GENERAL AGREEMENT ON

TARIFFS AND TRADE

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ACCESSION OF MONGOLIA

Questions and Replies Concerning the Memorandum on the Foreign Trade Régime (L/6943)

In a communication dated 17 June 1991, circulated as L/6886, the Government of Mongolia applied for accession to the General Agreement pursuant to Article XXXIII. At its meeting on 8 October 1991, the Council set up a Working Party to examine Mongolia's application for accession. The present document sets forth some of the questions submitted by contracting parties in connection with Mongolia's foreign trade régime and the replies thereto provided by the authorities of Mongolia.

Further questions submitted by contracting parties and Mongolia's replies thereto will be circulated in due course.

Delegations wishing to raise additional questions concerning Mongolia's foreign trade régime might inform the delegation of that country (with a copy to the secretariat) of such questions in advance of the meetings of the Working Party, so that considered replies can be made available by Mongolia to members at the time of the Working Party meetings.

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REPLIES TO QUESTIONS SUBMITTED BY CONTRACTING PARTIES CONCERNING THE MATTERS COVERED IN THE MEMORANDUM ON FOREIGN TRADE REGIME OF MONGOLIA

Question 1:

1. Was the 10 per cent import surcharge introduced? Were the producer subsidies reduced?

Reply:

The Government has introduced 10 per cent import surcharge and the excise tax on liquor, gold, silver jewellery and tobacco. The excise tax will be introduced on lubricants in the coming months. A uniform exchange rate of the tugrik per US$ was introduced from the beginning of April of this year. The Government is planning to introduce the sales tax on domestic goods from July of this year.

Expenditures on wages, health care, and education are being reduced by introducing such measures as paid services taken step by step.

There are no producer subsidies at the moment.

Question 2:

To which extent have State-controlled prices been freed?

Reply:

As of 1 April 1992, the Government freed 80 per cent of State prices or 90 per cent of the range of goods and services.

Question 3:

Paragraph 37 states that during the next two years, Mongolia intends to abolish all import and export license requirements, other quantitative restrictions, and its system of foreign currency retention requirements. Under this new régime, how will any balance-of-payments problems be dealt with?

Answer:

The Government is pursuing strong financial policies as a decisive element of the stabilization process.

All export, import and other operations with foreign exchange are to be fixed and supervised by the Central Bank.

Taking into account the deterioration of the external environment, the Government considers that it is necessary to accelerate reforms aimed at supporting incentives to increase export and trade diversification as well as to promote domestic savings to finance investment.

Question 4:

To which extent have import and export licence requirements, other quantitative restrictions and the system of foreign currency retention requirements been abolished?

Reply:

Measures for the liberalization of foreign trade are being taken. As part of this process most export restrictions have been abolished with the exception of rare and protected animals and plants. At the present time temporary restrictions have been introduced on certain animal skins, scrap of non-ferrous metals and steel.

Private entities have been permitted to preserve all foreign exchange earnings from their activities. State enterprises can retain a share of foreign exchange earnings from export according to the rate fixed by the Government and this rate was increased recently. For example, the share of export earnings from copper, molybdenum-concentrate, fluorspar and its concentrate which State-enterprises could preserve has increased from 26 per cent to 45 per cent.

Question 5:

To what extent have commercial banks been privatized?

Reply:

Commercial banks have not been privatized yet.

Question 6:

Paragraphs 44-46 indicate Mongolia's intention to privatize small State and co-operative assets and assets in its agricultural sector before December 1991. By December 1992 Mongolia intends to have privatized 65 per cent of all other State assets. This would include some 550 large State enterprises but exclude military and certain natural monopolies. Can Mongolia clarify what entities would be covered by this exception?

Reply:

The defence sector, public air transport, railway, institutions of health services, education, and science organizations would be covered by this exception. But the Government will support all activities aimed at the establishment of private entities.

Question 7:

What share of the economy remains under State and co-operative management at the present time? Were all shops, other small assets and assets in the agricultural sector transferred to private owners by the end of 1991? What share of other State assets have been transferred to private owners?

Reply:

The Law on Privatization was adopted by the Parliament in July 1991. Since then, the legal environment for privatization has been established. The privatization commission has been established in each aimag and somon (administration units). Besides this, the Mongolian Stock Exchange and many brokerage companies began trading operations throughout the country.

Fifty-seven point five per cent or Tug 11.5 billion of State property have been privatized. Currently 60 per cent of the herd of livestock is under private ownership and 40 per cent is under collective ownership.

Four hundred and thirty large enterprises worth Tug 9.0 billion have been privatized by the big privatization and 3,000 enterprises worth Tug 2.5 billion by the small privatization.

Question 8:

What is the present situation as regards the exchange rate and its régime?

Reply:

The Banking Law was adopted by the Parliament in May 1991. To promote exports and to take steps towards reducing the difference between the official and the parallel market rate, the Government devalued the tughrik from Tug 7.1 per $1 to Tug 40 per $1. But up to April 1992 the exchange rate of Tug 15 per $1 was used in barter trade with former USSR. Now a uniform exchange rate of Tug 40 per $1 is being used in all kinds of foreign trade transactions. In addition, from April 1991 all branches of MONGOLBANK (Central Bank) and commercial banks were permitted to buy and sell foreign exchange at parallel market rate. The MONGOLBANK announces the exchange rate of the tughrik to the dollar and other foreign currencies on the basis of international market rates every two weeks. MONGOLBANK has to stabilize the tughrik because the parallel market has been higher than the official rate by 4-5 times. Therefore, MONGOLBANK is pursuing the policy of increasing the loan interest rate and will set the loan interest rate taking into account the real level of inflation, in the nearest future.

Question 9:

9. What is the present situation as regards foreign investment? Which are the trading partners to which Mongolia grants MFN treatment?

Reply:

Before the enactment of the Foreign Investment Law, there were the following joint ventures with foreign capital participation:

- Mongolian-Soviet (former) copper and molybdenum concentrate plant;
- "Mongolsovtsvetmetal" Corporation;
- "Ulaanbaatar Railway" joint stock venture;
- "Mongolczechoslovakmetal" Corporation;
- "Mongolbulgarmetal" Corporation (now ceased activities)
- Mongolian-Hong Kong Colour Photo Laboratory;
- Mongolian-British Wind Energy Agregates Production Plant.

After the adoption of the Foreign Investment Law, ten enterprises in 1990 and sixty-eight in 1991 obtained permission to start their activities. As of 1 January 1992, eighty-four enterprises with participation and full investment of foreign firms and companies from seventeen countries have been registered. Foreign participants of enterprises established in 1990-1991 are investing US $22 million. Forty-two enterprises established during the past two years are operating in the field of production of consumer goods and food stuffs, twenty-three in the development of the tourist industry and all corresponding services, seven in the production of medicines and household articles, six in the production of construction materials as well as construction of buildings.

It is necessary to note that Mongolia faces difficulties such as a landlocked situation, the small size of the internal market, a low level of infrastructure development, backwardness of transport and communications facilities, shortages of financial resources and devaluation of the national currency.

Currently, measures are being taken to overcome the difficulties to deal with implementing the foreign investment policy, creating the legal basis for foreign investment, improving the mechanisms to encourage and promote foreign investment, setting up free economic zones and training specialists.

There are no partners to which Mongolia grants MFN treatment concerning foreign investment.

Mongolia has agreements in the field of trade with the United States, Japan, China, Finland, Laos, Vietnam, Austria, Poland, Bulgaria, Romania, Republic of Korea, People's Democratic Republic of Korea and Nepal, according to which each part shall accord each other MFN treatment. In connection with the disintegration of the former Soviet Union, the trade agreements with Russia and other independent Republics are under negotiation.

Question 10:

Paragraph 84 states that citizens of Mongolia may possess as private property, land, means of production and other property, including intellectual property (IP). Paragraph 86 indicates further that foreign citizens enjoy national treatment with respect to ownership of property, except as otherwise stipulated under Mongolian law. Could Mongolia please elaborate on (a) the scope of IP rights available to foreign persons and (b) any limitations on private property rights of foreign investors?

Reply: Amendments to the Civil Code of Mongolia provide that "foreign persons have equal rights to possess objects of property with the citizens of Mongolia within the territory of Mongolia unless otherwise stipulated under Mongolian law and international agreements of Mongolia" (Article 99, Chapter Y).

The objects of property that may be possessed are goods and intellectual property (Article 61, Chapter I).

The Civil Code does not indicate the scope of intellectual property rights available to foreign persons and does not provide any limitations for foreign investors on private property rights.

Question 11:

Paragraph 88 states that the Government of Mongolia is moving to decentralize foreign trade activity through the issuance of trade licenses to private and public enterprises in addition to State trading corporations. In this regard, could Mongolia please indicate (a) a percentage breakdown of foreign trade currently handled by State-trading organizations, other public enterprises, and private enterprises, (b) whether availability of trade licenses is automatic (i.e. issued on application), conditional, or otherwise discretionary and (c) whether private enterprises are able to engage in foreign trade activities on an equal footing with State enterprises (for example, with regard to the granting of import/export permits, access to foreign exchange, etc.).

Reply:

(a) Percentage breakdown of foreign trade
(first quarter of 1992)

	Export	Import
1. State trading and other public enterprises	96%	99%
2. Private enterprises	4%	1%

(b) The availability of trade licenses is automatic (i.e. issued on application).

(c) Private enterprises are able to engage in foreign trade activities on an equal footing with State enterprises.

Taking into account the little experience of nascent private entities, the Government institutions are helping them to deal with foreign trade and are also implementing control over certain export products as well as import of a limited range of consumer goods and industrial raw materials.

Question 12:

Paragraph 91 indicates that the Law on Business Entities assures parallel treatment for public and private enterprises. Does this Law discriminate in any way against foreign-owned private enterprises (e.g., with regard to capitalization requirements, taxation of profits, access to government procurement and industrial incentive programmes, etc.) or place any conditions or restrictions on business acquisitions by foreign investors (e.g., sectoral exclusions)? With regard to paragraph 92, we would also be grateful for an elaboration of how the Law "establishes favoured conditions to investors", especially with respect to such issues as taxation, repatriation of profits, and invested capital, which would appear to be covered by the Foreign Investment Law referred to in paragraph 49.

Reply:

1. The Law on Business Entities provides equal treatment for national and foreign owned private enterprises and it does not provide any disciminations with regard to capitalization requirements, taxation of profits, access to government procurement and industrial incentive programmes.

Under Article 4, Chapter I, of the Law on Business Entities, foreign citizens, organizations or any other persons without citizenship of Mongolia may establish a business entity within the territory of Mongolia unless otherwise stipulated under Mongolian law and international agreements of Mongolia.

Foreign investment is prohibited by the Government Decree No. 207 in the following fields:

- National security, defence industry;
- Communications;
- Mass media;
- Gold and silver deposits.

This Decree restricts foreign investment up to 49 per cent in the field of extraction and manufacture of agricultural raw materials and up to 30 per cent in the field of national culture and arms.

Prior approval by the Government to foreign investment should be obtained in the following fields:

- Tobacco and alcohol manufacturing;
- Production of explosive and poisonous substances;
- Investigation and extraction of minerals.

2. "Entities with foreign capital participation may be exempted from profit taxes during the first three years of their activities" under Article 8(2) of the Foreign Investment Law of Mongolia.

Article 8(3) of this law states that "a foreign participant shall be exempted from any taxes on repatriation of its share of profits abroad".

In compliance with Article 8(4), goods exported and imported by an entity with foreign capital participation for its production needs shall be exempted from customs duties. Article 15, Chapter 3, of the Customs Law of Mongolia provides that "goods to be brought into the registered capital or required for the production of enterprises set up in the territory of Mongolia and financed by foreign capital shall be exempted from customs duty".

Article 10(3) of the Foreign Investment Law of Mongolia provides that "foreign employees of entities with foreign capital participation may transfer abroad tax-free salaries and other income".

Article 4(2) of this law provides legal guarantees for foreign investors stating that "Mongolia shall protect rights and interests of foreign investors in compliance with its legislation and internationally recognized norms as well as foundation documents of the entity with foreign capital participation. Foreign capital in Mongolia shall not be nationalized".

Question 13:

What is the régime that applies to prices at the present time?

Reply:

Currently as Mongolia moves towards market economy, the Government is pursuing the policy of releasing all prices step by step taking into account the needs of the population.

Question 14:

Paragraphs 105-113 indicate that until recently, prices continued to be largely dictated by the Government. Paragraph 143 indicates that currently State price controls exist only on a certain number of goods, such as oil products, coal, children's food, meat, flour, sugar, and rice. It further indicates that all prices will become free at the end of 1992. Will this latter measure entail a complete move to a market pricing system, or will some prices remain subject to "broad guidelines" and "administrative controls"? To what extent does Mongolia provide subsidies which have as their express purpose or as their effect the enhancement of domestic production and/or exports?

Reply:

Recently the prices of such goods as children's clothes, children's food, meat, sugar, rice, butter, vegetable oil, gasoline, diesel fuel, some kinds of medicine, tariffs on road, rail and air traffic, and telephone subscriptions have been freed. At the present time, State-fixed prices exist on a short list of goods, such as flour, certain kinds of bread, coal and energy for household use, rents on housing, public transport which affect the living standards of the population. There are no subsidies for covering losses of enterprises but support for export and domestic production may take place.

Question 15:

To what extent is the purpose of the customs tariff to produce Government revenue?

Reply:

Nowadays, the customs duty is expected to be one of the main ways of producing the Government revenue in Mongolia. However, in 1991, the revenue from customs duty did not reach its expected amount because of the following circumstances:

- trade volume in 1991 - especially import - sharply reduced in comparison with the previous years;
- customs duty started to be levied from 1 March 1991;
- the exchange rate was changed from time to time;
- exported goods were exempted from customs duty from 20 June 1991;
- a certain part of imported goods were exempted from customs duty (according to Article 15 of the Customs Law).

Thus, in 1991, the revenue from customs duty accounted for 5 per cent of total Government revenue.

As of 1 May 1992, the customs duty income reached about 160 million tugriks. This year the customs duty income is expected to be at the level of 20 per cent of the Government revenue.

Question 16:

Paragraph 115 notes that the Government of Mongolia has not yet converted its customs tariff to the Harmonized Commodity Description and Coding System, the Convention of which Mongolia is a signatory. What time-frame is envisaged for conversion to this system? Does the Government of Mongolia intend to adopt the Harmonized System and, if so, by what time?

Reply:

Mongolia became a signatory to the Convention on the Harmonized Commodity Description and Coding System in September 1991. The present customs tariff has not been converted to the HS. The Convention will enter

into force in respect of Mongolia on 1 January 1993. Now we use this system partially for statistical needs only. The translation of this system from English into Mongolian is in its final stages.

Question 17:

What are the two conventions in the field of customs to which the MPR is a signatory?

Reply:

Mongolia is a signatory to the following two Conventions in the customs field: Convention establishing the CCC; Convention on the Harmonized Commodity Description and Coding System.

Question 18:

What is at the present time the import tariff?

Reply:

At the present time the import customs tariff rate is uniform, 15 per cent for all imported goods.

Question 19:

Paragraph 114 indicates that the new Mongolian Customs Law was enacted effective 1 March 1991, and paragraph 120 indicates that at the end of June 1991, a uniform import tariff rate of 15 per cent was adopted to replace the previous system of multiple rates. Under this new system, does the Government of Mongolia intend to bind its entire tariff, and, if so, would it be willing to negotiate specific bindings at appropriate rates for individual tariff items as part of its accession exercise?

Reply:

In the near future, it is planned to introduce a system of multiple rates.

Question 20:

Are there any export duties presently?

Reply:

Presently Mongolia has no customs duty on exported goods.

Question 21:

Paragraph 125 states that the Mongolian Customs General Administration is studying how to implement an internationally accepted method of valuing goods for customs tariff purposes. Mongolia indicates that it is a signatory to the Convention establishing the Customs Co-operation Council

and that it became a member of that organization in 1991. Does Mongolia envisage adherence to the GATT Customs Valuation Code (and, if so, when)? What steps does Mongolia envisage which might make this possible?

Reply:

Mongolian Customs General Administration is studying now the general methods of valuation for customs purposes. Mongolian customs officers have no experience in valuation matters. In many cases, Mongolian trade organizations do not duly declare the value of goods, i.e. they do not submit an invoice to the Customs. This is the main obstacle which causes the Customs trouble in valuing goods for customs purposes. Particular measures are being taken to remove those difficulties. The matter of implementation of internationally accepted valuation methods is under consideration. With that view, the Customs General Administration has obtained the technical assistance of customs experts in this field.

Question 22:

What MTN Codes does Mongolia intend to sign?

Reply:

Currently, Mongolia does not intend to sign any MTN Codes.

Question 23:

Which part of export and imports require licences? Are these licences automatic or discretionary?

Reply:

Rare and protected animals and plants and at the present time, temporarily, animal skins as well as the scrap of non-ferrous metal and steel require export licences. Licences are not required for imported commodities. Licences are automatically issued on application.