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ACCESSION OF THE KYRGYZ REPUBLIC

Questions and Replies
to the Memorandum on the Foreign Trade Régime
(Document WT/ACC/KGZ/3)

The additional questions submitted by Members and the replies thereto provided by the authorities of the Kyrgyz Republic are reproduced hereunder. The annexes mentioned in this document are available in the Secretariat (Accessions Division, Room 1126) for consultation.

TABLE OF CONTENTS

	Page No.	Question No.
II. ECONOMY, POLICIES AND FOREIGN TRADE	1	1-12
1. Economy	1	1-6
(a) General description	1	1-6
2. Economic Policies	2	7-12
(b) Monetary and fiscal policy	2	7-10
(e) Competition policy	3	11-12
III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES	4	13-15
4. Legislative Programmes or Plans to Change the Regulatory Régime	4	13-15
IV. POLICIES AFFECTING TRADE IN GOODS	5	15-62
1. Import Regulation	5	15-57
(b) Characteristics of national tariff	5	15-19
(c) Tariff quotas, tariff exemptions	6	20-22
(d) Other duties and charges, specifying any charges for services rendered	6	23-27
(f) Import licensing procedures	7	28-33
(h) Customs valuation	10	34-38
(i) Other customs formalities	11	39-40
(k) Application of internal taxes on imports	12	41-49
(l) Rules of origin	16	50
(m) Anti-dumping régime	16	51
(n) Countervailing duty régime	17	52
(o) Special purpose duties	17	53-57
2. Export Regulation	18	58-62
(d) Export licensing procedures	18	58-62
(f) Export financing, subsidy, and promotion policies	20	-
3. Internal Policies Affecting Foreign Trade in Goods	20	63-99
(b) Technical regulations and standards, including border measures	20	63-81
(c) Sanitary and phytosanitary measures	24	82-88
(d) Trade-related investment measures	25	89
(e) State-trading practices	26	90-91
(h) Trade-related environmental policies	27	92-97
(j) Government-mandated countertrade and barter	28	98
(l) Government procurement practices	29	99
4. Policies Affecting Foreign Trade in Agricultural Products	29	100-104
(a) Imports	29	100-101
(b) Exports	29	102-103

	Page No.	Question No.
(e) Internal policies	30	104
V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME	30	105-156
1. General	30	105-111
(a) Intellectual property policy	30	105-106
(c) Membership of international intellectual property conventions	31	107-109
(d) Application of national and MFN treatment to foreign nationals	32	110-111
2. Substantive Standards of Protection	33	112-113
(a) Copyright and related rights	35	114-122
(b) Trademarks, including service marks	37	123-128
(c) Geographical indications, including appellations of origin	40	129-130
(d) Industrial designs	40	131-132
(e) Patents	41	133-138
(f) Plant variety protection	43	139-140
(g) Layout designs of integrated circuits	43	141-146
(h) Requirements on undisclosed information	44	147-149
(i) Any other categories of intellectual property	45	150
3. Measures to Control Abuse of Intellectual Property Rights	45	151
4. Enforcement	46	
(a) Civil judicial procedures and remedies	46	152-153
(b) Provisional measures	46	154
(d) Any special border measures	46	155
(e) Criminal procedures	47	156
VI. TRADE-RELATED SERVICES REGIME	48	157-159
3. Market Access and National Treatment	48	-
(f) Limitations on the participation of foreign capital	48	157
(g) Measures providing for less than the treatment accorded to national services or service suppliers	48	158-159
4. Most Favoured Nation Treatment	49	160-161
5. Description of the Market and the Mechanism for Regulating the Most Prominent Service Sectors	49	162
(f) Transport services	50	162
VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES	50	163-176
1. Bilateral, Plurilateral and Multilateral Agreements Relating to Foreign Trade in Goods and Trade in Services	50	-
(b) Plurilateral agreements relating to foreign trade in goods and trade in services	50	-
2. Economic Integration, Customs Union and Free Trade Agreements	50	163-176

	Page No.	Question No.
(b) Customs union agreements	50	163-168
(c) Free trade area agreements	53	169-176

II. ECONOMY, POLICIES AND FOREIGN TRADE

II.1 Economy

II.1(a) General description

Question 1.

Please confirm whether the private sector contributed 77 or 87 percent of the Republic's total agricultural production in 1995 (typo in text).

Answer:

The accurate amount is seventy-five point four percent (75.4%).

Question 2.

Please identify and describe the non-private entities which contributed the remaining share of agricultural production.

Answer:

The figure in the Memorandum indicating that seventy-eight percent (75.4%) of agricultural production in 1995 was contributed by the private sector needs clarification. According to a resolution of the Cabinet of Ministers "On Agriculture," agricultural producers are to be divided into three categories: (i) state agricultural enterprises, kolkholzes and peasant farm associations (ii) personal farms and (iii) peasant farms. In accordance with this resolution, the Ministry of Agriculture collects gross statistics for each of the three specified categories. Producers falling into the latter two categories, which are entirely private, contributed seventy-five point four percent (75.4%) of agricultural production in 1995. The 150 enterprises falling within the first category contributed the remaining twenty-four point six percent (24.6%).

However, it must be noted that kolkhozes and peasant farm associations (PFA's), which are included within the first category, are also entirely private agricultural entities. They are completely owned and controlled by their respective members. The state does not own or control their operations, property or resources. Furthermore, they receive no state support. A PFA is usually a kolkhoz that has been reorganized by its members. The difference between a kolkhoz and a PFA is that, in a kolkhoz each member owns an undivided share in the entire enterprise, and in a PFA each member has the exclusive right to work a specified parcel of land and has an exclusive ownership right in certain specified productive assets (such as buildings and/or equipment).

Only goskhozes are still state-owned; however, any member of a goskhoz may take a parcel representing his share in the goskhoz and withdraw this from the goskhoz, thereby creating a private farm. This is an on-going process as more and more members of goskhozes take advantage of this right. Although all goskhozes are supposed to receive some state support, due to a lack of funds, the state has been unable to provide this support, except to those few goskhozes engaged in animal breeding or seed production. Due to the lack of state support, it is believed that the resources of the other goskhozes will be completely privatized by their members within the next few years.

Question 3.

Do State-owned means of agricultural production (i.e., collective farms) continue to exist in the Kyrgyz agricultural sector?

Answer:

Yes

Question 4.

If so, what is their share of total agriculture production?

Answer:

Somewhat less than ten percent (10%). See answer to question 2 above.

Question 5.

Does the Kyrgyz Republic intend to privatize further its collective farming system?

Answer:

Yes

Question 6. When does the Kyrgyz Republic believe that it will have completed its privatization program?

Answer:

Currently, the privatization program for 1997 is being developed. During 1997 the privatization program for 1998 and 1999 will be developed. It is too early to predict the date on which the entire program will have been completed, but it is envisaged that the program will be completed before 2005.

II.2 Economic Policies

II.2(b) Monetary and fiscal policy

Question 7.

The Memorandum states that considerable progress has been achieved with regard to the privatization of medium and large enterprises, and that the process of privatization will continue under the 1996-1997 program. Does the Kyrgyz Republic consider the privatization of small enterprises to now be complete?

Answer:

Privatization of small enterprises engaged in the production or offering of goods has been completed; however, the situation is different for service enterprises. Such enterprises include the following types of service providers: educational institutions, scientific institutions, cultural institutions, recreational and entertainment facilities, tourism service providers, hotels, health resorts, sports facilities and health care providers. In accordance with the Denationalization and Privatization Program for 1996-1997, the state is to retain a 70% interest in these entities. Privatization of all small enterprises is planned to be finished by 1999.

Question 8.

The Memorandum states that the privatization process is open to foreign and domestic participation according to the same rules. Are the current procedures published and where can they be found?

Answer:

The procedures applicable to privatization are developed and maintained by the State Property Fund. Although such procedures are not usually formally "published," they are made available by the State Property Fund to any interested person upon request. Currently, several private publishers

and data base companies routinely collect and publish such procedures, as well as laws, resolutions, decrees, regulations and rules.

Question 9.

Your memorandum states that the land privatization program will resume in the fall of 1996, and that an element of the plan is to create private ownership of land. What is the current status of the land reform program ? What is the status of the Parliamentary consideration of a law to create the right to private ownership of land?

Answer:

The memorandum discusses land reform only within the context of the privatization of agriculture. For a description of the current situation regarding agricultural privatization, see the answers to questions 2 and 5 on Part II, Section 1(a) above.

The Cabinet of Ministers is currently considering a new draft of a law entitled "On Property Rights in Land." The draft law was developed by the governmental working group on the matter created pursuant to Instruction No. 105-p of the Cabinet of Ministers of 22 April 1996. This draft law establishes private property rights in land; however, even if approved by the Cabinet of Ministers and submitted to and passed by the Parliament, this law cannot come into effect until the current constitutional prohibition on the private ownership of land has been eliminated. Therefore, it is unlikely that such a law will come into effect until, at the earliest, 1999.

Question 10.

When does the Kyrgyz Republic believe that it will have completed its privatization program?

Answer:

We assume this question is directed to agricultural privatization. For a description of the current situation regarding agricultural privatization, see the answer to question 2 on Part II, Section 1(a) above. For non-agricultural privatization, the Privatization Program for 1998-1999 will be developed in 1997. It is too early to predict the date on which the entire privatization program will have been completed, but it is envisaged that the program will be completed before 2005.

II.2(e) Competition policy

Question 11.

The Memorandum states that "open competition currently exist in almost all sectors of the economy, " but that "natural," "permitted" and "temporary" monopolies exist, with the various categories of "natural" monopolies specifically mentioned. Please identify the sectors characterized by the dominance of "permitted" and "temporary" monopolies.

Answer:

The following are "permitted" monopolies:

- "Kyrgyzstan Aba Zholdoru" (air transportation - to be privatized in 1997);
- State Joint Stock Company "Kyrgyzmunaizat" (oil company);
- Jalal-Abad Oil Processing Plant;
- State concern "Uchkun" (printing house);
- State concern "Akyl" (printing house);
- Production Association "Kyrgyzkomur" (coal); and
- State concern "Kyrgyzaltyn" (gold).

"Temporary" monopolies, numbering 31, predominate in machine-building, textiles and food industries.

Question 12.

How many entities characterized as "permitted" and "temporary" monopolies are currently regulated by the Anti-monopoly Department of the Ministry of Economy?

Answer:

At this time the Anti-monopoly Department regulate the following "permitted" monopolies:

- the national air company "Kyrgyzstan Aba Joldoru",
- SJSC "Kyrgyzmunaizat" (oil company);
- State concern "Uchkun" (printing house); and
- State concern "Akyl" (printing house).

The rest "permitted" monopolies are being studied.

None of the "temporary" monopolies is currently regulated; however, the activities and prices of each are monitored to ensure that it does not abuse its dominant position.

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

III.4 Legislative Programs or Plans to Change the Regulatory Régime

Question 13.

According to the Memorandum, the Parliament's work program for 1996 includes, inter alia, preparation of the following legislation: On the Procurement of Goods (Works) and Services, On State Enterprises, On Patent Rights, On Trademarks, Service Marks and Appellations of Origin, On Copyright and Related Rights, On Foreign Investment, a Customs Code and Amendments to the law On General Principles of Denationalization, Privatization and Entrepreneurship. With regard to the aforementioned legislative changes in particular, what is the time frame for the completion of each? We request that the Kyrgyz Republic furnish drafts of these legislative changes for Working Party review.

Answer:

All above mentioned draft laws are included into the plan of the Parliament's work for 1997. Time frame to complete the work on each of these legislative acts has not been determined.

Drafts of these legislative acts are given in Annexes A-1 through A-6, and C-1 through C-3.

Question 14.

Does the Government of the Kyrgyz Republic publish drafts of new, revised or amended laws seeking public comment? If so, in which publications might they appear?

Answer:

The law does not bind the Parliament or the Government to publish drafts of new, revised or amended laws for public comment. Usually, draft laws are published in the following official publications: Vedomosti Jogorku Kenesha, Slovo Kyrgyzstana, Erkin Too and Nasha Gazetta..

IV. POLICIES AFFECTING TRADE IN GOODS

IV.1 Import Regulation

IV.1(b) Characteristics of national tariff, customs tariff nomenclature (HS), types of duties, general description of the customs tariff structure, weighted average level of duties on main customs tariff groupings, application of MFN tariff rates, tariff preferences

Question 15.

What is the legislative status of the proposed Customs Tariff Law, which was to have been introduced by the Cabinet of Ministers by 30 September 1996?

Answer:

It is under consideration by a Parliamentary committee. Once approved by the committee, it will go before the Parliament as a whole for approval. It is included in the 1997 work plan for the Parliament but no specific time schedule for adoption has been set.

Question 16.

When does the Kyrgyz Republic anticipate completing its new tariff schedule? Please provide a copy of it to the Working Party.

Answer:

It is currently before the Cabinet of Ministers. The draft of new the tariff schedule is provided in Annex 10 of WT/ACC/KGZ/3.

Question 17.

WT/ACC/KGZ/3 notes that there are some structural and coding differences between the existing tariff nomenclature and the International Harmonized System.

Answer:

The Kyrgyz Republic does not have its own tariff nomenclature, but instead uses the tariff nomenclature in force in Russia. Russia was scheduled to have adopted the Harmonized Tariff System by January 1, 1997. If and when Russia has adopted that system, the Kyrgyz Republic will use the HS nomenclature.

Question 18.

Will the new tariff regime retain the existing import nomenclature?

Answer:

See the preceding answer.

Question 19.

Will these differences be eliminated under the proposed Customs Tariff Law?

Answer:

See the answer to question 17 above.

IV.1(c) Tariff quotas, tariff exemption

Question 20.

WT/ACC/KGZ/3 reports that technical equipment, raw materials, materials, reagents, components, replacements, spare parts, semi-manufactures and other articles, that are exempt from customs duties when they are imported by domestic business enterprises for the production of final products. Will the proposed Customs Tariff Law retain these duty exemptions?

Answer:

Yes

Question 21.

Please identify, by HS tariff line numbers, the items and tariff categories eligible for these exemptions.

Answer:

Individual domestic business enterprises must apply to the Ministry of Industry and Foreign Trade to receive these exemptions.

Question 22.

Please indicate approximately what portion of the Kyrgyz Republic's imports in a recent representative period made use of these exemptions.

Answer:

There are no statistics available on the portion of imports entered under this exemption.

IV.1(d) Other duties and charges, specifying any charges for services rendered

Question 23.

All fees and charges related to customs services, e.g., customs processing, licensing, sanitary and standards certification, must conform to the provisions of Article VIII of the GATT 1994, e.g., that they not constitute a barrier to trade and that they approximate the cost of the services rendered for the individual import transaction. Fees applied without functional justification or that generate revenue in excess of the cost of the service are not compatible with WTO. We expect that all service fees applied to imports will be reviewed and amended to meet the WTO criteria prior to the date of accession.

Both the existing and proposed Customs Codes provide for the payment of customs service fees based upon a stated percentage of the value of goods imported. This method of charging customs fees is not consistent with Article VIII of the GATT 1994 which limits the amount of fees to the approximate cost of services rendered. What has the Kyrgyz Republic done to modify this fee structure to bring it into conformity with WTO provisions?

Answer:

The Government intends to amend the proposed Customs Code to ensure that fees and charges related to importation are limited in amount to the cost of services provided as required by Article VIII of the GATT.

Question 24.

The proposed Customs Code also applies different service fees to commercial and non-commercial importations. What is the basis for the difference in fees for commercial versus non-commercial importations? What criteria are used to distinguish commercial from non-commercial importations?

Answer:

Cost of processing for non-commercial importations is less than for commercial ones. Non-commercial importations are items imported for personal use and not for resale. Since this distinction is found in the proposed Customs Code, which has not yet been passed, no criteria have yet been established by the State Customs Inspectorate for the practical implementation of this provision.

Question 25.

The Memorandum states that, as opposed to the existing Customs Code, the "Proposed Customs Code" currently does not contain the requirement that fees for licenses, customs brokers, storage, goods escort, information and consultancy, and participation in customs auctions, not exceed the approximate value of services rendered. Does the Kyrgyz Republic plan to incorporate this requirement into the final version of the new Customs Code?

Answer:

Yes.

Question 26.

Why was this provision dropped?

Answer:

It is unclear.

Question 27.

The Memorandum notes that anti-dumping, countervailing and special-purpose duties are authorized under the existing Customs Tariff Law and similar duties are provided for in the proposed Customs Tariff Law. To what extent are these duties also provided for in Article 23 of the Customs Code of 2 July 1992?

Answer:

These duties were not provided for in Article 23 of the Customs Code of July 1992.

IV.1(f) Import licensing procedures

Question 28.

Section II.1.(b) (Current Economic Situation) of the Memorandum states that the Kyrgyz Republic has eliminated import and export licensing for the vast majority of goods. Annex 3 of WT/ACC/KGZ/3 indicates that the only licensing requirements left are applied on imports for health, consumer or environmental welfare and safety, and national security purposes. Please provide a list of any agricultural and food commodities that are currently subject to import licensing for any reason, e.g., safety certification, sanitary regulations, etc.

Answer:

Agricultural and food commodities are not subject to licensing. All items subject to licensing are listed in Table 3-1 of Annex 3 to the Memorandum. Food items that are subject to safety certification as described in Part IV Section 3(b) are as follows:

- Products of agriculture and food industry subject to safety certification:

0201-0210	Meat and edible meat sub-products
0301-0307	Fish and crustaceans, shellfish and other water invertebrates
0401-0410	Milk and milk products, poultry eggs, natural honey, food products of animal origin
0701-0714	Vegetables, edible tuber crops and root-crops
0901-0910	Coffee, tea, spices
0801-0814	Edible fruit and nuts, citrus and water-melon crop peel
1001-1108	Grain bread
1101-1109	Products of flour-and-cereals industry, malt, starch, inuline, wheat gluten
1501-1522	Lard and oil of animal and vegetable origin, products of their decomposition
1601-1605	Products made of meat, fish, crustaceans, shellfish, other water invertebrates
1701-1704	Sugar and confectionery made of sugar
1801-1806	Cocoa and its products
1901-1905	Products made of grain, flour, starch and milk, flour confectionery products
2001-2009	Products made of processed vegetables, fruit and nuts
2101-2106	Other food stuff
2201-2209	Alcoholic and soft drinks, vinegar
2401-2403	Tobacco and industrial tobacco substitutes
2501	Salt
2301-2309	Products of fodder industry

Question 29.

Please describe in detail the administration of the import licensing system.

Answer:

Applications must be obtained from the Office of the Ministry of Industry and Foreign Trade. Then the importer must submit the application to the appropriate expert state body for approval. Once approved by the expert state body, the form must then be returned to the Ministry of Industry and Foreign Trade and submitted with all other required documents for final approval.

The import licensing system is described in further detail in Annex 3 to the Memorandum.

Question 30.

We seek confirmation of any areas of the WTO Agreement on Import Licensing Procedures where the Kyrgyz Republic believes it is not now able to fully implement the Agreement from the date of accession. For example, Kyrgyz administrative guidance suggests approval of license applications within 20 days whereas the WTO Agreement on Import Licensing Procedures calls for a maximum of 10 days for all automatic licenses. Another problem is the requirement that importers obtain multiple "expert" certifications from various different Government entities prior to being able to obtain an import license from the Ministry of Industry and Trade.

Please indicate how this and any other deficiencies will be addressed prior to WTO accession.

Answer:

The Government will revise its import licensing system to ensure conformity with the WTO Agreement on Import Licensing Procedures. The Kyrgyz Republic believes that it will be able to fully implement the Agreement from the date of accession.

Question 31.

WT/ACC/KGZ/3 paragraph IV(c)(xii) notes that imports of technical equipment, raw materials, materials, reagents, components, replacements, spare parts, semi-manufactures and other articles, which are imported by domestic business enterprises for the production of final products in the Kyrgyz Republic, are exempted from customs duties. Please describe the licensing process for obtaining this duty exemption, in the form of a response to the Questionnaire on import licensing procedures.

Answer:

To receive this exemption, a request must be made by the domestic business enterprise to the Ministry of Industry and Foreign Trade. The Ministry of Industry and Foreign Trade generally only reviews the type of product and the quantity to be imported. Once approved by the Ministry of Industry and Foreign Trade, final approval must be obtained by the Cabinet of Ministers. If such approval is obtained, the Cabinet of Ministers will issue a resolution specifying the particular product, the quantity and the importing company. The country of origin of the merchandise is not a consideration in the granting of the license.

Question 32.

Are the administrative procedures and guidelines for the Kyrgyz import licensing system published and available to the public? If so, in what publication are the procedures found?

Answer:

Yes, they are published in the monthly scientific journal Economics, which publishes the normative acts of the Kyrgyz Republic.

Question 33.

We understand that there are additional licensing provisions in the Russia-Belarus-Kazakhstan Customs Union Agreement concerning the importation of precious metals and stones. Please indicate any other proposed licensing provisions in the Agreement, describe the need for these requirements, and provide information on their application such as that provided for the Kyrgyz Republic's current import licenses in Annex 3.

Answer:

To our knowledge, there are no import or export licensing requirements in the actual Russia-Belarus-Kazakhstan Customs Union Agreement, or in the agreement providing for the joining of the Kyrgyz Republic. However, pursuant to the "Agreement between the Government of the Kyrgyz Republic and the Government of the Russian Federation on the Common Order of Regulating Foreign Economic Activity," the Cabinet of Ministers issued Resolution No. 56 of 6 February 1996 describing the items for which an import licensing regime is envisaged. Note that Resolution No. 56, by its own terms, does not become effective until the Agreement providing for the joining of the Kyrgyz Republic to the Customs Union has been ratified.

Resolution No. 56 provides for the introduction of an import licensing regime for precious metals and stones, industrial wastes, pharmaceuticals, medical and veterinary equipment, chemical plant protection substances, military uniforms and decoding equipment.

Resolution No. 56 also provides for the introduction of an export licensing regime for (i) certain specified seafood products (e.g., fish, molluscs, crabs, caviar), (ii) decoding equipment, (iii) palaeontology artifacts, (iv) geology and mineralogy samples, (v) precious metals and articles thereof, (vi) precious and semi-precious stones and articles thereof, (vii) wild animals, wild plants, ivory, horns, hooves, coral, and the like, (viii) organic raw material for the production of pharmaceuticals, (ix) weapons and spare parts thereof, (x) explosives, (xi) nuclear materials, (xii) military works and services, (xiii) antiquities, (xiv) information on mineral and fossil fuel deposits, (xv) narcotics, psychotropic items, poisons, (xvi) material and raw material, equipment, technologies and information of a military character, (xvii) dual-use material, equipment and technologies, (xviii) pharmaceuticals, (xix) means of protection from military poisons - e.g., gas and biologic weapons - and the parts therefor (xx) military uniforms and attributes thereof.

The above licensing requirements are intended to further health, safety and/or national security purposes.

As Resolution No. 56 is contingent upon the ratification of the Customs Union Agreement, the implementing regulations have not yet been developed.

Discretionary import licensing for protective purposes is prohibited by the WTO except when specifically justified, Adoption by the Kyrgyz Republic of licensing requirements that cannot be justified on health, safety, or national security grounds will complicate its accession process.

IV.1(h) Customs valuation

Question 34.

Annex 4 to WT/ACC/KGZ/3 states that current legislation neither incorporates nor otherwise provides for implementation of key provisions of the WTO Agreement on the Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement), e.g., that the prohibitions of Article 7.2 (b), (c), (d) and (f) of the WTO Agreement on Customs Valuation are not expressly delineated in the Proposed Customs Code, that there is no provision to use the hierarchy of valuation methods, that certain transparency provisions are also not included. It also states, however, that a new Customs Code, now before the legislature, will include the necessary provisions to address these concerns and to fully implement the WTO Agreement. What is the current legislative status of the proposed Customs Code?

Answer:

It is under consideration by one of the Parliamentary Committees. Once approved by the committee it will go before the Parliament for approval. It is included in the 1997 work plan for the parliament but no specific time schedule has been set.

Question 35.

How long before the new law is implemented?

Answer:

Parliament is due to consider this new proposed law this year. The Parliament will define the implementation period.

Question 36.

What difficulties are foreseen in implementing the customs valuation provisions of the new Customs Code law?

Answer:

We anticipate no difficulties other than those usually inherent in the implementation of a new customs procedure, such as the education of the customs officers and the importing public.

Question 37.

We believe that the draft Customs Law should be submitted for review to the Working Party as soon as possible, in order to ensure that its provisions address the aspects of Customs Valuation covered by the WTO Agreement.

Answer:

The proposed Customs Code is attached as Annex A-4.

Question 38.

We seek a commitment from the Kyrgyz Republic to implement the WTO Customs Valuation Agreement from the date of accession.

Answer:

The Kyrgyz Republic confirms that it will implement the WTO Customs Valuation Agreement from the date of accession.

IV.1(i) Other customs formalities

Question 39.

Article VIII of GATT 1947 states that fees associated with imports must be limited to the cost of services rendered and shall not indirectly provide protection for domestic products. Listed as one of the "other customs formalities" is a fee to be paid at the moment of filing the import declaration.

Answer:

The fee referred to under "other customs formalities" refers to the clearance fee of 0.15%.

Question 40.

Please list, describe, and explain the reason for application of all fees involved in importing a product. Please describe in detail the relationship of the amount of the fee to the pricing structure for the associated service.

Answer:

- clearance fee: 0.15% ;
- import license: 750 soms (currently, about 45 US\$) - the amount currently equal to "ten minimum salaries;"
- license extension: 350 soms (currently, about 20 US\$);
- certificate of compliance: 600-1500 soms (currently, about 35-90 US\$), depending on the type of laboratory tests required;
- phytosanitary certificate: 76-166 soms depending on the type of product. If the total weight of the product is less than 300 kg the required payment will be 10% of the otherwise applicable

- amount. If the weight is from 300 kg-1000 kg the required payment will be 50% of the otherwise applicable amount;
- veterinary certificate: for goods having a value equal to or less than 5000 soms, a fee equal to 0.5% of the value is assessed; for goods having a value exceeding 80,000 soms, a fee equal to 350 soms plus 0.1% of the value is assessed; for goods having a value in excess of 5000 soms but less than 80,000 soms, a variety of formulas are applied that gradually reduce the amount of the fee in ad valorem terms;
 - hygienic certificate: 70-800 soms depending on the type of laboratory tests required.

IV.1(k) Application of internal taxes on imports

Question 41.

Please identify, including HS tariff number, those imported capital goods eligible for VAT exemption, due to their importation by a legal entity or entrepreneur for use in its/his productive economic activity. Please describe the criteria applied in determining eligibility for this VAT exemption.

Answer:

Criteria for eligibility of this VAT exemption is that they must be capital goods and not for resale. Capital good are goods that cost more than 45 minimum salaries (one minimum salary is currently 75 soms) (45 minimum salaries is approximately 200 US\$) and the capital good must have a life of more than one year. Capital goods do not include raw materials.

Question 42.

Please identify, including HS tariff number, any imported products that have been specified as VAT-exempt by the State Customs Inspectorate. What were the reasons for the exclusion of these products from VAT?

Answer:

Although the Tax Code provides for such an exemption, this exemption has not yet been implemented.

Question 43.

The Memorandum states that CIS countries charge a VAT on exports to other CIS countries. Does this mean that imports from CIS countries in the Kyrgyz Republic do not pay VAT taxes at the time of importation?

Answer:

The VAT is not assessed at the time of importation on imports originating from a CIS country. If the importer then sells the goods in the Kyrgyz Republic, the VAT is assessed at the time of sale; however, the importer is entitled to claim a VAT credit in the amount of the VAT paid on the goods in another CIS country.

Question 44.

Does the Kyrgyz Republic rebate VAT taxes on exports (a) to CIS countries; and/or (b) to other countries?

Answer:

VAT taxes are rebated on exports to non-CIS countries, but not on exports to CIS countries.

Question 45.

WT/ACC/KGZ/3 states that goods subject to excise taxes are exempt from customs duties. However, it appears that a number of goods in Annexes 9 and 10 are provisionally subject to both excise taxes and customs duties. Please explain this apparent contradiction.

Answer:

Currently, all goods subject to excise taxes are exempt from customs duties. Note that Annex 10 to WT/ACC/KG/3 contains a proposed tariff schedule. If and when a new tariff schedule is adopted, it will provide for rates of duties on all products, including those subject to excise taxes; however, the notes to that tariff schedule will make it clear that those rates are not to be applied to goods that are subject to excise taxes.

Question 46.

Will customs duties be eliminated on those items?

Answer:

See answer above.

Question 47.

Article III of the GATT 1994 (national treatment) stipulates that taxes on imported goods should be no higher than such taxes on domestic production. Article I (MFN) requires that taxes applied to imports from WTO members should be no higher than those applied to imports from non-WTO sources. In Annex 9, the Kyrgyz Republic indicates that there is a considerable disparity in the rates of excise tax for imported and domestic goods. We note that the new Tax Code, which came into effect on 1 July 1996, continues this discriminatory treatment for a large number of products. What are the Kyrgyz Republic's plans for the elimination of this discriminatory treatment?

Answer:

Yes, the existing system of excise taxes stipulates different methods of calculation for imported and domestic goods. The necessity for using two methods for calculating excise taxes is caused by the fact that imported goods often have prices that are higher than those of similar domestic goods. In this respect, equal absolute rates of excise tax for imported and domestic products would mean relatively higher rates for domestic products. Excise rates in percentages are higher for almost all domestic goods in comparison with rates for imported goods. This situation provides a relative price advantage in the market of imported goods over domestic production.

Question 48.

We understand that neither VAT nor excise taxes are applied to imports from CIS countries. Please indicate how this will be altered prior to accession.

Answer:

Excise taxes are applied to the concerned imports from all countries, including CIS countries.

The Kyrgyz Republic currently supports the concept of bringing 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. Nevertheless, it should be noted that the agreement of other CIS countries must be obtained to accomplish this. Uncoordinated unilateral transition may lead to a situation of double taxation on CIS imports, thereby causing a re-orientation of trade and the possible imposition of reciprocal measures by CIS countries on Kyrgyz exports.

This issue is the theme of the discussion of experts at meetings of the Inter-State Council and the Integration Committee and currently it is impossible to determine the concrete terms of when or how the transition will be accomplished.

Question 49.

For those items made subject to excise taxation by the new Tax Code, which came into effect on 1 July 1996, when does the Kyrgyz Republic expect to submit the applicable excise tax rates to Parliament?

Answer:

At the end of 1996, the Legislative Assembly, one of the two chambers of Parliament, approved the following table of excise tax rates. The matter is now pending before the other chamber, the Assembly of People's Representatives. The Government believes that, although the excise tax rates applicable to certain items may change before final adoption and approval by the President, the description of goods and the applicable tariff code numbers, with the exception of the possible elimination of coffee and cocoa, will not change .

Proposed Excise Tax Régime

Goods	Domestic Rates	Import Rates	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
Liqueurs and vodka products	\$0.90/litre	\$0.90/litre	220810, 220830, 220890510-220890790, 220890910, 220890990
Alcoholized beverages, juice and balsam ¹	\$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

¹ Excise tax rates are calculated based on the content of ethyl alcohol in such items, the base being a beverage containing 45% alcohol.

Goods	Domestic Rates	Import Rates	Codes
Beer: - packaged - unpackaged	\$0.08/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
Golden, 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, capas, 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 capas 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
Oil products:- gasoline, soft and medium distillates	\$45/ton	\$45/ton	2707, 271000330, 2710 00350, 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, 271000790

Goods	Domestic Rates	Import Rates	Codes
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

IV.1(l) Rules of origin

Question 50.

The Kyrgyz Republic states that its Customs laws generally follow the transitional disciplines governing rules of origin. Does the Kyrgyz Republic intend to adopt in law the rules of origin that are being developed in the WTO?

Answer:

The Kyrgyz Republic does intend to adopt in law the rules of origin that are being developed in the WTO.

IV.1(m) Anti-dumping regime

Question 51.

Both the Customs Tariff Law and the proposed Customs Code provide for the imposition of anti-dumping duties in an amount "... that does not exceed the difference between the price of the dumped goods at the moment of export and the average price of like or directly competitive goods in the Kyrgyz market." However, GATT Article VI limits the amount of duties to the amount of the margin of dumping, which is the difference between the price of the dumped good and the price for the like product destined for consumption in the exporting country, or, in the absence of such domestic price, the highest comparable price for the like product for export to any third country, or the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit. It appears that the legislation of the Kyrgyz Republic does not at present fully conform to WTO provisions in this area.

Have efforts commenced to amend proposed Customs Code to bring it into conformity with GATT Article VI and the WTO Agreement on Anti-dumping?

Answer:

The provisions relating to the imposition of dumping duties have never been utilized or fully developed in detail. The Government of the Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

IV.1(n) Countervailing duty regime

Question 52.

Do the Customs Tariff Law and the proposed Customs Code limit the countervailing duties to the amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of the product in the country of origin or exportation, including any special subsidy to the transportation of a particular product? Please discuss how the Kyrgyz Republic intends to incorporate WTO provisions in this area in its legislation.

Answer:

The provisions relating to the imposition of countervailing duties have never been utilized or fully developed in detail. The Government of the Kyrgyz Republic is in the process of drafting a more detailed WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions.

The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

IV.1(o) Special purpose duties

Question 53.

Are the provisions of the Customs Tariff Law and the Proposed Customs Tariff Law authorizing the imposition of "special purpose duties" consistent with the requirements of the WTO Agreement on Safeguards? Please describe fully any provisions that are not in conformity with the requirements of the Safeguards Agreement.

Answer:

The provisions relating to the imposition of special purpose duties have never been utilized or fully developed in detail. The Government of the Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. Furthermore, the Government of the Kyrgyz Republic confirms that no quantitative restrictions are or will be used as safeguards. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

Question 54.

Will the warning measures provided by the existing Customs Tariff Law continue in effect after enactment of the proposed Customs Tariff Law? What is meant by the term "violating the interests of the country"?

Answer:

No. The proposed Customs Tariff Law, as currently drafted, does not contain provisions on warning measures. The adoption of the proposed Customs Tariff Law will repeal the existing Customs Tariff Law. The warning measures provided for in the existing Customs Tariff Law have never been utilized or fully developed in detail. Therefore, it is not possible to provide a definition of "violating the interests of the country."

Question 55.

Are there any provisions of the Anti-Monopoly Law specifically applicable to foreign firms or imported products?

Answer:

No

Question 56.

Are the special purpose duties authorized by the existing and proposed Customs Tariff Laws equal to the penalties assessed on domestic firms engaged in unfair competition pursuant to the Anti-Monopoly Law?

Answer:

No.

Question 57.

Please describe the applicable provisions of the Anti-Monopoly Law.

Answer:

The Anti-monopoly Law has no specific provisions to address unfair foreign trade practices. The proposed law on extraordinary trade measures may include specific provisions addressing unfair trade practices by foreign firms.

IV.2 Export Regulation

IV.2(d) Export licensing procedures

Question 58.

Cabinet of Ministers Resolution No 56 of February 6, 1996 provides for licensing requirements and controls on exports. These include licensing restrictions for textile goods, wearing apparel, silicon carbide, ammonium nitrate, and raw aluminum, required by bilateral agreements between the Russian Federation and the European Union, and for general exports of precious stones, precious metals, articles containing precious metals, and precious metal waste. Are these requirements currently in effect in the Kyrgyz Republic? If not, please elaborate on the timing of their implementation?

Answer:

Currently, Cabinet Ministers Resolution No. 56 of 6 February 1996 is not in effect. This resolution will come into force if and when the Customs Union Agreement is ratified by Parliament.

Question 59.

What is the functional justification for these restrictions and how will the Kyrgyz Republic justify them under WTO provisions?

Answer:

These restrictions will come into force only if the Kyrgyz Republic becomes a member of the Customs Union. In that event, internal customs barriers between and among Russia, Belarus, Kazakhstan and Kyrgyzstan will gradually be dismantled. In the current transitional period, such a situation could provide a large opportunity for the misappropriation and export of certain high-value commodities of the member countries. Therefore, these export licensing requirements are intended to provide some degree of control over such unlawful activity. From our perspective, these measures - which are intended to last for the transitional period - are justifiable national security controls.

Question 60.

Is Cabinet of Ministers Resolution No 373, adopted on 25 August 1995, On Increasing the Liability for Unauthorized Purchase and Sale of the Fragments and Waste of Non-Ferrous and Ferrous Metals and their Industrial Fragments (Resolution No 373) still in effect?

Answer:

Yes

Question 61.

Please describe the law that is being considered by Parliament which deals with this subject matter.

Answer:

The goal of the draft law is 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. According to the draft law, a person desiring to purchase and/or export such items must hold a license. Under the draft law, licensed persons may purchase only those items that are specified by the Cabinet Ministers in an implementing resolution. Under the draft law, any company that produces waste of ferrous or non-ferrous metals is obligated to report the kind and amount of such waste. The export and import of such items must be licensed. Engaging in such activity without a license is punishable by monetary fines and the confiscation of illegally purchased or used wastes.

Question 62.

Please identify, including HS tariff number, the ferrous and nonferrous metal fragments and wastes which are subject to the export licensing requirement.

Answer:

It must first be noted that ferrous metal fragments and waste are not subject to export licensing. The following is a list of the non-ferrous metal and wastes and scrap thereof, and HS tariff number, 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
- 2825
- 8102 Molybdenum and articles thereof, including wastes and scrap
- 2613
- 2825
- 8103 Tantalum wastes and scrap
- 8104 Magnesium 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

IV.2(f) Export financing, subsidy and promotion policies

We note that the Kyrgyz Republic has no policies or measures to finance exports. Because export subsidies are the most trade distorting forms of support, we strongly encourage the Kyrgyz Republic to commit to binding export subsidies at zero for all products.

IV.3 Internal Policies Affecting Foreign Trade in Goods

IV. 3(b) Technical regulations and standards, including border measures

Question 63.

Annex 5 states that the State Inspection on Standardization and Metrology (Kyrgyzstandard) performs the State administration of standardization, including the establishment of rules governing the application of international standards. Are there regulations or administrative procedures which provide guidance to Kyrgyzstandard, or other agencies such as the Ministry of Architecture and Construction and Ministry of Environmental Protection, to publish draft standards for comment?

Answer:

No, there are not. In the Kyrgyz Republic, draft standards are normally sent for review and comment to interested organizations.

Question 64.

Is there guidance on a recommended period to allow for public comment?

Answer:

Draft standards are not required to be submitted for public review and comment. Therefore, there is no recommended period of time for public comment.

Question 65.

Is there guidance for agencies to consider the use of appropriate international standards?

Answer:

Yes. In the Kyrgyz Republic, international standards are to be applied in accordance with the instructions of the State Standardization System of Kyrgyzstan.

Question 66.

Does the Bulletin of Current Information of Kyrgyzstandard provide announcements for all Kyrgyz (including other Ministries) draft standards, technical regulations and conformity assessment procedures, so that interested parties may provide comments?

Answer:

Draft standards, technical regulations, and conformity assessment procedures are not published for public comment.

Question 67.

In what specific publication(s) are final standards, technical regulations and conformity assessment procedures published?

Answer:

Final standards, technical regulations and conformity assessment procedures are published in Kyrgyzstandard's the official Bulletin of State Standards and Technical Regulations, published on a quarterly and annual basis.

Question 68.

Annex 5 states that a "certificate of conformity" is required for the importation of select regulated products. Kyrgyzstandard is to review documents issued by "national certification bodies" which assert compliance with applicable safety requirements. Are such certificates only accepted from Kyrgyzstandard-accredited certification bodies and testing laboratories?

Answer:

Certificates issued by foreign certification bodies are accepted if a bilateral or multilateral agreement exists that provides for their acceptance. In absence of an applicable bilateral or multilateral agreement, the Kyrgyz Republic will generally review and accept a certificate issued by a manufacturer or certification body widely recognized as having a reputation for quality. Such certification body does not necessarily have to be accredited by Kyrgyzstandard. The determination of such firms and organizations remains within the discretion of the Kyrgyz Republic. As a rule, foreign certificates are accepted only for products originating in the country where the certificate was issued.

Question 69.

Do you have a list of these products together with the standards they must meet?

Answer:

That list is attached as Annex B.

Question 70.

What is the legal basis for certification? Do you have copies of the laws and the normative regulations?

Answer:

The legal basis for certification is described in Annex 5 to the Memorandum. Copies of the applicable laws and normative regulations on standardization and certification, all of which are referred to in Annex 5, have already been submitted to the WTO on diskette.

Question 71.

How can an importer gain access to the standards affecting his product?

Answer:

An importer can gain access to all standards affecting his product by submitting a request to Kyrgyzstandard, or by reviewing the official bulletins of Kyrgyzstandard.

Question 72.

Does the Kyrgyz Republic recognize any external, regional or international standards?

Answer:

Yes. Standards developed on the basis of the international standards of ISO, MEK, CMEA are applied in the Kyrgyz Republic. For example, GOST 28397-91 has been developed on the basis of ISO 2382-15-85, GOST 28397-91 (ISO 2382-15-85), GOST 29106-91 (MEK 748-1-84), GOST 28312-89 (CMEA 6415-88, MEK 417-73) and others. (The full list can be found in the Comments of Kyrgyzstandard for 1996 which is available in the Information-Analytical Department of Kyrgyzstandard.)

Question 73.

Has it identified any equivalencies between standards in the Kyrgyz Republic and these external standards? If so, which ones: ISO? MEK? ASME? API? CE? Others?

Answer:

As described in the answer to the above question, standards in the Kyrgyz Republic have equivalencies with ISO, MEK and CMEA. As for other external standards they have not yet been considered for equivalency.

Question 74.

Are there plans to recognize such equivalencies as a basis for automatic certification?

Answer:

Currently Government of Kyrgyz Republic has no plans to recognize such equivalencies as a basis for automatic certification.

Question 75.

Are there provisions for notice if the list of products requiring mandatory certification changes?

Answer:

No. There are no formal notice requirements. However, within the CIS, regulations have been developed that operate like notice provisions. The CIS Inter-Governmental Counsel for standardization, methodology and certification (ICS) has developed regulations allowing for the import and sale in an ICS-member country, without a certificate, of a product that is otherwise subject to mandatory certification if (i) the product originated in an ICS-member country and (ii) and the importation occurs within six months from the date of the introduction of the mandatory certification requirement.

With respect to non-ICS-member countries, the Kyrgyz Republic may resolve this issue on the basis of an international agreement.

Question 76.

What is the fee structure for certification of these product types? If you maintain a standard fee schedule, may we have a copy?

Answer:

- Certificate of compliance: 600-1500 soms (currently, about 35-90 US\$), depending on the type of laboratory tests required;
- phytosanitary certificate: 76-166 soms depending on the type of product. If the total weight of the product is less than 300 kg the required payment will be 10% of the otherwise applicable amount. If the weight is from 300 kg-1000 kg the required payment will be 50% of the otherwise applicable amount;

- veterinary certificate: for goods having a value equal to or less than 5000 soms, a fee equal to 0.5% of the value is assessed; for goods having a value exceeding 80,000 soms, a fee equal to 350 soms plus 0.1% of the value is assessed; for goods having a value in excess of 5000 soms but less than 80,000 soms, a variety of formulas are applied that gradually reduce the amount of the fee in ad valorem terms;
- hygienic certificate: 70-800 soms depending on the type of laboratory tests required;
- a certificate setting forth the determination of State ecology experts that the product has met applicable environmental standards: amount of fee defined on case by case basis based on cost of the laboratory tests.

Question 77.

What is the procedure that importers of products and equipment into the Kyrgyz Republic should follow in order to obtain a certificate?

Answer:

The procedure of controlling products imported to the Kyrgyz Republic is regulated by the Resolution of the Cabinet of Ministers of the Kyrgyz Republic of 12/02/95, No. 520.

Work on certification in the Kyrgyz Republic is implemented within the developed National system of certification. The order and procedure of work on certification is established by standards of this system - KMC 40.03-96- and procedures of certification of similar categories of products (at this time twenty of them are in effect. They continue to be worked out). There is also a normative document establishing the procedure of recognizing foreign certificates of compliance in the System.

Question 78.

Do products imported for personal use or as part of a foreign assistance program require certification?

Answer:

All products specified in the list, including those imported as humanitarian aid are subject to certification. Goods imported for personal use do not require certification.

Question 79.

What are the "national certification bodies?"

Answer:

"National certification bodies" are bodies authorized to maintain a common government policy in the area of certification. The National certification body of The Kyrgyz Republic is Kyrgyzstandard.

Question 80.

How do the national certification bodies relate to each other and to the state customs service and the industry ministries and Goskominvest?

Answer:

Cabinet of Ministers Resolution No. 12 of 6 January 1997 established an Inter-Departmental Counsel on the Certification of Products and Services. The resolution also established its composition. The Counsel includes the following state bodies especially authorized to work on certification of products:

- i. Kyrgyzstandard;
- ii. Ministry of Architecture and Construction of the Kyrgyz Republic;
- iii. Ministry of Health of the Kyrgyz Republic;
- iv. Ministry of Transportation and Communication of the Kyrgyz Republic;
- v. Ministry of Interim of the Kyrgyz Republic;
- vi. State Agency for Tourism and Sports under the Cabinet of Ministers of the Kyrgyz Republic;
and
- vii. Kyrgyz Energy Holding Company.

The purpose of its creation is to ensure the coordination of state certification bodies having the authority to issue certificates and/or to accredit other certificate-issuing organizations. Relation of state bodies to the State Customs Inspectorate is established by the Resolution of the Cabinet of Ministers of the Kyrgyz Republic of 12/02/95, No.520. In the importation of products, the State Customs Inspectorate checks the presence of necessary certificates issued by the mentioned agencies, and also every month it informs these bodies of the delivery of products which are subject to mandatory certification to Kyrgyzstan.

Question 81.

Are there pre-requisites for certification such as the requirement to obtain internal use licenses from industry sector inspectorates, ministries, and/or agencies?

Answer:

No.

IV.3(c) Sanitary and phytosanitary measures

Question 82.

Are the Kyrgyz Republic's procedures for adopting trade measures relating to concerns with human, animal and plant health in line with the requirements of the SPS Agreement?

Answer:

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) are reviewing the provisions of the SPS Agreement for the purpose of bringing their respective procedures into compliance with the SPS.

Question 83.

Are all proposals for such measures published in advance, and is there an opportunity for public comment by interested parties, both domestic and foreign?

Answer:

State bodies can publish such measures in advance seeking for the public comment, but it is not obligatory.

Question 84.

Is there a requirement and are there guidelines for conducting risk assessments prior to the adoption of SPS measures, including a requirement that such measures be based on scientific evidence?

Answer:

There is a requirement that any SPS measure be based on scientific evidence, but no requirements or guidelines for the conduct of risk assessments.

Question 85.

According to the information provided in WT/ACC/KG/3, Cabinet of Ministers Resolution No 260 requires that safety certificates be obtained for imports of "agricultural and food industry products." Are all types of agricultural and food products subject to this requirement? If not, please provide a complete list of agricultural and food products subject to compulsory safety certificates.

Answer:

See above, the answer to question 27 on Part IV, Section 1(f).

Question 86.

On what scientific evidence or risk assessments is Resolution 260 based?

Answer:

Resolution 260 is based on the evaluation of the possibility of entry of pest and disease and potential biological consequences. Certification requirements for items listed in Resolution No. 260 are based on scientific studies and are imposed only to the extent necessary to protect human life and health, environment.

Question 87.

Is there any other legislative or administrative authority for specific SPS measures affecting imported agricultural and food products?

Answer:

The Law "On Quarantine of Plants of the Kyrgyz Republic," of 7 June 1996; and Cabinet of Ministers Resolution No. 520 of 2 December 1995 (described in Annex 5 to the Memorandum at page 143).

Question 88.

Are the sanitary and phytosanitary standards in the Kyrgyz Republic in conformity with applicable 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?

Answer:

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) are reviewing the provisions of these standards for the purpose of bringing their respective standards into conformity therewith.

IV.3(d) Trade-related investment measures

Question 89.

According to the Memorandum, bids are scored according to a number of factors for the privatization of medium and large state-owned enterprises. Included among the factors considered is the commitment by the bidder "to maintain certain employment levels". How does the Kyrgyz Republic justify this examination of a bidder's ability to hire locally, in light of commitments in the TRIMs Agreement? Please list and describe all other factors used to rate bids in the privatization process.

Answer:

Giving weight to a bidder's willingness to make a commitment to maintain a certain employment level does not contradict the TRIMs Agreement. There is no trade-related aspect imposed by the state on the buyer in connection with this commitment. The state is currently the major stock-holder in these entities, and in that role may require a potential purchaser to maintain certain employment levels as part of the deal. The imposition of such a requirement is not unknown in wholly private transactions involving the sale of a business. Furthermore, a requirement to maintain employment levels does not mean that a buyer will be required to use only local labour. The requirement is imposed on the buyer for the purpose of avoiding de-stabilizing simultaneous mass lay-offs during this period of initial transition and mass privatization. This requirement always terminates or phases out within a limited time after the transaction has closed. Nothing in these arrangements violates the TRIMs Agreement.

Other factors which may be used to rate bids in the privatization process are applied with due regard for the MFN and national treatment principles. These factors include:

- the amount and term of investment;
- keeping the company profile and/or production volume within a period of time specified by a bidding commission;
- the commitment to hire a highly professional staff;
- maintaining environmental protection measures;
- maintenance and use of social programs and cultural objects, which are a part of the commercial property, under privatization;
- prohibition of certain actions in respect of a bidding property;

The bidding commission can establish other factors to rate bids.

IV.3(e) State-trading practices

Question 90.

The Kyrgyz Republic notes that 29 enterprises have been granted exclusive rights by the government to purchase and export scrap metals. Annex 6 also notes that the list of enterprises is temporary (under Resolution 373), pending the enactment of a law by Parliament in late 1996. What is the status of this anticipated law. How does the government exercise control over the scrap metal exports of these enterprises? We request that Kyrgyz Republic submit notifications for this program under the provisions of GATT Article XVII.

Answer:

This Draft Law is in the Parliament's work plan for 1997. See answer below.

Question 91.

Annex 6 states no criteria exist for determining the quantities to be exported. If this is the case, how does the government ensure that this exclusive system of scrap metals exporters does not "plunder" domestic supplies?

Answer:

This resolution is intended to prevent the plunder of domestic resources of waste and scrap metal and to protect the existing infrastructure from being cut up and sold. The government has licensed only 29 companies to engage in the business of purchasing and processing waste and scrap metal. These companies must regularly provide to the Ministry of Industry and Foreign Trade information about the quantities and sources of purchases. This is only a temporary measure taken to prevent the theft

and exportation of the countries resources. Resolution 373 contains an exclusive list of items made of ferrous and non-ferrous metals which these companies can purchase domestically on a cash basis.

IV.3(h) Trade-related environmental policies

Question 92.

Please describe the mandatory product standards that the Kyrgyz Republic has established to protect the environment of the life, health or property of Kyrgyz citizens.

Answer:

In addition to the information on certification provided in Annex 5 to the Memorandum, it should be noted that the system of certification in effect in the Kyrgyz Republic is harmonized with the systems of certification in effect in the Russian Federation and other CIS countries, and with the regulations of ISO/IEC and European standards of serial No. EN 45000. The certification rules and regulations of the Kyrgyz Republic are set forth in 44 different sets of regulations, of which 20 have general applicability and 24 apply to specific products or product groups. These documents contain detailed information on the procedures and requirements related to mandatory and voluntary certification.

Goods for which state standards have been established for the purpose of protecting the environment or the life, health and property of citizens are subject to mandatory certification by the appropriate ministry or state body, and the subsequent issuance by Kyrgyzstandard of a certificate of conformity and a license to mark the concerned goods with a "mark of conformity." Sale or import of such goods in the Kyrgyz Republic without such prior certification and marking is prohibited. List of goods that are subject to mandatory certification is developed by Kyrgyzstandard.

Question 93.

What documentation and information is required to "confirm the safety of the products imported" from countries having a significant incidence of a disease requiring quarantine measures?

Answer:

It can be any document certifying the safety of imported products that is issued by an authorized body of a country having a disease problem.

Question 94.

Cabinet Ministers Decision 260 on the Approved List of Goods Locally Produced or Imported into the Kyrgyz Republic that are Subject to Compulsory Safety Certification, as amended, appears to reserve much of the economy for compulsory certification for health, safety or environmental reasons. The Decision covers capital goods (machinery, building, electrotechnical and instrument making industries), agriculture/food, light industry, raw materials, wood processing and medical products.

Answer:

Although Cabinet of Ministers Resolution No. 260 covers many industries, it only covers a limited range of products within each industry. The text of the resolution has already been submitted to the WTO on diskette. The resolution contains an item-by-item list of the specific products subject to compulsory certification. Therefore, only a small class of goods is subject to compulsory certification.

Question 95.

What significant sectors of the economy remain outside the scope of this Decision?

Answer:

Sectors of the economy that are outside of the scope of this resolution include ferrous metals, mining, most types of construction materials, fuel industry, tourism industry, scientific institutions, production of feed for livestock and flour mills.

Question 96.

What has been the experience with the Decision 260? Is the certification process sufficiently rapid so as to ensure the infusion of new goods and/or technologies into the economy? What is the time line for certification?

Answer:

Cabinet of Ministers Resolution No. 260 applies to a relatively small range of products. The few goods subject to compulsory certification obtain that certification within a relatively brief period of time provided the required documentation is provided.

Question 97.

Does the certification requirement apply to each shipment or import? Is there an inspection requirement for each shipment or import?

Answer:

The certification requirement applies to every shipment of goods subject to mandatory certification. One certificate may be issued to cover a large shipment to be imported over time in pieces or lots, but the term of its validity cannot exceed 3 years.

IV.3(j) Government-mandated countertrade and barter

Question 98.

Does the Government maintain statistics on the value and quantity of goods imported into and exported from the Kyrgyz Republic through counter-trade and bartering, particularly within the CIS? If so, please furnish these statistics to the Working Party. If not, please describe, to the extent possible, the portion of the economy accounted for by counter-trade and bartering, as well as the general categories of products traded in this manner.

Answer:

According to customs accounting, barter transactions were carried with 30 countries in 1996, mainly with Russia, Kazakstan, Uzbekistan and China. The total value of barter transactions in 1996 is estimated at US\$92.9 million.

In barter trade with the CIS countries, the value of exported products was US\$ 45 million, and imported products US\$ 36.1 million. Tobacco, sugar, textile products, electro-technical equipment and parts therefor were the main barter exports, while oil products, non-precious metals and articles of thereof, raw sugar, timber and articles thereof constituted the major barter imports.

Commodity exchange with non-CIS countries had a non-balanced character: the value of barter exports was more than twice the value of barter imports. Barter trade was mainly carried out with China, Cyprus, Austria and Rumania. Wool, cotton-fibre, raw leather were the main exports in this trade, and food products and raw materials for their production, machines, equipment and instruments were the main imports.

IV.3(l) Government procurement practices

Question 99.

The Kyrgyz Republic notes that it is drafting a law on government procurement entitled "On the Procurement of Goods, Works and Services". Please submit a copy of the draft law to the Working Party.

We encourage the Kyrgyz Republic to use the WTO Government Procurement Agreement (GPA) as a guide in drafting this law.

As a part of its protocol accession commitments, we seek a commitment from the Kyrgyz Republic to accede to the Government Procurement Agreement and submit a schedule of commitments to the GPA Committee to initiate negotiations no later than 3 months after the date of accession to the WTO.

Answer:

A copy of the draft law is provided in Annex A-1.

IV.4 Policies Affecting Foreign Trade in Agricultural Products

IV.4(a) Imports

Question 100.

Why did the Kyrgyz Republic decide to change its flat 10 percent customs duty on agricultural products to a new tariff regime that will have rates of duty ranging from zero to 25 percent?

Answer:

The current tariff regime, characterized by a flat 10% rate applicable to almost all imports, was never intended to be a permanent system. It was instituted shortly after independence in order to provide our relatively new national customs service with an easy to administer system. Today, after several years of economic reforms, the Kyrgyz Government has decided to develop a more economically sophisticated system that is based on a better understanding of our trade flows and the needs of our still fledgling market economy.

Question 101.

Will the average tariff rate for agricultural products under the new tariff regime exceed the existing ten percent average rate?

Answer:

The average tariff rate for agricultural products under the proposed tariff regime will remain at about 10 per cent.

IV.4(b) Exports

Question 102.

The Kyrgyz Republic is to be commended for its liberal trade regime for agricultural exports. We would like to see this regime bound in the accession commitments. Is the Kyrgyz Republic prepared to bind its export subsidies for agricultural products at zero?

Answer:

The government of Kyrgyzstan is considering the effects of binding export subsidies for agricultural products at zero.

Question 103.

Is the Kyrgyz Republic prepared to bind the existing policies of not requiring licenses for export of agricultural products and not imposing tariffs or quotas on the export of agricultural products?

Answer:

Yes, the Kyrgyz Republic is prepared to temporarily bind the existing policies regarding agricultural exports.

IV.4(e) Internal policies

Question 104.

The Government's program for the reform of the agriculture sector provides for the complete cessation - as of 1995 - of direct State financial payments to all agricultural enterprises, with the exception of 6 special animal breeding and 26 seed producing farms. Does the Government intend to cease the direct state financial support payments to the special animal breeding and seed producing farms in the future? What is the time frame for the cessation of these support payments?

Answer:

Due to a lack of financial resources, the state currently provides no support to the above-mentioned farms. Breeding farms engaged in raising pedigree horses have been able to cover their costs without state assistance, but farms for the production of seeds are supported by the European Commission on Technical Issues. The assistance rendered in 1995 was an estimated 15-20 million soms. In 1997 assistance for such farms is provided for in a government program for sheep breeding.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

V.1 General

V.1(a) Intellectual property policy

Question 105.

We applaud the desire of the Kyrgyz Republic to put in place a system of intellectual property protection modeled on the systems found in developed market economy countries. We note that the Kyrgyz Republic is in the process of adopting Civil Code provisions to establish basic intellectual property rights and protection and the various additional specialized laws, dealing with specific types of intellectual property.

Please provide the Working Party with texts of these draft laws at the earliest opportunity. What is the legislative status of each of these bills?

Answer:

The intellectual property laws currently in draft form and the legislative status of each are as follows:

- i. The Patent Law (under consideration by Parliament; adoption is planned for the first half of 1997);
- ii. The law "On Trade Marks, Service Marks and Appellations of Origin" (under consideration by Parliament; adoption is planned for the first half of 1997);
- iii. The law "On the Legal Protection of Software and Databases" (under review by the Government; exact time of consideration will depend on Parliament's workload);
- iv. The law "On Legal Protection of Integrated Circuit Topographies" (under review by the Government; exact time of consideration will depend on Parliament's workload);
- v. The law "On Selection Achievements" (under review by the Government; exact time of consideration will depend on Parliament's workload); and
- vi. The law "On Copyrights and Neighbouring Rights" (under consideration by Parliament; adoption is planned for the first half of 1997).

Copies of all draft laws are attached in Annex C1 through C-6.

Question 106.

We seek adoption and implementation of a TRIPS-consistent intellectual property regime prior to WTO accession. Does the Kyrgyz Republic foresee any problems in accomplishing this?

Answer:

The obvious problem is delay in adopting the draft laws. The above-referenced drafts have already been under consideration by the Parliament for four years. However, it is anticipated that at least three of the draft laws will be adopted in the first half of 1997, and that Parliament will consider the other draft laws within a reasonable time thereafter.

V.1(c) Membership of international intellectual property conventions

Question 107.

Does the Kyrgyz Republic intend to join the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Convention on the Protection of Producers of Phonograms? If not, how will their requirements incorporated in the WTO be implemented in the regime of the Kyrgyz Republic?

Answer:

The Kyrgyz Republic intends to join the Berne Convention (1971). The State Agency for Intellectual Property ("SIPA") is currently conducting preparatory work necessary for joining that Convention.

For the time being, the Kyrgyz Republic is not considering joining the Geneva Convention on the Protection of Producers of Phonograms. The rights of producers of phonograms will be protected by the Law "On Copyright and Neighbouring Rights", which includes basic provisions protecting the rights of these producers in compliance with applicable WTO requirements.

Question 108.

Concerning intellectual property obligations the Kyrgyz Republic has assumed pursuant to its accession to the Eurasian Patent Convention and through its signing of a bilateral agreement with the Government of the Russian Federation on Cooperation in the Sphere of Protection of Industrial Property. Please list and describe any such obligations.

Answer:

The obligations of the Parties on the basis of the referenced bilateral agreements are as follows:

- providing physical and legal persons of one party with the rights and privileges provided to local physical and legal persons of the other party;
- recognition on the territory of the country of the protection documents of the USSR;
- payment of royalties in accordance with the Law of the party using the inventions;
- the possibility of converting protection documents of the USSR into those of the Kyrgyz Republic;
- granting of the right of prior use of an invention or industrial design without execution of a license agreement, with payment of a royalty in accordance with the law of the party using the invention or design;
- granting of the right to conduct business activities after the receipt of protection documents, and the right to maintain their validity directly with the patent agencies of the parties, without a patent attorney;
- granting of the right to pay fees for conducting legally significant activities related to the protection of industrial property in compliance with applicable regulations, currency and amounts provided for the national applicants of the parties;
- harmonisation national legislative acts; and
- exchange of patent information, legislative and other documents, experience, and experts in the area of industrial property protection.

Question 109.

Are the intellectual property benefits provided by these agreements also granted to third country nationals on a most favoured nation basis?

Answer:

No. Benefits provided by these agreements are not granted to third country nationals on a most-favoured-nation basis.

V.1(d) Application of national and MFN treatment to foreign nationals

Question 110.

Footnote 17 of WT/ACC/KGZ/3 states that the Kyrgyz Republic intends to eliminate, in due course, the discriminatory treatment in the method of calculating application, registration, renewal and other fees paid by domestic, foreign and CIS holders of intellectual property rights. Article 2 of the Paris Convention for the Protection of Industrial Property (the Paris Convention), which is incorporated by reference in Article 2.1 of the TRIPS Agreement, provides for national treatment. Does the Kyrgyz Republic intend to provide national treatment, through the reduction or elimination of fees for intellectual property protection, to foreigners who are members of certain specified classes, specifically, veterans of the Great Patriotic War, students and disabled persons?

Answer:

The Kyrgyz Republic intends to apply the same fee structure to foreign students and disabled persons as it applies to Kyrgyz students and disabled persons, thus assuring national treatment for those classes. Currently, the issue on privileges related to fees granted to veterans of the Great Patriotic War has not been definitively resolved, because this privilege provided favourable treatment for citizens of the USSR.

Question 111.

What is the plan to eliminate the practice of charging higher fees for non-CIS nationals, in light of the Kyrgyz Republic's membership in the Paris Convention?

Answer:

Kyrgyzpatent intends to introduce a single-fee system for all local and foreign applicants. The new system will be put into place after the adoption of draft laws which comply with the Paris Convention.

V.2 Substantive Standards of Protection

Question 112.

Section V.2 of the Memorandum outlines provisions of Part I of the Kyrgyz Republic's Civil Code that refer to the existence of rights in certain forms of intellectual property and states that these rights will be developed and refined by additional provisions in later parts of the Civil Code and other specialized laws. Please describe these additional provisions and specialized laws, and provide a time table for their introduction and implementation.

Answer:

A full section on intellectual property is contained in Part III of the Civil Code. Part III is currently under consideration by a special Parliamentary Committee. It is anticipated that final discussion and adoption of Part III will take place in 1997.

The intellectual property section of Civil Code Part III consists of seven chapters (Chapter 54- Chapter 60).

Chapter 54 covers general topics, including: (1) objects of intellectual property and their legal protection; (2) property and non-property rights; (3) exclusive rights of authorship; (4) agreements on the creation and exploitation of works; and (5) means of protection, including withdrawal and publication.

Chapter 55 covers copyrights. The chapter addresses (1) objects of copyright; (2) works that are not objects of copyright; (3) authorship; (4) free and unlicensed use of works; (5) the territorial and temporal scope of copyright; (6) author's agreements; and (7) liability for infringement.

Chapter 56 governs neighbouring rights, and specifically mentions (1) objects and entities of neighbouring rights; and (2) rights of performers, producers of phonograms, and air and cable broadcast organizations.

Chapter 57 covers industrial property rights, including (1) protection of inventions, utility models and industrial designs; (2) exclusive rights; (3) authorship; (4) work-for-hire and license agreements; and (5) liability for patent infringement.

Chapter 58 addresses selection achievements, including (1) protection of rights to selection achievements; and (2) the rights and obligations of a patent-holder.

Chapter 59 governs the protection of undisclosed (confidential) information. This chapter specifically mentions (1) rights to protection of undisclosed (confidential) information; and (2) liability for illegal use of such information.

Finally, Chapter 60 covers trademarks and related issues, in particular (1) trade names; (2) trademarks; and (3) appellations of origin.

In addition to the intellectual property provisions of Civil Code Part II, there are six draft specialized laws currently under consideration by Parliament:

- i. The draft Patent Law consists of nine sections. Section 1 covers general concepts. Section 2 defines conditions of patentability for inventions, industrial designs and utility models. Section 3 defines entities which are accorded rights under the law. Section 4 defines exclusive rights to objects of industrial property. Section 5 sets forth procedures for obtaining a patent, preliminary patent or certificate. Section 6 covers termination of preliminary patents, patents and certificates. Section 7 defines the rights and benefits of authors and patent-holders. Section 8 governs the enforcement of those rights. Section 9 contains miscellaneous final provisions.
- ii. The draft law "On Trade Marks, Service Marks and Appellations of Origin" comprises ten chapters. Chapter 1 defines general trade mark concepts, including exclusive rights and grounds for refusal of registration. Chapter 2 covers registration procedures, including making an application, expert examinations, appeals of examination decisions, registration, publication, issuance of certificates, and trade mark terms. Chapter 3 deals with collective marks. Chapter 4 governs the use of trademarks, and consequences of non-use. Chapter 5 covers transfers of marks. Chapter 6 defines how trademark protection may be lost. Chapter 7 covers general concepts related to appellations of origin. Chapter 8 sets out registration procedures for appellations of origin. Chapter 9 covers the use of appellations of origin. Chapter 10 defines how legal protection for an appellation of origin may be lost.
- iii. The law "On Legal Protection of Software and Databases" consists of four chapters. Chapter 1 sets out the main concepts used in the law; terms of copyright; and temporal and territorial limits of protection. Chapter 2 defines property (economic) and non-property (moral) rights, as well as registration procedures. Chapter 3 defines the grounds for use of software and databases. Chapter 4 deals with infringement, elements of protection, and international cooperation.
- iv. The law "On Legal Protection of Integrated Circuit Topographies" consists of fourteen Articles. Article 1 defines various terms used in the law. Article 2 defines the relationships regulated by the law. Article 3 defines the objects of legal protection. Article 4 deals with authorship. Article 5 covers economic (property) rights. Article 6 governs the assignment of those rights. Article 7 deals with work-for-hire and commissioned works. Article 8 defines actions not recognized as infringement. Article 9 governs registration and notification. Article 10 sets out terms for exclusive rights. Article 11 sets out the rights of the author or other owner of the rights in a topography. Articles 12-14 deal with international protection issues.
- v. The draft law "On Selection Achievements" consists of seventeen sections. Section 1 covers general concepts. Section 2 deals with protectability of selection achievements. Section 3 describes patent application procedures. Section 4 covers protection of selection achievements. Section 5 defines the rights and obligations of a patent-holder. Section 6 governs license agreements, including open and compulsory licenses. Section 7 defines authorship. Section 8 covers invalidity and nullification. Section 9 deals with registration and publication. Section

10 discusses governmental encouragement of the creation and use of selection achievements. Section 11 governs appeals. Section 12 covers selection achievement certificates. Section 13 sets out patent fees. Section 14 governs enforcement of patent rights. Section 15 explains the genetic fund of the Kyrgyz Republic. Section 16 governs import and export controls on selection achievements. Section 17 deals with international protection issues.

- vi. The draft law "On Copyrights and Neighbouring Rights" consists of five sections, including 50 articles. Section 1 defines the subject of regulation and basic concepts used in the law. Section 2 covers the objects of copyright, authorship, authors' rights, transfers of property rights, and terms of copyright. Section 3, which covers neighbouring rights, defines entities of neighbouring rights, their rights, and the terms of neighbouring rights. Section 4 deals with collective management of property rights by organizations created to provide property rights for the holders of copyrights and neighbouring rights in cases where exploitation on an individual basis is difficult. Section 5 sets forth civil and other enforcement measures.

Each of the draft laws provides that foreign persons and entities enjoy the same rights as local persons and entities.

The legislative status of each of the foregoing draft laws is provided above in response to question 104, Section 1(a).

Question 113.

Section V.2 of the Memorandum also refers to existing protection for trademarks and trade secrets contained in section 5 of the Anti-monopoly Law. Please describe in detail the procedure for invoking this protection, the process followed by the body responsible for reviewing such matters, and the remedies available in the event of a favourable decision.

Answer:

Special procedures for invoking this protection have not yet been established. Violations are now identified through auditing conducted by the Department on Anti-monopoly Policy.

V.2(a) Copyright and related rights

Question 114.

Concerning the draft law "On Copyrights and Related Rights". Please provide the Working Party with a copy of this draft legislation.

Answer:

A copy of the draft legislation is provided in Annex C-3.

Question 115.

Are the provisions of this draft law in conformity with the requirements of the Berne Convention for the Protection of Literary and Artistic Works? Please identify and describe any provisions that are not consistent with Berne Convention requirements.

Answer:

The draft law is currently undergoing two minor amendments to ensure compliance with the Berne Convention. Article 27(5), which currently grants longer copyright terms to Kyrgyz war veterans, is being deleted to ensure compliance with the Berne Convention's national treatment provision. A similar provision at Article 43, which grants longer neighbouring rights terms to Kyrgyz veterans,

is also being deleted. Otherwise, the draft law "On Protection of Copyrights and Neighbouring Rights" complies with the requirements of the Berne Convention.

Question 116.

Will the draft law "On Copyrights and Related Rights" protect compilations of data or other material?

Answer:

Yes.

Question 117.

Section V.1(b) of the Memorandum refers to registration of copyrights in the State Agency for Intellectual Property. The Berne Convention for the Protection of Literary and Artistic Works, incorporated by reference in Article 9.1 of the TRIPS Agreement, prohibits any formalities as a condition for protection of copyrights. Is registration of foreign copyrights required to obtain protection in the Kyrgyz Republic and, if so, how is this justified in light of the provisions of the TRIPS Agreement?

Answer:

No; registration is optional and is not a prerequisite to protection.

Question 118.

The section of your Memorandum on foreign trade V.2(a) mentions protection for the rights of performers, producers of phonograms, and broadcast organizations only in relation to the draft copyright law. Is protection currently available to performers, producers of phonograms, and broadcast organizations under the Civil Code or any temporary regulations? If so, what rights are provided, for how long, and how may these rights be enforced?

Answer:

Legislation currently in force does not specifically provide for any protection of rights of performers, producers of phonograms and broadcast organizations. However, the draft legislation which grants those protections is expected to come into force this year.

Question 119.

Article 18 of the Berne Convention, incorporated by reference in Article 9.1 of the TRIPS Agreement, requires that protection under the Convention apply to all works that are not in the public domain in their country of origin and that have not had a full term of protection in the country applying the Berne Convention. How will this obligation be implemented under the Kyrgyz Republic's proposed copyright law for both copyrighted works and sound recordings?

Answer:

The draft law "On Copyright and Neighbouring Rights" contains the following provision dealing with this issue:

If an international agreement to which the Kyrgyz Republic is a signatory establishes standards other than those contained in this law, then the rules of the international agreement shall be applied.

The referenced provision in Article 18 of the Berne Convention shall be applied through this general provision.

Question 120.

Articles 11 and 14.4 of the TRIPS Agreement require that rental rights be provided at least for computer programs, cinematographic works (except in certain circumstances), and sound recordings. Are rental rights currently available under the Civil Code or any temporary regulations? If so, what rights are provided, for how long, and how may these rights be enforced?

Answer:

The Civil Code of the Kyrgyz Republic sets out a definition of exploitation of a work of an author by another person (Article 501). The definition of exploitation is understood to include leasing relationships, although they are not directly specified in the Civil Code. Article 517 of the Civil Code provides for the possibility of concluding authors' agreements on transfer of works of literature, science, or art, for exploitation in different ways. The list of authors' agreements given in this Article is not exhaustive.

Question 121.

How will this obligation be implemented under the Kyrgyz Republic's proposed copyright law for both copyrighted works and sound recordings?

Answer:

The draft law "On Copyright and Neighbouring Rights" (at Article 16) specifically provides for rental rights. Under that Article, an owner of an audiovisual work, software, database, or musical composition in the form of a music text has the right to distribute that work through leasing, regardless of the ownership of actual copies of the work.

Question 122.

Section V.1(d) of the Memorandum refers to fees for the registration of computer programs, databases. Article 10 of the TRIPS requires that computer programs be protected as literary works and that compilations of data, including computer databases, be protected under copyright law. The Berne Convention for the Protection of Literary and Artistic Works, incorporated by reference in Article 9.1 of the TRIPS Agreement, prohibits any formalities as a condition for protection of copyrights. What, if any, benefits are accorded to the owners of registered computer programs or databases that are not available to unregistered owners of computer programs databases?

Answer:

The Temporary Regulation on the Legal Protection of Software, Databases and Topographies of Integrated Circuits (at paragraph 2.2) provides that software is protected as a literary work.

There are no benefits accorded to the owners of registered programs that are not also available to owners of unregistered programs.

V.2(b) Trademarks, including services marks

Question 123.

Please provide the Working Party with a copy of the draft trademark law, currently pending before Parliament.

Answer:

The draft law is included in Annex C-2.

Question 124.

Do the Temporary Regulations and draft Trademark Law provide for cancellation of a trademark application for non-use?

Answer:

The Temporary Regulations currently in force do not provide for cancellation based on non-use. However, Article 21 of the draft Trademark Law provides for cancellation of a mark that has not been used for 3 years.

Question 125.

Article BIS of the Paris Convention, incorporated by reference in Article 2.1 of the TRIPS Agreement, requires that well-known marks be protected. Is protection for well-known marks currently available under the Civil Code or any temporary regulations? How will this obligations be implemented under the Kyrgyz Republic's proposed law on trademarks, service marks and appellations of origin?

Answer:

Civil Code Part I, which is currently in place, contains no specific provisions on well-known marks.

The current "Temporary Regulations on Industrial Property," in compliance with the Paris Convention, do not require registration of well-known marks. However, voluntary registration for well-known marks is possible. At present, SIPA is carrying out work to develop methods to determine whether a trademark is well-known, and is investigating the experience of other countries. To enforce rights in a trademark, including a well-known mark, the owner of the mark may file a civil action in civil court against an unauthorized user of the mark. The only judicial remedies currently available are (i) an injunction, (ii) an award of compensation for losses and (iii) an assessment of a penalty.

The Kyrgyz Republic's proposed law "On Trademarks, Service Marks and Appellations of Origin" was drafted to ensure compliance with the Paris Convention. Like the temporary regulations, the draft law does not require registration of well-known marks, but voluntary registration for well-known marks remains possible. In compliance with Article 6bis of the Paris Convention, the draft law (at Article 6) provides that "marks may not be registered as trademarks if they are identical or sufficiently similar as to cause confusion with a well-known mark in the territory of the Kyrgyz Republic."

To ensure that holders of well-known marks can enforce their rights, the draft law provides for the same judicial remedies available under the existing regulations. In addition, the draft law provides that a court may order seizure of counterfeit goods, as well as criminal penalties for ongoing violations. The provisions apply equally to cases involving well-known and ordinary marks.

Question 126.

Is priority currently granted to applicants of Paris Convention countries, if they apply for registration in the Kyrgyz Republic within six months of the national filing?

Answer:

Yes.

Question 127.

Under the Civil Code or temporary regulations on industrial property, is it possible to oppose registration of a mark or to seek its cancellation, if it has already been registered? What are the procedures for opposing registration or cancellation?

Answer:

The Civil Code currently in force does not deal with opposition or cancellation.

Under the "Temporary Regulations on Industrial Property," (at Article 16), any person or legal entity may oppose the registration of a mark, or seek cancellation of a registered mark. In both cases, a petition must be filed with the Appeals Board of SIPA. The Appeals Board must consider the petition within 6 months from the date of its receipt. Both the petitioner and the owner of the mark have the right to participate in the Appeals Board's consideration of the petition.

Question 128.

Please describe the nature of the marks that are eligible for registration.

Answer:

In general, a mark is eligible for registration if it serves to distinguish the goods and services of one person or entity from similar goods and services of other persons or entities. Verbal, graphic, volumetric and other signs or their combinations may be registered as trade marks.

Non-registrable marks include marks which are not distinctive; national symbols, flags, and emblems; official names of states, emblems, abbreviated or full names of international or intergovernmental organizations, official, control, guarantee stamps and hallmarks, seals, and decorations; marks generally applicable as marks of goods of a certain kind (i.e., generic marks); generally accepted terms and symbols; and marks which are purely indications of appearance, quality, quantity, characteristics, purpose, value of goods, or of the place and time of their production or sale (i.e., descriptive marks). Moreover, no mark may be registered which is false or liable to cause consumer confusion regarding the goods or their manufacturer. Marks contradicting the public interest, principles of humanity and morality are also not eligible for registration.

Marks may also not be registered if they are so similar or identical as to cause confusion with:

- trademarks previously registered or filed for registration in the Kyrgyz Republic under
- the name of another person in relation to identical goods;
- trademarks of other persons which are protected without registration under the international agreements of the Kyrgyz Republic;
- trade names (or their components) belonging to other persons who obtained the right to these designations before the receipt of an application for a trademark in relation to identical goods;
- appellations of origin of goods protected in the Kyrgyz Republic, except in cases in which they are included as an unprotected element in a trademark, registered to the individual who has the right to use such a designation.

Designations shall not be registrable as trademarks where they present:

- industrial designs the rights, to which belong to other persons in the Kyrgyz Republic;
- names of well-known works of science, art or literature or quotations therefrom, or works of art or their components, without consent of the copyright author or an appropriate competent body;
- names, pseudonyms and their derivatives, portraits and facsimiles of famous persons, without consent of their heirs or an appropriate competent body.

V.2(c) Geographical indications, including appellations of origin

Question 129.

Please describe the nature of the rights to be provided geographical indications in the proposed draft trademark law.

Answer:

Under the draft law "On Trade Marks, Service Marks and Appellations of Origin," legal protection of an appellation of origin arises on the basis of registration. An appellation of origin may be registered by one or more entities or persons who (i) are located in the geographical location indicated by the appellation of origin; and (ii) produce goods that have special characteristics which are exclusively or mainly determined by natural conditions and/or human factors characteristic of the geographical place indicated in the appellation. Registration is valid for an unlimited period of time.

A party who registers an appellation of origin obtains the right to affix the appellation to his goods, provided that his goods have the special characteristics indicated above. The holder of a registration document may place a warning mark near the appellation of origin, indicating that the designation used is an appellation of origin registered in the Kyrgyz Republic. The holder of a registration document may not license the use of the appellation to other persons.

A registered appellation of origin may not be used by parties who do not have a registration document. Also, no one may affix a registered appellation to goods which are similar to those for which registration was granted, because such use is likely to lead to consumer confusion.

It should be noted that the draft trade mark law treats appellations of origin distinctly from mere geographical indications. Under Article 5(6) of the draft law, purported marks which merely describe a good's place of manufacture or sale are barred from registration. Moreover, a mark which includes deceptively misdescriptive geographical terms would be non-registrable under Article 5(7) of the same law, which prohibits the registration of marks which are false or misleading as to the goods or their manufacturer.

Question 130.

Is protection currently available for geographical indications, including appellations of origin, under the Anti-Monopoly law?

Answer:

Yes. Under the Law "On Restricting a Monopolistic Activity, Development and Protection of Competition" (at Section 5, Article 19) appellations of origin are protected. Remedies for infringement of protected appellations of origin include: (1) disgorgement of illegal profits; (2) indemnification, including indemnification for lost profits; and (3) punitive damages.

V.2(d) Industrial designs

Question 131.

Under the Temporary Regulations on Industrial Property, are industrial designs registered or is examination of applications required?

Answer:

Both; industrial designs are registered, and examination of applications, according to procedures established by the Temporary Regulations, is a prerequisite for registration.

Question 132.

Please describe the rights acquired in industrial designs and how may they be enforced?

Answer:

The holder of a patent to an industrial design has the exclusive right to manufacture, import, offer for sale, sell and otherwise introduce the design into commerce. Unauthorized manufacture, importation, offer for sale, sale or introduction of a protected design into commerce constitutes infringement.

The following do not constitute infringement:

- the use of mechanisms containing patented industrial designs in the construction or use of transport vehicles of other countries, where such vehicles are temporarily or incidentally in the territory of the Kyrgyz Republic;
- the conduct of scientific research or experiments using a mechanism containing a patented industrial design;
- the use of mechanisms containing patented industrial designs in response to natural disasters, catastrophes, epidemics and other extreme situations, as long as compensation is later made to the patent holder;
- the private, non-commercial use of a mechanism containing a patented industrial design; or
- the use of a mechanism containing a patented industrial design, where the mechanism has been legally introduced into commerce.

V.2(e) Patents

Question 133.

Please provide a copy of the draft patent law and advise its status in the legislative process.

Answer:

The draft law is included in Annex C-1. Its legislative status is explained in the response to question 104.

Question 134.

The Temporary Regulations provide for patent protection for a period of twenty years from the "priority date". TRIPS Article 33 provides patent protection for twenty years from the date of filing. How is the term "priority date" defined for purposes of the Temporary Regulations and the draft patent law?

Answer:

Under both the Temporary Regulations and the draft Patent Law, the term "priority date" is defined as date on which the patent application is filed with SIPA.

Question 135.

How long is the grace period referred to in section V.2(e)?

Answer:

The grace period is 12 months. If the application is made within 12 months from the date of disclosure, the disclosure shall not influence the patentability of the invention.

Question 136.

Please describe any compulsory licensing provisions in the temporary regulations, including any that would permit a second patentee to use the technology patented by another, if it were necessary to do so in order to exploit the second patent. Please describe how the temporary regulations and draft patent law will ensure that each of the conditions of Article 31 of the TRIPS Agreement is met before a compulsory license can be granted?

Answer:

The temporary regulations do not contain compulsory licensing provisions related to second patents, as referenced in Article 31(1) of the TRIPS Agreement. Nor do the temporary provisions provide specifically for non-assignability (as referenced in Article 31(e)), or for domestic supply restrictions (as referenced in Article 31(f)). However, the temporary regulations take into account each of the other requirements of Article 31 of the TRIPS Agreement. Article 6(3) of the temporary regulations provides for compulsory licensing in certain circumstances, specifically: (i) in the event of non-use or insufficient use by (i) the patent-holder of an invention within the first four years, or (ii) by the holder of a utility model certificate within the first three years, from the date of the issuance of the patent or certificate. If the holder refuses to conclude a licensing agreement, any person desiring and prepared to use the protected object may apply to the court for a compulsory license. If the holder does not provide valid reasons for the non-use or insufficient use, the court may grant the requested license and impose, within its discretion, limits on its terms, including a payment obligation.

The draft Patent Law also takes into account each of the requirements of Article 31 of the TRIPS Agreement. The draft Patent Law (at Article 13) contains compulsory license provisions similar to those in the temporary regulations. However, the draft Patent Law contains an additional provision allowing for the unlicensed use of protected inventions, utility models and industrial designs in certain emergency situations (e.g., natural disasters, catastrophes, epidemics, etc.), with a subsequent payment of appropriate compensation to the holder.

Question 137.

Article 27.1 of the TRIPS Agreement requires that patents be available in all fields of technology with the exception of those indicated in paragraphs 2 and 3. Integrated circuit topologies is not among the listed exceptions. Will the draft patent law eliminate the exclusion from patentability now applied to integrated circuit topologies?

Answer:

No, the draft patent law will not eliminate the exclusion. However, integrated circuit topographies are covered by a separate draft law, and are patentable under that law.

Question 138.

Please describe the rights acquired by a patentee with the grant of his patent.

Answer:

Under the draft Patent Law, a patent-holder has the exclusive right to manufacture, import, offer for sale, sell and otherwise introduce the design into commerce, and to prohibit these activities by others. A patent-holder also has the right to own, use and dispose of the patent itself.

V.2(f) Plant variety protection

Question 139.

Do the Temporary Regulations on Industrial Property or the Temporary Regulations on Breeding Achievements provide patent protection for plant microorganisms, and for non-biological processes for the production of plants? Does the Republic of Kyrgyz provide similar patent protection for animal microorganisms, and for non-biological processes for the production of animals?

Answer:

Yes; the Temporary Regulations on Industrial Property protect plant and animal microorganisms, as well as non-biological processes for the production of plants and animals. The Temporary Regulations on Breeding Achievements protects the same microorganisms and processes.

Question 140.

Section V.2(f) refers to protection for plant varieties and animal breeds under the Temporary Regulations on Industrial Property. Please describe the nature of the rights provided, including any limitations, and how they are acquired.

Answer:

The holder of a patent to a selection achievement has the exclusive right to conduct the following activities with respect to the patented material:

- production and reproduction;
- bringing to maturity for reproduction offer for sale;
- sale and other types of distribution;
- import and export from the territory of the Kyrgyz Republic; and
- storage for the above-mentioned purposes.

The patent-holder may license these rights to third parties, or prohibit their conduct by third parties.

V.2(g) Layout designs of integrated circuits

Question 141.

Please provide to the Working Party a copy of the draft law "On the Legal Protection of Integrated Circuit Technologies."

Answer:

The draft law is included in Annex C-4.

Question 142.

Please describe the nature of the rights acquired under the draft law and under the Temporary Regulations On the Legal Protection of Computer Programs, Databases and Integrated Circuits, and indicate the term of these rights.

Answer:

Under the draft law, the creator of a computer program, database or integrated circuit has the following author's (moral) rights: the right to claim authorship (the right of paternity); the right to decide whether the author's name will appear on the work; and the right to inviolability. The creator also has the exclusive economic right to exploit his/her topography at his/her discretion, through manufacturing, distributing (which includes the notion of copying), and prohibiting the exploitation of the work by others without permission.

The creator's moral rights are valid without time limitation. The creator's exclusive economic rights are valid for ten years from the date of first use, or from the date of registration of the work with SIPA.

Question 143.

Please describe the procedure for obtaining the certificate referred to in Section V.2(g).

Answer:

- The procedure to obtain the certificate consists of several steps:
- submission of an application for registration, which complies with applicable requirements;
 - examination of the application to ensure compliance with the requirements;
 - if the examination's results are positive, data are included in a Register;
 - grant of the certificate; and
 - publication of data in the SIPA bulletin.

Question 144.

Please describe any provisions in the draft law and under the Temporary Regulations relating to compulsory licensing for integrated circuits.

Answer:

There are no such provisions in the draft law or the Temporary Regulations.

Question 145.

Would a product containing infringing integrated circuits be considered to violate the rights of the owner of the certificate protecting the integrated circuit?

Answer:

Yes; a product containing infringing integrated circuits would violate the rights of the owner of the certificate protecting the integrated circuit, except where the user of the product did not know, and should not have known, that the product contained such infringing integrated circuits.

Question 146.

Do the draft law and Temporary Regulations provide protection against products that include infringing integrated circuits, as is required by Article 37.1 of the TRIPS Agreement?

Answer:

Yes; the draft law "On Legal Protection of Integrated Circuit Topographies" (at Article 8) and the Temporary Regulations (at paragraph 21.1) comply with to the requirements of Article 37.1 of the TRIPS Agreement.

V.2(h) Requirements on undisclosed information

Question 147.

Are damages the only remedy available against persons who have misappropriated undisclosed information? If not, please describe the other remedies that would be available to the owner of the undisclosed information.

Answer:

No; damages are not the only available remedy. There are also criminal penalties for misappropriation of undisclosed information (at Article 165(2) of the Criminal Code). Also, injunctive relief is available.

Question 148.

Please describe the actions that can be taken against a party who acquires undisclosed information and who knew, or should have known, that the information belonged to another party who intended that it be kept secret because it had commercial value. If such actions are not available currently, how will such actions be made available in the future?

Answer:

The Code of the Kyrgyz Republic on Administrative Violations provides for remedies against a party who receives undisclosed information under such circumstances. Specifically, Article 151 of the Code sets out a fine of ten times the minimum monthly wage for unauthorized use or disclosure of confidential scientific, technical, productive or trade information.

Question 149.

Please describe the manner in which the criminal penalties referred to in section V.2(h) can be invoked.

Answer:

Article 165(2) of the Criminal Code provides that the theft of a data base, program, or software by means of unauthorized copying, printing, or any other means is punishable by imprisonment for up to two years, or by a fine of 50 - 150 times the minimum monthly wage.

V.2(i) Any other categories of intellectual property

Question 150.

Section V.2(i) states that the draft law "On Trade Marks, Service Marks and Appellations of Origin" will prohibit the registration of marks that reproduce company names owned by others. Please describe the manner in which the Kyrgyz Republic ensures that company names, or parts thereof, do not reproduce trademarks, service marks, and appellations of origin known in the Kyrgyz Republic.

Answer:

The Draft Provisions on Trade Names have been prepared, and are expected to be adopted by the Government. Paragraph 2.3 of these Draft Provisions provides that trade names which coincide with verbal trademarks and service marks of other owners protected on the territory of the Kyrgyz Republic shall not be registrable. Further, trade names which include well-known names shall not be subject to registration.

In compliance with Paragraph 4.4.6 of the Temporary Provisions on Industrial Property of the Kyrgyz Republic, designations which are similar or identical to existing marks, to the extent of causing confusion with existing trademarks (or their components), and which belong to other persons who obtained the right to the name before the receipt of the application for the trademark in relation to the same goods cannot be registered as trademarks.

V.3 Measures to Control Abuse of Intellectual Property Rights

Question 151.

Does importation satisfy the working requirement for patented inventions, as provided by section 6.3 of the Temporary Regulations on Industrial Property? Importation must satisfy the working requirement in order for the use requirement to satisfy national treatment requirements.

Answer:

Yes; importation satisfies the working requirement contained in paragraph 6.3 of the Temporary Regulations on Industrial Property.

V.4 Enforcement

V.4(a) Civil judicial procedures and remedies

Question 152.

Are injunctions available in the Kyrgyz Republic to stop infringement in addition to damages? What are the requirements for obtaining an injunction?

Answer:

Yes, injunctions are available. The basic requirement is to establish the fact of illegal use. Currently, SIPA is considering developing more detailed requirements.

Question 153.

May judges or administrative officials order the seizure and destruction of inventories of infringing goods and of the equipment used to produce the infringing goods? What procedures must be followed and what evidence presented to obtain such remedies?

Answer:

Yes. In compliance with legislation in force (Civil Procedural Code, Article 135.1) judges may, upon the request of a plaintiff or within their own discretion, order the seizure of infringing goods. The draft laws provide for further measures, such as confiscation and destruction of infringing goods and equipment used to produce infringing goods. To obtain such remedies, it is necessary to submit to the court an application that indicates obvious infringement.

V.4(b) Provisional measures

Question 154.

It is not clear from section V.4(b) of the Memorandum whether judicial and administrative authorities have the authority to provide temporary remedies during a legal proceeding in order to prevent serious injury or to preserve evidence. Please describe any legal means that exist providing for such provisional relief and what circumstances must be shown to invoke such relief.

Answer:

Judicial and administrative authorities do have the authority to provide temporary remedies during a legal proceedings in order to prevent injury or to preserve evidence. In accordance with Article 134 of the Civil Procedure Code of the Kyrgyz Republic: the court or a judge, at the request of the persons participating in the proceeding, or at [the court or judge's] own initiative, may take actions to provide provisional remedies. Provisional remedy is permitted at any stage of the proceeding, if the failure to provide such remedy will render it difficult or impossible to execute the final decision of the court. One of the provisional remedies available under the Civil Procedure Code (at Article 135) is the freezing of the defendant's assets pending litigation.

V.4(d) Any special border measures

Question 155.

Please describe the Kyrgyz Republic's plans for providing border enforcement, at list with respect to counterfeit trade marked goods and pirated copyrighted works.

Answer:

SIPA and the State Customs Inspectorate are currently considering these issues. Border measures are currently being drafted.

V.4(e) Criminal Procedures

Question 156.

Please describe the criminal penalties provided by the current proposed Criminal Codes for copyright and patent infringement, unauthorized use of a trademark or company name, commercial espionage, and disclosure of trade secrets.

Answer:

The current Criminal Code of the Kyrgyz Republic contains articles providing for criminal penalties for illegal actions which infringe intellectual property rights, specifically, Article 137 ("Violations of copyright and invention rights") and Article 158(5) ("Illegal exploitation of trade marks").

Article 137 provides as follows:

Manufacturing under one's own name, or other misappropriation of copyright to another's work of science, literature, music or art, or illegal re-production and distribution of such work, shall be punishable by mandatory community service for up to two years, or a fine of up to six minimum monthly wages.

Disclosure of an invention before registration and without the inventor's permission, misappropriation of authorship, and misappropriation of copyright to another's utility model shall be punishable by mandatory community service for up to two years, or a fine of up to 6 minimum monthly wages.

Article 158(5) provides:

Illegal use of another's trade mark, brand or company name upon application of administrative remedies shall be punishable by a fine of up to 7 minimum monthly wages.

Further, Article 165(2) of the Criminal Code of the Kyrgyz Republic provides that misappropriation of information, software, and integrated circuits by illegal copying or reproduction shall be punishable by imprisonment for up to two years, or a fine ranging from 50 to 150 minimum monthly wages.

The draft Criminal Code (at Article 187) imposes liability for the illegal use of a trade mark, where the use is repeated or causes significant damage. Criminal sanctions consist of possible imprisonment for up to six months. Further, the illegal usage of a preventive marking carries a penalty of possible imprisonment for up to four months.

The draft Code (at Article 158(5)) also makes illegal use of trademarks punishable by a fine of up to 70 times the minimum monthly wage. There are also penalties for the production of substandard goods (at Article 152); consumer fraud (Article 158); the sale of poor quality goods (Article 159); the violation of copyright or inventor's rights (Article 150); intentional false advertising (Article 181); illegal receipt of commercial or banking secrets (Article 182); commercial graft (Article 184); and illegal acquisition of computer information (Article 202).

VI. TRADE-RELATED SERVICES REGIME

VI.3 Market Access and National Treatment

VI.3(f) Limitations on the participation of foreign capital

Question 157.

Do the foreign capital ownership limitations of the provision of air transportation services for passengers or goods, as provided by Article 113 of the Air Code of 15 April 1994, apply to the legal entities offering computerized reservation system services?

Answer:

No.

VI.3(g) Measures providing for less than the treatment accorded to national services or service suppliers.

Question 158.

The capital requirement for Kyrgyz Republic legal entities offering banking services is twice as large for entities with at least 20 percent foreign ownership than it is for entities which have less than 20 percent foreign ownership. What is the reason for this different capital requirement?

Answer:

The National Bank of the Kyrgyz Republic has calculated the optimal amount of the minimum charter capital for commercial banks operating on the territory of the Kyrgyz Republic. The lower minimum fund requirement for banks that are predominantly locally owned was made necessary by the need to develop a domestic network of financial institutions and a domestic financial market capable of maximizing the attraction of the free monetary resources of Kyrgyz legal entities and natural persons.

Question 159.

The bilateral investment treaty (BIT) between the United States and the Kyrgyz Republic does not allow restrictions to national treatment, such as those listed under paragraphs VI.3.(f) and (g), specifically pertaining to air transportation, banking and professional services, to be placed on U.S. investors. The Kyrgyz Republic did not carve out any sectors from national treatment under the BIT. How does the Kyrgyz Republic view commitments under the BIT in relation to the statements made in these paragraphs of its Memorandum?

Answer:

The Kyrgyz Republic will honour the commitment to the United States, as provided in the BIT, to not to apply the restrictions discussed in parts VI.3(f) and (g) of the memorandum to US service suppliers.

VI.4 Most Favoured Nation Treatment

Question 160.

The Kyrgyz Republic includes telecommunications services among the "natural monopolies" discussed in paragraph I.2.(e) of the Memorandum (on competition policy). Competition policy officials and regulators in the United States have found that technological advancement facilitates the fostering of competition even in industries that previously had been considered natural monopolies, such as the provision of telecommunications services. Competition was accomplished by allowing separation of the provision of the infrastructure (e.g., the telecommunications network), which remains a regulated monopoly, from the provision of services over that network (e.g., competition among first long-distance and then local phone service providers). This has led to significant improvements in the efficiency of services provided as well as lower costs to consumers. Has any thought been given to a similar policy for telecommunication services in the Kyrgyz Republic?

Answer:

Yes. However, under the terms of a World Bank loan, the monopoly position of Kyrgyztelecom on long distance and international telecommunications has been guaranteed until the year 2008. Even if Kyrgyztelecom is privatized prior to that time, its monopoly position will still remain intact until 2008. Therefore, the liberalization of the telecommunication market cannot truly take place prior to 2008.

Question 161.

Does the Republic of Kyrgyz intend to privatize the state-owned telephone companies Kyrgyztelecom or Kyrgyzpost?

Answer:

The Kyrgyz Republic is now developing the concept of privatizing Kyrgyztelecom.

VI.5 Description of the Market and the Mechanism for Regulating the Most Prominent Service Sectors

VI.5(f) Transport services

Question 162.

Could the Kyrgyz Republic please outline its current regime in air services, with particular emphasis on the role of foreign air service suppliers and the degree of market access that exists for them?

Answer:

The current regime in air services is outlined in the Memorandum at page 62. In addition it should be noted that the President has issued a decree ordering the privatization of Kyrgyzstan Aba Zholduru (Kyrgyzstan Airlines). A more detailed description of the current regime in air services and a description of the current market will be included in the substantial initial offer on services in the GATS framework which will be submitted to the Working Party in near future.

VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

VII.1 Bilateral, Plurilateral and Multilateral Agreements Relating to Foreign Trade in Goods and Trade in Services

VII.1(b) Plurilateral agreements relating to foreign trade in goods and trade in services

We seek a commitment from the Kyrgyz Republic that it will adhere to the WTO Agreement on Trade in Civil Aircraft from the date of accession.

VII.2 Economic, Integration, Customs Union and Free Trade Agreements

VII.2(b) Customs union agreements

Question 163.

What is the status of Parliamentary ratification of the customs union agreement with Russia, Belarus and Kazakstan?

Answer:

The agreement providing for the joining of the Kyrgyz Republic to the Customs Union among Russia, Kazakstan and Belarus was submitted to the Parliament in 1996. Parliament intends to consider this issue during 1997. At the same time, Parliament will consider the Government's policy of acceding to the WTO.

Question 164.

Once ratified, when will the customs union agreement enter in force?

Answer:

The moment of entry into force will be defined in Parliamentary resolution to be passed if and when the customs union agreement is ratified.

Question 165.

Please identify any non-tariff trade barriers that will be created or increased, with respect to imports into the Kyrgyz Republic, from countries which are not parties to the customs union agreement.

Answer:

There are additional import licensing requirements proposed for industrial wastes, pharmaceuticals, medical and veterinary equipment, chemical plant protection substances, military uniforms and deciphering equipment. However, these requirements will be imposed on imports from all countries, including Customs Union countries.

Question 166.

Cabinet of Ministers Resolution No.56 of 6 February 1996 for the implementation of this agreement. Please outline its provisions, in particular with respect to changes it proposes to the current trade regime of the Kyrgyz Republic.

Answer:

This Resolution would introduce certain changes to the current foreign trade regime. If it comes into force, it would:

- reduce the time within which an export or import license application must be acted upon by the Ministry of Industry and Foreign Trade to 10 days;
- require the establishment of an export contract registration system;
- establish new lists of items subject to import and/or export licensing; and
- introduce a list of goods, the export of which is governed by international agreements.

Question 167.

Please describe the provisions relating to the need for the registration of contracts involving exports, listing the products covered, describing the registration process, noting the specific criteria that must be met to have exports registered and the basis for rejecting the registration application, identifying the Ministries involved in the administration of the system, how the registration requirement is enforced, and the penalties imposed for non-conformance.

Answer:

The export contract registration requirement of Resolution No. 56 applies only to contracts for the export of certain products. These are listed immediately below. There is no specific criteria that must be met in order to register an export contract for these goods. This export contract registration system is to serve the purpose of providing the Government with information about such export contracts, e.g., to identify the seller, the buyer, the quantity, the purchase price, etc. This information is necessary so that the Government can control the misappropriation (i.e. theft) and export of strategically significant goods. Exporters simply must supply a copy of the export contract to the Ministry of Foreign Trade and Industry. Although this requirement must be fulfilled in order to export, the ministry has no authority to reject the registration; however, questionable contracts may result in the initiation of an investigation to assure their legitimacy. Specific regulations governing this process have not yet been developed.

The following items are subject to export contract registration:

List of strategically significant goods, contracts for which are registered

Commodity Name	CL FEA Code No.
Fish alive, fresh, cold, frozen, reprocessed products of cod, sturgeon, salmon species, cancriod, caviar	030199110, 030212000, 030270000,(only caviar) 030321000, 030322000, 030329000, 030380000, (only caviar), 030410110, 030410130,030520000, (only caviar) 030530300, 160411000, 160419100, 160420100, 160420300, 160430, 1605 030310000
Grain	1001-1005, 100610 1000810
Seeds of soy-bean and sun-flower	1201, 1206
Ethyl non-denatured alcohol	220710000
Raw material for non-ferrous and ferrous metals	2603, 2604, 2606-2610
Natural gas	271111000, 271121000, 271112110, 271113900
Electric power	271600000
Mineral and chemical nitrous fertilizers, (except ammonium, sulphate and nitrate)	3102 (except 310221000, 310230900, 310240900)
Mineral or chemical potash fertilizers	3104

Commodity Name	CL FEA Code No.
Mineral or chemical fertilizers with two and three nutrient elements, nitrogen, phosphorus, potassium, other fertilizers	3105
Casein	3501 (except 350190100)
Leather raw material	4101-4107
Business timber (coniferous species)	440310100, 440310910, 440320
Coniferous saw-timber	440710100-440710500, 440710910, 440710930
Oak saw-timber and lumber	440391, 440791
Wool	5101, 5105
Cotton	5201, 5203
Linen fiber	5301
Tobacco	2401
Silk	5001-5003
Non-ferrous metals	7401-7403, 7405, 7501, 7502, 7504, 7601, 7603, 7801, 7901, 7903, 8001, 8104
Cobalt and other semi-products of Cobalt metallurgy; cobalt and articles, including waste and fragments	8105
Ferroalloy	7202 (except 720299)
Alumina	281820000
Ferrous and non-ferrous waste and fragments	2818 20 000, 7204, 7404, 7802, 7902, 7503, 7602, 8002, 81 09 109, 81 13 001, 72 0210 900, 860719910
Sparse, Sparse ground metals, raw material for production, alloy, compound and articles	2611-2615, 2804, 2805, 282330, 282619000, 28 4170, 2844-2846, 7110, 8103, 8106, 8108, 8109, 8110, 8112, 8113, 280540100

Question 168.

Export registration that is non-automatic or discretionary may constitute a violation of Article XI of the GATT 1994 unless the substantive criteria applied are consistent with WTO provisions. We seek assistance from the Kyrgyz Republic in better understanding the nature of this requirement and its substantive justification under WTO provisions.

Answer:

Registration is automatic. See answer above.

Question 169.

Will the trade-weighted average tariff rate for the Kyrgyz Republic increase as a result of the implementation of the common external tariff?

Answer:

The common external tariff will possibly cause changes in import patterns that will affect the average-weighted tariff. The government is studying these changes in order to predict the average-weighted tariff.

Question 170.

Please identify any goods, including HS tariff number, that the Republic of Kyrgyz intends to exclude from the common external tariff.

Answer:

A list of exclusions has not been developed. Annex 10 provides a summary of the new tariff schedule.

VII.2(c) Free trade area agreements

Question 171.

Is the CIS Free Trade Area Agreement currently in effect in the Kyrgyz Republic?

Answer:

Yes.

Question 172.

Does the Kyrgyz Republic presently provide duty free entry for imports of products from the Azerbaijan Republic, Turkmenistan, Republic of Belarus, Republic of Georgia or Republic of Tajikistan?

Answer:

Yes, except products from Georgia.

Question 173.

What is the status of the negotiation of the CIS Free Trade Area Agreement protocol, which will specify the goods excluded from the free trade regime?

Answer:

The protocol has not been drafted and it is not currently being negotiated.

Question 174.

Please identify, including HS tariff number, those products that the Kyrgyz Republic will exclude from the CIS free trade regime.

Answer:

Such a list has not been developed yet.

Question 175.

Please identify the products, including tariff numbers, that the Kyrgyz Republic excludes from coverage under its bilateral free trade agreements with Armenia, Kazakstan, Moldova, the Russian Federation and Ukraine.

Answer:

Armenia: No products have been withdrawn from the free trade regime.

Kazakstan: According to the Protocol to the Agreement with Kazakstan, Kazakstan has withdrawn several categories of goods; (i) goods, the export of which is subject to contract registration in Kazakstan; (ii) goods requiring an export or import license under the law of Kazakstan; and (iii) goods identified as strategically important under the law

of Kazakstan. The Kyrgyz Republic has withdrawn only exports that are subject to an export tariff, export license or export quota under the law of the Kyrgyz Republic. Currently, there are no export quotas or tariffs in the Kyrgyz Republic. Therefore, only goods requiring an export license have been withdrawn. These goods are listed in Cabinet of Ministers Resolution No. 408. A summary of this list is attached as Annex D. Goods fallen under the effect of the Kyrgyz legislation on export tariff, and legislation on licensing and quoting of exportation of goods (works, services) which is in force at the moment of goods customs clearance when the goods are exported from the Kyrgyz Republic to the Republic of Kazakstan.

Moldova: No products have been withdrawn from the free trade regime.

Ukraine: No products have been withdrawn from the free trade regime.

Russia: According to the Protocol to the Agreement with Russia, Russia has withdrawn goods subject to an export tariff, export quota or export licensing requirement under the law of the Russian Federation. The Kyrgyz Republic has withdrawn only exports that are subject to an export tariff or export licensing requirement. Currently, there are no export tariffs in the Kyrgyz Republic. Therefore, only goods requiring an export license have been withdrawn. These goods are listed in Cabinet of Ministers Resolution No. 408. A summary of this list is attached as Annex D.

Question 176.

Please identify the products, if any, including tariff numbers, that the Kyrgyz Republic excludes from free trade coverage, which are imported from countries which are parties to the CIS Free Trade Area Agreement, but with whom the Kyrgyz Republic does not have a bilateral free trade agreement.

Answer:

The CIS Free Trade Agreement is in effect; however, Kyrgyzstan has not withdrawn any goods from its coverage.