

WORLD TRADE ORGANIZATION

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**Working Party on the
Accession of Tonga**

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ACCESSION OF TONGA

Questions and Replies

In a communication dated 30 June 1995, the Government of the Kingdom of Tonga applied for accession under Article XII of the Agreement Establishing the World Trade Organization (WTO).

At its meeting on 15 November 1995, the General Council established a Working Party (WT/ACC/TON/2) with the following terms of reference "To examine the application of the Government of the Kingdom of Tonga to accede to the World Trade Organization under Article XII and to submit to the General Council recommendations which may include a draft Protocol of Accession." The membership is open to all WTO Members indicating their wish to serve on the Working Party.

In document WT/ACC/TON/2, Members were invited to submit questions in writing concerning the foreign trade regime of Tonga. The initial questions submitted by Members and the replies thereto provided by the authorities of Tonga are reproduced hereunder. The attachments mentioned in this document submitted to the Working Party are listed in document WT/ACC/TON/4/Add.1 and are available in the Secretariat (Accessions Division, Room 1126) for consultation.

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions of the ongoing economic policies

Question 1.

A number of government strategies are described in the document, one of that is "promotion of export oriented manufacturing industry". Could Tonga provide detailed information about the policies that will be used to meet these objectives?

Answer:

The Industrial Development Incentives Act encourages the growth of export oriented manufacturing industries by the provision of certain duty exemptions for products imported by these type of industries (see relevant section below).

The Tongatrade established as a 'search engine' for local producers exploring new potential markets overseas.

Question 2.

Precise the kind of "development benefits" that the three-year rolling programs intends to distribute to local producers.

Answer:

Development Strategies:

1. Improving Comparative Advantage and Competitive Positions

The proposed policies to improve Tonga's competitive position includes the following:

- Ensure that the exchange rate is appropriate. In this way the price of domestic exports will be relatively more competitive abroad and thus will generate better returns for local producers;
- Change the basis of indirect taxation from trade taxes to consumption based taxes. This will make imported raw materials cheaper for local producers and thus lower the cost of production for them;
- Ensure that company taxes does not raise cost of production unduly for local producers;
- Minimise trade distortions and barriers as these are major problems encountered by local producers so that risk taking and effort are encouraged;
- Ensure that wage rates are determined by productivity given that high wage rates are formidable barrier to local producers in terms of the development of competitive export markets;
- Optimise the price of domestic utilities supply so as to reduce the current unit cost of production.

2. Facilitating the development and enhancement of the Private Sector

The maintenance of a stable, macro-economic environment, free of foreign exchange regulations or trade and payment restrictions, is crucial for private investment, both local and foreign investors.

In summary, the following will be addressed during the three year rolling program:

- Ensuring a stable, macro-economic environment. This will ensure that price stability is maintained as well as a competitive cost structure for local producers;
- Ensuring an attractive tax regime for both local and foreign producers;
- Ensuring that the needed services and support to the private sector are available, such as infrastructure and investment credits;
- Reducing the extent of government involvement, control and influence on economic activity; this should reduce the extent where human and financial resources are concentrated on the government sector at the expense of local producers in the more productive sectors;
- Aligning education and training to the needs of the private sector; this will benefit local producers in terms of matching human resources development to manpower needs;
- Ensuring that bank's lending policies are supportive of private sector development; this will be an incentive to local producers with financial problems;
- Liberalising trade; this will be eventually reduce cost of production and increase returns for local producers respectively;
- Supporting the private sector export activities and export market development; essential major infrastructure should be in place to support local producers as well as export market development;
- Providing market and technical information services for potential and local investors; particularly for small and medium-sized enterprises for whom the cost of gathering such information is excessive.

3. Rationalizing the services of both Government and Public Enterprises

Broad development policies to be adopted are:

- Rationalize the size of cost of government to avoid the concentration of resources on the government sector at the expenses of the local producers in the more productive sectors; as well as to reduce the tax burden borne by local producers which is usually high to support the cost of government.
- Ensure that a business friendly taxation system is in place to attract local as well as foreign investors;
- Increase the opportunity for private sector participation in fields presently dominated by the public sector. This will give producers the opportunity to take over activities that would be better managed by private sectors;
- Reduce bureaucratic involvement in the private sector decision making, and ensuring a "business friendly" bureaucracy for all producers.

4. Human Resource Development

One of the emphasis will be on:

- Improving the linkages between the education system and the labour market, and to establish a more technical orientation in the education system; local producers demand for human resources will be better met by appropriately educated personnel;

5. Maintaining and Improving Physical Infrastructure

An adequate and well-maintained infrastructure is essential for the development of the private sector. Emphasis needs to be given to upgrading the present infrastructure and to ensure proper maintenance. The priorities in the infrastructure sectors should be to:

- Upgrade the present infrastructures and ensuring proper maintenance; establishment of well maintained infrastructures are important prerequisites for any endeavours by local producers;
- Remove bottlenecks to growth through quality, efficiency, or cost to users of infrastructures; this will result in a reduced cost of cost and subsequent increase in returns to local producers.
- Increase the degree of competition in the provision of infrastructure services such as power and telecommunications. This should lower the costs or costs of services for local producers; and
- Sub-contract work to private sector as far as possible. This will give chances for local producers to take up activities in which they are capable of being involved in.

6. Improvement of access to government services in rural areas & outer islands

While there will be differences in economic opportunities among the different regions, one of the government's strategy is to ensure a more equitable distribution of government services in the rural areas and the outer islands as a basic means of distributing the benefits of economic growth among the people of various regions of the Kingdom.

With this strategy in place, small local producers in the outer islands should have the benefits of having access to publicly provided services without having to be penalized as a result of their remoteness.

7. Raising Domestic Saving

The idea is to mobilize domestic saving to raise the kingdom's capacity to finance its development activities and to raise the investments in the economic and productive sectors.

With the above strategy in place, local producers should benefit in the long run in terms of encouraging domestic saving, facilitating private investments, and improving the quality of public sector investment particularly in the area of export industries.

8. Sustainable Utilization & Management of Natural Resources & the Environment

This will give focus to managing effectively the sustainable utilization of natural resources. Emphasis will be given to legislation, community awareness and institutional management.

The above will give due consideration to the environment impact of local producers' development activities.

9. Managing the development of urban areas

Emphasis will be given to institutional management, urban infrastructure; and urban land use planning. This is in order to introduce a more coordinated inter-sectoral approach and an effective monitoring system to ensure improving living conditions in Tonga's capital and to overcome emerging major problems associated with growing urbanization.

Given that Nuku'alofa is the central business area, shopping area as well as industrial area, it is critical for local producers' economic activities that the above issue is addressed.

10. Employment Creation

In view of the young age population with the majority under the age of 20 the government will introduce policies to promote employment creation principally through private sector with assistance where appropriate from the government.

Emphasis will be given to areas including provision of appropriate training for life time employable skills that are demanded by the labour market particularly the private sector; and provide effective information to employers to meet their respective needs.

11. Information Technology

Information technology is one of the government's development strategies given that it is an integral part of almost any organisation whether it be in the public sector, private sector, or NGOs. Information technology is critical in supporting individual goals and objectives by providing an opportunity to realise improved organisational efficiency.

Areas of emphasis include:

- Establishment of a government Computer Committee to oversee and coordinate computer related problems. This committee will collaborate with the private sector on any computer-related issues.
- Establishing training at all levels to ensure maximum benefits are achieved from IT. These programs will be extended to benefit local producers in the private sector.

Question 3.

Can foreign investors also benefit from the "promotion of export oriented manufacturing activities"?

Answer:

Yes.

Question 4.

In order to benefit fully from the future WTO membership, Tonga will need to undertake reforms to ensure that low levels of efficiency in the public sector do not inhibit private sector development. There are various references in the opening section of the memorandum to the need for reform of the public sector in the interests of efficiency, good governance and accountability:

(a) Can Tonga advise what progress has been made in these areas?

Answer:

The reform of the public sector and the privatisation program are dealt with in answer to question 126 below.

(b) Are there concrete plans for achieving such objectives as corporatisation or privatisation of government business enterprises and rationalisation of the civil service? If so, what timeframes are envisaged?

Answer:

Yes, the Government of Tonga had already privatised some of the government owned businesses and will continue to do so in the future. For more details, see the answer to question 126 below. There are no plans for the rationalisation of the civil service. However, any changes made necessary by WTO membership will be made.

Question 5.

As a future WTO member Tonga will be expected to have in place a regime that is administered fully in consistent, equitable and transparent manner. Can Tonga please provide information on:

- (a) Arrangement for publication of trading requirements so that traders and businesses can familiarise themselves with them?**

Answer:

The reform of the public sector and the privatisation program are dealt with in answer to question 126 below.

All laws and regulations affecting trade are published by the Government Printing Department and are on sale to the public at prices anyone can afford. Information on laws and regulations is freely available to the public through our Ministry of Labour, Commerce & Industries (WTO Section).

- (b) The extent to which trading requirements are set down in laws and regulations, and the extent to which discretion is able to be exercised in the application of such requirements?**

Answer:

Government policy is to set down all trading requirements in laws and regulations. Any residual discretionary powers are exercised by the competent Minister only when required.

- (c) Whether there are established procedures for private interests (both domestic and foreign) to comment on prospective changes in trading regulations?**

Answer:

The Tonga Chamber of Commerce represents any interest from the private sector to the Government. In addition, the Ministry of Labour, Commerce & Industries consult with the Private Sector (via Government/Private Sector Consultative Committee) when dealing with law reforms affecting trade.

- (d) Whether there are arrangements for private interests to seek independent review and correction of administrative decisions, for example relating to customs administration?**

Answer:

All administrative decisions are subject to judicial review under the Supreme Court Act.

Question 6.

On page 5 of the Memorandum, reference is made to the government objective of withdrawing from direct involvement in manufacturing and marketing. The WTO contains provisions relating to commercial activity of government enterprises, for example under Article XVII of GATT 1994:

- (a) Can Tonga provide more information on the nature and extent of government involvement in production and marketing?**

Answer:

Please see answer to question 126 in the section on Privatisation.

- (b) **Does Tonga have state trading enterprises which operate under exclusive or special privileges in relation to imports or exports?**

Answer:

No.

- (c) **Can Tonga complete the questionnaire on State Trading, included as Annex 6 to WT/ACC/1?**

Answer:

None of the state owned enterprises are state trading enterprises as defined by WTO. This constitutes our response to the Questionnaire.

Question 7.

Price Controls - Please give a detail of the goods subject to a regulatory price control (HS coding or SITC if not available, description of goods, minimum and maximum price). Does Tonga plan to liberalise these prices as part of the accession?

Answer:

Products subject to maximum price control	
Commodity	Tariff Line Item
Flour	11.02
Sugar	1701.0000
Butter	0405.0000
Margarine	15.17
Baby Milk	0402.1000
Tea	0902.0000
Rice	1006.0000
Coffee	0901.0000
Cocoa	1801.0000
Edible Oils of all types	15.01 – 1516.0000
Cheese and Dripping	15.01
Salt	2501.0000
Infant Food Preparations	19.01
Motor Vehicles	87.04
Motor Cycles	87.11
White Benzene	2710.0020
All Lubricant Oils	2710.0070
Insecticides	3808.1000
Herbicides	3808.3000
Fungicides	3808.2000
All chemicals and fertilisers for agricultural use	3101.0000 – 3105.0000
Motor Vehicle spare parts	87.08

Products subject to maximum price control	
Commodity	Tariff Line Item
Liquid petroleum products	27.10
Motor Spirit	2710.0010
Kerosene	2710.0040
Diesel	not available
Bread of standard size	1905.1010

Question 8.

Price Controls can affect the internal sale of imported products by upsetting the competitive position between imported and domestic products, and they need to conform to Article III of GATT 1994. Tonga has price controls for a number of products and we would appreciate advice on the following:

- (a) **Does Tonga have any plans to reduce the number of products that are subject to price controls?**

Answer:

While there has been some discussion of this matter, there are no concrete plans to reduce the number of goods subject to such control.

- (b) **Do price controls apply equally to domestic and imported products?**

Answer:

None of these goods are produced locally. In practice therefore, price controls are applied only to imported goods.

- (c) **What is the basis for selecting the maximum and minimum prices for each product?**

Answer:

Only maximum prices are set for each product by Section 5 of Price and Wage Control Act Cap.133. These were introduced for competition policy purposes in order to protect consumers, especially low income families, in respect of essential goods.

- (d) **Do enterprises that are fully or partially owned by the Tongan Government operate in the markets that sell any of these goods? If so please provide details of market share and confirm that they operate in conformity with Article XVII of GATT 1994.**

Answer:

No, owned/partially owned government enterprises do not operate in markets that sell any of the priced controlled goods.

Question 9.

Several consumer items are listed in the Foreign Trade Memorandum as being subject to minimum and maximum regulatory price controls. The items subject to price controls include several agricultural products, motor vehicles and spare parts, agricultural chemicals and petroleum products.

- (a) **Please describe how the regulatory price controls applied to import products. Are the prices controlled at the border or only at the point of sale to consumers? Please describe any differences in the application of price controls to imported products, as opposed to domestically-produced goods.**

Answer:

Where the Competent Authority has reasonable cause to believe that the cost of goods imported into the Kingdom after the commencement of this Act has materially altered since the making of any price order in respect of such goods he may by order or by notice in writing to the person concerned to prohibit the sale of such goods for such period as will enable him to vary or confirm the existing price order or to make a new price order in respect of such goods (Price and Wage Control Act CAP.113).

The prices are controlled only at the point of sale to the customers and not on importation.

- (b) **Please list all the products subject to regulatory price controls by tariff line item.**

Answer:

Please refer to List in the answer to Question 7 above.

- (c) **Are all products in the categories subject to price controls or do regulatory authorities allow some of the products to be sold at market prices? Please describe any terms or conditions that would allow certain products to be exempted from the price controls.**

Answer:

All products in the categories are subject to the price controls.

- (d) **According to Foreign Trade Memorandum, the regulations stipulate minimum and maximum prices for the listed items. Does the regulation authorize the Competent Authority Committee to institute price controls for any other products? If so, please identify the products and describe the procedures followed by the Committee to establish the prices and notify importers.**

Answer:

No.

Question 10.

According to Tonga's explanation on page 7 of the Memorandum on Foreign Trade regime, Tonga regulates minimum and maximum prices for some items, including flour, sugar, butter and margarine. Please provide more detailed information.

Answer:

See answer to Question 8. Flour, sugar, butter and margarine are some of the most basic foods of average and low income families in Tonga.

(b) Monetary and fiscal policies**Question 11.**

The information provided in Tables 3 (Gross International Reserves) and Table 4 (Trade Balance) only contains information through 1995. According to the Trade Memorandum, Tonga had foreign exchange reserves in 1995 equivalent to T\$32.82 million. Given Tonga's reliance on tourism to obtain foreign currency, please update Tables 3 and 4 with more recent data and describe the status of Tonga's foreign reserves in light of the Asian economic situation.

Answer:

Official Gross International Reserves				
End of	Reserve position in IMF (T\$m)	Holdings of SDR (T\$m)	NRBT foreign exchange holdings (T\$m)	Total Official foreign reserves (T\$m)
1992/93	2.3	0.8	46.1	49.2
1993/94	2.4	0.9	37.6	40.9
1994/95	2.4	0.0	27.6	30.1
1995/96	2.1	0.1	27.6	29.8
1996/97	2.1	0.2	30.6	32.8
1997/98	2.4	0.3	18.6	21.3
1998/99	3.6	0.0	30.5	34.1

Source: NRBT Quarterly Bulletin, 2000.

Trade Balance			
End of	Export & re-Exports (fob) (T\$m)	Imports (cif) (T\$m)	Trade Balance
1990/91	14.6	79.8	-65.3
1991/92	22.5	76.4	-53.9
1992/93	17.0	82.7	-65.8
1993/94	23.2	88.2	-65.0
1994/95	18.5	96.2	-77.7
1995/96	18.1	95.0	-76.9
1996/97	15.1	90.0	-74.9
1997/98	12.6	100.7	-88.2
1998/99	12.0	104.9	-92.9

Source: Statistics Department, 2000.

Recent Development in International Reserves

The gross official foreign reserves fell to a record low of \$18.8 million during 1998/99. However, by year-end, it had increased by \$12.8 million to \$34.1 million compared to \$ 21.3 million a year ago. The increase was due to a number of factors including the deceleration in the growth of import payments, the receipt of official aid and other receipts by government.

The import coverage improved to 3.9 months of imports at the end of 1998/99 from 2.5 months of import cover in 1997/98.

The Asian economic situation had minimal impact on the international reserves. The main impact was on the exchange rate which moved in line with the movement of the basket of currencies against which the pa'anga is pegged. The reserves were affected more by developments in domestic credit and by remittances from the US, which grew strongly in line with the growth of the US economy.

(c) **Foreign exchange and payments system**

Question 12.

Could you please, in detail, you current regime on payments and on capital movements, and give, where applicable the reference to your legislation?

Answer:

Tonga has accepted the obligations of Article VIII, Sections 2, 3, and 4 of the International Monetary Fund's Articles of Agreement as of March 22, 1991 and maintains an exchange system that is free of restrictions on payments and transfers for current international transactions.

Regulations on trade-related transactions are few in number and straightforward in application. For outward invisible transactions, individuals may freely obtain foreign exchange from commercial banks.

The Foreign Exchange Control regulations, Section 2, authorize the Minister of Finance, to restrict the sending of money out of Tonga but authorisation is usually given if the level of international reserves is considered adequate and the transaction is considered beneficial to the Tongan exports. The acquisition of foreign financial assets is prohibited, but this restriction is not effective both because there is a large volume of informal trade and because the repatriation requirement is not monitored

Foreign direct investment in Tonga is dealt with in the next section.

Finally, there are regulations on commercial bank's foreign asset positions. Banks are permitted to hold only working balances in foreign currencies, up to a limit of T\$1 million. No explicit limit exists on foreign exchange liabilities, but provision of forward exchange cover for squash exporters requires approval of the Ministry of Finance; cover is currently not permitted for imports.

Question 13.

Can you please indicate in detail your plans for changing the regime on payments and capital movements, and indicate an approximate timetable?

Answer:

No changes to the regime on payments and capital movements are being actively considered at the time of writing.

Question 14.

According to the Foreign Trade Memorandum, the convertibility of the Tongan pa'anga is free. The future plan is to liberate the capital flow and provide a freer convertibility of the Tongan pa'anga. Please describe all restrictions on the convertibility of the Tongan pa'anga. How does the Government of Tonga intend to free further the convertibility of the pa'anga?

Answer:

There are no restrictions on the convertibility of the pa'anga.

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

Question 15.

The Government of Tonga makes no important distinction between domestic and foreign investment. What is the meaning of "no important distinction"? Is there a discriminatory treatment?

Answer:

Domestic and foreign investment are treated in the same way. There is no discrimination between them.

Currently, an applicant has to meet requirements under the Industrial Development Incentive Act, 1978. The procedures are the same for Tongans and non-Tongans alike. The immediate requirements for submitting application are as follows;

1. Activities/business/industries which qualify for Development Licenses
 - Manufacturing, assembling, processing.
 - Tourism Prime Facilities (Hotel/Motel with accommodations, car rental, sports)
 - Engineering service oriented industries such as automobile repair shops, blacksmith operators, boat repair facilities, Electronic and Electrical Appliances repair.
 - Commercial Fishing for Exports.
2. Application Forms
 - One (1) signed original plus nine (9) copies.
 - T\$200.00 Development Licence Application Fee.
3. Resume and background information on all Shareholders. There should include references from current or previous employers, partners, business associates, bank etc.
4. References on experiences relative to the proposed area, formal qualifications etc.
5. Financial statements or bank references indicating capital availability.
6. Business plan covering the following:
 - Proposed production, products etc.
 - Market Prospects
 - Finance
 - Personnel arrangements
 - Location/Land Lease
 - Cash flow projection for the first three (3) years of operation.
7. In case of a Tourism Prime Facility, construction plan duly approved by the Ministry of Health and Ministry of Work will need to be submitted.

Question 16.

In case of foreign investment, are objective conditions to determine if there are substantial and continuing benefits to the people and economy of Tonga laid down in a law or does the government have a margin of discretion?

Answer:

While the Act lays down a number of conditions, the Government does have a margin of discretion. In practice foreign investment is encouraged in the sectors covered by the Act and licenses are freely granted.

Question 17.

Does domestic investment also satisfy the same conditions?

Answer:

Yes.

Question 18.

Are the benefits granted from a development license the same for domestic and foreign investment?

Answer:

Yes.

Question 19.

Could you clarify if an already established enterprise has to be consulted and if it has to consent before to deliver a development license for a new industry engaged in similar activities or not?

Answer:

No, consultation with an already established enterprise engaged in similar activities is not needed when delivering a development licence for a new investment.

Question 20.

Does the Industrial Incentives Act provide with an appeal procedure against non-successful application for a development license?

Answer:

While it is not stated in the law, an appeal can be made to the Minister for Labour, Commerce and Industries.

Question 21.

In relation to the Industrial Development Incentives Act:

- (a) **Can Tonga indicate how successful it has been in its stated objectives of encouraging the growth of industry and tourism in Tonga.**

Answer:

Taking 1998 as an example, 68 projects representing proposed investments of almost T\$ 14 million were approved during the year. For details, see table below.

Sectors	No. of Projects	Proposed Investment	Proposed Employment
Manufacturing	24	6,486,423.75	114
Tourism prime facility	17	2,605,000.00	64
Engineering	1	229,000.00	18
Commercial Farming	19	909,000.00	300
Commercial Fishing	7	3,736,000.00	54
Total	68	13,965,423.75	550

(b) For example, is there any statistical evidence on the success rate of businesses which receive development licenses?

Answer:

As of 1998, 1,104 investment licenses had been issued. This led to the establishment of 860 operational businesses and to the setting up of 212 businesses which subsequently closed down. 32 licenses had not yet been implemented.

(c) What is the impact on private sector development of the discretionary nature of decision-making under the scheme?

Answer:

The discretionary nature of decision making under the scheme has not had a negative impact on private sector development because in practice the Screening Committee grants applications if the required information is supplied.

(d) Are there any concrete plans to review the Act?

Answer:

Yes, the IDI act is currently under review for more standardisation and transparency.

Question 22.

Under Tonga's Industry Incentive Act, any person intending to establish an industrial enterprise needs to apply for a development license. Tonga's memorandum states that "both domestic and foreign investment are subject to the same approval procedure". This appears to be contradicted in the next sentence, where an application that involves foreign investment needs to satisfy a committee on a series of criteria. Some of these criteria appear to be trade related, and may be inconsistent with Article III of GATT 1994 and WTO Agreement on trade-related Investment Measures. Can Tonga please provide further explanation on:

- **The need to involve processing of local resources?**
- **The need to contribute substantial local added value?**
- **The need to contribute to import substitution?**

- **The need to satisfy any other criteria that the committee thinks is relevant. (This is a very general criterion that lacks transparency and appears to provide the committee with large discretionary power that could result in denial of national treatment).**
- **In the list of benefits granted from a development license, non-resident companies or shareholders are allowed to repatriate profits and capital gains. Is there a time limits on this benefit, if so what is it? What are the rights of non-resident companies and shareholders that do not have a development license in respect of repatriation of profits and capital gains?**

Answer:

The IDI Act of 1978 requires the Standing Advisory Committee to examine the extent to which the project will contribute to the objectives laid down in the Act, including the objectives listed above. However, in recent years the Committee has not used these criteria to determine whether or not a licence is to be granted because it welcomes all foreign investment in the sectors covered by the Act. The legislation is currently being reviewed in order to bring it into line with this current practice.

Question 23.

According to the information provided in the Foreign Trade Memorandum the Industrial Development Incentives Act 1978 grants broad discretionary authority to the Standing Advisory Committee on Industrial Licensing to approve applications for foreign investment. Similarly, the right to repatriate profits and capital gains is also conditioned on obtaining a Development License. Some of the factors considered in evaluating whether or not to approve an application for the license, such as contributing to import substitution and export potential, would appear to be inconsistent with the WTO TRIMs Agreement.

How does the Government of Tonga intend to amend the Industrial Development Incentives Act of 1978 to bring it into conformity with WTO TRIMS Agreement?

Answer:

We understand the TRIMs Agreement to deal with measures which are contrary to either GATT Article III, paragraph 4 or Article XI, paragraph 1. The IDI Act does not, as we understand it, contravene either of these provisions. The IDI Act is being reviewed with a view to its amendment - see answer to Question 22.

Question 24.

Some of the benefits described on page 10 of the English language version of the Foreign Trade Memorandum, such as exemption from income tax for up to five years; exemption from the withholding tax for the same period; accelerated depreciation of assets, customs duties exemptions on imported goods; a 50 per cent exemption from the Port and Services Tax, to the extent they are contingent on export performance or import substitution, would also appear to violate the WTO Agreement on Subsidies and Countervailing Measures.

How does the government of Tonga intend to amend the Industrial Development Incentives Act of 1978 to bring it into conformity with the WTO Agreement on Subsidies and Countervailing Measures?

Answer:

These benefits are not contingent on export performance or on import substitution. Many WTO Members have similar measures.

Question 25.

On page 8 of the Memorandum it is stated that "it is intended to identify government services which can be privatised". Can Tonga advise:

- **what specific plans are in place to achieve such privatisation?**
- **Over what time period is such as objective likely to be achieved?**

Answer:

Please refer to answers in Question 126.

(e) Competition policies

Question 26.

Tonga does not have a competition policy. Are there any plans to introduce one?

Answer:

Tonga has no plans to introduce a competition policy.

Question 27.

Appropriate trade and competition policies are mutually supportive, both aiming to improve efficiency and welfare. While there is no WTO requirement for Tonga to have a competition policy, we would be interested to know whether Tonga has any plans in this area?

Answer:

Tonga has no plans to introduce a competition policy.

3. Foreign Trade in Goods and Services

Question 28.

According to the foreign Trade Memorandum, over 46 per cent of government revenue was expected to be derived from customs duties and the Port and Services Tax in 1996/1997. Please identify the other major sources of government revenue.

- **Income tax**
- **Excise and sales taxes**
- **Entrepreneurial and property income**
- **Administrative fees and charges**

How does the Government of Tonga intend to offset revenue losses that may result from lower customs duty rates?

Answer:

A program is still under examination. Please see section on customs tariff below, including Question 48.

4. Domestic Trade in Services

Question 29.

Services represent 53 per cent of GDP but there is no services policy. Please clarify.

Answer:

There is no overall services policy. Policies apply to Individual services sectors (e.g. tourism and civil aviation).

Question 30.

As the services sector of Tonga accounts for over 50 per cent of Tonga's GDP, we would be interested to know whether Tonga is contemplating a comprehensive services policy, and if so, its likely main features?

Answer:

No such comprehensive policy is contemplated.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE.

1. Powers of Executive, Legislative and Judicial Branches of Government

Question 31.

Does the governors of Ha'apai and Vava'u or any other sub-central entity have any authority to regulate trade in any way or to impose any taxes? If so, please specify.

Answer:

No, Clause 55 of the Constitution stipulates that Governors cannot enact any law but that they are responsible for the enforcement of laws in his district. Further to this, only central government can increase or decrease taxes and/ or customs duties.

2. Government entities Responsible for Making and Implementing Policies Affecting Foreign Trade

Question 32.

Please provide the list of restricted items that needs an import license from the Minister of Finance and from the Minister for Police, Fire Service and Prisons.

Answer:

Please answer to Question 62.

Question 33.

What process will be needed to complete national procedures relating to WTO accession? Will implementing legislation be required?

Answer:

Implementing legislation will be required.

Question 34.

In order to meet its obligations as a future WTO member and to draw maximum benefit from its membership, Tonga will need well established arrangements for the development and coordination of trade and economic policy:

- (a) **How effective are the means for considering and coordinating policies affecting foreign trade between government agencies, and between the government and business?**

Answer:

The Government has established a Trade Coordination Committee to coordinate the work of the different Government entities involved (Ministry of Labour, Commerce & Industries, Ministry of Finance, Ministry of Agriculture & Forestry, Central Planning Department, National Reserve bank of Tonga, and Ministry of Fisheries) under the chairmanship of the Minister of L,C & I. This committee also consults with the private sector on matters relating to trade and economic policy.

- (b) **Can private sector views be more closely reflected in policy formulation**

Answer:

Yes, private sectors view is taken into account in policy formulation.

4. Legislative Programs

Question 35.

Does Tonga intend to submit to the WTO Working Party members for comment the revised legislation related to customs and excise whilst it is still in a draft form?

Answer:

The Customs and Excise Act has already entered into force on 11 October 1999. A copy has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

- (a) **Registration**

Question 36.

With a few exceptions, imports are permitted without restrictions. Please provide a list of those exceptions.

Answer:

Please see answer to Question 62 below in the section on Quantitative Import Restrictions.

Question 37.

Can natural persons engage in importation activities? If not, why not?

Answer:

Yes, they can.

Question 38.

Please identify the business activities that require a license to import goods, pursuant to the Licenses Act, Cap. 47. Is the decision to issue the license discretionary? Please describe the criteria that are considered in the determination of whether or not to grant a licence to import goods.

Answer:

Every business requires a licence to operate. There is no discretionary power to issue the licence, it is a simple 'pay-and-serve' process in which you pay for your licence fee and the licence is issued to you. There are no criteria not to issue licence.

(b) Customs tariff

Question 39.

What is the status of the current legislation to implement the HS 96 customs classification system?

Answer:

The HS was implemented on 1 May 2000.

Question 40.

Could Tonga please provide a copy of its SITC tariff schedule. (note: It is not contained in Annex II of WT/ACC/TON/3, as indicated. end note)

Answer:

Available in the Secretariat for consultation (WT/ACC/TON/4/Add.1 refers).

Question 41.

Please provide copies of applied rates of customs duty on diskette together with import statistics on a tariff line basis.

Answer:

Available in the Secretariat for consultation (WT/ACC/TON/4/Add.1 refers).

Question 42.

It is important that Tonga implement a customs classification system that is in line with the international standard (the Harmonized System) and we note that the proposed changes to Tonga's tariff classification system detailed in the foreign trade regime have not passed through parliament:

- **our understanding is that the current system of classification creates a significant obstacle to the efficient operation of Tonga's customs administration. Is this correct?**
- **to what extent do customs officials have discretionary powers in assessing duty on imports?**
- **With the rejection by the legislative Assembly of the legislation for a harmonized tariff schedule, what plans are there to modernise Tong's tariff structure?**
- **We would hope to see Tonga's tariff levels reduced in the context of WTO accession. Given the importance trade taxes have come to assume in government revenue, what plans does Tonga have for diversifying the revenue base?**

Answer:

HS was implemented on 1 May 2000. For question on customs valuation, please see relevant section below. Two studies have been undertaken on the reform of the taxation system. The next step is to study the impact of the proposals contained in these studies on the economy and government revenue.

Question 43.

According to page 14 of the Memorandum on foreign Trade Regime, Tonga will introduce the Harmonized System (HS). The action plan to join the HS agreement should be clearly explained. Will the initial offer that Tonga submits later be based on the HS 1996?

Answer:

HS was implemented on 1 May 2000. Tonga's initial tariff offer will be based on the HS system.

Question 44.

Is the harmonised system already introduced? If not, when does Tonga intend to introduce it?

Answer:

HS was implemented on 1 May 2000.

Question 45.

Tonga imposes quite substantial tariff barriers. The reason for these tariffs appears to be to raise revenue rather than protection of domestic competition. What other forms of raising government revenue could be considered?

Answer:

Establishing a system under which users pay for services rendered by the Government.
Broadening of the sales tax base

Question 46.

It is said; "Tonga charges excise duty of 50 per cent or T\$0.75 per litre on beer produced in Tonga" (at present only product on which excise duty is levied). Is it a correct understanding that no excise duty is charged on imported beer?

Answer:

Beer made from malt in Tonga attracts excise duty at T\$0.75 per litre. Imported beer made from malt attracts a rate of import duty of 200% or T\$2.40 per litre, whichever provides greater amount.

Question 47.

Why does Tonga stipulate high tariff rates on tobacco (150 per cent or T\$15/kg) and spirits (300 per cent or T\$35/l)? Why does Tonga levy excise duties only on beer?

Answer:

High tariffs on tobacco & spirits are applied for both revenue and health reasons. The duty on imported beer also gives protection to the local producer.

Question 48.

We note from the memorandum that the Ministry of Finance intends to implement a reform program that includes trade taxes. Could Tonga provide details of this program and include information on any taxes that are to be introduced, removed or have their base broadened?

Answer:

This matter is still under examination, but no specific proposals have yet been made. Any program will take into account the implications of accession to WTO.

(c) Tariff quotas and exemptions

Question 49.

Are tariff exemptions applied on an MFN basis?

Answer:

Yes.

Question 50.

Can Tonga confirm that it does not intend in the future to introduce import quotas?

Answer:

Tonga has no such intention.

Question 51.

Certain imported products are granted exemption from custom duties. Among these is airport ground equipment; fuel and lubricants for international air services; marine lifesaving equipment and patters and samples.

- (a) **Please provide a listing of the HS and/or SITC numbers for the products exempt from duty.**

Answer:

Description of Goods which are subjected to duty exemptions.

These are defined by HS number in only a few cases.

1. Goods required for the use of the reigning sovereign.
2. Goods required for the use of the Government of Tonga.
3. Goods required for the accredited diplomatic representatives to the Kingdom of Tonga International Organisations and Technical assistance officials.
4. Goods required under agreements of technical assistance entered into Government of Tonga.
5. The furniture, effects and equipment (including a motor car) of officials in the service of overseas government or international organisations if imported within six months from the date when the official takes up appointment or within such further period as the Controller of Customs may allow, on proof that the right to import such furniture effects and equipment free of duty has been authorized by agreement between the overseas government or international organisation concerned and by the Government of Tonga. Personal and household effects and baggage of arriving passengers.

Personal effects of passengers being accompanied baggage of passengers passes as such by the proper officer of customs consisting of:

6. A reasonable quantity of wearing apparel, articles of personal adornment and toilet requisites;
7. Instruments and tools to be used by the passenger for the purpose of his profession, trade occupation or employment provided that they have been in his possession and bona fide use for reasonable period;
8. Such articles in his baggage or his personal (not including firearms and ammunitions) which he might reasonable be expected to carry with him for his regular and private use whilst travelling;
9. Manufactured tobacco (for the personal use of passenger), including cigars and cigarettes not exceeding 500 grams aggregate (500 cigarettes shall be deemed to be equivalent to 500 grams of tobacco) imported by a person above the age of 16 years.
10. 2.25 litres of portable spirits or 4.51 of beer imported by a person above the age of 18 years or any combination not exceeding half of each of the quantities specified herein:

11. Articles (including foodstuffs), which would otherwise be dutiable but for this provision, the aggregate value of which does not exceed \$500.00
12. The items referred to in heading No. 9805.14 and heading No. 9805.15 above may also be purchased by disembarking passengers at the duty free shop at Fua'amotu Airport, prior to passing through customs
13. Household effects admitted as such by the Collector of Customs which accompany a person intending to take up residence in the Kingdom and are proved to the satisfaction of the Collector of Customs to have been in bona fide use by such person for a reasonable period and are not imported for disposal to a third party; Provided that a person may import household effects under this sub-paragraph only on the occasion of first taking up residence in the Kingdom.
14. Baggage and household effects in the case of a person intending to take up residence in the Kingdom) imported within six months of the arrival of the passenger or such further period as the Controller of Customs may allow provided that the articles would have been exempted from duty had they been imported under items 9805.1000, 9805.1100, 9805.1200 and 9805.2000 hereof; provided that the exemptions in 9805.1000, 9805.2000 and 9805.3000 hereof shall not apply to a member of the crew of an aircraft unless such person is finally leaving the aircraft or vessel on arrival in the Kingdom.
15. Personal effects (excluding merchandise...alcoholic beverages and tobacco products) of persons ordinary resident in the Kingdom who have died abroad.

Ground Equipment and fuel to aircraft

16. Ground equipment and technical supplies required for use within the limit of an airport in connection with the establishment or maintenance of international air services or air services operation within the kingdom.
17. Fuel and lubricants solely for use in aircraft specified in 9807.1 hereof.

Cultural and educational articles

18. Articles of an educational, scientific or cultural nature of the following description being products of any state which is a party to the agreement on the importation of educational, Scientific and Cultural materials approved by the general conference of the United Nations Educational, Scientific and Cultural Organisation during its Fifth Session at Florence in June 1950, subject to the satisfaction of the Controller as to their description and use.
19. Books, documents, (printed or produced by duplicating processes, but excluding stationery), periodicals, current newspapers, manuscripts (including typescripts), musical compositions, maps and charts;
20. Paintings and drawings (excluding manufactured wares), hand-painted impressions signed and numbered by artist, original works and of art of statuary or sculpture; collectors' pieces and objects of art consigned to approved public galleries, museums and other public institutions and not intended for re-sale: antiques more than one hundred years old;
21. Films, slides and sound recordings;
22. Architectural, industrial and engineering plans, models, wall charts and scientific instruments and apparatus:

23. Provided that articles specified in 9808.13, 9808.14 above (except news reels with or without sound tract) may only be imported free of duty by a person, society or body approved for that purpose by the Controller of Customs.
24. Specific materials and equipment, not including those articles specified in 9808.1 above, to be used solely in educational institutions, for educational purposes in accordance with procedures agreed by the Minister of Education and the Controller of Customs and approved by the Privy Council.

Charitable gifts

25. Goods donated to the Red Cross Society and certified by the person for the time being in charge that they are for free distribution.
26. Goods imported as charitable gifts, admitted as such by the Collector of Customs, by any organisation approved by the controller of customs and certified by the head of such organisation that such articles are for free distributions.

Marine life saving equipment

The following equipment which the Collector of Customs is satisfied is required for the purposes of ships and shipping

27. Life saving equipment, including life jackets, life buoys, buoyant apparatus, sea making dye, distress flares, rockets and other pyrotechnic devices for use in life saving;
28. Communication and signal equipment, including Morse signalling lamps, code flags, semaphore flags, fog horns and sirens.

Patterns, samples, advertising matter and documents

29. Patterns and samples cut, mutilated or otherwise spoiled to the satisfaction of the Collector of customs so as to render them unmerchantable and show cards, calendars, trade catalogues, price lists and printed posters advertising services and goods offered by the firms having no established place of business in the Kingdom;
30. Waybills, consignment notes, bills of lading, exchange orders, tickets and labels when imported on behalf of shipping companies and air lines domiciled outside the kingdom.

Religious goods for use in places of worship, tombstones

31. Altar bread and altar wines imported for administering the Sacrament; on the signed declaration of the head of the denomination for which they are intended;
32. Church bells, on the signed declaration of the head of the denomination for which they are intended;
33. Tombstones whether engraved or not and commemorative and memorial tablets to a deceased person.

Trophies and medals

34. Cups, medals, shields and similar trophies when awarded abroad, provided that the purpose for which the trophy was awarded is indelibly inscribed thereon.

35. Cups, medals, shields and similar trophies approved by the Privy Council to be specially for bestowal as honorary distinctions or prizes provided that the purpose for which the trophy is to be awarded is indelibly inscribed thereon.
36. Unframed portraits, developed photographs, developed negatives, developed films and sound recordings which the Collector of Customs is satisfied have only a personal or sentimental value to the importer and which are not intended for sale or for public exhibition or performance.
37. Articles and goods imported for objects of a general public character or beneficial enterprise approved by the Privy Council.

(b) Why do these and other products qualify for custom duty exemptions?

Answer:

These are the sort of items that are granted exemptions in many countries.

(c) How does the government determine which products qualify for exemption and are such exemptions available administratively, or is legislation necessary?

Answer:

Exemption is granted according to the Customs and Excise Act. No exemption is available administratively.

(d) Other duties and charges, including charges for services rendered

Question 52.

Please identify all products subject to the 20 per cent Port and Service Tax.

Answer:

Port and Service Tax is applied to all imported goods except those that are fully and partially exempted under the IDI Act.

Question 53.

Could Tonga please provide a copy of the Licenses Act (Cap.47) and the Port and Services Tax Act (Cap. 71)?

Answer:

These have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 54.

A list of wharfage dues are provided for boats, machinery, motor vehicles and several other products. The rates are given in T\$ per meter.

(a) Please explain the rationale for levying such fees based on length and/or internal space.

Answer:

Due to the relatively small area of operation at the wharf, 'space' (length in cubic metres) is of great importance. Hence, by measuring fees in comparison to the space it (each product) takes up at the wharf is the result.

- (b) Is the list of products subject to wharfage dues comprehensive? If not, please provide a full listing of dues by products.**

Answer:

These have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

- (c) Please provide a copy of the Wharves Act (Cap.38)**

Answer:

This has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 55.

Are there any other types of customs charges applied to imports and exports other than the Port and Services Tax and the wharfage dues listed?

Answer:

The Port and Services Tax is the only tax collected by Customs other than the import duty. In WTO terms, it is an "other duty or tax" and the relevant provision is Article II of GATT 1994.

Wharfage dues are not collected by the Government but by the Port Authority, a company which also collects berthage fees (see answer to question 58 below). These are purely commercial charges.

Question 56.

Certain imported products are exempt from Port and Services Taxes. Among these are educational, scientific and cultural books, documents and materials; fertilizers; insecticides, pesticides and fungicides for agricultural use; agricultural machinery, implements and tools; timber milling machinery; and stock feed and seeds.

- (a) Please provide a listing of the HS and/or SITC numbers for these products. Why do these and other products qualify for Port and Services Tax exemptions?**

Answer:

The main reason why they qualify for an exemption is because they are essential items. These have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

- (b) How does the government determine which products qualify for exemption? Are the exemptions granted administratively, or is legislative action necessary?**

Answer:

The exemptions are provided legislatively.

Question 57.

GATT Article VIII provides that all fees and charges will be limited in an amount to the approximate cost of the services rendered and will not be a taxation of imports for fiscal purposes. It appears that port services tax of 20 per cent and wharfage dues are not directly related to the cost of any particular customs service, but purely revenue generators. How does the government of Tonga intend to bring its import licensing fee structure into conformity with the requirements of GATT Article VIII?

Answer:

Please see answer to Question 55 above.

Question 58.

Could Tonga provide details of the import charges applied by Port Authorities and explain the difference between the wharfage and the Port and Service Tax? What services does they cover? Which products are concerned?

Answer:

The Ports Authority levy berthage fees on all overseas vessels including General Cargo, Fishing, gas Carrier, Tankers, Squash Pumpkins Vessel etc., and calculation is based on tonnage times hours at berth times the rate as listed under Section 12 (2) of Ports Authority Act or Standing Order 1999. These charges cover the use of berth and all associated fixtures, facilities and services including:

- Berth/anchorage; fender; bollard; channel depth; roads; security fence;
- Lightning, stacking area; pollution control etc.

The Ports Authority also charged Wharfage on all import cargo and exports passing through the International Port of Queen Salote Wharf. Such charges include wharfage or TOP \$22.00 on petroleum products in bulk per 100 litres or part thereof, TOP\$110.00 as terminal fee per container and TOP\$4.30 as terminal fee per ton (the greater the weight or measurement)

The Port and Services tax is an ad valorem tax of 20% levied on all imports. Please see answer to questions on this tax above.

Question 59.

Please provide more detailed information on Port and Service Tax. Is the tax levied in addition to customs duties? Why does Tonga keep the 20 per cent ad valorem Port and Service Tax?

Answer:

Yes, Port and Service Tax is levied in addition to customs duties. This was introduced for revenue purposes and not to protect domestic production. In addition, given the very small scale of the Tongan economy and the level of economic development of the country, it has not had a protective effect.

Question 60.

The WTO permits the imposition of fees for services rendered provided that the fee is no higher than the actual cost of the service. The ports and services tax does not appear to meet this requirement, and we would hope to see its removal as a feature of Tonga's WTO accession:

- **Could Tonga provide further information on the tax, in particular which goods are subject to the tax and which are exempt?**
- **Does Tonga regard the tax as a service fee or simply a charge on imports that is additional to the tariff?**
- **Has any substantive consideration been given to reviewing the tax?**

Answer:

Please see answers to questions on this subject above.

Question 61.

Is all kind of machinery subject to wharfage duties?

Answer:

Yes.

(e) Quantitative Import Restrictions

Question 62.

How does the government determine which products qualify for quantitative restrictions or restrictive licenses. Please provide a listing of all such products along with their HS and/or SITC number.

Answer:

The Government has included items on the "restricted list" for a number of reasons, including to protect public morals, human, animal or plant life or health, protection of trade marks and copyright. Some items have been included on the "restricted list" only to monitor their import, for instance motor vehicles.

(a) List of PROHIBITED Imports.

- 1) Counterfeit coin, currency notes or stamps.
- 2) Indecent articles (obscene books, paintings, drawings, cards, lithographic or other engravings, photographs, prints, films or other indecent products or articles except for private purposes) [Schedule II, Part 1 (Section 35) PROHIBITED AND RESTRICTED IMPORTS]
- 3) Goods bearing the royal Arms of the Kingdom of Tonga, unless importers holds his Majesty's authority.
- 4) Goods bearing any trade name or trade mark being or claiming to be the name or trade mark registered under the Registration of United Kingdom Trade Mark Act.
- 5) Fireworks, unless given permission by Minister of Police.

- 6) All books and any written or printed matter, sounds and visual recordings subject to copyright law.
 - 7) All books and any written or printed matter and sound and visual recordings which advocate violence, lawlessness or disorder.
 - 8) All toxic or hazardous wastes.
 - 9) Goods the importation of which is prohibited by any other law in force in the Kingdom.
 - 10) Goods the importation of which is restricted by any other law in force in the Kingdom except in accordance with such law.
- (b) List of RESTRICTED Imports.
- 1) Firearms and ammunition except with a licence issued by the Minister of Police (HS No. : 93.03)
 - 2) Explosives of all kinds including fuses and detonators except with licence issued by the Minister of Police (HS No. : 3602.0000)
 - 3) Noxious, stupefying or tear gas in any form and all weapons and instruments or appliances for firing or using such gases and gas containers or cartridges for such weapons or other instruments or appliances except with the written permission of the Minister of Police.
 - 4) (a) Brandy and whisky unless certified to the satisfaction of the Collector that it has been matured in wood for three years. (HS No.: 2208.3010)
 - 5) Rum unless certified to the satisfaction of the Collector that it has been matured in wood for two years. (HS No.: 2208.4010)
 - (a) Motor vehicles (HS No.: 87.04), motor cycles (HS No.: 87.11) and motor scooters except with a licence issued by the Minister of Finance.
 - 6) Left hand drive motor vehicles except with a licence issued by the Minister of Finance and a licence issued by the Minister of Police.
 - 7) Eggs except with a licence issued by the Minister of Finance. (HS No.: 0407.0010)
 - 8) Cabin and ships biscuits except with a licence issued by the Minister of Finance.
 - 9) Goods the importation of which is restricted by any other law in force in the Kingdom except in accordance with such law.

Question 63.

Import in Tonga of indecent articles, fireworks and seditious matter is prohibited. Can Tonga explain how it defines what an indecent article is? Does Tonga manufacture its own fireworks? In that case, then any ban on imported fireworks would be contrary to Article XI of GATT 1994. Is the definition of seditious matter laid down in a law or does the government authorities have a margin of discretion?

Answer:

The terms "Indecent Articles" and "Seditious Matter" are defined in accordance with the usual dictionary definition. Pornography is, for instance included. Tonga does not manufacture its own fireworks.

Question 64.

What is the current status of the legislation to revise the quantitative restrictions on imported eggs and cabin and ships biscuits?

Answer:

These restrictions still remain in place.

Question 65.

Article XI of GATT 1994 and the WTO Agriculture Agreement do not allow the imposition of import restrictions for the purpose of protecting local industries. Can Tonga advise the outcome of the revision to import arrangements for eggs and cabin and ships biscuits?

Answer:

As per Question 64.

Question 66.

Please explain why both right and left-hand drive motor vehicles are listed as being subject to quantitative restrictions.

Answer:

These items are on the "Restricted List" in order to monitor imports for road safety reasons. Import licenses are freely available unless the vehicles are unsafe.

Question 67.

Imports of certain other products are restricted and require separate licenses in addition to import licenses. For example, alcoholic products such as brandy, whisky and rum. Why are there such restrictions?

Answer:

These restrictions were introduced many years ago for health reasons.

Question 68.

Why does Tonga have quantitative restrictions on brandy, whisky, rum and motor vehicles? Will these restrictions be removed once Tonga accedes to the WTO?

Answer:

Please see answers to questions above. Tonga is prepared to review these measures taking into account the views of WTO Members.

(f) **Import licensing procedures**

Question 69.

Annex III of the Memorandum on Foreign Trade lists different fees charged to issue an import licence, which vary with the nature of the goods to be imported. The information provided in Annex III also states that the principal purpose of the import licensing system is to raise revenue for the Government of Tonga. GATT Article VIII provides that all non-tariff import fees and charges shall be limited in amount to the approximate cost of the services rendered and shall not be a taxation of imports or exports for fiscal purposes. Article 1:2 of the Agreement states that licensing procedures shall be in conformity with GATT provisions. It appears however, that the different licensing rates are simply revenue generators.

- What is the GATT justification for having processing fees at different rates?
- How does the Government of Tonga intend to bring its import licensing fee structure into conformity with the requirements of GATT Article VIII?

Answer:

There is no specific GATT justification. The Government of Tonga is prepared to review these matters, taking into account the views of WTO Members.

Question 70.

According to the information provided in Annex III of the Memorandum on Foreign Trade, where applications for import licenses are lodged by non-Tongans, the issuance of import licenses is not automatic. Each application is considered by a trading licenses screening committee. The use of discretionary import licensing procedures is a quantitative restriction incompatible with the requirements of GATT Article XI. Such a separate screening system would appear to be discriminatory. Why is the process of receiving an import licence not automatic for non-Tongans?

How does the Government of Tonga intend to bring the issuance of import licenses into conformity with the national treatment provisions of GATT Article III as well as Article XI? For each of the past three years, please provide the number of import licence applications received from non-Tongans and the number of applications that were approved. What were the reasons given for the denial of the import licence applications?

Answer:

The import licensing system has been reviewed since the Memorandum was distributed. The Trading Licence Screening Committee has been abolished and licenses are now granted to Tongans and non-Tongans alike. There is therefore now no discrimination between non-Tongans and Tongans regarding the issuance of import licence.

Question 71.

In this section, Tonga states, "There are no strict procedures regarding applications for import licenses. However, applications must already be in possession of a licence under the Licenses Act". In the second sentence, is "applicant" the correct word instead of "applications"?

- (a) If applicants is the correct word, however, the two sentences seem to imply that an applicant has to have a licence under the Licenses Act in order to apply for an import licence. This also seems not correct. Could Tonga clarify this statement.

Answer:

Yes, 'applicant' is the correct word, not 'applications'. However, all businesses do require a licence to engage in business activities (please see answer to Question 38 above) before they can apply for an import licence.

- (b) Please provide a copy of the importer licence application. (note: It is not in Annex II. end note)**

Answer:

This has been provided to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 72.

Please state the contribution to Government revenue that is provided by import licensing fees?

Answer:

Over T\$ 200,000 Tongan Pa'anga in 1999 (about US\$ 140,000).

Question 73.

According to Annex III of the Memorandum, import licenses for non-Tongans are not automatically issued. Are import licenses for Tongans issued automatically? How does Tonga ensure a national treatment for issuing import licensing.

Answer:

See answer to Question 70 above.

Question 74.

Can Tonga explain why non-Tongans applications for import licensing are subject to consideration by Tonga Trading Licence Screening Committee?

Answer:

See answer to Question 70 above.

Question 75.

Why does the Ministry of Finance require import licenses on eggs? How does Tonga intend to revise the import licensing system as indicated in page 18?

Answer:

The Ministry of Finance requires an import licence on eggs to closely monitor and control imports for the sake of the local Poultry farms. Tonga is prepared to review this measure taking into account the views of WTO Members.

Question 76.

We note that the private sector has expressed dissatisfaction with the system of import (and export) licensing. We support measures to reduce practical hindrances to trade as far as

possible. The WTO Agreement on Import Licensing Procedures requires that licensing systems be operated in a transparent, predictable, fair and equitable manner that does not impede trade:

(a) Are there plans for a review of the operation of the system?

Answer:

See answer to Questions 69 and 70 above.

(b) What is the reason for discriminating between Tongans and non-Tongans in the way in which licence applications are considered?

Answer:

The procedure has been reviewed and currently licenses are automatically issued to any person.

(c) What criteria does the Trading Licenses Steering Committee use to assess applications?

Answer:

This Committee had been dissolved.

(d) The memorandum states (page 39) that there are no strict procedures regarding the application for import licenses. However, applicants must already be in possession of a licence under the Licenses Act. Can Tonga please explain this further?

Answer:

Please see answer to question 71 above.

(e) What licence is this referring to, how is it obtained, and is it available to Tongans and non-Tongans equally?

Answer:

As mentioned earlier, this is the Importing Licence and can be obtained from the Licensing Unit, Ministry of Labour, Commerce & Industries. It is available to Tongans and Non-Tongans alike.

(f) It is noted that Tonga has "no strict procedures regarding applications for import licenses" and "no strict rules as to the documentation which has to be submitted". Can Tonga clarify these statements? In particular will Tonga be reviewing these arrangements to ensure that they accord with the WTO Import Licensing Agreement, which for example requires publication of all procedures?

Answer:

Please see answer to Questions 69 and 70 above.

Question 77.

We note from Annex III that the principal purpose of import licensing is to raise revenue by taxing imports. The fees charged appear to be of the type covered by Article VIII of GATT 1994, which requires that licensing and other similar fees and charges must be limited to the

cost of the service that is provided. Given the stated aim of import licensing applied by Tonga, there does not seem to be any service provided and the fees appear to be excessive:

- **can Tonga advise whether it considers the licensing system and its associated fees to be consistent with Article VIII of GATT 1994?**
- **what plans does Tonga have to bring its licensing arrangements into conformity with the WTO?**

Answer:

As per Question 69.

(h) Customs valuation procedures

Question 78.

According to the information provided in the Memorandum on Foreign Trade Regime, Tonga does not appear to be using transaction value for the purposes of customs valuation. Tonga will need to implement fully the WTO Agreement on Customs Valuation, as of the date of accession.

- (a) Will the Government of Tonga commit to implement fully the WTO Agreement on Customs Valuation, as of the date of accession?**

Answer:

Tongan customs valuation procedures date from well before the WTO Agreement on customs valuation and have not been amended since the negotiation of this Agreement. They are not, therefore, based on transaction value. Tonga recognises that, as a WTO Member, it will have to bring its procedures into conformity with the WTO Agreement and is ready to do so. It is also ready to discuss in the Working Party the legislative and other steps that need to be taken to achieve these objectives. Tonga will need technical assistance in this area and the availability of such assistance will largely determine the timetable for its implementation of the Agreement.

- (b) Could Tonga please complete the questionnaire on customs valuation contained in Annex IV of WT/ACC/1, so that the Working Party can begin the process of ascertaining what changes Tonga will need to make to its laws to conform with the WTO Agreement on Customs Valuation?**

Answer:

The questions in the Questionnaire all relate to the implementation of the different provisions of the WTO agreement on customs Valuation. Tonga can only reply to these by stating that it does not apply these provisions at the present time. It has already stated in answer to the previous question that it will have to make radical changes in its customs valuation procedures in order to bring them into line with the Agreement.

- (c) Could Tonga please provide a copy of the Customs and Excise Act, referred to in WT/ACC/TON/3, section IV(h)?**

Answer:

This has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 79.

Does the Tongan Government plan to apply the WTO Agreement on customs valuation?

Answer:

Yes - see answers to the previous questions.

Question 80.

To allow a useful examination of Tonga's customs valuation regime, Tonga will need to provide the Working Party with the questionnaire on customs valuation at the earliest opportunity (as detailed in WT/ACC/1): in addition to the questionnaire, can Tonga clarify what is meant by the statement "the price which in the opinion of the Controller ..."? This would appear to allow the Controller an arbitrary judgement of the value of a good and therefore be inconsistent with Article VII of GATT 1994 and the WTO Customs Valuation Agreement.

(a) Can Tonga advise what steps are in train to bring its customs valuation legislation and practices into conformity with the WTO Customs Valuation Agreement?

Answer:

Tonga recognises that its present customs valuation system gives discretion to the Controller. Please see answers to the previous questions.

(b) Does Tonga envisage any difficulties in achieving WTO conformity?

Answer:

Tonga does not foresee any difficulties of principle but lack of resources does create practical difficulties. Its need for technical assistance in this regard is referred to in the answer to Question 78.

(k) Internal taxes on imports

Question 81.

The memorandum mentions Tonga's policy on national treatment on internal taxation but not on regulatory aspects of sale, offering for sale, purchase, transportation and distribution. Please explain how the policy in this area complies with Art. III.4 of GATT 1994?

Answer:

In general, Tonga applies its laws and regulations affecting the sale, offering for sale, purchase, transportation and distribution of imported goods on a national treatment basis. These laws and regulations relate to a number of different WTO Agreements, which are dealt with in the relevant sections of this document.

Question 82.

Tonga charges an excise duty of 50 per cent or T\$ 0.75 seniti per litre on beer produced in Tonga. Does Tonga charge an excise duty on imported beer? If yes, what excise duty rate is applied to imported beer?

Answer:

Please see the answer to Question 46 above.

Question 83.

Tonga has a sales tax exemption for sales of local agriculture, livestock and fisheries products in government markets by individual sellers around the markets or at farm gates throughout the Kingdom. Are sales of imported agriculture, livestock and fisheries products also entitled to this sales tax exemption?

Answer:

Difficulties of tax collection have made it necessary to exempt these very small producers from sales tax. The distinction made is between these very small producers and sellers and larger businesses, rather than between imported and locally produced goods.

(l) Rules of origin

Question 84.

Is the Tonga's government ready to implement the WTO agreement on rules of origin?

Answer:

Yes.

Question 85.

When Tonga accedes to the WTO, under the Agreement on Rules of Origin it will have certain obligations including in regard to the transparency of laws, regulations and practices regarding rules of origin. Tonga should implement the Agreement on Rules of Origin from the date of accession, however, until the international work program for the Harmonisation of rules of origin is complete, Tonga should abide by the transitional disciplines of Article 2 of the Agreement from the date of accession. When the Harmonisation work program is complete, Article 3 will apply - does Tonga anticipate any difficulties with this?

Answer:

No.

Question 86.

(a) According to the Foreign Trade Memorandum, Tonga applies rules of origin only in the context of preferential trade. However, according to paragraph IV.1.(b) (Customs tariff), Tonga applies a single set of tariff rates on all imports, regardless of their country of origin, and does not apply tariff preferences. Please confirm that Tonga does not apply tariff preferences to any imports.

Answer:

Tonga does not grant tariff preferences.

(b) Please explain the circumstances in which Tonga applies non-preferential rules of origin.

Answer:

Tonga does not apply non-preferential rules of origin.

(m)(n)(o) Anti-dumping, Countervailing Duties and Safeguard Regime

Question 87.

Tonga does not have policies nor legislation for anti-dumping and countervailing duties and for safeguard measures. Will the Government of Tonga commit to the non-application of anti-dumping duties, countervailing duties, and safeguard measures, until WTO-compatible legislation is enacted and notified to the appropriate WTO bodies?

Answer:

Yes.

Question 88.

Does Tonga intend to adopt specific legislation regarding anti-dumping, countervailing duties and safeguard regime?

Answer:

Tonga has no plans to introduce legislation on anti-dumping, countervailing duties or safeguards.

Question 89.

We note that Tonga does not have any policies or legislation in the areas of antidumping, countervailing duties or safeguards. There is no WTO requirement to introduce such legislation if Tonga has no plans to implement such measures to deal with imports that are causing injury to domestic industry:

Can Tonga provide a commitment that it will not implement such measures in practice until appropriate legislation is in place, and that any such legislation that might be introduced in the future will be consistent with WTO requirements?

Answer:

Yes.

2. Export Regulation

(a) Registration

Question 90.

(a) Please identify the business activities that require a licence to export goods (if different from import goods), pursuant to the Licenses Act, Cap.47.

Answer:

All businesses require a business licence to operate. Please see answer to Questions 36 to 38 above.

- (b) **Is the decision to issue the licence discretionary? Please describe the criteria that are considered in the determination of whether or not to grant a licence to export goods.**

Answer:

The only requirement is the payment of the relevant fee. The schedule of fees is to be found in Annex II of the Memorandum.

- (c) **Quantitative export restrictions**

Question 91.

- (a) **The Director of Agriculture must give authority for the export of veterinary biological and organic products; animals, birds, fish and reptiles, Insects and gastropods; plants and fungi; seeds; and trees and lumber. What is the GATT rationale for quantitative restrictions for each of these products?**

Answer:

Protection of rare and indigenous protected species (plants and animals). Environmental protection.

- (b) **What criteria are considered by the Director of Agriculture in making his determination whether or not to allow the exportation of the agricultural products?**

Answer:

Maturity and exportable size of agricultural products exported. Requirements from the country of importation.

- (c) **Is the export authorization granted to foreign applicants pursuant to the same terms and conditions as for Tongans? Are the application and approval procedures the same for Tongan and foreign applications?**

Answer:

Yes, procedures in standard to all.

Question 92.

- (a) **Certain exports are restricted and need special authority given by the Director of Health. What is the GATT rationale for restricting the export of medical biological and organic products, chemicals, drugs and secondhand clothing? What criteria are considered by the Director of Health in making a determination whether or not to allow exportation of these products?**

Answer:

Medical, biological and organic products: quarantine measures to prevent the introduction of new diseases to foreign destinations. Chemicals, drugs: control of narcotics. Secondhand clothing: health.

- (b) **Are the application and approval procedures the same for Tongan and foreign applications?**

Answer:

Standard procedures for all.

(d) Export licensing

Question 93.

The background behind Tonga requiring export licensing on the agricultural products listed on page 21 of the Memorandum should be explained. The export licensing procedure should be clearly explained.

Answer:

This licensing requirement provides revenue. Licenses are freely available on payment of the corresponding fee. Fees are sometimes raised in order to protect the environment or regulate exports when the product concerned is in short supply on the local market. The schedule of fees is to be found on page 21 of the Memorandum.

Question 94.

GATT Article VIII provides that all export fees and charges shall be limited in amount to the approximate cost of the services rendered and shall not be a taxation of imports or exports for fiscal purposes.

(a) How does the Government of Tonga intend to bring its export licensing fee structure into conformity with the requirements of GATT Article VIII?

Answer:

Please see answer to Question 69, which also applies to the export side.

(b) What is the rationale for requiring export licenses for the fish and agricultural products listed on page 21 of the English-language version of the Memorandum on Foreign Trade?

Is the granting of export licenses automatic? If not, how does the Government of Tonga intend to bring the issuance of export licenses into conformity with the national treatment provisions of GATT Article XI?

Answer:

See answers to Question 91.

(c) Do different procedures apply to export licence applications from Tongans and non-Tongans? If yes, please describe the differences in the procedures.

Answer:

No, standard procedure is rendered for all.

(f) Export financing

Question 95.

We understand that Tonga's main export commodity is squash pumpkin, and that growers of this product are guaranteed against losses arising from climatic conditions. Could Tonga explain in more details how this support system works?

Answer:

Tonga does not have any system guaranteeing growers of squash pumpkin against losses arising from climatic conditions. However, the Government has provided assistance on an ad hoc basis to alleviate damage caused by drought and other natural disasters.

Question 96.

Can Tonga please provide more information on the facilities provided to exporters by the Tonga Development Bank?

Answer:

The Tonga Development Bank (TDB) provides facilities, such as term loans, for:

1. The production of commodities like squash, vanilla and root crops.
2. Loans to companies to assist in covering the cost of freight, inputs (like fertilizers and chemicals) and marketing of export products (like purchase of squash bins).
3. Companies purchasing export commodities e.g. vanilla.

These loans are granted on purely commercial terms and are not subsidized by the Government.

Question 97.

Does Tonga provide any export subsidies on agricultural products of the kind covered by Article 9 of the WTO Agriculture Agreement, and if so can Tonga provide details?

Answer:

Tonga will supply information on domestic support and export subsidies in Agriculture in the WT/ACC/4 format as soon as possible.

Question 98.

The operations of the Venture Capital Fund to provide equity capital support for the development of private sector projects which promote exports or import substitution may be incompatible with the requirements of the WTO Agreement on Subsidies and Countervailing Duties.

- (a) Please provide more detailed information on the operations of the Venture Capital Fund and describe the benefits it provides to qualifying projects.**

Answer:

The Venture Capital Fund provides capital for the development of viable private sector projects. This capital is only provided as a commercial venture to successful companies wishing to expand their activities. Priority is given to projects which promote exports or import substitution, foreign exchange earnings, the creation of employment, training opportunities and the introduction of new skills but the facility is available to all businesses and is not calculated in relation to exports. The maximum that can be invested for a single project is T\$50,000 (about US\$ 35,000). Only three projects have been financed in the last three years.

- (b) Please provide additional information about the Export Guarantee Scheme and the Export Diversification Fund. What are the qualification requirements and what benefits are available for exporters?**

Answer:

The Export Guarantee Scheme was established by the Tonga Reserve Bank to guarantee loans from overseas sources. However, this scheme has not been utilized, and to date no such loans have been guaranteed.

The Export Diversification Fund totalling T\$1.05 million was provided by the Tonga Government in 1991 to promote exports. In the early stages of the development of squash exports, this Fund was used to assist some companies in their marketing of the squash. The Fund was fully utilised and the money repaid to the Government.

- (c) For each of the past three years, please provide the amounts paid pursuant to pumpkin growers pursuant to the Loss Guarantee Program.**

Answer:

Please see reply to Question 95.

- (g) Export performance requirements**

Question 99.

Does Tonga consider that the arrangements described on page 23 of the Memorandum constitute export performance requirements of the kind covered by the WTO Agreement on Trade-related Investment Measures?

Answer:

It is our understanding that the TRIMs Agreement prohibits trade balancing requirements that restrict exports and not the arrangements described on page 23.

Question 100.

Could Tonga provide more information on the export requirements and sanctions that may be imposed for non-performance?

Answer:

It is expected that 90% of production of such manufacturing industries is expected to be exported overseas and 10% is allowed to be sold locally. If these exports are not made, duty is payable. Duty drawback is applied on a most-favoured nation basis.

Question 101.

Please explain how the Government of Tonga intends to eliminate the export performance requirements in the Development Licence program, under the Industrial Incentive Act, 1978.

Answer:

The Government is reviewing the Industrial Development Incentive Act.

(h) Import duty drawback requirements

Question 102.

According to the Foreign Trade Memorandum, holders of a Development Licence are not subject to customs duty on the import products or materials used in the processing, manufacturing or assembly of products determined to be primarily for export.

(a) How does the Government of Tonga ensure that there is no import duty drawback for finished products sold on the domestic market?

Answer:

Customs duty is not paid on the products or materials if a determination has been made that the finished goods are primarily for export.

(b) Please describe in detail the procedures to obtain a Development Licence. Are the procedures the same for Tongan and for foreign enterprises? What criteria are applied in determining whether an applicant qualifies for a Development Licence?

Answer:

Please see section on Foreign and Domestic Investment Policies, Questions 15 to 24.

3. Internal Policies Affecting Foreign Trade in Goods

(a) Industrial policy

Question 103.

According to WT/ACC/TON/3/Add.1, the Government of Tonga provided the Secretariat with a copy of Act No. 11 of 4 October 1982, To Amend the Industrial Development Incentives Act 1978. However, the Industrial Development Incentives Act, 1978, itself appears to have not been submitted. If you have not already done so, please provide a copy of the Industrial Development Incentives Act 1978 to the Secretariat for review by the Working Party.

Answer:

This has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

(b) Technical regulations and standards

Question 104.

Please complete the questionnaire on Technical Barriers to Trade.

Answer:

Tonga's only standards legislation is the Public Health Act 1992, under which the Minister for Health is empowered to make regulations in relation with food standards. A copy of this Act has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers). However, as of today, the Minister for Health has not make any food standard regulation. Tonga therefore has not adopted any technical regulations, standards or conformity assessment procedures and is not currently planning to do so. The only other question in the Questionnaire not covered by this response appears to us to relate to the Enquiry Point which, in the case of Tonga, will be the WTO Desk in the Ministry of Labour, Commerce and Industries. It is our understanding that this reply constitutes our answer to the TBT Questionnaire.

Question 105.

Please provide a response to the Questionnaire on Technical Barriers to Trade.

Answer:

As per Question 104.

Question 106.

Tonga will need to implement fully the WTO Agreement on the Technical Barriers, as of the date of WTO accession. Will the Government of Tonga commit to implement fully the WTO Agreement on Technical Barriers to Trade as of the date of accession?

Answer:

Yes. Tonga will also be prepared to undertake that any TBT measures which it introduces in the future will be consistent with the TBT Agreement.

Question 107.

Does Tonga's standards and inspection regime conform fully with the requirements of the WTO TBT Agreement? Please describe in detail any aspects of Tonga's standards and inspection regime that are currently deficient and the steps Tonga will take to remedy the deficiency prior to WTO accession.

Answer:

Tonga will establish an enquiry point. Tonga's TBT regime fully conforms with the requirements of the TBT Agreement. See answer to Question 104.

Question 108.

Please describe in detail the process used by the Minister of Health in establishing standards.

Answer:

While the Minister for Health is empowered by the Public Health Act 1992 to make regulations in relation with food standards, he has not made any such regulation. There has been no need for detailed regulations setting out the process to be used for establishing standards. Please also see the answer to Question 106.

Question 109.

What references does Tonga make to international standards in its standards legislation?

Answer:

See answer to Question 104.

Question 110.

Does Tonga participate in any international standards organizations, such as Codex Alimentarius or the Organization of International Epizootics? How does Tonga incorporate international standards into its standards regime?

Answer:

See answer to Question 104.

Question 111.

Tonga will have to accede to the TBT agreement from the first day of accession to the WTO. What practical steps is Tonga planning to take to prepare for the accession to the TBT agreement.

Answer:

Tonga will conform to the TBT Agreement from the date of its accession. Please see answer to Question 104.

Question 112.

There is nothing in the WTO TBT Agreement that requires Tonga to implement standards where currently none exist. However, Tonga will need to provide a commitment that all future standards and conformity assessment systems that it introduces will be consistent with WTO requirements: can Tonga provide such a commitment?

Answer:

Yes.

Question 113.

Does Tonga intend to adopt a specific legislation on standards and certification related to imports of non-food products? How is the current situation?

Answer:

As per Question 104.

Question 114.

Could Tonga please provide a copy of the Public Health Act 1992 to the Secretariat for review by the Working Party?

Answer:

A copy has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 115.

Tonga will need to provide the Working Party with more information on the operation of the Public Health Act as it relates to standards:

- (a) **Can Tonga provide information in the format detailed in the questionnaire on TBT in Annex 5 of WTO document WT/ACC/1?**

Answer:

As per Question 104.

- (b) **To what extent do Tonga's standards align with international standards (for example those developed by the Codex Alimentarius Commission)?**

Answer:

Tonga does not have any standards - see answer to Question 104.

Question 116.

Please indicate the number of cases, in the past three years, in which the Government of Tonga has denied or significantly delayed entry of foreign goods on the ground that the goods did not satisfy regulations on standards, measurement or quality, or were not correctly documented under such regulations. Please provide a general description of the most significant problems that foreign goods have encountered in satisfying standards requirements.

Answer:

Tongan government has not significantly delayed entry of foreign goods on the grounds that they did not satisfy regulations on standards as no standards exist.

- (c) **Sanitary and Phytosanitary measures**

Question 117.

Does Tonga follow the procedures laid down in the SPS agreement? If not, does Tonga anticipate any difficulties in applying the SPS agreement in full on accession?

Answer:

Tongan procedures largely follow those of Australia and New Zealand and the procedures laid down in the SPS Agreement. See the answer to Question 121 below.

Question 118.

We note that Tonga's Quarantine Act allows for quarantine restrictions to be applied. The Working Party will want to examine Tonga's sanitary and phytosanitary measures in fuller detail, including prohibitions or other restrictions such as certification requirements:

- (a) **Can Tonga provide a copy of the Quarantine Act, the associated import regulations, and the code of conduct?**

Answer:

A copy of the Plant Quarantine Act (Cap 127) 1988 together with the Amendments to that Act and its associated Regulations 1995 and Fee Regulations 1997 has been supplied to the WTO Secretariat. In addition, a copy of the Animal Diseases Act (Cap 146) 1978 and the Public Health Act 1992 and the Amendments to that Act have also been supplied (WT/ACC/TON/4/Add.1 refers).

- (b) **To what extent do Tonga's standards align with relevant international standards?**

Answer:

Plant: Plant Quarantine Act and Amendments align with international organisations' standards such as those of the FAO (Food Agriculture Organisation) and IPPC (International Plant Protection Convention) both of which Tonga is a member. Under IPPC, a regional organisation namely the PPPO (Pacific Plant Protection Organisation) actively operates to set standards that fit Pacific requirements. Such standards are submitted to the member countries (Forum Island Countries including New Zealand and Australia) for funding and implementation. In addition, the PPPO reviews and drafts any standards regulation of any member to align with the international requirements of the IPPC. The PPPO meets every 3 years. Tonga is in the executive committee representing the Polynesian Island Countries.

Animal: Tonga a member of FAO and OIE (International Office for Animal Diseases). Tonga uses their standards as a basis for its own.

- (c) **Does Tonga envisage any difficulties in complying with the requirements of the WTO Agreement on SPS Measures?**

Answer:

No.

Question 119.

If you have not already done so, please provide a copy of the laws and regulations relating to Sanitary and Phytosanitary Standards to the Secretariat for review by the Working Party.

Answer:

Please see answer to Question 118.

Question 120.

Please identify, including HS numbers, all products subject to Sanitary and Phytosanitary restrictions and requirements, including quarantine.

Answer:

Lists of prohibited products are contained in the second schedule of the Regulations under the Plant Quarantine Act and in the Animal Diseases Act. These are reproduced below.

98
SECOND SCHEDULE
(Regulation 31)

Importation of plants and plant materials of the following species is prohibited as stated.

Plant

Name	Plants or plant material prohibited
Banana, Abaca, other Musaceae Heliconiaceae	Plants, corns and cut flowers
All Beans of the species Phaseolus	All except seed
Cassava (Manihol esculenta Grantz)	All except tissue cultures
Citrus	All except fruit and seeds. Fruit from Areas where citrus canker (Xanthomonas Campestris p.v. citri, (Hasee) Dye) Occurs. All of Murraya spp.
All palms including coconut	All except seednuts and pollen from Areas approved by the Minister
Cacao and host plants of Cacao swollen shoot	All except seed from Asia Pacific Region
Coffe (Coffea spp.)	All propagating material except seed
Maize (Zea mays L)	All except seed
Peanut (Arachis hypogaea L)	All except seed
Potato (Solanum tuberosum L)	All except tubers, true seed and tissue cultures
Sorghum (Sorghum spp)	All except seed
Rubber (Hevea spp)	All
Taro and edible aroids (Alocasia spp, Colocasia spp, Xanthosoma spp nd Cyrtosperma spp)	All except propagating material, seed and tissue cultures
Tomato (Lycopersicon esculenum Miller)	All except fruit and seed
Orchidaceae	All except tissue cultures and seedlings in Sterile flasks.

Animal

Prohibition on importation or liberation of certain animals

7. (1) No person shall import or introduce into the Kingdom without prior approval of His Majesty's Cabinet any animal or carcass of the species listed below listed below:-
- (a) any snake of any species whatever;
 - (b) any venomous reptile, or any living stage of any venomous amphibian, venomous fish or venomous invertebrate;
 - (c) any monkey of any species;
 - (d) any member of the squirrel species;4
 - (e) any red fox or silver fox;
 - (f) any musquash (or muskrat);
 - (g) any hamster;

- (h) any mongoose;
 - (i) any coypu (or nutria);
 - (j) any mink;
 - (k) any rabbit;
 - (l) any hare;
 - (m) any deer
 - (n) any opossum;
 - (o) any other animal that is likely to become a nuisance or to cause injury or damage.
- (2) No person shall without prior approval of Cabinet import or introduce into the Kingdom the egg, semen or carcass of any animal specified in subsection (1) of this section.

Question 121.

Please submit a response to the Questionnaire on Sanitary and Phytosanitary Measures.

Answer:

Tonga's SPS legislation is not recent but its detailed procedures relating to both animals and plants are modern and are revised frequently as necessary. A large amount of assistance has also been received from both Australia and New Zealand to establish facilities, e.g. quarantine treatment facilities, to develop standards and to implement standards, e.g. setting procedures to be followed and training officials.

The following notes relate to the points on pages 2 and 3 of WT/ACC/8.

1. Standstill. It is Tonga's intention that new standards, animal health regulations and food safety regulations will conform to the SPS Agreement.
2. Contact Point. At the present time, enquiries relating to animal health may be addressed to Dr. Siosifa Fifita, Head of Livestock Division, Ministry of Agriculture and Forestry and to plant health to Mr. Sione Foliaki, Head, Quarantine and Quality Management Division, Ministry of Agriculture and Forestry.
3. Transparency. (a) Not applicable. (b), (c), (d). There are no such provisions at present.
4. Necessity. Importation is only prohibited when necessary to protect human, animal or plant life and health.
5. Regulations based on science. No reference is made to this principle in the relevant laws but regulations are, in fact based on scientific evidence.
6. Harmonisation. Tonga bases its SPS measures to the extent possible on international standards. It is a member of OIE, IPPC and Codex and also receives help from regional organisations in keeping its SPS measures up to date, in particular the Secretariat of the Pacific Plant Protection Organisation and, on the animal side, the Secretariat of the Pacific Community.
7. Equivalence. Tonga recognizes different measures that achieve the same level of protection. In this respect, its regulations are based on those of Australia and New Zealand.
8. Risk assessment. Tonga has the capability of doing its own risk assessments.

9. Regional conditions. Tonga's measures take regional conditions into account. Reference has already been made to its membership of PPPC and the Pacific Community.
10. Non-discrimination. Tonga's measures do not arbitrarily discriminate.
11. Tonga has no measures which establish tolerances for the use of additives or contaminants.

Question 122.

Please provide specific details on the sanitary and Phytosanitary requirements for all categories of imported animal and plant products. Also please provide a list of quarantine pests.

Answer:

For specific details on SPS requirements for animals and plants, please refer to Annex 5, via Regulations.

Tonga has submitted its list to the GPPIS list. Please refer to the web site : FAO/IPPC for the complete listing.

(d) Trade-related investment measures

Question 123.

Does Tonga intend to notify any measures under the TRIMs agreement?

Answer:

No.

Question 124.

Please list all existing measures and affected products that are inconsistent with the WTO Agreement on Trade-Related Investment Measures. Will Tonga eliminate all TRIMs-inconsistent measures prior to WTO accession?

Answer:

Tonga has no inconsistent restrictions on TRIMs.

(e) Privatisation

Question 125.

Please complete the state-trading questionnaire.

Answer:

Tonga has no state trading enterprises. It is our understanding that this answer constitutes our reply to the Questionnaire on State Trading.

Question 126.

Could you provide details of the privatisation plan?

Answer:

As of 30 June 1998, the Government shareholdings in other organisations were as follows:

Organisation	% of Ownership by Government	Shares (1998/99)	Value per Share	Face Value (Tongan Pa'anga T\$)
1. Air Pacific Limited	No longer got equity	70,400.00	F\$ 1.00	62,174.33
2. Pacific Forum Line Limited	5 %	1,271,956.00	W\$ 1.00	775,583.00
3. Shipping Corporation	60 %	6,000.00	T\$ 1.00	6,000.00
4. Bank of Tonga	40 %	120,000.00	T\$ 10.00	1,200,000.00
5. Tonga Development Bank	100 %	943,929.00	T\$ 10.00	9,439,290.00
6. International Finance Corporation	Cannot be determined. Got % as no authorized capital amount given	19.00	US\$ 100.00	26,355.89
7. Royal Tongan Airlines	99 %	6,916,466.00	T\$ 1.00	6,916,466.00
8. Sea Star Fishing Co. Ltd.	63 %	30,000.00	T\$50.00	1,500,000.00
9. Leiola Duty Free	60 %	600,000.00	T\$ 1.00	600,000.00
10. Export Produce Treatment Services Ltd.	20 %	40,000.00	T\$ 1.00	40,000.00
11. FRISCO	99 %	99.00	T\$ 1.00	99.00
12. Home Gas	99 %	99.00	T\$ 1.00	99.00
13. International Dateline Hotel	99 %	5,999,999.00	T\$ 1.00	5,999,999.00
14. Primary Produce Ltd.99 %	99 %	99.00	T\$ 1.00	99.00
15. Royal Beer	42 %	250.00	T\$ 1.00	250.00
16. Tonga Investment Limited	50 %	100.00	T\$ 1.00	100.00
17. Tonga National Shipping Line	90 %	90.00	T\$ 1.00	90.00
18. Tonga Timber Limited	99 %	1,619,999.00	T\$ 1.00	1,619,999.00
Total				28,186,604.22

Source : Ministry of Finance, 2000.

The Government of Tonga has established a Cabinet sub-committee which will set the plan, timing and other tasks associated with the restructuring of Government commercial activities. It has also through the Ministry of Finance established a Government Investment Unit (GIU) to develop and design programs and timetable for corporatisation and privatisation of government investments. These programs are closely linked to the progress of the private sector, their needs and the constraints that they face. The Government's reform policies take into consideration suggestions made by the private sector.

Assistance has been sought from the Asian Development Bank (ADB) for the designing of policies on public sector reform and the development of policies that accelerate economic growth leading to a more job opportunities (creation of employment).

The following action has been taken since June 1998:

- The Telecommunication Industry was privatised in July 2000.

- The Government Store has ceased operation, except disposal of goods on hand still in the processing stage.
- Privatisation of the Port Authority in 1998/1999.

The following alterations should be made to the figures for Government shareholdings given in the table on page 25 of our Foreign Trade Regime Memorandum. The Government stake in the last three entities has been significantly reduced.

Enterprise	Activity	Government Stake (%)
Tonga Development Bank	Development Bank	99
Royal Beer Co. Ltd	Brewery	40
International Dateline Hotel	Hotel	60
Sea Star Fishing Co. Ltd	Commercial Fishing	70

The Machinery Pool under the Ministry of Agriculture and Forestry is due for privatisation in the year 2001.

Because the Government of Tonga needs to gradually release and privatise the government owned businesses, it is believed that a period of 5 to 10 years is needed for this gradual progress to take place.

Question 127.

Are there any restrictions to foreign participation in the privatisation program (e.g. specific sectors excluded, ceiling level of participation)? If so, do these restrictions also apply to potential domestic investment?

Answer:

No.

Question 128.

We hope that Tonga's policy of increased private sector participation in the economy will be reflected in progress toward privatising some of the larger public enterprises. We would also hope that this process will allow full access for the private sector through open tendering processes: Is Tonga able to provide details of privatisation plans which may be in place?

Answer:

As per Question 126.

Question 129.

The Government Suppliers Department appears to have a special privilege on sales to the Government net of customs duty and Port and Services Tax. Please describe fully the operations of the Government Suppliers Department in the form of a response to the Questionnaire on State Trading Enterprises.

- (a) **What is the status of the privatization of the Government Supplies Department?**

Answer:

The Government Supplies Department operation in terms of purchasing of goods for resale has been terminated on 30 June 1999. The stocks are being sold out. There was no private interest to buy out the store as a going concern.

(b) Please describe the activities of the Tonga Investment Ltd, a holding company.

Answer:

Tonga Investment Ltd. is a Hardware Store for construction materials. It provides a variety of stocks from timbers to roofing materials to bathroom materials, etc.

(c) Are there private sector competitors on-island for Leiola Duty Free Shops - Tonga Ltd, Sea Star Fishing Co, Ltd and Tonga Timber Ltd?

Answer:

Yes, they do have private sector competitors.

- Leiola Duty Free Shops (Tonga) Ltd.: Vete Brewery, Morris Hedstrom Co. Ltd., E.M. Jones Co. Ltd, Kinikinilau Shopping Centre Co. Ltd.
- Sea Star Fishing Co. Ltd.: 'Alatini Fisheries Co. Ltd., Maritime Fishing Co. Ltd., Friendly Island Fishing Co. Ltd, sea Eagle Fishing Co. Ltd.
- Tonga Timber Ltd.: Morris Hedstrom Co. Ltd., Pacific Timber Co. Ltd, Lionvest Co. Ltd.,etc.

Question 130.

The Government of Tonga has a stake in 26 enterprises. Out of the ten Companies listed in the first table, only two have a government stake of less than 42 per cent. In the remaining eight companies the government stake is more than 97.8 per cent. The Memorandum notes that it is the policy of the Government to encourage increased private sector participation in economic activity, and to rationalize or privatize many of the activities its controls.

(a) How does the Government of Tonga plan to proceed with plans to privatize these enterprises and how long is it expected to take?

Answer:

Please see answer to Question 126.

(b) There are only 14 of the 26 enterprises and utilities listed. Please list the remaining 12 companies along with their activity and government stake.

Answer:

As per Question 126.

(l) Government procurement practices

Question 131.

Does Tonga intend to join the Government Procurement Agreement? If not, why?

Answer:

The Government Procurement Agreement is a plurilateral agreement in which only a relatively small number of WTO Members participate. It was not drawn up with the situation of very small developing countries, such as Tonga, in mind. On the one hand, given the high level of the thresholds which it contains, Tonga does not have the capacity to bid for or obtain contracts covered by the Agreement. On the other, it is probable that, for the same reason, few if any Tongan government contracts would be covered by the Agreement. Large contracts in the context of economic aid programs from, e.g. the Asian Development Bank, are already covered by the procurement rules of the organisations concerned.

Question 132.

Please provide a breakdown of the public procurement market both by contracting entity and product type?

Answer:

The statistics requested are not collected.

Question 133.

Answer:

We seek Tonga's accession to the Government Procurement Agreement, and requests a commitment to initiate negotiations for accession with the submission of a schedule of commitments to the Government Procurement Agreement Committee within three months after accession. Is Tonga willing to do this?

Answer:

Please see answer to Question 131.

Question 134.

Please describe the specific procurement procedures that apply to the purchase of goods and services from outside Tonga, i.e., by the government appointed agents in Australia and New Zealand.

Answer:

The procurement of supplies is one by open competition, through public tender in which all local and overseas suppliers are invited. When reaching the closing date of Tender, all quotes are evaluated and the order or contract is awarded to the bidder with the best prices. If the winner is outside Tonga then the order is prepared in a specific form known as 'Overseas Requisition'. This order form then has to be endorsed by Treasury and approved by the Prime Minister before it is sent to the Government Agent in the country concerned. The Overseas Agents then places the order with the supplier, arranges transportation, verifies specification expedites etc. until the good have arrived safely into the Government Store. The overseas Agent also pays the supplier and bills the Government of Tonga for their spending plus commission. The Treasury Tonga pays the Agents and debits the amount to the Government.

4. Policies Affecting Foreign Trade in Agriculture and Other Products

Question 135.

Tonga will need to supply tables on domestic support and export subsidies as detailed in WTO document WT/ACC/4: when will these be available?

Answer:

As soon as possible.

Question 136.

Tonga should submit its WT/ACC/4 domestic support to agriculture and export subsidy schedules as soon as possible and prior to the first meeting of the Working Party.

Answer:

As per Question 135.

Question 137.

In the memorandum, Tonga details the objectives of its agricultural policies without explaining what form the policies and programs actually take: can Tonga provide more detail on its agricultural policies, particularly in relation to the types of support that are made available to Tongan industry?

Answer:

Details of the customs tariff have been supplied to the WTO Secretariat in electronic form (WT/ACC/TON/4/Add.1). For information on quantitative restrictions and licensing requirements, see relevant sections above. Information on support measures and export subsidies will be provided in the WT/ACC/4 tables.

Question 138.

Can Tonga please confirm that it currently has no export subsidy policies of the kind specified in Article 9 of the WTO Agriculture Agreement, and that it is prepared to give a commitment that such export subsidies will not be introduced in the future?

Answer:

This question will be addressed when the WT/ACC/4 tables are available.

Question 139.

According to the Foreign Trade Memorandum, there are currently no measures in place to support domestic agricultural prices (or) to subsidize exports of agricultural produce. Is Tonga willing to bind its export subsidy commitments at zero?

Answer:

This question will be addressed when the WT/ACC/4 tables are available.

Question 140.

Please describe how the Tonga Development Bank encourages the development and diversification of agricultural and commodity exports.

Answer:

Please see the answers to Questions 95 to 98 in the Section on Export Financing above.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

(c) Membership of international intellectual property conventions and of regional or bilateral agreements

Question 141.

What time-frame is envisaged by Tonga respect to a possible adherence to international conventions, such as the Paris, Bern or Rome Convention?

Answer:

Privy Council submissions will be lodged shortly for Tonga to join the Paris & Berne Conventions.

Question 142.

Does Tonga have any intentions of joining any of the international conventions and agreements related to intellectual property, such as the Paris, Berne, and Rome conventions?

Answer:

Please see the answer to the previous question.

Question 143.

Tonga should be prepared to implement fully a TRIPS-compatible regime for the protection of intellectual property rights as of the date of accession. We are pleased to see that Tonga is already taking steps in this direction, by identifying deficiencies in its existing intellectual property regime. More importantly, Tonga has already submitted draft patent, industrial design and trademark regulations to WIPO for review. We were also pleased to see that a revised law on copyright is also in the course of being drafted.

Answer:

Tonga gives very high priority to this matter and will make every effort to pass and implement the necessary legislation. The timetable for this will depend to a large extent on the amount of technical assistance that it receives. Such assistance will be necessary to complete the necessary legislative changes and to carry out the steps necessary to implement and enforce the TRIPS Agreement, e. g. passing the necessary legislation and putting in place the infrastructure required and training personnel. Tonga's commitments in this area will be discussed in the Working Party.

2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights

(a) Copyright and related rights

Question 144.

Please explain whether and how Tonga protects (pre) existing subject matters in the area of copyright and related rights.

Answer:

The Copyright Act 1988 has not yet entered into force, as Regulations have not yet been prepared. Please see the Act, which has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 145.

What is the term of protection for copyright and related rights?

Answer:

Please see the answer to the previous question.

Question 146.

In its submission the Government of Tonga provides a list of necessary amendments to its copyright legislation in order to comply with the TRIPS Agreement. Please specify the envisaged time-frames and legislative steps for such amendments.

Answer:

The draft Copyright (Amendment) Bill is before Parliament and it is expected that the Regulations will be in place before the end of the year.

Question 147.

What is the expected timeframe for the amendments proposed to the Copyright Act to bring it into conformity with the WTO TRIPS Agreement?

Answer:

Please see the answer to the previous question.

(b) Trademarks, including services marks

Question 148.

Please explain how well known trade and service marks are protected in the Industrial Property Act 1994

Answer:

Please see Section 26 (e) of the Act, which has been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

(c) Geographical indications, including appellations of origin

Question 149.

Please explain how geographical indications are protected in the Industrial Property Act 1994.

Answer:

Geographical Indications are not protected by the Industrial Property Act 1994.

(d) Industrial designs

Question 150.

Please clarify whether the Industrial Property Act 1994 is in force. Should this not be the case, please specify when the Act will be operational.

Answer:

The Intellectual Property Regulations were passed in 1998. The Intellectual Property Regulations have been passed and the Act has been in force and operational since 1 February 2000. Both the law and the Regulations have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 151.

(a) What legislation applies in the area of industrial property at present?

Answer:

The Industrial Property Act 1994, which deals with patents; utility model certificates; industrial designs; marks, collective marks and trade names; and acts of unfair competition, and the Industrial Property Regulations 1998.

(b) Please also explain what rights are granted to a right holder under that legislation.

Answer:

Please see the Act and Regulations, which have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 152.

Please explain how textile designs are protected in the Industrial Property Act 1994.

Answer:

Please see the provisions of Part IV of the Act on industrial designs (WT/ACC/TON/4/Add.1 refers).

Question 153.

We hope that work on implementing the Industrial Property Act can be finalised in the near future. Can Tonga indicate the likely timing for implementation?

Answer:

The IPA has been in force and operational since 1 February 2000.

(e) **Patents**

Question 154.

Please explain the scope of patentability, the rights conferred by a patent and the criteria under which non-voluntary licenses are granted.

Answer:

Please see the Industrial Property Act and the Industrial Property Regulations, which have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

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

Question 155.

How are layout designs of integrated circuits protected?

Answer:

These are not yet protected.

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

Question 156.

Please explain how undisclosed information is protected, including undisclosed test or other data in the context of approving the marketing of pharmaceutical or of agricultural chemical products.

Answer:

Tonga does not have any "Uniform Trade Secret Act" as in the United States. However, s3 of Tonga Civil Law Act stipulates that, our Court shall apply the common law of England and the rules of equity, where there is no applicable law in place in Tonga.

4. Enforcement

Question 157.

Please specify what steps the Government of Tonga envisages introducing to provide an effective system to enforce intellectual property rights, including border enforcement. Please also provide a timetable for the respective legislative action.

Answer:

Please see the Industrial Property Act and the Draft Law on Copyright and Related Matters, which have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

While Tonga gives very high priority to this matter, the timetable for legislative action will depend to a large extent on the amount of technical assistance that it receives.

Question 158.

Does Tonga envisage any difficulties in implementing and enforcing laws to give effect to obligations under the WTO TRIPS Agreement?

Answer:

No difficulties of principle. However, as stated previously, Tonga will need technical assistance to complete the necessary legislative changes and to carry out the steps necessary to implement and enforce the TRIPS Agreement, e. g. passing the necessary legislation, putting in place the infrastructure required and training personnel.

5. Laws, decrees, regulations and other legal acts relating to the above

Question 159.

Does Tonga intend to submit to the WTO Working Party members for comment the revised Industrial Property Act and the revised Copyright Act whilst it is still in a draft form?

Answer:

As stated above, the Industrial Property Act, the Intellectual Property Regulations and the Draft Law on Copyright and Related Matters have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 160.

Please provide to the Secretariat a copy of the draft regulations to the Industrial Property Act, 1994 for review by the Working Party.

Answer:

The Regulations have already been passed and have been supplied to the WTO Secretariat (WT/ACC/TON/4/Add.1 refers).

Question 161.

When available, please provide a copy of the draft revised law on copyright to the Secretariat for review by the Working Party.

Answer:

This has been done.

VI. TRADE-RELATED SERVICES REGIME

1. General

Question 162.

Could Tonga explain what are the services that Tongans can undertake efficiently and why non-Tongan participation are restricted in these services?

Answer:

As stated in our Memorandum, a 25 per cent minimum local participation is required in the supply of services which can be undertaken efficiently by Tongans. Currently, this restriction applies to the following services: retailing, tourism services not requiring special equipment or skills, and construction.

This restriction is needed for economic development purposes.

Question 163.

- (a) **Please submit information on how trade in services is administered in Tonga, vis-a-vis foreign service suppliers, in the format and within the parameters of WT/ACC/5.**

Answer:

Tonga has very few laws, regulations or other policy measures affecting trade in services. It hopes that its Memorandum and the answers to these questions give a good summary of these. It will examine WT/ACC/5 with a view to providing answers to the questions that it contains.

- (b) **We look forward to receiving good commitments from Tonga in a number of sectors, including tourism, financial services (including banking and insurance), telecommunications, professional services (especially law, accountancy, engineering and construction services), and education. We are willing to help Tonga to develop a services schedule. In the meantime, we seek more clarification on the following points:**

- **Legal services**

Question 164.

What are the requirements for enrolment on the roll of law practitioners held by the Supreme Court and to join the Tonga Law Society?

Answer:

The requirements for joining the Tongan Law Society as outlined in section 5 of the Law Practitioner's Act 1989 are as follows:

1. the applicant has sufficient professional knowledge and experience and training in common law jurisdiction. The minimum required qualification to appear in the Supreme Court is the Diploma in Law from the University of the South Pacific. This standard is soon to be upgraded to a Bachelor's degree in Law (LLB) from a recognised University.
2. as to the person's character and his suitability to be a law practitioner. The application should have at least three character references.
3. That the person intends to practice law in Tonga as a law practitioner.

To join the Tonga Law Society, applicant's name must be on the roll of Law Practitioners and applicant must have a current practicing certificate

Question 165.

Is the cross border supply of legal services permitted?

Answer:

Foreign legal services can be engaged in Tonga provided that leave of the Court is obtained. Such leave is often obtained.

Question 166.

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

Answer:

Yes. See also answer to Question 164.

- **Accounting**

Question 167.

Are there any market access restrictions to practicing accounting in Tonga?

Answer:

There are currently no market restrictions to practicing accounting in Tonga.

Question 168.

What are the requirements to practice as an accountant in Tonga?

Answer:

Currently, accountants who are locally based are required to obtain a licence from the Ministry of Labour, Commerce & Industries. No queries are made to the Tonga Society of Accountants in relation to licensing. There are currently no specific requirements for accountants who come to Tonga to practice from off shore.

Question 169.

Are there any operating restrictions on foreign accounting firms?

Answer:

There are no operating restrictions on foreign accounting firms.

- **Engineering, computing and architecture**

Question 170.

What are the requirements to practice in each of these fields?

Answer:

There are no specific requirements for these fields except, that the practitioner must obtain a licence to operate from the Licensing Unit of the Ministry of Labour, Commerce & Industries.

- **Education**

Question 171.

What is the level of market access by foreign education service providers?

Answer:

The level of market access is high. In particular, religious institutions have established secondary schools in Tonga such as the Church of Jesus Christ Later Day Saints (Liahona High School), Seven Adventist Days Church secondary school (Beulah College), the Monfort Technical Institution for training of young mechanics and technicians. Other higher academic institution providers such as the University of the South Pacific Extension Centre provide courses at degree level.

- **Financial services**

Question 172.

Does Tonga permit the establishment of new foreign commercial banks and merchant banks?

Answer:

Yes.

Question 173.

Does Tonga permit the establishment of new foreign life and non-life insurance companies, insurance brokers and agencies servicing the domestic market (currently only reinsurance broking is permitted in the domestic market), and insurance underwriting and management companies servicing the domestic market?

Answer:

Yes.

Question 174.

Does Tonga permit the establishment of wholly-owned subsidiaries of foreign banks, merchant banks and other financial services companies and direct branching by these companies?

Answer:

Yes.

Question 175.

Are there any numerical or geographical restrictions on financial services licenses?

Answer:

No.

- **Telecommunications**

Question 176.

What are the criteria under the Broadcasting Act 180, by which an applicant's licence is assessed?

Answer:

The Broadcasting Act 1989 (No. 15 of 1989) was created in order to allow operators (other than the Tonga Broadcasting Commission) to licence television and radio services and stations.

The Acts grants a wide power to the King in privy Council to approve all broadcasting licenses issued in the Kingdom. Privy Council also has the power to decide what conditions shall apply to each licence, including the power to alter and amend the conditions of the licence or to revoke or suspend the licence.

The following are the main criteria which the government sets for the issuance of licence;

1. That all technical matters relating to frequencies and broadcasting of the service have been examined by the potential operator in conjunction with the Tonga Telecommunications Commission and that both parties are satisfied with the technical operating details. (Tonga Telecommunications advice/opinion overriding that of the potential operator in areas of conflict). This criteria also includes physical layout of the broadcasting station;
2. That potential operators have sufficient funds to establish and maintain such a service in the Kingdom and to pay the annual licence fee (which is currently TOP\$5,000 per annum);
3. That the licence is subject to revocation if the licence fee is not paid annually on or before February 1 each year;
4. That if the licence is not utilised within 12 months, of its grant, then it shall lapse and no further applications for that applicant;
5. The potential operator is also expected to exercise 'self censorship' bearing in mind the cultural sensitivities of the Kingdom of Tonga and the laws of Tonga - the Broadcasting Act carries a 'standard' censorship section.
6. The licence is not transferable without the approval of the Privy Council.
7. The licensee must agree to provide for Government the free broadcast of emergency public notices e.g. Government national emergencies, emergency medical appeals, disaster warnings.

The term of the licence is specified under the Act as follows:

- 5 years for the first grant, thereafter, the licence is renewable every two years.

It should be noted however, that the Broadcasting Act will be repealed if the new Communication Bill becomes law. It is envisaged that this Bill will become law by the end of this year (2000).

Under the Communication Bill, the global trend of classifying all telecommunications matters under the one process of 'convergence' has been effected. All communication licence shall be issued

under this law, including television, radio, internet service operators, mobile phone operators etc. The above mentioned criteria has been incorporated in to the Bill, with the addition that licensees in some circumstances shall be requested to provide development plans with their applications.

Question 177.

- (a) **We are interested to learn about the level of competition in the Telecommunications sector.**

Answer:

Up until very recently, the Government had a monopoly on all telecommunication services in the Kingdom.

Domestic Services

The Tonga Telecommunications Commission, statutory board, established under the Telecommunications Commission Act (Chapter 96) is empowered to operate, maintain and develop the domestic telecommunications system in the Kingdom. The Prime minister is the ex officio Chairman of the Board. They are monopoly providers.

International Services

Government has had a franchise agreement for the last 22 years with Cable & Wireless, to operate all international telephone services for the Kingdom. In 1995 Government authorized Cable & Wireless to be the only internet service provider for Tonga.

Since July 2000, Cable & Wireless no longer operate international telephone services etc for the Kingdom. A company, Tonga Telecommunications International Ltd. now operates the international services formerly provided by Cable & Wireless.

The monopoly as an internet service provider has been broken this year, with the government permitting any ISP fulfilling government criteria to apply for a licence from the government.

- (b) **Are there any majority public owned Telecommunications companies?**

Answer:

There is only one Telecommunication Company operating in Tonga. The Tonga Telecommunications International Ltd. is a private company partially owned by the Government.

Question 178.

On Telecommunications, whilst the licensing requirement seems clear enough there appears to be an additional requirement to obtain cabinet approval. Could Tonga explain what are the criteria applied in granting such approval?

Answer:

Under the provision of Telecommunication Services, such services have been a monopoly in the Kingdom - so the question of licensing telecommunications operators has not arisen. There is a provision in the Licensing Act (as amended) for licensing telecommunications operators, but this provision has never been used. Also there are currently different statutes, covering various licenses for television and radio broadcasting services.

However, Government intends to issue all telecommunication licenses under a new Act as provided in the Communications Bill referred to above. Incorporated within this new Bill are existing government policies (as approved by the Privy Council) on licensing set out in the answer to question 176 above.

All applications are tabled in cabinet/Privy Council as formality, it gives the Ministers an opportunity to monitor developments in this area and to ensure that government policies are evolving in accordance with objectives and also to ensure that there is a fair playing ground for all operators.

- **Professional qualifications**

Question 179.

In the Memorandum, it is stated that "Tonga does not have any national professional qualifications standards, and where appropriate, relies on qualifications issued by competent authorities and professional bodies in other countries..." (p.31, l.13). Could Tonga confirm that its laws and regulations on certification for foreign qualification are consistent with the GATS XI.

Answer:

Yes.

Question 180.

It is also stated that, "legal practitioners are regulated by the Law Practitioners Act, 1989...". Can we understand this Act provides for a "lawyer system" in Tonga, which consists of qualification requirements, qualification procedures, etc.? Are there any rules or framework to allow foreign lawyers to provide legal services in Tonga? In the case of the above, what are the requirements for a foreign lawyer to be able to provide a legal service? What is the scope of the legal services that foreign lawyers are allowed to provide? Is there any limitation in the activities of foreign lawyers (e.g. employment, partnership)?

Answer:

Please see the answer to Question 164 above.

2. Policies Affecting Trade in Services

Question 181.

We welcome the absence of MFN exemptions and the relative absence of national treatment limitations. As part of the accession negotiation process, Tonga will be asked to address areas of regulation where there is a lack of transparency or uncertainty affecting services sectors or where administrative discretion inhibits trade:

- (a) Can Tonga provide comprehensive details of both current and any proposed regulatory frameworks for the services industries?**

Answer:

See answers to previous questions.

- (b) **Can Tonga clarify the basis for restricting or regulating the level of foreign participation in some industries? What legislative basis is there for such decisions?**

Answer:

Please see the answer to previous questions.

- (c) **Noting the provision for a minimum 25 per cent local participation in the sectors specified by the memorandum, what is the basis for the apparent exclusion of foreign participation in the fishing industry?**

Answer:

While foreigners are not excluded from participating in the fishing industry, Tonga would like to ask where the fishing industry is to be found in the Services Sectoral Classification List.

4. Most-Favoured-Nation Treatment

Question 182.

It is stated that in the Memorandum that, "As regards the recognition of foreign professional qualifications, applications are treated on their own merits if they involve countries whose qualifications are not specifically cited in the relevant Acts." Could Tonga elaborate on the phrase, "treated on their own merits". Does it mean that such application is treated and approved on an MFN basis?

Answer:

Yes. The criterion is the standard of the qualification concerned.

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

- 1. Bilateral or plurilateral agreements relating to foreign trade in goods and trade in services**

Question 183.

According to Annex IV of the Memorandum on Foreign Trade, the South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) is a preferential non-reciprocal trade agreement covering the Forum Island countries with Australia and New Zealand. The agreement offers duty free and unrestricted or concessional access for virtually all products originating from the Island member countries. Does Tonga offer any duty-free or concessional access to any products originating from Australia or New Zealand? If yes, please identify the products, including HS numbers, and describe the preferential access accorded to them.

Answer:

No, Tonga does not offer any duty-free or concessional access to any products originating from Australia or New Zealand under this Trade Agreement.
