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**Working Party on the
Accession of Montenegro**

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Additional Questions and Replies

The following submission, dated 23 May 2008, is being circulated at the request of the Delegation of the Republic of Montenegro.

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II. ECONOMIC POLICIES

- State Ownership and Privatization

Question 1

We appreciate the information provided to date by Montenegro for this section. We have the following additional comments.

Point of clarification: Please confirm that the discussion in this section refers to both "socially owned" and "State-owned" firms, and that the statistics given cover both.

Answer:

"Social companies" do not exist in Montenegro any more. In accordance with the Law on Transformation of Ownership and Governance (RM Official Gazette Nos. 2/92, 27/94, 30/94 and 23/96) all enterprises and other entities having social capital have been transformed in joint-stock companies or limited liability companies with known owners of the capital (private, mixed, State or cooperative ownership).

Question 2

This section needs summary information on the overall status of privatization.

For example, what is Montenegro's assessment of what remains to be done to "complete" the process?

Answer:

In accordance with the Law on Privatization of Economy (RM Official Gazette Nos. 23/96, 6/99, 59/00 and 42/04), privatization is conducted pursuant to the Annual Privatization Plans adopted by the Government, upon proposal of the Privatization Council (Article 3). The same Article defines in detail the content of the privatization plan. The Decision on Privatization Plan for 2008 (RM Official Gazette No. 17/08) provides for, *inter alia*, methods and manner of privatization of all companies that have State-owned capital in their portfolio and that should be privatized in the following period. The Decision on Privatization Plan for 2008 is provided in WT/ACC/CGR/28/Add.1.

Question 3

How many firms remain on Montenegro's list of enterprises that may be subject to privatization?

Answer:

The abovementioned privatization plan for 2008 lists all companies that will be privatized in the following period (according to methods and manner of privatization: sale of shares and property on public bids (17), sale of shares and property on public auctions and sale of shares on the stock-exchange (38), privatization of companies in the forestry area (3), sale and valorization of military property (35), privatization of companies in receivership and valorization of tourist sites through public and private partnership).

Question 4

What firms are likely to be reserved for continued State ownership?

Answer:

The Government of Montenegro, upon proposal of the Privatization Council, decides on the percentage of State ownership in companies for every year, through the Annual Privatization Plan. However, no companies will be reserved for continued State ownership.

Question 5

What is Montenegro's estimate of how long completion of its privatization process this may take?

Answer:

It is difficult to provide the precise answer. The major part of privatization in Montenegro has already been conducted. For remaining companies it is necessary to conduct the privatization procedure and methodology (preparation of restructuring strategies and programmes prior to selecting methods and procedures, upon consultations with reputable foreign advisors), the duration of which cannot be assessed in advance. Montenegro is determined to complete the privatization process as soon as possible, depending on the circumstances.

Question 6

Tables 1 and 2 are helpful, but do not give full sense of the scope of Montenegro's efforts on privatization to date. Would it be possible to provide information in the following format:

Status Report on Privatization Progress through 1 January 2008

Sector	Number of Enterprises		Number of Employees		Value of Equity	
	Privatized	In Process	Privatized	In Process	Privatized	In Process
Manufacturing						
Agriculture						
Construction						
Crafts						
Distribution						
Transportation						
Finance						
Telecommunications						
Crafts						
Catering and Tourism						
Other						
Total						

Answer:

In Montenegro, privatization has been conducted according to privatization plans for each year and not according to sectors. Therefore, we are not in the position to submit the report in the required format.

However, it should be noted that more than 85 per cent of the formerly State-owned capital has been privatised so far. The Table lists the larger companies with the majority of State-owned capital that remain to be privatized.

Larger Companies with the Majority of State-Owned Capital

Company	Sector	Nominal Value of the Company in Euro	State's Share in %	Value of the State Share in Euro
"Elektroprivreda CG" AD Niksic	Energy	907,036,354	67.00	607,714,357
Zeljeznice Crne Gore	Railway	319,533,049	65.00	207,696,482
"Jadransko brodogradiliste" AD Bijela	Shipyard	31,612,218	62.00	19,599,575
AD "Plantaze" Podgorica	Wine production	68,704,284	54.00	37,100,313
AD Luka Bar Bar	Adriatic Port	133,958,143	54.00	72,337,397
Duvanski kombinat AD Podgorica	Tabaco production	19,781,558	51.10	10,088,595
Institut Dr Simo Milošević	Health tourism	59,240,278	56.00	33,174,556
HTP Budvanska rivijera	Tourism	69,618,231	58.73	40,886,787
HTP Ulcinjska rivijera	Tourism	81,529,344	60.73	49,512,771
Total capital		1,691,013,459	63.76	1,078,110,833

- **Pricing Policies**

Question 7

Paragraph 32 of the Draft Report: Are imported medicines reimbursable by the National Health Plan?

Answer:

Yes, in the health system in Montenegro the conditions for payment of imported and domestic medicines are identical.

Question 8

Paragraph 35: Concerning the price-setting process established by the Regulation on the Criteria for Determining Maximum Prices of Medicines (RM OG No. 50/07), please briefly describe the process.

Answer:

The Decree on Criteria for Establishing Maximum Prices of Medicines (RM Official Gazette No. 50/07) defines the criteria for establishing maximum prices of medicines and specifies the reference countries, whose wholesale prices are used for comparison with the wholesale prices in Montenegro.

The criteria for establishing maximum prices of medicines are:

- Comparative wholesale price of medicines in reference countries;
- Average comparable wholesale price in reference countries;
- Ratio of the wholesale price in Montenegro comparable wholesale price in reference countries;
- Average comparable wholesale price of medicine in reference countries;

- Current wholesale price;
- Indicators of farmaco-economic study; and
- Wholesale costs.

Reference countries are the following neighbouring countries or countries in the region:

- Republic of Slovenia;
- Republic of Croatia; and
- Republic of Serbia.

The producer of a medicine, or its agent or representative having corporate domicile in Montenegro, submits to the Agency for Medicines and Medical Devices of Montenegro the proposed price of the medicine when applying for a licence for placing medicine on the market.

The Agency for Medicines and Medical Devices, when processing the application of the producer or the agent, determines the maximum price at which the prescription medicine may be sold in Montenegro on the basis of the submitted documentation and the aforementioned prescribed criteria, including comparison of average prices of such medicine in reference countries (calculated into Euro). The determined price of a medicine is published in the Official Gazette of Montenegro. Market inspectorate controls the application of the determined prices of medicines. Prices of medicines of domestic and foreign producers are set in the same manner. Over-the-counter medicines are not subject to price control.

Question 9

At what point of sale prices are set, how the controlled prices are enforced, and any differences in the way imported and domestic medicines are handled under this process.

Answer:

Prices are controlled on the wholesale and retail levels, and there is no difference in the manner of proceeding with domestic and imported medicines.

Question 10

Could Montenegro provide the list of price-controlled medicines adopted in July 2007? Are changes to this list published?

Answer:

The process of registration i.e. issuing of licenses for placing medicines on the market has recently begun in Montenegro, and the Decree refers only to such medicines. Up to now, the procurement of medicines, which are paid for by the Health Fund, for the needs of public health institutions, has been conducted through international bid that ensures the same conditions for domestic and foreign producers, and in such a manner that ensures sufficient quantities of medicines. The procurement of medicines will be conducted in this manner in the following two years, in which period the newly established Administration for Medicines and Medical Devices will register the sufficient number of medicines and medical devices necessary for the unimpeded and continuous supply. The list of price controlled medicines, provided for by the Regulation on Criteria for Establishing Maximum Prices of Medicines adopted in July 2007, is still being compiled. Once finalized, it will be published in the Official Gazette. All the subsequent changes to the list will also be published.

The Law on Medicines (RM Official Gazette No. 18/08) has been amended to provide the same treatment to domestic and foreign importers of medicines and make a distinction between import and distribution activities.

Question 11

We suggest the following commitment text for this section:

35bis. The representative of Montenegro confirmed that from the date of accession, Montenegro would apply price control measures in a WTO-consistent fashion, including by taking account of the interests of exporting WTO Members as provided for in Article III:9, of the GATT 1994 and with respect to Articles V and VIII of the GATT 1994 and Article VIII of the General Agreement on Trade in Services (GATS). He also confirmed that following accession, Montenegro would regularly publish notices of the goods and services subject to State price controls. The Working Party took note of these commitments.

Answer:

Montenegro accepts the commitment text as suggested.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 12

We suggest the following commitment on the right of appeal:

46bis. The representative of Montenegro confirmed that from the date of accession Montenegro's laws would provide for the right to appeal administrative actions on matters subject to WTO provisions to an independent tribunal in conformity with WTO obligations including Article X:3(b) of the GATT 1994. The Working Party took note of this commitment.

Answer:

Montenegro accepts the commitment text as suggested.

Question 13

We suggest the following commitment on uniform application of the GATT throughout Montenegro's customs territory:

48bis. The representative of Montenegro confirmed that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions. He confirmed that, from the date of accession, the provisions of the WTO Agreement, including Montenegro's Protocol of Accession, would be applied uniformly throughout its customs territory and other territories under its control, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established. He also confirmed that when apprized of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts. The Working Party took note of these commitments

Answer:

Montenegro accepts the commitment text as suggested.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 14

We welcome Montenegro's responses to our written questions and comments contained in WT/ACC/CGR/27 and the incorporation of this material in the Draft Working Party Report. It confirms that Montenegro is prepared to expand the right to import and to export in line with the requirements of Articles III and XI of the GATT, and that Montenegro recognizes the difference between that and the right to distribute in the domestic market, which is covered by the GATS.

We look forward to reviewing the legislation that will bring Montenegro's regime on trading rights into line with WTO requirements. If possible, we would like to see the legislation prior to its adoption. When does Montenegro intend to make these changes?

Answer:

All amendments have already been introduced and submitted to the Secretariat prior to the fifth Working Party meeting (24 January and 15 February 2008). With regard to the right to import and export, the amendments to the following laws have been adopted:

- The Customs Law (RM Official Gazette Nos. 7/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06 and RM Official Gazette No. 21/08); and
- The Law on Medicines (Official Gazette of Montenegro Nos. 80/04 and 18/08).

It is expected that the Law on Amendments to the Law on Medical Devices, which is currently in the Parliamentary procedure for adoption, will be adopted by the end of the second quarter of this year.

With these amendments the clear distinction between the import activity, regulated by the provisions of Articles III and XI of the GATT, and the distribution activity, regulated by the provisions of GATS, has been made.

Question 15

Paragraph 49 states that corporate "registrations could be made for individual entrepreneurs, limited liability partnerships, and joint-stock companies."

Are these the only forms of business association that can be registered in Montenegro?

How would a subsidiary or a branch be registered?

Answer:

In accordance with the provisions of the Law on Companies (RM Official Gazette No. 6/02 dated 8 February 2002, Official Gazette of Montenegro No. 17/07), the forms for performing economic activity in Montenegro are:

- Entrepreneurs;
- Partnerships;
- Limited partnership;
- Joint-stock companies;
- Limited liability companies; and
- The part of foreign company.

Every foreign company may register its subsidiary or branch as a joint-stock company, limited liability company or as a part of the foreign company.

Question 16

Paragraph 50 states that "The Law on Business Entities prescribed a minimum capital requirement of €25,000 for joint-stock companies, while the minimum capital needed for a limited liability company was €1. No minimum capital was required for entrepreneurs or partnerships."

How is this minimum capitalization established to satisfy the requirement?

Must this amount be deposited in a local bank or with the Government?

Answer:

In the case of joint-stock companies, the founders, in accordance with the contract on establishing, make payments for shares in the appropriate value (on the account of the joint-stock company). In the case of establishing the limited liability company, the founder makes a payment in the amount of 1€ on the account of the limited liability company. The account on which payments of the founding capital are made is the one in the local bank. The Government has no role whatsoever in establishing of companies.

Question 17

Paragraphs 54-56: The description in these paragraphs covers activity licence requirements for retail and wholesale trade in and manufacture of tobacco and tobacco products.

Please clarify what type of activity licence is necessary to import or export tobacco and tobacco products.

Answer:

A company or an entrepreneur may engage in importation of tobacco, processed tobacco and tobacco products if they have been entered in the Register of Economic Operators for performing wholesale activity, and if:

- They submit the application to the authority responsible for issuing licenses;
- They have concluded the contract regarding purchase of tobacco, processed tobacco, or tobacco products with the foreign producer or authorized distributor of the foreign producer, authorized for distribution of its products in the territory of Montenegro;
- The company, entrepreneur or responsible person in the company have not been convicted for a criminal offence of illegal trade or illegal production of tobacco, processed tobacco and tobacco products in the three years preceding the filing of application for issuing approval; and
- They pay the prescribed fee.

Company or an entrepreneur may engage in exportation of tobacco, processed tobacco and tobacco products if they have been entered in the Register of Economic Operators for performing wholesale activity, and if the company, entrepreneur or responsible person in the company have not been convicted for a criminal offence of illegal trade or illegal production of tobacco, processed tobacco and tobacco products in the three years preceding the filing of application for issuing approval.

Question 18

Paragraph 60: We thank Montenegro for its pledge to amend its laws to bring its regime on the right to import and to export into conformity with WTO rules.

Please clarify which laws will be amended to do this.

Please clarify that importers/exporters only have to be represented by an agent if they have not registered at Customs.

Answer:

All amendments have already been introduced and submitted to the Secretariat prior to the fifth Working Party meeting (24 January and 15 February 2008). With regard to the right to import and export, the amendments of, *inter alia*, the Customs Law and the Law on Medicines have been adopted, and it is expected that the Law on Amendments to the Law on Medical Devices will be adopted by the end of the second quarter of this year. With these amendments the clear distinction between the activity of importation, regulated by the provisions of Articles III and XI of the GATT, and the activity of distribution, regulated by the provisions of GATS, has been made. Montenegro confirms that importers that do not have corporate domicile or residence in Montenegro are represented by the customs agent in the customs procedure.

Question 19

We suggest a commitment for this section along the following lines:

xx. The representative of Montenegro confirmed that from the date of accession Montenegro would ensure that its laws and regulations relating to the right to import and to export goods and the implementation of such laws and regulations would be in full conformity with WTO obligations, including Articles VIII:1(a), XI:1, and III:2 and III:4 of the GATT 1994. He also confirmed that, to this end, individuals and firms, regardless of national origin, would be able to import and export products as importers or exporters of record, with no requirement of physical presence or investment in Montenegro. Other than with respect to those goods set out in Table xx, the sole condition to serving as importer or exporter of record would be to register with the relevant Montenegro authority as described in paragraph yy. The Working Party took note of these commitments.

Answer:

Montenegro accepts in principle the commitment text as suggested, however in order to make it more precise, Montenegro suggests the following language:

"The representative of Montenegro confirmed that from the date of accession Montenegro would ensure that its laws and regulations relating to the right to import and to export goods and their implementation would be in full conformity with WTO obligations, including Articles VIII:1(a), XI:1, and III:2 and III:4 of the GATT 1994. He also confirmed that, to this end, individuals and firms, regardless of national origin, would be able to import and export products as importers or exporters of

record, with no requirement of physical presence or investment in Montenegro, if they are represented by a customs agent."

A. IMPORT REGULATIONS

- Ordinary customs duties

Question 20

Note: Table 3 has a number of typos, i.e., the dates for the seasonal duties have been mistaken for ex-out notations.

Answer:

Montenegro apologizes for technical errors in Table 3. Please see the corrected Table below:

Table 3: Seasonal Duties

HS 2007	Description
0701	Potatoes, fresh or chilled:
0701 90	- Other:
0701 90 50 00	- - - New, from 1 January to 30 June
0702 00 00	Tomatoes, fresh or chilled
0702 00 00 10	- From 1 April to 31 August
0707 00	Cucumbers and gherkins, fresh or chilled:
0707 00 05	- Cucumbers:
0707 00 05 10	- - From 1 April to 30 June
0707 00 90	- Gherkins:
0707 00 90 10	- - From 1 September to 31 October
0805	Citrus fruit, fresh or dried:
0805 20	-Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids:
0805 20 10	- - Clementines:
0805 20 10 10	- - - From 1 October to 31 December
0805 20 30	- - Monreales and satsumas:
0805 20 30 10	- - - From 1 October to 31 December
0805 20 50	- - Mandarins and wilkings:
0805 20 50 10	- - - From 1 October to 31 December
0805 20 70	- - Tangerines:
0805 20 70 10	- - - From 1 October to 31 December
0805 20 90	- - Other:
0805 20 90 10	- - - From 1 October to 31 December
0806	Grapes, fresh or dried:
0806 10	- fresh:
0806 10 10	- - Table grapes:
0806 10 10 10	- - - From 1 July to 30 September
0806 10 90	- - Other:
0806 10 90 10	- - - From 1 July to 30 September
0807	Melons (including watermelons) and papaws (papayas), fresh:
0807 11 00	- - Watermelons:
0807 11 00 10	- - - From 1 July to 31 August
0808	Apples, pears and quinces, fresh:
0808 10	- Apples:
0808 10 10 00	--Cider apples, in bulk, from 16 September to 15 December
0808 20	- Pears and quinces:

HS 2007	Description
	- - Pears:
0808 20 10 00	- - - Perry pears, in bulk, from 1 August to 31 December
0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh:
0809 30	- Peaches, including nectarines:
0809 30 90	- - Other:
0809 30 90 10	- - - From 1 June to 31 August
0810	Other fruit, fresh:
0810 50 00	- Kiwifruit:
0810 50 00 10	- - From 1 November to 31 March

Question 21

We suggest the following commitment for this section:

63bis. The representative of Montenegro confirmed that Montenegro would not list any "other duties and charges" in its Schedule of Concessions and Commitments on Goods under Article II:1(b) of the GATT 1994, binding such charges at "zero" from the date of accession. The Working Party took note of this commitment.

Answer:

Montenegro accepts commitment text as suggested.

- **Tariff rate quotas, tariff exemptions**

Question 22

We suggest the following commitment text for this section:

66bis. The representative of Montenegro stated that Montenegro would administer and apply its tariff rate quotas and tariff exemptions in conformity with the WTO Agreement, including Articles I, II, VIII, X and XIII of the GATT 1994 and the Agreement on Import Licensing Procedures. The Working Party took note of this commitment

Answer:

Montenegro accepts the commitment text as suggested.

- **Fees and charges for services rendered**

Question 23

Paragraph 68: The Draft Report states that "Certificates of origin (Form A) were issued by the Chamber of Commerce against payment of €8." Please confirm that a certificate of origin is not a mandatory customs document for importation or exportation.

Answer:

Certificate of origin is not a mandatory document for importation or exportation of goods.

Question 24

We suggest the following commitment text for this section:

71bis. The representative of Montenegro confirmed that all fees and charges for services applied in connection with importation and exportation would be applied in conformity with the WTO Agreement, including Articles VIII and X of the GATT 1994. He further confirmed that, upon request, Montenegro would provide WTO Members with information regarding the application and level of such fees and charges, revenues collected and their use. The Working Party took note of these commitments.

Answer:

Montenegro accepts commitment text as suggested.

- **Application of internal taxes to imports**

Question 25

Paragraph 75 states: "The tax base for imported goods was the customs value inclusive of import duty and excise tax, if applicable, as well as transportation and distribution costs to the first destination in Montenegro."

Is the excise tax included in the taxable base of domestic goods for the purpose of applying the value-added tax? If not, how can Montenegro's application of the VAT be consistent with Article III?

Answer:

Yes, the excise tax is included in the taxable base of domestic goods for the purpose of applying the value-added tax.

Question 26

We suggest the following commitment text for this section:

79bis. The representative of Montenegro confirmed that, from the date of accession, Montenegro would apply its internal taxes, including excise taxes and value added taxes, in a non-discriminatory manner to imports from all WTO Members and to domestically produced goods, in accordance with the WTO Agreement, including the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures and Articles I and III of the GATT 1994. The Working Party took note of this commitment.

Answer:

Montenegro accepts commitment text as suggested.

- **Quantitative import restrictions, including prohibitions, quota and licensing systems**

Question 27

We appreciate that Montenegro has taken steps to reduce the list of goods subject to non-automatic import licensing as noted in its Decision on Control List for Export, Import and Transit of Goods.

Nonetheless we still consider the list extensive and question whether Montenegro is best served with such an expansive import licensing regime.

Answer:

The Government of Montenegro has adopted the new Decision on Control List for Exportation, Importation and Transit of Goods (RM Official Gazette No. 45/07), which was submitted to the WTO Secretariat in July 2007. The Decision is being submitted once again through WT/ACC/CGR/28/Add.1. In accordance with this Decision, the total number of goods for which import licence is required is 116 or 1.19 per cent of the total number of HS 2007 tariff lines. The total number of goods for which export licence is required is 55 or 0.56 per cent of the total number of HS 2007 tariff lines. With the adoption of this Decision, the number of goods subject to import or export licence has been significantly reduced compared to the previous one.

The annexes to the Decision, containing goods subject to licensing in accordance with international agreements binding on Montenegro and the laws adopted in accordance with such agreements, are integral part of the Decision on Control List, as follows: Annex 2, encompassing the List of Narcotics including salts and derivatives, Annex 3 - List of Precursors, Annex 4 - List of Substances Depleting the Ozone Layer, Annex 5 - List of Waste, Annex 6 - List of Endangered Plant and Animal Species and Annex 7 - List of Protected Rare, Sparse, Endemic and Endangered Plant and Animal Species specified in the Decision on Placing Under Protection Rare, Sparse, Endemic and Endangered Plant and Animal Species.

International agreements binding on Montenegro are the following:

- Convention on Psychotropic Substances (SFRY Official Gazette - International Agreements No. 40/73);
- Uniform Convention on Narcotic Drugs (SFRY Official Gazette - Addendum No. 2/64, amendment - SFRY Official Gazette, International Agreements No. 3/78);
- Vienna Convention on Protection of the Ozone Layer (SFRY Official Gazette - International Agreements No. 1/90);
- Montreal Protocol on Substances Depleting the Ozone Layer (SFRY Official Gazette - International Agreements No. 16/90);
- CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora (FRY Official Gazette - International Agreements No. 11/01); and
- Basel Convention on Transboundary Movement of Hazardous Waste and its Disposal (FRY Official Gazette - International Agreements No. 2/99).

Question 28

We do not understand why it still contains goods that do not appear to qualify for an exception under Articles XX or XXI of the GATT, e.g., steel and household machinery.

Answer:

The question has been put forward based on the previous list. In accordance with the provisions of the new Decision on Control List for Exportation, Importation and Transit of Goods (RM Official Gazette No. 45/07) steel and household machinery are not subject to import licensing. Montenegro believes that by the adoption of the new Decision, the licensing regime has been brought into compliance with the GATT rules.

Question 29

We seek a comprehensive explanation for the remaining restrictions and a plan for bringing them into line with WTO requirements, including Article XI of the GATT.

Answer:

Montenegro believes that in its foreign trade regime there are no restrictions that are contrary to the WTO requirements, including Article XI of the GATT. Conditions for introducing licenses for import, export or transit and quantitative restrictions are prescribed in Section II of the Law on Foreign Trade (RM Official Gazette Nos. 28/04 and 37/07). These provisions are in conformity with provisions of the GATT 1994, including Article XI.

Question 30

Could Montenegro also provide additional information regarding the list of products with licensing requirements in chapter 85 that it justifies under the GATT Article XXI(b) and Foreign Trade Law Article XX, 2? Many of these products are noted as "other".

It would be helpful if Montenegro could provide some additional information as to what types of products it sees falling into these categories.

Answer:

In accordance with the Decision on Control List for Exportation, Importation and Transit of Goods (RM Official Gazette No. 45/07), only goods from the tariff line 8523 29 15 00 (unrecorded rigid magnetic discs) are on the licensing regime in chapter 85.

Question 31

In WT/ACC/CGR/18, Montenegro reports that importers must approach different Government agencies to obtain an import licence depending on the product. Additionally, the fee to obtain an import licence and the validity period for that licence varies by agency.

Can Montenegro please explain these differences? This appears to be burdensome for importers, especially those who may import multiple products that need import licenses from different agencies.

Answer:

The reason why importers must approach different authorities depending on the type of goods to obtain import licence is the consequence of specificities of certain goods. One authority can not have necessary knowledge and information about specific characteristics of all goods. Such goods are, for example, medicines, chemical products used in agriculture, works of art and items of historical importance, and the like. In those cases, it is in the interest of the importers that the licence is issued

by the authority that has the expertise for relevant goods, because that is the only way to obtain the licence in the shortest possible period. The list of authorities that are issuing licenses for certain goods is contained in the Decision on Control List for Exportation, Importation and Transit of Goods (RM Official Gazette No. 45/07), and it is available to all interested importers. Therefore, Montenegro considers that such system is not burdensome for importers.

With the amendment of the Law on Administrative Fees (RM Official Gazette No. 22/08), the amount of fees for obtaining licenses has been equalized for all types of licenses and brought into compliance with the GATT Article VIII.

Question 32

We will need to better understand the uses of Montenegro's licensing system to evaluate its restrictiveness and justification under WTO provisions.

We seek a commitment from Montenegro on the use of its authority to apply such measures, along the following lines:

89bis. The representative of Montenegro confirmed that, from the date of accession, Montenegro would eliminate and would not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements, and other restrictions having equivalent effect, that could not be justified under the provisions of the WTO Agreement, including measures listed in Table xx.. He further confirmed that the legal authority of Montenegro to suspend imports and exports or to apply licensing or other requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO Agreement, including Articles XI, XII, XIII, XIX, XX, and XXI of the GATT 1994, and the Agreements on Agriculture, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade. The Working Party took note of these commitments.

Answer:

Montenegro accepts commitment text as suggested.

- **Customs valuation**

Question 33

Paragraph 91: Montenegro states that it has no specific provision for using a guarantee or surety in its Customs Law, but that Articles 189 to 200 regulate "generally" the issuance of guarantees for customs debt, and "could be applicable to these circumstances."

Could Montenegro describe in the Working Party Report how these articles operate to provide the procedures mandated by the Customs Valuation Agreement?

Answer:

The use of guarantee for securing the customs debt is regulated by the Customs Law (RM Official Gazette Nos. 07/02 and 66/06) and the Implementing Regulation for the Customs Law (RM Official Gazette Nos. br.15/03 and 81/06).

The guarantee can be placed to secure:

- Payment of the existing customs debt;
- Payment of the customs debt that may be incurred; and
- Payment of interest accrued or the interest that may accrue in connection with the customs debt covered by the guarantee.

Customs debtor may place the guarantee to secure the payment of a single customs debt (single guarantee) or more than one existing customs debts or customs debt that may be incurred within a period of time, and/or in the specific customs procedure (joint guarantee).

Both single guarantee and joint guarantee can take a form of cash deposit or the bank guarantee issued by the bank having the corporate domicile in Montenegro.

Customs debtor provides the guarantee upon the request of the customs authority.

The joint guarantee is placed with Customs Administration, which sets the amount of guarantee. Customs Administration confirms the receipt of the guarantee. The filing number of the guarantee is entered into customs documents. Customs Administration promptly inform all the customs authorities about the joint guarantee received.

By issuing a guarantee, a guarantor (a bank) undertakes the obligation to cover the customs debt, which is not paid by the customs debtor by the due date. The period covered by the bank guarantee cannot be less than three months, or less than in which customs debt can incur extended for 60 days, as the case may be. If the term of the guarantee has expired, and the customs debts that were covered by such a guarantee have not been paid, in whole or partly, or if the customs debt can still incur, the new guarantee provided by the customs debtor must contain the clause covering debts secured by the previous guarantee. The bank guarantee can be extend before the expiration, whereas the guarantee so extended must contain the clause covering debts secured by the initial guarantee.

Custom debtor may place a cash deposit as a guarantee of payment of the customs debt, by remitting the amount to the deposit account of the Customs Administration or the customs house, as the case may be. The cash deposit is remitted in legal tender (Euro).

Upon the request of the customs debtor, the customs debtor will return the guarantee, if it determines that the customs debt covered by the guarantee has been paid in full and that any additional customs debt cannot incur.

Question 34

Paragraph 2 of the Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1) provides that Members will calculate the valuation of software for data processing equipment on the basis of the value of the media only. We believe this is a useful principle that facilitates technology transfer and liberal trade in high technology goods.

We seek a commitment from Montenegro to adopt paragraph 2 of Decision 4.1 as part of its accession to the WTO.

Answer:

Montenegro points out that the paragraph 2 of the Decision 4.1 is already included in its customs regulations. Under Article 43, paragraph 1 of the Customs Law, when establishing the customs value of software for data processing equipment, the value of the software will not be taken into account, provided that such value is indicated separately from the value of the medium.

Question 35

We seek a commitment from Montenegro on implementation of WTO provisions on customs valuation, along the following lines:

92bis. The representative of Montenegro confirmed that, as from the date of accession, Montenegro would apply the WTO provisions concerning customs valuation, including the Agreement on the Implementation of Article VII of the GATT 1994 and Annex I (Interpretative Note) and paragraph 2 of the Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1), providing that valuation of software was based on the value of the media. He stated that Montenegro would not use any form of reference or minimum prices or fixed valuation schedules for the valuation of imports and that all methods of valuation used would be in conformity with those provided for in the WTO Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.

Answer:

Montenegro accepts in principle the commitment text as suggested. However, having in mind the answer to the question above, Montenegro suggests the following amended language:

92bis. The representative of Montenegro confirmed that, as from the date of accession, Montenegro would apply the WTO provisions concerning customs valuation, including the Agreement on the Implementation of Article VII of the GATT 1994 and Annex I (Interpretative Note). He stated that Montenegro would not use any form of reference or minimum prices or fixed valuation schedules for the valuation of imports and that all methods of valuation used would be in conformity with those provided for in the WTO Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.

- **Rules of origin**

Question 36

We suggest a commitment for this section along the following lines:

95bis. The representative of Montenegro confirmed that, from the date of accession, Montenegro's preferential and non-preferential rules of origin, and the implementation thereof, would comply with the WTO Agreement on Rules of Origin. He further confirmed that, to this end, Montenegro would implement Article 2(h) and Annex II, paragraph 3(d) of the WTO Agreement on Rules of Origin in its domestic legislation and that, accordingly, with respect to non-preferential and preferential rules of origin, the relevant Montenegrin authorities would provide, upon request of an exporter, importer or any person with a justifiable cause, an assessment of the origin of the import under the terms outlined in those provisions. The Working Party took note of these commitments.

Answer:

Montenegro accepts commitment text as suggested.

- **Preshipment inspection**

Question 37

We suggest a commitment for this section along the following lines:

97bis. The representative of Montenegro confirmed that if pre-shipment inspection requirements were to be introduced in the future, such requirements would be temporary, and would comply with the requirements of the WTO Agreement on Pre-shipment Inspection and other WTO agreements. Montenegro would ensure that pre-shipment inspection enterprises operating on its behalf complied with the provisions of the WTO Agreement, including the Agreements on Import Licensing Procedures, Customs Valuation, Technical Barriers to Trade, the Application of Sanitary and Phytosanitary Measures, Agriculture, Rules of Origin and the GATT 1994. To this end, charges and fees of pre-shipment enterprises would be consistent with Article VIII of the GATT 1994 and Montenegro would ensure that the requirements and procedures of such entities would comply with the transparency and confidentiality requirements of the WTO Agreement, including Article X of the GATT 1994. Decisions by such firms could be appealed by importers in the same way and through the same procedures as administrative decisions taken by Montenegro. The Working Party took note of these commitments.

Answer:

Montenegro accepts commitment text as suggested.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 38

We suggest a commitment along the following lines:

110bis. The representative of Montenegro confirmed that, from the date of accession, Montenegro would not grant or maintain, at any level of Government, export or import-substitution subsidies, within the meaning of Articles 3.1(a) and 3.1(b) of the SCM Agreement. He further confirmed that, by the date of accession, Montenegro would provide a subsidy notification, in accordance with Article 25 of the SCM Agreement, to the Committee on Subsidies and Countervailing Measures. The Working Party took note of these commitments.

Answer:

Montenegro accepts commitment text as suggested.

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

Question 39

We note the new legislation provided in WT/ACC/CGR/27/Add.3. We look forward to reviewing it and will provide our comments prior to the next Working Party meeting.

The response to Question 15 in WT/ACC/CGR/27 and paragraph 115 of the draft Working Party Report outline Montenegro's plan to review its standards and technical regulations and to

withdraw all standards which are not harmonized with the international ones. Begun in December 2007, the review is expected to take more than a year to complete.

Does this include review of the technical regulations contained in the Register of Technical Regulations provided to the Working Party in WT/ACC/CGR/22?

Answer:

Yes it does. Under Transitional provisions of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements, Article 28, paragraph 1 provides that "technical regulations effective on the date this law enters into force shall be made compliant with this Law not later than two years from the date of entering into force", i.e. until 6 March 2010.

Question 40

Is it Montenegro's intention that the harmonization will be complete at the time of accession to the WTO?

Answer:

Because of the sheer number of technical regulations that have to be analyzed, it is not likely that the work could be finalized by the time of the WTO accession. Under Transitional provisions of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements (RM Official Gazette No. 14/08), technical regulations effective on the date this law enters into force shall be made compliant with this Law not later than two years from the date of entering into force (Article 28, paragraph 1), so the process will be finalized on 6 March 2010, at the latest. Please note, that on the day of accession of Montenegro to the WTO, all mandatory standards that are not converted to technical regulations, will become voluntary standards.

Question 41

"Decision on Establishing the Accreditation Body of Montenegro": WT/ACC/CGR/21 stated that Montenegro intended to sign agreement with a relevant foreign accreditation body to perform accreditation services for them until the accreditation body of Montenegro would be fully capable to perform these activities.

Has Montenegro done that? If so, which foreign accreditation body?

Answer:

Montenegro has established the Accreditation Body, which, in the meantime has commenced its operation in accordance with the Law on Accreditation. The Accreditation Body of Montenegro is an autonomous and independent accreditation body, which operates in accordance with the rules of the WTO TBT Agreement and the international standard ISO 17011. Therefore, there was no need to sign an agreement with a relevant foreign accreditation body to perform accreditation services in Montenegro.

Question 42

Article 5.2 of the Decision states that accreditation rules will be based on Serbian, European and international standards. The TBT Agreement, however, gives priority status to international standards over regional and national standards.

Montenegro should clarify in the Working Party Report and revise this provision accordingly in its legislation to indicate that it will base its accreditation rules first and foremost on relevant international standards, guides, and recommendations.

In addition, we believe that the law should be revised in light of the Agreement and the TBT Committee's Decision on the Development of International Standards (G/TBT/1/Rev.8), which clarifies that international standards are those developed using an "open, transparent, and impartial" approach.

Answer:

Montenegro accepts the commitment as suggested and confirms that as of the date of accession Montenegro will base its rules of accreditation on relevant international standards that are developed using an open, transparent, and impartial approach, guides, and recommendations.

Question 43

In WT/ACC/CGR/20, Montenegro appears to state that Article 20 of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements (LTRCA) allows acceptance of conformity from organizations abroad only if the certification is issued "in accordance with international agreements binding on Montenegro."

Please clarify if the WTO Agreement is one of these agreements "binding on Montenegro."

Answer:

Yes, as of the date of accession, all WTO agreements will become "binding on Montenegro".

Question 44

Please clarify in the draft Working Party Report Montenegro's approach to recognizing the attestations of international accreditation bodies, such as those of ILAC member bodies.

Answer:

Under Article 24, paragraph 1 of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements (RM Official Gazette No. 14/08), certificates of conformity and conformity marks issued abroad will be valid in Montenegro if responsible ministries are satisfied that applied conformity procedures offer an adequate level of conformity with equivalent technical regulations applicable in Montenegro. Therefore, ILAC attestations will be recognized in Montenegro.

Question 45

Article 16 of the Decree on Manner and Procedures of Conformity Assessment prescribes that certificates of conformity and conformity marks that are issued abroad shall be valid in Montenegro even if conformity assessment procedures differ from those in effect in Montenegro, provided they ensure conformity equivalent to domestic procedures. Such conformity assessment procedures are considered equivalent:

- **If conformity assessment is performed pursuant to an agreement on mutual recognition of conformity assessment results;**

- **If conformity assessment is conducted on the basis of an agreement on mutual recognition of technical competence of conformity assessment bodies; or**
- **If certificate was issued within international conformity assessment system.**

Pursuant to Article 20 of the Law on Metrology, foreign type approval certificates and verification certificates for measuring instruments, verification marks and other marks are valid in Montenegro, in accordance with international agreements binding on Montenegro.

Please confirm if Montenegro's regime for conformity assessment incorporates the provisions of Articles 6.1 and 6.4, i.e., that it reflects options for achieving confidence in the technical competence of bodies located in the territory of other WTO Members to perform conformity assessment and have their results accepted by Montenegrin authorities, including:

- **The conclusion of an agreement with a conformity assessment body in another Member (e.g., accreditation bodies; certification bodies, laboratories);**
- **The acceptance of the results of conformity assessment procedures within international product testing and certification systems of which Montenegro is a participant;**
- **The acceptance and non-discriminatory consideration of applications for accreditation from conformity assessment bodies located in other WTO Members, even in the absence of a mutual recognition agreement; and**
- **The acceptance of conformity assessment results from conformity assessment bodies recognized by Montenegro; and other means of recognition of equivalent procedures.**

Montenegro should prepare a draft "Statement on Implementation" for Working Party review prior to the next Working Party meeting, to allow Members to be able to assess the improvements made in its regime through the new legislation.

Answer:

The regime of conformity assessment procedures applied in Montenegro includes provisions of Articles 6.1 and 6.4 of the TBT Agreement. The Government of Montenegro will issue a regulation that will regulate the issue in detail, not later than 30 June 2008. The regulation will be available to the Working Party.

- **Sanitary and phytosanitary measures**

Question 46

We look forward to reviewing the revised laws in this area when they are completed.

We are pleased to see that Montenegro seeks to base its SPS measures on scientific principles and international standards. We are also pleased to see that Montenegro references the requirement to notify the WTO of SPS measures and the concept of recognizing different measures which attain the same appropriate level of protection as equivalent. We are encouraged by Montenegro's progress and we look forward to working with Montenegro during the accession process.

We understand that Article 18 of the Food Safety Law, entitled "Precautionary Principle", seeks to allow adoption of temporary measures in the absence of sufficient scientific information. We note that Article 5.7 of the SPS Agreement already allows for such temporary measures.

Could Montenegro please clarify why it needs a specific section of the Food Safety Law regarding this issue, and why it is titled 'Precautionary Principle.'

As there is no internationally agreed-upon principle on precaution, could Montenegro please clarify what is meant by "Precautionary Principle." We also request that Montenegro please clarify 'high level of protection,' as there must be parameters regarding levels of protection in order to ensure that trade is not hindered unnecessarily.

Answer:

This is the issue of legal tradition and legal technique in Montenegro. One segment of the law (part, section, chapter) usually covers one topic. Thus, in the Food Safety Law one segment is dedicated to the "precautionary principle", which comprises and emphasizes general principles of the Food Safety Law and the procedures applicable to food safety, notably: risk analysis, transparency, participation of the public and protection of consumers' interests.

Precautionary principle is the principle that is applied in certain situations, when based on the available information, but before the scientific confirmation, it has been determined that the health may be subject to harmful influence. In such a case, temporary measures for the risk management necessary for providing high level of protection of health may be adopted in Montenegro, which will be effective until other scientific information necessary for more comprehensive risk analysis is available.

These measures are introduced in accordance with Chapter VII of the General Obligation in Trade in Food and Feed - Food and Feed Safety Measures in International Trade and Articles 54-60 of the Food Safety Law, and they cannot be more trade restrictive than necessary for providing high level of protection of health. The measures are applied in the same manner in internal and foreign trade, regardless of the origin of goods.

Question 47

Regarding Article 35 of the Food Safety Law, the phrase "novel foods" appears.

Will Montenegro please provide examples of a novel food.

Answer:

The ultimate goal of Montenegro is to join the European Union. Therefore, the phrase "novel foods" has been introduced in compliance with the EU regulations in this area (Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients).

The examples of novel foods include, *inter alia*, the following:

- Riboflavin from *Bacillus subtilis* as nutrient;
- Yoghurt type products with added phytosterols;
- Microalga *Odontella aurita*;
- Juice of the fruits of *Morinda citrifolia*; and
- Noni juice (juice of the fruits of *Morinda citrifolia*).

Question 48

Also regarding Article 35 of this law:

While the opening sentence of Article 35 states that it does not include foods derived from genetic-engineering, the examples given make it difficult categorically to exclude foods derived from genetic-engineering under the broader definitions of a "novel food". For example, it seems like foods nutritionally-enhanced through genetic engineering would by default fall under the fourth category describing novel foods as, "food or food ingredients obtained through a technological process that hasn't been used in the past, where such process significantly changes composition or structure of food or food ingredients and therefore affects their nutritional value, human metabolism, or level of substances acceptable for human consumption."

Will Montenegro please clarify whether any foods derived from genetic-engineering also could be considered novel foods, and thereby also fall under the provisions of Article 35.

Answer:

No, any foods derived from genetic-engineering could not be considered novel foods, and thereby cannot fall under the provisions of Article 35 of the Food Safety Law.

Question 49

Regarding Articles 35 and 36 of the Food Safety Law, the articles state that the "Categories of food referred to in paragraph 1 of this Article must not: [...] differ from food or feed, or food or feed ingredients, which, according to the intended use, categories of genetically-modified food should substitute, to an extent that would alter its nutritive value and safety."

Would this provision apply to foods or feeds that have been nutritionally-enhanced through genetic engineering, where there are no safety issues identified and where the nutritionally-enhanced food product can be beneficial for consumers?

Answer:

No, it would not.

Question 50

Also, regarding Articles 35 and 36 of the Food Safety Law, the articles state that the "Categories of food referred to in paragraph 1 of this Article must not: [...] mislead the final consumer."

Please explain how these categories of food might mislead consumers.

Answer:

Articles 35 and 36 of the Food Safety Law actually refer to the correct labelling of food. It is deemed that consumers may be misled if the food is correctly labelled, i.e. if its ingredients are not correctly displayed.

Question 51

We are pleased to see that Montenegro is a member of the OIE, and since the last Working Party meeting, has joined the FAO, which is a precondition to joining the IIPC and Codex.

In WT/ACC/CGR/26, Action Plan for SPS, Montenegro states that the National Council for Assessment of Safety of Food will be responsible for food safety issues and data in Montenegro.

Will it have any role in the regulation of products of biotechnology?

Answer:

The National Council for Assessment of Safety of Food cooperates with relevant bodies responsible for the regulation of products of biotechnology.

- **Trade-related investment measures**

Question 52

Paragraph 134: We take note of Montenegro's intent to abolish the requirement in Montenegro's new Law on Tobacco that requires domestic producers to purchase a certain quantity of domestically produced tobacco per year by 31 December 2011. We suggest the following commitment:

136bis: The representative of Montenegro confirmed that from the date of accession, Montenegro would apply its investment regime in compliance with the WTO Agreement, including the Agreement on Trade-Related Investment Measures (TRIMs), in a non-discriminatory manner to imports from all WTO Members and to domestically produced goods. The sole exception to this WTO-consistent implementation of Montenegro's investment regime would be the requirements in the Law on Tobacco that tobacco manufacturers purchase certain quantities of domestically produced tobacco. He further confirmed that these requirements would expire on 31 December 2011. The Working Party took note of these commitments.

Answer:

The provision on the obligation of domestic manufacturers to buy specified quantity of domestically produced tobacco has been abolished. Therefore, there is no need for the commitment.

- **State-trading entities**

Question 53

We appreciate Montenegro's statement that it does not have any State-owned or private enterprises with exclusive or special rights or privileges, and therefore will not be notifying any such enterprises as called for in Article XVII of the GATT 1994 and the Understanding on that Article.

The obligations of Article XVII, however, apply not only to State-trading enterprises, but also to those enterprises owned or controlled by the State, regardless of their privileged trading status.

We would therefore 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:

The Privatization Council decides on privatization. At the moment, more than 85 per cent of the (formerly) State-owned capital has been privatized. The sale of State-owned capital is administered in accordance with the following regulations:

- The Law on Privatization of the Economy (RM Official Gazette Nos. 23/96, 6/99, 59/00 and 42/04);
- Regulation on Sale of Shares and Assets by Public Tender (RM Official Gazette No. 20/04);
- Regulation on Sale of Shares and Assets by Public Bid (RM Official Gazette Nos. 8/99, 31/00, 14/03 and 59/03); and
- The Law on Insolvency of Companies (RM Official Gazette Nos. 06/02, 01/06 i 02/07).

The Privatization Plan for 2008 is available through document WT/ACC/CGR/28/Add.1.

Question 54

We offer the following commitment for this section:

137bis. The representative of the Montenegro confirmed that, from the date of accession, enterprises that are State-owned or controlled, and enterprises with special or exclusive privileges, would make purchases of goods and services, which were not intended for governmental use, and sales in international trade in accordance with commercial considerations, including price, quality, availability, marketability, and transportation, and would afford enterprises of other WTO Members adequate opportunity in conformity with customary practice, to compete for such purchases or sales. Such enterprises would also act in conformity with other WTO provisions. He also confirmed that Montenegro would notify any enterprises falling within the scope of the Understanding on Article XVII of the GATT 1994 upon accession. The Working Party took note of these commitments.

Answer:

Montenegro accepts commitment as suggested.

- **Free zones, special economic areas**

Question 55

Paragraph 140, pp. 51-52: Could Montenegro provide a copy of the amended Law on Free Zones (RM OG No. 11/07) for review by the Working Party, and explain how the local content provisions under Article 21 of the old law (RM OG No. 42/04) have been made consistent with the SCM Agreement under the amended law?

Answer:

The Law on Free Zones has been amended and submitted to the Working Party in July 2007. It is submitted again through document WT/ACC/CGR/28/Add.1.

Question 56

We suggest that the material on Free Zones currently in the Working Party Report section on TRIMs be moved to this section, and the following edited and new text be inserted after paragraph 140:

140. Goods processed in a free zone and subsequently sold in Montenegro were not subject to customs duty or customs charges on the domestic component (raw materials, labour, etc.) in these goods. More favourable conditions applied when the domestic component exceeded 50 per cent (see "Trade-Related Investment Measures). ~~She later noted that the Law had been amended to be brought into compliance with WTO rules (RM OG No. 11/07).~~

140bis. A Member noted that the Law on Free Zones (RM OG No. 42/04) also appeared to exempt goods processed in a free zone in Montenegro from customs duties and charges on the domestic component in such goods. Once the component exceeded 50 per cent, such goods would not be subject to restrictions related to the foreign trade regime. If no import duties or charges were applied in such instances, this provision would constitute a local content requirement incompatible with Article III:5 of the GATT 1994 and Article 3 of the Subsidies Agreement, and the provision would need to be abolished.

140ter. In reply, the representative of Montenegro said that Article 21 of the Law on Free Zones (RM OG No. 42/04) stipulated that goods imported into Montenegro from a free zone were subject to customs duties, customs charges, VAT, and import restrictions (if applicable). Customs duties and charges were not payable on domestic materials and labour incorporated into the goods while in the zone. Once the domestic component exceeded 50 per cent, goods imported from the zone were considered to be "domestic goods" and were not subject to restrictions related to the foreign trade regime (i.e., quantitative restrictions, licenses, antidumping and countervailing duties and safeguards measures). Customs duties and other charges were payable, but decreased according to the percentage of domestic component in the goods. She later noted that the Law had been amended to be brought into compliance with WTO rules (RM OG No. 11/07)

140quater. The representative of Montenegro confirmed that, from the date of accession, free zones or free economic zones established in Montenegro, including those referred to in paragraphs 140-140ter, would be administered in compliance with WTO provisions, including the Agreements on TRIPS, TRIMs, and Subsidies and Countervailing Measures. He further confirmed that the right of firms to establish and operate in these zones would not be subject to export performance, trade balancing, or local content requirements, and that goods imported into, or produced from inputs imported into, these zones that were exempt from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of Montenegro, including the application of tariffs and taxes on the imported components in the goods. The Working Party took note of these commitments.

Answer:

Montenegro accepts edits and commitment as suggested.

- **Government procurement**

Question 57

We suggest the following commitment language be added after paragraph 144:

144bis. The representative of Montenegro confirmed that Montenegro would initiate negotiations for membership in the Agreement on Government Procurement upon accession by tabling an entity offer at that time. He also confirmed that, if the results of the negotiations were satisfactory to Montenegro and the other members of the Agreement, Montenegro would complete negotiations for membership in the Agreement by 31 December 2009. The Working Party took note of these commitments.

Answer:

Montenegro accepts commitment language as suggested.

- **Transit**

Question 58

We suggest the following commitment language be added to this section:

146bis. The representative of Montenegro confirmed that Montenegro would apply all its laws, regulations and other measures governing transit of goods (including energy), such as those governing charges for transportation of goods in transit, in conformity with the WTO Agreement, including Article V of the GATT 1994. The Working Party took note of this commitment.

Answer:

Montenegro accepts commitment language as suggested.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **ENFORCEMENT**

Question 59

In paragraph 197, of the Draft Working Party Report (WT/ACC/SPEC/CGR/4), it is stated that damages are determined on the basis of direct losses and that when filing a case, the plaintiff has to specify the amount of damages and submit evidence to support the claim. It is further stated that if the defendant objects to the proposed amount, damages are calculated by an expert appointed by the Court.

If the plaintiff bears the burden of specifying the amount of damages sought and supplies evidence to support the claim, is there an equal burden placed on the defendant to produce any evidence to support its objection? Or, is the expert's review triggered solely by defendant's conclusory objection?

Answer:

Montenegro believes that there is no burden on the defendant. Under the Montenegrin legal system, the plaintiff must specify a claim, which is important, inter alia, for the jurisdiction and the venue. Defendant has to produce evidence to support its objection, i.e. bears the burden of proof of its objections. The expert's review is not triggered solely by defendant's conclusory objection.

Question 60

In paragraph 199, of the Draft Working Party Report (WT/ACC/SPEC/CGR/4), it is stated that the representative of Montenegro noted that Article 47 of TRIPS, does not oblige Members to give judicial authorities the power to order an infringer to inform the right holder of the identity of third persons involved in the production and distribution of infringing goods and services. Nonetheless, such a provision had been included in the Law on Copyright and Related Rights (Article 185), but not in the Law on Patents.

Does Montenegro intend to bring its trademark and patent laws into parity with the Law on Copyright and Related Rights?

If no, why create a disparity, in terms of the remedies available, for copyrights versus trademarks?

Answer:

Yes, Montenegro intends to bring its trademark and patent laws into parity with the Law on Copyright and Related Rights, by including the provision of TRIPS Article 47.

Question 61

In paragraph 201 of the Draft Working Party Report (WT/ACC/SPEC/CGR/4), it is stated that the representative of Montenegro noted that provisional measures could be ordered *inaudita altera parte* if there was a demonstrable risk that pertinent evidence might be destroyed or impossible to obtain at a later stage.

Does this apply to both copyright as well as trademark infringement actions?

Answer:

Yes it does.

Question 62

"The Law on Protection of Undisclosed Information": In Article 9.3.1 of "The Law on Protection of Undisclosed Information", the inclusion of "or promote" extends the exception beyond that allowed for in TRIPS Article 39.3, which only uses the term "protect".

We believe this should be amended and clarified.

Answer:

Montenegro respectfully disagrees. TRIPS Article 39.3, provides for the obligation of Members to protect data against unauthorized disclosure, "except where necessary to protect the public". Montenegro believes that the meaning of the term "to protect the public" is broad enough to include protection and promotion of public health, environment and public interest. Montenegro also believes that promotion of certain values is an inseparable part of protection of such values.

Question 63

"The Law on Protection of Undisclosed Information" provides for five years of protection against unfair commercial use in Articles 9.4 and 9.5. However, Article 9.5 specifically refers to the Law on Medicines and the Law on Medical Devices.

In spite of these specific cross-references to the Laws on Medicines and Medical Devices, does Article 9.5 cover agricultural chemical products, or is there another Law that covers these products?

Answer:

The period referred to in Article 9.5. establishes the minimal term of protection, which also covers agricultural chemical products.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 64

"Law on Banks": Could Montenegro give us its definition of a "joint-stock corporation"? Is this term used interchangeably with "corporation"?

Answer:

The Law on Companies (RM Official Gazette No. 6/02 and Official Gazette of Montenegro No. 17/07) defines joint-stock companies as companies of natural or legal persons which are established for the purpose of performing economic activity, and whose capital has been divided into shares. The name of the joint-stock company must include the designation "joint-stock company" or abbreviated designation "AD". The Law does not prescribe the use of the term "corporation", but there are no prohibitions to use such a term. The part of the foreign company must contain the original name of the foreign company and the designation or abbreviated designation indicating the form of such company, which may include the use of names "company", "corporation" or the like. The registration of all forms of companies is administered by the Central Register of the Commercial Court.

Question 65

Will foreign banks have to provide the same capital requirements for branches and subsidiaries as domestic banks?

Answer:

The Law on Banks (Official Gazette of Montenegro No. 17/08) does not make a distinction between foreign and domestic banks with regard to the capital requirements for establishing branches or subsidiaries. The same requirements are applicable to domestic and foreign banks.

Question 66

We also very much appreciate and support the explicit authorization for branches and representative offices of foreign banks contained in the "Law on Banks." We would equally support similar provisions for foreign insurance companies.

Does Montenegro have any plans in this regard?

Answer:

Taking into account the level of development of the insurance market in Montenegro, as well as the capacity for supervision of the insurance services at the present moment, further liberalization, including opening of subsidiaries, may not be adequately implemented before 2012.

The transitional period is necessary in order to achieve independence and higher quality of the supervisory function. In accordance with the new law governing insurance, the Agency for Supervision of Insurance has been established, which has become operational in January 2008, and it

will become fully operational by the end of 2011. The Agency for Supervision of Insurance is an independent regulatory body whose main tasks are to protect interests of policy holders and other users of insurance, to ensure stability and development of the insurance activity based on the free competition and equal business conditions.

In the area of institutional development and capacity building, in the period 2008-2011 the Agency plans to establish the cooperation with other regulatory bodies in the region and sign memoranda on technical cooperation, in order to implement the best international practices in the Montenegrin insurance supervision system. In addition, the intensive training of personnel will be one of the main tasks of the Agency in this period. In the legislative area, the adoption of by-laws required for implementation of the Law on Insurance is planned.
