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**Working Party on the
Accession of Tonga**

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ACCESSION OF TONGA

Additional Questions and Replies

The following submission is being circulated at the request of the Delegation of the Kingdom of Tonga.

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Question 1

Concerning Tonga's status report on outstanding legislation and implementing regulations that are vital to Tonga's implementation of provisions, we look forward to a full status report on the legislative plan.

Answer:

Tonga's revised Legislative Action Plan is reproduced in Annex.

II. ECONOMIC POLICIES**- Foreign Exchange and Payments****Question 2**

Paragraph 13 of WT/ACC/SPEC/TON/4/Rev.3. We remain interested in a description of the repatriation requirements applied by Tonga. The information in response to Question 2 of WT/ACC/TON/12 should be used, and Tonga should describe precisely what measures are contemplated by the term "repatriation requirements."

E.g., what "assets in Tonga" are affected, and how; what law provides the government with the authority to require such repatriation; over what period of time should the repatriation occur; and how does it become known that such repatriation is no longer necessary, i.e., how is the measure terminated or suspended once the crisis that sparked invocation of the repatriation requirement had passed?

Since Tonga states that the use of these measures, which appear to be forms of control over the acquisition and use of foreign exchange, is foreseen to defend the balance of payments, we would appreciate a commitment in this section from Tonga to only use such measures when the International Monetary Fund has confirmed that there is a balance of payments issue to be resolved.

Answer:

Paragraphs 12 and 13. Please see text in the revised Draft Report.

Paragraph 14. Please see text in the revised Draft Report. Article XV:1 of GATT 1994 recognizes that exchange questions are within the jurisdiction of the IMF and that questions of quantitative restrictions and other trade measures are within the jurisdiction of WTO. This specifies relations between WTO and the IMF. It suggests that it would not be appropriate for governments to accept WTO Protocol commitments on matters within the jurisdiction of the IMF since this would make them subject to the WTO dispute settlement system and interpretations of the two sets of obligations might conflict. Tonga is ready to accept the commitment on import restrictions imposed for balance of payments reasons already contained in paragraph 81 of the draft report and suggests that Article XV of GATT 1994 be added to the list of relevant WTO provisions in that paragraph.

- **Investment Regime**

Question 3

Paragraph 21 of WT/ACC/SPEC/TON/4/Rev.3: Can Tonga confirm that all foreigners who wish to do business in Tonga, whether or not that involves actual establishment of a business, must register and receive a Foreign Investment certificate. Must an applicant invest a minimum amount to receive a Foreign Investment certificate? Please clarify the universe of circumstances under which an Foreign Investment certificate can be denied. [NOTE: See also comments on Paragraph 48]

Answer:

Paragraphs 20 – 21. Please see text in the revised Draft Report.

Paragraph 22. Please see text in the revised Draft Report. A later section of this report is dedicated to subsidies. Tonga therefore proposes the deletion of the commitment in this paragraph since it duplicates commitments in paragraphs 107 and 111.

- **State Ownership and Privatization**

Question 4

Paragraph 25-26 of WT/ACC/SPEC/TON/4/Rev.3: Can Tonga confirm somewhere in the text that there are no restrictions on private or foreign invested firms that would prohibit them from entering sectors where they compete with government owned firms that currently are the sole producers or service providers, e.g., in distribution of cooking gas (Home Gas)?

Answer:

Paragraph 25. Please see text in the revised Draft Report.

Question 5

Paragraph 28 of WT/ACC/SPEC/TON/4/Rev.3: We remain interested in knowing the relative size of the state sector. Can Tonga contrast the output of state owned firms to GNP?

Answer:

Tonga does not have statistics on the output of state owned firms. Tonga can contrast the value of imports by the quasi-government sector with the total value of imports: in 2004 the value of imports by the quasi-government sector was TOP 4.5 million compared to a total value of the imports of TOP 206.4 million.

Question 6

Paragraph 29 of WT/ACC/SPEC/TON/4/Rev.3: Can Tonga remove the brackets?

Answer:

Paragraph 29. Please see text in the revised Draft Report.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 7

Paragraph 40 of WT/ACC/SPEC/TON/4/Rev.3: Concerning the brackets, as it is Tonga's opinion; we believe that the words should be "considered this situation to be."

Answer:

Paragraph 40. Please see text in the revised Draft Report.

Question 8

Paragraph 42 of WT/ACC/SPEC/TON/4/Rev.3: We note that all laws must be passed by the National Assembly, and that the WTO, as an international agreement, would supersede domestic legislation. Please clarify if ratification of the WTO package will require approval by the Legislative Assembly (LA). [Note: this Question may be answered in Paragraph 45 – is the "parliament" referred to there the Legislative Assembly? If so, please use consistent terminology.]

Answer:

Paragraph 45. Please see text in the revised Draft Report.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 9

Paragraph 48 of WT/ACC/SPEC/TON/4/Rev.3: Please confirm in the text that a foreign firm seeking a foreign investment certificate in order to secure a business license in order to import, e.g., as importer of record, will be granted the certificate automatically except for the restrictions listed in the schedules attached to the Foreign Investment Law. If this is not the case, please provide information on the reasons that a firm seeking to be the importer of record for imports to Tonga would be rejected.

Answer:

Paragraph 48. Please see text in the revised Draft Report.

Question 10

Please provide an update on the status of implementation of the new Business Licenses Act and its implementing regulations. Are these provisions now in force? Have import and export licensing been abolished?

Answer:

Please see the last sentence in paragraph 49 of the revised Draft Report.

Question 11

The last sentence of Paragraph 48 refers to a foreign investment "license." If this is the same as the "foreign investment registration certificate," please use that term, or explain the difference.

Answer:

Paragraph 48. Please see text in the revised Draft Report.

A. IMPORT REGULATIONS

- **Ordinary Customs Duties**

Question 12

Paragraph 53 of WT/ACC/SPEC/TON/4/Rev.3: Please confirm the status of plans to adopt the single rate tariff at 15 per cent. Is 1 January 2007 still the target date?

Answer:

Paragraph 53. Tonga confirms that the single rate tariff of 15 per cent will be implemented by 1 January 2007 at the latest.

- **Fees and charges for services rendered**

Question 13

We take note of the commitment in paragraph 65.

Answer:

Paragraph 64*bis* (new paragraph 65). Please see text in the revised Draft Report. Tonga has added this paragraph to include fees for the issuance of business licences to authorize importers to engage in the business of importing. Paragraph 66 contains Protocol Commitments on these.

- **Application of Internal Taxes**

Question 14

Paragraph 69 of WT/ACC/SPEC/TON/4/Rev.3: Please make it clear that the "threshold" for not paying sales tax was trade turnover.

Answer:

Please see text in the revised Draft Report (paragraph 70).

Question 15

Paragraph 70 of WT/ACC/SPEC/TON/4/Rev.3: Please give a complete list of items for which the Consumption Tax is set at zero.

Answer:

1. The following supplies are exempt from the Consumption Tax:
 - (a) Medical prescriptions, dental nursing or health services;
 - (b) Educational services;
 - (c) Financial services;
 - (d) Public transport services; and
 - (e) Lease of land for residential purposes.

2. The following taxable supplies are subject to a zero rate of Consumption Tax:
 - (a) An export of goods;
 - (b) An export of services supplied for use outside of Tonga;
 - (c) A supply of international transport of goods or passenger services from a place outside Tonga to another place or if the transport or part of the transport is across the territory of Tonga;
 - (d) The supply of goods as part of the transfer or part or whole of a business as a going concern by a registered person to another registered person provided that the supplier and recipient have: (i) agreed in writing that part or whole of the business is supplied as a going concern; and (ii) notified the Chief Commissioner, in writing, of the details of the transfer, at the date of the transfer on which consumption tax has been credited as input tax;
 - (e) Electricity supplied by any supplier for domestic purposes; and
 - (f) The first 20 cubic meters of water per month supplied by any supplier for domestic purposes.

3. The following are exempt from Consumption Tax:
 - (a) Imports which are supplied in Tonga and are an exempt supply under 1;
 - (b) Imports not exceeding TOP 500 in value accompanying a person arriving in Tonga;
 - (c) Imports by diplomats according to law.

4. The following supplies are subject to a zero rate of the Consumption Tax:
 - (a) Supplies of goods and services by a supplier in Tonga to His Majesty to King; and
 - (b) Electricity supplied by a supplier for commercial use.

5. The following imports are exempt from the Consumption Tax:
 - (a) Insecticides, pesticides and fungicides for use in agriculture;
 - (b) Agricultural machinery and implements, including hand tools and timber milling machinery;
 - (c) Agricultural seeds and fertilizers;
 - (d) Stock feed;
 - (e) Live poultry;
 - (f) Live bovine animals;
 - (g) Live swine; and
 - (h) Packaging material for use in agriculture.

6. The following taxable supplies are subject to a zero rate of the Consumption Tax:

- (a) Insecticides, pesticides and fungicides for use in agriculture;
- (b) Agricultural machinery and implements, including hand tools and timber milling machinery;
- (c) Agricultural seeds and fertilizers;
- (d) Stock feed;
- (e) Live poultry;
- (f) Live bovine animals;
- (g) Live swine; and
- (h) Packaging material for use in agriculture.

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

Question 16

We take note of the commitment in paragraph 81 of WT/ACC/SPEC/TON/4/Rev.3.

Answer:

Please see text in the revised Draft Report (paragraph 81). Tonga has amended this text to clarify the system which is to be introduced to bring Tonga's licensing system into conformity with GATT provisions.

Paragraph 82. Tonga suggests the addition of a reference to Article XV of GATT 1994. (Please see answer to Question 2.)

- **Customs Valuation**

Question 17

Paragraph 84 of WT/ACC/SPEC/TON/4/Rev.3: We have reviewed the new Customs and Excise Act of 2004 and it does not appear to comprehensively implement the WTO Agreement on Customs Valuation.

It is not certain that Articles 1-7 are fully addressed, and there appears to be no reference at all to the provisions contained in Articles 8-14, including the Interpretative Notes.

We urge Tonga to demonstrate, in the text, where these provisions can be found.

Answer:

Tonga is in the process of comprehensively redrafting the Customs and Excise Act 2005 in order to ensure that the legislation will fully implement the WTO Agreement on Customs Valuation. The draft legislation will be circulated to members of the working party by 21 October 2005. Tonga stresses that the delay in providing the draft legislation is caused by Tonga's intention to ensure that the legislation conforms fully with the WTO Agreement on Customs Valuation.

Question 18

Paragraphs 85-87 and Table 7 of WT/ACC/SPEC/TON/4/Rev.3:

- **At the previous meeting we sought that "specific reference to the part of the Agreement where Tonga seeks a transition" be included in the commitment text; and**
- **Tonga should also amend its action plan for implementation to allow for additional legislative action to implement the missing provisions during the transition period.**

Answer:

Please refer to the amended Action Plan in the revised Draft Report.

B. EXPORT REGULATIONS

- **Customs tariffs, fees and charges for services rendered, application of internal taxes to exports**

Question 19

Paragraph 97 of WT/ACC/SPEC/TON/4/Rev.3: Please clarify in the text as to whether the licensing fee applied to exports is still in effect, or if it will be retained as an export duty, not a fee for service. If it remains in place, additional commitment language for paragraph 98 will be necessary.

Answer:

Please see text in the revised Draft Report (paragraph 98). This paragraph has been amended to deal only with the price-based measures it relates to. It is suggested that consideration of the licences themselves are properly dealt with in the next section.

- **Export restrictions**

Question 20

Paragraph 97 of WT/ACC/SPEC/TON/4/Rev.3: Please clarify in the text as to whether the comprehensive export licensing requirement is still in effect. Has it been abolished along with the import licensing requirement by the new Business Act? If not, please confirm that these licenses are granted automatically, and are applied essentially for revenue purposes. Please provide information on the rate of the fee charged for all exports.

Answer:

Please see text in the revised Draft Report (Paragraph 102). This has been amended to clarify the system to be introduced to bring Tonga's licensing system into conformity with GATT provisions.

- **Export subsidies**

Question 21

Paragraphs 106-7 of WT/ACC/SPEC/TON/4/Rev.3: Paragraph 106 confirms that the IDI Act, and its provisions for prohibited export subsidies, remain in force through June 2006. As a

consequence, the text of the commitment will need to be revised to ensure full coverage from the date of accession, which may occur prior to this time.

We have suggested the following commitment that reflects Tonga's determination to eliminate any prohibited subsidies from the date of accession. We suggest the following re-drafting of paragraph 107:

107. The representative of Tonga confirmed that from the date of accession his Government ~~did~~ would not maintain subsidies which met the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, and did not seek transitions to provide for the ~~progressive~~ elimination of all such measures ~~within a fixed period of time~~. He further stated that Tonga would not introduce such prohibited subsidies in the future, and would apply export promotion measures in conformity with WTO requirements. The Working Party took note of these commitments.

Answer:

Please see text in the revised Draft Report (Paragraphs 104 – 112). A Member has referred to duplication in the paragraphs of the report on this subject. In order to remove duplication, the section on "Export Subsidies" has been amalgamated with the section on "Industrial Policy, Including Subsidies." Please refer to text of revised commitment paragraph 110 (new numbering) which combines the old commitment paragraphs 107 and 111 and takes Member's comments into account. As noted above, these two commitment paragraphs also duplicated paragraph 22.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 22

There is overlap in the commitments in paragraphs 107 and 111 of WT/ACC/SPEC/TON/4/Rev.3.

Answer:

Please refer to answer to Question 21.

- **Technical barriers to trade**

Question 23

Paragraph 112 of WT/ACC/SPEC/TON/4/Rev.3: Specifying Codex and OIE (and IPPC) is appropriate in relation to SPS commitments. No specific bodies should be identified for TBT. The obligation in the Agreements is to "base" measures on the standards, there is no obligation to "incorporate", i.e. a Member is expected to evaluate whether an international standard is effective and appropriate to use in whole or in part as a basis for its domestic measure. This is different from "incorporation." As a consequence, we suggest the following redrafted paragraph:

112. Some Members stated that Tonga would need to implement fully the WTO Agreement on Technical Barriers to Trade as of the date

of WTO accession, and requested detailed information on Tonga's infrastructure relating to the development and application of standards, technical regulations and conformity assessment procedures, including policies or procedures relating to the use of international standards and transparency, standards and inspection regime, including participation in international standards organizations such as the Codex Alimentarius Commission or the Organization of International Epizootics, procedures for incorporation of international standards into Tonga's standards regime, any deficiencies in the present regime, and the steps Tonga would be taking to remedy these deficiencies prior to WTO accession. Tonga was reminded that the WTO TBT Agreement did not require Tonga to implement standards in any area, but any standards and conformity assessment systems introduced in the future would need to be consistent with WTO requirements.

Answer:

The comment on "incorporation" is noted. Tonga has supplied information on its infrastructure in its document on the implementation of Transparency Provisions of the TBT Agreement. Because Tonga had not adopted any TBT measures and had no plans to do so, its infrastructure is very simple. Please refer to text of this and the following paragraphs in the revised Draft Report.

Question 24

Paragraph 114 of WT/ACC/SPEC/TON/4/Rev.3: We suggest that the full citation of Tonga's TBT enquiry point be provided, i.e., at the same level of detail provided for the SPS enquiry point in WT/ACC/TON/9.

In addition, the last two sentences of the new text should be moved to paragraph 115 as part of Tonga's commitment (see below)

The text of paragraph 115, Tonga's commitment on implementation of the WTO Agreement on TBT, should be elaborated to demonstrate clearly its intent to ensure conformity with the provisions of the Agreement from the date of accession, while signalling that full use of all aspects of the Agreement's provisions is not necessary at this time. We suggest the following revised text:

115. The representative of Tonga confirmed that if, in the future, technical regulations or standards and conformity assessment procedures were to be introduced, Tonga would neither adopt nor implement these regulations, standards or procedures until it had implemented and notified appropriate legislation in conformity with the Agreement on Technical Barriers to Trade. Tonga would ensure the full conformity of any such legislation with the Agreement on Technical Barriers to Trade. Any standards, technical regulations, and conformity assessment procedures adopted would be developed and applied in conformity with the provisions of the Agreement, including publication prior to implementation to allow interested parties the opportunity for review and comment as provided for in the Agreement. Prior to accession, Tonga would prepare regulations specifying the publication to be used for the publication of any proposed measures, the procedure to be used for taking comments into account, etc. Existing or

new measures would be applied on a non-discriminatory basis, i.e. providing for national treatment and MFN treatment to all imports. Regulations would be introduced to ensure that its National TBT Notification Authority and Enquiry Point would be operational as from the date of its accession. Tonga would also provide relevant government officials with training to ensure that, from the date of accession, they were fully conversant with the requirements of the TBT Agreement The Working Party took note of these commitments.

Answer:

Please see text in revised Draft Report (paragraph 113-116, reference to note on implementation of transparency provisions and revised commitment paragraph).

Question 25

Paragraph 113 of WT/ACC/SPEC/TON/4/Rev.3: "Foreign goods entering Tonga were accordingly not subject to any particular standards-related procedures or requirements."

Are we to understand from this statement that there are absolutely no TBT-related technical requirements imposed on any goods imported into Tonga? Does this mean that any good can be freely imported without concern for technical requirements? For example, pharmaceuticals? Motor vehicles?

Paragraph 113 of WT/ACC/SPEC/TON/4/Rev.3: "The Consumer Protection Act 2000 did refer to the implementation of approved standards, including labelling requirements, to protect consumers, but no standards had been established."

Can Tonga please provide an explanation as to why no standards have been established? How does Tonga address the issue of defective or unsafe products? Does Tonga have any enforcement capacity in place? How is the government of Tonga able to assure itself that products entering the Tongan market actually provide the benefits to citizens that suppliers claim? Has Tonga considered the introduction of any international standards for use on a voluntary basis?

Answer:

There are no TBT-related technical requirements imposed on any goods imported into Tonga. While the adoption of the Consumer Protection Act 2000 is evidence of Tonga's wish to protect its citizens, the fact that no standards have in fact been established under the Act is evidence that there are many demands on Tonga's very limited resources and it simply cannot achieve all its aims at once. This is understandable since Tonga is an extremely small country at the early stage of economic development. It has a total population of 102,000, a gross domestic product of US\$ 163 million and a per capita GDP of US\$ 1,600. To cite just one example in order to put these figures into perspective, comparable statistics for Canada are: population 32 million, GDP US\$ 857,000 million and per capita GDP of US\$ 26,800. Canada's population is over 300 times Tonga's population and Canada's GDP is over 5,000 times Tonga's GDP.

The development of a complex array of TBT-related technical requirements in developed countries is a relatively recent development. In the absence of such measures, the principle of caveat emptor (let the buyer beware) applies.

As WTO Members point out in the draft report, the TBT Agreement does not contain provisions obliging WTO Members to adopt any TBT-related measures. It should also be noted that because it is a small developing country, Tonga only produces a very narrow range of primary products and has no domestic industry with an interest in the development of TBT-related measures that have a protective effect.

- **Sanitary and phytosanitary measures**

Question 26

We note and appreciate Tonga's efforts in the implementation of transparency provisions upon accession. The establishment and operation of the national enquiry point is especially welcome.

While taking note of Tonga's firm commitment to fully implement the SPS Agreement by 30 June 2007, Member's position, consistent for all acceding members, remains that Tonga should not have recourse to any transition period and that Tonga should fully implement the WTO SPS Agreement upon accession.

We recognize the merits of technical assistance and its capacity building benefits. Should Tonga find itself unable to comply with some provisions of the SPS Agreement upon accession, Members would note to Tonga that once it has joined the WTO, Tonga would have recourse to the provisions contained in Article 10.3 of the SPS Agreement.

We encourage Tonga's active participation in the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC).

Answer:

Please refer to the answer to Question 26.

Tonga confirms that it is its policy to play as full a part as its limited resources permit in the relevant international organizations and is obtaining information regarding membership of the IPPC and the OIE.

Question 27

We have been encouraged by Tonga's statement in WT/ACC/TON/9 that it would implement the WTO Agreement on SPS from the date of accession. However, there were concerns expressed that that Tonga has not fully thought through what it needs to do to meet that commitment.

We have reviewed the new proposals that Tonga tabled just prior to the informal consultation on 22 July 2005, (a) indicating that Tonga was technically capable of applying the requirements of the SPS Agreement from the date of accession and that it would have its enquiry point and notification center in operation from the date of accession, (b) giving further information on how Tonga's current application of SPS measures did not conflict with its WTO obligations under the Agreement; and (c) seeking additional time, i.e., until 30 June 2007, to train its officials and to adopt legislation that would make implementation of the WTO Agreement on SPS mandatory.

We appreciate the reasons for Tonga's new position, but after examination of the new information, we are now convinced that Tonga does not require a transition to operate its SPS system in conformity with the WTO Agreement on SPS.

In this regard, we propose the following redrafting of the SPS section of WT/ACC/SPEC/TON/4/Rev.3. Tonga will need to provide the additional information requested which is underlined. In addition, we suggest that the additional information provided by Tonga prior to the 22 July meeting be incorporated into either a revised WT/ACC/TON/9 or a new document confirming that it does not need a transition. We provide a possible revised WT/ACC/TON/9 text.

Begin suggested redrafted section:

- Sanitary and phytosanitary measures

116. The representative of Tonga said that the Quarantine Division of the Ministry of Agriculture and Food and the Ministry of Health were responsible for Tonga's sanitary and phytosanitary measures relating to foreign trade in animals, plants and related products. The principal pieces of SPS-related legislation were the Plant Quarantine Act (Cap 127) 1988 together with the Amendments to that Act and its associated Regulations 1995 and Fee Regulations 1997; the Animal Diseases Act (Cap 146) 1978; and the Public Health Act 1992 and the Amendments to that Act. The Quarantine Act Cap. 77, gave the Director of Health powers to impose quarantine restrictions for the protection of public health. He further noted that three new Acts had been passed by the Legislative Assembly in 2002, namely the Animal Diseases (Amendment) Act 2002, the Agricultural Commodities Export Act 2002, and the Pesticides Act 2002 which were notified to the WTO in WT/ACC/TON/12/Add.3. FAO and South Pacific Commission consultants had assisted in the drafting of this legislation, which should be in conformity with international requirements. Tonga's legislation did not refer specifically to scientific evidence, but Tonga's regulations were, in fact, based on scientific principles. The representative of Tonga confirmed that Tonga had the capability of conducting its own risk assessments. Imports regulations required a code of conduct for imports and the release of imported goods, including initiation of pest risk analysis or pest risk assessment. The code of conduct basically entailed.. . [Please describe] Tonga had no measures establishing tolerances for the use of additives or contaminants.

117. Asked to what extent Tonga's standards aligned with relevant international standards, the representative of Tonga added that Tonga based its SPS measures on international standards to the extent possible. Tonga was a member of the Codex Alimentarius Commission, the Asia Pacific Plant Protection Commission (APPPC) and the Pacific Plant Protection Organization (PPPO), but not yet a contracting party to the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). Tonga also received assistance from regional organisations, in particular the Secretariat of the PPPO and, on the animal side, the Secretariat of the Pacific Community. The Plant Quarantine Act and its Amendments were aligned with international standards such as those of the FAO (Food Agriculture

Organisation) and the IPPC. The Pacific Plant Protection Organisation operated actively to set standards fitting to Pacific requirements. Such standards were submitted to the member countries (Forum Island Countries including New Zealand and Australia) for funding and implementation. In addition, the PPPO reviewed and drafted standards regulations of any member. The PPPO met every three years and was chaired by Tonga. Tonga used FAO and OIE standards as a basis for its own standards relating to animals and animal products. Regarding the principle of equivalence, Tonga recognized different measures achieving the same level of protection, and based its regulations in this respect on those of Australia and New Zealand.

117bis [New paragraph] Importation was only prohibited when necessary to protect human, animal or plant life and health. A list of products prohibited in accordance with the Plant Quarantine Act and in the Animal Diseases Act is reproduced in Table 8. He stressed that importation of the items listed in Table 8 was not prohibited per se, but that the pest risk analysis system used by Tonga required those applying for import permits to provide technical and biological data to the Ministry of Agriculture and Food indicating that the species were free of the regulated quarantine pest concern or, if an effective treatment was available, import permits would be issued with additional quarantine requirements. In response to a Member who felt that it would be necessary to amend the relevant legislation to clarify the fact that "prohibited" products were actually only subject to "restriction", i.e. import permits, the representative of Tonga replied that, in his view, there was no need to revise the legislation as several sections of the Plant Quarantine Act 1998 and Plant Quarantine Regulations 1995 provided an explanation of the term "prohibited".

118. Some Members requested more detailed information and specific legislative references to be able to evaluate Tonga's SPS regime and its consistency with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. A Member noted that Tonga's regime did not appear to be consistent with the SPS Agreement on the issue of transparency. Tonga would need to have notification procedures in place so that its trading partners could be made aware of changes in Tonga's quarantine measures, for example, quarantine arrangements against foot and mouth disease. Concerning quarantine measures against food and mouth disease, the representative of Tonga clarified that Tonga taken precautionary measures by not allowing importation of animals or animal product from foot and mouth disease infected countries and regions. Tonga screened high risk vessels coming from infected countries, and screened air passengers arriving from infected destinations.

119. The representative of Tonga confirmed that Tonga had the technical infrastructure in place required to implement the SPS Agreement. He provided notes on the implementation and administration of the SPS Agreement, circulated in document WT/ACC/TON/xx. [Note: We are assuming that the information on Tonga's preparations to implement the SPS agreement tabled prior to

the July 22 informal WP meeting will be circulated either in a revised TON/9 or a new document, similar to what we have provided as an example. End note]. Tonga's SPS Enquiry Point and Notification Authority will be operated by one and the same body within the Ministry of Agriculture and Food (MAF) called the National SPS Notification Authority and Enquiry Point. The National SPS Notification Authority and Enquiry Point was operational and was headed by the Director, MAF. It could be contacted at:

Ministry of Agriculture and Food

National SPS Notification Authority and Enquiry Point

Address: P.O. Box 14, Nuku'alofa, Kingdom of Tonga

Phone: +(676) 23038 / 23402

Fax: +(676) 23093 / 24271 / 24922

Email: hfaanunu@maf.gov.to, maf-gqmd@kalianet.to

The authority is staffed by one official and five working committee members comprising technical advisors drawn from relevant divisions of the MAF. The Enquiry Point will provide answers to all reasonable questions from interested Members as well as undertake the role of providing relevant documents, in accordance with Annex B of the SPS Agreement. The Notification Authority will be responsible for notifying changes in Tonga's sanitary or phytosanitary measures, in accordance with the notification procedures of Annex B of the SPS Agreement. The Director was responsible for ensuring that Tonga's transparency obligations under the Agreement were met on an ongoing basis, including making notifications to the WTO and maintaining publications and procedures required by the Agreement. The representative of Tonga noted that the staff of the National SPS Notification Authority and Enquiry Point will be guided by the WTO Secretariat Handbook on "how to apply the transparency provisions of the SPS Agreement of September 2002". He added that Tonga intended to provide additional training to responsible government officials to ensure that they were fully conversant with the requirements of the SPS Agreement upon accession.

120. [moved to other paragraphs or eliminated]

121. [moved to other paragraphs]

122. The representative of Tonga also stated that he believed that Tonga had the ability to apply the provisions of the SPS Agreement and that Tonga's existing legislation provided an adequate basis for the application of the Agreement. Tonga would seek technical assistance to ensure that it had the capacity to implement the SPS Agreement correctly on an ongoing basis. The representative of Tonga indicated that it was prepared to accept the obligations of the WTO Agreement on

Sanitary and Phytosanitary Measures from the date of accession without any transitional period,

123. The representative of Tonga confirmed that Tonga would observe the requirements of the Agreement on Sanitary and Phytosanitary Measures from the date of accession. The representative of Tonga confirmed that his government had already established an enquiry point in the Ministry of Agriculture, Forestry and Food. The Director of that Ministry was responsible for ensuring that Tonga's transparency obligations under the Agreement on Sanitary and Phytosanitary (SPS) Measures were met on an ongoing basis, including making notifications to the WTO, and maintaining the publications and procedures required by the Agreement, including publication with sufficient time for public comment prior to enactment. Tonga would prepare regulations specifying the publication to be used for the publication of any proposed measures, the procedure to be used for taking comments into account, the Government body responsible for developing regulations, conducting risk assessments and control, as well as inspection and approval procedures, and other necessary legislation. Tonga administered its existing requirements on imports for sanitary and phytosanitary purposes listed in Table 8a based on principles of pest risk analysis and the international standards of Codex Alimentarius, IPPC, FAO and OIE, and these existing requirements would be notified to the WTO Committee on Sanitary and Phytosanitary Measures upon accession. Any SPS standards, technical regulations, and conformity assessment procedures adopted after accession would be developed and applied in conformity with the provisions of the Agreement, including publication prior to implementation to allow interested parties the opportunity for review and comment as provided for in the Agreement. Tonga would review its existing requirements in light of its obligations under the Agreement. Existing or new measures would be applied on a non-discriminatory basis, i.e. providing for national treatment and MFN treatment to all imports. The representative of Tonga also confirmed that Tonga would apply the Agreement from the date of accession without recourse to any transition period. He also confirmed that Tonga would provide relevant government officials with training to ensure that, from the date of accession, they were fully conversant with the requirements of the SPS Agreement. The Working Party took note of these commitments.

Answer:

Tonga has inserted the information requested on its code of conduct in its revision of the draft Report.

Tonga can accept the above text of Paragraphs 116 to 123 of the Draft Report proposed by the Member. It believes that it has the technical ability to implement the SPS Agreement and will be accepting an obligation both in its Protocol and in paragraph 123 to do so. Tonga has therefore inserted this text in its revision of the Draft Report.

Tonga is also ready to circulate the revised WT/ACC/TON/9 proposed with one amendment to the last sentence. The text of this document would read as follows:

Notification: Implementation and Administration of the Agreement on the

Application of Sanitary and Phytosanitary (SPS) Measures

The following submission provides information on the way that Tonga will implement the transparency provisions of the SPS Agreement, which relate to: notifications to inform other Members about new or changed regulations that affect their trading partners; answering reasonable questions; and publishing relevant regulations,

1. Under the SPS Agreement, countries are required to designate a Notification Authority and an Enquiry Point. In order to minimize the impact on financial and physical resources and to build up trade policy expertise in this area in a dedicated unit, Tonga has decided that the same body will operate both its Notification Authority and its Enquiry Point.

Name of institution:

Ministry of Agriculture and Food
National SPS Notification Authority and Enquiry Point
Address: P.O. Box 14, Nuku'alofa, Kingdom of Tonga
Phone: +(676) 23038 / 23402
Fax: +(676) 23093 / 24271 / 24922
Email: hfaanunu@maf.gov.to, maf-qqmd@kalianet.to

The Ministry of Agriculture and Food will be responsible for making notifications to the WTO and ensuring transparency obligations are met on an ongoing basis. As stated on previous occasions, the Notification Authority and Enquiry Point is already operational. The Director, Ministry of Agriculture and Food is the officer responsible. It is staffed by one official and five working committee members. The five committee members are technical advisors and administrative supporting staff from the relevant MAF divisions: Quarantine & Quality Management Division; Food Division; Livestock Division; Research & Extension Division; and Corporate Services Division (Policy).

2. The Notification Authority is responsible for: ensuring proposed regulations are published with sufficient time to allow for comments; notifying other countries through the WTO Secretariat of SPS regulations using the appropriate notification forms for routine and emergency notifications; providing copies of proposed regulations on request; and ensuring that comments are handled correctly.

The responsibilities of the SPS enquiry point are: answering all reasonable questions from interested Members and providing relevant documents regarding: any sanitary or phytosanitary regulations adopted or proposed within Tonga; any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval

procedures, which are operated within the country; risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection; the membership and participation of Tonga, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems; the membership and participation of Tonga in bilateral and multilateral agreements and arrangements within the scope of the SPS Agreement; and the texts of any such agreements and arrangements.

The resources at the disposal of the Notification Authority / Enquiry Point are adequate for these purposes: it uses existing office infrastructure and services and has word-processing capability (typewriter or computer), a photocopier, and access to postal facilities, telephones, fax, electronic mail and internet.

When applying the transparency provisions of the SPS Agreement, the staff of the Notification Authority / Enquiry Point will be guided by the WTO Secretariat Handbook: how to apply the transparency provisions of the SPS Agreement of September 2002. All notifications will be made in English. Tonga will only charge the same cost for the documents as it would for its own nationals plus the cost of delivering the documents.

3. Tonga is a member of the Food Agriculture Organization (FAO) and Codex Alimentarius Commission but not yet a Contracting party to the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). Tonga is also a member of the Asia Pacific Plant Protection Commission (APPPC) and Pacific Plant Protection Organization (PPPO). Tonga conforms to the standards set by FAO and other Standard Setting Bodies where possible.

4. Given Tonga's free pest and disease status for both animals and plants and because Tonga has very limited resources to combat an inclusion of a serious animal or plant disease a negligible level of risk would be appropriate.

5. He confirmed that Tonga had the technical infrastructure in place required to implement the SPS Agreement. Prior to Tonga's accession to the WTO, responsible government officials will receive additional training to ensure that, as from the date of accession, they are fully conversant with the requirements of the SPS Agreement, including: the definition of SPS measures and the distinction between SPS measures and TBT measures, the procedures for prior notification to the WTO Central Registry of Notifications of new sanitary and phytosanitary regulations or modifications to existing regulations, the steps to be taken when other countries make comments on a notified SPS measure.

6. Tonga agrees to all articles in the Agreement on the Application of Sanitary and Phytosanitary Measures and the Annexes appended, and will apply the Agreement from the date of its accession without any transitional period. Within this timeframe Tonga would seek technical assistance to draw up any necessary legislation and to confirm that it had the capacity to implement the SPS Agreement correctly.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 28

Paragraph 145 and 162 of WT/ACC/SPEC/TON/4/Rev.3: Please update the status of Tonga's memberships in relevant international organizations.

Answer:

Please see text in revised Draft Report (paragraph 146 and 163).

Question 29

Paragraphs 163-165 and Table 10 of WT/ACC/SPEC/TON/4/Rev.3, constitute Tonga's commitment to implement the WTO Agreement on TRIPS. Table 10 should be adjusted to indicate that the drafting and enactment of the listed legislation was accomplished prior to accession.

Answer:

Please see revised date for transitional period (paragraph 164). Tonga has been obliged to make this change because of the passage of time and the difficulty it has met of obtaining necessary resources.

Table 10: Please see revised action plan in revised Draft Report.

Question 30

Paragraphs 163 and 164 of WT/ACC/SPEC/TON/4/Rev.3 should be expanded to include relevant additional commitments. Paragraph 165 of WT/ACC/SPEC/TON/4/Rev.3 is a duplicate, and should be replaced with a standard commitment paragraph. We suggest the following for this text:

163. The representative of Tonga thanked the Working Party for its recognition that technical assistance would be required and the governments concerned for the technical assistance that they had already provided. For the reasons given above, the Government of Tonga requested that the Working Party grant a transitional period to [1 January 2007], approximately two years from the date of its accession, to obtain technical assistance and equip the Government to fully implement the obligations of the TRIPS Agreement. He confirmed that, if such a transitional period were granted, Articles 3, 4 and 5 of the Agreement, providing for, *inter alia*, national treatment and MFN treatment under current legislation in place would apply, and Tonga would ensure that any changes made in its laws, regulations and practice in this period would not result in a lesser degree of consistency with the provisions of the TRIPS Agreement that existed on the date of accession. In addition, Tonga would not grant patents, trademarks, or copyrights, or marketing approvals for pharmaceutical or agricultural chemicals inconsistent with the provisions of the TRIPS Agreement.

164. The representative of Tonga also stated that, should a transition be granted, existing rates of infringement would not in his view increase significantly over this transition period and that any infringement of

intellectual property rights would be addressed immediately in cooperation and with assistance from affected right holders. He further confirmed that during the transition period, that Tonga would protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person who submitted such data may, without the permission of the latter person, rely on such data in support of an application for product approval for a period of at least five years from the date on which Tonga granted marketing approval to the person that produced the data. Prior to the issuance of marketing approval of any pharmaceutical and agricultural chemical products, the relevant Ministries in Tonga will determine the existence of a patent covering a product for which an application for marketing approval had been filed by a party other than the patentee, and will not approve such application for marketing approval until the date of the expiration of such patent. He added that Tonga would seek out all available technical assistance to ensure that its capacity to enforce fully its TRIPS-consistent legal regime upon expiration of the transition period is assured. In response to requests from delegations for more specificity, the representative of Tonga presented an Action Plan setting out details of the steps that still remained to be taken in order to achieve this objective and a timetable for each step (Table 9).

Table 9: Action Plan for conformity with the TRIPS Agreement

Action	Deadline
<p>Drafting of new legislations, covering:</p> <ul style="list-style-type: none"> - protection of undisclosed information and trade secrets; - plant variety protection; - general and enforcement obligations under the TRIPS Agreement. 	<p>Protection of undisclosed information and trade secrets is provided for by section 9 of the Protection Against Unfair Competition Act 2002</p> <p>[Plant variety protection legislation will be drafted no later than 1 July 2006]</p>
<p>Drafting of amendments to existing legislations to address deficiencies <i>vis-à-vis</i> the WTO Agreement on TRIPS as identified in response to WT/ACC/9, specifically:</p> <ul style="list-style-type: none"> - Industrial Property Act 1994; - Copyright Act 2002. 	<p>Copyright Act 2002 has been enacted.</p> <p>Amendments to Industrial Property Act 2004 have been endorsed by the Cabinet and submitted to the Law Reform Committee for verification.</p>
<p>Circulation of draft legislation addressing remaining deficiencies <i>vis-à-vis</i> the WTO TRIPS Agreement in Tonga's intellectual property rights regime.</p>	<p>[July 2004]</p>
<p>Parliamentary passage of new legislations and amendments to existing legislations.</p>	<p>[No later than 1 July 2006]</p>
<p>Drafting of implementing regulations for Intellectual Property legislations, specifically:</p> <ul style="list-style-type: none"> - Geographical Indications Act 2002; - Protection of Layout Designs (Topographies) of Integrated Circuits Act 2002; - new legislations required, as detailed above. 	<p>Regulations for the Geographical Indications Act 2002 and the Protection of Layout Designs (topographies) of Integrated Circuits Act 2002 have been endorsed by Cabinet and submitted to</p>

Action	Deadline
	the Law Reform Committee.
Development of manuals and operating procedures	[No later than 1 January 2006]
Appointment of staff	[No later than 1 January 2006]
Training of key IP personnel	[No later than 1 July 2006]
Training for users (development of information brochure and training program)	[No later than 1 January 2007]
Full implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights.	[No later than 1 January 2007]

165. The representative of Tonga confirmed that Tonga would apply the Agreement on Trade-Related Aspects of Intellectual Property Rights no later than 1 January 2007 according to the Action Plan in Table xx with the understanding that during this period protection for intellectual property rights listed in paragraphs 163 and 164 would be applied in Tonga. The Working Party took note of this commitment.

Answer:

Tonga asks the Member to reconsider its request for the inclusion of more specific language on undisclosed test data and marketing approval than is included in the TRIPS Agreement. Tonga would find it very difficult to explain to its authorities and its stakeholders why it is singled out for such non-standard language in its TRIPS commitments.

Please see text of revised standard commitment paragraph in Draft Report (paragraph 166).

VII. TRANSPARENCY

- Publication of information on trade

Question 31

We note with gratitude that the responses to Questions 39 and 40 in WT/ACC/TON/11 indicate that Tonga is prepared to adopt the transparency facility we had proposed at previous meetings. We suggest slight redrafting of paragraphs 175-176 of WT/ACC/SPEC/TON/4/Rev.3 to clarify that the website will be the vehicle for this effort.

In addition, we request that the period for prior publication be lengthened to 30 days to give the Government time to assess the value of any comments received.

175. The representative of Tonga said that all laws and regulations affecting trade were published in the Tongan Government Gazette. Copies of specific laws and regulations could be purchased from the Government Printing Department. Information on laws and regulations relating to trade was also available, free of charge, from the Trade Policy Unit at the Ministry of Labour, Commerce and Industries. An investment promotion website, which would be the official website of the Ministry of Labour, Commerce and Industries, was in the process of being established by the Industries Division of the Ministry of Labour, Commerce and Industry. Tonga was receiving technical assistance on this matter from the Multilateral Investment Guarantee Agency (MIGA), a member of the World Bank Group. The website would be dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services and TRIPS, where

possible prior to enactment. This website would be updated on a regular basis and would be readily available to WTO Members, individuals and enterprises. Tonga intended, where possible, to provide a reasonable period, e.g. no less than 30 days, for comment to the appropriate authorities of Tonga before the regulations and other measures pertaining to or affecting trade in goods, services and TRIPS were implemented, except for those laws, regulations and other measures involving national emergency or security, or for which the publication would impede law enforcement. Tonga intended to implement this facility as soon as possible.

176. The representative of Tonga confirmed that, from the date of Tonga's accession, Tonga would fulfil the transparency requirements set out in Article X of the GATT 1994, Article III of the GATS and other WTO Agreements including those requiring notification, prior comment, and publication. Tonga confirmed that all regulations and other measures pertaining to or affecting trade in goods, services and TRIPS, except for laws, regulations and other measures involving national emergency or security, or for which publication would impede law enforcement, would be published or posted on a Government website for comment for a reasonable period, i.e., no less than 30 days prior to enactment. He further confirmed that all laws, regulations, rulings, including administrative rulings, decrees or other measures related to trade in goods would be published in the Official Gazette or posted on the website, and that no law, regulation, etc. relating to trade in goods, services and TRIPS would become effective prior to such publication. The publication of such laws, regulations and other measures of general application would include the effective date of these measures and list, where appropriate and possible, the products and services affected by the particular measure, identified for customs purposes by appropriate tariff line and classification. The Working Party took note of these commitments.

Answer:

Please see text in the revised Draft Report (paragraph 176). This states Tonga's intention to give 30 days prior notice, where possible, for comments to be made and adds that Tonga will need to test how its plans for a website will work in practice, especially given Tonga's very limited resources.

Please see text in the revised Draft Report (paragraph 177). Tonga has not included the reference to notification in the first sentence as this subject is dealt with in the next section. It has included some other Member's suggestions but asks the Member to reconsider its request for the inclusion of a reference to a website and a commitment to prior publication as Tonga would have real difficulty in explaining to its authorities and its stakeholders why it is singled out for such non-standard language in its commitments on matters currently under negotiation in the DDA. Proposals for prior publication put forward in the Negotiating Group on Trade Facilitation would have to be qualified by exceptions, for instance, where urgent problems of safety, health, environmental protection or national security arise.

ANNEX

Revised Legislative Action Plan

Laws / Regulations / Administrative decisions	WTO Agreement	Status of indicated legislation	Expected Approval Date
Consumption Tax Act 2003	General	Passed by Parliament. Entered into force April 2005.	In force
Ports and Service (Repeal) Act 2003	General	Passed by Parliament. Entered into force April 2005.	In force
Sales Tax (Repeal) Act 2003	General	Passed by Parliament. Entered into force April 2005.	In force
Fuel Sales Tax (Repeal) Act 2003	General	Passed by Parliament. Entered into force April 2005.	In force
Income Tax Act	General	Drafted. To be submitted to Parliament . It is anticipated that it will be implemented by 1 December 2005.	December 2005
Business Licences Act 2002	GATT 1994	Passed by Parliament. Draft Regulations have been forwarded to Crown Law Department for review prior to being submitted to Cabinet for approval. It is anticipated that the Regulations will be implemented by December 2005.	December 2005
Foreign Investment Act 2002	GATT 1994 / GATS	Passed by Parliament. Draft Regulations have been forwarded to Crown Law Department for review prior to being submitted to Cabinet for approval. It is anticipated that the Regulations will be implemented by December 2005.	December 2005
Customs and Excise (Amendment) Act 2005	Agreement on Implementation of Article VII of GATT 1994 / Agreement on Rules of Origin	Drafted. To be submitted to Parliament. Regulations for implementation of amended Customs and Excise Act are being drafted. It is anticipated that Regulations will be endorsed by Cabinet by December 2006.	December 2006
Customs and Excise (Amendment) Act - removal of quantitative restrictions on eggs, cabin and ship's biscuits, whisky, brandy and rum	Agreement on Implementation of Article VII of GATT 1994 / Agreement on Rules of Origin	These will be eliminated by amendments to Customs & Excise Act prior to accession.	December 2006
Order removing reference to local agricultural and fish products not subject to price control from Mark-Up Schedule of Prices and Wages Act 1998	GATT 1994	Approved by Competent Authority. Has been gazetted and is effective from May 2005.	In force
Repeal of Industrial Development Incentives (IDI) Act	GATT 1994	The IDI Act will be suspended on 1 July 2006 and subsequently repealed once customs duties have been reduced to the single rate of 15%. The provisions of the IDI Act that exempted development licence holders from the ports and services tax ceased to have effect when the ports and services tax was eliminated on 1 April 2005.	December 2006
Establishment of a TBT Enquiry Point	Agreement on Technical Barriers to Trade	Submitted for Cabinet Approval December 2005.	July 2006

Laws / Regulations / Administrative decisions	WTO Agreement	Status of indicated legislation	Expected Approval Date
Establishment on SPS Enquiry Point	Agreement on the Application of Sanitary and Phyto-Sanitary Measures	Submitted for Cabinet Approval December 2005.	July 2006
Amendments to Industrial Property Act 1994	Agreement on Trade-Related Aspects of Intellectual Property	Endorsed by Cabinet and submitted to Law Reform Committee for verification.	December 2007
Copyrights Act 2002	Agreement on Trade-Related Aspects of Intellectual Property	Passed By Parliament.	July 2006
Enforcement and Border Measures Act	Agreement on Trade-Related Aspects of Intellectual Property	Bill has been endorsed by Cabinet and submitted to Law Reform Committee.	December 07
Geographical Indications Act 2002	Agreement on Trade-Related Aspects of Intellectual Property	Passed by Parliament. Regulations have been endorsed by Cabinet and submitted to Law Reform Committee.	December 2007
Protection of Layout Designs (Topographies) of Integrated Circuits Act 2002	Agreement on Trade-Related Aspects of Intellectual Property	Passed by Parliament. Regulations have been endorsed by Cabinet and submitted to Law Reform Committee.	December 2007