

ACCESSION OF UKRAINE

Additional Questions and Replies

The Governmental Commission on Ukraine's Accession to the WTO has provided the replies reproduced hereunder to the questions submitted by delegations following the Working Party meeting held on 5-6 May 1997.

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III. FOREIGN TRADE REGIME

III.1 Import Regulation

Question 1.

VAT applicability in CIS trade. We thank Ukraine for the information provided, but seek to clarify how the arrangements currently operate.

Answer:

The value-added tax (VAT) is applied in Ukraine in accordance with the Law of Ukraine on the Value-added Tax no. 168/97-VR of 3 April 1997. Exports of goods from the custom territory of Ukraine are exempted from the VAT according to the legislation (the VAT rate is zero). Reimbursement of the paid VAT to exporting enterprises (reimbursement of the debit balance of the VAT settlements) is conducted from corresponding budgets in the places of incorporation of the enterprises. Reimbursement of the VAT to business activity entities that export goods (services) of that they have not produced themselves is conducted after their confirmation that the goods to be exported have been paid for in the money form.

If a manufacturing company exports its products it is reimbursed the paid VAT in accordance with the active procedure irrespective of the type of operation of acquiring the parts or raw materials.

The goods imported into Ukraine are liable to the VAT in accordance with the legislation currently in force. The VAT rate is set by the Law of Ukraine on the Value-added Tax no. 1168/97-VR of 3 April 1997 at the level of 20 per cent of taxable object.

The taxable object for the VAT is the custom value of goods to be imported into Ukraine including the custom dues and the excise tax for the goods that are excise liable according to the legislation of Ukraine.

In foreign trade between Ukraine and the CIS countries and the Baltic states, the VAT is applied differently: the Russian Federation and other countries that are members of the Custom Union - Belarus, Kazakstan and the Kyrgyz Republic - that apply foreign trade rules unified with those of the Russia Federation according to the agreements of the mentioned Union currently in force apply the VAT to exports and (since 1996) to imports.

The CIS countries that have not joined the Custom Union - Azerbaijan, Armenia, Georgia, Tadjikistan, Turkmenistan, Uzbekistan - apply the VAT according to the rule of origin, i.e. to exports. Moldova imposes the VAT on the goods imported from Ukraine.

The Baltic states - Latvia, Lithuania, and Estonia - apply the VAT according to the rule of destination, i.e. to imports when trading with Ukraine.

Question 2

Ukraine recalled in this document that it will levy for products, subject to excise duties, customs duties up to 70 per cent ad valorem. Is this measure a temporary provision or will Ukraine reserve this right after the date of accession?

Answer:

This document says that Ukraine reserves the right to temporarily increase duty rate to 70 per cent *ad valorem* on commodities subject to excise tax listed in the Concept of Transformation of Customs Tariff of Ukraine, and only while market access negotiations are in process.

Question 3

What are the control measures applied by the Ukrainian authorities to supervise the activities of foreign economic agents? Are those measures the same as for national economic agents? What does Ukraine specifically mean by "unfair fulfilment of obligations"?

Answer:

Ukraine has adopted the State Program for control of settlements between Ukrainian and foreign companies in foreign economic transactions, and the Ministry of Foreign Economic Relations and Trade is responsible for coordination of activities between the State Customs Service, authorized banks and tax authorities.

In the course of this work, the Ministry collects a database on mutual settlements and debts (accounts payable and receivable) between Ukrainian and foreign partners. In this way, control over foreign companies' abiding by Ukrainian legislation on foreign currency transactions is exercised.

The Law of Ukraine "On Foreign Economic Activities" is the legislative base for the above system of control. Article 37 thereof provides for imposition of special administrative sanctions for violation of Ukrainian legislation on foreign currency transactions, both on foreign and Ukrainian business entities. Decisions to impose such sanctions are taken by tax, judicial and law enforcement authorities, and such decisions are enforced by the Ministry of Foreign Economic Relations and Trade, and the State Customs Service. Final resolution of disputes on mutual settlements arising between business entities is performed only by the International Commercial Court of Arbitration under the Ukrainian Chamber of Commerce and Industry. Similar sanctions are also imposed in cases of infringement of anti-trust, unfair competition and anti-dumping legislation.

Question 4

Imports of cars is subject to taxation on general terms. The taxes levied are customs duties , excise and VAT. Are the excise rates and the VAT the same for domestic produced cars and for imported ones? Why are those products not listed under document WT/ACC/UKR/38 which provides the list of products subject to excise?

Answer:

Trade turnover on lorries and passenger cars produced by Ukrainian enterprises of all types of ownership from foreign and Ukrainian parts is not subject to excise duty up to 2007 provided that they are produced in amount not less than 1000 items per year.

In another case, excise rates are the same for domestic produced cars and for imported ones.

Tariff Exemptions and Preferences

Question 5

The information provided in question 22 does not clearly address the situation, and we seek further details.

Answer:

As it was informed in the answer to question 22 of WT/ACC/UKR/25, goods under State contracts and orders are subject to taxation on general terms.

Question 6

The ad valorem fee will need to be replaced by a specific fee to comply with GATT Article VIII and we seek details of Ukraine's plans in this regard.

Answer:

According to the Resolution of the Cabinet of Ministers of Ukraine No. 65 of 27 January 1997 "On Customs Duty Rates" specific duty rates were established which reasonably reflected the labour costs of customs officers and amounts of the customs duty rates to be applied to cargo during the customs clearance.

Customs Tariff

Question 7

We cannot find in the most recent documentation Ukraine's response to our earlier request that it describe the law and/or regulatory procedures by which the Ukraine meets the obligations under the WTO Agreement on Rules of Origin for issuing assessments of origin within 150 days of requests by exporters and importers, as provided for under Article 2(d) of the Agreement. Please provide an answer to this question.

Please describe the law and/or regulatory procedures by which such assessments shall remain valid for three years, as provided for under Article 2(j) of the WTO Agreement on Rules of Origin. Please describe the law and/or regulatory procedures by which any administrative actions taken by the government of the Ukraine takes in relation to the determination of origin is as required by Article 2(j) of the WTO Agreement on Rules of Origin: "reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination".

Please describe the law and/or regulatory procedures by which all information, as is required by the Article 2(k) of the WTO Agreement on Rules of Origin: "that is by nature confidential or that is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned".

Answer:

The Resolution of the Cabinet of Ministers of Ukraine of 30 July 1996 no. 846 "On Verification of Certificates of Origin of Goods from Ukraine" approves, that verification (determining of authenticity) of certificates of origin of goods from Ukraine is conducted exclusively by the State Customs Service of Ukraine.

According to the above mentioned Resolution of the Cabinet of Ministers of Ukraine the Edict of the State Customs Service of Ukraine of 01 April 1997 no. 143 (registered in the Ministry of Justice of Ukraine under the number 148/1952) approved the Regulations on procedures of verification of certificates of origin of goods from Ukraine by the customs authorities, which provides that:

- verification of certificates of origin of goods from Ukraine is conducted by the State Customs Service of Ukraine basing on the inquiries of customs authorities of other countries within 150 days period from the date of filing such inquiry;
- the protocol of examination of certificate of origin of goods from Ukraine and notification on the results of such examination are stored for three years from the moment of approval of this protocol;
- all information on conducted examination of certificate of origin of goods from Ukraine is confidential and can be used only with customs control purposes.

With this we remark, that the draft of the Customs Code of Ukraine (Article 111) provides, that the preliminary decision on goods, transported over the customs border of Ukraine stays in effect for one year.

Question 8

Ukraine had indicated that its new Customs Code might address the deficiencies in its customs valuation regime identified in the previous regulations. The provisions of the new Customs Code, however, still do not appear to be in full conformance with the WTO Agreement on the Implementation of Article VII of the GATT 1994, or the WTO Customs Valuation Agreement. We have noted deficiencies in the following areas:

Article 354. This provision provides for the confidentiality of information, except when the legislation of the Ukraine provides for disclosure. Could the Ukrainian Government provide examples of the exceptions or describe the circumstances under which such exemptions would prevail?

Answer:

The cases or conditions, when disclosure of confidential information is possible, are the commencement of criminal procedures for business entity in foreign economic activities.

Question 9

Article 355. This provision requires that the value declared must be "based on reliable, documentary confirmed information that is determined quantitatively". Could the Ukrainian Government provide an explanation of this provision, particularly how a value is "determined quantitatively".

Answer:

Probably, this question is asked due to inadequate translation. This Article implies not that the value is added "in quantitative terms", but that the information, that approves the determination of customs value, shall be filed in quantitative terms, so that there is a possibility of applying such data for calculation.

Question 10

The final paragraph in Article 355 requires that an importer pay duties notwithstanding that there is an extension of the period of cargo processing because of the determination of customs value. Does the Ukrainian legislation contain a provision for release of goods prior to the determination of the final value, if the importer provides sufficient guarantee in the form of a surety or other deposit as required by Article 13 of the Valuation Agreement?

Answer:

The draft Customs Code (Article 85) provides that in case the declaring person cannot declare goods in full amount due to some reasons (except for goods transitted through the territory of Ukraine), when crossing the customs border of Ukraine or within the period established by legislation, then such goods may be released by the customs authority for free utilization upon filing of temporary or incomplete declaration under obligation of filing of ordinary filled customs declaration within the period established by the customs authority, but not later than 30 days of the date of release of goods for free utilization.

The decision on release of goods for free utilization and filing of customs document in full amount afterwards is made by the customs authority basing on the conditions, of crossing of customs border of Ukraine by such goods, and on the characteristics of an enterprise.

Question 11

Could we obtain more clarification on the different methods of customs valuation applied in Ukraine and more specifically on method No 6 related to article 7 of respective GATT 94 agreement?

Answer:

The procedure of determining the customs value of goods imported in the customs territory of Ukraine which meets the requirements of the GATT's Customs Valuation Agreement, is included as an integral part in the draft Customs Code of Ukraine and submitted for consideration to the Verkhovna Rada of Ukraine.

Temporarily, until adoption of the new Customs Code of Ukraine, the customs value and customs valuation of goods are determined in accordance with Article 16 of the Law of Ukraine "On the Uniform Customs Tariff". If verification of the documents presented is not possible, or if the customs value declared is inappropriate, then pursuant to Part Two of Article 16 of the Law of Ukraine On the Uniform Customs Tariff for the purposes of customs valuation, the value of goods, which have been imported and registered in terms of the customs registration, and are identical to goods subject to customs valuation, is analyzed and compared. The following is verified: origination from one country, produced by one producer, are designed for the same purpose and have the same quality, have the same mark, code number, etc.

In case of the absence of the fact of importing identical goods, customs valuation is carried out on the basis of prices for similar goods, i.e. those goods that are, although not identical in all respects, alike by their characteristics and may be mutually substituted. The country of origin is herewith first of all taken into account as well as its producer.

With regard to valuation procedure under method 6 concerning Article 7 of the relevant GATT Agreement we, hereby, inform that valuation of goods is conducted on the basis of information on the cost of goods, which may be determined upon the analysis and adjustment to relevant indices (quality, quantity, seasoning, etc.) according to the data contained in the price-lists of producer's commercial offers, and data of the trade and economic missions, etc.

Question 12

We seek further details on the situation as regards seasonal duties.

Answer:

See reply to question 26 of WT/ACC/UKR/25/Add.1

Question 13

Document WT/ACC/UKR/29 provides the consolidated list of changes to the SH on import duty rates. Several tariff headings present some compound duties. Does Ukraine intend to introduce some compound duties bound offer or keep only *ad valorem* rates?

Answer:

Specific and combined tariffs will be eliminated according to the schedule. One third of these tariffs will be terminated by March 1998, the remaining two thirds will be terminated by 30 June 1998.

Anti-dumping and Safeguard Measures

Question 14

We welcome the advice in replies to questions 28 to 32 (WT/ACC/UKR/25/Add.1) that Ukraine's legislation on anti-dumping and safeguards will be brought into compliance with WTO agreements. We would be grateful for information on an indicative time frame for this process.

Answer:

The anti-dumping Codex, that complies with Article VI GATT 94, was elaborated by the Ministry of Foreign Relations and Trade of Ukraine. It is being worked out by the Cabinet of Ministers of Ukraine. After it is adopted by the Supreme Rada of Ukraine, the WTO Secretariat will be informed.

Question 15

Could the Ukrainian delegation provide more information on the presidential decree No 478/96 on the "Implementation Procedure for Elimination of Imports of Goods" to eliminate the amounts of imports that would damage the respective industries of the national economies? Has Ukraine applied such measures so far? If yes, for which products?

Answer:

The translation of the Decree of the President of Ukraine "On Procedures for Application of Restrictions on Import in Accordance with Rules and Principles of GATT/WTO" was submitted to WTO Secretariat before fourth meeting of the Working Party.

Procedures, mentioned in the Decree of the President of Ukraine, have not been applied yet.

Question 16

The policies listed in Section 4 of document WT/ACC/UKR/34 aim to increase import duties to protect domestic producers in cases when appropriate goods were produced or could be produced in Ukraine in sufficient quantity. Are those measures temporary? If not, how does Ukraine justify them regarding to the relevant GATT 94 provisions?

Answer:

The policies listed in Section 4 are temporary. In the future the policies aimed on reduction of volumes of import will be determined only according to the Decree of the President of Ukraine "On Procedures for Application of Restrictions on Import in Accordance with Rules and Principles of GATT/WTO".

Question 17

When will the legislation of Ukraine on issues connected to the application of anti-dumping measures be brought into compliance with the principles of article VI of GATT 94?

Answer:

See reply to question 14.

Non-Tariff Measures, Quotas and Licensing

Question 18

At the last Working Party meeting in 1996 Ukraine promised to look into the issue of consent by multiple administrative agencies to ensure that there was no hindrance to trade. Has Ukraine completed this review? If so, could Ukraine provide an update for the working party? What are the criteria in terms of procedures, documentation, and fees applied by each of these bodies?

Answer:

Procedure for issuance of import licenses

1. The issuing of import licenses to business entities that are registered in the territory of Ukraine, irrespective of their form of ownership, shall be carried out by Ministry of Foreign Economic Relations and Trade of Ukraine and by agencies authorized by the latter.

The licenses shall be issued in accordance with a procedure set forth in article 16 of Law of Ukraine "On Foreign Economic Activity" and these Regulations.

2. For purpose of obtaining a license, it is required to submit the following documents:
 - 2.1. an application for a license, prepared as required (a form is enclosed, see Annex 2);
 - 2.2. A letter requesting issuance of a license and guaranteeing payment of the state duty for the issuance of such;
 - 2.3. A copy of a contract with specifications, verified by management of an enterprise in accordance with established procedures;
 - 2.4. A copy of the enterprise's government registration certificate, verified by management of an enterprise in accordance with established procedures;
 - 2.5. A permission issued by an agency authorized in accordance with the addendum to Resolution of Cabinet of Ministers of Ukraine of 12.31.97 No. 1590 "On the list of goods importation of which in 1997 is subject to licensing";

- 2.6. A product examination act issued by the Chamber of Trade and Commerce, or its regional division, with the product's code specified in accordance with CN FEA;
3. The date of filing an application for a license shall be the date when it is registered with the Ministry of Foreign Economic Relations and Trade of Ukraine, or with an agency authorized by this Ministry, provided that it can be substantiated by a record in a registration journal.
4. In the case of an incorrectly prepared application for a license, or failure to file all required documents specified in item 2.2 of these Regulations, the documents shall not be accepted.
5. The issued licenses shall be effective during the period specified in the contract and shall be valid for purposes of customs clearance during this period, but not after 31 December 1997.
6. Import licenses shall be issued by the Ministry of Foreign Economic Relations and Trade of Ukraine and by the authorized agencies strictly on condition of availability of a document verifying the fact of payment of the state duty for such license, the amount of which is determined in accordance with Resolution of the Cabinet of Ministers of Ukraine of 8 February 1996 No.383 "On the amount of state duty charged for issuance of import licenses".
7. Import licenses may not be transferred to other legal entities.
8. Import licenses shall be issued in one copy.
9. Decision on whether to issue or refuse to issue an import license must be made within 15 working days counting from the date of registration of an application with the Ministry of Foreign Economic Relations and Trade of Ukraine, or with an agency authorized by the latter.
10. Decision to refuse to issue an import license may be made if:
 - submitted documents do not meet the requirements of the laws of Ukraine currently in effect;
 - the entity is not permitted to carry on foreign economic activities, based on article 37 of Law of Ukraine "On Foreign Economic Activities".
11. The decision of the Ministry of Foreign Economic Relations and Trade of Ukraine, or an agency authorized by the latter, not to grant an import license may be appealed by the business entity in court.

Question 19

Are the Chambers of Commerce located in Ukraine or abroad? What is the legal authority of the Chambers of Commerce? Are these chambers comprised of local producers? What "expertise" is provided by the chambers of commerce in determining the health and safety of a product? Does a domestic producer of pharmaceuticals or pesticides need to get this experts certificate? What is the role of the Chamber of Commerce in determining the conformity of imported goods with technical, pharmaceutical, sanitary, phytosanitary, veterinary and ecological standards?

Answer:

The Ukrainian Chamber of Commerce and Industry is a public non-governmental organization. It has 25 branch offices in various cities of Ukraine. Ukrainian producer-enterprises may become the CCI members upon their own choice. As far as the expertise on the product safety and goods conformity

with different standards is concerned the CCI may conduct a voluntary expertise and certification as requested by the enterprises and organizations. If safety and conformity with standards is compulsory these services are rendered by DERZHSTANDARD of Ukraine.

As per obtaining the certificate of origin for a product the commerce and industry chambers of Ukraine when issuing certificates are guided by the terms and conditions of bilateral agreements concluded between Ukraine and other countries of the world. This is underlying the issuance of one or another form of certificate of origin. If there is no such agreement, the certificate is granted based on the general rules established by the Law on the Uniform Customs Tariff of Ukraine. In order to obtain the certificate of origin the exporter (commodity producer or an intermediary) shall have the recourse to the chamber of commerce and industry and present necessary documents which confirm the Ukrainian origin of the product (lists of documents are attached in Annex 1). The exporter shall fill out the declaration form (attached in Annex 2), certify it with his seal and signature, and pay for the services rendered at the fixed rate (by transfer or in cash to the accounting department of the chamber of commerce and industry).

Question 20

Please explain the relationship between indicative prices and a licensing regime based on health and safety concerns.

Answer:

Hereunder is a list of goods, import of which is subject to licensing in 1997:

- (i) pesticides and herbicides;
- (ii) pharmaceutical preparations;
- (iii) cosmetic preparations and personal hygiene products;
- (iv) veterinary preparations.

It should be noted that MFERT (the Ministry of Foreign Economic Relations and Trade) has never fixed indicative prices for these goods. This group of goods is not covered by Article 19 of the Law of Ukraine "On Foreign Economic Activity" as regards the goods which are subject to special import procedures. Licensing for the list of goods is provided pursuant to Article 16 of the said Law, and according to the Decree of the President of Ukraine No. 124/96 of 10 February 1996 indicative prices are not set for this group of goods. Licensing of enlisted goods is earned out for the purpose of importing only those goods which by their pharmacological, sanitary, phytosanitary and veterinary characteristics do not violate the minimal requirements of the relevant standards and conditions that are in force in the territory of Ukraine.

Question 21

Does the recognition that contract prices can deviate from indicative prices for a variety of reasons mean that price deviations are accepted?

Answer:

The contract price may differ from indicative price. It may happen due to various reasons, including:

- terms of payment;
- various quality standards;
- terms of delivery of goods.

All mentioned above are acceptable deviations if contract prices are fixed for a list of goods subject to indicative prices.

Question 22

Has Ukraine ever refused to grant a license due to deviations from the indicative price?

Answer:

As there is no indicative prices for imported goods that are subject to licensing, there has been no refusal as to granting licenses due to existing deviations from indicative prices. In any event, the deviation of contract price from indicative price will not be a reason for refusing to grant license or register a contract.

Question 23

Ukraine charges a fee of 0.1 per cent for processing of import license applications. Ukraine also states that "in order to adjust the legislation of Ukraine on import licensing to the GATT/WTO requirements, the Resolution of the Cabinet of Ministers of Ukraine of 2 August 1996 No.893 'On the Amount of State Fee for Issuing Import Licenses' provides for the state fee for issuing import licenses at the amount of 15 times untaxable minimal personal income." It is not clear how this ceiling relates to cost recovery. How was this figure chosen? Is this 15 times the annual or monthly minimal personal income? How does this amount relate to the actual cost of processing the applications?

Answer:

To make Ukrainian legislation governing licensing consistent with GATT/WTO requirements, the Cabinet of Ministers of Ukraine's resolution of 2 August 1996 No. 893 "On State duty charged for issuance of import licenses" provides for setting this duty in the fixed amount equalling 15 minimum tax-exempt personal incomes. This amount was determined on the ground of estimated administrative costs of the Ministry of Foreign Economic Relations and Trade of Ukraine and of the agencies that decide on granting permission to issue import licenses, which amounted to 255 Hryvnias, which equals 15 minimum tax-exempt monthly personal incomes.

In addition to that we inform you that the minimum tax-exempt monthly personal income is determined in accordance with Decree of the President of Ukraine No.1082/95 of 11 November 1995, in the amount of 17 Hryvnias per month. This tax-exempt amount remains unaltered for an extended period and is used for calculating salaries and determining respective administrative expenses. It is also used as an conventional fixed amount currently equal to 17 Hryvnias.

Question 24

Question 7 of the Import Licensing Questionnaire solicits information on the timing for licenses that are NOT associated with quantitative limits. Since Ukraine says it uses a system with no quantitative restrictions, Ukraine should answer these questions to provide transparency. Please provide an answer to the following parts of question 7:

Where there Is no quantitative limit on importation of a product or on imports from a particular country:

- (a) **How far in advance of importation must application for a license be made? Can licenses be obtained within a shorter time-limit or for goods arriving at the port without a license (for example, owing to inadvertency)?**
- (b) **Can a license be granted immediately on request?**

- (c) **Are there any limitations as to the period of the year during which application for license and/or importation may be made? If so, explain.**
- (d) **Under what circumstances may an application for a license be refused other than failure to meet the ordinary criteria? Are the reasons for any refusal given to the applicant?**

Answer:

(a) The resolution of the Ministry of Foreign Economic Relations and Trade of Ukraine No. 145 of 19 March 1997 adopted the provision on import licensing procedure, according to which the decision on issuing the import license must be made no later than 15 working days after the date on which the application was registered with the Ministry of Foreign Economic Relations and Trade of Ukraine (MFERT), or by an agency authorized by this ministry, with the average period of issuing the license being 7 - 10 working days. The import licensing procedure is established as uniform for all business entities.

(b) Issuance of import licenses is carried out in accordance with the uniformly applied procedure that was adopted by the resolution of MFERT of Ukraine No. 145 of 19 March 1997, within the period no longer than 15 work days.

(c) There are no limitations concerning time of the year when the application for an import license may be filed.

(d) According to the effective procedure adopted by the mentioned above resolution of MFERT of Ukraine No. 145 of 19 March 1997, a decision not to issue an import license may be made only if:

- submitted documents don't meet the requirements of effective laws of Ukraine;
- the business entity is prohibited to engage in foreign trade transactions in accordance with article 37 of Law of Ukraine "On Foreign Trade Activities," which applies to business entities that violate this law of other related laws of Ukraine.

The decision of MFERT of Ukraine, or of the agency authorized by it, to refuse to grant an import license may be appealed by the business entity in accordance with established judicial procedures. Such a decision is conveyed to the business entity in written with reasons of the refusal explained.

Question 25

In WT/ACC/UKR/23, response 14, and in WT/ACC/UKR/25/Add.1. Ukraine slates that "the validity term of the license is fixed according to the application and can be extended upon the applicants request, hut not longer than till the end of the year." It is still not clear how the term of validity is set.

- **Does "fixed according to the application" mean that the applicant can select a period of validity?**
- **Does "not longer than until the end of the year" mean that licenses run according to the calendar year? Do all licenses expire on 31 December?**

Answer:

The phrase "established in accordance with the application" means that a business entity may itself choose during what period the license shall be valid.

The phrase "no later than the end of the year" means that import licenses expire on 31 December.

Question 26

Using an indicative list of prices to ensure that imports are not more expensive than domestic products is an unusual approach. Usually, countries use indicative price list to ensure that imports are not undervalued. Why does Ukraine care if imports are more expensive than domestic products?

Answer:

Indicative prices for imported goods that are subject to licensing do not exist.

Question 27

The fact that Ukraine takes prices into consideration when deciding whether to issue import licenses implies that the licensing is discretionary. According to the Uruguay Round Agreement on Agriculture, all quantitative restrictions (including discretionary import licensing) on agricultural products are prohibited.

Answer:

While granting an import licence, Ukraine does not take any prices into consideration.

Question 28

What goods are subject to special import procedures according to the Article 19 of the Law of Ukraine "On Foreign Economic Activity?"

Answer:

See reply to question 34 of WT/ACC/UKR/25/Add.1

Question 29

In relation to the answer given to question 27 of WT/ACC/UKR/23/Add.1, we would be interested in getting further clarification on the following:

(a) **What are the basis for examining prices before deciding on the issuance of import licenses, taking into account Ukraine's statement that "licensing is implemented with the purpose of ensuring technical, pharmacological, phytosanitary, veterinary and ecological regulations are adhered to"?**

(b) **What kind of relationship exists between the use of indicative prices and the issuance of import licenses?**

Answer:

(a) The grounds for granting a licence is an authorization by relevant organizations in case if this product meets the minimal requirements of domestic standards.

(b) No relationship exists.

Question 30

Questions 6 and 36 (WT/ACC/UKR/25/Add.1) refer. Ukraine's answer relates only to 1997, and we regard it as positive that there are no quotas currently in place. We also interested in future

plans, and seek an explanation of the circumstances in which quotas might be implemented and the WTO justification.

Answer:

In the future restrictions on import may be applied according to the Decree of the President of Ukraine "On Procedures for Application of Restrictions on Import in Accordance with Rules and Principles of GATT/WTO", which complies with the Agreement on Safeguard measures of Uruguay Round.

Question 31

It is unclear from the answer as to whether or not import licensing fees are levied on a percentage or absolute basis. We should be grateful for clarification and for confirmation that import licensing fees will be limited in amount to the approximate costs of services rendered in conformity with GATT Article VIII.

Answer:

See reply to question 34 of WT/ACC/UKR/25/Add.1

Question 32

In order to adjust the legislation of Ukraine on import licensing to the GATT/WTO requirements, the Resolution No 893 of August 1996 provides for the State fees for issuing import licenses at the amount of 15 untaxable minimal personal income. Could we obtain more information on this amount? Considering the frequent changes in this minimum personal income in Ukraine, how could the Ukrainian delegation justify such an amount?

Answer:

The state duty collected for issuance of a license is determined on the basis of estimated administrative costs of license issuance and equals 255 Hryvnias, which is 15 minimum tax-exempt personal incomes. The amount of the tax-exempt personal income was established by the Decree of the President of Ukraine No.1082/95 on 21 November 1997, and since then has not been changed.

Standards and Certification

Inspection by Consumer Association. We would be interested in further elaboration of the answers to questions 4-9 in UKR/23/Add.1. In particular:

Question 33

Based on these responses, it is our understanding that the Ukrainian Consumers Association and similar organizations do not have the right to seize, on their own authority, products which they believe may not conform with safety and quality standards. Rather, these organizations may, on the basis of their independent inspections, request that the responsible government agencies take such action. Please confirm that this is the case.

Answer:

If certain goods (services) do not meet effective standards or other requirements containing in regulatory documents, the bodies of the State Committee of Ukraine for Protection of Consumer Rights may, on the ground of material evidence obtained through investigations, levy financial penalties on business entities as provided in Article 23 of Law "On Protection of Consumer Rights" or impose administrative fines on employees and officials of business entities in accordance with Ukraine's Code

on Administrative Infringements, in particular, for failing to ensure that one's products (services) comply with effective requirements specified in standards and regulations (see Articles 167, 168 and 168¹), for producing or distributing goods without having been granted the product-quality certificate, if having such certificate is obligatory (Article 170¹), or may impose financial penalties as provided in Article 17 of Law of Ukraine "On State Control Over Production and Distribution of Ethyl Alcohol (either of cognac or fruit types), Alcoholic Beverages and Tobacco Products".

Question 34

Does the "Law on the Protection of Consumers' Rights" or other legislation and regulations provide any authority to take action, on the basis of consumer complaints against products which comply with published safety and quality standards? If not, what procedures have been established to ensure that decisions relating to consumer petitions are consistent with established standards and with WTO obligations.

Answer:

According to Article 26 of Law of Ukraine "On Protection of Consumer Rights", public organizations (associations) of consumers may submit to government bodies and business entities their proposals aimed to enhance quality of goods (work, services) or to suspend manufacturing or distribution of goods (work, services) that do not meet effective quality standards, terminate manufacturing or put out from the distribution net goods (work, services) that are hazardous to life, health or property of citizens or dangerous to the environment, as well as abolish prices set in violation of applicable enacted laws.

Question 35

Are the rules related to technical barriers to trade obligatory in Ukraine or are they optional? The Ukrainian rules with international standards been achieved only in the field of life/health protection and environmental security or also in other sectors? Could Ukraine provide a specific timetable of those harmonization plans?

Answer:

Under the WTO Agreement on Technical Barriers to Trade, every country may carry on measures necessary to ensure protection of life and health of people, as well as proper protection of the environment. One of such measures implemented in Ukraine is the mandatory certification of specific categories of products, which must meet certain obligatory requirements. Imposition of such requirements is regulated by applicable legislative acts. Such obligatory requirements include those aimed to ensure that products are safe with respect to life, health and property of consumers, to protect natural environment, ensure compatibility and interchangeability of products, meet work safety and hygiene standards. Explanations concerning obligatory and recommended requirements relating to Ukrainian standards were provided as part of answers to the questions made in the course of the preparation for the fourth meeting of the WTO commission

Development and direct implementation of international and European standards constitute the chief direction in which Ukraine's national standardization system is developing. Ukraine joined the Code of Fair Practice (Addendum 3 to the WTO/GATT Agreement on Technical Barriers to Trade) in December 1996. Ukraine has become full member of international standardization organizations, such as International Standardization Organization (ISO), International Electrotechnical Commission (IEC), a correspondent member of the International Organization for Legislative Metrology (OILM) and acquired membership in the International information network ISONET. Ukraine was the first CIS country that had become a correspondent member of the European Commission for Standardization (CEN). Currently, Ukraine's joining the European Commission for Standardization in Electrotechnical Sector is nearing its completion. There are more than 120 technical standardization commissions that operate in Ukraine,

with the participation of which during 1992-1997 period 1,900 state standards of Ukraine were developed, with about 60 per cent of these standards being consistent with respective international safety and other standards. Approximately 300 standards of international standardization organizations ISO and IEC, including quality system standards of the series ISO 9000 have been introduced in Ukraine and given the status of Ukrainian national standards. The preparation for direct implementation in Ukraine of international standards relating to environmental control of the series ISO 14000 has been completed and since 1 January 1998, these standards shall be effective as voluntary national standards of Ukraine.

Acknowledging the need for harmonization of effective laws of Ukraine with international and European ones, Cabinet of Ministers of Ukraine passed on 19 March 1997 (based on the materials prepared by the Derzhstandard of Ukraine with participation of all interested ministries and agencies) Resolution No. 244 "On measures relating to direct implementation in Ukraine of requirements set forth in directives of the European Union, sanitary, ecology, veterinary, phytosanitary requirements and international and European standards"; the resolution introduced the principle of program planning, in accordance with which there shall be developed sets of regulating documents that are harmonized with European standards in respective sectors of the economy. The proposed measures specify planned implementation dates for legislative and regulative documents (see WT/ACC/UKR/44) and therefore the document can be considered as harmonization schedule.

Sanitary and Phytosanitary Measures

Question 36

Hygiene Certificate: In the answer to question 51 in UKR/25/Add.1, Ukraine states that when a product is imported into Ukraine for the first time it is given a "hygienic resolution after an obligatory State sanitary-hygienic examination and checking of safety indices of the sanitary certificates given by foreign services."

Does this mean that a certification of hygiene is made after inspection?

Answer:

Yes. The hygienic conclusion for a product imported for the first time shall be provided after the state sanitary and hygiene expertise. If such product is not further subject to the mandatory certification, then when imported into Ukraine the hygiene expertise of separate consignments of such product shall be conducted and a permission on its sale in a specific region provided by the sanitary and epidemiological service. If consignments of the product are liable to the mandatory certification the permission shall be granted on the basis of the hygiene conclusion on a type of product and availability of the certificate of correspondence issued by the UkrSEPRO system.

Question 37

What procedures are required to obtain this hygiene certificate, what criteria are applied, and how long does the process normally take, e.g.. what is a typical period? We would be interested in reviewing any relevant regulations or administrative guidance on this requirement.

Answer:

The hygiene conclusion for a product imported for the first time shall be provided by the Main State Sanitary Doctor of Ukraine (Kiev, the Ministry of Health Protection (MOZ) of Ukraine). The hygiene conclusion for the consignments of goods that are not subject to the mandatory certification shall be issued by the Main State Sanitary Doctors of the Republic of Crimea, districts and cities of Kiev and Sevastopol. This process usually takes 5-7 working days.

Question 38

Is the issuance of the hygiene certificate required only once for each product?

Answer:

The hygiene conclusion for a product imported for the first time shall be provided for a term from one to three years and shall be further extended provided that another sanitary and hygiene expertise of the documents accompanying the product provided by the producer (importer) is conducted and some indices of the product safety for the health of consumers are verified.

Question 39

Is the hygiene certificate required for the products of each new supplier, even if the Ukraine has previously imported the same products from other sources?

Answer:

Yes. But a new supplier may have a copy of the hygiene certificate for such product which was earlier imported, certified by the producer of this product subject to prior provision of the hygiene conclusion to the producer and if its validity period has not yet expired.

Question 40

After products are imported once and receive the hygiene certificate, are subsequent imports allowed to enter Ukraine without inspection ?

Answer:

After obtaining the hygiene conclusion on a type of product, certification or the sanitary and hygiene expertise of separate consignments of the product shall be conducted and the permission for the sale of this product in the specific regions shall be issued. (See answer to question 37.)

Question 41

What criteria are used to determine whether a product is "new" to the market (rather than a variation of products that have previously been imported)? We would be interested in reviewing any relevant regulations or administrative guidance.

Answer:

New produce shall be the produce imported into Ukraine for the first time (the hygiene conclusion has not been provided before, the similar produce from a new producer, new supplier (without a valid copy of the hygiene conclusion granted to the producer earlier), similar produce of a modified composition or modified technology.

Question 42

Are there established procedures by which the Ukraine may recognize its trading partners' conformity assessment procedures, sanitary or phytosanitary certifications, or declarations of conformance? We would be interested in reviewing the relevant regulations

Answer:

Such valuation procedure is scheduled to be worked out during 1997. Presently, such a procedure is being implemented through the bilateral negotiations, acquaintance with the relevant legislation and the quality assurance and product safety system of the trading partner, sanitary verification of conditions of production.

Question 43

Does the Ukraine have a comprehensive and authoritative list of pests and diseases for which quarantine controls are imposed on imported products?

Answer:

Yes. Ukraine has such a list.

Question 44

We would be interested in reviewing such a list, or any partial lists which may be available.

Answer:

See the information on sanitary and phytosanitary measures in Ukraine. (WT/ACC/UKR/44)

Question 45

What criteria does the Ukraine apply in determining the quarantine significance of pests and diseases? Are such criteria based on guidelines established by relevant international organizations (i.e. Codex, ICCP, OIE and others)? Are all pests and diseases subject to quarantine control at the border also subject to domestic controls? We would be interested in reviewing any relevant regulations or administrative guidance.

Answer:

Ukraine uses the criteria based on the leading mentioned documents and other international organizations. The quarantine control shall be exercised at border.

Question 46

Could Ukraine provide us with a general description on how SPS measures are applied in Ukraine. It would also be interesting if an updated list of the regulations applied in this field could be provided.

Answer:

Sanitary and phytosanitary measures are enforced and applied in Ukraine in accordance with the Law of Ukraine On Ensuring the Sanitary and Epidemiological Safety of the Population on all stages of development, introduction, production, import and export, transportation, sale, application (use, consumption) of products, and processing thereof, utilization or destruction (where necessary). Concrete regulations and rules are laid out in about 2,000 normative and instruction-methodical documents, many of which were developed during the Former Soviet Union times. Today the most important of them have been revised taking into account the need in harmonization with the European legislation and are issued by the Ministry of Health Protection of Ukraine as a set of documents (volume I-IV). See also the information on sanitary and phytosanitary measures in Ukraine.

Question 47

In answer to question 164(WT/ACC/UKR/1), Ukraine said that it was not a Member of FAO or the Codex Alimentarius Commission, but that it intended to accede to FAO in 1995. Has Ukraine finally acceded to FAO? Do you have the intention of acceding to the Codex Alimentarius Commission?

Answer:

The question on Ukraine's membership in FAO and in the Code Alimentarius Commission is currently being worked out by the Ministry of Foreign Affairs, the Ministry of Health Protection of Ukraine and by other departments concerned. The accession to the Code's Committee on food additions, export and import control, and certification, hygiene of produce, methods of analysis, pesticides residues, veterinary preparations in products is expected in the near future

Question 48

We would also like to know whether Ukraine is planning to ratify the International Plant Protection Convention, signed in Rome on 6 December 1951.

Answer:

This question is within the terms of reference of the MFA of Ukraine. Importing, testing, transportation, preservation, sale, application of herbicides and pesticides in Ukraine is carried out in compliance with the Law of Ukraine On Pesticides and Agrochemicals which has been developed with account taken of the basic provisions of the Convention on Plant Protection (Rome, 6 December 1951).

Question 49

What standards or guidelines are being taking into account when adopting Ukrainian measures?

Answer:

Ukraine, before it becomes a member of the WTO, is governed, first of all, by all national sanitary and phytosanitary legislation, if otherwise provided for by an International agreement to which Ukraine is a party. Provisions of international laws or international standards are always taken into consideration. The priority is given to those provisions which ensure more safety of products for health.

2. Export Regulation, including Subsidies

Question 50

Has the mechanism of reimbursing the VAT for enterprises-exporters from the account of the State budget been improved so far?

Answer:

Before the Law of Ukraine On the Value Added Tax comes into effect on 1 October 1997, the VAT reimbursement is carried out in accordance with the Instruction On the Procedure of Calculation and Payment of the Value Added Tax and Excise Duty for Goods Imported into the customs territory of Ukraine, and for goods (works, services) exported from the customs territory Ukraine adopted by the Order of the Chief State Tax Inspection of Ukraine dated 31 May 1994 No. 44 and the letter of the Ministry of Finance of Ukraine dated 17 September 1996 No. 09-07-20-70-1508 on the procedure of the VAT reimbursement from the State Budget.

The new procedure of the VAT reimbursement was adopted by the joint Order of the State Tax Administration of Ukraine and the Chief State Treasury dated 2 July 1997 No. 209/72 (below) and shall come into effect along with the entry into force of the Law of Ukraine dated 3 April 1997 No. 168/97-VR On the Value Added Tax.

PROCEDURE OF THE VALUE ADDED TAX REIMBURSEMENT

1. Pursuant to sub-paragraph 7.7.3 of para.7.7 of the Law of Ukraine On the Value Added Tax in case when upon the results of the reporting period the difference between the total amount of tax obligations that have arisen in connection with any sale of goods (works, services) during the reporting period, and the amount of tax credit during the reporting period has a negative balance, such amount shall be reimbursed to the tax payer from the State Budget of Ukraine within a month, following the reporting period, i.e. not later than the last day of the month, during which the tax declaration was submitted.

In case the tax payer fails to meet the term of submission of the tax declaration, set out in sub-para. 7.7.2 para. 7.7 of Article 7 of the Law of Ukraine On the Value Added Tax, the budget reimbursement shall be extended for a term of delay in reporting.

2. The data of the tax declaration for a reporting period shall be the sole basis for obtaining the budget reimbursement.

3. At the tax payer's choice, an amount of budget reimbursement may be in full or partially included by the tax bodies in the further payments of this tax. Such decision of the tax payer shall be reflected in the tax declaration. Reimbursement by means of the decrease of other tax payments, dues (compulsory payments) shall not be allowed.

4. Budget reimbursement to the tax payer shall be carried out by the territorial bodies of the State Treasury based on the conclusions (attachment 1) of the state tax administrations according to the place of the payer's registration by transferring the appropriate monetary sums from the account No.100 Income of the State Budget of Ukraine to the tax payer's account in a servicing bank.

5. The conclusion of the tax body shall constitute the grounds for reimbursement. The full term of the preparation and submission of conclusions is 5 days from the date of registration of the tax declaration in the tax bodies. Given the conditions of operation of ARM Derzhdokhody (automated working place) the form shall be released automatically.

6. The records on conclusions provided for the payers shall be maintained in the Journal of conclusions granted on the amounts of the VAT reimbursement (attachment 2).

7. The reimbursement of amounts to the payer shall be carried out at the place of registration according to the VAT tax payments to the State Budget of Ukraine pursuant to relevant section, paragraph and symbol of the bank reports for the current day. In case of the absence or lack of revenues on the current day, funds shall be returned at the expense of the total revenues on the whole to the account No.100 Income of the State Budget of Ukraine. Negative balance is acceptable under the appropriate VAT symbol.

8. In cases of insufficiency or lack of funds on the account No.100 Income of the State Budget of Ukraine that is opened with the offices of the authorized banks in favour of the territorial bodies of the State Treasury at the place of payer's registration, the reimbursement shall be carried out on the basis of decisions (attachment 3) of the departments of the State Treasury in the Autonomous Republic of Crimea, oblasts, city of Kiev and Sevastopol from the transit account No.100, opened in the regional department of the National Bank of Ukraine, at the expense of the total amount of revenues on the current day. The grounds for decision making on the reimbursement from the transit account No.100 shall be an address of the territorial office of the State Treasury (attachment 4) about the necessity of making the VAT reimbursement and a copy of the conclusion of tax bodies. At the same time, with the purpose of preventing the budgetary debt, the territorial office of the State Treasury shall ensure submission of the transfer order to reimburse funds to the tax payer to the office of the authorized bank.

Decision on the funds transfer from the transit account No.100 shall be forwarded to the territorial body of the State Treasury. The regional department of the National Bank of Ukraine shall, on the basis of the transfer order of the department of the State Treasury of the Autonomous Republic of Crimea, oblasts, cities of Kiev and Sevastopol, transfer funds from the transit account No.100 to the account No.100 of the territorial body of the State Treasury. When funds are received on the appropriate symbol of the account No.100 the office of an authorized bank shall immediately fulfil the transfer order of the territorial treasury office as to the VAT reimbursement to the tax payer.

9. The tax payer which uses a quarterly tax period and carries out export transaction on selling goods (works, services), may obtain budget reimbursement of the part of a tax credit based on the results of operations during the first month of the quarter and two first months of the quarter. The percent of the taxable credit of the accounting period that equals the percent of export volumes of the sale of goods (works, services) in the total volume of taxable transactions on the sale of goods (works, services) of the accounting period shall be subject to budget reimbursement. The grounds for the reimbursement shall be the settlement (attachment 1 to the Tax Declaration on the Value Added Tax adopted by the order of the State Tax Administration of Ukraine of 30 May 1997 No.166) which is submitted to the state tax administration body not later than the 20th of the second or third month of the current quarter. Reimbursement shall be carried out in order provided for in the sub-paragraph 7.7.3 of paragraph 7.7 of Article 7 of the On the Value Added Tax for a taxable (reporting) period that equals the calendar month.

10. The amounts which have not been reimbursed to the tax payer within the term set out in paragraph of this procedure shall be deemed budget debt. The interest on the level 120 per cent of the discount rate of the National Bank of Ukraine to the amount of budget debt shall be accrued on a special payer's account, which as requested by the tax payer may be transferred or included at the cost of further payments or a fine for untimely settlements with the budget.

11. Upon obtaining the records on revenues by the tax bodies from the bodies of the State Treasury which have been transferred to the State Budget of Ukraine, and copies of payment documents on the reimbursement of the VAT tax, the amount of the VAT which is subject to reimbursement, shall be decreased in the card of a personal account of the payer to the amount of funds mentioned in a copy of the payment document.

Question 51

The suggestion appears to be that in the future Ukraine tends to introduce a system under' which the Government would intervene in the market to support farm prices. Can Ukraine explain in greater detail what is planned in this area, which we view with some concern. How does Ukraine intend that this would be accomplished within the domestic support commitments that it will undertake.

Answer:

The Ministry of Agroindustrial Complex plans to submit a proposal to the Cabinet of Ministers of Ukraine about the creation of the State Intervention Grain Market Stabilization Fund.

The main goals of the state fund activity shall be:

- to ensure gradual transition to the self-regulated food grain market under conditions of elimination of the state order system;
- to ensure food security of the state by using the state orders for food grain;
- to support domestic grain producers by guaranteeing the stable level of prices.

IV. OTHER POLICIES RELATED TO FOREIGN TRADE

2. Agricultural Policies

Export Stimulation Measures, including Subsidies

Question 52

This is an important issue which needs to be further explored. We expect Ukraine to base commitments on the most recent three year period and if no export subsidies were provided during this period then commitments should be bound at zero. We also expect that Ukraine will not introduce export subsidies between now and the end of the accession process.

Answer:

See the explanatory Note to the new version of WT/ACC/4 Format Tables calculated for 1994-1996, which were sent to WTO Secretariat on 3 July 1997 (WT/ACC/SPEC/UKR/1/Rev.2).

Question 53

Could you provide us with detailed information on the monetary value of the "green box" measures(column 3 of supporting table DS:1)?

Answer:

Information on monetary cost of Green Box measures is contained in the auxiliary table DS:1 which was forwarded to WTO Secretariat in the letter of 3 July 1997.

Question 54

Could we have an explanation on how the support of selection in stock breeding operates?(Re: "general services" No.1) .

Answer:

Support for selection in the raising of live-stock is provided by way of partial compensation of costs of pedigree cattle breeding associations, selection centers, pedigree cattle breeding farms, state pedigree poultry farms, pedigree enterprises and other owners of pedigree enterprises aimed at improvement of genetic potential of live-stock and poultry, used for reproduction of the most valuable sire breeds, creation of the own selection system and pedigree basis, raising of pedigree and ordinary horse-breeding and bio-technological methods of animal and poultry reproduction, preservation of the genetic fund of local and wild species. 50 per cent of the cost of purchased pedigree animals, poultry, sperm, embryo shall be reimbursed to the agricultural producers from the state budget.

Question 55

Could we have an explanation on how the support for the launching of production in the agricultural machinery sector operates and on the relevant "green box" justification? (Re: "general services" No. 2)

Answer:

In the last version of the table DS:1 sent to WTO Secretariat on 3 July 1997 (WT/ACC/SPEC/UKR/1/Rev.2) this supporting measure is excluded.

Question 56

Could you provide us with more information on how the eligibility procedure and the basis to get payments for the improvement of land are made?(Re: "general services" No. 5).

Answer:

The State support to the agricultural producers through the basic improvement of land is provided by way of reimbursement of their expenditures for conducting works on liming of acid and gypsum of salty soils. The said works are conducted on the basis of conclusions and cost estimates of the stations on chemical treatment of land.

Question 57

Could you provide us with information on how the support for selection in stock breeding (support of implementation of new highly -productive varieties) operates?

Answer:

See answer to question 54.

Question 58

Could you provide us with information on how the "public stockholding for food security purposes "is being implemented? Could you specify how emergency situations are characterized by Ukrainian legislation?

Answer:

Such term as public allocation of shares is not in use. The second part of the question needs clarification - the meaning is not clear.

Question 59

Could you describe how the "regional assistance programs" operate? Could you identify the areas that were benefited by those programs?

Answer:

The Law of Ukraine "On the Status of Mountain Settlements in Ukraine" provides for subsidies for agricultural producers that are located in the territory defined as the mountainous zone. However, due to the lack of funds in the state budget this measure of support is not currently applied.

Question 60

In DS:1, under "others", Ukraine says that the Law "on collective agricultural enterprises" and "on peasant's family farming" provides for the "payment of part of banking interest on loans" and for the "payment for a part of first tractor, combine or automobile purchased". We would appreciate if the Ukrainian government could provide us with more information on this program and on its justification according to "green box" criteria.

Answer:

The Law of Ukraine "On Collective Agricultural Enterprises and On Peasants' (Farmers') Economies" provide for the state support for collective agricultural enterprises and farms by way of partial compensation of their expenditures on interest payments under bank loans.

Partial compensation of expenditures on the acquisition of the first tractor, combine, lorry is provided to those farms which purchase them for the first time and do not have the appropriate machinery available.

Question 61

Re: WT/ACC/UKR/25/Add.1. Could you provide us with more information on the 'Export Potential Development Program' mentioned in the answer to question 74? What are the main features? What are the monetary outlays envisaged? How is it going to be financed?

Answer:

To set the export-import balance, reduce negative balance of foreign trade, create appropriate conditions for increasing export of goods (works, services) the draft of the State Program on Development of Export Potential of Ukraine has been developed and submitted for consideration to the Cabinet of Ministers of Ukraine, which provides as follows:

- to increase the share of hi-tech products up to the relevant ratio existing in the developed countries;
- encouragement of export of products of high processing level;
- improvement of crediting of the export-oriented industries;
- introduction of insurance for export transaction;
- encouragement of foreign investments in the export-oriented enterprises;
- appropriate modernization of industrial facilities;
- support for domestic producers and legal protection of their interests, with the generally accepted commercial norms and practices being applied.

However, at the present time the projected funds for the export support are not allocated by the Government, the program is not implemented, overall export of the country, and agricultural produce, in particular, are decreasing.

Question 62

We expect that domestic support and export subsidy commitments will be based on the most recent three year period (as part of the standstill concept in accession negotiations) and that Ukraine will not introduce export subsidies between now and the end of the accession process. If no export subsidies were used during the most recent three year period then export subsidies should be bound at zero.

We note that green box tables (supporting table DS: 1) remain the same except for more information provided in the data sources column. Ukraine has included under (1) other "partial reimbursement of agricultural producers" expenses on payment of interest under banking loans, in its green box tables. This would more appropriately be included as amber box (non- product-specific AMS)

We note that the table "production of certain types of products in Ukraine" has only provided details for beef, pork, bird's meat, granulated sugar, butter, sunflower oil and clean wool. We would appreciate details on the production levels of potatoes, flax fibre, hop, tobacco and vegetables.

Ukraine states in the footnote to table "Extra charges and additional payments for the sold agricultural products to the purchasing organization" that from 1995 the Government eliminated price support to agricultural producers. In view of supporting table DS:5 on market price support, can Ukraine elaborate on what price support it currently has and on what products.

We seek clarification that the import and export of the products listed in the table "Sale of certain types of products by the public enterprises of Ukraine" (potato, flax fibre, hop, tobacco and vegetables) are continued by state trading enterprises.

Ukraine confirmed in paragraph 6 of the explanatory notes that it does not apply any direct export subsidies. However, the implication of paragraph 4 appears to be that, because world prices are higher than the prevailing domestic price, Ukraine has determined the difference amounts to a level of export subsidy.

We seek clarification as to whether Ukraine, by providing the table "Export of certain products from Ukraine in 1990-96", is claiming any export as subsidised.

Answer:

See the explanatory Note to the new version of WT/ACC/4 Format Tables calculated for 1994-1996, which were sent to WTO Secretariat on 3 July 1997 (WT/ACC/SPEC/UKR/1/Rev.2).

State Trading (Agriculture)

Question 63

Could you give us more information about Ukraine's plans to set up an "Intervention Agency" that would supposedly deal with agriculture trade?

Answer:

No intermediary agency was and is planned to establish. Market-based structures are being set up in the country, agricultural exchanges, trade houses etc., through which the trade in agricultural produce is conducted.

Question 64

We continue to seek further details on State trading.

Answer:

In accordance with Decrees of the President of Ukraine "On Commercialization of the State Trade and Public Catering", "On Measures Regarding Acceleration of Small Privatization Process in Ukraine" and the Ukrainian Law "On Privatization of Small State Enterprises" privatization and commercialization of trade and public catering have been conducted in Ukraine.

More than 9 per cent of trade and public catering enterprises have changed their type of ownership as of 1 September 1997. Non-state sector provides more than eighty (80) per cent of retail trade return.

With commercialization of trade, administrative and command system of management has been completely liquidated and centralized distribution of goods under the funds has been cancelled.

If ensuring the state needs in agricultural produce through the exchange market is meant, the Cabinet of Ministers of Ukraine adopted the resolution "On the Concept of Development of the Exchange Market of Agricultural Produce" (No. 848, dated 5 August 1997) which foresees that the volumes of procurement of agricultural produce for the state needs should be formed only through the network of agricultural exchanges.

9. Policies Concerning Intellectual Property Rights (TRIPS)

Question 65

In several areas of intellectual property protection, such as geographical indications, patents, border enforcement, layout designs of integrated circuits, undisclosed information, the Ukrainian Government has stated that draft laws are being discussed. The same applies for possible amendments to the criminal code. Information is needed on the state of play of these draft laws as well as of any other (already existing or foreseen) legislative action which could have implications for the protection of intellectual property rights (including a concrete timetable for the completion of the respective legislative processes and a copy of the law, preferably in English and if already available).

Answer:

The State Agency of Ukraine for Copyrights and Related Rights has elaborated the draft Law of Ukraine "On Introduction of Changes and Amendments to the Criminal Code of Ukraine", which provides for the following wording of Article 136 of the Criminal Code:

Article 136. Infringement upon Copyrights and Related Rights

Unlawful use of products and objects of related rights, that is their reproduction and distribution without permission of persons holding copyrights and related rights, or other unlawful appropriation of copyright in products, as well as importation into Ukraine without permission of persons holding copyrights and related rights, of samples of products and soundtracks, if these acts resulted in serious material damages, shall be punished by correcting labour for the period of up to two years, or a fine in amount of fifty to one hundred and twenty non-taxed minimum incomes of individuals.

Same acts executed for the second time, or by an organized group, shall be punished by imprisonment for the period of two to five years with confiscation of property, or without such confiscation.

Note: material damage shall be considered serious if the amount of such damage exceeds 100 or more non-taxed minimum incomes of individuals.

The draft of this Law has been approved by the Ministries of Economy, Finance and Home Affairs, Prosecutor General's Office, Supreme Court of Ukraine, and after approval by the Ministry of Justice it will be submitted to the Cabinet of Ministers for further consideration by the Supreme Rada of Ukraine.

Besides, the draft Law of Ukraine "On Introduction of Changes and Amendments to the Law of Ukraine On Copyrights and Related Rights" has been elaborated and approved by relevant ministries and institutions. Article 43 of this draft provides for application of preliminary measures in cases on infringement upon copyrights and related rights, namely:

1. Before a case is actually considered in a court, the court or the judge may independently take a decision to prohibit to a defendant or a person reasonably suspected of infringing upon copyrights and related rights, to exercise certain activities (manufacturing, reproduction, sale, rent, importation etc., use (within the scope of this Law), as well as transportation, storage or holding for the purpose of releasing copies of products or soundtracks suspected of being counterfeit).

A court or a judge may take a decision to impose sequestration on, or withdraw all copies of products and soundtracks suspected of being counterfeit, as well as materials and equipment for manufacturing and reproduction thereof.

2. When sufficient information is available about the offense for which the law provides for criminal punishment, an investigation institution or a court must take measures to satisfy the existing or possible civil claim by way of search and sequestration of:

- (i) copies of products and soundtracks suspected of being counterfeit;
- (ii) materials and equipment for manufacturing and reproduction of such products and soundtracks;
- (iii) documents, invoices or other articles which may be the proof of acts for which the effective law prescribes criminal responsibility.»

In the nearest future, the draft of this Law will be submitted to the Cabinet of Ministers for further consideration by the Supreme Rada.

The draft Law "On Accession of Ukraine to the Geneva (1971) Convention on Protection of Interests of Soundtrack Producers from Unlawful Reproduction of Their Soundtracks" has been prepared, and presently it is being considered by ministries and institutions.

The Supreme Rada of Ukraine is at the moment considering draft Law 'of Ukraine "On Protection of Rights in Topologies of Integrated Chips" and "On Protection of Rights to Specify Geographical Origin of Goods (Services)".

Draft Laws of Ukraine providing for introduction of changes and amendments to the package of Laws of Ukraine on protection of rights in inventions, useful models, industrial samples and signs for goods and services have been prepared for approval by ministries and institutions.

Draft Law of Ukraine "On Introduction of Changes and Amendments to the Law of Ukraine On Protection of Rights in Sorts of Plants" has been submitted to the Cabinet of Ministers of Ukraine.

It is planned for 1998 to complete the elaboration of draft laws on special border measures applied to goods containing intellectual property objects, on protection of rights in brand-names and information subject to non-disclosure, as well as to draft provisions of relevant articles of the Administrative, Civil and Criminal Codes of Ukraine with respect to protection of rights in industrial property objects and non-traditional intellectual property objects.

Unfortunately, the procedure of preparation and adoption by the Supreme Rada of draft laws is rather complicated and long. Therefore, at the moment it is impossible to determine the time when the above draft laws will enter into force.

Translations of the above-mentioned draft laws into English or any other language have not been made.

Question 66

To help assess the level of protection for plant varieties the Ukrainian Government should provide a copy of the Law on the Protection of Rights of Plant Varieties (No 3116-XII of 21 April 1993, in English, French or German, if possible).

Answer:

Ukraine is ready to submit a copy of the Laws of Ukraine "On Protection of Plant Variety Rights", enforced by the Resolution of the Supreme Rada of Ukraine of 21 April 1993 No. 3117-XII, translated into English. (WT/ACC/UKR/44)

Draft Law of Ukraine "On Introduction of Changes and Amendments to the Law of Ukraine On Protection of Rights in Sorts of Plants" has been elaborated and submitted to the Cabinet of Ministers of Ukraine.

Question 67

State of play of any legislative action which could have implications for the protection of intellectual property rights (including a concrete timetable for the completion of the respective legislative processes and a copy of the draft law, preferably in English, French or German, if already available).

Answer:

Reply is contained in replies to questions 65 and 66.

Question 68

Applied penalties in cases of infringement of intellectual property rights.

Answer:

The effective Law of Ukraine "On Copyrights and Related Rights" provides that protection of personal and proprietary rights of persons who own copyrights and related rights, may be exercised according to procedures set forth by administrative, civil and criminal law. Article 43 of the Law provides for the following methods of protection of copyrights and related rights by means of civil law:

1. In case of use of other person's product, without an agreement with the person who owns copyright and related rights, as well as in case of violation of conditions of use of products and objects of related rights, or violation of personal and proprietary rights, persons who own copyrights and related rights may file a claim with a court of law or a court of arbitration for renewal of infringed rights by way of making relevant corrections, publications in the press about the infringement or otherwise.
2. A court of law or a court of arbitration has the right to adopt a decision to approve or prohibit the release of a product, or broadcasting of a performance, soundtrack or program on the air or through wires, to suspend their distribution, to withdraw or confiscate all copies of the product or soundtrack, as well as equipment and materials for manufacturing and reproduction thereof, provided there exists sufficient information about the infringement upon the copyright and related rights.
3. A court of law or a court of arbitration may adopt a decision to destroy or expropriate all copies of the products or soundtrack which are proven to have been manufactured and distributed with violation of existing rights of persons who own copyrights or related rights. This relates to all clichés, matrixes, forms, originals, magnetic tapes, photographic negatives and other articles used to reproduce copies of a product, soundtrack, broadcasting programs, as well as to materials and equipment used for reproduction thereof.

This Law (Article 44) also provides for reimbursement for damages for infringement upon copyrights and related rights.

1. Persons who own copyrights and related rights may claim:
 - (i) reimbursement for damages caused by infringement upon copyrights and related rights, including profit not received;
 - (ii) withdrawal and transfer in favour of owners of copyrights and related rights, of offender's profits received from infringement upon copyrights and related rights - as a substitute for reimbursement for damages;
 - (iii) payment of compensation to be determined by a court in amount of 10 to 50,000 non-taxed minimum incomes of individuals set forth by the law of Ukraine, as a substitute for reimbursement for damages or withdrawal of profits.
2. Besides reimbursement for damages and withdrawal of profits, for infringement upon copyrights or related rights, a court of law or a court of arbitration shall impose a fine in amount of 10 per cent of the sum which the court has ruled to pay in favour of the plaintiff. Fines so collected shall be transferred to relevant state budgets according to a procedure set forth by the law.
3. Offender of copyrights and related rights shall also reimburse moral damage in amount determined by a court to persons who own these copyrights and related rights.

As regards criminal responsibility, it is necessary to outline that in compliance with Article 136 of the Criminal Code of Ukraine currently in force, infringement upon copyrights and related rights is punished by a fine or correcting labour, which, of course, does not meet international requirements. Therefore, changes are necessary in this Article - please refer to reply 65.

The effective law of Ukraine provides for the following punishments for infringement upon rights in:

(i) industrial property objects:

- Article 164-3 of the "Code of Ukraine on Administrative Offenses" provides for imposition of a fine together with confiscation of produce manufactured, production tools and raw materials, or without such confiscation, for unlawful use of brand-name, signs for goods and services or any marking of goods, as well as for unlawful copying of shape, packing or external design, and imitation, copying or direct reproduction of goods manufactured by another producer, and for unauthorized use of his name;
- Article 7 of the Law of Ukraine "On Restriction of Monopolism and Prevention of Unfair Competition in Business" provides for imposition of a fine by the Anti-Monopoly Committee of Ukraine for execution of acts which are considered unfair competition, in particular, unlawful use of brand-name, signs for goods and services or any marking of goods, as well as for unlawful copying of shape, packing or external design, and imitation, copying or direct reproduction of goods manufactured by another producer, and for unauthorized use of his name;
- Articles 4, 5, and 6 of the Law of Ukraine "On Protection from Unfair Competition" provide for imposition of penalties and confiscation of goods by the Anti-Monopoly Committee of Ukraine for unlawful use of other companies' signs, packing, and copying of external design of goods;
- Article 137 of the Criminal Code of Ukraine provides for punishment in the form of correction labour or fine for unlawful appropriation of copyrights in other persons' inventions, useful models

or industrial samples, or for disclosure, without the permission of the author, of the contents of an invention, useful model or industrial sample prior to their official publication;

(ii) commercial secret:

- Article 164-3 of the "Code of Ukraine on Administrative Offenses" provides for imposition of a fine for appropriation, use and disclosure of commercial secret and confidential information for the purpose of causing damage to business reputation or property of another businessmen;
- Article 7 of the Law of Ukraine "On Restriction of Monopolism and Prevention of Unfair Competition in Business" provides for imposition of a fine by the Anti-Monopoly Committee of Ukraine for execution of acts which are considered unfair competition, in particular, appropriation, use and disclosure of commercial secret and confidential information for the purpose of causing damage to business reputation or property of another businessmen;
- Articles 4, 5 and 6 of the Law of Ukraine "On Protection from Unfair Competition" provide for imposition of fines by the Anti-Monopoly Committee of Ukraine for unlawful gathering, disclosure and forcing somebody else to disclose commercial secret, as well as for unlawful use of commercial secret;
- Articles 148-6 and 148-7 of the Criminal Code of Ukraine provide for imprisonment or a fine for unlawful gathering, for the purpose of use, and for use of data containing commercial secret, as well as for disclosure of commercial secret.

Question 69

Clarification is needed on whether and how well-known marks are protected in cases of goods or services which are not similar to those in respect of which a trademark is registered (Article 16.3 of the TRIPS Agreement).

Answer:

In compliance with the Law of Ukraine "On Protection of Rights in Signs for Goods and Services" (Article 3 and Clause 6 of Article 6), in Ukraine protected are well-known signs for goods and services on the basis of international treaties membered by Ukraine, in particular, on the basis of the Paris Convention on Protection of Industrial Property (Article *6bis*).

The draft Law of Ukraine "On Introduction of Changes and Amendments to the Law of Ukraine On Protection of Rights in Goods and Services" incorporates provisions of Articles 15-21 of the TRIPs Agreement concerning trademarks, including well-known trademarks.

Question 70

What is the nature and scope of protection of computer software and databanks, as well as related rights? (See Annex to the Agreement, Article 3, Clause 1).

Answer:

Law of Ukraine "On Copyright and Related Rights" which provides for protection of literary works, computer programs and databases, has been effective since February 1994. Under this law, authors of such works, as well as their legal successors, have both 'title' (non-property, or "personal") and "ownership" (property) rights to their works. The personal rights include the author's right to demand recognition of his being the author, mentioning of his name in cases where his work is being used, if it's practicable, the right to publicize his work, and prevent any unauthorized changes to or

misinterpretations of his work. The property rights include the author's exclusive right to use one's works in any form or in any way, authorize or prohibit distribution of one's works, their lease, as well as require a compensation for any use of his works.

The personal and property rights to one's works can be enforced through procedures established under applicable administrative, civil and criminal laws.

Issues relating to the related rights are governed by provisions of Title III of the specified above Law, which set out the rights of performers, producers of phonograms and broadcasting organizations, criteria for granting protection, and terms of such protection, of related rights.

It should be noted that Law of Ukraine On Copyright and Related Rights has been reviewed by International Department of the World Intellectual Property Organization and meets the requirements set by Bern Convention on Protection of Literary and Artistic Works. Ukraine was granted membership in Bern Convention on 25 October 1995.

Question 71

When is Ukraine going to join the International Agreement on Protection of Artists, Musical Instruments Makers and Organization of Radio Broadcasting of 26 October 1961; or in what another manner is Ukraine going to fulfil its obligations under the Annex to the Agreement, Article 2, Section 1, Clause 3?

Answer:

On 31 May 1995 Verkhovna Rada (Parliament) of Ukraine passed Law of Ukraine "On Accession of Ukraine to Bern Convention on Protection of Literary and Artistic Works", which took effect on 25 October 1995. Presently there are being prepared for submission to Parliament the documents that are related to Ukraine's accession to Geneva (1971) Convention on protection of phonogram producers from illegal reproduction of their phonograms.

As to Ukraine's joining Rome (1961) convention for protection of the rights of performers, phonogram producers and broadcasting organizations, it is planned that it will be accomplished within the first half of 1998.

Question 72

What real possibilities exist for the owner of said rights to protect himself from determined counterfeit? (Article 3, Clause 2)?

Answer:

In accordance with the Law of Ukraine On Protection of Goods and Services and Trademark Rights an owner of the rights to a trade or services mark shall be able to protect his mark from counterfeiting by way of the state registration of a trade or services mark and obtaining a certificate confirming the right of ownership to the mark.

Under Article 16 of the said Law the certificate for a mark shall grant its owner an exclusive right to use and dispose the mark at his sole discretion, and forbid the use of the registered mark by the other persons without his consent.

Article 20 of this Law provides that any encroachment upon the rights of the certificate owner shall be deemed as infringement of his rights and involves responsibility under current Law of Ukraine. Upon the owner's request such infringement must be stopped and the violator shall be under obligation

to indemnify the losses incurred by the certificate owner. The owner of the certificate may also request that the illegally used mark or a sign, which is similar to the mark inasmuch as to lead to confusion, should be removed from the goods or its packing.

Provision regarding enforcement of the owner's rights to the mark from counterfeiting are embodied in Article 7 of the Law of Ukraine "On Restriction of Monopolies and Prevention from Unfair Competition in Entrepreneurial Activity" which determines that illegal use of a trade name, mark for goods or services, or any other marking of goods, and illegal copying of the form, packing, external design, imitation, copying, direct reproduction of goods of other businessman, arbitrary use of his name shall constitute the fact of unfair competition.

It is recognized in Article 4 of the Law of Ukraine "On Prevention From Unfair Competition" that the use of somebody else's name, trade name, marks for goods and services, goods packing, names of places of origin of goods which may result in confusion with the activities of other economic agent (businessman) which has the priority in their use, without permission of the authorized person, shall be deemed illegal.

Making actions determined by the Laws of Ukraine "On Restriction of Monopolies and Prevention from Unfair Competition in Entrepreneurial Activity" and "On Prevention From Unfair Competition" as unfair competition and shall result in imposition of fines by the Anti-monopoly Committee of Ukraine and administrative, civil and criminal responsibility in cases provided for by Law.

Question 73

What measures were undertaken by Ukraine last years for improvement of enforcement of rights in non-material values (Article 5 of the Annex to the Agreement)?

Answer:

With the purpose of harmonizing the legislation of Ukraine in the field of protection of intellectual property with provisions of the TRIPS Agreement regarding enforcement of rights to the objects of intellectual (including industrial) property the following measures have been taken recently:

- in 1996 the draft Laws of Ukraine On Enforcement of Rights to Layout Designs (Topographies) of Integrated Circuits and On Enforcement of Rights to Geographical Indications of Goods (Services) in accordance with provision of Articles 35-38 and 22-24 of the TRIPS Agreement were developed and submitted to Supreme Rada of Ukraine;
- in 1997 the draft Laws of Ukraine on introduction of changes in and amendments to current Laws of Ukraine On Enforcement of Rights to Inventions and Utility Models, On Enforcement of Rights to Industrial Samples, On Protection of Goods and Services and Trademark Rights, On Protection of Rights to Plant Varieties have been developed. The above changes and amendments provide, in particular, for introduction of clauses on provisional measures in the said laws to immediately stop infringement of rights to the objects of industrial property in compliance with requirements of Article 50 of the TRIPS Agreement;
- in 1997 the development of proposals as to bringing the provisions of the Civil, Criminal and Administrative Codes of Ukraine to conformity with the requirements of Articles 41-50, 61 was initiated;
- in 1997 the concept of the legislative act regarding the special measures on the customs border of Ukraine in order to prevent crossing of the customs border of Ukraine by counterfeit goods and goods with falsified trademark in compliance with the requirements of Articles 51-60 was developed;

- in 1996 the provision on activity of the Appellate Council of the State Patent Office of Ukraine as the body which resolves at the administrative level the disputes related to the granting of rights to industrial property objects was improved;
- the conceptual basis regarding the creation of a specialized branch of judicial system (patent court) for dispute settlement in the field of intellectual property is being developed.

As it has already been pointed out, Ukraine has joined Bern convention for protection of literary and artistic works, in the near future Parliament will receive necessary materials relating to Ukraine's accession to Geneva convention for protection of phonogram producers from unlawful reproduction of their phonograms.

Besides, there have already been approved by relating ministries and agencies and submitted for final approval to Justice Ministry the draft laws on introducing changes and additions to the Criminal Code of Ukraine and the Code of Ukraine on Administrative Infringements, which provide for tightening criminal and administrative accountability for violating copyright and related rights. It is been proposed to introduce such sanctions as imprisonment, seizure of property, unlawfully produced copies of copyrighted works and equipment used for their reproduction, as well as imposition of sizable fines.

Presently Parliament is reviewing the draft Law On Introducing Changes and Additions to the Law of Ukraine "On Copyright and Related Rights", which, in particular, provides for before-the-court measures aimed at stopping violations of copyright and related rights, in accordance with which judge may rule, solely on his own initiative and before the case is reviewed in court, to prohibit the defendant's carrying on certain activities provided that there is evidence substantiating that the respondent violates copyright and related rights, or the judge may order to seize all unlawful copies and phonograms, as well as materials and equipment used to produce such.

Question 74

When is Ukraine going to join the Hague Agreement (Stockholm edition of 1967) on International Preservation of Craftsmanship Samples and Models (Article 5 of the Annex to the Agreement)?

Answer:

Ukraine has an intention to gradually accede to all agreements administered by the World Intellectual Property Organization, first of all, to the agreements participation in which is provided for in the bi- or multilateral agreements that have already entered into force in the territory of Ukraine. This also includes the accession to the Hague Agreement on International Deposit of Industrial Samples (Stockholm Act 1967). Ukraine is planning to accede to the above Agreement in 1998.

Question 75

When is Ukraine going to join the Budapest Agreement on International Recognition of Protection of Microorganisms (1977) (Article 5 of the Annex to the Agreement)?

Answer:

Ukraine became a party to the said Agreement on 2 July 1997.

Question 76

Is Ukraine going to join the Protocol of 27 June 1989 to the Madrid Agreement on International Registration of Marks (Labels)?

Answer:

Ukraine has an intention to gradually accede to all agreements administered by the World Intellectual Property Organization, first of all, to the agreements participation in which is provided for in the bilateral or multilateral agreements that have already entered into force in the territory of Ukraine. This also includes the accession to the Protocol of 27 June 1989 to the Madrid Agreement on the International Registration of Marks. Ukraine plans to accede to above Protocol in 1998.

V. TRADE AGREEMENTS

2. Regional Integration

Question 77

Could we have more information on the multilateral agreement on industrial cooperation relating to the Ashkabad Agreement?

Answer:

General provisions

All the CIS countries signed the Agreement on general conditions and support mechanism of the development of production cooperation of enterprises and industries of the CIS countries on 23 December 1993 in the city of Ashkabad with the aim of the re-establishment and development of mutually beneficial co-operation ties between enterprises and industries of the CIS countries. This Agreement is based on the principles of state support of co-operation ties, encouragement of business activity entities to develop co-operation first of all by means of simultaneous mutual exemption of the goods shipped under production co-operation agreements from import and export dues, taxes, excises and quantitative restriction.

The parties agreed that shipment under production co-operation agreement meant shipment of raw materials, parts, components, spare parts, half-finished products and other products of industry and inter-industry consumption technically related to and necessary for joint production of finished products.

Rendering of services under a production co-operation agreement means fulfilment of design and repairs works, technical maintenance and technological operations.

Shipment (rendering of services) is carried out by means of conclusion of agreements (contracts) between the business activity entities on the basis of inter-departmental agreements.

The Ashkabad Agreement's mechanism of realisation was determent by the corresponding Protocol signed on 15 April 1994 by the governments of the CIS countries. The Protocol provided for the adoption of unified regulations by the participating countries.

With the aim of full utilisation of advantages and peculiarities of bilateral inter-state relations in technological and scientific areas, re-establishment and development of inter-dependable manufacturing enterprises, preservation and further development of specialisation in the manufacturing industries Ukraine has also concluded bilateral agreements on production co-operation with Azerbaijan, Georgia, Turkmenistan, Kazakstan, Uzbekistan and the Kyrgyz Republic from which agreements with Azerbaijan, Georgia, Turkmenistan and Uzbekistan has entered into force.

State of the regulatory base of Ukraine and the CIS countries

The Resolution of the Cabinet of Ministers of Ukraine no. 323 of 18 May 1994 (with future amendments) enacted the Regulations on the procedure of shipment and custom clearing of products under production co-operation of enterprises and industries of the CIS countries that determined the mechanism of realisation of the Agreement's provisions in Ukraine and Ministries and Departments responsible for the preparation and conclusion of inter-departmental agreements for separate branches of industry.

The procedure of movement of goods and products shipped under production co-operation agreements across the custom border of Ukraine has been established by the Regulations on the procedure of movement across the custom border of Ukraine and registration of product shipped under inter-departmental agreements on production co-operation approved by the Order of the State Customs Service of Ukraine no. 189 of 25 April 1997.

Normative documents enacting the Agreement has also been approved in Russia, Azerbaijan, Georgia, Armenia, Belarus, Moldova, Kazakstan, the Kyrgyz Republic and Tadjikistan.

Procedure of granting VAT and excise preferences when conducting reciprocal shipments of products under production co-operation agreements between countries parties to the Agreement is determined in the Regulations on the procedure of the application of the VAT and excise taxes to shipments of goods (services) under production co-operation agreements in settlements between business activity entities of the CIS countries adopted by the Heads of Governments of the CIS countries on 17 January 1997. But the mentioned Regulations have not yet been enacted by Russia - the major partner of Ukraine in production co-operation.

ANNEX 1

THE LIST OF DOCUMENTS TO BE SUBMITTED WITH THE DECLARATION FORM

(i) Documents to confirm the fact of export:

a contract, an invoice, transport documents.

(ii) Documents to confirm the origin of goods:

for producer: a reference on the goods manufacturing* process

for an intermediary: documents on the goods procurement (contracts, transport, if available, payment documents, etc.) to confirm the producer (certificate of quality, passports, labelling on goods or tare).

ANNEX 2

DECLARATION FORM

The customer enterprise
being an exporter, requests the certificate(s) of origin for
Quantity of goods , weight
number of items , type of transport

The products is delivered to the address
under contract No. of
from
transport documents

Documents submitted when certificate is made up:
.

The goods are manufactured by the enterprise:

The customer declares that the data mentioned above is accurate, the goods originate from Ukraine
and meet the requirements as to the origin of goods.

Head of Enterprise

_____/signature/

(seal)