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Additional Questions and Replies

The Permanent Mission of the Republic of Azerbaijan has provided the replies reproduced hereunder to additional questions submitted by Members on the Memorandum on the Foreign Trade Regime.

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions

Question 1

Pricing Policies. WT/ACC/AZE/2 states that “In 1999, the Government will control prices of services and goods supplied by natural monopolies in the following industries: electrical power; heating energy; gas; oil and gas transportation; railway transport; telephone and mail communication services; public utilities; and housing rent.”

Are there currently any additional price controls, profit controls, or price guidance from any State agency on goods or services? If so, please list them, supplying the HS tariff code for any goods under price control?

Answer:

The base of state price and pricing policy consists of the state regulation of prices and tariffs appointed by natural monopolies for services rendered. The Law of the Republic of Azerbaijan "On natural monopoly" by 5 December 1998 identifies following spheres of natural monopolies' activity:

1. oil and oil products transfer by rout pipeline;
2. services on transferring of natural gas by pipelines, its storage and dissemination;
3. services on transferring and dissemination of electricity and heating energy;
4. services on main and local railroads, use of road constructions, traffic regulation and traffic security, on railroad and passenger stations;
5. airport services, airstrips and use of installations equipment, aviation and air-navigation service rendered to aircraft;
6. metro railways, tunnels and stations use, regulation of traffic and traffic security services;
7. maritime port services, exploitation of port installations, security services while stuff carrying and movements;
8. electricity for general use and post communication, receivers - broadcasting radio and television stations, exploitation of high-voltage installations and control services;
9. main sewage purification installations, main pipelines, water lines network and exploitation of its high pressure and regulation installation;
10. aeration in sewage, mechanical regulation stations, pumping stations, main and rain collectors and sewage lines exploitation;
11. exploitation of water reservoirs, channels, collectors, pipelines and links related with melioration and irrigation;
12. provision of heating services.

In cases of establishment of new acting objects in spheres listed above and enterprises acting in competitive conditions are not considered to be natural monopolies and this law has no concern to them.

Moreover, in accordance with the legislation of the Republic of Azerbaijan, prices and tariffs for goods (services) listed below are subject to state regulation:

- Goods and passenger's transportation by railroad and passenger's transportation by air and land transport mean, sport services and public transportation of passengers;

- Drinkable water and irrigation water in agriculture for watering;
- Budgetary financed services rendered by the central executive power authority;
- Rent payment of non-residential areas.

Besides spheres listed above, state regulation also covers prices in the retail sale of oil products.

Question 2

Please cite and describe the legal authority Azerbaijan retains to control prices or profits and indicate under what circumstances Azerbaijan would impose such restrictions.

Answer:

State regulation of prices (tariffs) is being carried out by Cabinet of Ministers, Ministry of Economy, Ministry of Finance, State Committee on Anti-Monopoly, city (district) Executive Power.

Government does not foresee any normative limits to incomes in spheres of production of financial goods in the country. Amounts of incomes made on prices (tariffs) that are under state control are accounted while regulation of those prices (tariffs). In another words, state carries out indirect control over incomes. Thus, Ministry of Taxes of the Republic of Azerbaijan controls incomes of enterprises while regulating control over in time payments of taxes and other charges due to the government.

Retail and whole sale prices for oil products are proved after consultations with Ministry of Economy, Finance and State Committee on Antimonopoly and Entrepreneurship Support. Price control policy of this kind is permanently applied to spheres important for all agricultural sector.

Control over correct formation and application of prices (tariffs) in places is entrusted to the Ministry of Taxes of the Republic of Azerbaijan by the legislation. State control over prices (tariffs) of goods (services) of monopolies is also entrusted to the State Antimonopoly Policy and Entrepreneurship Support Committee by the legislation. Monitoring of consumer prices in domestic market and publication of results in statistical information is entrusted to State Statistics Committee.

Tariff and price regulation in Azerbaijan for above-mentioned services is being carried out upon Decisions of the Cabinet of Ministers "On Regulation of sale prices for energy carriers in domestic market" under #367 by 24 October 1994, "On Regulation of tariffs for transportation of passengers, luggage, mail and cargo by the Azerbaijan State Airways Concern" under #374 by 2 November 1999, "On regulation of tariffs for inter-city transportation of passengers by the Azerbaijan State Azerautonegliyyat Concern" under #380 by 7 November 1994, "On regulation of tariffs for telephone communication services" under #386 by 14 November 1994, "On regulation of tariffs for maritime transportation of passengers" under #411 by 2 December 1994 and "On amendments to some decisions of the Cabinet of Ministers" under #82 by 22 July 1997 upon consultations with the Ministry of Economy, Finance and State Antimonopoly and Entrepreneurship Support Committee

Besides this, commission "On control over wholesale prices for food products sold to the state financed enterprises in the Republic of Azerbaijan" established upon the Decree of the Cabinet of Ministers of the Republic of Azerbaijan under #74s by 5 July 1996 is carrying the responsibility for controlling the wholesale prices for main food products procured by the state financed enterprises.

At the same time, tariffs for public utilities are determined by the Decision of the Cabinet of Ministers "On approval of tariffs for use of dwelling spaces (rental payment) ones in balance of state and public apartment funds and utilities" under #40 by 10 March 2000.

Along with this, draft project of the Decision of the Cabinet of Ministers "On regulation of prices and tariffs for goods supplied by the natural monopolies and rules of their formation" is under Government consideration.

Sectors identified as spheres of natural monopoly activity are determined by the Law of the Republic of Azerbaijan "On Natural Monopoly". The state regulation of natural monopoly activity in order to provide connection between consumers and monopolists interests is being carried out by: 1) regulation of prices (tariffs) for goods of natural monopolies 2) identification of consumers to be compulsorily served and identification of minimum needs of consumers in cases when natural monopolies not able to fully meet needs of consumers.

Regulation policy of the prices (tariffs) for goods of the natural monopoly is formed accordingly to the same Law and state regulation body for determination of economically grounded prices for goods carries out control policy of the level of ground of volume of income, expenditure and elements forming the price.

Government bears state control over natural monopolies' activities regulated by the same Law in order to eliminate limits for and improve competition.

There are no other mechanisms for limitation of state controlled prices (tariffs), also free prices (tariffs) and incomes.

- (c) **Foreign exchange and payments system, relations with International Monetary Fund, application of foreign exchange controls if any**

Question 3

WT/ACC/AZE/2 states that Azerbaijan's "national currency is fully convertible, with some restrictions for capital account transactions." Please describe the restrictions on the capital account.

Answer:

Question 4

Since the regulation of the capital flows is not provided in the normative acts of the Republic of Azerbaijan, these operations are carried out through the personal permission in accordance with the normative acts of the National Bank.

Question 5

Please describe how foreign exchange is acquired or sold in Azerbaijan.

Does Azerbaijan impose any controls or requirements on the acquisition or disposition of foreign exchange by private individuals or firms?

Answer:

In accordance with the current legislation, National currency can be freely converted to any foreign currency. These operations are carried out through the internal conversion of the Baku Interbanks Currency Exchange Markets, Organized Interbanks Currency Markets, Open Interbanks Currency Markets and Banks. Cash exchange is carried out by the Currency Exchange Points. Natural persons buying more than US\$1,000 are required to have passport in order to be registered. Moreover, during advance payment, residents can with no restriction pay up to US\$10,000 or equivalent amount in another currency for any contracts on import of goods or services. At the same time this restriction bears an indicative character and can be individually increased upon the permission of the National Bank.

Question 6

Is it required that proceeds from export of goods or services be converted into national currency? If so, under what circumstances? Please describe any other conversion requirements placed on earnings or remittances in currencies other than the national currency.

Answer:

There is no requirement for proceeds from export of goods or service be converted into national currency. But these kinds of proceeds are required to be deposited into the correspondent accounts in banks of the Republic of Azerbaijan.

Question 7

Does the government provide foreign exchange for any designated purpose? If so, does the price differ from that available on the market?

Answer:

Since the currency market of the Republic of Azerbaijan is liberal enough, there is no need for the government to provide foreign exchange for any designated purpose.

Question 8

Does Azerbaijan permit bank accounts of any kind in currencies other than the national currency?

Answer:

In accordance with the legislation of the Republic of Azerbaijan bank accounts of any kind in currencies other than national are permitted.

Question 9

Please update the information on Azerbaijan's relations with the IMF and its status under the Articles of the Fund.

Answer:

The Republic of Azerbaijan became a member of International Monetary Fund upon the Decree of the President of Azerbaijan by 18 August 1992 and Decision of the Milli Mejlis by

19 August 1992. Since then, relationships between Azerbaijan and International Monetary Fund had dynamically developed. Till now Azerbaijan and IMF have implemented several joint macroeconomic projects and IMF gave credits supporting these projects such as Structural Transformation Facility (STF), Stand-by, Extended Structural Adjustment Facility (ESAF), Extended Financing Facility (EFF), Compensatory and Contingency Financing Facility (CCFF). The total amount of these credits constituted more than US\$600 million. At present, consultations between Azerbaijan and IMF are carried out in accordance with Article IV of the Fund Agreement. At the same time consultations concerning next stage for 3 years are also carried out.

(e) Competition Policy

Question 10

Please review GATS Article VIII (Monopolies and Exclusive Service Suppliers) and provide information on how Azerbaijan is complying, or is taking steps to comply, with the requirements of that Article.

Answer:

Government of Azerbaijan ensures provision of equivalent condition for local as well as foreign services supplier in the provision of goods and services to the market through the legislation acts of Azerbaijan in the entrepreneurship activity and competition protection spheres. Government also prohibits abuse of monopoly rights, unreasonable price control over produced and sold goods, discrimination, provision of exclusive exceptions and unfair competition cases by Laws of Azerbaijan "On entrepreneurship activity", "On Enterprises", "On antimonopoly activity", "On unfair competition". Government established a legal-normative base for relative measures for elimination of law violations.

(f) Privatization policies

Question 11

Please describe Azerbaijan's privatization program in a chart that indicates how many firms or enterprises, by type, were privatized in the period 1991-1995 and in the period 1995 to present, noting as a starting point the total number of firms or enterprises identified initially as eligible for privatization, and giving information by sector. Please classify these firms as small, medium, or large enterprises, and indicate how many in each category have been reserved from privatization, and how many remain to be privatized.

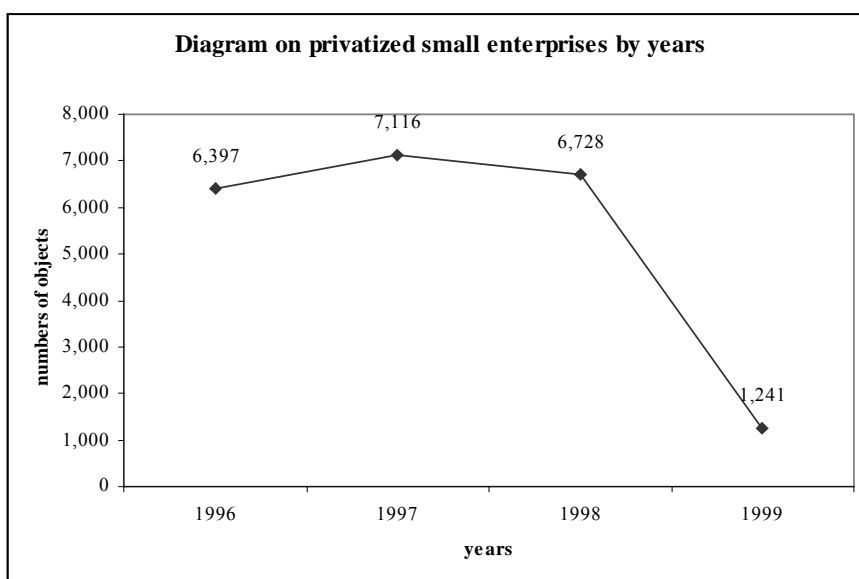
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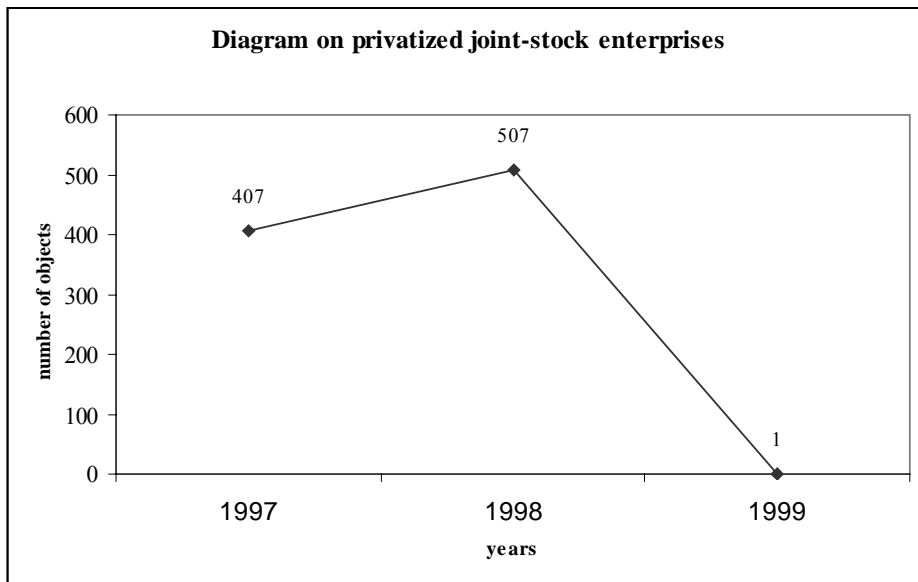
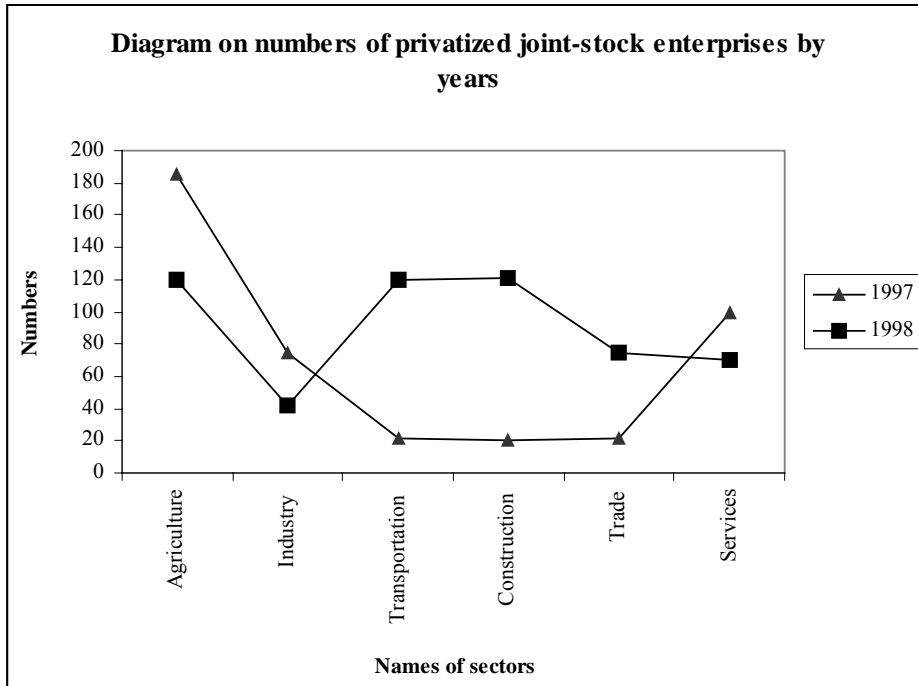
Small scale privatization by years and sectors

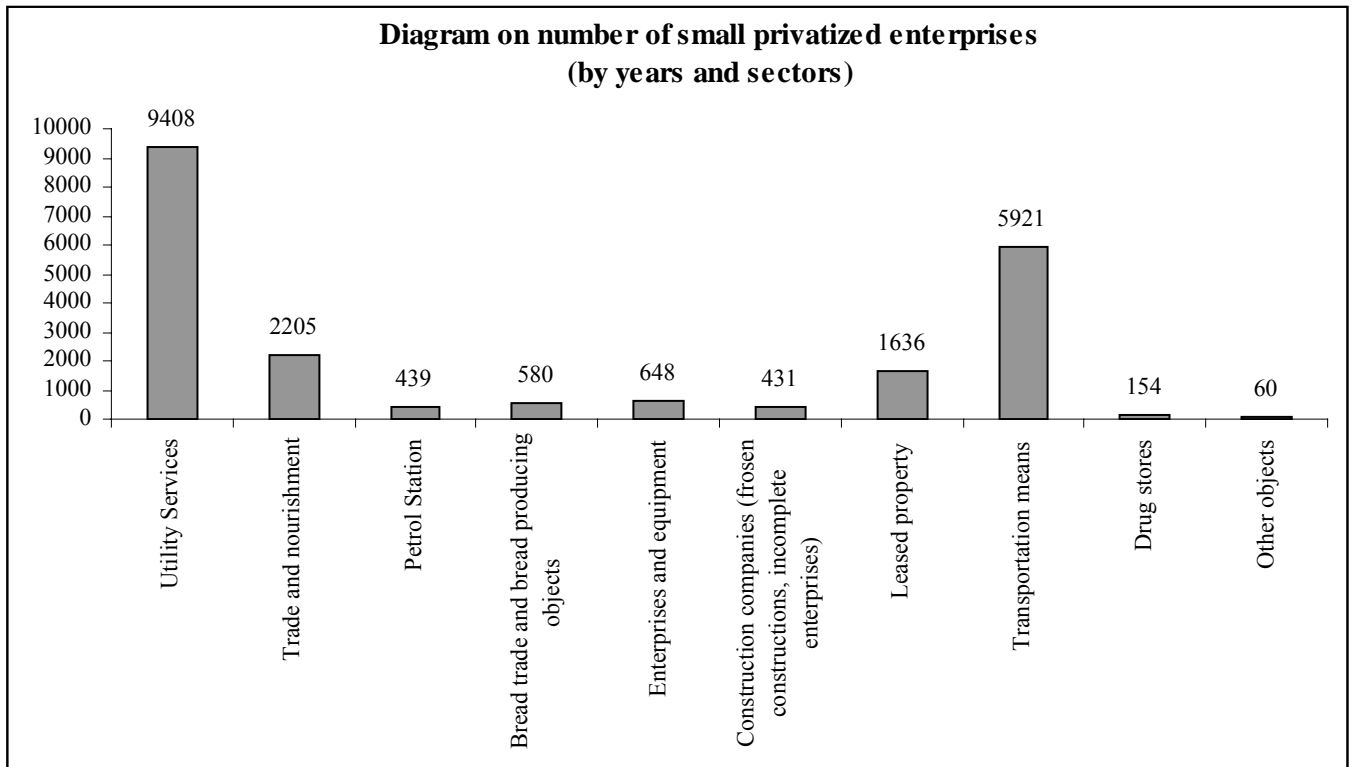
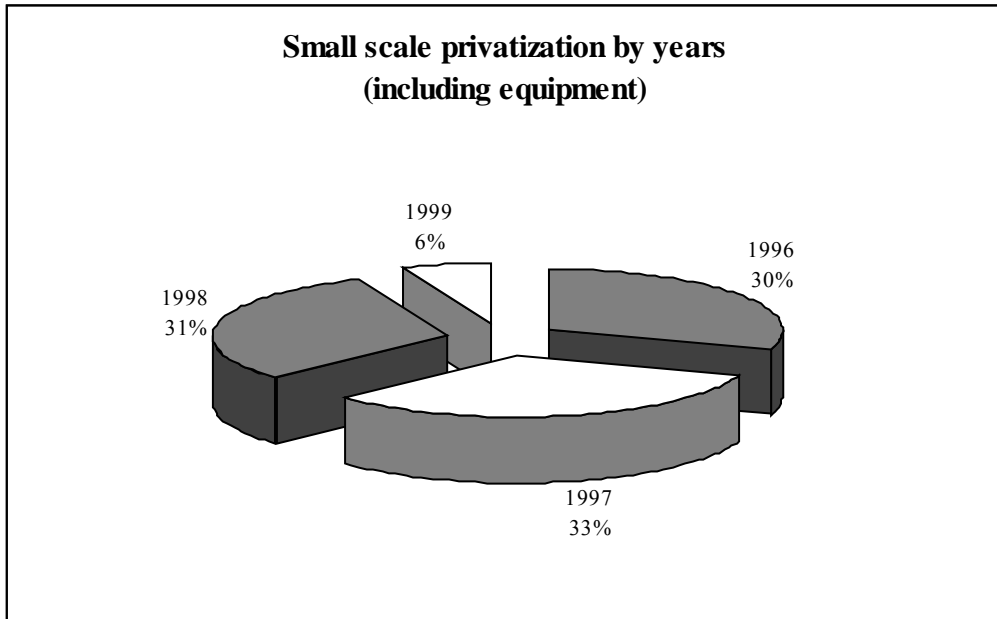
#	Sector	1996	1997	1998	1999	Total
1.	Utility Services	5,103	3,813	412	80	9,408
2.	Trade and Nourishment	387	834	814	170	2,205
3.	Patrol Stations	186	172	57	24	439
4.	Bread shops	302	63	7	1	373
5.	Bread producing stations (equipment)	6	170	25	6	207
6.	Industrial enterprises and equipment	14	308	286	40	648
7.	Construction enterprises	2	53	242	32	329
8.	Frozen constructions, incomplete constructions	5	30	52	15	102
9.	Leased objects	0	87	168	41	296
10.	Leased un-inhabited object	0	221	884	235	1,340
11.	Other spheres	8	1	45	6	60
12.	Drug store	0	4	107	43	154
13.	Transportation means	384	1,360	3,629	548	5,921
	TOTAL	6,397	7,116	6,728	1,241	21,482

Privatized joint-stock enterprises (by years)

Sector	1997	1998	1999	Total
Agriculture	187	119	0	306
Industry	69	42	1	112
Transportation	20	120	0	140
Construction	20	122	0	142
Trade	22	73	0	95
Service	89	71	0	160
TOTAL	407	547	1	955







Question 12

Approximately what portion of Azerbaijan's imports and exports are currently accounted for by state-owned enterprises?

Answer:

Upon the information provided by the Azerbaijan State Statistics Committee proportion of state-owned enterprises in export and import transactions in 1994 constituted US\$4,423,466 thousand and US\$3,921,361 thousand in 1995. The proportion of state-owned enterprises in import-export transactions since 1995 has not been followed.

Question 13

Please update the information provided in WT/ACC/AZE/2 on the status of Azerbaijan's privatization program and its prospects in the next 1-2 years. What firms have been reserved from privatization, and is this status permanent?

Answer:

See answer to Question 11.

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

1. Powers of executive, legislative and judicial branches of government

Question 14

Please outline the hierarchy of laws, i.e., which types of legislative instruments supersede others where there are inconsistencies in two or more laws.

Answer:

According to the Constitution of Azerbaijan, the legislation system of the country consists of following normative legal acts:

- Constitution;
- Acts adopted by the referendum;
- Laws;
- Decrees;
- Decisions of the Cabinet of Ministers;
- Normative acts of the central executive body.

Application and execution of acts adopted by the referendum, after their publication, are obligatory for by citizens, legislative, executive and court authorities, legal persons and municipals.

Laws cannot contradict the Constitution. Decrees of the President of Azerbaijan should contradict neither Constitution nor laws of Azerbaijan.

Decisions of the Cabinet of Ministers of Azerbaijan should contradict neither Constitution, laws nor presidential decrees. Acts of the central executive body should not contradict neither Constitution, laws, decrees of the president nor decisions of the Cabinet of Ministers.

As it provides Article 7 of the Law of the Republic of Azerbaijan "On normative-legal acts", "If there are inconsistencies between two different legally valid normative acts, one with more legal validity supersedes the other. If there are inconsistencies between two legally equal normative acts, one approved latter supersedes the other."

Question 15

How are relative authorities assessed if laws are passed whose provisions appear to conflict with one other.

Answer:

See previous question.

Question 16

Where does Azerbaijan publish second tier legislation (i.e., Acts of the President's Office, the Cabinet of Ministers and the various Ministries)? Is it required that they be published to come into force? If so, please cite the law that provides for this.

Answer:

In accordance with the active legislation of the Republic of Azerbaijan, Laws of Azerbaijan, Decrees and Resolutions of the President of Azerbaijan are published in the official mass media like "Azerbaijan" newspaper and "Collection of the legislation of the Republic of Azerbaijan".

Decision of Milli Mejlis of Azerbaijan are published in "Azerbaijan" newspaper and "Information of the Milli Mejlis" Collection.

Resolutions of the Cabinet of Ministers are published in the official publishing houses like "Collection of the legislation of the Republic of Azerbaijan" and "Republic" newspaper also by other publishing houses when immediate and wide broadcast of the information is necessary.

Normative-legal acts of the central executive authorities are being published in the "Bulletin of normative-legal acts of the executive authorities of the Republic of Azerbaijan", which is the official publishing house of the Ministry of Justice.

Relative executive authorities and Milli Mejlis of Azerbaijan can officially publish their adopted normative-legal acts in the way provided by the legislation of Azerbaijan.

Normative legal acts of relative executive authorities or other bodies are published by them in a volume necessary for wide acquaintance of by citizens.

Normative legal acts can also be published by any publishing houses or broadcasted by mass media.

Laws of Azerbaijan, Decrees of the President and Cabinet of Ministers of Azerbaijan are effective since their publishment if not otherwise foreseen thereby. Normative legal acts of relative central executive bodies, normative acts of regional executive bodies, local municipal bodies and

National Bank of Azerbaijan are effective after the publishment following the registration if not foreseen otherwise thereby. In order to make any part (provision, article, subsection) of the normative legal act effective, different date other than the one fixed for the effectiveness of the whole document can be fixed.

Question 17

Please describe the process that Azerbaijan will use to ratify the accession package approved by WTO members, and indicate about how long it should take.

Answer:

All proposals concerning joining to international agreements are being submitted to the President of the country by the Cabinet of Ministers and the Ministry of Foreign Affairs. Proposals on joining the international agreements including rules different from those provided in national legislation are being submitted to the President of Azerbaijan in coordination with the Ministry of Justice and approval of special experts.

The President of Azerbaijan is the one making decision on bearing the negotiations or actual conclusion of international agreements.

Agreements on joining of Azerbaijan to the universal or regional international organizations should be ratified by the Milli Mejlis. International agreements should be submitted to the Milli Mejlis within one month for ratification.

International agreements of Azerbaijan are being independently submitted by the Ministry of Foreign Affairs, other ministries, with the committees and departments, or in co-ordination with them to the President of Azerbaijan.

International agreements of Azerbaijan submitted by the President of Azerbaijan to the Milli Mejlis for ratification are reviewed by the experts of the Supreme Council for their comments.

International agreements submitted for ratification should be in national language. In cases if contexts of agreements are not in national language, they should be translated and relative documents proving the official translation should be attached.

Question 18

How will WTO provisions be implemented in Azerbaijan? Will the WTO automatically supersede domestic law after its is ratified? Will conflicting domestic laws still be enforced unless repealed or replaced by specific legislation?

Answer:

In accordance with provisions of the effective legislation, whenever Azerbaijan becomes a part of international organization or agreement, government makes relative corrections and additions to its legislation. According to Article 148.2 and Article 151 of the Constitution of Azerbaijan, international agreements that Azerbaijan is a part to are integral part of its legislation. If there are inconsistencies between normative legal acts of the legislative system of Azerbaijan (except the Constitution of the Republic of Azerbaijan and acts adopted by the referendum) and interstates agreements that Azerbaijan is participating, mentioned agreements supersedes domestic normative legal acts.

Along with this, amendments and additions to the legislation of Azerbaijan related to the WTO Agreements will be made upon the membership.

2. Government entities responsible for making and implementing policies affecting foreign trade

Question 19

WT/AZE/2 states that the Ministry of Commerce coordinates the activity of other central executive bodies in the field of internal and foreign trades in compliance with the existing legislation.

Please describe the structure of the coordination mechanism for trade policymaking, citing the relevant legislation, and outline its roll in this negotiation.

Answer:

According to Decree of the President of Azerbaijan under #626 "On Provision on the Ministry of Commerce of Azerbaijan" by 26 July 1997, responsibilities and authorities of the Ministry of Commerce are as follows:

- within its authority and in a way described by the law, demand of relative documents and information of government and non-government bodies, natural persons and legal entities;
- application to foreign government and non-government agencies, enterprises and banks and establishment of cooperation with them;
- taking part in events or meeting carried by international trade organizations;
- submission of claims to prohibit activity, abort licence and other measures against enterprises violating trade rules;
- submission of relative proposals on abortion of decisions made regarding trading by the central executive authorities contradicting effective legislation.

Responsibilities of the Ministry of Commerce within its authorities are as follows:

- participating in elaboration of state concept on main principles of trade its implementation by attracting other central executive authorities;
- participating in elaboration of measures on implementation of state policy in trade and keeping control over compliance with effective legislation, international legal norms and within its authorities control over application of relative commitments coming from international agreements;
- participating in elaboration of international agreements and carrying out of talks with other countries on trade-economic cooperation in the identified manner;
- in foreign economic cooperation sphere, elaboration of proposals on measures ensuring implementation of international agreements together with or in coordination with the Ministry of Foreign Affairs;
- together with the Ministry of Foreign Affairs carries out coordination of foreign trade relations with CIS countries and submits relative proposals to the Cabinet of Ministers in coordination with central executive authorities;
- participating in elaboration of coordination and implementation of international agreements of Azerbaijan on transportation, transit of goods, also legal, tariffs and other measures in foreign trade logistics;

- participating in establishment of equal conditions in domestic market for residents as well as for foreign investors to trade, submission of relative proposals in this concern to the Cabinet of Ministers;
- participating in elaboration of forecasts regarding foreign trade balance of the country;
- carrying out of researches regarding domestic trade, social nourishment and elaboration of forecasts on their development in current and further periods and submission of proposals to the Cabinet of Ministers;
- preparation and submission of proposals to central executive authorities on increasing of quantities of domestically produced goods, their competitiveness, importation of produced consumer goods;
- together with central executive authorities applies measures on increasing quantities of socially used products, participates in elaboration of programs aimed to eliminate special situations arising in goods provision sphere;
- participates in development programs of economic reforms in domestic trade and social nourishment, anti-monopolizing activity and establishment of conditions for competition, in privatization of enterprises, preparation of proposals on description of formation of trade relations, development of pricing, taxes and account systems;
- Organization of scientific researches for foreign and domestic trade, provision of foreign economic entities with necessary scientific-technical, economic, legal information, carrying out of works on establishment of database and information systems on foreign economic activity and trade;
- Establishment of information system for trade and provision of advises;
- Application of measures on non-tariff regulation of foreign trade, and in cases provided in the legislation and in the prescribed order issues licenses for import and export activities, also issuance of certificates of origin for goods to be exported out of the customs territory of Azerbaijan if it is necessary and if it is foreseen by the agreements (contracts) normative acts and in international agreements of Azerbaijan;
- In the identified way, submits proposals on rates levies and taxes in trade;
- Within its authorities, participates in elaboration of drafts normative acts regulating trade activity;
- Participates in elaboration of proposals on development of customs legislation of Azerbaijan;
- Organizes and coordinates cooperation of central executive authorities with World trade Organization and other international economic organizations and participates in meetings organized by these organizations;
- In the prescribed way, participates in establishment of representations of Azerbaijan in other countries and international trade organizations and keeps control over their activity;
- Participates in organization of exhibitions and fares of foreign companies in Azerbaijan and in organization of exhibitions in other countries held with participation of Azerbaijan companies;
- Carries out researches in order to prepare proposals on protection measures of importing goods, also carries out consultations with relative authorities of other countries and in the conclusion applies relative measures;
- Carries coordination activity with other central executive authorities on application of temporary technical measures (like; standards, safety norms, systems of compliance with qualitative requirements, packaging rules, forms of documents attached to goods, requirements of pre-shipment inspection, ecology, veterinary, sanitary and phytosanitary norms, measures for provision of national safety, methods of provision of compliance of works and services to identified norms) regarding import-export of goods, works and services;
- Provides protection against importation of unqualified to the market;

- Participates in elaboration of instructions and other normative acts concerning provision of population of the country with necessary products and goods of a first need in special situations, carries activity for ensuring state security of the country and provision of normal working conditions for trading enterprises;
- Submits proposals on border territories and rules for border trade to the Cabinet of Ministers;
- Within its authorities, participates in establishment and regulation of free economic zones, together with central executive authorities and international organizations assists in attraction of and supports to foreign investments to free economic zones;
- Prepares proposals concerning implementation of state encouragement mechanisms for industrial exports and main directions of trade policy;
- Participates in implementation of investments projects and attraction of investments to Azerbaijan, submits proposals regarding establishment of beneficial conditions for foreign investors;
- Implements necessary measure for provision of social protection of ministry staff, improvement of working conditions of employees;
- Carries out other responsibilities foreseen in by the legislation of Azerbaijan.

In addition to this, it is necessary to note that the Ministry of Commerce is the main executive of the Program "State Program for trade development in the Republic of Azerbaijan for years 1999-2002" approved by the Decree 160 by 23 July 1999 of the President of Azerbaijan.

Main directions of this Program are as follows:

- ensuring improvement of export potentials and development of export structure;
- improvement of competition potentials of produced goods;
- increasing benefits from import;
- attraction of investments and credits to prior spheres in order to create strong economic potentials of the country and implementation of technology developments;
- improvement of free competition conditions in domestic market, provision of consumer's rights;
- creation of unique information-register system for trade, nourishment and other kinds of services.

3. Division of authority between central and sub-central governments

Question 20

WT/ACC/AZE/2 states that the heads of local executive authorities carry out the executive power in the regions (districts, cities).

Do sub-central authorities in Azerbaijan have any authority to apply subsidies or rules for investment, or take other measures covered by WTO provisions independent of the authority and control of the central government?

Answer:

Authorities of sub-central or municipal authorities to apply subsidies or investments independently of the authority of the central government is regulated by the Law of Azerbaijan "On Financing the municipal authorities" under #722-Q by 7 December 1999 and "Provision on sub-central authorities" approved by the Decree of the President of Azerbaijan under #138 by 16 June 1999.

Question 21

Do Azerbaijan's sub-central authorities have the power to apply taxes independently of central authorities? If so, what sorts of taxes are applied and what is the relative size of their total compared with total central government revenues?

Answer:

In accordance with Tax Code of Azerbaijan effective since 1 January 2001, taxes are determined only by this Code and any changes to these taxes are applied only by making changes to this Code.

Coming to local taxes (municipal taxes), these taxes are ones determined by the Tax Code and relative law and applied in accordance with decision of local municipal authorities and applied in districts covered by these municipals. Other mandatory payments applied by the municipal authorities are determined by the relative law.

Local municipals are determining following elements of tax application accordingly to the Tax Code: tax concessions and tax rates in cases foreseen by the Code.

Question 22

How would the central authorities act to override any action by sub-central authorities that, after Azerbaijan's accession, violated WTO provisions?

Answer:

Acts adopted by local municipals should be based on legality and fairness (equal interests and attitudes), should not contradict Constitution, Decrees of the President, decisions of the Cabinet of Ministers (in Nakchivan Autonomic Republic; Constitution of Nakchivan, laws, decisions of the Cabinet of Ministers of Nakchivan).

In cases of inconsistencies between effective normative legal acts of the national legislation (except Constitution of Azerbaijan and acts adopted by the referendum) and inter-governmental agreements that Azerbaijan is a part to, international agreements supersede normative legal acts.

4. Any legislative programmes or plans to change the regulatory regime

Question 23

Please report on efforts made since Azerbaijan applied for WTO accession in 1998 to bring its trade regime into line with WTO provisions.

Answer:

The New Tax Code adopted in Azerbaijan is for the first time combines all taxes in it. Moreover, government adopted several laws like "On protection of Investors rights in stock market", "Labor migration", "On technical security", "On investments funds" etc. aimed to provide legal protection for economic reforms.

List of VAT exempt imports determined upon the decision of the government of Azerbaijan is also elaborated.

The Decision of the Cabinet of Ministers "On rates of customs charges for import-export transactions in the Republic of Azerbaijan" approved under #91 by 22 April 1998 foresees the volume of simplified customs charges applied for customs registration.

Normative legal acts like Laws "On Copyrights and cooperate rights", "On Patent", "On Antimonopoly activity", "On Unfair Competition", "On trademarks and geographical signs", Civil Code, Civil-Procedural Code, Criminal Code, Criminal-Procedural Code and other legal acts have been adopted and amended. Along with this, Azerbaijan is continuing its membership to the World Geneva Convention "On Copyrights" since 1997 (from the date of former USSR membership to this Convention by 27 May 1973) and declared its membership to the Bern Convention "On protection of cultural and art works" since 27 November 1998 and since 1999 is a participant to this Convention. Besides this, Azerbaijan adopted several relative laws declaring the participation of Azerbaijan in "Convention on united law on Bills and Note of Hands" and "Convention on united law on vouchers".

Also since 1999 Azerbaijan is a member to the "Agreement on Prevention of infringements of intellectual property rights" that CIS countries are participating in.

At the present, issues concerning membership of Azerbaijan to the Agreements "On Copyrights" "On Works and phonograms" (Internet agreements) of the World Intellectual Property Organization, also Geneva Convention "On Protection of rights of phonogram makers from illegal copying", Rome Convention are under consideration.

In order to improve the national legislation and bring it into line with international standards, new Criminal Code, Criminal-Civil Code, Civil Code, Civil-Procedural Code and Code On Administrative Infringements of Azerbaijan are brought into effect since 1 September 2000.

Question 24

Please review the list of laws provided in Annex II of WT/ACC/AZE/2 and listed in WT/ACC/AZE/2/Add.1 and ensure that copies of relevant trade legislation has been provided to the WTO Secretariat for review by WP members. In particular, we would want to have copies of laws related to customs measures, quotas or bans on imports or exports, tariffs, import and export licensing, intellectual property protection, certification of standards or sanitary requirements for imports, and fees, charges and taxes applied to imports.

Answer:

Copies of laws related to trade are submitted to the Secretariat of the WTO.

6. Description of judicial, arbitral or administrative tribunals or procedures, if any

Question 25

Please describe the right of appeal within Ministries of importers and exporters of administrative decisions taken by the authorities on issues covered by WTO provisions, e.g., customs valuation; classification; application of tariffs, taxes and customs charges; licensing or other non-tariff measures, intellectual property rights, etc.

Answer:

With claims of administrative decisions made by the authorities on issues covered by WTO provisions, importers or exporters have the right firsts to appeal to the relative Ministry as the first instance, then to general courts or to economic court.

The new Civil-Procedural Code of Azerbaijan is effective since 1 September 2000. This Code provides protection for infringed rights while dispute settlements and rights for freedom. The relativity of disputes to Economic Court or General Court is decided upon subjective reasons of the involved parties or subject of the dispute or by this Code upon characteristics of legal relations.

In cases related to disputes on civil, family, labour, apartment, land issues, usage of natural resources, environment protection, tax, and administrative matters in other spheres, if any of involved parties is a natural person and is not an entrepreneur or even if the party is the one, but the case doesn't concern his business, these disputes are treated by general court in a civic way.

In cases of disputes arising from commercial relations between natural persons with no juridical status engaged in entrepreneurship with no concern to their subordination to any enterprise and juridical persons, these cases are treated by economic court in a civil way.

Decree of the President of Azerbaijan by 8 October 1996 on implementation of the Law "On copyrights and cooperate rights".

Decision of the Cabinet of Ministers by 2 May 1997 on implementation of the Law "On copyrights and cooperate rights".

In year 2000 the Ministry of Justice adopted "Rules on registration of copyrights subjects".

The Law of Azerbaijan "On Patent" under #312-1 Q is effective since 2 August 1997 (since its publication date).

The law of Azerbaijan "On trademarks and geographical signs" under # 504-1 Q is effective since 27 August 1998 (since its publication date).

The Provision of Azerbaijan State Committee on Science and Technology "On the Appellation Commission" is brought into effect by the Decision of the Cabinet of Ministers under #155 by 2 September 2000.

Rules on State register of trademarks are brought into effect by the Decision of the Cabinet of Ministers under #143 by 30 August 1999.

Rules on State register of geographical signs are brought into effect by the Decision of the Cabinet of Ministers under #143 by 30 August 1999.

Provision on Patent ownership is brought into effect by the Decision of the Cabinet of Ministers under #21 by 15 February 2000.

Rules on application for registration of trademarks and their expertise are brought into effect by the Decision of the Cabinet of Ministers under #166 by 15 September 2000.

Rules on application for registration of geographical signs and their expertise are brought into effect by the Decision of the Cabinet of Ministers under #166 by 15 September 2000.

Amount of levies and charges related to protection of industrial property and rules of payment were approved by the Decision of the Cabinet of Ministers under #37 by 6 March 2000.

Rules of preparation of application form for patent obtainment for innovation, rules of submission and consideration were approved by the Decision of State Science and Technology Committee under #9 by 5 June 1999.

Rules of preparation of application form for patent obtainment for industrial models, rules of submission and consideration were approved by the Decision of State Science and Technology Committee under #5 by 8 May 1998.

Question 26

WT/ACC/AZE/2 states that “The Economic Court of the Republic of Azerbaijan is the highest law court for the settlement of economic disputes. It carries out control over activity of respective specialized law courts in an order envisaged by law.”

Are the Economic Court and its “respective specialized law courts” the judicial bodies where appeals are heard of administrative disputes on matters covered by WTO agreements, e.g., customs valuation; classification; application of tariffs, taxes and customs charges; licensing or other non-tariff measures, intellectual property rights, etc.

Answer:

In accordance with Article 132 of the Constitution of Azerbaijan the Economic Court is a high court authority considering of economic disputes and it supervises respective specialized law courts in the way described by the law.

All procedural activities of judges of the Economic Court are identified by the procedural legislation and Economic Court is not a specialized judicial court, it is a state court.

Economic Court does not consider administrative disputes while carrying out of fair judgement. Therefore, the Economic Court can not be considered as a judicial body considering administrative disputes.

See answer above.

Question 27

Please describe the process be which importers and exporters appeal to a tribunal independent of the Ministry where the first administrative action was taken.

Answer:

See answer above.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Registration requirements for engaging in importing

Question 28

WT/ACC/AZE/2 states that “there is no registration requirement to become involved in importing.”

Will Azerbaijan confirm that the former State monopoly in foreign trade has been abolished and that no restrictions exist on the right of foreign and domestic individuals and enterprises to import and export goods within Azerbaijan, except as provided in WTO Agreements.

Answer:

Azerbaijan confirms the abolishment of former soviet monopolists in foreign trade and that there is no restrictions for foreign or local enterprises and individuals to import or export goods except those prohibited by the Law.

Question 29

Will Azerbaijan confirm that individuals and firms are not restricted in their ability to import and export based on any official statement or registration of their scope of business, and any criteria for business registration are available to the public?

Answer:

Azerbaijan confirms that there is no restriction on individuals or firm's ability to import or export within the scope of their business or any official statement.

Question 30

Can Azerbaijan list and describe any requirements for licenses for certain activities, particularly as they might relate to importation?

Answer:

Import export activities are carried out in accordance with laws of the Republic of Azerbaijan. Information related to issuance of special permission (licence) for engagement in certain activities in Azerbaijan is reflected in the answer to question below.

- (b) **Characteristics of national tariff, customs tariff nomenclature (HS), types of duties, general description of the customs tariff structure, weighted average level of duties on main customs tariff groupings; application of m.f.n. tariff rates, tariff preferences**

Question 31

Can Azerbaijan confirm that it uses HS 1996 tariff nomenclature to the HS 1996 system to at least the six-digit level?

Answer:

Since 1992 nine-digit code is used for goods in customs system in the Republic of Azerbaijan. First six-digits of which are used in accordance with HS and first eight-digits are used in accordance with the combined system used in the Council of Europe. Last ninth digit is used to distinguish economic features of the country.

Milli Mejlis of Azerbaijan has adopted the Resolution by 3 May 2000 on accession to the International Convention "On harmonization system of commentary and encode of goods". The State Customs Committee has officially reported to the World Customs Organization on this matter.

Question 32

Has Azerbaijan supplied a copy of its applied tariff rates to the Working Party? If so, is it in electronic format? If not, could this document be provided?

Answer:

Azerbaijan will soon supply a copy of its applied tariff rates to the Working Party.

Question 33

Approximately what portions of Azerbaijan's central government revenues are accounted for by tariff revenues? By non-tariff fees collected on imports? By VAT and excise taxes collected on imports?

Answer:

Revenues collected from customs levies and taxes amounted for 719.6 billion Manat (including: import levies - 271.3 billion Manat, VAT - 384.9 billion Manats, excise taxes - 12 billion Manats other charges - 51.4 billion Manats) which constituted 20.2 per cent of total state revenues.

Amount paid to the government for the special permission (licence) for importation of alcohol beverages and tobacco products during year 2000 constituted 3,113,674,352 Manats. During year 1999 this number was up to 5,868,467,727 Manats. Amount from 1 July 1997 to 1 October 2000 constituted 250,000,000Manats.

Question 34

WT/ACC/AZE states that since 1997, Azerbaijan has had a simple tariff structure of two rates, 5 per cent and 15 per cent, with a number of products are granted duty free access. It also states that there are products which are exempt from duties (and VAT as well), including seeds; feeds; fertilizer; animals for breeding; pharmaceutical products; capital equipment; equipment (including spare parts) used in agriculture; packaged baby food and syringes.

At what general level are duties applied to agricultural products? What sorts of products are imported duty free?

Answer:

Customs duties applied to imported agricultural products are different.

Seeds, fertilizers for agriculture, forage, pedigree cattle, medicine, medicine used in veterinary, biological preparations and veterinary equipment, also machines for agriculture, and their spare parts, also raw materials used in processing of agricultural products - materials, equipment and inventory are exempt from custom duties and taxes.

Question 35

To what extent is Azerbaijan prepared to bind its applied tariff rates in the context of establishing its GATT Schedule of concessions?

Answer:

Custom tariff draft of Azerbaijan prepared in accordance with the preparation of the GATT Schedule of concessions and submitted to the relative government authorities for their opinions and comments.

Bind rates of maximum level all tariffs and other charges on imports can be achieved in bilateral negotiations on market access.

(d) Other duties and charges, specifying any charges for services rendered

Question 36

WT/ACC/AZE/2 states that the following *ad valorem* customs charges are imposed on exports and imports:

- **State enterprises pay an *ad valorem* fee of 0.15 per cent of the customs value of goods but no less than the equivalent of three minimum monthly wages;**
- **In-kind contributions to a joint venture are subject to the *ad valorem* rate of 0.25 per cent but no less than the equivalent of two minimum monthly wages;**
- **Exports and imports in barter transactions are subject to the rate of 0.25 per cent but no less than the equivalent of four minimum monthly wages.**

Are these charges, when applied to imports, applied in place of tariffs, or in addition to tariff charges?

Answer:

Number of types of levies and their rates were understated.

The decision of the Cabinet of Ministers of Azerbaijan "On amount of customs levies on imports and exports" under #91 by 22 April 1998 regulates amount of levies for customs registration:

- i. For customs registration of goods (including transport means, transported across the customs border of the Azerbaijan Republic), as well as goods and loads, and transport means, designated for non-commercial purposes, transported in non-accompanied luggage and international mail sendings, the customs duties are levied in amount 0.15 per cent of their customs value (not least than US\$10) in Manats by rate of the National Bank of the Azerbaijan Republic.
- ii. For the customs registration of goods and transport means, transported across the customs border of the Azerbaijan Republic in the purposes of humanitarian and technical assistance, and inter-transmission of electric energy as well as for formal use of the diplomatic representatives, located in the Azerbaijan Republic and personal use of the staff members of these representatives, the customs duties are not levied.
- iii. For each additional sheet of the Customs cargo declaration irrespectively from type of transaction the payment in amount of US\$5 is levied by rate of the National Bank of the Azerbaijan Republic.
- iv. For customs registration of goods, transferred across the customs border of the Azerbaijan Republic under the customs regime of transit, the customs duties of amount US\$30 and for each additional Customs cargo declaration – US\$10 are levied by rate of the National Bank of the Azerbaijan Republic.
- v. For the delivery of the document about registration of transport means, imported (as well temporary imported) by physical entities to the customs territory of the Azerbaijan Republic, the customs payment is levied in the following amounts:

- For trucks and cars, minibuses and buses – US\$20;
 - For other transport means – US\$15. The payment is delivered by rate of the National Bank of the Azerbaijan Republic.
- vi. For the registration of goods and transport means out of the working time of custom bodies of the Azerbaijan Republic and outside authorized place the customs duties are levied of two amounts.

Fees for customs registration shown above are used in addition to tariff charges.

Question 37

WT/ACC/AZE/2 also states that convertible currency exports and imports are subject to the *ad valorem* rate 0.25 per cent but no less than \$5 dollars (or its equivalent converted at the official rate of Manat).

How is this tax collected? Why is it assessed, e.g., for revenue purposes, for services, etc.? How are the revenues collected used by the government of Azerbaijan?

Answer:

Customs fees rates for customs registration are being determined upon customs value of goods. Collected amount is being transferred to the none-budget account of customs authorities and, in coordination with the Ministry of Finance, being used for consolidation of financial-technical base of customs authorities.

Question 38

WT/ACC/AZE/2 states that goods shipped for further processing are subject to the *ad valorem* rate of 0.25 per cent.

Is this a charge on goods imported for further processing where the output is exported, and therefore the imports are exempted from normal customs duties? Is the fee charged in place of normal tariffs?

Answer:

Goods imported for further processing are exempt from customs taxes and duties. Forms of application of customs fees for customs registration on those products are shown above.

Processing goods are not customs tax or duty imposed like other export goods.

Question 39

Are there any additional non-tariff charges, other than internal taxes applied to domestic goods as well, applied to imports? If so, please list them.

Answer:

Certain charges are imposed on those products subject to import licensing and quantitative restrictions.

The Ministry of Economy of Azerbaijan fixes annual quotation on import. Proportion of each enterprise of total import volume constitutes 15 per cent. Those are as follows:

Quantitative quotation on champagne - 1,000,000 bottles, wine - 300,000 l., vodka - 700,000 l., ethyl spirit - 5,000,000 l., cigarettes and cigars - 4,500,000,000 pieces, beer - 9,000,000 l., cognac - 500,000 l.

Import licensing in Azerbaijan is regulated by the Decision of the Cabinet of Ministers of Azerbaijan "On Rules of issuance of licence for importation of ethyl (eatable) spirit, alcohol beverages and tobacco products to the Republic of Azerbaijan " under #33 by 4 March 1999. This provides licence charges for importation of tobacco products and alcohol beverages. These are as follows:

Beer 1 litre - 150 m., spirit 1 l. - 5 m., vodka 1 l. - 1,000 m., wine, champagne, cognac 1 l. - 1,000 m., for each 1,000 pieces of tobacco pr. - 500 m., accounted for as licence payment should be paid to the Finance department of Baku city.

Question 40

As confirmed in a panel ruling under GATT 1947, non-tariff fees applied in connection with importation and exportation should meet the requirements of GATT Article VIII, i.e., that they be related approximately to the cost of the service supplied, not to the value of the goods in trade.

Azerbaijan should make clear to the Working Party the purpose of these fees and whether or not they are applied in place of normal tariffs or in addition to them.

Answer:

Charges shown above are applied in addition to normal tariffs. The purpose of these charges is to finance the customs authorities.

Question 41

We expect that, in the context of WTO accession, Azerbaijan will bind the maximum level of all tariffs and other charges on imports not otherwise justified under WTO provisions.

Answer:

Bind rates of maximum level all tariffs and other charges on imports can be achieved in bilateral negotiations on market access.

Question 42

In light of this, how does Azerbaijan plan address the current non-tariff ad valorem fees applied to imports to meet these requirements or otherwise bring them into conformity with WTO?

Answer:

It is currently under consideration. We emphasize that till now, old system has been simplified and unjustified rates have been decreased.

(e) **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

Question 43

Please provide a comprehensive list of products, by HS number and description, that are absolutely prohibited from being imported into Azerbaijan.

Answer:

Import and export of goods shown in table are carried out exclusively upon decision of the Cabinet of Ministers of Azerbaijan. These goods are not for export for credits, consignment, and border trade transactions.

List

Goods import and export of which are carried out upon decision of Cabinet of Ministers

Name of goods	Code of Goods Nomenclature in Foreign Economic Activity
Weapons and military technology, spare parts for construction	8710, 8802 (excluding 8802 11 100, 8802 12 100, 8802 20 100, 8802 30 100, 8802 40 100); 8803 (excluding 8803 10 100, 8803 20 100, 8803 30 100, 8803 90 910); 8906 00 100, 9301, 9302, 9305 (with only concern to military weapons); 9306 (excluding 9306 10 000, 9306 29 100, 9306 30 910, 9306 30 930); 9013, 9013 10 100, 9013 20 000, 9013 80 000, 9014 (with concern to only stuff of military use); 8526 (with concern to only stuff of military use)
Powder, explosives, pyrotechnics and explosion items	3601 (excluding powder for hunting); 3602-3604
Nuclear materials, technologies, equipment and installations, special non-nuclear materials, sources of radiation, including radio active elements	
Drugs and psychotropic means, chemical poisons	
Different types of scientific information, technologies, materials and equipment used for creation of military technology and weapons	

Question 44

Concerning the need for a licence to import “chemical elements used for cultivation of plants, medicines used in veterinary biological preparations and medical preparations:”

Please indicate the information importers are required to provide and the other requirements they must meet to be able to receive the licence.

Answer:

Importation of chemical elements used for cultivation of plants is regulated by the Decision #2 by 6 January 1998 of the Cabinet of Ministers "On approval of rules for issuance of special permission (licence) for provision of services in plant protection sphere".

According to this decision, along with other forms of activity, sale, import and export of chemicals used for cultivation of plants are also foreseen. Importers can bear commercial activity in a way and period foreseen in by license issued according to this Rules.

Only owner himself can use issued licence (or copy of the licence). Exception is only for temporary issuance of licence to people acting on behalf of the licence owner according to official labour agreement (contract) or assignment contract.

In order to obtain licence the importer should submit to the Ministry of Agriculture following documents:

Application for obtaining the licence:

Following should be reflected in the application:

- for legal entity - name of the legal entity, organizational-legal form of the enterprise, legal address, account number and name of the bank, type of activity;
- For natural persons - name, family name, father's name, information on ID (type, number, date and name of the authority issued, address), type of activity;
- Copy of registration documentation of the enterprise;
- Copy of certificate for state registration of the enterprise;
- Copy of the certificate issued by the tax authorities to the natural persons for registration of the type of activity;
- Document apporing payment of the state fee for obtaining the licence;
- Copy of the document approving rights of the applicant for use of objects shown in the application (rights for ownership, rent, use etc.);
- Copy of the document approving appropriate speciality of the head of the enterprise or experts attracted to this work according to the type of activity foreseen in the licence.

Importation of the medicines used in veterinary, which are under state veterinary control, is carried upon official permission of the Veterinary Department of the Ministry of Agriculture according to "Rules on importation and exportation of shipments under veterinary control in Azerbaijan" registered in the Ministry of Justice under #102 by 21 May 1998 and approved by the Azerbaijan State Veterinary Committee by 12 May 1998.

In order to bring goods under veterinary control into Azerbaijan, owner of shipments should present to the Department for Veterinary of the Ministry of Agriculture a pack of documents consisted of list of characteristics of goods, quantity of goods, aim of the import, name of the importing country, check point at the border, warehouses for shipments storage, 30 days prior to the shipment. Veterinary certificate agreed with the Department for Veterinary of the Ministry of Agriculture, agreement reflecting all requirements of the Department for Veterinary of the Ministry of Agriculture, terms for quality, also certificates for quality and origin should be also enclosed to the application. Along with this, medicines used for veterinary are being registered according to Provision "On expertise and registration of the medicines used in biological preparations produced outside Azerbaijan" approved by the Veterinary Committee by 6 April 1993. Foreign preparations haven't passed the expertise and without document of registration cannot be obtained by the Azerbaijan side.

According to the Decree of the Cabinet of Ministers of Azerbaijan "On approval of issuance of special permission (licence) for pharmaceutical activity" by 1 May 1998, all imported medicine preparations should be registered and permitted by the Ministry of Health. In order to bear pharmaceutical activity in Azerbaijan, first medicine preparations to be imported to Azerbaijan should be registered in the Ministry of Health. Followings are necessary to be presented for registration:

- Application - country, name of the firm-applicant; firm producer, country; firm patent owner; terms of effectiveness of the patent; name of the preparation; international non-patented name; main synonyms; contents of preparations; form of medicine; dose of the medicine preparation; methods of treatment with this preparation (oral, injection etc.); main comments on methods of treatment with this preparation; terms for keeping and requirements reflecting rules for keeping preparations; standard packaging;
- Document approving registration of the preparation in country origin of the applicant or in any other country (original or 3 copies in English approved by the notary (or in Russian));
- Instructions for medical use of preparation - one copy in Azerbaijani (or in Russian) and one copy in English (or the language of the original);
- Documents reflecting results of pre-clinical and clinical experiments on preparations, normative documents used while bearing control over quality of preparations, 3 copies in Azerbaijani (or in Russian) and 3 copies in English (or the language of original).

Samples of preparations in 5 packages.

After this, in order to bear pharmaceutical activity in Azerbaijan, special permission (licence) should be obtained. Issuance of licenses is regulated by the Ministry of Health according to the Decision of the Cabinet of Ministers "On approval of rules for issuance of special permission (licence) for pharmaceutical activity" by 1 May 1998.

In order to obtain licence, applicant should submit following documents to the Ministry of Health:

- Application for licence -
 - for legal entities - name of the legal entity, organizational-legal form of the enterprise, legal address, account number and name of the bank, type of activity
 - for natural persons - name, family name, father's name, information on ID (type, number, date and authority issued, address), type of activity;
- Copy of registration documentation of the enterprise;
- Copy of the certificate for the state register of the enterprise;
- Copy of the certificate issued by the tax authorities to the natural persons for registration of the type of activity;
- Document approving payment of the state fee for obtaining the licence;
- Copy of the document approving rights of the applicant for use of objects shown in the application (rights for ownership, rent, use etc.).

Requirement of documents not foreseen by these rules is prohibited.

Question 45

Please outline the role of other government agencies in setting and evaluating the criteria applied for receiving import licenses for these products.

Answer:

Annex 2 of the "Rules for regulation of import-export transaction in Azerbaijan" approved by the Decree of the President by 24 June 1997 covers actions with medicine used veterinary, biological preparations and veterinary means, medicine preparations, medical means and chemicals used in

cultivation of plants. Importation of chemical elements used for cultivation of plants, veterinary elements and biological preparations is carried out upon permission of the Ministry of Agriculture, also importation of medical preparations, medicines used in veterinary, medical means is carried out upon permission of Ministry of Health and registration of contract in the Ministry of Commerce.

As a final stage, medical preparations used in veterinary can be applied only after their expertise and registration in by the Department for Veterinary of the Ministry of Agriculture according to Article 20 of the Law of Azerbaijan "On Veterinary".

Importer should submit following documents when obtaining licence from the Department for Veterinary of the Ministry of Agriculture:

- agreement concluded between seller and buyer;
- certificate of origin;
- certificate of quality;
- laboratory analysis (from importer);
- document (licence) approving state register of the preparation in Azerbaijan.

Question 46

Please provide additional information on Azerbaijan's import licensing and quantitative restriction system for imports of alcohol (ethyl) spirit, alcohol beverages and tobacco products.

How are the quantitative quotas determined? Are they delineated by country or are they global? Does the Ministry of Economy determine these quantities? Are a limited number of state-authorized importers in control of the trade? How is this system consistent with the requirements of Articles III and XI of the GATT?

Answer:

In accordance with the decision of the government each year the Ministry of Economy fixes quotes for importation of alcohol beverages, ethyl (eatable) spirit and tobacco products during coming year by taking into account prognosis on production and sale of those items and reports to the Ministry of Trade, Ministry of Taxes and to the Ministry of State Property.

Licenses are issued to each enterprise for importation of goods constituting not more than 15 per cent of total amount of quota annually fixed by the Ministry of Economy.

Domestic production of same goods to be imported and need for those in domestic market are taken into account while determination of quantitative quotas by the Ministry of Economy. Every month after each quarter the Ministry of Commerce provides information to the Ministry of State Property and the Ministry of Economy on enterprises awarded with licenses for importation of ethyl (eatable) spirit, alcohol beverages and tobacco products. The Ministry of State Property controls the importation of goods through by licenses issued by the Ministry of Commerce and every month after each quarter provides information to the Ministry of Economy.

Quotas are global. There is no importer with state level trade controlling authority in this sphere, on the contrary, private importers are allowed to have these licenses and are presently obtaining them. These licenses are granted by the Ministry of Commerce.

In accordance with the legislation, importation of ethyl spirit, alcohol beverages and tobacco products is carried out through licensing. This measure is carried out in order to balance the turnover of alcohol beverages and tobacco products. Licensing of these products is also aimed to prevent their

illegal import to the country, violation from taxes, prevent unfair competition and protect consumer's rights.

Considering the possible danger of alcohol beverages and tobacco products to the human's life, it's worth no note, that licensing is not to restrict importation of these products, it is aimed to carry out effective control and provide health protection of citizens of the country.

We consider this measure to be complying with sections b and d of Article XX of GATT 1994.

Also, licensing of the importation of these products, is at the same time a control instrument over quotation.

For notes, licensed granted in 1999 constituted very little part of fixed quotas. So, licenses were granted to champagne, wine, vodka and other hard liquor, ethyl spirit, cigarettes and cigars, beer and cognac products. Which made 1.2 per cent, 10.2 per cent, 36.8 per cent, 26.4 per cent, 84 per cent, 33.8 per cent, 0.1 per cent of their relative fixes quotas.

Question 47

WT/ACC/AZE/2 states that documentation from 5 administrative bodies is needed to receive a licence from the Ministry of Agriculture for the importation of alcohol and tobacco. The Agreement on Import Licensing, Article 1, section 6 of the WTO states, applicants should have to approach no more than 3 administrative bodies for granting of a licence.

What steps is Azerbaijan taking to address this point?

Answer:

We apologize for mistake made in the Memorandum "On foreign Trade Regime of Azerbaijan", Annex 3 (Licensing of importation). Information on procedures of licence issuance for production of alcohol beverages and tobacco products is reflected in section VII of Annex 3 and has no concern to regulation of foreign transactions. According to information above for importation of alcohol beverages and tobacco products, importers should apply only to the Ministry of Commerce.

Question 48

Annex 3 (Information on Import Licensing Procedures), part VI (Provision of Licenses) states that in Azerbaijan, "Licenses are issued depending upon the import demand of the country according to each agreement (in case of lack of agreement in the document certifying the deal) and their validity might be up to 1 year"

Could Azerbaijan please clarify what this statement means? How is import demand determined, and what is meant by "agreement in the document certifying the deal"? Is this licensing automatic or non-automatic? Does it restrict quantities imported?

Answer:

Determination of needs for goods subject for quota (alcohol beverages and tobacco products) is carried out by the Ministry of Economy upon statistics of domestic production and experience of previous years. Each licence is granted based on final sale contract (agreement) or additional sale contract (document approving the transaction).

For more information, see question above.

Question 49

Please provide an outline of what an importer has to do to get a licence in Azerbaijan, including a list of agencies responsible for each type of licence granted, the amount of licensing fee and the name of the publication where this information can be found.

Answer:

The "Rules of issuance of licenses for importation of ethyl (eatable) spirit, alcohol beverages tobacco products to the Republic of Azerbaijan" was approved by the Decision of the Cabinet of Ministers under #33 by 4 March 1999. Ethyl (eatable) spirit, alcohol beverages (excluding beer) and tobacco products are subject to licensing while importation to Azerbaijan. The Ministry of Commerce is the body granting the licence.

Following documents should be submitted to the Ministry of Commerce for licence issuance:

- i. Application for licence;
 - For legal persons - name of legal person, legal form of enterprise, statistics code, legal address, number of settlement account, name of bank, information on type of activity with identification of code and amount of goods (if activity to be carried out in different places, addresses and numbers of these places should be noted in the application).
 - For natural persons - name, father's name, family name, information on ID (number, date of issuance, date of expiry, issued authority, address) information on type of activity with identification of code and amount of goods (if activity to be carried out in different places, addresses and numbers of these places should be noted in the application).
- ii. Original and copy of contract (if not contract, document approving the transaction) signed with foreign entity (party);
- iii. Copy of effective licence granted for whole sale and retail sale accordingly to type of activity noted in the application (in a way foreseen in by the legislation);
- iv. Copy of documents related to establishment of this enterprise;
- v. Copy of certificate of state registration of enterprise;
- vi. Copy of certificate on registration of natural person of engagement in entrepreneurship activity by tax authorities;
- vii. Document testifying the payment of state charges for licence issuance
- viii. Copy of document testifying the rights of applicant for use of each of objects noted in the application (ownership, rent, bases of use etc.)

Licenses are granted annually.

Application and above shown documents are excepted by the Ministry of Commerce and registered in special book, reviewed, and decision on insufficiency or issuance of licence no later than 15 starting from the date of the decision, if there is no reason to refuse the issuance.

If insufficiencies in documents are found, the applicant gets the written notification on this, after next submission of documents, they are being reviewed again within 5 days and appropriate decision is being made.

In case of refusal based on above shown rules, the applicant gets the written notification with clear identification of reasons for refusal.

State charges for issuance of special permission (licence) are as follows:

Ethyl (eatable) spirit	50*
Beer	1,500*
Vodka, alcohol, champagne and other alcohol beverages	10,000*
Cigarettes made of tobacco or its substitutes	500**

* for each decilitre, in Manats

** for each thousand pieces, in Manats

In accordance with national legislation, laws of Azerbaijan, decrees and provisions of the President of Azerbaijan are published in official publishing houses like "Azerbaijan" newspaper and "Collection of Legislation of Azerbaijan".

Resolutions of the Cabinet of Ministers are published in the official publishing houses like "Collection of the legislation of the Republic of Azerbaijan" and "Republic" newspaper also by other publishing houses when immediate and wide broadcast of the information is necessary.

Normative-legal acts of the central executive authorities are being published in the "Bulletin of normative-legal acts of the executive authorities of Azerbaijan".

Relative executive authorities and Milli Mejlis of Azerbaijan can officially publish their adopted normative-legal acts in the way provided by the legislation of Azerbaijan.

Normative legal acts of relative executive authorities or other bodies are published by them in a volume necessary for wide acquaintance of by citizens.

Normative legal acts can also be published by any publishing houses or broadcasted by mass media.

Question 50

Azerbaijan states in WT/ACC/AZE/2 that only alcohol and tobacco were subjected to licensing, but also noted that weapons and certain chemicals were also prohibited unless a licence was acquired. How are licenses acquired for these products?

Answer:

Importation of weapons and certain chemicals to Azerbaijan is not prohibited. It is carried out exclusively upon permission of the Cabinet of Ministers.

Question 51

It appears that Azerbaijan's current licensing system may not meet the transparency or other procedural requirements of the WTO Agreement on Import Licensing Procedures. In addition, it appears possible that the system acts as a non-tariff restriction on the quantity of imports, which is not consistent with Article XI of the GATT.

Azerbaijan should address these issues comprehensively, and indicate to the Working Party how it intends to bring these measures into line with WTO provisions.

Answer:

Azerbaijan will review its licensing system for its compliance with the WTO requirements.

Moreover, in addition to said above, Azerbaijan regulates importation of used weapons, radioactive elements, drugs and other stuff to its territory based on Articles XX and XXI of GATT.

In accordance with the legislation, importation of ethyl spirit, alcohol beverages and tobacco products is carried out through licensing. This measure is carried out in order to balance the turnover of alcohol beverages and tobacco products. Licensing of these products is also aimed to prevent their illegal import to the country, violation from taxes, prevent unfair competition and protect consumer's rights.

Considering the possible danger of alcohol beverages and tobacco products to the human's life, it's worth no note, that licensing is not to restrict importation of these products, it is aimed to carry out effective control and provide health protection of citizens of the country.

We consider this measure to be complying with sections b and d of Article XX of GATT 1994.

(h) Customs valuation

Question 52

We have reviewed the material contained in WT/ACC/AZE/2. In the absence of relevant legislation, we had only the information provided in Annex 4 of that document on which to base the following comments. We would appreciate Azerbaijan's help in clarifying the current scope of its implementation of the WTO Agreement on Customs Valuation.

Please provide the following documentation for review by the Working Party:

- **Customs Code of the Republic of Azerbaijan dated 6 October 1997;**
- **Law on Customs Tariff No. 1064 dated 20 June 1995; and**
- **The Resolution of the Cabinet of Ministers "Rules of application of the customs value of goods imported to and exported from the customs territory of the Republic of Azerbaijan."**

Answer:

Copies of these legislative acts have been provided to the Secretariat of the WTO.

Question 53

Articles 1 and 8 of the WTO Valuation Agreement, concerning transaction value and the additions to transaction value:

It does not appear that these provisions are fully implemented. We specifically note that all of the provisions concerning related parties, Article 1.2 of the WTO Valuation Agreement, are missing. Specifically, Articles 8.1(c) and (d) of the WTO Valuation Agreement, royalties and licence fees and proceeds of any subsequent resale, disposal or use of imported goods, are not fully implemented.

Article 5 of the WTO Valuation Agreement, concerning deductive value

It does not appear that these provisions are fully implemented. It appears that Azerbaijan has not adequately distinguished the three different methods of applying deductive value under Article 5 of the WTO Valuation Agreement. Additionally, with regard to Article 5.1(a) (i) of the WTO Valuation Agreement, Azerbaijan has not correctly implemented this provision by stating that “either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales.”

Article 6 of the WTO Valuation Agreement, concerning computed value:

It does not appear that these provisions are fully implemented. With regard to Article 6.1(a)(b) of the WTO Valuation Agreement, Azerbaijan has stated that “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.” This does not correctly implement the Article, and it appears that Article 6.2 of the WTO Valuation Agreement is not implemented at all.

Article 7 of the WTO Valuation Agreement, concerning the “fall back method” or valuation using reasonable means:

It does not appear that these provisions are fully implemented. Azerbaijan has stated that imported goods will be valued based on world prices. This is not consistent with the provisions of the Agreement. Article 7.2 of the WTO Valuation Agreement concerning the prohibited methods of valuation has not been implemented. Moreover, Azerbaijan has listed some valuation methods under this provision, which are prohibited under Article 7.2 of the WTO Valuation Agreement.

Article 9 of the WTO Valuation Agreement, concerning currency conversion, does not appear to be implemented.

Article 10 of the WTO Valuation Agreement, concerning confidential information, does not appear to be implemented.

Article 11 of the WTO Valuation Agreement, concerning the right of appeal:

Azerbaijan states that a right of appeal exists as specified by the Customs Code of the Republic of Azerbaijan. Without reviewing this document, we are uncertain is the right of appeal is within the Customs authorities or to a judicial body. Additionally, it is unclear if the importer’s right of is without penalty. The WP needs to review Azerbaijan’s legislation concerning right of appeal to ensure that it provides that the importer has a right of appeal without penalty to the

customs administration and the judicial authority and that the applicant is given written notice of the decision on appeal as set forth in Article 11.2 and 11.3 of the WTO Valuation Agreement.

Article 14 of the WTO Valuation Agreement.

It does not appear that Azerbaijan has implemented the Interpretative Notes set forth in Annex I of the WTO Valuation Agreement. Article 14 of the WTO Valuation Agreement stipulates that the Interpretative Notes to the Agreement form an integral part of the Agreement and the Articles are to be read in connection with the Interpretative Notes. Thus, the text of the Interpretative Notes must form part of the implementing legislation.

Article 15 of the WTO Valuation Agreement, which concerns Definitions, does not appear to be fully implemented.

We note that Azerbaijan has implemented the definition of related parties found in Article 15.4 of the WTO Valuation Agreement, but that other definitions are not provided for.

In Annex 4, Azerbaijan states that “[costs of clarification of declared customs cost or provision of additional information to tax authorities of the Republic of Azerbaijan shall be borne by the declaring person.”

It would appear from this that Azerbaijan is imposing a charge or a cost on the importer if Customs requires further information on a subject transaction. This may be inconsistent with Article VIII of the GATT 1994. We require clarification on the meaning of this statement and any costs or charges that will be imposed.

Additionally, we note that Azerbaijan has not implemented the Committee on Customs Valuation Decision 4.1 concerning the “Valuation of Carrier Media Bearing Software for Data Processing Equipment” to provide that only the cost of the carrier medium would be accounted for in the customs value, or the “Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods.”

We encourage Azerbaijan to implement both of these Decisions.

Answer:

Please note the below answer as reply to questions on customs valuation.

The determination system of the customs value (customs valuation) of goods is based on general principles of customs valuation established by the Law of Azerbaijan “On Customs tariffs”. Normative-legal base for the customs valuation includes Customs Code approved in 1997 by Milli Mejlis, which is the legislative body of Azerbaijan, the Law of Azerbaijan “On Customs Tariffs” adopted in 1995, also other decisions and normative documents adopted by the state executive bodies like Cabinet of Ministers and State Customs Committee based on above documents. Along with being similar to normative legal acts adopted in CIS countries such as Russia, Uzbekistan etc., documents mentioned above do not fully reflect international experience.

In March 2000 State Customs Committee organized TACIS program with participation of the European Customs experts to work on legislation on customs valuation of Azerbaijan in order to bring it into full conformity with the requirements of Article VII "On Customs Valuation" of the GATT/WTO. Second stage of this work was implemented in July-August of 2000. As a result of these measures, also taking recommendations from the United States of America into consideration

works on preparation of the coordinated document on customs valuation are being carried out and this document is going to be submitted to the Parliament for the approval.

It needs to be noted, that principal editing errors and grammatical mistakes made while translation of the legislation on customs into English language were displayed by the European experts while initial discussions and were underlined as points injuring the general outlook of the legislation.

(i) Other customs formalities

Question 54

Does Azerbaijan require authentication of import documentation by consular officials or other institutions in the country of export? If so, what fee, if any, is charged?

Answer:

Azerbaijan does not require authentication of import documentation by consular officials or other institutions of exporting country.

(j) Pre-shipment inspection

Question 55

Please describe how, and indicate why, importers would use the services of a pre-shipment inspection firm to meet consumer protection requirements and technical standards. Please indicate what requirements for importing into Azerbaijan would cause this to happen.

Answer:

As it is said in Section IV, Paragraph 1(j) of the Memorandum "On Foreign Trade Regime of the Republic of Azerbaijan" Azerbaijan does not apply pre-shipment inspection services to imports.

Question 56

Why would pre-shipment inspection for veterinary controls be used?

Answer:

We apologize for incorrect information concerning use of pre-shipment inspection for veterinary control in Azerbaijan provided in the Section IV, Paragraph 1(j) of the Memorandum. Azerbaijan does not provide pre-shipment inspection for any purpose.

(k) Application of internal taxes on imports

Question 57

Azerbaijan has stated that “the same rules of taxation apply to domestically produced goods as well as imports. There are no internal taxes levied specifically on imports.”

Please list all internal taxes applied to imports, and provide the specific amount of each corresponding tax. As appropriate, please list specific products by HS item number.

Answer:

In accordance with new Tax Code by 1 January 2001 VAT is applied by 18 per cent;

Following goods, works and services imported to and exported from Azerbaijan are VAT levied by zero (0) per cent:

- export of goods;
- transportation of international cargo and passengers, also services for transportation or other kind of services like provision of fuel or other technical details for international flights and other related works;
- goods, works, provision of services and their export paid for by financial grants provided from abroad.

Tax Code stipulates exemption of following goods from VAT:

- importation of national or foreign currency (except for numismatics purposes) and stocks;
- importation of gold, currencies, money bills of the Republic of Azerbaijan printed in other country to be kept in the National Bank of Azerbaijan;
- purchasing of goods, implementation of works, provision of services and their importation covered by the portion of Azerbaijan in projects implemented on credits and loans provided by international organizations, governments of foreign countries, also by foreign natural and legal persons upon interstates and intergovernmental agreements;
- importation of goods subject of financial leasing agreements;
- provision of services, carrying out of works, importation of goods by the National Bank of Azerbaijan while implementation of responsibilities foreseen by the legislation;
- other forms of importation can be exempt from VAT by the Cabinet of Ministers.

List of VAT exempt imports to Azerbaijan produced in countries other than CIS approved by the same decision

Code of goods by their nomenclature for foreign economic activity	Name of goods
Group 84	Nuclear energies, equipment and mechanisms means, their spare parts. Except 841451900; 841510000; 841581900; 841720; 841810900; 841821-841829000; 841830910; 841830990; 841840910; 841840990; 841850; 841891000; 842211000; 842310100; 842381500; 8450; 845210; 8469; 8470; 847110; 847120000-847120600; 847191000-847191900; 847199; 8472; 8476
Group 85	Electric machines and mechanisms, their spare parts Except 850710910;850810; 8509; 85010; 8511; 8512; 8516; 851710-851720000; 851781100; 8518; 8519; 8520; 8521; 8522; 8523; 8524; 852719000; 852721; 852731; 852732; 852739; 852810000-852810690; 852810730-852810980; 852820000; 852820200; 852820730-852820990; 852910200-852910700; 8539;
Group 86	Railroad trains and locomotives, their spare parts and means, road constructions for railroad and train net,
Group 87	On land (except railroad and train means) transportation means except 8702; 8703; 8711; 8712; 8714
Group 88	Flying apparatus, cosmos apparatus, their spare parts

Code of goods by their nomenclature for foreign economic activity	Name of goods
Group 89	Ships, boats and other on water transportation means except 8903

- In needs to be pointed out, that new table of excise rates is worked out.

Table 1. Excise rate for excise goods of non-CIS production and automobiles under excise

Names of excise products	Rates of excises, per cent
Vodka	65
Eatable spirit	90
Brandy	65
Wines	45
Hard liquor	40
All sorts of wine	40
Liquor	65
Beer	40
All types of tobacco products	50

Table 2. Excise levied oil products with concern to country of origin and exporting country

The name of products subject to excise tax	Rates, per cent
Aircraft petrol B-92, B-91	65.49
Gasoline AU-95,AU-98	65.03
Gasoline AU-92, AU-93	65.23
Gasoline AU-72, AU-76	64.76
Diesel fuel	26.4
Reactive engine fuel	0
Kerosene	33.45

Question 58

Please describe the point of sale and formula for application of excise taxes on (a) imports and (b) domestic goods.

Answer:

About excise rates also list of goods subject to excise tax and formula for excise application on domestic products and their sale:

In accordance with the Tax Code excise rate are determined by the Cabinet of Ministers. The Cabinet of Ministers is now preparing excise rates for excise goods.

Excise goods export of which is tax levied by zero (0) rates:

- Excise levied goods in accordance with Tax Code are as follows:
 - drinkable spirit, yeast, all sorts of beer and alcohol beverages
 - tobacco products
 - oil products

Followings are excise tax exempt:

- importation of 3 litres of alcohol and 3 blocks of cigarette by natural person for personal use, also fuel in the tank of the vehicle driven by persons to Azerbaijan amount of which is marked in its technical passport;
- goods in transit transferred through Azerbaijan;
- temporary importation of goods to Azerbaijan, except goods aimed for further re-export (excise taxes for re-export goods are paid while their importation, and paid amount is being returned to the exporter by customs authorities within 15 days upon re-export of these goods);
- goods aimed for re-export and guaranteed by deposit.

In accordance with the Tax Code, the amount of taxation of goods produced in Azerbaijan is the price no less than the wholesale market price (excluding excise and VAT) charged or to be charged by the taxpayer of the client or any other person, also by barter.

Excise tax for goods produced in Azerbaijan is accounted by following formula:

$$A = B \times A_1$$

Where A - excise amount

B - excise tax levied turnover (without VAT or Excise)

A₁ - level of excise tax fixed for goods

Question 59

Does Azerbaijan use the destination principle in the application of VAT and excise taxes to imports? Are imports from any source, e.g., Russia or other CIS, exempted from VAT and/or excise taxes?

Answer:

According to Tax Code, indirect taxes on goods imported to Azerbaijan are levied by destination principle and there is no exception for any country.

Question 60

Does Azerbaijan exempt exports from VAT or excise taxes? If so, under what conditions, e.g., are all exports exempted or only those to selected destinations?

Answer:

As it is shown above, in accordance with the Tax Code effective by 1 January 2001, all goods with no concern to their destination are levied by zero (0) level of VAT and excise tax.

(l) Rules of origin

Question 61

Azerbaijan states that it currently has no regime on rules of origin. We expect, however, that Azerbaijan will implement WTO-consistent provisions for the application of rules of origin for imports prior to its WTO accession. In this regard, it is particularly important that Azerbaijan enact regulations to address the procedural requirements of the Agreement for all imports, in

particular the requirements of Article 2(h) and Annex II, paragraph 3(d), which require WTO members to provide, upon request and prior to the time of importation, an assessment of the origin of the import and outline the terms under which it will be provided.

Could Azerbaijan please indicate how it intends to implement the requirements of Article 2(h) and Annex II, paragraph 3(d), and other procedural requirements of the Agreement on Rules of Origin prior to WTO accession?

Answer:

Chapter V, Articles 24-32 of the Law “On Customs tariffs” of Azerbaijan provides rules on determination of country of origin for goods, level of criteria for processing, certificate of origin etc. and assessment is carried out based on this law.

At present, draft Rules “On determination of country of origin of imports to the customs territory of the Republic of Azerbaijan” is prepared and submitted to the Cabinet of Ministers for approval. Above rules are prepared in consistence with the procedures reflected in the Agreement On Rules of Origin of the WTO.

(m,n,o) Anti-dumping, countervailing and safeguard regimes

Question 62

We look forward to reviewing Azerbaijan’s draft law on antidumping.

Please update the Working Party on Azerbaijan’s plans to develop legislation in the other areas.

Answer:

At present, draft law on antidumping is being worked out. Draft law will be sent to the Secretariat of the WTO when it is necessary. It is planned now to work out law on safeguard regime.

Question 63

Can Azerbaijan confirm that it will not apply any anti-dumping, countervailing or safeguard measure until it had notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI, on Subsidies and Countervailing Measures, and on Safeguards?

Answer:

Azerbaijan confirm that it will not apply any anti-dumping, countervailing or safeguard measure until it had notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI, on Subsidies and Countervailing Measures, and on Safeguards.

3. **Internal policies affecting foreign trade in goods**
- (b) **Technical regulations and standards, including measures taken at the border with respect to imports; and**
- (c) **Sanitary and phytosanitary measures, including measures taken with respect to imports**

Question 64

The WTO Agreement on TBT establishes fundamental rules and procedures regarding the development, adoption, and application of voluntary standards, mandatory standards ("technical regulations"), and the procedures ("conformity assessment procedures") used to determine whether a particular product meets such standards. It is imperative for governments to establish a coordinated approach to the development, adoption and application of standards, technical regulations and conformity assessment procedures to ensure that all ministries, agencies, and private bodies involved in these activities are aware of the obligations and abide by them on an ongoing basis.

Please complete the checklist found in WT/ACC/8, identifying specific provisions in Azerbaijan's legal and administrative system that address the requirements of the WTO Agreements on Technical Barriers to Trade and Sanitary and Phytosanitary Measures.

Answer:

We don't consider the completion of the checklist found in WT/ACC/8 is necessary so far.

Question 65

In addition to the above, could Azerbaijan submit a detailed plan of action for achieving full implementation of the TBT and SPS Agreements for those areas in which additional action will need to be taken in order to ensure compliance with the TBT and SPS Agreements?

Answer:

The detailed plan of action for achieving full implementation of the TBT Agreement is described below.

Table of Measures on Implementation of the Agreement of the WTO on Technical Barriers to Trade

No	Type of measures	Implementation period	Responsible departments for implementation	Note
1	Improvement and perfection of the legislation base on standardization and certification			
1.1	Preparation of the Laws of the Republic of Azerbaijan "On Standardization" and "On Certification"	2nd quarter of 2001	Standardization and technical information department, certification and accreditation department	Send document drafts to the Cabinet of Ministers for review

№	Type of measures	Implementation period	Responsible departments for implementation	Note
1.2	Elaboration of the Law of the Republic of Azerbaijan "On technical barriers to trade"	1st quarter of 2001	Standardization and technical information department	Send document drafts to the Cabinet of Ministers for review
1.3	Preparation of the offers on admission of the documents as national legislative and normative-technical documentation similar to the documentation adopted in the international, regional and national organizations on standardization, certification and metrology of the advanced foreign countries and determining requirements to the similar kind of goods, evaluation of conformity, ecological security etc.	Permanent	Standardization and technical information department, certification and accreditation department	Send document drafts to the Cabinet of Ministers for review
1.4	Analyzing of acting legislation (Laws, resolutions) on certification and standardization for their conformity with the requirements of the Agreement on technical barriers to trade in order to prepare offers to amend changes and additions to the mentioned above	2000-2001	Standardization and technical information department, certification and accreditation department	Send document drafts to the Cabinet of Ministers for review
2	Perfection and development of national systems on standardization and certification			
2.1	Making changes to the standardization founding documentation:			Adoption of changes to standards
	AZS 1.0-96. "State standardization system of the Republic of Azerbaijan Main provisions."	1-st quarter of 2001	Standardization and technical information department,	Adoption of changes to standards
	AZS 1.2-96. "State standardization system of the Republic of Azerbaijan Elaboration method of the state standards".	2-nd quarter of 2001	Standardization and technical information department,	Adoption of changes to standards
2.2	Making changes to the certification founding documentation:		Certification and accreditation department	By adoption of changes to the document
2.2.1	RD 001-93 "National system of certification AZS. Main provisions."	2-nd quarter of 2001	Certification and accreditation department	By adoption of changes to the document
2.2.2	RD 002-93 "National system of certification AZS. Requirements to the certification body and methods of its accreditation."	2-nd quarter of 2001	Certification and accreditation department	By adoption of changes to the document
2.2.3	RD 004-93 "National system of certification AZS. Requirements to the researching laboratories (centers) and methods of their accreditation."	2-nd quarter of 2001	Certification and accreditation department	By adoption of changes to the document

№	Type of measures	Implementation period	Responsible departments for implementation	Note
2.2. 4.	RD 005-93 "National system of certification AZS. Methods of implementation of the State register system."	2-nd quarter of 2001	Certification and accreditation department	By adoption of changes to the document
2.2. 5.	RD 008-94 National system of certification AZS. Method of admission of certifiable and accreditable objects	2-nd quarter of 2001	Certification and accreditation department	By adoption of changes to the document
2.3.	"National system of certification AZS. The way of payment of works on certification and accreditation".	1-st quarter of 2000	Certification and accreditation department	By adoption of documents
2.4.	Elaboration of drafts of normative documents of the Republic of Azerbaijan: "Order in planning of works on standardization".	2001	Standardization and technical information department	By adoption of documents
2.5	Preparation of offers on regulation of nomenclature of mandatory certifiable goods	2000-2001	Certification and accreditation department	Send the documentation drafts to the Cabinet of Ministers for review
3	International cooperation			
3.1	Participate in the work of working group on technical coordination and standardization policy of the UN European Economic Commission		Merging department, Standardization and technical information department	
4	Harmonization of national standards with the international standards			
4.1	Determine the list of international and national standards of other countries on goods and services in order to implement them directly or harmonize them with the standards of the Republic of Azerbaijan		Standardization and technical information department, technical committees	
4.2	Harmonization of current standards	2000-2004	Technical committees on standardization	
5	Cooperation with the CIS countries within the frame of the Intergovernmental Union on standardization, certification and metrology			
5.1	Participation in the elaboration of the standards on goods primarily important for the development of the country economy such as petrol, oil products, gas, cotton, tea, tobacco, oil machinery construction etc.	Permanently	Departments of Azerbaijan State Standardization Agency and technical committees on standardization	Adoption of standards

№	Type of measures	Implementation period	Responsible departments for implementation	Note
5.2	Participation in the elaboration of the program on transition from the mandatory standardization to the volunteer	2000-2002	Departments of Azerbaijan State Standardization Agency and technical committees on standardization	By adoption of the program
6	Organization and improvement of the activity of the inquiry point			
6.1	Adoption of international, regional and national standards of foreign countries, important for the industry of the country.	Permanently	Standardization and technical information department	Fulfilment of the fund
6.2	Full providence of the inquiry point with necessary technical and office equipment	2000	Standardization and technical information department	Improvement of work quality of the center
7	Informational propaganda activity			
7.1	Carrying out of seminars on certification and standardization issues in compliance with the principals of Agreement on technical barriers to trade for specialists from enterprises, firms, institutions, organizations responsible for certification and researching laboratories	2000-2002	Standardization and technical information department, certification and accreditation department, preparation service	Improvement of qualification of the specialists
7.2	Publication of materials on the implementation of the Agreement on technical barriers to trade	Permanently	Departments of Azerbaijan State Standardization Agency	Knowledge of the society on the work status

Question 66

Please describe the current inspection process for imported goods? Does it differ from the inspection process for domestically-produced goods?

Answer:

Description of inspection process of cargo with plant, plants origin and quarantine organisms by specialists from Plant Protection and Quarantine Department:

Imported to the country:

- identification of accompanying documentation for conformity (quarantine permission for importation, phytosanitary certificate);
- recognition process of certificates issued in countries parties of mutual agreement with Azerbaijan on certification and accreditation;
- goods without certificate and not complying to quarantine requirements are returned back;

- in case if quarantine organism is found in involved vehicle or products, fumigation is implemented, if not possible, the object is returned back or destroyed by consent;
- absence of quarantine organisms in rendered harmless cargo, samples are being taken for laboratory expertise;
- quarantine inspection and laboratory expertise of samples by picking any are carried out while transportation, storage and realization.

Goods produced in Azerbaijan and exported outside:

- quarantine requirements and certification are applied;
- control over goods during vegetation or in production process is carried out relatively to effective normative documents of Azerbaijan;
- measures taken to prevent production and realization of products not complying to quarantine requirements. Goods imported from countries with quarantine organisms not registered in Azerbaijan are under precise quarantine control.

Goods brought upon request of the customers go through:

- Identification of imported goods for their compliance with the observation documentation;
- Recognition process of certificates issued in countries parties of mutual agreement with Azerbaijan on certification and accreditation is being carried out;
- Certification of goods that are not certified yet;
- Keeping control by kicking any while transportation, preservation and realization.

Followings are used on goods produced in Azerbaijan:

- Implementation of mandatory certification related to security measures;
- Inspection control over certified indications within the identified period of time;
- Control over quality of goods with respect to the annual plan is carried out in compliance with the requirements reflected in the current normative documents of the Republic of Azerbaijan.
- Implementation of measures to prevent production and realization of goods not complying with the identified requirements.

Importation of goods to Azerbaijan is carried out upon Article 14 of the Law of Azerbaijan "On Foodstuff". Foodstuff registered in state hygiene register, submitted for certification or once with the recognized certificates may be imported to Azerbaijan. Foodstuff without relative certificates granted in accordance with the legislation of Azerbaijan are not allowed to be imported to the customs territory of Azerbaijan.

Quality and security signs of foodstuff should be included into the agreement (contract) concluded between consumer and seller.

Compliance of imported foodstuff to Azerbaijan with quality and security signs shown in the agreement and accompanying documents is one of the major conditions of bringing it to the market.

Question 67

Has the Azerbaijan established an enquiry point with respect to SPS and TBT measures, as required by the Agreements?

Answer:

An enquiry point with respect to TBT measures as required by the Agreement is established at the "Azerdovletstandart". We are in contact with other countries through Internet.

Concerning SPS measures, in accordance with Article 7 of the Law of Azerbaijan "On foodstuff" all foodstuffs imported to Azerbaijan are checked on their chemical contents, biological, toxicology, and radiology signs by expertise and these products are registered in the state register and all information can be obtained from Ministry of Health.

Moreover, citizens of Azerbaijan can in accordance with Article 6 of the Law of Azerbaijan "On Sanitary-epidemiology safety" obtain clear information on level of diseases, epidemiological condition and radiation, condition of environment and their impact on human's life, carried hygienic expertise, results of other special expertise, decisions made by government high rank government authorities that could lead a danger for human's life and environment safety free of charge.

Question 68

Has Azerbaijan established a publication to publicly announce changes or new laws?

Answer:

In accordance with the active legislation of the Republic of Azerbaijan, Laws of Azerbaijan, Decrees and Resolutions of the President of Azerbaijan are published in the official mass media like "Azerbaijan" newspaper and "Collection of the legislation of the Republic of Azerbaijan".

Decision of Milli Mejlis of Azerbaijan are published in "Azerbaijan" newspaper and "Information of the Milli Mejlis" Collection.

Resolutions of the Cabinet of Ministers are published in the official publishing houses like "Collection of the legislation of the Republic of Azerbaijan" and "Republic" newspaper also by other publishing houses when immediate and wide broadcast of the information is necessary.

Normative-legal acts of the central executive authorities are being published in the "Bulletin of normative-legal acts of the executive authorities of the Republic of Azerbaijan", which is the official publishing house of the Ministry of Justice.

Relative executive authorities and Milli Mejlis of Azerbaijan can officially publish their adopted normative-legal acts in the way provided by the legislation of Azerbaijan.

Normative legal acts of relative executive authorities or other bodies are published by them in a volume necessary for wide acquaintance of by citizens.

Normative legal acts can also be published by any publishing houses or broadcasted by mass media.

Question 69

Please provide documentation on the certificate of conformity? What government ministry is responsible for this and how is this obtained?

Answer:

Azerbaijan State Standardization and Metrology Center (Azdovletstandard) bears the responsibility of centralization of the certification and accreditation activities in Azerbaijan;

Within the scope of determined responsibility Azdovletstandard prepares managerial documentation in certification and accreditation spheres basing on international norms, standards and rules and submits them upon the request of the customer.

Managerial documents in certification and accreditation spheres exist in Azerbaijan (at present, works on re-review and publication of the managerial documentation are being carried out).

Question 70

Does Azerbaijan base the standards and technical regulations it develops on performance characteristics rather than design or descriptive characteristics?

Answer:

Azerbaijan gives the advantage to the descriptive characteristics of the standards and technical regulations it performs. All prepared standards and technical regulations are being developed in accordance with the requirements of standards of the State System of Azerbaijan. Design issues are preferred depending on the financial status of the producer.

Question 71

Please report on steps Azerbaijan has taken, or is taking, to review existing technical regulations and mandatory certification requirements with a view to removing unnecessary obstacles to trade.

Answer:

In order to remove unnecessary obstacles to trade in Azerbaijan, Azdovletstandard signs bilateral agreements with other countries. In accordance with these agreements, countries can use standards, norms and regulations, recognize results of trials and certificates issued by accredited laboratories and centers of each other, bear the same policy in the sphere of standardization, metrology and certification.

Question 72

Is Azerbaijan a member of the Codex Alimentarius Commission (CODEX), the International Plant Protection Convention (IPPC), or the Office of International Epizootic (OIE) – these are the three international standardizing bodies identified in the SPS Agreement.

Answer:

Azerbaijan is not a member of the Codex Alimentarius Commission (CODEX), is a member to International Plant Protection Convention (IPPC) since year 2000, and the Office of International Epizootic (OIE) since 1995.

Question 73

Please describe whether and how GOSSTANDART fits into Azerbaijan's government structure, e.g., does GOSSTANDART report to a Ministry, or is it an independent agency or private body? Was there some reason why this office was not included in the list of Government entities responsible for making and implementing policies affecting foreign trade found in WT/ACC/AZE/2?

Answer:

Azerbaijan State Standardization and Metrology Center (Azdovletstandard) is appointed by the government and bears responsibilities of a government body in the sphere of standardization. Azdovletstandard submits an annual report to the government. Azdovletstandard is an organization totally independent from the customer and producer.

Due to certain technical problems Azdovletstandard was not included to the list of enterprises shown in the WT/ACC/AZE/2.

Question 74

If possible, please give some indication of (a) the total number of Azerbaijan's standards, (b) how many are harmonized with international standards and how many are distinctly national standards, and (c) how many are mandatory standards

Answer:

The fund of Azdovletstandard includes more than 20 thousands of standards, 700 of which are national standards.

Fund is based on the intergovernmental standards (GOST) used by the CIS countries which are being intensively worked out in accordance with requirements of ISO and IEC. At present Turkish and ISO standards are being added to the fund.

Standards used in Azerbaijan are mandatory concerning ecological and security requirements. Standards are being prepared in accordance with the State Standardization System. Mandatory as well as recommendatory requirements exist in standards.

Question 75

Does Azerbaijan recognize international sanitary and phytosanitary standards? If so, how is this demonstrated in the treatment of imports? Does Azerbaijan reference international standards in the preparation of regulations?

Answer:

Azerbaijan had recognized international standards. Quarantine expertise of quarantine objects while their importation to Azerbaijan is carried out in accordance with mutual agreements signed with countries and provisions of Conventions. Agreements are applied in accordance with all international norms, standards and rules provided by FAO. Rules on plants protection and in quarantine sphere are worked out in compliance with all documentations mentioned above.

Question 76

Will any additional legislation Azerbaijan's contemplates for implementation of the TBT Agreement encourage the adoption of international standards? Will international guides and recommendations be considered for use as a basis for regulations when appropriate?

Answer:

Since Azerbaijan intends to implement the TBT Agreement, it created good conditions for adoption of these international standards and can use guides and recommendations when appropriate. These issues are reflected in the Presidential Decree No. 26 by 22 November 1998 "On rules on recognition and implementation of international (regional) and interstates standards, norms, regulations and recommendations in the territory of the Republic of Azerbaijan" and in the Law "On Standardization".

Question 77

Does Azerbaijan currently recognize technical regulations or conformity assessment procedures of any other countries as equivalent? Does Azerbaijan recognize conformity assessment procedures carried out by bodies located in other countries provided they meet the same criteria as domestic bodies?

Answer:

Azerbaijan does carry out recognition of issues related to certification and accreditation in accordance with bilateral Agreements on certification and accreditation signed by Azerbaijan considering that certification principles are same for all countries.

Question 78

Has Azerbaijan concluded any bilateral or multilateral agreements in any standards-related areas? Is Azerbaijan a signatory to any mutual recognition agreements/arrangements of conformity assessment procedures?

Answer:

Azerbaijan has concluded bilateral Agreements with CIS countries, also Turkey and Bulgaria on standardization, metrology and certification and accepts certificates granted for goods in these countries.

At present bilateral Agreement drafts with the Islamic Republic of Iran, Latvia, Lithuania, Estonia and Slovakia are in the preparation process.

Question 79

One fundamental obligation of the TBT Agreement is the assurance of non-discrimination and national treatment for imported products.

Is there any existing legislation or does Azerbaijan plan to develop any legislation ensuring non-discriminatory treatment for imported products?

Answer:

The legislation system of Azerbaijan does provide the right equivalence between foreign exporters, local producers and their goods and national regime in its transparent form.

(e) **State-trading practices**

Question 80

WT/ACC/AZE/2 states, "There are no measures that would grant exclusivity to one company or marketing enterprise in foreign trade." It also states that nearly half of Azerbaijan's GDP is generated by the state-owned sector.

Are there any production monopolies sanctioned by the government of Azerbaijan?

Please list the major state owned enterprises, especially those in the energy production sector.

Answer:

Since privatization of enterprises in energy sector has not started yet, all enterprises are state-owned or state established joint enterprises. In accordance with Second State Privatization Program, the privatization is carried on by following steps.

State-owned enterprises in energy sector:

- enterprises engaged in extraction of oil and gas, their transportation, processing and sale (except retail sale);
- "Azerenergy", joint stock company and its divisions;
- electric energy production, transportation and provision, production of heating energy
- "Azerigas", joint stock company with its divisions;
- Transportation of natural gas by pipelines and its provision to people.

Question 81

Please describe the trade activities of Azerbaijan's remaining state-owned enterprises.

Answer:

Considering that state-owned enterprises bear same legal status non-governmental organization, rules and laws of Azerbaijan, also Law "On entrepreneurship activity" and Constitution of Azerbaijan have equal concern to both of these type of enterprises.

Question 82

Please indicate list any enterprises, private or domestic, that import or export on behalf of the government or engage in stock-building from international trade.

Please refer to the informal indicative list of state trading enterprises contained in WTO Document G/STR/4 and indicate if any enterprise in Azerbaijan is involved in similar activities.

Answer:

Please see combined answer to all above questions in State Trading Practices sub-division.

Azerbaijan confirms that there is no state trading company in spheres mentioned in Article XVII of GATT and Article VIII of GATS as well as no state trading company working in sectors mentioned in G/STR/4.

Despite that half of Gross Domestic Product is provided by state-owned enterprises, they don't cover spheres under G/STR/4 requirements.

(l) Government procurement practices, including general legal regime and procedures for tendering, dealing with tenders and award of contracts

Question 83

Does Azerbaijan discriminate in favour of domestic production in its government procurement?

Answer:

The buyer can make preferential changes in favor of works of local executives, tenders on domestically produced goods or domestic services while evaluation and comparison of tender bids in accordance with sub-division 32.4.4. of Regulation "On procurement of goods (works and services) budgetary financed enterprises " provided that appropriate decision is approved by the State agency.

Question 84

Will Azerbaijan join the Agreement on Government Procurement in the context of its WTO Accession?

Answer:

Azerbaijan is now analyzing the possibility of joining the Government Procurement Agreement.

At present, in Azerbaijan's transition period to the market economy, works on formation of legal-normative base for the establishment of institutional base for Azerbaijan State Procurements and preparation of relative offers in terms of application of structural changes in different sectors upon advises of international financial organizations, are in the process.

4. Policies affecting foreign trade in agricultural products

(d) Export credits, export credit guarantees or insurance programmes

Question 85

We note that there are currently no export subsidy measures in place for agricultural products.

Can Azerbaijan confirm that it will commit to binding export subsidies at 0 in its agricultural country schedule?

Answer:

The application of export subsidies on agricultural products in Azerbaijan is reflected in Memorandum "On foreign trade regime of Azerbaijan" submitted to the WTO. The government of Azerbaijan schedules discussion of future application of export subsidies on agricultural goods during round negotiation to be held prior to its accession to WTO.

(e) **Internal policies**

Question 86

We suggest that Azerbaijan prepare information according to the format in WT/ACC/4 and circulate it to the Working Party for review.

Answer:

At present, Azerbaijan is working on "Domestic support and export subsidies in agriculture" (WT/ACC/4) format.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

Question 87

Please complete the checklist found in WT/ACC/9, identifying specific provisions in Azerbaijan's regime for the protection of intellectual property that address the provisions of the WTO Agreement on TRIPS.

Answer:

Azerbaijan is now in process of preparation of WT/ACC/9.

Question 88

Subsection 1(b) of section V of the Republic of Azerbaijan's Foreign Trade Memorandum identifies the agencies responsible for intellectual property policy.

Please describe in detail the structure and the specific responsibilities of the State Committee for Science and Technology, Patent and Licence Department and the Agency for Copyright, indicating the authority under which each organization acts and the way in which they coordinate their activities with other agencies of the Government of The Republic of Azerbaijan.

Answer:

In 1993 Patent and Licence Department was established under State Committee for Science and Technology (SCST) in order to bear state policy on protection of industrial property (inventions, useful models, industrial pattern, trademarks and geographical signs). Patent Licence Department (PLD) consists of three divisions. Patent Licence Department bears responsibility of establishment of normative-legal base for protection of industrial property, issuance of documentation insuring protection for industrial property, registration of agreements and licenses, publication of official bulletin on industrial property etc. This organization also makes contacts with similar organizations in CIS and other foreign countries, prepares drafts of mutual agreements and submits them to the Cabinet of Ministers for approval and represents Azerbaijan in international organizations within frames of its responsibilities. The main part of the Patent Licence Department (PLD) National Patent Expertise Centre (NPEC) is formed since 1994 under the SCST. NPEC receives claim applications on industrial objects, applies expertise and takes relative decisions concerning those objects.

Azerbaijan State Copyright Agency (ASCA) is the state central body regulating the state policy on copyrights and cooperate rights. The Agency is responsible primarily to the government of Azerbaijan in its activity.

Copyrights Agency carries out following responsibilities basing on legislation on copyrights and authorities granted by the President:

- state regulation of the policy in copyright and cooperate rights;
- prepares proposals concerning improvement of the legislation on copyright and cooperate rights;
- control over efficient compliance with the legislation on copyright and cooperate rights;
- represent Azerbaijan in international organizations and bears cooperation in this sphere;
- bears registration of scientific, literature and art works;
- bears registration of state registered organizations and controls over their activity in terms of collective regulation of property rights;
- other responsibilities foreseen by the legislation.

The Copyright Agency cooperates with Ministry of Culture, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Internal Affairs, Customs Committee, State Committee for Science and Technology, Ministry of Education, Academy of Science and other government bodies.

The structure of the Agency consists of management and four departments.

Question 89

Subsection 1(d) states that the Law on Patents, adopted 25 July 1997, provides national treatment for foreign nationals.

Please cite the provision and indicate if it provides national treatment with respect to both patents for inventions and for industrial designs.

Answer:

In accordance with Article 42 of the Law of Azerbaijan "On Patent" and Article 2 of Paris Convention foreign natural persons and legal entities may enjoy equal rights with citizens of Azerbaijan basing on mutual principles or international agreements that Azerbaijan is a part to.

Question 90

No information is provided in subsection 1(d) regarding national treatment for forms of intellectual property not covered by the Law on Patents.

Please describe the way national treatment is provided foreign nationals in connection with copyright and related rights, trademarks, geographical indications, integrated circuit layout designs, and undisclosed information, citing to the appropriate provisions of law.

Answer:

In accordance with Article 36 of the Law of Azerbaijan "On trademarks and geographical signs" if not foreseen otherwise in by international agreements that Azerbaijan is a part to, concerning trademarks and geographical signs foreign natural persons and legal entities enjoy quail rights with

citizens of Azerbaijan. Article 32 provides prohibition of following actions concerning use of registered trademarks and geographical signs: actions resulting in the confusing of goods, rendered service or entrepreneur activity with others; actions undermining the authority of the goods, rendered service or entrepreneur activity at the undertaking of commercial activity; indices, the use of which can mislead the public about characteristics, quality, and usability of goods at the undertaking of commercial activity. Article 33 of the same law stipulates that, commercial confidentiality of the trademark owner, connected to the manufacturing of goods or rendering of services is kept during consideration of disputes in court.

Article 7 of the law of Azerbaijan "On unfair competition" provides prohibition of following actions: illegal receiving, using and disclosing of the information on the scientific-technical, industrial or commercial activity of the market subject, including the commercial secrets; affecting by the illegal methods the acceptance and implementation of the economical decisions of competitor with the purpose of gaining unjustified advantage over him; sale of commodity with the forced additional assortment.

In accordance with Article 2 of the law of Azerbaijan "On copyright and cooperate rights", if other rules than those included in the original Law, are provided by the International Agreement, in which Azerbaijan participates, then the rules of international agreement are applied.

As it was noted, Azerbaijan is a member to World Geneva Convention "On copyright" and Bern Convention "On protection of art and eternal works".

Question 91

Please provide a schedule of fees for obtaining and maintaining patents for inventions and industrial designs and for registering and re-registering trademarks and other charges referred to in subsection 1(e).

Answer:

Fees are regulated in a following way by the "Rules on rates and payments of fees related to protection of industrial property objects" approved by the Decision of the Cabinet of Ministers under #37 by 6 March 2000.

Table for fees for patents granted for inventions, useful models and industrial patterns

#	Names of measures of legal importance and their terms of payment	Amount of duties	
		For national legal entities and natural persons	US\$ for foreign legal entities and natural persons (its Manat equivalent)
1.	For issuance of claim application for invention, useful model and industrial pattern (including initial expertise and expertise of the claim application): a) For one invention, one useful model and one industrial pattern; b) Additionally for each independent link of multiunit formula with more than one link c) Additionally, for each dependant link in multiunit formula with more than five links d) for each additional industrial pattern exceeding 10 e) for each pages of the claim application exceeding 30 pages Document confirming the payment of fees (hereinafter referred to as "payment document") should be enclosed to the claim application	15 20 50 50 75	100 50 20 10 2
2.	For initial request concerning claim application (one for priority) Payment document should be submitted during first two months after prior request by the payment document	20	50
3.	For application of changes and amendments to the claim application passing a month after its issuance Payment document should be submitted with the application for making changes and amendments	40	25
4.	For extension of term for reply to the expertise inquiry: for each month within no more than six months Payment document should be submitted together with petition for extension of term	50	10
5.	For publication of information about claim application before the fixed date Payment document should be submitted together with the petition of a applicant	40	45
6.	For publication of information about claim application Payment document should be submitted during 2 months from the date the decision on fixed date publication is awarded	40	30
7.	For searching works of database on invention, useful models and industrial pattern according to the petition Payment document should be submitted together with petition	the amount shown in "1.a" + tariffs	

#	Names of measures of legal importance and their terms of payment	Amount of duties	
		For national legal entities and natural persons	US\$ for foreign legal entities and natural persons (its Manat equivalent)
8.	For expertise of the claim application on invention, useful model and industrial pattern for its essence according to the application a) for one invention b) for one useful model c) for one industrial pattern; d) additionally for each independent link of multiunit formula exceeding one link e) additionally for each dependent link of multiunit formula exceeding five links f) for every additional industrial pattern exceeding 10 patterns The payment document should be submitted together with the petition.	50 50 50 50 50 50	150 100 100 80 20 20
9.	For conversion of claim application on invention to the claim application on the useful model Payment document should be submitted together with the application.	25	30
10.	For conversion of claim application on the useful model to the claim application on invention. Payment document should be submitted together with the application.	20	50
11.	Objection application to the Appeal Commission: a) Against the decision on refusal of patent issuance to the invention, useful model and industrial pattern. b) Against published claim application on invention, useful model and industrial pattern. c) Against the patent issuance for an invention, useful models and industrial pattern. d) The payment document should be submitted together with an objection application.	20 50 30	100 20 150
12.	Restoration of passed time: a) For application of a plaintiff to the Appeal Commission with an objection for the refusal of patent issuance b) For reply of a plaintiff to the Appeal Commission concerning submitted objection application for published claim application The payment document should be submitted together with the petition.	50 50	50 60

#	Names of measures of legal importance and their terms of payment	Amount of duties	
		For national legal entities and natural persons	US\$ for foreign legal entities and natural persons (its Manat equivalent)
13.	<p>Related the registration of industrial property objects, issuance of patent and its publication:</p> <p>a) for invention b) for useful models c) for industrial pattern; d) for each page exceeding 30 of patent description together with formula</p> <p>The payment document should be submitted together with the petition</p>	<p>10 10 10 50</p>	<p>150 100 100 2</p>
14.	<p>For acquaintance with materials of claim application after its publication. Payment document should be submitted together with the application.</p>	50	30
15.	<p>For issuance of patent duplicate</p> <p>The payment document should be submitted together with the petition.</p>	30	20
16.	<p>For application of changes to the granted patent</p> <p>The payment document should be submitted together with the petition.</p>	50	30
17.	<p>For registration of contracts on granting rights related to the industrial property objects:</p> <p>a) for each claim application separately on inventions, useful models and industrial patterns b) for each patent separately on invention, useful model and industrial pattern, c) for several claim applications on invention, useful model and industrial pattern (for each claim application exceeding one) d) for several patents on invention, useful model and industrial pattern (for each patent exceeding one) e)</p> <p>Payment document should be submitted together with the petition</p>	<p>20 20 25 20</p>	<p>100 150 60 100</p>
18.	<p>For registration of contracts on granting of rights for use of invention, useful models and industrial pattern objects:</p> <p>a) for one claim application b) for several claim applications</p> <p>The payment document should be submitted together with the petition.</p>	<p>20 20</p>	<p>100 80</p>

#	Names of measures of legal importance and their terms of payment	Amount of duties	
		For national legal entities and natural persons	US\$ for foreign legal entities and natural persons (its Manat equivalent)
19.	Registration of the licensing contracts: a) for every each patent granted separately for invention, useful models and industrial pattern b) for several patent granted separately for each invention, useful models and industrial pattern (for each patent designed for more than one) The payment document should be submitted together with the petition.	25 25	150 100
20.	For application of changes to the agreements on granting rights for claim applications or patents or in the licensing contracts registered according to the use of object. The payment document should be submitted together with the petition	50	50
21.	For consideration of the initial user's claim according to recognition of his rights. The payment document should be submitted together with the petition	50	50
22.	For remaining invention patent in force: for third year for fourth year for fifth year for sixth year for seventh year for eighth year for ninth year for tenth year for eleventh year for twelfth year for thirteenth year for fourteenth year for fifteenth year for sixteenth year for seventeenth year for eighteenth year for nineteenth year for twentieth year The payment document should be submitted together with the application	15 15 15 15 15 15 15 15 15 15 15 15 15 15 15 15 15 15	40 60 80 100 120 140 160 200 260 260 320 320 380 380 440 440 500 500

#	Names of measures of legal importance and their terms of payment	Amount of duties	
		For national legal entities and natural persons	US\$ for foreign legal entities and natural persons (its Manat equivalent)
23.	For remaining useful model patent in force for third year for fourth year for fifth year for sixth year for seventh year for eighth year for ninth year for tenth year The payment document should be submitted together with the application.	15 15 15 15 15 15 15 15	40 60 80 100 120 140 160 200
24.	For remaining industrial pattern patent in force for third year for fourth year for fifth year for sixth year for seventh year for eighth year for ninth year for tenth year The payment document should be submitted together with the application.	15 15 15 15 15 15 15 15	40 60 80 100 120 140 160 200
25.	For granting 6 months for the period of annual payment of the patent during the year while it's in force. The payment document should be submitted together with the petition	50	50

* The "tariff *" sign written in annex 1.1 shows that, tariffs of the international research center and fees for sending of documents are paid directly by the applicant or the interested person.

Amount of fees and duties to be for protection of industrial property objects and way of payment

Annex 2

Amount of fees to be paid for trademarks and geographical signs

#	Names of measures of legal importance and their terms of payment	Amount of duties	
		For national legal entities and natural persons	US\$ for foreign legal entities and natural persons (its Manat equivalent)
1	For claim application on registration of trademark or geographical sign (for no more than 3 classes of goods or services rendered Where: a) for expertise of the claim application b) for initial expertise of the claim application Payment document should be submitted together with the petition or within 2 months from the date of the submission of the petition	50 50 50	150 120 30
2	For every class of goods or services rendered exceeding 3 Payment document should be submitted together with the petition or within 2 months from the date of the submission of the petition	50	40
3	For extension of the period for 2 more months based on petition of the applicant in accordance with Article 9.12 of the Law of Azerbaijan "On Trademarks and geographical signs" Payment document should be submitted together with the petition	100	20
4	For the request of the priority concerning trademark Payment document should be submitted together with the petition	50	50
5	For application of amendments, corrections and changes to claim application materials concerning trademarks and geographical signs Payment document should be submitted together with the petition	70	20
6	For extension of the reply period for expertise inquiries Payment document should be submitted together with the petition	100	25
7	For carrying out of expertise over claim application on trademark and geographical sign in one month Payment document should be submitted together with the petition	50	100
8	For submission of the objection application to the Appeal Commission in case of dissent with the decision of the expertise concerning application for restoration of passed time Payment document should be submitted together with the petition	50	50

9	Submission of the objection application to the Appeal Commission: a) against refusal by the initial expertise of consideration of the claim application on trademark b) against refusal by the initial expertise of the consideration of the claim application on geographical sign c) against decision made by the expertise on the claim application on trademark d) against decision made by the expertise on the claim application on geographical sign e) against registered trademark f) against registered geographical sign Payment document should be submitted together with the petition	50 50 50 50 50 50	50 50 150 100 200 150
10	For registration, publication of the information and issuance of certificate: a) for trademarks b) for geographical signs c) for collective sign Payment document should be submitted together with the petition	25 25 25	200 100 250
11	For application of changes to the information concerning registration contained in register and certificate Payment document should be submitted together with the petition	50	70
12	For issuance of duplicates of certificates on trademarks and geographical sign Payment document should be submitted together with the petition	50	30
13	For withdraws out the register Payment document should be submitted together with the petition	50	30
14	For registration of agreements on granting rights related to trademarks: a) for one trademark upon claim application b) for several trademarks upon claim application (for each trademark exceeding one) c) for one registered trademark d) for several registered trademarks (for every trademark exceeding one) Payment document should be submitted together with the petition	50 50 50 50	100 60 150 100
15	Registration of licensing agreements: a) for one trademark b) for several trademarks (for every trademark exceeding one) Payment document should be submitted together with the petition	50 50	200 150
16	For application of changes to licensing agreements, agreements on granting rights related to trademarks Payment document should be submitted together with the petition	50	50

17	For extension of the effectiveness period after its expiry: a) for trademark b) for geographical sign c) for collective sign Payment document should be submitted during last 2 month of the effectiveness or together with the petition	50 50 50	250 100 350
18	Additional fee for 6 more months of extended period after expiry of the date: a) for trademark b) for geographical sign c) for collective sign Payment document should be submitted together with the petition	50 50 50	50 50 50

Question 92

Subsection 1(e) refers to “payments and taxes relating to the copyrights from foreign persons” being covered in Article 12 of the Law on Taxes on profit from private citizens and by the Law on income taxes of enterprises and organizations.

Please describe in detail the taxes, to whom they apply, and the manner in which they are collected, citing to the express provisions of law.

Answer:

Application of taxes on foreign persons for copyrights is regulated by Article 11 " Specific character of authorship payments taxation" of the Law of Azerbaijan "On income tax application on natural persons in the Republic of Azerbaijan". According to these rules if there are contracts for creation, publishing, fulfilment or another use of pieces of science, literature and art, payments effected under these contracts in advance or at the final settlement, are summed and distributed by years of contract term for the aim of taxation. In case of lacking of such contract, if the authorship payment for creation or first publishing of such works exceeds 50 minimum salaries, the amount is distributed for three years at payers' statement. The same order is to be applied for payments to authors of inventions, inculcation and production samples for the first year of their use. Tax amount is charged from payment source.

Question 93

Please provide translated copies of the laws, decrees, regulations, and other legal acts relating to intellectual property, including any draft legislation. This should include, but not be limited to the following:

- **On Copyright and Related Rights**
- **On Trademarks and Geographical signs**
- **Law On Patents**
- **Law About Nature Protection and Nature Utilization**

Answer:

Copies of Laws "On Copyright and Related Rights", "On Trademarks and Geographical signs" and Law "On Patents" are submitted to the Secretariat of the WTO.

Plant protection is provided by the general provisions of the Law of Azerbaijan "On Nature Protection and Nature Utilization". Also please note that, the Law "On Selections" by 15 November 1996, provides rules and conditions of plant types. We cannot provide copy of this Law due to its absence in English language.

- 2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights**
- (a) Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organizations**

Question 94

Subsection 2(a) specifies the provisions of Azerbaijan's Law on Copyrights and Related Rights that addresses protection for works of authors, performers' rights, phonograph producers' rights, and the rights of broadcast organizations, but it does not identify the specific rights provided in each case, their term, and any limitations applied.

As the texts of the laws themselves are not yet available, please provide that information.

Answer:

According to the worsening principles of the protection period foreseen in by Law of Azerbaijan "On Copyrights and cooperate rights" effective since 1996, works with old valid protection terms are affected by the new terms of the protection period (livelong of the author + 50 years).

If since the Law is effective, break in protection terms has taken the place, in another words if terms of previous protection have expired, the protection terms are not extended and new terms are not applied.

Question 95

Article 18 of the Bern Convention, incorporated into the TRIPS Agreement by Article 9.1, requires that copyright protection be restored to existing works that are still protected in their country of origin. Article 14 of the TRIPS Agreement requires that protection be restored to phonogram producers for existing phonograms still protected in their country of origin and to performances of performers still protected in their country of origin.

Please describe in detail the steps The Republic of Azerbaijan has taken to restore copyright protection for existing works when it became a Member of the Berne Union and please describe what steps are being taken to extend protection to existing rights in phonograms and performances that are still protected in their country of origin.

Answer:

Azerbaijan applies national regime to authors of countries members of the Bern Union.

According to Article 18.2 of Bern Convention, if works of authors of Bern Union member countries are public property, Azerbaijan do not protect these works. Azerbaijan can conclude special agreements with Bern Union member countries and can give specifics to protection principles in these agreements.

Cooperate rights definitions did not exist in the legislation till 1996 and they were not therefore protected. Protection of cooperate rights started since 1996. According to this, works on restoration of cooperate rights according to terms foreseen in new legislation and their protection are presently carried out.

Question 96

Article 10 of the TRIPS Agreement requires that computer programs be protected under copyright law as literary works under the Bern Convention.

Please confirm that The Republic of Azerbaijan's Law on Copyright and Related Rights is complies with that obligation.

Answer:

Protection of computer programs is provided in line with other copyright objects in by Article 6 the Law "On Copyright and cooperate rights".

Question 97

When does Azerbaijan intend to accede to the Geneva Phonograms Convention?

Answer:

The proposal on accession to the Geneva Phonograms Convention is submitted to the Cabinet of Ministers of Azerbaijan. The membership to the Geneva Convention was considered expedient by the Ministry of Foreign Affairs. Now Azerbaijan is going through accession procedures to the named convention.

Question 98

Azerbaijan indicates that legal protection of layout designs of integrated circuits is not currently provided on the basis of Law in Azerbaijan

Please describe in detail the manner in which legal protection of layout designs of integrated circuits is currently carried out and whether Azerbaijan plans to protect layout designs of integrated circuits on the basis of law.

Answer:

The draft Law of Azerbaijan "On protection of layout designs and integrated circuits" is being worked out with assistance of experts of the World Intellectual Property Organization and will be submitted to the Milli Mejlis in 2001.

(b) Trademarks, including service marks

Question 99

Subsection 2(b) of Part V of The Republic of Azerbaijan's Foreign Trade Memorandum states that trademarks, including official marks are protected under the Law on Trademarks and Geographical Indications, but provides no further description.

Please describe in detail what marks can be registered in The Republic of Azerbaijan, what rights are acquired with registration, the term of protection, whether and under what circumstances registrations can be renewed, and any conditions that are imposed on the use of trademarks, including licensing, by their owner.

Answer:

The following can be registered as trademarks:

Words, personal names, letters, figures, drawing elements, goods shapes or packing, any combination of colours or anything of the above (Law "On trademarks and geographical signs").

The owner of the trademark is entitled to exclusively use it on the territory of the Azerbaijan Republic for a period of its validity (Article 25).

The registration of trademark or geographical sign is to be valid within 10 years since the date of submittal of the exacting document to the corresponding executive authority. The period in question can be extended for another 10 years on the basis of trademark owner's application and provided that state duty is paid. After the expiration of the registration validity period the owner of the trademark or certificate of geographical sign can be provided with 6-month extension on condition of the payment of additional state duty (Article 21).

The owner of the trademark can cede the right to use it on the basis of lease agreement and the right for a trademark on the basis of agreement referring to all goods and services represented by this trademark or part of them to another person. According to the licence agreement the quality of goods and services of the licensee is not to be lower than the quality of the same of the licensor and the licensor is to control the fulfilment of this condition. The document about quality of goods and services is to be enclosed to the licence agreement. Licence agreement can be amended with consent of the parties and provided that the state duty is paid. Registered licence agreement can be cancelled in the order, established by the legislation. It is not allowed to forcedly conclude a licence agreement about trademark (Article 28).

Question 100

Are service marks protected under the Law on Trademarks and Geographical Indications? If not, what plans has The Republic of Azerbaijan to amend its law to provide protection for service marks as required by Article 15.1 of the TRIPS Agreement.

Answer:

Service marks are protected by the Law of Azerbaijan "On Trademarks and geographical signs" (see Article 1).

Question 101

Article 2.1 of the TRIPS Agreement requires that Members comply with Articles 1 through 12, and Article 19, of the Paris Convention, to which The Republic of Azerbaijan is a Party. Article 6^{bis} of the Paris Convention requires protection of well-known marks, even if they are not registered in a country.

Please describe in detail the manner in which well-known trademarks are protected in Azerbaijan, citing to the provisions of law authorizing the various forms of protection and indicating the agencies responsible for each kind of protection.

Answer:

Well-known trademarks are ones described in Article 6^{bis} of Paris Convention. Ever since trademark is recognized as well-know relative executive bodies note following:

- Degree of popularity of good and services trademark stands for among the population on the territory of the Azerbaijan Republic;
- Channels of distribution and commercial offers of goods and services trademark relates to;
- Information of consumers about quality of goods, using trademark both in Azerbaijan and at the world market;
- Characteristic features of the trademark or features acquired during the process of its use;
- Place of goods and services, using trademark that is occupied at the markets on the territory of the Azerbaijan Republic and other states.

Should the use of the popular trademark registered in Azerbaijan by another person in different kinds of goods and services results in the damage to the owner of this trademark, the circumstance is to be considered the violation of rights of the popular trademark owner (Article 7).

Question 102

Please describe in detail any limitations or special requirements placed on the use of trademarks in The Republic of Azerbaijan and provide the citation to the provision of law providing for such limitation or special requirement.

Answer:

Appeal committee of the corresponding executive authority can cancel the registration in case of non-use of the registered trademark or geographical sign for 5 uninterrupted years since the date of registration or for 5 years since the date of submittal the application for its utilization by the interested person. The interested person, owners of the trademark, its licensee, owner of the certificate of the geographical sign are entitled to participate in the consideration of application. During consideration of the issue about cancellation of registration in connection with the non-use of the registered trademark or geographical sign the arguments of the trademark owner, showing that he did not use it for reasons beyond his control can be taken into account. During the use of collective trademark in goods and services, not having common qualitative or other characteristics, the registration of the mentioned trademark can be cancelled in court either fully or partially on the basis of application from the interested legal or natural entity (Article30).

(c) **Geographical indications, including appellations of origin**

Question 103

Subsection 2(c) of Part V of The Republic of Azerbaijan's Foreign Trade Memorandum states that geographical indications are protected under the Law on Trademarks and Geographical Indications, but provides no further description.

Please describe in detail the protection provided geographical indications, how and by whom such geographical indications are established, and how interested parties can protect rights in geographical indications.

Answer:

Geographical sign is the sign, informing about goods origin in relation to the territory of the state or zone, or area (geographical location), reflecting its peculiar qualities, popularity or other characteristics.

Along with the geographical name of the country, city, zone or territory, that represent nominal geographical sign, graphical or visual reproduction of the geographical sign is also to be protected.

Unless geographical sign reflects forged or misleading origin, it can be used as a characteristic element of goods or service.

The use of geographical signs is specified for the entrepreneurs, servicing present territory.

Official name, historical name or derivatives from them can be used as geographical signs.

In case of violation of these rules, the sign is not to be registered as a geographical sign.

The sign representing the name of the geographical object or reflecting this name, but not referring to the geographical object in Azerbaijan is not to be registered as a geographical sign.

Geographical sign, not protected in the country of origin is not to be registered in Azerbaijan (Article 8).

Natural persons and legal entities of Azerbaijan are entitled to claim for registration of their geographical signs in other countries or international registration through by State Committee for Technology and Science, after their registration in Azerbaijan.

Question 104

Does protection for geographical indications vary based on the product to which a geographical indication applies and, if so, please describe those variations and indicate the products to which each variation applies.

Answer:

Geographical sign makes equivalent on or more geographical regions where one or more factories (of the entrepreneur) producing goods or services using of the geographical sign are located. Any factory geographically located in the territory of the used geographical sign is entitled, with complying to quality and characteristic requirements, use signs for goods or services originating from

this region. Geographical sign may be registered as collective sign. Collective signs is entitled to be used as differing sign for characteristics, quality, production methods, materials or geographical origin of goods or services rendered by the factories that use these collective signs and are owned by the owner of collective sing. In this case, all members of the union should own factories located in these geographical territories and should produce goods and render services determined by requirements of the commission group of the local executive bodies.

Following signs (works) cannot be registered as geographical signs:

- signs of wines and alcoholic drinks, not corresponding to their origin but equated to it;
- signs that may mislead consumers concerning characteristics, quality or geographical origin of goods or services rendered. These kind of sings are ones that may mislead consumers concerning characteristics, quality or any other specifics or create false idea about geographical origin of goods or services rendered.

(d) Industrial designs

Question 105

Subsection 2(d) of Part V of The Republic of Azerbaijan's Foreign Trade Memorandum states that protection for industrial designs if provided by The Republic of Azerbaijan's Law on Patents, but provides no further details.

Please describe in detail the requirements and procedure for obtaining rights in an industrial design, the rights acquired, any limitations on those rights and the term of protection provided.

Answer:

Industrial patterns are those artistic-constructive solutions determining the appearance of the information.

Industrial pattern might consist of picture, model, or their association.

If the whole of features causing aesthetic and ergonomic peculiarities of industrial pattern (shape, configuration, ornament or association of colours) is unknown from information acceptable to everybody in the world till its primacy date, the industrial pattern is considered to be new. Documents on claim on industrial samples in Azerbaijan given by other legal entities and natural persons and published in the official bulletin of the relative executive body are also related to the whole of existing information.

If the information concerning the context of the industrial pattern is revealed by the author, plaintiff or any other person obtaining the information directly or indirectly within 6 months till the day of presentation of documents of claim on industrial pattern to the appropriate executive body, this does not damage the innovation of the object specified in the document of claim. Author or plaintiff should undertake the proof of the fact of reveal.

Industrial pattern, important features of which give creative character to its aesthetic peculiarities is considered to be originals.

Industrial pattern, which is overproduced for several times, is considered to be applicable in the industry.

Following objects are not considered to be industrial patterns:

- solutions conditioning only technical functions of the information;
- architectural objects (except small architectural shapes);
- industrial, hydro-technical and other sanitary facilities;
- printing goods;
- objects with unstable shape made from liquid, gas, powder and alike substances.

The volume of legal protection granted to industrial patterns is identified according to the whole of important features specified in the photographs of the information (model, drawing). The term of validity of patent granted for industrial pattern is 10 years.

The permanent right for industrial pattern belongs to the owner of the patent by infringing rights of other patent owners.

Claim document on industrial pattern has concern only to one industrial pattern.

If several items structure the united artistic-constructive form, they are considered to be one industrial pattern.

If several industrial patterns belong to one class of industrial pattern classifications, they are considered to be one industrial pattern.

Appropriate executive body publishes the information on claim document no later than 6 months after the date of presentation of claim application on this industrial pattern in its official bulletin. According to application of the plaintiff, considering all fees paid, information concerning claim document can be published sooner than the date shown above.

Appropriate executive body grants patent to the applicant, after the expiry of terms for presentation of complaints concerning published claim application or within 2 months after the date of decision taken by the Appeal Commission concerning issuance of the patent, provide that all fees related registration of industrial pattern, issuance of the patent and its registration are paid.

(e) Patents

Question 106

Subsection 2(e) of Part V of The Republic of Azerbaijan's Foreign Trade Memorandum states that protection for inventions and utility models is provided by The Republic of Azerbaijan's Law on Patents, but gives no further description.

Please describe in detail the requirements and procedure for obtaining rights in an invention, the rights acquired, any limitations on those rights and the term of protection provided.

Answer:

Following objects might be considered inventions:

- structure;
- way;
- substance;
- stamp of microorganisms;
- crops of plant and animal cells;

- application of structure, way, substance, micro-organism stamp known before with a new purpose.

Object of invention that is new, and is in the level of invention and might be applied in industry is given a legal protection.

If the invention does not repeat one part of the existing whole of information, it is considered new. Information known to everybody in the world till the day of issue of documents of claim on invention is referred to the whole of existing information. Documents of claim on invention published in the official bulletin of the body of appropriate executive power are also included to the whole of existing information.

Information above is not applied to invention manifested only in their application of the innovation, only in the case, if the application does not arise from existing information.

If the information concerning the contents of the invention is revealed by the author, plaintiff or any person obtaining the information from them directly or indirectly within 12 months after the day of presentation of document of claim to the appropriate executive body, this does not damage the innovation of the object specified in the claim application. Author or plaintiff undertakes the proof of the fact of revealing.

If the invention does not arise openly from existing information for the specialist working in this sphere it is considered to be invention level.

If the object of the invention might be prepared or used in any sphere of industry or economy, in this case the invention considered to be applicable in the industry or economy.

Following objects are not considered to be inventions:

- scientific theories;
- arithmetical methods;
- result of artistic constructor work (design);
- methods of organization and management of economy and mental activity;
- ways and methods of games;
- computer algorithms and programs;
- ways of presentation of information;
- conventional signs, tables and rules;
- projects of structures, buildings and locality and schemes of planning;
- kinds of plants and species of animals (except microbiological ways and goods produced by this way);
- topology of integral microschemes;
- surgical and treatment of human and animal organisms, methods of diagnostic of illness.

The volume of legal protection granted with patent to inventions is established according to their formula. The term of validity of patent granted for inventions in Azerbaijan is established from the date of presentation of claim application to appropriate executive body and lasts for 20 years (provided payment of fees for every three years, starting after first three years).

Following cases are not considered violation of exclusive rights of patent owner:

- non-profit use of means containing patented object of industrial property;
- use of means containing patented objects of industrial property for scientific, experimental or research purposes, as well as for examination of patented objects of industrial property;

- making up a prescription for single use according to doctor's prescription.

Use of patented object of industrial property giving equal rights to owners of transportation means of Azerbaijan and belonging to legal entities and natural persons of foreign countries, and delivered to the territory of Azerbaijan temporary or by accident for need of transportation means, in design of those transportation means during their operation.

Question 107

Article 27 of the TRIPS Agreement generally requires that patents be available in all fields of technology but does identify certain permissible exceptions.

Are there any exceptions to patentability in the Law on Patents and, if so, please describe those exceptions.

Answer:

Inventions, industrial patterns, which are against public interests, principles of humanism and morals are not protected by patent.

Objects, which are not inventions shown above, can be presented as exceptions to patentability in the Law on Patent.

Question 108

Article 31 of the TRIPS Agreement establishes conditions under which the grant of a compulsory licence is permissible.

Does the patent law of The Republic of Azerbaijan permit compulsory licensing of patents and, if so, please indicate with respect to each condition itemized in Article 31, how and under what authority such condition is ensured.

Answer:

In case when patent owner or his successor does not use the object of industrial property within the period of 3 years after the date of issue of the patent without any valid excuse and does not carry out serious preparation to use or suspend the use more than 3 or refuse from issuing the licence after termination of this period, any legal entity or natural person might appeal the Law Court with claim on issue of compulsory licence is of non-exclusive nature.

In case when the licensee does not use the compulsory licence within the period of 2 years from the date of its issue, patent owner might appeal the Law Court for cancellation of the licence in the way established by the legislation. Relation between patent owner and the person obtained the compulsory licence from the date of issue of compulsory licence are considered equal to the relations between licensor and licensee established by the Law "On Patent".

Patent owner might require other patent owner without violation of his rights to conclude licence agreement if he can not use the object of industrial property. Disputes concerning them are settled at the Court in the way established by the legislation.

With the objectives of safeguarding the interests of national security body of the appropriate executive power has the right of giving his consent on use of the object of industrial property without the consent of patent owner. In this case corresponding compensation is paid to patent owner. If the

patent owner is not satisfied with the amount of compensation, he might appeal to Court in an order stipulated by the legislation of Azerbaijan.

Question 109

In disputes involving a process patent, is the burden of proof regarding the actual process used to produce the product that is the subject of the dispute shifted to the defendant in either or both of the two conditions identified in Article 34 of the TRIPS Agreement? If so, please describe in detail the conditions under which the burden of proof will be shifted and cite the legal authority for the shift.

Answer:

Rights granted for patent of methods for obtaining product (information) has direct concern to other products obtained by this method and if there is no proof of opposite, the new product is considered to be obtained by the new method.

(f) Plant variety protection

Question 110

Subsection (f) states that plant variety protection is provided by the Law "About Nature Protection and Nature Utilization."

Please describe in detail the requirements and procedure for obtaining rights in a plant variety, the rights acquired, the limitations on those rights contained in the law and the term of protection provided.

Answer:

As it is shown above protection of plant variety is provided by the general provision of the Law "On Nature Protection and Nature Utilization". The Law of Azerbaijan "On Selection achievements" of 15 November 1996 determines rules and conditions of protection of plant varieties. According to this law right for application for patent is first of all granted to authors of selection achievements or his legal successor.

In case if the selection achievement created jointly, or applicants are legal successors of the author then applications are presented by several persons and they are regulated by the agreement concluded among them.

Right of obtaining a patent for selection achievement created by employee in connection with fulfilment of official duties if there are no other terms between employer and employee, belongs to employer. In this case compensation of the author (authors) for the use of selection achievement should be foreseen by the agreement.

If there is no authorship agreement between employer and author concerning giving rights to the employer or the employer infringes conditions of agreement, in this case rights for application for patent stay with the author.

The right for obtaining a patent can be granted any persons written in the application of the author. In this case the application of the author should be presented to the appropriate bodies before the issuance of the patent is decided.

Legal entities and citizens of foreign countries have the right to apply for patent, if their relative countries have international agreements with Azerbaijan on expertise and protection of selection achievements. They present application for every selection achievement separately.

Application can be presented in country language of Azerbaijan or any other language. If the document is presented in another language, the translation of this document should be enclosed.

Following documents should be presented for obtaining the patent:

- application for obtaining the patent for selection achievements;
- file with description and reflected elements of selection achievements;
- payment check of all relative fees.

Rules for collection of application documents and their consideration are regulated by the approved instructions.

Authorize government bodies carry out necessary registration of patented selection achievements in the state register.

Terms of validity of patent is fixed for 20 years since the date of registration of patented selection achievement in the state register, and 25 years for grapes types, decoration plants, fruits and forest trees and types of animals.

Term of validity of the patent can be extended for 10 more years by the authorized government body.

During the temporary protection, selection achievements can be used only for science and experience-experiments.

Legal entities and natural persons of Azerbaijan have the right to appeal to appropriate government authorities of other countries for obtaining the patent for selection achievements.

Citizens applying for patent to other countries should inform appropriate bodies of Azerbaijan government.

All expenses for obtaining the patent in other countries should be covered by the applicant.

Natural persons and legal entities of other countries have the right to apply to appropriate government bodies of Azerbaijan for obtaining the patent.

The patenting of selection achievements in Azerbaijan applied for by the foreign legal entities and natural persons is carried out according to national legislation.

(g) Layout-designs of integrated circuits

Question 111

Subsection (g) indicates that The Republic of Azerbaijan does not currently protect layout designs for integrated circuits.

Please describe the plans for providing such protection, including identifying the agencies responsible for preparing legislation, indicating the steps that have been taken and the timetable for completion of the plans.

Answer:

The draft Law of Azerbaijan "On Layout-designs of Integrated Circuits" is worked out and will be submitted to the Milli Mejlis for consideration after the approval of the World Intellectual Property Organization is received.

(h) Requirements on undisclosed information, including trade secrets and test data

Question 112

Subsection (h) states that Article 16 of the Law of the Republic of Azerbaijan On Antimonopoly Activities prohibits use of test data or other commercial or financial secrets from being used without the consent of the proprietor.

Please describe in detail how this protection is provided, including the criteria used to determine what is a commercial or financial secret, who is considered to be a proprietor, what court and administrative procedures are available to enforce rights, and what remedies are available against those who violate those rights.

Answer:

According to Article 39 of TRIPS, protection of disclosed information is provided in by Article 7 of the Law of Azerbaijan "On Unfair competition". It is stipulated that illegal receiving, using and disclosing of the information on the scientific-technical, industrial or commercial activity of the market subject, including the commercial secrets are prohibited.

According to Article 33 of the Law of Azerbaijan "On trademarks and geographical signs" commercial confidentiality of the trademark owner, connected to the manufacturing of goods or rendering of services is kept during consideration of disputes in court.

According to Article 10, section 10.2 of Civil Procedural Code of Azerbaijan, disclosing of state, specialty or commercial secrets, spreading out of personal and family secrets, excluding cases when rights of people under full age are observed, all case are considered openly.

According Article 202, section 201.1 in case of collection of information including commercial or bank secrets, stealing of these kinds of information with the aim of their illegal use or spreading, procurement and threatening or other illegal actions - it is punished by payment of 100 to 500 times minimum wages of penalty or one year of compulsory works or two years of imprisonment.

According to Article 202.2 in cases of illegal use of information containing bank or commercial secrets for mercenary or other ends or their disclosure and actions causing serious damages - it is punished by payment of 500 to 1000 times minimum wages of penalty or two years of compulsory works or imprisonment for the same period.

Question 113

Article 39.3 of the TRIPS Agreement deals with test data that must be submitted to any regulatory authorities in a country in order to obtain marketing approval for a pharmaceutical or agricultural chemical product.

Please identify what authorities in Azerbaijan are responsible for granting marketing approval for pharmaceutical and agricultural chemical and indicate on what basis they make their determinations.

Answer:

See answers above.

Question 114

Please explain whether a second application for marketing approval of a pharmaceutical or agricultural chemical may rely on the data submitted by an earlier applicant if the second applicant can demonstrate that the pharmaceutical or agricultural chemical for which it seeks approval is the bio-equivalent of the earlier approved product.

Answer:

See answers above.

4. Enforcement

Question 115

Articles 41.1 and 42 of TRIPS Agreement require that procedures be available for the effective enforcement of the intellectual property rights covered by the Agreement.

Please describe the structure of the judicial and administrative procedures in Azerbaijan in which parties can enforce their intellectual property rights, at local, provincial and national levels.

Answer:

It is reflected in Article 36 of the Law of Azerbaijan "On trademarks and geographical signs" and Article 42 of the Law "On Patent" that, foreign legal entities or natural persons may enjoy equal rights with citizens of Azerbaijan in accordance with international agreements that Azerbaijan is participating or mutual principles.

According to Article 33 of the Law of Azerbaijan "On trademarks and geographical signs" and Article 40 of the Law "On Patent" disputes arising concerning industrial property objects are considered by the court in an order established by legislation of Azerbaijan.

According to legislation of Azerbaijan civil, criminal and administrative charges foreseen for insuring of copyrights and cooperate rights concerning industrial property.

Civil legal undertakings:

Section 2 of the Civil Code reflects the civil rights and responsibilities, and their protection.

According to Article 17 of the Civil Code ("Protection of Civil Rights") all state administrative bodies, local municipalities, political parties, social union, labour unions, organizations, legal entities and natural persons are obliged to respect civil rights and assist in their protection.

Legal protection of civil rights¹ is provided by the general courts according to their responsibilities foreseen in by Civil Code and economic courts.

¹ These questions apply to both judicial and administrative enforcement of intellectual property rights because of Article 49 of the TRIPS Agreement.

Owners of copyright and cooperate rights may apply to courts for restoration of their infringed rights.

According to Article 18 of the Civil Code, protection of civil rights is provided in accordance with legislation of Azerbaijan in a way not against public interests, principles of humanism and morals. Also according to Article 20 of the Civil Code, person has the right to protect his civil rights in any way, which is not against ways prohibited by the legislation of Azerbaijan.

Self-defending methods of civil rights should be balanced to civil rights infringements and should not exceed actions necessary to stop the violation.

According to legislation of Azerbaijan along with general means of civic-legal protection (recognition of civil rights, prevention of violation acts and restoration of conditions before violation, reimbursement of losses etc.- Article 18, 21 etc. of the Civil Code), according to Article 45 of the Law of Azerbaijan "On trademarks and geographical signs" following measures can be applied according to appeal of the plaintiff:

- a) penalty on the profit, received by the infringe in the result of copyrights and cooperate rights breaking, in place of compensation of losses. .
- b) Payment of compensation in the amount of from 100 to 50 thousand minimal wages in place of losses compensation or penalty on profit.

Criminal Legal undertakings:

Following responsibilities foreseen for violation of copyright and cooperate rights in accordance with Article 165 of the Criminal Code:

Article 165 - Violation of copyright and cooperate rights

165.1. In cases of illegal use of copyright and cooperate rights objects, i.e., publication of scientific, literature, art or other works on your name, or misappropriation of other's authorship, illegal republication of the work or spreading, also constrain to co-authorship, if serious material damage is caused - it is punished by payment of 100 to 500 times amount of losses of penalty or 160 to 240 hours of compulsory works.

165.2. Same undertakings

165.2.1. In recurrence of the case;

165.2.2 Planned actions by group of people and organized criminal groups - provided payment of 500 to 1000 times minimum wages as penalty and imprisonment for up to 3 years.

Article 166.1. If serious damage is caused by the infringement of invention and patent rights - is punished by payment of 100 to 500 times minimum wages of penalty or 160 to 240 hours of compulsory works.

Article 166.2.2. If violation is caused by planned actions of group of people or organized criminal groups - is punished by 500 to 1000 times wages of penalty and 3 years of imprisonment.

Article 197.1. In cases of occurrence of use of other's goods or service signs, use of name of place of origin of goods or use of names of goods of the same type or in cases or serious

damages - it is punished by payment of 1000 to 5000 times minimum wages of penalty or one year of compulsory works or one year of imprisonment.

Article 197.2. In case of serious damages caused by similar goods - it is punished by two years of compulsory works or three years of limitation of freedom or imprisonment for the same period.

Article 202.1. In case of collection of information containing bank or commercial secrets, their stealing with the aim of illegal use or spreading, also procurement, threatening or other kinds of illegal actions - it is punished by payment of 100 to 500 times minimum wages of penalty or one year of compulsory works or three years of imprisonment.

Article 202.2. In case of serious material damage caused by the illegal use or spreading of information containing bank or commercial secrets for mercenary or other personal ends without approval of the owner - it is punished by the payment of 500 to 1000 times minimum wages of penalty or two years of compulsory works or imprisonment for the same period.

Administrative legal undertakings:

According to Administrative Infringements Code of the Republic of Azerbaijan:

Article 17. Legal entities, including foreign persons bear the responsibility for administrative infringements determined by the Code.

Article 187:

187.2.1 For illegal use of programs of mass media without permission or copying of these programs without awareness of the owner with the aim of spreading, sale or for public show

- government officials are charged by 70 to 90 times minimum wages of penalty, legal entities are charged by 250 to 350 times minimum wages.

Article 205. For illegal use of other's goods or services signs, or use of names of origin of other goods of same type, if the damage is minimal - natural persons are charged by 10 to 15 times minimum wages, government officials by 35 to 65 times minimum wages, legal entities by 30 to 170 times minimum wages of penalties.

Article 223. For illegal use or spreading of information containing commercial or bank secrets without permission of the owner, if causes minimum losses - natural persons are charged by 20 to 25 times minimum wages, government officials by 40 to 55 times minimum wages, legal entities by 150 to 200 times minimum wages of penalties.

Note: Expression "if it causes minimum damage" in this Article means, amount equal to 7 thousand times minimum wage.

Article 364.1. Cases on administrative infringements, excluding when they concern actions leading to spreading of state, service, commercial and other secrets protected by the legislation are considered openly by the court.

According to Article 17 of the Civil Code ("Protection of civil rights") administrative protection of civic rights is carried out according to provisions foreseen by the legislation. Appeal of claim against decision can be presented to the court in the administrative order.

Owners of copyright and cooperate rights, also authorized government bodies and organizations providing collective regulation of these rights may demand prevention of actions causing or aiming to cause infringement of copyright or cooperate rights (Article 44 of the Law "On copyright and cooperate rights").

Nonetheless, the Code of Azerbaijan "On Administrative Infringements" effective of 1 September 2000, partially provides administrative charges for author-legal infringements. Concerning this, appropriate proposal related to amendments to this Code is sent to the Milli Mejlis:

"Article. Illegal use of copyright and cooperate rights (use of rights without consent of the owner).

Charge applied for illegal use of copyright and cooperate rights without consent of the owner-

Natural persons - in the amount of 15 to 25 times minimum wages, government officials - in the amount of 70 to 90 minimum wages.

Legal entities - in the amount of 250 to 300 times minimum wages."

Following are provisional measures established by the Civil Code of Azerbaijan effective of 1 September 2000.

Article 158. Measures satisfying claim application

158.1. Following actions can be undertaken in order to satisfy the claim application:

158.1.1. application of arrest on defendants' property or property of the defendant remaining in the disposition of others.

158.1.2. prohibition of certain actions to defendant

158.1.3. prohibition of actions subjects to disputes

158.1.4. suspension of procurement of property upon presented claim on release of property of the arrest.

158.1.5. prevention of withdrawing of demands on the debtor disputed within law frames upon execution document.

158.1.6. prevention of withdrawing of demand application presented by the plaintiff on disputes concerning penalty payment to be carried without disputes.

158.2. Court may apply other measures foreseen by this Code in order to satisfy the claim application. Court may apply different types of resolution of the matter.

Procedures of restoration of infringed copyright and cooperate rights are carried out in the following order foreseen by the legislation. Owners of infringed copyright and cooperate rights have the right to demand prevention of actions causing or aiming to cause violation of their rights. Owners of infringed copyright or cooperate rights may apply restoration of their rights through appropriate government bodies working in this sphere or organizations providing collective protection of this kind of rights.

Appropriate government bodies, working in copyright sphere, do not pay state fees while presentation claim application concerning restoration of copyright and cooperate rights (Article 46 of the Law of Azerbaijan "On copyright and cooperate rights").

Legislation releases plaintiff from the state fees while appeal with claim document to court on restoration copyright and cooperate rights (Article 3 of the Law "On State Fees").

According to Article 124.1 of the Civil-Procedural Code of Azerbaijan all expenses bore by court and amount of fees released from payment by plaintiff are charged within the country from the defendant in the proportion to amount satisfying the dispute.

Procedures of restoration of copyright and cooperate rights shown above have concern to participants of the international agreements that Azerbaijan is a part to.

According to Article 439 of Civil-Procedural Code of Azerbaijan, foreigners and non-citizens, foreign legal entities may appeal to courts of Azerbaijan for restoration of their disputed rights and interest protected by the law and enjoy equal procedural rights and bear same responsibilities with local legal entities and natural persons.

Question 116

Please indicate the jurisdiction of each type of court or administrative body and explain the interrelationships, if any, of the various types of courts and administrative bodies. Cite the laws or other authorities establishing the structure, including each type of court and administrative body.

Answer:

See answer above.

Question 117

Please describe briefly the procedure that must be followed by a foreign party to initiate an enforcement procedure in each of the courts and administrative bodies identified in response to the previous question cite the legal authorities establishing those procedures.

Answer:

See answer above.

Question 118

Please identify any requirement that a foreign party must meet to initiate a proceeding in the courts and administrative bodies identified in answer to question 25 that is not required of a national or resident of The Republic of Azerbaijan and cite the legal authorities providing for those differences.

Answer:

See answer above.

Question 119

Article 41.2 of the TRIPS Agreement addresses, among other things, the cost of judicial and administrative enforcement proceedings.

Please describe any fees charged by judicial or administrative officials for filing legal actions involving intellectual property or for pursuing such actions once initiated, cite the legal authorities for such fees, and provide copies of the documents used to inform the public of such fees.

Answer:

All disputes arising concerning objects of industrial property are considered in Appeal Commission of State Committee for Science and Technology (SCST) in accordance with the Laws of Azerbaijan "On Patent" and "On trademarks and geographical signs". Claim against decision taken by the Appeal Commission can be presented to Court within 3 months. According to sections 11, 12 of Annex 1 and sections 8 and 9 of Annex 2 of Rules "On payment and amount of fees related to protection of objects of industrial property" approved by the Resolution of Cabinet of Ministers under#37 of 6 March 2000, fees to be paid while application against decision of Appeal Commission are fixed at US\$20 to US\$200 rates.

According to Article 110 of the Civil-Procedural Code of Azerbaijan, authors related to copyrights; disputes on copyrights, invention useful models, industrial patterns, also disputes arising from other types of intellectual property - plaintiffs are released from payment of state fees related dispute consideration in court. In accordance with Article 46 of the Law of Azerbaijan "On copyright and cooperate rights" effective by 8 October 1996, in case of writ for the protection of copyrights and cooperate rights Copyright Agency doesn't pay a state levy as a state body dealing with copyrights. Also according to the Law "On State fees", authors are exempt from paying state fees while settlement of disputes arising from copyrights.

According to Article 124.1 of the Civil-Procedural Code of Azerbaijan all expenses bore by court and amount of fees released from payment by plaintiff are charged within the country from the defendant in the proportion to amount satisfying the dispute.

Question 120

Article 48.2 permits WTO Members to exempt public authorities and officials from liability from remedies for infringement of intellectual property rights only if the actions of those officials were taken or intended in good faith in carrying out their responsibilities under the law.

Please explain any exemption provided public authorities and officials under the laws of the Republic of Azerbaijan from liability for abuse of enforcement procedures, describe the circumstances in which such limitations would not apply, and cite the legal authorities.

Answer:

See answers above.

Question 121

Subsection 4(b) of the Foreign Trade Memorandum indicates that provisional measures are not available in Azerbaijan.

Please describe the Republic of Azerbaijan's plans for making the necessary changes to its laws and practices in order to provide provisional measures required by the TRIPS Agreement.

Answer:

Provisional measures established by the Civil-Procedural Code of Azerbaijan effective by 1 September 2000 are as follows:

Article 1, section 1.1 stipulates that, rules for court execution of its responsibilities while consideration of civic and economic disputes in courts of Azerbaijan are determined by the Law, this Code and also international agreements that Azerbaijan is a part to.

Section 1.5. If provisions of international agreements that Azerbaijan is participating differ from provisions procedural legislation, provisions of international agreements are applied.

Article 13, section 13.4 provides that, if there are no legal norms regulating legal disputes, court appeals to other legal norms regulating similar disputes.

Article 30. If while collection of several related claims, some have concern general court and other part has concern to economic court, all disputes are considered in general court.

Article 34. Local economic courts, disputes arising from international agreements are considered by economic courts.

Article 157. Bases for satisfaction of claim:

157.1 The judge may undertake measures in order to satisfy claim of the plaintiff.

157.2. Decision on satisfaction of claim made by the judge in order to execute decision in the future is temporary and does not solve the dispute ahead of time.

Article 158,158.1. Following actions can be undertaken in order to satisfy the claim application:

158.1.1. Application of arrest on defendants' property or property of the defendant remaining in the disposition of others; for execution of actions by turns see Articles 158.3, 158.3.2., 158.5.1., 158.5.2.

Article 158. . Measures satisfying claim application.

158.2. Following actions can be undertaken in order to satisfy the claim application;

158.1.7. Application of arrest on defendants' property or property of the defendant remaining in the disposition of others

158.1.8. Prohibition of certain actions to defendant

158.1.9. Prohibition of actions subjects to disputes to others

158.1.10. Suspension of procurement of property upon presented claim on release of property of the arrest.

158.1.11. Prevention of withdrawing of demands on the debtor disputed within law frames upon execution document.

158.1.12. Prevention of withdrawing of demand application presented by the plaintiff on disputes concerning penalty payment to be carried without disputes.

158.3. Court may apply other measures foreseen by this Code in order to satisfy the claim application. Court may apply different types of resolution of the matter.

158.6.1 Plaintiff may within legal frames demand of the defendant of the reimbursement of losses he bore while implementation of the decision taken concerning satisfaction of the claim.

Article 163. Presentation of complaint against decision taken concerning satisfaction of claim.

163.1 It is possible to present complaint against decisions taken concerning satisfaction of claim.

163.2 If the decision on satisfaction of claim is made without awareness of the plaintiff, terms of period for presentation of complaint starts from the date when he found out about the decision.

163.3 The presentation of the complaint against decision made concerning satisfaction of claim does not stop the execution of the decision.

163.4 If the decision of satisfaction of the claim is to cancel the claim or change one claim with another, the complaint of the decision does not stop the execution of the decision.

Article 164. Reimbursement of losses bore by the defendant as a result of the execution of the decision on satisfaction of the claim.

After decision on decline of claim has come into effect, defendant may claim for reimbursement by the plaintiff of losses he bore as a result of measures carried out by the court related to satisfaction of claim.

Article 439.2. Foreign natural persons and legal entities have equal procedural rights with citizens of Azerbaijan and bear same responsibilities.

Article 442.1. Procedural rights and scope of activities of foreign legal entities is determined by the legislation of the country it is originating.

Question 122

Subsection 4(c) states that the Republic of Azerbaijan has no provisions for border enforcement against counterfeit trademarked goods or against pirated copyrighted works, and that provisional measures are not applied.

Please describe the Republic of Azerbaijan's plans for making the necessary changes to its laws and practices in order to provide border measures as required by the TRIPS Agreement.

Answer:

According to Article 34 of the Law of Azerbaijan "On trademarks and geographical signs" during the import of goods in Azerbaijan, which have illegal trademark or geographical sign on them, excluding transit goods, the arrest is to be effected in legally applied order at the demand of the prosecutor, court, State Customs Committee or interested party. During the direct or indirect use of false characteristics about the origin of goods or personality of the manufacturer the arrest is to be applied on goods in the order, specified by the legislation of Azerbaijan.

Should the goods cross the border of Azerbaijan with illegally applied trademarks of goods owners or licensees the owners or licensees in question have the right to address customs authorities with a grounded request to suspend the passing of these goods through the border, as well as get information about the quantity of goods and name of the sender of them.

If the owner of the sign or licensee does not submit a copy of the court resolution about the arrest of goods or the document about the beginning of court case, a pawn for the coverage of expenses for their arrest, such goods can be kept for only 15 days.

According to Article 26.3 of the Code On Administrative Infringements, in cases of cross or move in the customs territory without consent of the appropriate executive power, engagement in production or other kinds of commercial activity, or other kinds of violation of territory regime under customs control - the punishment is; natural persons are charged by 5 to 10 times minimum wages, legal entities are charged by 50 to 110 times minimum wages as penalty.

Article 286 of the Code On Administrative Infringements stipulates that, should the goods not aimed for production or other kinds of commercial activity cross the customs border of Azerbaijan - goods or transportation means of primarily objects of administrative infringement are to be confiscated or penalty paid by amount equal to 10 - 100 per cent of the their price.

Question 123

Please describe in detail the manner in which Azerbaijan plans to provide provisional measures in accordance with the TRIPS Agreement.

Answer:

According to Article 19 of the Customs Code of Azerbaijan "Embargo on import to the Azerbaijan Republic and export from the Azerbaijan Republic of commodities and means of transportation", import to the Azerbaijan Republic and export from the Azerbaijan Republic of certain commodities and objects of intellectual property may be banned. Forbidden commodities and means of transportation shall be immediately taken outside the territory of the Azerbaijan Republic, or returned to the territory of the Azerbaijan Republic, if said commodities and means of transportation are not subject to confiscation.

Concerning this works on improvement of border measures are presently applied.

Question 124

Please describe in detail the authority of the Customs officials to prohibit importation of goods violating intellectual property rights and indicate how right holders can obtain relief through the exercise of that authority.

Answer:

Customs authorities take appropriate measures when there is a corpus delicti in the violation of the legislation on intellectual property.

Question 125

Subsection 4(d) states that Article 140 of the Criminal Code of the Republic of Azerbaijan provides criminal penalties for copyright infringement.

Are there criminal penalties for trademark counterfeiting as well and, if not, please describe the Republic of Azerbaijan's plans for making the necessary changes to its laws and practices in order to provide criminal actions against trademark counterfeiters, as required by the TRIPS Agreement.

Answer:

See answers above.

VI. TRADE-RELATED SERVICES REGIME

2. Policies Affecting Trade in Services

Question 126

Financial Services: Banking and other financial services. The information provided by Azerbaijan on its trade related services regime and its financial services sector was helpful. We have the following further questions and comments:

Are there any financial services as defined in paragraph 5 (a), (v) through (xvi) of the Annex on Financial Services (the Annex) that are not currently provided by the private sector in Azerbaijan or are not provided at all?

Answer:

Almost every shown financial service is presently offered by the special sector. But if any of these services does not exist, it is not because it is prohibited by the law, it is because there is no need for that particular service. So, the formation of the security market now impacts the absence of these kinds of services. Moreover, operations with valuable metals such as gold and silver acquire a special licence.

Question 127

If some financial services do not exist in Azerbaijan, is it because they are not permitted by prudential regulations currently in place?

Answer:

See answer above.

Question 128

Are there any measures that limit, in any way, the ability of a non-resident financial services supplier to establish a commercial presence in Azerbaijan as a directly owned branch, a representative office, or a wholly-owned subsidiary, either through de novo investment or through acquisition of existing enterprises to engage in the services covered by the Annex?

Answer:

According to the Law of Azerbaijan "On Banks and banking activity in the Republic of Azerbaijan" effective by 14 June 1996.

- i. The National Bank determines the limit of foreign capital participation in the Republic banking system. The National Bank terminates the issue of bank licenses to credit organisations with participation of foreign capital and branches of foreign banks at the achievement of the stated limit or the establishment of restrictions for credit organisations of the Azerbaijan Republic in the corresponding state.
- ii. The head or one of the deputies of the credit organisation with participation of foreign capital or the branch of the foreign bank is to be the citizen of Azerbaijan Republic.
- iii. If the foreign bank has got the permit in the country of its origin for obtaining pecuniary deposits or other means from juridical and natural entities, requiring return, bank licenses can be issued to its branches. In this case the foreign bank is to undertake a full responsibility on its branch debts.
- iv. The foreign bank is bound to get the National bank licence to conduct the activity through its branch. The licence issued by the National Bank prohibits the branch to carry out bank operations, not specified by the licence, issued to the foreign bank in the country of its origin.
- v. The National Bank is entitled to fix additional requirements to credit organizations with foreign investments and branches of foreign banks concerning the establishment of obligatory norms, the order of reporting, composition of administration, executed bank operations, as well as the minimum capital amount of newly founded credit organizations with foreign investments and branches of foreign banks and the order of the placement of capital abroad.

There is only a one restriction for foreign investments to establish a bank in the Republic of Azerbaijan or to establish an institution considered as a legal person by the legislation of the Republic of Azerbaijan in the banking sector, which is a limitation for the foreign capital not to exceed a 30 per cent rate of the total capital. There are no other restrictions except mentioned.

Question 129

Are foreign owned financial institutions that are established in Azerbaijan able to operate on the same terms and conditions as domestic institutions that are in like circumstances, including regarding capital requirements and the ability to expand geographically through branch offices?

Answer:

See answer below.

Question 130

Are there any measures that limit, in any way, the ability of a non-resident financial service supplier to provide cross-border into the territory of Azerbaijan (1) advisory and other auxiliary services, and (2) the provision and transfer of financial information and financial data processing (as defined by para. 5 (a) (xv) and (xvi) of the Annex on Financial Services? If so, please describe the measures that apply.

Answer:

No restrictions concerning this matter are considered by the law.

Question 131

Are there any limits on the consumption abroad of financial services by residents of Azerbaijan? Please describe any measures that would limit in any way the ability of residents to purchase other financial services in the territory of another party, including licenses required to effect currency transactions.

Answer:

Legal entities-residents of Azerbaijan (excluding credit organizations) are to obtain licence from National Bank in order to establish bank account outside Azerbaijan.

Question 132

Part VII, 2 of Annex 7 contained useful information regarding the financial services sector, but in some ways, it concentrated mostly on services that banks may provide. Under investments, for example, the role of banks was mentioned, but no mention was made of the role of securities markets.

What types of securities/ financial instruments/ assets are traded in Azerbaijan currently? What types of firms/ legal entities are allowed to provide dealing and brokerage services for such assets in Azerbaijan?

Answer:

Following securities are currently traded in Azerbaijan: corporate bonds, state short-term bonds, state privatization vouchers, state privatization options, futures, shares and certificates of deposit, promissory note.

Following securities are planed to be issued: storage certificates and cheques.

In order to bear professional activity in the security market of Azerbaijan, natural persons and legal entities should obtain appropriate special permission (licence) from the SCS (State Committee on Securities).

At present, in order to bear fund exchange activity, organizational–legal form of legal persons should be a closed type of joint-stock company, and organizational–legal form of investment funds should be an open type of joint-stock company.

There are no restrictions for organizational-legal form of legal persons bearing other kinds of professional activities.

Activities related to broking, procurement of privatization checks and to regulation of securities can be carried out by both natural persons and legal entities, other kinds of professional activities can be carried out by only legal persons.

Foreign investors can participate in the security market as an investor, professional participant of the securities market, through the establishment of joint or whole foreign owned organizations or in accordance with the agreement signed with the professional participant of the security market.

Question 133

What are state-shorts? If this refers to the government securities market, please describe the operation of this market. Are there any restrictions on participation in the government securities market by foreign-owned financial institutions?

Answer:

State short-term bonds - are securities insuring the rights of bonds owners to by the nominal price of those bonds from the body issuing them after the certain period and are issued by the Ministry of Finance in order to pay current expenses of the state budget.

State issues short-term bonds for not more than 1-year term by names and documented. Owners of short-term bonds can be any legal entity or natural person residents or non-residents of Azerbaijan. All operations related to allocation of short-term bonds also accounts related with them, registration of payments of entrepreneurs are carried out by credit organizations. In order to be engaged with these kinds of activities, credit organizations should obtain licence for engagement in procurement of financial means from the State Committee on Securities and should conclude a contract with Baku Fund Stock-Exchange Market for services to be rendered. Credit organizations may obtain bonds on its name and to its account or to investors account of his name and by his arrangement.

Allocation and turnover of bonds are carried out by sales through by Baku Fund Stock-Exchange Market. Keeping of bonds and registration of rights bonds owners is carried out by depository of the BFSEM. State Committee for Securities bears registration of issuance of state sort-term bonds. Information regarding state short-term bonds is passed to participants and investors through Baku State Stock-Exchange Market.

These kinds of issues are regulated by Provision "About issuance, allocation and turnover of state short-term bonds".

3. Market Access and National Treatment

Question 134

Please confirm that there are no market access and national treatment limitations in the securities sector.

Answer:

All participants of the of the security market, including foreign investors should equally follow legislation regulating security market.

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

1. Bilateral or plurilateral agreements relating to foreign trade in goods and trade in services

Question 135

What is the current rate of duty charged on imports of civil aircraft and aircraft parts?

Answer:

Rates of duty charged on imports of civil aircraft and aircraft parts are at zero level at present.

2. Economic Integration: Customs Union and Free Trade Area Agreements

Question 136

WT/ACC/AZE/2 states that although Azerbaijan has signed preferential trading agreements with seven states of the CIS - Georgia, Kazakhstan, Moldova, Russia, Turkmenistan, Uzbekistan and Ukraine, the trade liberalizing provisions of these agreements have not taken effect.

Is this still the case? Does Azerbaijan have near term plans to establish duty-free trade with any of its CIS trading partners?

Answer:

Azerbaijan has signed bilateral free trade agreements with 7 CIS countries (Russian Federation (30/09/92), Uzbekistan (27/05/96), Ukraine (28/07/95), Georgia (10/06/96), Moldova (26/05/95), Kazakhstan (10/06/97) and Turkmenistan (18/03/96)). According to articles of these agreements, states that signed the Agreement undertake a commitment not to apply duties, taxes and charges that equally affect exports and imports between them. At present custom duties are not applied to imported goods only from 3 countries like Georgia, Kazakhstan and Ukraine.

Azerbaijan joined the Agreement on the establishment of free trade zone within CIS on 15 April 1994. As the Agreement had not been implemented, the CIS countries signed the Protocol on making amendments and additions to the same Agreement on 2 April 1999. At present the Protocol is not effective yet. The states that signed the Agreement undertake a commitment not to apply duties, taxes and charges equivalently affecting exports and imports between them.

Question 137

Do any of these agreements have provisions for trade in services? If so, please describe them.

Answer:

Till very recent times, Azerbaijan didn't foresee any concessions regarding trade in services in Agreements concluded "On Free Trade Zone". According to Law effective by 24 March 2000 on approval of Protocol "On making amendments and changes to the Agreement "On Free Trade Zone" following changes regarding services were made to the Law:

Article 17

1. Parties will mutually do their efforts to gradually remove obstacles regarding services rendered at the territory covered by the Agreement.
2. Agreed parties should determine types of services to be covered by the agreement, and determine prior services serving the turnover of goods prior in liberalization in export import spheres.
3. Agreed Parties remain the rights concerning provision of services on bilateral and multilateral bases.

According to the above mentioned Law changes are made to section 1 of Article 17 "after words "Agreed Parties" it comes "will provide conditions for liberalization of market of national services and...".

Please note that, within carried economic reforms, according to Decree of the President of Azerbaijan by 30 April 2001 Ministry of Commerce, Ministry of State Property, Ministry of Economy, Antimonopoly and entrepreneurship support Committee, Investments Agency are closed, and new Ministry of Economic Development was formed based on these government bodies. All responsibilities of closed Ministries in terms of licence issuance etc., considering that there are no new instructions provided, are carried in a way done so far.
