

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/ACC/TJK/11**

2 March 2005

(05-0896)

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**Working Party on the  
Accession of the Republic of Tajikistan**

Original: English

## **ACCESSION OF THE REPUBLIC OF TAJIKISTAN**

### Additional Questions and Replies

The following submission, dated 22 February 2005, is being circulated at the request of the Delegation of the Republic of Tajikistan.

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## II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

### 2. Economic policies

#### (a) Main directions

##### - Pricing Policies

#### Question 1

**WT/ACC/TJK/3 states that prices for transportation of energy and of other goods is controlled in Tajikistan. Do the controlled prices differ based on whether the energy products or other goods being transported are for domestic or export delivery?**

Answer:

Equal prices are applied for transportation of electric power, natural gas by pipelines, railway and by air both for domestic and export delivery. Tajikistan is mainly an importer of energy.

##### - Privatization Plans

#### Question 2

**The Annex of the State Property Privatization by Regions and Scheme indicates that 91 percent of Tajikistan's agriculture state trading-enterprises have been privatized. Could Tajikistan please explain what the "Total" and "Total subject" columns in the Annex refer to? What specific agricultural sectors (i.e. commodities) have been privatized and which have not?**

Answer:

Column "Total" in the scheme indicates the total number of all state enterprises. Accordingly "Total subject" should be understood as "total number of state enterprises subject to privatization according to the plans of the Government".

According to Annex 1 of the Resolution No. 388 of the Government of the Republic of Tajikistan as of 28 August 1997 enterprises and objects in the areas of scientific and experimental manufacturing and which are part of Academy of Science of the Republic of Tajikistan and Academy of Agricultural Sciences (except enterprises providing services) as well as state seeds and pedigree farms and agencies, selective hybrid centers, centers and stations of new products testing, garden-stuff nurseries, nurseries of experimental animals, veterenary services and protection of plants are not subjected to privatization.

#### (c) Foreign exchange and payments system

#### Question 3

**WT/ACC/TJK/3 and WT/ACC/TJK/6 state that exporters are required to transfer all the proceeds from the sale of goods outside Tajikistan to their servicing bank in Tajikistan. Is it illegal to maintain a bank account in a foreign country? Can these foreign exchange earnings be used to invest abroad and purchase imports with no restrictions?**

Answer:

According to Article 5 of the Law of the Republic of Tajikistan "On foreign currency regulation and control" residents that are legal entities and physical persons involved in entrepreneurship activity may open accounts in foreign banks. Before establishing the account they shall obtain a permission from the National Bank of the Republic of Tajikistan and after establishment, the account is to be registered with the National Bank of the Republic of Tajikistan. However, physical persons not involved in entrepreneurship activity can establish accounts in foreign banks while residing abroad without getting the permission of the National Bank of the Republic of Tajikistan.

Usage of foreign currency funds of residents for capital account transactions including investments abroad is implemented according to the order established by the National Bank of the Republic of Tajikistan. A copy of the Regulation on the procedure of currency transactions related to capital movements is available for consultaion in WT/ACC/TJK/11/Add.1. Residents are required to get permission from the National Bank of the Republic of Tajikistan for conducting such transactions. Foreign currency earnings can be used for import purchases without restrictions.

**Question 4**

**Has Tajikistan accepted the obligations of Article VIII of the IMF Agreement?**

Answer:

Republic of Tajikistan officially accepted the obligations of Article VIII of the IMF Agreement on 9 December 2004.

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

**1. Power of the Executive, Legislative and Judicial Branches of Government**

**Question 5**

**Please outline the provisions Tajikistan has in place for publication of laws, regulations, decrees, administrative orders and other rulings of general application. In particular, how are such legal requirements made available for review and comment prior to enactment? Does Tajikistan's customs service publish its rulings?**

Answer:

Provisions on publication of draft legal acts are provided for in Article 45 of the Law "On normative legal acts":

- Draft normative legal acts directly relating to the interests of citizens as well as drafts of other important acts, by decision of legislative body, can be published in mass media for public discussion. Received proposals and notes are reviewed, analyzed and acceptable proposals and notes are taken into consideration in revising the draft.
- Draft Laws may be published for public discussion by decision of legislative body according to the established order.

- Publication of Laws and other normative legal acts is regulated by Articles 53, 54, 55, 56, 57, 59, 60 of Chapter 6 of the Law of the Republic of Tajikistan "On normative legal acts of the Republic of Tajikistan" (available for consultation in WT/ACC/TJK/11/Add.1).
- According to Point 14 of the Regulation of the Government of the Republic of Tajikistan No. 546 as of 5 October 2001 normative legal acts of ministries and agencies are published (except acts containing state or other secrets protected by Law) in official publications and come into force under the condition of their publication. This requirement also cover normative acts of customs bodies.
- Press service of the Ministry of State Revenue of the Republic of Tajikistan provides information on activities of tax and customs bodies in mass media. All normative legal acts regulating the activities of tax and customs bodies of the Republic of Tajikistan are published in Weekly "Boju Hiroch" and "Vestnik of MSR of RT".

### **3. Division of authority between central and sub-central governments**

#### **Question 6**

**We need a more focused response to Question 13 of WT/ACC/TJK/6:**

**Does the Gorno-Badakhshan Autonomous Oblast (or any other sub-central authorities in Tajikistan) have any authority for making or enforcing policies affecting trade?**

- **For example, do they apply indirect taxes, grant subsidies, engage in forms of export promotion?**
- **Do they have any right to apply such measures independently of the laws and international obligations of the central government?**

Answer:

According to Article 68 of the Law of the Republic of Tajikistan "On normative legal acts of the Republic of Tajikistan" Constitutional laws, laws, joint Regulations of Majlisi Milli and Majlisi Namoyandagon of the Republic of Tajikistan, Decrees of the President of the Republic of Tajikistan, resolutions of the Government of the Republic of Tajikistan, ministries, state committees, other agencies of state administration, international legal acts accepted by Tajikistan are valid on the whole territory of the Republic of Tajikistan if otherwise is not determined in the act on their implementation.

Thus, all legislative and normative legal acts of the Republic of Tajikistan that have impact on trade, equally expand their force on the whole territory of the Republic, including Gorno-Badakhshan Autonomous Oblast (GBAO). At the same time, according to Article 12 of Constitutional Law of the Republic of Tajikistan "On Gorno-Badakhshan Autonomous Oblast" Majlis of Peoples Representatives of GBAO fixes rates of local taxes and fees, duties, exemption on local taxes, fees and payments, going into local budget in accordance with the Legislation of the Republic of Tajikistan.

Types of local taxes and maximum possible rates are determined by the Tax Code of the Republic of Tajikistan. All other issues of foreign and internal trade policy of Tajikistan is determined by the central government.

#### 4. Any legislative programmes or plans to change the regulatory regime

##### Question 7

**WT/ACC/TJK/3 states that the Majlisi Ol is considering draft laws on the protection of consumer rights; the state registration of legal persons; and changes in the tax code, and that the Government is developing new legislation on state-owned enterprises and on licensing. Please give us an update on the status of this legislation and a brief description of the provisions of the draft and projected laws as the relate to WTO obligations.**

##### Answer:

The following were the recent legislative developments:

<b>Legislative act</b>	<b>Status</b>	<b>Brief description</b>
Law "On state registration of legal entities»"	Adopted on 22 April 2003	The Law has no direct relation to WTO provisions, but simplifies the procedure of registration required for implementation of entrepreneurship activity, reduces the time and costs of registration and number of bodies required to be approached.
Law "On Licensing of Certain Types of Activities"	Adopted on 17 May 2004	Determines types of entrepreneurship activity subject to licensing including services sectors, establishes principles of licensing, regulates the license issuance procedures.
Law "On state enterprises"	Adopted on 28 February 2004	The Law determines the areas in which state enterprises can be established, and deals with the issues of their organization, re-organization, liquidation and operation.
New edition (Draft) of Law "On protection of consumers rights"	Under the review of Lower House of the Parliament	The draft Code determines the rights of consumers and responsibility of sellers and provides for mechanisms of implementation of these rights. Consumer rights include: freedom of choosing of goods or services, obtaining data on goods, manufacturer, expiry date etc.
New edition of the Tax Code	Adopted on 3 December 2004	The tax Code is a basic document regulating tax relations including issues of tax administration under import and export (value added tax and excise tax).
New edition of the Customs Code	Adopted on 3 December 2004	The Customs Code determines legal, economic and organisational bases of customs matters in the Republic of Tajikistan and regulates relations in the area of customs, including determination of order of transfer of goods and transport means through customs border, relations arising in the process of customs clearance and control, appeal of acts, activities (inactivities) of customs bodies and their officials, determining customs value and country of origin of goods, as well as relations on setting and use of custom regimes, setting, introducing, changing and levying customs payments.

Copies of adopted laws will be submitted to the Working Party.

#### 6. Description of judicial, arbitral or administrative tribunals or procedures

##### Question 8

**The response to Question 16 in WT/ACC/TJK/6 indicates that the Economic Court applies the laws of other countries in its cases "if it is referred for under the law or international agreement of the Republic of Tajikistan." Would this include the provisions of the WTO after Tajikistan's accession?**



Answer:

Upon the accession of Tajikistan to the WTO and ratification of all WTO agreements by Majlisi Oli of the Republic of Tajikistan, WTO Agreements will become part of the Legislation of the Republic of Tajikistan and, therefore, according to Article 11 of the Economic Court Procedure Code, economic courts will apply provisions of the WTO Agreements.

**Question 9**

**Under Tajikistan's legal system do the provisions of international treaties or agreements like the WTO supercede domestic law?**

Answer:

According to Article 10 of the Constitution of the Republic of Tajikistan, Article 7 of the Law "On normative legal acts of the Republic of Tajikistan", Article 4 of the Law "On International Agreements of the Republic of Tajikistan", international legal acts accepted by Tajikistan are considered as part of the legal system of the Republic. In case of conflict, norms of international legal acts will supersede the laws of Tajikistan.

**Question 10**

**WT/ACC/TJK/3 states that "Administrative procedures are regulated in accordance with principles of the Code of the Republic of Tajikistan on administrative law violations of 5 December 1985 entered into force on 1 July 1996." Briefly, please describe the administrative procedures applicable if importers or exporters contest the decision of customs or other officials.**

Answer:

The Code On administrative violations regulates the relations when administrative violations take place. Cases of contesting the decisions of customs, tax and standard bodies are regulated by the following laws and normative legal acts of the Republic of Tajikistan:

- Chapter 7 of the new Customs Code of the Republic of Tajikistan. In particular, Point 1 of Article 46 states that decisions, actions (inaction) of customs agencies or their officials may be appealed in customs agencies, prosecutor's office and/or in court. Filing complaint against decision, action (inaction) of customs agency or its officials in customs agencies does not eliminate a possibility of contemporaneous or consequent lodge of complaint of analogous content to the prosecutor's office or court. Complaint for a decision, action (inaction) of customs agency or its officials lodged in customs agency prosecutor's office or a court is considered by these agencies.
- Chapter 11 of the new Tax Code of the Republic of Tajikistan. In particular, Point 1 of Article 101 states, that complain on the act of tax inspection, accrued sum of taxes, penalties and interests, and also other decisions of tax body can be put in during 30 calendar days, from the date of receiving by tax-payer the tax inspection act, notice of accrued sum of taxes, penalties, interests and also other decisions or not receiving of decision on complain by the same period. In case of default to a period of lodge by valid reason this period within the limitation period, enacted by this Code, can be re-established by superior tax body, authorized by a state body or by court and on the chance of applying by complaining person.

- Article 9 of the Law of the Republic of Tajikistan "On certification of goods and services" as of 1996 provides for appeal hearing on the activity of bodies on certification of testing laboratories by Central and regional bodies on certification.

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

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

###### **(a) Registration requirements for engaging in importing**

###### **Question 11**

**Tajikistan has indicated that importers and exporters must obtain a Certificate from the Ministry of Economy and Trade attesting that they are registered as participants in foreign economic activity, and that to get the Certificate they must have a registration card as a form of application. The registration must be periodically renewed. In addition, they must have Identification Taxpayer Numbers (ITN), which are granted by the Ministry of State Revenues and Taxes. The process of obtaining the Certificate is outlined in WT/ACC/TJK/5.**

- **Please clarify the nature and purpose of the registration card. Is it the application for Certification, to be submitted with the other information indicated in WT/ACC/TJK/5? How does an applicant get a registration card? Which Ministry issues the registration card? Is there an application for the registration card?**
- **Are registration cards granted automatically? On what basis would a request for certification as a foreign trade participant be denied?**
- **Please describe any similar requirements (i.e., to obtaining a registration card and Certificate) in place for domestic producers that do not import or export.**

###### Answer:

This requirement on registration is no longer applied. It was eliminated by the Law "On introducing changes and amendments to the Law No.3 of the Republic of Tajikistan "On foreign economic activity" of 28 February 2004, which was enacted within the framework of preparations for the accession of Tajikistan to WTO.

###### **Question 12**

**Tajikistan states that the fee for state registration as a foreign trade participant is less for Tajik enterprises engaged in production than for other enterprises. The fee for joint ventures is much higher, and depends on the level of invested capital. That would appear to indicate that importers other than domestic production facilities pay a higher, sometimes strikingly higher fee for their registration. Why does the fee structure discriminate in favor of domestic production facilities?**

###### Answer:

See the answer to Question 11.

###### **Question 13**

**WT/ACC/TJK/5 states that the application for registration should include a list of the prospective exports and imports. Why is this necessary? May the application indicate universal coverage? How precise does the specification have to be?**

Answer:

See the answer to Question 11.

#### **Question 14**

**WT/ACC/TJK/5 states that "it is not mandatory for foreign companies to open representations on the territory of the country to conduct import-export transactions." Would it also be correct to say that a firm or individual would not be required to invest in Tajikistan to engage in importation or exportation, only to be recognized as a foreign trade participant?**

Answer:

See the answer to Question 11.

#### **Question 15**

**Concerning how long is the registration card valid, i.e., the "certain period of time" referred to in WT/ACC/TJK/3, the response to Question 6 in WT/ACC/TJK/5 does not provide an answer. Is the Certificate of participant in foreign economic activity valid indefinitely? If not, what is the length of the "certain period of time" of its validity?**

Answer:

See the answer to Question 11.

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

#### **Question 16**

**Article 6 of the Law of the Republic of Tajikistan on customs tariffs mentions the concept of seasonal duties which may be applied for a maximum of six months. Could further explanations and concrete examples be provided with regard to these seasonal duties?**

Answer:

According to Article 343 of the new Custom Code the Government of the Republic of Tajikistan is authorized to impose seasonal duties as a tool in regulating external economic activities. In this case, customs duties provided by regular customs tariff are suspended for the period application of seasonal customs duties. Validity of mentioned duties shall not exceed six months per year. Currently the Republic of Tajikistan in foreign trade regulation applies no seasonal duties.

#### **Question 17**

**Can Tajikistan confirm whether its current applied tariff schedule is organized based on the HS system? If so, HS 96 or 2002?**

Answer:

According to the Regulation No.44 of the Government of the Republic of Tajikistan of 5 February 2003, "On ratification of an Agreement on single goods nomenclature of foreign economic activity of EuroAsian Economic Community", the Republic of Tajikistan applies ten digit goods nomenclature of foreign economic activity of EuroAsian Economic Community (EAEC) for

regulation of foreign economic activities. The Goods nomenclature of EuroAsian Economic Community according to the Agreement of EAEC is developed on the base of international classifiers – the Harmonized System of Description and Coding of goods of the WCO (HS 2002) and the single Goods nomenclature of CIS countries.

The current Customs tariff of the Republic of Tajikistan is adopted by the Resolution No. 450 of the Government of the Republic of Tajikistan of 25 October 2003 "On customs tariff of the Republic of Tajikistan". The customs tariff of the Republic of Tajikistan is developed in accordance with the ten digit Goods nomenclature of foreign economic activity of EAEC that complies with the classification of the Harmonized system of description and coding of goods of the year 2002 (HS - 2002).

#### **Question 18**

**Has Tajikistan changed its applied rates from those notified in WT/ACC/TJK/3 and WT/ACC/TJK/5? If so, when can we expect to receive a new applied tariff schedule? We look forward to seeing it when it is available.**

Answer:

The existing Customs tariff of the Republic of Tajikistan was adopted by the Resolution No. 450 of 25 October 2003. Text of the Resolution was submitted to the WTO Secretariat and is available in document WT/ACC/TJK/3/Add.1.

**(d) Other duties and charges, specifying any charges for services rendered**

#### **Question 19**

**With reference to WT/ACC/TJK/5 Question 10, we welcome the information that Tajikistan will review the calculation methods for fees for services rendered, some of which are currently calculated on an *ad valorem* basis. Please keep the Working Party informed of any developments.**

Answer:

According to Item 2 of Article 348 of the new Customs Code of the Republic of Tajikistan which entered into force on 1 January 2005: "Customs fees shall be limited to the cost of the services provided and should not provide an indirect protection for domestic products or taxation of imports of foreign goods for fiscal purposes".

#### **Question 20**

**With reference to WT/ACC/TJK/6 Questions 35-37, the cost to be paid for the issuance of a licence for a customs broker's activity (500 minimum wages) and for a preliminary decision-making (2 minimum wages) do not seem to be justified.**

Answer:

According to the new Customs Code of the Republic of Tajikistan the requirement for licensing of customs brokers activities is eliminated. In order to act as a customs broker, according to item 1 of the Article 139 of the new Customs Code, domestic legal entity shall be registered and listed in the Register of Customs brokers (Representatives). The terms of registering of customs brokers and the list of required documents are stated in Chapter 15 of the new Customs Code of the Republic of Tajikistan.

At the same time under the New Customs Code fee for taking preliminary decisions is no longer charged.

Currently, according to the List of normative and legal acts to be drafted due to introduction of new Customs and Tax Codes, the regulations which will determine the fee for the issuance of a certificate of competence of an expert on customs clearance is being drafted. This certificate is required as a condition for registration as a customs broker (representative).

#### **Question 21**

**With reference to WT/ACC/TJK/6 Question 46, the fees for the issue of a certificate of origin of a good should not be linked to the percentage of the producers' proceeds from the particular transaction, since this cost does not correspond to the cost of the service rendered.**

Answer:

The order of fee collection for the issuance of a certificate of origin of goods will be revised by the Republic of Tajikistan.

#### **Question 22**

**WT/ACC/TJK/3 refers to a fee of 0.1 per cent of the producers' proceeds from the particular transaction assessed by the Chamber of Commerce for issuance of a certificate of the origin mandatory for exportation. As it is a mandatory requirement of the state, this fee is subject to the provisions of Article VIII of the GATT, and must be related to the cost of services rendered, not used as a revenue raiser for the Chamber of Commerce. It should be abolished or revised.**

Answer:

The existing system of fees for obtaining certificates of origin of goods will be revised.

#### **Question 23**

**WT/ACC/TJK/3 refers to the payment of "state duty" as a prerequisite for initiating appeal before the economic courts. Is this a tax or a charge related to the cost of a service provided?**

Answer:

According to sub-paragraph 12) of Point 1 of Article 6 of the new Tax Code of the Republic of Tajikistan "state duty" is a national tax.

#### **Question 24**

**Please describe "state duties" and when and how they are applied. Are state duties ever necessary for customs documents, applications for import or export licenses, or any other activity related to importation or exportation.**

Answer:

The text of Article 3 of the Law of the Republic of Tajikistan "On State Duty":

Article 3. Objects of state duty levy

State duty is levied:

- for statements of claim, applications (complaints, appeals) submitted (brought) to the courts of the Republic of Tajikistan;
- for implementation of legally significant actions by law enforcement agencies;
- for implementation of notary acts in accordance with the Legislation of the Republic of Tajikistan;
- for state registration of acts of civil status in accordance with the Legislation of the Republic of Tajikistan;
- for review and issuance of documents relating to application for acquiring of citizenship of the Republic of Tajikistan or withdrawal from citizenship of the Republic of Tajikistan;
- for the implementation of other legal significant acts determined by the present Law (See also answer to Question 25).
- State duties are not levied on customs documents, on applications for receiving import or - export licenses or any other activity related to importation and exportation.

### **Question 25**

**At what rate are "State Duties" applied?**

Answer:

The rates of state duties are determined in accordance with Article 4 of the Law of the Republic of Tajikistan "On state duty" (available for consultation in WT/ACC/TJK/11/Add.1).

### **Question 26**

**WT/ACC/TJK/3 states that the customs charge for the issue of a licence to establish a customs warehouse or a free warehouse is dependent on the size of the warehouse, not the cost of the service of granting the license. Please explain why.**

Answer:

This order is no longer applied. In accordance with the new Customs Code of the Republic of Tajikistan requirements for obtaining licences for implementing activities as customs broker, for establishing a customs warehouse, for establishing a duty free shop, for establishing a free warehouse, for establishing a temporary warehouse and for implementing an activity as customs carrier are eliminated.

According to Article 17 of the new Customs Code activities of legal persons in the capacity of customs carriers, owners of warehouses of temporary storage, owners of customs warehouses, owners of duty free shops and customs brokers (representatives) are allowed, provided that there are included, accordingly: into the Register of customs carriers; Register of owners of temporary storage warehouses; Register of owners of customs warehouses; Register of duty free shop owners; or the Register of customs brokers (representatives).

No fees are charged for inclusion into the registers. However, according to Point 1 of Article 384 of the new Customs Code, implementation of activities as a customs broker, owner of temporary storage warehouse, owner of a customs warehouse, owner of a free warehouse, owner of a duty free shop and a customs carrier conditioned upon provision of a security for customs payments, such as guarantees or deposits.

### Question 27

**Article 110 of the Customs Code lists the charges collected by Customs. Please provide a list of the current level of the charges for each item.**

Answer:

The following charges are collected according to Article 340 "Customs payments and their types" of the new Customs Code:

- Customs duty (Rates of the customs tariff of the Republic of Tajikistan are available in document WT/ACC/TJK/3/Add.1);
- Excise duty levied for import of goods to the customs territory of the Republic of Tajikistan (Rates of excise duty are available in document WT/ACC/TJK/4);
- Value added tax levied for import of goods to the customs territory of the Republic of Tajikistan (Value added tax is levied at the rate of 20 percent);

### Question 28

**Article 110 of the Customs Code lists the charges collected by Customs. Please explain the purpose of the charges for:**

- **customs collections for the customs registration. What is customs registration?**
- **collections for the issuance of the license to the customs agencies and renewal of the license.**

Answer:

Collection for customs registration means fee levied by customs bodies for customs clearance for imports or exports goods. Fee at the rate of 0.15 percent of the cost of the goods being cleared is collected for the customs clearance as indicated in Item IV.1.(b) of the document WT/ACC/TJK/3. Please note, however, that according to the plan of the Government of the Republic of Tajikistan on bringing the internal legislation in compliance with WTO requirements in the new Customs Code that entered into force on 1 January 2005, it provides: "customs fees shall be limited in their size by approximate cost of the services rendered and shall not provide indirect protection for domestic goods or taxation of imports of foreign goods for fiscal purposes".

### Question 29

**Please list any other taxes or charges applied by the Government or by an enterprise acting on behalf of the Government that may be applied to imports or exports, or to the act of importation or exportation, e.g., activity licensing fees, stamp taxes, etc.**

Answer:

In accordance with the Article 340 following charges are related to customs payments:

- Customs duty;
- Value added tax levied for import of goods to the customs territory of the Republic of Tajikistan;
- Excise duty levied for import of goods to the customs territory of the Republic of Tajikistan;

In accordance with Article 347 the following customs fees are charged:

- 1) fee for customs clearance;
- 2) fee for customs escort;
- 3) fees for storage of goods in the warehouses of customs bodies;
- 4) fee for issuance of qualification certificate of specialist on customs clearance.

Currently, the Tajik government is conducting work on determining amounts of fees indicated in Article 347 of the Customs Code.

No other taxes and charges are applied to imports and exports except those listed above and in the answer to Question 27.

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

**Question 30**

**With reference to WT/ACC/TJK/5 Question 13, we take note of Tajikistan's explanation regarding the quantitative restrictions currently imposed on alcohol, which seem to apply to both domestic and imported products. However, further detailed information would still be required. Do the quotas concern duty free or reduced duty contingents?**

Answer:

The quotas do not relate to exemption from payment of duties nor reduced duty contingents.

**Question 31**

**Tajikistan has acknowledged that it has quantitative restrictions on the importation of tobacco and alcohol products, and has stated in response to questions that it does not intend to remove these restrictions. Tajikistan has justified the introduction of quotas on imports of alcohol and tobacco products as measures "necessary to protect human, animal or plant life or health", i.e., Article XX (b) of the GATT. Tajikistan has also indicated that there are similar restrictions in place on domestic production of these items.**

**We need more detailed information on these quantitative restrictions, e.g., on what specific alcohol and tobacco products are such restrictions applied? Please provide specific HS codes and product descriptions. Please also provide a copy of the appropriate Tajik law or regulation establishing such quantitative restrictions.**

Answer:

Codes of Goods Nomenclature of FEA (HS) on alcohol and tobacco products were provided in answer to Question 42 of WT/ACC/TJK/6.

Quantitative restrictions on alcohol and tobacco products are fixed based on:

- Resolution of the Government of the Republic of Tajikistan No. 453 as of 27 October 1999 on "The Order of issuance of quotas on import and export of tobacco products" and on "The Order of avowal of imports and export of alcohol and tobacco products";
- Resolution of the Government of the Republic of Tajikistan No. 131 as of 7 April 1999 on "Regulation on the order of fixing the quotas on export, import and purchases of ethyl alcohol and alcohol products" and on "Regulation of the order of declaration of volumes of production and turnover of ethyl alcohol and alcohol products".



In accordance with the Law of the Republic of Tajikistan "On licensing of certain types of activity" as of 17 May 2004 activity in the sphere of production and turnover of ethyl alcohol, alcohol and alcohol-containing products, as well as production of tobacco products are subject to licensing. Article 4 of the Law of the Republic of Tajikistan "On state regulation of production of ethyl alcohol and alcohol products" introduced quotas on the volume of export and import of ethyl alcohol.

"Article 4. Order of state regulation of production and turnover of ethyl alcohol

State regulation of production and turnover of ethyl alcohol provides for:

- Licensing of activities on production and turnover of ethyl alcohol;
- Establishing quotas on the volume of export, import and purchase of ethyl alcohol;
- Ban on retail sales of ethyl alcohol;
- Regulation of factory prices for ethyl alcohol produced from food and non-food raw materials;
- Establishing state standards, technical conditions, norms and rules in the field of production and turnover of ethyl alcohol;
- Conducting state control over the quality of ethyl alcohol.

Order of state regulation of production and turnover of ethyl alcohol is determined by the Government of the Republic of Tajikistan in accordance with the present Law."

Copies of the above mentioned acts were submitted to the Working Party following submission of the Memorandum on Foreign Trade Regime of Tajikistan.

### **Question 32**

**Please provide information on the size of the quotas applied and how these quotas are determined. What are the volumes of such restrictions for both imports and domestic production? What are the in-quota duties on imports of alcohol and tobacco that fall under these restrictions?**

Answer:

The Government of the Republic of Tajikistan annually establishes the size of applied quotas. It should be noted that in the Republic of Tajikistan single rate of duties for imported alcohol and tobacco products are applied (provided in WT/ACC/TJK/3/Add/1) i.e. these are not tariff quotas. These quotas are determined based on volumes of alcohol and tobacco products consumption, production capacities of plants (enterprises) producing alcohol and tobacco products and declared volumes of production of these goods.

### **Question 33**

**Please describe how the quotas are administered. Are licenses used?**

Answer:

The quotas are administrated by a body authorised by the Government of the Republic of Tajikistan for licensing of this products: State Unitary Enterprise "Khurokvory" under the Ministry of Agriculture of the Republic of Tajikistan. Quotas are distributed on the basis of applications from interested enterprises and importers.

**Question 34**

**Please indicate how these quotas protect human, animal, or plant safety, health, or life.**

Answer:

These quotas are imposed on the basis of age structure of population in order to protect health of the growing generation (teenagers under 18 years make 52 per cent of the population) and social moral and cultural values of population (99 per cent of the population profess Islam).

**Question 35**

**Are there any other requirements applied on imports of these products?**

Answer:

No other requirements, except licensing, quota and certification, are applied on imports of these products.

**Question 36**

**Concerning domestic production of alcohol and tobacco products: WT/ACC/TJK/6 states that Hurokvori Corporation of Food Industry, Horticulture and Viticulture issues the licenses that administer the quotas for imports of alcohol and tobacco products.**

- a) **Does Hurokvori also produce alcohol and tobacco products?**
- b) **Is Hurokvori a state owned firm? Are there any other producers of alcohol or tobacco products in Tajikistan?**

Answer:

- a) No. State Owned Unitary Enterprise (SUE) "Khurokvory" does not produce alcohol and tobacco products.
- b) Yes. (SUE) "Khurokvory" is a state owned enterprise. All the enterprises in Tajikistan producing alcohol and tobacco products are privately owned.

**Question 37**

**Please describe the domestic restrictions applied to the production of alcohol and tobacco products, and how these restrictions are developed and enforced.**

Answer:

Restrictions applied to alcohol and tobacco products cover production, sales, export and import of these products. Accordingly, licensing and quota measures are also applied to domestic production and sales of these products.

**Question 38**

**Please provide data on the volume and value of domestic production and imports over a recent representative period.**

Answer:

Production of alcohol for the year 2003 amounted to 263 thousand decalitre and for the year 2004, 272 thousand decalitre. In total, in 2003 enterprises of the Republic of Tajikistan produced alcohol to the amount of 14.3 million somoni and in 2004 to the amount of 18.8 million somoni. Imports of this product in 2003 amounted to - US\$ 39 thousand and in 2004 – US\$ 690.4 thousand.

Production of tobacco in 2003 amounted to 467 million smoking units and in 2004, 449 million smoking units. In total, in 2003 enterprises of the Republic of Tajikistan produced tobacco to the amount of 7.1 million somoni and in 2004, 7.3 million somoni. Imports of this product in 2003 amounted to US\$ 733.6 thousand and for the 2004 US\$ 765.8 thousand.

**Question 39**

**Tajikistan has indicated that it has quantitative restrictions on ferrous and nonferrous scrap and on precious stones and metals. We remain interested in a description of the nature and scope of the import restrictions on these products. What precisely, is covered? How are these requirements administered?**

Answer:

Quantitative restrictions on wastes and industrial scrap of non-ferrous and ferrous metal, precious stones and metals are applied to their exports only.

Imports of these products are carried out without any restrictions and licences.

**Question 40**

**Please provide an update on the measures Tajikistan is taking to harmonize Government Decrees Nos. 357 and 88 (the authority for the requirements) with WTO requirements?**

Answer:

Currently the new Regulation "On the order of export and import of precious metals and stones" is being developed where WTO requirements will be taken into account.

**Question 41**

**WT/ACC/TJK/3 states that there are a number of other permits required for importation, e.g., for pharmaceuticals, fertilizers, live plants, and "radio-electronic facilities and high frequency devices". WT/ACC/TJK/3 also states that a Governmental Decision is necessary to import or to export, inter alia, nuclear materials, explosives, and cryptographic devices.**

**These requirements meet the definition of "import license" in Article 1 of the WTO Agreement on Import Licensing Procedures. Tajikistan should provide information on these requirements.**

Answer:

Information on the procedures of obtaining licenses is provided below under item (f).

**(f) Import licensing procedures**

**Question 42**

**Tajikistan has acknowledged licensing requirements for the importation of alcohol and tobacco products, and for narcotics and other drugs. We note that WT/ACC/TJK/3 identifies additional products with permits required for importation, e.g., for pharmaceuticals, fertilizers, live plants, and "radio-electronic facilities and high frequency devices," that meet the definition of "import license" in Article 1 of the WTO Agreement on Import Licensing Procedures.**

**We have practically no information on the following aspects of these requirements:**

- a) How are these requirements administered? How long does it take to get the required permits?**
- b) What ministries or other agents of the Tajik Government are involved in administering these requirements?**
- c) Are activity licenses necessary, i.e., does the importer have to have a personal license to trade in these goods prior to requesting an import license? Are the number of traders restricted?**

**We request that this information be provided for all import requirements that meet the definition of import licenses under the WTO Agreement.**

Answer:

- a) There are no quantitative restrictions and bans applied for import of pharmaceutical products, but according to the Law of the Republic of Tajikistan "On medicine and pharmaceutical activity" and the Resolution of the Government No. 245 "On approving of a Provision on the order of licensing of pharmaceutical activity in the Republic of Tajikistan, the Order of import and export of medicine and medical goods" of 5 June 2002, a license issued by the State Center of Medicine Tests is required for import of medicines and medical products into the Republic of Tajikistan. The purpose of licence is state regulation, revelation and banning of penetration of poor quality and counterfeited medicines and medical products to the Tajik market.

According to Article 20 of the Law of the Republic of Tajikistan "On medicine and pharmaceutical activity" No. 39, of 6 August 2001, production, sales and application of medicine and medical goods on the territory of the Republic of Tajikistan are implemented after their state registration according to the order determined by the Ministry of Health of the Republic of Tajikistan.

According to Point 7 of the Order of import and export of medicine and medical goods to the Republic of Tajikistan No. 245 of 5 June 2002, for obtaining permission for import and export of medicines, medical goods and medical materials applicant should submit certificate of quality of medicine and medical goods, sales contract or contract and bills.

Time required for licence issue for import depends on the type of medicines and medical goods, availability of above mentioned documents and takes 1 to 25 working days.

The issue of import of radio-electronic facilities (REF) and high-frequency devices (HFD) into the Republic of Tajikistan is regulated by Provision on the order of development, production, projection, construction (instalation), procurement, operation in the territory of the Republic of Tajikistan and import of radio-electronic facilities and high-frequency devices, approved by the Regulation No. 371 of Council of Ministers of the Republic of Tajikistan of 1 August 1994.

Quantitative restrictions or quotas on the import of these products are not established by the above mentioned Regulation.

However, Item 4 of this Regulation determines certain restrictions on imports into the Republic of Tajikistan of REF and HFD, according to which only imports of REF, operative on periodicity lower than 3000 GigaHertz (irrespective of capacity and function) and HFD, operative on periodicity higher than 12 kilohertz and lower than 3000 GigaHertz are allowed. This restriction also includes the aggregate of all professionally prepared details (assembly), if details could be collected in radioelectronic facility without a tool or with help of the simplest tools or tools supplied jointly with the details.

Item 9 of this Regulation determines that list of REF and HFD, which do not require permission for purchase and import into the territory of the Republic of Tajikistan, is established and published by State Inspection of Communication of the Ministry of Communication of the Republic of Tajikistan.

Currently, legislation of the Republic of Tajikistan does not provide for time required for obtaining the above mentioned licences. According to the practice of under the State Inspection of Communication of the Ministry of Communication of the Republic of Tajikistan issuance of licences does not require much time and if necessary could be issued within one or two days.

The above requirements are administered by authorization of the Government of the Republic of Tajikistan and the SIC of the Ministry of Communication of the Republic of Tajikistan.

Issues of imports of chemical agents and biological preparations into the Republic of Tajikistan are regulated by the Law of the Republic of Tajikistan No. 90 "On ecological examination" of 22 April 2003 and Regulation of the Government of the Republic of Tajikistan No. 299 "On approval of regulation of chemical security of the Republic of Tajikistan" of 3 July 2003.

The following points of the "Regulation on Commission of chemical security of the Republic of Tajikistan" specify:

- Point 9: "chemical agents and biological preparations imported or exported through state border of the Republic of Tajikistan should be accompanied with a certificate of conformity issued by producer".
- Point 10: "enterprises, agencies and organisations manufacturing or supplying chemical agents and biological preparations to the Republic of Tajikistan must guarantee output and supply of these products in accordance with existing normative and technical documentations";
- Point 11: "chemical agents, biological preparations, plant growth stimulators, mineral fertilizers, other agents and preparations, first used in the Republic of Tajikistan or imported to the Republic of Tajikistan should in due order pass state tests in the laboratory (field) on biological, toxicological, ecological assessment and upon getting positive results shall be registered at the Commission".

Permissions are issued within 1 month period.

- b) Depending on the type of the goods being imported, the following bodies are involved in administering these requirements: Ministry of Health of the Republic of Tajikistan, Ministry of Communication of the Republic of Tajikistan, Ministry of Agriculture of the Republic of Tajikistan, Ministry of Industry of the Republic of Tajikistan, Committee of Nature Protection of the Republic of Tajikistan.

- c) According to the Law of the Republic of Tajikistan "On licensing of certain types of activities" of 17 May 2004, licence is required for engaging in pharmaceutical activity (making and manufacturing of medicine and cosmetic means, manufacturing of medical goods and equipment, trade in medicine and medical equipment, manufacturing of medical prophylactic nutrition).

However, an importer of medicine and medical goods should not necessarily have to obtain a license for engaging in pharmaceutical activity. There are no restrictions in number of persons involved in pharmaceutical activity.

Upon gaining permission for importation of REF and HFD, license to trade is not required. There are no restrictions in number of persons involved in trade in REF and HFD.

No activity license is required for obtaining a permission to import fertilisers and live plants.

#### Question 43

**We are also lacking such information on the other acknowledged restrictions, i.e., on precious metals and stones and on scrap metal, and ask for Tajikistan to provide it, both for import and export requirements.**

Answer:

According to Article 17 of the Law of the Republic of Tajikistan on Licensing of certain types of activities – an activity related to the turnover of precious metals and stones, as well as provision, processing and sales of ferrous and non-ferrous scrap is subject to licensing.

No import license on mentioned goods is required. For exports of these goods a license is required:

- for scrap metal the license is issued by the Ministry of Industry of the Republic of Tajikistan;
- for precious stones and metals – by the Ministry of Finance of the Republic of Tajikistan.

#### Question 44

**Tajikistan states "at present, there are neither Government-mandated quantitative restrictions for export of goods, nor any bans".**

- a) **Does Tajikistan plan to introduce any such restrictions either before or upon accession? If so, please describe the nature of such restrictions and what products they apply to.**
- b) **Please also provide a copy of Tajikistan's Law on Foreign Economic Activities and the Law on State Regulation of Foreign Trade Activities.**

Answer:

- a) Tajikistan does not plan to introduce quantitative restrictions nor bans for export of goods.
- b) Law on Foreign Economic Activities and the Law on State Regulation of Foreign Trade Activities are available for consultation in WT/ACC/TJK/11/Add.1.

(g) **Other border measures**

**Question 45**

**With reference to WT/ACC/TJK/5 Question 17, please provide further information on Tajikistan's intentions with regard to a "agreed transitional period" concerning the mandatory sale of specified commodities through the commodity exchange.**

Answer:

Requirement for mandatory sale of specified commodities through the commodity exchange is applied only to export of goods, produced in Tajikistan. This measure does not imply quantitative restrictions or bans on exports or sales in domestic market. Therefore, this requirement does not restrict access to Tajik market since it is not applied on imports.

(h) **Customs valuation**

**Question 46**

**According to Article 12 of the Law of the Republic of Tajikistan on Customs Tariffs (14 May 1999, No. 744) the valuation system "is based upon the general principles of customs valuation, adopted in international practice". In order to comply with the WTO Agreement on Customs Valuation (CVA) the valuation system should, at least at the moment of accession, be formally based on that Agreement.**

Answer:

The Law on Customs Tariff of the Republic of Tajikistan as of 14 May 1999 is abrogated due to entry into force of the new Customs Code of the Republic of Tajikistan starting from 1 January 2005. The system and methods of customs valuation of goods under the new Customs Code are based on WTO Customs Valuation Agreement on (the new Customs Code of the Republic of Tajikistan will be submitted to the WTO Secretariat once it is translated into English).

**Question 47**

**The full content of the CVA, including the Interpretative Notes, should be implemented in the legislation of Tajikistan. As an example, the Law on Customs Tariffs does not seem to implement these Interpretative Notes. Could the provision by which the Interpretative Notes of the CVA have been implemented in national legislation be provided to the Working Party.**

Answer:

Existing system of customs valuation, established under the Chapter 42 of the new Customs Code fully complies with the requirements of the provisions of the WTO Agreement on Customs Valuation. Please also note that, currently, according to the List of normative and legal acts to be drafted due to introduction of new Customs and Tax Codes, new regulation on implementation of the Customs Valuation provisions of the Code are being developed. This regulation will incorporate the text of the Interpretative Notes.

**Question 48**

**In order to verify that Article 11 of the CVA providing the right of appeal is implemented (article 16 point 4 of the Law on Customs Tariffs: "If a declarant does not agree to the decision**

taken by Customs Authority of the Republic of Tajikistan in respect of estimating customs value of goods, this decision may be appealed in accordance with procedure, established by the Customs Code of the Republic of Tajikistan."'), it is necessary that the articles of the Customs Code describing the appeals procedure are transmitted. These articles are not included in the communicated text.

Answer:

Chapter 7 of the new Customs Code which deals with: "appealing decisions, actions (inaction) of the customs Authority and Customs" ensures rights for appeal required under Article 11 of WTO Agreement on Customs Valuation.

**Question 49**

**Tajikistan has stated that its customs valuation regime, as outlined in the Customs Code and Customs Tariff Law are largely consistent with WTO.**

**Our review of these documents, supplied by Tajikistan in WT/ACC/TJK/6/Add.1, finds that the differences with the WTO Agreement on Customs Valuation are not "minor".**

**We found, in contrast that many of the provisions of the WTO Valuation Agreement are not clearly or fully implemented, and we would like to note this for the attention of the Tajik delegation as they move towards developing amendments to their current legislation.**

**Tajikistan has stated that it is currently developing a proposed new Customs Code and regulations to address some of these issues. We urge Tajikistan to incorporate all the concepts from the WTO Customs Valuation Agreement and the Interpretative Notes, including the relevant terminology, in this new legislation, and we await with anticipation an opportunity to review the new legislation.**

Answer:

Starting from 1 January 2005 the new Customs Code of the Republic of Tajikistan is in effect. Chapter 42 of the Code "On specification of customs value of goods" was developed based on the provisions of the WTO Agreement On customs valuation of goods and Revised Kyoto Convention on simplification and harmonization of customs procedures. (Text of Chapter 42 of the Code will be submitted once translated).

**Question 50**

**The Law on Customs Tariff does not always use the technical terminology of the WTO Valuation Agreement. (e.g., transaction value, price actually paid or payable, sold for export to the country of import, at or about the same time, greatest aggregate quantity) and uses terminology that does not appear in the Agreement (e.g., world market prices, estimated value, interdependent persons, transaction price). While this could be a translation error, we are concerned that terms of articles with specific meanings are not being accommodated in Tajikistan's laws.**

Answer:

The Law on Customs Tariff was revoked by the Law No. 66 of the Republic of Tajikistan as of 9 December 2004. Chapter 42 of the Customs Code uses the terms of WTO Valuation Agreement, including: transaction value; price actually paid or payable; sold for export to Tajikistan; at or about the same time with the goods being valued or no earlier than 90 calendar days prior to import of valued goods; and the greatest aggregate quantity.



### Question 51

**The Law on Customs Tariff does not include the provisions of Article 1.2 of the WTO Valuation Agreement which apply to related party transactions, a major deficiency.**

- **In WT/ACC/TJK/5, it is stated that sales between related persons are subject to special provisions and the fact of inter-company prices is considered sufficient grounds for regarding the respective prices as being influenced. This is contrary to the provisions of Article 1.2(a) of the WTO Agreement, specifically that "the fact that the buyer and the seller are related ... shall not in itself be grounds for regarding the transaction value as unacceptable."**
- **Article 1.2(b) addresses the circumstances of sale tests and test values that are used in a related party transaction. Tajikistan does not appear to have included these tests in its legislation.**

#### Answer:

The Law "On customs tariffs" of the Republic of Tajikistan is no longer in force. According to Item 6 of Article 355 of the new Customs Code of the Republic of Tajikistan, the fact of interdependence of the participants of transaction is not sufficient evidence to consider the transaction value as unacceptable. In this case the customs body should inspect the conditions related to the transaction, and its value may be used for determination of customs value of goods, if interdependence has not influenced the transaction value.

In addition, items 8 and 9 of Article 355 of the Customs Code fully reflect the provisions of Article 1.2 (b) of the WTO Valuation Agreement regarding the conditions of sales tests and test values that are used in examination of transaction values between interdependent parties to transaction.

### Question 52

**The provision contained in Article 5.1(a) of the WTO Agreement specifying "at or about the time of the importation of the goods being valued" is not synonymous with the terminology used by Tajikistan, i.e., "no later than 90 dates from the import of valued goods".**

#### Answer:

Extract from Article 358 of the new Customs Code:

2. In applying deduction value method the unit price of goods by which valued identical or similar goods are sold in largest aggregate quantity together with import of valued goods to persons independent from salesman shall be used as the basis for determining the customs value of the goods.
3. In this case sales should be implemented simultaneously with import of valued goods, but in absence of sales within this term – to the earliest date after the importation of valued goods, but no later than 90 calendar days from the moment of import of the valued goods."

### Question 53

**It is unclear whether the publication requirements set forth under Article 12 of the WTO Valuation Agreement are fully met. Could Tajikistan provide clarification? In particular, could Tajikistan clarify the meaning of the following sentence from Annex 4 of**

**WT/ACC/TJK/3 : "General regulatory acts of the customs body of the Republic of Tajikistan enter into force after 30 days of their publication by this body, except for cases when these acts set up more favorable rules than those in effect or if legislative acts of the Republic of Tajikistan oblige the customs body to enforce customs regulatory acts in a shorter time".**

Answer:

According to the Regulation of the Government of the Republic of Tajikistan No. 546 as of 5 October 2001 departmental normative legal acts are published (except acts containing state or any other secret protected by law) in open official publications and come into force upon a condition of their publication in these editions. This requirement also applies to normative acts of the customs body on customs valuation. (see also answer to Question 5).

#### **Question 54**

**It also does not appear that Article 13 of the WTO Valuation Agreement is properly incorporated. In particular, it is not clear whether the declarant has the right to have the goods released upon the deposit of sufficient guarantee as required by Article 13 of the WTO Agreement. Tajikistan's response in Annex 4 of WT/ACC/TJK/3 states only that the declarant has the right to request the declared goods for use on payment of security. Could Tajikistan provide clarification?**

Answer:

According to Item 2 of Article 364 of the new Customs Code declarant, if the final determination is postponed due to the necessity in adjusting of declared customs valuation, has the right to receive declared goods on condition of provision of a security on payment of customs duties and taxes in accordance with customs value of goods, determined by a customs body.

#### **Question 55**

**Article 14 of the Customs Valuation Agreement requires that the Interpretative Notes to the Agreement should be fully incorporated in law. They do not appear in either the Customs Code or the Customs Tariff Law. We understand that this will soon be accomplished. We would appreciate an update on progress.**

Answer:

Instructions on customs valuation will be developed and submitted to the Working Party.

#### **Question 56**

**While Tajikistan states that minimum import values or reference prices are not used for the purposes of customs valuation, there is no prohibition of their use, as required by the WTO Agreement.**

Answer:

Article 360 of the new Customs Code includes all bans indicated in Article 7 of the WTO Agreement on customs valuation, including prohibition on applying minimum and reference prices for customs valuation purposes.

### Question 57

We have additional observations on the Law on Customs Tariff and the Customs Code as they relate to the provisions of the WTO Agreement on Customs Valuation:

Could Tajikistan confirm that the use of the words "depending on a seller" are intended to mean "to persons who are not related to the persons from whom they buy such goods..." as set forth in under Article 5.1(a) of the WTO Agreement?

Answer:

The Provisions of Article 5.1(a) of WTO Valuation Agreement relating to "persons that are not interdependent with persons from whom they purchase such goods..." are reflected in Article 358.2 of the new Customs Code.

### Question 58

We note that Tajikistan states that in accordance with Article 5.2 of the WTO Valuation Agreement, provision is made for appraisalment using super deductive value. Could Tajikistan verify that the provision in its legislation is consistent with Article 5.2 which states the following:

**"If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a) of this Article. "**

Answer:

Article 358 of the new Customs Code, see below, fully reflects the provisions provided for in Article 5.2 of the WTO Valuation Agreement:

#### Article 358

##### Method of determining customs value on the basis of cost deduction

1. Determining the customs value of a good by method of valuation on the basis of cost deduction is effected in case if valued identical and similar goods will be sold primarily without changing initial state.
2. In applying method of cost deduction as basis for determining customs value of good, price of one unit for which identical or similar goods being valued are sold in largest aggregate quantity at the same time with import of valued goods to persons not interdependent with persons from whom they buy such goods.
3. With that, sale of goods should be conducted at the same time with import of goods being valued, and if no sales during this period – for the nearest date to the import of valued goods, but no later than 90 calendar days from the moment of import of goods being valued.
4. From the unit price of good the following are deducted:

- a) commissions paid or agreed to be paid, or premiums charged for deriving a profit and covering total expenses in connection with sale of imported goods of the same class and type in the Republic of Tajikistan;
  - b) amount of import duties, taxes and other obligatory payments to the budget, payable in the Republic of Tajikistan in connection with import and (or) sale of goods on the territory of the Republic of Tajikistan;
  - c) expenses paid out in the Republic of Tajikistan for transportation, insurance, loading and unloading operations, implemented in the territory of the Republic of Tajikistan.
5. Goods of same class and type imply goods that relate to a group or category of goods, produced by a certain branch of industry, and include identical and similar goods, but are not limited with them.
6. In the absence of cases of sale of valued identical or similar goods in the same condition in which they were imported, upon the request of the declarant, a unit price of good being processed, with deduction of value added cost and following provisions of Parts 2-4 of this Article may be applied.

#### **Question 59**

**Article 15 of the Customs Tariff Law , which deals with what happens if there is a dispute, does not clearly specify that an importer has the right to have the goods released upon the payment of sufficient guarantee (i.e., a surety bond, not simply paying the higher level of the duty).**

Answer:

See the answer to Question 54.

#### **Question 60**

**Clarification is needed regarding the "certification" process set forth in Articles 15 and 16.**

Answer:

The Law on Customs Tariff of the Republic of Tajikistan is no longer in force. See also answer to Question 54

#### **Question 61**

**It appears that Articles 15 and 16 may be an attempt to incorporate Decision 6.1 of the WTO Committee on Customs Valuation. If so, these provisions should adhere to the wording of that decision more closely.**

Answer:

See answers to Questions 54 and 60.

#### **Question 62**

**Reference is made in Article 4 to the appeal procedures established by the Customs Code of the Republic of Tajikistan. Chapter 52, Article 387 of Annex 1 of that law provides for the right to appeal a decision to the customs agency of the Republic of Tajikistan.**

- **Are there additional legal provisions which covers the right to appeal to a judicial authority?**
- **The response to Question 18 of WT/ACC/TJK/5 states that the provisions of Chapters 56-58 of the Customs Code deal with appeals from Customs Decisions. Those Chapters do not appear in the text of the Customs Code provided by Tajikistan in WT/ACC/TJK/6/Add.1. Please clarify.**

Answer:

Chapter 7 of the new Customs Code provides for the possibility of both administrative and legal appeals of decisions of the Customs Body. See also answer to Question 10.

**Question 63**

**The addition for license fees in Article 19 does not include the requirement that the fees must be related to the imported goods.**

Answer:

According to Point 2, Article 355 of the new Customs Code of the Republic of Tajikistan in determining the customs value of a good at transaction price with imported goods, price of transaction includes the following expenses, if they were not included earlier:

- 1) expenses for delivery of goods to airport, port or other place of import of a good to the customs territory of the Republic of Tajikistan;
  - transportation cost;
  - expenses on loading, unloading, overloading and transshipment of goods;
- 2) insurance cost;
- 3) expenses beared by a purchaser;
  - commission and broker fees, except for commissions on purchase of goods;
  - cost of containers or other reusable tare, if in accordance with Goods Nomenclature of FEA they are considered one with goods being valued;
  - cost of packing, including cost of packing materials and packing works;
- 4) corresponding part of cost of the following goods (works, services) that was directly or indirectly given to seller by a purchaser for free or on discounted price for using in production or sale for import of valued goods:
  - raw material, materials, details, semi-manufactured goods and other component products that are elements of valued goods;
  - tools, stamps, forms and other similar items used for production of the valued goods;
  - materials used for production of the valued goods (oil, fuel and other);
  - engineering and development works, design, setting, sketches and drawings done outside the territory of the Republic of Tajikistan and directly necessary for production of the valued goods;
- 5) royalties and fees for license issue related to the valued goods payable directly or indirectly by purchaser as a condition for sale of valued goods, if such royalties and fees are not included into the price, actually paid or payable;

- 6) value of a part of direct or indirect profit of seller from any further resale, transfer or use of valued goods.

#### **Question 64**

**The deductive value method outlined in Article 19 does not provide for deducting either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses as specified in Article 5 of the WTO Customs Valuation Agreement.**

Answer:

Item 4, Article 358 of the new Customs Code provides that in determining the value of good on the basis of deductive value method, from the price of a unit the following are deducted: "commissions, paid or agreed to be paid, or premiums charged for deriving profit or covering total expenses related to sale of imported goods of the same class and type in the Republic of Tajikistan."

#### **Question 65**

**Some of the prohibited methods listed in Article 7 of the WTO Customs Valuation Agreement are not incorporated (most notably, minimum customs values and arbitrary or fictitious values).**

Answer:

See answer to Question 56.

- (j) **Pre-shipment inspection**

#### **Question 66**

**WT/ACC/TJK/3 states that "some measures on introduction of the mechanism of pre-shipment inspection in foreign trade are being taken." Please update this information.**

Answer:

Currently, a draft Law of the Republic of Tajikistan On amendments in the Law of the Republic of Tajikistan On foreign economic activity in the Republic of Tajikistan, is being developed. The draft law will contain a new Article that provides for the possibility for introduction of the preshipment inspection.

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

#### **Value Added Tax:**

#### **Question 67**

**Tajikistan "zero rates" exported goods "except for the supply of goods (works and services) to the states applying the VAT on goods (works and services) exported to the Republic of Tajikistan."**

**Does Tajikistan apply VAT to imports of goods from such countries? Are imports from any country exempted from VAT? If so, this is not consistent with MFN treatment, and we seek clarification from Tajikistan as to how it intends to address this issue.**

Answer:

According to the provisions of the new Tax Code VAT is equally applied on imports from all countries on MFN basis with no exceptions.

**Question 68**

**What specific products are exempted from VAT application? Do these exemptions apply to imports as well as to domestic goods?**

Answer:

According to Article 211 of the new Tax Code the following supply of goods (excluding export of goods), and services are exempted from VAT:

- (i) sale, transfer or rent of real estate, except:
  - sale or transfer of hotel accommodation or housing for holiday-makers;
  - sale or transfer of newly constructed living quarters, except the cases when premises were used as residential at least for the duration of 2 years;
- (ii) providing financial services (in financial lease (leasing) in accordance with Article 33 of this Code exemption is provided exceptionally for interests and does not cover amounts payable in favour of leasing-giver or leasing-obtainer on account of cost repayment of the subject of financial lease (leasing) (principal debt);
- (iii) supply of national and (or) foreign currency (except for numismatic purposes), as well as securities;
- (iv) providing religious and ritual services by religious organizations;
- (v) providing medical services, except for cosmetic services;
- (vi) providing services in the sphere of:
  - preschool training and education;
  - general basic and general intermediate education;
  - elementary, intermediate, higher professional education, graduate professional education;
  - additional and special education.

Types of activity provided for in Points 5 and 6 of this Part are liable to VAT exemption only if they are implemented by persons having appropriate state licenses (permissions) for the right to engage in these types of activity, issued in order set by normative legal acts of the Republic of Tajikistan;

- (vii) supply of goods, implementation of works and providing services by way of humanitarian aid;
- (viii) supply of goods, implementation of works and providing services, produced (implemented, rendered) directly by penitentiary agencies of the Republic of Tajikistan or state enterprises, included in penitentiary system of the Republic of Tajikistan;

- (ix) supply of newspapers, magazines, art literature, childrens literature, scientific and technical books and textbooks, as well as implementation of works on their publication.
- (x) Privilege provided for in this Item do not cover the above mentioned types of product of erotic and specialised advertizing character;
- (xi) supply of goods (clothing and shoes, head dresses, hoseiry and socks) of child stock by the list defined by the Government of the Republic of Tajikistan;
- (xii) supply of specialised products of individual use for handicapped by the list defined by the Government of the Republic of Tajikistan;
- (xiii) resort sanatorium services.

List of agencies (organisations) that render such services is determined by the Government of the Republic of Tajikistan.

- (xiv) Supply, including for export of primary aluminium, raw cotton and cotton fiber is exempted of VAT.

The following types of import are exempted of VAT:

- (a) import of National and (or) foreign currency (except for numismatic purposes), as well as securities;
- (b) import of gold, silver, platinum, palladium (rhodium, iridium, ruthenium, osmium) by National Bank of Tajikistan, as well as import of gold, silver, platinum, palladium (rhodium, iridium, ruthenium, osmium), natural (processed and unprocessed) diamonds, sapphires, emerald, ruby, alexandrites, pearls, spinels by the Ministry of Finance of the Republic of Tajikistan for the State bank of valuables;
- (c) import of goods as humanitarian aid, as well as import of goods, transferred to charity organizations on non-repayable basis for the purpose of elimination of consequences of natural hazards, accidents and catastrophes, and import of goods tranfered on non-repayable basis to state agencies of the Republic of Tajikistan;
- (d) import of industrial and technological equipment and its components (a set, it means without these components industrial and technological equipment does not work) for formation or replenishment of an authorised fund of an enterprise or technical rearmament of a functioning production, on condition that this property is used directly for manufacturing of goods, implementation of works and rendering services in accordance with constituent documents of enterprises and does not refer to the category of excise goods, as well as personal property, imported to the Republic of Tajikistan by foreign employees of enterprises with foreign investment directly for their use. In case if such enterprise is liquidated or if the above mentioned industrial and technological equipment and its components imported to the Republic of Tajikistan are not used or realised by this enterprise to another person during 4 years from the day of arrival (import) to the republic, VAT sum unpaid according to this Point fall due to collection for the budget. Granting of this privilege and appropriation of the equipment to industrial and technological is implemented in the order set by the Government of the Republic of Tajikistan;
- (e) import of agricultural technology and its parts, as well as medicaments according to the schedule, determined by the Government of the Republic of Tajikistan in accordance with Goods Nomenclature of Foreign Economic Activity;
- (f) import of goods implemented for realisation of target projects, approved by the Government of the Republic of Tajikistan, out of (within) proceeds of grants and (or)



- credits (loans), provided by legal persons or individuals, foreign states, governments of foreign states or international organizations;
- (g) import of goods for construction of objects of special importance. List of such important objects is determined by the Government of the Republic of Tajikistan.
  - (h) import (except for excise goods) of main types of raw materials, materials, energy resources and equipment according to the list and in volumes determined by the Government of the Republic of Tajikistan, implemented directly by Tajik Aluminium Plant for production of primary aluminium;
  - (i) import of specialised goods of individual use for the handicapped by the list, determined by the Government of the Republic of Tajikistan.

#### **Question 69**

**What other exemptions are there? Please list all exemptions.**

Answer:

There are no other exemptions, except those listed in the answer to Question 68.

#### **Excise Taxes**

#### **Question 70**

**Please provide the Working Party with an updated list of excise taxes based on the revisions contained in GR No. 153 of March 2003. Are the new rates already in effect?**

Answer:

List of excise taxes were provided in document WT/ACC/TJK/4.

#### **Question 71**

**Does Tajikistan apply excise taxes equally to all countries, or are there supplier countries, as with the VAT, where imports are not subject to application of these taxes? If so, please list them and indicate how Tajikistan intends to address this inconsistency with MFN treatment.**

Answer:

According to the new Tax code, Tajikistan applies excise taxes equally to all countries on a MFN basis.

#### **Question 72**

**We welcome the information that the previous discrimination in excise tax rates between imported and domestically produced goods has been eliminated by new legislation, which, according to Tajikistan's Legislative Action Plan entered into force in May 2003.**

**According to document WT/ACC/TJK/4, different excise rate taxes are applied to similar ("like") products, for example cognac 1.2/l), as compared to vodka (€0.56/l). Could you please provide justification for these differences.**

Answer:

The Republic of Tajikistan differentiates alcoholic beverages made of brown spirits from white spirits. Technological production process, cost value and consumer characteristics of these two alcohol products are scientifically differ from each other. The outcomes of fiscal economic and statistic calculation, analyses of the volume of internal production and import of goods are taken into consideration when excise tax is levied.

**(l) Rules of origin**

**Question 73**

**Could further clarification be provided on the following issues related to Tajikistan's Law on customs tariffs:**

- **in Article 27 (h), high technology products, manufactured in the open space in board spaceships, which belong to a given country or leased by it shall be deemed as goods which were fully produced in a given country. Such kind of provisions is not in compliance with the annex on origin of the revised Kyoto Convention of the WCO.**

Answer:

The Law "On customs tariff of the Republic of Tajikistan" is eliminated. Requirements of Special Attachment "K" of International Convention on simplification and harmonization of customs procedures (revised Kyoto Convention) in particular corresponding provisions "Rules on determining of the origin of goods" are taken into consideration when developing the new Customs Code of the Republic of Tajikistan. Since the issue of determining origin of goods produced in spaceships was not specifically covered in the revised Kyoto Convention, according to item 10 of the Article 30 of the new Customs Code the goods fully produced are considered: "products of higher technologies received at cosmic objects in open space in case the country is a state of registration of respective spaceship."

**Question 74**

**In Article 30 (3), last indent, of the same Law, it is mentioned that "while importing goods into the customs territory of the Republic of Tajikistan, a certificate of origin shall be presented in an obligatory way if its provided for ... by the legislation of the Republic of Tajikistan in the field of the protection of the environment, health of the population, protection of the rights of the Tajik consumers, public order, state security and other vital interests of the Republic." Could the list of the concrete situations defined by the legislation be provided? Is this list being revised on a regular basis (the revised Kyoto convention for instance mentions a revision every three years).**

Answer:

The Law "On customs tariff of the Republic of Tajikistan" is eliminated.

The issues of determining the country of origin of goods are regulated by the Chapter 6 of the new Customs Code of the Republic of Tajikistan.

In particular, according to Article 36(1) of the new Customs Code, upon importation of goods into the customs territory of the Republic of Tajikistan a document confirming the country of origin of goods shall be submitted in case the Republic of Tajikistan gives tariff preferences to the country of origin of

these goods in compliance with international agreements of the Republic of Tajikistan or according to the legislations of the Republic of Tajikistan. In such cases the document confirming the country of origin of goods shall be submitted to the customs bodies at the time of submission of the customs declaration. Provision of tariff preferences may be conditioned by the need to submit the certificate of origin of goods in compliance with an established format stipulated by international agreements of the Republic of Tajikistan and by the legislation of the Republic of Tajikistan.

The customs bodies are authorized to demand submission of a document confirming the country of origin of goods in other cases only when the declared information about the country of origin of goods, which affects the application of rates of customs duties, taxes and (or) prohibitions and restrictions established in compliance with the legislation of the Republic of Tajikistan, is suspected to be inadequate.

#### **Question 75**

**Article 33 (3) of the same law which concerns the establishment by the Government of the Republic of Tajikistan of the peculiarities of identifying a country of origin of goods imported from the territories of free economic zones and free warehouses situated in the territory of the Republic of Tajikistan.**

Answer:

The Customs Tariff Law is no longer in force. Rules of origin established by the Chapter 6 of the new Customs Code apply as well to goods originating free economic zones and free warehouses with no "peculiarities".

#### **Question 76**

**Please identify where in Tajikistan's laws the provisions of Article 2(h) and Annex II:3(d) of the WTO Agreement on Rules of Origin, giving importers, exporters, and others with a justifiable the right to request a determination of origin for their goods prior to the beginning of trade.**

Answer:

Articles 42-44 of the new Customs Code provide for the right of importers, exporters and other interested persons to request issuance of preliminary decision regarding the origin of goods and their classification.

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

#### **Question 77**

**We would appreciate the opportunity to review Tajikistan's new legislation on trade remedy measures and to providing comments on it.**

**Are there any plans to issue more detailed guidelines on how these agreements will be implemented by the Government of Tajikistan. If so, please provide details regarding these plans.**

Answer:

Legislative acts in these fields will be submitted upon completion of their drafting.

## **2. Export Regulation**

### **(a) Registration requirements for engaging in exporting**

#### **Question 78**

**Please confirm that the requirements for exportation are the same as for importation, e.g., registration, the Certificate, etc.**

Answer:

No registration and obtaining a certificate is required for engaging in exporting. See also answer to Question 11.

### **(b) Customs tariff nomenclature, types of duties, duty rates**

#### **Question 79**

**WT/ACC/TJK/3 states that "these [export] rates and measures are exceptional measures of active regulation of foreign economic activity on the territory of the Republic of Tajikistan, and they are not actually applied."**

- a) Can Tajikistan confirm that it does not at present apply the export duties that are legally authorized?**
- b) Please provide a table listing all exports, by HS line item, where export duties are provided for in legislation, the level of duty authorized, and information on whether or not these duties are currently applied.**

Answer:

- a) At present, Republic of Tajikistan does not apply export duties.
- b) No list of goods subject to export duties exist. Currently no export duties are applied in the Republic of Tajikistan.

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

#### **Question 80**

**Question 17 of WT/ACC/TJK/5 sought information on the operation of requirements for mandatory sale of specified commodities through the commodity exchange ( as required by Decree 237), and the WTO justification for these requirements. Tajikistan has stated that it will remove the requirements after "an agreed transition period."**

- **Tajikistan should provide the information requested.**
- **We will need much more information on the measures if we are expected to "agree" to a transition for their removal.**

Answer:

Requirement for mandatory sale of specified commodities through the commodity exchange is applied only to export of goods, produced in Tajikistan. This measure does not imply quantitative restrictions or bans on exports or sales in domestic market. Therefore, this requirement does not restrict access to Tajik market since it is not applied on imports.

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

**(a) Industrial policy, including subsidy policies**

**Question 81**

**In response to Question 84 of document WT/ACC/TJK/6 regarding funding for exploration work by mining enterprises, the Government of Tajikistan confirms that "funds are allocated for enterprises, which use local raw materials." To the extent that these benefits are contingent upon import substitution (i.e., benefits contingent upon the use of domestic, rather than imported goods), they could constitute prohibited subsidies under Article 3.1 of the WTO Subsidies Agreement.**

**If the above benefits are contingent upon the use of domestic over imported goods, please explain how the Government of Tajikistan plans to eliminate or bring this program into compliance with WTO provisions.**

Answer:

Response to Question 84 of document WT/ACC/TJK/6 regarding the funding of mining enterprises and distribution of funds to the enterprises that use local raw material implied that Government of the Republic of Tajikistan funds geological and exploration works of state enterprises, implementing prospecting and mining of minerals in the Republic of Tajikistan. But, funding is not conditioned upon use of local instead of imported raw materials.

**Question 82**

**In response to Question 78 of document WT/ACC/TJK/6, the Government of Tajikistan states that "there are no indirect subsidies from the State Budget of the Republic for products and sales of specific goods, within an export capacity framework." However, in Tajikistan's Memorandum on the Foreign Trade Regime it states, "several measures of indirect subsidizing of production and sales of certain goods forming the basis of export potential of the country are applied in practice." (See page 58, section (III)(3)(a))**

**Please explain the discrepancy between these two statements.**

Answer:

Granting indirect subsidies implied granting privileges in the form of tax and customs exemptions provided for in the Tax Code (Articles 145 and 211) and Customs Code (Article 345). Granting of these privileges are not conditioned upon the requirement of mandatory exportation. See also the answer to Question 68.

**Question 83**

**If the above mentioned subsidies are not granted through the State Budget, please explain through what mechanism they are provided.**

Answer:

See the answer to Question 82.

#### **Question 84**

**If the Government of Tajikistan does in fact grant indirect subsidies "of certain goods forming the basis of export potential," could you please provide further information regarding these subsidies, including pursuant to which legal authority they are provided? Please also explain whether these tax preferences are contingent upon export.**

Answer:

See the answer to Question 82.

#### **Question 85**

**If the subsidies are in fact contingent upon export, please explain how the Government of Tajikistan plans to eliminate or bring this program into compliance with WTO provisions.**

Answer:

These subsidies are not contingent upon export.

**(b) Technical regulations and standards, including measures taken at the border with respect to imports**

#### **Question 86**

**WT/ACC/TJK/8 refers to a new legislation on technical regulations which is in the process of development. We would welcome an English copy of this legislation once it is available.**

Answer:

Upon completion of the development of the draft Law on Technical Regulation and its approval, an English version will be submitted to the Working Party.

#### **Question 87**

**The information, contained in WT/ACC/TJK/8, confirms that Tajikistan will need new legislation to implement the provisions of the WTO TBT Agreement. An enquiry point must also be established.**

**Concerning fees, Tajikistan indicates that they are currently "to limited extent different for domestic and imported products." If Tajikistan believes this can be justified, we will need information on their level and the reasons for the difference. We would not expect that the fees would vary between supplier countries after accession.**

Answer:

Fees are determined according to labour output ratio by document RD 50-002-2002.

Upon accession of the Republic of Tajikistan to the WTO all fees for certification will be brought into compliance with the WTO national treatment principle.

Fees for certification are charged on MFN basis. In cases where mutual recognition agreements exist, recognition procedures are applied instead of certification procedures.

**Question 88**

**We would appreciate any other information Tajikistan would provide, e.g., an action plan, for addressing current deficiencies, and how it intends to bring its laws and practices in the TBT area into conformity with WTO provisions.**

Answer:

A Working group is established for developing a draft law "On technical regulating", which will be based on the WTO TBT and SPS agreements.

**Question 89**

**Concerning the new law on Technical Regulations contemplated in WT/ACC/TJK/8, we would appreciate additional specific information on how Tajikistan intends to alter its system to (a) make all standards voluntary, and (b) retain only those mandatory requirements that can be justified as technical regulations as provided for in the WTO TBT Agreement.**

**We look forward to reviewing any existing or draft legislation in this area.**

Answer:

Upon the completion of the draft Law its text will be submitted to the Working Party.

(c) **Sanitary and phytosanitary measures, including measures taken with respect to imports**

**Question 90**

**The information, contained in WT/ACC/TJK/9, confirms that there are a number of the provisions of the WTO SPS Agreement where no provisions exist in Tajikistan's laws.**

**We would appreciate information on how Tajikistan intends to proceed to address these deficiencies, e.g, an action plan, and to bring its laws and practices in the SPS area into conformity with WTO provisions.**

Answer:

Provisions of the Law of the Republic of Tajikistan on Veterinary No.73, adopted on 8 December 2003 do comply with requirements of WTO Agreement on SPS and other international rules (for example, with Sanitary Code of land animals, adopted in Paris in 2003).

According to this Law same rules and procedures are applied to food products, both produced in the country and imported.

In accordance with this Law import of products, obtained as a result of using biostimulators, antibiotics and hormones on animals in order to increase their productivity and efficiency, is prohibited.

At present, no amendments to the existing laws in the field of SPS are scheduled.

See answer to question 88.

**Question 91**

**We also would like to know how technical regulations in the SPS area will be addressed, e.g., in the context of the new law on Technical Regulations.**

Answer:

It is planned that sanitary and phytosanitary measures will be covered by the new draft Law on Technical regulating, then, based on which technical regulations in the area of SPS will be developed.

**Question 92**

**We look forward to reviewing any existing or draft legislation in this area.**

Answer:

Copy of the Draft Law on Technical regulating will be submitted upon its completion.

(e) **State-trading practices**

**Question 93**

**Please provide a copy of the charter or law that establishes the responsibilities of the "Khurokvori" Corporation.**

Answer:

According to point 5 of Regulation No. 48 of the Government of the Republic of Tajikistan was created State Unitary Enterprise (SUE) "Khurokvori". The copy of the charter of SUE "Khurokvori" will be submitted to the Working Party upon completion of their translation into English.

**Question 94**

**Does the Corporation control the purchases or sales of imports and exports of alcohol and tobacco products?**

Answer:

Yes. SUE "Khurokvori" regulates production, turnover and sales, including export and import of alcohol and tobacco products through licensing of this activities and administering quotas for the volumes of production and sales of these products.

**Question 95**

**Please explain the process by which the Corporation decides who is issued import quotas and licenses.**

Answer:

Enterprises producing alcohol and tobacco products submit to SUE "Khurokvori" declarations of planned volumes of production on yearly basis. Based on this declarations, SUE "Khurokvori" issues quotas on imports of ethyl alcohol and licenses. Quotas for import are issued on the basis of applications from importers on a first come – first served basis.



- (f) Free zones
- (g) Free economic zones

#### Question 96

**Please list any such zones currently (a) provided for in law, or (b) currently in existence. Are there any plans to establish any other such zones?**

Answer:

The Law on Free Economic Zones was adopted in 2004. However, no free economic zone is established to date.

#### Question 97

**Please confirm that goods produced in free zones or free economic zones will be subject to normal tariffs, taxes, and other customs requirement if sold into the rest of Tajikistan.**

Answer:

Point 1, Article 270 of the new Customs Code of the Republic of Tajikistan provides for:

1. In placing foreign imported goods under customs regime of free customs zone full or partial exemption from payment of customs duties and taxes is implemented, also measures related to economic bans and restrictions, determined according to normative legal acts of the Republic of Tajikistan are not applied. In exporting of these goods from the territory of free customs zone to other customs zones of the Republic of Tajikistan customs duties and taxes are levied and measures, related with economic bans and restrictions, determined in accordance with normative legal acts of the Republic of Tajikistan are applied according to rules of declared customs regime.

Thus, goods produced in free zones or free economic zones will be subject to normal tariffs, taxes, and other customs requirement if sold into the rest of Tajikistan

#### Question 98

**Please confirm that the provisions of the WTO will apply within any such zones established in Tajikistan, and that traders will have recourse to administrative and judicial appeal on the same basis as in the rest of Tajikistan.**

Answer:

Republic of Tajikistan confirms that WTO provisions will apply within the territory of free economic zones.

Traders have recourse to administrative and judicial appeal on the same basis as in the rest of Tajikistan. See also the answer to Question 10.

**(l) Government procurement practices**

**Question 99**

**With reference to WT/ACC/TJK/5, we welcome Tajikistan's intentions to eventually join the GPA and, concerning the reference to a transitional period, would encourage Tajikistan to consider joining immediately after accession to the WTO.**

Answer:

Tajikistan confirms its intention eventually to join the GPA. However, Tajikistan will not be able to join the GPA immediately after accession to the WTO and requests a certain transition period for this.

**Question 100**

**We urge Tajikistan to accede to the Government Procurement Agreement.**

Answer:

See the answer to Question 99.

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

**Question 101**

**Please confirm that Tajikistan does not use any of the following measures on agricultural products as prohibited by Article 4.2 of the Agreement on Agriculture:**

- **quantitative import restrictions (besides the ones Tajikistan has already stated for alcohol and tobacco products);**
- **variable import levies, minimum import prices;**
- **discretionary import licensing, non-tariff measures maintained through state trading enterprises;**
- **voluntary export restraints; or**
- **border measures other than ordinary customs duties.**

Answer:

Tajikistan confirms that currently, none of the measures mentioned above are applied. Measures applied at the border are indicated in Chapter IV, Part 1(g) of the document WT/ACC/TJK/3.

**Question 102**

**Does Tajikistan currently apply any special duties to products? If so, which products and what are the nature of these special duties? Does Tajikistan plan to introduce any new special duties on products upon accession?**

Answer:

Currently, Tajikistan does not apply any special duties to agricultural products.

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

**1. General**

**(c) Membership in international intellectual property conventions**

**Question 103**

**In reply to Question 94 of WT/ACC/TJK/6, Tajikistan indicates that it is ready to join the UPOV agreement ("International Union for the Protection of New Varieties of Plants"). When does Tajikistan plan to join the UPOV agreement?**

Answer:

According to the recommendations of UPOV expert, in the Law on seed progress of crops of the Republic of Tajikistan changes and amendments were entered by the Regulation No. 338 of the Government of the Republic of Tajikistan as of 31 August 2002.

In the second part of 2003 the Government of the Republic of Tajikistan submitted model-application concerning the joining to the UPOV Agreement and at present the Secretariat of International Union for the Protection of New Varieties of Plants is reviewing this application.

**(e) Fees and taxes**

**Question 104**

**With reference to WT/ACC/TJK/5 Question 42, we welcome the information that Tajikistan will eliminate the currently applied discrimination in fees between nationals and foreign persons. Please keep the Working Party informed of any developments.**

Answer:

Currently National Patent Informational Center of the Republic of Tajikistan is developing a Draft "Regulation on patent duties and duties levied for trademarks registration". All discriminatory measures between citizens of Tajikistan and foreigners on payments will be removed in accordance with this Regulation. As soon as it is adopted it will be submitted to the Working Party.

**Question 105**

**In reply to Question 42 of WT/ACC/TJK/5, Tajikistan indicates that it is working on bringing its fees into compliance with TRIPS national treatment requirements (Art. 3.1). Please provide a copy of the pertinent regulations once they have been revised.**

Answer:

See the answer to Question 104.

## **2. Substantive Standards of Protection**

### **(a) Copyright and Related Rights**

#### **Question 106**

**In reply to Questions 100 and 101 of WT/ACC/TJK/6, Tajikistan discusses the beneficiaries of protection under the Copyright Law. As a member of the Berne Convention as of 9 March 2000, we understand that the literary and artistic works of Berne Union authors are protected in Tajikistan. However, the nature and extent of such protection remains unclear. Specifically, in the response to Question 100 regarding national treatment for authors, the articles cited only set forth the persons eligible for protection, not the nature or extent of protection provided. The national treatment principle is the bedrock of all of the major copyright conventions including Berne, Rome, and the new WIPO "Internet" Treaties. Is this principle explicitly set forth in your law?**

#### Answer:

Taking into consideration that the principle of national regime is the basis of international conventions on copyright, the Law on Copyright and Related Rights of the Republic of Tajikistan as of 1998 (Article 4, 30) includes list of legal and natural persons that have right to protection by this Law and obligation to protect products in accordance with international agreements to which Tajikistan is member. In this list there are no differences made between foreign citizens and citizens of the Republic of Tajikistan, as well as, if international agreement in which Tajikistan is part, include principle of national regime, then Republic of Tajikistan ought to follow it. Thus, the principle of national regime is fully respected. However, considering the importance of this principle for international protection of copyright, and conditions related to accession to WTO, a Draft Law of the Republic of Tajikistan on Amendments to the Law of the Republic of Tajikistan on Copyright and Related Rights of 1998 is prepared, in which the principle of national regime is precisely defined.

#### **Question 107**

**With respect to protection for producers of sound recordings, while your responses under Questions 100 and 101 adequately set forth the criteria for eligibility for protection, there does not seem to be any point of attachment. This gap will be resolved upon accession to the Geneva Phonograms Convention or the WTO. Until such time as Tajikistan accedes to the WTO or Geneva, Tajikistan does not appear to provide any protection under its Copyright Law to U.S. producers of sound recordings. If this is a misreading of Tajikistan's law, please explain how U.S. producers of sound recordings currently are protected in Tajikistan, including the points of attachment for such works.**

#### Answer:

Copyright to phonogramme is protected by the Law of the Republic of Tajikistan on Copyright and Related Rights and provisions of the Bern Convention, to which Tajikistan is a member. A certain part of phonogrammes of foreign producers falls under effect of Article 30 of the given Law.

According to Article 42 of the Law on Copyright and Related Rights, rights provided for in this Law in regard to performer, producer of phonogramme, organisation of tele-and-cablecasting remain in force for 50 years.

At present, in order to provide full protection of rights of foreign phonogramme producers in the Republic of Tajikistan a Draft Regulation of the Government of the Republic of Tajikistan on joining

the Rome Convention on interest protection of singers-performers, phonogramme producers and casting organisations as of 1961 has been prepared.

#### **Question 108**

**In response to Question 107 of WT/ACC/TJK/6, Tajikistan states there is "no separate provision" in Tajikistan's law on copyright and related rights that extends full retroactive protection for foreign works and sound recordings as required under Berne Article 18 and TRIPS Articles 14(6) and 70(2). Instead, Tajikistan merely relies on Article 2 of its law on copyright and related rights law, a general provision listing the sources of copyright and related rights law in Tajikistan, to discharge its international obligations.**

#### Answer:

Regarding retroactive protection of objects of copyright and related rights, legislation of the Republic of Tajikistan in the field of copyright do not contradict to Article 18 of the Berne Convention and Articles 14 and 70 of TRIPS Agreement, which do not require renewal of protection rights on object of intellectual property that at the date of entering into force of the mentioned international agreements go to public property. In particular, Article 2 of the Law of the Republic of Tajikistan on Copyright and Related Rights indicates that "legislation of the Republic of Tajikistan on copyright and related rights are based on the Constitution of the Republic of Tajikistan and includes present Law, other laws, legislative and other normative acts adopted in accordance with it, as well as international agreements, recognized by the Republic of Tajikistan". Article 10 of the Constitution of the Republic of Tajikistan provides for: "International legal acts, recognised by the Republic of Tajikistan, are constituents of legal system of the republic. In case of unconformity of the laws of the republic with recognised international legal acts the norms of international legal acts are applied." Therefore, Republic of Tajikistan follows Items 1 and 2, Article 18 of Berne Convention on protection of literature and art works on retroactive protection and Article 14 and 70 of TRIPS Agreement. In view of this term of protection of copyright in the Republic of Tajikistan determined to 50 years after the death of author according to the new Law of the Republic of Tajikistan on copyright and related rights as of 13 November 1998. according to the previous legislature on copyright (Article 493 part 4 of the Civil Code of Tajik SSR of 1965) term of protection comprised 25 years. Thus, if 25 years term of protection had not expired by 13 November 1998 the work falls under the effect of the new Law and term of its protection rises to 50 years. If 25-year term expired by 13 November 1998 then it becomes public property.

#### **Question 109**

**At the time that Tajikistan accedes to the WTO, the manner in which Tajikistan meets its obligation to provide protection for existing copyrights for the remainder of the copyright term is of particular importance to other WTO members. Given the importance of retroactive protection of copyrights, please explain whether Tajikistan will provide for a clear, express, independent provision in its copyright and related rights law ensuring the full retroactive protection of foreign works and sound recordings.**

#### Answer:

See the answer to Question 108.

#### **Question 110**

**At the time Tajikistan accedes to the WTO, under TRIPS Articles 14(6) and 70(2) it will be required to extend the full remaining term of protection for existing copyrights and related rights. In response to Question 109 of WT/ACC/TJK/6, Tajikistan sets forth the full term of**

**protection for copyrights (generally life of the author plus 50 years) and for related rights (generally 50 years from first fixation or performance) as provided for in Articles 17 and 42, respectively, of its law on copyright and related rights. However, in response to Question 107 of WT/ACC/TJK/6, Tajikistan suggests that certain existing copyrights and related rights may be eligible only for a significantly shorter period of protection (25 years). Please explain.**

Answer:

According to the new Law on Copyright and Related Rights as of 13 November 1998, term of copyright protection in the Republic of Tajikistan determined for 50 years after the death of author. In accordance with the previous legislature on copyright (Article 493 part 4 of the Civil Code of Tajik SSR of 1965), term of protection totaled 25 years. Thus, if a 25-year term of protection has not expired by 13 November 1998, the work falls under effect of the new law and term of its protection rises to 50 years. If a 25-year term expired by 13 November 1998 then it becomes public property.

Following example is brought for demonstration.

	Civil Code of 1965		Law of the Republic of Tajikistan on Copyright and Related Rights of 1998
	Entry of a 25-year term of protection	End of term	Consequences
<b>Case 1</b>	01.01.1970	01.01.1995 (expired prior to adoption of the Law of 1998)	Transferred to public property
<b>Case 2</b>	01.01.1975	01.01.2000	Term of protection extended to 01.01.2025

**Question 111**

**In reply to Question 105 of WT/ACC/TJK/6, Tajikistan indicates that copies of Government Decrees relating to governmental regulation of royalty rate-setting in the context of the collective administration of certain rights are "available through document WT/ACC/TJK/6/Add. 1. However, these decrees were not included in this submission of legislation. Please provide copies of Government Decrees No. 251 of 1 July 1999; No. 252 of 1 July 1999 and No. 37 of 4 February 2002.**

Answer:

See WT/ACC/TJK/11/Add.1.

**Question 112**

**Except for remuneration right for cable transmissions, producers of sound recordings do not enjoy a public performance right in Tajikistan (See Articles 35, 40 of Tajikistan's Copyright and Related Rights Law). Please describe any plans to provide producers of sound recordings an exclusive public performance (making available) right, for either analog or digital transmissions.**

Answer:

The Law of the Republic of Tajikistan on Copyright and Related Rights does not prohibit phonogram producers to use phonogrammes in any form: "Except for cases provided for in this Law, phonogram producer owns exclusive rights to use phonogram in any form, including the right get remuneration for every way of using phonograms" (Article 35). Thus, phonogram producer also has a right to public performance. However, Republic of Tajikistan included separate regulation on public

performance and placement in digital medium in the Law of the Republic of Tajikistan on Amendments to the Law of the Republic of Tajikistan on Copyright and Related Rights.

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

**Question 113**

**According to Article 18 of the Law on Trademarks and Service Marks, marks will be published in the Official Gazette within 6 months of entry on the register. TRIPS Article 15.5 requires publication of each trademark either before it is registered, or promptly afterwards. Will the planned Amendments to the Law on Trademarks and Service Marks noted in the IPR Legislative Action Plan (WT/ACC/TJK/7) change this article?**

Answer:

In a new edition of the Law of the Republic of Tajikistan on Trademarks and Service Marks being drafted by the Patent Agency for publication of information on registration of trademarks it is intended to determine a three month term from the date of putting trademark into the State register. This term is related to periodicity of publishing the official bulletin that is issued quarterly.

**Question 114**

**What are the civil and criminal penalties for wrongful use of a trademark? Who enforces any judgment related to the wrongful use of a trademark? In cases of infringement, how are damages calculated?**

Answer:

In accordance with Article 32 of the acting Law on Trademarks and Service Marks wrongful use of a trademark entails civil liability by the acting legislature. Protection of civil rights by the acting Civil Code is implemented (Article 12) in particular by means of:

- Recognition of rights;
- Renewal of regulation that existed prior to violation of law and passing of acts that break law or threaten of its violation;
- Compensation for losses;
- Compensation for moral damage.

If illegal use of trademark exercised repeatedly after imposition of administrative penalty or caused significant damage then violator is fined from one to two thousand of minimal wage rate or disciplinary works for term of upto six months (Article 275 of Penal Code of the Republic of Tajikistan).

Illegal use of foreign trademark in accordance with the Law on Competition and Restriction of Monopolistic Activity on trademarks is also classified as fact of unfair competition, i.e. fact of violation of antimonopoly legislature. According to Article 9 of the above Law the State Antimonopoly Body, in particular, has the right to give hosting subjects the necessary for implementation regulations on discontinuance of antimonopoly law violation, on revision of agreements that contradict the antimonopoly legislature, on transfer to the budget the profit gained as a result of antimonopoly law violation.

If the decision on wrongful use of a trademark is taken by the court then execution of judgement is controlled by judicial body in established order.

The size of losses from violation of rights to a trademark is determined coming from the size of lost profits, i.e. uncollected profits. Moreover, according to Article 15 of the Civil Code of the Republic of Tajikistan lost profits should not be less than profits earned by those who violated other's right.

**(c) Geographical Indications**

**Question 115**

**In the draft Law of the Republic of Tajikistan on Geographical Indications, the Article 1 definition of geographical indications includes a definition of appellations of origin, which is more narrow than the TRIPS Article 22.1 definition of geographical indications, and indications of source, which do not seem to meet the level of Article 22.1 of TRIPS. Under these definitions, how does the draft Law of the Republic of Tajikistan on Geographical Indications provide the protection required to geographical indications, as set out in Articles 22-23 of TRIPS and as defined in Article 22.1 of TRIPS?**

Answer:

First of all it should be noted that at present the Patent Office of the Republic of Tajikistan is working on the new draft of the Law on Geographical Indications where remarks of experts were taken into consideration. The questions from Members on implementation of TRIPS regulations in regard to geographical indications will also be considered at drafting the law.

Working party that is presently working on the regulations protecting geographical indications has proposed to include in the draft two definitions: definition of the name of goods origin and definition of geographical indications (as it is defined in TRIPS). Requirement of TRIPS Articles 22.2 and 22.3 is to be implemented by the following regulations of the Draft Law:

- a) Declined registration or invalidated on the initiative of an appropriate body or by claim of uninterested party of trademark registration that contains geographical indication of goods not originating from corresponding territory, if use of this indication in a trademark for such goods misleads consumers regarding the real place of good origin.
- b) Prohibited the use for indication of good or its presentation of any means specifying or inducing associations that this good originates from other than this place of origin, geographical region, that by this misleads consumers regarding the origin of the good, and any use in this meaning shall be considered as unfair competition in the context of Article 10bis of Paris Convention.
- c) Not allowed to use geographical indication, which although literally is true in regard to territory, region or locality from where goods originate, but belies on the real place of goods origin.
- d) Ambiguous geographical indications might be used in case if they differ somehow from each other, for example, accompanied by different descriptive elements.

**Question 116**

**Article 3.2 of the draft Law of the Republic of Tajikistan on Geographical Indications states, "Legal protection of an appellation of origin located in another country shall be granted in the Republic of Tajikistan if that appellation of origin is registered in the country of origin of the good and in the Republic of Tajikistan in accordance with legislation." How do foreign geographical indications attain registration in Tajikistan if their home country does not protect such signs as appellations of origin, but rather under another system, such as by protecting**



**them as certification marks? How would foreign geographical indications that do not consist of the name of the place of origin obtain registration in Tajikistan?**

Answer:

Registration regime of protection of name of origin of goods (hereafter "names") is supposed to retain same as it was in the draft submitted to the WTO Secretariat. For registration of foreign names it is necessary to submit a document on the right to declared name in the country of origin of the good, i.e. requirements of Articles 3.2 and 4.5.2 of the previously submitted Draft are abolished.

#### **Question 117**

**Article 4.5.2 of the draft Law of the Republic of Tajikistan on Geographical Indications requires, "for a foreign applicant -a resolution of the local government authority stating that the applicant is located in the geographical object in question and produces the good, the special features of which are defined by natural conditions or other factors or by combination of natural conditions and these factors." How would applicants from countries that do not require government certification of these factors, but rather employs a system of self-certification, such as a certification mark system, comply with Article 4.5.2, and thus be able to obtain registration in Tajikistan?**

Answer:

The question is related with inaccuracy of translation. In this case instead of "...resolution of the local government authority..." should be read "...conclusion of competent authority...". Furthermore, a competent authority must not necessarily be a governmental body. Declarant from a country that does not require state testimony on these factors and that using self authenticity system such as mark –prove system can obtain registration in Tajikistan.

#### **Question 118**

**Article 5.8 of the draft Law of the Republic of Tajikistan on Geographical Indications refers to the examiner's ability to grant "the right to use a previously registered appellation of origin." Does the original applicant or right holder have any rights to control the use of the geographical indication?**

Answer:

Regarding the rights of initial declaring for control in using geographical indications, these rights do not differ from provided Articles 16 and 18 of the draft of any third party provided for in Articles 16 and 18 of the old draft.

#### **Question 119**

**Under Article 13.3 of the draft Law of the Republic of Tajikistan on Geographical Indications, "Any person who honestly used the name of a geographical object identical or similar to the registered appellation of origin for not less than six months prior to the date of its registration shall be granted the right to continue to use it during a period determined by the Patent Office, but for not more than two years counted from the date of the said registration." Does this include trademarks that have been registered in Tajikistan, or which have gained rights under Article 7 of the Trademark and Service Mark Law (i.e. well-known marks)? How does this preserve the legal rights of trademark owners, consistent with Articles 16(1) and 24(5) of the TRIPS Agreement?**

Answer:

"Honest use", mentioned in Article 13.3 of the draft Law on geographical indications, includes trademarks too. Thus, if previously registered trademark is identical or similar to the extent of mixtion with name of place of origin that was registered later, then further use of such mark is possible only within the period determined by Patent Office and not exceeding two years from the date of name registration.

It should be added that analysis of trademarks database of the Republic of Tajikistan allows to conclude that this type of encounters of trademarks and geographical indications in the Republic of Tajikistan will not happen, as there are no marks in the database that are geographical indications in the meaning defined by TRIPS.

**Question 120**

**How does the draft Law of the Republic of Tajikistan on Geographical Indications provide the legal means for interested parties to prevent the use of false geographical indications used on wines and spirits, as required under Article 23 of the TRIPS Agreement?**

**What are the contemplated civil and criminal penalties for wrongful use of a geographical indication? Who will enforces any judgment related to the wrongful use of a geographical indication? In cases of infringement, how will damages be calculated?**

Answer:

Draft law On geographical indications is currently being revised with a view of providing additional protection for geographically indications for vines and spirits as provided for under TRIPS provisions. After the adoption of this law, amendments to the criminal and other legislation would be introduced in order to eliminate these deficiencies.

**(e) Patents**

**Question 121**

**Article 15 of the draft Law on Inventions allows conversion from a petty patent application to an application for grant of a patent for invention. Under this system, do such converted applications enjoy the 20-year-from-filing patent?**

Answer:

In case of conversion of petty patent application to an application for a patent on invention calculation of a 20-year term of validity of patent is done from the date of application for a petty patent.

**Question 122**

**Article 26 of the draft Law on Inventions allows a patent owner who is unable to use his invention without infringing a patent owned by another to demand a license from that other patent owner. If the other patent owner refuses, may the dependent patent owner obtain a compulsory license? If so, please explain how the draft law complies with the safeguards listed in TRIPS Article 33(a)-(1), specifically subsection (1).**

Answer:

According to Article 28 of the Law of the Republic of Tajikistan on Inventions dependent patent owner may obtain compulsory license. Article 28 of the Law complies with the safeguards listed in Article 31 (a)-(1) TRIPS.

**Question 123**

**The draft Law on Inventions allows a third party to obtain a compulsory license on the basis of failure to use the invention. Does importation of the invention into Tajikistan satisfy the use requirement, in accordance with TRIPS Article 27(1), which prohibits discrimination in the enjoyment of patent rights on the basis of whether the invention is imported or locally produced?**

Answer:

Article 26 of the Law of the Republic of Tajikistan on Inventions is such treated that import of inventions is also considered as use of invention.

**(f) Plant Variety Protection**

**Question 124**

**The IPR Legislative Action Plan (WT/ACC/TJK/7) indicates that the Law on Selective Achievements of Agricultural Products will be amended by the end of this year. Will these amendments bring Tajikistan's regime for plant variety protection into conformity with the UPOV agreement?**

Answer:

According to recommendations of UPOV experts, amendments were introduced to the Law On selective achievements on agricultural crops.

**(h) Requirements for Undisclosed Information, including trade secrets and test data**

**Question 125**

**The Civil Code, Article 153, protects information if "there is free legitimate access to it." Please explain how this provision complies with TRIPS Article 39(2), specifically how there can be free legitimate access to secret information.**

Answer:

This technical mistake in the Civil Code that is planned to be corrected by amending Article 153. The expression "there is free legitimate access to it" is to be replaced by "absence of free access to it on legal basis".

**Question 126**

**The Law on Competition, Article 7, prohibits "receipt, use, and disclosure of scientific and technical, production, or trade information, including a commercial secret" without consent of the owner. Does this provision apply to the government entities in Tajikistan responsible for**

**pharmaceutical or agricultural chemical regulatory approval? If not, how does Tajikistan's law comply with TRIPS Article 39(3)?**

Answer:

Article 7 of the Law on Competition does not apply to the government entities. By the Article 152 of the Civil Code Government entities have to keep up service and commercial secret.

#### **4. Enforcement**

##### **(a) Civil judicial procedures and remedies**

###### **Question 127**

**The IPR Legislative Action Plan (WT/ACC/TJK/7) indicates that a Civil Code (Part III) relating to TRIPS is in the drafting stage and will be submitted to Parliament in April. May a copy of the draft be provided? We also understand that amendments to the Criminal Code and a new Civil Procedure Code, Economic Court Procedure Code and regulations on border measures are or will be drafted. When available, may these amendments or new provisions addressing TRIPS requirements be provided? Information relating to procedures involving: production of evidence by the opposing party; damages; seizure of infringing goods and destruction of infringing goods in civil cases are of particular interest. With regard to the destruction of infringing goods, please indicate the articles under Tajikistan laws that govern destruction. Is this governed by Article 158 of the Administrative Violations Code?**

Answer:

Copy of draft of Part III of the Civil Code and extracts from amendments to the Criminal Code will be submitted upon completion of their translation into English.

Instructions on border measures will be submitted after their formulation.

Destruction of infringing goods realized according Article 80 of the Criminal Procedure Code, and Article 48 of the Law on Copyright and Related Rights, and also will be realized according Article 37 of the new edition of the Law on Trademarks and Service Marks, upon its adoption.

##### **(b) Provisional measures**

###### **Question 128**

**With reference to WT/ACC/TJK/5 Question 44, we welcome the information that Tajikistan will seek to achieve WTO compliance with respect to the fact that its legislation currently does not provide for the judicial authorities the authority to order prompt and effective provisional measures to prevent an infringement of any intellectual property right. Please keep the Working Party informed of any developments.**

Answer:

Currently new Civil Procedure Code, Economic Courts Procedure Codes, Criminal Procedure Codes are being developed where provisional measures will be reflected.

Provisions for suspension of release of counterfeit and pirated goods are determined under Chapter 54 of the new Customs Code of the Republic of Tajikistan.

**Question 129**

**In reply to Question 137 of WT/ACC/TJK/6, Tajikistan indicates that Articles 140-147 of the Civil Procedure Code provide judicial authorities with authority to order provisional measures. Please provide the text of these articles.**

Answer:

Texts of Articles 140-147 of the Civil Procedure Code are available for consultation.

**(c) Any administrative procedures and remedies**

**Question 130**

**In reply to Question 138 of WT/ACC/TJK/6, Tajikistan refers to legislation that envisages administrative responsibility for law offense if the violation does not entail criminal responsibility. Please provide a copy of this legislation. Please indicate the law enforcement agency that will enforce this administrative remedy.**

Answer:

Article 158(2) provides for administrative responsibility for illegal use for commercial purposes of copies of works or phonograms (attached).

District (municipal) judicial court examine cases related to these law violations (Article 221, Code of Administrative Violations).

**Question 131**

**In reply to Question 139 of WT/ACC/TJK/6, Tajikistan describes the manner in which fines are provided for in the Law on Competition. With regard to fines provided for under the Law on Competition, what fines have been assessed under this law relating to intellectual property infringement?**

Answer:

The Law on Competition does not provide for fines for violations in the sphere of intellectual property. Protective measures from violations in the field of intellectual property are provided for in the Civil Code, The Code on administrative Violation and the Criminal Code.

**Question 132**

**With regard to the procedures identified in the response to Question 141 of WT/ACC/TJK/6, which government agencies would be responsible for taking the actions described? Please describe awards that have been made within the last two years utilizing the process described in the response.**

Answer:

Ministry of Internal Affairs and Prosecutor's Office hold responsibility for implementation of measures on protection of intellectual property provided by the Code on Administrative Violations and Criminal Code. Final decision on applying measures of administrative penalty is taken by district (municipal) judicial court.

There are no measures of administrative penalty were taken under the article 158(2) of Code on Administrative Violations and article 156 of Criminal Code within the last two years. The Prosecutor's Office processed in 2003 - 55 criminal cases and in 2004 - 135 criminal cases, under the article 294 of Criminal Code, which were submitted to the Court.

**(d) Any special border measures**

**Question 133**

**Please describe the manner in which Tajikistan has implemented or plans to implement the Decision on the Rules for Customs Control on the Transfer of Goods Containing Intellectual Property Objects across the Customs Border (submitted with WT/ACC/TJK/6/Add.1).**

Answer:

Please note that the new Customs Code is in effect starting from 1 January 2005. According to the List of normative legal acts to be developed in connection with adoption of the new Tax and Customs Codes, a new instruction regarding the Rules for Customs Control on the Transfer of Goods Containing Intellectual Property Objects across the customs border is being developed.

**Question 134**

**In reply to Question 145 of WT/ACC/TJK/6, Tajikistan refers to the Decision approved by Resolution No. 185 of 30 April 2002. Pursuant to this Decision, please indicate whether under Tajikistan law the customs authority may take enforcement action relating to the exportation of counterfeit or piratical goods.**

Answer:

Measures on protection of intellectual property provided for in Chapter 54 of the new Customs Code are applied in relation to export of faked and pirated goods.

**Question 135**

**In reply to Question 146 of WT/ACC/TJK/6, Tajikistan notes that measures provided by the Decision in Resolution No. 185 of 30 April 2002 may not be applied with respect to goods transiting in international postal shipments. Please describe this exception for enforcement action with regard to in transit goods.**

Answer:

According to the Article 444 of the new Customs Code, measures related to suspension of release of goods are not applied to goods, containing objects of intellectual property and carried through the border by physical persons or sent in international postal shipments in insignificant quantities, if such goods are intended for personal, family, home and other needs not related to commercial activities.

### Question 136

**In reply to Question 147 of WT/ACC/TJK/6, Tajikistan states that the procedures under the Decision in Resolution No. 185 of 30 April 2002 are being developed. Please describe how Tajikistan has implemented or plans to implement these procedures.**

Answer:

It is planned that new instruction on rules of customs control over the goods containing objects of intellectual property, will be adopted in 2005.

### Question 137

**Regarding the reply to Question 148 of WT/ACC/TJK/6, it is not clear whether a court may order destruction of counterfeit or pirated goods. Please clarify.**

Answer:

According to the Article 48 of the Law On copyright and related rights, and Article 37 of the new Law on Trademark and service marks, courts may order destruction of pirated and counterfeit goods.

### Question 138

**In reply to Question 151 of WT/ACC/TJK/6, Tajikistan cites the Decision in Resolution 185 with respect to customs procedures for inspection by a right holder. Please describe the procedures under Tajikistan law relating to the inspection and delivery of information implementing the provisions in this Decision.**

Answer:

Article 442 of the new Customs Code provides for:

1. on written permission of the Customs Body right holder and declarant (their representatives) may take under customs control trials and samples of goods in regard to which a decision on discontinuance of output is taken, conduct investigation, as well as inspect, take photo or otherwise fix such goods.
2. on request of the right-holder (his representative) the Customs Body can provide additional information that a right-holder might need in order to prove violation of his rights, except for cases provided for in the Legislature of the Republic of Tajikistan.
3. information, obtained by right-holder (his representative) or declarant in accordance with this Article is confidential and should not be publicised, transferred to third parties, as well as state authorities, except for cases provided for in the Legislature of the Republic of Tajikistan.

#### (e) Criminal Procedures

### Question 139

**In reply to Question 152, Tajikistan cites articles from the Criminal Code relating to infringements. Please describe the meaning of "illegal use" under both the copyright and trademark infringement articles cited.**

Answer:

"Illegal use" in the meaning of Article 156 of the Criminal Code means acts violating the exclusive right of owners of trademarks, copyright and related rights.

**Question 140**

**In reply to Question 153, Tajikistan states that the level of counterfeit activity required for prosecution and for imprisonment is not directly determined in legislation. Please describe in practice the level of infringing activity that is required for criminal prosecution and for imprisonment. Please also describe the level of criminal fines and jail time that have been assessed by the courts for infringing activity.**

Answer:

Amendments No. 35 as of 17 May 2004 were brought in the Criminal Code. These amendments, among others, determined the size of damage done in order to determine criminal penalty for violation. Criminal punishment comes on violation of copyright and related rights and rights of patent-holders, if damage done exceeds 1000 times of minimal wage rate.

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