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**Working Party on the
Accession of Montenegro**

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Additional Questions and Replies

The following submission, dated 8 December 2006, is being circulated at the request of the Delegation of the Republic of Montenegro.

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ANNEX31

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions of the ongoing economic policies

- Pricing policies

Question 1

Regarding the Law on Emergency Procurement (RM OG No. 69/03), discussed in Montenegro's Foreign Trade Memorandum (WT/ACC/SRB/3), over what products and services does this law empower the government to establish prices? Under what conditions can the government exert such powers? How does the new law ensure that price controls will not be applied in a prejudicial manner, consistent with Article III:9 of the GATT?

Answer:

It appears to be a misunderstanding. The following has been said in the Foreign Trade Memorandum regarding the Law on Emergency Procurement (RM OG No. 69/03): "In December 2003, the Law on Emergency Procurement (RM OG No. 69/03) was enacted and thus the Law on Commodity Reserves (RM OG No. 56/92, 69/03) was abolished. Therefore, the Government has no instruments to influence determination of the prices for products, since the Directorate for Commodity Reserves no longer exists."

The Law on Emergency Procurement does not provide the power for the Government to impose price control.

Question 2

We are pleased to see that Montenegro has abolished the Law on Social Price Control, as indicated in response to Questions 1 and 3 of WT/ACC/CGR/10. However, we notice that the Legislative Action Plan (WT/ACC/CGR/11) includes a new Price Control Law, which passed the Parliament in April 2006.

Please provide the Working Party with a translation of this law.

It appears that with the abolition of the Law on Social Price Control, the government has the authority to impose price controls only on certain medicines, oil and oil derivatives, and coal. Please confirm our understanding.

For what other products and services does the new law give the Government power to establish prices?

How does the new law ensure that price controls will not be applied in a prejudicial manner, consistent with Article III:9 of the GATT?

Answer:

Please note that the Law on Abolishment of the Law on Social Price Control (RM OG No 27/06) has been enacted. Therefore, it was not the new law establishing price control but rather the law that has abolished the old law. Montenegro apologizes for the mistake made in Legislative Action Plan for the second Working Party meeting.

In addition, the Law on Abolishment of the Law on Social Price Control abolished price control for all products except medicines, oil and oil derivatives and coal, as you noted correctly.

A translation of the Law on Abolishment of the Law on Social Price Control can be obtained through document WT/ACC/CGR/17/Add.1.

Question 3

Regarding the response to Question 2 of WT/ACC/CGR/10, we look forward to reviewing the list of medicines for which the government can establish prices.

When does Montenegro expect this decree to be adopted? Prior to the next Working Party meeting, please update the Legislative Action Plan to include this decree.

Answer:

The Ministry of Health is currently working on a draft decree which will regulate prices of medicines. The draft decree will be provided to the Working Party as soon as it is available.

Question 4

In response to Question 4 of WT/ACC/CGR/10, Montenegro states that with the abolition of the Law on Social Price Control, it no longer has the authority to establish prices on agricultural products. Does this law abolish the authority to impose price controls on all products (except certain medicines, oil and oil derivatives, and coal)?

Answer:

Yes, the Law on Abolishment of the Law on Social Price Control abolishes price control for all products except for medicines, oil and oil derivatives and coal.

Question 5

In response to Question 7 of WT/ACC/CGR/10, Montenegro explains that the price for coal shipped to the Power plant Pljevlja is established every five years.

Does the government establish the price of coal to other purchasers?

Do these price controls apply to all sources of coal for the Power plant Pljevlja, or just to domestic suppliers of coal?

Answer:

The Government of Montenegro establishes prices of coal used for production of electricity by the Power Plant Pljevlja. This price control is applied only to domestic suppliers of coal shipped to Power Plant Pljevlja.

(d) Foreign and domestic investment policies

Question 6

Statement: In response to Questions 14 and 18 of WT/ACC/CGR/10 Montenegro indicates that it is considering amendment to its Law on Foreign Investment (RM OG No. 52/00). We note,

however, that this law is not included in Montenegro's Legislative Action Plan. Prior to the next Working Party meeting, please update the Legislative Action Plan to include these amendments.

Answer:

The Law on Foreign Investment will be amended prior to accession of the Republic of Montenegro to the WTO. Please see document WT/ACC/CGR/12/Rev.1.

Question 7

WT/ACC/CGR/10, Question 18: Please provide an update on amending the Foreign Investment Law. What is the timeframe for amending the Law?

Answer:

The Law on Foreign Investment will be amended prior to accession of the Republic of Montenegro to the WTO. Please see document WT/ACC/CGR/12/Rev.1.

(f) Privatization policies

Question 8

WT/ACC/CGR/10, Question 23: The privatization report in WT/ACC/CGR/13 states that 70.5 per cent of companies that had an element of state ownership in the past are now completely privately owned. Please provide a list of the remaining 30 per cent of companies along with any plans to privatize them in 2006/2007 or in the further future.

Answer:

Please see tables provided below with data about remaining companies to be privatized in Montenegro.

Question 9

We thank Montenegro for the information provided in the Privatization Report, WT/ACC/CGR/13.

Some of the companies listed in WT/ACC/CGR/13 are not on the list of state-owned companies in response to Question 48 of WT/ACC/CGR/7. Is that discrepancy because the list in WT/ACC/CGR/7 is of companies with more than 40 per cent government ownership? If not, please explain the discrepancy.

Answer:

The reason why some of the companies listed in WT/ACC/CGR/13 were not included in the list of state-owned companies in response to Question 48 of WT/ACC/CGR/7 was an imperfection of database at that time. Now, more accurate information on ownership structure is available that is included in the tables bellow. In addition, in the meantime (from July 2005) a number of companies have been privatized. Following lists include companies that have majority state ownership (more than 50 per cent of shares).

1. Companies to be privatized by public tender

(a) Companies for which public tender is ongoing

No	Company	Activity	% of state capital for privatization
1	"Termoelektrana Pljevlja"	Energy services	Assets of "Elektroprivreda Crne Gore" AD, Nikšić
2	Center for relaxation, recreation and health therapy Igalo AD	Relaxation, recreation and health therapy services	80.9642%

(b) Companies whose shares are to be sold by public tender

No	Company	Activity	% of state capital for privatization
1	Institut "Dr Simo Milošević" AD, Igalo	Health services	
2	"Duvanski kombinat" AD, Podgorica	Tobacco industry	51.1046%
3	"Jadransko brodogradilište" AD, Bijela	Shipbuilding	62.7090%
4	"Montepranzo-Bokaprodukt" AD, Tivat		75.0557%
5	HTP "Boka" AD, Herceg Novi	Tourism services	59.3211%
6	"Optel" AD, Pljevlja	Production of optic, electronic and microwave systems	53.2225%
7	"Poliex" AD, Berane		46.4052%
8	"Institut crne metalurgije" AD, Nikšić	Metallurgy	54.9732%
9	AD "Marina", Bar	Tourism (nautical) services	51.3440%
10	"Barska plovidba", Bar	Shipping company	51.2323%
11	DOO "Montenegro bonus", Cetinje	Trade	100%

(c) Privatization strategies will be prepared and privatization will commence for the following companies

No	Company	Activity	% of capital for privatization
1	HTP "Budvanska rivijera" AD, Budva	Tourism services	58.7334%
2	"Elektroprivreda Crne Gore" AD, Nikšić	Energy services	67.6599%
3	"Plantaže" AD Podgorica	Agriculture	54.2314%
4	"Željeznice Crne Gore" AD, Podgorica	Railway transport	65.7465%
5	"Luka Bar" AD, Bar	Transport services (port)	54.0527%
6	JP "Aerodromi Crne Gore", DOO Podgorica	Air transport infrastructure services	100%
7	"Montenegro airlines", DOO Podgorica	Air transport	99%

2. (a) Companies to be privatized through auction, i.e. stock exchange sale¹

No	Company	Activity	% of capital for privatization
1	Agrotransport Podgorica, Podgorica	Transport services	66.0228%
2	"Bisernica", Rožaje	Trade	76.0296%
3	Gross-market, Podgorica	Trade	65.9345%
4	Jugooceanija AD, Kotor	Transport services	51.0184%
5	Nibus AD, Nikšić	Transport services	51.8795%
6	Preduzeće za izgradnju Podgorice AD, Podgorica	Construction services	52.7915%
7	Prehrana, Pljevlja	Trade	72.8461%

¹ These companies have minority share in GDP of Montenegro.

No	Company	Activity	% of capital for privatization
8	Prekookeanska plovidba, Bar	Transport services	51.3441%
9	AD "Riviera" , Kotor	Production of cosmetic products	66.3139%
10	AD "Uzor" Rožaje	Tourism services	70.00045%
11	Zimosport AD, Žabljak	Protection and production of medical equipment for convalescents and sportsmen	87.7823%

2. (b) Companies from the area of specific-purpose industry and forestry that are to be privatized

No	Company	Activity	% of capital for privatization
1	Šumarsko preduzeće "Bijelo Polje"	Wood industry	85.0740%
2	Šumarsko preduzeće AD "Danilovgrad"	Wood industry	77.8203%
3	Šumarsko preduzeće "Kolašin"	Wood industry	68.1091%
4	Šumarsko preduzeće "Pljevlja" AD	Wood industry	81.8200%
5	Šumarsko preduzeće "Podgorica" AD	Wood industry	75.0900%
6	Šumarsko preduzeće "Rožaje" AD	Wood industry	70.0016%
7	Šumarsko preduzeće "Šavnik" AD	Wood industry	60.3900%
8	Šumarsko preduzeće "Žabljak"	Wood industry	82.5400%

Question 10

Please explain the relationship between the list of enterprises in WT/ACC/CGR/13 and the list of enterprises provided in response to Question 48 of WT/ACC/CGR/7.

Answer:

Please see the answer above.

Question 11

For those companies in which the government retains a minority share, does the government nevertheless retain control over the management of the company?

Answer:

The Government does not retain control over the management in these companies. The Government minority share is privatized through an auction, i.e. stock exchange sale.

Question 12

Are there any other enterprises, beside those accounted for in the Privatization Report, over which the government exerts control? Please list the companies and describe the means of government control.

Answer:

The Government exerts control over companies included in the lists above that have majority state capital. The Government, as a majority shareholder, exerts its control in the manner identical to any other majority shareholder in any other company.

Question 13

What percent of the economy, measured by GDP, remains under State control?

Answer:

No data available. Estimate shows that percent of the economy (measured by estimated value of the company capital), which is still under state control, is less than 15 per cent.

Question 14

Montenegro mentions "socially-owned" companies in response to Question 49 of WT/ACC/CGR/7. Do any socially-owned companies remain in Montenegro? If so, please describe how they differ from state-owned companies. In addition, what percentage of domestic GDP do they represent?

Answer:

Two types of ownership were dominant in Montenegro before 1989: state ownership and social ownership. Process of change of ownership in Montenegro has been started with the Law on ownership and management transformation (RM OG No. 02/92, 27/94, 23/96).

According to this Law, all companies had obligation to become incorporated and establish a capital with personalized ownership structure. Under the Law, the capital was distributed to:

- employees (up to 10 per cent free + up to 30 per cent under specific privilege conditions); and
- three state funds (Development Fund, Pension Fund and Employment Fund)

Therefore, under this Law, the social ownership in Montenegro was eliminated and the capital has been distributed between employees and the state (ratio was 60 per cent or more in favour of the Funds and 40 per cent or less for employees). Today, most of these transformed companies have been privatized.

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

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

Question 15

We thank Montenegro for providing the Working Party with an updated Legislative Action Plan. However, we note that implementing regulations, decisions or by-laws, which typically provide the practical details for the operation of legislation and many of which are mentioned in Montenegro's responses, do not appear on the Plan. Prior to the next Working Party, please amend Montenegro's Legislative Action Plan to include information on the development of implementing regulations, decisions or by-laws, as appropriate.

Answer:

Please see document WT/ACC/CGR/12/Rev.1.

Question 16

In its Legislative Action Plan, Montenegro has included a column entitled "Deadline". Please explain the significance of this date. The reported date is a deadline for what action?

Answer:

The reported date is a deadline for the passage of relevant law by the Parliament. In case of by-laws, reported date is a deadline for adoption by the Government.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Registration requirements for engaging in importing

Question 17

Regarding the requirement that individuals register as entrepreneurs in order to engage in importing, as described in response to Question 33 of WT/ACC/CGR/10, must an individual register as an entrepreneur in order to distribute domestically-produced goods?

Answer:

Yes, an individual has to be registered as an entrepreneur in order to engage in distribution of any goods, including domestically produced ones.

Question 18

Montenegro's justification for charging a higher fee for renewal of an expired licence than the charge for an unexpired licence, as explained in response to Question 35 of WT/ACC/CGR/10, appears to violate the GATT Article VIII requirement that fees reflect the approximate cost of services. Please describe how Montenegro will bring this fee structure into compliance with GATT Article VIII.

Answer:

The Republic of Montenegro will amend the Company Law (RM OG No. 6/02) with effect of abolishment of this provision. The draft of the Law on Amendments and Modifications of the Company Law is currently being reviewed by relevant ministries, prior to approval by the Government.

Question 19

In response to Question 36 of WT/ACC/CGR/10, Montenegro states that foreign pharmaceutical companies are not permitted to import into Montenegro without establishing a subsidiary in Montenegro. Montenegro does not, however, provide a rationale for this requirement, as requested in the question.

Please explain why foreign pharmaceutical manufacturers must establish a subsidiary in Montenegro and are not permitted to import directly into Montenegro.

Answer:

The Law on Medicines (RM OG No. 80/04) prescribes very strict procedures for production and circulation of medicines in Montenegro. In order to be engaged in production and circulation of medicines one has to be legal entity with the corporate domicile within the territory of the Republic of Montenegro and registered in the Central Register of the Commercial Court. This provision of the Law on Medicines is based on best international practices in this field and is equally applied on both foreign and domestic suppliers.

Question 20

Such a prohibition restricts the right to trade imported pharmaceutical goods in violation of Article XI:1 of the GATT. Please describe how Montenegro will bring its laws into conformity with this GATT provision.

Answer:

Please see the answer above.

Question 21

Also in response to Question 36 of WT/ACC/CGR/10, Montenegro states that "every entity, domestic or foreign, has to be registered" in Montenegro.

Can a foreign company register to import products, other than pharmaceutical products, into Montenegro without establishing a physical presence in Montenegro?

Answer:

No.

Question 22

Are there other products, aside from pharmaceuticals, that require a physical presence in Montenegro in order to be permitted to import?

Answer:

All entities engaged in import, domestic and foreign, have to be registered. That means that there is no product that can be imported by the company that is not registered in Montenegro.

Question 23

Please provide a detailed description of the procedures, including mandatory documents, required to import products into Montenegro. This description will assist the Working Party to understand Montenegro's import regime. Please be as detailed and specific as possible.

Answer:

The Foreign Trade Law (RM OG, No. 28/04) prescribes that all persons may conduct foreign trade activities in accordance with their legal and/or commercial capacities, and in accordance with relevant legislation regulating commercial activities. According to Article 11 of the Foreign Trade Law, any person may import or export goods subject to their status under relevant legislation.

In order to be engaged in foreign trade, a firm must be registered at the Central Register of the Commercial Court, must obtain the "statistical" number from the Montenegrin Bureau of Statistics, and register with the customs payers register in order to obtain a "customs number". The registration process is automatic, subject to submission of an application. The Customs Administration imposes no additional requirements with regard to registration of firms intending to engage in import or export.

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

Question 24

We appreciate Montenegro's decision to transform its "special charges" on agriculture to specific duties, as noted in response to Question 48 of WT/ACC/CGR/10. Will Montenegro commit to binding those specific duties?

Answer:

The Republic of Montenegro has committed to bind specific duties in its initial Goods Offer.

Question 25

In response to Question 49 of WT/ACC/CGR/10, Montenegro predicts that the amendments to its Customs Law will be enacted at the end of June. Have these amendments been enacted? Please provide the Working Party with an update as to the status of these amendments.

Answer:

The Law on Amendments and Modifications of the Customs Law (OG RM No. 66/06) has been passed by the Parliament on 26 October 2006. The text of the Customs Law with the amendments inserted can be obtained through document WT/ACC/CGR/17/Add.1.

Question 26

WT/ACC/CGR/10, Question 49: The legislative action plan states that Amendments to the Customs Law on *ad valorem* customs procedures are currently in inter-ministerial procedure, and enactment was planned by the end of June 2006. Please provide an update.

Answer:

The Law on Amendments and Modifications of the Customs Law (OG RM No. 66/06) has been passed by the Parliament on 26 October 2006. The text of the Customs Law with the amendments inserted can be obtained through document WT/ACC/CGR/17/Add.1.

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

Question 27

In response to Question 50 of WT/ACC/CGR/10 Montenegro explains that the list of prohibited imports is based on the old Law on Plant Protection, which law has been replaced by a new Law on Plant Protection.

Does the new Law on Plant Protection annul the list of prohibited imports provided in WT/ACC/CGR/3/Add.1?

Answer:

The Law on Plant Health Protection (RM OG No. 28/06) does not annul the list of prohibited imports based on the Order on Ban of Import and Transit of Certain Plant Species and Determination of Quarantine Surveillance for Certain Plant Species Imported for Growing Purposes, which is given in WT/ACC/CGR/3/Add.1. Therefore, the Republic of Montenegro will apply this list until enactment of the by-law based on new Plant Health Protection Law. Please note that new Plant Health Protection Law, passed in April 2006, provides for two years period for enactment of by-laws.

Question 28

Please provide the Working Party with a current comprehensive list of banned imports.

Answer:

The Republic of Montenegro has submitted list of banned imports in WT/ACC/CGR/3/Add.1, but we are sending this list again (please see the Annex at the end of this document).

(f) Import licensing procedures

Question 29

We welcome Montenegro's efforts to reform its import licensing regime in accordance with WTO procedures. We appreciate the recent submission of the "Decision on Control List for Export, Import and Transit of Goods." However, we remain concerned about the extensive list of goods subject to import licensing procedures.

Please confirm that all of the items listed in this document are subject to non-automatic import licensing procedures.

Answer:

Yes, all licenses prescribed in the Decision on Control List for Export, Import and Transit of Goods are non-automatic licenses.

Question 30

Please revise your Import Licensing Questionnaire to reflect the revised Control List. We suggest that Montenegro look to the United States' import licensing questionnaire response (G/LIC/N/3/USA/4) as a model.

Answer:

The revised Import Licensing Questionnaire will be provided prior to the next Working Party Meeting.

Question 31

(Statement) In response to Question II.3. of the Import Licensing Questionnaire, Montenegro explains that the purpose of its licensing regime is not to restrict the quantity or value of imports. Rather, the purpose of its licensing regime varies depending on the products and the licensing entity, but generally serve to protect human, animal or plant health or life, national security, the environment, and other reasons enumerated in Article XX of GATT. We recognize

that Montenegro has a legitimate interest in protecting its citizens from unsafe products. However, WTO rules make ample provision for technical regulations for such protection, rather than the broad application of import licensing procedures that burden trade. Many of the justifications offered by Montenegro for its licensing regime suggest that the concerns should be addressed through non-discriminatory and transparently-applied TBT or SPS technical regulations. We request that Montenegro review its licensing regime and evaluate whether TBT or SPS technical regulations would not better advance their objective.

Answer:

The licensing regime has been analyzed in order to remove some of the licenses if possible. However, it appears that no licenses currently applied can be replaced with a technical requirement or with SPS measure. We are ready to review the import licensing system in light of developments in the field of TBT and SPS measures.

Question 32

One of the requirements for obtaining a licence to import waste is a statement that "the imported waste of a particular quality does not exist in the domestic market circulation in the required quantities". (WT/ACC/CGR/7, Annex 2, Exhibit II.2) From this requirement, it would appear that the purpose of the licence is to protect domestic production, not to protect the environment.

Does this requirement mean that economic considerations override environmental concerns with the importation of non-hazardous waste?

Answer:

Under Article 8 of the Rulebook on Documentation to be Submitted along with Request for Issuance of Import, Export and Transit of Wastes (FRY OG No. 69/99), which is enacted on the basis of The Law on the Basis of Environment Protection (FRY OG No. 24/98), importer of waste has to submit, along with other documents, "statement of the processor that the imported waste of a particular quality does not exist in the domestic market circulation in the required quantities;". In the meantime, the Republic of Montenegro in 2005 passed the Law on Waste Disposal (RM OG No. 80/05), which provisions include the latest international standards in this area. This Law will enter into force on 1 November 2008. In this Law, there is no provision making discrimination between domestically produced waste and imported waste. With this Law entering into force, the Rulebook on Documentation to be submitted along with Request for Issuance of Import, Export and Transit of Wastes (FRY OG No. 69/99) will be abolished.

Question 33

Is the placement on the market of domestically-produced non-hazardous waste regulated? If so, how?

Answer:

The Republic of Montenegro passed in 2005 the Law on Waste Disposal (RM OG No. 80/05) that has provisions regulating disposal of all kind of waste, in accordance with international standards in this area. This Law will enter into force on 1 November 2008. By than, The Republic of Montenegro will apply the Law on Maintenance of Hygiene, Collecting and Usage of Waste (RM OG No. 20/81) which doesn't have specific regulation on a domestically produced waste. Basel Convention provisions allow signatories to prohibit import of waste for disposal purposes and the new Law on

Waste Disposal also prescribes that waste can be imported only as raw material, but not for disposal purposes.

Question 34

The licensing restriction for importing non-hazardous waste if it is produced in Montenegro appears to violate the prohibition against unjustified non-tariff restraints in Article XI of the GATT. When and how will Montenegro bring this provision into compliance with the GATT?

Answer:

Please see the answer above.

Question 35

There is a long list of species in Exhibit 6 of the Control List for which export or import trade requires a licence issued by the State authority for environmental protection. We interpret the table to be a reproduction of the list of species that are included in the appendixes of CITES by decisions of the Conference of the Parties.

Is this interpretation correct?

Answer:

Yes, the interpretation is correct, this is the list of species included in the appendixes of CITES.

Question 36

How are these licence requirements implemented (for example, how does Montenegro apply this species list to HS codes)?

Answer:

The Republic of Montenegro is in process of preparing new Customs Law with HS 2007 and all other regulations such as Decision on Control List for Export, Import and Transit of Goods (RM OG No. 19/06) will be harmonized with it. All tariff items subject to import licensing procedures in the Decision on Control List will be provided in HS 2007, which also includes plants and animals subject to import licensing procedures according to CITES. In this moment, there is no overall tariff nomenclature of items on CITES list.

Question 37

Are there any products derived from plant or animal species not listed in the CITES appendixes that are subject to the same or similar licence requirements?

Answer:

No.

Question 38

If the licensing requirement is applied more broadly, what is Montenegro's justification for the licensing requirement and import restrictions on those species not covered by CITES?

Answer:

Please see the answer above.

Question 39

In response to Question 62 of WT/ACC/CGR/10, Montenegro replied that Article 23 of the Law on Foreign Trade prescribes very precise timeline for issuance of licenses for import, export and transit. Is this timeline for both automatic and non-import licensing procedures? Please include this information in the updated Import Licensing Questionnaire, requested above.

Answer:

Please note that current Law on Foreign Trade does not differ between automatic and non-automatic licenses. Therefore, there is no different timeline for issuance of licenses depending of a type of the licence. However, in line with comments received during and after second Working Party Meeting, Montenegro has decided to amend its Foreign Trade Law and to add provisions on automatic and non-automatic licenses. All by-laws deriving from the Foreign Trade Law, notably the Decision on Control List for Export, Import and Transit of Goods will be amended in order to reflect this amendment in the Foreign Trade Law.

Question 40

In response to Question 63 of WT/ACC/CGR/10, Montenegro explains that a "licence" in Montenegrin usage is a non-automatic licence in WTO terms, while an "approval" is an automatic licence. Does this mean that all items listed in the "Decision on Control List" are subject to non-automatic licensing? In replies to the Import Licensing Questionnaire (WT/ACC/CGR/7, Annex 2) Question II.3, Montenegro states that licenses and approvals are not intended to restrict the quantity or value of imports. Therefore, we would like to reference Article 3.5(a) of the Agreement on Import Licensing Procedures:

Members shall provide, upon the request of any Member have an interest in trade in the product concerned, all relevant information concerning:

- the administration of the restrictions;**
- the import licenses granted over a recent period;**
- the distribution of such licenses among supplying countries; and**
- where, practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. Developing country Members would not be expected to take additional administrative or financial burdens on this account.**

For each item list in the "Decision on Control List", please provide the information solicited in Article 3.5(a) (i-iv) of the Agreement on Import Licensing.

Answer:

Percent of totally issued import licenses of all submitted requests for licenses is around 99 per cent. This is general data for all ministries which are involved in issuance of import licenses. We will provide more detail statistics with number of import licenses issued by each ministry with tariff items, as well as the total value of goods imported subject to licenses, and other required information in Questionnaire on Import Licenses which will be submitted prior to next Working Party meeting.

Question 41

For the products listed in the "Decision on Control List."

What is the percentage of licenses granted in terms of value?

What is the percentage of licenses granted in terms of total licenses applied for?

What is the total value of goods subject to licenses that are imported each year?

Answer:

Please see answer above.

Question 42

In response to Question 65 of WT/ACC/CGR/10, Montenegro suggests that it is reconsidering the validity periods for various import licenses. Please provide the Working Party with an update on those discussions.

Answer:

The Law on Foreign Trade prescribes validity of a licence up to one year with no restrictions of number of shipments during that period. The Ministry for International Economic Relations and European Integration has issued the instruction and interpretation of the Foreign Trade Law provisions related to validity of a licence to all ministries in charge for issuance of import licenses. All ministries have adjusted their respective licensing procedures to comply with those under the Foreign Trade Law.

(g) Other border measures

Question 43

WT/ACC/CGR/10, Question 70: Please provide an update on progress in reforming Montenegro's systems to be fully compliant with TBT and SPS. In particular, please provide an update on the draft Fertilizers Law and Pesticides Law, the draft Law on Plant Varieties, the draft Law on Food Safety, and amendments to the 2004 Veterinary Law.

Answer:

Document WT/ACC/8 is under preparation and will be provided prior to the next Working Party Meeting.

The draft Law on Protection of Plant Varieties has been sent to UPOV for review. As soon as comments from UPOV are received, the draft will be placed in the appropriate procedure for enactment. Draft Fertilizers Law has been prepared and it is being reviewed by relevant ministries. It is expected that this Law will be passed by March 2007. Draft Pesticides Law is in initial stage of drafting. It is expected that this Law will be passed by June 2007.

Draft Law on Amendments and Modifications of the Veterinary Law has been submitted to the Government for approval, and the passage of this Law by the Parliament is expected by March 2007.

Draft Food Safety Law is being reviewed by relevant ministries. It is expected for this Law to be approved by the Government by the end of 2006 or early in 2007.

(h) Customs valuation

Question 44

With regard to the response to Question 73 of WT/ACC/CGR/10, we look forward to reviewing the amended Customs Law and Decree when they are enacted.

Answer:

The Law on Amendments and Modifications of the Customs Law has been passed by the Parliament on 26 October 2006.

Based on the amendments to the Customs Law, the Decree for Implementation of the Customs Law will be amended accordingly by the end of December 2006.

The text of the Customs Law with the amendments inserted can be obtained through document WT/ACC/CGR/17/Add.1.

Question 45

We thank Montenegro for its response to questions concerning The Law on Customs. However, we do not fully understand Montenegro's response to Question 9 of WT/ACC/CGR/16, pertaining to Article 74 of the Decree on Implementation of the Customs Law. We are concerned that Article 74 of the Montenegrin Decree on Implementation of the Customs Law might not permit the accurate implementation of the Interpretative Note to Paragraph 1(b) of Article 1 of the WTO Customs Valuation Agreement. That Note provides that where the sale or price is subject to some condition or consideration for which a value cannot be determined, the transaction value is unacceptable for customs purposes. It applies to all transactions regardless of whether the buyer and seller are related. Article 74 would appear to limit its scope to business partners. (A typical example of a condition or consideration for which a value cannot be determined is where the seller establishes the price of imported merchandise on the condition that the buyer will also buy other merchandise in specified quantities.)

Please provide an example to illustrate how this Article is applied.

Answer:

We apologize for the error made due to reference on wrong paragraph of the Article 30 in the Customs Law. Namely, Article 74 of the Decree on Implementation of the Customs Law in paragraph 1 says: "If, when determining customs value in accordance with Article 30 paragraph 2 item 2 of the Customs Law, the customs authority finds that the sale/purchase deal or the price of imported goods is subject to the conditions or liabilities whose value is impossible to determine for the imported goods, such value shall be deemed to be indirect payment of the buyer to the seller and thus, a part of the actually paid or payable price." Instead of the Article 30 paragraph 30 item 2, the Article 74 of the Decree on Implementation of the Customs Law, should refer to Article 30 paragraph 1 of the Customs Law. This mistake will be revised in the amendments of the Decree on Implementation of the Customs Law, which are already planned. With this correction, the Article 74 of Decree on Implementation of the Customs Law will be fully harmonized with the WTO Customs Valuation Agreement.

Question 46

WT/ACC/CGR/10, Question 73: Please provide an update on amendments of the Customs Law and Decree of Implementation of the Customs Law.

Answer:

The Law on Amendments and Modifications of the Customs Law (OG RM No. 66/06) has been passed by the Parliament on 26 October 2006.

Based on the amendments to the Customs Law, the Decree for Implementation of the Customs Law will be amended accordingly by the end of December 2006.

(l) Rules of origin

Question 47

(Statement) We welcome Montenegro's commitment in response to Question 74 of WT/ACC/CGR/10 to bring its Decree on Implementation of the Customs Law into compliance with the WTO Agreement on Rules of Origin. Montenegro's intention to amend the Decree should be reflected in Montenegro's Legislative Action Plan so that the Working Party can follow its progress.

Answer:

Please see document WT/ACC/CGR/12/Rev.1.

3. Internal policies affecting foreign trade in goods

(a) Industrial policy, including subsidy policies

Question 48

Draft Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures (WT/ACC/CGR/15): We appreciate the opportunity for comment regarding Montenegro's Draft Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures. We submit the following request for additional information with regard to the programs reported in the Draft Notification.

Please provide information with regard to the six questions or requests enumerated below, as indicated for each of the following programs:

Assistance Provided in 2004 and 2005

I. Programme for reconstruction and development of economic activities

Please provide responses to all the questions and requests below with regard to this program.

II. Support for industry of electric machines and equipment

Please provide responses to all the questions and requests below with regard to this program.

Assistance Provided in 2005

II. Support for "Zeljezara" - Montenegrin steel producer

Please provide responses to items 1 and 2 below with regard to this program.

Questions and Requests for Information

Please identify the particular laws, decrees or other statutory or regulatory mandates under which the program is authorized and/or administered.

Answer:

The Law on Budget provided the assets for these programs for 2004 and 2005. The Ministry of Finance has determined this amount for restructuring of companies and support program for industry of electric machines and equipment.

Government of Montenegro adopted company-restructuring program in June 2003.

Support for "Zeljezara" occurred only in 2005. The Government of Montenegro was obliged to compensate the price difference between the real price and agreed price for electricity, which "Zeljezara" purchases from "Elektroprivreda" (Company for electric energy production). This price was defined in the purchase contract for "Zeljezara." When the investor gave up the purchase, the contract was terminated, and there is no Governmental obligation relating to this issue.

Question 49

Is the assistance provided under the program contingent on export activity or the use of domestic goods?

Answer:

Subsidy for "Zeljezara" was disrupted in November 2005 because the purchase contract failed. The production results of "Zeljezara" were much under production capacity in 2005.

There is not available valuation how this subsidy could affect export activity.

Credit assistance under restructuring programs related to numerous companies could not have significant influence on export improvement. (Support was given for net assets, solving economic-technology surplus of workers, and a small part for fixed assets).

Credit assets for industry of electric machines and equipment "Obod" were determined for preserving the company property (reconstruction, reparation), salaries for the workers engaged in reconstructions and property preservation. The company has not been operational for a few years and the credit assistance could not affect competition neither in Montenegro nor abroad.

Question 50

Please provide additional information as to the recipients of the assistance provided under the program, e.g., the industrial sector or types of enterprise.

Answer:

The restructuring program was directed to production and service capacities from many activities. For details please see the answer above.

Question 51

Please explain the terms of the loans or credits being provided under the programs, e.g., what interest rates (and other obligations) are applicable to these loans, how the terms are determined, and how the terms compare with the terms on commercial loans normally available during the reporting period.

Answer:

The Ministry of Economic Development makes proposal of credit assistance under the Program for Restructuring of Companies. This Ministry is responsible for realization of this Program.

The Program determines terms of the credits as following:

- duration of loan is 3 per cent with grace period of one year; and
- interest rate is 2 per cent on annual level.

Guaranty assets are determined by the Ministry of Finance in the signing process of credit contract, mostly with fiduciary loan

The Ministry of Finance is responsible for initiating payment procedure in case that term for payment expires.

Question 52

Is repayment of the loans or credits provided under the program contingent on the future performance of the company? If so, please explain how.

Answer:

Credit from Program for restructuring of companies approval, not credit repayment, is conditioned on future performance of the company. The future performances of companies are analyzed on working groups, which are responsible to determinate company's credit capability. If working group estimates that company has positive business perspective and financially is solvent for credit repayment, this company will be assigned credit.

Question 53

Please clarify whether the assistance provided under the program is intended to terminate when privatization of the company is completed, and when privatization is expected to be completed.

Answer:

Credit assistance under the restructuring program was obtained based on public tender. The aim was to make better conditions for restructuring and to prepare company for privatization. (The aim of privatization is that a new owner obtains necessary assets for reconstruction and modernization of capacities and competitive operations).

(b) Technical regulations and standards

Question 54

We welcome Montenegro's decision to abolish the Law on Quality Control for Imported Agriculture and Food Products and its by-laws, as reported in response to Question 78 of WT/ACC/CGR/10. However from Montenegro's answer, it appears that quality controls still exist, albeit applicable to both imports and domestic products.

Please describe those quality controls. Are these quality controls mandatory?

Answer:

Yes, these controls are mandatory.

Question 55

Are they technical requirements or voluntary standards?

Answer:

All quality controls requirements are technical regulations by their nature and they are prescribed in the form of regulations.

Question 56

How will these quality controls be applied to imports? at the border? at the distributor level?

Answer:

Quality requirements will not be applied at the border anymore. Border quality control has been abolished by the enactment of the Law on Foreign Trade. Quality control will be applied only at a distributor level.

Question 57

Please provide a list of products subject to quality controls.

Answer:

All goods circulated at the market are subject to quality control based on different rulebooks (around 40 rulebooks for food and group of food items) and regulations (quality control for industrial products is performed based on standardization regulations).

Question 58

Please provide a translation of the relevant legislation establishing the quality controls that remain in effect.

Answer:

Montenegro will provide translations of certain quality control regulations prior to next Working Party meeting. Please have in mind number of these regulations so we are not sure that we can

translate them all prior to next Working Party Meeting, but we will certainly submit list of these regulations, and translate them as soon as possible.

Question 59

WT/ACC/CGR/10, Question 79: New WTO compliant TBT laws were passed by the State Union level in 2005. These are: the Standardization Law (SM OG No. 44/05), the Accreditation Law (SM OG No. 44/05), the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements (SM OG No. 44/05) and the Law on Metrology (SM OG No. 44/05).

Please provide an update on the enforcement of this legislation in Montenegro.

Answer:

The independence of Montenegro as of 3 June 2006, means that Montenegro is now fully responsible for all the areas formerly within responsibilities of the State Union of Serbia and Montenegro, including TBT. By the Resolution of Parliament adopted on 3 June, all former State Union laws, including those dealing with TBT, will continue to be effective and enforced in Montenegro as Montenegrin laws. Therefore, the Republic of Montenegro continues to apply the four laws listed in above. The Ministry for Economic Development of the Republic of Montenegro is in charge of the implementation of these laws. The Ministry has established a working group to prepare all necessary by-laws for these four laws and to establish all necessary institutions that will be in charge of TBT. It has been decided to establish the Institute for Standardization, Bureau for Metrology and the Accreditation Body. The Register of Technical Regulations will be maintained within the Ministry for Economic Development, while Institute for Standardization will maintain the Register of Standards. The Republic of Montenegro will submit detailed report on TBT and action plan for remaining activities prior to next Working Party Meeting.

(c) Sanitary and phytosanitary measures

Question 60

(Statement) We appreciated Montenegro's efforts to answer Working Party questions on Montenegro's SPS regime. However, many of Montenegro's answers noted pending legislation and little insight into Montenegro's underlying objectives and focus. As noted in the opening remarks, we urge Montenegro to complete the SPS Check-list (WT/ACC/8) sooner than noted in the questions and answers so we can better understand how Montenegro's SPS measures are compliant with the WTO SPS Agreement.

Answer:

Montenegro will provide WT/ACC/8 checklist prior to the next Working Party Meeting.

Question 61

(Statement) In addition to seeking clarification on the status of implementing legislation, we continue to seek a copy of recently implemented legislation, such as the Law on Seeds and the Law on Seedlings.

Answer:

Translations of requested legislation can be obtained through document WT/ACC/CGR/17/Add.1.

Question 62

In the Protocol on the Harmonization of Operations and Procedures in the Foreign Trade of Goods Liable to Mandatory Veterinary-Sanitary and Phytosanitary control at the border of State Union of Serbia and Montenegro, described in response to Question 26 of WT/ACC/CGR/10, it appears that products subject to veterinary or phytosanitary inspection that are imported into Montenegro by an importer with a head office in Serbia can enter Montenegro having passed SPS controls in Serbia, and vice-versa.

Now that Montenegro and Serbia will be independent countries, how will such preferential treatment change?

Answer:

After the independence of Montenegro, all requirements for import of products subject to veterinary or phytosanitary inspection from Serbia to Montenegro and vice versa are subject to regular rules applied on import of such products from any other country. There is no preferential treatment for goods originating in Serbia when imported to Montenegro.

Question 63

Are there other ways in which Serbian exports to Montenegro or investors have been given preferential treatment in Montenegro?

Answer:

Please see the answer above.

Question 64

What are they and how will they change now that Serbia and Montenegro are two separate countries?

Answer:

Please see the answer above.

Question 65

Is Montenegro currently a member of the OIE, IPPC, and Codex Alimentarius? Please describe, in detail, how Montenegro ensures that its SPS measures conform to the standards, guidelines, or recommendations of these international standards-setting bodies.

Answer:

Montenegro is now in the process of establishing itself as an independent state. It became 192nd member state of the UN (on 28 June 2006). Montenegro is currently in the process of regulating its status in OIE, IPPC and Codex Alimentarius. (Membership in the Food and Agriculture Organization-FAO is expected on February 2007, on FAO annual meeting, when Montenegro will also automatically become the member of the Codex Alimentarius).

Montenegro has a focal point and editor for IPPC in the Ministry for Agriculture, but it is not member formally yet.

Montenegro is aware of the importance of membership in these organizations and will take all the necessary steps to become member in the near future. Working Party will be updated on any new developments.

Question 66

Does Montenegro maintain any SPS measures that result in a higher level of protection than international standards? If so, please describe these measures and show a scientific justification for such measures.

Answer:

Montenegro does not maintain any SPS measure that results in a higher level of protection than international standards.

Question 67

Further to Question 69, we still do not have an explanation from Montenegro about why it requires an import permit for biotech products. When does Montenegro plan to conclude revisions to current biotech requirements and the by-laws?

Answer:

The Law on the Basic Principles of Environment Protection (FRY OG No. 24/98, 24/99) that had a provision requiring an import permit for biotech products has been abolished in Montenegro. Hence, such requirement does not exist anymore.

Question 68

WT/ACC/CGR/10, Question 184: Please provide an update on the Food Safety Law.

Answer:

Draft Food Safety Law is being reviewed by relevant ministries. The draft law is expected to be approved by the Government by the end of 2006 or early in 2007.

(g) **Free economic zones**

Question 69

In response to Question 87 of WT/ACC/CGR/10, Montenegro states that the government is reviewing the Law on Free Zones. Please give the Working Party an update as to the status of this legislation. We note that there is no mention of it in the Legislative Action Plan.

Answer:

The Law on Free Zones will be amended prior to accession of the Republic of Montenegro to the WTO. Please see document WT/ACC/CGR/12/Rev.1.

Question 70

WT/ACC/CGR/10, Question 87: Will Montenegro review its Law on Free Zones in order to ensure that it is fully compatible with WTO rules?

Answer:

The Law on Free Zones will be amended prior to accession of the Republic of Montenegro to the WTO. Please see document WT/ACC/CGR/12/Rev.1.

4. Policies affecting foreign trade in agricultural products

(a) Imports

Question 71

In response to Question 2 of WT/ACC/CGR/16, Montenegro refers to Article 1 of The Decree for Implementation of Customs Law (RM OG No. 15/03). The version of this Decree provided to the Secretariat starts at Part 3, Article 13. Please provide the Working Party with a translation of the first two parts of this Decree.

Answer:

Montenegro will provide requested translation of the legislation prior to next Working Party Meeting.

Question 72

In response to Question 2 of WT/ACC/CGR/16, Montenegro confirms that it currently does not apply any "protective measures of agricultural policy." Will Montenegro commit that any future application of such measures will be done in conformity with its WTO obligations?

Answer:

Montenegro confirms that there are no currently applied protective measures of agricultural policy and commit that any future application of such measures will be done in conformity with its WTO obligations.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

Question 73

WT/ACC/CGR/10, Question 202: Please provide an update on relevant articles of the Penal Code, and the Law on Optical Discs.

Answer:

The Law on Amendments and Modifications of the Criminal Code (OG RM No. 47/06) has been passed by the Parliament in July 2006.

The draft Law on Optical Discs has been approved by the Government and has been submitted to the Parliament for approval.

- (c) **Membership of international intellectual property conventions and of regional or bilateral agreements**

Question 74

In response to Question 100 of WT/ACC/CGR/10, Montenegro stated that it does not plan to enact legislation to implement the Geneva Phonograms and Brussels Satellite Convention, which are directly enforceable in Montenegro's law.

Does Montenegro plan to promulgate regulations, or other instruments, which may be used by the judiciary in applying these treaties?

Answer:

Both Geneva Phonograms and Brussels Satellite Conventions are binding on Montenegro. As ratified international agreements, both have been translated and published in the Official Gazette and thus became an integral part of Montenegrin legal system. In addition, essential elements of both Geneva Phonograms and Brussels Satellite Conventions are included in the Law on Copyright and Related Rights. The judiciary applies all the laws directly, without the need for any additional instruments. Therefore, there is no need to promulgate regulations, or other instruments, which may be used by the judiciary in applying these treaties, and Montenegro does not plan to enact any.

Question 75

In WT/ACC/CGR/14, Montenegro notes that the requirements of Berne Convention Article 18 are implemented through Articles 193 and 196 of Montenegro's copyright law.

Under these provisions, are producers of phonograms fully assimilated to the rights of authors and copyright owners?

Answer:

Yes. Under Article 1 of the Copyright Law, the Law regulates, *inter alia*, the rights of phonograms producers. Please see Articles 121-125 of the Copyright Law for details.

- 2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights**

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

Question 76

We thank Montenegro for providing a copy of the new draft geographical indications (GI) law. According to the response to Question 102 of WT/ACC/CGR/10, Montenegro has indicated that the new draft GI law has been approved by the Council of Ministers of Serbia and Montenegro but is pending passage by the Union Parliament.

What is the time frame for the new law to be in force?

Answer:

The Law on Indications of Geographical Origin (OG SM No. 20/06) has been passed by the Parliament (of the former State Union of Serbia and Montenegro) on 11 May 2006 and became

effective on 20 May 2006. In accordance with the Declaration of Independence, Montenegro continues to apply and enforce former Union's IP Laws, including the Law on Indications of Geographical Origin. A translation of this Law can be obtained through document WT/ACC/CGR/17/Add.1.

Question 77

Under this new law, we understand that Montenegro will be creating a separate and distinct system apart from its trademark system for the protection of geographical indications. The following questions have arisen after a review of the new draft law:

According to Articles 12 and 14 of the new draft law, foreign GI owners can only receive protection in Montenegro if an international agreement is in place between the foreign country and Montenegro. This requirement of a bilateral agreement, or reciprocity, would appear to be contrary to the "national treatment" and "most favoured nation" principles in Articles 3 and 4 of the TRIPS Agreement.

Moreover, the requirement that foreign applicants submit evidence or documents showing protection in the country of origin proving the applicant's right to the GI could be used to deny protection to applicants whose countries have a different system of protection for GIs than Montenegro, such as unfair competition or trademark systems.

Would Montenegro accept other evidence of protection in the foreign country such as certification mark registrations?

Answer:

This appears to be a misunderstanding.

Article 12 of the Draft, which is identical to Article 12 of the Law on Indications of Geographical Origin, regulates the rights and procedure of domestic authorized user of the indication of geographical origin or the applicant for the authorized user of the indication of geographical origin to file an application for an international registration of the indication of geographical origin. Paragraph 1 simply states that the application should be filed in accordance with an international agreement binding on (Serbia and) Montenegro that regulates such international registration. Montenegro believes that this provision does not in any way contravene the "national treatment" and "most favoured nation" principles in Articles 3 and 4 of the TRIPS Agreement.

Under Article 14, paragraph 2, subparagraph 3 foreign natural or legal persons or foreign associations, may file an application to register an appellation of origin or a geographical indication" if an appellation of origin or a geographical indication were registered in the country of origin or when it stems from the international agreements." This provision does not exclude or favour any particular system of registration.

Question 78

It appears that Montenegro does not protect the rights of trademark owners as required by Article 16.1 of the TRIPS Agreement. Article 44 of the draft GI law does not provide that the principles of priority and exclusivity are preserved for trademarks and geographical indications. The TRIPS Agreement Article 16.1 requires that owners of trademark rights established prior to a later applied for GI should be able to assert the exclusivity of the prior trademark rights. Article 44 appears to allow for a GI to be registered if it conflicts with a prior trademark, even where this conflict would result in a likelihood of confusion.

Please confirm that Montenegro will preserve the rights of trademark owners, consistent with Articles 16(1) and 24(5) of the TRIPS Agreement by protecting trademarks from confusingly similar and later in time GIs.

Answer:

Article 44 of the Law on Indications of Geographical Origin regulates relation between registered geographical indication and previously registered trademark, or trademark application which has priority over registered geographical indication. It does not, however, provide for exclusivity. Please note that this article relates to the registered geographical indications only, and not to the registered appellations of origin.

(e) Patents

Question 79

Please explain in detail how Montenegro's patent law complies with each of the safeguards listed in TRIPS Art. 31 regarding compulsory licenses?

Answer:

The compulsory licence is regulated in Articles 63-70 of the Patent Law (OG SM No. 35/04). Please see the translation of the Patent Law for details. Table bellow provides comparison of provisions of TRIPS Article 31 and the relevant provisions of the Patent Law.

TRIPS Article 31	The Patent Law
(a) authorization of such use shall be considered on its individual merits	Article 63, paragraph 1: If an owner of a patent refuses to licence the right of commercial use of a protected invention to other persons or sets unreasonable conditions for such licensing, the authority competent in the field in which the invention shall be employed may, after considering the merits of each individual case, grant a compulsory licence upon application of the interested person.
(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time.	Article 63, paragraph 2: The interested person shall be required to prove that he has made efforts, before filing the application referred to in paragraph 1 of this Article, to obtain authorisation from the right holder to use the protected invention on reasonable commercial terms and conditions and that he has not received such authorisation within a reasonable period of time.
(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive	Article 65, paragraph 1: The scope and duration of a compulsory licence shall be limited to the purpose for which it has been granted.
(d) such use shall be non-exclusive	Article 65, paragraph 2: A compulsory licence shall not be exclusive.
(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use	Article 65, paragraph 3: A compulsory licence may be assigned only with the enterprise or part of the enterprise in which it is used.

TRIPS Article 31	The Patent Law
(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use	Article 65, paragraph 4: A compulsory licence shall predominantly be granted for the supply of the domestic market.
(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances	Article 65, paragraph 5: A compulsory licence may be terminated if and when circumstances that have led to its grant cease to exist and are unlikely to recur. On reasoned request, the competent authority shall re-examine the further existence of such circumstances
(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization	Article 64 The holder of a compulsory licence shall be required to pay the patent owner a mutually agreed remuneration. In the absence of an agreement on the amount and method of payment of such remuneration, the competent court shall decide, taking into account the merits of each individual case and the economic value of the compulsory licence.
(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member	Article 70 Administrative acts effected by the competent authority pursuant to the provisions of Articles 63, 66 and 68, shall be final. An administrative dispute against such acts may be instituted before the competent court. Note: The competent Court is the Administrative Court of Montenegro
(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member	Article 70 Administrative acts effected by the competent authority pursuant to the provisions of Articles 63, 66 and 68, shall be final. An administrative dispute against such acts may be instituted before the competent court. Note: The competent Court is the Administrative Court of Montenegro
(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur	Article 66, paragraph 5: In order to rectify an anti-competitive practice, the competent authority may refuse the termination of a compulsory licence in the public interest, if and when circumstances which have led to its grant are likely to recur. Article 67, paragraph 1: The holder of a compulsory licence in the public interest shall be required to pay the patent owner remuneration pursuant to Article 64. However, in the event that such licence is granted in order to rectify anti-competitive practice, the competent authority may, when determining the total amount of remuneration, take into account the need to remedy such practice. Article 66, paragraph 6: In order to rectify an anti-competitive practice, the competent authority may refuse the termination of a compulsory licence in the public interest, if and when circumstances which have led to its grant are likely to recur.

TRIPS Article 31	The Patent Law
<p>(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:</p> <ul style="list-style-type: none"> (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent; (ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and (iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent. 	<p>Article 63</p> <p>If an owner of a patent refuses to licence the right of commercial use of a protected invention to other persons or sets unreasonable conditions for such licensing, the authority competent in the field in which the invention shall be employed may, after considering the merits of each individual case, grant a compulsory licence upon application of the interested person:</p> <p>if the patent owner himself or a person authorised by him does not use the protected invention or uses it insufficiently in Serbia and Montenegro;</p> <p>if the commercial use of an invention that has been subsequently protected in the name of another person is not possible without the use of the protected invention in whole or in part.</p> <p>The interested person shall be required to prove that he has made efforts, before filing the application referred to in paragraph 1 of this Article, to obtain authorisation from the right holder to use the protected invention on reasonable commercial terms and conditions and that he has not received such authorisation within a reasonable period of time.</p> <p>The interested person, referred to in paragraph 1, item (1) of this Article, may only be a person who proves that he has the appropriate technological capacity and production facilities for the commercial use of the protected invention.</p> <p>The interested person referred to in paragraph 1, item (2) of this Article may only be the owner of the second invention, provided that:</p> <p>the second invention involves a technical advancement of special economic significance in relation to the invention protected by the first patent; and that</p> <p>the owner of the first patent is entitled, on reasonable terms, to a cross-licence to use the second invention.</p> <p>Authorisation for the use of the invention protected by first patent shall be non-transferable except with the assignment of the second patent.</p>

(f) Plant variety protection

Question 80

In response to Question 25 of WT/ACC/CGR/10, Montenegro mentions the new Law on Plant Protection and by-laws that will be issued to implement the law. Please provide a translation of the law and the by-laws to the Working Party.

Answer:

The Law referred to in the response to Question 25 of WT/ACC/CGR/10 the Law on Plant Protection, which is actually a SPS law that regulates the protection of plant health and related issues rather than protection of new plant varieties. For details on the Law on Protection of Plant Varieties, please see the answer below.

Question 81

We understand that Montenegro is working to implement a UPOV-consistent regime for protection of plant varieties, with a deadline of September 2006. Could Montenegro please provide a status update of these activities?

Answer:

The draft Law on Plant Varieties Protection has been prepared and submitted to UPOV for the review. However, the review from UPOV has not received yet and the plan to enact the Law had to be delayed. A translation of the draft Law can be obtained through document WT/ACC/CGR/17/Add.1.

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

Question 82

In its response to Question 30 in WT/ACC/CGR/16, Montenegro indicates it is working to adopt new legislation making the protection of undisclosed information more transparent.

Could Montenegro please provide a status update of these activities?

Could Montenegro please also explain whether or how its current legislation complies with TRIPS Article 39.3 regarding protection of pharmaceutical and agricultural chemical test and other data against unfair commercial use?

Specifically, does it protect the undisclosed test or other data against reliance by unauthorized third parties, and does it provide for a period of exclusivity for the data?

Will the new legislation concerning undisclosed information address these issues?

Answer:

Activities related to the protection of undisclosed information are still in the early stage, hence there is no draft that could be presented to the Working Party yet.

The Law on Medicines (RM Official Gazette No. 80/04) does not contain any provision that would comply with TRIPS Article 39.3 regarding protection of pharmaceutical chemical test and other data against unfair commercial use. Specifically, there is no provision that protects the undisclosed test or other data against reliance by unauthorized third parties, nor does it provide for a period of exclusivity for the data.

The former federal Law on Plant Protection (FRY Official Gazette No. 24/98, 26/98), which is still partly enforced in Montenegro, has a provision in its Article 54, paragraph 6, under which the authority responsible to examine physical and chemical properties and biological efficiency of pesticides and fertilizers, must keep all the data indicated by the applicant as a business secret for a period of ten years.

Montenegro is aware that its legislation falls short of meeting TRIPS requirements. However, the new legislation concerning undisclosed information will address all these issues.

4. Enforcement

Question 83

Statement: We thank Montenegro for the detailed citations to the existing and pending national legislation provided in WT/ACC/CGR/14 that implements TRIPS enforcement obligations. We look forward to reviewing amendments to the customs law, penal code, and optical disc legislation upon passage before Parliament.

Answer:

The following legislation has become effective and will be provided to the Working Party prior to the next meeting:

- Regulation on Actions of the Customs Authority Applicable to Goods that Infringe Intellectual Property Rights (RM Official Gazette No. 25/05), effective as of 1 July 2005 – enforcing TRIPS Border measures;
- Amendments to the Criminal Code (RM Official Gazette No. 47/06), effective as of 3 August 2006 – providing penal protection of IP rights; and
- In addition, the draft Optical Discs Law has been approved by the Government and is pending passage by the Parliament.

ANNEX

The List of Prohibited Imports based on the Order on Ban of Import and Transit of Certain Plant Species and Determination of Quarantine Surveillance for Certain Plant Species Imported for Growing Purposes and List of Plants Subject to Quarantine Surveillance

I. PROHIBITED IMPORTS AND TRANSIT FOR PHYTOSANITARY REASONS

Item	Type of plant	Object of prohibition
1	Plants from the genus <i>Abies</i> , <i>Picea</i> , <i>Pinus Pseudotsuga</i> , <i>Tsuga</i> and <i>Larix</i> originating from France, Spain and non-European countries	The ban pertains to import of the plants and parts for propagation of these plants, except seeds and samples of graft-twigs and pollen originating from non-contaminated areas, and imported by scientific institutions dealing in selection, introduction of new species, varieties, lines and hybrids or plant protection.
2.	Plants from the genus <i>Castanea</i> and <i>Quercus</i> from all countries and genus <i>Ulmus</i> originating from the United States of America	The ban pertains to import of the plants as well as parts for propagation of these plants, except the seed of <i>Quercus</i> and <i>Ulmus</i> and samples of the seed <i>Castanea</i> originating in non-contaminated areas and imported by scientific institutions dealing in selection, introduction of new species, varieties, lines and hybrids or plant protection.
3.	Plants form the genus <i>Juniperus</i> originating from the countries of Asia and North America	The ban pertains to the import and transit of plants as well as parts for propagation of such plants, except the seeds.
4.	Plants from the family <i>Rosaceae</i> (genus <i>Chaenomeles</i> , <i>Cydonia</i> , <i>Crataegus</i> , <i>Malus</i> , <i>Photinia</i> , <i>Prunus</i> , <i>Pyrus</i> and <i>Rosa</i>) originating from the countries of Asia and North America	The ban pertains to import and transit of plants as well as parts for propagation of such plants, except the seeds and plants in the stage of dormancy without leaves and fruit (import is permitted in the stage of dormancy and quarantine surveillance is applied).
5.	Plants from the genus <i>Populus</i> originating from France, Spain and non-European countries and the genus <i>Platanus</i> originating from the USA, France, Italy, Spain, Armenia and other countries where the quarantine harmful organism <i>Ceratocystis fimbriata</i> f. sp. <i>platani</i> had been found.	The ban pertains to import of plants as well as propagation parts of the respective plants, except the seeds and import of plant samples originating from non-contaminated areas, imported by scientific institutions dealing in introduction of new species, varieties, lines and hybrids.
6.	Potato (<i>Solanum tuberosum</i> and <i>Solanum</i> spp.) originating from Mexico and countries of Central and South America	The ban pertains to import of potato for seed and consumption, including the wild or semi-cultivated clones, in particular tuber, plants with roots and parts of plants, except the real seed and cultures of tissues and samples originating form non-contaminated areas, and imported by scientific institutions dealing in introduction of new species, varieties, lines and hybrids.
7.	Coniferous wood from non-European countries with non-peeled bark	The ban pertains to the import of wood except for the wood dried to less than 20% of moisture as expressed in percentage of dry matter (designation K.D. "Kilndried" etc.)
8.	Oak wood genus <i>Quercus</i> originating from the USA, Russian Federation and Romania and chestnut wood genus <i>Castanea</i> originating from all countries, with non-peeled bark	The ban pertains to the import of wood except for the wood dried to less than 20% of moisture expressed in percentage of dry matter.

Item	Type of plant	Object of prohibition
9.	Wood from the genus Populus, Ulmus, Zelkova, Fraxinus and Tilia americana originating from non-European countries with non-peeled bark.	The ban pertains to the import of wood except for the wood dried to less than 20% of moisture as expressed in percentage of dry matter.
10.	Logs and timber of the wood genus Platanus from the USA, France, Italy, Spain, Armenia and other countries where Ceratosystis fimbriata f. sp. Platani was determined.	The ban pertains to import of logs and timber.
11.	Wood bark under ordinal numbers 7, 8, 9 and 10.	The ban pertains to import of wood bark if in the country of origin no disinsection and disinfection by fumigation or fermentation applying the prescribed method was applied.
12.	Corn stalks and sorghum straw if originating from the countries of Africa	The ban pertains to import and transit of corn stalks and sorghum straw.
13.	Soil, compost and substratum mixed with soil or compost, with plants or without plants, originating from the non-European countries	The ban pertains to import of soil, compost and mixed substratum for which no disinfection and disinsection has been performed.
14.	Plants from the genus Fragaria originating from non-European countries.	The ban pertains to the import of plants, except for seeds and fruits.

II. PLANTS SUBJECT TO QUARANTINE SURVEILLANCE

Quarantine surveillance is prescribed for plants imported for propagation purposes as follows:

1. Graft-twigs and pollen of the genus *Abies*, *Picea*, *Pinus*, *Pseudotsuga*, *Tsuga* and *Larix* and samples of the plant seed of genus *Castanea* and *Quercus* if the import is restricted under ordinal No. 1 and 2 of Exhibit A12.3;
2. The genus *Abies*, *Picea*, *Pinus*, *Pseudotsuga*, *Tsuga* and *Larix* originating from non-European countries;
3. The genus *Populus* and *Platanus* if the import is restricted under the ordinal No. 5 of Exhibit A12.3; and
4. Seed potato samples (*Solanum* spp.) if the import is restricted under the ordinal No. 6 of Exhibit A12.3.

Quarantine surveillance of plants referred to in items 2) and 3) hereof pertains to the entire live plant and their parts for propagation, except the seeds.
