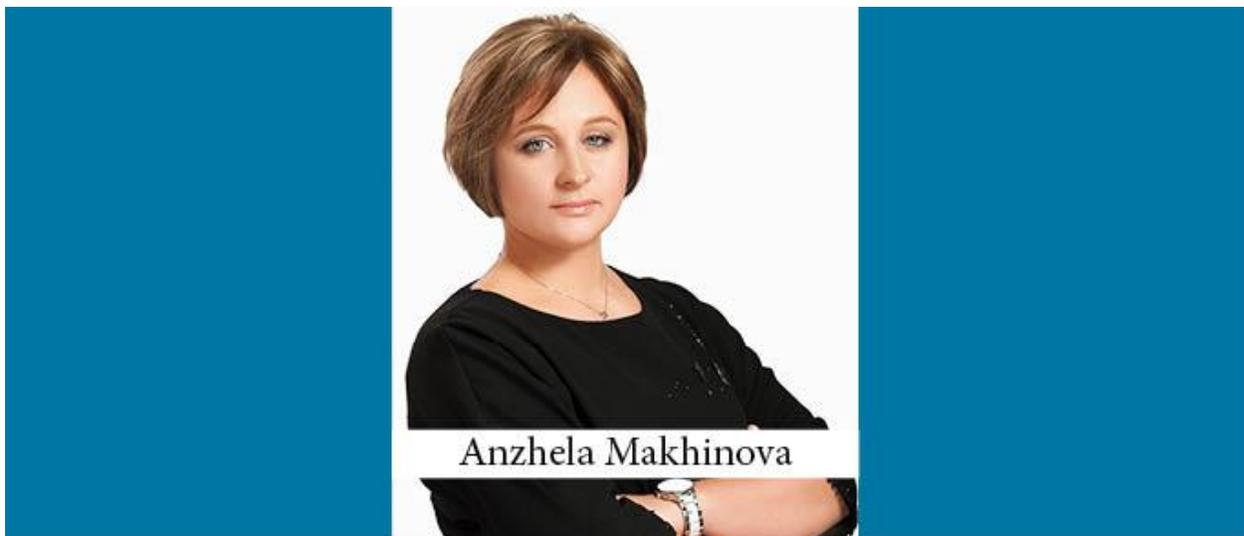


The Buzz in Ukraine: Interview with Anzhela Makhinova of Sayenko Kharenko

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Anzhela Makhinova

The sanctions imposed in 2016 continue to affect Ukraine, reports Anzhela Makhinova, Partner at Sayenko Kharenko in Kyiv, as the terms keep evolving and influencing the country's economy.

Among the recent developments in the international trade field are the further application and change of mutual trade limitations imposed by Russia and Ukraine on one another. At the end of 2017, Russia expanded an existing embargo against Ukraine goods, which led to retaliatory actions from the Ukrainian side. Moreover, sanctions imposed by the President of Ukraine under the “On Sanctions” Law of Ukraine are also subject to revision. For example, on March 6, 2018, the President of Ukraine extended sanctions on Russian banks that affect their activities in Ukraine.

Makhinova reports that restrictions applied by Russia and Ukraine on one another have, unsurprisingly, resulted in an increase in the number of WTO disputes between the two countries. At the moment, four Ukrainian and Russian disputes have been referred to the WTO. Two of them — DS 499 (initiated by Ukraine and involving Russian restrictions on Ukrainian import of railway equipment and parts, with a WTO panel report expected this spring), and DS 512 (initiated by

Ukraine and involving restrictions imposed by Russia against Ukrainian transit destined to Kazakhstan and Kyrgyzstan through its territory — are expected to be resolved by the end of 2018. Makhinova singles out DS 512 as "an extremely significant case, because these restrictions destroyed all the traditional transit routes for goods as historically applied."

The other two — DS 532 (Ukraine's claim against Russia in regard to various restrictions on Ukrainian juice products, beer, beer-based beverages, other alcoholic beverages, confectionary products, and wall paper and similar wall coverings), and DS 525 (a Russian claim contesting the Ukrainian embargo and sanctions imposed due to the situation in Crimea, Donetsk, and Luhansk) — are at the initial stages and will be resolved at a later date.

New trade legislation is being prepared in Ukraine, including an Anti-Dumping Law, Anti-Subsidy Law, and Safeguard Law. Although Ukraine entered the WTO in 2008, Makhinova says, "businesses did not make use of its trade protection instruments, but now there is greater understanding that the mechanism effectively protects business." Hence, she says, there has been a rise in trade defense proceedings in Ukraine and a resulting need for changes in legislation, and she describes the previous regime, which came into force in 1998, as "outdated, lacking transparency, and not fully corresponding to the recent trends and WTO jurisprudence."

According to Makhinova, new legislation submitted to the Verkhovna Rada — Ukraine's unicameral parliament — for consideration at the end of February 2018, complies with WTO requirements and includes "progressive innovations." These innovations include initiating trade defense proceedings ex officio by the Ministry of Economic Development and Trade of Ukraine, which she describes as "very important to react against urgent situations created by unfair imports." The legislation also introduces the concept of "market distortions" similar to the EU. The law's "clear and transparent procedure will also allow foreign and local businesses to participate in investigations and have a clear timeline," she says, explaining that the current law is "tedious, ineffective, and unable to fully protect business rights."

At the end of 2017 the Cabinet of Ministries of Ukraine approved the Export Strategy of Ukraine for 2017-2021. "This is an action plan that indicates the key vectors of export development in Ukraine: the reform of institutions and the improvement of agencies focusing on the promotion of exports," says Makhinova. "It is at an early stage, but the process promises to effect Ukrainian business and attract investments to Ukraine."

Makhinova says that negotiations of free trade agreements with Israel and Turkey are on the radar, following similar agreements Ukraine entered into with the EU and Canada last year. These agreements, she reports, will benefit "Ukraine's traditionally strongest export sectors: metallurgy, textiles, and agrarian industries."

Finally, Makhinova claims, businesses are very interested in is the possibility of a "trade war" between the USA and China as well as other tariffs applied around the world. For instance, the EU safeguard investigation on steel products, Makhinova says, may affect the metallurgy sector in Ukraine, "so everyone is scared of what is going to happen in all other export markets."

In light of the changes in the country, demand for legal services has been growing, Makhinova reports. "Due to the situation with Russia and general global tendencies, we see an increase in trade defense proceedings in Ukraine leading to the growth of the relevant professional legal services as well as the development of new services such as representation in WTO proceedings. Ukraine did not previously have much experience with the WTO, so what we are witnessing now is a unique process." As a result, an increasing number of law firms are seeking to position themselves as experts in the field.