

ACCESSION OF THE SULTANATE OF OMAN

Additional Questions and Replies

The Ministry of Commerce and Industry of the Sultanate of Oman has submitted additional replies to questions raised, with the request that they be circulated to Working Party members. The questions and replies are reproduced hereunder.

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II. ECONOMIC POLICIES

2. Economic Policies

(a) Main directions

Question 1.

We support the commitment in paragraph 25 of SPEC/OMN/7.

We seek a statement earlier in this section citing the legal authority for the application of current and future price controls

Reply:

There is no legislation on price controls. The Ministry of Finance applies price controls by executive orders.

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

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

Question 2.

We appreciate Oman's statement in paragraph 31 that "precise laws dealing with the right of appeal against governmental decisions provided for in WTO Agreements, including in particular Article X of the GATT 1994, would be promulgated" through "amendments to the Law on Commercial Court". We await the copy of the amendments for Working Party review promised for the end of September in the response to question 9 in WT/ACC/OMN/18.

We understand from Oman's statements at the informal Working Party meeting that promulgation of amendments guaranteeing the right of appeal in commercial matters to an independent tribunal will be delayed from December 1999, as earlier contemplated, until some time in 2000. In light of this fact, we seek inclusion of the following commitment as to the timing for promulgation of the amendments:

"32. The representative of Oman confirmed that no later than [31 March 2000,] Oman's laws would provide for the right to appeal administrative rulings on matters subject to WTO provisions to an independent tribunal in conformity with WTO obligations, including but not limited to Article X:3(b) of the GATT 1994. The Working Party took note of this commitment."

We ask Oman to provide to the Working Party for review as soon as possible a copy of the amendments to the Law on Commercial Courts dealing with the right of appeal against governmental decisions provided for in WTO Agreements, including in particular Article X of the GATT 1994. We will need to review the text of these amendments to finalize work on this section of the report.

Reply:

Paragraph 32 is acceptable as follows:

"32. The representative of Oman confirmed that no later than 30 June 2000, Oman's laws would provide for the right to appeal administrative rulings on matters subject to WTO provisions to an independent tribunal in conformity with WTO obligations, including but not limited to Article X:3(b) of the GATT 1994. The Working Party took note of this commitment."

Oman would provide copies of the draft amendments to the Law on Commercial Courts dealing with the right of appeal against government decisions provided for in WTO Agreements as soon as these are ready.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Registration requirements for engaging in importing

Question 3.

We remain concerned that Oman's registration requirements for importers constitute a violation of Article III of the GATT, in that restrictions exist on the right to import foreign goods that do not exist for domestic goods. For us, this is a question of trading rights. We thank Oman for its good efforts to explain the difference between Commercial Registration and Commercial Agency to the Working Party. The connection to trading rights is clearer in the requirements of Commercial Registration than in Commercial Agency.

We submit the following questions to ensure that our understanding of the facts is accurate:

- **Please confirm that the "relevant" requirements for commercial registration for foreign firms contained in the Foreign Capital Investment Law include minimum capitalization requirements and equity limitations.**
- **Please confirm whether or not foreign individuals can register sole proprietorships in Oman under current or prospective laws, and if so under what conditions and circumstances?**
- **Paragraph 33 of WT/ACC/SPEC/OMN/7 states that "foreign individuals were not eligible for commercial registration and could therefore not engage in importation or distribution of imports in Oman." Can foreign individuals import goods for onward sale in Oman under any circumstances?**
- **Could foreign individuals purchase domestic goods for onward sale in Oman? If so under what conditions and circumstances?**

We seek only the recognition that individuals and firms may import goods into Oman, and that this right to import does not necessarily extend to the distribution of these goods in Oman. In this regard, Oman's current laws, regulations, and requirements will need revision to meet its obligations under Article III and Article XI of the GATT. Oman's statement recognizing this and its commitment to make the necessary changes should be reflected in the Working Party report.

Reply:

There is no discrimination as between imported and domestically produced goods. The same conditions apply to both imported and domestic goods. The distinction is between "foreign and domestic individuals" and not between "foreign and domestic goods".

The replies to the four questions are as follows:

- (a) It is so confirmed.
- (b) Foreign individuals cannot register for sole proprietorships.
- (c) Foreign individuals can import goods for their own personal use, but not for onward sale in Oman.
- (d) Foreign individuals cannot purchase domestic goods for onward sale in Oman.

Question 4.

Concerning Oman's activity licensing for the importation of alcohol and beer, has a foreign enterprise ever been registered or granted a permit pursuant to the permit of the ROP (Royal Oman Police) to import these articles?

Reply:

We have no objection to see the following information reflected in the text of paragraph 37 of the Draft Report:

"Oman stated that while no licenses to import beer or alcoholic spirits had been issued in recent years, six joint ventures, with foreign participation were currently registered for this purpose."

Question 5.

We suggest that the current text of paragraphs 32-37 be revised to reflect Oman's commitment to permit the right of import and export without equity investment, making clear that this right is distinct from the right to distribute goods in Oman's domestic market, a service scheduled under GATS. To start, we suggest that this section be subtitled "(the right to import and export)"

Trading Rights (the right to import and export)

32. Some members requested Oman to clarify the right of firms and individuals to trade, i.e., to import and export goods, to understand better how Oman's conditions compared with the requirement of GATT Articles III:4 and XI. The representative of Oman said that no specific requirements existed for engaging in importation; it could be undertaken by any company or individual registered with the Ministry of Commerce and Industry under the relevant laws, i.e. the Oman Commercial Law, the Commercial Companies Law and the Foreign Capital Investment Law. An enterprise seeking registration to engage in commercial activities submitted an application form together with its Memorandum and Articles of Association, and documents identifying the partners or company directors, to the Ministry of Commerce and Industry. Joint-stock companies and enterprises subject to the Foreign Capital Investment Law should complete the necessary procedures under the Commercial Companies Law and the Foreign Capital Investment Law, respectively, before applying for registration in the Commercial Register. Once registered, an enterprise could engage in importation or distribution of imports provided these activities were mentioned in its Memorandum and Articles of Association. Registered companies could amend their registration, and acquire the right to trade, by amending their Memorandum and Articles of Association prior to applying for an amendment in their commercial registration.

33. The relationship between a principal/supplier and his commercial agent in Oman was governed by provisions in the Law on Commercial Agencies. A commercial agent was defined as an individual or company selling, promoting the sale and distribution of goods, or providing services whether in the capacity of agent, representative or intermediary of the manufacturer or supplier of goods. Only Omani nationals or companies with no less than 51 per cent Omani ownership could be appointed as commercial agents. Foreign individuals were not eligible for commercial registration and could therefore not engage in importation or distribution of imports in Oman. Omani nationals could obtain commercial registration provided they had a place of business in Oman, no criminal record or involvement in past bankruptcy proceedings, and were minimum 18 years of age. Citizens of other Gulf Cooperation Council countries were treated as Omani citizens in accordance with Article 8 of the Unified Economic Agreement. This Article, which was implemented in a progressive manner, did not guarantee GCC nationals the right to act as commercial agents in Oman. The representative of Oman confirmed that commercial agents were not subject to laws or regulations influencing the decision to import based on purely commercial considerations.

~~34. A member stated that the Law on Commercial Registration would need to be amended to bring it into conformity with the national treatment provisions of GATT Article III prior to WTO accession due to requirements for the import of goods and conditions of, inter alia, distribution that are less favourable than those for similar domestic goods. In his view, legal provisions analogous to Oman's Law on Commercial Registration had been found inconsistent with Article III:4 in GATT Panel Reports. The representative of Oman saw no conflict between the Law on Commercial Agencies and the provisions of GATT Article III. Foreign firms not based in Oman could export goods to Oman through any importer/distributor registered in Oman without using a commercial agent. Importers in Oman were not required to import through a commercial agent. Individuals and firms could import goods for their own use without restriction, subject to payment of customs duty, if any. Omani domestic goods could be distributed only through individuals or companies registered in the Commercial Register as distributors of goods.~~

34bis. A member expressed concern that since Oman's laws and regulations do not distinguish between importing or exporting and providing services, such as distribution, after importation those regulations could be considered a restriction on imports and inconsistent with Article XI of GATT 1994. The representative of Oman recognized the distinction drawn in the WTO between the right to import and export under the GATT and the right, under the GATS, to provide services such as distribution, and transportation, with respect to imported goods. Without prejudice to Oman's schedule of commitments on services, Oman would modify the relevant laws, regulations and requirements to permit foreign firms, including sole proprietorships, to register as importers without limitation on equity.

35. Some members noted that alcohol and beer could be imported only by registered importers pursuant to permission by the Royal Oman Police (Table 1), and this would appear to be a form of activity licensing. In reply, the representative of Oman said that only firms having included importation of alcoholic beverages in their commercial registration were eligible to apply for a permit. The permit, valid for one year, had to be obtained from the Royal Omani Police prior to importation. Oman maintained no other activity licensing requirements.

36. The representative of Oman confirmed that no special or unique registration requirements existed for foreign or domestic persons or firms engaging in importing or exporting goods except for the activity licence specifically listed in Table 1 and except as provided in WTO Agreements. The activity licence listed in Table 1 did not restrict foreign participation as it applied equally to foreign and domestic businesses. He confirmed that individuals and firms were not restricted in their ability to import or export goods based on the scope of business or their registration and that they could easily change their registration to allow for importation. He further confirmed that there were no restrictions, such as capital or nationality requirements, on firms wishing to engage in foreign trade, and that the criteria for registration were published in the official journal and generally applicable to all.

37. The representative of Oman confirmed that from the date of accession Oman would maintain the right of foreign and domestic firms and individuals to import and export ~~engage in international trade~~ on a non-discriminatory basis and would ensure that its laws and regulations relating to the right to ~~trade in~~ import and export goods and all fees, charges or taxes levied on such rights would 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, regulations and requirements in full conformity with these obligations. The Working Party took note of this commitment.

We seek Oman's assistance in addressing the issue of the right to import and export in Oman prior to finalization of the Working Party report and protocol.

Reply:

Paragraphs 32, 33 34, 35 and 36 are acceptable .

As for the proposed paragraph 34bis, we would accept the following formulation:

"34bis. A member expressed concern that since Oman's laws and regulations do not distinguish between importing or exporting and providing services, such as distribution after importation, those regulations could be considered a restriction on imports and inconsistent with Article XI of GATT 1994. The representative of Oman recognised the distinction drawn in the WTO between the right to import and export under the GATT and the right, under the GATS, to provide services such as distribution, and transportation, with respect to imported goods. However, the representative of Oman did not agree that Omani regulations could be considered as a restriction on imports inconsistent with Article XI of GATT 1994. Foreign and domestic firms registered in Oman are allowed to import goods, subject to the condition that they get commercial registrations which they can get without difficulty. Foreign individuals can import goods for their personal use. There is thus no restriction on imports."

Paragraph 37 is acceptable with the following change:

In the second line, after the words "foreign and domestic firms" the words "registered in Oman" should be added, and the words "and individuals" should be deleted.

(b) Characteristics of National Tariff:

Question 6.

The reply to question 18 of WT/ACC/OMN/18 states "Purchases by the Public Authority for Stores and Food Reserves are subject to zero tariff. There are no government purchases of agricultural products." Paragraph 98 of WT/ACC/SPEC/OMN/7, however, states "The Public Authority for Stores and Food Reserves conducted purchases and sales in connection with the stocking of strategic food reserves of rice, sugar, tea, milk powder and edible oils. The Authority imported only rice, on the basis of open tender and in competition with private

importers." We would appreciate it if Oman would clarify this apparent contradiction, for the record.

Reply:

The position is clarified as under:

The Government of Oman does not import any agricultural products for its own use. The Public Authority for Stores and Food Reserves imports only rice for stocking as strategic food reserve. However, private importers can also import rice and thus the Public Authority is in competition with private importers. The Public Authority and the private importers pay the same rate of duty on imported rice, which is zero percent. It may be stated for purposes of transparency that the Public Authority purchases sugar, tea, milk powder and edible oil from the open market in Oman and stocks these as food reserves.

Question 7.

At the informal Working Party meeting on 1 October, Oman stated that the Public Authority for Stores and Food Reserves does not qualify for a tariff exemption on its imports, but instead does not pay tariffs because the items it imports are subject to zero applied tariff rates. Paragraph 44 should be redrafted to reflect this information.

Paragraph 44 states that, "All imports from Gulf Cooperation Council countries were exempt from duty within the framework of the GCC free trade area." This statement should be moved to the section on trade agreements, as the duty free treatment granted is not a tariff exemption, but rather a tariff preference.

Reply:

Oman has no objection to the redrafting of paragraph 44.

(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems

Question 8.

We appreciate table 1 in WT/ACC/SPEC/OMN/7, listing the bans and restrictions applied to imports that Oman believes can be justified under WTO, and that it intends to retain after accession.

What measures has Oman taken to implement the WTO Agreement on Import Licensing Procedures? We would appreciate a description in the Working Party report what measures Oman is taking to implement the WTO Agreement on Import Licensing Procedures. (These procedures are relevant to the regulation of imports of restricted goods, or goods subject to prior authorization for standards or SPS purposes.)

Does Oman intend to regulate imports of restricted goods, or goods subject to prior authorization for standards or SPS purposes without reference to the Import Licensing Procedures Agreement?

We would also like to have a description, in paragraph 50 or a new paragraph 50bis of how Oman intends to dispose of its WTO-inconsistent quotas and bans, e.g., by indicating that the restrictions on the listed products have been abolished or replaced and by naming the legislative instrument(s) that will accomplish this.

We remain interested in reviewing the law, decree, or regulation that accomplishes this, as well

as the legislative instrument that implements the provisions of the Agreement on Import Licensing Procedures in the operation of these restrictions.

We appreciate the commitment in paragraph 51 of WT/ACC/SPEC/OMN/7. We support its expansion to include a commitment that Oman will implement the Agreement on Import Licensing Procedures.

Reply:

Oman has drafted a Ministerial Decree on Import Licensing that is in conformity with the Agreement on Import Licensing Procedures. A copy of the draft Ministerial Decree is being submitted to the WTO Secretariat.

WTO-inconsistent quotas and bans on petroleum products, fruit, vegetables, milk and eggs are being abolished. Copies of relevant Decrees are being sent to the WTO Secretariat.

(h) Customs valuation

Question 9.

We provided comments on Oman's draft customs valuation legislation at the last Working Party meeting. In response to question 23 of WT/ACC/OMN/18, Oman stated that these comments would be taken into consideration, presumably in the development of the legislation. Oman also stated in response to questions 21 and 22 that Oman's new customs valuation law would be implemented by Decree by December 1999. The text of Oman's draft customs valuation legislation circulated in mid-October represents a major retreat from its commitment to implement the WTO Customs Valuation Agreement on the date of accession. Based on our initial review, no more than half of the WTO Agreement's provisions are covered in this draft. The current text also does not address the specific deficiencies noted by us and raised in paragraph 56.

Does Oman have additional customs valuation legislation in development, e.g. amendments to this law or draft regulations that will cover the missing material? When will Oman provide for the missing parts of the WTO Agreement on Customs Valuation in additional regulations? We would like to review a copy of the draft or final Decree as soon as possible.

We are pleased that Oman is prepared to accept the commitment in paragraphs 57 and 58.

Reply:

A revised draft law on customs valuation, including changes which take into account the comments made by WTO members, has been prepared and is being sent to the WTO Secretariat. This will fully implement the Agreement on Customs Valuation.

(l) Rules of origin

Question 10.

We appreciate Oman's incorporation of the commitments in paragraphs 60 and 61 of WT/ACC/SPEC/OMN/7. We note however, that no reference is made to legislation on Rules of Origin in the table in WT/ACC/OMN/11/Rev.1.

We have reviewed Oman's ministerial decree dealing with the procedural protections for determination of origin, and we ask that paragraph 60 be redrafted to refer to and describe the

decree and any other laws or regulations on rule of origin that Oman has developed, including the date certain by which they are expected to be promulgated.

We note, however, that Oman has no other legislation before the Working Party on rules of origin. Could Oman please provide this legislation? How will Oman implement the WTO Agreement on Rules of Origin without legislation or regulations conforming to its provisions?

Reply:

Paragraph 60 has already been redrafted by the WTO Secretariat reflecting the draft Decree on rules of origin.

Oman has no other legislation on rules of origin. It will develop this after accession. At present Oman does not apply rules of origin for MFN trade. It only applies these for preferential trade.

(m) Anti-dumping, countervailing duties and safeguard regimes

Question 11.

Over a year ago, Oman indicated that it would amend the Law on Organization and Encouragement of Industry, and Oman has stated in paragraph 65 of the draft Working Party report that these amendments would be enacted in October 1999. Please provide the amendments. We look forward to reviewing the legislation amending the Law on Organization and Encouragement of Industry.

We appreciate Oman's commitment in paragraph 67 of WT/ACC/SPEC/OMN/7.

Reply:

A copy of the draft Decree amending the Law on Organisation and Encouragement of Industry is being sent to the WTO Secretariat.

2. Export Regulation

(c) Quantitative export restrictions

Question 12.

Concerning Oman's regulation of exports of certain textile and clothing items under bilateral agreements with the United States. We suggest that paragraph 70 and the discussion of the regulation of textile exports be moved to a separate section on textiles, e.g., in the section on sectoral trade, in WT/ACC/SPEC/OMN/7.

In addition, we seek incorporation of the following protocol commitment in the Working Party report:

Agreement on Textiles and Clothing

xx. The representative of Oman stated that the quantitative restrictions on imports of textiles and clothing products originating in Oman between Oman and WTO members that were in force on the date prior to the date of accession of Oman to the WTO should be notified to the Textiles Monitoring Body

(TMB) by the Members maintaining such restrictions and would be applied for purposes of Article 2 of the Agreement on Textiles and clothing. He said that the provisions of that Article, in particular paragraphs 13 and 14 thereof, would apply in stages in respect of base levels and growth rates from the date of Oman's accession. The Working Party took note of this commitment.

We appreciate Oman's incorporation of the commitments in paragraph 72 of WT/ACC/SPEC/OMN/7.

Reply:

Oman has no problem with the drafting changes except that in the last but one sentence, the words "from the date of Oman's accession" be deleted, and the last sentence be also deleted as there is no commitment by Oman in this paragraph.

(f) **Export financing, subsidy and promotion policies**

Question 13.

Oman's description of concessional export financing in paragraph 73 of WT/ACC/SPEC/OMN/7 describes what is clearly an export subsidy within the meaning of Art. 3.1 of the WTO Agreement on Subsidies and Countervailing Measures. Oman has defended its concessional export financing program as similar to other such programs, including the U.S. Import-Export bank. The United States and a number of other countries that provide import-export financing observe and respect the OECD guidelines on terms for such financing. Has Oman formally adhered to these guidelines? If not, would Oman be willing to do so?

In the absence of multilateral discipline on such programs, they can be considered to be prohibited export subsidies within the meaning of Article 3.1 of the WTO Agreement on Subsidies and Countervailing Measures. and should be eliminated. We seek a commitment from Oman either to notify this measure and to eliminate it within a specific time frame or Oman's adherence to OECD guidelines on terms for such financing.

We provide the following draft language to replace paragraph 76 as follows:

76. The representative of Oman states that the export financing support from the Export Guarantee and Financing Unit (EGFU) of the Oman Development Bank described in para 75 was an export subsidy which met a definition of a prohibited subsidy within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures. He confirmed that prior to accession to the WTO Oman would alter the program to ensure that the support is being provided in conformity with the Agreement, ie., consistent with item (K) of Annex 1 to the Agreement, the support will be provided at or above rates the government does or would have to pay in order to obtain funds of the same maturity and other credit terms, or it will otherwise be provided in conformity with the OECD interest rate guidelines stipulated for such financing. Otherwise, Oman would eliminate the program entirely prior to 31 December 2000. He further confirmed that from the date of accession, Oman would not maintain nor introduce any other prohibited subsidies. The Working Party took note of this commitment.

Reply:

Oman agrees to the proposed language to clarify the commitment, except that the sentence "Otherwise, Oman would eliminate the programme entirely prior to 31 December 2000," should be deleted.

3. Internal Policies Affecting Foreign Trade in Goods

(a) Industrial policy, including subsidy policies

Question 14.

We note that in paragraph 77, Oman states that the focus of its economic policy package "was directed towards capital, technology and knowledge intensive industries with emphasis on international competitive export -oriented industries." What criteria are specifically applied to determine what firms and industries get aid?

Reply:

No specific criteria are applied.

Question 15.

At the last Working Party meeting, Oman stated that export orientation is one of the criteria considered when granting aid to firms from its economic policy package. Does this mean that export performance or some sort of numerical level of export orientation is a qualifying criterion in order to get aid, either alone or in combination with other factors? Is export orientation a determinant or contributing factor in the decision to grant aid, even if other factors are taken into account?

Reply:

Export performance or numerical levels are not the qualifying criteria. Export orientation is a contributing factor in the decision to grant aid.

Question 16.

Concerning the statement in paragraph 82, could Oman confirm that neither export subsidies nor import substituting subsidies were used to implement the Fifth five Year Development Plan?

We appreciate Oman's incorporation of the commitments in paragraph 83 of WT/ACC/SPEC/OMN/7.

Reply:

No export subsidies nor import substituting subsidies were used to implement the Fifth 5 Year Development Plan.

- (b) Technical regulations and standards, including measures taken at the border with respect to imports.
- (c) Sanitary and phytosanitary measures, including measures taken with respect to imports

Question 17.

Concerning the draft Ministerial Decree implementing the WTO Agreement on Technical Barriers to Trade, we have the following initial comments. We would appreciate Oman's incorporation of these comments in its draft text:

Article 2.1 - Neglects to mention that treatment no less favorable than that accorded to products of domestic origin and accorded to similar products originating in other countries shall be accorded to similar products imported from the territories of other Members.

Article 4.1 - This text is unclear on the point of whether Oman's conformity assessment procedures are applied more strictly than necessary to ensure that Oman has confidence that imported products conform with their applicable technical regulations or standards. To clarify, we suggest the following changes to the text:

4.1 Conformity assessment procedures are not prepared, adopted or applied with a view to create unnecessary obstacles to international trade. Conformity assessment procedures shall not be applied more strictly than ~~unnecessary~~ to give ~~the exporting Members~~ the Directorate adequate confidence ~~to prove that their imported~~ products conform with the applicable technical regulations or standards, taking into account of the risks of non-conformity.

Article 4.3. - Neglects to mention that treatment no less favorable than that accorded to suppliers of products of domestic origin and to suppliers of similar products originating in other countries shall be accorded to suppliers of similar products originating in the territories of other Members.

Article 4.5. - Some clarification is necessary to highlight what the Directorate is studying. We suggest the following:

4.5 The Directorate shall study the ~~claims~~ complaints related to conformity assessment procedures and the necessary corrective action will be taken, when those complaints are justified.

Article 4.7 - Why has Oman specifically singled out the EN 45000 series as being equivalent to some of the international guides and recommendations for conformity assessment procedures? There are other guides.

Article 5.2 - For clarity, we suggest the following:

5.2 *The Directorate is authorized to enter into negotiations with other Members* ~~Members are encouraged to be willing to enter into negotiations~~ for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures for facilitating trade in the concerned products.

Article 5.3. - It appears to us that the text is unclear as to who is being allowed to participate in which conformity assessment procedures. The concept in the TBT Agreement is that conformity assessment bodies located in the territories of other Members would be allowed to participate in Oman's conformity assessment procedures. We suggest the following changes:

5.3 The conformity assessment bodies located in the territories of other Members are permitted to participate in the Directorate's ~~their~~ conformity assessment procedures under conditions no less favourable than those accorded to bodies located in the Sultanate or the territory of any other country.

In addition, the Decree completely omits Articles 2.6, 2.7, 2.8, 5.5, and 10.1.2 of the Agreement.

" TBT Agreement Article 2.6 encourages participation in international standards development work for products for which the Member already has, or expects to have, technical regulations.

" Similarly, Article 5.5 encourages participation in the development of guides and recommendations for conformity assessment procedures.

" Article 2.7 of the Agreement refers to the recognition of other Members' technical regulations as equivalent, even if they differ from Oman's regulations, provided they adequately fulfill the objectives of Oman's regulations.

" Article 2.8 says that "wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive *characteristics*".

" Under Article 10.1.2., the inquiry point will provide information on standards (in addition to technical regulations and conformity assessment procedures).

Oman should include these points in its legal framework to implement the WTO TBT Agreement.

Reply:

A revised draft Ministerial Decree on TBT, incorporating the comments on the earlier Decree, has been prepared and a copy of it is being submitted to the WTO Secretariat.

Question 18.

Are the GCC joint standards referred to in paragraph 85 of WT/ACC/SPEC/OMN/7 considered to be mandatory standards? Previously, Working Party members have requested that Oman list all imports, by HS line item, subject to mandatory standards. If these are mandatory standards, we request that Oman provide a chart listing the products covered, and we request that the chart be incorporated in the Working Party report.

Reply:

The list of mandatory standards has been provided to the Secretariat (WT/ACC/OMN/21).

Question 19.

Concerning shelf life requirements for imports, we have been discussing this issue bilaterally with Oman and we have noted that we believe that mandatory shelf-life standards on "shelf-stable-foods" are not justified under WTO Agreements on SPS and TBT.

In addition, we have observed that under the WHO/FAO Food Standards Program, regulations and procedures could be established in line with international norms for "highly perishable

refrigerated" food products that could gradually replace shelf life requirements with a scientific regulatory framework, e.g., within a year.

We believe that the shelf life issue should be resolved in the context of implementation of the WTO Agreements on TBT and SPS. We propose the following approach to bringing Oman's shelf life requirements into line with the WTO Agreements on SPS and TBT:

- First, mandatory government-imposed shelf-life standards for all "shelf-stable foods" should be eliminated prior to the date of accession.
- Second, drawing on technical advice from the WHO/FAO Food Standards Program, Oman would establish regulations and procedures in line with international norms for "highly perishable refrigerated" food products. This could be accomplished within a year.
- To recapitulate: our proposal is that mandatory shelf-life standards for "shelf-stable foods" should be eliminated immediately and existing mandatory shelf-life standards for "highly perishable refrigerated" food products should be eliminated within one year and replaced with a science-based regulatory framework.

We await the circulation of the draft Ministerial Decrees on TBT and SPS so that we may evaluate Oman's implementation of WTO provisions in these areas.

We also seek incorporation of the following material in the Working Party report reflecting our perspective in the draft Working Party report:

xx. One member observed that Oman's regulations on shelf-life did not conform with international norms and are inconsistent with the provisions of the SPS and TBT Agreements that require the use of sound science to establish such requirements. The food safety risk that can be prevented with mandatory shelf-life dates has not been specified, nor has it been demonstrated what impact non-fulfilment, i.e. the absence of a shelf-life date, would have. The practice of mandatory shelf life dates has been defended as helping government authorities to prescribe maximum storage periods for food products, and to inform the consumer when key quality attributes are at their optimum levels in the product (i.e., nutritional values and product characteristics). SPS Agreement provisions, however, pertain to the protection of human, animal or plant life or health, not quality or consumer information requirements.

xx. The member also maintained that the imposition of mandatory shelf-life terms on an arbitrary, across the board basis on numerous products is not an appropriate solution to the concerns expressed, and emphasized that it is in the interest of both the exporter and the importer to assure that there is sufficient shelf-life remaining on imported products so that they may be purchased and consumed within the optimum quality period. This member expressed the view that an arbitrary requirement for half the shelf-life, enforced by the government, was not a useful way to address this concern. He suggested that mandatory shelf-life dating should be eliminated for "shelf-stable foods", in the context of adopting the Ministerial Decrees that will implement the WTO TBT and SPS Agreements in Oman, and that regulations and procedures be established in line with international norms for "highly perishable refrigerated" food products to gradually replace these requirements with a scientific regulatory framework, e.g., within a year.

We also propose the following commitment for draft Working Party report:

xx. The representative of Oman confirmed his Government's intention to eliminate mandatory shelf-life standards for "shelf-stable foods" upon accession. He added that Oman would establish within one year regulations and procedures in line with international norms for "highly perishable refrigerated" food products and to gradually replace remaining shelf life requirements on these products with a scientific regulatory framework by 31 December 2000. The Working Party took note of these commitments.

We appreciate Oman's incorporation of the commitments in paragraphs 89 and 94 of WT/ACC/SPEC/OMN/7.

Reply:

The proposed paragraphs are acceptable.

Question 20.

Oman was requested to indicate how it intends to revise its shelf-life provisions. We look forward to a strong commitment that Oman will be revising its shelf life provisions to be in line with international standards under Codex.

Reply:

Please see the reply to question 19.

Question 21.

We support the request that Oman provide a list of imports subject to approval or mandatory certification requirements on the basis of technical or sanitary requirements.

Reply:

The list of mandatory standards has been provided to the Secretariat (WT/ACC/OMN/21).

Question 22.

It is noted that Oman is only a member of FAO, WHO and OIE. Does Oman plan to join the other two very important standard setting organizations of Codex Alimentarius and International Plant Protection Convention (IPPC)?

Reply:

Oman has already joined the International Plant Protection Convention (IPPC), and is a correspondent member of Codex Alimentarius.

Question 23.

What is meant by: "[w]here no specific standards existed, imported food products would be subject to safety tests...". To what standards would the products be judged to meet or not meet if there are no standards to measure the test results against?

Reply:

The appropriate measures of food safety like the approved permissible limits of the food additives, residues of veterinary drugs, pesticides and contaminants---etc., will be based to the specific Codex Alimentarius Standards.

(l) Government procurement practices

Question 24.

We appreciate Oman's statement that it would become an observer to the Agreement on Government Procurement (GPA). We also retain our request for Oman to initiate negotiations to accede to the GPA, as follows:

108. The representative of Oman confirmed that, upon accession to the WTO, Oman would initiate negotiations for membership in the Agreement on Government Procurement by tabling an entity offer. He also confirmed that, if the results of the negotiations were satisfactory to the interests of Oman and the other members of the Agreement, Oman would complete negotiations for membership in the Agreement within a year of accession. The Working Party took note of these commitments.

Reply:

Oman can accept the commitment language in paragraph 108.

4. Policies affecting foreign trade in agricultural products

We reserve the right to review this section in light of the outcome of discussions on Oman's commitments on domestic agricultural support levels and use of agricultural export subsidies.

Trade in Civil Aircraft

Question 25.

Oman stated at the October Working Party meeting that it was committed, in principle, to joining the agreement. We understood that view from our earlier bilateral discussions, and fashioned the proposed commitment text to reflect the balance discussed between Oman's intentions and the need for a specific timeline for those intentions to be realized. We seek the following commitment:

114bis. The representative of Oman stated that, in order to become acquainted with the agreement, it will become an observer in the agreement upon accession and will join within 3 years of accession, or at the time it eliminates tariff duties on imports of aircraft or aircraft parts for any member of the Agreement on a preferential basis, whichever comes first. The Working Party took note of these commitments.

Reply:

Oman accepts the proposed language for paragraph 114bis.

V. TRADE-RELATED INTELLECTUAL PROPERTY RÉGIME

Question 26.

We have received the translations of the GCC Patent Law, regulations, Office charter, and fee structure, in addition to WIPO comments. These were reviewed by our IPR experts and we have specific comments and a formal proposal on implementation of the patent provisions of the TRIPS Agreement. In order for Oman to meet TRIPS requirements, Oman must demonstrate that the GCC or other designated office (a) is functional and can process and issue patents; (b) uses WTO-consistent regulations that are recognized in Oman as governing the availability, issuance, maintenance and scope of Omani patents consistent with Oman's WTO obligations; and (c) that these patents are enforceable in Oman under the general enforcement provisions in Part III of the WTO TRIPS Agreement, which Oman implements in law.

These are the absolute minimum requirements for the near term implementation of the Patent Provisions of the TRIPS Agreement by Oman. We note that without the enforcement provisions of Part III in Oman law, Oman is also lacking in implementation of the other parts of the Agreement.

Proposal: We believe that Oman's use of the GCC patent office and law to meet its obligations under the WTO TRIPS Agreement could work, provided that the following actions are taken, and provided that clarification can be provided on the additional points attached:

- That the GCC patent office will be a functioning patent office that will grant patents. It is noted in a statement by the representative of the GCC Patent Office at the recent U.S.-GCC Economic Dialogue meeting, October 18, that the current GCC patent office has received ~350 patent applications. As a functioning GCC patent system is critical to the Omani's compliance with the TRIPS patent requirements, it is important that the GCC be a functioning system that actually grants patents to applicants desiring to obtain patent protection in Oman;

- That the following actions are taken to incorporate GCC patent provisions into Oman's legal structure:

" That at the time the amended GCC Patent Law is promulgated as Oman's Patent provisions, the promulgation also designates either the UAE Patent Office in Abu Dhabi or the GCC Patent Office in Riyadh as its official patent office both for the issuing and examining patents for Oman;

" That simultaneously a Ministerial Decree would be issued confirming officially that the patents issued by the GCC (or UAE) office would be recognized and enforceable in Oman and that the substantive provisions of the GCC patent law would govern the scope of such patents;

" That in adopting the enforcement provisions of the WTO TRIPS Agreement, Oman would implement Part III of Agreement in law making it clear that they would apply in Oman to the patents issued by the GCC (or UAE) office; and

" That as a member of the Paris Convention, Oman would join the Patent Cooperation Treaty (under the auspices of the World Intellectual Property Organization), which would allow foreign inventors to file an international application which would be examined in another country's patent office, e.g., that of the US, EU, or Japan, and which would work with the GCC (or UAE. office) to issue patents valid in Oman based upon the search/examination reports generated in the PCT international application.

- That the following comments concerning the TRIPS-consistency of the draft amended GCC patent law are addressed and clarified in the context of Oman's WTO accession;

" Article 2/1 – The “not conflicting with ... codes in the GCC states either in regard to industrial products, or manufacturing methods or operations” clause of this provision raises some question as to whether Oman/GCC will provided patent protection for the full range of patentable subject matter as required by TRIPS Article 27, especially the last proviso of TRIPS Article 27(2).

" Article 3/1/2 – The exclusions from patentability, especially that for business methods, in this provision go beyond those permitted by TRIPS Article 27.

" Article 12/1 and Article 13 – The local working requirements of these provisions run afoul of the TRIPS Article 27(1) non-discrimination provision on importation/local working. The relevant provisions of the GCC law should clearly state that local working is satisfied by importation.

" Article 18 – The "required amendment" to voluntary licenses that may be based upon the need of the GCC states to acquire and disseminate technology may run afoul of TRIPS Article 31, to the extent that such a "required amendment" may constitute a compulsory license.

" Article 19 -22 – These provisions on compulsory licenses incorporate many of the TRIPS Article 31 conditions on the grant of such licenses. However, all of the TRIPS conditions are not included in these provisions. Specifically, the conditions in TRIPS Article 31, paragraphs (a), (i), (j), and (l) (ii) and (iii) are not accommodated. Article 21 of the GCC law is addressed to dependent patent compulsory licenses which are the subject of paragraph (l) of TRIPS Article 31. The "either or both" provision in Article 21 may run afoul of the requirement in paragraph (l)(ii) of TRIPS Article 31 as cross-licensing may be required. Paragraph (l)(iii) of TRIPS Article 31 finds no equivalent in GCC Article 21. If the appeal provisions of Articles 24 –25 of the GCC law are intended to apply to the grant of compulsory licenses and this is clarified by GCC/Oman, then any deficiencies relating to paragraphs (i) and (j) of TRIPS Article 31 may be mitigated.

" Article 31 – Because Oman must comply with all of the TRIPS requirements as of 1 January 2000 and they enjoy no exemptions under TRIPS Article 65(4), this provision should not apply to Oman. We seek Oman's confirmation that this provision does not apply to Oman and assurance that Oman will provide patent protection for all fields of technology as of 1 January 2000.

" Enforcement – The enforcement provisions of Part III of TRIPS, as those provisions relate to patents, must be given effect in Oman as of the date of accession. The indication given by Oman at the 1 October informal Working Party meeting that enforcement may be available "sometime in 2000" does not meet this obligation. Further, the stated availability of enforcement outside of statutory enforcement, as outlined at that meeting, is insufficient as there is no assurance such "de facto" enforcement would be in accordance with the TRIPS requirements.

We remain ready to work with Oman to complete this part of the negotiation, but we need technical level engagement to complete work on this part of the accession negotiations.

Reply:

A draft Decree on Patents has been prepared which takes care, inter alia, of the points made in the question. A copy of the draft Decree is being sent to the WTO Secretariat.

Question 27.

With regard to patents, the scope of rights stated in Oman's domestic law should also be defined in the relevant paragraphs of the Working Party Report.

Reply:

Oman agrees to this.

Question 28.

Under the current regime, the terms for a patent are valid over a period of 15 years as of the date of granting. This practice is inconsistent with Article 33 of the TRIPS Agreement as such validity can be extended with a view to complying with Article 33 on the condition that the owner of the patent shall make a request for extension within the last 90 days of the original term.

Thus, in some cases, it is possible for the term of protection to be secured for less than 20 years without fulfilling the requirements prescribed in Article 33 of the TRIPS Agreement.

Reply:

The situation has been rectified in the draft Decree on patents wherein the term of patent is 20 years.

Question 29.

We understand that Oman considered becoming a member of the Paris Convention for the Protection of Industrial Property, which relates to patents, trademarks and unfair competition. Has Oman joined?

If so, has Oman contemplated joining the Patent Cooperation Treaty (PCT)? That Treaty, which is open to members of the Paris Convention, provides that some Patent operations can be undertaken by other Patent Offices.

Reply:

Oman has already become a member of the Paris Convention. It would consider joining the Patent Co-operation Treaty when it is finalised.

Question 30.

Please provide a status report on Oman's efforts to revise its IPR laws and implement the WTO TRIPS Agreement.

Reply:

Oman has already prepared draft Decrees in the following areas, copies of which are being submitted to the WTO Secretariat:

- Trade Marks;
- Copyrights;
- Patents;
- Industrial Designs;
- Plant Varieties;
- Geographical Indications;
- Layout – Designs of Integrated Circuits;
- Protection of Undisclosed Information;
- Control of Anti – Competitive Practices; and
- Enforcement of IPR's.

The Decrees will be promulgated after we receive comments from WTO Members.

Question 31.

Please confirm that Oman is prepared to implement TRIPS upon accession.

We propose that Oman amend paragraph 123 and 124 to accept the following commitment as paragraph 124bis:

124bis. The representative of Oman stated that Oman would fully apply all the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights from the date of its accession to the WTO, without recourse to any transitional period. The Working Party took note of this commitment.

We will review any revised proposals to address the need to implement the Patent provisions of the TRIPS agreement, and hope that we can resolve this issue expeditiously.

Reply:

Oman confirms that it is prepared to implement the TRIPS Agreement upon accession. Proposed paragraph 124 bis is acceptable.

Transparency

Publication of information on trade

Question 32.

We appreciate Oman's statements in paragraphs 132 and 133, and the commitment in paragraph 134 on notifications of WT/ACC/SPEC/OMN/7.

We still seek reference in the Working Party report on Oman's legislative basis for meeting the transparency requirements of Article X of the GATT and other provisions of the WTO.

Reply:

The legal citation for reference in the Working Party report on Oman's legislative basis for meeting the transparency requirements of Article X of the GATT and other provisions of the WTO is Article 74, Chapter Seven of Sultani Decree No. (101/96) promulgating the Basic Statute of the State which stipulates that "The Laws shall be published in the official Gazette within two weeks from the day of their issue. They shall come into force on the date of their publication, unless another date is specified."

Notifications

Question 33.

While we appreciate Oman's commitment on notifications, we do not believe it corresponds to Oman's statement at the last Working Party concerning delays in promulgation of specific legislation. Since most notifications are of final legal instruments, we seek Oman's review of this commitment and consultation with the WTO Secretariat to work out in detail a schedule for these notifications, like the one contained in WT/ACC/SPEC/MOL/6, with a view to ensuring that all initial notifications will be available.

Reply:

We accept the amended commitment in para 144 as follows:

"The representative of Oman said that, Oman would submit all initial notifications required by any Agreement constituting part of the WTO Agreement according to the schedule in table X attached to this report. Any regulations subsequently enacted by Oman which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirement of that Agreement. The Working Party took note of this agreement."

Trade agreements

Question 34.

Has the GCC ever been notified to or examined by the Committee on Regional Trade Arrangements? Will Oman notify the Arab League Free Trade Area and the GCC Customs Union to the respective Councils on Trade in Goods and Trade in Services, as appropriate?

We appreciate Oman's statement in paragraph 139 of WT/ACC/SPEC/OMN/7. We seek Oman's specific statement as to what it intends to do to meet this commitment after accession.

Reply:

Oman will definitely notify the Arab League Free Trade Area and the GCC Customs Union to the respective Councils.

After accession, it will work with its trading partners to ensure that regional trading arrangements, of which Oman is member, conform to the provisions of Article XXIV of GATT 94 and Article V of the GATS.
