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**Working Party on the Accession of the
Former Yugoslav Republic of Macedonia**

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ACCESSION OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Additional Questions and Replies

The Government of the Former Yugoslav Republic of Macedonia has submitted the following replies to additional questions raised by Members.

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

Economic policies

Main directions

Question 1

Please clarify the meaning of “construction land” in the text of paragraph 23, which is identified as being restricted from foreign ownership.

Answer

Construction land is defined by the Law on Construction Land (Official Gazette 53/01). According to Article 3, paragraphs 1 and 2, construction land is the land, with or without any structure on it, planned for construction under spatial and town-development plans. Built construction land is the construction land on which a permanent structure has been built and the land serves the purposes of regular use of such built structure.

Construction land may be owned by the Republic of Macedonia and by domestic legal entities and natural persons (Article 6). Ownership over construction land covers all of its space and everything permanently related to it, and situated on or under its surface (Article 7).

Under the Law on Construction Land, foreign natural persons and legal entities have the following rights over the construction land:

Concession

The Government may grant domestic and foreign natural persons or legal entities a concession to construction land owned by the Republic of Macedonia to be used for activities or to the benefit of the general welfare of the Republic of Macedonia (Article 14). Concession is granted upon a public tender.

Long-term lease

The lease may last for a maximum of 99 years (Article 19). The right to a long-term lease of a construction land is a right to someone else's construction land entitling the right holders to build their own facilities on or under the surface of the construction land, and obliging the owner of the construction land to bear with it. The holder of the right to a long-term lease of construction land is the owner of the facility built on such construction land and usufruct of the construction land which is the subject of such long-term lease right (Article 21 and 22). The facility built under the long-term lease right is transferable and inheritable together with the lease right (Article 25, paragraph 3). Upon expiration of the right to a long-term lease, the facility built on the construction land for which the lease was granted shall pass into the ownership of the owner of such construction land. The right to a long-term lease of construction land may be transferred or inherited (Article 25, paragraph 1).

The issues relating to foreign entities' right to ownership of personal and real estate are regulated with the Articles 243 to 252 of the Law on Ownership and Other Real Rights (Official Gazette No. 18/2001). According to this Law, foreign persons may not be entitled to ownership over real estate such as construction land but may be entitled to long-term lease under conditions of reciprocity, for the purposes of construction of business buildings and premises and housing buildings and apartments, subject to approval by the Minister of Justice,

following opinion obtained from the Minister of Urban Planning and Construction and the Minister of Finance. Furthermore, this Law makes it possible for foreign natural persons to acquire by inheritance right to ownership over real estate, under conditions of reciprocity.

The Regulations on the Manner and Procedure of Transfer and Lease of Construction Land Owned by the Republic of Macedonia and on the amount of the special fees for such procedure (Official Gazette 79/2001) provides for the possibility for mixed ownership legal entities to acquire right to ownership over construction land for the purposes of construction of administration, business, industry and other commercial facilities, public sports and recreation facilities and housing buildings and complexes. It must be noted that any mixed ownership legal entity must be registered in the Republic of Macedonia.

Question 2

We support removal of the brackets in the commitment contained in paragraph 33. Does Macedonia agree?

Answer

Yes.

Question 3

Do the price controls on natural gas and electrical energy given in Table 2(b) apply to sales to firms as well as to households?

Answer

Price controls on natural gas and electrical energy apply to both firms and households.

Question 4

What are the current control levels for gas and electrical energy?

Answer

The current price for electrical energy used by households is 2.523 MKD/kWh. The price for firms using 110 V is 1.2155 MKD/kWh.

The current price level for gas used by firms is 10.5MKD for one normal m3. Households in Macedonia still do not use gas.

The average exchange rate of the National Bank of Macedonia for the period 24 May – 23 June 2002 was: 1 EURO = 60.9608 MKD.

Question 5

Is Table 2 of WT/ACC/SPEC/807/4 exhaustive? Are all products subject to price controls covered?

Answer

Yes.

Question 6

We suggest the addition of a reference to Article VIII of the GATS to the commitment language in paragraph 40 and removal of the brackets. Does Macedonia agree?

40. The representative of FYROM stated that in the application of price controls now or in the future, FYROM would apply such measures in a WTO-consistent fashion, and take account of the interests of exporting WTO members as provided for in Article III.9 of the GATT 1994, and in Article VIII of the General Agreement on Trade in Services (GATS). FYROM would publish the list of goods and services subject to state controls and any that are introduced or re-introduced in the future in its official gazette. The Working Party took note of these commitments.

Answer

Yes.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES**Question 7**

With regard to paragraph 53, we seek information from Macedonia, for the SPS section of the Working Party report, concerning the disposition of its review of “procedures for publication and notification of sanitary and phytosanitary regulations” to “ensure full conformity with the requirements of the SPS Agreement, Annex B, i.e. to allow a reasonable interval between the publication of such regulations and their entry into force.”

Answer

The existing Macedonian legislation provides for obligatory publication of all laws and regulations, including the ones dealing with sanitary and phytosanitary measures, in the Official Gazette and for a reasonable period of time of minimum eight days between their date of publication and entry into force. Macedonia intends to observe the publication and notification requirements contained in Annex B of the SPS Agreement and it agrees this to be included in paragraph 53 of the report.

IV. POLICIES AFFECTING TRADE IN GOODS**Trading rights (the right to import and export)****Question 8**

We seek removal of the brackets in the commitment contained in paragraph 61. Does Macedonia agree?

Answer

Yes.

Import Regulation

- **Other duties and charges**

Question 9

Are the "price premiums (P-prelevman)" in paragraph 64 and "variable levies (prelevman)" described in paragraph 66, the same or two different measures?

Answer

Price premiums and variable levies are two different terms used for the same measure – prelevman (P). Prelevmans no longer apply.

Question 10

We take note of Macedonia's request for a three year transition to eliminate the 0.1 per cent export promotion fee. We are prepared to consider this request but would want to see specific language describing the scope of its application, i.e., confirmation in paragraph 66 of the text of the report that the fee is applied to all preferential and MFN imports and to exports to all destinations. We also seek specification of the legislation containing the date of its repeal.

Answer

Macedonia confirms that the 0.1 per cent export promotion fee applies to both preferential and MFN imports, as well as to exports to all destinations.

Article 25 of the new Law on Foreign Trade, enacted by the Parliament in June 2002 (Official Gazette 45/02) extends the application of Articles 57a, 57b and 57g, governing the 0.1 per cent fee, until 31 December 2005.

The Law on Foreign Trade (in draft) was submitted to the Working Party and circulated to members under WT/ACC/807/24.

Question 11

We propose the following re-drafted commitment language for paragraph 67, and removal of the brackets. Does Macedonia agree?

- 67. [The representative of FYROM confirmed that FYROM did not apply duties and charges on imports other than ordinary customs duties, with the exception of the Export Promotion Fee of 0.1 percent which will be applied through 31 December 2005, as recorded in FYROM's goods market access schedule. Any other such charges applied to imports after accession would be in accordance with WTO provisions. He further confirmed that FYROM would not list any other charges in its goods schedule under Article II:1(b) of the GATT 1994, binding such charges at 0.1 from the date of accession and at "zero" from 1 January 2006. The Working Party took note of this commitment.]**

Answer

Macedonia supports the above commitment language.

Tariff quotas, tariff exemptions

Question 12

Please confirm that Article 24a of the Customs Law, which establishes the authority to apply tariff quotas on “goods that are not produced in the Republic of Macedonia, or the production of which does not cover the needs [of Macedonia]” has been amended, as indicated in paragraph 70. Please provide the text.

Answer

Article 24a of the Customs Law is currently being amended. Its new text has already been approved by the Government. It is scheduled for enactment by the Parliament in July 2002.

The proposed new text of Article 24a was submitted to the Working Party. It reads:

“Article 24a

Favorable tariff treatment

The favorable tariff treatment from which certain goods may benefit shall be subject to conditions and criteria laid down by the Government of the Republic of Macedonia upon proposal by the Minister of Economy and prior opinion by the Minister of Finance and the Minister of Agriculture, Forestry and Water Economy. Where an authorization for the favorable tariff treatment is required, provisions set out in Article 79 and Article 80 paragraphs 1 and 2 of this law shall apply.

For the purposes of paragraph 1, the expression “favorable tariff treatment” means a reduction or suspension of an import duty as referred to in Article 3 item 4 of this law, even within the framework of a tariff quota.”

Question 13

Please clarify the relationship between the TRQs administered for market access for imports from preferential trading partners and TRQs under Article 24a that are intended to open trade in products only after domestic output has been consumed.

Answer

See the answer to Question 12 above.

Question 14

Please confirm that all TRQs agreed in market access negotiations will be distributed on MFN basis.

Answer

Macedonia confirms that all tariff rate quotas agreed in market access negotiations will be distributed on MFN basis.

Question 15

Please describe the manner of allocation of TRQs agreed in market access negotiations.

Answer

Tariff rate quotas agreed in market access negotiations will be allocated on “first come, first served” basis.

Fees and charges for services rendered

Question 16

Can Macedonia confirm that the customs evidence fee is applied to all imports and exports?

Answer

Currently the fee for customs services rendered applies only to imports. However, the concept of this fee is being changed as result of the Working Party comments with regard to its compatibility with Article VIII of GATT 1994. Under the amended regulation, the fee of 19 EURO will be charged per declaration and its application will be extended to all customs procedures, without exemptions. Changes to this end will definitely become effective prior to the accession.

Question 17

Please list the exemptions, if any, from the application of the customs evidence fee. They should be explicitly noted in the report text.

Answer

See the answer to Question 16.

Question 18

Please explain the structure of the customs evidence fee, i.e. list of customs services rendered.

Answer

See the answer to Question 16.

Question 19

Since 7 February 2002, any truck that passes the border at the Blace border terminal is charged with a fee of 100€ We would like to know if this fee is additional to the fee of 19€ for imported items and the justification, in terms of services rendered, for the additional fee of 100€

Answer

Due to its location, Blace is the most frequently used border crossing to Kosovo for commercial shipments. The same facilities were also used by the NATO forces stationed in Kosovo for all logistic purposes. To make the crossing more effective Macedonia recently opened an additional parallel by-pass to be used only by the NATO forces. However, trucks carrying commercial shipments also tend to use the NATO by-pass. In order to avoid this, all trucks transiting through Macedonia are escorted by the Macedonian authorities to the appropriate exit at the Blace border crossing. The 100 EURO fee is used to cover the expenses for the escort.

Trucks do not pay additional 19 EURO at the Blace border crossing.

Question 20

We suggest the addition of a transparency commitment in paragraph 74 concerning customs fees and removal of the brackets. Does Macedonia agree with the following text?

- 74. The representative of FYROM confirmed that from the date of accession FYROM would impose fees and charges for services rendered related to importation or exportation only in conformity with Article VIII of the GATT 1994. Information regarding the application and level of any such fees, revenues collected and their use would be provided to WTO members upon request. The Working Party took note of these commitments.**

Answer

Yes.

Application of domestic taxes**Excise taxes****Question 21**

Please clarify the reasons for the different excise taxes applied to wines and sparkling wines and other beverages covered by exactly the same HS import categories, as noted in Table 3(a). There would appear to be discrimination in favor of some types of wines (grape?) over others.

Answer

The existing Law on Excise Taxes (applied since 1 July 2001) provides for identical excise tax rates for same imported and domestic alcohol beverages and it, therefore, does not discriminate on the basis of their origin.

Question 22

Please give examples of the sorts of beverages taxed at the different rates and explain why, e.g., grape wines which are produced in Macedonia receive a lower excise rate than wines brewed from other fruits.

Answer

See the answer to Question 23 below.

Question 23

Please clarify the nature of the beverages termed “semis” and explain why the excise tax on these beverages is assessed at the same level as for distilled spirit beverages.

Answer

The classification and definitions on alcoholic beverages in the Macedonian Law on Excise Taxes are based on the EU directives relating to these products (EWG.RL.92/83). They are the following:

Sparkling wines (Example: Champagne, Asti Spumante, etc.) – Article 35(2)

Includes all products under tariff numbers 2204 10, 2204 21 10, 2204 29 10 and 2205, if they:

- are bottled with cork strengthened with special supporters or products under dissolved carbon dioxide pressure of 3 bars or more; and
- have an alcohol content of at least 1.2 per cent vol. but not more than 15 per cent vol. when the alcohol content of the finished product was obtained only by fermentation.

The excise rate on sparkling wines is 0 MKD/liter (Article 36(2)).

Wines (Example: white and other wines) – Article 35(3)

Includes all products under tariff numbers 2204 and 2205, with the exception of sparkling wines, if they:

- have an alcohol content of at least 1.2 per cent vol. but not more than 15 per cent vol. when the alcohol content of the finished product was obtained only by fermentation; or
- have an alcohol content of at least 15 per cent vol. but not more than 18 per cent vol., if not produced by enrichment and when the alcohol content of the finished product was obtained only by fermentation.

The excise rate on wines is 0 MKD/liter (Article 36(3)).

Other sparkling fermented drinks (Example: cider, perry and mead) – Article 35(4)(1)

Includes other sparkling fermented drinks under tariff numbers 2206 00 31 00 and 2206 00 39 00, as well as products under tariff numbers 2204 10, 2204 21 10, 2204 29 10 and 2205 not designated as “sparkling wines”, if they:

- are bottled with a cork sustained by special supporters, or products under carbon dioxide pressure of 3 bars or more; and
- have an alcohol content of at least 1.2 per cent vol. but not more than 13 per cent vol., or have an alcohol content of at least 13 per cent vol. but not more than 15 per cent vol. and when the alcohol content of the finished product was obtained only by fermentation.

The excise rate on other sparkling fermented drinks is 30 MKD/liter (Article 36(4)).

Other non-sparkling fermented drinks (Example: cider, perry and mead) – Article 35(4)(2)

Includes other sparkling non-fermented drinks under tariff numbers 2204 and 2205 not included in the “wine” category, as well as products under tariff number 2206 with the exception of “other sparkling fermented drinks” and “beer”:

- with an alcohol content of at least 1.2 per cent vol. but not more than 10 per cent vol.; or

- with an alcohol content of at least 10 per cent vol. but not more than 15 per cent vol. and when the alcohol content of the finished product was obtained only by fermentation.

The excise rate on other non-sparkling fermented drinks is 30 MKD/liter (Article 36(5)).

Semi products (Example: cider, perry, mead and other) – Article 35(5)

Includes all products under tariff numbers 2204, 2205 and 2206 with an alcohol content of at least 1.2 per cent vol. but not more than 22 per cent vol. not falling under “sparkling wine” and “wine” categories.

The excise rate on semi products is 300 MKD/liter of pure alcohol (Article 36(6)).

Ethyl alcohol (Example: cognac, whiskey, liqueurs, rum, spirit, mastika, gin, vodka, ouzo and other) – Article 35(6)

Includes:

- all products under tariff numbers 2207 and 2208 with an alcohol content of more than 1.2 per cent vol., even when they are part of other products classified under different chapters of the Customs Tariff;
- all products under tariff numbers 2204 and 2205 with and alcohol content exceeding 22 per cent vol.
- drinkable ethyl alcohol, regardless of whether it contains dissolved products or not.

The excise tax rate on ethyl alcohol is 300 MKD/liter of pure alcohol measured at temperature of 20⁰C.

Question 24

Macedonia’s revised plan of legislative activities indicates that the Amendments to the Law on Excise Taxes is slated for enactment in June 2002, and contains provisions to bring Macedonia’s excise tax policies into line with WTO requirements, in particular with Article III of the GATT.

Does this Law address the issues raised by the differential excise tax rates on alcoholic beverages noted above?

Macedonia should eliminate the differences in excise tax application on brewed beverages no later than upon accession. We do not support a transition for this change.

Answer

See the answer to Question 23 above.

Question 25

Paragraph 77: WT/ACC/SPEC/807/4 states that “FYROM would equalize excise taxes on cigarettes and other tobacco products by 2007 and 2005, respectively, in accordance with the timetable presented in Table 3(b).” WT/ACC/SPEC/807/17 states that the Amendments to the

Law on Excise Taxes, slated for enactment in June 2002, will equalize excise taxes for domestic and imported tobacco products.

Paragraph 83: We are prepared to consider the request for a transition, but seek additional information and assurances in the text of the Working Party report that these arrangements are, or will be, enacted in legislation and asks for the complete citation of the legislation.

We suggest the following amended text of paragraphs 77 and 83 and removal of the brackets:

- 77. Excise tax rates were identical for imported and domestically produced goods, except for tobacco products. The domestic tobacco industry was fragile and based on cultivation of a unique tobacco leaf, for which FYROM was struggling to develop an export market. Asked how FYROM intended to bring its excise taxation regime into line with WTO requirements, in particular with Article III of the GATT 1994, he proposed that FYROM would equalize excise taxes on cigarettes and other tobacco products by 2007 and 2005, respectively, in accordance with the timetable presented in Table 3(b). Legislation gradually equalizing the excise tax rates for imported and domestic tobacco products as outlined in Table 3(b) was contained in the Amendments to the Law on Excise Taxes, enacted in June 2002. By January 1, 2007, FYROM excise taxes on tobacco products would be in conformity with WTO Agreements, as outlined in Table 3(b).**
- 83. The representative of FYROM stated that, from the date of accession, FYROM would[, with one exception,] apply its domestic taxes on products, including those listed in [paragraphs 75 to 82 and Tables 3(a), 4(a) and 4(b)] in strict compliance with Article III of the GATT 1994, in a non-discriminatory manner to imports regardless of country of origin and to domestically-produced goods. FYROM's excise taxes applied to imported and domestic tobacco products would be equalized or otherwise brought into conformity with Article III of the GATT in accordance with the timetable contained in Table 3(b) and the Amendments to the Law on Excise Taxes of June 2002. By [date]. [The Working Party took note of these commitments.]**

Answer

The amendments to the Law on Excise Taxes (as submitted in draft to the Working Party) were enacted by the Parliament and published in Official Gazette 45/02. Macedonia accepts the above commitment language.

Quantitative import restrictions, including prohibitions, quotas and licensing systems

Question 26

Are the licensing requirements for TBT and SPS purposes applied to enforce technical regulations or are granted automatically when standard documentation is supplied?

Answer

As explained in WT/ACC/807/18, about four hundred products, mainly electrical appliances, require certification for import into Macedonia. The certification is granted automatically upon the submission of standard documentation. The purpose of the requirement is to ensure the availability to consumers of adequate safety and use information for the respective products. The documentation

required to be submitted consists of the manufacturer's manual, a manufacturer's usual guarantee, and a list of addresses for repairs.

Sanitary and phytosanitary requirements are based in their entirety on standards and procedures developed by the respective international organizations. Here too certification is issued upon the presentation of the internationally recognized and prescribed documents. Only where such documentation is not submitted, local testing may be required.

Question 27

How are TBT and SPS licensing requirements applied to similar domestic goods?

Answer

Domestic products are subject to the same sanitary, phytosanitary and safety requirements as imported goods.

Question 28

There is no information in the draft Working Party Report that relates the administration of most of these licenses to any specific TBT or SPS requirement, within the meaning of the WTO Agreements.

Answer

Information about the administration of certification procedures in compliance with the requirements of the TBT and SPS Agreements appears in WT/ACC/807/18. An updated list of products requiring certification and the issue of related conformity "licenses" appears in Table 5(b) in WT/ACC/SPEC/807/4/Rev.1.

Further legislation for development and administration of technical regulations in both TBT and SPS areas is being prepared. The purpose of such legislation is to ensure further harmonization of Macedonian laws and practices with international requirements and the related streamlining of Macedonian procedures. Details of the relevant legislation will be submitted immediately they become available. Furthermore, Macedonia undertakes to submit all and any additional information upon request. Macedonia intends to comply unequivocally with the requirements of the TBT and SPS Agreements.

Question 29

We believe that this section of the report should be reviewed with a view to making explicit which of the licenses are automatic and which are non-automatic, and their linkages with specific SPS and TBT requirements.

Answer

The required information appears in Tables 5(b), 5(c), 5(d), 5(e), 5(f), 5(g) and 5(h) in WT/ACC/SPEC/807/4/Rev.1.

Question 30

There does not appear to be a list of products subject to TRQs in the context of allocating tariff rate quotas granted bilaterally under free trade agreements. Please provide such a list for the draft Working Party Report.

Answer

The required information appears in Attachment 1.

Question 31

Please describe how TRQs granted bilaterally under free trade agreements are administered.

Answer

In general, Macedonia applies two types of procedures for administration of TRQs under its free trade agreements. TRQs agreed with Bulgaria and the European Union are allocated on the “first come, first served” basis while the TRQs granted under FTAs with Yugoslavia, Croatia, Slovenia, Turkey and Ukraine are allocated by a separate committee. Both procedures are briefly described below.

First come, first served – The Government prepares a decision announcing the TRQ quantities and the documentation required. The decision is published in the Official Gazette. Applications are submitted to the Ministry of Economy which decides immediately upon their receipt. If the quantities required within one day are higher than the quota quantity, the Ministry distributes the quota proportionally to all applicants.

Committee-based allocation - The volume of tariff quotas is determined on a yearly basis, but they are allocated twice a year. The procedure and the documentation required, as well as the overall quota amount for six months is spelled out in a government decision for each country and published in the Official Gazette. Following the publication of the decision, the Ministry of Economy runs a public invitation in the daily newspapers. The period for submission of applications is seven days from the day of publication of the invitation. Applications are filed with the Ministry of Economy. They are reviewed by a committee consisting of two representatives from the Ministry of Economy, and one representative from the Ministry of Agriculture, the Ministry of Finance and the Ministry of Foreign Affairs.

Question 32

We offer the following text as a basis for further discussion and drafting. Does Macedonia agree?

93. **The representative of FYROM confirmed that, as provided for in the timetable outlined in Table 5(a), no later than 31 December 2003, FYROM would eliminate and would not introduce, re-introduce or apply quantitative restrictions on imports, or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements, and other restrictions having equivalent effect, that cannot be justified under the provisions of the WTO Agreement. He further confirmed that the legal authority of the Government of FYROM to suspend imports and exports or to apply licensing requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade will be applied from the date of accession in conformity with the requirements of the WTO, in particular Articles XI, XII,**

XIII, ~~XVIII~~, XIX, XX and XXI of the GATT 1994, and the Multilateral Trade Agreements on Agriculture, Application of Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade. The Working Party took note of these commitments.

Answer

Yes.

Customs valuation

Question 33

Please confirm in the text of the Working Party Report that the new regulations will supersede the document entitled Regulation on the Rules and Procedures for Customs Valuation (Official Gazette 17/2000).

Answer

The Regulation on Implementation of the Provisions of the Customs Code Concerning Valuation of Goods for Customs Purposes, once published in the Official Gazette, will supersede the Regulation on the Rules and Procedures for Customs Valuation (Official Gazette 17/2000).

Question 34

We note Macedonia's offer in WT/ACC/807/23 to revise its compliance chart on customs valuation in light of the new legislation, and we request that this be done as soon as possible.

Answer

The revised compliance chart appears in Attachment 2.

Question 35

Article 38e of the Macedonian Customs Code states that the Customs authority may reject the declared value if it has reasonable doubt regarding the accuracy of that value. The Code also provides that an importer may receive a written explanation of how the Customs authority determined the customs value of the merchandise after the authority has rejected the importer's declared value.

Decision 6.1 of the Customs Valuation Committee, however, provides that a Customs authority must give an importer advance notice that it is contemplating rejecting the importer's declared value, along with an explanation, in writing if requested, of the grounds for doubting the accuracy of the information supporting the importer's declared value.

The authority must also provide the importer a reasonable opportunity to respond before making a final determination regarding the appraisal of the merchandise.

We seek incorporation of these changes in Article 38e of Macedonia's revised Customs Code.

Answer

The content of the Decision 6.1 of the Customs Valuation Committee is fully incorporated into Article 28 of the Regulation on Implementation of the Provisions of the Customs Code Concerning Valuation of Goods for Customs Purposes. This provision offers a detailed explanation of Article 38e of the Customs Code. It is for this reason that it is included in the Regulation. The Regulation was circulated to members under WT/ACC/807/24.

However, if the Working Party insists that this provision be incorporated in the text of the Customs Law, Macedonia is willing to do so upon a timely notice.

Question 36

Article 12 of an earlier version of the Macedonia's Customs Code provided a right of appeal of customs valuation determinations. The May 2002 text, however, does not contain any provisions regarding the right to appeal.

Please indicate where these provisions are enacted in Macedonian law.

Answer

The right of appeal, as well as the right to appeal to a judicial authority in customs matters without penalty are regulated by Article 15 of the Macedonian Constitution, Articles 223 and 224 of the Law on General Administrative Procedure and Article 15 of the Customs Law. As Article 15 of the Customs Law was not amended, its text is not included in the amendments circulated to members in WT/ACC/807/24. It appears, however, in the Customs Law which was submitted to the WTO Secretariat.

Question 37

We seek incorporation in Macedonia's legislation the provision that importers may exercise their right to appeal to a judicial authority in customs matters without penalty.

Answer

See the answer to Question 36 above.

Question 38

We note that Macedonia has implemented legal provisions to bring Articles 30, 31, 33 and 35 of the Macedonian Customs Code into compliance with the WTO Agreement. We would like to see this reflected in the text of the Working Party Report, e.g. in paragraph 96.

With these changes, enacted in law prior to finalization of Macedonia's terms of accession, and reflected in paragraphs 96 and 97 of the text of the Working Party report, we are prepared to support the general commitment in this paragraph and the removal of the brackets.

We suggest the following elaboration of the current text. Does Macedonia agree?

- 96. The representative of FYROM said that as the Law on Customs already largely ensured implementation of the WTO Customs Valuation Agreement, FYROM intended to adhere to the Customs Valuation Agreement from the date of accession to the WTO without recourse to any transitional period. FYROM was**

amending its Customs Law to ensure full compliance with the Agreement on the Implementation of Article VII of the GATT 1994. Amendments to the Customs Law and a revised Regulation on Implementation of the Provisions of the Customs Code Concerning Valuation of Goods for Customs Purposes superseded the provisions for customs valuation established in the Regulation on the Rules and Procedures for Customs Valuation (Official Gazette 17/2000). In particular, ~~including~~ both the Interpretative Notes of the Agreement and the Decision of 24 September 1984 on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, were fully incorporated in the Amendments to the Customs Law. Article 38e of the Customs Code has been amended to ensure that customs authorities will provide importers with advance notice that rejection of the importer's declared value is contemplated, and, if requested, a written explanation of the grounds for doubting the accuracy of the information supporting the importer's declared value. A reasonable opportunity for response will also be given prior to making a final determination regarding the appraisement of the merchandise. The right of importers and other interested parties to appeal customs rulings to the judicial authorities, and without penalty, provided for in Article 12 of the previous Regulation, is now implemented in Article XX of Law XX. In addition, FYROM implemented legal provisions to bring Articles 30, 31, 33 and 35 of the Law on Customs into compliance with the "related party" provisions of the Agreement. He expected this process to be completed by June 2002.

97. The representative of FYROM confirmed that, from the date of accession, FYROM would apply fully the WTO provisions concerning customs valuation, including the Agreement on the Implementation of Article VII of the GATT 1994 and Annex I (Interpretative Note) and the provisions for the Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1), providing that valuation of the software was based on the value of the media . He stated that FYROM would not use any form of reference price or fixed valuation schedule for the valuation of imports or to apply duties and taxes, and that all methods of valuation used were in strict conformity with those provided for in the WTO Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.

Answer

Yes.

Rules of origin

Question 39

We seek removal of the brackets in the commitment in paragraph 101. Does Macedonia agree?

Answer

Yes.

Anti-dumping, Countervailing duty and Safeguard Regimes

Question 40

We support the commitment in paragraph 108 and seek removal of the brackets. Does Macedonia agree?

Answer

Yes.

2. Export regulation

Export financing, subsidy and promotion policies

Question 41

We appreciate the changes made in the law on Free Economic Zones, but Articles 15, 16, and 26 still contain provisions conditioning access to the tax exemptions and incentives to exporting. Macedonia should address these issues prior to accession, and provide the amended legislation for Working Party review.

Answer

Articles 15, 16 and 26 refer only to the conditions spelled out in Articles 3 and 25. Export performance requirement was one of such conditions. Since export performance requirement was abolished in the recent amendment of Articles 3 and 25 (see Article 3, paragraph 1, item 2 and Article 25, paragraph 1, item 1), there is no such condition anymore, and Articles 15, 16 and 26 comply with WTO requirements.

Question 42

We support the commitment in paragraph 117. Does Macedonia support removal of brackets?

Answer

Yes.

Question 43

Please explain whether the import duty drawback scheme operates in a manner consistent with the provisions of Annex II of the WTO Agreement on Subsidies and Countervailing Measures. Can Macedonia provide further details with regards to the verification process under the duty drawback system?

Answer

The duty drawback scheme applies in customs procedures for goods imported for production aimed for exports. It is regulated by Articles 97 – 107 of the Customs Law (Official Gazette 21/98, 26/98, 63/98, 86/00, 25/00, 109/00 and 31/01), Articles 43 –81 of the Regulation on the Determination of Closer Criteria and the Manner of Conducting the Procedure with Economic Effect and the Instruction No. 3 of the Customs Administration on the Customs Procedure on Imports Aimed for Exports with the Duty Drawback Scheme (published in the Customs Administration Manual of March 2000).

The drawback request should be submitted by the person who carries out the production activity or who made the arrangements for it. The drawback may be requested upon submission of evidence that the imported products were used for the production of final products and if the imported product can be recognized in the final product.

The drawback system is centralized and is administered by regional customs houses which have special units that deal exclusively with drawbacks. These units take special care that the value of the import duty on inputs does not exceed the value rebated upon export of the finished product. The drawback is directly connected with the import declaration. The exporter must present all export and import declarations and documentation concerning the value of inputs. After this, an inspection at the producer's premises by a drawback unit verifies the production and value of the imported inputs in the finished products and issues an administrative decision. Drawback can be claimed only once for one import declaration.

The Macedonia legislation establishes objective criteria for the application of the duty drawback scheme, as well as mechanisms for additional verification. It, therefore, operates in a manner fully consistent with the provisions of Annex II of the WTO Agreement on Subsidies and Countervailing Measures.

3. Internal Policies, Affecting Foreign Trade in Goods

Industrial Policies

Question 44

We support the commitment in paragraph 120. Does Macedonia agree with removal of brackets?

Answer

Yes.

Technical regulations and standards

Question 45

We support the commitment in paragraph 129 to fully implement the WTO TBT Agreement from the date of accession, and seek removal of the brackets. Does Macedonia agree?

Answer

Yes.

Sanitary and phytosanitary measures

Question 46

We are concerned that the existence of two, rather than one, enquiry point in the SPS area may cause delay and confusion.

Answer

Following the Working Party recommendations, Macedonia has consolidated the two SPS enquiry points, previously operating within the ministries of health and agriculture, into one. The contact data for the single enquiry point are:

Contact person: Dr. Vladimir Kendrovski
Address: Codex Alimentarius Office
Public Health Institute
50-ta Divizija 6, 1000 Skopje, Republic of Macedonia
Telephone: ++ 389 2 125-044 ext.290
Fax: ++ 389 2 223-354
E-mail: kendro@mt.net.mk
rzzz@freemail.com.mk

The above information has officially been circulated to members as document WT/ACC/807/25 of 10 June 2002.

Question 47

We would appreciate further information from Macedonia on any additional legislation in development designed to address sanitary and phytosanitary measures within WTO requirements.

Answer

Law on Safety of Foodstuffs and Other Products and Materials in Contact with Foodstuff (Law on Food Safety) – scheduled for enactment by the Parliament in July 2002 (draft submitted to the Working Party in WT/ACC/807/20).

Law on Veterinary Health – Intended to be amended by December 2002.

Law on Plant Protection – intended to be amended by December 2003.

Question 48

We seek a commitment to implement the SPS Agreement from the date of accession and a description how Macedonia intends to accomplish this.

Answer

The existing Macedonian legislation follows international requirements and applies international standards and it is consistent with the SPS Agreement. Macedonia intends to maintain full compliance with the SPS Agreement upon its accession to the WTO.

Trade-related investment measures (TRIMs)

Question 49

WT/ACC/SPEC/807/4 indicates that Macedonia states that it does not maintain any measures contrary to the provisions of the Agreement on Trade-Related Investment Measures.

To the extent that use of local content in production is a requirement for investment in Macedonia's Free Economic Zones, it would appear that trade related investment measures may exist in Macedonia's trade regime.

We seek reflection of that perspective and Macedonia's response in the draft Working Party Report, and a commitment along the following lines:

- xx. The representative of FYROM said that his Government would not maintain any measures inconsistent with the TRIMs Agreement and would apply the TRIMs Agreement from the date of accession without recourse to any transitional period. The Working Party took note of this commitment

Answer

As indicated in the answer to Question 51 below, under the Law on Free Economic Zones, the eligibility of companies for the benefits of locating in a free zone is not contingent on the use of domestic over imported goods.

Macedonia agrees with the above commitment.

State trading practices

Question 50

Does Macedonia agree to undertake a commitment to apply its laws and regulations governing the trading activities of state-owned enterprises and other enterprises with special or exclusive privileges in full conformity with the provisions of the WTO Agreement, in particular Article VIII of the GATS, and to confirm that it will notify any enterprise falling within the scope of Article XVII?

Answer

Yes.

Free economic zones

Question 51

With regard to paragraph 140, it is noted that under the Macedonian Law on Free Economic Zones, producers and users of the zones should "procure goods and services from local suppliers and sub-suppliers whenever commercially justified".

Is eligibility for the benefits of locating in a free zone contingent on the use of domestic over imported goods? If so, please discuss why you believe this program to be consistent with the Agreement on Subsidies and Countervailing Measures.

Answer

The provision in Article 3, paragraph 3 of the Law on Free Economic Zones is more of a recommendation for the use of Macedonian products. It has no binding character and the use of benefits of locating in the zone is not contingent on it.

Macedonia believes that the provisions of the Law on Free Economic Zones are consistent with the Agreement on Subsidies and Countervailing Measures and, for that matter, with all other WTO requirements.

Question 52

Does Macedonia have plans to either phase out the program mentioned in Question 51 above or make it consistent with the Agreement on Subsidies and Countervailing Measures? If so, please explain what steps are being taken.

Answer

See the answer to Question 51 above.

Question 53

Can Macedonia explain when is it “commercially justified” (as referred to in Question 51 above) to use goods and services from local suppliers rather than from foreign suppliers?

Answer

See the answer to Question 51 above.

Question 54

The response to Question 61 of WT/ACC/807/23 states that the Macedonian Law on Free Economic Zones had been amended to separate the right of establishment in the zone and access to the tax exemptions and incentives provided from export performance requirements, but does not refer the articles of the law that contain the specific provisions. We would like to see this information included in the draft Working Party report.

Answer

Article 1 of the Law Amending the Law on Free Economic Zones (Official Gazette 6/02, circulated among members by WT/ACC/807/22) repeals the general export performance requirement provided in Article 3, paragraph 1, item 2 of the Law on Free Economic Zones.

Article 7 of the Law Amending the Law on Free Economic Zones repeals Article 25, paragraph 1, item 1 of the law which provided for specific percentages that users of the zone need to export in order to use the benefits of locating in the zone.

Question 55

We seek a commitment for this section along the following lines:

- xx. The representative of FYROM confirmed that from the date of accession the Government of FYROM would ensure enforcement of its WTO obligations in those zones. In this regard, he confirmed that the Law on the Free Economic Zones had been amended to eliminate any requirements for establishment in the zones or receipt of benefits provided to firms within the zones conditioned on use of local goods or export performance. In addition, goods produced in these zones under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities**

when entering the rest of FYROM, including the application of tariffs and taxes. The Working Party took note of these commitments.

Does Macedonia agree?

Answer

Yes.

Government procurement practices

Question 56

We believe that Macedonia should confirm that it will join the Agreement on Government Procurement, and that upon accession to the WTO, it will initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer. We suggest the following commitment language:

- xx. **The representative of FYROM confirmed that, upon accession to the WTO, the Government of FYROM would initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer. He also confirmed that, if the results of the negotiations were satisfactory to the interests of FYROM and the other members of the Agreement, FYROM would complete negotiations for membership in the Agreement within two years of accession. The Working Party took note of these commitments.**

Answer

Macedonia supports the above commitment language and confirms that it will initiate negotiations for membership in the Agreement on Government Procurement upon the accession to the WTO.

4. Policies affecting foreign trade in agricultural products

Internal policies

Question 57

We note that Macedonia has no export subsidies, and we seek Macedonia's commitment that it will not use such measures after the accession to the WTO.

Answer

Macedonia commits not to use export subsidies after the accession to the WTO.

5. Policies affecting foreign trade in other sectors

Question 58

Apart from the bilateral textile agreements with the United States and the EU, does Macedonia maintain similar arrangements with any other country?

Answer

No.

Question 59

Prior to finalization of this negotiation, we must address the need to establish Macedonia's "base line" quantities for phasing out restrictions under these agreements in the context of the gradual elimination of the Multifiber Arrangement (MFA).

When Macedonia becomes a WTO Member, the provisions of the Agreement on Textiles and Clothing will become relevant. We intend that our current bilateral quotas on imports from Macedonia of textiles and clothing products would become the starting point for the further liberalizations provided for under the terms of that Agreement.

In order to ensure an orderly transfer to this new status, and to guarantee the benefits of ATC trade liberalization for Macedonia's exports, we suggest that commitment language be developed for the draft Working Party Report that contains the following provisions:

- xx. The representative of FYROM confirmed that the quantitative restrictions on imports maintained by WTO members on textiles and clothing products originating in FYROM that were in force on the date prior to the date of accession of FYROM to the WTO should be notified to the Textiles Monitoring Body (TMB) by the Members maintaining such restrictions and would be applied for the purposes of Article 2 of the Agreement on Textiles and Clothing. Thus, for the purposes of FYROM's accession to the WTO, the phrase "day prior to the date of entry into force of the Agreement on Textiles and Clothing" shall be deemed to refer to the day prior to the date of accession of FYROM to the WTO. To this base level the increase in growth rates provided for in Articles 2.14 of the Agreement on Textiles and Clothing shall be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of FYROM's accession. The Working Party took note of this commitment.**

Answer

Macedonia agrees with the above commitment.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 60

What is the status of the Macedonian new Law on Industrial Property?

Answer

The new Law on Industrial Property was enacted by the Parliament in June 2002. The final text of the law takes into account comments of the Members of the Working Party and introduces improvements in that regard. English translation will be submitted to the Working Party as soon as available.

Question 61

Concerning the provisions of Article 7 of the draft Law on Industrial Property concerning submission of an application for recognition of industrial property rights in the Macedonian language and Cyrillic alphabet:

Given the time required to locate a Macedonian skilled in translating IPR technical and legal documents and verifying the translation once done, we suggest incorporation of a longer period

for submission in Macedonian – at least two months, to avoid de facto discrimination against nationals of other WTO countries.

Answer

Article 12 of the Law on Industrial Property provides for 90 days period for submission in Macedonian.

Question 62

Concerning the provisions of Article 12 of the draft Law on Industrial Property concerning the timely payment of fees for recognition of industrial property rights:

We seek addition of some provision permitting the filing of a fee after the deadline has expired on a showing of good cause for the unavoidable delay and a payment of a late fee. Applicants and right owners should not have to suffer additional loss if natural or man made disasters interfere with their filing required fees by a certain deadline.

Answer

Pursuant to the Law on Administrative Fees (Official Gazette 17/93, 20/96, 7/98, 13/01), the payment of a fee can be made within three months after the required deadline, but in that case, the fee will be increased by 25 per cent. The fee can be also paid within six months, but in that case, it will be increased by 100 per cent. It means that this Law provides for a total of nine months period in which the fees can be paid after the required deadline.

Question 63

Concerning the provisions of Article 13 of the draft Law on Industrial Property concerning the patentability of computer programs:

While few computer programs are likely to meet the standards of patentability, those few that can, should be patentable. We suggest elimination of this provision.

Answer

Pursuant to the Law on Industrial Property, Article 19, Paragraph 3, the exception to the object of protection under this Law is possible only if the subject matter of the patent application does not refer to some of those objects per se. This applies also to computer programs. So, if the computer program meets the requirements of patentability, it is protected by means of a patent.

Question 64

Concerning the provisions of Article 24 of the draft Law on Industrial Property concerning priority rights:

This provision should also indicate that the right of priority applies with respect to nationals of Members of the WTO since the WTO Agreement incorporates the substantive provisions of the Paris Convention in TRIPS Article 2.1.

Answer

Pursuant the Law on Industrial Property, Article 32, Paragraph 1, “Any legal or natural person who has filed a proper patent application in any of the state member of the Paris Union or of the World Trade Organization shall be granted priority right in the Republic of Macedonia”.

Question 65

Concerning the provisions of Article 80 of the draft Law on Industrial Property:

Macedonia should ensure that the Law will provide that decisions revoking or forfeiting a patent are appealable, as required by Article 32 of the WTO Agreement on TRIPS.

Answer

Pursuant to Article 14, Paragraph 1 of the Law on Industrial Property, the applicant has a right to appeal against the first instance decision issued by the Industrial Property Office to the Commission of the Government of the Republic of Macedonia. This also applies in cases of decisions of revoking or forfeiting a patent.

Question 66

Concerning the provisions of Article 114 of the draft Law on Industrial Property, the industrial design applicant is to be informed about the grounds specified in the notice of opposition and be invited to make a declaration and to submit his comments within 30 days.

We seek incorporation of a longer period for response, since, where foreign nationals are concerned, time would be required to translate the notice from the office and the opposition documents, prepare the response and translate it back into Macedonian. Thirty days would leave a foreign national at a considerable disadvantage as compared to Macedonian nationals.

Answer

Macedonia confirms that the period is extended to maximum of 60 days.

Question 67

With regard to Article 134 of the draft Law on Industrial Property, we suggest a lengthening of the term during which response must be submitted, because of the need for foreign nationals to translate documents to and from Macedonian.

Answer

Macedonia confirms that the period is extended to maximum of 60 days.

Question 68

Article 148 of the draft Law on Industrial Property should provide that court decisions should be appealable.

Answer

Pursuant to Article 15 of the Constitution of the Republic of Macedonia, all court decisions are appealable.

Trademarks

Question 69

With regard to Article 167 of the draft Law on Industrial Property, we note that the time allowed for response is insufficient for translations of documents from Macedonian to the language of a foreign national, for preparation of responding documents, and for translation of those responding documents into Macedonian.

Answer

Macedonia confirms that the period is extended to maximum of 60 days.

Question 70

Article 173 of the draft Law on Industrial Property should make it clear that such use as is described in the Article may not give the appearance that the products or services in question are offered or sold with the authorization or sponsorship of the trademark owner.

Answer

We believe that the wording of this Article is clear. The English translation of the Law needs to be improved.

Question 71

Article 189 of the draft Law on Industrial Property should specify that the period of non-use must be continuous, if the draft does not do so elsewhere.

Answer

Pursuant to Article 222, paragraph 2 of the Law on Industrial Property: “If the trademark-owner has not used the trademark for marking the goods or services it refers to without justified reasons for over 5 years from the date of entering the trademark in the trademark register or from the date when the trademark was last used, the Office may at request of an interested person issue a decision for termination of that trademark”.

The reference to a “continuous” non-use is included in the amended Article 189.

Question 72

In addition, the draft Law on Industrial Property does not appear to provide trademark registrants – as required under Article 16(1) of the TRIPS Agreement - with the exclusive right to prevent third parties using identical or similar signs for the same or similar goods/services, where such use would result in a likelihood of confusion.

Article 37 of Macedonia’s draft Law on Industrial Property appears to limit the trademark registrant’s right to exclusivity only for those goods/services for which the mark is registered, not with respect to similar goods and services.

How does Macedonia provide to trademark registrants the exclusive rights conferred under Article 16(1) of the TRIPS Agreement?

Answer

Pursuant to the Law on Industrial Property, Article 149, Paragraph 3, the trademark-owner has the right to prohibit use on the market by a third person, without his consent, of a sign which is:

1. identical to trademark used for identical products or services;
2. identical or similar to trademark used for identical or similar products or services if that similarity may mislead the average consumer, including the possibility of association between the sign and the trademark;
3. identical or similar to trademark used for different products or services if the trademark is well-known in the Republic of Macedonia and if the use of that sign without justified reason may lead to unfair competition and damage the distinctive character or reputation of the trademark.

With regard to the obligations of Article 16(1) of TRIPS, the Law on Industrial Property, Article 151 provides that:

1. The owner of prior trademark right shall not have the right to require cancellation of later trademark on the basis of his earlier priority right nor to prohibit use of the later trademark in relation to the goods or services for which the later trademark has been used, if he had acquiesced in this use for five consecutive years, unless the later trademark was protected by means of using false data.
2. The owner of a trademark with later priority right shall not have the right to prevent the owner to use its earlier registered trademark.

Geographical Indications

Question 73

Article 220 of the draft Law on Industrial Property should make it clear, either through the text of the law or in regulations, that certification marks, collective marks, labeling recognition, court decisions and other means of protection identified by WTO Members in response to the “checklist” under Article 24.2 of TRIPS will all be considered as recognition of a geographical indication for purposes of Macedonia’s law if it is clear that the indication meets the definition for geographical indication.

Answer

The provisions of Article 24.2 of TRIPS will be incorporated in the regulations which will follow the enactment of the new Law on Industrial Property.

Question 74

Article 223 of the draft Law on Industrial Property appears to limit registration to geographical names, while TRIPS Article 22.1 does not so limit the indications that can be considered geographical indications. The text should be clarified to include the broader grounds for registration.

Answer

The text has been changed. The new definition of geographical name contained in Article 3 of the Law on Industrial Property reads: “geographical name” is the name and/or designation of the country, region or place indicating that the product originates from a specific area.

Question 75

We note that under Geographical Indications (GI), Macedonian legislation provides no additional protection for wines and spirits. We would welcome clarification as to whether the protection afforded to GIs of wines and spirits is compatible with TRIPs Article 23, which requires a higher level of protection than for other goods under Article 22.

Answer

Law on Industrial Property, Article 195, Paragraph 1, states that “The users of geographical names may request prohibition of: marking products which do not originate from the place of origin indicated with the protected geographical name, even when the true geographical origin of the product is indicated, when translation of the geographical indication is used or when it is accompanied by additional expressions, like “kind”, “type”, “sort”, “imitation”, etc.;

Law on Industrial Property Article 126, Paragraph 1, Sub-paragraph 7 states that: “A trademark shall not protect a sign: 7. the appearance of which may create confusion in trade and mislead the average consumer particularly as to the geographical origin, kind, quality or any other characteristic of the goods or services”.

Pursuant to the Law on Industrial Property Article 172, “If the names of two or more places of origin of a product are the same or almost the same in writing, protection of such geographical names with geographical indication or appellation of origin shall be granted to all persons who comply with the requirements under this Law and in the manner prescribed in the regulations issued by the Minister of Economy, on the principles of equitable treatment of producers on the market and truthful informing of consumers, except when it may mislead the public as to the true geographical origin.”

Enforcement

Question 76

There appears to be some disparity between the law for goods infringing industrial property rights and the law relating to ex officio action for counterfeited goods in relation to TRIPs Article 58. We would welcome clarification on this point.

Answer

The Law on Industrial Property does not provide for application of *ex officio* measures at border crossings in cases of infringement of industrial property rights. This is not contrary to TRIPs as it gives the countries a possibility to choose whether they will apply only border measures upon right holder’s request or *ex officio* measures as well.

Question 77

Please describe the circumstances in which the administrative procedures and remedies provisions would be applicable, rather than the civil judicial procedures and remedies, with regard to enforcing intellectual property rights.

Answer

In cases of industrial property rights, the advantages of the administrative proceedings carried out by special Supreme Court units versus the civil judicial proceedings are:

- a. specialization of the tribunals
- b. smaller number of cases
- c. faster procedure

In cases of copyright and related rights, there are no advantages of either type of proceedings.

Question 78

May provisional measures be ordered *inaudita altera parte*?

Answer

For industrial property rights, no.

For copyrights, yes. Pursuant to Article 162, Paragraph 2 of the Law on Copyright and Related Rights, "If there is a well found suspicion that protection of this Article, paragraph 1, may not be realized later, the court may pronounce and execute such measures without prior notification and hearing of the adverse party".

Question 79

Please describe the length of time taken by courts between the request by rights holders for interim measures and the issuance of an order.

Answer

The procedure upon complaint in cases of infringement of rights is considered urgent. The length of procedure depends on each particular case. Interim measures proposed in the complaint are governed by the Law on Enforcement Procedure, and pursuant Article 9 of this law they are carried out in an urgent manner.

Question 80

In civil cases involving infringement, please describe how damages are calculated? Are pre-established damages available to rights holders?

Answer

The general rules for compensation of material and non-material damage, provided by the Law on Obligations (Official Gazette 18/01, 4/02) shall apply in the cases of infringement of industrial property rights.

The person whose right has been infringed may not only claim damages but also demand that the person infringing his / her rights is ordered by court to restrain from further violation, or that the court seize and destroy the infringing goods produced or placed in the market, or that the court order the person infringing his/her right to provide the records and data and that the sentence establishing the infringement is publish by the court in the public information media, on the account of the defendant.

In cases of infringement of the rights acquired under the Law of Industrial Property, when the infringement of the rights is either premeditated or a result of gross negligence, the right holder may seek payment of the usual compensation increased by 200 per cent, regardless of whether the infringement resulted in any pecuniary damage in the said amount.

In deciding on the amount of the fine in response to claims for damages, the court will take into account all the circumstances surrounding the case, and particularly the degree of the defendant's guilt, the amount of the usual compensation, and the preventive function of the penalty.

When the pecuniary damage is lower than the fine, the right holder shall be entitled to seek the difference to the full extent of the requested compensation.

Question 81

WT/ACC/807/9 states that in civil and criminal cases, judges are authorized to order expert examinations of evidence. May a right holder testify as to whether a product is infringing or is a third party expert required to offer evidence as to the infringing nature of the product?

Answer

The right holder may testify in his/her capacity of a party in the case.

Should expertise be necessary, the court may order expert examination only by experts authorized by the court.

Question 82

May a court compel production of evidence in civil cases?

Answer

Yes.

Question 83

In civil cases, please describe the manner in which infringing products are disposed of outside the channels of commerce. Do rights holders in practice routinely request destruction of infringing goods?

Answer

Pursuant to Article 159 of the Law on Copyright and Related Rights:

“When the rights from this Law have been infringed, the right holder may demand:

- to have the infringer prohibited in preparations for infringement, the infringement itself and future infringements;
- to have the infringer eliminate the situation caused by the infringement;
- to have unlawful copies and their packaging or the performance or other objects of protection according to this Law destroyed or altered;

- to have the master copies, negatives, plates, moulds or other devices that have been instrumental in the infringement destroyed or altered;
- to have the equipment whose sole or main purpose has been the infringement of rights according to this Law, which is owned by the infringer, destroyed or altered; and
- to have the judgment published in the public media at the expense of the infringer, to such extent and in such manner as the court may determine.

Instead of demands, the holder of right may demand that the infringer or owner convey to him the copies or the devices as of this Article, paragraph 1, items 3 and 4”.

Pursuant to Article 162, Paragraph 1 of the Law on Copyright and Related Rights, when the exclusive right has been infringed, the court may, at the request of the right holder, determine provisional measures to seize, remove from circulation and to store copies, devices, equipment and the documents relating thereto.

In criminal proceedings, pursuant to Article 157 of the Criminal Code (Official Gazette 37/96), the court is empowered to order seizure of the infringing goods.

Yes, the right holders routinely request destruction of infringing goods in practice.

Question 84

Please describe the application process for the suspension of release of goods. For what length of time may the application request enforcement action. If there is an application fee, please provide the amount and whether the fee relates to all actions relating to a particular trademark or for each shipment of goods for which release is suspended.

Answer

The suspension of release of goods is initiated by filing a complaint. The amount of the fee is determined in the Law on Court Fees (Official Gazette 46/90) depending on the value of the infringed good. Pursuant to Article 203 of the Law on Industrial Property, “the action for infringement of rights under this Law may be instituted within 3 years from the day the plaintiff learnt about the infringement and the person who performed the infringement and no later than 5 years from the day of the infringement”.

Question 85

With regard to border measures, please describe the amount required for the deposit relating to the damage liable to occur as a result of the measures.

Answer

Article 215 of the Law on Industrial Property, and Article 165 of the Law on Copyright and Related Rights provide for customs measures. The amount of the deposit is established by the relevant Customs authority on the basis of the Law on Industrial Property and the Law on Copyright And Related Rights, pursuant to customs regulations. The deposit is established in an amount sufficient to cover the expenses for the storage of the goods. Customs measures shall be initiated upon right holder’s request and the deposit must not represent excessive burden to the right holder or an impediment to the realization of his/her right to protection against violation. Customs measures are

always provisional measures and their legal efficiency is always established in a court procedure. Possible damage to the right holder resulting from these measures and its actual amount is always determined in a civil procedure.

Question 86

Please report on the amount of time the right holder has to submit collateral to customs after being notified that release of the goods has been suspended.

Answer

The amount of time will be determined in the forthcoming regulations that will be based on the existing legislation.

Question 87

May customs take action relating to the exportation of counterfeit or pirated goods?

Answer

No.

Question 88

May customs take action relating to the in transit movement of counterfeit or pirated goods?

Answer

No.

Question 89

Please describe the procedure by which a right holder submits collateral to customs.

Answer

See the answer to Question 86.

Question 90

May customs take *ex officio* action relating to infringement of trademarks?

Answer

The Law on Industrial Property does not provide for application of *ex officio* border measures in cases of infringement of industrial property rights. This is not contrary to TRIPs as each country is given a possibility to choose whether to take border measures only upon right holder's request or to take *ex officio* border measures as well.

Question 91

Are decisions on the merits of the case made by customs or referred to a judicial or administrative authority?

Answer

Customs decisions are effective only with regard to temporary seizure of goods, while court decisions are effective in all other cases.

Question 92

WT/ACC/807/9 states, with regard to border measures, that “[upon notification by the holder of the industrial property right that a right of industrial property has been infringed, the Office for Protection of Industrial Property files a complaint for infringement, that is a complaint for commercial offence, with the court that has venue. Where release of goods has been suspended by customs, is a right holder then required to notify the Office for Protection of Industrial Property in order for a complaint to be filed with the court? May the right holder file a claim with the court directly?

Answer

It is obvious that there is some misunderstanding. The Office for Protection of Industrial Property does not have an authority to file a complaint for infringement. Where release of goods has been suspended by customs, the right holder is not required to notify the Office for Protection of Industrial Property in order for a complaint to be filed with the court. And yes, the right holder may file a claim with the court directly.

Question 93

May customs impose monetary fines in addition to seizure of infringing goods?

Answer

No.

Question 94

Please describe customs procedures providing for a right of inspection and information and the manner in which a right holder may inspect goods to determine if they are infringing

Answer

Customs authority may, upon request by the right holder or his/her representative, examine the imported goods (inspect the goods and the accompanying documents) and withdraw such goods from the market or store it in a safe place, when the importer fails to provide a creditable evidence of the manufacture of the imported goods.

Question 95

Please describe the range of fines that may be assessed in criminal cases relating to patent, trademark and copyright infringement.

Answer

Criminal acts are governed by Article 157 of the Criminal Code (Official Gazette 37/96). This Article provides for two types of measures: fine and imprisonment. Any unauthorized use of a copyright work or works subject to related rights is punishable by fine or imprisonment of up to one year.

Infringement resulting in acquisition of a considerable illegal economic gain is punishable with a fine or imprisonment of up to three years. The perpetrators of infringements resulting in significant illegal economic gain may be punished with imprisonment of three months to five years. Attempts to perform such act is also punishable. Copies of copyright works and works subject to related rights and the means for their reproduction shall be seized.

The Criminal Code recognizes the following criminal acts:

Unauthorized use of someone else's company name

He who uses someone else's company name, mark, trade mark or special mark of goods, origin of product or service, with an intention to deceive the buyers or users of services, shall be punished by a fine or imprisonment of up to three years.

The same punishment shall be applied to the persons that use in their production, without authorization and with intention to deceive the buyers, someone else's designs or models, or place on the market articles manufactured through use of such models. The goods shall be seized.

Unauthorized use of someone else's invention

He who uses, publishes, rents or assigns someone else's registered or patented invention shall be punished with a fine or imprisonment of up to three years. The goods shall be seized.

Falsification of goods, measures and weighs indicators

He who, with intention to use them as genuine, counterfeits indicators of domestic and foreign goods, such as seals, stamps or measures used in branding gold, silver, cattle, wood or any other goods, or changes the genuine indicators, or uses false indicators as genuine, will be punished with imprisonment of three months to five years.

The penalty under paragraph 1 shall apply also to persons who counterfeit measures and weighs.

He who without authorization makes, provides, sells or lends for use means for making signs marking goods as genuine, shall be punished by a fine or imprisonment of up to three years.

False signs, measures and weighs, as well as the means for their making, shall be seized.

Question 96

Please describe the level of infringing activity required to initiate criminal prosecution for each type of intellectual property right infringement and the level of infringing activity required for imprisonment to be ordered

Answer

Under the Criminal Code, any infringer found to be of sound mind at the time of the intentional infringement shall be liable to criminal prosecution.

See also the answer to Question 95.

Question 97

In criminal cases, do courts routinely order the destruction of infringing goods? Are materials and implements, the predominant use of which has been in the commission of the offence, ordered destroyed by the courts in criminal cases?

Answer

Yes.

Question 98

Does data exist on the number of criminal prosecutions for trademark, patent and copyright infringement, fines ordered or prison sentences issued?

Answer

Yes.

Question 99

We seek a commitment in Macedonia's accession documents for full TRIPS consistency from the date of accession, without recourse to any transition. Does Macedonia agree?

Answer

Macedonia will include such commitment in its WTO accession documents.

Notifications

Question 100

We seek a commitment for Macedonia's initial notification.

Answer

Macedonia accepts the commitment for initial notifications contained in paragraph 216 of WT/ACC/SPEC/807/4/Rev/1.

VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

2. Economic integration: Customs unions and free trade agreements

Question 101

We seek a commitment from Macedonia that it will observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its participation in trade agreements, and will ensure that the provisions of these WTO agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which Macedonia is a member were met from the date of accession. Does Macedonia agree?

Answer

Yes.

Question 102

We seek confirmation that Macedonia will, upon accession, submit notifications and copies of its free trade agreements, including those established in the context of the Stability Pact Memorandum of Understanding, to the appropriate WTO councils and the Committee on Regional Trade Agreements (CRTA).

Answer

Macedonia confirms that upon accession it will submit all necessary notifications and copies of its free trade agreements to the appropriate WTO bodies.

ATTACHMENT 1

List of Tariff Rate Quotas
Granted Bilaterally under Free Trade Agreements

Year: 2002

Note: Duty free tariff quotas are entered in the tables only as a quantity number in the second column. In-quota rates are properly explained below the respective tables.

Yugoslavia	
HS	Quantity (tons)
0203 21	2.000
0203 22	
0203 29	
0210	300
0401	1.000
0406	250
1001 10 00 90 1001 90 99 00	50.000
1101 00	5.000
1512 19 91 00	3.000
1601 00	1.500
2402 20	250

Slovenia	
HS	Quantity (tons)
0207	3.850
0210 19 60 00	100
0210 19 70 00	
0210 19 81 00	
0210 19 89 00	
0401 20	2.200
0402 10	50
0405 10	250
0406 90 69 00	50
0406 90 78 00	
0406 90 86 00	
0406 90 87 00	
0406 90 88 00	
0406 90 93 00	
0406 90 23 00	
1502 00 10 00	300
1601 00	1.500
1602	500
1604 13	400
1704 90	140
1806	320
1905 30	330
1905 90 00 00	150
2009	600
2103 30 90 00	200

Bulgaria	
HS	Quantity (tons)
0201	300 (a)
0202	
0203	200 (a)
0207	500
0301 93 00 00	150
0301 99 11 00	
0301 99 19 00	
0303 79 11 00	100
0307 79 19 00	
0406 90 29 00	150
0406 90 50 10	300
0701 90	100 (a)
0802 31 00 00	40 (a)
0802 32 00 00	
1108 12	400 (a)
1202	150 (a)
1209 21 00 00	15 (a)
1209 91	5 (a)
1211 90	50 (a)
1517 10	50 (b)
1601 00	100 (b)
1602	100 (c)
1702 30	1.000
1702 40	
1702 60	
1704 90	250 (d)
1806	200 (d)
1902	100 (e)
1905	100 (e)
2003 10	50 (c)
2007 99	50 (f)
2009 80	200 (e)
2009 90	
2105 00	100 (d)
2201	300 (g)
2202	100 (e)
2203 00	20.000 hl (c)
2204 21 81 00	10.000 hl (a)
2204 21 82 00	
2302 10	800
2302 30	
2306 30 00 00	500

Reduction of MFN tariff:

- 50%
- 10%
- 20%
- 35%
- 25%
- 28%
- 12%

Turkey	
HS	Quantity (tons)
0207	3.000
0713 40 00 90	500
0802 22 00 00	250
0805 10 0805 20 0805 30 0805 40 00 00 0805 90 00 00	8.000
0806 20	250
1509 10 90 00	100
1604 14 1604 20 70 00	350
2005 70	700
2008	200
2203 00	300 (a)

(a) 50% of MFN tariff

Croatia	
HS	Quantity (tons)
0207 12	700
0207 14	500
0210	200
0302 69 11 10 0302 69 19 00	250
0401 20 11 00 0401 20 91 00	600
0401 30 11 00 0401 30 31 00 0401 30 91 00	100
0402 21	10
0403 10 91 00	150
0403 90	300
0405 10	50
0406 30	150
0406 90 50 10 0406 90 99 10 0406 90 29 00	150
0701 90	2.500
0813	20
1509	80
1601	400
1602	1.000
1604	1.620
1704 90	300
1806	550
1901 10 00 00	120
1901 90	160
1905 30	600
1905 90	110
2005 70	50

Croatia	
HS	Quantity (tons)
2007 99	100
2009 19	200
2009 30	100
2009 90	300
2102 10 31 00	10
2101 30	100
2103 30 90 00	40
2103 90	160
2104 10	400
2105 00	1.000
2106	500
2202 90	350
2208 20	800
2209	500
2401 10	2.500

Ukraine	
HS	Quantity (tons)
0201	1.000
0202	
0203 21	300
0203 22	
0203 29	
0402	400
1003 00 90 20	5.000
1005 90 00 00	20.000
1512 11	10.000.000 1
1701 12	15.000
1704	100
1806	100
1905 30	50
2007 99	100
2201	100.000 1
2209	100.000 1

EFTA - Switzerland	
HS	Quantity (tons)
0402	50
0406 90	50

EFTA - Norway	
HS	Quantity (tons)
0406	50
2208 90	5.000 1

European Union	
HS	Quantity (tons)
0206 29	300
0207	2.000
0402	300
0405 10	200
0406 20	70
0406 30	
0805 10	7.000
0805 20	
0805 30	
0805 40 00 00	
1005 90 00 00	20.000
1601 00	600
1602	500
2005 70	1.000
1507 10	10.000
1512 11	
1514 10	
1701 11	10.000
1701 12	
2309 90	10.000
2309 90 20 00	
2309 90 31 00	
2309 90 33 00	
2309 90 35 00	
2309 90 39 00	
2309 90 41 00	
2309 90 43 00	
2309 90 49 00	
2309 90 51 00	
2309 90 53 00	
2309 90 59 00	
2309 90 70 00	
2309 90 91 00	
2309 90 95 00	
2309 90 97 00	
0203	2.000 (a)
0406	600 (a)

(a) 80% of MFN tariff

ATTACHMENT 2

**Implementation of the Agreement of Article VII
of the General Agreement on Tariffs and Trade 1994**

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
Article 1		
1.1 The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:	Article 29 Paragraph 1 of the Customs Law (CL) (1) The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the Republic of Macedonia adjusted in accordance with the provisions of Article 36 and 37 of the Code, provided :	
1.1 (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which: (i) are imposed or required by law or by the public authorities in the country of importation; (ii) limit the geographical area in which the goods may be resold; or (iii) do not substantially affect the value of the goods;	Article 29, Paragraph 1 a) of CL a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which : - are imposed or required by law or other provisions of the Republic of Macedonia; - limit the geographical area in which the goods may be resold; or - do not substantially affect the value of the goods;	
1.1 (b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;	Article 29, Paragraph 1 b) of CL b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;	
1.1 (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8;	Article 29, Paragraph 1 c) of CL c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will acquire directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 36 of the Code; and	
1.1 (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.	Article 29, Paragraph 1 d) of CL d) that the buyer and seller are not related, or where the buyer and the seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2.	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
<p>1.2 (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.</p>	<p>Article 29, Paragraph 2 a) of CL</p> <p>(2) a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related shall not in itself be ground for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the declarant or otherwise, the Customs authority has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the declarant and the declarant shall be given a reasonable opportunity to respond. If the declarant so requests, the communication of the grounds shall be in writing.</p>	
<p>1.2 (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:</p> <ul style="list-style-type: none"> (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation; (ii) the customs value of identical or similar goods as determined under the provisions of Article 5; (iii) the customs value of identical or similar goods as determined under the provisions of Article 6; <p>In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.</p>	<p>Article 29, Paragraph 2 b) of CL</p> <p>b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the declarant demonstrates that such value closely approximates to one of the following occurring at or about the same time :</p> <ul style="list-style-type: none"> 1. the transaction value in sales to unrelated sellers and buyers of identical or similar goods for export to the Republic of Macedonia; 2. the customs value of identical or similar goods as determined under the provisions of Article 33 of the Code; 3. the customs value of identical or similar goods as determined under the provisions of Article 34 of the Code; <p>In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 36 of the Code and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.</p>	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
1.2 (c) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).	<p>Article 29, Paragraph 2 c) of CL</p> <p>c) The tests set forth in subparagraph b) are to be used at the initiative of the declarant and only for comparison purposes. Substitute values may not be established under the said subparagraph.</p>	
Article 2		
2.1 (a) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.	<p>Article 30, Paragraph 1 a) of CL</p> <p>(1) a) If the customs value of the imported goods cannot be determined under the provisions of Article 29 of the Code, the customs value shall be the transaction value of identical goods sold for export to the Republic of Macedonia and exported at or about the same time as the goods being valued.</p>	
2.1 (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.	<p>Article 30, Paragraph 1 b) of CL</p> <p>b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.</p>	
2.2 Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.	<p>Article 30, Paragraph 2 of CL</p> <p>(2) Where the costs and charges referred to in Article 36 (1) e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.</p>	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
2.3 If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.	Article 30, Paragraph 3 of CL (3) If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.	
Article 3		
3.1 (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.	Article 31, Paragraph 1 a) of CL (1) a) If the customs value of the imported goods cannot be determined under the provisions of Articles 29 and 30 of the Code, the customs value shall be the transaction value of similar goods sold for export to the Republic of Macedonia and exported at or about the same time as the goods being valued.	
3.1 (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.	Article 31, Paragraph 1 b) of CL b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
<p>3.2 Where the costs and charges referred to in paragraph 2 of Article 8 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.</p>	<p>Article 31, Paragraph 2 of CL</p> <p>(2) Where the costs and charges referred to in Article 36 (1) e) of the Code are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.</p>	
<p>3.3 If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.</p>	<p>Article 31, Paragraph 3 of CL</p> <p>(3) If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.</p>	
Article 4		
<p>If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3, the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.</p>	<p>Article 32 of CL</p> <p>If the customs value of the imported goods cannot be determined under the provisions of Articles 29, 30 and 31 of the Code, the customs value shall be determined under the provisions of Article 33 of the Code. If, the customs value cannot be determined under Article 33 of the Code, the customs value shall be determined under the provisions of Article 34 of the Code except that, at the request of the declarant, the order of application of Articles 33 and 34 of the Code shall be reversed.</p>	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
Article 5		
<p>5.1 (a) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:</p> <ul style="list-style-type: none"> (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind; (ii) the usual costs of transport and insurance and associated costs incurred within the country of importation; (iii) where appropriate, the costs and charges referred to in paragraph 2 of Article 8; and (iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods. 	<p>Article 33, Paragraph 1 a) of CL</p> <p>(1) a) If the imported goods or identical or similar imported goods are sold in the Republic of Macedonia in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following :</p> <ul style="list-style-type: none"> 1. either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods in question) in connection with sales in the Republic of Macedonia of imported goods of the same class or kind; 2. the usual costs of transport and insurance and associated costs incurred within the Republic of Macedonia; 3. where appropriate, the costs and charges referred to in Article 36 (1) e) of the Code; and 4. the import duties and other charges payable in the Republic of Macedonia by reason of the importation or sale of the goods. 	
<p>5.1 (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.</p>	<p>Article 33, Paragraph 1 b) of CL</p> <p>b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1 (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Republic of Macedonia in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.</p>	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
<p>5.2 If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a).</p>	<p>Article 33, Paragraph 2 of CL</p> <p>(2) If neither the imported goods nor identical nor similar imported goods are sold in the Republic of Macedonia in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Republic of Macedonia who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1 a).</p>	
Article 6		
<p>6.1 The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:</p> <ul style="list-style-type: none"> (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods; (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation; (c) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Member under paragraph 2 of Article 8. 	<p>Article 34, Paragraph 1 of CL</p> <p>(1) The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of :</p> <ul style="list-style-type: none"> (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods; (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Republic of Macedonia; (c) the cost or value of all other expenses referred to in Article 36 (1) e) of the Code. 	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
<p>6.2 No Member may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.</p>	<p>Article 34, Paragraph 2 of CL</p> <p>(2) It shall not be required or compelled any person not resident on the territory of the Republic of Macedonia to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under this Article may be verified in another country by the customs authority with the agreement of the producer and provided that customs authority give sufficient advance notice to the authorities of the country in question and the latter do not object to the investigation.</p>	
Article 7		
<p>7.1 If the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the country of importation.</p>	<p>Article 35, Paragraph 1 of CL</p> <p>(1) Where the customs value of imported goods cannot be determined under Articles 29 to 34 of the Code, it shall be determined, on the basis of data available in the Republic of Macedonia, using reasonable means consistent with the principles and general provisions of:</p> <ul style="list-style-type: none"> - the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade of 1994 - Article VII of the General Agreement on Tariffs and Trade of 1994 - the provisions of Articles 28 to 38-h of this Code. 	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
<p>7.2 No customs value shall be determined under the provisions of this Article on the basis of:</p> <ul style="list-style-type: none"> (a) the selling price in the country of importation of goods produced in such country; (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values; (c) the price of goods on the domestic market of the country of exportation; (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6; (e) the price of the goods for export to a country other than the country of importation; (f) minimum customs values; or (g) arbitrary or fictitious values. 	<p>Article 35, Paragraph 2 of CL</p> <p>(2) No customs value shall be determined under the provisions of this Article on the basis of :</p> <ul style="list-style-type: none"> a) the selling price in the Republic of Macedonia of goods produced in the Republic of Macedonia; b) a system which provides for the acceptance for customs purposes of the higher of two alternative values; c) the price of goods on the domestic market of the country of exportation; d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 34 of the Code; e) the price of the goods for export to a country other than Republic of Macedonia; f) minimum customs values; or g) arbitrary or fictitious values. 	
<p>7.3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.</p>	<p>Article 35, Paragraph 3 of CL</p> <p>(3) If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.</p>	

WTO Agreement on Implementation of Article VII of the GATT 1994	Relevant Provisions of the Macedonian Legislation that Implements the WTO Agreement	Comment
Article 8		
<p>8.1 In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:</p> <p>(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:</p> <p>(i) commissions and brokerage, except buying commissions;</p> <p>(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;</p> <p>(iii) the cost of packing whether for labour or materials;</p> <p>(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:</p> <p>(i) materials, components, parts and similar items incorporated in the imported goods;</p> <p>(ii) tools, dies, moulds and similar items used in the production of the imported goods;</p> <p>(iii) materials consumed in the production of the imported goods;</p> <p>(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;</p> <p>(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;</p> <p>(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.</p>	<p>Article 36, Paragraph 1 of CL</p> <p>(1) In determining the customs value under Article 29 of the Code, there shall be added to the price actually paid or payable for the imported goods:</p> <p>a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:</p> <p>1. commissions and brokerage, except buying commissions,</p> <p>2. the cost of containers which are treated as being one, for customs purposes, with the goods in question,</p> <p>3. the cost of packing, whether for labour or materials;</p> <p>b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:</p> <p>1. materials, components, parts and similar items incorporated in the imported goods,</p> <p>2. tools, dies, moulds and similar items used in the production of the imported goods,</p> <p>3. materials consumed in the production of the imported goods,</p> <p>4. engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Republic of Macedonia and necessary for the production of the imported goods;</p> <p>c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;</p> <p>d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;</p>	

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<p>8.2 In framing its legislation, each Member shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:</p> <p>(a) the cost of transport of the imported goods to the port or place of importation;</p> <p>(b) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and</p> <p>(c) the cost of insurance.</p>	<p>Article 36, Paragraph 1 e) of CL</p> <p>e) 1. the cost of transport and insurance of the imported goods to the place of introduction into the customs territory of the Republic of Macedonia, and</p> <p>2. loading and handling charges associated with the transport of the imported goods to the place of introduction into the customs territory of the Republic of Macedonia.</p>	
<p>8.3 Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.</p>	<p>Article 36, Paragraph 2 of CL</p> <p>(2) Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.</p>	
<p>8.4 No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.</p>	<p>Article 36, Paragraph 3 of CL</p> <p>(3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.</p>	
Article 9		
<p>9.1 Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.</p>	<p>Article 38 f) of CL</p> <p>Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that determined on the date which customs debt has incurred, in accordance to regulation governing foreign currency transactions.</p>	
<p>9.2 The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Member.</p>		

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Article 10		
<p>All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.</p>	<p>Article 29 of Regulation</p> <p>For all information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential, provisions of Article 19 of the Customs Code shall apply.</p>	
Article 11		
<p>11.1 The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.</p>	<p>Article 15 of CL</p> <ol style="list-style-type: none"> 1. If this Law does not stipulate differently, customs officials who conduct the customs procedure apply the Law on General Administrative Procedure. 2. When customs officials entirely accept a request in the Customs procedure, such a decision can be an official annotation on the initial request. 3. An appeal submitted to the Minister of Finance is possible against decisions made by customs officials, under the administrative procedure, within eight days from the receipt of the decision. 4. The appeal does not delay the application of the decision. 	
<p>11.2 An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.</p>		
<p>11.3 Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.</p>		
Article 12		
<p>Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned.</p>	<p>Pursuant to Article 52 of the Macedonian Constitution and Article 3 of the Law on Publishing Laws and Other Regulations and Acts in the Official Gazette of the Republic of Macedonia, provide for obligatory publishing of all laws, regulations and other documents of general application in the Official Gazette within seven days of their enactment.</p>	

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Article 13		
<p>If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.</p>	<p>Article 38g of CL</p> <p>If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the declarant shall nevertheless be able to withdraw them from customs, provided that, payment of a customs debt, in accordance to Article 172 of the Code, covering the ultimate payment of customs duties for which the goods may be liable, is ensured.</p>	
Article 14		
<p>The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.</p>	<p>Article 1 of Regulation</p> <p>(1) In applying the provisions of Articles 28 to 38-h of the Customs Code and those of this Regulation, the provisions set out in Annex 1, being integral part of this Regulation, shall also apply. The provisions as set out in the first column of Annex 1 shall be applied in the light of the interpretative note appearing in the second column.</p> <p>(2) If it is necessary to make reference to generally accepted accounting principles in determining the customs value, the provisions of Annex 2, being integral part of this Regulation, shall apply.</p>	
Article 15		
<p>15.1 In this Agreement:</p> <p>(a) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;</p> <p>(b) "country of importation" means country or customs territory of importation; and</p> <p>(c) "produced" includes grown, manufactured and mined.</p>	<p>Article 28 of CL</p> <p>"The provisions of Article 28 to 39 of the Code shall determine the customs value of goods for the purposes of applying the Customs Tariff, as well as other provisions governing trade related fields."</p> <p>Article 2 b) of Regulation</p> <p>b) 'produced goods' includes goods grown, manufactured and mined;</p>	

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<p>15.2 In this Agreement:</p> <p>(a) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;</p> <p>(b) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;</p> <p>(c) the terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 8 because such elements were undertaken in the country of importation;</p> <p>(d) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;</p> <p>(e) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.</p>	<p>Article 2 of Regulation</p> <p>c) 'identical goods' means goods produced in the same country which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance shall not preclude goods otherwise conforming to the definition from being regarded as identical;</p> <p>d) 'similar goods' means goods produced in the same country which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;</p> <p>(2) 'Identical goods' and 'similar goods', as the case may be, do not include goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 36 (1) b) 4. of the Customs Code because such elements were undertaken in the Republic of Macedonia.</p> <p>Article 10, Paragraph 1 of Regulation</p> <p>(1) In applying Article 30 and 31 of the Customs Code, a transaction value for goods produced by a different person shall be taken into account only when no transaction value can be found for identical or similar goods produced by the same person as the goods being valued.</p>	
<p>15.3 In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.</p>	<p>Article 2, Paragraph 1 of Regulation</p> <p>e) 'goods of the same class or kind' means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.</p>	

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<p>15.4 For the purposes of this Agreement, persons shall be deemed to be related only if:</p> <ul style="list-style-type: none"> (a) they are officers or directors of one another's businesses; (b) they are legally recognized partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. 	<p>Article 3, Paragraph 1 of Regulation</p> <p>(1) For the purposes of Articles 28 to 38-h of the Customs Code and of this Regulation, persons shall be deemed to be related only if:</p> <ul style="list-style-type: none"> a) they are officers or directors of one another's businesses; b) they are legally recognized partners in business; c) they are employer and employee; d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; e) one of them directly or indirectly controls the other; f) both of them are directly or indirectly controlled by a third person; g) together they directly or indirectly control a third person; or h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: <ul style="list-style-type: none"> — husband and wife, — parent and child, — brother and sister (whether by whole or half blood), — grandparent and grandchild, — uncle or aunt and nephew or niece, — parent-in-law and son-in-law or daughter-in-law, — brother-in-law and sister-in-law. 	
<p>15.5 Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4.</p>	<p>Article 3, Paragraph 2 of Regulation</p> <p>(2) Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria of paragraph 1.</p>	

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Article 16		
Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer's goods was determined.	Article 38e, Paragraph 4 of CL (4) Upon written request, the importer shall have the right to an explanation in writing from the customs authority of the country of importation as to how the customs value of the importer's goods was determined.	
Article 17		
Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.	Article 38e, Paragraph 2 of CL (2) No one provision of Article 28 to 38-h shall be construed as restricting or calling into question the rights of customs authority to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.	