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Accession of Ukraine**

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Additional Questions and Replies

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II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

Question 1

Paragraph 11: Is the reduction of VAT to 17 per cent in 2005 and to 15 per cent in 2006 still planned?

Answer:

No reductions in the VAT rates are currently being planned.

- Foreign Exchange and Payments

Question 2

Paragraphs 14-19: Are exchange rate losses paid abroad tax-deductible in all cases, e.g. if they relate to accounts payable?

Answer:

Exchange rate losses are not tax-deductible.

Question 3

Paragraph 17: Importers are required to obtain an individual licence from the National Bank for import prepayments for goods (works, services) of delivery terms exceeding 90 days. Are there any plans for abolishing this restriction? If yes, when will it be eliminated? If not, are there any prospects of prolonging the 90 days period. When could that take place?

Answer:

Article 6 of the Law of Ukraine "On Procedure for Carrying Out Settlements in Foreign Currency" establishes the list of types of agreements, implementation of which may fairly require the term exceeding 90 calendar days, and provides for the possibility to mitigate or abolish the above restriction by means of obtaining an individual licence of the National Bank of Ukraine for prolongation of the time-period of settlements, established by legislation.

- Investment Regime

Question 4

Paragraph 21: We understand that an investment program for automobiles construction was also approved for a further company, LuAZ, under the 1997 Law at the end of 2004. Please clarify.

Answer:

The Investment Program for LuAZ was approved in September 2003 prior to the adoption of the Law "On Development of Ukraine's Automobile Industry" No. 1624-VI of 18 March 2004. Thus, such program falls under the 1997 Law.

Question 5

Paragraph 23: Please add "The Working Party took note of this commitment" at the end of the paragraph.

Answer:

Ukraine does not object to this addition.

Question 6

Paragraph 26: According to the information provided, a wide range of activities could be prohibited. We welcome Ukraine's readiness to provide information on a case-by-case basis. However, for the sake of clarity, it would be desirable to draw up a list describing all prohibited (WTO inconsistent) investment activities.

Answer:

According to the Article 4 of the Law "On Investment Activities" No. 1560-XII of 18 September 1991, it is prohibited to invest in the objects, creation and use of the latter is contrary to environmental, sanitary and hygienic, radiation, architectural and other rules, established by legislation of Ukraine or violating the interests and rights of citizens, enterprises or the State, which are protected by the law. There is no specific list of the objects.

Question 7

Further, the acquisition of land from foreigners and foreign organisations is restricted and only possible via certain intermediaries. Could Ukraine confirm this?

Answer:

According to the Land Code No. 2768-III of 25 October 2001, foreign citizens as well as foreign legal entities are allowed to hold proprietary rights for non-agricultural land under condition they own the objects of real estate on the land. Foreign investors can obtain the property right for non-agricultural land on the basis of acquisition or other civil contracts if they buy or intend to build the objects of real estate for conducting economic activity.

- **State Ownership and Privatization**

Question 8

Paragraph 27: We understand that the State Property Fund is currently drafting a new programme. When is this expected to be adopted?

Answer:

The draft State Privatization Programme for 2004-2006 has been submitted to the Parliament for consideration.

Question 9

Paragraph 32: If available, please add the requested information on the importance of state-owned enterprises in Ukraine's foreign trade.

Answer:

According to the data by the State Statistics Committee of Ukraine, among the enterprises owned by the State and being in State corporate ownership, 792 were involved in export activity in 2004. The volume of export was US\$ 2,759.6 million (8.4 per cent of the total volume of exports). Five hundred and ninety-four enterprises were involved in importing activity, the volume of imports being US\$ 9,714.0 (33.5 per cent of the overall imports).

Question 10

Paragraph 34: Is the list of State-owned enterprises not subject to privatization exhaustive?

Answer:

The list of State-owned enterprises not subject to privatization exhaustive, referenced in paragraph 34, is exhaustive.

Question 11

From document WT/ACC/UKR/125, Question 13, we understand that a draft Law is currently in Parliament that would exclude 274 objects from the list of assets not subject to privatization. What is the current status of this draft Law?

Answer:

The Draft Law is under consideration in the Parliament.

- **Pricing Policies**

Question 12

Paragraph 42: We would like to stress the importance of ensuring that no new price controls are introduced.

Answer:

With respect to price controls, Ukraine will abide by the WTO rules.

- **Competition Policy**

Question 13

Paragraph 48: Is the list of natural monopolies exhaustive?

Answer:

The list of natural monopolies referenced in Paragraph 48 is exhaustive.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 14

Paragraph 62ff: Are activity licenses the only restrictions of trading rights? Who may get activity licenses? Are there any restrictions for foreigners? Can Ukraine clarify whether the fees for licensing are commensurate to the service rendered?

Answer:

Paragraph 62 does not deal with licensing of certain types of activities; it deals with registration of natural persons and legal entities as subjects of entrepreneurial activity that is not licensed. Any person can be registered as a subject of entrepreneurial activity, including foreigners.

Question 15

Paragraph 63: We regret that Ukraine does not envisage a gradual reduction of the number of goods and services-related activities subject to licensing.

Answer:

The number of goods and services-related activities subject to licensing has been drastically reduced in Ukraine during the recent years. Goods and services currently subject to licensing in Ukraine are similar to those subject to the same regulations in other WTO Member countries and are instituted to achieve legitimate objectives.

Question 16

Paragraph 65: We welcome the further information provided concerning the prohibition to import or export cognac spirits for foreign enterprises. For more clarity, we suggest to add the word "spirits" in the following sentence in paragraph 65: "Licences (for the production and trade in alcohol and tobacco products) were generally available to all economic agents, except for licences to import and export ethyl alcohol, cognac spirits and fruit spirits, which were issued only to State-owned enterprises or to "specialized enterprises" (residents) specifically approved by the Cabinet of Ministers." The same change should be made in Table 6(a).

Answer:

Ukraine does not object to add the word "spirits" where indicated in Paragraph 65 and Table 6(b).

Question 17

Please explain in more detail why foreign enterprises cannot be such "specialized enterprises" even if they would fulfil the criteria set out in the next sentence ("possessing the necessary facilities, equipment and expertise for the making of cognac spirits").

Answer:

Based on the fact that the above products can significantly affect human health, it is envisaged in Ukraine to conduct state control of production and circulation of spirits, which allows taking effective actions with the aim to prevent use of falsified and low-quality products in production. Said control is

conducted by means of issuing a licence to specialized enterprises (residents), list of which is adopted by the Cabinet of Ministers of Ukraine.

Question 18

What are the licensing requirements for foreign importers for in particular alcohol (other than ethyl alcohol, cognac spirits and fruit spirits – see above) and tobacco? Will only activity licenses be required for producers/distributors of alcohol and tobacco or also import licences (as is the case for ethyl alcohol, cognac spirits and fruit spirits)?

Answer:

List of the requirements for documents and information to obtain import licence for alcohol and tobacco products is stipulated in paragraph 42 of document WT/ACC/UKR/118 and in Table 6(d) of document WT/ACC/SPEC/UKR/5/Rev.2.

Ukraine hereby confirms that only a licence to carry out relevant types of activities is required for importers, producers and/or distributors of alcohol products (except for ethyl, cognac and fruit spirits) an tobacco products. Other and/or additional licenses, including import licenses, are not required.

A. IMPORT REGULATIONS

- Ordinary customs duties

Question 19

Paragraph 76: Amendments to the Customs Tariff of 15 March implied the lowering of tariff rates for a wide range of consumer products. An update of Table 8 might therefore be necessary.

Answer:

The current Customs Tariff comprised approximately 11,000 tariff lines. Most tariffs were levied at *ad valorem* rates, but 1,765 tariff line items were subject to specific rates of duty. Further details on the current applied tariffs are presented in Table 8.

An updated Table 8 is provided below:

Table 8: Import duties (privileged rates) levied on goods and other items imported into Ukraine Territory

| Ukrainian applied customs tariff | | | | | | | | | |
|---|-------|-------|---|-------|-------|-------|--------------|---------------|--------|
| Import duty rate (%) | 0 | 0-5 | 5-10 | 10-15 | 15-20 | 20-25 | More than 25 | Specific Rate | Total |
| Number of tariff lines | 1,836 | 3,873 | 1,804 | 681 | 374 | 435 | 296 | 1,716 | 11,015 |
| Share of number of tariff lines (%) | 16.67 | 35.16 | 16.38 | 6.18 | 3.40 | 3.95 | 2.69 | 15.58 | 100 |
| The maximum of the import duty rate is: | | | | | | | | | |
| for items of groups 01-24 | | | 50 % (with the quantity more than 25 % rate is 11.23 %) | | | | | | |
| for items of groups 25-97 | | | 50 % (with the quantity more than 25 % rate is 0.59 %) | | | | | | |
| Average arithmetic rate of the applied customs tariff (%) | | | | | 10.26 | | | | |
| Average weighted rate of the applied customs tariff (%) | | | | | 5.29 | | | | |

- **Other duties and charges**

Question 20

Paragraphs 79: The additional fee of €0.01 kg, which is discriminatorily levied on imported petroleum products, was scheduled to be abolished by 1 January 2005 but has now been prolonged for another year until 2006. We consider this fee a violation of Article VIII of GATT 1994. We would urge Ukraine to abolish the fee immediately as previously foreseen.

Answer:

Cabinet of Ministers Resolution No. 355 dated 18 May 2005 eliminated the additional fee of € 0.01 kg imposed on petroleum products.

- **Fees and charges for services rendered**

Question 21

Paragraph 95 ff: We are grateful for the information provided on the system for setting tariffs for transport of goods by rail. From this, we understand that different railway tariffs are applied for transportation of imported and exported goods than those which apply for transportation within Ukraine. In addition, preferential rates have been agreed with certain partners. However, in the meantime, we were pleased to receive most recent information suggesting that the process of harmonisation of tariffs has started. Could you please update the Working Party on these recent legislative changes. Generally, we ask Ukraine to end any discrimination upon accession. Please also clarify the situation concerning transit in this respect.

Answer:

On 1 April 2005 the Cabinet of Ministers of Ukraine adopted the Order No.91-r "On Indexation of Tariffs for Transportation of Cargos by Railway Transport and Related Services", which provides for an equal level of tariffs for internal railway transportation, and exports/imports, except for the tariffs on the transportation of the iron ore raw materials, cast iron, rolled ferrous metal, mineral fertilizers and oil products by the railway transport. The tariffs for these products will be unified by the end of the third quarter of the year 2005.

Ukraine will harmonize the differential railway tariffs for transport of goods by the date of accession.

- **Application of internal taxes to imports**

- Excise taxes

Question 22

Paragraph 104: We note that paragraphs 104 and 113 have the same contents; we suggest to keep paragraph 113. We will take position at the appropriate moment on Ukraine's requests for transitional periods for excise tax and VAT discrimination in the automobile sector until 2007 and 2008 respectively.

However, most recent information suggests that in the context of amendments to the 2005 Budget Law, the excise tax and VAT privileges have been eliminated. Please clarify whether the requested transitional periods are thus no longer necessary.

Answer:

The excise and VAT privileges have been eliminated by the Law of Ukraine No. 2505 "On Amendment of the Law of Ukraine "On the State Budget of Ukraine for 2005 and Some Other Legal Acts" of 25 March 2005. And thus the requested transitional periods are no longer necessary for VAT and excise privileges.

- VAT

Question 23

Paragraph 105: Please see comment on paragraph 11. Is the value-added tax paid for an operative leasing agreement tax-deductible?

Answer:

The value-added tax paid for an operative leasing agreement is tax-deductible except for financial leasing.

Question 24

Please also clarify the situation concerning domestic energy products – are they also exempted from VAT?

Answer:

Domestic energy products are not exempted from VAT.

Question 25

Paragraph 106: Please add "The Working Party took note of this commitment" at the end of the paragraph.

Answer:

Ukraine does not object to adding this sentence at the end of paragraph 106.

Question 26

Paragraph 108: As mentioned in paragraph 183, Law No. 1766 of 15 June 2004 amended Law No. 168 On VAT by extending VAT privileges for imports of components for ship building enterprises for the period 1 January 2005 - 1 January 2012; VAT privileges for imports of components by aircraft plants have been renewed in 2005 (postponed by 2004 budget law) and will be valid till 1 January 2007, according to the current version of VAT law. The report should reflect this.

However, most recent information suggests that in the context of amendments to the 2005 Budget Law, these privileges may have been eliminated. Please provide an update of the situation.

Answer:

Ukraine confirms that VAT privileges for shipbuilding and aircraft enterprises have been eliminated by the Law of Ukraine No. 2505 "On Amendment of the Law of Ukraine "On the State Budget of Ukraine for 2005 and Some Other Legal Acts" of 25 March 2005.

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

Question 27

Paragraph 118: We welcome the information that Ukraine will abolish import restrictions related to the age of vehicles imported into Ukraine upon accession. Please confirm that this includes all existing restrictions, namely related to buses, trucks and cars.

Answer:

The Draft Law, prepared by Ukraine, provides for abolishing a prohibition on imports of used buses and trucks older than five years, and a restriction related to the age of buses and trucks.

- **Customs valuation**

Question 28

Paragraph 134: What is the anticipated timing for the draft Law to amend the Customs Code to ensure the integration of the Interpretative Notes? When will the Customs Code be amended to stipulate mandatory publication of administrative and court decisions on valuation?

Answer:

The interpretative notes will be adopted in a Customs Order. The first Draft of Customs Order on Interpretative Notes has been prepared. It is expected to be finalized by the end of June 2005 and adopted during the second half of 2005.

Draft amendments to the Customs Code will include a provision stipulating mandatory publication of administrative and court decisions on valuation. The first Draft Amendments to the Customs Code has been prepared and is expected to be finalized by the end of June 2005 and adopted during the second half of 2005.

Question 29

Once known, please include the date as of which decisions of court bodies, in particular in the customs valuation area, will be available on the internet.

Answer:

Decisions of court bodies, in particular in the customs valuation area, will be available on the internet as of the date of accession.

- **Rules of origin**

Question 30

Question 79 of document WT/ACC/UKR/125: The reply explains that the "sufficient processing criterion" is determined in general by the change of tariff heading method or the *ad valorem* proportion rule. For "specific" product/countries, and according to the reply provided, the sufficient processing criterion seems to be determined through the change of tariff heading method, though the Resolution of the Cabinet of Ministers of Ukraine No. 2030 seems to establish technological process for determining the criterion of the sufficient processing for "particular" goods. Does this mean:

- that the sufficient processing criterion can be determined in general alternatively through the change of tariff heading and the added value method? How is it decided when to apply one or the other method?
- that for "specific" products/countries, if there are difficulties to determine the country of origin, the only method that will be applied is the change of tariff heading?
- that for "particular" goods (which ones?) the sufficient transformation will be determined through the technical processes method?

Answer:

The Cabinet of Ministers of Ukraine has authority to determine the criteria of sufficient processing for specific countries and goods on the basis of provisions set forth in Article 279 of the Customs Code.

According to Article 279 of the Customs Code the criterion of sufficient processing is determined on the grounds of a change of the classification code of goods at the level of any of the first four digits, the rule of *ad valorem* share or the list of specific production or technological operations.

If the Cabinet of Ministers does not establish such rules for certain goods, then the rule, under which a product is considered undergone sufficient processing shall apply, if in the result of its processing the classification code in the HS of description and coding of goods at the level of any of the first digits is changed. Accordingly, it is the said rule that is considered a general rule of origin.

According to the Resolution of the Cabinet of Ministers of Ukraine No. 2030 of 27 December 2002 the Cabinet of Ministers determined specific production and technological operations for identification of the criterion of goods processing. The list includes products of the following tariff codes: Group 25, Group 27, Codes 2818, 3301, 3403, 4001, 4017, 7103, 7111 and 8702-8704.

Question 31

Question 81 of document WT/ACC/UKR/125: The reply provides the list of products subject to certificates of origin, but it is not clear what the situation concerning goods receiving MFN treatment is. Is the certificate of origin compulsory for goods to be granted MFN treatment? (Will a certificate of origin be systematically requested for EC products?)

Answer:

As indicated in the response, under Article 282 of the Customs Code, presentation of a certificate of origin is mandatory only in the following cases:

- for the goods, originating in countries, to which Ukraine applies preferential treatment in accordance with the Customs Tariff of Ukraine;

- for the goods, import of which from respective countries is subject to regulation by quantitative limitations (quotas) or other measures of regulating foreign economic activities;
- if so is provided by international agreements of Ukraine, concluded in accordance with the procedure established by law, and also by Ukrainian legislation on environment and health protection; and
- in cases where documents, that are submitted for customs clearance purposes, do not contain information concerning the origin of goods, or if a customs authority has sufficient reasons to believe that the declared information regarding the origin of goods is incorrect.

Presentation of a certificate of origin therefore is not mandatory to obtain MFN treatment. As also noted in the response, the declarant presenting goods for customs clearance will be required to declare the origin of the goods. The basis for this declaration can be a written self-certified declaration by the producer or exporter on the commercial invoice or other accompanying document.

Question 32

Concerning free zones, what are the criteria used by Rules of Origin applied in free zones? Are these criteria different from the ones used by general Rules of Origin?

Answer:

The Law of Ukraine No. 2505 "On Amending the Law of Ukraine "On the State Budget of Ukraine for 2005 and Some Other Legal Acts" of 25 March 2005 removes some articles from the laws on establishment and functioning of special economic zones, which in particular determined the norms regarding the origin of goods produced within such territories. Thus, starting from the moment of adoption of the said Law of Ukraine the Rules of origin unified for the entire territory of Ukraine shall apply.

B. EXPORT REGULATIONS

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

Question 33

Paragraph 157 ff: Export duties: from the information provided, it seems that Ukraine only intends to undertake very limited reductions of export duties even though it acknowledges in paragraph 159 that reductions are needed. We urge Ukraine to consider further reductions and the eventual phase-out of all export duties.

Answer:

Draft Laws of Ukraine on reducing export duties have been submitted for consideration to the Verkhovna Rada of Ukraine.

- **Export restrictions**

Question 34

Paragraph 172: We welcome the government's commitment to lift the export ban on non-ferrous scrap from the date of accession. If substituted with an export duty, the level of this duty must not be prohibitive and form part of Ukraine's schedule to eventually phase-out all export duties.

Answer:

Ukraine took note of this remark. The draft Law "On Export Duty on Wastes and Scrap of Non-Ferrous Metals and Steel Alloys" regarding the elimination of prohibition of exports of scrap non-ferrous metals has been submitted for consideration to the Verkhovna Rada of Ukraine.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

Question 35

Paragraph 183: Please provide updated information on the support for the shipbuilding industry, following most recent legislative developments.

Answer:

All VAT, customs duties, and profit tax exemptions in the shipbuilding industry have been eliminated by the Law of Ukraine No. 2505 "On Amendment of the Law of Ukraine "On the State Budget of Ukraine for 2005 and Some Other Legal Acts" of 25 March 2005.

Question 36

Paragraph 186: Please report on any new developments regarding the possible revision of the Law on State Budget 2005 with a view to the suspension of VAT privileges for automotive, shipbuilding and aircraft construction industries.

Answer:

All VAT exemptions for automobile, shipbuilding, airspace, and aircraft industries have been eliminated by the Law of Ukraine No. 2505 "On Amendment of the Law of Ukraine "On the State Budget of Ukraine for 2005 and Some Other Legal Acts" of 25 March 2005.

Question 37

Paragraph 194: see comment on paragraph 21.

Paragraph 196: We take note of Ukraine's intention to request a transitional period until 2008 in relation to its discriminatory measures in the field of automobiles under the Agreement on Subsidies and Countervailing Measures. We will take a position at the appropriate moment a priori, however, granting any such period would be difficult.

However, in the meantime, it appears that most recent amendments to the 2005 Budget Law may have eliminated these privileges, and consequently, a transition period would no longer be necessary. Please clarify.

Answer:

Please see paragraph 186. A transition period would not be necessary.

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

Question 38

Paragraph 200: Could you provide an updated list of products currently subject to mandatory certification? What is the timetable for reducing the list of low-risk goods subject to certification from now on (the information provided until covers the period until the end of 2004)?

Answer:

The updated List of products subject to mandatory certification is approved by the Order of State Committee for Technical Regulation and Consumer Policy No. 28 of 1 February 2005 and accordingly 25 categories/subcategories of low-risk products had been removed from the list. Please see new list attached below.

Question 39

Paragraph 204: What is the maximum time that the certification process may take? Given that no list of fees exists, is it possible to get in advance information on the cost of the certification?

Answer:

The time of certification process depends on the type of products, testing and certification schemes. It may take from three days to one month.

The calculation of cost for certification is conducted pursuant the Rules on Determination of the Cost of Works to certify Products and Services approved by the Order of State Committee for Technical Regulation and Consumer Policy No. 100 of 10 March 1999. According to this Order, the fee for obtaining certificate of conformity is the same for both domestic and imported goods and it is according to the following formula: $0.1 \times \text{Дmin} \times N$; where Дmin is non-taxable minimum income of citizens and N is number of copies of the certificate of conformity. The cost of blank forms is paid additionally.

Additional Certification-Related Fees for Imported Goods

| Description of work | Unit of Measurement | Norm of payment |
|--|---------------------|-----------------|
| Preparing references (conclusions) for customs control bodies | Hour | 4 Дmin |
| Translation and confirmation of authenticity of translation of the documents | Printed sheet | 8 Дmin |

Question 40

Paragraph 207: Please provide an update on recent developments – when will the TBT enquiry point be operational?

Answer:

To ensure full compliance with the notification requirements of the TBT Agreement and the provisions of the Code of good practice for the Preparation, Adoption and Application of Standards, a Draft Resolution on establishment of TBT enquiry and notification point has been approved by the cabinet of Ministers. The TBT enquiry and notification point will be operational from the date of accession.

Question 41

Paragraph 208: We would be grateful to receive the text of the draft Law On Standards, Technical Regulations and Conformity Assessment Procedures as soon as possible.

Answer:

The finalized Draft Law on Standards, Technical Regulations and Conformity Assessment Procedures has been submitted to Parliament for consideration.

Question 42

Paragraph 210: Generally, we would expect Ukraine not to apply any national provisions upon accession that run counter to the TBT Agreement. We take note of Ukraine's intention to implement the review of existing technical regulations over a yet undefined period. Please submit an Action Plan to achieve full compliance as soon as possible. While granting any transitional period would *a priori* be difficult, we will take a position on Ukraine's request once all necessary material has been received and reviewed.

Answer:

Ukraine will not apply any national provisions upon accession that run counter to the TBT Agreement mandatory requirements. State Committee for Technical Regulation and Consumer Policy prepared Action Plan to achieve full harmonization of standards and technical regulations during period 2005-2011 (document WT/ACC/UKR/129).

Question 43

In the meantime, we would also appreciate receiving the texts of any technical regulations that have already been adapted for review.

Answer:

The texts of technical regulations that have been adapted are based on EEC/EC directives as indicated in the attached action plan.

- **Sanitary and phytosanitary measures**

Question 44

Paragraph 214: The costs for border inspection are likely to increase in the future. How is it ensured that only necessary inspections are made and that the costs would not increase excessively?

Answer:

Current SPS-related legislation requires inspection, sampling and testing of consignments of food products, live animals, animal products, live plants, plant products, or other articles that may carry or transmit animal diseases or hazardous organisms (pests). In each of the new SPS-related laws, two levels of border control—standard and extended—are applied to SPS-related consignments presented for import into Ukraine. This provision in the new laws should significantly reduce the number of inspections that include sampling and testing of goods in a consignment. Standard border control consists of verification of documentation accompanying consignments and visual inspection of the

goods in the consignment. If all documentation is in order and there are no visual indications of a health risk from the goods, the consignment will be cleared for entry without sampling and testing when the risk presented by the consignment is low. Assessment of the risk associated with a specific consignment is based on any pre-export and/or post-entry requirements for consignments of animals and plants and their products and whether or not prior consignments of like goods from the country of origin and/or particular facility of origin contained goods that did not comply with relevant sanitary, veterinary-sanitary or phytosanitary measures.

With regard to the cost of inspection, in each of the new laws dealing with food safety, plant health, and animal health, the following will apply:

"All fees charged in connection with any administrative procedures, laboratory analyses, expertise, control or other procedure required in accordance with this Law shall not exceed actual cost of the service rendered."

Question 45

Paragraph 216: What is the timetable for the adoption of the various draft laws related to SPS issues?

Answer:

Draft laws have been submitted to Parliament and are to be adopted before end of 2005.

Question 46

Paragraph 220: We welcome Ukraine's commitment to establish a single SPS Enquiry and Notification Point prior to the date of its accession to the WTO. We would be interested in more detailed information on the preparations and the estimated timing.

Answer:

Draft Resolution establishing SPS Enquiry and Notification Point has been approved by the Cabinet of Ministers. The SPS Enquiry and Notification point will be operational from the date of accession.

Question 47

Paragraph 221: Generally, we would expect Ukraine not to apply any national provisions upon accession that run counter to the SPS Agreement. Ukraine states that it will seek transitional arrangements to achieve full compliance with the SPS Agreement. Please submit an Action Plan to achieve full compliance as soon as possible. While granting any transitional period would *a priori* be difficult, we will take a position on Ukraine's request once all necessary material has been received and reviewed.

Answer:

Ukraine will fully implement the SPS Agreement upon accession provided adequate technical assistance from WTO Members to modernize testing laboratories, border inspection, control methods, and sampling procedures and to train relevant personnel. The SPS Harmonization Program is available in document WT/ACC/UKR/128.

Question 48

Document WT/ACC/UKR/124 – Commitment 6, Animal Health Legislation: The document says that all veterinary-sanitary measures shall be based on international standards, guidelines, and recommendations of the relevant international organisations. What if there is no international standard available?

Answer:

If no international standard, guideline or recommendation is available, veterinary-sanitary measures will be prepared following a risk analysis using the methodology developed by the relevant international organisations (specifically the World Animal Health Organisation). If scientific evidence needed for risk analysis is insufficient, veterinary-sanitary measures will be prepared on the basis of available information obtained from relevant international organisations (OIE), or the veterinary-sanitary measures employed by WTO Members.

Question 49

Document WT/ACC/UKR/124 – Commitment 7, Animal Health Legislation: It is said that relevant measures in another country are considered equivalent to those of Ukraine, and consequently accepted, if the other country shows in an objective manner that its measures achieve the same or higher level of protection of animal health and life as is required by Ukraine. What is meant by the words "in an objective manner"? What is actually required?

Answer:

The new animal health legislation requires that all veterinary-sanitary measures be based on international standards, guidelines and recommendations of relevant international organizations. The Terrestrial Animal Health Code published annually by the OIE contains guidelines with regard to reaching a judgement of equivalence of veterinary-sanitary measures, which will provide the basis for establishing the criteria and procedure for consideration and acceptance or rejection of equivalence.

Question 50

Document WT/ACC/UKR/124 – Commitment 11, Animal Health Legislation: It is mentioned that all fees charged in connection with any administrative procedure laboratory analysis, expertise, control or other procedure required shall be equal to the actual cost of the service rendered plus a reasonable rate of return. What is meant here by the word "reasonable"?

Answer:

Please note the "reasonable rate of return" is to be eliminated from all SPS-related drafts.

Question 51

Document WT/ACC/UKR/124 - Plant Health Legislation and Food Safety Legislation: Similar comments as those made on commitments 7 and 11 concerning animal health legislation (above) apply to this legislation as well.

Answer:

The new plant health legislation requires that all phytosanitary measures be based on international standards, guidelines and recommendations of relevant international organizations. In the case of

plants, the relevant international organizations are the IPPC and the regional organizations working within the framework of the IPPC. The IPPC has prepared a draft International Standard for Phytosanitary Measures (ISPM) containing guidelines on the concept of equivalence of phytosanitary measures and its application in international trade. Upon finalization of the draft, these guidelines will be used as the basis for establishing the criteria and procedure for consideration and acceptance or rejection of the equivalence of foreign country phytosanitary measures.

- **Trade-related investment measures**

Question 52

Paragraph 226: We will take a position on Ukraine's request for a transitional period for TRIMs at the appropriate moment; *a priori*, however, granting any such period would be difficult.

However, in the meantime, it appears that most recent amendments to the 2005 Budget Law may have eliminated these privileges, and consequently, a transition period would no longer be necessary. Please clarify. Can Ukraine confirm that upon accession, no operator will benefit from the privileges available under the previous conditions?

Answer:

As far as the Law of Ukraine No. 2505 "On Amendment of the Law of Ukraine "On the State Budget of Ukraine for 2005 and Some Other Legal Acts" of 25 March 2005 has eliminated the abovementioned privileges a transition period would no longer be necessary.

- **State-trading entities**

Question 53

Paragraph 228: How will state trading entities be treated in the future?

Answer:

To prevent the Working Party members from misunderstanding as to the use of the terms "state enterprises" and "state trading entities" the information in the draft report will be updated.

For State Trading Entities, Ukraine will abide by the Understanding on the Interpretation of Article XVII of the GATT 1994

- **Free zones, special economic areas**

Question 54

Paragraph 241: When will the legislation to remove the WTO inconsistencies be adopted? Recent information suggests that amendments to the 2005 Budget Law have removed privileges granted to FEZs? We would appreciate receiving clarification and the relevant legislation as soon as possible.

Answer:

The Law of Ukraine No. 2505 "On Amendment of the Law of Ukraine "On the State Budget of Ukraine for 2005 and Some Other Legal Acts" of 25 March 2005 cancels the privileges for business

entities registered in special economic zones, territories of priority development and technological parks without changing the principles of the effective taxation mechanism, and without increasing a tax burden on goods manufacturers. In particular, the Law cancels the exemption from land tax, corporate income tax, import duty and value-added tax on imports.

Question 55

Article 9 of the 2005 Budget Law imposes a moratorium on the creation of new FEZs as well as on the introduction of special investment regimes in new territories and on the creation of new technological parks. The same provision imposes a moratorium on the approval of new investment projects in FEZs and on territories with special investment regimes. The report should be modified accordingly.

Answer:

Ukraine does not object to reflecting such information in the report.

Question 56

Paragraph 243: Please add "upon accession" after "in compliance with WTO provisions".

Answer:

Ukraine does not object to reflecting such information in the report.

- **Transit**

Question 57

Paragraph 256: When will the text of Resolution of the Cabinet of Ministers No. 938 of 12 August 1996 (with changes and amendments) be provided to the Working Party?

Answer:

An English version of Cabinet of Ministers Resolution No. 938 dated 12 August 1996 will be submitted to the WTO Secretariat.

Question 58

Paragraph 258: Please reformulate the sentence "He noted... to impose a 'convenient route'". We do not agree that a government always knows what is the most convenient route for the economic operator in a specific case. It appears that the economic operator is better placed to decide what is most convenient.

Answer:

Ukraine will take note of this proposal, but would like to mention that this paragraph deals with groups of excisable goods, for which specially equipped check points must be created to prevent taxation abuse, in particular, it deals with ensuring delivery of excisable goods to the customs of destination, which, in turn, prevents smuggling.

- **Agricultural policies**

(c) **Internal policies**

Question 59

Paragraph 265: There is no reference to the fact that the purchasing and selling of agricultural land, foreseen in the Law of 2001 to be possible in 2005, was subject to a moratorium until 2007. Are any changes to this situation planned?

Answer:

No changes to this situation are planned.

- **Textiles regime**

Question 60

Paragraph 279: Table 18(b) should be updated to take into account with regard to recent developments (export licenses no longer required for certain categories).

Answer:

Pursuant to Cabinet of Ministers Resolution No. 1774 of 31 December 2004 "About bringing of changes to the Resolution of Cabinet of Ministers of Ukraine No. 1722 of 23 December 2004" ("On Approval of the List of Goods Export and Import of which is Subject to Licensing and Falling under Quotas in 2005"), export licenses are no longer issued for textile products falling within categories 2, 2(a), 4, 5, 6, 7, 8, 12, 13, 15, 26/27, 29, 83, and 117 exported to the EU. Thus, Table 18b is no longer valid and should be totally eliminated from the report.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **ENFORCEMENT**

Question 61

We would be grateful for an update of Ukraine's efforts to fight IPR infringement and audio/visual and software piracy.

Answer:

Note that the Draft law No. 7032 on Optical Disks passed the first reading in the Parliament on 5 April 2005.

In 2004, there were 218 legal cases (comparing with 168 in the previous year) related to the enforcement of intellectual property rights - 150 cases in economic courts and 68 in local courts. Twenty-two decisions were taken in the courts of the first instance, 27 decisions – appeal instance, 17 – cassation instance, 29 cases were brought to the High Economic Court and 17 final decisions were taken.

Most of the cases concern invalidation of certificates for trademarks and services mark on the basis of inconsistency with of the registered marks to the requirements for granting legal protection. For

unlicensed use of the authors' rights, non-payment of remuneration 8 claims were brought for the amount of UAH 586,700.

In 2004 according to the State Department of Intellectual Property Instruction No. 43, 269,706 hologram marks were issued to importers, exporters and reproducers of audiovisual works and phonograms, that fact proves the gradual increase of the share of licensed audio and video production in market of Ukraine (5 million more than during the previous year).

In 2004 state inspectors together with Ministry of Interior Affairs, State Tax Authority and Secret Service of Ukraine held 659 joint inspections of the subjects of economic activity related to the exploitation of intellectual property rights. On the basis of inspections were filled 397 administrative protocols, counterfeit products for amount of more than UAH 46 million were confiscated, 58 criminal cases were initiated for infringement of copyright and related rights.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 62

Paragraph 336: We received information that the draft Law allowing foreign banks to set up branches in Ukraine has been re-submitted to Parliament in early April 2005 – could you please confirm this?

Answer:

Ukraine confirms the re-submission of this draft to Parliament on 1 April 2005 (Draft No. 7274).

Question 63

As far as we know, the Law on Banks and Banking was last amended on 22 June 2004 (on bank liquidation procedures), and not on 11 November 2003 as stated in the paragraph.

Answer:

Correct.

Question 64

Paragraph 338: Please provide an update on the situation concerning the draft Laws on Auditing and On Bar.

Answer:

Drafts have been submitted to Parliament:

- On Auditing: 3 March 2005 (Draft No. 7149); and
- On Bar: 4 February 2005 (Draft No. 7051).

Drafts are being considered by relevant committees at Parliament.
