

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/ACC/GEO/10**

19 June 1998

(98-2408)

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**Working Party on the  
Accession of Georgia**

Original: English

## **ACCESSION OF GEORGIA**

### Additional Questions and Replies

The Permanent Mission of Georgia has submitted replies to additional questions raised after the meeting of the Working Party held on 3-4 March 1998, with the request that they be circulated to the members of the Working Party. The questions and replies are reproduced hereunder.



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## I. INTRODUCTION

### Question 1.

**Georgia has indicated that it intends to enact legislation and other regulations to implement WTO provisions, in the context of joining the WTO. We would appreciate an opportunity to review drafts of these initiatives at the earliest possible point, and to provide comments to Georgia that may be useful in this process. Could Georgia supply the draft or enacted laws and regulations as they become available, or indicate where the relevant material already has been provided on:**

- **customs fees;**
- **customs valuation;**
- **rules of origin;**
- **application of measures to address dumped or subsidized imports;**
- **safeguards applied to imports;**
- **standards and sanitary/phytosanitary measures; and**
- **export restrictions?**

### Answer:

The English version of the new Law on Customs Fees is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation. New regulations concerning customs valuation and rules of origin, which will be in full compliance with the relevant WTO Agreements, are in the process of preparation and will be submitted as soon as they are prepared. The laws in the fields of standardisation and sanitary/phytosanitary are available in the WTO Secretariat (Accessions Division, Room 1126) for consultation. At present, Georgia does not have any specific legislation in the fields of dumping, subsidies and safeguards.

### Question 2.

**To what extent will provisions on the foregoing topics be included in the law on foreign trade? Please give a status report on the development of this legislation.**

### Answer:

The law on foreign trade (FT law) is in the process of preparation; no draft is available at this time. As presently conceived, the law, in general, will provide for the following:

- (i) customs fees: The FT law will provide that customs fees may only be imposed consistently with the relevant WTO provisions, under regulations to be promulgated by the Ministry of Finance (Customs Department);
- (ii) customs valuation: The FT law will state that customs valuation will be done in strict conformity with the Customs Valuation Agreement, under regulations to be promulgated by the Ministry of Finance (Customs Department);

- (iii) rules of origin: The FT law will state that rules of origin shall be consistent with the Agreement on Rules of Origin, under regulations to be promulgated by the Ministry of Finance (Customs Department);
- (iv) anti-dumping, countervailing duties, and safeguards: The FT law will provide in principle for such special duties, but will state that they will be imposed only after implementing regulations consistent with the relevant WTO Agreements have been promulgated;
- (v) standards and sanitary/phytosanitary measures: The FT law will require that standards and sanitary/phytosanitary measures must conform with the relevant WTO Agreements. However, it is expected that Georgia will ask for a transition period to bring all such measures into conformity with WTO requirements.

## II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

### 2. Economic Policies

#### (a) Main directions of the ongoing economic policies

##### Privatization

#### Question 3.

**The response to question 4 of document WT/ACC/GEO/4 states that "companies subject to full privatization account for 75 per cent of GDP". Table 1 states that of 10,335 firms "approved", 10,093 are "privatized". Does that mean that of the firms slated for privatization, 98 per cent have actually been privatized? Could Georgia please give its best estimate of what portion of current GDP is provided by economic activity of private enterprises and by the remaining State-owned firms, both the 242 awaiting privatization and those not subject to privatization?**

#### Answer:

Yes, the privatization process of those companies mentioned above has been practically accomplished.

Approximately 80 per cent of Georgia's GDP is provided by privatized and private enterprises and 20 per cent by the enterprises remaining in the State sector.

#### Question 4.

**Could Georgia indicate approximately what portion of its imports, exports, manufacturing output, non-governmental services, and agricultural output are accounted for by private enterprise and by government-owned firms?**

#### Answer:

It is complicated to give the precise figures, because currently the privatization process is going on very actively and many medium and large scale enterprises are subject to privatization.

**Question 5.**

**When does Georgia foresee its privatization process concluding, e.g. please list the enterprises that will not be privatized, and how long should it take for the rest of the goods and services economy to be transferred out of government ownership and control?**

**Answer:**

Georgia foresees to conclude the privatization process by 2000, for which the common plan of privatization of certain sectors of Georgia's economy in 1998-2000 is approved by Decree of the President of Georgia No. 776 of 29 December 1997.

**Question 6.**

**Please provide a list of the remaining wholly or partially government-owned firms.**

**Answer:**

The list of joint-stock companies in which the controlling block of shares is temporarily kept in State property (however, they will subject to privatization in the near future):

No.	Joint-Stock Company
1	Chkhorotskhu hidroelectric power station
2	Energy Company of Tsalenjikha
3	Marneuli Electric Network
4	"Sanako" (municipal enterprise of Poti)
5	"TelavEnergo" (Telavi electric network)
6	"Energia" (Lanchkhuti electric network)
7	Energy Company of Zugdidi
8	Javakheti Electric Company
9	LagodekhEnergo (Lagodekhi electric network)
10	"Energia" (Senaki energy supply and realization enterprise)
11	"EnergoService" (Gardabani energy supply and realization enterprise)
12	"Energetic" ("KhvarelEnergo" )
13	"Electron" (Kharagauli electric network)
14	Sachkhere Electric Network
15	Energy Company of Chkhorotskhu
16	"Velasi" (Vani municipal energy company)
17	"Zeindari-96" (Zeindari municipal energy company)
18	Poti Electric Network
19	"Signagi Elmega" (Signagi electric supply and realization enterprise)
20	"Ozurgeti Energy Company"
21	"Chelasi" (Chokhatauri electric network)

No.	Joint-Stock Company
22	"Building Constructor" (special unit of "Sakenergogeneratsia" - Georgian Electric Generation)
23	Rioni Hidro-electric power station
24	"ElectricService"
25	Dmanisi Electric Network
26	"Kelasi" (Kutaisi electric network)
27	"EnergoMsheni" (specialized construction-repairing enterprise )
28	"Sakenergotekremonti" (enterprise of Georgian Electric Generation)
29	"Gumati Hydroelectric Power Station" cascade
30	"Hidroremmsheni" (specialized enterprise of Georgian Electric Generation)
31	Chiatura Electric Network
32	"Tbilsresremonti" (construction-repairing enterprise of Tbilisi Thermo-Electric Power Station)
33	"Vartsikhe Hydroelectric Power Station" cascade
34	"Tetsi" ("Tbilisi Electric Central")
35	"Dugabi" (reinforced concrete and wood processing enterprise of "Sakenergo")
36	Shaori Hydroelectric Power Station
37	Lajanuri Hydroelectric Power Station cascade
38	"Energomekanizatsia" (mechanization enterprise of Georgian Electric Generation)
39	"Relasi" (Rustavi municipal electric supply and realization enterprise)
40	"Sakenergoremonti"
41	"Temsi" (Tkibuli energy company)
42	"Orpiri energetikosi"
43	Tkibuli Hydroelectric Power Station
44	"Rioni" (Tskhaltubo electric network)
45	"Alioni" (Tskhaltubo electric network)
46	"Energetikosi" (Tskhaltubo electric network)
47	"Mnatobi" (Adigeni electric realization enterprise)
48	Khrami-1 Hydroelectric Power Station
49	Khrami-2 Hydroelectric Power Station
50	Tbilisi Thermoelectric Power Station
51	"Aspindza" (Aspindza Energy Company)
52	Terjola Electric Network
53	"Sinatle"
54	"Khaltsedoni"
55	Tbilisi Sport House
56	Poti airport



No.	Joint-Stock Company
57	Tbilisi airport
58	United Energy System "Sakrusenergo"
59	"Sakproeqti"
60	Georgian International Oil Corporation

The following firms are government-owned in the telecommunications sector:

- Georgian Post Ltd.;
- Infocom Ltd.;
- Telecom Ltd.

See also the answer to question 106.

#### **Question 7.**

**Could Georgia provide us with more details regarding the privatization of the energy sector?**

**Answer:**

The main aims of the implementation of privatization of the energy sector enterprises and organizations are: implementation of the rational State policy on the basis of restructuring this sector, division of the regulatory functions and commercial activities, gradual elimination of the State monopoly, establishment of the diversity of ownership, creation of the competitive environment, attraction of foreign investments after the restructuring of this sector. All these will have to relieve the existing crisis in energy sector.

#### Electric-energy

The privatization process of the electric-energy sector objects will be implemented with the assistance of the World Bank (Investment Bank) representatives.

The privatization process of the electric-energy sector will be implemented in several stages: at the first stage (by the end of 1997), the process of determining the authorized capital of the joint-stock companies will be finished taking into consideration the results of the restructuring of the energy sector debts. At the same time the prospects of the emission of stocks of the joint-stock companies, which are created on the basis of the enterprises of distribution, realization and generation will be prepared. In accordance with these prospects, from 1 January 1998, the controlling block of shares (51 per cent) of joint-stock companies, created on the basis of the enterprises of distribution and realization, will be sold by tenders and the rest (49 per cent) will be sold at the auction. Also it is intended to privatize the stocks of the non-finished plants (except "Khudonhesi") of the electric-energy sector in accordance with the existing legislation.

The controlling block of shares (51 per cent) of hydroelectric power stations will temporarily be kept as State property, but the rest (49 per cent) will be sold at auction. The terms and regulations of the privatization of the controlling block of shares by tender and necessary volume of investments will depend on the governmental decision.

In accordance with the Law of Georgia on Privatization of State Property, the submission of the controlling block of shares (51 per cent) of these joint-stock companies to any authorized person with administrative rights (keeping the property in State ownership), on the basis of tenders in agreement with the Ministry of Energy and Fuel, is possible.

#### Coal Industry

Enterprises which are involved in the coal industry will be transformed into joint-stock companies and their controlling block of shares (51 per cent) will be kept as State property until a possible investor makes the necessary volume of investments for rehabilitation and modernization of the enterprise to be privatized.

#### Gas Industry

The controlling block of shares (51 per cent) of the joint-stock companies of the gas industry will be sold by tender (according to investment conditions) observing the following criteria: types of activities must be unchangeable and full rehabilitation of technical conditions of the company should be implemented within 2 years.

The State enterprise "Saktransgazmretsvi" will be transformed into a joint-stock company and the total amount of shares (100 per cent) will be temporarily kept as State property.

The total amount of shares (100 per cent) of the joint-stock company "Saktkhevadgazi" will be temporarily kept as State property and the decision on its privatization in accordance with the existing legislation will be taken in agreement with the Ministry of Energy and Fuel.

#### Oil Extraction

After restructuring, the State company "Saknavtobi" will be transformed into a joint-stock company (except its joint ventures with foreign companies), the full block of shares (100 per cent) of which (except the stocks to be granted free of charge to employees of the enterprise, as it is envisaged by the law) will temporarily stay as State property.

#### Supply of Oil Products

The transformation of commercial-broker enterprises into joint-stock companies will be finished and their controlling block of shares (51 per cent), similarly to those of enterprises which are already transformed into joint-stock companies, will be sold gradually by tenders (according to investment conditions) in agreement with the Georgian Government, and the rest (49 per cent) will be sold at auction.

The completion of the privatization process of the energy sector is envisaged within 18 months.

#### **Question 8.**

**Please confirm that there is no distinction made in the privatization process between foreign and domestic investors.**

#### **Answer:**

Georgia confirms that there is no distinction made in the privatization process between foreign and domestic investors.

(b) **Monetary and fiscal policies**

**Fiscal policy**

**Question 9.**

**Please confirm that, as per the response to question 111 in document WT/ACC/GEO/4, Georgia's new Taxation Code went into effect as envisioned on 1 September 1997.**

**Answer:**

Georgia confirms that the new Tax Code of Georgia went into effect on 1 September 1997.

**Question 10.**

**Please confirm that, as per the response to question 8, that imports from all CIS Republics are assessed VAT and excise taxes in the same manner as imports from other countries.**

**Answer:**

Georgia confirms that imports from all CIS countries are assessed VAT and excise taxes in the same manner as imports from other countries.

(d) **Foreign and domestic investment policies**

**Question 11.**

**As per the response to question 15 of document WT/ACC/GEO/4, we would appreciate more information from Georgia on the types of sectors where it believes there may be a need to prohibit investment. Would sectors be reserved for State exploitation, or would development be prohibited absolutely? Would Georgia seek comments, from both domestic and foreign sources, prior to activating this aspect of Georgian investment law?**

**Answer:**

In accordance with Article 9 of the Law on Promotion and Guarantees of Investment Activities, the list of sectors in which investment activities will be prohibited is elaborated within the framework of the draft law on limitation and prohibition of investments in certain sectors of economic activities. According to which investments are prohibited in the following sectors:

- creation, production and proliferation of nuclear, bacteriological and chemical weapons;
- construction of polygons for testing nuclear, bacteriological and chemical weapons;
- import of radioactive and toxic wastes for the purpose of burying and other disposal;
- conducting the scientific-research activities connected with human cloning;
- production of narcotic substances;
- cultivation of poppy, coca and hemp;
- performing activities prohibited by international legislative acts, agreements, conventions and protocols to which Georgia is a contracting party.

Georgia would highly appreciate comments both from domestic and foreign sources prior to activating the mentioned aspect of Georgian investment law.

**Question 12.**

**Does Georgia, at the present time, have any plans to prohibit investment in any sector?**

**Answer:**

See the answer to question 11.

**Question 13.**

**Please outline how investors would go about receiving permission from the Government of Georgia to engage in banking activity, insurance activity, the issuance of securities, and communications. Has permission been given to any foreign investors yet in these sectors?**

**Are activities indicated in the response to question 15 (in document WT/ACC/GEO/4) totally prohibited or are they submitted to specific conditions? Has the list mentioned in the response been approved? Is there a foreign presence in these sectors? The last item listed reads "other activities stipulated by the legislation of Georgia"; does it mean legislation in the future?**

**Answer:**

Provisions related to receiving permissions for conducting banking, insurance and communication activities in Georgia are given in document WT/ACC/GEO/4 (insurance - page 129, banking - page 130, communications - 135).

The following documents should be presented to the Ministry of Finance of Georgia in order to get a licence for the issuance of securities:

- application;
- prospect of emission (two copies) signed by three persons occupying highest posts of an organization and certified by seal of organization;
- charter (two copies);
- copy of State registration certificate;
- balance sheets of previous year and the first quarter of the ongoing year (half year or nine months, considering the time of making an application for obtaining the licence) certified by an independent auditor;
- document certifying the amount of own capital, certified by an independent auditor;
- the sample of securities (two copies);
- protocol on adoption of decision concerning the issuance of securities;
- document of bank (banks) concerning the account (accounts) of an organization (presenting this document is not necessary for banks);
- list of persons having a personal licence with copies of licences. Every employee of issuer of securities, participating in or administering implementation of operations with securities must have a personal licence;
- copy of contract of issuer of securities with underwriter, in case if the issuer organizes the emission of securities by the investment institution;
- document from the Taxation Service concerning payments in State budget;
- copies of documents certifying the payment of licensing fees.

If the Ministry of Finance has no objections with regard to the presented documents, it has to register the emission prospects in the State register and grant the licence for issuing securities.

A significant flow of foreign investments is observed in the above-mentioned sectors for the last years, mainly in the banking and communication fields (At present, 22 banks are registered in Georgia with the participation of foreign capital).

As it is mentioned in the response to question 15 (in document WT/ACC/GEO/4), an investor does not have the right to carry out the activities in the listed spheres, without permission or a licence. This means that activities in these specific sectors are not prohibited and that they are subject to licensing requirements or permission is needed for their performance.

Furthermore, it should be mentioned that the draft licensing law is in the process of preparation. The draft law will give an exhaustive list of sectors in which the activities will be subject to licensing requirements.

#### **Question 14.**

**Please confirm that an enterprise in which the share of a foreign investor is less than 25 per cent enjoys the same right as a Georgian enterprise. Please provide an update of the legislative modifications affecting this subject.**

#### **Answer:**

In accordance with paragraph 1, Article 3 of the Law on Promotion and Guarantees of Investment Activities, "every foreign investor shall have in the pursuit of an investment or in the conduct of its business the same rights and protection as physical and legal persons of Georgia".

It should be mentioned that with regard to legislative modifications the appropriate remarks have been already sent to the Ministry of Economy.

### **3. Foreign Trade**

#### **Question 15.**

**Please provide recent data on the share of "non-organized trade".**

#### **Answer:**

The share of non-organized trade in total export of 1997 accounts for 36.2 per cent and in total import of 1997 - 15.6 per cent.

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

#### **2. Government Entities Responsible for Making and Implementing Policies Affecting Foreign Trade**

#### **Question 16.**

**The response to question 18 states that "upon ratification, the WTO provisions will automatically become law in Georgia". The response to question 23, however, indicates that "it is necessary to bring the Georgian legislation into full conformity with the WTO provisions". This would appear to indicate that, in order for WTO provisions to operate in Georgia, legislation mandating it is necessary. Can Georgia confirm or further clarify this issue?**

**Answer:**

Georgia will bring its national legislation into full conformity with the WTO provisions upon accession to the WTO. If Georgia could not manage to do so, the WTO provisions will automatically become law in Georgia in accordance with Article 6.2 of the Constitution of Georgia, according to which "International treaties or agreements concluded with and by Georgia, if they do not contradict the Constitution of Georgia, take precedence over domestic normative acts".

**3. Division of Authority Between Central and Sub-Central Governments**

**Question 17.**

**We would be grateful for more details on the powers of the Central Government and those of sub-national authorities with regard to trade policy, and the power of the Central Government to ensure that sub-national authorities act in accordance with WTO obligations.**

**Answer:**

In accordance with Article 3 of the Constitution of Georgia:

- "1. The Georgian supreme national bodies have exclusive power to administer:
- (f) Customs and tariff regimes and foreign trade;
  - (g) State finances and State loans; the minting of money; legislation on banking, credit, insurance and taxes;
  - (p) Legislation on trade, criminal law, civil law, administrative and labour law; ...".

**Question 18.**

**The response to question 17 indicates that Abkhazian trade is largely "unorganized" and may constitute a "significant share in the total import-export structure". The response to question 19 indicates that Abkhazia is not de facto under Georgian Central Government jurisdiction at the present time. What portion of Georgia's external trade is believed to be accounted for by this situation? Do imports from Abkhazia escape both tariffs and domestic taxes?**

**Answer:**

As it was mentioned in the answers to questions 19 and 20 in document WT/ACC/GEO/4, due to the existing political situation in the Autonomous Republic of Abkhazia, this region is not de facto under the jurisdiction of the Georgian Central Government. Consequently, it is natural, that both national tariffs and domestic taxes are not observed by the local administration in this region.

Given the above-mentioned fact it is practically impossible to determine the portion (even approximate) of Autonomous Republic of Abkhazia in Georgia's foreign trade.

**Question 19.**

**Officially, the provisions of the Constitution affecting foreign trade are extended to all the territory of Georgia including the Autonomous Republics of Abkhazia and Ajaria. However, this region is de facto not under the jurisdiction of the Central Government of Georgia. Could we obtain further clarification on this specific situation at the sub-central level? Are there specific local rules regarding foreign trade which differ considerably from national rules?**

**Answer:**

See the answer to question 18.

**Question 20.**

The responses to questions 19, 20 and 21 indicate that the "exclusive power to administer ... taxes" is, under Article 3 of the Constitution, reserved to the Georgian supreme national bodies, i.e. the central authorities rather than any sub-central governments. However, the response to question 19 also states, "in accordance with Article 6 of the Taxation Code, general State and local taxes exist in Georgia". We would appreciate a listing of local taxes applicable to imported goods and services, whether local authorities ever levy taxes on imported goods and services independently of the central administration, and an explanation of how the supreme national bodies administer these taxes through the local authorities.

**Answer:**

In accordance with Article 6.3 of the Georgian Tax Code the following types of local taxes exist in Georgia:

- tax on entrepreneurial activities;
- tax on gambling business;
- health-resort tax;
- hotel tax;
- advertisement tax;
- tax on car-parking;
- tax for use of local symbols.

In connection with collecting of local taxes, this process is implemented by the local taxation bodies in the frame of the authority granted by the national legislation. The local administrative bodies have no rights to impose any kinds of taxes other than listed above.

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- "1. The Georgian supreme national bodies have exclusive power to administer:
- (f) Customs and tariff regimes and foreign trade;
  - (g) State finances and State loans; the minting of money; legislation on banking, credit, insurance and taxes;
  - (p) Legislation on trade, criminal law, civil law, administrative and labour law; ...".

**Question 21.**

Please describe for the Working Party the nature of any authority granted to sub-central authorities, including but not limited to information on application of taxes on goods and services, non-tariff measures affecting international trade, investment regulations and requirements, registration or licensing of economic activities, subsidies, price controls, and standards and sanitary requirements.

**Answer:**

In accordance with Article 3 of the Constitution of Georgia:

- “1. The Georgian supreme national bodies have exclusive power to administer:
- (f) Customs and tariff regimes and foreign trade;
  - (g) State finances and State loans; the minting of money; legislation on banking, credit, insurance and taxes;
  - (p) Legislation on trade, criminal law, civil law, administrative and labour law; ...”.

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- tax on entrepreneurial activities;
- tax on gambling business;
- health-resort tax;
- hotel tax;
- advertisement tax;
- tax on car-parking;
- tax for use of local symbols.

In connection with collecting of local taxes, this process is implemented by the local taxation bodies in the frame of the authority granted by the national legislation. The local administrative bodies have no rights to impose any kinds of taxes other than listed above.

Administrative organs, organizations and economic entities may work out their standards in the sphere of their competence and approve them. The standards should not infringe mandatory requirements of national standards. The responsibility for compliance of these standards with mandatory requirements of national standards, are born by the entities approving these standards. These standards will become effective only after State mandatory registration.

Official information about standards to be elaborated or already adopted, classifiers of technical-economical information, also national standards and classifiers themselves should be accessible for users, including foreigners if the information does not include State secrets.

The State control and supervision over the observance of the mandatory requirements of national standards are carried out by the competent officials of the State administrative organs in accordance with Article 15 of the Law on Certification of Products and Services.

As regards the licensing of economic activities in Georgia, the process of elaboration of draft licensing law is going on, stipulating spheres of activities which will be subject to licensing requirements and determining appropriate institutions which will issue the licences.

**Question 22.**

**Will Georgia confirm that the provisions of the WTO Agreement, including Georgia's Protocol, shall be applied uniformly throughout its entire customs territory, including at the sub-national level, and in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations have been established?**



**Answer:**

Georgia confirms that the WTO provisions, including Georgia's Protocol will be applied uniformly throughout its entire customs territory, which is controlled by the Georgian Central Government.

**Question 23.**

**Will Georgia confirm that from the date of accession its Central Authorities will ensure that the laws, regulations and other measures of government entities at the sub-national level conform to the obligations undertaken in its Protocol of Accession and the WTO Agreement, and will enforce WTO provisions at the sub-national level?**

**Answer:**

Georgia confirms that, upon accession to the WTO, Georgian Central Authorities will ensure that the laws, regulations and other measures of government entities at the sub-national level conforms to the obligations undertaken in its Protocol of Accession and WTO Agreement and will enforce them at the sub-national level controlled by the Central Government.

**4. Any Legislative Programmes or Plans to Change the Regulatory Regime**

**Question 24.**

**The response to question 22 of document WT/ACC/GEO/4 lists draft laws for consideration of the Parliament. Please give a status report on the adoption of this legislation. Please indicate if these or any additional draft or enacted laws relevant to Georgia's WTO accession are now available for review by the Working Party.**

**Answer:**

Customs Code, Law on Statistics, Law on Customs Fees, Law on Customs Tariffs, and Law on Advertising have been already adopted by the Parliament of Georgia and are in force. The English versions of all these laws are available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

The Patent Law of Georgia has been submitted to the Parliament for consideration.

The Law on Licensing of Entrepreneurial Activity is in the process of preparation.

**Question 25.**

**Please provide an update on the implementation of the legislative programme to adjust Georgia's trade policy to WTO rules.**

**Answer:**

The new Law on Customs Tariff and Duty has been adopted by the Parliament of Georgia, which envisages that customs valuation of goods and rules of origin should be in full compliance with international standards. Given this fact draft legislative acts are being prepared with regard to customs valuation and rules of origin. The provisions contained in these documents will be in correspondence with and based on the relevant WTO Agreements.

The new Law on Customs Fees has been adopted by the Parliament. This Law still contains the 0.3 per cent *ad valorem* customs fee on customs declarations. However, work is going on to adjust this measure with Article VIII of the GATT.

The draft law on abolition of prohibition of export of ferrous and non-ferrous metal scrap is prepared and will be submitted to the Parliament of Georgia.

The draft patent law is expected to be submitted to the Parliament in May.

The Foreign Trade Law is being prepared together with IRIS (Institutional Reform and Informal Sector, USA).

The draft licensing law is under the process of elaboration.

Georgia closely cooperates with IRIS Centre and GEPLAC (Georgian-European Policy and Legal Advice Centre, European Communities) to bring its standardization and sanitary/phytosanitary systems in full conformity with the relevant WTO Agreements.

With the purpose of bringing Georgia's Tax Code in full compliance with Article III of the GATT, Georgia plans to revise it during autumn session of the Parliament of Georgia.

The new draft law on copyright and neighbouring rights has been prepared which is based on WIPO and WTO TRIPS standards.

#### **Question 26.**

**Please list areas where Georgia believes further new legislation or regulation is necessary for compliance with the WTO, and Georgia's timetable for implementing these changes in its trade regime.**

#### **Answer:**

Georgia is preparing an overall foreign trade law that will determine the responsibilities of various ministries for particular aspects of the WTO Agreement. Specific laws, or in most cases regulations, will then be prepared in a number of areas, including anti-dumping, countervailing duties, safeguards, customs valuation, rules of origin, pre-shipment inspection, export/import licensing, export controls of military and dual use technology, standards, and sanitary and phytosanitary measures. Additional legislation is also being prepared in certain areas of intellectual property, and revisions are being made to several investment laws, including the law governing insurance. In each of these areas, all new laws and regulations will conform fully to WTO standards.

These new laws and regulations are being prepared as rapidly as possible given available resources. However, it is not possible at this time to provide a precise schedule for their completion.

#### **5. Laws and Legal Acts**

#### **Question 27.**

**Could Georgia elaborate on the second paragraph of its answer to question 25 (document WT/ACC/GEO/4)? Which are the exceptional cases? Only those set out in Article 42, section 5 of the Constitution? Are the same principles applied to regulations?**

**Answer:**

In accordance with Article 42.5 of the Constitution of Georgia "Laws that do not reduce or abrogate responsibility have no retroactive force".

As it is mentioned in the document WT/ACC/GEO/4, the above-mentioned provision does not make Georgian regulatory system not-transparent and unpredictable.

**Question 28.**

**Could Georgia elaborate on the "publicity" of normative acts; are they published in an Official Journal? Is the "Sakartvelos Respublica" the Georgian Official Journal? When do they become effective?**

**Answer:**

See the answer to question 29.

**Question 29.**

**This section of document WT/ACC/GEO/3 appears to indicate that Article 38 of the Law on Normative Acts (29 October 1996) requires that a "normative act" must be published in the "Sakartvelos Kanonmdeblobis Matsne" (Georgian Legislation News) or the "Sakartvelos Parlamentis Utskhebani" (Georgian Parliament News) in order to take effect. It then states that "State secrets" may not be published, and that Article 61 of the Law on Normative Acts would allow publication of normative acts in the newspaper "Sakartvelos Respublica" (Republic of Georgia) or in the official publishing organ of the authority who adopts normative acts as a substitute for publication in the Georgian Legislation News. Please clarify where normative acts must be published for enactment.**

**Answer:**

The normative acts for enactment must be published in "Sakartvelos Kanonmdeblobis Matsne" (Georgian Legislation News) or the "Sakartvelos Parlamentis Utskhebani" (Georgian Parliament News) or "Sakartvelos Respublica" (official newspaper) or in the official publishing organ of the authority who adopts the normative act.

**Question 30.**

**Please clarify the relationship of these requirements with Article X of the GATT 1994, i.e., do the requirements of the Law on Normative Acts meet the requirements of Article X that "Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any [member], pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on import or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them". Does Georgia publish all such acts and measures prior to implementation?**

**Answer:**

Yes, Georgia publishes all such measures prior to their implementation.

**6. Description of Judicial, Arbitral or Administrative Tribunals or Procedures**

**Question 31.**

**In the response to questions 28 and 72 in document WT/ACC/GEO/4, Georgia outlines the right of appeal in customs cases, quoting from "section XIII of the draft Customs Code". The enacted Customs Code of 14 November 1997, however, does not contain these provisions, but rather the statement in Article 166 that "Decisions, action or inaction of Customs bodies and their officials may be appealed against unsure procedure established by law". Have the provisions outlined in response to question 28 been enacted yet? If so, please provide a copy of the law or regulation where they can be found.**

**Answer:**

The new Customs Code does not contain provisions relating to right of appeal. Therefore, these provisions have not been enacted.

Decisions or actions of Customs bodies and their officials may be appealed in the courts of Georgia.

**Question 32.**

**If they have been enacted, do they also apply in the area of application of standards and sanitary certification and inspection, application for import or export licences, measures taken against dumping and subsidized imports, and intellectual property protection as well as customs matters, e.g., customs valuation, classification and duty, and taxation of imports? If not, please indicate what other provisions of Georgian law would prevail. If they have not yet been enacted, please indicate when they will come into force.**

**Answer:**

The right of appeal in cases of customs valuation will be regulated by the new legislative act on customs valuation which is in the process of preparation.

The decisions or actions of any governmental entities or officials may be appealed in the courts of Georgia.

**Question 33.**

**Is there a legal definition of "inaction" of a customs body or authorized officials that can give right to appeal according to Article 374 of the draft Customs Code?**

**Answer:**

See the answer to question 31.

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

##### **1. Import Regulation**

##### **(b) Characteristics of national tariff**

###### **Question 34.**

**We understand that Georgia has taken the decision to introduce the Harmonised System (HS) 96 tariff nomenclature, and would be grateful for details as to when it is likely to be introduced.**

###### **Answer:**

In accordance with Decree No. 249 of 24 December 1997 of the Chairman of the Customs Department of Georgia, the Harmonised System 96 has been adopted by Georgia which took effect on 1 January 1998.

###### **Question 35.**

**In its response to question 29, Georgia indicates that it currently uses the HS 92 system for both classification and statistical purposes, and intends to adopt the HS 96 system "in the near future". WTO Members have agreed to adopt the HS 96 nomenclature. Georgia should negotiate and establish its goods market access schedule in the HS 96 nomenclature. This means that Georgia should submit its goods market access offer in HS 96 nomenclature and supply its current applied tariffs in HS 96 nomenclature.**

###### **Answer:**

In accordance with Decree No. 249 of 24 December 1997 of the Chairman of the Customs Department of Georgia, the Harmonised System 96 has been adopted by Georgia which took effect since 1 January 1998.

Georgia started the first round of bilateral market access negotiations with WTO Members on the goods market access schedule which was based on the HS 92 nomenclature.

Georgia will gradually change its goods market access schedule that will be based on HS 96 nomenclature.

###### **Question 36.**

**We note that in the response to question 32, Georgia stated that the trade-weighted average customs tariff in 1996 was 2.2 per cent and for the first quarter of 1997 was 3.9 per cent. There appears to be a substantial difference between these trade-weighted averages and the tariff percentages submitted in document WT/ACC/SPEC/GEO/4, the "Initial Offer on Goods". Could Georgia explain the discrepancy? In addition, please provide the average current applied rates for Georgia's imports, including those for agricultural products.**

###### **Answer:**

In accordance with the statistical data of the Customs Department of Georgia the revenue accrued from import duties in 1997 amounted to 61,185 thousand Lari while the volume of the total import for the same period amounted to 930 million United States' Dollars approximately

1,199,700 thousand Lari (average exchange rate US\$1 = 1.29 Lari). Trade weighted average customs tariff in 1997 equalled 5.1 per cent.

After calculations made by the Ministry of Trade and Foreign Economic Relations on the basis of Georgia's initial tariff offers the rate of trade weighted average customs tariff equals 6.74 per cent. In the agricultural sector it equals 9.22 per cent and in the industrial sector 5.38 per cent.

(c) **Tariff quotas and tariff exemptions**

**Question 37.**

**Georgia has indicated that its domestic legislation allows for implementation of tariff rate quotas (TRQs) for countries with which it has entered into trade agreements. Upon accession to the WTO, does Georgia plan to implement tariff-only measures for all agricultural imports regardless of the origin?**

**Answer:**

Georgia confirms that upon accession to the WTO it will maintain only tariff measures for all agricultural imports regardless of the origin.

**Question 38.**

**Georgia affirms that no tariff quotas are used in practice. Is there a plan to introduce them in the future?**

**Answer:**

There is no plan to introduce tariff quotas in the future.

**Question 39.**

**We note that Georgia's legislation provides for tariff quotas, but that in practice they have not been used. We seek clarification as to whether this is still the case.**

**Answer:**

See the answer to question 38.

**Question 40.**

**Could Georgia provide a copy of current applied rates for all agricultural products?**

**Answer:**

The current applied rate of customs duty for all agricultural products is 12 per cent. Except cigarettes, which are levied on a specific basis rather than *ad valorem* and the current applied rate of customs duty, which includes VAT and excise tax for this product, is as follows:

- 0.25 Lari per box for high, A, B, I and II class of cigarettes;
- 0.19 Lari per box for other classes of cigarettes.

**Question 41.**

**We would be grateful if Georgia could provide more details on tariff exemptions, including specific details by HS tariff item.**

**Answer:**

In accordance with Article 18 of the Law of Georgia No. 1316-II of 20 March 1998 on Customs Tariff and Duty the following are exempted from customs duties:

- (a) export of goods;
- (b) re-export of goods; during importation of goods intended for re-export customs duties are to be paid or bank guarantee should be provided. Customs duties paid are returned to importer or bank guarantee is cancelled once he exports the imported goods from the territory of Georgia;
- (c) goods transported via the territory of Georgia by transit;
- (d) imported goods placed in the customs warehouses. The customs duty is imposed according to the existing rules upon going out of goods from customs warehouses into free turnover; in the case of different customs regime - according to regulations of that regime;
- (e) goods imported for the purpose of liquidation of natural calamities, accidents and catastrophes, also humanitarian aid;
- (f) goods, import of which is envisaged by agreements on grants, according to the rules determined by Decree of the President of Georgia;
- (g) goods, import of which is financed at the expense of grants or at the expense of preferential credits provided by a foreign State body or international organization, which contain minimum 25 per cent of grant element. Grant element is determined by the Ministry of Finance of Georgia with agreement of the Parliament of Georgia, by means of discounting of payments within frames of a credit proceeding from the rate of a discount in accordance with conditions of a credit;
- (h) goods, destined for official use by foreign diplomatic and equal to them representations, also goods destined for personal use by diplomatic and administrative-technical staff (including members of families living with them) of these representations;
- (i) goods, temporarily imported to the territory of Georgia;
- (j) raw materials and semi-finished goods, destined for production of goods for export within the limits of a volume of practically exported ready goods. Upon importation of the mentioned raw materials and semi-finished goods to the territory of Georgia, the customs duty must be paid or a bank guarantee must be provided, however, upon exportation of ready goods from the territory of Georgia, the paid amount must be returned to the payer or a bank guarantee must be abolished according to a volume of practically exported ready goods;
- (k) goods, to a total value of less than 300 Lari in each entry, imported by a natural person from abroad, according to the list determined by the Resolution of the Parliament of Georgia No. 273-II of 13 June 1996;
- (l) wheat, children's food and diabetic food products;

- (m) creative and scientific works of the Georgian classics and citizens of Georgia published abroad;
- (n) sixteen names of pharmaceutical products according to the list approved by the Ministry of Finance, Ministry of Health Protection and Ministry of Agriculture and Food of Georgia:
- (i) 3002 20 000 - vaccines,
  - (ii) 3004 31 100 - insulin,
  - (iii) 3004 40 900 - morphine,
  - (iv) 3004 20 100 - rifampicin,
  - (v) 3004 20 100 - cetofaccim,
  - (vi) 3004 10 900 - pirazinamid,
  - (vii) 3004 39 900 - petidin,
  - (viii) 3004 50 100 - polyvitamin,
  - (ix) 3004 10 100 - ampicillin,
  - (x) 3001 90 910 - heparin,
  - (xi) 3005 90 110 - cotton and its products,
  - (xii) 3005 90 310 - gauze and its products,
  - (xiii) 3002 31 000 - vaccines against foot-and-mouth disease,
  - (xiv) 3002 39 000 - other veterinary vaccines,
  - (xv) 3002 90 500 - cultures of microorganisms,
  - (xvi) 3002 90 900 - cultures of microorganisms;
- (o) aviation fuel, lubricants and other supporting technical equipment during international carriages by air according to the international rules of civil aviation;
- (p) import of residual oil.
- (d) **Other duties and charges**

**Question 42.**

**We are pleased to see that Georgia has recognised that its customs user fee is inconsistent with GATT Article VIII and that it needs to be changed. We would be grateful for details on plans to bring the customs user fee into conformity with GATT Article VIII.**

**Answer:**

0.3 per cent *ad valorem* fee for customs declarations still appears in the new Law on Customs Fees. However, Georgia recognizes the inconsistency of this measure with Article VIII of the



GATT 1994. Actions are being continued to bring this regime into full compliance with WTO requirements.

**Question 43.**

**Could Georgia provide an update on the repeal of the 0.3 per cent *ad valorem* customs fee?**

**Answer:**

See the answer to question 42.

**Question 44.**

**The response to question 44 states that Georgia intends to change the provision of law that imposes a 0.3 per cent *ad valorem* fee for customs declarations, "in the near future". Please report on efforts to realize this pledge, including if possible a description of precisely how this will be accomplished and when.**

**Answer:**

See the answer to question 42.

**Question 45.**

**How does Georgia intend to bring into conformity its *ad valorem* fees for customs declaration with Article VIII of the GATT? What will be changes in the relevant Georgian legislation?**

**Answer:**

See the answer to question 42.

**Question 46.**

**The new Customs Law provides for customs fees both for services rendered and for "developing the Customs Department of the Republic of Georgia". Please list all such fees (including the amount of the fee) and indicate how they are "limited in amount to the approximate cost of services rendered and do not represent a general revenue charge or indirect protection to domestic products or a taxation on imports for fiscal purposes" as required by GATT Article VIII.**

**Answer:**

After adoption of the new Law on Customs Fees by the Parliament of Georgia, Resolution No. 333 of 27 April 1993 of the Cabinet of Ministers of Georgia on Customs Procedures in the System of Customs Committee, Types of Services Rendered and the Rates of Customs Fees has been abolished.

The new Law on Customs Fees is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 47.**

**Georgia indicated in its response to question 46 that its domestic legislation allows "seasonal export and import duties to be imposed on certain types of products...". Upon accession, will Georgia commit not to apply seasonal import duties?**

**Answer:**

Georgia confirms that the imposition of seasonal tariffs is envisaged by its national legislation. However, Georgia has never used the seasonal tariffs in practice. In case of imposition of seasonal tariffs, Georgia commits that such measures will be consistent with WTO requirements.

**Question 48.**

**We note that Georgia has provision in its legislation to use seasonal tariffs, but that they have not been used. We would like information on the circumstances in which seasonal tariffs might be used, and on what goods they would be likely to be used.**

**Answer:**

In accordance with Article 6 of the Law of Georgia No. 1316-II of 20 March 1998 on Customs Tariff and Duty:

"1. Seasonal customs tariff is a duty imposed for certain period of time, which is aimed at regulating the exportation from and importation into the customs territory of Georgia of goods, considering the seasonal peculiarities of production and consumption of these goods.

2. Duration of application of seasonal customs tariff does not exceed six months in a year.

3. The base for introducing seasonal customs tariff is systematic analysis made by the relevant organs of executive authority in accordance with requirements stipulated in paragraph 1".

**(f) Import licensing procedures**

**Question 49.**

**Are import permits required for food imports? If so, what agency is responsible for issuance, and what are the eligibility requirements?**

**Answer:**

Import permits are not required for food imports.

**Question 50.**

**Are import permits required for imports from other CIS countries?**

**Answer:**

Import permits are not required for imports from other CIS countries.

**Question 51.**

**According to document WT/ACC/GEO/3 Annex 3, Article 1, section (b) and section (f), the approval of four separate administrative bodies is required for the importation of wild animals and nuclear materials. For wild animals, one must approach the Ministry of Trade and Foreign Economic Relations, Ministry of Protection of Environment and Natural Resources, the Department of Forestry and the Ministry of Agriculture and Food. For nuclear materials, one must approach the Ministry of Trade and Foreign Economic Relations, Cabinet of Ministers, Ministry of Protection of Environment and Natural Resources and the Ministry of Health**

**Protection. What does Georgia plan to do to reduce the number of agencies to be approached to meet WTO requirements?**

**Answer:**

The Department of Forestry exists under the Ministry of Protection of Environment and Natural Resources. Therefore, only two Ministries have to be approached during importation of wild animals (Annex 3, Article 1, section (b), document WT/ACC/GEO/3).

According to the Law on State Executive Authority the Cabinet of Ministers of Georgia has been abolished. Therefore, only two Ministries have to be approached during importation of nuclear materials (Annex 3, Article 1, section (f), document WT/ACC/GEO/3).

**Question 52.**

**Are the criteria, documentation requirements and procedures for the administrative bodies listed in section 1 of Annex A freely available to traders? How can a trader access this information?**

**Answer:**

All trade related information including above mentioned provisions are freely accessible for traders whether they are domestic or foreign natural or legal persons. If they could not get the information from mass-media, they will receive the necessary trade-related information upon a request made to the appropriate organizations dealing with trade-related aspects.

**Question 53.**

**Can Georgia confirm that the foreign currency needed for imports is equally available for goods subject to import licensing?**

**Answer:**

Georgia confirms that the foreign currency needed for imports is equally available for goods subject to import licensing.

**Question 54.**

**Can Georgia confirm that their licensing renewal process complies with Article 1, section 5 of the GATT Agreement on Import Licensing and is as simple as possible?**

**Answer:**

Georgia confirms that licensing renewal process complies with Article 1, section 5 of the GATT Agreement on Import Licensing and is simple.

**Question 55.**

**Does Georgia require a mark of conformity? If so, what are the requirements and what agency(s) are responsible for issuance?**

**Answer:**

Georgia requires a certificate of conformity, which is issued by the State Department of Standardisation, Metrology and Certification of Georgia.

**(h) Customs valuation****Question 56.**

**It appears that Georgia is undertaking work on its customs legislation to bring it into conformity with WTO requirements, but that there remain provisions that are inconsistent with the Customs Valuation Agreement. We seek further information from Georgia on progress in bringing its customs valuation legislation into conformity with WTO requirements.**

**Answer:**

In accordance with Article 10 of the new Law on Customs Duty and Tariff adopted by the Parliament of Georgia on 20 March 1998 the customs valuation of goods is implemented in accordance with the principles recognized by the international customs practices and is regulated by legislative acts. In accordance with this law, regulations on customs valuation that are fully WTO-consistent (in fact, they have been taken directly from the Customs Valuation Agreement) have been prepared and are under review in the Ministry of Finance. The English-language version of these regulations will be forwarded to the WTO Secretariat as soon as they are officially issued.

**Question 57.**

**The response to question 56 states "that there are no discrepancies" between Resolution No. 843 of the Cabinet of Ministers of Georgia "on rules of determining customs valuation of goods" and the WTO Customs Valuation Agreement. Unfortunately, that is not quite the case. In order to analyze the consistency of Georgia's customs valuation regime with WTO provisions, we have reviewed (a) the information provided in documents WT/ACC/GEO/3 and 4; (b) the Resolution No. 843 of the Cabinet of Ministers of the Republic of Georgia Concerning Approval of the Instructions on Order of Definition of Customs Value of Goods Imported to the Territory of the Republic of Georgia effective 1 January 1995; (c) the Law of Georgia on Customs Duty dated 27 December 1996; (d) the Decree of the Republic of Georgia 'Concerning Customs Tariffs dated 21 October 1996; and (e) the Customs Code of Georgia effective 1 January 1998. While we commend Georgia on its efforts to implement the WTO Valuation Agreement, we are unable to state that Georgia has fully implemented the WTO Valuation Agreement. Based on our review of the above documents, Georgia has only partially implemented the WTO Valuation Agreement, and we find that Georgia's laws and regulations fail to address the following critical areas:**

- **the provisions for assists/"goods and services" found in Article 8 and the Interpretative Notes in Annex I to the WTO Valuation Agreement do not appear to be fully implemented;**
- **the royalty provision and proceeds of subsequent resale, disposal or use provision of Article 8 of the WTO Valuation Agreement are merged with the provision for assists/"goods and services";**
- **the related party provisions in Article 1 and the Interpretative Notes in Annex I to the WTO Valuation Agreement do not appear to be fully implemented;**
- **as noted in the response to question 61, Georgia does not provide for Article 4 of the Customs Valuation Agreement, allowing only the importer to reverse the order of use of deducted or computed valuation methods;**
- **under Article 8(3) and (4) of the WTO Valuation Agreement, Georgia fails to include the provision concerning objective and quantifiable data and no other additions other than those provided for are to be included in the price actually paid or payable;**
- **as noted in the response to question 66, Georgia fails to include several prohibited methods of appraisal required by Article 7 of the WTO Valuation Agreement, as**

- well as the obligation to inform the importer in writing of the method of appraisal used by Customs;
- minimum prices/reference prices for imports still appear;
  - the obligation to publish laws, regulations, etc./transparency pursuant to Article 12 does not appear to be implemented;
  - the Interpretative Notes in Annex I of the WTO Valuation Agreement do not appear to be fully implemented in Georgian law;
  - Article 15(5) of the WTO Valuation Agreement provision concerning sole agent, sole distributor or sole concessionaire is not implemented;
  - the Committee on Customs Valuation Decision 4.1 concerning the "Valuation of Carrier Media Bearing Software for Data Processing Equipment" is not implemented; and
  - the Committee on Customs Valuation "Decision on the Treatment of Interest Charges in the Customs Value of Imported Goods" is not implemented.

We have more fully addressed these concerns in a separate document provided to the Georgia delegation which also details other technical problems we found during our review. We seek a report from Georgia prior to the next Working Party meeting on how it intends to remedy these identified deficiencies and to fully implement the WTO Agreement on Customs Valuation prior to accession.

**Answer:**

See the answer to question 56.

**Question 58.**

**What have been the last developments in bringing Georgia's legal provisions on customs valuation into full line with the WTO Customs Valuation Agreement requirements?**

**Answer:**

See the answer to question 56.

**Question 59.**

**Could Georgia provide more information on when minimum import prices will be abolished? We understand they are still applied on fourteen items and would be grateful for a list of these items.**

**Answer:**

After adoption of the new Law on Customs Tariff and Duty by the Parliament of Georgia on 20 March 1998 the Law on Customs Duty of 27 December 1996, which provided for the system of minimum import prices, was abolished. The new Law was published in the press on 29 March 1998 and took effect on this day. Upon entry into force of the new Law on Customs Tariff and Duty the system of minimum import prices was abolished.

**Question 60.**

**Could Georgia provide us with a clear dismantling programme of all groups of products subject to a system of minimum import prices?**

**Answer:**

See the answer to question 59.

**(j) Pre-shipment inspection**

**Question 61.**

**Georgia has indicated that it is considering whether or not to implement a pre-shipment inspection regime. Has a decision been made on whether or not to do so? If a pre-shipment inspection scheme is to be implemented, we would be grateful for details of the proposed scheme.**

**Answer:**

Georgia does not implement a pre-shipment inspection regime. No decision has been made in this regard.

**Question 62.**

**Georgia indicates that it is considering the adoption of pre-shipment inspection. What is the status of Georgia's plans in this regard? Have any steps been taken to secure the services of a PSI firm? If so, what duties will it undertake for Georgia and how will they be implemented?**

**Answer:**

See the answer to question 61.

**(k) Application of internal taxes on imports**

**Question 63.**

**What is the relationship of the Part III of the Tax Code on the Value Added Tax provided in document WT/ACC/GEO/4/Add.1 and the Law of Georgia on Value Added Tax provided in document WT/ACC/GEO/3/Add.1? The response to question 83 seems to imply that they are the same.**

**Answer:**

The Law of Georgia on Value Added Tax, which is one of the consisting parts of the Tax Code of Georgia, was adopted by the Parliament of Georgia and entered into force on 1 September 1997 (see Chapter III of the Tax Code of Georgia).

**Question 64.**

**Concerning exemptions from the VAT listed in Article 101 of the Tax Code, the response to question 80 indicates that Georgia recognizes that the current exemptions provided in VAT exemption category R for imports of scientific, artistic, and literary books and journals, the authors of which are citizens of Georgia, and the import of Georgian classical literature published abroad are not consistent with Article III of the GATT. Please indicate how this will be remedied.**

**Answer:**

The issue will be discussed by the Parliament of Georgia during the autumn session.

**Question 65.**

**The distribution of religious items and religious construction activities noted in category U of this Article are VAT-exempted for the Patriarchate of Georgia. Do any other religious groups enjoy similar tax benefits in Georgia?**

**Answer:**

No other religious groups enjoy similar tax benefits in Georgia. However, this issue will be revised during the autumn session of the Parliament of Georgia.

**Question 66.**

**There are a number of taxes on automobiles provided for in the Tax Code, e.g. excise taxes in Article 130, registration taxes in Chapter 25 and taxes on entry into Georgia in Chapter 35. Could Georgia elaborate on the purposes, taxable base and point of application of these three types of taxes? If an imported automobile is resold in Georgia, is it subject to excise tax again?**

**Answer:**

In accordance with the Tax Code of Georgia the following types of taxes are imposed on automobiles:

- tax on ownership of motor vehicles; The tax is payable to the organs of the road fund at the time for registration, re-registration (in the case the former owner of the vehicle has not paid the tax for the previous year), or the annual technical inspection of the motor vehicle;
- tax on entry in the territory of Georgia by motor vehicles; The tax is payable by any person who is the owner or driver of a motor vehicle entering the territory of Georgia (including transit);
- excise tax. According to Article 124 of the Tax Code of Georgia "The object of taxation is the import of excisable goods, the supply of excisable goods produced in Georgia ...".

If an imported automobile is resold in Georgia, it is not subject to excise tax again.

**Question 67.**

**The response to question 9 in document WT/ACC/GEO/4 states that "excise taxes are the same for imported and domestic products". We would like to have some clarification of the distinctions made in Article 130 of Georgia's tax legislation associated with sharply different tax rates for similar products. Excise tax category 1 of Article 130 "wines made of grapes and wine materials, champagne and sparkling wines" contained in HS item 2204 have an excise tax of 15 per cent. Tax category two, "strong wines and wine materials" in the same HS tariff item are taxed at 50 per cent, "sparkling wines made of grapes" in tax category 3 have a tax rate of 20 per cent, and "Champagne wines" in excise tax category 4 have a tax of 100 per cent. Are these tax rates fully *ad valorem* also based on alcoholic content of the beverages? Please indicate the differences between wines and wine materials in excise tax category 1 and the wines and wine materials subject to a higher tax rate in categories 2, 3 and 4.**

**Answer:**

The above mentioned tax rates are fully *ad valorem* and are not based on alcoholic content of the beverages. See also the answer to question 71.

**Question 68.**

**Please provide a more detailed description of the types of "fruit wines", "wine materials" and "other drinks" covered by excise tax category 5 and HS tariff item 2206.**

**Answer:**

Excise tax category 5 includes cider, perry, mead and other types of fruit wines.

**Question 69.**

**What types of wines and wine drinks are produced in Georgia? Can Georgia indicate what percentage of its wine output falls in tax category 1 and the other wine tax categories?**

**Answer:**

The following types of grape wines are produced in Georgia: dry, semidry and semisweet quiet, ordinary and delicious grape wines.

Grape wines account for 80 per cent of the total amount of alcoholic beverages produced in Georgia, sparkling wines - 9 per cent, brandy - 3 per cent, liqueur-vodka - 6 per cent and ethyl spirit - 2 per cent.

**Question 70.**

**Excise tax category 6 of Article 130, "brandy, materials for brandy, other spirits obtained from wines and vodka" contained in HS item 2208 have an excise tax of 50 per cent. Tax category 7, however, "all others (cognac, whisky, gin, rum, balsam and other alcoholic beverages)" in the same HS tariff item have an excise tax of 100 per cent, and "ethyl spirits (alcohol)" in HS tariff item 2207 and 2208 are also taxed at 100 per cent. Are these taxes fully *ad valorem* also based on alcoholic content of the beverages?**

**Answer:**

The above mentioned rates of taxes are fully *ad valorem* and are not based on alcoholic content of the beverages.

**Question 71.**

**Why is "brandy" taxed at a lower rate than "cognac" and vodka taxed at a lower rate than whisky, gin, rum, and other distilled alcoholic beverages? On what basis is there a distinction in these products? Why are ethyl spirits taxed at a higher rate than, e.g., vodka?**

**Answer:**

The Government of Georgia understands that certain aspects of its treatment of alcoholic beverages are not fully consistent with WTO rules. A revision of the customs, excise and VAT taxes imposed on imported alcoholic beverages is expected to be undertaken during the summer of 1998, and changes will be made to bring these taxes fully into compliance with WTO rules.



**Question 72.**

**What types of distilled alcoholic beverages are produced in Georgia? Can Georgia indicate what percentage of its distilled alcohol output falls in tax category 6 and what portion falls in categories 7 and 8?**

**Answer:**

Georgia mainly produces the following types of distilled alcoholic beverages brandy, liqueur, vodka and ethyl spirit.

Production of brandy accounts for 3 per cent of total amount of alcoholic beverages produced in Georgia, liqueur-vodka - 6 per cent and ethyl spirit - 2 per cent. The production of beer in Georgia in 1997 accounted for 764,000 Dal (dekalitre).

**Question 73.**

**Article 130 of the Tax Code indicates that "tobacco products (other than tobacco raw materials)" in excise tax category 9 of "extra quality, first and second class," in HS tariff items 2402 and 2403 are subject to a rate of 100 per cent, while those of "third, fourth, fifth, and sixth classes" in the same tariff categories have an excise tax of only 5 per cent. Please provide a more detailed description of the products in each of the five classes, noting the differences between the first and second classes, on the one hand, and the third, fourth and fifth classes of tobacco products on the other hand that justify such widely differing tax rates.**

**Answer:**

The Government of Georgia understands that certain aspects of its treatment of tobacco products are not fully consistent with WTO rules. A revision of the taxation system of imported tobacco products is expected to be undertaken during the summer of 1998, and changes will be made to bring these taxes fully into compliance with WTO rules.

**Question 74.**

**What types (and classes) of tobacco products are produced domestically in Georgia? Can Georgia indicate what percentage of its output of tobacco products falls in the first and second classes of tobacco products and in the third, fourth and fifth classes, respectively?**

**Answer:**

Georgia produces only two (third and fifth classes) types of cigarettes. Production of third class cigarettes accounts for 70 per cent of the total production of tobacco products and fifth class cigarettes - 30 per cent.

**Question 75.**

**Article 130 indicates that automobile gasoline (other than ethylated gasoline) contained in tax category 13 and HS tariff items 271000330 and 271000350 is taxed at the rate of 15 per cent, but that "ethylated gasoline" contained in tax category 14 in the same HS tariff line is taxed at 50 per cent. Please explain why this differential exists.**

**Answer:**

The difference exists due to the ecological reasons, that ethylated gasoline is more contaminating than other automobile gasoline.

**Question 76.**

**Georgia's excise taxes on alcohol and tobacco products would appear to vary based on characteristics in a manner that could disadvantage imports. We seek an excise tax regime in Georgia that meets the criteria of Article III of the GATT, and conforms to the principles outlined in recent dispute settlement panels that have clarified the scope of national treatment obligations in the application of excise taxes.**

**Answer:**

See the answers to questions 71 and 73.

**Question 77.**

**Is the excise tax applied to goods originating in the CIS the same applied to goods originating in other countries?**

**Answer:**

The excise tax applied to goods originating in the CIS is the same applied to goods originating in other countries.

**Question 78.**

**The structure of the excise taxes as described in document WT/ACC/GEO/3 seems not to be consistent with Article III of the GATT. Please explain in detail, which of the products subject to excise taxes are also produced in Georgia.**

**Answer:**

The products included in the following tax categories (Tax Code of Georgia, Law on Excise Tax, Article 130) are produced in Georgia:

- tax category 1;
- tax category 2;
- tax category 3;
- tax category 4;
- tax category 6;
- tax category 7;
- tax category 8;
- tax category 9 (third and fifth class cigarettes);
- tax category 10;
- tax category 13;
- tax category 14;
- tax category 16.

(l) **Rules of origin**

**Question 79.**

**Could Georgia provide a detailed plan for the implementation of the WTO Agreement on Rules of Origin for non-preferential trade purposes?**

**Answer:**

In accordance with the paragraph 4 of Article 12 of the new Law on Customs Tariff and Duty adopted by the Parliament of Georgia on 20 March 1998, the criteria and rules for determining a country of origin are based on international experience and practice and are established by legislative acts. In accordance with this law, new regulations on rules of origin are being prepared that will be based directly on and be fully consistent with the WTO provisions. The English language version of these regulations will be forwarded to the WTO Secretariat as soon as they are officially issued.

(p) **Reference prices**

**Question 80.**

**Please provide an update on the phasing out of the system of minimum import prices.**

**Answer:**

After adoption of the new Law on Customs Tariff and Duty by the Parliament of Georgia on 20 March 1998 the Law on Customs Duty of 27 December 1996 has been abolished, which envisaged the system of minimum import prices. The new Law was published in the press on 29 March 1998 and went in effect on this day. Upon entry into force of the new Law on Customs Tariff and Duty the system of minimum import prices was abolished.

**Question 81.**

**The response to question 103 of document WT/ACC/GEO/4 seems to directly contradict the statement in response to question 66 that the provisions in Georgia's customs valuation regulations prohibit the use of minimum customs values. Imports of alcoholic beverages, tobacco, several food staples and jewellery are covered by these measures. Has this practice been eliminated, as foreseen in the responses to questions 106 and 108?**

**Answer:**

See the answer to question 80.

2. **Export Regulation**

(c) **Quantitative export restrictions, including prohibitions, quotas and licensing systems**

**Question 82.**

**Does Georgia exempt any countries from the restrictions on exports of timber and metal scrap? If so, please list them, cite the agreement or law providing for the exemption, and give some justification for the exemption in terms of Article I of the GATT. The responses to questions 112-118 would appear to indicate that Georgia's current restrictions on the export of ferrous and non-ferrous scrap and unprocessed timber would appear to violate Article XI.**

**Georgia should revise these restrictions or eliminate them to bring them into conformity with WTO provisions prior to accession, or on a time-table agreed with WTO Members.**

**Answer:**

Georgia does not exempt any countries from restrictions on exports of timber and metal scrap.

On the basis of the Decree of the President of Georgia of 17 March 1998 on Measures of Ensuring the Implementation of ESAF's programme and the second Structural Adjustment Credit (SAC II), the Ministry of Trade and Foreign Economic Relations of Georgia has prepared the draft law on abolition of prohibition on export (re-export) of ferrous and non-ferrous metal scrap. The draft law, which is agreed with the relevant ministries, will be discussed in the Parliament of Georgia in the near future.

With the purpose of ensuring the ecological balance in Georgia's forests and establishing an order in utilization of forestry resources and given the "Credit Agreement on Development" signed between the Government of Georgia and the International Development Association (IDA, the World Bank), ratified by the Parliament of Georgia on 31 May 1996, Georgia has the right to have an export licensing mechanism on timber.

The new Law on Export-Licensing Fees on Timber took effect on 31 March 1998, which provides for a export-licensing fee - 60 Lari per cubic meter of timber (60 Lari/m<sup>3</sup>).

**Question 83.**

**GATT Article XI.2(a) provides that no prohibitions or restrictions (other than duties, taxes or other charges) shall be made on exports to the territory of another GATT party to relieve shortages of essential products to the exporting party. When does Georgia expect the export prohibition on ferrous and non-ferrous scrap metals to be removed?**

**Answer:**

See the answer to question 82.

**Question 84.**

**Please specify when the licensing procedures for the export of timber will be removed. Please provide evidence that licensing is required for ecological reasons.**

**Answer:**

See the answer to question 82.

**Question 85.**

**Georgian timber is currently subject to export restrictions: are there any other less restrictive measures that can be envisaged to attain the same goal, while respecting Article XI of the GATT?**

**Answer:**

See the answer to question 82.

(h) **Import duty drawback schemes**

**Question 86.**

**Under the Subsidies Agreement, subsidies that are prohibited under Article 1.1(ii) include tax revenue foregone. When does Georgia intend to phase out this tax exemption?**

**Answer:**

According to the Law on Customs Tariff and Duty, imports of raw materials and semi-finished goods destined for production of goods for export are exempt from customs duties in Georgia. Upon importation of such raw materials and semi-finished goods, the customs duty must be paid or a bank guarantee must be provided. However, when manufactured goods containing such imported raw materials are actually exported, the exporter may "drawback" the duties paid or guaranteed. The main reason for maintaining the import duty drawback scheme in Georgia is the export promotion purposes. Georgia understands that such a drawback provision is not a violation of the WTO rules and does not intend to phase it out.

**3. Internal Policies Affecting Foreign Trade in Goods**

(b) **Technical regulations and standards**

**Question 87.**

**We note that Georgia's legislation and practices in the area of standards do not meet the requirements of the TBT Agreement. Georgia will need to provide further details on how it intends to bring its legislation into conformity with the TBT Agreement. Specific details should be provided on time-frames, details of the process and the steps to be taken and any problems with implementation of the TBT Agreement upon accession.**

**Answer:**

Currently, the close cooperation between the State Department of Georgia on Standardisation, Metrology and Certification ("Sakstansarti") and Georgian-European Policy and Legal Advice Centre (GEPLAC) is going on to bring Georgia's national legislation in the field of standards in compliance with the WTO TBT Agreement.

Work is going on together with GEPLAC to elaborate the precise plan of actions and time-frame for bringing Georgia's national legislation in the field of standards in conformity with TBT Agreement. These documents will be submitted to the WTO Secretariat as soon as the process of elaboration is completed.

**Question 88.**

**What progress has there been on Georgia's implementation of the TBT Agreement? We are particularly interested in the establishment of a WTO TBT enquiry point in Georgia which is essential for transparency in this area.**

**Answer:**

The enquiry point has been established under the State Department of Standardisation, Metrology and Certification of Georgia.

**Question 89**

**What are the main developments regarding the harmonisation of the national system of standardisation of Georgia with international standards? Could you present us with a further explanation of the difficulties faced by "Sakstandarti" in replacing existing standards with international ones? Could you provide us with a concrete programme of Georgia's next steps to bring into conformity its national norms with the WTO Agreement on TBT?**

**Answer:**

See the answer to question 87.

**Question 90.**

**The responses to questions 27 and 133 appear to indicate that, at the present time, Georgian law does not provide for the publication of draft standards and other measures for prior comment as required in the WTO Agreement on Technical Barriers to Trade and that legislative revision will be required for Georgia to meet the provisions of the Agreement. Could Georgia indicate what it has done in this regard so far, what it intends to do and on what time-table or schedule?**

**Answer:**

The publishing house "Standarti" has been established under the State Department of Standardization, Metrology and Certification of Georgia ("Sakstandarti"), which issues the information bulletins, standard catalogues and other materials related to standardization, metrology and certification. As it is provided for by the WTO Agreement on Technical Barriers to Trade (TBT), "Sakstandarti" provides the publication of standards and other draft technical documents for prior comments.

**Question 91.**

**Could Georgia please complete a "Statement of Implementation" on technical barriers to trade?**

**Answer:**

The completion of the "Statement of Implementation" will be possible after finishing the work which is initiated together with the GEPLAC (Georgian-European Policy and Legal Advice Centre). See the answer to question 87.

**Question 92.**

**We note the absence of a discussion in the area of food safety (i.e., labelling, food additives, pesticide residues, etc.). Does Georgia have food safety standards, labelling requirements, food additive specifications and/or pesticide residue control requirements? What agency is responsible for developing and implementing such standards, requirements and/or specifications? Where are these standards published and how are they made available? What certifications are required?**

**Answer:**

Georgia has already adopted food safety requirements, food safety standards, label requirements and requirements for contra-indication information. They are given in the Georgian Law

on Protection of Consumers Rights, Chapter 1, Article 6. The Law is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 93.**

**Does Georgia require a certificate of conformity or a certificate of hygiene or both? If so, how do you obtain one and where? Is there a fee associated with obtaining such certificates? If so, what is the cost?**

**Answer:**

The system of granting conformity certificates on products and services operates in Georgia.

The existing system of certification requires both conformity and hygienic certificates. Conformity certificates have to be obtained in certificate issuing bodies accredited by "Sakstandarti" and hygienic certificates have to be obtained in the Ministry of Healthcare of Georgia.

A certain amount of the fee is associated with obtaining such certificates, which is determined by the type and volume of products and complexity of conducting tests.

**Question 94.**

**Does Georgia have a Consumer Protection Law? If so, please provide a copy.**

**Answer:**

The English version of the Law of Georgia No. 151-II of 20 March 1996 on Protection of Consumers' Rights is available in the WTO Secretariat (Accessions Division, Room 1126) for consultation.

**Question 95.**

**In regard to the responses to questions 127 and 138, does Georgia participate in any of the International Standard Setting Bodies? If so, which ones?**

**Answer:**

Georgia is a correspondent-member of the International Organization for Standardization (ISO) since 1 January 1998.

Georgia applied for membership in the joint FAO/WHO Food Standards Programme-Codex Alimentarius Commission on 17 October 1997.

**Question 96.**

**Concerning the response to question 124, has the TACIS Coordinating Unit of Georgia responded to the time-table submitted for accession to the TBT Agreement?**

**Answer:**

See the answer to question 87.

**Question 97.**

Georgia's responses to questions concerning the possible timing of additional legislation to bring the current system of standards and certification into line with WTO requirements have been somewhat vague. This included information on moving from domestic to international standards; providing an operational inquiry point; acceptance of the TBT Code of Good Practice; the use of manufacturers' certification; adoption of a national post-market surveillance system; and the replacement of mandatory standards with voluntary standards. Is Georgia in a better position now to (a) specifically outline its deficiencies vis-à-vis WTO provisions in this area, and (b) indicate a schedule for achieving compliance? We seek a commitment from Georgia to abide by the requirements outlined in the WTO Agreement on Technical Barriers to Trade (TBT) as of the date of WTO accession. We would be interested in working with Georgia to identify specific aspects of the Agreement that are not currently implemented and establish a work programme to do so.

**Answer:**

See the answer to question 87.

(c) **Sanitary and phytosanitary measures**

**Question 98.**

It appears that Georgia's legislation and practices covering SPS measures do not meet the requirements of the SPS Agreement. Georgia will need to provide further details on how it intends to bring its SPS legislation into conformity with the SPS Agreement. Specific details should be provided on time-frames, details of the process and the steps to be taken, and any problems with implementation of the SPS Agreement upon accession.

What have been the main progress made in the field of sanitary and phytosanitary measures? Could Georgia provide us with more information on the current infrastructure and material-technical bases? Could you provide us with concrete programme of Georgia's next steps to bring its national norms into conformity with the WTO Agreement on SPS?

**Answer:**

With the purpose of bringing Georgia's SPS measures into conformity with the relevant WTO Agreement, the Georgian authorities started close cooperation with representations of IRIS (Institutional Reform and Informal Sector, USA) and GEPLAC (Georgian-European Policy and Legal Advice Centre). The arrival of foreign experts in Georgia is anticipated in the nearest future. After their arrival and work in Georgia, the specific aspects of SPS measures will be defined that are not implemented in Georgia and a precise working plan and time-frame will be defined.

**Question 99.**

The responses to questions 140-145 raise concerns that Georgia has failed to revise its SPS regulations since independence. Georgia should change its SPS regime in line with the requirements of the SPS Agreement, e.g., transparency, due process, use of sound science.

**Answer:**

Since its independence, Georgia has revised its plant quarantine requirements and adopted the following legislative acts: the Law on Protection of Plants from Harmful Organisms (14 October 1994), the Law on Agricultural Quarantine (15 May 1997), Veterinary Law, etc.



Currently, the draft law on state sanitary supervision and hygienic standardization is being prepared and circulated for consideration among the Ministries and other organizations.

At present, work is going on to bring Georgia's sanitary and phytosanitary measures into conformity with the WTO Agreement on SPS

**Question 100.**

**Has Georgia revised its plant quarantine requirements since independence? If not, when does Georgia plan to do so?**

**Answer:**

See the answer to question 99.

**Question 101.**

**What is Georgia's strategy for implementation?**

**Answer:**

Georgia intends to join the International Convention on Plant Protection and become a member of the European and Mediterranean International Plant Protection Organization.

Georgia's strategy for implementation of WTO consistent provisions in the field of SPS is to intensify its work together with foreign experts.

**Question 102.**

**Are import permits required to meet Georgia's SPS requirements? If so, what agency(s) is responsible for issuance and what are the eligibility requirements?**

**Answer:**

According to the Law of Georgia on Agricultural Quarantine (Article 8):

- import of the commodities of plant origin and other entities subject to quarantine is possible after producing the certificate on the condition of the commodity subject to quarantine issued by the relevant division of the Ministry of the Food and Agriculture of Georgia and the phytosanitary certificate issued by the quarantine service of the exporting country;
- import of the commodities subject to quarantine from the countries that do not have phytosanitary quarantine services and respectfully, phytosanitary certificate should acquire a permission issued by the relevant unit of the Ministry of Food and Agriculture of Georgia as defined by the Law of Georgia on Prevention Plants from Harmful Organisms.

**Question 103.**

**Does Georgia require a Veterinary-Sanitary Certification? If so, what agency(s) is responsible for issuance? Please provide a list of the products requiring such certification.**

**Answer:**

Georgia requires veterinary and sanitary certification for which the Veterinary Department is responsible. The following types of products are subject to certification requirements: live-stock, products of animal origin, raw materials and forage (fodder).

**Question 104.**

**We seek a commitment from Georgia to abide by the requirements outlined in the WTO Agreement on Sanitary and Phytosanitary Measures (SPS) as of the date of WTO accession. We would be interested in working with Georgia to identify specific aspects of the Agreement that are not currently implemented and establish a work programme to do so. [We will supply further comments and questions on Georgia's SPS regime in writing.]**

**Answer:**

Georgia anticipates difficulties in applying the SPS Agreement in full upon accession. The implementation of WTO consistent provisions in the field of SPS is depended on efficiency of the work undertaken together with foreign experts.

**(d) Trade-related investment measures**

**Question 105.**

**Georgia has stated in both documents WT/ACC/GEO/3 and 4 that it currently maintains no measures inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMs). Please confirm that Georgia is prepared to undertake the obligations of the TRIMs Agreement on accession, without transition periods.**

**Answer:**

Georgia expresses its readiness to undertake the obligations of the TRIMs Agreement on accession to the WTO.

**(e) State-trading practices**

**Question 106.**

**According to document WT/ACC/GEO/3, State enterprises do not have any exclusive rights or special privileges in their purchases and sales. The responses to questions 2 and 151 in document WT/ACC/GEO/4, however, identify a telecommunications monopoly owned by the State. Please outline how the firms listed in the response to question 151 are not State-trading enterprises.**

**Answer:**

Supplying services in the communications sector are not monopolized. Any Georgian or foreign juridical or natural person who is registered in Georgia has the right to get a licence for supplying communication services.

The independent companies which exist in this sector are, namely: MegaCom Ltd., GeoCell Ltd., MagtiCom Ltd., which provide wireless communication services (mobile phone services). The Ministry of Communications and Posts possesses a certain share only in MegaCom (it

provides services for 20 per cent of the total market, and the remaining 80 per cent is provided by GeoCell Ltd. and MagtiCom Ltd.).

Telecom Ltd., New Networks Ltd. and Pelicom Ltd. serve fixed telephone networks. From these organizations only Telecom Ltd. is fully owned by the State, other firms are private organizations.

Firms Georgian Post Ltd., IMS Ltd., and DHL Ltd. provide courier and postal services in Georgia. From these firms only the Georgian Post is fully owned by the Government, as regards the other firms they are private property.

Ayety TV Ltd. is a private organization and performs paging services in Georgia.

The joint-stock company "Bond" is a private structure the main direction of its activities is communication designing works.

Infocom Ltd. and Good Will Ltd. perform the following types of activities: conducting audio conferences, Internet, fax services, etc. Infocom Ltd. is 100 per cent owned by the State, while Good Will Ltd. is a private organization.

#### **Question 107.**

**The response to question 148 indicates that State agricultural firms are in a state of transformation. Does Georgia operate at the present time any State enterprise or agency, or authorize any other firm, to purchase domestic and/or imported agricultural products, either for export or for domestic distribution? If so, please identify this entity and provide information on its activities in the market, its role in agricultural support, and other information as requested in the Questionnaire on State-trading.**

#### **Answer:**

Georgia does not operate at the present time any State enterprise or agency, or authorize any other firm, to purchase domestic and/or imported agricultural products, either for export or for domestic distribution.

#### **Question 108.**

**Please list all "natural monopolies" that still exist in Georgia and identify any State-owned firms or enterprises in these sectors.**

#### **Answer:**

State register of natural monopolies:

1. From the Ministry of Communications and Post of Georgia:
  - service of State post communication – operator Georgian Post Ltd. (fully owned by the State);
  - distribution of frequency spectrum – Frequency Spectrum Distribution and Supervision Service (fully owned by the State).
  
2. From the Railway Department of Georgia:
  - railway line – operator Railway Department of Georgia;

3. From the State company "Sakgazi":
  - import and transit of gas in the territory of Georgia – operator joint-stock company International Gas Corporation of Georgia (fully owned by the State).
4. From the State company "Sakenergo":
  - high voltage power transmission system – operator State company “Sakenergo”.
5. From the State company "Sakaeronavigatsia":
  - route and dispatcher control of air space – operator State company “Sakaeronavigatsia”.
6. From the Maritime Department of Georgia:
  - sea port of Poti;
  - sea port of Batumi;
  - sea port of Sukhumi.

**Question 109.**

**Do any State-owned firms receive loans from the Government at present?**

**Answer:**

State-owned firms can receive ordinary but not preferential loans.

**(j-k) Government-mandated counter-trade and barter; and**  
**Trade agreements leading to country-specific quota allocation**

**Question 110.**

**The response to question 153 seems to indicate that barter trade under Trade and Economic Cooperation Agreements with Russia, and possibly other countries, is conducted on a duty free basis. Please confirm this, and also confirm that domestic taxes are applied to such trade. Does Georgia intend to continue to make such agreements, notwithstanding that there were none contracted in 1997-98?**

**Answer:**

In accordance with the Tax Code of Georgia, domestic taxes are applied to imports of goods from all countries including CIS countries.

Georgia has no plans to conclude the above-mentioned agreements.

**Question 111.**

**Has the draft law on free economic zones already been submitted?**

**Answer:**

The draft law on free economic zones has been rejected by the Parliament of Georgia.

(l) **Government procurement practices**

**Question 112.**

**We are very pleased that Georgia intends to join the WTO Government Procurement Agreement. Georgia should submit an entity list to initiate negotiations within three months of its accession to the WTO, with the understanding that negotiations will be completed within a year after that.**

**Answer:**

To implement the WTO consistent provisions in government procurement and to ensure the transparency in this field Georgia has prepared the draft law on government procurement.

**Question 113**

**Please provide us with more information on the law on government procurement which will be adopted soon.**

**Answer:**

The draft law on government procurement has already been prepared and submitted to the Ministries for consideration. The draft law is mainly based on the UNCITRAL model law on government procurement. The draft law on government procurement was prepared in close cooperation with GEPLAC (Georgian-European Policy and Legal Advice Centre).

**4. Policies Affecting Foreign Trade in Agricultural Products**

(b) **Exports**

**Question 114.**

**Georgia does not include supporting table DS:1 on export subsidies in the information provided in response to document WT/ACC/4 in document WT/ACC/SPEC/GEO/1. Does this indicate that Georgia does not use export subsidies? In your next submission, please provide this table with the designation "no expenditures" during the 3 years of the base period.**

**Answer:**

Georgia currently is not using export subsidies in agriculture.

**Question 115.**

**If Georgia is currently not using export subsidies in agriculture, it should not establish any in its agricultural country schedule. We seek a commitment from Georgia that it will bind agricultural export subsidies at zero in its agricultural country schedule.**

**Answer:**

Georgia undertakes a commitment not to use agricultural export subsidies in the future.

**Question 116.**

**We seek confirmation that Georgia does not use export subsidies and that it will make a commitment to bind these at zero.**

**Answer:**

Georgia confirms that it will bind its agricultural export subsidies at zero.

(c) **Internal policies**

**Question 117.**

**Could Georgia confirm that the information provided on agriculture subsidies covers the period 1994-1997? Could Georgia provide information separately for each year and further details on the programmes?**

**Answer:**

Georgia confirms that information provided on agricultural subsidies covers the period 1994-1997.

**Question 118.**

**Could Georgia advise which funds came from the budget and which from European Communities' counterpart funds?**

**Answer:**

According to document WT/ACC/SPEC/GEO/2, the total amount of support, which accounted for 16.8 million Lari, has been allocated for national agricultural budget from the European Communities' counterpart fund. From this amount, 12.9 million Lari has been allocated as agricultural credit through commercial banks (the remaining 3.9 million Lari remained in national agricultural budget). From 12.9 million Lari, 6 million Lari has been credited for grape and wine production and the remaining 6.9 million Lari has been returned to the national agricultural budget.

**Question 119.**

**We appreciate the hard work the Georgian delegation has put into preparing these materials on domestic support. We know this is a difficult task and offer the following comments to better understand the information provided. Georgia is required to provide 3 years of data as noted in the technical note WT/ACC/4. If budgetary outlays and revenue foregone in favour of agricultural producers was zero in 1994 and 1995 (assuming Georgia uses 1994-96 as a base), this still should be documented in the tables.**

**Answer:**

Budgetary outlays and revenue foregone in favour of agricultural producers were zero in 1994 and 1995.

**Question 120.**

**Does Georgia provide any non-product specific support to producers, such as general interest rate subsidies, input subsidies, debt write-off, etc., to name a few examples?**

**Answer:**

Georgia provided non-product specific support to grape production, namely general interest rate subsidies (see the reply to question 124).

**Question 121.**

**Could Georgia advise if any non-product specific support has been provided? Was product specific support provided only for grapes?**

**Answer:**

Non-product specific support has been provided in Georgia only for grape production.

**Question 122.**

**Concerning supporting table DS:1 (measures exempt from reduction commitment "green box"), it is not clear from Georgia's submission how (or if) the measures listed under "other" in DS:1 and detailed on page 6 meet Annex 2 criteria.**

**Answer:**

The measures listed under "other" in DS:1 meet the fundamental requirements and criteria stipulated by Annex 2 of the WTO Agreement on Agriculture. The support has been provided through a government programme. This programme has not provided price support for grape producers.

**Question 123.**

**With reference to supporting table DS:4 (calculation of the total aggregate measurement of support), in our view, "Product A" should be replaced with the designation "Grapes" to specify the AMS for grapes (from table DS:7). What percentage of the value of grape production does 6 million Lari account for? Is this figure for a calendar year or marketing year?**

**Answer:**

We agree that "Product A" should be replaced with the designation "Grapes" to specify the AMS for grapes (from table DS:7). 6 million Lari accounts for 39 per cent of the value of grape production in 1996. This is the figure for a calendar year.

**Question 124.**

**Regarding supporting table DS:7 (product-specific aggregate measurements of support), why was the total amount of credits budgeted given as the total level of support? This programme appears to be an interest rate subsidy, which should be calculated as the difference between the commercial interest rate (45-50 per cent, according to the notification) and the subsidized rate the farmer pays (24 per cent), multiplied by the amount of credit actually made available. Are grape producers the only ones eligible for this (or any other kind of support) programme?**

**Answer:**

We agree that this programme is the interest rate subsidy.

The amount of three million Lari has been allocated from central budget in 1998 for rehabilitation of tea industry of Georgia.

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

**2. Substantive Standards of Protection, Including Procedures for the Acquisition and Maintenance of Intellectual Property Rights**

**(a) Copyright and related rights**

**Question 125.**

**Currently, Georgia provides copyright protection under Book Four, Section One of the Civil Code. This does not, however, appear to provide expressly for national treatment in connection with copyrights. Is that correct? And if so, how does Georgia intend to address this deficiency?**

**Answer:**

That's not correct, according to Article 1018 of the Civil Code "The Copyright Law is applied to:

- (a) works of science, literature and art, performance, phonogram and videogram, on which a citizen of Georgia or a natural person permanently residing on the territory of Georgia, or a legal person registered in accordance with the procedure established by the Law of Georgia, obtains the copyright or related rights;
- (b) works of science, literature and art, phonograms and videograms, first published on the territory of Georgia; works, phonograms and videograms shall also be considered as first published in Georgia if, within thirty days from the first publication abroad, they are published on the territory of Georgia;
- (c) a performance, which has first taken place on the territory of Georgia; the performance recorded on the phonogram or videogram, and is protected in accordance with the provisions of item (b) of this Article; the performance which is not recorded on the phonogram or videogram but is included in the programme of broadcasting organisations protected in accordance with the provisions of item (d) of this Article;
- (d) programmes of broadcasting organisations if they are legal persons under the law of Georgia and conduct transmission by transmission facilities located on the territory of Georgia;
- (e) on works of architecture, located on the territory of Georgia notwithstanding the nationality and residence of their authors;
- (f) other works of science, literature and art, performance, phonogram and videogram, programmes of broadcast organisations, protected under international treaties where Georgia is a party".

Georgia is a member country to the Bern Convention, so national treatment is provided to all member countries.

**Question 126.**

**It seems that copyright and related rights are equally dealt with in Book 4 of the Civil Code as well as in the (draft?) Law on Copyright and Neighbouring Rights. Please explain the scope of the two laws, how they relate to each other and how they are applied in practice.**



**Answer:**

The answer to this question will be provided later, when the issue whether or not to have a separate law on copyright and neighbouring rights, in addition to the relevant chapter of the Civil Code will be clarified in the Parliament.

**Question 127.**

**Please provide further details, if possible with examples, of the different transmission rights provided for in Article 1035 of the draft Civil Code, parts (f), (g) and (h), and explain why the air and cable transmission rights are provided for separately in parts (g) and (h), as well as being included within the public transmission right in part (f). In this respect, we would also request that Georgia explains why section 16.2 of the Copyright Law does not provide separately for a cable transmission right.**

**Answer:**

The draft law on copyright and neighbouring rights provides in Article 16(g) for transmission by cable. After the adoption of the law by the Parliament relevant changes will be made in the Civil Code.

**Question 128.**

**Article 1045 of the Civil Code states that the exclusive rights of authors include their rights of distribution, i.e. "sale, rental, etc. of original work of its copies by any means". Article 1046 of the Civil Code, however, states that "if copies of lawfully published works are sold their further distribution is allowed without the author's permit and payment of royalties". Please clarify the scope of these two provisions. Please also clarify Articles 1086 and 1088 on one hand and Article 1089 on the other hand, which foresee similar exceptions in the case of the distribution of phonograms and videograms.**

**Answer:**

These issues are regulated in the draft law, in Articles 16(1) and 16(2) respectively, also in Articles 39(2), 40(2) and 41(1), after the adoption of the law by the Parliament relevant changes will be made in the Civil Code.

**Article 16. Economic Rights**

1. The author, or another owner of the copyrights, has the exclusive right to conduct, permit and prohibit the following:

- (a) reproduction of the work (right to reproduction);
- (b) distribution of the originals or copies of the work by any means: sale, rental, etc. (right to distribution);
- (c) importation of copies of the work for the purposes of distribution, including the copies, which are made with the consent of the author, or by other owner of the copyright (right to import);
- (d) public display of the work (right to public display). This right does not apply, when public display has resulted from the lawful purchase of the work, which was placed in commerce;
- (e) public performance of the work (right to public performance);
- (f) broadcasting of the work (to air transmissions);
- (g) other communication to the public;
- (h) translation of the work (right to translation);
- (i) adaptation, arrangement, or transformation of the work (right to transformation).

2. If copies of a lawfully published work are in commerce for the purpose of selling, then it is permitted to carry out their further distribution without the author's consent and without payment of the author's remuneration.

#### Article 39. Rights of producers of phonograms

1. Producer of a phonogram is a natural or juridical person, who has initiated and is responsible for the first sound record of the performance or other sound. When the contrary is not proved, a producer of a phonogram is considered a natural or juridical person, who is properly indicated on this phonogram, or on its case.

2. A producer of a phonogram may enjoy the following exclusive right:

- (a) reproduction of the phonogram; in any manner or form;
- (b) alteration of the phonogram or its treatment through other means;
- (c) first distribution of the copies of the phonogram;
- (d) rental of the copies of the phonogram;
- (e) import of the copies of the phonogram for the purposes of distribution, including the copies, which are made with the consent of the producer of the phonogram;
- (f) the making available to the public of the phonogram by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.

#### Article 40. Rights of producers of videograms:

1. A producer of the videogram is a natural or juridical person, who initiated and is responsible for making of the first record of consecutive images accompanied by sound, or without it. When the contrary is not proved, a producer of the videogram is considered a natural or juridical person who is properly indicated on the videogram or on its case.

2. A producer of a videogram may enjoy the following exclusive rights:

- (a) reproduction of a videogram;
- (b) alteration of a videogram or its treatment through any other means;
- (c) first distribution of copies of videogram;
- (d) rental of the copies of videogram;
- (e) import of copies of videogram, made under the consent of the producer of the videogram, for the purposes of distribution.

#### Article 41. Distribution of phonogram and videogram

1. If copies of the lawfully published work enter into commerce by sale, it is allowed to distribute them further without the consent of the producer and phonogram or videogram and without paying them honorarium.

2. Right to distribute copies of phonogram and videogram by rental belongs to producers of phonogram or videogram irrespective of proprietary rights on the said copies.

3. Exclusive rights of producers of phonograms or videograms, envisaged in sections 40 and 41.3 can be transferred to other persons by contract.

**Question 129.**

**Article 1082 of the Civil Code states, among others, that "the exclusive right to use performance implies the right to allow or ban broadcast or cable transmission of performance unless the recording of this performance for the first time was carried out for the purpose of gaining profit". Please clarify the scope of these provisions (preferably on the basis of examples).**

**Answer:**

This is a mistake made during translation. The text should be read as follows: "broadcast or cable transmission of performance recording, if recording of this performance initially was not carried out for profit purposes".

**Question 130.**

**Article 1091 of the Civil Code states, among others, that "the exclusive right of use of the programme implies the right of a broadcasting organization to allow or prohibit public broadcast of the programme at the place where the entrance is payable". Please clarify this provision and in particular, does it mean that a broadcasting organization may allow or prohibit the broadcast of a programme in cases where there is no entrance fee?**

**Answer:**

This issue is regulated in Article 42(2) of the draft law. After the adoption of the law by the Parliament relevant changes will be made in the Civil Code.

Article 42. Rights of broadcasting organizations

1. A programme of broadcasting organizations is one which has been created by the broadcasting or cable organization itself, or by another organization, under the order and with the resources of the above-named organizations.
2. The broadcasting organization has the following exclusive rights:
  - (a) recording of the programme;
  - (b) reproduction of the recording of the programme, with the exception of the cases, when the programme is recorded with the consent of the broadcasting organization and the reproduction is conducted for the same purposes as for which its recording has taken place;
  - (c) simultaneous transmission of its programme through broadcast (cable) by other broadcasting (cable) organizations;
  - (d) transmission of the programme through broadcast (cable);
  - (e) public broadcasting of the programme in spots where the entry is paid.

**Question 131.**

**Article 1092 of the Civil Code provides for the "free use of objects of related rights". Please confirm whether a condition for such use is the consent by the performer, producer of a phonogram or videogram and broadcasting organization.**

**Answer:**

Consent is not a condition.

**Question 132.**

**Article 1092 of the Civil Code allows free use "in other cases established in connection with restriction of the property rights of authors of works of science, literature and art". Please explain the scope of this provision.**

**Answer:**

The answer to this question will be provided later.

**Question 133.**

**Please clarify whether Georgian legislation provides for rental rights in respect of computer programs, cinematographic works and phonograms and what are the conditions.**

**Answer:**

The Civil Code does not provide for the above-mentioned provisions. All relevant norms, including those regarding rental rights are included in the draft law on copyright and neighbouring rights. The provisions relating to rental rights of computer programs were drafted on the basis of the EC Directive of 14 May 1991 on the Legal Protection of Computer Programs.

**Question 134.**

**Please clarify how compilations of data are protected.**

**Answer:**

Compilations of data are protected as collections in the draft law. Please see Article 6.1(k):

Article 6. Objects of Copyright

1. Objects of copyright are:

- (a) literary works (books, brochures, articles, computer programs, etc);
- (b) drama or musical-dramatic works, choreographic, mime, and other theatrical works;
- (c) musical works, with, or without texts;
- (d) audio-visual works (movies, television and video films, and other cinematographic and televisual works);
- (e) sculptural, painting, architectural, graphic, lithographic and other work of visual art;
- (f) pieces of decorative-applied and monumental art;
- (g) pieces of theatrical-decorative art;
- (h) photographic works, and works which are created through means analogous to photography;
- (i) maps, plans, sketches, illustrations and other three-dimensional works belonging to geography, photography or other sciences;
- (j) derivative works (translations, interlines of fictions, adaptations, reviews, dramatization, compilation, musical arrangement, and other kinds of derivation of pieces of art);
- (k) collection of works or data, such as encyclopedia, anthology, data bases, and other composite works, which, according to selection and disposition of materials, represent results of intellectual creative activity, and other works.

**Question 135.**

**Please indicate whether and how pre-existing works and subject matters, which have not fallen into the public domain, will be protected under the new law.**

**Answer:**

This issue is regulated by Articles 1062 and 1063(3) and 1508 of the Civil Code:

Article 1062. Duration of Copyright

1. The copyright arises at the moment of creation of the work and it is valid within the author's life and 50 years after his death, except for the cases stipulated by Article 1063.
2. Calculation of a term stipulated by Articles 1062 and 1063 begins from 1 January of the year following the year when the legal fact arises, which was the basis of beginning of calculation the said term.

Article 1063. Validity of Copyright

1. The copyright on work published anonymously or under a pen-name is effective within 50 years following the date of legal publication of such work. If within the said term the author of work published anonymously or under the pen-name discloses his personality, or if his personality is doubtless, the clause mentioned in paragraph 1 of Article 1062 is applied.
2. The copyright of a work created in co-authorship is effective within the life and 50 years following the death of the last author.
3. After the author's death the copyright on the work published for the first time is effective within 50 years following its publication.
4. The copyright on works mentioned in Article 1037 is effective within 50 years following the date of their publication, if the work was not published - 50 years following the date of its creation.
5. The copyright a producer of audiovisual work is effective within 50 years following the date of its publication, and, if the works were not published - 50 years following the date of its creation.

Article 1508. Application of Copyright Law Norms on Pre-existing Works

1. "Copyright Law"- Part One of the Book Four of the Civil Code is applied to the relations connected with the establishment and usage of copyright and similar rights arisen after the enforcement of this Code.
2. The copyright validity periods envisaged by Articles 1062-1063 of this Code are used towards those works those twenty-five year copyright protection has not expired by 16 May 1995, i.e. before Georgia joined Bern Convention on Protection of Works of Literature and Fiction.
3. For the performance on which by 25 November 1997 twenty five years are not gone since its first performance, the performer's executor's right protection period envisaged by the first part of Article 1095 of the present Code is applied.

4. For phonograms and videograms on which by 25 November 1997 twenty five years are not gone since their first legal publication or composition, in the case if in the mentioned period they were not published, the period of protection of related right envisaged by the third part of Article 1095 shall apply.

5. For programmes of broadcast organizations on which by 25 November 1997 twenty five years are not gone since their first legal publication or composition, in the case when in the mentioned period they were not published, the period of protection of the related right envisaged by the fourth part of Article 1095 of this Code shall apply.

6. Copyright of legal entities which arose before enforcement of this Code are valid during fifty years from the date of legal publication of a work or its composition if in the mentioned period this particular work was not published.

**(b) Trademarks, including service marks**

**Question 136**

**How are trademarks defined under the new draft law on trademarks?**

**Answer:**

According to the draft law on trademarks "... a trademark is a sign or a combination of signs, which can be expressed graphically and which is capable of distinguishing the goods and/or services of one person from those of another.

A trademark may be verbal (including a name, a family name, a word, integrity of words, letters, or figures), figurative, two-dimensional and capacious (including shape and packaging of goods), as well as combination of colours".

**Question 137.**

**Currently, trademark protection appears to be provided under the Statute on Trademarks No. 304 of 15 March 1992. What is the current legislative status of the draft trademark law?**

**Answer:**

The draft law on trademarks was discussed in the State Chancellery and reviewed by the governmental bodies, amendments were made by drafters to reflect results of discussions, currently remarks have been received from WIPO, after reviewing and reflecting WIPO proposals the draft will be returned to the State Chancellery and then submitted to the Parliament.

**Question 138.**

**TRIPS Article 16.1 states that the law should presume confusion where an identical mark is used without authorization on identical goods and services. There does not appear to be any express provision in the current Statute on Trademarks creating such a presumption. Will such a provision be included in the new law?**

**Answer:**

According to Article 4(a) of the draft law on trademarks, "A trademark shall not be registered if it is identical to the trademark, having earlier priority and the list of goods and services, for which the registration is required, is identical to the list of the goods and services for which the trademark having the earlier priority is protected".

According to Article 5.1 "The trademark owner shall be entitled to prevent third parties from the use of such a trademark in commerce, which is identical to the protected trademark, if the list of goods and services are identical as well".

**Question 139.**

**Articles 36-47 of the Statute provide for the protection of well-known marks as well as registered trademarks. It is not clear, however, what criteria are used to determine what constitutes "well known in the Republic of Georgia". Could Georgia indicate how it defines the expression for the purpose of establishing what constitutes a "well-known mark"?**

**Answer:**

For the definition of a "well known mark" Georgian legislation refers to the Paris Convention. Specific criteria will be determined by the courts when such a case arises. Until now there was no case in the practice of the Patent office, that any applicant requested recognition of a trademark as a "well-known mark", there has been no dispute in any Georgian court involving this matter. The Patent Office was working on this issue and had consultations in WIPO regarding how to determine the criteria in question. There is a general understanding among Georgian specialists, that because Georgia lacks developed survey system and/or survey organizations, dealing with IP matters, and because the list of "well-known marks", prepared by any Georgian authority, will become questionable in court, the burden of proof that the mark is "well known in the Republic of Georgia" will rest on the interested party, and the court will determine what kind and how much of evidence to request and what percentage of the relevant public should be familiar with the mark. Criteria for the determination will be set in the regulations after at least minimum experience will be gained and at least 4-5 surveys will be conducted in Georgia regarding this matter.

**Question 140.**

**What are the criteria for a trademark in order to have "good reputation" in Georgia? Are these the same criteria for determining whether a trademark is well-known?**

**Answer:**

See the answer to question 139.

**Question 141.**

**Please clarify whether well-known marks are protected in cases where no confusion with another trade/service mark can be established.**

**Answer:**

According to the draft trademark law, the owner of the registered trademark has the right to prohibit third persons from using in commerce a trademark, which is identical or similar to his protected mark, which has a good reputation in Georgia and use of this mark will create undeserved advantageous conditions, or will damage the reputation of the earlier trademark.

There is no special wording in Georgian legislation regarding protection of well-known marks in cases where no confusion with another trade/service mark can be established.

**Question 142.**

**Please explain how Georgian legislation deals with the (application for a) registration of a trademark for wines/spirits which contains or consists of a geographical indication identifying wine/spirits.**

**Answer:**

According to Article 3.1(b) of the draft trademark law, signs, or combinations of signs, which consist exclusively of designations of kind, quality, quantity, features, value, geographical origin, place and time of marketing or other characteristics of a good, or can be regarded as such.

According to Article 30 of the draft trademark law, as an exception from Article 3.1(b), it is allowed to register as a collective mark a sign, which represents indication of geographical origin of the good. Indication of geographical origin can not be used as a collective mark for goods, which do not originate from the given geographical place, area, region, country, if such indication creates the likelihood of confusion regarding the origin of the goods.

If indication of geographical origin connotes special characteristics and quality of the goods, use of such a sign as a collective mark is permitted only for those goods of the same origin, which possess the same characteristics and quality.

This Article extends to names, indications and signs, which are similar to the indications of geographical origin.

**Question 143.**

**What is the initial term of registration for a trademark?**

**Answer:**

The initial registration term for a trademark is ten years.

(c) **Geographical indications, including appellations of origin**

**Question 144.**

**Collective marks are provided for under Articles 22-25 of the Statute. A draft law on protection of appellations of origin and geographical indications is pending. What is the status of the legislation?**

**Answer:**

The draft law on the protection of appellations of origin and geographical indications was sent to the ministries and departments; the drafters received responses. Now it is in the process of review to reflect the remarks from the ministries and departments.



**Question 145.**

**Article 22.3 of the TRIPS Agreement requires a member to refuse to register or invalidate registrations containing geographical indications except in instances in which such marks have been used continuously for at least 10 years or in good faith before 15 April 1994. Article 2 of the Statute only prohibits registration of indications liable to mislead the public, omitting the more precise requirements. This provision does not appear sufficient to satisfy the requirement of the TRIPS Agreement in this regard. Please describe the nature of the protection that will be provided geographical indications in the new law.**

**Answer:**

According to Article 4(e) of the draft law on trademarks, "A trademark shall not be registered if it is identical or similar to the appellation of origin or the geographical indication, protected in Georgia, to such an extent, that causes confusion or likelihood of confusion or as a result of association".

According to Article 26.2(c) "Registration of the trademark can be cancelled by request of the third party if grounds, provided for in Article 4 of this law, exist at the time of the registration and they still exist at the moment of making the cancellation decision".

Provision regarding "invitation of registrations of trademarks containing geographical indications except in instances in which such marks have been used continuously for at least 10 years or in good faith before 15 April 1994" will be included in the trademark simultaneously with the adoption of the law on the appellations of origin and geographical indications (currently, no such provision can appear in Georgian legislation, because appellations of origin and geographical indication as such are not yet protected).

**Question 146.**

**How will geographical indication be protected by the new Georgian legislation?**

**Answer:**

See the answer to question 145.

**Question 147.**

**The current Statute is deficient in a number of areas with respect to Articles 22-24 of the TRIPS Agreement, including: (a) protection against use of geographical indications even when literally true but which falsely represent that the goods originate in another territory; (b) protection, with certain exceptions, of appellations of origin for wines and spirits even against use accompanied by expressions such as "kind", "type", "style", etc; and (c) refusal or invalidation, with certain exceptions, of trademark registrations containing geographical indications for wines and spirits if they do not originate in the place named. In each case, it is not clear that the current Trademark Statute is sufficient to address these requirements. Please describe what is being done to ensure that the TRIPS requirements are being met.**

**Answer:**

For reflecting TRIPS requirements draft laws on trademarks and on the protection of appellations of origin and geographical indication were prepared.

Regarding point (a) - protection against use of geographical indications even when literally true but which falsely represent that the goods originate in another territory: the draft law on protection of appellations of origin and geographical indications provides in Article 14.1.(b) that "Persons entitled to use the registered appellation of origin and geographical indication have the right to prevent the third parties from the following:

... any use of the registered name, which although is literally true as to the place of production of good, or as to the place of producing and processing raw materials, but creates likelihood of confusion as to its origin".

Regarding point (b) - protection, with certain exceptions, of appellations of origin for wines and spirits even against use accompanied by expressions such as "kind", "type", "style", etc. The draft law on the protection of appellations of origin and geographical indications provides in Article 14.1(c) that "Persons entitled to use the registered appellation of origin and geographical indication have the right to prevent the third parties from the following:

... any commercial use of the registered appellation of the origin, even in translation, or accompanied by such expressions as "type", "style", "kind", "imitation", "method", etc."

Regarding point (c) - refusal or invalidation, with certain exceptions, of trademark registrations containing geographical indications for wine and spirits if they do not originate in the place named. According to Article 4(e) of the draft law on trademarks, "A trademark shall not be registered if it is identical or similar to the appellation of origin or the geographical indication, protected in Georgia, in such an extent, that causes confusion or likelihood of confusion or as a result of association".

**(d) Industrial designs**

**Question 148.**

**Protection in Georgia currently is provided under the Statute on Industrial Designs No. 303 of 12 March 1992.**

**Answer:**

The patent law, after its adoption, will regulate the protection of industrial designs in Georgia.

**Question 149.**

**What is the term of protection for industrial designs in Georgia?**

**Answer:**

The term of protection for industrial designs in Georgia is 10 years from the filing date. Registration can be renewed once for 5 years.

**Question 150.**

**What are the requirements for securing protection for textile designs?**

**Answer:**

For the current situation please see the Memorandum on the Foreign Trade of Georgia, Chapter 5, point (d) - Industrial designs.

The draft patent law does not list specific requirements for securing protection for textile designs in particular. It defines requirements for securing protection for industrial designs generally.

According to the draft patent law "Under the industrial design is considered a new artistic-constructive outward appearance of the article.

A patent shall be granted for an industrial design if it is novel, original and industrially applicable.

An industrial design shall be considered novel if the integrity of its essential features, determining aesthetic and/or ergonomic peculiarities of the article, are not widely known before the date of the industrial design priority, on the basis of written or verbal descriptions, public exploitation, or by other means".

While determination of novelty of an industrial design, all applications for the industrial designs, presented to "Sakpatenti" and having earlier priority, shall be taken into consideration.

An industrial design shall be considered original if its essential features stipulate the artistic nature of the article's aesthetic peculiarities.

An industrial design shall be considered industrially applicable if its multiple production is possible.

An industrial design shall be considered novel irrespective of the information about it revealed to the public by its author, applicant, or the person who has directly or indirectly received the information from them, if the data on the industrial design has become known not more than 6 months before the date of filing the application to "Sakpatenti". Burden of proof of this fact rests on the applicant.

Article 17. A patent for an industrial design shall not be granted:

- (a) for subjects that can damage the public interests, or infringe upon national and religious feelings, or which contradict to moral principles;
- (b) for outward appearance of buildings and other real estate, with the exception of small architectural forms;
- (c) for subjects having liquid, gas, friable and other unstable forms;
- (d) for articles the outward appearance of which is stipulated by their technical function only;
- (e) directly for printed production.

Article 27. An application for obtaining a patent shall be presented in the Georgian language, and other application documents either in Georgian or other languages.

A picture of an industrial design must give full and detailed ideas about the outward appearance.

A description of an industrial design must include the essential properties that characterize it.

(e) **Patents**

**Question 151.**

**Protection in Georgia is currently provided under the Statute on Inventions No. 302 of 16 March 1992. The rights provided under Article 11 of the Statute do not expressly coincide with those required to be provided under Article 28.1 of the TRIPS Agreement, that patent owners with the right to prevent others from making, using, offering for sale, selling or importing a patented product or from using a patent process or using, offering for sale, selling or importing a product produced directly using such process. Article 11 only gives the owner of the patent the exclusive right to derive income from the income or profit from use of the invention and to dispose of the invention at his discretion, including by selling, assigning, or licensing it. Please describe what is being done in the new law to ensure that the TRIPS requirements are being met.**

**Answer:**

According to the draft law, the patent owner has the exclusive right to use an invention in his discretion, to make a product, protected by the patent, to place object in commerce, to derive income from its use.

The patent owner may dispose of the invention at his discretion. He may sell or otherwise alienate a patent, or grant a licence.

**Question 152.**

**TRIPS Article 31 states that compulsory licences can be issued only when enumerated conditions are met, including such things as notice, remuneration, limitations on use and transfer of the licence, etc. Under Georgian law, compulsory licensing of patents is authorized by Articles 72 (to satisfy use requirement; to use a dependent patent; and refusal to grant a voluntary licence on fair terms); 72 (public use); and 73 (limited to pharmaceuticals and methods of treatment). These appear much broader than the reach of Article 31. Please describe what is being done to ensure that the TRIPS requirements are being met.**

**Answer:**

The draft patent law provides in Article 73: "Compulsory licence can be only non-exclusive. It shall be granted after 4 years of patent issuance upon the request of any interested persons, taking into consideration evaluation of each specific case, in particular, if patented invention or utility model was on the territory of Georgia, or if it use sufficient use. Licence can by granted only in that case, if prior to that an interested person was trying to get it on reasonable terms from the patent owner, but his efforts failed. Decision regarding the granting a compulsory licence shall include sphere of use, term of application, rights and obligations of licensor and amount of remuneration".

**Question 153.**

**It is not clear whether the current law provides for judicial review of decisions to forfeit or revoke a patent. Please describe what is being done to ensure that the TRIPS requirements are being met.**

**Answer:**

According to Article 84 of the draft patent law disputes regarding granting compulsory licences, regarding partial or entire annulment of the patent can be subject to judicial review.

**Question 154.**

**Will Georgian law foresee the seizure, forfeiture and destruction of the infringing goods in cases of wilful trademark counterfeiting and copyright piracy?**

**Answer:**

According to the Civil Code of Georgia:

“1. The copies of works and phonograms, making or distribution of which causes violation of the copyright and related rights, shall be regarded as counterfeit copies.

2. Counterfeit shall also be considered copies of those works and phonograms, which are preserved in accordance with the Law of Georgia, and which, without consent of the owner of the copyright and the related rights, are imported in Georgia from the country where these works and phonograms have never been protected, or their protection has been terminated” (Article 1097).

“1. A court is authorised to take a decision about confiscation of the copies of counterfeit works and phonograms, as well as of the materials and equipment needed for their reproduction. The counterfeit copies of works and phonograms, at the request of the holder of the copyright and the related rights, may be given to the latter.

2. The counterfeit copies of works and phonograms, which have not been recalled by the holder of the copyright and the related rights, as well as the materials and equipment needed for their reproduction, are subject to destruction on the basis of the court decision.

3. The counterfeit copies of works and phonograms, obtained by the third parties in good faith, are not subject to confiscation” (Article 1098).

**Question 155.**

**There is no provision in the current law that would appear to shift the burden of proof, as required in Article 38, in process patent infringement actions to the defendant in instances in which the product produced by the process is new or where it is substantially likely that the identical product was made using the process and the patent owner has been unable through reasonable efforts to determine the process used. Please describe what is being done to ensure that the TRIPS requirements are being met.**

**Answer:**

According to Article 60 of the draft patent law when patent is issued on the process, until contrary is proved, any similar product, made by another person, shall be regarded as produced by that process.

**Question 156.**

**What is the current legislative status of the draft patent law?**

**Answer:**

The draft patent law is expected to be submitted to the Parliament in May.

**Question 157.**

**Please explain the conditions and procedures which apply to patent applications from foreigners.**

**Answer:**

Foreigners enjoy the same rights as Georgian citizens. They are accorded national treatment in accordance with the Paris Convention.

**Question 158.**

**In document WT/ACC/GEO/3 it is stated that the term of protection for a patent in addition shall be 20 years from the filing date of the application. However, in its most recent replies, Georgia explains that patents of addition shall be valid for a period of time not longer than 10 years from the date of the patent application in “Sakpatenti”. Please clarify the term of protection of a patent of addition.**

**Answer:**

We apologize for the confusion over the term “patent of addition” with the “imported patent”. According to the Statute on Inventions a patent of addition is granted on the improvement of an invention. A patent of addition is valid for 20 years from the date of the patent application. A patent of addition is not envisaged in the draft patent law. No such patents have been granted in Georgia so far.

**Question 159.**

**In which cases are inventions excluded from patentability under the new Georgian law?**

**Answer:**

The draft patent law differentiates objects which shall not be considered as inventions and inventions, which shall not be granted patent:

Under invention shall not be considered:

- (a) a discovery, scientific theory, or mathematical method;
- (b) results of artistic-constructive work;
- (c) computer algorithms and programs;
- (d) method and system of education and training, the grammar system of a language, as well as implementation methods of intellectual operations, rules of games and drawing;
- (e) organizational and management methods of economy;
- (f) industrial design and diagram for planning of buildings, constructions and territories;
- (g) presentation of information.

The above-named subjects shall not be regarded as inventions if there is a patent application to protect them as such.

A patent shall not be granted:

- for an invention the publication or exploitation of which may provoke, or encourage inhumane, immoral and/or anti-social actions;

- for surgical, therapeutic and diagnostic methods of treatment of people and animals; this rule does not apply to equipment, substances, or substantial admixtures which are used in the mentioned methods;
- for species of plants and animals, as well as for particularly biological methods for raising breeds of plants and animals; this rule does not apply to micro-biological methods and products obtained through these methods.

**(g) Layout designs of integrated circuits**

**Question 160.**

**Document WT/ACC/GEO/3, Part V, 2(g) states that the Patent Office of Georgia is drafting a law for the protection of integrated-circuit layout designs. What is the status of that legislation?**

**Answer:**

Work on elaboration of the draft law on layout designs and integrated circuits is going on.

**Question 161.**

**Please describe what is being done to protect integrated-circuit layout designs pending enactment of the draft legislation.**

**Answer:**

See the answer to question 160.

**(h) Requirements on undisclosed information, including trade secrets and test data**

**Question 162.**

**In document WT/ACC/GEO/4, in response to question 175, it is stated that Georgia's law does not contain any express provision protecting test data regarding pharmaceuticals and agricultural chemicals. When is it expected that such legislation will be enacted?**

**Answer:**

It is expected to prepare and enact the relevant legislation in 1999.

**Question 163.**

**After which period of time may a person other than the person who submitted undisclosed test or other data to the Ministry of Healthcare, without the latter's permission, rely on such data in support of an application for product approval?**

**Answer:**

This issue is not regulated yet by Georgian legislation.

#### **4. Enforcement**

##### **Question 164.**

**Document WT/ACC/GEO/3, Part V.4 and document WT/ACC/GEO/4 questions 178-184, refers to various draft laws involving enforcement of intellectual property rights before general courts and before special bodies. Please provide the status of these various pieces of legislation.**

##### **Answer:**

Georgia will not have a patent court in the near future. According to the Code of Civil Procedure, which was passed by the Parliament in November 1997 and will come into force on 1 August 1998, intellectual property cases fall under the jurisdiction of regional courts.

##### **Question 165.**

**Please describe Georgia's law and practice how the enforcement provisions in Articles 41 to 61 of the WTO TRIPS Agreement are implemented.**

##### **Answer:**

See the answers to questions 22-27 in document WT/ACC/GEO/3.

#### **VI. TRADE-RELATED SERVICES REGIME**

##### **Question 166.**

We appreciate the considerable effort devoted to submission of document WT/ACC/SPEC/GEO/1 and document WT/ACC/SPEC/GEO/3. Georgia's initial offer on market access in services forms a good starting point for our bilateral market access negotiations. We will supply detailed specific comments on Georgia's offer separately. We would like to take the opportunity here, however, to draw your attention to the need for improvements in telecommunications and financial services, two sectors in which a very large number of WTO Members and countries acceding to the WTO have undertaken substantial commitments. We expect the same from Georgia. With respect to telecom, we are pleased that Georgia's schedule is relatively clean of market access and national treatment limitations. We will be looking to Georgia to incorporate more clearly several basic telecom services, as well as the reference paper and other agreed texts from the basic telecom negotiations. In addition, many WTO Members have undertaken a common form of horizontal commitments for temporary entry of service suppliers (Mode 4), which we would expect Georgia to provide as well.

##### **Answer:**

Georgia's revised offer in services has been already sent to the WTO Secretariat, which incorporates remarks of WTO Members made during bilateral market access negotiations (WT/ACC/SPEC/GEO/3/Rev.1).

##### **Question 167.**

**We note that Georgia has not submitted information on preferential treatment of service suppliers, either in document WT/ACC/SPEC/GEO/1 or document WT/ACC/SPEC/GEO/3. Does Georgia intend to submit a draft list of MFN exemptions?**



**Answer:**

Georgia's draft list of MFN exemptions together with the services offer has been already sent to the WTO Secretariat (WT/ACC/SPEC/GEO/3/Rev.1).

**Question 168.**

**What is the status of the "framework for performing legal services" by foreigners referred to in the response to question 198 in document WT/ACC/GEO/4?**

**Answer:**

The existing legislation does not restrict foreign legal service suppliers from providing legal services in Georgia, which will not be in contradiction with the Georgian legislation in force.

At the current stage, the licensing requirements for performing legal services in Georgia have been removed from the draft law on licensing.

**VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES**

**1. Bilateral Agreements Relating to Foreign Trade in Goods and Services**

**Question 169.**

**We seek a commitment from Georgia that it will adhere to the WTO Agreement on Trade in Civil Aircraft from the date of accession. In this regard, the current duty free treatment accorded to parts and other aircraft equipment in Georgia's tariff should facilitate the decision to join.**

**Answer:**

Currently, Georgia maintains a duty free regime for the import of aircraft parts and other supporting equipment used in international transportation. Joining the WTO Agreement on Trade in Civil Aircraft will be envisaged upon Georgia's accession to the WTO.

**Question 170.**

**We note that Georgia has concluded bilateral free trade agreements with Armenia, Azerbaijan, Russia, Turkmenistan, Ukraine and Uzbekistan. However, it appears that only the agreements with Azerbaijan and Russia are currently in force. Could Georgia provide further information on the status of these agreements and which are in force?**

**Answer:**

- The Free Trade Agreement between the Government of Georgia and the Government of the Republic of Azerbaijan. Signed in Tbilisi on 8 March 1996, ratified by the Parliament of Georgia on 24 June 1996, date of entry into force is 10 July 1996;
- The Free Trade Agreement between the Government of Georgia and the Government of the Russian Federation. Signed in Tbilisi on 3 February 1994, ratified by the Parliament of Georgia on 10 March 1994, date of entry into force is 10 May 1994;

- The Free Trade Agreement between the Government of Georgia and the Government of Ukraine. Signed in Tbilisi on 9 January 1995, ratified by the Parliament of Georgia on 2 April 1996. In force;
- The Free Trade Agreement between the Government of Georgia and the Government of Turkmenistan. Signed in Tbilisi on 20 March 1996. Not in force;
- The Free Trade Agreement between the Government of Georgia and the Government of the Republic of Armenia. Signed in Stepanavan on 14 August 1995, ratified by the Parliament of Georgia on 28 June 1997. Not in force;
- The Free Trade Agreement between the Government of Georgia and the Government of the Republic of Uzbekistan. Signed in Tashkent on 4 September 1995. Not in force.

**Question 171.**

**Could we obtain further clarification on the Agreement (signed on 24 September 1993 and in effect since January 1994) creating an economic union between Georgia and other CIS countries? How far has the free circulation of goods, services, capital and manpower been implemented so far?**

**Answer:**

The Agreement signed between Georgia and other CIS countries on the creation of an economic union is a framework agreement. The practical realization of this agreement is fully dependent on concluding the separate multilateral agreements within the framework of CIS in specific areas of economic activities. For example the Agreement on the Creation of a Zone of Free Trade of the Commonwealth of Independent States and others (including creation of the CIS Customs Union).

The Agreement on the Creation of an Economic Union Between CIS Countries does not lay down the legal principles of free circulation of goods, services, etc. Accordingly, no free circulation of goods, services, capital and manpower has been implemented on the basis of this Agreement.

**Question 172.**

**Could you elaborate more on the groupings within the CIS Customs Union and make a direct link with the above-mentioned agreement?**

**Answer:**

The creation of the CIS Customs Union is the practical step for implementing the Agreement on the Creation of an Economic Union Between CIS Countries.

However, as it is indicated in Georgia's previous documents, Georgia's strong position is not to join the CIS Customs Union.

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