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**Working Party on the
Accession of Montenegro**

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ACCESSION OF MONTENEGRO

Additional Questions and Replies

The following submission, dated 7 May 2007, is being circulated at the request of the Republic of Montenegro.

TABLE OF CONTENTS

II.	ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE	1
2.	Economic Policies.....	1
(a)	Main directions of the ongoing economic policies.....	1
(c)	Foreign exchange and payments system	2
III.	FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES	2
IV.	POLICIES AFFECTING TRADE IN GOODS	3
1.	Import Regulation.....	3
(a)	Registration requirements for engaging in importing.....	3
(d)	Other duties and charges.....	9
(f)	Import licensing procedures	9
3.	Internal policies affecting foreign trade in goods.....	15
(a)	Industrial policy, including subsidy policies.....	15
(b)	Technical regulations and standards	16
(c)	Sanitary and phytosanitary measures.....	31
V.	TRADE-RELATED INTELLECTUAL PROPERTY REGIME.....	32
2.	Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights	32
(c)	Geographical indications, including appellations of origin.....	32
(e)	Patents.....	32
4.	Enforcement	34
(a)	Civil judicial procedures and remedies.....	34
(b)	Provisional measures	35
(d)	Any special border measures	35
(e)	Criminal procedures.....	36

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions of the ongoing economic policies

- Pricing policies

Question 1

We thank Montenegro for the clarification contained in response to Question 2 of document WT/ACC/CGR/17 concerning the Law on the Abolishment of Social Price Control. Regarding the retained authority of the government of Montenegro to regulate prices for medicines, oil and oil derivatives and coal, please describe how Montenegro will ensure that any price controls will not be applied in a prejudicial manner, consistent with Article III:9 of the GATT.

Answer:

Price controls on coal are imposed only on coal intended for use in Power Plant Pljevlja. Coal intended for other purposes is not under price control. Coal Mine Pljevlja and Power Plant Pljevlja are in the privatization process now. The same company is interested in buying both the mine and the power plant. When that privatization is completed, there will be no further price controls on coal.

Oil companies may not sell oil derivatives in Montenegro at prices higher than the maximum retail price. The maximum retail price for oil derivatives is based on:

- prices on the international market (Platt's quotations);
- market premiums which are applied on Platt's quotations;
- exchange rate and conversion from US\$ to € and from metric tons to litres;
- customs, import fees and other taxes on oil derivatives;
- costs and margins;
- costs of import and bank's fees;
- cost of distributions, storages and handling; and
- costs of wholesale and retail.

This price control policy for oil and oil derivatives is applied equally to both domestic and imported oil and oil derivatives.

We are still working on a draft Decree on Prices for Medicines, in which we will provide equal treatment of both domestically produced and imported medicines. It is important to stress that the prices of only those few medicines that are covered from the health fund are controlled. Prices for other medicines are not under control and costs for their purchase are not reimbursed to buyers.

In sum, with respect to price controls Montenegro will fully comply with all relevant WTO Agreements.

Question 2

We look forward to reviewing the decree regulating the price of medicines, mentioned in response to Question 3 of document WT/ACC/CGR/17.

Answer:

We will submit the requested text prior to the next Working Party meeting.

Question 3

Regarding the response to Question 5 of document WT/ACC/CGR/17, is our understanding correct that the government controls the price of only the domestically-produced coal to the Power Plant Pljevlja? Therefore the government does not set the price of coal to any other purchaser, nor the price of imported coal to the Power Plant Pljevlja, correct? Does the Power Plant Pljevlja purchase imported coal? Is it authorized to purchase imported coal?

Answer:

Your understanding is correct. The Government of Montenegro control prices only of domestically produced coal to the Power Plant Pljevlja. Prices of imported coal are not controlled as well and prices of coal for other purchasers. Power Plant Pljevlja is authorized to buy imported coal, but in practice that's rare situation since domestically produced coal cover their needs.

(c) Foreign exchange and payments system

Question 4

We understand that the Government of Montenegro is engaged in discussions with the International Monetary Fund on aspects of their financial and foreign exchange system. An efficient and transparent monetary and foreign exchange system can facilitate trade and contribute to economic development. We urge Montenegro to prepare to come into compliance with WTO rules, including Article XV of GATT and Article XI of GATS, and factor this into their discussions with the IMF. We look forward to reviewing Montenegro's foreign exchange regime following its discussions with the IMF.

Answer:

Montenegro is currently in the process of negotiating its status with the IMF. Issues related to Article XV of GATT and Article XI of GATS will not be important in these negotiations, because Montenegro uses the Euro as its sole currency. Under the Law on Current and Capital Transactions, there are no any restrictions whatsoever in these areas.

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

Question 5

Thank you for providing the revised Legislative Action Plan (document WT/ACC/CGR/12/Add.1). In addition, we thank Montenegro for providing drafts for review by the Working Party. We encourage Montenegro to continue this practice of providing drafts of legislation, including implementing regulations and/or by-laws, so that the Working Party can review them for conformity with WTO rules.

Answer:

Montenegro will continue to provide drafts of legislation to the Working Party regularly.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Registration requirements for engaging in importing

Question 6

We are concerned about Montenegro's regime governing trading rights. A fundamental principle of the WTO is the right to import (and export) products without establishing a subsidiary or physical presence. (It is important to note that the right to import is separate and distinct from the right to distribute products within Montenegro.) It is of no consequence that this requirement applies "equally" to both domestic and foreign suppliers because, by definition, domestic suppliers will have an established presence in Montenegro whereas foreign suppliers will not, and thus, the establishment requirement is an unnecessary obstacle to importation by foreign suppliers. Such obstacles have failed to survive scrutiny by GATT dispute settlement panels. Montenegro is permitted to establish a registration requirement, provided that the registration process is simple and automatic. Montenegro is also permitted to maintain an activity licence regime, again, provided the process is simple and non-discriminatory. It is, however, a violation of GATT Articles III and IX to require an investment in order to import.

Answer:

Montenegro is aware of the problem and will amend the Customs Law appropriately.

Question 7

In response to Question 19 of document WT/ACC/CGR/17 and Question 36 of document WT/ACC/CGR/10, Montenegro explains that pharmaceutical companies must establish a subsidiary in Montenegro in order to import into Montenegro. While we fully appreciate the need for adequately protecting consumers of pharmaceutical products, we fail to see how the establishment of a subsidiary furthers this objective, nor do we understand the "international best practices" to which Montenegro refers.

Please explain how Montenegro intends to bring this requirement into conformity with Articles III and XI of the GATT 1994.

Answer:

Montenegro is preparing amendments to relevant legislation that will provide trading rights in full conformity with GATT Articles III and XI.

Question 8

Please describe, and provide a cite to, the "international best practices" to which Montenegro refers.

Answer:

Please see the answer above.

Question 9

In response to Question 22 of document WT/ACC/CGR/17, concerning the requirement of a physical presence in Montenegro in order to import, Montenegro states that "All entities engaged in import, domestic and foreign, have to be registered."

Does registration require a physical presence in Montenegro?

Answer:

No. Under expected amendments to current legislation, registration at customs will be required in order to import, but that registration will not require physical presence.

Question 10

If so, please explain the rationale behind requiring a physical presence in Montenegro.

Answer:

Please see the answer above.

Question 11

How does Montenegro define a "physical presence"?

Answer:

Registration of a company in Montenegro requires physical presence in the sense that a local company address and the address of a registered representative upon whom process may be served must be provided.

Question 12

Is a minimum level of investment required in order to satisfy the "physical presence" requirement?

Answer:

No.

Question 13

GATT Article III requires that imported product have access to the same distribution channels as domestic products. How does Montenegro ensure compliance with this obligation?

Answer:

All laws governing trade of goods in Montenegro provide equality and do not discriminate between imported and domestic goods. The Customs Law prescribes that after duties are collected, imported goods are treated same as domestic goods. There is no discrimination in distribution between domestic and imported goods once they undergone the importation procedure. The Law on Foreign Trade guarantees national treatment for imported goods.

Question 14

Montenegro has explained that individuals can register as entrepreneurs, and thereby be permitted to import. Can foreign persons register as entrepreneurs? If a foreign person registers as an entrepreneur, must they establish a physical presence in Montenegro in order to import? How does a foreign natural person establish a physical presence? Can entrepreneurs import (separate and distinct from distributing) products for wholesale?

Answer:

A foreign natural person could register as an entrepreneur, which provides the right to import for retail purposes and engage in retail trade, but would have to be physically present in and have residence rights in Montenegro to do so. Entrepreneurs can neither import nor distribute products at the wholesale level.

Question 15

In response to Question 23 of document WT/ACC/CGR/17, Montenegro explains that a firm must be registered at the Central Register of the Commercial Court in order to import. What information must be provided in this registration? Does the Commercial Court have the authority to reject a registration?

Answer:

Individual entrepreneur is registered when he/she submits the registration application which contains following data:

- The name and the last name of the entrepreneur;
- His personal ID number;
- Name of the entity (if different of the personal name of entrepreneur);
- The address of the entrepreneur;
- Description of the activity of the entrepreneur; and
- The signature of the entrepreneur.

A limited partnership is registered when the statement on establishment or the contract signed by all partners is submitted to the Central Register of Commercial Court. That statement or contract has to contain the following data:

- The name of the partnership and confirmation that the partnership is established as a limited liability partnership;
- The address of the partnership;
- The period for which the partnership is established and the date of the beginning of work;
- The name, last name and the personal ID number of each partner in the partnership;
- The name of each person who has a status of limited liability partner; and
- The share of limited liability partners and statement whether their share is in money or in other form of capital.

A Joint Stock (JS) company is registered when the company submitted to the Central Register of Commercial Court following documents and data:

- The contract establishing the company;
- Statute;

- The list with names of members of the Board of Directors, their place and date of birth as well and their personal ID numbers;
- Permanent address or residence of members of the Board of Directors;
- Statement of members of Board of Directors about their citizenship;
- Occupations of members of Board of Directors;
- Data about their membership in other boards, other positions in Montenegro or outside of Montenegro, as well and place of registration of these other companies, if they are not registered in Montenegro;
- The names and the addresses of the executive director, secretary of the company and the auditor;
- The name of the company and its address for official communication, i.e. the corporate headquarter;
- Signed statements of all members of the Board of Directors, executive director, secretary of the company and the auditor of the company in which they confirm acceptance of functions on which they are appointed;
- Decision of the Securities Commission approving prospect for public offer of stocks; and
- Proof on payment of administrative fee.

Registration fee for the entrepreneur, Limited Liability Company and partnership is €10, while fee for the JS is €50.

The Central Register of Commercial Court is obliged to register every entity if they submit all abovementioned documents. The registration can be rejected for following reasons only: if all documents required for registration of a particular type of entity fail to be submitted; if there is another entity registered under the same name; if there is a clear violation of some other regulation (for example, if someone wants to register a company for trade in narcotics) and if all data required for registration of a particular type of the entity are not provided.

Registration is renewable under same conditions required for initial registration, except the fee for renew of the registration is €1 for each type of entity.

Question 16

Does Montenegro require an activity licence of any sort (i.e., a licence to manufacture, to warehouse, or distribute) in order to import any products? If so, please list the activities that require a licence and the requirements.

Answer:

We provided that information in our replies that were sent after the I Working Party meeting, but we are gladly repeating the information.

Tobacco: Manufacturing and wholesale and retail trade in tobacco products may be pursued only by a company or entrepreneur that is licensed and registered in accordance with the Law on Tobacco.

Public tenders for licenses for tobacco products manufacturing are implemented by the administrative authority for tobacco, taking into account the fiscal interest, situation on the market, and previously assumed commitments of the Republic of Montenegro related to the tobacco products manufacturing.

To be eligible to participate in such a tender a company or entrepreneur must:

- be able to carry out all phases of production from the preparation of tobacco to manufacturing of cigarettes and other tobacco products and their packaging;

- have facilities to manufacture a minimum annual output of 1,500,000,000 cigarettes;
- have facilities to manufacture other tobacco products (cigars, cigarillos, cut tobacco, pipe tobacco, chewing tobacco, and snuff tobacco);
- have a suitable laboratory for tobacco products analysis and quality control;
- have suitable premises complying with the prescribed requirements for production or circulation of the articles of general use;
- employ suitable skilled work force in manufacture and quality assessment;
- commit to produce or buy domestic processed tobacco sufficient for at least 40 per cent of their annual production of cigarettes and other tobacco products, and not less than 700 tons a year; and
- offer a realistic estimate of annual output of cigarettes and other tobacco products according to the suitable quality and quantity and in accordance with the situation on the market.

Compliance with the requirements set above is determined by the administrative authority for tobacco, which, upon the advice of the Ministry in charge for agriculture and the Ministry in charge of health, decides on granting the licence to a company or entrepreneur.

The licence of a company or entrepreneur ceasing to comply with these requirements may be revoked.

An application for a licence for wholesale trade in tobacco products must include evidence that the applicant:

- has available orderly storage of at least 30 tons of cigarettes and other tobacco products;
- has appropriate means of transport, which must be visibly marked, so that from its warehouses it may regularly supply retailers; and
- has entered into a preliminary Agreement on supply of tobacco products with a registered manufacturer or importer of tobacco products.

A licence for wholesale trade in tobacco products requires a fee of €150,000, which is revenue to the budget of Montenegro and may be paid in five equal annual instalments.

A registered importer who meets the requirements may be granted a licence for wholesale trade.

If such importer engages solely in importation of other tobacco products (cigarillos, cut tobacco, pipe tobacco, chewing tobacco, and snuff tobacco), the fee for obtaining the licence is payable in the amount of €30,000 which can also be paid in five equal annual instalments.

The company and/or entrepreneur that are granted licence to engage in tobacco product wholesale are entered in the Register of Tobacco Product Wholesalers.

The administrative authority for tobacco decides on revoking the licence from the tobacco product wholesaler which does not fulfil any longer the requirements described above, or from the one which, pursuant to its own decision, ceases to pursue wholesale trade in tobacco products, or fails to pay the subsequent instalment of the licence fee.

The licence may be also revoked from the tobacco product wholesaler if it is punished for offence in wholesale trading in tobacco products and/or if the person authorized to represent the company and/or entrepreneur has been punished for criminal offence of unauthorized trade in cigarettes and other tobacco products.

The tobacco product wholesaler sells tobacco products exclusively through a tobacco product retailer who has been granted licence under the Law on Tobacco.

The wholesaler in cigarettes and tobacco products, and/or the importer determine retail prices and notify the administrative authority.

A company and/or entrepreneur applying for a licence for retail trade in tobacco products must show:

- that it has entered into preliminary Agreement on the supply of tobacco products with tobacco product wholesalers;
- that it has the facilities which satisfy sanitary, health and other conditions in accordance with the law on sanitary control; and
- that it has no outstanding obligations in respect of public revenues.

A licence for retail trade in tobacco products shall not be granted to an applicant who, within a three-year period preceding the application, was found guilty of unauthorized trade in cigarettes and other tobacco products.

The administrative authority must decide on a licence application within 30 days.

A fee of €100 per sales outlet needs to be paid in order to obtain a retail licence valid for two years.

Energy: The Law on Energy prescribes that the Energy Regulatory Agency issues licenses for activities related to energy sector facilities, networks and equipment for the generation, transmission, distribution, supply and sale of energy. Any foreign or domestic entity may apply to the Agency for a licence.

The Agency issues licenses based upon the following criteria:

- harmonization of facilities, energy network, installations and equipment with the conditions and standards;
- protection of public health and safety;
- protection of the environment;
- land use and sitting;
- use of public property;
- energy efficiency and conservation of electricity;
- the nature of primary energy sources; and
- the technical, economic and financial capabilities of the applicant.

Medicines and Medical Devices: Licenses and approvals for import of medicines and medical devices are issued by the Ministry of Health in accordance with the Law on Medicines (RM OG No. 80/04). Legal persons licensed by the Agency for Medicines may engage in wholesale trade in medicines, including import and export. Trade is limited to medicines that have a trade authorization, unless the Agency for Medicines approves and determines the volume of supply, import or export of a medicine without a trade authorization.

In order to be licensed for wholesale trade in medicines, a legal person must meet certain requirements established by the Agency for Medicines with respect to facilities, trained personnel, and record-keeping. The Agency may take up to 90 days to act on a licence application. Licenses are issued for an unlimited period of time, but may be revoked for cause.

Also, draft Law on Fertilizers and the draft Law on Pesticides prescribe conditions for activity licence required for engagement in production and trade of these products. We will submit detailed information about these activity licenses prior to next Working Party meeting

The Law on Seeds and the Law on Planting Material also require inscription in registers of importers, producers or/and wholesalers and retailers of seeds and/or planting material. We sent these laws in December 2006 for review, but we also described conditions for inscription in these registers in our answers to comments on Certain Montenegrin Legislation.

(d) Other duties and charges

Question 17

Please provide a copy of Decision on the Amount for Fee for Veterinary-sanitary examination of animals, products, raw materials and waste of animal origin in production and circulation (RM OG No. 51/03, 56/03).

Answer:

We provided a copy of the requested legislation, but please note that as we informed you, Decision on the Amount for Fee for Veterinary-sanitary examination of animals, products, raw materials and waste of animal origin in production and circulation (RM OG No. 51/03, 56/03) which you refer in your question is not valid anymore. That Decision is replaced with the Decision on the Level of Compensation for Veterinary-Sanitary Control in the Trade Across the Border of the Republic of Montenegro (RM OG No. 50/05) which was sent to the Secretariat in May 2006, but we will gladly resend the text of the Decision again.

Text of the Decision on the Level of Compensation for Veterinary-Sanitary Control in the Trade Across the Border of the Republic of Montenegro (RM OG No. 50/05) can be obtained through document WT/ACC/CGR/23/Add.1.

(f) Import licensing procedures

Question 18

In response to Question 32 of document WT/ACC/CGR/17, Montenegro states that in 2005 it passed a Law on Waste Disposal that abolished the previous requirement of a showing that the imported waste of a particular quality did not exist in the domestic market. Please describe how this Law eliminates the "discrimination between domestically produced waste and imported waste". For example, is there no longer a requirement that certain documentation be submitted for a licence, or is there no longer a licensing requirement at all? Also, please explain why the Law does not go into effect until 1 November 2008. Does Montenegro not hope to accede to the WTO before that date?

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 was enacted on the basis of The Law on the Basis of Environment Protection (FRY OG No. 24/98), an importer of waste has to submit, along with other documents, a "statement of the processor that the imported waste of a particular quality does not exist in the domestic market circulation in the required quantities". That is the only provision that discriminates between domestically produced waste and imported waste. This provision will be abolished by the date of accession to the WTO.

Montenegro hopes to accede to the WTO before 1 November 2008. Implementation of the Law on Waste Disposal has been delayed because that Law requires every municipality to have a sanitary land field, which requires certain financial assets and time for construction.

Question 19

In response to Question 39 of document WT/ACC/CGR/17, Montenegro stated that it would amend the Foreign Trade Law to add provisions on automatic and non-automatic licenses. In addition, 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. According to the Legislative Action Plan (document WT/ACC/CGR/12/Rev.1), this process will be complete by March 2007.

Please update the Working Party on this process and when we can expect to receive a copy of the revised documents.

Answer:

Montenegro has finished amendments to the Foreign Trade Law. These amendments will be provided to the Working Party prior to the next meeting.

The Law on Amendments and Modifications of the Law on Customs Tariff with HS 2007 was passed by the Parliament in March 2007. Montenegro is in the process of preparing amendments to the Decision on Control List for Export, Import and Transit of Goods based on this Law and on amendments to the Foreign Trade Law. The revised Decision will be provided to the Working Party prior to the next meeting.

Question 20

With the new authority to issue automatic licenses, does Montenegro plan to convert some of its non-automatic licenses to automatic licenses? We look forward to discussing that regime with Montenegro.

Answer:

Montenegro is in process of converting some of its non-automatic licenses to automatic licenses in amendments to the Decision on Control List. More detailed information will be provided prior to the next Working Party meeting.

Question 21

In response to Question 40 of document WT/ACC/CGR/17, Montenegro promised to submit detailed information on a number of import licenses issued by each ministry with tariff items, as well as total value of goods imported subject to licenses. We look forward to receiving this information.

Answer:

Montenegro will submit detailed information on a number of import licenses issued by each ministry with tariff items, as well as total value of goods imported subject to licenses prior to the next Working Party meeting.

- *Import Licensing Questionnaire (WT/ACC/CGR/18)*

Question 22

Thank you for the revised Import Licensing Questionnaire (WT/ACC/CGR/18). We found the information very helpful.

In response to item III.3 in each section, concerning consequences of having a licence application refused, Montenegro states that applicants who are refused a licence are informed in writing and have a right to lodge a complaint against the decision of the ministry to the Administrative Court of Montenegro.

Please describe what is meant by "ordinary criteria"?

Answer:

"Ordinary criteria" means all documents that importer has to submit based on the Law on Foreign Trade and on the Decree for Implementation of the Law on Foreign Trade, which are adduced in Exhibit I–V of Import Licensing Questionnaire (WT/ACC/CGR/18).

Question 23

What type of discretion does each Ministry apply in approving or disapproving a licence?

Answer:

There is no discretion in approving or disapproving a licence; if an application meets the criteria prescribed in the Law on Foreign Trade and in Decree for Implementation of the Law on Foreign Trade, it must be approved.

Question 24

Does this notification of refusal include information on how to make an appeal and give an indication of the circumstances under which appeals will be considered?

Answer:

Licenses issued by each Ministry include information on how to make an appeal and the deadline for lodging of the latter in accordance with the Law on General Administrative Procedure.

Question 25

How long does the appeal process typically take?

Answer:

The appeal process takes about one or two months.

Question 26

In responses to items VI.2. in each section, concerning the documentation required upon importation, Montenegro includes in the documents to be presented at importation "... certificates and, where required, other certificates – origin, conformity, veterinary, health, quality, phytosanitary)."

What is the difference between the first "certificates" mentioned and the "other certificates" that must be presented "where required"?

Answer:

There is no difference; we apologize for the awkward language used. Furthermore, Montenegro is going to abolish all certificates other than a import licence for products that are on the licensing regime, except for a certificate of origin when required for preferential treatment.

Question 27

Please describe these certificates (in both categories) and identify the Ministry from which the certificate is obtained.

Answer:

Please see the answer above.

Question 28

How does an importer know what certificates are required? Is it listed in Montenegro's tariff code? The need for a certificate does not appear to be mentioned in the Decision on Control List for Export, Import and Transit.

Answer:

Please see the answer above.

Question 29

If an importer obtains the necessary conformity, veterinary, health, quality or phytosanitary certificate, why is an import licence required in addition? Please describe the different objectives of these documents as they appear duplicative.

Answer:

Please see the answer above.

Question 30

If, as Montenegro has promised, quality standards will no longer be imposed at the border, what are the "quality" certificates referred to in this response?

Answer:

Please see the answer above.

Question 31

Why does Montenegro require a certificate of origin? For non-preferential imports, the country of origin should be simply a matter of self-declaration.

Answer:

For details on preferential treatment certificates please see the answer above. For non-preferential imports Montenegro doesn't require a certificate of origin.

Question 32

In response to item VII.1. in each section, concerning the period of validity of licenses, Montenegro has provided the period of validity for each type of licence, but has not responded whether the validity of the licence can be extended. Please provide this information for each type of licence.

Answer:

The validity of the licence can be extended, except for licenses issued by the Ministry of Health, Labour and Social Welfare.

Question 33

The Decision on Control List for Export, Import and Transit includes 7 tariff lines in Chapter 97 for products that are subject to a licence from the state authority competent for culture. The Import Licensing Questionnaire, however, makes no mention of these products. Has the licensing requirement for these products been revoked? If not, please add an explanation of the licensing requirements for these products.

Answer:

Products covered by the 7 tariff lines in Chapter 97 are not included in the Import Licensing Questionnaire because these products are subject export licenses, not import licenses. Licenses for these products have not been revoked.

The Ministry of Culture issues export licenses for:

- paintings, drawings and pastels;
- original engravings, prints and lithographs;
- original sculptures and statuary;
- postage or revenue stamps, stamp-postmarks, first day covers, postal stationery (stamped paper);
- Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographic or numismatic interest; and
- Antiques of an age exceeding one hundred years.

An exporter must submit to the Ministry of Culture following documents in order to get an export licence:

- confirmation from Republic Institution for Protection of Cultural Monument;
- statement about conformity for export from copyright holder;
- photography of artwork which is subject of export; and
- a proof that an administrative fee has been paid (administrative fee for this licence is €10).

Question 34

Regarding licenses from the Ministry for Economic Development listed in response to item II.1., we do not understand the purpose of requiring licenses for "precious metals and metals clad with precious metal" and "TV apparatus and sound recorders and reproducers". Please explain further Montenegro's rationale for requiring a licence for these products.

Answer:

The Foreign Trade Law (RM OG, No. 28/04) in Article 20 prescribes that the government may require import licence when it is necessary to:

- protect human, animal or plant life or health;
- protect national security;
- protect environment or exhaustible natural resources;
- protect public morals;
- protect intellectual property rights; or
- enforce any special rules related to gold and silver.

We consider that requiring licenses for "precious metals and metals clad with precious metal" is in accordance with Article 20 The Foreign Trade Law (RM OG, No. 28/04) and in accordance with Article XX Paragraph 3 of GATT.

We will abolish with the amended Decision on Control List the import licence for import of TV apparatus and sound recorders and reproducers.

Question 35

Regarding licenses from the Ministry of Tourism and Environmental Protection, please explain why the different types of licenses have such different fees.

Answer:

Montenegro is aware of the problem and it will resolve it prior the next Working Party meeting.

Question 36

Regarding licenses from the Ministry of Agriculture, Forestry and Water Management, we understand footnote 1 to mean that after June 2007, a licence will no longer be required for imports of fertilizers and pesticides. However, under the new laws on fertilizers and pesticides, an activity licence will be required to import fertilizers and pesticides.

Is our understanding correct?

Answer:

Yes, your understanding is correct.

Question 37

What are the requirements for obtaining an activity licence to import fertilizers and pesticides?

Answer:

We are working on drafts of the Law on Pesticides and the Law on Fertilizers and we will provide a detailed answer on activity licence requirements as soon as the drafts are available.

Question 38

Regarding licenses issued by the Veterinary Administration, Montenegro has recognized that these licenses are not WTO-compliant and has plans to abolish them.

Will these products not be subject to any licensing regime whatsoever?

Answer:

These products will not be subject to import licenses after the abolishment.

Question 39

If Montenegro plans to adopt a new licensing regime for these products, please describe that regime.

Answer:

Montenegro does not plan to introduce a new licensing regime for these products.

3. Internal policies affecting foreign trade in goods

(a) Industrial policy, including subsidy policies

Question 40

According to the response to Question 49 of document WT/ACC/CGR/17, assistance under these programs "could not have significant influence on export improvement." Please clarify further whether assistance is in any way contingent upon the use of domestic over imported goods.

Answer:

No, they did not. That credit assistance was mostly provided to companies that have not been operation for several years, and consisted of support for working capital, solving problems related to worker redundancies and for reconstructing company facilities.

Question 41

In response to Question 51 of WT/ACC/CGR/17, Montenegro states that the "duration of loan is 3 per cent with grace period of one year." Please clarify whether you meant to say the duration of the loan is three years, or otherwise explain what the 3 per cent means.

Answer:

It appears there was a technical error in translation. We apologize for the misunderstanding. We meant to say that the duration of the loan was three years.

Question 42

Also in response to Question 51 of WT/ACC/CGR/17, Montenegro states that the "interest rate is 2 per cent on annual level." How do the 2 per cent rate and other terms of the loans provided under these programs compare with commercial rates and terms available on the market during the reporting period?

Answer:

That credit program was supplied under subsidized conditions as obvious. But that credit program has been discontinued for several years, and Montenegro no longer provides any sort of subsidies with similar conditions.

Question 43

In response to Question 53 of document WT/ACC/CGR/17, Montenegro explains that credit assistance under these programs was aimed at creating "better conditions for restructuring and to prepare company for privatization." Please clarify further whether these programs will be terminated when the privatizations are completed. In addition, when does Montenegro anticipate these privatizations to be completed?

Answer:

Yes. This program will be terminated when the privatizations are completed. Montenegro expects this process to be ended within the next few years.

(b) Technical regulations and standards

Question 44

With the abolition of the Law on Quality Control for Imported Agriculture and Food Products, what quality controls will remain in place and under which law?

Answer:

With the abolition of the Law on Quality Control, Montenegro applies quality control only at the retail level, without any discrimination between domestic and imported goods. This quality control is based on different rule books (around 40 rule books for food items; quality control for industrial products is performed based on different regulations). The grounds for enactment of rulebooks are specific laws governing trade in specific products, such as Veterinary Law, Plant Health Protection Law, etc. Montenegro submitted the list of all regulations applied in quality control to the Working Party in February 2007.

Question 45

Will Montenegro review these controls to ensure that they are appropriate and comply with the TBT Agreement? What criteria or guidelines will Montenegro follow to determine the appropriateness of its quality controls in this instance?

Answer:

Montenegro will review all regulations governing quality control to make sure they are TBT compliant. Furthermore, we will submit the translations of required regulations to the Working Party and we will gladly accept all possible suggestions for review of the latter.

Question 46

Regarding the response to Question 54 of document WT/ACC/CGR/17, please describe the quality controls that will exist after the Law on Quality Control for Imported Agriculture and Food Products is abolished.

Answer:

The quality control is applied at retail level as described above. The market inspector performs quality control ex officio. In practice, market inspector comes to the retail store and takes a look on goods displayed on shelves assessing whether they comply with the regulations on quality. If the market inspector suspects that a particular product doesn't fulfil conditions prescribed in the regulation for that type of a product, he/she take a sample and send it for analysis. If the analysis shows that product doesn't fulfil conditions prescribed in the regulation for that product, he/she would orders that any non-conforming product be removed from circulation.

Question 47

In response to Question 56 of document WT/ACC/CGR/17, Montenegro explains that quality controls will no longer be applied at the border. Will the fees for quality control, described in response to Question 117 of document WT/ACC/CGR/7, likewise be abolished?

Answer:

Yes, with the abolition of the quality control at the border, fees for that control are also abolished. There are no fees, for quality control applied at the retail level.

Question 48

Thank you for providing a "List of Technical Regulations on Quality of Food and Industrial Products Applied in the Republic of Montenegro" in response to Questions 57-58 of document WT/ACC/CGR/17.

Is this list a complete list of all technical regulations currently applied in Montenegro?

Answer:

Yes.

Question 49

How are these regulations consistent with Article 2 of the TBT Agreement? For example, on what basis does Montenegro assess the risks that lead it to conclude that a technical regulation is required to fulfil a legitimate objective (see TBT Article 2.2)?

Answer:

The Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements governs enactment of technical regulations in detail. Article 4 of this Law prescribes that drafting, enactment and implementation of technical regulations is done based on the following principles: Technical regulations and conformity assessment procedures shall not be prepared, adopted or applied so as to create unnecessary obstacles to trade, nor may they have such effect.

With respect to preparation, adoption and application of technical regulations and conformity assessment procedures, products originating in a country that is a signatory to a relevant international Agreement (including all WTO Agreements once Montenegro has acceded to WTO) shall not be treated less favourably than like products of domestic origin or like products originating in any other country.

Technical regulations shall cease to apply if the circumstances or objectives giving rise to their adoption no longer exist or have changed, or if the objectives of a technical regulation can be addressed in a less trade-restrictive manner.

Article 5 of the Law prescribes that technical regulations are enacted with the purpose of protecting life, health and safety of human, animals and plants; protection of environment; consumer and other users protection; protection of property and protection of other public interests. These objectives are compliant with the TBT Article 2. In another word, each technical regulation, or more precisely, each rulebook containing technical regulations is enacted based on the above principles. We believe that the wording from the Article 4 and Article 5 of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements is compliant with the TBT Article 2.2.

However, the Law doesn't prescribe the basis for assessing risks that lead to a conclusion that a technical regulation is required to fulfil an appropriate objective, and therefore we will amend the Law in order to add missing language from the TBT Article 2. The draft amendments will be provided prior to next Working Party meeting.

Question 50

Below we have identified individual regulations that we would like to review.

List of Technical Regulation on Quality of Food and Industrial Products Applied in the Republic of Montenegro
REGULATIONS ON QUALITY
1. Regulation on the quality of agricultural herbs seed (SFRY OG No. 47/87, 60/87, 55/88, 81/89) and (FRY OG, No. 16/92, 8/93, 21/93, 30/94, 43/96, 10/98, 15/01, 58/02)
4. Regulation on the quality of slaughter livestock meat, poultry and game meat (SFRY OG No. 13/78, 1/81)
5. Regulation on the quality of fruit, vegetable and edible mushroom products and pectin products (SFRY OG No. 1/79, 20/82, 39/89, 74/90, 46/91, and FRY OG No. 33/95, 58/95; see No. 267 Art.41, the S&M OG No. 56/03,05/04; see No. 29 Art.34,S&M OG No. 04/04,12/04,48/04; see No. 43 Art.51, S&M OG No. 12/05)
7. Regulation on the quality of fresh fruit, vegetables and edible mushrooms (SFRY OG No. 29/79, 53/87; see No. 267 Art. 41, S&M OG No. 56/03,05/04; see No. 29 Art.34, S&M OG, No. 04/04, 12/04, 48/04; see No. 129 Art.75, S&M OG, No. 31/03)
10. Regulation on the quality of slaughtered porcine and the categorization of porcine meat (SFRY OG No. 2/85, 12/85, 24/86)

List of Technical Regulation on Quality of Food and Industrial Products Applied in the Republic of Montenegro
15. Regulation on the methods of sampling and physical, chemical and microbiological analyses of animal feeding stuff (SFRY OG No. 15/87)
18. Regulation on the testing methods of eggs and egg products (SFRY OG No. 72/87)
23. Regulation on the quality of soups, sauces, seasonings and related products (FRY OG No. 41/93; see No.267 Art.41, S&M OG No. 56/03,05/04; see No.29 Art.34, S&M OG No. 04/04,12/04,48/04)
25. Regulation on the quality of starch and related products for food purposes (FRY OG No. 33/95; see No. 267 Art.41, S&M OG No. 56/03,05/04; see No.29 Art.34, S&M OG No. 04/04, 12/04, 48/04)
26. Regulation on the quality of cereals, baking and milling products, pasta and frozen paste (FRY OG No. 52/95; see No.267 Art.41,of S&M OG No. 56/03,05/04; see No.29 Art.34,of S&M OG No. 04/04, 12/04, 48/04)
30. Regulations on the quality and other requirements of animal feeding stuff (FRY OG No. 20/00,38/01)
39. Regulation on the quality and other requirements for milk, milk products, composite milk products and starter culture (FRY OG No. 26/02 , S&M OG No. 05/04, see No.267 Art.41, S&M OG No. 56/03, 05/04; see No.29 Art.34, S&M OG No. 04/04,12/04,48/04)
46. Regulation on the quality and other requirements for meat products (S&M OG No. 33/04)
50. Regulation on the quality and other requirements for fine baking products, breakfast cereals and sneck products (S&M OG No. 12/05)
55. Regulation on the quality for beef and sheep slaughter and fatten (SFRY OG No. 21/69, 55/69)
58. Regulation on the quality of poultry meat (SFRY OG No. 01/81, 51/88)
REGULATIONS ON THE DECLARING, DESIGNING, MARKING AND PACKAGING OF PRODUCTS
1. Order on the designation of certified transporting means for the international transport of perishable food products (SFRY OG No.24/78)
8. Regulation on the marking of agricultural and food products from genetically modified organisms (S&M OG No. 06/03)
9. Regulation on the labelling and marking of pre-packaging foodstuffs (S&M OG No.04/04,12/04,48/04)
10. Regulation on the marking of pre-packaged foodstuffs intended for nutrition of infants and young children (S&M OG No.04/05)
11. Regulation of denoting goods and services which are placed in market (S&M OG No.13/05,16/05)

Answer:

We will provide translations of the requested rulebooks prior to the next Working Party meeting.

Question 51

Regarding Montenegro's List of Technical Regulations, the section on regulations for motor vehicles makes reference to UNECE standards, but none of the other sections for quality (food), technical norms, and design, marking and packaging of products appear to make reference to international standards.

Does Montenegro reference Codex standards in its food quality standards? If not, why not?

Answer:

No, because Montenegro is not yet a member of Codex Alimentarius. However, the specific laws governing trade in particular food products (Veterinary law, Plant Health Protection Law, draft Food Safety Law) refer to international standards and to particular international organizations such as OIE, IPPC, and the Codex Alimentarius. Since all food quality regulations are enacted in accordance with the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements (procedure for enactment of technical regulation) and in accordance with

specific laws governing trade in particular product and specific laws do refer to international standards, all food quality regulations are based on international standards indirectly.

The Revised Strategy of Quality Infrastructure Development in Montenegro, which is expected to be adopted in April 2007, will include the obligation of harmonization of food and environment safety standards, as well as standards of safety at work.

Question 52

Does Montenegro reference the Codex General Standard for Labelling of Pre-Packaged Foods?

Answer:

It appears there is a translation error in the List of Technical Regulations. We listed the Regulation on the labeling and marking of pre-packaging foodstuffs (S&M OG Nos. 04/04,12/04,48/04), while it should have been translated as Regulation on the labelling and marking of packed foodstuffs. We apologize for the error. There is no specific rulebook on labelling of pre-packaged foods.

Question 53

If not, why not?

Answer:

See the answer above.

Question 54

Are any of the regulations on technical norms based on international standards?

Answer:

The listed regulations incorporate Yugoslav rather than international standards, although most Yugoslav standards were harmonized with international standards. The former Institute for Standardization of Serbia and Montenegro, which was a joint institution until Montenegro's independence in May 2006, held 13,746 serbian-montenegrin standards in its data base, 323 (2.4 per cent) of which were translated CEN standards, and nine (0.07 per cent) were CENELEC standards.

The Revised Strategy of Quality Infrastructure Development in Montenegro, which is expected to be adopted by May 2007, will include the obligation of harmonization of food and environment safety standards, as well as standards of safety at work with international standards. The Strategy also includes the obligation of withdrawing all standards which are not harmonized with the international ones.

The Montenegrin Institute for Standardization, which was formally established by the Decision of Government adopted on 29 March 2007, will in the first phase of harmonization adopt as national standards around 8,000 European standards related to new EU directives and 4,000 EU standards related to foodstuff, transport and medical devices. The Institute intends to adopt the remainder of some 21,000 EU standards by the end of the harmonization process.

Question 55

How do Montenegro's quality regulations comply with TBT Article 2.4? Are all of them based on relevant international standards?

Answer:

Please see the answer above.

Question 56

What portion of Montenegro's regulations are based on international standards?

Answer:

Please see the answer above.

Question 57

Upon accession, what is Montenegro's plan for adopting and using international standards?

Answer:

Please see the answer above.

Question 58

Is Montenegro intending to use European standards in technical regulations?

Answer:

Generally, yes. In accordance with Article 7, paragraph 1 of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements, ("LTRCA"): "Technical regulations are adopted in accordance with the principles specified in Article 4 of the Law, commitments undertaken in bilateral and multilateral Agreements on preventing and eliminating obstacles to international trade and, when it is necessary, to harmonize technical regulations of the European Union and international Agreements binding on Montenegro." For details, please see the answer above.

- *Check-list of Illustrative Technical Barriers to Trade (TBT) Issues (WT/ACC/CGR/20)*

Question 59

We congratulate Montenegro for its easy-to-follow, clear TBT Check-list. We appreciate Montenegro's efforts in presenting this information.

In both the check-list and the Action Plan, Montenegro notes that the "Union TBT Laws and relevant regulations remain in effect and will be enforced as Montenegrin laws and regulations." Does Montenegro intend to amend the laws cited in these documents to reflect the current independent status of Montenegro? For the sake of transparency, we need to understand clearly who/which institution is responsible for administering these laws, whether and how stakeholders can contribute to the process, how information will be notified and publicly disseminated, etc. Please explain Montenegro's intentions in this regard.

Answer:

Although the existing regulations, taken over from the former State Union level, provide an adequate foundation for proper functioning of the system, they will be reviewed based on Working Party comments, to ensure that they are fully compliant with all WTO requirements. The Montenegrin Ministry of Economic Development is in charge of administration of these laws and an inter-ministerial working group has already begun to draft amendments, which will be provided prior to the next Working Party meeting.

In order to provide transparency, Montenegro has adopted the Decree on the Manner of Preparing and Adopting Technical Regulations and Register of such Regulations. In Article 8 it is said that the working group, established by the Minister of Economic Development, prepares the draft technical regulation, which the Ministry submits to all interested authorities, organizations and other legal and natural persons for comments. According to the same article, the title and summary of a particular draft technical regulation, as well as the data on how the draft can be obtained, is also available at the Ministry's website, as well as the website of the Chamber of Commerce.

The Ministry has also prepared a draft Decree on Notification of Technical Regulations, Standards and Conformity Assessment Procedures prescribing that Enquiry Point for technical regulations, which will be in the Department for Quality Infrastructure, while Enquiry Point for standards will be in the Institute for Standardization. The draft Decree will be available prior to next Working Party meeting.

Question 60

One of our most pressing concerns is what priority Montenegro assigns to the WTO TBT Agreement. Throughout the TBT Check-list, Montenegro refers to efforts to bring its laws into conformity with European Union standards.

What are Montenegro's intentions with regard to regional versus international Agreements, especially the WTO TBT Agreement?

Answer:

Montenegro will give priority to the TBT Agreement, although regional Agreements like CEFTA and SAA (both of which refer to the TBT Agreement in their preambles and provisions) are also carefully applied. SAA Preamble says: "...Considering the commitment of the parties to free trade, in compliance with the right and obligations arising out of the WTO", which is applied on all area covered in SAA, including the TBT matter. CEFTA Preamble says: "resolved to this end to eliminate the obstacles to their mutual trade, in accordance with the provisions of the Marrakech Agreement establishing the World Trade Organization, and to establish progressively closer trade relations."

Question 61

Does Montenegro intend to give priority to the WTO TBT Agreement upon accession?

Answer:

Yes.

Question 62

In Commitment 1 of the TBT Check-list (document WT/ACC/CGR/20 of 16 February 2007), Montenegro states:

"In accordance with Article 7, paragraph 1 of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements, ("LTRCA") technical regulations are adopted in accordance with the principles specified in Article 4 of the Law, commitments undertaken in bilateral and multilateral Agreements on preventing and eliminating obstacles to international trade and, when it is necessary, to harmonize technical regulations of the European Union and international Agreements binding on Montenegro.

When/under what circumstances, in Montenegro's view, will it be "necessary, to harmonize technical regulations of the European Union and international Agreements binding on Montenegro"?

Answer:

This was a translation error. The sentence was supposed to be as follows: "...and, when it is necessary, to harmonize it's technical regulations with technical regulations of the European Union and international Agreements binding on Montenegro."

Question 63

How would such harmonization be undertaken?

Answer:

The details of harmonization would have to depend on the specific technical regulation at issue.

Question 64

In Commitment 1, Montenegro also states that:

"Article 3, item 6 of the Law on Standardization prescribes that one of the principles of standardization is taking into account rules of international and European organizations for standardization and relevant international Agreements."

How does Montenegro define "international organizations for standardization"?

Answer:

According to Article 2, item 12 of the Law on Standardization, "International organizations for standardization are organizations for standardization the members of which can become relevant national standardization bodies of any country, like:

- International Organization for Standardization (ISO);
- International Electro Technical Commission – IEC; and
- International Telecommunication Union – ITU.

Question 65

How does Montenegro define "European organizations for standardization?"

Answer:

According to Article 2, item 11 of the Law on Standardization, "European organizations for standardization are organizations for standardization the members of which can become relevant national standardization bodies of the European Union, like:

- European Committee for Standardization (CEN);
- European Committee for Electro technical Standardization (CENELEC); and
- European Telecommunication Standards Institute (ETSI).

Question 66

How does Montenegro define "relevant international Agreements"?

Answer:

In this context, relevant international Agreements are multilateral Agreements on prevention and elimination of barriers to international trade which are binding on Montenegro. Chief among these, upon accession, will be the WTO Agreements, including TBT.

Question 67

In light of the above, how do Montenegro's statements/legal provisions fulfil the "Standstill" principle that: "the introduction of new standards, technical regulations and conformity assessment procedures should be fully compatible with the TBT Agreement"? The TBT Agreement would appear to be one amongst equals rather than the priority. How does Montenegro plan to ensure that its TBT Agreement commitments will override other competing interests?

Answer:

Montenegro pays particular attention to TBT Agreement although regional Agreements like CEFTA and SAA are also carefully applied. TBT Agreement simply because of its international character and due to fact that its provisions are basis for regional Agreements like CEFTA and SAA (both Agreements refer to TBT Agreement in their provisions), TBT is of a particular importance and takes precedence over the others. The draft Decree on Notification of Technical Regulations, Standards and Conformity Assessment Procedures refers to the TBT Agreement specifically.

Article 10, paragraph 1 of the Law on Standardization prescribes that Montenegrin standards and related documents shall be adopted and issued in accordance with that Law and the rules of the Institute for Standardization, which shall be in compliance with the rules of European and international organizations for standardization, particularly with the Code for Good Practice for the Preparation, Adoption and Application of Standards of the WTO Agreement on Technical Barriers to Trade.

Question 68

In Commitment 2, "Submission of Statement on Implementation," Montenegro assures that it "will ensure compliance with Article 15.2 of the TBT Agreement upon accession to the WTO."

Please confirm that "upon accession" means "upon the date of accession to the WTO?"

Answer:

We confirm that "upon accession" means "upon the date of accession to the WTO".

Question 69

In Commitment 3, "Establishment and Operation of a Single Contact Point for Information ("inquiry point"), Montenegro states:

"In accordance with Article 6 LTRCA, the provision of information on technical regulations is conducted in accordance with obligations arising from relevant international Agreements."

What are the "relevant international Agreements" to which Montenegro refers and how would such Agreements differ one from the other in this regard?

Answer:

In this context, relevant international Agreements are the TBT Agreement and any other multilateral Agreements on prevention and elimination of barriers to international trade that are binding on Montenegro.

Question 70

Also in Commitment 3, Montenegro states:

"Pursuant to Article 6, item 10 of the Law on Standardization, the Institute for Standardization acts as an information centre for standards and related documents, in accordance with requirements defined by relevant international Agreements and obligations arising from membership in European and international organizations for standardization."

What are the "requirements defined by relevant international Agreements"?

Answer:

In this context those would be all requirements defined by the TBT Agreement and any other multilateral Agreements on prevention and elimination of barriers to international trade that are binding on Montenegro.

Question 71

What are the "obligations arising from membership in European organizations for standardization"?

Answer:

According to Article 2, item 11 of the Law on Standardization, "European organizations for standardization are organizations for standardization the members of which can become relevant national standardization bodies of the European Union, like:

- European Committee for Standardization (CEN);
- European Committee for Electro technical Standardization (CENELEC); and
- European Telecommunication Standards Institute (ETSI).

Therefore, obligations arising from membership in European organizations for standardization are obligations arising from above mentioned organizations. However, due to facts that TBT Agreement has more international character and that its provisions are basis for regional Agreements like CEFTA and SAA (both Agreements refer to TBT Agreement in their provisions). TBT is of a particular importance and its provisions take precedence over obligations arising from other Agreements, including obligations arising from Agreements with European organizations for standardization.

Question 72

What are the "obligations arising from membership in international standardization" organizations?

Answer:

According to Article 2, item 12 of the Law on Standardization, "International organizations for standardization are organizations for standardization the members of which can become relevant national standardization bodies of any country, like:

- International Organization for Standardization (ISO);
- International Electro Technical Commission – IEC; and
- International Telecommunication Union – ITU.

Therefore, obligations arising from membership in international organizations for standardization are obligations arising from abovementioned organizations. However, due to facts that TBT Agreement has more international character and that its provisions are basis for majority of other international Agreements, the TBT Agreement is particularly important, and its provisions take precedence over obligations arising from other Agreements, including obligations arising from Agreements with other international organizations for standardization.

Question 73

How are they different from the TBT Agreement? Which of these Agreements and organizations takes/will take precedence?

Answer:

Montenegro will give precedence to the TBT Agreement among all relevant international Agreements on prevention and elimination of barriers to international trade.

Question 74

In Commitment 4, concerning identification of authority responsible for notifications, publications and other internal procedures to ensure transparency obligations are met on an ongoing basis, Montenegro states:

"Pursuant to Article 6, item 6 of the Law on Standardization, the Institute for Standardization performs activities in accordance with obligations related to standardization arising from international Agreements that are binding on Montenegro. This includes notification obligation in the area of standards."

Please identify the "obligations related to standardization arising from international Agreements that are binding on Montenegro".

Answer:

These are obligations arising from the TBT Agreement after Montenegro ratifies the WTO accession protocol (please have in mind that Montenegro will integrate TBT provisions in its legislation even before its accession to the WTO). Also, under obligations related to standardization arising from international Agreements that are binding on Montenegro, we include obligations arising from regional Agreements like CEFTA and SAA, but as said above, obligations arising from the TBT Agreement take precedence over other Agreements.

Question 75

In Commitment 4(b), referring to the identification of authority responsible for making notifications to the WTO, Montenegro states:

"In accordance with Article 6 LTRCA, notification of technical regulations is conducted in accordance with obligations arising from relevant international Agreements."

What are the "relevant international Agreements" to which Montenegro refers?

Answer:

The relevant international Agreements in this context are the TBT Agreement and other international Agreements binding on Montenegro such as CEFTA and SAA. Obligations arising from the TBT Agreement take precedence over other Agreements.

Question 76

Please confirm that the Ministry for Economic Development, Department for Quality Infrastructure is the only authority responsible for making notifications to the WTO.

Answer:

The Ministry for Economic Development, Department for Quality Infrastructure, is the only responsible authority for notifications related to technical regulations and conformity assessments. For notifications related to standardization, the only responsible authority will be the Institute for Standardization.

Question 77

In Commitment 4(b), Montenegro further states:

"Pursuant to Article 6, item 6 of the Law on Standardization, the Institute for Standardization performs activities in accordance with obligations related to standardization arising from international Agreements that are binding on Montenegro. This includes notification obligations in the area of standards."

What are the "binding" international Agreements to which Montenegro refers?

Answer:

The binding international Agreements in this context will be the TBT Agreement after Montenegro ratifies the WTO accession protocol (please have in mind that Montenegro will integrate TBT provisions in its legislation even before its accession to the WTO), and other international Agreements binding on Montenegro such as CEFTA and SAA. Obligations arising from the TBT Agreement take precedence over other Agreements.

Question 78

How do the "obligations related to standardization" arising from such international Agreements differ? Please identify those differences as they relate to the WTO TBT Agreement.

Answer:

These obligations generally do not differ, because other international Agreements binding on Montenegro refer to the TBT Agreement. However, if they do differ, obligations arising from the TBT Agreement will take precedence.

Question 79

Concerning Commitment 4(c), requiring guidance/law to ensure regulatory authorities afford non-discriminatory consideration of comments in the preparation of a final regulation, Montenegro points to Article 8 of the Decree on the Manner of Preparing and Adoption of Technical Regulations and Register of Such Regulations to fulfil this requirement. However, Article 8 makes no mention of non-discriminatory consideration of written comments. Nor does it provide for Montenegro's compliance with TBT Agreement Articles 2.10, in particular, 2.10.3, 5.6.4, 5.7.3. Furthermore, Montenegro's Article 8 of the Decree on the Manner of Preparing and Adoption of Technical Regulations and Register of Such Regulations appears to have gone beyond the emergency exemptions allowed under TBT Article 2.10.

TBT Article 2.10, however, makes no reference to "other public interests". What does Montenegro include/mean by "other public interests"?

Answer:

"Other public interests" in this context would be national security or environment protection, as defined in Article 2 paragraph 10. We are aware that our legislation does not contain all exact language from the TBT Agreement. We are reviewing our TBT related legislation based on WP comments, and expect that draft amendments will be available prior to the next Working Party meeting.

Question 80

We hope that Montenegro will seriously consider revising its law/decrees to ensure that the TBT Agreement articles are faithfully reflected. If left as currently written, we are concerned that Montenegro risks non-compliance with the WTO TBT Agreement.

Answer:

We expect to submit the text of the necessary amendments prior to the next Working Party meeting.

Question 81

Commitment 4(d) concerns guidance/law to ensure regulatory authorities allow a reasonable period of time between the final publication of a technical regulation and conformity assessment procedure and its entry into force so that suppliers can adapt.

Please explain how the simple requirement to publish technical regulations and conformity assessment procedures in the "Official Gazette of the Republic of Montenegro" fulfils the requirements contained in TBT Articles 2.11, 2.12, 3.1, 5.8, 5.9, 7.1? Article 10 of the Decree on the Manner of Preparing and Adoption of Technical Regulations and Register of Such Regulations does not ensure that the regulations will be promptly published nor does it require the regulator to provide a "reasonable" interval between final publication and entry into force. We call Montenegro's attention to G/TBT/1/Rev. 8 in which the TBT Committee decided that "reasonable interval" normally means "not less than six months". How will Montenegro enact such change?

Answer:

We are aware of all inconsistencies and we will prepare draft amendments of TBT legislation based on Working Party comments. We will submit the text of amendments prior to the next Working Party meeting.

Question 82

What are the "relevant" international Agreements referenced in Article 4 of the LTRCA?

Answer:

In this context, relevant international Agreements are the TBT Agreement and other multilateral Agreements on prevention and elimination of barriers to international trade that are binding on Montenegro.

Question 83

Montenegro states that:

"Article 14 of the Decree on Manner and Procedures of Conformity Assessment prescribes that fees for conformity assessment of certain product are equal regardless of the origin of the product subject to conformity assessment."

Why fees for "certain products" and not others are "equal regardless of the origin of the product...?"

Answer:

We are reviewing our TBT related legislation based on Working Party comments, and expect to provide a draft of the necessary amendments prior to the next Working Party meeting.

Question 84

According to Montenegro, "Article 5 LTRCA prescribes that technical regulations may be adopted only to protect human, animal and plant life, health and safety, the environment, consumers and other users, property and other public interests."

What criteria does Montenegro use to assess risk as established in Article 2.2 of the TBT Agreement?

Answer:

The Law doesn't prescribe the basis for assessing risks that lead to conclusion that a technical regulation is required to fulfil objectives of protection of human, animal and plant life, health and safety, the environment, consumers and other users, property and other public interests, therefore we will amend the Law in order to add missing language from the TBT Article 2. The draft amendments will be provided prior to next Working Party meeting.

Question 85

How does Montenegro intend to bring its laws and decrees into compliance with TBT Articles 2.4, 3.1, 5.4, and 7.1? TBT Article 2.4, for example, requires WTO Members to use international standards, if they exist, as the basis for technical regulations. Unless modified, the laws and decrees that Montenegro cites would make it difficult for your government to comply with the obligations contained in the aforementioned TBT Articles.

Answer:

We are aware of all inconsistencies and we will prepare draft amendments of TBT legislation based on Working Party comments. We expect to submit the text of the necessary amendments prior to the next Working Party meeting.

Question 86

With regard to the commitment to consider equivalent technical regulations of other Members, Montenegro has clouded its intentions. Montenegro's laws and decrees appear to apply this obligation to only countries "that are signatories to relevant international Agreements". Does Montenegro include the WTO as a "relevant international Agreement"?

Answer:

Yes.

Question 87

Montenegro's laws and decrees do not appear to allow it to comply with TBT Articles 6 and 7.1. Montenegro seems to accept the results of conformity assessment procedures conducted by bodies in an exporting Member country only if the conformity assessment certificates and marks are issued "in accordance with international Agreements binding on Montenegro" or pursuant to "an Agreement on mutual recognition". Does Montenegro include the WTO as an international Agreement "binding on Montenegro"? Are government-to-government MRAs the only valid mutual recognition Agreement?

Answer:

Yes, the WTO Agreements will be "binding on Montenegro as of the date of accession. No, government-to-government MRAs, would not be the only valid mutual recognition Agreements; conformity assessment certificates and marks that are "in accordance with (i.e., consistent with) WTO Agreements would suffice.

Question 88

How does Montenegro plan to modify its laws and decrees to ensure that it will be able to fulfil the WTO TBT obligation that fee structures shall be non-discriminatory and cost-based?

Answer:

We are aware of all inconsistencies and we will prepare draft amendments of TBT legislation based on Working Party comments. We expect to submit the text of the necessary amendments prior to the next Working Party meeting.

Question 89

Our concerns with Montenegro's system for Development and Application of Standards and Conformity Assessment Procedures (Commitment 6 on the TBT Check-list) are equivalent to those identified in the previous questions. These include:

- **The lack of priority given to international standards which thereby creates an inconsistency with Montenegrin assurances of "preventing or eliminating unnecessary" obstacles or technical barriers to trade.**
- **The lack of a cost-based fee structure in accordance with the WTO TBT Agreement.**
- **How will Montenegro change its laws and/or administrative underpinnings to allow it to accede to the obligations contained in the WTO TBT Agreement?**

Answer:

We are aware of all inconsistencies and we will prepare draft amendments of TBT legislation based on Working Party comments. We expect to submit the text of the necessary amendments prior to the next Working Party meeting.

(c) **Sanitary and phytosanitary measures**

Question 90

We thank Montenegro for submitting its SPS check-list (WT/ACC/CGR/19). We are still reviewing this document and will provide written questions and comments at a later date.

Please provide the following legislation for the Working Party's review:

- **Draft Food Safety Law (expected to be approved by the Government by the end of 2006 or early 2007);**
- **Amended Law on Genetically Modified Organisms**

Answer:

We will submit the requested legislation prior to next Working Party meeting.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

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

(c) Geographical indications, including appellations of origin

Question 91

According to Montenegro's response to Question 78 of document WT/ACC/CGR/17, Article 44 of Montenegro's GI law does not allow the owner of trademark rights established prior to a later-applied-for GI to assert the exclusive rights of the prior trademark against a later in time and confusingly similar geographical indication or appellation of origin, as required by Article 16.1 of the TRIPS Agreement. As such, contrary to Article 16.1, a GI (or an appellation of origin) would be able to be registered even if it conflicts with a prior trademark and would result in a likelihood of confusion.

Please indicate how Montenegro, through its Law on Indications of Geographical Origin or some other form, will preserve the rights of trademark owners by protecting trademarks from confusingly similar and later in time GIs (or appellations of origin) as required by the TRIPS Agreement Articles 16.1 and 24.5.

Answer:

Montenegro will amend the Law on Indications of Geographical Origin to meet the requirements of TRIPS Agreement Articles 16.1 and 24.5. The amendments will be made not later than 1 January 2008.

(e) Patents

Question 92

In response to Question 79 of document WT/ACC/CGR/17, Montenegro discusses the implementation of TRIPS Article 31 in its domestic law. With respect to TRIPS Article 31(c), Article 63 of the patent law cited by Montenegro does not ensure that in the case of semiconductor technology, the scope and duration shall only be for public non-commercial use or to remedy a practice determined after judicial/administrative process to be anti-competitive. Please explain how the patent law complies with this requirement.

Answer:

Montenegro will amend the Patent Law to make it fully compliant with TRIPS Article 31(c). The amendments will be made not later than 1 January 2008.

Question 93

Also in the response to Question 79 of document WT/ACC/CGR/17, and in reference to TRIPS Article 31(j), which provides that decisions made relating to remuneration must be subject to judicial or other independent review, Montenegro notes that Article 70 of its Patent Law (OG SM No. 35/04) refers to Articles 63, 66 and 68 of the Patent Law. In a previous answer, Montenegro cited Article 64 as the Article relating to remuneration matters in situation of compulsory licence. Article 64 is not referred to in Article 70. Does the Patent Law provide

that the remuneration decision mentioned in Article 64 is subject to judicial review or other independent review?

Answer:

Yes.

Question 94

Articles 63, 66 and 68 of the Patent Law regulate powers of the competent authority (the IP Office) to grant a compulsory licence under different circumstances. A compulsory licence is always granted by an administrative decision. Article 70 provides for the right to request review of any such administrative decision by the Administrative Court of Montenegro.

Article 64 of the Patent Law, on the other hand, regulates the right of the patent holder to collect remuneration from the holder of a compulsory licence. Under this provision, in the absence of an Agreement between the parties, the court decides the amount of remuneration and the method of payment, taking into account the merits of each individual case and the economic value of the compulsory licence. The competent court is the Basic Court or the Commercial Court, as the case may be. Therefore, Article 64 should not have been referred to in Article 70.

In response to Question 82 of document WT/ACC/CGR/17, Montenegro indicates that it is aware that its legislation falls short of meeting TRIPS requirements relating to undisclosed information but that new legislation concerning undisclosed information will address these issues, including protection of undisclosed test or other data against reliance by unauthorized third parties and providing for a period of exclusivity for the data. Please inform the Working Party as to when Montenegro expects to have a draft law that can be shared. Will this law provide for a period of exclusivity that will protect the undisclosed test or other data relating to pharmaceutical and agricultural chemicals from reliance by unauthorized third parties?

The Legislative Action Plan (WT/ACC/CGR/12/Rev.1) indicates that a Law on Protection of Plant Varieties (UPOV Law) and legislation on protection of undisclosed information (trade secrets) are in development. We appreciate that Montenegro has provided a draft of the Law on Protection of Plant Varieties for the Working Party's review.

Would Montenegro consider providing the draft law on undisclosed information with the Working Party for its review?

Will this law provide for a period of exclusivity that will protect the undisclosed test or other data relating to pharmaceutical and agricultural chemicals from reliance by unauthorized third parties?

Answer:

The draft Law on Protection of Plant Varieties has been prepared and reviewed by UPOV. Subsequent to UPOV review and the necessary amendments, the draft has been placed in the appropriate procedure for the Government approval. The draft is expected to be approved by 30 June 2007 and provided to the Working Party for its review.

Montenegro will make the draft Law on Protection of Undisclosed Information available for review by 30 June 2007. The draft Law will address all the relevant issues, including the period of

exclusivity that will protect the undisclosed test or other data relating to pharmaceutical and agricultural chemicals from reliance by unauthorized third parties

4. Enforcement

(a) Civil judicial procedures and remedies

Question 95

With regard to the responses to Question 223 of document WT/ACC/CGR/7 and Question 104 of document WT/ACC/CGR/10, please explain whether the compensatory damages may include attorney's fees.

Answer:

Under the legal system of Montenegro, notably the Law on Civil Procures, any party to a litigation that wins a case has a right to be compensated by the losing party for any expenses incurred in the litigation, including attorney's fees. When deciding a case, the court always decides the expenses that must be paid by the losing party. This rule is applicable to all litigation, including that related to infringement of intellectual property rights.

Question 96

Please explain whether the laws of Montenegro provide for the indemnification of the wrongfully enjoined or restrained defendant in accordance with Article 48 of TRIPS.

Answer:

Under Article 154 (1) of the Law on Contracts and Torts (SFRY OG No. 29/78, 39/85, 45/89, 57/89, FRY OG No: 31/93, 22/99, 23/99, 35/99, 44/99) any person that causes an injury must pay compensation for the injury, unless such person proves that he/she is not culpable. This is a general rule, applicable to any situation, including those referred to in TRIPS Article 48.

Question 97

Please provide information regarding the establishment of institutions within the Republic of Montenegro to enforce the provisions under Articles 41-61 of the TRIPS Agreement relating to civil and administrative procedures and remedies, special requirements related to border measures and criminal procedures.

Answer:

Since the independence of Montenegro was declared, the IP Office of the former State Union is no longer responsible for registration of IP rights in Montenegro. Montenegro is in the process of establishing its own IP Office, which will be responsible for registration and depositing of IP rights. The process is well under way, and the Working Party will be informed of all the developments in due course.

Civil courts administer civil procedures and decide on remedies provided by relevant IP Laws. If both parties to the proceedings are legal persons or entrepreneurs, or where the dispute arises from commercial activity, the case would be decided by the Commercial Court. If one of the parties is a natural person, or where the dispute does not arise from commercial activity, the case would be decided by the Basic Court.

For more detailed information related to civil and administrative procedures and remedies please see answers to Questions 202-220 in document WT/ACC/CGR/7 and Questions 73-83 of document WT/ACC/CGR/17.

Customs authorities are responsible for the administration of border measures. For details please see the Regulation on Actions of the Customs Authority Applicable to Goods Suspected of Infringement of Intellectual Property Rights (RM OG No. 25/05), submitted earlier, and answers to Questions 229-234 in document WT/ACC/CGR/7.

Criminal procedures are administered by courts that enforce relevant provisions of the Penal Code. The Penal Code provides penal protection of all intellectual property rights. The state prosecutor has the power to prosecute all IPR related offences *ex officio*. The penalties include fines and imprisonment of up to eight years. Under the Penal Code, any infringing goods or materials and implements, the predominant use of which has been in the commission of the offence, must be confiscated or confiscated and destroyed, as the case may be.

(b) Provisional measures

Question 98

With respect to the provisional measures discussed in questions 225-227 of WT/ACC/CGR/7, we understand that provisional measures may be ordered *inaudita altera parte*. Do the relevant statutes contain a notice requirement in accordance with Art. 50(4) of TRIPS?

Answer:

Yes, they do.

(d) Any special border measures

Question 99

Regarding the response to Question 229 of document WT/ACC/CGR/7, please explain whether the relevant laws provide for a notice of suspension of the release of goods to the importer and the applicant. In addition, please explain whether Montenegro's laws are in line with TRIPS Article 55, which limits the suspension time period to ten working days with possible extension by another 10 working days.

With regard to the response to Question 231 of document WT/ACC/CGR/7, please explain whether Montenegro's laws provide for the destruction or disposal of the goods seized by Customs and determined to be infringing. Can Customs authorities order the destruction or disposal of the infringing goods?

Are there any provisions in Montenegro's laws prohibiting re-exportation of the counterfeit trademark goods in an unaltered state?

Answer:

The Regulation On Actions Of The Customs Authority Applicable To Goods Suspected Of Infringement Of Intellectual Property Rights (RM OG No. 25/05) regulates proceedings and powers of the customs authorities with respect to goods found to infringe intellectual property rights.

Article 9 of the Regulation provides for a period of suspension of 15 calendar days with a possible extension for another 15 calendar days. Montenegro will amend the Regulation to meet the requirement of TRIPS Article 55 and limit suspension to ten working days with possible extension for another ten working days. The amendments will be made not later than 30 September 2007.

All infringing goods must be destroyed or disposed of outside normal channels of commerce by any other manner. The customs authority has the power to destroy infringing goods, either upon court order or *ex officio*.

Article 14(2) of the Regulation explicitly states that re-exporting of infringing goods in an unaltered state is not regarded as disposal outside normal channels of commerce.

(e) Criminal procedures

Question 100

We look forward to the response to Question 235 of document WT/ACC/CGR/7 concerning criminal procedures. Please give the Working Party an update as to the status of the amendments to the Penal Code.

Answer:

The amendments to the Penal Code were passed by the Parliament in July 2006 and became effective as of 3 August 2006. The translations of the relevant provisions were submitted to the Secretariat in February 2007.

- *Regulation on Actions of the Customs Authority Applicable to Goods Suspected of Infringement of Intellectual Property Rights (RM OG No. 25/05)*

Question 101

Article 1(2)(2): Please describe the types of goods that this provision would be applicable to.

Answer:

This provision would be applicable to goods that have been manufactured or that bear a trade mark under an Agreement with the right holder, where there is some kind of a dispute between the manufacturer or holder of goods and the right holder, as to whether contractual obligations of the parties have been fulfilled. In such cases the customs authority has no power to interfere and act either *ex officio* or upon the request of either party. However, if there is a court order or a temporary injunction issued by a competent court in such a dispute, the customs authorities will act in accordance with the court order or temporary injunction.

Question 102

Article 1(2)(3): Are guidelines or regulations contemplated that would set forth use/quantities of goods that would qualify for the personal use exemption?

Answer:

The provision itself is actually a guideline. The personal use exemption is limited to one copy of a product. The Regulation will be applicable in all cases where more than one identical copy of the product is being imported or exported.

Question 103

Article 6: Has the amount of the administrative application fee been determined?

Answer:

Yes. Customs fee for processing expenses in connection with requests for the protection of intellectual property rights at the border shall be €100 (Decree on the types, amounts and manner of payment of fee for services rendered by customs authorities, "Official Gazette of the Republic of Montenegro", No. 66/06).

- *The Penal Code of the Republic of Montenegro, Criminal Offences Against Intellectual Property Rights (Amendments Published in RM OG No. 47/06, on 25 July 2006).*

Question 104

Article 234: This provision provides for imprisonment. May criminal fines also be assessed for violation of this article?

Answer:

The principles of criminal justice system in Montenegro allow for lenient sentencing in case of first time offenders and/or exceptionally mitigating circumstances, if the court so finds. In such a case fine or a suspended sentence may be assessed.

- *The Law on Optical Discs*

Question 105

Article 22 (10) provides for temporarily banning the manufacturing of optical discs, or duplication of optical discs and sealing the licensed premises for offences of this law. Does a provision exist for permanently closing offending plants for serious violations?

Answer:

Yes. Under Article 27 of the Law the permanent prohibition of manufacturing of optical discs and/or production parts and commercial duplication of optical discs, must be ordered in addition to the fine for the offences referred to in Article 24, paragraph 1 and Article 25, paragraph 1, sub-paragraphs 1 and 3. A conviction for a serious offence always requires offending plants to be permanently closed.

- *Law on Indications of Geographical Origin (OG of Serbia and Montenegro No. 20/06)*

Question 106

Article 7: What is the rationale for not protecting indications of "geographical origin for the vine product that is identical to the name of the variety of grape that existed in the territory of Serbia and Montenegro before 1 January 1995"?

Answer:

Article 7 reflects and is consistent with the provision of TRIPS Article 24.6. which states that "nothing in this Section shall require a Member to apply its provisions in respect of a geographical

indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement".

Question 107

Article 14: Some countries may chose to protect geographical indications at common law, with no requirement for official registration. Does this article allow applicants from such foreign countries to submit an affidavit attesting to the necessary elements of protection, rather than an official document from its government?

Answer:

This is probably a linguistic issue. The meaning of the provision in the original language of the Law is that foreign persons may file an application if the appellation of origin or geographical indication were recognized under any system applicable in the country of origin. Therefore, an affidavit attesting to the necessary elements of protection would be sufficient.

Question 108

Article 16: It appears that an official document is required from the applicant's government. "Where the applicant is a foreign natural or legal person or a foreign association, the application referred in paragraph 1 of this Article shall be accompanied by a public document issued by a responsible authority in the country of origin verifying that the appellation of origin or a geographical indication has been registered in the country of origin." Please provide clarification.

Answer:

This is an issue similar to the above. Again, the meaning in the term as used in the original language of the Law is "recognition", rather than "registration". Consequently, any public document verifying that the appellation of origin or geographical indication has been recognized in the country of origin, including an affidavit, would meet this requirement.

Question 109

Articles 22; 23; 35; 36: Is there any prejudice to a foreign applicant whose country does not provide information regarding the registrability of a geographical indication?

Answer:

The provisions of Articles 22, 23, 35, and 36 became obsolete with the dissolution of the former State Union of Serbia and Montenegro. These provisions in the former State Union Law on Indications of Geographical Origin referred to member states and not to any foreign states.

Since the independence of Montenegro was declared, both Montenegro and Serbia have continued to use and enforce a number of formerly common laws as their own, including the Law on Indications of Geographical Origin. Of course, under the new circumstances some of provisions are simply not applicable any more. This is the case with Articles 22, 23, 35, and 36.

Question 110

Article 26: What is the rationale for limited duration of registered geographical indication? Does this mean that even if the geographical indication loses its significance, it may only cease in effect if a petition is filed by a third party or cancellation is effected by the GOM?

Answer:

Article 26 reads: "The period of validity of the registered appellation of origin or geographical indication shall not be limited." Therefore, the duration of an appellation of origin or geographical indication is unlimited.

Question 111

Articles 27; 28 and 42: Must foreign entities who want to use the geographical indication in Montenegro apply to do so, even if their country of origin does not have a system for authorized users apart from the private obligations required between the authorized user and the owner of the geographical indication?

Answer:

The provisions of Articles 27, 28 and 42 regulate the use of Montenegrin geographical indications by persons residing or established in Montenegro, and do not affect foreign entities.

Question 112

Article 44 and 55: Does this article only allow use of the prior trademark, not registration as well? Are the rights of prior-in-time trademarks not observed? Is co-existence allowed? Does the prior-in-time trademark owner have standing in a claim for infringement? The reporting cable dated 16 March 2007 indicates that "[t]he law for geographic indications will be amended to protect prior in time trademarks...." When will the amendment be available for review?

Answer:

Under Article 44, the provisions of the Law on Indications of Geographical Origin do not affect the conditions for the registration, validity of the registration or the right to use a trademark registered or acquired in good faith that is identical or similar to a registered geographical indication. It actually protects the right of a prior trademark holder allowing the use and co-existence of a prior trademark.

However, Article 44 does not allow the owner of trademark rights established prior to a later-applied-for GI to assert the exclusive rights of the prior trademark against a later in time and confusingly similar geographical indication or appellation of origin, which is inconsistent with relevant TRIPS provisions.

Montenegro will amend the Law on Indications of Geographical Origin to meet the requirements of TRIPS Agreement Articles 16.1 and 24.5. The amendments will be made not later than 1 January 2008.

Article 55 does not in any way affect the relationship between a prior trademark and a later in time geographical indication or appellation of origin. It regulates the circumstances under which a decision on the recognition of status of an authorized user may be revoked.

Question 113

Article 46: Article 46 prohibits transfer of rights, license Agreement, pledge, franchise or the like of geographical indications and relevant trademark. What effect does this have on foreign geographical indications where such transactions are not prohibited? What is the result if such a transaction is effected? Is the geographical indication cancelled *ex officio*?

Answer:

The laws of any country are applicable in, and their effects are generally limited to the territory of such country. Consequently, Article 46 is applicable to domestic geographical indications and appellations of origin. If such a transaction is made, the transaction is null and void and it does not cause cancellation of a geographical indication or appellation of origin. Article 46 does not have any effect on any foreign geographical indications, including those originating in a country in which such transactions are not prohibited.

Question 114

Article 55: Please clarify whether "interested person" includes a prior-in-time trademark owner?

Answer:

Yes, it does.

- *Law on Patents*

Question 115

Article 43 of the Patent Law states that the competent authority will examine whether the subject matter of a patent application "constitutes a technical solution of a specific problem", in addition to matters of novelty, inventive step and industrial application. Please explain whether this is an additional requirement of patentability that would prevent a patent from being granted. If so, please explain how this is consistent with TRIPS Article 27.1 that patents be available for any inventions "provided that they are new, involve an inventive step and are capable of industrial application."

Answer:

This provision may be interpreted as an additional requirement of patentability, and consequently may be inconsistent with TRIPS Article 27.1. Montenegro will amend Article 43 of the Patent Law to make it consistent with TRIPS Article 27.1, not later than 1 January 2008.

- *Montenegro's Planting Materials Law - On Promulgation of the Law on Planting Material*

Question 116

Article 2 states that genetically modified planting material is not covered by this law. We are eager to review Montenegro's Law on Genetically Modified Organisms. We note the absence of this law in this current submission of legislation for review. We expect any such legislation to conform to principles outlined in the WTO SPS and TBT Agreements, indicating that a regulatory system must be transparent, timely, predictable, and science-based.

Answer:

Montenegro provided the Law on Genetically Modified Organisms and its two by-laws to the WTO Secretariat in September 2005 (document WT/ACC/CGR/9 refers), and is also enclosing the material as Annex I to these answers.

Question 117

Under Article 5, only companies or other legal persons or entrepreneurs entered in the Register of Producers may become involved in the production of planting material. Can you please describe the process involved in entering a name in to the Register and how much time it takes to be entered into this register. Is this the same process for companies or other legal entities wishing entry in the Register of Importers per Article 28?

Answer:

Article 7 prescribes that entry in the Register of Producers is possible for producers with land required for production of planting material and who employ on full-time basis a person responsible for production of planting material (hereinafter referred to as: responsible person) with academic qualifications and at least three years of relevant work experience.

An application for entry in the Register of Producers must include data about:

- the producer (name, registered office, address, unique identification number, fiscal identification number and code of business activity);
- responsible person (first and last name, address, unique identification number, and educational background);
- species, variety, and category of planting material; and
- parent trees.

The application needs to be accompanied with additional documentation as follows:

- proof of the right of disposal over, or use of, the agricultural land for production of planting material (an excerpt from the title deed, or the lease Agreement);
- employment contract with the responsible person;
- outline of a production plan (the manner of processing, protecting and preserving the biological and chemical characteristics of land, cultivation of parent trees, and production volumes); and
- proof of registration in Central Register of Commercial Court.

This Register of Producers is not the same as the Register of Importers defined in Article 28. In order to be inscribed in Register of Importers, a company, or other legal person or entrepreneur must submit proof of registration in the Central Register of Commercial Court and proof of ownership or contractual right to use a registered customs warehouse.

The process of registration for both the Register of Producers and the Register of Importers last around seven days if the documentation for registration is complete; if not, producers and importers are informed to complete documents, which takes additional few days, but in any case cannot last longer than the 30 day maximum specified in the Law on General Administrative Procedure.

Question 118

Article 12 states that production of planting material "may be conducted in other county on the basis of a contract between such domestic client and a foreign producer, upon the consent of the administrative authority." Who is the administrative authority and how is consent granted?

Answer:

The administrative authority mentioned in paragraph 3 of Article 12 and throughout the whole Law is the Ministry for Agriculture, Forestry and Water Supply.

The consent of the Ministry of Agriculture is granted, upon application, in the form of written decision.

Question 119

Who is the administrative authority in Article 28, is this the same administrative authority mentioned throughout the law such as in Article 8, Article 10, Article 11, etc? How will the Ministry make publicly available to importers the "content, from, and manner of keeping the Register of Importers, and the content of the application?"

Answer:

Yes, it is the same administrative authority.

All legal acts enacted by state authorities in the Republic of Montenegro are published in the Official Gazette of the Republic of Montenegro. All acts (laws, decrees, regulations, orders, decisions...etc) enacted by the Ministry of Agriculture, including "content, from, and manner of keeping the Register of Importers, and the content of the application" are so published and therefore available to importers.

Question 120

Article 30: Paragraph 1 states that "The imported planting material, along with the bill of lading, must be accompanied by ...and the certificate of quality of planting material (ISTA)." There are a number of certification and testing programs recognized by the OECD Seed Schemes (key international seed certifying body), including ISTA. We would like to see ISTA replaced with ISTA or equivalent internationally recognized methods. (Per Article 4 of the SPS Agreement – Equivalence)

Answer:

We appreciate this comment and we will amend the provision on ISTA certificates in accordance with these suggestions.

Question 121

Article 31: Paragraph 2 states that "Planting material which is imported shall be subject to mandatory control of certification and quality...at the border crossing." Imports of plant material into Montenegro are subject to requirements contained in Article 11 and Article 13. Mandatory inspection by a phytosanitary inspector at the border crossing is burdensome and provides no additional level of protection. We would like to have the aforementioned requirements as contained in Articles 11 and 13 fulfil the requirements under Article 31,

therefore, no additional mandatory inspection by a phytosanitary Inspector would be necessary at the border crossing.

Answer:

It appears there is certain misunderstanding. Articles 11 and 13 prescribe conditions for domestic producers, not importers. Article 31 says that planting material may be imported only from producers which comply with the production requirements, namely which are registered and under supervision of the competent authority of the exporting country. This is related to foreign producers.

However, since the Law on Plant Health Protection prescribes that all plant shipments are subject to phytosanitary inspection, and the planting material is considered as a plant according to IPPC Convention, we believe that fact that phytosanitary inspector is present at the border is not burdensome to trade. We are trying to harmonize our SPS legislation with the SPS Agreement which refers to international organizations, among which is IPPC.

Question 122

Are the fees described in Article 54 the same for domestic and foreign producers?

Answer:

Yes, all fees charged based on this Law are equal for foreign and domestic persons.

- *On Promulgation of the Law on Seed Material of Agricultural Plants (RM OG No. 28/2006)*

Question 123

According to paragraph 5 of this article, the Ministry shall specify the type of packaging and designation of individual categories of seed material. Please describe how the Ministry shall make this information publicly available. Also please specify who the administrative authority is under paragraph 5.

Answer:

The administrative authority mentioned in paragraph 5 of Article 4 and throughout the whole Law is the Ministry for Agriculture, Forestry and Water Supply.

All legal acts enacted by state authorities in the Republic of Montenegro are published in the Official Gazette of the Republic of Montenegro. All acts (laws, decrees, regulations, orders, decisions...etc) enacted by the Ministry of Agriculture, including "type of packaging and designation of individual categories of seed material" are so published.

Question 124

Please specify who is the Administrative Authority referred to in Article 6 and Article 7.

Answer:

See answer above.

Question 125

Article 40: Paragraph 4 states "...shall submit the declaration, namely varietal certification of seed (OECD), certification of seed quality (ISTA) and phytocertificate." There are a number of certification and testing programs recognized by the OECD Seed Schemes (key international seed certifying body), including ISTA. We would like to see ISTA replaced with ISTA or equivalent internationally recognized methods. (Per Article 4 of the SPS Agreement – Equivalence)

Answer:

We thank you for this comment and we will amend the provision on ISTA certificates in accordance with your suggestions.

Question 126

Article 45: Who is the administrative authority referred to in this article? Please describe the application process for importers interested in being entered into the Register of Importers.

Answer:

The administrative authority mentioned in Article 45 and throughout the whole Law is the Ministry for Agriculture, Forestry and Water Supply.

The Law on Seeds prescribes that wholesale trade in seeds include importation. That means who ever is registered in Register of Wholesalers can be registered in the Register of Importers of seeds if he/she submits few additional information.

A company, or other legal person or entrepreneur may be entered in the Register for Wholesalers of Seed Material upon application if it employs, on full time basis, for marketing activities, a person who with required academic training and has a facility for warehousing seed materials.

Registration as an importer requires in addition proof on registration in the Central Register of Commercial Court and proof of ownership or the contractual right to use a registered customs warehouse.

The process of registration for both the Register of Wholesalers and the Register of Importers of seeds takes around 7 days if the documentation for registration is completed and is subject to the 30 day limit specified in the Law on General Administrative Procedure.

Question 127

Article 47: Paragraph 1 states "...accompanied by a phytocertificate, varietal certification of seed material (OECD), and certificate of seed material quality (ISTA)." There are a number of certification and testing programs recognized by the OECD Seed Schemes (key international seed certifying body), including ISTA. Consequently, we would like to see ISTA replaced with ISTA or equivalent internationally recognized methods. (Per Article 4 of the SPS Agreement – Equivalence)

Answer:

We appreciate this comment and we will amend the provision on ISTA certificates in accordance with these suggestions.
