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**Working Party on the
Accession of Ukraine**

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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 last meeting of the Working Party meeting.

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IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(b) Characteristics of national tariff

Question 1.

We refer to Ukraine's plans to review its customs tariff in order to eliminate most of the mixed tariffs. When are the mixed tariffs likely to be eliminated? How will the elimination of mixed tariffs be achieved?

Answer:

Work is continuously progressing on bringing Ukrainian customs tariffs in line with WTO requirements.

If by "mixed tariffs" you mean "combined rates", they are still used for goods in Groups 1-24 of the Foreign Trade Nomenclature, but the Cabinet of Ministers is considering the draft of new Law of Ukraine "On Making Changes to the Ukrainian Law "On State Regulation of Imports of Agricultural Produce" submitted by the Ministry of Foreign Economic Relations and Trade, which will authorize the customs rates to be altered and simplified in order to comply with Ukraine's international obligations.

The Decree of the President of Ukraine No.255/66 of 6 June 1996 approves the Concept Paper on the Transformation of the Customs Tariff of Ukraine 1996-2005 which establishes an import duty rates limit level and a schedule plan for their transformation to comply with WTO standards.

The customs tariffs on 1 January 1998 presented the following picture:

- 20 per cent of all rates were equal to their limit rate levels;
- 11 per cent of the rates exceeded them;
- 69 per cent of all rates were lower.

On 17 February 1998 the customs tariffs could be classified as follows:

- | | |
|---|----------------|
| - <i>ad valorem</i> rates (calculated on a per cent basis of value) | 77.6 per cent; |
| - specific rates (calculated in monetary values per unit) | 2.6 per cent; |
| - combined rates (including <i>ad valorem</i> and specific rates) | 19.8 per cent. |

Question 2.

Are their plans to convert specific tariffs in the customs tariff to *ad valorem* rates?

Answer:

Of course, the intention is to introduce *ad valorem* rates.

See the answer to question 1.

Question 3.

Could Ukraine continue to provide Working Party members with up-to-date tariffs in electronic form? When will Ukraine formally introduce an up-to-date nomenclature? Could Ukraine inform about the evolution of its weighted average tariff?

Answer:

Ukraine shall continue e-mailing information on changes in tariffs to the Working Party members. Ukraine intends to implement the new nomenclature in 1999. The average import duty rate has decreased from 5.12 per cent at the end of 1996 to 4.16 per cent at the end of 1997.

Question 4.

We would request a commitment by Ukraine that such non-tariff barriers as, for example, minimum prices, quantitative restrictions, seasonal import duties on agricultural produce, that have been established by the law of Ukraine of which we received the text recently, will be lifted on Ukraine's accession to the WTO as being inconsistent with the provisions of the Agreement on Agriculture and that the customs tariff of Ukraine will remain the only instrument of protection henceforth.

Answer:

When Ukraine accedes to the WTO, it will endeavour to comply with the requirements of the Agreement on Agriculture and the Agreement on Safeguards.

Question 5.

Please clarify if Ukraine's commitment to maintain the maximum level of import duties at 30 per cent (with a few possible exceptions) relates to agricultural products too, and whether it would be binding on Ukraine's accession to the WTO. If so, this commitment seems not to be harmonized with the content of the market access offer submitted by Ukraine where tariff rates planned even for 2002 and earlier years exceed the level of 30 per cent.

Answer:

According to the Concept of Transformation of the Customs Tariff for the period from 1996 through 2005 (document WT/ACC/UKR/22/Add.1), the maximum level of tariffs for agricultural produce does not exceed 70 per cent. This document is an invitation to enter market access negotiations. The level of the tariffs that will be applied after Ukraine accedes to the WTO depends on the outcome of the negotiations.

(d) Other duties and charges

State Tax

Question 6.

Concerning the State tax described in WT/ACC/UKR/32:

Can Ukraine confirm that this tax is applied equally to imported and domestic goods on a "national treatment basis" as required in Article III of the GATT?

Is the State tax applied on the right of appeal in customs matters? If so, please describe the scope and nature of the tax.

Is this tax in any way related to the licensing of business activity? Is it related to the right to import or to export? If so in either case, please describe the scope and nature of the tax.

In what specific instances is the tax applied on an *ad valorem* basis? Why is there a tax on documents substantiating industrial property rights? Please describe the scope and nature of the tax.

Answer:

The State tax is applied on the basis of a national regime in compliance with Article III of the GATT.

In the right of appeal in customs matters the State tax is not applied. If an appeal in customs matters is submitted to court, the state tax is applied on a general basis.

VAT and Excise Taxes

Question 7.

WT/ACC/UKR/27/Add.2 contains a schedule of excise rates and customs duties for certain commodities.

Is this schedule still accurate? If not, please update it.

Note 4 to the schedule indicates that there is a temporary exemption from payment until the year 2000 of excise duties for Ukrainian produced television sets, tape recorders, and other products. Why are these specific products exempted from the excise duty payment? If only domestically produced products are exempted from the excise tax, it would appear to violate Article III and it could also constitute a subsidy.

Answer:

We submit in a tabulated form all excise duties in Ukraine to domestic and imported goods.

Increases in excise rates were introduced as a temporary measure in connection with the sharp increases of imports in certain categories of goods. The imports caused a slow down in domestic production which resulted in payment balance difficulties.

List of Goods Subject to Excise Duty

CN number	Excise Duty for Import Goods	Excise Duty for Domestic Goods	Term of Validity	Legal Basis (Law)
0207 39 130 0207 39 230	0.03 ECU/kg	0.03 ECU/kg		23.12.97 No. 767/97-SR

CN number	Excise Duty for Import Goods	Excise Duty for Domestic Goods	Term of Validity	Legal Basis (Law)
0207 41 510	0.03 ECU/kg	0.03 ECU/kg		23.12.97 No. 767/97- SR
0901	0.2 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
1604 30 100	5 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
1604 30 900	3 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
1605 10 000	2 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
1605 20 000	0.5 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
1605 30 000	2.5 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
1605 40 000	1 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
1806 20	0.1 ECU/kg	0.1 ECU/kg		23.12.97 No.7/97- SR
1806 31	0.1 ECU/kg	0.1 ECU/kg		23.12.97 No.7/97- SR
1806 32	0.1 ECU/kg	0.1 ECU/kg		23.12.97 No. 767/97- SR
1806 90 110 - 1806 90 390	0.3 ECU/kg	0	1996- 2000	23.12.97 No. 767/97- SR
2101 10 110	0.8 ECU/kg	0	1996- 2000	11.07.96 No. 313/96- SR
2203 00	0.04 ECU/l	0.04 ECU/l		11.07.96 No. 313/96- SR
2204 (ex 2204 10 ex 2204 30)	0.15 ECU/l	see 2)	1996- 2000	07.05.96 No. 178/96- SR.18.02.97 No. 74/97- SR.12.06.97 No. 339/97- SR
2204 10	0.3 ECU/l	see 2)	1996- 2000	07.05.96 No. 178/96- SR.08.02.97 No. 74/97- SR.12.06.97 No. 339/97- SR
2204 30	-	see 2)	1996- 2000	07.05.96 No. 178/96- SR.12.06.97 No. 339/97- SR
2205	0.5 ECU/l	see 2)	1996- 2000	07.05.96 No. 178/96- SR.12.06.97 No. 339/97- SR.12.06.97 No. 339/97- SR
2206	0.5 ECU/l	0.5 ECU/l		07.05.96 No. 178/96- SR.12.06.97 No. 339/97- SR

CN number	Excise Duty for Import Goods	Excise Duty for Domestic Goods	Term of Validity	Legal Basis (Law)
2207	3 ECU/l/vol %	see 3)	1996- 2000	07.05.96 No.178/96- SR.08.02.97 No. 74/97- SR.12.06.97 No. 339/97- SR
2208 10 (ex 2208 10 100)	-			07.05.96 No. 178/96- SR
2208 10 100	3 ECU/l/vol %	3 ECU/l/vol %		07.05.96 No. 178/96- SR
2208 20 - 2208 90 100	3 ECU/l/vol %	see 2) 3)	1996- 2000	07.05.96 No. 178/96- SR.12.06.97 No. 339/97- SR
2208 90 310 - 2208 90 390	3 ECU/l/vol %	3 ECU/l/vol %		07.05.96 No. 178/96- SR
2208 90 510 - 2208 90 790	3 ECU/l/vol %	3 ECU/l/vol %		07.05.96 No.178/96- SR
2208 90 910 - 2208 90 990	3 ECU/l/vol %	3 ECU/l/vol %		07.05.96 No.178/96- SR
2401	0	0		06.02.96 No.30/96- SR
2402 10 000	5 ECU/100 pcs	5 ECU/100 pcs		06.02.96 No. 30/96- SR
2402 20 000	2 ECU/1000 pcs	2 ECU/1000 pcs		06.02.96 No. 30/96- SR
2403 (ex 2403 10 000 ex 2403 99 100)	0			06.02.96 No. 30/96- SR
2403 10 000	2 ECU/kg	2 ECU/kg		06.02.96 No. 30/96- SR
2403 99 100	2 ECU/kg	2 ECU/kg		No.06.02.96 No. 30/96- SR
2710 00 110	12 ECU/1000 kg	12 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 150	12 ECU/1000 kg	12 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 210	12 ECU/1000 kg	12 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 250	20 ECU/1000 kg	20 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 310	20 ECU/1000 kg	20 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 330 2710 00 350				
A- 72, 76, 80	8 ECU/1000 kg	8 ECU/1000 kg		23.12.97 No. 767/97- SR
A- 90, 91, 92, 93	20 ECU/1000 kg	20 ECU/1000 kg		23.12.97No. 767/97- SR

CN number	Excise Duty for Import Goods	Excise Duty for Domestic Goods	Term of Validity	Legal Basis (Law)
A- 94, 95, 96, 98	40 ECU/1000 kg	40 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 370	20 ECU/1000 kg	20 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 390	20 ECU/1000 kg	20 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 410	12 ECU/1000 kg	12 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 450	12 ECU/1000 kg	12 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 510	12 ECU/1000 kg	12 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 550	20 ECU/1000 kg	20 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 590	20 ECU/1000 kg	20 ECU/1000 kg		23.12.97 No. 767/97- SR
2710 00 610 2710 00 650 2710 00 690	6 ECU/100 kg	6 ECU/100 kg		11.07.96 No. 313/96- SR
4011 10 000	5 ECU/pcs	5 ECU/pcs		24.05.96 No. 216/96- SR.12.06.97 No. 340/97- SR
4203 10 000	35%	35%		11.07.96 No. 313/96- SR
4303 10 900	30%	0	1996- 2000	11.07.96 No. 313/96- SR
7113 - 7114	35%	35%		11.07.96 No. 313/96- SR
8215 10	10%	10%		11.07.96 No. 313/96- SR
8215 91 000	10%	10%		11.07.96 No. 313/96- SR
8516 50 000	5 ECU/pcs	5 ECU/pcs		11.07.96 No. 313/96- SR
8520	5%	0	1996- 2000	11.07.96 No. 313/96- SR
8521 10 310 8521 10 390	5%	5%		11.07.96 No. 313/96- SR
8523 Only audio without recording	0.05 ECU/pcs	0.05 ECU/pcs		11.07.96 No. 313/96- SR
8523 Only video without recording	0.2 ECU/pcs	0.2 ECU/pcs		11.07.96 No. 313/96- SR
8524 Only audio with recording	0.1 ECU/pcs	0.1 ECU/pcs		11.07.96 No. 313/96- SR
8524 Only video with recording	0.5 ECU/pcs	0.5 ECU/pcs		11.07.96 No. 313/96- SR

CN number	Excise Duty for Import Goods	Excise Duty for Domestic Goods	Term of Validity	Legal Basis (Law)
8524 90 100	0.2 ECU/pcs	0.2 ECU/pcs		11.07.96 No. 313/96- SR
8528 10	0.8 ECU/cm screen diagonal	0	1996- 2000	11.07.96 No. 313/96- SR
8703 10	0.6 ECU/cm ³	see 1)	1996- 2007	24.05.96 No. 216/96- SR.12.06.97 No. 340/97- SR
8703 21	0.2 ECU/cm ³	see 1)	1996- 2007	24.05.96 No. 216/96- SR.12.06.97 No. 340/97- SR
8703 22	0.2 ECU/cm ³	see 1)	1996- 2007	24.05.96 No. 216/96- SR.12.06.97 No. 340/97- SR
8703 23				
	0.3 ECU/cm ³	see 1)	1996- 2007	24.05.96 No. 216/96- SR.12.06.97 No. 340/97-. SR
	0.6 ECU/cm ³	see 1)	1996- 2007	24.05.96 No. 216/96-SR.12.06.97 No. 340/97-SR
8703 24	1 ECU/cm ³	see 1)	1996-2007	24.05.96 No. 216/96-SR.12.06.97 No. 340/97-SR
8703 31	0.2 ECU/cm ³	see 1)	1996-2007	24.05.96 No. 216/96-SR.12.06.97 No. 340/97-SR
8703 32	0,3 ECU/cm ³	see 1)	1996-2007	24.05.96 No. 216/96-SR.12.06.97 No. 340/97-SR
8703 33	0.8 ECU/cm ³	see 1)	1996-2007	24.05.96 No. 216/96-SR.12.06.97 No. 340/97-SR
8703 90	100 ECU/pcs	see 1)	1996-2007	24.05.96 No.216/96-SR.12.06.97 No. 340/97-SR
8711 40 000 8711 50 000 8711 90 000	0.2 ECU/cm ³	0.2 ECU/cm ³		24.05.96 No. 216/96-SR
8716 10 990	100 ECU/pcs	100 ECU/pcs		24.05.96 No. 216/96-SR
9303 20	20 ECU/pcs	20 ECU/pcs		11.07.96 No. 313/96-SR
9303 30	20 ECU/pcs	20 ECU/pcs		23.12.97 No. 767/97-SR
9304 00 000	10 ECU/pcs	10 ECU/pcs		23.12.97 No. 767/97-SR

CN number	Excise Duty for Import Goods	Excise Duty for Domestic Goods	Term of Validity	Legal Basis (Law)
9401	5%	0	1996-2000	11.07.96 No. 313/96-SR
9403 10	5%	0	1996-2000	11.07.96 No. 313/96-SR

1. The revenues from sale of passenger and carrier/passenger cars, produced by all Ukrainian enterprises (regardless of form of ownership) from imported or domestic components will not be subject to excise until 2007 if the production volume is not less than 1000 units a year.

2. Temporarily, for the period from 1996 till 2000 the following excise rates are established for domestic goods, produced from domestic raw materials:

grape natural ordinary dry wine	- ECU 0.02 for 1 litre (codes 2204.21290; 2204.29100-2204.29290);
grape natural ordinary fortified wine	- ECU 0.1 for 1 litre (codes 2204.21390; 2204.29310-2204.29390);
fruit and berry wine	- ECU 0.2 for 1 litre (2206.00930;2206.00990),
Cognac, brandy seasoned for no less than three years	- ECU 0.25 for 1 litre of pure alcohol (2208.20);
Raw Wine Materials sold to retailers and consumers	- ECU 0.15 for 1 litre (2204.30);
Vermouth and other wines (natural or with herbal additives or aromatic extracts)	- ECU 0.15 for 1 litre (2205).

3. Ethyl alcohol used by domestic producers to manufacture alcoholized juice, fruit juice water, infusions and perfume - the excise rate established at the level of ECU 0.2 for 1 litre of pure alcohol.

Question 8.

In its responses to questions from the last two Working Party meetings, Ukraine has stated that imports delivered under State contracts of orders are subject to taxation "on general terms". It would be useful if Ukraine could clarify whether they were exempted from VAT and other taxes and duties, and what, if any relation such preferences would have with those on goods involved in production-sharing agreements.

Answer:

We reaffirm that goods, imported under government procurement, are subject to tax, including VAT and excise. The procedure for such tax is established by the Law of Ukraine "On the Value Added Tax" and the Law of Ukraine "On Excise Duty Rates for Certain Goods (Products)".

The translated texts of these laws have already been submitted and are listed in WT/ACC/UKR/33 and WT/ACC/UKR/44.

The goods purchased under government procurement are not covered by production-sharing agreements. In other words such goods are not exempt from taxation.

See also the answer to question 21.

Question 9.

In September 1997 Ukraine amended the VAT law to exempt coal and electricity. Further, Ukraine has delayed use of accrual accounting for VAT calculation until 1999. This would appear to maintain GATT inconsistent tax treatment of some trade through at least 1998.

Why has Ukraine taken these measures?

Has Ukraine considered what impact this change could have on its WTO accession?

Are further changes in the law likely?

Answer:

Article 11.6 of the Ukrainian Law "On Value Added Tax" provided for the application of a zero value added tax on sales until 1 January 1998. The provision applied to:

- coal and products of its enrichment, coal and peat briquettes;
- natural gas;
- electricity.

Transition of Ukraine to a value added tax calculation on accrual basis is postponed until 1 January 1999. This is an emergency measure caused by a payments crisis in settlements between government agencies as well as in budgetary allocations to the government agencies.

Question 10.

The use of minimum import values for assessment of both excise duties and VAT would appear to be inconsistent with the WTO. These values are set pursuant to the Cabinet of Ministers Resolution No. 502 of May 1997 (excise duties) and a draft Presidential Decree (VAT). Could Ukraine list the goods subject to these minimum prices?

Answer:

The Resolutions of the Cabinet of Ministers temporarily establishes minimum customs values for imported goods. The objective is to prevent artificial reduction of the customs value of goods and thus to safeguard adequate rates of VAT and excise.

The minimum customs value applies to the following goods:

1. Tobacco products.
2. Malt beer.
3. Liquor.
4. Coffee (beans and instant)

5. Caviare (black and red)
6. Legs (chicken and turkey), frozen
7. Chocolate.
8. Fur clothing.
9. Crabs and lobsters (canned)
10. Natural leather clothing.
11. Audio and video cassettes (blank)
12. Television sets.
13. Cars (new and second hand), and tyres for them.
14. Pork.
15. Milk and cream, butter, hard cheeses, margarine (artificial butter)
16. Onions.
17. Wheat, barley, maize, buckwheat, millet and canary seeds.
18. Cereal groats and pellets.
19. Starches ,inulin.
20. Soya.
21. Rape.
22. Vegetables, fruit, nuts and other edible parts of a plant, prepared or canned in vinegar or vinegar acid.
23. Tomatoes, prepared or canned in vinegar or vinegar acid.
24. Jams, candied fruit jellies, fruit jelly, puree and paste of fruit and nuts.
25. Fruit and vegetable juices.
26. Yeast and prepared cooking powders.
27. Siftings and other sifting waste.
28. Textile products: suits (complete), jackets, dresses, skirts, skirts-trousers, overalls with bibs and broad straps, britches and knitted shorts for women and girls, underwear for men and boys, knitted fabric products, including pyjamas, bathing robes, wrappers and like products, lingerie for women and girls, knitted products, including pyjamas, lady's dressing gowns (peignoirs), bathing robes and gowns and like products, sleeveless sporting vests, jerseys and like knitted products, sweaters, pullovers, jumpers, waistcoats and like stockinet products; sport, ski and bathing suits; overcoats, jackets, coats, windbreaker and stormbreakers, blouses, shirts, linen, footwear, hats, and other headgear.

Question 11.

Please produce in a table the complete list of Ukrainian excise taxes as they are applied (a) to Ukrainian domestic goods, (b) to imports, and (c) and exceptions for imports from particular countries.

Answer:

Excise taxes listed in the answer to question 7 apply to all goods regardless of their origin.

Question 12.

The taxation treatment of cross-border transactions, and the relationship to the taxation treatment of domestic transactions, is a key area for the examination of a country's policies against WTO requirements. The scope for an examination of taxation measures should not be confined only to ordinary customs duties.

Given that VAT, excises, sales taxes and turnover taxes are, in varying degrees, major elements of different national taxation systems, inconsistencies in the way that such taxes may operate in a particular national taxation system can give rise to substantial trade distortions. Such

distortions could create significant and anomalous differences in the conditions of access to Ukraine's market that are faced by suppliers from different countries.

The purpose of examining taxation measures against WTO requirements is essentially to determine whether or not the taxes concerned are levied at discriminatory rates or are applied in a discriminatory manner in particular to determine whether or not, in relation to each measure, all imported goods are accorded most-favoured-nation (as required under Article I of the GATT 1994) and national treatment (as required under Article III of the GATT 1994).

In relation to VAT and excise Ukraine, as a future WTO Member, will have the right to decide the following things:

- the products on which VAT or excise will be imposed;
- the rates of VAT or excise that will be applied on such products;
- the industries, sectors or entities that will be exempt from the payment of VAT or excise or subject to the payment of VAT or excise at a concessional rate, whether in relation to particular products or across the whole range of products that would otherwise be subject to the full rate of VAT or excise;
- the entities that will have the right to reimbursement of VAT paid on the inputs they have purchased;
- the product coverage of such reimbursement rights.

However Ukraine, as a future WTO Member, will need to ensure that the following conditions are completely satisfied in relation to all the products of all WTO Members:

- that VAT or excise imposed on any particular product will be levied at exactly the same rate and applied in exactly the same manner for all domestic transactions involving such products, regardless of the product's country of origin;
- that any exemption from payment of VAT or excise that is provided to a particular industry, sector or entity in the purchase of any product, will apply to all such purchases of that product regardless of the product's country of origin;
- that any rights accorded to an entity in relation to the remittance of VAT paid on the purchase of any inputs will be accorded to all purchases of the inputs covered by such rights, regardless of the country of origin of the inputs concerned.

Can Ukraine provide an assurance that, under its current VAT and excise arrangements, in respect of the rates at which these taxes apply and in the manner of their application including any rights of remission of VAT already paid on purchased inputs, all of the conditions listed above are completely satisfied?

Answer:

Ukraine can assure that its current VAT and excise arrangements and the methods of their application, including all entitlements for exemptions therefrom as well as levies relating to natural resources and utilities comply in all respects with the requirements of GATT Articles I and II and in the light of the provisions of GATT Article XXIV.

Question 13.

If a categorical assurance cannot be given, we would also appreciate complete details of Ukraine's plans to bring its taxation policies and practices into full conformity with both

Articles I and II of the GATT 1994, in particular, information on when each of the WTO inconsistent aspects of its policies and practices will be brought into full conformity with WTO requirements.

Answer:

See the answer to question 12.

Question 14.

In document WT/ACC/UKR/32 it is indicated that excise taxes "shall not be imposed in the case of excisable goods (products) that are exported for foreign currency". Are excise taxes rebated upon export, or simply not collected upon export? Is there an established procedure to ensure that any rebates or exemptions of excise taxes do not exceed that amount which could have been collected or imposed on products consumed in the production of export goods if such goods had been sold for domestic consumption?

Answer:

Excise taxes are not payable on goods exported for foreign currency. It is therefore possible to estimate the production or manufacture cost of such goods.

Question 15.

Please update the status of application of Ukraine's VAT and excise taxes in the context of (a) national treatment; (b) MFN treatment, especially vis-a-vis the Russian Federation and other republics of the former Soviet Union; and (c) other WTO provisions, e.g., use of minimum import valuation and quantitative restrictions. (WT/ACC/UKR/41 questions 15 and 50, WT/ACC/UKR/48)

Answer:

The application of excise duty by Ukraine in the context of:

- (a) the national regime;
- (b) most-favoured-nation treatment;

is set out in the answer to question 7. As for the application of the excise tax to goods imported from the Russian Federation and other CIS countries is concerned, it does not contain any exceptions from the general rule.

The application of VAT by Ukraine is determined by the Law of Ukraine No. 168/97-VR of 3 April 1997 "On Value Added Tax" which was submitted in a set of documents for the fifth Working Party meeting on Ukraine's accession to the WTO (WT/ACC/UKR/44).

Imposition of minimum customs value is a temporary measure to prevent artificial lowering of the customs value on imported goods to ensure the payment of the full amount of VAT and excise duty.

Question 16.

In the answer to question 1 in document WT/ACC/UKR/41 it is indicated that exports are exempted from the VAT and that "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". What procedures are followed to ensure that the amount of VAT taxes which are refunded upon export do not exceed the amount of VAT levied on the produce being exported?

Answer:

In accordance with subparagraph 6.2.1 of Article 6 of the Law of Ukraine No. 168/97-VR, dated 3 April 1997, "On the Value Added Tax", as amended, the rate of value added tax on exported goods is zero. Where the value added tax has been paid on such goods, it is refunded. The exporter does not receive anything above and beyond the value added tax paid.

In accordance with paragraph 11.6 of Article 11 of the said law, till 1 January 1999, when goods (works, services) are taken (exported) outside Ukraine's customs territory under barter (exchange of commodities) operations, the amount of value added tax paid (calculated) in connection with purchase of goods (works, services), shall not be attributed to the increase of tax credit but included in the total expenditures of the taxpayer.

Question 17.

We support Ukraine's policy objective of taking steps to provide full national treatment in the excise taxation of all excisable imported products.

We would appreciate details of where matters currently stand in relation to the implementation of this policy objective.

In reply to question 2 of document WT/ACC/UKR/41 Ukraine has indicated that such steps may involve changes to applied rates of customs duty. What changes to applied rates of customs duty have taken place after excise reunification? Are any further changes planned? If so, we would appreciate details of such changes. Will Ukraine seek to revise its proposed tariff bindings to take account of such changes?

Answer:

The unification of excise rates is almost complete. Different excise rates for domestic and imported foods have been established on a temporary basis for certain alcoholic products (e.g., grape wine, cognac, brandy), colour television sets, tape recorders, furniture, food products, clothing produced from nutria, fox, mink and Arctic fox fur, as well as vehicles (passenger and carrier/passenger automobiles and motor-cycles) and tyres for passenger cars.

For additional information on produce subject to excise, see the table in the answer to question 7.

Question 18.

In reply to question 4 of document WT/ACC/UKR/41, Ukraine has affirmed that national treatment is provided in the excise taxation of imported cars. However, Ukraine has not stated that national treatment is provided in the value-added taxation of imported cars. Could Ukraine confirm that this is the case?

Answer:

Zero VAT shall be applied to sale transactions on automobiles produced by non-residents with the percentage of foreign or domestic investments in their assets being no less than US\$150

million. To qualify for this exemption the latter have to be in monetary form. The exemption is provided for in the Law of Ukraine "On Promoting Production of Automobiles in Ukraine" No.535/97-VR, of 19 September 1997. When Ukraine accedes to the WTO, it will adhere to the principle of applying national regime to taxation.

Question 19.

It is not clear that Ukraine's reply to question 6 of WT/ACC/UKR/41 recognizes the crucial distinction between customs fees and charges which will need to be brought into consistency with Article VIII of the GATT 1994, and applied customs duties and other duties and charges which, from the date of accession, will need to be consistent with Articles I and II of the GATT 1994 and the Uruguay Round Understandings on the GATT_1994 and on the Interpretation of Article II:1(b) of the GATT 1994.

Are the specific duty rates mentioned in Ukraine's reply to question 6 of document WT/ACC/UKR/41 components of ordinary customs duties or other duties and charges within the meaning of Articles I and II of the GATT 1994 and the Uruguay Round Understanding on the Interpretation of Article II:1(b) of the GATT 1994?

If so, all customs fees and charges - including any such charges that have been incorporated into Ukraine's customs duties or other duties and charges - will need to be determined and applied separately from Ukraine's customs duties and other duties and charges in full conformity with the requirements of Article VIII of the GATT 1994. What are Ukraine's plans in this area?

Answer:

Customs fees, mentioned in the answer to question 6 of Document WT/ACC/UKR/41 are not a component part of usual customs tariffs. In accordance with the Resolution of the Cabinet of Ministers of Ukraine No.65, of 27 January 1997, customs fees are charged for carrying out customs services, which include customs legalization of goods, holding the goods under customs control, etc. The fees are set in accordance with the requirements of Article VIII of GATT, and are charged uniformly regardless of the country of origin of goods. There are no privileges in existence for domestic importers or producers.

Question 20.

How does Ukraine reconcile its reply to question 77 of document WT/ACC/UKR/41 in respect of the preferential VAT and excise exemption provisions of the Ashkabad Agreement on CIS Industrial Cooperation with its future WTO obligations.

Answer:

The Ashkabad Agreement applies only to enterprises connected by a single production process with enterprises in other CIS countries which produce final products. This is why quantity of production cooperation supplies are insignificant (1.9 per cent of the total trade turnover with CIS countries). Only semi-products and spares, relevant to the production process, are exempted from value added tax and excise tax. Final products, sold in the domestic market or exported are fully taxed.

Ukraine considers the Ashkabad Agreement a minor temporary measure of support for Ukrainian enterprises until the process of reform in the national economy is completed in the coming years.

Question 21.

In response to question 77 in WT/ACC/UKR/41 regarding the Ashkabad Agreement, it is stated that Ukraine selectively exempts trade in the elements of co-production agreements from "import and export duties, taxes, excises, and quantitative restrictions", and that regulations will determine the procedure of granting VAT and excise preferences when conducting reciprocal shipments of products under production cooperation agreements between countries which are parties to the agreement.

Why should such agreements qualify for tax preferences?

What is the exact nature of preferences which Ukraine may grant under the Agreement and any regulations?

How is this sort of exemption justifiable within the provisions of Articles I and III of the GATT?

Answer:

According to the Ashkabad Agreement on General Conditions and Mechanism of Promotion of the Development of Production Co-operation of Enterprises and Industries of the Member States of the CIS of 23 December 1993 and in accordance with the Regulations on the Procedure of Shipments and Customs Legalization of Products Under Production Co-operation of Enterprises and Industries of the Member States of the CIS, confirmed by Resolution of the Cabinet of Ministers of Ukraine No.323 of 23 May 1994, shipments of products intended for cooperative production are carried out on the basis of commercial contracts concluded by the subjects of entrepreneurial activity in accordance with the relevant governmental, sectoral or interministerial agreements. Products shipped under such agreements are exempt from import and export taxes, excise tax and value added tax.

However, to be granted the exemptions from export, taxes, import taxes, excise and value added taxes, the subjects of the entrepreneurial activity that directly import such products on the basis of the above intergovernmental, sectoral and interministerial production co-operation agreements must meet certain requirements provided for in the Ukrainian legislation. The products, imported into the customs territory of Ukraine pursuant to production co-operation agreements, cannot be re-exported to third countries without a written consent of the authorized organ of the supplying state.

As the Ashkabad Agreement was concluded within the framework of the CIS among Ukraine and all other member states of the CIS to promote free trade regime, and is an integral part of additional bilateral free trade agreements among CIS countries, the import, export, excise and value added tax exemptions appear to fall within the provisions of GATT Article XXIV.

Question 22.

WT/ACC/UKR/48 states that from May 1997, VAT tax is applied to all goods consumed in the customs territory of Ukraine regardless of origin. We understand, however, that Ukraine recently entered into an agreement with the Russian Federation exempting trade in certain items from taxation.

Would Ukraine please explain the nature of these exemptions, if they are granted to all trade in specific categories, or if the exemptions are unique to trade in certain goods with the Russian Federation?

If the latter, how is this consistent with Ukraine's effort to joint the WTO and the MFN obligation contained in Article I of the GATT?

Are imported coal and coal concentrating products and briquettes exempt from the VAT along with Ukrainian coal? Is this one of the products covered by the Agreement on VAT exemption with the Russian Federation?

Answer:

Less than seven years ago, when Ukraine and the Russian Federation were integral parts of the Soviet Union, their economies were inseparable. After the demise of the Soviet Union and the emergence of Ukraine and the Russian Federation as two independent countries, both of them endeavoured to save their economies. Their production sources theretofore structurally and economically integrated, became separated and even fragmented. It was desperately important to save existing industrial and agricultural operations, to prevent unemployment, and to stabilize economy. Some important help came from Western European and North American countries, but steps had to be taken locally.

In an effort to preserve at least some of the former production structure, Ukraine and the Russian Federation entered into a General Free Trade Agreement. It must be remembered in this context that they remained major business partners in exchange of goods, and Ukraine continued to be dependent on liberal gas and oil supplies from the Russian Federation. Within the context of their general agreement, Ukraine and Russian Federation made a subsidiary agreement for mutual exclusion of VAT for their respective imports. Such exclusion also applies to coal, its concentrated products, and briquettes. This agreement, as indeed the main agreement on free trade, is important for Ukraine.

It is submitted that the VAT exemptions fall within the provisions of GATT Article XXIV, and it is hoped that it will be recognized as such after a waiver of the prescribed procedural requirements.

Question 23.

In WT/ACC/UKR/48, Ukraine states that the calculation for excise taxes "takes into consideration" actually paid duties. Could Ukraine explain what that means in practice?

Answer:

The following formula is applied in order to calculate the excise duty:

$$(V+D) \times R:100$$

V is a customs value in Hryvnias,
D is customs duties, fees and charges, and
R is the excise duty rate.

Seasonal Tariffs

Question 24.

We refer to Ukraine's intention to apply seasonal tariffs (replies to question 12 of document WT/ACC/UKR/41 and question 16 of document WT/ACC/UKR/25/Add.1). Ukraine's July 1997 "Law on the State Regulation of Agricultural Produce" is also relevant.

Could Ukraine provide details of the seasonal tariffs that it intends to apply, including a complete list of the products that will be subject to seasonal tariffs, seasonal details and the rates that will apply?

Is it Ukraine's intention to apply seasonal tariffs within its tariff bindings for each of these products? Or does Ukraine intend to negotiate separate tariff bindings for each of these products for each of the seasons?

Answer:

According to Article 2 of the Law of Ukraine No.468/97-VR of 17 July 1997 "On the State Regulation of Import of Agricultural Produce", as amended by the Law of Ukraine of 16 January 1998 "On Amending Law of Ukraine " On the State Regulation of Import of Agricultural Produce", seasonal import duties are levied annually. Such duties are fixed as a double amount of preferential import duty rates for the following Group categories of the Foreign Trade Nomenclature: 07.01-07.08, 08.06.10,08.07.10, 08.08.10,08.08.20, 08.09.10000, 08.09.20, 10.01-10.05, 10.08,12.06-12..08,12.10, 12.12.91,12.12.92, 12.143, 12.14. They operate only during the period of harvesting and storage of similar domestic produce. According to Article 6 of the above Law, must equal or exceed 30 per cent.

The seasonal duty is established for a term not shorter than 60 and no longer than 120 consecutive calendar days. The Cabinet of Ministers establishes the periods of application for seasonal taxes on agricultural produce and publicizes them 45 days prior to implementation.

Ukraine intends to apply seasonal taxes within the limits of its tariff bindings.

Question 25.

If Ukraine intends to apply seasonal tariffs, WTO Members will expect transparency and predictability. Will Ukraine commit itself to the following measures:

- **the regular publication of all relevant information on the duration of the seasons, the tariffs that will apply during those seasons and how the seasonal tariffs will operate;**
- **the publication of all such information allowing no less than 180 days advance notice before application;**
- **meeting all other relevant requirements of Article X of the GATT 1994.**

Answer:

The Cabinet of Ministers of Ukraine intends to publish information on seasonal duties 45 days before their coming into force. Ukraine will adhere to the requirements of GATT Article XI (referred to as Article X in the Question, probably in error) and, where necessary, shall take safeguard measures in compliance with the provisions of the Agreement on Safeguards.

Corporate Profit Tax

Question 26.

Is the corporate tax described in WT/ACC/UKR/32 levied at the same rate for domestic and foreign entities? Are foreign entities eligible for the corporate profit tax exemptions described in this document. For example, would a foreign construction or design firm be exempted from the tax if it built one of the types of projects for which tax exemptions are granted?

Answer:

This question may have been formulated as a result of a conceptual misunderstanding due to an inadequate translation of the previous answer. In order to conduct business within Ukraine, a corporation (or entity) must be registered as a "resident" in Ukraine. In addition to the acquisition of a Ukrainian legal personality, such corporation also becomes subject to Ukrainian corporate profit tax, and all incidents of and all exemptions from such tax become applicable to it in the same manner and to the same extent as to domestic corporations.

Foreign corporations are not permitted to work within Ukraine unless they comply with the appropriate registration procedures.

(e) Quantitative import restrictions

Question 27.

Quantitative import restrictions (such as bans, quotas) cannot be applied on a seasonal basis or any other basis. Are we correct in assuming that Ukraine will not apply quantitative restrictions on the import of any product? (The "Law on the State Regulation of Agricultural Produce" appears to introduce quotas contrary to Article XI of the GATT 1994.)

Answer:

After its accession to WTO Ukraine will comply with the requirements of Article XI GATT 1994 and, if necessary, will introduce safeguard measures in accordance with provisions of the Agreement on Agriculture and the Agreement on Safeguards.

(f) Import licensing procedures

We would like to thank Ukraine for the clarification of the information previously provided on the import licensing fee and confirmation that indicative prices do not play a role in the licensing process.

Question 28.

We note from the reply to question 20 of document WT/ACC/UKR/41 that Ukraine has never fixed indicative prices for the goods listed (pesticides and herbicides, pharmaceutical preparations, cosmetic preparations and personal hygiene products, and veterinary preparations). We would welcome Ukraine's assurance that it will not fix indicative prices for any product subject to import licensing in the future. Can Ukraine provide such an assurance?

Answer:

Ukraine has never fixed indicative prices for imported goods. Prices are fixed only for exports from Ukraine to prevent the occurrences of dumping and to avoid anti-dumping charges against Ukrainian goods.

Question 29.

The intent of question 19 of document WT/ACC/UKR/41 is to clarify the role of the Chambers of Commerce and Industry in import licensing. The reply addresses their legal status, and their role in certifying the Ukrainian origin of goods. However, the response does not address the

role of the Chambers of Commerce and Industry in import licensing. Could Ukraine provide this information?

Answer:

We apologize that this and the subsequent question may be the result of inadequate translations.

The Chamber of Commerce and Trade has nothing to do with licenses. In addition to purely promotional or representational functions, it has developed an expertise in the determination of the proper classifications for goods under the Commodity Nomenclature. It offers this service to foreign pharmaceutical and related products which have ten or eleven digit classifications while Ukraine still retains a nine digit classification system. The Chamber of Commerce and Trade experts convert the ten and eleven digit classifications to their nine digit equivalents. They issue certificates which are valid for all shipments of such products. The service is voluntary. It helps to promote international trade.

Question 30.

WT/ACC/UKR/41 reply 18 section 2.6 confirms that one of the documents needed to obtain an import licence is 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 the CN FEA". Could Ukraine please explain the purpose of the "product examination act"? Why is this act necessary for import licensing? What is the role of the Chambers of Commerce and Industry in import licensing?

Answer:

See the answer to question 29.

(h) Customs valuation

Question 31.

How would the Ukrainian authorities like to improve the system of the determination of the customs value? The category of "minimal customs value", applied with reference to alcoholic beverages and beer, according to Resolution of the Council of Ministers No. 1433 dated 7 December 1996 is, in our view, inconsistent with Article 7.2(f) of the Agreement on Implementation of Article VII of the GATT 1994.

Answer:

Concerning the desire of the Ukraine customs authorities to improve its customs valuation system we would like to report the development of a Customs Valuation Procedure, which is an integral part of the new draft Customs Code of Ukraine. It is based on the WTO Agreement on Implementation of Article VII of the General Agreement on Trade and Tariffs of 1994.

The term "minimal customs value" has nothing to do with customs or tariffs. It represents the minimal value used for the purposes of calculating value-added and excise taxes. The word "customs" is used for lack of an appropriate word to describe the taxable value of the goods subject to such taxes. Therefore Article VII of GATT is not affected by this activity.

(l) Rules of origin

Question 32.

Please provide information on the system of certificates of origin of Ukrainian products as well as the rules of origin applied in the Ukrainian preferential trade with the CIS states.

Answer:

The system of certificates of origin within the trade among the CIS states was agreed upon by a Decision of the Heads of the CIS States on September 24, 1993. It is set out in the Rules to Determine the Country of Origin of Goods bearing the same date as the Decision.

According to the rules:

- "a country of origin of goods is the country where the goods are fully produced or where they undergo sufficient reprocessing;
- "sufficient reprocessing" takes place where the processing of the goods is performed whereby they acquire their distinct character;
- the following goods are deemed to be fully produced in a country:
 - (i) minerals, extracted in the territory or territorial waters or from the continental shelf or the bottom of the sea which the country has exclusive right to exploit;
 - (ii) plant products produced, grown and collected on its territory;
 - (iii) live animals born and grown in the country;
 - (iv) products obtained from animals grown on its territory;
 - (v) sea products obtained by hunting or fishing;
 - (vi) sea products obtained and/or produced in the open ocean by ships owned or chartered by the country;
 - (vii) secondary raw materials and waste that have formed as a result of production and other operations carried out in the particular country;
 - (viii) high technology products, obtained in the open space or aboard space ships owned or leased by the particular country;
 - (ix) goods produced in the country exclusively from goods described above.

Certificates of origin are issued by the appropriate agencies of the respective countries. Such certificates must contain full description of the goods, their country of origin, their quantity and weight, their means and route of shipment, and the particulars of the exporter and importer. The Rules also state that they apply only if the transactions, subject to the necessary transit, takes place between residents of the CIS countries.

Question 33.

According to document WT/ACC/UKR/23 dated 6 May 1996 "Processing in the country is considered sufficient, if: the declared goods are classified differently from the materials or products originated in third countries and used in their production. (In practice it means that it is necessary to change one of the first four figures in the HS code of the commodity.)". Could the Ukrainian delegation explain if the phrase "in practice" means that there is a possibility of exception to that rule?

Answer:

According to Article 18 of the Law of Ukraine "On the Unified Customs Tariff" processing of goods in a particular country shall be considered as taking place in the following cases:

- if declared goods are classified in the goods position different from the "materials or products from other countries" which are used for their production;
- if the percentage of the added value amounts to not less than 50 per cent of the value of the declared goods.

In the application of the above article there can be situations where the tariff position is not changed but the added value amounts to not less than 50 per cent of the value of the declared goods. Processing of goods in the particular country may be considered as taking place in such circumstances.

(o) Safeguard regime**Question 34.**

Concerning the new law "On Procedures for the Application of Safeguard Measures Pursuant to the Principles and Disciplines of the General Agreement on Trade and Tariffs (GATT)/World Trade Organization":

In this law, Ukraine outlines provisions for applying safeguard measures. It is unclear from the cover note if agricultural products are covered by this law. Are agricultural products covered by this law?

Answer:

The Decree of the President No.478/96 of 27 July 1996 "On the Order of Application of Goods Import Restriction According to the Rules and Directives of GATT/WTO (referred to in the Question as the Decree of the President "On Procedures for the Application of Safeguard Measures, Pursuant to the Principles and Disciplines of the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO)") does not apply to agricultural produce. It covers manufactured goods only.

3. Internal Policies Affecting Foreign Trade in Goods**(b) Technical regulations and standards****Question 35.**

Please describe progress made in the implementation of Decree No. 244 of 17 March 1997.

Answer:

A programme for the Development of a Set of Methodological Documents for National Certification and Accreditation Systems has been introduced and is being implemented in order to facilitate the execution of the Resolution of the Cabinet of Ministers No.244, of 19 March 1997, "On Measures for Gradual Introduction in Ukraine of European Union Directives, Sanitary, Ecological, Veterinary and Phytosanitary Rules and International and European Standards" made pursuant to the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Material" The Resolution came into effect on 24 January 1998. Ukraine has already introduced international standards ISO 9000 and ISO 14000, and intends to implement European Standards EN 45000 before the end of 1998.

Question 36.

According to Ukraine's response to question 12 of WT/ACC/UKR/23/Add.1, Ukraine has endorsed a policy of harmonizing its national standards with international standards and has taken a leading role in the EuroAsiatic Council on Standardization (EASC) to harmonize old GOST's with international standards. However, it appears that Ukraine has replaced many of its national standards with regional European standards (CEN and CENELEC) when it passed a resolution importing EU directives into Ukraine's body of national regulations.

Please explain the objective and purpose of this resolution?

Does this resolution replace Ukraine's national standards with CEN and CENELEC?

Please identify the areas (e.g. telecommunications equipment) where Ukraine's national standards are based on CEN and CENELEC. Please identify the areas where Ukraine's national standards are based on some other standards, and what are those standards?

Answer:

Ukraine will implement only those CEN and CENELEC standards that have been developed in accordance with international standards.

Question 37.

Does Derzhstandart currently accept test results from foreign test laboratories?

Answer:

Recognition of the protocols of examination of foreign testing laboratories is carried out in accordance with terms stipulated in specific agreements on cooperation and mutual recognition. Since that Ukraine is a member of IECEE (CB), verification of protocols of examination of electric devises must be performed in accordance with rules operating within the IECEE system.

See also the answer to question 46.

Question 38.

Under what conditions does or would Derzhstandart accept test results from foreign test laboratories? For instance, can a test laboratory accredited by Derzhstandart in Ukraine enter into an agency or representative testing arrangement with a foreign test laboratory to conduct equivalent testing to Ukrainian requirements?

Answer:

By signing the Decree No. 942/97 of 9 February 1997, the President of Ukraine established the National Council on Quality Issues. He approved the "Statute of the National Council on Quality Issues", and appointed the Council's membership. Organizational support for the Council is provided by Derzhstandard.

One of the objectives of the National Council on Quality Issues is to analyze and prepare proposals for the harmonization of national laws with international and European standards. The Council reviews proposals concerning improvements in the regulatory and technical foundation of the quality-control system to ensure quality, safety and competitiveness of Ukrainian products. It also takes measures aimed at the development of technical regulations of national standardization systems, as well as the testing, control, codification and classification of technical, economical and social information.

Question 39.

In the answer to question 4 of WT/ACC/UKR/23/Add.1, Ukraine indicated that the National Council on Quality and the National Council on Accreditation are being formed.

Have these two councils been established and what are their respective mandate and scope of standards development activities?

How do they coordinate standardization activities on the international, national, regional and local levels?

Answer:

One council has been formed to deal with quality issues, including accreditation. For further details, see the answer to question 38.

Question 40.

In response to question 12 of document WT/ACC/UKR/23/Add.1 of 21 March 1997, Ukraine noted that 60 per cent (approximately 965) of the 1,608 State National Standards, and 4,000 of the 20,000 former Soviet standards in force in Ukraine had been harmonized with international standards.

We would be grateful for confirmation as to whether Ukraine plans to have all these standards harmonized with international standards.

If so, we would appreciate greater details of the planned timetable leading towards complete harmonization and the final date by which such harmonization should be completed.

Answer:

Implementation of standards harmonized with international and European standards will be carried out during the period 1998-2000 in accordance with the plan approved by the Resolution of the Cabinet of Ministers No. 244, dated 19 March 1997.

See also answer to question 35.

Question 41.

At the previous Working Party meeting Ukraine said that it would apply the provisions of Article 6 of the TBT Agreement in relation to recognition of other countries certificates of conformity. Where do matters currently stand in relation to this undertaking? Where such recognition is not provided we would appreciate details of Ukraine's plans to recognize other countries certificates of conformity.

Answer:

Mutual recognition of the results of conformity assessments will be carried out in accordance with Article 6 of the TBT Agreement on the basis of and pursuant to the terms of bilateral cooperation agreements. By 1 March 1998, 38 agreements have been signed with 28 countries, and currently negotiations are being conducted with more than 30 other countries.

Question 42.

It has been stated by Ukraine that one of the reasons for maintaining very stringent and onerous pre-market certification requirements is the lack of a product liability law and other auxiliary legislation that allows control bodies to intervene post-market.

When will Ukraine introduce a product liability law and any other auxiliary legislation that will permit a systemic change from predominantly mandatory pre-market certification to manufacturers' declaration combined with post-market surveillance?

The Government Decree No. 30 of 8 April 1993 and Presidential Decree No. 950/96 of 16 October 1996 seem to give both Derzhstandart and the State Committee for the Protection of Consumer Rights wide ranging powers to investigate any economic entity, to intervene at the stage of manufacturing, importation, storage, transportation or sale, and to impose fines or take other measures including the closure of the economic entity. It would seem that the necessary enforcement instruments are available, which would enable a change from pre-market to post-market control. Could Ukraine please comment on if the above-mentioned decree No. 30 is correct, and if this is the case, why it is not possible to already turn now to post-market surveillance.

Answer:

A Law "On the Responsibility of Producers and Distributors for the Production and/or Distribution of Substandard and Hazardous Products" is being drafted. It takes into account the requirements of EU 85/374 IEEC Directive. The result will be as follows:

(i) Upon the above law taking effect Ukraine plans to introduce a modular principle for an assessment of compliance with its requirements. This approach will be based on producer/distributor declarations of conformity which will enable the compulsory pre-market certification procedure to be replaced by an effectively functioning system of market control. Standards based on ISO/IEC 22 and EN 45014 have already been adopted.

(ii) Article 4(2) of the Decree of the Cabinet of Ministers No.30-93 of 8 April 1993 "On Government Supervision of Compliance with Standards and the Rules for Their Enforcement in the Event of Non-Compliance" does not authorize post-market control or the taking of any of the measures at the distribution stage mentioned in the above question.

Question 43.

Which practical measures are being taken in Ukraine presently to align with the requirements of the TBT Agreement, as regards:

- **the principle of transparency; i.e. establishment of the inquiry point, prior notification procedures and a legislative procedure that allows for consultations with industry and other concerned parties and for comments to be taken aboard after such consultations?**
- **securing the principles of non-discrimination and national treatment in product legislation, standards, conformity assessment procedures (including fee structures and standard processing times), labelling requirements etc?**
- **the use and acceptance of international standards?**
- **the principles of proportionality and least trade restrictiveness; i.e. by moving from pre-market certification for products normally not subject to such requirements (foodstuffs, electronics, ceramic tiles) to manufacturers' declaration combined with post-market surveillance?**

Answer:

Ukraine is taking the following measures to comply with the TBT Agreement:

- (a) An inquiry point is being established to comply with Article 10 of the TBT Agreement. The current stage of this project, carried out under the auspices of a TACIS programme, involves the acquisition and installation of equipment. In addition all necessary information about standard and certification can be obtained at the present time at the National Automated Registry of Standards of the Standardization and Certification Research Institute (Address: 174 Gorkogo St., Kiev, Ukraine 252006, tel.: (044) 268-84-66, fax.:(044) 268-70-60);
- (b) The normative documents of the state certification system (UkrSEPRO) are based on the guidelines set by international and European standardization organizations. They guarantee national treatment for imported goods as required by Articles 5-9 of the TBT Agreement;
- (c) As of 1 February 1998, Ukraine has established 1957 state (national) standards with more than 60 per cent of them being harmonized with international standards;
- (d) The pre-market certification system is intended to be replaced by a system based on producer declarations after the enactment of the Law "On the Responsibility of Producers and Distributors for the Production and/or Distribution of Substandard and Hazardous Products". The law is being drafted.

Question 44.

On 1 January 1997 new labelling requirements for foodstuffs entered into force in Ukraine. These requirements do not correspond entirely to international requirements (Codex Alimentarius).

Has Derzhstandart produced the necessary standards or any other documentation (guidelines etc.) that specifies in detail what is required for different producers? If not, when will such documents be available to the producers?

Could Ukraine please provide detailed information on the draft Law "On changes and amendments to the law on State regulation of production and trade of ethyl, cognac, fruit spirits, alcohol and tobacco products" and its relation with the labelling regulation?

Could Ukraine consider accepting a translation of an already existing label - based on and fulfilling all Codex Alimentarius requirements - into Ukrainian and then the product would automatically be considered as fulfilling the requirements for entering the Ukrainian market (as the Russian Federation has done in the same case)?

Answer:

(a) The Decree of the Derzhstandart of Ukraine No.499, of 27 November 1996 as amended and added by Decree of the Derzhstandart of Ukraine No.268, of 17 May 1997 approves standards for food products that have to undergo obligatory certification in Ukraine.

(b) The Law of Ukraine "On the State Regulation of Import of Production and Trade of Ethyl Alcohol, Liquors and Tobacco Products" regulates production, use and trade of such goods. The Article 11 of this Law, when first enacted, did not regulate the warning of all ethyl alcohol, liquors and tobacco products. An amendment of Article II now sets out clear requirements.

(c) Acceptance of translated labels is possible if they contain the relevant information. On Codex Alimentarius, see the answer to question 56.

Question 45.

Ukraine operates mandatory pre-market certification for processed foodstuffs. What measures have been taken to allow a move from pre-market to post-market control in this area?

Answer:

Upon the enactment of the Law "On Responsibility of Producers and Distributors for the Production and/or Distribution of Substandard and Hazardous Products" a system of post-market controls is planned to replace the present pre-market control system.

See also the answer to question 42.

Question 46.

The present onerous certification requirements for electronics (computer parts etc.) have been motivated by Ukraine by reference to "national differences and characteristics". What "national differences" motivate the use of pre-market certification involving products model certification as well as individual consignment approval and quality system certification for products which are normally not subject to such onerous procedures?

Answer:

Ukraine's specific requirements for the certification of electronic devices are based on the special conditions of the country's electric power system which requires interference by electronic devices to be within established limits.

See also the answer to question 37.

Question 47.

What are ceramic tiles subject to mandatory pre-market certification which is contrary to international practice where manufacturer's declaration suffices?

What health and safety risks are the consumers being protected against?

Decree No. 244 also covers building material, so when will ceramic tiles be subject to requirements which are used in the European Union and internationally?

Answer:

As soon as the Law "On Responsibility of Producers and Distributors for the Production and/or Distribution of Substandard and Hazardous Products" is enacted and put into effect, a modular principle for the assessment of conformity will be introduced, and the list of products subject to obligatory certification in Ukraine will be revised to conform with EC Directive No.93/465 taking into account the necessary link assessment techniques.

See also the answer to question 42.

Question 48.

When will Ukraine join the 1958 UN-ECE Agreement, and how is work on alignment proceeding?

Can Ukraine confirm that joining the UN-ECE Agreement means that:

- **type-approval certificates will be issued for the whole lifespan of a model and not just for three years as presently;**
- **the UN-ECE standards will be introduced and accepted;**
- **it will abolish the mandatory plant visits to each and every plant occurring several times a year?**

Answer:

The Draft Law "On Ukraine's Accession to the UN-ECE Agreement of 1958" has been approved by the Derzhstandard, the Ministry of Transportation, and other interested agencies. The Ministry of Foreign Affairs is preparing it for submission to the Supreme Rada. In addition, the Ministry of Industrial Policy and the Ministry of Transportation have approved a list of UN-ECE standards that will become effective in Ukraine in addition to the existing national standards.

The situation concerning the specific issues raised above is as follows:

- (a) the period for which certificates of conformity are issued will depend on the certification scheme. For certification pursuant to the ISO 9000 standard, certificates will be issued for three years on condition of the annual examination of the effectiveness of operation of the quality control system;
- (b) 15 UN-ECE standards are already in effect in Ukraine in the form of national standards. 41 regulatory documents contain references to UN-ECE standards. The remaining UN-ECE standards will be introduced after the enactment of the above draft law;
- (c) the statement about the frequent visiting of factory sites to perform examinations is groundless. Over the three years, during which Ukraine has been applying compulsory certification of

transport vehicles, production facilities of almost all major manufacturers of such products (Volvo, Daimler-Benz, Ford, Opel and others) have been visited only once. Examination of production facilities is carried out to ensure that the enterprises are capable of maintaining a standard production processes and an even quality of products that meets the requirements of Ukrainian legislation.

Question 49.

Presently only legal entities require type approval certificates. When will the present discrimination between legal entities and private importers be abolished.

Answer:

Legal entities include private importers. It is a term used to describe everyone engaged in entrepreneurial activity.

Question 50.

The State Committee of Ukraine for Standardization submitted a list of measures for the implementation of international and European standards on the regional level (the CIS countries) for consideration of the eleventh session of the IC. One measure includes the "development of a programme for the direct implementation of international and European standards as interstate for reciprocally shipped products". The other measure requires developing a programme on inter-laboratory comparative testing of reciprocally shipped products subject to compulsory certification proceeding from the generally accepted international practice of carrying out such testing to ensure a high level of reliability of the testing results and the safety of the products for people and the environment. The law entitled "Procedures for Recognition of Results of Imported Goods" seems to refer to this type of treatment.

We are concerned about the concept of "reciprocally shipped" products. What exactly does this mean? Does this mean that international standards will only be used when products are reciprocally shipped? Ukraine should be prepared on accession to apply international standards to all imported products, whether or not reciprocally shipped. (WT/ACC/UKR/47)

Answer:

Ukraine will be ready to apply international standards to all imported goods (imported either on the reciprocal basis or not) upon its accession to WTO.

(c) Sanitary and phytosanitary measures

Question 51.

In document WT/ACC/UKR/23, Ukraine submitted its reply to the TBT questionnaire, but that no similar document on SPS issues has been developed. We would appreciate a similar document on sanitary and phytosanitary measures, to facilitate evaluation of Ukraine's SPS regime.

Answer:

We refer you to documents WT/ACC/UKR/45 and WT/ACC/UKR/46. However, we are happy to describe the SPS regime of Ukraine again. It is as follows:

According to the Resolution of the Cabinet of Ministers No. 244 of 19 March 1997, the Ministry of Health of Ukraine conducts persistent and zealous work on gradual introduction in Ukraine of the measures provided for in the European Union Directives on Sanitary, Phytosanitary, Veterinary and Ecological Rules.

The sanitary and phytosanitary measures are introduced and implemented in Ukraine in accordance with the Law of Ukraine "On Safeguarding Sanitary and Epidemic Safety of the Population". They apply to all stages of development, implementation, introduction, production, exporting, importing, transportation, distribution, application and use (making use of and consumption) of products, as well as, if it is necessary, to their reprocessing, utilization, and destruction.

The specific sanitary legislation and sanitary rules of Ukraine may be found in, approximately 2000 normative documents, as well as in related instructional and procedural materials. Many of the measures were developed before the collapse of the former Soviet Union. At present the most important of them are edited and amended as they are being harmonized with the relevant European legislation. They are published by the Ministry of Health of Ukraine as "The Collection of Significant Official Documents on Sanitary and Anti-Epidemic Issues" (an official edition consisting of nine volumes). This collection of documents is public and everyone can have access to it.

We must point out that the harmonization of the sanitary legislation in general and the detailed measures in particular to achieve full compliance with the WTO phytosanitary and sanitary requirements need time. The transitional period of adaptation is expected to be completed not later than the year 2001 and perhaps even earlier. The need for a transitional period is predicated by the necessity of taking appropriate measures, including careful scientific and legal drafting work, required by the "Agreement on Adhering to Sanitary and Phytosanitary Measures". The specific requirements include:

- setting up authorized missions (representatives) of the Ukrainian Ministry of Health in the respective international organizations and in the committees of the Code Alimentarius Commission, and to participate within the framework of the International Plant Protection Convention (IPPC), etc. The agreements provide for an obligation to enter the Committees of the Code Alimentarius on Food Additions, control of certification procedures, export-import transactions, transportation, the hygiene of food products, methods of analysis of the remains of pesticides and of veterinary preparations in products, etc.;
- studying the complex accumulation of existing international rules and regulations on sanitary and phytosanitary measures;
- review and harmonization of domestic sanitary and phytosanitary measures, hygienic rules, regulations and standards in order to bring them in line with international standards and requirements, comparing the domestic regime with the regime of foreign countries;
- setting up a prior publication service and the National Inquiry Point at the Medvedev Ecohygiene and Toxicology Scientific and Research Institute. The objective will be to make information available on sanitary measures already taking place in Ukraine, as well as on the national system of verification and control and on risk estimating procedures. Ukraine plans to do this in 1998;
- increase publishing activity of the Ministry of Health of Ukraine. The objective is to publicize the sanitary rules and regulations and other documents of sanitary legislation in all effort to promote principles of transparency as regards the sanitary and phytosanitary measures in Ukraine.

These and other important steps concerning the sanitary and phytosanitary conditions of Ukraine's accession to the WTO are controlled by the Ministry of Health of Ukraine.

The Ministry deems it necessary to inform the trade partners of Ukraine that during the period of transformation Ukraine will try not to impede trade transactions through sanitary and phytosanitary measures provided that the trading activities do not present a threat to the sanitary and epidemiological safety of the people of Ukraine.

All new products undergo an obligatory state sanitary and hygienic expertise. Thereafter, the expertise body issues its certificate which is entered into the National Register of Food Products. Such procedure takes up to 21 days. The validity term of a certificate for a newly imported product issued by the State Sanitary and Hygienic Expertise is determined in each case separately. However it may not exceed five years.

Ukraine uses uniform hygienic standards for the testing and evaluation of the safety of products. The Ministry of Health of Ukraine does not require an additional sanitary and hygienic expertise or examination of products exported by the foreign or international organizations recognized by Ukraine. It also is prepared to activate bilateral arrangements with world recognized expert bodies and organizations.

The Ministry guarantees that the criteria for safety of products, used to conduct sanitary and hygienic expertise, are transparent and available to all trade partners.

A procedure for the evaluation of the adequacy of the procedures, certificates and declarations of its trading partners has been developed by Ukraine. Recognition of such procedures, certificates and declarations is achieved through bilateral negotiations and familiarization with the laws and enforcement systems of the trading partners, as well as their sanitary safety and quality requirements.

Question 52.

In reviewing Ukraine's replies in document WT/ACC/UKR/25, we note that, as with technical barriers to trade, Ukraine has not yet implemented a system for prior publication for public comment or an inquiry point. These are two fundamental aspects of the SPS Agreement that should be in place prior to accession.

Has Ukraine made any progress in establishing a system of prior comment for sanitary and phytosanitary measures?

Has Ukraine designated an inquiry point for SPS issues yet? If so, what is the inquiry point?

Answer:

Ukraine is establishing this year a prior publication service and a national inquiry point at the Medvedev Ecohygiene and Toxicology Scientific and Research Institute attached to the Ministry of Health of Ukraine. The objective of the point will be to make available to the WTO Member states information about the implementation of WTO measures in Ukraine. It also will provide information about inspections and controls, as well as about risk estimating procedures, as required by the SPS agreement.

At the present information on SPS issues may be obtained from the Main Sanitary Epidemiological Department of the Ministry of Health of Ukraine, 7, Gorkogo Str., 252021, Kyiv.

See also the answer to question 51.

Question 53.

In response to question 40 in document WT/ACC/UKR/41, Ukraine states that "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". This would seem to require that each shipment must be inspected even after a hygiene certificate has been granted.

What is the purpose of having a hygiene certificate valid between one to three years if all shipments must be inspected in any case?

Does Ukraine have legislation in place which mandates the use of hygiene certificates, or is this regulation derived from Ministerial authority conferred by other laws?

If specific legislation exists, we would appreciate an opportunity to review it. We would also like an explanation of how the hygiene certification differs from the regular sanitary and phytosanitary certification.

Answer:

According to the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials", where a new product undergoes the state sanitary and hygiene expertise, separate shipments of that product are not required to undergo separate expertise

The issue of state sanitary and hygienic expertise is provided for in the Law of Ukraine "On Providing Sanitary and Epidemic Safety of the Population", the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials", and the Law of Ukraine "On the State Regulation of the Import of Agricultural Produce". Within the scope of these laws more detailed regulations are issued by the Ministry of Health of Ukraine.

English translations of the Law of Ukraine "On the State Regulation of the Import of Agricultural Produce" and the Law of Ukraine "On Providing Sanitary and Epidemic Safety of the Population" were made available in November 1997 (see WT/ACC/UKR/44/Add.1). Text of the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials" in English translation is submitted together with this document (See WT/ACC/UKR/51)

Question 54.

We are puzzled as to why hygienic certificates are required given that additional inspections also are necessary. This would appear to be an additional step in the certification process and it is unclear if they provide any more assurance than a regular sanitary permit. We believe that this process can be streamlined.

The response to question 2 in document WT/ACC/UKR/41 states that a procedure to recognize its trading partners' conformity assessment procedures, sanitary or phytosanitary certifications and declarations or conformance is implemented through bilateral negotiations.

What is the status of these negotiations?

This implies that SPS certificates are only recognized from countries where there is a bilateral agreement. This does not respect the concept of equivalence set forth in the SPS Agreement. Can Ukraine give a commitment that it will accept these certificates from all WTO Member countries - not just those in which a bilateral agreement has been signed - when Ukraine accedes to the WTO?

Will Ukraine commit in its protocol text, that upon accession, it will recognize conformity assessment procedures, sanitary or phytosanitary certifications and declarations of conformance of other WTO Members?

Answer:

Please be advised that the State Veterinary Medicine Department of the Ukrainian Ministry of Agro-industrial Complex is ready to consider within its competence the issue of veterinary certificate recognition of all WTO Members, and not only of those with whom bilateral agreements on cooperation in the field of veterinary medicine were signed. It can be done, if the epizootic situation in a producer's country is satisfactory and veterinary requirements of Ukraine are fulfilled.

Phytosanitary Service of Ukraine carries out inspections and phytosanitary certification in accordance with the standards of International Plant Protection Convention (IPPC) whose representative in Europe is the European and Mediterranean Plant Protection Organization. In cases not covered by IPPC, Ukraine solves the issue by entering into bilateral agreements.

Therefore, Ukraine has recognized in the past and continues to recognize today phytosanitary certificates and relevant inspection procedures of other countries.

Question 55.

We note Ukraine's response to question 2 in document WT/ACC/UKR/41 that it was reviewing regulations regarding procedures to recognize trading partners' conformity assessment procedures, sanitary or phytosanitary certifications, or declarations of conformance. Has this review been completed? What arrangements does Ukraine intend to put in place for the recognition of the conformity assessment procedures, sanitary or phytosanitary certifications, or declarations of conformance of its trading partners?

The revision of the rules dealing with the procedure for recognition of the conformity assessment procedures of trading partners, their sanitary or phytosanitary certifications, and their declarations of conformance is not completed yet. However such procedures, certifications and declarations are recognized in the international practice where they conform with international standards.

Question 56.

With regard to questions 47 and 48 of document WT/ACC/UKR/41, can Ukraine clarify the present status of its membership of the international bodies which are recognized under the SPS Agreement, notable the Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention?

Answer:

Ukraine intends to become a member of the Codex Alimentarius Commission in 1998. The Resolution of the Cabinet of Ministers of Ukraine establishes a National Committee on Food Products Description relating to Codex Alimentarius. The committee includes the representatives of the

Ministry of Agro-industrial Complex, Derzhstandard and the Ministry of Health of Ukraine. The committee's mission is to promote Ukraine's responsibilities as a member of the Codex Alimentarius Commission.

Question 57.

In response to question 48 in document WT/ACC/UKR/41, Ukraine states that it has developed rules on importing, testing, transportation, preservation, sales and application of herbicides and pesticides which are based on the basic provisions of the convention on Plant Protection. However, we are still unclear whether Ukraine intends to ratify the International Plant Protection Convention. Does Ukraine intend to ratify the International Plant Protection Convention?

Answer:

See the answer to question 56.

Question 58.

With regard to the SPS standards which Ukraine is harmonizing with CIS countries (WT/ACC/UKR/42 refers) and European Community members (WT/ACC/UKR/47 refers), we would appreciate advice from Ukraine on the extent to which international, as distinct from regional standards, are taken into account in this harmonization process. In this regard we draw Ukraine's attention to Article 3 of the SPS Agreement.

Answer:

In the development of new sanitation standards Ukraine takes into account the relevant international standards. If the national sanitary standards are different in any manner from the international standards, the WTO Member States are notified.

Question 59.

We note that the list of agreements entered into by Ukraine with a number of countries in the field of standardization, metrology and certification (WT/ACC/UKR/42). Can Ukraine confirm that the arrangements under these agreements do not contain provisions which discriminate against importers from third countries, or which would be inconsistent with the requirements of the SPS Agreement?

Answer:

Ukraine reaffirms that bilateral agreements concluded with a number of countries on sanitary measures do not discriminate against importers from third states.

Question 60.

Document WT/ACC/UKR/42 lists the different bilateral SPS agreements Ukraine has reached with other countries.

We are unclear what purpose the bilateral agreements on SPS serve. Please explain.

Ukraine's policy implies that SPS certificates are only recognized from countries where there is a bilateral agreement. This does not respect the concept of equivalence set forth in the SPS

Agreement. We need assurance that Ukraine will respect certificates from all WTO Member countries.

Answer:

The State Veterinary Medicine Department of the Ukrainian Ministry of Agro-industrial Complex represents Ukraine in International Office of Epizootics since 1993 and observes the requirements of the Zoosanitary Code. Since 1 March 1994, Ukraine is a party to the European and Mediterranean Plant Protection Organization Convention of 1951, as supplemented in 1955, 1962, 1973 and 1982, which is the regional organization of the International Plant Protection Organization. All regulating documents of the European and Mediterranean Plant Protection Organization applied by Ukraine are based on FAO standards.

The phytosanitary certification is conducted in accordance with the International Plant Protection Convention.

Subject to their meeting the safety standards to protect human health and life Ukraine recognizes the sanitary certificates of all WTO Member States, where issues arise that are not settled by the international organizations or institutions, Ukraine reaches appropriate bilateral arrangements.

Question 61.

Among the imports subject to quarantine, Ukraine quarantines agricultural machinery, soil cultivation implements, and vehicles coming from foreign countries and regions of Ukraine with a special quarantine regime. The legislation entitled "Special Types of Border Control: Veterinary, Quarantine and Ecological" does not mention quarantine for anything other than plant and animal products. Can Ukraine confirm that the quarantine requirements for machinery refer only to products that have been used and that this practice does not refer to new, never-used equipment imported into Ukraine. (WT/ACC/UKR/46)

Answer:

Phytosanitary Service of Ukraine confirms the necessity to undertake phytosanitary inspection for agricultural machinery that was in use.

Quarantine requirements are not applicable to new equipment that was never used before its import into Ukraine.

Question 62.

Under point 6 Ukraine states that "new (food) products", "food produced from new untraditional types of products" and "food products produced with the use of principally new types of plants or animals" which are imported require obligatory consideration by the State Sanitary Services. How are the "new" domestic products treated? As a member of the WTO, Ukraine must apply the same standards to imported and domestic products. We seek a commitment from Ukraine that it will apply the same certification requirements to both domestic and imported products. (WT/ACC/UKR/46)

Answer:

All new products, imported into Ukraine for the first time, must undergo obligatory state sanitary and hygiene expertise. Upon the conclusion of the expertise the state sanitary and hygiene expertise body issues its certificate. The latter is entered into the National Register of Food Products.

The sanitary standards for imported goods are practically the same as those applied to domestic products.

Question 63.

Under point 8, Ukraine notes that "substances used in industry or agriculture which are new, not used in the production process before, raw materials which have direct contact with people or product components that may effect people's health" which are imported require obligatory consideration by the State Sanitary Service. Does this include the packaging in which processed products come (i.e. cans, boxes, plastic)? (WT/ACC/UKR/46)

Answer:

Yes, the requirements of obligatory sanitary and hygiene expertise apply to all products that may either directly or indirectly affect human health. This includes all accompanying materials, including packaging, raw materials, and food additives.

Question 64.

We welcome the explanation of the arrangements which are in place for developing hygiene and safety standards in Ukraine (WT/ACC/UKR/46). Can Ukraine explain the criteria used for evaluating the suitability of existing international standards?

Answer:

All Ukrainian standards of hygiene and safety are based on criteria of health safety which have a foundation in hygienic science.

Ukraine is working on the harmonisation of national hygiene and safety standards with the international standards. The purpose of the work is to eliminate excessive impediments in trade and to provide for sanitary and epidemiological safety of the citizens. The same criteria are used to evaluate the applicability of international standards in Ukraine.

Ukraine reaffirms that after it accedes to the WTO, the provisions of the SPS Agreement will be adhered to including the recognition of the sanitary certificates of Ukraine's trading partners.

Question 65.

In this regard, we note that Ukraine does not use "sanitary certificates" as official documents. Could Ukraine confirm that upon accession to the WTO processes will be put in place to recognize the sanitary certificates of its trading partners and that arrangements will be in place for members to demonstrate, where appropriate, the equivalence of specified sanitary or phytosanitary measures in accordance with Article 4 of the SPS Agreement.

Answer:

See the answer to question 64.

Question 66.

We have heard of problems with the recognition of trading partners certification by veterinary officials despite the certification being deemed sufficient under Ukrainian legislation. Is

Ukraine prepared to take the necessary steps to address the apparent inconsistency between its laws and the manner in which they are being applied by veterinary officials?

Answer:

Veterinary certificates issued by trading partners are recognized provided they meet the veterinary requirements of Ukraine and are in conformity with epizootical safety requirements of the producer country.

Question 67.

We would appreciate it if Ukraine could provide more information on the issue of plant quarantine for imports. Please provide a copy of the relevant laws, the list of plant quarantine pests and diseases as well as an explanation of the rules and regulations regarding plant quarantine for imports in Ukraine.

Answer:

The General State Inspection on Plant Quarantine of Ukraine submits as separate documents (see WT/ACC/UKR/51):

- Law of Ukraine "On Plant Quarantine"
- a list of pests and diseases of plants and weeds that are quarantinable in Ukraine.

State quarantine control is conducted at border checkpoints. All imported or exported seeds and plant products undergo such control according to the Law of Ukraine of 30 June 1993, "On Plant Quarantine" and the Resolution of the Cabinet of Ministers No.892 of 28 October 1993, "On the Status of the State Plant Quarantine Service of Ukraine".

Article 7 of the Law provides that, as a rule, two kinds of bodies conduct such control. These are the oblast plant quarantine inspection stations and the border checkpoints.

The sphere of their competence includes:

- (a) issue of certificates for imported seeds, plants and plant products, and also for those exported from special quarantine regime zones;
- (b) quarantine inspection and laboratory expertise of imported quarantinable materials and objects (including those that are contained in luggage, handbags or mail packages);
- (c) the organization of sanitation and disinfection measures for imported quarantinable materials, objects and vehicles;
- (d) control of the activity of introductory quarantine hotbeds, state sorting divisions, hothouses that conduct quarantine inspections of imported seeds, plants and plant materials;
- (e) State control of production, storage, reprocessing, utilization and realization of seeds, plants and plant products.

According to Article 11 of the above Law all the quarantinable materials and objects that cross the border of Ukraine are subject to phytosanitary control.

Quarantinable materials can be imported to Ukraine if:

- there is a phytosanitary certificate, issued by the state quarantine and plant protection bodies of the exporter's state;
- there is a quarantine import permission, issued by the General Plant Quarantine State Inspection.

The customs legalization of shipments takes place only after phytosanitary control is concluded.

Persons violating quarantine requirements are fined. This is done by means of court proceedings upon the submission of the appropriate findings by state phytosanitary inspectors.

Question 68.

In the "Rules of Issues of Veterinary Documents for Freight Subject to Compulsory Veterinary Control" some exceptions to the general rules are reported. Could Ukraine please explain the special relationships between Crimea and Ukraine, and between Ukraine and the oblast and the cities of Kiev and Sebastopol.

Answer:

The answer to the previous question on this matter may not have been clear. The "Rules of Issues of Veterinary Documents for Freight Subject to Compulsory Veterinary Control" apply throughout Ukraine, including Crimea. They must be observed by all veterinary medicine institutions, organizations and enterprises of the country without any regional distinctions or exceptions.

Question 69.

In "Resolution 244 of 19 March 1997 on Measures for Gradual Introduction in Ukraine of European Union Directives, Sanitary Ecological, Veterinary and Phytosanitary Rules, and International and European Standards" it is stated that Ukraine intends to introduce the European Union directives on SPS rules. Please provide an update of the status regarding this issue. Has Ukraine incorporated the European Union directives in its laws yet? Will Ukraine incorporate all the veterinary and sanitary directives? Does Ukraine have the intention of incorporating European Commission Decision 97/534/EC of 30 July 1997 on the prohibition of the use of material presenting risks as regards transmissible spongiform encephalopathies? If this is the case, could Ukraine please provide assurance that an exemption for tallow processed for splitting into fatty acids will be adopted.

Answer:

The Ministry of Health is introducing a Programme of Developing a Complex of Sanitary, Sanitary-Chemical, Toxicological-Hygienic, Phytosanitary and Veterinary Rules which complies with the relevant EU directives. The Programme is being developed in accordance with the Resolution of the Cabinet of Ministers of Ukraine No.244 of 19 March 1997.

Current veterinary requirements on the import of animals, meat, meat and dairy products, raw materials of animal origin, animal feed, and biological materials comply with the requirements of the International Zoosanitary Code. The European Commission Decision 97/534/EC is also taken into consideration.

Question 70.

Reference "Part III: Veterinary Requirements to Importing Meat, Meat and Dairy Products and Edible Products". This document reports, in the last paragraph under section "3.1: Veterinary Requirements to Importing Meat and Meat Products" that "the buyer of meat preserves the right to involve his veterinary experts into selective pre-slaughtering examination of the animals and veterinary and sanitary expertise of the carcasses and intestines at the exporter's enterprises". Does that clause apply to all countries exporting to Ukraine? Does Ukraine currently recognize certain countries as having an equivalent sanitary system to its own? If not, does Ukraine have the intention in the future of recognizing certain countries as having an equivalent sanitary system to its own? If yes, could Ukraine provide a list of countries it recognizes as equivalent?

Answer:

As to the last paragraph of section 3.1 of Part III of the "Veterinary Requirements to Importing Meat and Dairy Products, and Edible Products", the requirement applies to all countries exporting to Ukraine.

Question 71.

Reference "Part III: Veterinary Requirements to Importing Meat, Meat and Dairy Products and Edible Products". In the second paragraph under section 3.3 "Veterinary Requirements to Importing Poultry Meat and Edible Eggs", Ukraine states that "it is not permitted to import poultry, meat ... which received natural hormonal medicine, antibiotics ... during growing, feeding or before slaughtering". Could Ukraine please explain what the scientific basis for such a ban is? Does Ukraine have established maximum residue limits (MRL's) for antibiotics in poultry (if so, please provide MRL levels)? Could Ukraine also confirm that it does not permit the use of antibiotics on its own territory during growth of poultry. The veterinary requirements for importing meat in Ukraine state that the presence of salmonella on the surface of poultry is not permitted in imports. What is Ukraine's tolerance level for salmonella in meat? Please indicate levels of tolerances for most meat types.

Answer:

The requirement imposed by the "Veterinary Requirements for Importing Poultry Meat and Edible Eggs" prohibits the import of the meat of poultry which has received natural hormonal treatment and antibiotics during growing, feeding or before slaughtering.

Note that pursuant to the Law of Ukraine "On Veterinary Medicine", in order to expedite the growth of animal and poultry productivity, the use of biological stimulators, antibiotics, hormonal and other medicine which decrease internal secretion glands functions, and particularly which have teriostatic and endrogenic influence, is prohibited. These preparations can be applied only for medical purposes.

Medical and biological standards and the sanitary rule for raw food and food products require that the permissible levels (in milligrams per kilo) for fresh, cooled and frozen meat and poultry shall not exceed:

- 0.01 unit per gram for antibiotics of tetracycline group;
- 0.5 unit per gram for grisein.

Concerning hormonal preparations:

- diethylbestrol not allowed;
- 0.0005 milligram per kilo of estradiol - 17;
- 0.015 milligram per kilo of testosterone;

Salmonella: 25 grams in frozen meat not allowed.

(b) and (c) Technical Regulations and Standards /Sanitary and Phytosanitary Measures

Question 72.

We recognize that after accession Ukraine will have the right to apply standards, technical regulations and conformity assessment procedures for legitimate reasons such as the protection of the protection of human, animal and plant life and health, and the prevention of deceptive practices. We appreciate that Ukraine understands that all such measures will need to be applied in a manner that is consistent with the SPS and TBT Agreements.

However, every effort should be made to align Ukraine's standards as closely as possible with international standards and to apply the fundamental principle of equivalence under the SPS and TBT Agreements in the recognition of other members standards, technical regulations and conformity assessment procedures.

Ukraine will also need to ensure that after accession:

- **no measures covered under the SPS or TBT Agreements will discriminate, or be applied in a manner that discriminates between importers from different countries or in favour of domestically produced goods over imported goods;**
- **no SPS/TBT measure will be more trade restrictive than necessary to achieve its legitimate objective;**
- **no SPS measure will be applied without sound scientific justification;**
- **no change in any SPS/TBT measure will be introduced without adequate notice being given or without adequate opportunities for comment being provided to interested parties; and**
- **Ukraine will abide by its notification obligations under the SPS and TBT Agreements.**

Answer:

Ukraine intends to abide by the SPS and TBT requirements and avoid discrimination in doing so.

Question 73.

We note that in column seven of the tabulated applied tariff and tariff offer information supplied in WT/ACC/UKR/40 of 24 September 1997, Ukraine indicated that SPS or certification measures (or both) applied to a large number of products.

We would appreciate full details of each of the SPS/certification measures.

Do these SPS/certification measures relate specifically to information contained in other WTO documents that have been circulated recently?

Answer:

Yes, the documents do contain the information on sanitary and phytosanitary certification measures.

(l) Government procurement

Question 74.

Does Ukraine plan to join the WTO Government Procurement Agreement upon its accession to the WTO. If not, please explain the reasons.

Answer:

Harmonization of the government procedures is taking place at the present time. As soon as this process is completed, Ukraine will begin to take steps to join the WTO Government Procurement Agreement.

Question 75.

We welcome Ukraine's efforts to reform its government procurement system and appreciate that this effort has been undertaken with WTO disciplines and the UNCITRAL model in mind. As you are aware, it is our position that Ukraine should join the WTO Agreement on Government Procurement on accession to the WTO.

Answer:

See the answer to question 74.

Question 76.

Does Ukraine have plans to introduce publication of tenders by electronic tendering systems? If so, please provide information on the types of systems being considered and when such systems are scheduled to be operating. If not, will Ukraine consider establishing an electronic tendering system in the future?

Answer:

Upon Ukraine's accession to WTO these issues, most likely, will be resolved.

Question 77.

Please provide a list of the government-owned utilities in the telecommunications, power generation and transportation sectors. Please provide details of any plans to privatize these sectors?

Answer:

The Law of Ukraine No.124/98-VR of 12 February 1998 "On the State Programme of Privatisation for 1998" established the programme of privatization that contains a comprehensive list of state-owned enterprises that are being privatized in Ukraine.

The requested list will require a long time to prepare. We ask you kindly to reconsider your request. We will endeavour to prepare it, if you request it again.

Question 78.

Please provide information on the size and structure of Ukraine's government procurement market for a recent reference period (e.g. value of purchases and product categories by government department or agency etc.).

Answer:

Monitoring of the government procurement market does not exist in Ukraine.

Question 79.

Does Ukraine provide MFN treatment to all foreign suppliers for government procurement? If not, please describe any preferential treatment, including methods for determining origin of supplies, goods and services.

Resolution No. 694 of 28 June 1997 "On Organization and Conducting Auctions (Tenders) for State Procurement of Goods (Works, Services)

Answer:

Ukraine provides most-favoured-nation treatment to all foreign suppliers of goods (works, services) for government procurement.

Question 80.

We have had the opportunity to review quickly Resolution No. 694 and would like to take this opportunity to offer some preliminary comments:

- (a) **technical specifications:** we are concerned about the way in which Resolution No. 694 addresses this issue. The resolution fails to stress the use of performance over design criteria as called for in the Government Procurement Agreement. In addition, the resolution fails to specify that references to trademarks, brand names, specific suppliers, and the like should not normally be made in tender documentation;
- (b) **offsets:** Resolution No. 694 (item 41) allows bids to be evaluated on some criteria which may be considered prohibited offsets under Article XVI of the Government Procurement Agreement, such as internal investment and technology transfer. The Government Procurement Agreement makes clear that such requirements may in some circumstances be used to determine qualification to participate in the procurement process, but not as criteria for awarding contracts;
- (c) **15 per cent preference for Ukrainian suppliers:** the 15 per cent preferential price adjustment permitted under item 41 of Resolution No. 694 raises serious MFN concerns;
- (d) **appeals:** Resolution No. 694 suggests that Ukraine is working towards developing a WTO-consistent appeals process. However, the resolution lacks specificity in key area, including whether participants in the appeals process can be represented or accompanied to hearings and whether opinions and decisions are given in writing.

We look forward to the opportunity to provide additional comments and to discuss these issues in more detail, perhaps in a future Working Party when government procurement is on the agenda.

Answer:

(a) Technical specifications: Yes, we are aware that the resolution does not contain such provisions.

(b) The offsets: In the evaluation and selection of bids, a contracting authority may use any of the criteria listed in Article 29 (4) of the Resolution No. 694 in accordance with the procedure set out therein.

It is the contracting authority that determines whether it should use this or that criteria and also the way the bids should be evaluated. But it does so only on the condition that the relevant bid is economical and effective.

All the criteria are specified in the legal documents according to a prescribed procedure. This is done in case of open sales, sales with preliminary qualifications, and in competitive negotiations.

(c) A price preference of 15 per cent in favour of Ukrainian suppliers: The criteria requiring the contracting authority to accept the best bid are specified in the tender documents. According to the prescribed procedure, the contracting authority provides all bidders, including foreign bidders, with the relevant tender documents. The procedure is set out in an invitation to tender.

If a contracting authority so wishes, a price preference can be included into the list of criteria. It cannot exceed an amount of 15 per cent in favour of domestic goods (works, services).

In accordance with the Resolution of the Cabinet of Ministers No.1058 of 24 September 1997, there can be no price preference in tender purchases involving sums from UAH 10,000 to UAH 70,000.

See also the answer to question 85

(d) Appeals: Any supplier, regardless of the character or form of ownership of assets, may appeal the decision of the contracting authority if the amount of the purchase equals or exceeds US\$100,000.

The procedure for purchases involving the sums that are less than US\$100,000 is simplified and does not provide for any appeal procedure. That is why the Resolution of the Cabinet of Ministers No.1058 of 24 September 1997, does not contain any rules and provisions for appeals.

But, regardless of the quantity or value of procured goods, and the way the procurement is conducted, Resolution No.1058 of 24 September 1997, specifies that where the expected value of procurement ranges from UAH 10,000 to UAH 70,000 the contracting authority is allowed to acquire the goods (services, works) by way of price requests. The establishment of a contractual relation between the contracting authority and a supplier as well as the conclusion thereof and the procedures for dispute settlement are regulated by legislation.

Question 81.

Is Ukraine a party to an international or bilateral agreement respecting procurement (Resolution No. 694, Section 1:5 and 1:6)? Please provide details.

Answer:

Currently Ukraine is not a party to any multilateral or bilateral international agreements on government procurement.

Question 82.

How does Resolution No. 1058 of 24 September 1997 ("Establishing a Unified System for Purchasing Goods (Works, Services) at the Expense of the State Budget and Foreign Credits Received Under the Guarantees of the Cabinet of Ministers of Ukraine" - referenced in WT/ACC/UKR/44/Add.1) affect the procedures and regulations pursuant to Resolution No. 694?

Answer:

Resolution of the Cabinet of Ministers of Ukraine No. 1058 of 24 September 1997, expands the application of tender procedures (such as open tenders, tenders requiring preliminary qualifications competitive negotiations) to procurements within the domestic market. It also establishes a tender procedure for procurement of goods in the domestic and foreign markets valued from UAH 10,000 to the equivalent of US\$100,000.

Question 83.

With regard to Section 1:4(c) of Resolution No. 694, please provide examples of "other special cases" exclusions from the application of the regulations.

Answer:

Natural disasters and emergency situations.

Question 84.

In Section III:26 (Resolution No. 694), reference is made to publication of tenders by radio or television, in addition to domestic and foreign newspapers and technical magazines. Please provide further details about which tenders are published in each medium. For example, are all tenders which are open to foreign bidders, published in foreign newspapers?

Answer:

Pursuant to paragraph 26 of Resolution No.694 "On the Procedure for Organizing and Carrying out of Auctions (Tenders) in the Field of State Procurements of Goods (Works, Services)" invitations to tender must be published by a contracting authority in the newspapers "Holos Ukrainy" ("Voice of Ukraine") or "Uriadovyi Courier" ("Government Courier"), and in relevant foreign media.

Question 85.

Section III.41(b) of Resolution No. 694 refers to a price preference of 15 per cent in favour of Ukraine suppliers. Is this always applied in procurements open to foreign suppliers? Is this criterium specified in invitations to tender and/or in tender documentation? Does Resolution No. 1058 provide price preferences in favour of Ukraine suppliers?

Answer:

Criteria applied by the contracting authority, when evaluating the best tender bid, must be included in the tender documentation. Contracting authority must provide all suppliers, including foreign suppliers, with tender documentation pursuant to the procedures mentioned in the invitation to a tender.

A price preference of 15 per cent in favour of Ukrainian producers of goods (works, services) can be included as a tender criteria by the contracting authority. Price preferences are not applicable to purchases from UAH 10 000 to UAH 70 000, concluded competitively, as prescribed by the Resolution of the Cabinet of Ministers No.1058, of 24 September 1997, because the price constitutes the primary criteria in such transactions.

Question 86.

The regulations approved by Resolution No. 694 (and Resolution No. 1058, if applicable) cover procedures on tendering for procurement of goods, works and services of foreign origin. What are the relevant procedures for domestic origin procurement? What are the principal differences (including preferences accorded to domestic suppliers) between foreign and domestic origin procurement?

Answer:

The Resolution of the Cabinet of Ministers of Ukraine No. 694 of 28 June 1997, as amended by the Resolution of the Cabinet of Ministers of Ukraine No. 1058 of 24 September 1997, should be considered as a unified document governing procurement of goods (works, services) paid from funds provided by the state budget. An identical procedure applies to all procurements irrespective of the origin of goods. In other words, the same procedure applies to domestic and foreign origin procurements.

Question 87.

Other possible criteria for evaluating bids, found in Section III:41(b) of Resolution No. 694, appear to imply that foreign suppliers must provide for local investment, local employment, local subcontracting, and transfer of technology, among others. Are these criteria always applied in procurements open to foreign suppliers? Are these criteria specified in invitations to tender and/or in tender documentation? Are these criteria affected by Resolution No. 1058?

Answer:

Pursuant to the procedure in Resolution No.694 any criteria listed therein may be applied to determine the successful tender.

All criteria must be applied to ensure the economic benefit and efficiency of a purchase.

Purchasing by means of open tenders, tenders with preliminary qualifications, and competitive negotiations must specify the applicable criteria. The Resolution of the Cabinet of Ministers No.1058 of 24 September 1997, allows purchases from UAH 10,000 to UAH 70,000 to be concluded by the means of bid/ask price requests. The price closest to the expectations of the contracting authority is the only criteria in such circumstances.

See also the answer to question 79.

Question 88.

Please confirm that appeal procedures contained in Section VII:6373 of Resolution No. 694 are available to foreign suppliers. Does Resolution No. 1058 contain appeal procedures; please explain these appeal procedures.

Answer:

An appeal is available to any supplier in the case of a purchase of US\$100,000 and above. Purchases for less than US\$100,000 are conducted by means of simpler methods and do not require appeal procedures. In all cases, irrespective of the purchase amount, contractual terms are fully enforceable.

Question 89.

Please provide a list of government departments and agencies to which the regulations under Resolution No. 694 apply. Please provide a list of government departments and agencies to which the regulations under Resolution No. 1058 apply.

Answer:

Resolutions No. 694 and 1058 of the Cabinet of Ministers of Ukraine apply to enterprises, organizations and institutions regardless of their ownership, if they carry out purchases of goods (works, services) using state budget funds or foreign loans raised with guarantees provided by the Cabinet of Ministers of Ukraine. In other words, the above resolutions apply to all government departments and agencies.

4. Policies Affecting Foreign Trade in Agricultural Products
(a) Imports

Concerning the authorization procedure for imported food stuffs:

Question 90.

We would appreciate Ukraine's explanation of the authorization procedure for imported food stuffs. Is this for health and safety reasons?

Answer:

Procedures for importation of food products, raw food and accessory products into Ukraine and the enforcement of compliance with such procedures are set out in Articles 16 and 17 of the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials" and the Resolution of the Cabinet of Ministers of Ukraine No.1211. In accordance with Article 4 of the above Law, the list of food additives permitted for use in food products must be approved by the Cabinet of Ministers of Ukraine. The Derzhstandard has prepared a draft resolution on this matter which is currently under review by the Cabinet of Ministers.

The Law of Ukraine "On Amending the Resolution of the Cabinet of Ministers of Ukraine "On Standardisation and Certification No.333/97 of 11 July 1997" determines that the adequacy of a product, imported and sold on the territory of Ukraine has to be certified. The relevant certificate (either certificate of adequacy or a certificate of recognition of a foreign certificate) is either issued or recognized, as the case may be, by one of two bodies. These are the Derzhstandard or any body accredited by it.

The Derzhstandard enters the certified products into the Unified Register of Products Certified in Ukraine.

The customs control bodies legalise the entry of goods on the basis of the Unified Register.

The Derzhstandart controls the availability of certificates for goods, sold by legal entities or natural persons in the customs territory of Ukraine.

The authorization of the Products is conducted with a view to health protection and epidemiological safety of the population.

Question 91.

Does Ukraine prohibit the use of specific food additives? In other words, does Ukraine have a list of permitted additives? If so, where can this list be obtained? How are food additives regulated?

Answer:

According to the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials" and the Law of Ukraine "On State Regulation of Import of Agricultural Produce", it is the Cabinet of Ministers that approves the list of food additives allowed or prohibited to be used in Ukraine. The conditions for use of food additives are provided for in the Sanitary Rules on Use of Food Additives, which establish the procedure of state registration of additives and their maximum content level in specific food products as well as the rules for safe use of food additives in production of food products.

We submit a list of food additives, which are allowed or prohibited in Ukraine. (See WT/ACC/UKR/51)

Question 92.

Are products shipped in bulk subject to the same labelling requirement specified in the Cabinet Ministers No. 1372 of 9 November 1996 "On Enhancing Quality Control and Safety of Food Products"?

Answer:

The product marking requirements are determined by the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials".

The product marking requirements, specified in the Resolution of the Cabinet of Ministers No.1372 of 6 November 1996 "On the Improvement of Quality of Control Measures and Safety of Food Products" are applied to all food products, including bulk shipments. The marking of the products is also determined by Article 7 of the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials". An English language translation of the law is submitted as a separate document. (See WT/ACC/UKR/51.)

The general requirements also apply to products brought into Ukraine for reprocessing or packaging because such products fall within the definition of raw food materials in Article 1 of the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials".

Question 93.

Are products shipped for further processing or repackaging in Ukraine subject to the same labelling requirement? Please explain?

Answer:

See the answer to question 92.

New Agricultural Import Law**Question 94.**

The new Law on the State Regulation of Import of Agricultural Produce contains provisions concerning certification and control over imports of agricultural produce. We assume these measures coincide with the non-tariff measures "SPS" and "certification" as mentioned in the "Unified Customs Tariff currently in force with applied non-tariff measures and with the customs tariff restructuring offer according to WT/ACC/UKR/22". Could Ukraine elaborate on the procedures to follow for traders exporting agricultural products to Ukraine.

Answer:

The Procedure for Imports of Food Products, Raw Food Materials and Related Products into Ukraine and control over its implementation are set forth in articles 16 and 17 of the Law of Ukraine "On the Quality and Safety of Food Products and Raw Food Materials" and the Resolution of the Cabinet of Ministers of Ukraine No. 1211 of 11 November 1997 "On the Approval of the Procedure for Customs Clearance for Goods (Products) Subject to Obligatory Certification in Ukraine". The text of the Procedure. It is as follows:

Procedure of Customs Clearance for Imported Goods
(Products) Subject to Obligatory Certification in Ukraine

1. This Procedure determines the mechanism of Customs clearance for imported goods (products), subject to obligatory certification in Ukraine that are brought into the Customs territory of Ukraine by subjects of entrepreneurial activity to be sold or traded.
2. The procedure shall not apply to imported goods (products) brought to Ukraine:
 - as gifts;
 - temporarily;
 - as a humanitarian or technical relief;
 - a part of authorised capital of incorporated juridical persons;
 - on the basis of joint investment activity contracts;
 - for exhibition purposes;

It also shall not apply to:

- goods (products) re-imported into the Customs territory of Ukraine;
- goods intended for storage in licensed customs warehouses;
- goods imported in the regime of import with the aim of further re-export in the order, approved by the State Customs Service.

3. The legal basis for clearance of goods (products) so that they may be unrestrictedly used in the Customs territory of Ukraine are:

- conformity certificate of goods (products) or its copy, issued by Derzhstandart or a duly authorised certification body;
- certificate of recognition of a foreign conformity certificate, issued by Derzhstandart or a duly authorised certification body;
- description of the goods included into the Unified Register of Products Certified in Ukraine.

The specified conformity certificate (certificate of recognition) or its copy applies to:

- goods (products) arriving at the address of a single recipient with a single shipping document (invoice, bill of lading, etc.);
- goods (products), arriving at the destination point simultaneously in one shipment, destined for a single receiver, sent from a single shipper, loaded at a single departure point;
- goods (products), supplied through a pipeline on the basis of a single act of acceptance during the term, necessary to transfer the goods (products) of a volume, specified in the act.

4. The number and the date of issue of a conformity certificate of goods (products) or a certificate of recognition of a foreign certificate are specified in the customs declaration. The Customs Authority that has conducted the Customs clearance of goods for unrestricted use shall retain photo-copies of the specified documents.

5. The basis for Customs clearance of goods (products), brought into Ukraine in disassembled form (complex objects) or a part of any other goods (products), that require installation are:

- a contract on performing certification works of a good (product) between the proprietor (owner) of the good, held in the Customs control and the certification body;
- a document issued by a certification body, certifying the conclusion of such contract, containing the number of a contract and the date of its signature.

6. In case samples of products held in the Customs control are required to conduct certification of the goods (products), the proprietor (owner) must address the Customs Authority in writing for such samples, based upon a contract between a proprietor (owner) of goods (products) and the certification body rendering certification services, or with a written confirmation of such contracts by the certification body, containing the number of the contract, the date of signature, the period of carrying out the work, and the necessary number of samples. If the certification requires testing resulting in a loss of the goods, the owner (proprietor) submits a proper written notice to the Customs Authority and submits an act of sample destruction, issued by the certification authority. The value of the samples is included in the value of goods (services) in the Customs declaration.

7. If the proprietor (owner) of goods (products) does not receive a conformity certificate for goods (products) or a certificate of recognition of a foreign certificate, the goods (products) have to be placed in a licensed Customs warehouse or removed from the Customs territory of Ukraine.

Question 95.

Concerning the new agricultural import law the "State Regulation of the Import of Agricultural Products", we understand that it was signed by President Kuchma on 3 October 1997 and will become effective on 17 November 1997. We have raised our concern on the new agricultural import law with various Ukraine government officials. We recently received information from our embassy in Ukraine trying to clarify some of these concerns. Unfortunately, we still have some questions on this new law.

One Ukraine official told us that although the law had been passed, it would not be implemented due to some internal problems. However, one of our exporters has already experienced delays and problems associated with this law. Our exporter noted that all imports had been suspended by customs officials and were now only allowed on an arbitrary basis. What is the status of the implementation of this law? How will Ukraine work to avoid the problems associated with this law at the border?

Answer:

Kindly inform us about the details of the suspension of import that the particular importer experienced. What was the actual reason for the refusal by the Customs Authority? For example, the importer could have failed to present the certificate of adequacy or a document necessary for customs legalisation of a product, or any other document necessary for the legalisation procedure.

As concerns the effect of the Laws of Ukraine "On the State Regulation of Import of Agricultural Produce" on the imports of goods, the situation is as follows. The Law has almost had no effect on the volume of imports of goods to which the Law applies, and it is premature to form any conclusions about its cause-and-effect consequences. Article 3, dealing with the import of animals, is not applied, and the tariffs in Article 6 for agricultural produce have been reduced by the Law of Ukraine No.32/98-VR, of 16 January 1998.

Question 96.

If our understanding is correct only duties of 30 per cent or higher will be subject to seasonal duties, then it appears that the minimum seasonal duty will be 60 per cent. The maximum duty could be much higher. If this is true, then we have some potentially serious concerns associated without market access negotiations. Although this law reduces the tariff to zero on a few products, it substantially raises the tariff on products in HS chapters 7-12. Increasing tariffs at this stage of your accession negotiations will not be welcomed by most member countries.

Answer:

According to the Law of Ukraine "On State Regulation of Import of Agricultural Produce" (as amended by Law of Ukraine No.32/98-VR of 16 January 1998), the seasonal import duties are levied every year at the level of full rates of import duty rates for agricultural produce listed in Groups 7 -12 of the Commodity Nomenclature of Foreign Economic Activity during the period of harvesting and storage of similar domestic produce. However, according to Article 6 of the Law, such agricultural produce is subject to the regular rate, if it equals or exceeds the 30 per cent rate. In other words, seasonal rates replace the Article 6 regular rates only during the prescribed periods and only if the regular rates are less than 30 per cent

Since, as a result of the above Law, the maximum level of a seasonal rate may not exceed 50 per cent, it does not contradict the Concept of Transformation of the Customs Tariff for the period

from 1996 through 2005 (documents WT/ACC/UKR/22 and WT/ACC/UKR/Add.1) which forms a basis for market access negotiations. The Concept establishes a maximum level of tariffs of up to 70 per cent for agricultural produce.

See also Answer to question 32.

Question 97.

We also understand that this new law establishes import quotas, not tariff rate quotas. All quantitative restrictions on agricultural products, including import quotas, are prohibited in the Uruguay Round Agreement on Agriculture. Does Ukraine understand that application of such measures is inconsistent with the WTO and that this law must be brought into conformity prior to Ukraine's accession.

Answer:

The requirements of the Agreement on Agriculture and the Agreement on Safeguards will be altered to when Ukraine accedes to the WTO.

Question 98.

We are still confused on what is meant by "mutual recognition". Does this mean that a bilateral agreement must first be negotiated before Ukraine will recognize certificates from other countries? If this is the case, we also have concerns about this aspect of the new agricultural law.

We expect that once Ukraine is a Member of the WTO it will follow the SPS Agreement and recognize certificates of all WTO Member countries, not just those where bilateral agreements have been negotiated.

Answer:

Foreign certificates for agricultural produce are taken into account only in cases of mutual recognition of such certificates as envisaged by relevant international agreements. In other words the agreements must include provision on the mutual recognition of certificates. For information on the sanitary and phytosanitary requirements, see the answer to question 51.

(b) Exports

Export Subsidies

Question 99.

In questions 73 and 74 of document WT/ACC/UKR/25/Add.1, Ukraine was asked for further clarification regarding the following statements: "Ukraine is currently developing legislation which will eliminate subsidies to export", and "beginning with 1995, export subsidies no longer exist". Could Ukraine indicate if the legislation which will eliminate export subsidies has been prepared (if so, please provide us a copy)? Could Ukraine explain its answer to question 187 of document WT/ACC/UKR/25 which states that "the Government is developing a Decree which could stipulate export subsidies, in which case Members would be informed"? What is the status of the Government's "Export Potential Development Programme"? Has it been approved by the Supreme Rada?

Answer:

Ukraine does not have any legislation establishing export subsidies. A draft "Programme for the Development of the Export Potential" in Ukraine has been discussed, but it has not been approved at the government level.

Question 100.

Our expectation is that export subsidy commitments should be based on a recent three year period (in this case 1994-1996) and if there was not use of export subsidies during that period then export subsidy commitments should be bound at zero. We are please to see in document WT/ACC/SPEC/UKR/1/Rev.1/Corr.1 that Ukraine accepts the commitment that export subsidy commitments be bound at zero.

Answer:

Yes, Ukraine confirms that during the latest relevant three year period (1994-1996) export subsidies were bound at zero.

(c) Internal policies**State Trading****Question 101.**

Please describe the role of the new State-owned procurement corporation "Bread of Ukraine" which took over the grain procurement activities of the Central Grain Products Department of the Ministry of Agriculture.

Answer:

The State owned corporation "Bread of Ukraine" performs the function of grain acquisition for consumption. The corporation uses market methods in its acquisition activities and conducts business in the same manner as commercial entities. It competes with such commercial entities in all activities pertaining to the acquisition of grain including processing and the acquisition of related products. "Bread of Ukraine" performs its services for state, regional and other consumption requirements.

Question 102.

Please provide the following information on Ukraine's State-owned trading enterprises (including any trade organization which receives federal or sub-federal government funds, preferential credits or legislative privileges for the import and/or export of products):

- **what are the products or groups of products for which these State-owned enterprises are maintained, or for which an enterprise has exclusive or special privileges in Ukraine;**
- **what is the reason and purpose for introducing and maintaining these enterprises;**
- **what is the function of each of these enterprises, in particular, are they involved in exports and/or imports; what are the criteria used to determine the quantities to be processed domestically (including inter-region movements) exported and/or imported; how are export prices for these entities determined; how do export prices and resale prices of imports compare with domestic prices in 1994, 1995 and 1996 figures; and are long-term contracts negotiated by these enterprises.**

Answer:

Enterprises with different forms of asset or capital ownership structures conduct foreign trade in goods and services in Ukraine.

Within the most recent eight month period in 1997, the Ukrainian export-import trade in goods was as follows:

The number of goods		Exports			Imports	
		The goods' value under the FOB conditions	The share in the total amount	The number of goods	The goods' value under the FOB conditions	The share in the total amount
All in all	13437	9045.6	100.0	21184	11136.3	100.0
including: according to the forms of ownership of their assets:						
Private	2247	273.7	3.0	3205	481.3	4.3
collective	9937	7087.6	78.3	15576	8664.8	77.8
public	988	1492.4	16.5	1602	1450.6	13.0
the latter including:						
government	931	1406.6	15.6	1317	1387.3	12.4
communal	57	85.8	0.9	285	63.3	0.6
property of other states	2	0.0	0.0	2	10.7	0.1
the property of international organizations and legal Entities of other states	227	177.6	2.0	721	521.0	4.6
other	36	14.3	0.2	78	16.9	0.2

The export share of the 988 public enterprises constitutes as little as 16.5 per cent of the total exports of goods. The 1602 enterprises with the same form of ownership conduct 13.0 per cent of the total imports of goods. The largest exporter of goods is the "Kryvorizhstal" integrated works (4 per cent of the total amount of the imports). The imports of the largest state owned importers do not exceed 3 per cent of the total.

Enterprises, conducting foreign trade in services (as of the end of the first half of 1997) can be classified according to the values of the services as follows:

	Exports	Imports	The number of subjects	
			export	import
	Value in Thousands of US\$	Value in Thousands of US\$		
- All in all	2292203.27	411929.65	2783	1423
- Including according to form of ownership:				
- private	5956.89	14627.09	147	101

	Exports	Imports	The number of subjects	
	Value in Thousands of US\$	Value in Thousands of US\$	export	import
- collective	1590356.50	166674.76	1870	1036
- public	649135.25	188026.98	624	218
the latter including:				
- government	639222.57	187388.12	530	209
- communal	9912.68	638.86	94	9
- property of other states	7527.51	11841.24	1	1
- organizations	39227.12	30659.58	141	67

The share of State owned enterprises in the total amount of exports of services constitutes 28.3 per cent, including those of government enterprises (29.7 per cent) and communal enterprises (0.4 per cent). The share of such enterprises in the total imports of services constitute, respectively, 45.6 per cent, 45.5 per cent , 0.1 per cent.

The imports of services by largest state owned enterprises do not exceed 3 per cent. The largest importers of services are: "Ukrzaliznytsya" (Lviv), (10.9 per cent), "Ukrtelekom" (8.7 per cent) and "The Southern Ukrainian Atomic Station" (3.5 per cent).

Domestic Support and Export Subsidies (WT/ACC/SPEC/UKR/1/Rev.1 and Rev.2)

Question 103.

Ukraine mentions in document WT/ACC/UKR/41 (reply to question 61) a draft of a State Programme on Development of Export Potential in order to create appropriate conditions for increasing exports of goods. What kind of support mechanisms are foreseen in this draft?

Answer:

The Programme envisages the following mechanisms of development:

- the establishment of government services of general nature (scientific research, staff training, information distribution, consulting, inspection services, marketing services, infrastructure development services(except subsidising infrastructure objects within separate enterprises);
- financial participation of the government in programmes on the security and insurance of income;
- promotion of readjustment programmes for redundant industries;
- promotion of structural changes through resource management programmes;
- promotion of structural changes through investment stimulation programmes;
- environmental protection programme support;
- regional aid programme support.

Question 104.

The revised agricultural supporting tables in document WT/ACC/SPEC/UKR/1/Rev.2 contain three measures under the category "Structural adjustment assistance provided through investment aid". Does Ukraine agree that partial reimbursement payments to agricultural producers for elite seeds purchased should be included as AMS (input subsidies)? Could Ukraine explain in more detail about the "payments for a part of banking interest on loans?"

Answer:

Ukraine does not agree that partial reimbursement payments to agricultural producers for the acquisition of elite seeds purchased should be considered AMS (input subsidies). Such payments meet the criteria of items 1 and 11 of Addendum 2 of Agreement on Agricultural. Also, such payments refer to measures, exempt from reduction commitments. They are made from specially budgeted funds, earmarked for the improvement of production and efficiency of production.

Document WT/ACC/SPEC/UKR/1/Rev.2 lists the laws of Ukraine that regulate partial payments of interests on bank loans.

Question 105.

As regards the revised agricultural supporting tables in document WT/ACC/SPEC/UKR/1/Rev.2 could Ukraine explain the aim and functioning of the regime(s) with administered prices, in particular:

- **what is the aim of the regime with procurement prices; to ensure availability for State needs or ensure farmers income;**
- **which criteria are used for fixing administered prices and who fixes these prices;**
- **are the administered prices identical all over Ukraine;**
- **when are these administered prices fixed, and where are they published;**
- **are Ukrainian authorities obliged to buy all products offered by farmers or are quantitative limits applicable;**
- **are farmers obliged to sell products to governmental agencies, or can they sell the whole harvest on the open market;**
- **what is the source of information for the external prices used;**
- **how do eligible production levels in supporting table DS:5 relate to total production of products involved?**

Answer:

At the present time prices of agricultural produce are not fixed by the state.. That is why there is no government criteria or agencies to prescribe or control prices. Ukrainian farmers are not required to sell their produce to state agencies and may trade all of their crops in the open market.

The commodity exchange prices for a particular product are based on market information and are used for that purpose, and the prices quoted on international exchange determine the price in foreign trade (the foreign trade price for each particular product is determined on the basis of prices used at a relevant commodity exchange that is leading for the product.

The acceptable production levels, mentioned in Table DS:5, coincide with output of a particular product.

Question 106.

Please provide additional information and details for each domestic support policy measure reported in the revised information on domestic support in agriculture provided in WT/ACC/SPEC/UKR/1/Rev.2 of July 1997.

Answer:

Updated information may be found in a separate document accompanying this document. (See WT/ACC/SPEC/UKR/1/Rev.3.)

Question 107.

We thank Ukraine for providing information on domestic support and export subsidy commitments for the 1994-1996 reporting period in WT/ACC/SPEC/UKR/1/Rev.2 of 16 July 1997. We have concerns that it falls short of what would be acceptable to WTO Members. We seek confirmation that Ukraine intends to use the 1994-1996 reporting period as the basis for its domestic support and export subsidy comments.

Answer:

We reaffirm that the period from 1994 through 1996 remains the basis for the calculation of domestic support.

Question 108.

Please provide the level of supports using one currency (i.e. US\$, ECU, or SIR) in the Supporting Table, in nominal terms. For example in WT/ACC/SPEC/UKR/1/Rev.2 Supporting Table DS:1 reports expenditures in Karbovanets and Hryvnia, while Supporting Table DS:5 reports amounts in US\$. In WT/ACC/SPEC/UKR/1/Rev.1 the expenditures are shown in ECU's. We would appreciate if all the levels of support could be provided in the same currency to provide consistency.

Answer:

The levels of supports expressed in the US\$ value are given in the latest version of Table DS:1.

Question 109.

Ukraine stated in its explanatory notes to WT/ACC/SPEC/UKR/1/Rev.1 that "measures on non-product-specific support and direct payments under production-limiting programmes (blue box) are not applied". Could Ukraine please reflect this fact by submitting, in a revised or addendum to document WT/ACC/SPEC/UKR/1/Rev.2, a blank copy of Supporting Table DS:3 and Supporting Table DS:9.

Answer:

The tables given do not include Table DS:3, i.e. we consider it to be "blank". They include Table DS:9.

Re: Supporting Table DS:1 (Green Box Programmes)

Question 110.

Please provide supporting information and analysis that demonstrates that the measures Ukraine identifies as "green" have no, or at most minimal, trade-distorting effects of effects on production, and are provided through a publicly-funded government programme. Please provide for each type of measure in place in the most recent three years (i.e. 1994-1996) a complete description of these measures (how they are applied/administered and by whom; reference to Laws or decrees; eligibility etc.) with a reference to the criteria in Annex 2 of the Agreement on Agriculture (measures which could fit the scope of either (a) research, (b) pest and disease control, (c) training services, (d) extension and advisory services, (e) inspection services, (f) marketing and promotion services, and (g) infrastructural services).

Answer:

All the necessary information is given in the updated information referred to in the answer to question 106.

Question 111.

Under general services, Ukraine states that pest and disease control concerns measures on the struggle with especially dangerous pests and diseases of agricultural plants and animals. Please provide a list of those pests and diseases, and describe the measures envisaged under the Action Plan of the Cabinet of Ministers? Also, could Ukraine provide the laws, rules and regulations for plant quarantine of imports?

Answer:

The list of pests and diseases of plants is submitted in connection with the answer to question 67. The list of dangerous diseases of agricultural animals meets the requirements of the International Zoosanitary Code. As member of the International Office of Epizootics, Ukraine adheres to this code.

Question 112.

Under general services, under the programme "Payments for fundamental improvement of land", Ukraine states that it consists of "liming of sour soils and gypsuming of saline soils". Please specify where in paragraph 2 of Annex 2 this programme falls, and how it meets the appropriate criteria.

Answer:

Paragraph 2 of Addendum 2 states that the programmes referred to in the previous answer are not confined to the criteria thereof and that they may satisfy general criteria defined in Paragraph 1. The programme, mentioned in the question, meets the requirement.

Question 113.

Under "structural adjustment assistance provided through investment aids", Ukraine includes the measures "Support of selection in stockbreeding, upgrading of selection and genetic potential, improvement of cattle and poultry strain, and use of improved seed". Please provide further detail on this measure. For example, why and how does "partial reimbursement or expenditures on improved seed" qualify as an investment aid. Could Ukraine also please provide more information on the "structural disadvantage" that is addressed through these schemes?

Answer:

All the necessary information is given in Table DS:1. We do not have more detailed information.

Question 114.

We note that Ukraine has provided the monetary value of measures for 1994 and 1995 in billion karbovanets (KRB) and changed in 1996 to million hryvnias (HRV). We understand that HRV, which is equal to 100,000 KRB, was introduced on 2 September 1996. We would appreciate if Ukraine could provide consistency in presenting the monetary values in the green box tables.

Answer:

As the national currency rate was frequently altered during the period mentioned in this question, and a conversion coefficient does not exist, we are not able to present the monetary values in their dollar equivalents. This is unfortunate, but it is a fact which creates a gap in the statistical record.

Question 115.

Ukraine has moved "support of selection in stockbreeding - upgrading of selection and genetic potential, improvement of cattle and poultry strain" from (a) General services to (h) Structural adjustment assistance provided through investment aids - 1". We would be interested in further details of this support and how Ukraine considers it meets the criteria of structural adjustment as opposed to general services.

Answer:

Unfortunately, we do not have the required information.

Question 116.

We note that Ukraine no longer appears to be claiming that it has support for "public stockholding for food security purposes". We also note that Ukraine has indicated "not applied" for "payments for relief from natural disasters" where previously it had indicated "reimbursement for damages caused by a natural disaster".

Answer:

No funds have been made available to the Ministry of Agro-industrial Complex to offer relief for damages caused by natural disaster.

Question 117.

Ukraine has moved "(1) Other - partial reimbursement of agricultural producers' expenses on payment of interest under banking loans" to "(h) Structural adjustment - 3". We seek details from Ukraine on how they consider that this meets the criteria of Annex 2 of the WTO Agreement on Agriculture. We consider that this would be more appropriately included in the amber box as non-product-specific support.

Answer:

We are grateful for the suggestion, but in present circumstances we are not in a position to agree or disagree.

Question 118.

It is helpful that Ukraine has indicated the law to which each support programme is related to. It would also be useful if Ukraine could indicate the authorities responsible for administration of the measures.

Answer:

Listing of support programmes and the authorities required to administer them is not possible at this time because no actual distribution of funds has taken place. We expect the relevant information to become available in the near future.

AMS (Supporting Table DS:4)

Question 119.

We note that Ukraine has only provided a figure of total AMS. This table should be expanded to provide full details of product-specific support and total support for each year of the reporting period and an average of the three years.

Answer:

Such figures are not available. See the answer to question 100.

Question 120.

Please confirm that Ukraine is basing its base total AMS on the period 1994-1996.

Answer:

See the answer to question 107.

Question 121.

In order to conform with document WT/ACC/4 which describes how this Supporting Table should be presented, please provide the product-specific AMS for each commodity.

Answer:

AMS on goods are supplied in Table DS:5.

Question 122.

The current total AMS reported in WT/ACC/SPEC/UKR/1/Rev.2 is US\$2,380.3 million. Converted into ECU this total would be 2,084.8 million. In WT/ACC/SPEC/UKR/1/Rev.1 Ukraine reported a current total AMS of 1,917.6 million ECU, while in W/ACC/SPEC/UKR/1/Rev.1 it reported 4,490.2 million ECU. Please explain these differences.

Answer:

The correct amount is US\$2,380.3 million.

Question 123.

We note that Ukraine has changed its figure from 1,917.6 million ECU to US\$2,380.0 million. We would be grateful if Ukraine could provide the exchange rate used for this conversion. We note that Ukraine provided the exchange rate of ECU1 = US\$1.235 in its previous tables. Has Ukraine used the same rate in its conversion for this table.

Answer:

A different exchange rate was used from ECU 1=US\$ 1.235.

Market Price Support (Supporting Table DS:5)

Question 124.

We welcome the provision of details by Ukraine on market price support for the 1994-1996 reporting period. We note that Ukraine has changed the currency from ECU's to US\$. We would be grateful for confirmation that the exchange rate is the same as previously used.

Answer:

We reaffirm that the same exchange rate is being used.

Question 125.

We note that the eligible production for the particular products in the 1986-1990 reporting period (WT/ACC/SPEC/UKR/1/Rev.1) is the same as the eligible production for the 1994-1996 reporting period (WT/ACC/SPEC/UKR/1/Rev.2). We seek up-to-date details of the eligible production for market price support for each year of the reporting period and the average of the reporting period.

Answer:

We do not have any specific information arranged by years.

Question 126.

Ukraine has previously provided details of the total production for beef, pork, bird's meat, granulated sugar, butter, sunflower oil and clean wool in thousand tons. We seek details of the value of production for all the products for which Ukraine is claiming product-specific support to assist in determining whether Ukraine has de minimis levels of support.

Answer:

No, there is no support

Question 127.

Price parity: In its response to question 59 of document WT/ACC/UKR/25/Add.1, Ukraine states that "price parity in Ukraine is defined by way of comparison of growth rates of prices for industrial produce and services, consumed by the agriculture, with the growth rates of prices for agricultural produce". Using an example, please explain how price parity for agricultural products is determined?

Answer:

Unfortunately, no actual examples are available. The price parity is a model.

Question 128.

State intervention/procurement: In questions 63, 64 and 67 of document WT/ACC/UKR/25/Add.1, Ukraine was requested to provide a comprehensive list of agricultural commodities falling into the category of essential commodities (HS 6-digit basis) which would be purchased by an intervention agency at an announced minimum support price, as well as information about the role of this agency. Ukraine responded that the State Intervention Provision Fund to buy into strategic commodities was not yet established and that such information was thus not available. Could Ukraine please provide updated information on the status of this Fund? Which agricultural products will be eligible/affected/purchased at these announced minimum prices? What will the State Intervention Provision Fund or the National Intervention Foodstuffs Fund operating budget be? What will the level of minimum support prices be relative to world prices and domestic prices (please provide reference of relevant decrees or laws)?

Answer:

Actually, the State Corporation "Khib Ukrayiny" (Bread of Ukraine) has established a state investment fund for the stabilisation of the grain market at 600,000 tons in 1998.

Question 129.

We would appreciate if Ukraine could provide detailed explanations of "eligible production", "external reference prices", "applied administered prices", and the exchange rates used in Supporting Table DS:5. It should be explained in further detail what these elements are, how they were derived, etc. with relevant sources of information.

Answer:

No information other than included in Table DS:5 is available.

Non-product-specific support (Supporting Table DS:9)

Question 130.

We note that Ukraine has previously indicated that it does not provide any non-product-specific support. However, we consider that "Partial reimbursement of agricultural producers' expenses on payment of interest under banking loans" should be included as non-product-specific support and not as a green box measure.

Answer:

Ukraine submits that the particular measures fall within the "green box" category.

Law on the State Regulation of Agricultural Produce

Question 131.

We have some concerns with the law:

- **it puts in place applied tariffs at levels higher than its proposed bindings;**
- **it introduces import quotas contrary to Article XI of the GATT 1994 (although we are not sure if tariff quotas may be intended);**
- **it does not abide by the standstill expectation on new trade-restrictive measures;**
- **it provides for auctioning of quotas in breach of tariff bindings under Article II of the GATT 1994.**

Answer:

Import duties in most cases do not exceed the limit levels established in the Concept of Transformation of the Customs Tariff for the Period from 1996 through 2005 (see documents WT/ACC/UKR/22 and WT/ACC/UKR/22/Add.1). The concept is an invitation to market access negotiations. Moreover amendments to the Law of Ukraine No.644/97-VR of 19 November 1997 reduce import duty rates. The average current tariff rate is reduced to little as 0.29 per cent.

- **Article I (Tariff regulation)**

Question 132.

We assume that the reference in this law to "preferential rates" of import duty and excise are Ukraine's most-favoured-nation rates of import duty and excise. Is this assumption correct?

Answer:

Yes, this assumption is correct. The import duty rates are privileged (not preferential), within the context of the most favourable regime. However, this Law does not set excise rates.

Question 133.

If this is correct, what term would describe the preferential rates of import duty that would provide CIS countries or any of Ukraine's free-trade partners with preferential (for example, duty free access) to its domestic market, for example, under the provisions of the Ashkabad Agreement of 1993 or any agreement to establish a free-trade area, to which Ukraine may be a party?

Answer:

The import duty rates applicable to free trade and CIS partners are set at zero level. They have no specific terms or names.

Question 134.

Which natural persons or legal entities enjoy privileges in relation to the payment of import duty in Ukraine? How do they qualify for these privileges?

Answer:

The following goods are exempt from customs duty:

- (a) vehicles that carry out regular international transportation of loads, luggage and passengers as well as logistical materials and equipment, fuel, food products and other assets necessary for their proper use during the period of being on the road, at interim stop points, or vehicles, purchased abroad to replace vehicles damaged in accidents;
- (b) logistical materials and equipment, fuel, raw materials for industrial reprocessing, food stuffs and other assets, exported from the customs territory of Ukraine to provide for the production activity of Ukrainian and chartered ships that conduct sea fishery, as well as the products of the fishery, imported into the customs territory of Ukraine;
- (c) the currency of Ukraine, foreign currency, and securities;
- (d) goods and other objects acquired by Ukraine in accordance with its laws;
- (e) goods and other objects that had been damaged before passing through the customs border of Ukraine and as a result have become unusable as products or materials;
- (f) objects brought into Ukraine for official or personal use or brought out of the customs territory of Ukraine by organisations and persons that according to international agreements and Laws of Ukraine enjoy the right of duty free export and import of such objects;
- (g) goods and other objects, originating from the customs territory of Ukraine and reimported into its territory without any processing or reprocessing, as well as goods and other objects of foreign origin that are reexported from the customs territory of Ukraine without processing or reprocessing;
- (h) goods and other objects re-imported into the customs territory of Ukraine and originating from another territory the customs duty for which has been paid when being imported to Ukraine for the first time but having been temporarily brought out of the customs territory of Ukraine;

- (i) goods and other objects that are reexported from the customs territory of Ukraine and originating in its territory and being brought temporarily into the customs territory of Ukraine, if the duty for these goods has been paid when they were brought out of the customs territory of Ukraine for the first time;
- (j) goods (except for excisable items), imported by national and international associations of citizens who have suffered as a result of Chernobyl disaster. The rules applies only to associations the statute of which envisages offering social and medical relief to persons that have suffered from the Chernobyl Disaster and to enterprises that are founded by such associations, if persons that have suffered as a result of a Chernobyl disaster comprise at least 75 per cent of members of such associations and of people working at such enterprises. The list of national and international associations of citizens that have suffered as a result of Chernobyl disaster, their enterprises and organisations, the list of the goods, imported by them and the limit of the amount of relevant imports are approved by the Cabinet of Ministers;
- (k) other goods and other objects exempted by the Cabinet of Ministers of Ukraine.

If imported goods fall within the list of product covered by Article 6 of the Law of Ukraine "On State Regulation of Import of Agricultural Produce" the relevant natural persons or legal entities with customs duty privileges according to other legal acts of Ukraine are not exempt from import duty.

Question 135.

Does the ability of any person or entity to qualify for such privileges depend in any way on:

- **the origin of the goods or services they import;**
- **the destination of the goods or services they export;**
- **the nationality of the person or the entity;**
- **the existence of any agreement to which Ukraine is a party that has provisions which relate to the activities of that person or entity?**

Answer:

See the answer to question 134.

Question 136.

On what grounds can these privileges be revoked?

Answer:

The privileges can be withdrawn according to changes in legislation.

Question 137.

Do these privileges entail any particular legal obligation?

Answer:

No, they do not.

Question 138.

What products/services do these privileges cover?

Answer:

See the answer to question 134.

- **Article II (Seasonal duties)**

Question 139.

Why has it been necessary to define the coverage of products that may be subject to seasonal tariffs in such an all-encompassing manner, instead of defining product coverage in a more targeted way, for instance, in terms of the HS 96 product nomenclature at six-digit level.

Answer:

Problems subject to seasonal duty are located within Groups 7 through 12 of the Harmonized System. Designation on a four digit level is used where the whole group is subject to seasonal duty. A nine-digit level definition is used where the seasonal duty is applied to specific goods only.

Question 140.

We would appreciate full details of the domestic harvesting and storage periods for all of the products for which a seasonal duty provision is being made.

Answer:

The harvesting and storage period for potato and vegetable cultures are as follows:

The name of the produce	The harvesting period	The storage period	Notes Potatoes
Potatoes	01.07 - 01.11	01.10 - 01.06*	
Tomatoes	20.06 - 10.10	01.08 - 20.10	harvesting, storage and reprocessing.
Onions	01.08 - 20.09	10.08 - 15.05*	
Cabbage	15.06 - 01.11	01.10 - 01.06*	
Roots (carrots, beet).	01.09 - 01.11	01.10 - 01.06*	

*The storage period lasts until the next year.

Question 141.

As the first paragraph of this article has already established the principles for determining the duration of the period for applying seasonal duties, we do not understand why it is necessary in the fourth paragraph to arbitrarily impose a statutory minimum period of sixty days. What is the reason for this?

Answer:

The purpose of this measure is to provide for more transparency and certainty. The period of seasonal duties is fixed by laws. As to the minimum validity period of seasonal duties, data given in the table in the answer to question 140 shows the minimum harvesting and storage term to be 60 days.

Question 142.

As the first paragraph has already established the principles for determining the duration of the period for applying seasonal duties, we do not understand why it is necessary in the third paragraph to make the period of the application subject to the discretion of the Cabinet. What is the reason for this? Why is it not possible for their duration to be objectively determined with reference to the principles set out in the first paragraph?

Answer:

The term of seasonal rates depends on the period of harvesting and storage of similar Ukrainian produce. This, in turn, can be predicted only after the growing cycle begins. Thus the Cabinet of Ministers of Ukraine annually establishes the effective period of the seasonal rates for agricultural produce and publishes the decision 45 days before its implementation.

Question 143.

We wish to clarify the meaning of the second paragraph. Does this paragraph mean that the seasonal duty applied during the designated harvesting and storage period will override all margins of preference accorded to Ukraine's partners in agreements to establish free-trade areas, customs union, production cooperation agreements and other international agreements? In other words, is it the case that all seasonal duties will be applied on a most-favoured-nation basis?

Answer:

Seasonal duties replace import duty rates, established in Article 6 of the Law during their period of operation. This means that all seasonal rates are applied on the general basis of the most favoured nation regime.

Question 144.

If this is correct, how will Ukraine reconcile this very wide coverage of exemptions to these agreements and the increase in customs duties that will result with the following GATT Article XXIV requirements:

- **that the duty free products under free-trade areas and customs unions cover substantially all trade;**
- **that customs duties and other restrictive regulations of commerce not be made more trade restrictive as a result of the formation of a free-trade area or customs union?**

Answer:

Seasonal rates are established for goods in the following group categories of the Commodity Nomenclature of the Foreign Activity: 07.01 - 07.08, 08.0610, 08.07.10, 08.08.10, 08.08.20, 08.09.10000, 08.09.20, 10.01-10.05, 10.08, 12.06- 12.08, 12.10, 112.12.91, 12.12.92, 12.13, 12.14. They are calculated at preferential rates if they equal or exceed the 30 per cent rate.

See also the answers to questions No.24, 25, 96.

Question 145.

Forty-five days for changing the period of validity of seasonal duties and the product coverage of seasonal duties will not be sufficient to meet the transparency requirements of Article X of the GATT 1994 and provide certainty for traders. This is particularly so given that the period of validity will depend on the period of harvesting and storage - something that will already be anticipated at the start of the cropping cycle. A considerably longer period should be proposed. Given the issues involved, 180 days would not be unreasonable. We ask Ukraine to review this provision.

Answer:

We believe that Ukraine applies the transparency requirements of GATT Article X by requiring 45 days prior notification. However, Ukraine will review the possibility of a longer period of prior notification.

Question 146.

Regarding the fifth paragraph, Ukraine's seasonal duties will need to be consistent with its tariff binding commitments that are currently being negotiated. Depending on the outcome of the negotiations for different products, we anticipate that the rate of 30 per cent would probably exceed many of Ukraine's tariff bindings. These issues will need to be addressed in the bilateral market access negotiations, and full details of seasonal duties will be needed for progress to be made in the market access negotiations. Also, Ukraine can expect to encounter resistance in the Working Party to the broad coverage of seasonal tariffs it will be seeking, as well as requests for objective information on the duration of the periods of harvesting and storage for all of the products that are covered.

Will seasonal duties be set at levels that are within Ukraine's schedule of tariff binding commitments or will Ukraine be seeking to incorporate seasonal tariffs into its tariff bindings?

Answer:

Ukraine intends to apply seasonal tariffs within its tariff bindings.

See also the answers to questions 24, 25, 96, 140 and 141.

- Article III (Quotas)

Question 147.

This Article appears to result in the imposition of import quotas rather than tariff quotas. Can Ukraine confirm that this is their intention?

Answer:

Article 3 of the Law "Non-tariff Regulation of Animal Industry Products", which envisages the implementation of import quotas, is scarcely applied at present. Thus, Ukraine does not apply any trade restrictions and does not violate GATT Articles II and XI.

Question 148.

In order to accede to the WTO, Ukraine will be required to remove all of these quantitative restrictions, including its quotas on agricultural products. This article of Ukraine's law is unacceptable, and will need to be deleted in order to achieve consistency with Article XI:1 of the GATT 1994 and Article 4 of the Agriculture Agreement.

Answer:

See the answer to question 147.

Question 149.

In its accession, Ukraine has no right of access to Uruguay Round methodologies such as tariffication of non-tariff measures.

Answer:

Will you kindly explain why Ukraine has no such right.

Question 150.

Ukraine's introduction of quotas in this law also represents a serious breach of the standstill on new trade-restrictive measures that is expected of countries negotiating their accession.

Answer:

See the answer to question 147.

Question 151.

We seek clarification of the meaning of the fourth paragraph. Does this paragraph mean that quotas will override all provisions relating to the products covered by them under Ukraine's agreements to establish free-trade areas, customs union, production cooperation agreements and other international agreements?

Answer:

Yes, the quotas form an exception (that is they have an "overriding force") to preferential or privilege regimes, including free trade areas, customs union production cooperation agreements, and other international agreements where the exceptions are recognised in such agreements.

See also the answer to question 147.

Question 152.

Can Ukraine explain how it sees auctioning of quotas as consistent with its future obligations under Article II of the GATT 1994, given that the tender premiums will impair Ukraine's tariff bindings?

Ukraine considers that auctioning of quotas is consistent with its future obligations under Article II of the GATT 1994. Tender premiums will not impair tariff bindings of Ukraine because the payments will be insignificant and will correspond to the auction expenses.

Question 153.

For each of the products concerned, what is the quantity of access that Ukraine proposes to make available for imports under quotas?

According to Law quotas may be set by the Cabinet of Ministers of no less than 10 per cent of the Ukrainian production in the preceding year. They are authorised to be imposed on animal products. In reality, no quotas have been set.

- **Article V**

Question 154.

The translation of the paragraphs under this article is unclear. In particular, we are unsure whether the first paragraph is intended to enable some form of domestic price control.

Answer:

The article prohibits any restrictions on the distribution of agricultural products in Ukraine. It also prohibits any prescription on the reprocessing or sale of agricultural produce, and it prohibits minimum prices for such products.

V. TRADE RELATED INTELLECTUAL PROPERTY REGIME

2. Substantive Standards of Protection, Including Procedures for the Acquisition and Maintenance of Intellectual Property Rights

(a) Copyright and related rights

Question 155.

In its answer to question 65 (WT/ACC/UKR/41) the Government of Ukraine gives details of a new Article 136 of the Criminal Code which is meant to amend criminal sanctions in cases of infringement of copyright and related rights. In its answer to question 68, sanctions with respect to infringements of industrial property are specified. Please clarify whether remedies are foreseen which shall not only include the seizure but also the forfeiture and destruction of the infringing goods (in cases of wilful trademark counterfeiting and copyright piracy) and of any materials an impediments the predominant us of which has been in the commission of the defense.

Answer:

The draft Law of Ukraine "On Introduction of Changes and Additions to the Law of Ukraine "On Copyright and Related Rights", which has already been approved by the relevant ministries and agencies, and will be submitted to the Supreme Rada in 1998, provides for several remedies, including seizure, forfeiture, and destruction of illegally produced works, phonograms and other subject matters of copyright and related rights.

In particular, Clause 1, Part 2 of Article 43 of the above Law entitled "Methods of Judicial Procedures in Cases Concerning Infringement upon Copyright and Related Rights" provides that:

"A court or a judge may also order a seizure or forfeiture of all copies of original works and phonograms suspected of being counterfeit, as well as of materials and equipment intended for production thereof".

Clause 5 of Article 44 entitled "Methods of Protection of Copyright and Related Rights" provides that:

"A court may order the forfeiture of counterfeit copies of original works and phonograms, as well as of materials and equipment used for reproduction thereof.

At the request of a person holding a copyright or related rights, counterfeit copies of an original work or phonogram may be turned over to such person. Counterfeit copies of original works and phonograms, as well as of materials and equipment used for reproduction thereof, transfer of which has not been requested by a person holding a copyright or related rights, shall be subject to destruction under a relevant court resolution".

Ukraine has drafted appropriate provisions for amending civil, administrative and customs legislation with respect to the enforcement of rights for industrial property and related interests (commercial secrets, integral chips topography, plant stocks) to ensure conformity with the requirements of Articles 41-61 of the TRIPS Agreement.

Changes and amendments to the Laws of Ukraine "On Enforcement of Rights for Inventions and Utility Models", "On Enforcement of Rights for Industrial Designs", and "On Enforcement of Rights for Trademarks for Goods and Services" have been drafted. They also include articles of direct enforcement, which provide for such measures as arrest, confiscation, and destruction of goods produced contrary to intellectual property rights.

Question 156.

Does the Government of Ukraine intend to amend its legislation on copyright and related rights in order to grant full retroactive protection of works (presently limited to works which were released since 1 January 1973) and phonograms (no retroactive protection at all) as foreseen by that TRIPS Agreement (in Articles 9 and 14.6 in conjunction with Article 18 of the Bern Convention)? Please also specify the possible timetable for such an amendment.

Answer:

The Government of Ukraine intends to amend its legislation on copyright and related rights in order to grant full retroactive protection. However, an interim period of time will be required for the enactment and implementation of the legislation. For example, Article 58 of the Constitution of Ukraine provides that laws and other normative acts shall not be applied retroactively. Therefore, the national legislation of Ukraine on copyrights and related rights does not provide for retroactive protection. However, Ukraine, being a member of the Bern Convention for the Protection of Literary and Artistic Works, must observe provisions of Article 18 of the Convention. Ukraine's willingness to accede to WTO will require it to observe Articles 9 and 14.6 of the TRIPS Agreement.

Introduction of appropriate amendments to Ukrainian legislation is planned to take place in 1999.

(e) Patents

Question 157.

Could the Government of Ukraine explain when the intended changes and amendments to bring the patent legislation into conformity with the TRIPS Agreement, in particular Articles 31 and 2.1 in conjunction with Article 5.4 of the Paris Convention, enter into force.

Answer:

Draft laws of Ukraine are being developed to change and amend the laws of Ukraine "On Enforcement of Rights for Inventions and Useful Models", "On Enforcement of Rights for Industrial Models", "On Enforcement Of Rights for Trademarks for Goods and Services". These amendments will satisfy requirements of Articles 15-21, 25, 26, 27-34 of the TRIPS Agreement, and in particular provisions of the Articles 2.1, 31 of the TRIPS Agreement and Article 5.4 of the Paris Convention.

(g) Layout designs of integrated circuits

Question 158.

When will the draft law on "The Protection of Rights in Topologies of Integrated Chips" enter into force?

Answer:

The Law of Ukraine "On Enforcement of Rights for Topologies of Integral Chips", adopted by the Supreme Rada of Ukraine on 5 November 1997 came into force on 11 December 1997.

4. Enforcement

(e) Criminal Procedures

Question 159.

Could the Government of Ukraine provide information about criminal penalties that are actually applied?

Answer:

Article 136 of the Criminal Code of Ukraine entitled "Infringement of Copyright" provides that: "Production under own or another name by means of illegal appropriation of authorship of works of science, literature or art held by other persons shall be punished by corrective labour for a term of up to one year or a penalty of up to 500 UAH".

As is explained in the answer to question 160, the draft amendment to Article 136 of the Criminal Code of Ukraine will establish complete compliance with Article 61 of the TRIPS Agreement.

Criminal Code of Ukraine also includes:

- Article 137 which provides criminal punishment for illegal appropriation of copyrights, in particular rights for inventions, useful models, industrial models, or for disclosure without consent from the author of the content of the invention, useful model, industrial model before they were officially published;
- Articles 1486, 1487, which provide criminal punishment for the illegal use with the purpose of further utilization, of information classified as commercial secrets, and the disclosure of commercial secrets.

There are no instances of criminal prosecution for the above crimes in recent years.

5. Laws, Decrees, Regulations and Other Legal Acts Relating to the Above

Question 160.

In answer to question 69 (WT/ACC/UKR/41) as well as in answer to question 73, Ukraine lists several draft laws which are actually under consideration. Could the Government of Ukraine please explain the main elements of each of the draft laws and specify their objectives in relation to the TRIPS Agreement, i.e. what amendments are introduced to fulfil which obligation under the TRIPS Agreement. Please also provide a timetable for the completion of the respective legislative processes and explain the steps which need to be taken before these processes are concluded.

Answer:

The draft Law of Ukraine "On Introduction of Changes and Additions to the Law of Ukraine "On Copyright and Related Rights", which will be submitted to the Supreme Rada in 1998, provides for the following:

- in pursuance of Article 10 of the TRIPS Agreement "Computer Programs and Compilations of Data" - two articles are added: Article 5.1 "Copyright for Computer Programs" and Article 5.2 "Copyright for Databases";
- in pursuance of Articles 42-50 and 61 of the TRIPS Agreement - additional civil law and administrative procedures and measures to deal with infringements, provisional measures, and criminal procedures are included in Article 43 entitled "Methods of Judicial Procedures in Cases Concerning Infringement upon Copyright and Related Rights" and in Article 44 entitled "Methods of Protection of Copyright and Related Rights".

The draft Law of Ukraine "On Introduction of Changes and Additions to the Criminal Code of Ukraine and the Administrative Code of Ukraine", approved by the relevant ministries and departments, under current consideration by the Cabinet of Ministers of Ukraine and expected to be submitted to the Supreme Rada in 1998, incorporates the requirements of Articles 42-50 and 61 of the TRIPS Agreement. In particular, it proposes amendment of Article 136 of the Criminal Code of Ukraine to provide criminal responsibility (imprisonment for a term of up to three years) for illegal use of works and subject matters of related rights. It also includes a new Article 164-9 entitled "Illegal Use of Works and Subject Matters of Related Rights" in the Administrative Code of Ukraine to provide financial penalties (up to US\$1,300) along with forfeiture of illegal copies of works and phonograms, and of equipment for production thereof.

The drafting of the Law of Ukraine "On Legal Protection of Computer Programs" is already taking place. The draft establishes a comprehensive approach for the protection of computer programs. It incorporates the provisions of Article 10 of the TRIPS Agreement. Subsequent to the approval of the draft by all relevant ministries and departments, it will be submitted to the Supreme Rada in 1998.

The Supreme Rada of Ukraine is already considering draft laws of Ukraine "On Enforcement of Rights for Indication of the Geographical Origin of Goods" and "On Changes and Amendments to the Law of Ukraine "On Enforcement of Rights for Plant Stocks"". With respect to the Law of Ukraine "On Enforcement of the Rights for Indication of the Geographical Origin of Goods", it is worth mentioning that currently there is no enforcement of rights for geographical indications in Ukraine as it is required by the Articles 22-24 of the TRIPS Agreement. The above draft law takes into account the requirements of Articles 22-24 and also includes provisions for direct enforcement in order to comply with Article 50 of the TRIPS Agreement. It further includes articles creating

administrative, civil and criminal sanctions or remedies for breaching the rights in geographical indications as is stated in Chapter III of the TRIPS Agreement.

Draft Law of Ukraine "On Changes and Amendments to the Law of Ukraine "On Enforcement of the Rights for Varieties of Plants" has been amended in order to conform with the provisions of the UPOV Convention (1991), which Ukraine intends to join. It also includes articles on direct enforcement of the rights to plant stocks as required by Chapter III of the TRIPS Agreement.

These draft laws have passed the first reading, and are expected to be adopted by the Supreme Rada of Ukraine in 1998.

Information about the compliance of Ukraine with the requirements of the TRIPS Agreement is presented in the form of two tables included as separate documents with this document.
