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**Working Party on the
Accession of Montenegro**

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Additional Questions and Replies

The following submission, dated 29 September 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 propose the following commitment for this section of WT/ACC/SPEC/CGR/4/Rev.1 as paragraph 30bis:

"The representative of Montenegro confirmed that to ensure full transparency and to keep WTO Members informed of its progress in the ongoing reform of its economic and trade regime, Montenegro would provide annual reports to WTO Members on developments in its programme of privatization, including identification of recently privatized enterprises and enterprises expected to be privatized, as well as relevant legal measures relating to Montenegro's privatization programme. The Working Party took note of this commitment."

Answer:

Montenegro accepts the commitment as suggested.

Question 2

We suggest that the privatization and STE sections of the Working Party Report be merged as in other Working Party Reports.

Answer:

Montenegro accepts the suggestion.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 3

We support the commitment text in paragraphs 49 and 52 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 4

Paragraphs 53-54 of WT/ACC/SPEC/CGR/4/Rev.1.: We understand that a foreign legal person may register a branch office in Montenegro or "part of a foreign firm".

What information, fees, physical presence, and minimum capital requirements are associated with these forms of registration?

What is a "part of a foreign firm" in operational terms? Would this be the same as the "foreign firm" registering in Montenegro? May a "part of a foreign firm" act as declarant or importer of record?

May a branch office act as a declarant or importer of record?

Answer:

A "part of foreign firm" is not the same as the "foreign firm" registering in Montenegro. The foreign firm registering in Montenegro is the situation where a foreign firm registers a new company in Montenegro, in accordance with the Company Law, meeting all the prescribed requirements (form of the organization, minimum capital). After the registration, such company, owned by a foreign person, operates as any other company registered in Montenegro.

The branch office in the form of the "part of foreign firm" is foreseen as a way to facilitate the operation of foreign companies in Montenegro. Under this system, foreign company can operate in Montenegro, without the need to establish and register the new company in Montenegro. However, any such entity must operate in compliance with the laws and regulations in force in Montenegro. There are no fees and no minimum capital requirements associated with this form of registration. Physical presence is not required for the registration of the "part of foreign firm". Any "part of foreign firm" / branch office registered in Montenegro may act as declarant or importer of record.

The following information must be provided for the registration of the "part of foreign firm":

- Address in Montenegro;
- Description of the activities;
- Name and the form of organization of the parent company, and the name of the part of the company, if different from that of the parent company;
- Certified copy of Articles of Incorporation of the parent company and the certified translation thereof;
- Name(s) and address(es) of person(s) authorized to represent the parent company in its dealings with any third parties; and
- Name(s) and address(es) of person(s), residents of Montenegro, authorized to represent the parent company in any legal proceedings.

Question 5

Paragraph 55 of WT/ACC/SPEC/CGR/4/Rev.1: We understand that because a foreign individual located outside Montenegro may not register as an entrepreneur, this effectively means such an individual may not be a "declarant" or "importer of record" that imports a good for a customer in Montenegro.

Is this still correct following the amendments to the Customs Code, providing for the appointment of an agent to conduct trade on behalf of a foreign individual?

If so, this limitation would not satisfy Montenegro's trading rights obligations under the GATT Articles III and XI and would need to be modified.

Answer:

The situation has changed following the amendments to the Customs Code. Any foreign person (person not established in Montenegro) can now be an importer of record. No registration of any kind is required for such person in Montenegro and no surety related to importation is required from the importer of record who is not established in Montenegro.

A foreign person must be represented by an agent in the customs procedure administered by the customs authority. However, an agent does not in any way conduct trade on behalf of a foreign

person, including a foreign individual. The importer of record remains the exclusive owner of goods at all times and is the only party who has the right to dispose of the goods and who is liable for all duties and charges through the completion of the customs clearance process. The sole purpose of an agent of a procedural nature. The customs authorities need to have a person who would be able to accept service of process on the foreign person's behalf. Foreign person may chose any company or entrepreneur established in Montenegro and registered with the customs authorities, to be his/her agent. The only registration requirement for an agent is submission to the customs authorities of the written application and the copy of the Certificate of Registration issued by the Commercial Register.

Montenegro believes that this system is almost identical to the one applied in the United States, as described in the U.S. Customs and Border Protection (CBP) Publication No. 0000-0504, where: (i) a foreign corporation in whose name merchandise is entered must have a resident agent in the State where the port of entry is located who is authorized to accept service of process on the foreign corporation's behalf, and (ii) a non-resident individual, partnership, or foreign corporation may issue a power of attorney to a regular employee, customs broker, partner, or corporation officer to act in the United States for the non resident employer, whereas any person named in a power of attorney must be a resident of the United States who has been authorized to accept service of process on behalf of the person or organization issuing the power of attorney.

In addition, please note that any foreign person (both firm or individual) is free to select a distributor or distributors of their choice provided that such distributor or distributors have the right to distribute the respective product(s) in Montenegro. Montenegro does not, and will not apply any restrictions on the choice of the distributor or distributors, including in relation to the type of enterprise or nationality of the distributor. However, foreign person not established in Montenegro does not have the right to distribute goods in Montenegro.

In addition to amendments to the Customs Law, a number of other laws, including the Law on Medicines, have been amended to make the clear distinction between importation and distribution and to provide the right to persons not established in Montenegro to import goods in Montenegro, i.e. to be importers of record. Therefore, Montenegro firmly believes that its system does not contravene the GATT Articles III and XI.

Question 6

Paragraphs 58-63 of WT/ACC/SPEC/CGR/4/Rev.1: What are the criteria/requirements for a firm located outside Montenegro to be granted an activity licence for the importation of the following products: (i) tobacco/tobacco products, (ii) medicines, (iii) medical devices, (iv) fertilizer, and (v) pesticides?

The fee for the tobacco wholesalers licence is not related to the cost of providing it, and therefore cannot be charged for the right to import and export.

Please also provide the relevant legal citations for these criteria and a copy of the relevant laws for Working Party review if they have not already been so provided.

Answer:

The criteria/requirements for a firm located outside Montenegro to be granted an activity licence for the importation are the following:

Tobacco/tobacco products

Under Article 16 of the Tobacco Law a company or entrepreneur may import tobacco, processed tobacco and tobacco products provide that:

- It is registered with the Commercial Court Register for performing foreign trade activity;
- It fulfils the prescribed minimum technical requirements for wholesale of goods;
- It has concluded the contract on purchase of tobacco, processed tobacco or tobacco products with the foreign producer or authorized distributor of the foreign producer of tobacco, processed tobacco or tobacco products, as well as that the importer of cigarettes is authorized by the foreign producer or authorized distributor of the foreign producer for the distribution of such cigarettes on the market of Montenegro;
- The company, entrepreneur or responsible person within a company has not been convicted for a criminal offence of illegal trade or a criminal offence of illegal production of tobacco, processed tobacco and tobacco products in the three consecutive years preceding the submission of application for issuing approval; and
- The prescribed fee has been paid.

Medicines

Under Article 61 of the Law on Medicines, any company, both Montenegrin and foreign, may export or import medicines provided that such company is registered with the Drug Agency. In order to register with the Agency, a company must submit a written application accompanied by the documentation prescribed by the Ministry of Health.

If the importer is not licensed for distribution and wholesale of medicines in Montenegro, imported medicines may be delivered only to companies licensed for distribution and wholesale.

Medical devices

The Law on Medical Devices is still in the process leading to its passage by the Parliament. However, this law will have provisions on importation identical to those of the Law on Medicines.

Fertilizer

Under Article 24 of the Law on Fertilizers (RM Official Gazette No. 48/2007) any company or entrepreneur, both Montenegrin and foreign, who has a distribution agreement for the territory of Montenegro with the fertilizer manufacturer may import fertilizer if it:

- Owns or leases bonded warehouse, which meets requirements for storing of fertilizers;
- Has an employee with at least college degree in the field of agriculture who is responsible for acquisition, storing and handling of fertilizers; and
- Is registered in the Register of Importers, maintained by the Ministry of Agriculture, Forestry and Water Management.

In order to register as importer, an interested party must submit written application accompanied by the documentation prescribed by the Ministry.

Pesticides

Under Article 41 of the Law on Pesticides (Official Gazette of Montenegro No. 51/2008), any company or entrepreneur, both Montenegrin and foreign, may import pesticides whose use is approved in Montenegro. The only requirement associated with such importation is registration at

the Ministry of Agriculture, Forestry and Water Management, which maintains the Register of Importers. In order to register as importer, an interested party must submit written application accompanied by the documentation prescribed by the Ministry.

If the importer is not licensed for distribution and wholesale of pesticides in Montenegro, imported pesticides may be delivered only to companies licensed for distribution and wholesale.

Under Article 22, paragraph 5 of the Tobacco Law, any company or entrepreneur registered as wholesaler of tobacco or tobacco products, who has paid the wholesale licence fee, does not have pay any fee for the licence to import and export.

Copies of any laws that have not already provided will be submitted to the Working Party prior to the next Working Party meeting.

Question 7

Paragraph 65 of WT/ACC/SPEC/CGR/4/Rev.1: We welcome the steps Montenegro has taken to bring its import regime into compliance with WTO trading rights obligations but we seek clarification in the Working Party report from Montenegro on the provisions of the new legislation, i.e., the amended Customs Code, Foreign Trade Law, Law on Medicines, and Law on Medical Devices.

Concerning the amendments to the Customs Code, Foreign Trade Law, and the Law on Medicines, please detail the registration requirements for those firms located outside Montenegro to be allowed to import.

What are the requirements to establish a "branch" in Montenegro? Does this require investment, or is it sufficient to register and secure a local address?

Please explain the purpose and role of the "customs agent" now required in order for firms located outside Montenegro to be able to import. Could a foreign firm instruct its "branch" to act as its agent or declarant?

Foreign importers should be allowed to import products and retain control of the product and liability for all duties and charges through the completion of the customs clearance process. Requiring an agent for this purpose would not, in our view, be consistent with Montenegro's trading rights obligations under the GATT Articles III and XI.

When might we see the detailed regulations for the amended Law on Medicine that permit the importation of pharmaceuticals without a wholesaler's activity licence?

When can we expect to see a copy of the revised Law on Medical Devices?

We want to work with Montenegro to clarify these points in the Working Party text.

We will provide comments on the new legislation that we have.

Answer:

In general, firms located outside Montenegro do not have to be registered to be allowed to import. However firms that import certain specific goods (medicines, medical devices, pesticides, fertilizers) must register with relevant ministers/agencies. For details please see answer to Question 6 above.

Registration of a "branch" in Montenegro does not require investment. For details please see answer to Question 4 above.

A "branch" can act as a declarant/importer of record. For details on "customs agent" please see answer to Question 5 above.

As it was pointed out in the answer to Question 5 above, the importer of record is the exclusive owner of goods at all times during customs/import procedure and is the only party who has the right to dispose of goods and who is liable for all duties and charges through the completion of the customs clearance process. Montenegro firmly believes that this system does not contravene the GATT Articles III and XI.

Detailed regulations for the amended Law on Medicine that permit the importation of pharmaceuticals without a wholesaler's activity licence are being prepared and will be submitted to the Working Party for review prior to the next Working Party Meeting.

The Law on Medical Devices is still in the process leading to its passage by the Parliament. A copy of the revised Law will be submitted to the Working Party for review prior to the next Working Party Meeting.

Question 8

Paragraphs 58 and 59 of WT/ACC/SPEC/CGR/4/Rev.1: Please clarify the following: If a person wants to import tobacco products to Montenegro and at the same time wants to manufacture tobacco products in Montenegro, would this person be required to pay twice in order to obtain the corresponding licenses?

Please comment on the amount of the fees due in light of Article VIII:1 (a) of the GATT 1994.

Answer:

Under Article 22, paragraph 5 of the Tobacco Law, any company or entrepreneur registered as producer of tobacco or tobacco products, who has paid the producer licence fee, does not have pay any fee for the wholesale trade in tobacco products.

Comment on the amount of the fees will be submitted at the later stage.

Question 9

Paragraph 62 of WT/ACC/SPEC/CGR/4/Rev.1: Please indicate the amount of fee for licenses for circulation of medicines.

Answer:

The activity licence fee for circulation of medicines is €1,250, which cover the costs of examination of fulfilment of requirements for the circulation of medicines and issuance of the activity licence.

A. IMPORT REGULATIONS

- Ordinary customs duties

Question 10

We request that Montenegro confirm in the Working Party Report text that it intends to bind all its tariff rates of duty on all imported goods.

Answer:

Montenegro agrees that its intention to bind all its tariff rates of duty on all imported goods be confirmed in the Working Party Report.

Question 11

Please indicate what HS nomenclature is being used in bilateral negotiations. If it is different from HS2007, please confirm in the text that Montenegro will provide a concordance for the transformation of the consolidated tariff schedule and verification of the schedules.

Answer:

The nomenclature being used in bilateral negotiations is HS 2007.

Question 12

Paragraph 68 (a) of WT/ACC/SPEC/CGR/4/Rev.1: Please add commitment language in a new paragraph:

"Montenegro undertook bilateral market access negotiations on goods with members of the Working Party. The results of these negotiations are contained in the Schedule of Concessions and Commitments on Goods (document [...])."

Answer:

Montenegro accepts the commitment as suggested.

- Other duties and charges

Question 13

We support a commitment along the lines of the one suggested for paragraph 70 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support.

- Tariff rate quotas, tariff exemptions

Question 14

We support a commitment along the lines of the one suggested for paragraph 74 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support.

- **Fees and charges for services rendered**

Question 15

Article 291 of the Customs Law states that Montenegro's customs fee must be related to the cost of the service rendered and that the Government will "prescribes the type, amount and manner of paying the fee."

Please describe in the Working Party text the customs fee that replaced the *ad valorem* fees described in paragraph 75 of WT/ACC/SPEC/CGR/4/Rev.1, and provide the legal citation.

Please confirm in the text that Montenegro no longer applies any *ad valorem* fees applied on or in connection with importation and exportation.

Answer:

The customs fee is governed by the Regulation on Kind, Amount and the Manner of Payment of Fees for the Services Provided by Customs Authority (Official Gazette of Montenegro No. 47/08). The fees are payable for the following:

- Administration of the customs procedure at the venue that is not designated for such purpose, upon the request of the declarant; and
- Administration of the customs procedure outside normal working hours, upon the request of the declarant.

In both cases the fee is €15 per customs officer involved.

Montenegro confirms that it no longer applies any *ad valorem* fees on or in connection with importation and exportation.

Question 16

We support a commitment along the lines of the one suggested for paragraph 80 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support.

- **Application of internal taxes to imports**

Question 17

Table 4 is not helpful. Please provide information on what products are being taxed and clarify the tax level categories applied.

Answer:

Montenegro apologizes for the error. Please see in Annex the corrected Table 4 (now Table 1).

Question 18

For fermented beverages (wines from grapes and other fruits, other brewed beverages) there is a stark difference in the rate of tax applied to still wines (220421 and 220429, zero) and the rates applied to other fermented beverages, even similar goods such as wines from other fruits.

Does Montenegro produce wine? Grape or other? What other brewed beverages are produced locally?

Please explain how this differential taxation nevertheless ensures that, for example, imported wine from grapes is not taxed at a less favourable rate than a "like" imported or domestic product, as required by the GATT Articles I and III.

Answer:

Montenegro produces grape wines. Other brewed beverages include beer and grape brandy (grapa).

Under Article 2 the Law on Excise Taxes (RM Official Gazette No. 65/01, 12/02, 76/05) excise tax is payable for products liable to such tax both produced in Montenegro and imported. The amount of tax is identical for both domestically produced and imported products. Therefore, the imported wine from grapes and the wine from grapes made in Montenegro are subject to identical excise tax. There is no exception to this rule.

Question 19

For must, vermouth, and other brewed beverages (220430, 2205, and 2206), the taxation categories in the third column partially overlap (e.g., 10 per cent - 15 per cent, 40 Euro, and 1.2 per cent - 22 per cent, 70 Euro). Please clarify and update.

Answer:

Please see updated Table 1 (formerly Table 4) in Annex.

Question 20

For distilled alcohol (2207) and distilled beverages (2208), there is no level of tax provided in the third column for beverages with alcoholic strength above 1.2 per cent. Please update.

We also suggest that it could be moved to the back of the report.

We support a commitment along the lines of the one suggested for paragraph 89 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Please see updated Table 1 (formerly Table 4) in Annex.

Question 21

Paragraph 84 of WT/ACC/SPEC/CGR/4/Rev.1: Please identify at what point the tax base for application of the VAT to domestic products includes the excise tax?

Answer:

The tax base for application of the VAT to domestic products includes the excise tax at the moment of placing the product on the market for final consumption.

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

Question 22

Paragraph 94 of WT/ACC/SPEC/CGR/4/Rev.1: We would like to confirm that Montenegro will not reject an import licence application for minor typographic errors that do not affect the substance of the data. In order to provide greater clarity, we suggest an addition to paragraph 94 of the Working Party Report. Please add the following text, after the second sentence:

"No application will be refused for minor documentation errors which do not alter basic data."

Answer:

Article 25 of the Foreign Trade Law (RM Official Gazette No. 28/04) contains identical provision. However, Montenegro accepts the addition to paragraph 94 of the Working Party Report as suggested.

Question 23

Paragraph 98 of WT/ACC/SPEC/CGR/4/Rev.1: Montenegro states that the import licenses for fertilizer and pesticides are being eliminated because Montenegro moved to a system of activity licensing in June 2007. Please confirm in the Working Party report text that all import licence requirements on fertilizer and pesticides have therefore been eliminated.

Answer:

Montenegro confirms that all import licence requirements on fertilizer and pesticides have been eliminated and agrees this confirmation to be included in the Working Party Report.

Question 24

Paragraph 99 of WT/ACC/SPEC/CGR/4/Rev.1: We appreciate the continued steps that Montenegro has taken to reduce the list of goods subject to import licensing.

In consideration of the amended legislation, "The Decision on Control List for Export, Import and Transit of Goods," which entered into force in July 2007, we request that Montenegro provide an updated questionnaire on import licensing procedures. We also seek a table listing all goods under import and export licensing regime.

Why does Montenegro require a non-automatic licence for the export of ferrous and nonferrous scrap, designated as "non-hazardous waste?" What are the criteria applied for granting or denying the licence? What "environmental" issue or provision of Article XX or XXI of the GATT 1994 are involved in requiring the export licence?

Where in Montenegro's laws and regulations do we find the legal provisions implementing the procedural requirements of the WTO Agreement on Import Licensing Procedures, e.g., those found in Articles 1-3?

Answer:

Updated licensing questionnaire will be submitted at the later stage.

Clarification will be submitted at the later stage.

Legal provisions implementing the procedural requirements of the WTO Agreement on Import Licensing Procedures, including those found in Articles 1-3, are to be found in the Foreign Trade Law (Articles 19-27a) and the Implementing regulation for the Foreign Trade Law (Articles 3-7). Both the Law and its Implementing regulation have been submitted to the Working Party in July 2007.

Question 25

Question 31 of WT/ACC/CGR/28 (pp. 13-14): We appreciate Montenegro's response and appreciate its efforts to equalize the fees for obtaining import licenses from the relevant Government agencies.

Can Montenegro please clarify the reason licenses obtained from different Government agencies have different periods of validity. Has Montenegro taken any steps to equalize these validity periods?

Answer:

The Table 2 below provides information on licenses, issuing authorities and the periods of validity. All the licenses issued by the Ministry for Economic Development and the Ministry of Tourism and Environmental Protection are valid for one year. As it was pointed out in the answer to Question 23 above, the licenses for fertilizers and pesticides that used to be issued by the Ministry of Agriculture, Forestry and Water Management have been abolished and replaced by the system of activity licenses. The only licenses with period of validity of less than one year are those issued by the Ministry of Health, Labor and Social Welfare. Montenegro believes that such shorter validity is justifiable because of the nature of goods subject to licence. Arsenic, narcotics and precursors are extremely dangerous substances that require more strict and more often control, which warrants shorter period of validity of a licence.

Table 2 - Licence Validity

	Licenses are Required for:	Licenses are valid:
The Ministry for Economic Development	<ul style="list-style-type: none"> - Derivatives containing only nitro or only nitro's groups (1 tariff item in Chapter 29); - Explosive and pyrotechnic products (6 tariff items in Chapter 36); - Polycarbonates (1 tariff item in Chapter 39); - Precious metals and metals clad with precious metal (15 tariff items in Chapter 71); - Tanks and other armoured fighting vehicles (1 tariff item in Chapter 87); - Warship (1 tariff item in Chapter 89); - Lasers and other optical appliances and instruments (2 tariff items in Chapter 90); and - Arms and ammunition tariff items in Chapter (28 tariff items in Chapter 93). 	One year.

	Licenses are Required for:	Licenses are valid:
The Ministry of Tourism and Environmental Protection	<ul style="list-style-type: none"> - Uranium and thorium ores and concentrates (4 tariff items in Chapter 26); - Natural uranium (25 tariff items in Chapter 28); - Nuclear reactors (4 tariff items in Chapter 84); - Apparatus based on the use of X-rays or of alpha, beta or gamma radiations (3 tariff items in Chapter 90); - Wastes; - Endangered and protected species of wild flora and fauna; - Substances damaging the ozone layer; and - Protected rare, rarefied, endemic and endemic and endangered plant and animal species. 	One year.
The Ministry of Health, Labor and Social Welfare	<ul style="list-style-type: none"> - Arsenic (1 tariff item in Chapter 28); - Narcotics - including derivates and salts (48 tariff items in Chapter 12, 13 and 29); and - Precursors (22 tariff items in Chapter 28 and 29). 	From one to four months.
The Ministry of Agriculture, Forestry and Water Management	<ul style="list-style-type: none"> - Fertilizers (37 tariff items in Chapter 31); and - Pesticides (21 tariff items in Chapter 38). 	60 days.

Question 26

Paragraph 100 of WT/ACC/SPEC/CGR/4/Rev.1: Could Montenegro confirm that the new licensing uniform fee applies to licenses for all products, regardless of the Ministry to which the importer must apply? What is the amount of the uniform licensing fee? How does the fee relate to the service provided?

Answer:

Montenegro confirms that the new licensing uniform fee in the amount of €50 applies to licenses for all products, regardless of the Ministry to which the importer must apply.

Question 27

We support a commitment along the lines of the one suggested for paragraph 101 of WT/ACC/SPEC/CGR/4/Rev.1. We suggest deleting "licensing requirements" from line 4 of paragraph 101 given the inclusion of the term "licensing" earlier in the sentence.

Answer:

Montenegro agrees with the suggestion.

- Customs valuation

Question 28

Paragraph 104 of WT/ACC/SPEC/CGR/4/Rev.1: We thank Montenegro for the additional information on its guarantee system for customs debt. We cannot tell, however, from the text, whether this system (provided for in Articles 194-200 of the Customs Law) accurately provides for the following:

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

Does Montenegro's legislation mandate that the importer "shall be able to withdraw" his goods from customs with provision of a "sufficient guarantee" in the "form of a surety?" It appears to be more limited than that.

Answer:

Yes it does. Under Article 42 of the Customs Law and Article 126, paragraphs 2 and 3 of the Implementing Regulation importer may withdraw the goods (the goods may be released to importer) if the importer provides a surety in a form of cash deposit or a bank guarantee covering the payment of customs duties for which the goods may be liable.

Question 29

We are reviewing Montenegro's revised legislation on Customs Valuation and hope to find the missing Interpretative Notes provided for therein.

We support a commitment along the lines of the one suggested for paragraph 106 of WT/ACC/SPEC/CGR/4/Rev.1. We cannot, however, agree to accept it until we are satisfied that all the Interpretative notes are fully incorporated in Montenegro's laws.

We suggest the following revisions for paragraph 106: Please add in the first sentence "...Annex 1 (Interpretive Notes) THERETO", and begin the second sentence with "SHE FURTHER CONFIRMED THAT, TO THIS END, Montenegro would not use in any form..."

Answer:

Montenegro accepts commitment language as suggested.

- **Rules of origin**

Question 30

We support a commitment along the lines of the one suggested for paragraph 110 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support.

- **Preshipment inspection**

Question 31

We support a commitment along the lines of the one suggested for paragraph 113 of WT/ACC/SPEC/CGR/4/Rev.1, but suggest one drafting clarification as follows: in line 7, please

add "and" before "Rules of Origin" and begin the second sentence of this paragraph with "SHE FURTHER CONFIRMED THAT Montenegro would ensure..."

Answer:

Montenegro accepts commitment language as suggested.

- **Anti-dumping, countervailing duties, safeguard regimes**

Question 32

We are still reviewing the revised legislation provided on trade remedies.

We thank Montenegro for its assurances on the use of trade remedies, and we believe that appropriate commitment language can be fashioned.

We will submit our suggestions on both issues in writing when we have completed the review.

Answer:

Montenegro thanks the Member for the support and is looking forward to receiving the suggestions.

B. EXPORT REGULATIONS

- **Customs tariffs, fees and charges for services rendered, application of internal taxes to exports**

Question 33

Paragraph 118 of WT/ACC/SPEC/CGR/4/Rev.1: Please add commitment language as last sentence of paragraph 118:

"The representative of Montenegro confirmed that from the date of the accession Montenegro will not apply or reintroduce any export duty. The Working Party took note of this commitment."

Answer:

Montenegro accepts the commitment as suggested.

- **Export restrictions**

Question 34

We place great value on Montenegro's removal of its export duty on ferrous scrap metal and note that Montenegro intends to apply its export restrictions in a WTO-consistent manner. However, we would like to have information in a table on the goods subject to export licensing, including ferrous and nonferrous scrap.

We will work with Montenegro and other delegations to confirm its intentions in both areas with appropriate commitments for the Working Party report.

Answer:

Table 3 below provides the list of goods subject to export licenses.

Table 3 - List of Goods Subject to Export Licenses

Responsible Authority	Goods Subject to Export Licenses
The Ministry for Economic Development	- Derivatives containing only nitro or only nitro's groups (1 tariff item in Chapter 29); - Arms and ammunition tariff items in Chapter (6 tariff items in Chapter 93).
The Ministry of Tourism and Environmental Protection	- Uranium and thorium ores and concentrates (4 tariff items in Chapter 26), natural uranium (25 tariff items in Chapter 28); - Nuclear reactors (4 tariff items in Chapter 84); - Apparatus based on the use of X-rays or of alpha, beta or gamma radiations (3 tariff items in Chapter 90); - Wastes; - Endangered and protected species of wild flora and fauna; - Substances damaging the ozone layer; and - Protected rare, rarefied, endemic and endangered plant and animal species.
The Ministry of Health, Labor and Social Welfare	- Arsenic (1 tariff item in Chapter 28); - Narcotics - including derivatives and salts (48 tariff items in Chapter 12, 13 and 29); and - Precursors (22 tariff items in Chapter 28 and 29).
The Ministry of Culture, Sport and Media	- Works of art, collectors pieces and antiques (7 tariff items in Chapter 97).

- **Export subsidies**

Question 35

Does the Customs Law and/or the related implementing decree make clear that any remission of import duties under Montenegro's duty drawback scheme will not be in excess of the original charges on the imported goods?

Answer:

Yes, it does. The amount remitted under the drawback scheme under no circumstances can exceed the amount of duties paid on the imported goods.

- **Industrial policy, including subsidies**

Question 36

We appreciate the additional draft subsidies notification covering 2007 (WT/ACC/CGR/15/Add.2), and support the commitment to submit a full notification by the date of accession.

We will have questions with regard to certain programmes described in the draft notification and its previous version covering 2006 (WT/ACC/CGR/15/Add.1).

We support Montenegro's commitment not to introduce subsidies prohibited within the meaning of Article 3 of the SCM Agreement.

We support a commitment along the lines of the one suggested for paragraph 127 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support and is looking forward to receiving the questions.

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

Question 37

This section of the report is developing well, and reflects the substantial progress Montenegro has made in the area of Technical Barriers to Trade as the accession process has moved forward.

We are reviewing available documentation and legislation. We ask that Montenegro provide the latest drafts and completed legislation in translation to the Working Party as soon as possible.

We thank Montenegro for its most recent documentation to help us evaluate the legislation.

Answer:

Completed legislation will be submitted at the later stage.

Question 38

We note that Montenegro indicates in paragraph 130 of WT/ACC/SPEC/CGR/4/Rev.1 that its Accreditation Body was now fully operational and the additional information provided on the establishment of non-discriminatory conformity assessment procedures in Montenegro that allow foreign bodies to demonstrate conformity with Montenegro's technical regulations without the need for a Mutual Recognition Agreement.

Please provide a copy of the regulation slated for adoption "by the end of June 2008" that provides for acceptance of certificates of conformity and conformity marks issued abroad.

Answer:

Copy of regulation will be submitted at the later stage.

Question 39

We applaud the work Montenegro has done to bring its previous "quality" control system into conformity with the WTO Agreement on Technical Barriers to Trade, and to use international standards as the basis for its technical requirements and voluntary standards.

We also take note of the commitment that from the date of accession, Montenegro's technical regulations and other mandatory requirements will either be applied in conformity with the TBT Agreement, or will be made voluntary.

We will provide our summary comments on this section, and on Montenegro's legislation, in writing soon.

This will include draft commitment language that is more comprehensive than that offered in paragraph 138 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support and is looking forward to receiving the comments.

- Sanitary and phytosanitary measures

Question 40

We congratulate Montenegro on adopting its new Law on Food Safety and its Regulation on Notification Procedures of Sanitary and Phytosanitary Measures (paragraphs 139 and 147 of WT/ACC/SPEC/CGR/4/Rev.1).

As per a July 2008 review of the Codex Alimentarius Commission and International Plant Protection Convention (IPPC) websites, it is noted that Montenegro has not yet joined the international organizations. Could Montenegro please explain ongoing efforts to fully join those organizations and associated timeframes in doing so (paragraph 140 of WT/ACC/SPEC/CGR/4/Rev.1)?

Answer:

After becoming the member of FAO Montenegro has initiated activities necessary for joining Codex Alimentarius and International Plant Protection Convention (IPPC).

The process of ratification of the International Plant Protection Convention is under way. Once the Parliament ratifies the IPPC, the application for the full membership will be submitted.

Under Article 4 of the Decree on Establishing the Institute for Standardization of Montenegro ("Official Gazette of RM", N. 21/07, from 13 April 2007), Institute for Standardization has been designated as the enquiry point for Codex Alimentarius. The Institute is in charge of all the activities related to joining Codex Alimentarius

Montenegro expects both processes to be finalized soon.

Question 41

Drafting suggestion: Paragraph 140 of WT/ACC/SPEC/CGR/4/Rev.1 (page 40) states that Montenegro became a member of the "Office International des Epizooties" (OIE) on 10 July 2007. We recommend using the "World Organization for Animal Health" as this is the current name. In 2003, the International Office of Epizootics became the World Organization for Animal Health, but kept its historical acronym OIE.

Answer:

Montenegro accepts the amendments to the commitment language of paragraph 140 as suggested.

Question 42

Paragraph 146 of WT/ACC/SPEC/CGR/4/Rev.1 states that "labels should correspond to the data specified in the producers' specification and requirements prescribed by the Food Safety Law." The Food Safety Law states that, "detail requirements for content, type of the data and

manner of their presentation in the declaration, as well as manner of labelling of food of plant origin at the primary production level, food of animal origin, composite food and feed shall be prescribed in the regulation issued by the Ministry of Agriculture, or in the case of food of plant origin after primary production, composite food and other food in the regulation issued by the Ministry of Health."

Could Montenegro please confirm that its trading partners will have an opportunity to comment on regulations that would require food labelling as prescribed by the Ministries of Agriculture and Health, prior to adoption (paragraph 146 of WT/ACC/SPEC/CGR/4/Rev.1)?

Answer:

Montenegro confirms that its trading partners will have an opportunity to comment on regulations that would require food labelling as prescribed by the Ministries of Agriculture and Health, prior to adoption.

Question 43

Paragraph 146 of WT/ACC/SPEC/CGR/4/Rev.1, page 53: In regards to the last sentence, we note that Article 23 of the Food Safety Law states: "When determining food safety, the following shall be considered:..Information provided to the consumer, including information on the label and conformity thereof with the producer's specification, or other information generally available to the consumer concerning the prevention of harmful effects on human health from a particular category of food."

Please clarify whether producer labelling requirements, in addition to the Montenegrin Government labelling requirements, are mandatory for importing into the Montenegro's market.

Answer:

No, there are no additional labelling requirements.

Question 44

We have the following questions regarding the Draft Regulation on Notification Procedures of Sanitary and Phytosanitary Measures. If applicable, the same questions will apply to the final version of this measure (paragraph 147 of WT/ACC/SPEC/CGR/4/Rev.1).

We note that Montenegro's enquiry point will not provide information on the membership and participation in bilateral and multilateral arrangements within the scope of the SPS Agreement, texts of those regulations, and upon request, information on participation in bilateral or multilateral equivalence arrangements. Could Montenegro please identify entities that would provide this information?

Answer:

Montenegro respectfully disagrees. Article 3 of the Regulation on Notification of SPS Measures (Official Gazette of Montenegro No. 13/2008) clearly indicates that the Enquiry Point is the Ministry of Agriculture, Forestry and Water Management. Under Article 4 of the Regulation, Inquiry Point provides information, *inter alia*, on membership and participation of Montenegro or its bodies in international sanitary and phytosanitary organizations and systems, in bilateral and multilateral

agreements and arrangements and provides texts of such agreements and arrangements to interested parties.

Particulars of the enquiry point are the following:

Ministry of Agriculture, Forestry and Water Management
Rimski trg br. 46, PC "Vektra" 81000 Podgorica, Montenegro
Phone: (+381) 81 482-109; Fax: (+381) 81 234-306
Website: www.minpolj.vlada.cg.yu

Question 45

Article 6 states that, "The Ministry shall notify sanitary or phytosanitary regulations to relevant international organizations including the World Trade Organization, unless otherwise provided for by the applicable rules of the relevant international organizations or by the legislation of Montenegro." Could Montenegro please identify current legislation(s) that would prevent Montenegro from notifying SPS or SPS-related regulations? Could Montenegro please identify any SPS or SPS-related regulations that WTO Members have not had an opportunity to review?

Answer:

There is no legislation that would prevent Montenegro from notifying SPS or SPS-related regulations. There are no SPS or SPS-related regulations that WTO Members have not had an opportunity to review.

Question 46

Article 10 states that, "The Ministry shall decide on the necessity for submitting notification to the relevant international organization based on the received notice referred to in Article 9, paragraph 1 of this Regulation." Could Montenegro please explain what criteria will be used to guide its decision?

Answer:

Criteria used to guide the Ministry's decision are those contained in Article 2 of the Regulation, which define SPS measures.

Question 47

In addition, Article 14 states, "Provisions of Articles 6-11 of this Regulation shall apply to any significant change or amendment of the sanitary or phytosanitary regulations, including any change of scope of products covered." Article 14 appears to imply that Montenegro reserves the right to not notify significant changes or amendments of SPS regulations, as per Article 10. Could Montenegro explain the correlation of Article 10 and Article 14?

Answer:

No, it is quite the opposite. The meaning of Article 14 is that significant changes or amendments of SPS regulations must be notified in the same manner as new regulations that introduce SPS measures.

Question 48

Paragraph 148 of WT/ACC/SPEC/CGR/4/Rev.1, page 53: Please clarify that the "Regulation" referenced in this paragraph is the Regulation on Notification Procedures of SPS measures. If so, paragraph 148 states that the Ministry is obliged to publish a notice of intention to introduce "sanitary-veterinary" measures. Please confirm that phytosanitary measures are also covered by this Regulation.

Also, drafting suggestion: replace "sanitary and veterinary measure" with "SPS measure".

Answer:

Montenegro confirms that "Regulation" referenced in paragraph 148 is the Regulation on Notification Procedures of SPS Measures and that phytosanitary measures are also covered by this Regulation. Montenegro thanks for the drafting suggestion.

Question 49

Paragraph 148 of WT/ACC/SPEC/CGR/4/Rev.1, pages 53-54: We appreciate that Montenegro is providing a 75-day period between publication and adoption of a measure. Is there a law or regulation that provides guidance on the period of time between adoption and implementation? We note that at the Doha Ministerial, Ministers adopted a Decision that "Where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures, the phrase "longer time-frame for compliance" referred to in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures, shall be understood to mean normally a period of not less than six months." (WT/MIN(01)/17, paragraph 3.1).

Answer:

Under the legal system of Montenegro, the period of 75 days is a usual period of "public discussion" in connection with any legislation adopted by the Government.

Thank you for your suggestion, Montenegro confirms that legislation is in compliance with Decision on Implementation Related Issues and Concerns taken on 14 November 2001 at the Fourth Ministerial Conference in Doha, Qatar.

Question 50

Paragraph 151 of WT/ACC/SPEC/CGR/4/Rev.1, page 55: We appreciate the additional information on Montenegro's continued work to bring its SPS regime in line with its WTO obligations. Could you please provide an update on the status of these efforts, particularly those outlined in paragraph 151? Further, we note that the SPS Checklist (WT/ACC/CGR/19) has not been updated since February 2007. We would appreciate it if Montenegro would update the checklist.

We are concerned about the treatment in the Working Party report of imported goods based on biotechnology. It is not clear from the text that Montenegro has an appropriate system in place for the registration and distribution of these products. We will provide questions for clarification on this issue.

We are not prepared at this point to agree that Montenegro's SPS regime will be WTO-consistent from the date of accession. We hope to be able to make a more definitive decision on this after we receive Montenegro's responses to our questions and comments.

Answer:

Montenegro will update the SPS Control List and submit it to Working Party prior to the next Working Party meeting. Montenegro would like to reiterate its commitment to establish the SPS regime that would be fully WTO compliant. To achieve this goal, all the suggestions are helpful and Montenegro is looking forward to receiving additional question and providing necessary clarifications.

- **Trade-related investment measures**

Question 51

We thank Montenegro for its prompt action to remove its mixing requirements for tobacco.

We would appreciate receiving a copy of the law establishing the new regime.

We support a commitment along the lines of the one suggested for paragraph 153 of WT/ACC/SPEC/CGR/4/Rev.1, with the following grammatical modification:

153. The representative of Montenegro confirmed that from the date of accession, Montenegro would apply its investment regime in a non-discriminatory manner to imports from all WTO Members and to domestically produced goods, in compliance with the WTO Agreement, including the Agreement on Trade-Related Investment Measures (TRIMs). The Working Party took note of these commitments.

Answer:

Montenegro accepts modification to the commitment language of paragraph 153 as suggested.

- **State-trading entities**

Question 52

We appreciate the clarification that Montenegro has provided with respect to its largest State-owned enterprises. We seek confirmation of Montenegro's understanding that the substantive obligations of the GATT Article XVII cover not only enterprises with special or exclusive privileges, but also State-owned and -controlled enterprises, in which case the opening statement in paragraph 154 - where Montenegro states that it had "no enterprise covered by the provisions of Article XVII of the GATT 1994" - is clearly incorrect and will need to be revised to reflect this understanding.

Answer:

Montenegro clearly understands the meaning and coverage of the GATT Article XVII. However, Montenegro still believes that although there are State-owned or controlled companies (please see answer to Question 42 in WT/ACC/CGR/27) none of them operates in contravention of the GATT Article XVII. All these companies in their purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the GATT for governmental measures affecting imports or exports by private traders. Any purchases or

sales of these companies are made solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale. Any other company, both domestic and foreign has an adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

The intention of Montenegro is to privatize its entire economy. The most of the economy is already privatized - 85 per cent. The remaining 15 per cent will be privatized as quickly as possible. However, in order to meet the Member's concerns Montenegro will accept an amendment to the commitment language of paragraph 154 that would meet the Member's concerns.

Question 53

We support a commitment along the lines of the one suggested for paragraph 155 of WT/ACC/SPEC/CGR/4/Rev.1, but suggest one drafting clarification as follows:

The second sentence of the commitment should be corrected as a grammatical matter to read: "She further confirmed that enterprises that are State-owned or -controlled, and enterprises with special or exclusive privileges, Such enterprises would also act in conformity with other WTO provisions."

Answer:

Montenegro accepts modification to the commitment language of paragraph 155 as suggested.

- **Free zones, special economic areas**

Question 54

We thank Montenegro for its assurances that its remaining measures for free zones that violate WTO provisions will be eliminated prior to accession. We are reviewing the revised law and will have comments soon.

The commitment text in paragraph 162 of WT/ACC/SPEC/CGR/4/Rev.1 does not include reference to Article 23 of the Law on Free Zones, described in paragraph 161.

Was this deliberate? Please clarify, and amend the commitment to cover paragraph 161.

Please include in paragraph 161 a description on how Montenegro has brought its Free Zone regime into conformity with WTO provisions. We support a commitment along the lines of the one suggested for paragraph 162, but suggest one drafting clarification as follows: in line 7 of paragraph 162, please replace "normal customs formalities" with "standard customs formalities."

Answer:

Montenegro believes that it was not deliberate. Article 23 should have been referenced and the commitment should have covered paragraph 161. Montenegro will bring the system into conformity with WTO provisions by repealing inconsistent provisions of its Free Zones Law. Montenegro accepts modification to the commitment language of paragraph 153 as suggested.

- **Government procurement**

Question 55

We support a commitment along the lines of the one suggested for paragraph 167 of WT/ACC/SPEC/CGR/4/Rev.1.

Answer:

Montenegro thanks the Member for the support.

- **Transit**

Question 56

We support a commitment along the lines of the one suggested for paragraph 170 of WT/ACC/SPEC/CGR/4/Rev.1, but suggest one drafting clarification as follows: Please add "from the date of accession" after "confirmed that."

Answer:

Montenegro accepts modification to the commitment language of paragraph 153 as suggested.

- **Agricultural policies**

Question 57

We thank Montenegro for its statement concerning its willingness to bind in its GATT Schedule of Concessions that it doesn't use agricultural export subsidies.

Answer:

Montenegro thanks the Member for the support and reiterates the commitment.

- **Trade in civil aircraft**

Question 58

We urge Montenegro to provide a statement for this section of the report concerning Montenegro's intentions concerning the Agreement on Trade in Civil Aircraft and the application of tariff duties to imports of aircraft and aircraft parts.

Answer:

Montenegro intends to initiate negotiation for the accession to the agreement on the trade in civil aircraft subsequent to the accession to WTO.

V. TRADE RELATED INTELLECTUAL PROPERTY REGIME

- GENERAL

Question 59

While we applaud Montenegro's progress to date with establishing a TRIPS-compliant regime for the protection of intellectual property, we have a few areas of concern, where we need clarification.

We would like to have a final accounting of legislation in development that will address the final issues raised.

When we have completed our review of the amended legislation, we will be able to help develop appropriate commitment language for this section.

Answer:

Montenegro thanks the Member for the support and is looking forward to receiving the suggestions regarding the commitment language.

- SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**
- Copyright and related rights**

Question 60

In the case of copyright, is the operative law still the 2004 law (Law No. 2004/61)? Have there been recent amendments or new regulations developed or enacted recently?

Answer:

It is still the same Law. Please note that this is the law of the former State Union of Serbia and Montenegro, which is still applied in Montenegro. Such law cannot be amended by the Parliament of Montenegro, because the Parliament of Montenegro did not initially pass it. Montenegro intends to enact new intellectual property laws covering all IP rights, including copyright. The first two laws that have replaced old Union laws are the Patent Law and Law on Indications of Geographical Origin. The other laws will follow soon. Capacities of Montenegro are limited, but Montenegro is working hard and is determined to maintain its regime of IPR protection fully TRIPS compliant. WTO Members will be informed of all the further developments.

Question 61

Paragraph 195 of WT/ACC/SPEC/CGR/4/Rev.1: Montenegro indicates that it is in compliance with Article 18 of the Berne Convention. The text of paragraph 195, however, does not fully reflect that. It indicates that "Pursuant to this Article (Article 18 of Berne), copyright protection extended to all works, which at the moment of entry into force of the Law, had not fallen into the public domain. Works which had fallen into the public domain could not be protected anew."

This is not totally accurate. Article 18 of Berne provides that such protection is extended to works that have not fallen into the public domain as a result of the expiry of the term of protection. It creates an obligation, however, to restore copyright to works that have fallen into the public domain as a result of failure of formalities. The current statements in paragraph 195 ignore the distinction.

Please confirm that Montenegro's Copyright Law provides the full protection of Article 18 of Berne, i.e., that "copyright protection extended to all works, which at the moment of entry into force of the Law, had not fallen into the public domain through the expiry of the term. Works which had fallen into the public domain through the expiry of the term could not be protected anew."

If so, please reflect that in the text of paragraph 195.

Answer:

Montenegro confirms that Copyright Law provides the full protection of Article 18 of Berne, and agrees paragraph 195 to be amended as suggested to reflect that.

Question 62

Paragraph 196 of WT/ACC/SPEC/CGR/4/Rev.1 states that Montenegro will have to amend Article 125 of the Law on Copyrights and Related Rights.

Please provide a status report on enactment of this amendment.

Answer:

Please see the answer to Question 60 above.

Question 63

Montenegro's Copyright Law provides certain rights to producers of videograms (see Articles 126 - 130).

Is the subject matter protected by these Articles the same subject matter as cinematographic works under the Berne Convention?

If so, how do the rights of producers of videograms relate to the rights of owners of copyrights in cinematographic works under other articles of the copyright law?

As noted in paragraph 191 of WT/ACC/SPEC/CGR/4/Rev.1, the Copyright Law provides that producers of videograms will enjoy a term of protection that extends 50 years from the date of production of the videogram, or, if the videogram is, within that 50-year period, either (a) lawfully published, or (b) lawfully communicated to the public, the term will extend to 50 years from the date of that first publication or communication to the public, "whichever date is earlier." (See Article 144(2) of the Law of Copyright and Related Rights of 2004.)

If videograms protect Berne subject matter, then this method of calculating the term of protection does not appear to comply with TRIPS Article 12, which requires that the term be 50 years from production, or, if there is authorized publication within those 50 years, 50 years from authorized publication.

TRIPS Article 12 does not make reference to authorized communication to the public, and the term "publication" in TRIPS Article 12 would require more than just communication to the public (see, for example, Berne Convention Article 3(3), which states that "publication" does not include such things as performance, communication by wire or broadcasting). It appears that in a case where a producer of a videogram, within 50 years of the production of the videogram, first authorizes a communication to the public, then later authorizes a publication of the videogram, Article 144(2) of the Copyright Law will provide a term of protection that is too short.

Please explain how Montenegro intends to address this concern.

Answer:

Montenegro understands the concern. To some extent it is a linguistic issue arising from the original language of the law, which was not precise enough and its subsequent translation. Nevertheless Montenegro intends to enact completely new copyright law. For details please see answer to Question 60 above. In addition, Montenegro is ready to accept a commitment, which would meet the concern expressed in this question and invites the Member to propose the commitment language.

- **Trademarks, including service marks**

Question 64

What is the status of the amendments to the Trademark Law?

Answer:

Please see the answer to Question 60 above.

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

Question 65

Page 27: Montenegro disagrees with our belief that the inclusion of "or promote" extends the allowed exception under TRIPS Article 39.3. Specifically, Montenegro asserts that the meaning of the Article 39.3 exception "to protect the public" is broad enough to include protection and promotion of public health, environment and public interest.

We would note that Article 39.3 only uses the term "protect" which is already included in Montenegro's law. The inclusion of "promote" in Montenegro's law therefore must be seen as extending the exception. In addition, the exception also requires that the disclosure be "necessary" to protect the public.

There are likely many justifications for disclosure based on "promoting" the public interest that are not necessary to "protect" the public.

Accordingly, we again express our belief that Article 9.3.1 of "The Law on Protection of Undisclosed Information" should be amended and clarified.

Answer:

Montenegro will amend the Law on Protection of Undisclosed Information and delete the term "promote" from the appropriate provision of the Law.

- **MEASURES TO CONTROL ABUSE OF INTELLECTUAL PROPERTY RIGHTS**
- **ENFORCEMENT**
- **Provisional measures**

Question 66

Paragraph 226 of WT/ACC/SPEC/CGR/4/Rev.1: Please confirm that provisional measures can be ordered *inaudita altera parte* in cases of irreparable harm to the right holder as required in Article 50.2 of the TRIPS Agreement.

Answer:

Montenegro confirms that provisional measures can be ordered *inaudita altera parte* in cases of irreparable harm to the right holder as required in Article 50.2 of the TRIPS Agreement.

- **Special border measures**

Question 67

Paragraph 229 of WT/ACC/SPEC/CGR/4/Rev.1: Please confirm that a right holder is required to provide adequate evidence for prima facie infringement to satisfy the competent authorities in an application for the suspension of release of infringing goods as required in Article 52 of the TRIPS Agreement.

Answer:

Montenegro confirms that a right holder is required to provide adequate evidence for prima facie infringement to satisfy the competent authorities in an application for the suspension of release of infringing goods as required in Article 52 of the TRIPS Agreement.

Question 68

Paragraph 232 of WT/ACC/SPEC/CGR/4/Rev.1: Article 55 of the TRIPS Agreement requires a duration of suspension "not exceeding 10 working days after the applicant has been served notice of the suspension". Under certain interpretations, the Regulation amended in March 2008 that provides for a suspension time of 15 calendar days, renewable once, may not satisfy this requirement. Does Montenegro intend to align their legislation with the TRIPS Agreement by amending their legislation with the "10 working days" language?

Answer:

The legislation has been amended to include "10 working days" language.

- **Criminal procedures**

Question 69

Paragraph 234 of WT/ACC/SPEC/CGR/4/Rev.1: Article 61 of the TRIPS Agreement requires that Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Montenegro states that its legislation did not prescribe the level of infringing activity required to initiate

criminal prosecution and that any level of infringement could be subject to criminal prosecution. This lack of explicit legislation identifying the types of infringement with available criminal procedures and penalties is problematic as it introduces an unnecessary level of discretion and uncertainty related to the initiation of criminal procedures. This legal regime would likely have a negative impact on the legitimate uses of intellectual property rights. Does Montenegro intend to align its legislation with Article 61 of the TRIPS Agreement by clarifying the types of intellectual property rights infringement with available criminal procedures and penalties?

Answer:

This appears to be a misunderstanding. The Penal Code of Montenegro clearly identifies types of infringement with available and penalties. These provisions are compliant with TRIPS Article 61. The translation of relevant provisions of the Penal Code have been submitted to the Working Party in February 2007. For your convenience these have been submitted again to the Secretariat (document WT/ACC/CGR/30/Add.1).

Paragraph 234 should be read in conjunction with paragraph 233. The statement in paragraph 234 is a part of an answer to the earlier question, where the Member wanted to know what level of infringing activity was required to initiate criminal prosecution, for each of the criminal offences provided for in the Penal Code. And the answer is still the same. The level of infringing activity is not relevant for the prosecution; however it is relevant for the sentencing. Depending on the level of the infringing activity the court will determine the sentence within the limits provide for in the Penal Code for the criminal offence in question.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 70

Following is suggested commitment language for this section dealing with transparency in the area of licensing the right to provide Services:

236. Montenegro's legislation did not impose any restrictions on capital transactions affecting the supply of services, the total value of service transactions or assets, the total number of service operations, the total quantity of service output, or the total number of natural persons that could be employed in a particular service sector. The number of service suppliers was not subject to any limitation, but foreign persons were not allowed to establish service companies involved in trade in weapons or located in some restricted areas (e.g. "frontier strip" and national parks). Some restrictions or requirements also existed regarding the type of legal entities that could be established. Commercial banks and companies engaged in brokerage, dealing, investment management and underwriting, for example, had to be incorporated as joint-stock companies.

236bis. [New paragraph] She added that some service sectors, including banking, insurance, medical, educational and transport services, were subject to licensing. She provided a list of State and non-State bodies responsible for issuing service licenses in Tables 7(a) and 7(b). Licensing of charter road transport was subject to reciprocity. In addition, foreign persons employed in a branch office or a business entity subject to a business cooperation agreement; foreign persons engaged in educational activities on national and ethnic minorities' languages; sport professionals; and husbands, wives and children of a foreign person with a permanent residence permit were delivered work permits in accordance with international agreements.

236ter. Responding to specific requests of a Member, the representative of Montenegro confirmed that for the services included in Montenegro's Schedule of Specific Commitments Montenegro would ensure that its licensing procedures and conditions would not act as independent barriers to market access. She further confirmed, in particular that, from the date of accession, (i) Montenegro's licensing procedures and conditions would be published prior to becoming effective; (ii) Montenegro would specify reasonable time frames for the review and decision by all relevant authorities in Montenegro's licensing procedures and conditions; (iii) applicants would be able to request licensing without individual invitation; (iv) any fees charged, which were not deemed to include fees determined through auction or a tendering process, would be commensurate with the administrative cost of processing an application; (v) the competent authorities of Montenegro would, after the receipt of an application, inform the applicant whether the application was considered complete under Montenegro's domestic laws and regulations and in the case of incomplete applications, would identify the additional information required to complete the application and provide an opportunity to rectify deficiencies; (vi) decisions would be taken promptly on all applications; (vii) if an application was terminated or denied, the applicant would be informed in writing and without delay of the reasons for such action. The applicant would have the possibility to resubmit, at his/her discretion, a new application addressing the reasons for termination or denial; and (viii) in case examinations were held for the licensing of professionals, such examinations would be scheduled at reasonable intervals. The Working Party took note of these commitments.

236quater. In addition, the representative of Montenegro confirmed that, from the date of accession, Montenegro would (a) publish in advance any regulations or other implementing measures of general application, pertaining to or affecting trade in services, that it proposed to adopt, the purpose of the regulation or other implementing measure, the effective date of these measures, and the scope of services or activities affected; (b) provide interested persons and other Members a reasonable opportunity to comment on such proposed regulation or other implementing measure; and (c) allow reasonable time between publication of the final regulation or other implementing measure and its effective date. The Working Party took note of these commitments.

236quinquies. In addition, the representative of Montenegro confirmed that, upon accession, Montenegro would publish a list of all organizations that were responsible for authorizing, approving or regulating service activities for each service sector, and would publish in the official journal, upon accession, all of its licensing procedures and conditions. The Working Party took note of these commitments.

Answer:

Montenegro accepts the commitment language as suggested.

VII. TRANSPARENCY

- Publication of information on trade

Following is suggested commitment language for this section:

242. The representative of Montenegro confirmed that all laws and regulations were published in the Official Gazette of Montenegro immediately after their adoption. No legal act of general applicability could enter into force before being published in the Official Gazette. As such, from the date of accession, all laws, regulations, decrees, judicial decisions and administrative rulings of general application related to trade in goods, services or TRIPS would be published promptly in a manner that fulfils WTO requirements, and no law or regulation

related to international trade would become effective prior to such publication in the Official Journal. She further confirmed that upon accession Montenegro would post the contents of current and past editions of the Official Journal on the Government website and keep them current. In addition, all regulations and other normative acts or measures pertaining to or affecting trade in goods, services, or TRIPS would be published promptly in a single official source, and that no such regulation or other normative act or measure would become effective or be enforced prior to such publication. She further confirmed that within two years of accession Montenegro would establish or designate an official journal or website, published or updated on a regular basis and readily available to WTO Members, and individuals and enterprises thereof, dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services, and TRIPS prior to enactment. She further confirmed that Montenegro would provide a reasonable period, i.e., no less than 30 days, for comment to the appropriate authorities before such measures are implemented, except for those regulations and other measures involving national emergency or security, or for which the publication would impede law enforcement. The publication of regulations and other measures related to trade in goods, services or TRIPS would, where possible, include the effective date of these measures and list the products and services affected by the particular measure, identified by appropriate tariff line and classification. The Working Party took note of these commitments.

Answer:

Montenegro accepts the commitment language as suggested.

- Notifications

Question 71

Following is suggested commitment language for this section:

242bis. The representative of Montenegro said that, unless otherwise provided for in this Report, upon entry into force of the Protocol of Accession, Montenegro would submit all the initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Montenegro which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of these commitments.

Answer:

Montenegro accepts the commitment language as suggested.

VIII. TRADE AGREEMENTS

Question 72

Following is suggested commitment language for this section.

247bis. The representative of Montenegro confirmed that Montenegro would comply with all WTO provisions including Article XXIV of the GATT 1994 and Article V of the GATS when participating in preferential trade agreements. To this end, Montenegro would ensure, from the date of accession, that its preferential trade agreements complied with the provisions of the WTO Agreement for notification, consultation and other requirements concerning free trade areas and customs unions. She further confirmed that Montenegro would, upon accession,

submit notifications and copies of its Free Trade Areas and Custom Union Agreements to the Committee on Regional Trade Agreements (CRTA). She further confirmed that any legislation or regulations required to be altered under its Trade Agreements would remain consistent with the provision of the WTO and would, in any case, be notified to the CRTA during its examination of the same. The Working Party took note of these commitments.

Answer:

Montenegro accepts the commitment language as suggested.

ANNEX

Table 1 - Products Subject to Excise Tax (Formerly Table 4)

Tariff Code	Description	Amount of Excise Tax (Rate)
2402 20 10 00 2402 20 90 00 2402 90 00 00	Cigarettes	- Specific 1.00€/1000pcs - Proportional 26% of their retail price
2402 10 00 00 2402 90 00 00	Cigars and cigarillos	10.00€/kg
2403 10 10 00 2403 10 90 00	Finely chopped tobacco	20.00€/kg
2403 10 90 00	Smoking tobacco	15.00€/kg
2203 2206 00 39 00 2206 00 59 00 2206 00 89 00	Beer	1.90€/per alcoholic content by volume per hectoliter of beer
2204 21 2204 29 2205 10 10 00 2205 90 10 00	Table wines: 1. With an alcoholic content exceeding 1.2% vol but not exceeding 15% vol provided the quantity of alcohol contained in the final product is completely of fermented origin; and 2. With an alcoholic content exceeding 15% vol but not exceeding 18% vol provided the quantity of alcohol contained in the final product is completely of fermented origin and not enriched.	0€(zero) per hectoliter of table wine
2204 10 2205	Sparkling wines: 1. In bottles with 'mushroom' stoppers imported or held in place under pressure of carbon dioxide of 3 or more bars; and 2. With an alcoholic content exceeding 1.2% vol but not exceeding 15% vol provided the quantity of alcohol contained in the final product is completely of fermented origin.	35€/per hectoliter of sparkling wine
2204 2205 2206	Other fermented beverages, other than beer and wine: 1. With an alcoholic content exceeding 1.2% vol but not exceeding 10%; and 2. With an alcoholic content exceeding 10% vol but not exceeding 15% vol provided the alcohol contained in the final product is completely of fermented origin.	40€/per hectoliter of other fermented beverages
2204 21 95 00 2204 21 96 00 2204 21 98 00 2204 29 95 00 2204 29 96 00 2204 29 98 00 2205 10 90 00 2205 90 90 00 2206	Medium alcoholic beverages: - With an alcoholic content exceeding 1.2% vol but not exceeding 22%.	70€/per hectoliter of medium alcoholic beverages
2207, 2208 2204, 2205, 2206	Ethyl alcohol: - With an alcoholic content exceeding 1.2% whether or not it is constituent part of the product having different tariff code; - With an alcoholic content exceeding 22%; and - Other alcoholic beverages containing ethyl alcohol whether or not in a solution, which are not covered by Articles 38 to 41 of this Law.	550€/per hectoliter of pure alcohol

Tariff Code	Description	Amount of Excise Tax (Rate)
2710 11 31 00	Aviation spirit	0.12€/kg
2710 11 41 00 2710 11 45 00 2710 11 49 00	Unleaded motor spirit	0.364€/l
2710 11 70 00	Spirit type jet fuel	0.12€/kg
2710 11 51 10 2710 11 51 90 2710 11 59 00	Other motor spirits	0.364€/l
2710 19 21 00	Kerosene for motors	0.12€/kg
2710 19 21 00	Kerosene type jet fuel	0.12€/kg
2710 19 25 00	Other kerosenes	0.12€/kg
2710 19 21 00	Kerosene type jet fuel used as heating fuel	0.069€/kg
2710 19 41 10 2710 19 45 10 2710 19 49 10	Diesel fuel	0.27€/l
2710 19 41 10 2710 19 45 10 2710 19 49 10	Diesel fuel used as heating fuel	0.12€/l
2710 19 49 20	Fuel for ships	0.27€/l
2710 19 49 90	Other oils	0.12€/l
2710 19 61 00	Oil of low sulphur content for metallurgy	0.023€/kg
2710 19 61 00 2710 19 63 00 2710 19 65 00 2710 19 69 00	Other fuel oils	0.023€/kg
2711 19 00 00	Petroleum gases: - Propane and butane mixture.	0.069€/kg
2711 19 00 00	Other petroleum gases	0.069€/kg