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**Working Party on the
Accession of Ukraine**

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Additional Questions and Replies

The following submission, dated 30 August 2006, is being circulated at the request of the Delegation of Ukraine.

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II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

Question 1

This section seems quite out of date. It needs to be updated.

Answer:

Ukraine has no objections to update this section

8. The representative of Ukraine said that the National Bank of Ukraine (NBU) fulfilled the functions assigned to it under Article 99 of the Constitution and the Law "On the National Bank of Ukraine" No. 679-XIV of 20 May 1999. The principal objective of the National Bank was to ensure monetary stability, thereby minimizing macroeconomic risk to promote investment and facilitate rapid economic growth. The National Bank had managed to curb inflation and to stabilize the exchange rate of the hryvnia to the US dollar. The NBU met the demand for cash through interventions in the foreign exchange market; it refinanced banks and supported their liquidity through the use of short and medium-term tenders, extension of overnight credit to banks and direct REPO operations. When required, the National Bank conducted mobilization operations, i.e. allocated its own depository certificates and conducted open market transactions with government securities. ~~In 2003, Ukraine's [real] GDP had increased by 9.3 per cent while the annual rate of inflation had been contained at 8.2 per cent.~~ In 2005, Ukraine's [real] GDP had increased by 2.4 per cent while the annual rate of inflation had been contained at 10.3 per cent.

- Foreign Exchange and Payments

Question 2

[This section requires enactment of pending legislation; draft Law "On Amendments to the Law of Ukraine "On Procedures of Payments in Foreign Currency."]

Ukraine's response to Question 4 of document WT/ACC/UKR/137 provides insight into the reasons that Ukraine has enacted Article 3 of the Law "On Procedure of Payments in Foreign Currency" No. 185/94 of 23 September 1994 (as amended). However, it does not respond to the specific questions in paragraph 21 of the draft report, which were not answered. We would appreciate more specific responses for inclusion in the text.

Further, we appreciate the economic conditions in the past that caused Ukraine to establish exchange control requirements. We are concerned, however, that Ukraine is now imposing restrictions on the financing of current international transactions. We note that the current balance of payments does not appear to require these restrictions.

We note in particular the 90 day limit on prepayment for imports, which restricts current account transactions. We believe that the simplification of procedures outlined by Ukraine in paragraph 20, to be implemented by enactment of the draft law "On amendments to the law of Ukraine "On procedures of payments in Foreign Currency," addresses our immediate concerns. However, in the longer term, as the overall financial framework in the country improves, we expect that the Government of Ukraine will remove these requirements.

Answer:

Ukraine regularly holds the consultations with the International Monetary Fund on currency policy issues in line with the GATT Article XV.

The above mentioned measures shall be gradually eliminated along with the improvement of the country's overall monetary system.

Question 3

Ukraine should provide a commitment to apply restrictions on foreign exchange only in conformity with WTO provisions.

Answer:

Ukraine will apply measures on foreign exchange only in conformity with WTO provisions.

- **Investment Regime**

Question 4

Paragraph 25: This material probably should be addressed later in the report, in the section on TRIMs.

Answer:

Ukraine doesn't object to this proposal.

Question 5

Paragraphs 27-28: This material probably should be addressed later in the report, in the section on Application of Domestic Taxation to Imports.

Answer:

Ukraine doesn't object to this proposal.

- **State Ownership and Privatization**

Question 6

This section, and its companion section "State-trading entities" which is situated later in the report, both need substantial revision and reorganization.

They cover a great deal of the same material. Ukraine's privatization program deals with both state-owned and controlled enterprises, and state trading entities. Both sections have reference to Article XVII.

As a consequence, we suggest they be reorganized by combining them to ensure a coherent and complete description that will be responsive to the draft commitment language in paragraph 294, which covers both State-owned and -controlled enterprises, and State trading entities. Such a reorganization will also allow for text and commitment language more properly focused on Privatization, separate from the discussion on such enterprises.

Answer:

Ukraine doesn't object to the proposed changes.

Question 7

It also seems to us more appropriate to include the discussion of State enterprises in the front part of the Report, perhaps following the Privatization discussion, because of the systemic nature of the issue.

While we appreciate the information provided, there are a number of problems with the data, for example, the meaning of Table 1(b) is not clear; the questions asked in paragraph 37 are not answered in the Working Party text; and paragraph 39 seems to initiate discussion of Ukraine's STEs that is resumed in paragraph 292. The material on Khib Ukrainy in paragraphs 42 and paragraphs 290-1 should be unified.

Answer:

We provide updated table 1 (b)

Table 1 (b): Joint-stock enterprises with State-owned and private capital (1 July 2006)

Industry	Total	Percentage of private ownership in statutory capital			
		up to 25%	25-50	50-70	75-100
Power engineering	35	7	9	7	1
Fuels	14			2	1
Ferrous metallurgy	105	3	2	1	18
Chemicals and petrochemicals	113	5	4	7	20
Machine building and metal processing	1,296	43	35	74	176
Woodwork, and pulp and paper industry	146	2		4	19
Light industry	226	6	5	6	38
Food industry	835	3	4	29	172
Transportation	923	7	2	61	141
Construction	1,132	3	13	20	142
Other industries	3,970	41	43	189	612
Total:	8,795	120	117	400	1,340

Question 8

We support the commitments in paragraphs 43 and 294.

Answer:

With aim to avoid duplication of commitments in paragraph 294, Ukraine proposes to delete the commitment language of the first paragraph and to remove the square brackets from the commitment language of the second paragraph.

Question 9

The combined sections will provide an opportunity for Ukraine to describe its state-owned, state-controlled, and state-trading enterprises without prejudice to the issue of notification.

We will provide drafting suggestions in writing.

Answer:

Ukraine is awaiting the afore-mentioned drafting suggestions in writing

- **Pricing Policies**

Question 10

This section needs substantial editing and reorganization to isolate information on pricing controls and requirements and exclude material better addressed in other sections of the report.

Answer:

Ukraine doesn't object to this proposal.

Question 11

Specifically, the discussion of price supports for agricultural products that is scattered throughout the section, including Tables 6a-c, would be better addressed in Agricultural Policies. These are not price controls but rather intervention prices to support agricultural prices.

Answer:

Ukraine doesn't object to this proposal.

Question 12

The description of energy pricing in paragraphs 60-62 should be elaborated and updated.

Answer:

Ukraine will update the description of energy pricing in paragraphs 60-62 in due course.

Question 13

The description and commitment language in Paragraphs 66-67 should be revised to clearly distinguish the commitment from the descriptive text and to remove any issues not related to price controls.

Answer:

Ukraine has no objections to the said changes and proposes to re-draft paragraphs 66-67 as follows:

66. Some Members asked Ukraine to accept a commitment to apply railway tariffs in conformity with WTO obligations and to end any discrimination upon accession. A Member requested Ukraine to clarify, in particular, the situation with regard to transit. In reply, the representative of Ukraine said that the process of harmonization of rail transportation tariffs had begun with the adoption of Cabinet of Ministers' Order No. 91-r "On Indexation of Tariffs for Transportation of Cargos by Railway Transport and Related Services" of 1 April 2005. Thus, tariffs for the transportation of coal and ferrous metal scrap had already been equalized. Differential pricing was still applied to the tariffs charged for the transportation of iron ore raw materials, cast iron, rolled ferrous metal, mineral fertilizers, foodstuff and oil products. As for grain, Cabinet of Ministers Resolution No. 295-p of 29 July 2005 had reintroduced lower tariffs for the transportation of grain until 31 December 2005. A moratorium on the increase of transportation tariffs had been in force until 16 September 2005.

Following its expiration, a draft Cabinet of Ministers Resolution "On the Indexation of Railway Tariffs for Freight Transportation", aimed at bringing railway tariffs into conformity with WTO obligations, had been prepared. This draft was under the consideration of relevant Ministries and State Committees and was expected to be adopted in the first quarter of 2006. After its adoption, a table setting out harmonised railway transport fees by product would be published. ~~He confirmed that Ukraine would harmonize differential railway tariffs for the transportation of goods by the date of accession.~~

67. *[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). [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.] [Ukraine confirmed it would repeal provision of Article 8 of the Law "On State Support of Agriculture in Ukraine" providing for the application of minimum prices on imports on a temporary basis.] [He also confirmed that Ukraine would equalize differential railway tariffs for the transportation of domestic and imported goods by the date of accession.] 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.]*

Question 14

In relation to this section: Ukraine states in paragraph 54 that the "...Government was developing a draft law introducing changes to the Law "On State Support of Agriculture in Ukraine" which it 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". We are pleased that Ukraine is developing this draft law to repeal the provisions on minimum purchase prices applicable to imports.

We seek removal of square brackets from appropriate commitment language in paragraph 67, including a specific reference to the provisions that have been repealed in the law mentioned above.

Answer:

Ukraine agrees to the removal of brackets and to restate the text of the commitment as follows:

[Ukraine confirms that Ukraine will repeal the rules set out in Article 8 of the Law of Ukraine "On State Support of Agriculture in Ukraine", which contemplate a possibility to apply minimum import prices on a temporary basis and import and export quotas.]

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 15

The treatment of right of appeal is very unclear. Paragraphs 80-84 should be reviewed and substantially revised to use the same terms for the same institutions, to lay out once and clearly

Ukraine's judicial hierarchy, and most importantly, to address clearly how Ukraine provides the right of administrative and judicial appeal in matters covered by the WTO and likely to require adjudication. The relevance to WTO of the various types of courts described should be made clear.

Answer:

Starting 1 September 2005 the Code of Administrative Proceedings (No. 2747-IV of 6 July 2005) came into effect. The latter stipulates that administrative courts will consider administrative cases, including WTO-related matters. It means that the right to appeal administrative rulings on matters subject to WTO provisions to an independent tribunal is provided in conformity with WTO requirements.

We proposed also the following revision of the paragraph 80 and paragraph 84:

80. The judiciary is comprised of the Constitutional Court and courts of general jurisdiction, i.e. local (general and specialized) courts, appellate (general and specialized) courts, higher specialized courts, and the Supreme Court of Ukraine. Commercial and administrative courts are specialized courts in the system of courts of general jurisdiction.

According to the Law of Ukraine "On Judiciary" (No. 3018-III of 7 February 2002), local general courts are those established at the level of districts, city districts, cities, and city-district courts, as well as military courts of garrisons. Local commercial courts are commercial courts of the Autonomous Republic of Crimea, the oblasts, cities of Kyiv and Sevastopol. Local administrative courts are okrugs courts established at the level of okrugs (regions) according to the Decree of the President of Ukraine. In addition, according to the Code of Administrative Proceedings (No. 2747-IV of 6 July 2005) local administrative courts also include local general courts, jurisdiction of which encompasses the simplest administrative cases. Local general courts consider civil, administrative and criminal cases, as well as cases of administrative violations. Local commercial courts consider cases that arise from commercial legal relations, as well as other cases, which, according to the procedural law, are under their jurisdiction. Local commercial courts are commercial courts of the Autonomous Republic of Crimea, the oblasts, cities of Kyiv and Sevastopol. Local administrative courts consider administrative cases related to legal relations in the sphere of state management and local self-governance (cases of administrative jurisdiction), except cases of administrative jurisdiction in the sphere of military management that are considered by military courts. Appellate general courts, which include the appellate courts of oblasts, Kyiv, Sevastopol, the Autonomous Republic of Crimea's appellate court, the appellate military courts of the regions, the appellate court of Ukraine's Navy, and the Appellate Court of Ukraine review appeals in accordance with procedural law and try cases, specified by law, as courts of first instance. Appellate specialized courts are appellate commercial courts and appellate administrative courts, which are established in appellate okrugs in accordance with the Decree of The President of Ukraine. The higher specialized courts (including the Higher Commercial Court and the Higher Administrative Court) review, by cassation, cases of the appropriate jurisdiction and other cases as provided by procedural law. The Supreme Court of Ukraine, the highest judicial body in the judiciary of Ukraine, reviews (by cassation) the judgments of the courts of general jurisdiction (general and specialized courts) in cases assigned to its jurisdiction by procedural law.

Courts of General Jurisdiction:

I. The court system of general courts:

- Local courts established at the level of districts, city districts, cities, city-district courts, as well as military courts of garrisons;

- Appellate courts of the of Autonomous Republic of Crimea, the oblasts, cities of Kyiv and Sevastopol; appellate military courts of the regions and Ukraine's Navy; the Appellate Court of Ukraine; and
- The Supreme Court of Ukraine.

II. Specialized Courts:

A. System of commercial courts:

- Local commercial courts;
- Okrug appellate commercial courts, which are established at the level of appellate okrugs (regions);
- The Higher Commercial Court; and
- The Supreme Court of Ukraine (Court Chamber for Commercial Cases).

B. System of administrative courts:

- Local administrative courts include okrug administrative courts and local general courts as administrative courts;
- Okrug appellate administrative courts, which are established at the level of appellate okrugs (regions);
- The Higher Administrative Court; and
- The Supreme Court of Ukraine (Court Chamber for Administrative Cases).

As far as WTO-related issues, administrative courts consider violations of payment procedure in the sphere of trade, and violations in the sphere of state control of exports. Starting 1 September 2005 the Code of Administrative Proceedings came into effect. The latter stipulates powers and authorities of administrative courts, procedure of application to these courts and procedure of administrative litigation. The Code stipulates that an objective of administrative proceedings is to protect the rights, freedoms and interests of natural persons, rights and interests of legal entities in the sphere of public-legal relations from violations on the part of state power bodies, local self-governance bodies, their officials, as well as the officials of other entities in course of performing state management functions by the latter."

84. Procedures of consideration.

Article 17 of the Code of Administrative Proceedings in Ukraine provides for the consideration the following disputes:

- 1) disputes arising between natural persons or legal entities and a government agency [subject with government authority] involving appeals against the latter's decisions (regulatory acts or legal acts of individual applicability), actions or inaction;
- 2) disputes involving the hiring of persons as civil servants, employment in the civil service and dismissal from the civil service;
- 3) disputes between government agencies [subjects with government authority], involving issues relating to the discharge of their competence in the area of administration, including those involving delegated powers, as well as disputes arising from the conclusion and performance of administrative agreements; and
- 4) disputes initiated upon requests of government agencies [subjects with government authority] in instances contemplated by law.

According to Article 12 of the Code of Commercial Procedure of Ukraine, commercial courts shall consider:

- 1) cases involving disputes arising from the conclusion, amendment, termination and performance of commercial contracts and on other grounds, as well as cases involving the invalidation of acts on grounds listed by law, except for:
- disputes arising from the confirmation of standards and technical conditions;
 - disputes involving the setting of prices for products (goods) and the setting of rates (tariffs) for services (works performed) if, pursuant to law, these prices and rates (tariffs) may not be set by agreement of the parties; and
 - bankruptcy cases.

A dispute falling within the jurisdiction of commercial courts may be transferred by parties thereto to a reconciliation tribunal (arbitration) for resolution, except for disputes involving the invalidation of acts and disputes arising from the conclusion, amendment, termination and performance of commercial contracts relating to satisfaction of State needs.

Along with the foregoing, Articles 2 and 8 of the Civil Code of Ukraine, Articles 5 and 9 of the Code of Administrative Proceedings in Ukraine, Article 4 of the Code of Commercial Procedure of Ukraine provide that proceedings in disputes shall be carried out pursuant to the Constitution of Ukraine, these Codes and international agreements and treaties of Ukraine, the consent to the binding force of which is granted by the Supreme Rada of Ukraine. In this respect, if such international agreements and treaties of Ukraine contain rules other than those contemplated by Ukrainian law, the rules of the international agreement or treaty shall prevail.

Thus, in the course of considering cases involving violations of the WTO Agreements, after such WTO Agreements have become binding upon Ukraine, such dispute consideration procedures shall be used as are contemplated by these Agreements and, in particular, by the Understanding on Rules and Procedures Governing the Settlement of Disputes. And in instances not covered by the Agreements there shall be used respective rules from the Ukrainian national law.

Question 16

It would also be useful to have a better description in paragraph 77 of the role of the various Ministries, Commissions, or other offices of the executive involved in the development and execution of trade policy in Ukraine.

Answer:

Preparing of information on functions of central bodies of executive power in the area of execution of Ukraine's trade policy falls within the competence of central bodies of executive power.

At the same time, national law, in particular Article 9 of the Law of Ukraine "On Foreign Economic Activities", sets forth the following responsibilities of bodies of the executive power in the area of execution of trade policy in Ukraine:

The Cabinet of Ministers of Ukraine:

- undertakes measures aimed to implement foreign trade policy of Ukraine pursuant to the laws of Ukraine;
- coordinates activities of Ukrainian trade missions in foreign states;
- passes regulatory rules on issues of foreign economic activity as and when contemplated by the laws of Ukraine; and
- conducts negotiations and concludes inter-government agreements of Ukraine on issues of foreign economic activity as and when contemplated by Ukrainian laws on international agreements and treaties of Ukraine, ensures that international agreements and treaties of

Ukraine on issues of foreign economic activity are implemented by all governmental bodies subordinated to the Cabinet of Ministers of Ukraine, and involves other entities engaged in foreign economic activity into implementing such international agreements and treaties on a contractual basis.

The National Bank of Ukraine:

- provides saving and use of gold and foreign exchange reserve of Ukraine and other State valuables that ensure Ukraine's solvency;
- represents interests of Ukraine in relations with central banks and other financial and credit institutions and concludes respective inter-bank agreements;
- regulates the exchange rate of the Ukrainian national currency against currencies of other countries; and
- keeps records of, and makes settlements in respect of, extended and received State credits and loans, carries out operations with centralized foreign exchange resources that are allocated out of the State Foreign Exchange Fund of Ukraine into the disposal of the National Bank of Ukraine.

The Ministry of Economy of Ukraine:

- ensures the pursuit of single foreign economic policy when entities engaged in foreign economic activity enter external markets, coordinates their foreign economic activity, including pursuant to international agreements and treaties of Ukraine; and
- provides control of all entities engaged in foreign economic activity to comply with and observe effective Ukrainian law and terms and conditions of international agreements of Ukraine.

The State Customs Service of Ukraine:

- carries out customs control in Ukraine according to the effective laws of Ukraine.

The Antimonopoly Committee of Ukraine:

- provides control of entities engaged in foreign economic activity to comply with and observe laws on protection of economic competition.

The Intergovernmental Commission on International Trade:

- passes decisions on violations and decisions on carrying out anti-dumping, countervailing or special investigations and on applying anti-dumping, countervailing or special measures, respectively.

Question 17

We support the commitment language in paragraphs 79 and 85.

Answer:

Ukraine has already accepted the commitment language in paragraphs 79 and 85.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 18

[This section requires enactment of pending legislation; 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; and draft Law to 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).]

This section is shaping up, but it contains a lot of different material, with several kinds of state licensing of trade activity described. It should be re-organized and edited for clarity, e.g., subsection headings for each product category.

Specific outstanding issues that should be addressed in the text include (a) clarification of the scope of activity licensing for the right to import and export; (b) establishment of a non-discriminatory fee structure that meets the requirements of Article VIII of the GATT for activity licensing for importation of alcoholic beverages, and (c) determining the scope of activity licensing required for importation.

Answer:

Ukraine confirms that starting from the date of the WTO accession the non-discriminatory system of fees and payments related to the alcoholic beverages import licensing (complying with the requirements of GATT Article VIII) will be applied.

Question 19

In particular, the extremely high fees for licenses to import tobacco or spirits (US\$47,000) annually is not consistent with the fees charged domestic traders, including exporters.

Answer:

In the nearest future the amount to be paid for the licence granting the right for alcoholic beverages and tobacco products import will be brought into conformity with the provisions of Articles VIII and III of the GATT.

Question 20

Any subsequent fees for addiction prophylaxis and treatment applied to these products should be carefully established to be consistent with Articles I and III of the GATT 1994.

Answer:

Ukraine confirms that from the date of the WTO accession any subsequent fees for addiction prophylaxis and treatment applied to the said products would be established consistent with Articles I, III and XX of the GATT 1994

Question 21

In addition, we seek information on the permissible activities of foreign firms in the importation of alcohol and detailed information on the operations of the state trading entities that deal in ethyl spirit and cognac and fruit spirits. How do these firms allow purchases and sales of imports?

Concerning pharmaceuticals, we are concerned that the "fees for expertise" charged in connection with registration of these products may not be established in line with the cost of the services rendered. In particular, we would want to know about the fee structure, if the charges were differentiated based on what expertise was required, and how the fees are established. Reference to these issues in the Working Party report would be helpful in demonstrating how Ukraine's pharmaceutical registration process is non-discriminatory *vis-à-vis* imports.

We will provide detailed questions and drafting suggestions in writing.

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.

Ukraine is awaiting the afore-mentioned drafting suggestions in writing.

Question 22

We note the Ukrainian system of licensing for alcohol beverages and tobacco remains in breach of Article VIII GATT. In particular, we seek confirmation of:

- **reductions in licence fees to levels approximating the cost of services rendered (required by Article VIII), and removal of fees that vary according to the volume of importation;**

Answer:

The draft Law of Ukraine, which brought into conformity with the provisions of Articles VIII and III of the GATT the amount to be paid for the licence granting the right for alcoholic beverages and tobacco products import, will be submitted to the Supreme Rada of Ukraine for consideration.

Question 23

- **removal of trading right limitations on foreign enterprises in paragraph 89 to engage in import and export of cognac spirits.**

Answer:

Ukraine believes that such limitation is reasonable. See answer in paragraph 91.

A. IMPORT REGULATIONS

- Ordinary customs duties

Question 24

Some of the material in this section should be updated, e.g., the discussion in paragraph 101 concerning Ukraine's multi-column tariff system. We understand that the common rate of duty has been abolished, but this is not reflected in the description. Also, we understand that conversion to HS 2002 has been delayed. Will conversion require legislation, or can it be done by the government on its own authority.

Answer:

We would like to suggest the following wording for Paragraphs 101 – 103:

101. The representative of Ukraine said that import duties were established on the basis of the Law "On the Customs Tariff of Ukraine" No. 2371-III of 5 April 2001, as amended. The Law set out the framework for the regulation of tariffs and reserved the right to make tariff changes exclusively by the Verkhovna Rada of Ukraine. Imports from trading partners holding MFN status were assessed at the "privileged" (preferential) rate of import duty, except in cases where duties were established in the context of a special preferential trade agreement. For the current moment, Ukraine applies the most favoured treatment to its trade with 82 countries, and conducts trade based on the free trade agreements with 12 countries. An "ordinary" (full) import duty is applied to goods imported from the other countries. Along with this, during the year 2005 the Verkhovna Rada of Ukraine adopted a number of laws designed to liberalize the access of goods into the domestic market of Ukraine. The import duty rates changed, in particular – according to the consolidated commitments of Ukraine within the scope of the negotiations on accession to the WTO. Thus, the applied import duty rates correspond to practically all consolidated commitments. However, some commodity subcategories are subject to the import duty rates of a lower level than those established by the Consolidated Tariff Offer. Along with that, for the most commodity subcategories of the Customs Tariff the full import duty rates were established to the level of privileged ones.

The GSP scheme is not applied in Ukraine. Upon accession to the WTO, Ukraine would apply the "privileged" (MFN) import duty rate to all goods originating from the WTO members, in accordance with Article 1 of the GATT 1994.

The current Customs Tariff of Ukraine is based on the Ukrainian Commodity Classification of Foreign Economic Activity of Ukraine, which is based on the Harmonized Commodity Description and Coding System of 1996 (HS 1996). For the current moment, the Government has prepared and submitted to the Verkhovna Rada of Ukraine the Draft Law of Ukraine "On Amendment of the Law of Ukraine "On the Customs Tariff of Ukraine". The given Draft Law provides for the application of the Customs Tariff of Ukraine based on the new version of the Ukrainian Commodity Classification in Foreign Economic Activity, which is based on the Harmonized Commodity Description and Coding System of 2004 (HS 2004). The Draft Law is expected to come into effect on 1 January 2007.

102. Some Members asked Ukraine to provide a concordance table for the conversion of Ukraine's tariff commitments to HS 2002. These Members noted their expectation that they would be able to study the table prior to the finalization of Ukraine's new applied tariff, and in any case prior to the finalization of the accession process to the WTO. The representative of Ukraine replied that the draft Law "On Amendment of the Law of Ukraine 'On the Customs Tariff of Ukraine'" had been submitted to the Verkhovna Rada and was available from the Verkhovna Rada's website. He added that Members would receive the concordance table in due course.

103. The current Customs Tariff comprised more than 11,000 tariff lines. Most tariffs were levied at *ad valorem* rates, but 671 tariff line items (5.93 per cent) were subject to the specific rates of import duty. Further details on the current applied tariffs are presented in Table 10.

Table 10: Import duties (privileged rates) levied on goods and other items imported into Ukraine's territory

Ukrainian applied customs tariff									
Import duty rate (%)	0	0-5	5-10	10-15	15-20	20-25	greater than 25	specific rate	Total
number of tariff lines	3,500	3,427	2,263	898	388	43	124	671	11,314
Share from the total number of lines (%)	30.94	30.29	20.00	7.94	3.43	0.38	1.10	5.93	100
The maximum of the import duty rate is:									
for items of groups 1-24:			50 % (of which 4.84% are higher than the 25% rate)						
for items of groups 25-97:			25 % (the number of rates is only 0.47%)						
average arithmetic rate of the applied custom tariff (%)					6,51				
average weighted rate of the applied custom tariff (%)					5,10				

- **Other duties and charges**

Question 25

Paragraph 109: The first sentence of the commitment paragraph should be eliminated to ensure that it is not read as exempting duties and fees from WTO obligations.

Answer:

Ukraine agrees with this suggestion.

Question 26

We note the discussion of a 1 per cent tax and Ukraine's confirmation that wholesale and retail sale of domestic and imported alcohol is taxed on equivalent terms. In order to clarify that this is tax is not an ODC within the meaning of Article II:1(b), but instead an internal tax within the meaning of Article III of GATT 1994, we request that the following information be included in paragraph 108:

Information on the point at which (i.e. at the border, upon wholesale sale, upon retail sale) the 1 per cent tax applied to imported wines and spirits.

Information on the point at which (i.e. at the border, upon wholesale sale, upon retail sale) the 1 per cent tax applied to domestic production of wines and spirits.

Ukraine confirm that this tax is applied only once to domestic and imported goods.

Answer:

The said fee is collected on a monthly basis from business entities, irrespective of the forms of their ownership and subordination, in the amount of 1 per cent of proceeds from the sale of alcohol beverages and beer in the wholesale and retail network.

- **Tariff rate quotas, tariff exemptions**

Question 27

[This section requires enactment of pending legislation; draft Regulation governing the allocation of the TRQ on raw cane sugar.]

We seek a commitment that Ukraine will administer its TRQs in a WTO-consistent fashion, with particular reference to eliminating auctioning as an acceptable method of administration.

Answer:

The commitment that Ukraine will administer its TRQs in a WTO-consistent fashion, with particular reference to eliminating auctioning as an acceptable method of administration is set forth in the paragraph 119 of the Working Party report:

"119. *The representative of Ukraine said that from the date of accession Ukraine would allocate its only tariff rate quota on raw cane sugar only in conformity with the WTO Agreement, including Articles I, II, VIII, X, XI and XIII of GATT 1994, Article 4 of the Agreement on Agriculture, the Agreement on Import Licensing Procedures and other WTO provisions. **Ukraine would not maintain, apply or revert to the auctioning of tariff quota for any product.** Allocation methods used would not have trade-restrictive or -distortive effects on imports additional to those occasioned by a quantity-limited in-quota rate and an out-of-quota rate and would take account of the need to issue any licenses in economic quantities. Any arrangements applied would be administered and applied in a uniform, impartial, reasonable, transparent, predictable and fair manner. Ukraine would introduce a process for consultation with trading partners, importers and exporters prior to the amendment of tariff quota regulations, involving public notification of intended arrangements and the provision of adequate opportunity for comments to be made before final decisions are taken and implemented on such changes. [Tariff quota under the bound tariff rate quota for raw cane sugar would be allocated by the first-come-first-served method.] The Working Party took note of these commitments".*

Question 28

We propose the following amendments to paragraphs 116-199.

116. In reply, the representative of Ukraine said that upon accession to the WTO, Ukraine would apply a system of TRQ allocation for raw sugar in accordance with the terms described in its Consolidated Schedule of Concessions on Goods (Annex X etc.). He confirmed that Ukraine would abide by the provisions of the Agreement on Import Licensing Procedures and would allocate each share of the quota fairly, in order to secure its full utilisation. In addition, he stated that Ukraine would not use auctioning for the allocation of raw sugar from the date of accession.

Answer:

Ukraine does not object to such changes in paragraph 116.

Question 29

Paragraph 119: Amend language in square brackets and remove brackets so as to read

"The representative of Ukraine said it would adopt a system of allocating raw-cane sugar on a First-Come-First-Served basis within three years of the date of accession."

Answer:

Ukraine does not object to such changes in paragraph 119.

- **Fees and charges for services rendered**

Question 30

[This section requires enactment of pending legislation; draft amendments to the Cabinet of Ministers Resolution No. 1183, which would abolish the discriminatory fees on testing and registration of plant varieties;].

The last sentence of paragraph 125 reflects a commitment on the part of Ukraine and should therefore be included in the commitment paragraph (paragraph 126).

We will provide drafting suggestions in writing.

Answer:

Ukraine is awaiting the aforementioned drafting suggestions in writing.

Question 31

We note that within the new "Unified" Customs Fee, Ukraine proposes to charge a "supplementary fee" for use of Ukrainian highways (for goods travelling to final destination). As we noted in the recent Working Party meeting, there is a lack of clarity as to the nature of this fee and whether it is better characterised as a fee within the meaning of Article VIII of GATT 1994 or an internal charge within the meaning of Article III. We seek inclusion of the following language in this section of the report:

"In the view of a Member, the supplementary fee was not related to a service connected with importation, but represented an internal charge applied to the use of Ukrainian highways associated with the distribution of cargo within Ukraine. This fee, then, would be subject to the disciplines of Article III:1 of GATT 1994, which requires that such charges not be applied in excess of those applied to like domestic products. The Member sought clarification from Ukraine as to whether such 'supplementary fees' are levied on: (i) imported product that has crossed the Ukrainian border; and (ii) domestic product that is being distributed within Ukraine (but has not crossed the border). The Member also sought information on how Ukraine would ensure this fee was brought into conformity with Article III of GATT 1994."

Answer:

Pursuant to the Law of Ukraine "On Amendments to the Law of Ukraine 'On the Introduction of the Unified Fee charged at Points of Entry through the State Border of Ukraine'", dated 12 July 2001, No. 2659-III, the unified fee is to be imposed on motor vehicles of domestic and foreign owners that cross the State border of Ukraine and is to be levied at points of entry through the State border of Ukraine pursuant to Ukrainian law for customs inspection of goods in transit and of motor vehicles; sanitary, veterinary, phytosanitary, radiological and environmental controls of freight and motor vehicles; as well as for the use of Ukraine's highways and passage of motor vehicles which exceed prescribed amounts of total weight, axial loads and/or overall dimensions.

In addition, the Law provides that the unified fee may not exceed the costs related to the conduct of customs inspection of goods in transit and of motor vehicles; sanitary, veterinary, phytosanitary,

radiological and environmental controls of freight and motor vehicles, as well as expenses related to the restoration of highways.

Thus, the requirements of the said Law are in full compliance with the provisions of Articles III and VIII GATT 1994.

Question 32

We note in paragraph 166 (under Import Licensing Systems) that an importer seeking an import licence must also apply to the Chamber of Commerce and Industry of Ukraine to receive an "expert examination act" certifying the goods' code identification. This represents a "fee for service" related to the right to import and is therefore covered by Article VIII of GATT 1994. We seek:

- **additional language in this section indicating that "a Member asked as to the nature of any fees charged by the Chamber of Commerce of Ukraine in relation to issuing an "expert examination act" required by the Ukrainian Government as a condition of importation. The Member noted that any such fees would be subject to the disciplines of Article VIII of GATT 1994."**
- **clarification in the report as to the nature/level of the fees charged and how they relate to the cost of the service provided.**

Answer:

This rule was introduced to confirm the conformity of the goods to the list of licensable goods approved by the Cabinet of Ministers of Ukraine. However, Ukraine takes measures to abolish the said requirement in the nearest future. The Ministry of Economy had developed the draft to remove this requirement.

Question 33

We note in paragraph 166 that a "State duty" is also required to be paid for issuance of a licence. We seek clarification as to the nature and level of this "State duty" and how it relates to the charges of UAH 220 and UAH 780 noted later in the same paragraph.

Answer:

A letter warranting payment of the State duty for licence issuance is a proof that the applicant paid the fees for processing import licence application (State duty is equal UAH 220 for automatic licence or UAH 780 for non automatic licence).

- **Application of internal taxes to imports**

Question 34

[This section requires enactment of pending legislation; a draft Law "On Amending Certain Laws on Issues of Excise Taxation" which would accelerate the elimination of discriminatory excise taxes on alcoholic beverages; amendments to the Law "On Amendments to Certain Laws of Ukraine on Taxation of Agricultural Producers and Support of Social Standards for their Employees" and to the law "On Value Added Tax" eliminating the discriminatory VAT provisions.]

We will provide drafting suggestions for both sections (Excise Taxes; VAT) in writing.

Answer:

Ukraine is awaiting the aforementioned drafting suggestions in writing.

- VAT

Question 35

The discussion on VAT is confusing and should be revised. Parts of paragraph 139, and paragraphs 140-141 may be obsolete and can be eliminated.

Answer:

Ukraine doesn't object to the revision of the said paragraphs.

Question 36

What is the status of the legislative amendment to the discriminatory provision in the Law of Ukraine on Taxation of Agricultural Enterprises and Support of Social standards." Is it part of the WTO package of laws proposed for enactment by the new Rada?

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.

Question 37

Has the zero rate VAT for milk and meat products entered into force? We were under the impression that it was to enter into force on 1 January 2006.

Answer:

Before 1 January 2007, the amount of VAT payable to the budget by processing enterprises of all forms of ownership for milk and milk products, meat and meat products sold by them is transferred in full only for payment of subventions to agricultural producers for milk and meat sold by them in live weight to processing companies.

We also provide explanations regarding special VAT regime for agricultural producers.

Special VAT regimes for agricultural producers envisage the following:

1. the mechanism for paying subventions by processing enterprises;

Agricultural producers of all forms of ownership and business sell to processing companies, milk and meat in live weight. The said sale transaction is taxed at a zero rate. This means that agricultural producers do not have tax liabilities resulting from such sale transactions, and the amount of tax credit under the same transactions is refunded from the state budget (due to the lack of the source for VAT refund paid as part of the price of purchased tangibles).

Sales by processing companies of milk and milk products, meat and meat products produced from milk and meat sold by agricultural producers in live weight are taxed at the rate of 20 per cent.

Based on results of the said sale transactions, processing enterprises in accordance with the general tax accounting rules determined the amount of VAT that they must pay to the budget (that is, the difference between the "incoming" and "outgoing" VAT).

Having determined the VAT amount 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 agricultural producers in live weight.

2. the mechanism for accumulating funds by agricultural producers.

Under transactions to sell agricultural products other than milk and meat, agricultural enterprises accrue VAT at the rate of 20 per cent.

Based on results of the said sale transactions, processing enterprises in accordance with the general tax accounting rules determined the amount of VAT that they must pay to the budget (that is, the difference between the "incoming" and "outgoing" VAT).

The amount of VAT determined in such a manner is not paid to the budget but is rather transferred to separate bank accounts of agricultural producers. The funds in these accounts are used to purchase material and technical resources for production.

Provisions of the WTO Agreement on Agriculture allow subsidizing the sector.

The above mechanisms for levying VAT in the agricultural sector are, in fact, subsidies to the sector as the cost of income rejected by the state in favour of agricultural producers. The advantage of such subsidies is that the term during which the funds reach agricultural producers is shortened 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 not transferred to the state budget and after that transferred to agricultural producers.

As a supplement to the explanations of current mechanisms for levying VAT on agricultural producers, we hereby provide their schematic representation (Annex 1).

Question 38

We look forward to Ukraine's confirmation that it has removed discriminatory VAT exemptions applied in agriculture. In particular, we reiterate our concerns in relation to two aspects of VAT policy:

- **the VAT regime governing production of milk and meat - whereby producers sell output to processors without VAT, and processors are able to deduct VAT from inputs despite the fact that no VAT is paid on inputs from producers. The VAT liability is transferred back to producers.**

We note that paragraph 139 of document WT/ACC/SPEC/UKR/5/Rev.4 of 18 May 2006 differs in its description of the VAT regime that was contained in paragraph 130 of document WT/ACC/SPEC/UKR/5/Rev.3. In particular, we note that the previous draft of the Working Party report noted that "The processors applied 20 per cent VAT to the sales of the final products, deducting 20 per cent VAT on all inputs, even though no VAT was collected on the milk and meat in live weight purchased from agricultural producers." We request that this description be reinstated to the Working Party report.

Answer:

In the course of preparing a new version of the draft Report (document WT/ACC/SPEC/UKR5/Rev.4, dated 17 May 2006), Ukraine made changes to the description of the VAT regime that was contained in paragraph 130 of document WT/ACC/SPEC/UKR/5/Rev.3, in order to correct inaccuracies in the translation from Ukrainian into English that arose in the course of preparing document WT/ACC/SPEC/UKR/5/Rev.3. Ukraine requests to accept apologies for this technical mistake. Updating the text of paragraph 130 makes no sense.

Ukraine provide explanations regarding special VAT regime for agricultural producers.

Special VAT regimes for agricultural producers envisage the following:

- 1) the VAT mechanism for paying subsidies to agricultural producers of milk and meat

Agricultural producers sell to processing companies, milk and meat in live weight. The said sale transaction is taxed at a zero rate of VAT. Sales by processing companies of milk and milk products, meat and meat products produced from milk and meat sold by agricultural producers in live weight are taxed at the VAT rate of 20 per cent.

Based on results of the said sale transactions, processing enterprises in accordance with the general tax accounting rules determined the amount of VAT that they must pay to the budget (VAT balance, which is the difference between the "incoming" and "outgoing" VAT).

Having determined the VAT amount 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 subsidies for milk and meat sold by agricultural producers in live weight.

- 2) the mechanism for VAT accumulation by agricultural producers

Under transactions to sell agricultural products other than milk and meat, agricultural enterprises accrue VAT at the rate of 20 per cent.

Based on results of the said sale transactions, agricultural enterprises in accordance with the general tax accounting rules determined the amount of VAT that they must pay to the budget (VAT balance, which is the difference between the "incoming" and "outgoing" VAT).

The amount of VAT determined in such a manner is not paid to the budget but is rather transferred to separate bank accounts of agricultural producers. The funds in these accounts are used to purchase inputs for production of agricultural products.

The above mechanisms in the agricultural sector are, in fact, subsidies to the agriculture as the VAT tax revenues granted by government to agricultural producers. The advantage of such subsidies is that the term during which the funds reach agricultural producers is shortened 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 not transferred to the state budget and after that transferred to agricultural producers.

As a supplement to the explanations of current mechanisms for levying VAT on agricultural producers, we hereby provide their schematic representation (Annex 1).

Question 39

We also seek inclusion of the following language in this section: A Member noted that the scheme described in paragraph 139 in relation to meat and milk, conferred a subsidy on processors that is conditional upon the use of domestic over imported inputs. This arises from the fact that it is able to deduct VAT costs of 20 per cent of domestically-sourced inputs from its overall VAT liability, despite the fact that it did not incur any VAT in purchasing such inputs. Hence, its overall VAT liability is less than would otherwise be the case – a benefit which is conditional on the purchase of domestic inputs (a prohibited subsidy). The Member noted that, additionally, the fact that VAT is not levied on the basic domestic agricultural inputs (i.e. meat and milk of farmers) but is levied on imported like inputs (when purchased by processors) also results in dissimilar competitive conditions for imported *vis-à-vis* domestic meat and milk. This is because the domestic processor has a clear incentive to purchase domestic meat and milk inputs as no VAT is charged on the domestic input, while VAT is charged on the imported input. While the processor may claim back the VAT on the imported input at a later stage, there is an unfavourable competitive advantage to the domestic producer of milk and meat inputs and hence the VAT is being applied in such a way to afford protection to domestic production. This is a violation of Article III:1 of GATT 1994.

Answer:

Ukraine cannot agree to the proposal to include the above suggested wording into the section "Value Added Tax" in the draft Working Party Report due to the fact that such wording is based on the incorrect interpretation of the VAT regime, which is a technical mistake that arose in the course of the translation from Ukrainian into English. Ukraine requests to accept apologies for this technical mistake.

Question 40

- **the VAT regime concerning other agricultural inputs – which provides for accumulation of VAT for purchase of inputs. We require further clarity on the way in which this scheme works. In particular can Ukraine explain how the processor calculates the amount of VAT liability that he/she should pay to the Government and the amount of liability that would be transferred to the special accounts and accumulated for use by farmers as subsidies? Does Ukraine require that the processor makes payments of VAT to the Government that are associated with the sale of goods which are processed using imported inputs? Does Ukraine require that the processor make payments to special accounts of that proportion of VAT that is associated with the sale of their goods processed from domestic inputs?**
- **Introduction of a new "special regime"; under which allowed domestic producers to subject to a 10 per cent VAT, compared with a 20 per cent VAT applicable to imported product.**

This appears to allow domestic producers to face VAT liabilities based on a 10 per cent rate instead of the 20 per cent applicable to imported goods. This is a violation of Article III of GATT 1994.

Answer:

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 this new "special regime".

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 and quotas**

Question 41

[This section requires enactment of pending legislation; draft Veterinary Medicines Law to eliminate bans on imported meat products and establish basis for use of international veterinary standards; draft law to eliminate age limit on import of used vehicles]

The text on products with encryption refers (paragraphs 150-154) to an approval system that operates like licensing. It should be moved to the Import Licensing Procedures section.

Answer:

Ukraine doesn't object to this proposal.

Question 42

In relation to paragraph 149, we need to see confirmation of the removal of the import ban on second-hand vehicles by the date of WTO Accession. There is no justification for a transition period for its removal.

Answer:

The draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Some Issues Related to Importing Motor Vehicles to the Customs Territory of Ukraine'", which suggests removing the ban on the importation of used motor vehicles into the customs territory of Ukraine, will be submitted to the Supreme Rada of Ukraine for consideration.

Question 43

In relation to paragraph 156, we need confirmation that the import ban on ground beef has been eliminated upon accession. We also seek confirmation that an import ban on offal more generally has been eliminated.

Answer:

The import ban on ground beef will be eliminated soon after the enactment of the new Law on Veterinary Medicine which is expected in 2006. Currently, there is not a general import ban on offal.

Question 44

In relation to paragraph 158, we require confirmation that the mandatory requirement for exportation of sugar refined from imported raw cane sugar has been repealed.

Answer:

The Draft law On Introduction of Changes to the Law of Ukraine "On State Regulation of Sugar Production and Sale", which repeal the mandatory requirement for exportation of sugar refined from imported raw cane sugar and eliminate quotas B and C, will be submitted to the Supreme Rada of Ukraine for consideration.

Question 45

We would appreciate confirmation in this section that the provisions of Article 8 of the Law of Ukraine on State Support of Agriculture allowing for "setting of non-tariff limitations (quotas) as to import or export of a specific object of state price regulation" have been repealed.

Answer:

The Draft law "On Amendments to the Law of Ukraine "On State Support for Agriculture", which amend Article 8 to repeal the rights for imposing quotas on import or export of a specific object of state regulation, will be submitted to the Supreme Rada of Ukraine for consideration.

- **Import licensing systems**

Question 46

[This section requires enactment of pending legislation; draft amendments to the Law on Foreign Economic Activities to eliminate import approval requirements for precious metals and scrap metal]

Ukraine should eliminate the requirement that importers must secure an "expert evaluation" from the Chamber of Commerce in order to apply for import licenses for the goods in question (paragraphs 166-168). There does not appear to be any justification for this measure.

Answer:

This rule was introduced to confirm the conformity of the goods to the list of licensable goods approved by the Cabinet of Ministers of Ukraine. However, Ukraine takes measures to abolish the said requirement in the nearest future.

Question 47

We seek confirmation that import requirements for scrap metal have been eliminated as indicated in paragraph 164. Table 14 (c) would need to be amended to remove reference to scrap metal.

Answer:

Ukraine confirms that currently there were no import requirements for scrap metal. Ukraine would completely eliminate import approval requirements for scrap metal by the date of WTO accession.

Question 48

We note Ukraine's statement that "no import approval was applied to precious metals and alloys". However, Table 14 (c) continues to refer to non-automatic licensing of precious metals and alloys and precious stones. We request that Ukraine clarify this issue and adjust Table 14 (c) accordingly.

Answer:

Ukraine commits to amend the Law of Foreign Economic Activities to change "precious metals and stones" to "gold and silver" by the date of WTO accession.

Question 49

Table 14 (c) also still contains references to non-automatic import licensing of "precious stones" and "precious metals and alloys". The justification they are seeking is GATT Article XX (c) - but this Article pertains to only gold and silver. Ukraine notes it will address this issue in paragraph 164, but it is not clear that this has happened.

Answer:

Ukraine commits to amend the Law of Foreign Economic Activities to change "precious metals and stones" to "gold and silver" by the date of WTO accession.

Question 50

In relation to paragraph 166, we note that an importer seeking a licence must also apply to the Chamber of Commerce and Industry of Ukraine to receive an "expert examination act" certifying the goods' code identification. This represents a "fee for service" related to the right to import and is therefore covered by Article VIII of GATT 1994. We seek:

- **additional language in this section indicating that "a Member asked as to the nature of any fees charged by the Chamber of Commerce of Ukraine in relation to issuing an "expert examination act" required by the Ukrainian Government as a condition of importation. The Member noted that any such fees would be subject to the disciplines of Article VIII of GATT 1994. In response, the representative of Ukraine confirmed that this fee would be subject to Article VIII. The Working Party took note of this commitment."**
- **clarification in the report as to the nature/level of the fees charged and how they relate to the cost of the service provided.**

Answer:

This rule was introduced to confirm the conformity of the goods to the list of licensable goods approved by the Cabinet of Ministers of Ukraine. However, Ukraine takes measures to abolish the said requirement in the nearest future.

Question 51

We note in paragraph 166 that a "State duty" is also required to be paid for issuance of a licence. We seek clarification as to the nature and level of this "State duty" and how it relates to the charges of UAH 220 and UAH 780 noted later in the same paragraph.

Answer:

A letter warranting payment of the State duty for licence issuance is a proof that the applicant paid the fees for processing import licence application (UAH 220 for automatic licence or UAH 780 for non automatic licence).

Question 52

In relation to paragraph 168, we will need to update section concerning sugar following finalisation of bilateral negotiations.

Answer:

Ukraine passed the draft of Regulation on Allocation of Tariff Rate Quota on Raw Cane Sugar Importation into Ukraine to the WTO Secretariat for further circulation as a separate document. However Ukraine doesn't object to amend text in paragraph 168.

- **Customs valuation**

Question 53

[This section requires enactment of pending legislation; Draft Order of the State Customs Service of Ukraine on approval of methodological recommendations on application of certain provisions of the Customs Code of Ukraine dealing with the issues of customs valuation of goods imported into customs territory of Ukraine (legislation meant to implement the Interpretative Notes).]

We have reviewed Ukraine's Customs Code, its amendments, and the draft Regulation "On Interpretative Notes for Application of the Customs Code Provisions on Customs Valuation," legislation 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.

We have forwarded our last comments to Ukraine. We consider this section in substance terms essentially completed.

Answer:

Please see observations by Ukraine on this Member's comments the Customs Code of Ukraine in Annex 2.

Question 54

Please confirm when the draft Regulation will become law.

Answer:

The Draft Order of the State Customs Service of Ukraine implementing the Interpretative Notes is being revised by the Customs Service and is expected to be finalized and adopted before the next working party meeting.

- **Rules of origin**

Question 55

Please add material from the response to Question 44 of document WT/ACC/UKR/137 to paragraph 187 of the report, to confirm that CM Resolution No. 1443 "On Making Additions to the Procedure for Determining the Country of Origin of Goods Carried Across the Customs Territory of Ukraine" ensures the observance of the requirements of Article 2 (h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin.

Answer:

Ukraine doesn't object to the proposed changes. The paragraph could be amended as follows:

"187. A Member noted that an examination of the amendments to Section XI of the Customs Code had revealed that the amendment to Article 277 was not specific enough to ensure implementation of the provisions of Article 2(h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin. In reply, the representative of Ukraine pointed to Cabinet of Ministers' Resolution No. 1443 of 28 October 2004 **intended to ensure the observance of the aforementioned requirements.** The Resolution had taken effect on 1 January 2005".

Question 56

Please review paragraph 190 to clarify the status of the default option for determining the Rule of Origin for goods without certificates of origin issued by Chambers of Commerce or other competent authorities.

Answer:

If there is no properly formalized goods origin certificate or additional information about the goods origin, or if it is impossible to determine the country of origin of the goods with certainty, such country is considered unknown and, in this case, the full import duty rate is paid. The privileged rate is established for imports of goods having a properly authorized certificate of goods origin. If the full and privileged rates for the goods are the same, the goods origin certificate is not necessary.

- **Other customs formalities**

Question 57

This section is very misleading, and should be revised in light of the information provided in the response to Question 47 of WT/ACC/UKR/137. Paragraph 193 in the report does not reflect that classification rulings by the Chambers are voluntary.

The commitment in paragraph 194 is not clear. What does it mean "according to the recommendations of the World Customs Organization?"

Answer:

As it was agreed at the Working Party meeting Ukraine is awaiting the drafting suggestions in writing of the commitment in paragraph 194.

- **Preshipment inspection**

Question 58

The commitment text should clearly confirm that use of PSI firms will not undermine access to the due process or transparency protections of the Agreements. We will provide additional drafting suggestions in writing.

Answer:

Ukraine is awaiting the aforementioned drafting suggestions in writing.

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

Question 59

The price comparability provisions in paragraph 205 may need to be altered, as Ukraine now has market economy status for anti-dumping.

Answer:

During the recent Working Party meeting it was agreed that paragraph 205 should be eliminated as Ukraine now has market economy status for anti-dumping.

Question 60

We support the first commitment text in paragraph 206.

Answer:

Legislation of Ukraine in the field of anti-dumping, countervailing and safeguard measures has been passed in 1998. All current legislation in the mentioned fields has been developed with due regard to the provisions of the WTO Agreement on the Application of Article VI and the WTO Agreements on Anti-Dumping Measures, Subsidies and Countervailing Measures as well as Safeguard Measures. With regard to the fact that Ukraine already passed the relevant laws that are in line with the WTO Agreement on the Application of Article VI and the WTO Agreements on Anti-Dumping Measures, Subsidies and Countervailing Measures as well as Safeguard Measures, we believe it would be reasonable to accept the second wording of the text of the commitment. All the laws in this field were provided to the WTO Secretariat at the request of the Working Party members.

Thus Ukraine supports maintaining the second paragraph of the commitment language in paragraph 206:

[The representative of Ukraine confirmed that from the date of accession Ukraine would apply any anti-dumping, countervailing or safeguard measure in full conformity with the relevant WTO provisions, particularly with the provisions of the WTO Agreements on the Implementation of Article VI, on Subsidies and Countervailing Measures, and on Safeguards. The Working Party took note of these commitments.]

B. EXPORT REGULATIONS

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

Question 61

[This section requires enactment of pending legislation; draft laws reducing export duties on oilseeds, scrap metal and hides and skins.]

We appreciate Ukraine's efforts to reduce its export duties as reflected in the commitment in paragraph 216 and Tables 17b and 17c.

Minimum export prices act against competitive exports and can, under certain circumstances, create artificially low internal prices for exportable goods. We seek a commitment for their elimination from the date of accession, responsive to the request in paragraph 215.

Answer:

Ukraine took note of this comment.

Question 62

In relation to export duties on live cattle, the proposed starting point for reductions is very high (50 per cent) and will continue to have a prohibitive effect on exports for a considerable period after accession. We seek a much lower starting point for reductions upon accession, with a more rapid reduction in subsequent years.

Answer:

Ukraine believes that the proposed schedule for reduction of export duties on hides and skins is reasonable.

Question 63

In relation to export duties on hides and skins, the proposed plan in Table 17(c) also involves no adjustment upon accession. We request a considerable reduction from the current rate of 30 per cent immediately upon accession to a lower end point.

Answer:

Ukraine believes that the proposed schedule for reduction of export duties on hides and skins is reasonable.

Question 64

On export duties on ferrous and non-ferrous scrap, we also support calls for more ambitious reductions in final bound duties.

Answer:

Ukraine believes that the proposed schedule for reduction of export duties on hides and skins is reasonable.

Question 65

We also seek confirmation that Ukraine will repeal provisions imposing minimum export prices on any goods, as these act as a form of additional export restriction within the meaning of Article XI when exporters are legally bound to set prices at this level.

Answer:

Ukraine doesn't apply minimum export prices. Ukraine use indicative export prices aimed to inform companies about the level of world prices, in order to avoid antidumping measures, special import procedures and in accordance with international obligations of Ukraine.

- **Export restrictions**

Question 66

[This section requires enactment of pending legislation; draft Laws "On cancellation of export ban for alloyed ferrous metal scrap, non-ferrous metal scrap and semi-products, manufactured using the latter" (regarding of replacement export ban for alloyed ferrous metal scrap, non-ferrous metal scrap with introduction of export duty for above products); draft Amendments to the Law on Foreign Economic Activities to eliminate all measures other than those affecting gold and silver; draft law On Introduction of Changes to the Law of Ukraine "On State Regulation of Sugar Production and Sale" (abolishing export quotas and mandatory exportation of raw cane sugar)]

Paragraph 224 indicates that the *ad valorem* licensing fee has been eliminated. This information should also be recorded in paragraph 166 as well, for import licenses.

Answer:

Ukraine doesn't object to this proposal

Question 67

The commitment text in the second set of brackets in paragraph 228 represents a good basis from which to develop an appropriate commitment. We will provide drafting suggestions in writing.

Answer:

Ukraine doesn't object to maintaining the second paragraph of the commitment language which states that the export ban of non-ferrous scrap will be eliminated upon accession:

[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.]

Ukraine is awaiting the aforementioned drafting suggestions in writing

Question 68

We seek confirmation in paragraph 227 of the indication that the Rada had adopted laws removing export bans on scrap ferrous and non-ferrous metals. This needs to be clarified as Table 19(a) continues to refer to a prohibition on export of non-ferrous scrap. We also seek confirmation that all precious metals currently listed in Table 19(b) would no longer be subjected to export restrictions.

Answer:

The first sentence of Paragraph 227 should be replaced with the following:

"The representative of Ukraine said that a Draft Law "On Cancellation of Export Ban for Alloyed Ferrous Metal Scrap, Non-Ferrous Metal Scrap and Semi-Products, Manufactured Using the Latter" providing for the elimination of the export ban on ferrous metal scrap and on scrap non-ferrous metals (to be replaced by export duties), will be submitted to the Supreme Rada of Ukraine for consideration..

Question 69

We seek confirmation of adoption of amendments to abolish the scope of Government to apply quotas (B and C) on the export of raw cane sugar.

Answer:

The Draft law On Introduction of Changes to the Law of Ukraine "On State Regulation of Sugar Production and Sale", which repeal the mandatory requirement for exportation of sugar refined from imported raw cane sugar and to eliminate quotas B and C, will be submitted to the Supreme Rada of Ukraine for consideration.

- **Export subsidies**

Question 70

What is the scope of shipbuilding contracts concluded prior to March 2005 that still receive customs duties exemptions on inputs used in the production process? How long does Ukraine believe these benefits will continue, e.g., more than five years? This information should be included in the text.

What portion of its shipbuilding production does Ukraine export?

We have sought confirmation from Ukraine that its 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). Ukraine has indicated that the benefits granted to shipbuilding are not duty drawback.

Answer:

During 2005, export of shipbuilding industry constituted US\$230.2 million (34 vessels), and that accounts for 76 per cent of the overall volume of production, production for internal needs was US\$71.3 million (15 vessels) that accounts for 24 per cent.

The number of contracts signed before March 2005 is 118.

In 2005 the export share in shipbuilding industry made up 0.57 per cent in the overall country's export that accounts for US\$230.2 million.

In accordance with the Law of Ukraine "On State Support of Shipbuilding Industry of Ukraine" No. 1242 of 18 November 1999, the following preferences are in effect:

- in accordance with Article 1, a delay is stipulated in payment of the profit tax on advances made to shipbuilding industry enterprises before the moment of commissioning a ship.
- Land tax exemption effective:
 - from 1 April 2005 – at the level of 75 per cent of the effective rates in the relevant territories;
 - from 1 January 2006 – at the level of 50 per cent of the effective rates in the relevant territories; and
 - from 1 January 2007 – at the level of 25 per cent of the effective rates in the relevant territories.

Question 71

Whether in this section or elsewhere, however, we continue to seek inclusion of this commitment.

We support the second commitment paragraph in paragraph 232.

Answer:

Ukraine has no objections to the second commitment paragraph in paragraph 232:

[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 to, any such subsidies to the shipbuilding and automotive industries. The Working Party took note of this commitment]

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 72

We support the commitment texts in paragraph 248 and the second part of paragraph 249.

Answer:

Ukraine has no objections to the second commitment paragraph in paragraph 249:

[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.]

Question 73

We also support inclusion in the commitment in paragraph 248 the commitments in paragraph 205(b) and (c) concerning use of alternative methodologies. We will provide text in our written comments.

Answer:

Ukraine is awaiting the aforementioned drafting suggestions in writing.

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

Question 74

[This section requires enactment of pending legislation; amendments to laws and regulations as described in document WT/ACC/UKR/129 to ensure that Ukraine's 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.]

The commitments in paragraph 267 and 268 should be reviewed to ensure that they do not overlap and that the commitment text is in the proper form.

We will have detailed comments in writing.

Answer:

At the recent Working Party meeting it was agreed to delete the commitment in paragraph 267 and to take as the basis for commitment in the TBT sphere the text laid down in the paragraph 268.

Ukraine is awaiting the aforementioned drafting suggestions in writing.

- **Sanitary and phytosanitary measures**

Question 75

[This section requires enactment of pending legislation; draft Law on Veterinary Medicine; draft Law on Biotechnologies (GMOs).]

We commend the Government of Ukraine for continuing to reduce the list of goods subject to mandatory certification and would encourage further reductions.

Answer:

Ukraine annually takes measures to shorten the list of products subject to mandatory certification by excluding from that list, the commodities with a low level of risk to consumers. For example, in 2005, over 50 product titles were excluded from the List.

In 2006, the shortening of the List continues.

Beginning 2007, after the introduction of technical regulations, product groups covered by these regulations will be excluded from the List.

Question 76

What is the status of the action/reform program that Ukraine envisages to bring its Sanitary and Phytosanitary (SPS) regime into compliance with WTO obligations? We seek to understand how Ukraine intends to be in full conformity with all provisions of the SPS agreement with all aspects of the harmonization plan incomplete.

Paragraph 282: We support the commitment, but need an explanation of what "national competent" bodies are.

We are making a final technical review of the existing legislation, i.e.,

- 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; and**
- The Draft Law on Plant Quarantine was adopted by the Rada on 19 January 2006.**

We await enactment of the Law on Veterinary Medicine and look forward to reviewing the draft Law on Biotechnologies.

Answer:

The following is an updated status on the SPS action plan:

All systemic laws to bring the legal framework into conformity with the WTO SPS Agreement have been adopted except for the Law on Veterinary Medicine. The Draft Law on Veterinary Medicine has been drafted. This Draft law is part of the WTO package of laws proposed for enactment by the new Rada.

Food Safety requirements: since August 2005, Ukraine has been conducting a comparative review of Ukrainian food safety requirements with Codex Alimentarius standards. Around 85 per cent of Codex and Ukrainian food safety requirements have been compared. The results of the comparison thus far indicate that around 20 per cent of Ukrainian food safety requirements are the same as Codex Alimentarius. The remaining requirements will have to be brought in conformity with the SPS Agreement. Measures offering higher protection than the Codex would be replaced by Codex standards, or a risk assessment would be undertaken to justify them. Measures that exist in Ukraine but are not in the Codex would be eliminated, or a risk assessment would be undertaken to justify them. On 3 July 2006, Ukraine established the National Codex Alimentarius Commission. The Commission will start to gradually adopt Codex Alimentarius standards.

Animal Health: greater compliance with the standards of the OIE and the SPS Agreement had already been achieved pursuant to Order No. 36 of the State Department of Veterinary Medicine of 25 April 2005. Upon the adoption of the Law on Veterinary Medicine (expected in 2006), the Veterinary Department will take further measures in accordance with the new law to achieve full compliance with OIE. Recently, the rules for Slaughtering have been harmonized with the EU legislation (99 per cent completed). Further, the Rules for Issuance of Veterinary Documents have been upgraded in accordance with the international requirements.

Plant Health: In May 2006, Ukraine became a Member of the IPPC. Ukraine will base all of its plant health measures on IPPC standards, guidelines and recommendations. In this regard, Ukraine recently adopted ICPM Standard No. 15 was adopted in the form of Phytosanitary rule.

Question 77

We seek confirmation that the import ban on ground beef (or offal) will be eliminated with enactment of a new Veterinary Medicine Law (paragraph 156).

Answer:

The import ban on ground beef will be eliminated soon after the enactment of the new Law on Veterinary Medicine which is expected in 2006.

- **Trade-related investment measures**

Question 78

[This section requires enactment of pending legislation; draft amendments to the Law on State Regulation of Sugar Production and Sale.]

While this section is shaping up, it needs a traditional commitment on TRIMs, and should receive the information from the Investment section on these measures.

Answer:

The commitment language in TRIMs sphere is presented in paragraph 286 of the Working Party report of Ukraine:

"The representative of Ukraine confirmed that from the date of accession, Ukraine will apply its investment regime in compliance with the relevant provisions of the WTO, including the Agreement on Trade-Related Investment Measures, and in a non-discriminatory manner - to imports from all WTO Members and to domestically produced goods. The Working Party took note of this commitment".

- **State-trading entities**

Question 79

As we noted earlier, it would be useful to incorporate this section in the front portion of the Report with portions of the section on "State Ownership and Privatization". Doing so would greatly improve the coherence of the discussion relating to State-owned, State-controlled, and State trading enterprises.

We support the commitment text in paragraph 294, with appropriate changes to reflect redrafting.

We will provide drafting suggestions in writing.

Answer:

Ukraine is awaiting the aforementioned drafting suggestions in writing.

- **Free zones, special economic areas**

Question 80

[This section requires enactment of pending legislation; (per response to Question 92 of WT/ACC/UKR/137) draft law 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.]

We believe this section is substantially completed. However, there are a few loose ends that will need to be tied down.

We will need more information on the prospective law, and its current progress towards enactment. When can we see a text?

Answer:

Ukraine will provide the abovementioned draft law in due course.

Question 81

We are concerned about information in the Rules of Origin section of the report indicating that goods processed in special economic zones could acquire status as domestic goods based on domestic content. This would appear to allow them to be sold in the rest of Ukraine duty free based on local content—a prohibited subsidy.

Paragraph 304, dealing with the moratorium on SEZs will need to be updated.

Answer:

A moratorium on the creation of new special (free) economic zones imposed by the 2005 Budget Law (Article 9) is still in effect and there are no plans or draft legislation to cancel this Moratorium.

- **Government procurement**

Question 82

[This section requires enactment of pending legislation; Draft amendments to the law "On Government procurement" regarding State enterprises]

We would like to see a copy of the new legislation on Government Procurement. We understand that it blurs the distinction between purchases by state entities for possible commercial use and government purchases for its own consumption.

We will want the text to reflect that Ukraine has separated the two issues, and that its commitment in this section refers only to procurement by the government for its own consumption.

Answer:

Ukraine will provide the new law on Government Procurement in due course.

Question 83

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

Answer:

Ukraine looks forward for initiation of negotiations of membership in the Government Procurement Agreement as stated in the Working Party Report Commitment.

- **Agricultural policies**

Question 84

[This section requires enactment of pending legislation; draft Amendments to the Law on Milk and Dairy Products; amendments as appropriate to the Law on State Support for Agriculture and the Law on VAT to eliminate WTO-inconsistent measures applied to support agriculture.]

It is clear that this section of the report will need review based on the repeal of WTO-inconsistent legislation on support of agriculture. The section will also need to be redrafted to receive the material moved from the Pricing Policies section.

Answer:

Ukraine has no objection to redrafting of this section.

Question 85

We urge Ukraine to address the following concerns prior to the next Working Party meeting, so we may finalize this section of the report.

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 part of the WTO package of laws proposed for enactment by the new Rada.

Question 86

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 Law of Ukraine "On Introducing Changes to Some Laws of Ukraine on Taxing Agricultural Enterprises and Supporting Social Standards of 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 Taxing Activities 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.

In the current year, 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 allow avoiding a discriminatory approach to the imposition of 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.

Question 87

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).

Ukraine is entitled to assist its farmers, and to protect its markets, but must use WTO-consistent methods to do so.

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.

Answer:

Ukraine will provide the aforementioned legislation in due course.

Question 88

WTO inconsistencies in application of VAT between domestic and imported products need to be addressed.

Answer:

Please see answers to Question 38 above.

Question 89

Article 8 of Law On State Support to Agriculture in Ukraine needs to be addressed to repeal rights to impose import quotas (paragraph 334) and minimum import prices.

Answer:

The Draft law "On Amendments to the Law of Ukraine "On State Support for Agriculture", which amend Article 8 to repeal the rights for imposing quotas on import or export of a specific object of state regulation, will be submitted to the Supreme Rada of Ukraine for consideration.

Question 90

We will need to finalise agricultural support commitments on the basis of a recent and representative base period.

Answer:

We understand the importance of this issue and aspire to agree upon the commitment regarding the AMS for agriculture as soon as possible. This is why Ukraine prepared and provided its alternative proposal regarding State support on the basis of the period of 2000 – 2002 for review, and we expect active cooperation on the part of this Member in respect of this issue.

- **Trade in civil aircraft**

Question 91

Ukraine has stated its commitment to join the Agreement on Trade in Civil Aircraft. Standard commitment language should be added.

Answer:

Ukraine proposes the following new wording for the commitment in paragraph 320:

320. A Member sought a commitment from Ukraine to join the Agreement on Trade in Civil Aircraft upon accession to the WTO. ~~The representative of Ukraine replied that his Government intended to join the Agreement on Trade in Civil Aircraft in 2010.~~ **The representative of Ukraine confirmed that Ukraine would become a signatory to the Agreement on Trade in Civil Aircraft in 2010. The Working Party took note of this commitment."**

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **GENERAL**

Question 92

[This section requires enactment of pending legislation; draft law that amends: Law on Medicines (data exclusivity), legislation on agricultural chemicals; the Law on GIs to take into consideration WTO rulings; draft Resolution of the CM on amending of item 2 of Procedure of payment of the charge for actions related to acquiring, implementation and protection of rights for plant varieties; and "Draft amendments to the Customs Code" to provide Customs inspectors with "ex officio" authority.]

Our priority in this area is legislative implementation and enforcement.

The text is shaping up, and we will have a few additional comments on the text, in writing.

Answer:

Ukraine is awaiting the aforementioned drafting suggestions in writing.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 93

[This section requires enactment of pending legislation; draft law on the Bar; draft law On Introduction of Changes to the Law of Ukraine "On Banks and Banking Activity" (with regard to setting up branches of foreign banks in the territory of Ukraine); draft Law on Changes to the Law of Ukraine "On Publication Activity"]

The text of this section will require work to incorporate material supporting the commitments in the consolidated schedule.

In this regard, we have specific material on insurance and transparency that we will provide in writing for the next revision.

Answer:

Ukraine is awaiting the afore-mentioned drafting suggestions in writing.

VIII. TRADE AGREEMENTS

Question 94

We note the bracketed commitment language and urge adoption of the second text in paragraph 452.

Answer:

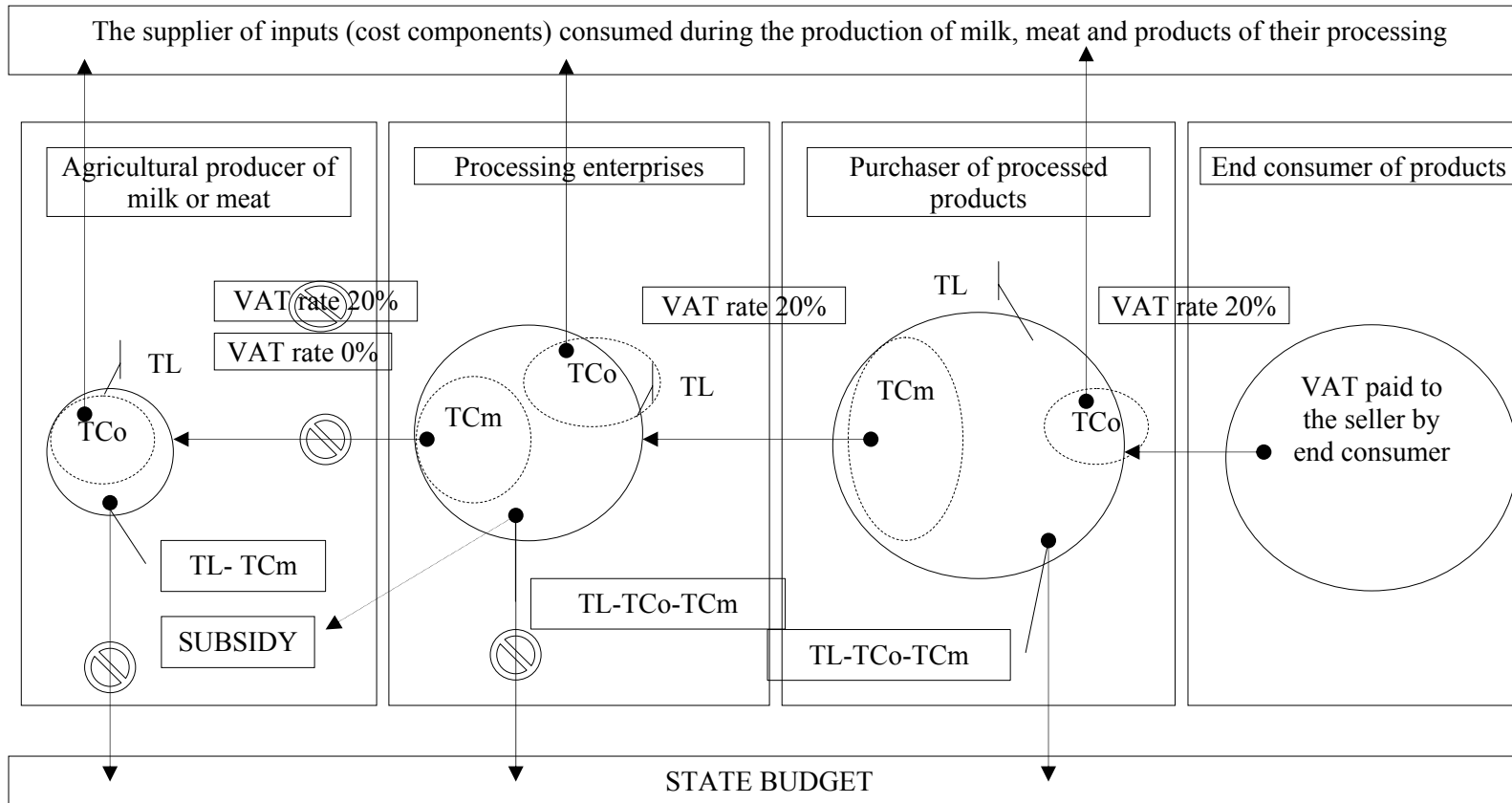
At the recent Working Party meeting it was agreed to adopt the second text in paragraph 452:

[The representative Ukraine confirmed that Ukraine would observe all WTO provisions including Article XXIV of GATT 1994 and Article V of the GATS in its participation in preferential the trade agreements, and would ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which Ukraine was a member were met from the date of accession. He confirmed that Ukraine would, upon accession, submit notifications and copies of its Free Trade Areas and Custom Union Agreements to the Committee on Regional Trade Agreements (CRTA). He further confirmed that any legislation or regulations required to be altered under its Trade Agreements would remain consistent with the provision of the WTO and would, in any case, be notified to the CRTA during its examination of the same. The Working Party took note of these commitments.]

ANNEX 1

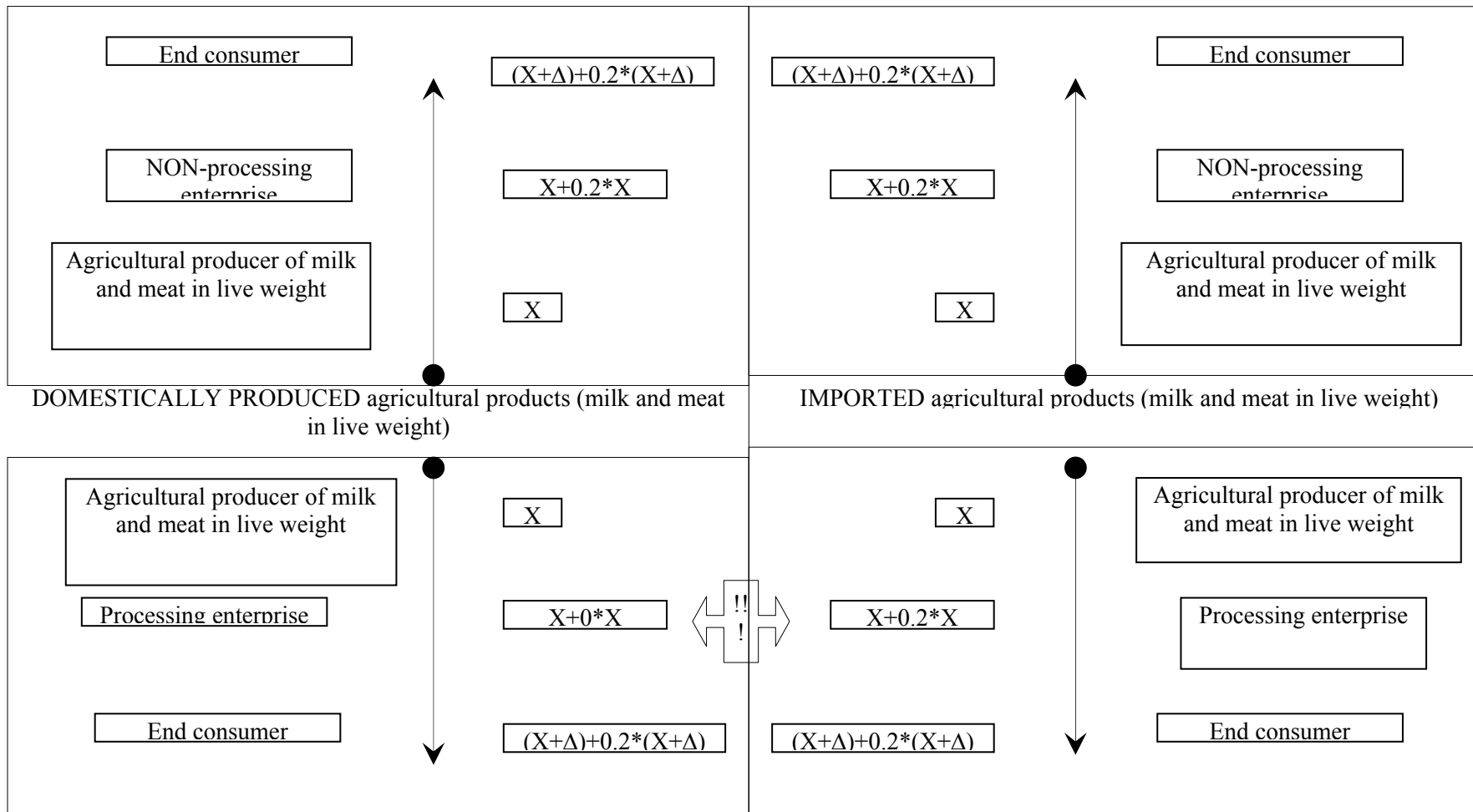
Special VAT regime for agricultural producers of milk and meat

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

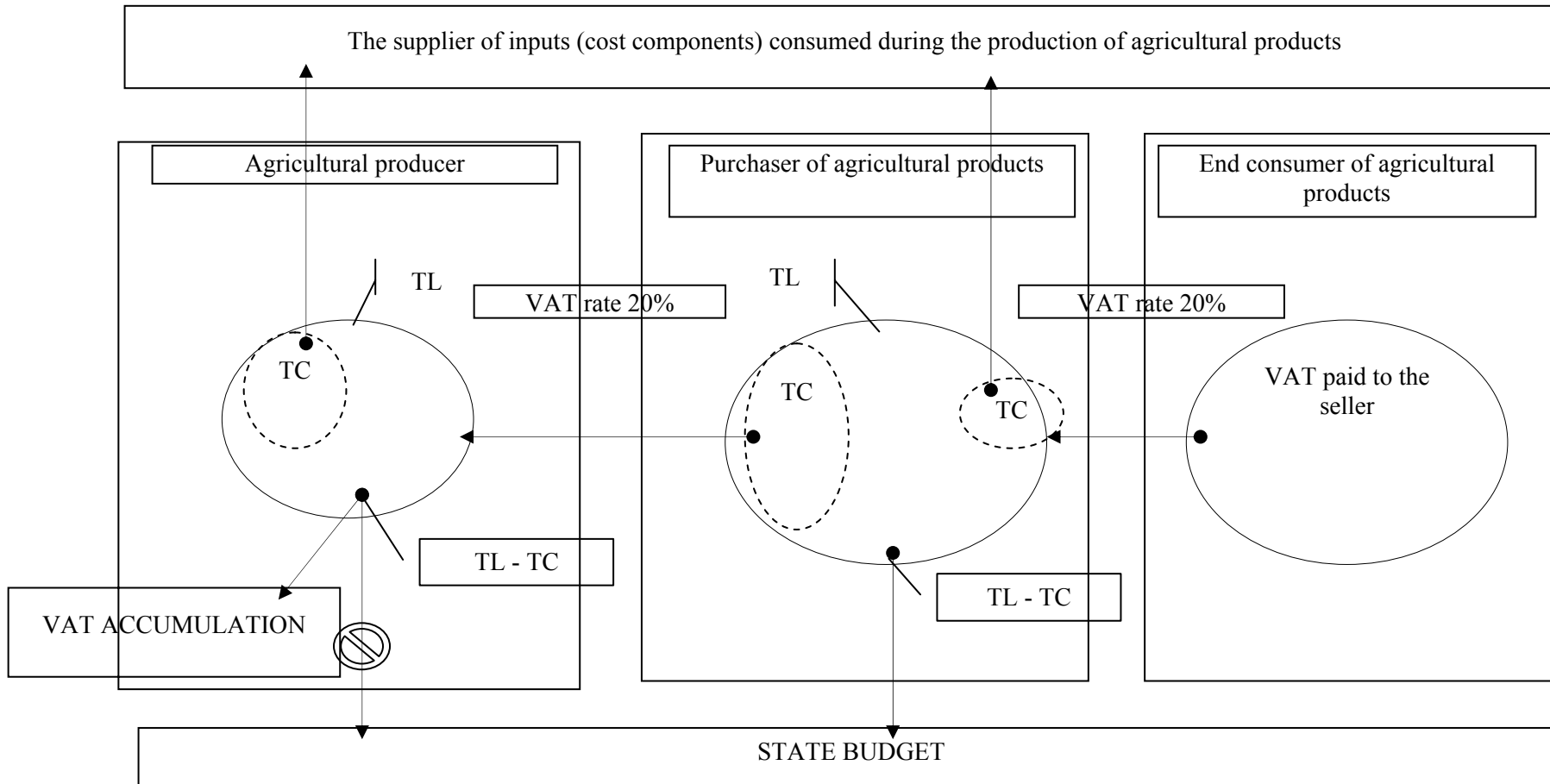


Assumptions:

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

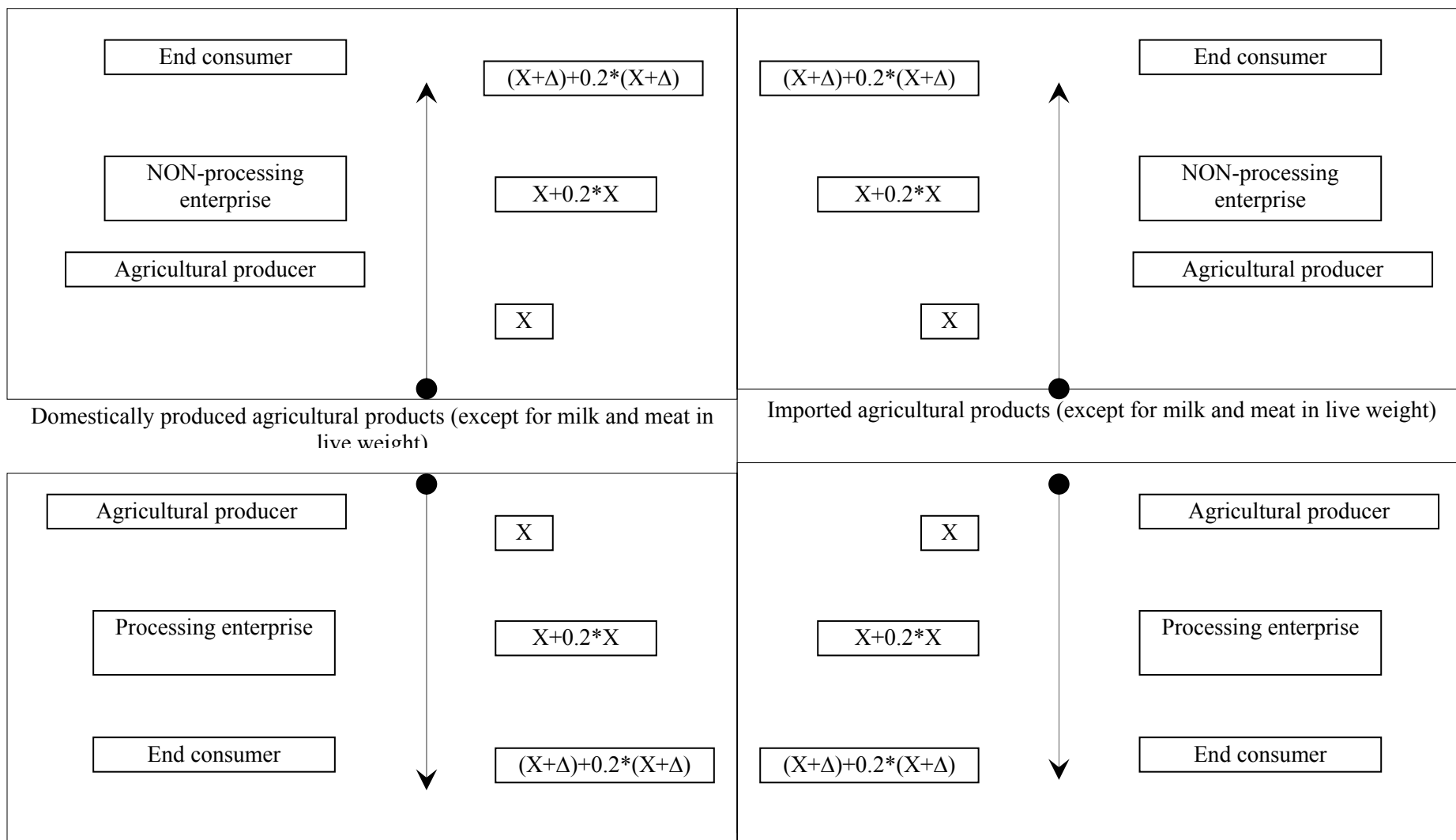
Δ - added value created by a processing/non-processing company.

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

Observations by Ukraine on the comments raised by a Member of the Working Party on the Customs Code of Ukraine

Ukraine is thankful for these informal comments on those parts of the Customs Code of Ukraine dealing with customs valuation.

Ukraine intends to bring itself into compliance with WTO rules on customs valuation through two normative acts: the Customs Code of Ukraine, as amended, and the Executive Order of the State Customs Service of Ukraine "Methodological recommendations for using certain provisions of the Customs Code of Ukraine relating to the determination of the customs value of goods brought into the customs territory of Ukraine" (hereafter: "Executive Order").

Transaction Value for Related Parties: first paragraph

Paragraph 3.8.1 of the draft Executive Order reads as follows:

"Paragraph 7) of part three of Article 267 stipulates that where the purchaser and the seller are interdependent, that is, are related persons, the circumstances of sale must be studied and the value of the transaction shall be accepted as the customs value provided such relations had no impact on the price. It is not stipulated that circumstances must be studied in all cases where the seller and the purchaser are related to each other. Such inquiry would be needed only where there are reasonable doubts regarding the acceptability of the price. If the customs body does not have any doubts regarding the acceptability of the price it must be accepted without requesting further information from the declarant. For example, the customs body had studied the relations before or already has detailed information on the purchaser and the seller and may be convinced as a result of studying this information that these relations had no impact on the price of the goods brought into the customs territory of Ukraine."

Transaction Value for Related Parties: second paragraph

There appears to have been a translation or typographical error. Article 267 of the Customs Code does not contain the language "expenses listed in Part 5 of this Article" referred to in the comments. Article 267 does contain the language "expenses listed in Part 2 of this Article". Part 2 contains paragraphs 1 through 7, which, as noted in comments, correspond to the expenses listed in Article 8 of the Customs Valuation Agreement.

Transactions Value for Related Parties: third paragraph

Paragraph 3.9 of the draft Executive Order reads as follows:

"A number of factors shall be taken into consideration in determining that any value is "approximated as much as possible" to some other value. These factors include the nature of the imported goods, the nature of the industry, the season during which the goods are imported and whether or not the difference between values is commercially significant. Since these factors may differ in each specific case, it would be impossible in each case to apply a uniform standard like a fixed percentage. For example, a small difference in values in a case concerning certain types of goods may be unacceptable, while a big difference in a case concerning another type of goods may be acceptable in determining whether or not the value of the transaction is approximated as much as possible to "benchmark" values mentioned in paragraph 7) of part three of Article 267."

Computed Value

Paragraph 7.4 of the draft Executive Order reads as follows:

"Profits and general costs mentioned in paragraphs 20 and 30 of Article 272 shall be determined based on information provided by the manufacturer or on its behalf, unless the manufacturer's figures are incompatible with the figures usually recorded in connection with sales of goods of the same class or type as the valuated goods that are manufactured by manufacturers in the exporting country for export to Ukraine."

Paragraph 7.5 of the draft Executive Order contains the following language:

"In this connection it should be noted that 'profits and general costs' must be taken in their entirety. It means that if in a certain specific case manufacturer's profits are low and general cost of the manufacturer are high, manufacturer's profits and general costs, taken together, still can be compatible with those recorded in connection with sales of goods of the same class or type."

Paragraph 7.6 of the draft Executive Order contains the following language:

"If information used for the purposes of calculating the value is other than that provided by the manufacturer or on its behalf, customs bodies must inform the importer...."

Right to Appeal without Penalty

Paragraph 1.8 of the draft Executive Order reads:

"In accordance with Article 264, the declarant shall be entitled to challenge decisions concerning the determination of the customs value of goods approved by the customs body. Initially, a complaint may be lodged with a higher-ranking customs body, but the declarant shall be entitled to ultimately challenge such decision in court."

Paragraph 1.9 of the draft Executive Order reads:

"The declarant shall not be subject to a penalty or threatened with a penalty only because he decided to avail himself of the right to challenge the decision. Payment of ordinary legal costs shall not be considered a fine."
