

ACCESSION OF TONGA

Additional Questions and Replies

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

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I. INTRODUCTION

Question 1

Overall, we would be interested if Tonga has requested technical assistance in any of the technical areas and whether positive responses have been received or are being considered.

Answer:

An overview of the legislation Tonga has implemented/will implement to give effect to the WTO Regulations is detailed in the Table included in Annex D of this document.

Technical assistance will be required in a number of areas. Areas specifically mentioned in this document are customs valuation (response to Question 51), SPS notification (response to Question 70) and TRIP's regulations (response to Question 82). Another area in which assistance is required is in establishing a Standards Certification System.

Tonga would welcome and consider any offers of assistance given by Member countries on these or other technical issues.

Question 2

Concerning the import and export licensing notification (see questions 69-77 and questions 93-94) and the TRIPS checklist/action plan, can Tonga advise whether progress has been made in these areas and what timeframes are envisaged for submission?

Answer:

Please see the answers to the questions on these topics in the relevant sections below.

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions

Question 3

Tonga's answer to question 4(a) refers to privatization only (which is dealt with in the answer to question 126). We would be interested if Tonga could explain other broader aspects of its reform plans in the public sector, including to address public sector efficiency and accountability, and public sector coordination (including the development of mechanisms for producing a whole-of-government approach).

Answer:

The Government of Tonga's overall reform programme comprises four main areas:

- Fiscal reform,
- Public service reform,
- Financial sector reform,
- Private sector reform.

Public service reform is seen as a pre-condition for sustainable economic development. At present, all significant functions relating to the management of the Civil Service are highly centralised and the

essence of the reform is the development of a more decentralised approach. The emphasis is on improved service delivery to both the public and the private sectors and on the establishment of the institutional framework for a performance-oriented civil service.

Question 4

Concerning the price controls applied to the products listed in the response to question 7 of document WT/ACC/TON/4, are these controls applied upon importation, i.e., do they effect the valuation of these goods for customs purposes? Are the controls applied at the level of retail or wholesale distribution? Does the control price include tariffs, port and service charges, wharfage fees, sales tax or any other taxes or charges, or are these added to the control price prior to distribution?

We appreciate the reasons that Tonga seeks to maintain oversight of prices of basic needs. We need, however, more information from Tonga on how its price controls operate in practice and interact with its customs procedures and charges. We seek a commitment from Tonga, similar to that included in other accession protocols that its price controls will observe the provisions of Article III:9.

Answer:

Except for bread and petroleum products, Tonga's price control mechanisms are enforced as maximum mark-up percentages – a percentage over landed cost for wholesale markets and a percentage over wholesale cost for retail markets. Therefore these controls do not effect the valuation of regulated goods for customs purposes. Sale prices are set for petroleum products and standard sized bread. The Price Control Mark-Up Schedule is included as Annex A of this document.

Tonga produces a very narrow range of goods and imports nearly all its requirements. None of the products subject to price control, other than bread, are produced locally. Given the very small size of Tonga's economy, the price controls are enforced to prevent wholesale and retail suppliers taking advantage of local monopoly situations and do not prejudice the interests of WTO Members supplying imported products.

Tonga is willing to accept the following Protocol commitment: "Tonga would apply its price control measures in a WTO-consistent fashion, and take into account the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. Tonga would also publish the list of any goods and services subject to price controls in its Official Gazette"

Question 5

Does Tonga undertake to administer maximum prices in conformity with Art. III.9 GATT?

Answer:

Tonga is ready to accept the following Protocol commitment in the Working Party report: "Tonga would apply price control measures in a WTO-consistent fashion, and take into account the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. Tonga would also publish the list of any goods and services subject to price controls in its Official Gazette."

Question 6

We note in the answer to question 7 that Tonga has no plans to reduce the number of products subject to price controls. Given that these can impact on trade, we would welcome advice from Tonga as to how Tonga proposes to give effect to paragraph 9 of GATT Article III that requires

WTO Members to take account of the interests of exporting countries in applying such price controls.

Answer:

With the exception of bread, Tonga does not produce any of the products subject to price controls and does not believe that the price controls have an impact on trade. It proposes to give effect to Article III:9 as laid down in that provision, by consulting exporting WTO members on request and taking their interests into account.

Question 7

Can Tonga please clarify how the maximum price control is determined? Why is this price controlled only at the point of sale to the customers and not by authorized customs officials? How will Tonga ensure that these maximum price controls comply with Article III (9) of the GATT 1994 and the interests of exporters are not prejudiced by these price controls?

Answer:

Price control is administered by the “Competent Authority” within the Ministry of Labour, Commerce and Industries. The primary task of the Competent Authority is to protect the interests of consumers, hence its’ administration of the price controls, rather than Customs. The Price Control Mark-Up Schedule is included as Annex A of this document.

Tonga will give effect to Article III:9 as laid down in that provision by consulting exporting WTO members on request and taking their interests into account.

(b) Monetary and fiscal policies

Question 8

Tonga has indicated that it has a tax reform program under consideration (see questions 28, 42, 44 and 48). Given the importance of trade and other taxes from a number of viewpoints, including WTO consistency and market access, we would be very appreciative if Tonga could outline in detail its plans in this area, including timetables for planned reforms.

Answer:

Tax reform plans aim to ensure that the tax burden is spread as widely and as fairly as possible, whilst maintaining simplicity. Taxation should be at a level that is sustainable within the constraints of building an effective economy. One of the aims of the reform is to shift the emphasis of taxation from trade taxes to internal taxes. Coupled to this would be a reworking of individual and corporate income tax to provide a fairer system. The proposed changes will need to be phased in to ensure that there is not a loss of revenue. In particular, changes in trade taxes will need to be introduced cautiously. A concerted effort will be necessary to increase the effectiveness of the revenue administration. Technical assistance is being received for this purpose. The details of the reform and its timing will depend in part on the terms of Tongan accession to the WTO.

(c) Foreign exchange and payments system

Question 9

The response to question 12 of document WT/ACC/TON/4 indicates that foreign exchange cover is not permitted for imports. We would appreciate clarification of this statement and

information on any unique restrictions or requirements applied to foreign exchange acquisition for imports.

Answer:

The Government of Tonga is a subscriber to the International Monetary Fund (IMF) Article VIII, which commits member countries to the free mobility of currencies. The acquisition of foreign exchange for imports is not restricted.

(d) Foreign and domestic investment policy

Question 10

The Industrial Development Incentive Act, according to answer to question 21 (WT/ACC/TON/4), is currently under review for more standardization and transparency. Please update the Working Party on the status of the revision.

Answer:

The Industrial Development Incentive Act is being replaced by new legislation and will be repealed when the new legislation is implemented. This new legislation, the Foreign Investment Act, has been passed by Parliament but is yet to be gazetted and implemented.

The Foreign Investment Act provides regulations for foreign investors in Tonga who wish to carry on any activity for the purpose of generating revenue in trade, commerce or industry, including any trade, profession or calling.

The Act details the regulations for foreign investment into Tonga, the registration requirements for foreign investors and the duration of registration certificates; lists those activities that are classified as reserved or restricted and the relevant conditions for foreign investment into such activities; details the terms for transfer of registration, cancellation of registration and the means for appeal if registration is refused; and sets out transitional arrangements for foreign investors already operating in Tonga at the time of the legislation being implemented.

A copy of the new legislation is being sent to the WTO Secretariat for the information of delegations.

Question 11

The response to question 1 of document WT/ACC/TON/4 does not address the basic question of whether Tonga's investment legislation permits the denial of investment based on whether import substitution or the use of local content is provided for. If these provisions exist in law, they can be used. Will Tonga revise the Industry Development Incentive Act to eliminate these provisions and ensure consistency with the WTO Agreement on TRIMs?

Answer:

Please refer to answers both to the previous question and to Questions 73 and 74 below in the section on TRIMs.

Question 12

The response to question 22 of document WT/ACC/TON/4 indicates that "in recent years the (Standing Advisory) Committee has not used these criteria to determine whether or not a licence is to be granted because it welcomes all foreign investment in the sectors covered by the

Act. The legislation is currently being reviewed in order to bring it into line with this current practice." What is the status of this review? Has the Law been amended?

Answer:

Please refer to the answer to Question 10.

Question 13

We must disagree with the response to question 24 in document WT/ACC/TON/4. To the extent that the benefits provided by the Industrial Development Incentives Act are, in law or in fact, contingent upon export performance or import substitution, they are prohibited subsidies as provided for in the WTO Agreement on Subsidies and Countervailing Measures. How does the government of Tonga intend to amend the IDI Act to bring it into conformity with WTO Agreements?

Answer:

The benefits referred to in Question 24 of WT/ACC/TON/4 have never been made contingent upon export performance or import substitution. It is the Government of Tonga's understanding that these benefits would therefore not be contrary to the WTO. However, this legislation will be replaced by new legislation, referred to in the answer to Question 10, and the provisions of this new legislation will apply from the date of Tonga's accession to the WTO.

Question 14

Questions 21, 22 and 23 (pages 13-15 of document WT/ACC/TON/4) and questions 99-100 (pages 41-42) refer to the Industrial Development Incentives Act. It is still not clear how the provisions of the Act relate to the disciplines under the Agreement on Subsidies and Countervailing Measures and the TRIMs Agreement.

Answer:

Please refer to answers to Questions 10 and 13 above.

Question 15

Questions 25 (page 16 of document WT/ACC/TON/4), 125, 126 and 127 (page 49) refer to the proposed privatization of government services. We would appreciate an update on progress in this area and Tonga's future plans for privatization.

Answer:

As of 30 June 2002, the Government's shareholding in other organizations was as follows:

ORGANIZATION	% GOT OWNERSHIP	NO. OF SHARES 1999/2000
Air Pacific Limited	<5	70,400
Bank of Tonga	4	120,000
Export Produce Treatment Services Ltd.	20	40,000
Frisco	99	99
Hawaiian Air	<5	208
Home Gas	99	99
International Dateline Hotel	99	5,999,999

Leiola Duty Free	60	600,000
Pacific Forum Line Limited	Approx. 5	1,271,956
Primary Produce Ltd.	99	99
Royal Tongan Airlines	99	12,000,000
Sea Star Fishing Co. Ltd	70	42,000
Shipping Corporation of Polynesia Ltd	100	10,000
Tonga Development Bank	100	1,400,000
Tonga Investment Ltd	99	100
Tonga Telecommunications International Ltd	100	6,712,466
Tonga Timber Limited	99	1,889,999
Tonga Corporation	100	250,000

Since Tonga's response to the initial questions submitted by WTO Members (found in WT/ACC/TON/4) ownership of Royal Beer Co. Ltd has been transferred to a private owner.

There are still plans to wind up Primary Product Ltd as soon as possible.

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

Tonga is prepared to accept the following Protocol commitments in the Working Party report:

"From the date of its accession, Tonga's laws would give foreign and domestic importers and exporters the right to appeal administrative action relating to matters subject to WTO provisions to an independent body in full conformity with WTO obligations, including Article X:3(b) of the GATT 1994".

"The provisions of the WTO Agreement, including Tonga's Protocol, shall be applied uniformly throughout its customs territory and other territories under Tonga's control, any special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established".

Question 16

We understand that the Judiciary comprises at the lower level the Magistrates' Court and the Land Court. Is there a differentiation by subject between these two courts?

Answer:

Yes, there is a differentiation by subject between these two courts. They play completely separate roles in exclusive jurisdictions. The Magistrate Court is as the lowest level of Judiciary hierarchy, whilst the Land Court is at the same level as the Supreme Court.

The Land Court has the jurisdiction to deal only with all land related cases, including Hereditary Estates Tax and town Allotments Mortgages. It does not deal with any criminal or civil cases.

The Magistrate Court has the jurisdiction to deal with all criminal and civil cases, up to a certain limit. This court hears and determines criminal matters for which the punishment provided by law does not exceed a fine of T\$1,000 or 3 years imprisonment and also criminal cases including proceedings for the recovery of fines, penalties and forfeitures which the Magistrate is allowed by law and determine. The Magistrate Court also has the jurisdiction to hear and decide civil actions whose claim does not exceed \$1,000.

Question 17

Tonga will need to implement legislation to give effect to the WTO in a number of areas and this is acknowledged in Tonga's replies. It would be helpful if Tonga could provide an update on progress with legislation and its future plans in this area, including timetables for implementation.

Answer:

Tonga has identified a number of areas in which changes in its legislation will be necessary to give effect to the WTO. Information on these is contained in the relevant sections of the present document.

An overview of the legislation Tonga has implemented/will implement to give effect to the WTO Regulations is detailed in the Table included in Annex D of this document.

Bilateral donors have been generous in providing technical assistance to the government of Tonga in the past and Tonga notes that, in certain cases, action will only be possible if further adequate and timely technical assistance is received.

Question 18

Does Tonga have a plan of action to address the deficiencies already identified in its legislation as it relates to WTO provisions? If not, we suggest that one be developed. We look forward to working with Tonga on this, if necessary.

Answer:

Please see the answer to Question 17.

Tonga will be pleased to work with the Accession Working Party on this task.

Question 19

Please describe the ratification procedures that will be necessary once Tonga's accession package has been approved by the General Council.

Answer:

Once approved by the General Council, the Accession Package requires the approval of the Privy Council in Tonga before it enters into force.

Question 20

What will be the status of the WTO Agreement and its annexes in Tonga's legal hierarchy after acceptance of the WTO and Membership, e.g., do the provisions of international agreements take legal precedence over domestic law?

Answer:

Please see the answer to Question 19.

IV. POLICIES AFFECTING TRADE IN GOODS

(a) Registration requirements for engaging in importing

Question 21

Please specify the cost of the license and the time necessary to obtain it. Are they the same for export licenses?

Answer:

A new draft Act, the Business Licences Bill, will repeal the Licences Act Cap. 47 and introduce a simple, transparent procedure for the issuance of business licences that does not create barriers to imported or exported products. Under the new Act, a licence must be issued if:

- The application is for a business which does not carry on, and does not propose to carry on, a prohibited activity; and
- In the case of an applicant who is an individual, the applicant is 18 years or older; and
- In the case of a partnership, all the partners are 18 years or older; and
- In the case of an applicant who is a foreign investor, the applicant holds a valid foreign investment registration certificate.

Any party holding a business licence will be able to engage in the business of importing or exporting.

Regulations to be issued under the new law will provide that fees for the issuance of the licences are no higher than the approximate cost of services rendered.

The aim of the new legislation is to bring Tonga's rules in this area into line with best international practice and the rules of the WTO, i.e. Articles VIII:1(a), XI:1 and III:2 and 4.

A copy of this Bill has been supplied to the WTO Secretariat for the information of members of the Working Party. A copy of the Regulations will be supplied as soon as possible.

Tonga is prepared to enter into the following Protocol commitment: "From the date of accession, Tonga would ensure that its laws and regulations relating to the right to trade in goods and all fees, charges and taxes levied on such rights would be in full conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994 and that it would implement such laws and regulations in full conformity with these obligations".

Question 22

In document WT/ACC/TON/4, Tonga states that a business activity license is required before importer can apply for an import license. Please detail the steps for obtaining a business activity license, including any investment requirements, residency requirements, or fees.

Answer

Please see answer to Question 21. The new legislation specifies that foreign investors must hold a valid foreign investment registration certificate, the details of obtaining which were provided in the answer to Question 10.

Question 23

Please detail the additional requirements necessary to obtain a license to import. What, if any, additional requirements exist for foreign or domestic persons or firms to import goods in Tonga?

Answer:

Please see the answer to Questions 21 and 22. When importing, all businesses must, of course, conform to the relevant laws and regulations, such as those relating to the payment of import duties, etc.

(b) Characteristics of national tariff**Question 24**

In relation to Tonga's applied tariff not all HS subheadings are included in the Customs and Excise Act – 22 of 1983 (e.g. sub-headings 0103-0106, 0205-0207, etc. are omitted). Can Tonga please explain why these rates are missing and what rates of duty apply?

Answer:

Tonga's Custom Tariffs include all HS subheadings. The relevant details for the examples quoted are as follows:

Tariff Item	Description	Duty Rate
0103.0000	Live Swine	0%
0104	Live sheep and goats	
0104.1000	- sheep	0%
0104.2000	- goats	0%
0105	Live poultry, that is to say, fowls of the specie, Gallus domesticus ducks, geese, turkeys and guinea fowls	0%
0106	Other live animals	0%
0205	Meat of Horses, asses, mules or hinnies, fresh, chilled or frozen	15%
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen	
0206.1000	- of bovine animals, fresh or chilled	15%
0206.2000	- of bovine animals, frozen	15%
0206.3000	- of swine, fresh or chilled	15%
0206.4000	- Other, fresh or chilled	15%
0206.9000	- Other, frozen	15%
0207	Meat and edible offal, of the poultry of heading No. 01.05, fresh, chilled or frozen.	
	- Poultry not cut in pieces fresh or chilled:	
0207.1010	--- Fowls of the species, Gallus domesticus	20%
0207.1090	--- Other	20%
	- Poultry not cut in pieces, frozen:	
0207.2100	--- Fowls of species Gallus domesticus	20%
0207.2200	--- Turkeys	20%
0207.2300	--- Ducks, geese and guinea fowls	20%
	- poultry cuts and offal (including livers), fresh or chilled	
0207.3011	--- Fatty livers of geese or ducks	20%
	--- Other:	
0207.3910	--- of fowls of the species Gallus domesticus	20%
0207.3990	--- other	20%

Tariff Item	Description	Duty Rate
	- Poultry cuts and offal other than livers, frozen:	
0207.4100	--- of fowls of the species Gallus domesticus	20%
0207.4200	--- of turkeys	20%
0207.4300	--- of ducks, geese or guinea fowls	20%
	- Poultry livers frozen:	
0207.5010	--- of fowls of the species Gallus domesticus	20%
0207.5090	--- other	20%

Source: Schedule 1: Customs and Excise Duty Act, Section 67

Question 25

In document WT/ACC/TON/4, Tonga states that excise duties on imported alcoholic beverages are for revenue, health reasons and to protect the domestic industry. Article III states that excise and other taxes applied to imports should not discriminate vis-à-vis similar domestic products, i.e., they cannot be used for protection. What is Tonga's timetable for eliminating the level of discrimination towards imports from its excise tax system?

Answer:

Tonga is prepared to modify its current excise tax regime to bring it into conformity with WTO rules and in particular to ensure that these taxes apply equally to both domestic and imported alcohol beverages. It is also ready to negotiate on the rates of customs duties applied to imported products. The timetable for the changes will be determined as part of the accession process.

Question 26

The response to question 47 in document WT/ACC/TON/4 indicates that the reason import tariffs for tobacco and alcoholic beverages are so high is for revenue and health reasons. The high (200% or T\$2.40 per litre, whichever is greater) tariff on beer, however, appears to be in place to protect domestic production, not for health reasons. As the government maintains a 40 percent ownership share in the local production facility, we would like to know how health enters into Tonga's policy vis-à-vis this product. We believe an evenly applied excise tax on both domestic and imported beer in conjunction with a more reasonable tariff would better served Tonga's stated policy objectives, i.e., revenue and health protection, than this prohibitive import tariff, while at the same time providing a level of protection.

Answer:

The government does not now have any form of ownership in the local production facility as stated in the answer to Question 15 above.

Rates have been modified since WT/ACC/TON/4 and are now as follows:

Tariff Item	Description	Duty Rate
22.03	Beer made from malt	
2203.0010	---not exceeding 2.5% volume of alcohol	110% or T\$1.10/L, whichever is greater. Excise 83s/L or 55%, whichever is greater.
2203.0090	---other	220% or T\$2.20/L, whichever is greater
22.04	Wine of fresh grapes, including fortified wines; grape must be other than that of heading No. 22.09.	
2204.1000	---Sparkling wine	99% or T\$3.52/L, whichever is greater
2204.2000	---other wine; grape must with fermentation prevented or arrested by the addition of	82.50% or T\$2.64/L, whichever is greater

Tariff Item	Description	Duty Rate
	alcohol	
2204.3000	---other grape must	82.50% or T\$2.64/L, whichever is greater
2205.0000	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances	82.50% or T\$2.64/L, whichever is greater
2206.0000	Other fermented beverages (for example cider, perry, mead)	82.50% or T\$1.43/L, whichever is greater
22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% volume; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages.	
2208.1000	---Compound alcoholic preparations of a kind used for the manufacture of beverages	330% or T\$38.50/L, whichever is greater
2208.2000	---Spirits obtained by distilling grape wine or grape marc	330% or T\$38.50/L, whichever is greater
2208.3010	Whiskies ---less than 57% by volume of alcohol	220% or T\$22.00/L, whichever is greater
2208.3020	Whiskies ---57% by volume of alcohol or more	330% or T\$38.50/L, whichever is greater
2208.4010	Rum and tafia ---less than 57% by volume of alcohol	220% or T\$22.00/L, whichever is greater
2208.4020	Rum and tafia ---57% by volume of alcohol or more	330% or T\$38.50/L, whichever is greater
2208.5010	Gin and geneva ---less than 57% by volume of alcohol	220% or T\$22.00/L, whichever is greater
2208.5020	Gin and geneva ---57% by volume of alcohol or more	330% or T\$38.50/L, whichever is greater
2208.9010	Other ---less than 57% by volume of alcohol	220% or T\$22.00/L, whichever is greater
2208.9020	Other ---57% by volume of alcohol or more but less than 80%	330% or T\$38.50/L, whichever is greater
2208.9030	Other ---80% by volume of alcohol or more	330% or T\$38.50/L, whichever is greater
24	Tobacco and manufactured tobacco substitutes	
2401.0000	Unmanufactured tobacco; tobacco refuse	225% or T\$37.50/kg, whichever is greater
24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substitutes	
2402.1000	---cigars, cheroots and cigarillos, containing tobacco	255% or T\$75.00/kg, whichever is greater
2402.2000	---cigarettes containing tobacco	525% or T\$96.00/kg, whichever is greater; or T\$96.00/1000 cigarettes
2402.9000	---other	525% or T\$96.00/kg, whichever is greater; or T\$96.00/1000 cigarettes
2403.0000	Other manufactured tobacco and manufactured tobacco substitutes; "homogenized/reconstituted" tobacco; tobacco extracts and essences	187% or T\$37.50/kg, whichever is greater

Source: Schedule 1: Customs and Excise Duty Act, Section 67

Excise Tax is charged equally on domestically produced and imported beer as per the above table.

Tonga is prepared to enter into the following Protocol commitment "Upon accession to the WTO, Tonga would apply its internal taxes on tobacco, alcoholic beverages and beer in conformity with GATT obligations, in particularly Article III, 1 & 2 and negotiate on the level of its import duties on these products".

(c) Tariff quotas, tariff exemptions

Tonga is prepared to enter into the following Protocol commitment “Upon Tonga’s accession to the WTO, any tariff quotas and tariff exemptions would only be implemented in conformity with the relevant WTO provisions including Article I of the GATT 1994 and the TRIMs Agreement”.

Question 27

We note that ground equipment and technical supplies required for use at airports in connection with air services are exempt from customs duties. Are they also exempt from the port and service tax and other revenue charges? In light of these exemptions, would Tonga consider binding its customs duties and other revenue charges on civil aircraft and parts at zero?

Answer:

Tonga confirms that ground equipment and technical supplies required for use at airports in connection with air services are exempt from customs duties. These goods are not exempted from the Port and Services Tax.

Tonga has stated that Port and Services Tax is an ‘Other Duty or Charge’ (ODC) and has already offered to bind its ODC’s at zero (0%). Tonga is also willing to negotiate on its customs duties during the accession process.

Question 28

Are the products listed in reply to question 51 (document WT/ACC/TON/4) also exempted from internal taxation?

Answer:

Internal taxes are dealt with in Section (k) below.

Not all goods listed in the answer to Question 51 are entitled to exemption from internal taxation. The following goods are exempt:

Sales of goods and services to his Majesty the King;

- Sales of goods and services to or by government;

Sales of goods from one vendor or business to another vendor or business for the purpose of further retailing or manufacturing and processing for sales of customers;

- Sales of local agriculture, livestock and fisheries products in government market by individual sellers around the markets and at farm gates throughout the Kingdom;
- Sales of goods by street vendors such as selling of handicrafts, woodcarvings, clothing and peanuts;
- Sales of tickets to patients approved by the Minister of health for international travel on production of a certificate of exemption from the Minister;
- Sales of materials to be used for building of residential home on production of a certificate of exemption from Minister;
- Sales of goods exported to foreign markets.

(d) Other duties and charges: charges for services rendered

Tonga reconfirms that it is prepared to bind "other duties and charges" as defined in Article II:1(b) of GATT 1994 at zero in its Initial Tariff Offer, on the understanding that the removal of its "other duties and charges" is taken into account in the tariff negotiations. If its "other duties and charges" are bound at zero, it would not appear appropriate to draft a Protocol commitment providing that the application of these duties and charges would be in accordance with WTO provisions.

Tonga is prepared to accept the following Protocol commitment on fees and charges for services rendered: "All fees and charges imposed by Tonga on or in connection with importation or exportation would be operated in conformity with the relevant provisions of the WTO Agreement, in particular Articles VIII and X of GATT 1994. From the date of accession, Tonga would not apply, introduce or reintroduce any fees and charges for services rendered that were applied to imports on an ad valorem basis. Information regarding the application and level of such fees and charges, revenues collected and their use, would be provided to WTO Members on request."

Question 29

In document WT/ACC/TON/4, Tonga states that the port and service tax is for revenue purposes. Does this tax have any "service" component, i.e., is it related to any particular identifiable service when applied to imports? We note that all fees relating to importation should only cover the cost of services rendered and should not be applied for revenue purposes.

Answer:

The answer to Question 55 in WT/ACC/TON/4 states that, in WTO terms, the Ports and Service Tax is an "other duty or charge" and that the relevant provision is Article II of the GATT 1994. Tonga has already offered to bind its ODC at zero (0%) in its Initial Tariff Offer. This means that the Ports and Service Tax would be removed in accordance with a timetable to be specified in that Schedule. Tonga would expect that this be taken into account during the negotiation on the level of tariff bindings.

Question 30

Tonga has provided information in documents WT/ACC/TON/3 and WT/ACC/TON/4 and in the laws submitted to the WP on its wharfage dues, charges paid on certain products that arrive in Tonga on a government wharf. The dues, however, are not standard, but vary by product with certain products being assessed a charge for each product imported, e.g., motor vehicles, buses and bicycles. We had understood that the wharfage dues were services for use of the facilities, not additional charges on imported products. We would appreciate a comprehensive explanation to the Working Party on the nature, scope, and method of application of wharfage dues that addresses this issue and transparently lays out the costs involved in this regime.

Answer:

Sections 5 and 16 of the Wharves Act 1992 (Cap. 138) and Amendments 1997, 1998 provide for wharfage dues. Having re-examined the subject of wharfage dues levied under this Act, Tonga recognises that these are "Other Duties and Charges" on imports and is prepared to take legislative action to remove these as from the date that the zero binding on ODCs comes into effect.

Question 31

There also appears to be a discrepancy between the information provided on wharfage dues in document WT/ACC/TON/4 and in the law itself. WT/ACC/TON/4 clearly states that the wharfage fee is paid to the port authority and not to the government. The Wharfage Law,

however, states that all fees including wharfage and berthage are paid to the government as revenue, not as service fees. We appreciate the importance of port fees in conducting commerce, but the current system does not, apparently, provide for a transparent distinction between fees and charges for service and those applied for general revenues. We believe that a more explicit separation of these charges would facilitate trade and be more consistent with the provisions of Articles II, III, VIII, and X of the GATT.

More broadly, the number of fees that Tonga requires of imports can be alarming. Certain products, motor vehicle in particular, are required to pay (a) a custom duty, (b) a 20 percent port and service tax, (c) an import licensing fee, (d) wharfage dues and (e) a berthage or tonnage tax for using a vessel larger than 2 tons. It would appear that with the exception of the berthage or tonnage tax, these fees are not collected for services rendered, but constitute taxes and charges applied for revenue purposes. We would appreciate a consolidated, comprehensive treatment of the issue of fees and charges, perhaps in a table or chart, that can help the WP understand the total current level of taxation charged on imports for revenue purposes, as opposed to services rendered. This will be critical in evaluating Tonga's market access offer. We offer our assistance in this endeavour, if Tonga believes it necessary.

Answer:

Please refer to the answer to Question 30 above. As this indicates, Tonga is prepared to simplify the situation radically by binding other duties and charges at zero. Import licensing is dealt with in Questions 40 to 45 below.

Question 32

Tonga has three major charges on imports – the Ports and Services Tax, wharfage dues and import licensing fees (see questions 55-61 and 69). These charges do not appear to conform fully to GATT requirements. Import licensing fees appear to exceed the cost of the service and Tonga recognizes a need to amend this (see question 69). The wharfage dues appear to be a charge for a service. The Ports and Services Tax is an ODC under the terms of Article II of the GATT. In its tariff offer, Tonga offers to bind ODCs at zero per cent which seems to imply that, as it claims a GATT Article II justification for the tax (see question 55), the Ports and Services Tax will need to be eliminated. Can Tonga confirm its intention in this area?

Answer:

Please refer to answers to Questions 29, 30 & 31 above.

Question 33

With reference to the offer to bind "Other Duties and Charges" at zero, this would imply that the "Port and Services Tax" of 20 per cent will be eliminated. Can Tonga confirm that this is, in fact, what is planned? If so, would this be done as of the date of accession?

Answer:

Please refer to answers in Questions 29, 30 & 31 above.

Question 34

We appreciate Tonga's readiness to bind ODCs at zero per cent in its tariff schedule. Does this include both the Port and Services Tax and the Wharfage tax?

Answer:

Yes. Please refer to answers in Questions 29, 30 & 31 above.

Question 35

We are pleased to note that Tonga has recently adopted the harmonized tariff system. Tonga has very recently submitted an offer on WTO tariff bindings. We consider that it has some positive features such as universal binding of all tariff lines, and binding of ODCs at zero per cent. Is Tonga proposing to eliminate the Ports and Services Tax?

Answer:

Yes. Please refer to answers in Questions 29, 30 & 31 above.

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

Tonga is prepared to enter into the following Protocol commitment: “Tonga would, from the date of accession, not introduce, re-introduce or apply quantitative restrictions on imports, or other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreement. The legal authority of the Government of Tonga to restrict or prohibit importation of goods into Tonga would be applied from the date of accession in conformity with the relevant requirements of the WTO, in particular Articles XI, XII, XIII, XVIII, XIX, XX, and XXI of the GATT 1994, and the Agreements on Agriculture, the Application of Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards, and Technical Barriers to Trade”.

Question 36

We appreciate Tonga's readiness to review the licensing requirements for a number of products (re: question 68 in document WT/ACC/TON/4). Which law contains the criteria to determine whether importing a car is possible or not? Could you briefly explain them?

Answer:

The Customs and Excise Act (Cap 67) Section 35 and Schedule II, Part I, Section 5 under the List of Restricted Imports provides the list of motor vehicles whose importation into Tonga is restricted. This restriction can be waived when there has been a licence issued by the Minister of Finance.

In relation to left hand drive vehicles, the restriction can be waived when there has been a licence issued by the Minister of Finance and the Minister of Police.

Procedures as to how to obtain an import license are shown in Regulations 6 – 9 and the Schedule of Foreign Exchange Control Regulation.

Question 37

Tonga imposes quantitative restrictions on imports of eggs and biscuits (see questions 62, 64-65, and 75). This is contrary to Article XI of the GATT and the Agriculture Agreement and the measures need to be removed and, if necessary, replaced by tariffs.

Answer:

Tonga is prepared to remove these restrictions from the date of its accession to the WTO, to replace them with an appropriate customs duty rate to be negotiated.

Question 38

In document WT/ACC/TON/4, Tonga states that it requires import licenses for the import of "all books and any written or printed matter, sound and visual recordings subject to copyright law" and that it restricts "all books and any written or printed matter or sound and visual recordings which advocate violence, lawlessness or disorder." Can Tonga explain how the requirements relating to the importation of copyrighted material are administered. Are these restrictions? Does Tonga intend to restrict the importation of printed and recorded matter that violates a copyright, patent or trademark? How does Tonga determine if imported material advocates violence, lawlessness or disorder?

Answer:

Tonga currently has no requirements relating to the importation of copyrighted materials. It is however intended that importation of printed and recorded matter that violates a copyright, patent or trademark will be restricted – as a signatory to both the Paris and Berne Conventions, Tonga must abide by the standards set by those conventions.

Section 2 of the Cinematograph Act (Cap. 167) allows for the establishment of the Censor Committee. Section 3 and 4 of the Censorship Regulations sets out the Powers of the Board of Sensors.

Section 3 of the Censorship Regulations states “no person shall exhibit a cinematograph film in public or any poster or other advertisement or video tape film...unless he shall previously have obtained a certificate from Board of Censors of the district where the film is to be shown”.

Section 4 of the Censorship Regulations states “a board of censors shall not issue a certificate unless the cinematograph film or poster or other advertisement or video tape or film...shall have been exhibited by 3 members of the Board of Censors and approved by at least 2 of the members...”

Question 39

The response to question 64 in document WT/ACC/TON/4 states that eggs and cabin and ship biscuits are subject to quantitative restrictions to protect domestic industry. We suggest that Tonga develop a WTO-consistent method of addressing the need to protect these industries, e.g., use of tariffs instead of a quantitative restriction to protect their domestic industry.

Answer:

Tonga is prepared to remove these restrictions from the date of its accession to the WTO, to replace them with an appropriate customs duty rate to be negotiated, as stated in the answer to Question 37.

(f) Licensing procedures

Question 40

Tonga's reply to question 75 in document WT/ACC/TON/4 appears contrary to Articles III and VIII of the GATT 1994 because it appears to require an import license on eggs to "closely monitor and control imports for the sake of local poultry farms". Can Tonga clarify how this is justified under WTO rules?

Answer:

Please see answers to Questions 37 and 39 above.

Question 41

We welcome the modifications that have been introduced to the import licensing procedures in order to eliminate possible discriminations. What are the plans to review the fee structure to bring it in conformity with Art. VIII GATT?

Answer:

Tonga acknowledges that the main purpose of its import licensing procedures, specifically the Import Licensing Fees, is to raise revenue. The Government is therefore prepared to abolish the procedures thereby removing these fees as from the date of its accession to WTO.

Question 42

In relation to import and export licensing, Tonga has indicated that it has made some changes to the import licensing system (see question 70), and that it is prepared to discuss modification of the associated fees to bring them into conformity with GATT Article VIII (see questions 69 and 74). However, Tonga has not provided sufficient details in relation to the other question raised in question 76. In particular, are there plans for review of the system to make it more transparent, predictable, fair and equitable?

Answer:

Please see the answer to Question 41 above.

Question 43

What criteria are applied to determine whether licenses should be issued or not (we note that the Committee has been abolished but presumably an assessment is still undertaken of applications by other authorities)? Can Tonga clarify how there can be no procedures or rules regarding applications and documents, and how it plans to address the requirement for all procedures to be published?

Answer:

Please see the answer to Question 41 above.

Question 44

Can Tonga clarify the situation with import licensing procedures? In the initial question, Tonga was asked to clarify how varying import license fees (that were used to raise revenue for the Government) were justifiable under Article VIII of the GATT 1994. Under this Article such fees are prohibited from being used for fiscal purposes. In their reply, Tonga has said they will review the matter. Have any measures been put in place to ensure compliance with Article VIII?

Answer:

Please see the answer to Question 41 above.

Question 45

A number of responses in document WT/ACC/TON/4 on licensing are not totally clear, as they refer questions on the scope, content, and nature of the system to the legislation submitted to the WTO Secretariat. Review of this legislation, however, has raised further issues regarding the import regime of Tonga, specifically relating to the number of fees required, how these fees are applied to certain products, and with the requirements that govern import licensing. Tonga's current licensing law appears to have a number of aspects inconsistent with the Agreement on Import Licensing Procedures and GATT Articles VIII and X, i.e., transparency and the application of fees. It does not provide guidance as to the steps that an importer would need to take to actually obtain a license and the fee structure appears to be related to the level of importation, not to the cost of providing the license. For example, the import licensing fee varies by product and is paid every time the product is shipped. Certain items are subject to a license fee for each item imported such as motor vehicles and machinery. This does not appear to be commensurate with the cost of services rendered.

We recommend that Tonga revise its legal provisions related to the act of importation, making them consistent with the provisions of the WTO Agreement on import licensing requirements both as they relate to the licensing of imports as goods and of the act of importation of certain products.

Answer:

Please see the answer to Question 41 above.

Question 46

Tonga noted in WT/ACC/TON/3 that the rules for issuance of special licenses were being revised. Has this happened? What has been done in this regard?

Answer:

Following is a list of goods that require a special licence:

HS Number	Description	Permission required & Ministry involved	Application Fee
93.03	Firearms and ammunition	license issued by the Minister of Police	\$10.00
3602.000	Explosives of all kinds including fuses and detonators	license issued by the Minister of Police	Nil
9304.0000	Noxious, stupefying or tear gas in any form and all weapons and instruments or appliances for firing or using such gas containers or cartridges for such weapons or other instruments or appliances	written permission of the Minister of Police	Nil
2208.3010	Brandy and whisky	certified to the satisfaction of the Collector of Customs that it has been matured in wood for three years*	Nil
2208.4010	Rum	certified to the satisfaction of the Collector of Customs that it has been matured in wood for two years*	Nil
87.04 87.11	Motor vehicles, motor cycles and motor scooters	license issued by the Minister of Finance and the Minister of Police (for public safety purposes and records keeping)	Nil

HS Number	Description	Permission required & Ministry involved	Application Fee
87.04	Left hand drive motor vehicles	license issued by the Minister of Police (for public safety purposes and records keeping)	Nil
4007.0010	Eggs	license issued by the Minister of Finance*	Nil
1905.9010	Cabin and ships biscuits	license issued by the Minister of Finance *	Nil
	Goods the importation of which is restricted by any other law in force in the Kingdom except in accordance with such law.		

* Tonga is prepared to remove its licensing requirements for eggs (see question 37 above), cabin and ships biscuits (see question 37 above), brandy and whisky, and rum as at the date of its accession to the WTO.

Question 47

In document WT/ACC/TON4, Tonga states that additional licenses are needed for the importation of alcoholic products for health reasons. What are the health reasons that require that brandy and whisky be matured in wood for three years?

Answer:

Please see the answer to Question 46 above.

Question 48

What are the steps for getting the additional licenses required for importing alcoholic products? Does Tonga have a domestic alcoholic beverage industry and is it subject to the same restrictions?

Answer:

Please see the answer to Question 46 above.

Question 49

We are pleased that Tonga has eliminated the discriminatory licensing procedures between Tongan and non-Tongan. Please revise the Annex 3 import licensing questionnaire to include the changes that have been made to the licensing system since the foreign trade memorandum was distributed.

Answer:

Please see the answers to Question 41 above.

Question 50

Please include a list of all products that require a license with HS number and description. Also include all agencies or ministries that must be approached to get a license, and any fees associated with importing.

Answer:

Please see the answer to Question 46 above.

(h) Customs valuation

Question 51

We would appreciate receiving an update on progress in bringing Tonga's customs valuation regime into conformity with the WTO Agreement on Customs Valuation. We note that Tonga has identified this issue as a possible area requiring technical assistance. We would be interested if Tonga has requested technical assistance in this area and whether positive responses have been received or are being considered.

Answer:

Tonga recognises that its present valuation rules do not conform to WTO requirements and plans to introduce a new WTO-compatible system as rapidly as possible. However, given the length of time needed to implement the new customs valuation rules, the Government of Tonga requests a transitional period permitting it to complete this process after its accession to WTO.

Tonga's legislative action plan regarding customs valuation is as follows:

Action	Target date from receipt of adequate technical assistance
Parliamentary consideration and passage of legislation for WTO-consistent valuation rules.	One year
Establishment of implementing regulations.	Two years
Recruitment of personnel, obtaining facilities and equipment. Establishment of databases.	Two and a half years
Development of manuals and operating procedures.	Two and a half years
Training of at least 15 officials, customs officers and private sector people.	Three years
Implementation of legislation	Three years after receipt of adequate technical assistance or date of accession, whichever is later.

The length of the transitional period will be agreed during the negotiations for accession, when the availability of adequate technical assistance is clarified.

Tonga is prepared to accept the following Protocol commitment: "Tonga would fully apply the WTO provisions concerning customs valuation as from an agreed date, including the Agreement on the Implementation of Article VII of the GATT 1994.

Question 52

On customs valuation (see question 78B), Tonga acknowledges that it will need to amend legislation and supply the questionnaire.

Answer:

Please refer to the answer to Question 51 above.

Question 53

We have reviewed Tonga's submissions on customs valuation provided in documents WT/ACC/TON/2, WT/ACC/TON/3, WT/ACC/TON/3/Add.1, WT/ACC/TON/4, and WT/ACC/TON/4/Add.1. This includes the relevant Tongan statutes and regulations including the Customs Duty and Excise Act; Act No. 3 of 24 June 1992 to Amend the Customs Duty and Excise Act (Cap. 67); Act No. 22 of 23 October 1990 To Amend the Port and Service Tax Act; and Customs and Excise Regulations, Chapter 67, Section 265 (July 31, 1984). We appreciate Tonga's statement in WT/ACC/TON/3 that it intends to amend its current system to meet WTO obligations, and we take note of Tonga's request for appropriate technical assistance. We also note that Tonga sent a representative to participate in the World Customs Organization Fellow Program, and we believe this training should be helpful in this effort. We look forward to working with Tonga on the implementation of those changes. In order to assist Tonga in evaluating the key areas where additional legislation and institutions may be necessary, we have prepared the following comments and questions:

Concerning the valuation hierarchy, Tonga's current valuation law does not appear to provide for the determination of customs value based on the hierarchy of appraisement methods contained in Articles 1-6 of the Agreement on the Implementation of Article VII of the GATT 1994. Specifically, transaction value as defined in Article 1 is the preferred method of appraisement, followed by the transaction value of identical merchandise, the transaction value of similar merchandise, the deductive value, computed value, and finally the fallback method. We suggest that Tonga's legislation be revised to adopt the provisions of these Articles.

Answer:

These concerns will be addressed in the proposed new legislation. Tonga will provide a copy of the proposed Bill once it has been completed.

Question 54

We note that in most countries, the vast majority of customs entries are accepted on the basis of invoice value. Is this the case in Tonga? Does Tonga foresee specific problems with reliance on invoice value for valuation of most customs entries?

Answer:

The present system is not based on invoice value. Experience has shown that in some cases, invoices presented to customs in Tonga do not reflect the price actually paid or payable. However, Tonga believes that, provided that the necessary technical assistance is made available, it will not have major problems in implementing Article 1 of the WTO Customs Valuation Agreement (transaction value) correctly.

Question 55

Could Tonga outline its current method for dealing with customs entries where use of the invoice for the basis of valuation is not possible?

Answer:

At present Tonga uses the Brussels Definition of Value (BDV) system.

Question 56

Concerning the prohibited basis of appraisal, in accordance with Article 7 of the Agreement, customs value may not be based on 1) the selling price in the country of importation; 2) a system that provides for the acceptance for customs purposes of the higher of two alternative values; 3) the price of goods on the domestic market of the country of exportation; 4) the cost of production other than compute values which have been determined for identical or similar goods; 5) the price of the goods for export to a country other than the country of importation; 6) minimum customs values; or 7) arbitrary or fictitious values. The current Tongan law does not contain these prohibited methods for valuation, and should be amended to include them. Does Tonga currently use any of these methods? If so, what are the circumstances that require this, and what consideration has been given to revising these procedures to meet WTO obligations? We would be interested in Tonga's views on how such methods could be converted to a WTO-consistent method.

Answer:

As noted above, Tonga recognises that it will have to introduce a new system of customs valuation when it becomes a member of WTO, rather than trying to convert its present system.

Question 57

Concerning confidentiality and transparency, Tonga's valuation law does not appear to provide adequate protection for the treatment of confidential information in accordance with the Article 10 of the Agreement, which grants confidential treatment to business proprietary information. Are there other provisions of law that cover this requirement? If not, we believe that the provisions of the WTO Agreement should be included in Tonga's laws.

Answer:

The provisions of the new law will cover this requirement.

Question 58

Tongan law also appears to lack adequate transparency safeguards. In particular, Article 12 of the WTO Agreement ensures publication of laws, regulations, judicial decisions and administrative rulings regarding the valuation of merchandise. In addition, the Tongan law and regulations do not appear to provide that importers have the right to a written explanation of how judicial and administrative valuation decisions were determined. These provisions are contained in Articles 11.3 and 16 of the Agreement. Are these requirements provided for in other legislation? If not, we believe Tonga should develop a plan for establishing such protections for Customs rulings, and should consider extending such measures to other areas, e.g., in the application of taxes and fees to imports and the granting of licenses and other prior authorizations for importation.

Answer:

The new valuation legislation will ensure that the requirements of the WTO Agreement on Customs Valuation are met.

Tonga is also prepared to accept the following Protocol commitment: "From the date of accession to the WTO Tonga would abide by the provisions of WTO relating to judicial and administrative decisions, including Article X:3 of GATT 1994".

Question 59

Concerning bonded entries, when it is necessary to delay the final determination of the customs value, Article 13 of the Agreement grants importers the right to withdraw their merchandise provided they obtain sufficient guarantee in the form of a surety or deposit to cover the ultimate payment of customs duties. Tonga's Customs law does not appear to provide for bonded entry of merchandise under these circumstances. If such a system does not exist, we suggest that Tonga adopt one. If such a system exists, we suggest that it be explicitly included in its customs law and regulation to ensure transparency.

Answer:

The new valuation legislation will ensure that the requirements of the WTO Agreement on Customs Valuation on this provision are met.

(k) Application of internal taxes on imports

Tonga is willing to enter into the following Protocol commitment: "From the date of accession Tonga would apply its domestic taxes in full compliance with the relevant provisions of the WTO, including Articles I and III of GATT 1994, in a non-discriminatory manner to imports from all WTO Members and to domestically- produced goods".

Question 60

Two provisions of Tonga's sales tax on goods appear to have elements that discriminate against imports, i.e., that goods from one vendor or business to another vendor or business for the purpose of further retailing or manufacturing and processing for sales to customers are exempted unless these goods are imported for resale unless registered by the Inland Revenue Department; and that sales of local agriculture, livestock and fisheries products in government markets by individual sellers are also exempted. We would appreciate Tonga's clarification as to how this does not discriminate against similar imported goods, i.e., conflict with the provisions of Article III?

Answer:

Tonga does not believe that the provision that that goods from one vendor or business to another vendor or business for the purpose of further retailing or manufacturing and processing for sales to customers are exempted unless these goods are imported for resale unless registered by the Inland Revenue Department discriminates against imports because the procedure for registration by the Inland Revenue Department is designed only to administer revenue collection and does not constitute an obstacle to trade.

The exemption of sales of local agriculture, livestock and fisheries products in government markets by individual sellers only applies to very small individual producers. Products sold by large local firms and imported products, which by definition are sold by larger firms, are subject to the tax. Difficulties of tax collection and its disproportionate cost make it necessary to exempt small producers. Many other WTO Members also exempt small producers.

On this understanding, Tonga is prepared to enter into the following Protocol commitment: "From the date of accession Tonga would apply its domestic taxes in full compliance with the relevant provisions of the WTO, including Articles I and III of GATT 1994, in a non-discriminatory manner to imports from all WTO Members and to domestically- produced goods".

Question 61

Does Tonga apply VAT? If yes, please provide details of its functioning and eventual differences with the sale tax.

Answer:

No, Tonga does not apply VAT.

Question 62

Does Tonga produce any other alcoholic beverage besides beer? Does it produce tobacco products?

Answer:

Tonga does have two small local distilleries. No tobacco products are currently produced in Tonga.

(l) Rules of origin

Question 63

We seek a commitment from Tonga that upon accession its laws and regulations on rules of origin would be applied in conformity with the provisions of the WTO Agreement on Rules of Origin. We also seek confirmation that Tonga's laws will be amended to incorporate the requirements of Article 2(h) and Annex II, paragraph 3(d), i.e., that for non-preferential and preferential rules of origin, respectively, the customs authority will provide upon the request of an exporter, importer or any person with a justifiable cause an assessment of the origin of the import and outline the terms under which it will be provided, and that any request for such an assessment would be accepted even before trade in the goods concerned began.

Answer:

Tonga is prepared to accept the following Protocol commitment: "From the date of accession, Tonga's preferential and non-preferential rules of origin would comply fully with the WTO Agreement on Rules of Origin, including the provisions of Article 2(h) and Annex II, paragraph 3(d) of the Agreement, i.e., that for non-preferential and preferential rules of origin, respectively, the customs authority will accept requests from an exporter, importer or any person with a justifiable cause for an assessment of the origin of the import".

(m,n,o) Anti-dumping , Countervailing and safeguard regimes

Question 64

We appreciate that Tonga does not expect to use these measures to regulate trade. We seek an appropriate commitment in the Working Party report that Tonga will not apply such measures without first notifying to the WTO legislation covering such measures consistent with WTO Agreements.

Answer:

Tonga is willing to accept the following Protocol commitment: "Tonga would not apply any anti-dumping, countervailing or safeguard measures until it had implemented appropriate laws in conformity with the provisions of the WTO Agreements on these matters. Tonga would ensure the

full conformity of any such legislation with the relevant WTO provisions, including Article VI and XIX of the GATT 1994 and the Agreement on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. After such legislation was implemented, Tonga would only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions”.

3. Internal Policy Affecting Foreign Trade in Goods

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

Tonga is prepared to enter into the following protocol commitment: “Tonga would ensure that no technical regulations, standards and conformity assessment procedures are adopted or implemented until Tonga has implemented appropriate laws ensuring conformity with the provisions of 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”.

Question 65

The Ministry has authorization to make regulations for the size, dimensions, and other specifications of packages of food. This is potentially very prescriptive. Do any regulations exist concerning food package size and dimensions and, if so, can Tonga provide a list of food the regulations apply to?

Answer:

Tonga has no regulations concerning food package size, dimensions or other specifications.

Question 66

Are there currently any food labelling and packaging regulations in force in Tonga?

Answer:

No. We do however have one regulation regarding the packaging of squash pumpkin for export.

Question 67

Which substances are not permitted in food?

Answer:

There are no regulations on this subject.

Question 68

Under Section 120 of the Act, 'the Minister may specify standards of emission from any motor vehicle...which is a nuisance or endangers public health'. Are there any emission standards in place?

Answer:

There are no emission standards.

Question 69

Under Section 120, could the term "excessive or harmful exhaust smoke" be clarified? What constitutes 'excessive' smoke?

Answer:

Tonga is a very small developing country and does not have the resources to buy, maintain and operate testing equipment. Findings that exhaust smoke is excessive or harmful are only made in exceptional cases.

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

Question 70

We appreciate the information Tonga has provided on its sanitary and phytosanitary regime. However, we need to see more detailed information and specific legislative references in its checklist to be able to evaluate Tonga's SPS regime and its consistency with the WTO Agreement on Sanitary and Phytosanitary Measures. Please provide separate documentation using the format given in document WT/ACC/8, with specific reference to the legislative, administrative, or procedural basis for compliance with the provisions of the SPS Agreement. If the relevant legislation or administrative procedures are not yet in place, please indicate when Tonga intends to develop these laws or procedures.

Answer:

Three new Acts have been passed by the Legislative Assembly, namely, Animal Diseases Bill (Amendment) Act (2002), the Agricultural Commodities Export Act (2002) and the Pesticides Act (2002). FAO and South Pacific Commission Consultants assisted in the drafting of this legislation and these should meet international requirements. These Acts have been submitted to WTO Secretariat for the information of WTO Members.

At the present time, Tonga does not have legislation making observation of the SPS Agreement mandatory. Such legislation, and regulations containing the administrative procedures necessary to administer the SPS Agreement, would come into force as from the date of Tonga's accession to WTO. The regulations would specify, for instance, the enquiry point, the authority responsible for making notifications to WTO, the publication to be used for the publication of proposed measures, the procedure to be used for taking comments into account, the Government body responsible for developing regulations, conducting risk assessments and control, inspection and approval procedures. This constitutes our response to the questions in WT/ACC/8.

Tonga does have the technical infrastructure in place required to implement the SPS Agreement. Australia assisted in the development of Tonga's present practices, so it is expected that these meet international requirements. Tonga already responds to all reasonable questions regarding their sanitary and phytosanitary measures - the Director of Agriculture is the contact point for all enquiries on SPS issues:

Mr. Haniteli 'O. Fa'anunu
Director of Agriculture,
Ministry of Agriculture and Forestry,
Nuku'alofa,
P.O. Box 14
Tel: (676) 23038 Fax: (676) 24271
E-mail: hfaanunu@maf.gov.to

The Tongan Authorities also conduct risk assessments, work closely with Pacific Quarantine counterparts in dealing with Plant Protection and Quarantine issues as endorsed and recommended by the FAO IPPC (International Plant Protection Convention) and actively participate in relevant regional and international bodies.

MAF is seeking financial assistance for development of MAF SPS information Web Site from Australia and USA. Tonga would welcome any funding assistance that may be provided by WTO members, as a part of the capacity building assistance to developing countries.

Tonga is prepared to accept the following Protocol commitment in the Working Party report: "Tonga would apply the agreement on the application of sanitary and phytosanitary measures from the date of its accession without any transitional period".

Question 71

Concerning the list of prohibited imports in response to question 120, why does Tonga prohibit the importation of these commodities except for seeds and propagating materials? Is it to protect domestic production? If for sanitary or phytosanitary reasons, isn't there a method less trade restrictive than an import ban that could serve the same purpose?

Answer:

Lists of plants and plant materials (Plant Quarantine Regulation/Act and in the Animal Diseases Act, second schedule, Regulation 31 etc.) of the listed *species* is NOT meant to be prohibited entry into Tonga. 'Prohibited' meant in the legislation refer to as 'RESTRICTED'. The Pest Risk Analysis system used by Tonga MAF is a "Import Permit" system where applicant has to supply MAF with all technical and biological information on the *species* is 'free' of the regulated quarantine pest concern or if an effective treatment is available then permit to import that *species* will be given to the importer, with special additional quarantine import requirements and declaration. It is suggested to redefine or new inclusion of the word 'PROHIBITED' or/and "RESTRICTED" or "REGULATED" for clarity of purpose in the legislation.

Question 72

We note that Tonga has submitted a response to the questionnaire on sanitary and phytosanitary measures (see question 121). Tonga's regime does not appear to be consistent with the SPS Agreement on the issue of transparency. Transparency is one of the key provisions of the SPS Agreement and it is unacceptable to provide answers such as "not applicable". Tonga needs to have its notification procedures in place, so that trading partners are made aware of changes to Tongan quarantine measures. For example, has Tonga put new quarantine arrangements in place against foot and mouth disease? Perhaps Tonga's SPS contact point (enquiry point) could also provide notifications? Tongan officials should consult the handbook on transparency put out by the WTO Secretariat in November 2000 titled "How to apply the transparency provisions of the SPS Agreement". This is available from the WTO website.

Answer:

These comments have been noted and taken into consideration where relevant in the answers to Questions 70 & 71 above.

With respect to the question regarding quarantine measures against food and mouth disease, Tonga is taking precautionary measures through not allowing importation of animals/animal product from Foot

and Mouth Disease infected country(ies) and regions. Tonga watches high risk vessels coming from infected countries, and screens air passengers arriving from infected destinations.

(d) Trade-related investment measures

Question 73

We have noted Tonga's replies to questions 22 and 23 on the Industrial Development Incentives Act. It seems that the Act refers to criteria which would constitute trade-related investment measures, but that these are not applied in practice, and that the Act is being reviewed. We seek an explanation of the changes that will be made to the Act, and a commitment that the revised Act and associated practices and decision-making processes would be consistent with the WTO, including the TRIMs Agreement.

Answer:

As stated in the answer to Question 10 above, the Industrial Development Incentive Act is being replaced by the Foreign Investment Act and will be repealed when this new legislation is implemented.

Tonga is prepared to accept the following Protocol commitment: "Tonga would not maintain any measures inconsistent with the TRIMs Agreement and would apply the TRIMs Agreement from the date of accession without recourse to any transitional period".

Question 74

Tonga affirms that no TRIMs are applied in the country but the possibility to revoke an industry's license if export requirements are not met qualifies as TRIM. Even if this possibility is seldom used, we are seeking its elimination in the course of accession.

Answer:

Please see the answer to Question 73.

(e) State-trading practices

Tonga is prepared to accept the following Protocol commitment: "Tonga would apply its laws and regulations governing the trading activities of State-owned enterprises and other enterprises with special or exclusive privileges and would act in full conformity with the provisions of the WTO Agreement, in particular Article XVII of the GATT 1994 and the Understanding on that Article and Article VIII of the GATS. Tonga would notify any enterprise falling within the scope of Article XVII".

Question 75

With the exception of the Royal Beer Co. Ltd, does the Government of Tonga have an ownership stake in any other manufacturing facility in Tonga?

Answer:

The Government of Tonga does not have an ownership stake in Royal Beer Co. Ltd. and has no stake in any other manufacturing facility in Tonga.

Question 76

Please indicate the type of business conducted by FRISCO, Primary Produce Ltd, and Tonga Investment. Do any of these firms distribute imports? Do they have import competition for the products they sell?

Answer:

Tonga Investments Ltd. is a holding/investment company. It was set up in 1991 to manage and promote the various businesses carried out by its' subsidiaries, being Frisco Hardware Ltd, Homegas Ltd and Primary Produce Export Ltd.

Frisco is a hardware and building materials supplier. The majority of items that it sells are, by necessity, imported. In supplying such products Frisco is competing with private enterprises. Despite being Government owned, Frisco has not been granted any exclusive or special rights or privileges.

Primary Produce Limited is basically a shell company to collect debts. It is intended that this company be wound up as soon as possible.

Question 77

Will the Government of Tonga's holding in various services enterprises prevent commitments in any sector in its GATS schedule of commitments?

Answer:

No, the Government of Tonga's holdings will not prevent it from negotiating a schedule of specific GATS commitments.

(l) **Government procurement practices**

Question 78

We take note of the response to question 131 in document WT/ACC/TON/4 concerning Tonga's interest in membership in the Government Procurement Agreement. Does Tonga currently apply any margin of preference to local sourcing in its government procurement?

Answer:

No.

4. Policies Affecting Foreign Trade in Agricultural Products

- **General Background**

Question 79

We appreciate Tonga's submission on domestic support and export subsidies as detailed in document WT/ACC/4. We note that it appears to indicate that Tonga does not provide support that can be included in an aggregate measure of support under the Agriculture Agreement, nor export subsidies. Concerning document WT/ACC/SPEC/TON/3, we would appreciate clarification on a few technical points on supporting table DS:1. Can Tonga confirm that expenditures for infrastructural facilities required for the facilitation of export are limited to the provision or construction of capital works only, and does not include any subsidies to inputs

or operating costs, or preferential user fees, as required by paragraph 2(g) of Annex 2? Could Tonga provide an example of these facilities?

Answer:

Tonga confirms that the expenditures for infrastructural facilities required for the facilitation of export are limited to the provision or construction of capital works only and does not subsidies to inputs or operating costs. An example is the Air Treatment facility for treating (heating) agricultural produce at the international airport and Wharf.

The fees paid by exporters for these types of facilities for exports are commensurate to the costs of the services rendered. Details of the fee structure are included as Annex B.

Question 80

While information on Tonga's total value of agricultural production is useful, it doesn't need to be included in supporting table DS:1. We would suggest that this information be removed from the table, and included as part of the explanatory notes preceding the supporting tables. In its place, we would suggest inserting the total value of "green box" measures, including the 3-year average, at the end of supporting table DS:1.

Answer:

Attached as Annex C with changes suggested.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 81

We are reviewing Tonga's intellectual property laws, and look forward to reviewing areas where amendments or new laws may be necessary to implement the WTO Agreement on TRIPS. We appreciate Tonga's commitment to implementation of the TRIPS Agreement and we look forward to working with Tonga, WIPO, and other WP delegations to provide the assistance necessary to accomplish this. We suggest, in the interim, that Tonga use the checklist in document WT/ACC/9 to analyze its system and determine where additional provisions or institutions may be necessary.

Answer:

WT/ACC/9 has been submitted with this document.

Question 82

Please submit an action plan for the implementation of the TRIPS Agreement.

Answer:

The Industrial Property Right Act (covering copyright and related rights, patents, trademarks, industrial designs) was enacted in 2000. Copies of the Act and the accompanying Regulation were submitted to WTO Secretariat for circulation to members of the Working Party.

Laws for Protection in the Integrated Circuits, Protection against Unfair Competition and Geographic Indications have since been enacted. Copies of the draft laws were submitted to the Secretariat in June

2002 and copies of the laws as enacted are now being forwarded. Regulations under these Acts will be drawn up.

Given the length of time required to implement the new legislation, the Government of Tonga requests a transitional period permitting it to complete this process after its accession to WTO.

Its legislative action plan is as follows:

Action	Target date from receipt of adequate technical assistance
Parliamentary passage of TRIPS-consistent legislation on copyright and related rights, patents, trademarks, industrial designs, geographical indications, layout designs of integrated circuits, and protection of undisclosed information (trade secrets)	Done
Establishment of Intellectual Property (IP) Office.	Done
Establishment of implementing regulations.	One year
Obtaining facilities and equipment.	One year
Development of manuals and operating procedures.	One and a half years
Training of at least 15 officials, customs officers and private sector people as well as educators in TRIPS issues.	Two years
Readiness to participate in regional and international IP administrative cooperation (Forum Island countries, PCT, Madrid Protocol, etc.).	Two years
Implementation	Two years after receipt of adequate technical assistance or date of accession, whichever is later.

The length of the transitional period will be agreed during the negotiations for accession, when the availability of adequate technical assistance is clarified.

Question 83

We would appreciate receiving an update from Tonga on its plans to accede to the Paris and Berne Conventions and on the entry into force of the Copyright Act 1988. We note that according to Tonga's answer to question 146 (page 56 of document WT/ACC/TON/4), the Copyright Act 1988 is expected to enter into force following the passage of regulations which were due to be prepared before the end of December 2000.

Answer:

Tonga became a member of the World Intellectual Property Organization on the 14 June 2001, and a member of the Paris and Berne Conventions as of that date.

TRIPS-consistent legislation on copyright and related rights has been passed by Parliament.

VI. TRADE-RELATED SERVICES REGIME

1. General

Question 84

Tonga needs to provide documentation in a number of areas including WT/ACC/5 on services (see question 163, but we also note Tonga's comment in document WT/ACC/SPEC/TON/2

about the availability of information in the services sector). We note that Tonga has very recently submitted an initial offer document on services (WT/ACC/SPEC/TON/2) and that further work is needed to translate this document into a specific offer and that Tonga will need to draw up relevant legislation. At this early stage, taking into account Tonga's developing country status, we could suggest Tonga examine a somewhat broader sectoral coverage to include, for example, financial services.

Answer:

Tonga is transmitting its specific offer to WTO and looks forward to bilateral negotiations on the basis of that offer. It requests that, wherever possible, these bilaterals take place in Nuku'alofa. Where this is not possible, it looks forward to holding bilaterals when it comes to Geneva for the second meeting of its Working Party.

Question 85

As per question 177 (page 64 in document WT/ACC/TON/4), we would welcome advice from Tonga as to whether a monopoly on the provision of international telecommunication services still remains in place. If this is so, we would welcome details on the terms of this monopoly.

Answer:

As stated in WT/ACC/TON/4 the exclusive right granted by Government to Cable & Wireless to provide the international telecommunications services for Tonga lapsed in July 2000.

The Communications Act 2000 opened up both the domestic and international telecommunications services for any person or company wishing to operate them, subject to Part V of this Act which sets out the authority, rights and obligations associated with either an Individual or a Class License.

Tonga now has two mobile service providers who both offer international communication services, in addition to Tonga's land-line facilities.

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

Question 86

We take note of Tonga's statement concerning preferential trade arrangements in its response to question 183 in document WT/ACC/TON/4. Does Tonga grant any trade preferences to any other countries or economies?

Answer:

No.

Tonga is prepared to accept the following Protocol commitment: "Tonga's Government would observe the provisions of the WTO, including Article XXIV of the GATT 1994 and Article V of the GATS in its trade agreements."

ANNEX A

PRICE CONTROL MARK-UP SCHEDULE

PRICES OF GOODS AND SERVICES AND WAGE RATE ACT 1988

MARK-UP SCHEDULE

In exercise of the powers conferred upon the Competent Authority under the Prices of Goods and Services and Wage Rate Act 1988 as amended the Competent Authority hereby cancels all orders hitherto made under the Prices of Goods and Services and Wage Rate Act 1988 and its subsequent amendment.

1. This heading replaces the order under the heading **PRICES OF GOODS AND SERVICES AND WAGES RATE 1947** which was published in the Tonga Government Gazette No. 1 of 1991 and Tonga Government Gazette No. 8 of May 31st 1989 in respect of spare parts.
2. The legal maximum price to be charged for the goods indicated in this order shall be the price ascertained by the calculation as shown.

Notes: The abbreviation “**LC**” means **LANDED COST**
The abbreviation “**WP**” means **WHOLESALE PRICE**
The abbreviation “**RP**” means **RETAIL PRICE**

Articles	Calculation for WP	Calculation for RP
1. Flour per 50kg bag per kg	5% over LC	3 ³ / ₄ % over WP 0.02s over RP /kg in bag.
2. Sugar per 50kg bag per kg	7 ¹ / ₂ % over LC	10% over WP 0.02s over RP /kg in bag.
3. Butter and Margarine	5% over LC 0.02s/cartoon freezer allowance over WP	7.5% over WP 0.10s/carton freezer allowance over RP
Baby milk, Milk powered evaporated or condensed (with or without other ingredients)	5% over LC	7.5% over WP
4. Tea	5% over LC	7.5% over WP
5. Rice (Brown, White or Polished)	12.5% over LC	15% over WP
6. Coffee, Milo, Cocoa	12.5% over LC	15% over WP
7. Edible oil of all types	12.5% over LC	15% over WP
8. Cheese & Dripping	12.5% over LC	15% over WP
9. Salt	12.5% over LC	15% over WP
10. White Benzine per reputed 800ml bottles	7.5% over LC	7.5% over WP
11. All lubricants oil	12.5% over LC	15% over WP
12. Insecticides, pesticides, Weedicides, fungicides for Agricultural use	12.5% over LC	15% over WP

MISCELLANEOUS

1. A. Petroleum Product

- a) Motor Spirit PMS
- b) Kerosene DPK
- c) Diesel ADO

Wholesale and Retail Prices are determined by the COMPETENT AUTHORITY

Liquid Petroleum Gas (LP.Gas)

Wholesale and Retail Prices are determined by the COMPETENT AUTHORITY

B. Bread of standard size (454g)

Wholesale and Retail Prices are determined by the COMPETENT AUTHORITY

- 2. Agricultural product that are grown locally and fish that are caught locally are not subject to Price Control.
- 3. Ex-bond goods sales are not subject to Price Control.
- 4. Export Board sales are not subject to Price Control.
- 5. Country and Small Island sale retail mark up shall be as follows:
 - a) Country retail mark-up shall be 2.5% above retail mark-up for Nuku’alofa, Neiafu, Pangai and ‘Ohonua.
 - b) Small Islands retail mark-up shall be 5% above retail mark-up for Nuku’alofa, Neiafu, Pangai and ‘Ohonua.
- 6. a) The wholesale mark-up for Nuku’alofa and Neiafu shall be the same as indicated under the **“Calculation for Wholesale Price”** in the order for goods that have been initially imported directly to each of the above respective ports from overseas sources.
- b) The wholesale mark-up for Neiafu, Pangai and ‘Ohonua in respect of goods initially imported directly to the Port of Nuku’alofa before being shipped to each of the above respective ports shall be the same as the mark-up indicated under the **“Calculation for Wholesale Prices: in the order plus the additional percentage indicated below to cover the cost of handling, transportation and freight.**

The wholesale mark-up for Neiafu, Pangai and ‘Ohonua may be worked out as follows:

Port	Prescribed Mark-up	Additional Mark-up to Cover Handling Transport & Freight	Wholesale Mark-up
Neiafu	As indicated in the order	Plus 8%	Prescribe plus 8% mark up
Pangai	As indicated in the order	Plus 7%	Prescribe plus 7% mark up
‘Ohonua	As indicated in the order	Plus 4%	Prescribe plus 4% mark up

7. The retail mark-up for Nuku'alofa, Neiafu, Pangai and 'Ohonua shall be the same as prescribed under the Calculation for Retail Prices in the Order.
8. For the Niuas add 10% to the Retail Prices.

ANNEX B

Quarantine Fees¹

The Fees charged, stated in Tongan Pa'anga, are as follows:

TREATMENT:	
FUMIGATION	
Small Chamber (1.1 m ³)	\$10.00
All other fumigation chambers including sheet fumigation.	\$7.75 per m ³ or part thereof (maximum of \$130.00 per container and/or chamber).
HEAT STERILISATION	
Sterilisation of goods by heat in an oven	\$7.75 per 0.2m ³ or part thereof (maximum of \$130.00 per container and /or chamber)
WASTE DISPOSAL	
Disposal/incineration of quarantinable material e.g. war ships	\$0.40 per hour or part thereof.
STEAM CLEANING	
Per consignment	\$15.00 per hour or part thereof.
COLD STORAGE	
Cool room/refrigerator	\$0.02 per kg per 24 hours or part thereof
Freezer	\$0.04 per kg for the first 24 hours and \$0.02 per kg per 24 hours or part thereof, thereafter.
INSPECTION AND CLEARANCE:	
EXAMINATION FOR IMPORT OR EXPORT	
Documentation (Certificates and permits)	\$4.00
Examination of a container system unit	\$2.00
Examination of motor vehicle	\$4.00
Examination of goods at airports for issuing of a Phytosanitary Certificate (Max. 15 mins)	\$2.00
Examination of goods, other than at an airport for the issuing of a Phytosanitary Certificate (Max. 30 mins)	\$4.00
AIRCRAFT CLEARANCE	
Light Aircraft	\$50.00
Narrow-bodied aircraft (untreated)	\$80.00
Narrow-bodied aircraft (treated)	\$50.00
Wide-bodied aircraft (untreated)	\$120.00
Wide-bodied aircraft (treated)	\$60.00
SHIP CLEARANCE	
Vessel of more than 25 metres in length	\$50.00
Vessel of 25 metres or less in length	\$20.00
POST-ENTRY QUARANTINE	
Bench space per month (per 0.5 m ³ or part thereof)	\$7.75
Potting Material, chemicals and other related expenses	At cost

¹ **Source:** Adapted from Tonga Government's Gazette Supplement Extraordinary, No.7, 24 Friday 1997, "The Plant Quarantine Fees Regulation 1997".

OVERTIME	
For aircraft and passenger clearance at Airports;	
Weekdays	\$4.00 per hour
Weekends & Public Holidays	\$5.00 per hour
Other than aircraft and passenger clearance at Airports	\$2.00 per hour
MISCELLANEOUS FEES	
Hire of forklift and driver	\$25.00 per hour
Any other activity not specified in these Regulations	\$4.00 per officer per half hour or part thereof including travelling time
