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**Working Party on the
Accession of Samoa**

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Additional Questions and Replies

The following submission, dated 5 May 2009, is being circulated at the request of the Government of Samoa.

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II. ECONOMIC POLICIES

- Foreign Exchange and Payments

Question 1

Paragraph 12 of WT/ACC/SPEC/SAM/4/Rev.2: Please update the exchange rate given. It is very out of date.

Answer:

Cash rate as of 19 March 2009: SAT 1.00 = USD 0.3275.

Question 2

Paragraph 15 of WT/ACC/SPEC/SAM/4/Rev.2: We suggest adding reference to the Understanding to the commitment in paragraph 15.

15. The representative of Samoa confirmed that in the event Samoa applied restrictions to safeguard the balance-of-payments, it would do so in accordance with Article XVIII of the GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994. The Working Party took note of this commitment.

Answer:

This is fine.

- Investment Regime

Question 3

Paragraphs 18 and 20 of WT/ACC/SPEC/SAM/4/Rev.2: Samoa indicates that its review of the Foreign Investment Act 2000 and its draft regulations, including the development of criteria for revising the Reserved and Restricted Lists is nearly complete.

- Please provide the draft law and regulations for Working Party review as soon as possible.
- Please provide information for the Working Party Report text on the results of the review of the Foreign Investment Act 2000 and its draft regulations, including the development of criteria for revising the Reserved and Restricted Lists both Reserved and Restricted Lists and the special requirements for foreign investors associated with the Restricted List.

Answer:

The Ministry of Commerce, Industry and Labour (MCIL) is still in the process of finalizing the Foreign Investment Amendment Bill 2008. The draft regulation on the other hand requires a consultation process with the private sector. We will make available the draft legislation once it is ready for public comment as reflected in the revised timetable as follows:

Table 1.1 - Timetable for finalizing the Foreign Investment Legislation (April 2009)

Activity	Completion
1. Ongoing work with the Attorney General's Office to finalize the legislations. Draft Foreign Investment Act (FIA) Bill and Regulation was received from the Attorney General's office (AG) in February 2009 and comments from MCIL were sent to AG in April.	Since March 2008
2. Circulate restricted and reserved activities for stakeholders comments (follow up and awaiting responses from stakeholders).	January/April 2009
3. Incorporate comments from stakeholders and forward to the Attorney General's office for final legal drafting.	April/May 2009
4. Meeting of MCIL and AG to clarify issues for completion of Bill.	May 2009
5. Present final Bill to Cabinet for their endorsement (through AG); and Amendment Bill 2008 published in Gazette: (Savali newspaper) for public comments.	May/June 2009
6. Bill submitted to Parliament for consideration and approval (through AG); and Present final regulation to Cabinet for endorsement (through AG).	June/July 2009

Question 4

Please confirm whether the "Reserved" sectors deal exclusively with employment, or if the reservation extends to ownership of the enterprises in the sectors listed as well, e.g., could a foreign firm own a taxi enterprise, if all taxi drivers were Samoan? Could a foreign firm own a retail establishment if all the staff were Samoan?

Answer:

The Reserved list of activities identifies those business activities that are reserved exclusively for Samoan citizens. Foreign investors cannot own businesses under the reserved activities.

Question 5

Paragraph 19 of WT/ACC/SPEC/SAM/4/Rev.2: Please clarify that there will be an opportunity for public comment on proposals to expand or amend the Restricted List sectors or requirements prior to parliamentary action to enact the legislation.

Answer:

Yes there is an opportunity for public comments as reflected in the above timetable (refer to Table 1.1).

- **State Ownership and Privatization**

Question 6

Paragraph 27 and Tables 1 and 2 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its comprehensive and clear description of its State-owned and State-controlled Enterprises, and the status of its revised privatization programme based on the information in the responses to Questions 8 and 9 and Tables 1 and 2 of WT/ACC/SAM/8.

Answer:

Noted.

Question 7

Paragraph 30 of WT/ACC/SPEC/SAM/4/Rev.2: Please clarify in the text why Samoa does not consider that the Agriculture Store Corporation and its privately owned duopoly partner for sales of pesticides and other agricultural chemicals should be notified as State Trading Enterprises, as provided for in the Understanding on Article XVII of the GATT 1994. Will the duopoly continue after privatization?

Answer:

The market for importation, distribution / selling of pesticides is open to competition. Any one can apply to the Pesticides Committee (Ministry of Agriculture) for a licence to trade in these services. The Agriculture Store Corporation and Farm Supplies are the only local companies currently selling pesticides FOR AGRICULTURAL USE only. However there are many other companies with licences to import/distribute/sell chemicals, etc., for household purposes. The small market size does not encourage companies to trade in pesticides for agricultural purposes. It must also be noted that more and more villages do not allow the use of chemicals for farming and are moving to organic farming.

The duopoly will be discontinued after privatization.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES**Question 8**

Paragraph 39 of WT/ACC/SPEC/SAM/4/Rev.2: Please revise the third sentence "The two others were held by representatives of individual voters without territorial or tribal affiliation."

Answer:

Noted.

Question 9

Paragraph 44 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for clarifying how administrative appeals of government acts are addressed, e.g., in the context of issues covered by WTO provisions. The response to Question 16 of WT/ACC/SAM/8, however, is troubling.

- It appears that administrative decisions are not able to be appealed to the judiciary, however, and that the Ombudsman's role is not guaranteed, even if it were agreed that the Ombudsman could be considered an "independent tribunal" for the purposes of Article X:3 of the GATT 1994 or the due process provisions of WTO Agreements.
- The reference to appeals to rulings by the Comptroller based on common law does not adequately address the problem.
- (Statement) We seek a clear statement for the Working Party Report outlining how Samoa intends to create a right of appeal of administrative decisions to the judiciary for the issues covered by the WTO Agreements, e.g., appealing a customs decision, and including classification and valuation, application of tariff duties, charges and taxes to imports, application of standards and technical regulations to imports, and intellectual property rights cases. We seek a commitment from Samoa that it will be enacted in law and in operation as part of Samoa's system of appeals by a date certain.

- Samoa's provisions do not conform to the requirements of Article X:3, and are in addition, we seek specific information on the same issues on recourse available to importers and exporters for judicial.

Paragraph 44 of WT/ACC/SPEC/SAM/4/Rev.2: The commitment in this paragraph is inadequate and the commitment inaccurate, as it appears Samoa does not fully implement the GATT Article X:3 nor the provisions for appeal in other WTO Agreements, e.g., the Customs Valuation Agreement. We suggest the following redrafting (to be accompanied by descriptive text outlining what Samoa intends to do to bring its tariff):

41. [The representative of Samoa confirmed that from the date of its accession, Samoa would continue to provide foreign and domestic importers and exporters the right to appeal administrative action relating to all matters subject to WTO provisions utilizing its current laws and procedures. He further confirmed that a system of appeal from administrative decisions in matters covered by WTO Agreements to the judiciary or to an independent tribunal, as provided for in Article X:3 of the GATT and other WTO Agreements, was in the process of being established in the draft Law on XXXX, and would be operational by 31 December 2009. The Working Party took note of this commitment.]

Answer:

All customs administrative decisions are subject to judicial appeal. There are currently no general administrative rights of appeals to decisions made by the Comptroller except for those provided in the Customs Valuation, Registration on the Import and Export Electronic Processing System and Administrative Penalties. However, all decisions made by the Comptroller are subject to judicial review by the Supreme Court pursuant to the Supreme Court (Civil Procedure) Rules and common law principles.

Question 10

Paragraph 47 and the response to Question 18 of WT/ACC/SAM/8: In light of the information provided, we would appreciate a statement by Samoa in the Working Party Report text confirming its intention to apply the WTO uniformly throughout Samoa, and its ability to overrule sub-central governing authorities on WTO matters. We do not think that the text offered in paragraph 47 fully covers the issues. We suggest the following additional text:

47bis. [The representative of Samoa confirmed that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions. He confirmed that the provisions of the WTO Agreement, including Samoa's Protocol of Accession, would be applied uniformly throughout its customs territory and other territories under Samoa's control, including in special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established. He added that when apprized of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts. The Working Party took note of these commitments.]

Answer:

This is fine.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 11

Paragraph 50 of WT/ACC/SPEC/SAM/4/Rev.2: Please update the USD value of the licensing fees expressed in Samoan Tala (SAT) referred to in this paragraph and all other such references in the draft Working Party Report, e.g., in paragraphs 12, 40, 42, 50, 53, 58, 67, 73, 96, 115, 131, 168, 178, 182, 184, , etc.

Answer:

Business licence SAT 220 = USD 72.886 SAT 500 = USD 165.65 (October 08).

Question 12

Paragraph 53 of WT/ACC/SPEC/SAM/4/Rev.2: The last part of the paragraph should be clarified, as follows:

53. In addition... Before trading liquor, village stores had to seek permission to sell liquor from their village council. Licenses to import liquor were neither restricted in number nor subject to specific criteria, but two different activity licenses were needed, one to buy and sell liquor domestically and one to import it. In the case of domestic liquor, both a licence to produce and a licence to buy and sell were required. Licenses were valid for one year. Licence fees to produce, purchase, sell and import liquor are presented in Table 4. He confirmed that retailers who already had an activity licence to buy and sell liquor did not need a second licence to import.

Answer:

The last sentence of the paragraph, as amended, is incorrect under both the current regime and the new regime being established.

In the current regime, a trader is required to apply and obtain a licence to sell liquor before they can apply for second licence to either manufacture or import liquor. There is a link here in that the licence to sell liquor is a prerequisite to applying for a licence to import liquor.

As per the requests of the Working Party, Samoa is amending its Liquor laws. The Government is proposing to remove the current requirement for an importer to apply first for a licence to sell liquor before applying for a licence to import. Under the proposed laws, any trader can apply first to import liquor. However, once they have obtained an importers licence, if the trader wishes to sell or distribute any imported alcohol in Samoa then they will require an additional licence to sell liquor. This is the case for local businesses as well.

The Liquor Control Board is still reviewing the draft Bill. As this is the first major amendment since the Liquor Act was first passed in 1971 there are many proposed policy changes that require in depth review by the Committee. Once the Liquor Control Board has finalised its proposed policy changes the Bill will be returned to the Office of the Attorney General for a final review.

At this stage the Liquor Control Board have not set a date for the draft Bill to be presented to Cabinet for endorsement although it appears that the Liquor Control Board have planned to complete their work by December 2009.

Question 13

Paragraph 55 of WT/ACC/SPEC/SAM/4/Rev.2: We appreciate that Samoa is considering how to separate the acts of distribution and importation in the area of alcoholic beverages.

- **Has the Liquor Control Board completed its review?**
- **Has the Office of the Attorney General transmitted the draft amendment to the Liquor Act of 1971 to the Cabinet for endorsement? Has it been forwarded to Parliament?**
- **Could Samoa indicate how it intends to proceed in this matter?**

Answer:

Please refer to above response.

Question 14

Paragraph 56 of WT/ACC/SPEC/SAM/4/Rev.2: We cannot finalize the text of this commitment without reference to what Samoa intends to do on the alcohol importation issues. We look forward to final resolution of the issues.

Answer:

Please refer to above response.

A. **IMPORT REGULATIONS**

- **Customs tariff**

Question 15

Paragraph 57 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for the information in the responses to Questions 28 and 29 of WT/ACC/SAM/8 concerning its intent to establish its applied and bound tariff rates in the HS2007 nomenclature.

- **We would like to see that information explicitly referenced in the draft Working Party Report.**
- **Please confirm as well that Samoa will complete its market access negotiations in HS1996.**

Answer:

Confirmed.

Question 16

Finally, please provide the WTO Secretariat and interested Working Party Members with a full and accurate concordance to HS2007 to be used for the conversion. Doing this will allow the

Secretariat to compile a consolidated goods schedule in HS2007 for Working Party Member verification, and will help Members complete their verification efforts rapidly.

Answer:

This will be provided once it is endorsed by Cabinet.

- **Other duties and charges**

Question 17

Paragraph 61 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its agreement to the revised commitment language.

Answer:

Noted.

- **Tariff rate quotas, tariff exemptions**

Question 18

Paragraph 63 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its agreement to the revised commitment language.

Answer:

Noted.

- **Fees and charges for services rendered**

Question 19

Paragraph 63 of WT/ACC/SPEC/SAM/4/Rev.2: Please provide updated information concerning the deliberations of the National Revenue Board on establishing a customs fee structure consistent with the provisions of Article VIII of the GATT 1994.

Answer:

A revised, WTO-compliant, fee structure is awaiting endorsement by the National Revenue Board for as required under the Public Finance Management Act. The current fee structure as set out in Table 1 below will be replaced by the fee structure provided in Table 2. Once endorsed by the National Revenue Board, it is then given to Cabinet for approval.

Table 1

R61	Application for refunds	SAT 25 + SAT 8 per SAT 500 or part thereof
R62	Application for refund, faulty manufacture	SAT 25 + SAT 8 per SAT 500 or part thereof
R63	Application for refund, damaged etc. goods	SAT 25 + SAT 8 per SAT 500 or part thereof
R64	Application for refund, goods diminished in value	SAT 25 + SAT 8 per SAT 500 or part thereof
R65	Application for refund, destroyed, pillaged or lost goods	SAT 25 + SAT 8 per SAT 500 or part thereof
R67	Application for drawback	SAT 25 + SAT 8 per SAT 500 or part thereof
R68	Application for drawback in special cases	SAT 25 + SAT 8 per SAT 500 or part thereof

Table 2

R61	Application for refunds	SAT 25
R62	Application for refund, faulty manufacture	SAT 25
R63	Application for refund, damaged etc. goods	SAT 25
R64	Application for refund, goods diminished in value	SAT 25
R65	Application for refund, destroyed, pillaged or lost goods	SAT 25
R67	Application for drawback	SAT 25
R68	Application for drawback in special cases	SAT 25

Question 20

Paragraph 66 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its agreement to the commitment language. However, we are not prepared to see the brackets lifted from this section until we have adequate information on Samoa's plans for establishing a WTO-consistent customs fee structure.

Answer:

Refer to above response.

- **Application of internal taxes on imports**

Question 21

Paragraph 68 of WT/ACC/SPEC/SAM/4/Rev.2: We agree that enterprises, including farms, with small turnover, are often exempted from paying the VAT. If this is the basis upon which Samoa exempts its small agricultural producers from the VAT, it should be so stated in the text of the draft Working Party Report and the legal citation that provides for this exemption should be given.

We cannot agree that the exemption of domestically produced raw agricultural produce, *per se*, from the VAT is WTO consistent unless such an exemption is made available for such imported goods as well.

Earlier, we asked that Samoa clarify how the current system works, and provide the appropriate legal citations to back that up. Based on the response to Question 39 of WT/ACC/SAM/8 and the reference in paragraph 68 of the revised draft Working Party Report, is Samoa now in position to give us an update on its deliberations on this issue, and how does it intend to bring the current practice into conformity with Article III of the GATT 1994?

Answer:

The matter is still under review. Prior to accession, Samoa intends to amend its laws to ensure conformity. An update will be provided to WTO Members at the next meeting in May 2009.

Question 22

Table 6: Check the typo in the line for 2208.2090. It should be 57.12 per cent, not 15 per cent.

Answer:

This has been corrected accordingly.

Question 23

Paragraphs 69 and 70 of WT/ACC/SPEC/SAM/4/Rev.2: In our review of Table 6 we notice that the taxation of alcohol is different for different types of beverages, and at different levels of alcohol.

While we accept that the taxes applied do not vary between imports and domestic goods of the same type of beverage or level of alcoholic content, the taxation of similar goods could vary based on which products were imported and which were domestic.

Please describe for the Working Party Report what sorts of alcoholic beverages are produced domestically and what level of alcohol is typical of domestically produced distilled alcoholic beverages or spirits.

Answer:

There are several liquor manufacturers in Samoa. The largest is Vailima Breweries that currently only manufactures beer under heading 2203 but imports other forms of liquor such as wines and spirits for local sale. The several small manufacturers produce various spirituous products such as vodka and whiskey produced under heading 2208. As liquor products are closely regulated due to its value and vulnerability to misuse, the import duty rates for these products are not used as a barrier for trade but are uniformly applied across the board to all liquor products whether produced in Samoa or not.

The main alcohol produced in Samoa is beer made from malt with a strength exceeding 3 per cent by volume of alcohol (22030090) and vodka, rum and whisky of an alcohol strength by volume exceeding 30 per cent but not exceeding 57.12 per cent.

Question 24

Paragraph 71 of WT/ACC/SPEC/SAM/4/Rev.2: We suggest the commitment for this section be left in brackets pending agreement on the disposition of the VAT and excise tax issues.

Answer:

This is fine.

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

Question 25

We appreciate the additional information provided in the responses to Questions 41-44 in WT/ACC/SAM/8 and in the text of the revised draft Working Party Report. As we have noted before, however, we need further information on Samoa's justification for some of these restrictions, and we need to see further elaboration of our concerns in the revised Draft Report.

Paragraphs 75-76 of WT/ACC/SPEC/SAM/4/Rev.2: Concerning Samoa's restriction on the importation of automobiles more than 12 years old:

- We remain concerned that this arbitrary restriction discriminates against imports.
- Clearly used automobiles older than 12 years are purchased and sold domestically and therefore cannot all be considered unsafe *per se*.
- We urge Samoa to reform its system and to apply non-discriminatory safety and environmental standards to all used automobiles, whether imported or purchased domestically.
- Such a regime could be administered with import licenses requiring safety or environmental inspections for imported vehicles over 12 years old comparable to those required for vehicles over 12 years old purchased domestically.

We would like to see our views reflected in the draft Working Party Report.

Answer:

Samoa is in the process of reviewing this prohibition. A comprehensive update will be provided to WTO Members at the May meeting.

Question 26

Paragraph 76 of WT/ACC/SPEC/SAM/4/Rev.2: Concerning Samoa's ban on the importation of left-hand drive (LHD) vehicles:

- We would also appreciate more information from Samoa on the reason for its recent ban on the importation of left-hand drive (LHD) vehicles.
- Why has Samoa suddenly made this change? A significant portion of U.S. exports to Samoa (up to 40 per cent in recent years) is accounted for by automotive equipment, and we expect that virtually all of it will be affected by the ban.
- Other countries do not ban LHD or RHD vehicles even if their driving regulations are based on the other arrangement, so why does Samoa?
- What portion of automotive vehicles currently in Samoa are left-hand drives? What will happen to left-hand drive vehicles already in Samoa after the ban takes effect? Are they considered a hazard? Will they be permitted to remain on the road, or is it only imports that will be prohibited?

We would like to see this discussion and Samoa's responses to our questions reflected appropriately in the draft Working Party Report, along with our strong recommendation that this ban is discriminatory and unnecessary.

Answer:

Samoa is in the process of reviewing this prohibition. A comprehensive update will be provided to WTO Members at the May meeting.

Question 27

Paragraph 76 of WT/ACC/SPEC/SAM/4/Rev.2, and the response to Question 45 of WT/ACC/SAM/8: We appreciate Samoa's efforts to bring its registration fee for agricultural chemicals into line with Article VIII of the GATT 1994.

We suggest that the discussion of this fee (including the bracketed reference (in paragraphs 73 and 76, and in the commitment text) be moved to the section on "Fees and Charges for Services Rendered" along with the updated information on its transformation.

Answer:

This is fine.

Question 28

Paragraph 72 of WT/ACC/SPEC/SAM/4/Rev.2, and the response to Question 46 of WT/ACC/SAM/8: Please provide a Table, like Table 7, listing all the imported products that are prohibited, including HS numbers.

Does Samoa produce any of these products domestically?

Answer:

Prohibited imports

LHD motor vehicles and vehicles manufactured more than 12 years prior to importation	Relevant goods imported under Headings 8702,8703,8704,8705,8706
Bee and bee products	0409, and other goods containing honey
Turkey tails	02072610, 02072710 and any other goods containing turkey tails except for whole turkeys
Tinned fish cartons of 48 cans	Specific packaging of tinned fish imported under Heading 0305
Coins and bank notes	NA.
Pornographic articles, publications, films, and video	Relevant goods imported under Chapters 37, 49, 85.
Non-biodegradable plastic bags	Relevant goods imported under Heading 3923

Of the goods listed above, the only product that Samoa manufactures is honey. The ban is not related to industry protection but of phytosanitary reasons.

Question 29

Paragraph 72 of WT/ACC/SPEC/SAM/4/Rev.2: Samoa indicates that it has prohibited imports of turkey tails and states that this measure was introduced to support health preventative measures to curb the rising problem of life style disease such as diabetes, high blood pressure, and heart and kidney failure among other reasons.

- We appreciate the Government of Samoa's desire to enhance the health of its citizens and to take action to address the threat that obesity represents to that goal.
- However, we are concerned that Samoa has singled out a single food item in order to address a much larger and more complex problem.
- In this regard, we note that there was wide consensus at the 36th Session of the Codex Committee on Food Labelling, which reflected the World Health Organization's Draft Action Plan for the Implementation of the Global Strategy on Diet, Physical Activity and Health, that emphasized the importance of considering total dietary choices and exercise to avoid non-communicable diseases.
- What is Samoa's plan for educating its consumers on the importance of considering total dietary choices and exercise to avoid non-communicable diseases, as discussed in the

World Health Organization's Draft Action Plan for the Implementation of the Global Strategy on Diet, Physical Activity and Health?

Answer:

Samoa is currently implementing a number of measures to educate consumers about healthy diet choices and exercise:

- (a) Samoa has just developed the "Health Sector Plan 2008-2018: A Healthy Samoa", which has "Health Promotion and Prevention" as one of the strategic areas with the objective of "To strengthen health promotion and primordial prevention". This objective includes a number of outputs and indicators related to the WHO Global Strategy on Diet, Physical Activity and Health;
- (b) Samoa's Dietary Guidelines are currently being reviewed and updated through consultations with stakeholders. These guidelines emphasise the importance of eating a variety of fresh local foods and they also encourage consumers to eat fewer foods high in fat, salt, sugar and to be active everyday;
- (c) The health, agriculture and community development sectors actively promote healthy eating and in particular, eating local foods and fresh fruit and vegetables. Activities include awareness and training sessions about healthy diets and physical activity, information booths at special events such as church conferences, seed distribution, planting and gardening programmes;
- (d) Communities are encouraged through their work with the Ministry of Women, Community and Social Development, to improve family and food supply and physical activity by planting family vegetable gardens;
- (e) Healthy eating and physical activity are promoted through the mass media. Radio and posters are produced and information provided to the print media for publication;
- (f) Appropriate Infant and Young Child Feeding is promoted to give young children the best start in life they can get. Each year World Breastfeeding Week is celebrated to increase awareness about the importance of breastfeeding and Samoa is currently striving to implement the Baby Friendly Hospital Initiative to further strengthen and support breastfeeding;
- (g) A national physical activity programme in the villages, which has been running for two years, encourages people to undertake regular physical activity as part of a healthy lifestyle. At present 96 villages conduct regular physical activity programmes. Other messages about a healthy lifestyle are also incorporated in the programme such as eating low fat foods and quit smoking. Currently there are efforts underway to strengthen the nutrition and gardening elements of the programme in addition to the physical activity;
- (h) National Annual weeks and days focusing on health and food are celebrated: Health Lifestyle Week (November); World Food Day (October); World Breastfeeding Week (August); and World Health Day (April);
- (i) Nutrition, physical activity and health are all included in the school curriculum for secondary students and the primary school curriculum is currently being strengthened. Pre-school and school teachers and nursing training programmes all include nutrition as a subject;
- (j) Efforts are being made to improve nutrition in schools (pre-schools - primary). School nutrition guidelines have been drafted and are ready for pilot testing. They seek to limit the amount of foods high in fat, salt and sugar that can be sold and consumed in schools to prevent promotion of these foods in schools. A pilot pre-school programme has shown that improvements in food served to children can be made and sustained over two years. At the beginning of the programme, 57 per cent children were eating foods high in fat, salt and sugar at pre-school. After two years only 9 per cent were doing so;
- (k) The Ministry of Health is working on updating food legislation for Samoa. New legislation has been drafted and stakeholders are currently being consulted on the draft; and

- (l) The National CODEX Committee is working on developing food standards to address the availability of high quality foods.

Question 30

We would also like to know what specific objective criteria Samoa used to identify this one food product among all others for restriction.

Answer:

The turkey tail prohibition is considered by Samoa a desperate measure to address the very real health problems faced by the people of this country.

- Turkey tails contain high percentage of fat (32 per cent: Foster Farms, turkey tail supplier);
- Turkey tails are popular food items and are easily accessible as it is cheaper than other types and cuts of meat. This is a particular concern for low income earners; and
- Discourage the introduction of turkey tails to the diets of young children. It would be difficult to sway them from consumption of it as they get older.

Question 31

How can Samoa justify an arbitrary ban on one food in combating health problems when many others with similar characteristics are allowed in circulation?

We would like to see this discussion and Samoa's response reflected appropriately in the draft Working Party Report

Answer:

Samoa is in the process of reviewing this prohibition. A comprehensive update will be provided to WTO Members at the May meeting.

- **Customs valuation**

Question 32

We thank Samoa for the additional information provided in the responses to Questions 48, 51, and 53 of WT/ACC/SAM/8 and the revised draft Working Party Report.

What is the status of the Customs Valuation Amendment Regulations 2007? If the final draft has been completed, may we review it?

We suggest inserting Table 9 in the text of the revised draft Working Party Report, as follows:

- 81. During this period, ...the transition period is assured. The representative of Samoa presented an Action Plan setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step (Table 9).**

Table 9

Action	Timeframe
Working Party review of draft legislation necessary for conformity with the Agreement	Prior to Accession
Provisions of the Agreement that Samoa can implement as from accession	
Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 15, 16, 17, implemented in accordance with existing legislation	Completed
Recruitment of personnel, obtaining facilities and equipment, establishment of databases	Completed
Customs Valuation Amendment Regulations 2007	Under development, 2006-2007 Final Draft completed prior to 1 August 2008
Provisions of the Agreement that Samoa will implement prior to the end of the transitional period	
Passage of Regulation through Cabinet	Prior to 1 September 2008
- Article 10 data confidentiality	Prior to 1 September 2008
- Article 12 transparency	Prior to 1 September 2008
- Article 14 interpretative notes	Prior to 1 September 2008
Updating of manuals, operating procedures	Prior to August 2008
Printing of updated forms, brochures etc.	Prior to August 2008
Training of at least 20 Officials and Customs Officers	Prior to August 2008
Workshops for Private Sector	Prior to August 2008
Implementation of valuation system in full conformity with WTO rules	Prior to 1 December 2008

82. The representative of Samoa stated that legislation on the valuation of imports for customs and taxation purposes conforming to the requirements of the Agreement on Customs Valuation would be enacted by 1 September 2008. Samoa would progressively implement the Agreement on Customs Valuation in accordance with the action plan in Table 9, and with the understanding that during this period the scope of implementation of other aspects of the Agreement, as described in paragraphs [80] and [81], would be applied by Samoa. Full implementation would start from 1 December 2008. The Working Party took note of these commitments.

Answer:

The Customs Valuation Regulations Amendment Draft is now awaiting Cabinet endorsement. Table 9 accurately reflects the stage that this amendment has reached:

Table 9

Action	Timeframe
Working Party review of draft legislation necessary for conformity with the Agreement	Prior to Accession
Provisions of the Agreement that Samoa can implement as from accession	
Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 15, 16, 17, implemented in accordance with existing legislation	Completed
Recruitment of Personnel, obtaining facilities and equipment, establishment of databases	Completed
Customs Valuation Amendment Regulations 2009	In draft form - awaiting Cabinet endorsement
Provisions of the Agreement that Samoa will implement prior to the end of the transitional period	
Passage of Regulation through Cabinet	June 2009
- Article 10 data confidentiality	June 2009

Action	Timeframe
- Article 12 transparency	June 2009
- Article 14 Interpretative Notes	June 2009
Updating of manuals, operating procedures	Prior to December 2009
Printing of updated forms, brochures etc.	Prior to December 2009
Training of at least 20 Officials and Customs Officers	Prior to December 2009
Workshops for Private Sector	Prior to December 2009
Implementation of valuation system in full conformity with WTO rules	January 2010

- **Rules of origin**

Question 33

Paragraph 86 of WT/ACC/SPEC/SAM/Rev.2: We appreciate why Samoa has amended the suggested text for paragraph 86. However, there are a number of reasons why Samoa will need to determine origin of its imports, whether or not it has such rules in place from the date of accession.

- **Origin is important for the administration of the Agreements on, *inter alia*, Safeguards, Antidumping, Subsidies and Countervailing Duties, TBT, SPS, and Import Licensing Procedures.**
- **Confirmation of origin in accordance with the provisions of Article II(h) must be available to importers.**

We ask that Samoa accept the previously suggested text, or amend it to provide a date certain by which this provision of the Agreement on Rules of Origin will be operational, as follows.

86. The representative of Samoa confirmed that, [from the date of accession,] [from date certain,] Samoa's preferential and non-preferential rules of origin would fully comply with the WTO Agreement on Rules of Origin, including the provisions of Article 2(h) and Annex II, paragraph 3(d) of the Agreement, i.e., that for non-preferential and preferential rules of origin, respectively, the customs authority would accept requests from an exporter, importer or any person with a justifiable cause for an assessment of the origin of the import make such a determination as soon as possible, but no later than 150 days after the request had been submitted provided that all necessary elements had been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Samoa would also abide by the relevant WTO provisions on transparency and the provision of information about its rules of origin and their application. The Working Party took note of this commitment.

Answer:

Samoa has no non-preferential rules of origin in place except those provided by Section 134(2) which relate to fish, whales and natural produce of the sea.

- **Preshipment inspection**

Question 34

We remain convinced that preshipment inspection services engaged by WTO Members should respect and apply the provisions of the WTO Agreements, since the PSI firm is enforcing mandatory requirements for importation and exportation on behalf of the Member government.

We thank Samoa for its agreement to strike paragraph 88 from the text of WT/ACC/SPEC/SAM/4/Rev.2. Samoa either acknowledges its WTO obligations, whether applied by customs staff or a private firm on its behalf, or it does not. If not, then we cannot consider this section of the Report closed

We propose removing the brackets from the revised commitment in paragraph 89, as follows:

89. The representative of Samoa confirmed that if a pre-shipment inspection system would be introduced in the future, it would be temporary. Should such a system be put in place, Samoa would ensure that this system would be in conformity with the WTO Agreement on Preshipment Inspection and any other relevant WTO provision] The Government of Samoa would take responsibility to ensure that the operations of any preshipment inspection companies it retained would meet the requirements of the WTO Agreements, in particular the Agreements on Preshipment Inspection, Import Licensing Procedures, Customs Valuation, Sanitary and Phytosanitary Measures and Technical Barriers to Trade. He further confirmed that charges and fees applied by such companies would be consistent with Article VIII of the GATT 1994, and that such system would comply with the due process and transparency requirements of the WTO Agreements, in particular Article X of the GATT 1994, and the Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.

Answer:

This is fine.

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

Question 35

We are reviewing Samoa's recently provided trade remedy legislation and reserve the right for further questions later.

Answer:

Noted.

Question 36

Paragraph 92 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its agreement to the revised commitment language.

Answer:

Noted.

B. EXPORT REGULATIONS

- **Export restrictions**

Question 37

Paragraph 98 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its agreement to the revised commitment language.

Answer:

Noted.

- **Export subsidies**

Question 38

Paragraph 101 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its agreement to the revised commitment language, but per below, we believe this section should be merged with the "Industrial Policy" section.

Answer:

Noted. This is fine.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 39

We appreciate the additional information provided by Samoa on its subsidies and incentives. It makes it clear that the firm Yazaki Samoa Limited will continue to be eligible for tax holidays and for customs and excise benefits until 11 July 2010 under the Enterprise Incentives and Export Promotion Act 1992/1993.

As these benefits are contingent in fact, if not in law, on exports, we also appreciate the information provided by Samoa that it does not intend to extend these programmes when they expire.

In light of this information, we suggest merging the information in the sections on Export Subsidies and Industrial Policies (including subsidies) and using a single commitment for the new, combined section.

Answer:

This is fine.

Question 40

Our drafting suggestions are contained in Annex 1 to this submission.

Answer:

Refer to the annex for comments.

Question 41

Could Samoa please provide copies of the Enterprise Incentives and Export Promotion Act 1992/1993 and any amendments to the law to the Secretariat for Members to review? We reserve the right for further questions upon review of the requested legislation.

Answer:

This legislation has been abolished.

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

Question 42

Paragraph 109 of WT/ACC/SPEC/SAM/4/Rev.2: We are sensitive to the fact that Samoa does not establish its own technical regulations, nor have any approved standards, with the exception of the pesticide labelling requirement which was based on international standards. For this reason, the commitment is prospective. We support this commitment with changes that track the recommendations of the WTO Committee on Technical Barriers to Trade and the Doha Ministerial Declaration on Implementation on norms for prior publication and comment, as follows:

109. [The representative of Samoa stated that Samoa would establish an enquiry point as soon as possible within the Ministry of Commerce, Industry and Labour, responsible for answering all enquiry and notifications as provided in the Agreement on Technical Barriers to Trade. Samoa would ensure that no technical regulations, standards and conformity assessment procedures were adopted or implemented until Samoa had implemented appropriate laws ensuring conformity with the provisions of the Agreement on Technical Barriers to Trade, including the publication or posting on a website of draft technical regulations and conformity assessment requirements for review and comment at least 60 days prior to implementation, and that the final technical regulations and conformity assessment requirements would be published at least six months prior to entry into force. Samoa would ensure the full conformity of any such legislation with the Agreement on Technical Barriers to Trade. The Working Party took note of these commitments.]

Answer:

Samoa understands that the publication of draft technical regulations is not a requirement under the TBT Agreement, it is only a recommendation made by the TBT Committee. The only requirement concerns the notification of draft technical regulations. We would therefore like to suggest the following alternative language:

[The representative of Samoa stated [...] including the notification of draft technical regulations and conformity assessment requirements for review and comment at least 60 days prior to

implementation, and that the final technical regulations and conformity assessment requirements would be published at least six months prior to entry into force. Samoa would ensure the full conformity of any such legislation with the Agreement on Technical Barriers to Trade. The Working Party took note of these commitments.]

- **Sanitary and phytosanitary measures**

Question 43

We appreciate Samoa's thorough review of its SPS entry requirements and strong commitment to participate in the three international standards bodies of the Codex Alimentarius, International Plant Protection Convention, and the World Organization for Animal Health.

The steps that Samoa has outlined in its SPS Action Plan (WT/ACC/SAM/9) are also quite transparent and noteworthy.

We have some questions:

- **We very much appreciate the opportunity provided to review Samoa's Quarantine Act of 2005. Although we are still evaluating this document we have a few initial questions.**
- **Has the legislation been officially adopted?**

Answer:

Yes, the Quarantine (Biosecurity) Act 2005 has been officially adopted through enactment by the Legislative Assembly of Samoa in Parliament, 2 December 2005.

Question 44

Does Samoa have a similar Act that governs food and agricultural products produced in Samoa?

Answer:

- Produce Export Ordinance 1961;
- Food and Drugs Act 1967; and
- Health Ordinance 1959.

Question 45

How are domestic food and agricultural products inspected?

Answer:

The Produce Export Ordinance 1961 allows the Director of Agriculture to enter premises where any produce is grown, kept, or stored and inspect such produce. Inspection of some agricultural products may be mandated also under other legislation relating to Health and Environment.

There are meat inspectors and fish inspectors. The Crops Advisory Officers also perform similar roles for vegetables root crops especially with pests and diseases control whereby it has an impact on quality of agricultural products for domestic consumption.

The Food and Drugs Act 1967 allows the Ministry of Health Environmental Health Officers (EHO) to inspect premises where food is processed, stored and sold. These premises include food processing factories, restaurants, supermarkets, bakeries, wholesalers and vendor stalls. In addition to the premises, food for sale may also be inspected.

The Health Ordinance Act 1959 allows EHO to inspect food premises also in relation to sanitation, water supply, occupational health and safety.

EHO conduct inspections conduct daily scheduled inspections which may include complaints lodged at the Ministry.

Question 46

Concerning Samoa's Enquiry Point: The response to Question 71 in WT/ACC/SAM/8 indicates that it is operational. Have any notifications been posted through the Enquiry Point? If so, can examples be provided?

Answer:

No notifications have been posted so far.

Question 47

Does Samoa have any plans to enact an official journal that publishes all announcements of draft legislation and their amendments and makes them available for public comment prior to adoption?

Answer:

Announcements of draft legislation and their amendments are published in the official "Savali" gazette.

Question 48

Would Samoa identify which laws mandate that all SPS measures be published in the official journal and notified to the WTO in draft stage for public comment prior to adoption?

We believe the action plan outlined in Table 10 is a good basis for discussion of specific commitments to implement the SPS Agreement by 1 January 2012. Please see Annex 2 for our drafting suggestions, based on WT/ACC/SAM/9.

Answer:

Changes incorporated in Annex 2.

There is no law that mandates that all SPS measures be published in the official journal and notified to the WTO in draft stage for public comment prior to adoption.

The Samoa BioSecurity (Quarantine) Act will need to be amended accordingly.

- **Trade-related investment measures**

Question 49

Paragraph 122 of WT/ACC/SPEC/SAM/4/Rev.2. We thank Samoa for accepting this commitment:

122. [The representative of Samoa said that Samoa would not maintain any measures inconsistent with the TRIMs Agreement and would apply the TRIMs Agreement from the date of accession without recourse to any transition period. The Working Party took note of this commitment.]

Answer:

Noted.

- **State-trading entities**

Question 50

We appreciate Samoa's responses to Questions 75-77 in WT/ACC/SAM/8 and the new information that has been used to update this section and its commitment text in the revised draft Working Party Report.

We have the following drafting suggestions for the commitment text in paragraph 127 as follows:

127. The representative of Samoa confirmed that upon accession Samoa would notify and provide information on the activities of its new supplier of petroleum products as they related to the exclusive contract to supply petroleum products to Samoa on behalf of the Government, in accordance with Article XVII of the GATT and the Understanding on that Article. Samoa would apply its laws and regulations governing the trading activities of State-owned and State-controlled enterprises and other enterprises with special or exclusive privileges and would act 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. The Working Party took note of these commitments.

Answer:

Noted. This is fine.

- **Transit**

Question 51

Paragraph 135 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its agreement to the revised commitment language.

Answer:

Noted.

- **Agricultural policies**

Question 52

Paragraph 141 of WT/ACC/SPEC/SAM/4/Rev.2: The base period is not very recent, covering programmes in the period 1997/1998-2000/2001.

Could Samoa describe for the Working Party Report text what, if any, changes have occurred in its agricultural support programmes since that time?

Answer:

Response to be provided at a later stage.

Question 53

Paragraph 141 of WT/ACC/SPEC/SAM/4/Rev.2: We thank Samoa for its commitment not to use export subsidies in the agricultural sector.

Answer:

Noted.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 54

Paragraph 171 of WT/ACC/SPEC/SAM/4/Rev.2: We recognize that Samoa is a least developed country and that the TRIPS agreement has flexibilities designed to facilitate the accession to the WTO of least developed countries. We are willing to work with Samoa on its commitment to implement the WTO Agreement on TRIPS with a transition.

- We do not agree that the commitment suggested in paragraph 171 is appropriate or necessary.
- We note that assurances on the protection of intellectual property on integrated circuits layouts and plant varieties have been removed. Can Samoa indicate why?
- We remain interested in Samoa's completion of WT/ACC/9, the Checklist on the Implementation of the WTO Agreement on TRIPS. We look forward to receiving this information. Until we do, we will not be able to suggest or evaluate commitment language.
- We look forward to receiving Samoa's IPR legislation as well.

Answer:

Response to be provided at the May consultation. The WT/ACC/9 checklist will be submitted before the May consultation.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 55

This section of the Report should remain open, pending completion of the market access negotiations, to ensure that the information compliments, and does not contradict, the commitments undertaken in the schedules.

Answer:

Noted.

VII. TRANSPARENCY

- **Publication of information on trade**

Question 56

For its own purposes, and to stimulate economic activity and promote investment, Samoa must adopt a more effective method of meeting the transparency requirements of WTO Agreements. This is particularly true in the areas of TBT and SPS where the collection of comments prior to enactment is an obligation.

Samoa's ability to provide facilities for public comment on regulations or provide traders with unified information points appears to us from the information provided to be rudimentary.

For example, in the response to Question 88 of WT/ACC/SAM/8, Samoa has indicated that the Ministry of Foreign Affairs and Trade has a website, but that use of the internet in Samoa is not common (internet penetration is only 2 per cent) and in Samoa's view would be ineffective.

We note, however, that other WTO Members make common use of the internet to publicize materials and to search for information. Samoa's current practice, of sending publications directly to private sector organizations for them to comment on, would be very ineffective in opening its regulatory review process (not to mention collecting comments on SPS and TBT draft technical regulations) to interested parties in other WTO Member countries. The same is true for notices published in the local newspaper.

We would like to learn more about Samoa's current process for accepting and reviewing comments on draft regulations.

- **Does current legislation require that the Government collect or respond to comments submitted? In the areas of SPS or TBT?**
- **How are final regulations notified in Samoa?**

Answer:

Response to be provided at a later stage.

Question 57

In order to deal with its transparency obligations, we recommend that Samoa consider establishing a unified publication policy, enquiry point and/or website where regulations on all WTO issues routinely would be published prior to implementation for public review and comment. Such a facility would help Samoa implement its other commitments, and represent a major reform breakthrough.

To initiate the discussion of how Samoa might move towards improving this situation, and thereby take a great step forward towards a truly transparent and accessible regulatory review mechanism that will improve the economic environment, we offer draft commitment language for Samoa's consideration and look forward to its comments.

171. [The representative of Samoa confirmed that from the date of its accession, Samoa would fully and promptly implement the transparency provisions of the WTO requiring notification and publication, including the provisions of Article X of the GATT 1994. He further confirmed that no law, regulation, judicial decision administrative rulings and other measures of general application pertaining to or affecting trade in goods, services, and TRIPS, would become effective prior to its publication. The publication of such laws, regulations and other measures would include the effective date of these measures and list the products and/or services affected by the particular measure. He stated further that Samoa intended to establish or designate an official journal or web-site, published or updated on a regular basis and readily available to WTO Members, individuals and enterprises, dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services, and TRIPS prior to implementation, and that Samoa intended to provide a reasonable period, e.g. no less than 30 days, for comment to the appropriate authorities of Samoa before such measures are implemented, except for those regulations and other measures of general application involving national emergency or security, or for which the publication would impede law enforcement or be otherwise contrary to the public interest or prejudice the commercial interests of particular enterprises, public or private. Samoa intended to implement this facility as soon as possible, and within the timeframe of its other WTO commitments. The Working Party took note of this commitment.]

Answer:

Response to be provided at a later stage.

VIII. TRADE AGREEMENTS

Question 58

Paragraph 196 of WT/ACC/SPEC/SAM/4/Rev.2: We appreciate Samoa's acceptance of the commitment.

Answer:

Noted.

Annex 1: Redrafted Combined Subsidy Sections

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including export and other subsidies

99. The representative of Samoa said that Samoa did not apply any prohibited subsidies. His Government had abolished the Export Financing Facility on 31 December 1997, as part of the liberalization of the financial system and in line with the 1994 Central Bank of Samoa Act 1994 - the Export Financing Facility offered a 3 per cent margin of interest rate on loans to finance exports; under the Facility, commercial banks could offer loans at an interest of 9 per cent instead of 12 per cent as per normal interest rate. Local banks made financing available to exporters at market interest rates and the Government did not provide any kind of support to Samoa's exporters. [moved from previous section]

100. Samoa operated an import duty drawback scheme administered by the Customs Department. Duty drawback was regulated by the Customs Act 1977, Sections 166-168, and the 1986 Customs Regulations 1986 - Regulations 68-71 -, and subject to strict compliance requirements, including prior notification, inspection/examination, shipment and export certification, entry, and claim. To prevent claims on products sold on the domestic market, Samoa's duty drawback regulations provided for inspection and certification of shipments at the time of export before clearance of the claim for duty drawback. Penalties for violation of duty drawback regulations were laid down in the Customs Law. [moved from previous section]

102. The representative of Samoa said that Samoa's industrial policy aimed at stimulating private sector competition and domestic and foreign investment through liberalization. He noted that the 1999 amendments to the Enterprises Incentives and Export Promotion Act 1992/1993 had not eliminated all import duty and income tax exemptions granted on the basis of export performance. Special benefits in the form of income tax holidays, tax holidays on dividends, and exemptions from customs and excise duties granted to five enterprises which exported 95 per cent of their production had been grandfathered. Most of these benefits had expired. Only one company, Yazaki Samoa Limited, was still eligible to tax holidays until 8 November 2009 and to customs and excise benefits until 11 July 2010 (see also the section "Investment Regime"). He confirmed that none of these incentives were contingent upon local content requirements.

103. He added that duty concessions were granted for hotels and other development projects under the Customs Amendment Act 2007. Applications for duty concessions had to be submitted to the Ministry of Commerce, Industry and Labour. The concessions were granted only for the capital goods required for the establishment of the project. Applicants were required to provide a list of such capital goods. The concessions ceased once the quantity and value approved for the development project had been exhausted. He noted that the criteria to benefit from duty concessions under this scheme were being revised. He confirmed that there were no other subsidy programmes. No public sector enterprises were entitled to subsidies or preferred credit arrangements.

104. A Member noted that the incentives grandfathered under the Enterprises Incentives and Export Promotion Act were prohibited subsidies under Article 3 of the Subsidies and Countervailing Measures Agreement. Asked whether all prohibited subsidies would be eliminated with the expiration of the incentives grandfathered under the Enterprises Incentives and Export Promotion Act, the representative of Samoa confirmed that his Government did not intend to renew these incentives.

101. [moved from previous section] The representative of Samoa confirmed that [from the date of accession,] ~~from 31 July 2010,~~ Samoa would not maintain any subsidies, including export subsidies, which met the definition of a prohibited subsidy contained in Article 3 of the Agreement on

Subsidies and Countervailing Measures. Benefits based on existing laws would not be granted after that date and Samoa would not introduce any other such prohibited subsidies from the day of accession. [moved from previous section]He further confirmed that any programmes that granted subsidies would be administered in line with the Agreement on Subsidies and Countervailing Measures and that all necessary information on notifiable programmes would be notified to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon entry into force of Samoa's Protocol of Accession. The Working Party took note of this commitment.]

Annex 2: Redrafted SPS Section Commitment

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Sanitary and Phytosanitary Measures

We suggest the following incorporation of the Action Plan into commitment text in WT/ACC/SPEC/SAM/4/Rev.2, and, as noted, improvements in the specificity of the action plan, as follows:

119. He added that achieving compliance with the requirements of the SPS Agreement was a complex task and further work needed to be undertaken to ensure compliance with the SPS Agreement. While the Quarantine (Biosecurity) Act 2005 mandates a risk based approach consistent with principles of SPS Agreement, there were no regulations to implement the specific provisions of the WTO Agreement on SPS and its annexes. In light of the legal, infrastructural, financial and technical constraints faced by Samoa, Samoa was accordingly seeking a transition period as outlined in the detailed action plan for the gradual implementation of the SPS Agreement reproduced in Table 8. The transition period was necessary to permit the adoption of legislation, train staff and ensure that Government officials and stakeholders had a good knowledge and understanding of SPS legislative requirements, to create the appropriate additional institutions and facilities for transparency, risk assessment, and the determination of equivalence, and make sure that control inspection and procedures were fully operational.

He stressed the necessity for his Government to receive adequate technical assistance to ensure the proper implementation of the Agreement

120. In response to a Member who noted that the establishment of an enquiry point was a key part of the transparency obligations under Article 7, Annex B of the SPS Agreement, and that the enquiry point should be up and running at the time of accession, the representative of Samoa said that Samoa's national SPS enquiry point was already operational. The enquiry point had been established within the Ministry of Agriculture and Fisheries:

Mr Pelenato Fonoti
Assistant Chief Executive Officer
Ministry of Agriculture and Fisheries
Apia, SAMOA
Email: ACEO@samoaquarantine.gov.ws
Tel: (685) 20924
Fax: (685) 20103

120bis. The representative of Samoa requested that the Working Party grant a transitional period from the date of its accession until 1 January 2012 for implementation of the WTO Agreement on Sanitary and Phytosanitary Measures to allow Samoa to obtain and utilize technical assistance to fully implement the obligations of the Agreement. During this period, existing measures would be applied on a non-discriminatory basis, i.e., providing for national treatment and MFN treatment to all imports. Measures in place already consistent with the provisions of the Agreement on Sanitary and Phytosanitary Measures would not be subject to transitions. Samoa would ensure that any changes made in its laws, regulations and practice during the transition period would not result in a lesser degree of consistency with the provisions of the Agreement than existed on the date of accession. If necessary, any SPS standards, technical regulations and conformity assessment procedures adopted during the transition period would be developed in conformity with the provisions of the Agreement, including publication prior to implementation to allow interested parties the opportunity for review and comment as provided for in the Agreement. Otherwise accepted international standards would be

adopted. Priority would be given to the establishment of a functioning enquiry point and the notification of all of Samoa's SPS measures to the Committee on Sanitary and Phytosanitary Measures. Samoa would review its existing requirements in light of its obligations under the Agreement. He stressed the importance of technical assistance to be provided during the period of transition, including under Article 9 of the SPS Agreement, and added that Samoa would seek out all available technical assistance to ensure that its capacity to implement the SPS Agreement upon expiration of the transition period was assured. Samoa would fully participate in the work of the Committee on Sanitary and Phytosanitary Measures. He drew the attention of Members to the Action Plan in Table 8, setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step.

Table 10: Action Plan for the Implementation of the SPS Agreement

Action	Timeframe and Comments
Parliamentary passage of Quarantine (Bio security) Act 2005.	Completed.
Introduction of new standards, animal health regulations and food safety regulations in conformity with the SPS Agreement principles.	The introduction of new standards and regulations follows the principles set out in the Biosecurity Act and is based on risk analysis.
Further development of quarantine website, www.samoaquarantine.gov.ws to improve notification and access to documentation.	Improve input of data and the operation of the website. Technical assistance to assist in further operational improvement of website, for it to be in good order by June 2009.
Measures are applied only to the extent necessary to protect human, animal or plant health and regulations governing animal and plant health and food safety shall be based on scientific evidence.	The Quarantine (Biosecurity) Act 2005 mandates a risk based approach consistent with principles of SPS Agreement.
To the extent possible, Members shall follow international standards, guidelines, and recommendations in establishing SPS measures.	Samoa participates in the development of international standards (e.g. plant standards under IPPC through the Pacific Plant Protection Organisation) and follows international standards and guidelines in the development of national standards.
Equivalence: Members shall recognize different measures that achieve the same level of protection.	The Quarantine (Biosecurity) Act 2005 mandates a risk based approach consistent with principles of SPS Agreement. Samoa has been flexible with this principle and uses it to facilitate trade without compromising Quarantine.
Contact for SPS and administrative procedures:	Assistant Chief Executive Officer Quarantine Division Ministry of Agriculture Email: CEO@samoaquarantine.gov.ws Tel: (685) 20924 Fax: (685) 20103 Enquiry point is now functional.
Establishment of enquiry officer with MAF Training of enquiry officer with MAF: Head of Quarantine Ministry of Agriculture Email: CEO@samoaquarantine.gov.ws Tel: (685) 20924 Fax: (685) 20103	Established. Ongoing training with capacity required expected to be achieved by July 2009. Technical assistance has been sought from New Zealand and Australia.

Action	Timeframe and Comments
Establishment of implementing regulations, including control, inspection and approval procedures.	The Quarantine (Biosecurity) Act 2005 is flexible. It already provides a mandate for administrative procedures outlining control, inspection and approval procedures, following the principles of the SPS Agreement. Implementing Regulations to be formally established January 2012.
Further identification of regulations necessary for giving full effect to the Act (if any).	Section 69(1) allows for the making of Regulations for such matters which are necessary for giving full effect to the Act. Identify regulations by December 2009.
Draft of Regulations.	July 2010 (in line with the achievement of the Quarantine Performance Measures).
Passage of Regulations.	December 2010.
Upgrade and strengthen facilities and equipment. (Require x-ray machines, more disposal / treatment facilities, new replacement of existing old machines, strengthen fumigation mechanisms, IT support systems - computers, etc.)	The most basic facilities and equipment are in place. Technical assistance has been sought from New Zealand and Australia. Upgraded facilities in place by January 2012.
Development of manuals. Printing of forms, brochures, etc. (SPS specific).	Operational manuals and procedures to be ready by January 2012.
Include National Awareness Workshop on SPS.	September 2009. June 2010. June 2011. January 2012. Technical assistance to be sought by July 2009 to commence awareness programmes. To be conducted annually.
SPS specific intensive training of at least 15 quarantine officials.	July 2010. October 2011. Technical Assistance to be sought by December 2009.
National awareness programmes on SPS implementation (to include customs officers, private sector people and civil society).	By July 2010 (Capacity achievement to be achieved by these dates). In line with performance measure target to complete. By July - December 2009. By July 2010 - December 2011 (Capacity achievement to be achieved by these dates).
Full implementation.	By 1 January 2012. In line with performance measure target to complete.

120ter. The representative of Samoa confirmed that Samoa would implement progressively the provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures within the timetable provided for in Table 8, and would ensure full implementation of the Agreement no later than 1 January 2012, and with the understanding that during this period the scope of implementation of other aspects of the Agreement, as described in paragraph 120bis would be applied by Samoa. He further confirmed that Samoa would consult with WTO Members upon request if they deemed that any measures applied during the transition period affected their trade negatively. The Working Party took note of these commitments.