

**Working Party on the
Accession of Saudi Arabia**

Original: English

ACCESSION OF THE KINGDOM OF SAUDI ARABIA

Additional Questions and Replies

The Ministry of Commerce of the Kingdom of Saudi Arabia has submitted additional replies to questions raised by members after the fourth meeting of the Working with the request that they be circulated to members of the Working Party. The questions and replies are reproduced hereunder

Table of Contents

	Question	Page
II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE		
2. Economic Policies		
(a) Main directions of ongoing economic policies		
- Privatization	1	1
- Petroleum	2-6	1
(d) Foreign and domestic investment policies	7	2
IV. POLICIES AFFECTING TRADE IN GOODS		
1. Import Regulation		
(a) Characteristics of national tariff	8-13	3
(f) Import licensing procedures	14-19	4
- Timing	20-21	5
- Licenses from the Ministry of Interior	22-26	6
- Licenses from the Ministry of Agriculture	27-32	7
- Chivalry Club	33-35	8
- Licenses from the Ministry of Post, Telegraph and Telephone	36-37	9
- Bans and National Treatment	38	10
(h) Customs valuation	39-43	11
(j) Pre-shipment inspection	44	12
(l) Rules of origin	45-47	12
(m)(n)(o) Anti-dumping, countervailing duty and safeguard regimes	48	13
3. Internal Policies Affecting Foreign Trade in Goods		
(b) Technical barriers to trade	49-56	13
- Food standards and Shelf Life	57-67	15
- ICCP	68-98	22
(c) Sanitary and phytosanitary measures	99	37

		Question	Page
4.	Policies Affecting Foreign Trade in Agriculture	100-103	37
-	Re: Document WT/ACC/SAU/13/Add.1/Corr.1	104-120	38
-	Domestic Support	121-126	43
V.	TRADE-RELATED INTELLECTUAL PROPERTY REGIME	127-133	44
VII.	INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES		
	Preferential Trading Arrangements	134-138	46

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions of ongoing economic policies

Privatization

Question 1.

Could Saudi Arabia explain if and how foreign companies participate in the privatization of Saudi industries?

Reply

According to the Council of Minister's Resolution No.60 dated 1/4/1418 H, regarding the Government's objectives of privatization, one of those objectives is:

"the encouragement of national and foreign capital to undertake domestic investment".

The Ministerial Committee on Privatization formed by the above Resolution shall approve the implementation program for each project planned for privatization by the Government. The program shall include a study on the participation of foreign investment according to the circumstances and nature of each project.

Petroleum

Question 2.

In WT/ACC/SAU/29- Question 22, Saudi Arabia states that "The reference to petroleum and asphalt in earlier documentation reflect a long standing arrangement. The need for the control is under review."

We appreciate Saudi Arabia's commitment that, by the time of accession, it will be in conformity with WTO obligations. We will expect this commitment to be reflected in the working party report and protocol commitment .

Please report to the Working Party when the review is complete and outline the Steps that will be taken to ensure conformity.

Reply

We take note of the observations.

Question 3.

Can Saudi Arabia confirm that local industries that use liquefied gas still enjoy a benefit of 30 per cent . Has this practice or other practices pursued which result in national users of these other feedstocks paying less than world market prices been extended to other raw materials for ethylene production (e.g. naphtha condensates?).

Reply

Saudi Arabia confirms that the national industries still receive a 30 per cent discount from the export price. This discount is applied to all NGL's from the Master Gas System (Propane, Butane, and Light Naphta) that are used as a feedstock. Refined products, including refined naphta, do not receive this discount.

Question 4.

Why is the rebate applied to the minimum export price reported in that quarter and not to the average price?

Reply

This is done for purely accounting purposes and to avoid the complaints from the customers of applying averages, since the export price is a contract price set by the exporting entity.

Question 5.

Can Saudi Arabia state the specific proportions of the costs associated to LPG exports (refrigerating, storage, mooring, and marketing) that totally account for the 30 per cent rebate?

Reply

We do not have specific proportions of the cost associated to LPG exports due to the fluctuation of such costs depending on the flow of gas, the capacity of the plants and many other factors associated with refrigerating, storage, mooring and marketing of LPG.

Question 6.

Is the "stated objective of diversifying Saudi's economic base and lessening dependence on the export of raw material" (WT/ACC/SAU/3c page 4) to be taken to mean that the production associated with this rebate is meant for export only? If not, how much of this production will be absorbed by the Saudi market?

Reply

The Council of Ministers' decision No. 68 did not specify the discount for export industries. It is intended for local industries, whether Saudi or foreign owner, using it as feedstock whether their output is for domestic or export markets. The proportion to be absorbed by the domestic market depends on economic and population growth, investment patterns and many other factors.

(d) Foreign and domestic investment policies

Question 7.

With regard to technology transfer requirement, specifically what kind of measures are required for foreign capital in the transfer of technical know-how or management know-how?

Reply

No precise measures are specified. Foreign investors have to give an undertaking that they will arrange the transfer of technical and management know-how.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Characteristics of national tariff

Question 8.

Could Saudi Arabia confirm that there is no local production of tobacco products.

Reply

Yes, there is no local production of tobacco and products thereof in the Kingdom.

Question 9.

In 1994 the export duty for untanned hides and skins was 22.6 per cent. Has this duty been increased since 1994? What is the total revenue collected through this duty?

Reply

The rate of duty is SR\$2,000/ton. Rate has not been increased since 1994. The total revenue from hides and skins is about SR\$834,000

Question 10.

Which animal's untanned hides and skins are subject to the export duty?

Reply

The hides and skins subject to export duty are those falling under headings 41.01, 41.02 and 41.03.

Question 11.

What tariff is currently applied to the import of the same goods?

Reply

The rate of duty currently imposed on the imported skins is 12 per cent (ad valorem).

Question 12.

What tariff does Saudi Arabia intend to bind for the import of these goods?

Reply

At 50 per cent ad valorem.

Question 13.

This export duty which Saudi Arabia affirms in response to Question 126 is applied only for revenue purposes, together with the eventual application of an import tariff creates a serious market distortion which is difficult to reconcile with a willingness to join the WTO. How does Saudi Arabia intend to eliminate this distortions?

Reply

The GATT 1994 rules permit the imposition of export duties. The Agreement (GATT 1994) does not contain any provision restricting the right of any country to levy duties on exports. Moreover, Article XI of the GATT 1994 permits the use of export duties the same way as it permits the use of import duties.

(f) Import licensing procedures

Question 14.

Question 19 WT/ACC/SAU/29 What costs are involved in obtaining a license? Are they different for foreign and Saudi companies? What happens in case of a trade fair: Do you still need an import license? Do you need to obtain a temporary license, if it exists? Do you still need a commercial registration?

Reply

There are no costs in obtaining a license. In the case of trade fairs, once a company gets permission to hold a trade fair, no import license or commercial registration is required to import merchandise for display at the fair. However, such merchandise can not be sold at the fair.

Timing

Question 15.

In this document, there are references to different "average time" requested to deliver a license. Is it the time to deliver a license determined by law or by a specific administrative order?

Reply

There is no law or specific administrative order. It is a well established practice.

Question 16.

The application review times in Saudi Arabia are described in terms of average time periods, except for telecommunications equipment these time periods are under 30 days. Could Saudi Arabia state whether there is any law, decree, etc. that confirms that reviews cannot exceed the 30 day limit stipulated in the import licensing agreement?

Reply

There is no law or specific administrative order. However, it is a well established practice.

Question 17.

From the information provided in WT/ACC/SAU/30 we note that process varies. Can Saudi Arabia explain the reasons for the different appeal processes?

Reply

The slight variations are because of the procedures of different Ministries and Departments.

Question 18.

Question 4 WT/ACC/SAU/29 Which legislation or administrative order is applied and is there a publication of the reasons for the decision? Is there a publication of the decision of the Board of Grievances and of the reasoning upon which it is based'?

Reply

There is no legislation and reasons for decision are not published. Similarly there is no publication of the decisions of the Board of Grievances nor the reasons thereof. However, the Board of Grievances supplies copies of its decisions to all concerned parties and reasons for decisions are recorded in its judgments.

Question 19.

What Is the composition of the Board of Grievances and how are members selected?

Reply

The Board of Grievances consists of President, who has the status of a Minister, one or more Vice- presidents and Members (called deputy assistants). The number of vice presidents and members is not fixed. The president is appointed by the King and reports to him. The Vice-presidents and members are appointed by Royal Decree, on the recommendations of the president. Members of the Board should have a degree in sharia or any other University degree equivalent to that.

Question 20.

While time frames have been stipulated for the consideration of an application, no indication is given concerning the time frames for the consideration of appeals. Is there a standard period for the consideration of appeals?

Reply

No, there is no standard period for consideration of appeals. Time periods would depend on the nature of different cases and the work-load at a particular time.

Licenses from the Ministry of Interior

Question 21.

In WT/ACC/SAU/4.Add.1 Saudi Arabia listed many goods that are subject to licensing by the Ministry of Interior for security reasons but that have legitimate commercial uses as well. The responses to questions to questions 39-46 in WT/ACC/SAU/29 state that only certain items with security applications will be subject to licensing. We appreciate this clarification.

In WT/ACC/SAU/30 section IV on the Ministry of Interior only covers four product groups (paragraph 22), but there are many other items listed in the annex to SAU/4/Add.1 as being subject to import licensing by the Ministry of Interior, such as spectacles and burglar alarms.

Could Saudi Arabia confirm that imports of all the items listed in the annex as- being licensed by MOI are subject to the same procedural and documentation requirements described in WT/ACC/SAU/30 section IV paragraphs 22-27?

Reply

Yes.

Question 22.

Questions 41 and 42 WT/ACC/SAU/29 We are not convinced of the need for import licensing for burglar/fire alarms and high quality photocopiers. There must be less trade restrictive measures to achieve the same objective, for example the use of water-marking and holograms on documentation. As for burglar/fire alarms why have these been singled out? Is material contained in these alarms which is not available elsewhere? Such alarms are widely available in other countries and are not used for making explosives.

Reply

We take note of the question. However, as explained earlier, for security reasons the Kingdom of Saudi Arabia has restricted the import of these items.

Question 23.

What are the national security reasons to submit items listed in point 22 (c) and (d) to import licensing? Why cannot a less restrictive system be envitthe Government of Saudi Arabiaed?

Reply

The reason for restricting items listed in point 22(c) is to prevent import and the misuse of these items by persons who could pose a security risk. Only Ministry of Interior can vet whether a person importing such equipment could be a security risk. As for fire fighting equipment, the procedure has been changed. Now no import licensing is required from the Ministry of Interior. If the imported equipment meets Saudi or international standards, import will be allowed after customs have checked compliance with standards.

Question 24.

Point 33 (ii) do you have to undergone the full procedure if you do not want the subsidy? If yes, why?

Reply

No, you do not have to undergo the full procedure if you do not want the subsidy.

Question 25.

Point 33 (iii) who tests the suitability of the imported machine?

Reply

A committee of the Ministry of Agriculture and Water consisting of agricultural and mechanical engineers tests the suitability of the imported machine.

Licenses from the Ministry of Agriculture

- **License for Importing Agricultural Machinery and Equipment**

Question 26.

Saudi Arabia stated that one of the reasons for restricting the import of agricultural machinery and equipment, is to determine the "right" subsidy, and provide the Agricultural Bank with the price and subsidy for each consignment,

Does this statement mean that only machinery and equipment for which subsidies are provided can be imported?

Reply

No, machinery can still be imported even if importer does not ask for subsidy.

Question 27.

Under what circumstances could someone or an agent import non-subsidized machinery and equipment?

Reply

Anyone having commercial registration or any agent can import non-subsidized machinery and equipment.

Question 28.

Reply 35 in WT/ACC/SAU/29 states that "If a person or entity wants to import agricultural equipment without receiving the state subsidy, it still has to apply for an import license." However, in the fourth working party meeting Saudi Arabia stated that the license was only required if the importer wanted the subsidy.

Could Saudi Arabia please clarify this issue? Is the license only required when importing subsidized agricultural equipment?

Reply

Import license is still required even if imported agricultural equipment does not receive State subsidy.

- **Licenses for Importing Seeds and Fertilizers**

Question 29.

It is stated that the reason for requiring a license for the importation of seeds is to ensure compliance with Saudi standards and specifications, and to ensure that infected seeds, and chemicals are not imported.

How is a license used to ensure that infected seeds are not imported?

Reply

License contains phytosanitary dispositions to be met by imported seeds.

Question 30.

Could Saudi Arabia provide information on how seeds are inspected and what the cost of inspection is?

Reply

There is no cost for seed inspection. The inspection is carried out firstly by visual inspection of the seeds and insuring the absence of impurities and checking phytosanitary information in the export documents. And lastly, samples are sent to laboratory to check for aflatoxins.

Chivalry Club

Question 31.

Can Saudi Arabia provide more information on the Chivalry Club?

Reply

We have already given information on Chivalry Club. However, we can give more information if it is specified what precise information is required.

Question 32.

One of the requirements for importing horses into Saudi Arabia is that the horses have to be imported by air, on a direct flight from the exporting country to specified airports in Saudi Arabia.

Could Saudi Arabia explain why only air transportation can be used to transport horses into Saudi Arabia? In a case where there is no direct flight from the exporting country to Saudi Arabia, will a shipment that comes in through a connecting flight be denied entry in the Kingdom?

Reply

Animal quarantine facilities are only available at major airports of the Kingdom. That is why import is allowed only by air. If there is no direct flight to the Kingdom, a shipment by a connecting flight will not be denied.

Question 33.

Saudi Arabia also noted that the issuance of an import license for the importation of Arabian breed horses, is contingent upon the approval of the Arabian Horse Center.

Does the Arabian Horse Center publish and make available to the public, the guidelines for determining the breed and origin of the Arabian Horses that can imported?

Reply

The Arabian Horse Center publishes all the guidelines for determining the breed and origin of Arabian Horses that can be imported. Furthermore, the Arabian Center is a member of International Arabian Horse Organization which gathers information on Arabian horses on an annual basis.

Question 34.

In the reply to question 52 Saudi Arabia says that "Importation of" other than Arabian horse strain is permitted. provided a license is obtained from the Chivalry Club ... Will the license be granted automatically. and if not. what are the criteria for obtaining a license ?

Reply

A license is granted automatically by the Chivalry Club.

Question 35.

Saudi Arabia does not specify the license processing time for import licenses for horses in the Section on the Chivalry Club (WT/ACC/SAU/30 page 8-9).

Could Saudi Arabia confirm that the Chivalry Club processes license applications within 30 days of receipt of the documentation'?

Reply

Yes, it is so confirmed.

Licenses from the Ministry of Post, Telegraph, and Telephone**Question 36.**

An outstanding issue that is highlighted by WT/ACC/SAU/30 is the issue of timing.

Article 3, Section 5(f) of the Agreement on Import Licensing says., "the period for processing applications shall, except when not possible for reasons outside the control of the Member, not be longer than 30 days if applications are considered as and when received, i.e. on a first-come first-served basis.... "

The timing for issuance of import licenses exceeds 30 days for licensing of several categories of goods.

For radio communication apparatus, it takes one to two months to issue a license. (WT/ACC/SAU/30 page 5)

For network equipment, it takes six to twelve months, to obtain a license, (WT/ACC/SAU/30 page 5)

All countries take steps to prudently allocate spectrum and to rationalize use of frequencies. However, this process is normally independent of the import licensing procedure. Since the processing time exceeds 30 days and the allocation of spectrum is not "outside the control of the Member.," the current system does not meet WTO requirements.

The problem does not seem to lie in the licensing system itself but in the mingling of import licensing with other regulatory functions.

What are the time periods for review by the Frequency Department? For review by the Licensing Committee? Perhaps Saudi Arabia could consider splitting out the approval of the actual import license from the broader telecommunications regulatory process.

Reply

The time period required for review by the frequency department is one week from the date of receiving complete required data. The time period required for reviewing by the licensing committee is one week.

Question 37.

If a product meets the frequency requirements and technical specifications, does the Licensing Committee approve the application within 30 days?

Reply

If a product (Request) meets the frequency requirements and technical specifications, the licensing committee will take a decision within a period of 30 days.

Bans and National Treatment

Question 38.

WT/ACC/SAU/29/Add.3 contains several products that have not appeared on previous lists. One such item is HS 4819. The description states that the ban applies to "Empty bags separately presented bearing mark or information on foodstuffs or cement or trademark.,; of the manufacturers excluding those imported by national companies."

- **What is purpose of this ban?**
- **Why is this ban not applied to national companies?**

Reply

The import of empty bags is prohibited to ensure that these bags are not misused by packing deceptive goods thus misleading the consumer. The restriction does not apply to State owned companies (National companies) as they do not indulge in such practices.

(h) Customs valuation

Question 39.

In response to, among others, question 135 Saudi Arabia describes a three phase plan for the incorporation of the Agreement on Customs Valuation into Saudi legislation. Which phase is Saudi Arabia currently implementing?

Reply

We are implementing section A of phase I at present.

Question 40.

Which actions have already been taken'?

Reply

As stated in reply 27, we are implementing section A of phase I. As for section B of phase I, we are in touch with the WCO to arrange the visit of Saudi customs officials to the WCO. We are in early stage of thinking and planning the training program for custom officials.

Question 41.

Can Saudi Arabia specify the duration of each phase and when the plan will be completed?

Reply

Phase I will last one year, whereas phase II and phase III will each have a duration of three to four years.

Question 42.

Does Saudi Arabia intend to complete this plan before acceding to the WTO? If not, which parts of the plan does Saudi Arabia intend to complete after accession?

Reply

The plan will not be completed before accession to the WTO. Phases II and III will be completed after accession.

Question 43.

A minimum price is currently applied to the import of Spanish tiles into Saudi Arabia and does not respect the value declared in the commercial documentation. The evaluation seems to be made in a discretionary way following instructions from Saudi Ceramic Co. The same procedure is not applied to tiles imported from other countries. What does Saudi Arabia intend to do to eliminate this discriminatory practice?

Reply

Minimum prices are used for valuation of ceramic products falling under HS heading 6908.9010, imported from all countries. There is no discrimination in the use of minimum prices.

(j) Pre-shipment inspection

Question 44.

We are particularly concerned about the pre-shipment arrangements which Saudi Arabia will apply extensively. The overall impression is that it can hardly be considered a proper justification of the use of pre-shipments by just listing that this arrangement is based upon the reference to PSI-Agreement the Preambular text stating that "so far as it is necessary to verify the quality, quantity or price of imported goods" as Saudi Arabia repeatedly states in the background documentation. We have no problems to accept that pre-shipment arrangements can be useful in some cases and due to lack of competence in the importer country.

Furthermore we respect Saudi Arabia's explanation for the need of pre-shipment arrangements as a result of inadequate infrastructural and technical expertise capabilities to perform these duties in the country itself. We also welcome the Saudi assurances that the PSI and PST activities will be reduced proportionally to the developments regarding the infrastructural capabilities.

Reply

We take note of the observations.

(l) Rules of origin

Question 45.

Is it correct that every certificate of origin must be approved by a Saudi Embassy?

Reply

Certificates of origin shall be attested by the Saudi Embassy or Consulate. Where no Saudi Embassy or Consulate exists, such certificate shall be attested by the Chambers of Commerce in the exporting country.

Question 46.

Is it correct that a certification of European Community origin is not accepted and that specific country must always be specified?

Reply

Yes.

Question 47.

In response to question 241 Saudi Arabia affirms that marking of origin has to be printed or stamped on all expensive textile fabrics. When is a textile fabric considered expensive?

Reply

Expensiveness of the fabric depends on a number of factors including the quality, the brand name, the tissue, texture, design and the price relative to other fabrics.

- (m) Anti-dumping regime**
- (n) Countervailing duty regime**
- (o) Safeguard regime**

Question 48.

In response to question 221, Saudi Arabia affirms that trade remedies legislation would be enacted after it joins the WTO. Could Saudi Arabia confirm that it will not take any antidumping, safeguards and countervailing measures until a WTO consistent legislation is enacted?

Reply

Saudi Arabia confirms that, after accession to the WTO, it will not take any anti-dumping, safeguard or countervailing measures until an appropriate legislation in line with the WTO Agreements is enacted.

3. Internal Policies Affecting Foreign Trade in Goods

(b) Technical barriers to trade

Question 49.

Will the non-tariff barriers in the form of non-automatic licensing of import and ban on import, for example import ban on position 0401 0000- UHT milk, pasteurized in packages above 1 litre in order to prevent falsification (document WT/ACC/SAU/29/Add.1 of 22 November 1997) be lifted after Saudi Arabia's accession to the WTO? If not, on what WTO provisions will they be applied (what kind of derogations does Saudi Arabia plan to obtain)?

Reply:

The ban on import of position 0401 0000- UHT milk, pasteurized in packages of more than 1 litre and other bans will be lifted after Saudi Arabia's accession to the WTO. As for non-tariff barriers, Saudi Arabia will remove all non-tariff barriers against WTO rules.

Question 50.

Saudi Arabia should supply a complete list of all Saudi standards and technical regulations. How many international standards have been adopted by Saudi Arabia as national standards?

Reply

Saudi Arabia is a member of ISO, IEC, OIML and CAC. All Saudi (SASO) standards are thus notified to all other members of these international organizations, including the Philippines. A high percentage of SASO standards utilizes international standards and other widely accepted national standards as references. About one third of SASO standards cover food products predominantly utilizing CAC (Codex codes) as major references. A list of SASO standards in which Codex standards have been used as the main reference is attached (see document WT/ACC/SAU/34). Further, a complete updated list of the 1323 Saudi standards is attached (see document WT/ACC/SAU/34), including cross reference numbers of the international standards which were adopted in their entirety as SASO standards. The list of SASO standards applicable to each one of the 76 ICCP Regulated Product Categories had been made available to the WTO as an attachment to WT/ACC/SAU/15. A second copy is attached herewith.

Question 51.

If Article 4(a) of the Council of Ministers Resolution No. 50 does not relate only to the externally administered substances, specifically what kind of standards have been adopted by Saudi Arabia for those hormones and auxines whose standards for residues are set out in CODEX? (WT/ACC/SAU/29)

Reply

There are no approved Saudi standards regarding maximum residue limits of hormones in food products. Most of Saudi standards for meat and meat products state that such products shall be free from synthetic hormones. Recently a draft Gulf standards is being prepared on maximum residue limits of veterinary drugs including hormones in food of animal origin.

Regarding the auxines, there are no approved Saudi standards concerning maximum residue limits in food products.

Question 52.

Please provide the specific review schedules of the articles referred to under this question?

Reply

The review will be completed before Saudi Arabia's accession to the WTO.

Question 53.

We note that In the list of restricted (banned and controlled) items contained in WT/ACC/SAU/29/Add.3, live sheep and goats end meat thereof are ncluded and GATT 1994 Article XX(b) cover is claimed, Could Saudi Arabia provide information of the basis of which these are maintained?

Reply

Restrictions on imports of live sheep and goats are maintained according to the reports of the OIE and its regulations of declaring the areas free from the disease.

Question 54.

What arrangements are there for reviewing and removing restrictions which may be imposed for specific disease occurrences (eg. Morbillivirus in horses)?

Reply

Restrictions which may be imposed for specific disease occurrences are reviewed and removed whenever reports received from the OIE declaring the area free from the diseases according to the OIE regulations.

Question 55.

With regard to restrictions on cuttings and seedlings, we would appreciate further detailed information concerning the products affected the procedures for determining disease status, and the need for the measures to protect plant life in Saudi Arabia?

Reply

All cuttings and seedlings imported into Saudi Arabia are affected by these measures. The procedures include phytosanitary certificates from the country of origin and visual inspection in the quarantine area. These measures are needed to make sure no infected plant is imported so that plant life could be protected.

Question 56.

Annex C to the SPS Agreement stipulates requirements in relation to control, inspection and approval procedures. Article 4 of the SPS Agreement also requires WTO Members to accept the sanitary and phytosanitary measures of other members, subject to confirming objectively that these are adequate to achieve the importing country's level of sanitary and phytosanitary protection. Can Saudi Arabia confirm that it will accept the certification of exporting countries, in accordance with these requirements under the SPS Agreement?

Reply

Yes, Saudi Arabia confirms that it will accept the certification of exporting countries, in accordance with the requirements under the SPS Agreement.

Food Standards and Shelf Life

Question 57.

With regard to long-11 per cent pasteurized milk in packs exceeding one liter, could Saudi Arabia explain the nature of the deceptive practices that have given rise to the ban on imports? Does this apply to all imports?

Reply

As stated earlier, the ban will be removed and replaced by tariffs after Saudi Arabia's accession to the WTO.

Question 58.

In relation to questions 189 to 195 and 200 to 258 in WT/ACC/SAU/29, relating to shelf life, we note that there is widespread acceptance of manufacturer determined shelf life, based on a body of recognized scientifically based literature. Will Saudi Arabia accept manufacturer determined shelf life where applicable?

Reply

Saudi Arabia relies for the determination of the shelf life of food products on available scientific studies by specialized, and internationally recognized bodies and on references, based on research conducted for academic or industrial/commercial purposes. The fact that part of this research is conducted by manufacturers demonstrates that Saudi Arabia takes into consideration differences in manufacturing and packaging processes. This wide spectrum of scientific basis does not affect Saudi Arabia's right to engage in shelf life determination as an SPS measure for perishable food products and as a TBT-technical regulation appropriate to Saudi Arabia's climatic conditions for shelf stable food products.

Question 59.

Can Saudi Arabia provide an assurance that shelf life regulations applied to products destined for areas where adequate transport, storage facilities exist are not more restrictive than necessary?

Reply

Saudi Arabia's shelf life for perishable food products is determined based on the assumption of a controlled storage temperature (by refrigeration or freezing) in accordance with internationally recognized norms. As for shelf stable products, the main consideration for its determination is the prevailing climatic conditions of Saudi Arabia. The inadequacy or abuse of the transport and handling conditions are not particularly factored in. However, in cases where the internationally recognized scientific studies and references are not in concurrence on the appropriate shelf life period, the tendency in the past for higher risk products had been to rely on the study with the shorter shelf life period.

Question 60.

Do the Administrative arrangements and evaluation process outlined in WT/ACC/SAU/27 include provision for "acceptance SPS measures applied by other countries, including manufacturer data where these may differ from Saudi Arabian standards but where the exporter can objectively demonstrate that the standards are appropriate to Saudi Arabia's level of SPS protection"?

Reply

Shelf life is considered partly as an SPS measure only for perishable food products. By its definition, SPS measures are taken by countries (governments) whenever they choose to interfere in insuring an appropriate level of SPS protection. Manufacturer determined shelf life determination that may be followed in other countries are neither uniform nor can be considered as official SPS measures by governments. Nevertheless, shelf life periods of perishable food products are not applied imposed unilaterally, but rather adopted in accordance with the same open process applicable to standards, i.e. through technical committees entrusted with the preparation of the standard whose diversified membership includes representatives of the industrial and commercial sectors. These members have the opportunity to influence the decision on shelf life determination and insure its responsiveness to the needs of the industry, not to mention the period afforded for consultation and comment by any interested parties. In addition, SASO administrative procedures and directives provide the opportunities for manufacturers to submit at any time the scientific basis for their own determined shelf to SASO for evaluation. If these manufacturers can demonstrate objectively that their shelf life periods are appropriate to Saudi Arabia's level of SPS protection as well as the food quality criteria, Saudi Arabia will revise its shelf life standards accordingly.

Question 61.

(WT/ACC/SAU/29) The reply to question 200 states that "... final determination of shelf-life is made based on the studies for which " the stated storage conditions" most closely resemble Saudi Arabian conditions ... these conditions have been thoroughly investigated and surveyed ... in a report entitled Proceedings of Symposium on the Transportation, Handling & Storage of Food Products to the Kingdom, Part I and II dated 26-28 February 1989".

Please explain how the appearance of a date on a food package alone will prevent, directly or indirectly, the risk of food contamination in the Government of Saudi Arabia's regulated food products.

Please explain what specific food safety risk the Government of Saudi Arabia is attempting to prevent by displaying the shelf-life date on a food product package and what impact non-fulfillment, i.e. the absence of a shelf-life date, would create.

If the Government of Saudi Arabia justifies the use of its' shelf-life measures as necessary to protect the health and safety of its consumers, on a product by product basis, please provide the generally accepted scientific data which supports why each shelf-life date has been applied to each of the Government of Saudi Arabia's regulated products?

Because quality attributes can change (sometimes rapidly) in some food products based on the type of product, how it is handled, packaged, and stored throughout distribution, please illustrate:

How the appearance of a date on a food package can ensure the quality of the Government of Saudi Arabia's regulated food products? What other methods does the Government of Saudi Arabia use to ensure quality?

What is the risk non-fulfillment would create, i.e. the absence of a shelf life date?

Saudi Question 203 Reply states that "Codex defines "Use-By-Date" as "the date which signifies the end of the estimated period under any stated storage condition after which the product probably will not have the quality attributes normally expected by the consumer ... the term "unacceptable to the consumer" and "unit for human consumption" respectively correspond to and are self evident from the above definition..."

"Unacceptable to the consumer" relates to sensory and quality attributes while "unfit for human consumption" relates to the products safety i.e. risk of contamination which makes the product unsafe or harmful to the consumer.

Does the Government of Saudi Arabia use shelf life dating as the primary means by which to control and ensure the safety and quality of both domestic and imported regulated food products?

Reply

Saudi Arabian standards for food products are adopted either entirely or by and large from the Codex Code. They cover the various factors that affect food quality and safety (e.g. SSA 220/1984 Hygienic Regulations for Food Plants and their Personnel). The purpose of Saudi Arabia's date marking is to insure that products which meet the required criteria at time of production, and thus were initially safe and wholesome, maintain their microbiological, sensory and nutritional qualities during the shelf life period at the stated storage temperature. Thus, Saudi Arabia does not rely on date marking alone as is stated.

Saudi Arabia had previously stated in its WTO submissions that shelf life is both a TBT (quality) issue as well as an SPS (food safety) issue. In this course, it is necessary to make the following distinction:

(a) Perishable food products:

These products carry the inherent risk of concurrent deterioration of food safety and quality properties, and thus date marking plays a contributing role in the maintenance of food safety; this gives it the priority to be classifiable as an SPS measure in addition to its TBT classification as technical regulation for quality of health. By and large, perishable food products are stored under controlled and uniformly specified temperature and humidity conditions (refrigeration or freezing). In this case, Saudi Arabia predominantly adopts the shelf life periods determined by the scientific studies of internationally recognized specialized institutes listed as references in the attachment to WT/ACC/SAU 27 for each individual product, without deviation. In limited cases noted (Labneh,

chilled meat ... etc.), Saudi Arabia conducted the studies itself and provided copies to the WTO. Thus, Saudi Arabia has totally met the scientific justification criteria required by the SPS Agreement. Nevertheless, a WTO Member who believes that any shelf life period(s) are not objectively determined in accordance with scientific justification, is always welcome to submit the relevant technical grounds. SASO is willing to study each individual case and make the required amendments in its shelf life determinations, if warranted.

(b) Shelf stable food products:

These products generally remain safe for some time after food quality properties start to deteriorate. Thus, date marking of shelf stable products contributes mainly to the maintenance of food quality, and falls under the provisions of TBT Agreement. The Agreement grants Members the right to prepare and adopt standards that are “appropriate” to the Member’s “fundamental climatic, infrastructural and technological conditions”. Shelf stable products are normally stored under room/ambient temperature conditions. In the case of Saudi Arabia, shelf life determination of these products has to take into account the prevailing high ambient temperatures in the country and the wide fluctuations between day and night and different seasons, ranging between -10°C to 55°C averaging 33°C on a year round basis, not to mention the extreme variations in relative humidity. In contrast, shelf life for shelf stable products determined by most food exporting countries are based on an assumed ambient storage temperature not exceeding 25°C. A study conducted by Natic Research for the United States Army found that shelf life periods of shelf stable products under a constant storage temperature of 32.22°C are generally half those determined under 21.1°C, thereby confirming Arrhenius Equation and the Q₁₀ rule used by researchers. Nevertheless, comparison of Saudi Arabia’s actually determined shelf life periods with the results of the study shows that they generally fall in the mid-range between the periods determined by the study at these two storage temperatures. For several products, Saudi Arabia’s shelf life period coincided with the study’s 21.1°C condition, with few exceptions coinciding with the 32.22°C condition (e.g. highly risky products such as baby food). Thus, Saudi Arabia’s shelf life determinations for shelf stable products are in fact less strict than warranted by its climatic and infrastructural conditions.

Question 62.

(WT/ACC/SAU/29) Responding to the Government of Saudi Arabia's definition of CODEX shelf-life guideline, CAC/VOL VI-Ed. 1 states the purpose of date marking, is to give the consumer a date which will provide information about the expected quality of the product provided that it has been properly stored. This does not mean that date marking guarantees either the acceptability or the safety of the product. Unquote. Under definition of types of date marking CODEX also defines: "sell-by-date", “date of minimum durability (“best before”), in addition to "Use-by-date" marking. In general shelf-life is the period during which the food keeps its microbiological and sensory quality at the specific temperature of storage.

Page 9 (b), paragraph 4 - The compelling argument made by SASO, is that, quote ... the most hazardous effect of temperature, which leads to rapid quality deterioration and microbiological decay of foods, is temperature, handling and storage.

This is true, however, why is the producer of an imported product being held responsible for the Saudi food handlers inadequate methods of storing or transporting the product once in the Kingdom?

Page 14 (b) - The scientific studies specified in this document are done at a constant temperature to evaluate and estimate shelf-life. These studies do not include testing for temperature abuse specific to Saudi Arabia.

How does Saudi use these studies in determining its existing shelf life?

Saudi Arabia has the right to require expiration dates that meet the standards set by standard testing methods; however, they do not have the right to expect the rest of the world to determine how much temperature abuse a specific product can withstand in Saudi Arabia based on compliance to triggers beyond their control and which fall under the authority and capability of the Government of Saudi Arabia to take corrective enforcement action to prevent.

Saudi Arabia seems to impose on the foreign manufacturer the added obligation of being responsible for the irresponsible handling and transportation of their product once it has entered the Kingdom, hence the half life/shelf life date requirement on imports.

Reply

The same shelf life periods are applied on domestic and imported food products alike. In the case of shelf stable products, the TBT Agreement grants Saudi Arabia the right to take into account the effect of the country's specific climatic and infrastructural conditions (i.e. transportation, storage and handling conditions). However climatic conditions is the only one of these factors actually considered as the major essential factor by SASO in determining shelf life. In rare cases covering particular products where non-concurrence or differences were found between the internationally recognized studies and references, the tendency had been to rely more heavily on the shorter shelf life periods determined by these studies as an indirect compensation for not specifically accounting for the infrastructural factors. With the improvement of the infrastructural factors, a more lax attitude will be adopted.

Question 63.

(WT/ACC/SAU/29) Question 204 Reply states that the Government of Saudi Arabia has identical shelf-life periods and marking requirements applied for domestic and imported food products... on a non-discriminatory basis... and that the half the shelf life requirement for imported foods is not an SPS issue, but rather a requirement for the marketing of the food, i.e. to allow enough time for the exporter to ship and the importer time to facilitate the distribution and marketing to all regions of the Kingdom.

How does the Government of Saudi Arabia compensate for the geographic advantage of domestically produced regulated food products mandatory shelf-life measures when these same measures impose an unfair burden on imported foods?

If half-life/shelf-life is not an SPS issue and it does not support the quality attributes of the product, how does the Government of Saudi Arabia justify the punitive nature of this requirement on imported foods i.e., if half the shelf life does not remain on the product the imported product is denied entry into the Kingdom?

Saudi Arabia asserts that it accepts the CODEX definition of shelf life, then why does the Government of Saudi Arabia impose a half-life/shelf life date requirement (i.e. half the shelf-life must remain on the product before it will be allowed entry) on imported foods.

Reply

Regarding the requirement of half shelf life validity at time of entry of food products, Saudi Arabia has previously explained that this has nothing to do with the Codex definition of shelf life, but is purely a requirement for the marketing of food products. It insures that at least 50 per cent of shelf life validity remains on food products to allow for reasonable and adequate time for the distribution and marketing of these products throughout Saudi Arabia. The first 50 per cent of shelf life allowed to be lost before entry exceeds the time required for shipping from the most distant country from

Saudi Arabia, thereby accounting for the geographical disadvantage inherent in imported products, and thus is not a punitive requirement as stated. Even with the half shelf life requirement imposed, the local distribution system and Saudi consumer are still at a disadvantage when buying imported food products versus domestically manufactured products which can provide full shelf life and freshness utility. Needless to mention, food products arriving in Saudi Arabia with inadequate or near expiry shelf life remaining will put an unreasonable strain on the distribution and marketing system and may wind up having to be wasted, thereby inflicting unnecessary losses on the national economy.

Question 64.

CODEX states that when a specific CODEX food standard requires date marking that the “date of minimum durability” (preceded by the words “Best Before”) shall be declared. the Government of Saudi Arabia plan to align it’s date marking measures with the CODEX standard?

Reply

Codex CAC/VOL VI-Ed. 1 is intended as guidance to Codex committees and stipulates that "first consideration should be given to the date of minimum durability" but does not preclude all other date marking types prescribed in Codex standard No. 1/1985. Saudi Arabia explained in Section 2 of WT/ACC/SAU 27 that “use by - recommended last consumption - expiration date” is appropriate for microbiologically highly perishable foods, while "date of minimum durability - best before date" is appropriate for the other food products where quality and nutritional value are the major factors considered. Thus, Saudi Arabia’s date marking is totally consistent with Codex. Moreover, Saudi standard SSA 703/1993 provides the option of expressing shelf life in any one of the date marking types prescribed by Codex.

Question 65.

Why does SASO use standards experiments of other countries which do not the Government of Saudi Arabia’s special climate conditions (i.e. Annex 4 list, “References Used for Evaluation of Shelf-Life ...,” Netherlands for Food Group: Milk and Milk Products)?

Reply

As stated in reply 61 above, only shelf stable foods are subject to Saudi Arabia’s special climatic conditions. Milk and milk products food group are stored under controlled temperature (by refrigeration or freezing), and excluding any transportation, handling, or storage abuse, are not affected by climatic conditions. Thus, shelf life studies for these products conducted in other countries are applicable to any other country including Saudi Arabia and can serve as scientific references.

Question 66.

To determine the methodology used and results of the scientific studies performed by the Kingdom of Saudi Arabia, Annex (1), “References Used for Evaluation ...” We request copies of all studies it does not already have (all fifteen (15)) as noted in Annex (1) for consideration to determine at what temperature(s) they were conducted.

Reply

Required references are available.

Question 67.

(WT/ACC/SAU/27)The document has several well developed statements pertaining the Government of Saudi Arabia's concerns associated with food safety in several product categories which are presented to demonstrate and support a legitimate scientific argument. Two examples used in this paper illustrate why the use of this method of justification is insufficient to satisfy a health claim for the use of mandatory shelf-life dating as imposed by the Government of Saudi Arabia.

Page 8 (a) Internal Factors relating to the properties of a food commodity - Paragraph 1, pH Value: If a product has been properly canned, there are no organisms present to produce a change in pH values. There is no such thing as spontaneous generation, consequently if there is a bad can, the organisms will grow and effect the can in such a way as to make it obvious that there is something wrong.

Page 9 (b) External Factors - paragraph 3 - the Government of Saudi Arabia makes a point of saying that products stored below 2 degrees C causes the formation of ice crystals which break the cells and permit internal nutrients to escape which, according the Government of Saudi Arabia, is a cause of rapid decay. This can happen, however, only after the product is raised to a temperature that will permit the organisms to grow in the first place. They will not grow at 2 degrees C, and consequently the food will not decay. Only when the temperature is raised will the organisms grow.

Reply

The examples related to internal and external factors mentioned in SASO paper, pages 8 & 9 affecting the product properties, are only general examples for the scientific basis showing the effect of these factors.

ICCP

Question 68.

We seek further details on the charging regime under the ICCP and any changes that may be necessary to bring it into conformity with GATT 1994 Article VIII?

Reply

The subject of the ICCP's fees has been fully clarified and explained in previous documentation submitted to the WTO. For a comprehensive coverage of this issue please refer to Section 5 of Chapter IV of WT/ACC/SAU/26, and to Reply 1 of "Saudi Arabia's Response to Questions from Canada following the May 29-30 Working Party" submitted to the WTO as supplementary document dated 26 November 1997 (circulated informally).

Question 69.

We are aware of the assurances from Saudi Arabia inter alia listed in document WT/ACC/SAU/16 in the answers to Member countries that Saudi Arabia has designed its ICCP-programme to be consistent with the various WTO instruments (see question 3). However, we would appreciate further information on how the ICCP-programme operates and what the terms of purpose are and the rationale for this comprehensive regime.

Reply

The fact that the ICCP has been designed from the outset to be consistent with various WTO instruments is not mere assurances voiced by Saudi Arabia, but is rather evidenced by Saudi Arabia's ability to respond positively to the multitude of WTO Members' questions and concerns while providing full clarification or justification that rely on specific provisions and principles of the relevant WTO and GATT 1994 Agreements, not to mention the latest successful streamlining and fine tuning of the Program via the issue of the new "ICCP Comprehensive Procedures & Guidelines - October 1997" after careful consideration of the legitimate comments of WTO members and other concerned parties. Nevertheless, in an effort to consolidate all relevant issues and put them in recapping context, Saudi Arabia had submitted to the WTO the comprehensive document WT/ACC/SAU/26 dated 23 September, 1997 which reiterates the rationale of the Program (Section I - General Concept), and demonstrates its consistency with every relevant article of the TBT, PSI and GATT 1994 Agreements.

Question 70.

We still consider that the different compliance verification options, in particular the type approval and licensing process, are excessive for the type of products which are listed and do not respect the WTO TBT Agreement requirement to adopt the least trade restrictive procedures to meet the legitimate objectives of the Saudi authorities. According to international practice, only products such as pharmaceuticals which can pose high health hazards are submitted to such an extensive procedure.

Question 71.

Saudi Arabia should adapt the conformity assessment procedures to the inherent health and safety hazard risk of products. Such measures would be less trade restrictive and would enable to reach the same goal, that is to demonstrate that products comply with Saudi Arabian requirements and approved standards. In addition, it would ensure that the principle of national treatment is respected during the implementation of the program.

Question 72.

For most of the products listed (e.g. electronics & products), Saudi Arabia should rely on the suppliers declaration of conformity and on random sampling to establish and enforce the conformity to Saudi Arabian requirements.

Reply 69, 70 and 71

The PSI Agreement facilitates the conducting of inspection procedures on a preshipment basis rather than on a post-market sampling basis, particularly for developing countries. By providing "the possibility to have conformity assessment activities undertaken at the site of facilities ...", the PSI process satisfies the "access" requirements of TBT Article 5.1.1, whereas post market sampling does not (refer to WT/ACC/SAU/26 Chapter III paragraph 2). Moreover, the core of the Registration process under ICCP is substantiated suppliers' declaration. Thus, the ICCP's compliance verification option of Registration plus Preshipment Inspection, available for exporters of any regulated products, is equivalent to supplier's declaration plus random sampling applied in developed countries. As such, it is in accordance with international practice and respects the TBT Agreement requirement to adopt the least trade restrictive procedure.

The objective behind the ICCP's Type Approval Licensing is to provide exporters with an option "allowing the import of their products with the minimum of intervention", mostly through exemption from Preshipment Inspection. In accordance with the principle of proportionality, this

maximum laxing of compliance verification should be associated with the highest level of confidence that the product can convey as to its conformity to Saudi requirements. Accordingly, Model Third Party Certification (ISO Guide 28) was adopted, as it is "the most comprehensive" conformity assessment procedure that can provide such a confidence. The ICCP Comprehensive Procedures & Guidelines clearly stipulate "Exporters may choose the route most appropriate to their product range and frequency of exports". Thus, Type Approval Licensing is not mandatory for any regulated product regardless of its risk classification. Exporters who do not see worthwhile benefits in Type Approval Licensing for their products are always welcome to adhere to the Registration/PSI option.

Question 73.

For products which contain higher health risk (e.g. some medical devices), the manufacturer's declaration of conformity could be coupled with a type approval evaluation or with a Quality system certification. The manufacturer should have the choice between those different conformity assessment procedures.

Reply

As for providing a choice between product and QS approval, please refer to details in our reply to the European Communities's question 5 submitted to the WTO as supplementary document dated 26 November 1997 (circulated informally), which demonstrates the shortcomings in such a choice, and the doubtful success of the EC system. In fact, many individual EC countries' marking systems, such as BSI's Kite Mark, as well as other developed countries such as Japan's JIS Mark are based on evaluation and approval of both the product and the QS.

Question 74.

We seek details on the procedures and costs for laboratories seeking SASO approval to carry out type and conformity testing under the ICCP?

Reply

The approval procedures are very simple and straight forward. Laboratories seeking SASO approval are required to complete the "SASO/ICCP Laboratory Application Form" (WT/ACC/SAU/34). The form basically provides SASO with information about the accreditation that the laboratory already has and the type of ICCP Regulated Products that it has the capabilities to test in whole or in part. The information is evaluated and verified and the laboratory is approved accordingly. In countries that do not have Nationally Recognized Laboratory Accreditation Bodies that accredit laboratories in accordance with ISO Guide 25, a higher degree of scrutinizing is conducted in order to gain assurance at the laboratory's competence. There are no costs involved for laboratories seeking SASO approval.

Question 75.

How are laboratories already participating in the program notified of any changes, including on product coverage?

Reply

Approved laboratories will be furnished with and are continually updated on all Program documentation appropriate to their level of involvement, i.e. standards, guidelines, type testing requirements, etc.

Question 76.

Non-Discrimination and National Treatment. Imported and domestic products are currently approved by different agencies, This increases the risk of procedures being designed and applied differently. To avoid this risk, the ICCP scheme should explicitly state not only that the same standards apply equally to domestic goods and imports, but that the same type approval procedures also apply and are administered in an identical manner. In earlier informal discussions with Saudi Arabia, the Saudi Arabian government expressed willingness to make explicit in its legislation these non discrimination requirements, but apart from a cursory mention in the ICCP Introduction this has not been done.

We reiterate our request that the relevant Saudi legislation for domestic product controls should be cited in the scheme as a demonstration of transparency and non-discrimination, and the we would also like a copy of it,

Reply

Non-Discrimination and National Treatment: TBT Article 6.1 account of the different conditions that prevail in Member countries by allowing for application of different conformity assessment procedures (CAP), subject to the test that they offer "equivalent" assurance of conformity. SASO Quality Mark scheme is equivalent to the ICCP's Type Approval Licensing, as both are based on approval of the product and the quality system. The SASO QM scheme has been in operation since 1986 i.e. long before the ICCP was initiated. Close examination of its rules and regulations indicates that it is even more strict than its ICCP counterpart especially with respect to surveillance. The ICCP Procedures & Guidelines are intended to be exactly what its title indicates, simple steps to be followed by exporters of the regulated products. Saudi Arabia does not find it necessary to load it with details that are irrelevant to these exporters apart from stating the principle of equal application of the Saudi standards on imported and domestic products.

Question 77.

Choice of conformity procedure: In previous meetings Saudi Arabia has stated that producers can seek product type approval under ICCP without having first to undergo the stages of full PSI or registration, However, the current version of the Guidelines (October 1997) still refers to type approval being made available through the progressive registration (page 6 of the Guidelines). In other words type approval appears to be the culminating stage. We believe the ICCP must be amended to reflect the intention that type approval can be sought independent of any registration stage.

Reply

Choice of conformity assessment procedure: The statement in the ICCP Comprehensive Procedures & Guidelines referring to the qualifying for type approval "through the progressive registration process" is intended to cover the case of manufacturers who are already registered in the Program. The next sentence in the same paragraph covers the case of "manufacturers of unregistered products who choose to apply directly for type approval". Nevertheless, there are some common requirements between the pre-assessment required in the latter case and registration.

Question 78.

Exports from the manufacturer/from an independent exporter. The ICCP type approval regime foresees slightly different type approval procedures depending on whether the product was exported directly by a manufacturer or via a separate trader, There are no grounds in the TBTA to differentiate in this way between like products. We therefore urge Saudi Arabia to

merge the two procedures into one by applying to all products the procedure applied to manufacturers who exported. This would involve as a consequence the deletion of those paragraphs in the ICCP guidelines referring to products coming being presented by an importer/exporter who is not the manufacturer. Our understanding has been that since there are no significant differences in treatment such a modification would be considered positively.

We would welcome Saudi Arabia's views on whether this change can be made.

Reply

Exports from the manufacturer/from an independent exporter: In accordance with clause 5.1.1 of Article 5 of the TBT Agreement, equal conditions of access for suppliers of like products need only be applicable in comparable situations. A Type approval license is only granted to manufacturers with approved quality system. Type approved products are not necessarily marked with SASO quality mark for differentiation. Exporters normally deal with several manufacturers and markets and may be involved in assembly, conversion or repacking which may change the original characteristics of the product and render it incompliant. The lower level of confidence justifies different corresponding proportionate measures. The exporter is still entitled to get the benefit of waiver of routine PSI, by obtaining the authorization of the manufacturer who owns the license. The CoC can then be issued by either the manufacturer or the SCO.

Question 79.

Transparency: We suggest that the ICCP should explicitly state that a single uniform concordance of Saudi and other equivalent standards exists, is regularly updated by SASO which is solely responsible for setting standards, and is available from any SASO Country Office. We would also like a clear statement in the ICCP that the Saudi Arabian government is the body determining technical regulations, standards, conformity assessment procedures and their application, and that companies applying such rules on products prior to export are acting in conformity with those rules established by the government. This is to ensure that different test houses, inspection services cannot deviate from the centrally established rules, standards, and assessment procedures.

The concordance of standards should also identify for which standards a third party conformity assessment procedure is or is not required, our understanding being that there are products which must meet certain standards but for which there is no ICCP procedure.

Finally, the ICCP should identify describe in more detail the nature of the conformity assessment procedures applicable and identify the relevant ISO guides or other standards governing these procedures.

Reply

In accordance with Chapter 2 - Definition of Terms of the ICCP CPG, it is clear from the definitions of Certificate of Conformity, International Conformity Certification Program, Regional Licensing Center (RLC), SASO, and SASO Country Office (SCO) that the RLCs and SCOs are carrying out their duties on behalf of SASO/MOC under the rules of the ICCP. The adherence of these bodies to these rules, and their accountability to SASO/MOC is further reflected in the second paragraph under the heading of SASO Program Management on page 14 of the CPG, as well as the full recourse to the Saudi Arabian authorities provided for in the grievance procedures included as attachment to Appendix C. As for equivalency of standards, the second paragraph of Chapter I - Introduction states: "Compliance with the relevant SASO standards, or approved equivalent alternatives, results in the issue of a CoC, The same thing is reiterated in the first paragraph of Chapter 3 Procedures for Product Compliance. The term "approved" is intended to signify standards,

the second paragraph of Chapter I - Introduction states: "Compliance with the relevant SASO standards, or approved equivalent alternatives, results in the issue of a CoC. The same thing is reiterated in the first paragraph of Chapter 3 Procedures for Product Compliance. The term "approved" is intended to signify approval by SASO. All these measures are in place to insure that bodies designated and entrusted with the implementation of the Program do not deviate from the centrally established rules, standards and assessment procedures.

Products which are subject to certain SASO mandatory standards but not fall under the ICCP regulated products list are presently considered to be of low risk to the Saudi consumer and no conformity assessment procedures are required for them. This does not preclude the Saudi Government's right to sample test such products from time to time, or to add -them to the ICCP regulated products upon prior consultation and notification, should the need arise.

All the ICCP's CAP are in accordance, with ISO Guides, particularly Nos. 2, 22, 25 and 28. The sections in the CPG covering the procedures of Registration and Type Approval Licensing are a translation of the implementation of these guides into detailed and comprehensive steps for exporters and inspection/licensing/certification bodies alike to follow without ambiguity-

Question 80.

Non-Compliance: ICCP continues to provide that type approval certificates would be annulled if' a product was found to be non-compliant. We have argued in earlier WTO discussions that this was to attack- the wrong target: in such cases the product should be suspended and action taken against the person responsible for marketing the product. Only in those cases where the type approval certificate was inaccurate or fraudulent should it be revoked.

We reiterate our views that the ICCP Should be amended to say that revocation of certificates remain a possibility in cases where a certificate is fraudulent or is materially inaccurate. This revision should remove the implication that revocation is the standard response to unsafe product determinations.

Reply

The final version of the CPG had been amended from the initial draft on account of the discussions with WTO Members, as follows:

"If discrepancies or violations are found, SCO withholds CoC ID number, and nullifies CoC, and notifies SASO and the manufacturer. An expedient investigation is carried out and appropriate action taken on the basis of the findings. Depending on the severity, frequency, and cause of the discrepancy, appropriate action may include suspension or withdrawal of the Type Approval License".

It is clear that the action warranted is proportionate to the seriousness of the facts at hand on a case by case basis. Suspension (which may be temporary) or withdrawal of the License is only a possibility in extreme cases, such as fraud or material inaccuracy.

Question 81.

Proportionality: We find it difficult to accept that ICCP products have to undergo not only product type approval but also factory quality system certification. This double barreled certification is in virtually all parts of the globe reserved only for very high risk products such as pharmaceuticals and medical devices and applied to lower risk goods is a disproportionately heavy means of regulation. Where it can be demonstrated that some form of third party

certification is necessary, manufacturers should be given a choice between product or quality system certification but not have to run the gauntlet of both.

We have already explained that international standards related to quality system certification already contain sufficient checks on the product related aspects to provide the guarantees of product conformity necessary.

Secondly, we question the justification for annual licensing of approved manufacturing sites. This again is a disproportionate measure and is more trade restrictive than necessary. Even if Saudi Arabia were to amend the ICCP to provide that manufacturing quality system certification is an alternative to product certification a requirement for annual licensing is over-regulation. Standard international practice for re-inspection of quality systems in high risk areas such as pharmaceuticals production is two to four years, It is also unclear as to whether "licensing" equates to quality system inspection or not. If it does not then as a procedure it does not seem necessary. We would appreciate clarification on this point.

Thirdly, we question the justification for pre-market certification of consumer electronics/electrical appliances and processed foodstuffs- this runs against international practice and (in the case of foodstuffs) the principles established by FAO and WHO, and in the HACCP system with which Saudi Arabia is familiar. Border control of processed foodstuffs does not in itself offer guarantees of health and safety since this is to ignore the whole chain of production conditions, storage, distribution, retail conditions etc. We suggest that Saudi Arabia consider removing pre-market certification for these products.

Fourth, concerning inspection and certification of new tyres, the cost of the procedures for this have been a source of concern for tyre manufacturers. A detailed explanation of the concrete procedures and costs of approval for this product would be appreciated.

Fifth, concerning certification of perfumes. We have been told of new requirements that display, not-for-sale samples of perfumes are subject to the full certification requirement. Saudi Arabia has however said that this was not the case. examples of perfumes were exempt. Such exemptions should, we submit, be specified in the ICCP guidelines.

A second issue relates to requirements for soaps containing perfumes which are subject to the full ICCP requirements for cosmetic products (3307 of the Harmonized system), and are not treated like other soaps (HS 3401), This is a costly and heavy procedure for exporters. We would appreciate Saudi Arabia's considering an adjustment of its procedures - namely to treat perfumed soaps as soap falling under 3401 and therefore exempt it from ICCP – to remove this problem.

Reply

The PSI Agreement facilitates the conducting of inspection procedures on a preshipment basis rather than on a post-market sampling basis, particularly for developing countries. By providing "the possibility to have conformity assessment activities undertaken at the site of facilities... ", the PSI process totally satisfies the access requirements of TBT Article 5. 1. 1, whereas post market sampling does not (refer to WT/ACC/SAU/26 Chapter III paragraph 2). Moreover, the core of the Registration process under ICCP is substantiated suppliers' declaration. Thus, the ICCP's compliance verification option of Registration plus Preshipment Inspection, available for exporters of any regulated products, is equivalent to supplier's declaration plus random sampling applied in other developed countries. As such, it is in accordance with international practice and totally respects the TBT Agreement requirement to adopt the least trade restrictive procedure.

The objective behind the ICCP's Type Approval Licensing is to provide exporters with an option "allowing the import of their products with the minimum of intervention ", mostly through exemption from Preshipment Inspection. In accordance with the principle of proportionality, this maximum laxing of compliance verification should be associated with the highest level of confidence that the product can convey as to its conformity to Saudi requirements. Accordingly, Model Third Party Certification (ISO Guide 28) was adopted, as it is "the most comprehensive " conformity assessment procedure that can provide such a confidence. The ICCP Comprehensive Procedures & Guidelines clearly stipulate "Exporters may choose the route most appropriate to their product range and frequency of exports ". Thus, Type Approval Licensing is not mandatory for any regulated product regardless of its risk classification. Exporters who do not see worthwhile benefits in Type Approval Licensing for their products are always welcome to adhere to the Registration/PSI option. As for providing a choice between product and QS approval, please refer to details in our reply to the European Communities's question 5 submitted to the WTO as supplementary document dated 26 November 1997 (circulated informally) which demonstrates the shortcomings in such a choice, and the doubtful success of the EC system. In fact, many individual EC countries' marking systems, such as BSI's Kite Mark, as well as other developed countries such as Japan's JIS Mark are based on evaluation and approval of both the product and the QS.

Concerning certification of perfumes, please refer to Saudi Arabia's reply to question 9 of the European Communities comments on draft ICCP Procedures & Guidelines submitted to the WTO as dated 26 November 1997 (circulated informally).

Regarding the regulation of soaps under the ICCP, Saudi Arabia has adopted the definition of cosmetics prescribed by the EC Cosmetics Directive 76/768/EEC, which classifies toilet soaps and deodorant soaps as cosmetics, regulated by the ICCP. The HS Codes are only indicative and not the basis for whether the product is regulated or not. HS 3401 was inadvertently missed from being included in the list, and a correction is due. Even though perfumes and cosmetics are listed under one product category, only standards pertaining to the particular product are applicable. For cosmetic soaps, the applicable standards are SSA 298, 299, 300, 301, 302, 303, 304, 492 and 493.

Question 82.

While the prospective with regard to the timing for a reduction of the scale of pre-shipment inspections and pre-shipment testing will be reduced we remain convinced of the need to point out that there will be a need for unqualified commitments by Saudi Arabia in the accession Protocol that national standards, conformity assessment procedures under the ICCP-programme, sanitary and phytosanitary arrangements, and pre-shipment inspections arrangements will be operated in a manner in full conformity with the relevant WTO-provisions.

Reply

We take note of the observations.

Question 83.

We would like to draw the attention to the basic provisions in the PSI-Agreement where it is stated in the Preambular text that the PSI-inspection should be carried out "without giving rise to unnecessary delays or unequal treatment" which is restated in Art. 2 paragraph 1 and paragraph 15 of the Agreement. Our information is that the ICCP procedures lead to weeks of delays.

Reply

Typical turnaround times of the ICCP are in accordance with clauses 15 and 16 of Article 2 of the PSI Agreement. Paragraph a) of column 1 on page 12 of the Comprehensive Procedures & Guidelines states that PSI is "normally conducted within five working days from the date of notification by the exporter that a consignment is ready for shipment. Following the receipt of the final documents and successful completion of the pre-shipment inspection, a Certificate of Conformity is issued within five working days". ICCP performance records demonstrate that the actual turnaround times have averaged about half the stipulated periods.

Question 84.

In addition Saudi Arabia states in her answer to question 2 in document WT/ACC/SAU/16 that with regard to quality this reference should be read as "quality identified as conformity to Saudi standards". In this respect we lack a reference to international standards.

Reply

Refer to reply 5 of "Saudi Arabia's Response to further questions raised by Australia on the draft ICCP Procedures & Guidelines" submitted to the WTO as a supplementary document dated 26 November 1997 (circulated informally).

Question 85.

It is our view that the selection of products subject to the ICCP control measures seem to be somewhat arbitrary. Furthermore we welcome Saudi Arabia's assurance at the 5 May 1998 meeting that, in compliance with TBT Agreement Articles 2.9 - 2.12 and 5.6 - 5.9, at least 60 days advance notice will be given before new products will be added to the ICCP-programme. We assume that this privilege also includes foreign suppliers.

Reply

All regulated products under the ICCP were selected for WTO legitimate objectives. Refer to reply to question 9 of WT/ACC/SAU/13/Rev 1. The 60 days notice for addition of any new product(s) to the ICCP applies to all exporters (foreign suppliers) of the affected products. In addition to publication in the major local newspapers, SASO will specifically notify the known local importers of the products, the foreign embassies in Riyadh, the Chambers of Commerce and the trade associations of the foreign manufacturers.

Question 86.

Saudi Arabia states in document WT/ACC/SAU/16 that the country closely follows ISO/IEC standards for type approval licensing, which leads us to pose the question what is then the reason for these extensive control and verification procedures while other countries applying these standards seem to get by with much less stringent product control regimes. In addition the Pre-shipment Compliance Verification is just one of the verification procedures in use in Saudi Arabia, while exporters also will face demands of registration, certification of conformity (associated with individual consignments) and type approval evaluations and licenses (issued on an annual basis), factory quality certification demands as additional conformity certification procedures.

We consider the multitude of product control conformity assessments in Saudi Arabia as not consistent with the over all principle in the WTO trade regulations to select the least trade restrictive possible means of regulation proportionate to the goal sought. We agree with others

that Saudi Arabia as other countries should apply quality system certification combined with suppliers (importer or producer) declaration of conformity, or the supplier's (importer or producer) as a standard practice for conformity controls. This procedure could certainly be supplemented by tests based upon random sampling procedures.

Reply

The PSI Agreement facilitates the conducting of inspection procedures on a preshipment basis rather than on a post-market sampling basis, particularly for developing countries. By providing "the possibility to have conformity assessment activities undertaken at the site of facilities ...", the PSI process totally satisfies the "access" requirements of TBT Article 5.1.1, whereas post market sampling does not (refer to WT/ACC/SAU/26 Chapter III paragraph 2). Moreover, the core of the Registration process under ICCP is substantiated suppliers' declaration. Thus, the ICCP's compliance verification option of Registration plus Preshipment Inspection, available for exporters of any regulated products, is equivalent to supplier's declaration plus random sampling applied in other developed countries. As such, it is in accordance with international practice and totally respects the TBT Agreement requirement to adopt the least trade restrictive procedure.

The objective behind the ICCP's Type Approval Licensing is to provide exporters with an option "allowing the import of their products with the minimum of intervention", mostly through exemption from Preshipment Inspection. In accordance with the principle of proportionality, this maximum laxing of compliance verification should be associated with the highest level of confidence that the product can convey as to its conformity to Saudi requirements. Accordingly, Model Third Party Certification (ISO Guide 28) was adopted, as it is "the most comprehensive" conformity assessment procedure that can provide such a confidence. The ICCP Comprehensive Procedures & Guidelines clearly stipulate "Exporters may choose the route most appropriate to their product range and frequency of exports". Thus, Type Approval Licensing is not mandatory for any regulated product regardless of its risk classification. Exporters who do not see worthwhile benefits in Type Approval Licensing for their products are always welcome to adhere to the Registration/PSI option. As for providing a choice between product and QS approval, please refer to details in our reply to the European Communities' question 5 submitted to the WTO as supplementary document dated 26 November 1997 (circulated informally), which demonstrates the shortcomings in such a choice, and the doubtful success of the EC system. In fact, many individual EC countries' marking systems, such as BSI's Kite Mark, as well as other developed countries such as Japan's JIS Mark are based on evaluation and approval of both the product and the QS.

Question 87.

We are particularly concerned about the Saudi practice to differentiate between manufacturers who export directly to Saudi Arabia and those who are not themselves manufactures.

Reply

In accordance with clause 5.1.1 of Article 5 of the TBT Agreement, equal conditions of access for suppliers of like products need only be applicable in comparable situations. A Type approval license is only granted to manufacturers with approved quality system. Type approved products are not necessarily marked with SASO quality mark for differentiation. Exporters normally deal with several manufacturers and markets and may be involved in assembly, conversion or repacking which may change the original characteristics of the product and render it incompliant. The lower level of confidence justifies different corresponding proportionate measures. In order for the exporter to get the benefit of waiver of routine PSI, he must obtain the authorization of the manufacturer who owns the license. The CoC can then be issued by either the manufacturer or the SCO. This does not preclude the case whereby exporters totally devoted to a licensed manufacturer can be treated the same as manufacturers.

Question 88.

With regard to the principles of non-discrimination and national treatment we find the Saudi practice of the pre-inspection and pre-shipment testing programme as an eclatant breach of these principles taking into account that domestic products only will be subject to a “analogous approval system”.

Reply

Refer to reply question 3 of response to the European Communities' comments on draft ICCP Procedures & Guidelines submitted to the WTO as a supplementary document dated 26 November 1997 (circulated informally).

Question 89.

Further more with regard to dispute settlements we would like to stress the importance of that Saudi Arabia establish independent dispute settlement procedures. We do not consider Program manager ITSI as an independent complaint authority.

Reply

A four level dispute settlement procedure has been included in appendix D of the ICCP Guidelines as attachment to the request for certification (RFC). The procedure starts with complaint to the SCO or RLC up to SASO Program Management in Riyadh up to the Minister of Commerce and ending with independent review procedures.

Question 90.

(WT/ACC/SAU/21, paragraph 7, letter d) In this paragraph, it is stated that it is not feasible to determine the equivalency of some national standards to international ones. Further below in the same paragraph, it is mentioned that “the ICCP registration process provides for the “...determination of equivalency of the standards that partially satisfy the requirements of the Saudi standards”. This appears contradictory since the equivalency to the Saudi standards is evaluated under the ICCP on a case by case.

Reply

What is intended in our WT/ACC/SAU/21 paper is that this is an extensive undertaking that could not be instantly completed upon the start of implementation of the ICCP (predetermination). We feel that even developed countries may not be able to produce accurate and comprehensive instant equivalency lists for all the world's national standards in the context of the WTO's definition of equivalency. Nevertheless, the ICCP, through its Registration process, has already succeeded in establishing a rich data base for equivalency of standards. Appropriate non-Saudi standards have already been identified as the basis upon which product compliance may be assessed, as well as the specific Saudi Arabian National Deviations (SANDS), that may apply. This information is available for exporters on request at all the SASO Country Offices or Regional Licensing Centers. The data base is being continuously updated.

Question 91.

In document WT/ACC/SAU/26, Chapter II, paragraph 2, it is stated that Saudi Arabia uses international standards except when found inappropriate because of the country's fundamental

climatic and geographical factors. With the exception of food products, could Saudi Arabia specify for which type of products the international standards are judged ineffective?

Reply

Examples are international standards which do not specify performance or testing of equipment apparatus or material at high ambient temperatures representative of Saudi conditions.

Question 92.

According to document WT/ACC/SAU/21, inspections and testing under the ICCP are "due to Saudi Arabia's inadequate infrastructural and technical expertise capabilities to perform these tasks in-country".

We consider that this situation could lead to difference of treatment between national and foreign manufacturers. Therefore we welcome the information according to which Saudi Arabia's infrastructural capabilities are being progressively developed and that the PSI and PST activities under the programme will be reduced proportionately.

We would like to know if a time schedule has been established with regard to the replacement of PSI and PST activities by the recognition of a supplier's declaration coupled with random in-country sampling (for most products except high hazard categories).

Reply

Regarding Saudi Arabia's infrastructural plans, refer to reply to Canada's question 4 submitted as dated 26 November 1997 (circulated informally).

As for proportionate measures to reduce PSI, the ICCP has already encouraged several consistently compliant manufacturers to apply for type approval licensing. Initially, few have taken the steps towards this transition, and the process is expected to accelerate in the forthcoming period.

Question 93.

ICCP CAP accepts the results of credible CAP of other countries through ... for routine PSI is eliminated. Could Saudi Arabia specify for which products this paragraph applies and give examples of countries or bodies whose certificates are recognized?

Reply

Any existing test reports or certificates issued by accredited bodies for the regulated product under another national or international conformity assessment or certification scheme can be submitted by exporters as documents substantiating their compliance. Full recognition is duly given to those reports/certificates in so far as they satisfy the Saudi requirements. Where the full Saudi requirements are met, the role of the ICCP Regional Licensing Center would be limited to evaluation, verification, administration, issuance and validation of the confirming Statement of Registration or Type Approval License. The SASO Country Office would still carry out the required PSI associated with Registration and issue the final Certificates of Conformity. For products holding SASO Type Approval License, CoCs can be issued by the manufacturers themselves. This applies to all products and countries.

Question 94.

What is the difference between the bodies mentioned in this paragraph and the laboratories mentioned in paragraph 7, letter b? (see also document WT/ACC/SAU/26, chapter III, paragraph 3).

Reply

Accredited laboratories, third party certification or notified bodies are all bodies whose test results and certificates are recognized as indicated in (a).

Question 95.

We welcome the proposal to make more flexible investigation relating to Type Approval than the current one.

Reply

Statement noted.

Question 96.

Saudi Arabia should eliminate the difference of treatment between manufacturers who export directly and exporters who are not the manufacturers themselves. Such a measure finds no justification under the WTO TBT Agreement. A product can be imported in Saudi Arabia only if it fulfills Saudi Arabian requirements. The supplier, either the producer or the importer, is responsible for the conformity of the products he is marketing. In addition, problems which arise from goods marketed in Saudi Arabia may also stem from the distribution and retailing system.

Reply

Please refer to supplementary document dated 26 November 1997 (circulated informally).

Question 97.

At the most recent round of informal WTO accession discussions, held in Geneva in early November, the Saudi Arabian government stated its readiness to consider modifications to the ICCP scheme in order to render it more compatible with the WTO TBT Agreement. We welcomes the statement of the Saudi side in this respect, and in a constructive spirit sets out below its principal comments on the ICCP and the further improvements we seek to the scheme to render it fully compatible with the WTO TBT Agreement.

(a) Non-Discrimination and National Treatment. Imported and domestic products are currently approved by different agencies. This increases the risk of procedures being designed and applied differently. To avoid this risk, the ICCP scheme should explicitly state not only that the same standards apply equally to domestic goods and imports, but that the same type approval procedures also apply, and are administered in an identical manner. The relevant Saudi legislation for domestic product controls should be cited in the scheme as a demonstration of transparency and non-discrimination, and we would also like a copy of it.

(b) Exports from the manufacturer/from an independent exporter: The ICCP type approval regime foresees slightly different type approval procedures depending on whether the product was exported directly by a manufacturer or via a separate trader. There are no

grounds in the TBTA to differentiate in this way between like products. We therefore urge Saudi Arabia to merge the two procedures into one by applying to all products the procedure applied to manufacturers who exported. This would involve as a consequence the deletion of those paragraphs in the ICCP guidelines referring to products coming being presented by an importer/exporter who is not the manufacturer. Our understanding from Mr. Molla of SASO at the November meeting was that there were no significant differences in treatment and that such a modification would be considered positively.

We would welcome confirmation that this change to the ICCP procedure is being made.

(c) **Transparency:** The ICCP should explicitly state that a single uniform concordance of Saudi and other equivalent standards exists, is regularly updated by SASO which is solely responsible for setting standards, and is available from any SASO Country Office. We would also like a clear statement in the ICCP that the Saudi Arabian government is the body determining technical regulations, standards, conformity assessment procedures and their application, and that companies applying such rules on products prior to export are acting in conformity with those rules established by the government. This is to ensure that different test houses, inspection services cannot deviate from the centrally established rules and standards.

(d) **Non-Compliance:** ICCP continues to provide that type approval certificates would be annulled if a product was found to be non-compliant. We had argued in May that this was to attack the wrong target: in such cases the product should be suspended and action taken against the person responsible for marketing the product. Only in those cases where the type approval certificate was inaccurate or fraudulent should it be revoked.

In the November meeting Saudi Arabia said it had made changes to the enforcement measures to take in account this concern. We reiterate our view that the ICCP should be amended to say that revocation of certificates remained a possibility in cases where a certificate is fraudulent or is materially inaccurate. This revision should remove the implication that revocation is the standard response to unsafe product determinations.

(e) **Proportionality:** We find it difficult to accept that ICCP products have to undergo not only product type approval but also factory quality system certification. This double barreled certification is in virtually all parts of the globe reserved only for very high risk products such as pharmaceuticals and medical devices, and applied to lower risk goods is a disproportionately heavy means of regulation. Where it can be demonstrated that some form of third party certification is necessary, manufacturers should be given a choice between product or quality system certification but not have to run the gauntlet of both.

We have already explained that international standards related to quality system certification already contain sufficient checks on the product related aspects to provide the guarantees of product conformity necessary.

Secondly, we question the justification for annual licensing of approved manufacturing sites. This again is a disproportionate measure and is more trade restrictive than necessary. Even if Saudi Arabia were to amend the ICCP to provide that manufacturing quality system certification is an alternative to product certification a requirement for annual licensing is over-regulation. Standard international practice for re-inspection of quality systems in high risk areas such as pharmaceuticals production is two to four years. It is also unclear as to whether "licensing" equates to quality system inspection or not. If it does not then as a procedure it does not seem necessary.

Thirdly, we question the justification for pre-market certification of consumer electronics/electrical appliances and processed foodstuffs; this runs against international practice and (in the case of foodstuffs) the principles established by FAO and WHO, as expressed in the HACCP system with which Saudi Arabia is familiar. Border control of processed foodstuffs does not in itself offer guarantees of health and safety since this is to ignore the whole chain of production conditions, storage, distribution, retail conditions, etc. We will provide a more detailed aide memoire on foodstuffs controls for consideration by Saudi Arabia. We expect nevertheless for Saudi Arabia to remove, in time, pre-market certification for these products.

Finally on certification of Perfumes. At our November meeting we expressed concerns over new requirements that display, not-for-sale samples of perfumes were being subject to the full certification requirement. Saudi Arabia said this was not the case. Samples of perfumes were exempt. We would appreciate formal confirmation of this.

A second issue relates to requirements for soaps containing perfumes, which are subject to the full ICCP requirements for cosmetic products (3307 of the Harmonized system), and are not treated like other soaps (HS 3401). This is a costly and heavy procedure for exporters. We would appreciate Saudi Arabia's considering an adjustment of its procedures - namely to treat perfumed soaps as soap falling under 3401 and therefore exempt it from ICCP - to remove this problem.

Reply

The Aide Memoire dated 27 November, 1997 acknowledged in its cover page that the document was drawn up before receiving Saudi Arabia's latest paper on the subject. All the issues (with the exception of one), were previously raised by the European Communities and addressed by Saudi Arabia in the "Response to the European Communities' comments on draft ICCP Procedures & Guidelines" submitted to the WTO as a supplementary document dated 26 November 1997 (circulated informally). (See also replies to questions 76, 78, 79, 80 and 81.)

Question 98.

Shelf-Life Regulations for Processed Agricultural Products

Legal Basis:

- Gulf Standard No. 150/1993, "Expiration period of food products"
- Saudi Standard 702/1993, "Expiration period of food products"
- Saudi Arabian Standard SSA 457/1986, "Expiration periods for food products"

Description:

Shelf-life of products in particular chocolate covered or stuffed biscuits

Under Gulf Standard No. 150/1993, the expiry dates for sugar confectionery and chocolate products have been defined as follows:

Cocoa powder:

- 24 months for containers in metal, glass or aluminum foil containers packed under vacuum or in the presence of an inert gas;
- 12 months for the other containers, such as paper or plastic

Sweetened or salted biscuits:

- 9 months for paper containers or wrapped in special paper cellophane or aluminum foil;
- 12 months packed in metallic tins

Cake mixes:

- 18 months for paper containers or aluminum foils

Plain hard candy:

- 24 months for all suitable containers

Enriched fortified hard candy:

- 12 months for all suitable containers

Filled and coated biscuits:

- 12 months for metallic containers. In our opinion the translation for packaging in paper has been omitted

All types of chocolate:

- 12 months for packed in paper, aluminum foils or plastic containers.

Exporters encounter difficulties in particular with the category of products "Salted or sweetened biscuits" and "stuffed or covered biscuits".

In addition to Gulf Standard No. 150/1993 to which all GCC member countries subscribe, Saudi Arabia continues to apply standard No. SSA 457/1986 finalized by the SASO in 1986, prescribing a shelf life of only six months (instead of 12 months as prescribed in the Gulf Standard) for "stuffed or covered biscuits", contained in paper containers or wrapped in special paper or cellophane.

International Practice:

In international trade, shelf life is determined by the producers and under their own responsibility according to the technology used. This corresponds to the provisions of Codex Alimentarius, in particular to:

- (i). Article 4.7 "Date marking and storage Instructions", Section 4 "Labeling of Prepackaged Food", Codex Alimentarius.
- (ii) Article 4.7.1 of Section 4 of the Codex Alimentarius indicates that "The date of minimum durability shall be declared for pre-packaged Foods".

Recommendations:

The Gulf Standard No. 150/93 and the Saudi Arabian Standard SSA 457/1986 should be amended so that:

- all types of biscuits should have the same shelf-life of at least 12 months, without making a distinction following the packaging material;
- governmental bodies should not be involved in the determination of the shelf-life of foodstuffs;
- shelf-life should be determined by the manufacturer; it is in the interests of the manufacturer to keep his reputation by guaranteeing a realistic shelf-life.

Reply

Updating SSA 702/93 (GS 150/93) and SSA 457/1986 Part Two is currently underway. These findings shall be observed in cooperation with the factories concerned with these products.

(c) Sanitary and phytosanitary measures

Question 99.

We would appreciate further Information In response to question 177, 178, 180, 181 and 182 in WT/ACC/SAU/29 as the Information provided in the answers does not provide sufficient information to judge whether or not Saudi Arabia's arrangements in relation to SPS measures are consistent with the SPS Agreement?

Reply

Please state what precise information is required. We believe Saudi Arabia's arrangements are consistent with SPS Agreement. Where these are not found to be consistent, Saudi Arabia will ensure their consistency by the time of its accession to the WTO.

4. Policies Affecting Foreign Trade in Agricultural Products

Question 100.

How will the "protection" policy be applied to Imported products "to safeguard the national agricultural sector"?

Reply

The "Protection" policy is applied to imported products "to safeguard" agriculture through keeping out diseases and pests away from the national agricultural sector.

Question 101.

Concerning Saudi Arabia's ban of certain agricultural products such as, dates and long-validity pasteurized liquid milk in containers of more than one liter: the WTO Agreement on Agriculture, Article 4, paragraph 2, prohibits the imposition of the use of quantitative import restrictions.

Can Saudi Arabia confirm that the tariff rates offered in WT/ACC/SPEC /SAU/2/Rev.2 are intended to replace these bans and that after accession to the WTO no bans will be applied to the importation of these products'?.

Reply

Yes, the offered tariff rates are intended to replace the bans on dates and long-validity pasteurized milk in containers of more than one liter, and after accession to the WTO no bans will be applied to the importation of these products.

Question 102.

Saudi Arabia has said (WT/ACC/SAU/29 - Reply to question 47) that it may replace the import ban on long-life pasteurized Milk by tariffs upon accession. According to Article 4.2 of the Agreement on Agriculture, no border measures other than ordinary customs duties are permitted. We expect Saudi Arabia should confirm that it will comply with this provision.

Reply

It is so confirmed.

Question 103.

Saudi Arabia has recently increased the duty rates for tobacco and tobacco products and said that the increase has to be seen in the context of health and safety matters. We take note of this statement and we expect that Saudi Arabia will not increase the import protection for any other agricultural product during its WTO accession negotiations. Can Saudi Arabia confirm this expectation'?

Reply

During its WTO accession negotiations, Saudi Arabia will not increase the import protection for any agricultural product other than tobacco and tobacco products.

Re: Document WT/ACC/SAU/13/Add.1/Corr.1

Question 104.

(Question 2) Saudi Arabia explained that the Grains, Silos, Flour, and Milling Organization (GSFMO) purchases domestically produced and imported barley and then sells it to livestock producers at an administered price of US\$74.67 per ton.

What criteria does the GSFMO use to set the administered price fixed at US\$74.67 , or does it fluctuate in accordance with the market price of barley?

Reply

The administered price of barley for livestock producers is fixed at US\$ 74.67, and does not fluctuate in accordance with the market price of barley.

Question 105.

(Question 2) Saudi Arabia was asked to explain the reasons for denying a request for an import license for an agricultural product. In response, Saudi Arabia referenced the document on import licensing (WT/ACC/SAU/30). However, WT/ACC/SAU/30 does not explain the reasons for denying a request for an import license for an agricultural product. This document indicates only that an application is assessed on the basis of how it meets Saudi Arabia's standards and specifications.

Could Saudi Arabia please describe its standards and specifications for issuance of import licenses.

Reply

The application for an import license is verified to ensure that the material meets the Saudi standards and specifications which differ according to the nature of the product.

Question 106.

(Question 32) Saudi Arabia was asked to outline its criteria for determining seed quality and to discuss how it determines and enforces seed use for planting and food. In response, Saudi Arabia referenced the document on import licensing (WT/ACC/SAU/30). However, WT/ACC/SAU/30 does not explain the criteria for determining seed quality and how it determines and enforces seed used for planting and food .

Could Saudi Arabia please provide more information on determining seed quality and how it determines and enforces seed use for planting and food.

Reply

The use of seeds for planting or food is determined by confirmation in the export certificate specifying if the seed is for planting or food. The quality of the certified seed is checked and the export certificate is verified by the Saudi authorities at the entry points.

Question 107.

(Question 37) Saudi Arabia noted that there are no existing bans on the exportation of wheat and wheat flour with the exception of subsidized wheat and wheat flour. What percentage of, wheat and wheat flour is subsidized and therefore subject to export bans? what governmental authority sets this percentage, and on what basis does it do so?

Reply

As noted, there are no existing bans on the exportation of wheat and wheat flour, with the exception of subsidized wheat and wheat flour. All wheat and wheat flour produced domestically are subsidized and therefore subject to export bans. No governmental authority sets any percentage.

Question 108.

(Question 37) In previous documents, Saudi Arabia explained that it prohibited and/or restricted the exportation of certain agricultural products (livestock, horses, baby milk, date palm seedlings, barley, corn, maize, soya beans), However, in the response to question 49, Saudi Arabia noted that "exportation is neither prohibited or restricted". Exportation of such items "is conditional on the repayment of subsidies intended for support of domestic production.' Furthermore, Saudi Arabia stated that the licensing procedure for exporting such products is 'transparent and nondiscriminatory since it is available for every exporter.'

Could Saudi Arabia please clarify whether certain agricultural products (livestock, horses, baby milk, date palm seedlings, barley, corn, maize, soya beans) are subject to export prohibitions and/or restrictions?

Could Saudi Arabia describe in detail the export licensing procedures and in particular, the transparent and non-discriminatory manner in which export licensing procedures are administered.

Reply

Exportation of female livestock and horses is prohibited in order to maintain productivity of such animals. Exportation of date palm seedlings, barley, corn, maize, and soy beans is conditional on the repayment of subsidies intended for support of domestic production.

Question 109.

(Question 53) Saudi Arabia stated that "prohibited" items may be imported for "legitimate use" (i.e., by governmental agencies for their own use and not for commercial sale) .

Could Saudi Arabia please provide examples of how governmental agencies would use such "prohibited" items?

Would any of these "prohibited" items fall within the agricultural sector? Could Saudi Arabia please provide a list of such "prohibited" items at the 6 digit HS level?

Reply

Examples are "postage or revenue stamps" which can be imported only by governmental agencies, or "parachutes" which can only be imported by the Ministry of Defense for its own use.

As for the list of items, please see the revised list in document WT/ACC/SAU/29/Add.3. The list is not available at 6-digits HS level. It is only maintained at Saudi 8-digit level.

Question 110.

(Question 56) Saudi Arabia was asked to clarify what it meant by "quality requirements" for import licenses for seeds in its reply to Question 31 of WT/ACC/SAU/ 13/Add. 1. Saudi Arabia referenced the document on Import Licenses (WT/ACC/SAU/30). This document does not explain what is meant by "quality requirements". Could Saudi Arabia therefore please provide information on how licenses are issued for seed that meets quality requirements?

Reply

Quality requirements mean standards.

Question 111.

(Question 84) Saudi Arabia was asked to explain why it had removed "feed (corn and soybeans)" and ,"other products" from its AMS table, and reflected corn and soybeans as "input subsidies" for poultry in Supporting table DS:7. Saudi Arabia replied "this is only a statement."

Could Saudi Arabia clarify the response "this is only a statement". Also could Saudi Arabia please explain how and where it plans to place corn and soybeans on its domestic support notifications.

Reply

Corn and soybeans are reflected as "input subsidies" for poultry in Supporting table DS:7 of revised AMS table in conformity with WT/ACC/4 technical note.

Question 112.

(Question 96) Saudi Arabia was asked to provide information about the prices of stock held wheat and barley. It noted that only wheat is stock held for food security purposes, stock held wheat is purchased at "administered prices, which are the market prices in Saudi Arabia.

If stock held wheat is purchased at the market price, why does Saudi Arabia consider the price "administered?" Which governmental authority sets the administered price of stock held wheat and on the basis of what specific criteria?

Reply

Stock held wheat is purchased at administered prices, which are the market producers prices in Saudi Arabia. The amount shown in Supporting Table DS : 1 reflects the cost of storing wheat held for food security.

Question 113.

(Question 104) Saudi Arabia was asked to provide data on wheat exports after 1995. Furthermore, it was asked to explain whether an agency/agencies or private firms replaced the GSFMO in exporting wheat after the GSFMO was prohibited from doing so. Finally, Saudi Arabia was asked to provide the Working Party with the "nil" supporting table ES:1 if export subsidies were not provided to wheat. We would be grateful for the requested information.

Reply

No wheat was exported by GSFMO since 1995. No other agency/agencies or private firms exported wheat during this period. Saudi Arabia has included supporting table ES:1 in its recent revised WT/ACC/4 tables, and completed the table by including a statement related to its wheat export policy.

Question 114.

(Question 105) Saudi Arabia was asked to clarify the sources of the data provided in WT/ACC/4. It responded "that data in WT/ACC/4 is based on actuals." Could Saudi Arabia please clarify the term "actuals"? Could Saudi Arabia also explain what data the information in WT/ACC/4 is based upon?

Reply

Saudi Arabia does not have a separate/specific section of its governmental budget for domestic subsidies. The basis for data is explained in the methodological note.

Question 115.

(Question 108) Saudi Arabia was asked to confirm whether it maintains exports controls on barley, wheat, and wheat flour, and whether such controls are in the form of quantitative restrictions, export licenses, or other measures. It answered that the GSFMO no longer exported wheat or barley. Furthermore, it explained that export controls were maintained for subsidized wheat and barley through export licenses.

Could Saudi Arabia provide a list of recipients of licenses to export wheat and barley since 1995? Could Saudi Arabia also provide export data for wheat and barley since 1995?

Reply

So far there has been no request for such license. No wheat was exported by GSFMO since 1995. No other agency/agencies or private firms exported wheat during this period. Consequently, there is no export for wheat and barley since 1995.

Question 116.

(Question 111) Saudi Arabia noted that it was a net wheat exporter in 1992-1994. Is this still the case, (even though the GSFMO is no longer permitted to export wheat? Could Saudi Arabia please provide export data for wheat?

Reply

GSFMO is no longer wheat exporter. There was no export of wheat after 1994.

Question 117.

(Question 113) Saudi Arabia was asked to explain why it had not provided a "nil" DS:1 supporting table to WT/ACC/4 even though it does not maintain export subsidies. Saudi Arabia responded that Working Party members should refer to the new WT/ACC/4 tables.

We welcome the fact that Saudi Arabia has included supporting table ES: 1 in its revised WT/ACC/4 tables (WT/ACC/SPEC/SAU/1/Rev. 1). However, the table is blank. Therefore, could Saudi Arabia please complete the table by including the word "nil" if, indeed, it does not provide export subsidies.

Reply

Saudi Arabia has included supporting table ES:I in its recent revised WT/ACC/4 tables, and completed the table by including a statement related to its wheat export policy.

Question 118.

(Question 119) Saudi Arabia was asked to provide a list of those 'prohibited items' that could be imported by certain state agencies for legitimate use. Saudi Arabia replied that 'such a list does not exist. Instead, entry of some prohibited items may be allowed on a case-by-case basis,

Could Saudi Arabia please provide a list of the prohibited items that have been permitted entry on a case-by-case basis over the period 1994-96.

Reply

This information is not available as different agencies do not maintain records of such cases.

Question 119.

(Question 141) Saudi Arabia noted that "the guaranteed production price to wheat producers could be considered as a market price for procuring grain from domestic producers." Furthermore, Saudi Arabia explained that "the consumer/user price established by the GSFMO can be considered the effective domestic market sale price."

Why does Saudi Arabia consider an administered/guaranteed/set price to be the same as the market price? How do these prices differ from the prices of imported wheat?

Reply

The guaranteed price to wheat producers could be considered as a market price for procuring grain from domestic producers since it represents the price at which farmers sell their production. The consumer/user price is the effective domestic market sale price since it represents the price at which GSFMO sells wheat flour. In addition there is no other price (no imported wheat).

Question 120.

(Question 233) In Question 45 of WT/ACC/SAU/13, Saudi Arabia was asked to specify the time frame for completing the Ministerial Committee's examination of agricultural issues and WTO commitments. Saudi Arabia replied that there was no such time frame, and stated that the Committee reviews the agricultural policy and meats as often as necessary. Could Saudi Arabia provide more detailed information about the work of the Committee and when it has met in the past?

Reply

The program of work of the Committee is confidential. The Kingdom of Saudi Arabia can confirm that it will accept and implement its obligations under the WTO Agreement upon its accession.

Domestic Support

Question 121.

In the Explanatory note to the document WT/ACC/SPEC/SAU/1Rev.1 (point II), it is said that agricultural subsidies include projects also for fish farms. We request Saudi Arabia to delete any subsidy dealing with fishery from the agricultural supporting tables.

Reply

Item related to fisheries has been deleted from the agricultural supporting tables.

Question 122.

Likewise: in the reply to question 79 in document WT/ACC/SAU/29 it is said that support to Fish Resources Research centers will not be included in the new WT/ACC/4 tables (WT/ACC/SPEC/SAU/1 Rev.1). But this support is still included.

Reply

Support to Fish Research centers has not been included in the latest revised tables.

Supporting Table DS:1

Question 123.

Saudi Arabia included pest and disease control, air spray pest and disease control, and control of scarlet fever in its domestic support for agriculture. Why was scarlet fever included as part of Saudi Arabia's domestic support for agriculture?

Reply

Scarlet fever is not included as a part of the domestic support in the revised tables.

Question 124.

Saudi Arabia includes a number of programs in its notification such as the Saudi-American Cooperation, and the Saudi-Chinese Cooperation. Could Saudi Arabia please provide a description of these programs and explain how they qualify under domestic support for agriculture?

Reply

In the context of these programs, specialists from the United States and China are contracted with in order to work in the Ministry of Agriculture. Similarly, Saudis are sent to these countries to gain experience. In addition, laboratory equipment is provided to support these programs.

Question 125.

Saudi Arabia included a number of infrastructure services in its DS:1 notification - these included construction - of dams, maintenance of dams, irrigation and drainage systems, prevention of moving; sand, and planting and development of forests. Could Saudi Arabia please explain how these services solely benefit the agriculture sector?

Reply

These services benefit solely the agriculture sector since no other sector receives support from these programs.

Question 126.

Saudi Arabia did not provide information about predetermined targets of public stockholding for food security purposes in their domestic support notification. Could Saudi Arabia please provide details of the "predetermined targets in terms of volume and accumulation of such stocks" as required under Annex 2 of the Agreement on Agriculture?

Reply

Saudi Arabia has a suitable stockholding target to cover its consumption needs of wheat.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 127.

Would Saudi Arabia please clarify how the answer to question 173 of WT/ACC/SAU/13/Add.1, that a trademark registration can be open to cancellation after only two years' non-use, complies with Article 19.1 of TRIPS?

Reply

There is a misunderstanding of the answer to question 173 of WT/ACC/SAU/13/Add.1. This answer is related to the rights conferred to an owner of a trademark, which comply with Article 16.1 of the TRIPS Agreement.

Under Article 29.1 of the Saudi Trademarks Law, a trademark registration can be open to cancellation after an uninterrupted period of five years of non-use, while this period is "at least three years of non-use" under Article 19.1 of the TRIPS Agreement.

Question 128.

We welcome Saudi Arabia's confirmation that in accordance with Article 14 of TRIPS and Article 18 of the Berne Convention retroactive protection will be provided for sound recordings still in protection in other WTO countries and made up to 50 years ago (question 247 WT/ACC/SAU/29). What steps will Saudi Arabia be taking to implement and enforce this and to what timetable'?

Reply

Saudi Arabia will make the necessary changes in its copyright law but it will be done during the transitional period.

Question 129.

We welcome Saudi Arabia's confirmation that, in accordance with Article 10 of TRIPS, computer programs shall be protected as literary works under the Berne Convention and that also, compilations will be protected as intellectual creations. What steps will Saudi Arabia be taking to implement and enforce this and to what timetable?

Reply

Saudi Arabia will make the necessary changes in its copyright law but it will be done during the transitional period.

Question 130.

Who decides on the distinctiveness acquired by a trademark (question 244 WT/ACC/SAU/29): the trademark office, the judge or someone else? On what basis is the "distinctiveness" decided: on the basis of a public survey or on what other basis?

Reply

The Trademarks office within the Ministry of Commerce is competent to decide on the "distinctiveness" acquired by a trademark. The distinctiveness is decided on the basis of the legal criteria described in Articles 1.10 of the Trademarks Law, and Article 7 (parag.2) of its Rules of Implementation.

Question 131.

On question 246 (WT/ACC/SAU/29) It is not relevant that the TRIPS Agreement contains an MFN clause which obliges TRIPS members to extend any advantage, favor or privilege granted to the nationals of any other TRIPS country to the nationals of all TRIPS Members? Still on the subject of copyright, when does Saudi Arabia expect the study by a specialized committee to be carried out?

Reply

Yes, we agree with the first part of the question. As for the second part, the study is in progress, but it is difficult at this stage to give a time frame for its completion.

Question 132.

In question 252 (WT/ACC/SAU/29) is it not relevant that TRIPS Article 2 obliges all Members to comply with Articles 1- 12 and 19 of the Paris Convention, irrespective of actual accession to that Convention?

Reply

After joining the WTO, Saudi Arabia will undertake the commitment to bring its intellectual property regime into conformity with the TRIPS Agreement after a transitional period of five years. Thus, the fact that TRIPS Agreement is mostly based on other international Conventions, including the Paris Convention, Saudi Arabia will comply with Articles 1-12 and 19 of this Convention.

Question 133.

We have already stated our general opposition to transitional periods as well as information required in order to consider the possibility of an exceptional case. In WT/ACC/SAU/28, Saudi Arabia requests a transitional period of five years fully to apply the provisions of the TRIPS Agreement. The same document describes the actions that Saudi Arabia will undertake to implement the TRIPS Agreement after its accession to the WTO. It would be useful to know what Saudi Arabia has already done and/or is currently doing to implement each section of the above-mentioned agreement. For any instances where action has not been or is not presently in the course of being taken it would be useful to have an explanation why no action has been undertaken so far.

Reply

Please refer to document on the subject circulated to the Working Party.

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

Preferential Trading Arrangements

Question 134.

Can Saudi Arabia provide the texts of the following agreements:

- **the Arab free trade area.**
- **the Agreement facilitating and developing trade exchanges among Arab States.**

Reply

Enclosed herewith, please find:

- The program of the implementation of the Agreement Facilitating and Developing Trade Exchange among Arab States to create a Free Trade Area.
- The Agreement Facilitating and Developing Trade Exchange among Arab States.

Question 135.

Have the texts of these agreements been notified to the CRTA?

Reply

Saudi Arabia is not yet a member and will not notify these agreements upon becoming a WTO member.

Question 136.

We note that Saudi Arabia is undertaking negotiations with Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates on the establishment of a GCC common external tariff. Could Saudi Arabia provide inform in these negotiations?

Reply

Please see the reply to question no. 184 in document WT/ACC/SAU/6

Question 137.

We note that there is no institutional link between the GCC Free Trade Agreements (or the future GCC Customs Union) and the Arab League Free Trade Agreement. Will the future GCC Customs Union have common trade and commercial policies towards other Arab League FTA countries, or will GCC countries continue to pursue separate trade and commercial policies?

Reply

This matter is still under consideration by competent committees within the framework of the General Secretariat of the GCC.

Question 138.

Will the GCC Customs Union have common trade and commercial policies. If so, in which areas will common policies be pursued?

Reply

This matter is still under consideration by competent committees within the framework of the General Secretariat of the GCC.
