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**Working Party on the
Accession of Ukraine**

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ACCESSION OF UKRAINE

Additional Questions and Replies

The following submission, dated 5 August 2005, is being circulated at the request of the Delegation of Ukraine.

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II. ECONOMIC POLICIES

- Pricing Policies

Question 1

WT/ACC/UKR/130, Question 18: Refined sugar needs to be correctly classified in accordance with the Harmonized System (HS) classification principles that are accepted by Ukraine. The classification of refined (white) sugar to the raw sugar code, HS sub-heading 1701.12 (raw beet sugar), is erroneous. For consistency with the HS, refined sugar must be classified to subheading 1701.99, regardless of whether it is of cane or beet origin. Only raw sugar should be classified to either subheading 1701.11 (cane origin) or subheading 1701.12 (beet origin). Accordingly, in the revised Table 3 of WT/ACC/SPEC/UKR/5/Rev.2, Ukraine's entries should be:

- "Ex 1701.99", for the code;
- "Domestic refined sugar of beet origin produced within the limits of the A quota", for the product description; and
- "Mandatory minimum sale price", for the measure.

Answer:

The Law of Ukraine "On State Regulation of Sugar Production and Sale" does not contain mandatory price requirement. In its answers Ukraine does not use the term "mandatory minimum price".

In Table 3 Ukraine agrees to replace 1701.12 with the HS code 1701.99, in the column "codes of goods", and "Sugar produced from sugar beets in Ukraine within quota 'A'" in the column describing a good, and to fill in Table 3 in the following way:

Table 3: Goods subject to State regulation of prices and tariffs

Codes of Goods	Description of goods prices (tariffs) which are subject to state regulation	Form or nature of price regulation
1701.99	Sugar produced from sugar beets in Ukraine within quota "A"	Minimum prices (support prices)

Question 2

In the revised Table 3, there should also be a separate entry along the following lines:

- "1701.99", for the code;
- "Refined sugar", for the product description; and
- "Administered price applied through official interventions", for the measure.

Answer:

Ukraine does not agree with the proposition to insert the following definition of minimum price into Table 3. Minimum price (support price) is administered price in terms of provisions of Annex 3 the Agreement of Agriculture. See also the reply for the next question below.

Question 3

WT/ACC/UKR/130, Questions 19-21: The replies indicate that sugar support was provided by administered prices for refined sugar applied through official interventions in 2000, and by the mandatory minimum sale prices for domestic refined sugar of beet origin produced within the limits of the A quota in 2001 and 2002. If Ukraine can confirm this is correct, we would like to see this noted in the report. We would also like to see a clear distinction drawn between these two very different measures that apply to refined sugar through separate entries in the table on price regulations. We would propose the following the text for the report:

"In response to a question from a member, the representative of Ukraine confirmed that prior to 2001, sugar support was provided by administered prices for refined sugar applied through official interventions, and that from 2001 onwards, sugar support was provided by the mandatory minimum sale prices for domestic refined sugar of beet origin produced within the limits of the A quota."

Answer:

This statement does not fully reflect the reality. From 17 June 1999 until now, support of national sugar producers is regulated under the Law of Ukraine "On the State Regulation of Sugar Production and Sale" No. 758. This Law envisages minimum prices for domestic refined sugar of beet origin produced within the limits of the A quota as a measure to provide support for sugar producers (in accordance with provisions of Annex 3 the Agreement of Agriculture). During the period of 2000-2004 no official interventions in the form of procurements on sugar market to provide support for sugar producers were introduced.

Question 4

WT/ACC/UKR/130, Questions 22 and 24: Further to Ukraine's replies, we would like to see the following text included in the report:

"In response to another question from the member, the representative of Ukraine confirmed that a sugar owner could be fined for breaching the requirement pursuant to [...] to sell domestic refined sugar of beet origin produced under the A Quota at or above the mandatory minimum sale price. He said that the fine was twice the level of the minimum price for the quantities sold above the level of minimum sale price. "

Answer:

The Law "On State Regulation of Sugar Production and Sale" does not contain mandatory price requirement. Moreover, pursuant to the Law sugar owner could be fined for breaching the requirement to sell domestic refined sugar of beet origin produced under the A Quota below the minimum sale price. There is no fine for the quantities sold above the level of minimum sale price. In its replays Ukraine doesn't use the definition "mandatory minimum sale price" and we ask Members to not use such definition as well.

Question 5

WT/ACC/UKR/130, Questions 22, 24 and 26: It is clear from the replies that a mandatory minimum sale price applies only to domestic refined sugar of beet origin produced under the A Quota. Further to these replies, we would like to see the following text included in the report:

"In response to further question from the member, the representative of Ukraine confirmed that the mandatory minimum sale price requirement applied to domestic

refined sugar of beet origin produced under the A Quota does not apply to imported refined sugar or to domestic sugar refined from imported raw cane sugar and that, accordingly, in this respect the measure is consistent with the requirements of Article III:4 of GATT 1994".

Answer:

Ukraine does not object to the inclusion of the aforementioned text in the Draft Working Party Report.

However the phrase "mandatory minimum sale price requirement" should be replaced with "minimum prices".

Question 6

WT/ACC/UKR/130, Question 23: Ukraine's view that the 365,000 tonnes of domestic sugar refined from imported raw cane sugar in 2003 was "insignificant" is a position that we would be happy to explore in our bilateral market access negotiations. We will leave it to Ukraine to decide whether it would wish to see this view noted in the report.

Answer:

Ukraine took note of this comment.

Question 7

WT/ACC/UKR/130, Question 27: We look forward to seeing an appropriately amended, comprehensive and fully updated version of Table 3 of WT/ACC/SPEC/UKR/5/Rev.2 in the forthcoming redraft of the report.

Answer:

Ukraine will include the updated version of Table 3 of WT/ACC/SPEC/UKR/5/Rev.2 in the forthcoming redraft of the report.

Question 8

WT/ACC/UKR/130, Question 29: We look forward to seeing the inclusion in the report of details of export and import prices under international agreements where trade is undertaken on preferential terms and where the exports and imports concerned are traded at negotiated prices.

Answer:

There were no export international trades Agreements on sugar since 1996.

Question 9

WT/ACC/UKR/130, Questions 32 and 37: In the light of the replies provided, we would like to see the text proposed in Question 32 amended as follows:

[...] A member noted however that WTO jurisprudence had established that a regulation requiring that domestic and imported products adhere to a minimum-price requirement is not consistent with Article III of GATT 1994 on the grounds that the imported product would be prevented from being sold at a price below that of the

domestic product. The member asked how the minimum price requirements for bitter aromatic beverages and spirits will be brought into conformity with Article III by the date of accession. The representative of Ukraine replied minimum prices applied to domestically produced and imported spirits had been eliminated by Resolution No. 407 of the Cabinet of Ministers of Ukraine of 28 May 2005 "On Invalidation of Certain Resolutions of the Cabinet of Ministers of Ukraine" and that the minimum prices applied to bitters would be brought into conformity with GATT Article III by the date of accession by [eliminating the minimum price] [eliminating the application of the minimum price to the imported goods].

Answer:

Please note that (21.0390.30.00) were not subject to price control as was erroneously indicated in Table 3 of WT/ACC/SPEC/UKR/5/Rev.2. The position about bitter aromatic beverages should be removed from Table 3.

Question 10

WT/ACC/UKR/130, Question 34: We appreciate the response, and would ask to see this point noted in the report:

In response to a question from a member, the representative of Ukraine confirmed that the price measures on glass ware of Chapter 70 did not apply to imported glass ware and that, accordingly, in this respect the measures were consistent with the requirements of Article III:4 of GATT 1994.

Answer:

The price measures on glass ware of Chapter 70 did not apply to imported glass packaging and that, accordingly, in this respect the measures were consistent with the requirements of Article III:4 of GATT 1994.

Question 11

WT/ACC/UKR/130, Question 35: We appreciate the response. Therefore, the appropriate entry in column 3 is as follows: "Minimum purchase price applicable to sugar processors within the limits of the A Quota".

Answer:

In Table 3 of WT/ACC/SPEC/UKR/5/Rev.2, in the column which describes a good will be written "Sugar produced from sugar beets in Ukraine within quota 'A'", and in the column nature of price regulation "Minimum prices (support prices)". The Table 3 will be filled in the following way.

Table 3: Goods subject to State regulation of prices and tariffs

Codes of Goods	Description of goods prices (tariffs) which are subject to state regulation	Form or nature of price regulation
1701.99	Sugar produced from sugar beets in Ukraine within quota "A"	Minimum prices (support prices)

Question 12

WT/ACC/UKR/130, Question 36: The replies to previous questions in this set of questions appear to clarify the issues that are raised in the context of this question, and the information yielded needs to be reflected in appropriate revisions to Table 3. In summary:

- The reply to Question 18 clearly implies that the classification of refined (white) sugar to a raw sugar code such as HS subheading 1701.12 (raw beet sugar) is an erroneous application of the Harmonized System;
- The replies to Questions 22 and 24 indicate that one of the price regulations applied to "refined sugar of beet origin falling to HS subheading 1701.99 within the limits of the A quota" is a "mandatory minimum sale price";
- The replies to Questions 19-21 indicate that the price regulation applied to "refined sugar of HS subheading 1701.99" is an "administered price for refined sugar applied through official interventions".

Answer:

Ukraine agrees with the amendments proposed under the first bullet.

As for the second bullet, the phrase "mandatory minimum sale price requirement" should be replaced with "minimum prices".

As for the third bullet, such intervention has not been applied since 2000.

Question 13

WT/ACC/UKR/130, Question 38: We would appreciate clarification in the context of an amended paragraph 137 of WT/ACC/SPEC/UKR/5/Rev.2 as to whether minimum and/or maximum purchase prices have been applied to imports or exports of any product pursuant to the provisions of Article 8 of the Law "On State Support to Agriculture in Ukraine".

Answer:

The minimum and/or maximum purchase prices have not so far been applied to imports or exports of any product pursuant to the provisions of Article 8 of the Law "On State Support to Agriculture in Ukraine."

Question 14

WT/ACC/UKR/130, Question 39: We would ask Ukraine to respond to the issues raised in this question and for the substance its responses to be incorporated into the text of the redraft of the report.

Answer:

Ukraine took note of this comment.

Question 15

WT/ACC/UKR/130, Question 40: We would appreciate clarifications in relation to the following matters:

- **advice of the provisions of the Law "On State Support to Agriculture in Ukraine" that could trigger market interventions aimed at supporting domestic agricultural producers;**
- **details of how the provisions of the Law "On State Support to Agriculture in Ukraine" that could trigger market interventions aimed at supporting domestic agricultural producers have been applied;**
- **confirmation that the provisions of the Law "On State Support to Agriculture in Ukraine" that could trigger market interventions are distinct from and unrelated to the provisions of Article 8 of the Law concerning minimum and/or maximum purchase prices applied to imports or exports.**

Answer:

Ukraine has not applied the provisions of the Law "On State Support to Agriculture in Ukraine" that could trigger market interventions aimed at supporting domestic agricultural producers.

Ukraine confirms that the provisions of the Law "On State Support to Agriculture in Ukraine" that could trigger market interventions are distinct from and unrelated to the provisions of Article 8 of the Law concerning minimum and/or maximum purchase prices applied to imports or exports.

Question 16

WT/ACC/UKR/130, Questions 40 and 41: We would have no objection to market interventions aimed at supporting domestic agricultural producers after accession provided that: (1) the interventions undertaken are consistent with current AMS usage within the limits of Ukraine's bound AMS commitments; and (2) that the interventions will not involve or be related to the application of mandatory price requirements to any imported product. We would accordingly request that Ukraine commit to not apply mandatory minimum price requirements to any imported product.

Answer:

[Ukraine commits to not apply mandatory minimum price requirements to any imported product.]

Question 17

WT/ACC/UKR/130, Question 42: We would request that the information contained in the reply to this question be included in the report.

Answer:

There would be no obligation on any buyer or seller to buy or sell at the minimum price, and that the sole means of influencing the price would be intervention purchases and sales.

The aforementioned information may be included in the Draft Working Party Report.

Question 18

WT/ACC/UKR/130, Question 43: Is the reply to this question still correct? If it is not, we would appreciate a revised and updated response.

Answer:

Yes, it is still correct. No indicative prices to meat have been introduced

IV. POLICIES AFFECTING TRADE IN GOODS

- **Trading rights**

Question 19

Paragraphs 65 and 74 of WT/ACC/SPEC/UKR/5/Rev.2. We urge Ukraine to bring its licensing fees for alcohol beverages and tobacco in compliance with Article VIII GATT. At present the fees are excessive and do not reflect the cost of services provided.

Answer:

Nowadays Ukraine is working on this issue in order to bring by the date of accession its licensing fees for alcohol beverages and tobacco in compliance with Article VIII GATT. The Law on State regulation of Production and Turnover of Ethyl, Cognac, and Fruit Spirits, Alcoholic Beverages, and Tobacco Goods will be amended accordingly.

A. IMPORT REGULATIONS

- **Ordinary customs duties**

Question 20

WT/ACC/UKR/130, Question 54: We are appreciative of the response provided to this question.

Answer:

You are welcome.

- **Fees and charges for services rendered**

Question 21

Paragraph 96 of WT/ACC/SPEC/UKR/5/Rev.2. We would request Ukraine to provide the following to the Working party:

- **information on the timetable and state of play as regards harmonisation the railway fees as regards the remaining products iron ore raw materials, cast iron, rolled ferrous metal, mineral fertilizers and oil products;**
- **The latest legislative drafts in this field, prepared in June 2005;**
- **A table setting out the harmonised railway transport fees per product (amounts of the fees per product).**

We would propose the adding the following commitment language for the section of the Working Party Report dealing with railway fees (paragraph 97, second sentence):

The representative of Ukraine confirmed that from the date of accession, any application of fees and charges by Ukraine for services rendered on or in connection with importation, exportation or transit would be in accordance with the relevant provisions of the WTO Agreements, in particular Articles I, III, V, VIII, X and XI of the GATT 1994. After accession, information regarding the application and level of any such fees, revenues collected and their use, would be provided to WTO Members upon request. The Working Party took note of these commitments.

Answer:

At present, pursuant to inquiries from WTO members the procedures for application of tariffs (rates) for carriage by railway of certain types of freight remain a disputable issue.

The Ministry of Transport and Communication of Ukraine undertakes respective measures to settle this issue, in particular the tariffs (rates) for carriage of coal, grain and scrap of ferrous metals (except for crushed scrap that is carried from the Rokytno railway stations of the South-Western Railway) were equalized in the course of efforts undertaken during the first stage.

Proposals for the second stage of tariff (rate) equalization pursuant to the inquiries from the WTO members were submitted by the Ministry of Transport and Communication of Ukraine to the Cabinet of Ministers of Ukraine in May and June of this 2005. The draft regulatory act contemplated that the tariffs (rates) would be equalized in two stages: from the 1 July 2005 and from the 1 October 2005, in order to avoid the occurrence of possible adverse consequences.

However, pursuant to Protocol Decision No. 29 of the Cabinet of Ministers of Ukraine, dated 16 June 2005, dealing with a moratorium upon the increase of tariff (rates) for carriage of products of the mining and metallurgic sector, prices for electricity, natural gas and coal, effective as from the 16 June 2005 for a period of three months, the proposals of the Ministry of Transport and Communication of Ukraine for unification of tariffs (rates) for carriage by rail were not supported at a meeting of the Cabinet of Ministers of Ukraine held on the 30 June 2005, except for the proposals for equalization of tariffs (rates) for carriage of scrap of ferrous metals (Order No. 233 of the Cabinet of Ministers of Ukraine, dated 1 July 2005, has been submitted to the Secretariat, see document WT/ACC/UKR/131/Add.1).

Pursuant to Item 7 of Protocol Decision No. 32 of the Cabinet of Ministers of Ukraine, upon the end of the moratorium the Ministry of Transport and Communication of Ukraine, jointly with involved central agencies of executive power in Ukraine, will submit proposals for further indexation of rail carriage tariffs (rates) in accordance with WTO requirements to the Interdepartmental Commission for Monitoring of Impact of Tariff Policies upon the Economy pursued in the Area of Railway Transportation, for review. Based on results of the review by the Inter-Departmental Commission, a draft act on the equalization of tariffs (rates) for carriage of iron-ore raw materials, cast iron, rolled ferrous metal, mineral fertilizers, foodstuffs and petroleum products in accordance with WTO requirements will be prepared and submitted to the Cabinet of Ministers of Ukraine for review.

The latest drafts of legislative acts that have been prepared with a view of resolving this issue have been submitted to the Secretariat (please see document WT/ACC/UKR/131/Add.1).

The Ukrainian party took note of the suggested language of commitments.

- **Application of internal taxes to imports**

Question 22

Paragraph 104 of WT/ACC/SPEC/UKR/5/Rev.2. We would propose the following commitment language for paragraph 104:

The representative of Ukraine confirmed that from the date of accession, Ukraine would apply its domestic taxes including the excise taxes and the value added taxes in full compliance with the relevant provisions of the WTO including Articles I and III of the GATT 1994, in a non-discriminatory manner to imports from all WTO Members and to domestically produced goods. The Working Party took note of this commitment.

Answer:

Ukraine accepts this commitment language.

Question 23

WT/ACC/UKR/130, Questions 64-67, 69 and 72: We look forward to advice of Ukraine's plans to eliminate the measures described in paragraph 109 of WT/ACC/SPEC/UKR/5/Rev.2 and to equalize VAT rates by the date of accession, and to positive confirmation from Ukraine that these steps have been taken.

Answer:

According to the Law of Ukraine "On Amendment of Certain Laws of Ukraine 'On Taxation of Agricultural Enterprises'" of 23 December 2004, No. 2287, the effect of the VAT accumulation mechanism was extended until 1 January 2006.

Ukraine does not perceive VAT accumulation as a distortion. There is no discrimination in taxation of domestic versus imported products as VAT is calculated and payable at the same rate – 20 per cent which applies to both transactions involving sale of domestically manufactured agricultural produce and transactions involving importation of similar foreign-origin goods.

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

Question 24

WT/ACC/UKR/130, Question 76: We thank Ukraine for agreeing to consider the options for amending paragraph 130 of WT/ACC/SPEC/UKR/5/Rev.2 to include the elimination of quantitative restrictions on livestock and hope that this will be reflected satisfactorily in the revised draft report of the Working Party. We would hope that specific paragraph references will be included in the commitment paragraph, as we have proposed.

Answer:

Ukraine considers that a reference to respective GATT Article in Paragraph 130 is adequately exhaustive for such commitments.

Question 25

WT/ACC/UKR/130, Question 77: We appreciate a review of these issues is in progress and hope that the recommendations outlined in the terms of this question will be accepted. Is Ukraine able to indicate when it expects the review will be completed?

Answer:

The only current bans on imports to protect human, animal, or plant life or health are the following:

The current Law of Ukraine "On amending the Law of Ukraine "On veterinary medicine" No. 2775-III dated 15 November 2001 prohibits the use for purpose of animal growth hastening and productivity (lactation, etc.) increase biological stimulators, antibiotics, hormonal and other preparations that damp function of internal secretion strangles, and in particular have thyreostatic, estrogenic, androgenic or histological influence. Under Law No. 2775, these preparations can be used only for medical purposes. The new draft law "On Veterinary Medicine" includes a provision

permitting the use of hormones and other veterinarian preparations for medicinal and other uses provided their levels in edible animal products do not exceed established maximum limits.

Order of the Chief State Inspector of Veterinary Medicine of Ukraine "On Urgent Measures of Prevention and Liquidation of Development of cattle sponge-like encephalopathy disease and other prion infections" No. 23 dated 12 March 2001, prohibits (i) import into Ukraine of meat, meat-bone, or bone flours and additives which contain such flours in order to prevent and liquidate development of cattle sponge-like encephalopathy disease and other prion infections and (ii) feeding of ruminant animals and pigs by meat, meat-bone, bone flours that contains protein of ruminant animals.

Note that Ukraine follows, in addition, OIE recommendations with respect to animal health. The table below provides the list of goods, imports of which are restricted with the goal of protecting the life or health of people, animals or plants.

The list of goods, imports of which are restricted with the goal of protecting the life or health of people, animals or plants

UCC FEA commodity code (HS 96)				The applied non-tariff measure (NTM)	The date of application of NTM	The customs regime, when the NTM applies	Document proving the origin of control/ and the place of its application	The State authority issuing the permit for importation, exportation or transit	Notes
The position of the good	The sub-position of the good	The category of the good	The sub-category of the good						
1	2	3	4	5	6	7	8	9	10
0102, 0201, 0202, 0206, 0210, 0506, 0507, 0511, 1516, 1517, 1602, 2104, 2301, 2309, 3001, 3002, 3502, 4101, 4103, 4206	150200 150300 151800 152200 160100 300450 350300		0106009010 0106009090 0410000000 0504000000 0510000000 1506000000 3002905000 3101000000 3504000000	Prohibition	11.01.05	Import Transit	Veterinary document (certificate or form No.2, with the CIS countries)	The State Department of Veterinary Medicine (DVM) and its structural subdivisions	Canada Encephalopathia spongiforme
0105, 0207, 0210, 0408, 0505, 0507, 1516, 1517, 1602, 2309, 3001, 3002, 3502, 4103, 4206, 4301	020900 040700 150100 160100 300450 350300		010600 9010 0106009090 0410000000 0504000000 0510000000 1506000000 3002905000 3101000000 3504000000 6701000000	Prohibition	12.04.05	Import Transit	Veterinary document (certificate or form No.2, with the CIS countries)	The State Department of Veterinary Medicine (DVM) and its structural subdivisions	Greece – Newcastle disease
0105, 0207, 0210, 0408, 0505, 0507, 1516, 1517, 1602, 2309, 3001, 3002, 3502, 4206, 4103, 4301	020900 040700 150100 160100 300450 350300		0106009010 0106009090 0410000000 0504000000 0510000000 1506000000 3002905000 3101000000 3504000000 6701000000	Prohibition	12.04.05	Import Transit	Veterinary document (certificate or form No.2, with the CIS countries)	The State Department of Veterinary Medicine (DVM) and its structural subdivisions	The Republic o Korea - Avian Influenza (Bird Flu)

UCC FEA commodity code (HS 96)				The applied non-tariff measure (NTM)	The date of application of NTM	The customs regime, when the NTM applies	Document proving the origin of control/ and the place of its application	The State authority issuing the permit for importation, exportation or transit	Notes
The position of the good	The sub-position of the good	The category of the good	The sub-category of the good						
1	2	3	4	5	6	7	8	9	10
0105, 0207, 0210, 0408, 0505, 0507, 1516, 1517, 1602, 2309 3001, 3002, 3502, 4206, 4103, 4301	020900 040700 150100 160100 300450 350300		010600 9010 0106009090 0410000000 0504000000 0510000000 1506000000 3002905000 3504000000 3101000000 3504000000 6701000000	Prohibition	28.04.05	Import Transit	Veterinary document (certificate or form No.2, with the CIS countries)	The State Department of Veterinary Medicine (DVM) and its structural sub-divisions	Japan – Newcastle disease
0102, 0103, 0104, 0201, 0202, 0204, 0206, 0210, 0401, 0402, 0403, 0404, 0405, 0406, 0502, 0505 0506, 0507, 0511, 1214, 1505, 1516, 1517, 1602 1703, 2104, 2301, 2302, 2303, 2306, 2308, 2309 3001, 3002, 3501, 3502, 4101, 4102. 4103, 4105, 4106, 4206, 4301, 5101, 5102	150200 150300 151800 152200 160100 210500 300450 350300		0106009010 0106009090 0410000000 0503000000 0504000000 0510000000 1213000000 1506000000 2304000000 2305000000 2309099100 3002905000 3101000000 3504000000 6701000000	Prohibition	18.05.05	Import Transit	Veterinary document (certificate or form No.2, with the CIS countries)	The State Department of Veterinary Medicine (DVM) and its structural sub-divisions	China - FOOT-AND-MOUTH DISEASE

Question 26

WT/ACC/UKR/130, Question 78: We would note that the question is not answered by Ukraine's reference to the table on Tariff Rate Quotas in document WT/ACC/UKR/120. Table 4 of that document does not appear to contain any information on import quotas within the meaning of Article 4.2 of the Agriculture Agreement and/or Article XI:1 of GATT 1994. We would encourage Ukraine to respond to our request for the inclusion of information on all import quotas in the table on non-tariff measures annexed to the report, not excluding import quotas applied under preferential trade arrangements.

Answer:

Tariff Rate Quotas

Tariff Code	Product Description	Entity(ies) responsible for Applying the Measure	Legislative Basis	Measure Description and Purpose WTO justification or the Date of Elimination
7010.91 21 00	----- Bottles: - Of colourless glass	Cabinet of Ministries of Ukraine	The Law of Ukraine "On Amendments to Customs Tariff of Ukraine, approved by the Law of Ukraine "on Customs Tariff of Ukraine" No. 1691 dated 20 April 2004	Not prohibited under WTO rules. This is an interim measure until the end of 2005

The free trade agreement with FYROM dated 18 January 2001 stipulate tariff rate quotas. The agricultural products listed in the table below are imported free of duty until the quota is reached. Then normal duties (MFN duties) apply.

List of goods subject to Tariff Rate Quota under Agreement with FYROM

Names of products	HS Code	Amount of quota, metric tons
Meat of sheep or goats, fresh, chilled or frozen:	0204	500
- Fruits of the genus Capsicum or of the genus Pimenta:	0709 60	5,000
Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:	0712	500
Fruit, dried, other than that of headings 08.01 to 08.06; mixtures of dried fruits or nuts of this Chapter:	0813	200
Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum or of the genus Pimenta:	0904	500
Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered:	1211 90	500
Sugar confectionery (including white chocolate), not containing cocoa:	1704	500
Chocolate and other food preparations containing cocoa:	1806	500
Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, corn flakes); cereals (other than maize (corn)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked, or otherwise	1904	500
- Sweet biscuits; waffles and wafers	1905 30	100
Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:	2001	6,000

Names of products	HS Code	Amount of quota, metric tons
Tomatoes prepared or preserved otherwise than by vinegar or acetic acid:	2002	4,000
Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No. 2006:	2005	3,000
Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter	2007	100
Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:	2008	500
Fruit juices (including grape must) or vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:	2009	3,000,000*
Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:	2103	3,000
Wine of fresh grapes, including fortified wines; grape must other than that of heading No. 2009:	2204	40,000,000*
- Spirits obtained by distilling grape wine or grape marc:	2208 20	100,000*
- - Other spirits and other spirituous beverages	2208 90	100,000*
Vinegar and substitutes for vinegar obtained from acetic acid	2209 00	100,000*
- Tobacco, not stemmed/stripped	2401 10	10,000

* in Litre

Question 27

WT/ACC/UKR/130, Question 79: We appreciate the commitment, and look forward to advice of the repeal of the provision of Article 3.11 of the Law "On State Regulation of Production and Sale of Sugar" No. 758-XIV of 17 June 1996. We note that Ukraine has introduced a draft law to revoke the mandatory exportation of raw cane sugar and would be interested to know when the law will take effect. We would also request that the intention of Ukraine to revoke the mandatory exportation of raw cane sugar be included in the redraft of the report.

Answer:

A draft law that will revoke mandatory exportation of raw cane sugar is currently at the Parliament. Ukraine does not object to a reference in the Draft Working Party Report this draft law.

Question 28

WT/ACC/UKR/130, Question 80: We would appreciate the inclusion of the details provided in the reply to this question in the report. We would also appreciate confirmation in the report that all trade under such barter arrangements is subject to the same customs duties, fees and charges and internal taxes as other like products imported into Ukrainian territory.

Answer:

Ukraine does not object to the inclusion of details provided in the reply to Question 80 in the Draft Working Party Report.

Ukraine confirms in the report that all trade under such barter arrangements is subject to the same customs duties, fees and charges and internal taxes as other like products imported into Ukrainian territory.

Question 29

WT/ACC/UKR/130, Question 81: Given that the approval requirements in relation to precious metals and alloys and precious stone notified to Table 12(b) do not apply, we would like to see the date (or dates) on which they were eliminated included in this Table.

Answer:

References in Table 12(b) will be changed to "gold and silver." The Law on Foreign Economic Activities will be amended accordingly by the date of accession.

Question 30

WT/ACC/UKR/130, Question 82: We look forward to advice of the outcome of the review of import approval requirements for scrap metal. We would like to see the date on which they will be eliminated included in a revised and updated version of Table 12(b).

Answer:

[Ukraine will eliminate import approval requirements for scrap metal by the date of accession. The Law on Foreign Economic Activities will be amended accordingly.]

Question 31

WT/ACC/UKR/130, Question 83: We look forward to advice of the outcome of the review of the activity licensing requirements to engage in importation of the products listed in Table 6(a). We would like to see the date on which they will be eliminated included in a revised and updated version of Table 6(a).

Answer:

Ukraine takes note.

Question 32

WT/ACC/UKR/130, Question 84: We look forward to advice of the outcome of the review of the requirements to engage in importation. We would like to see the date on which they will be eliminated included in a revised and updated version of Table 12(b).

Answer:

Ukraine takes note.

Question 33

WT/ACC/UKR/130, Questions 85-88: We appreciate the clarifications provided. However, we would appreciate more information about the import licensing requirements applicable to products in Table 12(c) to confirm that they are automatic.

Do they apply to all legal and natural persons?

What are the applicable requirements set by the Law "On Foreign Economic Activity" of 16 April 1991 No. 959-XII whose non-observance could lead to the non-issuance of the licence?

Answer:

The import requirements for the products listed under Table 12(c) apply to all legal and natural persons.

According to Article 15 of the Draft Amendments to the Law on Foreign Economic Activities 16 April 1991 No. 959-XII, the licence may not be refused after necessary documents are submitted, if the latter comply with prescribed requirements.

Question 34

WT/ACC/UKR/130, Question 89: We understand this question is under review, and would hope for a firm commitment from Ukraine not to introduce import quotas for meat and would abide by the prohibition on seeking recourse to such measures under Article XI:1 of GATT 1994 and Article 4 of the Agriculture Agreement.

Answer:

Currently, there are no import quotas on meat in Ukraine. Ukraine commits to not introduce such measures in the future.

Question 35

WT/ACC/SPEC/UKR/5/Rev.2, Paragraph 130. We would urge Ukraine to eliminate the existing import bans of buses, trucks and cars of older than eight years by accession.

We would propose the following commitment language for paragraph 130:

The representative of Ukraine confirmed that Ukraine will eliminate the ban on imports of buses and trucks of older than eight years and of cars older than eight years from the date of accession. After this date, the imported vehicles will be subject to the same domestic legislation that is applied to all cars of similar age used in traffic in the territory of Ukraine to ensure that they comply with the relevant technical norms on safety and environmental standards. From the date of accession, Ukraine would eliminate and would not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements, and other restrictions having equivalent effect, that are not compatible with the provisions of the WTO Agreement.

He further confirmed that the legal authority of the Government of Ukraine to suspend imports and exports or to apply licensing requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO, in particular Articles XI, XII, XIX, XX, and XXI of the GATT 1994, and the Multilateral Trade Agreements on Agriculture, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade. The Working Party took note of these commitments.

Answer:

Ukraine took note of this proposition of the commitment language.

- **Customs valuation**

Question 36

Document WT/ACC/UKR/98/Add.16. We note that in the "Regulation on the interpretative notes for application of the Customs Code Provisions on Customs Valuation of Ukraine", the Articles 9, 11 and 15.4 of the Interpretative Notes to WTO Customs Valuation Agreement are not included. Article 11 is important since it is about appeal procedures. We therefore urge Ukraine to transpose these relevant provisions of the Interpretative Notes into its national law.

Answer:

Article 11 is fully reflected in the Amendments of the Customs Code – Article 264. Furthermore, Ukraine prepared the Draft Law on Amendments to the Customs Code of Ukraine.

The draft Law provides the harmonization of some Customs Code provisions to the requirements of the General Agreement on Tariffs and trade, namely the Agreement on Rules of Origin, Agreement on Customs Valuation and Special Annex to the International Convention on simplification and harmonization of the custom procedures (in edition (version) of the Protocol of 1999) .

This draft law takes into consideration the abovementioned remarks (the draft law has been submitted to the Secretariat, see document WT/ACC/UKR/131/Add.1).

- **Anti-dumping, countervailing duties, safeguard regimes**

Question 37

We have submitted to Ukraine textual changes to "The Act of Ukraine on application of the measures of safeguard against imports to Ukraine" and would urge Ukraine to change their legislation accordingly in order for it to be in compliance with the WTO Agreement on Safeguards.

Answer:

Ukraine will take into account proposed textual changes in its draft amendments to the Law on Application of Special Measures ("Safeguards") against Imports to Ukraine.

Question 38

We have the following comments on the Ukrainian legislation in the area of Anti-dumping and countervailing duties:

Ukraine – "The Law of Ukraine on safeguards of the national industry against dumped imports" (No. 330-XIV, 22 December 1998); and Amendment

General comment:

Some of the basic concepts do not seem to be fully in line with the WTO Anti-Dumping Agreement (ADA). While in many cases this is probably due to translation problems, it might sometimes create confusion on the meaning of the concepts itself. This is e.g. the case for Article 1, 8 ("serious injury" should probably read "material injury") or Article 1, 16 ("normal cost" instead of "normal value"). We therefore suggest that the wording be aligned as much as possible with that of the ADA.

Specific Comments:

- Article 1, 5): the definition of dumping as such should not include the concepts of injury and causation but be limited to the notion as defined in Article 2.1 ADA.
- Article 1, 20): Article 6.11 ADA does not require that parties cooperate in the investigation in order to qualify as interested party.
- Article 1, 21) does not seem to reflect the concept of "ordinary course of trade" laid down in Article 2.2. et seq. ADA
- Article 7.8, 2): should "above per unit costs of production" read "below..."?
- Article 10.3, 1): the Amendment does no longer seem to require that price undercutting is significant, although this is required by Article 3.2 ADA.
- Article 10.5 does not seem to mention all injury indicators of Article 3.4 ADA (see in particular market share and ability to raise capital). Moreover, the meaning of the first sentence of 10.5.1 ("incomplete reimbursement to a national producer of the actual amount of a margin of dumping and incomplete elimination of the effects of a consequent impact of...") is unclear. Finally this provision also refers to contraction in demand, which rather belongs to the factors listed in 10.7 of the law.
- Article 10.7: "may" should be replaced by "shall" since other factors of injury shall be examined by the investigating authorities pursuant to Article 3.5 ADA.
- Article 12.3 seems to imply that applications can be made by any appropriate body of the Ukrainian government. Would such applications be made on behalf of the domestic industry? Under what conditions?
- Article 12.6 does not seem to be in line with Article 5.4 ADA as it does not seem to require support of the application by 50 per cent of the total production of those supporting or opposing the complaint, at initiation stage, but only later on in the course of the investigation.
- Article 13.3: What are the normal deadlines for replying to a questionnaire? (see Article 6.1.1 ADA)
- Article 20.2,1) provides that an interim review shall be initiated if there is sufficient evidence that "continuation of the application of the anti-dumping measures is reasonable for elimination of dumping". The meaning of this provision is not clear, as it does not refer to any changed circumstances justifying an interim review.
- Article 26: How do the special provisions on products with short production cycle relate to the ADA?

Answer:

Ukraine will take into account these concerns in its draft amendments to the Law on Protection of Domestic Producer from Dumped Imports No. 330-XIV.

Question 39

"The Act of Ukraine on safeguards of the national industry against subsidized imports"

General comment:

Similar observations can be made for the Ukrainian CVD legislation in regard to terminology used in the ASCM. In regard to the translation, already the title of the law is erroneous. It is not "safeguards of" the national industry – but "for" the national industry.

Specific comments:

- Article 7 mixes up the concept of specificity in regard to a subsidy and the CVD measure in its title and the following Articles are unclear in regard to specificity and actionability of a subsidy.
- Article 10 outlines the general principles of "calculation of the amount of non-actionable subsidy" this title is erroneous it should just read "calculation of the amount of subsidy"
- Article 13 – definition of injury: "serious injury" should be replaced by "material injury"
- Article 13.3 does not mention that the investigating authorities should consider whether there has been a significant increase in subsidized imports (Article 15.2 ASCM)
- Article 13.5.1 First sentence "incomplete elimination of the effects of previous subsidy on the national producer or indemnification of the national producer for a shoestring margin of dumping" is unclear and does not correspond to any provisions of the ASCM.
- Article 15.1 also gives the possibility for lodging a CVD complaint to trade Unions of the employees of the national enterprise. Please explain how this relates with the provisions of Article 15.8 "application made by or on behalf of the national industry"- does a complaint lodged by Unions also have to be supported by at least 25 per cent of national producers?
- Article 17.12 limits the application of provisional CVD measures to four months but permits an extension to further two months (total six months). This does not correspond with Article 17.4 ASCM limiting the application of provisional CVD measures to four months.

The law does not foresee consultations according to Article 13 ASCM.

Answer:

Ukraine will take into account these concerns through drafting amendments to the Law on Protection of Domestic Producers from Subsidized Imports No. 331-XIV.

B. EXPORT REGULATIONS

Question 40

WT/ACC/UKR/130, Questions 98-113: We thank Ukraine for noting our requests and would encourage Ukraine to make the necessary commitments to eliminate the export duties, the export restrictions and the measures which may lead to the use of export subsidies that have been mentioned in these questions, including:

- all quantitative export restrictions in Table 17(b) of WT/ACC/SPEC/UKR/5/Rev.2 by the date of accession, including the export bans on non-ferrous metal scrap and other quantitative export restrictions in this table;
- all export approval requirements relating to products falling to HS headings 2616, 2843, 7018, 7103, 7104 and 7105 listed in Table 18(c), by the date of accession;
- the export licensing and prior approval requirements applicable to all products listed in Table 18(a) of WT/ACC/SPEC/UKR/5/Rev.2 for which a justification was provided under Article XX(d) or (g) of GATT 1994, by the date of accession;
- all export contract registration requirements;

- **all minimum indicative export prices and the approval requirements in relation to export prices that do not meet the minimum indicative export price requirements; and**
- **the B and C Quotas for domestic refined sugar.**

Answer:

Ukraine takes note concerning bullets 1-3.

As for 4-6 bullets: Ukraine does not currently maintain export contract registration requirements. The Order of the President of Ukraine "On Considering Invalid Some Orders of the President of Ukraine" No. 1003/2005 was adopted on 29 June 2005, and came into force on 12 July 2005.

As to minimum indicative export prices, there is no indicative export prices now. President Decree No. 691 dated 18 November 1994 is not valid now.

Draft Law No. 7568 currently in the Parliament eliminates B and C Quotas for domestic refined sugar.

Question 41

WT/ACC/UKR/130, Questions 101-103: We are pleased to note that there is a Draft Law "On export Duty on Wastes and Scrap Non-Ferrous Metals and Alloy Steel" which provides for the elimination of ban on export of scrap non-ferrous metals.

- **We would appreciate advice on the passage of this Law.**
- **Could Ukraine please clarify whether this Law will also eliminate the prohibitions in the export of scrap metals categorised in Question 103?**
- **We would also like to restate our request for an appropriate entry in a revised Table 17 of WT/ACC/SPEC/UKR/5/Rev.2 that includes details of these measures and a date of their elimination.**

Answer:

Draft Law No. 7565 "On Introduction of Amendments to the Law on Export Duty on Ferrous Waste and Scrap" replaces prohibitions on the export of non-ferrous waste and scrap in the Law on Scrap Metal with export duties. The following is the schedule of export duties:

- 30 per cent but not less than €0.4 for 1 kilogram for alloy steel and aluminium;
- 30 per cent but not less than €0.3 for 1 kilogram for plumb;
- 30 per cent but not less than €1 for 1 kilogram for copper;
- 30 per cent but not less than €5.5 for 1 kilogram for nickel;
- 30 per cent but not less than €4 for 1 kilogram for titanium;
- 30 per cent but not less than €1.6 for 1 kilogram for tin;
- 30 per cent but not less than €0.32 for 1 kilogram for zinc.

Draft Law adopted by Supreme Rada of Ukraine in first reading 6 July 2005

Question 42

Export duty on non-ferrous scrap. We note that the levels of export duties set for non-ferrous scrap in the Law of Ukraine "On Export Duty on Scrap of Non-Ferrous Metals and alloyed Steel", are too high and considered prohibitive, and therefore equalling an export ban. We urge Ukraine to further reduce the export duties to a non-prohibitive level.

Answer:

Please note that the Law of Ukraine titled "On Export Duty on Scrap of Non-Ferrous Metals and alloyed Steel" does not exist.

Draft Law No. 7565 "On Introduction of Amendments to the Law on Export Duty on Ferrous Waste and Scrap" replaces prohibitions on the export of non-ferrous waste and scrap in the Law on Scrap Metal with export duties. The following is the schedule of export duties:

- 30 per cent but not less than €0.4 for 1 kilogram for alloy steel and aluminium;
- 30 per cent but not less than €0.3 for 1 kilogram for plumb;
- 30 per cent but not less than €1 for 1 kilogram for copper;
- 30 per cent but not less than €5.5 for 1 kilogram for nickel;
- 30 per cent but not less than €4 for 1 kilogram for titanium;
- 30 per cent but not less than €1.6 for 1 kilogram for tin;
- 30 per cent but not less than €0.32 for 1 kilogram for zinc.

Draft Law adopted by Supreme Rada of Ukraine in first reading.

Question 43

WT/ACC/UKR/130, Question 106: Ukraine states that the export duty rates currently applied to scrap ferrous metals would be liberalised gradually. We request that details be provided on how liberalisation will be achieved, and would hope that the final outcome will be the elimination of the export duties.

Answer:

Draft Law on amending the Law of Ukraine "On Export Duty on Ferrous Metal Wastes and Ferrous Scrap Metal" has been submitted by the Cabinet of Ministers to the Parliament as a priority Draft. Draft number is 7563. The Draft reduces export duties from €30 per ton to €25 per ton starting 1 January 2006 and to €18 per ton starting 1 January 2007.

Question 44

Export duty on ferrous scrap. We note that the level of the export duty for ferrous scrap as set in the Law of Ukraine "On Export Duty on Waste and Scrap of Ferrous Metals", is too high and considered prohibitive, and therefore equalling an export ban. We urge Ukraine to further reduce the export duties to a non-prohibitive level.

Answer:

Draft Law on amending the Law of Ukraine "On Export Duty on Ferrous Metal Wastes and Ferrous Scrap Metal" has been submitted by the Cabinet of Ministers to the Parliament as a priority Draft. Draft number is 7563. The Draft reduces export duties from €30 per ton to €25 per ton starting 1 January 2006 and to €18 per ton starting 1 January 2007.

Question 45

WT/ACC/UKR/130, Question 107: We appreciate Ukraine's acceptance of our suggested amendments and request that these be included in the revised draft report of the Working Party.

Answer:

Ukraine does not object to the proposed amendments under Question 107 of WT/ACC/UKR/130 and does not object to their inclusion in the revised Draft Working Party Report.

Question 46

WT/ACC/UKR/130, Questions 108-109: We thank Ukraine for noting our requests and encourage Ukraine to make the necessary commitments to eliminate:

Answer:

This question is under the review now. The Working Party members will be informed about the decision of this review

Question 47

WT/ACC/UKR/130, Question 111: We are pleased to note that the Cabinet of Ministers has approved the Draft Order of the President "On Considering Invalid Some Orders of the President of Ukraine", with the purpose of liberalising the export of goods from Ukraine. When will the Presidential Decree likely to come into force?

Answer:

The Order of the President of Ukraine "On Considering Invalid Some Orders of the President of Ukraine" No. 1003/2005 was adopted on 29 June 2005, and came into force on 12 July 2005.

Question 48

WT/ACC/UKR/130, Question 147: We appreciate Ukraine's intention to abolish the B and C Quotas for domestic refined sugar, and look forward to a positive outcome that can be noted in the report.

Answer:

The Draft Law on abolishing B and C quotas has been drawn up and is being under consideration in the Parliament.

- **Export subsidies and industrial subsidies**

Question 49

1. **Paragraphs 180 and 196 of WT/ACC/SPEC/UKR/5/Rev.2. We do not agree with the modified commitment texts for paragraphs 180 and 196 of the Draft Working Party Report Ukraine had submitted to the Working Party in the recent document "Comments to WT/ACC/SPEC/UKR/Rev.2." Ukraine's new proposal mentions that Ukraine would apply its national taxes, including excise duty and VAT, in compliance with the Subsidies Agreement. The relevant sections of the Draft Working Party Report where the commitment paragraphs 180 and 196 relate to, concern however subsidies in general (export and industrial subsidies), and therefore the commitment language should cover all subsidies, whatever the form, not only those given in the form of specific tax exemptions. We do not agree.**

2. **We also note that the information submitted by Ukraine indicates that the exemption from import duty is still maintained until 2007 as regards the shipbuilding sector.**
3. **We would therefore propose the following commitment language for paragraphs 180 and 196:**

The representative of Ukraine confirmed that from the date of accession Ukraine will not maintain subsidies, except subsidies to shipbuilding industry in the form of exemption from the import duty until 31 December 2006, including export subsidies which meet the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, and that it will not introduce such prohibited subsidies in the future. The Working Party took note of this commitment.

Answer:

Ukraine took note of this proposition of the commitment language and is ready to incorporate following changes in paragraphs 180 and 196:

[The representative of Ukraine confirmed that from the date accession Ukraine will not maintain subsidies, which meet the definition of a prohibited subsidy, within the meaning of Article 3 of Agreement on Subsidies and Countervailing Measures, and that it will not introduce such prohibited subsidies in the future, with exception for subsidies to shipbuilding industry in the form of exemption from the import duty until 31 December 2006. The Working Party took note of this commitment.]

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Technical Barriers to Trade

Question 50

WT/ACC/UKR/5/Rev.2: Ukraine's Draft Law on Standards, Technical Regulations and Conformity Assessment Procedures has been submitted to the Parliament and when adopted will supersede the 2001 Law on Conformity Assessment and the Law on Standardization. Paragraph 197 and possibly other parts of the Draft Working Party Report on TBT (e.g., paragraphs 200, 203-205) will need to be updated to reflect the actual content of the new Law once approved. This will also be true for proposed amendments to the Law on Quality and Safety of Foodstuffs and Raw Food, and possibly the new Law on General Safety of Products (if relevant).

Answer:

Ukraine will make the necessary updating and amendments to duly reflect the regulatory and legislative developments occurred.

Question 51

Paragraph 200 should be updated to reflect the List of Products Subject to Mandatory Certification in Order No. 28 of 1 February 2005.

Answer:

Ukraine will make the necessary updating and amendments to the relevant paragraph.

Besides, according to the Order of the State Committee for Technical Regulation and Consumer Policy No. 171 of 14 July 2005 one more category of low-risk goods has been removed from the list of products subject to mandatory certification, namely category "8.14 Optical wares for medicinal purposes".

Question 52

Paragraphs 201-202 should be updated to reflect the amended Interstate Standard (DSTU) No. 1168-86 on shelf life for fish products. The last sentence concerning mandatory certification for other products is unrelated to the shelf-life issue and could be merged into paragraph 200.

Answer:

Ukraine is in the process of revising the existing DSTU and bringing it into conformity with international standards. Ukraine will make the necessary updating and amendments to duly reflect these changes in the Working Party Report.

Ukraine does not object to removing the last sentence of paragraph 201 and merging it into paragraph 200.

Question 53

Paragraph 203: Suggest deletion of "...including the 'modular approach' to conformity assessment based on ISO/IEC provisions." We believe the "modular approach" refers to the European Commission's approach, rather than to ISO/IEC provisions.

Suggest deletion of "...and, for higher risk products, third party certification such as ISO 9000 should constitute an alternative to costly and time-consuming plant inspection." ISO 9000 does not require third party certification. It is a tool for quality management and not necessarily a replacement for regulation of high-risk product as suggested in the text.

Answer:

Ukraine does not object to the proposed deletions above.

Question 54

Paragraph 207: It is our understanding that on 26 May 2005, the Cabinet of Ministers approved a Resolution on Establishment of a Centre for Processing Inquiries from WTO Member States and for Notifications (the Inquiry Point). This paragraph should be updated to reflect the effect of this Resolution, if appropriate.

Answer:

Ukraine will make the necessary updating and amendments to the relevant paragraph of the Draft Working Party Report to reflect the effect of the abovementioned Resolution.

The updated text should include the text provided below:

"On 31 May 2005, the Cabinet of Ministers approved a Resolution on Establishment of a Centre for Processing Enquiries from WTO Member-States and for Notifications (the Enquiry and Notification Point) to establish a centre for processing inquiries from WTO Members and to make WTO notifications (including on TBT matters). The adoption of this legislative instrument was meant to

comply, *inter alia*, with the transparency obligations under the TBT Agreement". The Enquiry and Notification Point will be operational by the date of accession to the WTO.

Question 55

Paragraphs 209-210: It is our understanding that Ukraine is not seeking a transition for implementation of the TBT obligations and its commitment to comply upon accession should be noted.

Answer:

Ukraine confirms its intention to comply with all provisions of the Agreement on Technical Barriers to Trade (TBT Agreement) on the date of its WTO accession and to abide by the provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards.

Ukraine shall not use standards, technical regulations and conformity assessment procedures in a manner that would be restrictive to international trade, prohibitive of imports, and discriminatory of individual exporters and suppliers.

Question 56

Draft Law on Development and Application of Standards, Technical Regulations and Conformity Assessment Procedures: We have expressed our concern that the draft Law (and TBT Action Plan) fails to distinguish between international and regional standards, with equal priority given to them. The TBT Agreement, in contrast, obliges WTO members to give priority to using relevant international standards. (As defined in the TBT Agreement, regional bodies are not open to all WTO members). The current draft of the Working Party Report (paragraph 199) indicates that "in the area of standardization, priority is given to harmonization with international standards and, in adopting regional standards as national standards, preference is given to those regional standards that are identical to international standards."

We are seeking confirmation in the Working Party Report that Ukraine will give priority consideration to relevant international standards, guidelines and recommendations as a basis for its standards, technical regulations and associated conformity assessment procedures.

Answer:

Ukraine does not object to introduce changes to the Draft Law on Development and Application of Standards, Technical Regulations and Conformity Assessment Procedures as well as confirm in the Draft Working Party Report that Ukraine will give priority consideration to relevant international standards, guidelines and recommendations as a basis for its standards, technical regulations and associated conformity assessment procedures.

Question 57

We have also expressed concern with certain privileges associated with "international agreements" (e.g., in Articles 5 and 44 of the Law). In bilateral discussions, Ukraine has clarified that the WTO fell within the definition of "international agreement" for purposes of implementing its Law.

We are seeking confirmation of this understanding in the Working Party Report (when revised to reflect the content of this new Law).

Answer:

In the draft law, the term "international agreement" is defined as: any international agreement, including bilateral and multilateral mutual recognition agreements, of which Ukraine is a participant, regarding development and application of standards, technical regulations and conformity assessment procedures;

This definition clearly includes the WTO Agreement "regarding development and application of standards, technical regulations and conformity assessment procedures."

Ukraine does not object to confirm this understanding in the Draft Working Party Report.

Question 58

As regards the Ukrainian law "On development and application of standards, technical regulations and conformity assessment procedures", we have comments regarding two Articles and would propose the following amendments to bring these Articles in compliance with the TBT Agreement:

Article 13 paragraph 3

The current wording "The implementation of standards is voluntary except for cases when application of standards is required by technical regulations", should be replaced by:

"The implementation of standards is voluntary unless for exceptional cases when application of standards is required by technical regulations".

Answer:

As far as wording "unless for exceptional cases" may lead to some misinterpretation when applying this provision, Ukraine intends to introduce changes provided below into the Draft Law on Development and Application of Standards, Technical Regulations and Conformity Assessment Procedures.

"The implementation of standards is voluntary except for cases when application of standards is required by technical regulations approved in accordance with legislation intended to ensure national security, prevent deceptive practices, protect the life and health of people, animals or plants, as well as protect the environment".

Question 59

Article 59 paragraph 2

The current wording "The notification for a draft technical regulation and/or conformity assessment procedure shall be submitted in the format and with the information required by the agreement or organisation no less than 60 calendar days before the relevant expert working group is scheduled to finalise a draft technical regulation or conformity assessment procedure", should be replaced by:

"The notification for a draft technical regulation and/or conformity assessment procedure shall be submitted in the format and with the information required by the agreement or organisation no less than 60 calendar days before the relevant expert

working group is scheduled to review a draft technical regulation or conformity assessment procedure."

Answer:

Ukraine will introduce this suggestion into the Draft Law on Development and Application of Standards, Technical Regulations, and Conformity Assessment Procedures.

Question 60

Paragraph 210 of WT/ACC/SPEC/UKR/5/Rev.2. We would propose the following commitment language for the TBT section:

General commitments on standards

The representative of Ukraine confirmed that Ukraine will comply with all obligations under the WTO Agreement on Technical Barriers to Trade from the date of accession without recourse to any transition period, and would sign and follow the Code of Good Practice for the preparation, adoption and application of standards from the date of its accession to the WTO.

The representative of Ukraine further confirmed that from the date of accession, all existing Soviet-era and other regional standards will be voluntary with respect to products imported from WTO member countries. National standards will remain mandatory only for non-imported products and only by reference to a technical regulation, adopted by a public authority in accordance with legitimate objectives, such as national security, preventing of misuse practices, protection of the health and life of physical persons, of the health and life of animals, plants protection, and environment protection. All existing Soviet-era and other regional standards will continue to apply as mandatory only to products produced in Ukraine or imported from non-WTO member CIS states. These standards will be replaced with international standards, or technical regulations based on international standards, in accordance with the timetable outlined in WT/ACC/UKR/129, and be fully replaced by 31 December 2011. With respect to the items for which certification remains mandatory in Ukraine, the representative of Ukraine confirmed that imported products meeting either international, European, or national standards will be accepted.

General commitments on conformity assessment procedures

The representative of Ukraine confirmed that Ukraine will use relevant guides or recommendations issued by international standardizing bodies as the basis for new conformity assessment procedures in accordance with Article 5.4 of the TBT Agreement. Ukraine shall accept conformity assessment certificates issued by internationally recognized authorities of the exporting countries, or approvals provided by recognized independent conformity assessment bodies or agencies recognized by the Ukrainian Governmental body. Ukraine also shall reduce further the number of categories of imported products subject to mandatory certification prior to the end of year 2011 and shall notify the revised list to the WTO by 31 January 2012, and will complete the process of conversion to voluntary certification in accordance with the timetable outlined in WT/ACC/UKR/129.

The representative of Ukraine confirmed that prior to the date of accession, Ukraine will amend its laws and regulations as described in WTO/ACC/UKR/129 to ensure that its conformity assessment procedures reflected options for achieving confidence in the

technical competence of bodies located in the territory of other WTO members to perform conformity assessment and have their results accepted by Ukrainian authorities. Such options would include: the conclusion of agreements with conformity assessment bodies in other countries (e.g., accreditation bodies; certification bodies); the acceptance and non-discriminatory consideration of applications for accreditation from conformity assessment bodies located in other WTO members and the acceptance of conformity assessment results from qualifying bodies; and other means of recognition of equivalent procedures.

General commitments

The representative of Ukraine confirmed that Ukraine shall apply the same controls, criteria and rules regarding technical regulations, standards certification and labelling requirements to imported and domestic goods, and will not use such regulations to restrict imports. Ukraine will ensure that its technical regulations, standards certification and labelling requirements are not applied to imports in an arbitrary manner, in a way that discriminates between supplier governments where the same conditions apply or as a disguised restriction on international trade. Ukraine shall make sure that internal mechanisms will exist, upon accession, to inform and consult with, on an ongoing basis, government agencies and ministries (at national and sub-national levels), and private sector interests on the rights and obligations under the GATT 1994 and the TBT Agreement.

The representative of Ukraine confirmed that Ukraine will, upon request of WTO members, meet to discuss all these measures and their impact on trade with a view to resolving problems. The Working Party took note of these commitments.

Answer:

With respect to these comments and suggestions put forward in the "Non Paper Ukraine on WTO/TBT Accession - Final Commitments" we would propose our version of the commitment language for the TBT section.

Ukraine confirms its intention to comply with all provisions of the Agreement on Technical Barriers to Trade (TBT Agreement) on the date of its WTO accession and to abide by the provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards (i.e., Annex 3 to the TBT Agreement) as regards the development, adoption and application of standards that it signed in December 1998.

Ukraine confirms the voluntary nature of its application of all national standards except for those national standards that are referred to in technical regulations approved in accordance with legislation intended to ensure national security, prevent deceptive practices, protect the life and health of people, animals or plants, as well as protect the environment. Standards will apply equally and in a non-discriminatory fashion to domestic products and to products imported from WTO Member countries, CIS countries and non-CIS countries alike.

Ukraine confirms its intention to review and replace all its national standards (i.e., former USSR standards) with international standards or technical regulations based on international standards in accordance with the Program of Current Standards Review envisioned by the 2005 – 2011 Action Plan (the "Action Plan") to achieve full conformity of the national system of standards and technical regulations in Ukraine to the WTO Agreement on Technical Barriers to Trade (document WT/ACC/UKR/129). To guarantee the necessary degree of technical and regulatory effectiveness to fulfil its legitimate objectives, while avoiding unnecessary obstacles to international trade, Ukraine's process of technical and regulatory harmonization shall be carried out on the basis of an informed and

technical process of standards' development and harmonization, not by means of automatic and systematic substitution of domestic with international standards.

In accordance with the "Action Plan", as well as with the special State standardization program for 2006 – 2010, which is being prepared in accordance with the Decree of the President of Ukraine "On Measures to Improve Activities in the Field of Technical Regulation and Consumer Policy" No. 1105/2005 of 13 July 2005, the said standards shall all be replaced at the latest by January 2011.

Ukraine also reaffirms its intention in the field of conformity assessment to use international standards, guidelines and recommendations of the International Organization for Standardization as regards conformity validation procedures in accordance with Article 5 of the WTO Agreement on Technical Barriers to Trade. Ukraine would recognize and accept the results of conformity assessment in accordance with Article 6 of the WTO Agreement on Technical Barriers to Trade provided by conformity assessment bodies of exporting countries based on their confirmed adequacy and reliable technical competence as well as the recognition of the said bodies by the National Executive Authority for Conformity Assessment.

Ukraine shall shorten the List of Products subject to obligatory certification by the end of 2005 by delisting the products of low risk to consumers and shall inform the WTO Members by means of a notification to the WTO by 1 December 2005. Ukraine shall also complete the process of regulating conformity assessment (manufacturer's declaration of conformity and third party's certification) as well as the voluntary certification in accordance with the "Action Plan" for 2005 – 2011 (document WT/ACC/UKR/129).

By the date of its WTO accession, Ukraine shall have introduced relevant changes to its laws in the field of conformity assessment envisioning the participation of competent authorities in the field of conformity assessment located in the territories of other WTO Members, implementation of national conformity assessment procedures, recognition and acceptance of conformity assessment results provided by bodies in exporting countries by the National Executive Authority for Conformity Assessment. This would envision the entry into agreements with conformity assessment bodies of other countries, acceptance and non-discriminatory review of accreditation applications from conformity assessment bodies located in the territories of other WTO Members, acceptance of results and conformity assessments provided by technically competent authorities in accordance with the established procedure based on international standards, guidelines and recommendations, recognition of the equivalence of technical regulations and conformity assessment procedures.

Ukraine shall not use standards, technical regulations and conformity assessment procedures in a manner that would be restrictive to international trade, prohibitive of imports, and discriminatory of individual exporters and suppliers. Ukraine shall use the same standards, technical regulations and conformity assessment procedures for imported and domestic goods.

At the request of WTO Members, Ukraine shall hold consultations and meetings to discuss any issue related to the application of standards, technical regulations and conformity assessment procedures that are stipulated by the TBT Agreement and may have a negative impact on international trade. In particular, upon its WTO accession, Ukraine shall ensure a national mechanism for ongoing information and holding of consultations with national and regional executive authorities as well as with stakeholders representing its private sector as regards rights and obligations in accordance with the General Agreement on Tariffs and Trade 1994 and the Agreement on Technical Barriers to Trade.

- **Sanitary and Phytosanitary Measures**

Question 61

Paragraph 221 of WT/ACC/SPEC/UKR/5/Rev.2. We would propose the following commitment language for the TBT section:

The representative of Ukraine stated that from the date of accession to the WTO his Government would apply all its sanitary requirements consistently with the requirements of the WTO Agreements on Sanitary and Phytosanitary Measures and Import Licensing Procedures without recourse to any transitional arrangements. He added that Ukraine would not require additional certification or sanitary registration for products which have been certified as safe for human use and consumption by recognized foreign or international bodies, and Ukraine would ensure that from the date of accession its criteria for granting prior authorization or securing the required certification for imported products would be published and available to traders. He confirmed that sanitary and other certification requirements in Ukraine were administered in a transparent and expeditious manner, and that his Government would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments

Answer:

With regard to this proposition for commitment language we would propose our version of the commitment language for the SPS section.

The representative of Ukraine stated that from the date of accession to the WTO his Government would apply all its sanitary requirements consistently with the requirements of the WTO Agreements on Sanitary and Phytosanitary Measures and Import Licensing Procedures without recourse to any transitional arrangements. He added that Ukraine would ensure that from the date of accession its criteria for granting prior authorization or securing the required certification for imported products would be published and available to traders. He confirmed that sanitary and other certification requirements in Ukraine were administered in a transparent and expeditious manner, and that his Government would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments

Ukraine considers it impossible to agree with the inclusion to the report of the following text: "He added that Ukraine would not require additional certification or sanitary registration for products which have been certified as safe for human use and consumption by recognized foreign or international bodies" because it's not clear what is meant by "recognized foreign or international bodies", what products are subject to the following regime, and which certification procedures on safety are being used in these bodies.

- **Trade-related investment measures**

Question 62

Paragraph 226 of WT/ACC/SPEC/UKR/5/Rev.2. We would propose the following commitment language for the TRIMs section:

The representative of Ukraine confirmed that from the date of accession, Ukraine will apply its investment regime in compliance with the relevant provisions of the WTO, including the Agreement on Trade-Related Investment Measures, and in a

non-discriminatory manner - to imports from all WTO Members and to domestically produced goods. The Working Party took note of this commitment.

Answer:

Ukraine took note of this proposition of the commitment language.

- **Free zones, special economic areas**

Question 63

Paragraph 243 of WT/ACC/SPEC/UKR/5/Rev.2: We would like the brackets to be removed from the commitment text of paragraph 243.

Answer:

There are two proposed bracketed commitments. It is unclear which commitment text is being referenced in the question.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- (d) **Application of national and MFN treatment to foreign nationals**

Question 64

Paragraph 287 of WT/ACC/SPEC/UKR/5/Rev.2. We note that Article 8.2 a) of the Law "On Protection of Rights to Indications of Origin of Goods" leaves little room for an interpretation consistent with WTO rules when requiring the conclusion of agreements regarding reciprocal protection with relevant foreign countries as a precondition for granting GI protection to foreign GIs in Ukraine. Therefore we would urge Ukraine to modify this Article so that it excludes the applicability of the requirement of an agreement on reciprocity with respect to WTO Members. We propose a following text for Article 8.2.a):

Article 8. 2.

- a) **The foreign country is not a WTO Member or Ukraine has not concluded a relevant agreement with the foreign country regarding reciprocal protection of this type of indications of origin**

Answer:

Draft amendments to the Law "On Protection of Rights to Indications of Origin of Goods" are being prepared to address this concern.

2. Substantive Standards of Protection

- (c) **Geographical indications, including appellations of origin**

Question 65

Paragraph 299 of WT/ACC/SPEC/UKR/5/Rev.2. We note that Article 8.2 a) of the Law "On Protection of Rights to Indications of Origin of Goods" leaves little room for an interpretation consistent with WTO rules when requiring the conclusion of agreements regarding reciprocal protection with relevant foreign countries as a precondition for granting GI protection to

foreign GIs in Ukraine. Therefore we would urge Ukraine to modify this Article so that it excludes the applicability of the requirement of an agreement on reciprocity with respect to WTO Members. We propose a following text for Article 8.2.a):

Article 8. 2

- (a) **The foreign country is not a WTO Member or Ukraine has not concluded a relevant agreement with the foreign country regarding reciprocal protection of this type of indications of origin**

Answer:

Draft amendments to the Law "On Protection of Rights to Indications of Origin of Goods" are being prepared to address this concern.

- (h) **Requirements on undisclosed information, including trade secrets and test data**

Question 66

Paragraph 311 of WT/ACC/SPEC/UKR/5/Rev.2. We would like to see the brackets removed from the commitment text of paragraph 311.

Answer:

Ukraine took note of this comment.

4. Enforcement

- (c) **Provisional measures**

Question 67

We would like to see the following commitments added to the end of this section:

Preservation of evidence

The representative of Ukraine confirmed that, in order to ensure that evidence of intellectual property rights can be preserved, Ukraine will establish a judicial procedure whereby, even before the commencement of proceedings on the merits of a case on intellectual property rights infringement, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his/her claims that his/her intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

Such measures will include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholder or where there is a demonstrable risk of evidence being destroyed.

In establishing such procedure, Ukraine will preserve the rights of the defendant by ensuring that:

- (a) where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.
- (b) measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant.
- (c) the measures to preserve evidence can be revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.
- (d) where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

Provisional and precautionary measures

The representative of Ukraine confirmed that Ukraine will establish a judicial procedure that will allow right holders to obtain provisional and precautionary measures in case of allegation of intellectual property right infringement.

- 1) In particular, Ukraine shall ensure that the judicial authorities may, at the request of the applicant:
 - (a) issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder; an interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right; injunctions against intermediaries whose services are used by a third party to infringe a copyright or a related right;
 - (b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
- 2) In the case of an infringement committed on a commercial scale, Ukraine shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary

seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

- 3) **The judicial authorities shall, in respect of the measures referred to under 1) and 2), have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.**
- 4) **Ukraine shall ensure that the provisional measures referred to under 1) and 2) may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the rightholder.**
- 5) **In establishing such procedures, Ukraine will preserve the rights of the defendant by ensuring that:**
 - (a) **In the event of provisional measures taken without the defendant being heard, the parties shall be so informed without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.**
 - (b) **the provisional measures, referred to under 1) and 2) are revoked or otherwise cease to have effect, upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.**
 - (c) **the competent judicial authorities may make the provisional measures referred to under 1) and 2) subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in the following paragraph.**
 - (d) **where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate**

Answer:

With account for these proposals, we suggest that Section 3 of the Draft Report be worded to read as follows (proposed amendments cited in italics):

"(c) Provisional measures

Preservation of evidence

The representative of Ukraine confirmed that, in order to ensure that evidence of intellectual property rights can be preserved, Ukraine will establish a judicial procedure whereby, even before the commencement of proceedings on the merits of a case on intellectual property rights infringement, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his/her claims that his/her intellectual property right has been infringed or is about to be infringed, *pass rulings* ordering prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

Such measures shall include *discovery and examination of written and material evidence, examination by the court of evidence immediately at the place of location thereof, examination of premises, in which actions relating to infringements took place, seizure of property owned by a person, against whom the provisional measures have been taken, and held by such person or other persons*. Those measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholder or where there is a demonstrable risk of evidence being destroyed.

In establishing such procedure, Ukraine will preserve the rights of the defendant by ensuring that:

- (a) where *a ruling* ordering measures to preserve evidence is passed without the other party having been heard, *the parties* affected shall be sent a copy of such ruling *without delay after the execution* of the measures. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the *furnishing of the ruling* on the measures, of whether the measures shall be modified, revoked or confirmed.
- (b) *in passing the ruling on* measures to preserve evidence *the court may require* that it be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant.
- (c) *the measures to preserve evidence may be revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority within ten working days from the date on which the ruling ordering measures to preserve evidence was passed.*
- (d) where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

Preventive measures

The representative of Ukraine confirmed that Ukraine will establish a judicial procedure that will allow right holders to obtain *preventive measures* in case of allegation of intellectual property right infringement.

- 1) In particular, Ukraine shall ensure that the judicial authorities may, at the request of the applicant:
 - (a) take measures to secure a claim through seizure of property or funds owned by the defendant and held by such defendant or other persons; to prohibit to take certain actions; prohibit other persons to make payments or transfer property to the defendant; suspend the sale of the seized property, if a claim is filed with respect to the right of ownership to such property or exclusion of such property from the list of seized property. Persons, who are guilty of violating the prohibition to take certain actions or transfer property to the defendant, may be subjected to a fine by a ruling of the court. In addition, the plaintiff may recover damages caused by the failure to comply with the ruling securing the claim. Such measures may be taken against an intermediary whose services are used by a third party to infringe intellectual property rights, in particular to infringe a copyright or a related right.
 - (b) pass a *ruling* ordering the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
- 2) In the case of an infringement committed on a commercial scale, Ukraine shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may pass *a ruling* ordering the preventive seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may pass *a ruling* ordering the communication of bank, financial or commercial documents, or appropriate access to the relevant information.
- 3) The judicial authorities shall, in respect of the measures referred to under 1) and 2), have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.
- 4) Ukraine shall ensure that the *preventive measures* referred to under 1) and 2) may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the rightholder.
- 5) In establishing such procedures, Ukraine will preserve the rights of the defendant by ensuring that:
 - (a) In the event of *preventive measures* taken without the defendant being heard, the parties shall be so informed without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.
 - (b) the *preventive measures*, referred to under 1) and 2) are revoked or otherwise cease to have effect, upon request of the defendant, *if the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority within ten working days from the date on which the ruling ordering the measures to preserve evidence was passed.*
 - (c) *in passing a ruling* ordering the *preventive measures* referred to under 1) and 2), *the court may demand* that such measures be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure

compensation for any prejudice suffered by the defendant as provided for in the following paragraph.

- (d) where the *preventive measures* are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures."

(e) **Special border measures**

Question 68

We note that the customs legislation does not mandate *ex officio* action against suspected IP infringers. Instead, customs action to prevent import/export of counterfeit goods is only foreseen on the basis of a formal application from the right-holder. We also note that the application fees are prohibitively high.

Therefore we would like to have the following commitment at the end of this section:

The representative of Ukraine confirmed that by accession, Ukraine will change its customs legislation to include the possibility of an *ex officio* action of the customs authorities against suspected intellectual property infringers. Ukraine will also reduce the fees charged from right-holders to lodge applications to a level that shall not unreasonably deter recourse to these procedures.

The representative of Ukraine confirmed that Ukraine would apply the commitments undertaken under TRIPS in a manner so as to permit effective action against acts of infringements of intellectual property rights, including if justified act expeditiously on the basis of complaints lodged by right-holders against well identified factories dedicated largely or exclusively to the production of pirated digital media and, if such allegations are proven correct, ensure that such protection is permanently stopped and that the infringers are punished. The Working Party took note of these commitments.

Answer:

We note that the customs legislation does not mandate *ex officio* action against suspected IP infringers. Instead, customs action to prevent import/export of counterfeit goods is only foreseen on the basis of a formal application from the right-holder.

Proposed amendments cited in italics:

"The representative of Ukraine confirmed that by accession, Ukraine will change its customs legislation to include the possibility of an *ex officio* action of the customs authorities against suspected intellectual property infringers. *Ukraine will also consider a matter of reducing the fees charged from right-holders to lodge applications to a level that shall not unreasonably deter recourse to these procedures.*

The representative of Ukraine confirmed that Ukraine would apply the commitments undertaken under TRIPS in a manner so as to permit effective action against acts of infringements of intellectual property rights, including if justified act expeditiously on the basis of complaints lodged by right-holders against well identified *enterprises* dedicated largely or exclusively to the production of pirated *discs for laser-readable systems*, if such

allegations are proven correct, ensure that such protection is permanently stopped and that the infringers are punished. The Working Party took note of these commitments".
