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Working Party on the Accession of Montenegro

DRAFT REPORT OF THE WORKING PARTY ON THE ACCESSION OF MONTENEGRO TO THE WORLD TRADE ORGANIZATION

Revision

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I. INTRODUCTION

1. The Government of Montenegro applied for accession to the World Trade Organization on 23 December 2004. At its meeting on 15 February 2005, the General Council established a Working Party to examine the application of the Government of Montenegro to accede to the World Trade Organization under Article XII of the Marrakesh Agreement establishing the WTO. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/CGR/2/[Rev.10].

2. The Working Party met on 4 October 2005 under the Chairmanship of H.E. Mr. A. Gosnar (Slovenia); and on 5 July 2006; 27 February and 19 July 2007; and 28 February, 18 July and [...] 2008 under the Chairmanship of H.E. Mr. A. Logar (Slovenia).

DOCUMENTATION PROVIDED

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of Montenegro (WT/ACC/CGR/3 and Addendum 1), the questions submitted by Members on the foreign trade regime of Montenegro, together with the replies thereto, and other information provided by the authorities of Montenegro (WT/ACC/CGR/4 and Corrigendum 1; WT/ACC/CGR/7; WT/ACC/CGR/8; WT/ACC/CGR/10; WT/ACC/CGR/12 and Revisions 1 and 2; WT/ACC/CGR/13; WT/ACC/CGR/14; WT/ACC/CGR/15 and Addendum 1; WT/ACC/CGR/16 to 21; WT/ACC/CGR/23; WT/ACC/CGR/24 and Addendum 3; WT/ACC/CGR/26; WT/ACC/CGR/27 and Addendum 1; WT/ACC/CGR/28; WT/ACC/CGR/30; and [...]) including the legislative texts and other documentation listed in Annex 1.

INTRODUCTORY STATEMENTS

4. The representative of Montenegro said that WTO accession was one of the main priorities of her Government, and Montenegro intended to accomplish the process in the shortest possible time. She noted that although WTO rules and procedures had allowed Montenegro to initiate the accession process under the provisions of Article XII of the Marrakesh Agreement as a "separate customs territory", Montenegro had - on the basis of a referendum held on 21 May 2006 - become a fully independent State assuming full responsibility for its political, security and economic system. Montenegro had become a Member of the United Nations on 28 June 2006, and had joined all relevant UN-related international organizations. On 4 December 2006, the Government had deposited a declaration with WIPO regarding the continued applicability of all relevant WIPO international conventions and treaties.

5. On 3 June 2006, as Montenegro's Parliament had declared the independence of the Republic of Montenegro, it had also prescribed that all laws enacted by the former State Union of Serbia and Montenegro would continue to be applied in Montenegro. Thus, Montenegro was undertaking to implement former State Union laws in the areas of TBT and intellectual property, and was developing the institutional capacity to deal with these matters. She acknowledged that additional efforts would be needed to establish a system of technical regulations and standards meeting the requirements of the TBT and SPS Agreements. In other areas, Montenegro stood ready to make amendments and other changes as deficiencies in Montenegro's laws and regulations were being identified by Members.

6. She noted that much work had already been accomplished on the legislative front. As per October 2005, virtually all necessary legislation had been passed to bring Montenegro into full compliance with the TRIPS Agreement. A new Customs Law had been applied since 2003, and Montenegro had enacted a new Customs Tariff Law and a new Foreign Trade Law. A Foreign Investment Law and a Free Zones Law had been introduced to stimulate the economy. Most of the economy had been privatized, and her Government was in the process of privatizing the remaining large State-owned enterprises.

7. Members of the WTO welcomed the application from Montenegro to join the WTO and looked forward to a rapid accession on appropriate terms and conditions. Members appreciated Montenegro's willingness to comply with WTO rules and principles, noting that further work would be required to improve the legal framework and to strengthen Montenegro's institutions to implement and enforce WTO rules. Some Members also pointed out that Montenegro would need to eliminate some WTO-inconsistent measures.

8. The Working Party reviewed the economic policies and foreign trade regime of Montenegro and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party on the various aspects of Montenegro's foreign trade regime and on the terms and conditions of Montenegro's accession to the WTO are summarized below in paragraphs [9 to ...].

II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

9. The representative of Montenegro said that the Central Bank of Montenegro had been established as an independent institution with exclusive responsibility to carry out Montenegro's monetary policy. Pursuant to the new Constitution of Montenegro, the Central Bank was responsible for ensuring financial stability and supervising the banking sector. The role of the Central Bank in

this regard was nevertheless limited as Montenegro had adopted the Euro as its currency from the time the Euro had come into circulation on 1 January 2002. Inflation in Montenegro was therefore primarily the result of imported inflation and supply-side shocks.

10. According to the Law on the Central Bank of Montenegro, the Central Bank was also entrusted with the task of maintaining banking stability as well as an efficient payments system in the Republic. The banking sector had been reformed through restructuring and privatization, and the arrival of foreign-owned banks. The Central Bank had adopted an extensive regulatory framework to govern the operations of commercial banks in Montenegro, including some 35 by-laws addressing the supervision of banks and an additional seven by-laws governing financial and banking operations. The payments system, originally centralized within the Central Bank of Montenegro, had been operated through the commercial banks since 5 January 2004.

11. Concerning the fiscal policy, the representative of Montenegro said that Montenegro had undertaken comprehensive fiscal reforms since 2001 in consultation with the World Bank and the International Monetary Fund. Several laws had been adopted to establish a more transparent system of taxation and expenditures and to enhance revenue collection, notably a new Law on Budget (RM OG Nos. 40/01 and 44/01) establishing the Treasury of the Republic of Montenegro, the Law on Public Procurement (RM OG No. 40/01), the Law on Tax Administration (RM OG No. 65/01), the Law on Local Self-Government Financing (RM OG Nos. 42/03 and 44/03), and the Law on Supreme Financial Institution for Auditing (RM OG No. 28/04). The Supreme Financial Institution for Auditing verified the collection and use of public revenue, as well as the management of State property. A medium-term framework for budget expenditures had been introduced in the Budget Law for 2003 to improve the management of public expenditure, and the concept of programme budgeting was being developed. Other measures included the introduction of fiscal cash registers and tax identification numbers. The population had submitted tax declarations for the first time in January 2003.

12. At present, taxes were levied on the basis of the Law on Corporate Profit Tax (RM OG Nos. 65/01, 12/02, 80/04 and 40/08) as amended in December 2004; the Law on Personal Income Tax (RM OG Nos. 65/01, 12/02, 37/04, 29/05, 78/06 and 04/07) and the Law on Amendments to the Law on Personal Income Tax (RM OG Nos. 37/04, 29/05, 78/06 and 04/07); the Law on Value Added Tax (RM OG Nos. 65/01, 38/02, 72/02, 21/03, 76/05, 04/06, and 16/07); the Law on Excise Tax (RM OG Nos. 65/01,12/02 and 79/05); the Law on Administrative Fees (RM OG Nos. 55/03, 46/04, 81/05, 02/06 and 22/08); the Law on Sales Tax for Used Motor Vehicles, Vessels and Aircrafts (RM OG No. 55/03); and the Law on Real Estate Tax (RM OG Nos. 65/01 and 69/03). The corporate

profit tax was levied at a flat rate of 9 per cent. The variable rate of the personal income tax had been replaced by a flat rate under the 2006 amendments of the Law on Personal Income Tax (RM OG No. 78/06). The personal income tax would amount to 15 per cent in 2007 and 2008, 12 per cent in 2009 and 9 per cent as of 2010. A sales tax had been replaced by value added tax in April 2003. Excise taxes were currently applied to alcoholic beverages, tobacco and petroleum products. The real estate tax, levied on the market value of properties, was collected by the municipalities. Article 6 of the Law on Local Self-Government Financing authorized municipalities to levy a surtax on personal income, the real estate tax, a tax on the consumption of alcoholic and non-alcoholic beverages, a tax on vacant construction land, and a tax on company names. Taxes collected by the municipalities had accounted for approximately 5.4 per cent of total Government revenue in 2004.

13. In response to specific questions, the representative of Montenegro added that although duties and taxes collected at the border had represented more than 50 per cent of total Government revenue in 2004, these revenues were largely due to the application of internal taxes (VAT and excise duties). Customs duties and charges had accounted for less than 10 per cent of total Government revenue in 2004. She confirmed that Montenegro's municipalities were not authorized to levy taxes or duties on imports.

- **Foreign Exchange and Payments**

14. The representative of Montenegro said that the Euro was the monetary unit, legal tender and reserve currency of Montenegro pursuant to the Law of the Central Bank of Montenegro. The Law on the Central Bank (RM OG Nos. 53/00, 47/01and 04/05), the Law on Banks (OG MNE No. 17/08), the Foreign Investment Law (RM OG Nos. 52/00 and 36/07), and the Law on Current and Capital Transactions (RM OG No. 45/05) enabled payments to be effected freely without restriction. Her Government did not impose any requirements or controls on the acquisition or disposition of foreign exchange by private individuals or firms, did not provide foreign exchange for any designated purpose, nor did it apply any limitations or restrictions on foreign accounts of businesses or private citizens. Montenegro did not maintain any foreign exchange restrictions not explicitly approved by the IMF. She added that the new Law on Current and Capital Transactions, which had entered into force in 2005, did not authorize any restrictions with respect to foreign exchange and payments for residents and non-residents alike. The new Law also covered foreign direct investment, trading in securities, foreign borrowing and lending, and deposits in foreign banks prohibited any discriminatory State-ordered restrictions on the free movement of capital.

15. Asked to describe the circumstances under which foreign accounts could be frozen and the right to appeal such decisions, she said that foreign or domestic accounts generally could be frozen only by court order, normally in the context of an ongoing dispute or in the execution of a judgement. In addition, Montenegro's tax authorities could freeze accounts if necessary to ensure payment of uncollected taxes, and an investigating magistrate could freeze an account in connection with a criminal investigation. Such actions were subject to administrative appeal and to judicial review.

16. Concerning Montenegro's relations with the IMF, the representative of Montenegro recalled that the Socialist Federal Republic of Yugoslavia (SFRY) had participated in the Bretton Woods Conference (in 1944) and had been one of the founders of the IMF and the World Bank. Between 1980 and 1991, the SFRY had been approved for seven stand-by arrangements to the value of SDR 3.5 billion, of which SDR 2.7 billion had been used. On 20 December 2000, the IMF Committee of Executive Directors had decided that the Federal Republic of Yugoslavia (FRY) met all requirements for becoming a member of the institution, with retroactive effect from 14 December 1992, when the Board of Executive Directors of the IMF had concluded that the SFRY had ceased to exist. The FRY's share of the assets and liabilities of the former SFRY had been set at 38.06 per cent. In 2005, the IMF had granted Serbia and Montenegro a credit of US$200 million and this Agreement had enabled a write-off of the remaining debt to the Paris Club totalling US$700 million. After the proclamation of Montenegro's independence, the ratio of all non-allocated rights and obligations had been set at 94.12 per cent for Serbia and 5.88 per cent for Montenegro in accordance with the Agreement on Regulating Memberships in International Financial Organizations and Division of Rights and Obligations of the Two Republics signed between Montenegro and Serbia on 10 July 2006.

17. Stressing that an efficient and transparent monetary and foreign exchange system could facilitate trade and contribute to economic development, a Member referred to ongoing discussions between the Government of Montenegro and the International Monetary Fund regarding certain aspects of the financial and foreign exchange system, and urged Montenegro to be ready to come into compliance with WTO rules, including Article XV of the GATT and Article XI of the GATS, and to factor this into the discussions with the IMF.

18. In reply, the representative of Montenegro said that Montenegro was negotiating its status with the IMF, and WTO requirements were not central in these talks as Montenegro was using the Euro as its sole currency. She reiterated that the Law on Current and Capital Transactions did not authorize any restrictions with respect to foreign exchange and payments. She subsequently informed the Working Party that Montenegro had become a member of the IMF on 18 January 2007.

- **Investment Regime**

19. The representative of Montenegro said that the Economic Reform Agenda, a comprehensive four-year plan for the period 2003-2007, aimed at fostering a positive business climate in Montenegro based on transparent, non-discriminatory and non-discretionary regulations, effective protection of investors' rights, and rapid and fair settlement of disputes. The Agenda sought to develop an environment conducive to domestic and foreign investment by upgrading the physical infrastructure in Montenegro as well as in the context of overall legal and institutional reforms. Among the objectives were to achieve a trade regime in conformity with WTO rules, a modern commercial legal regime, the protection of property rights, streamlined administrative procedures, financial sector reform, and a stable macroeconomic environment. Her Government was particularly mindful of the positive effect of investment in creating employment. In 2004, the Montenegrin Investments Promotion Agency (MIPA) has been established by Government Decision. The purpose of the Agency was to promote investment projects, develop Montenegro's investment promotion strategy, coordinate all activities to attract foreign investment, and develop partnerships between the public and private sector. The Agency could provide information to potential investors, but had no means to provide subsidies or other types of incentives.

20. Foreign investment was regulated pursuant to the Foreign Investment Law of the Republic of Montenegro (RM OG Nos. 52/00 and 36/07). Foreign investors were (i) legal entities with their head office outside of Montenegro, (ii) foreign natural persons, or Montenegrin citizens having taken up residence abroad for more than one year, (iii) an enterprise established in Montenegro by a foreign person, or (iv) a domestic enterprise with more than 25 per cent foreign ownership. Montenegro's investment legislation generally placed foreigners on equal footing with domestic investors and did not stipulate reciprocity requirements, except for the purchase of real estate pursuant to the Law on Basic Property Relations (FRY OG No. 29/96). The Foreign Investment Law did not stipulate restrictions on foreign capital except for production or trade in arms and ammunition, which was subject to approval by the Ministry of Defence and could only be effected in a joint venture with a local partner, and joint ventures in national parks or in "border districts", where the share of foreign ownership in the joint venture could not exceed 49 per cent. Border districts were not determined precisely in the Law, but understood to be identical to the "frontier strip" defined in the Law on Crossing of the State Border and Movement in the Frontier Strip (RM OG No. 68/02) as territory within 100 metres of the State border of Montenegro on land, and within two miles of the boundary line at sea. The Ministry of Defence was required to respond to a request to establish or invest in an enterprise producing or trading in arms and ammunition within 30 days of receipt, otherwise the application would be considered approved. She confirmed that Montenegro had no minimum capital

requirements for foreign investors, and did not apply any differential pricing for utilities or transportation.

21. All foreign investment in Montenegro should be insured and registered with the Agency for Foreign Investments and Reconstruction of Economy (for statistical purposes). Changes in the investment should also be notified to the Agency. Foreign-owned enterprises registered with the Commercial Court in the same manner as domestic enterprises. The Court informed the Agency for Foreign Investments about the registration of foreign investment. Registration with the Agency was automatic and free of charge.

22. Asked to describe the requirements for registering a daughter company of a foreign enterprise, the representative of Montenegro said that a foreign enterprise establishing a foreign company branch in Montenegro should submit documentation to the Central Registry of the Commercial Court within 30 days of the establishment, including the name and legal form of the parent company and the branch; the activities and address of the branch; an authenticated copy of the charter of the foreign enterprise and a certified translation of this document; a copy of the registration certificate of the foreign enterprise and an authenticated document confirming the legal registration of the enterprise in its home State; identification of the person(s) authorized to represent the company *vis-à-vis* third parties and in legal proceedings as a company Body or permanent representative; identification of a resident/residents authorized to accept the service of legal proceedings on behalf of the company or any notice required to be served on the company; and the most recent balance sheet, profit and loss statement, or similar financial documents required by law in the home country.

23. Concerning the expropriation of property, she noted that Article 45 of the Constitution of Montenegro (RM OG No. 48/92) provided that property rights could only be revoked in the public interest as prescribed by law, and against justifiable compensation. According to the Law on Expropriation (RM OG Nos. 55/00, 28/06, and 21/08), the State authority in charge of property affairs effected the expropriation of real estate in the public interest, as defined by law, or determined by the Government. The Government was obliged to decide upon proposals to expropriate real estate by the State, a municipality, a State fund or a public company within 60 days of receipt. The decision could be appealed to the Supreme Court of Montenegro. Expropriation decisions of the State authority in charge of property affairs could be appealed to the second instance administrative authority, or referred to the competent court under the administrative disputes procedure. Article 17 of the Constitution provided a general right of appeal of all decisions affecting the rights or legal interests of any person. An interested party could also request the court to consider compensation pursuant to the Law on Contracts and Torts (RM OG No. 44/99). The Law on Foreign Investment stipulated

specifically (Article 29) that compensation should be no less than the market value plus interest calculated from the date of expropriation, and compensation for damages due to war or state of emergency should be no less than that granted to domestic investors (Article 30). Foreign investors also had the right to be compensated for damages caused by illegal or irregular conduct of Government officials or agencies.

24. Some Members noted that Montenegro was considering amending the Law on Foreign Investment *inter alia* to strengthen the legal protection of investments and inquired about the anticipated timeframe for the completion of this work. The representative of Montenegro replied that Montenegro's Parliament had passed the Law on Amendments and Modifications of the Law on Foreign Investment on 29 May 2007 (RM OG No. 36/07). The amendments had removed the restriction on foreign investment in restricted areas (national parks and "border districts"). The only restriction still in place concerned foreign investment in production or trade in arms and ammunition (Article 7 of the Law).

- **State Ownership and Privatization, State-Trading Entities**

25. The representative of Montenegro said that approximately 380 State-owned or "socially owned" companies had been subject to transformation and incorporation in the early 1990s pursuant to the Law on Ownership and Management Transformation (RM OG Nos. 2/92, 17/92, 59/92, 4/93, 27/94, 30/94, and 23/96). Employees in these enterprises had been granted 10 per cent of the shares free of charge, and been allowed to purchase additional shares (up to 30 per cent of the shares outstanding), offered at a discount and to be paid in instalments. The remaining stakes had been transferred to three State-owned funds - the Development Fund, the Pension Fund, and the Employment Fund. Some 117 of these enterprises had subsequently been sold through various methods, including direct sale or auctions. In eight sectors - mobile telecommunications, insurance, tourism, pharmaceuticals, food production, footwear and garments, regional water supply, and metals - privatization had been envisaged to be effected through the establishment of joint ventures. She noted that in accordance with the Law on Ownership and Management Transformation, all "socially owned" companies had been transformed into joint-stock or limited liability companies (with private, mixed, State or cooperative ownership).

26. More than 200 enterprises had been privatized through Mass Voucher Privatization (MVP). Montenegro's adult population had received voucher points and given the choice to invest their points in individual enterprises or in six privatization funds (HLT Fund, Eurofond, Trend, Atlas Mont, Moneta and MIG).

27. At present, privatization was governed by the Law on Ownership and Management Transformation (RM OG Nos. 2/92, 17/92, 59/92, 4/93, 27/94, 30/94 and 23/96); the Law on Privatization of the Economy (RM OG Nos. 23/96, 6/99, 59/00 and 42/04); the Decision on Establishment and Structure of the Privatization Council (RM OG No. 23/07); the Decree on Sale of Shares and Company Assets by Public Auction (RM OG No. 20/04); the Decree on Sale of Shares and Company Assets by Public Tender (RM OG Nos. 08/99, 31/00, 14/03, 59/03 and 65/03); the Decree on Publishing, Acquiring and Use of Privatization Vouchers (RM OG Nos. 17/01, 37/01, and 11/02); the Decree on Dematerialization of Securities and Privatization Vouchers (RM OG Nos. 8/99 and 26/00); the Decree on the Mode of Implementing Employees' Rights to Free Shares (RM OG No. 24/99); the Law on Settling Obligations and Claims Related to Foreign Debt and Foreign Currency Saving Deposits of the Citizens (RM OG Nos. 55/03 and 11/04); the Law on Restitution of Property Rights and Compensation (RM OG No. 21/04); and the Law on Investment Funds (RM OG No. 49/04). Privatization was carried out according to Privatization Annual Plans adopted by her Government, on proposal of the Privatization Council. The Privatization Council had been established in 1999 pursuant to the Law on Amendments of the Law on Privatization of the Economy (RM OG Nos. 23/96, 6/99, 59/00 and 42/04) and was responsible for managing and controlling the privatization process. It has executive competencies and was responsible before the Government. The privatization plans identified the enterprises to be privatized, the methods of privatization, the number of shares to be sold, etc.

28. The representative of Montenegro provided a Privatization Report in May 2006, circulated in document WT/ACC/CGR/13. The report described the privatization activities undertaken in 2005 and outlined the plan for 2006. According to the report, among the 386 enterprises having had an element of State ownership in the past, 272 had been fully privatized as per December 2005. Responding to requests for updates on progress in privatization in Montenegro, she provided information on enterprises to be privatized in 2008 pursuant to the Decision on the Privatization Plan for 2008 (document WT/ACC/CGR/28/Add.1). Asked to provide a status report of the privatization process per sector, she noted that data per sector was not available, but based on the estimated value of the enterprise capital, the percentage of enterprise capital remaining under State control was less than 15 per cent. She provided a list of the largest companies with majority State ownership (more than 50 per cent of the shares) that remained to be privatized in Table 1. She confirmed that her Government did not retain control over the management in enterprises where it held a minority interest.

Table 1: Largest Companies with the Majority of State-Owned Capital Still to be Privatized

Company	Sector	Nominal Value of the Company (in million €)	State's Share in %	Value of the State Share (in €)
"Elektroprivreda CG" AD Niksic	Energy	907.04	67.00	607.71
Zeljeznice Crne Gore	Railway	319.53	65.00	207.70
"Jadransko brodogradiliste" AD Bijela	Shipyard	31.61	62.00	19.60
AD "Plantaze" Podgorica	Wine production	68.70	54.00	37.10
AD Luka Bar Bar	Adriatic Port	133.96	54.00	72.34
Duvanski kombinat AD Podgorica	Tabaco production	19.78	51.10	10.09
Institut Dr Simo Milošević	Health tourism	59.24	56.00	33.17
HTP Budvanska rivijera	Tourism	69.62	58.73	40.89
HTP Ulcinjska rivijera	Tourism	81.53	60.73	49.51
Total capital		1,691.01	-	1,078.11

29. In response to specific questions, she said that no restrictions were placed on the participation of foreign investors in the privatization process, other than those prescribed by the Law on Foreign Investment. The Decree on Sale of Shares and Company Assets by Public Auction and the Decree on Sale of Shares and Company Assets by Public Tender both stipulated that any natural and legal person, whether domestic or foreign, had the right to participate in privatization tenders and auctions.

30. She noted that no companies would be reserved for continued State ownership. Only natural resources and public goods such as roads, parks and town squares were not to be privatized. Her Government was determined to complete the privatization process as soon as possible. A specific estimate of how long this would take was, however, difficult to provide.

31. The representative of Montenegro confirmed that to ensure full transparency and to keep WTO Members informed of its progress in the ongoing reform of its economic and trade regime, Montenegro would provide annual reports to WTO Members on developments in its programme of privatization, including identification of recently privatized enterprises and enterprises expected to be privatized, as well as relevant legal measures relating to Montenegro's privatization programme. The Working Party took note of this commitment.

32. The representative of Montenegro responded to requests for information on State trading in document WT/ACC/CGR/3/Add.1 (Annex 6), stating that Montenegro had no enterprise covered by the provisions of Article XVII of the GATT 1994. Subsequently asked to list and provide information on any enterprise with exclusive or special rights or privileges and any State-owned or State-controlled enterprise regardless of whether these enterprises had special privileges or

monopolistic status, including information on the sectors in which these enterprises operated and the extent of the State's involvement in the commercial decisions of these enterprises, she reiterated that Montenegro had no enterprises - private or State-owned - with exclusive or special rights or privileges as referred to in Article XVII of the GATT 1994 and the Understanding on that Article. Montenegro had no State-trading enterprises in any sector. Amongst the former State-owned enterprises with a continued element of State ownership, none had "exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports", and no privately-owned enterprises had such special rights or privileges. Montenegro's State-owned enterprises acted in accordance with commercial considerations and in a manner consistent with the non-discrimination principle, as provided for in Article XVII of the GATT 1994. Commercial decisions of these enterprises were taken through participation of the State in the management board of the enterprises. She noted that there were no specific laws or regulations governing the sales/purchases of these enterprises. State-owned enterprises operated under the same rules as privately-owned enterprises. As of mid-2008, more than 85 per cent of the capital owned by the State had been privatized (see paragraph [28]).

33. The representative of the Montenegro confirmed that, from the date of accession, enterprises that were State-owned or controlled, and enterprises with special or exclusive privileges, would make purchases of goods and services, which were not intended for governmental use, and sales in international trade in accordance with commercial considerations, including price, quality, availability, marketability, and transportation, and would afford enterprises of other WTO Members adequate opportunity in conformity with customary practice, to compete for such purchases or sales. She further confirmed that enterprises that were State-owned or -controlled, and enterprises with special or exclusive privileges would also act in conformity with other WTO provisions. She also confirmed that Montenegro would notify any enterprises falling within the scope of the Understanding on Article XVII of the GATT 1994 upon accession. The Working Party took note of these commitments.

- **Pricing Policies**

34. The representative of Montenegro said that the Law on Social Price Control (RM OG No. 45/90) had provided the authority for her Government to regulate prices in broad areas of the economy, including in the construction industry, road transport, insurance, higher education and research, publishing (except local newspapers), broadcasting, health care and social services, and banking. The Law had also provided for Government regulation of prices in order to stimulate agricultural production. In addition, the Law had authorized intervention in response to significant

price disturbance, or in case it was apparent that economic policy objectives could not be met by any other means but price control. However, despite the broad authority provided in the Law on Social Price Control, price controls had been applied for a limited number of goods and services such as medicines for human consumption, oil and oil derivatives, postal services, and certain utility services (heating, water supply, garbage collection, public transportation, etc.) subject to control by the local authorities. The Law had been abolished in February 2006 pursuant to the Law on Abolishment of the Law on Social Price Control (RM OG No. 27/06).

35. At present, prices were determined freely by the market in Montenegro except for certain medicines, oil and oil derivatives, and coal. Article 6 of the Law on Medicines (RM OG Nos. 80/04 and 18/08) authorized her Government to set maximum prices for medicines. She added that only medications reimbursable under the national health scheme - whether imported or domestic - were subject to price control. She noted that under the national health plan, imported and domestic medicines were subject to the same conditions of reimbursement. Pursuant to the Decree on Method of Establishment of Maximum Retail Prices of Oil Derivatives (RM OG Nos. 52/02, 55/02, 23/03, 32/02 and 35/05), oil companies were obliged to observe maximum retail prices for oil derivatives. All such products were imported. The maximum prices were cost-based and adjusted to account for movements in world market prices; exchange rates; import duties, fees and taxes; distribution, handling and storage costs; operating margins; etc. For coal, the price controls applied only to domestically-produced coal delivered to the electric power plant Pljevlja. The measure was applied on the basis of the Law on Energy (RM OG No. 39/03), which envisaged complete deregulation of coal prices after a period of maximum five years following the passage of the Law. Coal destined for other users or purposes was not subject to price regulation. The power plant Pljevlja was authorized to purchase imported coal at market prices, but in practice the plant based its needs on local coal. The Law on Telecommunications (RM OG No. 59/00) had established a regulatory Agency for Telecommunications which was responsible for price controls, if any, on telecommunication services. The abolition of the Law on Social Price Control had eliminated the authority to establish prices for agricultural products.

36. The representative of Montenegro said that importers and wholesalers of cigarettes and other tobacco products determined the retail price and notified the administrative authority.

37. Noting that the Law on Social Price Control had been abolished but that the Government of Montenegro had retained the authority to regulate the prices for some items, some Members asked how Montenegro would ensure that its price controls would not be applied in a prejudicial manner, consistent with Article III:9 of the GATT 1994.

38. The representative of Montenegro replied that the price regulations applied by her Government did not discriminate between imported and domestically-produced goods. Both the coal mine and the power plant at Pljevlja were undergoing privatization and might possibly be sold to the same owner. No further price controls would be maintained on coal once the privatization process had been completed for the two enterprises.

39. Concerning medicines, she noted that a Decree on the Criteria for Establishing Maximum Prices of Medicines (RM OG No. 50/07), which detailed the price regulations on medicines and included a list of price-controlled medications, had been adopted in July 2007. Pursuant to this Decree, maximum prices of medicines were determined by the Agency for Medicines and Medical Devices on the basis of the price proposed by the producer, or its agent or representative in Montenegro in his/her application for a licence to place the medicine on the market, and a set of criteria including the average wholesale price of medicines in reference countries (Slovenia, Croatia, and Serbia) and its ratio to the wholesale price of medicines in Montenegro, economic indicators, and wholesale costs. Maximum prices were published in the Official Gazette of Montenegro (OG MNE). A market inspectorate controlled the proper implementation of price control measures. She added that prices controls of medicines were enforced at the wholesale and retail levels and that imported and domestic medicines were subject to the same conditions. Over-the-counter medicines were not subject to price controls. She noted that the list of price-controlled medicines was under development. Once finalized, the list would be published in the Official Gazette. She confirmed that all subsequent changes would be published.

40. The representative of Montenegro confirmed that from the date of accession, Montenegro would apply price control measures in a WTO-consistent fashion, including by taking account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994, and with respect to Articles V and VIII of the GATT 1994 and Article VIII of the General Agreement on Trade in Services (GATS). She also confirmed that following accession, Montenegro would regularly publish notices of the goods and services subject to State price controls. The Working Party took note of these commitments.

- **Competition Policy**

41. The representative of Montenegro said that the FRY Antimonopoly Law (FRY OG No. 29/96) - technically in force in Montenegro, but never applied in practice - had been superseded by the Competition Law (RM OG Nos. 69/05 and 37/07) enacted in November 2005. The new Law had been modelled on Articles 81, 82 and 86 of the Treaty on European Union; EC Regulations

Nos. 2790/1999, 139/2004 and 17/62; and European Commission Decrees (OJ C 372/1997 and OJ C 368/2001).

42. The Competition Law foresaw the establishment of an independent agency, the Directorate for the Protection of Competition, responsible for the development of regulations furthering competition as well as the enforcement of Montenegro's competition legislation. She estimated the annual budgetary expense for the enforcement of the Law to be approximately €100,000. The Agency would be entrusted with merger control and investigations of acts infringing on competition, defined in the Law as abuse of dominant position and agreements preventing, restricting or impairing competition in circumstances other than those accepted under the Law (e.g. agreements contributing to the improvement of production or distribution, or to the stimulation of technical or economic development). The Law stipulated strict penalties for violations against the rules on competition. The decisions of the Agency could be challenged in the Administrative Court of the Republic of Montenegro.

43. Asked to provide an updated list of companies having production, trade or internal distribution monopolies in Montenegro, she said that Montenegro had no such enterprises. She added that the Directorate for the Protection of Competition was responsible for determining abuse of competition and the existence of monopolies. Proceedings on abuse of competition and monopolies could be initiated *ex officio* or upon the request of an interested party. However, no such proceedings had ever been initiated.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

- Powers of Executive, Legislative and Judicial Branches of Government

44. The representative of Montenegro said that Montenegro's parliamentary democracy was based on the principle of separation of powers between the legislative, executive and judicial branches of Government. The President of the Republic, representing the State, was elected directly for a five-year term. The President nominated the Prime Minister, proposed the president and judges of the Constitutional Court, and signed promulgations declaring laws. The role of the Prime Minister was to constitute the Government.

45. Parliament was the supreme legislative Body, composed of 81 members chosen by direct ballot every four years. Parliament enacted the Constitution, the laws and legal acts; provided authentic interpretation of the laws; adopted the budget and annual balance sheet; ratified international agreements; elected and dismissed the President and Vice President of the Parliament from within its

own members; and confirmed the Prime Minister, ministers, justices and presidents of the Constitutional Court and the Supreme Court, and the State Prosecutor. Montenegro's Parliament also decided on membership in international organizations based on proposals of the President. Laws passed by Parliament were declared by promulgation signed by the President. Should the President refuse to sign a promulgation declaring a law, then Parliament would be obliged to re-examine the law.

46. The Rules of Procedure of the Parliament (Articles 157 to 159) implemented the constitutional provision establishing that Parliament could provide authentic interpretation of the laws. A request for an authentic interpretation of a law was submitted to the President of the Parliament, who conveyed it to the members of Parliament and the Constitutional and Legislative Committee. The Constitutional and Legislative Committee drafted an authentic interpretation and presented it to Parliament. If the Constitutional and Legislative Committee did not find the request for an authentic interpretation justified, a report would be submitted to Parliament, which decided on the matter. An authentic interpretation of a law was binding. WTO-related legislation enacted by Parliament was, in principle, open to authentic interpretation. However, international agreements ratified by Montenegro became part of the internal legal system and could not be changed by law. Thus, any authentic interpretation of WTO-related laws enacted by Parliament would have to take note of the respective WTO Agreements, and observe the requirements of such Agreements.

47. Concerning the procedure for ratification of Montenegro's Protocol of Accession, the representative of Montenegro said that the Ministry of Economic Development would prepare a draft Law on Ratification of the Marrakesh Agreement Establishing the World Trade Organization (including Annexes 1, 2 and 3) in cooperation with the Ministry of Foreign Affairs. The draft law would be submitted to her Government for approval, and then forwarded to Parliament for passage. Upon adoption of the Law on Ratification, the President of Montenegro would sign a Proclamation for the law, which would be published in the Official Gazette. Following publication, the Ministry of Foreign Affairs would prepare and submit an instrument on accession in compliance with Article XII:1 of the Agreement Establishing the World Trade Organization. The procedure for ratification of international agreements normally took about two months.

48. Parliament confirmed the Government by majority vote at the proposal of the Prime Minister and based on the programme of the prospective Government. The Government was accountable to Parliament in implementing laws and other regulations passed by Parliament. The Government proposed laws, the State budget and other regulations for adoption by Parliament, and adopted decrees and other regulations necessary for execution of the laws. Ministries worked independently in their

areas of jurisdiction within the framework provided by the Constitution and the laws, and were accountable to the Government. The present Government consisted of a Prime Minister, two Vice-Prime Ministers, and 13 Ministers (Maritime Affairs, Transportation and Telecommunication; Tourism and Environmental Protection; Finance; Foreign Affairs; Culture, Sports and Media; Defence; Agriculture, Forestry and Water Management; Justice; Education and Science; Interior Affairs and Public Administration; Economic Development; Protection of Human and Minority Rights; and Health, Labour and Social Welfare).

49. The Ministry of Economic Development was the principal Government entity responsible for formulating and implementing policies relating to foreign trade. The Ministry was responsible for negotiating and coordinating the implementation of international treaties and the coordination of relations with international economic institutions. In carrying out its tasks, the Ministry of Economic Development cooperated with the Ministries of Finance; Agriculture, Forestry and Water Management; and other ministries. Foreign trade policy was formulated in close cooperation with the Ministry of Finance, which was also responsible for cooperation with the international financial institutions. The Ministry of Finance proposed the Law on Customs Tariff. The Ministry of Agriculture, Forestry and Water Management was in charge of enacting SPS measures related to exportation and importation of agricultural goods. The Ministry of Economic Development was responsible for enacting substantive laws with respect to standards and technical regulations, measures and precious metals, and intellectual property. The Secretary for European Integration was responsible for coordinating activities related to Montenegro's EU integration.

50. Judicial authority was vested in the courts. The Constitutional Court assessed the compliance of legal acts with the Constitution. If the Constitutional Court determined a law or other legal act to be inconsistent with the Constitution, then the act (or some of its provisions) would cease to be effective on the day the Constitutional Court passed the decision. The Law on Courts (RM OG Nos. 5/02 and 49/04) elaborated in detail the proceeding before the Constitutional Court. The Supreme Court was the highest court in Montenegro, providing uniformity in the implementation of laws by all courts. The present judicial system recognized specialized courts such as administrative and commercial courts. The appellate courts decided on appeals against decisions of the lower courts, delineated the competencies of the lower courts, and other matters determined by the law.

51. The Constitution guaranteed a general right of appeal against individual legal action brought in a court or an administrative procedure. This constitutional principle had been implemented in the Law on Criminal Procedure (RM OG Nos. 71/03, 7/04 and 47/06), the Law on Civil Procedure (RM OG Nos. 22/04, 28/05 and 76/06) and the Law on General Administrative Procedure

(RM OG No. 60/03). Administrative appeals of customs and other Government decisions on issues covered by WTO Agreements were conducted under the general rules for appeal provided in the Law on Administrative Procedure. The Supreme Court had appellate jurisdiction only. The Supreme Court decided as the third instance authority in certain cases. Decisions of a higher court, acting as a court of first instance, could be appealed to the Supreme Court.

52. The representative of Montenegro confirmed that from the date of accession Montenegro's laws would provide for the right to appeal administrative actions on matters subject to WTO provisions to an independent tribunal in conformity with WTO obligations including Article X:3(b) of the GATT 1994. The Working Party took note of this commitment.

- **Authority of Sub-Central Governments**

53. The representative of Montenegro said that sub-central entities had no competencies in areas related to WTO rules. A violation of WTO rules by a local authority would be corrected by the responsible ministry or by her Government. Local Governments had no direct role in foreign trade operations and foreign economic relations, nor with respect to taxation applicable to imports, subsidies, or investments.

54. Article 6 of the Law on Local Self-Government Financing (RM OG Nos. 42/03, 44/03 and 05/08) allowed municipalities to collect a surtax on the personal income tax, a tax on real estate, a consumption tax, a tax on vacant construction land, a tax on company name, and a local tax on the consumption of alcoholic and non-alcoholic beverages. The Ministry of Finance was responsible for the collection of all taxes through the Tax Administration and for the correct implementation of all tax laws. The Ministry of Finance therefore had supervisory authority over all taxes applied by the municipalities.

55. The representative of Montenegro confirmed that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions. She confirmed that, from the date of accession, the provisions of the WTO Agreement, including Montenegro's Protocol of Accession, would be applied uniformly throughout its customs territory and other territories under its control, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations were established. She also confirmed that when apprized of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts. The Working Party took note of these commitments.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

56. The representative of Montenegro said that registration was required to carry out business activity, including foreign trade, in Montenegro. The Foreign Trade Law (RM OG No. 28/04) regulated import and export activities conducted by natural and legal persons. Registrations could be made for individual entrepreneurs, limited liability partnerships, and joint-stock companies. Foreign companies could register a subsidiary or a branch as a joint-stock company, a limited liability company or as part of the foreign company - the Law on Companies (OG Nos. 6/02 and 17/07) provided for six forms of business association: entrepreneurs, partnerships, limited partnerships, joint-stock companies, limited liability companies, and part of a foreign company. Enterprises wishing to engage in foreign trade had to register at the Central Register of the Commercial Court, and obtain a statistical number from Montenegro's Bureau of Statistics and a customs number for the settlement of import duties and other customs payments. The Law on Business Entities (RM OG No. 06/02) had simplified the company registration process significantly. A business entity was now deemed registered unless the Central Register of the Commercial Court rejected the registration documentation within four days of receipt. The proposed line of business should be indicated at the time of registration. However, entities wishing to engage in foreign trade would not need to specify the products to be imported or exported. The registration at Customs was automatic against payment of €10, and the Customs Administration imposed no additional requirements on firms engaging in importation or exportation relative to firms performing other commercial activities. She confirmed that business entities were not required to have a physical presence in Montenegro in order to register at the Commercial Court, the Bureau of Statistics or the Customs; they could be represented by an attorney.

57. Registration as a limited partnership required a statement or contract signed by all partners including the name and address of the partnership and confirmation that it had been established as a limited liability partnership, the commencement and duration of the partnership, the full name and ID number of each partner, the name of each limited liability partner, the share of each partner, and a statement whether the share consisted of money or any other form of capital. A joint-stock company should submit the contract establishing the company; its statutes; details about its Board of Directors (names, place and date of birth, ID numbers, citizenship, address or place of residence, occupation, membership in other boards); the name and address of the executive director, company secretary and auditor; the company name and headquarter address; statements accepting and confirming the functions to which they had been appointed, signed by all board members, the executive director,

company secretary and auditor, and a receipt for payment of the administrative fee. As for registration as "part of a foreign firm", information to be submitted included: the description of the company's activities; the address in Montenegro; the name and form of organization of the parent company and the name of the part of the company, if different from that of the parent company; a certified copy of the Articles of Incorporation of the parent company and the certified translation thereof; the name(s) and address(es) of the person(s) authorized to represent the parent company in its dealings with third parties; and the name(s) and address(es) of the person(s), residents in Montenegro, authorized to represent the parent company in any legal proceedings. This form of company aimed at facilitating the operation of foreign companies in Montenegro. Registration as "part of a foreign firm" was not subject to any fee or minimum capital requirement. A foreign firm registering as "part of a foreign firm" did not need to invest and be established in Montenegro. Parts of foreign firms could act as declarants or importers of record. Provided all the necessary documentation was completed, the Central Register could only refuse the application if another entity had already registered under the same name or the application clearly violated another regulation (e.g. trading in narcotics). The Central Register required an annual registration fee of €50 for joint-stock companies; €10 for entrepreneurships, partnerships, limited liability partnerships; and €1 for renewal of the registration. The Law on Business Entities prescribed a minimum capital requirement of €25,000 for joint-stock companies, while the minimum capital needed for a limited liability company was €1. This amount had to be deposited in the bank account of the company. She noted that the Government was not involved in the registration of companies. She added that no minimum capital was required for entrepreneurs or partnerships.

58. Individuals could register with the Central Registry as entrepreneurs, which provided the right to import for retail purposes and engage in retail trade. The signed application form should contain information such as the full name of the entrepreneur and of the entity (if different); his/her ID number and address; and a description of the activity to be undertaken. A foreign individual could also register as entrepreneur, but would need to be a resident and physically present in Montenegro in order to so. Entrepreneurs had the right to import and distribute products at the wholesale level. Natural persons not registered as entrepreneurs could only import goods for their own use or for the use of their families.

59. She added that importers, manufacturers, wholesalers and retailers in seeds and planting materials were required to be inscribed in registers pursuant to the Law on Seeds and the Law on Planting Material.

60. The representative of Montenegro said that Montenegro also required a licence to engage in certain types of activity, notably for tobacco, medicines and medical devices, narcotics and poisons, fertilizer, and pesticides, as well as in order to operate facilities, networks and equipment for the generation, transmission, distribution, supply and sale of energy. The Energy Regulatory Agency issued licenses pursuant to the Law on Energy, taking into account various conditions and criteria including the protection of public health, safety and the environment; energy efficiency and conservation; the nature of source of energy; and the technical, economic and financial capability of the applicant. Any foreign or domestic entity could apply for a licence.

61. The Law on Tobacco (OG MNE No. 48/08) required importers, exporters and entities engaged in transit of tobacco and tobacco products to be registered with the competent administrative authority (the Agency for Tobacco). Activity licenses were needed for importation, exportation, manufacturing, wholesale trade, and retail trade in tobacco and tobacco products. She noted that a company or entrepreneur registered as a wholesaler of tobacco or tobacco products - and having paid the wholesale licence fee - did not need to pay any import or export licence fee (Article 22, paragraph 5 of the Tobacco Law). The Agency for Tobacco delivered the licence within 30 days of receipt of the application. Enterprises or entrepreneurs could apply to the Tobacco Agency for an activity licence to import or export raw tobacco, processed tobacco and tobacco products after having registered in the Central Register of the Commercial Court to perform foreign trade activity. Pursuant to Article 16 of the Tobacco Law, activity licenses were delivered provided the enterprise or entrepreneur fulfilled the minimum technical requirements for wholesale trade of tobacco and tobacco products, had not been convicted for a criminal offence of illegal trade or illegal production of tobacco in the three years preceding the filing of the application, had paid the prescribed fee, and - in the case of importation - had concluded a contract of purchase of tobacco with a foreign producer or authorized distributor. In addition, importers of cigarettes had to be authorized by the foreign producer or authorized distributor to distribute cigarettes in Montenegro's market. The fee amounted to €150,000 for a five year period or €30,000 if the enterprise imported or exported tobacco products only (cigarillos, shredded tobacco, pipe tobacco, chewing tobacco or snuffle tobacco). The fee could be paid in five annual instalments.

62. Enterprises or entrepreneurs wishing to make tobacco products should demonstrate the capability to undertake all stages of the production process from the preparation of tobacco to the packaging of the final products, as well as the capacity to produce a full range of tobacco products - and a minimum of 1.5 billion cigarettes annually; and possess suitable production premises including laboratories and a skilled workforce. Tobacco manufacturers were required to provide annual production estimates. She noted that the Law on Tobacco had been amended to abolish the

requirement that tobacco manufacturers purchase or produce minimum 40 per cent of their tobacco input locally. The competent administrative authority determined compliance with the requirements, and the licenses were awarded - through public tender - by the Ministry of Agriculture, Forestry and Water Management and the Ministry of Health. An enterprise or entrepreneur no longer satisfying these requirements would have his/her licence revoked.

63. Enterprises or entrepreneurs granted licenses for wholesale trade in tobacco products were entered in the Register of Tobacco Product Wholesalers. Applicants were required to have at their disposal sufficient storage capacity (for minimum 30 tons of cigarettes and other items), visibly marked transportation means to supply retailers, and to submit a preliminary agreement with a registered manufacturer or importer to supply tobacco products. The wholesale licence fee amounted to €150,000 for a five-year period, or €30,000 for tobacco products other than cigarettes. The fee could be paid in five equal annual instalments. Wholesalers were only authorized to sell to registered retailers. The licence could be revoked for failure to pay the instalment of the fee, if the licence holder or his/her representative engaged in illegal trade in cigarettes or other tobacco articles, or if the other requirements above were no longer fulfilled.

64. The activity licence for retail trade in tobacco products was valid for two years and issued against payment of €100 per sales outlet. Applicants were required to possess facilities satisfying sanitary, health and other conditions in accordance with the Law on Sanitary Control; have no outstanding fiscal obligations; and to submit the preliminary Agreement with a wholesale supplier. Licenses could not be granted to persons convicted of illegal trade in cigarettes and other tobacco goods during the three-year period preceding the application. The administrative authority decided on the licence application within 30 days.

65. Pursuant to the Law on Medicines (RM OG No. 80/04), a licence was required to be involved in the "circulation" (i.e. including importation or exportation) of medicines. The responsible administrative authority - the Ministry of Health - could only issue licenses to legal persons established within the territory of Montenegro. The requirement to be established in Montenegro applied to both domestic and foreign persons and aimed at ensuring that commercial operators wishing to trade in medicines were adequately staffed and equipped to distribute and warehouse such goods. Foreign and domestic legal persons licensed for wholesale trade in medicines were subject to the same conditions with respect to facilities, skilled employees, and recordkeeping. Licence applications were processed within 90 days and were subject to a €1,250 fee. The licenses were valid for five years renewable. Trade was limited to medicines with a trade authorization, except when the regulatory agency issued approvals for shipments of specific medicines. She added that the Law on

Medicines had been amended to guarantee the same treatment to domestic and foreign importers of medicines and separate the right to import from the right to distribute (OG MNE No. 18/08).

66. The Law on Production and Circulation of Narcotics (FRY OG Nos. 46/96 and 37/02) required legal entities to be registered for the production and circulation of psychotropic substances to engage in import and export of these items. Legal entities registered for wholesale production of medicines could import and export medicines containing psychotropic substances. The Law on Chemicals (RM OG No. 11/07) obliged legal entities and entrepreneurs to register with the Ministry of Health in order to import, export, sell or store poisonous substances. Carriers of poisonous substances were required to register with the Ministry of Transportation. Approvals to trade in poisonous substances were issued by the sanitary inspection of the Republic for wholesalers, and by the municipal sanitary inspection for retailers.

67. Activity licenses were also required for fertilizer under the new Law on Fertilizer (RM OG No. 48/07). Pursuant to Article 24 of the Law, any company or entrepreneur, whether domestic or foreign, could import fertilizer provided it had a distribution agreement for the territory of Montenegro; owned or leased bonded warehouses which met the requirements for storing fertilizer; employed at least one person with a college degree in the field of agriculture responsible for the acquisition, storage and handling of fertilizer; and was registered at the Register of Importers of the Ministry of Agriculture, Forestry, and Water Management.

68. Importation of pesticides was subject to registration at the Register of Importers of the Ministry of Agriculture, Forestry, and Water Management (Article 41 of the Law on Pesticides, OG MNE No. 51/2008). Any registered company or entrepreneur, whether domestic or foreign, could import pesticides authorized for use in Montenegro. Importers not licensed for distribution or wholesale of pesticides in Montenegro were required to deliver the imported pesticides only to companies licensed for such activities.

69. Some Members expressed concern about Montenegro's regime governing trading rights, recalling that the right to import (and export) products without establishing a subsidiary or physical presence was a fundamental principle of the WTO. Whether such a requirement applied "equally" to domestic and foreign suppliers was of no consequence as domestic suppliers, by definition, would have an established presence in Montenegro whereas foreign suppliers would not. The establishment requirement was an unnecessary obstacle to importation, and it would be a violation of the GATT Articles III and XI to require an investment in order to be allowed to import. The higher charge applied to renew an expired licence relative to an unexpired licence also appeared unjustified according to the GATT Article VIII. While appreciating the need to protect consumers, some

Members failed to understand how a requirement for foreign pharmaceutical companies to establish a subsidiary in Montenegro in order to import, would further this objective. In any case, the measure restricted the right to trade imported pharmaceutical goods in violation of Articles III and XI:1 of the GATT 1994. A Member also questioned the rationale behind the measure prohibiting individual entrepreneurs to import for wholesale trade.

70. The representative of Montenegro replied that Montenegro was aware of the problem posed by the requirement to be established in Montenegro to import or export and had amended the Customs Law appropriately (OG MNE No. 21/08). The amendments eliminated the establishment requirement for both legal and natural persons wishing to engage in import and export activities, and provided for the right of persons not established in Montenegro to participate in all customs procedures, including import and export, in full conformity with the GATT Articles III and XI. Foreign persons not established in Montenegro could now act as importers of record. They did not need to register at Customs or to deposit any surety in order to import, but they had to be represented by an agent in Montenegro. Foreign persons could choose any company or entrepreneur established in Montenegro and registered with the customs authorities to be his/her agent. Agents were required to register at Customs. The application should be accompanied by a copy of the Certificate of Registration issued by the Commercial Register. She noted that the importer of record remained the exclusive owner of the goods at all times and the only party who had the right to dispose of the goods and was liable for all the duties and charges associated with customs clearance. She added that foreign persons not established in Montenegro did not have the right to distribute goods in Montenegro. However, such persons were free to select a distributor or distributors of their choice, provided such a distributor or distributors had the right to distribute their respective products in Montenegro.

71. The Law on Medicines had also been amended to make Montenegro's activity licensing regime for medicines compliant with the GATT Articles III and XI (OG MNE No. 18/08). Pursuant to Article 61, any company, whether Montenegrin or foreign, including legal persons not established in Montenegro, could import medicines provided the company was registered at the Drug Agency. Persons not established in Montenegro were required to deliver the imported medicines only to companies licensed for such activities. Such persons did not have the right to distribute or sell them in any other way in Montenegro. She added that implementing regulations concerning the right of importers without a distribution or wholesale licence to import were being developed. In addition, amendments to the Law on Medical Devices were expected to be adopted by the end of 2008. These amendments would allow persons not established in Montenegro to import medical devices under the same procedures as medicines. She added that the new Law on Internal Trade (OG MNE No. 49/08), which had been adopted by the Parliament on 15 August 2008, had removed the prohibition against

individual entrepreneurs to import for wholesale trade. All these amendments provided for a clear distinction between the right to import and the right to distribute. In her view, Montenegro's legislation was in conformity with Articles III and XI of the GATT 1994.

72. The representative of Montenegro confirmed that from the date of accession Montenegro would ensure that its laws and regulations relating to the right to import and to export goods and [the implementation of such laws and regulations] [their implementation] would be in full conformity with WTO obligations, including Articles VIII:1(a), XI:1, and III:2 and III:4 of the GATT 1994. She also confirmed that, to this end, individuals and firms, regardless of national origin, would be able to import and export products as importers or exporters of record, with no requirement of physical presence or investment in Montenegro [, if they are represented by a customs agent]. [Other than with respect to those goods set out in Table [x], the sole condition to serving as importer or exporter of record would be to register with the relevant Montenegro authority as described in paragraph [y].] The Working Party took note of these commitments.

A. IMPORT REGULATIONS

- Ordinary customs duties

73. The representative of Montenegro said that a new Law on Customs Tariff had been enacted on 7 December 2005. The new Law had entered into force on 1 January 2006, replacing the Decree on Customs Tariff (RM OG, Nos. 47/03 and 25/05). The Law, based on HS 2002 with changes agreed in 2004, conformed to the nomenclature of the EU at the eight-digit level. The applied tariff rates ranged from 0 to 30 per cent *ad valorem*. Compound duties were levied on some agricultural goods. She added that a new Law on Amendments and Modifications of the Law on Customs Tariff (RM OG No. 17/07) had been enacted in March 2007. Montenegro's customs tariff nomenclature had been harmonized with the combined nomenclature of the EU pursuant to the Decree on the Harmonization of the Customs Tariff Nomenclature for the Year 2008, adopted on 20 December 2007, and the Law on Ratification of the Temporary Agreement on Trade between Montenegro and the EU. The new customs tariff based on HS 2007 comprised 9,767 tariff lines at the 10-digit level.

74. Specific duties were applied on certain fruit and vegetables (Table 2) pursuant to the new Law on Customs Tariff - the Decision on Seasonal Customs Duties on Import of Certain Agricultural Products had been abolished with the entry into force of the Law in January 2006. Specific duties were an integral part of Montenegro's customs tariff. She stated that any specific duties applied in the future by Montenegro as a WTO Member would be within the bound rates negotiated during the

accession process. She further confirmed that Montenegro would bind all its tariff rates of duty on all imported goods.

75. Montenegro undertook bilateral market access negotiations on goods with members of the Working Party. The results of these negotiations are contained in the Schedule of Concessions and Commitments on Goods (document WT/ACC/CGR/.../Add.1).

Table 2: Specific Duties

HS 2007	Description
0701	Potatoes, fresh or chilled:
0701 90	- Other:
0701 90 50 00	---New, from 1 January to 30 June
0702 00 00	Tomatoes, fresh or chilled
0702 00 00 10	- From 1 April to 31 August
0707 00	Cucumbers and gherkins, fresh or chilled:
0707 00 05	- Cucumbers:
0707 00 05 10	- - From 1 April to 30 June
0707 00 90	- Gherkins:
0707 00 90 10	- - From 1 September to 31 October
0805	Citrus fruit, fresh or dried:
0805 20	-Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids:
0805 20 10	- - Clementines:
0805 20 10 10	- - - From 1 October to 31 December
0805 20 30	--Monreales and satsumas:
0805 20 30 10	- - - From 1 October to 31 December
0805 20 50	- - Mandarins and wilkings:
0805 20 50 10	- - - From 1 October to 31 December
0805 20 70	- - Tangerines:
0805 20 70 10	- - - From 1 October to 31 December
0805 20 90	- - Other:
0805 20 90 10	- - - From 1 October to 31 December
0806	Grapes, fresh or dried:
0806 10	- fresh:
0806 10 10	- - Table grapes:
0806 10 10 10	- - - From 1 July to 30 September
0806 10 90	- - Other:
0806 10 90 10	- - - From 1 July to 30 September
0807	Melons (including watermelons) and papaws (papayas), fresh:
0807 11 00	- - Watermelons:
0807 11 00 10	- - - From 1 July to 31 August
0808	Apples, pears and quinces, fresh:
0808 10	- Apples:
0808 10 10 00	--Cider apples, in bulk, from 16 September to 15 December
0808 20	- Pears and quinces:
	- - Pears:
0808 20 10 00	---Perry pears, in bulk, from 1 August to 31 December
0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh:
0809 30	- Peaches, including nectarines:
0809 30 90	- - Other:
0809 30 90 10	- - - From 1 June to 31 August

HS 2007	Description
0810	Other fruit, fresh:
0810 50 00	- Kiwifruit:
0810 50 00 10	- - From 1 November to 31 March

- **Other duties and charges**

76. The representative of Montenegro said that an additional levy had been imposed on 124 tariff lines pursuant to the Decree on Special Charge on Importation of Agricultural and Food Products (RM OG Nos. 61/03 and 63/03). The Decree had been abolished with the entry into force of the Law on Customs Tariff in January 2006. She acknowledged that the "special charge" had been maintained to protect domestic production and thus had not constituted a charge or fee for services rendered. She added that the "special charge" had been converted to a specific element in the compound duty rates, applied to 311 agricultural tariff lines pursuant to the Law on Customs Tariff, as amended in March 2007.

77. The representative of Montenegro confirmed that Montenegro would not list any "other duties and charges" in its Schedule of Concessions and Commitments on Goods under Article II:1 (b) of the GATT 1994, binding such charges at "zero" from the date of accession. The Working Party took note of this commitment.

- **Tariff rate quotas, tariff exemptions**

78. The representative of Montenegro said that Montenegro did not apply tariff rate quotas except in the context of the free trade agreements with Albania, Croatia, and Moldova. Information concerning the tariff rate quotas established for "sensitive" agricultural products was provided in document WT/ACC/CGR/3/Add.1, Annex 9.

79. The representative of Montenegro said that the procedure for obtaining tariff exemptions was laid down in the Decree on Procedure for Realization of Rights on Customs Duty Exemption (RM OG No. 22/03). Article 184 of the Customs Law (RM OG Nos.7/02, 38/02, 72/02, 21/03 and 31/03) provided for tariff exemptions for (i) goods specified by an international Agreement (i.e. FTA) binding on Montenegro; (ii) exchanges of goods of non-commercial nature (no payment) between natural persons; (iii) medals and awards at international events, presents as part of international relations; (iv) goods brought into Montenegro as humanitarian assistance, to be distributed free of charge; (v) equipment for the use of humanitarian organizations or handicapped people; (vi) goods satisfying "basic human necessities" (e.g. food, medications, clothes, and bed linen); and (vii) trademarks, patents, designs, supporting documents, and application forms forwarded

for the registration of copyright and industrial property rights. Exempt were also application forms and documents submitted to the State authorities, materials representing evidence in courts and other proceedings, printed material exchanged between public institutions and banks, securities, submissions to international contests organized in Montenegro, official trade documents, and letter mail.

80. Montenegro also accorded tariff exemptions for fire-prevention and fire-fighting equipment; goods inherited by residents of Montenegro; imports for the reconstruction, maintenance and restoration of protected cultural monuments, approved by the competent authority; goods to be used in museums, archives, restoration, literary activities, art, theatre and musicals, and filming activities (subject to the approval of the competent authority); goods donated to cultural institutions and other non-profit cultural activity upon approval of the competent authority; goods brought by scientists, writers and artists as own works; equipment not produced in Montenegro imported by State authorities; and investment goods brought into Montenegro by a foreign party in accordance with relevant legislation. Montenegrin citizens living within five kilometres of the State border, and owning plots of land in such a strip of Montenegro's neighbours were able to bring into Montenegro the agricultural, forestry or fishing yields from these plots free of import duty. Goods falling under this provision - established to facilitate the movement of people and goods in border areas - were intended for personal use and not for the general stream of commerce. The catches of sea-going fishing vessels of Montenegro were exempt pursuant to Article 188 of the Customs Law. Article 185 provided an exemption, upon request, for domestic goods exported and subsequently returned in the same state to the customs territory of Montenegro within two years.

81. The representative of Montenegro stated that Montenegro would administer and apply its tariff rate quotas and tariff exemptions in conformity with the WTO Agreement, including Articles I, II, VIII, X and XIII of the GATT 1994 and the Agreement on Import Licensing Procedures. The Working Party took note of this commitment.

- **Fees and charges for services rendered**

82. The representative of Montenegro said that Article 291 of the Customs Law (RM OG Nos. 07/02, 38/02, 72/02 and 21/03) allowed the customs administration to charge a fee for customs clearance. The fee could be a specific amount or *ad valorem.* Depending on the procedure applied, the customs clearance fee ranged from 0 to 1 per cent *ad valorem,* or €3 to €120, according to the Decree on Amount and Procedure of Charging of Fees for Services Rendered by the Customs Authorities (RM OG Nos. 20/03 and 62/04).

83. Customs also applied charges for specific services such as temporary storage and storage of goods at customs (€20 per declaration), issuing opinions on the classification of goods (€100 or €120 depending on the need for testing), and assessments of the origin of goods (€50). The Law on Administrative Fees (RM OG Nos. 55/03 and 46/04) determined a number of administrative charges related to importation or exportation, notably for documentation and certificates arising from veterinary, sanitary, and phytosanitary inspections; customs forms, declarations, controls, classifications, complaints; and for the issuance of import and export licenses. The fees, which were all stipulated in specific amounts, are listed in Table 3. Certificates of origin (Form A) were issued by the Chamber of Commerce against payment of €8. She confirmed that a certificate of origin was not a mandatory customs document for importation or exportation.

84. Quality controls on imported or exported agricultural and food products were effected against a fee of €4.60 for shipments of up to 20 tons, and €0.30 for every additional ton, according to the Decision on the Level and Method of Paying Fees Covering Costs of Quality Control of Agriculture and Food Products and Products Made Thereof Destined for Export or Import (FRY OG Nos. 62/97 and 55/98). Charges had also been established according to the Decree on Fee Charged for Health Inspection of Plant Shipments and Control of Pesticides and Fertilizers in Traffic Through the Territory of FRY (FRY OG No. 71/00), and the Decision on Fee Charged for Veterinary-Sanitary Control of Animals, Products, Raw Materials and Waste of Animal Origin in Production and Traffic (RM OG Nos. 51/03 and 56/03). The veterinary-sanitary fee varied from 0.06 to 1 per cent *ad valorem*.

85. Some Members noted that Montenegro applied *ad valorem* charges for customs clearance and for veterinary-sanitary controls, and recalled that fees and charges not related to a specific service or assessed on an *ad valorem* basis were WTO-inconsistent, as such fees were required to approximate the cost of services rendered, and not to be based on the value of the good assessed, or applied for the purpose of raising revenue for general purposes. Montenegro was requested to confirm that it would eliminate fees not meeting the requirements of Article VIII of the GATT 1994, or revise the fees to bring them into conformity with WTO rules.

86. In reply, the representative of Montenegro said that her Government was aware of the issue and that all non-conforming fees were being amended to be fully compliant with the GATT Article VIII prior to the date of accession. The veterinary-sanitary fee had been amended through the Decision on the Level of Compensation for Veterinary-Sanitary Control in the Trade Across the Border of the Republic of Montenegro (RM OG No. 50/05). As for the customs clearance fee, it had been revised through the Law on Amendments and Modifications of the Customs Law of

October 2006 (RM OG No. 66/06); the Decree on the Amount and Procedure for Charging Fees for Services Rendered by the Customs Authorities of December 2006 (RM OG No. 04/07); and the Regulation on the Kind, Amount and Manner of Payment of Fees for the Services Provided by the Customs Authority issued in 2008 (RM MNE No. 47/08). Customs fees were now fixed amounts reflecting the approximate costs of services rendered. Pursuant to the Regulation, a customs administration fee of €15 per customs officer involved was applied for the clearance of goods at a venue not designated for such purpose or outside the normal working hours. She confirmed that Montenegro no longer applied any *ad valorem* fees on or in connection with importation or exportation.

87. The representative of Montenegro confirmed that all fees and charges for services applied in connection with importation and exportation would be applied in conformity with the WTO Agreement, including Articles VIII and X of the GATT 1994. She further confirmed that, upon request, Montenegro would provide WTO Members with information regarding the application and level of such fees and charges, revenues collected and their use. The Working Party took note of these commitments.

- **Application of internal taxes to imports**

88. The representative of Montenegro said that alcohol and alcoholic beverages, tobacco, and mineral oils, derivatives and substitutes were subjected to excise tax according to the Law on Excise Tax (RM OG Nos. 65/01, 12/02 and 76/05) of 28 December 2001. The products concerned and the respective rates are listed in Table 4. Excise taxes on imports were collected at the time of importation by the customs authorities, whereas the tax authorities collected the tax on domestically-produced goods when the goods were released for free circulation. Excise taxes were not collected on exports. Following Montenegro's independence in June 2006, the special taxation regime applied in trade with Serbia had been eliminated. Goods imported from Serbia were now subject to excise taxes as any other imported good and goods exported to Serbia were exempt from any such taxes. She added that natural persons making small quantities of alcoholic beverages solely for personal use were exempt from the excise tax.

89. Ethyl alcohol (ex HS 2207) used as a raw material in the manufacture of fermented products, vinegar, and chemical and cosmetic products (only denatured ethyl alcohol) was exempt from excise tax. Chocolate containing alcohol (ex HS 1806) was exempt provided the amount of alcohol did not exceed 8.5 litres of pure alcohol per 100 kilograms; the limit for other food items was five litres of pure alcohol per 100 kilograms. Institutions in the health sector could obtain a licence from the tax authorities allowing them to purchase ethyl alcohol for medical purposes without payment of the

excise tax. The excise tax was not paid on mineral oils used as fuel in air and maritime traffic and as fuel for fishing boats (except when used for private purposes), for the production of electric energy or the joint production of electric and heating energy, for further processing, or for injection in blast furnaces for chemical reduction purposes as an additive to coke as the basic fuel. Reimbursement and drawback of excise duties was available in all these cases, as well as for exported goods on which excise tax had been paid; importers paying excise duties and subsequently returning the goods in an unchanged condition; and licensees acquiring excise goods at a price including the excise, and using such goods in an excise goods warehouse for the production of excise goods.

90. Article 32 of the Law On Excise Tax exempted from excise tax goods sold on board vessels and aircraft in international transport; excisable goods in travellers' personal luggage within the limits established by customs legislation; and fuel in the standard reservoirs of motor vehicles, vessels, and aircraft provided the fuels were not intended for further sale and exempt from the payment of import duties in accordance with the customs legislation. The excise tax was not payable on goods brought into Montenegro for the official needs of diplomatic and consular representative offices accredited in Montenegro, international organizations (by international agreement), and for the personal needs of their staff pursuant to Article 31 of the Law. The Ministry of Foreign Affairs issued certificates verifying that the application of the excise tax exemption was subject to a reciprocity requirement based on an international agreement.

91. Noting that the excise tax rates applied to still wines (220421 and 220429) were very different from those applied to other fermented beverages, including similar products, a Member asked Montenegro to explain how it ensured that imported grape wines were not taxed at a less favourable rate than like domestic or imported products, as required by Articles I and III of the GATT 1994. In response, the representative of Montenegro noted that imported and domestic products, including wines from grape, were subject to the same tax rate in accordance with Article 2 of the Law on Excise Taxes. There was no exception to this rule. She added that Montenegro produced grape wines, beer and grape brandy.

92. The representative of Montenegro said that a sales tax had been replaced by value added tax on 1 April 2003 pursuant to the Law on Value Added Tax (RM OG Nos. 65/01, 12/02, 38/02, 72/02 and 21/03). VAT was levied on imported and domestically-produced goods at a rate of 17 per cent. A reduced rate of 7 per cent was applied to some products and services. The tax base for imported goods was the customs value inclusive of import duty and excise tax, if applicable, as well as transportation and distribution costs to the first destination in Montenegro. The obligation to pay VAT arose at the same time as the obligation to pay customs duty and other import charges. Goods

temporarily exported for processing, repair or mounting were assessed VAT upon return on the value added abroad and any materials used for these purposes. Certain goods and services were VAT exempt (see Tables 5(a) (goods) and 5(b) (services)). In addition, medicines and medical devices were zero rated in accordance with the Law on Amendments to the Law on Value Added Tax (RM OG No. 76/05). In response to a question, she confirmed that the excise tax was included in the taxable base of domestic goods subject to VAT when the products were placed on the market for final consumption.

Table 5 (a): Goods Exempt from VAT

Tariff Number	Product Name
4907.00 10 00, 4907.00 30 00, 4907.00 90 00	Post mark, administrative and judicial fees and tax mark
7106, 7108, 7110	Gold and other precious metals

Table 5 (b): Services Exempt from VAT

Services Exempt from VAT in the Public Interest:	
1.	Public postal services performed by the post office of Montenegro
2.	Health services and care and delivery of goods including supply of human organs, blood and human milk performed in accordance with the law governing the field of health care activities
3.	Social security services and the supply of goods directly linked to social security services that are performed in accordance with the regulations governing the field of social security services
4.	Services in pre-school education and the education and training of children, young people and adults, including the supply of goods and services directly linked to these activities, provided these activities are performed in accordance with the regulations governing this field
5.	Services and deliveries of goods by nursery schools, primary and secondary schools, universities, and by student catering and boarding institutions
6.	Services related to culture including tickets for cultural events and supply of goods directly related to those services provided by non profit organizations in accordance with regulation governing the field of culture
7.	Services related to sport and sport education, which perform non-profit organizations (associations, etc)
8.	Monthly subscription on radio and TV program
9.	Religious services and supply of goods directly linked to religious services performed by religious institutions in order to satisfy the needs of the faithful, in accordance with the regulations related to those communities
10.	Services provided by non-Government organizations established in accordance with the regulations governing the activities of those organizations unless it is unlikely that such exemptions would lead to a distortion of competition
Other VAT exempt services:	
1.	Insurance and reinsurance services, including services provided by insurance brokers and agents
2.	Supply of immovable propriety, except the first transfer of the ownership rights that is the rights to dispose of newly-constructed immovable property
3.	Services of leasing and subletting of residential houses, apartments and permanent residential premises for longer than 60 days and lease of agricultural land or forests, which are registered in land books

4.	Banking and financial services, such as:
(a)	Approving and managing credits, and approving and managing guarantees that is other forms of credit insurance on the part of the lender;
(b)	Services relating to the management of deposits, savings, bank accounts, conducting payment transactions, transfers, executing due liabilities, cashing cheques or other financial instruments, except
(c)	for recovery of debts and factoring;
(d)	Transactions, including the issuing of bank notes and coins, which are legal tender in any country, excluding collector items; the collector items shall be considered to be coins of gold, silver and other material, bank notes not in use as legal tender, and coins with a numismatic value;
(e)	Trading in shares that is other forms of participation in companies, bonds and other securities, including their issuance, except for the safekeeping of securities;
	Investment fund management.
5.	Services of games of chance

93. The VAT exemptions applied equally to imported and domestically-produced goods. In addition, no VAT was levied on (i) goods in transit, (ii) goods re-imported in an unchanged state by the person exporting the goods; (iii) re-imported goods having been subject to a service abroad, provided the refund of VAT had not been recognized there; (iv) imports by State bodies or humanitarian organizations to be distributed free of charge to alleviate social needs (excluding coffee, alcoholic beverages, tobacco and tobacco products, and motor vehicles other than rescue vehicles); (v) duty-free goods imported by diplomatic missions, consulates, international organizations and their staff within the limits and conditions set forth in international conventions and as approved by the Minister of Foreign Affairs; (vi) services related to imported goods, provided the value of such services was included in the tax base; and (vii) gold, other precious metals, bank notes, and coins imported by the Central Bank of Montenegro. Temporarily imported goods were exempt from VAT provided they were also exempt from customs duties according to the customs legislation. Other special exemptions (Article 30 of the Law) related to imported goods to be stored in an excise warehouse, imports to be submitted to the customs authorities and stored temporarily in accordance with customs regulations, goods destined to a free customs zone, and imports to be subjected to a customs warehousing procedure or import procedure for export under a suspension arrangement. VAT exempt goods subsequently put into free circulation would be subject to VAT (to the same amount that should have been applied upon importation).

94. The representative of Montenegro added that farmers, not themselves registered to pay VAT but delivering agricultural or forestry goods and services to registered taxpayers, could claim compensation for VAT charged on their inputs at a flat rate of 5 per cent (Law on Amendments to the Law on Value Added Tax (RM OG No. 76/05)).

95. Asked to explain why banking, insurance and games of chance were exempt from VAT, the representative of Montenegro said that these services were regulated under separate legislation,

i.e. the Law on Tax on Insurance Premium (RM OG Nos. 27/04 and 37/04) and the Law on Games of Chance (RM OG No. 52/04).

96. In response to specific questions, the representative of Montenegro stated that (i) the Law on Excise Tax and the Law on Value Added Tax were the only laws governing the taxation of imports and domestic goods, (ii) all domestic taxes levied on goods were applied no less favourably to imports than to similar domestically-produced goods per Article III of the GATT, (iii) the eligibility for the excise tax exemption for mineral oil used in blast furnaces was not subject to any export performance or import substitution requirements, and that (iv) imports from, and exports to, all countries received identical treatment in the application of domestic taxes. She added that the Law on Value Added Tax was undergoing revision with a view to making currently VAT-exempt goods subject to VAT at a reduced rate of 7 per cent.

97. The representative of Montenegro confirmed that, from the date of accession, Montenegro would apply its internal taxes, including excise taxes and value added taxes, in a non-discriminatory manner to imports from all WTO Members and to domestically produced goods, in accordance with the WTO Agreement, including the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures and Articles I and III of the GATT 1994. The Working Party took note of this commitment.

- Quantitative import restrictions, including prohibitions, quotas and licensing systems

98. The representative of Montenegro said that Article 14 of the Foreign Trade Law (RM OG No. 28/04) stipulated that goods could not be imported if trade in such goods was banned in Montenegro. Her Government could also ban imports, temporary imports, or good in transit banned under the legislation of the country of export, origin, or destination. The Decision on the Control List for Export and Import of Goods (RM OG No.44/04) of 17 June 2004 contained a list of dangerous waste banned for importation into Montenegro. In order to prevent pests and diseases endangering human or animal health, Montenegro could prohibit imports of animals, plants, animal and plant products and other goods from specific countries or territories based on international recommendations and guidelines, available scientific evidence, and the animal and plant health status of such countries or territories. Any such restrictions were applied consistently with the Agreement on the Application of Sanitary and Phytosanitary Measures. A list of imported goods prohibited according to the Law on Plant Health Protection (RM OG No. 28/06) is reproduced in Table 6. According to Article 15 of the Foreign Trade Law, quantitative import restrictions could only be applied in the form of safeguard measures.

99. The representative of Montenegro said that the Decision on Control List for Export and Import of Goods (RM OG No. 44/04) defined the goods subject to licenses, approvals or certificates. The full list - more than 30 pages of items - was submitted in document WT/ACC/CGR/3/Add.1, Annex 11. She noted that a revised Decision on Control List for Export, Import and Transit of Goods (RM OG No. 19/06), including the GATT/WTO justifications for the specific measures, had been issued on 16 March 2006. The revised Decision included a general import/export control list, and specific lists enumerating narcotics, precursors, substances damaging the ozone layer, wastes, endangered wild plant and animal species (CITES), and protected rare, rarefied, endemic and endangered plant and animal species. She noted that the number of products subject to non-automatic import licensing (listed in Annex I of the revised Decision) had been substantially reduced. Information on Montenegro's non-automatic import licensing procedures was provided in document WT/ACC/CGR/18.

100. The Foreign Trade Law (RM OG No. 28/04) and the Decree on Implementation of Foreign Trade Law (RM OG No. 52/04), the Decision on Control list for Export, Import and Transit of Goods (RM OG No. 45/07), the Law on Administrative Procedure (RM OG No. 60/03), and the Law on Administrative Dispute (RM OG No. 60/03) constituted the general legislative basis for the issuance of import licenses. In addition, depending on the product, licenses were issued on the basis of the Law on Foreign Trade in Arms, Military Equipment and Dual Use Goods (SM OG Nos. 7/05 and 8/05), the Decree on Taking Over Responsibilities from the Law on Foreign Trade in Arms, Military Equipment and Dual Use Goods (RM OG No. 40/06), the Environmental Protection Law (RM OG Nos. 12/96 and 55/00), the Law on the Basis of Environment Protection (FRY OG No. 24/98), the Law on Transportation of Hazardous Substances (FRY OG No. 27/90), the Law on Production and Circulation of Waste Substances (FRY OG Nos. 15/95, 28/96 and 37/02), the Law on Protection from Ionizing Radiation (FRY OG No. 46/96), Decision on Placement under Protection of Specific Plant and Animal Species (RM OG No. 76/06), the Law on Production and Circulation of Narcotics (FRY OG Nos. 46/96 and 37/02), and the Veterinary Law (RM OG No. 11/04). In response to a question she noted that the legal provisions implementing the procedural requirements of the WTO Agreement on Import Licensing Procedures, including those of Articles 1 to 3, were to be found in the Foreign Trade Law (Articles 19 to 27a) and the Decree on Implementation of Foreign Trade Law (Articles 3 to 7).

101. The non-automatic licenses were not intended to restrict the quantity or value of imports. The system operated on the basis that the importers should only approach one single administrative organ, and failure to meet the ordinary criteria would be the only circumstance under which applications could be refused. No application would be refused for minor documentation errors which did not alter

basic data. Such refusal (and the reason) would always be communicated to the applicant in writing, and the Ministry's decision could be challenged before the Administrative Court. Non-automatic licenses should be delivered within 30 days (15 days for arsenic, narcotics and precursors); in practice the period could be much shorter (about one week). No deposit or advance payment was required. The validity of the licenses and the cost differed from one Ministry to another. Licenses issued by the Ministry for Economic Development were valid for one year at a cost of €60. The Ministry of Tourism and Environmental Protection charged €50 for a one year licence for endangered and protected species of wild flora and fauna, and for substances depleting the ozone layer, and €200 for one year licenses to import radioactive materials. The Ministry of Health, Labour and Social Welfare charged €30 for licenses valid from one to four months. The period of validity of the licenses delivered by the Ministry of Health, Labour and Social Welfare was shorter due to the dangerous nature of the products concerned (arsenic, narcotics and precursors) and the necessity to control them more closely. She added that the Ministry for Economic Development had initiated discussions with the other relevant State authorities in order to harmonize the licensing procedures. She provided information on the validity of import licenses and the products covered in Table 7.

Table 7: Import Licenses

Ministry in Charge	Products Concerned	Validity
The Ministry for Economic Development	- Derivatives containing only nitro or only nitro's groups (1 tariff item in Chapter 29); - Explosive and pyrotechnic products (6 tariff items in Chapter 36); - Polycarbonates (1 tariff item in Chapter 39); - Precious metals and metals clad with precious metal (15 tariff items in Chapter 71); - Tanks and other armored fighting vehicles (1 tariff item in Chapter 87); - Warship (1 tariff item in Chapter 89); - Lasers and other optical appliances and instruments (2 tariff items in Chapter 90); and - Arms and ammunition tariff items in Chapter (28 tariff items in Chapter 93).	One year.
The Ministry of Tourism and Environmental Protection	- Uranium and thorium ores and concentrates (4 tariff items in Chapter 26); - Natural uranium (25 tariff items in Chapter 28); - Nuclear reactors (4 tariff items in Chapter 84); - Apparatus based on the use of X-rays or of alpha, beta or gamma radiations (3 tariff items in Chapter 90); - Wastes; - Endangered and protected species of wild flora and fauna; - Substances damaging the ozone layer; and - Protected rare, rarefied, endemic and endemic and endangered plant and animal species.	One year.
The Ministry of Health, Labour and Social Welfare	- Arsenic (1 tariff item in Chapter 28); - Narcotics - including derivates and salts (48 tariff items in Chapter 12, 13 and 29); and - Precursors (22 tariff items in Chapter 28 and 29).	From one to four months.

102. Some Members noted that Montenegro had passed a Law on Waste Disposal in 2005, abolishing an earlier requirement obliging the importer to demonstrate that the particular quality of the imported waste was not available in the domestic market. However, the Law would not enter into force until 1 November 2008. Montenegro was requested to explain the reason for the delay, and outline the requirements applied to imported waste in the interim period.

103. In reply, the representative of Montenegro said that Article 8 of the Rulebook on Documentation to be Submitted along with Request for Issuance of Import, Export and Transit of Wastes (FRY OG No. 69/99) required a statement from the processor that the imported waste did not exist in the domestic market in the necessary quantities. This provision would be abolished by the date of Montenegro's accession to the WTO. The entry into force of the Law on Waste Disposal had been delayed to give all municipalities enough time to establish sanitary landfills - an obligation under the new Law.

104. A Member stated that Montenegro had a legitimate interest in protecting its citizens from unsafe products, but that WTO rules made ample provision for technical regulations for such protection, rather than the broad application of import licensing procedures burdening trade. Many of the justifications offered by Montenegro for its licensing regime suggested that the concerns should be addressed through non-discriminatory and transparent TBT or SPS technical regulations. The Member requested Montenegro to review its licensing regime and evaluate whether TBT or SPS technical regulations would better advance its objectives. In reply, the representative of Montenegro said that the licensing regime had been reviewed with a view to reducing the number of items subject to licensing. However, the review had concluded that no currently applied licenses could be replaced by technical requirements or SPS measures.

105. Concerned about the continued broad scope of Montenegro's licensing regime, some Members requested detailed information about the number of import licenses issued by each Ministry as well as the total value of imported goods subject to licenses, recalling the extensive obligations to provide such information according to Article 3.5(a) of the Agreement on Import Licensing Procedures. These Members also noted that Montenegro was amending the Foreign Trade Law to add provisions on automatic and non-automatic licenses and that all by-laws deriving from the Foreign Trade Law, including the Decision on Control List for Export, Import and Transit of Goods, would be amended accordingly. Montenegro had recognized that the import licenses issued by the Veterinary Administration were WTO-inconsistent and would be abolished. A Member failed to understand the need for licenses for "precious metals and metals clad with precious metal" and "TV apparatus and

sound recorders and reproducers". Montenegro was also asked to explain why it required a non-automatic licence for the export of ferrous and nonferrous scrap, designated as "non-hazardous waste", what criteria were applied for granting or denying the licence, and what environmental issue or provision of Article XX or XXI of the GATT 1994 were involved in requiring the import licence. A Member further enquired why importers were required to approach different Government agencies to obtain an import licence and why import licence fees and validity periods of import licenses varied by agency, which appeared to be burdensome for importers.

106. The representative of Montenegro provided information on the number of import licenses issued by each Ministry as well as the total value of imported goods subject to licenses in document WT/ACC/CGR/24/Add.3. She added that Parliament had adopted the Law on Amendments and Modifications of the Law on Customs Tariff in March 2007, as well as amendments to the Foreign Trade Law. The imposition of quantitative restrictions and licensing requirements for import, export and transit was regulated by Section II of the Law on Foreign Trade. In her view, this Law was in full conformity with the provisions of the GATT, including Article XI. The Decision on Control List for Export, Import and Transit of Goods had entered into force in July 2007 (RM OG No. 45/07). As part of this work, some of the non-automatic licenses had been converted into automatic licenses and import licenses had been abolished for a number of products, including precious metals and metals clad with precious metal; magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device; tanks and other armored fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles; warship; some military weapons, other than revolvers, pistols and arms under heading 9307; and steel and household machinery. As a result, only 116 goods - representing 1.19 per cent of Montenegro's tariff lines - were now subject to import licensing and 55 - 0.56 per cent of the tariff lines - to export licensing. In her view, the Decision on Control List for Export, Import and Transit of Goods was in line with the Agreement on Import Licensing Procedures. She noted that the goods listed in Annexes 2 to 7 of the Decision were subject to licensing in accordance with Montenegro's obligations under the Convention on Psychotropic Substances, the Uniform Convention on Narcotics Drugs, the Vienna Convention on Protection of the Ozone Layer, the Montreal Protocol on Substances Depleting the Ozone Layer, the CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, and the Basel Convention on Transboundary Movement of Hazardous Waste and its Disposal.

107. She added that the Law on Administrative Fees had been amended (RM OG No. 22/08). The amendments provided for a uniform licensing fee of €50 conform to the GATT Article VIII. She confirmed that the fee applied to licenses for all products, regardless of the Ministry to which the importer had to apply. She explained that importers were required to approach different agencies

because of the specificities of certain goods. Responsibility for issuing licenses was entrusted to the authority having expertise in the relevant field. The list of licensing authorities was contained in the Decision on Control List for Export, Import and Transit of Goods and was publicly available. She did not consider this system burdensome. She confirmed that all import licence requirements on fertilizer and pesticides had been abolished and replaced by the system of activity licenses. She added that Montenegro had discontinued the licensing regime administered by the Veterinary Administration. In her view, none of the remaining restrictions violated WTO rules.

108. The representative of Montenegro confirmed that, from the date of accession, Montenegro would eliminate and would not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, and other restrictions having equivalent effect, that could not be justified under the provisions of the WTO Agreement, including measures listed in Table [x]. She further confirmed that the legal authority of Montenegro to suspend imports and exports or to apply licensing or other requirements that could be used to suspend, ban, or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO Agreement, including Articles XI, XII, XIII, XIX, XX, and XXI of the GATT 1994, and the Agreements on Agriculture, Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards and Technical Barriers to Trade. The Working Party took note of these commitments.

- **Customs valuation**

109. The representative of Montenegro said that the Law on Ratification of the Agreement on Implementation of Article VII of the GATT and its associated Protocol (FRY OG 1/82 - international agreements), the Customs Law (Articles 29 - 45 - reproduced in document WT/ACC/CGR/3/Add.1, Annex 4), and the Decree on Implementation of the Customs Law (RM OG No.15/03), constituted the principal basis for customs valuation rules and procedures in Montenegro. Montenegro submitted a completed questionnaire on the implementation and administration of the Customs Valuation Agreement in document WT/ACC/CGR/7, Annex 3.

110. Having reviewed the legislation and the questionnaire, some Members sought further information regarding the possible conformity of Montenegro's legislation with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, notably (i) the incorporation of the Interpretative Notes to the Agreement; (ii) other legislation addressing the transparency, commercial secrets, and right of administrative and judicial appeal provisions of the WTO Agreement; (iii) any facility allowing importers to post a guarantee for duties owed to Customs in the form of a surety, bond, or other such instrument to clear their goods from Customs when a final

determination on the duties owed was being delayed; and (iv) an explanation for how Article 36, paragraph 2 of the Customs Law conformed with Article 6.2 of the Agreement. A Member was also concerned that Article 74 of the Decree on Implementation of the Customs Law would not permit accurate implementation of the Interpretative Note to paragraph 1(b) of Article 1 of the Agreement, which applied to all transactions, whereas the scope of Article 74 appeared to be limited to transactions between business partners.

111. The representative of Montenegro replied that the majority of the Interpretative Notes to the Agreement had been included in the Customs Law or in the Decree on Implementation. The Customs Law and its implementing regulations had been amended in October 2006 to include the few remaining Interpretative Notes. The amendments had come into force on 1 January 2007. Article 8, paragraph 3 of the Customs Law provided for the right of appeal of first instance decisions of the customs authorities. The right of appeal to an independent judicial authority without penalty was provided generally in the Law on Administrative Disputes (RM OG No. 60/03), whereby any final administrative decision could be appealed to the Administrative Court or - as the case might be - to the Supreme Court of Montenegro. Transparency, commercial secrets and the right of administrative and judicial appeal was not addressed in other legislation. Legislation governing trade secrets had been adopted in December 2007 (OG MNE No. 96/07). On item (iii), Montenegro had no specific provision on this issue, but Articles 189 to 200 of the Customs Law and the Implementing Regulations for the Customs Law (RM OG No. 15/03 and 81/06) regulated generally the issuance of guarantees for customs debt, and could be applicable to these circumstances. Pursuant to these provisions, the customs authority could request importers to provide a guarantee to secure the payment of a single customs debt, including interests accrued or that may accrue (single guarantee), or the payment of several customs debts or of a debt that may be incurred within a certain period of time (joint guarantee). The amount of the guarantee was set by the customs authority. Guarantees could take the form of a cash deposit (in Euro) on the account of the Customs Administration or customs office, or of a bank guarantee. The validity of a bank guarantee could not be inferior to three months or to the period during which the debt could be incurred plus 60 days. If the term of the guarantee had expired and the debt had not been paid, in whole or in part, or if a debt could still be incurred, a new guarantee covering the debts secured by the previous guarantee had to be provided. When a joint guarantee was presented, the Customs Administration confirmed receipt of the guarantee, entered the filing number of the guarantee into customs documents and promptly informed all the customs authorities of the guarantee received. A single guarantee simply had to be presented to the customs office. Guarantees were returned after payment of the debt, once it had been determined that no further debt could be incurred. She added that Article 42 of the Customs Law and Article 126, paragraphs 2 and 3 of its implementing regulation enabled importers to withdraw their goods from

customs with provision of a surety in the form of a cash deposit or a bank guarantee covering the payment of customs duties for which the goods could be liable. She confirmed that the prohibition under Article 36, paragraph 2 of the Customs Law applied only to non-residents. Article 74 of the Decree had been amended by the Decree on the Amendments to the Decree on Implementation of the Customs Law (RM OG No. 81/06) to refer to the appropriate provision (Article 30, paragraph 2) of the Customs Law. In her opinion, the new Decree ensured the full compliance of Montenegro's customs valuation legislation with WTO requirements.

112. In response to a Member who invited Montenegro to adopt paragraph 2 of the Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1), the representative of Montenegro noted that the provisions of paragraph 2 of Decision 4.1 had been included in Article 43.1 of the Customs Law.

113. The representative of Montenegro confirmed that, as from the date of accession, Montenegro would apply the WTO provisions concerning customs valuation, including the Agreement on the Implementation of Article VII of the GATT 1994 and Annex I (Interpretative Note) thereto [and paragraph 2 of the Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment (Decision 4.1), providing that valuation of software was based on the value of the media]. She further confirmed that, to this end, Montenegro would not use any form of reference or minimum prices or fixed valuation schedules for the valuation of imports and that all methods of valuation used would be in conformity with those provided for in the WTO Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.

- **Rules of origin**

114. The representative of Montenegro said that Articles 23 to 28 of the Customs Law and Articles 13 to 67 of the Decree on Implementation of Customs Law (RM OG No.15/03) laid down detailed provisions on rules of origin. The Law defined non-preferential rules of origin for the purposes of applying the Customs Tariff (except for goods entering under free trade agreements), to apply measures established by other regulations governing trade in goods, and for the issuance of certificates of origin. Goods were evaluated according to the "wholly obtained" criterion or - for goods produced in more than one country - where the imports had undergone the last substantial, economically justifiable processing. Simple assembly of parts; treatment to preserve the characteristics of products during transportation and storage; labelling and marking; separation, sorting, sifting, rinsing or cutting; changes in quantity; and packing and repackaging of goods would not be considered substantial, economically justifiable processing. Any processing undertaken for the sole purpose of circumventing the provisions of the Customs Law would not be deemed authentic.

115. Preferential rules of origin were stipulated in Montenegro's free trade agreements. The origin was proven by the presentation of an EUR1 certificate of origin or an exporter's declaration. The Customs Administration issued certificates of preferential origin, whereas non-preferential certificates of origin for domestic goods were issued by the Chamber of Commerce. She confirmed that the European Community was treated as one entity for the determination of origin.

116. Asked how the provisions of Article 2 (h) and paragraph 3 (d) of Annex II of the WTO Agreement on Rules of Origin were implemented in Montenegro's legislation, the representative of Montenegro pointed to Article 12 of the Customs Law and Articles 8 and 10 of the Decree on Implementation of the Custom Law. The customs authority issued binding information on the classification and origin of goods within 60 days of receipt of a request (the deadline for classification determinations was three months). The assessments remained valid for two years provided the facts and conditions, including the rules of origin, under which they had been made remained comparable. She subsequently noted that the implementing Decree had been amended to extend the period of validity of assessments to three years (RM OG No. 81/06).

117. The representative of Montenegro confirmed that, from the date of accession, Montenegro's preferential and non-preferential rules of origin, and the implementation thereof, would comply with the WTO Agreement on Rules of Origin. She further confirmed that, to this end, Montenegro would implement Article 2 (h) and Annex II, paragraph 3(d) of the WTO Agreement on Rules of Origin in its domestic legislation and that, accordingly, with respect to non-preferential and preferential rules of origin, the relevant Montenegrin authorities would provide, upon request of an exporter, importer or any person with a justifiable cause, an assessment of the origin of the import under the terms outlined in those provisions. The Working Party took note of these commitments.

- Other customs formalities

118. The representative of Montenegro said that the processing of imports by Customs required the submission of a customs declaration; the invoice; the Bill of Lading; certificates of fact, force majeure, or end user; and - as necessary - certificates of origin, certificates of conformity; veterinary, phytosanitary, health or quality certificates; approvals; or licenses. In response to a specific question, she confirmed that Montenegro did not require the authentication of import documentation by its consular offices or by other institutions in the country of export.

- **Preshipment inspection**

119. The representative of Montenegro said that Government-mandated preshipment inspection of the nature foreseen in the Agreement on Preshipment Inspection was not applied in Montenegro.

120. The representative of Montenegro confirmed that if pre-shipment inspection requirements were to be introduced in the future, such requirements would be temporary, and would comply with the requirements of the WTO Agreement on Pre-shipment Inspection and other WTO agreements. Montenegro would ensure that pre-shipment inspection enterprises operating on its behalf complied with the provisions of the WTO Agreement, including the Agreements on Import Licensing Procedures, Customs Valuation, Technical Barriers to Trade, the Application of Sanitary and Phytosanitary Measures, Agriculture, and Rules of Origin and the GATT 1994. She further confirmed that Montenegro would ensure that charges and fees of pre-shipment enterprises would be consistent with Article VIII of the GATT 1994 and Montenegro would ensure that the requirements and procedures of such entities would comply with the transparency and confidentiality requirements of the WTO Agreement, including Article X of the GATT 1994. Decisions by such firms could be appealed by importers in the same way and through the same procedures as administrative decisions taken by Montenegro. The Working Party took note of these commitments.

- **Anti-dumping, countervailing duties, safeguard regimes**

121. The representative of Montenegro said that anti-dumping and countervailing measures could be imposed on imports pursuant to the Foreign Trade Law (Article 36) and the Decree for Implementation of the Foreign Trade Law. The Ministry for Economic Development would conduct investigations based on written requests filed by or on behalf of the domestic industry (i.e. producers collectively accounting for more than 25 per cent of the national output of a like product). A notification announcing the initiation of proceedings would be published in the Official Gazette. The investigation should be concluded within one year of the initiation. If the Ministry confirmed the existence of dumping or subsidization, and the resulting injury to the domestic industry, a recommendation would be made to the Government, which decided on the imposition of anti-dumping or countervailing duty. Decisions to levy anti-dumping or countervailing duty - whether provisionally or definitely - would be published in the Official Gazette. Provisional anti-dumping duty could be levied for maximum six months; for provisional countervailing duties the period could not exceed four months. Subject to review by the Ministry, anti-dumping or countervailing duties remained in force as long as necessary to remedy the injury, but not for more than four years. She considered the anti-dumping and countervailing provisions of the Foreign Trade Law and the Decree for Implementation of the Foreign Trade Law to be fully compliant with the Agreement on

Implementation of Article VI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures.

122. The representative of Montenegro said that her Government could impose safeguard measures on imports based on the recommendation of the Ministry for Economic Development. The Ministry's recommendation would be the result of an investigation carried out as required under the Foreign Trade Law (Articles 44 to 50) and the Decree for Implementation of the Foreign Trade Law (Articles 38 to 42). The Ministry's decision to initiate an investigation was published in the Official Gazette. A safeguard measure could be in the form of a quantitative restriction or a price-based measure. Her Government could introduce a provisional safeguard measure - in the form of a tariff increase - for a period not exceeding 200 days if evidence showed clearly that the increased imports were causing or threatening to cause serious injury to the domestic industry, and a delay would cause injury difficult to repair. Safeguard measures remained in force as long as necessary to remedy an injury, but not for more than four years (or a total of eight years in exceptional circumstances). She considered the provisions on safeguard measures in the Foreign Trade Law and the Decree for Implementation of the Foreign Trade Law to be fully compliant with the Agreement on Safeguards.

123. The representative of Montenegro considered Montenegro's trade remedy legislation WTO compliant, but confirmed that Montenegro would not apply any anti-dumping, countervailing or safeguard measure until it had notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI of the GATT 1994, Subsidies and Countervailing Measures, and Safeguards.

B. EXPORT REGULATIONS

- Customs tariffs, fees and charges for services rendered, application of internal taxes to exports

124. The representative of Montenegro said that individuals and enterprises wishing to engage in exporting were obliged to register pursuant to the Foreign Trade Law (RM OG No. 28/04). The registration requirements for exporters were identical to the requirements for importers (see "Trading rights"). Exporters of goods subject to activity licensing were subject to additional registration requirements pursuant to the Law on Production and Circulation of Narcotics (FRY OG No. 46/96 and 37/02), the Law on Chemicals (RM OG Nos. 11/07), the Law on Medicines (RM OG Nos. 80/04 and 18/08) and the Law on Tobacco (OG MNE No. 48/08).

125. The representative of Montenegro said that no export duties were being applied at present. Montenegro had applied an export duty of 15 per cent on ferrous metals and scrap steel, and 20 per cent on raw hides. The export duty on ferrous metals had been abolished in 2005 according to the Decision on Abolishment of Export Duties for Ferrous Metals (RM OG No. 25/05), and the export duties on scrap steel and raw hides had been eliminated with the entry into force of the new Law on Customs Tariff in January 2006.

126. The representative of Montenegro confirmed that, from the date of accession, Montenegro would not apply or reintroduce any export duty. The Working Party took note of this commitment.

- **Export restrictions**

127. The representative of Montenegro said that Montenegro did not prohibit the export of any goods. Article 15 of the Foreign Trade Law allowed her Government to introduce quantitative restrictions on exports in case of critical shortages of essential products, to relieve the consequences of such shortages, or in order to protect an exhaustible natural resource - applied simultaneously with restrictions on domestic production or consumption. The Ministry for Economic Development would be in charge of quota allocations. She stressed that the Foreign Trade Law stipulated that quantitative export restrictions could be applied only in strict WTO-compatible circumstances, that no quantitative export restrictions were being applied at present, and that no such restrictions were being contemplated. Moreover, Montenegro did not resort to any other export measures such as minimum export prices, voluntary export restrictions, or orderly marketing arrangements.

128. Export licensing could be applied pursuant to Article 6 of the Foreign Trade Law. The Decision on Control List for Export, Import and Transit of Goods (RM OG No. 45/07) established a regime for export licensing comparable to that applicable to imports. However, whereas no licenses were required for imports, the Ministry of Culture licensed exports of artefacts of artistic, cultural, historical and archaeological value, notably for (i) paintings, drawings and pastels; (ii) original engravings, prints and lithographs; (iii) original sculptures and statues; (iv) postage or revenue stamps, stamp-postmarks, first day covers, postal stationery (stamped paper); (v) collections and collectors' items of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest; and (vi) antiques of an age exceeding 100 years. In order to get a licence, the applicant should submit a confirmation from the Republic Institution for Protection of Cultural Monument; if applicable, an export conformity statement from the copyright holder; a photograph of the artwork being exported; and the receipt for payment of the €10 administrative fee. She provided a list of goods subject to export licenses in Table 8.

Table 8: Goods Subject to Export Licenses

Responsible Authority	Goods Subject to Export Licenses
The Ministry for Economic Development	- Derivatives containing only nitro or only nitro's groups (1 tariff item in Chapter 29); and - Arms and ammunition tariff items in Chapter (6 tariff items in Chapter 93).
The Ministry of Tourism and Environmental Protection	- Uranium and thorium ores and concentrates (4 tariff items in Chapter 26); - Natural uranium (25 tariff items in Chapter 28); - Nuclear reactors (4 tariff items in Chapter 84); - Apparatus based on the use of X-rays or of alpha, beta or gamma radiations (3 tariff items in Chapter 90); - Wastes; - Endangered and protected species of wild flora and fauna; - Substances damaging the ozone layer; and - Protected rare, rarefied, endemic and endemic and endangered plant and animal species.
The Ministry of Health, Labor and Social Welfare	- Arsenic (1 tariff item in Chapter 28); - Narcotics - including derivates and salts (48 tariff items in Chapter 12, 13 and 29); and - Precursors (22 tariff items in Chapter 28 and 29).
The Ministry of Culture, Sport and Media	- Works of art, collectors pieces and antiques (7 tariff items in Chapter 97).

- **Export subsidies**

129. The representative of Montenegro said that Montenegro did not provide any subsidies or Government benefits to promote exports. In response to a specific question, she confirmed that Montenegro did not maintain prohibited subsidies within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, including benefits contingent upon export performance or local content, and that it would not introduce such prohibited subsidies in the future.

130. Asked to the explain the conformity of Montenegro's duty drawback scheme with Annexes I item (i), II and III of the Agreement on Subsidies and Countervailing Measures, the representative of Montenegro said that Articles 128 to 132 of the Customs Law allowed duty drawback on imported goods not released for free circulation and subsequently exported. The duty drawback was equal to the amount of the original charges on the imported goods. In her view, the duty drawback scheme conformed to the Agreement on Subsidies and Countervailing Measures, including its Annexes. Drawback of customs duty could be requested no later than three years from the date when the customs debt had been incurred. She confirmed that the amount remitted under the drawback scheme could under no circumstances exceed the duties paid on the imported products.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

131. The representative of Montenegro submitted a draft notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, covering the years 2004 and 2005, in document WT/ACC/CGR/15; for 2006 in document WT/ACC/CGR/15/Add.1; and for 2007 in document WT/ACC/CGR/15/Add.2. Support was made available through the Law on Budget. During the 2004-2006 period, the Ministry of Economic Development had administered a loan programme - Programme for Restructuring of Companies - to prepare industrial enterprises undergoing privatization for restructuring and modernization. The duration of the loans was three years with a grace period of one year, and the annual rate of interest was two per cent. Eligibility criteria included the company's export potential, its ability for restructuring, its human resources potential and whether the company was eligible for privatization within 12 months. The credit was aimed at strengthening the working capital of the enterprises, covering the costs related to worker redundancies and reconstruction of facilities, defining the optimal organizational structure and number of employees, improving the companies' business competitiveness, and assisting the companies in their restructuring to enable them to operate in an open market economy. As the programme was linked to the privatization of these enterprises, the scheme would be terminated once the privatizations had been completed. The estimated value of the subsidy had amounted to €2.65 million in 2004, €1.76 million in 2005, and €1.26 million in 2006.

132. In addition, the Ministry of Finance had provided subsidized credit worth €2.34 million in 2004, and €3.07 million in 2006, to the enterprise "Obod" - a manufacturer of electric machinery and equipment in which the State owned 51.8 per cent of the capital. A public tender for the privatization of this enterprise was being prepared. Support provided aimed at preserving the company's assets and at preparing it for privatization, and included subsidized credit for the modernization of machinery and the restoration of two manufacturing facilities, including the payment of workers involved in these activities. The loans were granted at an annual rate of two per cent and had to be repaid after privatization. Obod was the sole recipient of these loans. In her view, these loans did not affect competition as Obod had not been operational in recent years.

133. She added that the steel producer "Zeljezara" had received grants totalling €0.64 million from the Ministry of Economy in 2005. The grants had compensated the steel producer for the difference between the market price and the contract price for electricity supplied by "Elektroprivreda". The Agreement between her Government and the former majority owner of "Zeljezara" had been terminated at the end of 2005, and no subsidy had been paid in 2006.

134. Finally, grants worth €0.55 million had been provided to companies of various sectors in 2006 to promote competitiveness. The programme aimed at improving business practices and transfers of managerial know-how to enable the companies concerned to operate more effectively in an open market economy. Support was provided to enterprises with a positive business outlook and a positive approach towards improvement of management and business practices. She noted that the amounts granted were relatively small and could not affect the performance of the company substantially.

135. The representative of Montenegro confirmed that, from the date of accession, Montenegro would not grant or maintain, at any level of Government, export or import-substitution subsidies, within the meaning of Article 3.1(a) and 3.1(b) of the SCM Agreement. She further confirmed that, by the date of accession, Montenegro would provide a subsidy notification, in accordance with Article 25 of the SCM Agreement, to the Committee on Subsidies and Countervailing Measures. The Working Party took note of these commitments.

- **Technical barriers to trade, standards and certification**

136. The representative of Montenegro recalled that the former Socialist Federal Republic of Yugoslavia hade been a signatory to the TBT Code under the GATT 1947 and a number of principles of that Agreement. The subsequent WTO Agreement on Technical Barriers to Trade had been incorporated in the legislation of the State Union of Serbia and Montenegro, and under the Constitutional Charter of the State Union, legislation passed at the Union level had been directly applicable in Montenegro. Thus, standards, technical regulations and conformity assessment procedures had been adopted at the Union level prior to Montenegro's independence, the key legal documents being the Law on Standardization and its two relevant decrees, the Decree on the Procedure for the Elaboration and Enactment of Technical Regulations and for Keeping the Registry of these Regulations, and the FRY Decree on the Procedure for the Elaboration, Adoption, and Enactment of Yugoslav Standards. The Ministry of Economy had been the ministry responsible for the coordination of activities related to standards and technical regulations in Montenegro, whereas the Standards Institution of Serbia and Montenegro - a full member of ISO and IEC - reporting to the Union Ministry of Internal Economic Relations, had been in charge of implementing the Law on Standardization and adopting standards in Serbia and Montenegro. The State Union of Serbia and Montenegro had been a signatory to a number of international agreements on mutual recognition of certification and test results for specific products, and the Accreditation Body of Serbia and Montenegro had recognized certificates and test reports on the basis of bilateral and multilateral agreements.

137. Following the independence of Montenegro on 3 June 2006, Montenegro had become fully responsible for all areas, including TBT, formerly within the responsibilities of the State Union. Montenegro's Parliament had adopted a Resolution of Parliament on 3 June 2006 whereby all former State Union laws would continue to be effective and enforced in Montenegro as national laws. In the TBT area, the Resolution covered four key laws adopted at the State Union level in 2005, namely the Law on Standardization (SM OG No. 44/05), the Law on Accreditation (SM OG No. 44/05), the Law on Technical Requirements for Products and Conformity Assessment of Products with Such Requirements (SM OG No. 44/05), and the Law on Metrology (SM OG No. 44/05). In addition, four regulations had been adopted in 2006, i.e. the Decree on Legal Measurement Units (SM OG No. 10/06), the Decree on Manner of Authorizing Conformity Assessment Bodies, Register of Authorized Conformity Assessment Bodies, Records on Certificates of Conformity, Conformity Marks and Conformity Assessment Bodies, and the Conditions for Applying Technical Regulations of Other Countries (SM OG No. 22/06), the Decree on Manner and Procedures of Conformity Assessment (SM OG No. 22/06), and the Decree on Manner of Preparing and Adopting Technical Regulations and Register of Such Regulations (SM OG No. 17/06). The Ministry for Economic Development of the Republic of Montenegro was presently in charge of implementing these laws and regulations. The Ministry had established a working group to prepare all necessary by-laws for the four laws and to establish all necessary institutions in charge of TBT matters.

138. The representative of Montenegro presented a checklist of illustrative TBT issues in document WT/ACC/CGR/20, a TBT Action Plan in document WT/ACC/CGR/21, and a draft statement under Article 15.2 of the TBT Agreement in document WT/ACC/CGR/29. According to the checklist and the action plan, a Department for Quality Infrastructure had been established within the Ministry. The Ministry had also established a Bureau for Measures and Precious Metals, and the Institute for Standardization of Montenegro had been set up by Government Decision on 29 March 2007. A Decision on the Establishment of the Accreditation Body had been adopted on 29 March 2007, and the Acting Director of the Body had been appointed on 10 May 2007. The Accreditation Body was an independent Body operating in accordance with the provisions of the TBT Agreement and ISO 17011. Montenegro's Accreditation Body was now fully operational. A Register of Technical Regulations would be maintained within the Ministry for Economic Development, while the Institute for Standardization would maintain a Register of Standards.

139. Some Members noted that Montenegro required certificates of conformity for a substantial number of imported items pursuant to the Decision on Control List for Export and Import of Goods (RM OG No. 44/04), and that the Decision also listed 53 categories of goods subject to import quality control (see documents WT/ACC/CGR/3/Add.1, Annex 5 and WT/ACC/CGR/7, Annex 4). As

Montenegro had decided to abolish the Law on Quality Control of Agricultural and Food Products in Foreign Trade (FRY OG Nos. 12/95, 28/96 and 59/98) and its by-laws, these Members asked what quality controls would remain, on what legal basis, and which steps Montenegro would take to review these controls to ensure they were appropriate and complied with the TBT Agreement.

140. The representative of Montenegro replied that the Law on Quality Control had been abolished, and so had quality controls applied at the border. Montenegro currently applied quality control at the retail level without any discrimination between domestic and imported goods. Market inspectors checked the goods displayed on the shelves and, if in doubt, a sample would be taken and submitted for analysis. A product not fulfilling the prescribed conditions would be removed from circulation. The controls were based on some 40 rule books for food items based on specific legislation such as the Veterinary Law and the Plant Health Protection Law. The Laws referred to international standards and to particular international organizations such as the OIE, the IPPC, and the Codex Alimentarius, although Montenegro was not yet member of Codex Alimentarius. Quality controls on industrial goods were based on various regulations, enumerated in a list of Technical Regulations on Quality of Food and Industrial Products Applied in the Republic of Montenegro submitted in February 2007 (see notice in document WT/ACC/CGR/22). No fees were charged for quality control at the retail level. Montenegro would review all regulations governing quality control to ensure compliance with the Agreement on Technical Barriers to Trade. A Revised Strategy of Quality Infrastructure Development in Montenegro had been adopted on 7 June 2007. The Revised Strategy included an obligation to harmonize food and environmental safety standards, including standards of safety at work, with international standards. Pursuant to Article 28.1 of the Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements (OG MNE No. 14/08), all standards and technical regulations in force at the time of entry into force of the Law would be made compliant with international standards by 6 March 2010. The review of existing standards and technical regulations had begun in December 2007. She did not expect this process to be over by the time of Montenegro's accession. She noted, however, that mandatory standards which would not have been converted into technical regulations at the time of Montenegro's accession to the WTO would be become voluntary.

141. Asked how Montenegro's regulations could be consistent with Article 2 of the TBT Agreement, notably how Montenegro would assess the risks leading it to conclude that a technical regulation would be required to fulfil a legitimate objective, the representative of Montenegro said that the new Law on Technical Requirements for Products and Conformity Assessment of Products with Such Requirements (OG MNE No. 14/08) had been adopted to ensure full conformity with the provisions of the TBT Agreement. She noted that the Law did not stipulate

the basis for assessing risks. The latter was regulated by the Law on General Product Safety, which had been adopted by the Parliament on 11 August (OG MNE No. 48/08). The Law provided the basis for assessing risks not prescribed in any other legislation.

142. Concerning standardization and the extent to which Montenegro's standards were based on or harmonized with international norms, the representative of Montenegro said that the Institute for Standardization of Montenegro (ISME) had become a member of the International Organization for Standardization (ISO) on 1 July 2007 and participated in the standardization work of 17 ISO technical committees and two policy committees (COPOLCO and DEVCO). ISME had also applied for membership in the International Electrotechnical Commission (IEC). ISME had been an affiliate member of European Committee for Standardization (CEN) since 1 July 2008. The former Institute for Standardization of Serbia and Montenegro, a joint institution until Montenegro's independence in May 2006, had held a total of 13,746 Serbian-Montenegrin standards in its data base. According to Law on standardization (Article 20) those standards could be used as voluntary standards before the adoption of relevant Montenegrin standards, provided they were relevant for Montenegro. For the time being and in accordance with its plan and programme of work for 2008, ISME had adopted around 800 Montenegrin standards which were harmonized with international and European standards. These standards related to safety of machinery, toys, low voltage equipment, electromagnetic compatibility, personal protective equipment, medical devices, foodstuff, environment, quality, etc. For the year 2009, ISME planned to adopt around 1,500 Montenegrin standards. ISME intended to adopt the remaining 20,000 European standards by the end of the process of harmonization with the EU. During this period, international standards relevant for Montenegro would also be adopted as Montenegrin standards. Montenegrin standards and related documents were adopted and issued in accordance with that Law and the rules of the Institute for Standardization, which was in compliance with the rules of European and international organizations for standardization, particularly with the Code of Good Practice for the Preparation, Adoption and Application of Standards of the WTO Agreement on Technical Barriers to Trade. She noted that the Revised Strategy of Quality Infrastructure Development in Montenegro, which had been adopted on 29 March 2007, included an obligation to withdraw all standards not harmonized with international standards. Among the international standardization organizations relevant to Montenegro she considered the International Organization for Standardization (ISO), the International Electro Technical Commission (IEC), and the International Telecommunication Union (ITU), and amongst the relevant European institutions she referred to the European Committee for Standardization (CEN), the European Committee for Electro technical Standardization (CENELEC), and the European Telecommunication Standards Institute (ETSI). She reiterated that in accordance with the new Law on Technical Requirements for Products and Conformity Assessment of Products with Such

Requirements, all mandatory standards which would not have been converted into technical regulations at the time of Montenegro's accession to the WTO would become voluntary. Responding to a concern that Montenegro could appear to be giving priority to regional over international standards, she said that Montenegro would give priority to the TBT Agreement, although regional agreements such as CEFTA and the SAA, both of which referred to the TBT Agreement in their preambles and provisions, were also carefully applied.

143. With regard to transparency, the representative of Montenegro said that Montenegro had adopted the Decree on the Manner of Preparing and Adopting Technical Regulations and Register of such Regulations (OG MNE No. 55/08) and the Decree on Notification Procedure in the Field of Technical Regulations, Standards and Conformity Assessment Procedures (OG MNE No. 55/08). Further regulations in preparation included draft decrees on the manner and procedures for conformity assessment and conformity assessment authorities, and on the application of technical regulations of other countries and record on conformity verifications issued abroad. According to Article 5 of the Decree on the Manner of Preparing and Adopting Technical Regulations and Register of such Regulations, draft technical regulations would be prepared by working groups established by the relevant ministries. The Ministry would submit the drafts to all interested authorities, organizations and other legal and natural persons for comment. The title and summary of a particular draft technical regulation, as well as information on how to obtain the draft, would be available on the Ministry's website, as well as on the website of the Chamber of Commerce. The Decree on Notification of Technical Regulations, Standards and Conformity Assessment Procedures (OG MNE No. 55/08) appointed the Enquiry Point for technical regulations in the Department for Quality Infrastructure, whereas the Enquiry Point for standards was located in the Institute for Standardization. She added that all technical regulations had to be published in the Official Gazette of Montenegro at least six months before their entry into force pursuant to Article 6(3) of the new Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements. As for the publication of requirements concerning conformity assessment procedures, she noted that the provisions of Article 5.9 of the TBT Agreement had been included in Article 15.2 of the Law on Technical Requirements.

144. Some Members expressed concerns about the system for introducing and enforcing technical regulations in Montenegro. Article 8 of the Decree on the Manner of Preparing and Adoption of Technical Regulations and Register of Such Regulations appeared to go beyond the emergency exemptions allowed under TBT Article 2.10, and the Article made no mention of non-discriminatory consideration of written comments. Article 10 of the Decree did not ensure prompt publication of TBT regulations, nor did it require the regulator to provide a "reasonable" interval between final

publication and entry into force, i.e not less than six months. A Member reminded Montenegro that Article 2.4 of the TBT Agreement required WTO Members to use international standards, if they existed, as the basis for technical regulations. This Member also noted that Article 5.2 of the Decision on Establishing the Accreditation Body of Montenegro provided for accreditation rules to be based on Serbian, European and international standards. This Member recalled that the TBT Agreement gave priority to international standards over regional and national standards and invited Montenegro to revise its legislation to ensure that accreditation rules would be based first and foremost on relevant international standards developed in an open, transparent and impartial way. Moreover, Montenegro's laws and decrees did not appear to allow it to comply with Articles 6 and 7.1 of the TBT Agreement as Montenegro seemed to accept the results of conformity assessment procedures conducted by bodies in an exporting Member country only if the conformity assessment certificates and marks were issued "in accordance with international Agreements binding on Montenegro" or pursuant to "an Agreement on mutual recognition". The Member was also concerned about Montenegro's system for Development and Application of Standards and Conformity Assessment Procedures, in particular (i) a lack of priority given to international standards thereby creating an inconsistency with assurances of "preventing or eliminating unnecessary" obstacles or technical barriers to trade, and (ii) the lack of a cost-based fee structure in accordance with the WTO TBT Agreement. Montenegro would need to change its laws and/or administrative underpinnings to allow it to accede to the obligations contained in the WTO TBT Agreement.

145. The representative of Montenegro replied that Montenegro was aware of all inconsistencies and had amended its TBT legislation based on comments expressed in the Working Party. A new Law on Technical Requirements for Products and Conformity Assessment of Products with Such Requirements had been adopted (OG MNE No. 14/08). The Law was conform to Article 2 of the TBT Agreement *inter alia* by clarifying the reference to international standards being the basis for technical regulations, standards and conformity assessment procedures, and by stipulating that a notice should be published and a technical regulation notified at an "appropriate stage". In addition, the new Law on Standardization (OG MNE No. 13/08) provided that all standards related to Montenegro's development priorities would be based on international standards. Only where no adequate international standards existed would European standards be adopted. She confirmed that Montenegro would take into account the key principles referred to in the Decision of the TBT Committee G/TBT/1/Rev.8 when defining international standards. These principles had been included in the new Law. The new Law on Standardization also provided for a non-discriminatory and cost based fee structure, clarified the right of appeal, provided for a 60-day comment period, and clearly separated the different conformity assessment procedures (Self Declaration and Third Party Certification). Concerning conformity assessment, she noted that pursuant to Article 24.1 of the new

Law on Technical Requirements for Products and Conformity Assessment of Products with Such Requirements, certificates of conformity and conformity marks issued abroad would be accepted if it was proven that the conformity procedures applied provided for a level of conformity equivalent to Montenegro's technical regulations. ILAC attestations would, therefore, be recognized in Montenegro. She confirmed that the new legislation on conformity assessment incorporated the provisions of Articles 6.1 and 6.4 of the TBT Agreement. Several decrees had been adopted to regulate the issue in detail, including the Decree on notification procedure in the field of technical regulations, standards and conformity assessment procedures (OG MNE No. 55/08) and the Decree on manner of drafting and adoption of technical regulations, technical specifications and the register of technical regulations (OG MNE No. 55/08). Two other decrees on manner and procedures for conformity assessment and conformity assessment authorities, and on the application of technical regulations of other countries and record on conformity verifications issued abroad were being drafted. These drafts were expected to be adopted by the end of October 2008. She confirmed that recognition of conformity assessment certificates and marks of conformity would not be dependent on valid mutual recognition Agreements from the date of accession. In response to a further question, she confirmed that conformity of a product with relevant technical regulations could be proved by other means than by using standards in accordance with Article 9.2 of the Law on Technical Requirements.

146. [The representative of Montenegro confirmed that, from the date of accession, Montenegro's rules of accreditation would be based on relevant international standards developed using an open, transparent and impartial approach. The Working Party took note of this commitment.]

- **Sanitary and phytosanitary measures**

147. The representative of Montenegro said that the Veterinary Law (RM OG Nos. 11/04 and 27/07), the Law on Plant Health Protection (RM OG No. 28/06), the Law on Seed Material (RM OG No. 28/06), the Law on Planting Material (RM OG No. 28/06), the Law on Health Safety of Food Items and Articles for Common Use (SFRY OG No. 53/91; FRY OG Nos. 24/94, 28/96 and 37/02; SM OG Nos. 79/05 and 101/05), together with pertinent regulations, constituted the basic legal framework for Montenegro's sanitary and phytosanitary measures. A new Law on Food Safety had been adopted on 29 November 2007 (OG MNE No. 14/07).

148. The main Government agencies involved in the administration of Montenegro's SPS measures were the Ministry of Agriculture, Forestry and Water Management; and the Ministry of Health. Concerning the participation of Montenegro in the relevant international organizations, she said that Montenegro had become a member of the World Organization for Animal Health (OIE) on

10 July 2007. Montenegro was sending representatives to meetings organized by Codex and the International Plant Protection Convention (IPPC) but was not yet a member of the Codex Alimentarius Commission or the IPPC. However, Montenegro had joined the FAO on 17 November 2007, which was a precondition for membership in the Codex Alimentarius Commission and the IPPC. She expected Montenegro to become a member of the Codex Alimentarius Commission and the IPPC in the near future. The Ministry of Agriculture, Forestry and Water Management had established a focal point for the IPPC, and participated in its meetings, but still without voting rights. The Institute for Standardization had been designated as Montenegro's enquiry point for Codex Alimentarius. The Institute was in charge of all activities related to the Codex Alimentarius. She noted that the Former Republic of Yugoslavia had been a member of the FAO; Codex Alimentarius standards were therefore an integral part of Montenegro's current legal system.

149. The representative of Montenegro presented a Check-list of Illustrative Sanitary and Phytosanitary (SPS) Issues in document WT/ACC/CGR/19 and an SPS Action Plan in document WT/ACC/CGR/26. According to the checklist, the principle of necessity in the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) had been incorporated in the Veterinary Law (Article 2, item 51f; Article 34a, paragraph 1, item 1) and in the Law on Plant Health Protection (Article 10, paragraph 2). This principle had also been included in the new Law on Food Safety (Article 54, paragraph 2). Montenegro's SPS legislation stipulated that regulations governing animal and plant health and food safety should be based on scientific evidence according to the Veterinary Law (Articles 34a (paragraph 1), 34b (paragraphs 1, 4 and 5)), and the Law on Plant Health Protection (Article 10, paragraph 3). Adherence to international standards, guidelines and recommendations - to the extent possible - was prescribed in the Veterinary Law (Articles 6 (paragraph 2), 34a (paragraph 1, item 1), and 34b (paragraphs 2 and 4)) and the Law on Plant Health Protection (Article 10, paragraph 3). Provisions had also been included in the new Law on Food Safety (Article 9, Article 54, paragraph 1, Article 55, paragraph 2 and 3). Article 2, item 51n of the Veterinary Law listed the OIE, the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO), and the WTO as international organizations relevant in the area of animal and human health protection.

150. The principle of equivalence had been incorporated in the new Law on Food Safety (Article 59), the Veterinary Law (Articles 33 and 34f, paragraphs 1 and 2), and the Law on Plant Health Protection (Article 10, paragraph 6). Procedures governing risk, risk analysis, risk assessment, risk management and an appropriate level of protection had been established pursuant to Article 2 (items 51b to f) of the Veterinary Law, Article 10 of the Law on Plant Health Protection, and Article 6

(items 6, 7, 8, 9 and 10) and Articles 15, 16, 17 of Law on Food Safety. Provisions regarding disease free and low disease prevalence areas had been included in the Veterinary Law (Article 2, items 51g and h), and Article 34b, paragraph 3 of the Law stipulated that veterinary-sanitary measures should be adapted to the veterinary-sanitary characteristics of the region from which animals, products, food and raw materials of animal origin originated or were destined. The observance of regional conditions was also laid down in various provisions of the Law on Plant Health Protection (Articles 10 (paragraph 4), 14 and 15). Non-discrimination provisions had been incorporated in the Veterinary Law (Article 34a and g), the Law on Plant Health Protection (Article 5), and in the new Law on Food Safety (Article 54, paragraph 1, item 2). Border inspection posts and the domestic market inspections respected the principle of non-discrimination by applying the laws equally to all operators irrespective of nationality.

151. Noting that pursuant to Article 33 of the Veterinary Law imports of animal origin were allowed only from facilities complying with the prescribed requirements or registered in the European Union, but that "other facilities" could become eligible, a Member invited Montenegro to describe the process through which "other facilities" could gain approval to export to Montenegro. The representative of Montenegro replied that in the event of import from such a facility, the Veterinary Administration would conduct risk assessment taking into account the veterinary-sanitary control system and the epizootic situation in the exporting country, as well as the standards and recommendations from the OIE and other relevant organizations. Controls of the export facility could be carried out to determine the existence of veterinary-sanitary obstacles to importation. If the regulations, standards, and the veterinary-sanitary control system of the exporting country provided for a level of protection at least equivalent to that of Montenegro, the facility would be granted approval to export to Montenegro. In her view, this provision complied with the concept of equivalence of the SPS Agreement.

152. Article 34g of the Veterinary Law prescribed the inspection procedures, and Article 60 (paragraph 3) of the Law stipulated that the inspection fees should not be higher than the actual cost of the relevant procedure. Compensation was also addressed in Article 55 of the Law on Plant Health Protection. Each inspection service had a rulebook based on the particular law it administered, describing in detail the procedures to be used, including controls and sampling methods. Inspection costs were prescribed in various decrees, including in the Decision on the Level of Compensation for Veterinary-Sanitary Control in the Trade Across the Border of the Republic of Montenegro (RM OG No. 50/05). Simple testing was performed at the border, for more elaborate tests samples were sent for laboratory analysis. Montenegro had three laboratories located in Podgorica, each performing separate types of testing - the Institute for Public Health of Montenegro, the Centre for

Ecotoxicology Research of Montenegro, and the Specialized Veterinary Laboratory. About 10 per cent of all imported shipments of animal origin had been subject to laboratory control in 2005.

153. Agricultural and forest plants and products could only be imported through designated border crossings. Article 31 of the Veterinary Law prescribed that all shipments containing products of animal origin should be accompanied by an international veterinary certificate issued by the veterinary service of the exporting country. The certificate should contain information determined by the Minister of Agriculture in compliance with OIE guidelines, in general providing information on the origin of the goods, their identity, destination, the registration number of the transportation vehicle, and the health conditions of the shipment. Certified seeds and seedling material were subject to phytosanitary examinations during the vegetation period by institutions authorized by the Ministry for Agriculture, Forestry and Water Management, and by laboratories testing to confirm that the seeds or planting materials were free of pests. Authorized inspectors carried out visual inspection, and samples could be taken to determine the presence of quarantine pests. Imported plants or plant products containing quarantine pests would be returned or destroyed in agreement with the importer.

154. Labelling and packaging of food products were regulated by the Rulebook of Declaration and Labelling of Packed Foodstuffs (S&M OG Nos. 4/03 and 12/03), the Rulebook on Conditions of Health of Dietary Foodstuffs Which Can Be Placed into Circulation (SFRY OG Nos. 4/85, 70/86, and 69/91), and the Food Safety Law (RM OG No. 14/07). Under the Food Safety Law, food products were required to be labelled. Labels should correspond to the data specified in the producers' specification and requirements prescribed by the Food Safety Law. In response to a question, she noted that there were no other mandatory requirements for labelling besides those prescribed by the Food Safety Law.

155. Concerning the principle of transparency and the establishment of a single Enquiry Point, she said that Montenegro had no single enquiry point at present, but a Regulation on Notification Procedures of SPS Measures had been adopted in January 2008 to comply with Article 7 and Annex B.3 of the SPS Agreement (OG MNE No. 13/2008). Pursuant to the Regulation, the SPS Enquiry Point would be located in the Ministry for Agriculture, Forestry and Water Management (Rimski trg br. 46, PC "Vektra" 81000 Podgorica, Montenegro; phone: (+381) 81 482-109; fax: (+381) 81 234-306; website: www.minpolj.vlada.cg.yu). The enquiry point would be responsible for providing information, *inter alia*, on Montenegro's membership and participation in international sanitary and phytosanitary organizations, and on bilateral and multilateral agreements and arrangements, including the texts of such agreements and arrangements (Article 4 of the Regulation). The Ministry would also act as Montenegro's notification authority (Article 3 of the

Regulation). Pursuant to Article 14 of the Regulation, any significant change or amendment of an SPS regulation had to be notified in the same manner as a new SPS measure. In response to a question, she added that the Veterinary Administration, which was under the responsibility of the Ministry of Agriculture, Forestry and Water Management, acted as the notification authority to the OIE pursuant to Article 9 of the Rulebook on classification and notification of suspicious animal diseases, which had been adopted in January 2008 (OG MNE No. 05/08). She further noted that, as a member of the FAO, Montenegro met the notification requirements of the IPPC. In response to a Member who had expressed concerns over the absence of clear language on transparency in the Law on Plant Health Protection, she noted that such language had been included in the Regulation on Notification Procedures of SPS measures adopted in January 2008 in implementation of Article 12, paragraph 6 of the Law on Plant Health Protection. In her view, the Regulation complied with the transparency obligations of Annex B of the SPS Agreement.

156. Pursuant to Article 7 of the Regulation on Notification Procedures of SPS Measures, the Ministry was obliged to publish a notice of the intention to introduce an SPS measure on the official website of the Ministry (www.minpolj.vlada.cg.yu) at an early stage of development of the measure. The Regulation also required the Ministry to notify members of relevant international organizations of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Draft SPS measures had to be notified to interested parties and published for public comment on the official website of the Ministry of Agriculture, Forestry and Water Management (www.minpolj.vlada.cg.yu), or on the websites of the administrative authorities enacting them at least 75 days before their adoption. The Law on State Administration and the Regulation on Notification Procedures of SPS Measures guaranteed the right of the private sector to comment on Montenegro's draft SPS measures. After adoption, regulations were published in the Official Gazette of Montenegro. Asked whether Montenegro's legislation provided any guidance on the period of time between adoption and implementation of an SPS measure, the representative of Montenegro said that Montenegro's legislation was in compliance with the Decision on Implementation Related Issues and Concerns adopted on 14 November 2001 at the Doha Ministerial Conference which referred to a period of not less than 6 months.

157. A Member noted that the Protocol on the Harmonization of Operations and Procedures in the Foreign Trade of Goods Liable to Mandatory Veterinary-Sanitary and Phytosanitary control at the border of State Union of Serbia and Montenegro appeared to have allowed goods subject to veterinary or phytosanitary inspection to pass SPS controls in Serbia if brought into Montenegro by an importer with a head office in Serbia, and vice versa. As Montenegro and Serbia had become independent countries, the Member requested information on how such preferential treatment had been changed.

The representative of Montenegro replied that following the independence of Montenegro, all requirements for importation of products subject to veterinary or phytosanitary inspection from Serbia to Montenegro and vice versa had become subject to the regular rules applied on importation of such products from any country.

158. The representative of Montenegro said that imports of genetically modified organisms and wild species of flora and fauna required a permit from the Ministry for Agriculture, Forestry and Water Management, or the Ministry of Tourism and Environment Protection. The wild species of flora and fauna subject to import or export licensing had been identified by incorporating the Annexes of the CITES Convention into the Control List. Licensing requirements for biotech products had been eliminated with the abolition of the Law on the Basic Principles of Environment Protection (FRY OG Nos. 24/98 and 24/99). Genetically modified organisms were considered potentially dangerous to human, plant and animal health and therefore subject to a special regime pursuant to the Law on Genetically Modified Organisms adopted on 2 April 2008 (OG MNE No. 22/08) and its by-laws. The Law regulated the circulation and marking of agriculture and food products originating from GMOs. The new Law also prescribed conditions for the use of GMOs in closed systems (laboratory, glass houses); the intentional introduction of GMOs in the environment; the placing on the market of GMOs or GMO products; the handling, transportation, packing, transit and marking of GMOs or GMO products; and the control and supervision of economic operators dealing with GMOs. The Law enabled transportation of approved GMO products and included measures to prevent adverse effects resulting from the use of GMOs. The Law was meant to give consumers a choice. She confirmed that the former procedures applied in the interim. In response to a question about the role of National Council for Assessment of Safety of Food, she noted that the Council cooperated with the relevant bodies responsible for the regulation of products of biotechnology.

159. She added that Montenegro had amended existing legislation to comply with the SPS Agreement in the area of veterinary measures, and intended to amend a few additional provisions in the area of phytosanitary measures. Work to reach and ensure full compliance with the SPS Agreement was ongoing, and included new regulations on animal protection based on OIE recommendations and standards; new regulations on plant protection in conformity with IPPC standards; examination and harmonization of national legislation with Codex Alimentarius standards; the elaboration of guidelines and recommendations relating to food additives, veterinary drugs and pesticide residues; the introduction of a Global Monitoring System on food contamination and Assessment Programme (GEMS/Food); the reorganization of a national reference laboratory in compliance with ISO/IEC standards; and implementation of the National Food Safety Strategy. These activities would allow Montenegro to accept the principle of equivalence, to perform control,

inspection and approval procedures consistent with WTO rules, and to take account of risk assessment techniques developed by the relevant international organizations.

- **Trade-related investment measures**

160. The representative of Montenegro said that Montenegro believed its Law on Foreign Investment to be fully compliant with the Agreement on Trade-Related Investment Measures. Asked to list all investment opportunities contingent upon the use of local materials in the production process, import/export balancing, or linking access to foreign exchange for importation to the value of exports, she noted that an activity licence was required to manufacture tobacco goods in Montenegro, and Article 15 of the Law on Tobacco (RM OG Nos. 80.04 and 05/05) obliged each manufacturer to produce or purchase domestically-processed tobacco to cover at least 40 per cent of the annual output of cigarettes and other tobacco products, and no less than 700 tons per year. The activity licenses were administered by the Ministry of Agriculture and the Ministry of Health and awarded through public tender (see "Trading rights"). In response to a Member who noted that the requirement to buy domestically-processed tobacco appeared to violate WTO rules, the representative of Montenegro said that this measure had been put in place to support some 500 families who lived in disadvantaged rural areas and whose main source of revenue was the growing of tobacco. She noted that a new Law on Tobacco (OG MNE No. 48/08) had been adopted by the Parliament on 11 August 2008. The new Law, had abolished the requirement for each manufacturer to purchase a specific quantity of domestically-processed tobacco.

161. The representative of Montenegro confirmed that from the date of accession, Montenegro would apply its investment regime in a non-discriminatory manner to imports from all WTO Members and to domestically produced goods, in compliance with the WTO Agreement, including the Agreement on Trade-Related Investment Measures (TRIMs). The Working Party took note of these commitments.

- **Free zones, special economic areas**

162. The representative of Montenegro said that free zones and free warehouses were considered part of the customs territory of Montenegro, but business activities carried out there were subject to special conditions. A free zone or free warehouse could be founded at or near a seaport or airport, or in other suitable locations. So far, one free zone had been created - at the Port of Bar. All kinds of activity could be conducted in a zone and a warehouse, except those presenting a hazard to the environment, human health, material goods or national safety.

163. The treatment of goods kept in free zones and free warehouses was regulated pursuant to Articles 167 to 181 of the Customs Law. Both foreign and domestic goods could enter a free zone or free warehouse, and no limit was set for the length of time the goods could remain there, although such goods could not be consumed nor used while being placed in a free zone or free warehouse. Exceptionally, certain domestic goods intended for export were subject to specific time limits, and if the deadline was not complied with or the goods were found to have been returned to another part of the customs territory of Montenegro, the Customs authorities would take action as prescribed in cases of failure to comply with specific conditions. Goods could leave a free zone or free warehouse temporarily for processing, mounting, testing, attestation, repair, marketing presentation, etc. Such goods would have to be returned to the zone or warehouse (or exported) within a specified period and no later than one year from the date the goods were taken out of the zone or warehouse. Upon special authorization of the Customs authorities, domestic goods not intended for export or processing could be stored in a free zone or free warehouse, but such goods would be kept separate from other goods. Goods entering the territory of Montenegro from a free zone without further processing were subject to normal customs duties and charges, internal taxes and other import restrictions, if applicable.

164. Business activities carried out in a free zone or free warehouse were regulated according to the Law on Free Zones (RM OG Nos. 42/04 and 11/07). A free zone could be divided into several sub-zones. Goods entering a free zone or free warehouse and consumed or used in accordance with the Law on Free Zones were not subject to customs duty, customs charges, or VAT. The Law on Free Zones provided incentives to enterprises operating in a free zone. These enterprises were not liable to pay profit tax or real estate tax; foreign payment operations were generally unrestricted and could be carried out through any bank in Montenegro; loans could be granted or accepted without restriction; labour agreements could be negotiated freely and up to 10 per cent of the employees could be foreign citizens; capital investments were unrestricted and the repatriation of capital and profits was free; banks, insurance companies and other financial institutions located in a free zone could be wholly foreign-owned; a foreign citizen could acquire real estate for his/her business in a free zone regardless of any reciprocity provision that would otherwise apply; and private property could not be nationalized or expropriated. The benefits were not conditioned on any export performance requirements. Goods processed in a free zone and subsequently sold in Montenegro were not subject to customs duty or customs charges on the domestic component (raw materials, labour, etc.) in these goods. More favourable conditions applied when the domestic component exceeded 50 per cent.

165. A Member noted that the Law on Free Zones (RM OG No. 42/04) also appeared to exempt goods processed in a free zone in Montenegro from customs duties and charges on the domestic component in such goods. Once the component exceeded 50 per cent, such goods would not be

subject to restrictions related to the foreign trade regime. If no import duties or charges were applied in such instances, this provision would constitute a local content requirement incompatible with Article III:5 of the GATT 1994 and Article 3 of the Subsidies Agreement, and the provision would need to be abolished.

166. In reply, the representative of Montenegro said that Article 21 of the Law on Free Zones (RM OG No. 42/04) stipulated that goods imported into Montenegro from a free zone were subject to customs duties, customs charges, VAT, and import restrictions (if applicable). Customs duties and charges were not payable on domestic materials and labour incorporated into the goods while in the zone. Once the domestic component exceeded 50 per cent, goods imported from the zone were considered to be "domestic goods" and were not subject to restrictions related to the foreign trade regime (i.e., quantitative restrictions, licenses, antidumping and countervailing duties and safeguards measures). Customs duties and other charges were payable, but decreased according to the percentage of domestic component in the goods. She later noted that the Law had been amended to be brought into compliance with WTO rules (OG MNE No. 11/07).

167. In response to a Member who noted that Article 23 of the Law on Free Zones appeared to be inconsistent with Montenegro's State aid and anti-subsidy obligations, the representative of Montenegro acknowledged that this Article was falling short of Montenegro's obligations. She noted, however, that the real effect of this Article was negligible as Montenegro only had one operational free zone, which had attracted a fairly limited number of companies. She nevertheless added that any provision of the Law on Free Zones inconsistent with WTO rules would be repealed.

168. The representative of Montenegro confirmed that, from the date of accession, free zones or free economic zones established in Montenegro, including those referred to in paragraphs [164-167], would be administered in compliance with WTO provisions, including the Agreements on TRIPS, TRIMs, and Subsidies and Countervailing Measures. She further confirmed that the right of firms to establish and operate in these zones would not be subject to export performance, trade balancing, or local content requirements, and that goods imported into, or produced from inputs imported into, these zones that were exempt from tariffs and certain taxes would be subject to standard customs formalities when entering the rest of Montenegro, including the application of tariffs and taxes on the imported components in the goods. The Working Party took note of these commitments.

- Government procurement

169. The representative of Montenegro said that Montenegro had enacted the Law on Public Procurement (RM OG No. 40/01). The Law superseded all previous provisions on Government

procurement in Montenegro. According to the Law, all public entities should take the necessary measures to ensure the widest possible participation on equal terms in their invitations to tender. The procurement methods laid down in Article 7 of the Law included (i) direct purchasing, (ii) competitive bidding, (iii) two-stage bidding, (iv) open international pre-qualification of suppliers for major contracts, followed by limited competitive bidding, and (v) permissible standardization of goods undertaken in compliance with the Law. The solicitation documents should encourage open competition, and set forth the detailed needs, place of delivery, minimum performance requirements, warranties, maintenance requirements and any other pertinent terms and conditions. Contracts for goods and works should be awarded to the suppliers offering the right quality to meet identified needs for the specified quantity, at the lowest calculated price, and at the right time. Any factors other than price that would be taken into account in the evaluation of the offers should be specified in the solicitation documents. Due care should be taken to ensure the confidentiality of the offers. The Law did not provide preferential treatment for domestic suppliers of goods or services. Local competitive bidding - open to all suppliers with their seat or residency in Montenegro - would be considered when it was determined that foreign companies were not interested or the project was too small for them.

170. The appeals procedure was laid down in Article 79 of the Law. Suppliers were invited to address complaints in writing to the public entity concerned. Unsatisfied with the response, an appeal should be lodged with the Public Procurement Commission within eight days of receipt of the response. The Public Procurement Commission was obliged to give its reply in writing within 15 days of receipt of the appeal.

171. She added that the Law on Public Procurement had been reviewed to be fully compliant with EU directives. The new Law on Public Procurement had entered into force on 29 July 2006 (RM OG No. 46/06).

172. Some Members asked whether Montenegro intended to join the Agreement on Government Procurement upon accession to the WTO. In reply, the representative of Montenegro said that Montenegro would consider joining the Agreement on Government Procurement within a reasonable period after accession.

173. The representative of Montenegro confirmed that Montenegro would initiate negotiations for membership in the Agreement on Government Procurement upon accession by tabling an entity offer at that time. She also confirmed that, if the results of the negotiations were satisfactory to Montenegro and the other members of the Agreement, Montenegro would complete negotiations for membership in the Agreement by 31 December 2009. The Working Party took note of these commitments.

- **Transit**

174. The representative of Montenegro said that goods in transit were governed by provisions in the Foreign Trade Law (RM OG Nos. 28/04 and 37/07), the Customs Law (RM OG Nos. 07/02, 38/02, 72/02, 21/03, 29/05, 66/06 and 21/08), the Decree on Implementation of the Customs Law (RM OG Nos. 15/03 and 81/06), and the Decree on Fees for Use of Roads by Foreign Vehicles (RM OG No. 36/05). Montenegro could prohibit the transit of goods banned under the legislation of the Republic of Montenegro pursuant to the Foreign Trade Law, and her Government could also ban imports, temporary imports or transit of goods if the circulation of such goods was banned under the legislation of the country of export, origin, or destination.

175. According Articles 19 and 20 of the Foreign Trade Law, licenses could be required for the transit of certain goods. In these cases, the purpose of such licensing would be to protect either human, animal or plant life or health, national security, the environment or exhaustible natural resources, public morals, or intellectual property rights, or to enforce any special rules related to gold and silver. Based on Article 29 of the Foreign Trade Law, the transit of goods was subject to relevant veterinary, sanitary or phytosanitary requirements prescribed for particular types of goods. She referred to the revised Decision on Control List for Export, Import and Transit of Goods (RM OG No. 45/07) for further details.

176. The representative of Montenegro confirmed that, from the date of accession, Montenegro would apply all its laws, regulations and other measures governing transit of goods (including energy), such as those governing charges for transportation of goods in transit, in conformity with the WTO Agreement, including Article V of the GATT 1994. The Working Party took note of this commitment.

- **Agricultural policies**

(a) Imports

177. The representative of Montenegro said that customs duties constituted the main form of border protection for agricultural goods. Certain fruit and vegetables were subject to specific duty (Table 2) in accordance with the new Law on Customs Tariff, which had entered into force in January 2006. She noted that Montenegro had imposed an additional levy on 124 items pursuant to the Decree on Special Charges on Importation of Agricultural and Food Products (RM OG Nos. 61/03 and 63/03). However, the Decree had been abolished with the entry into force of the new Law on Customs Tariff in January 2006, and the "special charge" had been converted to specific-duty

elements of compound duties. Montenegro's nomenclature counted 279 compound duties (Decree on the Harmonization of the Customs Tariff Nomenclature for the Year 2008 (RM OG Nos. 75/05 and 17/07)). The Law did not grant the authorities discretion to decide on the imposition of special levies or adjust such levies according to price or volume thresholds.

178. Some 56 agricultural products were considered "strategic" in the sense that these were significant for the living standard of the population and not produced in Montenegro, and these goods were accordingly subject to zero tariff or very low import duty. Milk, fats, cooking oil, and sugar were considered basic commodities for human consumption and exempt from VAT in support of low income households. Excise taxes were levied on alcoholic beverages and tobacco. Tobacco was also subject to activity licensing. A certain number of agricultural items were subject to import licensing pursuant to the Decision on Control List for Export, Import and Transit of Goods (RM OG No. 45/07).

(b) Exports

179. The representative of Montenegro said that Montenegro had applied an export duty of 20 per cent on raw hides, but the export duty had been eliminated with the entry into force of the present Law on Customs Tariff in January 2006. No other agricultural product was subject to export duty. Licensing requirements were applied pursuant to the Decision on Control list for Export, Import and Transit of Goods (RM OG No. 45/07).

180. Montenegro had no export credit, export credit guarantee, or export insurance programmes for agricultural or other products. The Ministry of Agriculture, Forestry and Water Management operated a programme entitled the "Improvement of Market Position of Montenegrin Agriculture Products" promoting domestic products at fairs and exhibitions, a campaign "MADE IN MONTENEGRO", and other promotional activities. Montenegro sought to increase the exports of specific domestic products, notably early vegetables, lamb meat, njeguški smoked ham, cheeses, wine, fish, honey, medicinal herbs and forestry products.

(c) Internal policies

181. The representative of Montenegro said that the agricultural sector had emerged from a socialist system favouring so-called "combinats" and neglecting the private sector to a market-based, non-interventionist policy framework applied since 2000. The current agricultural policy focused on the development of sustainable agriculture performed by private farmers. The budgetary support to

the sector was modest (around €12 per capita), and more than 80 per cent of the support was allocated to "green box" measures.

182. The representative of Montenegro provided information on domestic support and export subsidies in the agricultural sector in the format of document WT/ACC/4 for the period 2002-2004 in document WT/ACC/SPEC/CGR/1 of 19 April 2005. The data had subsequently been updated to cover the period 2004-2006 (document WT/ACC/SPEC/CGR/1/Rev.1). Data for 2007 was circulated in document WT/ACC/SPEC/CGR/1/Rev.1/Add.1. In addition to "green box" measures, support was mainly provided in the form of direct per head payments to increase the herds of cattle, sheep and goats; quality breeding programmes (cattle and stallions); artificial insemination (cattle and swine); beehive modernization; grazing incentives (cattle); premiums to increase the production of milk and tobacco; premiums for cattle and milk; production programmes (figs, potato seeds and olives); and production increase programmes (grass, cereals). The support exceeded the *de minimis* level of 5 per cent for two types of commodities only (tobacco and cereals - rye, barley, etc.).

183. Some Members noted that Montenegro did not apply any export subsidies in agriculture and requested Montenegro to bind export subsides at zero upon accession. The representative of Montenegro replied that Montenegro would bind all export subsides at zero upon accession.

- Trade in civil aircraft

184. In response to a question about Montenegro's intention concerning the Agreement on Trade in Civil Aircraft and the application of tariff duties to imports of aircraft and aircraft parts, the representative of Montenegro said that her Government intended to initiate negotiations for membership in the Agreement on Trade in Civil Aircraft after accession.

- Textiles regime

185. The representative of Montenegro said that Montenegro did not have any special measures regarding trade in textiles.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- GENERAL

- Industrial property protection

186. The representative of Montenegro said that the State Union had been responsible for the formulation and enactment of substantive intellectual property legislation before Montenegro's

independence - implementation and enforcement of State Union laws being the responsibility of the Republics. When the Republic of Montenegro had declared its independence in June 2006, the Parliament had adopted a resolution whereby all laws enacted by the State Union of Serbia and Montenegro would continue to be effective and enforced in Montenegro as national laws. The Republic of Montenegro was now developing its own institutional capacity. State Union legislation in the area of intellectual property included the Law on Copyright and Related Rights (SM OG No. 61/04), the Law on Patents (SM OG Nos. 32/04 and 35/04), the Law on Trademarks (SM OG Nos. 61/04 and 7/05), the Law on Legal Protection of Designs (SM OG No. 61/04), the Law on Indications of Geographical Origin (SM OG No. 20/06), and the Law on Protection of Topographies of Integrated Circuits (SM OG No. 61/04). In her view, all these laws were in compliance with the TRIPS Agreement.

187. New legislation covering intellectual property rights had been developed since Montenegro's independence. A Law on Optical Discs (RM OG No. 2/07) had been adopted in early 2007 and Montenegro's criminal code and customs law had been amended to be brought into conformity with the TRIPS Agreement. In addition, new laws on plant varieties protection (RM OG Nos. 48/07 and 48/08) and undisclosed information (OG MNE No. 96/07) had been passed in August and December 2007 respectively. She noted that Montenegro intended to enact new intellectual property laws covering all intellectual property rights. She provided detailed information about the implementation of the TRIPS Agreement in document WT/ACC/CGR/14 of 30 May 2006.

- **Responsible agencies for policy formulation and implementation**

188. The representative of Montenegro said that the Ministry for Economic Development was responsible for the protection of industrial property rights and the Ministry of Culture and Media for the protection of copyright and related rights. A Montenegrin Intellectual Property Office (MIPO), responsible for the registration of intellectual property rights in Montenegro, had recently been established (Decree on a Manner and Organization of the State Administration RM OG Nos. 54/04, 78/04, 6/05, 61/05, 6/06, 32/06, 42/06, 56/06, 60/06, 72/06, and 6/07). The MIPO had become fully operational on 28 May 2008. The Ministry for Economic Development was responsible for overseeing MIPO's activities.

189. A Regulation on Recognition of Intellectual Property Rights, which regulated the recognition of all intellectual property rights registered with the Union Intellectual Property Office or the Serbian Intellectual Property Office (SIPO), had been adopted in September 2007 (RM OG No. 61/07). Under the Regulation, any rights registered with the Union Intellectual Property Office or SIPO and pending applications filed with these Offices before MIPO had become operational were enforceable

in Montenegro. Since 28 May 2008, when MIPO had started operating, all applications had to be filed with the Montenegrin Office.

190. She added that enforcement of border measures was the responsibility of the Customs Administration and criminal enforcement the responsibility of the Ministry of Justice.

- **Participation in international intellectual property agreements**

191. The representative of Montenegro said that Montenegro had become a member of the World Intellectual Property Organization (WIPO) on 3 December 2006 and, as a successor State of the former State Union of Serbia and Montenegro, Montenegro had accepted the Convention Establishing the World Intellectual Property Organization; the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works; the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods; the Madrid Agreement Concerning the International Registration of Marks; the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks; the Hague Agreement Concerning the International Deposit of Industrial Designs (the Hague Act (1960) and the Stockholm Complementary Act (1967)); the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Locarno Agreement Establishing an International Classification for Industrial Designs; the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; the Nairobi Treaty on the Protection of the Olympic Symbol; the Trademark Law Treaty; the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty; the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure; the Patent Cooperation Treaty; the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms; the Treaty on the International Registration of Audiovisual Works; and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

192. In response to a question about Montenegro's plans to enact legislation to implement the Geneva Phonograms and Brussels Satellite Conventions, the representative of Montenegro noted that these conventions, as all international conventions and agreements ratified by the former Federal Republic of Yugoslavia or the State Union, were an integral part of Montenegro's legal system. These conventions were directly enforceable and prevailed over domestic legislation. She noted that the Law on Copyright and Related Rights captured the main elements of these two conventions. In her view, the implementation of these conventions did not require the adoption of any new legislation.

- **Application of national and MFN treatment to foreign nationals**

193. The representative of Montenegro said that pursuant to Article 106 of the Law on Copyright and Related Rights, Article 6 of the Law on Trademarks, Article 7 of the Law on Indications of Geographical Origin, Article 10.2 of the Law on Legal Protection of Design, Article 3 of the Law on Patents, and Article 7 of the Law on Protection of Topographies of Integrated Circuits, foreign natural and legal persons enjoyed the same intellectual property rights as domestic natural and legal persons when so provided for under international agreements or under the principle of reciprocity. Upon accession, all WTO Agreements, including the TRIPS Agreement, and all intellectual property conventions and treaties to which Montenegro was a party would become part of Montenegro's legal system and would supersede domestic legislation, thereby ensuring the application of national treatment to foreign nationals. The only exception to this general national treatment rule was the requirement that foreign nationals be represented by registered agents or domestic attorneys when dealing with governmental bodies administering intellectual property rights (Article 11 of the Law on Trademarks, Article 11 of the Law on Indications of Geographical Origin, Article 16 of the Law on Legal Protection of Design, and Article 4 of the Law on Patents).

194. She added that Montenegro's legislation did not contain any specific provision on MFN treatment. However, MFN treatment was guaranteed through the direct application of the WIPO Conventions, to which Montenegro was a party. Upon Montenegro's accession, the TRIPS Agreement would also become an integral part of Montenegro's legal system, and the provisions of Article 4 on MFN treatment would then be directly enforceable.

195. In response to a Member who invited Montenegro to amend the Law on Copyright and Related Rights to incorporate explicitly the national treatment principle, the representative of Montenegro said that the Berne Convention was directly enforceable and took precedence over domestic laws and regulations. In her view, the Law on Copyright and Related Rights did not need to be amended.

- **Fees and taxes**

196. The representative of Montenegro said that Montenegro was in the process of setting its own fees and taxes for registration of intellectual property rights with MIPO. A Law on Amendments to the Law on Administrative Taxes had been adopted in April 2008 to this effect (OG MNE No. 22/08). She provided a list of fees for registration of intellectual property rights in Annex 1 of document WT/ACC/CGR/28/Add.2. She noted that Montenegrin nationals only had to pay 10 per cent of the

prescribed fees. However, as of the date of accession to the WTO, Montenegrin and foreign nationals would be subject to the same fees.

- SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

- Copyright and related rights

197. The representative of Montenegro said that copyright and related rights were protected under the Law on Copyright and Related Rights of 24 December 2004 (RM OG No. 61/04). The Law regulated the rights of authors of literary, scientific and artistic works; performers; producers of phonograms and videograms; broadcasting organizations; and database producers (Article 1). Copyright was provided for original intellectual creations, irrespective of form; artistic, scientific or other value; purpose; size; content; and expression (Article 2). Literary, artistic, and scientific works protected included written works (books, brochures, articles, translations, computer programs in any form, including preparatory design material and other); spoken works (lectures, speeches, orations, etc.); dramatic, dramatic-musical, choreographic and pantomime works, as well as works originating from folklore; musical works, with or without words; films (cinema and television); fine art works (paintings, drawings, sketches, graphics, sculptures, etc.); works of architecture, applied art and industrial design; cartographic works (geographic and topographic maps); drawings, sketches, dummies and photographs; and theatre plays (Article 2). Satellite broadcasting was regulated under Article 28 of the Law on Copyright and Related Rights, and optical discs were protected under the Law on Optical Discs (RM OG No. 2/07). The Law on Optical Discs provided for fines and for the temporary prohibition of the manufacturing of optical discs and/or production parts in case of infringement of intellectual property rights.

198. Copyright arose from the moment the work was created. Copyright protection was provided for the life time of the author and 70 years after his/her death. The rights of performers and phonograms and videograms producers were protected for 50 years from the date of recording or first disclosure of the performance, the rights of broadcasting organizations for 20 years from the date of first broadcast, and the rights of database producers for 15 years from the date of creation of the database - in the case of significant modifications of the database contents, the term of protection could be extended for another 15 years. Protection of copyright and related rights was not subject to any acquisition or use requirements, but the Law provided for optional deposit procedures.

199. Right holders had the exclusive right to exploit the work and authorize its publication, reproduction and circulation, including its presentation in public, broadcast, adaptation, and rental (Articles 19 to 37). Limitations to authors' economic rights were laid down in Articles 40 to 55 of the Law. The moral rights of authors and copyright holders were provided in Articles 14 to 18 of the Law. Moral rights were perpetual and indivisible. The economic and moral rights of a deceased author, with the exception of the right to publish an undisclosed work and the right to modify an existing work, were transferred to the heirs of the author or, in their absence, to authors' associations and arts and science institutions (Article 56). After expiration of the author's economic rights, authors' associations and arts and science institutions were responsible for protecting the moral rights of deceased authors (Article 150). Noting that paragraph 2 of Article 150 stipulated that any person was entitled to protect the right of authorship and integrity of the works of a deceased author, a Member questioned who would speak for the author in case of disagreement. The representative of Montenegro replied that there was no clear provision on this issue. In her view, the heirs of the author, or in their absence the authors' association or relevant institution, would have a predominant influence.

200. In response to a question, she confirmed that the statutory licence created in Article 53 extended to for-profit educational institutions. In her opinion, this Article complied with the concept of statutory licence set out in Article 9.2 of the Berne Convention, which did not exclude commercial entities from the scope of such licenses. A Member noted that Article 54 of the Law on Copyright and Related Rights appeared to create a TRIPS-inconsistent statutory licence, as any literary work published in a mass media could be subsequently reproduced or communicated to the public, unless the publisher or author expressly prohibited such reproduction or communication. This Member invited Montenegro to bring this Article into conformity with the TRIPS Agreement. In response, the representative of Montenegro said that Article 54 of the Law on Copyright and Related Rights reflected the provisions of Article 10*bis*.1 of the Berne Convention, which allowed national legislation to provide for free use or statutory licence for the use of pertinent works.

201. Asked to clarify the scope of Article 38, the representative of Montenegro explained that Article 38 did not establish a personal use exception, nor did it impose any statutory licence. Article 38 gave right holders a right of compensation for economic losses caused by the use of technical devices used for (unlawful) copying of copyrighted works. This Article entitled collective rights associations to levy a duty on imports or sales of such technical devices.

202. In response to a Member who asked how Montenegro intended to codify into the Law on Copyright and Related Rights Article 18 of the Berne Convention, which required that copyright

protection be applied to all works which had not fallen into the public domain in the country of origin through the expiry of the term of protection, the representative of Montenegro noted that Article 195 of the Law on Copyright and Related Rights provided for such protection. Pursuant to this Article, copyright protection extended to all works, which at the moment of entry into force of the Law, had not fallen into the public domain through the expiry of the term. Works which had fallen into the public domain through the expiry of the term could not be protected anew. There was, in her view, no need for further codification of Article 18. She added that the Berne Convention was directly enforceable and took precedence over domestic legislation.

203. Some Members questioned the compatibility of Article 125 of the Law on Copyright and Related Rights relating to phonograms with Article 15 of the WIPO Performances and Phonograms Treaty and of Article 144(2) of the Law on Copyright and Related Rights concerning the protection of producers of videograms with Article 12 of the TRIPS Agreement. In response, the representative of Montenegro acknowledged that the Law on Copyright and Related Rights was falling short of the requirements of paragraph 4 of Article 15 of the WIPO Performances and Phonograms Treaty and of Article 12 of the TRIPS Agreement. She noted that a new law on copyright would be developed soon to replace the State Union legislation on copyright and bring Montenegro's copyright legislation into conformity with the TRIPS Agreement and the WIPO Performances and Phonograms Treaty.

- **Trademarks, including service marks**

204. The representative of Montenegro said that trademarks, including service marks, were protected pursuant to the Law on Trademarks (SM OG Nos. 61/04 and 7/05). A trademark could consist of words, slogans, letters, numbers, pictures, drawings, colour combinations, three-dimensional forms, or a combination of such elements, as well as musical phrases that could be shown graphically.

205. Applications for registration had to be filed with the Union Intellectual Property Office (MIPO as of 19 July 2007). Documents to be submitted included the registration form; the sign to be protected; a list of goods and services to which the sign applied; and in the case of registration of collective trademarks, the general act on collective trademark which set out the conditions of use of collective trademarks and the measures to be taken in case of infringement of the collective trademark or violation of the general act. Registration was subject to fees set out under the Law. Applications were examined as to form and substance. Prior use was not a precondition for registration. Priority rights for registered trademarks were set according to the filing date and the rules of the Paris Convention. Registered marks were published in the Official Journal of the Union Intellectual Property Office (MIPO Official Journal as of 19 July 2007). Protection was provided for ten years

from the filing date, a period which could be extended an unlimited number of times upon payment of the appropriate fee.

206. Failure to use a trademark for an uninterrupted period of five years without justified reasons could lead to termination of the protection. "Justified reasons" were understood to mean any circumstances occurring independently of the right holders' will and creating obstacles to the use of the trademark. A registered trademark could be declared void, partly or fully, if it was determined that, at the time of approval, the legal conditions had not been met. Pursuant to Article 51, paragraph 1 of the Trademark Law, the IP Office, if informed - in any way and by any interested party - that the requirements for registration had not been met, could invalidate a trademark *ex officio*.

207. The Law on Trademarks also included specific provisions on the protection of well-known marks. Under the Law, a mark which was a reproduction, imitation, translation or transliteration of a well-known mark used by third persons for marking their goods and/or services, could not be protected as a trademark, if the use of such a mark would result in an unfair benefit or an injury to the distinctive character and/or reputation of the well-known mark.

208. She added that a new law on trademarks would be developed soon to replace the State Union legislation on trademarks.

- **Geographical indications, including appellations of origin**

209. The representative of Montenegro said that a new Law on Indications of Geographical Origin had been adopted on 11 May 2006 (SM OG No. 20/06). The Law protected appellations of origin and geographical indications (Article 1). Appellations of origin were defined as the geographical name of a country, region or locality, used to designate a product originating therein, the quality and characteristics of which were due exclusively or essentially to the geographical environment, including natural and human factors, and which was produced, manufactured or processed within a specific limited geographical area (Article 3). Geographical indications were indications that identified a good as originating from the territory of a specific country, region or locality within such territory, where a quality, reputation or other characteristic of the good could be essentially attributed to its geographical origin (Article 4).

210. Applications for registration of appellations of origin and geographical indications had to be filed with the Union Intellectual Property Office (MIPO as of 19 July 2007). Documents to be submitted included the registration form, data on the geographical area and, in the case of appellations of origin, a report on the method of production and the qualities and characteristics of the product.

Natural and legal persons wishing to use a geographical indication or an appellation of origin had to file an application with the Union Intellectual Property Office (MIPO as of 19 July 2007) for recognition as an authorized user. Applications for recognition as an authorized user had to be accompanied by a proof of activity and, in the case of appellations of origin, by a product control certificate. Applications for registration of appellations of origin and geographical indications, and appellations for recognition as an authorized user were examined as to form and substance. Approved appellations of origin and geographical indications and recognitions of authorized users were published in the Official Journal of the Union Intellectual Property Office (MIPO Official Journal as of 19 July 2007). The validity of appellations of origin and geographical indications was not limited in time. The right to use an appellation of origin or a geographical indication was granted for three years from the date of entry of the authorized user in the appropriate registry. This right could be renewed an unlimited number of times upon submission of new applications for recognition. Registration of appellations of origin or geographical indications and recognition as an authorized user could be declared void if it was determined that, at the time of approval, the legal conditions had not been met or, in the case of recognition as an authorized user, that the conditions for recognition had ceased to exist. Registered appellations of origin and geographical indications ceased to be valid when protection in the country of origin elapsed, and registered geographical indications could be annulled by court decision if it was established that a geographical indication had become a generic name. She confirmed that Montenegro's legislation on geographical indications covered all goods. Non-geographical names (e.g. traditional or historic names) could be registered as geographical indications in accordance with the draft Law on Indications of Geographical Indications.

211. A Member was concerned that the provisions of Article 14 of the new Law requiring foreign applicants to submit documents proving the applicant's right to the geographical indication in the country of origin could be used to deny protection to applications from countries with a different system of protection. This Member sought confirmation that certification mark registrations or non-official documents such as affidavits were accepted as evidence of protection. In response, the representative of Montenegro explained that Article 14 allowed foreign persons to file an application if the appellation of origin or geographical indication was recognized in the applicant's country of origin, irrespective of the registration system applied in that country. Thus, certification mark registrations and affidavits were accepted as evidence of protection. Owners of geographical indications could provide their own affidavits attesting protection in the country of origin, provided such documents were considered sufficient to prove the existence of a right in the country of origin.

212. Asked to explain the rationale of Article 7 which excluded from protection geographical indications for wines identical to the name of a variety of grape that existed in the territory of Serbia

and Montenegro before 1 January 1995, the representative of Montenegro replied that Article 7 of the Law was consistent with Article 24.6 of the TRIPS Agreement.

213. Noting that Article 46 prohibited the transfer of rights, licence agreements, pledges, franchises or the like of geographical indications and relevant trademarks, a Member invited Montenegro to explain the effect of such a provision on geographical indications originating in a foreign country where such transactions were not prohibited, and the result if such a transaction was effected. In response, the representative of Montenegro explained that Article 46 applied only to domestic geographical indications and appellations of origin. Article 46 had no effect on foreign geographical indications, including those originating in a country where such transactions were not prohibited. She added that if such a transaction was made, it would be declared void and the geographical indication or appellation of origin would not be cancelled.

214. A Member noted that Article 44 of the new Law did not seem to protect the rights of trademark owners as required by Articles 16.1 and 24.5 of the TRIPS Agreement, as it appeared to allow for a geographical indication to be registered even in case of conflict with a prior trademark which could result in a likelihood of confusion. The representative of Montenegro noted that Article 44 referred only to geographical indications, not to appellations of origin. She acknowledged, however, that Article 44 did not guarantee the exclusive rights of the owner of a prior-in-time trademark against a later-in-time and confusingly similar geographical indication. In order to address this issue, a new Law on Indications of Geographical Origin had been passed by the Parliament on 29 July 2008 in replacement of the former Union law (OG MNE 12/08). The Law had come into effect on 19 August 2008 and was in full compliance with Articles 16.1 and 24.5 of the TRIPS Agreement.

- **Industrial designs**

215. The representative of Montenegro said that industrial designs were protected pursuant to the Law on Legal Protection of Design (SM OG No. 61/04). Industrial designs were defined as the two- or three-dimensional appearance of a product or part thereof whose character resulted from its ornamentation or special features of lines, contours, colours, shape, texture, or materials, or their combination (Article 2). Only new industrial designs presenting an "individual character" could be registered (Article 3). A design was considered "new" when no identical design had been made available to the public before the date of filing of the application for registration, or when no application for registration of an identical design had yet been filed. Designs were deemed identical when they presented only "immaterial," i.e. negligible, differences (Article 4). A design was considered to present an "individual character" when the overall impression the design produced on an

informed user differed from the overall impression produced by any other design made available to the public before the date of filing of the application for registration (Article 5).

216. Applications for registration of an industrial design had to be submitted to the Union Intellectual Property Office (MIPO once operational). Registered designs were protected for 25 years from the filing date, provided the prescribed fees had been duly paid (Article 11). Registration could be nullified if it was proven that the required conditions had not been met when protection had been granted.

- **Patents**

217. The representative of Montenegro said that the Law on Patents (SM OG No. 32/2004) protected inventions under two regimes, the patent regime and the petty patent regime. Patents protected inventions which were new, involved an inventive step, and were industrially applicable (Article 2). Petty patents protected inventions with a lesser level of inventiveness.

218. Applications for registration of a patent had to be filed with the Union Intellectual Property Office (MIPO once operational). Documents to be submitted included the registration form, a description of the invention, one or more claims for protection of the invention through a patent or a petty patent, any drawings referred to in the description and claim(s), an abstract of the description, and proof of payment of the prescribed filing fee. Patent applications were subject to examination as to form and substance. Applications having successfully passed the formal examination were published in the Official Journal of the Union Intellectual Property Office (MIPO Official Journal once MIPO would be operational). Their substance was examined after payment of the prescribed examination fee. Registered patents were published in the Official Journal. Priority rights were established according to the filing date or, if applicable, to the priority rules of the Paris Convention. Petty patent applications were only examined as to form. Petty patent applications were not published, but approved petty patents were subject to publication.

219. Patents were granted for 20 years, non renewable, from the filing date. Petty patents were valid for six years from the filing date, a period which could be renewed twice for two years upon payment of the prescribed fee. Patents and petty patents could be declared void if it was proven that the required conditions had not been met when protection had been granted or that the extent of rights granted was broader than justified by the description of the invention.

220. Conditions and procedures for granting compulsory licenses were laid down in Articles 63 - 70 of the Law. Compulsory licenses could be granted in case of refusal of the patent holder to conclude a

licensing agreement, or of imposition of unjustified conditions for the conclusion of such an agreement. The scope and duration of a compulsory licence were limited to the purpose for which the licence had been granted. Requests for issuance of compulsory licenses had to be submitted to the Ministry competent in the field in which the invention would be applied. Decisions to grant a compulsory licence were subject to judicial review by the Administrative Court of Montenegro (Article 70). The right of the patent holder to remuneration was regulated by Article 64. Under this Article, in the absence of Agreement between the parties, the Basic Court or the Commercial Court, as the case may be, determined the amount of remuneration and the method of payment, taking into account the merits of each individual case and the economic value of the compulsory licence - basic courts had jurisdiction over natural persons and commercial courts over legal persons and entrepreneurs. In response to a Member who asked whether remuneration decisions of basic courts and commercial courts were subject to judicial review as required under Article 31 (j) of the TRIPS Agreement, the representative of Montenegro confirmed that decisions of basic courts could be appealed to the Superior Court and decisions of commercial courts to the Appellate Court.

221. Asked to clarify the apparent contradiction between Article 7.2 which prohibited patents for surgical, therapeutic or diagnostic methods, and Article 8 which allowed patents of new surgical, therapeutic or diagnostic methods using a known substance, the representative of Montenegro explained that Article 7.2 prohibited patents for surgical, therapeutic, or diagnostic methods, but allowed patents for substances or compositions used in these methods. As for Article 8, it stipulated that substances and compositions for treatment by surgical, therapeutic or diagnostic methods which had not been used in a similar way before were patentable. Thus, while surgical, therapeutic or diagnostic methods could not be protected through a patent, substances and compositions used in these methods were patentable.

222. A Member noted that Article 43, by requiring that the subject matter of a patent application "constitute a technical solution of a specific problem", seemed to create a fourth requirement of patentability in contradiction with Article 27.1 of the TRIPS Agreement. This Member also observed that Article 63 did not ensure that in the case of semiconductor technology, the scope and duration of a compulsory licence should only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive as provided for in Article 31 (c) of the TRIPS Agreement. In response, the representative of Montenegro said that a new Law on Patents had been drafted to bring Montenegro's regime into conformity with Articles 27.1 and 31 (c) of the TRIPS Agreement. The draft had been approved by the Government in February 2008 and was pending passage by Parliament.

- **Plant variety protection**

223. The representative of Montenegro said plant varieties were protected under the Law on Protection of Varieties of Agricultural and Forest Plants (FRY OG No. 28/2000). This Law, however, did not meet international standards. A new UPOV-compliant Law on Protection of Plant Varieties had therefore been adopted (RM OG Nos. 48/07 and 48/08). The new law regulated the rights and obligation of holders of breeders' rights and the procedures for protection of plant varieties. The law was applicable to all new, distinct, uniform, and stable plant genera and species designated by an appropriate denomination. Protection was granted for 25 years from the date the breeder's rights had been granted - 30 years for trees and wines. The new law guaranteed the application of national treatment to foreign nationals.

- **Layout designs of integrated circuits**

224. The representative of Montenegro said that layout designs of integrated circuits were protected under the Law on Protection of Topographies of Integrated Circuits (SM OG No. 61/04). Applications for registration had to be filed with the Union Intellectual Property Office (MIPO once operational). Rights arose as of the filing date or the date of first commercial use anywhere in the world, whichever was first, and ceased at the end of the 10th calendar year from the date the layout design of integrated circuits had been created. In response to a question, she added that the Law did not provide for interim measures.

- **Requirements on undisclosed information, including trade secrets and test data**

225. The representative of Montenegro said that there was no specific law protecting undisclosed information. Business secrets were protected under the Law on Business Companies (RM OG No. 6/02), the Criminal Code (RM OG Nos. 70/03 and 13/04), the Law on Protection of Varieties of Agricultural and Forest Plants (FRY OG Nos. 24/98 and 26/98), the Law on Protection of Topographies of Integrated Circuits (SM OG No. 62/04), the Law on Medicines (RM OG No. 80/04) and the Law on Medical Devices, but these laws did not fully meet the requirements of the TRIPS Agreement relating to undisclosed information. A new Law on Protection of Undisclosed Information, which protected undisclosed information in conformity with Article 39 of the TRIPS Agreement, had therefore been adopted (OG MNE No. 96/07). She confirmed that this Law provided for a period of exclusivity that ensured protection of undisclosed test or other data relating to pharmaceutical and agricultural chemicals from reliance by unauthorized third parties.

226. Having reviewed the new Law on Protection of Undisclosed Information, a Member noted that Article 9.3.1 seemed to extend the exception beyond that allowed for in Article 39.3 of the TRIPS Agreement. This Member also asked Montenegro to clarify whether Article 9.5 covered agricultural chemical products. In response, the representative of Montenegro said that her Government would amend Article 9.3.1 of the Law on Protection of Undisclosed Information to bring it into conformity with Article 39.3 of the TRIPS Agreement. She confirmed that Article 9.5 covered agricultural chemical products.

- **MEASURES TO CONTROL ABUSE OF INTELLECTUAL PROPERTY RIGHTS**

227. The representative of Montenegro said that abuse of patent rights, i.e. refusal to grant a licence or the setting of unreasonable licensing conditions, could result in compulsory licensing. She added that the Law on Protection of Competition (RM OG No. 69/05) included provisions on measures against unfair competition, monopolistic activities and limitation of the market (Article 2).

- **ENFORCEMENT**

- **Civil judicial procedures and remedies**

228. The representative of Montenegro said that civil judicial procedures and remedies related to intellectual property were governed by the Law on Civil Procedures (RM OG Nos. 22/04, 28/05 and 76/06) and Montenegro's intellectual property laws. Civil courts had jurisdiction over civil proceedings. However, when both parties were legal persons or entrepreneurs, or when the disputes arose from a commercial activity, the case was brought before the Commercial Court. Disputes involving a natural person or arising from a non-commercial activity were handled by the Basic Court.

229. Courts had the authority to order production of evidence; award damages; issue injunctions to prevent further violation; and order seizure, destruction or alteration of infringing goods, and materials and implements used in the creation of infringing goods. Right holders' requests to destroy or alter infringing goods or materials and implements were always granted. The representative of Montenegro noted, however, that the Law on Protection of Topographies of Integrated Circuits did not contain any provision on destruction or alteration of infringing goods, and materials and implements used in their creation. She added that pursuant to paragraph 4 of Article 177 of the Law on Copyright and Related Rights, the plaintiff could, instead of requesting destruction or alteration of the infringing goods, ask that the goods be handed over to him.

230. Damages were determined on the basis of direct losses, including any lost profit, taking into account, in particular, the remuneration that would have been payable had the right been lawfully used. When filing a case, the plaintiff had to specify the amount of damages and submit evidence to support the claim. If the defendant objected to the proposed amount, damages were calculated by an expert appointed by the Court. She noted that the defendant had to submit evidence to support its objection. The expert's review was not triggered solely by the defendant's sole conclusory objection. She confirmed that compensatory damages could include attorney's fees. Asked whether Montenegro's legislation provided for the indemnification of the wrongfully or restrained defendant in accordance with Article 48 of the TRIPS Agreement, she noted that pursuant to Article 154.1 of the Law on Contracts and Torts (SFRY OG Nos. 29/78, 39/85, 45/89, and 57/89; FRY OG Nos. 31/93, 22/99, 23/99, 35/99, and 44/99) any person having caused an injury was required to pay compensation for such injury, unless this person proved that he/she was not guilty.

231. Right holders could claim pre-established damages in case of infringement involving copyright and related rights, patents, trademarks, and undisclosed information and trade secrets (Article 178 of the Law on Copyright and Related Rights, Article 93.2 of the Law on Patents, Article 57.3 of the Law on Trademarks, Article 56 of the Law on Legal Protection of Design, and Article 27.4 of the Law on Protection of Topographies of Integrated Circuits). In the event of intentional infringement or infringement by gross negligence, pre-established damages could be claimed up to three times the amount of "usual remuneration" that would have been paid had the right been used lawfully. "Usual remuneration" was understood as the amount payable by the user of the right to the right holder for the lawful use of the right in the normal course of trade (retail price, licence fee or the like).

232. Asked whether Montenegro's legislation permitted the court to order the defendant to provide information about third parties related to an infringement or to hand over documents relating to the infringement pursuant to Article 47 of the TRIPS Agreement, the representative of Montenegro noted that Article 47 did not oblige Members to give judicial authorities the power to order an infringer to inform the right holder of the identity of third persons involved in the production and distribution of infringing goods and services. Nonetheless, such a provision had been included in the Law on Copyright and Related Rights (Article 185) and her Government intended to amend the legislation on trademarks and patents along the same lines. In response to a question, she confirmed that Montenegro's legislation complied with the general obligations laid down in Article 41 of the TRIPS Agreement.

- **Provisional measures**

233. The representative of Montenegro said that provisional measures were governed by Articles 182 to 184 of the Law on Copyright and Related Rights; Articles 92, 94 and 95 of the Law on Patents; Articles 57 and 61 to 64 of the Law on Trademarks; Articles 60 to 63 of the Law on Legal Protection of Design; Articles 60 to 64 of the Law on Indications of Geographical Origin; Articles 14 and 17 of the IPR Enforcement Law; Article 271 of the Law on Civil Procedures; and the Law on Execution Procedures (RM OG No. 23/04). Courts could, upon request of the right holder and presentation of credible evidence of an imminent or actual infringement, order provisional measures to prevent infringement or to preserve relevant evidence. Similar provisions had been included in the draft Law on Protection of Undisclosed Information.

234. Provisional measures included seizure, removal from channels of commerce of infringing goods, and injunctions prohibiting the continuation of actions that could lead to infringement. Inspection or rooms, books, documents, databases, and examination of witnesses and experts were also permitted. Provisional measures could be requested prior to an action being filed for determination on the merits of a claim. Pursuant to Article 64 of the Law on Trademarks, the court could order an applicant to deposit a security in the event the request was found to be groundless - no such provision had been included in the Law on Copyright and Related Rights. If the court considered the evidence presented to support a request credible enough, provisional measures could be ordered within a few weeks - or days if circumstances permitted. Provisional measures could be ordered *inaudita altera parte* in the case of copyright and trademark infringement actions if there was a demonstrable risk that pertinent evidence might be destroyed or impossible to obtain at a later stage, and in the case of irreparable harm to the right holder as required in Article 50.2 of the TRIPS Agreement. Where provisional measures had been adopted *inaudita altera parte*, the parties affected were given notice, in accordance with Article 50.4 of the TRIPS Agreement (Article 183.3 of the Law on Copyright and Related Rights, Article 62.3 of the Trademark Law, Article 61.3 of the Law on Protection of Design, Article 94.3 of the draft Patent Law, and Article 61.3 of the draft Law on Indications of Geographical Indications). Appeals of provisional measures did not stay the execution of a decision on provisional measures. She confirmed that the Law on Litigation Proceedings and the Law on Enforcement Proceedings provided for the possibility of a review upon request of the defendant, including a right to be heard, as provided in Article 50.4 of the TRIPS Agreement.

- **Administrative procedures and remedies**

235. The representative of Montenegro said that administrative procedures and remedies were regulated by Montenegro's Law on General Administrative Procedure (RM OG No. 60/03). The

authorities competent to take administrative action in relation to infringement of intellectual property rights were the Union Intellectual Property Office (MIPO once operational) and Montenegro's Customs Administration. Montenegro's legislation did not provide for a second-level administrative authority to review MIPO decisions. However, all MIPO decisions could be appealed before the Administrative Court of Montenegro. She added that first instance decisions of the Customs Administration could be contested before the Ministry of Finance. Ministry of Finance decisions were subject to review by the Administrative Court of Montenegro.

236. Asked to describe the circumstances in which administrative procedures and remedies were applicable rather than civil procedures and remedies, the representative of Montenegro said that administrative procedures were applied to matters related to registration of intellectual property rights and border measures.

- Special border measures

237. The representative of Montenegro said that pursuant to the Regulation on Actions of the Customs Authority Applicable to Goods Suspected to be Infringing Goods (RM OG No. 25/05), customs authorities could, upon request of the right holder, suspend customs clearance of imported and exported goods and goods in transit suspected of violating intellectual property rights (Article 3). Requests for suspension of customs clearance had to be filed with the Customs Administration Headquarters, and be accompanied by a description of the goods sufficient to allow the customs authorities to recognize the goods, and a proof of the right holder's exclusive rights (Article 4). Requests for suspension of customs clearance were subject to a €100 fee pursuant to the Decree on the Types, Amounts, and Manner of Payment of Fee for Services Rendered by Customs Authorities (RM OG No. 66/06). The applicant could be requested to provide a security equal to any costs incurred by the suspension of the goods (Article 8 of the Regulation). Right holders had the right to inspect the suspected goods, provided such inspection took place in the customs premises and under customs supervision (Article 9). In case of evidence of a *prima facie* infringement, customs authorities could take *ex officio* action (Article 11). Customs authorities were required to inform the importer, exporter or owner of the goods, and the right holder or his/her representative of the measures taken without delay (Articles 9.2 and 11.2). Decisions on the merit of the case were referred to court. She confirmed that the mandate of customs authorities to take *ex officio* action applied to all IP rights and to goods in transit and that the right holder was required to provide adequate evidence for *prima facie* infringement to satisfy the competent authorities in an application for the suspension of release of infringing goods as required in Article 52 of the TRIPS Agreement. Article 13 provided for compensation of the importer or the owner in case of wrongful detention of

the goods and Articles 14 and 15 for the destruction and disposal of infringing goods outside the normal channels of commerce. In response to a question, she added that the re-exportation of infringing goods in an unaltered state was not regarded as disposal outside the normal channels of commerce under Article 14.2. She confirmed that all actions by customs authorities could be appealed, including *ex officio* actions.

238. Asked whether the importer had any rights in the process leading to a Customs Administration's decision, the representative of Montenegro said that applications for suspension of customs clearance were submitted prior to importation, while the actual importers of the suspected products were not known. However, importers were informed of the suspension decision immediately and were entitled to submit evidence to support their claim.

239. Questioned about the personal use exemption foreseen in Article 1.2.3, the representative of Montenegro explained that this exemption was limited to one copy only. The Regulation on Actions of the Customs Authority Applicable to Goods Suspected to be Infringing Goods applied whenever more than one identical copy of a suspected product was imported, exported, or imported in transit.

240. Asked whether Montenegro's legislation limited the suspension time period to ten working days with a possible extension by another ten working days in accordance with Article 55 of the TRIPS Agreement, the representative of Montenegro said that the Regulation had been amended in March 2008 to be brought into conformity with Article 55 of the TRIPS Agreement (OG MNE No. 16/08).

- **Criminal procedures**

241. The representative of Montenegro said that infringement of intellectual property rights could be liable to criminal prosecution pursuant to the Criminal Code, as amended on 3 August 2006 (RM OG No. 47/06), and Articles 19 to 26 of the IPR Enforcement Law. Criminal procedures were administered by court. The State prosecutor had the authority to take *ex officio* action. Penalties included fines ranging from €1,000 to €30,000 and prison sentences of up to eight years. The type and level of penalty, including imprisonment, were determined by the court taking into account the specificities of each case. She confirmed that the Criminal Code provided for the confiscation, or confiscation and destruction of infringing goods, and materials and implements used to commit the offence, regardless of the level use. Thus, the level of protection provided by Montenegro's Criminal Code exceeded the requirement of Article 61 of the TRIPS Agreement.

242. In response to a question, she noted that Montenegro's legislation did not prescribe the level of infringing activity required to initiate criminal prosecution. The level of infringement was, however, relevant for determining the sentence. She noted that Montenegro's Penal Code clearly identified the types of intellectual property rights infringement and related criminal procedures and penalties. In her view, Montenegro's legislation was in compliance with Article 61 of the TRIPS Agreement.

VI. POLICIES AFFECTING TRADE IN SERVICES

243. The representative of Montenegro said that Montenegro had traditionally been a net exporter of services. Exports and imports of services had almost doubled in recent years, mainly due to the substantial increase in tourism services. She provided information based on the services sectoral classification list in document WT/ACC/CGR/3/Add.1, Annex 7, and information on policy measures affecting trade in services in the format of document WT/ACC/5 in document WT/ACC/CGR/4 and Corrigendum 1.

244. Montenegro's legislation did not impose any restrictions on capital transactions affecting the supply of services, the total value of service transactions or assets, the total number of service operations, the total quantity of service output, or the total number of natural persons that could be employed in a particular service sector. The number of service suppliers was not subject to any limitation, but foreign persons were not allowed to establish service companies involved in trade in weapons or located in some restricted areas (e.g. "frontier strip" and national parks). Some restrictions or requirements also existed regarding the type of legal entities that could be established. Commercial banks and companies engaged in brokerage, dealing, investment management and underwriting, for example, had to be incorporated as joint-stock companies.

245. She added that some service sectors, including banking, insurance, medical, educational and transport services, were subject to licensing. She provided a list of State and non-State bodies responsible for issuing service licenses in Tables 9 (a) and 9 (b). Licensing of charter road transport was subject to reciprocity. In addition, foreign persons employed in a branch office or a business entity subject to a business cooperation agreement; foreign persons engaged in educational activities on national and ethnic minorities' languages; sport professionals; and husbands, wives and children of a foreign person with a permanent residence permit were delivered work permits in accordance with international agreements.

246. Responding to specific requests of a Member, the representative of Montenegro confirmed that for the services included in Montenegro's Schedule of Specific Commitments Montenegro would

ensure that its licensing procedures and conditions would not act as independent barriers to market access. She further confirmed, in particular that, from the date of accession, (i) Montenegro's licensing procedures and conditions would be published prior to becoming effective; (ii) Montenegro would specify reasonable timeframes for the review and decision by all relevant authorities in Montenegro's licensing procedures and conditions; (iii) applicants would be able to request licensing without individual invitation; (iv) any fees charged, which were not deemed to include fees determined through auction or a tendering process, would be commensurate with the administrative cost of processing an application; (v) the competent authorities of Montenegro would, after the receipt of an application, inform the applicant whether the application was considered complete under Montenegro's domestic laws and regulations and in the case of incomplete applications, would identify the additional information required to complete the application and provide an opportunity to rectify deficiencies; (vi) decisions would be taken promptly on all applications; (vii) if an application was terminated or denied, the applicant would be informed in writing and without delay of the reasons for such action. The applicant would have the possibility to resubmit, at his/her discretion, a new application addressing the reasons for termination or denial; and (viii) in case examinations were held for the licensing of professionals, such examinations would be scheduled at reasonable intervals. The Working Party took note of these commitments.

247. In addition, the representative of Montenegro confirmed that, from the date of accession, Montenegro would (i) publish in advance any regulations or other implementing measures of general application, pertaining to or affecting trade in services, that it proposed to adopt, the purpose of the regulation or other implementing measure, the effective date of these measures, and the scope of services or activities affected; (ii) provide interested persons and other Members a reasonable opportunity to comment on such proposed regulation or other implementing measure; and (iii) allow reasonable time between publication of the final regulation or other implementing measure and its effective date. The Working Party took note of these commitments.

248. In addition, the representative of Montenegro confirmed that, upon accession, Montenegro would publish a list of all organizations that were responsible for authorizing, approving or regulating service activities for each service sector, and would publish in the official journal, upon accession, all of its licensing procedures and conditions. The Working Party took note of these commitments.

249. The Government of Montenegro granted a number of subsidies in the form of incentives for bus, air, rail or ship transport related to tourism; preferential interest rates for credits granted by commercial banks to the tourism sector; and partial reimbursement of registration costs for private accommodation to stimulate the development of tourism (Law on Tourism, RM OG Nos. 32/02,

41/02, 45/02, 38/03,11/04, 31/05 and 13/07). These subsidies were granted to both domestic providers and foreign providers registered at the Central Register of the Commercial Court in accordance with the Law on Business Entities. Some tax exemptions and reductions were also granted under the Law on Environment to service providers for the use of clean technologies and recycling (RM OG Nos. 12/96, 55/00 and 80/05). She added that the fees imposed on foreign producers of films and TV series without a Montenegrin partner had been abolished on 23 November 2006 (amendments to the Law on Cinematography RM OG Nos. 45/93 and 27/94).

250. Legal services were regulated by the new Montenegrin Law on Legal Services (RM OG No. 79/06) and the Tariff on Fees and Compensation of Costs for Performance of Attorney's Activities (RM OG No.18/02). Pursuant to the new Law, which had entered into force in January 2007, foreign lawyers could freely provide consultancy services on international law and third countries' law, but representation before administrative and judicial tribunals was subject to reciprocity.

251. The telecommunications sector was regulated by the Law on Electronic Communications (OG MNE No. 50/08), which had been adopted by the Parliament on 19 August 2008. An Agency for Telecommunications and Postal Services had been established in March 2001 as an independent regulatory Body. The Agency was responsible for promoting competition and access to networks, issuing licenses to operators, and regulating tariffs. Telekom Montenegro was the leading telecommunications operator in Montenegro. Telekom Montenegro had been created in December 1998 following the split of the State-owned PTT Montenegro into postal and telecommunication services. Telekom Montenegro had been fully privatized in March 2005, when the State had sold all its remaining shares (51.1 per cent) to Matav (the Hungarian telecommunications company, owned by German Telecom). Telekom Montenegro had been granted a monopoly over fixed telecommunications until 31 December 2003. All restrictions on foreign investment in this area had since then been eliminated. Three companies, ProMonte, Monet, and MTel, provided mobile services in Montenegro.

252. A new Law on Postal Services had been passed in July 2005 (RM OG No. 46/05). Under the Law, the public postal operator Posta Montenegro had exclusivity over the collection, transportation and delivery of letters up to a certain weight and value; the collection, transportation and disbursement of money orders; and the collection, transportation and delivery of court mail and official letters related to administrative or judicial proceedings. Other universal postal services could be provided by any domestic or foreign operator established in Montenegro as a legal entity, duly licensed by the Agency for Telecommunications and Postal Services.

253. Insurance services were regulated by the Law on Insurance (RM OG Nos. 78/06 and 19/07). The Law provided for the establishment of a new Insurance Supervision Agency as an independent regulatory Body. The Council of the Agency had been appointed on 3 July 2007, and the Parliament had approved the Agency's statute, financial plan and programme in December 2007. The Agency had started operating but would only be fully capable of performing its functions by the end of 2011. All financial institutions in Montenegro, including insurance companies, had to be incorporated as joint-stock companies. Foreign insurance companies were not subject to any restrictions. She confirmed that all insurance companies could reinsure abroad. She added that a new Law on Banks had been enacted (OG MNE No. 17/08). Under the new law, foreign banks were allowed to set up subsidiaries, branch offices or representative offices in Montenegro. Representative offices could only perform preparatory activities, such as market research; they could not provide banking services. The establishment of banks and representative offices was subject to the approval of the Central Bank of Montenegro. She confirmed that foreign and domestic banks were subject to the same requirements. Asked whether Montenegro intended to explicitly authorize branches and representative offices for foreign insurance companies as it had done for banks, the representative of Montenegro noted that given the level of development of the insurance market, a transitional period was necessary before further liberalization could be carried out. Supervision, in particular, had to be strengthened. A number of measures were planned in the lead up to 2011 before the Insurance Supervision Agency would become fully operational, including, the negotiation of memoranda on technical cooperation with other regulatory bodies in the region, intensive training of personnel, and the adoption of by-laws required for the implementation of the Law on Insurance.

VII. TRANSPARENCY

- Publication of information on trade

254. The representative of Montenegro confirmed that all laws and regulations were published in the Official Gazette of Montenegro immediately after their adoption. No legal act of general applicability could enter into force before being published in the Official Gazette. As such, from the date of accession, all laws, regulations, decrees, judicial decisions and administrative rulings of general application related to trade in goods, services or TRIPS would be published promptly in a manner that fulfils WTO requirements, and no law or regulation related to international trade would become effective prior to such publication in the Official Journal. She further confirmed that upon accession Montenegro would post the contents of current and past editions of the Official Journal on the Government website and keep them current. In addition, all regulations and other normative acts or measures pertaining to or affecting trade in goods, services, or TRIPS would be published promptly

in a single official source, and that no such regulation or other normative act or measure would become effective or be enforced prior to such publication. She further confirmed that within two years of accession Montenegro would establish or designate an official journal or website, published or updated on a regular basis and readily available to WTO Members, and individuals and enterprises thereof, dedicated to the publication of all regulations and other measures pertaining to or affecting trade in goods, services, and TRIPS prior to enactment. She further confirmed that Montenegro would provide a reasonable period, i.e., no less than 30 days, for comment to the appropriate authorities before such measures are implemented, except for those regulations and other measures involving national emergency or security, or for which the publication would impede law enforcement. The publication of regulations and other measures related to trade in goods, services or TRIPS would, where possible, include the effective date of these measures and list the products and services affected by the particular measure, identified by appropriate tariff line and classification. The Working Party took note of these commitments.

- **Notifications**

255. The representative of Montenegro said that, unless otherwise provided for in this Report, upon entry into force of the Protocol of Accession, Montenegro would submit all the initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Montenegro which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of these commitments.

VIII. TRADE AGREEMENTS

256. The representative of Montenegro said that the Republic of Montenegro was a party to a number of bilateral trade agreements on goods, services, and avoidance of double taxation; bilateral investment promotion agreements; bilateral labour-related agreements; and multilateral economic cooperation agreements. She provided a list of these agreements in document WT/ACC/CGR/3/Add.1, Annex 8. The State Union of Serbia and Montenegro had also signed and ratified eight bilateral free trade agreements (FTAs) - seven with Montenegro's South-East European neighbours, i.e. Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Moldova, and Romania, and one with the Russian Federation. Upon Montenegro's independence, Montenegro's Parliament had adopted a resolution whereby all international agreements signed by the State Union would continue to apply in Montenegro. The agreements with Bulgaria and Romania had since then been abolished, following Bulgaria's and Romania's accession to the EU. She noted that Montenegro

was not a member of any customs union. In response to a question, she added that Montenegro did not grant GSP treatment to any of its trading partners.

257. The negotiation of bilateral free trade agreements among South-East European countries was based on the Memorandum of Understanding on Trade Liberalization and Facilitation signed on 27 June 2001 by the ministers of foreign trade of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Moldova, Romania, and Serbia and Montenegro under the auspices of the Stability Pact for South-East Europe. The Memorandum spelled out the basic principles to be included in each FTA, including the elimination of export duties and taxes upon entry into force of the FTAs; the abolition of import duties and taxes for at least 90 per cent of the value of trade between the contracting parties - elimination upon entry into force of the FTA for a majority of products and over a six-year period for the remaining goods covered by the FTA; the removal of WTO-inconsistent quantitative restrictions - exemptions had to be selective and limited in time; the application of transparent and non-discriminatory measures in the area of public procurement, Government aid and State monopoly; the simplification of customs procedures; the harmonization of the methods for collecting statistical trade data; the harmonization of SPS measures with WTO and other relevant international organizations' rules; greater cooperation on TBT issues; the harmonization of local tax and banking legislation with EU regulations; the implementation of intellectual property rights in compliance with WTO standards; the liberalization of trade in services; and compliance of FTAs provisions on implementation of antidumping, countervailing, and safeguard measures with WTO rules. A total of 28 bilateral free trade agreements had been negotiated, seven of which involved Montenegro. All these agreements were based on WTO rules and principles.

258. In accordance with the bilateral free trade agreements with Albania, Bosnia and Herzegovina, Croatia, FYROM, and Moldova, Montenegro's trade in industrial goods with these countries had been fully liberalized on 1 January 2007. Import duties on most agricultural products had been either eliminated or lowered, depending on the sensitivity of the product. Particularly sensitive agricultural products were subject to annual duty-free or low-duty quotas. Imports in excess of the agreed quotas were subject to normal customs duties. She provided a detailed description of these agreements and information on trade with South-East European countries in document WT/ACC/CGR/3, pages 104 to 112. She added that an Agreement on Amendment and Accession to the Central Free Trade Agreement (CEFTA 2006) had been signed on 19 December 2006 by Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Moldova, Montenegro, Romania, Serbia, and UNMIK. CEFTA 2006 covered a number of areas not dealt with in the bilateral free trade agreements, including services, intellectual property, government procurement and investment. CEFTA 2006 had

entered into force on 26 July 2007 in Albania, UNMIK/Kosovo, Montenegro, Macedonia, and Moldova; in August in Croatia; in September in Serbia; and in November in Bosnia and Herzegovina.

259. The bilateral free trade Agreement with the Russian Federation had been signed on 28 August 2000 and ratified on 9 May 2001. The Agreement provided for the gradual elimination of import duties, charges, and other equivalent measures over a five-year period - however, as of January 2008, trade with the Russian Federation had not been fully liberalized. The Agreement also included provisions on the non-discriminatory application of SPS measures; the application of rules of origin in accordance with the legislation of the importing country; the re-exportation of goods originating in the customs territory of the other contacting party - non-sanctioned re-exportation was prohibited; the implementation of anti-dumping, countervailing and safeguard measures in accordance with WTO rules; the protection of intellectual property rights in accordance with the conventions to which both parties were signatories; transfers and payments - which should be free from any restriction; and special procedures for applying protective measures and measures for balance-of-payment purposes for limited duration.

260. She added that a Stabilization and Association Agreement (SAA) with the European Union had been initialled in March 2007. The Agreement had been signed in October 2007 and the Law on the Ratification of the Stabilization and Association Agreement between the European Communities and their Member Countries and the Republic of Montenegro had entered into force on 9 November 2007 (OG MNE No.07/07-1 of 2 November 2007). The Interim Agreement had become effective in January 2008.

261. The representative of Montenegro confirmed that Montenegro would comply with all WTO provisions, including Article XXIV of GATT 1994 and Article V of the GATS, when participating in preferential trade agreements. To this end, Montenegro would ensure that, from the date of accession, its preferential trade agreements complied with the provisions of the WTO Agreement for notification, consultation and other requirements concerning free trade areas and customs unions. She further confirmed that Montenegro would, upon accession, submit notifications and copies of its Free Trade Areas and Custom Union Agreements to the Committee on Regional Trade Agreements (CRTA). She further confirmed that any legislation or regulations required to be altered under its trade agreements would remain consistent with the provision of the WTO and would, in any case, be notified to the CRTA during its examination of the same. The Working Party took note of these commitments.

CONCLUSIONS

262. The Working Party took note of the explanations and statements of Montenegro concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by Montenegro in relation to certain specific matters which are reproduced in paragraphs [31, 33, 40, ,52, 55, 72, 77, 81, 87, 97, 108, 113, 117, 120, 126, 135, 146, 161, 168, 173, 176, 246, 247, 248, 254, 255, and 261] of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the draft Protocol of Accession of Montenegro to the WTO.

263. Having carried out the examination of the foreign trade regime of Montenegro and in the light of the explanations, commitments and concessions made by the representative of Montenegro, the Working Party reached the conclusion that Montenegro be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this Report, and takes note of Montenegro's Schedule of Concessions and Commitments on Goods (document WT/ACC/CGR/../Add.1) and its Schedule of Specific Commitments on Services (document WT/ACC/CGR/../Add.2) that are annexed to the draft Protocol. It is proposed that these texts be adopted by the General Council when it adopts the Report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Montenegro which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Montenegro to the Marrakesh Agreement Establishing the WTO.

ANNEX 1

Laws, Regulations and Other Information Provided to the Working Party by Montenegro

- Economic Reform Agenda;
- Law "On Foreign Current and Capital Operations" (RM OG No. 45/05);
- Law "On Foreign Investment" (RM OG No. 52/00);
- Draft Law "On Property, Chapter XII, Regulating the Rights of Foreign Persons";
- Decision "On Privatization Plan for 2008" (RM OG No. 17/08);
- Law "On Abolishment of the Law 'On Social Price Control'" (RM OG No. 27/2006);
- Law "On Protection of Competition" (RM OG No. 69/05);
- Decision "On the Promulgation of the Constitution of the Republic of Montenegro" of 12 October 2004;
- Decree "On the Proclamation of the Law On General Administrative Procedure" (RM OG No. 60/03) of 28 October 2003;
- Decree "On Promulgation of the Law On Administrative Disputes" (OG RM No. 60/2003) of 22 October 2003;
- Law "On Foreign Trade" (RM OG No. 28/04);
- Regulation "On Implementation of the Foreign Trade Law" (RM OG No. 52/04);
- Law "On Tobacco" (RM OG No. 80/2004 and No. 5/05);
- Law "On Customs Tariff" applied from January 2006;
- Draft Law on Customs Tariff - Applied Tariff Rates of the Republic of Montenegro (HS 2002);
- Applied Tariff Rates of the Republic of Montenegro (HS 1996);
- Customs Law, including amendments (RM OG Nos. 7/02, 38/02, 72/02, 21/03, 31/03, 29/05 and 66/06);
- Decree "On Amendments to the Decree 'On Implementation of the Customs Law'" (RM OG No. 81/06);
- Decree "On Implementation of the Customs Law" (RM OG Nos. 15/03 and 81/06).
- Decree "On Implementation of the Customs Law, Rules of Origin and Customs Valuation (RM OG No. 15/03);
- Decree "On the Types, Amounts and Manner of Payment of Fee for Services Rendered by Customs Authorities" (RM OG No. 4/07);
- Law "On Excise Tax" (RM OG Nos. 52/01 and 12/02);
- Law "On Excise Taxes", Provisions on Tobacco Products;
- Law "On Value Added Tax" (RM OG Nos. 65/01, 12/02, 38/02, 72/02 and 21/03);
- Decision "On Control List for Import and Export of Goods" (RM OG No. 44/04);
- Decision "On Control List for Export, Import and Transit of Goods" (RM OG No. 45/07);
- Law "On Foreign Trade in Weapons, Military Equipment and Dual-use Goods" (SM OG No. 7/05);
- Decision "On Control List for Export, import and Transit of Goods" of 16 March 2006;
- Customs Law, Chapter Three, "Value of Goods for Customs Purposes";
- Decree "On Implementation of Customs Law", Part 3, "Origin of Goods"; and Part 4, "Customs Valuation of Goods";
- Non-Preferential Origin of Goods; Part 3 of Rules on Origin of Goods (RM OG No. 15/03);
- List of Technical Regulations on Quality of Food and Industrial Products Applied in the Republic of Montenegro;
- Law "On Technical Requirements and Conformity Assessment of Products with Prescribed Requirements";
- Law "On Standardization";
- Strategy for Improving the Quality Infrastructure in Montenegro;
- "Food Safety Law" (RM OG No. 14/07);
- Law "On Veterinary" (RM OG No. 11/04);

- Edict "On Promulgation of the Veterinary Law" (RM OG No. 11/04);
- Law "On Plant Health Protection";
- Draft Law "On Plant Protection Product" of December 2007;
- Decree No. 01-961/2 "On Promulgation of Fertilizer Law", dated 2 August 2007 (RM OG No. 48/2007);
- Criteria for Establishing of Health Condition of the Crops and Facilities, Seeds, Nursery Plants and Planting Material;
- Law "On Seed Material of Agricultural Plants, promulgated on 20 April 2006" (RM OG No. 28/2006);
- Law "On Promulgation of the Law 'On Planting Material, promulgated on 20 April 2006'" (RM OG No. 28/2006);
- Decision "On Establishing the Accreditation Body of Montenegro" (RM OG No. 21/07);
- Draft Regulation "On the Procedure for Notification of Sanitary and Phytosanitary Measures";
- Law "On Genetically Modified Organisms and related regulations";
- Ordinance "On Undertaking the Measures to Prevent Introduction of the Animal Infectious Disease Bovine Spongiform Encephalopathy (BSE) in the Republic of Montenegro" (RM OG No. 23/05);
- Decision "On the Level of Compensation for Veterinary-Sanitary Control in the Trade Across the Border of the Republic of Montenegro" (RM OG No. 50/2005) of 7 July 2005;
- Law "On Free Zone" (RM OG No. 42/04);
- Law "On Free Zones" (RM OG No. 11/07);
- Law on Copyright and Related Rights of 1 January 2005 (Official Gazette No. 61 of Serbia and Montenegro of 24 December 2004);
- Law "On Cinematography";
- Law on Geographical Indications for the Federal Republic of Yugoslavia of 1 April 1995 (Official Gazette No. 15 of the Federal Republic of Yugoslavia of 24 March 1995);
- The Law "On Indications of Geographical Origin" (OG of Serbia and Montenegro No. 20/06);
- Law on Trademarks of 1 January 2005 (Official Gazette No. 61 of Serbia and Montenegro of 24 December 2004);
- Law on Patents of 10 July 2004 (Official Gazette No. 15 of Serbia and Montenegro of 2 July 2004);
- Law on Legal Protection of Design of 1 January 2005 (Official Gazette No. 61 of Serbia and Montenegro of 24 December 2004);
- Law on Protection of Topographies of Integrated Circuits of 1 January 2005 (Official Gazette No. 61 of Serbia and Montenegro of 24 December 2004);
- Draft Plant Variety Protection Law (dated January 2006);
- Draft Law "On Plant Variety Protection";
- Law "On Protection of Undisclosed Information" (RM OG No. 16/07);
- Law "On Optical Discs";
- Law "On Enforcement of the Legislation that Regulates Protection of Intellectual Property Rights" (RM OG No. 45/05);
- Regulation "On Providing the Application of Intellectual Property Rights", dated 20 September 2007 (RM OG No. 61/07);
- Regulation "On Actions of the Customs Authority Applicable to Goods Suspected of Infringement of Intellectual Property Rights" (RM OG No. 25/05);
- Penal Code of the Republic of Montenegro (Amendments Published in RM OG No. 47/06, on 25 July 2006. Effective as of 3 August 2006);
- Penal Code of the Republic of Montenegro (RM OG No. 47/06), Criminal Offences Against Intellectual Property Rights (Articles 233 - 238, 271); and
- Law "On Banks", proposal of 7 November 2007.

ANNEX 2

Table 3: Administrative Fees and Charges

Fees	Level (€)
Tariff No. 1:	
For claims, requests, petitions, proposals and other applications	5
Tariff No. 22:	
For written decisions approving importing, exporting or transit of explosive substances and items, weapons and military equipment through the territory of the Republic, per ton of freight	20
Tariff No. 51:	
For a veterinary sanitary certificate on the health status of export consignments	5
Tariff No. 56:	
For a written decision determining the veterinary-sanitary requirements for importing consignments of animals and products, raw materials and waste of animal origin	60
For a written decision determining the veterinary-sanitary requirements for the transportation of consignments of animals and products, raw materials and waste of animal origin	90
For a written decision determining the veterinary-sanitary requirements for temporary imports, exports or transport of animals intended for sports events, fairs and exhibitions (horses, dogs, cats, birds, fish and similar)	60
Tariff No. 57:	
For the issuance of approval for temporary imports of animals for breeding purposes and seeds and other plant reproductive organs	15
Tariff No.58:	
For a written decision approving the importation of seeds, seedlings and planting material and determining the health status and variety of seeds, seedlings and planting materials being imported.	60
Tariff No. 60:	
For the issuance of phyto-certificates for export and re-export of plant consignments	50
For certificates on phytosanitary safety of seedlings and planting material in internal circulation	50
Tariff No. 62:	
For written decisions on authorizing a legal person for testing and determining the quality of seeds being exported and issuing certificates on the quality of seeds and planting material	50
For written decisions on the prohibition of imports of seeds and planting material	70
Tariff No. 65:	
For the issuance of export certificates for products obtained through organic production methods	20
Tariff No. 67:	
For written decisions on the issuance of licenses for placing in circulation plant-protection means (pesticides) and plant-nourishment means (fertilizers)	70
For written decisions on the renewal (revision) of licenses for placing in circulation plant-protection means (pesticides) and plant-nourishment means (fertilizers)	70
Tariff No. 68:	
For written decisions on approving the imports of plant-protection means (pesticides) and imports of active substances and concentrates for the production of pesticide end-products and plant-nourishment means (fertilizers)	70
For certificates that plant-protection means (pesticides) are not being produced in the Republic	20
Tariff No. 69:	
For written decisions determining the fulfilment of requirements by legal persons to place in circulation plant-protection means (pesticides) and plant-nourishment means (fertilizers) on wholesale and retail level	100
Tariff No. 75:	
For written decisions approving placing in circulation of genetically-modified organisms and products derived from genetically modified organisms	50

Fees	Level (€)
For written decisions determining the duration of the contained use, production and circulation of genetically modified organisms and products derived from genetically modified organisms	40
Tariff No. 77:	
For licence for imports, exports or transit of endangered and protected species of wild flora and fauna, their developing forms and parts	100
For licence for imports, exports or transit of genetic resources of wild flora and fauna, bio-technology and genetically-modified organisms	100
Tariff No. 78:	
For written decisions on the issuance of approval to place in circulation medicine and auxiliary therapeutic and medicinal media for use in medicine and dentistry	50
For written decisions on the renewal of an approval for placing in circulation medicine and auxiliary therapeutic and medicinal media for use in medicine and dentistry	30
Tariff No. 79:	
For permit approving the imports or exports of medicines, auxiliary therapeutic and medicinal substances, healing substances and mixtures of healing substances (semi-products) for the production of finished medicines, auxiliary therapeutic and medicinal media, for use in medicine and dentistry	30
For certificates that medicines and auxiliary therapeutic media are not produced in the Republic	10
For certificates that specific health-care equipment, appliances and instruments, as well as appropriate spare parts and operating supplies, are not produced in the Republic	10
Tariff No. 80:	
For written decisions determining that enterprises and other legal and natural persons may engage in the production or circulation of medicines and auxiliary therapeutic medical media for use in medicine and dentistry	100
Tariff No. 82:	
For written decisions determining legal persons and entrepreneurs for the production and circulation of poisons, or legal persons for performing control of poisons	170
Tariff No. 83:	
For an application for approval to place in circulation poisons for public hygiene use	40
Tariff No. 84:	
For written decisions approving the imports, exports or transit of poisonous substances through the territory of the Republic	100
Tariff No. 85:	
For licence to import substances which harm the ozone layer	150
For written decisions approving the transportation of radioactive substances across the borders of the Republic	500
For approval to foreign natural or legal person for the transit through the territory of the Republic of goods having properties of dangerous substances	20 per ton
Tariff No. 86:	
For approvals for the production or circulation of narcotics	150
For licence for importation or exportation of narcotics	130
For written decisions determining legal persons that may engage in the production or circulation of narcotics	150
Tariff No. 87:	
For written decisions determining legal persons and entrepreneurs that may produce, engage in circulation or use sources of ionizing radiation	100
Tariff No. 103:	
For a request for the inspection of a consignment (of food or Articles of general use) for the purpose of establishing health safety of goods being imported	5
For written decisions confirming that the consignment referred to in the preceding paragraph, with respect to health safety, conforms to the requirements prescribed in the Republic for such food products or products of general use	10

Fees	Level (€)
Tariff No. 104:	
For a request for the issuance of a certificate on the quality of agricultural and food products being imported, or exported	5
For written decisions establishing the quality of the products referred to in the preceding paragraph	50
Tariff No. 105:	
For licenses for exporting goods	30
For licenses for importing goods	60
For written decisions allocating quota for the exports of goods	25
For written decisions allocating quota for the imports of goods	50
Tariff No. 106:	
For approval of import-export customs clearance of goods where the goods do not cross the customs line	75
For approval of compensation operations with foreign partners	75
For approval of agency operations in foreign trade	90
Tariff No. 108:	
For a customs document used for the temporary accommodation of goods	5
Tariff No. 109:	
For written decisions (approvals) issued by the customs authorities in an administrative procedure:	
For written decisions (approvals) approving the opening or use of a customs warehouse	50
For written decisions (approvals) approving active or passive re-processing or processing procedure under customs supervision	30
For written decisions (approvals) approving temporary imports with exemption in part from the payment of customs duties	20
For written decisions (approvals) approving temporary imports with full exemption from the payment of customs duties	10
For written decisions (approvals) in connection with requests for the alteration of data in the Uniform Customs Declaration (JCI) on which the calculation of customs debt is based	30
For written decisions (approvals) in connection with requests for the exemption from the payment of customs duties	10
For other written decisions (approvals) issued by the customs authorities in an administrative procedure	10
For written decisions issued by the customs authorities in summary procedure:	
For written decisions (approvals) on the placement of temporarily imported navigational vessels under customs supervision	10
For other written decisions (approvals) issued by the customs authorities in summary procedure	6
Tariff No. 110:	
For a Uniform Customs Declaration when used in customs procedures, as well as for the calculation of customs debt in passenger traffic	6
Tariff No. 111:	
For the procedure under the Uniform Customs Declaration in cases when calculation and collection of customs debt are performed:	
(1) up to 100 kg	5
(2) from 100 kg to 10,000 kg	2
(3) for every 1,000 kg beyond 10,000 kg	1
Goods whose quantity cannot be expressed in kilograms shall be subject to the payment of fee per unit of measurement	1
Tariff No. 112:	
For certificates on the customs status of goods and certificates on the identity of goods	15
For the mandatory information on the classification of goods in the Customs Tariff nomenclature	15
For the mandatory information on the origin of the goods	15

Fees	Level (€)
Tariff No. 113:	
For the issuance of certificates on direct consignments, €1 and €2 goods trading certificates, FORM-A certificates on the origin of goods and other certificates on the origin of goods	15
Tariff No. 114:	
For written decisions (approvals) approving the commencement of operation of free economic zones and warehouses	100
For written decisions (approvals) approving the form and content of records kept in free economic zones and warehouses	30
Tariff No. 115:	
For cancelling an ATA carnet (regulation fee)	50
Tariff No.116:	
For the issuance of a certificate confirming that a motor vehicle fulfils technical requirements for transporting goods on the basis of a TIR carnet	50
Tariff No. 117	
For appeals against written decisions issued by customs offices in an administrative procedure lodged by legal and natural persons	6

Table 4: Products Subject to Excise Tax

Tariff Code	Description	Amount of Excise Tax (rate)
2402 20 10 00 2402 20 90 00 2402 90 00 00	Cigarettes	- Specific 1.00€ / 1000 pcs; and - Proportional 26% of their retail price.
2402 10 00 00 2402 90 00 00	Cigars and cigarillos	10.00€/kg.
2403 10 10 00 2403 10 90 00	Finely chopped tobacco	20.00€/kg.
2403 10 90 00	Smoking tobacco	15.00€/kg.
2203 2206 00 39 00 2206 00 59 00 2206 00 89 00	Beer	1.90€ per alcoholic content by volume per hectoliter of beer.
2204 21 2204 29 2205 10 10 00 2205 90 10 00	Table wines: 1. With an alcoholic content exceeding 1.2% vol but not exceeding 15% vol provided the quantity of alcohol contained in the final product is completely of fermented origin; and 2. With an alcoholic content exceeding 15% vol but not exceeding 18% vol provided the quantity of alcohol contained in the final product is completely of fermented origin and not enriched.	0€ (zero) per hectoliter of table wine.
2204 10 2205	Sparkling wines: 1. In bottles with ‘mushroom' stoppers imported or held in place under pressure of carbon dioxide of 3 or more bars; and 2. With an alcoholic content exceeding 1.2% vol but not exceeding 15% vol provided the quantity of alcohol contained in the final product is completely of fermented origin.	35€ per hectoliter of sparkling wine.
2204 2205 2206	Other fermented beverages, other than beer and wine: 1. With an alcoholic content exceeding 1.2% vol but not exceeding 10%; and 2. With an alcoholic content exceeding 10% vol but not exceeding 15% vol provided the alcohol contained in the final product is completely of fermented origin.	40€ per hectoliter of other fermented beverages.

Tariff Code	Description	Amount of Excise Tax (rate)
2204 21 95 00 2204 21 96 00 2204 21 98 00 2204 29 95 00 2204 29 96 00 2204 29 98 00 2205 10 90 00 2205 90 90 00 2206	Medium alcoholic beverages: - With an alcoholic content exceeding 1.2% vol but not exceeding 22%.	70€ per hectoliter of medium alcoholic beverages.
2207, 2208 2204, 2205, 2206	Ethyl alcohol: - With an alcoholic content exceeding 1.2% whether or not it is constituent part of the product having different tariff code; - With an alcoholic content exceeding 22%; and - Other alcoholic beverages containing ethyl alcohol whether or not in a solution, which are not covered by Articles 38 to 41 of this Law.	550€ per hectoliter of pure alcohol.
2710 11 31 00	Aviation spirit	0.12€/kg.
2710 11 41 00 2710 11 45 00 2710 11 49 00	Unleaded motor spirit	0.364€/l.
2710 11 70 00	Spirit type jet fuel	0.12€/kg.
2710 11 51 10 2710 11 51 90 2710 11 59 00	Other motor spirits	0.364€/l.
2710 19 21 00	Kerosene for motors	0.12€/kg.
2710 19 21 00	Kerosene type jet fuel	0.12€/kg.
2710 19 25 00	Other kerosenes	0.12€/kg.
2710 19 21 00	Kerosene type jet fuel used as heating fuel	0.069€/k.g
2710 19 41 10 2710 19 45 10 2710 19 49 10	Diesel fuel	0.27€/l.
2710 19 41 10 2710 19 45 10 2710 19 49 10	Diesel fuel used as heating fuel	0.12€/l.
2710 19 49 20	Fuel for ships	0.27€/l.
2710 19 49 90	Other oils	0.12€/l.
2710 19 61 00	Oil of low sulphur content for metallurgy	0.023€/kg.
2710 19 61 00 2710 19 63 00 2710 19 65 00 2710 19 69 00	Other fuel oils	0.023€/kg.
2711 19 00 00	Petroleum gases: - Propane and butane mixture.	0.069€/kg.
2711 19 00 00	Other petroleum gases	0.069€/kg.

Table 6: Imports Prohibited According to the Order on Ban of Import and Transit of Certain Plant Species and Determination of Quarantine Surveillance for Certain Plant Species Imported for Growing Purposes and List of Plants Subject to Quarantine Surveillance

I. Prohibited Imports and Transit for Phytosanitary Reasons

Item	Type of plant	Object of prohibition
1.	Plants from the genus Abies, Picea, Pinus Pseudotsuga, Tsuga and Larix originating from France, Spain and non-European countries.	The ban pertains to import of the plants and parts for propagation of these plants, except seeds and samples of graft-twigs and pollen originating from non-contaminated areas, and imported by scientific institutions dealing in selection, introduction of new species, varieties, lines and hybrids or plant protection.
2.	Plants from the genus Castanea and Quercus from all countries and genus Ulmus originating from the United States of America.	The ban pertains to import of the plants as well as parts for propagation of these plants, except the seed of Quercus and Ulmus and samples of the seed Castanea originating in non-contaminated areas and imported by scientific institutions dealing in selection, introduction of new species, varieties, lines and hybrids or plant protection.
3.	Plants form the genus Juniperus originating from the countries of Asia and North America.	The ban pertains to the import and transit of plants as well as parts for propagation of such plants, except the seeds.
4.	Plants from the family Rosaceae (genus Chaenomeles, Cydonia, Crataegus, Malus, Photinia, Prunus, Pyrus and Rosa) originating from the countries of Asia and North America.	The ban pertains to import and transit of plants as well as parts for propagation of such plants, except the seeds and plants in the stage of dormancy without leaves and fruit (import is permitted in the stage of dormancy and quarantine surveillance is applied).
5.	Plants from the genus Populus originating from France, Spain and non-European countries and the genus Platanus originating from the USA, France, Italy, Spain, Armenia and other countries where the quarantine harmful organism Ceratocystis fimbirata f. sp. platani had been found.	The ban pertains to import of plants as well as propagation parts of the respective plants, except the seeds and import of plant samples originating from non-contaminated areas, imported by scientific institutions dealing in introduction of new species, varieties, lines and hybrids.
6.	Potato (Solanum tuberosum and Solanum spp.) originating from Mexico and countries of Central and South America.	The ban pertains to import of potato for seed and consumption, including the wild or semi-cultivated clones, in particular tuber, plants with roots and parts of plants, except the real seed and cultures of tissues and samples originating form non-contaminated areas, and imported by scientific institutions dealing in introduction of new species, varieties, lines and hybrids.
7.	Coniferous wood from non-European countries with non-peeled bark.	The ban pertains to the import of wood except for the wood dried to less than 20% of moisture as expressed in percentage of dry matter (designation K.D. "Kilndried" etc.)
8.	Oak wood genus Quercus originating from the USA, Russian Federation and Romania and chestnut wood genus Castenea originating from all countries, with non-peeled bark.	The ban pertains to the import of wood except for the wood dried to less than 20% of moisture expressed in percentage of dry matter.
9.	Wood from the genus Populus, Ulmus, Zelkova, Fraxinus and Tillia americana originating from non-European countries with non-peeled bark.	The ban pertains to the import of wood except for the wood dried to less than 20% of moisture as expressed in percentage of dry matter.

Item	Type of plant	Object of prohibition
10.	Logs and timber of the wood genus Platanus from the USA, France, Italy, Spain, Armenia and other countries where Ceratosystis fimbriata f. sp. Platani was determined.	The ban pertains to import of logs and timber.
11.	Wood bark under ordinal numbers 7, 8, 9 and 10.	The ban pertains to import of wood bark if in the country of origin no disinsection and disinfection by fumigation or fermentation applying the prescribed method was applied.
12.	Corn stalks and sorghum straw if originating from the countries of Africa.	The ban pertains to import and transit of corn stalks and sorghum straw.
13.	Soil, compost and substratum mixed with soil or compost, with plants or without plants, originating from the non-European countries.	The ban pertains to import of soil, compost and mixed substratum for which no disinfection and disinsection has been performed.
14.	Plants from the genus Fragaria originating from non-European countries.	The ban pertains to the import of plants, except for seeds and fruits.

II. Plants Subject to Quarantine Surveillance

Quarantine surveillance is prescribed for plants imported for propagation purposes as follows:

1. Graft-twigs and pollen of the genus Abies, Picea, Pinus, Pseudotsuga, Tsuga and Larix and samples of the plant seed of genus Castanea and Quercus if the import is restricted under Ordinal No. 1 and 2 of Exhibit A12.3;
2. The genus Abies, Picea, Pinus, Pseudotsuga, Tsuga and Larix originating from non-European countries;
3. The genus Populus and Platanus if the import is restricted under the ordinal No. 5 of Exhibit A12.3; and
4. Seed potato samples (Solanum spp.) if the import is restricted under the ordinal No. 6 of Exhibit A12.3.

Quarantine surveillance of plants referred to in items 2. and 3. hereof pertains to the entire live plant and their parts for propagation, except the seeds.

Table 9 (a) - State Bodies with a Regulatory Role in Service Activities

Body	Role
Central Bank of Montenegro	Commercial bank licensing; approval of securities issuance and sale of large blocks of commercial bank shares, approval of the auditor chosen by the commercial bank.
Ministry of Education and Science	Licensing authority for secondary schools and universities.
Ministry of Labour and Social Welfare	Issuance of work permits.
Ministry of Health	Issuance of approvals for compliance with health standards, supervision, and inspection.
Ministry for Tourism	Licensing, classification, supervision, and inspection of tourism related services.
Ministry of Maritime Affairs and Transportation	Licensing of inland transport related services.
Ministry of Environmental Protection and Physical Planning	Issuance of permits for fulfilment of environment standards, supervision and inspection.
The Securities Commission	Licensing for exchanges and other activities (brokerage, dealing, investment management, and underwriting and investment consultancy).
Ministry of Finance	Licensing for accounting and auditing services.
Ministry of Agriculture, Forestry and Water Supply	Issuance of commercial fishing licenses, approval of hunting permits for foreign nationals.
The Energy Regulatory Agency	Issuance of licenses for the Generation, Transmission, Distribution, Supply and sale of electricity; for commercial transport; warehousing, distribution, sale and shipment of gas, oil and oil derivatives; for market operators, transmission and distributive networks.
The Agency for Broadcasting	Issuance of broadcasting licenses.
The Agency for Telecommunications	Issuance of licenses for telecommunications.
Insurance Supervision Agency	Licensing for insurance services and supervision of the performance insurance business.

Table 9 (b) - Non-State Bodies with a Regulatory Role in Service Activities

Body	Role
The Bar Association	Licensing (registration) of attorneys.
The Association of Doctors	Registration of medical doctors and dentists.
The Association of Pharmacists	Registration of pharmacists.
The Association of Engineers	Licensing of engineers and companies who are involved in layout and construction of facilities.
The Association of Hunters	Registration, issuance of hunting permits for foreign citizens.
The Veterinary Chamber	Licensing (registration) of veterinarians.

[Draft Decision]
ACCESSION OF MONTENEGRO

Decision of […]

The General Council,

Having regard to paragraph two of Article XII and paragraph one of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), and the Decision-Making Procedures under Articles IX and XII of the Marrakesh Agreement Establishing the World Trade Organization agreed by the General Council (WT/L/93);

Conducting the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph two of Article IV of the WTO Agreement;

Taking note of the application of Montenegro for accession to the Marrakesh Agreement Establishing the World Trade Organization dated 23 December 2004;

Noting the results of the negotiations directed toward the establishment of the terms of accession of Montenegro to the WTO Agreement and having prepared a Draft Protocol on the Accession of Montenegro;

Decides as follows:

Montenegro may accede to the WTO Agreement on the terms and conditions set out in the Draft Protocol annexed to this Decision.

DRAFT PROTOCOL

ON THE ACCESSION OF MONTENEGRO

Preamble

The World Trade Organization (hereinafter referred to as the "WTO"), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"), and Montenegro,

Taking note of the Report of the Working Party on the Accession of Montenegro to the WTO Agreement reproduced in document WT/ACC/CGR/[…], dated […] (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of Montenegro to the WTO Agreement,

Agree as follows:

PART I - GENERAL

1. Upon entry into force of this Protocol pursuant to paragraph 8, Montenegro accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

2. The WTO Agreement to which Montenegro accedes shall be the WTO Agreement, including the Explanatory Notes to that Agreement, as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph [...] of the Working Party Report, shall be an integral part of the WTO Agreement.

3. Except as otherwise provided for in paragraph [...] of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Montenegro as if it had accepted that Agreement on the date of its entry into force.

4. Montenegro may maintain a measure inconsistent with paragraph one of Article II of the GATS provided that such a measure was recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

PART II - SCHEDULES

5. The Schedules reproduced in Annex I to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994") and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as "GATS") relating to Montenegro. The staging of the concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

6. For the purpose of the reference in paragraph 6 (a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

PART III - FINAL PROVISIONS

7. This Protocol shall be open for acceptance, by signature or otherwise, by Montenegro until […].

8. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by Montenegro.

9. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance by Montenegro thereto pursuant to paragraph nine to each Member of the WTO and to Montenegro.

This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at […] this […] day of […] in a single copy in the English, French and Spanish languages, each text being authentic, except that a Schedule annexed hereto may specify that it its authentic in only one of these languages.

ANNEX I

SCHEDULE […] - MONTENEGRO

Authentic only in the … language.

(Circulated in document WT/ACC/CGR/…/Add.1)

SCHEDULE OF SPECIFIC COMMITMENTS ON SERVICES

LIST OF ARTICLE II EXEMPTIONS

Authentic only in the … language.

(Circulated in document WT/ACC/CGR/…/Add.2) **]**
