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of the Kyrgyz Republic**

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ACCESSION OF THE KYRGYZ REPUBLIC

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

Additional questions submitted by Members and the replies thereto provided by the authorities of the Kyrgyz Republic are reproduced hereunder.

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II. ECONOMY, POLICIES AND FOREIGN TRADE

II.2 Economic Policies

The Kyrgyz Republic has liberalized most of its international trade policies since 1994. We seek confirmation in the accession protocol that the former state monopoly in foreign trade has been abolished and that no restrictions exist on the right of foreign and domestic individuals and enterprises to import and export goods and services within the customs territory of the Kyrgyz Republic, except as provided for in WTO Agreements. We seek further confirmation that individuals and firms are not restricted in their ability to import or export based on their registered scope of business, and the criteria for any type of business or trade registration or licensing of companies in the Kyrgyz Republic are generally applicable and published in the an Official Gazette.

II.2(b) Monetary and fiscal policy

Privatization

Question 1.

The response to question 7 in WT/ACC/KGZ/5/Add.2 indicates that the current privatization plan calls for the Government to retain a 70 per cent ownership interest in a broad spectrum of services, including hotels, tourism, and health care providers.

- Will this requirement change in future privatization programs?
- What management role will Government play given this controlling ownership role?
- Will these requirements affect the commitments that the Kyrgyz Republic is prepared to make concerning the right of foreign service providers to operate in these sectors without Government equity participation?

Answer:

Article 6 of the Resolution on Concept of Destatization and Privatization of Resort, Recreation, and Tourism Objects; Article 5 of the Resolution on Concept of Destatization and Privatization of Sporting and Physical Training Objects; and Article 7 of the Resolution on Concept of Destatization and Privatization of Cultural Objects permit the State to retain, on a case-by case basis, up to 70 per cent ownership interest in objects connected with resort, recreation, sporting, physical training, cultural, and tourism services. Although the Government may have controlling ownership role, the Government will not play any management role.

Allowing the State to retain up to 70 per cent ownership will not affect the commitments that the Kyrgyz Republic is prepared to make concerning the right of foreign service providers to operate in these sectors without Government equity participation. Foreign service providers may establish and operate today in these sectors in the Kyrgyz Republic without government participation.

We would appreciate confirmation by the Kyrgyz Republic in its protocol of accession that it agrees that it is important to ensure full transparency and to keep WTO members informed of its progress in the reform of its transforming economic and trade regime, and in the progress of its various privatization programs.

We seek a commitment from the Kyrgyz Republic to provide annually to WTO members information on developments in its program of privatization along the lines of that being provided

to the Working Party during the accession progress, and on other issues related to its economic reforms as relevant to its obligations under the WTO.

II.2(e) Competition policies

Question 2.

According to WT/ACC/KGZ/3 a "natural monopoly" is defined to include any entity for which the creation of competition is impossible. However, the term "natural monopoly" also includes a variety of industries that are not normally considered as "natural", including enterprises for which the State has actually created a monopoly by law. The Anti-Monopoly Department (AMD) regulates the prices charged by natural monopolies.

- (a) **Does the label "natural monopoly" indicate any restraints on market entry by other firms? Will foreign funded enterprises be able to invest in sectors dominated by "natural" monopolies?**

Answer:

The label "natural monopoly" does not indicate any restraints on market entry by other firms. Foreign funded enterprises are currently able to invest in sectors dominated by "natural" monopolies in the Kyrgyz Republic.

- (b) **According to the Memorandum, enterprises engaged in fertilizer production and the mining and processing of mineral resources are specifically mentioned as natural monopolies. However, the response to question 1 of WT/ACC/KGZ/5 does not appear to include any "natural monopolies" engaged in these activities. Please explain this apparent contradiction.**

Answer:

Regulation No. 152 of the Anti-Monopoly Department of 29 November 1993 defines the sectors in which entities may be considered natural monopolies. These sectors include (please see Part IV.2.e of WT/ACC/KGZ/3) fertilizer production and the mining and processing of mineral resources. The Anti-Monopoly Department, however, has determined that only the seven companies, listed in the response to question 1 of WT/ACC/KGZ/3, are natural monopolies.

The draft natural monopoly law limits the sectors which may be considered natural monopolies to the following: oil and gas pipelines; electric and post telecommunications; power generation, transmission and distribution; railroads; air navigation; airports; ports; water supply systems; and mining and processing of precious metals and stones.

- (c) **The response to question 1 of WT/ACC/KGZ/5 states that Kyrgyzalco (alcohol and alcohol products, other than beer) and Kyrgyztamekesi (tobacco fermentation, manufacture of tobacco products, sale of fermented tobacco), are included as natural monopolies. Presumably these enterprises were created by the State as monopolies by law. What are the domestic market shares for these two enterprises? What was the rationale for the creation of monopolies for alcohol and tobacco production and distribution? Please describe these enterprises in the form of a response to the Questionnaire on State-trading. Please provide a translated copy of the current price schedule for the products sold by these two enterprises.**

Answer:

A. Kyrgyzalco

Kyrgyzalco is a State Joint Stock Company established by a Presidential Decree in January 1996. The main purposes for the creation of Kyrgyzalco are consumer protection and revenue generation. Under Kyrgyzalco, there are currently 14 joint stock companies. Only two of these companies have State shares. The other companies are private. Foreign investors may purchase shares in these companies. Currently, only one of the 14 companies under Kyrgyzalco is with foreign participation.

Each of these companies is independent from the other and has its own financial statements. Kyrgyzalco does not interfere in the management and the operations of these companies and does not influence prices of products produced by these companies. Any company may apply to become under the structure of Kyrgyzalco. The role of Kyrgyzalco is to conclude contracts with companies wishing to be under its structure, issue licenses to these companies, and monitor that these companies comply with the terms of the contract. The contract includes information regarding the volume of import, production and sale of alcoholic products. The contracts are usually issued for one year and are subject to renewal. Licenses are issued on the basis of the contract and should not exceed the terms of the contract. Kyrgyzalco itself is not currently engaged in production. Kyrgyzalco may import and export alcohol and alcoholic products on behalf of the companies under its structure.

In the Kyrgyz Republic, licenses are currently required to import, export, and produce alcohol and alcoholic products. Kyrgyzalco is the only body in the Kyrgyz Republic authorized to issue these licenses. Only companies under the structure of Kyrgyzalco are allowed to obtain licenses for importing and exporting ethyl alcohol and for producing alcohol and alcoholic products.¹ Kyrgyzalco is allowed to perform all activities which it licenses.

Companies under Kyrgyzalco are mainly engaged in the production of alcoholic products including wine, liqueur, vodka, and brandy. All 14 companies currently have licenses to produce and export these alcoholic products.

Any entity (including entities outside the structure of Kyrgyzalco) may obtain a license from Kyrgyzalco to import and export alcoholic products (except ethyl alcohol). There is competition in the trade and production of alcoholic products between the 14 companies under the structure of Kyrgyzalco. In addition, there is competition in the trade of alcoholic products between private entities and companies under the structure of Kyrgyzalco. The domestic market share of companies under the structure of Kyrgyzalco in the sale of alcoholic products was approximately 53 per cent in 1996.

Wholesale prices of alcoholic products are established separately by each of the enterprises under Kyrgyzalco. Enterprises under Kyrgyzalco must declare their prices to the Anti-Monopoly Department under the Ministry of Finance and are subject to profitability control by the Anti-Monopoly Department. Profit may not exceed 20 per cent.

The wholesale price schedule, as of 1 May 1997, for products sold by enterprises under Kyrgyzalco is as follows:

¹The production of beer is excepted. Other private companies are allowed to obtain licenses to produce beer.

Name of product	Volume	Price (Som)
Vodka "Extra"	1.75 l	67.50
	1.0 l	36.50
	0.75 l	30.0
	0.375 l	17.50
Vodka "Kara-Balta"	1.75 l	68.0
	1.0 l	37.50
	0.75 l	31.0
	0.375 l	18.0
Vodka "Kara-Balta" - as souvenir	0.75 l	57.0
Vodka "President"	0.75 l	41.0
Vine "Kagor"	1.0 l	57.0
Vodka "Russian"	0.5 l	16.50
Vodka "Sary-Ozon"	1.0 l	35.50
Vodka Banker		30.0
Vodkas: "Stolichnaja", "Pchenichnaja", "Posolskaja"	0.5 l cork up	17.90
	0.38 l twisted	14.0
	0.25 l twisted	10.50
	0.75 l twisted	30.0
Vodkas: "Bishkek", "Kyrgyz Aragy"	0.5 l cork up	17.50
	0.5 l twisted	18.50
Balsam "Arashan"	0.25 l twisted	26.0
	0.38 l twisted	37.50
	0.5 l twisted	49.30
	0.5 l ceramic	51.0
Infusion "Starka"	0.5 l cork up	18.0
	0.5 l twisted	19.10

A response to the questionnaire on State-trading regarding Kyrgyzalco is provided in Attachment A (to be circulated in an addendum).

Finally, there are no current plans to eliminate Kyrgyzalco and take away its authority to license the trade and production of alcohol and alcoholic products.

B. Kyrgyztamekesi

Kyrgyztamekesi is a State Joint Stock Company established by Presidential Decree in May 1996. There are seven companies under its structure (six are joint stock companies and one is a state enterprise). The state share in these companies is as follows: 37 per cent; 40 per cent; 65 per cent; 66 per cent; 70 per cent; 71 per cent; and 100 per cent. Foreign participation is permitted. Currently, no foreign investors have shares in any of these seven companies. Each of these companies is independent from the other and has its own financial statements. The directors of each of these seven companies are members of the Board of Directors of Kyrgyztamekesi.

The main purpose of establishing Kyrgyztamekesi are (1) state regulations of tobacco and tobacco products and (2) revenue generation. These seven companies are engaged in tobacco fermentation, production of tobacco products, sale of fermented tobacco, export of fermented tobacco, and import of auxiliary materials (e.g. filter) for production of tobacco products (for its own use). Kyrgyztamekesi has the exclusive authority to issue licenses for (1) production of tobacco products and fermentation of tobacco leaves and (2) import/export license for fermented tobacco.

The domestic market share of Kyrgyztamekesi is approximately 96 per cent for tobacco products in 1996. Licenses are not required for the import/export of tobacco products. Any person may obtain a license to engage in the production of tobacco products and fermented tobacco and import/export of fermented tobacco. Kyrgyztamekesi does not have any exclusive rights to export fermented tobacco.

Kyrgyztamekesi must declare its prices to the Anti-Monopoly Department under the Ministry of Finance and is subject to profitability control by the Anti-Monopoly Department. Its profit may not exceed 20 per cent.

The wholesale price schedule, as of 1 May 1997, for products sold by Kyrgyztamekesi is as follows:

- | | |
|------------------------|---|
| - Cigarettes "Polyot" | = > som 51.47 per 1,000 units |
| - Pipe Tobacco "Dunza" | = > som 46.10 per 1 kg (inside the Kyrgyz republic) |
| - Fermented tobacco | - negotiable |

A response to the questionnaire on State-trading regarding Kyrgyztamekesi is provided in Attachment A (to be circulated in an addendum).

- (d) **According to the response to question 1 of WT/ACC/KGZ/5, Kyrgyzgas is a natural monopoly for natural and liquefied natural gas. Does Kyrgyzgas have a monopoly on the exploration and production of natural gas in the Kyrgyz Republic? Does it have a monopoly on the exportation of natural gas? Please describe Kyrgyzgas in the form of a response to the Questionnaire on State-trading. Does Kyrgyzgas provide natural gas to all domestic consumers at the same rates? Are preferential prices for natural gas available to domestic industries engaged in import substitution or export production? Please provide a translated copy of the current price schedule for the natural gas sold by Kyrgyzgas.**

Answer:

First, please note that Kyrgyzgas and Kyrgyzgasmunaizat merged according to President Decree No. 30 of 29 January 1997. The new company is a State Joint Stock Company called Kyrgyzgasmunaizat and is listed as a natural monopoly and as a permitted monopoly.

Kyrgyzgasmunaizat is engaged in the import, storage, and sale of oil products, natural gas, and liquefied natural gas; and the operations of the only natural gas pipeline in the Kyrgyz Republic used only for import.

Kyrgyzgasmunaizat is not engaged in the exploration, production, and export of natural gas and oil. Note, in addition, that there are no barriers to entry. Foreign and domestic investors may obtain licenses to explore and produce natural gas and oil.

Any person may import natural gas and liquefied natural gas. Kyrgyzgasmunaizat imports approximately 50 per cent of the natural gas consumed in the Kyrgyz Republic. The share of Kyrgyzgasmunaizat in the import of liquefied natural gas is approximately 35 per cent (1st quarter 1997).

Any person may import and sell oil products in the Kyrgyz Republic. There is no need to have a license to import oil products. Kyrgyzgasmunaizat's domestic market share in the sale of oil products is approximately 2 per cent in 1996.

In addition, Kyrgyzgasmunaizat provides gas pipeline transport services to other importers of natural gas for their own use.

A response to the questionnaire on State-trading regarding Kyrgyzgasmunaizat is provided in Attachment A (to be circulated in an addendum).

There are two rates for the natural gas provided by Kyrgyzgasmunaizat: a rate for industry and a rate for household and others. The industry rate is higher. All industries are charged the same rate and there are no preferential prices for natural gas available to domestic industries engaged in import substitution or export production.

Kyrgyzgasmunaizat provides oil products to all domestic consumers at the same rates. There are no preferential prices for oil products available to domestic industries engaged in import substitution or export production. Kyrgyzgasmunaizat does not provide oil products to domestic industries at preferential rates for use as feedstock.

The current price schedule for the natural and liquefied gas, gasoline, and diesel fuel sold by Kyrgyzgasmunaizat is as follows:

- the wholesale price of the natural gas for all industries is som 1,042 (including VAT) for 1,000 Cubic Meters;
- the wholesale price of the natural gas for household and others is som 846 (without VAT) for 1,000 Cubic Meters. Households do not pay VAT on natural gas;
- the wholesale price of liquefied gas is som 4,600 for 1 ton (including VAT);
- the wholesale price of gasoline (76) is som 4.50 per 1 litre;
- the wholesale price of diesel fuel is som 3.50 per 1 litre.

(d) Do any of these "natural" monopolies have a monopoly on foreign trade in addition to service and production monopolies? If so, how is it administered?

Answer:

The following natural monopolies have a monopoly on foreign trade:

- (i) Kyrgyz Energy Holding currently has 100 per cent market share for import/export electric power energy;
- (ii) Kyrgyzalco and companies under its structure have exclusive rights to import ethyl spirit;
- (iii) Kyrgyztamekesi has a monopoly in the export of pipe tobacco.

For administration of State-trading by these companies, see the response to the State-trading questionnaires provided in Attachment A (to be circulated in an addendum).

Question 3.

According to the Memorandum, a "permitted monopoly" has a dominant share (35 per cent) of the market for a product needed by the public and under existing market conditions cannot be eliminated. An entity identified by the AMD as a permitted monopoly must declare its prices, have its prices approved by AMD and the prices must be published in an AMD register.

- (a) Does the label "permitted monopoly" indicate any restraints on market entry by other firms? Will foreign funded enterprises be able to invest in sectors dominated by "permitted" monopolies?

Answer:

The label "permitted monopoly" does not indicate any restraints on market entry by other firms. Foreign funded enterprises are able to invest in sectors dominated by "permitted" monopolies.

- (b) According to the response to question 12 of WT/ACC/KGZ/5/Add.2, SJSC Kyrghymunaizat (oil company) is a permitted monopoly. Does Kyrghymunaizat have a monopoly on the exploration and production of oil in the Kyrgyz Republic? Does it have a monopoly on the exportation of crude or refined oil? Please describe Kyrghymunaizat in the form of a response to the Questionnaire on State-Trading. Does Kyrghymunaizat provide oil and related products to all domestic consumers at the same rates? Are preferential prices for oil and related products available to domestic industries engaged in import substitution or export production? Does Kyrghymunaizat provide oil and related products to domestic industries at preferential rates for use as feedstock? Please provide a translated copy of the current price schedule for oil and related products sold by Kyrghymunaizat.

Answer:

Please see the response to Question 2(d).

- (c) Please describe Production Association (coal) and Kyrghyzaltyn (gold), in the form of a response to the Questionnaire on State-Trading.

Answer:

Responses to the questionnaire on State-Trading regarding KyrghyzAltyn (gold) and Production Association Kyrghyzkomur (coal) are provided in Attachment A (to be circulated in an addendum).

Price Controls

The Kyrgyz Republic reports that most price controls have been eliminated, except for those applied to "natural" monopolies. We seek enhanced transparency in this area in the accession protocol and that goods and services subject to state price controls notified in the accession process have been published in an Official Gazette and any future changes from those notified will also be published.

The Kyrgyz Republic should state in the accession protocol that all prices for goods and services in every sector that are not clearly notified as under control are determined by market forces. All price controls on products and services still in effect, at the central and sub-central level, should be listed by HS number. The controls in place should be described, and the authority to apply these and any other such controls clearly cited, including the reasons for the existing controls, and the conditions under which Kyrgyzstan expects to use such controls in the future.

Now and in the future, the Kyrgyz Republic should commit that its price controls will be applied in a WTO-consistent fashion, taking account of the interests of exporting WTO members as provided for in Article III:9 of the GATT 1994.

In this regard, the Kyrgyz Republic should also eliminate any import reference prices in place and should commit that such measures will not be reintroduced after accession, except in accordance with WTO Agreements.

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

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

Question 4.

The response to question 14 states that "the law does not bind the Parliament or the Government to publish drafts of new, revised or amended laws for public comment".

To the extent that this covers laws that address standards matters, it would not appear to conform to the requirements of the Agreement on Technical Barriers to Trade, which requires that draft standards be published for comment prior to implementation.

Could the Kyrgyz Republic please address this issue?

Answer:

The Kyrgyz Republic will conform upon accession to Article 2.9, Article 10, and Annex 3 (specifically items J, L, M, O and P) of the Technical Barriers to Trade agreement which require that:

- notification at an early stage regarding proposed standards and technical regulations;
- providing a copy of draft standards or technical regulation to interested parties within the Kyrgyz Republic and other members of the WTO upon request; and
- allowing a reasonable time for comments by interested parties.

In addition, GATT Article X provides that all laws and regulations affecting trade be published and available to traders in advance of their implementation.

We seek a commitment that from the date of accession, all laws, regulations, rulings, decrees or other measures related to trade will be published in the Official Gazette for public review at least two weeks prior to implementation, unless a longer period is specified under the relevant WTO Agreement.

We also seek confirmation from the Kyrgyz Republic that, in accordance with Article X of the GATT 1994, such laws, regulations etc., will be accessible to traders prior to implementation, and that no law, rule, etc. related to trade will become effective prior to such publication.

IV. POLICIES AFFECTING TRADE IN GOODS

IV.1 Import Regulation

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

Question 5.

According to the response to question 15 of WT/ACC/KGZ/5, the Kyrgyz Republic does not have its own tariff nomenclature, but instead uses the tariff nomenclature in force in Russia. According to the responses to question 17-19 of WT/ACC/KGZ/5/Add.2, the new tariff schedule, which is currently before the Cabinet of Ministers, will retain structural and coding differences between the existing Russia-based nomenclature and the International Harmonized System.

Uniformity in the description and scope of the thousands of product categories is essential in order to establish a common basis upon which to conduct tariff negotiations. The International Convention on the Harmonized Description and Coding System (Convention), drafted by World Customs Organization, and the General Rules of Interpretation and Section and Chapter Notes, contain principles to be applied to determine the correct classification of products. The Kyrgyz Republic should implement HS tariff nomenclature that is consistent with the Convention and General Rules of Interpretation as of the date of WTO accession.

- (a) Please identify the structural and coding differences that exist between the existing import nomenclature and the rules provided by the World Customs Organization in order to facilitate negotiations on market access.**

Answer:

The Kyrgyz Republic currently uses HS 96 as its tariff nomenclature. There are currently no differences with the general rules of interpretation provided by the World Customs Organization.

- (b) Does the Kyrgyz Republic intend to accede to the World Custom Organization?**

Answer:

Yes. The Kyrgyz Republic intends to accede to the World Customs Organization.

- (c) Since the Russian tariff nomenclature was derived from the European Union tariff system, the Kyrgyz Republic is currently using a form of the HS System. At the six-digit tariff level, is the nomenclature being used in the Kyrgyz Republic based upon the 1995 EU HS schedule or the 1996 EU HS schedule?**

Answer:

The existing tariff nomenclature is the same as the current Russian nomenclature which is based on HS 96. At the six-digit tariff level, the nomenclature being used in the Kyrgyz Republic is based upon HS 96.

- (d) Please identify any differences between the Kyrgyz Republic tariff nomenclature and the Russian tariff nomenclature. For example, are there any different tariff line break-outs at the eight-digit level?**

Answer:

There are no differences.

- (e) **A draft of the Kyrgyz Republic's proposed tariff schedule was provided in Annex 10 of WT/ACC/KGZ/3. Is this draft identical to the schedule awaiting consideration by the Cabinet of Ministers? If not, please provide a more detailed version of the schedule.**

Answer:

The proposed tariff schedule which was provided in Annex 10 of WT/ACC/KGZ/3 is no longer valid. The Kyrgyz Republic is entering negotiations with the WTO Working Party on the basis of the tariff rates in effect in the Kyrgyz Republic on 1 June 1997 (flat 10 per cent mentioned in Section IV.1.b of WT/ACC/KGZ/3).

We expect that the Kyrgyz Republic will negotiate and establish its goods market access schedule in the HS 96 nomenclature now being adopted by WTO members. We can see no utility in establishing the Kyrgyz Republic's WTO schedules in an obsolete nomenclature that will require further negotiation to convert to HS 96 in the future.

IV.1(c) Tariff quotas, tariff exemptions

Question 6.

According to the response to questions 20, 21 and 31 of WT/ACC/KGZ/5/Add.2, domestic business enterprises must apply to the Ministry of Industry and Foreign Trade to receive tariff exemptions for imports of certain items which are used for the production of final products.

- (a) **Are applications for these tariff exemptions automatically approved by the Ministry of Industry and Foreign Trade? If not, what criteria, other than the type of product and quantity to be imported, are considered in determining whether or not to grant the request? Does the Ministry of Industry and Foreign Trade consider import substitution or export performance as factors in approving these requests?**

Answer:

Applications for these tariff exemptions are not automatically approved by the Ministry of Industry and Foreign Trade. The main criteria is that items will be used in the production of final products. The Ministry of Industry and Foreign Trade does not consider import substitution or export performance as factors in approving these requests.

- (b) **Are these tariffs exemptions granted to all imports in the tariff line categories affected, or are they granted only on imports by the petitioning enterprise?**

Answer:

These exemptions are granted to the petitioning enterprise for the specific items applied for.

IV.1(h) Customs valuation

Question 7.

According to the information provided in Annex 4 of WT/ACC/KGZ/3, the existing customs valuation regime in Kyrgyz Republic is incompatible with the WTO Agreement on Customs Valuation (Agreement). For example, the current law does not contain the prohibitions of Article 7.2 of the Agreement and provides for the use of reference prices. However, it appears from the

responses, to questions 34-38 of WT/ACC/KGZ/5/Add.2, that the Kyrgyz Republic is committed to adopting a new Customs law which will fully implement the Agreement, effective from the date of accession. According to the response to question 37, the draft Customs Code was attached to WT/ACC/KGZ/5/Add.2 as Annex A-4.

Is the draft "Customs Code" different from the draft "Customs Tariff Law" provided in the annexes to WT/ACC/KGZ/3? If not, what is the difference in their coverage and why are both being pursued?

If so, will the Customs Code contain specific provisions implementing WTO requirements, e.g., for customs valuation, or will it be only broadly indicative like the draft Customs Tariff Law already provided?

Does the Kyrgyz Republic intend to elaborate its laws through regulations to meet WTO requirements?

Answer:

All relevant provisions in the proposed customs tariff law will be reflected in the draft Customs Code. The existing Customs Tariff Law will be invalid as soon as the proposed Customs Code, anti-dumping law, safeguard law, and countervailing law are all enacted. A customs tariff law will be adopted annually by the Parliament reflecting only the customs tariff rates for imported/exported goods.

As much as possible, the Customs Code will contain specific provisions implementing WTO requirements. Currently, further amendments are introduced to the draft Customs Code to reflect that for Customs Valuation and Rules of Origin. Specific laws will be enacted to deal with anti-dumping, countervailing, and safeguards measures.

As much as possible, the Kyrgyz Republic will adopt laws rather than regulations to meet WTO requirements.

We have not yet had an opportunity to review the draft Custom Code, but we will provide comments on its provisions once we are sure we have it.

IV.1(i) Other customs formalities

Concerning the current customs fee of 0.15 per cent:

We seek elaboration by the Kyrgyz Republic prior to the next Working Party of the measures it intends to take to bring its *ad valorem* customs processing fees into conformity with Article VIII of the GATT 1994. The Kyrgyz Republic should describe in detail the nature of the changes it intends to make. We seek elimination of the fee, or completion of a revised fee structure prior to accession to the WTO.

Question 8.

According to the response to question 40 of WT/ACC/KGZ/5/Add.2, the fee for a phytosanitary certificate is som 76 - 166, depending on the type of product. If the total weight of the product is less than 300 kg, the required payment will be 10 per cent of the otherwise applicable amount. If the weight is from 300 - 1000 kg, the required payment will be 50 per cent of the otherwise applicable amount. Subparagraph 1.(f) of Annex C of the Agreement on the Application of Sanitary

and Phytosanitary Measures requires that any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service.

- (a) Are domestic products required to have a sanitary certificate, and if so, are the inspection fees identical to those applied to imports?**

Answer:

Domestic products are required to have a sanitary certificate. The inspection fees are the same for imports and domestic products.

- (b) What is meant by the "otherwise applicable amount?" Is it the som 76 - 166 fee? Why does the applicable percentage increase from 10 per cent to 50 per cent for products heavier than 300 kg? What is the applicable percentage for products weighing more than 1000 kg? What is meant by the term "products?" Is the applicable rate based upon the weight of the shipment? If so, how can the fee be considered to be related to the cost of the service?**

Answer:

Please note first that the fee has been recently changed from som 76 - 166 to som 93 - 216. This fee is amended on an annual basis to take into account inflation.

The "otherwise applicable amount" means som 76 - 166 (currently som 93 - 216). This amount reflects the cost of services rendered regardless of the weight of the shipment. However, the Kyrgyz Republic provides preferences for low weight shipments: 10 per cent for shipment less than 500 kg and 50 per cent for shipment between 500 (recently changed from 300 kg to 500 kg) and 1000 kg.

- (c) According to the response to question 76 of WT/ACC/KGZ/5/Add.2, the Kyrgyz Republic charges an *ad valorem* fee for issuance of veterinary certificate. How does the Kyrgyz Republic limit the *ad valorem* fees to an amount no higher than the actual cost of the service provided?**

Answer:

The fee is not related to cost of service and will be adjusted upon accession to reflect the cost of service rendered.

The fee structure for the Kyrgyz Republic's sanitary and veterinary certification process, while adjusted progressively to avoid becoming burdensome to high value shipments, does not appear to be related to the actual cost of inspecting and certifying the goods. In addition, we need to better understand how such certification is administered to domestic like articles. We seek additional information and suggestions from the Kyrgyz Republic as to how it intends to address both of these issues.

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

Question 9.

According to the Memorandum, the Kyrgyz Republic is currently excluding imports from CIS states from its value-added tax (VAT), but is imposing VAT on imports from all other countries. Article I of the GATT 1994 provides most-favoured-nation treatment to all matters included in

paragraphs 2 and 4 of GATT Article III (which includes internal taxation). It appears that the Kyrgyz Republic's application of indirect taxes to imported goods is in conflict with WTO provisions.

- (a) **Please indicate how the Kyrgyz Republic will amend its VAT law to bring it into conformity with WTO requirements prior to accession. Specifically, is draft legislation in preparation to alter this practice?**

Answer:

The Kyrgyz Republic supports the principles of bringing in line with international practices its system of collecting VAT. The Kyrgyz Republic is currently in the process of negotiating on a bilateral basis with various CIS countries to ensure that VAT is applied at imports rather than at the point of production. A bilateral agreement has been reached with Kazakhstan. Currently, Kazakhstan is treated as non-CIS countries with respect to the application of VAT. In addition, a similar agreement has been initialled with Ukraine and the first round of negotiations has been concluded with Uzbekistan.

This issue is also still being addressed by the Inter-State Council and Integration Committee.

- (b) **Is the VAT rate assessed on the invoice value or on the duty-paid value of imported goods?**

Answer:

The VAT is assessed on the customs value of imported goods.

- (c) **Please elaborate on the response to question 45 in WT/ACC/KGZ/5/Add.2. The current response is not clear as to whether the new law will, or will not, provide for tariff exemptions for goods under excise tax.**

Answer:

For reasons of economic security, as well as the protection of domestic producers and establishing equal competition environment for domestically produced goods, the Kyrgyz Republic may, in exclusive cases, impose customs duties for goods subject to excise taxes.

Question 10.

According to the response to question 47 of WT/ACC/KGZ/5/Add.2, the Kyrgyz Republic states that there are different methods of calculation of the tax for imported and domestic goods. According to that response, "the necessity for using two methods for calculating excise taxes is caused by the fact that imported goods often have prices that are higher than those of similar goods. In this respect, equal absolute rates of excise tax for imported and domestic products would mean relatively higher rates for domestic products. Excise tax rates in percentages are higher for almost all domestic goods in comparison with rates for imported goods".

The response does not address the direct contradiction of current Kyrgyz practice with WTO provisions. If equality of *ad valorem* tax rates is the goal of the Kyrgyz Republic, it should establish *ad valorem* rates. WTO absolutely forbids the sort of tax differentials provided for in Kyrgyzstan's current laws.

The table provided in the response to question 49 of WT/ACC/KGZ/5/Add.2, which reflects the excise tax rates approved by the Legislative Assembly, appears to continue these differentials for

a number of domestic and imported products. The proposed excise tax law imposes higher *ad valorem* excise tax rates on imported gold, platinum and silver jewellery; and firearms and gas weapons than on such domestically - produced products. In addition, imports of certain items will be subject to excise taxes (all *ad valorem*, except the fuels), but such domestically - produced products will not be subject to excise taxes. These products include other tobacco - containing items, including fermented tobacco (12 per cent); processed and raw fur hides (10 per cent); wearing apparel made of natural fur (10 per cent); coats, short-coats, jackets and capes trimmed with fur (10 per cent); clothing made of natural leather (10 per cent); and crystalware (30 per cent) and carpets and rugs (35 per cent); diesel fuel (US\$45 per ton); and aircraft fuel (US\$45 per ton).

We are very disappointed that the Kyrgyz Republic has chosen to perpetuate this WTO-inconsistent practice. If this approach is maintained, it will delay the accession.

(a) Please explain why the discriminatory rates have been maintained in the new law?

Answer:

The Kyrgyz Republic will reconsider its decision regarding excise taxes in light of above comments. The Kyrgyz Republic is committed to establish, upon accession to the WTO, one equal excise tax regime for imported and domestically produced goods. Appropriate legislation will be enacted at that time.

(b) How does the Government of the Kyrgyz Republic intend to bring its excise tax regime into compliance with GATT Article III?

Answer:

The Kyrgyz Republic plans to establish, upon accession to the WTO, one equal excise tax regime for imported and domestically produced goods. Appropriate legislation will be enacted at that time.

The Kyrgyz Republic should indicate how it intends to ensure that domestic taxes are levied on imports in accordance with Article III of the GATT 1994, and should make the necessary adjustments prior to accession.

IV.1(m)(n) Anti-dumping regime, countervailing duty regime

Question 11.

We are concerned that the information and documentation supplied by the Kyrgyz Republic with respect to its existing and proposed customs tariff laws do not provide sufficient detail to reassure WTO Members that the Kyrgyz authorities would apply anti-dumping and countervailing measures in a manner consistent with WTO obligations.

Could the Kyrgyz Republic explain in detail the main differences of both substance and intent between the provisions of Articles 18-21 of the 1994 law and Articles 7-11 of the proposed law?

Are there implementing regulations or other transparent practice and procedures used by Kyrgyz authorities to interpret and apply the provisions of its law(s)?

Does Kyrgyz law provide opportunities for judicial, arbitral or administrative review of the decisions of its anti-dumping/countervailing duty authorities?

Law of 16 April 1994 No. 1501-XII

With respect to anti-dumping duties (Article 19), please provide the definition or meaning of: (i) "competitive wholesale price of the dumped good in the country of export;" and (ii) "average market price in the Kyrgyz Republic of the like goods."

Please explain how these terms relate to the terms "normal value" and "export price" as used in the Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

Does "average market price in the Kyrgyz Republic" include the price of domestically-produced goods? How is this "average" derived?

Answer:

All relevant provisions in the proposed customs tariff law will be reflected in the draft Customs Code. A customs tariff law will be adopted annually by the Parliament reflecting only the customs tariff rates for imported/exported goods.

The new Customs Code will simply have references to other legislation which will address dumping, countervailing, and safeguard measures. Dumping, countervailing, and safeguard measures will be governed by new laws currently being drafted in conformity with respective WTO agreements.

The draft law on dumping, countervailing, and safeguard measures will be made available to the Working Party during summer 1997 for comments.

Proposed customs tariff law**Question 12.**

What legal provisions or practices will be followed by the Kyrgyz authorities to ensure that investigations are initiated only on the basis of sufficient evidence of dumping/subsidization, injury and causation and of sufficient industry support for the complaint? What standards or tests will be employed to satisfy those requirements?

Will Kyrgyz law permit dumping to be determined on the basis of sales made at prices below the cost of production, plus a reasonable profit? If so, under what circumstances will it be permitted, where is this standard expressed in the proposed law, and how would the cost of production and reasonable profit level be determined?

Will Kyrgyz anti-dumping law permit or require the adjustment of normal value or export prices to account for substantiated differences in the conditions or terms of sale which would affect price comparability? Where is this addressed in either the proposed law, or in proposed regulations or procedural practice?

How will Kyrgyz law define the term "subsidy", and will only those subsidies which are "specific" to a firm, industry or group thereof be countervailable under the law? Will Kyrgyz law specifically require that there be a "financial contribution", or "income or price support" in the sense of GATT Article XVI, and that a benefit be conferred?

How will material injury or the threat of material injury be established? What guidelines, standards or principles will be used to facilitate the authorities' investigation of injury and causation,

particularly *vis-à-vis* the role of other factors or conditions which may be causing the domestic industry some harm or hardship?

In practical terms, what rights will foreign exporters have to defend their interests in any such investigations? For example:

Will Kyrgyz law provide the opportunity for a public hearing or another venue in which oral arguments might be made and information provided?

Will the Kyrgyz authorities be required to provide written notice of their determinations, together with the underlying reasoning and analysis of the facts and legal aspects of the proceeding?

The proposed law speaks about the application of duties, but no mention is made of the possibility of price undertakings in lieu of imposing duties. Will this option be provided under Kyrgyz law and, if so, under what terms and circumstances?

Article 11 indicates that duties shall be assessed on the basis of the margin of price discrimination, the rate of subsidization and "caused losses." Does this mean that the Kyrgyz Republic will attempt to quantify injury in determining the amount of duty to apply? If so, how would this be accomplished, and are these various amounts (dumping margin, subsidy rate, injury margin) cumulated to fix the duty rate, or is some other method used?

We seek confirmation from the Kyrgyz Republic that from the date of accession, its legislation providing for the application of safeguard or other import measures to protect domestic industries from fair or unfair trade (e.g., anti-dumping and countervailing duty measures) will conform to the provisions of the WTO Agreements on Safeguards, on Anti-Dumping and on Subsidies and Countervailing Measures.

Answer:

All relevant provisions in the proposed customs tariff law will be reflected in the draft Customs Code. A customs tariff law will be adopted annually by the Parliament reflecting only the customs tariff rates for imported/exported goods.

The new Customs Code will simply have references to other legislation which will address dumping, countervailing, and safeguard measures. Dumping, countervailing, and safeguard measures will be governed by new laws currently being drafted in conformity with respective WTO Agreements.

The draft law on dumping, countervailing, and safeguard measures will be made available to the Working Party during summer 1997 for comments.

IV.1(o) Special purpose duties

Question 13.

Concerning the responses to questions 53-56 of WT/ACC/KGZ/5/Add.2:

How does the Kyrgyz Republic intend to reconcile the draft provisions of its new Customs Tariff Law retaining "special purpose duties" and any additional legislation addressing anti-dumping and countervailing duty issues under WTO provisions? Will the "special purpose duties" authority be retained after the new legislation is in place? If so, why?

More broadly, what purpose will the "special purpose duties" be put to under the new Customs Tariff Law that is separate and distinct from anti-dumping/countervailing duties or safeguard provisions implemented in separate legislation?

Answer:

Special purpose duties (safeguard, warning measures, unfair competition, and retaliation) are authorized in the existing Customs Tariff Law. The proposed Customs Tariff Law authorizes also the same special purpose duties except warning measures.

All relevant provisions in the proposed customs tariff law will be reflected in the draft Customs Code. A customs tariff law will be adopted annually by the Parliament reflecting only the customs tariff rates for imported/exported goods.

The new Customs Code will simply have references to other legislation which will address dumping, countervailing, and safeguard measures.

Dumping, countervailing, and safeguard measures will be governed by three new laws currently being drafted in conformity with respective WTO agreements. Safeguard duties will be imposed under the conditions established in Article XIX of GATT and the Agreement on Safeguards. Warning measures will not be imposed in the future. Unfair competition duties will be addressed through the use of anti-dumping and countervailing duties. Retaliation duties will be addressed in the Customs Code and used for retaliation purposes in circumstances foreseen in Article 22 (Compensation and Suspension of Concessions) of the Understanding on Rules and Procedures Concerning the Settlement of Disputes.

IV.2 Export Regulation

IV.2(d) Export licensing procedures

Question 14.

Please describe the administrative procedures that apply for the issuance of a license to be an authorized purchaser or seller of fragments and waste of non-ferrous and ferrous metals and their industrial fragments. Are these licenses issued and renewed automatically? Who approves these license applications? What criteria are considered in deciding whether or not to authorize an enterprise to engage in these activities? Are foreign enterprises eligible to be authorized purchasers and sellers of these products? Does the Government of the the Kyrgyz Republic impose any performance requirements, such as domestic content, local hiring, export performance or import substitution, as conditions on the issuance or extension of these licenses?

Answer:

An application must be submitted to the Ministry of Foreign Trade and Industry. No fee or is required. The main criteria are (i) to have appropriate equipment for packaging of waste of ferrous and non-ferrous metals and their industrial fragments and (ii) to demonstrate solvency. Once approved by the Ministry of Foreign Trade and Industry, the application is forwarded to the Cabinet of Ministers for further approval. If the application is approved by the Cabinet of Ministers then the Ministry of Foreign Trade and Industry will issue the license. Licenses are not issued and renewed automatically.

Foreign enterprises, registered in the Kyrgyz Republic, are eligible to be authorized purchasers and sellers of these products. The Government of the Kyrgyz Republic does not impose any performance

requirements, such as domestic content, local hiring, export performance or import substitution, as conditions on the issuance or extension of these licenses.

Question 15.

According to the response to question 44 of WT/ACC/KGZ/5, the exportation of ferrous, precious and rare-earth metals extracted or processed in the Kyrgyz Republic requires an export license. When applying for the export license, the applicant must submit a short description of how the transaction benefits the Kyrgyz Republic.

What factors are considered by the Kyrgyz Republic in its review of the short description, provided by the applicant, of how the transaction benefits the Kyrgyz Republic?

Answer:

The factors, considered by the Kyrgyz Republic in its review of the short description, are prices taking into account quality. Please note that export licenses are not refused on the basis of low prices. However, recommendations are made to the applicant to ensure that prices are comparable to world market prices.

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

Question 16.

The Kyrgyz Republic has stated that Article 20 of the Foreign Investment Law grants profit tax exemption for Kyrgyz legal entities for two to five years based on foreign participation, depending on the nature of its activity. After the expiration of the profits tax exemption, varying reductions in the applicable profits tax are provided for under certain circumstances, including a 25 per cent reduction, if at least 50 per cent of the entity's production is exported.

This would appear to be a prohibited export subsidy. We seek elimination of this program, or alteration to remove the export performance criterion. We would also appreciate Kyrgyzstan's views on how it intends to address this issue in the context of the requirements of the Agreement on Subsidies and Countervailing Measures.

Answer:

A new foreign investment law is in the process of being adopted. The Parliament is currently considering the elimination of tax incentives based on export performance.

The Kyrgyz Republic has also authorized free customs and economic zones. To the extent that access to the favourable terms of production and trade in these zones relates to export performance, the measures may constitute prohibited subsidies and conflict with the provisions of the Agreement on Subsidies and Countervailing Measures.

We seek confirmation from the Kyrgyz Republic that if it maintain subsidies which meet the definition of a prohibited subsidy, within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, it will work with the Working Party to identify these measures and take steps to eliminate or alter them.

IV.3 Internal Policies Affecting Foreign Trade in Goods

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

Question 17.

According to the response to question 47 of WT/ACC/KGZ/5, the Kyrgyz Republic anticipates it will have difficulties applying the TBT Agreement prior to accession, particularly provisions relating to translation into WTO official language, participation in international standard - setting organizations, timely notification of technical regulations, establishment of an enquiry point on standards and technical regulations and membership in ISONET.

When does the Kyrgyz Republic expect to be able to complete notification of its technical regulations and establishment of the enquiry point on standards and technical regulations?

Answer:

Work toward the establishment of the enquiry point has been initiated and is likely to be completed during the first half of 1998. The notification of technical regulations was covered to a large extent in Annex 5 of WT/ACC/KGZ/3. The Kyrgyz Republic, however, is ready to respond to additional specific requests regarding technical regulations.

Question 18.

According to the responses to questions 64 and 66 of WT/ACC/KGZ/5/Add.2, the Kyrgyz Republic does not require that draft standards be submitted for public review and comment. Annex 3 of the Agreement on Technical Barriers to Trade, "Code of Good Practice for the Preparation, Adoption and Application of Standards," requires advance publication of a draft standard and a comment period, before a standard may be adopted.

- (a) Will the Kyrgyz Republic commit to the full implementation of Annex 3 of the Agreement on Technical Barriers to Trade, "Code of Good Practice for the Preparation, Adoption and Application of Standards," as of the date of WTO accession?**

Answer:

The Kyrgyz Republic has initiated work toward bringing its procedures for adopting standards to conform fully to Annex 3 of the Agreement on Technical Barriers to Trade. The Kyrgyz Republic, however, will notify during the next six months any difficulties encountered in completing this effort and will apply, if needed, to the Committee on Technical Barriers to Trade for extension of the implementation period for certain points of Annex 3 of the TBT Agreement.

- (b) Please describe how the Kyrgyz Republic will amend its procedures for the adoption of standards to bring them into conformity with the requirements of Annex 3 of the TBT Agreement.**

Answer:

Appropriate legislation will be adopted to ensure conformity with the requirements of Annex 3 of the TBT agreement. The Kyrgyz Republic may seek technical assistance in this regard.

- (c) Please identify each provision of Annex 3 of the TBT Agreement that the Kyrgyz Republic believes it will not be able to implement, the reason for the delay in implementation of the provision, and a time table for the implementation of the provision.

Answer:

Please see the response to the question 18(a).

IV.3(c) Sanitary and phytosanitary measures

Question 19.

According to the response to question 55 of WT/ACC/KGZ/5, the Kyrgyz Republic expects no difficulties in implementing the SPS Agreement as of date of accession. However, the appropriate governmental ministries and State bodies are reviewing the provisions of the SPS Agreement for the purposes of bringing their respective standards into conformity with the Agreement.

- (a) Please describe the specific measures the Kyrgyz Republic intends to take to bring its regime into conformity with the provisions of the SPS Agreement.

Answer:

The Kyrgyz Republic intends to adopt, upon accession, appropriate legislation to implement the provisions of the SPS Agreement. In addition, work toward establishment of an inquiry point will be initiated soon.

- (b) Will the Kyrgyz Republic commit to implementation of the procedural and substantive provisions of the SPS Agreement as of the date of accession?

Answer:

As stated in the response to question 55 of WT/ACC/KGZ/5, the Kyrgyz Republic expects no difficulties in implementing the SPS Agreement as of the date of accession. In case of unforeseen difficulties, the Kyrgyz Republic will notify the Working Party.

IV.3(e) State-trading practices

Question 20.

According to the responses to questions 90 and 91 of WT/ACC/KGZ/5/Add.2, the Government has licensed only 29 companies to engage in the business of purchasing and processing waste and scrap metal. The response to question 62 of the same document details the products that are covered by this licensing requirement.

- (a) Are all 29 companies that have been granted licenses to purchase and process waste and scrap metal permitted to engage in these activities for all of the products listed in the response to question 62? If not, for each company, please identify the products, by HS number, for which the company is licensed to engage in purchasing and processing.

Answer:

Yes. All 29 companies that have been granted licenses to purchase and process waste and scrap metal are permitted to engage in these activities for all of the products listed in the response to question 62 of WT/ACC/KGZ/5/Add.2

(b) Have any applicants been denied a license for this activity?

Answer:

Yes.

IV.3(f)(g) Free zones, free economic zones

Question 21.

The Proposed Customs Code contains provisions for the creation by the Cabinet of Ministers of free customs zones and free warehouses where production and all other commercial operations could be authorized, except for retail trade. Customs duties and taxes would not be levied, nor economic restrictions applied, on goods entered into or exported from such zones or warehouses. None exist as yet. Existing legislation as well as the proposed Customs Code authorize the establishment of free economic zones, which offer special and very favourable customs, tax, labour relations and procedural benefits to enterprises locating within such a zone vs. the conditions available to firms in the rest of the Kyrgyz Republic. Free economic zones are established by Parliament only, and only Bishkek's is operational.

(a) Please elaborate on the criteria that firms must meet to establish themselves in the free customs and free economic zones. Do any of these criteria include export performance, local content, or trade balancing elements?

Answer:

Currently, there are no criteria stated in the draft customs code and the law on free economic zones for establishing in the free customs and free economic zones. None of these laws require that establishment in these zones be based on export performance, local content, or trade balancing. In addition, de facto, establishment in these zones is not based on export performance, local content, or trade balancing.

(b) Will establishment in these free zones, either customs or economic, be conditioned on export performance? Will normal taxes, tariffs, and other trade restrictions be applied on sales from these zones into the rest of the Kyrgyz Republic?

Answer:

Establishment in these free zones, either customs or economic, is not conditioned on export performance.

The Directorate of the Bishkek Free Economic Zone (Information Bulletin No. 2) provides exemptions from lease payments for up to 15 years for establishments which (1) are engaged in export-oriented and import substitution production activities, (2) use domestic raw materials and spare

parts, and (3) employ certain number of people per year. In addition, export-oriented production is exempt from quantitative restrictions (quotas² and licenses).

For products originating in the zone and imported from the zone to the rest of the Kyrgyz Republic, only the 0.15 per cent customs processing fee is applied. VAT applies when such products are sold within the Kyrgyz Republic. Normal taxes, tariffs, and other restrictions apply for goods not originating from the zone and imported from the zone to the rest of the Kyrgyz Republic.

Export from such zones should not be conditioned on export performance. If they are, it would constitute a prohibited export subsidy. In addition, all sales from such zones into the rest of the Kyrgyz Republic should be subject to normal tariffs, taxes, and trade restrictions, in order to meet the requirements of Article I, II, and III of the GATT 1994.

IV.3(1) Government procurement practices

Question 22.

The Government of the Kyrgyz Republic planned to create, in the first half of 1997, a new Government Procurement Agency within the Ministry of Finance.

What is the current status of the creation of the procurement agency? Please describe the progress to date in creating the agency and the schedule for completion.

We seek confirmation from the Kyrgyz Republic that it will seek accession to the WTO Agreement on Government Procurement in the context of its WTO accession.

Answer:

The Kyrgyz Government Procurement Agency (KGPA) was established on 29 January 1997 through a Presidential Decree as an agency under the Government. Currently, the KGPA is in the process of establishing rules, procedures, forms, and manuals based on the new government procurement law.

The Kyrgyz Republic will consider joining the Government Procurement Agreement in January 1999 (two years after the date of establishment of the KGPA).

IV.4 Policies Affecting Trade in Agricultural Products

IV.4(b) Exports

According to the response to question 102 of WT/ACC/KGZ/5/Add.2, the Government of the Kyrgyz Republic is considering the effects of binding export subsidies for agricultural products at zero.

Export subsidies are the most trade distorting forms of agricultural support. We strongly encourage the Kyrgyz Republic to maintain its subsidy-free regime and bind its export subsidy commitment at zero.

²Please note however, that the Kyrgyz Republic does not currently maintain quotas.

According to the response to question 103 of WT/ACC/KGZ/5/Add.2, the Kyrgyz Republic is prepared to "temporarily" bind the existing policies not requiring licenses for export of agricultural products and not imposing tariffs or quotas on the export of agricultural products.

We strongly encourage the Kyrgyz Republic to bind permanently the existing policies applicable to the export of agricultural products, and to recognize that non-tariff export controls such as quotas or discretionary licensing are inconsistent with Article XI of the GATT 1994 and other WTO provisions.

IV. 4(e) Internal policies

We have the following general comments on WT/ACC/SPEC/KGZ/1 concerning domestic supports for agricultural production:

Question 23.

WT/ACC/SPEC/KGZ/1 only appears to include tables with data for 1995 and 1996 only. According to the guidelines of WT/ACC/4, three years of data is required to be provided. If 1996 data are still incomplete, please submit data for the three-year period 1993-95.

Answer:

Please find attached an updated WT/ACC/4 for the period 1994-1996. (To be circulated separately as document WT/ACC/SPEC/KGZ/1/Rev.1.)

Question 24.

The Kyrgyz Republic listed certain measures, in supporting table DS:2, that it wishes to exempt from reduction commitments under Special and Differential Treatment-Development Programmes. Does the Kyrgyz Republic intend to accede to the WTO as a developing country and exempt itself under this category?

Answer:

The Kyrgyz Republic intends to accede to the WTO as a developing country and wishes to exempt itself from reduction commitments under Special and Differential Treatment-Development Programmes.

Question 25.

There were no de minimis calculations in the above submission. Please include the value of production for each commodity listed under product-specific support, as well as the value of total agricultural production. This information will allow the de minimis calculation to be made, as well determination of the share of support in total agricultural production.

Answer:

An updated WT/ACC/4 for the period 1994-1996 has been forwarded to the WTO Secretariat. (To be circulated separately as document WT/ACC/SPEC/KGZ/1/Rev.1.)

We also have specific comments and questions on the supporting tables.

Question 26.

For supporting table DS:1, please provide a detailed and specific explanation of the programs listed under General Services. We noted that "agricultural machinery supervision" was listed under item 2.e. The inspection services that should be listed under that item refer to commodities, not machinery.

Answer:

Such support was provided for State Seeds Inspection only. Please see updated WT/ACC/4 for the period 1994-1996. (To be circulated separately as document WT/ACC/SPEC/KGZ/1/Rev.1.)

Question 27.

For supporting table DS:1 for 1995, please clarify what is meant by "given as goods in kind" under point 3 (Creation of State reserves to provide food security)? This entry appears in effect to be a state procurement activity. Please note that State procurement does not qualify as a public stockholding program for food security purposes, since purchase and disbursement prices are not made on a commercial basis.

Answer:

Regarding point 3 of DS:1, grain and flour were provided in the form of humanitarian aid by the European Community Commission. This was not a State procurement activity.

Question 28.

For supporting table DS:1, 1996, point 3, and DS:1, 1995, point 4, please describe and clarify, in further detail, what is meant by structural adjustment assistance provided through investment aids.

Answer:

This was provided to speed up the privatization of agricultural enterprises. It consists of payments for services provided by experts and their expenses to conduct land surveying and valuation, assets valuation, and calculation of land shares.

Question 29.

For supporting table DS:1, 1996, point 4, please clarify and describe, in further detail, what is meant by payments according to programmes of regional aid.

Answer:

Such payments were provided to agricultural producers in disadvantaged mountain regions where climate and nature conditions are not favourable.

Question 30.

For tables DS:6 through DS:9, the Kyrgyz Republic lists fertilizer and fuel as product-specific support. These items should be listed instead in table DS:9 (non product-specific support). Could the Kyrgyz Republic please make this adjustment? In addition, the items labelled "Support to agricultural producers" is vague. Could the Kyrgyz Republic please provide a more detailed explanation of the types of measures included in these tables.

Answer:

The adjustment is made as recommended. Please see updated WT/ACC/4 for the period 1994-1996. (To be circulated separately as document WT/ACC/SPEC/KGZ/1/Rev.1.)

The non-product specific support (fuel, fertilizers, etc.) is provided (in kind) to the agricultural producers in coordination with the oblast/region administration under different terms (e.g. loans, credits, grants). There are no specific criteria for providing such support.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**V.1 General****V.1(d) Application of national and MFN treatment to foreign nationals****Question 31.**

According to the response to question 85 of WT/ACC/KGZ/5, the State Agency for Intellectual Property (Kyrgyzpatent) is reviewing all laws and regulations to eliminate prohibited differences in the treatment of foreign persons and Kyrgyz citizens.

Is Kyrgyzpatent similarly reviewing all laws and regulations to eliminate prohibited differences in the treatment of foreign persons from differing countries, in order to ensure most-favoured-nation treatment?

Answer:

Yes, it is. A proper MFN system is being developed and will be introduced in the near future.

Question 32.

Please identify and describe fully any provisions of Kyrgyz laws, regulation or international agreements, which accord advantages, favours, privileges, or immunities, to nationals of a foreign country, that are not provided equally to nationals of third countries.

Answer:

In September 1995, the Kyrgyz Republic ratified the Eurasian Patent Convention (EAPC).

According to Rule 40 of the patent instruction to the EAPC, approved on 1 December 1995, persons permanently residing or staying in the territory of a member State of the Paris Convention on Protection of Industrial Property where the level of the per capita GNP is US\$3,000 or lower (or their representatives) pay duties according to temporary privileged tariff.

In addition, there is an international practice of establishing such privileges (e.g., with the World Intellectual Property Organization and the European Patent Office.)

V.2 Substantive Standards of Protection

Question 33.

According to the response to question 86 of WT/ACC/KGZ/5, "additional provisions" on intellectual property will be included in the later parts of the Civil Code. Part II of the Civil Code is still under preparation and is expected to be submitted to Parliament at the end of 1997.

Please provide a translated copy of these draft provisions to the Working Party for review.

Answer:

An English translation of Parliament's first draft Civil Code for Intellectual Property will be forwarded in June 1997. However, the draft is now being actively discussed and commented upon. The provided draft Code will certainly be amended as these comments are considered and incorporated.

Question 34.

In the response to question 112 of WT/ACC/KGZ/5/Add.2, Part III of the Civil Code consists of seven chapters (Chapters 54 through 60) which address intellectual property rights. Many of these topics appear to duplicate items covered in the specialized laws.

How will the Provisions in the Civil Code dovetail with the provisions in the specialized legislation so that duplication (and confusion) and possible contradiction are avoided?

Answer:

Intellectual property experts within SIPA and the Parliament's offices are constantly reviewing the draft Civil Code and the draft specialized laws as they develop. They are ensuring that duplication, confusion and possible contradiction are avoided. These considerations will continue to be applied as comments to the Civil Code and laws are received and incorporated.

Question 35.

How will necessary amendments to intellectual property laws be achieved since, in many cases, such amendments would require changes to both specialized laws and to the Civil Code?

Answer:

Currently, every effort is being made to create specialized laws and Civil Code provisions which will require no amendments in the short term. However, the Government recognizes that in the long term, technological and other external developments will inevitably necessitate amendments. Kyrgyz law allows Parliament to make such amendments to both the Civil Code and the specialized laws.

V.2(a) Copyright and related rights

Question 36.

According to the responses to questions 120 and 121 of WT/ACC/KGZ/5/Add. 2, the draft law "On Copyright and Neighbouring Rights" (at Article 16) specifically provides for rental rights.

Under the draft law, does a copyright owner have the right to prohibit the rental of a copy of the copyrighted work after that copy has been sold?

Answer:

Yes, a copyright owner has the right to prohibit the rental of a copy of his copyrighted work after that copy has been sold, if the work in question is an audiovisual work (which is understood to include cinematographic works), a computer program, a database, a phonogram, or a notated musical work. Draft Law "On Copyright and Neighbouring Rights," Article 16(3). This provision was specifically drafted to comply with TRIPS Articles 11 and 14(4) of the TRIPS Agreement.

With respect to all other copyrighted works, the first sale doctrine applies.

Question 37.

For example, the does the copyright owner of a computer program, who sold a copy of the program, have the right to prohibit the purchaser from renting copies of the program to third parties?

Answer:

Yes. See the answer to Question 36, above.

Question 38.

According to the response to question 119 of WT/ACC/KGZ/5/Add. 2, the draft law "On Copyright and Neighbouring Rights" incorporates standards provided by international agreements to which the Kyrgyz republic is a signatory, including article 9.1 of TRIPS, which incorporates Article 18 of the Berne Convention, providing retroactive protection for copyrighted works.

What steps will the Kyrgyz Republic take to ensure that the market place and the courts are aware that these rights are being restored and the effect of these rights on commercial dealers of copyrighted works?

Answer:

The draft law of the Kyrgyz Republic "On Copyright and Neighbouring Rights," establishes the principle of the priority of international agreements over national legislation. Article 18 of the Berne Convention provides the opportunity to the acceding country to define the terms of application or non-application of the reciprocity principle.

However, for the present, the Kyrgyz Republic has not yet determined the specific conditions of application of the principle in question.

Question 39.

Does the Kyrgyz Republic intend to amend the draft legislation or promulgate regulations that ensure that TRIPS-consistent rental rights provisions are incorporated into Kyrgyz law?

Answer:

Amendments to the draft Law are unnecessary. TRIPS-compliant rental rights provisions are already contained in the draft Law "On Copyrights and Neighbouring Rights." See response to Question 36.

V.2(b) Trademarks, including service marks

Question 40.

According to the response to question 94 of WT/ACC/KGZ/5, the trademark examiners follow only their personal knowledge in making expert examinations and resolving issues regarding refusals of registration, where a "generally-known" trade mark is involved.

Perhaps there was an error in translation, but the TRIPs Agreement and the Paris Convention provide for protection of "well-known" marks, not "generally-known" marks.

Answer:

The official Russian text of the TRIPS Agreement translates the term "well-known" in Article 16(2) as "широко-известные" (well-known). However, the official Russian text of the Paris Convention translates the term "well-known" in Article 6 *bis* as "общеизвестные" (generally known). The Kyrgyz Law "On Trademarks, Service Marks and Appellations of Origin" uses the same word used in the Russian translation of the Paris Convention.

However, this should not be a matter of concern: in Russian, both terms are nearly identical in their meaning.

Question 41.

Has the Trade Mark Expert Examination Department developed criteria for use by the trademark examiners in making their determination of what is or is not a well-known mark?

Answer:

No. At present, the Expert Examination Department has not yet developed criteria for determining what is or is not a well-known mark.

Question 42.

If so, please describe the criteria that is being applied.

Answer:

See answer to Question 41.

Question 43.

If not, does the Department intend to adopt criteria for this purpose in the near future?

Answer:

Yes, it does. This issue is currently being examined in detail. Kyrgyzpatent is looking for assistance in gathering information and solutions on this problem.

Question 44.

Also in response to question 94 of WT/ACC/KGZ/5, it is noted that judicial remedies are available to the owners of well-known marks through legal actions in civil court.

What criteria are used by civil court judges to determine whether a mark is well-known (for example, would evidence of international advertising in media familiar to those dealing in the relevant product or service be relevant)?

Answer:

Currently, there is no actual practice of judicial consideration of trademark disputes in the Kyrgyz Republic. Thus, no criteria are applied. However, Kyrgyzpatent is developing criteria for identifying well-known marks during the registration process (see Response to question 35). It is anticipated that civil court judges will use those same criteria in identifying well-known marks in the context of litigation.

Question 45.

The Kyrgyz Department on Anti-Monopoly Policy conducts audits for violations of trademarks and trade secrets.

How does the Kyrgyz Republic ensure that foreign-owned trademarks and trade secrets are protected by the Department of Anti-Monopoly Policy?

Answer:

The Anti-Monopoly Department conducts audits for violations of trademarks and trade secrets without regard to the citizenship of their owners. The Anti-Monopoly Department conducts its enforcement activities on the basis of existing legislation.

V.2(g) Layout designs of integrated circuits**Question 46.**

According to the response to question 137 of WTO/ACC/KGZ/5/Add.2, integrated circuit topographies are not covered by the draft patent law, but will instead be covered by a separate draft law.

Does the draft law for integrated circuit topographies satisfy all the requirements of Articles 27-34 of the TRIPs Agreement?

Answer:

The draft law of the Kyrgyz Republic "On Legal Protection of Integrated Circuit Topographies" does not comply with the requirements of Articles 27-34 of the TRIPS Agreement. However, it does comply with the requirements of Articles 35-38 of the TRIPS Agreement, except for Article 37(2).

Article 14 of the mentioned draft law stipulates the following:

"If the international treaty of the Kyrgyz Republic establishes rules other than those that are included in this Law the rules of the international treaty shall be applied."

Question 47.

Please identify and describe any provisions that are inconsistent with the requirements.

Answer:

See answer to Question 46.

Question 48.

Please indicate how the Kyrgyz Republic will ensure that all of the protection required by TRIPS Articles 27 through 34 will be met in connection with integrated circuit layout designs.

Answer:

See answer to Question 46. The government plans to bring the Law "On Legal Protection of Integrated Circuit Topographies" into compliance with Article 37(2) of TRIPS.

V.4 Enforcement

V.4(e) Criminal procedures

Question 49.

According to the response to question 156 of WT/ACC/KGZ/5/Add.2, the current Criminal Code contains articles providing the following penalties for infringements of intellectual property rights: copyright infringement, two years community service or a fine of up to six minimum monthly wages (circa US\$27); patent infringement, same penalties as copyright infringement; trade mark infringement, fine of up to seven minimum monthly wages (circa US\$31); and infringement of computer software and integrated circuits, up to two years imprisonment or a fine of 50-150 minimum monthly wages (circa US\$222-666). The draft Criminal Code increases the fine for trade mark infringement to 70 minimum monthly wages (circa US\$311). (Note: the US dollar values were derived from the exchange rate of 45 minimum monthly wages equal to US\$200, which was provided in the response to question 41 of WT/ACC/KGZ/5/Add.2).

The criminal fines for the infringement of intellectual property rights provided by the current and draft Criminal Code appear to be insufficient to serve as an effective deterrent within the meaning of TRIPS Article 61.

How does the Kyrgyz Republic intend to increase the amount of the fines provided by the current and draft Criminal Code for infringements of intellectual property rights, in order to ensure that fines serve as effective deterrents?

Answer:

As a preliminary matter, it should be noted that average wages in the Kyrgyz Republic are lower than in other parts of the world. In this context, the deterrent effect of the present fines are greater than they might appear to some WTO members, such as the United States. It is the position of the Government of Kyrgyzstan that the fines set out in the existing Criminal Code and the draft Criminal Code are currently adequate under Article 61 of the TRIPS Agreement.

Nevertheless, Kyrgyzpatent has sent to Parliament proposals to add the following penalties to the draft Criminal Code:

1. Illegal exploitation of other person's trade mark, service mark, firm's name, appellation of origin
 - Illegal use of a trademark, service mark, firm name or appellation of origin, if committed repeatedly or in such a way as to damage the right holder: fine in the amount of 200 to 400 minimum monthly wages, or imprisonment for one to two years.
 - Illegal use of a warning mark in relation to a trademark, service mark or appellation of origin not registered in the Kyrgyz Republic, if committed repeatedly or in such a way as to cause significant damage to the right holder: fine in the amount of 100 to 200 minimum monthly wages, or imprisonment for one year.
2. Infringement of copyright and neighbouring rights
 - Illegal commercial use of objects of copyright and neighbouring rights in such a way as to damage the right holder: fine in the amount of 200 to 400 minimum monthly wages, or imprisonment for three years, followed by debarment from employment, if employment is related to the original offense, for up to three years.
 - Publication of another's copyrighted work under the publisher's own name, other exploitation of the right holder's rights of copyright and/or neighbouring rights, or improper and coercive claim to co-authorship: fine in the amount of 300 to 600 minimum monthly wages, or imprisonment for five years, followed by debarment from employment, if employment is related to the original offense, for up to five years.
 - Any of the foregoing actions which are committed (1) repeatedly; (2) by group of persons by prior agreement; or (3) by an organized group: imprisonment for three to seven years, followed by debarment from employment or other activities, if employment or activities are related to the original offense, for up to seven years.
3. Infringement of patent holder's rights
 - Illegal commercial use of a product containing a patented invention, utility model, industrial design, selection achievement or integrated circuit topography, conduct of a process covered by a preliminary patent or patent, or introduction into commerce of a product manufactured by a patented process, where such conduct is without the consent of the patent holder and causes damage to the patent holder: fine in the amount of 200 to 400 minimum monthly wages, or

imprisonment for up to three years, followed by debarment from employment, if employment is related to the original offense, for up to three years.

- Misappropriation of authorship of an invention, utility model, industrial design, selection achievement, integrated circuit topography, improper and coercive claim to co-authorship, or disclosure of the elements of an invention, utility model, industrial design, selection achievement or integrated circuit topography, where such conduct is without the consent of the patent holder (or patent applicant) and occurs prior to official publication: fine in the amount of 300 to 400 minimum monthly wages, or imprisonment for up to five years, followed by debarment from employment, if employment is related to the original offense, for up to five years.
- Any of the foregoing actions which are committed (1) repeatedly; (2) by group of persons by prior agreement; or (3) by an organized group: imprisonment for three to seven years, followed by debarment from employment, if employment is related to the original offense, for up to seven years.

Note: Under domestic legislation, "significant damage" is deemed to be damage in excess of 500 minimum monthly wages.

VI. TRADE-RELATED SERVICES REGIME

VI.1 General

Question 50.

We appreciate the description of the services regime provided in the Foreign Trade Memorandum. However, since the submission of the Memorandum, the Secretariat issued a technical note, WT/ACC/5, which provides a standard format for the comprehensive description of services information.

We regret any inconvenience caused by asking for a resubmission of services information, but the submission of a response to WT/ACC/5 would greatly simplify and expedite the Working Party review of the services regime. Please submit a response in the format.

Answer:

The response to WT/ACC/5 has been forwarded to the WTO Secretariat. (To be circulated separately as document WT/ACC/SPEC/KGZ/3.)

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

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

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

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

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

VII.2(c) Free trade area agreements

According to the response to question 175 of WT/ACC/KGZ/5/Add. 2, the Kyrgyz Republic has withdrawn from coverage by the free trade agreements with Kazakhstan and Russia products subject to export licensing. GATT Article XXIV requires free trade area agreements to eliminate duties and other regulations of commerce on substantially all trade between the constituent territories in products originating in such territories.

Question 51.

The list of products covered by export licensing, as provided in Annex D of WT/ACC/KGZ/5/Add.2, appears to be quite extensive, including many tariff items for non-ferrous metals, wastes and fragments, precious metals and fragments, rare-earth metals and mercury.

Please provide the value by group, of exports to Russia and Kazakhstan, for non-ferrous metals, wastes and fragments, precious metals and fragments, rare-earth metals, and mercury, for each of the past three years. What is the total domestic production of these products, by group, for each of the past three years? What is the total value of exports covered by the free trade agreements with Kazakhstan and Russia?

Answer:

Value of exports by groups to Russia and Kazakhstan (thousands US\$)

Exports by groups	1994	1995	1996
Copper and articles thereof			
Russia	-	176.4	-
Kazakhstan	-	606.6	23.8
Waste and fragments of copper			
Russia	-	-	-
Kazakhstan	-	20.2	-
Aluminum and article thereof			
Russia	-	41.5	50.1
Kazakhstan	-	14.8	41.2
Waste and fragments of aluminum			
Russia	-	-	21.2
Kazakhstan	-	-	-
Lead and articles thereof			
Russia	-	-	-
Kazakhstan	3.4	0.2	44.9
Lead waste and fragments			
Russia	-	-	-
Kazakhstan	-	0.2	44.9
Antimony and articles thereof, incl. waste and fragments			

Exports by groups	1994	1995	1996
Russia	3,025.6	4,510.1	4,765.7
Kazakstan	702.3	107.0	292.5
Mercury			
Russia	86.2	43.5	120.4
Kazakstan	60.5	-	45.5
Gold			
Russia	-	-	2.3
Kazakstan	-	-	-

Total Domestic Production of the above Mentioned Products for the Past Three Years
(thousands US\$)

Group of Products	1994	1995	1996
Antimony	20,145.76	28,271.79	20,336.13
Mercury	1,582.43	1,395.84	1,910.7

Total Value Exports Covered by the Free Trade Agreements with Kazakstan and Russia
(thousands US\$)

Country	1994	1995	1996
Russia	55,388.2	100,028.5	129,661.4
Kazakstan	94,433.8	66,071.4	112,052.1

Question 52.

Russia has stated in its WTO accession documentation that it no longer applies any export duties or requirements to exports. Have products previously withdrawn from coverage for this reason resumed trade under the Free Trade Agreement?

Answer:

Yes.