of enterprises that underwent at least one inspection in 2008

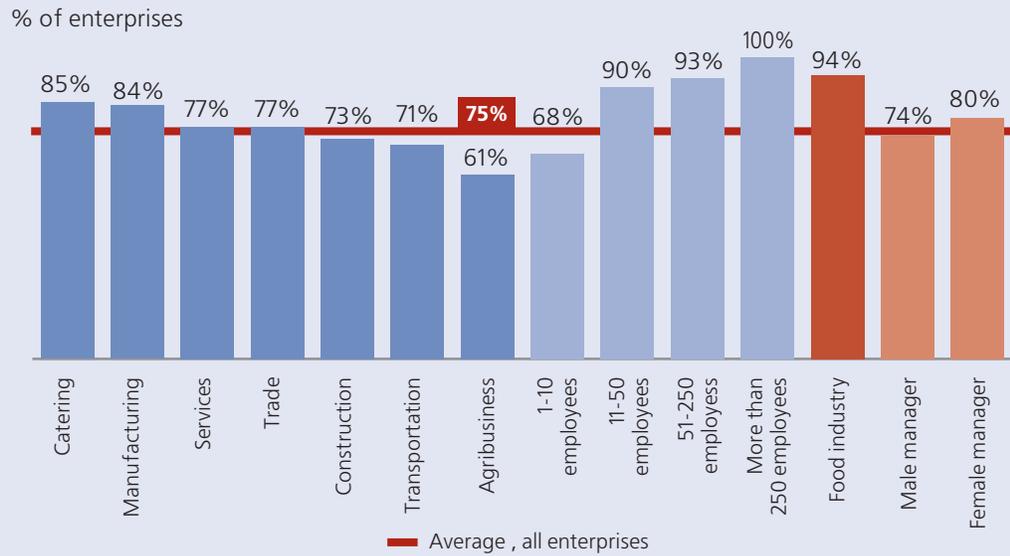


Figure 95

Number of inspections in 2008 (among covered entities)

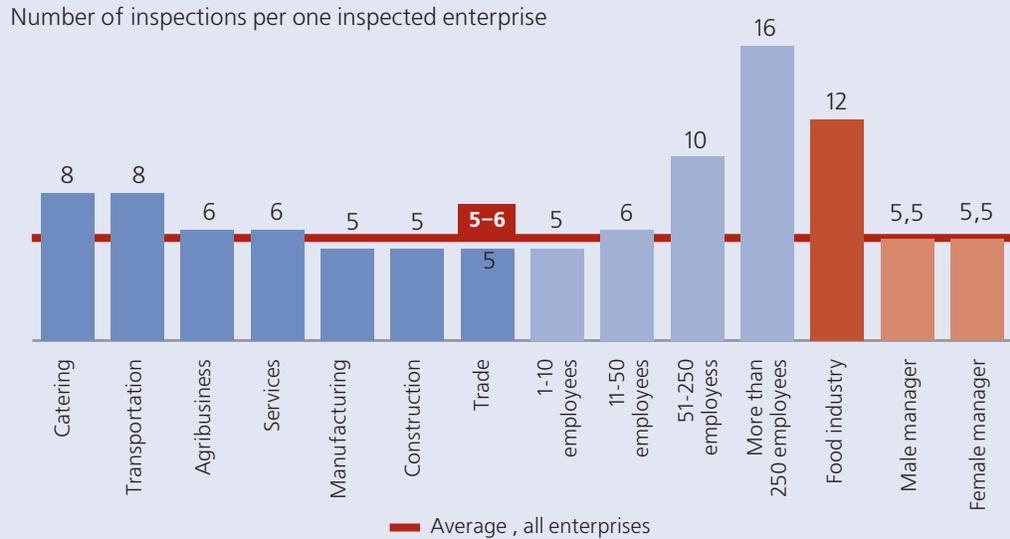


Figure 96

Number of working days diverted for all inspections and direct expenses associated with all inspections in 2008 (among inspected entities)

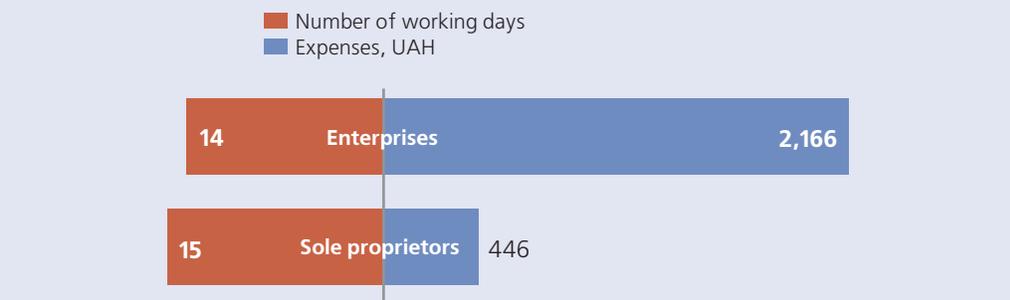


Figure 97

Number of working days spent on all inspections by one inspected enterprise in 2008

Number of working days per one inspected enterprise

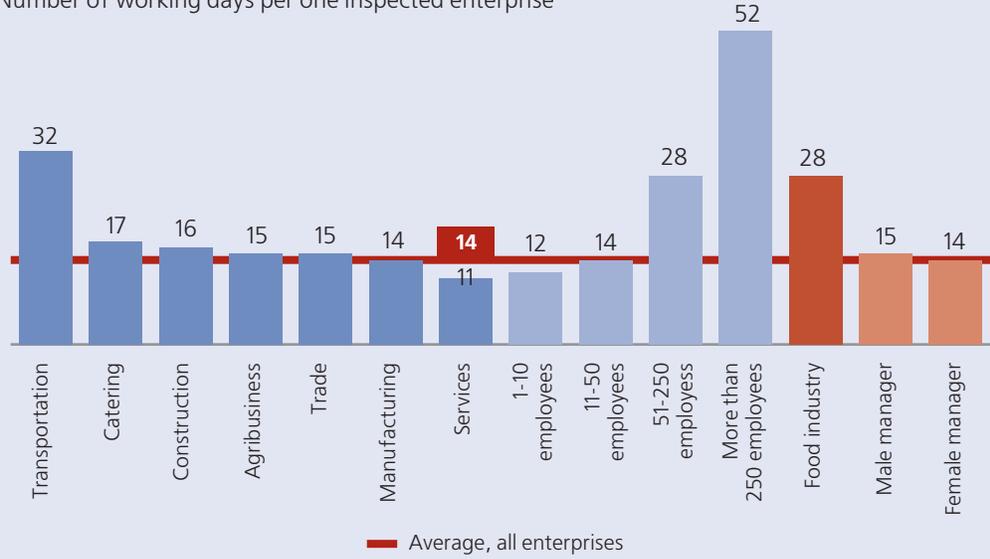
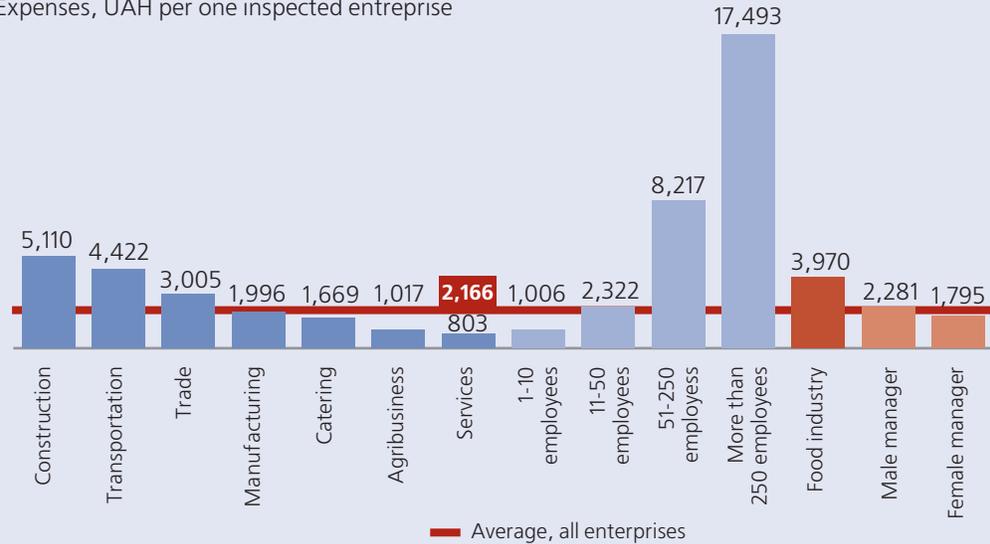


Figure 98

Direct expenses associated with all inspections at one inspected enterprise in 2008¹⁸¹

Expenses, UAH per one inspected enterprise



¹⁸¹ Direct expenses do not include labor cost.

Standards and technical specifications

Figure 99

Share of enterprises whose products or services were subject to standards and/or technical specifications in 2008

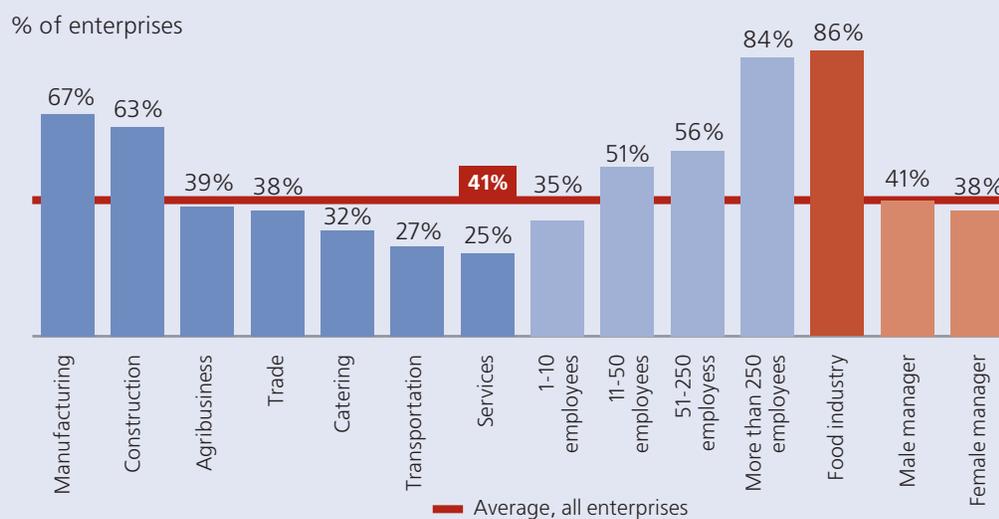


Figure 100

Share of enterprises which had to purchase and/or register standards and/or technical specifications in 2008

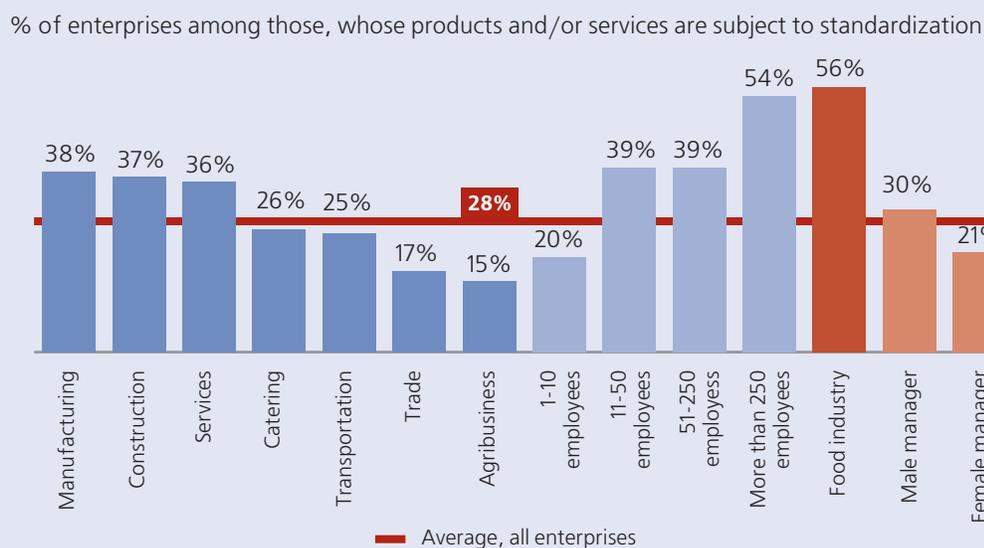


Figure 101

Number of purchased and/or registered standards and/or technical specifications (among enterprises which purchased and/or registered them in 2008)

Number of standards and/or technical specifications

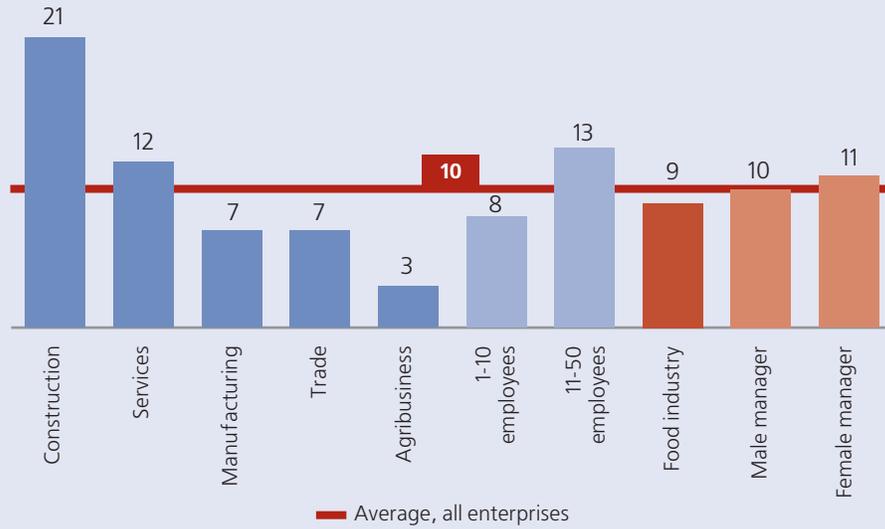


Figure 102

Time needed by one enterprise to prepare all documents to register one technical specification¹⁸²

Number of working days per enterprise, covered with this procedure

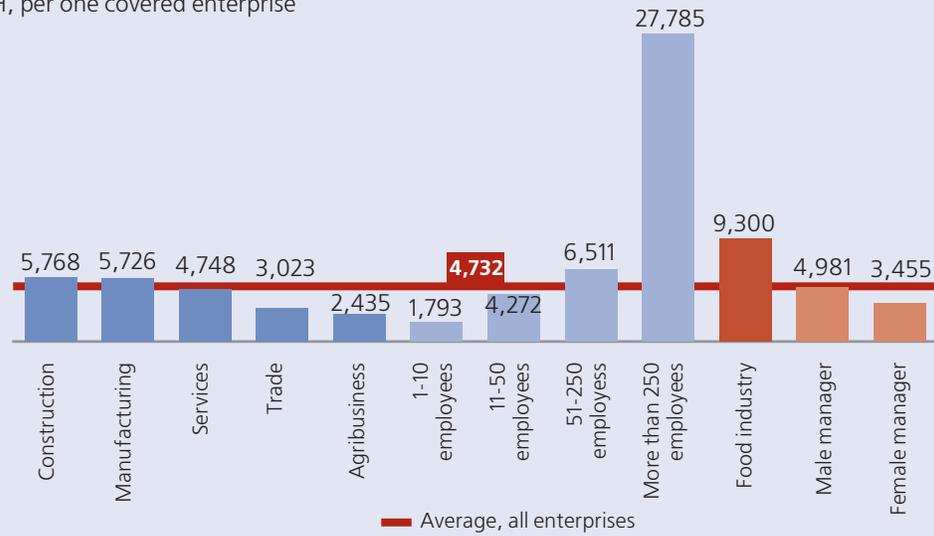


¹⁸² Insufficient number of observations for any distribution.

Figure 103

Direct expenses associated with purchasing and/or registering standards and/or technical specifications in 2008¹⁸³ (among enterprises covered with this procedure)

UAH, per one covered enterprise



¹⁸³ Direct expenses do not include labor cost.

Certification

Figure 104

Share of enterprises whose products or services were subject to mandatory certification in 2008

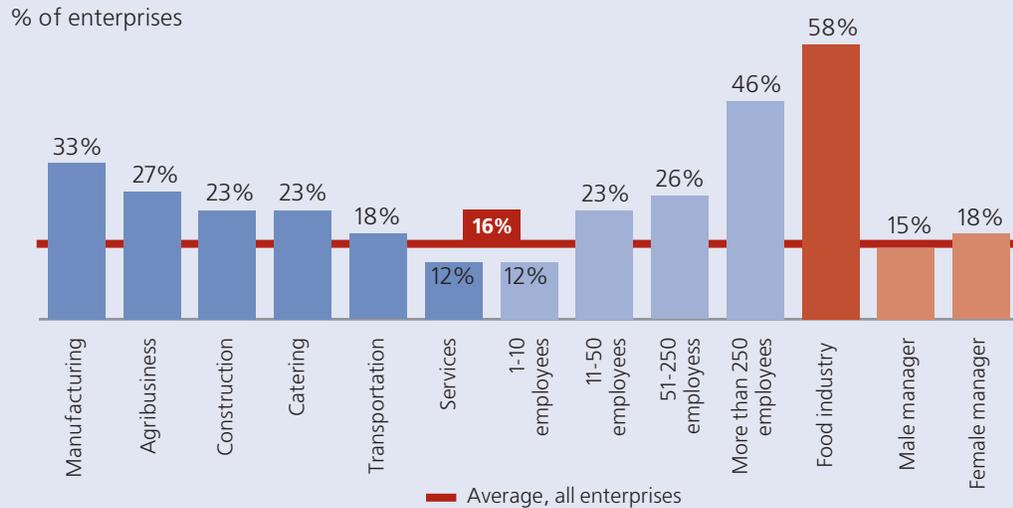


Figure 105

Share of enterprises which obtained mandatory certificates in 2008 (among enterprises whose products or services are subject to mandatory certification)

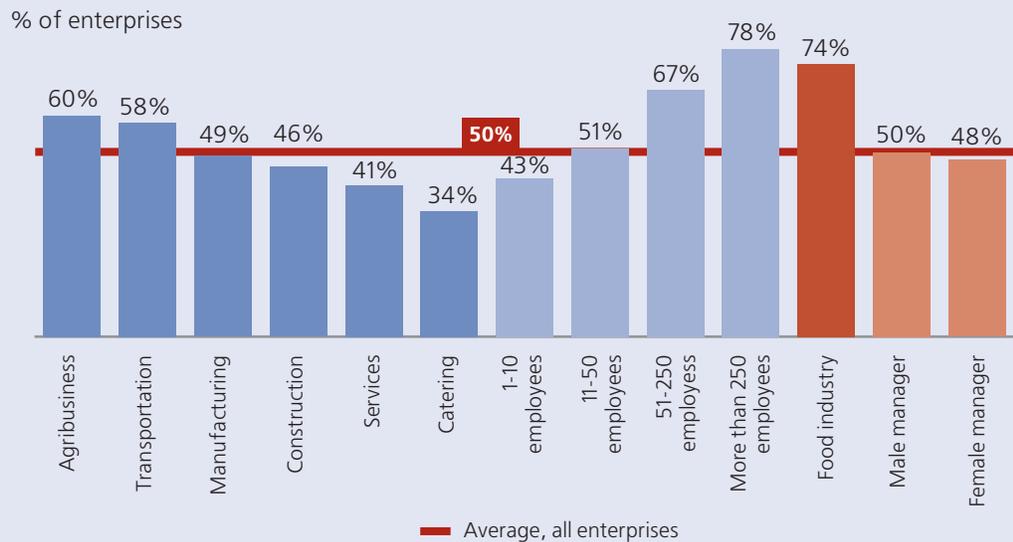


Figure 106

Number of mandatory certificates obtained in 2008 (among enterprises having obtained at least one certificate)

Number of mandatory certificates obtained by one covered enterprise

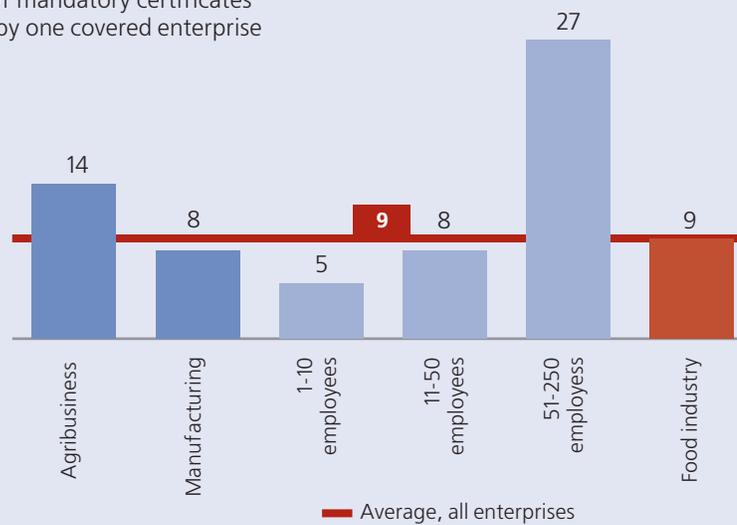


Figure 107

Time spent by one enterprise to obtain all mandatory certificates in 2008 (among enterprises having obtained certificates)

Working person-days per enterprise

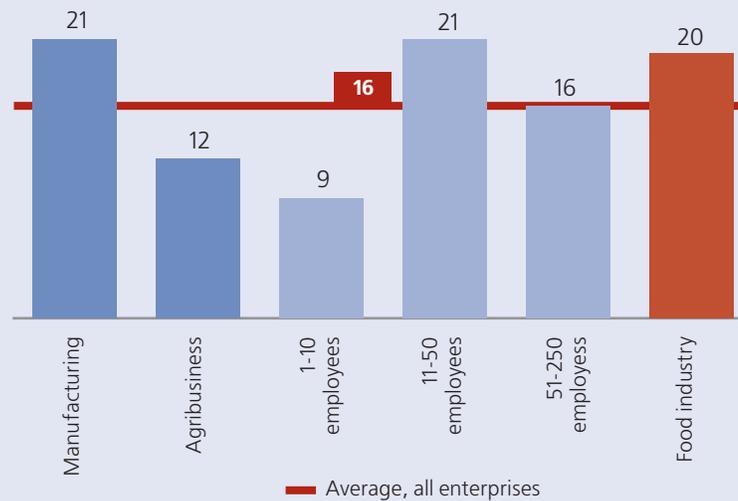
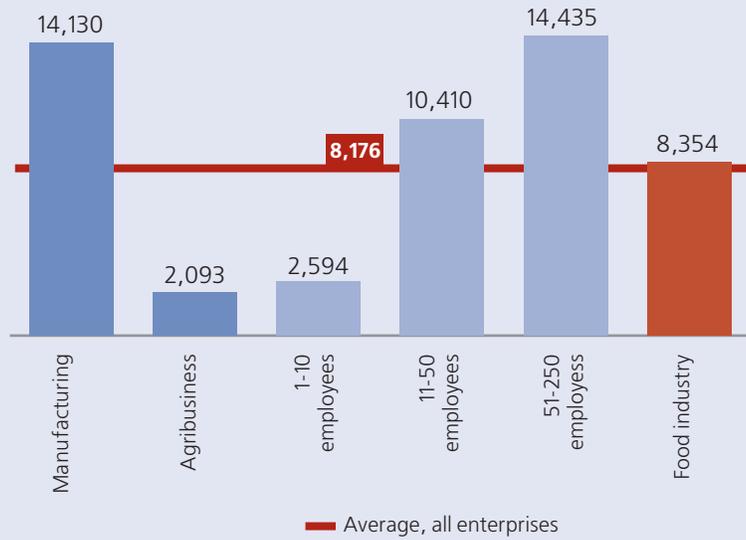


Figure 108

Direct expenses of one enterprise associated with obtaining all mandatory certificates in 2008 (among enterprises having obtained certificates)

Expenses, UAH per one enterprise



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