

# WORLD TRADE ORGANIZATION

RESTRICTED

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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 31 May 2007, is being circulated at the request of the Delegation of the Republic of Montenegro.

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## **II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE**

### **1. Economy**

#### **(b) Current economic situation**

##### **Question 1**

**What provisions will be in place to regulate private monopolies once state-owned monopolies have been privatised?**

Answer:

The Law "On Protection of Competition" (RM OG No. 69/05) regulates monopolies, whether state owned or private. The Law governs forbidden agreements, abuse of the dominant position and mergers (this law can be obtained through document WT/ACC/CGR/24/Add.1).

##### **Question 2**

**Please provide an updated list of companies with each company's area of commercial or public operation, and the extent to which they have production, trade, or internal distribution monopolies.**

Answer:

Montenegro does not have any companies with production, trade, or internal monopolies.

##### **Question 3**

**Please provide a more precise time frame for the implementation of the Law on Foreign Investment.**

Answer:

The draft Law "On Amendments and Modifications of the Law 'On Foreign Investment'" was passed by the Parliament on 29 May 2007.

## **IV. POLICIES AFFECTING TRADE IN GOODS**

### **1. Import Regulation**

#### **(f) Import licensing procedures**

##### **Question 4**

**Could Montenegro provide an updated list of goods that are subject to licensing procedures?**

Answer:

Montenegro is currently working on amendments of the Decision on Control List of Goods for Export, Import and Transit which contains all goods that are on the licensing regime. We will submit the revised Decision prior to the next Working Party meeting.

**(h) Customs valuation**

**Question 5**

**According to the replies of the Montenegro authorities, they have not yet included all Interpretative Notes to the WTO Customs Valuation Agreement in their legislation. When will a copy of the legislation incorporating all Interpretative Notes be available?**

Answer:

The question refers to a document submitted by Serbia, not Montenegro. Montenegrin customs legislation includes all the Interpretive Notes.

**3. Internal policies affecting foreign trade in goods**

**(b) Technical regulations and standards**

**Question 6**

**Articles 2.8 to 2.12 of the TBT Agreement are not currently covered by the legislation. Please provide a detailed plan of action for integrating these Articles into domestic legislation.**

Answer:

A re-drafted Law "On Technical Regulations", including all these items, is under review by the Government. An advanced draft will be provided prior to the next Working Party Meeting.

**Question 7**

**The reference to international standards being the base for technical regulations, standards and conformity assessment procedures are not sufficiently clear. Could Montenegro provide a stronger commitment (see references cited in document WT/ACC/CGR/20 page 6)?**

Answer:

This has been done in the re-drafted Law "On Technical Regulations" mentioned above.

**Question 8**

**In Article 15, last paragraph, of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements, is an appeal possible?**

Answer:

This has been provided in the re-drafted Law "On Technical Regulations" mentioned above.

**Question 9**

**In Articles 11 and 18 of the Law on Technical Requirements for Products, the different conformity assessment procedures are not clearly separated (Self Declaration and Third Party Certification). These articles give the impression that certificates of conformity are always given by a third party (at least if declaration of conformity is included in the definition of certificate of conformity). Could Montenegro clarify?**

Answer:

This has been done in the re-drafted Law "On Technical Regulations" mentioned above.

#### **Question 10**

**Please clarify what Article 8 paragraph 2 of the Law on Technical Requirements for Products means. Is there always a possibility to prove the conformity of a product with relevant technical regulations by other means than using standards?**

Answer:

The re-drafted Law "On Technical Regulations" mentioned above clarifies this point.

#### **Question 11**

**In the Decree on Manner of Authorizing Conformity Assessment Bodies, please clarify what Article 3.6 means.**

Answer:

A revision of the subject Article will make this clear.

#### **Question 12**

**Article 7 of the Decree on Manner of Authorizing Conformity Assessment Bodies, together with the related Article 3.6, implies that the technical competence of a conformity assessment body can be proven by three different means: by an accreditation certificate, by a report on competence from another equally significant procedure or by evidence which is in accordance with the regulations issued by the Accreditation Body. What is meant by the two last mentioned means of proving competence? How do they differ? Could Montenegro provide any examples?**

**Does Article 4 item 3 of the Law on Technical Requirements for Products mean that technical regulations in question cease to apply even if they are not formally repealed?**

Answer:

No. A technical regulation that is no longer appropriate must be repealed. The re-drafted Law "On Technical Regulations" mentioned above clarifies this point.

#### **Question 13**

**On page 7 under commitment (g) of document WT/ACC/CGR/20, the second part of the answer relating to Article 6 of the Law on Technical Requirements for Products: how is a non-discriminatory and cost-based fee structure ensured by applying Article 6 of the Law?**

Answer:

Articles 13 and 21 of the re-drafted Law "On Technical Regulations" mentioned above make it clear that fees shall be non-discriminatory and cost-based.

(c) **Sanitary and phytosanitary measures**

**Question 14**

**Please provide an update and timeframe for enacting the Draft Law on Food Safety.**

Answer:

The draft Food Safety Law is in inter-ministerial review procedure; it is expected that this Law will be passed by the end of June.

**Question 15**

**The establishment of a single contact point for information is important for the effective operation of notifications. Please clarify which authority will become the single Enquiry Point and the timeframe for adopting a regulation to govern its establishment, responsibilities and manner of functioning.**

Answer:

The SPS Enquiry Point will be in the Ministry for Agriculture, Forestry and Water Supply. Its establishment is expected by the end of June.

**Question 16**

**The importance of transparency is mentioned in the Veterinary Law, but not in the case of the Law of Plant Protection and the Draft Law on Food Safety in which the language on transparency is vague. How will Montenegro ensure that the provisions foreseen in these two laws will comply with transparency requirements?**

Answer:

We will include appropriate language on transparency in the draft Food Safety Law, which is currently under review. The Law "On Plant Health Protection" prescribes in Article 5 that the administrative authority in charge for plant protection is in charge, among other, for implementation of international conventions, contracts and treaties related to plant health care. That includes respecting provisions of the SPS Agreement as well. Montenegro is currently in process of establishing its SPS Enquiry Point which will be in charge for notifying new proposed phytosanitary measures and all other activities as set in the SPS Agreement.

**Question 17**

**Montenegro states that "when scientific evidence needed for risk assessment is insufficient, or in urgent circumstances..., sanitary measures are prepared based on available relevant information...". Please provide concrete examples of sanitary standards or guidelines already taken in Montenegro required by urgent circumstances. Currently, what are the main standards already in place to fulfil animal, plant health, safety provisions? What are the current standards in general – are they close to EU or international norms and limits? Who carries out the scientific evaluation needed to set up specific standards or norms?**



Answer:

Please note that you are referring to the draft Food Safety Law which is still under review. The draft Food Safety Law will introduce the risk assessment procedure, which does not exist under current legislation, therefore there are no examples of that sort at the moment.

**Question 18**

**Does Montenegro send representatives to meetings or congress organized by OIE, CODEX or IPPC? Does Montenegro participate regularly in Working Groups at international level?**

Answer:

Montenegro sends representatives to meetings or congresses organized by OIE, Codex and IPPC. Furthermore, Montenegro sent an official request for membership to the OIE in November 2006. It is expected that the OIE will decide about that request on its regular meeting to be held in late May 2007. The Director of the Veterinary Administration of Montenegro participates in OIE meetings, but without voting right. Montenegro is waiting for its membership in FAO, which is the precondition for the membership in Codex Alimentarius. Montenegro has its focal point for IPPC, and participates in its meetings, but still without voting right.

**Question 19**

**"The draft Law on Food Safety prescribes that sanitary measures in another country are considered equivalent and are consequently accepted, if the other country shows in an objective manner that its measures achieve the required level of health protection". Please provide concrete examples of equivalent measures already exchanged with other countries.**

Answer:

Please note that you are referring to the draft Food Safety Law which is still under review. The draft Food Safety Law will introduce the principle of equivalence in accordance with the SPS Agreement. However, as this principle does not exist under current legislation, there are no examples of that sort at the moment.

**Question 20**

**Please provide a concrete example of risk assessment recently performed in each of the three sectors: animal health, plant health and food safety. In particular, how is the risk assessment, risk management and risk communication coordinated in practice?**

Answer:

Please note that you are referring to the draft Food Safety Law which is still under review. The draft Food Safety Law will introduce the risk assessment procedure (including risk management and risk communication), which does not exist under current legislation. Therefore there are no examples of that sort at the moment.

**Question 21**

**"...special attention shall be ensured to provide that sanitary measures are adapted to the sanitary or characteristics of the areas...". Are regional conditions in line with the concept**

**defined by the three international bodies (OIE, CODEX and IPPC)? Please provide examples of what is meant by regional conditions.**

Answer:

Please note that you are referring to the draft Food Safety Law which is still under review. The draft Food Safety Law will introduce the concept of regional conditions in accordance with the SPS Agreement. The concept will be applied consistently with the way it is defined by the three international organizations mentioned in your question.

#### **Question 22**

**Article 5 of the Law on Plant Health Protection prescribes "non-discrimination obligation between foreign and domestic producers". Please provide details, with examples, on how the Border Inspection Posts and domestic market inspections operate in order to respect the provisions of non-discrimination. Do inspections follow international standards?**

Answer:

The Law "On Plant Health Protection" prescribes in Article 5 that the administrative authority in charge for plant protection is in charge of implementation of international conventions, contracts and treaties related to plant health care. Since all international conventions in this area include the principle of non-discrimination, phytosanitary inspectors do not apply any discriminatory measures. Border inspection posts and domestic market inspections respect the principle of non-discrimination by applying laws equally to all operators, regardless of their nationality. Please have in mind that we sent all laws governing foreign trade for WTO review and we don't have any provision that is discriminatory for foreign persons.

#### **Question 23**

**Do phytosanitary and animal product inspectors at Border Inspection Posts work with customs? Can Montenegro please provide details of the inspection equipment used, who is responsible for testing the products and costs of inspection? Does a manual of procedures exist that describes all the steps available to inspectors?**

Answer:

Yes, they do.

Inspection equipment used at the border is generally speaking very simple equipment, including lenses and simple equipment for sampling. More involved testing is not done at the border, but rather on samples taken at the border and sent to central testing laboratories.

The cost of inspection is prescribed in different decrees. We have provided 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 contains in details fees paid for various veterinary controls at the border, for review by the Working Party.

Every inspection service has a rulebook that is based on the particular law it administers (Plant Protection Law, Veterinary Law, or Law "On Sanitary Inspection"), which describes in detail the inspection procedures, including controls and sampling methods, that are to be used.

## V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

### Question 24

**Please provide more details on implementation and enforcement procedures in the area of intellectual property.**

Answer:

After the declaration of independence of the Republic of Montenegro and the dissolution of the former State Union of Serbia and Montenegro, Montenegro has continued, in accordance with the Declaration of Independence, to use and enforce a number of formerly common laws as their own, including substantive intellectual property laws. These are the following:

- The Law on Copyright and Related Rights;
- The Patent Law;
- The Trademark Law;
- The Law on Legal Protection of Designs;
- The Law on Indications of Geographical Origin; and
- The Law on Protection of Topographies of Integrated Circuits.

These laws also provide for civil protection of intellectual property rights, including provisional measures ordered *inaudita altera parte* and pre-established damages.

Penal protection of IP rights is provided by the Penal Code (amendments to include IPR related criminal offences published in the RM Official Gazette No. 47/06).

Enforcement of substantive IP laws is regulated by the Law on Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights (RM Official Gazette No. 45/05).

The Law "On Optical Discs" (RM Official Gazette No. 02/07) regulates the production of optical disks, registration of the business activity of reproducing optical disks for commercial purposes, provides for control of optical disk imports and exports and imports and exports of polycarbonates (the material used in production of optical disks) and production equipment for the production of optical disks

Regulation "On Actions Of The Customs Authority Applicable to Goods Suspected of Infringement of Intellectual Property Rights (Regulation on IP Border Measures)" published in RM Official Gazette No. 25/05 provides for the powers of customs authority to act both ex officio and upon the request of the right holder in case of infringing goods placed in any of the customs procedures.

The draft Law "On Protection of Plant Varieties", compliant with UPOV Law convention has been prepared and placed in the approval procedure.

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