

# WORLD TRADE ORGANIZATION

RESTRICTED

**WT/ACC/YEM/10**

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**Working Party on the  
Accession of Yemen**

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## **ACCESSION OF YEMEN**

### Additional Questions and Replies

The following submission, dated 12 May 2006, is being circulated at the request of the Delegation of the Republic of Yemen.

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## I. INTRODUCTION

### Question 1

Referring to paragraph 5 of the Factual Summary, we thank Yemen for identifying a need for transition periods to implement WTO Agreements on Customs Valuation, TRIPS, SPS, and TBT. We welcome receipt of Yemen's action plan for implementing the TRIPS Agreement and will provide comments on it later. We look forward to receiving in the future Yemen's action plans to implement the customs valuation, SPS, and TBT agreements. We are pleased to be providing technical assistance towards the development and implementation of these action plans.

#### Answer:

With regards to the Customs Valuation Agreement, Yemen currently applies the customs valuation system according to the Brussels definition of value. Yemen will move to the application of the provisions of the WTO Customs Valuation Agreement. This requires a transitional period of seven years. An action plan for the implementation of this agreement and the technical assistance needed in this regard will be sent later.

Please find also circulated in documents WT/ACC/YEM/13, WT/ACC/YEM/16 an action plan for the implementation of the SPS Agreement and TBT Agreement as well as the related technical assistance.

## II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

### 2. Economic Policies

#### (a) Main directions of the ongoing economic policies

##### - Pricing policies

### Question 2

Paragraph 29 of the Factual Summary indicates that Yemen "monitors" the prices of oil derivatives, water, electricity, and fixed telephone services to ensure provision of these products to the general public and, in particular, to the poor and lower-income segments of the population. What does this mean? Do all consumers pay the same prices for these products?

#### Answer:

The government determines the prices of goods and services it provides with a view of accommodating the living conditions of the people. Thus, some products are subsidized such as oil derivatives, while others are sold with very small profit margin. Moreover, all consumers pay the same prices for these products.

### Question 3

Paragraph 30 of the Factual Summary stated that "Products often (emphasis added) sold with price ceilings or administered prices below international prices were petrol..., diesel..., kerosene..., and Liquefied Petroleum Gas (LPG)..." Are these products ever sold at market price? If so, what entities may sell these products at market price? Has the government imposed price ceilings on other products? What is the process for imposing price ceilings or administered prices?

**What law gives the government the authority to control prices?**Answer:

Yemen adopts the free market system. Thus, the Government practices no control over prices of goods and services provided by the private sector. However, some Government agencies determine the prices of some goods and services which they provide such as electricity and water, with a view to accommodate the living conditions of people.

**Question 4**

**Paragraph 30 of the Factual Summary: We note that Yemen is reviewing pricing policy for petroleum products. We would appreciate being kept update on developments.**

Answer:

As a result of the review of the pricing policy for petroleum products, the government, in July 2005, decreased the subsidies on some petroleum products which resulted in the following changes in prices:

Product	Old price	New price
Diesel	17 Riyals per litre	35 Riyals per litre
Kerosene	16 Riyals per litre	40 Riyals per litre
LPG	205 Riyals per cylinder	410 Riyals per cylinder
Gasoline	35 Riyals per litre	60 Riyals per litre

- **State ownership and privatization****Question 5**

**Paragraph 27 of Factual Summary: Could Yemen give detailed explanation of the activities and special competencies and rights of the 100 per cent State-owned companies Yemen General Company of Oil and Gas, The Yemen Oil Company, the Aden Refinery Company and the Yemen Refinery Company.**

Answer:

The Yemen Oil Company, the Aden Refinery Company, and the Yemen Refinery Company are a group of companies owned by one holding company, "The Yemen General Corporation of Oil and Gas." Its main competences and activities can be summarized as follows:

- Setting up establishments related to industrial operations of oil and gas and to petrochemical industries, supervising and controlling the management of these establishments;
- Exploring oil and gas, refining oil, processing gas, providing the local market with the needs of oil products, as well as marketing and exporting the crude oil and its refined products; and
- Proposing standards related to oil and gas industries, and assessing their conformity.

The holding company has exclusive rights in the areas of its activities, and enjoys full exemption from customs duties and taxes.

**Question 6**

**Could Yemen give exact amounts of State shareholding in the companies listed in Table 3 of the Factual Summary?**

Answer:

**Table 3: State-owned Enterprises**  
(wholly or partially owned) (based on the best information available)

**A. 100 per cent Ownership**

Enterprise	State shareholding	Capital	Supervising agency/ ownership
Public Telecommunication Corporation	100%		Ministry of Telecommunication
Public Corporation of Water and Sewage	100%		Ministry of Water and Environment
Public Electricity Corporation	100%		Ministry of Electricity
Public Cement Manufacturing and Marketing Corporation	100%	400 Million Riyals	Ministry of Industry and Trade
Public Textile and Spinning Manufacturing Corporation	100%	200 Million Riyals	Ministry of Industry and Trade
Yemen Insurance and Re-Insurance Company	100%		Ministry of Finance

**B. 50 – 100 per cent Ownership**

Enterprise	State shareholding	Capital	Supervising agency/ ownership
Yemen International Telecommunication Company (TeleYemen)	95%		Ministry of Telecommunication
Marib Poultry Company	68%	190 Million Riyals	Ministry of Industry and Trade, Government share is currently under privatization.
Yemen Airways	51%		Ministry of Transportation
The Yemen Bank for Reconstruction and Development	51%	1250 Million Riyals	Ministry of Finance
Yemen Libyan Holding Company	50%	50 Million USD	Yemen Libyan Holding Company

**C. Less than 50 per cent Ownership**

Enterprise	State shareholding	Capital	Supervising agency/ ownership
Yemeni Kuwaiti Real Estate Development Company	42%	276 Million Riyals	Yemeni Kuwaiti Real Estate Development Company
National Tobacco and Matches Company	41.5 %	600 Million Riyals	Ministry of Industry and Trade
Saba Insurance Company	9%	100 Million Riyals	

Enterprise	State shareholding	Capital	Supervising agency/ ownership
Marib Insurance Company	37%	100 Million Riyals	The Yemen Bank for Reconstruction and Development
Arab Insurance Company	4%	100 Million Riyals	

D. Companies that have been privatized

Aden Hotel (Aden)	Privatized
26 September Hotel (Aden )	Privatized
Al-Hilal Hotel (Aden )	Privatized
Ardh Al-Ganateen Hotel	Privatized
Thala Hotel	Privatized
Public Poultry Corporation (Aden)	Liquidated
Rosaba Farm	Privatized
Fruits and Vegetables Corporation	Liquidated
National Shipping Company	Privatized
Yemen Navigation Lines Company	Identified for liquidation
Yemen Investment and Finance Company	Liquidated

**Question 7**

**Yemen has stated that it has no fixed timetable for the completion of its privatisation processes (paragraph 28 of the Factual Summary). We would be grateful if Yemen could keep the Working Party informed of any future developments in this area.**

Answer:

Please refer to the table in Question 6 for an update on the issue. Yemen will keep the Working Party updated of any future development in this area.

**Question 8**

**We thank Yemen for listing the companies which the government wholly owns and the State-owned enterprises in Table 3 of the Factual Summary in which it has more than a 50 per cent share. Yemen has also stated that it does not consider the State-trading entities (paragraph 102 of the Factual Summary) subject to Article XVII of the GATT or the understanding on the interpretation of Article XVII. We would appreciate clarification from Yemen on how it draws this conclusion.**

Answer:

Yemen believes that the practices of the State-owned companies (referred to in Table 3 of the Factual Summary) are not inconsistent with Article XVII of GATT 1994 as the said enterprises do not enjoy any special or exclusive rights and they operate on equal footing with the private sector.

**Question 9**

**We seek advice as to whether Yemen's agricultural cooperatives have been granted any exclusive or special rights or privileges.**



Answer:

Agriculture cooperatives have no exclusive or special rights or privileges other than exemptions from customs duties on agricultural inputs; such exemptions are not provided to any specific product, but to all agricultural products.

### **Question 10**

**What law governs the operations of State-owned enterprises?**

Answer:

The law governing the operation of State-owned enterprises is the Law No. 35 of 1991 "On Public Authorities, Corporations and Companies", amended by Law No. 7 of 1997. Furthermore, some State-owned enterprises are governed by the decree of its establishment which clearly defines their mandate, operations, structure, etc.

### **Question 11**

**What Ministries own the State's shares in the enterprises listed in paragraph 27 and Table 3?**

Answer:

Please see answer to Question 6.

### **Question 12**

**Who appoints the Boards of Directors of the enterprises identified in paragraph 27 and in Table 3?**

Answer:

The respective decree under which a public enterprise is established stipulates the mechanism of appointing the board of directors. However, as a general rule, the chairman of the board is appointed by the President or the Prime Minister, while other members are appointed according to shareholdings. For instance, if the enterprise is wholly owned by the government, all members of the board of directors are appointed by the President or the Prime Minister. In the case of joint ventures, members representing the government are appointed by the above mechanism, while members representing the private sector are elected by the members of the general assembly.

### **Question 13**

**How do enterprises identified in paragraph 27 and Table 3 make purchases of goods and services?**

Answer:

As a general rule, enterprises wholly owned by the government purchase their goods and services through public tendering. Enterprises jointly owned by the government and private sector operate freely concerning their purchase of goods and services.

#### **Question 14**

**Does Yemen have a bankruptcy law?**

Answer:

Yemen has no separate bankruptcy law. However, the issue of bankruptcy is dealt with under the provisions of the Commercial Law No. 32 of 1991 (Articles 570 through 823).

#### **Question 15**

**Do the State-owned enterprises identified in paragraph 27 and Table 3 face private sector competition? Please identify the sectors, if any, in which the State retains a monopoly.**

Answer:

Except for a few enterprises that maintain a monopoly which are: the Public Telecommunication Corporation (monopoly over fixed telephone services only), Yemen International Telecommunication Company TeleYemen (monopoly over international telecommunication services), General Corporation of Water and Sewage System (monopoly over water and sewage services), and the Public Corporation for Electricity (monopoly over electricity production and distribution), the remaining enterprises operate on free market basis.

#### **Question 16**

**Please expand Table 3 to include information on the size of these companies in terms of capitalization and employment.**

Answer:

Please see answer to Question 6.

#### **Question 17**

**What is the percentage of GDP, imports, and exports attributable to State-owned enterprises?**

Answer:

The role of State-owned enterprises in the economy is limited, and there are no specific data with regards to their contribution to the GDP. However, the State-owned industrial enterprises roughly form only 1.2 per cent of the total number of industrial establishments in the country and contribute around 10 per cent of the industrial sectors share of the GDP in 2005.

#### **Question 18**

**What plans, if any, does Yemen have to privatize the companies identified in paragraph 27 and Table 3?**

Answer:

There is no specific plan to privatize enterprises listed in Table 3. However, as indicated in the table reproduced in Question 6, some of these enterprises have already been privatized while others are still in the process of being privatized.

**(d) Foreign and domestic investment policies****Question 19**

**Please describe the process through which an investor claims the incentives described in paragraph 19 of the Factual Summary.**

Answer:

Tax exemptions stipulated in Article 20 paragraph (a) Items 1, 2, 4 and Article 21 of the Investment Law are provided according to the following procedures:

- (i) Upon completion of the installation of the project's assets the investor notifies the Authority thereof. Equally, the investor notifies the Authority of the commencement of production activities or the rendering of his services. The notification concerning the commencement of business activities has to occur prior to the placement of any of the products or services into the market;
- (ii) The investor submits an application of the requested exemptions and all proofs of the project's eligibility according to the law within 90 days from the beginning of the production or practicing activities;
- (iii) The authority has the right to inspect the project, its records and assets to ensure the availability of the necessary conditions for the requested exemption; and
- (iv) The authority issues the tax exemption certificate within 60 days from receiving the requested documents.

**Question 20**

**The following questions refer to paragraph 20 of the Factual Summary:**

- 1. Please describe the process of registering an investment with the General Investment Authority.**
- 2. What criteria does the General Investment Authority require to register an investment?**
- 3. Do Yemeni citizens and foreigners who want to invest go through the same procedures to register their investment?**
- 4. Are there capital requirements to establish a company? If so, what are they?**
- 5. In its response to Question 14 in WT/ACC/YEM/6, Yemen states that the described mechanism by which Yemen increases its tariff (proposed by the General Investment Authority and then ratified by the House of Representative) has never been used. If this is the case, could Yemen explain how the process of increasing tariffs takes place at the present time?**

Answer:

1. The process of registering an investment project is as follows:
  - The investor submits the registration request of the investment project to the designated department in the General Investment Authority accompanied with the following documents:
    - (a) an ID of the project's owner or passport for the foreign investor and the personal ID of the authorized person in the case of a power of attorney;

- (b) an endorsed power of attorney from the relevant authorities in case someone is in charge of the procedures of registering the investment project on behalf of the investor;
  - (c) the commercial register of the company or establishment;
  - (d) the contracts of establishing the project endorsed by the relevant authorities; and
  - (e) the project layout and designs.
- the chief of the relevant sector examines the investment application and all the attached documents and receives them from the applicant and records the date of receiving them and gives the investor a receipt;
  - the chief of the sector reviews the application and review the list of the project's requirements from the assets, spare parts and manpower according to the provisions of the law;
  - the chief of sector makes a field visit to the site of the project to make sure of its suitability. The report of this visit is added to the documents of the project at the sector; and
  - the chief of sector consults the relevant authority which is in charge of the respective economic activity. The relevant authority then has to make a decision of whether approving or rejecting the project within 15 days.
2. To apply for the General Investment Authority registry of an investment project, the following conditions are required:
- (a) The project should be covered by the Investment Law;
  - (b) The value of the project assets should not be less than YR 50 million or its equivalent in other foreign currencies (the value of buildings and lands are not included);
  - (c) The project should comply with the technical standards and disciplines applicable which vary according to the nature of the project;
  - (d) The investor should commit to execute the project according to the specified plan in the project registering certificate;
  - (e) The project should have no negative impact on the environment.
3. Yes, foreign investors and Yemeni citizens go through the same procedures to register their investments.
4. The capital requirement differs according to the type of the company established. For instance, for limited liability companies the capital requirement is YR 3 million, for closed joint stock companies the capital requirement is YR 15 million while for joint stock companies the capital requirement is YR 50 million.
5. Yemen has not yet applied the provisions of Article 24 of the Investment Law of 2002.
- As for the mechanism of amending any tariffs (increase or decrease), it is as follows:
- The Tariff Council suggests the amendment;
  - The suggestion is presented to the Cabinet; and
  - The proposed suggestion is submitted to the Parliament and then enacted into a law by the president.

**Question 21**

**Paragraph 17 Factual Summary: Yemen lists sectors which are not covered by the Investment Law No. 22/2002 but separate laws. Could Yemen briefly explain, sector by sector, what is the investment regime applied to these sectors and whether there are restrictions or limitations for foreign investors in these sectors? The sectors mentioned in paragraph 17 are: investment in natural resources, financial institutions, wholesale and retail trade, telecommunications, insurance sector, exploration and extraction of minerals.**

Answer:

Investment in the areas mentioned in the question is subject to the following:

- Exploration and extraction of oil and gas is governed by "special agreements" signed between the Government, represented by the Ministry of Oil and Minerals and the respective companies. Investments in oil and gas exploration and extraction of minerals are subject to the Mines and Quarries Law No. 24 of 2002;
- Banks, exchange bureaus and financial companies are governed by the Banks Law No. 38 of 1998; Islamic Banks Law No. 21 of 1996; and Law No. 19 of 1995 on Financial Exchange; Central Bank Law No. 14 of 2000; and the amendments to the Financial Exchange Law No. 15 of 1996. Foreign equity is limited to 45 per cent for commercial banks, 20 per cent for Islamic banks;
- Retailing and wholesaling is governed by the Commercial Law No. 32 of 1991 and its amendments by Law No. 6 of 1998. Foreign equity is limited to 49 per cent;
- Telecommunication is governed by Law No. 38 of 1991 on Wired and Wireless Telecommunications. Existing mobile projects have benefited from incentives accorded by the Investment Law; and
- Insurance service is governed by Law No. 37 of 1992 on the Supervision of and the Control over Companies and Insurance Agents, and the respective amendments by Law No. 9 of 1997. Foreign equity is limited to 25 per cent.

**Question 22**

**Are there any further sectors that are subject to separate legislation and not the Investment Law? If yes, please provide clarification of the investment regime applied to them.**

Answer:

Investment in the Free Zones is governed by the Law "On the Free Zones" No. 4 of 1993.

**Question 23**

**Paragraph 19 of the Factual Summary, Question 10 of WT/ACC/YEM/6: Yemen explains that tax exemptions to investment projects are granted for 7 to 16 years, depending on the location of the investment project, the local component of fixed assets and the percentage of shares held by Yemeni nationals in joint stock companies.**

We note that these provisions indicate contingency of local contents and discrimination against foreign investors, if tax exemptions are granted for longer periods for investments under these conditions. We therefore urge Yemen to abolish such criteria from its investment incentive regime. We also note that there is no exemption for LDCs from the prohibition of local content subsidies under Article 27 ASCM, only export subsidies are allowed (Annex VII ASCM).

Answer:

This article does not stipulate any discrimination between local and foreign investors as it accords the incentive to both local and foreign investors. Due to the importance of encouraging the use of local materials and equipment which is going to positively reflect on the process of developing and increasing the local production, Yemen seeks its trade partners' understanding in that respect. Furthermore, the Decision of Ministers at the 6<sup>th</sup> WTO Ministerial Conference in Hong Kong allows LDCs to use local content measures.

**Question 24**

**Referring to Question 11 of WT/ACC/YEM/6: Could Yemen list exclusively all sectors prohibited under the Shari'a. It is understood that the three areas mentioned – gambling and night clubs, swine products and alcohol beverages - are only examples ("*inter alia*").**

Answer:

There is no exclusive list of sectors/products that are considered contrary to the Sharia. However, the general rule is that anything that contradicts public morals and Islamic values is deemed to be contrary to the Sharia'a.

**Question 25**

**Referring to Question 13 of WT/ACC/YEM/6: Could Yemen list exclusively the industries that are considered to harm the environment? Are these sectors where investments are prohibited? If not, what is the investment regime applied to them?**

Answer:

There is no exclusive list of industries that are considered to harm the environment. Investment proposals are screened in this respect on an individual basis based on their environmental impacts. However, Yemen in this regard usually applies international agreements on the protection of the environment.

**Question 26**

**Paragraph 17 of the Factual Summary: We note that Yemen's Investment Law does not cover certain activities which are contrary to Shari'a Law, including in natural resources. We would be grateful if Yemen could provide further information on how investment in natural resources is regulated.**

Answer:

Investment in natural resources is not covered by the Investment Law; it is regulated according to the terms and conditions of the bilateral agreements between the Government and the company making the exploration of natural resources in Yemen.

**Question 27**

**We note reference to customs duty/tax exemptions to Yemen investors being dependent on "local consumption in fixed assets." We seek clarification of the meaning of "fixed assets" and whether any incentives are made conditional upon the use of domestic goods over imported goods.**

Answer:

Fixed assets are the machinery, instruments, equipment, supplies, and spare parts needed to establish, expand or rehabilitate a project including buses especially designed to transport tourists, vessels for maritime transport and fishing and furniture and furnishing for hotels and hospitals whether imported or locally manufactured or produced. The use of locally produced fixed assets amounting to at least 25 per cent of the total fixed assets of the project entitles the project to enjoy two additional years of tax exemption.

**Question 28**

**Paragraph 17 of the Factual Summary JOB(05)/172: In Yemen's view are measures for "Production Sharing Agreements" or "Special Agreements" consistent with the provisions of the WTO Agreement on Trade-Related Investment Measures?**

Answer:

Yemen believes that the production sharing agreements or special agreements are not inconsistent with the provisions of TRIMs. Such types of agreements do not fall under any of the measures articulated in the TRIMs agreement nor, for that matter, raise concerns under any WTO agreement. It should be noted, in addition, that such agreements are widely applied by countries around the world.

**Question 29**

**Paragraph 18 of the Factual Summary JOB(05)/172: In reference to Yemeni Investment Law, which "guarantees that investment projects would not be nationalized and that investments would not be confiscated by any decision other than judicial order", could Yemen please specify if foreign investors would be entitled to the same compensation as offered to domestic investors in issues concerning indirect or direct expropriation?**

Answer:

The Investment Law No. 22 of 2002 states that Arab and foreign capital and investors shall be on par with Yemeni capital and investors in all rights, obligations, rules and procedures set forth in the law and the decrees and regulations enacted in the execution thereof. Therefore, foreign investors are entitled to the same compensation as offered to domestic investors in all issues.

**Question 30**

**Paragraph 18 of the Factual Summary JOB(05)/172: Yemeni Investment Law contains language relating to "the freedom of investors to manage their projects", could Yemen please outline it's regulations on the entry of personnel and senior officials employed by the investor?**

Answer:

The Investment Law No. 22 of 2002 states that "projects may recruit non-Yemenis in accordance with their requirement list and are entitled to obtain work permits and residence visas for such personnel for a three-year period renewable upon a recommendation of the Authority." Also investors have the right to manage their projects by themselves.

### Question 31

**Paragraph 19 of the Factual Summary JOB(05)/172: According to the Secretariat's Report, "Tax exemptions were accorded to investment projects for a period of 7 to 16 years, depending on the location of the investment project, the local component in fixed assets, and the percentage of shares held by Yemeni nationals in joint stock companies." Could Yemen provide additional information as to the type or amount of "local component in fixed assets" required? In Yemen's view, are these local component requirements consistent with the provisions of the WTO Agreement on Trade-Related Investment Measures?**

Answer:

Investment projects are entitled to two additional years of tax exemption if the local content of their fixed assets is not less than 25 per cent of the total fixed assets of the project. Further, for the purpose of the Investment Law, fixed assets means "the machinery, instruments, equipment, supplies, and spare parts needed to establish, expand or rehabilitate a project including buses especially designed to transport tourists, vessels for maritime transport and fishing and furniture and furnishing for hotels and hospital whether imported or locally manufactured or produced." With regards to the consistency with the TRIMs Agreement, Yemen believes that this condition is not fully consistent with the Agreement; however, Yemen seeks its trade partners' understanding in that respect as it is important for the promotion of using locally fixed assets. Further, the Decision of Ministers at the 6<sup>th</sup> WTO Ministerial Conference in Hong Kong allows LDCs to use local content measures.

### Question 32

**Paragraph 22 of the Factual Summary: Could Yemen provide a list of all international and bilateral investment treaties to which Yemen is a signatory?**

Answer:

Yemen is a party to the following international investment agreements:

- Islamic Institute Agreement for Investment Insurance and Exports Credit;
- International Convention for the Settlement of Investment Disputes between the State and the Nationals of Another State;
- Islamic Institute Establishment Agreement for the Development of the Private Sector; and
- Investments Promotion and Protection Treaties with Jordan, Tunisia, Morocco, Syria, Djibouti, Egypt, Saudi Arabia, Sudan, Algeria, Oman, Lebanon, Kuwait, Iran, Ethiopia, China, Malaysia, Bulgaria, Luxemburg, Bahrain, India, South Africa, Austria, Belarus, Hungary, Eritrea, Pakistan, Turkey, Indonesia, Ukraine, Romania, Russia, Croatia, Mongolia, Germany, Italy, Mauritania, Korea, Sweden, United Kingdom, France, and Netherlands.

### (e) Competition policies

### Question 33

**Please provide a description of the elements of Law No. 19/1999 that provide authority for the government to intervene against monopoly or anti-competitive behaviour. We would also appreciate a review of the procedures outlined in the law through which a company or individual may file a complaint with the government of anti-competitive behaviour in a market or sector. Please include a description of how the government would adjudicate the complaint.**



Answer:

The current Law on Monopoly and Anti-competitive Behaviour is being reviewed, and there is a draft law that has been submitted to the Parliament and is still under consideration.

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

**Question 34**

**We appreciate the information on the judiciary in paragraph 35 of the Factual Summary. We would appreciate a fuller description of the operation of the court system.**

- 1. Please describe how criminal cases are prosecuted in the courts and appealed;**
- 2. Please describe how civil cases are filed, processed and adjudicated from hearing in the court of first instance through final appeal; and**
- 3. What is the appeals process for criminal cases? For civil cases?**

Answer:

1. Criminal cases are prosecuted in the courts of first instance chaired by an individual judge. The ruling can be appealed before an appellate court whose panel is composed of three judges. The trial is conducted before the court of first instance and the appellate court in accordance with the principles and procedures stipulated in the Republican Decree of Law No. 13 of 1994 on Criminal Procedures, inter alia:
  - public trials: Trials are open to the public unless the court decides that proceedings will be held in confidentiality, for reasons of national security or public morals;
  - oral proceeding: in principle all proceeding relay on oral exchanges of facts and arguments. In addition, written submissions may be admitted by the court;
  - continuation of trial: criminal cases are prosecuted in continuous and consecutive sessions until finalized, unless the conditions of the case require and justify a suspension or delay according to the conditions stipulated in the law;
  - adversarial principle: the trial proceeds on the basis of argument and counter argument between disputing parties, i.e. public prosecution, plaintiff, and the accused;
  - equality in the right of evidence: all parties to a case, including the accused, lawyer, plaintiff, etc., are on par in terms of rights and duties; they have the right to submit and discuss evidence, and request to examine evidence by experts if the court consents; and
  - after a ruling is decided by the court of first instance, parties to a dispute may appeal the ruling before the appellate court.
2. The Procedure and Civil Enforcement Law No. 40 of 2002 explains the process of filing a civil case according to the following:

First: Case Processing

- A case is filed in an original written document with copies for each of the litigants. The document must include the specific data of the case such as the name of the claimant and litigant, their addresses, and the subject of the claim.
- In the assigned session for considering the claim, the court accepts from the litigants the documents which have not been submitted before and reads their content to the litigants. If the claim conforms to the conditions, the judge shall ask the litigant for

reply. The litigant shall reply with all evidence explaining what he/she denies or admits without ambiguity. The court shall ask the claimant to prove what the litigant denies and hears evidence and witnesses.

- Once trial is over or the case under litigation at court can be decided upon, the court shall issue the ruling without delay.

#### Second: Appeal

- A person against whom the ruling of the first instance was issued may appeal within 60 days. During the appeal, the case is considered and decided upon once again.
- Cassation through appeal at Supreme Court shall take place only if the ruling is based on a violation of law or a mistake in its application, the issued ruling of the supreme court's in this regards shall be final.

3. Rulings adjudicated for criminal cases are appealed through one of the following methods:

- Appeal;
- Objection for cassation; and
- Petition for reconsideration.

The above-mentioned appeal methods are the same for civil cases.

#### **Question 35**

- **How long does it take the courts to try a case and reach a final decision?**
- **Please describe how the commercial courts operate. What makes them different from standard civil courts?**
- **How are civil court decisions enforced in Yemen?**

#### Answer:

- Despite the fact that the procedural laws provide for specified timeframes for each step of litigation, it is difficult to specify the period that the court takes to adjudicate a given case and reach a final decision. The reason is because each case has its own facts and circumstances. For instance, the court of first instance can try a case and reach a final decision in one or two sessions, then the case is brought to the appellate court. A final decision can be reached by the appellate court in two sessions at most if the case is clear and its evidence is apparent and unambiguous. In other words, the determination of the period depends on the nature of the case along with its allegations. Nevertheless, the law obliges courts not to delay a case on trial for more than two sessions for the same reason. It also obliges them to reach a final decision as soon as possible in case it is ripe for a decision, even if not requested by the parties to the dispute. Article 243 of the Civil Procedure and Enforcement Law Provides for expedited procedures for cases of special urgency.
- Commercial courts are specialized courts in charge of claims and disputes of a commercial nature. Cases are tried in commercial courts of first instance chaired by an individual judge and adjudicated pursuant to the procedures stipulated in the Civil Procedure and Enforcement Law No. 40 of 2002. Then, decisions of such courts are appealed before the Commercial Appellate Division whose panel consists of three judges. Judges are selected in the court of first instance and appellate court from those who have sufficient experience in the area of commercial transactions, and who have already been trained in the area of commercial judiciary.

Commercial courts are different from standard civil courts in terms of jurisdiction. Commercial courts have jurisdiction over cases of commercial nature only, whereas civil courts have general jurisdiction to try all cases except commercial ones.

- The Civil Procedure and Enforcement Law No. 40 of 2002 entrusts courts of first instance with the application of civil rulings and decisions based on rulings to be applied by force. The Law specifies the methods for direct and indirect enforcement. The methods of direct enforcement are fines, detention and the use of force, whereas the methods of indirect enforcement are seizure, receivership and garnishment. The Law obligates the public authorities to assist in this enforcement even by force once the judge orders it.

The rulings of the civil courts in Yemen are enforced according to the procedures stated in the Civil Procedure and Enforcement Law. They can be summarized as follows:

- (a) Enforcement is carried out by a request based on a verdict;
- (b) The judge summons to notify the opponent of the ruling for execution and instructs him/her to voluntarily execute the ruling within one week from the date of the notification and within three days in an urgent case;
- (c) If the opponent does not execute the ruling within the specified timeframe, the judge may impose a fine of not less than YR 10,000 and no more than YR 60,000, and another period for execution is granted, not exceeding three days. If the opponent still does not execute the ruling, the judge issues a detaining order against him/her; and
- (d) Compulsory enforcement is done through two methods:
  - i. Directly: in case the subject matter of enforcement is moveable or real estate; the execution assistant moves and submits the object of execution or transfers its title thereof and submits/confer it on the plaintiff. A record for such action is written to this end; and
  - ii. Indirectly: in case of garnishment, action is taken through seizure of the defendant's assets, then sold to cover the amount claimed according to the ruling.

### Question 36

**Please describe Yemen's arbitration process as authorized under Law No. 22/1992. How does the government enforce arbitration decisions?**

Answer:

Arbitration means that the two parties to a dispute select one or more arbitrator(s) - agreed upon by both parties - to arbitrate between them, without having recourse to the competent court.

Arbitration takes place through any term denoting such action and the arbitrator's consent. Arbitration may not be established unless in writing, nor may it be agreed upon unless in writing whether prior to the dispute or thereafter. The agreement of arbitration shall be considered void if it is not recorded in writing or the subject matter of arbitration and the arbitration panel is not specified. Such record may take the form of a telegram, letter or any other means of advanced communication of documentary nature. Arbitration may take place before or after the start of the dispute according to Article 16 of the Arbitration Law on the basis of a separate agreement (arbitration document) or of a clause in a contract (terms of arbitration). In both cases, the terms of arbitration are considered an independent agreement from the rest of clauses. In case the contract is considered void or terminated, the arbitration clause remains valid.

The arbitration agreement is binding for both parties, i.e. it arranges mutual rights and obligations for contractors which subject them to settle the dispute through an arbitrator(s). An arbitration agreement may take place prior to or after filing a suit in a court. The conclusion of an arbitration agreement constitutes a waiver by the parties of their rights to resort to courts for settling the existing dispute between them.

The arbitration panel or the arbitrator shall hold hearing sessions for oral pleading, hear experts and witnesses, and familiarize themselves with anything related to the dispute in question before reaching a decision. The arbitration panel issues its decision in writing.

The arbitration decisions are recognized as binding under Yemeni law and are enforced through appellate courts according to Article 58 of the Arbitration Law. The appellate courts may mandate courts of first instance for enforcement. All decisions of the arbitrator(s) are enforced through the same procedures of decisions issued from courts and the provisions of the Civil Procedure and Enforcement Law (see answer to Question 34).

However, Yemen is currently preparing a new draft law on arbitration based on the model arbitration law prepared by the United Nations Commission on International Trade Law (UNCITRAL).

### **Question 37**

**How are judges chosen? What are the qualifications to be selected as a judge?**

Answer:

Judges in Yemen are appointed according to the provisions of the Judicial Authority Law No. 1 of 1990 which stipulates that anyone to be appointed in judiciary must meet the following conditions:

- (a) Be a Yemeni national;
- (b) Be not less than 30 years of age, and have spent at least two years of judicial training;
- (c) Be a holder of a certificate from the High Institute for Judges after having obtained a college degree in law from a university recognized by Yemen;
- (d) Good reputation; and
- (e) Not be subjected to a sentence in a crime.

The appointment shall take place through a Republican Decree based on the nomination of the Minister of Justice and the approval of the Supreme Judge Council.

### **Question 38**

**The answer to Question 15 of WT/ACC/YEM/6 reads "international agreements ratified that are ratified by the House of Representatives and signed by the President are considered part of the domestic law."**

- **What does this mean? How are the terms of ratified treaties and agreements implemented by the government?**
- **Are there any international agreements which are not ratified by the House of Representatives and signed by the President? If not, how do these agreements become domestic law?**

Answer:

According to the Yemeni constitution, ratified international agreements are considered to be an integral part of the domestic law. They are implemented at the national level by employing the same instruments and methods which are applicable for the enforcement of all other domestic laws.

All international agreements require ratification by the President. However, the approval of the Parliament takes place prior to the ratification of the President. In case of international political and economic treaties and agreements of general nature regardless of their form or level, in particular those related to defence, alliance, reconciliation and peace, borders or those which have financial consequences on the State or whose implementation needs the issuance of a law. In both cases, whether approved by the Parliament and the President (by way of a formal law) or only by the President (by way of a decree), Yemen's international agreements are considered to be an integral part of the Yemeni domestic law.

**Question 39**

**We would appreciate some clarification on the authority of sub-central governments.**

- **What authority do local governments have over economic activity in their jurisdictions?**
- **Do they have the power to tax? Do they require businesses operating in their jurisdiction to be registered? Can local governments impose rules or regulations on business operations? Do local governments have control over land allocation or zoning decisions?**

Answer:

The government does not provide local authorities with powers to impose taxes. However, sub-central governments have power over land allocation and zoning decisions. Moreover, certain ministries have local or regional offices acting on their behalf to facilitate day-to-day business operations, implementing laws and regulations related to the respective ministries.

**IV. POLICIES AFFECTING TRADE IN GOODS**

**1. Import Regulation**

- (a) Registration requirements for engaging in importing**

**Question 40**

**Paragraphs 39 and 40 of the Factual Summary and Yemen's answer to Question 16 of WT/ACC/YEM/6: We would appreciate Yemen's clarification of how its laws restricting importation to only Yemen nationals, or foreign companies established in Yemen meet the requirements contained in Articles III and XI of the GATT.**

Answer:

We still believe that Yemen's laws restricting the importation of goods to only Yemeni nationals or companies established in Yemen does not contradict the requirements contained in Articles III and XI of the GATT. However, we would appreciate any explanation as to how the relevant Yemeni laws would not meet these provisions.

#### Question 41

**Paragraphs 39 and 40 of the Factual Summary (JOB(05)/172) and Yemen's answer to Question 16 of WT/ACC/YEM/6: Please describe the steps required for a foreign company to establish itself as a legal Yemeni Importer in order to obtain Commercial Registration through the General Directorate of the Commercial Registrar at the Ministry of Industry and Trade.**

Answer:

A foreign company could legally be a Yemeni importer if it is established as a Yemeni company and the foreign share does not exceed 49 per cent. The company, then, can register using the same steps and procedures stated in the answer to Question 21 of WT/ACC/YEM/4 as well as Paragraph 40 of the Factual Summary JOB(05)/172.

#### Question 42

**Paragraphs 39 and 40 of the Factual Summary (JOB(05)/172) and Yemen's answer to Question 16 of WT/ACC/YEM/6: Please provide copies of all documentation required for commercial registration.**

Answer:

A ministerial decision to register a company is issued when the following documents are submitted:

- For an individual trader:
  - A Copy of the ID or the passport; and
  - Municipal license to operate the business including information about the enterprise.
- For commercial companies:
  - Articles of Association for joint stock, limited liability companies and limited partnership, including the name of the company, its purpose, duration, the headquarters, the capital and its distribution.
  - Memorandum of Association for the joint stock company, comprising the amount of the capital and contribution of shares, board of directors, general assembly, financial statement and the method for liquidation.

#### Question 43

**Referring to paragraph 41 of the Factual Summary and Yemen's response to Question 17 of WT/ACC/YEM/6, kindly provide detailed information on the services rendered for which the mentioned fixed fees are imposed?**

Answer:

Please note that registration fees are very low in absolute figures; they range between YR 10,000 and 30,000 which corresponds to around between US\$ 50 to US\$ 160, according to the current exchange rate. Yemen is currently reviewing these fees to ensure conformity with the WTO provisions.

#### Question 44

**Yemen's policy of requiring an importer to be a Yemeni resident goes against the fundamental right of the WTO to import goods without investing in a member country. Yemen's policy needs to be altered to reflect Articles III and XI of GATT 1994.**

Answer:

Please see answers to Questions 39 and 40.

#### Question 45

**We seek further information on the requirements for registration of imports. In particular, we would be grateful for information as to how are municipal licences obtained and the fee charged for such licences.**

Answer:

Please see answer to Question 41. Please also note that municipal licenses are business licenses which focus on matters like the suitability of the premise for the type of the business activity, and are not related to importation and exportation.

#### Question 46

**Can Yemen explain the requirements for establishing a firm to import, given its statement in WT/ACC/YEM/4 that such firms are required to provide "a copy of the Ministerial Decision on licensing the establishing of a firm?"**

Answer:

A Ministerial Decision on licensing the establishment of a firm to import is granted by the Minister of Industry and Trade once the following requirements are met:

- Submission of licensing application for the establishment of the import company;
- Submission of the articles of association and memorandum of association;
- Bank certificate for depositing the capital; and
- Copies of IDs or passports of the founders.

#### Question 47

**We note reference in paragraph 41 of the Factual Summary (JOB(05)/172) to a number of registration fees that vary depending on the commercial form of the entity. These fees do not appear to be related to the actual cost of services rendered in administering the act of registration. We seek Yemen's clarification as to why these fees vary.**

Answer:

Please see answer to Question 42.

#### Question 48

**Paragraph 41 Factual Summary: We note that the registration fees for imports and exports for companies do not seem to reflect the costs of services rendered. Because the registration**

requirements set out in paragraph 40 are the same for all types of commercial companies, the registration fees should also be the same for all of them. In particular we note that the fee is the highest for the agency and branches of a foreign company. We therefore urge Yemen to bring its registration fees in conformity with Article III and VIII of GATT and set them to the level that reflects the services rendered regardless of the nationality of the companies concerned.

Answer:

Please see answer to Question 42.

However, Yemen will review the different registration fees referred to in Paragraph 41 of the Factual Summary to ensure that the fees charged reflect the approximate cost of services rendered and ensure conformity with WTO provisions.

#### **Question 49**

**Paragraph 42 Factual Summary (JOB(05)/172): We note that neither foreign nationals nor foreign companies can register as importer or exporter. Companies need to be established in Yemen or have an agent based in the country in order to be registered. We would urge Yemen to equalise the treatment of foreign and domestic nationals and companies as regards the rights to be registered as an importer and/or exporter.**

Answer:

Please see answers to Questions 39 and 40.

#### **Question 50**

**We also seek clarification as to why there appears to be a difference in treatment of Yemen citizens and foreign citizens in terms of trading rights for "commercial use." Can Yemeni nationals imports for commercial use?**

Answer:

Yes, Yemeni nationals can import for commercial use.

#### **(b) Characteristics of national tariff**

#### **Question 51**

**Yemen noted in Question 20 of WT/ACC/YEM/6 that it is preparing a draft amendment to bring its custom classification in accordance with HS2002.**

**What is the current status of this draft amendment? What is the specific timeline envisioned for implementation of the amendment?**

Answer:

Currently, Yemen is applying HS 2002. It is part of the new Tariff Law No. 41/2005.



**Question 52**

**Paragraph 43 of the Factual Summary: We understand that Yemen is planning to introduce HS2002 instead of its current HS1996 based tariff nomenclature. Does Yemen have a deadline to the legislative amendment for instituting this change?**

Answer:

Yemen has already changed its Tariff Law where HS 2002 is now applied. It is explicitly part of the new Tariff Law No. 41/2005.

**Question 53**

**Paragraph 43 of the Factual Summary(JOB(05)/172): Could Yemen indicate when will the Harmonised System 2002 will be implemented?**

Answer:

Please see answer to Question 50.

**Question 54**

**Paragraph 45 Factual Summary (JOB(05)/172): It is noted that Article 24 of the 2002 Investment Law indicates that with a view to protecting local production, the Customs tariff Committee should impose or increase customs duty on the imports of goods competing with local production that rely on local material on its production. This requirement is WTO incompatible and we urge Yemen to abolish it from its legislation.**

Answer:

Please note that Yemen has never applied Article 24 of the Investment Law. Furthermore, if Yemen resorts to such article in the future, it will be within the bound rate.

(c) **Tariff quotas, tariff exemptions**

**Question 55**

**We welcome the statement in Question 21 and paragraph 47 of the Factual Summary (JOB(05)/172) that Yemen does not apply tariff rate quotas. Yemen also indicated that it may apply tariff-rate quotas to sensitive products.**

**To what specific products would Yemen apply a tariff-rate quota?**

Answer:

Yemen has not decided to use tariff rate quota yet. Yemen may resort to such a system if the need arises. If so, it will conform to the relevant WTO provisions.

**Question 56**

**Paragraph 47 of the Factual Summary (JOB(05)/172): We appreciate Yemen's clarification that it currently does not apply tariff quotas. We would urge Yemen to reconsider any notion of introducing tariff quotas on accession.**

Answer:

Please see answer to Question 54.

#### **Question 57**

**We would appreciate more detail on the agricultural and fisheries projects which are exempt from tariff duties. Could Yemen confirm that such tariff exemptions are in conformity with WTO agreements? We seek details of the projects concerned, how exemptions are applied, and whether tariff exemptions are made contingent in any way on domestic production or exports.**

Answer:

Yemen provides tariff exemptions for machines, equipment, tools, materials, and production inputs to associations and cooperatives supervised by the Ministry of Agriculture and Irrigation and the Ministry of Fisheries as well as investment projects within these areas. These exemptions are given without any precondition based on domestic production or exportation and are in conformity with WTO agreements.

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

#### **Question 58**

**With reference to Question 24 of WT/ACC/YEM/6, we look forward to receiving a preliminary list of ODCs, and accompanying explanation as to their purpose. Please explain why these ODCs are not applied to domestic products.**

Answer:

A list of ODCs and their purposes is circulated in document WT/ACC/YEM/11. For further illustration, the document also contains a list of fees that apply to both imported and locally produced goods.

#### **Question 59**

**In its response to Question 23 of the Factual Summary, Yemen indicated that ODCs would be dealt with during the accession process.**

**Does Yemen intend to bind all ODCs at zero upon accession?**

Answer:

Yemen will abide by Article II (1) (b) of GATT; this will be agreed upon during the negotiations.

#### **Question 60**

**We look forward to reviewing Yemen's schedule for fees and charges for services rendered.**

Answer:

The list of fees and charges for services rendered is circulated in document WT/ACC/YEM/11.

### Question 61

**Paragraph 46 of the Factual Summary: Could Yemen indicate when it will submit information on its other duties and charges to the Working Party?**

Answer:

Please see answer to Question 57.

### Question 62

**It is noted that Article 25 of the 2002 Investment law indicates that the fees and duty charged on imported goods that are comparable to locally-produced goods will be set higher than for other goods. This requirement is WTO incompatible and we urge Yemen to abolish it from its legislation.**

Answer:

The understanding of Article 25 of the Investment Law as reflected in the question appears to misinterpret the provision. The purpose and effect of Article 25 is to create a level playing field between competing like local and imported products by ensuring that internal financial burdens imposed on local production are not higher than those imposed on imported like products.

### Question 63

**Paragraph 49 of the Factual Summary (JOB(05)/172): Could Yemen indicate when it will submit information on its fees and charges for services rendered to the Working Party?**

Answer:

Please see answer to Question 59.

### Question 64

**Paragraph 46 of the Factual Summary (JOB(05)/172): We look forward to the forthcoming submission by Yemen of its other duties and charges (ODCs) on imports. We hope that, following due consideration of the ODCs that it applies, Yemen will agree to bind its ODCs at zero upon accession.**

Answer:

Please see answers to Questions 57 and 58.

### Question 65

**Paragraph 49 of the Factual Summary (JOB(05)/172): We look forward to Yemen's forthcoming submission of information on fees and charges for services rendered. We note reference to a number of fees in paragraph 55, including a 0.2 per cent fee on technical clearance of pesticide/fireworks. Such fees appear to be applied on the value of goods imported and not related to the cost of the service provided (as required by Article VIII of GATT 1994).**

Answer:

Please see answers to Questions 47 and 59.

**(e) Quantitative import restrictions**

**Question 66**

**Referring to Question 25 of WT/ACC/YEM/6, we look forward to receiving a list of all prohibited imports. When does Yemen anticipate having such a list available?**

Answer:

The list of prohibited goods circulated in document WT/ACC/YEM/17. All of these restrictions are justified under Article XX or XXI of GATT 1994.

**Question 67**

**In paragraph 54, the Factual Summary (JOB(05)/172) states that "Law No. 16/1996 "On Foreign Trade" had abolished import licensing in Yemen. At present, some goods were subject to prior technical clearance (Table 8)." In paragraph 55, the Factual Summary adds that "The technical clearance requirements were not discretionary, in his opinion, and were granted automatically once the required application procedures and requirements had been met."**

- **Please clarify how "technical clearance requirements" differs from automatic import licensing requirements.**
- **Please clarify the process for "technical clearance". Is there a set amount of time allotted to the review of applications for technical clearance? Does each shipment need to be cleared by the relevant authority or is technical clearance granted for a set time period?**
- **Do the submissions for technical clearance require a specific form(s) or format(s)? If so can Yemen provide an example of the required form(s)?**
- **Can applications for technical clearance be denied for minor documentation or procedural errors?**
- **Is there any opportunity for other countries to make comments in writing when new procedures regarding the technical certification or import licensing are introduced?**

Answer:

- Yemen reiterates its statement that it has no import licensing regime. However, based on laws, regulations and practices in a number of government agencies like those under the Ministries of Agriculture, Health, Industry and Trade, Culture, and Interior, we have noticed that terminologies like clearances, permits, approvals, and licenses were mentioned. Analysing the measures taken, and procedures adopted we came to the conclusion that they may be described as licensing procedures, although they focus on ensuring compliance with technical issues. We have also found that a technical clearance permit or approval, etc. is given in a manner which is similar to automatic licensing;
- Review of the applications for technical clearances; such clearance is given within a few days, not exceeding ten working days and is granted for a product even if it arrives in separate consignments;
- Technical clearance is given for a specific duration of validity which depends on the product and the granting agency;
- Technical clearance requires a special form or format;

- Applications cannot be refused in case of minor documentation or procedural errors; and
- The existing laws and regulations do not provide for the submission of comments on new procedures. However, Yemen will consider such provisions in the future.

The completed questionnaires on import licensing procedures will provide further clarification with a view to the above-mentioned points.

#### **Question 68**

**Paragraph 56 provides a summary of the procedures for importing books, newspapers, audiovisual and other artistic works into Yemen including the statement that the Ministry of Culture and Tourism would only accept applications from Yemeni nationals for technical clearance to import such materials.**

- **Please explain how this restriction is in conformity with GATT Articles III and XI; and**
- **Please describe the types of products for which the Ministry would deny technical clearance.**

Answer:

Please see answer to Question 39.

We would like to indicate that the type of products which the Ministry of Culture denies technical clearance cannot be specified in digits and description at any point in time, as they are products which fall under clear and specific violation of Islamic values of the society, public order, security and public morals.

#### **Question 69**

**Similarly, paragraph 57 describes the rules for importing pharmaceuticals and medical equipment:**

- **Please explain the rationale behind the restrictions listed; and**
- **Please describe the registration process with the Supreme Authority for Drugs and Medical Equipment.**

Answer:

- The requirements referred to in paragraph 57 are not restrictions, but merely the necessary requirements for those dealing with pharmaceuticals and medical equipments. The basic rationale is the protection for the human health and life.

The requirement (iii) in paragraph 57 of the Factual Summary should read as follows:

"be a full-time pharmacist or the importer to hire a full-time pharmacist as a technical supervisor."

- The registration process with the Supreme Authority for Drugs are as follows:
  - As regards pharmaceutical products:
    1. free sale certificate of the product in the country of origin pursuant to the WHO certificate scheme, legalized by the competent authorities;
    2. Bio-Equivalence studies for the dosage forms "capsules", "tablets", "suspensions" according to the WHO scheme of as required by the Technical Committee for Registration;
    3. Free sale certificate of the product and composition of the product including the active and inactive ingredients: the colouring and flavouring materials if any, to identify quantity thereof; pharmaceutical form; package; composition; insert leaflet used in the country of origin including all aspects required to be registered in Yemen, legalized by the Ministry of Health, the Foreign Ministry, the Yemeni Embassy, or any Party, or Arab embassy acting on its behalf in case the Yemeni Embassy is not available in the country of origin;
    4. Certificate of comprehensive product analysis proving that the analysis result is identical to the standard and to state the pharmacopoeia by the lab seal and the manufacturing company in the country of origin (form to be obtained from Registration Department);
    5. The analysis method in case the pharmacopoeia is not mentioned next to the materials in the composition or pharmacopoeia validation study in case of non pharmacopoeia products;.
    6. A standard referential sample for every active material in the item in case it is different from the approved pharmacopoeia;
    7. Product stability study;
    8. Clinical study in case the product has been recently invented;
    9. Twenty samples of the product intended for registration (current packs); and
    10. Three inserted leaflets, three external packs and three stickers.
  - As regards medical appliances:
    1. Free sale certificate and certificate of sterilization for the items requiring sterilization;
    2. Price certificate including the wholesaler and retail prices in the country of origin and the proposed CIF price to a Yemeni port proposed by the company;
    3. Six samples of each item bearing all the necessary information.

#### **Question 70**

**Referring to paragraph 58 of the Factual Summary, we look forward to receiving a list of the fees currently assessed for technical clearances.**

Answer:

The list of the technical clearance fees is included in the "list of fees and charges for services rendered" circulated in document WT/ACC/YEM/11.

#### **Question 71**

**We welcome Yemen's commitment in paragraph 59 of the Factual Summary that Yemen would comply with the WTO Agreement on Import Licensing procedures, including the notification requirement, upon accession. We also welcome Yemen's commitment to apply any future**

**import licensing regime in accordance with the WTO Agreements. We reserve our rights to propose specific commitment language once the factual basis of this section has been established. We look forward to Yemen's completing the import licensing questionnaire and would appreciate an assessment of when it will be completed.**

Answer:

The import licensing procedures questionnaire will be submitted in the very near future, including a list of relevant documents and requirements for importation.

#### **Question 72**

**Paragraph 53 of the Factual Summary (JOB(05)/172): Could Yemen indicate when it will be able to provide the list of products subject to import prohibition?**

Answer:

Please see answer to Question 65.

#### **Question 73**

**Paragraph 56-57 of the Factual Summary (JOB(05)/172): Could Yemen explain exhaustively the criteria required for issuance of technical clearance and their legal basis as regards the following products: seeds and fertilizers, pesticides, plants, explosives and fireworks, books, newspapers, audiovisual and artistic works and drugs and medical equipment. With the criteria we mean exhaustive list of all documents that need to be submitted to the issuing authority and other criteria relating to the qualifications and other requirements regarding the applicant/importer.**

Answer:

The questionnaires referred to in answer to Question 70 will provide clarification and answers to all such queries.

#### **Question 74**

**Paragraph 57 of the Factual Summary (JOB(05)/172): Could Yemen explain what the rationale of requiring that importer of drugs is or medical equipment needs to be an agent of a drug or medical equipment company and full time pharmacist?**

Answer:

Please see answer to Question 68.

#### **Question 75**

**Can foreign nationals and companies be granted technical clearance for importation of medicines and medical equipment?**

Answer:

Foreign nationals and companies cannot be granted technical clearance for importation of medicines and medical equipment, as importation, in general, is confined only to Yemeni nationals and companies as referred to answers in Questions 39 and 40.

**Question 76**

**Paragraph 58-59 of the Factual Summary (JOB(05)/172): We welcome Yemen's commitment to bring its fees charged for technical clearance into compliance with the WTO Agreement on Import Licensing Procedures upon accession, and to comply with this agreement upon accession.**

Answer:

Yemen will comply with the WTO Agreement on Import Licensing Procedures upon accession.

**Question 77**

**Yemen has indicated that it will provide further information on quantitative import restrictions. We look forward to seeing this information in due course and seek information on measures that can be applied, their method of application, and the WTO justification.**

Answer:

Yemen has no quantitative import restrictions other than those mentioned in the list of prohibited goods in line with Articles XX and XXI of GATT 1994. However, Yemen prohibits the importation of coffee and mango. Yemen also maintains seasonal tariffs/restrictions on certain agricultural products. These restrictions are under review to conform to WTO rules upon accession.

**Question 78**

**In paragraph 54 of the Factual Summary (JOB(05)/172), Yemen notes that import licensing has been abolished and replaced by "technical clearance." However, it appears that "technical clearance" is still a form of import licence. We seek information on what constitutes technical clearance, including any approval criteria applied, the process of obtaining clearance (including processing time and fees), and reasons for refusal.**

Answer:

Please see answers to Questions 66 through 75.

**(h) Customs valuation**

**Question 79**

**In response to Question 48 of WT/ACC/YEM/4, Yemen states that importer's have a right to appeal customs valuation decisions to a committee representing the customs authority and the importer. If the committee cannot reach agreement on the dispute, the matter may be referred to another committee with representation from the office of the Minister of Finance, a representative from the customs authority, and a representative of the Chamber of Commerce and Industry. Yemen states that decisions of the second committee are final and binding. Under Paragraph 2 of Article 11 of the WTO Valuation Agreement, an importer has the right to**



**appeal administration determinations to an independent judicial authority. A committee with representatives from the Finance Ministry and customs authority is not an independent judicial body.**

**We urge Yemen to amend its Customs Law to conform its law regarding the right of appeal to the requirements of the WTO Valuation Agreement.**

Answer:

The Draft Customs Law is currently being considered and reviewed to conform to the provisions of the WTO Agreements on Customs Valuation and also on Rules of Origin.

#### **Question 80**

**We are pleased to see that in Articles 231 through 238 of the Explanatory Memorandum of the Draft Customs Law, Yemen is proposing to amend its customs law to provide for the right to appeal adverse customs decisions to an administrative committee and independent customs court.**

**We are concerned, however, that the importer may have insufficient time to prepare an appeal because Article 231 provides only eight days from the date of the "proces-verbal" to appoint a representative to the administrative committee.**

Answer:

Please refer to answer in Question 78.

#### **Question 81**

**According to Article 231 through 238 of the Explanatory Memorandum of the Draft Customs Law, the committee that reviews the initial review of customs determinations would include a representative of the Chamber of Commerce. Pursuant to Article 10 of the WTO Valuation Agreement, "All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information..." The inclusion of a non-government representative on the committee violates the Article 10 requirement to protect confidential information.**

**We urge Yemen to amend this provision to limit representation on the committee to government representatives.**

Answer:

Please see answer in Question 78.

#### **Question 82**

**Paragraph 62 Factual Summary: We note the explanation of Yemen that it will complete the revision of its Customs Law by 2007. We would be happy to have a copy of the draft law as soon as possible to be able to comment it.**

Answer:

Yemen confirms that its Draft Customs Law will be in conformity with the provisions of WTO Agreements. As indicated, the draft law is still under discussion. A copy of it will be provided to the Working Party as soon as it is prepared in near-final form.

**Question 83**

**We are also looking forward to seeing the working programme in this area. Can Yemen indicate when this will be available to the Working Party?**

Answer:

The Customs Valuation Work Programme will be sent later.

**Question 84**

**We note that Yemen is drafting a new Customs Law, with a view to being able to comply with the WTO Agreement on the Implementation of Article VII of the GATT 1994, which it hopes to have approved by 2007. We would be interested to see Yemen's proposed work plan when it becomes available (paragraph 62 of the Factual Summary).**

Answer:

Please see answer to Question 82.

**(j) Pre-shipment inspection**

**Question 85**

**Paragraph 73 indicated that there exists no government-mandated pre-shipment inspection regime in Yemen.**

**Do Yemeni importers require pre-shipment inspections?**

Answer:

Some Yemeni importers resort to such measure.

**Question 86**

**We appreciate the commitment in paragraph 73 of the Factual Summary; however, we reserve our right to propose specific commitment language when the factual basis of the section has been fully developed.**

Answer:

Yemen welcomes any discussion on proposed language relating to its adherence to the WTO Pre-shipment Inspection Agreement.

**(k) Application of internal taxes on imports**

**Question 87**

**Referring to paragraph 52 of the Factual Summary (JOB(05)/172), please provide information on different tax rates applied to goods imported under the terms of bilateral or regional trade agreements.**

Answer:

Elaborating on the statement mentioned in paragraph 52 of the Factual Summary and the answer to Question 33 of WT/ACC/YEM/6, it should be emphasized that customs duties applied to goods imported under bilateral or regional agreements are subject to the provisions of these agreements.

As for internal taxes, products imported under such an agreement are not treated differently from any other products outside such agreements. In other words, they are applied on products irrespective of their source.

**Question 88**

**Paragraph 51 Factual Summary (JOB(05)/172): We would be interested to receive the copy of the Law No. 19/2001 on the General Sales Tax which would be introduced during 2004 to replace the current production, consumption and services tax.**

Answer:

The copy of the Law No. 19 of 2001 on the General Sales Tax and its Amendments by Law No. 42/2005 will be sent later.

**Question 89**

**Yemen has indicated that taxes applied on imports from its bilateral or regional trade agreement partners may be treated differently than those from other countries of origin, which suggests some potential for discrimination. Can Yemen please provide more information on the taxes applied to imports from all the countries with which it has bilateral or regional trade agreement partners?**

Answer:

Please see answer to Question 86.

**(l) Rules of origin**

**Question 90**

**In response to Question 39 of WT/ACC/YEM/6, regarding the right of importers to appeal adverse customs decisions to the customs authority and to an independent judiciary, Yemen states that the right of appeal is provided in the Customs Law.**

**Please clarify what provision of the Customs Law provides the right to appeal adverse decisions regarding the origin of an imported good.**

Answer:

Article 76 of the existing Customs Law requires that in case of a disagreement about the origin of a product, the decision of a panel composed of two experts who represent the interest of the Customs Authority and the importer is final, if they both agreed. In case of further disagreement, it shall be referred to a committee composed of a permanent representative appointed by the Minister of Finance and two members; one representing Customs Authority and the other representing the respective Chamber of Commerce and Industry. The committee's decision is deemed final, conclusive, and unchallengeable.

**Question 91**

**In the Explanatory Memorandum of the Draft Customs Law, Article 28 states: "Goods imported from a country other than the country of origin, are subject, after being put for consumption in that country, to customs tariff applied to goods of the country of origin or the source country whichever is the highest."**

**Please explain the purpose of this provision.**

Answer:

Please see answer to Question 78.

**Question 92**

**What provisions exist in Yemen's customs provisions to provide interested parties a determination of a good's origin prior to importation, as required by the Agreement in Article 2(h) and Annex II, paragraph 3(d)?**

Answer:

No such provisions currently exist. Yemen is reviewing the provisions on rules of origin in the new Draft Law.

**Question 93**

**Paragraph 69 of the Factual Summary (JOB(05)/172): We would be happy to have the confirmation of Yemen that it will comply with the WTO Agreement on Rules of Origin upon accession.**

Answer:

Please see answer to Question 78. Yemen will comply with WTO rules of origin upon accession.

**(m,n,o) Anti-dumping, countervailing duty, and safeguard regimes**

**Question 94**

**In response to Question 40 of WT/ACC/YEM/6, Yemen notes it is in the process of drafting safeguard, antidumping and countervailing duty legislation.**

- **Please provide an estimated timeline of when the legislation will be finalized and ready to be reviewed by Members; and**

- **Please confirm that Yemen will ensure its legislation will be in full conformity with relevant WTO provisions.**

Answer:

Yemen has already mentioned an estimated timeframe for introducing such law. This is included in the legislative action plan (WT/ACC/YEM/9/Rev.1) Item 3 which is the year 2007.

Yemen confirms that laws on anti-dumping, countervailing duties and safeguards will be in conformity with the WTO Agreements.

#### **Question 95**

**Paragraph 75 of the Factual Summary (JOB(05)/172): We welcome Yemen's commitment to apply any anti-dumping, countervailing duties, and safeguards in full conformity with the relevant WTO provisions. We would be happy to receive the draft law as soon as available to be able to comment it. Could Yemen indicate when this would be available?**

Answer:

Please see answer to Question 93.

#### **2. Export Regulation**

##### **(f) Export financing, subsidy and promotion policies**

#### **Question 96**

**Concerning Yemen's reference to the special and differential treatment provisions of the SCM Agreement, we nonetheless believe that Yemen should consider revision of its laws to eliminate any prohibited subsidies as defined in Article 3 of the SCM Agreement as soon as possible, as Yemen's ability to apply such measures within WTO rules will expire when it is no longer recognized as an LDC. If Yemen cannot eliminate these measures from the date of accession, it should propose a timeline for their gradual elimination.**

**Does Yemen currently provide any subsidies based on local content use?**

Answer:

Yemen confirms its commitment to implement all WTO provisions. Please also refer to answer in Question 23.

#### **Question 97**

**We also seek confirmation by Yemen that it will notify all of its subsidies, prohibited or otherwise, in accordance with Article 25 of the SCM Agreement, which states, "Members shall notify any subsidy as defined in paragraph 1 of Article 1, which is specific within the meaning of Article 2, granted or maintained within their territories".**

Answer:

Yemen confirms that it will abide by Article 25 of the SCM Agreement upon accession.

**(h) Import duty drawback schemes**

**Question 98**

**Paragraph 79 of the Factual Summary (JOB(05)/172): Could Yemen give detailed explanation of the operation of its duty drawback scheme? Could Yemen explain in particular how its authorities verify which inputs are consumed in the exported products and how they control in practice that the drawback does not exceed the actual duties paid?**

Answer:

We would like to reiterate the facts mentioned in our previous statement on the duty drawback scheme in Yemen. We confirm that duties are refunded totally or partially on the imported inputs actually incorporated in the manufacture of exported products. The exporter has to submit an application accompanied by all necessary documentation, in particular those related to duties paid on the imported products incorporated in the final product.

The amount refunded is based on an evaluation of the percentage of the value of the imported products incorporated in the final product for export and the duty paid on such inputs. This evaluation is conducted by a committee composed of representatives from the Customs Authority and the Ministry of Industry and Trade, the Ministry of Agriculture, or the Investment Authority. The evaluation is strictly neutral and is in no way discretionary.

We would like to reaffirm that the duty drawback does not exceed the actual amount of duties paid by the exporter on his imported inputs.

**Question 99**

**In response to Question 48 of WT/ACC/YEM/6, Yemen stated that the import duty refunds do not exceed the actual amount paid. Could Yemen please explain:**

- **How your authorities confirm which inputs are consumed in the production of the exported product and in what amounts; and**
- **Can you please describe what type of system Yemen has in place, if any, that your authorities will use to ensure that the drawback does not exceed the actual duties paid upon importation?**

Answer:

Please see answer to Question 97.

**3. Internal policies affecting foreign trade in goods**

**(a) Industrial policy, including subsidy policies**

**Question 100**

**In response to Question 51 of WT/ACC/YEM/6 regarding industrial zones, Yemen stated that it intends to avail itself of support measures that include export performance and local content requirements, within the context of Yemen's development.**

**As we already noted, we nonetheless seek a commitment for the elimination of such measures, in light of the fact that at some point, Yemen will not be able to maintain such subsidies, i.e. as defined in Article 3 of the SCM Agreement, after it is no longer considered an LDC.**

Answer:

Please see answer to Question 95.

#### **Question 101**

**Paragraph 82 Factual Summary (JOB(05)/172): As regards Industrial Zones, we welcome Yemen's statement that it intends to comply with WTO rules when establishing industrial zones. However, we note Yemen's statement that it intends to resort to local content requirements in its industrial zones. We would like to stress that local content subsidies are prohibited subsidies under Article 3 ASCM also for LDCs. LDCs are exempted from the prohibition of export subsidies under Article 27 ASCM (Annex VII), but not from the prohibition of local content subsidies. We therefore urge Yemen not to resort to local content subsidies in its industrial zones.**

Answer:

Yemen will be committed to apply all WTO provisions including Article 27 of the ASCM.

#### **(b) Technical regulations and standards**

#### **Question 102**

**With respect to Question 53 of WT/ACC/YEM/6, we look forward to receiving your action plan on TBT. We will follow up with further questions upon receiving your TBT-related documents.**

Answer:

The Action Plan for the Implementation of the TBT Agreement is circulated in document WT/ACC/YEM/15.

#### **Question 103**

**Referring to Yemen's response to Question 55, if Yemeni Standardization and Metrology Organization (YSMO) certificates are currently the only recognized certificates, how are imports requiring certificates currently handled? When will the operational system be adopted?**

Answer:

- Certificates issued from the YSMO shall be recognised for domestic products only. For imports, certificates accompanying the shipment shall be recognised if they are issued from accredited labs in the country of origin; and
- The adoption of an operational system is related to the issue of lab-conformity as referred to in the action plan of the implementation of TBT Agreement (WT/ACC/YEM/15).

#### **Question 104**

**We are pleased to see in the response to Question 56 of WT/ACC/YEM/6 that Yemen is in the process of establishing an enquiry point. Please provide an update as to the status of establishing this enquiry point and the timeline for completion.**

Answer:

Please refer to the Action Plan for the Implementation of the TBT Agreement (WT/ACC/YEM/15), and the related technical assistance needs (WT/ACC/YEM/16).

#### **Question 105**

**In its response to Question 58 of WT/ACC/YEM/6, Yemen states that "YSMO (entity identified as the focal point for TBT) generally applies international standards."**

- **Does Yemen currently (or have plans to) apply TBT measures that are not based of international standards?**
- **How does Yemen plan to ensure that such measures are in full compliance with the TBT Agreement?**

Answer:

In setting its specifications, Yemen relies on international standards, and is guided by Gulf standards (which, we believe, are based on international standards). Yemen has never issued any specifications contrary to that. If there is a need to prepare Yemeni specifications not based on international standards, they shall be prepared according to the TBT Agreement.

#### **Question 106**

**Paragraph 85 of the Factual Summary (JOB(05)/172): We note Yemen statement that full compliance with the TBT Agreement requires technical assistance and a transition period. We are also looking forward to seeing the action plan in this area and would be happy to know when Yemen could submit the action plan on TBT to the Working Party.**

Answer:

Please see answer to Question 101.

#### **Question 107**

**Paragraphs 85-86 of the Factual Summary(JOB(05)/172): Yemen has indicated it is requesting financial and technical assistance in order to be able to implement fully the obligations of the TBT agreement. We look forward to advice in due course about its action plan for implementing this Agreement and of the process of establishing an enquiry point.**

Answer:

Please see answer to Question 101.



(c) **Sanitary and phytosanitary measures**

**Question 108**

**We thank Yemen for providing answers to Questions 59-69 of WT/ACC/YEM/6 on sanitary and phytosanitary measures. However, we need a more detailed response to these questions in order to better assess how Yemen plans to implement and adopt the SPS Agreement.**

Answer:

For more details about the implementation of SPS measures, the following documents have been circulated:

- The revised SPS Check-list (WT/ACC/YEM/12);
- The Action Plan for the implementation of SPS measures (WT/ACC/YEM/13); and
- Technical assistance needs related to the implementation of SPS measures (WT/ACC/YEM/14).

**Question 109**

**We understand that Yemen will provide a revised SPS check-list with more details on the status of implementation and progress including timelines.**

Answer:

Please see answer to Question 107.

**Question 110**

**We also look forward to Yemen's submission of an SPS Action Plans and as well as a request for technical assistance.**

**Once Yemen has submitted and we have had a chance to review these documents, we may want to ask further questions.**

Answer:

Please see answer to Question 107.

**Question 111**

**We would like to help Yemen devise an SPS implementation plan that meets its needs and will take into account any special needs that Yemen may have in this regard, as per Article 10 (1) of the SPS Agreement.**

Answer:

We would like to thank the WTO Members for their preparedness to provide technical assistance according to Article 10.1 of the SPS Agreement.

**Question 112**

**Paragraph 96 of the Factual Summary (JOB(05)/172): We note Yemen statement that full compliance with the SPS Agreement requires technical assistance and a transition period. We**

are also looking forward to seeing the action plan in this area and would be happy to know when Yemen could submit the action plan on SPS to the Working Party.

Answer:

Please see answer to Question 107.

#### **Question 113**

We look forward to Yemen's submission of an action plan for implementation of the SPS Agreement. It would be helpful if Yemen could outline in general terms the deficiencies of its SPS regime, as this will assist with explaining the changes it believes will require action under the action plan. We note Yemen plans to notify the establishment of its enquiry point and notification authority on accession.

Answer:

Please see answer to Question 107.

#### **Question 114**

We would be interested to know whether Yemen will be using the same agency as both its SPS Enquiry Point and Notification Authority.

Answer:

Yemen is currently considering this issue. It will notify Members on any decision as soon as possible.

#### **Question 115**

We appreciate Yemen's responses to questions about SPS measures, in particular its submission of the indicative checklist on SPS measures and its indication that it would like to comply with the SPS Agreement, but is seeking technical support and a transition period. We have the following queries and suggestions in relation to the indicative checklist (WT/ACC/YEM/5) which we would like to register with Yemen:

- Yemen will need to have some kind of consultative mechanism in place to allow interested Members or the public a reasonable period of time to comment without discrimination. We suggest removing the confusing qualification "if requested";
- Yemen mentions technical assistance and its efforts to "endeavour" to apply the SPS Agreement to the extent necessary to protect health (commitment 8). Yemen will need to describe what technical assistance will achieve to strengthen its regimes and provide some measure of certainty that it will eventually apply the SPS, rather than simply "endeavour" to do so;
- We also are concerned with the entry of the qualifying term "endeavour" against commitments 9 and 10; and
- The objectives of financial and technical assistance should be provided in due course relative to Yemen's comments against commitment 11.

Answer:

We are grateful for the suggestions.

Please see answer to Question 107.

**(d) Trade-related investment measures**

**Question 116**

**We are concerned by Yemen's indication that it intends to avail itself of local content requirements to promote investment in industrial zones.**

Answer:

Please see answer to Question 23.

**Question 117**

**Yemen should indicate how it intends to bring these measures into line with the WTO TRIMs Agreement. Consistent with the LDC Declaration on Accessions, we are prepared to address the elimination of these measures in the context of a transition. Please provide an action plan implementing the WTO Agreement on TRIMs.**

Answer:

Yemen is grateful for the Member's expressed readiness to accept transitional periods, and hopes that other Members will follow this approach, in line with the letter and spirit of the General Council Decision on LDC Accessions of December 2002.

Please see answer to Question 23.

**Question 118**

**Trade related investment measures, Paragraph 100 of the Factual Summary JOB(05)/172: When establishing industrial zones, the Report states that the Yemeni government intended to "avail itself to local content and export performance requirements should such measures be considered conducive to Yemen's industrial development." Could Yemen please clarify what is meant by this phrase and whether if in Yemen's opinion these local content requirements are consistent with the provisions of the WTO Agreement on Trade-Related Investment Measures?**

Answer:

Please see answer to Question 23.

**(e) State-trading practices**

**Question 119**

**What entities have the right to import and export crude oil, natural gas, and petroleum products?**

Answer:

Import and export of crude oil, natural gas and petroleum products are the responsibility of the General Corporation for Oil and Gas and its affiliates.

#### **Question 120**

**What entities are licensed to import pharmaceuticals and medical equipment?**

Answer:

The entities licensed to import pharmaceuticals and medical equipment are as follows:

- The government health agencies; and
- The private sector importers registered at the Supreme Board of Drugs and Medical Appliances.

#### **Question 121**

**Do any of the State enterprises listed in paragraph 27 or Table 3 of the Factual Summary possess special or exclusive trading privileges?**

Answer:

Please see answer to Question 8.

#### **Question 122**

**Paragraph 102: Could Yemen give detailed explanation of the scope of activities and special competencies and rights of the 100 per cent State-owned companies Yemen General Company of Oil and Gas, The Yemen Oil Company, the Aden Refinery Company and the Yemen Refinery Company?**

Answer:

Please see answer to Question 5.

**(f) Free zones**

#### **Question 123**

**We reserve the right for further comment on this section. We reiterate our request that Yemen commit to eliminate subsidies as defined in Article 3 of the SCM Agreement that may remain.**

Answer:

Yemen will be committed to apply all the provisions of ASCM upon accession. It should be noted, however, that these include, *inter alia*, Article 27.

#### **Question 124**

**Paragraph 104 of the Factual Summary (JOB(05)/172): We note Yemen's explanation that financial transactions within the free zones are not subject to foreign exchange control measures and that investors have the right to transfer their capital and profit out of the free zones.**

**Could Yemen explain what kind of foreign exchange control measures and restrictions as regards transferring capital and profit apply to companies located outside free zones? Yemen explains in paragraph 14 concerning foreign exchange regime that no restrictions apply.**

Answer:

There are currently no foreign exchange control measures or restrictions on the transfer of capital or profits that apply to companies located outside Free Zones. This is in line with Article VIII of the International Monetary Fund Agreement, which Yemen ratified in 1996 as part of the economic reform program. The Free Zone Law No. 4/1993 was drafted when there were restrictions on the transfer of capital within the country. However, now those restrictions have been eliminated.

**(l) Government procurement practices**

**Question 125**

**Paragraph 108 of the Factual Summary (JOB(05)/172): We would encourage Yemen to consider joining the GPA after its accession to WTO.**

Answer:

Yemen will consider how to deal with this agreement after accession to WTO.

**(m) Regulation of trade in transit**

**Question 126**

**We appreciate the statement in paragraph 109 of the Factual Summary. Please describe the provisions in Customs Law No. 14/1990 that govern transit trade.**

Answer:

The Customs Law allows for the transit of goods of foreign origin according to the transit system whether these goods are passing through Yemeni territories into other countries' territories (these products are not subject to guarantees), or whether they are sent directly from one entry point to another in the country (transit). Goods are not subject to restrictions and prohibitions unless specified otherwise in the relative laws and regulations. The Customs Authorities identify entry points, transport means and roads allowed for the passage of the goods taking into consideration agreements concluded with other countries. The Customs Authorities issue permits that could be cancelled in case of violations or misuse of transport means. This applies as well in case people involved have been proven guilty of committing violations of the law or to be engaged in smuggling activities.

Goods in transit are subject to a brief declaration and an overall inspection in part or in whole if needed. The Customs Authorities shall impose guarantees, if necessary, in order to ensure the payment of customs duties in case of diversion. The Customs Authorities shall use precautionary measures like sealing or other means in such a way as to ensure the arrival of goods at the other entry points and also to ensure that they are not smuggled into the country or not accompanied by other products. The law also allows for the application of the transit system based on international documents, internationally unified forms and security and safety procedures for goods and transport means.

**4. Policies affecting foreign trade in agricultural products**

**(b) Exports**

**Question 127**

**This section will become clearer as discussions on Yemen's domestic support tables and export subsidies progress.**

Answer:

Information on Domestic Support and Export Subsidies in Agriculture have been submitted in document WT/ACC/SPEC/YEM/1.

**Question 128**

**With reference to paragraph 112 of the Factual Summary and Question 79 of WT/ACC/YEM/6, we ask Yemen to bind export subsidies at zero upon accession. This is a commitment taken on by all acceding countries, including LDCs.**

Answer:

Yemen will be committed to apply all the provisions of the WTO Agreement on Agriculture upon accession.

**Question 129**

**We note that for countries like Yemen, the subsidized export of agricultural products is, in reality, the subsidized export of water.**

Answer:

We took note of the valuable remark.

**Question 130**

**We note that Yemen has stated that it does not currently use export subsidies. We encourage Yemen to bind its agricultural export subsidies at zero on accession.**

Answer:

Please see answer to Question 127.

**V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

- 2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights**
  - (a) Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organizations**

**Question 131**

**Paragraph 127 of Factual Summary (JOB(05)/172):** We note that Yemen stated the following: "Concerning Article 5.2 of the Berne Convention and the mandatory registration procedures in Articles 35-37 of the present Law, the existing Law granted the enjoyment and exercise of copyright." We would like Yemen to provide more details on Articles 35-37 of its Intellectual Rights Law No. 19/1994.

Answer:

Mandatory registration procedures, stated in Articles 35-37 of the current IPR law, are not included in the new IPR draft law, in compliance with TRIPS Agreement.

- (b) Trademarks, including service marks**

**Question 132**

**Paragraph 130 of Factual Summary (JOB(05)/172):** We note that usage of a registered trademark requires the owner's prior approval. Are non-registered trademarks also protected?

Answer:

No. Non-registered trademarks are not protected.

**Question 133**

**Paragraph 130 of Factual Summary (JOB(05)/172):** We note that "Yemen would include factors to determine whether a mark was a so-called "known mark" in conformity with the TRIPS Agreement." Would Yemen specify what would be the "factors" in determining whether a trademark is a "known mark".

Answer:

Yemen has already taken into consideration factors mentioned in Article 16.2 of the TRIPS Agreement in the new IPR draft law such as:

- The knowledge of the trademark in the relevant sector of the public; and
- The knowledge of the trademark in the Member Country concerned which has been obtained as a result of the promotion of the trademark.

**Question 134**

**Paragraph 130 of Factual Summary JOB(05)/172:** We note that "Yemen would include factors to determine whether a mark was a so-called "known mark" in conformity with the TRIPS Agreement". Would also non-registered foreign known marks be protected?

Answer

Yes. Non-registered foreign known marks are also protected.

**4. Enforcement**

**Question 135**

**In the WTO document relating to implementation of the TRIPS Agreement (WT/ACC/YEM/7), Yemen stated only that it will review its IPR laws to comply with the TRIPS Agreement and that it needs technical assistance to accomplish this task (see page 11 of this document). In this same document, Yemen repeats this basic response in each of the "response boxes" contained along side the summaries of the TRIPS enforcement articles (Articles 41-61). In order to conduct a proper, thorough and complete assessment, we need the citations to those specific provisions of Yemen's laws/regulations/decrees that provide the enforcement measures/remedies called for in Articles 41-61 of TRIPS. In each "response box" we need to know where the current law of the Republic of Yemen provides the proper authority to meet each of the TRIPS enforcement obligations detailed in Articles 41-61. If no such laws/regulations exist that provide the authority required by a certain article or articles, this should be indicated in the proper "response box" in this document (WT/ACC/YEM/7).**

Answer:

The revised document WT/ACC/YEM/7/Rev.1 has been circulated.

**Question 136**

**Accordingly, we continue to be unable to determine whether Yemen's IPR enforcement regime is compliant with the TRIPS Agreement. In order to even begin such an analysis, we will need official translations of the following laws cited by the Republic of Yemen in response to previous inquiries:**

- (1) Customs Law (only a draft customs law was provided previously);**
- (2) Crimes and Penalties Law (only a non-official translation of selected articles of Law No. 12 of 1994 was provided previously);**
- (3) Procedures and Civil Enforcement Law (only a non-official translation of selected articles of Law No. 40 of 2002 was provided previously);**
- (4) Republican Decree on Law No. 19 of 1994 on Intellectual Right (referenced on page 31 of document WT/ACC/YEM/3);**
- (5) Republican Decree on Law No. 28 pertaining to Procedures and Civil Enforcement (referenced on page 31 of document WT/ACC/YEM/3);**
- (6) Republican Decree on Law No. 19 of 1999 pertaining to Competition Promotion and Prevention of Monopoly and Trade Deception (referenced on page 31 of document WT/ACC/YEM/3);**
- (7) Law No. 25 of 1990 on the Press and Publications (referenced on page 31 of document WT/ACC/YEM/3);**
- (8) The Press and Publications Law No. 49 of 1993, on the Press regulations (referenced on page 31 of document WT/ACC/YEM/3 and in response to Question 151 in document WT/ACC/YEM/4);**
- (9) Minister of Culture's Decision No. 126 of 1999, on the establishment of the Intellectual Rights Department (referenced on page 31 of document WT/ACC/YEM/3);**
- (10) Yemeni Evidence Law (referenced in response to Question 136 in document WT/ACC/YEM/4);**



- (11) **Yemeni Law on Intellectual Property Right (referenced in response to Questions 137-39, 150 and 152 in document WT/ACC/YEM/4); and**
- (12) **Ministerial Decision No. 353 of 1995 Pertaining to Implementing By-law on Intellectual Property Right Law (previously only a non-official translation was provided).**

Answer:

Please note that Yemen has stated in each box of WT/ACC/YEM/7/Rev.1 where the current IPR law and other related laws meet the TRIPS enforcement obligations provided in Articles 41-61. However, Yemen needs technical assistance and transitional periods as requested in the action plan for the implementation of the TRIPS Agreement (WT/ACC/YEM/8).

**Question 137**

**We thank Yemen for submitting the detailed action plan on TRIPS and note the transition periods requested, as well as Yemen's request for technical assistance in this area. We reserve our right to submit more detailed comments on this area at later stage.**

Answer:

Yemen highly appreciates that WTO Members understand Yemen's needs for technical assistance and transitional periods, and is ready to accommodate any further questions or remarks.

**VI. TRADE-RELATED SERVICES REGIME**

**Question 138**

**Initial Offer on Services (WT/ACC/SPEC/YEM/2)**

**Horizontal Commitments, Limitations of Market Access, Commercial Presence:**

**Could Yemen explain the rationale behind the established percentage of foreign equity allowed in joint stock and partnerships, which is 45 per cent and allowances for other business partnerships where it is 49 per cent?**

Answer:

The rationale for limiting foreign equity in joint stock and partnership companies to 45 per cent is to encourage the participation of the Yemeni public in holding shares in such companies and promote national public investment.

**Question 139**

**Horizontal Commitments, Limitations on National Treatment, Commercial Presence:**

**Does Yemen expect to revise its laws and policies concerning acquisition of land rights by foreign investors either in the medium-term or in the longer-term?**

Answer:

Currently, Yemen has no plan to review its policies in that respect.

## TRANSPARENCY

### Question 140

**We appreciate the commitment paragraph 174 that Yemen would ensure the publication of all relevant legislation or regulations related to the implementation of the WTO Agreements from the date of accession. We would like to explore with Yemen how it intends to establish this, and we reserve the right to provide more specific commitment language once the factual basis of this section has been established.**

**How will Yemen ensure publication of relevant legislation or regulations related to WTO implementation?**

Answer:

The process of publishing the State's legislations and regulations represents a governmental procedure which is an obligation by virtue of the constitution. Therefore, Law No. 27 of 1993 has been issued, which states that publications in the official gazette are an official procedure that ensures the information of the public at large. This mechanism applies to all laws.

As regards to the distribution of the publications of the official gazette, it takes place at the widest level as they are distributed to all governmental bodies and authorities both at the local and central levels. In addition, the Ministry also makes such publications available for companies and individuals in general either through annual subscription contracts or through direct sales at reasonable prices for whom they are requested through the Ministry or its branch offices in governorates or from bookshops or newsstands.

### Question 141

**Several WTO Agreements require Members to publish proposed rules changes, take public comments and incorporate those comments into the proposed rule.**

**How does Yemen intend to implement these obligations? Does Yemen's law currently require ministries to publish draft changes to rules and regulations, accept public comments, and incorporate those comments into the proposed rule or regulation?**

Answer:

Yemen publishes draft laws to the relevant bodies whether from the public or businessmen circles (for example) or civil associations whenever possible. Moreover, Yemen will abide by WTO provisions upon accession.

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