

WORLD TRADE ORGANIZATION

RESTRICTED

WT/ACC/GEO/18

4 February 1999

(99-0417)

Working Party on the Accession of Georgia

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 13 October 1998, with the request that they be circulated to the members of the Working Party. The questions and replies are reproduced hereunder. Annexes I and II are available in the Secretariat (Accessions Division, Room 1126) for consultation by interested members.

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I. Introduction

Question 1.

Could Georgia keep the Working party updated on the developments concerning the law on foreign Trade?

Answer:

It has been decided that the Presidential Decree on Managing the WTO Relationship would be adopted instead of the Law on Foreign Trade. The Ministry of Trade and Foreign Economic Relations has prepared a draft presidential decree assigning the responsibilities for managing various aspects of the relationship between Georgia and the WTO after accession is achieved.

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions of the ongoing economic policies

Privatization

Question 2.

For the firms not yet privatized, which according to WT/ACC/GEO/10 account for about 20 per cent of Georgia's GDP, what portion of Georgia's imports and exports are accounted for by these government-owned firms?

Answer:

This kind of information is not available at the present stage.

Question 3.

The response to question 6 of WT/ACC/GEO/10 lists about 60 Joint-Venture firms with significant Government participation. Earlier, however, Georgia had indicated that there were approximately 240 firms not yet privatized. Could Georgia provide a list of the remaining unprivatized wholly or partially-government owned firms and indicate in broad terms which are being considered for privatization and which are not?

Answer:

The list of remaining unprivatized wholly- or partially-government owned firms is enclosed. (see Annex I)

Question 4.

Could Georgia display its privatization status information in a table similar to those provided by Latvia and Kyrgyz Republic in their accession Working Party Reports?

Answer:

The privatization status information of Georgia is enclosed. (see Annex I)

Question 5.

The response to question 5 of WT/ACC/GEO/10 states that Georgia foresees the completion of its privatization program by 2000. We seek a commitment from Georgia to provide annually to WTO Members information on developments in its privatization for as long as its program of privatization is in existence along the lines of the information provided to the Working Party during the accession process, and on other issues related to its economic reforms as relevant to its obligations under the WTO. Is Georgia prepared to agree to such a commitment?

Answer:

Georgia takes a commitment to provide annually the information on developments in its privatization to the WTO Members. The information regarding the privatization process in Georgia is available through the Internet in the following addresses:

www.georgia.net.ge/mospm - web side of the Ministry of State Property Management of Georgia;

www.casebycase.org.ge - web side of the World Bank project - Multilateral Investment Guarantee Agency (MIGA)

www.sanet.ge/geplac - web side of the Georgian-European Legal Advice Center (GEPLAC)

(b) Monetary and fiscal policy

Fiscal policy.

Question 6.

Apparently, according to Georgia legislation, tax inspectors can freeze bank accounts of foreign firms without an order issued by the judicial authority and/or money can be withdrawn without the consent of account holder. Could Georgia specify under which circumstances these activities are carried out and if Georgia intends to change its legislation to avoid possible abuses?

Answer:

The decision of the court is necessary to freeze bank accounts both of foreign and domestic firms.

(d) Foreign and domestic investment policies

Question 7.

Re question 13. Does the process for obtaining permission to engage in banking activity, insurance activity, issuance of securities and communications, as outlined by the Georgian response to this question, apply equally to domestic and foreign investors?

Answer:

The process for obtaining permission to engage in banking activity, insurance activity, issuance of securities and communications applies equally to domestic and foreign investors.

Question 8.

Could Georgia please specify the sectors that will be submitted to licensing requirements in the new licensing law? in addition could Georgia specify the nature of these requirements ?

Answer:

A new draft law concerning licensing of businesses has been prepared and was formally considered by Government (the final stage before submission to Parliament) in early December. Parliamentary consideration is scheduled for February 1999. The law will apply equally to both domestic and foreign-owned businesses in Georgia. The draft is quite favorable to business in that it restricts the authority of ministries to control businesses through the issuance of licenses to those situations involving safety, consumer protection, environmental protection, or national security issues.

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

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

Question 9.

The response to question 17 of WT/ACC/GEO/10 indicates that the national Government of Georgia has full authority in the areas of, *inter alia*. taxes on goods, customs, tariffs, and foreign trade on its national territory with the exception of the Autonomous Republic of Abkhazia.

The responses to questions 22 and 23 indicate that Georgia is prepared to take specific commitments coiled-rung the uniform implementation of WTO provisions and the elimination or nullification or measures taken by sub-central authorities in Georgia that are in conflict with the WTO Agreement when those measures were brought to its attention "at the sub-national level controlled by the Central Government" from the date of accession.

Is there any part of Georgia's territory other than the Autonomous Republic of Abkhazia, e.g., free trade or economic zones, trade processing zones, other autonomous regions, where Georgia does not foresee the ability to enforce WTO provisions from the date of accession?

Answer:

At present negotiations are ongoing to share the power between central and local authorities in order to ensure the enforcement of the national legislation in former South Ossetian Autonomous Region.

4. Any Legislative Programs or Plans to Change the Regulatory Regime

Question 10.

The response to question 26 states that Georgia is preparing draft laws or regulations to address identified inconsistencies in its legal structure vis-à-vis WTO provisions in the following areas:

- **-A foreign trade law that will determine the responsibilities of various ministries for particular aspects of the WTO Agreement,**
- **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.**
- **-certain areas of intellectual property;**
- **-amendments to several investment laws.**

We believe that this draft legislation should be circulated well prior to the next Working Party to allow Working Party members to reviews and comment upon it for discussion at that meeting.

Answer:

The above-mentioned draft legislation except anti-dumping, countervailing duties and safeguards (Georgia refrains from imposing anti-dumping, countervailing and safeguard measures until WTO consistent legislation has been adopted and properly notified to the WTO) will be circulated prior to the next Working Party. As for the foreign trade law it was transformed into the Presidential Decree on Managing the WTO Relationship.

Question 11.

Please provide an update on the recent measures undertaken to implement the legislative programme to adjust Georgia' s trade policy to conform to WTO rules.

Answer:

The following specific actions have been taken to enact or revise legislation or regulations to meet specific WTO requirements:

Customs Valuation Regulations

The Ministry of Finance prepared detailed regulations to guide the Customs Department in applying the provisions of the WTO Agreement on the Implementation of Article VII of the GATT 1994 ("Customs Valuation Agreement"). These regulations have been recently revised to incorporate the Decisions of the WTO Customs Valuation Committee concerning "Valuation of Carrier Media Bearing Software" and "Treatment of Interest Charges" (WTO/VAL/6&8). Issuance of these regulations has been delayed by reorganization of the Ministry of Finance and the Customs

Department, but it is expected that they will be formally issued by the Ministry of Finance in the very near future. A training seminar to introduce the new regulations to Customs officials was presented by the Crown Agents valuation expert from 6-10 July 1998.

Rules of Origin Regulations

The Ministry of Finance prepared detailed regulations for the Customs Department covering the requirements of the WTO Agreement on Rules of Origin. As with the Customs Valuation Regulations, issuance of the Rules of Origin regulations has been delayed, but is expected in the near future.

Antidumping, Countervailing Duties, and Safeguards Regulations

The Government of Georgia has continued its policy of not proceeding with detailed legislation in these areas. While Georgia retains the right to apply these measures at some point in the future, it will not do so until detailed legislation and implementing regulations fully consistent with WTO requirements have been prepared.

Presidential Decree on Managing the WTO Relationship

The Ministry of Trade has prepared a draft presidential decree assigning the responsibilities for managing various aspects of the relationship between Georgia and the WTO after accession is achieved. Having such a decree in place will help Georgia to transition smoothly from the accession to the post-accession phase. Final issuance of this decree depends on further discussions in the Government.

Excise and VAT Taxes

Under current legislation, the excise rates for domestic and imported products, except for cigarettes, became the same as of 1 January 1999. VAT on excisable products other than cigarettes also became consistent under current law on 1 January; the 20 per cent *ad valorem* VAT rate will be applied to the wholesale price plus excise for domestic products, and to the customs value plus duty and excise in the case of imports.

Under current law, the special treatment of imported cigarettes expires on 1 April 1999. At that time, imports will come under the same excise and VAT provisions as domestic products. The question of differential excise treatment of high- and low-quality cigarettes is under review; the price data is being collected to determine whether the differential specific rates are in fact consistent when viewed in terms of *ad valorem* equivalents.

Excise stamps for cigarettes and alcoholic beverages, both domestic and imported, are scheduled for introduction on 1 February 1999, under current law. This date is likely to be delayed to 1 March. Detailed regulations governing the administration of excise stamps has yet to be prepared.

Land Privatization

A new Law on Administration and Disposal of State-owned Non-Agricultural Land, which provides for the privatization of non-agricultural land throughout Georgia has been approved by Parliament and implemented. Large numbers of individuals and enterprises are now in the process of privatizing the land they have until now occupied but not owned.

Capital Markets

A law establishing a stock market and providing for securities registration and regulation, prepared by USAID-supported experts, was enacted during the fall session of Parliament. Amendments to the law on entrepreneurs, providing for improved stockholder protection and other provisions necessary to encourage the development of a securities market in Georgia have also been approved by Parliament.

Log Exports

The Law on Regulation of Forest Exploitation in the Territory of Georgia was adopted by Parliament at the end of June 1998. This law provides that exports of logs will be allowed, subject only to licenses issued by the Ministry of Trade and Foreign Economic Relations. These licenses will be granted in all cases in which the logs in question have been cut in conformance with the requirements of the State Forest Department. The Law on Export License Fee for Wood Raw Products of 31 March 1998, has been abolished. The purpose of the export licence requirement is to prevent the export of logs taken from Georgia's forests in violation of the environmental protection regulations.

Scrap Exports

The Law of Georgia on Regulation of Export and Re-export of Scrap and Waste of Black and Colored Metals was passed by Parliament at the end of June 1998, and was signed by the President in June. This law requires an export license and the payment of a special duty, set at 28 Laries (approximately US\$21) per ton for scrap other than copper or aluminum; at 475 Laries (approximately US\$355) per ton for copper, and at 320 Laries (approximately US\$240) per ton for aluminum. The new law is effective from 1 July 1998, and abolishes the prohibition on scrap exports contained in the Law of Georgia #637-II of 21 February 1995.

Business Licensing Law

A new draft law concerning licensing of businesses has been prepared and was formally considered by Government (the final stage before submission to Parliament) in early December. Parliamentary consideration is scheduled for February 1999. The law will apply equally to both domestic and foreign-owned businesses in Georgia. The draft is quite favorable to business in that it restricts the authority of ministries to control businesses through the issuance of licenses to those situations involving safety, consumer protection, environmental protection, or national security issues.

Accounting Law

A draft Law on Bookkeeping and Accounting has passed first reading in the Parliament.

Administrative Procedure Act

A general Administrative Procedure Act, which will establish the procedures by which judicial appeal of administrative actions may be pursued, has been prepared and will be formally submitted to Parliament on 22 December. Parliamentary approval is expected in the spring session. The law has been prepared with the assistance of experts provided by USAID and European donors. Although certain rights of appeal are contained in specific laws or regulations (for instance, there is a specific right of appeal contained in the customs valuation and rules of origin regulations), the Administrative Procedure Act will systematize such rights in all areas, thus covering such additional WTO-related areas as business licensing, appeal of export or import license denials, etc. An English translation will be available in mid-December.

Insurance Legislation

Amendments to the Law on Insurance, adopted on 30 October, 1998, provide that the restriction limiting foreign ownership of insurance companies to 49 per cent is abolished, the provision to become effective upon Georgia's accession to the WTO.

Government Procurement Legislation

A new law on government procurement, based on the UNCITRAL model law and prepared with the help of European experts through GEPLAC, passed Parliament on 11 December 1998. An English translation will be made available to WTO in the near future. Further work will be undertaken to amend this law in order to be fully compliant with the Agreement on Government Procurement. A list of the government entities to which the law will apply will be provided to the WTO.

5. Laws and Legal Acts

Question 12.

The responses to questions 29 and 30 indicate that normative acts may be published in a variety of locations. As outlined in Article X of the GATT and in several WTO Agreements, laws, regulations, judicial decisions, and administrative rulings of general application dealing with trade must be published in a manner that permits governments and traders to become acquainted with them, and in some cases for comment prior to finalization.

Can Georgia indicate specifically which organs are relevant to the obligations contained in Article X of the GATT and the WTO Agreements on SPS, TBT, TRIPS, GATS, Import Licensing Procedures, Customs Valuation, etc.?

Answer:

The draft "Decree of The President of Georgia on accession of Georgia to WTO" is enclosed (see Annex II). Organs that are relevant to the obligations contained in Article X of the GATT are indicated in this draft decree.

Question 13.

We suggest that Georgia review its current diffuse publication strategy and consider focusing its publication requirements on WTO issues in a relatively small number of publications, which it will list for the Working Party.

Answer:

In accordance with the paragraph 5 of Article 38 of the Law of Georgia "On Normative Acts" (29 October 1996), a normative act cannot take effect before its official publication. An official publication of normative acts of Georgia is the first publication of their entire text in "Sakartvelos Kanonmdeblobis Matsne" (Georgian Legislation News).

Question 14.

Could Georgia submit a copy of the Administrative procedure Act once presented to the parliament?

Answer:

The Code of Administrative Court Procedures of Georgia is enclosed. (see Annex II)

Question 15.

The current system of publication of normative acts in various publishing journals according to the authority that adopts the normative act may be a source of serious confusion and lack of proper information for foreign traders. Georgia should consider creating a single official newspaper for the publication of normative acts. Please list the relevant publications that correspond to Georgia's transparency requirements after accession.

Answer:

"Sakartvelos Sakanonmdeblo Matsne" is an official newspaper for the publication of normative acts and it is available for public.

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

Question 16.

The responses to questions 31 and 32 of WT/ACC/GEO/10 appear to indicate that the provisions on "gilt of appeal described in WT/ACC/GEO/4 will not be included in any implemented legislation, and that for customs valuation only, provisions will be included in the new regulations under development. Is that correct?

If no new comprehensive appeal procedures are to be implemented, it is important that Georgia respond to question 28 in WT/ACC/GEO/4 and question 32 in WT/ACC/GEO/10, i.e.:

Please describe in detail the process of appeal to the judiciary available for traders who contest administrative rulings by executive agencies, e.g., in the area of customs valuation, classification and duty, taxation of imports, standards and sanitary certification and inspection, application for import or export licences, measures taken against dumping and subsidized imports and intellectual property protection.

If these provisions have not yet been enacted in Georgian law or regulation, please indicate when they will come into force.

The right of appeal of administrative decisions to an independent body is a critical component of the rule of law embodied in WTO provisions. The discussion in WT/ACC/GEO/3 and the responses to questions on the right of appeal provided on issues covered by the WTO Agreements show a willingness by Georgia to address the issue, but do not make clear how Georgia intends to fulfil its WTO obligations in this area.

Georgia should review this situation and report on the issue to the Working Party for discussion at the next Working Party meeting.

How does Georgia intend to regulate the right of appeal against decisions, actions or inaction of Custom bodies?

Answer:

As for the right of appeal of persons engaged in commercial activities the above-mentioned persons (traders) can apply to the Court of the First Instance, in accordance with article XI of the civil procedure code of Georgia. In order to appeal the decisions of the Court of the First Instance, legislation provides for the right to apply to appellate courts.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulations

(a) Registration and right to trade

Question 17.

Georgia has stated that the former State monopoly in foreign trade has been abolished and that no restrictions existed on the right of individuals and enterprises to import and export goods into its customs territory, except as provided in WTO Agreements. Can Georgia confirm that individuals and firms are not restricted in their ability to import or export based on their registered scope of business and the criteria for registration are generally applicable and published in the official journal?

Answer:

Georgia confirms that individuals and firms are not restricted in their ability to import or export based on their registered scope of business and the criteria for registration are generally applicable. Normative acts that regulate export and import are published in the official press.

Question 18.

We seek Georgia's commitment that from the date of accession, it will ensure that all of its laws and regulations relating to the right to trade in goods, and all fees, charges or taxes levied on such rights will be in full conformity with its WTO obligations, including Articles VIII: 1 (a), XI: 1 and III:2 and 4 of the GATT 1994 and that it would also implement such laws and regulations in full conformity with these obligations.

Answer:

Georgia undertakes commitment that all its laws and regulations relating to the right to trade in goods, and all fees, charges or taxes levied on such rights will be in full conformity with WTO requirements.

(d) Other duties and charges

Question 19.

Could Georgia explain in details how the ad valorem rate proposed for customs user fees covers the costs of rendered? Could Georgia confirm that customs user fees would be applied in consistency with GATT Art. VIII on accession.

Answer:

The existing rate of Customs User Fee of 0.3 per cent, which is in nonconformity with the Article VIII:1, will be reduced to 0.2 per cent from 1 April 1999, and further reduced to 0.15 per cent upon accession to WTO. A study has been undertaken to develop data to determine the allowable level for the Customs User Fee, and the final fee level, with appropriate minimum and maximum levels, will be established based on this study. After accession to WTO, the Customs User Fee will meet WTO requirements.

Question 20.

The response to question 42 in WT/ACC/GEO/10 confirms that Georgia is developing a plan for bringing its 0.3 per cent *ad valorem* customs fee into line with WTO provisions. We seek circulation of a specific plan to address this issue be circulated in an accession document prior to Georgia's next Working Party meeting.

Answer:

See answer to Question 19.

Question 21.

According to the reply no. 46 in document WT/ACC/GEO/4 Georgian regulations provide for imposition of seasonal duties for the period of up to 4 months. Are these duties and periods of their validity indicated in the Customs Tariff of Georgia? If not, on what agricultural products such seasonal duties may be imposed? Does Georgia intend to change the regulations concerning seasonal duties?

Answer:

The rates of seasonal duties and periods of their validity are not indicated in the Law on Customs Tariff of Georgia. The concrete types of products are not yet stipulated by the Law on Customs Duties of Georgia on which the seasonal duties may be imposed. However, Georgia has reflected the system of seasonal tariffs in its offer on goods. Any legislative changes in this area will be in full conformity with the WTO requirements.

Question 22.

According to the contents of Georgia offer on goods (as reproduced in document WT/ACC/SPEC/GEO/4/Rev.2) final rates of duty which differ from the bound rates will enter into force as from the date of accession. Does this mean that the bound rates of duties which are equal to the final rates level, as indicated in the offer, are at present in force?

Answer:

The bound rates of duties which are equal to the final rates level, as indicated in Georgia's offer on goods, are not at present in force.

(f) Import licensing procedures

Question 23.

As far as import permits are concerned, is there a differential treatment between import from CIS or non CIS countries? If so please explain the difference.

Answer:

There is no differential treatment between import from CIS and non CIS countries.

Question 24.

Could Georgia briefly describe the licence requirements for import, production and sale of tobacco products as foreseen in the Presidential Decree?

Answer:

The Presidential Decree N 391 "On Activities Addressing Regulation of Production, Import, Wholesale and Retail Trade in Tobacco Products in Georgia" is enclosed (see Annex II).

(h) Customs valuation

Question 25.

The responses to questions 56-60 indicate that Georgia has revised its legislation on customs valuation with the enactment of the Law on Customs Tariff and Duty on 20 March 1998 and the abolition of the Law on Customs Duty of 27 December 1996. We commend Georgia for its rapid implementation of a legal framework for the determination of customs valuation consistent with WTO provisions. We will supply detailed comments on the new legislation, in writing, separately.

Has Georgia included in the law the contents of the Interpretative Notes to the WTO Valuation Agreement and the Decisions of the WTO Customs Valuation Committee on "Valuation of Carrier Media Bearing Software for Data Processing Equipment", on the "Treatment of Interest Charges in the Customs Value of Imported Goods"?

Answer:

These provisions have been included in the draft Regulations (9 December 1998) governing the Customs Valuation.

(j) Pre-shipment inspection

Question 26.

We remain interested in Georgia's plans to secure the services of a PSI firm? If this occurs, we would appreciate a report from Georgia on what duties it will undertake and how will they be implemented.

Answer:

The Government, following discussions with the World Bank and the IMF, has decided to invite companies providing PSI and related services to propose ways to improve customs collection in Georgia, including imposing a pre-shipment inspection requirement on exporters. The tender is to be issued in January; the target date for implementation is 1 April 1999. A Presidential Decree announcing a tender to select a contractor was signed in early December.

In order to ensure that any decision on PSI is taken with consideration of the implications for Georgian accession to the WTO, the Agreement on Pre-Shipment Inspection and the December 1997 Report of the Working Party on Pre-Shipment Inspection have been translated into Georgian for use by the Ministry of Finance.

(k) Application of internal taxes on imports

Value Added Tax

Question 27.

In response to question 64 of WT/ACC/GEO/10, Georgia states that it exempts from VAT imports of "scientific, artistic, and literary books and journals, the authors of which are citizens of Georgia".

While we appreciate the purpose of these exceptions, their application violates Article III of the GATT.

We suggest that in the context of its accession to the WTO, Georgia contemplate establishing a "zero" VAT rate for the "scientific, artistic, and literary books and journals" subject.

In accordance with the reply to the question no. 71 and question no. 73 in document WT/ACC/GEO/10 "The Government of Georgia understands that certain aspects of its treatment of alcoholic beverages and tobacco products are not fully consistent with WTO rules". A revision of duties, excise tax and VAT tax had been envisaged to take place in the summer of 1998 with an aim to bring these taxes into compliance with WTO rules. Have the relevant regulations been amended?

Answer:

At present the work is going on to change the appropriate provisions of the Tax Code of Georgia and to bring them into compliance with Article III of the GATT.

Excise and other taxes

Question 28.

At the last Working Party meeting, delegations noted that Georgia's excise rates on alcohol and tobacco products appeared to vary based on the basis or characteristics in a manner that could disadvantage imports, contrary to Article III of the GATT. In its response to questions 71 and 73 of WT/ACC/GEO/10, Georgia has acknowledged that certain aspects of its treatment of alcoholic beverages and tobacco products are not fully consistent with WTO rules, and that a revision of the customs, excise and VAT taxes imposed on imports of these product,? was discussed during the summer of 1998.

Georgia stated that changes would be made to bring these taxes fully into compliance with WTO rules, e.g., Article III of the GATT. What were the results of Georgia's review of tills situation? What does Georgia intend to do to bring its excise taxes on these products into line with WTO provisions?

Answer:

The system of combined taxes imposed on imported alcoholic beverages which included customs duty, VAT and excise tax was abolished since 1 January 1999. Accordingly, since 1 January 1999 the rates of excise taxes on imported and domestically produced alcoholic beverages became be equal.

Question 29.

As for taxation of tobacco products, there is a difference in taxation of imported and domestically produced cigarettes. However, Georgia tries to bring its system of taxation of cigarettes in compliance with the WTO requirements. Could Georgia update this working party on the status of development of the legislative changes necessary to bring its excise taxation system in full conformity with WTO rules?

Answer:

The need for consistent duty, excise taxation of all spirits, following the recent WTO panel decisions in Japan II and Korea - Alcoholic Beverages has been discussed in the Ministry of Finance. The Ministry is preparing amendments to the tax code, for enactment in the spring Parliament, to meet this requirement. Under current legislation, the excise rates for domestic and imported products, except for cigarettes, became the same since 1 January 1999.

Under current law, the special treatment of imported cigarettes expires on 1 April 1999. At that time, imports will come under the same excise provisions as domestic products. The question of differential excise treatment of high- and low-quality cigarettes is under review; the price data is being collected to determine whether the differential specific rates are in fact consistent when viewed in terms of *ad valorem* equivalents.

Question 30.

Are excise stamps applied to both imported and domestically produced goods?

Answer:

Excise stamps are applied to both imported and domestically produced goods.

Question 31.

As referred to in document WT/ACC/GEO/12. page 5, Georgia commits itself to its excise and VAT system in compliance with WTO standards. Does this mean that the different excise rate for different classes of cigarettes as stipulated in the present tax Code (article 130) will be abolished upon accession to the WTO. Georgia needs to ensure transparency of the procedure, standards and requirement for determining the class of cigarettes, and an equal approach in determining the class for domestically produced and imported cigarettes.

Answer:

Georgia confirms that it will bring the taxation of cigarettes fully into conformance with WTO requirements prior to accession, including abolishing discrimination between imported and domestic products in the application of internal taxes, and discrimination among classes of cigarettes to the extent such discrimination would violate GATT Article III.

Question 32.

As stipulated in document WT/ ACC/GEO/12, page 6, two presidential Decrees have been issued- on the introduction of excise stamps on production sales and import of tobacco products and alcoholic beverages, and on the establishing of licensing requirements for import , production en sale of tobacco products. can Georgia confirm that these documents envisage equal and non- discriminatory treatment of domestic and imported products as well as to local and foreign persons Please, provide copies of the decrees.

Answer:

Georgia confirms that excise stamps for tobacco and alcoholic beverages will be applied consistently to imported and domestic products, without discrimination against imported products that would be in violation of GATT Article III. Copies of the decrees in question were submitted. Regulations implementing these decrees are still in preparation, and will be notified to WTO as soon as they are available.

Question 33.

Article 125 (2) of the tax code of Georgia stipulates that in the case of imports, the of the taxable transaction shall be the customs value of the goods, but not less than "wholesale market price, excluding the excise and VAT". We seek confirmation that in approximating is tax legislation to the WTO standards by accession to the WTO. Georgia will introduce taxation based of the customs value of imported goods for each transaction.

Answer:

The basis for the calculation of excise taxes on tobacco and alcoholic products is the volume of goods; i.e., the tax in question is specific rather than *ad valorem*. In the case of excise taxes on other products, which are levied on an *ad valorem* basis, Georgia confirms that the basis for excise taxation of imported goods shall be the customs value, determined in accordance with the Customs Valuation Agreement, plus the applicable tariff and other duties. The phrase "but not less than the wholesale market price" will be deleted from the tax code prior to accession.

Question 34.

Under article 21 (1) of the law of Georgia on Customs Tariffs and Duties, the customs value of goods is determined in accordance with the contract costs, but using the prices that are not lower than the world average prices approved by the Ministry of Economics. Can Georgia confirm that by its accession to the WTO, this will be brought in compliance with WTO rules?

Answer:

The provision in question was contained in Article 5(6) of the old Law on Customs Tariffs and Duties, dated 27 December 1996. This law was superseded by the current Law on Customs Tariffs and duties, dated 20 March 1998. The currently effective provision on customs valuation is contained in

Article 10 of the new law, which contains no reference to world average prices. More generally, Georgia is fully committed to customs valuation in accordance with the WTO Customs Valuation Agreement, implementing regulations for which are currently under preparation.

(1) Rules of origin

Question 35.

Georgia states in response to question 79 that in accordance with the new Tariff Law enacted in March 1998, new regulations on rules of origin are being prepared that will be based directly on and be fully consistent with the WTO provisions and that the English language version of these regulations will be forwarded to the WTO Secretariat as soon as they are officially issued. We look forward to reviewing these regulations when they are issued.

Answer:

With technical assistance of the IRIS (Institutional Reform and Informal Sector, USAID) the WTO consistent draft regulations on Rules of Origin has been prepared. The Ministry of Finance has submitted it to the Customs Department for approval. The draft regulations has been submitted for review to the WTO Secretariat.

(m) Antidumping regime

(n) Countervailing duty regime

(o) Safeguard regime

Question 36.

Georgia has stated that it is reviewing its trade remedy legislation and will, in the context of the foreign trade law, enact laws and regulations implement to trade remedies in a WTO-consistent fashion.

We look forward to reviewing Georgia's revised legislation on these issues.

We seek a commitment that Georgia will not apply any anti-dumping, countervailing or safeguard measure until it has implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI, on Subsidies and Countervailing Measures, and on Safeguards.

Answer:

As it was stated by Georgia it will refrain from imposing any anti-dumping and countervailing measures until WTO consistent legislation has been enacted and properly notified to the appropriate WTO committees.

Question 37.

In the elaboration of any legislation concerning anti-dumping duties, countervailing duties and safeguards, Georgia should ensure their full conformity with the relevant WTO provisions, including Article VI and XIX of the GATT 1994 and the Agreement on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on

Safeguards. After such legislation has been implemented, Georgia would only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions.

Answer:

If Georgia does not complete the implementation of WTO consistent legislation by the date of accession, it will refrain from imposing any safeguard measures, until WTO consistent legislation has been enacted and properly notified to the appropriate WTO committees.

2. Export Regulations

Question 38.

We seek Georgia's confirmation that it does not maintain subsidies including export subsidies which meet the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures and that it will not introduce such prohibited subsidies in the future.

Answer:

Georgia confirms that it does not maintain subsidies including export subsidies which meet the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures and will not introduce them in future.

(h) Import duty drawback schemes

Question 39.

Are raw materials and semi-finished goods imported in Georgia under the existing import duty drawback schemes physically incorporated in the exported goods?

Answer:

Raw materials and semi-finished goods imported in Georgia under the existing import duty drawback schemes are physically incorporated in the exported goods.

3. Internal Policies Affecting Foreign Trade in Goods

(a) Industrial policies

Question 40.

Can Georgia confirm that any subsidy programs existing or developed in the future will be administered in line with the Agreement on Subsidies and Countervailing Measures and that all necessary information on programs to be notified, if such exist, will be provided to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon entry into force of Georgia's Protocol of Accession?

Answer:

Georgia confirms that any subsidy programs existing or developed in the future will be administered in line with the Agreement on Subsidies and Countervailing Measures that all

necessary information on programs to be notified, if such exist, will be provided to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon entry into force of Georgia's Protocol of Accession.

Question 41.

A date is missing in the reply to question no. 170 in document WT/ACC/GEO/10 indicating entry into force of the free trade agreement with Ukraine. Could Georgia provide it?

Answer:

The free trade agreement with Ukraine entered into force on 4 June 1996.

(b) Technical regulations and standards

Question 42.

Could Georgia commit itself to implement the TBT Agreement from the date of accession and update the Working Party on the steps taken in this direction?

Answer:

A Presidential Decree on Measures Implementing the Requirement of the WTO Agreement on Technical Barriers to Trade was adopted on 5 December 1998, which envisages the detailed plan of actions. This document has been submitted to the WTO Secretariat for review.

Question 43.

In the answer to question 55 in document WT/ACC/GEO/ 10 no information is provided with respect to the issuance of a certificate of conformity. Can Georgia provide information about line list of goods for which such certificate is required, the procedure and terms for its issuance, fees collected , necessary documents samples and others. Can Georgia confirm that the obtaining of a certificate is not related to the establishment of additional barriers to trade

Answer:

The required information is provided in the document WT/ACC/GEO/3.

(c) Sanitary and phytosanitary measures

Question 44.

We appreciate Georgia's clearly stated intent to implement both the TBT and SPS Agreements from the date of accession.

Georgia's legislation on measures required by the TBT and SPS Agreements, and its standards and certification system in general, are not at this time WTO consistent. Full implementation of both Agreements, with a certification system for imports that does not present unnecessary barriers to trade, prior to accession is a fundamental factor in completing Georgia's accession process.

The responses in WT/ACC/GEO/10, however, do not provide sufficient information on the specific actions Georgia has undertaken since last Working Party meeting to meet TBT and SPS obligations.

We urge Georgia to circulate its Action Plan to Working Party members as an accession document as soon as possible, in order to advance the process. Near term review and comment by WTO Members would help ensure that concerns are being addressed properly and perhaps eliminate the need for future amendments.

In any case, this Action Plan should be circulated for comment well prior to the next Working Party session. We have provided an outline of our position on implementation of the two Agreements to the Georgia delegation bilaterally.

We hope that hope this will spark early response from Georgia on these issues and we ask Georgia to address the issues raised in their communication on SPS and TBT implementation to the Working Party.

We also renew our request, circulated in WT/ACC/GEO/10, that Georgia complete a "Statement of Implementation" on technical barriers to trade.

Answer:

Based on discussions with the Ministries of Foreign Affairs and of Agriculture, IRIS provided short-term technical assistance to assist the various ministries concerned with sanitary and phytosanitary import control measures to revise their procedures to meet WTO requirements. A detailed working plan was prepared to bring Georgian procedures into conformance with WTO requirements. An "Enquiry Point" has been established as required by WTO. An Interministerial Coordinating Body for SPS Implementation ("ICB") has been established, chaired by the Deputy Minister of Agriculture responsible for international issues. A working-level body has been established under the ICB, with representatives of each concerned agency identified. A Project Director and staff have been appointed, and an office provided and equipped. As of July 1998, the enquiry point was in full operation.

A Presidential Decree on Measures Implementing the Requirement of the WTO Agreement on Technical Barriers to Trade was adopted on 5 December 1998, which includes the precise plan of actions has been submitted to the WTO Secretariat for review.

Question 45.

Is the enquiry point referred to in the response to question 88 operational? If so, what is its address and how can it be accessed? Does it cover SPS Agreement requirements as well as TBT? If not, what institution addresses these requirements for the SPS Agreement.

Has the publishing house "Standarti" referred to in the response to question 90 established under the State Department of Standardization, Metrology and Certification of Georgia ("Sakstandarti") to provide for the publication of standards and other draft technical documents for prior comments yet published any standards related materials for review and comment? Does it handle prior publication for materials covered by the SPS Agreement as well? If not, what institution addresses these requirements for the SPS Agreement.

Answer:

A Presidential Decree on Measures Implementing the Requirement of the WTO Agreement on Technical Barriers to Trade was adopted on 5 December 1998, which includes the precise plan of actions. This document has been submitted to the WTO Secretariat for review. In addition, agreement has been reached with Japan to provide technical assistance to bring Georgia's procedures for enforcing technical standards into conformance with WTO requirements. A Georgian delegation was in Tokyo in November and early December for training on TBT issues. At present the TBT enquiry point is not full operational. But creation of the WTO consistent enquiry point is provided for by the above mentioned Decree.

Based on discussions with the Ministries of Foreign Affairs and of Agriculture, IRIS provided short-term technical assistance to assist the various ministries concerned with sanitary and phytosanitary import control measures to revise their procedures to meet WTO requirements. A detailed working plan was prepared to bring Georgian procedures into conformance with WTO requirements. An "Enquiry Point" has been established as required by WTO. An Interministerial Coordinating Body for SPS Implementation ("ICB") has been established, chaired by the Deputy Minister of Agriculture responsible for international issues. A working-level body has been established under the ICB, with representatives of each concerned agency identified. A Project Director and staff have been appointed, and an office provided and equipped. As of July 1998, the enquiry point was in full operation.

(d) Trade-related investment measures

Question 46.

We support Georgia's commitment that it does not and will not maintain any measures inconsistent with the TRIMS Agreement and will apply the TRIMS Agreement from the date of accession without recourse to any transitional period.

Answer:

Georgia commits that it does not and will not maintain any measures inconsistent with the TRIMS Agreement and will apply the TRIMS Agreement from the date of accession without recourse to any transitional period.

(e) State-trading practices

Question 47.

Georgia has stated that there are no enterprises meeting the criteria for a state-trading enterprise in Georgia at this time.

Can Georgia confirm that it will apply its laws and regulations governing the trading activities of state-owned enterprises and other enterprises with special or exclusive privileges in full conformity with the provisions of the WTO Agreement, in particular Article XVII of the GATT 1994 and the Understanding on that Article and Article VIII of the GATS, and that Georgia will notify any enterprise falling within the scope of Article XVII?

Answer:

Georgia makes the commitment that its laws and regulations governing the trading activities of state-owned enterprises and other enterprises with special or exclusive privileges will be in full conformity with the WTO requirements.

(l) Government procurement practices

We support Georgia's commitment to join the WTO Government Procurement Agreement.

4. Policies Affecting Foreign Trade in Agricultural Products

(b) Exports

Question 48.

We appreciate Georgia's commitment not to use agricultural export subsidies in the future and to bind its agricultural export subsidies at zero.

Answer:

As it was stated many times by Georgia, it will bind its agricultural export subsidies at zero.

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 49.

The response to question 126 in WTO/ACC/GEO/10 asks whether, in addition to Book 4 of Georgia's Civil Code, Georgia's Parliament will enact a Law on Copyright and Neighboring Rights. Please give us an update on the status of the draft legislation regarding copyright and neighboring rights.

Answer:

The draft law will have a first hearing in Parliament in April 1999.

Question 50.

Article 1045 of Georgia's Civil Code provides an exclusive right to allow or ban the remake, arrangement, or other kind of working up of the work and the right of public showing of the work, public performance, public broadcast, including cable transmission.

Does this provision include cinematographic adaptation or reproduction that authors are to be granted under Article 14 of the Berne Convention?

Answer:

Article 1045 includes cases envisaged by the Article 14 of the Berne Convention. Article 1045 should be read together with the Article 1039, 1040 and 1041 of the Civil Code.

Question 51.

Articles 1050 through 1061 impose limitations on the rights of authors.

With respect to each limitation, please explain the manner in which it conforms to the obligation in TRIPS Article 13, that limitations and exceptions be confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the right holder's legitimate interests.

Answer:

Articles 1050 through 1061 are confined to such cases as use for the studying purposes, for providing information, making short records, etc., envisaged in Articles 9(2), 10, 10*bis*, 11*bis* 3 of the Berne Convention. Provisions of these Articles are confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the right holder's legitimate interests.

Question 52.

Could Georgia please provide full details of how it complies with, or steps taken to comply with, Article 3 ("national treatment") and Article 13 ("limitations and exceptions") of TRIPS.

Answer:

According to Article 1018 of the Civil Code copyright extends to the works of science, literature and art, performance, phonogram and videogram, etc., which are protected by those international agreements, to which Georgia is a party.

Limitations and exceptions envisaged in the Civil Code are confined to such cases as use for the studying purposes, for providing information, making short records, etc., envisaged in Articles 9(2), 10, 10*bis*, 11*bis* 3 of the Berne Convention. That Provisions Articles are do not conflict with a normal exploitation of the work and do not unreasonably prejudice the right holder's legitimate interests.

(b) Trademarks, including service marks

(c) Geographical indications

Question 53.

Please provide an update on the draft law on trademarks referred to in answer to question 137 of WTO/ACC/GEO/10.

Answer:

The Draft Trademark law passed the first reading in the Parliament in December 1998. It is expected that it will be enacted during the spring session, which begins in February.

Question 54.

The response to Question 141 implies that, to be protected, well-known marks must be registered. The Paris Convention, as incorporated into TRIPS by Article 2.1, requires that well-known trademarks be protected without the necessity of registration.

Please verify whether registration is required for well-known to be protected. If so, please explain how the law will be amended to conform to Article I á of the TRIPS Agreement and Article 6 *bis* of the Paris Convention, as incorporated into the TRIPS Agreement by TRIPS Article 2.1.

Answer:

According to Article 3.4 of the draft Trademark Law, well known marks are protected without registration by virtue of the article 6*bis* of the Paris Convention.

Question 55.

The reply to question No. 138 seems to indicate that a mark is only registered in those cases where it is identical to a previously registered mark and where the products involved are identical. However, Article 16.1 of the TRIPS Agreement extends the protection to similar signs for similar products. Please clarify.

Answer:

The Draft Law on Trademarks extends protection to similar signs for similar products too. Please see paragraphs 1, 2 and 3 of the Article 5 – Relative Grounds of Refusal of the Draft Trademark law. Those three paragraphs extend protection to the following:

- identical sign – identical product;
- identical sign – similar product;
- similar sign – identical product;
- similar sign – similar product.

Question 56.

Please also clarify whether and how well-known marks are protected in cases where no confusion with another mark can be established, i.e. whether and how article 16.2 and 3 of the TRIPS Agreement are/will be implemented in Georgian legislation. In the latter case, please explain the steps that will be taken (including time-frame) to comply with the TRIPS Agreement.

Answer:

Article 5.4 of the draft Trademark law says that

1. A trademark shall not be registered if it is identical to the well known mark;
2. A trademark shall not be registered if it similar to the well known mark to such extent, that creates likelihood of confusion;

3. A trademark shall not be registered if it similar to the well known mark to such extent, that creates likelihood of association.

These rules apply even when the goods are different.

Also, according to the article 3.4 of the draft Trademark law well known marks are protected without registration by virtue of the article *6bis* of the Paris Convention.

Question 57.

Please clarify whether and how Article 23.2 of the TRIPS Agreement – registration of a trademark for wines and spirits which contains or consists of a geographical indication identifying wines or spirits – is/will be implemented in Georgian legislation. In the latter case, please explain the steps that will be taken to bring Georgian legislation into compliance with the TRIPS Agreement.

Answer:

According to Article 5.5. of the draft Trademark law a trademark shall not be registered if it is identical or similar to the appellation of origin or geographical indication protected in Georgia. This provision extends to wines and spirits and to other products as well. Protection of geographical indications identifying wines or spirits shall be regulated by the Law on Appellations of Origin and Geographical Indication. The draft law is available at the WTO Secretariat.

(d) Industrial designs

Question 58.

The response to Question 148 of WTO/ACC/GEO/10 states that the draft patent law, after its adoption, will govern protection of industrial designs. Please provide an update on the status of the draft patent law.

Answer:

The Draft Patent Law passed the first reading in Parliament in December 1998. It is expected that it will be enacted during the spring session, which begins in February.

(e) Patents

Question 59.

Article 11 of the Statute on Inventions, No. 302 of 16 March 1992, gives patent owners the exclusive right to derive income from the use of their inventions and to dispose of the invention at their discretion by selling, assigning, or licensing it. Article 28 of the TRIPS Agreement requires that patent owners have the right to prevent others from making, using, offering for sale, selling, or importing a patented product or from using a patented process or using, offering for sale, selling, or importing a product produced directly using such process. The response to Question 151 of WTO/ACC/GEO/10 does not make clear flat each of the rights required by TRIPS Article 28 are, in fact, assured by Article 11 of the Statute on Inventions.

Please describe with respect to each of the rights required to be provided patent owners under Article 28.1, how a patent owner would be able to enforce his rights. For example, how would Article 11 enable the owner of a process patent to prevent third parties from importing the product produced directly by the patented process.

Answer:

The Statute on Inventions, cited in the question, will be abolished in the first half of the 1999 after the enactment of the Patent Law, the draft of which was already passed by the Parliament in the first reading. Hence, article 11 of the Statute will become irrelevant. the new Patent law shall satisfy the requirement of TRIPS.

Question 60.

The response to Question 152 of WTO/ACC/GEO/10 does not make clear whether importation of a patented product or the product produced using a patented process would satisfy the "use" requirement in Article 73 of the draft patent law. Please explain whether importation will satisfy the "use" requirement under Georgian law.

Answer:

Under Georgian law, importation will clarify the "use" requirement.

Question 61.

Re question 159. Please clarify the patentability of non-biological processes for the production of plants and animals. Could Georgia confirm that it would provide an effective *sui generis* system for the protection of plant varieties as required by Article 27 (b) of TRIPS?

Answer:

Georgia protects plant varieties and animal breeds according to the Law on the Protection on Plant Varieties and Animal Breeds. A translation of the Law on the Protection on Plant Varieties and Animal Breeds is available at the WTO Secretariat.

(g) Layout designs of integrated-circuit

Question 62.

The responses to Questions 160 and 161 did not provide any details regarding the draft legislation being developed to protect integrated circuit layout designs. Please provide a general description of the provisions of the draft law for the protection of integrated-circuit layout designs.

Answer:

The draft was prepared according to the section 6 of TRIPS. Text of the draft will be sent to the WTO secretariat after its conclusion.

Question 63.

Please give an update on the status of the legislation and the expected time of submission to the Parliament and enactment.

Answer:

the Draft Law on the Protection of Integrated Circuit Layout Designs will be submitted to Parliament during its spring session.

(h) Requirements on undisclosed information

Question 64.

Article 8.2(g) of the Law on Monopolistic Activities and Competition makes "the obtaining, acquisition, use, or distribution of scientific-technical, production, or trade information and commercial secret" without the owner's permission a manifestation of unfair competition. Article 20 authorizes the Antimonopoly Service to "conduct preventative measures to forestall unfair competition" and Article 21 authorizes the Service to order violators of the law to cease the violation and, apparently, to prosecute violators, if they fail to obey such orders.

Please describe in detail, how the Antimonopoly Service performs its duties under the law as it relates to undisclosed information.

Answer:

The Antimonopoly Service has not received information and/complaints regarding any facts envisaged in the article 8.2 (g) so far.

4. Enforcement

Question 65.

The response to Question 154 of WTO/ACC/GEO/10 gives information regarding the Civil Code of Georgia as it relates to pirated copyrighted works and phonograms. It refers to them as "counterfeit copies." No reference is made to counterfeit trademarked goods. Article 39 of the Statute on Trademarks authorizes seizure of counterfeit goods on importation at the request of the public prosecutor or other competent authority or interested party.

Please describe the authorities of the customs officials to stop pirated copyrighted works and counterfeit trademarked products at the border as required by Articles 51-60 of the TRIPS Agreement.

Answer:

Customs Department is preparing regulations to conform to the Articles 51-60 of the TRIPS Agreement. Final language of the draft has not yet developed.

Question 66.

WTO/ACC/GEO/3 refers to Articles 1.47 and 166 of the Criminal Code as providing criminal penalties for copyright piracy and trademark counterfeiting. Please describe in detail the manner in which these Articles are implemented in practice.

Answer:

Because intellectual property protection is new for the former USSR countries, Georgian policemen lack understanding of the concepts of copyright and trademark protection. The Georgian Government is planning seminars for law enforcement bodies. First such seminar is scheduled for 21-22 March. TACIS experts will conduct it.

Question 67.

In its reply to questions No. 154 the Government of Georgia describes in detail the remedies in cases of copyright piracy. Please provide the same information in cases of wilful trademark counterfeiting.

Answer:

According to Article 45.2 of the draft Law on Trademarks, in case of violation of the exclusive rights a trademark owner can apply to court and request:

- (i) to stop acts, violating his rights;
- (ii) destruction of all labels, drawings, packages, packaging and advertisements which contain registered mark, its copy or imitation;
- (iii) destruction of all the devices, designed for making counterfeited mark, and, it is impossible to separate marks from the goods, destruction of the goods, bearing counterfeited marks.

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

1. Bilateral agreements relating to foreign trade in goods and services

Question 68.

Can Georgia confirm that it will become a signatory to the Agreement on Trade in Civil Aircraft upon accession to the WTO without exceptions or transitional period?

Answer:

Georgia will become a signatory to the Agreement on Trade in Civil Aircraft, however it will ask for some transitional period.

2. Economic integration: customs union and free trade area agreements

Question 69.

Will Georgia confirm that it will observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its participation in trade agreements, and ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which Georgia is a member are met from the date of accession?

Answer:

Georgia confirms that it will observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its participation in trade agreements, and ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which Georgia is a member are met from the date of accession.

Question 70

Can Georgia confirm it will upon accession, submit notifications and copies of its Free Trade Area and Customs Union Agreements to the Committee on Regional Trade Agreements (CRTA)?

Answer:

Georgia has already submitted its free trade agreements to the WTO Secretariat. (WT/ACC/GEO/4/Add.1) At the same time it should be mentioned that Georgia is not a member of any free trade area or customs union.
