

The representative of the Kyrgyz Republic has proposed the deletion of the texts in square brackets in paragraphs 14, 81, 87 and 100.

Members are invited to submit to the Secretariat (H.A. Millan, fax 739 57 76) any comments or proposals concerning the text of the draft Report well in advance of the meeting of the Working Party scheduled to take place on 23 June 1998.



# WORLD TRADE ORGANIZATION

RESTRICTED

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28 May 1998

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## Working Party on the Accession of the Kyrgyz Republic

### DRAFT REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE KYRGYZ REPUBLIC

#### Revision

#### **I. INTRODUCTION**

1. On 13 February 1996, the Government of the Kyrgyz Republic requested accession to the World Trade Organization (WTO). At its meeting on 16 April 1996 the General Council established a Working Party to examine the application of the Government of the Kyrgyz Republic to accede to the WTO Agreement under Article XII, and to submit to the General Council recommendations which could include a draft Protocol of Accession. Membership of the Working Party was open to all WTO Members. The terms of reference and the membership of the Working Party were reproduced in document WT/ACC/KGZ/2/Rev.2.

2. The Working Party met on 10 and 11 March, and 18 July 1997, 5 February, 6 May and .... 1998 under the Chairmanship of Mr. J.-M. Metzger (France).

#### **II. DOCUMENTATION**

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of the Kyrgyz Republic (WT/ACC/KGZ/3) and the questions submitted by Members of the Working Party on the foreign trade regime of the Kyrgyz Republic, together with the replies thereto (WT/ACC/KGZ/5 and Addendum 2, WT/ACC/KGZ/7, WT/ACC/KGZ/9, WT/ACC/KGZ/10 and Addendum 1, WT/ACC/KGZ/13, WT/ACC/KGZ/15 and WT/ACC/KGZ/16) and other information provided by the Kyrgyz Republic authorities. The Government of the Kyrgyz Republic made available to the Working Party the following documentation:

- The Constitution of the Kyrgyz Republic

## Laws

- The Civil Code of the Kyrgyz Republic,
- Bankruptcy Law in force since 19 April 1994 Law on Bankruptcy of 15 October 1997
- Law No. 1057-XII of 12 December 1992 On Banks and Banking (with amendments No. 1394-XII of 12 January 1994)
- Law No. 1357-XII of 10 January 1994 On the Principles of the Budget
- Law No. 6 of 2 April 1996 On Certification of Goods and Services
- Resolution of the Government of the Kyrgyz Republic No. 520 of 2 December 1995 On Adoption of the Regulation on the Procedure of Control of the Goods Imported to the Kyrgyz Republic
- Resolution of the Government No. 260 of 28 April 1994 On Adoption of the List of Goods (Works and Services), Produced On the Territory of the Kyrgyz Republic and Imported to its Territory, Which are Subject to Certification On the Indicators of Safety
- Law No. 915-XII of 29 June 1992 On Commodity Exchange and Exchange Trade in the Kyrgyz Republic
- Law On Pledge of 6 March 1992
- Law No. 768-XII of 28 February 1992 On Protection of Consumer Rights of 10 December 1997(as amended by the Law of the Kyrgyz Republic No. 1426-XII of 14 January 1994)
- Law of 6 March 1992 On Concessions and Foreign Concession Enterprises
- Law of 7 February 1992 On Customs Code of 30 July 1997
- Resolution On implementation of the Custom Code
- Resolution of the Supreme Soviet of the Republic of Kyrgyzstan No 769-XII of 28 February 1992 - On Implementing the Law On Consumers Rights Protection
- Law No. 683-XII of 20 December 1991 On General Principles of Denationalization, Privatization and Undertakings in Kyrgyz Republic (to be extended and specified by Laws as of 6 March 1992 No. 876-XII; 2 July 1992 No. 939-XII; 8 May No. 1229-XII; 12 January 1994 No. 1382-XII; 16 April 1994 No. 1501-XII; 23 June 1995 No. 5-I; 28 September and 11 October 1995 No. 30-I; Resolution of Parliament of 12 January 1994 No. 1386-XII).
- Resolution of Supreme Soviet of the Republic of Kyrgyzstan No. 684-XII of 20 December 1991 On the Procedure of Putting into Force of the Law of the Republic of Kyrgyzstan About the General Principles of Denationalization, Privatization and Undertakings - Law No. 1385-XII of 12 January 1994 On Denationalization and Privatization of State Ownership in the Kyrgyz Republic
- Decree of the Zhogorku Kenesh of the Kyrgyz Republic No 1386-XII of 12 January 1994 On the Procedure for the Introduction into Operation of the Law of the Kyrgyz Republic On Denationalization and Privatisation of State Ownership in the Kyrgyz Republic
- Law No. Y16-XII of 17 April 1991 On Protection of the Environment
- Law No. 6-1 of 5 July 1995 On Operations in Foreign Currency
- Law No. 1076 of 16 December 1992 On Free Economic Zones in the Kyrgyz Republic (as amended by the Law of the Kyrgyz Republic No. 2 of 15 March 1996)
- Resolution of the Supreme Soviet of the Kyrgyz Republic No. 1077-XII of 16 December 1992 On implementation of the Law of the Kyrgyz Republic On FEZ in the Kyrgyz Republic
- Law No. 536-XII of 28 June 1991 On Foreign Investments in the Kyrgyz Republic (as amended by the Law of the Kyrgyz Republic No. 1221-XII of 7 May 1993 and No. 20-1 of 26 September 1995)
- Resolution of the Supreme Soviet of the Kyrgyz Republic No. 537-XII of 28 June 1991 On Order of Implementing the Law of the Kyrgyz Republic On Foreign Investments in the Kyrgyz Republic
- Law of 18 April 1991 On Common Principles of Foreign Economic Activity
- Law No. 943-XII of 2 July 1992 On People's Health Protection (as amended by Law of the Kyrgyz Republic No. 1091-XII of 18 December 1992)

- Resolution Of the Supreme Soviet of the Kyrgyz Republic No 944-XII Regulations for Enforcement of the Law of the Kyrgyz Republic On People's Health Protection in the Kyrgyz Republic
- Law No. 670-XII of 18 December 1991 On Insurance
- Resolution of the Supreme Soviet of the Republic of Kyrgyzstan No. 671-XII of 18 December 1991 On implementation of the Law of the Republic of Kyrgyzstan On Insurance
- Law No. 1548-XII of 27 May 1994 On Making, Ratifying, Implementing and Denouncing International Agreements of the Kyrgyz Republic
- Resolution No. 1549-XII of 27 May 1994 On bringing into force the Law of the Kyrgyz Republic On making, ratifying, implementing and denouncing the International Agreements of the Kyrgyz Republic
- Law No. 1478-XII of 14 April 1994 On the Local Taxes and Fees
- Resolution of the Parliament of the Kyrgyz Republic of the 14 April 1994 On the implementation procedure of the Law of the Kyrgyz Republic On local taxes and fees
- Law No. 7 of 2 April 1996 On Providing Unity of Measurements
- Law of the Kyrgyz Republic (enforced by Resolution of the Supreme Soviet No. 949-XII) of 3 July 1992 On Medical Insurance of the Citizens of the Kyrgyz Republic (as amended by the Law of the Kyrgyz Republic No. 27-I of 28 July and 26 September 1995)
- Law of 15 December 1992 On Mineral Resources
- Resolution of the Kyrgyz Republic Supreme Soviet of 15 December 1992 On the Manner of Implementation of the Kyrgyz Republic Law On Mineral Resources
- Draft Law of the Kyrgyz Republic On the Limitation of Monopolistic Activities and the Development and Protection of Competition of 15 April 1994
- Law On the National Bank
- Law No. 1481-XII of 14 April 1994 On Non-Tax Payments
- Law No. 34 of 1 July 1996 On Normative Legal Acts of the Kyrgyz Republic
- Law of the Kyrgyz Republic (enforced by Resolution of the Supreme Soviet No. 946-XII) of 2 July 1992 On Sanitary-Epidemic Welfare of the Kyrgyz Republic's Population
- Law of the Kyrgyz Republic On Securities and Stock Exchanges of 21 December 1991
- Law of the Kyrgyz Republic of 2 April 1996 On Standardization
- Law No. 1072-XII (enforced by Resolution of the Supreme Soviet of the Kyrgyz Republic No. 1073-XII of 16 December 1992) of 16 December 1992 On the State Fee
- Law No. 874-XII of 6 March 1992 On the State Tax Service
- Law No. 1553-XII of 28 May 1994 On the Basic Principles of the Treasury of the Kyrgyz Republic
- Law No. 660-XII of 17 December 1991 On Taxes from Companies, Associations and Organizations (as amended by Laws: No. 872-XII of 6 March 1992, No. 925-XII of 30 June 1992, No. 1088-XII of 17 December 1992, No. 1237-XII of 8 May 1993, No. 1416-XII of 13 January 1994, No. 1525-XII of 25 May 1994, No. 25-I of 27 July and 26 September 1995 and No. 24 of 26 June 1996)
- Law of the Kyrgyz Republic On Taxes from Population of 27 December 1991
- Law No. 1472-XII of 14 April 1994 On Principles of Taxation System in the Kyrgyz Republic
- Law on Subsurface Resources of 2 July 1997
- Law on State Regulations of Foreign Economic Activities of 2 July 1997
- Law on Banks and Banking Activities of 29 July 1997
- Law on National Bank of 29 July 1997
- Amendments to the Customs Tariff Law of 30 July 1997
- Law on Foreign Investment of 24 September 1997
- Civil Code Part II (section on intellectual property) of 5 January 1998
- Criminal Code (section on intellectual property) of 1 January 1998
- Law on Copyrights and Neighbouring Rights of 14 January 1998
- Law on Trademarks, Servicemarks and Appellation of Places of Origin of 14 January 1998

- Patent Law of 14 January 1998
- Amendments to Part I of the Civil Code of 15 October 1997
- Law on Integrated Circuits Topology of 30 March 1998
- Law on Commercial Secrets of 30 March 1998
- Law on PC, Software and Databases of 31 March 1998

### **Presidential Decrees**

- Presidential Decree No. 134 of 5 May 1993 On Regulating Currency Transactions
- Presidential Decree of 9 June 6 September 1994 On Additional Guarantees for Foreign Investors in the Kyrgyz Republic
- Presidential Decree No. 246 of 27 July 1992 On the State Commission of the Kyrgyz Republic for Foreign Investments and Economic Assistance
- Presidential Decree No. 270 of 9 September 1992 On Measures for Organization of Expert Examinations of Foreign Investments
- Presidential Decree No. 280 of 23 September 1992 On Changing the Procedure for Licensing Raw Materials, Consumer Goods and Products of Productional and Technical Purpose
- Presidential Decree No. 35 of 9 February 1993 On Changes in the State Regulation of Foreign Economic Activities in the Kyrgyz Republic (as amended by Presidential Decrees No. 219 of 30 July 1993, No. 5 of 12 January 1994, No. 32 of 23 March 1994 and No. 36 of 9 February 1995)
- Presidential Decree No. 121 of 2 April 1992 On Regulation of Foreign Economic Activity in the Kyrgyz Republic
- Presidential Decree No. 140 of 11 April 1996 On Measures to Improve Coordination of Privatization with Attraction of Foreign Investment to the Kyrgyz Republic
- Presidential Decree No. VII-165 of 13 May 1996 On Additional Measures on Introduction of State Monopoly to the Production, Storage, Sale of Alcohol and Alcoholic Products
- Presidential Decree No. 207 of 19 June 1992 On Licensing Certain Kinds of Businesses (as amended by Presidential Decrees: No. 302 of 27 October 1992, No. 106 of 6 April 1993, No. 6 of 12 January 1994, No. 22 of 22 February 1994, No. 74 of 7 May 1994, No. 148 of 4 July 1994, No. 177 of 15 July 1994, No. 235 of 7 September 1994, No. 254 of 6 October 1994, No. 36 of 9 February 1995, No. 70 of 11 March 1995, No. 177 of 17 July 1995, No. 322 of 25 November 1995)
- Presidential Decree No. 234 of 9 June 1994 On Additional Guarantees for Foreign Investors in the Kyrgyz Republic
- Presidential Decree No. VII-301 of 12 November 1994 On the Arrangements for Increasing Control Over the Market of Securities of the Kyrgyz Republic
- Presidential Decree No. 319 of 9 December 1994 On the Bishkek Foreign Investments Attraction Zone
- Presidential Decree No. 34 On Some Measures for Protection and Development of Private Entrepreneurship of 25 March 1994
- Presidential Decree No. 42 of 27 February 1995 On Improving Taxation in Agriculture
- Presidential Decree No. 45 of 4 March 1996 On the Structure and Composition of the Cabinet of Ministers of the Republic

### **Resolutions**

- Resolution of the Cabinet of Ministers No. 373 of 25 August 1995 On Strengthening Responsibility for Unauthorized Purchase, Sale of Scrap and Fragments of Non-Ferrous and Ferrous Metals and Their Industrial Scrap (as amended by Resolution of the Cabinet of Ministers No. 268 of 17 June 1996)

- Resolution of the Cabinet of Ministers No. 383 of 12 September 1995 On the Programme of State Investments for 1996-1998
- Resolution of the Government No. 408 of 13 June 1994 On the Establishment of Provisions on the Procedure of Export and Import Licensing Goods in the Kyrgyz Republic
- Resolution of the Cabinet of Ministers No. 440 of 23 October 1995 On Approving the Regulations on the Procedure for Delivery of Goods and Rendering Services within the Framework of Productional Cooperation of Enterprises and Branches of the Kyrgyz Republic and Other States - the CIS Participants
- Resolution of the Government No. 484 of 14 November 1995 On Creation of the Consulting Agency on International Procurement Under the General Directorate of the State Commission for Foreign Investments and Economic aid of the Kyrgyz Republic
- Resolution of the Cabinet of Ministers No. 49 of 1 February 1996 On the Draft Law of the Kyrgyz Republic On the Customs Tariff of the Kyrgyz Republic
- Resolution of the Cabinet of Ministers No. 52 of 2 February 1996 On Measures of Extraordinary Financial Support of Agriculture
- Resolution of the Government No. 520 of 2 December 1996 On Adoption of the Regulation on the Procedure of Control of the Goods Imported to the Kyrgyz Republic
- Resolution of the Government No. 523 of 18 July 1994 On the Rates of the Author's Award for Public Performance and Other Kinds of Usage the Productions of Literature and Arts
- Resolution of the Government No. 56 of 6 February 1996 On the Procedure for the Export and Import of Commodities (Goods and Services) in the Kyrgyz Republic
- Resolution of the Government No. 57 of 5 February 1993 On Procedures of Transfer of Articles, Property, Currency, Auto-motor Vehicles and Other Valuables Through the Customs Border of the Kyrgyz Republic
- Resolution of the Government No. 57 of 6 February 1996 On Confirmation of the List of Country-Users of the Preference Scheme in the Kyrgyz Republic
- Resolution of the Cabinet of Ministers No. 571 of 27 December 1995 On Introduction of Applying Excise Marks on Production, Importation and Sale of Tobacco Products and Alcoholic Beverages in the Kyrgyz Republic
- Resolution of the Cabinet of Ministers No. 613 of 30 December 1993 On Temporary Customs Tariff (as amended by Resolutions of the Cabinet of Ministers No. 26 of 21 January 1994 and No. 358 of 28 May 1994)
- Resolution of the Government No. 622 of 18 August 1994 On Customs Regime of Processing of Tolling Raw Materials and Goods Within the Customs Territory of the Kyrgyz Republic
- Resolution of the Government No. 119 of 20 March 1996 On Adoption of Regulations on Equipping Transport Vehicles (Containers) for Carriage of Goods with Customs Stamps and Seals
- Resolution of the Government No. 725 of 23 September 1994 On Regulations on the State Inspection for Standardization and Metrology at the Government of the Kyrgyz Republic
- Government Decree No. 82 of 28 February 1996 On Programme of Denationalization and Privatization of State Property in the Kyrgyz Republic for 1996-1997
- Resolution of the Government No. 9 of 8 January 1996 On Approval of the Resolution on Procedures of Use of the Excise Marks in the Kyrgyz Republic on Production, Import and Realization of Tobacco Goods and Alcoholic Drinks
- Resolution of the Government No. 901 of 30 December 1994 On Regulating the Import of Goods, Things and Other Objects by Physical Persons in the Kyrgyz Republic
- Resolution of the Government No. 97 of 22 March 1995 On Main Directions of Foreign Economic Activity of the Kyrgyz Republic
- Resolution of the Government No. 10 of 9 January 1996 On Temporary Regulation On Applying Excise Seals On Oil Products Imported to the Kyrgyz Republic
- Resolution of the Government No. 109 of 30 March 1992 On Ratification of Resolutions on Procedures for Registration of Securities, on Procedures of Licensing the Right for Professional

- Stock Market Activities, on Procedures for Collecting Securities Registration Fees, Licensing and Certifying the Right for Implementation of Professional Stock Market Activities and for Collecting Other Fees, on Procedures for Maintaining the General State Registry of Joint Stock Companies, Recording and Accountability in Joint Stock Companies
- Resolution of the Supreme Soviet of the Republic of Kyrgyzstan No. 1126-XII of 18 December 1992 On Introduction of State Licensing in Construction Activity in the Kyrgyz Republic
  - Resolution of the Government No. 29 of 24 January 1994 On Creation of the State Regulation of Production, Storage and Distribution of Ethyl Spiritus and Establishing Control over Production and Sale of Strong Drinks in the Kyrgyz Republic
  - Resolution of the Government No. 120 of 14 March 1994 On the Results of the Reconstruction and Privatization in 1991-1993 and on the Programme of the Reconstruction and Privatization of State Property in the Kyrgyz Republic in 1994-1995
  - Presidential Decree No. 121 of 2 April 1992 On Regulation of Foreign Economic Activity in the Kyrgyz Republic
  - Resolution of the Supreme Soviet No. 1220-XII of 7 May 1993 On Karakol, Alai, Chon-Alai and Kara-Kuldji Free Economic Zones
  - Resolution of the Cabinet of Ministers No. 135 of 27 March 1996 On Clarification of the List of Subjects-Monopolists for 1996
  - Resolution of the Government No. 146 of 5 April 1996 On Supplement of the List of the Productions (Works, Services) Produced in the Kyrgyz Republic and Imported to its Territory Be Subject to Obligatory Certification of the Index Safety, Stipulated to Introduce on the III Stage, Approved by the Resolution of the Government of the Kyrgyz Republic No. 260 of 28 April 1994
  - Resolution of the Legislative Assembly of Jogorku Kenesh of the Kyrgyz Republic No. 151-1 of 23 June 1995 On Creation of Free Economic Zones of Bishkek City
  - Resolution of the Cabinet of Ministers No. 559 of 21 December 1995 On the Development Programme for Export of the Kyrgyz Republic for 1996 and Middle-Term Prospects
  - Resolution of the Cabinet of Ministers No. 167 of 16 May 1995 On the Work of the Ministry of Communication on Carrying Out First Project of Telecommunication in the Republic Financed by the World Bank/MAR and European Bank of Reconstruction and Development
  - Resolution of the Government No. 209 of 10 May 1996 On the Concept of Development of Free and Private Market for Grain in the Kyrgyz Republic
  - Resolution of the Cabinet of Ministers No. 242 of 2 June 1993 On Approving the Regulation on the Procedure of Licensing Attraction (Hiring) of Manpower from Abroad
  - Resolution of the Government No. 260 of 28 April 1994 On Approval of the Products' List (Works, Services) Produced in the Territory of the Kyrgyz Republic and Imported to its Territory, Being Subject for Compulsory Certification on Safety Indications
  - Resolution of the Cabinet of Ministers No. 270 of 7 July 1995 On Approving the Procedure for Calculation and Collection of Excise Tax on Produced and Imported Alcohol and Liquor-Vodka Products
  - Resolution of the Cabinet of Ministers No. 290 of 7 May July 1993 On Creation of Customs-Tariff Council Under the Cabinet of Ministers
  - Resolution of the Government No. 298 of 21 July 1995 On Implementation of the State Regulation of Production, Storage and Distribution of Ethyl Spiritus and Strong Drinks
  - Resolution of the Government No. 3 of 5 January 1996 Regulations On the Procedures of Imposition of Penalties and Economic Sanctions for Violations of the Anti-Monopolistic Legislation, Pricing Discipline and Consumers' Rights Protection
  - Resolution of the Cabinet of Ministers No. 300 of 1 July 1996 On State Customs Inspectorate Under the Cabinet of Ministers



- Resolution of the Cabinet of Ministers No. 327 of 17 July 1996 On the Course of Implementing Regulations of the Parliament and the Cabinet of Ministers On Issues of Introduction of State Monopoly in the Sphere of Production, Storage and Sale of Alcohol and Alcoholic Products

### **Instructions and Regulations**

- Instruction On Customs Procedures for Transit Cargo (approved by Order No. 145 of the State Customs Inspection on 23 August 1993)
- Instruction of the Order to Fill the Cargo Customs Declaration (approved by Decree No. 05-06/13 of the State Customs Inspection on 24 January 1996)
- Instruction On Application of Personal Examination (approved by Order No. 176-1 of the State Customs Inspection on 17 September 1993)
- Order No. 45 of 14 February 1994 On the Procedure for Licensing Entrepreneurship Activity of Paid (i.e. for pay) Medical, Pharmaceutical and Educational Institutions and Persons Engaged in Private Medical, Pharmaceutical Practice and Paid Training
- Instruction No. 99-p of 19 March 1993 to approve "Statute on the Order of Design, Expert Examination and Adoption of Investment Projects for the Construction Sector in the Territory of the Kyrgyz Republic"
- Regulations for Opening Commercial Banks in the Kyrgyz Republic (approved by the Board of the National Bank of the Kyrgyz Republic No. 1/8 of 23 July 1994 with amendments and additions No. 16/4 of 30 June 1995)
- Regulation on State Licensing the Construction Activity Implemented on the Territory of the Kyrgyz Republic by Enterprises with Foreign Investment (approved by Resolution of the Collegium of the State Construction of 10 February 1995)
- Order No. 05-06/12 of 24 January 1996 On Approval of the Regulation on Procedure of Control Over the Goods Exported from the Territory of the Customs Union (State Customs Inspectorate Under the Government of the Kyrgyz Republic)
- Temporary Regulations On Drawing, Submitting and Considering Applications On Official Registration of Software, Databases and Topographies (Main Department of Intellectual Property of the Ministry of Education and Science of 29 August 1995)
- Document Regulations On Activities of the Branches Representative Offices of Foreign Banks in the Kyrgyz Republic of 30 June 1994
- Regulation On State Licensing of Construction Activities in the Kyrgyz Republic (with amendments by Decree of the Gosstroj of the Kyrgyz Republic No. 16 of 30 March 1994 and No. 30 of 28 September 1995)
- Temporary Provisions on Industrial Property of the Kyrgyz Republic (adopted by Decree of the State Committee on Science and New Technologies No. 3 of 2 August 1993)
- Temporary Provisions On Work Inventions, Utility Models and Industrial Designs
- Order of Receiving Payments for Licence Extradition
- Regulations On the Procedures of Imposition of Penalties and Economic Sanctions for Violations of the Anti-Monopolistic Legislation, Pricing Discipline and Consumers' Rights Protection (passed by Resolution of the Government No. 3 of 5 January 1996)
- Temporary Provisions On Selection Achievements of 24 July 1995
- Regulations on the State Inspection for Standardization and Metrology At the Government of the Kyrgyz Republic (passed by Resolution of the Government No. 725 of 23 September 1994)
- Temporary Regulations On the State Fund of Industrial Property (approved by the Ministry of Education and Science on 24 July 1995)
- Regulation On Department of Patent Agency for Trademark and Industrial Model Examination
- Regulation on Equipping Transport Vehicles (Containers) for Carriage of Goods With Customs Stamps and Seals (approved by the Resolution of the Government of the Kyrgyz Republic No. 119 of 20 March 1996)

### **Draft laws and regulations**

- Draft Law on Anti-Dumping
- Draft Law on Subsidies and Countervailing Measures
- Draft Law on Safeguards
- Draft Law On Selection Achievements
- Draft Amendments to the Law On Certification
- Draft Amendments to the Law On Standardization
- Draft Amendments to the Law On Plant Quarantine
- Draft Amendments to the Law On Veterinary
- Draft Amendments to the Customs Code
- Draft Amendments to the Tax Code
- Draft Regulations On Import/Export Licensing
- Draft Regulations on Amendments to Certain Decisions of the Government
- Draft Amendments on Introducing Changes and Amendments to some Legislative Acts of the Kyrgyz Republic (amendments to the Law on Normative Acts and the Law on Publication of Laws)

### **III. ECONOMIC POLICIES**

#### **- Foreign exchange and payments system**

4. In response to requests for information, the representative of the Kyrgyz Republic informed members of the Working Party that a highly pro-active monetary policy was being pursued by the National Bank of the Kyrgyz Republic (NBKR) to stabilize the foreign exchange value of the Som. The Kyrgyz Republic did not maintain any exchange restrictions on current account or capital transactions. Individuals and legal entities could import and export foreign currency without limitations provided they declared the amount to the customs.

5. The representative of the Kyrgyz Republic added that the Kyrgyz Republic had joined the IMF on 8 May 1992. The Kyrgyz Republic accepted the obligations of Article VIII of the IMF Articles of Agreement in March 1995 and maintained a fully convertible currency. The Kyrgyz Republic's quota was Special Drawing Rights (SDR) 64.5 million (about US\$96 million) and its outstanding use of IMF credit currently totalled SDR 83.6 million (about US\$120 million). He further noted that on 11 December 1995, the International Monetary Fund (IMF) had approved a first Enhanced Structural Adjustment Facility (ESAF) loan in the amount of SDR 88.15 million.

#### **- Investment regime**

6. Some members of the Working Party enquired whether there were any restrictions to the national treatment principle in relation to investments by foreign persons in the Kyrgyz Republic. The representative of the Kyrgyz Republic stated that the new Law on Foreign Investment of

16 September 1997 provided guarantees of national treatment, equitable and fair treatment, and full and constant protection for foreign investors. Exceptions from national treatment, according to the same law, were restrictions connected with defence and the protection of national security, the health of the population, and public moral. At this point, no such restrictions had been introduced. The Law on Denationalization and Privatization of State Property of 12 January 1994 provided the Cabinet of Ministers with the authority to restrict or otherwise limit foreign investors from participating in the privatization of certain industries; however the Cabinet of Ministers had not yet exercised this authority. The Kyrgyz Republic would not use such authority in a manner that was inconsistent with its obligations as a future member of the WTO. Foreign investors could freely repatriate investments made or profits earned in the Kyrgyz Republic in a freely convertible currency.

7. Some members of the Working Party asked whether foreign investors were protected against expropriation or nationalisation of their assets. In response, the representative of the Kyrgyz Republic stated that Article 5 of the new Law on Foreign Investment of September 1997 guaranteed foreign investments from expropriation (nationalization, requisition or any other equivalent measure), except in cases when such expropriation is carried out for an overriding public purpose, on a non-discriminatory basis. In the event of expropriation of a foreign investment, the Law on Foreign Investment requires that a foreign investor be paid prompt, adequate and effective compensation. Such compensation is freely transferable and payable in a freely useable currency. Rights established under the Law on Foreign Investment are enforceable against the governmental bodies with any applicable procedure agreed upon between the foreign investor and the authorized governmental bodies of the Kyrgyz Republic. When such agreement is absent an investment dispute between the authorized governmental bodies of the Kyrgyz Republic and a foreign investor shall be settled through arbitration in accordance with one of the following procedures:

- Regulations of the Arbitration Court under the Chamber of Industry and Commerce of the Kyrgyz Republic;
- Convention for the Settlement of Investment Disputes between States and Citizens of any other States, ("Convention ICSID" signed in Washington DC on 19 March 1965) if applicable;
- Arbitration (Auxiliary) Regulations of the International Centre for the Settlement of the Investment Disputes (ICSID), if applicable; and
- Arbitration Regulations of the United Nations Commission on International Trade Law (UNCITRAL Regulations); in this case the appointing body shall be the General Secretary of the ICSID.

8. In response to questions concerning the ownership of land by foreign investors, the representative of the Kyrgyz Republic noted that the Constitution of the Kyrgyz Republic prohibited the private ownership of land by private persons or legal entities, either foreign or local. There were no plans to eliminate that restriction. Foreign citizens and legal entities could purchase residential immovable property attached to land - such as apartments and houses - only with the specific permission of the Cabinet of Ministers. Foreign citizens and legal entities could rent immovable property on the same basis as Kyrgyz citizens and legal entities.

- **State ownership and privatization**

9. The representative of the Kyrgyz Republic stated that the Government's privatization plans were organized according to industrial and sectoral priorities. In the electric energy sector, the plan was to attract foreign investment for the development of hydroelectric power engineering, to privatize sectoral enterprises and to modernize and reconstruct electric grid networks. In the coal industry, the plan was to restructure the sector and sector enterprises by reorganizing and, where necessary, liquidating sector enterprises, to develop coal open-pit mining with the aim of decreasing production costs and to promote energy saving technologies. In the oil and gas sector, the plan was to construct and bring into operation two small oil refineries in the next two years and to develop a package of documents for conducting an international tender intended for the purpose of attracting foreign investment into the exploration and exploitation of oil and gas deposits, to conduct the tender. In the gold extracting industry, the plan was to attract foreign investment into the exploration and exploitation of gold deposits. Non-ferrous metallurgy (mercury, antimony, tin, tungsten) would be reformed to attract foreign investment into the development of the antimony and mercury metallurgy industry.

10. The representative of the Kyrgyz Republic further added that in the machine building and metal processing sector, the Government planned to reorganize the production of machines, equipment (and the parts thereof) for (i) processing agricultural products, (ii) mechanizing small peasant and family farms and (iii) use in the coal mining industry. The Government also planned to reform the electrotechnical sector to orient enterprises toward the production of complex electrical appliances and equipment for the electric energy industry. Light industry would be reformed to speed up the structural transformation of the sector and to find new markets both within and outside the CIS. More modern equipment would be purchased with the aid of German and Japanese loans. Food production and processing industries would be reformed to establish small and medium-sized on-site production/processing facilities for milk, meat, fruit and vegetable production and processing. The pharmaceuticals sector would be reformed to attract foreign investment into the domestic pharmaceutical

industry generally and to complete the construction of "bishkekbiofarm", a chemical pharmaceutical plant. The agriculture sector would be reformed to attract foreign investment for the purpose of developing export-oriented agricultural enterprises; and to create joint ventures with foreign investors for the production of agricultural products. The construction sector would be reformed to attract foreign investment into the housing construction industry and to encourage the manufacturing of energy-saving construction materials.

11. In response to requests for information concerning restrictions on foreign investors participation in privatisation, the representative of the Kyrgyz Republic stated that Article 8 of the Law on Denationalization of State Property of 12 January 1994, provided that during the privatization of State owned assets, the Cabinet of Ministers could "reduce the number of purchasers to guarantee the priority rights of citizens and legal entities of the Kyrgyz Republic." He noted, however, that this power had not yet been exercised.

12. The representative of the Kyrgyz Republic stated that the status of privatization in the Kyrgyz Republic was provided in Tables 1 and 2 below. As of 1 January 1998, approximately 64 per cent of State-owned objects (base is 1 January 1991) had been privatized. The total value of privatized state objects since 1991 was som 13,418,900 million. The mass privatization program was completed on 30 June 1997. The shares of 1,056 Joint-Stock Companies were sold using coupon auctions. According to Article 4 of the Kyrgyz Republic Constitution of 5 May 1993, land, minerals, water, air space, forests, plant and animal life and all other natural resources were the exclusive property of the State. According to Article 3 of the Law on Privatization and Denationalization of 12 January 1994, objects in exclusive ownership of the Kyrgyz Republic could not be subject to privatization. The lease of such property was, however, possible. The Law on Privatization and Denationalization also authorized the Cabinet of Ministers to specify additional objects not subject to denationalization and privatization, even though their privatization and denationalization might not be specifically prohibited in the Kyrgyz Republic Constitution and the Kyrgyz Republic Law On Privatization and Denationalization. The current list of objects not subject to privatization is the following:

- mineral resources, forest fund, water resources, air space;
- protected or used in a special manner natural territories;
- objects of historical and cultural heritage of the people of Kyrgyzstan (unique cultural and natural monuments, objects of nature, history, culture, science and technology, as well as rarities kept in state museums, libraries and their subsidiaries, the association of folk art production "Kyial");
- property compounds of state power and management bodies;

- funds of the republican budget and [foreign] currency reserve of the Kyrgyz Republic, Social Fund under the Kyrgyz Republic Government, other State out-of-the-budget funds, as well as the gold reserve;
- National Bank of the Kyrgyz Republic, Treasury, Monetary chamber;
- arms, military equipment and other property of military use, budget-financed entities and organizations (including arsenals), as well as vehicle columns of military type under the operative management of the Ministry of Defense of the Kyrgyz Republic, Ministry of National Security of the Kyrgyz Republic; Ministry on emergencies and civil defense of the Kyrgyz Republic, Ministry of interior of the Kyrgyz Republic, other ministries and agencies that have military units;
- military objects of CIS countries located on the Kyrgyz Republic territory in accordance with existing inter-state agreements;
- objects of the civil defense of the Ministry of Emergencies and Civil Defense of the Kyrgyz Republic;
- science-technical entities and organizations within the system of the State agency on forests under the Kyrgyz Republic Government;
- enterprises and science-technological entities and organizations within the system of the State inspection on standardization and metrology under the Kyrgyz Republic Government and State archive agency under the Kyrgyz Republic Government;
- entities and organizations subordinate to the National Committee on Statistics of the Kyrgyz Republic;
- enterprises and organizations of hydro-meteorological service, services of control over the state of environment and protection of the nature;
- enterprises and organizations of the mapping-geodesic service;
- enterprises and entities of sanitary-epidemiological and quarantine service of the Kyrgyz Republic, plant protection service;
- objects and equipment for permanent storage of hard industrial and household wastes, hard and liquid radioactive wastes, animal cemeteries;
- cemeteries, enterprises on their service and provision of ritual services; and,
- technical inventory bureau.

The Law on Denationalization and Privatization of State Property of 12 January 1994 provided the Cabinet of Ministers with the authority to restrict or otherwise limit foreign investors from participating in the privatization of certain industries; however the Cabinet of Ministers had not yet exercised this authority. The Kyrgyz Republic would not use such authority in a manner inconsistent with its

obligations as a future member of the WTO. Foreign investors currently participated in the privatization process in the Kyrgyz Republic according to the same rules applied to domestic investors. Privatization methods which will be used for privatizing remaining State assets, subject to privatization were:

- (i) corporatization (turning a State-owned enterprise into a Joint Stock Company-JSC) followed by privatization through sales of shares using auctions or commercial tenders (used mainly for the privatization of medium and large scale enterprises);
- (ii) transformation of a State-owned object into a limited liability partnership followed by sale of partnership rights;
- (iii) direct sale (including bidding) to strategic investors (especially foreign companies) of large-scale objects. Companies are invited to bid through international press;
- (iv) direct sale (including bidding), auctions, and commercial tenders of any objects;
- (v) lease (contract management) for a period of time including the right of purchase by lessee.

During 1998, the Kyrgyz Republic planned to begin privatization and denationalization of large enterprises in strategic sectors of the economy including mining, energy, telecommunications, and systems of supply (oil and gas). These include companies such as Kyrgyztelecom-telecommunications company, Kyrgyz Aba Zholdoru-National airline company, Karabalta-Mining, Kadmajay Antimony, Uchkun JSC-Printing, Akyl JSC-Printing, Kyrgyz Energy Holding, Kyrgyzgasmunaizat, and Bishkek Machinery JSC. Also, the Kyrgyz Republic plans to privatize and denationalize companies and facilities of the non-productive sphere (e.g. movie theatres, recreation objects, resorts) in 1998-2000.

Table 1: Sectoral Privatization Data Profile for 1991-1997

Sector	Number of Objects of State Property as of 1 January 1991	Number of Privatized Objects as of 31 December 1997	Percentage of Privatized Objects as of 1 January 1998
Industry	602	531	88.2
Consumer Services	1919	1917	99.9
Oil Production Sector	1253	434	34.6
Trade and Public Catering	1949	1894	97.1
Agriculture	855	354	41.4
Construction	730	418	57.3
Transport	295	154	52.2
Other sectors	2306	673	28.2
Total	9989	6375	63.8

Table 2: Sectoral Privatization Data Profile by Privatization Modes For 1991-1997

Sector	Privatization Mode	Number of Privatized Objects
Industry	Lease with subsequent buy-out	8
	Auctioning	400
	Sale through auctions	16
	Sale through tenders	12
	Gratis transfers	1
	Direct sale to private entities	18
	Direct sale to labour collectives (bodies)	49
	Incorporation (Joint-Stock Companies)	27
Consumer Services	Lease with subsequent buy-out	17
	Auctioning	36
	Sale through auctions	170
	Sale through tenders	529
	Direct sale to private entities	717
	Direct sale to labour collectives (bodies)	440
	Incorporation (Joint-Stock Companies)	8
Non-production sector	Lease with subsequent buy-out	2
	Auctioning	277
	Sale through auctions	30
	Sale through tenders	8
	Direct sale to private entities	41
	Direct sale to labour collectives (bodies)	28
	Incorporation (Joint-Stock Companies)	48
Trade and public catering	Lease with subsequent buy-out	41
	Auctioning	213
	Sale through auctions	151
	Sale through tenders	581
	Direct sale to private entities	307
	Direct sale to labour collectives (bodies)	549
	Incorporation (Joint-Stock Companies)	52
Agriculture	Lease with subsequent buy-out	4
	Auctioning	128
	Sale through auctions	6
	Sale through tenders	1
	Direct sale to private entities	30
	Direct sale to labour collectives (bodies)	177
	Incorporation (Joint-Stock Companies)	8
Construction	Lease with subsequent buy-out	2
	Auctioning	298
	Sale through auctions	11
	Sale through tenders	3
	Direct sale to private entities	13
	Direct sale to labour collectives (bodies)	69
	Incorporation (Joint-Stock Companies)	22



Sector	Privatization Mode	Number of Privatized Objects
Transport	Auctioning	137
	Direct sale to private entities	3
	Direct sale to labour collectives (bodies)	11
	Incorporation (Joint-Stock Companies)	3
Other sectors	Lease with subsequent buy-out	24
	Auctioning	151
	Sale through auctions	77
	Sale through tenders	28
	Direct sale to private entities	171
	Direct sale to labour collectives (bodies)	193
	Incorporation (Joint-Stock Companies)	28

13. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would provide annually to WTO Members information on developments in its privatization for as long as its programme of privatization is in existence along the lines of the information provided to the Working Party during the accession process, and on other issues related to its economic reforms as relevant to its obligations under the WTO. The Working Party took note of this commitment.

- **Pricing policy**

14. At the earlier stages of the deliberations, the representative of the Kyrgyz Republic stated that all prices had been liberalized except when the concerned item was supplied by an entity that has been classified as either a natural, permitted or temporary monopoly. [Certain natural monopolies (electricity, gas pipelines, telecommunications, railroad and aviation) were regulated through either price or profit restrictions by the Anti-monopoly Department within the Ministry of Finance. Prices of water supply, heat, hot water and public transport were set by city or oblast administrations. Non-natural monopolies with a dominant position in the market (more than 35 per cent market share) were subject to profitability control. The allowable margin of profitability had ranged from 25 per cent to 50 per cent. At that time, there were 105 companies (mostly goods producers) subject to profitability control. Companies which exceeded their allowable profitability margin had had to provide a written justification to the Anti-Monopoly Department.]

15. Some members of the Working Party requested further information on which "natural monopolies" were subject to pricing or profit controls, and how such controls were operated. In response, the representative of the Kyrgyz Republic later on, describing the current situation, stated that tariff rates were required to be approved by the Anti-Monopoly Department at the Ministry of Finance (AMD), on the basis of levels and norms of profitability: cost of operating a specific infrastructure (e.g.

power transmission line, pipeline) or producing a specific product plus a profit margin set by the AMD. The following natural monopolies were subject to price and profit controls:

- Kyrgyz Energy Holding production, transmission, and distribution of electricity and thermal power);
- Kyrgyzgasmunaizat (natural gas);
- Kyrgyztelecom (communication services);
- Kyrgyzalco (alcohol and alcoholic products);
- Kyrgyztamekesei (tobacco and tobacco products);
- Kyrgyz Aba Joldoru (air transport of passengers and cargo); and
- Kyrgyzrailroad (rail transport of passengers and cargo).

In addition, the prices of services provided by Kyrgyztelecom (e.g. cost for installing a phone, rate of long distance calls/per minute) were set by the AMD. The prices of services provided by Kyrgyzgasmunaizat (only gas for population) and Kyrgyz Energy Holding (e.g. electricity HS 2716 rate/kwh) were established by the State Agency on Energy. Prices for using sewage systems, water, and city public transport are set by city or oblast administrations. All fees for services provided by the state were subject to control (e.g. fee for driver's license, fee for obtaining phytosanitary certificate, fee for obtaining veterinary certificate). Permitted monopolies (eight companies) and temporary monopolies (34 companies) - these are companies which have dominant position in the market (more than 35 per cent market share) - are not subject to price or profitability control. Permitted monopolies were required to notify their prices to the Anti-Monopoly Department at the Ministry of Finance. All other natural monopolies were permitted to set their prices freely.

16. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic's regime for price and profit control for natural monopolies would be operated in conformity with the requirements of Articles II and III of the GATT 1994 and Article VIII of the GATS.

17. Some members of the Working Party noted that two of the covered entities dealt with the production and sale of alcohol and tobacco: Kyrgyzalco and Kyrgyztamekesi. They requested additional information on the price controls applied. In response, the representative of the Kyrgyz Republic stated that Kyrgyzalco was a State Joint Stock Company within which there were currently 14 joint stock companies. The domestic market share of companies under the structure of Kyrgyzalco in the sale of

alcoholic products was approximately 60 per cent. Wholesale prices of alcoholic products were established separately by each of the enterprises under Kyrgyzalco. Enterprises under Kyrgyzalco were required to declare their prices to the Anti-Monopoly Department under the Ministry of Finance and were subject to profitability control by the Anti-Monopoly Department. Profit could not exceed 20 per cent. There were no plans to eliminate Kyrgyzalco and take away its authority to license the trade and production of alcohol and alcoholic products.

18. In relation to Kyrgyztamekesi, the representative of the Kyrgyz Republic added that it was a State Joint Stock Company with seven companies under its structure (six were joint stock companies and one was a State enterprise). The domestic market share of Kyrgyztamekesi was approximately 16 per cent for tobacco products. Kyrgyztamekesi was required to declare its prices to the Anti-Monopoly Department under the Ministry of Finance and was subject to profitability control by the Anti-Monopoly Department. Its profit was not permitted to exceed 20 per cent.

19. In response to requests from some members of the Working Party, the representative of the Kyrgyz Republic explained that the controls mentioned above were authorized by the Law of the Kyrgyz Republic on Limitation of Monopolistic Activities and the Development and Protection of Competition of 15 April 1994 and sub-central authorities applied such controls in accordance with the same law. The purpose of price and profits control was to regulate natural monopolies and fees for services charged by State bodies. In general, the Government of the Kyrgyz Republic wished to avoid application of such measures, and intended to do so in the future in accordance with the law.

20. The representative of the Kyrgyz Republic stated that the all price controls on products and services still in effect, at the central and sub-central level were listed in paragraph 15 above by HS number where applicable. All other prices for goods and services in the Kyrgyz Republic were determined by market forces. Any changes in price controls or additional controls would be published in official publications. All price controls would be applied in a WTO-consistent fashion, taking into account the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. The Working Party took note of these commitments.

#### **IV. FRAMEWORK FOR MAKING AND ENFORCING POLICIES**

**- Powers of executive, legislative and judiciary, administration of policies on WTO-related issues**

21. The representative of the Kyrgyz Republic stated that under the Constitution of the Kyrgyz Republic, governmental power was divided among the executive, legislative and judicial branches, with the President being afforded the most significant power. The President was the Head of State and the highest government official. The executive powers were exercised by the Government (principally, the Cabinet of Ministers) formed by the President. The head of the Government was the Prime Minister. The President was elected to a 5-year term of office on the basis of universal (persons 18 years of age and older), equal and direct suffrage by secret ballot. The Constitution gave the President wide-ranging powers: he was the highest representative of the Kyrgyz Republic both within the country and in international relations; he determined the basic direction of domestic and foreign policy and had the right to propose and veto legislation; his assent was required for any bill passed by the Parliament to become law (unless the Parliament was exercising a presidential veto). He had the power to issue decrees and to suspend or invalidate acts of the Cabinet of Ministers and other executive bodies. The President was responsible for appointing members of the Cabinet of Ministers.

22. The representative of the Kyrgyz Republic further added that the Cabinet of Ministers was the principal institution of Government. Executive power was exercised by the Cabinet of Ministers, as well as the individual ministries, State committees, administrative departments, other central executive bodies and local State administrations under the control of the Cabinet of Ministers. The Cabinet of Ministers consisted of the Prime Minister, all Vice-Prime Ministers, all Ministers and Heads of State Committees. The Government was the highest body within the executive power system of the Kyrgyz Republic, (except the President) and as such directly controls activities of local state administrations on a range of issues, including those involving external trade matters and implementation of provisions of international treaties to which the Kyrgyz Republic is a party. Article 6 of the Civil Code provided that international agreements ratified by the Kyrgyz Republic were to take precedence over conflicting provisions in civil legislation. The Kyrgyz Republic Law "On Government" of 25 March 1997 No. 17 set out the functions and authority of the central government and provides in Article 20 and 21 that the Government shall direct the implementation of all laws and decrees of the Kyrgyz Republic. The Kyrgyz Republic Law "On local self-government and local state administrations in the Kyrgyz Republic" of 19 April 1991 N-

437-XII set out the powers of the local governments. These powers were subordinate to those of the national government and did not entail authority concerning trade policy, which is the sole purview of the central authorities.

23. The representative of the Kyrgyz Republic stated that the Parliament exercised legislative power was implemented by the Parliament which consisted of two chambers: the Legislative Assembly and the Assembly of People's Representatives. Judicial authority was exclusively exercised by the Courts. The Court system consisted of a commercial division and an ordinary division. Generally, the commercial division dealt with business and commercial disputes between legal entities, whereas the ordinary division had exclusive jurisdiction over all other types of disputes, including civil, criminal and administrative law matters, as well as commercial disputes where at least one of the litigants was an individual or a collective farm. Both Court systems were divided into tiers. The commercial division had two tiers. Seven regional commercial Courts of general primary jurisdiction (one for the city of Bishkek and one for each of the six oblasts) constituted the lower tier. The Supreme Commercial Court constituted the upper tier. It had appellate jurisdiction over the decisions of the regional commercial Courts, and primary jurisdiction over disputes involving any "non-normative" aspect of an act of any governmental body, institution or official. The ordinary Court system was divided into three tiers. The lower tier was composed of district Courts. The middle tier was composed of seven regional Courts (one for the city of Bishkek and one for each of the six oblasts), which had initial appellate jurisdiction over the decisions of the district Courts. The Supreme Court alone had final appellate jurisdiction over the decisions of the regional Courts. By virtue of the Constitution judges had immunity when acting in their official capacity. Any member of the three high Courts (the Constitutional Court, the Supreme Court and the Supreme Commercial Court) could be removed from his/her post upon a formal presentation to the Parliament by the President. Lower Court judges could be removed if they failed a qualification test. Agency actions affecting trade were subject to administrative and appellate review. Article 2(3) of the Civil Code provided for the right to appeal an administrative decision in court. Specifically, Articles 417 to 428 of the Customs Code provided for the right to appeal decisions of the customs bodies. Article 57 of the Tax Code provided for administrative appeals of decisions of an official of the Tax Service. Article 58 provided for appellate review of any final decision of the Tax Service. Article 18 of the Law on Licensing provided for the right to appeal issues relating to the refusal in the issue of a license.

24. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would provide a right of appeal to an independent body for foreign and domestic importers and exporters of official measures affecting trade. The Working Party took note of this commitment.

- **Authority of sub-central governments**

25. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic was divided into seven regional executive administrations, under the direct supervision and control of the Cabinet of Ministers. Within each regional executive administration were a number of departments having regional competence over certain specified matters, e.g., a Department of Agriculture, a Department of Economy, which reported both to the regional executive administration and to its corresponding national Ministry. Because the regional executive administrations were under the control and supervision of the Cabinet of Ministers and each national Ministry, local governmental policy affecting trade in goods and services was exclusively determined by the central Government. Governors headed the oblast regional executive administrations, and were appointed by the President with the consent of the corresponding kenesh. At the lowest level of government were the rayon (district) executive administrations. The President, with the consent of the kenesh of the rayon, appointed the head of each rayon administration after considering the recommendation of the concerned governor or mayor. The President could also remove the head of the local rayon administration after taking into account the recommendation of the concerned governor or mayor. In addition to the regional executive administrations, Bishkek and the oblasts each had a locally elected unicameral legislature called a kenesh. Each regional kenesh was responsible for legislation dealing with regional social and economic matters. Each kenesh must also approve the budget prepared by its corresponding regional executive administration. If a kenesh passed a piece of legislation on a matter within its competence, it automatically became law. Each rayon had a local kenesh composed of 15-25 elected representatives, the primary responsibility of which was to adopt legislation dealing with a small range of local matters.

26. The representative of the Kyrgyz Republic confirmed that central authorities would be solely responsible for establishing foreign trade policy and that the central Government would implement the provision of the WTO relevant to sub-central governments, including Article XXIV:12 of the GATT 1994, the corresponding WTO Understanding and Article I:3(a) of the GATS; that sub-central administrative authorities, e.g. local administrative bodies, had no jurisdiction or authority to establish regulations or taxes on goods and services in the Kyrgyz Republic independent of the central authorities and that the central government would eliminate or nullify measures taken by sub-central authorities in

the Kyrgyz Republic that conflict with WTO provisions from the date of accession. The Working Party took note of these commitments.

## **V. POLICIES AFFECTING TRADE IN GOODS**

### **- Registration and right to trade**

27. The representative of the Kyrgyz Republic stated that all natural and legal persons engaging in any type of economic activity in the Kyrgyz Republic were required to be registered. He noted that the Kyrgyz Republic had no special registration requirements for persons engaging in importing or exporting nor were individuals or firms restricted in their ability to import or export based on the scope of business of their registration. There were no restrictions, such as capital or nationality requirements, on persons wishing to engage in foreign trade. The representative of the Kyrgyz Republic also confirmed that the former State monopoly in foreign trade had been abolished.

28. The representative of the Kyrgyz Republic confirmed that the Kyrgyz Republic would ensure that, should any laws and regulations relating to the right to trade in goods, and all fees, charges or taxes levied on such rights, be introduced in the future, they would be in full conformity with its WTO obligations, including Articles VIII:1(a), XI:1 and III:2 and 4 of the GATT 1994 and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of this commitment.

### **- Customs tariff**

#### **- Ordinary customs duties**

29. The Kyrgyz Republic engaged in market access negotiations on goods. The tariff concessions resulting from these negotiations are reproduced in the Schedule annexed to the draft Protocol of Accession of the Kyrgyz Republic which is reproduced in the Appendix to this Report.

30. In response to requests for information, the representative of the Kyrgyz Republic stated that the Customs Tariff of the Kyrgyz Republic was contained in the Customs Tariff Law. The temporary tariff was a flat 10 per cent tariff on all imported goods, except those for which an explicit exemption had been created by law. Under the temporary flat 10 per cent regime, the average trade-weighted level of import

duties (after adjusting for exempted items and items qualifying for the Kyrgyz Republic's preference scheme) was 8.4 per cent in 1995. In 1997, the Kyrgyz Republic adopted HS 96 as its tariff nomenclature, retaining the tariff rate of 1992. Tariff descriptions were coded at the 6 and 9-digit levels. In response to further questions, he noted that the Kyrgyz Republic was engaged in negotiations to join the World Customs Organization.

31. He further added that under the Kyrgyz Republic's System of Preferences, goods originating in developing countries were subject to a duty rate which was 50 per cent of the tariff rate while goods produced in and imported from least developed countries were free of duty. The system of preferences may be modified from time to time, in accordance with the provisions of the Customs Code.

32. In response to questions concerning the seasonal duties, the representative of the Kyrgyz Republic stated that according to the Customs Code which incorporated the matters previously covered by the Tariff Law of 1992, the Cabinet of Ministers of the Kyrgyz Republic may establish seasonal duties. The representative of the Kyrgyz Republic stated that if imposed, seasonal duties would not exceed the bound level of tariffs and would be applied in a manner consistent with the requirements of the WTO Agreement. Also, adequate notice would be provided before imposing seasonal duties. The Working Party took note of these commitments.

- **Tariff quotas, tariff exemptions**

33. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that any business enterprise operating in the Kyrgyz Republic, (including wholly or partially foreign owned enterprises) could apply to the Ministry of Industry and Foreign Trade to receive tariff exemptions for imports of certain items used in the production of final products. Applications for tariff exemptions were not automatically approved by the Ministry of Industry and Foreign Trade. The criteria applied in consideration of an application were whether the items will be used in the production of final products. Import substitution or export performance were not factors in consideration of the requests. The exemptions were granted to the requesting enterprise alone. Since 30 March 1994, 436 businesses had enjoyed the benefits of the duty exemptions.



34. Some members of the Working Party noted that exemptions were granted to some products originating in CIS countries. They recalled that Article I of the GATT 1994 required application of the MFN principle, whilst Article XXIV permitted exceptions to Article I in the case of regional integration initiatives provided that the conditions of Article XXIV and the Understanding were complied with. They asked if the Kyrgyz Republic was prepared to enter a commitment that tariff exemptions would only be given to third countries in the context of a WTO compatible Free Trade Agreement or Customs Union Agreement.

35. The representative of the Kyrgyz Republic stated that upon accession to the WTO, any tariff exemptions would only be implemented in conformity with the relevant WTO provisions including Articles I and XXIV of the GATT 1994. The Working Party took note of this commitment.

- **Other duties and charges**

36. The representative of the Kyrgyz Republic confirmed that the Kyrgyz Republic levied no duties and charges on imports other than ordinary customs duties. He further confirmed that the Kyrgyz Republic had bound other duties and charges within the meaning of Article II:1(b) of the GATT 1994 at zero in its Schedule of Concessions on Goods which is reproduced in Part I of the Annex to the Protocol of Accession.

- **Fees for services rendered**

37. Some members of the Working Party requested information on any fees applied to imported products. In response, the representative of the Kyrgyz Republic stated that an *ad valorem* customs processing fee was levied on imported goods. In response, some members of the Working Party stated that the fee did not appear to be consistent with Article VIII of GATT 1994, which required that fees and charges related to importation be limited to the cost of services rendered. The representative of the Kyrgyz Republic stated that the government was considering how to alter the current customs clearance fee from an *ad valorem* fee into a fee that recovered the actual cost of the service provided. The Kyrgyz Republic was attempting to calculate the actual cost of the services rendered in connection with importation. The representative of the Kyrgyz Republic added that the Kyrgyz Republic would ensure that all fees and charges related to importation reflected the cost of services rendered.

38. Following further requests for information, the representative of the Kyrgyz Republic noted that the Kyrgyz Republic proposed to use the *ad valorem* rate of 0.15 per cent with minimum and maximum limits. The limits would be determined on an annual basis to account for inflation. The existing rate of 0.15 per cent would be continued, even though the expense/revenue ratio was 3.6 per cent for fiscal year 1996 and was estimated at 2.4 per cent for fiscal year 1997. The minimum and maximum fees were determined using a methodology that was based on internationally recognized cost accounting principles and practices. The minimum fee consisted of two components: direct costs and indirect costs. Direct costs were those that were exclusively incurred to process import declaration, and consisted of employee costs to process an import declaration. The time spent by an employee to process various categories of import goods was analyzed and the average employee cost to process an import declaration was computed. Indirect costs were those that were incurred for various customs activities including import processing. These costs, also called overhead costs, were allocated based on approximate total time spent by customs employees. On average, Kyrgyz Customs employees spent about 50 per cent of their time processing import declarations. As a result, 50 per cent of the total overhead costs were allocated to import processing. The maximum fee was based on the total costs of Kyrgyz Customs. It was estimated that approximately 50 per cent of Customs resources were consumed to process import declarations. As a result, about 50 per cent of total costs were allocated to import processing. The Kyrgyz Republic would create a revolving fund to finance import processing activities. All revenues collected from import processing fee would be credited to this fund. The proceeds from the fund would be used only to meet the costs of import processing.

39. Following further requests for information on the customs processing fee, the representative of the Kyrgyz Republic stated that in pursuance of Article VIII of the GATT 1994, the new Customs Code of the Kyrgyz Republic put into effect on 1 October 1997, provided that customs fees collected for customs clearance must not exceed the approximate cost of the services provided.

40. The representative of the Kyrgyz Republic also noted that an import/export License Fee was also charged. The current fee was som 1,000 (US\$56). Analysis had revealed that the current fee reflected the cost of services rendered.

41. The representative of the Kyrgyz Republic stated that prior to the date of accession to the WTO, the Government of the Kyrgyz Republic would adopt, through implementing regulations, the provisions and methodology for the application of the customs processing fees as described in paragraphs 38 and 39

above. He confirmed that all fees and charges for services related to importation or exportation and would be operated in conformity with the provisions of Article VIII of the GATT 1994 from the date of accession. The Working Party took note of these commitments.

- **Tariff rate quotas**

42. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic maintained no tariff quotas, and did not intend to introduce tariff rate quotas in the future. Any tariff rate quotas introduced in the future would be operated in conformity with the relevant WTO provisions, including Article XIII:5 of the GATT 1994.

- **Application of internal taxes on imports**

- **Value Added Tax**

43. In response to requests for information, the representative of the Kyrgyz Republic stated that a 20 per cent VAT was imposed on all sales of goods within the Kyrgyz Republic, as well as on goods imported from non-CIS countries. The VAT was imposed on non-CIS imports at the time of importation, and was collected by the customs authorities. The base for assessment of the VAT was the sum of (i) the customs value of the goods plus (ii) transportation, insurance and other costs related to the importation of goods where applicable. With respect to goods imported from CIS countries, no VAT was collected until the good was sold within the Kyrgyz Republic; and the seller was permitted to claim a VAT credit for the amount of VAT paid in the exporting CIS country. This VAT-credit mechanism for imports from CIS countries was in effect in all CIS countries. In addition, VAT exemptions were granted for (i) goods imported to render assistance in connection with natural disasters, armed conflicts, or accidents; (ii) goods imported as humanitarian assistance as specified under an order of the Cabinet of Ministers; (iii) imported goods which the importer had previously exported; (iv) goods temporarily imported under bond, provided such goods were exported in an unaltered condition within twelve months; (v) goods mistakenly imported into the Kyrgyz Republic and being returned to the original exporter; (vi) goods in transit through the Kyrgyz Republic; (vii) imported goods intended for official use by foreign embassies or similar representative offices of foreign governments and imported goods intended for the personal use of the diplomatic, administrative or technical personnel of such embassies or representative offices or the family members of such personnel; (viii) pharmaceuticals and medicinal supplies specified by

Cabinet of Ministers; (ix) educational supplies and school equipment; (x) baby food; (xi) capital goods imported by a legal entity or entrepreneur for use in its/his productive economic activity; and (xii) other imported goods specified as VAT-exempt pursuant to the customs legislation of the Kyrgyz Republic.

44. Some members of the Working Party stated that Article XXIV of the GATT 1994 does not exempt regional integration agreements from application of the MFN principle with regard to internal taxation. They requested an indication when the Kyrgyz Republic would bring its system of VAT application into line with Article I of the GATT 1994. In response the representative of the Kyrgyz Republic stated that the Kyrgyz Republic understood the need to bring its VAT system into conformity with accepted world practice, i.e. applying the VAT to all goods sold or imported into the Kyrgyz Republic regardless of their country of origin, and exempting exported goods regardless of their country of destination. However, he noted that because it was necessary to obtain the agreement of other CIS countries to do so it was not possible to give a date for elimination of the practice. A bilateral agreement had been reached with Kazakstan, with the result that Kazakstan was treated as a "non-CIS" country with respect to the application of VAT. Moreover, analogous agreements have been signed with Armenia, Azerbaijan, Belarus, Tadjikistan, Ukraine and Uzbekistan, and initialled with Georgia. A Protocol signed with the Russian Federation recently would change this practice in their trade as of 1 January 1999.

45. The representative of the Kyrgyz Republic stated that the Law on Making Amendments and Supplements to the Tax Code of the Kyrgyz Republic would be adopted no later than 1 January 1999 and that as soon as possible from the date of accession, in accordance with the legislative programme outlined in paragraph 44 above, the Kyrgyz Republic would ensure that value added taxes would be applied to imports in full conformity with WTO requirements, in particular, the most-favoured-nation requirements of Article I and the national treatment provisions of Article III of the GATT 1994. The Working Party took note of this commitment.

- **Excise Taxes**

46. In response to requests for information on the excise taxes applied in the Kyrgyz Republic, the representative of the Kyrgyz Republic stated that excise taxes were imposed on certain goods whether produced in or imported into the Kyrgyz Republic. He further added that the new Tax Code specified that the following goods were subject to excise taxes: (i) alcoholic beverages, drinks, spirits and liquors;

(ii) items destined for wine production; (iii) tobacco and tobacco products; (iv) gold, silver and platinum jewellery; (v) processed and non-processed fur hides (except for the hides of moles, rabbits, dogs, deer, or sheep); (vi) clothing made of natural fur (except for apparel made of the hides of moles, rabbits, dogs, deer, or sheep); (vii) coats, short coats, jackets and cloaks trimmed with fur (except for the fur of moles, rabbits, dogs, deer or sheep); (viii) clothes made from natural leather; (ix) crystal items, including lighting appliances made of crystal; and (x) firearms, including gas weapons (other than those procured by State authorities). The following imported goods were exempted from excise tax: (i) goods needed to operate or repair vehicles being used for the international conveyance of passengers, baggage or cargo; (ii) goods which were damaged and thereby made useless prior to their entry into the Kyrgyz Republic; (iii) goods imported as humanitarian aid; (iv) goods imported for charitable or aid purposes, including technical assistance supplied by foreign States and international organizations; (v) goods confiscated by or escheated to the State; (vi) goods in transit through the Kyrgyz Republic; and (vii) goods intended for official use by foreign embassies or similar representative offices of foreign governments and imported goods intended for the personal use of the diplomatic, administrative or technical personnel of such embassies or representative offices or the family members of such personnel.

47. The representative of the Kyrgyz Republic added that some excise taxes were assessed on an *ad valorem* basis, while others were assessed on a quantity basis. Domestic and imported goods were subject to differing excise tax rates. Imported goods subject to excise tax were exempted from customs duties. Some members also requested information on the methodology used to calculate excise rates for domestic, CIS and other imported products. In response, the representative of the Kyrgyz Republic stated that the Cabinet of Ministers Resolution No. 557 of 26 September 1997, and Resolution No. 702 of 4 December 1997 established the methodology to be used for calculating excise taxes. This methodology was the same for goods produced in the Kyrgyz Republic and imported from other countries including CIS countries.

In cases where the excise tax rate was established in proportion of the wholesale price of goods:

$$H = C \times A : 100\%$$

where

H = the amount of excise tax

C = the wholesale price of goods (or their customs value at the point of import)

A = the rate of excise tax in per cent.

In cases where the excise tax rate was established in US\$ to the physical volume of goods:

$$H = O \times T \times K$$

where

H = the amount of excise tax

O = the physical volume of manufactured or imported goods (kilogram, litre, units, tons)

T = the rate of excise tax in US\$ per unit

K = the US\$ exchange rate to the Kyrgyz Som.

The Som was the only currency that could be used for payment of excise taxes for both imports and domestic products. Conversion into Soms was based on the official exchange rate of the National Bank of the Kyrgyz Republic.

48. The representative of the Kyrgyz Republic further added that the new Tax Code, which came into effect on 1 July 1996, substantially changed the list of goods subject to excise tax. However, no rates had been set for the items newly subject to excise tax. In the interim, customs duties applicable to such items had temporarily been increased. He stated that the current system of excise taxation treated imported and domestic products differently. In response, some members of the Working Party stated that although they welcomed the Kyrgyz Republic's recognition that the current excise tax system treated domestic and imported products differently, which was inconsistent with Article III of the GATT 1994, they asked that the system be brought into conformity with that provision and requested a progress report on the reform of the system. In response, the representative of the Kyrgyz Republic stated that following a review of excise tax rates, the Legislative Assembly had in December 1996 approved the following table of excise tax rates.

Table 3: New Excise Tax Regime

Goods	Domestic Rates	Imported Rates	HS Codes
Ethyl alcohol and purified ethyl alcohol produced from raw materials (except those imported by special consumers within stipulated limits)	\$1.4/litre	\$1.4/litre	2207
Vodka	\$0.90/litre	\$0.90/litre	220890110- 220890390

Goods	Domestic Rates	Imported Rates	HS Codes
Liqueurs and vodka products	\$0.90/litre	\$0.90/litre	220810, 220830, 220890510- 220890790, 220890910, 220890990
Alcoholized beverages, juice and balsam*	\$0.90/litre	\$0.90/litre	220840, 220850
Grape wine other wines	\$0.35/litre \$0.29/litre		
Wine		\$0.35/litre	220421-220429, 2205, 2206
Cognac	\$0.60/litre	\$0.80/litre	220820100
Sparkling wines	\$0.40/litre	\$0.45/litre	220410
Beer: - packaged - unpackaged	\$0.80/litre \$0.05/litre	\$0.25/litre	2203
Raw materials for wine production	\$0.15/litre	\$0.20/litre	220430
Tobacco products** - filter cigarettes - unfiltered cigarettes	\$1.5/1000 each \$0.75/1000 each	\$5/1000 each \$2/1000 each	2402 2402
Other tobacco-containing items, including fermented tobacco		12%	240110, 240120, 2403
Gold, platinum or silver jewellery	20%	30%	7113-7118
Processed and raw fur hides (other than mole, rabbit, deer, dog and sheep skin)	0%	10%	4110, 4103-4104, 4106-4109
Wearing apparel made of natural fur, including coats, short-coats, jackets, capes, stoles, scarves, headgear, collars, fur coats and fur pieces (other than apparel made of hides of mole, rabbit, dog, deer or sheep skin)	0%	10%	4303
Coats, short-coats, jackets and capes trimmed with fur (other than mole, rabbit, dog, deer or sheep skin)	0%	10%	4303
Clothing made of natural leather	0%	10%	4203
Crystalware	0%	30%	701321, 701331, 701391
Firearms and gas weapons (other than those acquired for the needs of State agencies)	10%	20%	9301-9393, 9305-9306

Goods	Domestic Rates	Imported Rates	HS Codes
Oil products: - gasoline, soft and medium distillates	\$45/ton	\$45/ton	2707, 271000330, 271000350, 271000390, 271000110, 271000150, 271000210, 271000250, 271000410, 271000450
Aircraft fuel		\$45/ton	271000510- 271000590
Diesel fuel	\$0/ton	\$45/ton	271000610, 271000650, 271000690
Black oil	\$0/ton	\$0/ton	271000710, 271000750, 27100790
Other	\$0/ton	\$0/ton	271000550, 271000910, 271000930, 271000990
Coffee and cocoa products		10%	0901, 1801, 1803- 1805
Carpets and rugs (except floor coverings)	0%	35%	57

\* Excise tax rates were calculated based on the content of ethyl alcohol in such items, the base being a beverage containing 45 per cent alcohol.

\*\* Pursuant to Resolution No. 430 of 23 July 1997 of the Kyrgyz Republic for imported tobacco products (topped cigarettes and without tops) with excise stamps, the rate of excise tax is US\$1.5 per 1000 cigarettes, pursuant to Resolution No. 430 of 23 July 1997 of the Kyrgyz Republic.

49. Some members of the Working Party stated that the proposed new rates of excise taxation did not appear to resolve the problems of inconsistent rates of taxation, in particular higher rates of taxation for certain imported products. They requested that the system be brought into conformity with Article III of the GATT 1994, and that imported products not be subject to tax rates in excess of those applied to domestic products. In response, the representative of the Kyrgyz Republic stated that the excise tax system prevailing in the Kyrgyz Republic was already in full conformity with WTO most-favoured-nation requirements. He noted that no imported goods to the Kyrgyz Republic were subject to both excise taxes and import duties at the same time, although it was not contrary to international practices or WTO rules to have apply both excise taxes and import duties to an imported good.



50. The representative of the Kyrgyz Republic stated that by the date of accession to the WTO, the Government of the Kyrgyz Republic would comply with the provisions of Articles I and III of the GATT 1994 with regard to the application of excise taxes and would adopt a decision establishing a single excise tax regime with the same rates applied equally to imported and domestically produced goods. The Working Party took note of these commitments.

- **Quantitative import restrictions**

51. In response to questions, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic maintained no quantitative import restrictions and it did not plan to introduce import quotas except in those circumstances permitted by the WTO Agreements. The Kyrgyz Republic did not foresee balance of payment problems in the next 2 years provided that the current economic situation continued to evolve favourably. Currently, the only import restrictions applied in the Kyrgyz Republic applied to military arms and goods; explosives; nuclear materials and technology for military use; virulent poisons; and narcotics (including those used in pharmaceuticals) and psychotropic substances. The system applied to goods originating in and coming from all countries, including other CIS countries.

52. The representative of the Kyrgyz Republic stated that if the Kyrgyz Republic introduced import quotas as an emergency measure in the future they would be in conformity with Article XIX of the GATT 1994; and if import quotas were introduced for balance of payment purposes they would be in conformity with Articles XII and Article XVIII of the GATT 1994 and the WTO Agreement.

- **Import licensing procedures**

53. In response to requests for information, the representative of the Kyrgyz Republic stated that previously, import licences had been required for five broad categories of goods. A Draft Regulation finalised and submitted to the Working Party specified in greater detail the goods subject to licensing, and broke down the covered goods into 19 sub-items. The representative of the Kyrgyz Republic provided the Working Party, with the following table listing the covered goods:

Table 4: List of Specific Goods Imported under Licenses  
contained in the Draft Regulation on Import/Export Licensing

	Goods	HS Code	Rationale/Justification
1.	Ciphering devices (including ciphering equipment, spare parts for the ciphering equipment, ciphering programs), normative and technical documents to the ciphering devices (including designing and exploiting)	8471 (ciphering equipment only), 847330000 (for the ciphering equipment only), 854380900 (ciphering equipment only), 854390900 (ciphering equipment only)	To protect the Republic's national security
2.	Arms and weapons, specific parts for their production, works and services in the area of military - technological cooperation	by the list of the Ministry of Defense of the Kyrgyz Republic	To protect the Republic's national security
3.	Protection devices from the battle poisoning substances, parts and accessories thereof	by the list of the Ministry of Defense of the Kyrgyz Republic	To protect the Republic's national security
4.	Military uniform, clothing and attributes	by the list of the Ministry of Defense of the Kyrgyz Republic	To protect the Republic's national security
5.	Normative and technical documents to the military products (construction and exploitation)	by the list of the Ministry of Defense of the Kyrgyz Republic	To protect the Republic's national security
6.	Gun powder and explosives, explosive devices and pyrotechnics	3601 (except for the hunting powder), 3602, 3603, 3604	To protect the Republic's national security
7.	Nuclear materials, technologies, equipment and plants, special non - nuclear materials, sources for the radioactive radiation, including radioactive waste	by the list approved by the President of the Kyrgyz Republic (Resolution No. 55, 2 June 1996, the Government of the Kyrgyz Republic)	To maintain the Republic's national security, as well as to adhere to international commitments related to non-proliferation of mass destruction and production technologies thereof

	Goods	HS Code	Rationale/Justification
8.	Materials, equipment and technologies which are intended for peaceful purposes but can not be used while creating weapons for mass extermination	In accordance with the list passed by the President of the Kyrgyz Republic (Resolution No. 55, 2 June 1996, the Government of the Kyrgyz Republic)	To maintain the Republic's national security, as well as to adhere to international commitments related to non-proliferation of mass destruction and production technologies thereof -
9.	Certain types of raw materials, equipment, technologies and scientific information which can be applied while creating weapons and military techniques	by the list approved by the President of the Kyrgyz Republic (Resolution No. 55, 2 June 1996, the Government of the Kyrgyz Republic)	To maintain the Republic's national security, as well as to adhere to international commitments related to non-proliferation of mass destruction and production technologies thereof
10.	Precious metals, alloys, goods made from them, metals plated with precious metals and goods made from them; ores; concentrates; scrap and waste	2616 (ores and concentrates), 2843 (metals, junctions, amalgams), 300640000 (from precious metals only), 7106-7112, 711311000, 711319000, 711411000, 711419000, 711510100, 711590100, 711590900, 7118 (from precious metals only), 8544 (only with conductors from precious metals), 960810300, 960839100	To protect the financial position and the balance of payments of the Republic
11.	Precious natural stones and goods from them, powder and recuperate of precious natural stones, goods from them.	7101, 7102, 7103 (precious stones only), 7105 (from precious stones only), 7116 (from precious stones only).	To protect the financial position and the balance of payments of the Republic
12.	Narcotics and psychotropic drugs, virulent and stupefying concoctions	by the list of the State Commission for Drug Control under the Government of the Kyrgyz Republic	To protect the population's life and welfare
13.	Virulent poisons	by the list approved by the Government of the Kyrgyz Republic (Resolution of the Government of the Kyrgyz Republic of 6 February 1996, No. 55)	To protect the population's life and welfare, as well as flora and fauna in general
14.	Hazardous wastes	by the list of the Basil Convention on the Control over Trans-border Transportation of hazardous cargo of 22 March 1989, approved by Resolution of the Parliament of the Kyrgyz Republic of 18 January 1996, No. 304-1)	To protect the population's life and welfare, as well as flora and fauna in general

	Goods	HS Code	Rationale/Justification
15.	Chemical means of protection of plants	3808 (preparations for the plant protection only)	To protect the population's life and welfare, as well as flora and fauna in general
16	Pharmaceuticals	by the list of the Ministry of Health of the Kyrgyz Republic	To protect the population's life and health
17.	Service and civil guns	by the list of the Ministry of Internal Affairs of the Kyrgyz Republic	To maintain public order
18.	Tobacco	by the list of "Kyrgyztamekisi"	To protect the health and life of the population
19.	Spirits and alcoholic products	by the list of the State Joint Stock Company "Kyrgyzalco"	To maintain public order and protect the health and life of the population

The import licensing system was required to protect public health and safety, the environment, consumer welfare and national security. The licensing procedure was not intended to restrict the quantity or value of imported goods. Imports subject to licensing amounted to about 2 per cent of the value of the Kyrgyz Republic's total imports. Goods subject to import licensing were designated by the Cabinet of Ministers upon recommendation by interested ministries and government bodies and were not subject to administrative discretion.

54. The representative of the Kyrgyz Republic further added that to obtain a licence for import (and also for the export) of alcohol and alcoholic products (except beer, for which there were no import or export licensing requirements) and importer was required to submit an application for a license and the following documents: (i) import or export contract; (ii) a copy of the purchase-sale contract if the applicant does not own the goods; (iii) a copy of the certificate of registration; (iv) certificate of compliance; (v) certificate of origin; (vi) conclusion of expert-organization; (vii) copy of tax-payer registration card. There were no quotas connected with the import and export of alcohol or alcoholic products. A licence was required to be issued within ten days of application. A licence could be obtained after goods had arrived at the border. For imports of alcoholic beverages, Kyrgyzalco was the sole agency with responsibility for determination of the licence application. Licenses were required to be granted unless the application for a licence was not complete or the information contained therein was not reliable. Article 8 of the Law on Licensing provided that foreign legal entities or individuals, as well as individuals without citizenship were entitled to receive licences on the same conditions and pursuant to the same procedures as legal entities and individuals of the Kyrgyz Republic. Whenever a licence application was refused, reasons for the refusal were required to be provided to the applicant in writing. In the case of a refusal, applicants had a right of appeal to a Court, per Article 18 of the Law on Licensing of 3 March 1997.

55. In response to further questions concerning the procedure for granting of an import licence, he added that none of the items subject to import licensing were restricted as to the quantity or value of those imports. Licence applications were normally approved in about 1 week. In urgent cases an application could be approved in a shorter time. Applications for an import licence could only be refused in an application did not meet the stipulated criteria. The reasons for refusal were required to be provided in writing to the applicant. A decision to refuse to grant a licence could be appealed to the Ministry which refused the application and further appealed to an independent Court. All persons, firms and institutions were eligible to apply for an import licence under the system of the Kyrgyz Republic. There was no system of registration of persons or firms permitted to engage in importation. The licence was valid for up to six months, or one year in the case of importers having long-term relationships with foreign exporters. The licence could be renewed for a further period of six months. There was no penalty for non-utilization of the licence or a portion of a licence. The licence was not transferable. The current fee to obtain an import license was som 1000 (approximately US\$ 56.00). He provided members of the Working Party with a detailed analysis of the cost of provision of the service recovered by the fee in Attachment A.IV to document WT/ACC/KGZ/13. In his view that fee reflected the cost of services rendered.

56. Some members of the Working Party asked whether the import licensing would be brought into conformity with the Agreement on Import Licensing. In response, the representative of the Kyrgyz Republic stated that the Government of the Kyrgyz Republic was in the process of drafting regulations to establish new import licensing procedures in conformity with WTO requirements, including the Agreement on Import Licensing. A draft regulation on Import/Export Licensing was provided to the Working Party. The regulation would be enacted by the date of accession.

57. The representative of the Kyrgyz Republic confirmed that the Kyrgyz Republic would, from the date of accession, eliminate and shall not introduce, re-introduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements and other restrictions having equivalent effect that cannot be justified under the provisions of the WTO Agreements. He added that the special import licenses listed in items 10 and 11 of Table 4 were granted automatically to all who request them and would not restrict the right to import these products into the Kyrgyz Republic or in any way discriminate against imported products. He further confirmed that the legal authority of the Government of the Kyrgyz Republic to suspend imports and exports or to apply licensing 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, in particular Articles XI, XII, XIII, XIX, XX and XXI of the GATT 1994, and the Multilateral 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**

58. In response to requests for information concerning the customs valuation system, the representative of the Kyrgyz Republic stated that the Customs Code put into effect on 1 October 1997 provides for six methods to determine the customs value according to the WTO Customs Valuation Agreement. He further added that the Kyrgyz Republic did not have any import reference prices in place and any such measures would not be reintroduced after accession, except in accordance with WTO Agreements.

59. The representative of the Kyrgyz Republic also stated that the rules to determine the customs value contained in the Customs Code which came into force on 1 October 1997 were largely in compliance with the WTO requirements. Amendments and corrections would be made to the new Customs Code by the Law of the Kyrgyz Republic "On Changes and Amendments to the Customs Code of the Kyrgyz Republic" which would be adopted by the date of accession, and would bring the Customs Code valuation rules into full conformity with the WTO. The Working Party took note of these commitments.

60. The representative of the Kyrgyz Republic indicated that the Kyrgyz Republic would fully apply the WTO provisions concerning customs valuation from the date of accession, including, in addition to the Agreement on the Implementation of Article VII of the GATT 1994, the provisions for the Valuation of Carrier Media Bearing Software for Data Processing Equipment and the provisions on the Treatment of Interest Charges in Customs Value of Imported Goods. He further confirmed that, as an international agreement, the provisions of the WTO Agreement on the Implementation of Article VII of the GATT 1994 would supersede domestic law after accession. The Working Party took note of this commitment.

- **Rules of origin**

61. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had no country of origin marking requirement. A certificate of origin certified by an authorized governmental body in the country of origin was required for all imported goods. Pursuant to the Customs Code, origin was determined by methods specified in the Kyoto Convention Annex. Once the Customs Code was passed by Parliament, the Kyrgyz Republic would require time to develop implementing regulations on the determination of origin. It was envisaged that the primary method used would be the tariff shift method. The Customs Code did not define the list of operations that would be considered as sufficient to confer origin. No other specific implementing regulations or rules had been developed. He also added that the Kyrgyz Republic intended to adopt the rules of origin that were being developed in the WTO.

62. In response to further requests for information on the customs origin provisions of the Customs Code, the representative of the Kyrgyz Republic stated that Chapter 55 of the Customs Code provided for issuance of preliminary decisions on various issues including the country of origin. Assessments remained effective for three years. Implementing instructions describing the process in detail would be developed at a later stage. Chapters 58, 59 and 60 of the Customs Code provided that administrative actions taken by customs bodies could be appealed. The Customs Code also provided that goods that are wholly produced in a country are considered as originating in that country. A list of wholly produced goods was adopted from the Kyoto Convention Annex. The Customs Code provided for three methods of determining origin as specified in the Kyoto Convention Annex. However, the tariff shift method of determining origin was, at present, the only method in use. There were no regulations implementing the *ad valorem* or specific manufacturing or processing methods.

63. The representative of the Kyrgyz Republic confirmed that the Kyrgyz Republic would remedy any departures from full conformity with the WTO Agreement on Rules of Origin prior to its accession, and that by that time, the Kyrgyz Republic's application of rules of origin for both MFN and preferential trade would be administered in conformity with the provisions of the Agreement. The Kyrgyz Republic would adopt the Harmonized Rules of Origin once finalized by the WTO in co-operation with the World Customs Organization. The Working Party took note of this commitment.

- **Pre-shipment inspection**

64. In response to questions, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had no plans to introduce any preshipment inspection requirements; however, if such requirements were introduced, they would be consistent with the requirements of the Agreement on Preshipment Inspection. The Working Party took note of this commitment.

- **Anti-dumping, countervailing and safeguards**

65. Some members of the Working Party expressed concern that both the current Customs Tariff Law in force and the proposed law departed from WTO rules on imposition of anti-dumping duties in several respects. These members requested that the legislation be amended so as to be WTO-consistent from the date of the Kyrgyz Republic's accession to the WTO. In response, the representative of the Kyrgyz Republic stated that dumping, countervailing, and safeguard measures would be governed by new laws currently being drafted in conformity with respective WTO agreements. Draft laws on dumping, countervailing, and safeguard measures were submitted in October 1997 to the Working Party.

66. Some members of the Working Party requested that the Government of the Kyrgyz Republic undertake a commitment that any anti-dumping, countervailing or safeguards measures would only be taken pursuant to legislation in conformity with the WTO Agreement on Subsidies and Countervailing Measures, the Agreement on Interpretation of Article VI of the GATT 1994, and the Agreement on Safeguards.

67. The representative of the Kyrgyz Republic stated that the Laws on Anti-Dumping, Safeguards and on Subsidies and Countervailing Measures would be adopted in October 1998. Any legislation in place at the time of accession or implemented in the future providing for the application of measures taken for anti-dumping, countervailing duty, or safeguard purposes would conform to the provisions of the WTO Agreements of Anti-Dumping, on Subsidies and Countervailing Measures, and on Safeguards. In the absence of such legislative authority in place at the time of accession, the Kyrgyz Republic would not apply measures for anti-dumping, countervailing duty, of safeguard purposes until legislation in conformity with the provisions of these WTO Agreements had been implemented. The Working Party took note of these commitments.



- **Export Regulation**

- **Customs tariffs, fees and charges and internal taxes applied to exports**

68. In response to requests for information the representative of the Kyrgyz Republic stated that there were no export duties; although like all CIS countries - a VAT was charged on exports destined for other CIS countries. The importing CIS country was required to grant the person who first sold the good a VAT credit in the amount of the VAT paid to the Kyrgyz Republic. VAT does not apply on exports to non-CIS countries.

- **Export restrictions**

69. The representative of the Kyrgyz Republic stated that with the exception of quantitative restrictions specified in an Agreement with the European Communities on Textiles, the Kyrgyz Republic maintained no quantitative export restrictions, nor prohibitions on exports.

- **Export licensing**

70. The representative of the Kyrgyz Republic informed members of the Working Party that export licences were required for the export of military arms and goods; explosives; nuclear materials and technology for military use; virulent poisons; narcotics (including those used in pharmaceuticals) and psychotropic substances; works of art and antiquities having historical, cultural or scientific value; ferrous, precious and rare-earth metals extracted and produced in the Kyrgyz Republic and their fragments; and rare types of raw materials of vegetable or animal origin having pharmacological applications. Except for non-ferrous metal fragments and waste, the licensing requirement was not intended to restrict the quantity or value of the exports of these goods, but rather to protect public health, consumer welfare, the environment, national patrimony and national security. He further noted that licensing was mandatory for textile exports to the European Communities.

71. In response to requests for more information concerning the requirement to obtain a licence for the exportation of ferrous, precious and rare-earth metals extracted and/or processed in the Kyrgyz Republic, the representative of the Kyrgyz Republic stated that any manufacturing/mining entity or intermediary entity (regardless of form or ownership) was eligible to apply for such a licence. The licence application was required to be submitted to the Ministry of Industry and Trade. When applying for an export licence, an applicant must submit: (i) an application on a standard form; (ii) a copy of the export contract; (iii) a copy of the applicable bilateral agreement on deliveries, if any; and (iv) a short

description of how the transaction benefits the Kyrgyz Republic. The licence was required to be granted within 20 days of the receipt of the complete application. The licence was non-transferable. Once the licence was granted, the recipient must provide it to the State Customs Inspectorate together with a customs declaration. A "single shipment" licence must be used within six months from the date of issuance. A "multiple shipment" licence must be used within 12 months.

72. The representative of the Kyrgyz Republic stated that the following non-ferrous metal and wastes and scrap thereof, and HS tariff number, were subject to export licensing:

7404	Copper wastes and scrap
7503	Nickel wastes and scrap
7802	Lead wastes and scrap
7602	Aluminum wastes and scrap
9702	Zinc wastes and scrap
8002	Tin wastes and scrap
8101	Wolfram and articles thereof, including wastes and scrap
2611	Tungsten ores and concentrates
8102	Molybdenum and articles thereof, including wastes and scrap
2613	Molybdenum ores and concentrates
8103	Tantalum wastes and scrap
8104	Magnum wastes and scrap
8105	Cobalt wastes and scrap
8106	Bismuth wastes and scrap
8107	Cadmium wastes and scrap
8108	Titanium wastes and scrap
8109	Zirconium wastes and scrap
8110	Antimony and articles thereof, including wastes and scrap
2617	Antimony concentrates
2825	Antimony oxides
8111	Manganese wastes and scrap
8112	Rhenium and articles thereof, including wastes and scrap
8112	Chrome, germanium, vanadium, beryllium and niobium wastes and scrap

73. Some members of the Working Party requested information on Cabinet of Ministers Resolution No. 56 of 6 February 1996. They noted that the resolution provided for licensing requirements and controls on exports, including textile goods, wearing apparel, silicon carbide, ammonium nitrate, and raw aluminum, required by bilateral agreements between the Russian Federation and the European Communities, and for general exports of precious stones, precious metals, articles containing precious metals, and precious metal waste. The representative of the Kyrgyz Republic stated that the

restrictions set out in that draft Resolution would come into force only if the Kyrgyz Republic became a member of the Customs Union. The goal of the draft legislation would be to protect electric transmission and communication lines and ferrous and non-ferrous metal items from theft by persons desiring to resell those metals to scrap metal processing firms. In the view of the Government of the Kyrgyz Republic, the measures were justifiable on national security grounds.

74. In response to further questions concerning the reason for the requirement to obtain export licences for exports of non-ferrous metal and wastes and scrap thereof, the representative of the Kyrgyz Republic stated that when an application for an export licence was received, the Kyrgyz Republic reviewed the prices of the products to be exported. While the export licences were not refused on the basis of low prices, recommendations were made to the applicant to ensure that prices were comparable to world market prices. He confirmed that no sanctions were imposed on exporters who continue to export these products that were considered to be below world market prices. The Kyrgyz Government did not consider the export of these products at low prices in its decision to grant or renew an enterprise's licence to purchase or sell fragments and waste of non-ferrous and ferrous metals.

75. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would ensure that its system of export licensing was in conformity with the requirements of Article XI of the GATT 1994 as from the date of accession. The Working Party took note of this commitment.

- **Export subsidies**

76. In response to questions, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had no policies or measures to finance exports. Certain limited export promotion programmes were maintained. The Kyrgyz Republic imposed no export performance requirements. Drawback on goods imported for completion, assembly, or processing for re-export must be claimed within a time limit set by the SCI and the processed goods must be exported within two years after the importation of the concerned items. He further added that the Customs Code also exempted from duties and taxes goods re-exported within six months of importation. If the goods were not re-exported within six months, customs duties, taxes and interest were collected on the goods.

77. Some Working Party members noted that the 1991 Foreign Investment Law granted profit tax exemptions for Kyrgyz legal entities for two to five years based on foreign participation, depending on the nature of its activity. After the expiration of the profits tax exemption, varying reductions in the applicable profits tax are provided for under certain circumstances, including a 25 per cent reduction if at least 50 per cent of the entity's production is exported. In addition, the Directorate of the Bishkek Free

Economic Zone (Information Bulletin No. 2) provides exemptions from lease payments for up to 15 years for establishments which (i) are engaged in export-oriented and import substitution production activities; (ii) use domestic raw materials and spare parts; and (iii) employ a certain number of people per year. In addition, export-oriented production is exempt from quantitative restrictions. Some Working Party members sought a commitment from the Kyrgyz Republic to eliminate these measures, which constituted prohibited subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Duties.

78. In response to further questions, the representative of the Kyrgyz Republic stated that certain lease payment provisions of the Bishkek Free Economic Zone were concerned with import substitution. The representative of the Kyrgyz Republic stated that the source of input for production purpose was not restricted. An enterprise (i) was not prohibited or limited in its ability to import products used in or related to its local production and (ii) was not required to use local products as input for its production. Some members of the Working Party stated that the tax incentives based on export performance provided by Article 24 of the previous Foreign Investment Law of June 1991 should be eliminated prior to accession to the WTO. In response, the representative of the Kyrgyz Republic stated that the new Foreign Investment Law of September 1997 does not provide any tax incentives. He confirmed that his Government did not intend to apply any export subsidies to industrial goods. He added that those tax incentives based on export performance were currently used by foreign firms under a previous foreign investment law. It was foreseen that those incentives would continue to apply until the expiration of the term of their validity. Any attempt at this point to terminate such incentives prior to the term of their validity would cause significant problems to existing foreign investors.

79. The representative of the Kyrgyz Republic stated that the lease payment exemption for export-oriented and import substitution production which could be considered to conflict with the requirements of the Agreement on Subsidies and Countervailing Measures would be eliminated upon accession to the WTO. He further stated that the Regulations On the Amendments to Certain Decisions of the Government would be in conformity with the requirements of the Agreement on Subsidies and Countervailing Measures and would be adopted by the date of accession. The Working Party took note of these commitments.

80. The representative of the Kyrgyz Republic stated that his Government would eliminate, by the date of accession, all measures which meet the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, [including those subsidies discussed in paragraphs 77 and 78 covered under the Foreign Investment Law of 1991 and the Regulations on the Amendments to Certain Decisions of the Government as and would terminate by the

date of accession any incentives [previously granted] under these [and prior] laws]. The Working Party took note of these commitments.

- **Internal Policies Affecting Trade in Goods**

- **Industrial policy, including subsidies**

[81. In response to requests for information, the representative of the Kyrgyz Republic stated that the Government had a general policy to create a broad-based market economy and to privatize all government-owned commercial enterprises and assets. The Government also had a general policy to attract foreign investment into the country and to involve, as far as possible, foreign investors, technology and know-how in all sectors of the economy for the purpose of furthering the creation of a broad-based market economy and the privatization of government-owned commercial enterprises and assets. The Government did not intend to maintain any policies which would distort trade; nor protect any industry, market or business entity.]

82. Some members of the Working Party asked whether the Kyrgyz Republic would maintain subsidies prohibited by Article 3 of the Subsidies and Countervailing Measures Agreement upon its accession to the WTO and whether it would have recourse to Article 29 of the same Agreement to justify such subsidies. In response, the representative of the Kyrgyz Republic stated that, excepting other subsidies described above, the only subsidies had been certain tax exemptions provided by the Foreign Investment Law of 1991. The new foreign investment law which eliminated tax exemptions based on export performance had been adopted in September 1997.

- **Technical Barriers to Trade**

83. In response to requests for information, the representative of the Kyrgyz Republic stated that standards and certification requirements in the Kyrgyz Republic were not intended to distort or establish technical barriers or to disrupt trade. The object of such standards and certification requirements were to (i) ensure the safety and/or quality of goods, works and services, (ii) to protect the environment and the health, life, work and property of citizens, (iii) to ensure uniformity of measurement and the technical compatibility and interchangeability of products; and (iv) to preserve all types of resources. Both domestic-origin and foreign-origin goods were equally subject to the same requirements on standards and certification. Importers of goods subject to obligatory certification of conformity with national safety requirements and other technical requirements were required to present a certificate at the border

stating that the goods met the applicable requirements, along with the import declaration and other supporting documents. If an international agreement to which the Kyrgyz Republic is a party provides for other rules other than those stipulated by the legislation of the Kyrgyz Republic on standardization then the rules of the international agreement would prevail.

84. The representative of the Kyrgyz Republic added that the State Directorate on Standardization and Metrology under the Cabinet of Ministers (Kyrgyzstandard) was the agency responsible for developing, realizing and administering the Kyrgyz Republic's policy on technical regulations, standards and certification requirements. The Cabinet of Ministers Resolution No. 260 of 28 April 1994, as amended by Resolution No.146 of 5 April 1996, listed seven general product categories that require certification prior to sale, without regard to the origin of the concerned products. For health-related products, sanitary/hygiene test results were used as the basis for granting the certificate of compliance. Kyrgyzstandard was responsible for accrediting certification and testing bodies. As of 1 January 1998, there were 11 accredited certifying bodies and 19 accredited testing laboratories in the Kyrgyz Republic. In addition, the four regional branches of Kyrgyzstandard were also authorized to conduct certification procedures. In accordance with the Agreement On a Uniform Policy on Standardization, Metrology and Certification, which was executed by all CIS countries, Kyrgyzstandard now accepted certificates issued by any accredited institution of Armenia, Azerbaijan, Belarus, Georgia, Kazakstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan and Uzbekistan. He further added that it was possible for foreign companies to be accredited as certification bodies or testing laboratories by Kyrgyzstandard; however, no such companies had yet applied. The requirements for accreditation and the procedures to be followed were the same for both domestic and foreign certification bodies. In response to requests for further information, the representative of the Kyrgyz Republic stated that the Law "On Protection of Consumers' Rights", set mandatory requirements for products which posed a substantial potential threat to the environment or the safety, lives and/or health of citizens. Kyrgyzstandard would issue a certificate of compliance and a licence to mark the concerned goods with a "mark of compliance." Sale or import of such goods in the Kyrgyz Republic without such prior certification and marking was prohibited. Goods imported for personal use did not require certification. Other requirements (indications) were voluntary. Goods subject to voluntary certification could be certified on the basis of an agreement between the applicant and Kyrgyzstandard. Voluntary certification could also be performed by any body authorized by Kyrgyzstandard to do so. The method of voluntary certification was chosen by the applicant from those accepted by Kyrgyzstandard. In response to requests for information on the process for obtaining a certificate and mark of compliance the representative of the Kyrgyz Republic stated that the issuance of a certificate and mark of compliance required: (i) the filing of an application with the responsible ministry or State body; (ii) a review of the application, including the choice of certification method; (iii) the identification and selection of samples and their testing; (iv) a review of the test results and a comparison with the applicable standards; and (v) the issuance of a certificate of

compliance and a licence to use the mark of compliance. It was generally possible for the certifying body to accept the declaration of a manufacturer or producer, but the acceptance of a declaration was subject to the discretion of the Ministry or State body responsible for certifying the compliance of the goods. Pursuant to document KMS40.03-97 "System of Certification Kyrg. St. Procedure for Certification of Products", the certifying body would accept manufacturers' declarations of compliance.

85. In response to requests for information on the bringing of standards used in the Kyrgyz Republic into compliance generally accepted international standards, the representative of the Kyrgyz Republic stated that Kyrgyzstandard was currently a corresponding member of the International Standards Organization (ISO). The Kyrgyz Republic was in the process of moving from the use of GOST-standards to the use of international standards. The Kyrgyz Republic was a member of the CIS Inter-Governmental Council on Standardization, Metrology and Certification, which was recognized by ISO as a regional organization moving towards eventual implementation and usage of international standards. A timetable for the change-over had not been finalised. The Kyrgyz Republic had also adopted over 120 standards of the International Electrotechnical Commission (IEC). The acceptance of certificates issued by foreign certification bodies was generally dependent on the existence of a bilateral or multilateral agreement on the matter. The Government was currently in the process of negotiating bilateral agreements on standards with Austria, the People's Republic of China, Germany, India, Iran and Turkey.

86. The representative of the Kyrgyz Republic further added that accreditation of a certification and testing organization was performed by Kyrgyzstandard and other State bodies authorized to conduct mandatory certification within their area of competence (for example, the Kyrgyz Ministry of Construction and Architecture was responsible for certifying the compliance of construction materials). An applicant must provide Kyrgyzstandard with its organizational documents, the desired scope of accreditation, a brief description of its legal status, as well as a description of its organizational structure. An organization applying for an accreditation must: (i) be independent and unbiased; and (ii) be sufficiently competent, i.e. possess sufficient means, qualified professionals, etc.

87. In response to requests for information on the fee structure for certificates, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic had conducted a detailed assessment of all fees connected with issuance of certificates (including the certificate of compliance, certificate of origin, phytosanitary certificate, and veterinary certificate) to determine whether or not such fees were in conformity with the WTO requirements, especially Article VIII of the GATT 1994. He provided detailed analysis supporting the following report:

- Phytosanitary Certificate: the current costs of issuing a Phytosanitary Certificate (minimum fee som 70, maximum fee som 223) exceeded the fee currently charged (minimum fee som 36, maximum fee som 265) for such a certificate. Accordingly, the Kyrgyz Republic considered that the current fee structure was in full conformity with Article VIII. In response to requests by some members of the Working Party, the Kyrgyz Republic provided the list of goods (using HS Code) subject to Phytosanitary Certificates along with the fees charged for each category. This certificate was issued by the Ministry of Agriculture;
- Veterinary Certificate: the current costs of issuing the Veterinary Certificate (minimum fee som 250, maximum som 3,272) exceeded the fee currently charged (minimum fee som 30, maximum fee som 500) for such a certificate. Accordingly, the Kyrgyz Republic considered that the current fee structure was in full conformity with Article VIII. In response to requests by members of the Working Party, the Kyrgyz Republic provided the list of goods (using HS Code) subject to Veterinary Certificates. This certificate was issued by the Ministry of Agriculture;
- Certificate of Origin: currently the following fees are charged for obtaining the certificate of origin: (a) CIS countries - som 100 for natural persons and som 300 for legal entities; and (b) non-CIS countries - som 200 for natural persons and som 400 for legal entities. The Kyrgyz Republic recognized that the fee structure was in violation of Article I and Article VIII of the GATT 1994. The representative of the Kyrgyz Republic stated that, as of the date of accession to the WTO, the fee for issuing the certificate of origin would be som 160 (reflecting the approximate cost of issuing a certificate of origin) for all legal and natural persons in conformity with Article I of the GATT 1994. This certificate was issued by the Chamber of Commerce and Industry;
- Certificate of Compliance: the current cost for the Certificate of Compliance ranges from approximately US\$50 to US\$1,390 depending on the type of products and required tests. The representative of the Kyrgyz Republic provided detailed information of various schemes for testing and the cost of using different schemes. The Kyrgyz Republic considered that the current cost of issuing the Certificate of Compliance was in conformity with Article VIII of the GATT 1994 and reflected the cost of services rendered. In response to requests by some Working Party members, the Kyrgyz Republic provided a list (using HS Code) of all goods requiring a Certificate of Compliance);



[- Import Export licensing: the current fee for issuing import/export licensing is som 1,000 (approximately US\$56). Analysis showed that such a fee reflected the cost of services rendered and was in conformity with Article VIII of the GATT 1994.]

88. Some members of the Working Party asked whether any difficulties were foreseen in the application of the Agreement on Technical Barriers to Trade upon accession. In response, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic does not foresee difficulties in the application of the TBT Agreement. He noted that, at present, draft standards, technical regulations, and conformity assessment procedures were not published for public comment. There were at present no formal notice requirements, although within the CIS, regulations have been developed that operate like notice provisions. The Law on Standardization and the Law on Certification was being amended to meet the TBT requirements for publication of draft standards and technical regulations. Kyrgyzstandard published a quarterly periodical entitled the Information Bulletin of Kyrgyzstandard where such notices will be published. Under Resolution No. 12 of 6 January 1997 the Cabinet of Ministers of the Kyrgyz Republic officially established the Information Centre of the State Inspectorate on Standardization and Metrology (Kyrgyzstandard) as the Inquiry Point for standards and sanitary and phytosanitary measures in the Kyrgyz Republic. This Inquiry Point met WTO requirements, it contained all adopted and proposed standards and conformity assessment procedures and information concerning the membership and participation of the Kyrgyz Republic in regional and international standardizing bodies as well as in bilateral and multilateral arrangements. The Inquiry Point received questions and sends responses by telephone, mail, fax and e-mail. Kyrgyzstandard had hired employees, fluent in Russian and English, who would receive and transmit information in English. To the extent that resources will allow, Kyrgyzstandard will participate in international standards activities. The Kyrgyz Republic was a corresponding member of the ISO. It was also a member of the CIS Inter-Governmental Council on Standardization, Metrology and Certification. This body was recognized by the ISO as a regional organization moving towards the eventual implementation and usage of international standards.

89. The representative of the Kyrgyz Republic stated that the Law on Making Amendments and Supplements to the Law of the Kyrgyz Republic on Standardization which would be fully consistent with the WTO Agreement on Technical Barriers to Trade would be adopted in May 1998. The Working Party took note of this commitment.

90. The representative of the Kyrgyz Republic stated that his Government would apply the WTO Agreement on Technical Barriers to Trade from the date of accession without recourse to any transition period. He further confirmed that, in particular, the Kyrgyz Republic would apply the same controls,

criteria, and rules regarding technical regulations, standards, certification, and labelling requirements to imported and domestic goods, and would not use such regulations to restrict imports. The Kyrgyz Republic would ensure that its technical regulations, standards, certification and labelling requirements are not applied to imports in an arbitrary manner, in a way that discriminates between supplier countries where the same conditions apply or as a disguised restriction on international trade, and would also ensure that from the date of accession its criteria for granting licenses or securing required certification for imported products will be published and available to traders, and that its sanitary and other certification requirements are administered in a transparent and expeditious manner. The Kyrgyz Republic would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments.

- **Sanitary and phytosanitary measures**

91. The representative of the Kyrgyz Republic stated that it was the policy of the Government to develop and maintain sanitary standards solely for the purpose of protecting the health of human, animal and plant life and not for the purpose of creating technical barriers to foreign products or for protecting domestic producers. Development of sanitary standards was the responsibility of several technical committees in cooperation with the Ministry of Health. The consent of the Ministry of Health was required before Kyrgyzstandard could issue any standard constituting a sanitary measure. He further explained that Cabinet of Ministers Resolution No. 260 of 28 April 1994, as amended by Resolution No. 146 of 5 April 1996, listed seven general product categories that require certification prior to sale, without regard to the origin of the concerned products. All covered products required certification of safety indicators, sanitary and environmental reasons. For health-related products, sanitary/hygiene test results were used as the basis for granting the certificate of compliance. Product categories subject to sanitary measures were included in this list. Any accredited certification body could certify a product as being in conformity with the applicable sanitary requirements if the required sanitary/hygiene tests had been performed by a competent testing laboratory and the required test results obtained. He provided the Working Party with a list of goods subject to phytosanitary and veterinary certificates together with corresponding fees in document WT/ACC/KGZ/16.

92. The representative of the Kyrgyz Republic further added that importers of goods subject to sanitary and/or phytosanitary measures were required to present a certificate at the border stating that the goods met the applicable requirements, along with the import declaration and other supporting documents. If the container or packaging was damaged, or was not accompanied by the required documentation, the product could not be cleared through customs.

93. Some members of the Working Party requested information on whether the Kyrgyz Republic's procedures for adopting trade measures relating to concerns with human, animal and plant health were in conformity with the requirements of the SPS Agreement. In response, the representative of the Kyrgyz Republic stated that the appropriate ministries and State bodies (particularly, the Ministry of Health, the Ministry of Agriculture and Food, the Ministry of Environmental Protection, and the Veterinary-Sanitary Supervisory Office) had reviewed the provisions of the SPS Agreement and had brought [in order to bring] their respective procedures into conformity with the SPS Agreement. The amendments to the Law on Veterinary and the Law on Plant Quarantine necessary to implement the provisions of the SPS Agreement were provided to the Working Party.

94. Some members of the Working Party asked whether proposals for SPS measures were published in advance, and whether there was an opportunity for public comment by interested parties, both domestic and foreign. They also asked whether there was a requirement to conduct risk assessments prior to the adoption of SPS measures, including a requirement that such measures be based on scientific evidence. In response, the representative of the Kyrgyz Republic said that the draft Amendments to the Law on Plant Quarantine and the Law on Veterinary provide that notifications on draft developed phytosanitary measures significantly affecting trade, if not substantially the same as international standards, guidelines and recommendations, or if international standards, guidelines and recommendations do not exist, shall be published at an early stage in such a manner as to enable interested parties to make their comments and suggestions. He also stated that draft amendments to the Law on Plant Quarantine and the Law on Veterinary require that risk assessments be employed and that SPS measures be based on scientific evidence.

95. Some members of the Working Party asked whether the sanitary and phytosanitary standards in the Kyrgyz Republic were in conformity with international standards, in particular those developed by the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention. In response, the representative of the Kyrgyz Republic stated that the appropriate ministries and State bodies (particularly, the Ministry of Health, the Ministry of Agriculture and Food, the Ministry of

Environmental Protection, and the Veterinary-Sanitary Supervisory Office) had been conducting comparisons of their standards with international standards through the Eurasian Organization on Standardization, and were engaged in the necessary work to ensure the harmonization of their standards in conformity with the SPS Agreement. The Kyrgyz Republic would report annually progress in the work on harmonization.

96. Some members of the Working Party expressed concern that Cabinet of Ministers Resolution No. 260 required that safety certificates be obtained for imports of "agricultural and food industry products". They requested details of the scientific evidence or risk assessments upon which Resolution No. 260 was based. In response, the representative of the Kyrgyz Republic stated that Resolution No. 260 was based on the evaluation of the possibility of entry of pests and diseases and potential biological consequences. Certification requirements for items listed in Resolution No. 260 were based on scientific studies and were imposed only to the extent necessary to protect human life and health and the environment.

97. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would apply the SPS Agreement in full upon accession. He noted that the Law On Amendments to the Law on Veterinary and the Amendments to the Law on Plant Quarantine which were fully consistent with the SPS Agreement and were adopted in May 1998.

98. The representative of the Kyrgyz Republic stated that from the date of accession to the WTO his Government would apply all its sanitary requirements consistently with the requirements of the WTO Agreements on Sanitary and Phytosanitary Measures and Import Licensing Procedures [without recourse to any transitional arrangements]. [In particular, he stated that if a decision was taken to require notification of diseases other than those listed in OIE Classes A and B, any such decision would be taken in conformity with the requirements of the Agreement on Sanitary and Phytosanitary Measures.] He added that the Kyrgyz Republic [had a system to recognize certificates of compliance issued by the accredited certifying bodies pursuant to treaties concluded with countries who are trading partners of the Kyrgyz Republic. In the absence of such treaties it is allowed to recognize certificates of compliance or certificates of quality of internationally known firms and organizations. However, controlling testing may be conducted in cases where the documentation submitted is analyzed and found to be inadequate and where upon inspection of the products in question it is discovered that the required transportation and storage conditions have been violated, and] [would not require additional certification or sanitary registration for products which have been certified as safe for human use and consumption by recognized foreign or international bodies, and] the Kyrgyz Republic would ensure that from the date of accession

its criteria for granting prior authorization or securing the required certification for imported products would be published and available to traders. He confirmed that sanitary and other certification requirements in the Kyrgyz Republic were administered in a transparent and expeditious manner, and that his Government would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments.

- **Trade Related Investment Measures (TRIMs)**

99. Some members of the Working Party noted that bids to purchase State owned assets were scored according to a number of factors, Included among the factors considered was the commitment by the bidder "to maintain certain employment levels". They asked whether this requirement was inconsistent with obligations in the TRIMs Agreement. In response, the representative of the Kyrgyz Republic stated that giving weight to a bidder's willingness to make a commitment to maintain a certain employment level did not contradict the TRIMs Agreement. There was no trade-related aspect imposed by the State on the buyer in connection with this commitment. The State was currently the major stock-holder in these entities, and in that role could require a potential purchaser to maintain certain employment levels. Furthermore, a requirement to maintain employment levels did not mean that a buyer was required to use only local labour. The requirement was imposed on the buyer for the purpose of avoiding de-stabilizing simultaneous mass lay-offs during an initial period of transition and mass privatization. This requirement was phased out within a limited time after the transaction. In his view nothing in the arrangements violated the TRIMs Agreement.

[100. Following questions in relation to the compatibility of certain aspects of the Bishkek Free Economic Zone with the requirements of the TRIMs Agreement, the representative of the Kyrgyz Republic stated that the lease payment which required the employment of a certain number of people per year was not TRIMs inconsistent, because the TRIMs Agreement referred only to products. The lease payment conditioned on use of domestic raw materials and spare parts could be TRIMs inconsistent and would be eliminated upon accession to the WTO. The Kyrgyz Republic would adopt regulations eliminating all WTO-inconsistent measures in connection with the free economic zones.]

101. The representative of the Kyrgyz Republic stated that the Amendments to the Regulations on Free Economic Zones which would be in conformity with the requirements of the TRIMs Agreement would be adopted by the date of accession to the WTO, and that the Kyrgyz Republic would ensure that the operation of the free economic zones would be WTO-consistent after accession. The Working Party took note of these commitments.

102. The representative of the Kyrgyz Republic stated that from the date of accession, the Kyrgyz Government would not maintain measures that were not in conformity with the Agreement on Trade-Related Investment Measures. The Working Party took note of this commitment.

- **State-trading practices**

103. Some members of the Working Party noted that the Kyrgyz Republic had earlier described enterprises that enjoyed natural monopolies. They asked whether the trade activities of those enterprises were State-trading in terms Article XVII of the GATT 1994 or Article VIII of the GATS. In response, the representative of the Kyrgyz Republic stated that the Government of the Kyrgyz Republic was reviewing the operations, legal status and privileges of the listed natural monopolies to determine whether they should be notified as State-trading entities within the meaning of Article VIII of the GATS or Article XVII of the GATT. If the Government determines that an entity fell within the definition of a State-trading enterprise, that entity would be notified as such to the WTO. At present, the Government was examining the following enterprises:

- Management Department of Kyrgyzrailroad (intra-republic passenger and goods transportation);
- Ministry of Communication (telecommunication services rendered to public);
- Kyrgyz Energy Holding Company (electric power and thermal energy);
- "Kyrgyzgas" (natural and liquefied natural gas);
- "Kyrgyzjilkommunsojuz" (thermal energy, water-pipe water and sewage);
- "Kyrgyzalco" (alcohol and alcohol products, other than beer); and
- "Kyrgyztamekesi" (tobacco fermentation, manufacture of tobacco products, sale of fermented tobacco).

He further added that Kyrgyzpharmacia had no role whatsoever in the issuance of licenses and, therefore, would not be notified as a State trading company. Later, the representative of the Kyrgyz Republic stated that further examination of the State trading sector had revealed that State trading monopolies currently existed in the alcohol, tobacco, and electrical energy sectors: Kyrgyzalco (*de jure*), Kyrgyztamekesi (*de jure*), and Kyrgyz Energy Holding (*de facto*). In response, some members of the Working Party stated that Kyrgyzaltyn should also be notified as a state trading enterprise, because since 1994, that fully State owned enterprise had been the only producer, importer, or exporter of antimony. In response, the representative of the Kyrgyz Republic stated that although Kyrgyzaltyn had been the only, *de facto*, producer, importer, and exporter of antimony, the Kyrgyz Republic did not

believe that this company fell under the definition of Article XVII of the GATT 1994. Kyrgyzalco did not have any exclusive or special rights or privileges in conducting foreign trade. Any person could apply for and obtain a license to export antimony. Licenses were not required for the import of antimony.

104. Concerning the tobacco sector, Kyrgyztamekesi was the sole provider of licences for the production of tobacco products in the Kyrgyz Republic. Any person could obtain a licence to engage in the production of tobacco products. Imported tobacco products were marketed freely in the Kyrgyz Republic, licenses were not required for the domestic distribution or sale of tobacco products.

105. The representative of the Kyrgyz Republic stated that concerning the alcohol sector, Article 8 of the Law on Licensing of 3 March 1997 stated that foreign legal entities or individuals, as well as individuals without citizenship should receive licenses on the same conditions and in the same procedure as legal entities and individuals of the Kyrgyz Republic, unless otherwise stipulated by legislative acts. Currently, no legislative acts stipulated otherwise for licenses issued by Kyrgyzalco. Article 18 of the same law permitted license applicants to have judicial appeal. Any MFN or national treatment (Article III) violations may be appealed to the court by license applicants. Policy decisions with respect to any quantitative restrictions and prohibitions are made by the Government and not by Kyrgyzalco. The Kyrgyz Republic commits to ensure that the operations of Kyrgyzalco in the issuance of import and export licenses for alcohol and alcoholic products are administered in a manner consistent with WTO requirements.

106. Concerning the energy sectors, there were no prohibitions by the government on the export of oil products, natural gas, and liquefied gas. Currently, there were no firms (including Kyrgyzgasmunaizat) engaged in the exportation of oil products, natural, and liquefied gas, due to high domestic demand and insufficient supply. There were five privately-owned companies engaged in the importation of oil products: Lukoil Kyrgyzstan, Tyan-Shan Oil, Sato Petroleum, Datka, and Ekooil. In addition to Kyrgyzgasmunaizat which imported approximately 50 per cent of the natural gas and liquefied gas to the Kyrgyz Republic, a number of State companies (e.g. Kadamjai Antimony Group, Maili Suu Lamp Plant) were currently importing natural gas to meet their own demand. These State companies had their own contracts with Uzbekistan for importing natural gas and had a commercial contracts with Kyrgyzgasmunaizat to transport gas from Uzbekistan to the Kyrgyz Republic.

107. Some members of the Working Party requested further information on trade in the electrical energy sector. These members welcomed the recognition that although there were no *de jure* barriers to trade in electrical energy in the Kyrgyz Republic, there was a *de facto* monopoly in the hands of the

Kyrgyz Energy Holding Company. In response, the representative of the Kyrgyz Republic stated that the production and sale of the electrical energy was carried out by Kyrgyz Energy Holding. There were no regulatory barriers to entry. Any person could apply for a licence for the generation, transmission, distribution, and sale of electrical energy. The draft regulations outlining the procedures, criteria, and requirements for obtaining such licences were currently being developed in accordance with the Law on Licensing of 3 March 1997. He noted that no applications for such licences had been submitted to the Licensor (the "State Energy Agency under the Cabinet of Ministers"). He added that electrical power was equally available to all firms and individuals in the Kyrgyz Republic. In general, the rates for households were lower than the rates for legal persons. There was no difference in the rates charged to (1) a legal person (without foreign ownership), (2) a legal person (fully or partially foreign-owned), and (3) a representative or branch office. Export prices of bartered electrical energy established with Uzbekistan and Kazakhstan were negotiated on annual basis and depended upon the traded volume and conditions of the inter-governmental agreement. The volume and the commercial value of bartered goods were considered during negotiation.

108. Some members of the Working Party requested that the Kyrgyz Republic undertake a commitment that, upon accession to the WTO, all State trading enterprises would be eliminated. In response, the representative of the Kyrgyz Republic stated that Article XVII of the GATT 1994 authorized State trading activities. The Kyrgyz Republic was not prepared to undertake a commitment that State trading would be abolished in the alcohol and tobacco sectors.

109. The representative of the Kyrgyz Republic confirmed that his Government would apply its laws and regulations governing the trading activities of State-owned enterprises and other enterprises with special or exclusive privileges, listed in paragraph 103 of this report, in conformity with the relevant provisions of the WTO Agreement, and would abide by the provisions for notification, non-discrimination, and the application of commercial considerations for trade transactions for any enterprise whose activities were subject to Article XVII of the GATT 1994, the WTO Understanding on that Article, and Article VIII of the GATS. He further confirmed that the Kyrgyz Republic would notify any enterprise falling within the scope of Article XVII at the time of accession. The Working Party took note of these commitments.



- **Free zones**

110. In response to requests for information on free zones operating in the Kyrgyz Republic, the representative of the Kyrgyz Republic stated that existing legislation and the Customs Code authorized the establishment of free economic zones, which offered special customs, tax, labour relations and procedural benefits to enterprises locating within such a zone. Each free economic zone was required to be established by an act of Parliament. Specific benefits included: (i) exemption from the imposition of customs duties and other payments on foreign-origin goods entered into such a zone and intended for reexport; (ii) simplified border clearances; (iii) abolition of non-tariff restrictions on import and export; (iv) exemption from all taxes and charges (however, entities were required to pay the General Directorate an annual fee of 0.1 - 2 per cent of the proceeds generated from the sale of goods and services); (v) collective labour agreement and individual contracts; (vi) free circulation and use of foreign currency, including payments between legal entities and natural persons in the zone; and (vii) simplified entrance, departure and salary transfer abroad for foreign citizens. Four economic zones had been created by law, but only the Bishkek zone was operational. In response to that information, some members of the Working Party asked whether or not any free or free economic zones established in the future would be fully consistent with all WTO obligations relating to free and free economic zones.

111. The representative of the Kyrgyz Republic stated that the free zones and special economic zones authorized by the legislation described in paragraph 110 above were fully subject to the coverage of the commitments of the Kyrgyz Republic in its Protocol of Accession to the WTO Agreement and that the Kyrgyz Republic would ensure enforcement of its WTO obligations in those zones. In this regard, he confirmed that the draft Regulations on the Amendments to Certain Decisions of the Government would be adopted by the date of accession to the WTO. In addition, goods produced in these zones under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of the Kyrgyz Republic, including the application of tariffs and taxes. The Working Party took note of these commitments.

- **Government procurement**

112. In response to requests for information, the representative of the Kyrgyz Republic stated that in the past there was no specific law regulating government procurement practices. Each branch, ministry, agency, or other governmental body was free to utilize whatever method it desired to acquire required goods and services. Open competitive bidding was not required. Details of Government purchasing in

recent years were provided to the Working Party in Tables 1-29 and 1-30 of Annex 1 of document WT/ACC/KGZ/3. He further added that as part of the reform process, the Law on State Procurement was adopted by the Parliament of the Kyrgyz Republic on 15 April 1997, enacted on 13 May 1997, and came into force on 1 June 1997.

113. In response to requests for information on the purchasing process under the proposed law on government procurement, the representative of the Kyrgyz Republic stated that the law would require that procedures and criteria for the evaluation of bids be set forth in the solicitation documents issued for each procurement. The proposed law required procuring entities to act in strict accordance with the applicable solicitation documents. Price, subject to any margin of preference applied pursuant to the law, was the only criterion unless the solicitation documents stated that the award will be based on other objective and quantifiable criteria. Alternative criteria must be specified in advance in the solicitation documents. The State Procurement Agency under the Cabinet of Ministers was established according to Presidential Decree No. 31 of 29 January 1997. This new central agency would control the application of the legal system, supervise the decisions of all purchasing organizations, monitor infringements of public law and settle disputes. Disputes could be pursued in the economic Court system; however, judicial redress was generally available only after the exhaustion of administrative remedies. He noted, however, that the following matters were not subject to judicial review:

- the selection of the method of procurement;
- the choice of a selection procedure;
- the limitation of procurement proceedings on the basis of nationality;
- a decision by the procuring entity to reject all tenders, proposals, offers, or quotations;
- a refusal by the procuring entity to respond to an expression of interest to participate in request-for-proposal proceedings; and
- an omission of reference to laws and regulations in the solicitation documents.

114. In response to questions concerning whether the procurement of certain products was reserved for local industry, the representative of the Kyrgyz Republic stated that with respect to the MFN principle, the law does not permit the procuring entity to discriminate among foreign bidders. If there are enough suppliers on the territory of the Kyrgyz Republic to carry out the deliveries of goods, works, and services, a purchasing organization shall have the right to limit participation in the procedures of purchases to domestic suppliers.

115. Some members of the Working Party asked that as part of its protocol accession commitments, the Kyrgyz Republic accede to the Government Procurement Agreement (GPA) and submit a schedule of commitments to the GPA Committee to initiate negotiations no later than three months after the date of accession to the WTO. These members expressed concern that the new law would allow for domestic preferences, either by limiting procurement procedures to national bidders, or by giving preferential margins to domestic goods or service providers. In their view, such a provision would create a trade barrier in contradiction with the future obligations that the Kyrgyz Republic would assume upon accession to the Government Procurement Agreement. In response, the representative of the Kyrgyz Republic stated that the last version of the draft law did not limit procurement procedures to national bidders and did not give preferential margins to domestic goods or service providers. He also added that the Kyrgyz Republic did plan to accede to the Agreement on Government Procurement.

116. During the early stages of the deliberations the representative of the Kyrgyz Republic stated that the Kyrgyz Republic would initiate the process of joining the Government Procurement Agreement two years after the establishment of the Kyrgyz Government Procurement Agency (KGPA). KGPA was established in January 1997. He further added that the Government Procurement law was adopted by the Parliament on 15 April 1997, signed by the President on 13 May 1997, and came into effect on 1 June 1997. Later on he added that in response to requests from some members of the Working Party, the Kyrgyz Republic was reconsidering its position regarding accession to the Government Procurement Agreement.

117. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic would initiate negotiations for membership in the Government Procurement Agreement upon accession by tabling an entity offer at that time. He also confirmed that, if the results of the negotiations were satisfactory to the Kyrgyz Republic and the signatories of the Agreement, the Kyrgyz Republic would complete negotiations for membership in the Agreement by 31 December 1999. The Working Party took note of this commitment.

- **Trade in civil aircraft**

118. In response to the request by some members of the Working Party, the representative of the Kyrgyz Republic stated that his Government would [consider the issue of joining] [adhere to] the Plurilateral Trade Agreement on Trade in Civil Aircraft [after accession] [at the time of accession] to the WTO. [The Working Party took note of this commitment.]

- **Transit**

119. The representative of the Kyrgyz Republic stated that under the Customs Code, goods in transit through the territory of the Kyrgyz Republic were required to be declared to the SCI at the point of entry. Upon release from the entry point, the goods could move freely through the customs territory of the Kyrgyz Republic. No payment of duties or taxes was required on goods in transit. Goods classified as "goods in transit," were required to remain unchanged except for normal wear and tear and should not be used for any economic purpose. The goods were required to be transported to their customs destination according to the routes and directions established by the SCI. If the goods were not presented to the SCI at the point of exit within a reasonable time, the carrier was responsible for the payment of all duties and taxes due as if the goods had been released into free circulation (the carrier may also be assessed an administrative penalty), unless the goods can be proved to have been exported, destroyed, or lost as a consequence of an accident or force majeure event.

- **Policies Affecting Trade in Agricultural Products**

- **Imports - description of the types of border protection maintained**

120. In response to requests for information, the representative of the Kyrgyz Republic stated that agricultural products were not subject to import licensing, or other restrictions such as quotas. Certain categories of agricultural products, specified in the list approved by Cabinet of Ministers Resolution No. 260 of 28 April 1994 were subject to certification, the purpose of which was to protect the health of Kyrgyz citizens by restricting the importation of poor quality products and raw material. Imported agricultural products were subject to rates of duty not exceeding ten per cent.

- **Exports**

121. He further added that no licence was required to export agricultural products. There were no export tariffs, quotas, restrictions or prohibitions on the export of agricultural products. No export credits, export credit guarantees, export credit insurance, or other financial support or assistance was available for agricultural exports.

- **Internal policies - i.e. description of and the budgetary expenditure and any revenue foregone involved in each of the domestic support measures in place**

122. In response to requests for information, the representative of the Kyrgyz Republic stated that one of the basic aims of the Kyrgyz Republic's policy in agriculture was to ensure the stability and growth of the supply of agricultural products to the domestic market. The Kyrgyz Republic was therefore pursuing a process of de-collectivization, reorganization and privatization of agricultural enterprises. Agricultural prices had been liberalized. From the end of 1995, all direct State financial support payments to all agricultural enterprises, had ceased - with the exception of 6 special animal breeding and 26 seed producing farms. He further noted however, that due to a lack of funds, even those enterprises did not receive regular financial support from the State. In partial replacement of direct State financial support, funds loaned to the Government of the Kyrgyz Republic by various international organizations and institutions were being used by the Government to provide low-interest credit facilities to agricultural enterprises to enable them to make purchases of key inputs, e.g., seeds, fertilizer, equipment, etc. The loans had annual interest rates of between 7 per cent and 12 per cent. The follow-on loans to the agricultural enterprises had rates of between 1 per cent and 5 per cent. In this connection he noted that annual interest rates charged by private commercial lenders, currently ranged between 50 per cent and 60 per cent.

123. In response to this information, some members of the Working Party asked whether the average tariff rate for agricultural products under the new tariff regime would exceed the existing 10 per cent average rate. In response, the representative of the Kyrgyz Republic stated that the average tariff rate for agricultural products under the proposed tariff regime would remain at about 10 per cent.

124. Some members asked whether the Kyrgyz Republic would enter a commitment to not require licences for export of agricultural products and to not impose tariffs or quotas on the export of agricultural products. In response, the representative of the Kyrgyz Republic stated that the Kyrgyz Republic would bind its existing policies of not requiring licences for export of agricultural products and not imposing tariffs or quotas on the export of agricultural products, except in accordance with WTO Agreements.

125. The representative of the Kyrgyz Republic provided information on domestic support and export subsidies in document WT/ACC/SPEC/KGZ/1. He stated that the Kyrgyz Republic would bind export subsidies at zero for agricultural products.

126. Some members of the Working Party asked whether the direct State financial support payments to the special animal breeding and seed producing farms would be stopped in the future. In response, the representative of the Kyrgyz Republic stated that due to a lack of financial resources, the State currently provided no support to the above-mentioned farms. Breeding farms engaged in raising pedigree horses had been able to cover their costs without State assistance, but farms for the production of seeds were supported by the European Commission on Technical Issues. The assistance rendered in 1995 was an estimated som 15-20. In 1997 assistance for such farms was provided for in a government programme for sheep breeding.

127. The Kyrgyz Republic's commitments on agricultural tariffs, on domestic support and export subsidies for agricultural products are reproduced in Part I of the Schedule of concessions and commitments annexed to the Protocol of Accession of the Kyrgyz Republic to the WTO.

- **Textiles regime**

128. In response to requests for information on textile products, the representative of the Kyrgyz Republic stated that imported textile products were subject to rates of duty ranging from 0 to 30 per cent, and that textile products for children must comply with the applicable safety standards. This certification requirement was established by Cabinet of Ministers Resolution No. 520 of 2 December 1995 and applied equally to locally produced children's textiles. The export of textile products was only to an Agreement between the Kyrgyz Republic and the European Communities on Trade in Textile Products (the EC Textile Agreement) imposing a quota on Kyrgyz-origin textiles into the European Communities. The EC Textile Agreement provided that the quotas did not take effect until 1 January 1997. According to the EC Textile Agreement, the Kyrgyz Republic could export textiles to the European Communities according to the following quotas (established as percentages of the total imports of such goods into the European Communities during the previous year):

- 0.35 per cent for category I goods;
- 1.20 per cent for category II goods; and
- 4.00 per cent for category III, IV and V goods.

## **VI. TRADE-RELATED INTELLECTUAL PROPERTY REGIME (TRIPS)**

### **1. General**

#### **(a) Intellectual property policy**

129. The representative of the Kyrgyz Republic stated that the intellectual property system of the Kyrgyz Republic was still undergoing a transition from the system inherited from the former Soviet Union. It was the policy of the Government to put into place a system of intellectual property protection modeled on the systems found in developed market economy countries. In pursuit of this policy the Kyrgyz Republic has adopted (i) Part 2 of the Civil Code, (adopted 5 December 1997, effective 1 March 1998) containing provisions establishing basic intellectual property rights and protections, (ii) the Patent Law (adopted 16 December 1997, effective 4 February 1998), (iii) the Law on Copyright and Related Rights (adopted 16 December 1997, effective 23 January 1998), (iv) the Law on Trademarks, Service Marks and Appellations of Places of Origin of Goods (adopted 16 December 1997, effective 28 January 1998). In addition, separate laws covering: integrated circuits, software and databases, selective breeding achievements and the law on commercial secrets had been adopted by the Parliament. The Anti-Monopoly law enacted on 15 April 1994 contained provisions regarding unfair competition as well as the misappropriation of intellectual property. The Criminal Code (Section on Intellectual Property) entered into force 1 January 1998; the Law on PC, Software Programs, and Databases, the Law on Integrated Circuits, and the Law on Commercial secrets were adopted by the Parliament on 2 March 1998 and were signed by the President at the end of March 1998. The Law on Selection Achievements was currently being reviewed by the Parliament and was expected to be adopted by the Parliament in May 1998. He further added that in preparing those laws, the Kyrgyz Republic had taken into account the requirements of the TRIPS Agreement. The representative of the Kyrgyz Republic stated that Part 2 of the Civil Code had come into force 1 March 1998, and includes Chapter V - Intellectual Property, which complies with the TRIPS Agreement requirements.

130. Some members of the Working Party said that the Kyrgyz Republic should enter a commitment to fully apply the TRIPS Agreement by the date of its accession to the WTO.

#### **(b) Responsible agencies for policy formulation and implementation**

131. In response to requests for further information, the representative of the Kyrgyz Republic stated that on 4 March 1996, the President issued a decree, which established a central intellectual property agency, the State Agency for Intellectual Property (also known as Kyrgyzpatent). This agency was responsible for the registration of patents, trademarks, industrial designs, copyrights and associated

rights and breeding achievements (i.e. new varieties of plants and new breeds of animals). The Anti-monopoly Department within the Ministry of Finance was responsible for the administration and enforcement of the Anti-monopoly Law, which, at section 5, prohibited "unscrupulous competition", defined as including the unauthorized use of trademarks, trade dress and confidential/proprietary business information.

**(c) Membership of international intellectual property conventions**

132. The representative of the Kyrgyz Republic stated that as of 20 February 1998 the Kyrgyz Republic was a member of the following multilateral treaties, agreements and conventions:

- Convention Establishing the World Intellectual Property Organization (WIPO);
- Paris Convention for the Protection of Industrial Property, (signed by the Kyrgyz Republic Prime-Minister 6 January 1994, deposited with WIPO 14 February 1994);
- Madrid Agreement Concerning the International Registration of Marks, (signed by the Kyrgyz Republic Prime-Minister 6 January 1994, deposited with WIPO 14 February 1994);
- The Patent Cooperation Treaty, (signed by the Kyrgyz Republic Prime-Minister 6 January 1994, deposited with WIPO 14 February 1994);
- Eurasian Patent Convention (the translation is being adjusted to conform to the official version of 1994);

Moreover, the Kyrgyz Republic was in the process of acceding to:

- Berne Convention for the Protection of Literary and Artistic Works;
- WIPO Copyright Treaty;
- Locarno Agreement Establishing an International Classification for Industrial Designs (ratified by the Jogorku Kenesh (Upper House) 26 January 1998, and submitted to the Chamber of the People's Representatives for ratification);
- Strasbourg Agreement Concerning the International Patent Classification (ratified by the Jogorku Kenesh (Upper House) 26 January 1998 and submitted to the Chamber of the People's Representatives for ratification);
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (ratified by the Jogorku Kenesh (Upper House) 26 January 1998 and submitted to the Chamber of the Peoples Representatives for ratification);
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (ratified by the Jogorku Kenesh (Upper House) 26 January 1998, and submitted to the Chamber of People's Representatives for ratification).

In addition to these multilateral treaties, the Kyrgyz Republic had entered into bilateral agreements concerning industrial property with the following countries:



- Russian Federation (1995)
- Uzbekistan (1996)
- Kazakstan (1997)
- Armenia (1997)
- Azerbaijan (1997).

The Kyrgyz Republic has yet to take the necessary steps to accede to the following conventions for reasons unrelated to the substance of the conventions themselves.

- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention);
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonogram (Geneva Convention);
- WIPO Performances and Phonograms Treaty;
- Treaty on Intellectual Property in Respect of Integrated Circuits (Washington Agreement);
- Universal Copyright Convention.

Nevertheless the Kyrgyz Republic passed this Law on Integrated Circuits on 2 March 1998 which has been sent to the President for the signature. This Law provides the protections listed in the Washington Agreement and comports to the requirements of the TRIPS Agreement. Moreover, Chapter 55 of the Civil Code covers neighbouring rights as did the Law on Copyright and Neighbouring Rights adopted on 16 December 1997. These laws protect the right of performers, producers of phonograms and broadcasting organizations for a term of fifty years and are consistent with requirements of TRIPS.

133. The rights of producers of phonograms were protected by the Law "On Copyright and Neighbouring Rights", which included basic provisions protecting the rights of these producers in compliance with applicable WTO requirements. The representative of the Kyrgyz Republic said that the Kyrgyz Republic was in the process of acceding to the Berne Convention on Protection of Literary and Artistic Works and, upon accession, would ratify the WIPO Copyright Agreement (1996). This accession would be concluded by 1 July 1998. [The Working Party took note of these commitments.]

**(d) Application of national and MFN treatment to foreign nationals**

134. The representative of the Kyrgyz Republic noted that the policy of the Kyrgyz Republic regarding application of its intellectual property laws to foreign nationals was to accord national treatment to foreign citizens, stateless persons and foreign legal entities, unless such treatment was contrary to the provisions contained in other international agreements to which the Kyrgyz Republic was a party. The exception to this "national treatment policy" was that Article 17 of the adopted Patent Law and Article 6 of the Law On Trademarks, Service Marks and Appellations of Origin of Goods provide that applications filed by foreign legal entities and natural persons residing outside of the Kyrgyz Republic shall be through a patent agent registered with State Agency on Intellectual Property (Kyrgyzpatent).

135. Some members asked how the Kyrgyz Republic intended to comply with Article 4 of the TRIPS Agreement. In response, the representative of the Kyrgyz Republic stated that in order to ensure national treatment, the State Agency for Intellectual Property (Kyrgyzpatent) was now reviewing all laws and regulations to ensure national treatment of foreign persons. For example, a uniform fee structure was currently being developed. With respect to the MFN principle, the Kyrgyz Republic intended to follow the requirements of Article 4 of the TRIPS Agreement.

**(e) Fees and taxes**

136. He noted that fees were charged for the processing of trade mark and service mark registration applications, patent applications for inventions and industrial designs and applications for the certification of utility models. Levies would also be collected for the extension of the term of a patent for an industrial design, a utility model, and for an extension of the registration of a trademark, service mark and the use of an appellation of the place of origin of the good. He noted in this regard that section 18 of the Temporary Regulations set different methods for calculating the application/registration and other fees to be paid by Kyrgyz citizens and CIS nationals (fees set in varying shares of the "minimum salary") and those to be paid by non-CIS nationals (fees set in varying amounts of US Dollars). Pursuant to the Patent Law and the Law On Trademarks, Service Marks and Appellations of Origin of Goods, regulations were being developed which would provide for a unified method to accrue levies. However, prior to the adoption of this regulation, the rules of the temporary regulation on levies applied for the patenting of inventions, utility models, industrial designs, registration of trademarks and service marks (1994).

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

137. The representative of the Kyrgyz Republic noted that the basic legal recognition of intellectual property rights was established under several articles of the Civil Code. Article 22 of the Civil Code listed the objects of civil rights, namely protected undisclosed information and other results of intellectual activity, trade names, trademarks and other means of individualization of goods. Article 53 of the Civil Code stated that a citizen can have the right to intellectual property as well as personal non-economic property rights. Article 22 specifically dealt with brands, trademarks and other means of distinctively marking articles. Article 53 of the Civil Code provided, inter alia, that a person may have authorship rights in scientific works, works of art, literature, inventions and other results of intellectual activity. Article 32 provides that a person has the exclusive right in and to the resultant objective expression of their intellectual activity, including any means created and used for identifying a legal

entity, or a product, work, or service produced or offered by a physical person or legal entity (e.g., firm's name, product brand, trade mark, service mark, etc.). Article 32 also provided that a third person could use such an "objective expression" only with the consent of the person/entity holding the right thereto. These intellectual property provisions were contained in Part I of the Civil Code. The Anti-monopoly Law, which proscribed "unscrupulous competition," included "the unauthorized use of a trademark, name or marking of goods; the unauthorized duplication of a form, package or appearance of goods" and "the unauthorized use or disclosure of confidential scientific, technical, engineering or commercial information".

**(a) Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organizations**

138. The representative of the Kyrgyz Republic further added that Part I of the Civil Code provides generally for the protection of rights of authorship. Article 7 provides that intellectual property rights arise as a consequence of the creation of works of science, literature, arts, invention and other products of intellectual activity. Kyrgyzpatent's Temporary Regulations on the Official Registration of Computer Programs, Databases and Integrated Circuit Topologies extend copyright protection to computer programs - other than computer programming languages - and to databases, which were treated as compilations. These Temporary Regulations had provided the owner of such a program, data base or topology with the option of formally registering his copyright therein. The Temporary Regulations had been replaced by the Law on Copyright and Neighbouring Rights, effective 23 January 1998, which regulated relations resulting from the creation of works of science, literature and art (copyright), phonograms, performances, productions and broadcasts by cable and broadcast organizations (neighbouring rights).

139. The representative of the Kyrgyz Republic stated that the Law on Copyright and Neighbouring Rights which had entered into effect 23 January 1998 was in full conformity with the requirements of TRIPS Agreement.

**(b) Trademarks, including service marks**

140. The representative of the Kyrgyz Republic said that the Law on Trademarks, Service Marks and Appellations of Origin of Goods provided for the registration of a trademark, which was valid for ten years from the date a conforming application is filed with the State Agency on Intellectual Property (Kyrgyzpatent). Article 20 of this law provided for the nullification of the registration of a trademark if

it had not been used for three years. Pursuant to Article *6bis* of the Paris Convention on Protection of Industrial Property, Article 5 of the Kyrgyz Republic Trademark Law provided that trademarks which are similar to the extent likely to cause confusion with well-known trademarks within the territory of the Kyrgyz Republic may not be registered. Article 41 of the Trade Mark Law provides liability for the illegal use of a trademark. Seizure and destruction of goods in respect of which a trademark had been illegally used were listed among legal remedies. Article 5 of the law provided for the rejection of an application to register a trademark, which reproduced a trade name (in full or in part) owned by others who have been granted an earlier ownership right.

141. The representative of the Kyrgyz Republic stated that the Law of the Kyrgyz Republic on Trademarks, Service Marks and Appellations of Origin of Goods, passed by the Legislative Assembly of the Parliament of the Kyrgyz Republic on 16 December 1997, signed by the President of the Kyrgyz Republic on 14 January 1998, which had entered into effect 28 January 1998, was in compliance with the requirements of the TRIPS Agreement.

**(c) Geographical indications, including appellations of origin**

142. The representative of the Kyrgyz Republic said that the newly adopted Law of the Kyrgyz Republic On Trademarks, Service Marks and Appellation of Origin of Goods enacted in December 1997 which had entered into force on 28 January 1998 governed relations involving the registration, legal protection and use of trademarks, service marks and appellations of origin of goods. For example, Articles 27-38 of this law contained provisions on appellations of origin of goods.

143. The representative of the Kyrgyz Republic stated that the Law on Trade Marks, Service Marks and Appellation of Origin of Goods had brought the regime on appellations of origin of goods in the Kyrgyz Republic into full conformity with the requirements of the TRIPS Agreement.

**(d) Industrial designs**

144. The representative of the Kyrgyz Republic said that the recently adopted Patent Law of the Kyrgyz Republic provided for the protection of industrial designs for ten years from the priority date. Article 21 of the law provided an opportunity to establish a priority date from the date an application was filed in a member state of the Paris Convention on Protection of Industrial Property (conventional priority), if the application was filed with the State Agency on Intellectual Property (Kyrgyzpatent) within 6 months from the indicated date. A limited grace period was provided for disclosures by the

author or person who obtained the disclosed information from the author. Excluded from protection were architectural structures and works contradicting the public interest or the principles of humanity. In response to requests for clarification of the concepts of contradiction of "principles of humanity", the representative of the Kyrgyz Republic stated that the definitions were not based on official normative documents and could only be accompanied by references to sources which had a statement of humane ideas and moral-ethic standards formed in the society, in conformity with the international standards set forth in the applicable international agreements.

**(e) Patents**

145. The representative of the Kyrgyz Republic noted that the Patent Law of the Kyrgyz Republic provided that the term of a patent was 20 years from the priority date. An invention was patentable if it was new, has an inventive level and was industrially applicable. Applications were to be filed with Kyrgyzpatent and were examined on request of the applicant. A grace period was established for disclosures made by the inventor or a person who obtained the disclosed information from the inventor. Integrated Circuits were protected in a separate Act currently pending before Parliament. Similarly, patent protection was excluded for works contradicting the public interest or the principles of humanity. Importation satisfied the working requirement.

146. The representative of the Kyrgyz Republic stated that the Patent Law of the Kyrgyz Republic passed by the Legislative Assembly of the Parliament of the Kyrgyz Republic on 16 December 1997, signed by the President of the Kyrgyz Republic on 14 January 1998 which had become effective on 4 February 1998 had brought the patent regime of the Kyrgyz Republic into full conformity with the requirements of the Agreement on Trade Related Aspects of Intellectual Property Rights.

**(f) Plant variety protection**

147. The representative of the Kyrgyz Republic said that plant varieties were not patentable pursuant to the Patent Law of the Kyrgyz Republic. However, the legal protection for plant varieties and animal breeds was provided by the temporary regulation of breeding achievements. The draft Law of the Kyrgyz Republic on Legal Protection of Breeding Achievements was [pending before Parliament and was expected to be] passed in May 1998.

**(g) Layout designs of integrated circuits**

148. The representative of the Kyrgyz Republic stated that layout designs of integrated circuits were the subject matter of a specific law that incorporates the requirements of TRIPS. The law had been adopted by Parliament and enacted in March 1998.

149. The representative of the Kyrgyz Republic stated that the Law On Topologies of Integrated Circuits [that would be] adopted in April 1998 [would bring] [had brought] the regime on protection of layout designs of integrated circuits into full conformity with the requirements of the TRIPS Agreement. [The Working Party took note of this commitment.]

**(h) Requirements on undisclosed information, including trade secrets and test data**

150. The representative of the Kyrgyz Republic stated that pursuant to Articles 22 and 34 of the Civil Code, protected undisclosed information, which is a trade secret, was also listed among the objects of civil rights. Such information must have actual or potential commercial value due to its secrecy to third parties, it cannot be accessed on any legal basis and its holder must undertake measures to keep it confidential. Commercial secrets were the subject of separate legislation which was enacted on 30 March 1998. Damages were available for misappropriation of such information by persons who had obtained it illegally or who had divulged it in violation of a contractual obligation. Article 202 of the Civil Code obliged a commercial representative to keep confidential all information learned about sales transactions, even after the completion of his or her employment. The Criminal Code also provided penalties for copying information from computers.

151. The representative of the Kyrgyz Republic stated that the Law on Commercial Secrets enacted on 30 March 1998 had brought the regime on protection of commercial secrets into full conformity with the requirements of the TRIPS Agreement.

**(i) Any other categories of intellectual property**

152. The representative of the Kyrgyz Republic stated that under Kyrgyzpatent's Temporary Regulations on the Procedure for the Registration of Licensing Agreements of 24 July 1995, relationships on "know-how" were protected. Trade names were protected under Article 89 of the Civil Code which provides that a legal entity, whose firm name has been registered, has an exclusive right to its use. Article 89 provided that a legal entity which had first registered a particular business name had

the exclusive right to use that name. A person who unlawfully uses another firm's registered name was obliged to stop using the name upon demand and to indemnify the registered owner for any damage caused by such use. Kyrgyz patent had submitted for approval the draft regulation on firm names which would be in force until the adoption of the appropriate law.

### **3. Measures to Control Abuse of Intellectual Property Rights**

153. The representative of the Kyrgyz Republic stated that Article 12 of the Patent Law provided that in cases where an invention, utility model or industrial design was not used or used insufficiently within three years from the date the patent is granted, any entity willing or prepared to use the protected object (if the patent holder refuses to enter into a licensing agreement with the entity) shall have the right to resort to court and file a petition requesting the grant of a compulsory license. Such license shall be granted if the patent holder fails to prove that insufficient use or non-use of the object is caused by justifiable reasons.

### **4. Enforcement**

#### **(a) Civil judicial procedures and remedies**

154. The representative of the Kyrgyz Republic stated that Article 10 of the Civil Code provides for Court enforcement of recognized by the Civil Code. Article 11 provided that the Court could order (i) specific performance of an obligation, (ii) compensation of losses, (iii) exaction of penalties and other penalties. Article 14 stated that losses included both direct and consequential damages, including lost profits, as well as the profits made by the violator from the violation of the right. Compensation for moral harm was available under Article 16. The protection of honour, dignity and business reputation was provided under Article 18, where remedies included both the right of refutation and compensation for losses and/or moral harm.

#### **(b) Provisional measures**

155. The representative of the Kyrgyz Republic said that Article 35 of the Patent Law provided that courts, within the limits of their authority, had jurisdiction to hear the following disputes: actions involving copyright to industrial property, disputes involving the issuance of protection documents, determinations as to who holds the patent, issues involving compulsory licenses, actions for breach of the exclusive rights to the object of industrial property, as well as disputes concerning other economic rights of the patent owner.

**(c) Any administrative procedures and remedies**

156. The representative of the Kyrgyz Republic stated that Article 10 of the Civil Code provided that administrative enforcement of rights could be exercised only in cases stipulated by law and such decisions were appealable in Court. The Patent Law and the Law on Trademarks, Service Marks and Appellations of Origin of Goods provides for Appellate Council review of disputes involving: inventions, utility models, industrial designs, trademarks and service marks, as well as appellations of origin of goods. The Appellate Council was the first body of review for these disputes. The consumer protection agency had administrative authority to address various forms of unscrupulous business activity, including passing off, the sale of items not fit for ordinary use (including mislabelled items of food and drink) and trade mark counterfeiting. Under Article 20 of the Anti-Monopoly Law, the Anti-Monopoly Department had the power to levy and collect fines for engaging in unscrupulous business activity, including acts of passing off, trade mark misappropriation and unauthorized use/disclosure of proprietary information. In addition to fines, Article 22.1 provided that, upon successful application by the Anti-Monopoly Department to a commercial Court, a violator may be required to surrender all profits made from the concerned activity. Finally, Article 22.2 permitted the damaged person or legal entity to recover losses in an action filed in an appropriate Court.

**(d) Any special border measures**

157. The representative of the Kyrgyz Republic stated that Articles 28 to 31 of the Customs Code, enacted on 29 July 1997, and effective on 1 October 1997, provided for border measures related to intellectual property. These measures include the suspension of the release of goods where there is an indication the goods violate intellectual property rights.

**(e) Criminal procedures**

158. The representative of the Kyrgyz Republic stated that the new Criminal Code, passed 18 September 1997, had entered into force on 1 January 1998. Articles 150 and 191 detailed the offenses for violation of copyright, neighbouring rights and the rights of a patent holder, as well as for illegal use of trademarks, service marks and appellations of origin of goods.

159. The representative of the Kyrgyz Republic confirmed that his Government would fully apply the provisions of the TRIPS Agreement by the date of its accession to the WTO without recourse to a transitional period. The Working Party took note of this commitment.



## **VII. POLICIES AFFECTING TRADE IN SERVICES**

160. The Government of the Kyrgyz Republic entered into bilateral negotiations on market access in Services, on the basis of the offer circulated to Working Party members in document WT/ACC/SPEC/KGZ/3. The results of those negotiations are reproduced in the Schedule of Specific Commitments contained in Part II of the Annex to the Protocol of Accession of the Kyrgyz Republic.

161. In response to requests for information, the representative of the Kyrgyz Republic stated that since independence, the type, quality and number of service providers had been expanding rapidly. Private companies and individual suppliers now dominated the sector. As of 1 January 1998, the service sector accounted for approximately 40 per cent of total employment. The service sector accounted for approximately 30 per cent of GDP in 1996 and approximately 32 per cent in 1997. He provided the Working Party with a detailed description of selected service industries and the legal regime governing each. He noted that the primary goals of State regulation of the services sector were: protection of the life, health and economic interests of consumers, protection of the environment and suppression of unfair competition. The Kyrgyz Republic pursued these goals through a system of regulation intended to impose a minimum of burdens on service suppliers. The regulatory system, with a relatively few minor exceptions, was imposed equally on both foreign and domestic suppliers (including foreign-owned domestic suppliers). Therefore, foreign suppliers generally enjoyed national treatment. In addition, the Kyrgyz Republic did not discriminate among foreign suppliers of services on any basis.

## **VIII. TRANSPARENCY**

162. In response to questions from some members of the Working Party, the representative of the Kyrgyz Republic stated that there was no legal requirement to publish all legislation and administrative acts on WTO related issues. However, in practice, all laws, decrees, and resolutions were published in national newspapers. In response, some members of the Working Party stated that the Kyrgyz Republic appeared to lack a legislative basis for the implementation of Article X of the GATT 1994 and other publication requirements of WTO Agreements, e.g., the requirement that standards be published for prior review and comment before finalization and implementation. These members stated that the Kyrgyz Republic should make efforts to institute appropriate legislation on these points. In response to those requests, the representative of the Kyrgyz Republic stated that amendments to the Law on Normative Acts and Amendments to the Law on Publication of Laws had been prepared to ensure the transparency of trade laws and regulations, and to ensure conformity with Article X of the GATT 1994 and other publication requirements of WTO Agreements.

163. The representative of the Kyrgyz Republic said that upon entry into force of the Protocol of Accession, the Kyrgyz Republic would submit all initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by the Kyrgyz Republic 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.

## **IX. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES**

164. The representative of the Kyrgyz Republic stated that the Kyrgyz Republic had signed some 27 bilateral agreements relating to foreign trade in goods and/or services. He provided the Working Party with a list of those agreements and a summary of the terms of the agreements. The agreements had been signed with 21 foreign countries (six of which were CIS countries). All of the agreements were currently in force and were generally concerned with the granting of mutually advantageous terms and conditions for trade and economic cooperation. The Kyrgyz Republic has free trade with the following countries: CIS countries according to the CIS Free Trade Area Agreement; Kazakstan and Uzbekistan according to the Central Asia Economic Area Agreement (20 April 1994); Kazakstan, Belarus and the Russian Federation; Bilateral Agreement with Armenia (4 July 1994); Bilateral Agreement with Kazakstan (22 June 1995); Bilateral Agreement with Moldova (26 May 1995); Bilateral Agreement with the Russian Federation (8 October 1992); Bilateral Agreement with Ukraine (26 May 1995).

165. Some members of the Working Party requested further information on whether the Parliament expected to ratify the Customs Union with Russia, Kazakstan and Belarus by the Kyrgyz Republic. The representative of the Kyrgyz Republic stated that the agreement on joining the Customs Union was ratified by the Legislative Assembly; however, internal procedures on its enforcement had not been adopted. Currently, within the Customs Union, expert consultations were being held on this issue.

166. Some members of the Working Party asked how the Government of the Kyrgyz Republic planned to meeting the requirement contained in the Customs Union Agreement that the Kyrgyz Republic harmonise its customs and trade legislation with that of the other parties to the Customs Union. In response, the representative of the Kyrgyz Republic stated that the harmonisation of the Kyrgyz Republic's legislation connected with foreign trade with the Customs Union's requirements were currently being studied at the level of ministries and State agencies of the Kyrgyz Republic.

167. The representative of the Kyrgyz Republic stated that his Government would observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its participation in trade agreements, and would ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which the Kyrgyz Republic was a member were met from the date of accession. [He confirmed that the Kyrgyz Republic would, by the date of accession, submit notifications and copies of its Free Trade Area and Customs Union Agreements to the Committee on Regional Trade Agreements (CRTA). He further confirmed that any legislation or regulations required to be altered under its Trade Agreements would remain consistent with the provisions 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.

## **X. CONCLUSIONS**

168. The Working Party took note of the explanations and statements of the Kyrgyz Republic concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by the Kyrgyz Republic in relation to certain specific matters which are reproduced in paragraphs 13, 20, 24, 26, 28, 32, 35, 41, 45, 50, 57, 59, 60, 63, 64, 67, 75, 79, [80], 89, 90, [98], 101, 102, 109, 111, 117, [118], [133], [149], 159, 163 and [167] of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of the Kyrgyz Republic to the WTO.

169. Having carried out the examination of the foreign trade regime of the Kyrgyz Republic and in light of the explanations, commitments and concessions made by the representative of the Kyrgyz Republic, the Working Party reached the conclusion that the Kyrgyz Republic 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 the Kyrgyz Republic's Schedule of Concessions and Commitments on Goods (document WT/ACC/SPEC/KGZ/9/Rev.1/Add.1) and its Schedule of Specific Commitments on Services (document WT/ACC/SPEC/KGZ/9/Rev.1/Add.2) that are annexed to the 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 the Kyrgyz Republic 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 the Kyrgyz Republic to the Marrakesh Agreement Establishing the WTO.

**APPENDIX**

**ACCESSION OF THE KYRGYZ REPUBLIC**

**Draft Decision**

The General Council,

Having regard to the results of the negotiations directed towards the establishment of the terms of accession of the Kyrgyz Republic to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol for the Accession of the Kyrgyz Republic,

Decides, in accordance with Article XII of the Marrakesh Agreement Establishing the World Trade Organization, that the Republic of the Kyrgyz Republic may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the said Protocol.

**PROTOCOL OF ACCESSION OF THE KYRGYZ REPUBLIC  
TO THE MARRAKESH AGREEMENT ESTABLISHING  
THE WORLD TRADE ORGANIZATION**

**DRAFT**

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 "WTO Agreement"), and the Kyrgyz Republic,

Taking note of the Report of the Working Party on the Accession of the Kyrgyz Republic to the WTO in document WT/ACC/KGZ/ ... (hereinafter referred to as the "Working Party Report"),

Having regard to the results of the negotiations on the accession of the Kyrgyz Republic to the WTO,

Agree as follows:

**Part I - General**

1. Upon entry into force of this Protocol, the Kyrgyz Republic 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 the Kyrgyz Republic accedes shall be the WTO 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 comprise the commitments referred to in paragraph 168 of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in the paragraphs referred to in paragraph 168 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 the Kyrgyz Republic as if it had accepted that Agreement on the date of its entry into force.

4. The Kyrgyz Republic may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure is 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 annexed 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 the Kyrgyz Republic. The staging of 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 the Kyrgyz Republic until .....

8. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

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 thereto pursuant to paragraph 7 to each Member of the WTO and the Kyrgyz Republic.

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

11. Done at Geneva this ... day of .... one thousand nine hundred and ninety eight, 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 is authentic in only one or more of these languages.

**ANNEX**

**SCHEDULE CXLII - THE KYRGYZ REPUBLIC**

**Part I - Goods**

[To be circulated in document WT/ACC/SPEC/KGZ/9/Rev.1/Add.1 ]

**Part II - Services**

[To be circulated in document WT/ACC/SPEC/KGZ/9/Rev.1/Add.2]

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