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**Working Party on the
Accession of Ukraine**

ACCESSION OF UKRAINE

Check-list of Issues

In response to an invitation at the last meeting of the Working Party on the Accession of Ukraine, members submitted specific proposals, comments and suggestions including, the commitments expected from Ukraine for inclusion in a consolidated check-list of issues. The specific responses of the Governmental Commission on Ukraine's accession to the WTO to each of the issues in the check-list are reproduced hereunder. The annexes mentioned in the responses are reproduced in document WT/ACC/UKR/110/Add.1

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General Comments

No. 1

Members expressed support for a the rapid accession of Ukraine to the WTO based on meaningful market-access commitments and on the full respect of WTO rules.

No. 2

In respect of the market-access commitments undertaken during the negotiations, members noted that the commitments undertaken so far were of a very high standard both compared with other accessions and the commitments of current members of the WTO. In this respect, besides recalling the need to respect the standstill principle that should be observed by acceding countries in the course of the negotiations, these members considered that Ukraine has fulfilled the reasonable expectations of the membership and it should be possible for all Working Party members to conclude the negotiations expeditiously.

No. 3

Members stated that in overall terms Ukraine was making good progress with respect to bilateral market access negotiations but some members remained concerned about the value of tariff bindings being diluted or eroded by a number of serious non-tariff measures which impede trade. These would need to be satisfactorily resolved in order to move towards concluding negotiations.

Answer: (1-3)

One of the efforts towards the liberalization of the foreign economic activity involves the granting to the State Customs Service of Ukraine of the right not to apply, as at the time of the customs clearance, any non-tariff regulation or other restrictions to business entities acting in good faith and not encumbered with any foreign trade, tax and other liabilities with respect to deductions to different budgets, and having no record of customs and taxation laws violations, such right being granted under Resolution No. 593 of the Cabinet of Ministers of Ukraine of 14 April 1999. The criteria and procedure of determining the qualifying enterprises are established by the Order of the State Customs Service, Ministry of Foreign Economic Relations and Trade of Ukraine and of the State Tax Administration of Ukraine of 7 July 1999 No. 411/488/357.

With the view of facilitation of foreign trade activities and seeking to ensure the implementation of the strategic foreign economic priority of Ukraine's integration into the global economy and furthering the steady harmonization of Ukraine's laws with WTO rules and requirements, the State Customs Service has been consistently working on preparing Ukraine's accession to the Convention On Temporary Imports of 26 June 1990.

The Ministry of Health Care of Ukraine acting in conjunction with the State Customs Service of Ukraine has developed the Procedure of Medical (Sanitary) Inspection of Cargoes at Points of State Border Crossing and in the Customs Territory of Ukraine identifying the list of goods subject to compulsory sanitary inspections at checkpoints, and establishing clear and transparent provisions governing interaction of sanitary checks and customs authorities pursuing the goal of facilitating the transfer of goods across the customs border of Ukraine.

The State Department for Drugs and Health Care Related Products Quality Assurance, Safety and Production and the State Customs Service of Ukraine have set up and regularly update an integrated interdepartmental database "Medicinal Agents Registered in Ukraine". By the joint order

of Ministry of Health Care of Ukraine and State Customs Service No. 224/487 of 8 June 2001, this database has been commissioned. The database is being updated by the State Department by means of electronic information communication and hardcopies transmission to the State Customs Service on the fifth, 13 and 25 day of each month.

According to its structure, the database consists of: the medicine's brand name, production form, international unpatented name of the medicine, manufacturer, country of manufacture, registration number, medicine's registration expiration date, code of goods foreign trade nomenclature.

The database is used at the time of performing customs check and customs clearance of the medicinal agents. When a medicine enters the territory of Ukraine, an inspector of the border-patrol customs office verifies its presence in the database. Such kind of check is performed by an inspector of the customs office based at the destination at the time of customs clearance of the release of medicines registered in Ukraine into free distribution. The use of the said database allows to dramatically save time needed for customs procedures performance.

Resolution No. 1671 of the Cabinet of Ministers of Ukraine On Amendments to Paragraph 3 of the Procedure of Customs Clearance of Imported Goods (products) Subject to Compulsory Certification in Ukraine of 13 December 2001 was approved with the view of facilitating non-tariff regulation of foreign trade in Ukraine. This Resolution establishes that in the event of the foreign-based producer's receipt of compliance certificate to serial production goods, all batches of the product in question shall be forwarded to the same recipient's address throughout the whole period of effect of the mentioned certificate.

Pursuing the goal of double taxation avoidance, pharmaceutical products were removed from the list of goods the import of which is subject to licensing. Resolution No. 1422 of the Cabinet of Ministers of Ukraine of 13 September 2000 approves a new procedure of medicines registration (re-registration) which gives due account to requirements incorporated in GATT/WTO and in the EU legislation.

Order No. 163 of 3 May 2001, No. 442 of 1 November 2001, No. 442 of 1 November 2001 and No. 185 of 17 May 2001 of the Ministry of Health Care of Ukraine duly registered with the Ministry of Justice of Ukraine identify the procedure of expert examination of materials used for medicines production for which state registration (re-registration) is sought, as well as of expert examination of materials in relation to which amendments to registration documents during the period of effect of the registration certificate are sought. The procedure of presentation of the Information On Medicine, Criteria of Attribution of a Medicine to Over-the-Counter and Legend Drugs Categories, with respect to the initial review of documents with the view of qualification attribution of these agents to drugs or other categories. Said documents are harmonized with the EU legislation (EU Directives 65/65 EEC, 75/318 EEC, 97/27 EEC, etc.).

In order to ensure further harmonization of Ukraine's legislation with EU's laws and regulations governing medicinal agents distribution, a draft law of Ukraine On Amendments to the Law of Ukraine On Drugs reviewed by EU experts to examine its compliance with basic requirements of European legislation and approved by the Parliament of Ukraine on the first hearing, takes into account principles of drugs administration as applied in EU countries and provides for the introduction of universally-accepted systems of drugs safety and quality assurance (in lieu of a drugs control system), identifies requirements to relevant practices: production practice (GMP), laboratory practice (GDP), clinical practice (GCP), distribution practice (CDP).

Orders of the Ministry of Health Care of Ukraine No. 5-6 of 14 December 2001, No. 103 of 19 March 2002, No. 271 of 18 July 2002 put into effect the Directive "Due Production Practice",

"Due Distribution Practice", "Due Practice of Production of Active Pharmaceutical Ingredients". Necessary efforts are being used to ensure the due procedure of certification (the granting of conformity assessment) of drugs manufacturing with respect to their conformity with requirements of applicable production practice.

In response to the question on raising the tariff rates on insulin, please be advised that tariffs rates are being determined by the Law of Ukraine On Import Tariff of Ukraine whereunder a 30 per cent tariff rate for short effect insulin is set.

As concerns the matter of amendments to the list of food additives allowed for use in foodstuffs, please be informed that Article 4 of the Law of Ukraine On Quality and Safety of Foodstuffs and Materials for Foodstuffs establishes that the list of food additives allowed for use in foodstuffs shall be approved by the Cabinet of Ministers of Ukraine.

As required under the effective sanitary legislation, the Chief State Sanitary Doctor of Ukraine shall approve scientifically grounded hygienic standards of food additives content in foodstuff.

The list of food additives allowed for use was being supplemented over the period from 1999 through 2001 by respective resolutions of the Cabinet of Ministers of Ukraine (No. 12 of 4 January 1999, No. 342 of 17 February 2000, No. 1140 of 21 July 2000, No. 1656 of 8 November 2000, No. 647 of 21 June 2001).

The food additives list may be expanded with account for EU directives and subject to referrals to central executive power authorities having jurisdiction over the foodstuffs production, and a scientific substantiation of their safety for human health following the procedure prescribed by applicable laws.

No. 4

With respect to WTO rules members noted that important work had to be carried out by Ukraine before its accession could be completed. Members saw the need for further submissions of new draft laws in areas not yet covered, as well as clear and precise information on by-laws, rules and regulations in a number of areas.

No. 5

Members stated that the overview of legislation WT/ACC/UKR/93/Add.3 needed to be updated as several laws had been enacted which were not reflected in the documentation tabled at the last Working Party meeting. While in overall terms members acknowledged that Ukraine had made progress in enacting legislation, some members expressed concern with respect to implementation.

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main direction of ongoing economic policies

No. 6

Members requested information on production of goods and services by State-owned enterprises:

- **By industry, over a recent representative period;**
- **and Value of output.**

Answer:

Output by Enterprises with a Share of State Ownership in 2001

Output of Production of Products and Services by Enterprises with a Share of State Ownership in 2001	Output of products excluding VAT and excise (UAH, 000)
- Total by economy	73,103,405.8
I. Agriculture, hunting and forestry	1,923,814.1
- Agriculture, hunting and related services	1,238,010.7
- Plant growing	781,536.9
- Animal breeding	340,027.8
- Growing of cultures in combination with animal breeding (mixed agriculture)	35,379.4
- Providing services in the areas of plant growing and animal breeding	77,109.7
- Hunting and related services	3,956.9
- Forestry and relates services	685,803.4
II. Fish industry	91,773.6
- Fishing, activities of fish nurseries, fishing farms; relates services;	91,773.6
III. Extractive industry, processing industry, production of electricity, gas and water	36,029,714.3
- Extractive industry	8,733,736.0
- Production of energy materials	8,071,928.0
- Production of energy materials	661,808.0
- Processing industry	15,688,538.7
- Food industry and processing of agricultural products	1,650,326.9
- Light industry	67,446.7
- Textile industry and sewing of clothes	56,342.9
- Production of leather and leather footwear	11,103.8
- Production of wood and wood products	295,192.9
- Pulp and paper industry; publishing	445,358.1
- Production of paper and cardboard	8,543.6
- Publishing, printing industry, reproduction of printing materials	436,814.5
- Production of coke, oil-refining products and nuclear fuel	493,746.3
- Chemical and petrochemical industry	2,916,639.9
- Chemical production	2,902,761.6
- Production of rubber and plastic products	13,878.3
- Production of other non-metal mineral products	384,694.0
- Metallurgy and metal working	6,123,116.4
- Machine-building, repair and assembly of machinery and equipment	3,198,369.8
- Production of machinery and equipment	1,266,796.0
- Production of electric and electronic equipment	637,539.4
- Production of transport equipment	1,294,034.4
- Other production, not attributed to other categories	113,647.7
- Production of electricity, gas and water	11,607,439.6
IV. Construction	2,844,393.8
V. Wholesale and retail trade: trade in vehicles; repair services	2,224,093.0
- Trade in vehicles and their repair	9,743.1

Output of Production of Products and Services by Enterprises with a Share of State Ownership in 2001	Output of products excluding VAT and excise (UAH, 000)
- Wholesale and mediation in trade	1,836,002.8
- Wholesale trade in home appliances and their repair	378,347.1
VI. Hotels and restaurants	489,364.8
- Hotels, other places of short-term dwelling	203,828.0
- Restaurants, bars, canteens and supplies of wholesale food	285,536.8
V. Transport	23,125,630.8
- On-land transport	12,222,287.7
- Railroad transport	4,734,162.8
- City and road transport	1,157,475.2
- Pipeline transportation	6,330,649.7
- Water transport	57,410.7
- Sea transport	57,343.8
- River transport	66.9
- Aviation transport	191,026.8
- Regular aviation shipments	141,975.6
- Non-regular aviation shipments	48,969.7
- Space transport	81.5
- Auxiliary transport services	9,605,598.0
- Mail and communication	1,049,307.6
VI. Financial activity	44,699.1
VII. Operations with real estate: lease and services to legal entities	4,666,458.0
- Operations with real estate	2,075,274.7
- Lease without maintenance staff	52,647.9
- Informatization activities	146,500.8
- Research and development	1,308,046.5
- Services, provided primarily to legal entities	1,083,988.1
VIII. Public administration	141,564.8
IX. Education	141,386.5
X. Health protection and social security	231,050.7
XI. Collective, public and personal services	1,149,462.3
- Sanitation, street cleaning, and processing of waste	833,830.4
- Public activity	794.2
- Activities in the sphere of recreation and entertainment, culture and sport	205,377.1
- Individual services	109,460.6

No. 7

Members requested information on the list of goods and services subject to price control:

- **Description by HS tariff item/service category;**
- **Nature and level of price restriction/requirement; and**
- **Legislative authority.**

Answer:

In Ukraine commercial entities sell their products, services and assets in domestic market for prices set by themselves or for prices and tariffs stipulated in contracts and in instances governed by the Ukrainian legislation for prices and tariffs set by the government. An effective mechanism of flexible and efficient domestic pricing has been installed. State price regulation is governed by the Law of Ukraine "On Prices and Pricing" and by decrees of the Cabinet of Ministers of Ukraine: "Provisions of State Regulation of Prices (Tariffs) for Industrial Products, Consumers' Products, Works and Services Provided by Monopolies", "On Introduction of Authority of the Executive Branch of Power and Executive Branches of Municipal Power in Regard of Pricing (Tariff Setting)", "On Enhancement of Efficiency of Pricing Mechanism".

Currently 90 per cent of all prices are set by the market. Specific share of state regulated prices is not higher than 10 per cent, which is within the limits acceptable for the market economy. The main objective of the government's pricing policy is demolition of artificial barriers for development of the civilized and transparent market, minimizing of influence of natural and historical monopolies.

In transaction with foreign partners contractual prices that are set in accordance with terms and conditions of international prices are used (See Article 23 of the Law of Ukraine "On Enterprises").

Character and Levels of Price Limitations

Services, products, prices (tariffs) subject to state regulation (control)	Executive agency authorized to exercise control
Cost estimates guidelines for construction works	Supervised by the State Committee for Construction, Architecture and Housing Policy
Collection prices for returnable glass bottles	Supervised by the Council of Ministers of the Autonomous Republic of Crimea, oblasts, Kiev and Sebastopol Municipal State administrations
Domestic railway transportation tariffs and related services	Supervised by the Ministry of Transportation in coordination with the Ministry of Economy
Tariffs for works related to processing of international transit and external trade freights at sea and river ports (harbors), payments and collections for services provided to foreign ships at sea and river ports of Ukraine	Supervised by the Ministry of Transportation in coordination with the Ministry of Economy
Tariffs for international and domestic railway transportation of freights and passengers (except for suburban trains)	Supervised by the Ministry of Transportation in coordination with the Ministry of Economy
Tariffs for intercity and interoblast (interregional) bus transportation of freights and passengers	Supervised by the Ministry of Transportation in coordination with the Ministry of Economy
Aeronavigation collections and aeronavigation services provided to aircraft within the borders of Ukraine	Supervised by the Ministry of Transportation in coordination with the Ministry of Economy
Airport collections and airport services provided to aircraft and passengers at Ukrainian airports (taking off, landing, services provided to passengers at the airports, extended stay of aircraft, provision of aviation safety).	Supervised by the Ministry of Transportation in coordination with the Ministry of Economy
Tariffs for main telecommunication services provided on the territory of Ukraine and for international telecommunication services.	Supervised by the State Committee of Communications and Informatization in coordination with the Ministry of Economy
Tariffs for universal postal services	Supervised by the State Committee of Communications and Informatization in coordination with the Ministry of Economy
Subscription tariffs for processing and distribution of domestic printed periodicals	Supervised by the State Committee of Communications and Informatization in coordination with the Ministry of Economy
Tariffs for services connected with processing and distribution of pensions and subsidies funded from the Pension Fund	Supervised by the State Committee of Communications and Informatization in coordination with the Pension Fund
Prices for precious metals (jewelry and bulk) and for precious stones bought from private entities	Supervised by the Ministry of Finance in coordination with the Ministry of Economy and the National Bank of Ukraine
Water supply tariffs for services provided by Production Amalgamation "Ukrpromvodchormet" and by the enterprise "Krivbaspromvodpostachannya"	Supervised by the Ministry of Industrial Policy in coordination with corresponding oblast, Kiev and Sebastopol Municipal State Administrations
Maximum fees for student hostels and rates of return for printed products funded from the budget in the amount of 15% and for distribution of the said products in the amount of 5%	Supervised by the Ministry of Environment Protection and by the Ministry of Healthcare and by the central bodies of executive power in charge of educational institution in coordination with the Ministry of Finance
Maximum fees for hostels of the Ministry of Interior	Supervised by the Ministry of Interior in coordination with the Ministry of Finance

Services, products, prices (tariffs) subject to state regulation (control)	Executive agency authorized to exercise control
Household electricity tariffs	Supervised by the National Electricity Regulatory Commission
Maximum wholesale prices for natural gas for residential users and for organizations funded from the budget	Supervised by the National Electricity Regulatory Commission
Retail prices for natural gas used by residential users	Supervised by the National Electricity Regulatory Commission
Tariffs for natural gas, oil, petroleum products, ammonia and ethyl substances transportation through main pipelines of to Ukrainian users	Supervised by the National Electricity Regulatory Commission
Natural gas storage tariffs	Supervised by the National Electricity Regulatory Commission
Natural gas distribution network transport tariffs and end users transport tariffs	Supervised by the National Electricity Regulatory Commission
Prices for prosthesis, orthopedic products and means of rehabilitation	Supervised by the Ministry of Labour and Social Policy
Prices for products of hunting including exported live wildfowl	Supervised by the State Committee of Forestry in coordination with the Ministry of Economy for all users of hunting grounds
Prices for hunting trophies gained by foreign citizens	Supervised by the State Committee of Forestry in coordination with the Ministry of Economy for all users of hunting grounds
Tariffs for services provided to freeing users of hunting grounds	Supervised by the State Committee of Forestry in coordination with the Ministry of Economy for all users of hunting grounds
Prices for hunting licenses for ungulate wild animals and bears	Supervised by the State Committee of Forestry in coordination with the Ministry of Finance for all users of hunting grounds
Prices for fuel (coal, coal bricks, domestic furnace fuel, gas, peat, peat, bricks, liquefied gas) sold through retail trade	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblasts, Kiev and Sebastopol municipal state administrations
Maximum levels of trade overheads and rate of returns for baby food	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblasts, Kiev and Sebastopol municipal state administrations
Fees for services provided by alcohol detoxification centers to under the Ministry of Interior	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Fees for services provided by state and communal medical treatment and prevention facilities	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Maximum trade overheads for drugs and medical appliances included in the inventory of domestic and imported drugs and medical appliances subject to government regulation: sold through retail drug store network – at the level not higher than 35% from the wholesale price of the producer (customs declared price); sold to the state healthcare facilities funded from the budget – at the level not higher than 10% from the wholesale price of the producer (customs declared price)	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblasts, Kiev and Sebastopol municipal state administrations

Services, products, prices (tariffs) subject to state regulation (control)	Executive agency authorized to exercise control
Fees for valuation of real estate, for issuing titles and for title registration	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Tariffs for funeral service	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Tariffs for passenger transportation and prices for tickets at municipal passenger transportation: metro, buses, tramways, trolleybuses (that service regular routes)	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Tariffs for passenger transportation and prices for tickets at passenger electrical transport (trolleybuses) used for intercity and suburban transportation	Supervised (set) by Council of Ministers of the Autonomous Republic of Crimea
Tariffs for passenger transportation and prices for tickets at suburban railway transportation	Supervised by the management of railways in coordination with Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Tariffs for passenger and luggage transportation at intercity, suburban and interoblast automobile transport (servicing regular routes of the Ministry of Transportation)	Supervised by the Ministry of Transportation in coordination with Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Freight transportation tariffs for railway distribution branches, loading and unloading services and other services provided by operators of industrial goods railway transportation	Supervised by Ukrpromzaliztrans (railway transportation of industrial goods)
Water supply services provided to commercial entities regardless of their form of ownership and water supply support and water treatment services	Supervised by the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Heat generation and distribution tariffs provided to commercial entities regardless of their form of ownership	Supervised by the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Tariffs for collection, removal and processing of solid and liquid domestic waste provided to commercial entities regardless of their form of ownership	Supervised by the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Maximum hostel fees paid by foreign citizens and persons without citizenship that stay in Ukraine legally	Supervised by the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations
Tariffs for cable TV	Supervised by the Council of Ministers of the Autonomous Republic of Crimea, oblast, Kiev and Sebastopol municipal state administrations in coordination with the Ministry of economy and European Integration

Introduction of pricing mechanisms and enforcement of government pricing policy is ensured by pricing departments of the bodies of executive power and by the state pricing control bodies.

The State Pricing Control Inspection is a governmental civil service agency that operates under the Ministry of Economy and European Integration and is accountable to it. Activities of the State Pricing Control Inspection are governed by the constitution of Ukraine, presidential decrees, decrees of the Cabinet of Ministers, decrees of the Ministry of Economy and by Provisions of the State Pricing Control Inspection ratified by the resolution of the Cabinet of Ministers of 13 December 2000, No. 1819. The main objective of the State Pricing Control Inspection is

organization and management of control and supervision of adherence to price and tariff procedures by the central and local bodies of executive power, by enterprises and institutions.

No. 8

Members requested information on progress of privatization of State-owned enterprises:

- **By category and size of enterprise, by type of privatization;**
- **Since initiation of privatization program, indicating enterprises privatized, in the process of privatization, and still state-owned; and**
- **Projected date of privatization.**

Answer:

Privatization is a top priority of economic reforms in Ukraine.

In Ukraine mass privatization has been completed and a new stage of privatization has been initiated based on a commercial case by case approach. With introduction of market standards private property has become a driving force of economic growth of the nation. Statistical analysis conducted by independent experts showed that the economic growth has a direct connection with operation of private businesses.

Within all years of privatization about UAH 7 billion was gained through privatization sales (main part went to the national budget) which helped to solve a lot of social problems: covering of pension arrears, provision of subsidies to underprivileged, salaries to employees of the enterprises funded from the national budget.

According to the data of 1 April 2002 provided by the National Statistical Committee 79,362 entities changed their form of ownership under privatization. A significant specific share (72.9 per cent or 57,824 entities) was contributed by the communal enterprises with the rest (27.1 per cent or 21,538 entities) contributed by the state enterprises.

Among a total number of privatized entities a significant majority (80.7 per cent) belongs to small businesses (Group A), medium and large (Groups B,C,D: 14.3 per cent), construction in progress (Group E, 4.0 per cent), social and cultural facilities (Group F, 1 per cent).

Initial value of fixed and intangible assets of enterprises that changed their form of ownership accounts for 32.5 per cent out of total value of all fixed and intangible assets in Ukraine. For state and communal enterprises this parameter is 55.3 per cent.

Industrial output of the privatized enterprises amounted to UAH 20281.9 million, which was 52.8 per cent out of total production (data for 1 April 2002).

Share of output of privatized enterprises was 34.3 per cent for mining industry, 57.2 per cent for processing industry and 48.5 per cent for generation and distribution of electricity gas and water.

Higher than average for the industry was the share of output of privatized enterprises for such branches of industry as metallurgy and metal processing (72.4 per cent), manufacturing of machines and equipment (70.3 per cent), mining of non-energy substances (69.7 per cent), production of all other non-metal mineral products (construction materials, glassware (64.8 per cent), production of coke and petroleum products (57.6 per cent).

In food industry and processing of agricultural products, in textile industry and clothes production more than a half of the output is produced by the reformed enterprises; in chemical industry and in manufacturing of electrical and electronic equipment they account for 49 per cent.

In the structure of industrial output produced by the said enterprises output of processing enterprises accounted for three fourths (74.1 per cent), electricity, gas and water generation and distribution facilities – 18.1 per cent, mining industry – 7.8 per cent.

In the first quarter of 2002 privatized enterprises employed 2.6 million, which was about one fifth of hired labour (apart from small businesses).

In January-March an average monthly nominal salary of employees of the privatized enterprises was UAH 373.07 (in 2001 it was UAH 354.46), which is 23 per cent higher compared to corresponding period of the previous year. This parameter is 11.2 per cent compared to all other enterprises in Ukraine.

Thus one can make a conclusion that privatized enterprises contribute significantly to the Ukrainian industrial production (55 per cent).

According to the list of the enterprises planned to sell not less than 25 per cent of their stock in 2002 preparatory work for sale of stock of strategic enterprises and monopolists has been undertaken.

966 enterprises have changed their form of ownership in Ukraine during 7 months of 2002, including Group A – 537 (55.6 per cent), Groups B and C – 38 (3.9 per cent), Group D – 313 (32.4 per cent), Group E – 8 (0.83 per cent), Group F – 70 (7.2 per cent).

A majority of enterprises of Groups C and D have been privatized through sales of stock of the open joint stock companies – 30 enterprises (78.9 per cent).

224 small businesses have been sold through auctions (41.7 per cent) and 304 small businesses have been bought out.

Enterprises of Group E have been predominantly sold through auctions – 214 (68.4 per cent) and 91 (29.1 per cent) have been bought out.

In Group F 31 enterprises have been sold through auctions (44.3 per cent) and 37 (52.9 per cent) bought out.

This year the main collection was anticipated from sale of stock of Open Joint Stock Company "Ukrtelecom".

Resolutions of the Cabinet of Ministers of 31 July 2002 Nos. 425p-433p adopted tender procedures for sale of nine electricity companies. With the aim to increase investment attractiveness of the said companies and to facilitate tender organization the government adopted a decision to hold the tender after debt restructuring (around US\$1 billion). In its resolution of 26 July 2002 No. 513-ck/7 the Cabinet of Ministers requested to develop mechanisms for debt settlement.

Resolution of the Cabinet of Ministers No. 300 of 4 June 2002 increased stock of Ukrtelecom to be put for sale from 37 per cent to 42.86 per cent. At its meeting of 7 August 2002 the government adopted the decision to postpone the sale of Ukrtelecom stock for the next year.

The Privatization Program of the years 2000-2002 is reaching its completion this year.

The Fund undertook the work of drafting of the National Program for Privatization in the years 2003-2008.

The next stage of privatization of state assets will be conducted on a basis of individual approach with detailed analysis of financial standing of all enterprises and selection of strategic investors with serious investment proposals.

Draft of the new program envisages optimization of the structure of the state property which will be based on definition of state assets that will remain in state ownership, provision of efficient corporate management, transition from fiscal privatization to innovative investment approach under which part of the funds raised from privatization will be allocated for development and modernization of strategic enterprises, etc.

Another promising development of privatization is sale of the enterprises in the most attractive branches of Ukrainian economy such as mining, fuel and energy, petroleum, instrumentation, aerospace; enterprises of air, railway, water transport, production of liquor and alcohol, agricultural operators, enterprises of the military industrial complex.

No. 9

Members requested information on the list of activities subject to licensing:

- **Description of activity and products for which activity licence is necessary;**
- **Nature of requirement, i.e. who must apply, any additional requirements; and**
- **Issuing authority, fee structure.**

Answer:

Law of Ukraine "On Licensing of Certain Types of Commercial Activities" stipulates the types of businesses subject for licensing, licensing procedures, enforcement of licensing, responsibilities for infringement of licensing regulations.

According to Article 1 of Law of Ukraine "On Licensing of Certain Types of Commercial Activities" licensing fees are paid once when the licence is issued to the licensee.

Fees collected from issuing of licenses, introduction of amendments to licenses and for issuing copies of licenses are transferred to the national budget of Ukraine.

The list of commercial activities subject for licensing is set by the Article 9 and by Part 2 of Article 2 of the said law.

Resolution of the Cabinet of Ministers of 14 November 2000, No. 1698 "On Setting up Licensing Authorities" introduces a list of licensing authorities (See Annex 1).

Resolution of the Cabinet of Ministers of 29 November 2000, No. 1755 "On Terms of Licenses for Certain types of Commercial Activities, on Licensing Fees and Payment Procedures" defines terms of validity of licenses and licensing fees. Licensing fees are collected in the amount of 20 minimum salaries before taxes, if the licence is issued by the central executive agency, and of 15 minimum salaries before taxes, if the licence is issued by the local executive agency, except for the following licenses:

- Radio communication services (with use of radio frequencies): 200 minimum salaries before taxes

Telephone services (except for strategic users):

- International (licence is valid for the territory of Ukraine only): 529,000 minimum salaries before taxes

Intercity:

- use of transmission lines, network routes, communication channels: 20,000 minimum salaries before taxes;
- without use of transmission lines, network routes, communication channels: 20000 minimum salaries before taxes;
- cellular telephone communication: 20,000 minimum salaries before taxes.

Local:

- with capacity of up to 1,000 numbers: 60 minimum salaries before taxes;
- with capacity of over 1,000 numbers: 200 minimum salaries before taxes;
- in rural regions: 20 minimum salaries before taxes;
- audiotext: 200 minimum salaries before taxes.

Technical maintenance of telephone, radio- and cable communication under industrial use:

- Telecommunication network: 60 minimum salaries before taxes;
- Production of ethyl alcohol, brandy and fruit alcoholic drinks: 1,500 minimum salaries before taxes;
- Production of ethyl alcohol, brandy and fruit alcoholic drinks at the enterprises of primary processing that produce grape and fruit alcoholic drinks and raw alcohol from byproducts with average annual volumes of production of up to 1,000 ton: - 360 minimum salaries before taxes;
- Wholesale trade in ethyl, grape and fruit alcohol: 15,000 minimum salaries before taxes;
- Wholesale trade in alcoholic drinks: 300 minimum salaries before taxes;
- Retail trade in alcoholic drinks: 300 minimum salaries before taxes.

International passenger air transportation: 107.5 minimum salaries before taxes (at time of submission of the application) and 25.4 minimum salaries before taxes (for the licence):

Extension of the term of the licence for international passenger and luggage airfare: 53.8 minimum salaries before taxes (at time of submission of the application) and 25.4 minimum salaries before taxes (for the licence)

Aerochemical works: 35 minimum salaries before taxes (at time of submission of the application) and 15 minimum salaries before taxes (for the licence).

Extension of licence for aerochemical works: 17.5 minimum salaries before taxes (at time of submission of the application) and 15 minimum salaries before taxes (for the licence).

Term of validity of the licenses is three years, except for the following licenses:

- radiocommunication (with use of radio frequencies) - ten years;

- telephone communication (except for strategic enterprises) - 15 years;
- technical maintenance of tele radio and cable communication networks under industrial use - five years.

Resolution of the Cabinet of Ministers of Ukraine of 4 July 2001 No. 756 "On Documents Attached to a Licence Application for Certain Types of Commercial Activities" stipulates a list of documents attached to a licence application for certain types of economic activity (see Annex 2).

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Registration requirements for engaging in importing

No. 10

Members noted that registration and pre-registration can be used as a market barrier in a fashion similar to certification, with foreign companies exposed to arbitrary administrative decisions and lack of notification of regulatory changes. Although Ukraine has made progress recently, in particular as concerns pharmaceutical products, Ukraine must commit to establish, and maintain, clear and transparent procedures for registration and pre-registration of goods.

Members requested:

- **that Ukraine ensure that the pre-registration fees introduced by order No. 55 of the Ministry of Health of Ukraine be implemented in a non-discriminatory way between domestic and foreign products;**
- **consistent implementation of the resolutions concerning pharmaceutical and crop protection products, with clear and transparent procedures for the processing of one-time import allowances in exceptional cases;**
- **that fees for registration and pre-registration do not exceed the cost of the examination/registration procedure in line with GATT Article VIII.**

Answer:

In order to avoid double licensing pharmaceutical products were excluded from the list of exported commodities subject for licensing.

According to Article 9 of the law of Ukraine "On Medication" the procedures for state registration of medication are stipulated by the Cabinet of Ministers of Ukraine.

Resolution of the Cabinet of Ministers of Ukraine of 13 September 2000, No. 1422 "On Introduction of Provisions of State Registration (re-registration) of pharmaceuticals and Amount of fees for State Registration (re-registration) of pharmaceuticals" stipulates an unified fee for state registration (re-registration) of imported and domestic pharmaceuticals. Amount of the fee determined with regard to the type of product and its origin.

According to the said resolution the Ministry of Healthcare prepared a decree of 19 September 2000, No. 220 "On Introduction of Procedures for Analysis of Pharmaceutics Components Submitted for the State Registration (re-registration) and on Procedures for Introduction of Amendments to the Registration Documents within the Term of Validity of the Registration"

registered with the Ministry of Justice (registration of 5 October 2000, No. 685/4906) which introduces unified procedures for analysis of components submitted for pharmaceutical registration and procedures for their registration regardless of the country of origin.

As for maximum tariffs for expert analysis and evaluation of components submitted for registration (re-registration) set in the decree of the Ministry of Healthcare of 17 March 2000, No. 55, these tariffs are also unified for all operators of the pharmaceutical market. The tariffs have been updated to meet the requirements of GATT (Article VIII) and ratified by the decree of the Ministry of Healthcare of Ukraine of 14 June 2001, No. 228 "On Changes and Amendments to the Maximum Tariffs for Expert Analysis of Pharmaceutical Materials Submitted for the State Registration (re-registration) at the State Scientific Expert Center of Pharmaceutical Materials of the Ministry of Healthcare of Ukraine" registered with the Ministry of Justice (registration of 21.06.2001 No. 4-28-1671). Amount of these tariffs depends on type of product submitted for registration regardless of the country of origin.

Decree of the Ministry of Healthcare of Ukraine of 17 January 2002, No. 13 "On Procedures for Import of Unregistered Pharmaceutical Materials to the Customs Territory of Ukraine with the Aim of Conducting Pre-Treatment Research, Clinical Tests and State Registration" registered with the Ministry of Justice of Ukraine (registration of 15 February 2002, No. 151/6439) introduces a unified procedures for import of unregistered pharmaceutical materials to Ukraine for all operators.

(b) Characteristics of national tariff

No. 11

Members requested information on rates of state duties established:

- **Description by HS tariff item/service category; and**
- **Rate(s) applied.**

Answer:

The objects of the state duty, documents and actions which are subject to the state duty are set by Ukraine Cabinet of Ministers' Decree 7-93 of 21 January 1993 "On State Duty".

Rates of the state duty shall be set as follows:

1. For filing lawsuits and complaints with civil jurisdiction courts and for document copies to be issued by the courts	
- for filing lawsuits	1% of the lawsuit price, but not less than 3 untaxed minimums of personal income and not more than 100 untaxed minimums of personal income (currently, one untaxed minimum of personal income equals UAH17)
- for filing complaints on illegal actions by governmental bodies and officials which (actions) infringe on rights of individuals	0.2 of the untaxed minimum of personal income
- for filing divorce lawsuits	0.5 of the untaxed minimum of personal income
- for filing repeat divorce lawsuits	1 untaxed minimum of personal income
- for filing lawsuits to obtain divorce and have joint property divided	the size of state duty is set based on the price of the lawsuit in accordance with sub-clause "a)" of this clause

- for filing lawsuits to obtain divorce from persons judicially declared missing or incapable (insane), or from persons sentenced to at least three years of imprisonment	0.2 of the untaxed minimum of personal income
- for filing lawsuits to have an apartment rental contract amended or terminated, to have inheritance acceptance time period prolonged, to have property seizure cancelled, and other lawsuits of the intangible nature (or those which cannot be priced)	0.5 of the untaxed minimum of personal income
- for filing applications (complaints) with courts to have specific facts (e.g. date of birth) established or confirmed (cases under special proceedings)	0.5 of the untaxed minimum of personal income
- for filing lawsuits on disputes arising while contracts are being concluded	0.5 of the untaxed minimum of personal income
- for filing defamation lawsuits	1 untaxed minimum of personal income
- for appealing and cassation court judgments	50% of the size of the duty to be paid when filing a lawsuit, application or complaint (i.e. with a trial court), and in property related disputes – 50% of the size calculated on the basis of the price of that property
- to have another copy of the same judgment, sentence or other court ruling issued	0.03 of the untaxed minimum of personal income for one page of the copy
- for filing lawsuits to protect an individual's land title or property interest	0.1% of the price of the lawsuit
2. For filing lawsuits with economic (commercial jurisdiction) courts	
- for filing lawsuits of the tangible nature	1% of the lawsuit price, but not less than 3 untaxed minimums of personal income and not more than 100 untaxed minimums of personal income
- for filing lawsuits of the intangible nature including lawsuits to have non-regulatory decisions invalidated, for filing bankruptcy lawsuits against debtors, for filing monetary claims against debtors against which a bankruptcy lawsuit has been filed	5 untaxed minimums of personal income
- for filing lawsuits on disputes arising while economic contracts (i.e. contracts between bodies corporate) are being concluded, amended or terminated	5 untaxed minimums of personal income
- for appealing or cassation judgments and rulings; for filing applications to have judgments and rulings reviewed by trial courts because of newly discovered circumstances	50% of the size to be paid for filing a lawsuit with a trial court, and in property related disputes – 50% of the size calculated on the basis of the price of that property
3. For notarization done at state notary offices and executive committees of city or village councils:	
- for notarization of contracts to alienate houses, apartments, apartment rooms, summer cottages, garages and other real properties owned by individuals who are alienating these properties	1% of the contract price but not less than 1 untaxed minimum of personal income

- for notarization of contracts to alienate land plots owned by individuals who are alienating these plots	1% of the contract price but not less than 1 untaxed minimum of personal income
- for notarization of contracts for sale of state-owned companies' property, for notarization of pledge contracts	0.1% of the price of the property being sold or pledged
- for notarization of contracts to alienate motor vehicles and other self-propelled devices:	
- to one's own child, spouse or parents	1% of the contract price which is not less than the real value of the motor vehicle or other self-propelled device
- to other persons	5%
- for notarization of other contracts which can be priced	1% of the contract price but not less than 1 untaxed minimum of personal income
- for notarization of contracts to divide joint property, of suretyship contracts and of other contracts which cannot be priced	0.05 of the untaxed minimum of personal income
- for notarization of wills (testaments)	0.05 of the untaxed minimum of personal income
- for issuance of the Certificate of the right to inheritance:	
- to the spouse, parents or an adult child	0.5% of the price of the inheritance property
- to a grandchild, great-grandchild, brother, sister, grandfather or grandmother	-
- to any other heir	-
- for issuance of the Certificate of the right to inherit land plot (or land interest):	
- to the spouse, parents, an adult child, grandchild, great-grandchild, brother, sister, grandfather or grandmother	0.1% of the inherited property
- to any other heir	0.5% of the inherited property
- for issuance of the Certificate of the spouse's right to the share of joint property, acquired during marriage	0.03 of the untaxed minimum of personal income
- for notarization of powers of attorney to use and dispose of property (other than motor vehicles and self-propelled devices) and to use bank accounts:	
- to a child, spouse, parents	0.03 of the untaxed minimum of personal income
- to any other individual	0.1 of the untaxed minimum of personal income
- for notarization of powers of attorney to use and dispose of motor vehicles:	
- to a child, spouse, parents	0.1 of the untaxed minimum of personal income
- to any other individual	0.3 of the untaxed minimum of personal income
- for notarization of general powers of attorney to use property including motor vehicle	the size of the duty is set at rates provided for by sub-clauses i) and j) of this clause
- for notarization of other powers of attorney	0.02 of the untaxed minimum of personal income
- for imposing notarial ban on disposal of inheritance property	2 untaxed minimums of personal income
- for attesting a protest by ship master	0.3 of untaxed minimum of personal income
- for protesting bills of exchange or promissory notes, for presenting cheques to be paid and certifying non-payment of cheques	0.3 of untaxed minimum of personal income

- for certifying that a document is correctly translated	0.3 of untaxed minimum of personal income per page
- for making notarial endorsements (to recover a debt by selling debtor's property)	1% of the sum to be recovered or 1% of the price of property to be recovered but not less than 3 untaxed minimums of personal income and not more than 100 untaxed minimums of personal income
- for notarization of document copies or document excerpts	0.01 of the untaxed minimum of personal income per page
- for notarization of signatures on documents including translator's signature	0.02 of the untaxed minimum of personal income per document
- for certifying the fact that one individual or legal entity has passed an official document to another individual or legal entity and for performing any other notarial action except for those stated in sub-clauses a) – t) of this clause	0.03 of the untaxed minimum of personal income
- for issuing a duplicate copy of a notarized document	0.03 of the untaxed minimum of personal income
- for notarization of land plot (sub-) lease contracts	0.01% of the land plot appraisal performed under the methodology approved by Ukraine's Cabinet of Ministers. In case the land plot is not appraised, 1% of the contract price but not less than 1 untaxed minimum of personal income
4. For notarial and other actions done outside the notary office or the office of city/village council at rates set for appropriate actions plus actual costs of travel	
5. For issuance of personal status certificates:	
a) registration of marriage	0.05 of the untaxed minimum of personal income
b) registration of divorce:	
- at the consent of both spouses having no minor children	0.05 of the untaxed minimum of personal income
- on the basis of a court judgment and in case the marriage was the first for both spouses	0.5 – 1 untaxed minimum of personal income due from one spouse or the both
- on the basis of a court judgment and in case the marriage was not the first for one of the spouses	1- 1.5 of the untaxed minimum of personal income due from one spouse or the both
- from persons judicially declared missing or incapable (insane), or from persons sentenced to at least three years of imprisonment	0.03 of the untaxed minimum of personal income
c) registration of the change of surname, given name and patronymic name (except for the change because of registered marriage)	0.03 of the untaxed minimum of personal income
d) registration of the repeat change of surname, given name and patronymic name not in connection with registered marriage	3 untaxed minimums of personal income
e) for issuance of a Certificate in connection with the changing, adding to and renewing of entries on personal status registration	0.02 of the untaxed minimum of personal income
f) for issuance of repeat certificates of personal status registration	0.03 of the untaxed minimum of personal income
6. For performing other actions:	
a) for issuance of Ukrainian national's passport (internal one):	

- in case the currently valid passport is replaced	0.2 of the untaxed minimum of personal income
- in other cases	1 untaxed minimum of personal income
b) for issuance of Ukrainian national's passport for international travel or for renewal of the passport:	
- on the territory of Ukraine	5 untaxed minimums of personal income
- outside Ukraine	at the rate of the consular duty
c) for re-registration of regular (non-diplomatic or non-service) passport for international travel	2 untaxed minimums of personal income
d) for issuance of Stateless Person's ID document for international travel or for renewal of the document	5 untaxed minimums of personal income
e) for issuance of foreign nationals and stateless persons with Ukrainian entry visas, Ukrainian exit visas and Ukrainian transit visas	as set by Ukraine's Cabinet of Ministers
f) for making any changes in documents stated in sub-clauses b) and e) of this clause (except for renewal of them)	0.5 of the untaxed minimum of personal income
g) for issuance of Ukrainian nationals, foreign nationals and stateless persons with documents on invitation to Ukraine	0.3 of the untaxed minimum of personal income
h) for issuance of, or renewal of Ukraine residence permits to foreign nationals and stateless persons:	
- permanent residence permits	0.5 of the untaxed minimum of personal income
- temporary residence permits	0.2 of the untaxed minimum of personal income
i) for registration of foreign nationals' passports or similar documents	0.05 of the untaxed minimum of personal income
j) for issuance of Ukrainian nationals residing in border areas, with permits to cross Ukraine's state border under the simplified procedure	0.5 of the untaxed minimum of personal income
k) for issuance of foreign nationals and stateless persons with a residence permit to replace the lost one	the same as for issuance of the appropriate original documents
l) for applying for Ukrainian nationality	0.5 of the untaxed minimum of personal income
m) for applying to renounce Ukrainian nationality	6 untaxed minimums of personal income
n) for issuance of international travel passports or similar documents, or documents on invitation to Ukraine instead of the lost ones	the same as for issuance of the appropriate original documents
o) for expedited (within ten working days) issuance of documents stated in sub-clauses b), c) and g) of this clause when requested by individuals	the appropriate size of state duty is increased by 100%
p) for registration of individual's residence (the former is similar to the latter)	0.05 of the untaxed minimum of personal income
q) for issuance of international travel passports, of similar documents, and for renewal of these documents, to Ukrainian nationals who are former guerrillas or participants of the Civil War and Great Patriotic War, of other combatant operations while guarding the Soviet Union and Soviet Ukraine, and being in active military service	the appropriate size of state duty is decreased by 50%

r) for consular actions done inside and outside Ukraine	at the rates of Ukraine's consular duties
s) for actions connected with securities transactions:	
- for registration of information on issues of securities except for governmental or local authority bonds	0.1% of the face value of securities issued
- for issuance of privatization papers	0.2 of the face value of privatization papers
t) for transactions of sale of houses, apartments, apartment rooms, summer cottages, garages and other real properties owned by natural persons—sellers, done on commodity exchanges, except for involuntary alienation of such properties in cases specified by Laws of Ukraine	1% of actual price of the concluded contract but not less than 1 untaxed minimum of personal income per concluded contract
u) for public bidding (auctions, tenders) of real properties owned by natural persons – sellers, except for involuntary alienation of such properties in case specified by Laws of Ukraine	1% of the actual value of real properties sold but not less than 1 untaxed minimum of personal income per property sold
v) for issuance of hunting permits, fishing permits and for annual renewal of them	0.1 of the untaxed minimum of personal income
w) for issuance of title documents (patents and certificates) for intellectual property:	
- for issuance of invention (declaratory) patent, design declaratory patent, and industrial prototype patent:	
- to natural persons permanently residing in Ukraine and to legal entities located in Ukraine	1 untaxed minimum of personal income
- to natural persons permanently residing outside Ukraine and to foreign legal entities located outside Ukraine	US\$100
- for issuance of trade or service mark owner's certificate:	
- to natural persons permanently residing in Ukraine and to legal entities located in Ukraine	5 untaxed minimums of personal income
- to natural persons permanently residing outside Ukraine and to foreign legal entities located outside Ukraine	US\$200
- for registration of integrated circuit topography:	
- to natural persons permanently residing in Ukraine and to legal entities located in Ukraine	1 untaxed minimum of personal income
- to natural persons permanently residing outside Ukraine and to foreign legal entities located outside Ukraine	US\$100
- for issuance of the registration certificate of the right to use the name of product's origin:	
- to natural persons permanently residing in Ukraine and to legal entities located in Ukraine	5 untaxed minimums of personal income

- to natural persons permanently residing outside Ukraine and to foreign legal entities located outside Ukraine	US\$200
- for registration of the right to a plant sort	1 untaxed minimum of personal income
- for issuance of involuntary licence for the right to use a plant sort	3 untaxed minimums of personal income
x) for submitting to Ukraine's Cabinet of Ministers a draft plan to set up an industrial and financial group	1,000 untaxed minimums of personal income

No. 12**Members requested information on tariff surcharges, if any, applied to imports:**

- **Description by HS tariff item/service category; and**
- **Rate(s) applied.**

Answer:

Products, imported into the customs territory of Ukraine, are subject to import duty at rates set by Law of Ukraine No. 2371-III of 5 April 2001 "On Customs Tariff of Ukraine" (effective since 1 July 2001) as amended.

Law of Ukraine No. 2097-XII of 5 February 1992 "On Single Customs tariff" provides that in case products, imported into Ukraine, are subject to antidumping, compensatory or special measures in accordance with Laws of Ukraine "On Protection of the national manufacturer from dumping-priced imports", "On Protection of the national manufacturer from subsidized imports", non-regular types of duty may be applied which are levied on the basis of the Inter-Departmental Commission of International Trade's decisions to apply antidumping, compensatory or special measures.

In particular, Article 11 of Law of Ukraine No. 2097-XII of 5 February 1992 provides for the following types of non-regular duty:

- special duty;
- antidumping duty;
- compensatory duty.

Ukraine's current legislation does not provide for any other type of tariff surcharges on products imported into Ukraine.

Anti-dumping Investigations on the basis of which Findings
Anti-Dumping Duties have been applied

Commodity that is subject to the Antidumping Investigation	Country of Origin of the Commodity	Date on which the Anti-Dumping Duty was levied, the Term of Effect and the Amount of such Duty
<ul style="list-style-type: none"> - Artificial fur and articles thereof (HS code – 4304 00 00) - Pile fabrics and terry fabrics (HS code - 6001) 	Republic of Belarus	On 23 February 2001, by Decision No. AD-15/2001/52-54 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty for artificial fur – 179.70%; pile fabrics – 53.29% (of the customs value of the commodity, were introduced for a period of five years.
Electric filament lamps (HS code – 8539 22 90 00)	Russian Federation	On 7 December 2000, by Decision No. AD-11/2000/52-39A of the Interdepartmental Commission on International Trade, final anti-dumping measures in the form of a anti-dumping duty in the amount 97.50% of the customs value of the commodity, were introduced for a period of five years.
Fiberboard of wood (HS code- 4411 11 00 00)	Republic of Belarus	On 12 July 2002, Decision No. AD-45/2002/52-61 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty in the amount of 68.75% of the customs value of the commodity, were introduced for a period of five years.
Crossing pieces (HS code - 8608 00 10 00)	Russian Federation	On 5 July 2002, by Decision No. AD-43/2002/52-63 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty in the amount of 59.4% of the customs value of the commodity, were introduced for a period of five years.
Ruberoid (HS code- 6807 10 1000)	Republic of Belarus	On 12 July 2002, by Decision No. AD-47/2002/52-62 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty in the amount of 75% of the customs value of the commodity, were introduced for a period of five years.

(d) Other duties and charges

No. 13

Members requested information on fees and charges for services rendered relating to importation i.e., customs fees, consular fees, port fees, etc.:

- **Description of service rendered/purpose of fee; and**
- **Rate(s) applied.**

Answer:

For the rendering of services in the customs area and in accordance with Article 77 of the Customs Code of Ukraine, customs authorities charge customs fees during customs formalities for goods and other items in customs control zones and on location at enterprises that store such goods and other items, or after working hours as designated for customs, and for storage of goods and other items under bond in cases where their transfer to customs storage in accordance with Article 85 of the Code is not obligatory.

Cabinet of Ministers of Ukraine Resolution No. 65 dated 27 January 1997 established the following rates for customs fees:

For customs clearance of goods and other items with a customs value of:

- Up to US\$100 not levied;
- From US\$100 to US\$1,000 - US\$5;
- Greater than US\$1,000 - 0.2 per cent of the customs value of goods and other items, however not more than the equivalent of US\$1,000.

For customs clearance of temporarily imported (exported) property under obligation to export (import) said property:

- For each freight customs declaration – US\$30;
- For each additional sheet thereof – US\$15.

For customs clearance of goods in case of their transit:

- For each freight customs declaration – US\$10;
- For each additional sheet thereof – US\$5.

For customs clearance of goods imported to a bonded customs warehouse:

- For each freight customs declaration – US\$30;
- For each additional sheet thereof – US\$15.

For holding of goods and other items under customs control, for each they are held:

- For the first fifteen calendar days – not charged;
- For every subsequent calendar day - 0.05 per cent of the general customs value of goods and other items.

For customs clearance of goods and other items in customs control zones on the territory of and in facilities of enterprises that store such goods and other items, or after working hours as designated for the customs house (per one customs house staff person hour):

- During working hours – US\$20;
- During non-working hours, on Saturday and Sunday – US\$40;
- On holidays – US\$50.

In accordance with Cabinet of Ministers of Ukraine Resolution No. 285 dated 7 March 1998, in cases of customs clearance of the export of scrap metal and ferrous and non-ferrous metal waste, customs fee rates for customs clearance of goods, their holding under customs control and for

summoning of a customs house inspector shall be paid by enterprises at a rate five times the customs fee rate set for the said category, except for enterprises which conducted exportation of these goods in accordance with the State Program of Destruction of Regular Types of Un-usable and Un-storable Ammunition.

Note: In accordance with the new Customs Code of Ukraine adopted by the Verhovna Rada of Ukraine on 11 July 2002, the charging of customs fees is not provided for, with the exception of charges for customs clearance, that takes place off-location of customs authorities or after working hours designated for customs authorities. The new Customs Code is enacted starting 1 January 2003.

In accordance with Ministry of Transportation of Ukraine Order No. 392 dated 31 October 1995, as amended and supplemented, for processing of particular types of freight, uniform accorded rates are charged for the conduct of loading and off-loading for both export and import freight consignments. No fee is charged for the storage of import freight consignments that have entered the port, during the first four calendar 24 hour periods from the moment of their entering the port, and after expiration of the above periods and to the moment of the freight's exportation from the port, a fee is charged of the recipient depending on the length of storage.

The following specific fees are charged at Ukrainian seaports: ship, berth, anchor, channel, lighthouse, freight, administrative and sanitary. All port fees and payments for services provided to ships at seaports of Ukraine are conducted without regard to the type of freight (export or import). In accordance with Cabinet of Ministers of Ukraine Resolution No. 1544 dated 12 October 2000, and Ministry of Transportation of Ukraine Order No. 711 dated 15 December 2000, detailed value calculations for services rendered, with identification of base payments and supplemental payments (overtime – supplemental value charged for work performed after standard hours) shall be provided in disbursement invoices billed by the port to ship-owners.

Other types of fees may be created via legislative acts of Ukraine.

Port fees may be used exclusively for their specific purposes. In accordance with Article 84 of the Code of the Maritime Trade Fleet of Ukraine, port fees are payment for services rendered to clients by ports, and the formation of their level (value – price) takes place with account of the relevant expenses of ports and the income required to broaden renovation. In particular, the ship, channel, light-house, anchor and berth fees are payment for conditions provided to ships for safe entry, berthing and exit from ports, while the sanitary fee is for collection of all forms of pollution (waste) from ships.

In accordance with the Instruction "On the Consular Fee of Ukraine" approved by Order of the Ministry of Foreign Affairs of Ukraine No. 217 dated 15 December 1999:

- A consular fee is a money fee which is charged by diplomatic representations and consular institutions of Ukraine abroad, by the Consular Department of the Ministry of Foreign Affairs of Ukraine and by representations of the Ministry of Foreign Affairs of Ukraine on the territory of Ukraine, to natural and legal persons for the conduct of consular acts.
- Consular fee rates charged on the territory of Ukraine and abroad for the processing of visa documents for entry into Ukraine as well as for transit through the territory of Ukraine, are charged in amounts established in accordance with Article 3, Paragraph 3 of the Decree of the Cabinet of Ministers of Ukraine "On State Duty" No. 7-93 dated 21 January 1993 and the Resolution of the Cabinet of Ministers of Ukraine "On Establishing Rates for Consular Fees Charged for Processing of Visa Documents for Entry into Ukraine" No. 1457 dated 9 August 1999.

- Consular fee rates for the conduct of consular acts on the territory of Ukraine (with the exception of consular fees established by Paragraph 2 of this Instruction) are established in the national currency of Ukraine. In cases provided for by legislation of Ukraine, consular fees for non-residents on the territory of Ukraine shall be charged in any freely convertible currency at the official exchange rate of the National Bank of Ukraine (NBU) effective on the day of application as to the conduct of the relevant consular act.
- Basic rates of the consular fee for conduct of consular acts beyond the boundaries of Ukraine (with the exception of consular fees delineated in the first sub-paragraph of Paragraph 2 of this Instruction) shall be established in US\$.
- Consular fee rates for the conduct of consular acts by diplomatic representations and consular institutions of Ukraine abroad are established with account of the basic rates for consular fees (Paragraph 4 of this Instruction), and the requirements of the Resolution of the Cabinet of Ministers of Ukraine "On Establishing Rates for Consular Fees Charged for Processing of Visa Documents for Entry into Ukraine" No. 1457 dated 9 August 1999 (first sub-paragraph of Paragraph 2 of this Instruction), in the currency of the country of stay and in a dollar equivalent, and are approved by the Ministry of Foreign Affairs of Ukraine upon petition by the relevant diplomatic representations and consular institutions of Ukraine abroad with account of the economic situation in the country of stay and the principle of reciprocity. The relevant consular fee amounts may be charged at the applicant's option either in the currency of the country of stay or in US\$.
- Consular fee rates charged abroad, are reviewed by diplomatic representations of Ukraine abroad with account of the economic situation in the country of stay (the level of inflation, consumer price index etc.), however, as a rule, no more than once a year.

In case of changes to consular fee rates, their review shall include information to and approbation by the Ministry of Foreign Affairs of Ukraine.

Where several consular institutions of Ukraine are present in the country of stay, the Ministry of Foreign Affairs, upon the application of the relevant diplomatic representation of Ukraine abroad, shall confirm uniform consular fee rates for consular institutions of Ukraine in the country of stay.

The consular fee shall be charged (paid) prior to conduct of a consular act.

The consular fee charged shall be paid in non-cash form. As an exception, if the consular fee cannot be charged in a non-cash form (during non-working hours or where the consular act is conducted in an urgent fashion), then, with the written permission of the head of the diplomatic representation or consular institution of Ukraine, the consular fee may be collected in cash with mandatory completion of all relevant documents in accordance with current legislation of Ukraine.

Consular fees are non-refundable after the consular act has been completed or undertaken.

Consular fees may be returned to the applicant only in cases of impossibility of conducting a consular act due to circumstances that appeared or became apparent to the diplomatic representation or consular institution of Ukraine abroad, the Consular Department of the Ministry of Foreign Affairs of Ukraine and representations of the Ministry of Foreign Affairs of Ukraine on the territory of Ukraine following the charging of a consular fee.

For the conduct of consular acts during non-working hours or as a matter of urgency (the regular time required to conduct consular acts is determined by the heads of diplomatic representations or consular institutions of Ukraine, and on the territory of Ukraine – by the head of the Consular Department of the MFA of Ukraine, taking account of the total number of applications), double the regular consular fee is charged.

Natural and legal persons are exempted from payment of consular fees in cases foreseen by current legislation of Ukraine and international treaties of Ukraine that have been ratified (whose provisions have been confirmed as binding by) the Rada of Ukraine.

Consular fees that are charged for conducting consular acts:

- by a diplomatic representation or consular institution of Ukraine abroad shall receive at its own account with further transfer as income to the State Budget of Ukraine and for use in accordance with legislation of Ukraine and in the order established by the Ministry of Finance of Ukraine and the State Treasury of Ukraine;
- by the Consular Department of the MFA of Ukraine or a representation of the MFA of Ukraine shall be received at an account opened in the name of the State Treasury of Ukraine in accordance with the relevant budget classification codes.

Information on consular fee rates charged to conduct a consular act (or exemption therefrom) are recorded in the registry books designated for such acts and payments received therefrom, which shall be maintained in accordance with a sample approved by the MFA of Ukraine. Recordkeeping for payments received for the conduct of consular acts beyond the boundaries of Ukraine shall be maintained by the accountants of diplomatic representations and consular institutions of Ukraine abroad and the Currency and Finances Department of the MFA, and on the territory of Ukraine – by the Central Accounting Office of the MFA and accountants of the representations of this ministry in Ukraine.

The head and accountant of the relevant institution shall keep track of the propriety of application of consular fee rates and bear responsibility for ensuring the timely and complete collection of fees paid for the conduct of consular acts and their transfer to the State Budget of Ukraine.

Reports on fees paid for conduct of consular acts, their collection and use are compiled and submitted in accordance with forms approved by the Chief Department of the State Treasury of Ukraine and by deadlines set thereby.

The Ministry of Finance of Ukraine and the Ministry of Foreign Affairs of Ukraine may demand additional reports from representations of the Ministry of Foreign Affairs of Ukraine on the territory of Ukraine and diplomatic representations and consular institutions of Ukraine abroad, which shall be mandatory for these institutions.

In accordance with Article 56 of the Consular Statute of Ukraine, approved by the President of Ukraine Decree No. 127/94 dated 2 April 1994, actual expenses connected with the conduct of consular acts shall also be reimbursed.

The order in which reimbursed expenses connected with the conduct of consular acts, shall be established by current legislation of Ukraine.

The head of the diplomatic representation or consular institution of Ukraine abroad, the head of the Consular Department of the Ministry of Foreign Affairs of Ukraine, and the heads of representations of the Ministry of Foreign Affairs of Ukraine on the territory of Ukraine shall bear personal responsibility for compliance with the requirements of this Instruction.

Rates for consular fees charged for the conduct of consular acts on the territory of Ukraine by the Consular Department and representations of the MFA of Ukraine.

Name of consular act	Rate (in un-taxed minimum incomes of citizens)	
I. PASSPORT SERVICES		
Receipt of application for foreign travel passport from a citizen of Ukraine	1	
Issuance of foreign travel passport for a citizen of Ukraine	5	
Replacement (Re-issuance) of a lost or damaged foreign travel passport for a citizen of Ukraine	5	
Extension of validity of a foreign travel passport issued in Ukraine	5	
Entry of amendments to foreign travel passport for a citizen of Ukraine	0.5	
II. CITIZENSHIP ISSUES		
Review of petition to determine Ukrainian citizenship of applicant	0.5	
Issuance of certificate of Ukrainian citizenship	0.5	
Issuance of certificate of absence of Ukrainian citizenship	0.5	
III. LEGALIZATION AND PRESENTATION OF DOCUMENTS		
	For citizens of Ukraine	For foreign citizens and stateless persons
Review of petition for legalization of documents	0.5	0.5
Legalization of civil (marriage) status documents	0.5	1
Legalization of documents on activities of legal entities in Ukraine	5	5
Issuance of legalization certificate	0.5	0.5
Presentation of documents from abroad	0.5	0.5
IV. OTHER ACTS		
Conduct of other act in accordance with the Consular Statute of Ukraine	2	

Basic rates of consular fees charged for conduct of consular acts by diplomatic representations and consular institutions of Ukraine abroad.

Name of consular act	Minimum and maximum fee rate in US\$
I. PASSPORT SERVICES	
Receipt of application for foreign travel passport by a citizen of Ukraine	5 – 10
Issuance of personal identification for return to Ukraine	30 – 100
Issuance of foreign travel passport for a citizen of Ukraine	30 – 100
Replacement (Re-issuance) of a lost or damaged foreign travel passport for a citizen of Ukraine	30 – 100
Extension of validity of a foreign travel passport issued in Ukraine	10 – 30
Entry of amendments to foreign travel passport for a citizen of Ukraine (permanent and temporary consular registration abroad, removal of consular registration abroad, etc.)	1 – 30
II. CITIZENSHIP ISSUES, ENTRY TO UKRAINE FOR PERMANENT RESIDENCE AND EXIT FOR PERMANENT RESIDENCE ABROAD	
Filing of application for naturalization to Ukrainian citizenship	20 – 100
Filing of application for renewal of Ukrainian citizenship	20 – 100
Review of petition for review of status of Ukrainian citizenship	10 – 50
Issuance of certificate of Ukrainian citizenship	5 – 10
Issuance of certificate of non-citizenship of Ukraine	5 – 10
Filing of petition on permanent residence abroad	40 – 150

Name of consular act	Minimum and maximum fee rate in US\$
Filing of petition for entry to Ukraine for permanent residence	20 – 100
Filing of petition for renunciation of citizenship of Ukraine	40 - 200
III. LEGALIZATION AND PRESENTATION OF DOCUMENTS	
Review of petition for legalization of documents	3 – 10
Document legalization for natural persons	3 – 90
Document legalization for legal entities	20 – 200
Issuance of certificate of legalization	3 – 20
Review of petition for presentation of documents	3 – 10
Presentation of documents from Ukraine	10 – 40
IV. REGISTRATION OF ACTS OF CIVIL (including MARRIAGE) STATUS	
Review of petitions regarding registration of acts of civil status	5 – 30
Registration of marriage	10 – 150
Registration of divorce (termination of marriage):	
By mutual consent, married couple without minor children	70 – 300
By court decision, both parties in their first marriage	70 – 300
By court decision, if one party is remarrying	120 – 400
With persons duly recognized as missing or incompetent due to mental illness or deficiency, or with persons sentenced for a serious crime to a term of incarceration of not less than three years	10 – 100
Registration of change of surname, name and patronymic (except for changes in case of registration of marriage)	70 – 250
Registration of a repeat change of surname, name and patronymic, not connected with registration of a marriage	150 – 400
Other services for registration of acts of civil status	10 – 100
Review of petition to change, supplement or correct an act of civil status	10 – 30
Re-issuance of certificates of registration of acts of civil status	5 – 70
V. INHERITANCE MATTERS	
Review of an inheritance petition	10 – 110
Review and defense of inherited property	30 – 300
Safe-keeping of inherited property	0.2% of the inheritance value, per week of safe-keeping
VI. NOTARIAL ACTS	
Review of notary petition	3 – 15
Notarization of agreements (agreements, wills, powers of attorney et. Al.), except for agreements on alienation or mortgage of residential buildings, apartments, dachas, garden buildings, garages, land plots, other real property located in Ukraine	5 – 200
Measures for protection (safe-keeping) of inherited property	2% of the inheritance, but not less than 80 US\$
Issuance of certificates of ownership of a share of community (marriage) property	10 – 150
Witnessing to authenticity of copies of documents and extracts therefrom	5 - 50
Witnessing to the authenticity of signatures on documents	3 – 40
Witnessing to the propriety of translations from one language into another	5 – 70
Certificate that a person is alive	5 – 30
Certificate of personal location at a place certain	15 – 50
Certification of match between a person and photograph	5 – 40
Certificate of time of document presentation (furnishing)	3 – 30
Receipt for deposit of moneys and securities	0.5% of the total value per month of

Name of consular act	Minimum and maximum fee rate in US\$
	safe-keeping
Safe-keeping of documents	5 - 40 per month of safe-keeping
Execution of enforcement orders	10 – 70
Execution of maritime protests	10 – 90
Issuance of certificates on the right to an inheritance	40 – 200
Execution of other notary acts permitted by the laws of Ukraine	20 - 90
VII. FOSTER CARE, ADOPTION	
Review of a petition on establishment of fatherhood, adoption, establishing of foster care and guardianship	5 – 30
Establishing fatherhood, adoption, foster care and guardianship	50 – 250
Issuance of a certificate of adoption	5 – 150
De-registration of an adopted child from the consular register	5 - 150
VIII. PROCESSING OF DOCUMENTS BEARING ON WATER AND AIRBORNE TRANSPORT	
Processing of documents bearing on a water or air-ship	30 – 50
IX. OTHER ACTS	
Execution of a translation from one language to another (for every initiated page)	5 – 15
Execution of another act in accordance with the Consular Statute of Ukraine	5 – 25
Preparation of petition on the acquisition of weapons and ammunition therefore to the juridical persons of Ukraine provided there is a relevant permit from the internal affairs bodies of Ukraine.	100 - 150
Filing of a weapons or ammunition procurement petition by citizens of Ukraine with the relevant permit from internal affairs authorities of Ukraine	10 - 50

No. 14

Members expressed concern with respect to the single customs fee which was collected for purposes including SPS, ecological, road and other services rendered. They asked that a list of all fees for customs formalities be submitted as they understood that some were applied to other Members (such as for oil products) but had not been listed.

Answer:

In compliance with laws currently in effect, the following duties and charges shall be collected at the time of goods and other products' crossing the customs border of Ukraine:

- Customs fee,
- Import duty,
- Export duty,
- Value-added tax (VAT),
- Excise duty (when applicable).
- Customs fees collected by customs authorities when exporting.

In conformity with applicable laws of Ukraine the following payments shall be required at the time of customs clearance of cargoes exported outside of the customs territory of Ukraine:

- Customs fee;
- Export duty for oily crops seeds;
- Export duty for livestock and raw hides.

Following the Law of Ukraine On Taxation System, the duty levied on VAT and excise duty are referred to the national taxes and charges (mandatory payments):

- Customs fees collection is established under the Customs Code of Ukraine;
- Customs fees collected by customs authorities when importing.

In conformity with applicable laws of Ukraine the following payments shall be required at the time of customs clearance of cargoes imported into the customs territory of Ukraine:

- Customs fee;
- Import duty;
- Value-added tax (VAT);
- Excise duty (when applicable);
- Customs fees collected by customs authorities at transit.

In compliance with the laws of Ukraine only customs fees shall be collected for goods customs clearance.

In compliance with provisions of Articles 76 and 77 of the Customs Code of Ukraine, customs fees subject to rates approved under Resolution of the Cabinet of Ministers of Ukraine No. 65 On Customs Fees Rates of 27 January 1997 shall be collected for the customs clearance of vehicles, goods and other products crossing the customs border of Ukraine, for their being kept under customs control as payment for customs services.

For customs clearance of goods and other products having customs value:

- up to US\$100 - no fee collected;
- from US\$100 up to US\$1,000 – US\$5;
- over US\$1,000 - 0.2 per cent of the goods' and other products' customs value being however not bigger than the equivalent of US\$1,000.

For customs clearance of temporarily imported (exported) assets against a commitment of its reverse exportation (importation):

- as per each customs declaration – US\$30;
- as per each additional sheet - US\$15.

For customs clearance of goods in transit:

- As per each goods declaration - US\$10;
- As per each additional sheet - US\$5.

For customs clearance of goods in case of their movement to customs licensing warehouse:

- As per each goods declaration – US\$30;
- As per each additional sheet – US\$15.

For goods' and other products' being kept under customs control, per each day of stay:

- for the first 15 day period – no fees collected;
- for each subsequent calendar day – 0.05 per cent of the total customs value of goods and other products

For customs clearance of goods and other products at customs control zones within the territories and on the premises of enterprises storing such goods and other products, or performed at times beyond regular business hours as established for the customs office (per one hour of work of one customs officer):

- during business hours – US\$20;
- beyond business hours or on Saturday, Sunday – US\$40;
- on holidays – US\$50.

Furthermore, as per Resolution No. 285 of the Cabinet of Ministers of Ukraine of 7 March 1998, in the event of customs clearance of scrap and waste ferrous and non-ferrous metals, rates of customs fees collected for these items' customs clearance and their stay under the customs control, and for the call of a customs inspector shall be paid in five-fold amount of the determined rates of this kind by all business entities except those engaged in the export of such items under the State Program of Disposal of Conventional Ammunition Unfit for Further Use and Storage.

By Resolution of the Cabinet of Ministers of Ukraine No. 1460 of 18 September 1998. No. 1460 an additional customs fee has been introduced providing for payment for the customs clearance of oil products imported into the customs territory of Ukraine and subject to excise duty, being equal to 0.01 ECU per one kilo of said products which shall be remitted to the national budget and for target purposes to the Pension Fund as part of redemption of the arrears of the national budget owed to it. The effect of the said Resolution shall not apply to oil products produced and distributed in Ukraine.

The new Customs Code No. 92-IV approved by the Verkhovna Rada on 11 July 2002 (Articles 286 and 287) to enter into effect on 1 January 2003 introduces the notion of "payment for the customs clearance of goods inasmuch as it such clearance is effected outside of the place of business of customs authorities or at the time beyond regular business hours established for customs authorities".

Thus, as at the time of this Code entering into effect (on 1 January 2003), the notion of "charges for customs clearance" shall be eliminated.

For the purposes of facilitation of the customs clearance of vehicles crossing the customs border of Ukraine, the Verkhovna Rada of Ukraine passed, on 12 July 2001, the Law of Ukraine No. 2659-III On Amendments to the Law of Ukraine On the Introduction of the Unified Fee Collected at Entry Points on the Ukrainian State Border.

This Law provides for the unified fee collected at the points of entry into the customs territory of Ukraine from vehicles owned by domestic and foreign persons. This fee consists of fees collected for the performance of customs checks under the laws of Ukraine of cargoes and vehicles in transit, as well as of sanitary, phytosanitary, radiological and environmental types of control, and fares for the motor vehicles passage down motorways of Ukraine.

As per Article 2 of the Law of Ukraine of 12 July 2001 No. 2659-III, the unified fee shall be collected on a single-time basis respective of the movement mode (import, transit) subject to a single payment document.

The unified fee rates are stipulated in Article 5 of the said Law and shall be collected in EUROS, and may not be altered throughout the period of the budget year.

The unified fee collected at the points of entry into the customs territory of Ukraine shall be collected in the national currency of Ukraine as per the official exchange rate established by the National Bank of Ukraine as at the date of such fee collection.

The amount of fees collected for the customs, sanitary, phytosanitary, radiological and environmental types of control may not exceed the amount of costs associated with the performance of said checks.

The collection of any fees not envisaged under the above mentioned Law shall be prohibited.

Article 2 of Law No. 2659-III of 12 July 2001 establishes the following rates of the unified fee collected for the performance, at entry points on the state border of Ukraine, of control of cargo and motor vehicles, fees for the fare of motor vehicles down auto highways of Ukraine (per every kilometer of passage), and additional fees for every kilometer of passage of auto motor vehicles that exceed the prescribed amounts of total weight, axle loads, or/and overall dimensions:

Type of Motor Vehicle	Seat Capacity or Total Weight of Motor Vehicle with Cargo	Unified Rate Fee per motor vehicle - in €	
		For performance of control	For fare down highways per every kilometer of passage
1. Buses	from 10 to 30 seats inclusive	2	0.02
	Over 30 seats	5	0.02
2. Trucks with/or without trailers and prime movers with/or without semi-trailers	Up to 20 tons inclusive	5	0.02
	Over 20 up to 40 tons inclusive	10	0.02
3. Heavy weight trucks with total weight:	Over 40 up to 44 tons inclusive	10	0.1
	Over 44 up to 52 tons inclusive	10	0.2
	Over 52 up to 60 tons inclusive	10	0.27
	Over 60 tons (for every next 10 tons)	10	0.78
4. Heavy weight motor vehicles with excessive axle loads	Up to 5% inclusive	-	0.05
	Over 5% to 10% inclusive	-	0.1
	Over 10% to 20% inclusive	-	0.27
	Over 20% for every next 5%	-	0.15
5. Heavy weight motor vehicles exceeding prescribed breadth, height, length dimensions	For every parameter	-	0.03
6. Railway cargo car, container		2	-

As payment for the customs clearance related services subject to Article 77 of the Customs Code of Ukraine, customs authorities shall collect customs fees for customs clearance of goods and other products in customs control zones within the territory or on the premises if enterprises storing such items, or at the time beyond the regular business hours for the customs office, as well as for storage of goods and other products subject to the customs office liability in cases when the transfer of such items for the customs office storage under Article 85 of the Code is not compulsory.

No. 15

Members requested information on other non-services fees or charges applied exclusively to imports:

- **Description by HS tariff item; and**

- **Rate(s) applied.**

Answer:

No fees or payments not connected with services rendered, other than import duty and customs fees, shall be charged by current Ukrainian legislation.

No. 16

Members were concerned about the Law of Ukraine No. 2659-III "On Amendments to the Law of Ukraine On Application of a Single Fee Collected at the Points of Crossing of the State Border of Ukraine" adopted by the Rada on 12 July 2001, which sets unified rates per vehicle of the general fee to be collected at Ukrainian borders.

The calculation of the single fee is carried out on the basis of the vehicle type and it covers the performance of controls at the border (sanitary, veterinary, phytosanitary, radiological and ecological), regardless of whether or not the mentioned controls are carried out on the imported goods.

These members requested that Ukraine ensure that its system of fees is applied in conformity with WTO rules.

Answer:

With the aim of simplifying customs formalities for means of transportation crossing the customs border of Ukraine, the Rada adopted the Law of Ukraine "On Amendments to the Law of Ukraine "On Introduction of a Unified Fee Charged at State Border Crossing Points of Ukraine"" No. 2659-III dated 12 July 2001.

In accordance with this law the established unified fee is charged at state border crossing points of Ukraine and applies to means of transportation belonging to local and foreign owners.

This fee consists of fees for the conduct of customs control in accordance with legislation of Ukraine for transit freight and means of transportation, as well as sanitary, veterinary, phyto-sanitary, radiological and ecological control, and payments for passing of means of transportation, and other automobiles and mechanisms on the automobile roads of Ukraine.

In accordance with Article 2 of the above Law of Ukraine the unified fee is charged once depending on the regime of movement (import, transit) through a single payment document.

Unified fee rates were confirmed by Article 5 of the above Law in Euros and may not change during the fiscal year.

The unified fee which is charged at state border of Ukraine crossing points is collected in the national currency of Ukraine at the official (exchange) rate of the National bank of Ukraine on the day of payment of this fee.

Fees for the conduct, in accordance with legislation of Ukraine, of customs, sanitary, veterinary, phyto-sanitary, radiological and ecological control may not surpass the value of expenses connected with the conduct of such control.

It is forbidden to collect at state border of Ukraine crossing points any fees not provided for by this Law.

The term "unified fee" does not mean that the level of the applied fee is the same in any case. The level of the fee depends on the types of control measures needed for products entering Ukraine. The term "unified" means that payments are made in the same "window".

In this manner, from the point of view of the State Customs Committee, the use of a unified customs fee and its level (the approximate value of expenses for provision of the relevant control service) does not contradict the requirements of Articles V and VIII of the GATT 1994.

No. 17

During the Working Party meeting held in June 2001, a member drew the attention of the Working Party to the fact that some existing fees for customs formalities were not listed in the document WT/ACC/UKR/90 and other documents. In particular, the additional fee for customs clearance on importation of oil products, the amount of which was 0.01 ECU per kilogram of the oil product, which was imposed by the Resolution of the Government of Ukraine No. 1460 of 18 September 1998. This member requested that this fee would be reflected in the revision of the document WT/ACC/UKR/90 and other relevant documents. At the same time these members requested justification of the compliance of this fee with the provisions of the Article VIII of GATT 1994.

Unfortunately, the request was not taken into account while issuing the revision of the document.

During the bilateral meetings held in May and June 2002, this member received the explanation that this fee was not reflected in the appropriate document since only one member had expressed interest regarding this fee. This member also received the explanation that the fee was imposed for market protection reasons and recognition that this fee does not comply with the requirements of Article VIII of GATT 1994. Since this member was promised that the Ukrainian side would remove this fee soon, it expected further information regarding the developments on this issue.

Answer:

The Customs Code, adopted by Verhovna Rada on 11 July 2002, takes effect on 1 January 2003. From that date onwards the Resolution of the Cabinet of Ministers of Ukraine No. 1460 dated 18 September 1998, which introduced the charging of an additional fee for customs clearance of oil products, shall become invalid as the new Customs Code does not provide for such a fee, except for payment for customs formalities, if such formalities are conducted not on a customs authority site, or are conducted during non-working hours as designated for customs authorities.

(f) Import licensing procedures

No. 18

Members requested information on imports requiring licenses or subject to quotas bans/prohibitions or to other similar non-tariff restrictions to trade:

- Description and HS tariff item number;**
- Reason for requirement/criteria to receive licence;**
- WTO justification;**

- Issuing authority/fee structure; and
- Date and elimination of those not justified under WTO rules.

Answer:

Import operations subject to mandatory licensing:

Name of Product	HS Code	Quantitative limitations	Basis and compliance with WTO norms
Ozone-destroying substances (chemical substances) and products that may contain ozone-destroying substances	2903	No	International convention Need to defend the life and health of humans, animals or plants and/or the environment
Plant protection means	3808 10, 3808 20 3808 30, 3808 90	No	Need to defend the life and health of humans, animals or plants and/or the environment
Polycarbonate for production of optical information storage devices	3907 40 00 00	No	Measures for protection of intellectual property
Stamps, heraldic paper, securities	4907 00 10 00 4907 00 99 00	No	Measures for protection of intellectual property
Discs for laser reading systems	8523 90 00 00 8524 31 00 00 8524 32 00 00 8524 39 00 00 8524 91 10 00 8524 91 90 00 8524 99 00 00	No	Measures for protection of intellectual property
Newsprint	4707 90 90 00	Yes	Trade Remedies adopted according to the decision of Interdepartmental Commission on International Trade
Iron ores: non-agglomerated, agglomerated originating in the Russian Federation	2601 11 00 00 2601 12 00 00	Yes	Protective measures adopted according to the decision of Interdepartmental Commission on International Trade
Baking soda originating in the Russian Federation	2836 30 00 00	Yes	Protective measures adopted according to the decision of Interdepartmental Commission on International Trade
Synthetic fur and worsted fabric originating in the Republic of Belarus, People's Republic of China (including from Hong Kong, Siangan, Macao, Aomin) Chinese Taipei, the Russian Federation and the Republic of Hungary,	4304, 6001	Yes	Protective measures adopted according to the decision of Interdepartmental Commission on International Trade
Polyurethane plates, sheets, tape and platters originating in the Russian Federation, Republic of Belarus, Lithuania, Poland, Czech republic, Republic of Hungary;	3921 13	Yes	Protective measures adopted according to the decision of Interdepartmental Commission on International Trade

Name of Product	HS Code	Quantitative limitations	Basis and compliance with WTO norms
Electric light bulbs originating in the Republic of Belarus, Russian Federation, Poland and the Republic of Hungary;	8539 10 8539 22 90 10 8539 22 90 90 8539 29 98 00	Yes	Protective measures adopted according to the decision of Interdepartmental Commission on International Trade
Needle and non-needle syringes made of plastic materials with volume of 2, 5, 10, 20 ml originating in the Russian Federation, Slovakia, the Kingdom of Belgium, Ireland, Poland, the Federal Republic of Germany and the Kingdom of Spain.	9018 31 10 00	Yes	Protective measures adopted according to the decision of Interdepartmental Commission on International Trade

Licenses are issued by the Ministry of the Economy and European Integration of Ukraine. The licence fee is 255 UAH and is paid into the State Budget.

No. 19

Members requested Ukraine update and provide additional information on its import licensing regime including the full response to the import licensing questionnaire. Members asked that Ukraine address members' concerns with respect to licensing arrangements for ethyl alcohol, other alcohol and tobacco.

Answer:

Comprehensive information concerning import licensing procedure in Ukraine is contained in document WT/ACC/UKR/99.

No. 20

The Cabinet of Ministers, on a yearly basis, issues a resolution defining those products that will be subject to import licensing. Members welcomed the removal in January 2002 of the import licensing requirement concerning veterinary medicines, cosmetics and personal hygiene products (except those in aerosol form), and insecticides used for domestic pets. Pharmaceutical products were removed from this list in 2001. However, non-automatic import licensing was still required, inter alia, for crop protection products and fertilisers; personal hygiene products in aerosol form and veterinary products (except medicines and insecticides). This was in addition to requirements for registration and certification.

These members requested that Ukraine remove non-automatic licensing requirements where they are not justified by WTO principles, and bring its licensing system in conformity with the WTO Agreement on Import Licensing Procedures.

Answer:

Currently, crop protection products, fertilizers, personal hygiene products in aerosol forms and veterinary products are not included into the list of products which are subject to mandatory certification in Ukraine. Customs clearing of the above-mentioned products is effectuated without submission of certificates of conformity issued by UkrSEPRO system. Import of personal hygiene products is not subject to direct licensing. Licensing of such personal hygiene products is effectuated

only if they are supplied in aerosol packing or contain ozone-destructive substances. In case such products do not contain ozone-destructive substances, their import is not subject to licensing.

Therefore, rather than dealing with import of personal hygiene products, licensing concerns import of ozone-destructive substances, which may be contained in aerosol personal hygiene products.

The draft Law "On amendments to the Law of Ukraine "On Foreign Economic Activity" was elaborated with the aim to amend Article 16 of the said Law. The new provisions take fully into account the requirements of WTO Agreement on Import Licensing".

(h) Customs valuation

No. 21

Members noted the ongoing work with respect to the Customs Code and Decree 104 and sought an update of developments in this area and a copy of all relevant decrees, laws and regulations for examination by the Working Party.

Answer:

The Customs Code of Ukraine was approved by the Supreme Rada on 11 July 2002, and registered under No. 92-IV. The Code comes into effect on 1 January 2003.

As of September 2002, Ukraine achieved significant progress in the process of WTO accession. Eight bilateral protocols were signed on goods and services market access, and negotiations with a number of other countries were accomplished.

Large attention is being paid to the legislative provision of Ukraine's WTO accession. It envisages the immediate adoption of laws directed at harmonizing the national commercial legislation with WTO requirements and fulfillment of obligations undertaken by Ukraine before the Working Party members. In this regard the following was performed:

- The Draft Tax Code of Ukraine (No. 3266-1) was adopted in the second reading on 29 November 2001. Currently, the Draft is being worked upon by the Supreme Rada Committee on Finance and Banking. The Draft Tax Code is planned to be adopted in the first quarter of 2003, and shall come into effect in 2004.
- The draft Law "On the Amendment of the Law On Television and Radio Broadcasting" was submitted to the Cabinet of Ministers for consideration by the letter of the State Committee on Information No. 1803/8/11, 6 June 2002. At the meeting of the Governmental Committee of 27 July 2002, a decision was taken to consider the draft Law on 5 August 2002. The draft Law underwent further improvements by central agencies of executive power and was for the second time submitted to the Cabinet of Ministers of Ukraine on 13 September 2002.
- The draft Law of Ukraine "On the Amendment of the Law "On State Regulation of Import of Agricultural Products" (referring to the cancellation of the seasonal duty on fruit and vegetables, namely: annulment of Article 2 "Seasonal Duties on Agricultural Product Imports" and Article 3 "Non-Tariff Regulation of Imports of Animal Products") was submitted to the Supreme Rada of Ukraine on 12 June 2002. On 25 September 2002 it was considered at a plenary meeting of the second session of the Supreme Rada of Ukraine of the fourth convocation.
- The draft Law "On the Amendment of the Law of Ukraine "On Quality and Safety of Food Products and Food Raw Materials" was prepared and submitted by the State

Committee on Standardization, Metrology and Certification to the Cabinet of Ministers of Ukraine. On 12 June 2002, the draft Law of Ukraine was submitted to the Supreme Rada of Ukraine. On 10 July 2002 the draft Law was considered at a meeting of the Supreme Rada of Ukraine. Due to the large volume of documents that were considered, and in connection with the end of the working session of the Supreme Rada of Ukraine, no voting on the above referenced draft Law took place. The draft Law was passed in the first reading at the meeting of the Supreme Rada of Ukraine on 12 September 2002.

- In order to resolve the matter of repealing the requirement for a six-month break following the end of the four-year period of permanent stay of foreign nationals in Ukraine in order to renew their professional activities, on 17 May 2002 the respective Resolution of the Cabinet of Ministers of Ukraine, No. 649, "On the Amendment of Resolution No. 2028 of the Cabinet of Ministers of Ukraine "On Procedures governing the Issuance to Foreign Nationals and Stateless Persons of Permits for Employment in Ukraine" was adopted, in which Resolution the requirement for a six-month break following the end of the four-year period of permanent stay of foreign nationals in Ukraine in order to renew their professional activities is substituted for annually issued permits for employment in Ukraine. Currently, a draft Resolution of the Cabinet of Ministers of Ukraine is prepared to amend Resolution No. 2028 of the Cabinet of Ministers of Ukraine "On Procedures governing the Issuance to Foreign Nationals and Stateless Persons of Permits for Employment in Ukraine", in order to prolong the term of effect of permits for employment in Ukraine up to 3 years, with a subsequent prolongation for 2 years.
- The draft Law of Ukraine "On the Amendment of Some Legislative Acts of Ukraine" (introduction of a conformity assessment procedure compliant with the TBT Agreement for goods imported into Ukraine) was submitted on 17 June 2002 to the Supreme Rada of Ukraine for consideration.
- The Law of Ukraine "On the Amendment of the Law of Ukraine "On the Ensuring of Sanitary and Epidemic Safety of the Population" was adopted by the Supreme Rada of Ukraine on 7 February 2002, No. 3037 – III.
- The draft Law "On the Amendment of the Law of Ukraine "On the Quality and Safety of Food Products and Food Raw Materials" was adopted in the first reading at the meeting of the Supreme Rada of Ukraine on 12 September 2002.
- The draft Law of Ukraine "On the Amendment of the Law of Ukraine "On Information Agencies" (referring to the elimination of restrictions for foreign citizens and legal entities from other countries on the establishment of information agencies, and limitation of the amount of foreign investments in the statutory capital of such agencies) was submitted on 12 June 2002 to the Cabinet of Ministers of Ukraine for consideration. At the meeting of the Governmental Committee of 27 July 2002, a decision was taken to consider the Draft on 5 August 2002. The draft Law underwent further improvements by central agencies of executive power and was for the second time submitted to the Cabinet of Ministers of Ukraine on 13 September 2002.
- The Draft Law of Ukraine "On the Amendment of the Law of Ukraine "On Banks and Banking" (referring to the grant to foreign banks of a right to open branches on the territory of Ukraine) undergoes, as of 15 September 2002, improvements at the National Bank of Ukraine. After the Chairman of the NBU has signed a resolution on the approval of the said draft Law, the draft Law will be submitted in a prescribed manner to the Supreme Rada of Ukraine.
- The draft Law of Ukraine "On the Amendment of the Law of Ukraine "On Stimulation of Agricultural Development for the Period of 2001-2004" (referring to the elimination of obligatory utilization by the tobacco producing enterprises of tobacco raw materials grown and fermented in Ukraine) was submitted on 4 June 2002 to the Supreme Rada of Ukraine for consideration. The draft Law is registered under No. 1137, the Committee on Agrarian Policy and Land Relations is a special committee.

- The Draft Law on the Amendments of Article 18 of the Law of Ukraine "On the Power Industry" (referring to tender principles) was submitted to the Supreme Rada of Ukraine for consideration on 30 August 2002.
- The Draft Law of Ukraine "On the Amendment of the Law of Ukraine "On the Bar", in the part relating to the elimination of the requirement as to Ukrainian citizenship in order to practice law, was submitted on 15 July 2002 to the Supreme Rada of Ukraine for consideration.
- The Draft Law of Ukraine "On the Amendment of the Law of Ukraine "On Foreign Economic Activity" (referring to the introduction into the national legislation of automatic and non-automatic import licensing procedures) undergoes further improvements at the Secretariat of the Cabinet of Ministers of Ukraine. The draft Law fully complies with the WTO Agreement on Import Licensing Procedures.
- The draft Law of Ukraine "On the Amendment of the Law of Ukraine "On Auditing" was submitted on 1 July 2002 to the Supreme Rada of Ukraine for consideration. The draft Law provides for elimination of the requirement as to Ukrainian citizenship in order to engage in auditing activities.

Drafts of 11 technical regulations pertaining to conformity confirmation have been developed based on European "New Approach" Directives, and have been duly submitted for the review of the Cabinet of Ministers of Ukraine, namely:

- On confirmation of conformity of electromagnetic compatibility,
- On confirmation of conformity of low voltage equipment,
- On confirmation of conformity of toys safety,
- On confirmation of conformity of simple vessels operating under pressure,
- On confirmation of conformity of elevators,
- On confirmation of conformity of non-automatic weighing instruments,
- On confirmation of conformity of safety of gas equipment,
- On confirmation of conformity of safety of water heating boilers powered by liquid fuel,
- On confirmation of conformity of maximum permissible power consumption by refrigerating equipment,
- On confirmation of conformity of pressurized equipment.

The draft technical regulations are placed on the web site of the State Committee on Standardization, Metrology and Certification (www.dstu.gov.ua).

(Texts of the draft technical regulations pertaining to conformity confirmation are provided in electronic form).

The Ministry of Culture of Ukraine has prepared and submitted a draft CMU Resolution to the Cabinet of Ministers of Ukraine, in order to set minimum rates of author fees payable to directors for public performances of works created for on-stage demonstration, producers for public demonstration of audiovisual works, as well as minimum rates of fees payable to producers and performers of phonograms for the use of related rights.

The preparation of comparative tables on the conformity of Ukrainian law with the rules and requirements of the WTO Agreements in all areas governed by these Agreements continues.

No. 22

Members requested that Ukraine should submit for examination the interpretative notes and expressed concern about the lack of information on appeal processes. If the law is to become effective on 1 November 2003, a draft should be submitted for examination

Answer:

In accordance with Article 265 of the new Customs Code of Ukraine (Rights and Responsibilities of Customs Authorities at Performing Goods Customs Valuation Control), a decision of the customs authority involved concerning the customs value determination may be challenged following the procedure established by the law.

As per Article 264 of the Code (Rights and Responsibilities of a Declarer Declaring the Goods Customs Value), "in cases of... making the final decision ... by the court with respect to applying the customs value assessment made by the Declarer, the customs authority in question shall be obliged to reimburse to the Declarer the amount of taxes and charges paid in excess of the such customs value".

No. 23

Members asked Ukraine to identify the provision in its draft Customs Law that set out the review and appeal procedures for customs valuation.

Answer:

Pursuant to Article 265 of the new Customs Code of Ukraine ("Rights and Obligations of Customs Authorities During Effectuation of Customs Valuation of Goods"), decision of customs authorities regarding determination of customs value of goods may be appealed under the procedure established by law.

Pursuant to Article 264 of the said Code ("Rights and Obligations of a Declarer who Declares Customs Value of Goods"), "in case ... court ... makes the final decision regarding application of customs value made by the declarer, customs authorities are obligated to compensate to the declarer the amount of excessively paid taxes and duties."

No. 24

Further to Article 13 of the Agreement on Customs Valuation, members asked Ukraine to provide information on its surety system for customs valuation, including identifying the relevant provisions in its Customs Law.

Answer:

Pursuant to Article 264 of the Customs Code of Ukraine ("Rights and Obligations of a Declarer who Declares Customs Value of Goods"), a declarer shall have the right to apply to customs authorities with the request to give him the declared goods for free circulation under guarantee of the authorized bank, or to pay taxes and duties in accordance with customs evaluation of such goods made by customs authorities. A promissory note issued by the declarer to customs authorities and guaranteed by the authorized bank or deposit in the bank may serve as guarantee.

Customs authorities are obligated to release goods for free circulation if the declarer presents guarantee of the authorized bank.

Validity term of guarantee obligations determined by this Article can not exceed 30 calendar days from the date of release of goods for free circulation.

(i) **Other customs formalities**

No. 25

Members welcomed the adoption of the Customs Code by the Ukrainian Rada on 11 July 2002 and expect that it will be signed by the President and will enter into force as soon as possible. These members expected that the new Customs Code will allow for an efficient movement of goods into and out of Ukraine and will eliminate the legal uncertainty under which the customs authorities are currently working which leads to a lack of clarity for economic operators.

Furthermore, Ukraine must simplify the procedures for customs clearance. Businesses reported a number of practical difficulties in dealing with the Ukrainian Customs Service, mainly to do with complex and time-consuming procedures for customs clearance. For example, Ukraine could move towards a system whereby a single customs officer is charged to deal with all stages of customs clearance.

These members requested that Ukraine finalise adoption and enforce the Customs Code immediately as well as the necessary secondary regulation to allow for its implementation with a view to ensure full implementation of its WTO obligations, inter alia, of the WTO Customs Valuation Agreement by the time of its accession to the WTO.

Answer:

Currently, customs authorities of Ukraine, while implementing customs policy, solve the following tasks: control over observance of Ukrainian laws on customs matters; provision of fulfillment of obligations resulting from International Agreements of Ukraine as to customs matters; use of means of customs and tariff and non-tariff regulation during transfer of goods and other articles through the customs border of Ukraine; struggle with smuggling and violations of customs rules; keeping of customs statistics, etc.

Taking into account that customs control is an aggregate of measures which are effectuated by customs authorities within their competence in order to ensure observance of the norms of the Customs Code of Ukraine, laws and other normative and legal acts on issues of customs matters and International Agreements of Ukraine made under the procedure established by laws, a range of issues that are resolved by officials of customs authorities is so wide that charging them with the fulfillment of customs control at all stages will not simplify but significantly complicate the process of customs control and customs clearance of goods and vehicles.

As of today, the State Customs Service of Ukraine drafted the Procedure for Implementation Customs Control and Customs Clearance of Goods and other Articles with Application of Cargo Customs Declaration. Such Procedures allow combination of fulfillment of functions by one official at separate stages of effectuation of customs control and customs clearance of goods. Transition of customs authorities to the system under which solution of issues of customs clearance at all stages shall be within competence of one official of customs authorities requires deep working up and creation of the relevant technical conditions and informative and analytical basis with data on goods and vehicles which are transferred through the state border of Ukraine and is impossible at the moment.

Current stage-by-stage procedure for customs clearance of goods using different subdivisions of customs authorities is aimed at improving of customs control. It diminishes risks of corruption abuses by officials of customs offices and is analogous to that one which is effectuated in many WTO Members.

(k) Application of internal taxes on imports

No. 26

Members requested information on import taxes (not applied to domestic goods) applied exclusively to imports:

- **Description by HS tariff item; and**
- **Rate(s) applied.**

Answer:

Effective laws contain the following cases of application of different regimes to the national and imported goods as far as excise taxes are concerned:

- Article 1 of Law of Ukraine No. 178/96-VR "On Rates of Excise and Import Duty for Ethyl Spirits and Alcoholic Beverages," dated 7 May 1996, approved rates of excise taxes for ethyl spirits and alcoholic beverages. Articles 2, 5 and 7 of the said Law accordingly establish privilege rates of excise taxes for wine-making products, denatured ethyl spirits (technical spirits) and cognac produced in Ukraine;
- Articles 2-7 of Law of Ukraine No.178/96-VR "On Rates of Excise Taxes and Import Duty for Ethyl Spirits and Alcoholic Beverages," dated 7 May 1996, with amendments made by effective laws of Ukraine regarding establishment of privilege rates of excise taxes for domestic enterprises which produce alcoholic beverages.
- Article 1 of Law of Ukraine No. 216/96-VR "On Rates of Excise Taxes and Import Duties for Certain Vehicles" (with changes and amendments), dated 24 May 1996, approved rates of excise taxes for one cubic centimeter, depending on working volume of engine cylinder and taking into account depreciation period of a car (less than five years and over five years), except for vehicles manufactured by Ukrainian enterprises.
- Article 4 of Law of Ukraine No. 216/96-VR "On Rates of Excise Taxes and Import Duties for Certain Vehicles," dated 24 May 1996, which provides for exemption from excise taxes turnover from sale of cars, truck and passengers cars and motorbikes which are manufactured by Ukrainian enterprises of all ownership types. Such exemption is provided till 1 January 2007.

For the HS tariff item description and rates of excise duties applied see Annex 4.

No. 27

Members requested that Ukraine submit to the Working Party a copy of decree on excise tax.

Answer:

The text of the Decree "On Excise Duty" is given in Annex 3.

No. 28

Members requested information on excise taxes applied:

- **Description and HS tariff item number; and**
- **Rate(s) applied and information on who must pay.**

Answer:

Effective rates of excise taxes according to description and coding of tariff entry under the Harmonized System are established by the following laws (with changes and amendments): Law of Ukraine No. 178/96-VR "On Rates of Excise Taxes and Import Duty for Ethyl Spirits and Alcoholic Beverages," dated 7 May 1996, Law of Ukraine No. 216/96-VR "On Rates of Excise Taxes and Import Duties for Certain Vehicles," dated 24 May 1996 and Law of Ukraine No. 313/96-VR "On Rates of Excise Taxes and Import Duty for Certain Goods (Products)," dated 11 July 1996.

According to Article 2 of Decree No. 18-92 of the Cabinet of Ministers of Ukraine, dated 26 December 1992, the following entities are payers of excise taxes:

- agents of entrepreneurial activities and their branches, divisions (other separate units) which are producers of excise goods on the customs territory of Ukraine, including those goods (products) made of give-and-take raw materials for which rates of excise taxes are established in stable prices, as well as customers (who pay excise taxes to the producer) under whose commission products on give-and-take raw materials scheme are produced as to goods for which rates of excise taxes are established in per centage to turnover;
- non-residents who produce excise goods (services) on the customs territory of Ukraine directly or through their permanent representative offices or persons which are considered as such under effective laws;
- any agents of entrepreneurial activities, other legal entities, their branches, divisions and other separate units which import excise goods into the customs territory of Ukraine, regardless of availability of effectuated foreign investments into such entities;
- physical persons, residents and non-residents, who import (send) excise things or articles into the customs territory of Ukraine as accompanied or unaccompanied luggage, as well as physical persons who receive such excise thing (articles) sent into the customs territory of Ukraine as postal or other dispatches or unaccompanied luggage in volumes or prices that exceed norms for import free of duty, established by laws for such physical persons;
- legal entities of physical persons who purchase (receive in other forms of ownership, use and disposal) excise goods from tax agents.

The term "tax agent" was introduced with the aim of putting into good order taxation of excise goods (products) and activity on sale of excise goods (products). The term "tax agent" means an agent of entrepreneurial activity created in the form of an enterprise with foreign investments, as well as its subsidiaries, branches, divisions and other separate units whose right to exemption from taxation with certain taxes and charges (mandatory payments) was confirmed by court (arbitration court). Such "tax agent" is authorized to effectuate calculation and recovery of excise from excise tax payers, as well as to pay amounts of excise taxes into the budget recovered from payers of such excise taxes.

For the HS tariff item description and rates of excise duties applied see Annex 4.

No. 29

Members noted that discriminatory rates applied on some products (notably on ethyl alcohol, certain alcoholic beverages (including wine), cigarettes and cars) were infringements of the national treatment principle.

The Law "on taxation of excisable goods" of 4 November 1999 reduced the categories of excisable products to five as of 1 January 2000: alcohol and alcoholic beverages, tobacco, jewellery, petroleum products and cars.

The law of Ukraine No. 311/13 of 11 December 1998 introduced some temporary lower rates for locally produced ethyl alcohol and alcoholic beverages. These discriminatory excise rates, which were due to expire in 2000, were extended for another three years. Discriminatory excise taxes applying to cars will remain in place until July 2007 (as described above).

Moreover, as concerns alcoholic beverages, members were concerned about the recently introduced 'excise stamp' which exporters of alcoholic beverages to Ukraine must place on the bottle before importation takes place, while domestic traders will place it just before commercialisation takes place.

These members requested:

- that Ukraine remove remaining discriminations in excise duties, as well as the discrimination concerning the excise stamp for alcoholic beverages, in line with WTO rules; and**
- a commitment not to re-introduce discriminatory excise duties on any product. In particular Ukraine should ensure that the provisions of the draft Tax Code being considered by the Rada do not serve to re-introduce discriminatory excise duties.**

Answer:

The Ministry of Finance of Ukraine together with the State Tax Administration of Ukraine are obliged to monitor consideration of the draft Tax Code of Ukraine in the Verkhovna Rada of Ukraine during its third reading, including harmonization of provisions of Section IV "Value Added Tax" and Section V "Excise Taxes" to the requirements of European laws and provisions of the WTO Agreements. The Verkhovna Rada of Ukraine approved the draft Tax Code of Ukraine in its second reading on 29 November 2001.

Privilege rates of excise taxes for wine-making products and cognacs produced in Ukraine are in effect till 1 January 2004. Taking into account that it is anticipated that the Tax Code of Ukraine has to be approved in year 2003, with coming into effect on 1 January 2004, privilege rates of excise taxes for wine-making products and cognacs will keep in force till 1 January 2004.

At the same time, it is provided to cancel the Law of Ukraine "On Charge for Development of Vine-growing, Horticulture and Hop-growing," beginning 1 January 2003.

In the draft Law of Ukraine "On Amendments of Certain Laws of Ukraine on Excise Taxes" (registration No. 1278-1), which is in the process of improvement for the second reading, the Cabinet of Ministers of Ukraine prepares its suggestions regarding cancellation of Articles 4 and 5 of the Law of Ukraine "On Rates of Excise Taxes and Import Duty for Ethyl Spirits and Alcoholic Beverages." This draft Law and the draft Tax Code of Ukraine provide for establishment of the rate of excise taxes in the amount of two Hryvnias for one liter of 100 per cent spirits for denatured ethyl spirits (technical spirits) produced at domestic enterprises and used for production purposes.

At the same time, in order to improve administration of excise taxes, a promissory note availed by a bank shall be introduced. Such promissory note shall be issued for ninety-days period for the amount of excise taxes calculated on the volume of received spirits, proceeding from the rate which is determined as difference between the full rate of excise taxes for ethyl spirits, provided by effective laws, and the rate in the amount of two Hryvnias for one liter of 100 per cent spirits.

In case of out of purpose usage, an agent of entrepreneurial activity shall be charged with a penalty. Such penalty shall be calculated proceeding from volumes of received spirits and the full rate

provided by effective laws increased by 120 per cent per annum of the discount rate of the National Bank of Ukraine.

Currently, the Ministry of Economy and European Integration of Ukraine with participation of other ministries prepare draft laws and/or amendments to the draft Tax Code of Ukraine with the aim of undertaking urgent measures for implementation of the Plan of Measures on Adaptation of Ukrainian Laws as to Stimulation of Automobile Industry to Provisions of ACP with the European Union and WTO rules. Such laws should provide for the following:

- exemption from income tax of all producers of cars (including producers of cars, trucks and buses) for three year period under the condition of re-investment of tax into production during privilege period; exemption from payment of import duty for equipment, spare parts thereto, materials and set parts for production;
- cancellation of privileges for domestic car-building enterprises, among which: exemption from payment of value added tax for operations on import of goods which are used for construction and production activity; exemption from payment of value added tax and excise taxes on sale of cars; exemption from payment of land tax.

VAT

No. 30

Members requested information on value added or other trade turnover taxes applied (if not uniform *vis-à-vis* imports and domestic goods and services):

- **Description and HS tariff item number; and**
- **Level(s) of tax applied and information on who must pay.**

Answer:

According to Article 6 of the Law of Ukraine "On Value Added Tax" of 3 April 1997, No. 168-VR, the value added tax is levied on taxation objects at the rate of 20 per cent.

At the same time Articles 5, 6 and 11 of the Law define certain products and services, which are taxed at the zero rate or are exempted from taxation, in particular:

Until 1 January 2008 the value added tax is levied at the zero rate on operations in selling automobiles, buses and component parts thereto of own production of residents who carry out their activities in conformity with the Law of Ukraine "On Stimulation of Automobile Production in Ukraine".

Temporarily, until 1 January 2008 operations in bringing (sending) into the customs territory of Ukraine according to the Law of Ukraine "On Stimulation of Automobile Production in Ukraine" goods (including machinery complete sets) used for building and production activities of enterprises producing automobiles, buses and component parts thereto shall be exempted from taxation (see Annex 14).

During the period from 1 January 2000 to 1 January 2005 operations in selling products manufactured by enterprises of shipbuilding industry for the funds of the State Budget of Ukraine shall be taxed with the value added tax at the zero rate.

During the period from 1 January 2000 to 1 January 2005 operations of enterprises of shipbuilding industry determined pursuant to the Article 1 of the Law of Ukraine "On Measures to Support Shipbuilding Industry of Ukraine", in bringing (sending) into the customs territory of Ukraine materials, equipment and components thereto (hereinafter - goods) to be used in building ships, (except for excise goods), if such goods are not produced by enterprises on the territory of Ukraine or those produced do not meet certification requirements of international classification societies or customers' requirements for ships determined by contract conditions.

During the mentioned period development efforts performed by national makers under contracts of the above enterprises of shipbuilding industry for ships building shall be exempted from taxation.

During the period from 1 January 2001 to 1 January 2006 operations in selling goods (works, services) to be used by enterprises of the concern "Bronetekhnika Ukrainy" – contractors of the state defense order and international contracts for manufacturing armored fighting machines, as well as from sales of armored fighting machines and component parts thereto, which are sold to the state customer or customer under international contract shall be taxed with the value added tax at the zero rate.

Until 1 January 2010 operations in bringing (sending) into the customs territory of Ukraine goods (except excise goods) shall be exempted from taxes if they are used for expanding production and production activities of enterprises manufacturing ammunitions, their elements, and special chemical products.

Operations in performing development efforts by national makers under contracts of the mentioned enterprises of the concern "Bronetekhnika Ukrainy" to sell armored fighting machines shall be exempted from taxation.

During the period from 1 January 2001 to 1 January 2006 there shall be exempted from taxation operations in bringing (sending) into the customs territory of Ukraine materials, equipment and components thereto (hereinafter- goods), except for excise ones used in production of armored fighting machines provided such goods are not produced by enterprises on the territory of Ukraine or those produced fail to meet requirements of the customers of armored fighting machines, determined by contract conditions.

During the period from 1 January 2002 to 1 January 2007 operations in selling products (services) manufactured by enterprises of aircraft construction industry for the funds of the State Budget of Ukraine shall be taxed with the value added tax at the zero rate.

During the period from 1 January 2002 to 1 January 2007 operations of enterprises of aircraft construction industry defined in the Article 2 of the Law of Ukraine "On State Support to Aircraft Construction Industry in Ukraine" in bringing (sending) into the customs territory of Ukraine materials, component parts thereto and equipment (hereinafter - goods), except for excisable shall be exempted from taxation if such goods are not produced by enterprises on the territory of Ukraine or those produced fail to meet requirements of international classification societies or requirements of customers of products (services) defined by contract conditions.

Temporarily, until 1 January 2009 operations in sales of extraterrestrial complexes, space carrier rockets, spacecrafts, ground segments of space systems and their units, systems and components produced by subjects of space activity shall be exempted from taxation.

Temporarily, until 1 January 2009 operations in bringing into the customs territory of Ukraine, by subjects of space activity, goods to be used in production of space equipment (including

units, systems and components to extraterrestrial complexes, space carrier rockets, spacecrafts, ground segments of space systems) if such goods are not produced on the territory of Ukraine (see Annex 13).

No. 31

Members requested information on value added tax exemptions:

- **Description and HS tariff item number; and**
- **Reason for exemption, and information on who is eligible.**

Answer:

Exemption from payment of the value added tax is defined in Articles 5 and 11 of the Law of Ukraine "On Value Added Tax" of 3 April 1997, No. 168/97-VR.

Pursuant to the Law the following operations shall be exempted from taxation:

- products of domestic manufacture for children's nutrition sold by dairy kitchens and specialized stores and shops functioning as distributing centers in keeping with the procedure and according to the list of products established by the Cabinet of Ministers of Ukraine (see Annex 12);
- sales (subscription) and delivery of mass media printed periodicals of domestic manufacture; sales of books of domestic manufacture; sales of copy-books for pupils, textbooks and school-books of domestic manufacture;
- rendering, according to the list determined by the Cabinet of Ministers of Ukraine, services in higher, secondary, vocational and primary education by education institutions, which have special permit (licence) for rendering such services and services in upbringing and educating children by cultural centers in rural area, by children's musical and artistic schools, schools of arts;
- sales of goods of special use for disabled according to the list determined by the Cabinet of Ministers of Ukraine (see Annex 12);
- services in delivering pensions and monetary aids to the population;
- rendering services in registering acts of civil statuses by state bodies, authorized thereto according to legislation;
- sales of medicines and products for medical use registered in Ukraine in keeping with the procedure established by law, including services rendered by pharmacies in such sales;
- rendering services to population in health care according to the list determined by the Cabinet of Ministers of Ukraine by health institutions which have special permit (licence) for rendering such services;
- sales of vouchers to facilities in sanatoria and health resorts and rest for children according to the list determined by the Cabinet of Ministers of Ukraine. The above privilege shall not apply to sales of vouchers to non-residents.

Rendering services according to the procedure and within the norms set forth by the Cabinet of Ministers of Ukraine in:

- keeping children in infant schools, boarding schools, juvenile delinquents' rooms of the Interior Ministry of Ukraine;
- keeping persons in nursing and old people's homes.

Nourishing and accommodating for night's lodging homeless individuals in specially allocated for these purposes places:

- nourishing children in schools, vocational schools and nourishing citizens in health institutions;
- nourishing, providing with material property, utilities and other services rendered to the special contingent in institutions of penitentiary system according to the list approved by the Cabinet of Ministers of Ukraine;
- rendering services by state employment agencies of Ukraine according to the list established by the Cabinet of Ministers of Ukraine;
- rendering services by archive institutions of Ukraine associated with providing access to documents of the National Archive Fund of Ukraine to natural persons and legal entities, as well as selling documents of the National Archive Fund of Ukraine being the property of natural persons and legal entities in accordance with legislation of Ukraine to archival institutions of Ukraine;
- rendering services in carrying passengers by municipal and commuter transport and motor transport within a district, provided transportation tariffs are regulated according to the procedure determined by Law, except for operations in renting (hiring) passengers' transport;
- rendering religious services and selling articles of religious use by religious organizations according to the list determined by the Cabinet of Ministers of Ukraine;
- rendering burial services by any taxpayer according to the list established by the Cabinet of Ministers of Ukraine;
- passing the confiscated property, finds, treasures, or property recognized as abandoned under disposal of state bodies or organizations authorized to store them or to sell them in accordance with legislation;
- transferring land plots, which are under the objects of immovable property or inbuilt areas if such transfer is allowed according to the provisions of the Land Code of Ukraine;
- free transfer of rolling-stock by a rail carrier or a railway transport enterprise of general use to other rail carriers or railway transport enterprises of general use run by state according to the procedure established by the Cabinet of Ministers of Ukraine;
- privatization of the state-owned and communal-owned property, as well as in free of charge privatization of the housing fund, including places of general use in apartment houses, plots of land attached to houses and land shares in accordance with legislation is mandatory condition for privatizing dwellings, plots of land attached to houses and land shares;
- selling newly built dwellings or transferring them into ownership to natural persons for residing therein;
- providing charity aid, in particular free of charge transfer of goods (works, services) to persons determined in paragraphs "A" and "B" of the sub-clause 7.11.1 of Article 7 of the Law of Ukraine "On Enterprise Profit Tax" to use them directly for charity purposes, as well as operations in free transfer of such goods (works, services) to recipients (subjects) of charity aid in accordance with legislation;
- paying the expenses of fundamental researches, scientific-research and research and construction works executed for the account of the State Budget of Ukraine;
- rendering by state-owned and community-owned libraries of services to natural persons and legal entities on pay basis.

There shall be exempted from taxation operations in:

- selling goods (works, services), except for excisable goods, gambling business, purchasing goods by enterprises and organizations of public organizations of disabled,

whose property is under their possession, in which the number of disabled having there the main places of work, during the preceding reporting period was not less than 50 per cent of the total number of employees, and under the condition that the wages fund of such disabled employees, during preceding reporting period was not less than 25 per cent of the amount of total expenses for remuneration of labour, which are referred to the structure of total costs of production (circulation);

- free of charge transfer of products (works, services) of own production by auxiliary agricultural farms and medical-production labour workshops (shops, sections) of boarding homes and territorial centers serving single aged citizens (pensioners), under the condition that such transfer is carried out to satisfy own needs the mentioned institutions;
- rendering, in rural localities by agricultural producers, services in repairing schools, infant schools, boarding-schools, health institutions and rendering material aid (within one minimum personal tax-free income per month for one person), by food products of own production and services in cultivating the land, to families with many children, war and labour veterans, rehabilitated citizens, disabled workers, handicapped persons from birth, single aged citizens, individuals suffered in the result of the Chornobyl catastrophe, and to schools, infant schools, boarding-schools, health institutions;
- rendering, in rural localities by agricultural producers during the period of field works conduction, services in nourishing machine-operators and cattlemen in field canteens with products of own production;
- sale and free of charge transfer of devices, equipment, materials to research institutions and research organizations, higher education institutions of III–IV accreditation levels enlisted in the State Registry of research organizations, which are supported by state under the condition they [devices, equipment, materials] are used exclusively for own needs;
- rendering services in collecting and procuring some types of waste products deemed as secondary raw materials, the list of which is determined by the Cabinet of Ministers of Ukraine.

There shall be exempted from taxation operations in selling goods (works, services) for own needs of diplomatic representations, consular institutions of foreign states and representations of international organizations in Ukraine, as well as for the use by diplomatic personnel of such diplomatic missions and members of their families residing together with such in-staff individuals.

There shall be exempted from taxation operations in bringing into the customs territory of Ukraine goods of sea fishery (fish, mammals, shellfish, water plants etc., chilled, salted, frozen, preserved, processed in meal or other products), recovered (fished out, produced) by vessels registered in the State Registry of Ships of Ukraine or in the Book of Ships of Ukraine. Operations in further sale of the mentioned goods by legal entities – ship owners or freighters are taxed according to the general procedure.

No. 32

Members sought further details with respect to the VAT applied at the border and clarification as to whether an exemption was granted for agricultural production and bulk agricultural produce.

Answer:

In conformity with Article 3 of the Law of Ukraine On Value Added Tax, VAT applies to operations involving importation (forwarding) of goods into the customs territory of Ukraine.

In addition Article 5 provides for benefits extended to VAT payment. VAT exemptions as envisaged by Paragraphs 5.1 and 5.3 of Article 5 save for subparagraph 5.1.2 of Paragraph 5.1 apply to operations involving importation (forwarding) of certain goods (works, services).

In addition to that, under Article 11, temporary exemption is granted to operations involving the importation of goods required for automobile building, ship building, aerospace and aircraft building industries, industries manufacturing ammunition and their components, special chemical products, enterprises being part of the "Bronetekhnika Ukrayiny" concern, as well as to goods for book publishing and Chernobyl Nuclear Power Plant's power units decommissioning.

The laws currently in effect provide for the following tax benefits for agricultural production and bulk agricultural produce.

Subparagraph 6.2.6 of Article 6 of the Law of Ukraine On Value Added Tax provides for a zero tax rate for operations involving the sale by reprocessing enterprises of milk and meat in live weight by agricultural producers of whatever form of ownership.

As envisaged by Article 11 (paragraph 11.21), the amount of the value added tax that has to be paid to the budget by agribusiness entities of all types of ownership for milk, dairy products, meat and meat products sold by them shall be in full used for paying subsidies to agricultural producers for milk and meat sold by them in live weight to reprocessing enterprises, effective till 1 January 2004.

The amount of VAT payable to the budget from agricultural producers of all types of ownership for milk, livestock, poultry, wool, as well as for dairy and meat products sold by them and produced in their own processing facilities shall be retained in full by said agri-businesses and shall be used for the support of own cattle and poultry production.

In addition subparagraph 11.29 of the said Law provides that VAT amounts calculated in connection with operations involving the sale of goods (services, works) of own production including products (save for excisable goods) produced on a tolling arrangement basis from own agricultural raw materials, save for operation involving sale to reprocessing enterprises of milk and meat in live weight performed by agricultural producers irrespective of their ownership and legal and organizational form, provided that the amount received from the sale of own agricultural produce and products of its reprocessing for the preceding reporting (taxation) year equals not less than 50 per cent of the total of the enterprise's gross income, shall be retained by agricultural producers and used by them for the purposes of acquisition of production-designated material and technical resources.

In Ukraine, due to an insufficiency of funds in the State Budget, state support for the agricultural sector is given primarily through the indirect method of implementing a favorable taxation regime, in particular, through the introduction of special VAT taxation regimes that provide for:

- diversion of full amount of the VAT to be paid by processing enterprises into the state budget, to the payment of subsidies to agricultural producers for produce (milk and meat in bulk) sold by the latter to the processing enterprises;
- full retention by agricultural enterprises of the sum of VAT to be paid into the budget by them for production produced at the enterprises' own processing lines and thereafter sold, for use in support of own production of animal products and poultry (bird) production;
- full retention by agricultural producers of VAT to be paid from operations of sale by said producers (of works and services) of their own production, with the exception of operations of sale to processing enterprises of milk and meat in bulk. These moneys, transferred to a separate account by agricultural producers, are used by the latter to acquire material and technical resources of a manufacturing type.

No. 33

Members requested information on discriminatory measures affecting foreign investments, notably on VAT.

Members were concerned about the long-standing discrimination as regards VAT reimbursements to exporters. This issue has implications on the credibility of the Ukrainian administration and budget. These members were aware of the results of Ukraine's consultations with the IMF, which set up a good basis for a positive resolution of this problem.

Moreover, these members are concerned about the restrictive application of the concept of "export" by Ukrainian authorities. Certain transactions are not considered as exports even when the final destination is outside Ukraine on the basis of the INCOTERM used, i.e. FOB transactions are not considered to be export transactions.

These members requested that without delay Ukraine:

- should commit to apply VAT to all domestic and imported products on the same basis and irrespective of origin of the goods concerned;**
- eliminate the discrimination concerning VAT reimbursements to exporters; and**
- eliminate the discrimination in the treatment of export transactions on the basis of the INCOTERM used.**

Answer:

Significant advantage of the Ukrainian value added tax (VAT) is the fact that in Ukraine the unified rate of VAT is applied both for goods of domestic and foreign production (with certain exceptions on VAT payment). Tax obligations and tax credit are calculated under the unified rate. This tax is neutral for different fields of activity and does not influence competition and choice of investment into one or another field; it simplifies financial planning.

The Ministry of Finance of Ukraine together with the State Tax Administration of Ukraine are obliged to support consideration of the draft Tax Code of Ukraine in the Verkhovna Rada of Ukraine during its third reading, including harmonization of provisions of Section IV "Value Added Tax" and Section V "Excise Taxes" to the requirements of the WTO Agreements.

Verkhovna Rada of Ukraine approved the draft Tax Code of Ukraine in its second reading on 29 November 2001.

On the basis of prepared comparative tables on compliance of Ukrainian laws with the norms and requirements of the WTO Agreements and pursuant to the relevant commission of the Government of Ukraine, the Ministry of Finance of Ukraine together with the State Tax Administration of Ukraine have to draft laws regarding final removal of non-compliance of Ukrainian laws with the norms and requirements of the WTO Agreements and provide the Cabinet of Ministers of Ukraine with such draft laws in order to submit them under the established procedure for consideration by the Verkhovna Rada of Ukraine and approval of the relevant normative and legal acts. It is planned to make the said changes by improvement of the draft Tax Code of Ukraine.

Solution of the issue regarding elimination of discrimination as to VAT reimbursements to exporters is provided by the draft Law of Ukraine "On Amendment of the Law of Ukraine "On Value

Added Tax" (registration No. 1277, dated 1 July 2002) and the Cabinet of Ministers' of Ukraine approval of the schedule of debt repayment on VAT reimbursements for previous reporting periods.

The issue of application of zero rate of value added tax in operations on sale of goods outside the customs territory of Ukraine, depending on the terms of supply in accordance with INCOTERMS, was resolved by Order No. 418 of the State Tax Administration of Ukraine "On Approval of Tax Explanation Regarding the Procedure for Application of Zero Rate of Value Added Tax in Operations on Export of Goods Outside the Customs Territory of Ukraine," dated 5 September 2002 (see Annex 5).

(o) Safeguard regime

No. 34

Members were concerned with regard to legislation on trade remedies, in particular, on safeguards, and the practice of their implementation.

Main issues regarding the safeguard legislation:

- **Page 1 of Article 16 of the law provided the possibility to apply the "limitation of validity of permission to imports issued by the Ministry". Members requested that Ukraine explain the compliance of this measure with the WTO Agreement on Safeguards and the Agreement on Import Licensing;**
- **Page 6 of Article 16 - "Top level of quotas shall be not higher than the average arithmetic value of imports under investigations, which have been carried out within the last three years. Page 1 of Article 5 of the WTO Agreement on Safeguards provides that "if a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury".**

Surveillance measures. Article 9 (9) stipulates that in the course of a special investigation the Committee may make a decision on application of the special provisional measures and/or surveillance measures. Surveillance measures according to their description in Section IV of the Ukrainian law could be considered as restrictive licensing. Article 6 of Safeguards Agreement provides that provisional safeguard measures should take the form of tariff increases.

These members considered that the provisions of the Ukrainian law did not seem to comply with the appropriate provisions of the WTO Agreements, and that this situation should be corrected.

Answer:

The Law of Ukraine "On Application of Special Measures Regarding Imports into Ukraine" (the Law), in order to protect national producers, provides for the possibility of application of special measures pursuant to the results of conducting special investigations as to mass imports into Ukraine, which cause or threaten to cause significant injury to national goods producers.

Pursuant to paragraph 1 of the Article 16 of the Law, it is possible to apply the following special measure: "limitation of validity of permissions to imports issued by the Ministry according to Article 15 of this Law."

Pursuant to Article 1 of the WTO "Agreement on Safeguards Agreement shall establish the rules of application of safeguards under which such measures are considered as provided by Article XIX of GATT 1994".

Pursuant to paragraph 1a of Article XIX of GATT 1994 "If in result of unforeseen circumstances and influence of obligations undertaken by the Member of this Agreement, including tariff concessions, import of any goods to the territory of this Member increases in such quantity and is conducted on such terms that this causes or threatens to cause serious injury to national producers on this territory of analogues or directly competing goods, the Member shall have the right as to such goods, as well as to extent and during period of time which may be required for prevention or elimination of consequences of such injury, completely or partially suspend fulfillment of obligation or cancel or change concession."

Limitation of validity of permissions to imports may be considered as partial suspension of fulfillment of obligation in terms of paragraph 1a of Article XIX of GATT 1994.

Accordingly, Article 16 of the Law of Ukraine "On Application of Special Measures Regarding Imports into Ukraine" in part of the possibility to apply limitation of validity of permissions to imports issued by the Ministry of Economy and European Integration of Ukraine in general complies with the WTO Agreement on Safeguards and the WTO Agreement on Import Licensing.

Article 16 of the Law in part of boundary level of quotas has certain differences from Article 5 of the WTO Agreement on Safeguards. Pursuant to part 6 of Article 16 of the Law "boundary level of quotas shall not be higher than the average arithmetic value of imports under investigation, which have been carried out within the last three years." Pursuant to paragraph 1 of Article 5 of the WTO Agreement on Safeguards "if a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which the statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury." However, as practice of application of safeguards in Ukraine indicates, calculation of boundary level of import quotas was implemented through the method of calculation of the average arithmetic value of imports, which have been carried out within the last three years.

Article 9 of the Law in part of the possibility of application of the special provisional measures and/or surveillance measures, which could be considered as restrictive licensing, in general complies with the requirements of Article 6 of the WTO Agreement on Safeguards. Application of safeguard measures as to imports of goods which is effectuated in such growing volumes or on such terms that cause injury or threaten to cause significant injury to national industry completely complies with the international practice and is regulated by the provisions of the WTO Agreement on Safeguards, in accordance to which the Verkhovna Rada of Ukraine approved Law of Ukraine No. 332-XIV "On Application of the Measures of Safeguards against Imports to Ukraine," dated 22 December 1998.

No. 35

Members referred to the practice of the application of the safeguard measures. As Ukraine declared that the present Act of Ukraine "On Application of the Measures of Safeguard against Imports to Ukraine" was compatible with WTO standards, members expected that their application should also comply with WTO practice.

These members were concerned regarding the existing practice of application of safeguard measures. This could be illustrated by the measure applied to imports of plates, sheets, films

and other articles of polyurethane originating in the Russian Federation, Belarus, Lithuania, Poland, Czech Republic and Hungary.

Although the measure was introduced in the first half of 2000, members only received slightly more information about the evidences of injury of the industry in the beginning of 2002. Members also unsuccessfully sought consultations with the Ukrainian side on the issue as provided in the Article 12 of the WTO Agreement on Safeguards.

The information received concerning the measure applied did not contain factors such as the share of the domestic market taken by increase in imports, productivity, profits and losses, which are mandatory according to the Article 4.2 of the WTO Agreement on Safeguards, and it seemed that they were not examined. Also no data related to the increase of imports, which is essential for the investigation, was submitted. Taking the above into account, members considered that Ukraine's introduction of safeguard measures failed to prove the existence of increase of imports, injury to industry and causal relation.

Another issue was the level of allocated protective quotas, approximately 2.5 times below the average of imports in the last three representative years, which produced real doubts that the existing practice of allocating quota was in conflict with Article 5 of Safeguards Agreement.

The above example showed existing problems applying safeguard measures. Members requested that this and other safeguard measures applied, and the practice not corresponding WTO rules, should be eliminated as soon as possible.

Answer:

Special investigation regarding imports of polyurethane into Ukraine was initiated pursuant to the provisions of the Law of Ukraine "On Application of the Measures of Safeguards against Imports to Ukraine" under the Decision of the Governmental Commission on International Trade, No.SP-9/1999, dated 24 September 1999. Plates, sheets, films and other articles of polyurethane (code under the Ukrainian Classifier of Goods of Foreign Economic Activity is 3921 13; hereinafter – polyurethane) originating in Belarus, Lithuania, Poland, the Russian Federation, the Czech Republic and Hungary were object of investigation.

Investigation was initiated due to the results of consideration of the application of "Interfom" LLC (Obukhiv, Kyiv oblast).

Due to increase of volumes of import into Ukraine of goods which are subject to investigation and/or decrease of prices on these goods, negative facts take place in the applicant's situation. During the period of investigation (from 1 September 1998 to 30 June 1999) and in comparison with previous periods (the first previous period - from November 1997 to 31 August 1998, the second previous period – from 1 January 1997 to 31 October 1997) the following events took place: decrease of the applicant's profit, incomplete use of production facilities by the applicant, decrease of sale volumes of polyurethane, which is subject of investigation, increase of stocks of similar goods, growth of imports from Lithuania, the Russian Federation, Belarus, Hungary, Czech Republic and Poland, decrease of price on polyurethane, decrease of liquidity coefficient, incomplete employment at the applicant's enterprise and absence of profit of the applicant on investment capital.

During the period of investigation, decline of production of all producers (except for the applicant) was 33 per cent. The share of this production in general production of similar goods decreased to 9.9 per cent (in comparison with the second previous period rate of decrease of this part it made up 125 per cent).

Therefore, in the process of investigation it was determined that imports (in significant volumes and/or under low prices) into Ukraine of goods, which are subject of investigation, negatively influenced on production, commercial and financial situation of the national producer. As a result, significant general decline in national production of similar goods took place.

Dynamics of decrease of production, sale of polyurethane by the applicant, decrease of the market share, use of production facilities by the applicant, his liquidity, increase of stocks in warehouses and change for the worse of other indexes of social and economic situation of the applicant were the basis for determination of the fact of injury and/or threat of such injury, availability of casual relation between imports and injury and/or threat of such injury and expediency in application of the special measures in accordance with Article 10 of the Law of Ukraine "On Application of the Measures of Safeguards against Imports to Ukraine." In case of non-application of special measures, further worsening of financial and economic situation could be the reason of the applicant's bankruptcy. As to other Ukrainian producers, non-application of the mentioned measures could lead to decrease of production by them. This, in its turn, could support further increase of import share and potential complete lost of this segment of the market by national goods producers.

Taking into account materials of the special investigation, on 2 March 2001 (decision No. SP-2/2000), the Governmental Commission on International Trade applied special measures by implementation of quota as to imports of plates, sheets, films and other articles of polyurethane into Ukraine originating in Belarus, Lithuania, Poland, the Russian Federation, the Czech Republic and Hungary. The annual volume of special quota is determined in the amount of two hundred ninety two (292) tons.

Pursuant to international norms and the Law of Ukraine "On Application of the Measures of Safeguards against Imports to Ukraine," the Commission made its Decision No. SP-31/2002/52-42, dated 29 January 2001, "On Liberalization of Special Measures as to Imports of Plates, Sheets, Films and other Articles of Polyurethane into Ukraine Originating in the Russian Federation, Belarus, Lithuania, Poland, the Czech Republic and Hungary." Pursuant to the said Decision, amount of quota for imports of paralone from the above-mentioned countries was decreased by eight per cent.

The term of application of the special measures will expire on 3 October 2003.

2. Export Regulation

No. 36

Members requested information on rates of export duties:

- **Description and HS tariff item number;**
- **Rate(s) applied; and**
- **Information, as appropriate on which destinations are subject to export taxes.**

Answer:

Ukraine's export duty is determined by Laws of Ukraine On Export Duty on Live Cattle and Hides No. 180/96-BP from 7 May 1996 and On Export Duty Rates for Seeds of Some Oil Crops No. 1033-XIV from 10 September 1999 as amended by Law of Ukraine No. 2555-III from 21 June 2001.

Law of Ukraine No. 180/96-BP from 7 May 1996 sets the following export duty rates:

Goods' HS 96 code	Goods' HS 96 description	Duty rate	
		% of customs value	But at least, €/ton
01.02.90100	Live cattle: Young cattle weighing 350 kg and less; Cattle weighing over 350 kg	75	1,500
01.02.90310	heifers (female bovines that have never calved), cows, bulls, bullocks, etc.	55	540
01.04.10	Live sheep	50	390
Hides:			
41.01	Cattle hides	30	400
41.02	Sheep or lamb skin	30	1 euro/animal
41.03.90000	Pigskin only	27	170

In accordance with this law, agricultural producers that are legal entities are allowed to export these goods without export duty, if they are produced by the exporting entity, with the exception of young cattle weighing 350 kg and less (HS 96 codes 41.01, 41.02, 41.03.9000).

Law of Ukraine On Export Duty Rates for Seeds of Some Oil Crops No. 1033-XIV from 10 September 1999 sets the following export duty rates:

Goods' HS 96 code	Goods' HS 96 description	Export duty rate, per cent of customs value
12 04.00900	Flax seeds, shattered or non-shattered	17
12.06.00900	Sunflower seeds, shattered or non-shattered	17
12.07.99990	False flax seeds only	17

No. 37

Members noted that the law No. 180/96 of 7 May 1996 introduced export duties and a minimum export price on live animals, hides and skins. On 14 February 1997 the Ukrainian Parliament approved a law modifying some individual taxes but maintaining in general the former export duties. The Verkhovna Rada passed in June 2001 a law reducing the seasonal export duty on sunflower seeds from the 23 per cent to 17 per cent.

These members requested a commitment that Ukraine will not introduce new export duties and to remove existing ones, in particular those applicable to live animals, hides and skins and to sunflower seeds.

Answer:

Ukraine notes that export duties *per se* are fully consistent with WTO Agreements.

Export duty on sunflower seeds at a rate of 21 per cent of the goods' customs value was introduced in October 1999 when sunflower seed production was developing extensively. At the time, gross production numbers were attained by means of increasing the area under crop while yield and economic efficiency were decreasing drastically (0.92 tons per hectare and 22 per cent, respectively, in 1998).

Because almost 50 per cent of Ukraine's sunflower yield was exported, the country's sunflower seed processing facilities were working at less than 30 per cent capacity, and some of them went out of business. The lack of sunflower oil was holding back margarine production. But the situation has changed since the duty was introduced. Increasing domestic sunflower seed processing and the production of oil, margarine, special fats and mayonnaise has resulted in an increase of revenue to the budget from UAH 345 million to UAH 1,081 million.

Oil and fat production has become a good sector to invest into and the only processing industry to reach the production level of the 1990s. Oil is exported to 27 countries, and Ukraine now exports almost twice as much oil as it did in 1990.

The introduction of the export duty has not damaged agricultural producers because of the stiff competition on the domestic market between processing enterprises, which have the capacity to process 40 per cent more sunflower seeds than the country produces. The duty was lowered to 17 per cent in 2001.

As international sunflower seed production and sales are limited, changing the existing export duty rates would be inexpedient at this stage.

For reference: Russia has introduced a 20 per cent export duty on major oil crops – sunflower, soybeans and canola. Argentina (world's leading sunflower producer) introduced a 23.5 per cent export duty in 2002.

A bill repealing Law of Ukraine On Export Duty on Live Cattle and Hides was drafted and submitted to the Cabinet of Ministers in order to deal with the problems of bilateral trade and investment. The bill's tentative version was introduced to the Verkhovna Rada of Ukraine in January 2000 (as bill No. 4273). The bill was repeatedly considered at the Verkhovna Rada's sessions but was defeated every time.

The final version of the bill repealing Law of Ukraine On Export Duty on Live Cattle and Hides was rejected at a meeting of the Cabinet of Ministers on 11 April 2002.

Domestic consumption of meat and meat products is still a problem to be solved in Ukraine, because average per capita meat consumption has dropped from 68 kg to 30 kg in the last decade, and in industrial regions to 23-26 kg (the minimum approved by the Ministry of Health in its order No. 272 from 18 November 1999 is 60 kg). The introduction of an export duty on hides has resulted in a substantial improvement of the structure of hides export. While in 1995 (prior to the introduction of the duty) the export consisted of US\$85.5 million worth of hides and only US\$19.1 million worth of semi-finished goods and finished leather, in 2001 these numbers were US\$26.8 million and US\$82.0 million, respectively. Therefore, while hide resources have generally diminished, revenue has increased due to the rise in the export of deeply processed goods, improving the situation in the leather and shoe industry. Utilization of leather factories' capacity has increased from 15-20 per cent to 60-70 per cent. Ukraine still exports some hides on preferential terms to countries with which it has Free Trade Agreements, which means that Ukraine has reoriented its export towards the CIS and the Baltic nations.

In 2001, domestic cattle and hide prices approached world prices, so producers can now profitably sell their goods in Ukraine. Cattle export went down from 16,700 heads in 2000 to only 3300 heads in 2001, and hide export decreased from 23,800 tons in 2000 to 15,900 tons in 2001. Finally, the law currently in force allows agricultural producers that are legal entities to export cattle (with the exception of young cattle weighing 350 kg and less) and hides of their own production without export duty.

(d) Export licensing procedures**No. 38**

Members requested information on exports requiring licenses or subject to quotas bans/prohibitions or to other similar non-tariff restrictions to trade:

- **Description and HS tariff item number;**
- **Reason for requirement/criteria to receive licence;**
- **WTO justification;**
- **Issuing authority/fee structure; and**
- **Date and elimination of those not justified under WTO rules.**

Answer:

Annually, Ukraine determines the list of products exports and imports of which are subject to quotas and licensing. The said list is approved by the Resolution of the Cabinet of Ministers of Ukraine. For the year 2002, the following Resolutions of the Cabinet of Ministers of Ukraine determined the list of products exports and imports of which are subject to quotas and licensing: "On the Lists of Goods Exports and Imports of which are Subject to Quotas and Licensing in Year 2002," No. 1703, dated 18 December 2001, and "On Amendment of the Resolution of the Cabinet of Ministers of Ukraine No. 1703, dated 18 December 2001."

The List of Goods Exports and Imports of which are Subject to Quotas and Licensing

Code under the Ukrainian Classification of Goods of Foreign Economic Activity	Description of Goods/ Issuing Authority	Reason
2530 90 95 00, 2616, 2843, 7102, 7103, 7106, 7108, 7110, 7112	Precious stones and metals (the Ministry of Finance of Ukraine)	Provision of control over the transfer of precious stones and metals
7208 10 00 00, 7208 25 00 00, 7208 26 00 00, 7208 27 00 00, 7208 36 00 00, 7208 37 10 00, 7208 37 90 00, 7208 38 10 00, 7208 38 90 00, 7208 39 10 00, 7208 39 90 00, 7211 14 10 00, 7211 19 20 00, 7219 11 00 00, 7219 12 10 00, 7219 12 90 00, 7219 13 10 00, 7219 13 90 00, 7219 14 10 00, 7219 14 90 00, 7225 19 10 00, 7225 20 20 00, 7225 30 00 00, 7208 40 10 00, 7208 51 10 00, 7208 51 30 00, 7208 51 50 00, 7208 51 91 00, 7208 51 99 00, 7208 52 10 00, 7208 52 91 00, 7208 52 99 00, 7208 53 10 00, 7211 13 00 00, 7225 40 20 00, 7225 40 50 00, 7225 99 10 00, 7208 40 90 00, 7208 53 90 00, 7208 54 10 00,	Certain categories of steel products – to the EU Members (the Ministry of Economy and European Integration of Ukraine in agreement with the Ministry of Education and Science of Ukraine)	Agreement between European Union on Coal and Steel and the Cabinet of Ministers of Ukraine on Trade in Certain Steel Products

Code under the Ukrainian Classification of Goods of Foreign Economic Activity	Description of Goods/ Issuing Authority	Reason
7208 54 90 00, 7208 90 10 00, 7209 15 00 00, 7209 16 10 00, 7209 16 90 00, 7209 17 10 00, 7209 17 90 00, 7209 18 10 00, 7209 18 91 00, 7209 18 99 00, 7209 25 00 00, 7209 26 10 00, 7209 26 90 00, 7209 27 10 00, 7209 27 90 00, 7209 28 10 00, 7209 28 90 00, 7209 90 10 00, 7210 11 10 00, 7210 12 11 00, 7210 12 19 00, 7210 20 10 00, 7210 30 10 00, 7210 41 10 00, 7210 49 10 00, 7210 50 10 00, 7210 61 10 00, 7210 69 10 00, 7210 70 31 00, 7210 70 39 00, 7210 90 31 00, 7210 90 33 00, 7210 90 38 00, 7211 14 90 00, 7211 19 90 00, 7211 23 10 00, 7211 23 51 00, 7211 29 20 00, 7211 90 11 00, 7212 10 10 00, 7212 10 91 00, 7212 20 11 00, 7212 30 11 00, 7212 40 10 00, 7212 40 91 00, 7212 50 31 00, 7212 50 51 00, 7212 60 11 00, 7212 60 91 00, 7219 21 10 00, 7219 21 90 00, 7219 22 10 00, 7219 22 90 00, 7219 23 00 00, 7219 24 00 00, 7219 31 00 00, 7219 32 10 00, 7219 32 90 00, 7219 33 10 00, 7219 33 90 00, 7219 34 10 00, 7219 34 90 00, 7219 35 10 00, 7219 35 90 00, 7225 40 80 00, 7207 19 31 00, 7207 20 71 00, 7216 31 11 00, 7216 31 19 00, 7216 31 91 00, 7216 31 99 00, 7216 32 11 00, 7216 32 19 00, 7216 32 91 00, 7216 32 99 00, 7216 33 10 00, 7216 33 90 00, 7213 10 00 00, 7213 20 00 00, 7213 91 10 00, 7213 91 20 00, 7213 91 41 00, 7213 91 49 00, 7213 91 70 00, 7213 91 90 00, 7213 99 10 00, 7213 99 90 00, 7221 00 10 00, 7221 00 90 00, 7227 10 00 00, 7227 20 00 00, 7227 90 10 00, 7227 90 50 00, 7227 90 95 00, 7207 19 11 00, 7207 19 14 00, 7207 19 16 00, 7207 20 51 00, 7207 20 55 00, 7207 20 57 00, 7214 20 00 00, 7214 30 00 00, 7214 91 10 00, 7214 91 90 00, 7214 99 10 00, 7214 99 31 00, 7214 99 39 00, 7214 99 50 00,		

Code under the Ukrainian Classification of Goods of Foreign Economic Activity	Description of Goods/ Issuing Authority	Reason
7214 99 61 00, 7214 99 69 00, 7214 99 80 00, 7214 99 90 00, 7215 90 10 00, 7216 10 00 00, 7216 21 00 00, 7216 22 00 00, 7216 40 10 00, 7216 40 90 00, 7216 50 10 00, 7216 50 91 00, 7216 50 99 00, 7216 99 10 00, 7218 99 20 00, 7222 11 11 00, 7222 11 19 00, 7222 11 21 00, 7222 11 29 00, 7222 11 91 00, 7222 11 99 00, 7222 19 10 00, 7222 19 90 00, 7222 30 10 00, 7222 40 10 00, 7222 40 30 00, 7224 90 31 00, 7224 90 39 00, 7228 10 10 00, 7228 10 30 00, 7228 20 11 00, 7228 20 19 00, 7228 20 30 00, 7228 30 20 00, 7228 30 41 00, 7228 30 49 00, 7228 30 61 00, 7228 30 69 00, 7228 30 70 00, 7228 30 89 00, 7228 60 10 00, 7228 70 10 00, 7228 70 31 00, 7228 80 10 00, 7228 80 90 00, 7301 10 00 00		
7208 40 10 00, 7208 51, 7208 52, 7208 53 10 00, 7208 53 90 00, 7208 90, 7210 70 39 00, 7210 70 90 00, 7210 90 38 00, 7210 90 90 00, 7211 13 00, 7211 14, 7211 90, 7212 40 91 00, 7212 40 93 00, 7212 40 98 00, 7212 50 51 00, 7212 50 58 00, 7212 50 99 00	Flat-rolled products of carbon steel of a width of more than 150 mm, hot-rolled, not clad, plated or coated, not in coils - to the USA (the Ministry of Economy and European Integration of Ukraine)	Agreement on Suspension of Antidumping Investigation on Cut-to-length Carbon Steel Plates, made between the Department of Commerce and the Government of Ukraine, dated 24 October 1997
7208	Flat-rolled products of carbon steel, hot-rolled – to Indonesia (the Ministry of Economy and European Integration of Ukraine)	Agreement between the Ministry of Industry and Trade of Indonesia and the Ministry of Foreign Economic Relations and Trade of Ukraine on Restriction of Exports Flat-rolled Products of Carbon Steel, Hot-rolled, Originating in Ukraine, made on 29 May 1998.
7304, 7305, 7306	Tubes and pipes of iron or steel – to the Russian Federation (the Ministry of Economy and European Integration of Ukraine)	Agreement between the Ministry of Economy of Ukraine and the Ministry of Economic Development and Trade of the Russian Federation "On Regulating Supplies of Tubes and Pipes of Iron or Steel," dated 10 April 2001
4411 11 00 00	Fiberboard of wood – to Hungary (the Ministry of Economy and European Integration of Ukraine)	Memorandum between the Ministry of Economy of Ukraine and the Ministry of Foreign Affairs of Hungary on Settlement of Issues on Imports of fiberboard of wood, originating in Ukraine, to Hungary

Code under the Ukrainian Classification of Goods of Foreign Economic Activity	Description of Goods/ Issuing Authority	Reason
The List of categories approved by the Resolution of the Cabinet of Ministers of Ukraine, No. 1703, dated 18 December 2001	Certain categories of textile products – to the USA (the Ministry of Economy and European Integration of Ukraine)	Visa understanding between the Government of Ukraine and the USA Government regarding textile and textile products

The List of Goods Exports of which are Subject to Licensing

Code under the Ukrainian Classification of Goods of Foreign Economic Activity	Description of Goods/ Issuing Authority	Reason
8523 90 00 00, 8524 31 00 00, 8524 32 00 00, 8524 39 00 00	Discs for laser optic systems (the Ministry of Economy and European Integration of Ukraine in coordination with the Ministry of Education and Science)	Ensures fulfillment of the Law of Ukraine "On Peculiarities of State Regulation of Operations of Agents of Entrepreneurial Activity Related to Production, Exports and Imports of Discs for Laser Optic Systems."
8524 91 10 00, 8524 91 90 00, 8524 99 00 00	Master-copies of discs which contain information and are designated for production of discs for laser optic systems (the Ministry of Economy and European Integration of Ukraine in coordination with the Ministry of Education and Science)	Ensures fulfillment of the Law of Ukraine "On Peculiarities of State Regulation of Operations of Agents of Entrepreneurial Activity Related to Production, Exports and Imports of Discs for Laser Optic Systems."
3907 40 00 00	Polycarbonate for production of optical carrier of information (the Ministry of Economy and European Integration of Ukraine in coordination with the Ministry of Education and Science)	Ensures fulfillment of the Law of Ukraine "On Peculiarities of State Regulation of Operations of Agents of Entrepreneurial Activity Related to Production, Exports and Imports of Discs for Laser Optic Systems."
7211 23 99 00, 7211 29 50 00, 7211 29 90 00, 7211 90 90 00, 7211 23 91 00, 7225 19 10 00, 7225 19 90 00, 7226 19 10 00, 7226 19 30 00, 7226 19 90 00, 7218 10 00 00, 7224 10 00 00, 7226 11 90 00	Certain steel products – to the EU Members (regime of dual control with issuing an "exports document") (the Ministry of Economy and European Integration of Ukraine)	Agreement between European Union on Coal and Steel and the Cabinet of Ministers of Ukraine on Trade in Certain Steel Products
7202 30 00 00	Ferrosilicomanganese – to the EU Members (the Ministry of Economy and European Integration of Ukraine)	Obligations of Nikopol and Zaporizhzhya plants of ferroalloys to the European Commission
7312 10 82 00, 7312 10 84 00, 7312 10 86 00, 7312 10 88 00, 7312 10 99 00	Steel ropes – to the EU Members (the Ministry of Economy and European Integration of Ukraine)	Obligations of the Open Joint Stock Company "Silur" to the European Commission

Code under the Ukrainian Classification of Goods of Foreign Economic Activity	Description of Goods/ Issuing Authority	Reason
2903 1400 00, 2903 19 10 00, 2903 30 33 00, 2903 41 00 00, 2903 42 00 00, 2903 43 00 00, 2903 44 90 00, 2903 45 10 00, 2903 45 15 00, 2903 45 25 00, 2903 45 30 00, 2903 45 35 00, 2903 45 40 00, 2903 45 45 00, 2903 45 50 00, 2903 45 55 00, 2903 45 90 00, 2903 46 10 00, 2903 46 20 00, 2903 46 90 00, 2903 49 10 00, 2903 49 30 00	Ozone-destructive substances and products which may contain ozone-destructive substances (the Ministry of Economy and European Integration of Ukraine in agreement with the Ministry of Ecology and Natural Resources of Ukraine)	Aimed at provision of fulfillment of the requirements of Montreal Protocol
The List of categories approved by the Resolution of the Cabinet of Ministers of Ukraine, No. 1703, dated 18 December 2001	Certain categories of textile products – to the EU Members (the Ministry of Economy and European Integration of Ukraine)	Agreement in the form of Letters Exchange between the EU and Ukraine on Trade in Textile Products

The List of Goods Exports and Imports of which are Conducted on the Basis of Licenses with the Right to Export and Import

The Law of Ukraine "On State Regulation of Production and Trade in Ethyl Spirits, Cognac Spirits and Fruit Spirits, Alcoholic Beverages and Tobacco Products," dated 19 December 1995, and the Resolution of the Cabinet of Ministers of Ukraine "On Provisional Procedure for Issuing Licenses with the Right to Import Ethyl Spirits, Cognac Spirits and Fruit Spirits, Alcoholic Beverages and Tobacco Products," No. 493, dated 13 May 1996, determine the said List.

Code under the Ukrainian Classification of Goods of Foreign Economic Activity	Description of Goods/ Issuing Authority	Reason
2204, 2205, 2206, 2208	Alcoholic beverages (the Ministry of Economy and European Integration of Ukraine)	Provision of the high quality of products and protection of individuals' health, as well as strengthening of struggle against illegal production and turnover of alcoholic beverages and tobacco products in Ukraine
2207	Ethyl spirits, cognac spirits and fruit spirits (the Ministry of Economy and European Integration of Ukraine)	Provision of the high quality of products and protection of individuals' health, as well as strengthening of struggle against illegal production and turnover of alcoholic beverages and tobacco products in Ukraine
2402, 2403	Tobacco products (the Ministry of Economy and European Integration of Ukraine)	Provision of the high quality of products and protection of individuals' health, as well as strengthening of struggle against illegal production and turnover of alcoholic beverages and tobacco products in Ukraine

Fee for Issuing Licenses

Licenses for imports of goods, including special licenses	15 untaxed minimums of individuals' income (255 Hryvnias)
Licenses for exports of goods	0.1 per cent of the transaction's value
Licenses with the right to export spirits	5,000 untaxed minimums of individuals' income (85,000 Hryvnias)
Licenses with the right to export alcoholic beverages and tobacco products	100 untaxed minimums of individuals' income (1,700 Hryvnias)
Licenses with the right to import alcoholic beverages and tobacco products	10,000 untaxed minimums of individuals' income (170,000 Hryvnias)
One-time (individual) licenses	0.2 per cent of the transaction's value

No. 39

Members requested information on fees and charges for services rendered relating to exportation, i.e., customs fees, consular fees, port fees, etc:

- **Description of service rendered/purpose of fee; and**
- **Rate(s) applied.**

Answer:

For the rendering of services in the customs area and in accordance with Article 77 of the Customs Code of Ukraine, customs authorities charge customs fees during customs formalities for goods and other items in customs control zones and on location at enterprises that store such goods and other items, or after working hours as designated for customs, and for storage of goods and other items under bond in cases where their transfer to customs storage in accordance with Article 85 of the Code is not obligatory.

Cabinet of Ministers of Ukraine Resolution No. 65 dated 27 January 1997 established the following rates for customs fees:

For customs clearance of goods and other items with a customs value of:

- Up to US\$100 not levied
- From US\$100 to 1,000, US\$5;
- Greater than US\$1,000 – 0.2 per cent of the customs value of goods and other items, however not more than the equivalent of US\$1,000.

For customs clearance of temporarily imported (exported) property under obligation to export (import) said property:

- For each freight customs declaration – US\$30;
- For each additional sheet thereof – US\$15.

For customs clearance of goods in case of their transit:

- For each freight customs declaration – US\$10;
- For each additional sheet thereof – US\$5.

For customs clearance of goods imported to a bonded customs warehouse:

- For each freight customs declaration – US\$30;
- For each additional sheet thereof – US\$15.

For holding of goods and other items under customs control, for each they are held:

- For the first fifteen calendar days – not charged;
- For every subsequent calendar day - 0.05 per cent of the general customs value of goods and other items.

For customs clearance of goods and other items in customs control zones on the territory of and in facilities of enterprises that store such goods and other items, or after working hours as designated for the customs house (per one customs house staff person hour):

- During working hours – US\$20;
- During non-working hours, on Saturday and Sunday – US\$40;
- On holidays – US\$50.

In accordance with Cabinet of Ministers of Ukraine Resolution No. 285 dated 7 March 1998, in cases of customs clearance of the export of scrap metal and ferrous and non-ferrous metal waste, customs fee rates for customs clearance of goods, their holding under customs control and for summoning of a customs house inspector shall be paid by enterprises at a rate five times the customs fee rate set for the said category, except for enterprises which conducted exportation of these goods in accordance with the State Program of Destruction of Regular Types of Un-usable and Un-storable Ammunition.

Note: In accordance with the new Customs Code of Ukraine adopted by the Verhovna Rada of Ukraine on 11 July 2002, the charging of customs fees is not provided for, with the exception of charges for customs clearance, that takes place off-location of customs authorities or after working hours designated for customs authorities. The new Customs Code is enacted starting 1 January 2003.

In accordance with the Order of the Ministry of Transportation No. 392 of 31 October 1995, as amended, Ukraine's seaports charge the same lump rates for handling exported goods as for handling imported ones. Imported cargo is not subject to storage charge for the first four calendar days after arrival to port, and from the end of this period to the removal of goods the receiver pays storage depending on storage duration.

The following charges are collected in Ukraine's seaports: ship's fees, berthage, anchorage, canal fees, light fees, cargo fees, administration fees and sanitary fees. All port fees and fees for services provided to ships in Ukraine's seaports are independent of cargo type (export or import). In accordance with the Enactment of the Cabinet of Ministers of Ukraine No. 1544 from 12 October 2000 and Order of the Ministry of Transportation No. 711 of 15 December 2000, detailed calculation of the cost of services provided indicating the rates and extra charges (overtime) is provided in disbursement bills presented to ship owners by the port.

Ukrainian legislative acts may establish other charges.

Port fees may be used only for their respective intended purposes. In accordance with Article 84 of the Merchant Shipping Code of Ukraine, port fees are payment for services provided by ports and are based on the ports' costs and profit necessary for extended reproduction. In particular, ship's fees, canal fees, light fees, anchorage and berthage are payment for providing safe entrance into port, anchorage and departure, and sanitary fees are payment for all kinds of contamination caused by the ships.

In accordance with the Enactment of the Cabinet of Ministers of Ukraine On Approving Harbor Fees Regulations No. 1544 from 12 October 2000:

Harbor fees (ship's fees, canal fees, light fees, berthage, anchorage, administration fees and sanitary fees) are collected in seaports from ships belonging to the following groups and self-floating structures flying the Ukrainian or a foreign flag:

Cargo vessels calling at port for cargo handling and self-floating structures	Group A
Passenger vessels, including high-speed hydrofoil vessels and ferries, calling at port for cargo handling, and ice-breakers that are neither owned nor rented by the port	Group B
Lighters, towboats, pusher tugs, pushboats, barges (self-propelled and non-self-propelled) and self-propelled river vessels, including river-sea vessels belonging to shipping companies that are parties to the Bratislava Agreement calling at Danube ports and self-propelled river vessels calling at other ports for transshipment to sea ships and vice-versa	Group C
Non-self-propelled vessels (except barges)	Group D
The ships entering the port forcedly for supplies and quarantine requirements, and also ships bounded for overhaul to the shipyards (bases) of Ukraine	Group E
Official and military ships	Group E
Training and training-and-production ships in voyage in accordance with curricula of educational organizations having at least 50 students on board and training-and-simulator ships	Group E
Scientific and research vessels and high-speed hydrofoil vessels performing regular passenger voyages according to time-schedule in coastwise navigation (except pleasure voyages and cruises)	Group E
Other vessels (vessels belonging to a shipyard, rescue vessels, submarine technical vessels, technical vessels, hospital vessels, hydrographic vessels, vessels belonging to local port fleet, ice-breakers owned and rented by the port, sports vessels, privately owned yachts, sailing vessels, vessels undergoing sea trials and fishing vessels calling at port without cargo handling)	Group F

The port due is charged before the ship exits from the port; as for the transit passage of Kerch-Yenichkale Channel (KYC) and the Prorva Channel the payments are done either beforehand or directly before the entrance to the KYC and the Prorva Channel, if otherwise is not stated.

The port fees are made on the basis of conventional ship volume, which is calculated in cubic meters and is equal to the multiplication of three dimensions (the ship length, width and the shipboard height), indicated in the tonnage certificate (principal dimensions), or in the document substituting this certificate.

For the sea ships carrying loads on the higher deck or having two or more decks, except twin-deck ships, the board height involved to the ship volume calculation should be not less than half ship width.

For the Group-B ships having two or more decks the shipboard height used for the ship-volume calculation should be equal to the half ship-width.

Conventional ship volume of the barge and towboats and other combined self-floating structures, which is calculated for the duty charges of all kinds (except sanitary tax) is equal to the sum of individual constituents.

To calculate all kinds of duties the conventional volume of the RO-RO, RO-FLOW, OBO, LO-RO ships, container vessels, stock-transporting ships, car-transporting vessels is taken with the 0.7 factor if the ships are used in accordance with the original purpose. The ship type and its purpose are determined by the ship documents.

When calculating duties with daily rates the time is approximated to the 0.5 day. Doing this the time under 0.5 day is taken as 0.5 of a day, and the time equalling 0.5 day or more is approximated as a whole day.

For the lighter-aboard ships operating with lighters at both external and internal roads the port fees are charged on the basis of lighters delivered by the ship after arrival to the port and on the lighters accepted in the port.

For the cargo vessels of A-Group operating on the international lines, which were opened according to the established order, it is envisaged a reduction of 20 per cent of the ship due.

The main signs (features) of the international line are:

- introduction of obligatory and optional international and Ukrainian ports of call;
- assignment of types of ships for the work on this line;
- introducing periodicity of the ship calls to the Ukrainian ports;
- registration of the line by the State Department of Sea and River Transport according to the submission of the port (sea port) administration.

For the ships entering Yuzhnyi Port for loading and unloading general and bulked cargo, the port can use a reduction of port fees equalling to 50 per cent.

In the Yalta port the following reductions are used:

50%	reduction of the ship due for the A-Group ships;
20%	reduction of all port fees for the B-Group passenger cruisers of international lines (except those performing cargo-and-passenger voyages).

In the Odessa port a reduction of 10 per cent for all port due rates is used for the B-Group passenger cruisers of international lines (except those performing cargo-and passenger voyages) 8. If the ship is subject to several reductions of port fees, then it enjoys only the highest reduction to the basic rate.

The state affiliation of the ship and its status in the process of port due charges is determined according to the flag which the ship is flying irrespective of who its owner or user is.

Payments of port fees are executed according to the Decree of the Cabinet of Ministers dated from 19 February 1993 No. 15 "On the System of Currency Regulations and Currency Control".

The Value-Added Tax is paid according to the legislation from the amounts of port fees charged in Ukrainian currency. At the same time if the port provides services to the coastwise navigation ships then the duty charge determined according to the current Statement is to be increased by the amount of VAT charged, while in other cases the VAT to be paid to the Budget is calculated from the sum of duties charged and paid to the port without this increase.

For the ships of A, B and D groups the ship due is charged for each entry and exit to and from the port for each cubic meter of the vessel volume in line with the following rates:

Port	For ships in international voyage		For ships of coastal navigation
	Regular rate	Incentive rate	
Bilgorod-Dnistrovskiyi	0.157	0.076	0.0008
Berdiansk	0.308	0.069	0.0008

(in US\$)

Port	For ships in international voyage		For ships of coastal navigation
	Regular rate	Incentive rate	
Dnipro-Buzkyi	0.277	0.085	0.0042
Yevpatoria	0.184	0.063	0.0046
Izmail	0.194	0.065	0.0024
Illichevsk	0.297	0.095	0.0060
Bukhta Kamyshova	0.182	0.077	0.0038
Kerch	0.277	0.089	0.0042
Mariupol	0.254	0.087	0.0024
Mizhvodne	0.18	0.063	0.0032
Mykolaiv	0.277	0.071	0.0054
Odessa	0.313	0.094	0.0054
Oktiabrskiy	0.277	0.085	0.0042
Ochakiv	0.265	0.081	0.0051
Reni	0.194	0.062	0.0020
Sevastopol	0.182	0.077	0.0042
Skadovsk	0.277	0.085	0.0054
Ust-Dunaisk	0.100	0.086	0.0078
Feodosia	0.187	0.065	0.0042
Kherson	0.194	0.068	0.0028
Chornomorsk	0.184	0.063	0.0032
Yuzhnyi	0.383	0.187	0.0144
Yalta	0.331	0.097	0.0090
Mooring Line of the JCSC "Mykolaivskiy Kaliyni Terminal"	0.277	0.071	0.0054
Other ports (mooring lines)	0.182	0.062	0.0043

The E and F Group ships are exempt from ship due payments.

The ship due with incentive rates are charged for ships flying the Ukrainian State Flag and for ships flying the flags of states with which Ukraine has International Agreements about providing ships either with the most-favoured-nation treatment or with the national treatment.

The ship due rates for coastal trade ships are charged only for ships operating in coastal navigation under the Ukrainian State Flag. If the maximal draught of large-tonnage ship indicated in tonnage certificate increases the permissible draught established for this very port, which increase leads to the partial load of the ship, then the port has a right to decrease the height of shipboard by the amount of unused draught when calculating the ship due charge.

In case when the A-Group ships during one voyage enter subsequently some ports of Ukraine, then ship due is paid as follows:

- When entering two ports the ship due is decreased by 50 per cent of the basic rate of each port;
- When entering more than two ports, then in the first port the ship due is decreased by 50 per cent, and in every subsequent port it is decreased by 75 per cent of the basic rate.

For the B-Group ships the ship due is charged in each called port both at the entrance and exit from the port at a rate less than 50 per cent only for the first and second voyages of the ship during the calendar year. During the next calls of the ship in the port during the calendar year the ship due for these ships is not charged.

For the C-Group ships the ship due is charged in each called port both at the entrance and exit from the port at the following rates:

in international voyage:

- US\$40.5 from a ship or tug-boat;
- US\$20.25 from the item (a barge, a lighter).

in coastwise navigation:

- US\$10 from a ship or tug-boat;
- US\$5 from an item (a barge, a lighter).

The Canal Due is charged for the each passage of the channel by a ship in one direction and for each transit passage of the channel by a ship in one direction and calculated for each cubic meter of the vessel volume according to the following rates:

In US\$

Port	For ships in international voyage	For ships of coastal navigation
Bilgorod-Dnistrovskiy	0.063	0.0063
Berdiansk	0.106	0.0106
Bukhta Kamyshova	0.032	0.0032
Dnipro-Buzkyi	0.027 + 0.18*	0.0026 + 0.0180*
Illichevsk	0.020	0.0020
Kerch (including KYC):		
Commercial sea port	0.16	0.0170
Fishery sea port and other Kerch enterprises performing cargo handling operations and servicing ships	0.144** + 0.016***	0.0153** + 0.0017***
KYC transit passage	0.053	0.0062
KYC for transit ships entering and leaving the "Kavkaz' port		
Buoy N 1-41	0.044	-
Buoy N 41-51	0.013	-
Mariupol	0.106	0.0106
Mykolaiv (sea port)	0.027 + 0.227*	0.0026 + 0.0226*
The "Okean' plant mooring line	0.221*	0.0221*
Odessa	0.011	0.0010
Oktyabrskiy	0.027 + 0.203*	0.0026 + 0.0202*
Ochakiv	0.027 + 0.027*	0.0027 + 0.0027*
Sevastopol	0.032	0.0032
Skadovsk	0.032	0.0032
Ust-Dunaisk	0.068	0.0068
Kherson (sea port)	0.10 + 0.136*	0.010 + 0.0136*
Yuzhnyi	0.074	0.0074
For the Prorva Channel passage	0.140	0.0140
Mooring line of the JCSC "Mykolaivskiy Kaliyniy Zavod"	0.027 + 0.208*	0.0026 + 0.0207*

For the B-Group ships the Canal Due is charged for each port call for both enter and exit on the rates with 50 per cent reduction only for the first and second voyages performed by the ship during the current calendar year. During next port calls during the current calendar year the Canal Due for these ships is not charged.

The ships of the C, E and F groups passing through the Prorva Channel are exempt from the Canal Due payments.

For the ships belonging to the A and B Groups the lighthouse due is charged for each port (shipyard) call and for each transit passage of the port, except the passage of Kerch-Yenikalskyi Channel. The rates of the charged lighthouse due are as follows:

- US\$0.029 for each cubic meter of the vessel volume is charged from the ships in international voyage;
- US\$0.0029 for each cubic meter of the vessel volume is charged from the ships of coastal navigation.

The full amount of lighthouse due is paid directly to the state institution "Derzhgidrografia".

The C, D, E and F Group ships are exempt from the lighthouse due.

The berthage is charged from the ships at the berthing line.

For the ships of A, B, C (tug-boats) Groups and for the ships of D, E and F groups (sport ships, private yachts, fishing-boats calling ports without performing cargo handling) the following rates are applied:

In US\$

The berthing place	For ships in international voyage	For ships of the coastwise navigation
Cargo handling performed with the help of port labour force and facilities (in cubic meters for each ship entry)	0.022	0.0022
Other cases, and also for tugs, sport ships, private yachts, and sailing vessels, fishing-boats calling ports without performing cargo handling operations (for 1 cubic meter per day)	0.0072	0.00072

For the C Group vessels (except tags) the berthage is charged for each tone loaded or unloaded cargo according to the following rates:

US\$0.12	for the ships in international voyage;
US\$0.012	for the coastwise navigation ships.

Payment of berthage is charged for each operation. In case if operation is carried out near the unfitted coast or by the ship-to-ship method, the rate of berthage is reduced by 50 per cent.

The ships standing "in log" to the other ship, or the ships berthed with a rostrum or a stern to the berthing line are to pay 50 per cent of the berthage rate.

For the A and B Group ships after the loading (passenger) operations are finished, and for the stand near freight (passenger) berthing line because of the reasons depending from the ship or the ship owner, the berthage is charged from the moment cargo handling is finished and the load secured; the due is charged per one cubic meter according to the following rates:

US\$0.0104	for the ships in international voyage;
US\$0.00104 per hour	for the coastwise navigation ships.

For the stand or for finishing ship service operations the port is eligible to provide empty berthing place or the anchorage place on the road according to the captain's (ship owner's) requirements.

For the A and B Group ships the anchorage for more than 12-hour stand at the internal road of the sea port is charged according to daily charges for each cubic meter of the vessel volume per each actual stand hour as follows:

US\$0.0027	for the ships in international voyage;
US\$0.00027	for the coastwise navigation ships.

For the ships of C, D and F groups (sport ships, private yachts, fishing-boats calling ports without performing cargo handling) the anchorage is charged for 30 days for each vessel standing at the interior road. In this case the rates are as follows:

US\$18	for the ships in international voyage;
US\$1.8	for the ships of the coastwise navigation .

For the each day of stand at the internal road exceeding this determined term the anchorage is charged for each ship according to the following rates:

US\$2	for the ships in international voyage;
US\$1	for the ships of the coastwise navigation.

The ships of E and F Groups (except sport ships, private yachts, sailing vessels and fishing-boats calling ports without performing cargo handling) are exempt from anchorage.

For the A, B, C, D Group ships administration due is charged for each port call according to the following rates:

US\$0.014 per one cubic meter of the vessel amount	for the ships in international voyage;
US\$0.0014 per one cubic meter of the vessel amount	for the ships of coastwise navigation.

The ships which call sea ports to perform procedures related to the passage through the frontiers of Ukraine without carrying out cargo handling are exempted from the administration due payments.

The ships of A, B, C and D Groups, which call subsequently some Ukrainian ports during one voyage to perform cargo handling the administration due is charged only in the first port entered.

The reductions of fees, introduced by the ports after consent of the ship owners, are not eligible for the administrative rate.

The ships of E and F Groups are exempt from the administration due payments.

The funds accumulated from the administration due payments are spent according to legislation.

The sanitary due provides that:

- the port removes all kinds of pollutions (except ballast water) during all time of the ship stand in the port, and also carries out operations related to the pollution removal on the port's account (including the floating structures supply and removal, providing containers

and other facilities for garbage collection, re-cargo handling, cable connection and disconnection, etc.)

Obligatory removal by the ship standing in a port of all pollutions and garbage presented on board in order to prevent sea pollution. The removal of pollutions is proved by the port certificate.

The sanitary due for the Group A ships is charged for 1 cubic meter of the ship amount or the self-propelled constituent of a combined floating structure according to the following rates:

In US\$

Port	For the ships in international voyage		For the ships of the coastwise navigation	
	Up to ten days stand	The stand from ten to 30 days	Up to ten days stand	The stand from ten to 30 days
Bilgorod-Dnistrovskiy	0.014	0.023	0.0014	0.0023
Berdiansk	0.022	0.040	0.0022	0.0040
Dnipro-Byzkyi	0.010	0.016	0.0010	0.0016
Illichevsk	0.014	0.023	0.0014	0.0023
Mariupol	0.022	0.040	0.0022	0.0040
Mykolaiv (sea port)	0.014	0.023	0.0014	0.0023
Odessa	0.014	0.023	0.0014	0.0023
Sevastopol (sea port, commercial port and fishery port)	0.027	0.040	0.0027	0.0049
Feodosia	0.027	0.038	0.0027	0.0038
Kherson (sea port)	0.014	0.023	0.0014	0.0023
Yuzhnyi	0.014	0.023	0.0014	0.0023
Yalta	0.022	0.040	0.0022	0.0040

The ships equipped with environment protection equipment for complete utilization of all kinds of board wastes and pollutions, and the ships possessing international certificate about preventing the sea pollution with oil, and leachate, and also the ships having a certificate about preventing garbage pollutions (that is, which are environmentally friendly) enjoy the sanitary duty rate reduction amounting to 50 per cent.

Information concerning the Instruction "On the Consular Fee of Ukraine" approved by Order of the Ministry of Foreign Affairs of Ukraine No. 217 dated 15 December 1999 is reproduced in the reply No. 13 pages 24-29.

No. 40

Members stated that, besides the existence of export duties and minimum export prices on live animals, hides and skins, Ukraine introduced in May 2001 a ban on "tolling contracts" for hides and skins.

Regarding non-ferrous metal scrap, the 1999 "Law on Scrap Metal" imposed restrictive conditions, including an export licensing mechanism, on trade of nonferrous scrap. Since August 2000, the Ukrainian Cabinet of Ministers imposed a full ban on exports of non-ferrous scrap metal (officially justified by the willingness to combat criminal activities in the sphere of scrap trading). This ban is not compatible with Ukraine's obligations under WTO rules since the measure is not mirrored by any corresponding domestic restriction (domestic trade remains free), it clearly constitutes a disguised restriction on trade.

The 2001 Law decreased the seasonal export duty on sunflower seeds to 17 per cent and at the same time banned outward processing contracts for sunflower seeds not subject to the export duty. The net effect of this legislation is a considerable restriction to trade.

These members requested:

- **that Ukraine remove export restrictions, in particular on live animals, hides and skins, non-ferrous metal scrap and sunflower seeds.**
- **a commitment not to introduce any new export restrictions.**

Answer:

Customs duty on sunflower seeds amounting to 21 per cent of the clearance price of the exported seeds has been introduced in October 1999 under the condition of the extensive growth of its production, when gross volumes have been achieved through the expansion of the land under sunflower and abrupt decrease of the crop yields and profitability, which in 1998 composed accordingly 0.92 ton per hectare and 22 per cent.

Introduction of the customs duty had no negative effect on agricultural producers because of the strong competition in the domestic processing industry – their capacities are 40 per cent higher than gross production of the sunflower.

In 2001 the duty was reduced to 17 per cent.

Taking into account limited world production of sunflower and its trading in the world markets at this moment, it is not appropriate to reconsider the introduced duty amount.

Draft Law of Ukraine "On Considering as no Longer Valid the Law of Ukraine "On Export Duty on Cattle and the Hides" has been prepared and submitted to the Cabinet of Ministers of Ukraine with the purpose of resolving trade and investment issues.

Previous version of the draft Law of Ukraine "On Considering as no Longer Valid the Law of Ukraine "On Export Duty on Cattle and the Hides" was submitted to the Verkhovna Rada of Ukraine in January 2000. The bill was discussed several times at the Verkhovna Rada sessions but never received the required number of votes.

On 11 April 2002 at the session of the Cabinet of Ministers the latest draft Law of Ukraine "On Considering as no Longer Valid the Law of Ukraine "On Export Duty on Cattle and the Hides" was rejected.

In Ukraine we still have an unresolved issue of providing our own population with meat and meat products since during the last decade the level of its consumption has decreased from 68 to 30 kg per capita and in the industrial regions to 23-26 kg per capita, while the minimal amount of consumption, as stated in Order No. 272 of the Ministry of Health of 18 November 1999 should equal 60 kg per capita.

After introduction of the customs duty on the hides the structure of exports in this industry has greatly improved. In 1995 (before the Law was adopted) exports of the hides amounted to US\$85.5 million and semi finished products and leather only to US\$19.1 million. In comparison, in 2001 these amounts constituted accordingly US\$26.8 and 82.0 million. In this way while the used resources of the hides have decreased, the profits increased due to higher volumes of export of finished materials, which benefited the economic condition of the leather and footwear industry. The

hides processing facilities are now running at 60-70 per cent of their capacities – an increase from only 15-20 per cent.

We have to note here that certain amounts of hides are still being exported from Ukraine on favourable terms to the countries, with which we have Free Trade Agreements. As a result the export has shifted to CIS and the Baltic countries mainly.

Domestic price on cattle and hides approached the world level and it became profitable for producers to sell these products in Ukraine. In 2001, for example, only 3.3 thousand head of cattle (compare to 16.7 thousand in 2000) were exported. Exports of hides decreased from 23.8 thousand tons in 2000 to 15.9 thousand tons in 2001.

Fourthly, the acting Law of Ukraine allows agricultural producers – legal entities exporting cattle (except young animals with weight under 350 kg) and hides without customs duty if these are the products of their own production.

3. Internal Policies Affecting Foreign Trade in Goods

(a) Industrial policy

No. 41

Members noted that WT/ACC/UKR/87/Add.1, part III on Legal Relations in the Field of Production and Trade with Agricultural Produce, stated that two laws related to fisheries were under consideration in the Ministry of Agricultural Policy. Besides making it clear that these laws were related to industrial goods, further information as to the content of the laws, as well as the timetables for their enactment, was requested.

Answer:

Information concerning the fishing industry legislature.

Name of the bill	Result expected	The term of submission to the Cabinet of Ministers of Ukraine/execution
The draft Law of Ukraine "On Fisheries"	Regulation of the fishery activities of legal and physical persons in internal reservoirs, the continental shelf and the sea economic zone of Ukraine.	First quarter of 2003
The draft Law of Ukraine "On Ratification by Ukraine of the Agreement on Execution of the Conditions of the Convention of the UNO on Maritime Law of 19 December 1982 and Concerning Preservation of Trans-border Fish Resources and Resources of the Far Migrating Fish and Their Control"	Introduction of the world standards and approach to sea and ocean resource usage into the fishing practices in Ukraine. Expansion of the access to the live sea resources.	First quarter of 2003

Name of the bill	Result expected	The term of submission to the Cabinet of Ministers of Ukraine/execution
Draft Law of Ukraine "On State Program of Fishery Development in Ukraine in 2002 – 2010."	Creation of favourable conditions for increase of competitive fish products, achievement of the volume of fish and sea products in 2010 of 750,000 tons, fish products production in the amount of 540,000 tons, canned fish of 250 cubic meters, fodder fish flour of 33,000 tons. Saturation of the domestic market with fish products.	First quarter of 2003
Draft Law of Ukraine "On Fish, other Water Live Resources and Food Products Made of Them"	Estimation of demand on fishery products, fish processing, certification of processing facilities, producer-guaranteed quality and safety of fishery products and food made of them.	First quarter of 2003
Draft Resolution of the Cabinet of Ministers of Ukraine "On State Program of Development of Selection and Breeding for the Period up to 2010"	Preservation of the breeding flock of fish-culture, expanded reproduction and improvement of the gene pool of the main fisheries of fish-culture enterprises with utilization of modern production techniques. Improvement of the quality of young fish, increase of the volumes of production of fish products, cost reduction.	First half of 2003
Draft Resolution of the Cabinet of Ministers of Ukraine "On State Program of Filling Internal Reservoirs of Ukraine with Valuable Fish Breeds for the Period up to 2010 (aquaculture)" Draft Resolution of the Cabinet of Ministers of Ukraine "On State Program "Salmon"	Growth of aquaculture production through breeding valuable fish types in internal reservoirs of Ukraine and development of maritime and aquaculture production.	First half of 2003
Draft Resolution of the Cabinet of Ministers of Ukraine "On Mechanism of Execution of the National Program of Building of Vessels for Fishing Fleet for the Period up to 2010"	Increase of fish and sea products production volumes.	Firstquarter of 2003
Draft Resolution of the Cabinet of Ministers of Ukraine "On Monitoring Fishing Vessels". Draft Law of Ukraine "On Ukraine Joining the Teremolin Protocol on Fishing Vessels Safety"	Provision for economic safety of Ukraine, preservation of human life on the sea. Execution by Ukraine of international obligations during the operation of its vessels in economic zones of other countries and in the open sea. Introduction of world level standards of safety of fishing vessels operation.	First quarter of 2003

No. 42

Members stated that direct subsidies, in the form of capital transfers from the budget to enterprises for the financing as current expenditures, have been gradually phased-out in Ukraine. However, possible indirect or implicit subsidies have risen in the last years notably:

- tax preferences granted to preferred enterprises such as shipbuilding and locally produced automobiles;
- non-payment of taxes, social security and other fiscal charges with arrears of enterprises;
- tax write-offs and tax restructuring for certain enterprises and sectors;
- other indirect subsidies, such as targeted credits authorised by the Government or government guarantees (e.g. for sugar and ship-building industries);
- tax and customs privileges granted to enterprises in free economic zones, which sell their production in Ukrainian markets.

Members requested that Ukraine:

- eliminate the above-mentioned industrial subsidies to the extent they are incompatible with the SCM Agreement; and
- ensure compliance with SCM Agreement upon accession and, in particular, it must eliminate all subsidy programmes falling within the scope of Article 3 of the SCM Agreement.

Answer:

In order to create equal tax conditions for legal entities engaged in economic activities the Ministry of Finance of Ukraine has developed a draft Law of Ukraine "On Changes in Certain Legislative Acts of Ukraine on Taxation", which cancels some of tax benefits stipulated in the Law of Ukraine "On Value Added Tax (VAT)" and provided on the industry-related basis. Provisions envisioning cancellation of favourable taxation for boat building, aircraft and arms industry, as well as specialized chemical enterprises that produce the ammunition and specific chemical products were not agreed upon as well.

Also a parliamentary draft Law of Ukraine "On Amendments in the Law of Ukraine "On Value Added Tax (VAT)" was adopted in the first reading by the Verkhovna Rada of Ukraine (registration No. 1277-1). The abovementioned bill stipulates cancellation of the zero Value Added Tax rate on sales of cars, buses and spare parts of domestic origin, produced by legal entities in accordance with the Law of Ukraine "On Stimulation of Car Production in Ukraine" as well as on sales of products manufactured by ship building producers.

During the preparation of the Tax Code for the third reading the requirements of the countries members of WTO will be taken into consideration.

Article 14 of the Law of Ukraine "On Order of Pay-off of the Obligations of Taxpayers to Budgets and State Target Funds" No. 2181 of 21 December 2000 stipulates the procedure according to which the taxpayers may have their tax obligations postponed or restructured (to be paid by

instalments), that is the obligation of a taxpayer to pay to budget or state target funds a specified amount of money as stipulated by the laws of Ukraine.

To have tax obligations restructured, as indicated in the abovementioned Article, the taxpayer has to provide sufficient proof of existing threat of formation of the tax debt and economic reasoning of the possibility of tax pay-off to the corresponding budget as a result of tax restructuring and under the condition that during this term the management or sales policies of the entity are changed.

To have tax obligations postponed (the term of pay-off prolonged) the taxpayer has to provide sufficient proof of the circumstances of insurmountable force that resulted in threat of tax debt and/or bankruptcy, as well as economic reasoning of the possibility of tax pay-off and/or increase of tax payments to the corresponding budget as a result of postponed tax payment, if during this period the management or sales policies of the entity are changed.

Every year the Laws on State Budget of Ukraine stipulate that it is prohibited to restructure or write off tax and duty (mandatory payments) debt of legal entities and postpone the term of payment. Such a standard shall be introduced in the Law of Ukraine "On 2003 State Budget of Ukraine".

According to the Law of Ukraine "On the Order of Tax Pay-off by Taxpayers to Budgets and State Target Funds" No. 2181 of 21 December 2000 tax debt was written off, however it was a one-time act performed due to the accumulation of a large amounts of "hopeless" debts that had a negative influence on the financial state of taxpayers and were unlikely to be collected.

In addition, Article 50 of the Law of Ukraine "On 2002 State Budget of Ukraine" No. 2905-III of 20 December 2001 prohibited in year 2002 to restructure or write off taxes, duties (mandatory payments), debts of legal entities to the budget if those debts arose since 1 January 2000 as well as postpone payment of such debts.

(b) Technical regulations and standards

No. 43

Members asked Ukraine to advise if the new laws, "On Standardization", "On Conformity Assessment Bodies", and "On Assurance of Conformity" had come into effect, and if not, when this was expected to take place?

Answer:

Law of Ukraine "On Standardization" (No. 2408-III of 17 May 2001), "On Conformity Assessment" (No. 2406-III of 17 May 2001), "On Accreditation of Bodies on the Conformity Assessment" came into effect on 20 June 2001. In line with the TBT Agreement the relevant notifications in the form G/TBT/Notif.00 were submitted to the WTO Secretariat in Geneva in August 2001. The texts of the laws in Ukrainian and in English are placed on the Derzhstandart web-page (www.dstu.gov.ua).

No. 44

Members requested that Ukraine submit revised action plans in the areas of TBT as well as all relevant legislation for examination. Concern was expressed about Ukraine's policy of harmonization with EU standards rather than international standards, and sought a commitment that Ukraine will implement international standards.

Answer:

The drafting of regulations (standards) is governed by Articles 11 – 13 of the Law of Ukraine "On Standardization". Last year saw the entering into effect of the national standard DSTU 1.7-2001. "Rules and Methods of International and Regional Standards Acceptance and Application".

The development of regulations and legal acts (technical regulations on conformity confirmation) is governed by Article 6 of the Law of Ukraine On Conformity Confirmation.

Drafts of 11 technical regulations pertaining to conformity confirmation have been developed based on European "New Approach" Directives, and have been duly submitted for the review of the Cabinet of Ministers of Ukraine, namely:

- On modules of conformity assessment procedures and principles of marking with the national conformity mark (sign) to be applied in technical regulations,
- On confirmation of conformity of toys safety,
- On confirmation of conformity of pressurized equipment,
- On confirmation of conformity of simple vessels operating under pressure,
- On confirmation of conformity of electromagnetic compatibility,
- On confirmation of conformity of low voltage equipment,
- On confirmation of conformity of maximum permissible power consumption by refrigerating equipment,
- On confirmation of conformity of non-automatic weighing instruments,
- On confirmation of conformity of safety of gas equipment,
- On confirmation of conformity of safety of water heating boilers powered by liquid fuel,
- On confirmation of conformity of elevators.

Drafts are posted on Derzhstandart Web-page (www.dstu.gov.ua).

The revised action plan in TBT sphere is presented in Annex 6.

Concerning the harmonization of national standards with international standards, it is essential to mention that since 1993, Ukraine is a full-fledged member of the International Standardization Organization (ISO) and the International Electrotechnical Commission (IEC).

75 Ukrainian technical committees take an active part in the operation of 318 ISO's technical committees and subcommittees, 40 Ukrainian specialists are experts of ISO technical committees' and subcommittees' working groups.

30 Ukrainian technical committees participate in 182 IEC technical committees and subcommittees.

In accordance with the Law of Ukraine On Standardization, technical committees are charged with the responsibility of development, review and approval of international (regional) and national standards.

The drafting of regulations (standards) is governed by Articles 11 – 13 of the Law of Ukraine On Standardization. Last year saw the entering into effect of the national standard DSTU 1.7-2001. "Rules and Methods of International and Regional Standards Acceptance and Application".

International and European standards of organizations of which Ukraine is a member are regularly submitted to the Derzhstandart's National Regulations Fund.

Priority development of national standards harmonized with international and European standards, by the area of application, is envisaged by the Annual State Standardization Plans. To this

effect, the 2002 State Standardization Plan approved by Order No. 206 of Derzhstandart on 2 April 2002 contains 1,339 subjects, of which 1,138 provide for the development of national standards harmonized with international and European ones, namely: ISO – 466, IEC – 128, EN – 403, other ND 141.

With respect to Ukrainian standards harmonization with international standards in particular, it must be noted that as of 15 September 2002, 1,017 national standards harmonized with international and European ones are in effect in Ukraine, of which 457 were approved throughout the period of 2001 and 267 – during the current year, while the Derzhstandart is obligated to develop and approve at least 500 harmonized standard on an annual basis.

No. 45

Members noted that there were a large number of priority draft normative acts, covering a wide range of product areas, which were expected over one year ago to receive final approval by June 2002. Members asked if Ukraine had adopted a policy or law which was used to guide the development of normative acts such as these in order to ensure their compliance with the requirements of the TBT Agreement. If "yes", members requested that Ukraine identify it and indicate if it is available on the Enquiry Point web page. If "no", members asked Ukraine how it will review existing and/or future regulations to ensure they comply with the requirements of the TBT Agreement.

Answer:

Drafting of normative acts (standards) is regulated by Articles 11, 12, 13 of the Law of Ukraine "On Standardization". Past year the National standard DSTU 1.7-2001 "Rules and Methods of Adoption and Application of International and Regional Standards" came into effect.

Drafting of normative-legal acts (technical regulations on conformity assessment) is regulated by the Article 6 of the Law of Ukraine "On Conformity Assessment".

Works on adapting the technical legislation to the EU legislation are carried out in accordance with the procedure approved by the decision of the Fifth Inter-Agency Coordination Council on Adapting Ukrainian legislation to the EU legislation of 28 May 2001.

The normative-legal acts on issues of reforming the foreign trade regime of Ukraine have to be agreed obligatorily with the Governmental Commission on Ukraine's Accession to the WTO in correspondence with the Order of the Ministry of Economy of 21 December 2001, No. 312.

The texts of the Laws of Ukraine "On Standardization" (No. 2408-III of 17 May 2001), "On Conformity Assessment" (No.2406-III of 17 May 2001) in Ukrainian and in English are placed on the Derzhstandart web-page (www.dstu.gov.ua).

No. 46

Members noted that Ukraine's enquiry point was now operational and wished to know when Ukraine anticipated its draft rule being ready ("Rule for the Making of Notifications to Trading Partners of Ukraine") regarding its transparency, consultations and notification commitments in accordance with the TBT Agreement.

Answer:

The State Standard DSTU 1.13-2002 "Rules for Making Notifications to Trading Partners of Ukraine" was approved on 30 April 2002. The Standard comes into effect on 1 January 2003. There is a possibility to get acquainted with it at the Derzhstandart web-page (www.dstu.gov.ua).

No. 47

Members asked Ukraine to provide an explanation of the contents and working of the new program "Development of the Informational and Analytical System of the State Standardization, Metrology and Certification Committee of Ukraine".

Answer:

According to the Law of Ukraine "On the National Program of Informatization", the Program was drafted for creating the informational system of Derzhstandart, introduction of which is envisaged for 2001-2004. One of the main tasks of the program is the improvement of informational interchange with International, Inter-State and regional organizations on standardization, countries - trading partners, providing for the transparency of activity in the area of standardization and conformity assessment according to the provisions of the Agreement on Technical Barriers to Trade.

The bibliographic and full-text database of the national standards of Ukraine shall be introduced till the end of 2002 as a matter of priority. The system will provide for the possibility of remote access to the informational resources of the central executive bodies, technical committees on standardization, certification bodies.

No. 48

Members asked to for information on the status of the draft rules submitted to the Cabinet of Ministers in January 2002 regarding the fee structure for conformity assessment.

Answer:

At the implementation of provisions of Article 19 "Fees for conformity assessment works" of the Law of Ukraine "On Conformity Assessment" the Cabinet of Ministers of Ukraine adopted the Resolution No. 458 of 11 April 2002, which was prepared by Derzhstandart, on the approval of Rules for defining the cost of works on conformity assessment. It incorporates the principles of proportionality provided for by the PCA and GATT. The rules apply to domestic and foreign customers. The text of the Resolution may be found at the Derzhstandart web-page (www.dctu.gov.ua).

No. 49

Members requested information on the list of products subject to mandatory import inspection:

- **Description and HS tariff item number;**
- **Reason for requirement; and**
- **Issuing authority, fee structure.**

Answer:

There is no such list. The applicant is given the right to choose the certification scheme.

No. 50

Members stated that Ukrainian certification procedures often lack transparency and the fees requested for conformity assessment are not always proportional to the services rendered, which is in breach of GATT article VIII. The same applies to registration procedures, where applicable, and to legislative or regulatory changes, which are often published very late.

Legislation should be made available at the draft stage, as soon as available. For example:

- sector specific technical regulations (e.g. toys, simple pressure vessels etc.)**
- product liability legislation;**
- draft law that amends existing laws, in order to avoid overlaps between Ministries and duplicating conformity assessment procedures.**
- The inclusion of issues related to technical regulations in the draft law on standardisation has led to some confusion. For example:**
 - the distinction between compulsory technical regulations and voluntary standards is not clear;**
 - it is not known the extent to which international standards are used;**
 - not yet clear if mandatory "standards" are used and to what extent compulsory elements appear in standards;**
 - not clear on the degree to which openness and transparency is used in the drafting of technical regulations, standards and conformity assessment procedures.**

Members appreciated that the Ukraine had made considerable efforts to make laws available via the Internet, however consideration should be given to introduce some basic measures to raise the awareness of officials responsible for border controls (e.g. customs officials).

The details of the products and services subject to mandatory certification needed further study to assess if the principles of proportionality and least trade-restrictiveness are being applied.

More information should be provided on timetable foreseen for fulfilling TBT obligations, particularly with respect to transitional arrangements between old and new systems.

Members requested that:

- Ukraine implement the action plan to gradually make technical regulations, standards, certification procedures and labelling requirements compatible with WTO obligations by the time of accession;**
- Producers should be given a choice between different conformity assessment procedures to meet legal requirements depending on the risk to consumers, workers and others. Options should include manufacturers' declaration for low to medium**

risk products. For higher risk products, where third party certification is demonstrably necessary, ISO 9000 quality certification should constitute an alternative to costly and time-consuming plant inspections;

- Ukraine's recently confirmed commitment to introduce the "modular approach" along is welcome. Members expected the new law "on confirmation of conformity" to reflect these commitments. The determination of the modules applicable to each product category should reflect risk levels;
- Members also urged Ukraine to amend the draft law on supplier's liability in order to ensure its full compatibility with WTO obligations;
- In addition, Ukraine should take steps with a view to developing effective market surveillance arrangements, which members viewed as the best way to ensure the protection of the health and safety of consumers;
- Members also welcomed the first moves to reduce the list of products subject to compulsory certification, but urged Ukraine to review the list with a view to removing remaining lower risk products. They requested that Ukraine indicate what, if any, requirements apply to products taken off the list. In order to increase transparency, and also requested Ukraine to provide detailed lists of the products that are no longer subject to mandatory certification and of those that remain subject to it;
- Ukraine should make sure that fees corresponded to the costs of services in accordance with GATT article VIII and ensure that all agencies (such as customs inspection at the border) were fully aware of technical regulations for imports and carry out verifications of certificates and documents expeditiously;
- Members requested Ukraine to consult interested parties on draft legislation and to give industry sufficient advance notice to comply with new rules to avoid trade disruption. To this end, Ukraine should ensure that forthcoming technical regulations, standards etc. were published well in advance of entry into force, as well as fee schedules and standard processing times for conformity assessment procedures, as foreseen by the WTO TBT Agreement;
- Members requested Ukraine to report on a regular basis on progress towards setting up a fully functioning "enquiry point"; as requested by the Agreement;
- Ukraine should also take steps to avoid the creation of multiple testing requirements by different public authorities (e.g. by establishing a one-stop shop).

Answer:

The tasks of introduction of technical regulations, standards, certification procedures and requirements to marking according to the EU rules and practice, and thus - according to the commitments before the WTO, are set forth in the Program of Ukraine's integration into the EU, annual plans of work on adaptation and plans for the State standardization, Program of Measures for Completion of Ukraine's Accession to the WTO.

A producer's right to make a choice between different conformity assessment procedures envisaged by the Law of Ukraine "On Conformity Assessment", which took effect on June 20, 2001.

Articles 8 and 9 of the Law contain provisions regarding assessment and declaration of conformity in accordance with contemporary European practices.

Based on decision 93/465 of the EU Council, there have been prepared a draft technical regulation on modules of conformity assessment procedures and principles on the affixation of national conformity markings, which should be used in technical regulations on conformity assessment. The text of the draft is similar to the text of the directive to the maximum extent possible. Section 3.1 envisages the use of Module A (internal production control), i.e. conformity declaration.

A draft technical regulation was approved by European experts at the TACIS-Bistro Project (BIS/99/072/20).

In addition to this draft, there have been prepared another 10 draft technical regulations based on the EU Directives of the New Approach, namely:

- on conformity assessment for the safety of toys;
- on conformity assessment for equipment operating under pressure;
- on conformity assessment for simple vessels operating under pressure;
- on conformity assessment for electromagnetic compatibility;
- on conformity assessment for the safety of low-voltage equipment;
- on conformity assessment for maximum permitted amount of power consumed by refrigerating devices;
- on conformity assessment for non-automated weighing devices
- on conformity assessment for the safety of gas appliances;
- on conformity assessment for the safety of boilers operating on liquid fuel;
- on conformity assessment for lifts.

These drafts are currently under consideration of the Cabinet of Ministers of Ukraine.

These drafts are placed on the web page of the Derzhstandart (www.dstu.gov.ua)

It is provided for by the Law of Ukraine "On Conformity Assessment", which took effect on 20 June 2001. The text of the law is available in the Ukrainian and English languages at the web page of the Committee (www.dstu.gov.ua).

Articles 8 and 9 of the law contain provisions on assessment and declaration of conformity in accordance with contemporary European practices.

Requirements to the conformity assessment procedures for specific types of products (see answer to the question B) are established in the draft technical regulations analogously to the existing approach to the said products in the EU.

In implementation of the assignment of the Cabinet of Ministers of Ukraine of 9 July 2002 No. Ind. 28, the Derzhstandart has prepared a new version of the draft law "On the Supplier's Liability for Production and Sale of Low Quality and Hazardous Products", that is similar to EU Directive 85/374 to the maximum extent possible. The document has been submitted for consideration and confirmation to the interested agencies of executive power, and is placed on the web page of the Committee (www.dstu.gov.ua).

The Derzhstandart has commenced activities to incorporate provisions on general product safety as are contained EU Directive 2001/95 into national laws. The first draft law should be ready by 10 September 2002.

Up to now, the Derzhstandart has updated the list of products that are subject to compulsory certification in Ukraine. There has been developed a new version of the list, which has taken into account recent changes in the legislative and regulatory framework, and 15 low-risk products have been struck off from this list. A respective order of the Derzhstandart is currently undergoing registration with the Ministry of Justice. Upon completion of the respective procedures, the list will be placed on the Web-site of the Committee (www.dstu.gov.ua).

Customs clearance of products removed from the list shall be carried out pursuant to effective law governing specific products.

Products, for which conformity certificate (conformity recognition certificate) are mandatory, are marked with a letter "C" in the list of products (respectively the Commodity Nomenclature of Foreign Economic Activity), whose access to the Ukrainian market is subject to regulation by the State. The other products on this list, which are not marked with a letter "C", shall not be subject to the compulsory certification requirements.

Article 16 of the PCA and Article VIII of the GATT 1994 contain provisions as to the correspondence of import- and export-related fees and formalities, in particular with respect to certificates.

In pursuance of provisions of Article 19 "Remuneration for Works on Conformity Assessment" of the Law of Ukraine "On Conformity Assessment", the Cabinet of Ministers of Ukraine adopted Resolution No. 458 of 11 April 2002 on approval of the Rules for Determining the Cost of Works on Conformity Assessment, which was developed by the Derzhstandart. It has incorporated the principles of proportionality determined by provisions of the PCA and GATT. The Rules apply both to domestic and foreign customers. The text of Resolution No. 485 of the Cabinet of Ministers of Ukraine of 11 April 2002 was published in the "Standardization, Certification, Quality" Magazine No. 2 (2002) and placed on the web page of the Derzhstandart (www.dstu.gov.ua).

Order No. 188 of the Derzhstandart of 29 March 2002 "On Informational Resources of the Register of the UrkSEPRO State Certification System" approved a temporary procedure for using official information, which is placed on a web-server, on certified products and refusals to issue certificates as well as a list of organizations - users of official information of the Register. The State Customs Service is included in the said list.

A testing of the web page on the Internet is nearing completion.

The State Register Service maintains close contact with respective customs services through phone and written queries.

Draft documents related to import are placed on the web page of the Derzhstandart (www.dstu.gov.ua).

The Derzhstandart, which acceded to the Fair Practices Code on Development, Adoption and Application of Standards in 1997, complies with provisions of Article 10 of TBT Agreement and Sections J, L, M of the Code governing the provision of information on technical regulations, standards and conformity assessment procedures.

Draft technical regulations are placed on the web page of the Derzhstandart (www.dstu.gov.ua).

A technical action program on standardization is adopted twice a year. It is placed on the web page of the Derzhstandart (www.dstu.gov.ua) and published in Bulletin on Informational Materials on Standardization, Metrology and Certification that is run by the Derzhstandart.

A catalog of national standards of Ukraine is published yearly and monthly - an information index "Standards" containing information on standards, changes etc. adopted during a month. Said publications may be bought in the Ukrainian Science and Research Institute of Standardization, Certification and Informatics.

As to separate standards, exhaustive information may be obtained at the TBT "enquiry point" (Ukrainian Science and Research Institute of Standardization, Certification and Informatics (UkrSRISCI) of the Derzhstandart, Gorkogo St., MPS, Kyiv, 03680; tel.:+380 44 268 24 77, fax + 380 44 268 70 80, E-mail:ndi@issi.kiev.ua).

Draft laws and ministry rules, technical regulations, orders, decisions of collegiums, work plans and other news in operation of the Derzhstandart are published in "Standardization, Certification, Quality" Magazine that is circulated quarterly (subscription index 22567).

The WTO "enquiry point" was created in pursuance of Resolution No. 84 of the Cabinet of Ministers of Ukraine of 1 February 1995. The implementation of current objectives that are set before it calls for significant financial resources, which may not be allocated from the State Budget.

To ensure its functioning pursuant to the requirements of the WTO and the International Information Network ISONET, technical assistance is required.

A web page of the Derzhstandart has been placed on the Internet (www.dstu.gov.ua) where one may find the Laws of Ukraine "On Conformity Assessment", "On Standardization", "On Accreditation of Conformity Assessment Bodies" (in Ukrainian, Russian and English languages), the list of products (services) that are subject to compulsory certification in Ukraine, adopted regulatory and legal acts related to the implementation of provisions of new laws, draft technical regulations on conformity assessment as they are developed, technical action program on standardization in Ukraine.

For implementation of the assignment of the Cabinet of Ministers of Ukraine of 1 August 2002 as to the preparation of the next round of negotiations on issues of Ukraine's accession to the WTO, the Ministry of Economy provided a Plan of Measures in the Area of Technical Regulation aimed at resolving issues specified in this question. These measures comprise preparation and submission to the Secretariat of the Interdepartmental Commission of information on operation of the TBT "enquiry point" on a regular basis.

For purposes of avoiding the duplication of controlling functions by central agencies of executive power and introduction of the conformity assessment procedure with respect to products imported into Ukraine pursuant to the requirements of the WTO Agreement on Technical Barriers to Trade, the Derzhstandart by agreement with the Ministry of Economy, the Ministry of Health Care, the Ministry of Agrarian Policy, the State Customs Service, the Ministry of Finance and the Ministry of Justice has developed a draft law on amending certain laws of Ukraine.

The draft law has been submitted by the Cabinet of Ministers of Ukraine for consideration by the Verkhovna Rada of Ukraine (currently being considered by the Committee on Issues of Industrial Policy and Entrepreneurship, registration No. 1218 Y).

No. 51

Members noted that there were also a number of specific sector issues for standards, technical regulations and conformity assessment in Ukraine:

In the automobile sector, certification for commercially imported cars was onerous and time consuming with type-approval certificates having a limited validity (extended to five years on 15 January 2001). Ukraine had signed the 1958 UN-ECE Agreement, and it should take steps to ensure that validity of the type approval should extend to the vehicle's whole life cycle.

Manufacturers must perform conformity tests even when ISO 9000 certificate is given. In addition, all factories of car producers exporting cars to Ukraine were subject to inspections by the Ukrainians officials, with costs borne by the respective manufacturer.

Members requested that:

- Ukraine abolish the limitation of type approval and give a type approval for the life cycle of a model;**
- Ukraine should also consider accepting EC Type Approval Certificates in parallel to certificates according to UN/ECE regulations;**
- Ukraine publish clear rules regarding homologation procedures for small series, including allowed quantities;**
- a statement of compliance issued by the manufacturer for singular vehicles should be accepted in place of NTA.**

Answer:

A draft Action Plan on Legislation Adjustment for 2003 provides for the development of a draft technical regulation on conformity assessment for motor vehicles (MV), their parts, systems and components.

It contemplates incorporating provisions of the Geneva Convention of 1958 as well as respective EU directives. In particular, there are plans to:

- introduce a national type approval certificate without specification of a term of validity;
- recognize type approval certificates as envisaged by EU directives 70/156, 98/14, that are equivalent to respective UN/ECE Rules;
- introduce provisions on conformity assessment of small and final series MVs, singular MVs;
- take for consideration certificates (statements) of conformity issued by a manufacturer for certain MVs.

The current procedure for inspecting car manufacturers is consistent with the contemporary European practices of MV certification pursuant both to the EC Directives and the UN/ECE Rules. Inspections of production facilities are carried out by Ukrainian specialists practically not more than once every two to four years, as a rule, due to commencement of production of a new series of MVs, launch of new production facilities, filing of a first application by a new manufacturer.

No. 52

Members noted that Ukraine operated mandatory pre-market certification for processed and unprocessed foodstuffs and detergents. In addition, Ukraine required excessive certification requirements, requiring product model, individual consignment approval, and additional quality system certification on electronic and electrical appliances. Such requirements did not appear justified by the need to protect the health and safety of consumers.

Members requested:

- that Ukraine remove these items from the list of products subject to compulsory certification, with a view to the cancellation of pre-market certification for all these products; and**
- the abolition of compulsory factory inspections for some of these products.**

Answer:

The draft law "On Introduction of Amendments to the Law of Ukraine "On State Regulation of Import of Agricultural Produce" provided for removal of food raw materials from the list of products subject to compulsory certification. The draft law failed to gain a required number of votes during its consideration at the meeting of the Verkhovna Rada of Ukraine on 16 January 2002.

Cosmetic products and soap have never been subject to compulsory certification in Ukraine. A clearly determined list of detergents remaining on the list is subject to compulsory certification pursuant to the Law of Ukraine "On Protection of Consumer Rights". As of the middle of 2000, following the amendments to DSTU 3413-96 "UkrSEPRO Certification System. The Procedure for Certifying Products", a certification scheme that does not require inspections for production facilities is applied to detergents, electronic and electric devices (at an applicant's request).

The application of modular approach to conformity assessment and transition from the current list of products that are subject to compulsory certification to conformity assessment in accordance with contemporary European practices shall be carried out gradually after introduction of respective EU Directives.

As of now, an applicant may choose one of 6 certification schemes, including schemes of "certification on the basis of periodical tests during the lifetime of a certificate without inspection of production facilities", which was introduced in Ukraine in 2000. Due to introduction of this scheme, the number of inspections of production facilities abroad has decreased three times.

No. 53

The law No. 468/97 of July 1997 "on state regulation of agricultural imports" required mandatory certification for a wide range of agricultural products, including raw materials imported by enterprises for use in food processing industries. In the latter case, this created an unnecessary double certification requirement, since the final product produced in Ukraine was in any case subject to certification. Amendments to this law to avoid this problem had been rejected again by the Rada in January 2002.

Members requested that Ukraine enact and implement the proposed amendments that would rationalise certification requirements in this area.

Answer:

The draft law "On Introduction of Amendments to the Law of Ukraine "On State Regulation of Import of Agricultural Produce" provided for removal of food raw materials from the list of products subject to compulsory certification. The draft law failed to gain a required number of votes during its consideration at the meeting of the Verkhovna Rada of Ukraine on 16 January 2002.

The application of modular approach to conformity assessment and transition from the current list of products that are subject to compulsory certification to conformity assessment in accordance with the contemporary European practices shall be carried out gradually after introduction of respective EU directives.

No. 54

Members noted that Chapter II, Article 11, of the draft legislation "On Assurance of Conformity" imposed a requirement to approve only those certification bodies resident in Ukraine in the regulated sphere. In July 2001, members emphasized that this provision was inconsistent with the spirit of Article 6, and in particular Article 6.4, of the TBT Agreement which encourages members to permit participation of conformity assessment bodies located in other members' jurisdictions. Members asked if Ukraine maintained this provision in its final law. If "yes", members asked why Ukraine had decided to limit participation, without exception, in this regard.

Answer:

Information on this matter was provided in September of the last year referring to the already adopted Law of Ukraine "On Conformity Assessment" (from June 2001). Here we provide our additional explanations.

Provisions of Article 12 of the Law of Ukraine "On Conformity Assessment" provide for authorization for operation in a legislatively regulated area exclusively for certification bodies that reside in Ukraine. Pursuant to effective law, residents of Ukraine are legal entities and business entities that do not enjoy the status of a legal entity (affiliates, representative offices etc.) that were created and operate pursuant to Ukrainian law and are located on its territory.

Ukrainian residents are subject to Ukrainian law and are responsible for authenticity of results of certification works, as well as in case for damage caused to consumers by the consumption (use) of a product that has undergone certification.

No. 55

In July 2001, members had noted that Article 13 of the draft law "On Standardization" encompassed the development of technical regulations. While the draft law set out "legitimate objectives" for regulatory activity, it did not elaborate on how regulatory agencies or other government bodies would determine whether the adoption of a technical regulation was required. Articles 2.2-2.4 of the TBT Agreement imply that circumstances will exist where technical regulation is not the most appropriate course of action to meet the relevant policy objective and may often result in becoming an unnecessary barrier to trade. Members asked Ukraine to elaborate on how and where it would set out policy criteria and guidance for regulatory agencies and government departments in determining whether, among other things, a technical regulation was the least trade restrictive tool while still meeting the policy objective.

Answer:

Article 1 of the Law of Ukraine "On Conformity Assessment" determined that a technical regulation on conformity assessment – a ministry rule approved by the Cabinet of Ministers of Ukraine containing descriptions of types of products that are subject to compulsory conformity assessment, safety requirements to life and health of men, animals, plants as well as property and environment, the procedure for assessing conformity with these requirements, rules of marking and introduction of products into circulation.

Article 9 of the Law of Ukraine "On Conformity Assessment" established that the conformity assessment procedure in a legislatively regulated area for some types of products, which may pose a threat to life and health of men, animals, plants as well as to property and environment is introduced by technical regulations on conformity assessment.

Article 13 of the Law of Ukraine "On Standardization" determines that Technical Regulations and other ministry rules establish mandatory requirements as to:

- protection of life, health and property of a man;
- protection of animals, plants;
- environmental protection;
- safety of products, processes or services;
- prevention of misleading as to the destination and safety of products;
- elimination of a threat to the national security.

Thus, effective laws and the Cabinet of Ministers of Ukraine determine instances and criteria when technical regulations are applied as minimally restricting measures.

(c) Sanitary and phytosanitary measures

No. 56

Members expected Ukraine to comply with the SPS Agreement from the date of accession.

Answer:

In order to adjust Ukrainian legislation to the requirements of the WTO Agreement on introduction of sanitary and phytosanitary measures, in the Law of Ukraine "On Sanitary and Epidemic Welfare of the Population" with amendments, the term "sanitary measures" has been specified and the standard of equal health safety requirements to imported and domestic products introduced.

In the report of the expert group of TACIS (technical aid project "Sanitary and phytosanitary measures in Ukraine (UK04) it is stated that sanitary measures including the procedure of state sanitary testing (Order of Ministry of Health No. 247 of 9 November 2000) performed in Ukraine meet the requirements of Article 7 and Amendment B of the WTO Agreement on sanitary and phytosanitary measures. Legislative acts of Ministry of Health of Ukraine concerning specific goods or those adopted on a general basis introduce sanitary measures according to sanitary and phytosanitary requirements (Article 2, Clause 3) by way of non-discrimination of domestic and imported goods.

No. 57

Members requested information on the list of products requiring veterinary or sanitary certification:

- **Description and HS tariff item number;**
- **Reason for requirement; and**
- **Issuing authority, fee structure.**

Answer:

To execute the Law of Ukraine "On Amendments in the Law of Ukraine "On Introduction of the Unified Duty Collected at the Ukrainian Border Crossing Points" No. 2569-III of 12 July 2001 Ministry of Health of Ukraine provided the list of goods indicated in accordance with codes UCG FEA that require sanitary control at the border. The mentioned list is included as amendment to Draft Resolution of the Cabinet of Ministers of Ukraine "On Order of Collecting Unified Duty at the Ukrainian Border Crossing Points" and agreed upon in the letter of Ministry of Health No. 5.10/16/1354 dated 4 January 2002.

For the list of goods requiring sanitary and phytosanitary verification upon import or transit in Ukraine see Annex 7.

No. 58

Members requested that Ukraine submit revised action plans in the areas of SPS as well as all relevant legislation for examination. Members were concerned about Ukraine's policy of harmonisation with EU standards rather than international standards, and sought a commitment that Ukraine would implement international standards.

Answer:

The Cabinet of Ministers of Ukraine agreed the Action Plan for Resolution of Problem Issues of Sanitary and Phytosanitary Inspection in Ukraine, in Particular at the State Border in 2002-2003. According to the conclusion remarks of the Sanitary and Phytosanitary Measures in Ukraine Project Report (UK04) the Action Plan in general can be considered effective enough. Several measures envisaged by the plan require financial support, which has not been taken into account from the beginning, closer cooperation with the European Commission is crucial primarily in order to get an access to the European legislation and information on the EU procedures.

On 1 February 2002, the following measures envisaged in the Action Plan were implemented:

- registered veterinary preparations, insecticides for domestic insects were excluded from the list of goods subject to import licensing;
- amendments were introduced to the Law of Ukraine "On Sanitary and Epidemic Safety of Population";
- additional commitment was made regarding international transportation of goods simplification, viz. reducing formalities requirements, kinds and duration of inspection procedures, especially through national and international coordination of inspection procedures and methods thereof.

The Action Plan for Resolution of Problem Issues of Sanitary and Phytosanitary Inspection in Ukraine, in Particular at the State Border in 2002-2003 is attached in Annex 8.

No. 59

Members sought an update on developments with respect to Ukraine's intentions on Codex Alimentarius and the International Plant Protection Convention. They also sought details of the control, inspection and approval procedures (page 5 of WT/UKR/101/Rev.1 refers)

Answer:

The Resolution of the Cabinet of Ministers of Ukraine "On Measures Regarding Gradual Implementation of the Provisions of the EU Directives, Sanitary, Ecological, Veterinary and Phytosanitary Norms and International and European Standards in Ukraine," No. 244, dated 19 March 1997, as well as the Resolution of the Cabinet of Ministers of Ukraine No. 616, dated 19 April 1999, which approved the Regulations on the National Committee on Codex Alimentarius and its members, are evidence of Ukraine's intentions on bringing its normative and legal basis into compliance with the provisions of Codex Alimentarius and the International Plant Protection Convention.

The said Committee is a coordinating authority in the field of rationing, regulation and standardization of foodstuffs as to indexes of quality and safety for people's health and fulfillment of the obligations, resulting from Ukraine's membership in the joint commission of FAO/WHO (Food and Agriculture Organization of the United Nations/World Health Organization) on Codex Alimentarius.

In order to bring the normative and legislative base of Ukraine into compliance with the provisions of Codex Alimentarius and the International Plant Protection Convention a draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Plant Quarantine'" is being developed for review by the Parliament of Ukraine.

In implementation of the Work Plan for Adaptation of the Legislation of Ukraine to EU Legislation for 2002, the draft Law of Ukraine "On Ukraine's Accession to the International Convention on Protection of New Types of Plants."

No. 60

Members noted Ukraine's statement that it considers the standards applied in the conduct of risk assessment were sufficiently high, and noted that Ukraine had banned imports of meat offal without a corresponding ban on domestic production and consumption. This would need to be addressed and Ukraine would need to bring its measures on offal into compliance with the SPS Agreement.

Answer:

The Resolution of the Chief State Sanitary Doctor of Ukraine "On Protection of Population of the Territories of Ukraine from Spongiform Encephalopathy and Prevention of Prion Infections Spreading," No. 54, dated 17 May 2001, banned imports into Ukraine and transit through its territory of stuff for food industry, finished food products, feed, food additives, meat, bone and meat bone flour from unfavorable countries as to bovine spongiform encephalopathy and prion infections. Stuff for perfumery and pharmaceutical industries, perfumery, cosmetic and medical preparations obtained from ruminant animals are banned for imports into Ukraine and transit through its territory, if there is no a document which confirms receipt of stuff from regions and farms that are free from prion

infections. The said Resolution approved the list of countries unfavorable to spongiform encephalopathy and other prion infections as of 15 May 2001 (according to data of the International Epizootic Bureau). Resolutions of the Chief State Sanitary Doctor of Ukraine No. 61, dated 23 July 2001, No. 69, dated 20 December 2001 and No. 20, dated 23 May 2002, amended the said list.

No. 61

Members noted that economic operators had reported difficulties with the scope and requirements for sanitary controls. Mandatory sanitary controls were required for products not normally requiring this kind of certificates (e.g. vehicles, building materials). The Ukrainian government had begun a process of reform, including harmonisation of the list of products subject to sanitary controls with those commonly subject to such controls in the EU (by end of 2001); cancellation of multiple testing requirements by different public authorities (by mid-2002). This was part of a broader effort to bring the system of sanitary controls in line with WTO SPS requirements and to approximate to EU standards.

Members noted that list of permitted food additives was introduced in January 1999 by Decree of the Cabinet of Ministers. This list restricted trade, as the legislation lists only +/- 200 food additives. Unlike most food additives regulations, the Decree does not contain (i) conditions or levels of use for the listed food additives or (ii) provisions concerning the possibility to obtain approval (and eventually the listing) of "new" (non-listed) food additives. Although a further 33 products were added to the approved list in 2000 and 2001, this list is still very restrictive and the procedure for approval of additives is cumbersome and expensive.

These members requested that:

- Ukraine implements the SPS Agreement from the time of its accession to the WTO;**
- Ukraine ensure that the list of products subject to sanitary controls only included products that were commonly subject to such controls in other WTO members (e.g. the EU);**
- Ukraine endeavour to reduce existing overlap of control functions, whereby one and the same product being imported to Ukraine must undergo lengthy and similar checks in different institutions, i.e. through the Derzhstandart and the sanitary control systems;**
- Ukraine avoid frequent regulatory changes or the use of certification or hygiene rules for protectionist purposes; and**
- All food additives permissible in the EU be cleared for use in Ukraine.**

Answer:

Harmonization of national legislation in this sphere is stipulated in a number of Presidential Decrees and resolutions of the Government of Ukraine. Their compliance to the standards and principles of the WTO Agreement on introduction of sanitary and phytosanitary measures has to be provided for by introduction of the standards of Codex Alimentarius, international and European standards and rules in the sphere of agricultural, plant and animal products, food and dietary supplements.

In order to simplify the procedure of sanitary control at the border and customs clearance, the Ministry of Health of Ukraine adopted the Conclusion of the State sanitary-hygiene testing

No. 5.10/29250 of 29 December 2001 of objects of foreign economic activity according to the codes of UCG FEA, as well as objects that passed sanitary-hygiene testing at the moment of registration in Ukraine (medical tools and products, pesticide, agricultural chemicals and so on), that included 359 types of goods. Items included in this Conclusion should not be subject to sanitary control at the border and at the time of clearance.

In addition, to further develop the list of products that are subject to sanitary control in Ukraine and assure that it complies with the corresponding documents of other WTO members, in particular EU, on 5 June 2001 the Ukrainian side requested to the Delegation of EC in Ukraine, the list of products that are subject to mandatory sanitary-hygiene testing. The answer is outstanding.

With the goal of receiving the lists of goods that are subject to sanitary, veterinary, phytosanitary and environmental control in the EU with indication of types, forms of control, place of testing and the body responsible for testing, the Ukrainian side, through the representative office of Ukraine in the EU asked EC for assistance (letter of the Ministry of Economy 44-40/807 dated 29 October 2001). Ukrainian representative office accredited in the EU informed the Ministry of Economy of Ukraine that in the opinion of the European Commission preparation of such documents is a rather complex task that requires a lot of time. After that in December 2001 the Secretary of the Ukrainian trade and investment Subcommittee of the Committee on Cooperation between Ukraine and the EC asked for assistance in receiving the above mentioned documents from the Department of Trade Analysis of GP "Trade" of the EC. The answer is outstanding.

In order to simplify the sanitary control procedure at the border of Ukraine and during the customs clearance, the first Deputy Chief Sanitary Officer of Ukraine adopted the Conclusion of the State sanitary-hygiene testing No. 5.10/29250 of 29 December 2001 of objects of foreign economic activity according to the codes of UCG FEA, as well as objects that passed sanitary-hygiene testing at the moment of registration in Ukraine (medical tools and products, pesticides, agricultural chemicals and so on), that included 359 types of goods. Items included in this Conclusion should not be subject to sanitary control at the border and at the time of clearance.

In order to reduce the duplication of the functions of the state sanitary-hygiene offices by higher supervising bodies, the Law of Ukraine "On Changes in the Law of Ukraine "On Sanitary and Epidemic Welfare of the Population" specifies that "control and supervision over compliance with the requirements to safety of human life and health is a complete responsibility of the medical professionals".

According to Article 16 of the Law of Ukraine "On Sanitary and Epidemiological Well-Being of the Population", goods, produce, raw materials imported to Ukraine shall be subject to requirements regarding their safety in view of health and life of people, as well as control procedures, examinations, granting permits, setting sanitary-epidemiological standards, procedures analogically to requirements to respective goods, produce, raw materials, produced in Ukraine. The abovementioned legislative norm makes impossible use of sanitary measures for protectionist purposes.

Article 4 of the Law of Ukraine and Food Products and Raw Food Product Quality and Safety designates that the list of food additives allowed for use in foods shall be approved by the Cabinet of Ministers of Ukraine.

Scientifically sound hygienic norms of food additive content in food products are approved by the Chief State Health Officer of Ukraine pursuant to the sanitary law in force.

The list of food additives allowed for use was amended in 1999-2001 by respective Cabinet resolutions (No. 12, as of 4 January 1999; No. 342, 17 February 2000; No. 1140, as of 21 July 2000; No. 1656, as of 8 November 2000; No. 647, as of 21 June 2001).

The list of food additives may be expanded according to the procedure established by the Ukrainian legislation with due consideration of EU directives following application to the central executive authority in the sphere of foodstuff production and provided scientific substantiation of their safety to human health.

(e) State-trading practices

No. 62

Members requested that Ukraine submit full details of state trading enterprises and demonstrate that they operate in accordance with Article XVII of the GATT.

Answer:

The following is the list of state trading enterprises:

- State foreign economic enterprise "Ukrkol'orprom" Dnipropetrovsk.
- State trade and production enterprise "Ukrmetalurg orgpostach" Zhytomyr.
- Ukrainian foreign economic state enterprise firm "Ukrtekhprom" Kyiv.
- State enterprise "Spetsializovana Zovnishnyotorgivel'na Firma "Ukroboronexport" Kyiv.
- State enterprise "Zovnishnyotorgivel'na Firma "Tasko-export" Kyiv.
- Ukrainian state enterprise "Ukrkhim" Kyiv.
- State foreign economic enterprise "Ukrzovnishderevprom" Kyiv.
- State enterprise "Torgposludy" Prymorskiy.
- State pharmaceutical production and commercial enterprise "Apteka" Rubizhne.
- Technical and trade center "Kvantor" Ternopil'.
- State foreign economic firm "Khersonsudnoimpeks" Kherson.
- State enterprise technical and trade center "Novator" Khmelnytskyi.
- State commercial and production enterprise "Chernivets'listorg" Chernivtsi.

Activities of the said enterprises are in conformity with Article XVII of the GATT 1994.

(f) Free zones

No. 63

Members requested information on the list of free zones:

- **Status of operations;**
- **Criteria/requirements for right of establishment and operation;**
- **Border measures (e.g., tariffs, taxes, NTBs, TBT/SPS, etc.) exempted on imports into the zones;**
- **Border measures applied to "exports" from the zones to the rest of Ukraine; and**
- **Governing legislative authority.**

Answer:

For the list of, and conditions for, free economic zone creation and functioning, please see Annex 9.

(g) Free economic zones**No. 64**

Members noted that since 1996, a total of 21 special economic zones (SEZ) or priority development areas (PDA) have been established, covering around ten per cent of Ukrainian territory. The creation of free economic zones has been adopted as a method of regional industrial development. The general procedure for the creation of, and activity in, free economic zones is set out by the Law of Ukraine "On the General Conditions for the Creation and Operation of Special Economic Zones" of October 1992.

Each special economic zone is created and operated within a framework provided by a special law. Incentives in terms of taxation, customs regime, finance and other aspects are offered to foreign and domestic investors in these areas. Further privileges are granted to high-priority enterprises in such zones as well as to export-oriented and import substitution manufactures. Usually, benefits include tax holidays (five years for profit tax, three years for land and 50 per cent discounts thereafter), as well as exceptions from import and excise duties and import VAT.

Members requested that Ukraine ensure that Special Economic Zones and Priority Development areas were fully subject to WTO obligations. In particular:

- applying normal taxes, tariffs, customs charges and other regulations to imports of goods from those zones into the rest of Ukrainian territory;**
- not making the right to establish and operate in these areas dependent on their export performance, trade balancing, or local content criteria;**
- and observing the provisions of the WTO Agreement on Subsidies; and**
- countervailing Measures (e.g. in providing incentives for establishment of firms in the free zones) as well as the provisions of the TRIMS and TRIPs Agreements.**

Answer:

Establishing privileged taxation regimes for free economic zones and privileged development areas is a key feature characteristic for such zones created to encourage investments in the priority economic spheres and to solve social-economic issues of depressed territories whose economy suffered substantial losses and structural changes. In the first place, this relates to the mining regions, cities with high role of the military production complex, and regions whose population suffered the most from technological and environmental disasters.

A special investment regime has been implemented to alleviate depression in specific territories related to:

- structural unemployment in the mining regions due to the necessity to decommission 63 mines in the Donetsk, Lugansk and Volyn Oblasts making redundant more than 23,000 employees respectively.

Technological and environmental disasters: Chornobyl NPP accident, technological impact of Sulphur DGHP Mining and Chemical Mills and catastrophic floods in the Transcarpathian Region. These have already led to situations when:

- fifteen regions and three cities in Zhytomyr and Chernihiv oblasts were added to the list of most highly radioactively contaminated areas;
- ChNPP's ahead-of-schedule decommissioning requires solving issues of living conditions maintenance in the town of Slavutych;
- environmental problems in Yavoriv district of the L'viv oblast need to be resolved through creating conditions for rehabilitation of land resources heavily suffering from technological impact of Sulphur DGHP Mining and Chemical Mills;
- according to various estimates, liquidation of aftermaths of the disastrous flooding in the Carpathian region may take more than 20 years and will require substantial investments;
- Military production complex enterprise closure and restructuring, specifically, in Kharkiv and Shostka has led to some 24 thousand unemployed in these two towns.

Introduction of the special investment regime in the Autonomous Republic of Crimea is aimed at encouraging investments in the public health protection and recreation-tourism sectors, preservation and efficient management of available recreation resources, also at industrial production development in the peninsula.

4. Policies Affecting Foreign Trade in Agricultural Products

(a) Imports

No. 65

Members noted that the law No. 468/97 of July 1997 "On State Regulation of Agricultural Imports", subsequently amended by the law No. 32/98 of January 1998, restricts the imports of live stock products through annual quotas, from 1997 until 2003. Even if quotas (limited to ten per cent of the Ukrainian production) would allegedly not be implemented, members insisted that they must be eliminated as a threat remains to economic operators.

These members noted that Ukraine had submitted draft legislation to the Rada abolishing the provision allowing quotas for livestock imports, and requested that Ukraine expedite the approval of this law, thereby removing quantitative restrictions to trade that are not compatible with WTO rules.

Answer:

The draft Law of Ukraine on Changes to the Law of Ukraine on State Regulation of Agricultural Product Import has been considered by the Verkhovna Rada of Ukraine.

Under Art. 7 of the Law of Ukraine "On State Regulation of Agricultural Product Import", Article 3 "Non-tariff Regulation of Livestock Product Import" provisions shall remain in force until 1 January 2003.

No. 66

Members expressed concern regarding Ukraine's sugar policies, in particular its proposals for tariff quotas on raw cane sugar and the price control measures that are imposed in the domestic market. These policies would need to be modified to provide adequate market access on a non-discriminatory basis, and to ensure consistency with WTO provisions including Article 4 of the Agriculture Agreement, and Articles III and XI of the GATT 1994.

Answer:

A draft Law of Ukraine "On the Establishment of the Tariff Quota on Imports into Ukraine of Raw Cane Sugar", in order to regulate issues of access to the Ukrainian sugar market of raw cane sugar originating from a number of countries that are members of the Working Party dealing with the consideration of Ukraine's application for accession to the WTO. The mentioned draft Law provides for the prescription of an annual volume of raw cane sugar imports in the amount of 200,000 tons, with a subsequent increase in the following years respectively: 2003 – 220,000 tons, 2004 – 240,000 tons, 2005 – 260,000 tons, with a tariff duty rate within limits of this quota being equal to 2 per cent, and with supplies of this volume taking place annually from 1 January till 1 September.

In the course of the regular round of bilateral negotiations, interested countries that are members of the Working Part were provided the fourth variant of the draft Regulation on the Allocation of the Tariff Quota on Raw Can Sugar. The mechanism for the allocation of the tariff quota that is envisaged in this Regulation guarantees all countries that are traditional suppliers of raw cane sugar the receipt of amounts of the quota not less than those used for the previous year.

The draft Regulation on the Allocation of the Tariff Quota on Raw Can Sugar is attached in Annex 10.

No. 67

Members stated that they did not consider the 1994-96 period as an appropriate basis for Ukraine's domestic support arrangements. They reiterated the request for Ukraine to submit data for the 1997-99 period and sought a commitment to continue discussions in this important area in a plurilateral meeting to be held in the margins of the next Working Party meeting.

Answer:

Ukraine had prepared the non-paper "A Position Paper Regarding Volumes of State Support Required for Implementation of the Strategy of Agriculture Sector Development in Ukraine" which gave a fundamental explanation of the adoption of the years 1994-1996 as base years for calculation of the total scale of agriculture sector support. This document was distributed prior to multilateral negotiations on agriculture of 26 June 2002, amongst the member states of the Working Group on Review of Ukraine's Application for WTO Accession. See Position materials on the scope of state support necessary for the realization of the strategy of Ukraine's agriculture development in Annex 11.

State support is required for the stabilization and further development of the Ukrainian agrarian sector. This necessity is caused by the objective peculiarities of the functioning of agriculture, which apply both to Ukraine and developed countries; by the lagging of domestic (national) agriculture in comparison with developed countries by the technological level of production and level of nature use rationalization regimes, as well as by the need to resolve particular problems of the Ukrainian agricultural sector that have accumulated over the years of the transition period. The past several years' experience has shown that the agricultural sector is incapable of resolving these problems without substantial state support for the nearest future.

For Ukraine it is important to receive the right of providing support from the "amber box" above the minimal level of "de minimis", which in its turn will secure the fulfillment of strategic internal tasks in the agrarian sector and the economy as a whole. Thus, financing by the state of collateral grain purchases (in accordance with the Law of Ukraine "On Stimulation of the Development of Agriculture for the Period 2001-2004 No. 2238-III dated 18 January 2001, which fixed support for producer income through introduction of collateral prices for agricultural

production) will exceed 5 per cent of the production value of seed cultures (that is the level of minimal support de minimis) and will equal roughly 10-12 per cent of the production value of particular seed cultures. In comparison with the base set in 1994-1996, this measure will not be a violation of the "standstill" rule.

The substantial difference in the level of AMS for the 1997-1999 period as compared with 1994-1996 can be explained by the fact that during the 1997-1999 period the sector was financed at decreased levels for a number of reasons bearing a macroeconomic character: state budget deficit, the existence of non-transparent financing schemes, the elimination of the state grain order. Therefore Ukraine takes the position that it is the 1994-1996 period that represents the future conditions for the functioning of agriculture in Ukraine.

No. 68

Members stated that support provided for fish needed to be excluded from the domestic support tables as the Agreement on Agriculture was clear that fish and fish products were excluded from its coverage and were considered industrial products. They requested an explanation of the support provided to the fishing industry which would be subject to disciplines covered by the Agreement on Subsidies and Countervailing measures.

Answer:

Support provided to the fishing industry was not included into the domestic support tables, because the Agreement on Agriculture did not cover fish and fish products which were considered industrial products.

Reference to the report of State Committee for Fish Industry of Ukraine in the domestic support tables for the basic period (table DS 6) is explained by the fact that agricultural enterprises which are included to the supervision of the said Committee obtained subsidies for cattle, pigs and poultry which they breed along with fish-breeding.

The support amount indicated in table DS 6 for enterprises of State Committee for Fish Industry of Ukraine did not relate to fish-breeding.

5. Policies Affecting Foreign Trade in Other Sectors

(b) Policies affecting foreign trade in other major sectors

No. 69

The law of October 1997 "on the stimulation of automobile production in Ukraine" accompanying legislation, and regulations regarding the second hand car markets provide a set of discriminatory advantages to one company (Daewoo - AvtoZaZ) which are contrary to WTO rules.

Since 1997 members had requested Ukraine to remove the following elements of the 1997 regulation:

- **Provisions regarding the local content requirement;**
- **Discriminatory exemptions of indirect taxes (VAT exemption for import of materials and parts and sales of new cars, exemption of excise duties on sales of new cars, exemption of land tax, reduction of the tax base for the corporate profit;**

- tax, exemption of payment to the state innovation fund);
- Discriminatory exemptions of import duties;
- Ban on import of second hand cars older than five years, and minimum customs value of US\$5,000 on cars less than five years old.

In 2001, the Ukrainian side proposed a plan of measures including, inter alia, the removal of VAT and excise exemptions by the end of 2001. It was however not implemented. On 15 November 2001, amended legislation governing the regulation of the automobile sector was passed by the Rada, which removed the local content requirements but did not address the main problems (i.e. exemptions on VAT and excise on sales of new vehicles produced by privileged enterprises). In fact, the new legislation widens the scope of the discrimination as it affects not only to cars but also to parts and components of cars.

Thus far, the only progress made has been the easing of the ban on import of second hand cars, from five to eight years, the removal of the local content requirements and the removal of minimum customs values for imported cars.

The Ukrainian side presented a plan in January 2002, which could serve as a basis for solving the issues of inconsistency with WTO rules.

These members request Ukraine:

- to bring the automobiles regime in conformity with WTO rules;
- to this end the Action Plan of January 2002 should be implemented with no delays; and
- moreover, with a view to ensure a rapid solution of this issue, we would still urge Ukraine that the solution be implemented through a single legislative package, including tariffs, VAT and excise all considered together.

Answer:

To provide for implementation of the Phased Action Plan of Ukrainian car-making industry encouraging legislation's adaptation to the terms of the Partnership and Cooperation Agreement between Ukraine and the European Community and WTO rules, and pursuant to decisions of the fifty-fifth session of the Customs and Tariff Council of Ukraine, the following drafts have been developed and forwarded to the Cabinet of Ministers of Ukraine for consideration:

- On Changing and Amending Certain Legislative Acts of Ukraine to Adapt National Legislation on Car-making Industry Encouragement to PCA Provisions and WTO rules;
- On Changing and Amending Certain Legislative Acts of Ukraine on Import and Excise Duty Rates on Certain Types of Vehicles and Components for Such.

The above draft legislations envision coordinated measures of settlement the existing inconsistencies with the EU, and compensatory measures to protect domestic manufacturers.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

No. 70

Members referred to trade-related intellectual property rights as follows:

- **Copyrights:** The main problem in this field is the lack of efficient enforcement of the legislation. Members have received complaints from industry, notably the phonogram industry, concerning the overwhelming presence on the market of counterfeited goods. The situation appears to be specifically grave with regard to the production and placing on the market of counterfeited compact discs;
- **Trademarks:** The trade mark law of Ukraine is still a long way off the minimum standards of protection as specified in the TRIPS Agreement.

Ukraine has joined many of the IPR treaties and conventions relating to Trade Marks. Ukraine is a Member to the Madrid Agreement (1991) and Madrid Protocol (2000) and in 1996 Ukraine ratified the Trademark Law Treaty (TLT).

Law No. 3689-XII dated 15 December 1993 "On Protection of Rights on Marks for Products and Services" came into force on 1 June 1994.

Main weaknesses of the law appear to be:

- trademark protection is ensured only in view of identical, not in view of similar signs;
- it is unclear how a third party may petition for the cancellation of a trademark; and
- it is unclear how well-known trademarks are to be protected.

Protection of undisclosed information: It is unclear how Ukraine provides for a protection of undisclosed test data against unfair commercial use as foreseen by Article 39.3 TRIPs.

Geographical indications: The Ukrainian Law on Protection of Rights to the Origin of Goods does not yet appear to comply to the standards set by TRIPs.

Notably, it appears that protection is only granted for a limited period (whereas TRIPs foresees no such period), and only for geographical names (whereas TRIPs foresees protection also for names that are not in the strict sense geographical). As a general observation, some of the concepts used in the Ukrainian law appear somewhat unclear, and there is also no clear information on the procedures foreseen (e.g.: is there a right for foreign right holders to oppose the registration of a geographical indication?).

Enforcement: Along with legislative measures, Ukraine also needs to take measures to ensure implementation and enforcement, i.e. create the infrastructure to register intellectual and industrial property produced in Ukraine, collect payments for their use when these are due, monitor and punish infringements of these property rights, in particular in the area of copyright and geographical indications.

These members requested that :

- **all the ongoing legislative initiatives be consistent and co-ordinated in the fight against piracy and urges adoption of those that remain outstanding;**
- **Ukraine ensure effective enforcement of the legislation in the field of copyrights;**
- **Ukraine ensure that its legislation in the field of trade mark is consistent with the standard of protection specified in the TRIPS Agreement;**
- **on protection of undisclosed information, Ukraine provide for protection of undisclosed test data against unfair commercial use as foreseen by Article 39.3 TRIPS;**
- **as concerns geographical indications, Ukraine ensure compatibility of its legislation with TRIPS requirements, notably as concerns the duration of the protection and the protection of names that are not in the strict sense geographical: and**
- **Ukraine ensure effective implementation and enforcement of the measures adopted. These members will continue to support technical assistance which could be used for strength enforcement agencies. Ukraine still needs to take a number of measures, i.e. create the infrastructure to register intellectual and industrial property produced in Ukraine, collect payments for their use when these are due, monitor and punish infringements of these property rights, in particular in the area of copyright and geographical indications.**

Answer:

In January 2002 the Law of Ukraine was adopted "On Peculiarities of State Regulation of Activity of Subjects of Economic Activity, Associated with Manufacturing, Export, Import of Discs for Laser-Readable Systems" (hereinafter referred to as the Law) that takes into consideration all positions, envisaged in the Ukrainian-American joint program to fight piracy in the sphere of optical information carriers.

To implement the Law requirements, in May-July 2002 a number of resolutions of the Cabinet of Ministers of Ukraine were adopted. Legal norms of the resolutions establish the mechanism of implementation of the Law and regulate:

- activity of state inspectors on intellectual property issues;
- the procedure of attributing of a special identification code to disc producers, as well as the procedure of importing, exporting of discs in the presence of such codes;
- providing additional materials by subject of economic activity to the licensing body, related to manufacturing, export, import of discs, equipment for their manufacturing;
- the procedure of making decisions by the licensing body on application of special measures to subjects of economic activity;
- licensing of export, import of discs, matrixes and raw materials (optical polycarbonate) for disc manufacturing;
- identification of the main units of equipment for production of discs, export, import of which is subject to licensing;
- performing full inventory, composing relevant inventory descriptions and certificates on disc inventory at the moment of taking legal effect by the Law;
- setting up a depository of disk specimens and creating and maintenance of the registry of these specimens for the purpose of permanent state control over production of discs, and observing intellectual property rights in disc production.

Additionally, to implement the Law requirements and relevant by-laws in July 2002 a joint order of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship and the Ministry of Education and Science of Ukraine No. 71/382 was adopted on 3 July 2002 "On Approving of Licensing Terms of Conducting Economic Activity in Manufacturing of Laser-Readable Discs", registered in the Ministry of Justice of Ukraine as No. 589/6877 on 17 July 2002. The said order establishes the procedure of issuing the licence to manufacture discs to subjects of economic activity, as well as technological, organizational requirements to conducting this type of economic activity, including the requirements to the procedure of inspection of rights to objects of intellectual property.

In order to improve legislation in the sphere of manufacturing, export, import of discs, the Draft Law of Ukraine "On Amending Certain Laws of Ukraine" was developed. The said Draft Law provides for amending the Law of Ukraine "On Peculiarities of Regulation of Activity of Subjects of Economic Activity, Associated with Manufacturing, Export, Import of Laser-Readable Systems".

The Draft Law takes into consideration the requirements of the American side as to improvement of legal protection of intellectual property rights in Ukraine. Particularly, the following is envisaged:

- licensing of production, export, import of matrixes;
- mandatory availability of special identification codes only on produced and exported discs;
- placing on clean discs without any information recorded of special identification codes rather than a code of a matrix, from which the disc was manufactured;
- addition to definition of the term "illegal disc turnover";
- conducting inspections of plants manufacturing discs with participation of persons, holding copyright and/or related rights, or representatives of those;
- exclusion of liability of an applicant that addressed the licensing body with a written application on violation of rights;
- increasing the level of criminal liability;
- confiscation of discs, equipment and raw materials for their manufacturing in the event of violation of legislation, regulating manufacturing, export, import of discs, export, import of equipment or raw materials for their manufacturing, if such actions are covered by criminal liability.

In addition, distribution of discs is performed according to the Law of Ukraine "On Distribution of Specimens of Audiovisual Works and Phonograms". Pursuant to Article 3 of the Law of Ukraine "On Distribution of Specimens of Audiovisual Works and Phonograms" a controlling mark shall be placed on specimens of audiovisual works or phonograms, imported into Ukraine or exported from Ukraine, in cases, envisaged by the said Law.

Currently the Draft Law of Ukraine "On Amending the Law of Ukraine "On Distribution of Specimens of Audiovisual Works and Phonograms" is developed and submitted for consideration by the Verkhovna Rada. The Draft provides for introduction of labeling with controlling marks of specimens of computer programmes, databases, which are to protect rights to these objects of intellectual property.

The controlling mark itself has undergone considerable changes. It certifies lawfulness and legitimacy of distribution of specimens of audiovisual works and phonograms. In accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 637 "On Amending the Provision on the Procedure of Manufacturing, Storage, Sale of Controlling Marks and Labeling of Specimens of Audiovisual Works and Phonograms", in order to prevent cases of illegal use and forgery of controlling marks, a new controlling mark in the form of a holographic protective element shall be

introduced. Properties of the controlling mark shall ensure its self-destruction in case of attempt to remove it from the packaging of a specimen of a work. In addition, information shall be placed on each controlling mark in a special manner that is to identify the mark with a relevant specimen of audiovisual work or phonogram. This means that customers applying for controlling marks to label specimens of works, with regard to which they really have rights of distribution, will not be able to put these marks on specimens of other works. Such controlling mark will make it possible for a customer to control legitimacy of distribution of a specimen of an audiovisual work or a phonogram on his/her own. The new controlling mark is to make the work of controlling bodies much easier with respect to detection of specimens, distributed with violation of legislation on copyright and related rights.

Ukrainian legislation has a provision regarding such trademarks.

In particular, according to item 3, Article 6 of the Law of Ukraine "On Protection of Rights to Trademarks for Goods and Services" cannot be registered trademarks which are identical, and hence cannot be distinguished from:

- trademarks previously registered, or applied for the registration in Ukraine on the name of other person, where they regard similar goods and services;
- trademarks of other persons, provided these trademarks are legally protected without registration on the basis of the International Agreements of Ukraine;
- firm names known in Ukraine, and belonging to other persons, who got the right on them before the date of application was submitted to the Department regarding similar goods and services;
- names of places of goods origin, except for those included into the trademark as elements, which are not protected, and registered on the name of the persons having the right to use these names;
- certificate trademarks registered in the duly order.

The State Intellectual Property Department developed the Draft Law of Ukraine "On Amending Certain Legislative Acts of Ukraine Regarding Intellectual Property", which is submitted for consideration to the Verkhovna Rada of Ukraine. The said Draft provides for amending the Law of Ukraine "On Protection of Rights to Trademarks for Goods and Services" in order to ensure its conformity with the requirements of the TRIPS Agreement. This Draft was included in the list of first priority drafts when considered by the Verkhovna Rada of Ukraine and presently is being considered by the Committee of the Verkhovna Rada for Education and Science (No. 1238, date of registration – 18 June 2002).

Ukrainian legislation regulates the provision on confidential information and commercial secret. In Particular, Article 30 of the Law of Ukraine "On Information" provides definition of confidential information, according to which it is information that is in possession, use, or disposal of certain physical persons or legal entities, and is disseminated at their discretion according the conditions, envisaged by these persons/entities.

In addition, according to Article 30 of the Law of Ukraine "On Enterprises in Ukraine", commercial secret of an enterprise shall mean information, related to production, technological information, administration, finance and other activities of an enterprise, which is not deemed state secret, disclosure of which may cause damage to its interests.

Ukrainian legislation provides for liability for disclosure of confidential information and commercial secret. In particular:

- Article 231 of the Criminal Code of Ukraine provides that intentional actions directed at obtaining the information that constitutes a commercial secret, with the aim of disclosure or other use of such information (commercial espionage), as well as illegal use of such information, if it caused a substantial damage to the economic agent, is subject to fine in the sum from 200 to 1000 untaxed minimal incomes of citizens or restriction of liberty up to five years or deprivation of liberty up to three years.
- Article 232 of the mentioned Code provides that intentional disclosure of the commercial secret without consent of the owner by a person, who is aware of the information owing to his professional or service activity, if it caused a substantial injury to the economic agent, is punished by a fine from 200 to 500 untaxed citizens' incomes with deprivation of right to occupy certain posts or to engage in certain activities during the period of up to three years, or by corrective labour for a period of up to two years, or deprivation of freedom for the same period of time;
- Chapter IV of the Law of Ukraine "On Protection against Unfair Competition" provides for the responsibility for unlawful collection, disclosure and use of commercial secret.

It should be mentioned that Book IV of the newly adopted by the Verkhovna Rada Civil Code contains a chapter on the intellectual property right to commercial secret. In particular, there is a provision referring the protection of commercial secret by the state body: "the State body is obliged to protect from unfair commercial use the information, which is a commercial secret and creation of which requires a considerable effort in the aim of receiving a permit, provided for by the law, for sale of pharmaceuticals, agricultural products, chemicals containing new chemical compounds. This information is also protected by the State body from disclosure, except the cases, when the disclosure is necessary for ensuring the protection of the population or measures are not taken for protection of the information from unfair commercial use".

The Draft Law of Ukraine "On Amendment of Some Legislative Acts of Ukraine on Intellectual Property" supplements the Article 10 of the Civil Procedural Code of Ukraine and Article 20 of the Criminal Procedural Code of Ukraine with changes which refer to the protection of undisclosed information during the court proceedings. Presently the Draft Law is being considered by the Committee of the Verkhovna Rada of Ukraine for Education and Science (No. 1238, date of registration – 18 June 2002), and proposed to be included in the list of first priority drafts when considered by the Verkhovna Rada of Ukraine.

Article 1 of the Law of Ukraine "On Protection of Rights to Indications of Origin of Goods" states that indication of origin of goods is the term that encompasses the following terms:

- simple indication of origin of goods and qualified indication of origin of goods;
- simple indication of origin of goods shall mean any verbal or pictorial (graphical) indication, which points, directly or indirectly, to the geographical location of origin of goods;
- qualified indication of origin of goods" shall mean a term, which encompasses the following terms:
 - name of the place of origin of goods;
 - geographical indication of origin of goods;
 - name of the place of origin of goods, shall mean the name of a geographical location used as an indication in the name of a product originating from the specified geographical place and having specific features, which are exclusively or mainly attributed to natural conditions characteristic of this particular geographical location or to combinations of these natural conditions with the human factor characteristic of this particular geographical location;

- geographical indication of origin of goods shall mean the name of a geographical location used as an indication in the name of a product originating from the specified geographical location and having certain qualities, reputation or other characteristics, which are mainly attributed to natural conditions or the human factor characteristic of the particular geographical location, or to combinations of such natural conditions and the human factor;
- thus, Ukrainian legislation provides for protection of rights not only with respect to the name of a geographical location of origin of goods, but also to an indication, that directly or indirectly points to a geographical location of origin of goods.

According to the Law of Ukraine "On Copyright and Related Rights" (Article 11) a copyright holder, in order to certify his authorship (copyright) with respect to a promulgated or non-promulgated work, the fact and date of publication of the work, or to certify contracts relating to the author's right to a work, may have its copyright registered in the official State registers. State registration of copyright and contracts, relating to the author's right to a work shall be conducted by the Ministry of Education and Science (hereinafter referred to as the MES) according to the procedure, approved by the Cabinet of Ministers of Ukraine (the Resolution of the Cabinet of Ministers of Ukraine No. 1756 "On State Registration of Copyright and Contracts, Relating to the Author's Right to a Work", dated 27 December 2001). The MES shall compile and periodically publish catalogues of all state registrations.

Objects of industrial property that have legal protection shall be registered in relevant state registries.

According to the provisions of the aforementioned Law (Chapter IV), subjects of copyright and/or related rights have the right to assign administration of their property rights to collective management organizations, the main function of which are collection of remuneration for the use of objects of copyright and/or related rights, as well as distribution and payment of collected remuneration to subjects of copyright and/or related rights. Presently there are three collective management organizations, set up according to legislative requirements that exercise management on a collective basis of property rights of subjects of copyright and/or related rights, particularly rights of authors of works of music, audiovisual works, works of applied or fine art, rights of manufacturers of phonograms and videograms.

Ukrainian legislation provides for liability for violations of rights to objects of intellectual property.

In particular, Article 51-2 of the Code of Ukraine on Administrative Violations establishes that illegal use of an object of intellectual property right, misappropriation of authorship to such object, or other deliberate violations of rights to objects of intellectual property, protected by law, shall entail imposing penalty with confiscation of illegally manufactured products and equipment and materials, meant for their production.

In addition, the Verkhovna Rada of Ukraine adopted the new Customs Code of Ukraine, which is to enter into force from 1 January 2003. The mentioned Code contains a section as to control over crossing through the customs border of Ukraine of products, containing objects of intellectual property, which is totally in accord with the requirements of Chapter 4 of the TRIPS Agreement.

Effective measures to ensure observation of intellectual property rights are also introduced by the Criminal Code of Ukraine, which entered into force from 1 September 2001. The Criminal Code, in particular, provides for punishment for illegal use of an object of intellectual property right, which is protected by law, if this caused damages in significant or especially significant size, or such actions are committed repeatedly.

The State Intellectual Property Department developed the Draft Law of Ukraine "On Amending Some Legislative Acts of Ukraine on Intellectual Property", submitted for consideration to the Verkhovna Rada of Ukraine. This Draft provides for making changes to the Law of Ukraine "On Protection of Rights to Trademarks for Goods and Services" in order to ensure its conformity with the provisions of the TRIPS Agreement. Presently, this Draft is considered by the Committee of the Verkhovna Rada of Ukraine for Education and Science (No. 1238, date of registration – 18 June 2002), and proposed to be included in the list of first priority drafts when considered by the Verkhovna Rada of Ukraine.

The Draft provides for amendments to be made to the Civil Procedural, Criminal, Criminal and Procedural Codes of Ukraine, as well as to special Laws of Ukraine in the sphere of intellectual property.

The Draft, in particular, includes provisions as to protection of intellectual property rights, temporary measures on immediate termination of violations. Changes, proposed to be made to the Criminal Code of Ukraine are associated with increasing liability for violations of intellectual property rights.

It is envisaged to increase the maximum size of penalty for illegal use of invention, utility model, industrial design, integrated circuit, plant variety.

In addition, the Draft provides for provisions, aimed at increasing liability for illegal use of a trademark for goods and services, firm name, indication of origin of goods, labeling of goods, if it was connected with generating income in big amount, or the same actions, committed repeatedly, or associated with generating income in especially big amount. Due to this, it is offered to make relevant changes to Article 229 of the Criminal Code.

No. 71

Members noted that problems remained in the area of enforcement and said that this would need to be satisfactorily addressed. They sought revised inputs from Ukraine with respect to its TRIPS legislation as well as its Criminal and Civil Codes.

Answer:

Within the last two years, Ukraine undertook significant measures regarding further improvement of the national laws of Ukraine on provision of the effective protection of intellectual property.

On 29 November 2001, the Verkhovna Rada of Ukraine (*the Parliament*) approved the Civil Code of Ukraine which contained Book IV "Intellectual Property Rights." The said Book reflects the main provisions of civil relations in the field of intellectual property that completely comply with the international norms. Therefore, laws of Ukraine in the field of intellectual property have two levels: the Civil Code of Ukraine contains the general provisions, and special laws contain provisions that relate to the specific issues of acquisition, realization and protection of intellectual property rights.

The Criminal Code of Ukraine, which came into force from 1 September 2001, introduced the effective methods for ensuring of intellectual property rights observance.

In particular, the Criminal Code of Ukraine provides for the punishment for illegal use of objects of intellectual property rights protected by laws, if this caused injury in the significant amount.

State Department for Intellectual Property of Ukraine drafted the Law of Ukraine "On Amendment of Certain Laws of Ukraine on Intellectual Property Issues" which was submitted to the Verkhovna Rada of Ukraine for consideration.

On 11 September 2002, the Committee of the Verkhovna Rada of Ukraine on Science and Education considered the said draft laws on its meeting. Due to the results of consideration, the decision was made to submit the said draft Law to the Verkhovna Rada of Ukraine for consideration.

The said draft Law provides for amendment of Civil Procedures Code of Ukraine, Criminal Code of Ukraine and Criminal Procedures Code of Ukraine, as well as special laws of Ukraine in the field of intellectual property, in particular: the Law of Ukraine "On Copyrights and Related Rights", "On Protection of the Rights to Inventions and Utility Models", "On Protection of the Rights to Industrial Models", "On Protection of the Rights to Goods and Services Marks" and "On Protection of the Rights to Topographies and Integral Microcircuits" and "On the Protection of the Rights to Indication of the Goods Origin". The suggested changes result in bringing into compliance of the norms of the national laws with the TRIPS Agreement.

In particular, the said draft Law contains provisions on protection of intellectual property rights and provisional measures regarding immediate elimination of violations. Changes related to strengthening of responsibility for violation of intellectual property rights were suggested for the Criminal Code of Ukraine.

At the same time, the said draft Law provides for the provisions on strengthening of responsibility for unlawful use of goods and services mark, a firm's name, indication of the goods origin, marking of goods, if it was related to receipt of income in significant amount, or for the same actions if such actions were made repeatedly or related to receipt of income in specifically significant amount.

Along with the creation of legislative basis in the field of intellectual property, Ukraine undertakes efforts on its enforcement.

Pursuant to the Order of the High Commercial Court of Ukraine (Vischiy Gospodarskiy Sud Ukrainy), No. 19, dated 26 July 2001, the issue regarding creation of the specialized board of judges of the High Commercial Court of Ukraine on consideration of disputes related to protection of intellectual property rights was solved. The specialized boards of judges on consideration of disputes related to protection of intellectual property rights operate within commercial courts of the Autonomous Republic of Crimea, oblasts, Kyiv and Sevastopol and appeal commercial courts.

It should be noted that a tendency related to the significant growth of a professional level of judges who consider cases dealing with protection of intellectual property rights can be observed in commercial courts recently. The specialized boards on the issues of protection of intellectual property is the first step in creation of the specialized patent court in Ukraine under competence of which would be the issues of protection of the violated rights of the owners of protective documents to objects of intellectual property.

Training and seminars for employees of the Ministry of Internal Affairs of Ukraine, State Customs Service of Ukraine and other authorities of the executive power, whose activity relate to the issues of intellectual property, have been taking place in order to increase the level of knowledge in the field of intellectual property.

Divisions which deal exclusively with the issues of violations of intellectual property rights were created in the Ministry of Internal Affairs of Ukraine and State Customs Service of Ukraine.

In order to ensure the effective compulsory observance of laws in the field of copyrights and related rights, decisive measures on improvement of mechanisms in implementation of normative and legal basis and permanent effectuation of measures aimed at strengthening of protection of copyrights and related rights and struggle against piracy in this field were undertaken recently.

In year 2001, the new wording of the Law of Ukraine "On Copyrights and Related Rights" was approved. Legal norms of this Law were brought into compliance with International Agreements in the field of copyrights and related rights. In its new wording, the said Law complies with the Agreement on Partnership and Cooperation between Ukraine and the EU and the TRIPS Agreement regarding protection of copyrights and related rights, including effective measures of compulsory nature.

The Cabinet of Ministers of Ukraine approved a number of resolutions in May-June this year in order to fulfill the requirements of the Law of Ukraine "On Peculiarities of State Regulation of Activity of Business Agents Related to Production, Exports and Imports of Discs for Laser Systems." Legal norms of the resolutions determine the mechanism of implementation of the Law and regulate the following issues:

- activities of state inspectors on the issues of intellectual property;
- procedure for designation of a special identification code to producers of discs, as well as the procedure for imports and exports of discs if the said codes are available on such discs;
- on provision of the licensing authorities with additional documents related to production, exports and imports of discs and equipment for their production by an business agent;
- determination of powers of the licensing authorities;
- procedure for making decisions by the licensing authorities on application of the special measures to an business agent;
- licensing of exports and imports of discs, matrixes and raw materials (optic polycarbonate) for discs production;
- determination of the principal units of equipment for production of discs, exports and imports of which are subject to licensing;
- conducting of the complete inventory and preparing the relevant inventory list and information on inventory of the remainder of the discs as of the moment of coming into force of the said Law; and
- creation of a depository of discs' copies and creation and maintaining of the register of such copies with the aim of the permanent state control over discs production and observance of intellectual property rights during discs production.

Permanent unexpected inspections of enterprises which produce discs for laser systems regarding lawful use of copyrights during discs production have been taking place from the end of year 2000 up to these days.

Two out of five existing enterprises that produce discs have ceased their activities.

Currently, in Ukraine there were issued licenses for production of discs and designated CID-codes to three enterprises: Private Enterprise "Rostok-CD" (Kyiv), Closed Joint Stock Company "Noiprox" (L'viv) and Limited Liability Company "Amitron, LTD" (Kherson).

Inspections prove that enterprises conduct production of discs legally, having license agreement with owners (mainly, CD-R without recording and discs with Ukrainian repertoire are produced).

In order to fulfill the joint Program, Ukraine conducted special operations ("Compact-dysc" (Compact-disc), "Kordon" (Border), "Kanal" (Channel), "Kil'tse" (Ring), "Potyag" (Train), "Laserniy Dysc" (Laser Disc) and "Intelect" (Intellect)).

As a result of the said measures, over eight thousand business agent were inspected within the first quarter of year 2002 (268 trains, 16 vessels of foreign navigation, 7 airliners and over 11,000 vehicles). One hundred and seventeen criminal cases were initiated, while it were only 135 criminal case within previous two years. Violators were brought to responsibility.

Due to the results of joint inspections conducted with participation of international experts, the General Prosecutor's Office of Ukraine is in the process of completion of a criminal case's consideration on violation of intellectual property rights during discs production.

According to the information of the Ministry of Internal Affairs of Ukraine, over 10,000 business agents which conduct their activities in the field of intellectual property were inspected as a result of the undertaken measures. Three hundred and thirty two criminal cases were initiated, 243 of which directly relate to copyrights, while in year 2000 it was discovered only 19 of such cases and in year 2001 – 116. Three thousand of administrative protocols were made. 85 per cent of the said protocols were made due to the fact of distribution of audiovisual products which were not marked with holographic control mark under the established procedure.

Five hundred thousand counterfeit copies of audiovisual products and phonograms for the total amount of 4.9 million Hryvnias were confiscated from violators. Violators were penalized for the amount of 388,000 Hryvnias.

Activities of 103 "underground" shops involved in production of various counterfeiting products were ceased.

According to the information of State Customs Service of Ukraine, 1,137 discs and 100 videocassettes that illegally transferred through the customs territory of Ukraine were confiscated in July 2002.

Within recent years, volumes of discs production significantly decreased (according to the information of State Committee for Statistics of Ukraine, discs production in Ukraine is the following: 2000- 10,095; 2001 – 7,168 and the first quarter of 2002 – 2,289).

Therefore, currently Ukraine undertakes efforts both for improvement of its laws and creation of effective mechanisms for enforcement.

VI. TRADE-RELATED SERVICES REGIME

No. 72

In part IV of document WT/ACC/UKR/87/Add.1 related to General Treatment of Trade in Services it is stated that the Draft Law of Ukraine "On Telecommunications" has been approved by the Supreme Rada in the first reading. Members requested that an effort be made to complete the legislation on telecommunication by the date of Ukraine's accession to the WTO.

Answer:

The State Committee for Telecommunication and Informatisation of Ukraine is currently finalising the development of a revised version of the Draft Law of Ukraine on Telecommunications.

It is planned, that the draft will be submitted to the Cabinet of Ministers of Ukraine for consideration in the nearest future.

No. 73

In the field of services members noted that for some areas, such as transportation, banking and telecom, the relevant regulatory authorities were not independent from the service suppliers they regulate. With respect to Ukraine's schedule of specific commitments in services, members expected the independence of regulatory authorities from the service suppliers to be in conformity with relevant WTO provisions from the date of accession.

Answer:

In line with active legislation the function of bank regulation and supervision over the banks activity is carried out by the National Bank of Ukraine, which is a special central body of public administration responsible before the President of Ukraine and the Verkhovna Rada of Ukraine a special central body of public administration accountable to the President and the Verkhovna Rada of Ukraine within the scope of their constitutional authority. At the same time, the National Bank of Ukraine may not be liable for other banks' liabilities, and other banks hold no liabilities for these of the National Bank of Ukraine, if otherwise is not stated by the legislation or respective agreements. Therefore, the National Bank of Ukraine is independent from suppliers of banking services.

Under Part 3, Art. 5 of the Law of Ukraine on Telecommunications, the Telecommunications Administration of Ukraine is the central executive authority in the sphere of telecommunications. Pursuant to the Decree of the President of Ukraine No. 601/99, as of 3 June 1999, the functions of this administration are performed by the State Committee for Telecommunications and Informatisation of Ukraine. The Committee is in charge with regulatory management of the telecommunications sector, i.e., issuance of regulations, licensing activities, tariff regulations etc.

The State Committee for Telecommunications and Informatisation of Ukraine is the central body of the executive power accountable to the Cabinet of Ministers of Ukraine and independent from telecommunications service suppliers operating within the sphere of its regulatory competence.

In accordance with the Regulations of the Ministry of Transport of Ukraine approved by the Decree of the President of Ukraine No.304/2002, as of 27 March 2002, the Ministry is the central body of the executive power managed and coordinated by the Cabinet of Ministers of Ukraine; it is also "the coordinating body in the system of the central executive bodies providing implementation of the state policy in the spheres of transport, air space use and navigational and hydrographic provision of seafaring". The Ministry "shall provide licensing of specific kinds of entrepreneurial activities in cases provisioned by the law".

Being financed exclusively from the State Budget and using no sponsorships and donations either from sectoral enterprises or businesses from other sectors to finance its operations, the Ministry is independent from service suppliers.
