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Additional Questions and Replies

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II. ECONOMIC POLICIES

- Foreign Exchange and Payments

Question 1

We applaud Ukraine's elimination of the foreign exchange surrender requirement of 50 per cent.

However, we continue to be concerned with other requirements on payments, e.g. an individual license for import prepayments with delivery terms exceeding 90 days, and short time limits on payments to non-residents, that could have a negative impact on importers.

How difficult is it to get the extension for payments after 90 days referred to at the end of paragraph 20?

Answer:

A Ukrainian non-resident must deliver into (in) Ukraine such products (perform works, services) as have been prepaid by a Ukrainian resident under import agreements within 90 calendar days following the date of the prepayment.

Delivery of products into Ukraine with delivery terms exceeding the above referenced time period is considered by Ukraine as a capital operation, specifically the providing by a Ukrainian resident of a commercial credit to a Ukrainian non-resident. Therefore, the mentioned requirement is called up to prevent the outflow of capital outside Ukraine. The existence of the said requirement in Ukrainian law does not denote time limits on payments by Ukrainian residents to Ukrainian non-residents because the law permits to use letter of credit arrangements for prepayment under import agreements or allows making payment upon delivery, and it is the Ukrainian resident and the Ukrainian non-resident that agree upon the specific forms of payment in their agreement.

In connection with the existence of this requirement for certain types of agreements, it is permitted to obtain individual licenses from the National Bank of Ukraine for prolonging the legislatively prescribed time limit for payments. The list of the mentioned types of agreements is set forth in Article 6 of the Law, listing the following agreements: industrial cooperation agreements, consignment agreements, agreements for complex construction, agreements for operating and financial leasing, agreements for delivery of complex technical devices and products of special designation, i.e., these are the agreements under which it may be objectively needed to prolong periods of delivery of products into Ukraine. Resolution No. 445 of the Cabinet of Ministers of Ukraine, dated 30 March 2002, lays down procedures, whereby operations of Ukrainian residents are referred to the types of agreements.

Procedures, under which individual licenses are obtained, are set forth in Section 5 of the Instruction on Procedures for Control of, and Obtaining of Licenses under, Export, Import and Leasing Operations.

The procedures for obtaining an individual license are simple and transparent by themselves. If a Ukrainian resident requests a license in a timely manner, i.e. after having concluded an agreement, such Ukrainian resident will have no problems with obtaining the individual license.

Question 2

We do not believe these requirements are consistent with Ukraine's IMF obligations nor are they necessary at this point for exchange rate and reserve stability.

Answer:

At the time Ukraine assumed the obligations under Article VIII of the IMF Charter (1997), the requirement on time limits on delivery by Ukrainian non-residents of products (works, services) into Ukraine under import agreements entered into with Ukrainian residents within 90 calendar days from the date of prepayment was not considered by IMF experts, who had closely studied the laws of Ukraine, as a restriction on current operations, because, as was noted above, both in Ukraine and in other countries an operation with deferred delivery of products in excess of 90 days is regarded as a capital operation. To date, the IMF has not demanded from Ukraine to eliminate the above referenced requirement as such that is inconsistent with Article VIII of the Charter. A country's assuming of obligations under Article VIII of the IMF Charter does not require elimination of restrictions in the area of regulation of capital operations.

Question 3

We again request clarity on Ukraine's plans for reducing and eventually eliminating these remaining so-called "temporary" restrictions.

Answer:

At present, a draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Procedures of Payments in Foreign Currency'" has been prepared (by the Ministry of Economy of Ukraine), which draft Law provides for simplification of the procedures for prolonging periods of payment under the said operations, and, specifically, instead of an individual license from the National Bank of Ukraine the Ukrainian residents will obtain permits from the central agency of executive power for economic policy affairs.

Question 4

Paragraph 21: The requirement that foreign exchange payments to non-residents be made within five days of "date of entry" appears to refer to imports. Could this be clarified? What would be an "irrational" use of foreign exchange? How is this requirement enforced?

Answer:

This requirement is not inconsistent with the GATT rules, because the right of a Ukrainian resident to purchase foreign exchange to perform its obligations before a Ukrainian non-resident is not restricted, and the Ukrainian resident may purchase such foreign exchange at any necessary time pursuant to the conditions of an agreement. Ukrainian residents have a full possibility to meet periods of payment contemplated by such agreements both with the use of their own foreign exchange or with the use of the foreign exchange purchased in advance.

The existence of this requirement is conditioned by the fact that under conditions when the foreign exchange market of a country is very sensitive to various types of shocks (both internal and external) and when instruments for hedging of foreign exchange risks by resident importers almost are not used, this requirement is one of the instruments that allows to:

- ensure an even demand for foreign exchange on the part of Ukrainian resident importers, irrespective of fluctuations of the exchange rate of the national currency against foreign currencies; and
- avoid unjustified pressure upon the exchange rate of the national currency through speculative operations with foreign exchange carried out by Ukrainian residents.

The aforementioned requirement is an additional lever for the National Bank of Ukraine to influence the situation on the domestic foreign exchange market in order to ensure the stability of such market, which, in its turn, is a positive factor in foreign economic activities carried out by Ukrainian residents.

- **Investment Regime**

Question 5

Paragraph 28: We thank Ukraine for bringing its provisions concerning the use of promissory notes to pay the VAT into conformity with Article III and the commitment to continue this practice after accession.

Paragraph 25: We applaud Ukraine's elimination of tax and tariff preferences based on use of local content requirements in its laws governing investment in the automobile industry.

Can Ukraine confirm that no such provisions currently exist, and that from the date of accession Ukraine will not use such measures to promote its automobile industry, or others not in conformity with WTO obligations?

Answer:

Ukraine confirms that no such provisions currently exist, and that from the date of accession Ukraine will not use such measures to promote its automobile industry.

- **State Ownership and Privatization**

Question 6

We thank Ukraine for the additional information provided in this section on the State-owned sector in Ukraine.

Paragraph 42: We thank Ukraine for this commitment.

We still lack information on the trading activities of the major state-owned enterprises not yet privatized and the extent to which any of these firms trade on behalf of the state.

We continue to seek descriptive text outlining the scope, nature and operations of the State-owned firms reserved from privatization, in order to better understand Ukraine's vision for the role of the state sector in its economy.

Answer:

Table 1 lists major State-owned enterprises as of 1 January 2006. This Table should replace Table 2(a) and Table 2(b) in the Working Party Report. Table 2(b) is a very old table and should be considered as obsolete.

We understand "trade on behalf of the State" to mean that an enterprise is fulfilling an international agreement between the State and another foreign entity. As such, the following three are the only major state-owned enterprises that trade on behalf of the state:

- State company "Ukrspetzexport" engages in the export and import of products and services intended for military and special purposes;
- National joint-stock company "Naftogas of Ukraine"; and
- State Corporation "Energorynok" engages in import and export of electricity.

Table 1. Major State-owned enterprises by type of activity (January 2006)

No.	Major State Enterprises	Import/Export of Goods	Trade on Behalf of the State (Yes/No)	State property
1.	State concern "Ukrspyrnt"	Export of ethyl spirits.	No	100%
2.	State Joint Stock Company "Liky Ukrainy"	Export/import of pharmaceutical substances and medical products. Main supplier of narcotic and psychotropic substances, produced domestically, for population and institutions of protection of health.	No	100%
3.	National joint-stock company "Naftogas of Ukraine"	Export/import of oil and gas products and transportation services.	Yes	100%
4.	State joint-stock company "Khlib Ukrajyny"	Export/import of grain and grain products.	No	100%
5.	National joint-stock company "Ukragroleasing"	Organization and control over leasing operations in agro-industrial complex that are performed pursuant to the Agreements, concluded by the state leasing fund. Organization of authorized servicing of agricultural machinery, tractors, automobiles and equipment. Organization of trade for carrying out settlements for supplied agricultural machinery, tractors, automobiles, equipment and spare parts.	No	100%
6.	Public corporation "Ukrtransnafta"	Subsidiary of "Naftogas of Ukraine"	No	100%
7.	Public corporation "Ukrnafta"	Subsidiary of "Naftogas of Ukraine"	No	50% + 1 share
8.	Subsidiary company "Ukr gasvydobuvannya" of joint-stock company "Naftogas of Ukraine"	Subsidiary of "Naftogas of Ukraine"	No	100 %
9.	Subsidiary company "Ukrtransgas" of joint-stock company "Naftogas of Ukraine"	Subsidiary of "Naftogas of Ukraine"	No	100 %

No.	Major State Enterprises	Import/Export of Goods	Trade on Behalf of the State (Yes/No)	State property
10.	Subsidiary company "Gas of Ukraine" of joint-stock company "Naftogas of Ukraine"	Main tasks of the state company (SC), Gas of Ukraine" are: selling natural and liquefied gas to population, communal-general utilities, budgetary organizations, as well as industrial consumers, power generating companies of the Ministry of Fuel and Energy, entrepreneurial entities of the country; providing for gas settlements; operation and development of gas distribution networks, facilities and equipment.	No	100%
11.	State company "National Energy Company "Ukrenergo"	Management of state power stations. No trading activities.	No	100%
12.	State company "National Atom Energy generating company "Energoatom"	Import and export of nuclear materials, electricity.	No	100%
13.	Ukrainian State Center of specialized carriages exploitation "Ukrspetzvagon"	The subsidiary of the State owned company "Ukrzaliznytsia". Rendering of transport-dispatch services in course of transportation of export, import, transit and other consignments.	No	100%
14.	State Administration "Ukrzaliznytsia"	Transport services. No trading activities.	No	100%
15.	State territorial Branch Company "South-Western Railways"	Subsidiary of Ukrzaliznytsia. No trading activities.	No	100%
16.	Lviv State Railway	Subsidiary of Ukrzaliznytsia. No trading activities.	No	100%
17.	Odessa Railway	Subsidiary of Ukrzaliznytsia. No trading activities.	No	100%
18.	South Railway	Subsidiary of Ukrzaliznytsia. No trading activities.	No	100%
19.	State Company "Pridniprovska Railway"	Subsidiary of Ukrzaliznytsia. No trading activities.	No	100%
20.	State Company "Donetskaya Railway"	Subsidiary of Ukrzaliznytsia. No trading activities.	No	100%
21.	Concern of radio, radio connection and television	Broadcasting on televisions and radio programs. No trading activities	No	

No.	Major State Enterprises	Import/Export of Goods	Trade on Behalf of the State (Yes/No)	State property
22.	Ukrainian State Company of Post "Ukrposhta"	Postal connection. No trading activities.	No	100%
23.	State company "Ukrekokomresursy"	Collection and utilization of packing and garbage. No trading activities.	No	100%
24.	Ukrainian State Corporation "Ukrzakor-donnaftogazbud"	Export/import of gas, oil and oil products.	No	100%
25.	Leasing company "Ukrtransleasing"	Leasing services No trading activities	No	100%
26.	State company "Ukrspetzexport"	Export and import of products and services, intended for military and special purposes.	Yes	100%
27.	State company "Energy company of Ukraine"	Export/import of goods and services in energy sector: full sets of energy equipment; energy carriers and electricity.	No	100%
28.	State Corporation "Energorynok"	Export/import of electric energy.	Yes	100%
29.	National joint stock company "Nadra Ukraine"	Geological exploration. No trading activities.	No	> 50 %

Pursuant to the Law "On the List of State Property Assets not Subject to Privatization" No. 847-XIV of 7 July 1999, the List includes objects of national importance in general terms, meaning property and assets essential for the maintenance of Ukraine's sovereignty and the performance of basic State functions, defence and national security, health and the environment, public utilities, or objects considered important for the social development of Ukraine.

Question 7

Does the Agricultural Fund have a monopoly on all purchases and sales of grain and the other listed agricultural products, or can private traders make domestic and import/export purchases and sales as well? To what extent is imported grain eligible for purchase for state reserves?

Answer:

The Agricultural Fund does not have a monopoly on all purchases and sales of grain and the other listed agricultural products. Private traders can make domestic and import/export purchases and sales as well. Imported grain and domestic grain are both eligible for purchase by the State Committee of Ukraine on State Material Reserve in forming state reserves for national food security purpose. There are no restrictions that prevent the Agricultural Fund from importing grain to build state food reserves for the purpose of market intervention.

Question 8

What sort of products and services are provided by the 465 State-owned agricultural entities currently not subject to privatization? While we appreciate the additional information, it is not sufficient to give a clear idea of the role of the state in this sector.

Answer:

Around half of the 465 State-owned agricultural entities provide services and products which ensure maintenance and development of the whole agricultural sector. These include services connected with veterinary medicine, research and development, plant protection, development and inspection of seed stock, chemical laboratories, salt-works, and infrastructural services. Around 90 of these 495 enterprises fall under the State Concern "Khib Ukrainy" and consists mainly of mill factories, cereal factories, provender mills and elevators. Another important group of these enterprises (around 80) are engaged in production of ethyl spirits and alcoholic products and are part of the State Concern "Ukrspyr". A small number of these enterprises are collective agricultural farms.

Question 9

We note that the discussion in this section indicates enduring state involvement in a key sector of the Ukrainian economy, i.e. agriculture. Further description of the State role in this sector would be welcome.

Answer:

The 465 state-owned agricultural enterprises constitute marginal share in the whole sector which consists of around 12,000 private and joint-stock agricultural enterprises and around 40,000 farm entities.

Question 10

Paragraph 37-38 and Tables 2(a) and 2(b): Are all the enterprises listed in Tables 2(a) and 2(b) 100 per cent government owned? How much government ownership equity qualifies an enterprise to be labelled "State-owned." What is the difference between Table 2(a) and Table 2(b)? Do any of the firms listed have a trading monopoly?

Answer:

Note that Table 2(b) is a very old table and should be considered as obsolete. The table provided under the reply to Question 6 above should replace Table 2(a) and Table 2(b). Most of the state-owned enterprises listed under the new table above are 100 per cent owned by the state except National joint stock company "Nadra Ukraine" and Public corporation "Ukrnafta". State-owned enterprises in Ukraine are defined as entities with the state share exceeding 50 per cent.

Exclusive rights to trade are granted to the following major state-owned enterprises listed under the Table above:

- Ukrspirt: Export of ethyl spirits, cognac spirits, and fruit spirits in Ukraine is allowed only for designated state enterprises. Currently, there are ten state companies, which are all members of the State Corporation of Alcohol and Liquor Industry "Ukrspyr", designated by the Cabinet of Ministers are eligible to export ethyl spirits, cognac spirits, and fruit spirits. As of 30 January 2006, six of these ten obtained the right (license) to export ethyl spirits, cognac spirits, and fruit spirits.
- Liky Ukrainy: Import/export operations with certain narcotics, psychotropic substances and precursors - any activity (including export and import) regarding turnover of certain narcotics, which are defined by the List of narcotic drugs, psychotropic substances and precursors approved by the Cabinet of Ministers of Ukraine, is allowed only for state and municipal enterprises provided they have an activity license. The total number of state and communal enterprises, which have the appropriate license, is currently five (among them is State Joint Stock Company "Liky Ukrainy").

- Ukrspetzexport: Import/export of military equipment, as well as products, which are material carriers of information that constitutes State secret – State Company "Ukrspetzexport" is the only state company authorized by the Government of Ukraine to participate in international agreements (contracts) concerning Import/export of military equipment, as well as products, which are material carriers of information that constitutes State secret.
- Naftogas of Ukraine (UkrGasEnergo): Naftogas of Ukraine has been a monopolist in supplying natural gas to Ukraine. Closed JSC UkrGasEnergo is a new company - 50 per cent share of its share owned by Naftogas of Ukraine and 50 per cent by RosUkrEnergo - will have a trading monopoly for the importation of gas from Russia and Central Asia to be distributed among private industrial producers in Ukraine.

Question 11

We need the foregoing information to document the scope of Ukraine's State-owned and controlled firms and to describe how they operate, with a view to understanding their impact on trade.

We suggest merging the portions of this section that describe State-owned firms with the one on State trading entities, without prejudice to Ukraine's notification of state-trading enterprises as required by Article XVII of the GATT and the Understanding on that Article.

Answer:

It is preferred that these two sections remain separate for the following reasons:

- Not all state-owned enterprises are state trading entities; and
- Private entities could be state trading entities.

The purpose of this section is to describe the nature and scope of the state sector and the privatization process

- **Pricing Policies**

Question 12

Paragraph 58: If minimum import prices are not being applied to imports, and will not be in the future, please confirm that Ukraine intends to repeal such provisions in the new law on "On State Support of Agriculture in Ukraine," which appears to contain provision for minimum prices that will be applied to imported goods.

Answer:

The Government of Ukraine is developing a draft law on introducing changes to the Law of Ukraine "On State Support of Agriculture in Ukraine," which is intended to repeal the said provision.

Question 13

Paragraphs 52 and 54: We seek additional information from Ukraine on its energy pricing requirements. At what cost does Ukraine generate electricity and at what price is its sale to industrial consumers? Does Ukraine export electricity?

Answer:

Ukraine exports electric power but the proportion of these exports in the overall export volume does not exceed 0.5 per cent. The price of electric power to industrial consumers is regulated by Resolution No. 47 of 22 January 2001 of the National Commission on Regulation of Electric Power Industry Ukraine "On Approving the Procedure for the Formation of the Retail Tariff on Electric Power to Consumers (except for the population and settlements) Licensees to Supply Electric Power at the Regulated Tariff" and, on average, is 40 per cent higher than the purchase price.

Question 14

We also seek information concerning the pricing of natural gas and other energy products to domestic private and industrial consumers.

We would appreciate information from Ukraine concerning the reliance of its nitrogen fertilizer industry on natural gas secured by domestic industrial consumers at government-mandated artificially low prices as a feed stock for its production. (Note: Some of these products are currently under antidumping orders in the United States. End note)

Answer:

Pursuant to Resolution No. 128 of 9 February 2006, of the Cabinet of Ministers of Ukraine "On Approving the Price Ceiling on Natural Gas for the Period Till 2010," for the period till 31 December 2010, the ceiling natural gas price for all categories of consumers, less transportation and supply costs and the value added tax, shall not exceed US\$ 110 for 1,000 cubic meters in UAH equivalent.

Question 15

Table 4: Please provide information in the Working Party text on the nature of the price controls listed in Table 4 for energy and fuels and downstream products, e.g. HS Categories 2701-2710, 2711, 2716, and 31. Are these controls applied on energy and fuel provided for industrial purposes as well as for households?

Answer:

Please see updated Table 4 (Annex I) and aforementioned answers to paragraphs 52-54.

Question 16

From section on "Fees and charges for services rendered", paragraphs 114-116: This discussion of Railroad Tariffs should be moved to the Pricing Policies section. The commitment text in paragraph 59 includes a pledge to equalize these rates no later than the date of accession

Answer:

Ukraine does not object to moving the discussion on railroad tariffs in paragraphs 114-116 to the Pricing Policies section.

Question 17

Paragraph 116: Concerning Ukraine's differential pricing for domestic and imported goods on its railroads, we would appreciate a status report on efforts to bring this into conformity with WTO now that the moratorium on tariff increases has expired, on 16 September 2005.

59. [The representative of Ukraine confirmed that from the date of accession, the Government of Ukraine would apply price control measures in a WTO-consistent fashion, and take account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994 and in Article VIII of the General Agreement on Trade in Services (GATS). [He confirmed that Ukraine did not apply minimum import prices to agricultural products, including raw cane sugar, and would not do so in the future.] [He confirmed that Ukraine committed to not apply mandatory minimum price requirements to any imported product.] [He also confirmed that Ukraine would equalize differential railway tariffs for the transportation of domestic and imported goods by the date of accession.]He also confirmed that Ukraine published notices of the goods and services subject to State price controls and would continue to do so after accession. The Working Party took note of these commitments.]

Answer:

The tables setting out the harmonized railway transport fees per product are not prepared at this stage, as the tariffs have not yet been indexed in full. Thus, a draft Cabinet of Ministers Resolution "On the Indexation of Railway Tariffs for Freight Transportation", whereby this issue is resolved in full and in compliance with the WTO requirements, has been submitted to the Cabinet of Ministers of Ukraine for review. After the said Resolution has been approved, a book of tariffs for freight/passenger transportation will be prepared and published, which will indicate railway transport fees per product unit.

This Draft is being considered by the relevant Ministries and State Committees and is expected to be adopted during the first quarter of 2006.

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

Question 18

We would appreciate a description for the report of the ratification procedures Ukraine will use to accept the terms of accession approved by WTO members and a sense of how long it is likely to take after Ukraine signs its Protocol.

Answer:

According to the Law of Ukraine "On International Treaties" the President will sign on behalf of Ukraine the Protocol of Accession, thus, accepting the "Accession Package" subject to ratification in the Verkhovna Rada. In the Rada, the Accession Package will be voted together with the signed Protocol of Accession as Yes or No vote in a single reading by the simple majority (226 votes needed). All the procedures in the Rada – submission/registration for consideration and voting - shall take no more than 2 plenary sessions. Thus, technically speaking, ratification could be accomplished within three months.

Question 19

We note that there are multiple commitment paragraphs. We request agreement to paragraphs 71 and 77.

Answer:

We suggest the following wording of paragraph 71:

The representative of Ukraine confirmed that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions. He confirmed that the provisions of the WTO Agreement, including Ukraine's Protocol of Accession, shall be applied uniformly throughout its customs territory and other territories under its control, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established. He added that when apprized of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts. The Working Party took note of these commitments.

We suggest the following wording of paragraph 77:

The representative of Ukraine confirmed that from the date of accession Ukraine's laws would provide for the right to appeal administrative rulings on matters subject to WTO provisions to an independent tribunal in conformity with WTO obligations including, but not limited to, Article X:3(b) of the GATT 1994. The Working Party took note of this commitment.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 20

We thank Ukraine for the additional information provided and the clear signs that for the vast majority of its trade, the right to import and export is unrestricted and is not linked to domestic investment.

We remain concerned with the widespread use of activity licensing in the Ukraine on a variety of products, such as pharmaceuticals and alcoholic beverages.

In the case of alcoholic beverages, the licensing fee for importation of US\$ 47,000 clearly acts as a tax on profits, as indicated by Ukraine at the end of paragraph 81. This, while appropriate for distribution of alcoholic beverages, is not appropriate for importation, and conflicts with Article VIII of the GATT. What is the status of efforts to amend Law No. 481 of 19 December 1995 (paragraph 83) to bring this charge into conformity with Article VIII?

Answer:

The Government prepared and submitted to the Parliament a draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" (No. 8373 of 1 November 2005), amending Law No. 481, dated 19 December 1995, in order to bring licensing fees for alcohol beverages and tobacco in compliance with Article VIII GATT 1994. (The said draft Law provides for a substantial cut of fees for licenses for production of and trading in spirits, alcohol beverages and tobacco products to the amount of 15 - 20 of citizens' non-taxable minimum incomes, which will approximately be equal to €60. Alongside with this, it is proposed to introduce an annual fee for alcohol and tobacco addiction prophylaxis and treatment measures. For business entities that are engaged in retail trading in alcohol beverages the amount of the above fee will be differentiated depending on the number of population determined pursuant to statistical data for the previous year. In addition, the draft Law amend Article 14 of the Law of Ukraine "On the Taxation System", whereby the annual fee for alcohol and tobacco addiction prophylaxis and treatment measures must be included into the list of national mandatory fees and charges).

Question 21

In the case of pharmaceuticals and agricultural chemicals, paragraphs 87 and 89, respectively, appear to imply that an activity license to produce or distribute these products must be obtained in order to import. Is this true?

Answer:

No activity license is required for the importation of medicines and agricultural chemicals. Activity license is required only for wholesale and retail.

Question 22

Are there any other goods for which an activity license for production or distribution is necessary in order to import, e.g. precious metals and stones, veterinary medicines, perfumes and cosmetics containing alcohol?

Answer:

The list of goods for which an activity license for production or distribution is necessary in order to import requires an activity license is provided in Table 8(a) of the draft Working Party report.

Question 23

Provision should be made for importation that is not distribution, i.e. the requirements for production and distribution should not be imposed on importers of record only.

Answer:

Ukraine confirms that requirements for production and distribution are not imposed on importers.

Question 24

Please detail the specific efforts Ukraine is making to rationalize its fees for pharmaceutical registration, as indicated in paragraph 88? Include information on whether the new fee structure will be related to the cost of registration and if there are additional fees for any testing or expert evaluation during the registration process.

Answer:

Cabinet of Ministers Resolution "On the Approval of the Procedure for State Registration (Re-registration) of Medicines and Fees for State Registration (Re-registration) of a Medicine" as of 26 May 2005 No. 376, lowered the fees for registration and re-registration of:

- Pharmaceutical. The registration fees became €1,000 for each medical form, €100 for each next dose and €100 for each next package of a medicine. The re-registration fees became €500 for each medical form, €50 for each next dose and €50 for each next package of a medicine;
- Radioactive medicine, diagnostic means and simple or complex (halenic) preparations of plant medical raw materials. The registration fees became €150 for each medical form, €25 for each next dose and €25 for each next package of a medicine. The re-registration fees became €50 for each medical form, €20 for each next dose and €20 for each next package of a medicine; and

- Active substances and excipients, products of restricted usage, specified by MoH and donor blood or plasma. State registration (re-registration) is equivalent of €25 for each items.

These are financial matters between the applicant and the specialized institutions performing the verification and analysis service as described in Paragraph 88 of the Working Party Report (new fees must be reflected in Paragraph 87).

Question 25

It also appears that ethyl alcohol, cognac and fruit spirits can only be state-traded, and that only specialized domestic firms (perhaps not all of them state owned) designated by the Council of Ministers are permitted in international trade.

We confirm in the Working Party report that these firms are state-trading enterprises and inclusion of these firms in the coverage of Ukraine's Working Party commitment in paragraph 263 on State-owned or controlled, and other enterprises with special or exclusive privileges.

Answer:

Ukraine confirms that the export of ethyl spirits, cognac spirits, and fruit spirits in Ukraine is allowed only for designated by the Cabinet of Ministers state enterprises.

Question 26

We seek clarification on these points. In particular we are not reassured by the text of paragraph 90, since it directly contradicts the commitment language in paragraph 91, which we support.

Answer:

Any restrictions on rights of individuals and legal entities to engage in import and export of goods will be established only within the confines imposed by the WTO Agreements with due regard to the provisions of Article XX of GATT 1994.

A. IMPORT REGULATIONS

- **Ordinary Customs Duties**

Question 27

Paragraph 92: We suggest that it would be better for the concordance Ukraine is using to transpose its negotiated commitments in HS 1996 to HS 2002 be provided to Members prior to finalization of the new applied tariff, or be prepared to make the necessary technical changes that may occur if the "technical transposition" results in the impairment of a granted concession.

Answer:

Cabinet of Ministry already submitted the Draft Law "On Amendment to the Customs Tariff of Ukraine" to the Parliament that is based on the 2002 version of the Harmonized System (HS) nomenclature. The draft Law was registered as No. 8652 in the Parliament on 22 December 2005. Text of the draft law is available on the website of the Verkhovna Rada.

Ukraine will make the concordance table for conversion of tariff commitments to HS2002 available in due course.

Question 28

Paragraph 98: The first sentence of the commitment paragraph should be clarified to ensure that it is not read as exempting duties and fees from WTO provisions.

Answer:

Ukraine takes note of this proposal.

- **Fees and charges for services rendered**

Question 29

Paragraph 109: Please confirm that there will be no other customs clearance fee applied to imports, e.g. imports by ship or air, other than the unified fee described in Table 12(b) after 1 January 2006.

Answer:

The Law on State Budget 2006 No. 35 dated 20 December 2005 extended the application of previous fees (under Table 12(a)) until the date of WTO Accession. On such date, fees in Table 12(a) will become invalid and fees in Table 12 (b) and Table 12 (c) will come into effect.

Question 30

Paragraphs 110 and 113: Paragraph 110 should be eliminated and the information moved to paragraph 113. The combined paragraph 113 should be followed by a chart displaying the port charges referred to in this paragraph.

Answer:

Ukraine agrees with this proposal.

Note the following two changes to WT/ACC/UKR/118, Annex 3:

- A reference should be made to Order No. 518: (Pursuant to order of the Ministry of Transportation and communication of Ukraine, dated 2 September 2005, No. 518, a 50 per cent discount for port fees (except for administrative charge) had been introduced till 1 October 2006 for vessels that call in order to take a load (unload) of oil at the Pivdennyi oil terminal, which is located at the Yuzhniy sea commercial port); and
- The "Ministry of Transportation" should be the "Ministry of Transportation and Communication"

Question 31

Registration Fees: It is also our understanding that State Department and Veterinary Medicine of Ukraine (SDVMU) Order No. 62 of 12 September 2003 establishes two distinct price sets for testing and registration of veterinary drugs, animal feeds, and feed additives and substances, one for domestic products and one for imports.

We seek information on this measure and its current status, and ask that Ukraine equalize these rates prior to accession. We suggest the following descriptive text be added to this section, and that these products be covered by the commitment in paragraph 117:

113bis. A Member noted that Ukrainian State Institutions created directives that charge discriminatory fees on imported product. The State Department of Veterinary Medicine of Ukraine issued Order 62, which created fees for the registration and testing of veterinary drugs, animal feeds (including pet foods), and feed additives and substances that can be three times higher for imported product than domestic. The Cabinet of Ministers Resolution No. 1183 established discriminatory fees for the registration of plant varieties in the State Variety Register that are between ten and thirty times higher for imports than domestic. The Ukrainian delegation confirmed that the discriminatory fees applied for the registration and testing of these products will be adjusted to conform to the national treatment provisions of the GATT upon Ukraine's accession.

Answer:

Order No. 62 of the State Department of Veterinary Medicine of Ukraine was invalidated by Order No. 88 of the State Department of Veterinary Medicine of Ukraine dated 5 October 2005. Order No. 88 establishes new fees for testing and registration of veterinary drugs, animal feeds, and feed additives and substances, which are the same for domestic and imported products.

The Government of Ukraine has prepared draft changes to Resolution No. 1183 of the Cabinet of Ministers of Ukraine regarding the abolition of discriminatory fees for the registration and testing of plant varieties.

Question 32

Paragraphs 114-116: Per requested changes in the section on Pricing Policies, we believe that this discussion of Railroad Tariffs should be moved to the Pricing Policies section. The commitment text in paragraph 59 includes a pledge to equalize these rates no later than the date of accession

Answer:

Ukraine agrees with this suggestion.

Question 33

Paragraph 117: We note the commitment language on fees and charges for services rendered.

117. [The representative of Ukraine confirmed that Ukraine would ensure that any fees and charges for services rendered on or in connection with importation, exportation or trade in transit, including those listed in Tables 12(a), 12(b) [and 12(c)], described in paragraphs 82, 113 and 117, or introduced in the future would only be applied in conformity with the relevant obligations of the GATT 1994, and that from the date of accession any application of such fees and charges by Ukraine 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:

Ukraine agrees with the revised text.

- **Application of internal taxes on imports**

Question 34

Paragraph 122: Is a separate commitment necessary for both VAT and excise taxes? If so, it should be amended as follows:

(Additions in italics): ". . . in [full] compliance with *all* the relevant provisions of the WTO including *the Agreement on Subsidies and Countervailing Measures* and Articles I and III of the GATT 1994, . . ."

Answer

Ukraine agrees with this suggestion.

Question 35

Paragraph 127: We ask that Ukraine confirm that the Law No. 2505 "On Amendments to the Law of Ukraine "On State Budget of Ukraine for 2005" and Some Other Legislative Acts" of 25 March 2005, has eliminated all VAT exemptions for "certain domestic inputs." Moreover, please confirm that the elimination of VAT exemptions for "certain domestic inputs" are not limited to the automobile, shipbuilding, and aircraft construction industries and that the elimination of VAT exemptions also applies to enterprises with an investment program approved prior to 1 January 2004.

Answer:

Ukraine confirms that the elimination of VAT exemptions for "certain domestic inputs" are not limited to the automobile, shipbuilding, and aircraft construction industries and that the elimination of VAT exemptions also applies to enterprises with an investment program approved prior to 1 January 2004.

Question 36

Paragraph 131-134: The discussion of VAT exemptions for milk and meat and other agricultural products and of the use of the exempted funds is confusing and argumentative. It should be revised to ensure clarity.

Paragraph 134: Please provide a status on whether Ukraine has amended the Law "On Amendments to Certain Laws of Ukraine on Taxation of Agricultural Producers and Support of Social Standards for their Employees" to eliminate discriminatory tax exemptions.

Please confirm that all of these exemptions will be abolished upon accession.

Answer:

In paragraph 132 Ukraine provided explanations meant to lift the expressed concerns with the VAT mechanism application in Ukraine. The only beneficiaries of the VAT collection procedure applied in meat and dairy sectors are agricultural producers of meat and milk (not manufacturers). Processing enterprises act as sheer intermediaries authorized by the government to transfer their VAT payment

obligations as subsidies to agricultural producers. Henceforth, the existing mechanism is not more advantageous (instrumental) for processing enterprises than it is for producers of principal types of agricultural produce. For this reason, this mechanism meets the criteria specified in Paragraph 7 of Annex 3 to the Agreement On Agriculture. As concerns the VAT collection procedure as applicable to other types of agricultural produce, a representative of Ukraine stated that he did not regard VAT accumulation to be a distortion as VAT rates (20 per cent) remain the same for both imported and domestic produce. In essence, the government provides an input subsidy in the form of accumulated VAT instead of making direct disbursements from the state budget. The mechanisms of subsidizing domestic agricultural producers through the VAT collection (subsidies for meat and milk and accumulation of VAT) will also be applied in 2006.

The institution of a special VAT collection regime governed by the Law of Ukraine On Amendments to Certain Laws of Ukraine with Respect to Taxation of Agricultural Enterprises and Maintaining Their Employees' Social Standards discriminating against imported agricultural produce in the meaning of Article III GATT has been postponed for one year until 1 January 2007 (Law of Ukraine On Amendments to the Law of Ukraine On Value Added Tax with Respect to Agricultural Enterprises)

Question 37

Paragraph 135: Should be revised as follows:

(Additions in italics): ". . . in [full] compliance with *all* the relevant provisions of the WTO including *the Agreement on Subsidies and Countervailing Measures* and Articles I and III of the GATT 1994, . . ."

Answer:

Ukraine agrees with this suggestion.

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

Question 38

We suggest creating separate sections (1) on quantitative restrictions and (2) on import licensing systems.

Paragraph 138: In addition the import restrictions listed in Table 14(a), we request more information about a current ban on imports of ground beef by Ukraine and the purpose and scientific justification of such a ban. Does the enactment of the new Veterinary Medicines law change Ukraine's approach on this issue? If so, how?

Answer:

According to the new Veterinary Medicines Law, all veterinary-sanitary measures shall be based on scientific principles and available scientific justifications. All veterinary-sanitary measures shall be based on international standards, guidelines, and recommendations of the relevant international organizations. In case international standards, guidelines, and recommendations do not exist or are insufficient to fulfil the appropriate level of animal and related human health protection, veterinary-sanitary measures shall be developed on the basis of a risk analysis according to the technique developed by the relevant international organizations. As such, measures that do not meet the above criteria (e.g. ban on import of ground beef) will be eliminated after the enactment of the Veterinary Medicine Law.

Question 39

Table 14(c): How does Article XX(c) offer justification for restrictions on precious stones? The term "precious metals and alloys" appears to cover more than gold and silver, e.g. platinum. Paragraph 149 states that Ukraine will amend its Law on Foreign Economic Activities prior to accession to remove reference to precious stones and metals. Does that mean that the restrictions and licensing requirements on these products will be abolished as well? Were these products on the list of items for licensing issued for 2006?

Answer:

Ukraine is going to adopt the Amendments to the Law on Foreign Economic Activities according to which all measures (other than gold and silver) in Table 19(b) will be eliminated.

Question 40

Please include appropriate descriptive material in the section on import licensing on the new licensing requirements for 2006, e.g. for fresh, chilled, or frozen beef and pork and related live animals. In addition to describing these requirements, please address the following issues:

- **Are there any restrictions on who can apply for the licenses? and**
- **Must all applications have a certified classification from the Chamber, or is this required only for certain products, e.g. beef and pork?**

We ask that Ukraine provide up-to-date information on all of its intended amendments to its current licensing system to bring it into line with the WTO Import Licensing Procedures Agreement. We would appreciate copies of amended legislation.

Answer:

Fresh, chilled, or frozen beef and pork and related live animals became subject to import licensing without the need for prior approval in 2006 in accordance with CM Resolution No. 1304 as of 30 December 2005. Please see revised Table 14 (d) below listing all goods subject to import licensing without prior approval.

All persons can apply for these licenses. All applicants for licenses are required to provide an original copy of an expert examination act to the effect of the good's code determination according to Ukrainian Classification of Goods Involved in Foreign Trade Activity by the Chamber of Commerce and Industry of Ukraine or a regional Chamber of Commerce.

Table 14(d): Goods subject to import licensing, for which no prior approval is necessary

Tariff Code	Product Description	Entity Responsible for Applying the Measure	Legislative Basis	Measure Description/ WTO justification
2833 25 00 00	Copper sulphate	Issuance of Licence: Ministry of Economy	Resolution of the Cabinet of Ministers No. 1304 of 30 December 2005 "On the List of Goods, Export and Import of which is Subject to Licensing, and Which Fall under the Quota Regime in 2005	Import Licensing, without quantitative restriction. GATT Article XX(g); monitoring of trade flows.
3907 40 00 00	Optical polycarbonates for production of discs for	Issuance of Licence: Ministry of	""	Import Licensing, without quantitative restriction. GATT Article XX (d).

Tariff Code	Product Description	Entity Responsible for Applying the Measure	Legislative Basis	Measure Description/ WTO justification
	laser reading systems	Economy		
4907 00 10 00, 4907 00 91 00, 4907 00 99 00	Unused postage, excise labels and similar products being in circulation or have to be in circulation in the country of destination; stamp-impressed paper	Issuance of Licence: Ministry of Economy	""	Import Licensing, without quantitative restriction. GATT Article XX(d); monitoring of trade flows.
0201	Beef chilled and fresh	Issuance of Licence: Ministry of Economy		Import Licensing, without quantitative restriction. monitoring of trade flows.
0202	Beef frozen	Issuance of Licence: Ministry of Economy	""	Import Licensing, without quantitative restriction. monitoring of trade flows.
0203	Pork fresh, chilled or frozen	Issuance of Licence: Ministry of Economy	""	Import Licensing, without quantitative restriction. monitoring of trade flows.
0102	Live cattle	Issuance of Licence: Ministry of Economy	""	Import Licensing, without quantitative restriction. monitoring of trade flows.
0103	Pork live	Issuance of Licence: Ministry of Economy	""	Import Licensing, without quantitative restriction. monitoring of trade flows.

- **Customs valuation**

Question 41

We have reviewed Ukraine's Customs Code, its amendments, and draft Regulation

On Interpretative Notes for Application of the Customs Code Provisions on Customs Valuation, legislation is meant to bring Ukraine into compliance with the WTO Valuation agreement. We agree that these provisions largely cover our outstanding problems with Ukraine's legislation.

Please update the information on the enactment of the draft legislation and amend the WP text to reflect the changes in legislative authority.

We also identify the following issues, seeking Ukraine's accelerated efforts to address them, so that we may complete our review of this section.

Answer:

Ukraine proposes the following revisions to Paragraph 161:

Asked specifically about the adoption of legislation amending the Customs Code, the representative of Ukraine said that the Amendments to the Customs Code were adopted by the Verkhovna Rada on 22 December 2005 and published on 2 February 2006. The draft Customs Order on Interpretative Notes had been prepared and would be adopted in as soon the Amendments to the Customs Code come into effect (45 days after publication). The amendments to the Customs Code would reconcile the Code's provisions with those of the WTO Agreements, in particular with regard to the

determination of country of origin of goods, the determination of customs value, and the mandatory publication of court decisions on customs issues.

Question 42

Amendment to Section XI Customs Code (Valuation): We are concerned with Articles 268 and 269 regarding valuation on the basis of identical goods or similar goods. These Articles include two criteria, i.e. country of origin and manufacturer of the good, as factors to be considered in determining whether a good is identical or similar. These criteria are not included in Paragraphs 2(a) and 2(b) of Article 15 of the Customs Valuation Agreement and should be removed from the amendment.

Answer:

Indeed, the "country of origin" and "producer of goods" criteria are not included in paragraphs 2(a) and 2 (b) of Article 15 of the Agreement on the Implementation of Article VII of GATT. However, paragraph 2 (d) of Article 15 provides that goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued. Paragraph 2 (e) of the same Article provides that goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

Thus, we believe that the provision of the Law, which takes into account such criteria as the "country of origin" and the "producer of goods" in determining whether the goods are identical goods or similar goods, is not inconsistent with the provisions of the Agreement on the Implementation of Article VII of GATT

Question 43

Valuation of Imports Using Transaction Value:

What are Ukraine's procedures for dealing with imports of goods where the transaction value does not seem adequate or accurate? Are there any lists of products used to identify imports with a risk in this regard? Are there any reference prices established that could trigger further examination of the goods? Does Ukraine have any special procedures to address these situations that incorporate lists of goods or the generation of test values?

We seek description and assurances in the draft Working Party report text on this issue.

We do not think that the commitment text in the first set of brackets in paragraph 164 is sufficient for this section.

Answer:

Ukraine applies the norms of the current Customs Code, which implements the WTO Customs Valuation Agreement, to conduct customs valuation of goods. There are no lists of products used to identify imports with a risk or reference prices that could trigger further examination of goods. Ukraine does not have any special procedures to address these situations that incorporate lists of goods or the generation of test values.

Ukraine accepts the commitment text in the second set of brackets in paragraph 164 except for the words "nor would apply duties and taxes":

[The representative of Ukraine confirmed that, as from the date of accession, Ukraine would apply the WTO provisions concerning customs valuation, including the Agreement on the Implementation of Article VII of the GATT 1994 and Annex I (Interpretative Note) and paragraph 2 of the Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1), providing that valuation of software was based on the value of the media. He stated that Ukraine would not use any form of reference or minimum prices or fixed valuation schedules for the valuation of imports nor would apply duties and taxes, and that all methods of valuation used were in conformity with those provided for in the WTO Agreement on the Implementation of Article VII of GATT 1994. The Working Party took note of these commitments.]

- **Rules of origin**

Question 44

At the last meeting, we requested that Ukraine supply a copy to the Working Party of the supplementary legislation referred to in the paragraph to implement the requirements of Article 2(h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin. Examination of the Amendments to Section XI Customs Code (Country of Origin) revealed that the amendment to Article 277 provides that upon request, the Ukrainian customs authority will adopt a decision regarding the country of origin of a good.

This is not specific enough. Pursuant to Article 2(h) and Annex II, paragraph 3(d) of the WTO Agreement on Rules of Origin, such determinations should be issued as soon as possible and in no event later than 150 days from the date of the request. In addition, these determinations should remain valid for at least three years from the date of issuance providing there is no change in the facts or circumstances that determine the origin of the good.

Answer:

On 28 October 2004 the Cabinet of Ministers of Ukraine approved Resolution No. 1443 "On Making Additions to the Procedure for Determining the Country of Origin of Goods Carried Across the Customs Territory of Ukraine" intended to ensure the observance of the requirements of Article 2 (h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin. The Resolution took effect on 1 January 2005.

The Resolution stipulates that upon request of the exporter, importer or any interested party the customs body approves a preliminary decision on the country of origin of the goods immediately before the goods are traded but no later than 150 after the customs body receives such request.

The preliminary decision on the country of origin of goods which is binding upon all customs bodies is valid during three years after the day of its approval unless it is revoked or suspended.

The customs body may resolve to revoke or suspend the preliminary decision on the country of origin of goods, if such decision was approved based on forged documents or documents containing untruthful information.

A decision to revoke the preliminary decision on the country of origin of goods shall take effect as of the day of approving the preliminary decision.

The approved preliminary decision on the country of origin of goods may be revoked in the event:

- the Ukrainian Classification of Goods Involved in Foreign Trade Activity (goods nomenclature) has been changed;

- international agreements to which Ukraine is a party or legislative acts of Ukraine on determining the country of origin and/or the rules on determination relating to the country of origin and other conditions for determining the country of origin of goods; and
- state authorities of Ukraine approve decisions establishing other conditions for determining the country of origin.

The form and procedure for approving, suspending or revoking a preliminary decision on the country of origin of goods shall be determined by the State Customs Service.

Question 45

We would like to know how these measures will be provided for in Ukraine's laws.

Answer:

We also would like to inform you that on 22 December 2005 the Verkhovna Rada of Ukraine passed the Law of Ukraine "On Introducing Changes to Some Legislative Acts of Ukraine" No. 3269-IV that introduced changes to Section XII of the Customs Code of Ukraine (the country of origin of goods). The said changes stipulate the use of the latest goods processing operations (the cumulative principle) and the use of the criterion of goods code change in accordance with the goods nomenclature and the *ad valorem* criterion (Article 2 (a) of the WTO Agreement on Rules of Origin) as well as delineate preferential and non-preferential rules of origin (the WTO Agreement on Rules of Origin). They regulate the issues of determining the country of origin of packaging that must be declared separately from the goods (Article 9 of Section 1 of the Special Annex to the Kyoto Convention); they regulate the issues of determining the country of origin of components, parts and tools intended to be used with machines, devices, units or vehicles (Article 7 of Section 1 of the Special Annex to the Kyoto Convention).

Question 46

We do not think that the commitment text in the first set of brackets in paragraph 169 is sufficient for this section.

Answer:

Ukraine does not object to the second set of brackets in Para 169.

- **Other customs formalities**

Question 47

The use of non-governmental facilities to establish classification of imports is problematic, in that the normal protections of WTO provisions would not necessarily be observed, nor would the right of appeal to Ukrainian customs authorities and subsequently an "independent tribunal" be guaranteed. We need more information on how importers recourse to the Chamber of Commerce is required and handled.

- **What is the legal authority for the Chamber to perform this requirement?**
- **Is a Chamber of Commerce opinion on classification mandatory for all imports or only under certain circumstances? If it is the latter, please list those circumstances, e.g. if products are under import licensing?**
- **Are there any time-limits for the review by the Chamber of the application?**
- **Are the Chamber rulings published?**
- **How would an importer appeal a Chamber of Commerce decision he disagreed with?**

- **Is the Customs Services required to accept the Chamber's decision or is it only advisory?**
- **Why isn't Ukraine's customs service responsible for these services? and**
- **When will Ukraine customs resume classification of imports?**

Answer:

Article 313 of the Customs Code (adopted on 11 July 2002) stipulates the following:

"Customs authorities shall classify goods, i.e. they shall refer goods to classification groups of Ukrainian Classification of Goods Involved in Foreign Trade Activity. Decisions of customs authorities on classification of goods for customs purposes are binding for enterprises and citizens." Thus, the Customs Service is the only authority that classifies imports during importation.

Importers may seek the Chamber of Commerce's opinion re the classification of goods (expert opinion) in case of disputes with the Customs Service regarding classification of goods.

The only mandatory requirement for using Chamber of Commerce services for classification of goods is stipulated in the Import Licensing Regulation approved by an annual Order of the Ministry of Economy. One of the documents to obtain a license is an original copy of an expert examination act to the effect of the good's code determination according to Ukrainian Classification of Goods Involved in Foreign Trade Activity by the Chamber of Commerce and Industry of Ukraine or a regional Chamber of Commerce.

- **Preshipment inspection**

Question 48

The text in paragraph 173 is a good basis for a Commitment in this section.

Answer:

Ukraine accepts the commitment in Paragraph 173.

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

Question 49

We understand that two draft laws to bring Ukraine into compliance with WTO provisions on Anti-dumping and Safeguards were passed by the Rada in November. These were Draft No. 7117 -Amendments to the Law of Ukraine "On the Protection of Domestic Producer against Dumping Imports" and Draft No. 7127 "On Amendments to the Law of Ukraine On Safeguard Measures regarding Importation to Ukraine." (Note: Paragraph 175 states that Law No. 860-IV of 22 May 2003 is Ukraine's most current anti-dumping legislation. End note)

We understand that the laws have been signed. Are they currently in force?

Answer:

The Law of Ukraine "On Introducing Changes to the Law of Ukraine "On Protecting the Domestic Goods Producers Against Dumping Imports" took effect on 30 December 2005; and the Law of Ukraine "On Introducing Changes to the Law of Ukraine "On Applying Special Measures to Imports to Ukraine" took effect on 25 November 2005.

Question 50

Do they require additional implementing regulations? What is the status of the regulations used to implement the previous (unamended) laws? Were they also revised? Were they superceded?

Answer:

The Laws of Ukraine "On Protecting the Domestic Goods Producers Against Dumping Imports" and "On Applying Special Measures to Imports to Ukraine," both the original and amended versions, do not require the approval of additional normative acts.

Question 51

The Working Party should be given an opportunity to review Ukraine's new legislation on these issues. Has the legislation been provided to the Working Party? If not, when may we have copies?

Answer:

Copies of the Laws of Ukraine "On Protecting the Domestic Goods Producers Against Dumping Imports" and "On Applying Special Measures to Imports to Ukraine" have been submitted to the Secretariat.

Question 52

We reserve the right to make further comments upon review of the new anti-dumping and safeguard legislative texts.

Please confirm whether Ukraine has updated the Law "On Protection of National Industry against Subsidized Imports" No. 331-XIV of 22 December 1998 which contains Ukraine's countervailing duty legislation. Have there been any CVD cases initiated or pursued under this legislation since 1995?

Does Ukraine intend to bring its legislation concerning countervailing duty measures into conformity with the Agreement on Subsidies and Countervailing Measures?

Answer:

There was no need to update the Law of Ukraine "On Protecting the Domestic Goods Producers Against Subsidized Imports" No. 331-XIV of 22 December 1998. Pursuant to this law, no countervailing duty cases have been brought since 1995.

Question 53

Paragraph 183: We do not consider the commitment language in the first set of brackets as adequate for this section.

Answer:

Ukraine does not object to the commitment language in the third set of brackets.

Question 54

Price Comparability in Determining Subsidies and Dumping:

We request that the following language be added at the end of the section on Anti-Dumping, Countervailing Duties and Safeguard Measures to address the fact that Ukraine is presently considered by this Member a non-market economy for the purposes of determining price comparability in antidumping investigations:

The representative of Ukraine confirmed that, upon accession, the following will apply:

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Ukrainian origin into a WTO Member consistent with the following:

- (a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Ukrainian prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in Ukraine based on the following rules:
 - (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Ukrainian prices or costs for the industry under investigation in determining price comparability;
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in Ukraine if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
- (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies, the relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use alternative methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in Ukraine may not be available as appropriate benchmarks.
- (c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.
- (d) Once Ukraine has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should Ukraine establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

Answer:

Ukraine requests a review of this issue because on 16 February 2006, this Member recognized Ukraine as a market economy.

B. EXPORT REGULATIONS

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

Question 55

We suggest the following redrafting suggestions for the section on export duties reflecting Ukraine's intent to gradually reduce its export duties on metal scrap, and provide the attached tables to be appended to the report in the Annex:

184. The representative of Ukraine said that export duties had been introduced on the basis of the Laws "On Export Duty on Live Cattle and Hides" No. 180/96-BP of 7 May 1996; "On Export Duty Rates for Seeds of Some Oil Crops" No. 1033-XIV of 10 September 1999, as amended by Law No. 2555-III of 21 June 2001, and "On Export Duty on Ferrous Waste and Scrap" No. 216-IV of 24 October 2002. The products covered and the corresponding rates of duty at present are listed in Table 17(a) (Note: Table 17(b) will contain information on reduction of export duties. End note).

Table 17(a): Current export duties levied by Ukraine [Move to Annex]

185. OK - no suggested changes.

186. In reply, the representative of Ukraine stated that export duties per se were consistent with the WTO Agreements, but he acknowledged that high export duties could act as trade barriers and hence needed reduction. The export duty on oilseeds had resulted in increased capacity utilization among seed processors and higher domestic output of oil, margarine, special fats and mayonnaise. As for live animals and hides and skins, he noted that the consumption of meat and meat products had declined substantially in Ukraine in the 1990s to the detriment of domestic producers. The introduction of export duty on hides had resulted in a substantial improvement in the structure of Ukraine's exports of hides. ~~However,~~ Ukraine recognized the negative impact the export duties had on investment and bilateral trade, but ~~a proposal~~ to repeal the export duties on live cattle and hides had been defeated in the Supreme Rada, most recently in January 2006, ~~in 2000~~ and the Cabinet of Ministers had rejected a similar proposal in 2002. With regard to the TRIM-related concern raised by a Member, he stressed that agricultural producers which were legal entities in any case were allowed to export live cattle (as specified in Law No. 180/96-VR of 7 May 1996), except young cattle weighing 350 kg or less and hides from their own production, without payment of export duty. The export duty on oilseeds, originally set at 21 per cent, had been reduced to 17 per cent in 2001. Law No. 2773-IV "On Amending the Law On Export Duty Rates for Seeds of Some Oil-Yielding Plants" of 7 July 2005 provided for a further reduction of the export duty on oilseeds to 16 per cent and then to 10 per cent, through one per cent annual reductions. This Law would enter into force after Ukraine's accession to the WTO. Ukraine remained committed to enactment of legislation ~~had prepared a draft law,~~ which would eliminate the export duty on live cattle and reduce the export duty on hides (cattle hides, sheep and lamb skin, pigskin) from 15 to 10 per cent, through one per cent annual reductions. Ukraine also committed to reduce the €30 per ton export duty on ferrous metal waste and scrap ~~to €25 per ton from 1 January 2006 and then to~~

~~€18 per ton from 1 January 2007~~ as provided for in Table 17(b). The export duty on livestock would also be brought down upon accession – including reductions from 75 to 60 per cent on "live bovine animals", and 50 to 40 per cent on "live sheep and goats" – thereafter followed by a further five per cent annual reduction over a period of four years. Export duties on raw fur-skins would be reduced to 20 per cent by the date of accession, followed by a further reduction over the course of five years by one per cent annually. The proposed reductions are contained in Table 17(b). The draft laws on reducing these export duties had been submitted to the Supreme Rada for consideration.

192. [The representative of Ukraine confirmed that at present export duties were applied only to the goods listed in Table [17(a)]. Ukraine would reduce progressively the export duties listed in Table [17(b)] according to the timetable indicated. After accession to the WTO, Ukraine would minimize the application of export duties on other products and apply such measures only in accordance with the provisions of the WTO Agreement. He further confirmed that the current duties and any changes in their application would be published in the Official Gazette. The Working Party took note of these commitments.]

Answer:

Table 17(b): Ukraine commits to further reduce export duties for ferrous scrap in accordance with the following timetable. A draft law is being prepared to reflect these proposals

Table 17(b)

Code HS 96	Goods description	Upon accession	1 year after accession	2 years after accession	3 years after accession	4 years after accession	5 years after accession	6 years after accession
7204	Waste and scrap of ferrous metals, except for alloyed; iron and steel scrap ingots for remelting, except for alloyed							
7204 10 00 00	- Waste and scrap of cast iron	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
7204 30 00 00	- Waste and scrap of tinned iron and steel	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
	- Other waste and scrap							
7204 41	-- Turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles							
7204 41 10 00	--- Turnings, shavings, chips, milling waste, sawdust and filings	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
	--- Trimmings and stampings							
7204 41 91 00	---- in bundles	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
7204 41 99 00	---- other	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
7204 49	-- other							
7204 49 10 00	--- fragmentized (shredded)	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
	--- Other							
7204 49 30 00	---- in bundles	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
	---- other							
7204 49 91 00	---- in bundles	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
7204 49 99 00	---- other	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t
7204 50	- remelting scrap ingots							
7204 50 90 00	-- other	25 €/t	18 €/t	16.4 €/t	14.8 €/t	13.2 €/t	11.6 €/t	10 €/t

Ukraine commits to further reduce export duties for non-ferrous scrap in accordance with the following timetable. A draft law is being prepared to reflect these proposals.

HS 96	Description	After accession	1 year after accession	2 year after accession	3 year after accession	4 year after accession	5 year after accession
7202 99 80 00	Ferro-chromium-nickel	30%, but not less 0.4 €/kg	27% but not less 0.36 €/kg	24% but not less 0.32 €/kg	21% but not less 0.28 €/kg	18% but not less 0.24 €/kg	15%, but not less 0.2 €/kg
720421	Waste and scrap of alloy steel and of stainless steel	30%, but not less 0.4 €/kg	27% but not less 0.36 €/kg	24% but not less 0.32 €/kg	21% but not less 0.28 €/kg	18% but not less 0.24 €/kg	15%, but not less 0.2 €/kg
7204 29 00 00	Other waste and scrap of alloy steel	30%, but not less 0.4 €/kg	27% but not less 0.36 €/kg	24% but not less 0.32 €/kg	21% but not less 0.28 €/kg	18% but not less 0.24 €/kg	15%, but not less 0.2 €/kg
7204 50 10 00	Remelting scrap ingots of alloy steel	30%, but not less 0.45 €/kg	27% but not less 0.405 €/kg	24% but not less 0,36 €/kg	21% but not less 0.315 €/kg	18% but not less 0,27 €/kg	15%, but not less 0.225 €/kg

HS 96	Description	After accession	1 year after accession	2 year after accession	3 year after accession	4 year after accession	5 year after accession
7218 10 00 00	Stainless steel in ingots and other primary forms	30%, but not less 1 €/kg	27% but not less 0.9 €/kg	24% but not less 0.8 €/kg	21% but not less 0.7 €/kg	18% but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7401	Copper mattes, cement cooper (precipitated copper)	30%, but not less 0.7 €/kg	27% but not less 0.63 €/kg	24% but not less 0.56 €/kg	21% but not less 0.49 €/kg	18% but not less 0.42 €/kg	15%, but not less 0.35 €/kg
7402 00 00 00	Unrefined copper, copper anodes for electrolytic refining	30%, but not less 1 €/kg	27% but not less 0.9 €/kg	24% but not less 0.8 €/kg	21% but not less 0.7 €/kg	18% but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7403 12 00 00	Wire-bars	30%, but not less 1.2 €/kg	27%, but not less 1.08 €/kg	24%, but not less 0.96 €/kg	21%, but not less 0.84 €/kg	18%, but not less 0.72 €/kg	15%, but not less 0.6 €/kg
7403 13 00 00	Billets of refined copper	30%, but not less 1.2 €/kg	27%, but not less 1.08 €/kg	24%, but not less 0.96 €/kg	21%, but not less 0.84 €/kg	18%, but not less 0.72 €/kg	15%, but not less 0.6 €/kg
7403 19 00 00	Other refined copper	30%, but not less 1.2 €/kg	27%, but not less 1.08 €/kg	24%, but not less 0.96 €/kg	21%, but not less 0.84 €/kg	18%, but not less 0.72 €/kg	15%, but not less 0.6 €/kg
7403 21 00 00	Copper-zinc based alloys (brass)	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7403 22 00 00	Copper-tin based alloys (bronze)	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7403 23 00 00	Copper alloys, copper-nickel based alloys (cupro-nickel) or copper-zinc based alloys (nickel silver)	30%, but not less 1.6 €/kg	27%, but not less 1.44 €/kg	24%, but not less 1.28 €/kg	21%, but not less 1.12 €/kg	18%, but not less 0.96 €/kg	15%, but not less 0.8 €/kg
7403 29 00 00	Other copper alloys (other than master alloys of heading 7405)	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7404 00	Copper waste and scrap	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7405 00 00 00	Master alloys of copper	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7406	Copper powders and flakes	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7414 90 00 00	Grills and netting of copper wires	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7415 29 00 00	Other articles of copper, not threaded (including spring washers)	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7415 39 00 00	Other articles of copper, threaded (except for screws for wood, other screws, bolts and nuts)	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7418 19 00 00	Common articles of copper and parts thereof, other	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
7419	Other articles of copper	30%, but not less 1 €/kg	27%, but not less 0.9 €/kg	24%, but not less 0.8 €/kg	21%, but not less 0.7 €/kg	18%, but not less 0.6 €/kg	15%, but not less 0.5 €/kg
750300	Nickel waste and scrap	30%, but not less 5.5 €/kg	27%, but not less 4.95 €/kg	24%, but not less 4.40 €/kg	21%, but not less 3.85 €/kg	18%, but not less 3.30 €/kg	15%, but not less 2.75 €/kg
7602 00	Aluminum waste and scrap	30%, but not less 0.4 €/kg	27%, but not less 0.36 €/kg	24%, but not less 0.32 €/kg	21%, but not less 0.28 €/kg	18%, but not less 0.24 €/kg	15%, but not less 0.2 €/kg
7802 00 00 00	Lead waste and scrap	30%, but not less 0.3 €/kg	27%, but not less 0.27 €/kg	24%, but not less 0.24 €/kg	21%, but not less 0.21 €/kg	18%, but not less 0.18 €/kg	15%, but not less 0.15 €/kg

HS 96	Description	After accession	1 year after accession	2 year after accession	3 year after accession	4 year after accession	5 year after accession
7902 00 00 00	Zinc waste and scrap	30%, but not less 0.32 €/kg	27%, but not less 0.288 €/kg	24%, but not less 0.256 €/kg	21%, but not less 0.224 €/kg	18, but not less 0.192 €/kg	15%, but not less 0.16 €/kg
8002 00 00 00	Tin waste and scrap	30%, but not less 1.6 €/kg	27%, but not less 1.44 €/kg	24%, but not less 1.28 €/kg	21%, but not less 1.12 €/kg	18%, but not less 0.96 €/kg	15%, but not less 0.8 €/kg
8101 91 90 00	Tungsten waste and scrap	30%, but not less 10 €/kg	27%, but not less 9 €/kg	24%, but not less 8 €/kg	21%, but not less 7 €/kg	18%, but not less 6 €/kg	15%, but not less 5 €/kg
8108 10 90 00	Titanium waste and scrap	30%, but not less 4 €/kg	27%, but not less 3.6 €/kg	24%, but not less 3.2 €/kg	21%, but not less 2.8 €/kg	18%, but not less 2.4 €/kg	15%, but not less 2 €/kg

Pursuant to the draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Export Duty on Live Cattle and Hides" (regarding the reduction of export duty rates), Verhovna Rada registration No. 8317-1. The draft Law provides for the reduction of export duty rates to 50 per cent for live cattle and to 30 per cent for hide and skin raw materials from the date of accession. Then, the export duty rate for live cattle will be reduced by 5 per cent points annually to the 10 per cent, and the export duty rate for hide and skin raw materials will be reduced by 1 per cent point to the amount of 20 per cent (please see the table below).

Product code according to Ukrainian Classification of Goods Involved in Foreign Trade Activity	Goods description	Upon accession	1 year upon accession	2 years upon accession	3 years upon accession	4 years upon accession	5 years upon accession	6 years upon accession	7 years upon accession	8 years upon accession	9 years upon accession	10 years upon accession
0102	Live bovine animals:											
0102 90 05 00	--- of a weight not exceeding 80 kg	50	45	40	35	30	25	20	15	10		
0102 90 21 00	---- for slaughter	50	45	40	35	30	25	20	15	10		
0102 90 29 00	---- other	50	45	40	35	30	25	20	15	10		
0102 90 41 00	---- for slaughter	50	45	40	35	30	25	20	15	10		
0102 90 49 00	---- other	50	45	40	35	30	25	20	15	10		
0102 90 51 00	----- for slaughter	50	45	40	35	30	25	20	15	10		
0102 90 59 00	----- other	50	45	40	35	30	25	20	15	10		
0102 90 61 00	----- for slaughter	50	45	40	35	30	25	20	15	10		
0102 90 69 00	----- other	50	45	40	35	30	25	20	15	10		
0102 90 71 00	----- for slaughter	50	45	40	35	30	25	20	15	10		
010290 79 00	----- other	50	45	40	35	30	25	20	15	10		
0102 90 90 00	-- other	50	45	40	35	30	25	20	15	10		
0104	Live sheep and goats:											
0104 10 10 00	-- pure-bred breeding animals	50	45	40	35	30	25	20	15	10		
0104 10 50 00	--- lambs (up to 1 year old)	50	45	40	35	30	25	20	15	10		
0104 10 80 00	--- other	50	45	40	35	30	25	20	15	10		

Product code according to Ukrainian Classification of Goods Involved in Foreign Trade Activity	Goods description	Upon accession	1 year upon accession	2 years upon accession	3 years upon accession	4 years upon accession	5 years upon accession	6 years upon accession	7 years upon accession	8 years upon accession	9 years upon accession	10 years upon accession
4101	Raw hides and skins of bovine or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split	30	29	28	27	26	25	24	23	22	21	20
4102	Raw skins of sheep or lambs (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not with wool on or split, other than those excluded by note 1 (c) to this chapter.	30	29	28	27	26	25	24	23	22	21	20
4103 90 00 00	- other	30	29	28	27	26	25	24	23	22	21	20

Question 56

Minimum Indicative Export Prices:

Ukraine's minimum export prices raise serious questions of whether they act to create artificially low internal prices for exportable goods. They also appear to conflict with Article XI of the GATT. We seek their elimination from the date of accession.

In addition, the Working Party report text on this measure requires revision for coherence and to update the information given.

Paragraph 188: The discussion in paragraph 188 is confusing. We are told that Table 18 lists minimum indicative export prices in effect in early 2005, based on the authority contained in the Commercial Code Article 189, clause 4 which entered into force in January 2004. Then we are told that because Decree of the President No. 691 of 18 November 1994 is no longer in force, there are no minimum indicative export prices currently in effect.

Please clarify the legal basis for indicative prices and their current status and describe how the precise indicative prices are developed by the government and how they are implemented, e.g., through licensing?

If there are no indicative export prices currently in effect, we are uncertain that Table 18 is necessary.

Answer:

Pursuant to Decree No. 124/96 of 10 February 1996 of the President of Ukraine "On Measures to Improve the Market Pricing Policy in the Field of Foreign Economic Activity" the Government of Ukraine may implement indicative prices of the goods:

- to which exports antidumping measures have been applied or antidumping investigations or procedures brought in Ukraine or outside its border;
- to which special import procedures are applied in accordance with Article 19 of the Law of Ukraine "On Foreign Economic Activity";
- to which exports quota or licensing regimes have been established;
- to which exports special regimes have been established;
- which exports are carried out in accordance with the procedure stipulated by Article 20 of the Law of Ukraine "On Foreign Economic Activity"; and
- in other cases in accordance with international obligations of Ukraine.

Indicative prices implemented in accordance with this list are binding upon subjects of foreign economic activity of all types of ownership in entering into and performing foreign economic agreements (contracts).

Indicative prices are developed by the Ministry of Economy of Ukraine and its authorized organizations based on results of analyzing information received from customs, fiscal and statistical state bodies, banking, information and other institutions and organizations of Ukraine, other sources using appropriate methodologies.

Indicative export prices are implemented only if necessary; the goods list is developed in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity and the price is established which is approved by an Executive Order of the Ministry of Economy of Ukraine.

Question 57

Paragraph 189: Given the discussion in the foregoing paragraph, we do not understand the references to other laws in this paragraph. To what extent are minimum indicative prices still authorized by the Law on Foreign Trade Activities? By other laws?

Answer:

Article 29 of the Law of Ukraine "On Foreign Economic Activity" stipulates that the implementation of indicative import or export prices may be a measure taken by Ukraine in response to discriminatory or unfriendly actions of other states, customs unions or economic groups. Also, pursuant to Decree No. 124/96 of 10 February 1996 of the President of Ukraine "On Measures to Improve the Market Pricing Policy in the Field of Foreign Economic Activity" indicative prices may be established before the measures stipulated by Articles 19 and 20 of the Law of Ukraine "On Foreign Economic Activity."

Question 58

Paragraph 190: This text confuses the issue of legal authority even further, listing particular areas where minimum indicative export prices may be used. Most of these measures appear inconsistent with Article XI of the GATT. Are such requirements still in effect? Please update and clarify the information in paragraph 190 in light of the revised material in paragraphs 188 and 189.

Answer:

Minimum indicative export prices are established only for the period stipulated by normative acts of the Ministry of Economy. For example, minimum indicative export prices in 2006 were established by Executive Orders of the Ministry of Economy of Ukraine No. 7 of 17 January 2006 and No. 36 of 1 February 2006, namely, approved were indicative prices of carbamide that was exported from Ukraine in the second half of January 2006 at the level US\$195/MT FOB ports of Ukraine as well as the List of Minimum Indicative Prices of Some Products Exported from Ukraine in February 2006 (US\$/MT, FOB Black Sea Ports).

Item No.	Product	Price
1	Reinforcement :	
	<i>supplies to Near East countries:</i>	
	goods item 7214 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:	
	the diameter up to 10 mm	345
	the diameter more than 10 mm	335
	goods item 7213 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:	335
	goods item 7228 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:	
	the diameter up to 10 mm	345
	the diameter more than 10 mm	335
	<i>supplies to the USA:</i>	
	goods items 7213, 7214, 7228 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:	345
2	Reinforcement in accordance with the standards DSTU, GOST:	
	<i>supplies to Near East countries:</i>	
	goods item 7214 in accordance with : Ukrainian Classification of Goods Involved in Foreign Trade Activity:	

Item No.	Product	Price
	the diameter up to 10 mm	320
	the diameter more than 10 mm	315
	goods item 7213 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:	315
	goods item 7228 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:	
	the diameter up to 10 mm	320
	the diameter more than 10 mm	315
3	<i>Wire rod supplies to the USA:</i>	
	the diameter 5.5 mm	460
	the diameter more than 5.5 mm	460
4	Square bar	290
5	Hot-rolled coil	300
	<i>supplies to China, Turkey, Israel, United Arab Emirates, Syria</i>	290
	<i>supplies to Mexico, Canada, Argentina, India, Egypt</i>	290
	<i>supplies to the USA</i>	490
6	Hot-rolled sheet with the thickness 8 - 50 mm	380
	supplies to North-East Asia countries	360
7	Hot-rolled sheet <i>supplies to the USA:</i>	
	A36	659.11
	A572	710.49
	A516	715.98
	API-2H	973.04
	A283	654.05
	ABS A/B	663.24
	A515	710.56
8	Ferrosilicium -65	450
	Ferrosilicium -75	540
9	Ferrosilicium manganese:	
	P - 0,35 %	515
	P - 0,50 %	475
	P - 0,35 % BT	530
	P - 0,50 % BT	515
	P - 0,60 % BT	510
	<i>supplies to EU countries, CIF:</i>	
	C > 0,5 %	470 euro
	C < 0,5 %	560 euro
	C < 0,05 %	610 euro
10	Carbamide (3102 10 10 00, 3102 10 90 00 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:)	185
11	Ammonia (2814 10 00 00 in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity:)	255
12	Live cattle:	
	weighting up to 350 kg / head	1300 - 1350
	weighting over 350 kg / head	1300 - 1400
13	Live rams and sheep	
	weighting up to 30 kg / head	1050 - 1200
	weighting over 30 kg / head	1000 - 1100
14	Cattle hides wet-salted and preserved by other method, non-contoured, mechanically peeled:	
	1 grade	1550 - 1650
	2 grade	1450 - 1550
	3 grade	1315 - 1400
	4 grade	1200 - 1300
	weighting up to 10 kg, 1 grade	2450 - 2850

Item No.	Product	Price
15	Sheep hides wet-salted (USD/piece.):	
	1 grade	5.0 - 6.0
	2 grade	4.0 - 5.0
	3 grade	3.0 - 4.0
	4 grade	1.7 - 3.0
16	Pig hides wet-salted and preserved by other method, non-contoured, mechanically peeled:	
	1 grade	775 - 850
	2 grade	725 - 770
	3 grade	650 - 690
	4 grade	600 - 630
17	Flax seeds crushed or non-crushed	240
18	Sunflower seeds crushed or non-crushed	225
19	Ginger seeds	150

Question 59

Paragraph 191: We support the call for an appropriate commitment on this issue.

Answer:

Ukraine takes note of this proposal.

- **Export restrictions**

Question 60

Paragraph 193: Text should be updated in line with Amended Law on Foreign Economic Activity.

Paragraph 196: We seek Ukraine's agreement to eliminate its export bans, quotas, and non-automatic licensing restrictions applied for economic reasons to the products listed in:

- **Table 19(a) scrap metal;**
- **Table 19(b) precious stones and metals;**
- **Table 20(a) iron ore, nonferrous metals, certain machinery and parts, petroleum products, and precious stones and metals; and**
- **Table 20(b) precious stones, for economic reasons, in particular the ban on nonferrous scrap**

GATT Article XX(g) would not appear appropriate as many of these products are not "natural resources" and there do not appear to be domestic restrictions in place on domestic production or consumption. Article XX(c) covers silver and gold, generally for monetary purposes, not diamonds, amber, platinum or plate.

Answer:

Table 19(a): Draft Law No. 7565 "On Cancelling the Export Prohibition of Alloy Steel and Non-Ferrous Metal Waste and Scrap" eliminates the prohibition of exports and introduces the export duty for non-ferrous metal and alloy steel waste and scrap. Thus, Table 19(a) can be deleted after the adoption of this Law. This Draft was adopted on first reading on 6 July 2005.

Table 19(b): Upon the adoption of the Amendments to the Law on Foreign Economic Activities, all measures (other than gold and silver) in Table 19b will be eliminated.

Table 20(a): The first three entries of this table are to protect the environment and are justifiable under Article XX(b) of the GATT 1994. As for the remaining items, they were all removed by Cabinet of Ministers Resolution No. 1304 as of 30 December 2005. Please see revised Table 20(a) below.

Table 20(b): Many items under Table 20(b) have been eliminated. Please see below revised Table 20(b). All goods under this table are to meet legitimate objectives under Article XX except for precious stones and precious metals and alloys which will be replaced by gold and silver after the amendments to the Law on Foreign Economic Activities are adopted.

Table 20(a): Goods subject to export licensing, upon prior approval revised
on the basis of Resolution of the Cabinet of Ministers of Ukraine No. 1304 of 30 December 2005

Tariff Code	Product Description	Entity Responsible for Applying the Measure	Legislative Basis	Measure Description and Purpose WTO Justification or Date of Elimination
2710 00 98 00, 3004, 3208, 3209, 3212, 3214, 3304, 3305, 3306, 3307, 3402, 3403, 3405, 3506 91 00 00, 3808, 3809, 3811, 3812, 3814 00, 3820 00 00 00, 3824 90 70 00, 3824 90 95 00, 3910 00 00	Products, which may contain ozone-depleting substances and are imported in aerosol package	Issuance of Licence: Ministry of Economy Prior Approval: Ministry of Environmental Protection for 3208, 3209, 3212, 3214, 3304, 3305, 3306, 3307, 3402, 3403, 3405, 3506 91 00 00, 3808, 3809, 3811, 3812, 3814 00, 3820 00 00 00, 3824 90 70 00, 3910 00 00 Licence for 3824 90 95 00 issued by National Bank of Ukraine	Resolution of the Cabinet of Ministers of Ukraine No. 1304 of 30 December 2005 On the List of Goods, Export and Import of Which is Subject to Licensing, and Which Fall under the Quota Regime in 2006	GATT Article XX (b)
8415, 8418, 8424 10, 8419 89 10 00 8476 21 00 00, 8476 81 00 00, 9304 00 00 00	Products, which may contain ozone-depleting substances	Issuance of Licence: Ministry of Economy Prior Approval: Ministry of Environmental Protection	""	GATT Article XX (b)

Tariff Code	Product Description	Entity Responsible for Applying the Measure	Legislative Basis	Measure Description and Purpose WTO Justification or Date of Elimination
2903 14 00 00, 2903 19 10 00, 2903 30 33 00, 2903 41 00 00, 2903 42 00 00, 2903 43 00 00, 2903 44 10 00, 2903 44 10 00, 2903 44 90 00, 2903 45 10 00, 2903 45 15 00, 2903 45 25 00, 2903 45 30 00, 2903 45 30 00, 2903 45 35 00, 2903 45 40 00, 2903 45 45 00, 2903 45 50 00, 2903 45 55 00, 2903 45 90 00, 2903 46 10 00, 2903 46 20 00, 2903 46 90 00, 2903 49 10 00, 2903 49 30 00, 3824 71 00 00, 3824 79 00 00, 3824 90 95 00,	Ozone-depleting substances	Issuance of Licence: Ministry of Economy Prior Approval: Ministry of Environmental Protection	""	GATT Article XX (b)

Table 20(b): Goods subject to export approvals revised
on the basis of Resolution of the Cabinet of Ministers of Ukraine No. 1304 of 30 December 2005

Tariff Code	Product Description	Entity Responsible for Applying the Measure	Legislative Basis	Measure Description and Purpose WTO Justification or Date of Elimination
9303-9306	Arms, ammunition, defence military equipment and special components for production thereof	Cabinet of Ministers of Ukraine after agreement with respective committees of the Verkhovna Rada of Ukraine (Parliament)	Law on Foreign Economic Activities No. 959-XII dated 16 April 1991	GATT Article XXI (b)
2616 2843	Precious metals and alloys	""	""	GATT Article XX (c)
7018 7103-7105	Precious stones	""	""	GATT Article XX (c)
9701-9706	Masterpieces of arts and antique items from museum funds of Ukraine	""	""	GATT Article XX (f)

Question 61

In addition, Ukraine should revise its export licensing fee to relate it to the cost of the licensing program, not the value of the export. This should be reflected in the Working Party Report text.

Answer:

Cabinet of Ministers Resolution No. 362 "On the Amount of State Duty for Issuing Export (Import) Licenses" of 18 May 2005 provided for the application of import and export licensing fees that reflective of cost of services rendered. The *ad valorem* export licensing fee is no longer in effect.

Question 62

Paragraph 205: In this regard, we believe that that the commitment text in the second set of brackets represents a good basis from which to develop an appropriate commitment.

Answer:

Ukraine takes note of this proposal.

- **Export subsidies**

Question 63

Paragraph 208: Consistent with our comments at the last meeting, we ask that the current text of paragraph 208 be replaced by the following commitment from Ukraine:

208. The representative of Ukraine confirmed that, from the date of accession, Ukraine will eliminate all export subsidies, within the meaning of Article 3.1(a) of the SCM Agreement. To this end, Ukraine will, by accession, cease to maintain all pre-existing export subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes. This commitment covers subsidies granted at all levels of government which are contingent, in law or in fact, upon export performance and includes, but is not limited too, any such subsidies to the shipbuilding and automotive industries. The Working Party took note of this commitment

Answer:

Ukraine accepts the new text for Paragraph 208. Note however that Ukraine does not currently have any prohibited subsidies in the shipbuilding or automotive industries.

Question 64

Please confirm in the text of this section that Ukraine's incentives with respect to exemptions and remissions of import duties are consistent with Article 3 and Annexes I, II and Annex III of the SCM Agreement, including the requirement that limits duty remission and rebate schemes to inputs that are consumed in the production of the exported product (making allowance for waste).

Answer:

Exemptions from customs duties on input used for production exist only in the shipbuilding sector. Such exemptions are not contingent upon export. Further, Ukraine does not maintain any duty draw back or remission scheme in connection with this exemption. As such, Ukraine currently does not maintain any prohibited subsidies within the meaning of Article 3 of the SCM Agreement.

Note that the exemptions from customs duties on input used for production exist only in the shipbuilding sector provided contracts were concluded by shipbuilding enterprises before

1 March 2005. Thus, shipbuilding enterprises can not conclude new investment contracts on these favourable conditions.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidy policies

Question 65

We would like to confirm that the current Draft Law "On Amendment of the Law of Ukraine "On Stimulation of Automobile Production in Ukraine" does not maintain any prohibited subsidy elements, specifically subsidies deemed prohibited under Article 3.1(a) and 3.1(b) of the SCM Agreement. Also, please provide an updated of when this new law is expected to be adopted and to go into effect.

Answer:

The Law "On Amending the Law of Ukraine "On Development of Automobile Industry in Ukraine" was adopted on 6 July 2005 No. 2740. Ukraine does not currently maintain any prohibited subsidy elements in the automobile sector, specifically subsidies deemed prohibited under Article 3.1(a) and 3.1(b) of the SCM Agreement.

Question 66

Please clarify your response as to how the elimination of the "Law of Ukraine No. 2505-IV of 25 March 2005" and the provision of Article 4 of the Law of Ukraine "On Stimulation of Automobile Production in Ukraine "affects the VAT exemptions for "certain domestic inputs" under the Law "On State Budget for 2004/2005."

Answer:

Law of Ukraine No. 2505-IV of 25 March 2005 amended the Law on State Budget of 2005 and other Legislative Acts (e.g. VAT Law). Law No. 2505-IV eliminated the VAT exemptions for certain domestic inputs in the automobile sector through amending the VAT Law.

The provisions of Article 4 of the Law "On Development of Automobile Production in Ukraine", which had been the basis for granting the privileges (local content requirement), had been eliminated pursuant to the Law "On Amendment of the Law of Ukraine "On Development of Automobile Manufacture in Ukraine" dated 6 July 2005.

Question 67

We would like to confirm Ukraine's agreement that, as a prospective WTO member, all aspects of Article 3 of the SCM Agreement, including the prohibition of subsidies contingent upon export performance as well as subsidies contingent on the use of domestic over imported goods, as enumerated in Article 3.1(a) and 3.1(b), must be accepted. Therefore, we seek a commitment from Ukraine to eliminate all existing prohibited subsidy programs and to not introduce or maintain new prohibited subsidies in the future.

Answer:

Ukraine accepts all aspects of Article 3 of the SCM Agreement, including the prohibition of subsidies contingent upon export performance as well as subsidies contingent on the use of domestic over imported goods, as enumerated in Article 3.1(a) and 3.1(b).

Ukraine does not currently maintain any prohibited subsidies.

Question 68

Paragraphs 213, 214 and 219: We note that Ukraine has introduced a gradual phasing-out of the land tax exemption. We would like to confirm that exemptions from land tax are not contingent upon export or the use of domestic over imported goods. If they are contingent in this manner, Ukraine must either eliminate the program by the date of accession or modify the program to be consistent with Article 3 of the SCM Agreement.

Answer:

Ukraine confirms that exemptions from land tax are not contingent upon export or the use of domestic over imported goods.

Question 69

Paragraph 222 should be revised as follows: ". . .it would not maintain subsidies, including export subsidies and import-substitution subsidies which met the definition of a prohibited subsidy."

Answer:

Ukraine accepts this commitment.

Question 70

We ask that the following paragraph be included at the end of the descriptive section on Industrial Policy, Including Subsidies, that is, after paragraph 222.

222bis. The representative of Ukraine confirmed that, upon accession, the following shall apply: For purposes of applying Articles 1.2 and 2 of the SCM Agreement, subsidies provided to state-owned enterprises (including state trading enterprises) will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies. The WP took note of this commitment.

Paragraph 223: We ask that the current text of paragraph 223 be replaced by the following commitment from Ukraine:

223. The representative of Ukraine confirmed that, from the date of accession, Ukraine will eliminate all export and import-substitution subsidies, within the meaning of Article 3.1(a) and 3.1(b) of the SCM Agreement. To this end, Ukraine will, by accession, cease to maintain all pre-existing export and import-substitution subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes. This commitment covers subsidies granted at all levels of government which are contingent, in law or in fact, upon export performance or the use of domestic over imported goods, and includes, but is not limited to, any such subsidies to the shipbuilding and automotive industries. The Working Party took note of this commitment.

Answer:

Ukraine accepts this commitment.

- **Technical barriers to trade, sanitary and phytosanitary measures**

Question 71

We thank Ukraine for the information provided, and for the strong efforts it has made over the past few years to reform its standardization system.

We would be interested in a update on the additional legislation contemplated, to ensure that all mandatory requirements applied to imports meet WTO requirements prior to accession.

We have the following specific concerns:

WT/ACC/UKR/5/Rev.3: Ukraine's Draft Law on Standards, Technical Regulations and Conformity Assessment Procedures has been submitted to the Parliament and when adopted will supercede the 2001 Law on Conformity Assessment and the Law on Standardization. Paragraph 197 and possibly other parts of the 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:

The said question refers to the Government's draft Law "On development and application of standards, technical regulations and conformity assessment procedures", which did not gain a sufficient number of votes at the Verkhovna Rada of Ukraine and was rejected.

Instead, on 1 December 2005, the Verkhovna Rada of Ukraine adopted a Law of Ukraine "On Standards, Technical Regulations and Conformity Assessment Procedures" prepared by S. Matvienko, Member of Parliament of Ukraine, whose draft Law is aimed to bring the laws of Ukraine in the area of technical regulation into conformity with the rules of the Agreement on Technical Barriers to Trade.

The said Law came into effect on 11 January 2006. It introduced amendments to the Laws on Standardization and on Conformity Assessment. Please see Annex II for suggested changes to text of Working Party report.

Ukraine provides the English language version of the said Law to the Working Party Members for review.

Question 72

Paragraph 227 should be updated to reflect the List of Products Subject to Mandatory Certification in Order No. 28 of 1 February 2005.

Answer:

The updated list of products subject to mandatory certification had been approved by Order of the State Committee for Technical Regulation and Consumer Policy No. 28 of 1 February 2005. Accordingly, 25 categories/subcategories of low-risk products had been removed from the list. Pursuant to the Committee's Order No. 171 of 14 July 2005 an additional category, namely "Optical devices for medicinal purposes", had also been removed from the list.

Ukraine doesn't object to introducing the said changes to paragraph 227.

Please see revised Text to Paragraph 227 of Working Party Report in Annex II below.

Question 73

Paragraphs 228-229 should be updated to reflect the amended Interstate Standard (DSTU) No. 1168-86 on shelf life for fish products. The last three sentences of paragraph 229 concerning mandatory certification for other products is unrelated to the shelf-life issue and should be evaluated in light of Ukraine's news laws and, as appropriate merged into paragraph 227.

Answer:

Ukraine doesn't object to introducing the said changes to paragraphs 227-229.

Question 74

We suggest the insertion of the following commitment text, which we understand reflects Ukraine's revised system on shelf life requirements:

[229bis. The representative of Ukraine confirmed that Ukraine had reviewed its shelf-life requirements and as a result, the Cabinet of Ministers was in the process of approving changes to Ukraine's technical regulation on shelflife for fish to bring it into conformity with the CODEX alimentarius guidelines on the labeling of prepackaged food products. When the revised technical regulation was implemented, the previous technical regulations that imposed shelf-life restrictions would be repealed and no longer enforceable. In addition, Ukraine would accept use-by/ sell-by dates that are determined solely by the manufacturer. The Working Party took note of these commitments.]

Answer:

Ukraine accepts the proposed text of the said commitment with the following changes:

[229bis. Ukraine confirmed that Ukraine had reviewed its shelf-life requirements. As a result, ~~the Cabinet of Ministers is in the process~~ **the Government of Ukraine has begun the process** of approving changes to Ukraine's technical regulation on shelf life for fish to bring it into conformity with the CODEX Alimentarius guidelines on the labeling of prepackaged food products. When the revised technical regulation is implemented, Ukraine will no longer enforce previous technical regulations that imposed fish shelf-life restrictions, and Ukraine will accept use-by/ sell-by dates that are determined solely by the manufacturer. The Working Party took note of this commitment.]

Question 75

Paragraph 236: This paragraph should be updated to reflect that the new TBT law has been passed and signed. Please provide a copy of the final draft Law, in translation, as soon as possible.

Answer:

Ukraine has no objection to these changes. Please see revised paragraph 236 in Annex II below.

Ukraine has provided the English language version of the Law "On Standards, Technical Regulations and Conformity Assessment Procedures" to the Working Party Members for review.

Question 76

Paragraphs 239-241: This material needs to be streamlined and rationalized, as there is a great deal of duplication. A distinction should be made between descriptive and commitment language.

Answer:

Ukraine accepts the bracketed text in paragraph 240. However, Ukraine does not object to restructuring of paragraph 240 to make clear distinction between descriptive and commitment language.

Question 77

In addition, paragraph 240 and the second part of 241 appear to contemplate a transitional period after accession during which mandatory standards will be applied that do not meet WTO requirements as technical regulations.

While we appreciate Ukraine's candor in providing information on its intentions under its TBT Action Plan, we oppose any such transition and look to Ukraine to revise its proposal to ensure that from the date of accession only technical regulations meeting WTO requirements will be mandatory.

Answer:

Ukraine agrees to such proposal. Ukraine will ensure from the date of accession that only technical regulations meeting WTO requirements will be mandatory.

The Action Plan to achieve full conformity by the national system of standardization and technical regulation in Ukraine to the WTO Agreement on Technical Barriers to Trade (for 2005 to 2011) is not a request to grant a transitional period to Ukraine after its WTO accession. This is a domestic measure to update national legislation and ensure the monitoring and implementation of international standards in accordance with the requirements of the TBT Agreement which application is voluntary. Obligatory requirements to safety of specific products are included in technical regulations that are developed in Ukraine since 2001.

Question 78

Law on Development and Application of Standards, Technical Regulations and Conformity Assessment Procedures: We have expressed our concern that the Law (and Government 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.

The current draft of the Working Party Report (paragraph 226) indicates that this legislation gives priority consideration to "relevant international standards, guidelines and recommendations as a basis for it standards, technical regulations and associated conformity assessment procedures."

Answer:

According to Paragraph 2 of Article 8 of the Law on Standards, Technical Regulations and Conformity Assessment Procedures, priority should be given to international standards in the development and application of standards.

Question 79

We would appreciate a citation in the text of where confirmation of that statement can be found in Ukrainian law.

Answer:

Please see reply to question above.

Further, Ukraine is prepared to make a commitment in the Working Party Report to provide priority consideration to relevant international (over regional) standards, guidelines and recommendations as a basis for its standards, technical regulations and associated conformity assessment procedures.

Question 80

We have also expressed concern with certain privileges associated with "international agreements" (e.g. in Articles 5 and 44 of earlier drafts 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, with appropriate reference to the new Law.

Answer:

Ukraine confirms that the WTO falls within the definition of "international agreement" for purposes of the implementation of its Law. According to the definition in the Law on Standards, Technical Regulations and Conformity Assessment Procedures, international agreement is any international agreement of Ukraine, 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.

It is clear, however, that for purposes of a correct interpretation of Article 44 of the old Draft Law, the WTO Agreement is not to be considered as an international agreement on mutual recognition of conformity assessment. Similarly, the WTO cannot be seen as an international or regional conformity assessment organization. The WTO creates a number of obligations in relation to conformity assessment and the recognition of conformity (i.e. Articles 5 to 9 of the TBT Agreement), but does not imply that, merely because of WTO Membership, any WTO Member must recognize and "automatically" accept the conformity assessment procedures of other WTO Members.

This interpretation is clearly stated in Article 6.1 and 6.3 of the TBT Agreement. The recognition of conformity is encouraged under the TBT Agreement, but is not "automatic". It must come through a process of consultation or negotiation (of MRAs) by which Ukraine will become satisfied that the conformity assessment procedures of other WTO Members offer an assurance of conformity with applicable technical regulations or standards equivalent to the procedures used in Ukraine. Ukraine is ready to enter into such consultations and negotiations and fully committed at respecting the word and the spirit of the TBT Agreement.

It should also be noted that the Law on Standards, Technical Regulations and Conformity Assessment Procedures No. 3164-IV adopted on 1 December 2005 in the Article 30 states, that results of conformity assessment procedures, (including certificates of conformity and other documents regarding results of testing of products) conducted outside of Ukraine, shall be accepted and recognized in Ukraine, according to international agreements of Ukraine on mutual recognition of the results of conformity assessment. The conformity assessment results may be recognized without

concluding relevant international agreements on mutual recognition when Ukraine and the party which requests recognition are members of international or regional conformity assessment organizations.

- **Sanitary and phytosanitary measures**

Question 81

The section is much improved and we commend the Government of Ukraine for its commitment to make changes to its SPS regime that are WTO-consistent.

We thank Ukraine for the receipt of English versions of several draft SPS-related laws including the Law "On Safety and Quality of Food Products," "On Plant Quarantine," "On Veterinary Medicine," and the new TBT Law. We understand that all these laws have now been enacted and, with the exception of the Law on Veterinary Medicine, signed.

It is likely that this entire section of the Report will need updating and revision to take account of the new legislation.

Could Ukraine provide translated copies of these laws to the Working Party for review?

It is important in the context of finalizing this section of the draft Working Party report to review them to confirm their compliance and note any areas where clarification is necessary.

Answer:

Please see proposed revisions to the SPS Section in Annex III below.

Note that the Law on Veterinary Medicine was vetoed by the President for reasons connected with the status of the State Department of Veterinary Medicine. The said draft should be considered in the next session of the Verkhovna Rada (with proposals of the President of Ukraine).

Ukraine has provided the English copies of the SPS laws to the Working Party Members for review.

Question 82

We also take note of Ukraine's harmonization plan (WT/ACC/UKR/128) to bring its SPS regime into compliance with WTO rules and obligations but have concerns about the timeline of this process. We seek a commitment from Ukraine that it will be in full conformity with the obligations of the WTO SPS Agreement upon the date of accession. We also have further questions about the SPS harmonization plan.

Answer:

Ukraine is ready to apply all its sanitary measures consistently with the requirements of the WTO Agreements on Sanitary and Phytosanitary Measures upon the date of WTO accession without recourse to any transitional arrangements.

Question 83

We would also like confirmation that the Rada has not passed nor is considering any other SPS-related laws, i.e. laws that are not part of the SPS and TBT framework laws listed above. If there is additional legislation, we would appreciate received copies of all other SPS-related laws.

Answer:

The Verkhovna Rada of Ukraine has not passed nor is considering any other SPS-related laws, i.e. laws that are not part of the SPS and TBT framework laws listed above.

Question 84

Paragraph 244: Please provide us with any update on legislative developments related to SPS. Does Annex B to document WT/ACC/UKR/110/Add.3 contain the most up-to-date list of SPS-related laws?

Answer:

The following summarizes major legislative developments related to SPS:

- The Law of Ukraine on Safety and Quality of Food Products No. 2809-IV was passed on 6 September 2005 and entered into force on 26 October 2005;
- The Law of Ukraine On Introduction of Changes to Some Laws of Ukraine No. 3078-IV was passed on 15 November 2005 and entered into force on 7 January 2006;
- The Draft Law on Plant Quarantine was adopted by the Rada on 19 January 2006; and
- The Law on Veterinary Medicine was adopted by the Rada on 22 December 2005. The Law was vetoed by the President on 31 January 2006 for reasons connected with the status of the State Department of Veterinary Medicine. The Law is to be reconsidered by the Parliament again.

Question 85

Paragraph 245: We are pleased to hear that new legislation may significantly reduce the number of inspections requiring sampling and testing procedures. Please update this paragraph to indicate which legislation will provide such reductions and what is its current status. We would also request a copy of this legislation, in English.

Answer:

Please see revised text for Para 245 in Annex III below.

The Law on Safety and Quality of Food Products No 2809-IV was enacted on 6 September 2005. An English copy of the Law has been provided.

Question 86

Paragraph 250: What is the status of Ukraine's membership with the IPPC?

Answer:

On 31 January 2006 the President of Ukraine signed the Presidential Order about Ukraine's adherence to the IPPC. Currently, all necessary documents (Instrument of Adherence) are being prepared to be passed by the Ministry of Foreign Affairs to the IPPC Secretariat.

Question 87

Paragraph 253: This is a good basis for a commitment.

Answer:

Ukraine doesn't object to accept the commitment language in paragraph 253 with the following modifications to make it more clear:

"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~~ **national competent 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".

- **Trade-related investment measures**

Question 88

Paragraph 257: This text is a good basis for a commitment text for this section.

Answer:

Ukraine accepts this commitment.

- **State-trading entities**

Question 89

We appreciate the new information provided by Ukraine on Khlib Ukrainy and other information.

We note that Ukraine has not provided any information of non-state-owned state trading enterprises within the meaning of Article XVII of the GATT. We are also interested in additional information on partially privatized state trading enterprises that meet these criteria. Does Ukraine have any of these sorts of enterprises, i.e., where a private or semi-privately owned enterprise is accorded special privileges or a trading monopoly by the government?

We reserve our position on other firms to be identified as state-trading enterprises.

Answer:

There are no non-state-owned state trading enterprises within the meaning of Article XVII of the GATT and its understanding. The only state trading entities that exist in Ukraine are State-owned. Ukraine conducted an evaluation of major state-owned and other enterprises and determined that only eight companies are state trading companies according to the definition of Article XVII of the GATT 1994 and its understanding. These are: State Corporation of Alcohol and Liquor Industry "Ukrspyrnt" and National Joint-Stock Company "Naftogas of Ukraine" (Closed JSC UkrGasEnergo), State Company "Ukrspetsexport", and state and communal pharmaceutical enterprises, which have an exclusive right to conduct import/export operations with certain narcotics, psychotropic substances

and precursors, namely: State Joint Stock Company "Liky Ukrainy", Kharkiv State Pharmaceutical Enterprise "Zdorov'ya Narodu", Open Joint Stock Company "InterChem", State Chemical and Pharmaceutical Enterprise "InterChem-1", Communal Enterprise "Pharmacia" (Kyiv). Paragraph 262 should be totally eliminated and replaced with this aforementioned information.

Presently, business conditions on the grain market are the same for SJSC "Khib Ukrainy" and private grain traders. All grain exporters have free access to border points for international maritime freight communications opened at the territory of port elevators of SJSC "Khib Ukrainy". Harbor dues, payments for services rendered in ports, transportation tariffs for exported grain, taxation conditions are the same for all grain exporters, including SJSC "Khib Ukrainy". This information can be added to the end of paragraph 261 of the Working Party Report.

Question 90

We suggest merging this section with the earlier section on state-owned and controlled enterprises.

Answer:

It is preferred that these two sections remain separate for the following reasons:

1. Not all state-owned enterprises are state trading entities;
2. Private entities could be state trading entities; and
3. The purpose of this section is to describe the nature and scope of the state sector and the privatization process

Question 91

We propose the following commitment language:

263. [The representative of the Ukraine confirmed that, from the date of accession, enterprises that are State-owned or controlled, and other enterprises with special or exclusive privileges, including those listed in paragraphs [34-41, 81, and 258-262], would make purchases of goods and services, which were not intended for governmental use, and sales in international trade in accordance with commercial considerations, including price, quality, availability, marketability, and transportation, and would afford enterprises of other WTO Members adequate opportunity in conformity with customary practice, to compete for such purchases or sales. Such enterprises would also act in conformity with other WTO provisions. He also confirmed that Ukraine would notify enterprises falling within the scope of the Understanding on Article XVII of GATT 1994 within one year of accession.

Answer:

Ukraine accepts this text as a commitment language in paragraph 263.

- **Free zones, special economic areas**

Question 92

Paragraphs 269-270: We note that several draft laws amending the current FEZ regime have failed to be adopted by the Rada. However, we ask for confirmation that Ukraine will ensure that its domestic legislation on free economic zones and priority development areas will be fully consistent with WTO provisions, including Article 3 of the SCM Agreement.

It is our understanding that Ukraine has no single, clear law that regulates their FEZs. How does Ukraine ensure that companies do not use their FEZ status to avoid tax payments and import duties or that an excessive import duty refund or rebate is not provided to eligible companies that locate in the export economic zones and priority development areas?

Answer:

The Law of Ukraine No. 2505 of 25 March 2005, "On Introducing Changes to the Law of Ukraine "On State Budget of Ukraine for 2005" and Some Legislative Acts of Ukraine" deleted Articles from Laws on the establishment and functioning of special economic zones and priority development territories (hereinafter referred to as SEZ and PDT) granting tax exemptions and preferential customs treatment to business entities implementing investment projects in these territories. Therefore, after 31 March 2005, these entities are taxed on general grounds stipulated by tax laws of Ukraine.

To minimize negative effects of abolishing the tax exemptions of business entities implementing export-oriented investment projects related to the processing of goods in SEZ, the Cabinet of Ministers of Ukraine approved Resolution No. 1119 of 30 November 2005 "Certain Issues of Bringing (Sending) Goods to Special (Free) Economic Zones and Bringing Goods Outside Their Boundaries" stipulating the provision by business entities to customs bodies of promissory notes for the amount of import duty and VAT maturing in 90 days upon imports of goods (except for excisable goods and 1 – 24 Group goods in accordance with Ukrainian Classification of Goods Involved in Foreign Trade Activity) for processing within the framework of investment projects, provided that 100 per cent of manufactured products are exported without the right to re-import.

The Ministry of Economy has prepared the draft law on certain issues of carrying out an investment activity in the customs territory of Ukraine and introducing changes to some laws of tax Ukraine and is working on it together with other central executive authorities. The draft law intends to regulate legal and organization grounds for implementing export-oriented investment projects in Ukraine related to the processing of goods in the customs territory of Ukraine.

Question 93

Please confirm that Ukraine's incentives with respect to exemptions from import duties are consistent with Annex II and Annex III of the SCM Agreement, specifically the requirement that inputs exempted from import duties must be consumed in the production of the exported product.

Answer:

Ukraine does not maintain any policy where inputs exempted from import duties must be consumed in the production of exported products.

Question 94

Paragraph 274: Is Ukraine prepared to take this commitment? If not, could Ukraine explain? What are the current rules for application of tariffs and domestic taxes for FEZ-produced goods entering the rest of Ukraine?

Answer:

Ukraine accepts the commitment in paragraph 274.

- **Government-mandated counter-trade and barter**

Question 95

Are barter imports subject to normal import requirements, tariffs, and taxes? If so, this should be reflected in the text.

Answer:

Ukraine confirms that barter imports are subject to the same customs duties, fees and charges, and internal taxes as other like products imported into Ukrainian territory. This has been reflected in the Draft Working Party Report-last sentence of paragraph 276.

- **Government procurement**

Question 96

We thank Ukraine for its responses and its new information on how Ukraine arranges for government procurement.

Please provide information for the Working Party text on the extent to which State-owned firms make use of the new Law on Procurement for their purchases or sales. Is use of the law specifically limited to procurement for government consumption for its own uses, or are there other purchases or sales for State purposes regulated by this law?

Answer:

The Law "On Procurement of Goods, Works, and Services" No. 1490-III as of 22 February 2000 provides for a single government procurement system. The Law regulated tendering procedures to be applied in public procurements financed by the State budget and local-government budgets, as well as expenses of non-budget funds and credits secured by the Cabinet of Ministers. Purchases for State needs were limited to the Government's own consumption. State-owned firms can not make use of the mechanism of this Law for their purchases or sales.

Question 97

We note the commitment language on joining the Agreement on Government Procurement. We look forward to the earliest possible initiation of negotiations for Ukraine's membership in the Agreement.

Answer:

Ukraine intends to start negotiations on the accession to the Government Procurement Agreement upon WTO accession.

- **Trade in civil aircraft**

Question 98

Ukraine has stated its commitment to join the Agreement on Trade in Civil Aircraft. We request that, in the appropriate part of the Working Party Report, Ukraine include information on their commitment to join the Information Technology Agreement as well.

Answer:

Ukraine agrees with this proposal.

- **Agricultural policies**

Question 99

We have provided questions on WT/ACC/SPEC/1/Rev.10, the tables on agricultural supports, and on WT/ACC/UKR/123, the Harmonization Plan on SPS, separately.

It is clear that this section of the report will need review based on the ultimate disposition of recent legislation passed by Ukraine instituting new protective measures in this area and addressing the many WTO-inconsistent measures that have been enacted. Ukraine is entitled to assist its farmers, and to protect its markets, but must use WTO-consistent methods to do.

The WTO incompatible provisions (production quotas, minimal prices and maximum trade margins) of the Law on Milk and Dairy Products must be changed prior to accession.

Answer:

The draft law on Amendments to the Law on Milk and Dairy Products is under consideration in the Verkhovna Rada of Ukraine.

Question 100

In addition, preferences provided to the state trading enterprises (Khib Ukrainy, State Reserves, Agricultural Fund) in procurement and transportation of agricultural commodities mandated by the Orders of the Cabinet of Ministers dated 29 July and 3 August 2005 must be eliminated.

Answer:

In fact, pursuant to Resolution No. 295-p of the Cabinet of Ministers of Ukraine, dated 29 July 2005, "On Measures aimed to stabilize Prices in the Grain Market and to ensure Grain Production without Losses" were special conditions established for State agents on the grain market. However, in order to reinvigorate exports of grain, later there was passed Resolution No. 375-p of the Cabinet of Ministers of Ukraine on the 31 August 2005, whereby all entities operating on the grain market had equal conditions. This Resolution repealed all rules and measures that were intended for the interests of State trading enterprises (in this case, for the State-owned enterprises "Joint Stock Company "Khib Ukrainy").

The Government of Ukraine will comply with its laws and rules that regulate trading activities of State-owned enterprises and other enterprises, which are granted special or exclusive privileges, and will in general act in full compliance with the provisions of the WTO Agreements, in particular Article XVII GATT 1994 and the Agreement on the Interpretation of this Article and Article VIII of the GATS, as well as Articles III and XI GATT 1994.

Question 101

The Cabinet of Ministers of Ukraine and the Rada should amend the current VAT Law (Article 8-1) to provide for national treatment for imported food products, e.g. to equalize the VAT tax burden with that applied to domestic products.

Answer:

The institution of a special VAT collection regime governed by the Law of Ukraine On Amendments to Certain Laws of Ukraine with Respect to Taxation of Agricultural Enterprises and Maintaining Their Employees' Social Standards discriminating against imported agricultural produce in the meaning of Article III GATT has been postponed for 1 year until 1 January 2007 (Law of Ukraine On Amendments to the Law of Ukraine On Value Added Tax with Respect to Agricultural Enterprises).

Question 102

Ukrainian Customs Service must cease using internal orders to change international Harmonized Trade classification without notice and without regard to Ukraine's international obligations to the WCO and the WTO. (We understand that the Customs service last year changed the HS classification for salmon contrary to international norms).

To verify our information, we ask Ukraine to provide copies of the following laws:

- **"On meat and meat products" (No. 8060);**
- **"On Consumer Protection" (No. 8207);**
- **"On Milk and Dairy Products" (part of Omnibus package No. 8322); and**
- **"On State Regulation of Sugar Production and Sale.**

We also seek copies, as available, of other relevant laws that affect trade in agricultural products.

Answer:

Ukraine will make these copies available in due course.

V. TRADE-RELATED INTELLECTUAL PROPERTY RÉGIME

- (b) Trademarks, including service marks**
- (c) Geographical indications, including appellations of origin**

Question 103

We thank Ukraine for providing the additional replies to questions in WT/ACC/UKR/127, WT/ACC/UKR/130 and WT/ACC/UKR/131, and the revised text contained in WT/ACC/SPEC/UKR/Rev.3.

We note the improvements made in Ukraine's IPR regime since the last Working Party meeting. We have additional comments and questions, and have concerns about remaining deficiencies in Ukraine's trade-related intellectual property regime, particularly in the area of enforcement, trademarks, including geographical indications and the protection of undisclosed information. We reserve the right to raise additional questions and comments based on your responses.

We have received the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" that is referred to in paragraphs 320 and 333 of WT/ACC/SPEC/UKR/5/Rev.3.

We note that Article 2(1)(3) contains language to the effect that where Ukrainian law and international agreements to which Ukraine is a member are different, the provisions of the respective international agreements shall prevail. We note further that this does not repair or

otherwise excuse any TRIPS inconsistencies that may exist in the law. While TRIPS sets out broad rules, it does not specify systems for implementation of those concepts, as national laws do. Therefore, by its nature, TRIPS cannot easily substitute for what may be inconsistent provisions of national law. Thus, we expect that Ukraine's laws, regulations and other measures will comply with and fully implement TRIPS provisions. The response to the questions concerning well-known marks in paragraph 326 of WT/ACC/SPEC/UKR/5/Rev.3 does not answer our question. As written in the Law On the Amendment of Certain Legislative Acts of Ukraine, and in keeping with the responses of the GOU, in order to be recognized as a well-known mark, the owner must petition the court, make a case that the mark is well-known, and have the mark formally recognized as well-known and listed as such in order to be protected. This does not seem to have changed under Articles 22-24, as well as Article 10(1) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names".

The draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" contrary to the TRIPS Agreement and Paris Convention requirements to protect well-known marks whether registered or not, sets out a process that includes an application, official recognition, and placement on a list of well-known marks. These requirements are, in our view, a registration process.

Answer:

Pursuant to Article 22 of the draft Law of Ukraine "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" (hereinafter referred to as, the "Draft Law"), which is part of the draft Law of Ukraine "On Amendments to Intellectual Property Laws", a trademark shall be recognized as well known in Ukraine by the Appellate Chamber in observance of a procedure described in Article 24 hereof, or by court.

Article 24 of the Draft Law provides for procedures whereby trademarks are recognized as well known in Ukraine by the Appellate Chamber of the State Department of Intellectual Property.

Pursuant to Part 1 of Article *6bis* of the Paris Convention for the Protection of Industrial Property, the countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country.

Hence, in order for a trademark to be considered as well known the competent authority of the respective country must consider such trademark to be well known, which is contemplated by the Draft Law.

In this respect it should be noted that the Draft Law does not contain provisions that would require the availability of mandatory registration of rights to a trademark through filing of an application with the institution in order to have such mark considered to be well known in Ukraine. Therefore, the trademark may be recognized as well known, irrespective of the fact whether such trademark is registered or not.

Besides, in order for the Appellate Chamber to be able to recognize a trademark as well known, an interested person must file a respective application (rather than a petition), because otherwise the Appellate Chamber will have no grounds for taking respective actions.

The list of well-known trademarks referred to in Article 24 of the Draft Law has no status of a State registry, is used only for information purposes and does not have anything common with the process of State registration of rights to a trademark.

Therefore, the provisions of the above referenced Articles of the Draft Law are in full compliance with Article 6*bis* of the Paris Convention for the Protection of Industrial Property and Article 16 of the TRIPS Agreement.

Question 104

The National Treatment and MFN problem is not solved by the language proffered in paragraphs 320 and 333 of WT/ACC/SPEC/UKR/5/Rev.3. The language provides that for protecting geographical indications, it would not be "suitable for acquiring rights to the geographical indication if (i) the rights to such a geographical indication were not protected in the said foreign state; and (ii) the laws of the foreign state did not allow protections of rights to geographical indications in Ukraine". While these statements accurately describe the provisions of Article 28(7) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names", those provisions do not provide national treatment to all WTO Members and thus also deny MFN treatment to those members. This problem is compounded under Article 32(5) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names", which requires foreign applicants to submit documents showing "legal protection granted to the claimed geographic indication in a respective state", and "possession by a foreign applicant of a right to use the claimed geographic indication".

- **A number of WTO Members do not have a separate system for the protection of geographical indications, but rather protect geographical indications under other laws, such as those governing unfair competition or trademarks.**
- **In addition, the Ukrainian law requires that the geographical indications of Ukraine be protected as geographical indications in the foreign country, thus requiring reciprocity by requiring equivalent systems in order to gain protection.**

How would Ukraine protect geographical indications from a country that does not have a separate system of protection for geographical indications, but rather protects them through unfair competition laws or as trademarks?

Answer:

Pursuant to Part 7 in Article 28 of the Draft Law:

An indication connected with a geographic location in a foreign state shall be deemed unfit for obtaining rights to a geographic indication as long as:

- 1) rights to this geographic indication are not protected in the respective foreign state;
- 2) laws of the respective foreign state do not make it possible to grant protection to the rights to a geographic indication of Ukraine.

Article 24(9) of the TRIPS Agreement provides that there shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin. The Draft Law, in its clause 1 of Part 7 in Article 28, almost literally reiterates this requirement of the TRIPS Agreement.

Pursuant to Article 22(2) of the TRIPS Agreement, in respect of geographical indications, Members shall provide the legal means for interested parties to prevent any unfair use. In this respect, such protection provides for no mandatory registration of rights to geographical indications. This may be achieved through other legal means specified by a WTO Member.

Therefore, as all WTO Members are required to protect geographical indications of other WTO Members through any means against unfair use, the provisions of clause 2 in Part 7 of Article 28 of the Draft Law will not hinder such Members from acquiring rights to geographical indications in Ukraine. The Draft Law does not provide for concluding bilateral agreements in order to protect geographical indications with WTO Members. However, interested parties from countries, which are not WTO Members, may acquire rights to geographical indications in Ukraine and, consequently, these provisions of the Draft Law are expedient.

In this respect it should be noted that clause 2 in Part 7 of Article 28 of the Draft Law provides for protections of rights to Ukrainian geographical indications in foreign states pursuant to the laws of such foreign states, rather than for the mandatory grant of such protections through registration of rights to geographical indications that exist in Ukraine. The Draft Law does not contain such requirement. That is, it does not require that there must be equivalent systems for protection of rights to geographical indications as a condition for obtaining such protection.

These provisions are in full compliance with Articles 3 and 4 of the TRIPS Agreement and Article 2 of the Paris Convention for the Protection of Industrial Property, as Ukraine will provide the same protections of rights to geographical indications to nationals of WTO Members as are provided to Ukrainian nationals.

Pursuant to Part 2 in Article 3 of the Draft Law, citizens of Ukraine, foreign persons as well as persons without citizenship shall enjoy equal rights and obligations as defined by this Law. Therefore, irrespective of what systems for the protection of rights to geographical indications exist in foreign states, in Ukraine there will be provided the same protections of rights to the geographical indications as are provided to Ukrainian citizens.

Proceeding from the foregoing, Ukraine will accept such evidence of protection of rights to geographical indications in foreign states as is provided by the laws of such foreign states dealing with protections of geographical indications (certificates of registration of certification marks, other evidence).

Part 5 in Article 32 of the Draft Law provides that foreign citizens and persons without citizenship residing or based outside of Ukraine shall, along with an application are required to submit documents attesting:

- legal protection granted to the claimed geographic indication in a respective state; and
- possession by a foreign applicant of a right to use the claimed geographic indication.

Such requirements are fully compliant with Articles 3 and 4 and Article 24 (9) of the TRIPS Agreement, because Ukrainian applicants are also required to provide a document confirming the production of goods specified in their applications.

Question 105

Please explain in more detail how the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" will address the concerns noted in paragraphs 297 and 298 of WT/ACC/SPEC/UKR/Rev.2.

Specifically, Ukraine's requirement that an applicant for geographical indication (GI) protection must provide a government document proving the applicant's right to the GI in the country of origin could effectively be used to deny protection to countries that have a different system of protection for GIs than Ukraine's, such as unfair competition systems or trademark systems.

Will Ukraine accept other evidence of protection in the foreign country, such as a certification mark registration or other evidence of use and control of the term?

Answer:

Ukraine will accept such evidence of protection of rights to geographical indications in foreign states as is provided by the laws of such foreign states dealing with protections of geographical indications (certificates of registration of certification marks, other evidence).

Question 106

National treatment and MFN may be further prejudiced by the provision in Article 29(1) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names", which sets out that "[r]ights to a geographical indication shall be obtained subject to their state registration following the procedure set forth herein or based on respective international agreements of Ukraine."

Is a bilateral agreement required in order to protect foreign GIs in accordance with Article 29(1) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names"? If not, is a bilateral agreement required in order to protect foreign GIs from countries that do not have a system similar to that of Ukraine for the protection of GIs?

Our preferred option is to delete these requirements from the Law?

Answer:

The Draft Law does not provide for concluding bilateral agreements in order to protect geographical indications with WTO Members.

Question 107

It also appears that Ukraine does not afford the rights to trademark owners required by Article 16.1 of the TRIPS Agreement, in line with the findings of a recent WTO Panel Report concerning protection of trademarks and geographical indications for agricultural products and foodstuffs.

With regard to the concern noted in paragraph 329, Ukraine's law does not provide that the principles of priority and exclusivity are preserved for trademarks and geographical indications. The TRIPS Agreement Article 16.1 requires that owners of trademark rights established prior to a later applied for GI should be able to assert the exclusivity of the prior trademark rights.

Based on our understanding of the WTO Panel decision (WT/DS174), in order for a GI registration regime to be valid under TRIPS, coexistence of a GI that conflicts (is confusingly similar to) with an earlier protected trademark can only be allowed under very narrow circumstances.

These circumstances require that a WTO member refuse registration of a GI if registration and use of the GI would lead to a likelihood of confusion.

Consequently, Ukraine's law on GI's fails to comply with TRIPS by allowing a GI to be registered even if it conflicts with a prior trademark, and even if the conflict would result in a likelihood of confusion.

Article 27(1) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" clearly mandates coexistence between trademarks and GIs. We do not believe that this is consistent with TRIPS Article 16.1 and the WTO Panel decision.

Further, Article 28(6)(7) provides that only well-known marks as recognized in the procedure set out under Articles 22-24 of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" can prevent the registration of a GI, if such registration would be misleading. This excludes all other trademarks from being able to exercise their rights of priority and exclusivity under TRIPS Article 16.1.

This TRIPS inconsistency is made explicit in Article 29(4) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names", where it is clearly set out that "[r]egistration of rights to a geographic indication in Ukraine may not be denied on the grounds of existence of rights to a trademark valid in Ukraine and consisting solely of the claimed geographic indication or containing it as its integral element, save for exception covered by Paragraph 7 of part 6 of Article 28".

Answer:

Coexistence between trademarks and geographical indications is contemplated by the TRIPS Agreement (Article 24 (5)), and, therefore, the provisions of Part 1 in Article 27 of the Draft Law are not inconsistent with the TRIPS Agreement.

As regards Article 28 of the Draft Law, it should be noted that at present the text of clause 7 in Part 6 has been changed and restated as follows:

- "6. The following indications shall not qualify for obtaining rights to a geographic indication:
 - 7) which indication is identical to or such that may be confused with a trademark, which trademark - on the date of filing of an application for recognition of an indication as a geographical indication and use of the geographical indication – has gained a reputation and data conditioned by the impact of the factors listed in Article 23 of this Law, if using such indication may mislead consumers as to the person that manufactures goods, for which rights to such a trademark have been acquired."

Such wording is fully compliant with the requirements of Article 16(1) of the TRIPS Agreement.

At the same time, as regards the WTO Panel decision referred to in the questions, we believe that the said WTO Panel decision is binding on the USA and the EU as they were parties to the said dispute. So, Ukraine may not amend its laws based on the above referenced WTO Panel decision.

Question 108

Article 28 of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" discusses both "simple indications of origin of goods" and "qualified indications of origin of goods".

- **Please explain these terms. How do these definitions correspond with the definition of geographical indications in TRIPS Article 22.1?**

- **How do the restrictions on protectable subject matter set out in Article 28(3) of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names" relate to the definition of geographical indications in TRIPS Article 22.1?**
- **How is TRIPS-level protection afforded to the entire range of GIs encompassed by the TRIPS definition?**
- **How is each level of protection offered to both domestic and foreign GI owners?**

Answer:

The Draft Law contains no such terms as "simple indications of origin of goods" and "qualified indications of origin of goods". Such terms are contained in the currently effective Law of Ukraine "On Protection of Rights to Indications of Origin of Goods".

The Draft Law contains a generally accepted term contained in Article 22(1) of the TRIPS Agreement: "geographical indication".

Pursuant to Part 1 of Article 28 of the Draft Law, the term "geographical indication" covers the following terms: the geographic indication of origin of goods and the name of origin of goods.

The geographical indication of origin of goods means the name of a geographic location (country, region or area within a certain country, or any other geographic object) and is used to identify a good originating from the given location and having a reputation and other characteristics predominantly ensuing from this geographic location, as well as which manufacture and/or extraction or processing of raw materials for which are carried out within the boundaries of this geographic location.

The name of origin of goods means the name of a geographic location used to indicate goods originating from this location and having specific characteristics exclusively or predominantly conditioned by this geographic location, including natural conditions or the human factor or a combination of both, which manufacture, extraction and processing of raw materials for which are carried out within the boundaries of this geographic location.

It means that the Draft Law contemplates stricter requirements for goods, for which the name of origin of goods is registered: the goods must have specific characteristics exclusively or predominantly conditioned by this geographic location, including natural conditions or the human factor.

Requirements for goods, for which the geographical indication of origin of goods is registered, are less stricter: goods must have a reputation and other characteristics predominantly ensuing from this geographic location.

Such separation is not inconsistent with the definition of the geographical indication in Article 22(1) of the TRIPS Agreement.

Under Article 60 of the draft Law "On the Protection of Rights to Trademarks, Geographic Indications and Trade Names," the Draft Law's general class of "geographic indications" (which includes "geographic indication of origin of goods," the Draft Law's counterpart to "geographical indications" as set out in the TRIPS Agreement) is protected from infringement.

Pursuant to Article 3 of the Draft Law, citizens of Ukraine, foreign persons, as well as persons without citizenship shall enjoy equal rights and obligations as defined by this Draft Law.

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

Question 109

Article 39.3 of TRIPS provides that "Members, when requiring, as a condition of approving the marketing of pharmaceutical... products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use".

Paragraph 346: The Report should indicate that Ukraine will comply with Article 39.3 of the TRIPS Agreement by amending to its Law on Medical Drugs and its laws and other applicable measures relating to agricultural chemical products. We provide specific suggestions for a commitment in the Working Party report and would welcome a further opportunity to discuss specific measures to implement the proposed commitment.

In particular, that Ukraine would enact specific legislative provisions, prior to accession, that require the registration that require the registration authorities for pharmaceutical and agricultural chemical products to provide a period of protection against unfair commercial use, such as reliance on data produced by another person or entity, of at least [six] years for pharmaceuticals and [ten] years for agricultural chemical products for test data submitted, starting from the time the first marketing authorization was granted for a specific product utilizing a new chemical entity in Ukraine. During this period no person or entity (public or private) other than the person or entity who submitted such data shall be entitled, without the explicit consent of the person or entity who submitted the data, to rely on or otherwise use such data in support of an application for product approval. During this period, any subsequent applicant for marketing approval shall not be granted a market authorization, unless he submits his own data to the same extent as required from the first applicant for obtaining the marketing authorization in Ukraine for the particular product. Furthermore, Ukraine shall guarantee, during this period, the protection of undisclosed information except where necessary to protect the public or unless steps were taken to ensure that the data are protected against unfair commercial use. The Working Party took note of these commitments.

Answer:

Ukraine does not object to the following agreed wording of the commitment to the Working Party draft Report.

[The representative of Ukraine confirmed that his government would, in compliance with Article 39.3 of the TRIPS Agreement, enact amendments to the Law on Medicines and the Law on Agricultural Chemicals providing that undisclosed information submitted to obtain marketing approval, i.e. registration, of pharmaceutical and agricultural chemical products respectively would provide for a period of at least 5 years of protection against unfair commercial use starting from the date of grant of marketing approval, in Ukraine for pharmaceutical products and 10 years for agricultural chemical products. During these periods, no person or entity (public or private), other than the person or entity who submitted such data, could without the explicit consent of the person or entity who submitted the data, rely on such data in support of an application for product approval/registration. During this period any subsequent application for marketing approval or registration would not be granted, unless the subsequent applicant submitted his own data meeting the same requirements as the first applicant. Furthermore, Ukraine would guarantee, during this period, the protection of such data against disclosure, except where necessary to protect the public or unless steps were taken to ensure that the data are protected against unfair commercial use. The Working Party took note of these commitments.]

- **Enforcement**

Question 110

The amendments to the Laser-Readable disk law were passed in July 2005, and went into force in August 2005. These amendments relate to issues such as: 1) including a system for monitoring raw materials - optical grade polycarbonate- for optical media production; 2) a clear obligation to engrave all manufacturing equipment and molds with SID Codes; 3) expanded non-compliance penalties to include plant closures and deterrent criminal penalties; and 4) stronger enforcement authority to seize infringing machinery and product.

Please provide an update on the implementation of the optical disc law and include information in the Working Party report on this Law.

Answer:

In order to improve the legal protection of intellectual property rights in respect of licensing of production, exportation (importation) of discs (CD-ROMs) and matrixes for their production, on 6 July 2005 there was passed Law of Ukraine No. 2734-IV "On Amendments to Certain Legislative Acts of Ukraine" (in respect of Bringing Order to Operations involving Production, Exportation and Importation of Laser-Readable Discs, Equipment and Raw Materials for their Production)". The said Law amended the Law of Ukraine "On Specifics of State Regulation of the Activities of Business Entities Associated with Production, Export, and Import of Discs for Laser-Readable Systems, Matrixes" (hereinafter referred to as, the "Law"). Pursuant to the Law, as well as in accordance with Resolution No. 1304 of the Cabinet of Ministers of Ukraine, dated 30 December 2005, "On the Approval of Lists of Goods, whose Export and Import are subject to Licensing, and the Amount of Quotas for 2006", exports/imports of raw materials for production of discs for laser-reading systems, matrixes (optical polycarbonate) and equipment for production of discs for laser-reading systems and matrixes shall be subject to licensing by the central agency of executive power for economic policy affairs – the Ministry of Economy of Ukraine.

Pursuant to Resolution No. 882 of the Cabinet of Ministers of Ukraine, dated 12 September 2005, "On Amendments to Resolution No. 623 of the Cabinet of Ministers of Ukraine, dated 26 April 2003, "On the Approval of Procedures for Assignment and Affixation onto Laser-Readable Discs of Special Identification Codes and Recognition of Special Identification Codes affixed upon Imported Discs", each produced disc with recorded data is to be affixed with a press mold SID-code (a special identification code) and a matrix SID-code, which ensure identification of a producer of discs and matrixes, respectively; each produced disc without recorded data is to be affixed with a press mold SID-code, which ensures identification of a producer of discs; each produced matrix is to be affixed with a matrix SID-code, which ensures identification of the producer of such matrix.

The Law contemplates the following measures for violations of the requirements set forth therein:

- a) imposition of financial sanctions in the form of fines upon violators (Order No. 514 of the Ministry of Education and Science of Ukraine, dated 6 September 2005); and
- b) restriction on, temporary prohibition of activities of business entities; revocation of licenses for production of discs for laser-reading systems, matrixes; suspension of a license for production of discs for laser-reading systems, matrixes; sealing and/or seizure of discs for laser-reading systems, matrixes, as well as equipment and raw materials for their production (Resolution No. 881 of the Cabinet of Ministers of Ukraine, dated 12 September 2005).

Strict criminal punishment is also contemplated for the illegal production, export, import, storage, sale and shipment of discs for laser-reading systems, matrixes, equipment and raw materials for their production, if such committed acts involve large amounts (i.e. when the value of discs for

laser-reading systems, matrixes, equipment and raw materials for their production exceeds 20 and more times the amount of the non-taxed minimum citizens' income), which will be punished by penalty in the amount ranging from 1,000 to 5,000 non-taxed minimum citizens' incomes or by correctional works for a term of up to 2 years, or by imprisonment for the same term, subject to seizure and destruction of discs for laser-reading systems, matrixes, equipment and raw materials for their production (Article 2031 of the Criminal Code of Ukraine). The same committed acts involving especially large amounts (i.e. when the value of discs for laser-reading systems, matrixes, equipment and raw materials for their production exceeds 100 and more times the amount of the non-taxed minimum citizens' income), shall be punished by imprisonment for a term ranging from 2 to 5 years, subject to seizure and destruction of discs for laser-reading systems, matrixes, equipment and raw materials for their production.

Pursuant to paragraph 2 in Part 4 of Article 52 of the Law of Ukraine "On Copyright and Related Rights", seized counterfeit copies of works (including software applications and databases), phonograms, videograms, broadcasting programs may, at a request of the holder of copyright and (or) related rights whose rights have been violated, be transferred to such holder pursuant to a decision of the court. If the said holder does not demand such a transfer, the counterfeit copies must be destroyed, and materials and equipment used for reproduction of the counterfeit copies are to be sold, with the proceeds from such sale being transferred to the State Budget of Ukraine.

Specifically, destroying of products manufactured in violation of law is contemplated in the Resolution on Procedures for Storage and Destroying of Unlabelled Copies of Audiovisual Works, Phonograms, Videograms, Software Applications and Databases, as approved by Resolution No. 1555 of the Cabinet of Ministers of Ukraine, dated 13 October 2000. In particular, it is contemplated that the unlabelled copies of audiovisual works, phonograms, videograms, software applications and databases, with respect to which the court decisions on their seizure have entered into force, shall be destroyed by bodies of the State Enforcement Service.

Question 111

On 17 January 2006, the Ukrainian Rada passed in the first reading bill No. 8068 Amendments to Criminal Code of Ukraine, which extends stronger criminal sanctions to software, data bases, cassette tapes. Please provide an update on the status of further legislative approval of this bill.

Answer:

Draft Law No. 8068 "On Amendments to the Criminal Code of Ukraine (in respect of protection of intellectual property rights) was adopted on 9 February 2006 in the second reading in its entirety. At present, this draft Law has been sent to the President of Ukraine for signing. Pursuant to the Law, the amount of financial losses that trigger commencement of criminal proceedings has been reduced from two hundred (UAH 35 thousand) to twenty (UAH 3.5 thousand) non-taxed minimum citizens' incomes, and criminal punishment has been established in the form of imprisonment for a term ranging from 3 to 6 years for commitment of crimes by an organized crime group in the said area.

Question 112

Paragraph 350: The Report provides that "[a]s for audiovisual piracy, he said that the increase in the number of hologram marks issued (5 million more than in 2003) testified to the gradual increase in the share of licensed audio/video production in Ukraine. Please provide information on efforts to combat the counterfeiting of hologram marks.

Answer:

Hologram marks, which protect products containing objects subject to copyright and related rights, have multi-level degrees of protection, which make it almost impossible to counterfeit such hologram marks. In addition, the hologram marks themselves are rather cheap and have no impact upon the price of the products. Thus, cases of the counterfeiting of hologram marks have been infrequent up to date.

Question 113

Paragraph 352: Please provide an update on the referenced anti-smuggling program in 2005.

Answer:

As a result of efforts undertaken during 2005, there were uncovered 483 crimes (which is 30 per cent more than in 2004), relating to infringements upon intellectual property rights, including 298 infringements directly involving facts of violations of copyright and related rights, 115 infringements involving facts of illegal turnover of discs for laser-reading systems, 50 infringements involving facts of illegal use of marks for goods and services. Investigations of 138 cases involving the crimes were completed, and such cases with indictments have been sent to court for trial.

5,107 administrative protocols were drawn in respect of facts of distribution of audiovisual cassettes and compact discs without hologram control marks. 194 thousand videocassettes, 69 thousand audiocassettes and 849 thousand compact discs (in aggregate, 1,112,000 articles) for the total value exceeding UAH 15 million, and counterfeited products illegally using trademarks for the total value of UAH 3.9 million were seized from violators.

Activities of 79 clandestine manufactories, which were engaged in production of various types of counterfeit products, out of which 32 manufactories were engaged in production of counterfeit audiovisual products, and 47 manufactories were engaged in production of falsified products, were terminated.

During 2005, customs authorities seized 330,938 discs for the amount exceeding UAH 7.4 million and prevented 59 attempts to ship 5,459 audio and video products for the total amount exceeding UAH 60,000.

In 2005, compact discs were seized by customs authorities at the Ukrainian-Polish, Ukrainian-Russian and Ukrainian-Hungarian border sections.

Question 114

Paragraph 356: The report provides that "[h]e added that current Ukrainian legislation did not lay down any procedure for the destruction of counterfeit goods. The execution of a court order to destroy counterfeit goods was assigned to the State Executors' Service." Please provide information on whether the civil, administrative or customs code provides for the destruction of infringing articles. With regard to the production of infringing optical discs, please provide information on the authority to order the destruction of optical discs, matrices, equipment and raw materials used in their manufacture in civil, administrative and customs cases.

Answer:

Pursuant to paragraph 2 in Part 4 of Article 52 of the Law of Ukraine "On Copyright and Related Rights", seized counterfeit copies of works (including software applications and databases), phonograms, videograms, broadcasting programs may, at a request of the holder of copyright and (or)

related rights whose rights have been violated, be transferred to such holder pursuant to a decision of the court. If the said holder does not demand such a transfer, the counterfeit copies must be destroyed, and materials and equipment used for reproduction of the counterfeit copies are to be sold, with the proceeds from such sale being transferred to the State Budget of Ukraine.

Specifically, destroying of products manufactured in violation of law is contemplated in the Resolution on Procedures for Storage and Destroying of Unlabelled Copies of Audiovisual Works, Phonograms, Videograms, Software Applications and Databases, as approved by Resolution No. 1555 of the Cabinet of Ministers of Ukraine, dated 13 October 2000. In particular, it is contemplated that the unlabelled copies of audiovisual works, phonograms, videograms, software applications and databases, with respect to which the court decisions on their seizure have entered into force, shall be destroyed by bodies of the State Enforcement Service.

Question 115

Paragraph 357-358: The Report indicates in paragraph 357 that "[a]pplicable provisional measures could include inspection of the premises where infringing activities were believed to be taking place, and seizure of assets." Paragraph 358 refers to amendments made to the Code of Civil Proceedings in May 2003. The report provides that "[s]uch preventive measures might include inspection of premises where activities related to such right infringement were taking place, and the attachment of property in possession of the person in regard to whom the preventive measures were being taken (Article 62²)." Have the courts issued such interim orders in infringement cases? Has property been attached? Is this action limited to products in the actual possession of the person named in the Order? Would all infringing product in a warehouse owned by a company be subject to attachment?

Answer:

Pursuant to effective Ukrainian law, in the course of inspection of premises, in which the counterfeit audiovisual products are located, law enforcement agencies seize such products, having in advance obtained a court permit therefore. As a rule, all products stored at the time of the inspection are seized.

In the course of proceedings in administrative cases, officers of internal affairs agencies, tax militia and State inspectors for intellectual property affairs seize counterfeit products and goods without a court sanction, which sanction is not contemplated for such situations by the Code of Ukraine on Administrative Violations.

Question 116

Paragraphs 360-363 (Question 67 of WT/ACC/UKR/131):

It is stated that Ukraine will establish judicial procedures to allow rights holders to preserve evidence in case of allegation of intellectual property right infringement. Please provide details on when these procedures will be established, and timing of enactment. Further, please provide information on what part(s) of Ukraine's current laws will be amended to add such procedures (Civil Procedural Code, Economic (Commercial) Procedural Code, Criminal Procedural Code, etc.).

It is stated that "[t]hose measures shall be taken, if necessary without the other party having been heard, in particular where any delay was likely to cause irreparable harm to the right holder or where there was a demonstrable risk of evidence being destroyed." Please provide information on whether the ability to obtain interim relief *inaudita altera parte* currently exists under Ukrainian law or if a judicial procedure will be established.

Answer:

The possibility of obtaining "*interim relief inaudita altera parte*" is contemplated by the Civil Procedural Code of Ukraine.

Part 4 of Article 151 of the Civil Procedural Code provides for a right of an interested party to file a petition with the court, requesting to secure the action prior to filing a letter of claim, in order to prevent infringements upon intellectual property rights. The petition for securing the action must be attached with documents and other evidence that confirm that it is the petitioner that is a holder of the concerned intellectual property right, and that the rights of such petitioner may be infringed upon if no measures to secure the action have been undertaken. Pursuant to Part 1 of Article 153 of the Civil Procedural Code, such petition shall be reviewed by the court that considers the action on the date such petition is filed, without notification of the respondent or other persons taking part in the action.

Question 117

Paragraph 369: It is stated that the registry maintained by the State Customs Service only contains 67 products/goods. This figure appears inordinately low. Please confirm that only 67 different trademarks and/or copyrights held by foreign or Ukrainian rights holders have been registered with State Customs Service.

It is stated that access to the Customs registry is limited and reserved to specially authorized officials of the customs body. Please address the concern that limiting Customs officials access to the registry may impede the efficacy of border enforcement against infringing goods. Is the registry available to Customs officials in the field?

Answer:

As of 20 February 2006, the registry, which is maintained by the State Customs Service pursuant to clause 6 of the Regulation on Procedures for Registration and Carriage through Ukraine's Customs Border of Goods containing Objects of Intellectual Property Rights, contains 119 products/goods, the rights to which are held both by Ukrainian and foreign producers. For the period from 20 November 2001 until 20 February 2006, registrations of 26 products/goods had been annulled for various reasons. Thus, as of 20 February 2006 the customs authorities control shipments through Ukraine's customs border of 92 products/goods containing objects of intellectual property rights, which products/goods are included into the Customs registry.

An application for recording a product containing objects of intellectual property rights into the Customs registry shall be filed by a rightholder or its representative with the central headquarters of the State Customs Service. The registry is maintained in electronic form with the use of a specially designed software package of the State Customs Service, and satellite communications allow customs authorities to receive information on products/goods that are recorded into the registry as on the date of registration thereof. Specially authorized officers of customs authorities, who work in customs clearance divisions, have access to the registry.

Question 118

Paragraph 370: It is stated that storage fees for goods at customs warehouses has been fixed in Resolution of the Cabinet of Ministers No. 65 of 27 January 1997. Please provide information on how costs are established under the Resolution. Also, please provide a copy of this Resolution in English.

Answer:

The text of the Resolution referred has already been provided to the Secretariat.

Question 119

Paragraph 371: It is stated that the information regarding the quantity and category of goods suspended by Customs was classified. Please provide details on whether this confidentiality requirements still in place, and how such suspension procedures are being implemented to safeguard against their abuse, as required by Article 41(1) of TRIPS. The report states that "[t]he customs bodies had not received any court decisions on the seizure of counterfeit goods as of 1 July 2003." Has Customs received a court decision since 1 July 2003?

Answer:

At present, procedures of customs clearance may be suspended by customs authorities pursuant to the requirements set forth in Article 257 of the Customs Code and Clause 25 of the Regulation, as approved by Resolution No. 412 of the Cabinet of Ministers of Ukraine, dated 28 April 2001, i.e. as to the goods, in respect of which there is suspicion that they are counterfeit. Customs authorities do not seize such goods, but only suspend their customs clearance. Pursuant to requirements of Ukrainian law, decisions to seize goods may be taken by a court. If a decision to seize goods is taken, the goods that are subject to seizure are to be transferred to the State Enforcement Service subordinated to the Ministry of Justice of Ukraine.

Question 120

Paragraph 372: Please indicate whether the draft amendments to the Customs Code provide for ex officio authority and if so the particular amendment.

Answer:

The State Customs Service of Ukraine prepared a draft Law "On Amendments to the Customs Code of Ukraine", which draft relates to the protection of intellectual property rights at the time of carriage of goods through the customs border Ukraine. In particular, this draft Law introduces amendments, which provide that customs authorities may take actions within limits of their powers against suspected infringers of intellectual property rights.

Also please note that Part 2 of Article 78 of the Law of Ukraine, dated 20 December 2005, under No. 3235-IV, "On the State Budget of Ukraine for 2006", provides that the Customs Code of Ukraine shall enter into force as from the 1 January 2004, except for Part 13 in Article 71, which shall enter into force as from the date of Ukraine's accession to the World Trade Organization. Hence, provision on collection of customs duties will lose their effect as from the date of Ukraine's accession to the World Trade Organization.

Question 121

Paragraph 374: Reference is made to Article 176 of the Criminal Code, as amended, which contains a threshold for bringing cases that involve "substantial material damage". Please provide information relating to the number of cases brought by prosecutors that have met the "substantial material damage" threshold in 2004 and 2005. We note that Article 61 of TRIPS requires that criminal procedures and penalties be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale.

May police act ex officio in initiating intellectual property cases without the need of a complaint from rights holders.

Answer:

In 2004, Ukrainian agencies of internal affairs uncovered 311 crimes covered by Article 176 of the Criminal Code of Ukraine. In 2005, this figure reduced and totals 298 crimes.

Upon their own initiative, Ukrainian agencies of internal affairs do not initiate proceedings in criminal cases involving infringements upon intellectual property rights.

Question 122

Questions on WT/ACC/UKR/123

Article 45 Damages:

Article 432 of the Civil Code is referenced as permitting courts to apply a single monetary penalty instead of reimbursement for losses. Please clarify how the single monetary penalty is calculated and in what circumstances it applies.

Article 52(2)(d) of the Law of Ukraine on Copyright and Related Rights is referenced which provides for the "payment of compensation determined by court, in the amount of 10 to 50,000 minimum salaries instead of reimbursement of losses or collection of income." Please clarify whether this provision is a form of pre-established damages under TRIPS Article 45(2).

Answer:

In accordance with the Civil Code of Ukraine, a court may rule to impose a one-time monetary fine instead of damages for the illegitimate use of the intellectual property rights object. Since the amount of damages must be proved, legislation of Ukraine provides an opportunity to recover compensation in the form of a one-time monetary fine pursuant to the court decision. The amount of such compensation, in particular, in accordance with the Law of Ukraine "On Copyright and Allied Rights" is 10 to 50000 minimum salaries.

In determining the amount of compensation payable instead of damages or recovering income, the court takes into consideration the scope of violation and the intention of the defendant.

Question 123

Article 46, Other Remedies: With regard to trademark counterfeiting, please indicate whether judicial authorities have the authority to order goods found to be infringing to be disposed outside of the channels of commerce or destroyed. Please indicate with regard to goods bearing a counterfeit trademark whether provisions exist for the disposal outside the channels of commerce of materials and implements, the predominant use of which was the creation of the infringing goods.

Answer:

In accordance with the Civil Code of Ukraine, the court may rule, in particular:

- to apply immediate measures to prevent the violation of an intellectual property right and preserve relevant evidence;

- to stop the passage through the customs body of Ukraine of the goods that are imported or exported in violation of intellectual property rights;
- to withdraw goods from civil circulation that have been manufactured or put into civil circulation in violation of intellectual property rights;
- to withdraw materials and tools from civil circulation that were used mostly to manufacture goods in violation of intellectual property rights;
- to apply a one-time monetary fine instead of compensating for damages caused by illegitimate use of an intellectual property right object; and
- to publish information in the mass media about a violation of an intellectual property right and the content of the court ruling regarding this violation.

Responsibility for violations in the field of business is stipulated in the Commercial Code of Ukraine pursuant to which the following types of business sanctions are applied:

- compensating for damages;
- penalties; and
- operational and business sanctions.

In accordance with Article 20 of the Law of Ukraine "On the Protection of Rights to Marks for Goods and Services," the owner of the certificate for a mark may demand removing goods, their packaging, an illegitimately used mark or indication similar to such an extent that it is likely to lead to confusion, or destroying manufactured images of a mark or indication similar to such an extent that it is likely to lead to confusion.

Question 124

Article 47, Right of Information: Please indicate if provisions exist with regard to goods bearing counterfeit trademarks relating to the authority of courts to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of counterfeit goods.

Answer:

In accordance with the Civil Code of Ukraine, a court of law may rule, in particular, to publish information in the mass media about a violation of an intellectual property right and the content of the court ruling regarding this violation.

Question 125

Article 51, Suspension of Release by Customs Authorities: Please clarify whether Customs have the authority to suspend the release of goods being exported out of Ukraine. If the authority exists, do regulations exist governing action relating to exportations? Does Customs take enforcement action relating to exportations under Resolution of the Cabinet of Ministers of Ukraine No. 412 of 28 April 2001?

Answer:

Pursuant to the requirements of Article 257 of the Customs Code and paragraph 25 of Regulation No. 412 of 28 April 2001, approved by the Cabinet of Ministers of Ukraine, customs bodies suspend customs clearance procedures of an intellectual property rights object included in the Registry regarding which there are sufficient grounds to believe that its passage across the customs border of Ukraine is in violation of intellectual property rights. Passage is understood both as imports and exports (paragraph 2 of Article 1 of the Customs Code).

Such goods must be stored at customs warehouses for temporary storage.

The decision to suspend customs clearance for 15 calendar days with the option of prolonging for another 15 days at the most shall be approved by the Head of the customs body or his deputy.

No later than the next working day after the date of approving the decision to suspend customs clearance of goods, the customs body shall notify the relevant owner of the intellectual property rights of the fact of the passage across the customs border of Ukraine of these goods; it shall notify the declarant of the reasons for suspending customs clearance and the name and address of the owner of intellectual property rights object. The notification to the intellectual property rights owner shall have the following information: customs clearance of which goods has been suspended, the customs value of these goods indicated by the declarant, the name and address of the owner of the said goods as well as other necessary information.

The owner of intellectual property rights to an object of intellectual property rights and the declarant, subject to permission of the customs body, may take tests and samples of the goods in respect of which the decision to suspend customs clearance has been approved and subject them to an inspection. Copies of relevant expert opinions shall be provided to the customs body.

If during the terms indicated in part two of this Article, it is confirmed that the goods in respect of which the decision to suspend customs clearance has been approved are counterfeit goods, the customs body, in accordance with the procedure stipulated by the Customs Code, shall institute proceedings for violating customs rules and the goods – immediate violating objects – are confiscated in accordance with the procedure stipulated by the Code.

If during the specified terms it was not confirmed that the goods in respect of which the decision to suspend customs clearance has been approved are counterfeit, the goods shall be subject to customs clearance in accordance with the established procedure.

Question 126

Article 57, Right of Inspection and Information: Does the Customs Code provide for a right of inspection and information for an importer?

Answer:

In accordance with Article 257 of the Customs Code, the owner of the rights to the intellectual property rights object and the declarant, subject to subject to permission of the customs body, may take tests and samples of the goods in respect of which the decision to suspend customs clearance has been approved and subject them to an inspection.

In accordance with paragraph 5 of Article 1 of the Customs Code, the declarant is a legal entity or individual that declares goods and vehicles passing the customs border of Ukraine.

Question 127

Article 58, Ex Officio Action: Proposed amendments to Article 257 of the Customs Code are referenced. Please clarify whether amendments to the law provide Customs the authority to suspend the release of goods without the requirement of an application to suspend the release of goods is contemplated? (See question regarding paragraph 372, above). Please provide an update on the status of government approval and submission to the Rada of these draft amendments.

Answer:

The State Customs Service of Ukraine developed a draft law on introducing changes to the Customs Code relating to the protection of intellectual property rights in carrying goods across the customs border of Ukraine. The changes include, in particular, the provision of the right to customs bodies to suspend customs clearance of goods on one's own the initiative if the goods are carried across the customs border of Ukraine in respect of which no application to protect intellectual property rights have been filed, but there are sufficient grounds to believe that during the passage of such goods the rights to the intellectual rights object may be violated (ex officio actions are applied stipulate by Article 58 of the TRIPS Agreement).

Question 128

Article 59, Remedies: Please clarify whether the law provides for the destruction of counterfeit and piratical goods and if so please reference the article.

Answer:

The rules of the current Customs Code and the draft law on introducing changes to the Customs Code relating to the protection of intellectual property rights in carrying goods across the customs border of Ukraine do not provide for actions of customs bodies regarding the destruction of counterfeit and pirated goods.

At the same time, the Article 257 of the draft Law "On Introduction of Changes to the Customs Code of Ukraine (With Regard to Intellectual Property Right Protection In Course of Movement of Goods across the Customs Border of Ukraine)" stipulates that the procedure for disposal of infringing goods shall be established by the Cabinet of Ministers.

- **TRANSPARENCY**

Question 129

We are very impressed with Ukraine's presentation on its transparency framework. We note the draft commitment language in paragraph 397 of WT/ACC/SPEC/UKR/5/Rev.3, and we urge support for establishment of such a transparency mechanism.

- **TRADE AGREEMENTS**

We note the bracketed commitment language and urge adoption of the second text.

Answer:

Ukraine takes note of this proposal.

ANNEX I

Table 4: 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	Authorities of the executive power which effectuate regulation	Normative Acts/ period of application (if applicable)
12.12.91	Sugar beets	Approval of minimum prices (support prices)	The Cabinet of Ministers of Ukraine	The Law of Ukraine "On State Regulation of Sugar Production and Sale," No. 758-XIV, dated 17 June 1999, and Resolutions of the Cabinet of Ministers of Ukraine (hereinafter the "CMU") "On Certain Issues of State Regulation of Sugar Production and Sale," No. 868, dated 2 June 2000 "Certain Issues of State Regulation of Sugar Production and Sale," No. 142, dated 15 February 2002, and "On State Regulation of Sugar Production and Sale of," No. 1977, dated 25 December 2002.
0402.29 11	Profitability caps and trade mark-ups for preparations of infant nutrition	Establishment of profitability caps and trade mark-ups	The Council of Ministers of the Autonomous Republic of Crimea, oblast, the Kyiv and Sevastopol City State Administrations	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and normative documents of local authorities.
	Trade mark-ups for medicines and produce of medical purposes mentioned in the list of domestic and imported medicines and produce for medical purpose, prices of which are subject to state regulation	Establishment of trade mark-ups	The Council of Ministers of the Autonomous Republic of Crimea, oblast, the Kyiv and Sevastopol City State Administrations	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and normative documents of local authorities.
1001, 1002, 1003, 1004, 1005, 1008	Common wheat; rye; barley; oats; maize (corn); buckwheat	Pledged price ¹	The Cabinet of Ministers of Ukraine	The Resolution of the CMU "On measures on executing pledged operations with grain of the 2004 year harvest", No. 625, dated 12 March 2004.

¹ Price guaranteed by the State for the purchase of grain from agricultural producers for a certain period of time, as set in an agreement, at pledged prices. During the agreed period, the producers retain the right to withdraw the grain in order to be able to sell it later at higher market prices.

Codes of Goods	Description of goods prices (tariffs) which are subject to state regulation	Form or nature of price regulation	Authorities of the executive power which effectuate regulation	Normative Acts/ period of application (if applicable)
17.01.99	Sugar produced from sugar beet in Ukraine within the A quota	Approval of minimum prices (support prices)	The Cabinet of Ministers of Ukraine	The Law of Ukraine "On State Regulation of Sugar Production and Sale," No. 758-XIV, dated 17 June 1999, and Resolutions of the Cabinet of Ministers of Ukraine (hereinafter the "CMU") "On Certain Issues of State Regulation of Sugar Production and Sale," No. 868, dated 2 June 2000 "Certain Issues of State Regulation of Sugar Production and Sale," No. 142, dated 15 February 2002, and "On State Regulation of Sugar Production and Sale of," No. 1977, dated 25 December 2002.
2701-2710	Prices on fuel-energy resources (coal, coal briquettes, common stove fuel, burning kerosene, fuel peat, firewood, peat briquettes and compressed gas) supplied to population for domestic (home) needs	Establishment of prices and profitability caps or declaration	The Council of Ministers of the Autonomous Republic of Crimea, oblast, the Kyiv and Sevastopol City State Administrations	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and normative documents of local authorities.
2711	Wholesale price caps of enterprises for natural gas used for needs of population and budget organizations	Establishment of wholesale price caps	The National Commission for Regulation of Electricity	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and the Resolution of the NCRE "On the Approval of Wholesale Price Caps on the Natural Gas Used for Needs of Population, and Tariffs on Services on Transportation and Distribution of the Natural Gas to Consumers of Ukraine," No. 337, dated 18 March 1999.
	Retail prices of natural gas used for needs of population and industrial consumers	Establishment of retail prices	The National Commission for Regulation of Electricity	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and the Resolution of the NCRE "On Retail Prices on the Natural Gas Used by Population for Communal-General Needs," No. 310, dated 10 March 1999. Resolution of the National Commission for Regulation of Electricity No. 176 of 16 February 2006 "On Approval of Marginal Levels of Prices of Natural Gas for Industrial Producers"

Codes of Goods	Description of goods prices (tariffs) which are subject to state regulation	Form or nature of price regulation	Authorities of the executive power which effectuate regulation	Normative Acts/ period of application (if applicable)
2716	Tariffs on electricity supplied to the population for domestic (home) and industrial consumers	Establishment of retail tariffs	The National Commission for Regulation of Electricity	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and the Resolution of the National Commission for Regulation of Electricity (hereinafter the "NCRE") "On Tariffs on Electricity Supplied to Population and Populated Areas," No. 309, dated 10 March 1999. Resolution of the National Commission for Regulation of Electricity No. 707 of 26 September 2005.
4901-4911	Norm of production profitability (in the amount of 15%) in case of issuance of printed material at the expense of the state budget and delivery of such material to consumers (norm of profitability in the amount of 5%)	Establishment of profitability norms	It is established by the Ministry of Education and Science of Ukraine, Derzhkomtelradio (State Committee for Television and Radio of Ukraine) and other central authorities of the executive power, which place state order on issuance of printed produce	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996.
70.10 ex 7010.1000 7010.2000	Deposit prices on glass tare purchased from population	Establishment of the fixed and minimum prices or deposit price caps	The Council of Ministers of the Autonomous Republic of Crimea, oblast, the Kyiv and Sevastopol City State Administrations	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and normative documents of local authorities.
9021	Prices on prosthetic and orthopedic appliances and technical means for preventive measures as to disablement and rehabilitation	Establishment of price	The Ministry of Labour of Ukraine	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996.
	Prices on products of hunting, including wild fowl supplied for export	Establishment of price	Derzhkomlispog (State Committee for Forestry of Ukraine) in agreement with the Ministry of Economy of Ukraine for all users of hunting grounds	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996.

Codes of Goods	Description of goods prices (tariffs) which are subject to state regulation	Form or nature of price regulation	Authorities of the executive power which effectuate regulation	Normative Acts/ period of application (if applicable)
	Prices on hunting trophies obtained by foreign citizens	Establishment of price caps	Derzhkomisgosp in agreement with the Ministry of Economy of Ukraine	The Resolution of the CMU "On Establishment of Powers of the Executive Power Authorities and Executive Authorities of City Councils Regarding Price (Tariff) Regulations," No. 1548, dated 25 December 1996, and the Order of State Committee for Forestry of Ukraine "On the Approval of Price Caps on Hunting Trophies Obtained by Foreign Citizens and Tariff Caps on Services Provided to such Citizens," No. 26, dated 28 February 2002.

ANNEX II

Proposed Revisions to TBT Section (Paragraphs 224-241)

- **Technical barriers to trade**

224. The representative of Ukraine said that the principal laws governing standards, technical regulations and conformity assessment were the Laws "On Standardization" No. 2408-III of 17 May 2001, "On Conformity Assessment" No. 2406-III of 17 May 2001, "On Accreditation of Conformity Assessment Bodies" No. 2407-III of 17 May 2001, and "On Metrology and Metrology Activity" No. 113/98 of 11 February 1998; and for mandatory product certification the Laws "On Protection of Consumer Rights", "On State Regulation of Imports of Agricultural Products", "On Labour Protection", "On Quality and Safety of Foodstuffs and Raw Food", "On Communications", "On Highway Traffic", "On Transport", "On Permissible Activity in the Area of Nuclear Energy Use", and "On Tourism". He provided a detailed comparison between Ukraine's basic legislation in this area and the provisions of the TBT Agreement in document WT/ACC/UKR/113, adding that the Supreme Rada had adopted the Law "On making amendments to the Law of Ukraine "On metrology and metrological activity"" No. 1765-IV on 16 June 2004. The Amendments did not contradict the principles of the WTO TBT Agreement and primarily introduced modern international terminology and principles in the area of metrology. He added that the Law "On Veterinary Medicine" and the Cabinet of Ministers' Decrees "On Standardization and Certification" and "On State Supervision of Compliance with Standards, Norms and Rules, and Sanctions for Violations thereof" had been amended in February 2003 to eliminate duplication of supervisory and controlling functions in central agencies of executive power. A new draft Law "On Standards, Technical Regulations and Conformity Assessment Procedures", which would supersede the Laws "On Conformity Assessment" and "On Standardization", had been submitted to Parliament. **The Representative added that Ukraine's Law on Standards, Technical Regulations and Conformity Assessment No. 3164-IV was adopted on 1 December 2005 and came into force in 11 January 2006. The new Law introduced amendments to the Law "On Standardization" No. 2408-III of 17 May 2001 and the Law "On Conformity Assessment" No. 2406-III of 17 May 2001.**

225. Producers were responsible for the marking of their products, and imported goods which did not comply with marking requirements could not be sold in Ukraine. Requirements were specified in the Laws "On Protection of Consumer Rights", "On Quality and Safety of Foodstuffs and Raw Food" and "On State Regulation of Production and Turnover of Ethyl Alcohol, Cognac and Fruit Alcohol, Alcoholic Beverages and Tobacco Products". The Department of Consumer Protection within the State Committee of Ukraine for Technical Regulation and Consumer Policy (Derzhspozhyvstandart) supervised the compliance with marking requirements through random inspections at the retail level. Producers and importers of special dietary food products had to obtain the consent of the Ministry of Health.

226. The State Committee of Ukraine for Technical Regulation and Consumer Policy (Derzhspozhyvstandart) was the central body of executive power in the area of standardization and technical regulation as well as a specially authorized central body of executive power in the area of conformity assessment. The Committee developed and implemented the policy of Ukraine in these areas. In the area of standardization, Ukraine's forthcoming draft legislation would ensure that priority consideration would be given to relevant international standards, guidelines and recommendations as a basis for Ukraine's own standards, technical regulations and associated conformity assessment procedures. **According to paragraph 2 of Article 8 of the Law on Standards, Technical Regulations and Conformity Assessment Procedures, priority should be given to international standards in the development and application of standards.** He noted that

approximately 80 per cent of the 1,314 national standards adopted during 2001-2003 were identical to international standards. In all, some 2,600 harmonized standards were in effect in July 2005, and he estimated that around 8,000 standards would need to be implemented in Ukraine.

227. Concerning technical regulations and conformity assessment, he noted that Ukraine operated a State certification system (UkrSEPRO) based on six certification schemes, i.e. certification of either (i) single products; (ii) groups of products or articles; (iii) serially manufactured products; (iv) products with examination/inspection of production; (v) products with attestation of production; or (vi) products with assessment of a quality system or certification of a quality system. The State Committee had drawn up a list of the products subject to mandatory certification, approved by Order No. 498 of Derzhspozhyvstandart of 30 August 2002. However, the coverage of the mandatory certification system was diminishing gradually as Ukraine was reviewing its regulations to conform with basic international practice, i.e. compliance with standards which - by definition - was voluntary, or mandatory requirements to be promulgated in technical regulations. **Ukraine was encouraged to continue reviewing the list of products subject to mandatory certification with a view to removing lower risk products such as cocoa beans, coffee beans, roasted and ground coffee, and powdered flavours.** Thirty categories of low-risk goods had been removed from the list in 2002 and Ukraine had continued to revise the list to eliminate additional low-risk goods. The updated list of products subject to mandatory certification had been approved by Order of the State Committee for Technical Regulation and Consumer Policy No. 28 of 1 February 2005. Accordingly, 25 categories/subcategories of low-risk products had been removed from the list. Pursuant to the Committee's Order No. 171 of 14 July 2005 an additional category, namely "Optical devices for medicinal purposes", had also been removed from the list. He stated that Ukraine would not resort to mandatory certification if the legitimate objectives could be met in a less trade-restrictive manner. He confirmed that, ~~when approved, the draft~~ **the new** Law "On Standards, Technical Regulations and Conformity Assessment Procedures" would ensure full compliance with the provisions Article 2 of the TBT Agreement.

228. Some Members noted that the Ministry of Agriculture imposed technical regulations and requested Ukraine to provide information about such technical regulations, in particular government-mandated shelf-life standards applicable to imported fish products. Ukraine appeared also to have introduced new restrictions on the port of entry for fish products, which seemed to contradict internationally accepted norms. ~~Ukraine was encouraged to continue reviewing the list of products subject to mandatory certification with a view to removing lower risk products such as cocoa beans, coffee beans, roasted and ground coffee, and powdered flavours.~~

229. The representative of Ukraine confirmed that the Ministry of Agriculture could impose technical regulations pursuant to the Law "On Standardization" No. 2408-III of 17 May 2001. He added that ~~after the adoption of the draft~~ **under the new** Law "On Standards, Technical Regulations and Conformity Assessment Procedures", technical regulations would only be adopted by the Cabinet of Ministers. Fish products were subject to technical regulations through mandatory application of Interstate Standard (DSTU) 1168-86, which mandated a use-by-date term from four months to one year for fish products. Fish products which did not comply with the shelf-life requirements under this standard could not be circulated within the territory of Ukraine. He stated that the requirement applied equally to domestic and imported fish products. He added that for imported products the use-by-date term set by the manufacturer would be accepted, provided that a State sanitary and epidemiological examination had reached the same conclusions. When imports of fish products arrived at the Ukrainian border a Veterinary Inspector verified whether the manufacturer-determined shelf-life exceeded the requirements of Ukraine's standards and, if that was the case, stamped the product with the Ukrainian shelf-life standard. The State Authorities were aiming at harmonizing shelf-life and use-by-date terms for fish products in line with international requirements by amending DSTU 1168-86. He denied that Ukraine had introduced new requirements or border measures on the importation of food, agricultural or fish products. He added that importation of animals, animal

products and foodstuffs was regulated by Veterinary Requirements Regarding Products Imported into Ukraine that Fall under the Control of the State Veterinary Medicine Service. Asked about the existence of multiple testing requirements by different public authorities, he added that imported food raw materials and food products of animal origin were subject to veterinary and/or sanitary examination and certification. **The Draft Law "On Veterinary Medicine", the new Law on Safety and Quality of Food Products, and the Cabinet of Ministers' Decrees "On Standardization and Certification" and "On State Supervision of Compliance with Standards, Norms and Rules, and Sanctions for Violations thereof" had been amended to eliminate duplication of supervisory and controlling functions in central agencies of executive power.** He noted that at present Ukraine had no intention to impose any new technical regulations, but should such technical regulations be imposed, a relevant notification would be provided.

229. bis. The representative of Ukraine confirmed that Ukraine had reviewed its shelf-life requirements. As a result, the Government of Ukraine has begun the process of approving changes to Ukraine's technical regulation on shelf life for fish to bring it into conformity with the CODEX alimentarius guidelines on the labelling of pre-packaged food products. When the revised technical regulation is implemented, Ukraine will no longer enforce previous technical regulations that imposed fish shelf-life restrictions, and Ukraine will accept use-by/ sell-by dates that are determined solely by the manufacturer. The Working Party took note of this commitment.]

230. Some Members welcomed the steps that Ukraine was taking to make technical regulations, standards, and conformity assessment procedures compatible with WTO obligations although Ukraine was also reminded that the adoption of regional standards, regulations or systems would not necessarily constitute compliance with WTO TBT requirements. Some Members suggested that producers should be allowed to choose between different conformity assessment procedures depending on the level of risk to consumers, workers and others, including the choice of a manufacturers' declaration for low to medium risk products. Ukraine was requested to indicate the maximum period of time needed for the conformity assessment procedures, as well as the establishment and publication of conformity assessment fees proportional to the services rendered. Some Members also noted that Articles 10 and 12 of the Law "On Conformity Assessment" restricted the accreditation of conformity assessment bodies to those resident in Ukraine. **These provisions were cancelled by the Law on Standards, Technical Regulations and Conformity Assessment Procedures, which envisaged in the Article 28 that relevant central bodies of executive power shall recommend for designation (not accreditation) only conformity assessment bodies which are residents of Ukraine.**

231. In reply, the representative of Ukraine said that producers could opt between conformity assessment schemes based on the analysis of production documents and technical supervision, inspection of production, attestation of production, and certification or assessment of compliance with ISO 9000. Depending on the type of products, as well as the type of testing and certification scheme, the certification process could take from three days to up to a month. The Law "On Conformity Assessment" (Articles 9 ~~to~~ and 11) allowed manufacturers' declaration of conformity, although such declarations could not substitute for conformity certificates required for goods subject to mandatory certification. **The Law on Standards, Technical Regulations and Conformity Assessment Procedures in the Article 28 states, that the producer of a product shall compile a declaration of conformity for all products subject to technical regulations that are placed in circulation, unless otherwise stipulated in technical regulations.** He added that 11 technical regulations had been adopted covering the conformity assessment modules used in technical regulations and rules for the granting and use of marks of conformity; the safety of low-voltage equipment; electric household refrigerating devices; electromagnetic compatibility; non-automatic weighing devices; and the safety of gas appliances; boilers; simple pressurized vessels; equipment operating under pressure; lifts; and toys. An overview of the recommended certification schemes (models) in Ukraine is presented in

Table 22(a). The duration of the works depended on the certification scheme chosen. A list of fees did not exist; these were calculated case-by-case pursuant to the "Rules on Determinations of the Cost of Works to certify Products and Service", registered with the Ministry of Justice and published in the Official Viysnyk of Ukraine No. 14/1999. The fee was the same for both domestic and imported goods. The fee was calculated according to the formula " $0.1 * \Delta_{\text{min}} * N$ " where Δ_{min} was the non-taxable minimum income of citizens and N was the number of copies of the certificate of conformity. Blank forms were paid for separately (see Table 22(b)).

232. Ukraine allowed the accreditation of private conformity assessment bodies, but had no intention to permit accreditation of non-resident conformity assessment bodies at this stage. However, Ukraine intended to negotiate agreements for the mutual recognition of the results of conformity assessment procedures in accordance with Article 6.3 of the TBT Agreement. Once Ukraine's National Accreditation Agency would become a member of ILAC, Ukraine would work towards increasing the acceptance of test results of laboratories accredited with and notified by ILAC member bodies. **The Law on Standards, Technical Regulations and Conformity Assessment Procedures in the Article 32 states, that results of conformity assessment procedures, (including certificates of conformity and other documents regarding results of testing of products) conducted outside of Ukraine, shall be accepted and recognized in Ukraine, according to international agreements of Ukraine on mutual recognition of the results of conformity assessment. The conformity assessment results may be recognized without concluding relevant international agreements on mutual recognition when Ukraine and the party which requests recognition are members of international or regional conformity assessment organizations.**

233. He added that Order No. 633 of Derzhstandart "On Approval of Procedures for Accomplishment of Works concerned with Certification of Foreign Serially Manufactured Products" of 18 August 1998 had been repealed by Derzhstandart Order No. 514 of 25 September 2002, and thereby been brought into compliance with Article 5 of the TBT Agreement. Imported goods were certified under the procedures and rules applicable to domestically-manufactured products. The introduction of technical regulations on conformity assessment would give manufacturers the right to choose the conformity assessment procedure for their products. Importers could obtain serial conformity certificates, valid for five years based on the selected scheme of certification, prior to the importation of a good subject to mandatory certification. Goods imported with serial certificates were not tested at the border unless it was evident that the goods had been damaged during transportation. In the absence of a serial conformity certificate, testing would be performed upon importation to issue a certificate of conformity for the specific shipment.

234. Regarding the establishment of a TBT Enquiry Point, the representative of Ukraine said that Cabinet of Ministers' Resolution No. 84 of 1 February 1995 had established a National Information Centre of the International Information Network (ISONET), allowing Derzhspozhyvstandart to provide regular information (notifications) on the development and adoption of technical regulations, products subject to mandatory certification, standardization programmes, as well responses to queries of WTO members. Draft conformity assessment procedures were published on the website of the Derzhspozhyvstandart. Draft product standards and technical regulations were not published, primarily for technical and financial reasons. He confirmed that Ukraine would implement the Code of Good Practice for the Preparation, Adoption, and Application of Standards (Annex 3 of the TBT Agreement) as well as the requirements for comments under Item 6 of Annex 2 and Articles 2, 3, 5, and 7 of the TBT Agreement in its national legislation by the date of accession. Ukraine would accordingly establish a formal procedure to give fair consideration to public comments prior to the adoption of final rules. He added that on 31 May 2005, the Cabinet of Ministers had approved a Resolution "On Establishment of a Centre for Processing Inquiries from WTO Member-States and for Notifications (the Enquiry and Notification Point)". He confirmed that the single Enquiry and Notification Point would be operational from the date of WTO accession. [Specific information to follow; for the time being queries can be directed to dstu@issi.kiev.ua or by dialling 380 44 268-92-

73 (telephone) or 380 44 268-54-02 (fax).] **On May 30, 2005 the Cabinet of Ministers approved a Resolution on Establishment of a Center for Processing Inquiries from WTO Member-States and for Notifications (the Inquiry Point). The Inquiry Point will be operational by the date of accession to the WTO.**

235. Having examined document WT/ACC/UKR/113, a Member remained concerned that Ukrainian legislation did not appear to reflect fully the provisions of the TBT Agreement, notably that technical regulations should not be maintained if their objectives could be addressed in a less trade-restrictive manner, and the recognition of other Members' regulations as "equivalent" rather than the principle of "adoption" of the regulations of others. Moreover, the Law "On Standardization" failed to address the issue of non-discrimination, and its text did not specify how decisions were taken regarding mandatory compliance and/or the development of a technical regulation. Parts of the Law "On Conformity Assessment" also appeared to contradict Article 6.4 of the TBT Agreement. Ukraine was also requested to clarify how it would meet the requirements of the TBT Agreement with respect to the preparation, adoption and application of technical regulations by local government bodies and non-governmental bodies, and whether Standard DSTU 1.13-2002 "On Rules of providing notifications to trade partners of Ukraine" met the requirements of Article 2.9 of the Agreement. In general, Ukraine was requested to be in full conformity with the obligations of the WTO TBT Agreement from the date of accession.

236. The representative of Ukraine replied that Ukraine ~~could commit to having~~ **has brought** its legislation in compliance with all the substantive provisions of the Agreement on Technical Barriers to Trade, including the procedural and transparency requirements, from the date of accession. He pointed to the new ~~draft~~ Law "On Standards, Technical Regulations and Conformity Assessment Procedures", which **amended** ~~would supersede~~ the Laws "On Conformity Assessment" and "On Standardization". This ~~draft~~ Law had been **adopted and entered into force, it brings** ~~submitted to Parliament and, once adopted, would bring~~ the legal framework governing standards, technical regulations and conformity assessment procedures into full conformity with the TBT Agreement.

237. The ~~{draft}~~ Law "On Standards, Technical Regulations and Conformity Assessment Procedures" established the legal and organizational framework for the development and application of national standards, technical regulations, and conformity assessment procedures, as well as for the granting of the right to use conformity marks for all products, processes and services, whether of domestic or foreign origin. The main principle of the ~~{draft}~~ Law was that standards, technical regulations and conformity assessment procedures could not be developed, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. This ~~{draft}~~ Law delineated the difference between voluntary standards and obligatory technical regulations, which fulfilled the legitimate goal to protect human, animal and plant health and life, the environment and natural resources, national security, and to prevent deceptive practices. This ~~{draft}~~ Law also defined the stages of development and the bodies responsible for the adoption of standards, technical regulations and conformity assessment procedures. The equivalence of foreign and Ukrainian technical regulations was recognized by this ~~{draft}~~ Law. With regard to transparency requirements, the ~~{draft}~~ Law provided for publication of notices of draft standards; an opportunity for public comments; a publication in which notices of proposed technical regulations and conformity assessment procedures would appear; an authority responsible for making notifications to the WTO; non-discriminatory treatment of comments in the preparation of the final regulation; and a reasonable period of time between the final publication of a technical regulation (or a conformity assessment procedure) and its entry into force, thus providing suppliers with sufficient time to adapt to it. The ~~{draft}~~ Law reflected the principles of the Code of Good Practice for the Preparation, Adoption and Application of Standards.

238. All existing technical regulations (mandatory standards) would be brought in line with the TBT Agreement as the technical regulations would be reviewed and, as necessary, revised to

eliminate all provisions exceeding international requirements and not justifiable under Article 2.4 of the TBT Agreement. In addition, the technical regulations would be revised to assess whether or not the circumstances or objectives giving rise to their adoption continued to exist, or whether the changed circumstances or objectives could be addressed in a less trade-restrictive manner. Appropriate amendments would be introduced to bring existing legislation in compliance with Article 2.7 of the TBT Agreement and address the issue of accepting other Members' regulations as equivalent. Technical regulations that did not comply with Article 3 of the TBT Agreement would also be eliminated. He considered DSTU 1.13-2002 "On the rules for notification of trade partners of Ukraine" to be in conformity with Article 2.9 of the TBT Agreement. This Standard had been developed to meet the requirements of documents G/TBT/W/2/Rev.1 and G/TBT/9, as well as the notification requirements of the TBT Agreement and the provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards. Ukraine would not use standards, technical regulations and conformity assessment procedures in a manner that would be restrictive to international trade, prohibitive to imports, and discriminatory of individual exporters and suppliers. [The complete alignment of technical regulations and standards with WTO norms could not be completed by the date of accession. Ukraine would therefore ask for an implementation period and submit a work program to the Working Party spelling out the steps remaining to be taken, and the required timeframe, to achieve full conformity.] [He confirmed that Ukraine committed to be in full conformity with the obligations of the WTO TBT Agreement from the date of accession provided it received adequate technical assistance from WTO Members.] The State Committee for Technical Regulation and Consumer Policy had prepared an Action Plan for the full harmonization of standards and technical regulations during 2005-2011.

239. [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 document 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.

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 document 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 document WT/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.

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.]

240. [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 de-listing 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.]

241. [The representative of Ukraine stated that, upon accession to the WTO, Ukraine would comply with all the provisions of the Agreement on Technical Barriers to Trade without recourse to any transitional arrangements. The Working Party took note of this commitment.]

[Ukraine commits to be in full conformity with the substantive provisions including procedural and transparency requirements of the WTO TBT Agreement from the date of accession. Ukraine intends to bring all existing technical regulations (mandatory standards) into line with the TBT Agreement. This will be implemented through a program of revision of all existing technical regulations

(mandatory standards) and elimination of those, which exceed international requirements and cannot be justified under Article 2.4 of the TBT Agreement. In addition, remaining technical regulations will be reviewed to assess whether the circumstances or the objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner. Technical regulations that do not comply with Article 3 of the TBT Agreement will also be eliminated. Ukraine intends to implement this program over a period of 5-6 years.]

ANNEX III

Proposed Revisions to SPS Section (Paragraphs 242-252)

- Sanitary and phytosanitary measures

243. In pursuance of Presidential Decree No. 797 "On Additional Measures Towards Acceleration of Ukraine's WTO Accession" of 5 September 2001, key legislation such as the Laws "On Ensuring Sanitary and Epidemic Safety of the Population", "On Quality and Safety of Foodstuffs and Food Raw Materials", "On Protection of Population from Infectious Diseases", "On Veterinary Medicine", "On Responsibility of Enterprises for Violation on the Law on Veterinary Medicine (**Law no longer in effect**)", "On Quarantine of the Plants" and "On Amendments to the other Laws in Connection to the Adoption of the Law on Quarantine" as well as secondary legislation in this area, were being examined and amended as necessary to bring national legislation into conformity with international requirements and standards.

245. A project funded by TACIS had also concluded that Ukraine's system of Border Inspection Points would need to be reviewed. All consignments of imported food of animal origin were subjected to elaborate laboratory tests with part of the costs covered by the owner of the goods. Meat and poultry were, for example, tested for toxic elements (lead, cadmium, arsenic, copper, zinc, mercury), ten different pesticides, micotoxine, microbiological parameters and radionuclide, at a cost of approximately US\$ 120 per consignment. Moreover, these costs were likely to increase in the future as the State would no longer support this activity. In this connection, the representative of Ukraine noted that the Ministry of Health (Order No. 247 of 9 October 2000) had confirmed a new procedure for issuing medical hygiene certificates, and that the Cabinet of Ministers' Resolution No. 1569 "On the Procedure for Collecting the Unified Fee at Points of Crossing the State Border of Ukraine" of 24 October 2002 included a list of the products subject to sanitary and phytosanitary control at the border, determined pursuant to UCC FEA. However, he expected that the **enacted Law on Safety and Quality of Food Products adopted on 5 September 2005 reduced provisions of the new (forthcoming) SPS related legislation would reduce** significantly the number of inspections requiring sampling and testing procedures. In particular, low-risk consignments would be cleared after a standard document verification and a visual inspection. All fees charged in relation to the border inspection would not exceed the actual cost of services rendered.

247. In reply, the representative of Ukraine added that efforts were under way to submit to the Supreme Rada draft laws amending SPS-related provisions contained in the Laws "On Veterinary Medicine", "On Quality and Safety of Food and Food Raw Materials", "On Plant Quarantine", "On Foreign Economic Activity", "On Ensuring Sanitary and Epidemic Safety of Population", "On State Regulation of Import of Agricultural Products", ~~"On the Protection of Population from Infectious Diseases"~~, and "On Pesticides and Agrochemicals". Ukraine intended to consolidate all existing SPS provisions into three separate framework laws, i.e. a Law on Veterinary Medicine, a Law on Safety and Quality of Food Products, and a Law on Plant Quarantine, which would be the only laws governing SPS matters. The framework laws would incorporate the provisions of the WTO SPS Agreement related to terminology; harmonization; equivalence in measures; risk assessment and appropriate level of protection; adaptation to regional conditions; transparency (enquiry and notification points); and inspection, control and approval procedures. Ukraine had drafted the amendments for bringing the relevant SPS-related provisions into full conformity with the WTO SPS Agreement, including substantive provisions, procedural and transparency aspects. These draft laws had been submitted to Parliament for consideration **and were all adopted by the VR by the end of January 2006**.

249. The new Law on Safety and Quality of Food Products would cover all food products regardless of content and stage of processing. The Law would introduce major conceptual changes in

the production and handling of food products by introducing best international practices encompassing a food-chain approach to safe food, including mandatory implementation of HACCP systems in food producing enterprises. Thus, the producer would become responsible for the suitability (safety and acceptability) of food for human consumption, enabling the State to reduce its role to that of verifying the conditions and practices necessary to produce safe food. In addition, the quality of food products would be determined according to (voluntary) standards and, as appropriate, minimum quality specifications defined in technical regulations. The Law on Safety and Quality of Food Products would also include a clear delineation of authority between the Veterinary Department and the Sanitary Service, minimize the documentation requirements for imported food products, streamline border control procedures based on the risk presented by a particular food product, establish requirements for the accreditation of all food control laboratories, and ensure broad acceptance of international standards and recommendations, to be adopted by the National Codex Alimentarius Commission of Ukraine. Minor amendments to the Laws "On Ensuring Sanitary and Epidemiological Safety of the Population", "~~On Protection of the Population from Infectious Diseases~~", and "On Pesticides and Agrochemicals" would ensure that the new Law would be the only legislation in Ukraine governing the importation of food products.
