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C O N F I D E N T I A L SECTION 01 OF 03 KIEV 003755

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SUBJECT: UKRAINE: ENGAGING THE NEW UKRAINIAN REALITY AFTER
50 DAYS OF PM YANUKOVYCH

REF: A. KIEV 3554

B. KIEV 3570

Classified By: Ambassador, reason 1.4 (b,d)

1. (SBU) Note: In preparation for senior-level consideration of our Ukraine policy, this cable assesses the political and economic developments under the new government.

2. (C) Summary. 50 days after Viktor Yanukovych returned to the premiership he vacated in December 2004 in the wake of the Orange Revolution, the basic dynamics of the new Ukrainian reality are becoming clear. PM Yanukovych is positioning himself to be the most powerful political figure in the country, taking advantage of the new rules of the game under constitutional reform which enhanced the power of the premier and parliamentary majority at the expense of the President. Regions and the Donetsk clan in particular have put their stamp on economic and personnel decisions. The tentative "two Viktors" partnership between President and PM has been beset by policy tussles and blue team encroachments on Presidential authority, though Yushchenko has begun meeting regularly with Yanukovych in an effort to iron out differences and improve coordination. Yushchenko belatedly has assembled a stronger team around him in the Presidential Secretariat and will likely seek to strengthen the role of

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the National Security and Defense Council (NSDC). Our Ukraine (OU) remains torn between a desire to retain influence by working within a Regions-dominated coalition and going into opposition. Yuliya Tymoshenko has laid claim to be the leader of the opposition, but her strategy will depend on OU's choice, a possible reconciliation with Yushchenko, and a possible Constitutional Court gambit. Winter looms - and with it the difficulty of dealing with Russia and energy supplies.



3. (C) Comment: Ukraine remains as important to U.S. strategic interests in the region as it was in the euphoric

afterglow of the Orange Revolution. It is unclear whether initiative will pass firmly into the hands of one political camp only, a healthy system of checks and balances will emerge, or cohabitation gridlock will result. We should push both sides to work together. If they do, Ukraine will be stronger internationally and more united domestically.

4. (C) As we engage the new Ukrainian reality, with a political elite struggling to reconcile the realities of "two Viktor's," competing Presidential-Prime Ministerial camps, and unchartered legal territory, we need to ensure that the new PM knows that the door to the West is open, and that we do not push him towards Moscow. The direction Ukraine takes, not the speed it moves, is now most important. While keeping in mind who Yanukovich is and what he has done in the past, we need to focus on what he can do in taking the country forward and how we can clearly convey our expectations. He was clearly affected by Secretary Rice's call to him immediately after he was confirmed. An S visit to Kyiv this fall would be very constructive. A Yanukovich visit to Washington by the end of the year could help establish him on a westward track. End Summary and Comment.

Yanukovich - currently the key, quickly asserted himself

5. (C) 50 days have passed since Yanukovich and his cabinet have settled into office and Ukraine's political reality shifted dramatically (ref A). While much of the country including Yushchenko went on vacation in August, Yanukovich worked to reestablish himself in power, assembling a large team in the PM and Cabinet of Ministers' offices to project himself across a broad range of policy and government functions, including those constitutionally in the President's domain (foreign and security policy). In addition, Donetsk denizens filled an estimated 40 out of 55 positions at the deputy minister or above equivalents in state agencies and enterprises; the shakeup was especially deep at state oil and gas company NaftoHaz Ukrainy. Early Cabinet decisions -- such as abolishing the Euro-Atlantic subcommittee previously headed by FM Tarasyuk in favor of a wider-ranging subcommittee chaired by Yanukovich himself -- were intended to demonstrate who was in charge.

6. (C) While it is still early in Yanukovich's tenure, there are some worrisome early signs. Economic policy moves across the board, from distorted VAT returns favoring Donetsk and contradictory signals on WTO, to rumors of threats to VANCO's contract to drill in the Black Sea and efforts to strong-arm grain traders to sell to the state grain reserve at below market prices, have not been encouraging (septel). Business contacts interpret the blue team's moves as an attempt to fully restore pre-Orange Revolution practices and controls.

KIEV 00003755 002 OF 003

On a more positive note, Yanukovich's September 14 speech at NATO endorsed closer cooperation and an enhanced public education campaign in a positive atmosphere. Domestic reaction, however, focused on his disavowal of Yushchenko's stated priority of a Membership Action Plan (ref B). Yanukovich's uncoordinated move and subsequent comments once back in Ukraine seemingly laid claim to primacy in areas of policy formulation constitutionally in the purview of the President.

Two Viktors = Uneasy Cohabitation, dithering Our Ukraine

7. (C) Early hopes coming out of the Universal National Unity Agreement process in early August that a positive "two Viktors, one Ukraine" dynamic might develop are fading amidst constant, robust institutional jostling between the Cabinet and the Presidential Secretariat, as well as an ongoing lack of clarity in Constitutional and legal arrangements governing Presidential-PM interaction. The PM's office is trying to use a new dual signature requirement in the revised constitution on some Presidential decrees to interject the PM substantively into Presidential decisions; some experts suggest Yushchenko should use his powers under the constitution (Art. 106, point 15) to start suspending Cabinet acts and resolutions deemed inconsistent with the constitution, referring them to the Constitutional Court for review. Either Yushchenko and Yanukovich's teams will find a way to work together for the good of the country, or they will frustrate each other, stall important decisions, and end up in the constitutional court (as well as the court of public opinion). In an attempt to achieve the former, Yushchenko and Yanukovich are meeting regularly, at least once weekly, something Yushchenko failed to do when Tymoshenko was PM in 2005.

8. (C) With his Presidential authority under challenge, Yushchenko finally reacted in mid-September with the second major shake-up of his largely ineffective Secretariat since he became President in January 2005, bringing in figures with stronger reputations for management, policy skills, and producing results. They include: the new Head of the Secretariat, Viktor Baloha; a second First Deputy Head for

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economic and legal issues, Arseniy Yatsenyuk; a Deputy Head for regional, personnel, and law enforcement issues, Viktor Bondar; and a Deputy Head for foreign policy issues, Oleksandr Chaly (known until recently to discount the possibility of membership in either NATO or the EU).

9. (C) Yushchenko and his team have also signaled their intent to make greater use of the NSDC mechanism, a constitutionally-mandated body headed by the President which retained tasking authority to the government and ministers even after the constitutional changes which transferred other Presidential authorities to the Premier and the Rada majority. Yushchenko's Chief of Staff Baloha told Ambassador September 26 that they planned to use the NSDC to work out Presidential-PM policy differences.

10. (C) While Yushchenko has long been called the Hamlet of Ukrainian politics for his chronic inability to make quick decisions, his political force Our Ukraine (OU) is, if anything, more internally conflicted, disorganized, and self-defeating, rarely able to deliver unified votes in the Rada even on crucial initiatives, or to make timely choices on coalition partners and policies. Nearly two months after Yanukovich became PM, OU remains torn between joining a Regions-dominated parliamentary majority on Regions' terms or joining Tymoshenko in opposition. It is unlikely all 80 OU MPs will go one way or another, but the choice of the OU majority will affect the policy dynamics within the Cabinet of Ministers and the parliamentary majority on the one hand and the development of majority-opposition relations on the other.

Tymoshenko in opposition for now, NSDC and Court wildcards

11. (C) Tymoshenko announced the creation of an interparty opposition September 22 which included BYuT plus two renegade Socialist MPs, leaving the door open for an OU influx of uncertain size once OU makes a decision. Her emerging strategy seems to be focused on regularizing the status of the opposition while cementing her role as leader, highlighting the negative social impact of Yanukovich government decisions (rise in utilities; a freeze in wages/pensions contrasting with a resumption of Special Economic Zone tax breaks and special investment initiative boondoggles), attacking the legitimacy of the Yanukovich government, and eventually pushing for early elections.

KIEV 00003755 003 OF 003

12. (C) Tymoshenko also has two stealth wild cards in play: reconciliation with Yushchenko, and a Constitutional Court gambit. She told a visiting EU official September 27 that she had met Yushchenko several times over the past week and that Yushchenko might offer the NSDC Secretary job to her, which would set the stage for a repeat of the counterbalancing situation prevalent in early 2005 when Yushchenko named her archrival Petro Poroshenko as NSDC Secretary with a specific mandate and enhanced authority to

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counter Tymoshenko as PM (that decision ended in disaster, with a bickering orange team and ultimately the dismissal of Tymoshenko's government in September 2005). Comments from OU and BYuT insiders starting in mid-July indicate that Yushchenko has been mulling such a move on and off for months.

13. (C) Tymoshenko and others have privately suggested in recent days that she may serve as Yushchenko's stalking horse to petition the Constitutional Court, now that it has a quorum, to overturn the December 8, 2004 constitutional changes. Yushchenko himself has made no move to petition the court to review the changes, and the Rada passed a perfunctory bill in early August attempting to block the Court's right to review the changes. However, 45 MPs have the right to petition the court to review the issue; Tymoshenko, who voted against the December 8 compromise, warning Maidan ally Yushchenko that he would soon rue the day he agreed to it, may well initiate the court gambit. One author of the December 8 legislation (Nestor Shufrych) and experts with contacts within the court separately have told us that the December 8 changes in fact violated established procedures for amending the constitution and that the court would likely overturn the changes if formally asked to review the matter -- presuming a majority of judges were not "bought" by Regions in the interim to rule otherwise.

14. (U) Visit Embassy Kiev's classified website at:
www.state.sgov.gov/p/eur/kiev.
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