

ACCESSION OF ESTONIA

Additional Questions and Replies
to the Memorandum on the Foreign Trade Régime (L/7423)

The following additional questions and replies and other statements concerning the Memorandum on the Foreign Trade Régime (L/7423), responses to questions submitted, consolidated in WT/ACC/EST/2 and other documentation including WT/L/59 and WT/L/60 have been received from the Ministry of Foreign Affairs of the Republic of Estonia.

TABLE OF CONTENTS

		page number
II.	Economy and Foreign Trade	
(1)	<u>Economy</u>	
(b)	Main Directions of the ongoing economic policies	
	Privatization	(Questions 1-4) 5
	Competition Policy	(Question 5) 8
III.	Foreign Trade Regime	(Question 6) 9
(1)	<u>Import Regulations</u>	
(a)	The evolution of the customs tariff regulation	(Question 7) 10
(b)	Customs tariff nomenclature, types of duties, general description of the customs tariff structure, weighted average level of duties on main customs tariff groupings	
	Customs duties	(Question 8) 18
	Excise duties	(Question 9) 19
	Value-added tax	(Question 10) 20
(d)	Taxation regime	(Question 11) 20
(f)	Non-tariff measures, quotas, and licensing system	(Question 12) 21

(g)	Customs Valuation	(Question 13)	24
(h)	Rules of Origin	(Question 14)	25
(i)	Sanitary and Phytosanitary measures and Technical Barriers to Trade	(Questions 15,16)	26
(2)	<u>Export Regulations</u>	(Question 17)	28
(3)	<u>Export Incentives</u>	(Questions 18,19)	28

IV. Other Policies Affecting Foreign Trade

(2)	<u>Agriculture Policy</u>		
	Current Agriculture Policy	(Questions 20,21)	30
	Market Access	(Question 22)	32
	Agricultural Privatization	(Question 23)	33
	Special Safeguards for Agriculture	(Question 24)	33
(3)	<u>Financial, Budgetary and Fiscal Policy</u>	(Question 25)	34
(5)	<u>Foreign Investment Policy</u>	(Questions 26,27)	34
(6)	<u>Government Procurement</u>	(Question 28)	37
(7)	<u>State-Trading Enterprises</u>	(Question 29)	38
(9)	<u>Protection of intellectual property rights</u>		
	GENERAL	(Question 30)	40
	PATENTS	(Questions 31-40)	40
	Semiconductors	(Question 41)	45
	Copyright	(Questions 42-44)	46
	Trademarks	(Questions 45-56)	48
	Industrial Designs	(Question 57)	54
	Trade Secrets	(Question 58)	55
	Competition and Antitrust	(Question 59)	55
	Enforcement	(Question 60)	56

V. Institutional Base for Trade and Economic Relations with Third Countries

(1)	<u>Bilateral Trade and Economic Agreements</u>	(Question 61)	56
-----	--	---------------	----

VII.	Services	(Questions 62-65)	57
------	----------	-------------------	----

II. Economy and Foreign Trade

(1) Economy

(b) Main Directions of the ongoing economic policies

Privatization

Question 1

In the response to question 9 of WT/ACC/EST/2, Estonia states that "Approximately 20 per cent of Estonia's international trade; 27.7 per cent of GDP and 61 per cent of production is contributed by State-owned firms. The response to question 47, however, indicates that "After privatization and formation of new companies, less than 5 per cent of domestic trade is currently accounted for by State-owned firms."

- o These figures do not appear consistent, even recognizing that privatization is an ongoing process.
- o We would appreciate Estonia's efforts to indicate the portion of imports, exports, domestic production, and GDP overall that is accounted for by State-owned firms. What portion of agricultural export trade and import trade is conducted by State-owned or State-designated firms? Are there any large State-owned trading firms that engage in international trade in agricultural goods? In certain industrial sectors?
- o Can Estonia provide for the Working Party information by sector in terms of percentage of GDP, production, imports and exports accounted for by the non-privatized part of Estonia's economy?

Answer

WT/ACC/EST/2 answers to questions 9 and 47 deal with different data. The term domestic trade in answer 47 includes the net turnover of retail trade and 5 per cent indicates the share of State enterprises in the net turnover of retail trade. As trade was the first branch of economy where privatization of enterprises was started, it also explains the smaller part of State-owned enterprises in this sector.

As no official statistical data is available separately for the share of State and private sector in various economic indicators (including export and import, percentage of GDP etc.), it is impossible to provide you with official data. The data presented as the response to the questions 9 and 47 should therefore be considered as expert estimation.

Please note that almost 100 per cent of agricultural enterprises were privatized by January 1995 and approximately 70 per cent of industrial enterprises were privatized by July 1995.

There is no State-trading enterprises in Estonia. Trade is totally decentralized.

Question 2

Regarding remaining State-owned enterprises:

- o Who appoints the management of these firms? Can these firms be prosecuted for anti-competitive activities, and if so, what penalties can be applied?

Answer

The administrative council board of a State enterprise and management of a State-owned joint stock company is appointed in accordance with the company's statutes of the State enterprise or Joint Stock company or by the Ministry which manages the enterprise. The administrative council or board appoints the general director of the enterprise and his deputies according to the proposal of the general director. The administrative council or board may release the general director from his office. The members of the administrative council or board are released from the office by the government or the ministry which has appointed them.

State-owned enterprises must follow the conditions of fair competition (Competition Law) equally with private companies and the same sanctions apply (see also question 12 in WT/ACC/EST/2).

Pursuant to the Competition Law, the Competition Board shall be entitled to charge the fine in the amount of 10 per cent of the company's (both State-owned and private) gross turnover of the last quarter for an activity harmful to competition, or to demand the liquidation of the enterprise or group of enterprises (if necessary, compulsory liquidation on the basis of a court decision). There are also fines for persons responsible for anti-competition activities.

Question 3

What legal provisions exist for the dissolution/bankruptcy of State-owned firms and of private firms?

Answer

The procedure of liquidation and/or bankruptcy of State enterprises or private companies follows the same principles. The procedure of rules of liquidation of an enterprise is provided in the Civil Code and Commercial Code (will become effective on 1 September 1995.)

The liquidation of an enterprise may be either voluntary or compulsory. The volunteer liquidation is decided by the owner of the company, compulsory liquidation is decided by the court. If at the liquidation of an enterprise there is not enough property to satisfy all the claims, the liquidators shall be obliged to file the bankruptcy application to the court (in the case of a State enterprise it is a liquidation committee, in the case of a private enterprise it is the board or a substituting body; in the case of a compulsory liquidation the liquidators are appointed by the court).

Pursuant to the Bankruptcy Law the bankruptcy application may be filed either by the debtor or by the creditor (including the creditor who is residing or has been registered outside Estonia). The bankruptcy decision is made by the court which appoints the trustee on bankruptcy. The trustee shall, according to the decision by the creditors, implement the restructuring, liquidation or sale of the enterprise.

Question 4

Please list all facilities that exist in law, regulation, or procedure for making funds available for State-owned firms. Are any of these facilities available only to State-owned firms?

Answer

There are no facilities in law, regulation or procedure in Estonia, which determine exclusive conditions for State-owned firms in their economic activities as compared to the private firms. The financing (making funds available) of State-owned enterprises and private companies is arranged

according to the same principles. Enterprises can take loans pursuant to conditions determined by the creditor. The financing procedure for State-owned enterprises is the same as for private companies.

The following governmental funds extend loans both to private and State-owned companies:

The Export Credit Fund

The fund grants loans to increase the realization capacity of export production and to enlarge its assortment; for single expenditures related to the initiation of export activity; for market research and advertising. Loans are granted to enterprises registered in the Republic of Estonia, regardless of their ownership type.

The Fund of Crediting Agriculture and Rural Life

The Fund extends credits for agricultural production, catch and raising of fish, enterprises processing agricultural products, enterprises servicing and supplying agricultural enterprises and for non-agricultural entrepreneurship in rural areas.

The Fund of Crediting Small Enterprises

Business projects of enterprises are credited up to 75 per cent of the cost of the project if the number of employees does not exceed 80 and the net turnover of the year does not exceed EEK 15 million.

The Innovation Fund

The Fund finances technology research and development projects to increase the competitiveness of production, and technological risk projects; establishment of competitive enterprises with high-technology; promotion of technology-related export. Either up to 50 per cent of the cost of the project is financed (support) or up to 75 per cent of the cost of the project (loan, or support and loan). Innovation Fund mostly extends loans. The expansion of production without simultaneous rise of the technological level and building activity that are not immediately related to innovation are not financed. Concrete projects are financed regardless of whether they are implemented by State-owned or private enterprises. Most of the projects financed have been presented by private companies. Foreign participation in an enterprise may not exceed 50 per cent.

Competition Policy

Question 5

Concerning the response to question 13 in WT/ACC/EST/2:

- o Does the Competition Board's authority extend to permission for or enforcement of local content or export performance requirements for foreign or domestic investors? If so, does this authority extend to the enforcement of private contracts?

Answer

Estonia does not exercise the enforcement of local content or export performance requirements neither for foreign nor domestic investors. (see also the answer to question 86 in WT/ACC/EST/2). The investors are free to purchase or use products of domestic origin or imported as well as to export or sell the production without any requirements related to the volume or value of products, or to the proportion of volume or value of its local products or products that it exports.

III. Foreign Trade Regime

Question 6

Please submit for Working Party review the notifications and replies to the questionnaires required by the WTO Agreements, including the Agreements on Import Licensing Procedures L/5640/Add.10 or its WTO equivalent), Implementation of Article VII (VAL/2/Rev.2 or its WTO equivalent), Sanitary and Phytosanitary Measures, and Technical Barriers to Trade (contained in TBT/16/Rev.7 or its WTO equivalent).

The notifications required of WTO Members by the WTO and its Agreements should all be completed and circulated to the Working Party for review well in advance of finalization of the negotiations.

Answer

The Notification on Import Licensing Procedures will be submitted to the WTO members after making of final decision on reforming the licensing system and procedures by the Government. See also the answer to question 12 on page 17 in this document.

Implementation of Article VII of the GATT. Please see Annex 1 as response to the questionnaire.

For Notifications on Sanitary and Phytosanitary Measures (contained in G/SPS/N/COUNTRY) please see Annex 1A.

Technical Barriers to Trade:

The standards of Estonia are as a rule of advisory nature and they are based on the ISO standards. Some standards, the so-called GOST, standards used before, are no longer obligatory. The obligatory standards established in Estonia exist only for spirits (white vodka) and construction cement. For these ISO standards have been used as a basis. These standards apply equally to imports and domestic products.

Presently there is no legal act in Estonia concerning adoption and application of standards and technical regulations as well as there are no corresponding agreements with other countries.

Assessment of conformity with technical regulations and standards is organized in accordance with requirements of European standards series EN 45 000.

The projects of national standards are published in the bulletin "Standards of the Republic of Estonia". Any notices concerning the registration of national standards and technical conditions are published in the bulletin "National Standards of the Republic of Estonia". Descriptions of standards and technical conditions can be subscribed. The descriptions of the standards of ISO and the Republic of Estonia are also available at the library of standards.

Estonia can affirm that the work to implement the Agreement on Technical Barriers to Trade is successfully under way.

(1) **Import Regulations**

(a) **The evolution of the customs tariff regulation**

Question 7

In response to question 17 of WT/ACC/EST/2, Estonia requests that the nine new laws it listed in the response to question 2 of L/7529 be listed again prior to describing their provisions. These nine laws are listed in question 5 of WT/ACC/EST/2, and include:

- (a) Law on Stamp Duty of 10 March 1994;
- (b) Patent Law of 16 March 1994;
- (c) Utility Model Law of 16 March 1994;
- (d) Law on Export and Transit of Strategic Goods of 6 April 1994;
- (e) Law on State Support of Entrepreneurship of 10 May 1994;
- (f) Accounting Law of 8 June 1994;
- (g) Law on State Border of 30 June 1994;
- (h) Law on Tobacco Excise of 13 July 1994;
- (i) Law on Securities' Market.

Please briefly describe their provisions.

In particular, please describe the provisions of the Law on Stamp Duty of 10 March 1994, with special emphasis on the application of the Stamp Duty to imports and domestic goods, including the incidence of the duty and its point of application

Please outline the relevant provisions of the Commercial Code, the Anti-dumping legislation (assuming it has been drafted), and the Law on Customs Tariff.

Answer

- (a) *Law on Revenue Stamps (Stamp duty) of 10 March 1994. In force since 1 January 1995.*

The law prescribes revenue stamps for goods subject to excise tax and customs duty, the order of placing revenue stamps and the conditions of the supply of goods to be marked with revenue stamps. The list of goods to be marked with revenue stamps, as well as the way of placing revenue stamps, the type of revenue stamps. The date after the goods may only be supplied with revenue stamps shall be established by the Government.

At present there is only one object of tax to be marked with revenue stamp - tobacco products. Imported and domestically produced tobacco products are marked with revenue stamps according to the tax rates specified in the Law on Tobacco Excise Tax. Revenue stamps shall be handed out by the National Tax Board against the payment which depends on the amount and type of goods.

For the text of the Law on Revenue Stamps see Annex 2.

- (b) *Patent Law of 16 March 1994. In force since 23 May 1994.*

The law regulates relationships arising in connection with legal protection of patentable inventions. Natural and legal persons of Estonia and of foreign States have according to the law equal rights.

The subject of an invention can be equipment, method, substance or microorganism strain, or their combination, but also the use of the above mentioned. The following shall not be regarded as the subject of an invention:

- (i) discoveries, scientific theories and mathematical methods;*
- (ii) schemes, rules, instructions and methods for performing economic and mental acts;*
- (iii) projects and schemes of structures, buildings and territories;*
- (iv) conventional signs;*
- (v) algorithms and programs for computers;*
- (vi) design solutions;*
- (vii) mere presentation of information;*
- (viii) plant or animal varieties.*

The law prescribes conditions for patentability, extent of patent protection, eligibility of applicants to the right to patent and exclusive right of patentee.

The law lays down the procedure for applying for patent application and its examination as well as for an international application processing. Estonia has its own State Register of Patents, maintained by the Patent Office.

The term of the patent shall be 20 years from the date of filing of the application. The law lays down the requirements for payment of fees and annual fees. Transfer as well as contest and protection of patent rights are also specified.

(c) Utility Model Law of 16 March 1994. In force from 23 May 1994.

The law regulates relationships arising in connection with legal protection of inventions protected as utility models in Estonia.

Under the present law equipment shall be protected as utility models. The following shall not be protected as utility models:

- (i) inventions contrary to order public and morality;*
- (ii) the use of known equipment for novel purposes;*
- (iii) design solutions;*
- (iv) topology of microcircuit.*

The term of the certificate shall be four years from the date of filing of registration application.

The structure and content of the Utility Model Law is otherwise similar to the Patent Law.

(d) Law on Export and Transit of Strategic Goods of 6 April 1994. In force since 7 May 1994.

The Law defines the concept of "strategic goods" and authorizes the Government to confirm the list of strategic goods and regulations for the issue of export licences and transit permits. The law also prohibits the export of strategic goods to crises areas, that is to countries engaged in a war or with a threat of war or countries in which there is civil war or armed conflict, unless otherwise established by an interState agreement. Punishment for falsifying or withholding information regarding strategic goods is established as a fine or imprisonment of up to two years.

For more detailed information on the export control system for strategic goods in Estonia, see Annex 3.

(e) *The Law on State Support for Entrepreneurship of 10 May 1995. In force since 1 July 1994.*

The law regulates the issue of giving State support to small and medium size enterprises. The object of this law is the business plan as defined in paragraph 2 of this law.

The law defines the following meanings:

- (i) *State support - a loan or a loan guarantee to an entrepreneur given according to the provisions of this law;*
- (ii) *a business project - the plan submitted by the loan applicant for starting the production of goods or rendering services, or for establishing or widening the enterprise ; the plan should be in conformity with the requirements of this law and the requirements stated in the articles of association of the fund that gives the support;*
- (iii) *small and medium sized enterprises - under Estonian legislation private economic entities with the maximum of 80 employees and with net turnover under EEK 15 million qualify;*
- (vi) *resident - an enterprise or a physical person registered in Estonia and whose permanent location is Estonia.*

The sources for State support are financing from State budget and the Government loans (both domestic and foreign loans), other financing that is in conformity with Estonian legislation.

State support is managed by the funds established by the Government of Estonia on a non-profit basis.

The activities of the funds are supervised by an eleven-member Council. The council is responsible for the distribution of financial means between the funds.

The general loan conditions are as follows:

- *The loans are given as investment loans and share capital loans.*
- *The loan repayment deadline can be up to ten years, the total sum may not exceed 75 per cent of the projected total. The loan must be immediately and fully refunded when the applicant has submitted false information, when the receiver of the loan refuses to give information about the use of the money, or when the receiver has otherwise violated the conditions of the loan.*
- *The loan is not given for refinancing earlier loans or to solve working capital problems, neither are loans given to enterprises that have deliberately made their economic indicators to correspond those of small and medium sized enterprises.*

(f) *Accounting Law of 8 June 1994. In force since 1 January 1995.*

The law shall establish the legal basis for and defines the basic mandatory requirements of bookkeeping/accounting, based on internationally accepted accounting principles, for accounting entities operating within Estonia.

The law applies to all legal entities and natural persons registered as businesses in Estonia with the exception to the Bank of Estonia. Basic mandatory bookkeeping/accounting requirements for accounting entities are as follows:

- *keep accounting records;*
- *document all its business transactions;*

- process, record and post all business transactions based on source documents;
- compile and present annual accounts;
- retain bookkeeping/accounting documents.

The law determines also the main accounting principles which are based on internationally accepted assumptions and principles.

The accounting entity is required to prepare the annual accounts for each completed financial year consisting of a Balance sheet, Income statement and accompanying notes.

(g) *Law on State Border of 30 June 1994. In force since 31 July 1994.*

The law establishes the definition of the State border of Estonia, the procedures for determining the location and marking of the border as well as maintaining the border marks, and the regime to be observed on the border.

The mainland border of Estonia has been determined by the Tartu Peace Treaty of 2 February 1920 and by interState border treaties. The aerial and maritime border shall be determined on the basis of international conventions, by laws of Estonia and interState treaties.

The Estonian aerial and maritime border are determined on the basis of international conventions, by laws of Estonia and interState treaties.

The law determines the formation of inland waters and air space.

Under Chapter II a border regime is described. It includes provisions on crossing the State border, border checkpoints and border and customs control as well as crossing the aerial border, pacific transit through territorial sea, entry into inland sea and harbours. The law also states movement of foreign vessels on border bodies of water when crossing the State border that be regulated by interState treaties and the right to temporarily restrict or suspend of crossing the State border in the interest of national security, or in order to prevent the spread of a contagious disease to either Estonian or foreign territory or at the desire a foreign State.

The text of the Law on State Border is annexed, see Annex 4.

(h) *Law on Tobacco Excise Tax of 29 June 1994. In force since 1 January 1995.*

Tobacco excise tax is charged on all tobacco products either manufactured or produced in Estonia or imported, except tobacco products in tax exempt quantities allowed for import by natural persons for private use according to customs regulations. All tobacco products on sale must bear revenue stamps and the excise tax is collected upon purchasing the revenue stamps by the Estonian manufacturer or importer. Circulation of tobacco products without revenue stamps is forbidden. The tax accrues into the State budget and 3 per cent of it is transferred to the Fund for Furthering Culture. Tobacco excise tax rates are published as response to the question 32 in WT/ACC/EST/2.

(i) *Law on Securities Market of 2 June 1993. In force since 21 June 1993.*

The law regulates the operations with securities in public circulation by professional participants in the securities market, issuing parties and investors in both primary and secondary market. Professional participants are: stock exchange, stock broker, investment fund.

The types of securities are as follows:

- *equities, confirming the property right (stocks, share in the investment fund etc.);*
- *debentures, confirming debt liability (debt's loan letter, bill letter, voucher, bond, deposit certificate etc.);*
- *securities, confirming sales rights on liability (options etc.).*

In order to publicly issue securities, the issuer has to register the emission at the National Board of Securities -- the office of supervision of securities issue, and after the registration of the issue, the issuer must publish a prospectus reflecting the issue. The professional participants must possess required professional qualification and acquire a licence of activity from the National Board of Securities.

Commercial Code of 15 February 1995. Will become effective on 1 September 1995.

The Commercial Code regulates all economic activities in Estonia and will replace the present Enterprise Law. It includes together more than 500 regulatory articles, specifying among others, the establishment of companies in various forms, their rights and obligations, procedure of liquidation, etc. Also reconstruction rules for the companies established under previous legal acts are included in the Code. The Code stipulates the establishment of the Commercial Registry and provides for the following six types of business:

- *Individual Private Entrepreneur (a natural person engaged in business);*

Five types of Business Associations:

- *General Partnership*
- *Limited Partnership*
- *Limited Liability Company*
- *Joint Stock Company*
- *Cooperative Association*

Commercial Registry will be kept by local city courts (instead of the present Enterprise Registry kept by municipalities). All companies and also a individual private entrepreneur shall be registered in this Registry. All entries and information in the Registry are public and available to everyone. All new entries and important amendments will be published in Riigi Teataja (Legal Acts of Estonia).

A brief description of five types of business associations:

General Partnership is a company where two or more partners act under the same business name and are equally liable for the company's obligations with all their property. A partner may be a natural or a legal person, whereas the State and municipality may not be. A new partner may be admitted only upon the unanimous consent of other partners.

Limited Partnership is a company where two or more partners act under the same name and at least one of them (full partner) is responsible for the company's liabilities with all his property and at least one other (limited partner) only with his down payment. Issuing of securities for limited shares of Limited Partnership is forbidden.

Limited Liability Company is a company with the capital divided into shares and whose shareholders are not liable for the company's obligations. The share capital must be at least 40.000 Estonian kroons held by one or several shareholders. The minimum nominal value of one share must be 100 Estonian kroons, if higher, it must always be a hundred-fold. The shares may be of equal or different nominal value. No securities can be issued for a share.

To establish a Limited Liability Company, the promoters must sign the Association Contract, which is valid until the company is registered and adopt the Company Statute, nominate the board of directors and the members of the council.

Joint Stock Company is a company with a share capital divided into shares. The shareholder is not personally liable for the company's obligations, whereas the company is liable with all its assets. The minimum share capital must be 400.000 Estonian kroons. The minimum nominal value of one share must be 10 kroon, if higher, the value must be ten fold. A share is indivisible, its price of issue may be more than its nominal value but it may not be less.

The Joint Stock Company may be founded by one or several natural or legal persons by way of either subscription of shares or without it. In the latter case, the founders will conclude an Association Contract which terminates from the moment the company has been entered in the Commercial Registry. Also the Company's Statute will be concluded and the board of directors, the council and the auditor will be appointed.

The shares must be fully paid for before the company can apply for the registration in the Commercial Registry and the instalment may not be settled by way of salary, royalty, or similar payment.

Cooperative Association is a business association with three or more members, founded with a goal to support its members' households or activities by the members' joint activities. The property of a Cooperative Association is formed from its members' instalments and other down payments, return from economic activities, economic aid from State and local governments, and other income.

The Commercial Code also stipulates the order for opening a foreign company's branch office for representation purposes in Estonia. A branch is not a legal person and the company will be liable for its obligations. The branch office must have one or several managers, of whom at least one must be resident in Estonia. He may not be a bankruptcy debtor or a person disposed of right to economic activity.

In the Commercial Code are listed all documents required to register the company in the Commercial Registry. The necessary documents are listed for all business associations in the articles describing their operation (see also answer to the question 26 in the present document).

From 1 September 1995 new companies may be established only in accordance with the Code. All companies, entrepreneurs, and branch offices, established under earlier legislation, which do not meet the requirements of the Code, must be reconstructed by 1 September 1997 or terminated. The reconstruction is considered complete after registration in the Commercial Registry.

From 1 September 1995 the share capital of a company registered in the Commercial Registry (i.e. both newly established and reconstructed) must be at least 10.000 kroon for a limited liability company and at least 100.000 kroon for a joint stock company. From 1 September 1999, the share capital of both a limited liability Company and a joint stock company must be corresponding to the rates given above (i.e. at least 40.000 kroons and 400.000 kroons respectively).

The Anti-Dumping Law is presently in the process of drafting. The law includes also provisions regulating possible countervailing procedures. Both anti-dumping and countervailing measures are drafted in line with the Article VI of the GATT.

The Anti-Dumping Law determines the essence of dumping or sale of products the export of which has been subsidized. The law establishes the procedures, responsibilities and required documentation and evidential material for the process of determining and compensating the damage.

Investigation should normally be completed in three months and anti-dumping or countervailing duty, in relevant case, would be sued within six months after the completion of the investigation.

The Law on Customs Tariff has been drafted and presented to the Parliament. According to the law, the charging of import duties on the goods shall be based on the value of the goods (ad valorem), which shall be determined in accordance with the Law on Customs Valuation. The law also allows the use of specific tariffs and combined tariffs to charge customs duty. Government shall specify the actual tariff rate to be imposed in accordance with the tariff schedule that is an integral part of the law.

(b) Customs tariff nomenclature, types of duties, general description of the customs tariff structure, weighted average level of duties on main customs tariff groupings

Customs duties

Question 8

Has Estonia established any new import duties since the last meeting in November 1994? If so, please describe these changes.

In its replies to questions 14, 25, and 26 in WT/ACC/EST/2, Estonia states, inter alia, that it is "...inclined to bind majority of its tariff rates at levels that are generally comparable to those of major trading nations," and "approximately at the same level as those of the European Union.

- o Please explain how these statements are consistent with the tariff rates listed in WT/L/60, Estonia's goods market access offer?

All Working Party members hope that Estonia intends to maintain its free trade orientation. Only binding commitments, however, in the protocol and schedules of Estonia's protocol package that confirms current liberal access can demonstrate that pledge in real terms. No "credit" will be given for Estonia's market access offers of rates and commitments that do not secure a measure of security on applied tariff levels and services access.

Answer

Estonia has not imposed customs tariffs since the last Meeting of the Working Party in November 1994 and intends to maintain its free trade orientation but wants to reserve the right to impose customs tariffs when circumstances so warrant. Estonia has entered into bilateral negotiations on binding the ceiling tariff rates as well as commitments on services. As the result of the first round of the negotiations, Estonia has presented its so-called revised offer for market access both on goods and services for revision to the WTO member countries, where the requests from the negotiations partners have been taken into account to the maximum extent possible.

Estonian Government keeps its firm position to maintain the free trade orientation. However, the free trade is not a goal itself. Free trade policy has to support the general economic development. Today there is no need to impose import duties in Estonia because the prices of all local resources have not reached the approximate international level (labour, land, energy etc.). It does not mean, that such a need could not rise in the future, when all production costs in Estonia will be approximated with international ones. Therefore Estonia needs to bind its tariff ceilings above the zero level to use, if necessary, the same regulatory opportunities in external trade as its main trade partners do.

Excise duties

Question 9

We would appreciate confirmation by Estonia that it intends to eliminate the differential in the level of domestic excise tax applied to tobacco products and alcoholic beverages by 1 January 1996. In addition,

- o Could the Working Party be given a description of how these taxes will be equalized and at what rates, as well as the details of the application of these taxes, e.g., at what point of sale and based on what valuation?

Answer

Estonia confirms that the differences between excise tax rates on imported and domestically produced alcoholic beverages and tobacco products will be equalized from 1 January 1996. The excise tax rates on tobacco products will be equalized at the rate of imported tobacco products. The tax rates on alcoholic beverages are not determined yet, but the same rates will be applied both on imported and domestically produced alcoholic beverages.

The importer pays excise tax in the Customs, the domestic producer at its sale in accordance with the rates specified in the law and outlined in WT/ACC/EST/2 pages 65-67.

Value-added tax

Question 10

Would Estonia please list for the Working Party the items exempted from the Value Added Tax? (Note: Estonia suggested in its response that we consult the VAT Law which is with the GATT Secretariat. We can do that, but it would be useful to have on the record what the exemptions are.)

Please outline what imported and domestic products and services are subject to the Stamp Tax.

Answer

The VAT exemptions are listed three times as answers to the questions 34 and 35 on pages 25-26 and 40 on page 28 in WT/ACC/EST/2, but in addition to that since 22 February 1995 municipal sauna services and packages that are used more than one time are also exempted from VAT.

The VAT exemptions are as follows:

- *elementary, basic, secondary and higher education, as well as advanced training and advanced professional training;*
- *public postal services;*
- *medical services under health insurance and medical requisites;*
- *funeral requisites and services;*
- *banking and insurance services;*
- *organization of gambling;*
- *lottery tickets;*
- *letting of housing;*
- *medicines and equipment for health and medical diagnostics;*
- *treating of dangerous waste;*

- *packages that are used more than one time;*
- *municipal sauna services;*

Only tobacco products, both imported and domestically produced are subject to the revenue stamps.

(d) Taxation regime

Question 11

Concerning the application of taxes to imported automobiles, was the new Law on the Excise Tax of Motor Vehicles implemented as planned on 1 April 1995?

If so, is the separate valuation list for the application of an import tax on automobiles by persons, as opposed to legal entities, still in effect? If not, how are automotive imports valued now? Does it use methods of valuation consistent with the WTO Agreement on Implementation of Article VII, e.g., invoice value or the hierarchy of other valuation methods provided for in the Agreement?

Answer

The Law on Motor Vehicle Excise Tax is in force from 1 April 1995. So the previously applied separate valuation list for the application of a customs tax of 10 per cent on motor vehicles imported by natural persons is not in effect since then.

According to the law, motor vehicles imported into Estonia and manufactured in Estonia are subject to the excise tax in accordance with the rates specified in the Law on the basis of the cylinder capacity and age. The excise tax is computed on the basis of the two rates by summarizing.

The cylinder capacity and age of the motor vehicle forming the bases for charging the excise tax are determined in accordance with the following documents submitted to and accepted by the customs:

- (i) in the case of a new motor vehicle - sellers' invoice;*
- (ii) in the case of a used motor vehicle - certificate of registration and purchase documents.*

Estonia finds that using such a method for charging the motor vehicles excise tax, does not violate the WTO Agreement on Implementation of Article VII.

The text of the Law on Motor Vehicle Excise Tax of 8 February 1995 and in force from 1 April 1995 is annexed herewith, see Annex 5.

(f) Non-tariff measures, quotas, and licensing system

Question 12

Please list comprehensively the professions or sectors where a person or firm must obtain a "licence on activity" to import goods or services.

For what professions or sectors are such licenses limited by law or happenstance to only a few firms?

Could Estonia indicate the outcome of the proposals for reform of this system that were discussed in May 1995, as outlined in WT/L/60, in the Note on Foreign Trade Legislation?

Answer

The "Licences of Activity" are issued by ministries, government institutions or municipal government executive offices depending on the specific area of licensing. The number of persons to obtain licences to import goods and services is not limited.

However, there are technical, educational requirements etc., which limit the circle of natural and legal persons who qualify for selling certain goods or services (including import). There is not such a licence in Estonia as import licence. When economic operator has the requested Licence on Activity, the right to import goods and services under the licence is automatic. The licence requirement does not establish different conditions for national and foreign operators.

The list of fields of economic activities for which, according to several Government regulations at present in force, one should have the Licence of Activity is as follows:

- 1. Management of aviation and sea transport (exclude small private boats), international road and railway transport (exclude intra-enterprise rail transport): Licence issued by Ministry of Transport and Communications.*
- 2. Geology-related activities, mining of natural resources: Ministry of Economic Affairs.*
- 3. Production and trade in objects containing precious metals and precious stones: Ministry of Finance.*
- 4. Production, possession and trade in weapons, parts thereof, ammunition, or pyrotechnic equipment; repairs of weapons: Ministry of Internal Affairs.*
- 5. Production and trade in medical narcotic, highly toxic, radioactive, and poisonous substances. Growing plants that contain narcotic, highly toxic and poisonous substances. Purchase and possessing of medical narcotic, highly toxic, radioactive, and poisonous substances: Ministry of Social Affairs.*
- 6. All forms of medical treatment: Ministry of Social Affairs.*
- 7. Production of and trade in medicines: Ministry of Social Affairs.*
- 8. Import and export, as well as production and wholesale of tobacco and production thereof, and alcohol; and retail of alcohol: Ministry of Economic Affairs; Municipal Governments.*
- 9. Printing and minting of money: Bank of Estonia.*
- 10. Printing of securities: Ministry of Finance.*
- 11. Printing of postage stamps: Ministry of Transport and Communications.*
- 12. Building and management of public communications' networks of any kind: Ministry of Transport and Communications.*
- 13. Management of an educational institution of a higher or general level, both vocational, or professional; together with the right to issue nationwide accepted certificates of education: Ministry of Culture and Education.*

14. *Management of security services' firms, installation of security, guard, and signalization systems: Ministry of Internal Affairs.*
15. *Opening and management of private detective agencies: Ministry of Internal Affairs.*
16. *Collation of measuring instruments: Ministry of Finance.*
17. *Production and trade in micro-organisms, plants, and animals created by genetic engineering: Ministry of Agriculture.*
18. *Insurance: Ministry of Finance.*
19. *Projecting, expertise and inspection of buildings, construction contracting activities: Ministry of Environment; Ministry of Agriculture.*
20. *Geodetic and cartographic activities: Ministry of Environment.*
21. *Ecological expertise: Ministry of Transport and Communications.*
22. *Management of environmentally harmful substances: Ministry of Transport and Communications.*
23. *Transmission or broadcasting of radio and television programmes by means of the radio and television networks: Ministry of Culture and Education.*
24. *Management of casinos (gambling): Ministry of Finance.*
25. *Reproduction of the State symbols or their parts of the Republic of Estonia: State Chancellery.*
26. *Stock Exchange management: Ministry of Finance.*
27. *Tourism: Ministry of Economic Affairs.*
28. *Ships' agenting and organizing sea transport: Ministry of Transport and Communications.*
29. *Lotteries: Ministry of Finance.*
30. *Assessment of land property, selling and buying land: Ministry of Agriculture.*
31. *Activities on the securities' market: Ministry of Finance.*
32. *Veterinary activities, veterinary practice: Ministry of Agriculture.*
33. *Temporary storage of commercial goods, customs-storage procedures: Ministry of Finance.*
34. *Commercial trade (imports, re-exports), wholesale and retail, and storage of imported fuels and lubricants: Ministry of Economic Affairs.*
35. *Production and repairs of weapons, ammunition, and technology for national defence purposes: Ministry of Defence.*
36. *Experiments with animals: Ministry of Agriculture.*

37. *Management of imports and exports, as well as other trade, services, repairs, and disassembling of motor vehicles and trailers: Ministry of Economic Affairs.*
38. *Assessment of personal protective equipment types, quality certification; assessment of machinery and equipment types: National Labour Inspection Board.*
39. *Logopedical aid: Ministry of Social Affairs.*
40. *Conservation, restoration, creating of repairs projects, and carrying out the corresponding activities on the objects of cultural importance (the objects of archaeological, architectural, technological, and historical value, objects of fine arts): Ministry of Culture and Education.*
41. *Classification of goods and measuring of goods for customs' purposes: Ministry of Finance.*

To regulate more adequately the licensing system and procedures in Estonia, the Government obliged all State authorities issuing the licences of activity to present their proposals for reforming this system. The proposals were to be discussed in Government in May, as indicated in WT/L/60 in the Note on Foreign Trade Legislation. Still, making of final conclusions and decisions has been postponed till September. A law dealing with licensing is in the stage of preparing the draft. The general position of the Government is to maintain the orientation towards free-market economy and the fields of activities falling under licensing requirement should decrease.

(g) Customs valuation

Question 13

WT/L/60, Note on Foreign Trade Legislation, indicates that the new Customs Valuation Law has been passed and will be implemented from 1 January 1996.

- o Why is there a delay until the end of the year in implementation of the Law?
- o For the Working Party, please elaborate on the aspects of the new Law in the context of the requirements of the WTO Agreement on the Implementation of Article VII of the GATT 1994. Is there a copy of the Customs Valuation Law on file with the WTO Secretariat?

We remain interested in having Estonia's response to the information requested in Val/2/Rev.2, "Information on Implementation and Administration of the Agreement," to assist the Working Party in reviewing Estonia's ability to implement the Valuation Agreement.

Answer

The time period between the date of adoption the Act (8 February 1995) and the date it will become effective (1 January 1996) is necessary for preparation work to implement the Act, and includes practical arrangements, such as printing necessary documents (customs valuation declaration etc.), training of customs officers, informing the importers etc.

Estonia believes that the adopted Act on Customs Valuation is fully in conformity with the WTO Agreement on the Implementation of Article VII of the GATT 1994.

The response to the requested "Information on Implementation and Administration of the Agreement" contained in Val/2/Rev.2 and the text of the Act on Customs Valuation are annexed herewith (see Annex 1 and 6).

(h) Rules of Origin

Question 14

Has Estonia yet established rules of origin, e.g., in connection with its free trade agreements with other European countries? If so, please provide these to the Working Party.

Answer

Since the Estonian foreign trade regime is highly liberal and the existing customs rates are overwhelmingly zero rates, rules of origin bear significance mainly in the context of the free-trade agreements.

Presently no separate law dealing with the rules of origin exists in Estonia. Its elaboration is foreseen by the end of 1995. The general philosophy will be based on the concept of the origin of goods in accordance with the free-trade agreements concluded by Estonia, preferential treatment regimes, as well as general conditions for import and export.

The issue of the certificates of rules of origin is covered in all the free-trade agreements. In trilateral free-trade agreement concluded with Latvia and Lithuania and in free-trade agreements with the European Union and Ukraine (agreement signed on 24 May 1995 and presently undergoing the process of ratification) similar rules of origin are used (see Annex 7). In free-trade agreements with EFTA countries - Norway and Switzerland the rules of origin are slightly different (see Annex 8). The latter ones are more liberal, mainly due to the fact that they allow for HS 84-91 product groups the possibility of alternative rules. There are minor differences also for product groups HS 1-24.

(i) Sanitary and Phytosanitary Measures (and Technical Barriers to Trade)

Question 15

Concerning the Law on Food outlined in WT/L/60 in the Note on Foreign Trade Legislation:

- o Please confirm that the health and safety provisions of the recently adopted Law on Food are consistent with the WTO Agreement on Sanitary and Phytosanitary Measures.
- o Will this law be uniformly applied to domestic and international producers of food products?

The United States recognizes a difference between food quality and food safety and reminds Estonia that WTO member nations have the right to be free from unwarranted regulations under the Sanitary and Phytosanitary Agreement and the Agreement on Technical Barriers to Trade. If a question over the legitimacy of a regulation arises, the burden of proof is on importing member nations to scientifically demonstrate why specific laws and regulations are being applied for the protection of human, animal or plant safety.

Answer

The health and safety provisions of the Food Law are consistent with the WTO Agreement on Sanitary and Phytosanitary Measures.

The Law provides the legal regulatory framework for the food related issues including legislation, inspection, licensing, laboratory methods, certification and information analysing cooperation.

All authorities and legislative acts concerning food will be adapted to and based on the Food Law. The Food Board will be the coordinating and auditing body for different authorities such as Veterinary Board, Plant Protection Board, Grain Board, Health Protection Board and others which are dealing with food and nutrition.

As the Food Law has just been adopted and the reforms in the system are in the beginning stage some changes will take place in the nearest future. Different legislative acts are in the stage of drafts and on the plan list.

Requirements for food handling, quality and safety and methods for inspection and control food safety and quality are equal to imported and domestically produced food products. According to the Food Law no discrimination in the food sector on the country of origin basis is allowed.

Question 16

Additional Questions:

- (a) Please explain how the Law on Food defines "internationally competitive".
- o Will minimum import prices be applied to food products?
 - o Does this provision of the law apply only to subsidized agricultural imports?
 - o Does the "internationally competitive" principle apply to products that are not also commonly grown in Estonia (e.g. citrus)?
- (b) Please explain how the Law on Food defines "high quality."
- o What mechanisms are in place to ensure that imported products are treated the same as domestically produced products in the assessment of quality?
- (c) Other than status as a "legal person" under Estonian law, what are the licensing criteria under the Law on Food?
- o Please describe what type of licensing is used to ensure the quality or the price of imported food products?
- (d) Since the Law on Food was implemented in May, 1995, have any food imports been classified as either "internationally competitive" or other than "high quality?" If so, which products were affected?
- (e) Please provide the full English text of this Law.

Answer

The objective of the Food Law is to guarantee, in conformity with the other laws high quality and internationally competitive food.

To meet this objective, the law does not foresee using of minimum import prices.

The food quality in the law is defined as complex of characteristics of food or of process of handling, including rendered services, which meets the determined or presumed needs and shows that food can be used.

The law is a basis for legislative acts regulating food handling, quality, safety, control and inspection that are to be further elaborated. In addition handling of baby foods and infant formulas, ecologically and biodynamically raised food, special food and drinking water is regulated by other legislative acts.

To deal with all the matters concerning food and nutrition policy, The National Food Board was established as of July 5, 1995.

The principles of licensing for importing food are not determined yet. Most probably there will be non-automatic licensing.

The text of the Food Law is annexed, see Annex 10.

(2) Export Regulations

Question 17

How does Estonia plan to justify under Article XI of the GATT 1994 and other WTO provisions the export quotas/licenses required for gravel and clay? Does Estonia seek a transitional provision in its accession documents for this measure?

Answer

The quota/licence for the export of gravel and clay were abolished as of 1 January 1995 as indicated in response to question 67 in WT/ACC/EST/2, therefore no justification under Article XI of the GATT 1994 and other WTO provisions is needed and Estonia will not seek a transitional provision in its accession documents for this measure.

(3) Export Incentives

Question 18

At the last meeting, Estonia indicated that "The Export Credit Fund" gives loans to promote privatization to firms that show the ability to export.

- o What aspects of "privatization" are funded by these funds?

It seems clear from the replies to questions 65 and 66 that the government provides export credit loans at 18 per cent, and this level may be less than the commercial rate available.

- o On what basis does Estonia maintain that this is not an export subsidy?

Answer

At the last meeting Estonia indicated that "The Export Credit Fund" gives loans to promote especially private firms that show ability to export.

The fact that Government provides export credit loans at 18 per cent does not mean that this level is less than the commercial rates available. For example, the commercial interest rate for short-term loans in Estonia varied between 16 and 25 per cent in 1994.

The loans from the Export Credit Fund can not be considered as export subsidies, because the loans provide support to increase the export ability via the following activities:

- *participation at fairs;*
- *advertising abroad;*
- *hiring of export consultants;*
- *financing of market research activities;*
- *financing of costs related to obtaining of patents, registering of trade marks and obligatory testing of goods;*
- *financing of training courses related to the export activities.*

Each loan will be provided only on the project-proposal basis. Each approved project gets loan only once. It is required also, that company's activities can not come into dependence on loans which have been provided by the Fund.

Question 19

Estonia has stated that it intends to give serious consideration to wide ranging use of export incentives.

Could Estonia confirm that such incentives will not be in the nature of export subsidies?

If no such commitment can be given, would Estonia confirm that any such measures will be fully in conformity with WTO rules?

Would Estonia provide details of the specific sector and sub-sectors in which it intends to provide such incentives?

Answer

Estonia does not intend to give neither "serious" nor "wide ranging" consideration to using of export incentives. The problem in Estonia is that trade balance is increasingly and seriously negative. There have been no export incentive programs so far. Our intention is to introduce moderate export incentive schemes to bring Estonian exporters nearer to the conditions enjoyed by the exporters of the developed countries and do that in conformity with the rules set by the WTO.

IV. Other Policies Affecting Foreign Trade

(2) Agriculture Policy

Current agriculture policy

Question 20

Can Estonia confirm for the Working Party, per the response to question 77 of WT/ACC/EST/2, that it intends to declare no export subsidies or internal supports in the context of establishing its agricultural country schedule?

Can Estonia indicate what measures currently applied that it considers to be "green box" supports?

Please indicate whether the Law on Agricultural Income has been replaced, per the response to question 77, by the Law on Market Arrangement. If so, would Estonia briefly describe the provisions of the new law and provide a copy for the Secretariat?

Answer

Estonia is willing to enter into negotiations with the WTO members to reserve the right to use export support schemes and establish domestic support measures not prohibited by the WTO Agreement on Agriculture and bind them in its agricultural country schedule.

The Schedule of Domestic Support Commitments and Schedule of Export Subsidies Commitments are submitted to the WTO for consideration by member countries.

The Government support programs currently applied in Estonia that it considers as "green box" measures are the following:

- *National Veterinary and Plant Protection Boards their activities (border inspections), National Food Board;*
- *Technical schools, higher educational establishments, research institutes, methodology centres;*
- *Eugenic Inspection;*
- *Investments in amelioration cooperatives;*
- *Compensation of bank loan interests;*
- *Programs related to the production of potatoes, sweetenings, grain, oil plants;*
- *Consultancy services;*
- *Programs related to afforestation of former agricultural lands, milk and fodder production and ecological agriculture;*
- *Promotion of farming (Farmers' Union);*
- *Plant breeding.*

In principle the Law on Market Arrangements is drafted and presented to the Government who have not passed it to the Parliament yet. Before doing that, certain amendments and modifications in the text of the law are expected.

According to the draft law, the Government and agricultural producers hold negotiations to establish a target prices and domestic support for agricultural products for the next year. The draft law also states that State support may be given to promote export and in the form of partial exemption of interest rates on loans.

At present, as the law is in such an early stage of preparation, the English language text is not available.

Question 21

In answer to the question 73, Estonia mentioned the existence of a Law on Grain providing for the imposition of quotas on grain imports and a Law on Agricultural Income to provide for export subsidies on agricultural products.

- o Does Estonia intend to repeal those laws before accession. If not, what will be the status and justification of those laws upon accession to the WTO?
- o Can Estonia provide further details on its law and policy on grain imports? What is meant by the reference to a "minimum price level" in answer 73? Will this minimum price be eliminated upon accession?
- o In answer 74, Estonia says that one of the Government's objective is to supply Estonians with Estonian products. What measures the Government of Estonia has implemented or intend to implement toward this objective? What is meant by strategic reserves?
- o Does the Government of Estonia have precise time table to complete the process of privatization of land?

Answer

The Law on Grain of 8 June 1994 states that the Government may restrict grain import if domestically produced grain and grain products cover fully the needs of domestic market. That does not mean indefinite imposition of quotas. Until now the quotas have not been implemented. Estonia can confirm that it is aware of the WTO requirements to convert quantitative import restrictions into ordinary customs duties and will follow these rules in its future policy. The Law on Agricultural Income, adopted on 29 June 1993 has not been applied in practice and will be repealed after the adoption of the Law on Market Arrangement, that is currently being drafted.

The expression "minimum price level" is not used in the Law on Grain. Estonia has not imposed minimum price on imports so far, and at present has no intention to impose it in the future. The Law on Customs Valuation, which will become effective on 1 January 1996 will regulate valuation for customs purposes.

No special measures affecting foreign trade for purpose "to supply Estonian residents with Estonian products" have been taken so far. Estonia is in the position that to meet this aim, the best way is to increase the competitiveness of domestic agricultural products.

By "strategic reserve" in question 74 in WT/ACC/EST/2 State reserve is meant that is a store of material resources and technical means which will be used in the case of war, emergency, and special situations, to the security and independence of the Republic. The State reserve comprises security, municipal and mobilization supplies.

There is currently no precise timetable to complete the process of privatization of land. To accelerate the privatization of land the Government of the Republic of Estonia has commissioned the Privatization Agency to arrange the privatization of the land for business and production purposes. the Government has decided to start the privatization of enterprises together with the land.

Market Access

Question 22

Estonia's offer on market access for agricultural products is very disappointing. The bindings listed in WT/L/60 are much higher than current levels of protection. Some of these high tariffs are listed for broad categories of agricultural products not even produced within Estonia.

Answer

As the result of the first round of the negotiations, Estonia has presented its revised offer for market access for revision to the WTO member countries, where the requests from the negotiating partners have been taken into account to the most possible extent.

Agricultural privatization

Question 23

The response to question 78, WT/ACC/EST/2, is very confusing. Please re-answer the original question more comprehensively. What portion of Estonia's agricultural output is (a) produced, (b) domestically distributed, and (c) imported or exported by State-owned enterprises, collectives, or farms at this time?

Answer

As Estonia has explained in response to question 78, in WT/ACC/EST/2 the major part of agriculture has been privatized. So at present the major part of agricultural output, export and import is carried out by private farms and private processing enterprises. The response to question 9 in WT/ACC/EST/2, also states, that almost 100 per cent of agricultural enterprises are privatized by now.

We can confirm, that the portion of Estonia's agricultural output produced, imported and exported by State-owned enterprises or collectives is almost zero. Instead of previous collective farm there are now more than 15.000 private farm and more than 3.000 new private legal persons (partnerships and joint stock companies as well as cooperative associations) in Estonia's agricultural market. Only 6 enterprises have remained State-owned, which share is of no significant importance. The table presented in response to the question 78 describes the domestic distribution carried out by private operators. In 1994 the farms accounted for 59 per cent and cooperatives and other private business associations for 41 per cent of agricultural output.

Special Safeguards for Agriculture

Question 24

Estonia has stated that it will not be able to maintain the degree of full liberalization of the agricultural sector indefinitely.

We understand that Estonia does not intend immediately to use the special safeguard mechanisms, however, Estonia has indicated that it may resort such measures in the future.

Would Estonia provide details of specific areas in which it is keeping in mind the possibility of introducing special safeguard?

Answer

At the moment Estonia is not able to provide details on specific areas where special safeguard measures could possibly be introduced in the future when circumstances so warrant.

Maintaining a liberal trade policy depends also on overall international economic climate surrounding us. Estonia can confirm that in the case of necessity to introduce the special safeguard measures, they will be carried out in a transparent manner and in conformity with Article 5 in the WTO Agreement on Agriculture.

(3) Financial, Budgetary and Fiscal Policy

Question 25

Please indicate for the Working Party, for a recent representative period, the portion of total Government revenue supplied by (a) income taxes, (b) excise and VAT taxes, (c) tariffs and taxes exclusively on imports, (d) other sources.

Answer

In 1994 the portion of total Government revenue supplied by: income taxes was - 31,5 per cent (of this 53,4 per cent was personal income tax and 46,6 per cent corporate income tax); excise tax - 8 per cent; VAT - 46,8 per cent; customs duties - 5 per cent; other sources - 8,7 per cent.

(5) Foreign Investment Policy

Question 26

We note that in WT/L/EST/2, the response to question 88 is noted as "pending." We hope that a definitive Government of Estonia response is available at this meeting or afterwards, in writing. Estonia has stated that all sectors, including services, are open to foreign company business, provided that the foreign company is registered and licensed.

- o Are requirements different for foreign and domestic firms in the registration process? If so, please summarize the differences in licensing and registration requirements. Please include reference to the following industries: mining, power engineering, gas and water supply, administration of waterways, ports, dams and other hydraulic structures?

Answer

Registration of a company is based on the Law on Enterprise. After 1 September 1995, the registration of a company should be carried out in accordance with the provisions of the Commercial Code. Registration of a credit institution takes place according to the Law on Credit Institution and insurance companies are registered according to the Insurance Law. There are no differences in the procedures of registration between foreign or domestic companies except in 6 fields of activity where Foreign Investment Licence is required, one should also have a relevant Licence of Activity. This licence is not required from domestic investors, but to register a company operating in these fields of activity they must present the Licence of Activity. These fields of activity are:

1. Mining Industry;
2. Power engineering, gas and water supply;
3. Administration of waterways, ports, dams and other similar structures;

4. *Expansion and reconstruction of railways and air transport;*
5. *Telecommunication (forwarding of sound, images, news or other information by cable, broadcasting, translation of satellites, telephone, telegraph and telecommunication), as well as maintenance and reconstruction of the communication network;*
6. *Retail of medicines.*

The investors having Foreign Investment Licence do not need a Licence of Activity. If the field of activity is licensed and the Foreign Investment Licence is not required, the Licence of Activity is required from foreign investors too. The licences of Foreign Investment Licence and Licence of Activity have the same rights. The main difference is that Foreign Investment Licences are issued only by the Ministry of Finance, the Licences of Activity are issued by different ministries or State authorities.

To register a company, depending on the type of the company, the following documents should be presented to the Commercial Registry:

General Partnership and Limited Partnership: application for the registration; the company contract; signature proof of authorized partners; telephone and fax numbers.

Limited Liability Company and Joint Stock Company: application for registration; association contract; company's statute; bank notice of the payment of share capital; names, personal codes; and places of residence of the members of the board of directors and the council; signature examples of the board members; in the case of down payment in the kind - contract of ownership transference and documents proving the value of the payment (in the case of a Joint Stock Company also the auditor's statement about the evaluation principles); telephone and fax numbers.

Question 27

In answer 85, Estonia says, that foreign investors are receiving the same treatment (i.e. national treatment) than Estonian legal persons.

- o Are there notification or approval procedures required for greenfield investment and/or for the acquisition of existing enterprises by foreigners or nationals?
- o Does the privatization of an enterprise include the distribution of vouchers to nationals and/or residents? Is there a minimum period of retention required for shares acquired through vouchers?

Answer

There are only 6 fields of activity where the establishment of the enterprise with foreign capital or the participation in the established enterprise is taking place on the basis of Foreign Investment Licence, as indicated in the answer to the previous question.

From national investors this licence is not required, but in these fields of activity they must obtain the Licence of Activity.

Minority shares (less than 50 per cent) of some enterprises are sold for privatization vouchers. Prior to the sale of minority vouchers the majority of vouchers (the minimum of 51 per cent) will be sold to the so-called core investor. By now 49 per cent of the shares of Tallinn Department Store and 20 per cent of shares of Saku Brewery have been sold for privatization vouchers.

It is intended to sell the minority of State-owned shares of still 20 enterprises for privatization vouchers this year.

There is no minimum period of retention required for share acquired through vouchers.

(6) Government Procurement

Question 28

Does Estonia plan to join the Agreement on Government Procurement?

We remain interested in receiving a copy of Estonia's draft Law on Public Procurement, and a description for the Working Party of its provisions, and how they concord with those of the GATT Agreement on Government Procurement.

Answer

Estonia has not yet made the decision of joining the WTO plurilateral Agreement on Government Procurement so far.

The Law on Public Procurement was adopted on 31 May 1995. It will become effective on 1 January 1995.

The task of the Law on Public Procurement shall be to ensure the most rational and economical use of the monetary resources to be used for public procurement.

The Law on Public Procurement shall establish the implementation procedures of public procurement. It stipulates the rights, obligations and responsibilities of the subjects associated with public procurement and the legal sanctions for the infringement of this Law.

The order set forth by the present Law is in force if public procurement the estimated value of which exceeds the thresholds set by the Government.

The order set forth by the present Law is in force if public procurement is carried out from account of monetary resources of State loans and loans obtained with government guarantee. If the implementation of these means is not established by the relevant agreements for loans, guarantee or foreign aid.

According to the Law on Public Procurement tender transactions involve checking the qualifications of tenders which include checking their technical competence, financial resources, equipment and other preconditions and experience, as well as presentation of the documents proving their solvency and showing if that have fulfilled all their obligations regarding State and local taxes.

Besides that, tender transactions involve procedures for pre-qualification, public procurement documents, publication of an invitation to tender, tender guarantee etc.

The chapter of the Law explaining submission of tenders includes the validity period for the submitted tender, opening of tenders, rejection of tenders, etc.

As to the evaluation of tenders, the Law foresees the criteria for a successful tender, cases for rejection of all tenders, conditions for the conclusion of a procurement contract and its coming into force.

A successful offer shall be the most favourable offer in regard with estimation criteria presented in the documents of offering invitation. If the documents of an offering invitation provide preferences

to domestic products or services, the best domestic offer which need not be the best of all presented offers, may be proclaimed as successful.

Five principal methods of carrying out public procurement are given in the Law, namely: open tender, two-stage tender, request for proposals, request for quotations and single-source procurement.

The public procurement activity in the Republic of Estonia shall be coordinated by the Public Procurement Board set up by the Government.

As to the arising complaints, there is a chance for every tenderer, who is interested in concluding a procurement contract according to the procedures prescribed by the Law on Public Procurement, to file a complaint to the Board regarding the activity of the procuring entity. The reasons for not reviewing a complaint, procedures for filing a complaint, for the review of the complaint, and the decision, lodging appeals, forming an arbitration court, etc. are established in the Law.

In the case of the law being in contradiction with a foreign agreement signed on behalf of the Republic of Estonia, provisions of a foreign agreement shall apply.

There are certain amendments and modifications in the text of the adopted Law comparing to the draft presented to the WTO (WT/L/60/Add.1, 18 May 1995). The English language text of the Law will be submitted immediately after the translation being completed.

(7) State-Trading Enterprises

Question 29

Regarding the former State monopoly in tobacco products, have other firms initiated production of tobacco products in Estonia since the response to question 91?

A significant portion of Estonia's trade and domestic economic activity remains in State hands. These firms benefit from export credit funding and their economic well-being remains in the hands of the State, and the State Treasury.

Such notification is for transparency purposes, and the provisions of Article XVII do not remove normal obligations under other GATT 1994 provisions.

Estonia should expect to notified under Article XVII any de facto or de jure monopoly in trade, as well as the trade activities of any State-owned firm that receives State aid not available to private firms, or whose operations are subject to State intervention, particularly of a fiscal or managerial nature.

Answer

No other firms have initiated production of tobacco products in Estonia since the response to question 91. At present there is only one private tobacco company with foreign capital share in Estonia. No special restrictions by State to start business in that field exist. According to the statistics, 75 per cent of tobacco products on sale in Estonia are imported.

Substantially all Estonian trade and economic activities are in private hands. Those, which are State-owned do not enjoy any fiscal or managerial privileges. There is no regulation in Estonian legislation which creates difference between State-owned and private enterprises in their conditions of economic activities. No State owned enterprise is under direct Government control.

There is no monopoly in trade de facto or de jure left in Estonia. There are some fields in Estonian economy where one enterprise has a dominant market position. As "natural monopolies" we consider energy supply, railway, heating-water pipe-lines. Usually these enterprises are not involved in foreign trade.

Estonia does not maintain or grant to State-owned enterprises any exclusive or special privileges not available to private companies. There are no State aid schemes (including the Export Credit Fund), access to which is different for State-owned enterprise and to private enterprises. The access of State-owned enterprises to the schemes mentioned above are less favourable because of the Government policy to support the development of private sector.

Therefore Estonia believes that there is nothing to notify under the Article XVII of the GATT 1994.

(9) Protection of intellectual property rights

GENERAL

Question 30

Do any of Estonia's intellectual property laws, regulations and practices contain any exceptions to the principle of national treatment or MFN treatment? If so, please list each of these exceptions and Estonia's plans to remove them, if any.

Answer

Estonian intellectual property laws, regulations and practices contain no exceptions to the principle of national treatment and MFN treatment.

PATENTS

Question 31

What inventions, if any, are excluded from patentability?

Answer

Inventions, that are excluded from patentability are listed in Estonian Patent Law, Chapter II; Section 7. Inventions not Patentable.

The following shall not be protected with patents:

- (i) inventions contrary to public order and morality;*
- (ii) methods for treatment of the human or animal body and diagnostic methods practised on the human or animal body;*
- (iii) topology of microcircuit;*
- (iv) substances derived by splitting the nucleus of an atom, methods of their derivation and use.*

Question 32

Are plant varieties protected under Estonian law? If so, how are they protected?

Answer

In Estonia plant varieties are protected by Variety Protection Law, adopted on 9 March 1994. According to the law if in the course of the expertise and the experiments made, the variety proves to meet the conditions for granting of the protection, the decision of granting of the protection shall be made by the Variety Inspection. Upon granting the protection the variety shall be registered in the Register of Protected Varieties and the Certificate of Protection shall be issued by the Variety Inspection.

Microorganism strains shall be protected with patents after the acceding of the Republic of Estonia to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure, concluded in 1977. Accession to the Treaty will be finalised by the end of 1995.

Question 33

Does Estonian law provide patent holders the full range of rights outlined in TRIPS Article 28? If not, what rights are not currently provided?

Answer

Estonian law provides patent holders with the full range of rights outlined in TRIPS Article 28.

Estonian Patent Law. Chapter IV.

Section 15. Exclusive Right of Patentee.

1. The exclusive right of the patentee means that during the term of the patent third parties shall not be allowed, without the consent of the patentee, to:

- (i) possess, use or command the patent;*
- (ii) make, use, distribute, sell or put on the market patented products, or to obtain (including the import) those products for the aforesaid purposes;*
- (iii) make, sell or put on the market essential components of a patented product or to obtain and to export them with the purpose of making or assembling the product, except where components are other staple products;*
- (iv) use a patented method or to offer it to third parties;*
- (v) use, distribute, sell or put on the market a product made according to a patented method, or to obtain (including the import) those products for the aforesaid purposes.*

Section 45. Assignment of Patent Application

Subsection 1

Assignment of a patent may be effected upon the abandonment of patent rights by a patentee and upon the assignment of a patent to another person (expropriation of patent):

- (i) if economic and business activities are transferred to another person;*
- (ii) upon giving the patent to entrepreneurship as the capital;*
- (iii) for other reasons not contradicting the law.*

Section 46. Licence

1. *Patentee (licenser) may transfer, in whole or in part, the right to use or command a patented invention to another person (licensee) by a licence.*
2. *Upon granting a licence, a licence agreement shall be concluded in writing which shall be entered into the Register by the Patent Office. An entry shall be made into the Register upon the receipt at the Patent Office of a document providing the payment of the fee. An unregistered licence agreement is invalid.*

Question 34

Are patent terms extendable under any circumstances? If so, under what circumstances?

Answer

Extension of patent terms is presently not provided by the Law and no need is foreseen for this in the near future. It should be taken into account that Estonian Patent Law became effective only in 1994 and so the patent extension questions may arise not before the year 2014. Similarly the extension of protection of medicaments and products of agrochemistry will not be topical in coming years.

Question 35

Does Estonian law contain any exceptions to the exclusive rights conferred by a patent (examples might include government use provisions, prior user rights, etc.)?

Answer

According to Estonian law, the exclusive rights of patentee could be restricted according to the court's decision on granting the prior user rights or by granting a compulsory licence by the court. The use of a patented invention in experiments concerning the invention itself; the extemporaneous preparation for individual cases in a pharmacy of a medicine containing a patented invention in accordance with a medical prescription, and its use; and the private and non-commercial use of a patented invention provided that it should not infringe the interests of a patentee shall not be considered as infringement of the rights of a patentee.

Estonian Patent Law. Section 17. Right of Prior Use

1. *Any person who, before the filing of a patent application for the same invention by another person, industrially used the invention in the Republic of Estonia in good faith irrespectively of the applicant, may continue to use the invention, retaining the general character of the use. The use shall be considered bona fide when the user did not know and was not obliged to know that a patent application was intended to be filed for the invention.*
2. *The right of prior use shall also belong to any person having bona fide made significant arrangements for the industrial use of the invention in the Republic of Estonia.*
3. *The right of prior use can only be transferred to another person together with the enterprise where the right of prior use has emerged or where it was intended to be used.*

Question 36

Does Estonia's law provide for the issuance of compulsory licenses? Is issuance of such licenses subject to the conditions in Article 31 of TRIPS?

Answer

Granting of compulsory licence is prescribed in section 47 of Estonian Patent Law and fully corresponds to the requirements of TRIPS Article 31. Furthermore, compulsory licence is granted in Estonia only on the ground of a court decision.

Estonian Patent Law. Section 47. Compulsory Licence

1. *Each person interested in using a patented invention and able to use it in the Republic of Estonia may, upon refusal from the patentee to grant a licence, bring action for obtaining a compulsory licence, if:*

- (i) the patentee has not used the invention in the Republic of Estonia within three years from publishing an announcement about the grant of the patent or within four years from filing the patent application, whereby the later date is taken into account;*
- (ii) the extent of use of the invention by the patentee does not comply with the needs of Estonian domestic market;*
- (iii) the patent hinders the use of another invention technically progressive and essential for Estonian economy;*
- (iv) the use of the invention is required by State defence, environment protection, public health or other important State interests of the Republic of Estonia, including an urgent necessity to use the invention in connection with nature catastrophes or other emergencies.*

2. *In cases provided for in item 3 of paragraph 1 of the present Section the patentee shall be entitled to obtain a compulsory licence for another invention if no agreement is reached about exchanging licences (reciprocal licence).*

3. *Upon granting a compulsory licence, the court shall prescribe the terms of the compulsory licence, including the extent and duration of the inventions well as the amount and payment procedure of the licence fee. The extent and duration of the use of the invention are determined on the grounds of the needs of Estonian domestic market.*

4. *The right to use the invention under the compulsory licence may be transferred to another person solely with the enterprise using the compulsory licence or planning to use it in compliance with the terms of the compulsory licence.*

5. *The grant of a compulsory licence shall not prevent the patentee from using the invention or from granting licences to other persons.*

6. *A compulsory licence shall become effective from the date of entering it into the register. The entry into the Register shall be made on the date of receipt at the Patent Office of a document proving the payment of the fee.*

7. *Upon a change in the circumstances both the licensor and the licensee may bring action for changing the terms of the compulsory licence.*

Question 37

Are there any restrictions on a patent owner's rights to assign, transfer, license rights under a patent?

Answer

There are no restrictions on a patent owner's rights to assign, transfer and license rights under a patent in Estonia if not counting the fact that upon granting a licence its entering into the Register is obligatory.

Estonian Patent Law. Section 46. subsection 2.

Upon granting a licence, a licence agreement shall be concluded in writing which shall be entered into the Register by the Patent Office. An entry shall be made into the Register upon the receipt at the Patent Office of a document proving the payment of the fee. An unregistered licence agreement is invalid.

Question 38

What is the size of the examining core in Estonia's patent office? How many applications are submitted/processed each year? In what technological categories? What is the average pendency period?

Answer

There are 15 experts working in the Estonian Patent Department at present. Since May 1994, when the Patent Law came into effect, ca 500 patent applications have been received. Patent Department examines inventions from all fields of technology. The whole procedure may take up to three years. It should be taken into account, that in Estonia this work is only starting. With the growth of the number of patent applications the increase of expert personnel is foreseen.

Question 39

In the case of products which may be produced through the use of patented processes, are there any instances when the defendant is obliged to prove that the product was produced through a different process, as required by TRIPS Article 34?

Answer

In Estonian law the provision of burden of proof, corresponding to TRIPS Article 34, is presently not yet established.

Question 40

What opportunities exist for judicial review of a decision to revoke a patent as required by Article 32 of TRIPS?

Answer

During examination procedure the applicant may contest the decision of the Patent Office at the Board of Appeals of Industrial Property established in compliance with the Trademarks Act of the Republic of Estonia, or in court. The applicant may lodge a complaint regarding the decision of the Patent Office at the Board of Appeals or he may bring action within two months from the date of the decision. Upon disagreement with the decision of the Board of Appeals the applicant may contest it, bringing action within three months from the day of rendering the decision.

Semiconductors

Question 41

What form of protection does Estonia now provide for semiconductor layout designs? How is that protection granted?

What rights are granted by such protection? Are there any restrictions or limitations on such protection? Are compulsory licenses of such technology permitted?

Are any changes to Estonian law contemplated at this time in the area of semiconductor layout design protection? If so, what?

Answer

There is presently no law on protection of semiconductor layout design in Estonia. The drafting and enforcing of this law is scheduled to 1996.

Copyright

Question 42

Please provide more information as to when free use under Chapter IV of Estonia's copyright law includes free use of computer programs and decompilation of computer programs.

Answer

Estonian Copyright Law. Chapter IV. Section 24. Free Use of Computer Programs

1. Unless otherwise provided in contract the lawful acquirer of a computer program shall enjoy the right, without the consent of the author of the program and without payment of separate remuneration, to reproduce, translate, adapt and otherwise transform the program and reproduce the acquired results, provided it is necessary:

- (i) in order to use the program for purposes, for the machine or machines and to the extent for which it was acquired;*
- (ii) in order to correct errors in the program.*

2. The lawful acquirer of a computer program shall enjoy the right, without the consent of the author of the program and without the payment of separate remuneration, to make archive copies of the program, provided they are used only for replacing the program which has been lost, destroyed or rendered unusable.

3. *The lawful acquirer of a computer program shall enjoy the right, without the consent of the author of the program and without the payment of separate remuneration, to study the functioning of the program in order to determine the ideas and principles which underlie any element of the program, provided that the author's rights are not violated.*

4. *A person who has lost the legal basis for the possession, use or disposal of the program shall be obliged to destroy the program referred to in Paragraphs 1 and 2 of this Section, a copy or transformation thereof.*

Section 25. Free Decompilation of Computer Programs

1. *The lawful acquirer of a computer program shall enjoy the right, without the consent of the author and without payment of separate remuneration, to reproduce the program and make translations thereof, if it is indispensable in order to obtain the information necessary for guaranteeing the interoperability of the original program with other programs, provided the following conditions are met:*

- (i) this is performed by the lawful user of the program or by another person authorized by the author;*
- (ii) the information guaranteeing the interoperability of programs has not been previously accessible for persons referred to in Subparagraph 1 of this Paragraph;*
- (iii) these acts are confined to the parts of the original program, necessary for guaranteeing the interoperability.*

2. *It shall not be permitted to use the information obtained by acts prescribed by Paragraph 1 of this Section:*

- (i) for goals other than guaranteeing the interoperability of the independently created program;*
- (ii) to be communicated to a third party unless it is necessary to guarantee the interoperability of the independently created program;*
- (iii) to develop, manufacture, realize a program of similar nature or to commit other acts violating the copyright of the author of the original program.*

Question 43

Please provide more information on the limitations of the rights of (1) performers in their live performances, (2) producers of phonograms, and (3) broadcasters.

Answer

Estonian Copyright Law. Chapter VII. Section 75. Limitations on Rights Neighbouring on Copyright

1. *Without the authorization of the performer, the producer of the phonogram and the radio and television organization and without payment of remuneration it shall be permitted to use performances of works, phonograms, radio and television broadcasts and the fixations thereof, including the use by means of reproduction:*

- (i) for private purposes, taking into consideration the provisions of Sections 26 and 27 of this Law;*

- (ii) *solely for the purposes of teaching and scientific research;*
 - (iii) *in the form of short excerpts to be included in reports of current events;*
 - (iv) *in the form of short excerpts (quotations) for informatory purposes, consistent with the obligation to communicate accurately the meaning of the performance, phonogram, radio and television broadcast as a whole;*
 - (v) *to make an ephemeral recording by a radio and television organization by means of its own technical devices and for use in its own broadcasts of a performance, broadcast or phonogram which it has the right to broadcast. Such a recording and its reproduction (copies) must be destroyed within 60 days counted from its making, except for a single copy which may be preserved for archival purposes;*
 - (vi) *in other cases in which the rights of the authors of the works are limited by virtue of Chapter IV of this Law.*
2. *The free use prescribed by this Section shall be permitted solely on condition that the legitimate interests of the performer, the producer of phonograms or the radio and television organization are not prejudiced and the use does not conflict with the normal economic use of the results.*

Question 44

Does Estonian law permit the compulsory licensing of works and sound recordings?

Does Estonian law provide full retroactive protection for copyrightable works and sound recordings, in accordance with TRIPS Articles 9.1 and 14.6?

Answer

The Estonian Copyright Law does not contain provisions on compulsory licensing.

The legal basis for full retroactive protection for copyrightable works and sound recordings is provided by Section 12 and Section 74 of the Copyright Law, both Sections being in accordance with the respective Articles of TRIPS

Trademarks

Question 45

What is the scope of subject matter that can be protected by trademark (e.g., names, letters, numerals, colours, shapes, figurative elements, etc.)?

Answer

Estonian Trade Marks Act. Section 6. Signs registrable as trade marks. Subsection 1

Literal, verbal, numerical, figural, and special signs or their combinations can be registered as trade marks.

Question 46

Does Estonian law protect well known marks? If so, to what extent and under what conditions? What is the definition of "well known"?

To what extent does a well-known mark that is not registered in Estonia receive protection? What specific rights does the owner of an unregistered well-known mark have?

Answer

Estonian law does not contain the definition of a well known mark, but according to Section 5, Subsection 4 of Trade Marks Act: Above the goods and services of the same or similar kind the trade mark proprietor shall be entitled to prevent the use of the trade mark also for goods and services of a different kind in case the trade mark is well known in the Republic of Estonia and its use takes unfair advantage of the distinctive character of the trade mark or is detrimental to the distinctive character or the repute of the trade mark.

Section 8. Signs not registrable as trade marks. Sub-section 1: The following shall not be registered as trade marks (...) (b) markings of trade marks and goods well known in the Republic of Estonia, irrespective of whether the trade mark or marking is registered or not in the Republic of Estonia.

Question 47

What rights are granted the holder of trademarks? Are there any exceptions to such rights (e.g., restrictions on use)?

Answer

Rights granted the holder of trademarks and exceptions to such rights are prescribed in Trade Marks Act, Section 5. Legal regime of trade mark.

2. *The Republic of Estonia safeguards exclusive rights of the proprietor of a protected trade mark to the mark.*

3. *No natural nor legal person may use, without the consent of the trade mark proprietor, in the course of economic or commercial activities any trade marks identical or confusingly similar to the protected trade mark, including a likelihood of confusion, to designate the same or similar goods or services.*

The following shall be considered the using of the trade mark:

- (a) affixing the trade mark to the goods or to the packages;*
- (b) offering the goods for sale under that trade mark, putting them on the market or stocking them for these purposes;*
- (c) offering or rendering services under the trade mark;*
- (d) exporting or importing goods under the trade mark;*
- (e) using the trade mark on economic or business papers, advertisements or operating instructions of goods.*

4. *Above the goods and services of the same or similar kind the trade mark proprietor shall be entitled to prevent the use of the trade mark also for goods and services of a different kind in case the trade mark is well known in the Republic of Estonia and its use takes unfair advantage of the*

distinctive character of the trade mark or is detrimental to the distinctive character or the repute of the trade mark.

5. *Trade mark proprietor is not entitled to prohibit third parties in the course of economic or commercial activities the use of:*

(a) his own name or address;

(b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the services, or the other characteristics of the goods or services;

(c) the trade mark, where it is necessary to indicate the goods which have a fixed purpose, like accessories or spare parts of services.

6. *In encyclopedia, handbooks, textbooks, publications with technical or professional contents, or in other publications the author and publisher shall ensure that at the request of the proprietor of a trade mark no reference is made to the trade mark without the warning sign (...).*

Trade mark proprietor is under the obligation to use the trade mark. If within five years the proprietor of a trade mark has not used the trade mark without proper reasons, any interested person is entitled to protest further validity of the registration.

Question 48

Does Estonian law impose any restrictions on the licensing, transfer, or use of trademarks? If so, what are they?

Answer

Estonian law does not impose any specific restriction. There are only special requirements on drawing up documents and payment of the State duty.

The proprietor of a trade mark (licensee) may:

- *based upon the licence agreement, assign the right to use the trade mark to other persons (licences). Upon payment of the State duty, the licence agreement is recorded in the Register.*
- *cede a registered trade mark to a natural or legal person for all or some of the goods and services and upon payment of the State duty, the deed of ceding is recorded into the Register.*

Where a legal person is reorganized, liquidated, mortgaged, or goes bankrupt as well as in other cases the legal status of the trade mark changes and an entry to that effect is made into the Register upon payment of the State duty.

Question 49

Does registrability depend on use?

Answer

Registrability does not in general depend on use, but if trade mark is upon taking into use insufficiently distinguishable, it may be granted lawful protection only after it has become distinguishable as a result of extensive use. A sign used as a trademark shall not be made up of letters, which does

not conceive a word, numbers or combinations of numbers and letters, excluding signs, which have already become distinguishable as a result use.

Question 50

Under what conditions may a mark be cancelled for non-use?

Answer

Invalidation of trademark registration:

A trade mark is erased from the Register with the decision of Patent Office when the trademark is invalidated in consequence of the proprietor having violated the provision of the Trade Marks Act, which says that trademark proprietor is under obligation to use the trade mark.

The following shall be considered the using of the trademark:

- (a) affixing the trade mark to the goods or to the packages;*
- (b) offering the goods for sale under that trademark, putting them on the market or stocking them for these purposes;*
- (c) offering or rendering services under the trademark;*
- (d) exporting or importing goods under the trademark;*
- (e) using the trade mark on economic or business papers, advertisements or operating instructions of goods.*

If within five years the proprietor of a trade mark has not used the trade mark without proper reason, any interested person is entitled to protest further validity of the registration accompanied by payment of the fee.

Question 51

What is the role of the Trademark Register in infringement actions?

Answer

According to law there is a possibility to contest the decision to register or not to register the trade mark. If the applicant disagrees with the refusal of the Patent Office to register the trademark, he is entitled to contest the decision in the Appeal Board within two months from passing the decision, paying the State duty. The State duty is reimbursed, if the Appeal Board declares the refusal of registration unfounded.

The decision of the Patent Office about registration of the trademark may be contested by the proprietor of another trademark or interested party in the Appeal Board within two months from the publication of the trademark, paying the State duty.

Question 52

What are the grounds on which the registrar may refuse to register a mark? Are interested persons given a right to oppose the registration of a mark? If so, what procedure is provided?

Answer

Invalidation of trademark registration and elimination from the Register:

On the basis of the application by any person concerned, the Patent Office may invalidate trademark registration if it was effected in contravention of Sections 7 and 8 of the Trade Marks Act (7: Circumstances excluding the protection of a trademark; 8: Signs not registrable as trademarks). An application for invalidating the registration of a trademark can be submitted to the Appeal Board within five years from the date of filing the application, accompanied by payment of the State duty.

If within five years the proprietor of a trade mark has not used the trade mark without proper reason, any interested person is entitled to protest further validity of the registration in the Appeal Board.

Question 53

Does registration of a mark satisfy notice of the exclusive right of the right holder to potential infringers? Does a right holder have to give actual notice to an infringer before the infringer is liable? Or is registration of the mark sufficient?

Answer

Registration of the mark satisfies notice of the exclusive right of the right holder to potential infringers and according to the Law the Republic of Estonia safeguards exclusive rights of the proprietor of a protected trademark to the mark.

At the same time the proprietor of the trademark may use together with the mark a warning sign indicating that the trade mark is registered in the Republic of Estonia.

Trademark proprietor's rights are protected through administrative channels and in court. Actions by natural or legal persons who intentionally or negligently infringe on the trademark proprietor's exclusive rights entail civil or criminal penalty, or both.

In Estonia a right holder shall recommendable give actual notice to an infringer, before bringing the case into the court. This is for making sure that the infringement was intentional and if there is no reaction from infringer, a complaint could be made.

Question 54

Is the recordation of an assignment mandatory? If so, what are the consequences of not recording an assignment?

Answer

After the agreement of assigning of the trade mark has been concluded and an official application for registration has been presented to the Patent Office, upon payment of the State duty, the licence agreement is recorded into the Register.

The registration of an assignment is not mandatory, but without registration it is not considered valid.

Question 55

To what extent are decisions of the trademark registrar appealable to a court of law?

Answer

The Appeal Board reviews applications about opposition to the decisions of the Patent Office, if:

- *the Patent Office refuses to file the registration application of the trademark;*
- *the applicant disagrees with the refusal of the Patent Office to register the trademark;*
- *the proprietor of another trademark or interested party disagree with the decision of the Patent Office to register the trademark;*
- *any person concerned submits the application to invalidate trademark registration if it was effected in contravention of Sections 7 and 8 of the Trade Marks Act (7: Circumstances excluding the protection of a trademark; 8: Signs not registrable as trademarks). (An application for invalidating the registration of a trade mark can be submitted to the Appeal Board within five years from the date of filing the application).*

All persons interested may take the decision of the Appeal Board to the court of law during a period of three months from the date when the decision was made.

Question 56

Are any changes to the trademark provisions of Estonian law contemplated at this time? If so, what are they?

Answer

No changes are contemplated to the Trade Marks Act at this time.

Industrial Designs

Question 57

What form of protection does Estonia now provide for industrial designs? How is that protection granted?

What rights are granted by such protection? Are there any restrictions or limitations on such protection?

Are any changes to Estonian law contemplated at this time in the area of industrial design protection? If so, what?

Answer

There is no law on protection of industrial designs in Estonia at present.

Trade Secrets

Question 58

Does Estonia now protect trade secrets? How is that protection granted?

What rights are granted by such protection? Are there any restrictions or limitations on such protection?

Are any changes to Estonian law contemplated at this time in the area of trade secret protection? If so, what?

Answer

There is no separate law on protecting business secrets and no legal act being drafted which deals with the business secret. The protection of business secrets is guaranteed by Article 148 of the Criminal Code which provides responsibility for the reveal or use of the illegally revealed business secret. According to the fundamental decree of book-keeping, the object of the business secret shall be any information concerning business relations, expenses of the branches of the enterprise and costs and feasibility of manufacturing certain products, calculation and pricing of the cost price of products as well as financial strategy and policy of enterprises.

Estonia is a member of the Paris Convention on the Protection of the Industrial Property.

Competition and Antitrust

Question 59

Does Estonia have any laws that would fall into the anticompetitive practices provisions of Article 40 of TRIPS? If so, please specify.

Are there any restrictions on the licensing of intellectual property, on either domestic or foreign nationals?

Answer

There are no special provisions in Estonian laws and regulations dealing with the control of anti-competitive practices in contractual licences.

There are no restrictions in regard to national treatment on the licensing of intellectual property.

Enforcement

Question 60

What is the average time of litigation of copyright infringement suits?

Please provide additional information concerning Estonia's system of border measures available to a right holder to prevent the importation of infringing goods. Is this system compatible with the requirements of the TRIPS agreement?

What types of provisional measures are available to right holders? Are these consistent with the requirements of the TRIPS agreement?

Answer

Since the Copyright Law is in force from 12 December 1992, there have been 3 litigation of copyright infringement suits. The time of proceeding was 6-7 months.

The Customs Law forms the legal foundation to prevent the importation of infringing goods. No special provisional measures are available to right holders.

V. Institutional Base for Trade and Economic Relations With Third Countries

(1) Bilateral Trade and Economic Agreements

Question 61

In WT/L/60, in the Note on Foreign Trade Legislation, Estonia indicates that a Resolution was signed on 13 February 1995 regarding the intend of Estonia, Latvia, and Lithuania to establish the Baltic Customs Union by 1 January 1998.

- o Please indicate in general terms how this will affect the current trade regime of Estonia and its negotiations for WTO accession and eventual membership in the European Union.
- o What near-term alteration in Estonia's trade regime could we expect to see as a result of this resolution?

Answer

The Resolution on establishing the Baltic Customs Union affects neither the current trade regime, nor the negotiations for the WTO accession, nor the eventual membership in the European Union.

The aim of the Baltic Customs Union is to abolish internal customs control between the Baltic countries, which is the essential interest of our trade partners. Today the resolution gives an excellent base for harmonization of respective regulations and policies needed for the establishment of the Customs Union.

It is too early to describe near-term alteration in Estonia's trade regime as the Customs Union will be created after the negotiations.

Estonia is maintaining the position of liberal trade policy.

VII. Services

Question 62

We would appreciate clarification on Estonia's draft schedule of commitments in trade in services (WT/L/59).

- o While the draft schedule mentions all eleven of the major service sectors used in the negotiations, and many of the sub-sectors, Estonia has entered "unbound" in almost every mode of delivery - meaning a very weak offer.
- o Descriptions supplied in WT/ACC/EST/2 and WT/L/60, however, indicate a relatively open services regime.
- o Can Estonia explain why it is unwilling to offer commitments in its Schedules confirming treatment that it already accords WTO Members at the present time?

Answer

In Estonian first draft of Services Commitment Schedule most of the service sectors were entered "unbound" because of the lack of special regulations regulating action of foreign service suppliers. As the result of the first round of discussions Estonia will present a new Revised Services Commitment Schedule for consideration to the WTO Members. In this document Estonia takes several commitments in different sectors.

Question 63

In WT/L/60, Estonia outlines its regulations concerning services:

Concerning "Residential and Working Permits:"

- o What provisions have been made to allow foreign firms investing in Estonia to have employees from abroad serve in these firms? What domestic legal restrictions apply?

Answer

The only legal restriction is the presence of the residential and working permits. Otherwise there are no obstacles to foreign employees to work in Estonia.

Question 64

Concerning Legal, Architectural, and Accounting Services:

- o Can foreign lawyers, architects, or accountants act as consultants to domestic Estonian firms?

Answer

Yes, they can.

Question 65

- o Can Estonian individuals or firms purchase foreign legal, architectural, and accounting services abroad and use the results of these services in Estonia?

Answer

There are no legal obstacles to purchasing foreign services abroad and using the results in Estonia.

Question 66

Concerning Financial Services:

Please describe the current financial services sector, including the substance of any current measures or those planned in the near future, that would apply to foreign institutions seeking to provide financial services.

Does Estonia currently impose or plan to impose any limitations on market access or national treatment in the financial services sector:

- o e.g., including any discretionary investment authorizations, reciprocity measures, or discriminatory practices involved in privatization, in addition to other measures inconsistent with the provisions on market access, national treatment, and MFN of the General Agreement on Trade in Services (GATS)?
- o If so, please describe any restrictions. Does Estonia have a timetable for eliminating these restrictions?

Please describe any laws, regulations, or practices which address the following:

- (a) the ability of a non-resident financial service provider to provide cross-border into the territory of your country advisory and other auxiliary financial services, the provision and transfer of financial information, and financial data processing (as defined in para. 5 of the Annex on Financial Services);
- (b) whether residents of your country may purchase financial services in the territory of another party;
- (c) the ability of a non-resident financial service provider to establish and expand a commercial presence in your country as a branch, an agency, a representative office, and as a wholly-owned subsidiary, either through *de novo* investment or through acquisition of existing enterprises, under terms and conditions of authorization that accord national treatment;
- (d) the ability of a foreign-owned financial service provider established in your country to compete to supply financial services on terms and conditions that are no less favourable than those applied to financial service providers of your country in like circumstances (including the opportunity to participate in any self-regulatory body, securities or futures exchange or market, clearing agency or other organization or association).

Are there any restrictions on the temporary entry of the personnel of a financial services provider that is establishing or has established a commercial presence in your country?

Answer

The current financial services sector is free from any restrictions concerning both the foreign and domestic credit and financial institutions and insurance companies. All requirements are already described in WT/L/59. There are no restrictive measures planned in the near future, that would apply to foreign institutions seeking to provide financial services.

Non-resident financial service provider can provide in Estonia advisory and other auxiliary financial services, the provision and transfer of financial information and financial data processing without any restrictions.

The residents of Estonia may purchase financial services in other countries. Credit institution can establish a representation office or sub-unit in other country, but it should present an appropriate application with requested data to the Bank of Estonia.

To establish a representation office or sub-unit of a credit institution of a foreign country in Estonia, the applicable credit institution should submit, via its domestic banking supervisory body, to the Bank of Estonia a relevant application with the required data.

Estonia confirms that foreign credit or financial institutions or insurance companies are not treated less favourable than domestic providers of financial services, except some special requirements concerning foreign-owned insurance companies, which are indicated in WT/L/59.

All foreign personnel of a financial services provider need a residential and working permit to establish a commercial presence in Estonia.