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**Working Party on the
Accession of Vanuatu**

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Additional Questions and Replies

The Department of Economic Affairs of the Government of Vanuatu has submitted the following replies to additional questions concerning the Memorandum on the Foreign Trade Regime of Vanuatu (WT/ACC/VUT/2) and the Questions and Replies thereon (WT/ACC/VUT/4), with the request that they be circulated to Working Party members. The Annexes mentioned in this document are available in the Secretariat (Accessions Division, Room 1126) for consultation.

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I. INTRODUCTION

Question 1.

Vanuatu notes that one of the three major development themes of the Third National Development Plan is the contribution to economic self-reliance.

Reply

The Third National Development Plan is no longer in force. Since the beginning of 1997 the Government of Vanuatu, with technical assistance from the Asian Development Bank is replacing that document and is now introducing a new economic policy document which will establish an on-going Comprehensive Reform Programme (CRP) focusing on an outward looking reform of both the private and public sector.

The CRP, as is detailed in Annex I will alter the direction of policy towards export orientation. A National Summit is scheduled for July which will prepare the way for major legislative reform. The Government of Vanuatu will assure that these economic reforms will be WTO compatible.

Question 2.

Please indicate specific trade policy measures that will be used to implement this goal. What particular aspects of the Plan address this development theme, eg. trade, investment, etc.?

Reply

In the past the manufacturing sector provided a source of modest economic growth in the economy providing much needed jobs. The growth of manufacturing was based on producing substitutes for imports. However, now few opportunities remain for import substitution. The protection necessary to stimulate the existing level of import substituting activities has contributed to the high cost structure of the economy and this is part of the reason for the implementation of the CRP.

The view of the Government of Vanuatu is that the outlook for trade and manufacturing will only improve with a change in emphasis towards the export sector. Export markets provide the potential for unlimited growth in output and incomes.

Proposed policies and strategies for the trade and manufacturing sector will be based on:

- the development of a more open trading regime which emphasises competitive production of goods for export. Exploitation of trading opportunities provided by membership of the Melanesian Spearhead Group Trade Agreement will also be encouraged and developed. Fuller participation in the multilateral trading systems (WTO) will be one of the main elements of this policy. Incentives which favour production for the domestic market over production for export will be removed;
- developing a strategy to involve more Ni-Vanuatu in business based on exploitation of competitive market opportunities;
- examining and amending labour legislation to be consistent with achieving high levels of productivity;

- diversifying the range of lending options for small business including the development of the credit union movement and micro credit scheme.

Question 3.

How will the accession protocol be incorporated into Vanuatu's domestic law? Will the provisions of the protocol take precedence over other laws if they conflict?

Reply

Annex II contains a list of laws of Vanuatu that will be amended in order to assure conformity with the commitments made in this questionnaire. The Government of Vanuatu will also commit to phasing out or abolishing immediately, where feasible, those laws that are in violation of its obligations under the covered agreements of the WTO. Specific reform commitments are made throughout the questionnaire.

Question 4.

Can the Government of Vanuatu ensure that sub-central governments conform to WTO rules?

Reply

The Government of Vanuatu agrees to ensure that all laws and regulations of provincial governments and councils will be in conformity with its WTO obligations

II. ECONOMY AND FOREIGN TRADE

1. Economy

(a-d) Agriculture, fisheries and forestry

International Finance Centre

Aims of government policy

**Questions 5.
and 6.**

WT/ACC/VUT/2, section II.1: Most WTO Members have moved away from an import substitution model of development to one based on liberalized free markets and competition. Import substitution increases domestic prices and protects essentially inefficient industries from foreign competition.

Does Vanuatu intend to continue to pursue import substitution policies after accession to the WTO? If so, will Vanuatu confirm in its protocol that all measures taken to implement these policies will be applied in conformity with the provisions of the WTO, e.g., without quantitative restrictions or measures that have that effect?

Reply

Vanuatu has pursued an import substitution policy for the past 16 years in order to develop its industrial and small manufacturing base. As discussed above it is now refocussing its policies and strategies to allow it to become outward looking, emphasising export promotion strategies. The linchpin of this is the "policies for growth and development" which is currently being prepared.

However in future tariffs will be the principal instrument of trade policy should any measure of protection be deemed necessary.

2. Foreign Trade

Question 7.

Paragraph 21 of Act No. 1 of 1994 states that “Where the government rates and taxes exist regarding international connections, the Local Government Councils shall have the power to make by-laws for additional amounts which may not exceed 10 per cent of the existing tax”. What “international connections” are being referred to? Would the right to increase taxes also apply to import duties and taxes?

Reply

This particular reference to international connections is not defined in the Act and could be defined to mean imports and exports. However, it should be noted that any potential tax, fee or levy raised by the provincial governments in Vanuatu must have the approval of the National Government through the Ministry of Home Affairs. The Government of Vanuatu will commit that it will amend existing provincial government legislation to remove any authority to raise import duties or import taxes but provincial governments would continue to maintain the right to raise internal taxes as is the case in other countries.

Question 8.

Vanuatu should supply additional information on the competence of the provinces for trade and investment policy under Vanuatu’s recent decentralization programme.

Reply

Currently all trade and investment proposals are appraised, processed and approved through the central government authorities. The Government is trying to strengthen the capacity in the provinces to carry out their tasks. It should be noted that provincial governments do not have legal authority to impose taxes and charges unilaterally that are not agreed to by the Minister of Home Affairs and hence the Government of Vanuatu can assure that provincial laws will be WTO consistent.

Question 9.

Please outline specifically those powers held by the local governments that are relevant to WTO provisions, e.g., taxes, investment, services permits, etc.?

Reply

As stated above, provincial governments with the approval of the National Government can impose taxes, fees and levies. The Government of Vanuatu will commit, in its protocol of accession that these levies, fees and taxes will be raised in a WTO consistent manner and that provincial governments will not have the authority to raise import duties or import taxes.

Question 10.

Can Vanuatu confirm for the Working Party and in its protocol that provinces will be required to implement the provisions of the WTO Agreement after Vanuatu's accession?

Reply

The Government of Vanuatu confirms that the provinces and all sub-national governments will be obliged to operate in conformity with the WTO Agreement. All relevant legislation will be amended to assure such conformity.

III TRADE REGIME FOR GOODS

A. Foreign Trade Regime

1. Import Regulations

(a) The evolution of the customs tariff regulation

Question 11.

Could Vanuatu please supply tariff and trade data in electronic format for the use of Working Party members in conducting goods market access negotiations?

Reply

The Vanuatu customs tariff is not available in electronic format. See Annex III for trade data for 1994, 1995 and 1996.

Question 12.

Vanuatu indicates that it offers extensive import tariff exemptions to private business to assist and facilitate private sector investment. Are these duty exemptions on a non-discriminatory basis to all entrepreneurs, domestic and foreign? Does Vanuatu extend these exemptions to products or is the exemption tied to certain firms?

Reply

Duty exemptions are normally accorded on a non-discriminatory basis to all entrepreneurs, domestic or foreign. However, the guidelines for the granting of customs duty exemptions issued by the Department of Industry that are based on a point system does contain a provision whereby preferences are given to firms on the basis of percentage of local ownership. These guidelines are not actually used by the committee in deciding whether to grant an exemption or not. However, as discrimination can be construed from the guidelines the Government of Vanuatu will withdraw these guidelines and draw up clear and transparent guidelines as part of the new investment code that will be drawn up under the Comprehensive Reform Programme.

General exemptions for the importation of a particular product by all importers are not granted. These are granted subject to a justification being offered to the Government of Vanuatu. However, these exemptions are not to specific companies but to those which are involved in industries where economic activities are of demonstrable and substantial benefit to Vanuatu

Question 13.

Please specify the terms and guidelines on which the duty exemptions are based.

Reply

The system by which these duty concessions are determined are generally discretionary with exemptions granted for projects which can demonstrably and significantly contribute to the economic development of Vanuatu.

The terms and guidelines to qualify are clear and please refer to answer No. 18 (WT/ACC/VUT/4). This specifies the precise guidelines that are used under Schedule 3 of the Vanuatu Customs Tariff Act (see Annex IV). There exists a system of points but in practice it is not employed by the government when granting tariff concessions.

Question 14.

According to WT/ACC/VUT/4, Vanuatu grants import duty exemptions according to the following guidelines: (i) to citizens of Vanuatu; (ii) to local producers; and (iii) on the basis of the percentage of local ownership of business ventures. How is such discrimination consistent with the national treatment provisions of the WTO?

Reply

As mentioned above in the response to question No. 13 this system of points is in practice not employed. However, the Government of Vanuatu will commit in its Protocol of Accession that within eighteen months of accession it will complete and implement its new investment code which shall not discriminate on the basis of nationality in offering tariff concessions.

These new investment guidelines will include clear and transparent regulations on how and under what conditions tariff concessions are to be granted in order to stimulate investment in a non-discriminatory manner.

Question 15.

Would foreign funded local enterprises be eligible for such exemptions on the same basis as local citizens or domestically owned firms?

Reply

Please refer to the answer to question 12.

Question 16.

Are these exemptions in any way tied to export?

Reply

Duty exemptions are not tied explicitly to exports. However the Government of Vanuatu does grant duty exemptions to the agricultural sector which is almost entirely export oriented.

Question 17.

Are Vanuatu's customs regulations contained in the Customs Tariff Law already provided to the WTO Secretariat?

Reply

Yes, these regulations were enclosed with the answers to the second series of questions sent to the Secretariat in April 1996 (WT/ACC/VUT/4/Add.1).

Question 18.

Vanuatu states that "most items are liable to a variable rate of duty on their value at import". Could Vanuatu clarify how and why the duty rates varies with value? Are such "variable duty rates" known to importers before they place their orders?

Reply

- (a) There was a typographical error in the first submission that should have stated "various" rates of duty not variable rates of duty. Vanuatu does not impose variable duty rates.
- (b) Rates of duty are fixed rates.
- (c) Same as (a).

Question 19.

Vanuatu says that the current average tariff is 24 per cent with a 5 per cent service tax. Vanuatu says that it is considering reducing tariffs to an average of 15 per cent with a service tax of 7 per cent. Vanuatu says that the service tax is to cover the cost of any services provided by the government authority as a result of import services. However, the service tax does not appear to form part of the service provided by the government and is pegged at a rate that would be far higher than the costs incurred. We would like to see this tax either declared an import surcharge and then become subject to bilateral market access negotiations or converted to a specific value more closely related to the cost of customs clearance.

Reply

Yes, the current service tax as presently found in the Customs Tariff Act will become an import surcharge on the basis of our submission to the WTO Secretariat. Our bound rates will become subject to bilateral market access negotiations. An *ad valorem* service tax or fee of 1 per cent we acknowledge will be maintained but the rate will, by legislation, be set to reflect the full cost of customs clearance.

Question 20.

Vanuatu says that business licence fees require that to import for retail and wholesale, the 2.5 per cent import surcharge fee must be paid. However, Vanuatu says that plans are under way to delete the 2.5 per cent fee. Could Vanuatu clarify that this is the case?

Reply

The business licence fee of 2.5 per cent imposed on importers of wholesale/retail products are no longer levied. The fee is currently set at VT 50,000 per annum.

Question 21.

Please provide details of variable rates of duty.

Reply

Not applicable. Please see the answer to question 18.

Question 22.

Answers at the first meeting of the Working Party indicate that the service tax, the 2 per cent fee on imports for wholesale or retail, and the licence fees paid to the Vanuatu Cooperative Federation are, in WTO terms, additional customs duties. Will Vanuatu be prepared to incorporate these into the customs duty, so that only one rate of duty applies to imports under each tariff line? Will Vanuatu be prepared to bind “other duties and charges” at zero in its tariff schedule? Will Vanuatu be prepared to review provisions providing for import duty exemptions are variable rules of duty as part of the WTO tariff negotiations?

Reply

(a) Yes, Vanuatu intends to incorporate the service tax and licence fees to Vanuatu Cooperative Federation into the customs duty.

(b) Vanuatu is not prepared to bind “other duties and charges” at zero in its tariff schedule. Vanuatu will introduce a service tax of 1 per cent of c.i.f. value of imports that is, as stated above, based upon full cost recovery of the customs clearance system. And will base any future changes of the *ad valorem* rate on a cost recovery basis only. This system of charges will be fully WTO consistent.

(c) As part of the review of our trading system Vanuatu intends to review provisions which provide for duty exemptions so as to assure clear and transparent guidelines in granting of duty exemptions for those sectors as prioritised by the government. The Government of Vanuatu will notify the changes in the guidelines to the WTO once accession is completed. It is expected that the change in guidelines will take several months to complete. The guidelines will be consistent with all covered WTO Agreements including the TRIMs.

Variable duty rates, as stated above, are not employed in Vanuatu.

(c) **Import charges and fees**

Question 23.

Vanuatu states that there is a 5 per cent “service tax” (possibly going up to 7 per cent) payable on imports on the duty inclusive value. In WT/ACC/VUT/4, Vanuatu notes that it views this “service tax” as a form of import tariff. Article VIII of the GATT 1994, however, mandates the charges for customs and similar services must be approximate to the “cost of services rendered”,

i.e. on the value of the service performed for each customs entry rather than, e.g., on the basis of a percentage of the value of the import transaction.

How does Vanuatu intend to amend or eliminate its service tax to comply with Article VIII of the WTO?

Reply

Vanuatu will amend the Customs Tariff Act so that the current service tax will become a surcharge. The government will create a new service tax based on the costs of customs clearance and will comply with Article VIII of the GATT.

Question 24.

Does Vanuatu intend to incorporate the service tax into its import duty rate? If so, is there legislation in development to accomplish this?

Reply

(a) Yes, Vanuatu's intention is to incorporate the service tax as an import surcharge but will retain a service tax which will reflect the cost of the service being provided.

(b) There is as yet no legislation. It is expected that in order to comply with WTO provisions legislation will be passed.

Question 25.

Vanuatu states that under the Business Licence Act, anyone wishing to import from wholesale or retail will be issued a licence for one year, upon application and payment of fees, by the Minister of Finance. Please indicate how the 3 to 4 per cent licensing fee applied for issuance of the licence is comparable to the cost of service, rather than the cost of the import?

Reply

The present Business Licence Act provides that anyone wishing to import for wholesale or retail sale will be issued a licence for one year upon application, and payment of fees and approval by the Minister of Finance. The fee is VT 50,000 per year. The 3 per cent commission for rice flour, sugar and canned mackerel and 4 per cent for tobacco is a fee paid to the Vanuatu Cooperative Federation and has no relationship to the cost of the service.

Question 26.

Are these fees assessed on each shipment? What is the role of the Vanuatu Cooperative Federation and why are the fees paid to it?

Reply

These fees are assessed on each shipment. The role of the Vanuatu Cooperative Federation exists to promote retail trade in the rural areas of Vanuatu. The fees paid to the Vanuatu Cooperative Federation was under an order issued by the Vanuatu Government (Import of Goods Control Order No. 28 of 1987) and fees are collected in order to repay debts of the Vanuatu Cooperative Federation.

Question 27.

If, as indicated in WT/ACC/VUT/4, the import fee is maintained to pay off the trading debts of the Vanuatu Cooperative Federation, in what manner should this not be considered an additional tariff or a tariff surcharge?

Reply

In trade terms the commission paid to VCF is an additional tariff and the Vanuatu Government will incorporate this into the import tariff and abolish the commission.

Question 28.

What is the timetable for either eliminating, restructuring or altering this fee to ensure consistency with GATT Article VIII?

Reply

This commission will be eliminated before accession.

Question 29.

Further to the answers to questions 16, 26 and 28 in document WT/ACC/VUT/4, we would appreciate clarification of Vanuatu's plans with respect to possible future reduction of import tariffs and reduction or elimination of other charges such as the service tax and business licence fee.

Reply

Business licence fees have changed from 2.5 per cent of c.i.f. values to VT 50,000 per annum. Service Tax changes will be incorporated into the Customs Tariff Act as a surcharge prior to accession. As regards future reduction of import tariffs this is to be phased over a period of ten years starting from the end of 1997 but the precise timing and sectors have yet to be identified.

(d) Taxation regime

Question 30.

Vanuatu notes that it has enacted a turnover tax at 4 per cent to make up for the expected shortfall in tax revenues from removing taxes on imports. When is this tax assessed and what is the basis for it's assessment, i.e., what transactions are affected?

Reply

The 4 per cent fee on turnover is part of the Business Licence Act. It is not a separate turnover tax. It is imposed based on gross turnover of income for the wholesale/retail sector as well as the financial sector. The turnover fee is paid quarterly on either estimated or actual turnover in the previous quarter. Reconciliations on payments are made at the end of the year. The tax is based on total turnover of the financial sector as well as the wholesale and retail sectors for both goods and services.

Question 31.

It appears that Vanuatu currently applies taxes to imports that do not have an equivalent tax on similar domestic goods, e.g., the 2.5 per cent licence fee for importation for wholesale or retail. This tax appears inconsistent with the national treatment provisions of Article III of the GATT 1994. Are Vanuatu's sales and turnover taxes applied equally to imported and domestic goods?

Reply

This 2.5 per cent licence fee has been eliminated and a fee of VT 50,000 per annum is charged for import for wholesale/retail. Vanuatu's business licence fee on local businesses and products are taxed equally on imports as well as domestically produced goods.

Question 32.

What are Vanuatu's intentions vis-à-vis tax reform and the elimination of 2.5 per cent import licensing tax?

Reply

The 2.5 per cent import licensing tax has been deleted and is now charged at VT 50,000 per annum (for those importing for wholesale or retail). Tax reform strategy is currently being formulated.

Question 33.

Will VAT be the only internal tax charged on imports?

Reply

There is no VAT in Vanuatu as yet and government policy in the area is still to be determined. There is however an excise tax on domestically produced beer which is charged at a rate of VT 80 per litre. This excise tax is in lieu of turnover tax on the brewery.

(e) Tariff preferences

Question 34.

The Melanesian Spearhead Group Trade Agreement(s) provide for only limited preferential tariff treatment, e.g., currently, only a handful of items are listed as eligible for "free trade" among Vanuatu, Papua New Guinea and the Solomon Islands.

Will Vanuatu pledge that it will submit the MSG Agreement to the Committee on Regional Arrangements for review in the context of WTO provisions in Article XXIV of the GATT 1994, the Enabling Clause, and Article V of the GATS?

Reply

Yes. Vanuatu as part of its Protocol of Accession will submit the existing MSG Trade Agreement to the Committee on Regional Arrangements as stipulated under Article XXIV of GATT 1994. However, it is our understanding that the Government of Papua New Guinea has, in May 1997, submitted the MSG agreement to the Committee on Regional Arrangements.

While the current agreement includes 150 tariff lines the Government of Vanuatu intends to fulfil its treaty commitments to its MSG partners and move, in the fullness of time to eliminating barriers on substantially all trade.

Question 35.

What plans have been declared that all goods currently and potentially traded between and among the MSG countries are, or will be free of duties and other restrictions, including licensing requirements, within a short period of time?

Reply

In order to facilitate trade liberalization between the MSG States Vanuatu will be notifying the other MSG members of this matter that has been raised by the Working Party. While the MSG Agreement clearly states the intention of the members is to move to eliminating trade barriers on substantially all trade there is as yet no timetable. We shall begin serious consultations at the earliest possible opportunity with our MSG partners in order to establish such a timetable which will eventually lead to "free trade" regime for all Melanesian Spearhead Group countries with the possible eventual formation of a customs union.

In order to facilitate our deliberations on this matter could the Working Party please provide the Government of Vanuatu with the appropriate precedence and jurisprudence that clearly defines 'substantially all trade' as well as what now constitutes an appropriate transition period to free trade?

Question 36.

Do imports from MSG trading partners pay domestic taxes? Do they pay the service tax?

Reply

Yes, imports from MSG countries pay service tax and all domestic taxes.

Question 37.

Do the MSG countries have a schedule for expansion of the coverage of the agreement and complete elimination of duties and restrictions on substantially all trade in goods between and among themselves?

Reply

As mentioned above, this agreement is transitional with all parties agreeing that it will move to cover substantially all trade. There has been an expansion from three products to 150 tariff lines. The MSG senior officials will meet in 1998 to discuss establishing a formal timetable for transition to full free trade.

(f) **Non-tariff measures, quotas and licensing system**

Question 38.

The "import orders" on agricultural produces and t-shirts appear to violate Article XI and the WTO Agreements on Agriculture and Import Licensing Procedures. These measures are, in effect,

either import prohibitions, discretionary licensing requirements, or de facto quotas, and therefore, WTO inconsistent. Has Vanuatu begun to consider how to amend, eliminate, or re-organise these import restrictions to bring them into WTO-conformity at the time of Vanuatu's accession?

Reply

Vanuatu will move to either impose tariffs on these products or will eliminate the import orders and other protective measures altogether on these products.

Question 39.

Vanuatu states that five agricultural goods (rice, sugar, flour, canned mackerel and tobacco products) are subject to "import orders" and cannot be imported all without a licence. Are these the only imports subject to import licensing? Who is the authorizing authority? What are the criteria for granting the licences?

Reply

An import licence is required for the following products:

- rice, flour, sugar, canned fish and tobacco products; and,
- t-shirts and singlets bearing a Vanuatu motif or logo.

The system of import licensing is contained in Annex III which explains the legal authority as well the criteria used. The authorising authority is the department responsible for industry and in the case of rice, flour, sugar, canned fish and tobacco products the licence is issued once the Vanuatu Cooperative Federation receives its 3-4 per cent commission. The authority for the import licences for t-shirts and potatoes is also the Department of Industry (see Annex on Import Licensing Procedures).

Arms and ammunition

In this case the authorising authority is the Ministry of Home Affairs. Licences are strictly controlled for reasons of public security and safety.

Liquor and Spirits

The issuing authority is the Ministry of Home Affairs which issues automatic licences for these products.

Plants and other products controlled by CITES

The issuing authority is the Vanuatu Quarantine Service. Licences are issued in light of CITES agreements and regulations.

Question 40.

Should these licences be considered "discretionary", i.e., that they are granted only when the responsible Vanuatu authority is prepared to permit importation of these products?

Reply

These are not automatic licences except in the case of liquor and spirits.

Question 41.

Are there any other products to which import licences and/or licensing fees are applicable?

Reply

There are no other products to which import licences or fees are applicable.

Question 42.

Vanuatu states in this section that it also permits importation of potatoes only during certain months. How does an import order operate in practice? How does the Government of Vanuatu approve or disapprove the applications for importation?

Reply

The prohibition on the import of potatoes during the harvest months from August to March of each year has already been eliminated.

Question 43.

How is such an import prohibition consistent with the WTO Agreement on Agriculture?

Reply

It is the intention of the Government of Vanuatu to use tariff measures as the principal trade policy instrument in future. As a result import prohibitions will be replaced by tariff measures or they will be eliminated altogether.

Question 44.

We note that the discretionary licensing requirements on rice, sugar, flour, canned mackerel and tobacco products and the seasonal restrictions on potatoes act as quantitative restrictions and are therefore absolutely prohibited by the Agriculture Agreement. Please provide a copy of the Import of Goods Control Act and explain in greater detail how Vanuatu's import licensing system operates.

Reply

A copy of the Import of Goods Control Act is available in the Secretariat for consultation (Accessions Division, Room 1126). Please refer to Annex V for clarification as to how the import licensing system operates. Seasonal restrictions on the importation of potatoes no longer apply.

Question 45.

If an importer has obtained a business licence to import from the Ministry of Finance, is that importer then free to import in any amount, other than those subject to prohibition or those covered by the Import Control Act?

Reply

When an importer has obtained a business licence to import from the Ministry of Finance then this importer is free to import any goods in any amount other than those subject to restrictions or prohibitions by other laws. Please note that the business licence issued by the Ministry of Finance is for imports for the purposes of wholesale or retail trade - it is not an import licence.

Question 46.

Are any further approvals by ministries or other government agencies for specified goods? For instance, under the Import of Goods Control Act, can the Minister for Trade limit the type or quantity of goods an importer with a business (import) licence can import?

Reply

The Minister of Trade could limit the type and quantity of goods an importer with a business (import) licence can import. However these provisions have never been used in this way.

Question 47.

Vanuatu states that non-citizens of Vanuatu must comply with residence and work permit regulations before submitting an application for an import (business) licence. What are the terms of these regulations? How are such licences acquired?

Reply

No non-citizen of Vanuatu can reside in Vanuatu without first having complied with the immigration regulations of Vanuatu. Non-citizens therefore cannot expect to reside in Vanuatu and carry on business without a residence permit. In order for a non-citizen to have a residence permit in Vanuatu for the minimum term he or she would have to have some assets either in cash or otherwise to the value of VT 5 million. A VT 5 million asset invested in Vanuatu will entitle a non-citizen to a one year permit. The Vanuatu Government allows non-citizens the maximum of a 10 year residence permit if they have assets of over VT 50 million invested in Vanuatu. The foreign investor having invested once in Vanuatu is not required to invest a similar amount each year.

Having obtained a residency permit a non-citizen may obtain a business (import) licence which is issued by the Minister of Finance. Every business licence is issued annually. The licence is not transferable and the business licence holder is required to pay an annual fee which varies from category to category.

Question 48.

Under the Import of Goods Control Act, the Minister of Trade may restrict or prohibit the importation of goods that compete with local industry. How would Vanuatu justify such policies in view of the requirements of Article XI or the GATT of 1994?

Reply

This is justified under Article XVIII of the GATT of 1994.

Question 49.

Will Vanuatu confirm in its protocol that it will use this authority after accession only in conformity with WTO provisions?

Reply

Vanuatu will confirm in its Protocol of Accession that it will use this authority after accession only in conformity with WTO principles.

Question 50.

Import licence required for goods intended for wholesale or resale require payment of a 2.5 per cent fee based on the c.i.f. value of the goods. The answer to question 28 indicated that there are plans to delete the 2.5 per cent part of the business licence fees. Could Vanuatu confirm that this is the case?

Reply

This tax has already been abolished and replaced by a VT 50,000 per annum fee.

Question 51.

Does Vanuatu intend to move the basis of payment of import licence fees to the approximate cost of services rendered in accordance with Article VII(a) of GATT 1994 and Article 3.2 of the Agreement of Import Licensing Procedures?

Reply

The business licence fee has been abolished and replaced with a fee of VT 50,000 and the 3-4 per cent commission to the Vanuatu Cooperative Federation will also be abolished prior to accession.

Question 52.

What is the purpose of Vanuatu's Import Licensing System?

Reply

Following the reforms the import licensing regime will exist to assure the proper monitoring of trade as well as to gather data. The import control function will cease to exist.

Question 53.

Please complete the Questionnaire on Import Licensing Procedures.

Reply

See Annex V.

Question 54.

The Agriculture Agreement provides that WTO Members should not maintain non-tariff measures on agricultural products. Will Vanuatu remove its non-automatic licensing requirements on rice, flour, canned mackerel, sugar, tobacco products and potatoes?

Reply

Yes, Vanuatu will agree to abolish non-automatic licences on these products

Question 55.

Could Vanuatu explain in detail about the seasonal restrictions on the import of potatoes and the rationale behind it?

Reply

There are currently no restrictions on the import of potatoes. This ban has been eliminated.

Question 56.

Could Vanuatu explain more specifically about the licensing restrictions on those items listed in the answers to questions 39 and 41 of WT/ACC/VUT/4?

Reply

An import licence is required for the following:

- rice, flour, sugar, canned fish and tobacco products;
- t-shirts and singlets bearing a Vanuatu motif or logo;
- Potatoes.

The system of import licensing is contained in Annex V which explains the legal authority as well the criteria used. The authorising authority is the Minister responsible for Industry and in the case of rice, flour, sugar, canned fish and tobacco products the licence is issued once the Vanuatu Cooperative Federation receives its 3-4 per cent commission. The authority for the import licences for t-shirts and potatoes is also the Minister for Industry (see Annex on Import Licensing Procedures).

Arms and ammunition

In this case the authorising authority is the Ministry of Home Affairs. Licences are strictly controlled for reasons of public security and safety.

Liquor and Spirits

The issuing authority is the Ministry of Home Affairs which issues automatic licences for these products

Plants and other products controlled by CITES

The issuing authority is the Vanuatu Quarantine Service. Licences are issued in light of CITES agreements and regulations.

Question 57.

Please explain about the quantitative restrictions on the importations of canned mackerel, to include the reason for an import quota, the procedures for obtaining the import quotas and the legal basis for the procedures, as well as the statistical data on import quotas and the actual amount of canned mackerel imported

Reply

There are no quantitative restrictions on the importation of canned mackerel. There are import licences which do not limit quantities in any way. The import licences exist by virtue of an import order issued by the Minister of Industry under an Import Order No 28 of 1987 empowered under the Import of Goods Control Act. The reason for the Import order was to assist the Vanuatu Cooperative Federation to pay its debts. Licences are granted for the import of canned mackerel following the payment to VCF of a commission of 3 per cent of the value of imports. The total value of imports of canned mackerel in 1996 was VT 94.2 million.

(g) Customs valuation

Question 58.

Customs valuation in Vanuatu, is “based on the Brussels Definition of Value”. Could Vanuatu give a more detailed explanation of how the system works and the sequence of alternative methods of assessing value of Vanuatu customs?

Reply

Please refer to Schedule II of the Customs Import and Export Duty Tariff 1996 (see Annex VI). Regrettably no more detail is available than that contained in the Act.

Question 59.

Will Vanuatu incorporate the terms of the WTO Agreements on Customs Valuation in its laws directly, to ensure WTO conformity after accession?

Reply

Yes, Vanuatu intends to incorporate the WTO Agreement on Customs Valuation into domestic laws directly to ensure WTO conformity by the year 2000. Vanuatu is a least-developed country and will require technical assistance and training of customs staff in order to implement the code.

Question 60.

Vanuatu advises that customs valuation is based on the Brussels Definition of Value. Could Vanuatu provide more details on customs valuation including on its intentions concerning the implementation of the Customs Valuation Agreement?

Reply

See the response to question 58.

Question 61.

Vanuatu has advised that it has no specific legislation governing rules of origin although standards are being prepared. Could Vanuatu advised of progress on developing and implementing standards?

Reply

There are no rules of origin being prepared locally. We will be relying on the World Customs Organisation recommendations as mandated by WTO.

Question 62.

Please complete the Questionnaire on Customs Valuation.

Reply

The questionnaire cannot be completed as Vanuatu is not using the GATT Valuation Agreement at present.

Question 63.

Will Vanuatu apply the provisions of the WTO Agreement on Customs Valuation from the date of it's accession?

Reply

Vanuatu will not be able to apply the provision of the GATT Valuation Agreement on accession as this will require the preparation of legislation as well as the training of customs officers but Vanuatu will do so by the year 2000.

(j) Standards and certification

Question 64.

Vanuatu states that it has no standard or certification code for imported or domestic foods. What is the mechanism for the enforcement of industrial standards in Vanuatu?

Reply

Vanuatu has no mechanism of enforcement of standards beyond health and phytosanitary standards. There does exist provisions for the regulation of municipal health standards by the various municipalities. These include the Food (Control) Act, No. 2 of 1981 which restricts businesses and persons from displaying, storing or selling food that is unfit for human consumption. Moreover, there is a National Building Code that requires construction to meet certain standards but these regulations apply only in the two main towns of Port Vila and Luganville.

Question 65.

Do private sector importers perform this function for imports?

Reply

Private sector importers will determine the standards of the products they import with their suppliers.

Question 66.

Is there a ministry or government regulatory agency that is responsible for applying industrial standards in Vanuatu?

Reply

No, the laws of Vanuatu do not provide for such regulatory authority beyond sanitary and phytosanitary standards.

Question 67.

If Vanuatu has no industrial standards code, are international standards applied? Is Vanuatu a member of any international standard organisations?

Reply

Beyond the OIE and other international organisations involved in sanitary and phytosanitary standards, Vanuatu is not a member of any other international standards body.

(k) Sanitary and phytosanitary measures

Question 68.

Will Vanuatu provide a detail explanation of the types of quarantine restrictions applied to the products listed and the justification for each restriction?

Reply

Sanitary and phytosanitary standards are dealt with by two organisations. The first is the Vanuatu Quarantine Service which deals with plant protection and the second is the animal health service of the Department of Livestock. In the case of both animal health and plant quarantine standards are determined either by the South Pacific Commission, OIE standards of standards established with technical assistance from the Australian and New Zealand animal health services.

Quarantine

The list of prohibitions (see Annex VII) has been established by the Plant Protection Unit of the South Pacific Commission and applies across the Pacific Island countries which produce similar crops, and have climates and environment. The prohibition is due mainly to the risk of introducing exotic pests. However, if the commodities are treated to eliminate the risk using agreed sanitary

procedures then importers can obtain quarantine authority allowing the commodities entry into the country.

Animal Health

Import protocols for animals and animal are based on the Office International des Epizooties recommendations in their international Animal Health Code. As a small country with limited resources technical assistance on risk assessment comes from MAF New Zealand and AQIS Australia. Both Australia and New Zealand provide technical assistance in formulating animal health protocols.

As Vanuatu does not exist the independent scientific capacity to set these standards all are established by international organisations or by developed countries in the region.

Question 69.

What is meant by “source country risk” as a basis for instituting prohibitions?

Reply

Quarantine

‘Source country risk’ is not a quarantine term, therefore it presumably means country or area Pest Risk Assessment (PRA). Vanuatu is developing an import specification manual based on scientific information and PRA is used to determined entry of products. The import specification manual is being drafted to assure conformity with IPPC standards.

Animal Health

The “Source Country Risk” relates to the animal disease status of the country of origin and therefore the risk of importing diseases which Vanuatu does not have. Quarterly reports from the OIE detail the health status for determining source country risk. Vanuatu would not accept animals from countries without a health status report. In the case where countries are not members of the OIE such as many of the countries of the South Pacific Vanuatu will act under advisement from the South Pacific Commission.

Question 70.

Is the Government of Vanuatu a member of the Codex Alimentarius Commission (CODEX) or the International Plant Protection Convention (IPPC)? If not, does Vanuatu plan to join these organisations?

Reply

Vanuatu is not a signatory to the International Plant Protection Convention (IPPC) nor is it a member of the Asia and Pacific Plant Protection Commission (APPPC). The Vanuatu Government is not a member of Codex Alimentarius Commission (CODEX). Vanuatu is planning to join these organisations. Vanuatu is a member of the newly formed Pacific Plant Protection organisation (PPPO). Vanuatu is a member of FAO and OIE .

Question 71.

Please complete the Questionnaire on Technical Barriers to Trade.

Reply

See Annex VIII.

Question 72.

Please provide a list of products affected by SPS measures (including import prohibitions) and the reason for each, including standards, guidelines or recommendations on which these requirements are based.

Reply

Quarantine

See the list of prohibited agricultural products (see Annex VII). Please note that this list is constructed under advice from the South Pacific Commission.

No person shall import or introduce any animal, animal products, biological product or any related article to Vanuatu:

- without a permit issued under the Animal Importation and Quarantine Act; or
- in contravention of the provisions of the Act or any regulations made thereunder.

Protocols have been developed for the importation of animals and animal products at the request of importers taking into account the risk of importing a disease that is not present in this country. In general protocols are not developed with countries that have endemic OIE List A diseases. Vanuatu does not have high security quarantine facilities to be able to import animals from countries with serious animal diseases. Similarly untreated or inadequately treated animal products from countries with OIE List A diseases are not given permits for entry.

Question 73.

Please give further information on the relevant control, inspection and approval procedures.

Reply

Quarantine

The favourable pest status of Vanuatu is a valuable national asset to be preserved, measured and utilised. Preserved to ensure crops, forest and natural flora and fauna are not threatened by new pests; measured so that the exact status of the pest situation is known and can be monitored; and utilised through the promotion of exports of fresh farm produce to neighbouring countries. The Vanuatu Quarantine and Inspection Service of the Department of Agriculture and Horticulture is charged with this task.

The Division discharges its functions in accordance with Vanuatu and international law and in conjunction and cooperation with any regional plant protection agreement for the Pacific.

The aim is to prevent the introduction of pest of plants and plant products into Vanuatu, and we have the full authority to regulate the entry of plants and plant products and therefore:

- (a) prescribe restrictions or use phytosanitary measures concerning the imports of plant and plant products into Vanuatu by inspection, prohibition on importation and also treatment;
- (b) prohibit the importation of particular plants or plant products that has potential or introducing new quarantine pests to Vanuatu;
- (c) inspect or detail particular consignments of plant or plant products that do not comply with import specifications;
- (d) treat, destroy or refuse entry to consignments of plants or plant products that do not comply with requirements prescribed in (a) or (b) or require that consignment to be treated or destroyed or re-exported.

All plant and plant products are required by law for the importer to apply for an import permit and entry conditions written to prevent introduction of pests. Importers from new countries are required to undertake a source country risk analysis and provide data for Vanuatu. The Plant Protection Unit of SPC provides data for pest risk in the Pacific Islands region. Outside the region the data is provided by the importer and is cross-checked on the FAO database on pests and disease status.

Animal Health

Animals or animal products require permits signed by a government veterinarian for entry. Any conditions are attached to the permit. All animals imported are examined at entry by a Livestock Department veterinarian and if health and the certificate is in order a permit to land is issued. Animal products are examined at entry by a member of the Quarantine Inspection Service and if they meet the conditions of the import permit are allowed entry. If they do not meet the conditions they are referred to a Livestock Department veterinarian.

(l) Safeguards, anti-dumping and countervailing duties

Question 74.

How does Vanuatu intend to incorporate the provisions of WTO Agreements on application of safeguards, anti-dumping, and countervailing duties in its legal structure?

Reply

At present Vanuatu has no provisions in its legislation for anti-dumping and countervailing measures and there are no plans at present to introduce such legislation. However the Government of Vanuatu reserves the right to employ safeguard provisions in its legislation in a manner that is consistent with its WTO obligations.

Question 75.

Vanuatu states that there are no specific policies for export promotion. However, Vanuatu states that there is relief from import duties for industries in Vanuatu. Is this relief linked in anyway to local content requirements?

Reply

The import duty relief for industries is not linked in any way to local content requirements nor are there any other trade related investment measures that are proscribed under GATT 1994.

Question 76.

Vanuatu states in its answer to question 17 (WT/ACC/VUT/4) that it's tariff protection could be overridden by importing dumping against which there is no legislation. Is legislation being developed on anti-dumping?

Reply

No anti-dumping legislation exists nor is it currently being developed.

Question 77.

Please indicate if Vanuatu is considering legislation which would permit the imposition of anti-dumping, countervailing or safeguard measures.

Reply

Vanuatu is not considering at this stage any anti-dumping, countervailing or safeguard measures legislation.

2. Export Regulations

Question 78.

Questions above relating to import measures apply equally to export measures. Please provide information.

Reply

Vanuatu has no direct taxes and thus has tended to use import duties as mechanism for providing incentives to stimulate investment in areas where Vanuatu has a commercial advantage or where this is developing over time. With regard to exports the Government of Vanuatu has maintained a series of export taxes.

Rates of export tax are:

Copra	4%
Kava	3%
Beef	2%
Cocoa	7%

However, the Government of Vanuatu has announced that it will eliminate these export taxes at the end of 1997. This is contained in the comprehensive reform programme (See Annex I).

Export Licences

As mentioned previously there are two commodities where the VCMB maintains a monopoly over exports. These include copra and cocoa. In the case of kava VCMB issues export licences to exporters of kava. The cost of the kava export licences are VT 50,000 per annum along with a payment of 3 per cent export tax which will shortly be abolished as well as 7.5 per cent of the f.o.b. value of the kava export as fee to VCMB.

While coffee is also prescribed exports have decreased of late and the product only supplies the domestic market. Other products such as beef and manufactured products are not subject to any export licensing arrangements

B. Other Policies Affecting Foreign Trade

1. Industrial Policy

Question 79.

Vanuatu describes the objectives of industrial policy in the industrial sector and indicates that “special incentive” are offered by the government through the Business Licence Committee and the Customs Department. In this regard, would Vanuatu describe in more detail the actions and policies followed by these two governments entities?

Reply

The Business Licence Committee has the right to give 50 per cent reduction from the business licence fee for the first three years of a new operation. In practice, this incentive has very rarely been used in Vanuatu. The Exemptions Committee also provides import duty exemptions which have been described at length above in the answers to questions 12-15.

Question 80.

Please also describe the nature and procedures of policies that provide low interest bank loans, special exemptions by customs and tax authorities and the arrangements to assist industries through the Development Bank of Vanuatu.

Reply

The Development Bank of Vanuatu no longer provides low interest loans. The Development Bank of Vanuatu is now operating on a fully commercial basis and as a result interest rates and amortisation periods are now similar to those of the other commercial banks.

2. Agricultural Policy

Question 81.

When will Vanuatu complete the questionnaire on agricultural supports and subsidies contained in WT/ACC/4? We would like to be able to discuss it at the next Working Party Meeting.

Reply

The questionnaire will be circulated as document WT/ACC/SPEC/VUT/2.

Question 82.

Vanuatu has stated that copra and its alternatives should be capable of providing an income to rural areas and substitute imported agricultural products in the answer to question 5 in document WT/ACC/VUT/4. How will Vanuatu protect these domestic agricultural industries from imported products? Are domestic prices for agricultural products higher than, lower than or equal to imported prices?

Reply

Tariffs will be the principal instrument of trade policy in those cases where Vanuatu chooses to protect domestic products. At present there are several products, mostly those tropical tree crop products which are exported and where import prices would be higher than domestic prices. However in sectors where Vanuatu is attempting to develop a measure of commercial advantage such as in domestically produced vegetables then domestic prices are higher than import prices.

Question 83.

Could Vanuatu provide more details on its seasonal restrictions on potatoes?

Reply

Seasonal restrictions on the importation of potatoes no longer apply.

Question 84.

Could Vanuatu provide more details on the restrictions relating to the import of rice, sugar, flour, tobacco and canned mackerel?

Reply

Answers to this question have already been provided in the response to question number 39.

Question 85.

What is the average rate of tariff duty for agricultural products (Chapter 1-24)?

Reply

The average rate of duty for agricultural products (Chapter 1 to 24) is currently as follows:

Chapter	Average Duty Rate
1	0
2	50%
3	50%
4	30%
5	14%

6	14%
7	31%
8	35%
9	45%
10	40%
11	23%
12	0%
13	17%
14	17%
15	30%
16	51%
17	43%
18	31%
19	46%
20	55%
21	52%
22	Specific duties
23	2%
24	5334 VT/kg

Export		Imports
Copra	4%	10%
Cocoa	7%	36%
Kava	3%	10%
Beef	2%	75%
Coffee		55%
Vegetables		30%
Pork		55%
Root crops		40%
Rice		12%
Tinfish		55%
Sugar		45%

Question 86.

It is not entirely clear from the response to question 41 on page 25 of WT/ACC/VUT/4 what plans Vanuatu has for the elimination of restrictions on the importation of potatoes, rice sugar, flour, tobacco and canned mackerel. We would appreciate clarification on this point.

Reply

Vanuatu will eliminate the restrictions on rice, sugar, tobacco and canned mackerel and will replace previously existing restrictions on potatoes with a seasonal tariff.

Question 87.

Please notify all agricultural measures, domestic support measures and export subsidies, in the form set out in WT/ACC/4.

Reply

Please note response to question 81.

Question 88.

Does the Vanuatu Commodities Marketing Board regulate export prices? If so, please provide details. Does the Board receive government subsidies?

Reply

The VCMB does regulate the 'beach' price or farm gate price of copra. These prices are regulated on an *ad hoc* basis using surpluses generated from trading activities and from Lomé Convention, Stabex funds for providing a buffer fund in the event of price decreases. While in the past the VCMB has been subsidised by the state this has not been the case in the last few years because of the relatively high commodity prices for copra and cocoa available on world markets. This has of course eliminated the need for price supports to these sectors.

Question 89.

Please provide detailed information on the domestic support policies.

Reply

The VCMB no longer subsidises copra and cocoa production nor does it subsidise inputs into the production of these. There is a small subsidy for coconut seedlings of VT 50 per seedling but this is a subsidy provided under the Department of Agriculture and not VCMB.

The VCMB does run a buffer fund for copra only. The buffer fund is based on the standard principals of commodity price stabilisation whereby in periods of high prices farm gate or beach prices do not fully reflect market prices. The surplus that is generated is deposited into a reserve fund which is used in periods of low commodity prices. However now, as opposed to the early there is no longer any subsidy as when the buffer fund is depleted there is no government supplement of the budget.

However the Government of Vanuatu does, on an *ad hoc* basis, provide occasional support by transferring Lomé Convention funds under the European Communities' commodity price stabilisation scheme Stabex. In 1996 the government transferred approximately VT 100 million (US\$ 900,000) to VCMB which was used to support copra prices. This is a once-off payment and there is no guarantee of regular price support from government. These supports are irregular and the VCMB, by statute is now obliged to fund its own activities without any subsidy from government.

5. Foreign and Domestic Investment Policy

Question 90.

We note that Vanuatu does not restrict investment in Vanuatu, even in areas where investment is not encouraged. Vanuatu does exclude foreign nationals from investing in small-scale businesses which can be carried out by Vanuatu nationals, however. How are these exclusion decisions made, and implemented? What are examples of small-scale investment opportunities that foreign nationals would be excluded from?

Reply

Business and investment opportunities in Vanuatu are subject to approval from a Government Business Licence Committee. There is currently a negative list of business ventures and activities that can only be pursued by indigenous Ni-Vanuatu, which includes service sectors such as taxis, buses, kava exports, rural transportation, mobile vendors, small retail and to some extent small bakeries.

The decisions on each particular business activity for Ni-Vanuatu is the discretion of the Business Licence Committee upon consultation with the Minister of Finance.

6. Government Procurement

Question 91.

Under government procurement procedures, where or with whom is the procurement order “place”?

Reply

Chapter 22, under Regulation No. 364 of the Financial Regulation of Vanuatu Tenders are submitted to the Secretary of the Tender Board in the Department of Finance.

Question 92.

How are “quotations” received and processed? Is open competitive bidding practised for procurement order of less than VT 1 million in value?

Reply

Under Regulation No. 365 of the Financial Regulation of Vanuatu Tenders are received by the Central Tenders Board This Board is comprised of the following persons:

- the Director of the Department which are procuring the goods and services;
- the Director Finance or his representative. The person should be the Secretary of the Central Tenders Board;
- Representatives of the ministry responsible for the department which is procuring the goods or services.

Under Regulation No. 367 after each tender has been opened, the appropriate technical officer will submit a report on each tender with his recommendation for acceptance. This report will advise the Board on the details of each tender¹. Under this regulation the form of all written contracts over

¹ The report of the officer will include as a minimum:

- the technical officer’s assessment of a reasonable cost for the tendered work;
- a report on the competence of each tenderer to carry out the work;
- an assessment of the ability of the contractor to complete the required work within his tendered price and period;
- details of the tenders previous performance;
- a report on the compliance of each tenderer with tender conditions and on the validity of the tender.

VT 3 million must have the approval of the Attorney General before the contract is signed and the term of each contract must make it clear that it may not be assigned or sublet without the consent of the Vanuatu Government

Under Regulation No. 361 where a procurement order exceeds VT 50,000 but less than VT 1 million (approximately US\$ 9,000) at least three written quotations shall be obtained wherever possible and the procurement order will be placed the accounting Officer who is usually the Director of the Department. While on some occasions three quotations are not possible because with such small amounts there are not three suppliers available locally and foreign suppliers are unwilling to offer quotations for such small sums.

Vanuatu thus practices open tendering and competitive bidding within the confines of a small island economy.

Question 93.

When considering tenders, does Vanuatu have a policy or programme that favours domestic suppliers? If so, please explain how the programme works and who qualifies for these preferences.

Reply

Vanuatu does not have a policy or programme that favours domestic suppliers.

Question 94.

Does Vanuatu plan to accede to the Agreement on Government Procurement? If not, could Vanuatu explain its reasons?

Reply

Vanuatu does not plan to accede to the Agreement on Government Procurement. All supplies of goods as well as services according to the financial regulations of Vanuatu which do not permit discrimination against foreign suppliers. As a result, Members of the WTO would not benefit from Vanuatu's accession to this plurilateral agreement to which many WTO Members have not acceded.

Question 95.

Does Vanuatu discriminate against foreign suppliers?

Reply

Vanuatu does not discriminate against foreign suppliers as given the small size of the domestic economy and the very limited number of local tenderers this would not even be technically possible.

Question 96.

Can non-citizens qualify as suitable suppliers on the same basis as citizens? What are the requirements for obtaining a valid business licence?

Reply

Non-citizens qualify as suitable suppliers on the same basis as citizens. However, business classified under the Vanuatu Business Licence Act is restricted to Ni-Vanuatu only. These sectors include inter-island shipping, public transport, outdoor vendors (mobile shops). These sectors have little to do with the type of goods and services procured through public tendering.

Question 97.

What is the scope of the products and services which the government central store provide? Does the government store procure goods and services on a non-discriminatory basis both from foreign providers and domestic providers? Will Vanuatu introduce a policy in which it allows competitive tender to be obtained by qualified private providers?

Reply

The central stores purchases stationery and other supplies used by the Government of Vanuatu. The central stores does not have an exclusive relationship with the Government of Vanuatu in that there is no obligation for government departments to purchase supplies from the central store. Purchases are made on a purely commercial basis and hence the central store is not a State-trading company.

The Government store does not discriminate against foreign sourced suppliers as this is simply not even practical, let alone desirable, in an economy which is as small as Vanuatu. The Government of Vanuatu, as described above does provide for competitive tendering from private sources.

7. State Trading Enterprises**Question 98.**

Vanuatu explains that there are 10 government enterprises and 15 non-government enterprises in which the government is a shareholder. Please list these firms and what they trade.

Reply

The number of companies that the government either owns outright or has part interest in is 19. These are listed below

Name of company	Government Equity	Trading Activities
Air Vanuatu	100%	International airline services
Bel-Mol Cattle Project	40%	Cattle farming
IWSI/IGSL	15%	Inactive
Metensel Estates	99.41%	Cocoa Estate
New Resources Development	30%	Inactive
NISCOL	10%	Stevedoring
Port Vila Fisheries	100%	Fishing
South Pacific Fishing Coy	100%	Fishing
Tanna Coffee Development	99.82%	Coffee Plantation

Name of company	Government Equity	Trading Activities
Telecom Vanuatu	33.33%	Telecommunications
Tour Vanuatu	51%	tourism
UNELCO	14.39%	Electricity generation
Vanuatu Abbatoir	79.94%	Abbatoir
Vanuatu Co-op Federation		Rural retail
Vanuatu Fish Investment	15%	Fish
Vanuatu Holdings	100%	Holding Company
VANAIR	100%	Domestic Airline Services
Vanuatu Livestock Development	100%	Livestock Development

Source: Incorporated Company Annual Reports

Question 99.

To what extent do these enterprises have monopoly positions or other exclusive rights to import certain commodities?

Reply

These enterprises do not have exclusive rights to import and they are not State-trading enterprises under the GATT Article XVII definition.

Question 100.

Please indicate any firms or other institutions, government or private, that act for the Government of Vanuatu in trade.

Reply

The Vanuatu Government does not have any other firms or institutions that act on its behalf apart from the VCMB which trades apart from those listed above.

Question 101.

We note that the Vanuatu Commodities Marketing Board (VCMB) for cocoa, copra and kava; and the TCDC for coffee appear to be State-trading entities, appear to be the sole purchasers of these domestic product for export, and therefore may need to be notified under Article XVII.

Reply

The VCMB shall be notified under Article XVII (see Annex IX) but Vanuatu does not export coffee now and so TCDC is not a State-trading company.

Question 102.

Does the Vanuatu Commodities Marketing Board have sole purchasing rights for export of certain goods, e.g., copra, cocoa, kava and coffee?

Reply

Yes, Vanuatu Commodities Marketing Board have sole purchases rights for export of copra, and cocoa only. It does not have sole rights over kava as there are currently 25 licensed Ni-Vanuatu kava exporters which have been licensed by VCMB.

V. TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY REGIME

Question 103.

How does Vanuatu intend to implement the TRIPS Agreement?

Reply

The Government of Vanuatu intends to implement the TRIPS Agreement within three years of accession.

Question 104.

How and within what time frame does Vanuatu expect to implement its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)?

Reply

See above.

Question 105.

When does Vanuatu plan to begin enacting legislation protecting intellectual property rights in compliance with the TRIPS Agreement?

Reply

The Government of Vanuatu has already approached WIPO for technical assistance to revise domestic legislation to assure compliance with the TRIPS provisions.

Question 106.

Does Vanuatu intend to accede to any international conventions and agreements relating to the protection of intellectual property rights?

Reply

Yes, Vanuatu will accede to the Paris, Berne and WIPO Conventions and is considering its status vis-à-vis the other conventions.

Question 107.

Are the Patents Act and the Trademark Act the only intellectual property laws in force at the moment in Vanuatu?

Reply

Yes, these are the only two laws governing intellectual property in Vanuatu.

Question 108.

Can Vanuatu provide a timetable for the introduction of the system of protection laid down in the TRIPS Agreement?

Reply

Vanuatu's laws on intellectual property will be fully WTO consistent within three years of accession.

Question 109.

Does Vanuatu intend to become a contracting party to the main intellectual property conventions?

Reply

Yes, Vanuatu will accede to the Paris, Berne and WIPO Conventions and is considering its status vis-à-vis the other conventions.

Question 110.

Has Vanuatu already acceded to, or is in the course of preparation for acceding to international treaties, such as the Convention establishing WIPO, the Paris Convention, the Berne Convention, the Universal Copyright Convention, the Patent Cooperation treaty, and the Budapest Treaty on the International recognition of the Deposit of Microorganisms for the purposes of Patent Procedures. What is the timetable set out in order for Vanuatu to bring current legislation into consistency with the TRIPS?

Reply

The Government of Vanuatu intends to implement the TRIPS Agreement within three years of accession. It has already approached the WIPO secretariat to request technical assistance to bring its legislation into conformity with its obligations under TRIPS. Vanuatu will also accede to the Paris, Berne and WIPO Conventions and is considering its status vis-à-vis the other conventions.

VI. TRADE-RELATED SERVICES REGIME

Question 111.

When will Vanuatu present a detailed services offer?

Reply

The services offer will be circulated as document WT/ACC/SPEC/VUT/3.

Question 112.

Could Vanuatu provide details of the system which enables residency permit periods to be extended if an investment over US\$ 50,000 is involved?

Reply

Under the terms of the Residency Permit Act non-citizens cannot reside in Vanuatu and carry on business without a residence permit. In order for a non-citizen to have residence permit in Vanuatu for the minimum term he or she would have to have some assets either in cash or otherwise to the value of VT 5 million. A VT 5 million asset invested in Vanuatu will entitle a non-citizen to a one year permit. This is a precondition for all business investors including those seeking residence to practice a profession. The Vanuatu Government allows non citizens three year residency permits if they invest VT 15 million and a 10 year residence permit if they invest VT 50 million invested in Vanuatu.

Residence permits may be renewed annually provided the conditions under which they were first issued remain the same. The initial fee for one year and subsequent annual renewal is VT 20,000 fees which are to be paid when submitting the form of application. Extensions of the residence permit do not require applicants to invest more but to maintain the existing level of investment.

Question 113.

Are companies required to prove that a position which it makes available could not be filled by a Ni-Vanuatu? What criteria are used to establish whether or not a suitably qualified and experienced Ni-Vanuatu is available?

Reply

No, Vanuatu does not require companies to prove that a position which is made available could not be filled by a Ni-Vanuatu and it does not have specific criteria for what constitutes a suitably qualified candidate. Companies are required to advertise all positions in the local news papers to determine if there are any suitably qualified, experienced Ni-Vanuatu that meet the conditions of the advertised position. If the advertisement demonstrates that there are no suitably qualified Ni-Vanuatu candidates then the firm is free to hire a non-citizen.

Question 114.

Vanuatu says that amendments have been proposed to the laws governing work permits. Could Vanuatu provide details on the proposed amendments? Will the amendments provide guidelines for the issuing of work permits?

Reply

The proposed amendments to the Labour Act governing work permits will attempt to achieve the following:

- provide greater transparency on the requirements to invest in Vanuatu;
- limit the ministerial discretionary powers as required in the existing Act;
- provide for investor confidence by creating a category of long term work permits for those undertaking investments that has a long term economic benefit in terms of employment infrastructure development and improvement in the livelihood of the people;

- provide for amended laws to restructure the Labour Department so as to make it welcoming and assisting foreign investors;
- provide encouragement of new investments by creating a new regime for dealing separately with new investors;
- provide for realistic rights of appeal in the event of a dispute over work permits.

The draft legislation is not yet complete and is part of the Comprehensive Reform Programme outlined in question 1. It is expected that legislation will be ready for the consideration of parliament this year.

Question 115.

Does Vanuatu intend to review the practice of issuing green letters to foreigners?

Reply

Yes, the Government of Vanuatu will introduce legislation into Parliament that will assure the right of legal recourse as outlined in the answer to question 114 above.

Question 116.

Could Vanuatu provide details of its approach to the recognition of qualifications of foreign professionals?

Reply

Legal Profession

Vanuatu allows foreign professionals to set up practice in Vanuatu with residence and work permit criteria no different from any other non-citizen intending to reside and work in Vanuatu. Professionals must also invest VT 5 million in order to receive their business licence and residency for one year. For legal practitioners there is a need to be accepted by the Vanuatu Law Council, which is comprised of the Chief Justice, the Attorney general and one local representative of the profession. The law council accepts lawyers on three conditions:

- the lawyer must be a resident of Vanuatu;
- he/she must have at least two years post-graduate experience. (This is normally as an articulated clerk);
- have a law degree which is accepted by the Law Council.

If the lawyer is acceptable to the Law Council then it is possible to apply to be accepted to the Vanuatu Bar.

Medical Profession

The Vanuatu Health Practitioners Act provides for the creation of a Health Practitioners Board which has five members in each of the professions which include medicine, dentistry, surgery, nursing, midwifery and one other practitioner. The board maintains a registry of professional and being on the registry is a condition for practicing in Vanuatu. The conditions for registry are:

- the applicant must hold a degree or diploma from a recognised university or institute;

- the applicant must be qualified to practice in the country in which the qualification was obtained;
- the applicant must be trained and skilled in his profession.

There are no specialised qualifications or boards for accountants, architects or engineers except a requirement that the individual possesses a degree in the area of specialisation.

Question 117.

Is Vanuatu prepared to enter into commitments that will ensure that it's business licensing regime does not discriminate among foreign service providers?

Reply

In Vanuatu the licensing system is the principle mechanism for determining in which sectors foreign investors may trade. Vanuatu is not prepared to enter into commitments that will ensure that its business licence regime does not discriminate among foreign service providers. Certain small business sectors of the economy remain the sole domain of Ni-Vanuatu and unless specific sectors have been opened to foreign service providers and investors, as per the services sector offer and national regulations on investment Vanuatu is unwilling to entertain such general commitments.

Question 118.

Is the turnover tax on the operations of accountants, trust companies and legal offices payable equally by foreign and by Vanuatu service providers?

Reply

The business licence fee on turnover on operations of accountants, trust companies and legal offices is equally payable by foreign and by Vanuatu service providers.

Question 119.

Could Vanuatu indicate whether it intends to liberalise the conditions relating to commercial establishment, for example where regulations limit foreign equity in joint ventures to certain maximum levels?

Reply

The Comprehensive Reform Programme is scheduled to liberalise conditions of investment in Vanuatu further. However it should be noted that Vanuatu has no regulations which limit foreign equity in joint ventures.

Question 120.

Paragraph 7 on page 24 of WT/ACC/VUT/4 notes that foreign nationals are excluded from engaging in some small scale businesses. Can Vanuatu please provide information on which small-scale businesses are not open to participation by foreign nationals?

Reply

The following category of business is not open to non-citizens of Vanuatu:

- kava bar operator;
- carpenters, joiners and mechanics working alone (or with up to 2 apprentices);
- open air vendors;
- mobile shop operator;
- road transport operators;
- tTour agent;
- sea transport operators (for fare paying passengers and cargo).

Question 121.

Further to the information provided in the answer to question 49 on pages 26-27 of WT/ACC/VUT/4, we would appreciate advice on the average time taken to approve applications for business licences, work permits and residency permits.

Reply

Business licence applications are usually approved within 4 weeks from date of application (except for non-citizens who have to comply with residence permit regulations first before a business licence could be approved).

Residence permits are approved on the same date as the applicant complies with all terms and conditions of the application, i.e. once a non-citizen has provided evidence of investment of the minimum amount in Vanuatu and a police clearance is received by the immigration authorities then the residence permit is issued.

Work permits are issued within a minimum period of 4 weeks of application.

Financial Services

Question 122.

Does Vanuatu have any plans to liberalise the issued capital and unimpaired reserves requirements for banking in Vanuatu, such that foreign banks would receive national treatment? At present the requirement are four times higher for foreign banks involved in local banking than for Vanuatu-based banks.

Reply

At the licensing stage, i.e., upon entry, commercial banks will continue to have different capital requirements. The rationale for having two separate capital requirements are:

- to avoid 'fly-by-night' banks;
- to create an incentive for the incorporation of banks within Vanuatu.

The Reserve Bank of Vanuatu is preparing policy guidelines relating to banks' capital adequacy ratio based upon the Basle risk-weighted asset methodology. This internationally accepted ratio will regulate capital/asset composition of the banking system so as to preclude any undesirable situations from arising in future. Moreover this system will treat every bank in the same manner whether they are incorporated locally or overseas.

Question 123.

Could Vanuatu provide details on the precautionary checks carried out by the authorities before issuance of a banking licence?

Reply

Prior to the issuance of a banking licence, precautionary checks are carried out and the applicant has to provide the following information:

- details of the capital structure of the proposed bank, its shareholders and the distribution of the shareholding;
- evidence that the applicant has management expertise in the area;
- the names of nominated bank directors/CEO and proof of good financial repute;
- copy of the latest audited financial statements of the corporation;
- numbers and names of the directors and promoters of the bank and their place of residence;
- the applicant has to provide all the documentation and securities requested by the Reserve Bank of Vanuatu;
- letters of reference from the Central bank and Bank Supervisory Authority of its country of origin;
- the applicant should have expertise in international financial markets;
- the employees of the bank have to show they have the necessary management expertise in all facets of the banking industry;
- submit a detailed feasibility study which includes the objectives, operations, financial viability of the bank, and corporate plan indicating financial products and services to be offered, market demand for those products and services, and projected balance sheet profit and loss cash flow statement for the first three years of the bank's operations;
- applicants must show that the proposed minimum capital requirement was obtained legally.

Telecommunications

Question 124.

We note that there is a requirement for present shareholders to give permission for any new participant to gain equity in Telecom Vanuatu Ltd. Does Vanuatu have any plans to privatise further the ownership of Telecom Vanuatu Ltd or to introduce competition into any telecommunications services?

Reply

Vanuatu does not have any current plans to privatise further the ownership of Telecom Vanuatu Ltd nor is it planning to introduce any direct competition in telecommunication services. The government is now only a one-third shareholder in Telecom Vanuatu.

Professional Services

Question 125.

Does Vanuatu permit cross-border supply of professional services such as legal advice? Are foreign professionals allowed to set up practice in Vanuatu and, if a residency or work permit is required for this, how and according to what criteria is such a residency or work permit obtained?

Reply

Vanuatu does allow cross-border supply of professional services such as legal advice. However the advice must be provided through an existing firm in Vanuatu. These lawyers do not have to be registered by the Law Council

Vanuatu allows foreign professionals to set up practice in Vanuatu with residence and work permit criteria no different from any other non citizen intending to reside and work in Vanuatu. Professionals must also invest VT 5 million in order to receive their business licence and residency for one year. For legal practitioners there is a need to be accepted by the Vanuatu Law Council, which is comprised of the Chief Justice, the Attorney general and one local representative of the profession. The law council accepts lawyers on three conditions:

- the lawyer must be a resident of Vanuatu;
- he/she must have at least two years post-graduate experience. (This is normally as an articulated clerk);
- have a law degree which is accepted by the Law Council.

If the lawyer is acceptable to the Law Council then it is possible to apply to be accepted to the Vanuatu Bar

Question 126.

Are foreign legal firms and lawyers able to provide consultations on legislation other than that of their home country?

Reply

Foreign legal firms and lawyers can provide consultations on legislation of any legal jurisdiction.

Question 127.

What are foreign lawyers allowed to do? Can they provide legal services on the legislation of Vanuatu, the domestic laws of the foreign lawyers country, international laws and third country laws?

Reply

Foreign lawyers resident in Vanuatu can do exactly the same as domestic lawyers. However foreign lawyers can only provide services from abroad through a local law firm. If they are resident in Vanuatu they have exactly the same rights as a local firm.

Question 128.

What kind of legal activities can they do? With regard to establishment of a foreign lawyer's office in Vanuatu, are there any restrictions?

Reply

Lawyers resident in Vanuatu are permitted to provide a full range of legal services independent of existing firms. It is only in cases where lawyers are non-resident that they must supply through a

local firm. Their right to establish is exactly the same as any other business. The precise conditions for obtaining a business licence are contained in the main body of the answers to the questions posed in the consolidated questions (documents WT/ACC/VUT/2 and WT/ACC/VUT/4).

Question 129.

With respect to the three basic qualifications required by the legal provisions, are these requirements also applied to foreign lawyers. If so, we would appreciate further explanations about the requirement that he/she undertake a two year post-graduate training in Vanuatu. Are there other requirements for a foreign lawyer to practice legal services, than those mentioned in the answer to question 92 of WT/ACC/VUT/4.

Reply

Yes, these requirements are also required of foreign lawyers. However the Secretary to the Law Council has clarified that it is normal practice that period of articling that is normal with foreign lawyers is accepted in lieu of 'post-graduate training'. Thus there is no requirement for foreign lawyers to undertake further study before beginning practice in Vanuatu. There are no further requirements apart from those outlined in the answer to question 92 of WT/ACC/VUT/4.

Question 130.

Could Vanuatu provide information on any operating restrictions on foreign accounting firms?

Reply

Vanuatu does not operate any restrictions on foreign accounting firms.

Education Services

Question 131.

Could Vanuatu provide details of any limitations on access to the education services market for foreign education service providers?

Reply

There are no limitations on the access to foreign service providers to education services market in Vanuatu.

Broadcasting

Question 132.

Could Vanuatu provide details on the conditions of access to the audio-visual service market for foreign providers?

Reply

With the exception of those limitations contained in the Censorship of Films Act Cap. 72, there are no restrictions on the audio-visual market. Under this legislation a censorship board which exists

in Luganville and Port Vila only may prohibit the sale or display of audio-visual products if it is deemed necessary for the "preservation of local customs and traditions".

Gambling

Question 133.

Could Vanuatu provide details of the regulations governing access to this sector for foreign service providers?

Reply

A copy of the regulations governing access to gambling is available for consultation in the Secretariat (Accessions Division, Room 1126)

Other Services

Question 134.

Could Vanuatu indicate whether there are limitations on market access for foreigners in the construction, distribution, environmental services and health services sectors? Is national treatment applied to foreign service providers in these sectors?

Reply

There are no limitations on market access for foreigners in the construction, environmental services and health service sectors.

National treatment is applied to foreign service providers in these sectors.

In the area of distribution however there are limitations on national treatment in the mobile retail sector. However in the larger supermarkets there are no restrictions.

Land

Question 135.

Are there any plans to change the administration of the land lease system in Vanuatu? What are Vanuatu's plans in relation to the resolution of land disputes?

Reply

Vanuatu has no plans to change the current land lease system. There is a constant review of administration to assure its efficiency. At present the system of land disputes is settled by resort to customary law.