

Anzhela Makhinova: There's no such thing as simple legal work in international trade

By Vyacheslav Hnatyuk.

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Anzhela Makhinova, partner at Sayenko Kharenko law firm, specializes in international trade disputes. (Kostayntyn Chernichkin)
Photo by Kostyantyn Chernichkin

Want some free legal advice?

Anzhela Makhinova will give it to you – as long as you're asking about the fundamentals of international trade.

“Ukrainians of all walks of life need to understand the consequences of Ukraine’s international obligations, when the country signs international treaties,” she says.

Large domestic and foreign corporations, as well as industrial unions and the state rely on her advice while trading all over the globe – and they do have to pay.

Makhinova, a leading Ukrainian lawyer specializing in international trade, and a partner at law firm Sayenko Kharenko, thinks that Ukrainians of various professions should adopt more internationalist attitudes. Businesses and authorities should rid themselves of parochial decision-making tactics, known in Ukraine as “mistetchkovist,” or “provincialism” in English.

“We have to look at our problems from various standpoints, and do our best to foresee the future of these problems,” Makhinova says. “And there shouldn’t be any rush decisions, like the one’s we’re so fond of.”

Neo-protectionism

Instead, Makhinova advocates balanced and strategic decision-making. Her certainty and candor are persuasive. She has been working in international trade law for more than 10 years, and knows Ukraine’s trade with the world inside out. Ask Makhinova what Ukraine’s biggest trade issues are, and her answer is instant.

“Ukrainian exporters are mostly suffering from the trade wars that the world is currently engaged in. Ukraine’s metallurgical sector in particular is being hit hard by the trade wars.”

A new wave of protectionism is currently rising over the globe. Dubbed “neo-protectionism,” it is when countries limit imports using the excuses of nationalist or populist policies. Recent examples include the introduction of new custom duties by the administration of U.S. President Donald Trump, and the increased use of protectionist measures within the World Trade Organization by its member-states.

Strict quotas

On top of that, since Russia started its war on Ukraine in the Donbas in 2014, Ukraine’s foreign trade policy has made a U-turn away from Russia and towards the West.

Many exporters are having a hard time adapting, and the process is far from over, Makhinova says.

“A re-orientation to other markets is taking place. My feeling is that trade currents with Russia are still flowing, but that the European vector is growing, too. However, Europe has not opened itself up fully.”

Even though Ukraine now has a Deep and Comprehensive Free Trade Agreement with the European Union, strict European Union quotas on low-duty imports are still in place. Ukraine’s quota for poultry is a mere 16,000 tons per year, whereas one local producer Myronivsky Hliboproduct, owned by tycoon Yuriy Kosyuk, alone churned out 566,242 tons last year. There are honey quotas in the EU, too, and Ukraine exhausts them within the first 10 days of each year.

Although a promoter of free trade, Makhinova confesses that “exports are not always a totally positive thing.” Nowhere can that be more plainly seen than in Ukraine’s Carpathian Mountains, where illegal logging, fueled by high prices for timber in the EU, has caused environmental problems associated with deforestation, such as floods and landslides.

The embargo Ukraine introduced for export of wood is not effective. It can be circumvented by smuggling, and Ukraine has faced a backlash by European countries in the WTO over its timber export limitations. The economics of this export trade are not in Ukraine’s favor either: “We export raw material, but import high value Italian furniture,” says Makhinova.

Entering the WTO has had minuses for Ukraine as well as pluses, she says – while export conditions are more favorable under the organization’s rules, membership also means opening the economy up to imports.

“When Ukraine entered (the WTO), we drastically decreased protection of domestic production,” Makhinova says. “Thus, imports of almost all types of steel products are performed with a zero-percent import duty rate.”

Legal instruments

WTO legislation is hard to understand and navigate, Makhinova admits. But Ukraine has to do a better job of using it to protect its domestic market, and its raw material markets. Much could be achieved if Ukraine just played its WTO cards correctly, Makhinova believes.

For instance, in the case of prohibiting timber exports, Ukraine’s ban has been ineffective because WTO legislation wasn’t understood or followed properly. Under WTO rules, Ukraine in fact has certain legal instruments that it could use to protect its domestic market,

and exceptions to free trade rules that can be called to protect exhaustible natural resources – they simply haven't been used, Makhinova says.

Asked what industries she would support were she Ukraine's Minister of Trade, Makhinova praises Ukraine's Export strategy for 2017-2021. The strategy sets Ukraine's export priority as High Tech Services.

But "this is a task for an innovative, glittering future," she adds. Meanwhile, Ukraine mustn't neglect its established and well-functioning industries – metallurgy, chemicals, and engineering, she says.

"We can't throw overboard the industries that are putting food on the table in Ukraine now. Of course the future belongs to IT, but we've got to develop it wisely."

Fostering development

For her paying clients, Makhinova offers two major types of services: trade investigations on the one hand, and advising on WTO legislation and dispute resolution on the other. Although she says she has no lack of clients and handles about five to seven projects per year, Makhinova declines to disclose her practice's turnover. She says her workload is enough to achieve the financial targets set by her firm's management. The work is intensive and well remunerated, she adds.

The unique character of her work means that it never becomes routine.

"My sphere of professional activity requires a lot of creativity and out-of-the box thinking" as the tasks require knowledge of WTO regulations and understanding of economic processes, Makhinova says.

If a bright law student were to want to join her team, the candidate would have to go through a rigorous selection process. First-class academic credentials from a top Ukrainian law school are a must. Applicants are also expected to have a specialized Master of Laws degree from a WTO-approved training course in Bern or Barcelona. More experienced lawyers would be expected to have passed the bar exam in Ukraine.

Makhinova's position is highly competitive. Her predecessor Nataliya Mykolska until recently was the deputy Economy Minister and was the country's trade representative.

Talent and experience are definitively a requirement for this line of legal work.

“In this sphere there’s no longer any such thing as simple work,” Makhinova says.

“What we’re doing fosters (self-) development. Plus, I enjoy talking to people from different spheres of human activity.”