

ACCESSION OF UKRAINE

Questions and Replies

The Governmental Commission on Ukraine's accession to the WTO has submitted the following Questions and replies with the request that it be circulated to members of the Working Party.

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I. INTRODUCTION

Question 1.

In conformity with the conclusions of the last session of the Working Party on the accession of Ukraine to the WTO, we would welcome the submission by the Ukrainian delegation, well ahead of the next meeting of the Working Party, of detailed action plans for the implementation of WTO consistent legislation in the following areas:

- **Excise taxation;**
- **Customs valuation;**
- **Import licensing;**
- **Technical barriers to trade;**
- **Sanitary and phytosanitary measures; and**
- **TRIPS.**

Answer:

Customs valuation

At the present phase, the following measures have been taken:

- minimum customs values were eliminated;
- specialized units that examine customs value and perform customs valuation were set up at customs points of entry; and
- a procedure for filing a customs value computation form for particular categories of goods (excisable goods, high-liquidity goods) was introduced as an interim measure before the procedure for declaring customs value of all goods on the basis of respective customs declarations is put in place.

As prospective measures, it is planned to:

- introduce a procedure for filing customs value declarations for all categories of goods;
- adopt the Customs Code of Ukraine; and
- implement provisions of the Agreement on Implementation of Article VII of GATT.

TRIPS Agreement

As a whole, Ukraine's legislation is consistent with EU and TRIPS requirements. The laws compatibility will be determined in the course of implementation of the Decree of the President of Ukraine "On the Program of Ukraine's Integration in the European Union" No. 1072/2000 of 14 September 2000.

Activities related to the final harmonization of Ukrainian laws with requirements of the TRIPS Agreement:

Approval by the Verkhovna Rada of Ukraine of the following revisions:

- Civil Code of Ukraine. Deadline – 2001;
- Criminal Code of Ukraine. Deadline – 2001;
- The Law of Ukraine "On Judicial System". Deadline – 2001;
- Relevant procedural laws of Ukraine. Deadline – 2001.

Approval by Verkhovna Rada of Ukraine of the Law of Ukraine "On Ukraine's Accession to the International Convention On the Protection of Rights of Performers, Phonograms Producers and Broadcasting Organizations" as approved in Rome on October 26, 1961. Deadline – 2001.

The more detailed answer to this Question is comprised in a separate document "Law enforcement mechanisms in high-priority areas of trade-related legal framework: Customs Fees, Customs Valuation, Import Licensing, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Enforcement of Intellectual Property Rights".

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions of the ongoing economic policies

Privatization and State ownership

Question 2.

Could you indicate if the Draft State Program on Privatization for the year 2000 has been adopted? If, not, when will it be adopted?

Answer:

The National program of privatization for the years 2000 – 2002 is ratified by the Supreme Rada through ratification of the Law of the Ukraine of 18 May 2000 No. 1723 – III. The said program will be in effect till the next program of privatization is ratified.

Question 3.

Could you elaborate on the main characteristics of the energy sector reform as set out in the Decree of the President of Ukraine No. 944/99 "On some peculiarities of Privatization of the Energy Complex" of 2 August 1999? Which are the sectors concerned? What are the main changes? In which way the efficiency of the energy sector has been improved by this Decree?

Answer:

Decree of the President of Ukraine of 9 September 1999, No. 944/99 "On Some Peculiarities of Privatization in the Energy Sector" made it possible to reform the energy sector via privatization of power companies on a new basis:

- Attraction of exclusively strategic (industrial) investors for participation in tenders and competitive bidding for the sale of packages of shares of power companies from among the world known power companies;
- Tenders and competitive bidding are conducted with the participation of financial advisors selected on a competitive basis from among international investment banks that are experienced in the privatization of energy sector in various countries;
- Terms of the conduct and results of tenders shall be approved by the Cabinet of Ministers of Ukraine which provides for crucial guarantees for investors;
- Apart from obligations of an investor, terms of the tender shall also include obligations of the State before the investor as to the restructuring of debts of the companies being sold, tariff policies etc.; and

- The procedure for the conduct of tenders and competitive bidding should be similar to the world standards to the maximum extent possible (within the limits of Ukrainian law).

To raise the interest of strategic investors in tenders for the sale of packages of shares of seven energy supplying companies commenced in 2000, the said Decree of the President has been amended (Decree No. 904 of 2 August 2000) through increasing the quantity of shares due to the State's refusal to hold any shares of these companies.

The efficiency of the energy sector should be raised by new owners (strategic investors) via the introduction of the latest technologies, advanced management techniques etc.

Question 4.

What do the state-owned foreign trade corporations listed in “Information to the Seventh Meeting” import and export? What portion of foreign trade passes through these organizations?

Answer:

The State foreign economic enterprises of Ukraine include:

- State foreign trade enterprise “Ukrzovnishkhimprom” (Kyiv). Activity areas: trade and transit of ammonia;
- State foreign trade enterprise “Slavutych-Stal” (Dnipropetrovsk). Activity area: import of raw materials and metallurgical integrated plants;
- State foreign trade enterprise “Ukroboronoservis” (Kyiv). Activity area: Transactions on the internal market on utilization of the equipment of the Ministry of Defence;
- State foreign trade enterprise “Ukrkolorprom” (Dnipropetrovsk). Activity area: export of colour metals (insignificant volumes);
- State foreign trade enterprise “Ukrmetalurgzabezpechennia” (Dnipropetrovsk). Activity area: raw materials supply and equipment of metallurgical integrated plants; and
- State company on export and import of produce and services for military and special purposes “Ukrspecexport” (Kyiv). Activity area: transactions with special technique.

The share of foreign trade passing through these enterprises does not exceed 1,5 per cent of the total foreign trade turnover of Ukraine.

Question 5.

Section 1.4 of the document “Information to the Seventh Meeting of the Working Party,” dated 12 July states that 4,500 enterprises remain under full state ownership, and an additional 5,000 have majority state ownership. “Information” also lists sectors where privatization is not contemplated. Approximately what portion of these 9,500 enterprises, by number and by value, are in sectors where privatization is prohibited or not contemplated?

Answer:

The total number of enterprises is 8,869 of which 4,057 of them are state-owned (including 1,609 – prohibited. Prohibited according to the Law of Ukraine “On the List of State-Owned Enterprises Prohibited for Privatization” No. 847-XIV of 7 July 1999). Utility enterprises – 4,812.

Moreover, the total number of enterprises (8.8690 includes the enterprises not subject to privatization according to Article 5 of the law “On State Property Privatization”).

Question 6.

Does Ukraine restrict development of private enterprise in any of these categories, e.g., what restrictions exist on private competition with “Khib Ukryainy” and state owned production and trade in alcoholic beverages? If such restrictions exist, please list the sectors and firms, and describe the restrictions.

Answer:

There are no restrictions on the development of private enterprise in agriculture.

Pricing policy

Question 7.

On page 9 of the document entitled “Accession of Ukraine” (Job Number 4310) distributed informally on 7 July by the Ministry of the Economy of Ukraine for the 12 July Working Party meeting (hence forth 7 July document), Ukraine indicates that “the Ministry of Economy is authorized to establish reference prices” that apply to foreign transactions. This document also indicates that reference prices were set on 3 March 2000 for the following products: tubes, armature, ferrosilicium, ammonia, cattle, wet salted leather, sunflower seeds, flax seeds, certain other products. Could Ukraine please indicated the reasons for establishing these references prices, how are they used, how they are determined, and Ukraine’s intentions and plans for maintaining reference prices on these and other goods.

Answer:

The Decree of the President of Ukraine dated 10 February 1996 No. 124/96 “On Measures for Improvement of Free Market Pricing Policy in the Sphere of Foreign Economic Activity” stipulates major possible criteria for introduction of indicative prices while exporting goods from Ukraine. Main concepts were determined and “Resolution on indicative prices in the sphere of foreign and economic activity” was approved.

The order of the Ministry of Foreign Trade dated 8 August 1996 No. 506 approved “Methods of Making and Usage of Indicative Prices”, which states in detail all existing approaches for making indicative prices and the process of their approval. According to the Resolution the following is taken into account while determining the level of indicative prices:

- exchange quotations;
- prices of specialized auctions;
- reference prices of specialized commercial editions;
- statistical data of customs, financial, informational and other state and non-state structures of Ukraine;
- commercial offers, letters, memoranda of intents, price lists and catalogues of well-known firms and enterprises;
- reports and references of trade departments at Ukrainian embassies abroad;
- contractual practice of goods shipments; and
- other sources.

For the period the mentioned decree was in force, a clear system of making indicative prices was established. Mechanism of establishing indicative prices stipulates involvement to this process

big Ukrainian producers and exporters, industrial associations of producers and exporters that makes this process transparent and considers opinions and wishes of market players, makes it possible to establish a sole pricing policy while entering the world market, which is particularly important in the period of economic crisis in a number of countries throughout the world, which are consumers of Ukrainian products.

By the law of Ukraine “On Export Duty for Livestock and Leather Raw Materials (item 1)” dated 7 May 1996 No. 180/96-BP the Cabinet of Ministers stipulates establishing indicative prices for the above-mentioned products.

By the law of Ukraine “On Rates of Export Duty for Seeds of Some Oil Crops” (article 2 item 2) dated 10 September 1999 No. 1033-XIV the Cabinet of Ministers of Ukraine stipulates establishing indicative prices for seeds of sunflower, flax and false flax.

According to item 2 (paragraph 2) of the above-mentioned decree of the President dated 10 February 1996 No. 124/96 export indicative prices for seamless pipes are introduced for EU countries, ferrosilicon, ferrosilicomanganese, armature for Middle East countries, rolled wire for the United States, bloom, hot-rolled sheet and coil, for products, against which antidumping measures were applied, or antidumping investigations or procedures in Ukraine or abroad begun.

Question 8.

On page 9 and 10 of the 7 July document, Ukraine indicates that it eliminated in 1999 “state regulations of prices” for the following goods: bread, bread products, grain seeds, rye seeds, sugar, groats, and oil. This document, however, adds that “however in certain oblasts restrictions of profits and maximum trade margins continue to apply. Sometimes a reservation is included in the contracts on the sale of grain from the state saying that the price of resale must not exceed certain maximum rate.” Could Ukraine please indicate if these restrictions and reservations are still maintained, and for which products, and what are the plans for removing such restrictions?

Answer:

Currently, there are goods and services, subject to price control in Ukraine. According to the authorities, delegated by the Cabinet of Ministers to the relevant ministries and agencies, the following shall be established:

- tariffs in the area of transportation(including railway transportation);
- tariffs in the communication sector;
- prices on precious metals;
- prices on energy and fuel, tariffs for transportation thereof;
- The city and regional councils shall be empowered to regulate:
utility tariffs;
- maximal trade mark-up on infant food, medicines and medical purpose produce;
- tariffs on the paid services of medical state and public-owned institutions; and
- tariffs on passenger transportation in the city and local transport.

Question 9.

In its response in WT/ACC/UKR/59/Add.2, Ukraine states that while the Law “On Prices” authorizes the application of price controls, agricultural products are not currently subject to state price controls. Ukraine also states that Ministerial Resolution No. 1548 of 25 December 1996 authorizes “central executive bodies” at the central and sub-central level to

regulate prices on certain goods and services. Are there any other legislative authorities for price controls? Are any products or services currently subject to price controls?

Answer:

Price regulation in Ukraine is carried out by executive bodies and local executive bodies within authorities entrusted to them by the Cabinet of Ministers. In addition, the Cabinet of Ministers can introduce other methods of state regulation of prices and tariffs.

For example, the Resolution of the Cabinet of Ministers dated 2 June 2000 No. 868 approves minimal price for sugar beet that will be provided for production of sugar beginning from 1 September 2000 within its quotations at the internal market and international agreements, and minimal price for sugar within its quotation of supplies at the internal market, beginning from the date indicated.

Are there any other legislative bodies to regulate prices?

State control over approval and use of prices and tariffs is conducted by the State Inspection for Price Control of the Ministry of Economy.

At this point there are products and services that are subject to price control in Ukraine. According to Article 4 of the law "On Prices and Pricing" the Cabinet of Ministers determines a list of products and services, prices and tariffs for which are approved by corresponding bodies of state administration. For example, according to authorities given by the Cabinet of Ministers to corresponding ministries and departments the following is determined:

- tariffs in the area of transportation (including railway transportation);
- tariffs in the communication sector;
- prices on precious metals;
- prices on energy and fuel, tariffs for transportation thereof;
- The city and regional councils shall be empowered to regulate: utility tariffs;
- maximal trade mark-up on infant food, medicines and medical purpose produce;
- tariffs on the paid services of medical state and public-owned institutions; and
- tariffs on passenger transportation in the city and local transport.

Question 10.

Please provide a comprehensive list by HS item number or services category where price controls are still applied, noting where the requirement is applied at the sub-central level, or where the controls are applied only to exports.

Answer:

See the answer to Question 8.

Question 11.

At what point of sale are price controls applied to domestic and to imported goods sold in the domestic market?

Answer:

Economic sanctions for violation of the state price discipline are applied in the event subjects of economy yield ungrounded revenue as a result of breaking the order of fixing and applying of prices and tariffs that are regulated by authorized bodies in accordance with the current legislation.

Question 12.

Section 1.7 of “Information to the Seventh Meeting” states that a major violation of Ukraine competition policy by both central and sub-central authorities is “regulation of prices not in compliance with the legislation.” Please explain this statement in the context of Ukraine’s price control regime and the requirements of Article III:9 of the GATT.

Answer:

This statement means that the agencies of the central branch of the government and the local governmental bodies sometimes abuse their authority in the area of price regulation, which results in harm to the businesses.

For instance, according to the Order of the Kyiv City Council No. 1911 of 14 September 1998 (currently repealed), a distribution margin was established on medical purpose goods. Prices on all types of medicines and medical purposes goods were controlled. At the same time, in line with legislation, the Kyiv City Council had a right to control the prices of 91 type of medical products.

So, the Kyiv City Council abused its authority by applying the above Order, and groundlessly controlled prices on all types of medical purpose goods. The application of such measure in the context of Article III:9 GATT could damage the suppliers of medical products in to Ukraine.

Question 13.

We seek listing of any controls in place at the time of accession (listed by HS number) and a standard commitment on the use of such measures in accordance with Article III:9 of the GATT.

Answer:

According to Article 13 of the Law of Ukraine “On Prices and Pricing”, the State Price Control Inspection carries out control over setting and applying of state-fixed and regulated prices and tariffs. At the same time legitimacy of price appliance and observing requirements of antimonopoly legislation are controlled in the free price sector.

The order of state price regulation of production of monopoly formations is fixed by the regulation of the Cabinet of Ministers dated 22 February 1995 No. 135 “On Resolution on State Regulation of Prices and Tariffs for Industrial and Technical Products, Consumer Goods, Work and Services of Monopoly Formations”. According to this resolution decision about introduction of state regulation of prices and tariffs for certain products, works and services of subjects of economy, by which they are included to the list of monopoly formations is made:

- at general state markets by the Ministry of Economy together with the Antimonopoly Committee; and
- at regional markets by the Government of the Autonomous Republic of Crimea, state administrations of oblasts, the cities of Kiev and Sevastopol, corresponding territorial departments of the Antimonopoly Committee of Ukraine.

In order to improve the system of price (tariff) regulation the Cabinet of Ministers of Ukraine by its resolution dated 25 December 1996 No. 1548 “On Determination of Authorities of Executive Bodies and Executive Bodies of City Councils Regarding Regulation of Prices and Tariffs”, approved authorities of central executive bodies, the Ministers Council of the Autonomous Republic of Crimea, oblast, Kiev and Sevastopol City State Administrations regarding regulation (setting fixed and marginal price (tariff) levels, trade (supply and sales) markups of liquidity norms, introduction of mandatory declaring of price and tariff changes for products and services.

Particularly,

- the Ministers Council of the Autonomous Republic of Crimea, oblast, Kiev, Sevastopol City State Administrations have the right to regulate pawn price for glass ware;
- the Ministry of Industry by agreement with corresponding oblast, Kiev and Sevastopol City State Administration regulates tariffs for water supplies, which are provided by the production union “Ukrprodvodchormet” and the enterprise “Kryvbaspromvodpostachanya”;
- the National Commission of Electric Energy Regulation regulates energy tariffs;
- the Ministry of Social Protection conducts regulation of prices for prosthetic and orthopedic products and technical prophylaxis devices of invalidity and rehabilitation;
- the Ministry of Forestry by agreement with the Ministry of Economy regulates prices and tariffs for all users of hunting grounds for:
 - hunting products, including exported live wildfowl;
 - hunting trophies bagged by foreign citizens;
 - services, provided to foreign citizens;
- the Ministers Council of the Autonomous Republic of Crimea, oblast, Kiev and Sevastopol City State Administrations regulate (fix):
 - prices for fuel and energy resources (coal, coal bricks, domestic stove fuel, domestic kerosene, fuel lump peat, firewood, peat bricks, liquified gas), which are sold to the general public for everyday use;
 - tariffs for heating energy (heat supply services) for all consumer groups, which is sold to energy supply organizations and enterprises regardless of the form of property;
 - tariffs for water supply and drainage services, which are provided to all consumers by the enterprises that are in communal ownership, as well as to the general public – by enterprises regardless of the form of property;
 - tariffs for services on cleaning, removal and neutralization of solid domestic waste and liquid impurities, provided to all consumers by enterprises regardless of the form of property;
 - marginal size of charges for living in dormitories for workers and office employees;
 - marginal levels of liquidity and trade markups for baby food;
 - sizes of charges for services, provided by detoxification centers at internal affairs bodies for alcohol intoxicated people;
 - tariffs for paid services, provided by medical and prophylactic, and sanitary and prophylactic state communal healthcare institutions;
 - marginal levels of trade markups (extra charges) of subjects of entrepreneurship for imported and domestically produced medical substances and devices (by the list determined by the Ministry of Healthcare with the agreement from the Ministry of Economy); and
- the Ministers Council of the Autonomous Republic of Crimea, oblast, Kiev and Sevastopol City State Administrations, executive bodies of Lviv, Kryvy Rih City Councils regulate (fix) tariffs for transportation of passengers and cost of tickets in city transport – metro, bus, streetcar, trolleybus, working in common traffic mode.

(c) **Foreign exchange and payments system**

Question 14.

We seek details of Ukraine's maximum term of payment for exports, prohibition on banks to sell foreign currency for the prepayment of imports and requirement for compulsory sales of foreign currency (page 6 of WT/ACC/UKR/81).

Answer:

The maximum term of payment for exports is 90 days. This term is determined by Article 1 of the Law of Ukraine "On Conducting Payments in Foreign Currency" No. 184/94 of 23 September 1994.

There is no prohibition on banks to sell foreign currency for conducting import transactions.

Requirement for the compulsory sale of 50 per cent of foreign currency incomes for the benefit of legal entities – residents of Ukraine, is stipulated by the Resolution of the Board of the National Bank of Ukraine "On Establishment of the Compulsory Sale of Foreign Currency Incomes for the Benefit of Legal Entities – Residents of Ukraine" No. 349 of 4 September 1998. This is based on the Constitutional obligations of the National Bank of Ukraine on ensuring the stability of money of account of Ukraine, which are determined by Articles 6 and 7 of the Cabinet of Ministers Decree "On the System of Currency Regulation and Currency Control" No. 15-93 of 19 February 1993.

Question 15.

In WT/ACC/UKR/63, Ukraine states that if a foreign legal entity owns foreign currency that is being kept abroad, it is necessary to provide the customs authority with a document certifying that all foreign currency has been duly declared. What are the procedures for getting this certificate?

Answer:

The point of the Question is not quite clear, since for a foreign legal entity that owns foreign currency it is not required to have the permit of the Ukrainian tax authorities to keep currency abroad.

Requirements as to the opening of bank accounts as a condition of registration with the customs authorities lie within the competence of the State Customs Service of Ukraine.

At the same time, for purposes of giving specific answers to the issues raised in Questions 23 and 15, the State Tax Administration of Ukraine deems it expedient to address the WTO Secretariat requesting to phrase these Questions more clearly.

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

5. Laws and Legal Acts

Question 16.

Can Ukraine indicate which have been the changes introduced by the 1999 legal modifications, in particular as regards the unified customs tariff?

Answer:

In keeping with paragraph 7 of the President of Ukraine's Order No. 216/98 "On the State Customs Service" of 23 March 1998 and with the Instruction of the Cabinet of Ministers of Ukraine No. 5924/1 of 7 May 1998, the ministries and agencies concerned drafted and submitted to the Parliament of Ukraine the draft law of Ukraine "On the Unified Customs Tariff in Ukraine". The Parliament's Order No. 981 of 15 July 1999 "On the Draft Law of Ukraine on the Unified Tariff in Ukraine" rejected this bill and instructed the Parliament's Finance and Banking Committee to prepare together with the Cabinet of Ministers of Ukraine the draft law of Ukraine "On the Unified Customs Tariff of Ukraine" and present it to the Parliament for review at the fourth parliamentary session. Under the Parliament of Ukraine's work timetable, the said bill is scheduled for consideration by the Parliament of Ukraine in December 2000.

The new draft Unified Customs Tariff of Ukraine incorporates the following measures:

- the import customs duty rates are reconciled with the Concept of transformation of Ukraine's customs tariff in 1996 – 2005 in compliance with the GATT/WTO system, with agreements with international financial organizations being respected;
- a ten-digit tariff classification code system is introduced;
- the exemptions with modifier "only" are eliminated from goods sub-entries; and
- a stability of tax legislation applicable to import duties is ensured.

Question 17.

Could Ukraine indicate which have been, since April 2000, the developments in the adoption process of the different drafts mentioned for the year 2000? Which legislation has been adopted and implemented since April 2000?

Answer:

- Law of the Supreme Rada of Ukraine "On Introducing Amendments to Article 5 of the Law of Ukraine "On Privatization of State Property" No. 1695-III of 20 April 2000;
- Law of the Supreme Rada of Ukraine "On the State Privatization Program" No. 1723-III of 18 May 2000;
- Law of the Supreme Rada of Ukraine " On Introducing Amendments to the Law of Ukraine "On Privatization of State Property" No. 1724-III of 18 May 2000;
- The Law of the Supreme Rada of Ukraine "On Peculiarities of Privatization of Enterprises under the Jurisdiction of the Ministry of Defense of Ukraine" No. 1741-III of 18 May 2000;
- Law of the Supreme Rada of Ukraine "On Peculiarities of Privatization of OJSC "Ukrtelecom" No. 1869-III of 13 July 2000;
- Law of the Supreme Rada of Ukraine "On Introducing Amendments to the Law of Ukraine "On Small-Scale Privatization of State-owned Enterprises (Small Privatization)" No. 1882-III of 13 July 2000; and
- Law of the Supreme Rada of Ukraine "On Peculiarities of Privatization of Facilities of Unfinished Construction " No. 1953-III of 14 September 2000.

Question 18.

A table listing "Drafts and Projects of Laws" in WT/ACC/UKR/79 notes amendments to Presidential Decree No. 619 of 4 June 1999 and to Ministerial Decree No. 1967 of 25 October 1999, both "On the Governmental Commission on Ukraine's Accession to the WTO." What do these amendments do?

Answer:

These amendments are introduced in connection with the structural reform in Ukrainian Government and concern only the list of agencies of the executive branch of the Government, which are the members of the Governmental Commission. The membership of the Commission was enlarged – it includes peoples' deputies – representatives of four Committees of the Supreme Rada of Ukraine, as well as a non-governmental organisation - the Institute of Legislative Issues - as an official advisor.

Question 19.

We seek clarification of the contents of the draft law on Ukraine's accession to the WTO. Is it intended that this will be legislation indicating that where any conflict occurs between domestic law and the requirements of the WTO, the WTO requirements will prevail? (we note that a number of WTO members have such legislation).

Answer:

Resolution of the Supreme Rada No. 2078-III, of 2 November 2000, approves the draft "Program of Harmonization of the Legislation of Ukraine with the Legislation of the European Union" (referred to hereinafter as the Program) as the basis for further legislative activity.

The draft envisages the establishment of Commission of the Supreme Rada on European Integration. The commission shall verify the compliance of legislation of Ukraine with that of European Union.

Sections 2 and 3 of the draft program list the normative acts of Ukraine subject to changes, draft normative acts that must be approved and international agreements that should be signed and ratified.

As of today the Supreme Rada is not considering any draft law on Ukraine's accession to WTO.

6. Description of judicial, arbitral or administrative tribunals or procedures, if any

Question 20.

Concerning right of appeal to an independent tribunal: Please identify which of Ukraine's various court systems act as the point of appeal from administrative decisions on customs and trade matters as outlined in Article X of the GATT and in the various WTO Agreements, e.g., Customs Valuation, TRIPS, etc.

Answer:

Pursuant to the Articles 1 and 2 of the Arbitration Code of the Ukraine, enterprises, institutions, organizations and other legal entities (including non-residents), the citizens that are involved in commercial activity without acquisition of the status of the legal entity, but duly acquired the status that permits them to be involved in the commercial activity, are entitled to bring actions to the arbitration court according to adopted procedures requesting the arbitration court to protect their rights.

In the instances envisaged by the Ukrainian legislation the right to bring actions to the arbitration court is also given to the public and other institutions and to the citizens that are not registered as legal or commercial entities.

The arbitration court institutes the suits upon the requests of:

- enterprises and organizations that bring their actions to the court with the view to protect their rights;
- public and other institutions that may bring their actions to the court in the instances envisaged by the legislation;
- prosecutors and their deputies that act on behalf of the state; and
- the arbitration court institutes bankruptcy suits upon a written request from any of creditors.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

Question 21.

What goods could be deemed to "contradict the Ukrainian constitution" apart from those falling to the other three categories of goods mentioned on pages 7 and 8 of WT/ACC/UKR/63?

Answer:

Under Article 74 of the Customs Code of Ukraine (12 December 1991, No. 1970-XII), the following goods and other items may not be allowed the passage through the customs border of Ukraine:

- goods that may not be moved across the customs border of Ukraine;
- goods importation of which in Ukraine is not allowed, in particular;
- goods that are hazardous to health or that may endanger life of human or animal population or may be environmentally damaging;
- products that promote ideas of war, racism and race discrimination, genocide and other products that violate relevant provisions of the Constitution (the Basic Law) of Ukraine;
- goods that are imported in violation of intellectual property rights;
- goods exportation of which from Ukraine is not allowed, which include:
- goods that constitute national, historic or cultural heritage of Ukrainian people, which is to be determined under laws of Ukraine;
- goods that are exported in violation of intellectual property rights; and
- goods transit of which through the territory of Ukraine is not allowed, which include goods that are hazardous to health, or may endanger life of human or animal population or may be environmentally damaging.

A specific list of goods that are subject to this Article is to be prepared by the Cabinet of Ministers of Ukraine and to be approved by the Parliament of Ukraine.

Goods with respect to which customs documentation was not prepared.

Goods that are moved across the customs border of Ukraine in violation of this Code and other legislative acts of Ukraine.

Up to date, Ukrainian legislation has not specified goods that contradict the Constitution of Ukraine.

Question 22.

For what reasons could goods be deemed to contradict the constitution and under which constitutional provisions, and by whom could this be done?

Answer:

See the answer to Question 21.

(a) Registration requirements for engaging in importing

Question 23.

Why are legal entities required to open bank accounts as a condition of registration with the customs authority? Ukraine mentions the need to settle debts through bank transfers. Are these debts to customs and tax authorities?

Answer:

The said requirement was established in accordance with the Order of the President of Ukraine No. 195/93 of 6 August 1993 “On Urgent Measures to Strengthen Currency Control” for the purpose of implementing the currency control system in Ukraine.

Requirements as to the opening of bank accounts as a condition of registration with the customs authorities lie within the competence of the State Customs Service of Ukraine.

According to Article 7 of the Cabinet of Ministers Resolution “On the System of Currency Regulation and Currency Control” No. 15-93 of 19 February 1993, payments between the residents and non-residents for trade transactions should be settled via authorized banks.

The existing system of currency control envisages the coordination of actions of the National Bank of Ukraine and the State Customs Service while controlling the export-import transactions of participants in foreign economic activity. Such control is first of all, based on the availability of full information on the participant of the transaction, a part of which is information on the fact of the bank accounts opening (but not information about the means kept at the bank accounts).

See also answer to Question 15

Question 24.

For how long are the registrations with the tax and customs authorities valid?

Answer:

For the entire period of operation of the enterprise (in the event of changes in the data shown on the enterprise’s accreditation card (except where the enterprise is liquidated), such data is to be adjusted under a regular working procedure).

Pursuant to paragraph 2.13 of “The Procedure for the Maintenance of Records on Subjects of Foreign Activity at Customs Authorities”, approved by Decree of the State Customs Committee of 31 May 1996, No. 237 and registered with the Ministry of Justice of Ukraine on 12 June 1996 under No. 292/1317, a registration with customs authorities is valid up to the liquidation of an enterprise. In case of liquidation, information about such an enterprise is removed from the current register of enterprises and is stored in the archive of an electronic database pursuant to Decree of the State

Customs Committee of 8 February 1996, No. 48 "On Electronic Information within the Customs System of Ukraine".

Pursuant to Paragraph 8 of the Guidelines on the Registration of Taxpayers approved by Decree of the State Tax Administration of Ukraine of 19 February 1998, No. 80 and registered with the Ministry of Justice on 16 March 1998 under No. 172/2612, a registration with tax authorities is valid up to the liquidation of an enterprise in the event that an owner (owners) or its (their) authorized body (bodies) adopt(s) a decision on liquidation or a court of general jurisdiction (arbitration court) has passed a respective ruling.

Question 25.

The text of WT/ACC/UKR/63 seems to imply that Ukraine's procedures provide for securing foreign currency for importation only after products have been shipped from the exporting country. Is this the case? What restrictions currently exist on the purchase of foreign currency, e.g., by individuals, by firms, and by importers?

Answer:

This Question is outside the area of competence of the State Customs Service.

There are no restrictions on the purchase of foreign currency for conducting foreign economic transactions.

The last restriction on a preliminary (advance) payment for import agreements was eliminated 1 July 1999 by the Resolution of the Board of the National Bank of Ukraine No. 281 of 10 June 1999.

Question 26.

Please provide a list of all fees associated with import registration collected by customs and tax authorities and the levels at which these fees are applied/assessed. Please indicate if any of these fees are assessed on an *ad valorem* basis.

Answer:

We enclosed with this document the consolidated table of taxes and fees that are administered by customs organs with respect to imported goods (WT/ACC/UKR/90).

Under Article 16 of Law of Ukraine of 2 May 1992 No. 2097-XII "On the Unified Customs Tariff", the customs duty is to be assessed on goods and other items subject to customs duties on a basis of customs value of such goods and items.

In the event of importation of goods and other objects into the customs territory of Ukraine, the following taxes and duties shall be applied at the customs points of entry: import tariffs, a customs charge, a single customs fee, value-added tax, excise duty.

Collection and transfer to the budget of taxes and duties paid for import of goods into the customs territory of Ukraine shall be performed by the customs authorities in the manner agreed upon with the central tax authority of Ukraine.

At importation, the Value Added Tax and customs fees in respect of imported goods are assessed on an *ad valorem* basis in respect of customs or contractual value (which may not be lower than the customs value).

Bringing (mailing) of goods into the customs territory of Ukraine and receipt of work (services) that are provided for the use or consumption thereof within the customs territory of Ukraine, including operations for the in-bringing (mailing) of property under lease (rent) agreements, pledge and mortgage agreements subject to VAT at the rate of 20 per cent pursuant to the Law No. 168/97, of 3 April 1997 "On the Value Added Tax".

Import tariffs are charged at rates calculated as per cent of the sale price or at the fixed rates in ECU depending on types of goods and things.

Customs fees are charged at rates calculated as per cent of the sale price or at the fixed rates in U.S. dollars depending on types of goods and things.

A single customs fee collected at customs points of entry shall be paid at the fixed rate expressed in U.S. dollar equivalents.

The list of goods (products) which are subject to excise duties and their respective rates are determined by Law of Ukraine of 6 February 1996, No. 30/96 "On Rates of Excise Duties and Import Tariffs for Tobacco Products" and Law of Ukraine of 7 May 1996, No. 178/96 "On Rates of Excise Duties and Import Tariffs for Ethanol and Alcoholic Beverages"; Law of Ukraine of 24 May 1996, No. 216/96 "On Rates of Excise Duties and Import Tariffs for Some Transport Vehicles and Tires to Them", and Law of Ukraine of 11 July 1996, No. 313/96 "On Rates of Excise Duties and Import Tariffs for Certain Goods (Products)".

Question 27.

Please describe/indicate how these fees are related to the specific cost of the service for which they are charged. On the suspension of the obligatory registration requirement for all businesses involved in foreign economic activity (page 4 of WT/ACC/UKR/81), will Ukraine commit to not apply such a requirement in the future?

Answer:

Under Article 77 of the Customs Code of Ukraine, the rates of customs fees are to be established under a procedure specified by the Cabinet of Ministers of Ukraine on condition that the level of such rates should not exceed approximate costs of customs services. The customs fee rates are set on the basis of the principles of Article VIII of GATT at the level that does not exceed actual costs of preparing shipment customs documentation (of the amount of time that is consumed by customs procedures, bill of lading data examination, as well as time needed to check the data by departments of payments, statistics, tariffs and customs value, and to train specialists). Besides, the amount of customs fees for processing customs documentation is insignificant and may not have a substantial impact on financial and business choices of participants of foreign economic activities.

Question 28.

Does Ukraine foresee to use and apply the "single window" concept?

Answer:

State registration of enterprises in Ukraine is carried out only in oblast, local and district administrations that is an evidence of the Ukraine's intentions to use the mentioned principles to simplify state registration of subjects of economic activity.

It is planned to establish a system of bodies for state registration of subjects of economic activity that will be consisted of authorized state body dealing with state registration of objects of

economic activity and territorial registration bureaus (corresponding draft law is presently being considered by the Supreme Rada of Ukraine).

Question 29.

Would it be possible to put in place a system that allows registration by one administration who will then forward to other concerned administrations the information necessary in order to get the different documents required in order to engage in a business activity?

Answer:

At present the Supreme Rada is considering the draft law "On the System of State Registration of Subjects of Entrepreneurial Activity" submitted by the Cabinet of Ministers on 2 October 2000, registration No. 6116.

Article 3 of the draft law provides for creation of a system of bodies registering subjects of entrepreneurial activity. The system would consist of an authorized body dealing with the state registration of subjects of business activity and territorial registration offices.

Article 10, section 7, of the draft law provides that territorial registration offices must transmit registration cards bearing marks of registration to the relevant government authorities within ten days after the state registration takes place.

The legislation provides that registration certificate is the only document certifying that the state registration took place. Only such document is required for a business to be registered by state tax authorities, to open bank accounts, to manufacture seals and stamps of the relevant business.

(b) Characteristics of national tariff

Question 30.

WT/ACC/UKR/81 states that Ministerial Resolution No. 1213 of 3 August 1998 "On the Procedure of Making Amendments to Import Duty Rates" limits changes in Ukraine's customs tariff duties to once per year, beginning on 1 January 2000. Is this resolution in operation? Does that mean once per year per tariff line?

Answer:

This Resolution is in operation. It introduces only one amendment to the acting tariff once per year. The quantity of changes to the tariff in this amendment is not stipulated.

Question 31.

In the document 4310 of 7 July 2000 that Ukraine submitted during the Working Party of 12 July 2000, a draft new customs tariff is mentioned. When will this draft be adopted by the Supreme Rada ? What are the main elements of this draft ? What are the main differences between the 1999 version and the draft of the customs tariff ?

Answer:

In keeping with paragraph 7 of the President of Ukraine's Order No. 216/98 "On the State Customs Service" of 23 March 1998 and with the Instruction of the Cabinet of Ministers of Ukraine No. 5924/1 of 7 May 1998, the ministries and agencies concerned drafted and submitted to the Parliament of Ukraine the draft law of Ukraine "On the Unified Customs Tariff in Ukraine". The

Parliament's Order No. 981 of 15 July 1999 "On the Draft Law of Ukraine on the Unified Tariff in Ukraine" rejected this bill and instructed the Parliament's Finance and Banking Committee to prepare together with the Cabinet of Ministers of Ukraine the draft law of Ukraine "On the Unified Customs Tariff of Ukraine" and present it to the Parliament for review at the fourth parliamentary session. Under the Parliament of Ukraine's work timetable, the said bill is scheduled for consideration by the Parliament of Ukraine in December 2000.

The new draft Unified Customs Tariff of Ukraine incorporates the following measures:

- the import customs duty rates are reconciled with the Concept of transformation of Ukraine's customs tariff in 1996 – 2005 in compliance with the GATT/WTO system, with agreements with international financial organizations being respected; and
- a ten-digit tariff classification code system is introduced.

(d) Other duties and charges, specifying any charges for services rendered

Question 32.

The response to Question 14 of WT/ACC/UKR/59/Add.2 states that Ukraine charges \$1,500, with an additional annual charge of \$1,500, to permit persons or enterprises to declare the customs value of imports and take control of these goods. Ukraine's customs charge this amount in addition to customs processing fees. This would not appear to be a charge related to the cost of any service other than the valuation of goods, which is also a customs processing operation. These fees do not appear to be covered by Article VIII of the GATT. They should be eliminated.

Answer:

A charge for issuing to an enterprise the declarant's certificate (for a period of up to one year) is charged for providing a declarant with the right to perform one's functions pertaining to declaration of goods, and has no relation to particular goods that are being declared by this declarant. Consequently, it is generally unacceptable to refer to this fee as to a duty.

Question 33.

The response to Question 15 WT/ACC/UKR/59/Add.2 lists separate customs charges for processing and storage of imports. The response to Questions 16 and 17 appear to indicate that all of these fees are considered "customs legalization" of goods. The response to Question 18 documents that such fees are not applied to exports. The import customs fees are non-transparent, expensive, and a burden on trade. There is no information given relating these fees to the cost of any service other than those related to standard border duties. Is it Ukraine's view that the right to import into Ukraine should be subject to fees in addition to tariffs?

Answer:

Under Article 77 of the Customs Code of Ukraine, the customs fee rates are to be set in accordance with a procedure established by the cabinet of ministers of Ukraine, on condition that level of such rates should exceed approximate costs of customs services. The customs fee rates are set on the basis of the principles of article VIII of GATT at the level that does not exceed actual costs of preparing shipment customs documentation (of the amount of time that is consumed by customs procedures, bill of lading data examination, as well as time needed to check the data by departments of payments, statistics, tariffs and customs value, and to train specialists). Besides, the amount of customs fees for processing customs documentation is insignificant and may not have a substantial impact on financial and business choices of participants of foreign economic activities.

Question 34.

We request that Ukraine provide a table identifying all customs fees required to be paid on imports, including the amount of the fee, who is required to pay the fee, the service for which the fee is being charged, how were these fees determined or calculated, what is the law or regulation imposing the fee and so forth.

Answer:

We provide this information in a separate document "Consolidated Table of Levies and Duties Collected by The Ukrainian Customs Service and Other Authorities of the Executive Branch of Power Upon the Entry Of Goods on the Customs Territory of Ukraine".

Question 35.

The law of Ukraine No. 1212-XIV of 4 November 1999 introduces a sole fee to be charged at customs points of entry on the Ukrainian state border. Can Ukraine indicate which are the rates of this sole fee for the year 2000? Do you plan to change these rates in the future? If yes, will you increase the rates and to which extent?

Answer:

At this point rates of sole fee are not yet approved.

According to Article 2 of the Law "On the Introduction of the Unified Fee Collected upon Crossing of Ukrainian State Border" rates of a sole fee is asserted by the laws of Ukraine by the Cabinet of Ministers' submission. By now the draft law "On Making Changes to the law of Ukraine "On the Introduction of the Unified Fee Collected upon Crossing of Ukrainian State Border" is adopted by the Supreme Rada in the first reading.

The developed draft law significantly simplifies the mechanism of collecting customs fees at check-points at the state border of Ukraine. The law determines specific rates of sole fee. The object of charging a sole fee is determined to be a vehicle depending on its load capacity and travel distance within the customs territory of Ukraine.

The unified (sole) fee is determined by the Law of Ukraine "On the Introduction of the Unified Fee Collected upon Crossing of Ukrainian State Border" No. 1212-XIV of 1 November 1999. But information on the application of the unified rate of this duty (fulfilling the above Law) is currently unavailable at the State Customs Service. The Ministry of Economy of Ukraine is being drafting the corresponding draft legislative act. By now, the customs fees are calculated according to the Cabinet of Ministers Resolution "On Customs Duty Rates" No. 65 of 27 January 1997, and represent a charge for the services rendered by the customs authorities during the customs clearance procedures. As the rate of the unified fee does not exist yet, the mentioned fees do not duplicate each other in any way. When the unified fee rate will be defined, the collection of the above fees will be reviewed in order to avoid duplication thereof.

Question 36.

In document 4310 of 7 July 2000 that Ukraine submitted during the Working Party of 12 July 2000, Ukraine mentioned the existence of a sole fee (page 17) and of a single customs fee (page 19). These two fees seem to be charged for the same services. In which way is this situation consistent with WTO rules, especially with article VIII GATT?

Answer:

As regards the existence of a sole fee and of a single customs fee that seem to be charged for the same services, we would like to inform you that there is a customs fee, which is charged for various types of services provided by customs offices pursuant to the Tax Code of Ukraine under rates approved by Resolution of the Cabinet of Ministers of Ukraine of 27 January 1997 No. 65 (as amended) and a sole fee, which is approved by Law of Ukraine of 4 November 1999 No. 1212 "On the Approval of the Sole Fee which is Charged at Points of Entry at the State Border of Ukraine". The sole fee consists of fees for the conduct of sanitary, veterinary, radiological, environmental control pursuant to Ukrainian law and of the customs fee, and not only for transit.

Therefore, the assertion that these fees are charged for the same services are groundless.

Question 37.

The Resolution of the Cabinet of Ministers "On the Customs fee rates" No. 65 of 27 January 1997 foresees different customs fees applicable for customs clearance of imports (see document 4310 of 7 July 2000, page 16). For customs clearance of imports from US\$100 to US\$1,000 the customs fee is US\$5. For customs clearance of transited products, a US\$5 fee is charged for each page attached to the customs declaration. For which reasons does Ukraine consider these fees consistent with article VIII GATT as they seem to exceed the approximate cost of services rendered?

Answer:

Under Article 77 of the Customs Code of Ukraine, the rates of customs fees are to be established under a procedure specified by the Cabinet of Ministers of Ukraine on condition that the level of such rates should not exceed approximate costs of customs services. The customs fee rates are set on the basis of the principles of Article VIII of GATT at the level that does not exceed actual costs of preparing shipment customs documentation (of the amount of time that is consumed by customs procedures, bill of lading data examination, as well as time needed to check the data by departments of payments, statistics, tariffs and customs value, and to train specialists). Besides, the amount of customs fees for processing customs documentation is insignificant and may not have a substantial impact on financial and business choices of participants of foreign economic activities.

Question 38.

WT/ACC/UKR/77, the Memorandum regarding customs entry procedures, states that Law No. 1212-V of November 1999 introduced a sole fee to be charged at customs points of entry and comprises fees which are charged for customs, sanitary, veterinary, phytosanitary, radiological and environmental control or verification, as well as highway fees levied on trucks, cars, motor vehicles, mechanisms, and other means of transportation for use on Ukrainian highway. What is the relationship of this "sole fee" to the customs charges for processing and storage noted in WT/ACC/UKR/59?

Answer:

The sole fee is to be administered in accordance with Law of Ukraine No. 1212-XIV of 11 April 1999 "On the Introduction of the Unified Fee Collected upon Crossing of Ukrainian State Border". However, for the time being the State Customs Service has no information regarding establishing the unified rate for such fee (to implement the said law of Ukraine). A draft of the respective law is being prepared by the Ministry of Economy of Ukraine.

Presently, customs fees are assessed under the Cabinet of Ministers of Ukraine's Order No. 65 of 27 January 1997 "On Customs Duty Rates" and paid at the time customs organs render customs registration services. Since there is no rate for the unified fee, the said fees by no means duplicate each other. After the rate of the unified fee is established, the procedure for administering the said fees will be revisited to eliminate duplication.

Question 39.

What is the level of this fee?

Answer:

A draft of the respective law is being prepared by the Ministry of Economy of Ukraine.

The English language copy of the Draft Law "On the Introduction of the Unified Fee Collected upon Crossing of Ukrainian State Border" is available (WT/ACC/UKR/88).

Question 40.

Could Ukraine provide an English translation of the portions of the draft Customs Code that deal with customs fees (including those charged for services, applied to imports for other reasons, or charged for importation) and other customs procedures and requirements?

Answer:

Ukraine submits the relevant information in a separate document "Consolidated Table of Levies and Duties Collected by The Ukrainian Customs Service and Other Authorities of the Executive Branch of Power Upon the Entry Of Goods on the Customs Territory of Ukraine".

Question 41.

Please provide a list of all fees associated with import licensing collected by customs and tax authorities and any fees associated with various forms of import certification and the levels at which these fees are applied/assessed. Please indicate if any of these fees are assessed on an ad valorem basis.

Answer:

Ukraine submits the relevant information in a separate document "Consolidated Table of Levies and Duties Collected by The Ukrainian Customs Service and Other Authorities of the Executive Branch of Power Upon the Entry Of Goods on the Customs Territory of Ukraine".

Question 42.

Please describe/indicate how these fees are related to the specific cost of the service for which they are charged.

Answer:

If it is customs fees that are being meant, then we would like to inform you that under Article 77 of the Customs Code of Ukraine, the customs fee rates are to be set in accordance with a procedure established by the Cabinet of Ministers of Ukraine, on condition that level of such rates should exceed approximate costs of customs services. The customs fee rates are set on the basis of the principles of Article VIII of GATT at the level that does not exceed actual costs of preparing shipment

customs documentation (of the amount of time that is consumed by customs procedures, bill of lading data examination, as well as time needed to check the data by departments of payments, statistics, tariffs and customs value, and to train specialists). Besides, the amount of customs fees for processing customs documentation is insignificant and may not have a substantial impact on financial and business choices of participants of foreign economic activities.

Question 43.

What is the relationship of these fees to the “sole fee to be charged at customs points of entry” created in November 1999 referred to in WT/ACC/UKR/77?

Answer:

At this point, the unified fee rate has not been set by existing legislation. The relevant draft law passed first reading in the Supreme Rada.

Question 44.

On the law on a single customs fee (pages 3-4 of WT/ACC/UKR/81) we would appreciate details of all fees applicable under this law.

Answer:

Law of Ukraine “On the Unified Customs Tariff” provides for administering import and export duties. The said law does not regulate any other fees.

(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems

Question 45.

What is the status of the Ministerial Order and Resolutions and Presidential Decrees described? For circulation to the Working Party prior to the next meeting, Ukraine should list all products, agricultural and industrial, currently under quota, import ban, or non-automatic licence requirement, by HS-96 tariff item number, and indicate the WTO justification for the restriction. If this list can be updated from previous submissions, so much the better. Such a document, reflecting current measures, can be updated as the negotiations proceed.

Answer:

- Resolution No. 704 is acting. But the changes introduced by this Resolution lost effect since 1 January 2000. The changes envisaged the exemptions of Ukrainian producers of champagne and cognac from special payments for the right to import cognac spirits;
- Resolution No. 208 of 24 February 1998 is in effect. But it established quotas only for 1998 and 1999;
- CMU Resolution No. 575 of 29 March 2000 increased the critical age of imported cars from five to eight years;
- Presidential Order No. 444 has expired. It established quotas on imports of refined sunflower oil and palm oil and its fraction; and
- Presidential Order No.334 has expired.

Quantitative restrictions are not applied to the agricultural products in Ukraine.

Question 46.

On quantitative restrictions, we note that on page 2 of WT/ACC/UKR/81 there is no mention of any legislative activity associated with the expiry of the validity of import quotas on raw sunflower oil, raw soya oil, palm oil and fractions thereof, sugar cane and unspecified champagne and cognac raw materials mentioned on pages 5-6 of WT/ACC/UKR/63 of 23 July 1999. Can Ukraine confirm that all of the presidential decrees and cabinet resolutions mentioned on pages 5-6 of WT/ACC/UKR/63 had mandated the expiry of import quotas at or before the end of 1999 and, as a consequence, no longer provide any legal authority for the imposition of import quotas on these products? Can Ukraine confirm that at present there is no legal authority for the imposition of import quotas on any product? Will Ukraine commit to refrain from applying import quotas in the future?

Answer:

There are no quantitative restrictions on goods of 1-24 groups of the CFTC. In order to protect domestic producers, tariff quotas for specific goods (raw sunflower oil, wine raw materials, raw sugar) have been set.

- Thus, CMU Resolution No. 208 of 24 February 1998 "On Adopting the Volumes of Import of Champagne and Cognac Wine Products in 1998 and 1999 years and on Making Amendments and Additions to some Resolutions of the Cabinet of Ministers of Ukraine" established a quota of 18,600 dal. for imports of the must with an import tariff set at a zero rate;
- Cabinet of Ministers Resolution No. 1515 of 18 August 1999 "On Mechanism of Regulating Import of Specific Types of Oil in 1999" has determined the quota of 250,000 tons for crude; and
- Cabinet of Ministers Resolution No. 1043 of 4 July 2000 "On Mechanism of Regulating Import of Sugar Cane in 2000" has determined a tariff quota of 260 thousand tons with a five per cent customs duty till 9 January 2000.

As of now, the aforementioned Resolutions have expired.

Question 47.

Further on quantitative restrictions, we are not aware of legislation that would give effect to the prohibition of "any goods that contradict the Ukrainian constitution" under article 17 of the law on foreign economic activity. Could Ukraine please clarify whether any such legislation exists?

Answer:

Law "On Foreign Economic Activity", No. 959-XII, of 14 April 1991, Article 17, part 2, provides that the Supreme Rada must approve the list of goods this article applies to. The Cabinet of Ministers must submit the draft list of such goods to the Supreme Rada. At present the Supreme Rada has not approved such list.

On the other hand, there are certain laws prohibiting export or import of certain goods. The laws include:

- Customs Code of Ukraine, No. 1970-XII, of 12 December 1991;
- Law "On the Protection of Cultural Legacy", No. 1805-III, of 8 June 2000;
- Law "On Veterinary Medicine", No. 2498-XII, of 25 June 1992;

- Law "On Sanitary and Epidemic Safety of the Population", No. 4004-XII, of 24 February 1994;
- Law "On Pesticides and Agrochemicals", No. 86/96, of 2 March 1995;
- Law "On the Protection of the Environment", No. 1264-XII, of 25 June 1992; and
- Law "On Copyright and Related Rights", No. 3792-XII, of 223 December 1993.

(f) Import licensing procedures

Question 48.

We would appreciate a checklist on import licensing procedures addressing how Ukraine's requirements relating to this area compare with the requirements of the WTO Agreement on Import Licensing Procedures and, where WTO conformity has not been achieved, the action that will be taken to bring measures into conformity with WTO requirements. The checklist should cover Ukraine's requirements for the registration of intending importers with the customs authorities (a necessary requisite for engaging in importation) as well as licenses for products subject to import licensing requirements (WT/ACC/UKR/63 of 23 July 1999 refers).

Answer:

See the document "Law Enforcement Mechanisms in High-Priority Areas of Trade-Related Legal Framework: Customs Fees, Customs Valuation, Import Licensing, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Enforcement of Intellectual Property Rights".

Question 49.

WT/ACC/UKR/63 states that every year a Ministerial Resolution lists imports subject to licensing requirements. Such goods include plant chemicals, pharmaceutical compounds, cosmetic compounds and hygiene products, veterinary compounds, and discs, tapes and similar carriers of sound or other recordings with recordings on them. Licenses are also required for goods subject to quota. Are these licenses automatic or non-automatic, i.e., if the information requirements in the application as listed in "Information to the Seventh Meeting" are met, does the issuing Ministry have any discretion in whether it issues the licence? If so, what criteria are applied?

Answer:

Resolution of the Cabinet of Ministers No.4, of January 6, 2000, approves the list of exports and imports subject to licenses and quotas in 2000.

According to the resolution, the following products are subject to licensing in 2000:

- Chemical substances for the protection of plants and regulation of growth of plants, insecticides for home use and rodenticides;
- Cosmetic and hygiene products;
- Veterinary products;
- Molds used for the output of phonograms;
- Ionizing substances;
- Products that may contain such substances; and
- In accordance with the resolution, the Order of the Ministry of Economy No. 49, of 17 April 2000, approves the Regulation "On the Procedure of Licensing of Imports in 2000".

The regulation requires that the following documents should be submitted for the issue of a licence:

- Application for a licence, properly prepared (the sample form is appended);
- Application letter for a licence guaranteeing the payment of the state fee for the issue of such licence;
- A copy of the contract, all appendices and specifications thereto certified by head of the subject of entrepreneurial activity;
- A copy of the state registration certificate certified by head of the relevant enterprise in accordance with the established procedure;
- The approval of the relevant authorized institution as provided for in annexes 2, 6 and 7 to Resolution of the Cabinet of Ministers No. 4, of 6 January 2000; and
- Act of expertise of the product issued by Trade and Commercial Chamber or its territorial department, indicating the code of product as provided for in Commodity Nomenclature of Foreign Economic Activity.

The following government agencies approve the applications for licenses to import certain products:

- Ministry for Agrarian Policy, Central State Soil Fertility and Plant Protection Station;
- State Governmental Commission on Testing and Registration of Means of Protection and Regulators of Growth of Plants and Fertilizers ("Goschimcommission");
- Ministry of Environmental Protection and Natural Resources;
- Ministry of Health;
- Ministry for Agrarian Policy Central State Soil Fertility and Plant Protection Station;
- Ministry for Agrarian Policy State Department of Veterinary Medicine; and
- Ministry of Education and Science.

The application must be either rejected or approved within fifteen working days after the application was registered by Ministry of Economy of Ukraine or by Ministry of Economy of the Autonomous Republic of Crimea or by the relevant department of an oblast, Kiev or Sevastopol city administration.

The application must be rejected if:

- The documents submitted by the applicant do not comply with the current legislation of Ukraine.
- It is prohibited for the applicant to engage in foreign economic activities as provided for in Law "On Foreign Economic Activity", No. 959-XII, of 14 April 1991, Article 37; and
- In the other words the procedure described above may be referred to as automatic licensing procedure complying with the Agreement on Import Licensing Procedures.

In order to implement the resolution mentioned above Order of the Ministry of Ecology and Natural Resources No. 56, of 16 June 2000, approves the procedure for the approval of applications for licenses to export or import ozone-destroying substances and products containing such substances.

In order to obtain such approval the subject of entrepreneurial activity must submit to the Ministry of Ecology and Natural Resources the following documents:

- Accompanying letter;
- Application for the approval (annex 5) in two copies;
- The certificate of compliance of ozone-destroying substances and products containing such substances. The certificate must contain references to the relevant trademark and

- the code of the product as provided for in the Commodity Nomenclature of Foreign Economic Activity;
- The copy of the contract on the delivery of goods certified in accordance with the established procedure;
 - Contract specification;
 - Conclusion of ecological expertise (for objects of ecological expertise);
 - A copy of the licence to manufacture and sell ozone-destroying substances issued in accordance with the "Instruction on the Rules and Conditions (Licensing Conditions) of Manufacture and Sale of Hazardous Chemicals and Control of Adherence Thereto" approved by Order of Licensing Chamber of Ukraine and Ministry of Industrial Policy No. 52/210 and registered by the Ministry of Justice (registration No. 430/3723).
 - Information on chemical composition of the product, existence of information labels indicating the type of the substance affixed to vessels and products; and
 - If the set of documents meets the requirements of the "conditions" referred to above and demonstrates that the requirements of the current legislation are met the application must be approved.

Question 50.

Are all these licenses subject to procedures that meet the requirements of the Import Licensing Procedures Agreement? Is there any comprehensive Law or regulation that sets uniform procedures meeting WTO requirements?

Answer:

Order of the Ministry of Economy of Ukraine No. 49, of 17 April 2000, "On the Measures by the Ministry of Economy to Implement the Resolution of the Cabinet of Ministers No. 4, of 6 January 2000, and No. 139, of 28 January 2000" approves uniform import licensing procedure. The same order approves the import licensing procedure for 2000. This import licensing procedure in general complies with the Agreement on Import Licensing Procedures.

Question 51.

Can Ukraine provide an updated response to the import licensing Questionnaire to reflect the products currently subject to import licensing?

Answer:

In accordance with the Resolution of the Cabinet of Ministers "On the Approval of List of Exports and Imports Subject to Licenses and Quotas in 2000" No. 4, of 6 January 2000, the following products are subject to licenses and quotas in 2000:

- Chemical substances for the protection of plants and regulation of growth of plants, insecticides for home use and rodenticides;
- Cosmetic and hygiene products;
- Veterinary products;
- Molds used for the output of phonograms;
- Ionizing substances; and
- Products that may contain ionizing substances.

Question 52.

Please provide a list of products, including HS number and description that can only be imported by authorised enterprises. Also, provide a list of the authorised enterprises.

Answer:

In Article 5 of the Law of Ukraine “On Foreign Economic Activity” No. 959-XII dated 16 April 1991 (with changes and additions) it is indicated that “all subjects of foreign economic activity have an equal right to perform any such activities not directly prohibited by the laws of Ukraine regardless of the form of property and other attributes.”

Also according to Article 8 of the above-mentioned law “the state and its bodies do not have a right to directly intervene into foreign economic activity of subjects of this activity”. Subject of entrepreneur activity acquires the status of the subject of foreign economic activity (FEA) after its state registration as a subject of economy and making corresponding regulations to its authorised agreement relating to the right to perform FEA.

Thus, in its foreign policy Ukraine does not practise restrictions of the rights of subjects of FEA (that is it does not set lists of certain authorised enterprises), nor it makes lists of products that can only be imported by authorised enterprises. Exceptions to this can only be determined by particular normative and legal decrees of the Ukrainian Government. At this point such an exception, determined by the Cabinet of Ministers of Ukraine dated 2 August 2000 No. 1196 (see note of Y. Zatsypin on this resolution).

More common in the foreign economic policy of Ukraine are such methods of non-tariff regulation as quoting and licensing. Thus, the resolution of the Cabinet of Ministers dated 6 January 2000 No. 4 (with changes and additions) determines the list of products, exporting and importing of which is subject to quoting and licensing in 2000.

Question 53.

Are the import licensing procedures the same for natural persons and legal entities?

Answer:

Order of Ministry of Economy No. 49, of 17 April 2000, provides that import licenses must be issued to all subjects of entrepreneurial activity regardless of form of ownership and place of registration. This means that licenses to import certain products may be issued to legal entities only.

Question 54.

What are the procedures for getting a contract registration card?

Answer:

To register foreign economic agreements (contracts) the following documents are submitted:

- application in free form on the official cover letter of the subject of foreign economic activity (FEA) – an applicant signed by general manager;
- information card of foreign economic contract of an established form, filled in and formatted in accordance with the order requirements;
- original of foreign economic agreement (contract) with all appendices, specifications, additional agreements and other documents required by legislation on the date of

submission of application, which are parts of the contract, its copy, certified in accordance with established procedure by general manager of the object of FEA (if the foreign economic agreement (contract) is signed by a physical person, its copy is certified in accordance with established procedure);

- copy of certificate of state registration, certified by general manager of the subject of FEA;
- copy of excerpt from trade, banking or forensic register or registration certification of the local authority of a foreign state on registration of foreign subject of economic activity, certified by general manager of the subject of FEA of Ukraine (submitted only in case of preliminary shipment);
- document confirming payment for registration services of a foreign economic agreement (contract); and
- in case of registration of foreign economic agreements (contracts) on exporting of waste and scrap of ferrous metals (code TNZED-7204) it is required to obtain an agreement of the State Committee of Industrial Policy of Ukraine.

Question 55.

In WT/ACC/UKR/63, Ukraine states that certain products must be certified by certain government agencies before a licence can be given. Is this certification for standards purposes, or some other form of certification? Please provide a list of products subject to this certification and the agencies that approves it. What are the procedures for getting the certificate?

Answer:

It is certification with the purpose of standardisation. It is also explained in the relevant section of this document.

Question 56.

In WT/ACC/UKR/63, the Ukraine states that the products subject to licensing change every year. Can Ukraine confirm that these changes are published and readily available to importers?

Answer:

Resolutions of the Cabinet of Ministers must approve the list of imported products subject to licenses. Decree of the President of Ukraine No. 1207/96, of 13 December 1996, provides that regulatory resolutions and orders of the Cabinet of Ministers must be published weekly in the information bulletin "Ofitsiyinyi Visnyk Ukrayiny" ("Official Herald of Ukraine"). This means that resolutions of the Cabinet of Ministers dealing with the list of imported products subject to licenses must be published in an official publication available to any importer.

Question 57.

In WT/ACC/UKR/63, the Ukraine states that registration with the tax and customs authorities is a prerequisite to applying for an import licence. Importers are also required to purchase foreign currency. In certain circumstances, importers are also required to get an additional certification from different government agencies for certain products. Importers may also be required to get an additional certificate for quality standards for certain products. If an importer has a product that requires all of these certificates, that importer would have to approach five administrative agencies, not including the agency that actually issues the licence. The Agreement on Import Licensing, states that importers not be required to approach any

more than three administrative bodies to get an import licence. Please outline Ukraine's plans to address these issues and bring its import licensing regime into WTO compliance.

Answer:

See the document "Compliance Analysis of Ukrainian Trade-Related Legislation with Requirements of GATT/WTO Agreements" (WT/ACC/UKR/85).

(h) Customs valuation

Question 58.

We have reviewed Document WT/ACC/UKR/59/Add.2 containing Ukraine's answers to Questions on customs valuation. In response to Question 22, Ukraine noted that the draft Customs Code was approved by the Rada in the first reading, but it is unclear what changes were made to the draft in the second reading. Further, Ukraine stated that the Customs Code continues to fall short of full compliance with the WTO Valuation Agreement. We have also reviewed the Resolution on Adopting the Procedure for Determining Customs Value of Goods and Other Items Crossing the Customs Border of Ukraine, No. 1598, of 5 October 1998, and note that this Resolution lacks many WTO Valuation provisions. Please identify the specific changes that Ukraine intends to make to meet WTO provisions in this area and outline current efforts to do so. (Note: The document "Information to the Seventh Meeting" provides some information, but we would like the information formatted along the lines of the Questionnaire in WT/ACC/1 and addressing specifically the issue of the changes in current legislation necessary to meet WTO provisions).

Answer:

At the present phase, the following measures have been taken:

- minimum customs value thresholds were eliminated;
- specialized units that examine customs value and perform customs valuation were set up at customs points; and
- a procedure for filing a customs value computation form for particular categories of goods (excisable goods, high-liquidity goods) was introduced as an interim measure before the procedure for declaring customs value of all goods on the basis of respective customs declarations is put in place.

As prospective measures, it is planned to:

- introduce a procedure for filing customs value declarations for all categories of goods;
- adopt the Customs Code of Ukraine; and
- implement provisions of the Agreement on implementation of Article VII of the GATT.

Provisions of the draft Customs Code that regulate customs valuation were amended as the draft was prepared for the second reading by the Parliament of Ukraine. In particular, the provision that provided for a possibility of application of minimum customs values was eliminated. Besides, a provision regarding customs valuation of goods imported by related business persons, one of which is an authorized agent, distributor or sole concessioner, and regarding prohibition to use alternative contract value as a basis for determining the customs value.

As to the procedure for determining the customs value of goods that are moved across the customs border of Ukraine, specified by the Order of the Cabinet of Ministers of Ukraine No. 1598 of 5 October 1998 with amendments and additions approved by the Cabinet of Ministers of Ukraine No. 1537 of 12 October 2000, the said Orders particularize certain concepts of the existing legislation of Ukraine dealing with issues pertaining to determination of the customs taxation base. Provisions of the WTO Agreement dealing with customs valuation issues were included in the draft Customs Code of Ukraine that was passed in the first reading.

The electronic copy of the draft Customs Code is provided (WT/ACC/UKR/88).

Question 59.

Are there any situations in which Ukrainian law or practice provides for the use of fixed, arbitrary or artificial values for the purpose of valuing imports for taxation? If so, please list the products and taxes involved, and give the legal citation.

Answer:

Minimum levels of customs value were abolished by the following orders of the Cabinet of Ministers of Ukraine:

- Order dated 29 July 1999 No. 1387 – “On introducing changes to particular Orders of the Cabinet of Ministers of Ukraine dealing with establishing minimum customs values for light-industry goods and agriculture machinery and equipment”;
- Order dated 24 January 2000 No. 134 – “On repealing particular orders of the Cabinet of Ministers of Ukraine”;
- Order dated 16 March 2000 No. 508 – “On repealing particular orders of the Cabinet of Ministers of Ukraine”;
- Order dated 29 March 2000 No. 575 – “On reconciling the Cabinet of Ministers of Ukraine’s orders with Ukraine – European Union Partnership and Cooperation Agreement”.

Pursuant to effective law, excise duties for excise goods (products) are paid at the fixed rates per unit of weight, volume, quantity or other in-kind indicator (except for jewellery). In regard to jewellery, the excise duty rate is determined as a percentage to the basis of taxation.

For purposes of bringing decisions of the Cabinet of Ministers of Ukraine in line with the Partnership and Cooperation Agreement between Ukraine and the EC (European Union), Resolution of the Cabinet of Ministers of Ukraine “On Bringing of Decisions of the Cabinet of Ministers of Ukraine in line with the Partnership and Cooperation Agreement between Ukraine and the European Union,” No. 575 of 29 March 2000 repealed resolutions which set minimum customs value of specific goods.

Question 60.

According to the Ukrainian law on VAT, the calculated value is converted into Ukrainian Hryvniya (UAH) at the official exchange rate of the National Bank of Ukraine effective on the day of payment. How does Ukraine consider the consistency of this provision with article 9:2 of the Customs Valuation Agreement which stipulates that "The conversion rate to be used shall be that at the time of exportation or the time of importation, as provided by each Member"?

Answer:

It is in conformity with Article 9 of the Agreement on Implementation of Article VII GATT, because customs duty and other fees are assessed on the basis of the customs value of the goods and are to be paid either before or at the time of the customs clearance.

Pursuant to Point 7.3.6, upon the bringing in (import) of goods, tax liabilities shall arise as of the date of completion of the customs declaration with an amount of tax indicated therein.

At the same time, Point 6.1.1 expressly sets forth that goods shall be considered taken out (exported) beyond the customs territory of Ukraine by a taxpayer in the event that such taking out (exportation) is certified by a properly completed customs cargo declaration.

In view of the foregoing, the provisions of effective Ukrainian law concerning these issues are consistent with Article 9.2 of the Customs Valuation Agreement.

Question 61.

Please provide as soon as possible a copy of the current draft Customs Code as it relates to customs valuation and any supporting regulation so that the Working Party can assess the status of Ukraine's efforts to implement the WTO Customs Valuation Agreement. [Note: Review of draft legislation by WTO Members does not constitute "approval" of its contents until Ukraine's accession package has been adopted by the Working Party].

Answer:

We provide a copy of the draft Customs Code and a copy of the Resolution of the Cabinet of Ministers of Ukraine No. 1598 of 5 October 1998 "On Adopting the Procedure for Determining the Customs Value of Goods and other Items Crossing the Customs Border of Ukraine".

Question 62.

We continue to seek changes in Ukraine's laws and regulations and in its customs practices to bring Ukraine into compliance with the WTO Agreement on the Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement) prior to accession. Please provide a report on the status of the draft Customs Code currently before the Rada and Ukraine's efforts to make the necessary changes to the bring the current Ukrainian Customs Code and subsequent resolutions such as No. 1598 into compliance with the WTO Valuation Agreement.

Answer:

At present, the draft Customs Code of Ukraine which contains basic provisions regarding determination of customs value and customs valuation (which was drafted under Article VII GATT and the WTO Agreement on implementation of Article VII GATT) is prepared for the second reading in the Parliament, which is scheduled for November 2000. Copies of the said provisions are provided (WT/ACC/UKR/88).

Question 63.

Please indicate where in Ukrainian law the provisions of Article X relating to transparency and right of administrative appeal and appeal to an independent tribunal are found?

Answer:

Article 57 of Ukrainian Constitution established that laws and legislative acts which determine the rights of the citizens are to be publicised in an order prescribed by the law. Article 94 stipulates that the law becomes effective ten days after its official publication, if other is not stipulated by the law, but not earlier than the day of its publication.

Presidential Decree No. 503 "On the Procedure for Official Publication of Legislative Acts and Coming into Effect Thereof" determines that Ukrainian Laws, other legislative acts of the Supreme Rada and the president shall be publicised in fifteen days after the adoption and signing thereof.

Article 55 of the Constitution guarantees the right to appeal the state powers bodies' actions or non-actions in the court.

Question 64.

The response to Question 22 in WT/ACC/UKR/59/Add.2 appears to indicate that minimum valuation of imports for customs and taxation purposes continue as a "temporary practice." WT/ACC/UKR/81 states that Ministerial Resolution No. 1589 of 5 October 1998 prohibits the use of minimum customs values. However, WT/ACC/UKR/79 lists a draft Ministerial Resolution "On the abrogation of the Minimum Customs Value for Audio, Video and other Home Appliances." "Information to the Seventh Meeting" states that Ukraine Resolution No. 575 of 29 March 2000 cancelled previous resolutions providing for minimum values on imported vehicles, tires, alcoholic beverages, chemical products, and soap, and that the minimal customs value is no longer in effect in Ukraine.

Answer:

See answer to Question 65.

Question 65.

The use of minimum customs values is prohibited by Article 7 of the WTO Valuation Agreement. Please confirm that Ukraine no longer applies minimum values to imports for customs purposes, e.g., automobiles, or to imports for the purposes of applying VAT and excise taxes, e.g., agricultural products?

Answer:

Presently, Ukraine does not apply minimum customs values. All minimal customs values that were used in Ukraine have been abolished by the following orders of the Cabinet of Ministers of Ukraine:

- Order dated 29 July 1999 No. 1387 – "On introducing changes to particular Orders of the Cabinet of Ministers of Ukraine dealing with establishing minimum customs values for light-industry goods and agriculture machinery and equipment";
- Order dated 24 January 2000 No. 134 – "On repealing particular orders of the Cabinet of Ministers of Ukraine";
- Order dated 16 March 2000 No. 508 – "On repealing particular orders of the Cabinet of Ministers of Ukraine"; and
- Order dated 29 March 2000 No. 575 – "On reconciling the Cabinet of Ministers of Ukraine's orders with Ukraine – European Union Partnership and Cooperation Agreement".

Question 66.

The response to Question 22 in WT/ACC/UKR/59/Add.2 appears to indicate that Ukraine's legislation does not provide for the right of an importer to withdraw goods from customs prior to the final determination of customs value. Article 13 of the WTO Valuation Agreement requires a Member to have a system which allows the importer to withdraw its goods from customs, pending the final determination of the customs value, where the importer provides sufficient guarantee in the form of surety or other deposit covering the ultimate payment of customs duties.

Answer:

As a rule, customs value is determined by the customs point that carries on customs clearance of an entity that engages in foreign economic activity at the location of the entity. Therefore, under this scheme goods are released through the customs border with inner customs carrying out customs clearance and releasing the goods into free circulation.

Under the Cabinet of Ministers of Ukraine's Order No. 1598 of 5 October 1998 "On adopting the Procedure for determining customs values of goods and other items that are moved across the customs border of Ukraine", determination of customs value must be completed by a customs organ within a period that is not longer than 15 work days. In exceptional cases this period may be extended by decision of head of the customs organ.

Under clause 7.3 of "Procedure for administering customs fees assessed on the basis of the import customs declaration", which was approved by the State Customs Service's Order No. 363 of 23 June 1998 (registered with the Justice Ministry of Ukraine on 14 July 1998, registration number is 443/2883), for purposes of assessing fees for being under the customs control the period of being under the customs control do not include:

"7.3.4. a period during which customs organs conduct examinations to identify a classification code of the goods under the Foreign Economic Activity Goods Nomenclature and to determine a customs value."

Question 67.

We note that on page 2 of WT/ACC/UKR/81 of 22 June 2000 it is stated that a number of resolutions authorising the application of minimum customs values have been repealed, and that a cabinet resolution has introduced changes to ensure conformity with WTO rules on customs valuation. We would appreciate details of any minimum customs values which are applied at present, and if any are applied, details of when they will be abolished. We also seek an explanation of the relationship, if any, between minimum customs values and the minimum prices NTMs category mentioned in Ukraine's tariff offer of April 2000.

Question 68.

Based on the discussion during the 12 July Working Party meeting, it is our understanding that the domestic legislation for implementing the WTO Agreement on Customs Valuation has been submitted to the Rada, that Ukraine plans to implement Customs fully all the provisions of Valuation Agreement as early as 2001, and that Ukraine has eliminated all minimum values for customs valuation purposes? Could Ukraine please provide an update on the status of the draft legislation in the Rada? Could Ukraine please provide a copy of the legislation on customs valuation? Could Ukraine please confirm that all minimum values have been eliminated?

Answer:

At present, the draft Customs Code of Ukraine which contains basic provisions regarding determination of customs value and customs valuation (which was drafted under Article VII GATT and the WTO Agreement on implementation of Article VII GATT) is prepared for the second reading in the Parliament, which is scheduled for November 2000. Copies of the said provisions are enclosed with this document.

Presently, all minimal customs values that were used in Ukraine have been abolished by the following orders of the Cabinet of Ministers of Ukraine:

- Order dated 29 July 1999 No. 1387 – “On introducing changes to particular Orders of the Cabinet of Ministers of Ukraine dealing with establishing minimum customs values for light-industry goods and agriculture machinery and equipment”;
- Order dated 24 January 2000 No. 134 – “On repealing particular orders of the Cabinet of Ministers of Ukraine”;
- Order dated 16 March 2000 No. 508 – “On repealing particular orders of the Cabinet of Ministers of Ukraine”; and
- Order dated 29 March 2000 No. 575 - “On reconciling the Cabinet of Ministers of Ukraine’s orders with Ukraine – European Union Partnership and Cooperation Agreement”.

Question 69.

How does Ukraine plan to approach customs valuation compliance by importers? Is Ukraine looking at the risk assessment or importer self-assessment, combined with post-entry verification or audit procedures by Customs? If yes, could Ukraine provide information and details on how it plans to select importers for verification or audit and what the type of verification or audit process it plans to follow? If Ukraine is planning to use another approach to valuation compliance, could Ukraine provide information and details on this approach?

Answer:

Auditing amounts of customs values declared by importers is planned to be performed by customs organs – either at a time of customs clearance, or by way of conducting audits after the goods are released into free circulation (this provision is incorporated in the draft Customs Code of Ukraine).

Question 70.

As regards Article 11 of the Customs Valuation Agreement, how does Ukraine plan to implement the requirements for review and appeal? Which agency or department/division will provide the administrative review (e.g., will it be customs valuation division or another division)? What will be the number of levels of “internal” appeals, the process and procedures an importer must follow to file an appeal, and the expected normal amount of time for a decision to be rendered? Which department/agency/court will provide appeal? Which court will provide final judicial appeal?

Answer:

If decisions of customs organs regarding customs valuation of goods is appealed, the appeal is to be submitted to the higher customs authority – regional customs organ – the State Customs Service. If the importer is not satisfied with the decision of a higher level customs organ, the importer may appeal this decision at court.

Question 71.

Article 12 of the Customs Valuation Agreement requires Ukraine to make its laws, regulations, judicial decisions and administrative rulings of a general application publicly available. When does Ukraine plan to publish its laws and regulations? How does Ukraine plan to keep its public informed of what Customs expects on valuation compliance? How does Ukraine plan to make available “judicial decisions and administrative rulings of a general application” publicly available. In general, what is Ukraine’s plans for encouraging cooperation between Customs and traders to promote the exchange of information in regard to customs valuation?

Answer:

All information regarding customs valuation requirements and texts of laws and other legislative acts are published in official publications (newspaper “Uriadovy Kurier”, compilation of legislative acts “Oficijnyj Visnyk Ukrainy”), in various other publications (“Encyclopedia mytnoyi spravy”, “Zbirnyk normatyvnykh-pravovykh aktiv z pytan mytnogo reguliuvania”, etc.), and is available on the official web sight of the State Customs Service of Ukraine.

Question 72.

Article 13 of the Customs Valuation requires that the release of goods not be unduly delayed when the final determination of the custom value can not be made at the time of importation. How does Ukraine plan to implement this requirement (e.g., what systems and procedures does Ukraine plan to put in place to implement Article 13)? How long will customs hold the good before releasing it when there is a delay in making the determination? How does Ukraine plan to establish a final customs value after the goods have been released without making the final determination? What type of guarantee (e.g., surety bond) will Customs require?

Answer:

As a rule, customs value is determined by the customs point that carries on customs clearance of an entity that engages in foreign economic activity at the location of the entity. Therefore, under this scheme goods are released through the customs border with inner customs carrying out customs clearance and releasing the goods into free circulation.

Under the Cabinet of Ministers of Ukraine’s Order No. 1598 of 5 October 1998 “On adopting the Procedure for determining customs values of goods and other items that are moved across the customs border of Ukraine”, determination of customs value must be completed by a customs organ within a period that is not longer than 15 work days. In exceptional cases this period may be extended by decision of head of the customs organ.

Under clause 7.3 of “Procedure for administering customs fees assessed on the basis of the import customs declaration”, which was approved by the State Customs Service’s Order No. 363 of 23 June 1998 (registered with the Justice Ministry of Ukraine on 14 July 1998, registration number is 443/2883), for purposes of assessing fees for being under the customs control the period of being under the customs control do not include:

“7.3.4. a period during which customs organs conduct examinations to identify a classification code of the goods under the Foreign Economic Activity Goods Nomenclature and to determine a customs value.”

Question 73.

As regards Article 16 of the Customs Valuation, who or which division in Customs will be responsible for providing a written explanation when importers request an explanation of how the customs value was determined? Will there be time limits on how long the importer must wait to get an explanation, etc?

WT/ACC/UKR/81 and Cabinet of ministers Resolution "On adopting the procedure for determining the customs value of goods and other items crossing the customs border of Ukraine" No. 1598 of 5 October 1998.

Answer:

A written explanation of how a customs value was determined is to be prepared by relevant specialized customs units that deal with issues of customs value auditing. Such information is to be provided upon the demand of the importer within a clearly specified period of time.

Question 74.

According to document WT/ACC/UKR/81 this resolution introduces the customs valuation standards contained in the WTO Agreement on Customs Valuation as well as the absence of the use of minimum customs values. According to the Customs value Agreement, there are 6 methods for determining the customs value. The three first ones are: the transaction value, the transaction value of identical goods and the transaction value of similar goods. In the Resolution the transaction value of similar goods is mentioned before the transaction value of identical goods. How does Ukraine consider this consistent with the provisions of the Customs Valuation Agreement?

Answer:

We hereby inform you that Orders of the Cabinet of Ministers of Ukraine No. 1598 of 5 October 1998, with changes and additions, particularize certain concepts used in existing legislation on matters concerning determination of the customs taxation base. Provisions of the WTO Agreement on Customs Valuation are incorporated in the draft Customs Code of Ukraine that was approved in the first reading.

Question 75.

In Article 5 of the Resolution it is indicated that " if the customs value of goods is determined in accordance with requirements of paragraph 2 is smaller than the minimum value (if it is provided by the legislation), then minimum customs value shall be used to collect the established taxes and fees." Article 7 of the WTO customs valuation agreement states that no customs value shall be determined on the basis of minimum customs values. In which way article 5 of the resolution can be considered consistent with article 7 of the WTO Customs Valuation Agreement?

Answer:

In connection with elimination of minimum customs values, necessary changes were made to the procedure for determining the customs value of goods and other items that are being moved across the customs border of Ukraine, approved by the order of the Cabinet of Ministers of Ukraine No. 1598 of 5 October 1998, which were reflected by way of issuing the order of the Cabinet of Ministers of Ukraine No. 1537 of 12 October 2000.

Question 76.

Document 4310 of 7 July 2000 that Ukraine submitted during the Working Party of 12 July 2000, states at page 30: "Where the declared customs value of goods and other items is clearly inconsistent with the value that is determined in accordance with the criteria of this article (Article 16- customs value of the Law of Ukraine "On the unified customs tariff"), or where it proves impossible to check the valuation, the customs authorities of Ukraine determine the customs value in accordance with the basic prices for identical goods and other items or for similar goods and other items, which prevail in countries that are leading exporters of the given goods and other items." In which way can "which prevail in countries that are leading exporters of the given goods and other items" be considered consistent with article 7 of the Customs Valuation Agreement?

Answer:

As to the concept of "price on identical or analogous goods" – similar concepts are provided for by Articles 2 and 3 of the Agreement on Implementation of Article VII GATT.

Question 77.

The same document lists (p.32 – confirmation of the veracity of customs value information provided by the declarant) the types of documents that may be presented as a proof of the accuracy of a given customs value. Can Ukraine explain in which way the copy of the organization's personal bank account, certified by the director and chief accountant of the given organization and the powers of attorney can help to determine the accuracy of a given customs value?

Answer:

Under the existing legislation of Ukraine, customs value is defined as a price that is actually paid, or is payable, at the time of goods' crossing the customs border of Ukraine. The customs value is to include the price of the goods specified in invoice, and also such actual costs that are not reflected in the invoice, specifically:

- transportation, loading, unloading, moving, and insurance up to the customs border point of entry;
- commissions and broker's compensation; and
- charges for use of intellectual property rights to goods that belong to these goods and other items and that must be paid by an importer (exporter) either directly or indirectly as condition for importation (exportation) of these goods.

Therefore, if at the time of crossing the customs border of Ukraine the price of the good that is subject to customs clearance, is actually paid, the documents that reflect payments made through banks will serve as a proof of the fact that the price is actually paid.

Question 78.

The same document states: "In the absence of accurate information, the customs authorities may utilized price information contained in their databases, in commercial catalogues and similar publications, as well as information furnished by organizations that have conducted relevant analyses." Please indicate how have the databases been established and where the price information come from in that case. What do you mean by "conducted relevant analyses"? Which are the organizations that conduct those analyses and what kind of information do they have to provide?

Answer:

The customs service database is to be created on the basis of customs statistics data, based on data shown on customs declarations by which the goods moved across the customs border of Ukraine are declared.

(k) Application of internal taxes on imports

VAT

Question 79.

Ukraine's imports under production sharing agreements under the Ashkabad Agreement are apparently exempted from tariffs, excise taxes and VAT. Domestic taxes are not covered by Article XXIV. When does Ukraine intend to cease this practice, which violates Article I of the GATT?

Answer:

In 18 months there have been no tax exemptions for trade conducted under the Ashkabad Agreement. The tax exemptions were provided under free-trade agreements.

Question 80.

WT/ACC/UKR/81 states that the discriminatory VAT exemptions for "critical import goods" was repealed by a Ministerial Directive on 5 June 2000. Other differentials currently exist in the application of VAT or excise taxes on imports and domestic products, as provided for in the Law "On Value Added Tax" and listed in WT/ACC/UKR/61. Are there other violations of Article III in the application of the VAT? What measures are being taken to address these issues?

Answer:

Pursuant to sub-points 5.1.1 and 5.1.2 of Article 5 of the Law of Ukraine "On the Value Added Tax", VAT exemptions apply to operations for the sale of domestically produced baby foods, for the sale (subscription) and delivery of periodicals printed by the domestic printed mass media; sale of books of domestic production; sale of student note books, text books and study manuals of domestic production. Pursuant to sub-point 5.1.1, VAT exemptions shall apply to operations for the sale of domestically produced baby foods that are carried out exclusively by milk kitchens and specialized stores and points that act as distribution entities. The list of goods, which are sold in the specified stores, includes goods with a very short term of preservation and, therefore there is no ground to compare the said products with imported ones. As regards the consistency of sub-point 5.1.2, pursuant to the draft Tax Code passed in the first reading by the Supreme Rada of Ukraine, tax exemptions shall apply to operations for the sale of text books, study manuals and student note books, irrespective of the country of their origin. VAT exemptions that apply to operations for the sale (subscription) and delivery of periodicals are not provided in the specified draft Code.

Pursuant to effective law, by 1 January 2000, domestically produced wine, grape and fruit wines, vermouths, cognacs and brandies are subject to excise duty at the rates lower than those levied on the same products brought into the customs territory of Ukraine. Also, sales of cars, trucks, passenger automobiles and motor bikes manufactured by Ukrainians enterprises of all forms of ownership (on condition that such enterprises will be producing no less than 1,000 items per year) are exempted from the excise duty until 1 January 2007. The draft Tax Code envisages the cancellation of the said privileges.

Question 81.

Do the provisions of the draft Tax Code address these WTO inconsistencies and those in the operation of the VAT? If not, what legislation is in preparation to remedy these departures from WTO provisions?

Answer:

At present Law "On Value Added Tax", No. 168/97, of 3 April 1997, contains the following provisions that do not comply with the GATT requirements:

- Law "On the Value Added Tax", No. 168/97, of 3 April 1997, Section 5.1.2, exempts from VAT sale (subscription) and delivery of periodical published mass media of domestic production; sale of books produced domestically; sale of pupil note-books, text-books and manuals;
- Law "On the Value Added Tax", No. 168/97, of 3 April 1997, Section 11.21, exempts agricultural producers from VAT on milk, cattle, poultry and wool as well as meat and dairy products they sell. The measure shall not expire until 1 January 2004;
- Law "On the Value Added Tax", No. 168/97, of 3 April 1997, Section 11.26, exempts from VAT materials, equipment and spare parts used in the production of sea vessels, engineering services performed for shipbuilding enterprises. The same law sets VAT rate for sale of products by shipbuilding enterprises to the state budget at zero; and
- Law "On the Value Added Tax", No. 168/97, of 3 April 1997, Section 11.29, exempts agricultural producers from VAT on goods they produce and sell. The measure shall not expire until 1 January 2001.

The draft Customs Code does not envisage the privileges referred to above.

Question 82.

Ukraine has three different taxation rates for VAT: 20 per cent, zero rate and exemption. Can you confirm that the national treatment principle applies in the case of VAT?

Answer:

Point 11.4 of the Law "On Value Added Tax" determines that VAT is an internal tax.

Along with this, VAT is calculated at a zero rate for goods sold exported outside the customs territory of Ukraine, as well as works (services) designed for use outside the customs territory of Ukraine.

So, the national treatment principle is observed in application of the VAT.

Question 83.

The Law No. 168/97, of 3 April 1997 "On value added tax" stipulates that "while crossing the customs territory of Ukraine, certain operations listed in the above-mentioned law are exempt from taxation, as well as critical, import of goods, whose VAT-free import is effective until 1 January 1999. This list has been repealed by law No. 1523-111 of 2 March 2000. What is the present VAT regime applicable to those critical goods?

Answer:

Pursuant to the Law of Ukraine "On the Value Added Tax", products (work, services) (former critical imports) shall be subject to taxation on general grounds.

Excise

Question 84.

Concerning the Ashkabad Agreement, Ukraine has stated that it considers the tax exemptions granted under 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. When does Ukraine believe it can eliminate these exemptions?

Answer:

Ukraine plans to eliminate these exemptions before the adoption of the Tax Code, which is planned to be adopted by the end of the current year or at the beginning of the next year pursuant to Resolution of the Supreme Rada of Ukraine of 13 July 2000 No. 1868-III "On the Use as a Basis of the Tax Code of Ukraine", which, if adopted in the version that has been passed by the Supreme Rada of Ukraine after the first reading, shall enter into force on 1 January 2002. The key goals of the Tax Code are that the Tax Code shall have to become a guarantor of stable tax law and an instrument ensuring the confidence of taxpayers in the State, as well as to exert a positive influence on the legalization of the economy.

Expansion of the base of taxation by virtue of elimination of exemptions, which are not directly related to social protections granted to low-income groups of the population, is not modification-oriented.

Currently, the Ashkabad Agreement is being used by the enterprises only for simplifying the customs procedures while importing and exporting the products. Exemptions from payment of duties VAT is exercised according to the bilateral agreements on free trade.

There have been no tax exemptions for trade conducted under the Ashkabad Agreement. The tax exemptions were provided under free-trade agreements.

The Agreement on general conditions and mechanisms of support of cooperation of production between the enterprises and industrial sectors of CIS countries was signed on 23 December 1993. In the Ukraine the Agreement was ratified through ratification of the Law of the Ukraine of 14 March 1995, No. 100/95-BP "On Ratification of the Agreement on general conditions and mechanisms of support of cooperation of production between the enterprises and industrial sectors of CIS" by the Supreme Rada. According to Article 14 the Agreement has an unlimited period of validity.

Question 85.

According to document WT/ACC/UKR/61, the excise is calculated in two ways (fixed rates in ECU per quantity of goods or rates in per cent of the sale price or customs value of the goods). In which cases and according to which criteria are these two methods used?

Answer:

Fixed excise rates per one unit of sold goods are applied to all excise goods, except for jewellery in which respect the excise duty is calculated in per cent of the sale price of goods.

See also answer to Question 59.

Question 86.

According to document 4310 of 7 July 2000 submitted to the seventh meeting of the Working Party held on the 12 July 2000, some excise duties have been harmonized as from 1 July 2000, i.e there is no discrimination anymore between imported and domestically produced products such as alcoholic beverages and tobacco.

Answer:

Discrimination between imported and domestically produced products such as tobacco products, alcoholic beverages and ethanol was cancelled on 1 July 2000.

Paragraph 11.4 of the Law of Ukraine "On the Value Added Tax" expressly determines VAT to be internal.

At the same time, operations for the sale of goods taken out of the customs territory of Ukraine, as well as for the sale of work (services) for the use and consumption beyond the customs territory of Ukraine shall be subject to a zero VAT rate.

Therefore, the principle of national treatment does apply in the case of VAT.

Question 87.

Has the excise rate for domestically produced product been increased to the level of the imported product or has the excise duty been reduced to the level of the domestically produced product? Please indicate the excise duty rates presently applicable to imported and domestically produced alcohol beverages (including beer), tobacco, jewellery, oil products and automobiles.

Answer:

Excise rates:

- For alcoholic beverages are set by Law of Ukraine of 7 May 1996 No. 178/96-BP "On Rates of Excise Duties and Import Tariffs for Ethanol and Alcoholic Beverages" (as amended);
- For tobacco products – by Law of Ukraine of 6 February 1996, No. 30/96-BP "On Rates of Excise Duties and Import Tariffs for Tobacco Products"(as amended);
- For cars – by Law of Ukraine of 24 May 1996 No. 216/96-BP "On Rates of Excise Duties and Import Tariffs for Certain Transport Vehicles and Tires to Them (as amended); and
- For oil products and jewellery - Law of Ukraine of 11 July 1996 No. 313/96-BP "On Rates of Excise Duties and Import Tariffs for Certain Goods (Products)" (as amended).

To solve the issue of social security the Ukrainian Government imposed the excise duty on a number of products. In 1999 this list was reduced and presently it includes products of four groups: alcohol beverages and spirits, tobacco products, some oil products, jewellery, automobiles and other vehicles. The list of products subject to excise was submitted (WT/ACC/UKR/90).

As to collecting duty in the amount indicated Ukraine reserves this right to itself for the existing list of excised products.

Question 88.

Document WT/ACC/UKR/38 lists the products which are subject to excise duties and for which Ukraine reserves its rights to levy customs duties up to 70 per cent *ad valorem*. Does Ukraine still maintain this reservation? If yes, on which products (HS number and description)?

Answer:

Excise duty was introduced in Ukraine for a number of products with the purpose of ensuring the social procurement by the Government of Ukraine. In 1999 the list of such products was significantly reduced.

Question 89.

Regarding discriminatory excise duty rates (page 5 of WT/ACC/UKR/81), will Ukraine commit to accord all imported products national treatment in excise taxation?

Answer:

Excise duty rates are uniform throughout all Ukrainian territory.

During purchases of import goods (products), the amount of duty levied thereon is calculated on the basis of their customs value. In the course of calculating such customs value, foreign currency is converted into Ukrainian national currency at the exchange rate of the National Bank of Ukraine that is effective on the day of filing a customs declaration

Question 90.

Could Ukraine please confirm that table on pages 21 to 27 identifies all the excise duties currently in place, including the products under excise duties, the duty rates, and, in the case of excise duty privileges, dates for removing these privileges? Could Ukraine also indicate its further plans for maintaining such excise duties?

Answer:

Products subject to excise duties include: alcohol beverages, petroleum, diesel, beer, ethanol, transport vehicles, tobacco products and jewellery. Excise duties are not levied: in case of sales of excise goods (products) for export for foreign currency; in case of sale of cars of special designation for disabled persons, cars of special designation; on sales of ethanol that is used for the production of medication and veterinary medicines.

Question 91.

Concerning excise taxes, WT/ACC/UKR/81 states that the discriminatory application of excise taxes on alcohol, wines, vermouths, cognac, raw wine materials; on certain tobacco products; and on automobiles, will expire on 1 January 2001, 1 July 2000, and 1 July 2007, respectively. Are these the only remaining differentials in the application of excise taxes between domestic and foreign goods?

Answer:

The application of excise duties (according to WT/ACC/UKR/81) to alcohol beverages, wines, vermouths, cognac and components for the production of wine shall be cancelled on 1 January 2001; excise duties for certain tobacco products had been in effect by 1 June 2000. The

application of excise duties to respective cars is expected to be cancelled with the adoption of the Tax Code

Question 92.

Why are snowmobiles and golf carts (8703.10) with relatively small engine size subject to an excise tax exceeding those of vehicles with smaller engines (e.g., 8703.21, 8703.22 and part of 8703.23) and equal to that of larger automobiles (e.g., the larger vehicles in 8703.23)?

Answer:

Snowmobiles and golf carts are luxury items.

Question 93.

Why is the category “cognac spirit,” subject to a zero excise duty rate, when the rate on all other distilled spirits in HS 2208 is 3 EURO/ 1 liter of 100 per cent spirit? Does the “cognac spirit category include all brandies, or only “cognac”, i.e., brandy from the cognac region of France?

Answer:

Due to the lack in Ukraine of sufficient quantities of raw materials for production of cognac and rather long technological process, a zero excise duty rate is introduced in respect of cognac spirit.

The “cognac spirit category” includes brandies and cognacs.

Question 94.

The excise tax rate for “filterless cigarettes (for Ukrainian enterprises)” is not listed in the chart listing other such tax rates. In light of the requirements of Article III of the GATT, we would be interested in knowing how it might differ from the rate applied to imports of similar products, i.e., 10 Uah/100 pcs?

Answer:

It complies with the requirements of Article III GATT.

Question 95.

On what basis does the excise tax differ for 2710.00 410 and 2710.00 450, i.e., 20 EURO/1000 kg for medium distillates for specific processing operations and 12 EURO/1000kg for medium distillates: for chemical transformations in processing operations other than those provided in Category 2710.00410.

Answer:

Rates of excise duties are set depending on expenses connected with the processing of medium distillates.

Excise duties are levied on “medium distillates,” depending on expenditures for the processing of “distillates”, namely: for specific processing procedures (goods coded under GS 2710 00 410) the excise duty rate is set at 20 Euro for 1,000 kg., and for chemical transformations not specified in 2710 00 410 (code 2710 00 450) – 12 Euro for 1,000 kg.

Question 96.

“Information to the Seventh Meeting” states that the excise rate for ethanol used by domestic producers for production of spirit juices, fruit drinks, shirts and perfumes, and for filterless cigarettes manufactured domestically will be less than that applied to comparable imported products through 1 July 2000. It also states that domestic production of grape and fruit wines, vermouths, cognacs and brandies will have a lower excise rate than that applied to similar imported products through 1 January 2001. Finally, “Information” states that no excise duty will be levied until 2007 on revenues from sales of cars, trucks, passenger automobiles and motor bikes manufactured from foreign and Ukrainian made components and parts by Ukrainians enterprises of all forms of ownership on condition that such enterprises will be producing no less than 1000 items per year. These provisions are a violation of Article III of the GATT and should be eliminated.

Answer:

Excise duty rates for ethanol used by domestic producers for production of spirit juices, fruit drinks, shirts and perfumes are cancelled.

Excise duty rates for grape and fruit wines, vermouths, cognacs and brandies of domestic production shall be in effect until 1 January 2001.

Exemptions from excise duties on sales of cars, trucks, passenger automobiles and motor bikes manufactured from foreign and Ukrainian made components and parts by Ukrainians enterprises of all forms of ownership on condition that such enterprises will be producing no less than 1,000 items per year are expected to be cancelled with the adoption of the Tax Code.

See also answer to Question 80.

Question 97.

During the 12 July Working Party meeting, Ukraine indicated that exemption from the 20 per cent VAT of imports from Russia was “temporary.” Are imports from Russia also exempt from other taxes and from customs fees? When does Ukraine believe it will be in a position to remove the exemption for imports from Russia?

Answer:

According to Article 1 of the Agreement between the Government of Ukraine and the Government of the Russian Federation on free trade relating to products, originating from the customs territory of Russia duties, taxes or fees that have equivalent impact on export or import are not applied. It is a forced step that goods of Russian production or those imported from Russia are free not only from import duty, but also from tax due to appliance of VAT for exporting its goods to Ukraine by the Russian side. Ukraine will consider the issue of cancellation of individual mode for goods imported from Russia (90 per cent of which make energy resources) immediately after Russia will have introduced the “designation country” principle for VAT in relation to Ukraine.

Question 98.

WT/ACC/UKR/61, the Memorandum on Taxation Regime, states that with the exception of Russia and Belarus, Ukraine now applies VAT to imports based on the destination principle, i.e., imports from all other CIS countries are subject to application of the VAT in the same manner as imports from other countries. Can Ukraine confirm that this is true.

Answer:

Pursuant to sub-point 3.1.2 of Article 3 of the Law of Ukraine “On the Value Added Tax”, the object of taxation shall include operations for the bringing (mailing) into the customs territory of Ukraine and receipt of work (services) that are provided by non-residents for the use or consumption thereof within the customs territory of Ukraine, including operations for the in-bringing (mailing) of property under lease (rent) agreements, pledge and mortgage agreements without specification of the country;

Currently, import of goods from all CIS countries (except for Russia) is subject to application of the VAT in the same manner as imports from other countries.

Question 99.

What plans does Ukraine have to establish the destination principle in the application of VAT to imports from Russia and Belarus, to eliminate the violation of MFN treatment represented by the tax exemption?

Answer:

Pursuant to Resolution of the Cabinet of Ministers of Ukraine of 22 June 1999 No. 203 “On the Repeal of Resolution of the Cabinet of Ministers of Ukraine of 18 February 1998 No. 203”, the Agreement between the Government of Ukraine and the Government of the Republic of Belarus on Free Trade has lost its effect.

VAT for imported goods is not applied in trade relations between Ukraine and Belarus after the multilateral Agreement on the order of appliance of indirect taxes for imported and exported goods (works, services) entered into force.

Question 100.

We seek a commitment providing that the discrimination against imports in Ukraine’s excise tax system be eliminated as soon as possible, but no later than the date of Ukraine’s accession to the WTO, and that all of Ukraine’s domestic taxes will be applied in conformity with Article III of the GATT from the date of accession. We would want to see this enacted in law prior to accession.

Answer:

These provisions are anticipated in the draft Tax Code.

After adoption of the Tax Code of Ukraine the issue of discrimination against import in the excise duty system will be solved.

Question 101.

Can Ukraine confirm that the list in Document WT/ACC/UKR/78 lists all the excisable goods and that the excise duties mentioned apply to national and imported goods according to Article III GATT principle?

Answer:

The listed excise duty rates are applied to domestic and imported goods pursuant to Article III GATT, except for exports for foreign currency: in respect of sales of cars of special designation for

disabled persons; sales of cars of special designation; volumes of sales of ethanol used for production of medication and veterinary medicines, sales of cars, trucks, passenger automobiles and motor bikes manufactured from foreign and Ukrainian made components and parts by Ukrainians enterprises of all forms of ownership on condition that such enterprises will be producing no less than 1,000 items per year.

Question 102.

In document WT/ACC/UKR/61 it is indicated that the draft of a Tax Code is under preparation. Could Ukraine give more details on its main elements?

Answer:

We inform you that the draft Tax Code of Ukraine (registration number VRU - No. 3266-1, of 20 June 2000) was passed in the first reading by the Supreme Rada of Ukraine on 13 July 2000.

(l) Rules of origin

Question 103.

The “Information to the Seventh Meeting” does not address Ukraine’s current or prospective regime for application of rules of origin. Please cite and describe the current legal regime for rules of origin.

Answer:

The rules for determining the country of origin of goods are provided in Article 18 of Law of Ukraine No. 2097-XII of 5 February 1992 under which:

The country of origin of goods shall be understood as the country in which the goods were fully produced or substantially processed or reprocessed. Goods completely produced in one country shall include:

- mineral deposits, extracted within the country’s territory or economic zone;
- plant products grown in its territory;
- live animals raised in it;
- products made from live animals in this country;
- hunting and fishery products and sea products produced in it;
- sea products produced or caught at the ocean by this country’s vessels or by vessels rented (freighted) by this country;
- waste materials that result from production and other activities performed in this country; and
- goods manufactured in this country exclusively from products specified in items “a” to “g” of this Article.

Processing or reprocessing shall be considered substantial, if:

- declared goods are classified in tariff lines other than materials or products that were originated in third countries and were used to manufacture the declared goods; and
- the value added amounts to less than 50 percent of the value of the declared goods.

The following technological operations may not be considered as substantial processing:

- operations related to safekeeping of the goods when such goods are stored or transported;
- the preparing of goods for sale or transportation (breaking into smaller packs, preparing shipments, arranging and repackaging);
- usual assembling operations; and
- mixing goods (components) without making characteristics of the product substantially different from characteristics of the components.

Question 104.

Please confirm whether or not current law provides for the right of importers or other concerned parties to request a ruling on origin for imports subject to both preferential and non-preferential import regimes, as provided for in Article 2(h) and Annex II, paragraph 3(d) of the WTO Agreement on Rules of Origin.

Answer:

At present this provision is not applied. Determination of country of origin is carried out immediately at the time of customs clearance of goods.

Making a preliminary decision on determination of country of origin is provided for under the draft new Customs Code of Ukraine.

Question 105.

In providing this information, please indicate specifically whether an exporter, importer or any person with a justifiable cause can request an assessment of the origin of a product and that Ukraine authorities will issue the assessment, valid for three years, within 150 days of the date of receipt of the request.

Answer:

At present this provision is not applied. Determination of country of origin is carried out immediately at the time of customs clearance of goods.

Making a preliminary decision on determination of country of origin is provided for under the draft new Customs Code of Ukraine.

Question 106.

Could Ukraine provide an English translation of the portions of the draft Customs Code that deal with rules of origin and other customs procedures and requirements?

Answer:

We are providing an electronic copy of the draft Customs Code (WT/ACC/UKR/88). The draft Law of Ukraine "On Rendering Invalid the Law of Ukraine "On the export duty for live cattle and leather raw materials" is being considered by the Supreme Rada of Ukraine.

The Supreme Rada of Ukraine is considering the draft Law of Ukraine "On setting seasonal coming-out (export) duties on sunflower seeds", which provides for setting ten per cent export duty from 1 November till 1 March. Upon adoption of this Law, the effect of the Law of Ukraine "On Export Duty Rates for Selected Oil Seed Cultures" will be terminated. There are no plans on applying duties to other goods under the codes 1-24 of the CFTC.

2. Export Regulation

(b) Customs tariff nomenclature

Question 107.

We would appreciate a status report on the planned repeal of the laws "on the export duty for live cattle and leather raw materials" and "on export duty rates for certain sunflower seeds" (page 5 of WT/ACC/UKR/81). Also, will export duties remain on any product after the repeal of export duties on those products? If so, which ones?

Answer:

The draft law of Ukraine "On Recognition of the One that Lost its Force the Law "On Export Duty for Livestock and Leather Raw Materials" is presently being considered by the Supreme Rada of Ukraine.

Also under consideration in the Supreme Rada is the draft law "On Establishment of Seasonal Export Duties for Sunflower Seeds" that stipulates establishing of export duty in the amount of 10 per cent for the period from November 1 to March 1. Once this law is adopted the law "On Rates of Export Duty for Seeds of Some Oil Crops" will be repealed.

Appliance of export duty for other goods according to codes CN FEA 1-24 is not stipulated.

3. Internal policies affecting foreign trade in goods

(b) TBT and (c) SPS

Question 108.

We have reviewed the information contained in WT/ACC/UKR/64, WT/ACC/UKR/66, WT/ACC/UKR/73, and WT/ACC/UKR/81, which give information on Ukraine's current TBT and SPS systems and indicate that Ukraine is striving to address the issues raised at previous Working Party meetings on this issues and to make changes in its TBT regime to eliminate measures that act as arbitrary and unnecessary barriers to trade. We also take note of WT/ACC/UKR/76, 80, 82, and 83.

Answer:

Draft laws of Ukraine "On Standardization", "On Conformity Assessment" and "On Accreditation of Bodies of Conformity Assessment" are submitted (WT/ACC/UKR/87).

Draft of normative and legislative act "On Establishing the National Accreditation Body" will be prepared once the corresponding draft law is adopted. Presently with the help of Federal Institute of Research and Testing of Materials of Germany training of the group of Ukrainian experts on studying of basic international and European documents and establishing of normative and legislative base for ensuring the body's activities.

Derzhstandard prepared draft resolution of the Cabinet of Ministers "On Introduction into National Technical Legislation of Ukraine of the Directives of EU, as well as international and European standards". The plan that is attached to the draft resolution stipulates introduction of 12 EU directives and over 1,000 European standards into the technical legislation of Ukraine in 2001. It is projected to develop such a plan every year. The draft is under consideration in the Cabinet of Ministers of Ukraine.

Question 109.

Please complete the checklist on TBT and SPS compliance contained in WT/ACC/8 in light of both current laws and these draft instruments.

Answer:

The table of TBT and SPS Compliance alongside with the regulations of draft Laws “On Standardization”, “On Conformity Assessment” and “On Accreditation of Authorities on Conformity Assessment” (WT/ACC/UKR/86).

Question 110.

We note that WT/ACC/UKR/82 and WT/ACC/UKR/83 name an enquiry point. Is this functional? What legislation established it? Please report on the operation of the TBT and SPS enquiry points.

Answer:

Creation of such GATT/WTO enquiry points as a part of the national automatized enquiry fund of standards is conditioned by Ministerial Resolution No. 84 of 1 February 1995. Derzhstandard takes steps to provide its functioning according to requirements of ISO regulations and according to TBT Agreement regulations. Within Tacis Project “Standardization and Certification in Ukraine” part of equipment was received. To provide the functioning of the enquiry point, Ukrainian versions of catalogues of international standards ISO and IEC and European standards EN were prepared. Electronic version of the mentioned catalogues is nearly completed. Now English version of normative documents of Ukraine is being prepared. The center prepares notifications for Secretariat of WTO and responses to enquiries of trade partners of Ukraine.

Question 111.

We note the action plan relating to implementation of the requirements of the TBT and SPS Agreements (WT/ACC/UKR/73) circulated in August 1999 and seek Ukraine's advice on progress in its implementation, including on any elements, which may have not proceeded according to the timetable. In any future action plans, we consider it would be highly desirable to have separate action plans on the steps that will be taken by Ukraine to achieve conformity with TBT and SPS Agreements, and to identify actions that will be taken in relation to specific provisions in these Agreements.

Answer:

During the period indicated draft laws for making changes and amendments to the laws of Ukraine “On Ensuring Sanitary and Epidemic Safety of the Population” and “On Quality and Safety of Food Products and Product Raw Materials” were prepared. Information on conformity with TBT and SPS agreements (workplans and measures) was submitted (WT/ACC/UKR/86).

Harmonization of Ukrainian legislation with TBT requirements.

The main action on harmonization of Ukrainian legislation with the requirements of the Agreement on Technical Barriers to Trade is the development of legislation which constitute a basis for reforming the system of technical regulation of the goods' market access.

The drafts of laws “On Standardization”, “On Accreditation of the Conformity Assessment Bodies” “On Conformity Assessment” were developed by the Derzhstandart of Ukraine with

participation of all interested parties. These laws introduce a new progressive system of technical regulation which significantly differs from the currently existing one and establishes new relations between producers and the state controlling and supervising bodies, in particular – the level of social partnership. The draft laws constitute a single complex, have a common ideology and supplement each other.

The draft law “On Standardization” stipulates direct introduction of International and European standards, application of the basic principle of their voluntariness. According to the International and European practices, standards cease to be obligatory. The establishment of the obligatory requirements is now transferred to the legislative acts, such as technical regulations.

The draft law “On Conformity Assessment” introduces a new notion of “technical regulation on the conformity assessment”, which imposes the schemes for conformity assessment and obligatory requirements to the potentially harmful types of goods on the safety thereof for peoples’ health and life and environmental protection. A new and very important point in this law is the application of the producer’s declaration on conformity with the requirements established for the certain types of goods instead of mandatory certification in line with the currently existing List of Products subject to mandatory certification.

The draft law “On Accreditation of Conformity Assessment Bodies” is bringing Ukrainian accreditation system into compliance with International and European rules and procedures in the conformity assessment area. By establishing the National independent body on accreditation, it will institutionally divide the functions of certification and accreditation, which are currently performed by Derzhstandart.

The adoption of the Law of Ukraine “On Accreditation of the Conformity Assessment Bodies” and establishment of the National body of Ukraine on accreditation will give an opportunity for Ukraine to apply for the allied membership in the European Accreditation Association (EA) and the International Accreditation Forum (IAF).

Due to the lack of funding, most actions determined by the Resolution of the Cabinet of Ministers “On Measures for Gradual Introduction in Ukraine of European Union Directives, Sanitary, Ecological, Veterinary and Phytosanitary Rules, and International and European Standards” No. 244 of 19 March 1997, were either suspended, or did not launch.

Before the adoption of the above drafts, Derzhstandart is making steps to adjust the existing system of technical regulation to the requests of industry and Ukrainian trade partners.

The List of Goods and Services Subject to Obligatory Certification in Ukraine is being translated and reduced. So, the orders of Derzhstandart of:

14 June 1999, No. 323 excluded the low-power electric engines, compressing engines, film viewers, electric-beam tubes, transformers, remote control devices and tuners, etc.;

29 December 1999, No. 418 excluded: chemical and photography products, travelling cranes, jib cranes, piler cranes, fluxes, reinforced-concrete frames, reinforced-concrete girders for building coatings for industrial and agricultural enterprises, video cameras, etc.;

27 March 2000, No. 241 excluded: ceramic tiles for internal facing, detergents, oil filters, elements thereof, oil system automobile pumps, clutches, gimbal drives, suspension springs, electronic controlling devices, automatic equipment for the domestic appliances control, switchers for the domestic and analogous stationary appliances, etc.

24 July 2000, No. 449 excludes section 33 "Repair Services and Technical Services of Vehicles and Components Thereof".

Before adoption of the laws "On Reinforcement of Responsibility" and "On the Responsibility of Suppliers for Production and Sale of Low-Quality and Dangerous Products", the Derzhstandart Order No.247 of March 30, 2000 amended the DSTU 3413-96 by way of introduction of additional certification scheme – "type certification" for certain types of goods of quantity production. In particular, it concerns the electric and electronic appliances, building materials, detergents, etc. Along with this, the validity term of the conformity certificate was prolonged: till 2 years – according to the scheme, with production examination, and till 3 years – with accreditation of production. Introduction of the "type certification" will significantly reduce the expenses for certification, especially that on-the-spots certification will become unnecessary.

The Derzhstandart Order No.457 of 25 July 2000 amends the DSTU 34-13-96 and DSTU 3419-96 in terms of prolonging the validity term of the conformity certificate till five years according to the scheme, with the quality certification system.

At the Derzhstandart initiative, for the simplification of the customs clearance of shipments of the kindred products, as well as separate shipments in the scope of one application for certification, the Cabinet of Ministers adopted the Resolution "On Amendment of Point 3 of the procedure for Customs Clearance of the Imported Goods (Products) Subject to Obligatory Certification in Ukraine" No. 1672 of 8 November 2000, which was approved by the Cabinet of Ministers Resolution No. 1211 of 4 November 1997.

Moreover, the Derzhstandart has prepared and introduced into the Cabinet of Ministers a Draft Law "On Amendment of Article 4 of the Law of Ukraine "On State Regulation of Imports of Agricultural Produce". The draft envisages exemption from the List of Products Subject to Obligatory Certification in Ukraine of raw materials, which are imported by the manufacturers exceptionally for processing, live animals of all kinds, fish, poultry, incubation eggs, flower cuts, as well as biologically active additives, which are distributed via pharmacies. The adoption of the law will eliminate a double control by the supervising bodies.

II. Opening of the TBT Information Center.

Opening of the GATT/WTO Enquiry Point as a component part of the National Information Standards Fund is determined by the Cabinet of Ministers Resolution No. 84 of 1 February 1995. However, because of the absence of funds, provisions of this resolution are not fulfilled. Derzhstandart is seeking opportunities to provide for the Point's functioning in accordance with the ISO Statute requirements and requirements of the Agreement on Technical Barriers to Trade. In the scope of TACIS project "Standardization and Certification in Ukraine", a part of equipment was obtained. To ensure functioning of the Enquiry Point, Ukrainian language catalogues of ISO and IEC standards were prepared, as well as European EN standards. The electronic version of the above mentioned catalogues is under construction. The English language catalogue of Ukrainian legislation is being developed. The Enquiry Point is preparing the Notifications for the WTO Secretariat and submit answers to the Questions from trading partners of Ukraine.

III. Harmonization and Improvement of the National Standardization System.

The basic standards of the state standardization system will be reviewed after the adoption of the Law of Ukraine "On Standardization". Draft national standards were prepared: "On Standardization. Rules and Methods of Application and Implementation of International Standards" on the basis of regulations of the ISO/IEC Directive 21; "The National Standardization System. Code of the Set Standardization Rules" with consideration of the ISO/IEC Directive 59, as well as the draft

national standard: Rules for Notifying the Trading Partners”. The final readings of the noted documents will be prepared after adoption of the Law.

IV. Development of the Procedure for Further Harmonization of Rules and Regulations of the UkrSEPRO Conformity Assessment Procedures with Internationally Recognized Regulations. Changes on the simplification of the certification procedure were introduced into the DSTU 3413-96 “Certification System Ukrcepro. Procedure for Certification of Products”. A copy of the document will be submitted.

With a view of further development of the voluntary certification of products, processes, works and services in Ukraine, further harmonization of the certification rules with European regulations, staged introduction of a modular approach in the conformity assessment, considering the EEC 93/465 EU Directive requirements, the Derzhstandart Order No. 2 of 10 January 1999 approved the Procedure for the Introduction of a Modular Approach in the Conformity Assessment, with Consideration of the European Union Directives.

After adoption of the Law “On Conformity Assessment”, a set of legislative acts of the national certification system will be reviewed and a legislative act “On the Modules of Conformity Assessment, which are Used in Technical Directives on Harmonization, and Rules for the Application and Utilization of the CE Compliance Marking” will be prepared.

Information of the reduction of the List of Products Subject to Obligatory Certification in Ukraine is comprised in Part I.

Question 112.

We also understand that Ukraine is adopting EU standards in some instances and we would note that this practice does not necessarily comply with the requirements of the TBT Agreement (article 2.4) and the SPS Agreement (article 6.1).

Answer:

Ukraine is trying to follow in full the requirements of TBT agreement (Article 2.4) and SPS agreement (Article 6.1)

Question 113.

With respect to Ukraine’s Memoranda on SPS (WT/ACC/UKR/66/Add.1 and WT/ACC/UKR/73, we would be grateful for Ukraine’s responses to the following Questions: Under the Partnership and Cooperation Agreement between Ukraine and the EC, the Ukraine Government is establishing legislation that permit DerzhStandart and other agencies to adopt EU standards, technical and SPS regulations for various products. What legislative steps Ukraine will take to ensure all international standards are being equally recognized on the science-basis and risk assessment mechanism so as to give equal opportunity to all exporters?

Answer:

Ukraine thoroughly follows the regulations of Article 2 of the SPS agreement, and developing sanitary measures is governed by the national (that does not contradict to the international ones) and corresponding standards related to assessment of life and health hazard. In Ukraine sanitary measures equally apply to both imported and domestically produced goods.

(b) **Technical regulations and standards**

Question 114.

We also note that while TBT measures are not explicitly identified as such in Ukraine's revised tariff offer of April 2000, certification requirements are included which appear likely to relate to technical barriers to trade. We seek information set out in tabulated form on Ukraine's steps to achieve conformity with the TBT Agreement: identifying the products that are subject to any technical regulations and conformity assessment procedures (including any labelling requirements, measures to protect consumers from deceptive practices, measures to protect the environment, certification requirements as well as any other measures that would be covered by the TBT Agreement); for each product, describing the measures applied and their purpose; for each measure, identifying relevant documentation authorising their application (laws, regulations etc.); and where actions are required to achieve WTO conformity, outlining the actions that will be taken.

Answer:

The List of products subject to compulsory certification in Ukraine contains references to normative/legislative documents pursuant to which certification is undertaken and the compulsory requirements and control methods are set forth. Upon approval of the Law of Ukraine "On Conformity Assessment" and the Law of Ukraine "On the Responsibility of Suppliers for the Output and Sale of Low Quality and Hazardous Products," the said list will be revised.

Web-site of Derzhstandart of Ukraine at its temporary address <http://www.leonorm.lviv.ua/dstu.htm> contains the List of products subject to compulsory certification in Ukraine, as well as Derzhstandart's Orders on the said List's reduction.

Question 115.

In WT/ACC/UKR/63, Ukraine states that certain products can only be imported if the importer has a certificate of compliance with Ukrainian quality standards. Please provide the HS number and description of all products currently subject to Ukraine quality standards.

Answer:

The list of all products that are required to meet quality standards of Ukraine was provided (WT/ACC/UKR/80).

Question 116.

Ukraine has indicated that the enactment of three additional laws and two draft Ministerial Resolutions will implement its WTO obligations under the TBT Agreement, i.e., the draft Laws "On Standardization," "On Accreditation (of laboratories?)," and "On Conformity Assessment," and draft Ministerial Resolutions "On the Establishment of the National Accreditation Center" and "On the Direct Application of International and European Standards." Please provide copies of these draft legal instruments and updated information on their status.

Answer:

Draft Laws "On Standardization", "On Recognition of Conformity" and "On Accreditation of Conformity Assessment Bodies" are submitted (WT/ACC/UKR/86). The indicated draft Laws are now being reviewed by the Supreme Rada of Ukraine.

Draft Ministerial normative and legal Resolution “On the Establishment of the National Accreditation Center” will be prepared after adoption of the corresponding draft Law. Today, with the assistance of German Federal Research- and Materials Testing Institute, a group of Ukrainian specialists are trained for studying the fundamental international and European documents for establishment of normative and legal base for in order to ensure the body’s activity.

Derzhstandard has prepared a Ministerial Resolution “On the Establishment in the National Technical Legislation of Ukraine the EU directives and International and European Standards”. The Plan attached to the Resolution presupposes implementation into technical legislation of Ukraine 12 directives of the European Union and more than 1,000 European standards in 2001. Such plan is going to be performed annually. Now this Resolution is being reviewed by the Cabinet of Ministers of Ukraine.

Question 117.

Please provide information on the guidance or legislation which will ensure Ukraine authorities and standardization bodies comply with obligations to publish draft standards, technical regulations and conformity assessment procedures; allow sufficient time for public comment; and, take those comments into account before finalization of a particular measure.

Answer:

According to Article 7 of draft Law “On Standardization”, development and managing of national center of International enquiry point ISONET, which is supposed to provide service in the sphere of standardization according to the requirements of the WTO, is one of the functions of the national standardization body. According to regulations of Article 11 of draft Law “On Standardization”, the term of consideration of the national standard draft and sending in comments on it must not be less than 60 days after it was published.

Question 118.

Please identify the publications where draft measures are published for prior comment (if not already identified in the checklist requested).

Answer:

Draft laws Of Ukraine “On Standardization”, “On Recognition of Conformity” and “On Accreditation of Conformity Assessment Bodies” are printed in “Standardization, Certification, Quality” magazine, that is published by Derzhstandard. Besides, they are placed on Derzhstandard’s web site at the temporary address (<http://www.leonorm.lviv.ua/dstu.htm>). English variants of the draft laws will be placed in the next issue of the Ukrainian “WELCOME” investment magazine.

Question 119.

WT/ACC/UKR/73, the Memorandum on TBT and SPS, lists various tasks for Derahstandart, the Health Protection Ministry, and the Agricultural-Industrial Complex in the context of addressing issues raised in the Working Party discussion, but does not specify which agency is responsible for which task, nor does it indicate if these tasks were actually completed or what legal instruments were involved in implementing them. Nor does it have a legislative action plan or time-table for addressing the deficiencies identified by Working Party members in Ukraine’s current regime. Some of these elements are promised in an “annex” to the Memorandum, which we do not have. Please prepare a document addressing these issues for circulation prior to the next Working Party meeting.

Answer:

Please see answer to Question 111.

Question 120.

Please update the information contained in WT/ACC/UKR/73 listing measures taken or being taken to implement the WTO Agreement on TBT and in the light of the three additional laws and two draft Ministerial Resolutions which Ukraine has identified as necessary for implementation of the TBT Agreement. Please provide information in tabular form illustrating Ukraine's progress in implementation, from drafting, through Ministerial approval, submission to the Rada, readings before the Rada, and actions taken.

Answer:

Draft Law	Sending for consideration to the Cabinet of Ministers	Consideration at Government Committee and Ministerial Meeting	Sending to the Supreme Rada	Consideration By the Supreme Rada's Profile Committees
"On Standardization"	August	September	27 September 2000	October, November
"On Accreditation of Authorities on Conformity Assessment"	May	July	9 July 2000	October, November
"On Conformity Assessment"	May	July	9 July 2000	October, November

The draft Laws are planned to be reviewed in the first reading as a single item during the sixth session of the Supreme Rada.

Question 121.

On page 1 of WT/ACC/UKR/73, in the first box, Ukraine indicates that the completion date for a draft law on "Ukraine's accession to the WTO," is dependent on "Ukraine's accession to the WTO." Please elaborate on this. Is the draft law, "Ukraine's accession to the WTO" a reference to Ukraine's draft instrument of ratification, or is it a reference to a law with specific provisions relating to Ukraine's implementation of specific WTO Agreements (e.g., the draft law on standardization)? If the latter, please describe the content of this law.

Answer:

Report on how the TBT implementation Plan is carried out will be submitted.

Draft law "On Accession of Ukraine to the WTO" is not yet prepared for consideration by the Supreme Rada, but such a law will be a ratification tool.

Question 122.

Does the draft law on conformity assessment or other documentation provide guidance to Ukraine authorities in this regard? Does it oblige them to consider the use of international standards, guidelines and recommendations where available, relevant and appropriate to their needs?

Answer:

Draft Law "On Standardization" provides direct implementation of the international and European standards, adoption of fundamental principle of their voluntarism. According to international and European experience standards stop to be mandatory for execution. In connection to this, establishment of mandatory requirements goes to legislative acts, such as technical regulation. It is in the second draft Law "On Recognition of Conformity" a new term "technical regulation on recognition of conformity" is applied, that establishes mandatory requirements to life protection, health protection, environment protection for potentially dangerous types of products. Regulations of Article 5 - taking into account international practice - provide adoption of the International ways of recognition of conformity, depending on potential risk; implementation of identical procedures of recognition of conformity for goods of Ukrainian and foreign origin; harmonization of normative and legislative acts on recognition of conformity with International and European acts. Article 6 of the draft law establishes authority of the executive body in the area of recognition of conformity.

Question 123.

Ukraine states in WT/ACC/UKR/64 that it uses Mutual Recognition Agreements for recognition of conformity of certification procedures of other countries. Whereas the TBT Agreement foresees the consideration of mutual recognition agreements as but one option for facilitating the acceptance of conformity assessment results. Other options include, for example, providing national treatment to foreign-based conformity assessment bodies when accreditation is used as the mechanism for assuring confidence in conformity assessment results. The choice of option will depend on an evaluation of alternatives by the regulatory authority and in the light of assessing risks, costs and other factors. Nothing in the TBT Agreement prescribes the mandating of conformity assessment procedures. Sometimes laws and other penalties are sufficient to provide regulatory authorities with confidence that products will conform to specified requirements. Please provide information on the process by which Ukraine authorities evaluate among options for assuring product conformity to technical regulations (including, e.g., evaluating the possibility that no positive assurance of conformity is mandated by the government, as foreseen in TBT Article 5).

Answer:

Rules and procedures of conformity assessment in Ukraine are applied in the same way for both home and foreign products. This applies to testings for standards conformity, sequence of certification testings, sizes and types of payments, dataware, etc. According to Article 17 of the Decree of the Cabinet of Ministers of Ukraine dated 5 October 1993 No. 46-93 "On Standardization and Certification" producers, suppliers, executors, sellers of products that are subject to mandatory certification and are sold on the territory of Ukraine, regardless of the country of origin, are obliged to conduct the certification of their products in accordance with terms and procedures specified.

This regulation meets Article 5.1.1 of TBT Agreement about providing not less favourable regime for suppliers from other WTO member-countries.

Recognition of conformity of certification must be performed on a mutual basis in the process of harmonization of Ukraine's technical regulation system with the requirements of Article 6 of TBT Agreement of the World Trade Organization, Agreement about Partnership and Cooperation between Ukraine and EU, through participation of Ukraine in the international and local accreditation and certification organizations and also through achieving bilateral agreements about mutual recognition.

Question 124.

On page 5, paragraph 5 of WT/ACC/UKR/64, Ukraine states that "negotiations on the possibility of cooperation on mutual recognition of conformity in some areas, namely telecommunications, medical equipment, and oil and gas is taking place." Could Ukraine provide further information on the status of these discussions, e.g., which countries, whether they are actual negotiations and whether there is a timeframe for their conclusion?

Answer:

Negotiations on cooperation in the issues of harmonization of assessment conformity standards and rules in the field of telecommunications, medical equipment and equipment for oil and gas took place within the framework of the meetings of the Committee for Trade and Investments (hereinafter the "CTI") of Kuchma-Gore Ukrainian-American Intergovernmental Commission, as well as during the meetings between the representatives of Derzhstandart (the State Committee of Ukraine for Standardization, Metrology and Certification) and American Institutions ANSI and NIST. Thus, the seminar "Problems and Experience of Certification in the Field of Telecommunications" was held in Kyiv in June of 2000. The said seminar was held with participation of Ukrainian and American specialists pursuant to an agreement achieved at the sixth meeting of the CTI. However, the American party did not support the proposals of the Ukrainian party on organizing a seminar for Ukrainian producers of oil and gas equipment on the issues related to access of the pipe products into the market of the United State of America.

Cooperation on mutual recognition of conformity assessment is carried out on the basis of agreements concluded between the governments of the countries or between Derzhstandart of Ukraine and national certification bodies (if such exist in the countries). For the current moment, 46 agreements with 32 countries were signed (19 of them - on the governmental level).

Question 125.

In WT/ACC/UKR/64, Ukraine states that "Documents indicated in the list explain the certification and standards systems in Ukraine," and states that copies of these laws have been provided to the WTO Secretariat. Please provide a concise explanation to the Working Party on how Ukraine's certification system works, in practice, for imported and domestic goods and what changes are contemplated to meet WTO norms and/or are foreseen in the draft law on conformity assessment.

Answer:

Rules and procedures of conformity assessment in Ukraine are applied in the same way for both home and foreign products. This applies to testings for standards conformity, sequence of certification testings, sizes and types of payments, dataware, etc.

According to Article 17 of the Decree of the Cabinet of Ministers of Ukraine dated 5 October 1993 No. 46-93 "On Standardization and Certification" producers, suppliers, executors, sellers of products that are subject to mandatory certification and are sold on the territory of Ukraine, regardless of the country of origin, are obliged to conduct the certification of their products in accordance with terms and procedures specified. This regulation meets Article 5.1.1 of TBT Agreement about providing not less favourable regime for suppliers from other WTO member-countries.

Basic requirements, concerning certification procedure, processes and types of service are stated in state standard 3413-96 "Certification System UkrSEPRO". Regulation on Products Certification". Regulations of state standard are applied to both domestic producers and importers.

According to international experience, draft Law "On Recognition of Conformity" introduces declaration of meeting the requirements established.

Question 126.

In addition, if they have not already been provided, we would appreciate receiving a copy of the laws listed by Ukraine in its Memorandum on Technical Barriers to Trade (WT/ACC/UKR/64) and other documentation relevant to the changes that will be made to bring the current regime into line with the WTO Agreement.

- **Decree on Standardization and Certification**
- **Decree on State Supervision over the Observance of Standards, Norms and Rules and Responsibility for their Violation, Ukraine No. 3410-96, 3411-96, 3412-96, and 3413-96.**

Answer:

Draft laws "On Standardization", "On Confirmation of Conformity" and "On Accreditation of Conformity Assessment Bodies", Decrees of the Cabinet of Minister "On Standardization and Certification", "On State Supervision over the Observance of Standards, Norms and Rules, and Responsibility for their Violation", samples of state standards 3410-96, 3411-96, 3412-96 and 3413-96 are submitted (WT/ACC/UKR/86).

Question 127.

Ukraine states in WT/ACC/UKR/64, that "further work is underway on reviewing the list of products that are subject to mandatory certification taking into account international and European practice and the potential risk for consumers as to the protection of human health, citizens' property and the environment." Information is also provided in WT/ACC/UKR/76 and WT/ACC/UKR/80, which appears to indicate that Ukraine is reducing the number of products subject to mandatory standards. Please provide updated information on the process for reviewing whether a standard should be mandatory and/or a product subject to mandatory certification requirements. Have any additional products been removed from the list of those subject to mandatory standards? those subject to mandatory certification? How long does Ukraine believe this review will take?

Answer:

With respect to the reduction of the number of products, it is to be mentioned that according to the orders dated:

- Order dated 14 June 1999 No. 323 electric engines of low capacity, engine compressors, television tubes, E-beam tubes, transformers, remote control devices, etc are reduced;
- Order dated 29 December 1999 No. 418 chemical and photo production, bridge cantilever and piler cranes, fluxes, ferroconcrete farms, ferroconcrete bearers for covering industrial buildings and agricultural enterprises, video cameras, etc are reduced;
- Order dated 27 March 2000 No. 241 ceramic tiles for internal use, detergents, oil filters and their parts, automobile oil pumps of oil engines, clutches, gimbal drives, suspension springs, electronic controlling devices, switches for home and analogous stationary units, etc are reduced.

- Order dated 24 July 2000 No. 449, and registered in the Ministry of Justice on 3 August 2000 No. 483/4704, part 33 “Services on repair and technical maintenance of road vehicles and their parts” is reduced.

Texts of orders are placed on the Derzhstandard’s web-site at the temporary address (www.leonorm.lviv.ua/dstu.htm).

On the initiative of Derzhstandard, in order to simplify customs procedures of similar product consignments, and individual consignments within one application for certification by the Cabinet of Ministers, there is a resolution adopted 11 August 2000 No. 1672 “On Making Changes to Item 3 of the Order of Customs Registration of Imported Goods (Products)” that are Subject to Mandatory Certification in Ukraine, which was approved by the resolution of the Cabinet of Ministers No. 1211 dated 11 April 1997.

In addition to that, Derzhstandard prepared and submitted to the Cabinet of Ministers a draft law of Ukraine “On Making Amendments to Article 4 of the Law of Ukraine “On State Regulation of Importing Agricultural Products”. The draft presupposes extraction from the list of products mandatory for certification in Ukraine, raw materials that are brought in by processing companies exclusively for industrial processing, live animals of all kinds, fish, poultry, incubatory eggs, sheared flowers, as well as bio-active additions that are sold through pharmacy network and healthcare institutions. Adoption of the law will make it possible to avoid double check from supervisory bodies.

In the list of products that are subject to mandatory certification in Ukraine, the telecommunication equipment is occupying four positions in section 18 “Means of Communication”, and their quantity did not grow since 1993.

Question 128.

Can Ukraine please explain and provide documentation on how technical regulations, standards and conformity assessment procedures are currently developed and contrast this with the new system contemplated in the draft legislation?

Answer:

In order to design and develop state standards and to commence working on standardization in compliance with the international standards, a network of 138 technical committees (TC) was established. At the moment 71 Ukrainian TC’s are working in cooperation with 278 technical committees, ISO subcommittees, 37 TC’s with 174 technical committees, and IEC subcommittees. The order of the development of the Ukrainian state standards, set by Derzhstandard 1.2-93, which is to be reviewed after adoption of the law “On Standardization.”

Development of technical regulations is determined by draft laws of Ukraine “On Standardization” and “On Conformity Assessment”.

Question 129.

What role does the public and foreign stakeholders currently play in the development of standards and mandatory regulations and how will this change, based on the new legislation?

Answer:

Draft law “On Standardization” presupposes establishment of collegial and consulting advisory body at the Cabinet of Ministers of Ukraine – Standardization Council – which will represent executive authority bodies, national body of standardization, representatives of enterprises, academies

of sciences, and public organizations. As far as participation of foreign representatives in the process of development of legal and regulatory basis is concerned, European experts working under the Tacis and World Bank Project will be involved into consideration of draft laws. In addition to that, new draft laws were represented at the round table, which took place at the European Business Association. Foreign stakeholders - if they wish - may join the work of technical committees.

Question 130.

How does the Ukraine incorporate international standards in this process?

Answer:

Introduction of international standards is performed in compliance with the rules, set by Directive ISO/IEC 21. On its basis, a corresponding draft of Ukrainian state standard is developed.

Question 131.

Is the Catalogue and Reference Book "State Standards of Ukraine" and the Bulletin on Documents of Standardization, Metrology and Certification a publicly available publication? How can a copy be obtained?

Answer:

The Catalogue and Reference Book "State Standards of Ukraine", that is published every month, the Bulletin on Documents of Standardization, Metrology and Certification, that is published every quarter, and Information Index Book "Standards" can be obtained at the Ukrainian Science and Research Institute of Standardization, Certification and Informatics (USRISCI), as well as in shops of standards in Kyiv and Kharkiv. Application form for printing publications of the USRISCI, and the Information sheet on this Question will be submitted.

Ukraine states in WT/ACC/UKR/64 that its movement from pre-market certification to post-market surveillance of standards compliance depends on the passage of a product liability law, "On the Responsibility of a Supplier for the Production and Selling of Substandard and Hazardous Products" and a relevant list of products subject to mandatory certification. Ukraine indicates the Draft Law introduced by the Cabinet of Ministers into the Supreme Rada at the end of February 1999. What is the status of this draft Law? When will it be enacted?

Answer:

The Draft Law "On the Responsibility of a Supplier for the Production and Selling of Substandard and Hazardous Products", adopted by the Supreme Rada in the first reading is presently being reviewed by the committees of the Supreme Rada. This draft law is expectedly to be adopted in 2001, once a complex of draft laws "On Standardization", "On Conformity Assessment", "On Accreditation of Conformity Assessment Bodies" is adopted, and the approach to conformity assessment therein contained considered.

Question 132.

Page 2, paragraph 1, of WT/ACC/UKR/64 outlines the agencies involved in "normative base updating." Please clarify this statement. Does it relate to Ukraine's review of mandatory standards to confirm whether or not they can be justified and classified as technical regulations (which are mandatory) or voluntary standards (which are not mandatory)?

Answer:

The process of updating of the normative base presupposes introduction of international and European standards. The Decree of President No. 1072 dated September 2000 approves the Program of integration of Ukraine in the EU. The Program outlines principal assignments in the sphere of technical regulation for the period of 2000-2007. The major assignments are introduction of 97 directives in the sphere of standardization, certification, accreditation, metrology and 7,650 European standards. Derzhstandard prepared the draft resolution of the Cabinet of Ministers, which presupposes introduction of 12 EU directives, and over 1,000 international and European standards into the national technical legislation in 2001. The draft is presently being reviewed by the Cabinet of Ministers of Ukraine.

Question 133.

Is there a strategy in place in Ukraine for coordination of this review process?

Answer:

Priorities of development of legislative, and normative and legal acts in industrial areas, including areas of technical regulation are determined by the Cabinet of Ministers Activity Program, annual state program of economic and social development of Ukraine. As to the adoption of technical regulations (Governments Decrees) in the legally regulated area, they are confirmed by the Cabinet of Ministers of Ukraine according to the Decree dated 6 May 2000 No. 915. According to Article 6 of the draft law "On Recognition of Conformity", coordination of activity of central executive power in the area of mandatory recognition of conformity and organization of development of normative and legal acts is conducted by the specially authorized central body of executive power – Derzhstandard.

Question 134.

Page 3, paragraph 1 of WT/ACC/UKR/64 states, "As per Ukraine's accession to Geneva Agreement 1958 Namely a decrease in the number of visits on importer's plants and discrimination of "private importers," production examination at importers plants is being carried out in order to check whether enterprises create conditions for stable production of products by the indices that are in line with the effective legal and normative acts of Ukraine." We would appreciate Ukraine's assistance in identifying the 1958 "Geneva Agreement" referred to and in explaining what this statement means.

Answer:

On 10 February 2000 the Supreme Rada of Ukraine adopted the Law on accession of Ukraine to the Agreement on acceptance of common technical inscriptions for wheeled vehicles, equipment units and parts, which can be placed and/or used on wheeled vehicles, and on conditions of mutual recognition of formal approvals, issued on the grounds of these inscriptions (Geneva Agreement 1958 with amendments 1995, The Committee for Home Transport of the UN European Economic Commission).

Adoption of this law will make the process of recognition of type certification for vehicles and inscriptions for spare parts and components for the countries, members of the Geneva Agreement 1958 simpler. The rules of certification that are to be reviewed due to Ukraine's accession to Geneva Agreement, will determine the procedures of recognition of conformity for small series and one-person vehicles.

Question 135.

Please explain whether the "non-private" importers referred to are these domestic firms importing goods for further manufacture and whether they are subjected to the same types and level of examination and inspection as domestic firms that do not import?

Answer:

Rules and procedures of conformity assessment in Ukraine are applied in the same way for both home and foreign products. This applies to testings for standards conformity, sequence of certification testings, sizes and types of payments, dataware, etc. According to Article 17 of the Decree of the Cabinet of Ministers of Ukraine dated 5 October 1993 No. 46-93 "On Standardization and Certification" producers, suppliers, executors, sellers of products that are subject to mandatory certification and are sold on the territory of Ukraine, regardless of the country of origin, are obliged to conduct the certification of their products in accordance with terms and procedures specified.

Derzhstandard prepared and submitted to the Cabinet of Ministers a draft law of Ukraine "On Making Amendments to Article 4 of the Law of Ukraine "On State Regulation of Importing Agricultural Products". The draft presupposes extraction from the list of products mandatory for certification in Ukraine, raw materials that are brought in by processing companies exclusively for industrial processing, live animals of all kinds, fish, poultry, incubatory eggs, sheared flowers, as well as bio-active additions that are sold through pharmacy network and healthcare institutions. Adoption of the law will make it possible to avoid double check from supervisory bodies.

Question 136.

What exactly does "conditions for stable production of products by the indices that are in line with the effective legal and normative acts of Ukraine" mean? What are those conditions?

Answer:

This means that while conducting inspections, enterprises are checked for the conditions of stable production of products by safety indices that are in line with the effective Ukrainian legislation.

Question 137.

Page 4, paragraph 1 of WT/ACC/UKR/64 states, "Introduction of any standard requires substantial financing to improve production and to create a modern examination base ...". It goes on to say that the introduction and implementation of international standards will only be possible when "essential funds" are provided." Can Ukraine be more specific? What is the intended source of the "substantial financing" and "essential funds" referred to?

Answer:

By estimates of Ukrainian experts, based on experience of the East European countries – candidates to join the EU – annual financial need of activities on introduction of international and European standards should be 12-15 mln. UAH (approximately \$2.5 mln).

Question 138.

Nothing in the TBT Agreement requires it adopt international standards that are not appropriate or relevant to its needs. Please outline the process and/or criteria that Ukraine has established to evaluate the appropriateness of international standards in the light of its domestic infrastructure and other needs.

Answer:

The principal assignments in the sphere of technical regulation for the period of 2000-2007 are outlined in the Program of integration of Ukraine into the EU, and which is approved by the Decree of the President No. 1072 dated 14 September 2000. The major assignments are introduction of 97 directives in the sphere of standardization, certification, accreditation, metrology and 7,650 European standards. Derzhstandard prepared a draft resolution of the Cabinet of Ministers, which presupposes introduction of 12 EU directives, and over 1,000 international and European standards into the national technical legislation in 2001. The draft is presently being reviewed by the Cabinet of Ministers of Ukraine. The development of such a plan is to take place once a year.

Question 139.

On page 5, paragraph 5 of WT/ACC/UKR/64, Ukraine states that "negotiations on the possibility of cooperation on mutual recognition of conformity in some areas, namely telecommunications, medical equipment, and oil and gas is taking place". please clarify what "taking place" means in this context, i.e., with what countries and in what timeframe?

Answer:

Negotiations on cooperation in the issues of harmonization of assessment conformity standards and rules in the field of telecommunications, medical equipment and equipment for oil and gas took place within the framework of the meetings of the Committee for Trade and Investments (hereinafter the "CTI") of Kuchma-Gore Ukrainian-American Intergovernmental Commission, as well as during the meetings between the representatives of Derzhstandart (*the State Committee of Ukraine for Standardization, Metrology and Certification*) and American Institutions ANSI and NIST. Thus, the seminar "Problems and Experience of Certification in the Field of Telecommunications" was held in Kyiv in June of 2000. The said seminar was held with participation of Ukrainian and American specialists pursuant to an agreement achieved at the sixth meeting of the CTI. However, the American party did not support the proposals of the Ukrainian party on organizing a seminar for Ukrainian producers of oil and gas equipment on the issues related to access of the pipe products into the market of the United State of America.

Negotiations on cooperation in the issues of harmonization of assessment conformity standards and rules in the field of telecommunications, medical equipment and equipment for oil and gas took place within the framework of the meetings of the Committee for Trade and Investments (hereinafter the "CTI") of Kuchma-Gore Ukrainian-American Intergovernmental Commission, as well as during the meetings between the representatives of Derzhstandart (*the State Committee of Ukraine for Standardization, Metrology and Certification*) and American Institutions ANSI and NIST. Thus, the seminar "Problems and Experience of Certification in the Field of Telecommunications" was held in Kyiv in June of 2000. The said seminar was held with participation of Ukrainian and American specialists pursuant to an agreement achieved at the sixth meeting of the CTI. However, the American party did not support the proposals of the Ukrainian party on organizing a seminar for Ukrainian producers of oil and gas equipment on the issues related to access of the pipe products into the market of the United State of America.

Question 140.

In document WT/ACC/UKR/59, in the answer to Question No. 5, Ukraine was stating that 'labelling language shall be subject to compulsory approval by the Ministry of Health Protection of Ukraine'. Is this rule still applicable? If so, does it apply to all food products? Does this rule imply that the labelling has to be approved by the Ministry before a product can be put on the market? Does Ukraine believe that such a requirement complies with the principles of proportionality and least trade-restrictiveness?

Answer:

Article 18 of the Law of Ukraine “On Protection of Consumers’ Rights” establishes the right of consumers to obtain necessary, available and reliable information on goods (works and services) which ensures a possibility of correct choice of such goods (works and services). The said Article also establishes general requirements for information on goods (works and services), as well as in what way such information should be given to consumers.

Article 7 of the Law of Ukraine “On Quality and Safety of Food Products and Food Raw Materials” regulates the requirements for labelling of food products. The requirements for labelling established in the said Article fully complies with the requirements of Section I “Labels and Requirements” of FAO/WHO Food Standards of the Codex Alimentarius Commission. Text that will be used in labelling of special food products is subject to compulsory approval by the Ministry of Health Protection of Ukraine. Without a permission of the Ministry of Health Protection of Ukraine, it is not allowed to give information on remedial properties of domestic and imported food products in a labelling.

Labelling of alcoholic beverages and tobacco products is effectuated pursuant to Article 11 of the Law of Ukraine “On State Regulation of Production and Trade in Ethyl Alcohol, Cognac and Fruit Spirits, Alcoholic Beverages and Tobacco Products.”

Article 18 of the Law of Ukraine “On Protection of Consumers’ Rights” establishes the right of consumers to obtain necessary, available and reliable information on goods (works and services) which ensures a possibility of correct choice of such goods (works and services). The said Article also establishes general requirements for information on goods (works and services), as well as in what way such information should be given to consumers.

Question 141.

Is Ukraine now accepting translations of labels that correspond to relevant Codex Alimentarius norms, as it announced it would in its answer to Question No. 8 in document WT/ACC/UKR/59? Have specific rules been enacted in the meantime to that effect? If so, can Ukraine provide the relevant texts?

Answer:

Partially procedures of recognition are introduced in the draft law “On Making Changes and Additions to the law “On Securing of Sanitary and Epidemic Safety of the Population”.

In the near future it is planned to develop a draft law, by which changes will be made to the laws “On Quality and Safety of Food Products and Product Raw Materials” and “On Protection of the Population Against Infectious Diseases” in accordance with the standards, instructions and recommendations, established by the Codex Alimentarius Commission.

Question 142.

Foreign companies doing business in Ukraine have been complaining repeatedly about cumbersome and expensive inspections of production plants as part of the certification requirements. Have any steps been taken by Ukraine to abolish or reduce these requirements? If so, have specific rules been enacted? If not, is Ukraine considering taking steps in the near future with a view to abolishing or significantly reducing these requirements? Would such reforms be linked with the introduction of alternative conformity assessment procedures? Would this be part of the new law on conformity assessment, which is currently being prepared?

Answer:

Payment for the certification services is effectuated pursuant to the “Rules for Determination of the Cost of Works” approved by Derzhstandart’s Order No. 100, dated 10 March 1999. The Ministry of Justice of Ukraine registered the said order. The “Rules for Determination of the Costs of Works” have been published in the “Standards” Information Directory, No. 3 of Year 1999. Web-site of Derzhstandart (<http://www.leonorm.lviv.ua/dstu.htm>) also contains the “Rules for Determination of the Cost of Works.” Amount of the payment is determined through norms of labor-intensiveness of works undertaken during the certification. Implementation of a so-called scheme “type certification” (Derzhstandart’s Order No. 247, dated 30 March 2000) will decrease significantly the certification costs because there will be no necessity to undertake field (*i.e., production plants*) inspections.

After the approval of the draft Law of Ukraine “On Conformity Assessment,” payment for conformity assessment works will be effectuated pursuant to the rules. The Cabinet of Ministers of Ukraine shall establish the said rules.

Question 143.

Has any step been taken recently with a view to simplifying conformity assessment procedures with regard to electrical and electronic products? In particular, can Ukraine confirm that cumbersome certification requirement for individual consignments have been abolished? Are any further steps in that direction being considered (e.g. removal from the list of products subject to compulsory certification for lower risk appliances)?

Answer:

Prior to the approval of the Law of Ukraine “On Conformity Assessment” and the Law of Ukraine “On the Responsibility of Suppliers for the Output and Sale of Low Quality and Hazardous Products”, Derzhstandart’s Order No. 247, dated 30 March 2000, amended DSTU 3413-96 (the State Standard of Ukraine) regarding implementation of the additional certification scheme, in particular: “type certification” for certain types of full-scale production items. Specifically, this relates to electronic and electric devices, construction materials and detergents. In such situation, the validity of a conformity certificate has been extended up to two years under the scheme with the inspection of production and up to three years with the attestation of production. Implementation of the scheme “type certification” will decrease significantly the certification costs because there will be no necessity to undertake field inspections.

Derzhstandart’s Order No. 457, dated 25 July 2000, amended DSTU 3413-96 and DSTU 3419-96 on the extension of the validity of a conformity certificate up to five years under the scheme with the certification of quality system.

Question 144.

For at least some categories of products, certificates issued by Ukrainian certification bodies have a limited validity (one to three years apparently). Can Ukraine specify for which products this is the case? How is the duration of individual certificate determined? Does it depend on the type of product? Is Ukraine planning to take measures to remove these limitations? In particular, will Ukraine remove the current limits on the duration of conformity certificates for motor vehicles?

Answer:

On 10 February 2000, the Supreme Rada of Ukraine approved the Law of Ukraine “On Ukraine’s Accession to the Agreement concerning the Adoption of Uniform Technical Prescriptions

for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the basis of these Prescriptions (the Geneva Agreement of 1958, as amended with effect from 1995, Inland Transport Committee of the UN Economic Commission for Europe).

Approval of the above Law of Ukraine will promote recognition of a type certification for vehicles, as well as prescriptions on spare parts and components for Member States of the Geneva Agreement of 1958. The certification rules, which must be revised in connection with Ukraine's accession to the Geneva Agreement, will provide for conformity assessment procedures for small series and individual vehicles.

Question 145.

Can Ukraine provide further details of the simplified procedure for renewing conformity certificates for automobiles which seems to be mentioned in the last paragraph to the reply to Question No. 24 in document WT/ACC/UKR/59?

Answer:

See answer to Question 146.

Question 146.

Can Ukraine give a detailed account of the steps that have been and are being taken with a view to the setting up of a TBT Enquiry Point, in line with the various requirements in Article 10 of the TBT Agreement? Can it confirm that the Enquiry point will be fully operational at the latest by the time of accession?

Answer:

Resolution of the Cabinet of Ministers of Ukraine, No. 84, dated 1 February 2000, provides for the creation of the GATT/WTO Enquiry Point as a component of the National Computer Information Fund of Standards. Derzhstandart of Ukraine carries out an activity in order to ensure the said Fund's functioning pursuant to the ISO Statute and provisions of the TBT Agreement. A portion of equipment has been received within TACIS project "Standardization and Certification in Ukraine." In order to ensure the activity of the above Enquiry Point, the Ukrainian versions of catalogues of the ISO and IEC international standards, as well as EN standards, have been prepared. An electronic version of the said catalogues is in the process of improvement. The English version of the catalogue of the Ukrainian normative documents is in the process of preparation. The said Enquiry Point prepares notification for the WTO Secretariat, as well as replies to inquiries of the trade partners of Ukraine.

Question 147.

Can Ukraine indicate in detail what requirements remain applicable to products that have been taken off the list of products subject to compulsory certification? Can it also provide consolidated, detailed lists (with HS codes) of the products that have been taken off the list (in three steps) and of those that remain on it?

Answer:

Copies of Derzhstandart's Orders on reduction of the List of products subject to compulsory certification in Ukraine, mentioning the HS codes that have been taken off the list, will be submitted.

Nevertheless, the requirements established pursuant to applicable laws (such as veterinary control, phytosanitary control, state registration, etc.) shall apply to products that have been taken off the List.

Question 148.

Can Ukraine provide the text of the draft law on conformity assessment?

Answer:

The draft Law of Ukraine "On Conformity Assessment" is submitted (WT/ACC/UKR/87).

Question 149.

With regard to various legislative actions relating to the requirements of the TBT Agreement which have been notified by Ukraine since the last meeting of the Working Party, we seek clarification of administrative arrangements taken, or still to be implemented, in connection with such legislation. For example, how will Ukraine ensure that there is no discrimination in the treatment accorded to former CIS countries and other WTO members, particularly where no bilateral agreement on mutual recognition is in place?

Answer:

Ukraine ensures the national treatment provided by the WTO provisions in relation to import goods. As to the CIS countries, results of the certification works are mutually recognized within the framework of agreements concluded with such CIS countries.

Question 150.

With regard to the draft law, "on responsibilities of suppliers for manufacturing and selling poor quality and hazardous produce" (WT/ACC/UKR/59/Add.3), we would welcome advice of administrative arrangements to ensure the requirements of article 5 of the TBT Agreement on conformity assessment procedures are adhered to, particularly in light of the responsibilities delegated to state inspectors. We also note that the draft law does not appear to provide for procedures for review of decisions on conformity assessment. What are Ukraine's plans in relation to review procedures?

Answer:

The draft Law of Ukraine "On the Responsibility of Suppliers for the Output and Sale of Low Quality and Hazardous Products" shall be revised after approval of the Law of Ukraine "On Conformity Assessment" and the Law of Ukraine "On Accreditation of Certification Assessment Bodies."

Question 151.

We seek advice of the extent to which Ukraine is basing its standards on those established by international standardization bodies, bearing in mind the requirement of article 2.4 of the TBT Agreement that where international standards exist or their completion is imminent members are required to use these as the basis for their own standards and a very similar requirement under article 3.1 of the SPS agreement. (Please note that by the term, international standards, we always mean international standards according to the WTO definition: the standards of any body or system whose membership is open at least to all WTO members. See paragraph 4 of annex 1 of the TBT Agreement, the preamble to and article 3.4 of the SPS agreement, and footnote 2 to the PSI Agreement.) What arrangements does Ukraine propose or have in place to

comply with these requirements? Where do matters currently stand on Ukraine's efforts to become a member of the Codex Alimentarius Commission, the International Office of Epizootics and the international and regional organizations operating within the framework of the International Plant Protection Convention?

Answer:

In 1996, Derzhstandart of Ukraine joined the Code of Fair Practice regarding preparation, approval and implementation of international standards. Ukraine's participation in the Codex Alimentarius Commission, the International Office of Epizootics and the international organization operating within the framework of the International Plant Protection Convention is under competence of the Ministry of Health Protection of Ukraine and the Ministry of Agrarian Policy of Ukraine.

Question 152.

In the Order of the State Committee of Ukraine on Standardization, Metrology and Certification - On Adopting the Certification Procedure for Foreign Full-Scale Production Items (No. 633 18 August 1998) it is foreseen, that the Ministry of Justice orders to "adopt the certification procedure for the foreign full-scale production items" in order to improve the certification procedure for these products. Does this mean that there are different certification schemes in place for national and foreign products?

Answer:

Approval of Derzhstandart's Order No. 633, dated 18 August 2000, was aimed at improvement of the certification procedure for foreign products, namely the procedure for consideration of application form, formation of the commission and decision-making. As to conformity assessment procedures and rules, such procedures and rules equally apply both to national and foreign products. This relates to compliance of conformity assessment with requirements of standards, the order for conducting certification tests, amounts and types of payments, information support, etc.

Question 153.

If so, could you please explain the differences and the reasons for derogations from Article 5.1.1 of the WTO TBT Agreement which establishes national treatment obligation for conformity assessment procedures?

Answer:

See answer to Question 153.

Question 154.

Could you specify which product categories are subject to this certification procedure?

Answer:

The force of the law is extended upon foreign products, which are produced on serial basis and included into the List of products subject to mandatory certification in Ukraine.

Question 155.

Does Derzhstandart envisage the recognition of conformity assessment procedures in other WTO Member States as stipulated in Article 6.1 of the WTO TBT Agreement? If so, what would be the preconditions?

Answer:

Recognition of conformity certificates should be undertaken on reciprocal basis in the process of harmonization of the Ukrainian system of technical regulation with Article 6 of the WTO TBT Agreement, the Partnership and Cooperation Agreement between Ukraine and the EC, as well as through Ukraine's participation in international and regional accreditation and certification organizations and entering into bilateral agreement with the trade partners on reciprocal recognition.

Question 156.

In the document (4310 - 7 July 2000) submitted to the seventh meeting of the Working Party held on 12 July 2000 it has been indicated that for the year 2000 Ukraine will introduce a "modular approach to determining compliance on the basis of suppliers' conformity assessment declaration".

Answer:

Upon approval of the Law of Ukraine "On Conformity Assessment," move from the List of products subject to compulsory certification in Ukraine to conformity assessment for certain types of products, which may be hazardous for life and health of individuals and domestic animals, as well as property and environment, will be undertaken. The Cabinet of Ministers of Ukraine approves application of producers' conformity assessment declaration for certain types of products, if such application was established by technical rules on conformity assessment. The Supreme Rada of Ukraine will consider the first reading of the draft law on this matter in the nearest future.

Question 157.

What are the areas in which Ukraine foresees the introduction of the suppliers' declaration of conformity?

Answer:

The draft Law of Ukraine "On Conformity Assessment" establishes the general legal and organizational grounds for products' conformity assessment with those maintained in Ukraine. The said draft Law of Ukraine is aimed at ensuring uniform technical policy in the field of conformity assessment and covers producers, suppliers of products regardless of their ownership and type of activity, certification bodies, testing laboratories, as well as bodies of the executive power.

Question 158.

Will this have any effect on Order No. 633 of 18 August 1998 mentioned above?

Answer:

Upon approval of the Law of Ukraine "On Accreditation of Certification Assessment Bodies" and the Law of Ukraine "On Conformity Assessment," Derzhstandart's Order No. 633, dated 18 August 2000, will be revised.

Question 159.

In Decree of the Cabinet of Ministers of Ukraine on Standardization and Certification (No. 46 - 93) it is stated in Article 16 that there will be a special conformity mark. If Ukraine is about to implement EC New Approach Directives, as indicated in the document (4310) submitted to the seventh meeting of the Working Party held on 12 July 2000, will then the EC mark also be recognized? If so, wouldn't a special mandatory national conformity mark not be super-fluent?

Answer:

Ukraine will recognize the EC mark after implementation of the relevant EC directives into its legislation and recognition of the Ukrainian system of technical regulation by the trade partners of Ukraine. A national conformity mark is in effect in Ukraine pursuant to DSTU 2296-93.

(c) Sanitary and phytosanitary measures

Question 160.

We welcome the indications provided in Ukraine's revised tariff offer of April 2000 that SPS measures and certification requirements are applied to a number of products. We note that any certification requirement relating to the application of any measure to protect human, animal or plant life or health would in fact be an SPS measure under paragraph 1 of annex a to the WTO SPS Agreement. We seek information set out in tabulated form on Ukraine's steps to achieve conformity with the SPS agreement: identifying the products that are subject to SPS measures (including any relevant certification requirements); for each product, describing the measures applied and their purpose; for each measure, identifying relevant documentation authorising their application (laws, regulations etc.); and where actions are required to achieve WTO conformity, outlining the actions that will be taken.

Answer:

Such information is provided in the tables : "Mechanism of laws implementation in most actual areas of trade legal relationships: customs fees, custom assessment, import licensing, technical barriers of trade, sanitary and phytosanitary measures, protection of intellectual property rights" and "conformity of legal acts in trade-oriented area with the GAAT/WT requirements".

Under phytosanitary acts, Ukraine carries out phytosanitary control measures at the time of importation or transit of the following products: seeds, agricultural, forestry and horticulture plants and parts thereof (branches, offshoots, buds, roots, fruits, etc.), as well other plant products that may carry dangerous quarantine organisms, east, bacteria, viruses, insects, as well as agriculture machinery, tilling equipment, particular industrial goods, packaging, goods made of plant materials that can carry hazardous quarantine organisms, soil samples and transport vehicles that are brought from foreign countries or regions of Ukraine in which a special quarantine regime is established, that is consistent with requirements of international organizations EPPO and FAO (www.eppo.org, www.fao.org).

The List of products subject to compulsory certification in Ukraine establishes references to normative/legislative documents pursuant to which certification is undertaken and control methods are set forth. Paragraphs of normative/legislative documents which establish compulsory requirements to products may be found on web-site of Derzhstandart of Ukraine at its temporary address <http://www.leonorm.lviv.ua/dstu.htm>. The said List must be revised upon approval of the Law of Ukraine "On Conformity Assessment." Derzhstandart of Ukraine will inform the trade partners of Ukraine constantly on the results of undertaken activity in this regard.

Question 161.

Ukraine indicates that preference is given to measures that ensure the highest level of protection. Does Ukraine follow international standards, guidelines and recommendations as requested by the SPS Agreement in drafting national and import legislation?

Answer:

Yes, Ukraine always follows international standards, with the exception of the cases, where there is a scientifically substantiated necessity to apply protection of higher level to ensure specific conditions for safety of the population of Ukraine.

The draft Law of Ukraine "On Standardization" and the draft Law of Ukraine "On Conformity Assessment" provide for a priority in application of international and regional standards, norms and rules in the field of conformity assessment.

Question 162.

Imported goods are subject to control and admitted to the Ukraine territory only after custom clearance. Could Ukraine indicate if all imported goods are subject to control or else if only a limited number of products are subjected to inspection? If so, could Ukraine provide a list of products subject to control/inspection? Do Ukraine relevant services issue a certificate to accompany the consignment after the inspection or else they allow the goods to enter with the foreign certificate? If so, why? Are any fees charged for such certificates?

Answer:

According to Article 7 of the Law "On Quality and Safety of Food Products and Food Raw Materials", customs registration of imported food products is allowed only if the following documents are available: certificate of compliance, issued by Derzhstandard of Ukraine, veterinary permit, quarantine permit, permit for marking according to the Ukrainian legislation. All these requirements apply to the products subject to certification. List of these products is published in mass media. Imported products are accepted on the territory of Ukraine by certificate of compliance of Ukraine. There is a fee charged for product certification in Ukraine.

Relevant working tables of the plan specify Ukraine's jointing international agreements in the are of plant quarantine as one of the conditions of international cooperation and trade. To date such agreements have been signed with 12 countries, and currently agreements with India, Slovenia, Romania and Lithuania are being prepared, which allows to ensure compliance with phytosanitary control and plant quarantine rules on a bilateral basis, and also simplifies phytosanitary control procedures at the border points of entry.

Customs clearance of import goods subject to compulsory certification in Ukraine is effectuated pursuant the Resolutions of the Cabinet of Ministers of Ukraine, No. 1211, dated 4 November 1997, and No. 1672, dated 8 November 2000. Recognition of conformity certificates is effectuated on the basis of multilateral and bilateral Mutual Recognition Agreements. Conformity certificate or recognition certificate is a proof of recognition. Costs for issuance of conformity certificate or recognition certificate are calculated pursuant to the "Rules for Determination of the Cost of Works," approved by Derzhstandart's Order No. 100, dated 10 March 1999, and registered with the Ministry of Justice of Ukraine on 31 March 1999, under No. 194/3487.

Question 163.

Hygiene certificates and permits for sales are mentioned. Could Ukraine explain the difference between the above-mentioned document? Is the hygiene certificate preliminary to the permit for sale? Does the validity of the hygiene certificate cover the shelf life of the relevant products?

Answer:

Receipt of the hygiene certificate is preliminary to receipt of the certificate of compliance. There is no special document, permitting to sell a product. Term of validity of the hygiene certificate is one to three years. Term of validity of the certificate of compliance for the consignment is determined taking into account the product shelf life.

Question 164.

Ukraine states that the current system is aimed at control of products, which may have a negative influence on the people's health. How Ukraine would define products which may have negative influence on human health? How Ukraine differentiate between products which may affect people health from products which do not affect people's health? The approach followed by Ukraine may lead to discrimination as regards the products that are submitted to controls and the ones which are not submitted to controls.

Answer:

Products, which have a negative influence on people's health while using or consuming them, are products of potential risk. The level of this risk and the possibility of a negative influence are determined through sanitary and hygienic examination of new products, including analytical determination of content or absence of hygienically accessible level of hazardous substances that enter the human organism in 24 hours. Possibility of influence is also identified by means of state sanitary and epidemic supervision over production, sales and use of products and the condition of sanitary and epidemic safety of the population. Restriction or "discrimination" is only applied to those products that have a negative conclusion of the state sanitary and hygienic examination.

The Question regarding control over goods that, if used, could be hazardous to people's health, is not related to the phytosanitary issues, because the system of the government quarantine measures aimed at protecting plants, products of plant processing, raw materials, particular shipments, from quarantine organisms, is carried out to prevent importation or entry and spread of the latter in the territory of Ukraine.

Under Law of Ukraine "On veterinary medicine," selling imported animal products, raw materials and animal feed is allowed only after completion of a veterinary examination.

Article 4 of the Law of Ukraine "On the Responsibility of Suppliers for the Output and Sale of Low Quality and Hazardous Products" defines which products are considered of low quality and hazardous. The said Article also establishes requirements for prevention of importation, production, sale and use of low quality, hazardous or falsified food products, food raw materials and related materials.

Question 165.

Order 190 refers to a list of products subject to obligatory examination. Is this a positive or negative list of products? Does Ukraine apply the same principle and controls to imported and domestically produced goods? (Please make Order 190 available)

Answer:

The Order is repealed on the Ministry of Justice initiative.

Pursuant to Article 14 of the Decree of the Cabinet of Ministers of Ukraine “On Standardization and Certification,” Derzhstandart’s competence includes approval of the list of products subject to compulsory certification in Ukraine. However, the Order of the Ministry of Health Protection of Ukraine, No. 190, dated 20 October 1995, relates to goods subject to sanitary and hygienic expertise.

Question 166.

We understand that fees have been established for examination and issuance of certificates and necessary documentation. Does it equally apply to both imported and domestically produced goods? What do you intend for necessary documentation?

Answer:

As a sanitary measure state sanitary and hygienic examination equally applies to both imported and domestically produced goods. Cost of product examination is governed by cost value of analytical testing. Necessary document is the conclusion of the state sanitary and hygienic examination of quality and safety of product that is issued on the result of such examination free of charge.

A charge for a phytosanitary examination and issuance of phytosanitary documents (quarantine, phytosanitary certificates), a quarantine laboratory examination, issuing a quarantine permit for import (transit), is administered in accordance with established rates under the Order of the Cabinet of Ministers of Ukraine “On charges for examining quarantine materials services provided to enterprises, organizations and individuals” No. 953 of 24 November 1993, and the Order of the Cabinet of Ministers of Ukraine No. 1034 of 15 June 1999 “On administering fees at the national border points of entry,” and applies to both imported and domestic goods.

Table 1 of the “Rules for Determination of the Cost of Works,” approved by Derzhstandart’s Order No. 100 dated 10 March 1999, and registered with the Ministry of Justice of Ukraine on 31 March 1999, under No. 194/3487, indicates norms of labour-intensiveness and names of works undertaken by a certification body during certification of specific products.

Question 167.

When international standards are not followed does Ukraine carry out a risk assessment as requested by Article 3 of the Agreement on SPS? Which is the body in charge of carrying out the risk assessment for live animals and animal products?

Answer:

Yes, it does. A risk assessment is carried out while conducting state sanitary and hygiene examination by science and research and practical institutions of the Ministry of Healthcare for all kinds of products, and by bodies of the State Department of Veterinary Medicine for such products as live animals and animal products.

In assessing the risk level of quarantine hazardous organisms, Ukraine adheres to international standards FAO MKGZ. The FAO standards provide for the following stages:

- preliminary risk assessment stage, at which a hazardous organism that may be a quarantine organism for the importing country is identified, or possible ways of such organisms entering the importing country from the exporting country; and
- assessment of potential economic damage that may be caused by a hazardous organism within a particular territory, which is done to determine whether the harmful organism in Question has the status of quarantine organism. Under the MKZP definition, a quarantine organism is the organism that is of potential economic significance for the country in which it is not present, or present in limited quantities, and that is subject to the measures taken by the government to prevent its further spread.

Question 168.

It is not clear how the concept of science-based risk assessment will fit into Ukraine's standard setting and certification requirement. Could Ukraine provide more details regarding any risk assessment and risk management procedures in the Ukraine relating to human health, plant health, and animal health? For example, who in which agency is responsible for risk assessment and risk management; what is the procedure for initiating a risk assessment, how does the standard-setting procedure relate to this? Are there any plans underway to create an Enquiry Point and implement notification requirements, as required by Article 7, Annex B under the SPS Agreement?

Answer:

The issue of risk assessment in Ukraine relating to human life and health, animal health and environment protection is under competence of the Ministry of Health Protection of Ukraine.

Historically Ukrainian standards were developed in compliance with the zero risk concept that foresees the highest possible protection level. Transition to market economy requires reconsideration of the risk assessment system and its conformity with that practised by EU countries. In response to Question 168 it is indicated that it is institutions of the Ministry of Healthcare that deal with risk assessment. New products risk assessment is carried out at the stage of its introduction into production or importing into Ukraine through sanitary and hygiene examination both of products themselves and their normative documentation. There are hygienic norms, standards and other restrictions related to product's properties, level and conditions of consumption (use) introduced for products of high risk. It is planned to establish a national reference body, as it is stipulated by Appendix B of Article 7 of the Agreement on SPS.

Assessing the risk of importation of plants, Ukraine follows the FAO MKZR ФАО МКЗР standards on the basis of the data provided by the phytosanitary service of Ukraine, scientific and research organizations, and a final ruling of the Inter-agency committee of the Ministry of Agricultural Policy, Academy of Agrarian Science, and other interested agencies and organizations. Besides, Ukraine constantly has been providing information regarding rules of importation, transit or exportation of plant products through central and local press, and currently materials are being prepared to be made available on the web-site that will contain regulatory acts dealing with phytosanitary certification of quarantine materials.

Question 169.

Could Ukraine please provide a checklist describing what agri-food products are subject to SPS restrictions, what are the specific certification requirement and their scientific justification, the contact point?

Answer:

The list of products subjected to certification is determined by Derzhstandard of Ukraine. Certification procedure meets the requirements of ICO and EH standards. All certification requirements are substantiated by the state certification system UkrSEPRO and corresponding state standards.

Importation of goods that are subject to the veterinary medicine control service is allowed on condition of meeting the Veterinary requirements concerning importation of goods that are subject to the state veterinary medicine service's control.

Limitation regarding importation of plant materials in Ukraine also applies to those quarantine materials and materials subject to control that are infected by quarantine organisms, which is provided in the "Rules of phytosanitary control at the national border of Ukraine" and is consistent with international standards.

The List of products subject to compulsory certification in Ukraine establishes references to normative/legislative documents pursuant to which certification is undertaken and control methods are set forth. Paragraphs of normative/legislative documents which establish compulsory requirements to products may be found on web-site of Derzhstandart of Ukraine at its temporary address <http://www.leonorm.lviv.ua/dstu.htm>. The said List must be revised upon approval of the Law of Ukraine "On Conformity Assessment." Derzhstandart of Ukraine will be ready to inform the trade partners of Ukraine on the results of undertaken activity in this regard.

(d) Trade-related investment measures**Question 170.**

Could Ukraine establish a list of her TRIMs with in particular local content requirement and foreign exchange requirements?

Answer:

Taking into account the necessity to observe the current law of Ukraine "On Mode of Foreign Investment" in the part related to establishment of the national mode of investment activity for enterprises with foreign investments the Supreme Rada of Ukraine adopted the law "On Elimination of Discrimination in Taxation of Subjects of Entrepreneur Activity, Established with the Use of Property and Funds of Domestic Origin" dated 17 February 2000 No. 1457-III, which states that enterprises, established with the use of foreign investments, as well as objects (results) of joint activity at the territory of Ukraine with participation of foreign investments without creation a legal entity, including those created on the grounds of agreements (contracts) on production cooperation, joint production, cooperative activity, etc are subjected to currency regulation and taxation according to the rules, determined by the Ukrainian legislation for currency regulation and taxation of enterprises, established without participation of foreign investments, except for the cases when there is preferential tax treatment for enterprises created without foreign investment, stipulated by the Ukrainian legislation. Special legislation of Ukraine on foreign investment as well as state guarantees of foreign investment protection do not regulate issues of current Ukrainian currency, customs and tax legislation unless otherwise stipulated by international agreements of Ukraine.

The national legislation does not stipulate any discriminatory investment measures related to requirements of currency exchange both for foreign subjects of economy and domestic enterprises.

Question 171.

“Information to the Seventh Meeting” indicates that draft legislation is in development to change Ukraine’s TRIM requiring “AutoZAZ-Daewoo” to maintain 70 per cent local content on its automobile output to receive certain investment privileges to a requirement of “70 per cent workplaces in Ukraine” instead. What does “70 per cent work places in Ukraine” mean?

Answer:

The Law of Ukraine “On Amendment of Some Laws on State Support of Automobile Production” was drafted. This draft law amends the Law of Ukraine “On Stimulating Production of Automobiles in Ukraine” No. 535/97 of 19 September 1997 in that part, which says about 70 per cent of localization of production. The draft does not establish requirements of 70 per cent workplaces.

The draft Law of Ukraine “On amendments to Law of Ukraine ‘On supporting automobile production’” proposes to eliminate the provision dealing with localization of the manufacturing in the territory of Ukraine at the level of 70 per cent. The draft Law does not have any provisions regarding numbers of jobs.

Question 172.

Will Ukraine apply the TRIMs Agreement at the date of accession?

Answer:

Ukraine will join the TRIMs Agreement in its accession to the WTO.

(e) State-trading practices

Overview of state support for Ukrainian entities engaged in foreign economic activity (WT/ACC/UKR/70)

Question 173.

This document concludes that "the bulk of so-called privileged legislation in the industrial sector, has not been implemented". Thus, a Member strongly feels that the remaining privileged legislation in the industrial sector should be amended in such a way to be fully consistent with the WTO agreements – thus, enhancing the transparency and the predictability of the Ukrainian trade regime. Do the Ukrainian Authorities intend to abolish or at least amend in a WTO compatible way this privileged legislation and, subsequently, in which time frame this could occur?

Answer:

Presently, a series of legislative acts that grant privileges to enterprises and economy sectors are being effective, including:

Paragraph 2. Agreement on subsidies and countervailing measures.

- Law of Ukraine “On carrying out an economic experiment involving the metallurgy and mining complex enterprises.” The Law is in effect until 1 January 2002, which is why we deem it inappropriate to amend it;
- Law of Ukraine “On writing off and restructuring tax debts incurred by enterprises manufacturing tractors and harvesting machines.” The Law provides for deferring

- payment of the tax debt until 1 January 2003, and that is why we deem it inappropriate to repeal it;
- Order of the Cabinet of Ministers of Ukraine No. 39-p of 18 January 1999 "To overcome the payment crisis and stabilize the economic and financial conditions of Krivorozhstal". By this Order the Cabinet of Ministers of Ukraine has provided the mining-metallurgic enterprise "Krivorizhstal" with a number of privileges that are to expire on 30 July 2000, which means that by the time of Ukraine's accession to the WTO the Order will no longer be in effect; and
 - Law of Ukraine "On writing off debts of the Open Stock Company 'AvtoZaz'." All requirements of the Law have been met. At present the Law is not in effect.

Paragraph 6. Trade-related investment measures.

- Law of Ukraine "On supporting automobile manufacturing." The Cabinet of Ministers of Ukraine has submitted to the Parliament of Ukraine the draft Law "On amendments to particular laws regulating the automobile market in Ukraine," under which paragraph 3 of Article 2 is to be amended. The said draft law is scheduled for final approval in the first quarter of 2001.

Paragraph 13. Article I, GATT 94, (General Most Favorable Regime)

- Agreement on general terms and mechanisms of supporting the development of the CIS. Article 5 of this Agreement provides that parties shall not apply import duties, taxes, excise taxes and quantitative limitations with respect to goods that are supplied under cooperation arrangements, within the customs regimes on reprocessing. This Agreement shall be repealed on Ukraine's accession to the WTO (approximately in 2002).

Government procurement

Question 174.

Does Ukraine intend to join the Government Procurement Agreement immediately after her accession?

Answer:

Ukraine intends to join GPA after its WTO accession. We deem that the observer status will benefit the process of joining GPA.

Question 175.

Does Ukraine intend to become an observer member before the accession?

Answer:

We deem that the observer status will benefit the process of joining GPA.

Question 176.

Could Ukraine give statistics on government procurements by category of products, by thresholds and by entities?

Answer:

The state reporting on government procurement bids (tenders) for 1999 was pilot and related only to the central bodies of the state executive power. Taking into account the general character of the reported data, the Ministry of Economy of Ukraine did not prepare a separate analytical report on the 1999 statistical data. Along with it, the quarterly analysis of economic situation is practiced in Ukraine. It is a constituent of the relevant Governmental decision about actions on the improvement of the situation. This decision comprises a part dealing with the status and directions of the improvement in the government procurement area. The mentioned governmental decision is placed in the form of resolution in Interned after its' approval. Next year, the Ministry of Economy of Ukraine is going to twice a year prepare the reports on the development of the government procurement system, on the basis of statistical reporting also, and publish them in the bulletin "Visnyk (Herald) on State Procurement" (and on its site also).

Question 177.

We welcome Ukraine's intention to join the WTO Agreement on Government Procurement? Could Ukraine please confirm that it intends to join this Agreement on the day it joins the WTO?

Answer:

Ukraine intends to join GPA after its WTO accession.

Question 178.

The Law of Ukraine "On Procurement of Goods, Works and Services for National Needs" No. 1490 - III was adopted on 22 February 2000. Under item 3.8 (1), it is stated that "Subordinate legislation providing for the implementation of this Law shall be adopted within a 3-month period after the enactment of this Law." When will the Law be enacted? Has the necessary subordinate legislation been drafted?

Answer:

The Law of Ukraine "On the Purchase of Goods and Services for the State Needs" came into effect 14 July 2000. In order to implement the provisions of the Law, the Cabinet of Ministers of Ukraine adopted a Resolution, prepared by the Ministry of Economy, No. 1469 of 27 September 2000 "On Organizational Measures on the Functioning of State Procurement System". Moreover, the Government has prepared a number of draft legislative acts, among which is the draft law "On Amendment of Certain Laws of Ukraine in Connection with the Adoption of the Law of Ukraine "On the Purchase of Goods and Services at the State Expense" (the list of legislative acts is submitted in documents WT/ACC/UKR/85 and 86).

Question 179.

It is noted that "The law requires publication of announcement on the anticipated government procurements in "News on Government Procurement" issues by the Ministry of Economy. How often is this notice published? Where is it made available? Is there a fee charged for the document?

Answer:

Announcements on the beginning of the procurement procedures, legislative-normative acts on government procurement and information useful for the readers are published in the analytical

information bulletin of the Ministry of Economy of Ukraine “Visnyk (Herald) on Government Procurement” twice a month, free of charge. The bulletin is distributed only on a pre-payment basis. Most of the subscribers are business structures – potential suppliers/performers. Subscribers who have e-mail, can obtain an electronic version together with the hard copy.

Question 180.

Under item 3.8 (2), it is stated that “The web page is under construction for internet users, and connection to the EU information database TED (Tender Electronically Daily) is underway.” Is the web-site referred to this case the site located at <http://www.vdz.ukrnet.net/> and referred to in document WT/ACC/UKR/75/Add.1 dated 19 April 2000? When will the link to the EU information database be established?

Answer:

The Ukrainian language web-site of the bulletin “Visnyk (Herald) on the Government Procurement” is www.vdz.ukrnet.net. Next year it’s design is going to be improved, and the site – regularly updated. Moreover, the Ministry of Economy of Ukraine intends to officially address the EU on the possibility to place Ukrainian announcements about bids in TED (Tender Electronically Daily), notwithstanding that the European Union is very carefully considering opportunities of countries, not members of the European Union, in informational supply to TED.

Question 181.

Under item 3.8 (3) it is stated that “With the purpose of re-enforcing control and monitoring of government procurements, State Statistical Reporting on conducting government procurement came into force in the 1st quarter of 2000, starting with the publication of the 1999 report.” Is this report made available to the public? Will a copy of the reports be filed with the WTO?

WT/ACC/UKR/74

Answer:

The state reporting on government procurement bids (tenders) for 1999 was pilot and related only to the central bodies of the state executive power. Taking into account the general character of the reported data, the Ministry of Economy of Ukraine did not prepare a separate analytical report on the 1999 statistical data. Along with it, the quarterly analysis of economic situation is practiced in Ukraine. It is a constituent of the relevant Governmental decision about actions on the improvement of the situation. This decision comprises a part dealing with the status and directions of the improvement in the government procurement area. The mentioned governmental decision is placed in the form of resolution in Interned after its’ approval. Next year, the Ministry of Economy of Ukraine is going to twice a year prepare the reports on the development of the government procurement system, on the basis of statistical reporting also, and publish them in the bulletin “Visnyk (Herald) on State Procurement” (and on its site also).

The web-site of the bulletin “Visnyk (Herald) on the Government Procurement” www.vdz.ukrnet.net is accessible to the general public. Next year it’s design is going to be improved, and the site – regularly updated.

Question 182.

Point 12 of WT/ACC/UKR/74 refers to “mandatory publication in official international publications” for certain procurement announcements. What “official international publications” does the Ukraine intend to use for such announcements?

Answer:

The Ministry of Economy is considering that the appropriate variants of placing of the announcements on bids in International information network, taking into account the high price of the announcements' publication in foreign editions, may be as follows:

- to place the announcements on the customer's own Internet WEB-site (or on the site of a higher rank organization or other state body, as would be agreed);
- to address the Ukrainian Chamber of Trade and Industry, which coordinates the foreign trade and economic relations;
- to provide the Ministry of Economy with the English language variant of the announcement, which will be submitted for publishing in a Swedish information bulletin on state procurement "Anbudsjournalen"¹ (distributed in Scandinavian countries).

Moreover, as was already mentioned, the Ministry of Economy is going to consider the possibility of placement of Ukrainian announcements on government procurement in the European electronic system of the procurement announcements, TED.

Question 183.

Point 18 of WT/ACC/UKR/74 refers to a preference adjustment rate that "shall not exceed 15 per cent". In WT/ACC/UKR/59/Add.2, the response to Question 77 refers to "the 10 per cent price preference". Under the new law of Ukraine "On Procurement of Goods, Works and Services for National Needs" No. 1490 - III that was adopted on 22 February 2000, is there a requirement for the percentage used in a preference adjustment rate to be notified in the bidding documents and in the report on procurement performance?

Answer:

First of all, it should be mentioned that Article 5 "Non-discrimination of the Performers" of the Law of Ukraine "On the Procurement of Goods, Works and Services at the State Expense" determines the main principle of the development of legislation on the competitive selection of the performers (suppliers) in the process of state procurement notwithstanding their community of state. The transparent and fair procedures of competitive bids provide for the possibility of choosing the most economically beneficial proposition.

The mentioned article is considered to be an integral part of international legislation on government procurement.

Taking into account the necessity of harmonization of the national legislation with international norms, the title of the article 5 and its reading are brought into compliance with the mentioned standards of international law.

Along with this, considering the realities of economic situation in Ukraine, currently it is necessary to provide conditions for the national producer's support. Preferences to national producers² (10 per cent price preference), determined by article 6, may be provided only to the relevant price margin in relation to the expected margin of the procured good, except the enterprises of the, Invalids' Society and enterprises of the penitentiary system of Ukraine, which enjoy a preference (price

¹ The Ministry of Economy of Ukraine has established the working relations with the above bulletin, which would give an opportunity to use its information resources for placing Ukrainian announcements on bids.

² National producer - a business- resident, who conducts manufacturing of produce, performs works or renders services on the territory of Ukraine

preference of 15 per cent), provided notwithstanding the price margin on the condition of fulfillment of the requirements of bidding documents, in particular – qualification and technical requirements.

Such exemptions are envisaged in the international legislation, and the determined price margins are later reviewed. On the condition of successful development of the national system of economy, the measures of support, determined by the Law, will become unnecessary.

The customer should inform the performers about the application of the preferential amendment in an announcement on the procurement procedure. Decision of the customer on the preferential amendment application may be changed before the end of the procurement procedure, and can not be appealed by the suppliers.

Question 184.

Point 26 of WT/ACC/UKR/74 states that “if the procurement procedure is not limited to the domestic bidders pursuant to the points in 17-19”, then documents shall be in Ukrainian and in “one of the foreign languages used in international trade.” What other language will be used? Will the second language chosen vary according to the contract being procured?

Answer:

The customer is entitled to chose the language of the bidding proposal. However, according to the current legislation, Ukrainian language is the state language. Accordingly, all documents on government procurement shall be filed in Ukrainian obligatorily. But, at the customer’s consideration, in some cases, (for instance, only with foreigners’ participation) the bidding proposal can be submitted in foreign language. This shall be obligatorily foreseen in bidding documents. In this case the foreign languages are considered to be the languages used in international trade. First of all, these are: English, French, Spanish and German. Besides that, suppliers in Ukraine, including the Ukrainian ones, at the approval of the customer, often prepare bidding proposals in Russian, which is explained by the social and cultural peculiarities of Ukraine’s development.

4. Policies affecting foreign trade in agricultural products

(a) Imports

Question 185.

The response to Questions 91 and 92 of WT/ACC/UKR/59/Add.2, confirmed in WT/ACC/UKR/81, states that Ministerial Resolution No. 754 of 28 May 1998, in addition to provisions of the Law No. 486/97 of 17 July 1997 “On State Regulation of Imports of Agricultural Produce,” established seasonal duties at twice the normal level for a specific list of products. Are these duties still in effect? Has the list of products in these responses been changed? What is the relationship of these duties to Ukraine’s tariff offer and the improved offers recently made in bilateral negotiations?

Answer:

Pursuant to Article 2 of the Law of Ukraine “On State Regulation of Imports of Agricultural Products”, seasonal import duties may be introduced yearly in the double amount of the privileged rate of the import duty. The list of goods subject to seasonal duties is provided in this Article and is not subject to change. Since 2000 Ukraine has not applied seasonal duties to any goods and is planning to amend effective law in this regard in the future.

Question 186.

Ukraine states in response to Question 29 of WT/ACC/UKR/59 and Question 82 of WT/ACC/UKR/59/Add.2 that import quotas are not being applied to agricultural products. Response to Question 34 of WT/ACC/UKR/59 states that it was recommended that the Cabinet of Ministers cancel the Law on State Regulation of the Import of Agricultural Products," which authorized the application of import quotas on cattle and meat (HS Chapters 1 and 2). The response to Question 93 states that Ministerial Order No. 340 of 19 May 1998 and Ministerial Resolution No. 208 of 24 February 1998 established import quotas on purchases of cognac, wine, and champagne. WT/ACC/UKR/81 states that Ministerial Resolution No. 575 of 29 March 2000 "On Harmonizing the Decisions of the Cabinet of Ministers with the Ukrainian-EU PCA" has established quotas on the importation of used vehicles older than 8 years. WT/ACC/UKR/63 states that in 1998 import quotas existed for raw sunflower oil, raw soya oil and palm oil (Presidential Decree No. 444 of 8 May 1998), and sugar cane (Presidential Decree No. 334/98).

Answer:

Ukraine has not imposed quotas on imports of transport vehicles. The said Order of the Cabinet of Ministers of Ukraine bans importation of vehicles that have been used for more than 8 years. This limitation is imposed to help solve environmental problems.

Pursuant to Article 3 of the Law of Ukraine "On State Regulation of Import of Agricultural Products", the Cabinet of Ministers of Ukraine may set yearly quotas for import of products that fall under the definition of first and second groups of the CFTC (Classification of foreign trade commodities). Since the entry into effect of the said Law this measure has not been applied and, therefore, a draft Law "On the Introduction of Amendments to the Law of Ukraine "On State Regulation of Import of Agricultural Products", which envisages the removal of Article 3, has been elaborated and submitted for consideration to the Supreme Rada of Ukraine.

Cabinet of Ministers Resolution No. 208 of 24 February 1998 has determined the volumes of import of champagne and cognac wine products used for production of finished commodities (champagne and cognac) and has not set restrictions on the import of finished commodities.

Cabinet of Ministers Resolution No. 575 of 19 March 2000 did not determine import quotas for vehicles.

Question 187.

What is the status of Law No. 468/97 "On State Regulation of Agricultural Imports" and Law No. 32/98-VR, "On Amendments" to that law?

Answer:

Law of Ukraine "On State Regulation of Import of Agricultural Products" No. 468/97 was signed on 17 July 1997. Over the past time it was also amended through Laws of Ukraine. The Law of Ukraine of 16 January 1998 No. 32/98 On Introducing Amendments to the Law of Ukraine "On State Regulation of Import of Agricultural Products" was among them, and changes it brought about are currently effective.

Question 188.

What is the content and status of the "Amendments" to Law No. 468/97 listed in "Drafts and Projected Laws" in WT/ACC/UKR/79?

Answer:

The Law of Ukraine "On State Regulation of Import of Agricultural Products" No. 468/97 of 17 July 1997 has been amended by such Laws:

- of 19 November 1997, No. 644/97;
- of 30 December 1997, No. 794/97;
- of 16 January 1998, No. 32/98;
- of 5 March 1998 No. 198/98;
- of 18 February 1999, No. 439-XIV;
- of 18 March 1999 No. 518-XIV;
- of 9 April 1999 No. 597-XIV;
- of 18 June 1999, No. 771-XIV;
- of 4 November 1999 No. 1214-XIV;
- of 21 December 1999 No. 1327-XIV;
- of 22 February 2000 No. 1476-III;
- of 2 March 2000 No. 1528-III; and
- And is currently effective as amended.

(b) Exports

Question 189.

We note that Ukraine has not provided any tables on export subsidies. Does this mean that Ukraine does not use export subsidies? Is Ukraine ready to undertake a commitment to not use export subsidies upon accession?

Answer:

Ukrainian legislation does not establish export subsidies for Ukrainian industrial products.

As of 20 October 2000, no legislation was developed by the State Committee for Industrial Policy in terms of export subsidies to the industrial enterprises. Neither the Committee initiated the adoption of such legislation.

In Ukraine export subsidies are not applied to agricultural products. And in the future Ukraine does not intend to take this measure, which was emphasized at the seventh meeting of the Working Party.

(e) Internal policies

Question 190.

Further to the 11 July 2000 plurilateral meeting on Ukraine's agricultural support systems and the information provided by Ukraine in document ACC/SPEC/UKR/1/Rev.4 of 17 February 2000, we would be grateful for Ukraine's response to the following comments and Questions. The way Ukraine calculates Base Total AMS will be the way Ukraine calculates its future Total AMS (i.e., Current Total AMS). This follows directly from the "constituent data and methodology" provisions of Article 1(a)(ii) and Article 1(h)(ii) of the Agreement on Agriculture (note: the former relates to the Base Total AMS, the latter relates to the Current Total AMS). This linkage over time underlies the need for transparency in the calculation of Base Total AMS.

Answer:

In the answers to the following Questions Ukraine provides information in greater detail as to the calculation of the Base Total AMS.

Question 191.

Could Ukraine please provide complete descriptions of support measures and programmes reported in the tables in form of endnotes or annexes to each supporting table. Policy descriptions are required and should indicate how the specific Annex 2 criteria are met for each measure claimed in the green box category. The information available elsewhere on Ukraine agriculture policy is very much more limited than was available on, for example, participants in the Uruguay Round.

Answer:

Descriptions of support measures and programmes are provided in the answers to Questions No. 200, 203, 210, 216, 227, 231, 232, 240, 241 (See. below).

Question 192.

Could Ukraine please provide more details on data sources for all the supporting tables. It would improve transparency to report which statistic table and page number are cited. For example, what do "MAIC" and "UAAS" stand for in Supporting Table DS:1? In Supporting Table DS:5, which State Statistics Committee Consolidated Report is Ukraine referring to?

In a revised version of Tables ACC/4 there are indicated page numbers of statistic tables with respect to the data in Columns 4 and 6 of Table DS5 for every of the base years 1994-1996.

Answer:

In a revised version of Tables ACC/4 there are indicated page numbers of statistic tables with respect to the data in Columns 4 and 6 of Table DS5 for every of the base years 1994-1996.

The abbreviations mean the following:

- MAIC – Ministry of Agriculture Agro-Industrial Complex; and
- UAAS – Ukrainian Academy of Agrarian Sciences.

State Statistics Committee Consolidated Report – a final report on grain procurements (annual) in respective years.

Question 193.

We prefer that Ukraine report amounts in national currency as well as US\$ also in Supporting Table DS:7, as Ukraine does in several other supporting tables. This increases transparency by allowing independent verification against national data sources. Ukraine can of course choose to use another currency, such as US\$, Euro, or SDR to express its Base Total AMS in Supporting Table DS:4 and its commitments (commitments are to be shown in Part IV, Section I, of Ukraine's schedules).

Answer:

Supporting Table DS:7 contains data in US\$, whereas calculations of the value of respective support measures are expressed in national currency in Working Tables 3 and 4, which will be provided for review. Calculations of the value of support measures in Column 8 of Supporting Table DS 7 in national currency are presented in Supporting Table DS 5 and Working Table WT 2. The latter shall also be provided for review.

Question 194.

In all Supporting Tables, where conversion from Krb or Hrv to US\$ occurs, Ukraine should not only show the exchange rate but also the source of that exchange rate (which Bank 's publication) and what the exchange rate represents (is it an annual average, or the rate as of 31 December)?

Answer:

For calculations purposes, the official exchange rate of Krb (1994-1995) and Hrv (1996) to US\$, set by the National Bank of Ukraine (an annual average), was used. Data were provided by the Currency Regulation Department of the National Bank of Ukraine. These data are also listed on the NBU site (www.bank.gov.ua).

Question 195.

Base period. It would be useful for Ukraine to provide corresponding information for later years than 1994-96 in order to enable members to verify that Ukraine has respected the standstill expectation on trade-distorting domestic support.

Answer:

At the request of WTO members, Ukraine prepared Tables in format ACC/4 for 1997-1999 and calculated the Total Amount of domestic support for 1997 to 1999.

Question 196.

Response to Question 30 WT/ACC/UKR/59 states that Khib Ukryainy is a state-held joint stock company currently being privatized in order to de-monopolize the grain trade. We understand, however, that a recently signed Presidential Decree No. 832 re-centralizes grain purchases in this organization. Ukraine's informational note indicates that property of enterprises belonging to Khib Ukryainy cannot be privatized. The Memorandum on Agriculture, WT/ACC/UKR/62, states that in the context of attempting to privatize grain production and trade in 1996 and 1997, about a fifth of the agricultural enterprises subject to the process were transferred to Khib Ukryainy, and that other enterprises were required to transfer portions of their equity in shares to Khib Ukryainy. In addition, in 1997, according to the Memorandum, Khib Ukryainy was authorized to be the state buyer for food and seed grain in this period, and that attempts to further privatize this enterprise failed.

Answer:

State Joint Stock Company "Khib Ukryainy" was founded pursuant to Cabinet of Ministers Resolution of 22 August 1996 No. 1000 "On the Establishment of State Joint Stock Company "Khib Ukryainy" and is currently state-owned property. The company comprises 82 grain storage and grain processing enterprises whose property, pursuant to the Law of Ukraine "On the List of State-Owned Property that is not subject to Privatization" is not subject to privatization. At the same time, in

conformity with Cabinet of Ministers Resolution of 6 May 2000 No. 223, measures are undertaken to complete the assessment of property and issues of shares of the company.

Privatization of the other 443 grain storage and grain processing enterprises, which do not belong to JSC "Khib Ukrayiny", is nearing completion, and they are all transformed into open joint-stock companies, and over 70 per cent of their shares have been sold. In particular, one hundred percent of shares of 237 companies from the companies mentioned above have been acquired in the course of privatization by private legal entities and individuals.

In respect of business operations of SJSC "Khib Ukrayiny", its role on the grain market and determination of its compliance with Article XVII GATT (Questions 202, 203), we inform that these Questions are beyond the scope of competence of the State Property Fund.

We inform you that, pursuant to Cabinet of Ministers Resolution No. 1218 of 5 November 1997 "On the Acceleration of Privatization of Grain Storage and Grain Processing Enterprises", 443 out of 543 enterprises, which initially belonged to State Joint Stock Company "Khib Ukrayiny" have been already 70 per cent privatized. 19 enterprises belonging to "Khib Ukrayiny" have been transferred into management by the former State Reserves Committee of Ukraine.

As of now, "Khib Ukrayiny" owns 81 subsidiaries whose assets are part of the authorized fund of State Joint Stock Company "Khib Ukrayiny" and, in conformity with the Law of Ukraine "On the Amendment of Article 5 of the Law of Ukraine "On Privatization of State Property", these enterprises are not subject to privatization. Requirements of international organizations as to having not more than 100 state-held grain storage and grain processing enterprises have been met.

It is true, as in conformity with the Government's decision in 1997, "Khib Ukrayiny" was authorized to be a state purchaser of food and seed grain for national needs. Since 1998, in connection with cancellation of the state procurement, State-held Joint Stock Company "Khib Ukrayiny" has not been engaged in this type of activity any more.

By order of the President of Ukraine of 27 June 2000 No. 832 "On Urgent Measures on Promotion of Grain Production and Development of Grain Market", State-held Joint Stock Company "Khib Ukrayiny" has been charged with functions of state agent responsible for ensuring state secured purchases of grain.

It is anticipated that State-held Joint Stock Company "Khib Ukrayiny" will coordinate state secured purchases of grain from agricultural producers by grain storage and processing enterprises irrespective of the type of ownership, which will pass the competitive examination in order to be eligible to engage in such activity.

In addition to state procurements of grain, State Joint Stock Company "Khib Ukrayiny" is currently engaged in grain production by itself, purchases grain directly from producers and people at the expense of loans provided by commercial banks and with its own funds, processes procured grain at its processing facilities and sells its products on the grain market.

As to the provision of investments, effectuation of export-import transactions, pursuant to the Order of the President of Ukraine of 29 June 2000, State Joint Stock Company "Khib Ukrayiny" may operate on a par with other subjects of the grain market.

Pursuant to its Charter, approved by the Cabinet of Ministers of Ukraine, State Joint Stock Company "Khib Ukrayiny" is not a state trading enterprise.

Question 197.

Please explain in detail Khib Ukryainy's new role in the production, distribution, and export of Ukrainian grain and grain products authorized by this Decree, including any activities involving the supply farmers with inputs; the purchase domestic grain; the storage, processing, and/or distribution of grain or grain products; or their import or export.

Answer:

See answer to Question 197

Question 198.

Should it be notified as a state trading enterprise under Article XVII of the GATT?

Answer:

State Joint Stock Company "Khib Ukryainy" is not a state trading enterprise under Article XVII of the GATT, it has not been given exclusive or special privileges or rights, through which exercise it may influence the means of purchase or sale, volumes or directions of import or export of grain and grain products.

The Company on a par with other subjects of business activity makes direct purchases grain from producers and people with its own funds and at the expense of loans extended by commercial banks. Products made with its own grain are sold mainly on the internal market.

Question 199.

We thank Ukraine for providing the name and description of measures for which exemption has been claimed under the "green box". However, we noticed that under "environmental payments," such information was omitted. Could Ukraine please provide the name and description of these measures, and how they meet the criteria contained in para. 12 of Annex 2?

Answer:

This measure is in conformity with the criteria contained in Paragraph 12 of Annex 2 of the WTO Agreement on Agriculture. Rights to such payments are granted within clearly different government programs of environmental protection and depend on the fulfillment of particular conditions specified by such government programs. The assessed value of this measure is within the expenditures of the State Budget under Section "Protection of the Environment". Measures provided by duly approved environmental programs: "Protection and Rational Utilization of Water Resources", "Protection and Rational Utilization of Lands", "Creation of Protection Forest Plantations and Field Protection Forest Strips", "Protection and Rational Utilization of Mineral Resources", "Preservation of the Nature Reserves" constitute the basis of calculations of expenditures under the Section of the State Budget of Ukraine entitled "Protection of the Environment". Costs and expenses connected with financing nature protection authorities are also included into such expenditures under this measure. Payments under the Article "Protection and Rational Utilization of Water Resources" were effected pursuant to the Complex Program of Implementation of Anti-flood Measures for 1994-2000, approved by Decree of the Cabinet of Ministers of Ukraine of 1 January 1994 No. 37. The creation of protection forest plantations and field protection forest strips is regulated by the Forest Code of Ukraine of 21 February 1994 No. 3852-XII and the Law the Law of Ukraine "On the Protection of the Environment" of 25 June 1991. The main documents governing activities of organizations of the nature reserve system include the Law of Ukraine "On Nature Reserves in Ukraine" and the Program

of Prospective Nature Reserve Development in Ukraine, approved by Resolution of the Supreme Rada of Ukraine of 29 September 1994, No. 177/94-BP.

Question 200.

We very much appreciate that Ukraine has provided the value of production and *de minimis* levels in this table. It is very helpful to have this information. However, we would prefer to see data for each year (1994, 1995, and 1996) presented separately rather than just the average. Also, if Ukraine could sum up the total AMS for each year, that would also be very helpful.

Answer:

Supporting Table DS4 is drawn in the format according to the recommendations as to how to draw and fill out Supporting Table DS4, which were provided by experts from Canada (the Center of Trade Policy and Law, Ottawa, Canada), namely there was provided the value of production and *de minimis* levels on average for 1994-1996, rather than for each year separately. In view of your request, we are gathering these data which will be provided by the end of the current year.

Question 201.

Also, it would be helpful at this stage if Ukraine could maintain the same format used in the other supporting tables, which presents data in both U.S. dollars and Ukraine's local currency (karbovanets in 1994-95, hryvna in 1996).

Answer:

All data provided in the supporting tables in U.S. dollars and Ukraine's local currency are presented in the Working Tables. The Working Tables will be provided for review. Thus, the value of production in national currency and U.S. dollars was calculated in Working Table 1 before being transferred to Table DS 4. Table DS 7 contains data in U.S. dollars, whereas calculations of the value of respective support measures in national currency are presented in Working Tables 3 and 4, which will also be provided for review.

Question 202.

It would be helpful if Ukraine could walk us through these calculations, explaining:

- **how the "state procurement under state orders/contracts" operates;**
- **how the applied administered prices are set;**
- **the source for the fixed external reference prices; and**
- **the level of production used for eligible production.**

Answer:

"The applied administered price" means average purchase prices at which the State procured agricultural products under state orders or contracts.

"The fixed external reference price" means, in respect of export products, an average export value of one unit of the exported product and, in respect of imported products, an average import value of one unit of the imported product. For this purpose, there were used statistical data of the State Customs Service of Ukraine on import and export operations concerned with agricultural products (1-24 Groups of the Classification of Foreign Trade Commodities) on the basis of customs cargo declarations for every year of the base period 1994 to 1996.

“The level of production used for eligible support” means actual volumes of state purchases under state orders or state contracts in which respect the fixed administrative price was set.

State procurement under state orders/contracts in the base years of 1994-1996 was carried out pursuant to the procedures developed by the Ministry of Finance, the Ministry of the Economy and the Ministry of Agriculture and Foodstuffs. For instance, in 1995 there was in effect “The Procedure of Extension and Repayment of Budgetary Loans for Financing State Contracts of 1995 for the Supply of Grain, Variety and Hybrid Grain Seeds to the State Resources”, approved by the Ministry of Finance, the Ministry of the Economy, the Ministry of Agriculture and Foodstuffs of 12 July 1995 No. 119/109/193. This Procedure was drafted in accordance with the Law of Ukraine “On the State Budget of Ukraine for 1995”, Decree of the President of Ukraine of 16 January 1995 No. 51/95 “On the State Contract for Agricultural Products for 1995”, applicable Resolutions of the Government concerned with said issues. Under the state contract for 1995, grain and other agricultural products were procured, which volumes were identified based on the country’s needs and monies allocated therefor. The state contract for the supply of grain and other agricultural products to the centralized funds was financed within the limit of monies of the State Budget of Ukraine earmarked for that purpose. Grain for the state resources was procured under a forward contract which provided for the supply of the product in the future with an advance payment of 50 per cent of the price of the contracted amount of grain, and the balance of the payment for the supplied grain was effected upon the reimbursement by a producer of the advance payment with proceeds from sales of grain. Interest-free budgetary loans for designated purposes were extended in a majority of cases to procurement organizations of the Ministry of Agriculture and Foodstuffs, which had the right to act as state purchasers for the state resources under the state contract within the limit of funds allocated for this purpose. Conditions of state procurement under the state contract in 1994 were similar to 1995. In 1996 (like in 1994), there was in effect “The Procedure of Formation of Volumes and Implementation of Purchases of Agricultural Products and Foodstuffs under State Orders” (approved by Resolution of the Cabinet of Ministers of Ukraine of 12 March 1996, No. 323). Purchases of other agricultural products for the state resources were carried out under similar arrangements.

In 1994 and 1996, the Ukrainian Government carried out state orders. In 1995, the Government made a state contract. The difference is that the state contract is an official, legally executed document, which binds the agricultural producer and the Governments to fulfil the terms and conditions of the contract, whereas the state order is a request of the State for the purchase of grain, i.e. the agricultural producer is free to enter into a contract with the Government.

Question 203.

Is the applied administered price set by the government, or are the prices used in this calculation market prices?

Answer:

The applied administered price is purchase prices under the state contract or the state order, which is set by the Ministry of Agriculture and Foodstuffs of Ukraine.

Question 204.

We were a bit perplexed by Ukraine’s response to Question 24 in WT/ACC/UKR/62/Add.2, which states that no mechanism has been developed to implement the Presidential decree on measures to support prices. Does this mean that Ukraine no longer provides price support? What was the basis for the price support measures reflected in these tables?

Answer:

Question 24 in WT/ACC/UKR/62/Add.2 related to Decree of the President of Ukraine No. 614 “On Measures to Support Prices and Income of Agricultural Producers” of 11 June 1998. In fact, no mechanism has been developed to implement this Decree for the part relating to price support. As regards income support, in implementation of Point 2 of this Degree requiring “to develop and submit for consideration by the Supreme Rada of Ukraine a draft law, extending the effect of the Law of Ukraine “On the Value Added Tax” for 1999 and the following years in the part, which mandates that amounts of VAT paid to the budget by processing enterprises for sold milk and milk products, meat and meat products be directed to pay subsidies to agricultural producers”, there was adopted Resolution No. 805 of the Cabinet of Ministers of Ukraine of 12 May 1999, which prolonged the effect and amended the Procedure of Determination of the Mechanism for the Calculation and Payment of Subsidies for the period from 1 January 1999 until 1 January 2004. This Procedure was in effect in 1998. In order to support agricultural producers of milk and cattle products and to timely pay subsidies to them for milk and cattle in live weight sold to the processing and meat packing enterprises, the Cabinet of Ministers of Ukraine adopted, pursuant to Point 11.21 of the Law of Ukraine “On the Value Added Tax”, Resolution No. 145 of 16 February 1998, approving thereby the Procedure for Calculation and Payment of Subsidies to Agricultural Producers for Milk and Cattle in Live Weight sold by them to the Processing and Meat Packing Enterprises.

This mechanism provides that processing and meat packing enterprises shall prepare on a monthly basis preliminary calculations of receipt and use of value added tax revenues levied on volumes of sales of milk and milk products, meat and meat products and transfer such VAT-generated funds to agricultural producers as subsidies. The amount of subsidies to agricultural producers for sold milk and cattle in live weight is calculated per one hryvnia of the value of such products. For this purpose, the processing and meat packing enterprises shall maintain separate tax and accounting records of milk and milk products, meat and meat products made from the milk and cattle in live weight sold by agricultural producers, as well as separate records of accounting for other products. Agricultural enterprises shall use the said funds exclusively for the development of cattle-breeding, purchases of fodder, reproduction of livestock, purchases of pedigree resources and implementation of veterinary measures.

As regards the base that has been used for the price support measures, please see the answer to Question No. 207.

In 2000, Resolution of the Cabinet of Ministers of Ukraine of 21 July 2000 No. 1141 “On the Implementation of Pledge Purchases of Grain from Agricultural Commodity Producers” provides for purchases of grain at pledge prices in order to stimulate grain production, support domestic agricultural producers and overcome negative consequences of seasonal and market fluctuations. No funds are earmarked at all in the State Budget for 2000 and the draft State Budget for 2001 for purposes of supporting the mechanism of pledge operations. By 20 October 2000, no pledge purchases had been made pursuant to this Resolution, and no pledge prices had been applied as the methodology of calculation of pledge prices was not approved.

Question 205.

Does eligible production represent what was actually purchased, or the amount of production that was considered eligible for the applied administered price? For example, if the Ministry of Agriculture designates how much grain, etc. is eligible for the applied administered price, this is the quantity that should be reflected in column 6. If all production is eligible to receive the applied administered price, then total production should be used.

Answer:

“Eligible production” means amounts actually purchased by the State under the state order or the state contract at the applied administered price. Only this quantity of the product has been sold for the applied administered price.

Question 206.

Annex 3 to the Agreement on Agriculture stipulates that the average per unit import or export price (depending on Ukraine’s position as a net importer or exporter) should generally be used for the fixed external reference price. However, if Ukraine feels that these data are not representative, or if there are quality differentials that need to be reflected, we’d be happy to work with Ukraine in the plurilateral process to determine the most appropriate external reference prices for this calculation. For example, the fixed external reference price of \$48/ton for wheat seems very low, given that the average world price was around \$150-\$200/ton.

Answer:

External reference prices for the base period were calculated pursuant to Annex 3 to the Agreement on Agriculture. An “external reference price” means, in respect of export products, an average per unit export price (FOB) and, in respect of import products, means an average per unit import price (CIF), depending on Ukraine’s position as a net importer or exporter of the relevant product. For the calculation there were used the statistical data of the State Customs Service of Ukraine regarding import and export operations in agricultural products (1-24 Group of the Classification of Foreign Trade Commodities) on the basis of customs cargo declarations for every year of the base period 1994 to 1996. Pursuant to the customs cargo declarations for 1994, an average export price of wheat was US\$75/t. In view of the fact that adjustments for costs of shipment from a producer to the border are sufficiently high (US\$27/t), the external reference price of wheat is equal only to 48 dollars/t. Amounts of wheat purchased under the state order at the applied administrative price of 118 dollars/t in 1994 were sold on the internal market for food consumption. A considerably lower sale price of grain (in comparison with prices of state purchases) sold by agricultural producers to traders–exporters ensured a fairly high level of profitability due to lower primary costs of production.

Question 207.

It is important to get the data used in these calculations right, since the external reference prices used in the base period will be fixed for future calculations of Ukraine’s current total AMS.

Answer:

Only national official sources of information have been used for the calculations of the total AMS of the base period, including the external reference prices.

Question 208.

What is the legislative basis for the programs included in this table? Is this legislation available from the Secretariat?

Answer:

It is not clear in which Table. If the Question relates to DS5, you should look up the answer to Questions No. 207 and 231.

Question 209.

Were budgetary outlays used for the expenditures listed for the programs “benefits from interest-free advance payments to farms for state procurement” and “benefits from using advances that are not reimbursed by agricultural producers on time”? If not, please provide calculation details.

Answer:

The Table generalizes all product-specific support from Tables DS 5 and DS 6 and takes into account the calculations of some other product-specific support in the form of payment benefits for farms for state procurement. Budgetary outlays used for the expenditures listed for the types of support “benefits from interest-free advance payments to farms for state procurement” and “benefits from using advances that are not reimbursed by agricultural producers on time” were not made. The amount of such benefits is obtained by way of calculations.

Working Tables 3 and 4, which will be provided for review, contain calculations of benefits for state procurement, to wit: benefits from interest-free loans through advance payments (Working Table 3) and benefits from using advances that have not been reimbursed to the State on time (Working Table 4). The methods of calculation of such benefits are as follows.

Benefits from interest-free advance payments (1). The period for which advance payments have been provided, i.e. an average number of months between payment and delivery of products (*Column 9 of Working Table 3*), is 6 months. The monthly average interest rate of commercial banks in 1994, for instance, was 201.7 per cent (*Column 10*). Advance payments are interest-free loans that were extended to agricultural producers for a period of 6 months. The amount of the extended loans in United States dollars is presented in Column 8. Therefore, the benefits from interest-free advance payments are equal to:

$$\text{Benefits (1)} = (\text{Amount of Extended Loans} \times ((\text{Commercial Interest Rate} / 12) \times 6) / 100)$$

Benefits from using advances that are not reimbursed to the State on time (2). Agricultural producers in every of the years of the base period did not reimburse on time advances for purchases of products under the state order or state contracts. Therefore, the sum of the advances that have not been reimbursed on time is considered to be interest-free loans. Amounts of advances made with the help of budgetary loans that have not been reimbursed on time are calculated on the basis of the data of consolidated annual accounting reports of agricultural producers. According to our estimates, the average period of such benefits is 12 (*Column 7 of Working Table 4*).

$$\text{Benefits (2)} = (\text{Amount of Advances that have not been reimbursed to the State on time} \times ((\text{Commercial Interest Rate} / 12) \times 12) / 100)$$

Question 210.

We noticed that there were some discrepancies in the data presented in column 8 (market price support from DS:5). In some cases, the differences appear to be rounding errors, but for wheat, they are more pronounced. For example, market price support in DS:5 for 1994 is given at US\$367.4 million, while in DS:7 it is US\$367.2 million. Similarly, in 1995, the figure given in DS:5 is (67.5) million, in DS:7, (68.4) million.

Answer:

The cited errors are of a technical nature. These errors have been rectified in the revised version of the Tables for the base period for 20 October 2000.

Question 211.

We also noticed that Ukraine is subtracting negative price support from the total level of product-specific support. -There is no legal requirement that Ukraine subtract this negative support. Some countries have expressed their view that this is the correct way to perform the calculation, others, including this Member, have taken a different view and maintain that this support should not be subtracted before the 3-year average is taken. The negative price support should be set to zero before being added to the other forms of product-specific support.

Answer:

Actually, there is negative price support as regards certain products. It was decided to retain negative price support rather than change it to zero in the calculation of the total level of support provided by Ukraine.

Question 212.

All tax exemptions should be removed from supporting table DS:9. Tax exemptions and privileges are not included in the AMS calculation. Please provide more details on the programs listed in supporting table DS:9. In cases where budgetary outlays are not used, please provide calculation details.

Answer:

Ukraine considers profit tax exemptions to be essential product-specific support. Profits of agricultural producers as a result agricultural business activities are not taxed, whereas profits generated by other types of business activities (not related to agricultural production) are taxed at the tax rate of 30 per cent (Decree of the Cabinet of Ministers of Ukraine of 26 December 1992 No. 12 "On the Profit Tax for Enterprises and Organizations"). At the time that the tables were reviewed as to the base period, Ukraine passed a decision not to include this support measure in the AMS calculation. Thus, tax exemptions and privileges will not be subject to reduction upon Ukraine's accession to the WTO and will be referred to the permitted types of support. If the WTO Members agree that this measure is a permitted type of support, Ukraine is going to exclude the measure "profit tax exemptions" from the calculation of the Base AMS, if not – Ukraine will insist on including this measure in the Base AMS.

The description of the types of support listed in DS9 are provided in the answer to Question No.240.

Question 213.

Could Ukraine please provide more recent data on domestic support. The current supporting tables, dated February 2000, cover the period of 1994-1996, and that period was presumably the most recent three year period for which data was available when the earlier version of the supporting tables was provided in April 1998. We are interested in the supply of recent data in order to have a more accurate picture of current levels of domestic support.

Answer:

Ukraine has prepared Tables in format ACC/4 for 1997-1999 and calculated the Total AMS for 1997-1999.

Question 214.

We note Ukraine uses U.S. Dollars to measure its domestic support commitments. We recall that this issue was raised at the previous agricultural plurilateral meeting in 1998, but it was not made clear as to why us dollars are being used in preference to local currency.

Answer:

The use of national currency would have made calculations impossible for comparison purposes due to the following reasons. Firstly, the base period of 1994-1996 was a period of considerable inflation. The index of consumer prices (in December as compared with December of the previous year) in 1994 was 500 per cent, in 1995 – 280 per cent, and in 1996 – 140 per cent (The Statistical Reference Book of the State Statistics Committee of Ukraine “Ukraine in Numbers in 1999”, page 47). Secondly, currency reform was implemented in 1996, with the Ukrainian hryvnia being brought into circulation as national currency in place of the Ukrainian karbovanets (Decree of the President of Ukraine of 25 August 1996 No. 762 “On Currency Reform in Ukraine”).

In view of the fact that inflation was high and monthly fluctuations of prices were extremely significant in the years of the base period, the annual average exchange rate of national currency against U.S. dollars coincided with the average exchange rate that existed at the time of payments for products procured by the State and state financing under other support measures. Therefore, Ukraine believes that the application of the average annual exchange rate of national currency against U.S. dollars for calculations of the level of support in the years of the base period is acceptable.

The official exchange rate of Ukrainian karbovanets (1994-1995) and hryvnias (1996) against U.S. dollars, set by the National Bank of Ukraine (an annual average), was used for calculations. The data were provided by the Foreign Currency Regulation Department of the National Bank of Ukraine. These data are also placed on the NBU web-site (www.bank.gov.ua).

Question 215.

In relation to specific programs, we would like to request further information on the green box measure, 'environmental programs', listed under paragraph (j) of DS:1, to ensure that it complies with annex 2 of the agreement on agriculture. In particular, how are such programs conducted and how is support delivered to beneficiaries?

Answer:

Please look up the answer to Question No. 200 as regards the “environmental programs”.

The description of “green box” measures.

All measures presented in Table DS 1 comply with the specific criteria of Annex 2 of the WTO Agreement on Agriculture. All measures have been undertaken with the use of budgetary outlays.

General research and research programmes relating to particular products (Annex 2, Paragraph 2 (a)) include budgetary outlays to finance research and development efforts, to finance research and applied projects, to finance scientific components of state, inter-branch and branch programs, fundamental general research and research relating to particular programs that are carried out by research institutions.

Pest and disease control (Annex 2, Paragraph 2 (b)) includes anti-epizootic measures and pest and disease control measures for agricultural plants.

Extension and advisory services (Annex 2, Paragraph 2 (d)) includes maintenance of labor offices, plant protection offices that provide advisory services for producers and disseminate information.

Inspection services, including general inspection services and the inspection of particular products for health, safety, grading or standardization purposes (Annex 2, Paragraph (e)) includes measures aimed at financing state veterinary medical institutions, state seed inspection offices, state variety testing offices, state grain inspection offices.

Training services, including both general, re-training and advanced training in production and social services for rural localities (Annex 2, Paragraph 2 (c)) includes the funding of educational institutions of 1 and 2 accreditation levels, educational institutions of 3 and 4 accreditation levels, institutions for graduate studies of 3 and 4 accreditation levels (academies, institutes, centers of advanced training, re-training and qualification improvement), and other educational institutions.

Land reform complies with the criteria set out in Annex 2, Paragraph 2 "General Services", includes the provision of services for the implementation of land reform: development of new land legislation, registration of land, land surveys, determination of land quality, as well as the funding of chemical certification of lands. Agrochemical certification of lands is carried out in accordance with Decree of the President of Ukraine "On Total Agrochemical Certification of Lands of Agricultural Designation" of 2 December 1995 No. 1118/95. Agrochemical surveys are carried out with the use of budgetary outlays to determine heavy metals in soil, remains of pesticides and radionuclides.

(Annex 2, Paragraph 2 (g), (e)) includes state capital investments in the area of construction of health care institutions, water-pipe networks, sewage systems and facilities, gas supply networks, household service facilities, and beatification of territories. This position also includes amounts of compensation to agricultural producers for costs of construction of social and culture facilities in rural communities.

Question 216.

In DS:4, an error seems to have been made with regard to the base total AMS of 'sunflower seed'. Given that the product-specific AMS (US\$9.9 million) is less than the level of de minimis support (US\$16.99 million), the base total AMS should be set at zero.

Answer:

Ukraine agrees with this remark. Appropriate changes have been made in the revised version of tables in format ACC/4 for the base period.

Question 217.

Finally, we welcome the inclusion of columns 1(b) and 1(c) in DS:4 as they provide additional transparency in the calculation of base total AMS. However, we find that the table is confusing in places and difficult to read because of the way it has been set out. For example, it is not clear whether the last figure in column 5 is the figure Ukraine is seeking as its base total AMS, or whether it is the non-product-specific support brought forward from DS:9. We would like Ukraine to advise its figure for base total AMS.

Answer:

Ukraine has prepared a revised version of the Table in format ACC/4 for the base period, including Table DS:4, wherein the data on the base total AMS are presented (WT/ACC/SPEC/UKR/1/Rev.5).

WT/ACC/SPEC/UKR/1/Rev.4

Question 218.

It is this Member's view that the agricultural supporting tables of any WTO-acceding country must thoroughly reflect support that was actually granted in the years recorded. WTO-acceding countries must submit justification of granted support (in the form of internal regulations or other administrative documents), if so requested. Once the supporting tables have become technically correct, the discussion on commitments can take place.

Answer:

Ukraine has prepared an English language list of international regulations and other administrative documents on which basis support was granted.

Question 219.

Ukraine has submitted data for the period 1994 to 1996. We would welcome data for the years 1997, 98 and 99 as well.

Answer:

Please look up the answer to Question No. 196 .

Table DS:1

Question 220.

We would welcome more detailed descriptions of the programmes listed in these tables.

Answer:

Please look up the answer to Questions No. 200 and 216.

Question 221.

Training and advanced training of experts. The figures shown here are considerably higher than the figures in the previous table. Could Ukraine explain why there is this difference?

Answer:

Certain categories of educational institutions were not taken into account in the previous version of Table DS1.

Question 222.

Land Reform. 'New legislation' is included as subdivision for support. Could Ukraine explain how it determines the value for this category of support?

Answer:

Funds of the State Budget were allocated to the State Committee on Land Resources, which retained involved scientific and research institutions for purposes of drafting new legislation and normative acts devoted to land matters and issues. This category of support complies with the criteria of Annex 2 of the Agreement on Agriculture, Paragraph 2 "General Services".

Question 223.

Environmental programs. Could Ukraine explain how these programs were operated?

Answer:

Please see answer to Question 200.

Question 224.

Please provide a complete description of all the measures reported in DS:1 and explain how each measure meets the specific criteria of Annex 2 of the Agreement on Agriculture.

Answer:

Please look up the answer to Question 216.

Table DS:4

Question 225.

Total AMS. Non-product specific AMS (from DS:9) needs to be added to the table and a figure for Current Total AMS has to be included (see WTO guideline document WT/ACC/4).

Answer:

Table DS 4 for the base period will be provided in a revised version. Ukraine has also prepared information on the Total AMS for 1997, 1998 and 1999.

Table DS:5

Question 226.

Market Price Support. Could Ukraine explain how its system of market price support worked for the period shown in the tables, as well as for the more recent years (see our request under point 2)?

Answer:

The mechanism of market price support of agricultural producers in Ukraine is different to a certain extent from the system of support because of the mechanism of minimum guaranteed prices, which was applied/is applied by the EC. As has been already mentioned with respect to the "applied administrative price", Ukraine took average purchase prices at which the State made procurements of agricultural products pursuant to state orders or state contracts. The level of prices set by the State for state procurements was higher than the level of market prices of producers. In the base period 1994 to 1996, products were supplied to state procurement organizations on a voluntary basis, and mandatory supplies were cancelled. Payments for the products purchased by the State were guaranteed by contracts .

Since 1998 no funds have been earmarked in the State Budget to finance state procurements under the similar scheme of state contracts. However, in 1998 and 1999 the debts of agricultural producers under budgetary loans for the past years were repaid with agricultural products, primarily with grain. Prices for grain that was supplied as repayment of the debts under the budgetary loans for the past years were set administratively. Thus, pursuant to Joint Letter No. 37-19-1-12/7684 of the

Ministry of the Economy, the Ministry of Finance, the State Committee of Reserves and SJSC "Khliv Ukrainy" of 20 July 1999, ratios of correlation between prices and the price of soft wheat of III class as well as calculated levels of prices for grain crops were applied to payments for the grain supplied as payment of the debts before the State accumulated in the past years.

Question 227.

Has there been any fundamental change in your market price support system for the year 2000, in comparison with previous years? Was the producer guaranteed a minimum price for a given, or for the total, quantity for each of the products shown in the tables, before each marketing year? If so, could Ukraine submit a (translated) copy of the administrative documents that guaranteed Ukrainian farmers to benefit from such a system? How did the farmer receive the support?

Answer:

In 2000, Resolution of the Cabinet of Ministers of Ukraine of 21 July 2000 No. 1141 "On the Implementation of Pledge Purchases of Grain from Agricultural Commodity Producers" provides for purchases of grain at pledge prices in order to stimulate grain production, support domestic agricultural producers and overcome negative consequences of seasonal and market fluctuations. No funds are earmarked at all in the State Budget for 2000 and the draft State Budget for 2001 for purposes of supporting the mechanism of pledge operations. By 20 October 2000, no pledge purchases had been made pursuant to this Resolution, and no pledge prices had been applied.

Question 228.

We would welcome the data-source for the shown external reference prices for each of the products included in the tables.

Answer:

The data-source is statistical data of the State Customs Service of Ukraine regarding import and export operations in agricultural products (1-24 Groups of the Classification of Foreign Trade Commodities) on the basis of customs cargo declarations for every year of the base period 1994 to 1996.

Question 229.

As mentioned during the plurilateral meeting in July, we are puzzled by the relatively low external reference prices shown in your tables, not least when we compare them with the external reference prices that another WTO-acceding country, in the same geographical region, is using for measuring its Market Price Support AMS. Please make sure that all average figures are calculated in conformity with established rules.

Answer:

Yes, certain errors were made in calculations of the average level of external reference prices for the base period. They will be rectified in the revised version of the tables in ACC/4 for the base period. Zero is used as an indicator of absence of the administrative price or amounts of state procurement in certain years, rather an indicator of a zero amount in Working Table 2, which will be provided for review and in which calculations of external reference prices have been made. Thus, for example, in 1995 and 1996 state procurements of sunflower seed per state order or state contract were not carried out. Therefore, external reference prices of sunflower seed were not calculated in respect of these years. In the revised version of the tables in ACC/4, the price in 1994 is taken as an average

external reference price for the three base years. Therefore, the external reference price of sunflower seed changed from US\$55/t. to US\$164/t. Appropriate changes have been made in respect of other products.

Question 230.

Please explain the terms "applied administered price", "external reference price" and "eligible production"? Is eligible production equal to total production? How is eligibility defined? What is the data source for the external reference price?

Answer:

“The applied administered price” means average purchase prices at which the State procured agricultural products under state orders or state contracts. The source of information: the Statistical Collection “Sales of Agricultural Products by Public Sector Enterprises” for respective years.

“The fixed external reference price ” means, in respect of export products, an average export value of one unit of the exported product and, in respect of imported products, an average import value of one unit of the imported product. For this purpose, there were used statistical data of the State Customs Service of Ukraine regarding import and export operations concerned with agricultural products (1-24 Groups of the Classification of Foreign Trade Commodities) on the basis of customs cargo declarations for every year of the base period 1994 to 1996.

Adjustments of at-border prices for 17 products have been made for the three base years. Working Table No. 2, which will be provided for review, has been used for the adjustments.

Five adjustments were made to the calculation of external reference prices:

Services of grain elevators and processing enterprises (data of reports of SJSC "Khlib Ukrainy" and various associations);

- Shipment by railway;
- Railway fee;
- Port fee; and
- Customs fee.

As regards imported goods, all adjustments of the at-border prices cause a rise thereof, while as regards export goods, they decrease such prices.

The following sources of information have been used for the adjustments:

- Price List No. 10-01 “Tariffs (Prices) for Cargo Railway Shipments”;
- Tariff Reference Book No. 1 of the Ministry of Communications of the USSR (Parts 1 and 2), approved by Resolution of the State Pricing Committee of the USSR of 31 March 1989, No. 328, which entered into force on 1 January 1990. Published by “Preyskurantisdat, Moscow – 1989”;
- Order of the Transport Ministry of Ukraine of 31 October 1996 No. 345 “On the Raise of Tariffs (Prices) for Cargo Shipments by Railway in Ukraine”;
- Order of the Transport Ministry of Ukraine of 31 October 1995 No. 392 “On the Approval of the List of Tariffs for Work and Services provided by Sea Ports of Ukraine to Owners of Cargoes”;
- Order of the Transport Ministry of Ukraine of 27 June 1996 No. 215 “On the Amendment of the List of Tariffs for Work and Services provided by Sea Ports of Ukraine to Owners of Cargoes”;

- Resolution of the Cabinet of Ministers of Ukraine of 2 March 1994 No. 133 “On Changes in Rates of Customs Fees”; and
- Order of the State Customs Committee of Ukraine of 17 July 1995 No. 323 “On the Improvement of Procedures of Collection of Customs Fees”.

Changes have been made in the calculation of the average external reference prices in the last version of the tables for 1994-1996 (as of 20 October 2000). Therefore, they have become higher in respect of certain products.

“The level of production used for eligible support” means volumes of state purchases under state orders or state contracts in which respect the fixed administrative price was set.

Table DS:6

Question 231.

Non-Exempt Direct Payments. The 1994 AMS figure for Cattle was previously recorded under "Green-box" and is now recorded in DS:6. Could Ukraine explain in more details how the programs work and on which basis?

Answer:

Product-specific support measures with respect to meat and milk products are presented in Table DS6. Subsidies were paid in 1994 for cattle, pigs, poultry, sheep, and milk. Resolution No. 496 of the Cabinet of Ministers of Ukraine of 21 July 1994 “On The Pricing of Agricultural Products and Raw Materials” was enacted for purposes of economic stimulation of production and sale for the state resources of agricultural products and raw materials, stabilization of wholesale and retail prices for meat and milk products, and in implementation of Decree of the President of Ukraine of 2 June 1994 "On Urgent Measures to Provide Financing and Loans for the Formation of State Food Resources of 1994 - 1995" and Resolution of the Supreme Rada of Ukraine of 17 June 1994 "On the Overcoming of the Crisis in the Agro-Industrial Complex. It was prescribed that from 1 July 1994 VAT on sales of agricultural producers and meat packing and milk processing enterprises of all forms of ownership was to be credited to this account and to be used within the limit of Krb 13.6 trillion for support payments for milk, cattle and poultry that are sold for the state resources in amounts per one ton of the product. Amounts of support payments for milk, cattle and poultry that were sold for the state resources by agricultural producers of all forms of ownership since 1 July until the end of 1994 were set in thousands Krb per ton: milk – 1,500, cattle (in live weight) – 4,650, pigs – 4,500, sheep – 3,700, poultry – 3,500.

Question 232.

Please explain the difference between "state funds for purchasing per state order" in Supporting Table DS:6 (for cattle, poultry and pigs), and the reference to "procurement" found in ST DS:5 for these products.

Answer:

In the version of the tables that were reviewed during the seventh meeting, “state funds for purchasing per state order” (Column 3 of Table DS6) relate to pedigree cattle and poultry. Calculations of market price support in respect of marketable cattle and poultry, rather than calculations of market price support in respect of pedigree cattle and poultry were made in Table DS5. In connection with the fact that it was impossible to calculate market price support due to the lack of data on export prices and domestic sale prices of these products at the time of calculations of tables for pedigree cattle and poultry, it was decided to include into the tables the prices of pedigree cattle

and poultry purchased for the state resources. Upon additional revision of the tables, Ukraine decided not to include in the calculations this measure due to a change in the methodical approach. In the course of preparation of the latest version (as of 20 October 2000) of Table DS6, it was also decided that the amount of expenses under the state livestock breeding program should not be broken down by various types of cattle and poultry, but should be referred in Table DS9 to the category of non-specific-product support. The state program of selection in stock raising is funded pursuant to Law of Ukraine No. 3691 "On livestock breeding" of 15 December 1993. Budgetary outlays are used to partially reimburse expenses connected with the improvement of genetic potential of cattle and poultry, creation of the domestic pedigree pool, and bio-technological herd methods.

Amounts reported in Column 3 of Table DS6 are decreased by the amount of measures that have been excluded.

The reference to the type of support "State Procurement under State Orders or State Contracts" in Table DS 5 is concerned with the administrative price. Average purchase prices, at which the State made purchases under state orders or state contracts, are taken as "administrative prices".

Question 233.

Please explain the relationship between the Committee on Fisheries (which is cited as source for "production-related direct payments") and payments for beef cattle, poultry, pigs and milk.

Answer:

The reference to data of the Committee on Fisheries in the source of information on "production-related direct payments" is explained by the fact that this Committee has under its jurisdiction enterprises which, in addition to fish production, are engaged in raising beef cattle, pigs and poultry.

Table DS:7

Question 234.

In column 12, Data Sources, there are several references to 'Working Tables'. We do not understand what Ukraine is referring to and we would welcome more information on the measures referred to in column 3.

Answer:

The Working Tables will be provided for review.

Question 235.

Where can we find the "Working Tables" referred to in Supporting Table DS:7 (last column)? At the 11 July meeting, the Ukraine delegation explained these are clear in the Ukrainian version. Could Ukraine also make these clear in the English version?

Answer:

Working Tables 3 and 4, which will be provided for review, contain calculations of benefits for state procurement: benefits from interest-free loans through advance payments (Working Table 3) and benefits from using advances that have not been reimbursed to the State on time (Working Table 4).

Question 236.

Please explain the measure "Benefits from using advances that are not reimbursed by agricultural producers on time"? How are the reported amounts calculated?

Answer:

Benefits from using advances that are not reimbursed to the State on time. Agricultural producers in every of the years of the base period did not reimburse on time advances for purchases of products per state order or state contracts. Therefore, the sum of the advances that have not been reimbursed on time is considered to be interest-free loans. Amounts of advances made with the help of budgetary loans that have not been reimbursed on time are calculated on the basis of the data of consolidated annual accounting reports of agricultural producers. According to our estimates, the average period of such benefits is 12 (Column 7 of Working Table 4).

Benefits (2) = (Amount of Advances that have not been reimbursed to the State on time x ((Commercial Interest Rate / 12) x 12) / 100)

Question 237.

It appears there are two identical copies of Supporting Table DS:7 in the document. Is there any particular meaning attached to this?

Answer:

Apparently, this was a mistake of a technical nature that appeared during the printing out of materials. Only one Table DS 7 has been included in the revised version of the tables in ACC/4.

Table DS:9**Question 238.**

Non-Product-Specific AMS. We are of the opinion that tax exemptions should be excluded from AMS and we request Ukraine to do so.

Answer:

Please look up the answer to Question 213.

Question 239.

All measures reported need to be explained in more detail. How were the reported amounts calculated (are these estimates?), and how do they relate to the Agreement on Agriculture? Are these support measures aimed/targeted only at agricultural producers, or are they available to all (including processors) in the rural areas?

Answer:

The measure "Preferential Prices for Electricity used for Production Purposes in Agriculture" (p. 1) reflects the amount of benefits for agricultural producers from lower rates for electrical power used by them for production purposes in 1994-1996, as compared with the consumer rates. Amounts of electrical power delivered to agricultural producers (thou. kWatt-hour) multiplied by a difference in the rates are equal to the amount of benefits for agricultural producers from lower rates for electrical power.

“Partial Reimbursement of Agricultural Producers Expenditures on Bank Loan Interest” (p. 4) relates to reimbursements with budgetary funds of the difference between the privileged interest rate and the commercial interest rate for loans extended by commercial banks to agricultural enterprises.

“Partial Reimbursement to Producers for Purchases of Elite Seeds” (p. 5) relates to the state program of selection in plant growing, which is funded with budgetary funds. Funding is provided pursuant to Law of Ukraine No. 3690 “On Seeds” of 15 December 1993. Budgetary outlays are used to partially reimburse agricultural producers for quality-related costs within their purchases of elite seeds.

The measure “Payments for Fundamental Soil Improvement ” (p. 7) relates to payments for activities concerned with fundamental soil improvement that are also financed with budgetary funds. The program called “Chemical Melioration of Soils in Ukraine” is part of the fundamental soil improvement activities (gypsuming, liming of soils), which is aimed at the rise of crop capacity of agricultural crops.

Support of the aforementioned measures was provided only to agricultural enterprises, excluding processors in the country’s agricultural sector.

In the course of revision of the tables (as of 20 October 2000) Ukraine decided to exclude from Table DS9 (p. 6) the measure called “State Expenditures to Purchase Feed and Technical Crop Seeds on the State Orders” because of the change in methodical approaches.

Question 240.

Regarding "cancellation of interest on commercial bank agricultural loans", "tax write-offs for agricultural producers", "returnable financial assistance non-reimbursed", and "budgetary loan for purchases of Ag. produce, non-reimbursed", please explain what these amounts represent. Were these amounts incurred/accumulated during the base period, or were they written-off/forgiven during the base period?

Answer:

Amounts of non-specific-product support in p. 2 “Tax Write-offs for Agricultural Producers (the Pension Fund, VAT, land tax, water use tax, road construction tax and others)” and in p. 3 “cancellation of interest on commercial bank agricultural loans” were written off during the base period.

In the version of Tables DS 9, in which respect Questions were asked and which was reviewed at the seventh meeting in Geneva, there were included non-reimbursed amounts accumulated at the end of every base period in respect of the following measures:

- returnable financial assistance (p. 8); and
- budgetary loans for purchases of agricultural produce (p. 9).

These non-reimbursed amounts were considered to be non-specific-product indirect support, because agricultural producers regarded them as grants, because in practice they were systematically written off during the years of the base period. It also happened after the base period.

In the course of revision of the tables (as of 20 October 2000), Ukraine made calculations of benefits both from using non-reimbursed financial assistance as interest-free loans and budgetary loans for purchases of agricultural produce, which were received by agricultural producers, in the tables for the base period. Therefore, in the new version of the Tables for the base period 1994 to 1996 the amount of returnable financial assistance non-reimbursed and the amount of budgetary loans

for purchases of agricultural produce, non-reimbursed, were substituted accordingly for the amount of benefits from using these non-reimbursed amounts as interest-free loans.

Question 241.

Tax exemptions should be excluded. No acceding applicant since 1995 has been allowed to use this type of support in domestic support.

Answer:

Please look up the answer to Question 213.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

(c) Geographical indicators

Question 242.

Per Ukraine's statement in "Information to the Seventh Meeting", what measures have been taken to accede to:

- **The Hague Agreement Concerning the International Deposit of Industrial Designs of 6 November 1952;**
- **Madrid Agreement Concerning the international Registration of marks of 14 April 1891;**
- **Strasbourg Agreement Concerning the International Patent Classification of 24 March 1971;**
- **Locarno Agreement Establishing an International Classification for Industrial designs Signed at Locarno on 8 October 1968; and**
- **Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks of 12 June 1973.**

Answer:

The Law No.1763-III of 1 June 2000 establishes that Ukraine joined the Protocol of the Madrid Agreement Concerning the international Registration of marks of 14 April 1891.

Ukraine is considering an issue of acceding the Hague Agreement Concerning the International Deposit of Industrial Designs of 6 November 1952, Strasbourg Agreement Concerning the International Patent Classification of 24 March 1971, Locarno Agreement Establishing an International Classification for Industrial designs Signed at Locarno on 8 October 1968 and Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks of 12 June 1973.

2. Substantive standards of protection

(a) Copyright and related rights

Question 243.

Articles 9 and 12 of the TRIPS Agreement and the Ukraine-U.S. Joint Action Plan to Combat Optical Media Piracy in Ukraine approved on 5 June 2000 by Presidents Clinton and Kuchma

provide that 50-years' copyright protection be established for pre-existing sound recordings and works. Please detail the steps Ukraine is taking to implement these commitments and give a timeframe for the legal establishment of these provisions.

Answer:

The draft Law of Ukraine "On Amendment of the Law of Ukraine "On Copyright and Related Rights," approved by the Supreme Rada of Ukraine in the first reading on June 16, 1999, brought the terms for the protection of works and phonograms into compliance with the provisions of the Bern Convention and Articles 9 and 12 of the TRIPS Agreement.

The final provisions of the above draft Law of Ukraine contain the following clauses:

- To establish that the terms for the protection of rights provided by Article 28 of this Law ("Copyright Validity Term") shall apply in all cases when 50-years' copyright validity term after the author's death has not expired yet prior to entering this Law into force;
- The Resolution of the Supreme Rada of Ukraine "On the Procedures for Entering the Law of Ukraine "On Copyright and Related Rights" into Force," dated 23 December 1993 ("Bulletin of the Supreme Rada of Ukraine," Year 1994, No. 13, page 65), shall be considered ineffective; and
- In paragraph 2 of the Law of Ukraine "On Ukraine's Accession to the Bern Convention for the Protection of Literary and Artistic Works (Paris Act 1971), to exclude the following text: "to notify that effect of the said Convention shall not apply to works which are public heritage in Ukraine as of the date of becoming effective of this Convention for Ukraine".

It is planned that the said draft Law of Ukraine will be approved prior to the end of year 2000.

In order to fulfill the Ukraine-U.S. Joint Action Plan to Combat Optical Media Piracy in Ukraine, the draft Law of Ukraine "On Peculiarities of State Regulation of Entrepreneurial Activity in the Field of Production, Export and Import of Discs for Laser Playback Systems" has been prepared, agreed with the relevant ministries and departments and submitted for consideration to the Cabinet of Ministers of Ukraine.

Question 244.

We note that "Information to the Seventh Meeting" states that Ukraine will submit legislation to the Supreme Rada in the third quarter of 2000 to join the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, (Rome Convention), 1961 and the recent international copyright agreements prepared by WIPO. Has this legislation been prepared and readied for submission to the Fall 2000 session of the Rada?

Answer:

The draft Laws of Ukraine "On Ukraine's Accession to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations," signed in Rome on 21 October 1961, and "On Ukraine's Accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty" have been prepared. After discussions and approval of the said draft Laws with the relevant ministries and departments, these draft Laws will be submitted for consideration to the Supreme Rada of Ukraine.

It is planned that the said draft Laws of Ukraine will be approved during the Fall 2000 session of the Supreme Rada of Ukraine.

4. Enforcement

Question 245.

Please describe the steps being taken and planned by Ukraine to maintain the suspension of unauthorized production of optical media products at plants already identified as producing unauthorized copies and only permitting resumption of production of optical media products at such plants only after the conditions for ensuring legal production have been established.

Answer:

Please see answer to Question 244.

Question 246.

“Information to the Seventh Meeting” states that the draft law “On Amendments of the Law on Copyright and Related Rights” is ready for the Supreme Rada second reading. Has this legislation been submitted to the Fall 2000 session of the Rada? Does this draft legislation contain provisions that would provide protection for pre-existing works and sound recordings, as provided for in the U.S.-Ukraine bilateral trade agreement?

Answer:

The draft Law of Ukraine “On Amendment of the Law of Ukraine “On Copyright and Related Rights” has been submitted for consideration by the Fall 2000 session of the Supreme Rada of Ukraine.

The said draft Law provides protection for pre-existing works.

The draft Law of Ukraine “On Ukraine’s Accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty” has been prepared. Upon approval of the said draft Law of Ukraine, Ukraine will ensure protection of pre-existing sound recordings.

Question 247.

We would appreciate confirmation that the Government of Ukraine is committed to being in full compliance with the obligations of the TRIPS Agreement on the date of accession, without any transition period, including having in place the legal and regulatory regime and the enforcement measures required.

Please provide specific information on steps taken to achieve the following measures and when legal implementation is expected:

- **provide protection for pre-existing works and sound recordings;**
- **protect geographical indications and layout designs for integrated circuits;**
- **establish criminal penalties sufficient to deter piracy on a commercial scale;**
- **create effective *ex parte* measures for combating end-user software piracy;**
- **provide the required border measures.**

Answer:

The draft Law of Ukraine “On Amendment of the Law of Ukraine “On Copyright and Related Rights” provides protection for pre-existing works. The said draft Law has been submitted for consideration to the Supreme Rada of Ukraine. It is planned to approve the said draft Law of Ukraine

prior to the end of year 2000. Protection for pre-existing sound records will be ensured after approval of the Law of Ukraine "On Ukraine's Accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty" (the Supreme Rada of Ukraine will approve this draft Law of Ukraine at the end of year 2000 or in the first half year of 2001).

The draft Law of Ukraine "On Amendment of Some Legislative Acts on the Reinforcement of Responsibility in the Field of Intellectual Property" provides for the relevant criminal penalties. The said draft Law has been submitted for consideration to the Supreme Rada of Ukraine. It is planned to approve the said draft Law of Ukraine prior to the end of year 2000.

The drafts Law of Ukraine "On Amendment of the Law of Ukraine "On Copyright and Related Rights" and "On Amendment of Some Legislative Acts on the Reinforcement of Responsibility in the Field of Intellectual Property" provide effective *ex parte* measures for combating end-user software piracy. The said drafts Law have been submitted for consideration to the Supreme Rada of Ukraine. It is planned to approve the said drafts Law of Ukraine prior to the end of year 2000.

On 16 June 1999, Ukraine passed the Law of Ukraine "On the Protection of Rights to Indication of Origin of Goods", No. 752-XIV

On 5 November 1997, Ukraine passed the Law of Ukraine "On the Protection of Rights to Integrated Circuits Layout", No. 621/97-VR.

Question 248.

Please describe any legal or administrative initiatives that Ukraine plans to improve enforcement, particularly criminal enforcement, of intellectual property rights?

Answer:

A Draft Law of Ukraine "On Amendment of Certain Legislative Acts with Respect to Enhancing Liability for Violations of Rights to Intellectual Property Objects", providing for criminal and administrative liability for illicit use of intellectual property objects. In addition to primary types of sanctions, the Draft Law sets forth additional penalties – seizure of illegally fabricated products, and of equipment and materials designated for its fabrication.

The aforementioned Draft Law is being prepared for the second hearing at the floor of the Verkhovna Rada of Ukraine.

5. Laws, decrees, regulations and other legal acts relating to the above

Question 249.

Please indicate what progress has been made in regard to new legislation in that field, whether civil or criminal, since the submission of the Memorandum on IPRs in Document WT/ACC/UKR/68?

Answer:

The following statutes have been passed:

- The Law of Ukraine "On the Protection of Rights to Indication of Origin of Goods" No. 752-XIV of 16 June 1999; and

- The Law of Ukraine “On Amendment of the Law of Ukraine On the Protection of Rights to Inventions and Utility Models” No. 1771-III of 1 June 2000.

The following bills are pending at the Verkhovna Rada of Ukraine:

- The Draft Civil Code of Ukraine (Volume 4 “Intellectual Property Rights”);
- The Draft Law of Ukraine “On Amendment of Certain Legislative Acts with Respect to Enhancing Liability for Violations of Rights to Intellectual Property Objects” (Draft No. 5213) (prepared for the second hearing);
- The Draft Law of Ukraine “On Amendment of Certain Legislative Acts of Ukraine with Respect to Protection of Rights to Indication of Origin of Goods”; and
- The Draft Law of Ukraine “On Amendment of the Law of Ukraine On the Protection of Rights to Varieties of Plants” (being prepared for the second hearing).

See also answer to Question 249.

Question 250.

What improvements to better combat counterfeiting and piracy and enforce in general intellectual property rights will the draft Law on Amendment of Some Legislative Act on the Reinforcement of Responsibility for Infringements in the Field of Intellectual Property bring about?

Answer:

This Draft Law establishes criminal and administrative liability for illicit use of intellectual property objects, namely: the Criminal Code of Ukraine and the Code of Criminal Procedure of Ukraine provide for imprisonment or correctional works or imposition of fine with seizure of illegally fabricated products, and of equipment and materials designated for its fabrication, while the Code of Ukraine On Administrative Offences envisages the fine with seizure of illegally fabricated products, and of equipment and materials designated for its fabrication; the Customs Code provides for a fine with seizure.

Question 251.

Will the new law provide that judicial authorities will have the authority to adopt, on the request of the right holder, prompt and effective provisional measures, including *inaudita altera parte* ones, before an action leading to a decision on the merits of the case has been lodged, as it is required by Article 50 TRIPS Agreement?

Answer:

Requirements of Article 50 of TRIPS Agreement are guaranteed by provisions of Articles 35—39, 149—158 of the Civil Procedural Code of Ukraine, and by Articles 66—68 of the Arbitration Procedure Code of Ukraine.

Question 252.

When is the draft Law on Amendment of Some Legislative Act on the Reinforcement of Responsibility for Infringements in the Field of Intellectual Property expected to enter into force?

Answer:

The Supreme Rada of Ukraine approved the said draft Law of Ukraine in the first reading on 6 July 2000. It is planned that the said draft Law of Ukraine will be approved prior to the end of year 2000.

The Draft Law of Ukraine "On Amendment of Certain Legislative Acts with Respect to Enhancing Liability for Violations of Rights to Intellectual Property Objects" is expected to be heard by the Verkhovna Rada of Ukraine in December of 2000.

VI. TRADE-RELATED SERVICES REGIME

1. General

Question 253.

In which financial services subsectors does the Ukraine, as a matter of law, not currently permit branches and/or 100 per cent subsidiaries of foreign companies?

Answer:

Opening of banks with 100 per cent foreign capital is allowed in Ukraine.

According to Article 2 of the Law of Ukraine "On Insurance" (further – Law) the common share of foreign legal entities and foreign persons in the statutory fund of the insurer can not exceed 49 per cent. But Article 43 of this Law determines that in case of reorganisation of the insurer by the Ministry of Finance, foreign insurers may become the participants, provided they pay all insurer's debts and obligations (dishonoured bills). In this case, the share of foreign participants in the statutory fund may be set at the level not exceeding 50 per cent of the total statutory fund, except insurers, who obtained a licensee to issue life insurance (their share can not exceed 49 per cent of the total statutory fund).

We also inform that at the fulfilment of the Cabinet of Ministers Resolution of 18 May 2000 (Id.34), the Ministry of Finance prepared a comparative table to the Draft Law of Ukraine "On Amendment of the Law of Ukraine "On Insurance" (further – Draft). 8 August 2000, this table was submitted to the relevant ministries for approval. A meeting dedicated to discussion of the table took place 29 September 2000. Meetings with representatives of the League of Insurance Companies and other participants on the insurance market took place also.

The Draft envisages elimination of restrictions for the 100 per cent share of foreign subsidiaries in the statutory fund of the insurer. It also envisages the equal amount of statutory fund for domestic insurers and insurers established with foreign participation in the amount of 5,000 EUR (Article 29 of the Law of Ukraine "On Insurance" determines that the minimal amount of the authorised fund belonging to the domestic insurer shall be fixed in a sum equal to 1,000 EUR, according to the foreign exchange rate of Ukraine. For insurers, established with the participation of foreign legal entities and foreign citizens, the minimal amount of the authorised fund of insurer shall be fixed in a sum equal to 5,000 EUR).

Considering the above, conclusion can be made that the draft developed by the Ministry of Finance is compliant with the GATT/WTO requirements.

The adoption of the law is planned for the year of 2001.

To establish affiliates (representations) and subsidiaries on the territory of Ukraine, the insurer shall in a prescribed order obtain a licence to conduct insurance activity. The licence is issued by the Ministry of Finance of Ukraine. There are no other restrictions (including the capital limitations) on the establishment of affiliates and subsidiaries on the territory of Ukraine and beyond its territories by the national insurers and insurers with foreign participation.

Question 254.

Which telecommunications services are currently reserved to a monopoly? Which entity has the monopoly for these services? What is the legislative authority for the telecommunications services monopoly?

Answer:

Ukrainian telecommunication market is not monopolized.

Question 255.

What are the respective roles of Ukrposhta and Ukrtelecom? What is their relationship to the Ministry of Communications? Are these the only two "Associations" as described in the WTO document, WT/ACC/UKR/43?

Answer:

The Program of restructuring the Ukrainian electric communication enterprise "Ukrtelecom" and the Program of restructuring of the Ukrainian electric postal service enterprise "Ukrposhta" are approved by the Cabinet of Ministers Resolution "On the Programs of Restructuring the "Ukrtelecom" and "Ukrposhta" Associations" No.1 of 4 January 1998. The Cabinet of Ministers Resolution No. 1038 of 27 June 2000 amends this Resolution.

The Ukrainian state enterprise on electric communication "Ukrtelecom" is established by way of incorporation. 100 per cent of its shares belong to the State Committee of Ukraine on Communication and Information. When a decision on privatization of the Ukrtelecom will be taken, all shares and management thereby will belong to the Fund for sale and determining the person authorized to manage the state's share.

The Ukrainian state postal service enterprise Ukrposhta is the state owned enterprise. The main goal of its activity is rendering postal services to natural persons and legal entities of all kinds of ownership.

The Ukrainian state enterprise on electric communication "Ukrtelecom" was incorporated into an open stock company "Ukrtelecom" by the Order of the State Committee of Ukraine on Communication and Information No.155 of 27 December 1999. Its main goals being rendering of services of international, inter-city and local telephone communication and other electric communication services to natural persons and legal entities of all kinds of ownership.

Ukrainian state postal service enterprise "Ukrposhta" and open stock company "Ukrtelecom" are the independent legal entities, and according to the Order of the Cabinet of Ministers of Ukraine No. 948-p of 9 September 1999, is within the competence of the State Committee of Ukraine on Communication and Information.

Question 256.

We understand that the Ministry of Communications is the telecommunications services regulator in Ukraine. Is this ministry also responsible for licensing, or is this the role of one of the Associations?

Answer:

According to the laws "On Communication" of 16 May 1995, "On Radio-Frequency Resources of Ukraine" of 1 June 2000, Presidential Decree "On the Regulation on the State Committee of Ukraine on Communication and Information" No. 601/99 of 3 June 1999, Resolution of the Cabinet of Ministers of Ukraine "On the Procedure for Licensing of Business Activity" No. 1020 of 3 July 1998 and the law "On Licensing of Certain Kinds of Business Activity" No.1775-III of 1 July 2000, the State Committee of Ukraine on Communication and Information is entitled with licensing of the telecommunication services (except governmental objects), which render the radio services (with the use of radio frequencies), technical services on TV- and radio networks, radio and wire broadcasting, money remittance.

Question 257.

With respect to Ukraine's commitment to adopt the Reference Paper on Basic Telecommunications "upon accession to the WTO and ratification of the paper by the Supreme Rada of the Ukraine" (WT/ACC/SPEC/UKR/2/Rev.4/Add.1), we would be grateful if Ukraine could indicate preparations underway to meet this commitment and whether the process of ratification of the Reference Paper by the Rada has begun?

Answer:

Ukraine undertook a commitment to comply with regulatory principles of the Reference Paper on Basic Telecommunications upon accession to the World Trade Organization and ratification of the Protocol on Ukraine's Accession tot WTO by the Supreme Rada of Ukraine.

We inform that the regulatory principles set out in the Reference Paper are already reflected in the draft laws "On Telecommunications" and "On Postal Communication", which were introduced into the Supreme Rada of Ukraine.

VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

1. Bilateral or plurilateral agreements relating to foreign trade in goods and trade in services

Question 258.

The following Questions are based on the information provided by Ukraine in WT/ACC/UKR/65, WT/ACC/UKR/65/Add.1, and WT/ACC/UKR/81. Upon accession, Ukraine will be expected to observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its participation in these Agreements, and to ensure that provisions for notification, consultation and other requirements concerning free trade areas and customs unions of which Ukraine is a member are met. The purpose of these Questions, however, is not focused on current consistency of these agreements with WTO provisions. Rather, we need to better understand the nature and extent of Ukraine's preferential arrangements in order to assess the value of its MFN offers in goods and services.

Answer:

Upon accession to the WTO, Ukraine will observe the provisions of this organisation, including Article XXIV GATT and Article V GATS, as well as will follow the notification rules, consultation and other requirements concerning Ukraine's participation in free trade areas or customs unions.

Question 259.

Please confirm that Ukraine intends, at the time of accession, to submit notifications and copies of its Free Trade Area and Customs Union Agreements to the appropriate Committees for review by the Committee on Regional Trade Agreements (CRTA).

Answer:

At the time of its accession, Ukraine will submit notifications and copies of the Free Trade Area Agreements and Free Trade Union Agreements signed by Ukraine to the appropriate Committees.

Question 260.

Please confirm that the list in WT/ACC/UKR/81 identifies all of its current and projected preferential relationships with other countries, whether called a free trade agreement, customs union, or something other, that relate to trade in goods or services.

Answer:

Preferential relationship of Ukraine with other countries are represented only in the form of free trade, and relate to trade in goods only.

Question 261.

Could Ukraine provide additional information to that provided on the nature and scope of these agreements, e.g., which of these addresses trade in services? Of those that provide for preferential import access for goods, what tariff chapters are covered and what are the specific terms of liberalization?

Answer:

Free trade agreements do not contain the precise list of services sectors. The agreement's provisions refer to the whole Commodity Nomenclature, except the agreed lists of goods, which act in trade relations in the free trade regime between Ukraine and Russia, Uzbekistan, Kazakhstan, Estonia and Lithuania.

Question 262.

What portion of Ukraine's imports in a recent representative period were accounted for by the preferential trade agreements, i.e., with CIS countries and with non-CIS countries?

Answer:

In the scope of free trade among CIS, the volume of imports into Ukraine from the countries mentioned below, is about 55 per cent (current year statistics) in the total imports.

In the scope of the agreement on general conditions and mechanism for supporting the production cooperation of enterprises and industries of the CIS countries, the volume of imports is about 0.2 per cent in the total imports.

Question 263.

What is the specific timetable for completion of the CIS free trade arrangement? If none exists at present, what measures is Ukraine taking within the CIS to encourage development of such a timetable?

Answer:

The Agreement on establishment of the zone of free trade within CIS (hereinafter referred as CIS Agreement) was signed on 15 April 1994.

The Protocol of 2 April 1999 introduced amendments and additions to the CIS Agreement.

Pursuant to Article 23 of the CIS Agreement: "The Agreement is applied provisionally after it is signed and comes into effect when the parties of the Agreement fulfill all necessary internal procedures and send the third notification to the depositary on this fulfillment"

Pursuant to clause 36 of the CIS Protocol: "the present Protocol comes into effect when the parties of the Protocol fulfill all necessary internal procedures and send the third notification to the depositary on this fulfillment". For the parties of the Protocol that fulfill all necessary internal procedures later, the present Protocol comes into effect when all necessary documents are submitted to the depositary.

The Ukraine ratified the Protocol on 6 October 1999 (Law of the Ukraine No. 1125-XIV).

Ukrainian legislation does not determine the terms for ratification of the signed international agreements.

2. Economic integration, customs union and free-trade area agreements

Question 264.

We would appreciate Ukraine's reply to Question 35 of WT/ACC/UKR/59/Add.2 of 18 August 1999 concerning the timing of the elimination of tax exemptions for trade conducted under the Ashkabad Agreement, given such exemptions are considered by Ukraine to provide a minor temporary measure of support for Ukrainian enterprises.

Answer:

Under Ashkabad Agreement Ukraine does not provide VAT tax allowance. VAT payment can be delayed until the moment of sale of the final product.

Question 265.

The response to Question 1 of WT/ACC/UKR/59 states that Ukrainian laws and decrees are published in mass media publications and available through news services. Ukraine should, prior to accession, establish an official gazette for publication of laws, etc. relating to trade issues. We consider the establishment of such a publication as fundamental to improving the transparency of the Ukrainian trade regime and meeting the transparency obligations of GATT Article X and other WTO Agreements.

Answer:

Currently, all conditions exist in Ukraine for reflecting the legislative activity in the country in order to consider this process really transparent and democratic.

In line with the Governmental decision, laws and other legislative acts, including trade-related ones, are obligatory published in mass media publications. In particular, necessary documents in a printed version may be found in newspapers “Uriadovyi Kurier” and/or “Golos Ukrainy”. Such editions as “Galytski Kontrakty”, “Visnyk NBU” and others publish both; adopted legislation and draft legislation, which are being prepared for approval by the Supreme Rada or Ukrainian President.
