

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
Spec(94)4
10 March 1994

(94-0439)

Original: English

WORKING PARTY ON THE ACCESSION OF MONGOLIA

The information hereunder has been submitted by the Permanent Mission of Mongolia in response to questions raised at the meeting of the Working Party held on 1-2 February 1994.

Privatization

1. Questions

What is the status of legislation governing secondary trading in coupons or stock of privatized firms?

Please indicate to what extent the "small privatization" and "large privatization" programs have been completed. If they are still underway, please indicate the degree of completion that has been achieved.

Could Mongolia describe in general terms how it sees its enterprise structure when the privatization program has been completed? If significant sectors remain Government owned and operated, does Mongolia still plan to ensure a separation of government control from day-to-day activities? If so, how?

Please indicate the relative proportion of ownership in Mongolian banks of (1) private firms or persons, (2) state enterprises, (3) foreigners.

Please indicate how the coupon system of privatization has fared since 1992. How has the pink coupon system developed, i.e. for "small" privatization? Have the coupons been withdrawn from the market at the end of 1993 as foreseen? Are regular market shares established? Is there a charge for the pink or blue coupons?

Are State firms open to foreign investment and ownership through privatization now?

What is the status of large privatization which was said to be completed in 1993?

Replies

The draft of the Securities Law which will regulate the procedures and activities of the secondary market is under discussion now.

The Small and Large Privatizations have not been completed yet. Currently 65 percent and 95 percent of State assets to be privatized through Small and Large Privatization respectively have been privatized. Roughly 50 percent of GDP is produced by the private and public sector respectively.

Structure of privatized entities by the end of 1993

*	<u>Large privatization</u>					<u>Small privatization</u>				<u>Total</u>
	1	2	3	4	T	5	6	7	T	
Industry	40	13	112	27	192	16	84	30	130	322
Construction	18	6	49	54	127	48	103	19	170	297
Transport	20	8	29	22	79	39	38	56	133	212
Telecom.	-	1	-	1	2	-	1	-	1	3
Trade and Services	24	8	14	4	50	183	1115	509	1807	1857
Housing	-	-	-	-	-	-	-	-	-	-
Agriculture, State and fodder farms	23	31	83	188	297	4	37	80	121	418
Others	1	-	13	8	22	-	9	69	78	100
Total	126	67	300	304	797	290	1387	763	2440	3237

* 1. Majority State owned ; 2. Partly State owned; 3. Shareholding company; 4. Limited liability company; 5. Limited liability company; 6. Partnerships; 7. Proprietorships; T-total

Currently there are sixteen commercial banks out of which one is a joint bank, one is State owned and the shareholders of others are both State enterprises and business entities of the private sector.

65 percent of pink coupons designed for small privatization have been utilized. The remaining share of pink coupons will be used for the privatization of the housing sector. Therefore the Government has decided not to withdraw the pink coupons from the market. The General charge for coupons is Tug 200. But poor and disabled persons have not been charged for coupons.

Yes, State firms are open to foreign investment and ownership through privatization.

State-Owned Enterprises

2. Questions

Chapter 5 of the Entity Law of 1 January 1993 describes the legal basis for State-owned firms. It indicates that the management of such firms is appointed by Government agencies, and that the State is ultimately financially responsible. Spec(93)28 notes that as of April 1993, 65 percent of exports and 70 percent of imports were accounted for by such firms, down from over 95 percent in April 1992. Nineteen firms are listed as comprising Mongolia's State trading enterprises.

Is this list comprehensive?

In Spec(93)28 and L/7043/Add.1 Mongolia states that it does not grant exclusive privileges to its state-owned enterprise. Nevertheless, press reports indicate that all organizations other than "Neftimport" will be required to pay the new 20 percent duty on imported petroleum products.

Replies

According to the Law on Business Entities the management of the State owned enterprises is appointed by the Government agencies. But the State is not financially responsible for those enterprises.

The list of State trading enterprises is comprehensive. Nevertheless, the Government has taken a decision to privatize some of them.

Mongolia does not grant any exclusive privileges to its State owned enterprises. Recently the Government has made a decision to introduce an excise tax on gasoline and diesel oil which will be imported by both State and private enterprises without any discrimination.

3. Questions

(1) Consumer goods import-export corporation and Wholesale Company of Food Products

- Specifically, what items does this corporation import and export?
- In total, what is the volume and the value of the goods purchased (or imported) by this corporation? In total, what is the volume and the value of the goods sold (or exported) by it?
- Are any of these items subject to price control? If any, please specify those items and explain the mechanism of this measure.
- In what way is the purchasing (or importing) price decided? In what way is the selling (or exporting) price decided? Who decides these prices?

The Border and Barter Trade Company.

- Specifically, what items does this company import and export?
- In total, what is the volume and the value of the goods purchased (or imported) by this company? In total, what is the volume and the value of the goods sold (or exported) by it?

Replies

Due to the abolition of State orders and according to the Law on Business entities, the State trading companies have no exclusive rights or special privileges to purchase and sell any goods with the exception of the enterprises which are directly dealing with both production and trading of goods.

The State trading companies are subject to privatization and the State Privatization Commission has started the privatization of some of them last year.

The Consumer Goods Import-Export Corporation, the Border and Barter Trade Company, the Wholesale Company of Food Products are entitled to carry out foreign trade transactions by their own decision and under their own liability without any interference from the Government. The Government is not financially liable. (Data relating to their activities will be sent later on).

The purchasing and selling prices are not subject to Government control. Those companies and corporations are free to determine the terms and prices of transactions.

Please refer to the proceeding reply.

Customs Matters

4. Questions

Are the customs charges and fees provided for in Article 16 of Mongolia's Customs Law (as amended on 22 December 1992) *ad valorem* or specific in nature? Could Mongolia describe these fees and charges?

Does Mongolia collect customs duties and taxes on goods that enter Mongolia from the Customs Special Zones or bonded warehouses described in Articles 18, 19 and 20 of the Customs Law?

Does Mongolia have customs valuation regulations beyond acceptance of the invoice value tendered at the time of importation?

Replies

According to the Customs Law, the General Customs Administration defines the charges and fees. Presently, the charges for customs formalities (services) are specific and the fees for the storage *ad valorem*.

Mongolia does not have Customs Special Zones. If the goods enter Mongolia from bonded warehouses and are designed for sale within the Mongolian territory, then customs duties are levied. But if the goods are designed for re-export the customs duties are not imposed.

In accordance with the amendments to the Customs Law in April 1993, the Government of Mongolia adopted the rules on customs valuation. These rules are based on the principles of the GATT Valuation Code.

Tariff Schedule

5. Questions

On page 5 of Spec(93)28 Mongolia discusses its tariff plans. A recent press report has indicated that the tariff on imported oil products will be raised to 20 percent.

Has Mongolia already established a tariff schedule different from its original uniform tariff of 15 percent?

Has Mongolia established its tariff schedule in the HS system as foreseen last year?

How will Customs legislation currently being considered in the State Hural affect Mongolia's tariff régime?

Does Mongolia still apply a tariff surcharge? If so, at what level, and how broad is its application?

Has Mongolia developed an offer for Schedules in the areas of market access for goods? If not, how does Mongolia intend to proceed to complete this negotiation and to accede to the WTO?

What is the status of introduction of the multiple tariff system?

Replies

Mongolia has not established a tariff schedule different from its original uniform tariff of 15 percent. The Coding and the description of the goods in statistics are based on HS system.

In accordance with the Tax Law and Customs Law, the customs tariff rates are defined by the State Hural. The amendment to Customs Law enacted in July 1993 has delegated to the Government the right to relieve the established rates on some basic consumer goods by up to 100 percent and on industrial and technical goods by up to 50 percent. This measure is envisaged to balance the supply and demand of these products and in this context is supposed to be carried out on a temporary basis.

There is no tariff surcharge.

Mongolia is ready to enter into tariff negotiations with all contracting parties of the GATT who have submitted requests and will present an offer. The tariff bindings of Mongolia for the accession to the GATT will also apply in the areas of market access within the framework of WTO.

Taxes

6. Questions

Articles 16 and 17 of Mongolia's Tax Law (1 January 1993) list types of national and local taxes applied.

Please indicate which of the taxes listed are also applied to imports and list the specific tax rates, e.g. the 10 percent sales tax.

Does Mongolia still apply the excise tax? If so, is it still applied differentially to imports and domestic products, as indicated in Spec(93)28?

What steps is Mongolia taking to ensure that its domestic taxes are applied equally to imported and domestically produced goods?

Replies

Imports are subject to customs duties (15 percent), sales tax (10 percent) and excise tax (see below).

Mongolia still applies the excise tax to the following products:

	Domestic	Imported
Rectified spirit	85	150
All kinds of liquor	80	100
All kinds of wine	80	50
All kinds of tobaccos	-	100
Gasoline	-	15
Diesel oil	-	20

Currently the excise tax on imports is higher than the tax applied to domestic products. Upon the accession of Mongolia to the GATT, the products of contracting parties will not be subject to internal taxes in excess of those applied to like domestic products.

Licensing System

7. Questions

Please update the information on the application of quantitative measures to imports into Mongolia, or on licensing that has the same effect.

Is Mongolia prepared to implement the procedural requirements of the Licensing Code, when it adopts the Code at the time of its accession?

In L/7043/Add.1, Mongolia indicated that it intended to justify quantitative restrictions under Article XVIII:B.

Reply

There are no quantitative restrictions on imports into Mongolia and there is no licensing system that has the same effect.

Foreign Exchange Requirements

8. Questions

Does Mongolia currently apply any restrictions on foreign exchange transaction? If so, what are they?

Please outline the current legal provisions in Mongolia for firms and individuals retaining foreign exchange, how the official and unofficial exchange rates are determined, how importers obtain foreign exchange and what rate, and how exporters convert their retained foreign exchange to domestic currency.

Replies

Mongolia currently does not apply any restrictions on foreign exchange transactions. Both State and private entities have equal access to foreign exchange.

The official exchange rates are determined on basis of transactions between banks weekly. Importers can obtain foreign exchange and exporters can convert their retained foreign exchange to domestic currency according to the above mentioned official rates.

Investment Issues

9. Questions

Articles 8 and 9 of Mongolia's Foreign Investment Law state that foreign investors should receive "no less favourable" treatment regarding "possession, use, and disposal" of their investments than Mongolian investors, and non-discriminatory treatment in expropriation matters.

Given these provisions, can Mongolia explain if there are any conditions under which equal "national treatment" is not provided for firms and enterprises established through foreign investment in accordance with the Investment Law?

Mongolia's Investment Law does not directly address the ability of foreign owned firms to operate within Mongolia:

Will foreign firms be able to invest in private enterprises on the same basis as domestic investors?

Is foreign investment prohibited or restricted in any sectors of the Mongolian economy or in any specific industries or enterprises in Mongolia?

If so, are those prohibitions or restrictions administered on a national treatment basis, that is, do foreign investors and domestic investors face the same prohibitions and restrictions?

Are foreign investments of any kind in Mongolia subject to screening and approval process by national or sub-national authorities in Mongolia?

If such screening and approval procedures are used, are such processes applied on a national treatment basis, that is, are foreign investments and domestic investments subject to identical screening and approval processes?

Replies

The Foreign Investment Law provides for non-discriminatory national treatment of foreign invested enterprises and indicates no conditions under which it can be withdrawn. The Foreign Investment Law does not limit the share of foreign investor, i.e. the enterprise may be wholly foreign owned and thus all the provisions of the Law apply to this type of foreign invested entities.

Foreign firms are able to invest in private enterprises on the same basis as domestic investors, there is not discriminatory regulation in this respect. To constitute an enterprise with foreign investment, the foreign investor should contribute not less than 20 percent of the registered capital. The lesser amount of contribution does not entitle to benefits and privileges provided for by the Foreign Investment Law, but as an investor the foreign person (whether natural or legal) shall be treated equally with domestic investors.

Under the existing legislation foreign investors may invest in any area of economy. There is no prohibition or restriction indicating specific industries or enterprises, except the production of narcotics which considered to be prohibited business within the territory or Mongolia for any person regardless of nationality.

Under the Law on Government and the Foreign Investment Law, the Ministry of Trade and Industry is the Government body responsible for the implementation of foreign investment policy, and in particular establishes and handles the approval procedure for establishing foreign invested enterprises. In pursuance

of the Foreign Investment Law, the Minister of Trade and Industry has enacted the rules governing the approval procedure. Applications for setting up a foreign invested enterprise are considered by the Ministry of Trade and Industry which reviews the applicant's file in terms of its compliance with legislation, impact of the enterprise on the natural environment, meeting of health and sanitary requirements, level of technology etc.. All these assessments are sought from the appropriate organizations.

The Ministry of Trade and Industry gives its ruling within 60 days from the date of receipt of application. If the application is approved, the Ministry of Trade and Industry grants a certificate allowing the establishment of the foreign invested enterprise. Upon such authorization, the General Department of State Taxation which acts as the register of business entities makes automatic registration of foreign invested companies and makes the registration public.

Actually the approval procedures for foreign investments and domestic investments are the same and there is no discriminatory treatment of foreign investment.

Both the approval procedures and the registration of national companies and enterprises are performed by the General Department of State Taxation whereas the foreign invested enterprises are subject to approval by the Ministry of Trade and Industry.

Exemptions from customs duties and the sales tax granted to foreign invested firms under the Foreign Investment Law are not conditional and in no way are dependent on export performance.

Tax preferences described in Article 20 of the Foreign Investment Law are income tax preferences and they do not apply to sales, excise or other kinds of taxes.

As it was indicated above, there are no restricted areas for foreign investment. Foreign insurance firms can operate within the territory of Mongolia, if they are set up and function in accordance with the Foreign Investment Law.

Obviously the Foreign Investment Law does not and can not completely cover all issues related to foreign investments. Some of them are already embodied in respective laws such as Law on Business Entities, Tax Law, Banking Law, Customs Law, Labour Law. The Parliament has recently passed Law on the status of foreign nationals and the Law on International Treaties of Mongolia. The drafts of the Land Law and Foreign Exchange Law are tabled in Parliament. Thus the specific matters related to foreign investments issues are being reflected in follow-up statutes. In the context of economic and foreign trade policy reforms, the existing legislation is being totally overhauled. Definitely with the accession to the GATT and WTO, Mongolia will make all its laws and regulations consistent with those established within the framework of the international trading system.

The Income Tax Law of Business Entities defines the foreign invested firms (both wholly and partially owned by foreign investors) as taxpayers and in this sense extends the tax exemptions listed in Article 7 to all taxpayers (whether foreign investor or domestically owned entities) who meet the requirements for eligibility to such exemptions.

The right of establishment of business entities in Mongolia is open to all national and foreign persons who are wishing to set up a business and have the necessary initial capital required by the law. Foreigners can establish companies in services areas, for example accounting firms, and they can be hired as "independent auditors" if they are professionally qualified for these kind of services.

The Law on Business Entities provides that the entity may be denied registration in the Registrar if the General Department of State Taxation finds that the Memorandum or Articles of Incorporation do not comply with the legislation. If the company has not been functioning within a year and six months from the date of its registration, it shall be removed from the State register.

10. WTO Related Issues

Currently Mongolia has not begun to develop a Schedule of commitments in the area of trade in services.

The Banking Law of Mongolia was adopted in 1991.

Foreign firms may invest in service industries.

In 1993 the Parliament enacted Copyright and Patent Laws. Under the Copyright Law the copyright works are subject to registration with a non-governmental agency called "Copyright Office". The trade marks and patents are registered and licensed with the Patent Bureau. The Copyright Office and the Patent Bureau are not directly authorized to enforce the legislation. The cases of the infringement and claims are investigated and decided by the courts.

Licensing of intellectual property is based on "first application" criteria.

With accession to the WTO, Mongolia will commit itself to all the requirements deriving from its membership.