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Accession of Ukraine**

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Additional Questions and Replies

The following submission, dated 14 August 2006, is being circulated at the request of the Delegation of Ukraine.

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II. ECONOMIC POLICIES

- Pricing Policies

Question 1

Paragraph 48: We prefer the first sentence in brackets "by eliminating the minimum price".

Answer:

According to the Law No.178/96 of 7 May 1996 "On the licence fee for production of spirits, alcohol and tobacco products" Ukraine prefers the following wording of the last sentence: "He confirmed that before the date of Ukraine's WTO accession, the pricing policy that is applied to bitter aromatized drinks would be brought in line with the provisions of Article III GATT 1994 regarding the abolition of the application of a minimum price to imported goods."

Question 2

Paragraph 49: We are fully aware of the fact that the Ukrainian Government has provided so far a large amount of information to the WTO Secretariat concerning various trade related policies. Therefore, it would be highly appreciated if delegation of Ukraine could indicate on respective document where information enumerated below is sought.

We endorse the view expressed by one WTO Member under paragraph 49 of the Draft Report pertaining to the minimum price regulation towards domestic beet sugar production in parallel to high market access restrictions would constitute effective leverage to discriminate against foreign suppliers, especially those where cost of production and transportation to Ukrainian market is high. Therefore, further clarification is sought whether current policy is in compliance with Article III of the GATT.

Answer:

Minimum prices established for the sale of sugar produced from sugar beet within the production quota A in Ukraine do not discriminate against foreign suppliers of sugar. Imported sugar as well as sugar produced from raw cane sugar imported to Ukraine is sold in Ukraine at domestic market prices. Imported sugar does not fall within the requirements regarding the minimum prices applicable to the domestically produced sugar. Minimum prices are used to provide price support to the market price for domestic agricultural producers of sugar beet. The import tariff is the only current restrictive tool on imports of sugar to Ukraine.

Please find more complete information on this matter in paragraph 50 of document WT/ACC/SPEC/UKR/Rev.4.

Question 3

Paragraph 54: Ukraine is preparing a draft law modifying the Law "On State support of agriculture in Ukraine" which would repeal the minimum purchase price applicable to imports, as well as provisions on the introduction of quotas on imports or exports.

When is this law foreseen to be approved?

Answer:

Ukraine confirms that the Ministry of Agrarian Policy has developed a draft law introducing changes to the Law "On State Support of Agriculture in Ukraine" which would repeal the provisions on minimum purchase prices applicable to imports, as well as the provisions on the introduction of quotas on imports or exports. These changes would be approved before Ukraine's accession to the WTO.

This Draft law is part of the WTO package of laws proposed for enactment by the new Rada.

Question 4

Paragraph 55: The market support measures described in Paragraph 55 need to be included in Ukraine's AMS. We would request Ukraine to update its AMS figures accordingly and submit them to the Working Party.

Can Ukraine explain whether this system will expire end 2006, or whether it will still continue for further years?

Answer:

In the calculation of Ukraine's AMS for the base period 1994-1996, the support of market prices of 17 agricultural products was included. During 2000-2002, the measures to support the market price covered only sugar and sugar beet. Since 2005, Ukraine resumed the system of supporting market prices of grain crops. Grain crops for which state procurement prices have been established since 2005, also were covered by the support system during the base period years. This system of market price support shall not be discontinued after 2006.

In the following years, when preparing notifications of domestic support Ukraine will include the market price support in AMS and reduce this support in line with the assumed commitments regarding the general AMS reduction.

Question 5

Paragraph 62 and Table 4: – Gas Pricing. We note in the Table 4 that the setting of retail price of gas for industrial customers has been introduced recently by Resolution No. 176 of 16 February 2006. What are the prices set by this Resolution for industrial customers, and what are the prices for domestic households?

We would also request Ukraine to submit this resolution to the Working Party.

Answer:

In accordance with Resolution No. 176 of 16 February 2006, of the National Commission on Regulating Electric Power Sector of Ukraine "On Approving Ceiling Prices of Natural Gas Supplied to Industrial Consumers" the ceiling level of the natural gas price supplied to industrial consumers is established at UAH 548.00 for 1,000 m³ exclusive of VAT and natural gas transportation and supply tariffs. For the population in accordance with Resolution No. 605 of 29 April 2006, of the Cabinet of Ministers of Ukraine "On Some Issues of Activities of the National Joint-Stock Company "Naftogaz Ukrainy," from 1 July 2006, the natural gas price was established at UAH 414.00 for 1,000 m³ including VAT and a duty in the form of a targeted mark-up of the current tariff, natural gas transportation and supply tariffs.

Provided below is the text of Resolution No. 176 of 16 February 2006:

"Resolution No. 176 of 16 February 2006, of the National Commission on Regulating Electric Power Sector of Ukraine "On Approving Ceiling Prices of Natural Gas Supplied to Industrial Consumers"

In order to implement the Order of the Prime-Minister of Ukraine No. 6035/1/1-06 of 14 February 2006 and the Resolution of the Cabinet of Ministers of Ukraine No. 128 of 9 February 2006, within the authorities delegated by the Edict of the President of Ukraine No. 213 of 14 March 1995 "On Measures to Ensure the Operation of the National Commission on Regulation of Electric Energy of Ukraine", in line with the Resolution of the Cabinet of Ministers of Ukraine No. 1729 of 7 December 2001 "On the Procedure for Providing the National Economy and Population with Natural Gas", taking into account the approval of the boundary level of prices by the Ministry of Economy of Ukraine (Letter No. 89-24/15 of 16 February 2006) the National Commission on Regulation of Electric Energy of Ukraine resolves:

1. To approve the boundary price for natural gas supplied for the industry consumers in the amount of UAH 548.00 per 1,000 m³, the value added tax and tariffs for transportation and supply of natural gas being not included.
2. To consider invalid the NCRE Resolution No. 1151 of 12 December 2005 "On the Approval of Boundary Price for Natural Gas Supplied for the Industry Consumers by the NJSC "Naftogas Ukrayiny", SC "Gas Ukrayiny", gas supplying enterprises and enterprises engaged in the gasification and CSC "Kyivgazpostach".
3. This Resolution shall come into effect on 20 February 2006."

Question 6

Paragraph 66: Railway Fees. What is the situation as regards adopting the resolution that will harmonise the rest of the railway tariffs?

Answer:

The Draft Resolution of the Cabinet of Ministers of Ukraine "On the Indexation of Tariffs for Railway Transportation" lost its effect, since the Resolution of the Cabinet of Ministers of Ukraine No. 673 was adopted on 16 May 2006. This Resolution empowers the Ministry of Transport and Communication of Ukraine with the function of establishing the tariffs for freight railway transportation.

Thereby, the Compilation of Tariffs for Railway Transportation was drafted. It shall be approved by the relevant Order of the Ministry of Transport and Communication.

We confirm that Ukraine would harmonize differential railway tariffs for the transportation of goods by the date of accession.

Question 7

Paragraph 67: Commitment language - We propose removing all brackets from the Commitment language. The railway commitment language should be replaced by the following:

"The Representative of Ukraine confirmed that all rail transportation fees, including basic fees, surcharges and rebates, would upon accession be applied without discrimination in law or in fact based on whether the goods are transported between domestic locations, whether the goods are imported or exported (whether by land or transported from or to a port, and without

discrimination in law or in fact depending on the country of origin or destination) or whether they are in transit."

Answer:

Ukraine doesn't object to the said changes and proposes to redraft paragraph 67 as follow:

[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:4 and III:9 of the GATT 1994 and in Article VIII of the General Agreement on Trade in Services (GATS).

The Representative of Ukraine confirmed that all rail transportation fees, including basic fees, surcharges and rebates, would upon accession be applied without discrimination in law or in fact based on whether the goods are transported between domestic locations, whether the goods are imported or exported (whether by land or transported from or to a port, and without discrimination in law or in fact depending on the country of origin or destination) or whether they are in transit. 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.]

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 8

Paragraph 85: What is the situation as regards the legislation providing for the right to appeal in matters falling under Article X.3(b) GATT (customs) and other WTO related matters?

Answer:

Presently, the right to challenge issues in economic courts of Ukraine is stipulated by the Customs Code of Ukraine that was passed with due regard to the provisions of WTO Agreements and EU legislation. In particular, Article 96 of the Code stipulates that the decision of customs authorities to prohibit or allow certain goods to cross the customs border of Ukraine may be challenged in court, which is in line with Article X.3 (b) GATT.

In this connection, Ukraine assumed the following commitment.

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.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 9

Paragraph 89: Licensing fees for alcohol and tobacco. The amounts of licensing fees needs to be updated in the text, as well as table 8(b) needs to be updated to reflect the text below (the UAH 100,000 additional fee and the fee of UAH 3,000 of the export licence are not mentioned):

The law "On amendments to Certain Legislative Acts of Ukraine", and its point 7 concerning the law "On State regulation of Production of and Trade in Ethyl Alcohol, Cognac and fruit spirits, Alcohol beverages and tobacco products", reconfirms the current annual fees of UAH 500,000 (€83,333) as regards importation of alcoholic beverages, if the volume is 75,000 decalitres, after which an additional UAH 1,000,000 (€166,666) needs to be paid. The fee on importation of tobacco products is reconfirmed at UAH 500,000. Exportation of alcohol and tobacco is subject to a fee of UAH 3,000 (€500).

Answer:

Ukraine will update the text, as well as Table 8(b) in the due course.

Question 10

Paragraph 91: What is the current situation as regards modifying the legislation to bring the alcohol and tobacco fees in compliance with Article VIII GATT?

The text of this paragraph should be updated to reflect the current situation.

Answer:

To bring licensing fees in line with Article VIII GATT, an appropriate draft law "On Introducing Changes to Some Legislative Acts of Ukraine (Regarding Licence Fees and the Excise Duty on the Manufacture of Spirits, Alcoholic Beverages and Tobacco Products)" has been developed and will be submitted for consideration of the competent authorities (available through document WT/ACC/UKR/140/Add.1). Ukraine is expecting comments on this draft law.

Question 11

Paragraph 95: Medicines - What is the situation with pure import and/or export of medicines? What type of licence is required? (production, wholesale and retail subject to activity licence, and no additional licence for imports required, but how about the other way round?)

Is importation conditional of production or retail of medicines?

Answer:

Export and import transactions with medicines do not require a licence, except for transactions to export (import) psychotropic and narcotic medicines (to carry out transactions with such medicines, a licence and a certificate are required), which provides the possibility of imports not depending on the availability of production or retail trade in medicine.

Question 12

Paragraph 96: Registration fees for medicines should be brought down to correspond to the level of the cost of services rendered.

Answer:

Ukraine has established effective fees for state registration (re-registration) of medicines and tariffs for inspection of registered materials in the State Pharmacological Centre of the Ministry of Health of Ukraine, which are the same for all business entities. The cost of registration and inspection of

registered materials is on a par with the value of services provided and is diversified by type of application.

Question 13

Paragraph 97 and Table 9 – Pesticides and Agro-chemicals: Registration fees should be brought down to correspond to the cost of services rendered.

What are the requirements for pure import and export activities of pesticides and agro-chemicals? Is a licence required and if so, what licence?

Answer:

Ukraine has established effective fees for state registration (re-registration) of pesticides and agricultural chemicals, which are the same for all business entities. The amount of registration fee is on a par with the value of services provided.

Export and import transactions do not require a licence.

Question 14

Paragraph 98: Can Ukraine confirm importers are under no requirements to produce or distribute as regards any products, including medicines, agro-chemicals and pesticides.

Answer:

There is no requirement to importers to be manufacturers or distributors of medicines, agro-chemicals and pesticides.

Question 15

Paragraph 100 - Commitment language - Should add the following after the first sentence. "The representative of Ukraine confirmed that registration fees for medicines, pesticides and agro-chemicals and licensing fees for importation and exportation of alcohol beverages and tobacco will be in compliance with Article VIII GATT, and brought to the level of cost of services provided upon accession. He also confirmed that upon accession, the licensing fees for importation and exportation of alcohol beverages and tobacco will be brought and to the level of an annual fee of approximately €60, which is the corresponding licensing fee for other products commensurate to the cost of services provided."

Answer:

As regards payment for the licence to import and export alcoholic beverages and tobacco products, to bring legislation in line with Article VIII GATT, a relevant draft law is part of the WTO package of laws proposed for enactment by the new Rada. The amount of registration fees for medicines, pesticides and agricultural chemicals is on a par with the value of services provided, which meets the requirements of Article VIII GATT. Ukraine does not mind adding the following sentence to the said commitment: "The representative of Ukraine confirmed that registration fees for medicines, pesticides and agricultural chemicals as well as licence fees to import and export alcoholic beverages and tobacco products will meet the requirements of Article VIII GATT and will, upon WTO accession, be brought to the level of the cost of services rendered."

A. IMPORT REGULATIONS

- **Ordinary customs duties**

Question 16

Paragraphs 105-106: We would like to express our concerns on Ukraine intention to raise its import duty on petroleum products up to €60 per ton. (The law passed first reading in November 2005 but has not been adopted yet). We would like to point out that such an increase is in breach of standstill commitment of WTO accession candidates and would strongly urge Ukraine not to carry out this increase, or any other unilateral tariff increases during the period of WTO accession negotiations.

Answer:

Ukraine took note of these comments.

- **Fees and charges for services rendered**

Question 17

Paragraph 126: Commitment - The paragraph needs to be changed to reflect the fact that railway fees and alcohol/tobacco are removed from this section. Change numbers of reference paragraphs and remove brackets of Article III. Delete reference to Article V and XI.

Answer:

Ukraine has no objections to the proposed changes.

Brackets have been removed.

"The representative of Ukraine confirmed that Ukraine would ensure that fees and charges for services rendered on or in connection with importation, exportation or trade in transit, those listed in Tables 12(a), 12(b) 12(c) and 12(d), described in paragraphs 123 and 126, 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, VIII and X 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."

- **Application of internal taxes on imports**

- **Excise Tax**

Question 18

Paragraph 130: This delegation is seeking for update on the "Law on Amending Certain Laws on Issues of Excise Taxation" mentioned in paragraph 130 of the Draft Report, in particular, the issue of affixing "excise stamp" on bottles containing alcohol beverages prior importation to the domestic Ukrainian market.

Answer:

The Law of Ukraine of 25 March 2005 No. 2505-IV "On Amendment of the Law of Ukraine "On the State Budget of Ukraine for 2005" and Some Other Legislative Acts of Ukraine" introduced changes to the Law of Ukraine of 15 September 1995 No. 329/95-VR "On the Excise Duty on Alcoholic Beverages and Tobacco Products" stipulating that excise duty stamps shall be sold to domestic producers provided the excise duty is paid.

Therefore, in accordance with the Law of Ukraine of 15 September 1995 No. 329/95-VR "On the Excise Duty on Alcoholic Beverages and Tobacco Products" and the Regulation on the Manufacture, Storage, and Sale of Excise Duty Stamps, Marking of Alcoholic Beverages and Tobacco Products approved by Resolution No. 567 of the Cabinet of Ministers of Ukraine of 23 April 2003, the sale of excise duty stamps and marking of alcoholic beverages either brought into the territory of Ukraine or manufactured by domestic producers shall be carried out based on the same principles, which fact is noted in the last sentence of the following passage "Foreign producers affix excise duty stamps to alcoholic beverages and tobacco products intended to be brought into the territory of Ukraine during their manufacture, as domestic producers do, therefore there is no discrimination in connection with the requirement of affixing excise duty stamps to imported alcoholic beverages and tobacco products."

- VAT

Question 19

Paragraph 139: Our delegation is seeking for explanation of the scheme on how the "commercial bank – agriculture VAT accumulation" principle works. What banks are entitled to accumulate VAT payment on their banking accounts. Since VAT exemption constitutes specific subsidy to particular industry (ies) the question is if Ukrainian Government how the Ukrainian government treat this subsidy in its Total AMS.

Answer:

Agricultural producers of all forms of ownership and business sell milk and meat in live weight to processing enterprises. The said sale transaction is taxed at a zero rate. This means that agricultural producers do not have tax liabilities resulting from such sale transaction and the amount of tax credit resulting from this transaction is refunded from the state budget (due to the lack of a source to refund the VAT paid as part of the price of purchased tangible assets). Transactions by processing enterprises to sell milk and milk products, meat and meat products produced from milk and meat in live weight sold by agricultural producers are taxed at the rate of 20 per cent. Pursuant to general accounting rules, based on the results of the above sale transactions, processing enterprises determine the amount of VAT that they must pay to the budget (that is, the difference between the "incoming" and "outgoing" VAT). Having determined the amount of VAT payable to the budget, processing enterprises do not transfer it to the budget but rather accumulate it in separate bank accounts and transfer these funds to agricultural producers as subventions for milk and meat sold by the latter to the processing enterprises in live weight.

The mechanism for accumulating funds by agricultural producers:

On selling agricultural products other than milk and meat, agricultural enterprises accrue VAT at the rate of 20 per cent.

Based on results of the above sale transactions, agricultural enterprises, pursuant to general accounting rules, determine the amount of VAT that they must pay to the budget (that is, the

difference between the "incoming" and "outgoing" VAT). The VAT amount determined so is not paid to the budget but rather is transferred to separate bank accounts of agricultural producers opened in the commercial banks that service them. This amount is used to purchase material and technical resources used for production purposes.

The above mechanisms of VAT levying in the agricultural sector are subsidizing the sector at the cost of revenue foregone by the state in favour of agricultural producers. The advantage of such subsidies is that the term during which the funds reach the agricultural producers becomes shorter due to the fact that the funds are immediately credited to separate accounts (the accounts are separate to enable control over the use of state funds) and are not transferred to the state budget and only then are transferred to agricultural producers.

As to its showing in the Ukrainian domestic support tables, the VAT accumulation is an input subsidy only for agricultural producers of agricultural products. It does not cover industrial enterprises processing agricultural products and, therefore, is included in table DS:9 as non product-specific support. Subventions for milk and meat are product-specific subsidies directed at specific products produced by agricultural producers and, therefore, are included in table DS:6.

Please see also VAT scheme in annex for better understanding the VAT accumulation mechanism (Annex 1).

Question 20

Paragraphs 139 and 140: These VAT exemption regimes (milk and meat producers, cumulation) are subsidies for agricultural production and should appear in the tables concerning domestic support for agriculture.

Answer:

Ukraine includes these subsidies in the tables for domestic support of agriculture and would observe this approach after WTO accession.

Question 21

Paragraph 143: What is the current situation as regards amending the discriminatory provisions of Article 8?

Answer:

The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Taxation of Agricultural Producers and Support of Social Standards for their Employees" introduced changes to the main laws on taxation, in particular, the Law of Ukraine "On Value Added Tax" by supplementing it with a new Article 8-1 "Special Regime for Taxation in the Field of Agriculture, Forestry and Fishery." Therefore, in the future, Article 8-1 of the Law of Ukraine "On Value Added Tax" should be discussed.

Currently, the said issue is regulated by the Law of Ukraine No. 2987 of 18 October 2005, "On Introducing Changes to the Law of Ukraine "On Value Added Tax" Regarding Taxation of Agricultural Enterprises" that suspends Article 8-1.

To finally regulate the said issue, the draft law of Ukraine on introducing changes to the Law of Ukraine "On Value Added Tax" has been developed regarding special regimes of taxing agricultural producers. It proposes to abrogate Article 8-1, which would provide an opportunity to avoid a

discriminatory approach in imposing the value added tax on transactions carried out by agricultural enterprises and agricultural import transactions.

This Draft law is part of the WTO package of laws proposed for enactment by the new Rada.

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

Question 22

Paragraph 164: Scrap metal – what is the situation as regards amending the law to eliminate import approval requirement for scrap metal?

Answer:

This Draft law is part of the WTO package of laws proposed for enactment by the new Rada.

Question 23

Paragraph 166: Please verify table 14(b) which states that non-automatic licenses are free of charge. The text indicates fee of UAH 780.

Answer:

In Table 14 (b) the term "Free charge" refers to a prior approval before issuing a licence rather than the issuance of a non-automatic licence (the licence fee is UAH 780).

Question 24

Paragraph 171: Commitment - We would like to maintain the language on import ban of vehicles to be abolished upon accession.

Answer:

The Draft Law of Ukraine "On Amendment of the Law of Ukraine "On Some Issues of Importation of the Motor Vehicles into the Customs Territory of Ukraine" on elimination of the restrictive period for importation of motor vehicles into the customs territory of Ukraine, which have been in use, is part of the WTO package of laws proposed for enactment by the new Rada.

- **Customs valuation**

Question 25

Paragraph 175: Could Ukraine forward a copy of the final version of the draft Law to amend the Customs Code to ensure the integration of the Interpretative Notes to Ukraine's legislation. Could Ukraine also submit the Order of the State Customs Service "On the Approval on Methodological Recommendations".

Could Ukraine also give the indicative dates for adoption of these pieces of legislation.

Answer:

Please see document WT/ACC/UKR/140/Add.1.

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

Question 26

Paragraphs 197-206: We fully support a view of the Members of the Working Party that Ukraine is to amend or rather replace its current antidumping legislation prior its accession to the WTO. In particular we seek for improvement of national Ukrainian legislation on determination of normal value, export price and determination of injury to domestic industry, role of government authorized bodies and procedural schemes. We also seek for clarification on how the *de minimis* rule would be addressed. We request the delegation of Ukraine to update Members on current situation with all antidumping measures being in place, in particular on electric filament bulbs.

Answer:

For better understanding Ukraine is asking this Member to formulate the question regarding Ukrainian anti-dumping legislation, in particular, in respect of the requirements as to the determination of normal value, export price, determining harm and procedural schemes more clearly. In case this Member believes that Ukrainian anti-dumping legislation does not meet the WTO requirements, please, provide specific comments and indicate Articles of the relevant legislative acts whose provisions, in the opinion of this Member's experts, do not meet WTO requirements.

As to the rule of applying the "lower" duty, it is stipulated by part eleven of Article 14 and part five of Article 16 of the Law of Ukraine "On the Protection of Domestic Producers against Dumping Imports."

As to the current situation regarding the application of ultimate anti-dumping measures to imports in Ukraine of electric filament bulbs originating in the Kyrgyz Republic, we would like to inform you that the said anti-dumping measures were applied on 15 January 2003, and their term of application ends on 15 January 2008. The review of the applied anti-dumping measures is regulated by Articles 18-22 of the Law of Ukraine "On the Protection of Domestic Producers against Dumping Imports."

Question 27

Paragraphs 198 and 201. Can Ukraine confirm that the modified legislation does not require any additional implementing regulations?

Answer:

Ukraine confirms that the modified legislation does not require any additional implementing regulations.

Question 28

Paragraph 206: We support maintaining the second paragraph of the commitment language.

Answer:

Ukraine agrees with the said comment.

B. EXPORT REGULATIONS

Question 29

Table 17. We would like to point out that there are technical errors in table 17 a), b), and c). We would urge Ukraine to verify the tables and to correct them.

Answer:

Verified tables 17 a), b), and c) are attached in Annex 2.

Question 30

Paragraph 209 – Export Duties. We consider the duty reductions indicated for live cattle, hides and skin and ferrous and non-ferrous scrap in Table 17 c) still too high and urge Ukraine for further reductions of these duties.

Answer:

Ukraine took note of these comments.

Question 31

Paragraph 215 – Minimum Export Prices (Table 18): We support this text. Minimum export prices should be eliminated for agricultural products. Otherwise these would affect the level of the export duties on live cattle, hides and skin and oil seeds. This is double subsidy for the products of question (export duty and minimum export price).

Answer:

Ukraine took note of these comments.

Question 32

Paragraph 216 - Commitment language: The commitment language as it currently stands is not acceptable. We would like to see it replaced by the following:

"The representative of Ukraine confirmed that, from the date of accession, Ukraine would apply export duties, export restrictions as well as internal regulations and taxes applied on or in connection with exportation in conformity with the WTO Agreement, in particular with Article I of the GATT 1994 and Article 11 of the Agreement on Safeguards. He further confirmed that Ukraine would reduce export duties in accordance with the List of Concessions and Commitments annexed to the Protocol of Accession and that the List of Concessions and Commitments included all export duties applied by Ukraine. He also confirmed that Ukraine would not introduce new, reintroduce or increase export duties, nor introduce or maintain internal taxes applied on or in connection with exportation in excess of those imposed on like products destined for internal sale, unless justified under an exception of the WTO Agreement. In addition, he confirmed that Ukraine would not resort to any other measures or practices that restrict exports in ways that are not in conformity with the WTO Agreement, and that it will act swiftly to bring any such other measures or practices in compliance with the WTO Agreement. The Working Party took note of these commitments."

Answer:

Ukraine agrees with the proposed wording for the commitment.

Question 33

Paragraph 228 – Commitment: We prefer to maintain the second paragraph of the commitment language which states that the export ban of non-ferrous scrap will be eliminated upon accession.

However, we want to point out that as this ban will be replaced by export duties upon accession, and these duties will be gradually reduced after accession, these should be added to paragraph 209 which deals with export duties (we also note that the foreseen duties and their reduction schedules as proposed by Ukraine have already been included in Table 17 c)).

Answer:

Ukraine has no objections to the said proposition.

[The representative of Ukraine confirmed that from the date of accession the export licensing requirements and other export restrictions and control requirements listed in Table [19(b)] and paragraphs [218 and 220] of this report or any introduced in the future would be applied in conformity with WTO provisions, including those contained in Articles XI, XVII, XX and XXI of the GATT 1994. [He also confirmed that any existing or future export licence fee would be consistent with Article VIII the GATT 1994.] The export ban on nonferrous scrap metal would be eliminated from the date of accession. The Working Party took note of this commitment.]

- **Export subsidies**

Question 34

Paragraph 232: We support maintaining the second paragraph of the commitment language.

Answer:

Ukraine has no objections to the second paragraph of the commitment language in paragraph 232.

C. INTERNAL POLICIES AFFECTING TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 35

Paragraph 249: We support maintaining the second paragraph of the commitment language.

Answer:

Ukraine has no objections to the second paragraph of the commitment language in paragraph 249.

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

Question 36

Paragraph 268: Our proposed commitment language OK, except page 101, third paragraph last sentence. The following text should be deleted: ..." according to the needs of the Ukrainian economy." The said paragraph is attached:

The representative of Ukraine confirmed Ukraine's 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 envisaged 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. ~~according to the needs of the Ukrainian economy.~~

Answer:

Ukraine does not object to the proposed changes.

- **Sanitary and phytosanitary measures**

Question 37

Paragraph 282: Commitment language OK with words "national competent bodies" (words "any foreign or international can be deleted). However, the following text of the same sentence should be deleted because it is unclear and was not part of the commitment language we proposed: "without prejudice to provisions in the Agreement on Sanitary and Phytosanitary Measures".

The text is attached:

The representative of Ukraine stated that from the date of accession to the WTO his Government would apply all its sanitary and phytosanitary measures consistently with the requirements of the WTO Agreements, in particular with the 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 ~~any foreign or international~~ national competent bodies, ~~without prejudice to the provision in the Agreement on Sanitary and Phytosanitary Measures,~~ and Ukraine would ensure that from the date of accession its criteria for granting prior authorization or securing the required certification for imported products would be published and available to traders. He confirmed that sanitary and other certification requirements in Ukraine were administered in a transparent and expeditious manner, and that his Government would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments.

Answer:

Ukraine has no objections from including/deleting of the following text from the commitment language: "without prejudice to provisions in the Agreement on Sanitary and Phytosanitary Measures" (the said text was proposed by another Member).

- **State trading enterprises**

Question 38

Paragraph 294: We support maintaining the commitment language of both two paragraphs, brackets can be removed from both of them.

Answer:

Ukraine agrees to remove the square brackets from the commitment language of the second paragraph. With aim to avoid duplication of commitments in this paragraph, Ukraine proposes to delete the commitment language of the first paragraph.

- **Government procurement**

Question 39

Paragraph 319: We prefer the text in brackets "immediately after accession".

Answer:

The commitment language for this section should be replaced with the following text:

[The representative of Ukraine confirmed that upon WTO accession, Ukraine would start negotiations on the accession to the Government Procurement Agreement. He confirmed that Ukraine would conduct procurement in a transparent manner and apply MFN treatment providing all foreign suppliers with equal opportunity to participate in that procurement pursuant to the principle of MFN treatment, i.e., if a procurement was opened to foreign suppliers, all foreign suppliers would be provided with equal opportunity to participate in that procurement. The Working Party took note of these commitments.]

- **Transit**

Question 40

Paragraph 327 – Commitment: Should be replaced with the following text:

"The representative of Ukraine confirmed that Ukraine would apply all its laws, regulations and other measures governing transit of goods (including energy), such as those governing charges for transportation of goods in transit by road, rail and air, in conformity with the provisions of Article V of the GATT 1994 and other relevant provisions of the WTO Agreement. The Working Party took note of this commitment."

Answer:

Ukraine doesn't object to the following wording of commitment:

"The representative of Ukraine confirmed that upon accession Ukraine would apply all its laws, regulations and other measures governing transit of goods, such as those governing charges for transportation of goods in transit by road, rail and air, in conformity with the provisions of Article V of the GATT 1994 and other relevant provisions of the WTO Agreement. The Working Party took note of this commitment."

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 41

Paragraphs 355 and 356, 371 and 372 – Geographical Indications: We need to see the draft law Ukraine refers to. When can this be available?

Answer:

We will provide the draft law of Ukraine on the protection of trade marks, geographic indications and commercial names in the due course.

Question 42

Paragraph 384 – Data protection – Commitment language: we support the second commitment language. However, the protection period should be changed to be six years for pharmaceuticals, not five.

Answer:

We also support the second version of the commitment, however, we believe that 5 years of protection of confidential information is sufficient to ensure the observance of Article 39.3 TRIPS.

Question 43

Enforcement – Paragraphs 403, 404 and 415 – see comments in the text below:

403. In establishing such procedure, Ukraine would preserve the rights of the defendant by ensuring that (i) where ~~measures to preserve evidence were adopted~~ ~~measures to preserve evidence was passed~~ a ruling ordering measures to preserve evidence was passed without the other party having been heard, the parties affected shall be ~~given notice~~ ~~sent a copy of such ruling~~, without delay after the execution of the measures ~~at the latest~~. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the ~~notification of~~ ~~furnishing of the rulings on~~ the measures, whether the measures shall be modified, revoked or confirmed; (ii) ~~measures to preserve evidence might be~~ ~~in passing the ruling on measures to preserve evidence the court may~~ ~~might~~ require that *the measures* ~~be~~ subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant; (iii) the measures to preserve evidence ~~could~~ ~~might~~ be revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which might be claimed, if the applicant did not institute ~~within a reasonable period,~~ proceedings leading to a decision on the merits of the case before the competent judicial authority ~~the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of 31 calendar days, whichever is the longer~~ ~~within ten working days from the date on which the ruling ordering measures to preserve evidence was passed~~; and (iv) where the measures to preserve evidence were revoked, or where they lapsed due to any act or omission by the applicant, or where it was subsequently found that there had been no infringement or threat of

infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

404. The representative of Ukraine confirmed that Ukraine would establish a judicial procedure that would allow right holders to obtain preventive measures ~~{aimed to secure a claim}~~ in case of allegation of intellectual property right infringement. In particular, (i) Ukraine shall ensure that the judicial authorities may, at the request of the applicant (a) take measures to secure a claim through seizure of property or funds owned or held by the defendant or other persons; to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right-holder; prohibit other persons to make payments or transfer property to the defendant; suspend the sale of the seized property, if a claim is filed with respect to the right of ownership to such property or exclusion of such property from the list of seized property. Persons, who are guilty of violating the prohibition to take certain actions or transfer property to the defendant, may be subjected to a fine by a ruling of the court. In addition, the plaintiff may recover damages caused by the failure to comply with the ruling securing the claim. Such measures may be taken against an intermediary whose services are used by a third party to infringe intellectual property rights, in particular to infringe a copyright or a related right. (b) pass a ruling ordering the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce; (ii) In the case of an infringement committed on a commercial scale, Ukraine shall ensure that, if the injured party demonstrated circumstances likely to endanger the recovery of damages, the judicial authorities *can* ~~might~~ pass a ruling ordering the preventive seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities ~~may~~*might* pass a ruling ordering the communication of bank, financial or commercial documents, or appropriate access to the relevant information; (iii) The judicial authorities shall, in respect of the measures referred to under (i) and (ii), have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant was the right holder and that the applicant's right was being infringed, or that such infringement was imminent; (iv) Ukraine shall ensure that the preventive measures referred to under (i) and (ii) might, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the right holder; and (v) In establishing such procedures, Ukraine would preserve the rights of the defendant by ensuring that (a) In the event of preventive measures ~~{aimed to secure a claim}~~ taken without the defendant being heard, the parties shall be so informed without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed; (b) the preventive measures ~~{aimed to secure a claim}~~ referred to under (i) and (ii) were revoked or otherwise ceased to have effect, upon request of the defendant, if the applicant did not institute proceedings leading to a decision on the merits of the case before the competent judicial authority within ten working days from the date on which the ruling ordering the preventive measures ~~{aimed to secure a claim}~~ was passed. (c) in passing a ruling ordering the preventive measures referred to under (i) and (ii), the court might demand that such measures be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in the following paragraph. (d) where the preventive measures were revoked or where they lapsed due to any act or omission by the applicant, or where it was subsequently found that there had been no infringement or threat of infringement of an intellectual property right, the judicial

authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

415. {The representative of Ukraine confirmed that by accession, Ukraine will change its customs legislation to include the possibility of an ex officio action of the customs authorities against suspected intellectual property infringers. Ukraine will also reduce the fees charged from right-holders to lodge applications to a level that shall not unreasonably deter recourse to these procedures. The representative of Ukraine confirmed that Ukraine would apply the commitments undertaken under TRIPS in a manner so as to permit effective action against acts of infringements of intellectual property rights, including if justified act expeditiously on the basis of complaints lodged by right-holders against well identified {factories} *and/or* {enterprises} dedicated largely or exclusively to the production of pirated {digital media}, *including* {discs for laser-readable systems} and, if such allegations are proven correct, ensure that such protection is permanently stopped and that the infringers are punished. The Working Party took note of these commitments}.

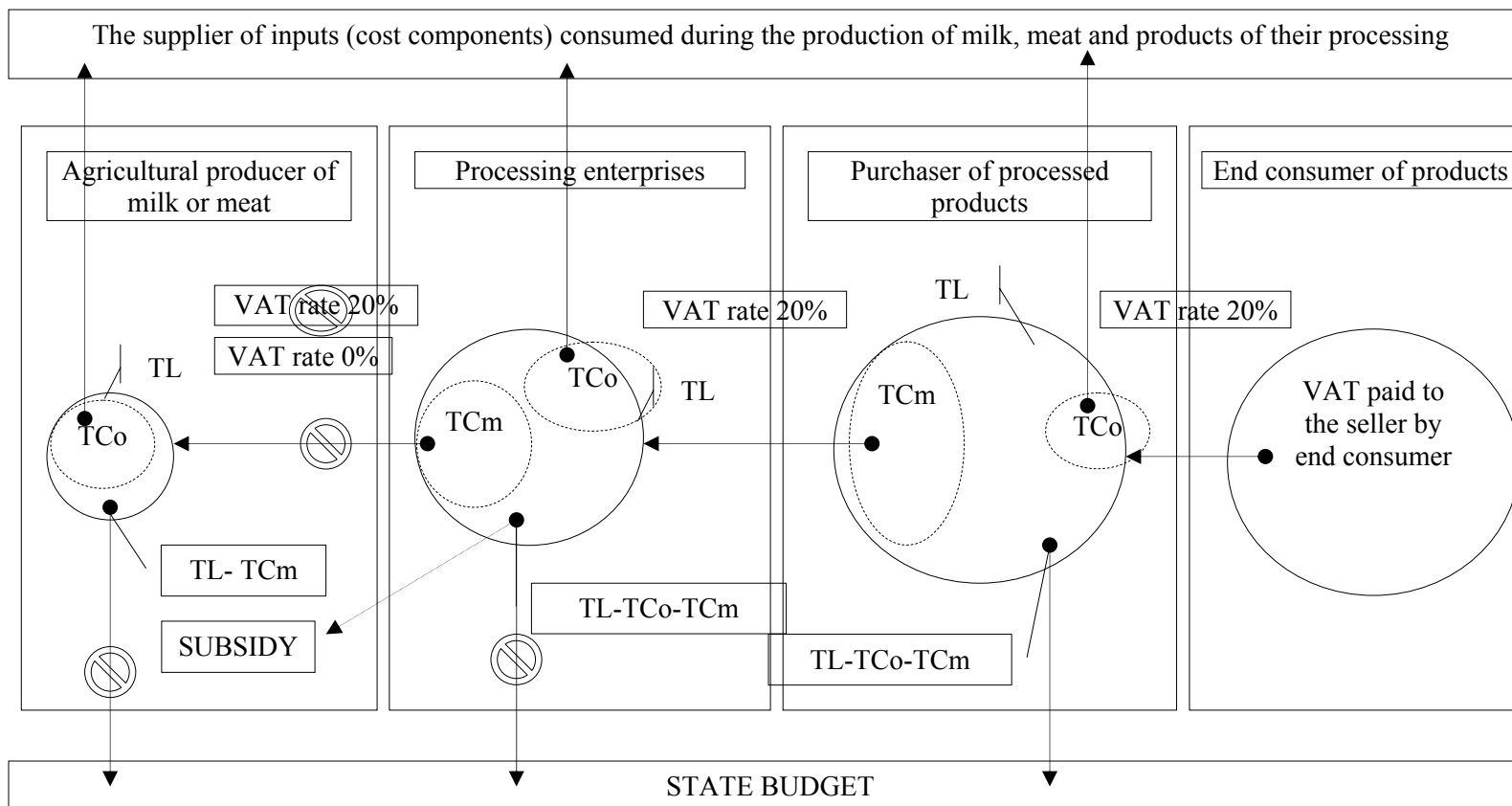
Answer:

We agree to the proposed changes and to removing the square brackets from the text of the commitment in paragraph 415.

ANNEX 1

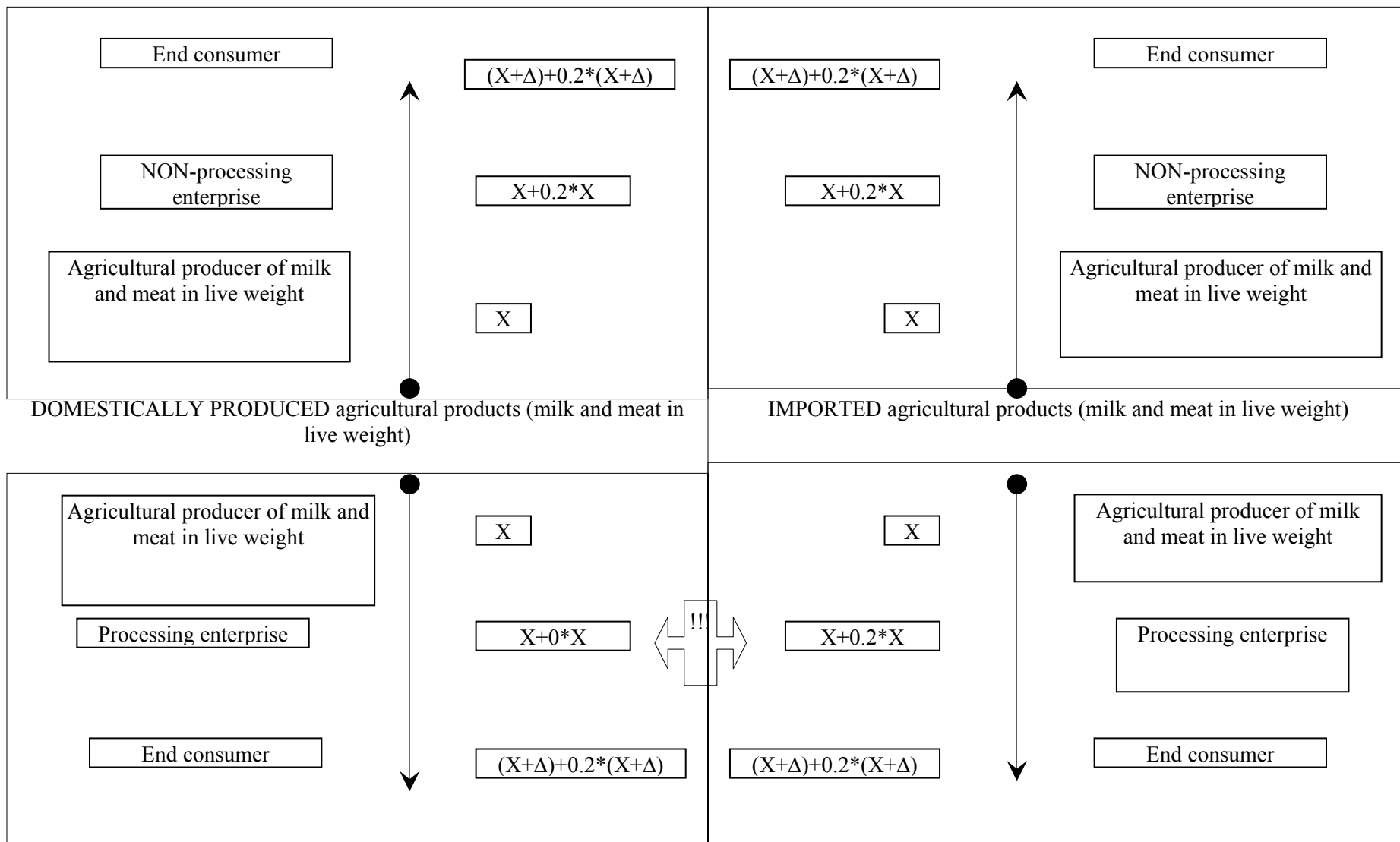
Special VAT regime for agricultural producers of milk and meat

The mechanism for paying subsidies to agricultural producers for milk and meat produced by them in live weight and sold to processing enterprises



TL – tax liability (amount of VAT paid by the purchaser of the products to their seller);
 TCm – tax credit resulting from the purchase of milk, meat or products of their processing; and
 TCo – tax credit resulting from the purchase of other cost components

Sales schemes for domestically produced and imported agricultural products

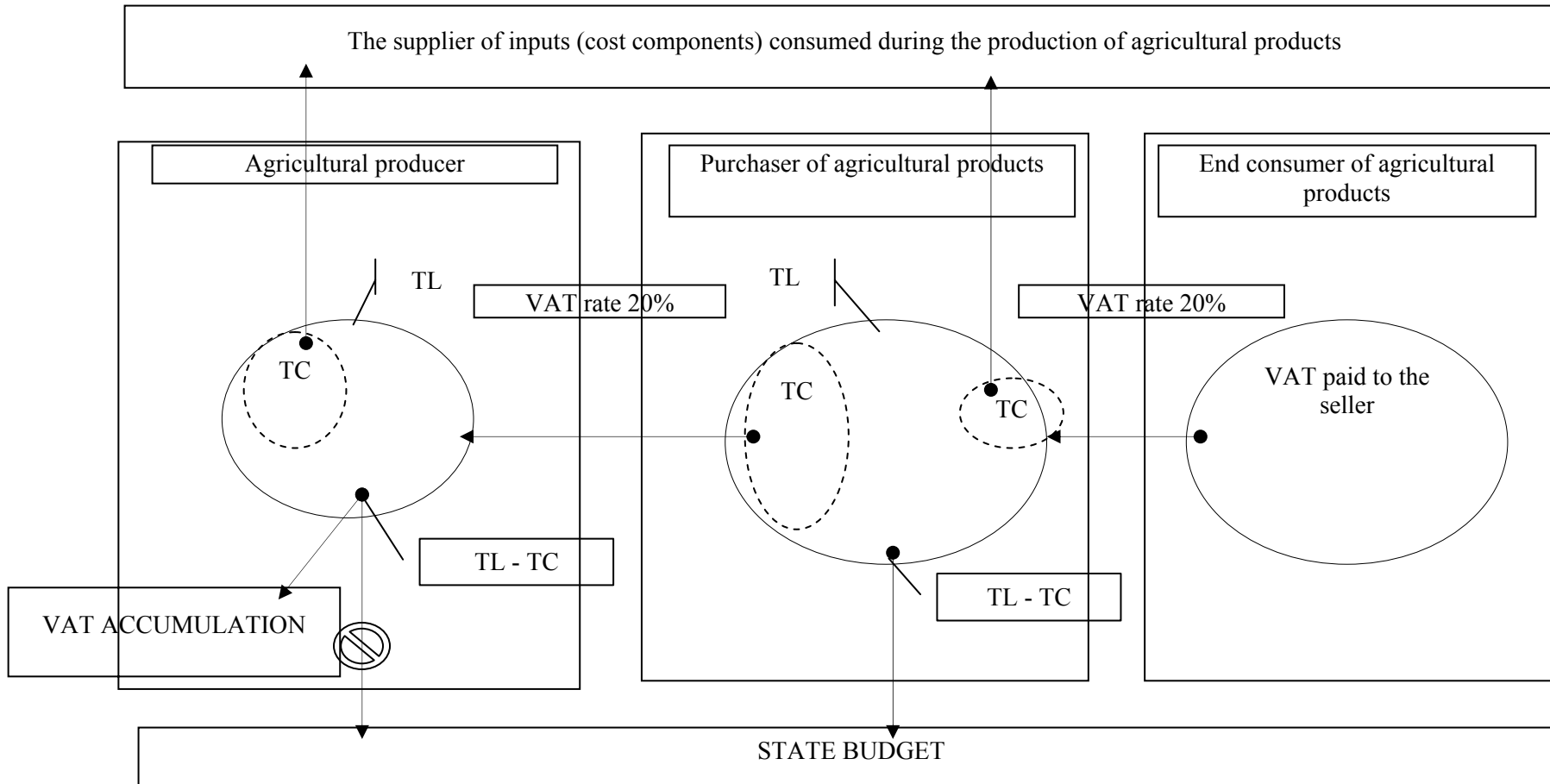


Assumptions:

X – the price of agricultural products produced in Ukraine (without VAT) equals the price of imported agricultural products (without VAT);

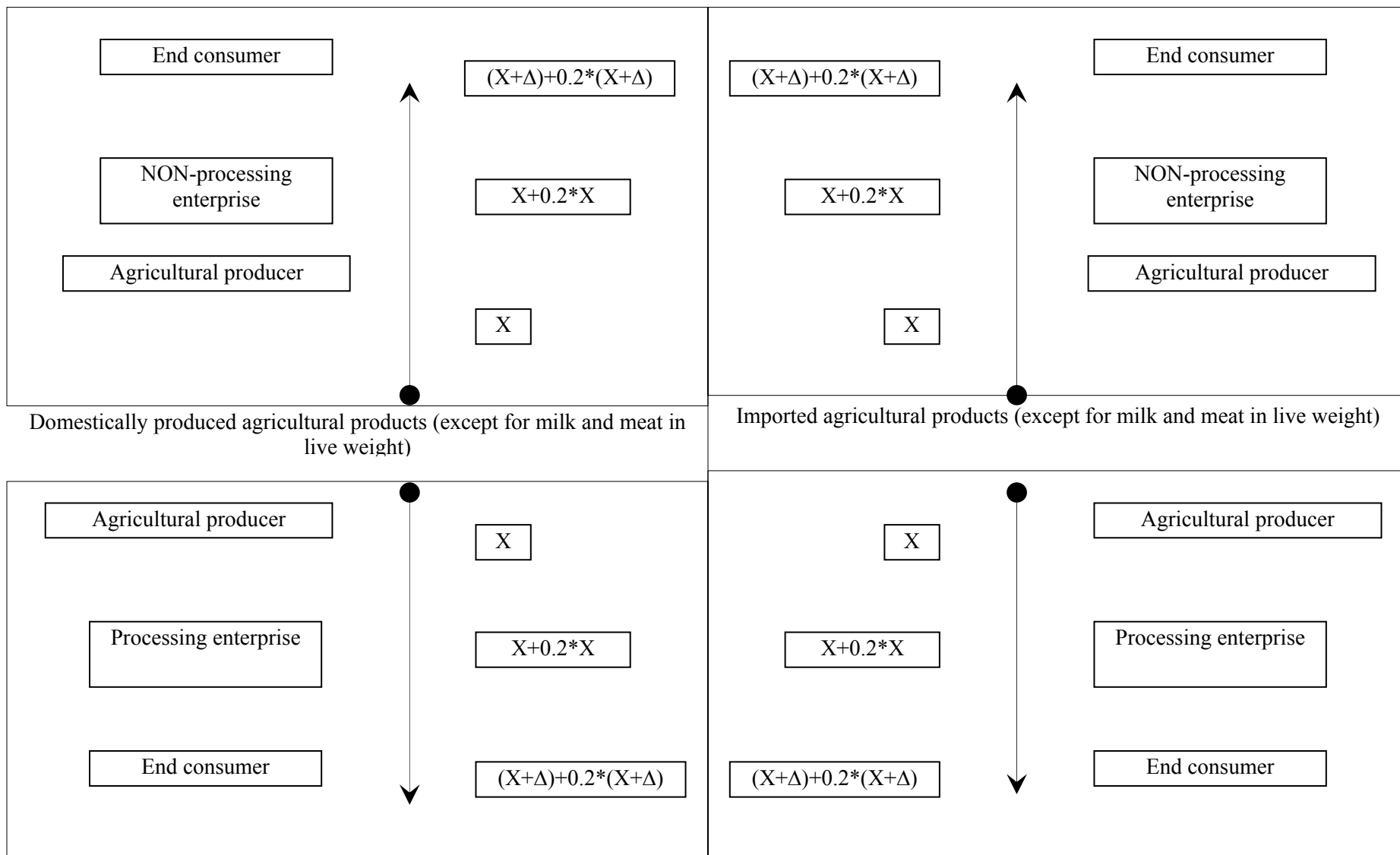
Δ- added value created by a processing/non-processing company.

Special VAT regime for agricultural enterprises
The mechanism for accumulation of VAT by agricultural enterprises received from the sale of
agricultural products produced by them (except for milk and meat in live weight sold to processing enterprises)



TL – tax liability (amount of VAT paid by the purchaser of the products to their seller);
 TC – tax credit resulting from the purchase of cost components

Sales schemes for domestically produced and imported agricultural products



Assumptions:

X – the price of agricultural products produced in Ukraine (without VAT) equals the price of imported agricultural products (without VAT);

Δ- added value created by a processing/non-processing company.

ANNEX 2

Table 17(a): Current export duties levied by Ukraine

Tariff code	Product description	Duty rate	Legislative basis	Date of elimination
01.02.90100	Live cattle: Young cattle weighing 350 kg and less; Cattle weighing over 350 kg	75% but not less than €1,500 per tonne	Law "On Export Duty on Live Cattle and Hides" No. 180/96-BP of 7 May 1996	Ukraine will conduct a policy of gradually reducing the level of export duties. Some duties may be eliminated. Ukraine is not planning to bind export duties at "Zero".
01.02.90310	Heifers (female bovines that have never calved), cows, bulls, bullocks, etc.	55% but not less than €540 per tonne	""	""
01.04.10	Live sheep	50% but not less than €390 per tonne	""	""
41.01	Cattle hides	30% but not less than €400 per tonne	""	""
41.02	Sheep or lamb skin	30% but not less than €1 per animal	""	""
41.03.90000	Pigskin only	27% but not less than €170 per tonne	""	""
12.04.00900	Flax seeds, shattered or non-shattered	17 per cent	Law "On Export Duty Rates for Seeds of Some Oil Crops" No. 1033-XIV dated 10 September 1999, as amended by Law No. 2555-III of 21 June 2001	""
12.06.00900	Sunflower seeds, shattered or non-shattered		""	""
12.07.99990	False flax seeds only		""	""

Tariff code	Product description	Duty rate	Legislative basis	Date of elimination	
7204.1000	- Waste and scrap of cast iron	€30 per tonne	Law "On Export Duty on Ferrous Waste and Scrap No. 216-IV of 24 October 2002.	""	
	- Waste and scrap of alloy steel:		""	""	
7204.21	-- Of stainless steel		""	""	
7204.2110	- - - Containing by weight 8% or more of nickel (ECSC)		""	""	
7204.2190	- - - Other (ECSC)		""	""	
7204.2900	- - Other		""	""	
7204.3000	-Waste and scrap of tinned iron or steel (ECSC)		""	""	
	- Other waste and scrap:		""	""	
7204.41	- - Turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles:		""	""	
7204.4110	- - - Turnings, shavings, chips, milling waste, sawdust and filings (ECSC)		""	""	
	- - - Trimmings and stampings:		""	""	
7204.4191	- - - - In bundles (ECSC)		""	""	
7204.4199	- - - - Other		""	""	
7204.49	- - Other:		""	""	
7204.4910	- - - Fragmentised (shredded) (ECSC)		€30 per tonne	""	""
	- - - Other:			""	""
7204.4930	- - - - In bundles (ECSC)	""		""	
	- - - - Other:	""		""	
7204.4991	- - - - - In bundles (ECSC)	""		""	
7204.4999	- - - - - Other	""		""	
7204.50	- Remelting scrap ingots:	""		""	
7204.5010	- - Of alloy steel (ECSC)	""		""	
7204.5090	- - Other	""		""	

Table 17(b): Proposed reductions in export duties that have already been adopted

Product code according to UPC FEA	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
120400	Linseeds, whether or not broken	16%	15%	14%	13%	12%	11%	10%
120600	Sunflower seeds, whether or not broken	16%	15%	14%	13%	12%	11%	10%
1207999900	False flax seeds	16%	15%	14%	13%	12%	11%	10%

Table 17(c): Proposed reductions in export duties, pending adoption

Live cattle and hides												
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%		
0102 90 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%		

Live cattle and hides												
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%

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