

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/ACC/CGR/27**

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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 2 January 2008, is being circulated at the request of the Delegation of the Republic of Montenegro.

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## II. ECONOMIC POLICIES

### - Investment Regime

#### Question 1

**Paragraph 22 of the Factual Summary (JOB(07)/115) contains reference to "the obligatory employment of local workers." Please explain this requirement. What is the legal basis for the requirement? To what companies does it apply? Does it apply equally to domestically-owned and foreign-owned companies?**

Answer:

This appears to be a misinterpretation. There is no such requirement in the legislation applicable in Montenegro.

#### Question 2

**Please describe the amendments to the Law on Foreign Investment. Did they strengthen protection for investment, as suggested in paragraph 24 of the Factual Summary? If so, please describe how the protections were strengthened.**

Answer:

Under the Law on Amendments and Modifications of the Law on Foreign Investments (RM OG Nos. 36/07), provisions prohibiting foreign investments in areas, which were defined by law as restricted zones (national parks and border areas etc.) have been abolished. By these amendments all the restrictions for foreign investors have been removed, except one, provided for in Article 7 of the Law, under which foreign investor may invest in production and trade in armament and military equipment jointly with a domestic person, provided that the share of the foreign investor does not exceed 49 per cent.

## IV. POLICIES AFFECTING TRADE IN GOODS

### - Trading Rights

#### Question 3

**We welcome Montenegro's recognition of Members' concerns about its trading rights regime, especially in relation to requiring physical presence or the establishment of a corporate entity in order to import or receive a necessary activity licence, and its commitment to revise its legislation accordingly. We look forward to seeing drafts of that legislation to ensure that Members' concerns are fully addressed before such legislation is adopted.**

**Are these amendments included in the legislation just submitted to the Secretariat?**

Answer:

No, they are not. However, the amendments will be submitted for review by the Working Party before the next Working Party meeting.

#### Question 4

**Paragraphs 49 and 50 describe the registration process for legal entities in Montenegro. In essence, an entity must 1) register with the Central Register of the Commercial Court, 2) obtain a statistical number for the Bureau of Statistics and 3) obtain a customs number. In response Question 9 of WT/ACC/CGR/23, Montenegro confirmed that, pursuant to forthcoming amendments, an entity is not required to have a physical presence in Montenegro in order to register at Customs.**

**Please confirm that a physical presence is not necessary for registration at the Central Register of the Commercial Court or the Bureau of Statistics.**

Answer:

A physical presence is not necessary for registration at the Central Register of the Commercial Court or the Bureau of Statistics. The person who is not physically present can be represented by an attorney.

#### Question 5

**According to paragraph 51 of the Factual Summary, and the response to Question 14 of WT/ACC/CGR/23, in order to be the importer of record, a foreign natural person must be physically present in Montenegro and have a residence in Montenegro. Montenegro has acknowledged that its establishment requirement for legal entities is not consistent with the WTO and that it will amend its legislation to eliminate the requirement of a physical presence. Will Montenegro likewise amend its legislation to eliminate this establishment requirement for natural persons?**

Answer:

Draft of the relevant amendments to the Customs Law, enabling person not established in Montenegro to be an importer of record, will be submitted for review by the Working Party before the next Working Party meeting.

#### Question 6

**Paragraph 51 of the Factual Summary and the response to Question 14 of WT/ACC/CGR/23 explain that an individual entrepreneur may import for retail trade, but not for wholesale trade:**

- **What is the rationale behind Montenegro's prohibition against entrepreneurs importing products for wholesale?**
- **Does this prohibition against importing for wholesale apply to both domestic and foreign entrepreneurs?**

Answer:

Montenegro has taken steps to remove this restriction. In accordance with the draft of the new Law on (internal) Trade, entrepreneurs will be able to engage in wholesale. The adoption of the draft Law is expected in the first quarter of 2008. The draft will be available for review by the Working Party before the next Working Party meeting.

#### Question 7

According to paragraph 57 of the Factual Summary, an activity licence to import or export medicines can be granted only to a legal entity established in Montenegro. Such a requirement does not appear to conform with the trading rights requirements under GATT Articles III and XI:

- **What is Montenegro's rationale for imposing such a requirement?**
- **How will Montenegro bring its activity licensing regime into conformity with the WTO?**

Answer:

Medicines are specific goods, important for the health of the population and subject to particular public interest. Therefore, under the Law on Medicines of Montenegro, any commercial operator, both domestic and foreign, who intend to trade in medicines in the territory of Montenegro, must meet requirements with respect to human resources and technical equipment necessary for trade in medicines in accordance with the principles of good practice in distribution and warehousing, and must be available for the inspectorial supervision and control by the state authorities.

Foreign legal entity may establish a branch in Montenegro, and operate in Montenegro under conditions identical to those applicable to domestic persons.

However, Montenegro intends to take steps to amend the appropriate legislation and make it compliant to GATT Articles III and XI.

#### Question 8

Regarding the activity licenses to import poisonous substances, fertilizer, and pesticides, mentioned in paragraph 58 of the Factual Summary, does the draft legislation on fertilizers and pesticides make such licenses be equally available to non-residents of Montenegro? We look forward to reviewing Montenegro's draft laws on pesticides and fertilizers.

Answer:

Draft Law on Pesticides and the Law on Fertilizers do not provide for the residence as the criterion for issuing of licenses.

#### A. IMPORT REGULATIONS

- **Application of internal taxes to imports**

#### Question 9

Paragraph 72 of the Factual Summary explains that Montenegro applies different excise tax rates on cigarettes depending on quality:

- **What are the quality criteria for each category?**
- **What percent of imported and domestically-produced cigarettes fall into each of the three categories?**
- **What are the applicable HTS numbers for each category?**

Answer:

An interpretation in paragraph 72 does not appear to be entirely correct. Under the Law on Excise Taxes (RM OG Nos. 55/01, 12/02 and 76/05), the following tobacco products are subject to excise tax: cigarettes, cigars, cigarillos, finely shredded tobacco (for rolling cigarettes) and other smoking tobacco. The rate of the excise tax depend on the kind of a product rather than the quality.

The excise tax for cigarettes comprises specific and proportional excise tax. Specific excise tax for cigarettes is €1.00 for 1,000 cigarettes. Proportional excise tax amounts to 26 per cent of their retail price.

The excise tax for other tobacco products is payable per kilogram of the product, as follows:

- Cigars and cigarillos: €10.00/kg;
  - Finely shredded tobacco (for rolling cigarettes): €20.00/kg; and
  - Other smoking tobacco: €15.00/kg.
- **Quantitative import restrictions, including prohibitions, quota and licensing systems**

**Question 10**

**We continue to have concerns about the extensive list of goods subject to licensing approvals or certificates in the Decision on Control List for Export and Import. Montenegro has submitted a revised Control List. While we prefer automatic licenses to non-automatic licenses, we had hoped that the licensing requirement would be eliminated altogether for most commonly-traded goods. We will review the Decision and provide our comments.**

Answer:

Montenegro would like to point out that the number of goods subject to non-automatic licenses listed in Annex I of the revised Decision on the Control List has been substantially reduced. The goods listed in other Annexes are subject to licenses in accordance with international agreements binding on Montenegro, whereby Montenegro fulfils its international obligations.

- **Customs valuation**

**Question 11**

**What is the status of the amendments to Customs Law and Decree on Implementation to include the remaining Interpretative Notes to the WTO Agreement on Customs Valuation, mentioned in paragraph 92 of the Factual Summary? We do not see it on the list of legislation recently submitted to the WTO Secretariat.**

Answer:

The Customs Law and its Implementing Regulation have been amended in November 2006, to include the remaining interpretative notes. The amendments became effective on 1 January 2007.



**C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS**

**- Industrial policy, including subsidies**

- Draft Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures (WT/ACC/CGR/15/Add.1)

**Question 12**

**AID FOR PRIVATIZATION: Please explain the terms the loans provided to the different sectors.**

**Please explain what the eligibility criteria is in order to receive the loans under this programme.**

Answer:

The aim of the Restructuring Assistance Programme is to create conditions for improvement of all the relevant aspects of company operations, to improve their competitiveness, to define optimal organizational structure and number of employees, and to attract investors, thus assisting companies in their restructuring and enabling them to operate in the open market economy.

The relevant eligibility criteria receiving a loan are the following:

- Ability of companies for successful restructuring shown through restructuring/business plan;
- Possibility of privatization within 12 months;
- Human resources potential; and
- Export potential

The credit assistance terms are the following:

- Three year repayment period, with one year grace period;
- Interest rate is two per cent annually; and
- Providing security, determined by the Ministry of Finance and included in the loan agreement, mostly by mortgage or by providing a letter of exchange.

**Question 13**

**SUPPORT FOR INDUSTRY OF ELECTRIC MACHINES AND EQUIPMENT: Please explain the terms of the favourable loans that are provided to Obod.**

**Please explain what the eligibility criteria is in order to receive the preferential loans under this programme? Do any other companies in the Republic of Montenegro receive favourable loans under this programme? If so, you please provide further details of which other types of companies have received loans under this programme.**

**Is there a particular reason why Obod is the sole recipient of the favourable loans?**

Answer:

"Obod", an electrical appliance manufacturer, is the company, which is not privatized yet and where the state owns 51.8 per cent of the capital. A public tender for the sale of state's share is being prepared.

The primary reason for providing favourable loans to "Obod" is to prepare the company for the successful privatization. Therefore, the amounts received were allocated for modernization of machinery, repair of roofs on two manufacturing facilities and payment of salaries to workers who have worked on repairs and safeguarding the company property.

The interest rate for the loans is two per cent annually. Loans should be repaid when the conditions for privatization are fulfilled. "Obod" is the sole recipient of these loans.

Favourable loans did not have any effect on competition in Montenegro because the company was not operational in recent years. The purpose of loans is to safeguard the assets of the company until it is privatized. However, the future buyer of the company will nevertheless have to invest substantially in order to make the company operational.

**Question 14**

**SUPPORT FOR ECONOMIC ACTIVITIES: Could you please further explain the policy objective for this programme and specifically explain what is meant by "to increase the overall competitiveness of companies?"**

**Please explain what the eligibility criteria are in order to receive the grants under this programme.**

**How are the amounts, which are provided to each company, determined? Do companies which compete internationally receive a higher level of subsidies? If so, please further explain.**

Answer:

The assistance under the programme has been provided to companies in different sectors. The purpose of the programme is improvement of operation and enabling companies to operate in the open market economy, improvement of business practices and transfer of managerial know-how.

The assistance has been provided to economic operators in a number of industrial and services sectors, in order to support their development, notably to those that have substantial business potential and a positive approach towards improvement of management and business practices. The amounts granted were relatively low and cannot substantially affect the performance of the company. Exposure to international competition does not affect granting or the amount of assistance. Economy of Montenegro is open to international competition.

- **Technical barriers to trade, standards and certification**

**Question 15**

**We take note of the changes to Montenegro's the Decree on Manner of Authorizing Conformity Assessment Bodies, Register of Authorized Conformity Assessment Bodies, Records on Certificates of Conformity, Conformity Marks and Conformity Assessment Bodies, and the Conditions for Applying Technical Regulations of Other Countries (S&M OG No. 22/06), and the Decree on Manner of Preparing and Adopting Technical Regulations and Register of Such**

**Regulations (S&M OG No. 17/06) that the representative of Montenegro has outlined in previous discussions. We realize that these efforts are still underway, but look forward to reviewing the revised laws when they are completed.**

**Regarding the review of all quality control regulations described in paragraph 114 of the Factual Summary, please provide further detail on this review, specifically what is the timeframe and how will the review be undertaken? In addition, please provide an update on the Revised Strategy for Quality Infrastructure Development in Montenegro that was to be adopted in April 2007.**

Answer:

Montenegro has committed to review all the regulations governing quality control in order to provide full compliance with the TBT Agreement. The Revised Strategy for Quality Infrastructure Development was adopted on 7 June 2007 and is targeted to harmonization of the food and environment safety standards, as well as standards of safety at work with international standards. The intention is to withdraw all standards which are not harmonized with the international ones. The review begun in December 2007 and is expected to take more than a year to complete.

#### **Question 16**

**With regards to information on the use of international and regional standards discussed in paragraph 116 of the Factual Summary, we would remind Montenegro of the WTO TBT Committee Decision (G/TBT/1/Rev.8), which identified the key principles of international standards, including transparency, openness, impartiality and consensus, relevance and effectiveness, coherence and developing country interests. We would encourage Montenegro to use these principles to identify international standards. We would add that the WTO TBT Agreement gives priority to international standards over regional standards.**

**According to paragraph 116 of the Factual Summary, the Institute for Standardization of Montenegro intends to adopt the remainder of some 21,000 European Union standards by the end of the harmonization process. Is Montenegro considering adopting any international standards in lieu of European standards? If yes, please provide examples.**

Answer:

Yes, Montenegro will adopt international standards which are related to Montenegrin strategic development priorities, i.e. standards related to food, tourism, transport, environment etc. Where there are no adequate international standards European standards will be adopted.

Montenegro thanks for the reminder of the Decision of the WTO TBT Committee on Principles for the Development of International Standards, Guides and Recommendations and commits to take into account all the key principles referred to in the Decision when defining international standards.

#### **Question 17**

**Could the representative of Montenegro provide an update on the status of the draft Decree on Notification of Technical Regulations, Standards and Conformity Assessment Procedures mentioned in paragraph 117 of the Factual Summary? Will Montenegro share a draft of this Decree with the Working Party?**

Answer:

The draft Regulation on Notification of Technical Regulations, Standards and Conformity Assessment Procedures has been submitted to the Secretariat on 12 July 2007. Montenegro believes that the draft, which is in the final stages of the adoption procedure, is compliant to the TBT Agreement. Subsequent to the adoption by the Government, the Regulation will be submitted to the Working Party.

- TBT Action Plan (WT/ACC/CGR/21)

**Question 18**

**Montenegro's TBT Action Plan notes that the Decision on Establishment of the Accreditation Body would be adopted by the end of June 2007:**

- **Has this Decision been adopted?**
- **Will Montenegro provide a translation for the Working Party's review?**

Answer:

Yes, the Decision on Establishment of the Montenegrin Accreditation Body was adopted on 29 March 2007 and the Acting Director was appointed on 10 May 2007. Montenegro will provide translation of the Decision before the next Working Party meeting.

- Draft Law on Standardization

**Question 19**

**With regards to the definitions in Article 2, we urge Montenegro to revise the definitions for the terms that are defined in the TBT Agreement, such as "standard", "international standard", and "conformity assessment" so that the definitions match those in the TBT Agreement.**

Answer:

Final drafts will include definitions compliant to those in the TBT Agreement.

**Question 20**

**Statement: With regard to the list of international standards organizations in Article 2.13, we note that neither the TBT Agreement nor the TBT Committee has ever established a list of recognized international standards organizations. Furthermore, we remind Montenegro of the Decision of the TBT Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement (G/TBT/1/Rev.8, section IX, 23 May 2002), which sets out principles for the development of international standards.**

**We commend the inclusion of Article 3.9 that obligates Montenegro to use "international standards or their relevant parts, when they exist or their completion is imminent, as the basis for Montenegrin standards." Please describe how the obligation will be implemented in practice given the obligation in Article 10(2) that allows Montenegrin standards to be "based on European or international standards".**

Answer:

Montenegro will adopt international standards, which are related to Montenegrin strategic development priorities, i.e. standards related to food, tourism, transport, environment etc. Where there are no adequate international standards, European standards will be adopted.

**Question 21**

**With regard to Article 22, please clarify whether Yugoslav and Serbian-Montenegrin standards currently in use will continue to be applied in Montenegro until a Montenegrin standard is adopted.**

Answer:

Many of Yugoslav standards, which used to be mandatory, will continue to be used as voluntary standards in Montenegro, under the appropriate procedure, provided that those are relevant for Montenegro.

- Law on Technical Requirements and Conformity Assessment of Products

**Question 22**

**With regards to the definitions in Article 4, we urge Montenegro to revise the definitions for the terms that are defined in the TBT Agreement, such as "technical regulation" and "conformity assessment" so that the definitions match those in the TBT Agreement.**

Answer:

Final drafts will include definitions compliant to those in the TBT Agreement.

**Question 23**

**We note the list of justifications for adopting technical regulations in Article 5. Please provide further explanation of the "protection of property and protection of other public interests" justifications.**

Answer:

The purpose of adopting technical regulations is safety and functionality of products. Safety of products is comprehensive consumer protection with respect to protection of health, environment, fire protection or trade related issues.

**Question 24**

**In a number of Articles (Articles 5, 11, 18, 19, and 22) there is reference to a separate regulation that is forthcoming. What is the status of these regulations?**

Answer:

Regulations referred to Articles 5, 11, 18, 19, and 22 are the implementing regulations that provide detailed provisions for implementation of the law. These include the following: Regulation on Notification of Technical Regulations, Standards and Conformity Assessment Procedures, Regulation on the Manner of Preparing and Adopting Technical Regulations and Register of Such Regulations

(S&M OG No. 17/06), Regulation on the Manner of Authorizing Conformity Assessment Bodies, Register of Authorized Conformity Assessment Bodies, Records on Certificates of Conformity, Conformity Marks and Conformity Assessment Bodies, and the Conditions for Applying Technical Regulations of Other Countries (S&M OG No. 22/06).

#### **Question 25**

**With regards to the comment period in Article 7(1)4, please describe what timeframe is being considered. We note that the TBT Committee has recommended a 60 day comment period.**

Answer:

Montenegro will accept the TBT Committee's recommendation and will include a 60 day comment period in the new law, which is pending adoption.

#### **Question 26**

**Article 8(1) urges harmonization to "technical regulations with those of the European Union and technical regulations within the framework of international agreements binding on Montenegro." The TBT Agreement gives primacy to international standards that fulfil the principles outlined in the Decision of the TBT Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement (G/TBT/1/Rev.8, section IX, 23 May 2002). How does this article comply with the obligation in the TBT Agreement?**

Answer:

Montenegro has included all the principles listed in the above-mentioned Decision in its draft Law on Technical Requirements and Conformity Assessment of Products.

- **Sanitary and phytosanitary measures**

#### **Question 27**

**In response to Question 14 of WT/ACC/CGR/24, Montenegro indicated that the Draft Law on Food Safety would be available in June 2007. We see that Part VII of this law has been provided to the Secretariat. Is Part VII the only portion of the law that has been amended? If not, will Montenegro be providing the remaining Chapters to the Working Party?**

Answer:

The Law on Food Safety was passed by the Parliament on 29 November 2007. The translation of the Law will be submitted before the next Working Party meeting.

#### **Question 28**

**During the last Working Party meeting, we expressed concern over the absence of clear language on transparency in the Law of Plant Protection. In response to Question 16 of WT/ACC/CGR/24, Montenegro stated that it would include the appropriate language. Please confirm that the revised text on Plant Protection includes the modified language.**

Answer:

Article 12 paragraph 6 of the Law on Plant Protection provides for the "... manner of their notification in accordance with the obligations arising from appropriate international agreements shall be prescribed by the Ministry of Agriculture, Forestry and Water Management". This provision means the obligation to adopt a regulation whose content will be transparency/notification. This regulation is actually the Regulation on Notification Procedures of SPS measures, which is compliant Annex B of the SPS Agreement. The translation of the Regulation will be submitted before the next Working Party meeting.

**Question 29**

**In response to Question 18 of WT/ACC/CGR/24, Montenegro explained that it expected to become a member of the OIE and in May 2007. What is the status of Montenegro's application to OIE, IPPC, and Codex?**

Answer:

At the 34<sup>th</sup> Session of the Food and Agriculture Organization, which was held on 17 November 2007, Montenegro has become the member of FAO. FAO membership is very important for Montenegro because it will enable accession and ratification FAO conventions - IPPC and Codex.

Montenegro has submitted an official request for membership to the OIE with necessary accompanied documentation.

**Question 30**

**Article 33 of the Veterinary Law, in the section on Preventive Veterinary Measures, Facilities and Animals from other Countries, states that imports are allowed from only "such facilities which comply with the prescribed requirements, are registered in the European Union, and are under the control of relevant veterinary bodies." However, the following paragraph provides that other facilities can become eligible for importation of food, raw materials, products, feed and waste. Please clarify what "other facilities" can become eligible, and describe the process for gaining such approval. How does this provision coincide with the concept of equivalency?**

Answer:

Montenegro has amended the Veterinary Law (RM OG No. 27/07) in order to make it fully compliant with the concept of equivalency in accordance with recommendations.

Article 33 of the Veterinary Law prescribes that import of products of animal origin are allowed only from such facilities which comply with the prescribed requirements, are registered in the European Union, and exceptionally from other facilities, after establishing that the regulations, standards, products and system of veterinary-sanitary control performed by the exporting country are at least equivalent to the regulations of Montenegro, and when at least equivalent protection of consumers is guaranteed. This provision does not contravene the SPS Agreement. On the contrary, the principle of "national treatment" has been observed, i.e. export facility and exporting country have to meet requirements identical to those required from any domestic producer or a domestic product. This provision prescribes that there is no privilege for the facilities that are registered for the export in the European Union. If certain exporting country applies regulations which are identical or at least equivalent to the regulations of Montenegro the competent authority will issue approval for import from the facility from such an exporting country.

After submitting request for import in Montenegro, Veterinary Administration elaborates submitted documentation and performs risk assessment for import from certain facility taking into account operating system of veterinary-sanitary control in exporting country, epizootiological situation, standards and recommendations of OIE and other relevant organizations, and may perform control of facilities in order to establish whether there are veterinary and sanitary obstacles for import. After establishing that the regulations, standards and system of veterinary-sanitary control, which are performed by the exporting country, are at least equivalent to the regulations of Montenegro, import will be approved.

### **Question 31**

**We are pleased to read that notification of 75 days is required before the adoption of proposed sanitary-veterinary measures and the Veterinary Administration is obliged to publish a notice of the intention to introduce a measure at an early stage of its development, as described in paragraph 126 of the Factual Summary. Where is this notice to be published?**

Answer:

A notice is to be published on the official web site of the Ministry of Agriculture, Forestry and Water Management ([www.minpolj.vlada.cg.yu](http://www.minpolj.vlada.cg.yu)).

### **Question 32**

**We note that, according to paragraph 128 of the Factual Summary, Montenegro intends to amend the Law on Genetically Modified Organisms (FRY OG No. 21/00). In addition, we note that the updated Legislative Action Plan (WT/ACC/CGR/12/Rev.2) identifies the deadline for amending the Law on Genetically Modified Organisms as December 2007. While the Legislative Action Plan does not indicate that an initial draft has been completed, we welcome the opportunity to review it when it is made available. In the meantime:**

- **Please describe the changes anticipated by the amendments; and**
- **Do the former procedures apply in the interim?**

Answer:

The Ministry of Agriculture, Forestry and Water Management has prepared the draft of the new Law on Genetically Modified Organisms, which is currently placed in the inter-ministerial review procedure.

The draft Law on Genetically Modified Organisms prescribes conditions for the GMO use in closed systems (laboratory, glass house), intentional introduction of GMO in the environment, placing on the market of GMO or products that contain GMO or a combination of GMO or products produced from GMO (import, export and/or internal circulation), handling, transport, packing, transit through the territory of Montenegro, marking of products which contain GMO or a combination of GMO and products produced from GMO, conditions and measures for the prevention and elimination of adverse effects of GMO use, inspectorial supervision of the enforcement of this Law, etc.

The purpose of the Law is to protect the health and the environment, to enable transportation of approved GMO products, to provide choice for consumers and to provide control and supervision over economic operators dealing in GMO.

The former procedures under the Law on Genetically Modified Organisms (FRY OG No. 21/00) apply in Montenegro in the interim.



- Check-list of Illustrative Sanitary and Phytosanitary (SPS) Issues (WT/ACC/CGR/19)

### Question 33

We appreciate the detailed and well-documented response that Montenegro has provided in its latest SPS checklist of action steps taken to bring its national SPS measures into compliance with the obligations of the WTO Agreement on Sanitary and Phytosanitary Measures. The integration of these obligations into Montenegro's laws covering veterinary, plant, and food safety is exemplary. However, in the interest of transparency, we would like some clarification on the actual mechanisms that will perform these obligations.

In the response to Commitments, Box 2, we note that the "three laws," the Veterinary Law, the Law on Plant Protection, and the Law on Food Safety, clearly delineate the oversight authority for these three areas. However, Montenegro has yet to establish a single SPS National Notification Authority to notify domestic SPS legislation to the WTO Secretariat for public comment by WTO Members or an SPS Enquiry Point to receive and respond to comments submitted by Members. As SPS measures may often impact trade in plant, animal and food commodities simultaneously, when and where does Montenegro intend to establish a single SPS National Notification Authority and a single SPS Enquiry Point?

#### Answer:

Under Article 3 of the draft Regulation on Notification Procedures of SPS Measures the Ministry of Agriculture, Forestry and Water Management is notification authority responsible for providing information and notification with respect to sanitary and phytosanitary measures.

The Ministry, acting as the enquiry point, provides answers to all reasonable enquiries from the Members of relevant international organizations and other interested parties and notifies the following:

- Any sanitary or phytosanitary regulations adopted or proposed in the Republic;
- Any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated in the Montenegro;
- Risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection; and
- The membership and participation of the Republic or of its relevant bodies, in international and regional sanitary and phytosanitary organizations and systems, as well as in relevant bilateral and multilateral agreements and arrangements, and the texts of such agreements and arrangements.

Where available, the Ministry may provide any other relevant information.

The draft Regulation on Notification Procedures of SPS will be submitted before the next Working Party meeting.

### Question 34

With respect to Commitments, Box 3, when will Montenegro establish an official journal to publish and disseminate all draft SPS measures for public comment prior to adoption and enforcement? Where will Montenegro's Ministries go to announce trade measures that may have SPS impact and SPS measures that may have trade impact? In particular, with respect to

**Box 3, Item d, when will Montenegro publish and implement a law requiring that all trade- and SPS-relevant measures are to be published in that official journal?**

Answer:

Prior to adoption and enforcement, any draft of SPS measures will be published on the official web site of the Ministry of Agriculture, Forestry and Water Management ([www.minpolj.vlada.cg.yu](http://www.minpolj.vlada.cg.yu)) or on web site of any other administrative authorities, which enact those regulations, requesting public comments and public discussion. Subsequent to the prescribed procedure for preparation and adaptation, those regulations are published in the Official Gazette of Montenegro.

#### **Question 35**

**With respect to Commitments, Box 4, what provisions are there in the legislation of Montenegro that would guarantee the right of the private sector to comment on Montenegro's draft SPS measures? While the "Three Laws" contain language that commit relevant ministries to draft SPS measures that achieve an appropriate level of protection and are no more trade restrictive than necessary, there is no language allowing for comment by industry. What steps will Montenegro take to ensure that industry has full access to draft measures for public comment prior to implementation?**

Answer:

Provisions of the Law on State Administration (RM OG No. 38/03) and provisions of the draft Regulation on Notification Procedure of SPS Measures ensure the right of the private sector to comment on Montenegro's draft SPS measures.

#### **Question 36**

**With respect to Commitments, Box 9, Montenegro clearly states how international standards of the three international bodies, The World Organization for Animal Health (OIE), International Plant Protection Convention (IPPC), and Codex Alimentarius, will be the reference standards for developing Montenegro's SPS measures and food standards. However, we fail to see any regulatory obligation to notify any of these bodies of changes in Montenegro's disease, pest, and quarantine status. We also do not see any reference as to how relevant ministries will participate and coordinate Montenegro's policy with respect to international food standards. What steps will Montenegro take to ensure timely reporting of changes in animal and plant health status to the OIE and IPPC, and what steps will it take to ensure coordination and harmonization of domestic food standards with those of the Codex Alimentarius?**

Answer:

Montenegro is a member of the Food and Agriculture Organization from 17 November 2007 and thus Montenegro has met the requirements for membership in IPPC. IPPC membership implies obligation of timely notification on IPPC portal.

Article 9 of the draft Rulebook of Classification, Manner of Notification and Application a Suspicion of Infectious Animal Disease, Reporting Emergence and Cessation of Animal Diseases, as well Format and Content of Prescribed Form, provides for the obligatory international notification (obligatory notification relates to diseases from the OIE list) and the manner of notification in accordance with OIE. The administrative authority responsible for the veterinary (Veterinary Administration) performs notification. It is expected that this rulebook will be adopted prior to the next Working Party meeting.

The Law on Food Safety and its implementing regulations will ensure coordination and harmonization of domestic food standards with those of the Codex Alimentarius. Codex Alimentarius standards are integral part of the current legal system in Montenegro in the area of food safety because former FR Yugoslavia was a member of FAO.

### **Question 37**

**Please identify Montenegro's labelling and packaging requirements for food.**

Answer:

Labelling and packaging of food are regulated by the Rulebook of Declaration and Labelling of Packed Foodstuffs (S&M OG Nos. 4/03, 12/03), the Rulebook on Conditions of Health of Dietary Foodstuffs which Can be Placed into Circulation (SFRY OG Nos. 4/85, 70/86, 69/91) and the Law on Health of Foodstuffs and Items of General Use (FRY OG No. 53/91). Under this Law, the food is sanitary incorrect if:

- The food does not have a declaration;
- The shelf life cannot be determined from declaration; and
- The declaration is damaged, unreadable or on some other way incomprehensible for consumers.

A declaration must also include nutritional facts.

### **Question 38**

**What are Montenegro's rules for shelf life? Are they compatible with international guidelines such as CODEX?**

Answer:

The new Law on Food Safety ensures compliance of the rules for shelf life with international guidelines.

### **Question 39**

**We hope to be able to review drafts of the Decree on Notification Procedures of SPS Measures and the Food Safety Law when they become available.**

Answer:

The Law on Food Safety and the draft Regulation on Notification Procedures of SPS Measures will be submitted before the next Working Party meeting.

- **Trade-related investment measures**

### **Question 40**

**Paragraph 130 of the Factual Summary describes a requirement in Montenegro's Law on Tobacco that requires domestic producers to purchase a certain percentage of domestically produced tobacco. Such a provision would appear to violate the prohibition against domestic content requirements. How will Montenegro bring this provision into compliance with its WTO obligations?**

Answer:

The Law currently applied prescribes that manufacturers of cigarettes and other tobacco products in Montenegro must every year produce or purchase domestic processed tobacco in the quantity equivalent to at least 40 per cent of their own yearly production of cigarettes and other tobacco products, but not less than 700 tons per year (Article 15 of the Law on Tobacco RM OG Nos. 80/04 and 05/05). This provision has been introduced in the Law due to the fact that, at the time of adoption of the Law, Montenegro had annual production of raw tobacco of more than 1,000 tons. Volume of production has been reduced over time, and, at present, it is maintained at the level of 500 to 600 tons annually.

Montenegro emphasizes that the production of tobacco is performed within a specific region near the Skadar Lake, where the soil is not suitable for growing of any other crops. Production of tobacco was the main source of income for around 500 families in disadvantaged rural areas.

Since raw tobacco is, by its nature, a specific commodity, tobacco farmers are fully dependent on the processing industry. In addition to purchase of raw tobacco, Duvanski kombinat Podgorica (Tobacco Company), the sole producer of tobacco products in Montenegro, also provided full professional support related to planting, protection and harvesting to farmers engaged in production of raw tobacco.

The new Law on Tobacco, which is expected to be adopted by the Government prior to the next Working Party meeting, will abolish the requirement related to purchase expressed in per cent (40 per cent), and will define the obligation to purchase domestic processed tobacco in the quantity of 300 tons in 2008, with gradual annual reduction in quantities which will be implemented by 31 December 2011 when this obligation will be fully abolished.

- **State-trading entities**

**Question 41**

**Paragraph 133 of the Factual Summary refers exclusively to enterprises with exclusive or special rights or privileges. We recall, however, that the obligations of Article XVII of the GATT 1994 (as opposed to the Understanding on that Article) apply not only to such enterprises, but also to those enterprises owned or controlled by the State, regardless of their privileged trading status. We request that Montenegro confirm this understanding of GATT Article XVII, as Montenegro will be expected to undertake a commitment reflecting its intention to ensure that all enterprises covered by Article XVII comply with those obligations. We would also appreciate, given the absence of enterprises with special or exclusive privileges in Montenegro, a description of Montenegro's largest State-owned and -controlled enterprises, including information on the sectors in which they operate, the extent of the State's involvement in the commercial decisions of the enterprise (e.g., through participation on management boards or requirement of State approval of board decisions), and any laws/regulations governing the sales/purchasing decisions of those enterprises.**

Answer:

In Montenegro, there are no enterprises owned or controlled by the state that have privileged trading status, as referred to in GATT 1994 Article XVII and in the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994. The state still has control or has a majority of shares in a number of enterprises. However, none of these have been granted special rights or privileges that would enable them to affect, through their purchases or sales, the level and direction of imports and exports.

The table below shows Montenegro's largest enterprises, including information on the sectors in which they operate and share of State's capital.

No	Company	Sector	% of State Capital
1.	"Plantaze" AD Podgorica	Agriculture (production of fruits and alcohols)	54.23%
2.	"Termoelektrana Pljevlja"	Energy services	Assets of "Elektroprivreda Crne Gore" AD, Nikšić
3.	"Elektroprivreda Crne Gore" AD, Nikšić	Energy services	67.6599%
4.	"Duvanski kombinat" AD, Podgorica	Tobacco industry	51.1046%
5.	"Željeznice Crne Gore" AD, Podgorica	Railway transport	68.8596%
6.	"Montenegro airlines" DOO, Podgorica	Air transport	99%
7.	HTP "Budvanska rivijera" AD, Budva	Tourism services	58.7334%
8.	HTP "Ulcinjaska rivijera" AD, Ulcinj	Tourism services	60.7311%
9.	Institut "Dr Simo Milošević" AD, Igalo	Relaxation, recreation and health therapy services	56.4806%
10.	"Luka Bar" AD, Bar	Transport services (port)	54.0527%

- **Agricultural policies**

- Domestic Support and Export Subsidies in the Agricultural Sector; Questions and Answers (WT/ACC/SPEC/CGR/1/Add.2)

**Question 42**

**Regarding the response to Question 3, are the rare local breeds of animals that Montenegro subsidizes marketed commercially?**

Answer:

Montenegro only subsidises rearing of very limited number of animals of rare breeds (two herds of cattle and few flocks of sheep and goats) as the animal genetic resources. The farmers must keep those animals at least three years or until the end of animals' productive life. Thus, farmers can not take subsidies and then sell the animals. Farmers have to take care of rearing replacements. Once replacing animals start production, farmers can cull old animals from the herd or flock, in order to maintain the number of animals for which they received support. In addition, commercial value of the animals of rare local breeds in comparison with more productive imported breeds is much lower. Therefore, the number of animals of rare breeds constantly decreases.

**Question 43**

**In response to Question 6, Montenegro explains that "Reason for this subsidisation is the tobacco production sector, that was very developed before dissolution of ex Yugoslavia, was almost diminished during the nineties - period of economic sanctions against Serbia and Montenegro imposed by International Community".**

**If the objective of tobacco subsidies is to help tobacco production recover are there plans to phase out subsidies once that objective is achieved?**

Answer:

The new strategy: "Montenegro's agriculture and the European Union - Food Production and Rural Development Strategy", adopted in July 2006, foresaw the reform of the agricultural policy in a manner that all subsidies linked to the production will be fully decoupled from the level of production and linked to the acreage of used arable land. This reform will be done in the next three years. It has to be noted, that the amount of subsidies per unit of product (kg of tobacco) has not been increased, on the contrary, in last three years there were some corrections to lower the amount of subsidy per kg of tobacco.

**Question 44**

**Regarding Montenegro's discussion of "Rye, barley and buckwheat" in response to Question 6, these products are widely grown in many parts of the world. Please explain what considerations make it necessary for Montenegro to provide subsidies for seeds and mechanization for its farmers for these crops?**

Answer:

Cereal production in Montenegro is very limited in terms of the area cultivated and volume of production. Practically, there is no commercial production of cereals, in spite of fact that there is a quite large area of available arable land in the northern part of the country. New farmers who see the possibility in production of specific, unique cereals, like buckwheat and ray, mainly for special kind of flour, are facing two main constraints: how to buy quality seeds and how to provide machinery for crops harvesting. In order to help farmers to overcome problems of purchasing quality seeds and harvesting of the crops (ray, barley and buckwheat) as the main bottle-necks, the Ministry provides subsidies for seeds and mechanization. In accordance to the reform of Agricultural policy foreseen by the Strategy, Ministry is going to convert this form of subsidization to the acreage based payments, fully decoupled from the production.

**V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

- **SUBSTANTITIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**
- **Trademarks, including service marks**

**Question 45**

**In the last sentence of paragraph 171 of the Factual Summary there is a statement that a registered trademark could be declared void if it is determined that at the time of approval the legal conditions had not been met. Is the invalidation done *ex officio*? How is this situation discovered by the office?**

Answer:

Under Article 50, paragraph 1 of the Trademark Law (FRY OG Nos. 61/04 and 07/05), the decision on trademark registration and/or an international registration of a trademark may be annulled, in whole or for some goods and/or services comprised, if it is determined that, at the time of issuance of the decision, the requirements for trademark registration prescribed by this Law have not been met.

Under Article 51, paragraph 1 of the Trademark Law, the IP Office will act *ex officio* if the Office is informed in any way, including information provided by any interested party, that the requirements for trademark registration have not been met.

#### Question 46

**Regarding paragraph 178 of the Factual Summary and the response to Question 91 of WT/ACC/CGR/23, will the laws of Montenegro provide the means for the owner of a prior-in-time trademark to object to the registration, and/or seek invalidation, of a later-in time geographical indication or appellation of origin? Will the laws of Montenegro limit the protection of a later-in-time geographical indication or appellation of origin to the language in which it is registered? Will the laws of Montenegro ensure that a geographical indication and/or appellation of origin will not be registered in light of a prior-in-time trademark's reputation and renown when registration is likely to cause confusion as to the true source of the product?**

Answer:

Montenegro will fulfil the commitment taken in the answer to Question 91 of WT/ACC/CGR/23 by redrafting the Law on Geographical Indications and thus resolve the issue.

- **Geographical indications, including appellations of origin**

#### Question 47

**Paragraph 175 of the Factual Summary and the responses to Questions 108 and 112 of WT/ACC/CGR/23 indicate that any public document verifying that the appellation of origin or the geographical indication has been recognized in the country of origin, including an affidavit, will meet the "recognition" requirement. In countries that protect marks under common law, there may be no "public" document to support protection. Will the laws of Montenegro allow for owners of geographical indications to provide their own affidavit attesting to the protection in such a country of origin?**

Answer:

Yes, if such an affidavit is, under the laws of the country of origin, sufficient proof of the existence of the right, i.e. protection in the country of origin.

#### Question 48

**Regarding paragraph 174 of the Factual Summary and the response to Question 110 of WT/ACC/CGR/23, can a registered geographical indication or appellation be registered indefinitely, even after it ceases to meet the legal conditions? In other words, if the geographical indication or appellation of origin meets the conditions when it is registered but subsequently fails to meet those conditions, may the registration be cancelled?**

Answer:

Under the Law Indications of Geographical Origin (SM OG No. 20/06), an appellation of origin is defined as shall be the geographical name of a country, region or a locality, used to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors, and which is produced, processed or prepared within a specific limited geographical area.

Geographical indication is defined as the indication that identifies certain goods as goods originating from the territory of specific country, region or a locality within such territory, where specific quality, reputation or other characteristics of the goods can be essentially attributed to their geographical origin.

The goods or products that meet the above requirements can be protected by an appellation of origin or a geographical indication, as the case may be. Period of validity of the registered appellation of origin or a geographical indication is not be limited.

Status of the authorized user of a registered appellation of origin or a geographical indication, on the other hand, is limited to three years after the entry into the appropriate Register.

Upon the application of the authorized user of an appellation of origin or a geographical indication, accompanied with the evidence that requirements prescribed by this Law have been met and that the prescribed fee has been paid, the status of an authorized user can be renewed perpetually, for as long as the appropriate appellation of origin or a geographical indication is valid.

Upon the written application of an interested person, a decision to register an indication of geographical origin may be cancelled, if the responsible authority (IP Office) determines that requirements for the registration of an indication of geographical origin have not been met at the time of the decision was issued.

Registered appellation of origin or registered geographical indication will cease to be valid when their protection in the country of origin terminates.

Registered geographical indication will cease to be valid upon the court decision, where it has been established that a geographical indication has become generic, i.e. usual name for certain product.

#### **Question 49**

**When will the next draft of the Geographical Indications law be available for review?**

Answer:

Redrafted Geographical Indications Law will be available for review before the next Working Party meeting.

- **Requirements on undisclosed information, including trade secrets and test data**

#### **Question 50**

**Montenegro's most recent Legislative Action Plan (WT/ACC/CGR/12/Rev.2) indicates that the "Law on Undisclosed Information" has been accepted by the Government as of 12 July 2007. When will Montenegro provide a copy of this law to the Working Party?**

Answer:

The translation of the Law on Undisclosed Information will be provided before the next Working Party Meeting.



- **ENFORCEMENT**
- **Civil judicial procedures and remedies**

#### **Question 51**

**With respect to the response to Question 95 of WT/ACC/CGR/23, please provide a copy of the provision of the Law on Civil Procedures that provides for the compensatory damages including attorney's fees, available to the winning party.**

Answer:

The right to compensatory damages is provided for in each of the substantive intellectual property laws that were submitted to the Secretariat earlier.

In addition, the following provisions of the Law on Civil Proceedings, (RM OG No. 22/04, 28/05, 76/06) provide for compensation of attorney's fees, available to the winning party:

Article 149

Costs of the proceedings shall comprise costs incurred within or those incurred in relation to the proceedings.

Costs of the proceedings shall include attorney's fees and fees of any other persons who are entitled to collect fees un the law.

Article 151, paragraph 1

The loosing party must reimburse the costs of the proceedings to the opposing party (winning party) and any of its co-parties.

Article 153

When deciding on the amount of costs the court shall take into account only the costs that were necessary for the participation in the proceedings. When deciding on what costs were necessary, as well as on the amount of costs, the court shall carefully examining all the circumstances of the case.

Attorney's fees shall be determined in accordance with the applicable schedule of fees<sup>1</sup>.

Article 161, paragraph 4

The decision on the costs of the proceedings shall be issued simultaneously with the decision ending the proceedings.

- **Criminal procedures**

#### **Question 52**

**Paragraph 204 of the Factual Summary states that Montenegro's Criminal Code provides "for the confiscation, or confiscation and destruction of infringing goods, and material and**

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<sup>1</sup> Schedule of Fees for Attorneys' Services is the one established and maintained by the Bar Association of Montenegro.

**implements used to commit the offence". Please indicate whether the materials and implements, the predominant use of which has been in the commission of the offence, are subject to destruction and the relevant provision.**

Answer:

The Penal Code provides for the confiscation, or confiscation and destruction of infringing goods, and material and implements used to commit the criminal offence, regardless of the level or manner of use. Therefore, it is not necessary to prove that the use was "predominant". Thus, the level of protection exceeds the one referred to in TRIPS Article 61.

### **Question 53**

**With respect to the recent amendments to the Penal Code mentioned in response to Question 100 of WT/ACC/CGR/23, please describe the level of infringing activity required to initiate criminal prosecution for each type of IPR infringement and the level of infringing activity required for imprisonment to be ordered. Does the Penal Code provide for the destruction of materials and implements the predominant use of which has been the commission of the offence as required by Article 61 of TRIPS?**

Answer:

The level of infringing activity required to initiate criminal prosecution for each type of IPR infringement and the level of infringing activity required for imprisonment to be ordered are not prescribed in advance. Therefore, any level of infringing activity may be subject to criminal prosecution. The penalty, including imprisonment, its kind and duration, if applicable, is determined by the court taking into account all the circumstances of the case. For the lower level of infringing activity the penalty is more lenient, whereas where the level is high, the penalty is more harsh, and may include imprisonment.

## **VI. POLICIES AFFECTING TRADE IN SERVICES**

### **Question 54**

**Paragraph 209 of the Factual Summary mentions a new Law on Telecommunications. What is the status of this law? What are the significant changes from the old telecommunications law?**

Answer:

The new Law on Electronic Telecommunications is under preparation at the moment. The Draft is expected to be approved by the Government by the end of January 2008.

### **Question 55**

**Paragraph 211 of the Factual Summary makes reference to new Insurance Law, which took effect on December 2006. This law establishes a new insurance supervision agency. What is the status of the establishment of such agency?**

Answer:

According to the Law on Insurance (RM OG No. 78/06), members of the Agency Council have been appointed by the Parliament on 3 July 2007. The Agency Council has adopted necessary documentation of the Agency (Statute, Financial Plan and Programme) and placed them in the

appropriate parliamentary approval procedure. Subsequent to approval, the Agency will be formally established and will be able to operate in accordance with the law.

**Question 56**

**Paragraph 211 of the Factual Summary also states that foreign insurance companies are not subject to any restrictions. Please clarify whether foreign insurance companies can place reinsurance business abroad.**

Answer:

According to paragraph 4 of Article 6 of the Law on Insurance, all insurance companies established in accordance with this Law may be reinsured with domestic and foreign reinsurance company.

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