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**Working Party on the
Accession of Ukraine**

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ACCESSION OF UKRAINE

Check-list of Issues

Corrigendum

With reference to the responses to the Check-list of Issues produced in WT/ACC/UKR/110, the Governmental Commission on Ukraine's Accession to the WTO has submitted revised responses to written comments reproduced hereunder.

TABLE OF CONTENTS

General Comments	1
IV. POLICIES AFFECTING TRADE IN GOODS	3
1. Import Regulation.....	3
(a) Registration requirements for engaging in importing.....	3
(d) Other duties and charges.....	4
(f) Import licensing procedures	9
(c) Sanitary and phytosanitary measures.....	10

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 dated 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 dated 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 dated 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 dated 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 dated 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 dated 3 May 2001, No. 442 dated 1 November 2001, No. 442 dated 1 November 2001 and No. 185 dated 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 dated Ukraine No. 5-6 of 14 December 2001, No. 103 dated 19 March 2002, No. 271 dated 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 tariff rates on short effect insulin were reduced from 30 per cent to 20 per cent, others – to zero per cent (the Law of Ukraine "On Amendment of the Customs Tariff of Ukraine" No. 370-IV dated 25 December 2002).

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 dated 4 January 1999, No. 342 dated 17 February 2000, No. 1140 dated 21 July 2000, No. 1656 dated 8 November 2000, No. 647 dated 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.

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 dated 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 dated 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 dated 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 dated 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 dated 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 dated 21 June 2001 No. 527/5718). 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 dated 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 dated 15 February 2002, No. 151/6439) introduces a unified procedures for import of unregistered pharmaceutical materials to Ukraine for all operators.

(d) Other duties and charges

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; and
- Unified fee collected at the cross border points at the State border of Ukraine.

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; and
- Export duty for scrap and waste ferrous metal.

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; and
- 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); and
- 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; and
- 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; and
- as per each additional sheet - US\$15.

For customs clearance of goods in transit:

- As per each goods declaration - US\$10; and
- 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; and
- 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; and
- 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; and
- on holidays – US\$50.

Furthermore, as per Resolution No. 285 of the Cabinet of Ministers of Ukraine dated 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 dated 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 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 dated 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 dated 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

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
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. 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, phytosanitary, 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, phytosanitary, 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.

(f) Import licensing procedures

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".

(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.

Article 1 of the Law of Ukraine "On Quality and Safety of Food and Food Raw Materials" is supplemented with the provision on scientific substantiation of the data on content in products (residues level) of components or substances harmful for human health and life. It meets the requirements of the Agreement "On the Application of Sanitary and Phytosanitary Measures". (The Law of Ukraine "On Amendment of the Law of Ukraine "On Quality and Safety of Food and Food Raw Materials" No.191-IV dated 24 October 2002).

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 Introduction of the Unified Duty Collected at the Ukrainian Border Crossing Points" the Cabinet of Ministers of Ukraine on 24 October 2002 approved Resolution No. 1569 "On the Approval of Procedure for Collecting the Unified Fee at the Ukrainian Border Crossing Points", which defines the types of goods subject to control, in particular – sanitary, veterinary and phytosanitary control (addendum 2 to the Resolution) (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.

As of 20 March 2003, 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; and
- Ukraine joined the International Convention on Coordination of Conditions for Cargo Control at the Borders (Presidential Decree No. 616/2002 dated 4 June 2002 "On Ukraine's Joining the International Convention on Coordination of Conditions for Cargo Control at the Borders").

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.

The Order of the State Department on Veterinary Medicine under the Ministry of Agricultural Policy of Ukraine No. 52 dated 27 September, registered with the Ministry of Justice of Ukraine under No. 813/7101 dated 4 October 2002, the import of by-products is allowed in Ukraine for processing at the meat processing enterprises.

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 and Epidemiological Expertise No. 5.10/4705 dated 28 December 2002 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 490 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-epidemiological testing No. 5.10/47505 dated 28 December 2002 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 more than 490 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 dated 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.
