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ACCESSION OF ALGERIA

Questions and Replies to the Memorandum on the Foreign Trade Regime (Document WT/ACC/DZA/1)

The Government of the People's Democratic Republic of Algeria has applied for accession to the General Agreement on Tariffs and Trade on the basis of Article XXXIII of the General Agreement. Having regard to the decision adopted by the General Council on 31 January 1995, the Working Party on the Accession of Algeria to GATT 1947 has been transformed into a WTO Accession Working Party. The terms of reference of the Working Party are reproduced in document WT/L/23. In document WT/ACC/DZA/1 Members were invited to submit questions in writing concerning the foreign-trade regime of Algeria. The questions submitted by Members and the replies thereto provided by the Algerian authorities are reproduced below.

Delegations wishing to raise additional questions concerning the foreign-trade regime of Algeria can inform the Algerian delegation (with a copy to the Secretariat) of such questions in advance of the next meeting of the Working Party, so that considered replies can be made available by Algeria to Members at the time of the Working Party meeting.

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I. GENERAL

Question 1

Please notify us of the legislation relating to the memorandum in a language of the WTO.

Reply

The main legislative and regulatory texts referred to in the memorandum will be communicated to the WTO Secretariat.

Question 2

The policy of removal of trade barriers will, according to the memorandum, be continued "with the progressive reductions in tariff protection being correlated with the improvements in the performance of the domestic manufacturers" (page 1, WT/ACC/DZA/1). Could the Algerian authorities explain the criteria adopted for evaluating these "improvements" and "correlating" them with tariff reductions?

Reply

The liberalization of Algerian foreign trade has been extremely swift. It has been carried out under the structural adjustment programme negotiated with the International Monetary Fund and strictly applied since April 1994. Under this liberalization, all non-tariff barriers have disappeared as a result of immediate measures.

The result of this, over and above the new attitudes noticeable in businesses and the Algerian market, has been in particular to show up the major inadequacies of national tariff policy.

As in all countries with managed economies, non-tariff trade barriers are of decisive importance, whereas for highly understandable reasons the role of customs duties can only be secondary (even when rates are high in themselves).

The gradual bringing of order into tariff policy is therefore a priority task, the current problem facing the Algerian economic authorities being increasingly to establish a proper relationship between trade-policy goals in the different branches of agricultural and/or industrial production.

A preliminary study using standard indicators such as coefficients of nominal protection, effective protection or effective incentive has already shown the effects of tariff protection on producers.

For certain activities it is planned to take the analysis forward to a second phase at microeconomic level, by comparing global indicators (protection coefficients) with indicators of comparative advantage (domestic-resource cost efficiency or economic return on capital) and competitiveness indicators (cost per monetary unit of production).

This second phase is aimed at acquisition of the skills necessary for evaluating tariff policies and should supply the data needed to shed greater light on the fiscal role of customs duty.

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

1. Economy(a) General descriptionQuestion 3

Please supply further details on how Algeria intends to achieve the first and third medium-term objectives (increased production, reduced current-account deficit).

Reply

The objectives of the economic programme supported by a financing facility agreement concluded with the IMF for the period 1995-98 are part of a medium-term plan to revive growth. Reform of the mechanisms for regulating and organizing the economy under the stabilization programme is practically complete. Considerable progress has been made in reforming the pricing system and in liberalizing foreign trade and the exchange regime, as well as in restructuring the economy, a process which includes the privatization of public enterprises in competitive sectors.

The medium-term programme is aimed at pursuing and developing the efforts already made to stabilize the macroeconomic environment and carry out structural reforms. Non-hydrocarbon growth will be based on the exploitation of existing potential in the agricultural, industrial and building and public works sectors but also on the productivity gains expected from the current reforms.

The return to equilibrium on current account will be supported by an export-promotion policy based on increasing the comparative advantages and performance criteria (cost, quality) of national manufactures. This export-promotion policy is based, in its turn, on the current restructuring of production sectors (agriculture, industry), and on encouraging the development of small and medium enterprises (SME).

Regarding the detail of the sectoral policies which will be followed in order to achieve the objectives of boosting growth and balancing the current account, the reply to question No. 79 supplies the information needed to assess the conduct of the medium-term programme, at least for the industrial sector.

2. Economic policies(a) Main directions and goals of economic policyQuestion 4

Indicate the number of local and national public enterprises.

Reply

Number of local public enterprises: 1209

Number of national enterprises: 447

The number of national and local public enterprises will fall in the coming years as a result of the privatization programme.

Question 5

Is foreign participation in the privatization programme allowed? If so, please supply a list of the sectors from which such participation is excluded. What are the conditions where these exist?

Reply

The privatization programme contained in the Order privatizing public enterprises, particularly Article 2, does not discriminate against foreign capital.

The arrangements for foreign participation are set out in the Order of 5 October 1993 on investment promotion. This order:

- Guarantees the transfer of invested capital, as well as of all earnings, dividends and interest produced;
- regulates the granting of incentives on the basis of a simple declaration of investment and of application for the relevant advantages;
- treats foreign investors in exactly the same way as domestic investors;
- establishes the basic rules for compensation in the event of expropriation;
- allows appeal to international arbitration in the event of disputes.

Apart from aerial-navigation and air-traffic control, rail transport and maritime pilotage and dockage, all activities are open to foreign participation.

Questions 6 and 7

What are the plans for disengagement by the State? In which sectors will the State remain active?

Please indicate the stages whereby the State has almost totally withdrawn from the management of public enterprises. How are the managers of enterprises appointed?

Reply

State withdrawal from the management of enterprises is included in the strategic approach aimed at an in-depth change in the organization and system of management of the economy, with a view to switching from a managed economy to an economy based on the free play of market forces, open to the outside and integrated into the world market.

After a slow start, the programme of change put on a strong spurt after 1994.

The first phase of the change consisted essentially in relieving the State of responsibility for the management of public enterprises by giving the latter full legal and financial autonomy. A feature of this first phase was the progressive introduction of regulatory mechanisms relating to prices, taxation, the exchange and credit regime, foreign trade and the allocation of resources, thus enabling the general functioning of the economy to be organised according to market logic.

This process has its juridical and legal anchor-point in the 1988 laws on the autonomy of enterprises, the law on money and credit, the law on commercial-capital management and the Commercial Code.

In general, Algerian public enterprises are now managed on the same basis as private enterprises. They operate in accordance with private law and are subject to the ordinary rules of the Commercial Code. They all have the status of joint-stock companies; their management is currently in the hands of holding companies.

The managers of these enterprises are appointed by boards of directors on the basis of public tender; the State takes no direct part in the process of selecting managers.

The second phase of State withdrawal was essentially initiated by the privatization Order. Article 2 of the Order identifies the following sectors which may be privatized immediately:

- Hotels and tourism;
- trade and distribution;
- mechanical, electrical and electronic engineering;
- wood and wood products;
- paper;
- chemicals;
- plastics;
- leather;
- road transport;
- insurance;
- port and airport services;
- building design and construction.

In general, the State is endeavouring to withdraw immediately from competitive sectors, while retaining a temporary presence in activities which are not yet adequately regulated by market forces. It aims to revert to its natural role of regulator and organiser of the process of economic and social change.

The change process is designed to bring about an Algerian economy in which private initiative will predominate and where the State will maintain a presence only in mining activities, public-service activities and activities coming under the heading of natural monopolies.

The State's continued presence in these activities will not, however, be of a monopolistic nature. Investment in them will remain open both to the national private sector and to the foreign private sectors. Algerian public enterprises are currently managed on the same basis as private enterprises. They operate in accordance with private law and are subject to the ordinary rules of the Commercial Code.

Question 8

What stage has been reached in the privatization programme whose implementation was planned for 1996 (page 9, WT/ACC/DZA/1)?

Reply

The privatization programme whose implementation started in 1996 has been carried out as follows (situation at 31 December 1996):

- Local enterprises sold: nine;
- local enterprises to be run as concessions: ten;
- national public enterprises privatised: five;
- hotel structures privatised: four;
- local enterprises wound up: 242.

Assessment of the privatization process started in 1996 reveals:

- A low rate of tenders compared with the number of invitations; this situation is explained particularly by the inadequacy of domestic savings and the absence of payment facilities or bank credits from current legislation;
- the cumbersome nature of the procedures, which tended to put tenderers off.

Amendments to the 1995 privatization Order have accordingly been proposed.

These amendments consist of additions to or clarifications of the existing provisions, designed to adapt them to the real state of the public economic sector, to national-savings capacity and to the interests of potential investors and of the economic and social partners.

The main goals of these amendments are to:

- Cut the times needed for privatisation operations;
- reduce the burden of certain obligations placed on buyers by Law No. 95.22 of 26 August 1995 and relating to the modernization and rehabilitation of privatized enterprises and the maintenance of employment and activity;
- permit and promote the acquisition of shares by the population wherever possible, in order to boost national savings;
- facilitate the takeover of assets by the employees of privatized enterprises;
- introduce the possibility of deferred payments both for employees and for buyers.

(b) Monetary and fiscal policies

Question 9

When is it planned to introduce the total convertibility of the dinar (page 9, WT/ACC/DZA/1)?

Reply

Total convertibility, understood as total convertibility of the dinar for both current and capital transactions, is the outcome of the conclusion of the reform process initiated by the public authorities.

Current convertibility has already been introduced for all items on the current balance, apart from expenditure for foreign travel, for which there will be partial convertibility in 1997.

Capital transactions have already been made convertible for non-residents as regards capital invested in Algeria and the related income.

Funds held by residents and non-residents in foreign currency accounts can be transferred freely.

The convertibility of capital transactions for residents implies a level of economic development such that Algeria would have surplus capital available for possible investment in the rest of the world.

However, the extension of convertibility to capital transactions for residents is not on the agenda at present.

Question 10

With a view to the total convertibility of the dinar, rules for the prudential monitoring of exchange positions are to be introduced (page 10, WT/ACC/DZA/1). What criteria will be adopted for defining them?

Reply

The flexibility introduced into the determination of the exchange rate, combined with the increased foreign-exchange resources made available to the banks, is contributing to the establishment of an interbank foreign exchange market.

In the first stage of developing this market, concerns about prudential monitoring limit the exchange positions (all currencies) which the banks are authorized to adopt to four times the volume of their equity.

Question 11

Do the Algerian authorities intend to invoke their balance-of-payments difficulties in order to justify tariff protection?

Reply

Given the present balance-of-payments situation, there are no major difficulties justifying recourse to tariff protection.

It must be remembered, however, that the Algerian economy is still over-dependent on the hydrocarbons sector (95 per cent of the country's foreign-currency reserves). The likely trends of the balance of payments have been worked out on the basis of reasonable price-fluctuation scenarios for the international oil market.

A collapse in these prices would clearly have a serious effect on the balance of payments. In such a case, safeguard measures would be applied in accordance with WTO rules, in particular, GATT 1994 Article XVIII.

Question 12

We note that a small number of agricultural products (milk, semolina and flour) remain uncovered by the free-price regime (page 13, WT/ACC/DZA/1). Could Algeria provide details on why these products are not covered by the free-price regime? How are the prices determined? How does this support relate to the price support policies which are applied on "only milk"? Algeria notes that the practice of subsidization has been sharply curtailed and the system has been gradually dismantled and that in 1996 only pasteurized milk is still subsidized to a limited extent. Does Algeria foresee removing this domestic subsidy support in the future?

Reply

Agricultural products such as milk, semolina and flour fell outside the free-price regime because they are popular basic foodstuffs.

The programme for progressive price liberalization took the date 1 January 1997 for ending the regulated-price regime particularly for pasteurized milk, since semolina and flour prices were liberalized as from 1 January 1996.

The prices of these products were fixed by decree at below their cost. Under the current rules, the importing enterprises concerned submit a subsidy request each month showing the regulated price, the determined equilibrium price, the quantities marketed and the total amount of price support for the period considered.

The equilibrium price combines the "material" cost with the real cost (the import price - at the exchange rate for the customs clearance period in question - of the raw material and the prevailing duties and taxes), the standard operating cost and the fixed production margin. The standard operating cost is determined on the basis of the data for a complete financial year (e.g. balance sheet and import vouchers relating to the charges for each kind of product).

Furthermore, the level of operating charges is determined on a standard basis, which is periodically adjusted whenever new data or cost increases are recorded.

The price-support policy was identical for the three products mentioned in that they all received budgetary subsidies.

Algeria plans to speed up the total liberalisation of all prices before 1998 under its IMF obligations. Domestic budgetary support for imports will therefore be abolished.

Question 13

Algeria indicates that free pricing is the general rule and the determination of prices by the State is an exception applicable only in unusual situations or special circumstances. What does Algeria consider an unusual situation or special circumstance? Can Algeria confirm that the only agricultural products subject to determination of prices by the State are those listed above?

Reply

By unusual situation or special circumstance Algeria means situations of serious crisis resulting in severe market disturbance, for example drought, natural disasters or sudden and substantial increases in price levels on the international market for imported basic agricultural inputs.

In this type of situation and as an exception, the State may determine the price of any product regarded as a strategic element in supplying the population, particularly widely consumed products (food, medicines).

(c) Foreign-exchange regime and liberalization of foreign trade

Question 14

It is noted in the sixth paragraph that the proceeds from exports of all products other than oil, gas and ores are being repatriated directly on the interbank exchange market. Is this compulsory? Is repatriation a condition for the proceeds from oil, gas and ore as well?

Reply

The exchange rules oblige all exporters to repatriate the proceeds from their exports regardless of the nature of the product exported (oil, gas, ores or other products) within a maximum period of four months which may be extended by the Bank of Algeria.

Question 15

Does Algeria plan to respect the commitments under Article VIII of the Agreement on the International Monetary Fund in future?

Reply

The economic stabilization and structural adjustment programmes concluded with the International Monetary Fund in 1994 and 1995 have considerably strengthened Algeria's cooperation with that institution.

Algeria's aim is, in fact, to respect the Article VIII commitments.

Under the action programme now being implemented, the date could well be brought forward to 1997. It should be noted here that foreign-travel expenses, the only item not yet made convertible, will become partly convertible (with a ceiling for each traveller) in 1997.

Question 16

Please describe in detail the regime governing capital transactions between Algeria and abroad applicable to foreigners and Algerian residents respectively?

Reply

Capital transactions for non-residents are unequivocally convertible; transferability of invested capital and related proceeds is guaranteed by two sets of legislation and by the accession of Algeria to international conventions.

Non-resident capital can be freely invested in Algeria.

Transfer procedures are governed by recognized practices. In any case, the law lays down a maximum of 60 days for capital transfers in respect of any dividends and realizations.

The movement of funds held by private parties and legal persons in currency accounts is totally unimpeded both for inflows and for outflows.

(d) Investment promotion policies

Question 17

Can you confirm that there is no sector of your economy in which the Algerian investor possesses greater rights to invest than a foreign investor?

Reply

Article 38, Title V, of the Investment Code states: "Foreign natural and legal persons shall receive treatment identical with that given to Algerian natural or legal persons, bearing in mind the obligations relating to investment."

Accordingly, national investors are not better placed than foreign investors. This also applies to activities classified as being of a priority nature, which automatically enjoy the advantages of the legislation on priority activities (Article 42 of Title VI).

Question 18

Can you specify the administrative steps which a foreign investor must take to transfer his capital or income? How long will the process take?

Reply

Investments made with capital inflows using freely available foreign exchange regularly quoted by the Central Bank of Algeria, which duly certifies that the exchange has been imported, enjoy the guarantee that invested capital and the resulting income can be transferred.

This guarantee also covers the real net proceeds of the transfer or realization, even if the amount exceeds the original capital invested.

Transfer requests by the investor are dealt with in a period not exceeding 60 days in accordance with Article 12 of Title I of the Investment Code.

Transfer procedures are governed by Bank of Algeria Regulation No. 90.03 of 8 September 1990 laying down the conditions for capital transfer in Algeria to finance economic activities and for the repatriation of such capital and the income therefrom.

Transfer requests are made through the paying bank and must be accompanied by the following documents:

(i) Transfer of dividends:

- Balance sheet and profit and loss account (properly certified operating and profit and loss account);
- minutes of the general meeting.

(ii) Transfer of capital:

- Transfer contract or realization statement or any other similar document.

Any transfer request must be accompanied by an adequate discharge. Royalties, interest and salaries are transferred according to the rules in force.

Question 19

Please describe the basic rules for compensation in the event of expropriation?

Reply

The guarantees provided for investments by the Legislative Decree on Investment Promotion, or Investment Code, concern cases which may be subject to administrative requisition.

Investments made (by foreign investors) can be the subject of administrative requisition only in the cases laid down in existing legislation.

Requisition confers entitlement to just compensation as laid down in Article 40, Title V, of the Investment Code.

Settlement of the dispute between the Algerian State and the foreign investor is subject to the arbitration of the competent courts except in the case of bilateral or multilateral conventions concluded by the Algerian State in relation to conciliation and arbitration, or of a specific agreement containing an arbitration clause or allowing the parties to agree on an ad hoc compromise in accordance with Article 41 of Title V.

It should be mentioned that Algeria has signed the Seoul, Washington and New York multilateral and bilateral investment-protection conventions.

In the event of expropriation, Law No. 91-11 of 27 April 1991 establishing the rules on compensation for reasons of public utility provides that prior equitable compensation is a right in accordance with Article 20 of the Constitution.

Expropriation is an exceptional procedure employed only where other means have been tried and found wanting. The declaration of public utility is preceded by an enquiry aimed at establishing the genuineness of the alleged public utility.

The amount of compensation must cover the whole of the damage caused by expropriation. It is fixed in accordance with the real value of the goods as shown by their nature or substance and their actual use by the owners or other holders of real rights or by industrial and small-scale traders.

The amount of the compensation to be allocated to the interested parties is deposited with the proper body.

An expropriation procedure can be started only if the credits needed for prior compensation of the expropriated goods and rights are available.

Any interested party may enter an appeal against the declaration of public utility before the appropriate court.

Any expropriation carried out in violation of the cases and conditions laid down by law is null and void and constitutes an abuse which may give rise to compensation via the courts, apart from any other sanctions required by existing legislation.

Question 20

Can you confirm that direct foreign investment is possible in its two forms:

- **Legally established subsidiary;**
- **branch?**

Reply

The Legislative Decree on investment promotion does not lay down any special provisions contrary to direct foreign investment, in any legal form whatsoever, in one or more sectors of an industry, except where one of the economic activities for the production of goods or services by that industry is explicitly reserved by a legislative text (Article I, Title I).

The activities explicitly reserved by legislation (Water Code, Transport Code, Mine Code etc.), excluding the traditional State monopolies (tobacco and matches, alcohol, gunpowder and explosives), are becoming increasingly open to private investment.

(e) Price and competition policies

Question 21

Please supply us with a complete HS 6-digit list (including a tariff description) of all products still subject to price control.

Reply

The list of products the prices of which are fixed and controlled for 1997 is as follows:

- 27.10.00.13 "normal" grade petrol
- 27.10.00.12 "super" grade petrol
- 27.11.12.20 LPG fuel
- 27.11.12.20 LPG bulk
- 27.10.00.41 diesel
- 27.10.00.44 fuel oil
- 27.11.13.20 butane
- 27.11.12.20 propane
- 27.16.00.00 electricity

- 27.11.11.00 domestic natural gas
- 11.01.00.00 common flour
- 19.05.10.00 ordinary and improved bread
- 04.01.20.10 packaged pasteurized milk
- 22.01.90.00 drinking water
- 10.01.10.90 durum wheat
- 10.01.90.90 common wheat

Question 22

Please explain how "controlled prices" are determined?

Reply

When the price of a good or service is subject to the fixed-price regime, prices are determined on the basis of proposals for reviewing or updating prices or tariffs submitted by the enterprise(s) concerned to the trade administration.

The proposals are accompanied by remarks and detailed notes and by the enterprise's summary accounts and other useful information justifying the request.

The proposals are discussed with the administration with a view to embodying the measures in a regulation.

Question 23

Please supply details about all price restrictions likely to be maintained until the end of 1998.

Reply

The price restrictions likely to be maintained until the end of 1998 concern the products listed in the reply to question No. 22. However, this list is liable to be reduced in 1998 in the light of the state of the market and competition.

Order No. 95-06 of 15 January 1995 on competition set out the principle of price freedom except for certain products which the State considers to be strategic and the price of which may be fixed. This exception applies only in serious situations (severe and lasting disturbance of the market, natural disasters etc.).

Question 24

Please supply all details concerning the subsidy plan for pasteurized milk. Who will benefit?

Reply

The pasteurized milk subsidy was abolished on 1 January 1997 in accordance with the 1997 provisions of the Finance Law.

Since this product was subsidized, the beneficiaries of the subsidy have been the public regional milk authorities (centre, west and east).

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE

1. Powers of the executive, legislative and judicial branches of government

Question 25

Article 74 of the Constitution provides that the President of the Republic as Head of State concludes and ratifies treaties. Does the Government or Parliament play a part in choosing legislation or concluding a treaty?

Reply

The principle is that the President of the Republic decides and conducts the foreign policy of the nation according to Article 77 A13 of the Constitution. In this capacity, he concludes and ratifies international treaties.

However, the power of the President of the Republic to conclude and ratify international treaties is subject to the prior approval of Parliament in certain matters exhaustively listed in Article 131 of the Constitution. This Article provides that "Armistice agreements, peace, alliance and union treaties, treaties relating to State frontiers, treaties on the status of persons and treaties involving expenditure not provided for in the State budget shall be ratified by the President of the Republic after express approval by each of the two Chambers of Parliament."

In addition to the cases mentioned in the above Article, the President of the Republic possesses supreme power to ratify international treaties without the approval of Parliament.

With regard to the Head of Government, the latter does not have any decision-making role in the conclusion of international treaties. However, in practice, negotiations for the conclusion of such treaties are handled by the government through the Ministry of Foreign Affairs and the technical ministries concerned.

Question 26

The role of the Head of Government includes the signing of executive decrees. Does the Constitution fix limits as regards the content of such decrees? Does this require the prior consent of Parliament and/or the President? What happens if Parliament and/or the President do not agree on an executive decree which the Head of Government proposes for signing?

Reply

As regards individual executive decrees, Article 85 of the Constitution empowers the Head of Government to make appointments to State posts without prejudice to the provisions of Articles 77 and 78 of the Constitution on the powers and prerogatives of the President of the Republic. It should be noted that these decrees are liable to a legality check by the administrative chamber of the Supreme Court on appeal by the injured person.

The prerogatives so far allocated to the administrative chamber of the Supreme Court are, from the point of view of the provisions of the Constitution as amended on 28 November 1996, guaranteed by the Council of State, the body regulating the activity of the administrative courts.

As regards regulatory executive decrees, these relate to matters other than those reserved for the law and other than those coming under the rule-making power of the President of the Republic.

The Head of Government derives his rule-making power from paragraph 2 of Article 125 of the Constitution, which provides that "The application of the laws comes within the regulatory domain of the Head of Government."

Regarding the second part of the question, the signing of executive decrees does not require the approval of the President of the Republic or of Parliament since these decisions are part of the domain reserved for the Head of Government.

It is essential, however, that these decrees should be carried out in strict observance of the legal provisions they are designed to implement.

Because he is appointed by the President of the Republic, it is clear that the Head of Government may not take decisions running counter to the guidelines and programme of the President of the Republic, who is alone responsible to the people.

Actions by the Head of Government must likewise be compatible with the execution of a programme adopted by Parliament but also with the strict application of laws passed by the latter.

All these limitations therefore constitute signposts enabling the powers of the Head of Government to be exercised within a consistent framework.

Nevertheless, where an executive decree conflicts with a law, any person injured thereby is entitled to appeal to the administrative chamber of the Supreme Court with a view to having the effects of the decision in question on his person declared null and void. The administrative chamber of the Supreme Court does not, however, possess the power to rescind an executive decree. Under the new Constitution adopted, such appeals will have to be made to the Council of State once it has been installed.

On the other hand, on referral to the President of the Republic, the President of Parliament or the President of the Council of State, the Constitutional Council has the power to rescind an executive decree judged to be unconstitutional. This represents an extreme case inasmuch as the President of the Republic, who exercises hierarchical power over the Head of Government, can ask the latter to revoke his executive decree, with no need for arbitration by the Constitutional Council.

Question 27

**What process is necessary to complete the national procedures for accession to the WTO?
Will the accession protocol of Algeria prevail over national legislation?**

Reply

Algeria has no special procedure requiring an international convention to be incorporated into the legal system.

Such a convention is an integral part of national legislation as soon as it is ratified by the President of the Republic. Under Article 132 of the Constitution, it acquires a legal authenticity greater than the law.

Accordingly, duly ratified international treaties are placed second in the hierarchy of legal texts, after the Constitution and before the law. A law contrary to the treaty cannot be implemented as the provisions of the treaty take precedence.

The Constitutional Council clearly stated in Decision No. 1/DLCC/89 of 20 August 1989 the constitutional principle that treaties take precedence over the law, inferring from this that anybody could rely on them before the courts.

"Whereas after its ratification and upon its publication any convention shall be incorporated into national law and, pursuant to Article 132 of the Constitution, acquires an authority exceeding the law..." (extract from the aforementioned decision).

2. Government entities responsible for the elaboration and implementation of foreign trade policy

Question 28

How are powers divided between the Ministry responsible for trade and the Ministry responsible for foreign trade (page 22, WT/ACC/DZA/1)?

Reply

The Trade Ministry is the holder of all powers relating to domestic and foreign trade. There is no foreign trade ministry.

4. Possible legislative programmes or plans to modify the regulatory regime

(a) Regime applicable to import and export operations

Question 29

Are there any agricultural products affected by the draft Order on foreign trade concerning prohibited products, because they prejudice safety, public order, health, morality, environment, national heritage and protection of certain animal and plant species (page 25, WT/ACC/DZA/1)?

Reply

The draft Order on foreign trade does not cover any prohibition affecting agricultural products. The existing export restrictions will, of course, be maintained.

Question 30

A substantial increase in foreign trade in goods is forecast for the five years ahead amounting to 60 per cent for exports and 50 per cent for imports (page 19, WT/ACC/DZA/1). What assumptions are these forecasts based on?

Reply

The forecasts of an increase in the foreign trade of Algeria amounting to 60 per cent for exports and 50 per cent for imports are based on the following assumptions:

As regards hydrocarbon exports, the average reference price per barrel of oil is estimated at US\$19 for the year 2000. Exported quantities will rise by 50 per cent for crude oil and natural gas.

These rises will be due mainly to new oil strikes coming on-stream and to the development of the natural-gas network between Algeria and Europe (doubling of the eastern gas pipeline and a phased increase in the western gas pipeline).

Non-hydrocarbon exports are forecast to reach a level of around US\$2 billion in the year 2000. This forecast is in line with the goals set for restructuring of the industrial production system.

As regards imports, the increase in physical flows is due particularly to the revival in industrial activity and in investment and to the increase in foreseeable demand for popular basic consumer products as a result of population growth.

(d) Supervision of foreign trade

Question 31

Please supply details about the present position regarding the adoption and/or implementation of the draft Order on foreign trade mentioned in this section.

Reply

The foreign trade bill is still in the study stage.

Question 32

Please send a copy of the draft Order on foreign trade and of the Customs Code to the Working Party in a language of the WTO.

Reply

The Customs Code is being submitted to the WTO Secretariat. The foreign trade bill is not yet in its final form.

5. Laws and legal acts

(a) List of laws and legal acts regulating the activity of the customs authorities

Question 33

Reference is made to the foreign trade bill. Is this the same as the draft Order on foreign trade? If not, please send us a copy.

Reply

There is no difference between the foreign trade bill and the Order. They both refer to the same draft legislation.

Question 34

As regards arbitration, it is stated that the Code of Civil Procedure has been expanded to make international arbitration possible (page 44). What changes does this imply as regards the procedure for requesting compensation for foreigners suffering prejudice following the instances of nationalization which occurred at the time of Algerian independence?

Reply

International arbitration was introduced in Algeria by Legislative Decree No. 93-09 of 25 April 1993 amending and supplementing Order No. 66/154 of 8 January 1966 on the Code of Civil Procedure in a chapter headed "Measures relating to international trade arbitration".

International arbitration as provided for in Article 458*bis* of the above text concerns the settlement of disputes relating to international trade interests between two trading parties of which at least one has its headquarters or domicile abroad and which have concluded an arbitration agreement.

The arbitration provided for in the Code of Civil Procedure therefore does not concern the situation of foreigners whose property was nationalized following independence.

(b) Laws and legal acts relating to:

(a) Non-tariff regulation of imports

Question 35

This bill makes it possible to apply import licensing measures and temporary quotas. What conditions will result in the application of such measures?

Reply

The foreign trade bill provides for the possibility of recourse to import licensing and the introduction of temporary quotas.

An import licence will be issued automatically in conformity with the WTO import licensing agreement.

With regard to temporary quotas, these can be implemented particularly in the following cases:

- To protect a specific branch of national production against an unforeseen increase in imports which damages or threatens to damage it seriously (safeguard measures);
- An upset in the balance of payments (Article XVIII of GATT 1994) incompatible with the Structural Adjustment Agreement concluded with international financial institutions (IMF-IBRD).

In any case, recourse to this type of temporary measure will take place in conformity with the relevant rules laid down by the WTO Agreements.

Question 36

Does Algeria undertake to apply the measures on import quotas and licences in a way which is fully compatible with WTO rules?

Reply

Yes.

Question 37

Algeria indicates that no non-tariff import regulations are currently in place, but that the foreign trade bill provides for the possibility of justified recourse to import licensing and the temporary limitation of imports (quotas) (pages 29, 48 and 68 of WT/ACC/DZA/1). Will Algeria bring its foreign trade bill into conformity with the provisions of the Agriculture Agreement? What does Algeria consider "justified recourse"? How will Algeria administer import licensing?

Reply

Algeria will bring its foreign trade bill into line with all WTO rules and disciplines and, of course, with the provisions of the Agriculture Agreement. "Justified recourse" refers to all the provisions of the WTO Agreements which lay down that in particular situations, especially when unforeseen imports threaten national industries (safeguard measures), a country may resort to a number of temporary measures aimed at restricting imports in order to cope with serious balance-of-payments difficulties or to combat, *inter alia*, dumping practices.

The licensing regime which Algeria is planning to implement for its statistical information purposes will be administered in accordance with the appropriate WTO Agreement. Licences will be issued automatically to all foreign-trade operators on request to the foreign-trade administration.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import regulation

(b) Characteristics of the national customs tariff

Question 38

Please supply copies of the customs tariff, preferably in electronic form, and a list of current import duties.

Reply

The customs tariff including the current rates for import taxes, customs duties and VAT is available in electronic form.

Question 39

Has Algeria gone over to the 1996 harmonized nomenclature system. If not, when will it do so?

Reply

The amendments to the harmonized system nomenclature adopted under the auspices of the World Customs Organization came into force on 1 January 1996.

Question 40

Please confirm that Algeria has no specific or combined customs duties?

Reply

Algeria does not possess any specific or combined customs duties. All customs duties are *ad valorem*. However, it does not rule out the use of such customs duties in the future.

Question 41

Could Algeria please provide a breakdown of which agricultural products are subject to each of the customs duty rates: exemption, 3, 7, 15, 25, 40 and 60 per cent (page 46, WT/ACC/DZA/1)? Could Algeria confirm that the maximum current applied tariff rate is 50 per cent? What is the maximum applied tariff rate for agricultural products? Could Algeria provide details of applied tariffs by tariff chapter?

Reply

The maximum current rate of customs duty fell from 60 per cent in 1995 to 50 per cent in 1996 and to 45 per cent in 1997, i.e. a reduction of 25 per cent over two years. This maximum rate applies to all imports and, of course, to imports of agricultural products.

This being the case, it should be noted that the major proportion of imports of agricultural products is subject to very low customs duties.

Regarding the breakdown of the applied rates for agricultural products, the whole of the current Algerian customs tariff is attached on diskette.

Question 42

How does Algeria consider the customs fee, the fee for customs formalities as well as the basic rules which are to be observed for carrying out import transactions (page 45, WT/ACC/DZA/1) to be consistent with Article VIII of GATT 1994?

Reply

The customs fee and the fee for customs formalities were introduced only in order to cover the approximate cost of the services provided by the customs administration.

All forms and other services, including those involved in using the data-processing system, are completely free of charge for all users.

The question whether these fees are in conformity with the provisions of Article VIII of GATT 1994 is currently being assessed.

As regards customs formalities, Algeria, which has been a member of the World Customs Organization since 1966, has adopted the majority of the conventions and recommendations drawn up by that organization. The existing formalities are based as a whole on current rules and practices on the subject at international level.

(c) Tariff quotas, tariff exemptions

Question 43

Please supply more detailed information on tariff exemption, comprising a six-digit HS list of all articles qualifying for exemption, and on the criteria adopted in deciding to grant exemption.

Reply

The number of tariff subheadings exempted from customs duties (zero rate) currently amounts to 100 (see diskettes on the 1997 customs tariff).

These consist mainly of:

- Four subheadings in Chapter 10 relating to cereals for use as seed;
- 38 subheadings in Chapters 27 and 34 relating to oil products enjoying special treatment under the customs arrangements for exempted factories;
- eight subheadings for military equipment;
- 21 subheadings for certain air and sea transport equipment;
- 13 subheadings relating to medical or paramedical equipment and contraceptive products;
- 12 subheadings concerning art objects or antiques;
- four subheadings relating to certain specific goods (monetary gold, bank notes, stamps etc.).

Question 44

As a WTO Member, would Algeria continue to maintain tariff preferences and exemptions for imports from countries of the Arab Maghreb Union (page 47, WT/ACC/DZA/1)? Could Algeria provide a list of products to which such preferences would apply?

Reply

The Treaty setting up the Arab Maghreb Union (17 February 1989) provides for the eventual introduction of the free movement of persons, services, goods and capital between the five countries which are members of the Union.

Two Conventions have been signed in connection with the implementation of these objectives:

- The Trade and Tariff Convention concluded in 1991, which confers exemption from customs duties, taxes and charges of equivalent effect on all imported products originating in member countries; and
- the Convention of 23 July 1990 specifically covering trade in agricultural products.

However, a start has not yet been made on applying these two Conventions.

With regard to the preferences and exemptions granted on imports coming from certain countries of the region under preferential bilateral trade agreements, it should be recalled that, despite their long-standing nature, the level of intra-Maghreb trade which they generate accounts for scarcely 3 per cent of the region's foreign trade.

These same agreements are due to be wound up in the more comprehensive framework of the proposed free-trade zone currently under discussion between the AMU member countries.

Regarding the lists of products to which tariff preferences would apply, it should be mentioned that, under the trade and tariff convention of 1991 which is not yet in force, AMU member countries have also drawn up the list (below) of products which will be completely freed from all tariff and non-tariff barriers:

25.02	iron ore;
ex. 25.07	clay, kaolin and bentonite;
ex. 25.11	baryta;
ex. 25.15	uncut marble;
ex. 25.20	crude gypsum;
ex. 25.23	white cement;
ex. 26.01	copper ore;
ex. 27.04	coke and semi-coke;
ex. 28.01	chlorine;
ex. 28.05	mercury;
28.16	ammonia;
ex. 28.40	super triple polyphosphate (STTP);
ex. 29.01	ethylene;
ex. 29.35	furfural;
ch. 30	medicines;
ch. 31	fertilizers;
33.01	essential oils;
ex. 38.11	agricultural pesticides;
ex. 39.02	polyvinyl chloride;
41.01	untreated skins;
ch. 45	cork and cork articles;
47.01	paper paste;
53.01	raw wool;
55.01	raw cotton;
68.01	articles of marble;
68.06	abrasives;
ex. 70.19	glass pearls;
73.01	pig iron;
73.02	iron alloy;
73.08	iron blanks;
73.12	band iron or steel;
73.13	iron sheets and plates;
ex. 73.18	steel tubes and pipes excluding welded tubes;
73.20	pig iron, iron or steel accessories and piping, (connectors, elbow joints);
ex. 73.21	metal frameworks;
ex. 73.37	steam boilers for central heating;
ex. 73.37	radiators for central heating;
ex. 76.10	aluminium packing;

78.01	raw lead excluding lead waste;
82.01	agricultural, horticultural and forestry tools;
84.06	motors;
ex. 84.10	hydraulic pumps;
ex. 84.22	lifting machines and equipment;
84.23	public works equipment;
ex. 84.28	machines and equipment for agriculture;
84.45	machine tools for stoneworking;
84.47	machine tools for working other materials;
84.53	micro-computers;
ex. 85.01	electric motors;
ex. 85.11	electric welding machines and equipment;
ex. 85.13	telephone switches;
85.25	electric insulators;
86.07	vans and wagons;
90.17	disposable syringes;
90.02	medical furniture.

The Convention on trade in agricultural products provides in Article 2 that "The Contracting Parties undertake to exempt agricultural products of local source and origin and traded directly between them from customs duties, taxes and charges of equivalent effect imposed on importation."

Article 3 refers to the undertaking by the Contracting Parties to "exempt agricultural products of Maghreb origin traded directly between the parties from non-tariff measures. The list of the said products is established by the Food Security Commission".

On 30 October 1990 the aforementioned Commission adopted the following list of agricultural products from which non-tariff barriers have been removed:

- Dried pulses;
- vegetables;
- fruit;
- seeds;
- plants;
- red meat;
- fish;
- preserves (tomatoes and fish).

Finally, it should be stated that there is not yet any list of agricultural products exempted from customs duties, taxes and charges having equivalent effect.

(d) Other duties and charges, including charges for services rendered

Question 45

GATT 1994 drew a distinction between taxes levied on imports but not on national products (which are subject to GATT provisions on customs duties which may approach zero (subject to Article VIII and limited to the approximate cost of the services)). What is the level of warranty fees on gold and precious metals and of the slaughter tax? Are these not inconsistent with the provisions of Article VIII of GATT 1994?

Reply

Taxes on gold and precious metals and the slaughter tax are in fact domestic taxes which are levied both on imported products and on products made locally.

These charges are therefore not covered by the provisions of Article VIII of GATT 1994.

Question 46

Does Algeria intend to eliminate these additional taxes?

Reply

As regards domestic taxes (excise duties), these charges will shortly be abolished so as to bring the products concerned within the scope of VAT, as was done in 1996 for oil products and alcohol.

Question 47

Does Algeria agree that, as *ad valorem* duties, the fee of 2 per cent for customs formalities and the fee of 0.4 per cent (four per 1,000) for customs fees are inconsistent with Article VIII of GATT 1994?

Reply

Algeria considers that the two customs fees (2 per cent and 4 per 1,000) reflect the approximate cost of the services rendered. However, this question is still under close examination.

Question 48

What are Algeria's plans to convert import fees into a tax reflecting the cost of the services?

How is it proposed to carry out these changes?

Reply

These two fees are designed exclusively to cover the approximate cost of the customs services received by foreign trade operators who take advantage of these services without paying other fees or charges. All forms and other services, including those involved in using the data-processing system, are free of charge.

- (e) Quantitative import restrictions, including prohibitions, quotas and licensing systems

Question 49

Please supply a complete list (eight-digit HS) of all import restrictions maintained, indicating the type of restriction applied and giving reasons.

Reply

There is no economic restriction at present on imports.

Question 50

The possibility of introducing import control, including quotas, is explicitly mentioned. Have any specific measures already been studied? If so, please give details and the WTO provisions relating thereto.

Reply

There are at present no specific control measures apart from quality control and control on the conformity of products with current rules.

Question 51

Is it to be understood that Algeria does not maintain any quantitative restrictions except for those on products such as narcotic drugs and weapons?

Reply

Algeria does not currently maintain any quantitative restrictions apart from those on products such as narcotic drugs and weapons.

However, Algeria does not rule out the use of such quantitative restrictions in the event of serious difficulties, in compliance with the relevant requirements of the WTO Agreements.

Question 52

Could Algeria supply a list of all products whose import is currently prohibited?

Reply

There is no absolute prohibition of an economic nature at present. The only prohibitions are those brought in for reasons of public morality, public order, public safety, protection of human life and health and animal protection and objects of artistic, historical or archaeological value or industrial and commercial property, in accordance with the provisions of Article XX of GATT 1994.

- (f) Import licensing procedures

Question 53

Does Algeria have plans to develop an import licensing system?

Reply

A study is currently in progress on the development of a system of automatically issued licences, for statistical purposes.

Question 54

Does Algeria intend to establish an import licensing system in the foreseeable future (page 48, WT/ACC/DZA/1)?

Reply

Algeria plans to introduce an automatic licensing procedure for statistical information purposes. In any case, Algeria intends to apply in this connection all the provisions laid down in the WTO Agreement on Import Licensing Procedures.

(g) Other border measures

Question 55

It is noticed that the import of certain products is subject to prior authorization. Please explain why this is not regarded as an import licence. Please supply a complete list of all products (eight-digit HS) which are subject to prior authorization and the reason for this requirement. Please explain, in stages, the process whereby prior authorization is granted, indicating the time needed and the criteria adopted for granting or refusing authorization.

Reply

The importation of certain products (medicinal products, hunting weapons, bookshop articles and animal and plant products) is subject to prior authorization by the departments concerned. This authorization can be regarded as a non-automatic import licence from the point of view of the provisions of the WTO Agreement on Import Licences.

Prior authorization by the appropriate department is required before importation.

For imported medicinal products, these must appear on the Ministry of Health and Population list of medicines which may be imported (in accordance with Article XX of GATT 1994).

As regards firearms, the holding of these is strictly prohibited in Algeria with the exception of hunting weapons which may be imported freely, subject to the technical agreement of the authorities concerned and for obvious reasons of security.

With regard to bookshop articles (newspapers, periodicals, literary and cinematographic works), the importation of these products is also subject to the prior authorization of the Ministry of Information and Culture, essentially for religious reasons, particularly public morals (in accordance with Article XX of GATT 1994). For animal and plant products, importation is subject to prior authorization by the departments of the Ministry of Agriculture and Fisheries.

These authorizations are issued on request to the issuing authority, subject to justification being provided of the status of the importer and to a description (or listing) of the product (or products) to be imported.

Question 56

Could Algeria provide a list of products which are currently subject to non-tariff trade restrictions and other border measures (page 48, WT/ACC/DZA/1)?

Reply

No product is currently subject to non-tariff restrictions or other external measures, apart from those for products such as narcotic drugs and weapons.

However, Algeria does not rule out recourse to non-tariff trade restrictions or other border measures in the event of serious difficulties, with due observance of the relevant requirements of the WTO Agreements.

Question 57

Does Algeria apply the Arab League boycott against Israel, a Member of the WTO? Please specify the trade regime in force in Algeria *vis-à-vis* Israel.

Reply

As a member of the League of Arab States, Algeria applies the different degrees of the embargo decreed by this institution in 1954 with regard to products originating in Israel. This measure is of a political and non-commercial nature.

The boycott is applied for reasons of national security in accordance with the provisions of Article XXI of GATT and of Article XIV of the General Agreement on Trade in Services relating to general exceptions.

(h) Customs valuation

Question 58

Please complete the questionnaire on customs valuation.

Reply

The questionnaire on customs valuation is being formalized and will be sent to the WTO Secretariat upon completion.

(j) Preshipment inspection

Question 59

Does Algeria intend to introduce preshipment inspection in the future?

Reply

Algeria does not propose to employ preshipment inspection companies. However, Algerian enterprises may resort to the services of these companies on a contractual basis.

Question 60

Will Algeria undertake to ensure that all preshipment inspection activities take place in full conformity with WTO rules?

Reply

If Algeria introduces preshipment inspection, it undertakes to ensure that this activity will take place in strict observance of the appropriate WTO rules.

(k) Application of internal taxes on imports

Question 61

What is the level of each of the taxes listed in this section? In each case, is the basis of taxation for imported products the same as that for national products?

Reply

The level of taxes listed is the following (in Algerian Dinars):

- Slaughter tax: DA 5 per kg. of imported or locally produced meat, of which DA 1.50 are allocated to the animal-health protection fund;
- warranty fees on gold and precious metals:
 - DA 1,000 per kg. of gold;
 - DA 500 per hectogramme for platinum articles;
 - DA 50 per hectogramme for silver articles.

These warranty fees are levied when the articles concerned, whether imported or locally produced, are hallmarked.

Gold and platinum articles are also liable to VAT at the rate of 21 per cent, while silver articles are taxed at 7 per cent.

(l) Rules of origin

Question 62

It is stated that Algeria does not apply the same rules of origin among countries. The Agreement on Rules of Origin stipulates that the rules are administered in a consistent, uniform, impartial and reasonable manner. Could Algeria explain how it intends to make its rules consistent with the Agreement on Rules of Origin?

Reply

Algeria applies the general rules on the determination of origin. Under common law only one definition of origin is applied. Algerian rules are perfectly consistent with the requirements of the

Agreement on origin since they do not constitute barriers to trade and likewise are not likely to cause deflection of trade.

Algeria applies particular definitions of origin under the trade and tariff agreements concluded with certain countries. These particular rules are not actually covered by the Agreement on Rules of Origin, which is aimed at the long-term harmonization of rules of origin other than those concerning the grant of tariff preferences. It should be pointed out that Algeria participates in the proceedings of the committee responsible for drafting common-law rules of origin under the auspices of the World Customs Organization.

However, an assessment has been started in order to determine the kind of actions needed for adaptation to the WTO Agreement on Rules of Origin.

(m) Anti-dumping regime

Question 63

It appears that the Algerian legislation described in this section of the memorandum takes retaliatory measures (on a basis of reciprocity) against the practices of third countries which take discriminatory measures against Algeria.

Give details about Algeria's requirements and about the procedures for taking such measures.

What are the WTO rules governing the application of these measures?

Reply

When Algeria is subjected to discriminatory measures by a partner country, it can apply the same measures. These are not retaliatory measures but simply a matching of the conditions to which it is subjected.

The application of such reciprocal measures is laid down by executive decree in accordance with Article 8 of the National Customs Code.

However, after its accession Algeria will adapt its legislation in the matter to bring it into line with WTO rules.

Question 64

Please confirm that no anti-dumping legislation of the type provided for in Article VI of the GATT 1994 and of the WTO Anti-Dumping Agreement is in force.

Reply

The Customs Code covers anti-dumping. Executive Decree No. 92-122 of 23 March 1992 lays down the procedures for applying the provisions on anti-dumping and countervailing duties, the amount of which may not, however, exceed the dumping margin, the premium or subsidy.

Question 65

Could Algeria explain more specifically the rules on the invoking of anti-dumping measures and give examples of anti-dumping measures previously taken?

Reply

The Customs Code (Law No. 79-07 of 21 July 1979) introduced the possibility of recourse to anti-dumping measures.

In this connection, Executive Decree No. 92-122 of 23 March 1992 was adopted. Its purpose was to lay down the procedures for implementing the provisions on the anti-dumping or countervailing duties provided for in Article 8 of Law No. 79-07 of 21 July 1979 on the Customs Code.

The Decree defines anti-dumping and countervailing duties as being increases in customs duties introduced in order to protect national production from unfair commercial competition practices.

The measures are triggered after consultations initiated at the request of the Minister concerned or of a production enterprise or sector of activity whose production is being harmed.

A commission set up under the Minister for the Economy is responsible for examining requests and reporting to the Minister.

Anti-dumping or countervailing measures were taken in 1992 under Executive Decree No. 92-123 of 23 March 1992.

(n) Countervailing duty regime

Question 66

Provide further details about the countervailing duty regime. For example, what subsidy practices is the countervailing duty regime designed to block?

What degree of damage enables such action to be taken?

What are the procedures for adopting such measures?

Reply

Countervailing duties are increased custom duties which can be introduced to protect national production from unfair commercial competition practices resulting from the subsidies provided by certain countries.

The existence of injury is based on established facts or on dossiers containing an assessment of the injury based on examination of all factors influencing the production situation concerned.

These duties have been applied only once, in 1992, and lasted a year.

In general, from the point of view of a developing country, this question of injury caused to the domestic economy by subsidies in the exporting countries (or by dumping practices) is quite new inasmuch as trade was previously subject to substantial non-tariff restrictions.

For the future, Algeria expects to take appropriate steps to use all the resources permitted by the relevant WTO Agreements.

- (o) Safeguard regime

Question 67

Please supply details about the safeguard regime, the substantive conditions and the procedures for adopting safeguard measures.

Reply

Safeguard measures may be taken as provided for in the WTO Agreement.

Question 68

Could Algeria explain about the conditions under which safeguard measures are invoked, as well as about laws and regulations on safeguard measures?

Reply

In anticipation of its accession to the WTO, the conditions under which Algeria might have recourse to safeguard measures are those laid down in the GATT 1994 Safeguards Agreement pursuant to Article XIX of GATT 1994, which allows a WTO Member country to take safeguard measures in order to protect a specific branch of national production against an unforeseen increase in imports which inflicts or threatens to inflict serious harm on it.

2. Export regulation

- (b) Customs tariff nomenclature, types of duties, duty rates, weighted averages of rates

Question 69

Confirm that no duty or tax is imposed on exports.

Reply

There are no customs duties on exports at present. The only charge affecting exports amounts to four per 1,000 in the same way as for imports, in respect of the customs fee due at the time of the declaration.

- (c) Quantitative export restrictions, including prohibitions, quotas and licensing systems

Question 70

Please supply a complete list (eight-digit HS) of all restrictions maintained on exports, indicating the type of restriction applied and the justification for the measure.

Reply

The eight-digit HS tariff headings for export restrictions are the following:

- 0102 10 00: live breeding animals of the bovine species;
- 0104 10 10: live breeding animals of the ovine species;
- 0508 00 00: raw and semi-finished coral;
- 0602 99 90: palm-tree seedlings;
- 97 01 10 00, 97 01 90 00, 97 02 00 00, 97 03 00 000, 97 05 00 00, 97 06 00 00: objects of national interest from the historical, artistic or archaeological standpoints.

All these headings are currently the subject of export restrictions. This measure is aimed at preservation of the national heritage.

All these export restrictions are consistent with Article XX of GATT 1994, in particular paragraphs (b) on conservation of animal life and plant conservation and (f) protection of national treasures.

(e) Other measures

Question 71

What criteria are used for the establishment of minimum prices?

Reply

The criteria used to work out a minimum export price for the products in the reply to question 72 are:

- Production cost;
- level of national production (supply);
- prices on the international market.

Question 72

What are the minimum price levels for exports of dates and raw hides or skins.

Reply

The minimum reference price for the products in question are:

For raw hides and skins:

Category	Minimum reference price (f.o.b. - Departure Algeria)
- Sheep	F 35 each
- Cattle	US\$2.20/kg.
- Wool	US\$1.60/kg .

For dates:

Variety	Minimum reference price (in F/f.o.b./kg.)
Deglet Nour/bunches	15.00
- Hand (boxed)	14.00
- 1 kg.	13.50
- 3 to 5 kg.	13.00
Deglet Nour/commercial	
- 1 kg.	9.50
- 5 to 10 kg.	9.00
Deglet Nour/packaged	
- Boxes 252 kg.	Free
- Boxes 500 kg.	Free
- 1 to 10 kg.	Free
Deglet Nour/standard	
- 10 kg.	6.00
Deglet Nour frezza (black dates)	
- 10 kg.	6.00
Common dates	6.00
- Tafezouine, natural (1 kg.)	Free
- Tafezouine, packaged (250 kg. to 500 kg.)	6.00
Date paste	Free

The above-mentioned minimum reference prices are valid for 1996.

Question 73

Is the use of the minimum export price compulsory? What happens if the products to be exported are valued below the minimum price?

Reply

Application of the minimum reference price is compulsory. Each marketing year, as regards dates generally in October at the time of the date harvest, the Ministry of Trade reviews the minimum reference prices after consultation with the trade associations concerned (producers and exporters).

A product whose price falls below the fixed minimum reference price may not be exported.

Question 74

Is dismantling of the minimum prices required or planned? How soon?

Reply

There is no plan at present to dismantle the minimum export price measures.

Question 75

Does Algeria intend to relax the conditions for repatriating the proceeds of export transactions within a foreseeable time-limit? (See section IV.2.a)

Reply

The obligation to repatriate export proceeds remains a basis of the exchange regulations at this stage of the reforms. Nevertheless, in order to take account of export promotion requirements in a highly competitive world context, the time limits for repatriation are relaxed under the financing terms granted to customers.

(f) Export financing, subsidy and promotion policies

Question 76

What measures are taken "to impose product quality" which are financed by the export promotion fund? What conditions regarding export financing are mentioned in

Reply

The Finance Law for 1996 set up a special export promotion fund (Special Account No. 302.084).

This fund can indeed assume responsibility for financing the costs of adapting products to foreign markets from the point of view of quality and presentation.

The resources of this fund come from the allocation of 10 per cent of the proceeds of the Additional Specific Tax (AST), which is levied equally on imported and nationally produced products.

Question 77

Does the CAGEX operate within the limits and criteria of paragraphs (j) and (k) of the illustrative list of export subsidies (Annex 1 to the Agreement on Subsidies and Countervailing Measures)?

Reply

CAGEX is an export insurance and credit-guarantee company. It does not give any subsidies to exporters. The latter pay the whole amount of an insurance premium when an insurance contract is signed with CAGEX.

CAGEX is not a State institution responsible for promoting exports and encouraging them through incentives. It simply insures those exporters which so desire against the risks of foreign-trade operations (various commercial risks).

(h) Import duty drawback schemes

Question 78

Please confirm that "the reimbursement of import duties ... under the drawback scheme does not exceed the amount of the duties levied on inputs incorporated in the goods exported ...".

Reply

Although provided for by the Customs Code, the drawback has never been used. In other words, exporters have never recovered the duties and taxes paid in the pre-production stages on inputs incorporated in the goods exported.

3. Internal policies affecting foreign trade in goods

(a) Industrial policy

Question 79

Please supply details about the means which Algeria intends to use in order to increase export activity and reduce its dependence on imports, both of which are objectives of its industrial restructuring policy.

For example, can Algeria explain whether the promotion of (import) substitution activities producing inputs means that internal local purchasing requirements will be imposed on factories using such inputs.

Can Algeria also explain whether the incentive measures intended for the SMEs are applicable across the board or whether they are targeted at particular sectors or regions of the country?

Reply

Restructuring of Algerian industry is a necessity which has already become evident, and now increasingly so, as a condition for its survival. This has become particularly clear since the liberalization of the economy and foreign trade and the reform of the macroeconomic framework led to the total

abolition of systematic protection of the domestic market against competition from foreign manufactures, as well as of the subsidies which certain local manufactures previously enjoyed.

In this general context, the prime objective of restructuring policy is to bring domestic industrial manufacturing activities up to a level of organization and performance which will better enable them to face up to foreign competition both on domestic markets and on the markets of our foreign trading partners. As in the hydrocarbons sector, these activities must be organized in such a way that they can progressively help to generate the resources needed for the functioning and development of the country's economy.

This objective is based on two essential facts:

- The inability of the hydrocarbons sector on its own to continue to finance economic development;
- the uncompetitiveness of the Algerian economy in general and of the industrial sector in particular, which results in an abnormal situation in which exports, apart from hydrocarbons, are extremely small.

The components of the Algerian balance of trade given below illustrate this abnormal situation (base 1996):

- Total exports came to: US\$13,375 billion;
- share of hydrocarbon and gas exports: US\$12,494 billion, i.e. 93.4 per cent;
- share of exports of industrial products: US\$202 million, i.e. 1.5 per cent of total exports.

Export policy is aimed at increasing the share of exports of products and services in order eventually to bring about a more balanced structure in which hydrocarbons and gas do not represent such an overwhelming share.

The ways and means of carrying out this policy essentially involve adapting the institutional environment so as to organize the relationship between the exporting enterprise and the foreign market more effectively by providing the necessary incentives and assistance. For this purpose a legal basis must be given to State intervention in the field of export promotion by providing intermediate support areas such as the Foreign Trade Office and the Export Credit Insurance and Guarantee Fund and by the regulation and standardization of fairs and exhibitions.

The development of exports in no way signifies, of course, a reduction in imports. On the contrary, the growth in export activities will necessarily imply a matching growth in imports. Algerian industrial policy accordingly entails a growth in the overall volume of its trade and thus a more sizeable participation by Algeria, under WTO auspices, in the growth in the volume of world trade.

There is naturally no plan to lay down internal requirements of any type for factories using inputs.

As regards investment incentive measures, these are aimed at all enterprises without distinction and concern all types of investment. These measures benefit residents and non-residents without discrimination. Depending on the location and nature of the investment, advantages are granted for a specific period either for making the investment or for exploiting it.

To this end, the Investment Code provides for a number of regimes:

- General regime: granting of tax and customs advantages;
- special regime: this is split up into:
 - Specific-zone regime: granting of fiscal, parafiscal and customs advantages such as the total or partial State financing of the provision of utilities for investments made in legally specified zones;
 - free-zone regime: suspension of duties and taxes and other specific advantages such as freedom of importation and storage and exemption from bank domiciliation;
- the convention regime: this covers the contractual terms decided on between the investor and the Algerian State;
- the south regime: this concerns the granting of additional advantages over and above the measures laid down by the Code for two major "couronnes" in the Algerian south:
 - the first "Couronne" regime which concerns the Algerian deep south: with the wilayat (departments) of Tindouf, Adrar, Tamanrasset and Illizi the granting of advantages regarding:
 - Registration duties;
 - turnover taxes;
 - customs duties;
 - direct taxes;
 - reinvested profits;
 - exemptions;
 - interest rate rebates of 50 per cent;
 - 50 per cent rebate for incomes.
 - the second "Couronne" regime, which affects the zone of the high Algerian plateaux (with the wilayat of Béchar, Biskra, Djelfa, El-Bayadh, Ghardaia, Laghouat, Naama and Ouargla), granting of advantages regarding:
 - Land tax;
 - financing of 50 per cent of infrastructure expenses;
 - concessions: 50 per cent reduction;
 - 25 per cent interest rate rebate;

- exemptions;
- reinvested profits.

In addition to the advantages granted by the Investment Code, the agriculture, tourism and small-industry sectors enjoy supplementary financial, fiscal and parafiscal measures.

(b) Quality control policy, technical regulations and standards

Question 80

Could Algeria explain how it harmonizes its domestic technical regulations and standards with international standards and regulations such as those of the ISO?

Reply

Algeria has made a good start on harmonizing its domestic technical regulations and standards with international standards and regulations like those of the ISO.

As regards standardization, the adoption of domestic standards is the responsibility of the Algerian Institute for Standardization and Industrial Property (INAPI), which oversees the work of a national technical committee which takes the proceedings of specialised international organizations as its reference.

There are now 4,848 Algerian standards, including 95 approved standards which are comparable to technical regulations, and 4,753 business standards 90 per cent of which follow the ISO pattern.

As regards technical regulations, rule-making power in regard to quality, product safety and quality assurance is the responsibility of the Ministry of Trade.

In this field as well, national technical regulations are based on the international legislation to which Algeria is a party as a member, *inter alia*, of FAO (application of the CODEX Alimentarius standards), ISO and IEC.

Question 81

Does Algeria have an enquiry point which deals with conformity assessment procedures?

Reply

The Algerian bodies responsible for these procedures are:

- The Algerian Standardization and Industrial Property Institute (INAPI) under the supervision of the Ministry of Industry and Restructuring;
- the Quality Control Laboratory (CAQUE) under the supervision of the Ministry of Trade.

(c) Sanitary and phytosanitary measures

Question 82

Does Algeria foresee problems in implementing the Agreement on sanitary and phytosanitary measures?

Reply

The SPS Agreement of the WTO raises no particular problems. It permits strengthening of the basic principles of phytosanitary prevention applied to trade in plants and plant products.

Algeria, which participates regularly in IOE proceedings, applies the recommendations of the Animal Health Code (IOE).

Question 83

Does Algeria have any enquiry point on SPS?

Reply

Algeria has two enquiry points concerning SPS:

- The Directorate of Veterinary Services (DSV);
- the National Plant Protection Institute (INPV).

These two institutions come under the authority of the Ministry of Agriculture and Fisheries.

Question 84

In this connection, there is no mention concerning sanitary measures on food. Could Algeria explain about this?

Reply

Foodstuffs are the subject of two checks when they cross the borders:

- A health and plant-health check;
- a check on product quality and conformity by the border control units of the Ministry of Trade.

The exact procedures for making checks on foodstuff imports at border posts are given in the reply to question No. 106.

(d) Trade-related investment measures

Question 85

Please confirm that Algeria does not support measures which are inconsistent with the Agreement on Trade-Related Investment Measures.

Reply

In accordance with the general principles of its investment-promotion policy in the Investment Promotion Code, Algeria does not support any measures which are inconsistent with the TRIM Agreement.

(e) State-trading practices

Question 86

Are there state-owned enterprises or joint-stock companies included in the section on state enterprises which possess special or exclusive trade rights? Are there other enterprises with such rights?

Reply

There are currently no state-owned commercial enterprises or joint-stock companies included in the State commercial enterprise section which possess any right conferring on them a monopoly or an exclusive right in respect of import or export.

Question 87

Does Algeria intend to notify enterprises under Article XVII of GATT 1994 or Article VIII of the General Agreement on Trade in Services (GATS).

Reply

Algeria does not rule out having to notify enterprises under Article XVII of GATT 1994 or Article VIII of GATS. An assessment of this point is in progress.

(f) Free zones

Question 88

Please confirm that, if and when free zones or zones of free economic activity are established, they will be fully subject to the commitments entered into by Algeria in connection with its accession to the WTO and that Algeria will ensure the application of these future obligations concerning the zones, including the commitments arising from the TRIPS Agreement.

Please also confirm that, when products manufactured or imported into any zone established in future under a special tax and tariff regime existing in zones outside those mentioned, normal customs formalities, tariffs and taxes are applied.

Reply

Investments in the free zones are reserved for export-oriented activities, i.e. the marketing outside the national customs territory, the free zones included, of goods and services produced by these investments.

Trade relations between enterprises set up in the free zone and those on national territory are regarded as foreign-trade operations from the point of view of current legislation.

Authorization to make sales in Algeria in respect of a part of production is also subject to current laws and regulations, particularly those governing foreign trade.

Investments "made on the basis of capital contributions by means of freely convertible currency regularly quoted by the Central Bank of Algeria, the import of which is duly recorded by the Bank and which can be put to use in the zones known as "free zones" where import, export, stockpiling, processing or reshipment operations are carried out under simplified customs procedures", are not subject to any administrative preliminaries for the advantages laid down in the Investment Code to be obtained.

Furthermore, Article 31 (Title III) of the Investment Code stipulates that "Goods and services used in making the investment and those needed for exploiting it are freely imported".

(j) Government-mandated counter-trade and barter

Question 89

Explain how Algeria can ensure that products imported under an exchange transaction will not be marketed outside the territorial borders of the wilayat of the south of Algeria.

Reply

Article 11 of the Interministerial Order of 14 December 1994 laying down the procedures for frontier barter trade with Niger and Mali stipulates that goods imported under this head may not be marketed outside the territorial limits of the wilayat of Adrar, Ilizi and Tamanrasset.

In order to ensure that imported products are not marketed outside the borders of the three wilayat (departments) indicated, Algeria has established a customs belt inside which the local customs, trading and taxation services carry out use checks. There are also a number of measures which include:

- Barter transactions on the borders with Niger and Mali concern a specific list of products;
- the quantities of imported products may be fixed, where necessary, by the authorities of the wilayat concerned in accordance with local market requirements;
- barter transactions at borders may be carried out by any legal or natural person residing in the wilayat concerned;
- the list of traders responsible for carrying out barter transactions at the borders is fixed annually by order of the wali;
- import and export transactions within this framework must pass through a special "barter" bank account opened for this purpose. The amount of products bought for export may not exceed that declared on entry at the time of importation;
- export transactions are subject to a customs declaration to which are appended a copy of the certificate of release of the imported goods for consumption and the purchasing invoices concerning the products to be exported. These documents must accompany the trader as far as the border.

Goods authorized for barter transactions at the borders between Algeria, Niger and Mali are:

- Algerian products:
 - common dates;
 - Frezza dates, excluding the other varieties of Deglet Nour dates;
 - domestic salt;
 - domestic objects of plastic, aluminium, pig iron, iron, steel;
 - blankets;
 - local craft objects, excluding wool rugs.
- products from Mali and Niger:
 - livestock;
 - henna;
 - green tea;
 - spices;
 - dry meats;
 - turban and sari cloth;
 - millet;
 - rancid butter for local consumption;
 - dried pulses;
 - rice;
 - mangos.

Question 90

Please supply all useful information relating to this part of the Bill.

Reply

The Foreign Trade Bill lays down the principles of barter trade at the borders between Algeria, Niger and Mali.

(l) Government procurement practices

Question 91

Does Algeria intend to accede to the GPA? If not, why?

Reply

During its current transition phase, Algeria is having to deal with an in-depth restructuring of its enterprises and of the whole of its foreign trade organization and simultaneously with severe domestic social tensions. For all these reasons, it does not wish to accede to the GPA at this stage. Such accession would introduce a disturbing element in the domestic production system without in any contributing to greater openness with respect to our foreign suppliers.

Question 92

Can the Algerian Government give details of cases of fruitless invitations to tender, with what contracting parties and concerning what products? What is the total value of public procurement?

What are the main entities? What statistics does the Algerian Government possess concerning government procurement? Can you make these statistics known to the Commission and supply it with a copy of the latest law on government procurement?

Reply

It appears difficult to give a precise answer to the various elements of this question. For this there are two reasons:

- First, the very concept of government procurement has undergone a substantial change since 1991 inasmuch as previously it also covered contracts concluded by public enterprises;
- second, the management of government procurement is highly decentralized. With the exception of contracts which exceed a regulatory threshold and which come within the responsibility of the National Procurement Commission attached to the Minister for the Budget, all others are the direct responsibility of the appropriate authorizing officers.

For these reasons:

- There is no system for centrally regulating the management of government procurement and therefore no system for monitoring the management of invitations to tender and their results. Over and beyond the procurement commissions attached to the managers of public funds and issuing "a priori" agreements concerning award of the contracts which they examine, there are "a posteriori" controls carried out either by the Court of Audit, the General Finance Inspectorate (at the Ministry of Finance) or, of course where appropriate, the courts;
- the principal bodies managing government procurement are ministerial departments or their specialised agencies, regional administrations (wilayat and communes) and public institutions supported out of the budget;
- on the statistical level, the available figures concern contracts dealt with directly by the National Procurement Commission. In 1996 the latter examined contracts costing a grand total of DA 31,480 million broken down as follows:

- Algerian suppliers: DA 1,990 million;
- foreign suppliers: 29,490 million.

Decree No. 91.434 of November 1991, which regulates government procurement, is attached.

Question 93

What is the management structure of the Algerian government procurement system?

Is there a central agency which purchases on behalf of all central government agencies or do the departments keep the budgets?

How is procurement managed for local-government agencies and for other state-controlled bodies?

How do the public services (oil, gas, electricity, transport and water undertakings) manage public contracts?

Reply

There are no central purchasing authorities operating on behalf of the different government departments.

Every government department and every public-service enterprise (electricity, gas, rail transport etc.) acts for itself in purchasing goods and services for its operation and equipment.

Public commercial enterprises are governed by marketing rules. Procurement for the national market is no longer a monopoly. Every public or private operator can take part.

Question 94

Is there a central agency which monitors the application of the legal system, supervises the decisions of the committees and sanctions infringements of public law?

Reply

Purchases by administrations and public enterprises of an administrative nature go through the National Procurement Commission when they exceed a certain amount (currently DA 3 million).

Control of public expenditure is carried out "a posteriori" by auditing bodies such as the General Finance Inspectorate and the Court of Audit.

Question 95

Can suppliers who dispute the award of a contract seek redress before a national court or through a legal system?

What remedies are available?

Reply

As regards principle, any natural or legal person may go to law to defend his rights. However, as far as compensation is concerned, there are no legal precedents on the subject because Algerian courts have not yet dealt with this type of dispute.

Question 96

Are there detailed rules about the condition that notice must be published of tenders and contracts? What information must such notices contain and where are they published?

Reply

An invitation to tender is launched via the press or a legal notice. The invitation must contain the following details:

- Company name and address of the contractor;
- type of invitation to tender (open or selective, national and/or international, adjudication or competition);
- purpose of the operation;
- documents required of candidates by the contracting service;
- deadline and place for submitting tenders;
- requirements as to security, if appropriate;
- submission in the form of a double sealed envelope marked "not to be opened" and references relating to the invitation to tender;
- price of the documentation.

The notice is published in the official language and in at least one foreign language. It must be circulated as widely as possible so as to reach all potential tenderers.

Question 97

Does the existing law on government procurement stipulate conditions for the preselection of would be suppliers?

What are these conditions?

Does the law lay down procedures and conditions for the different forms of adjudication contract? What are these procedures?

Reply

Public contracts are concluded according to the following methods:

- Single tendering, subdivided into:
 - simple direct agreement;
 - mutual agreement after consultation;
- invitations to tender, subdivided into:
 - open invitations to tender;
 - selective invitations to tender;
 - selective consultation;
 - adjudication;
 - competition.

Simple direct agreement is a procedure whereby the contracting service awards the contract to a supplier with which it has chosen to enter into direct negotiation subject to a prior competition.

Use of the simple direct agreement is limited to the following cases:

- When the services can be performed only by a single co-contracting partner who enjoys either a monopoly of, or an exclusive right to, the technological process decided on by the contractor;
- when the invitation to tender proves fruitless;
- in cases of great urgency arising from a threat of imminent danger to a good or investment which excludes any delay in the tendering process;
- in the case of urgent procurement designed to safeguard the functioning of the economy or to meet the population's essential needs.

Mutual agreement after consultation is a procedure whereby the contractor awards the contract to a supplier or entrepreneur chosen after a prior competition.

The contractor initiates a competition between several partners chosen from a specified list on the basis of criteria relating particularly to their qualifications.

The competition arrangements must be made in writing (fax, telex, letter) addressed to the partner concerned without prior publicity.

Selective invitations to tender are addressed only to candidates who meet certain special conditions previously defined by the contractor.

A selective invitation to tender after preselection is a selective consultation. The preselection notice is sent out via the press in the same way as for an invitation to tender. The choice of the candidates to be preselected must be made from all tenderers who meet the conditions and qualification criteria defined by the contractor.

Preselected candidates are consulted directly by the contracting service which, in doing so, must follow the procedure for an invitation to tender, namely:

- Preparation of the consultation dossier;
- reception of tenders;
- opening of the envelopes;
- assessment of the tenders and award of the contract.

Adjudication involves a competition between suppliers or entrepreneurs in order to award the contract to the lowest tenderer (i.e. the one quoting the lowest price, provided this does not exceed the maximum threshold fixed by the contractor).

Adjudication covers simple common operations and is aimed only at international or foreign candidates installed in Algeria.

The competition is a procedure for getting professionals to compete against each other for the execution of an operation which possesses specific technical, economic, aesthetic and/or artistic features.

Question 98

How are tenders evaluated? Is price the sole criterion or are contracts assessed by reference to an economically more advantageous approach? How are the different assessment methods employed?

Reply

Tenders are not assessed only on the basis of price. The comparative analysis of the different offers has regard to various criteria laid down in Article 49 of Decree No. 91-434 of 9 November 1991. These criteria are:

- The technical and financial guarantees;
- the price, quality and period of execution;
- integration into the national economy;
- the financing terms offered by foreign enterprises;
- the commercial guarantees and product-support conditions (after-sales service, maintenance and training).

Question 99

Does the Algerian law on government procurement lay down provisions for a price and country preference system? Is such a system compulsory or optional? How does the preference system work? How is it managed?

Reply

Executive Decree No. 91-434 of 9 November 1991 on the regulation of government procurement stipulates in Article 20 that "The contracting service must resort, as a matter of priority, to available national production."

Article 21 provides that "The partner/co-contractor must undertake to resort as a matter of priority to national production."

Question 100

Does the Algerian law on government procurement provide for compensation (transfer of technology or buy-back arrangements)? How often are such arrangements negotiated on a case-by-case basis?

Reply

Algerian rules make no reference to any obligation to provide compensation.

Question 101

Does Algeria possess a system of electronic tendering for public contracts? If so, how does this system operate? If not, are there any plans to install such a system?

Reply

Algeria does not possess any electronic tendering system for public contracts and has no immediate plans to install such a system.

Question 102

Does Algeria have purchasing agreements with third countries? If so, which countries? Can you supply us with copies of these agreements?

Reply

Algeria has no short or medium term purchasing contracts with third countries, even for basic foodstuffs. Contracts are concluded as and when necessary, without any commitment to multi-annual purchases or other forms of phased commitment.

Question 103

Does the Algerian law contain discriminatory provisions concerning participation by foreigners in government procurement?

Reply

Apart from the adjudication process, there is no discrimination regarding the participation of foreigners in government procurement.

Adjudication within the meaning of Executive Decree No. 91-434 of 9 November 1996 on the regulation of government procurement is a procedure whereby the contract is awarded to the tenderer who submits the best offer. It relates to simple common operations and concerns only Algerian applicants and foreigners settled in Algeria.

Question 104

Could Algeria explain the treatment applied to foreign products, foreign services and their suppliers under the procedures set out in Decree No. 91-434 of November 1991, and under the other regulations, procedures and customary practices relating to government procurement?

Reply

As regards the organization of government procurement, Algerian regulations give precedence to domestic producers and suppliers. This precedence takes the form of:

- Reserving contracts for local suppliers;
- authorizing the letting of contracts to local suppliers when their offers are slightly less competitive than those of foreign competitors;
- giving preference in international invitations to tender to foreign suppliers who emphasise in their offers that they intend to make greater use of local products.

In general, foreign suppliers are used only for goods and services not available locally or when the supplies in question are dependent on international financing. However, foreign tenderers and suppliers must by law be treated on a basis of strict equality.

4. Policies affecting trade in agricultural products

(a) Imports

Question 105

The memorandum mentions three key objectives of Algeria's trade policy. One of them is to establish control over imports of agricultural products and foodstuffs. Does "control" in this context mean more than the legal possibility of authorising the temporary limitation of imports, as in the memorandum?

Reply

Control on the import and export of agricultural products and foodstuffs complies with a legal framework compatible with SPS rules and with current laws, namely:

- Law No. 88-08 of 26 January 1988 on veterinary health controls at the borders;
- Law No. 87-17 of 1 August 1987 on phytosanitary border controls;

- Executive Decree No. 96-354 of 19 October 1996 on procedures for assessing the conformity and quality of imported products.

Question 106

Please provide clarification of the import control systems in respect of product quality.

Reply

1. Checks by the departments of the Ministry of Agriculture and Fisheries

(a) Animals and animal products

For the control of product quality Algeria applies the recommendations of the Codex Alimentarius (FAO-WHO) and those of the IOE and bases itself on national regulations, in particular Law No. 88-08 governing veterinary medicine and animal-health protection and Decree No. 91-452 on border controls. Samples are forwarded to approved laboratories for routine analyses, e.g. microbiological, physico-chemical, isotopic analyses etc.

Health inspection at border posts comprises:

- Checking of veterinary health documents required by current regulations;
- health and quality checks in the case of animal products or products of animal origin, supplemented by any samples considered necessary for laboratory analyses;
- placing in bond when the products are of a doubtful nature;
- quarantining of live animals where necessary;
- checks on conformity with requirements relating to disinfecting in general and to prior disinfecting of the means used to transport animals, animal products and products of animal origin.

(b) Plants and products of plant origin

Plant Health Law No. 87-17 and Decree No. 93-286 institute and establish official points of entry and departure for plants and plant products. At present there are 24, of which ten are at ports, six on land and eight at airports.

Border controls consist in:

- Verifying the documents accompanying the goods, in particular plant-health certificates;
- inspecting the goods for the presence of prohibited organisms;
- making sure that tolerated animal or plant organisms, if present, do not exceed the limits;
- where necessary, taking samples for laboratory analyses;
- taking the decision to reject or authorise products at the borders.

2. Quality control of imported products by Ministry of Trade departments

Executive Decree No. 96-354 of 19 October 1996 establishes new procedures for assessing the conformity and quality of imported products. The Decree provides for:

- Systematic prior control, on admission to national territory, of the quality and conformity of imported products;
- the list of products subject to control is laid down by interministerial order;
- any imported product not complying with the laws and regulations will be the subject of "a decision to refuse admission of a product into Algeria";
- any perishable products must, on the date of inspection, have a durability exceeding 80 per cent of their shelf life.

Before any release for consumption on national territory, the importer is required to carry out, or arrange for, a quality control of the imported goods.

Moreover, any imported product not meeting all the provisions of Executive Decree No. 90-367 of 10 November 1990 on the labelling and presentation of foodstuffs will be refused admission into Algeria.

Also, any importer who has imported products not complying with the regulations or unfit for consumption is liable to legal proceedings in accordance with Law No. 89.02 of 7 February 1989 on the general rules for consumer protection.

Question 107

Algeria indicates that the supply of agricultural inputs, which was for many years the preserve of public enterprises under monopolies granted by the State, has also been freed of all restrictions, and this has fostered the emergence of a wide range of private companies specializing in this field (WT/ACC/DZA/1, page 71). Can Algeria confirm that there is no longer any monopoly on the importation of agricultural products? Do state enterprises continue to take part in the trade in agricultural products?

Reply

Algeria confirms that there is no longer any legal monopoly on imports of agricultural products.

Public enterprises continue to take part in trade in agricultural products just like private enterprises.

(b) Exports

Question 108

Explain the existing suspension rule regarding the export of palm seeds and livestock.

Reply

The suspension of exports of these products is due to the desire to protect animal and plant species (see reply to question No. 70).

Question 109

What criteria are used to determine the minimum export price level of dates and raw hides and skins?

Reply

The information needed for a reply to this question is contained in the replies to questions Nos. 71 and 72. The criteria in question are objective criteria linked to the level of prices on the international market and determined in consultation with the trade associations concerned.

Question 110

Algeria indicates that there is no scheme of export subsidies applied at the present time (WT/ACC/DZA/1, page 68). Is Algeria willing to bind its export subsidy commitments at zero?

Reply

The bulk of Algeria's export income comes from the hydrocarbons sector, which represents a non-renewable resource characterized by extreme price instability on the international market, thus exposing the level of export income needed to finance the whole economy to unforeseeable fluctuations.

In the light of its existing export structure which is 95 per cent dominated by hydrocarbon products, Algeria as a developing country does not visualise entering into any immediate commitments which might bind export subsidies at zero, given the many and various risks inherent in such a situation and the Government's desire to produce a fundamental change in its approach to the international market from the integration standpoint.

Our position is strengthened by the provisions on "special differentiated treatment of member developing countries" laid down in Article 27 (Part VIII) of the WTO Agreement on subsidies and countervailing measures.

(e) Internal agricultural policies

Question 111

Give further details about the subsidy system for pasteurized milk. Clarify the existing pricing system for milk, semolina and flour.

Reply

Since 1 January 1997 there have been no subsidised imported products. As a result, there is no longer any price-subsidy system.

Question 112

We note that Algeria has a number of domestic subsidies that are covered under "green box" measures in the Agriculture Agreement (WT/ACC/DZA/11, page 69). What is the level of funding for each of the programmes? On which agricultural products does Algeria have any product-specific report?

Reply

The funding of programmes covered by budgetary measures amounted to over DA 11 billion (about US\$220 million) for each of the 1995 and 1996 financial years.

The internal subsidies covered by the "green box" category are broken down by heading as follows:

- Research, training and extension, technical support, plant and animal health protection: 20 per cent;
- local development: 60 per cent;
- central administration and directorates of the agricultural services of the wilayat: 20 per cent.

The agricultural products enjoying product-specific support are durum wheat and common wheat intended for consumption.

5. Policies affecting foreign trade in other important sectors

(b) Fish and fisheries

Question 113

Give details about any current policy affecting headings HS 03, 1604 and/or 1605.

Reply

The development strategy planned for the fisheries sector is based not only on existing potential but also on the recent trend in world policies, which are now moving inexorably towards the rational management and conservation of fishery resources with a view to optimum sustainable exploitation. The development strategy for this sector is structured around:

- Good knowledge of the resource;
- rational organization of fishery exploitation;
- continuous monitoring of fishing effort;
- development of new alternatives (aquaculture, inland fishing, specialized fishing).

The main aims of this strategy are to bring about a substantial increase in the contribution by the fishery sector to national food security and, on the socio-economic level, to help create jobs.

As regards foreign trade, fishery products are governed by the same conditions as those applied to agricultural products and foodstuffs, namely there is no restriction on the importation or exportation of these products.

As regards taxation and customs duties, Chapter 3 products are subject to VAT of 7 per cent and customs duties of 45 per cent.

The products covered by tariff headings 16-04 and 16-05 are liable on import to customs duties of 45 per cent and to VAT of 21 per cent for internal sales transactions.

Question 114

Do you plan controls on these products? Do you plan to introduce temporary safeguard measures for these products?

Reply

Algeria carries out health checks on fish and fish products in the same way as for products of animal origin (see reply to questions Nos. 105 and 106).

The introduction of temporary safeguard measures would be considered only if there were a threat to national production within the meaning of Article XIX of GATT 1994 and the WTO Agreement on safeguard measures.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME (TRIPS)

1. General

Question 115

What types of costs and charges exist which must be paid to obtain the right to intellectual property?

Reply

1. Regarding patents for inventions

The 1996 Finance Law laid down in Article 81 that the tariffs for taxes levied by the Algerian Standardisation and Industrial Property Institute (INAPI) and provided for in Article 124 of Legislative Decree No. 93-01 of 19 January 1993 concerning the finance law for 1993 are amended and replaced by the tariffs laid down in Table No. 1 below.

2. Registration of marks, designs, models and appellations of origin

Applications to register marks, designs and models and appellations of origin are validly lodged at the National Commercial Register Centre (CMRC) when accompanied by a voucher proving that the required taxes have been paid.

These taxes are laid down in the legislative texts relating to the three aforementioned fields, and the tariffs are fixed by the finance laws.

Thus, the tax tariffs for:

- Marks, designs and models were fixed by Law No. 85-09 of 26 December 1986 on the Finance Law for 1986; and
- for appellations of origin were fixed by Finance Law No. 77-02 of 31 December 1977.

The ten-year duration of protection is calculated from the date of payment of the required taxes, and no fee is due after the formalities connected with lodging the application for registration have been completed.

Table No. 2 below gives the tariffs for these taxes.

Table No. 1

Parafiscal Taxes Levied by the INAPI for Industrial Property Activities

Code	Nature of taxes	Unit tariff (DA)
762-01	Filing of application for invention patent	5,000
-02	Filing of addition certificate	3,000
-03	Claim of priority	800
-04	Publication of invention patents, addition certificates	2,400
	Taxes on annual payments	
-11	From 2nd to 5th annual payment	3,000
-12	From 6th to 10th annual payment	4,000
-13	From 11th to 15th annual payment	6,000
-14	From 16th to 20th annual payment	9,000
	Supplementary taxes	
-21	Publication of invention patents and addition certificates, per set of 5 pages after the first 10	600
-22	Publication of designs:	
	Small size per sheet after the third	200
	Large size per sheet after the second	500
	Taxes on authorized correction of material errors	
-23	For the first	DA 500
	For each of the following	DA 900
-24	Conversion into an application for invention patents of an application for a certificate of addition not yet issued	DA 800

Code	Nature of taxes	Unit tariff (DA)
-25	Registration taxes of any kind concerning a patent application or a patent	600
-26	Registration taxes concerning the transfer or grant of an application for a patent, an application for an addition certificate or an addition certificate	1,200
-27	Surcharge for delayed payment of annual payments for invention patents within the six-month grace period	Equal to the amount of the unpaid annual payment
	Taxes on provision of information	
-33	Issue of an official copy of a design, per page or sheet	200
-32	Authentication of a printed section of an invention patent or of an addition certificate	200
-33	Issue of a statement of annual payments for an invention patent	240
-34	Issue of certified copy of registration in the special patent register	300
-35	Investigation of prior art, per patent	2,400

Table No. 2

Taxes Applicable to Trade Marks or Service Marks
(Finance Law 1997)

Code	Nature of taxes	Unit tariff (DA)
	Filing or renewal taxes	
746-01	Filing	5,000
	Renewal	7,000
746-02	Registration by class of product or service	1,000
746-03	Claim to priority	1,000
	Post-filing taxes	
746-04	Issue of an identity certificate	400
746-05	Abandonment of use of a mark	200
746-06	Surcharge for delay in renewal of a mark	200
746-07	Investigation of prior art, per mark	400
746-08	Correction of material error, per mark	200

Code	Nature of taxes	Unit tariff (DA)
746-09	Issue of a certified true copy of a mark document	200
746-10	Issue of a use regulation copy of a collective mark, per page	200
	Taxes concerning the mark register	
746-11	Registration of an act transferring or granting a mark or transferring by succession	800
	- For each of the following marks referred to in the same schedule	100
746-12	Registration of any other kind relating to a mark. For each of the following marks referred to in the same schedule	100
746-13	Issue of a certified copy of entry in the mark register or certificate stating that none exists	200
	Tax on the filing of an application for international registration	
746-14	National tax on the application for international registration of a mark	2,000
	Filing taxes	
747-00	Fixed tax independent of the number of designs or models filed	5,000
747-01	Tax per design or model	200
	Tax on claim to priority	
747-02	Claim, per priority	800
	Post-filing taxes	
	Advertising tax, per object:	
747-03	- filed in the form of a specimen	2,000
747-04	- filed in the form of a photograph	400
747-05	Maintenance for second nine-year protection period, per design or model	1,000
747-06	Issue of identity certificate, per design or model	400
747-07	Issue of a copy of a registration of design or model	200
	Taxes relating to the register of designs and models	
	Registration tax of any kind	400
747-08	- for each design or model referred to in the same schedule	100
747-09	Tax on communication of information or copy of details appearing in the register of designs and models	200

Code	Nature of taxes	Unit tariff (DA)
	Filing and renewal taxes	
748-00	Filing and registration	3,000
748-01	Renewal	3,000
748-02	National tax on filing of an application for international registration	2,000
	Taxes on provision of information	
748-03	Issue of an official copy of an application for registration	200
748-04	Issue of a copy of or extract from any document constituting the application dossier, per page	200
748-05	Investigation of prior art, per appellation	400
	Taxes relating to the register of appellations of origin	
748-06	Registration tax of any nature, per registered appellation of origin	400
748-07	Surrender, per appellation of origin	200

3. Copyright

The protection of copyright by the National Copyright Office (ONDA) is not subject to the payment of duties and taxes since no formalities are involved in obtaining such protection.

However, when works are the subject of public exploitation and the body responsible for the collective management of copyright and neighbouring rights accordingly receives fees for the benefit of its members, management expenses are deducted in order to offset the costs of the services which it provides.

Under the recommended practices of the International Confederation of Societies of Authors and Composers (CISAC) of which the ONDA is a member, these management expenses should not normally exceed 30 per cent of the sums levied by the collective-management body.

Question 116

In the Civil Code the Algerian government describes three cases in which the intellectual property right is exercised in an unreasonable way. Give examples.

Reply

Under Legislative Decree No. 93-17 of 7 December 1993 on inventions, certain provisions of which concern the rights conferred by the invention patent on its holder, the latter has the right to manufacture, use and market the product protected by the patent and, depending on the case, to employ and market the process covered by the invention in the knowledge that the latter may refer either to a product or to a process. The patent holder may also forbid any person to exploit the invention covered by the patent for industrial purposes without his authorization.

The rights of the patent holder extend only to acts carried out for industrial or commercial purposes.

INAPI activity in regard to licensing contracts, which was introduced and regulated under the industrial-property legislation and the old exchange-control rules has revealed to us, among the licensing contracts submitted to the institute for registration, examination and opinion, certain contracts which contained restrictive (i.e. unfair) clauses of several types:

1. Commercial restrictions

The most commonly encountered restrictions are on export.

These are, in the main:

- An absolute ban on exporting;
- export permitted subject to prior approval by the partner;
- a ban on exporting to certain countries or authorization to export to others.

2. Non-competition clause

Some contracts include a ban on manufacturing and selling similar products or products of the same nature as those covered by the contract.

This type of clause often includes a ban on granting sub-licences even on national territory.

Such a ban is a serious obstacle to attempts to disseminate techniques within the country in order to boost national research and development and help national economic operators to adapt to and absorb these techniques.

3. Tied-purchasing clauses

These clauses oblige the licensee to obtain his raw materials, spares and intermediate products etc. exclusively from a partner previously chosen by the grantor.

Specific cases may be cited for marks:

- Filing of a mark in respect of all classes of products and services even though the mark is used only for certain classes;
- territorial limitation in licensing contracts on the export of products to certain countries.

2. Basic standards of protection

(a) Copyright and related rights

Question 117

In Algeria's new legislation, the economic rights of authors are protected throughout their lifetime and for 25 years after their death. Is this compatible with the TRIPS Agreement?

Reply

The 25-year period is laid down in Order No. 73-14 of 3 April 1973 concerning copyright. This text has been recast and has resulted in a new Order on copyright and neighbouring rights. This Order has been finalized and is being examined by the Parliamentary body concerned with a view to its adoption.

The new text provides for a protection period for the benefit of the author's dependants of 50 years from the beginning of the calendar year following his death.

For joint works the 50-year protection period runs from the death of the last survivor of the joint authors.

For audiovisual, collective, pseudonymous or anonymous and photographic works and work belonging to the applied arts, the 50-year protection period runs from publication of the work.

With regard to audiovisual works, the protection period is calculated from the date on which the work was made lawfully accessible to the public.

These provisions are in line with those of the Berne Convention for the protection of literary and artistic works, which WTO Member countries are required to respect under Article 9 of the TRIPS Agreement.

Question 118

How are computer programs and data compilations protected under Algerian law?

Reply

The protection of computer programs and data bases is expressly provided for by the new Order on copyright and neighbouring rights.

Computer programs are protected as literary works.

Data bases enjoy protection in the same way as collections or anthologies of works which are original by the choice, coordination or layout of the material.

Question 119

What provision is made by Algerian law for rental rights?

Reply

Algerian legislation gives an author an exclusive rental right over copies or originals in the case of audiovisual works and computer programs.

Question 120

Are there any restrictions on or exceptions to the right of exclusivity? Can you explain them?

Reply

The exclusive right conferred on an author by Algerian legislation regarding copyright is accompanied by limitations and exceptions.

1. Limitations permitting the unimpeded use of works free of charge mainly concern the following cases:

- Private and family use of the works;
- use for the creation of other works such as pastiches, parodies, caricatures, quotations, borrowings and illustrations;
- use for teaching and training purposes by libraries, documentation centres and radio-broadcasting bodies for their operating needs and by information bodies in the exercise of their activities.

2. Exceptions are codified in the form of legal licences and compulsory licences.

(a) In the case of legal licences, Algerian legislation covers situations in which the public use of a protected work does not require the author's permission but results in his receiving a remuneration.

The rights covered by this type of licence are:

- The right to reproduce a work licitly recorded on a sound medium;
- the right of sound or television broadcasting or cable distribution of broadcast works;
- the right of communication to the public via cable distribution of broadcast works performed simultaneously with broadcasting and without modification to the broadcast programme.

These legal licences apply only in cases where the holders of the rights are not represented by the National Copyright Office.

(b) Compulsory licences are covered by the provisions favourable to developing countries included in the Universal Convention on Copyright as revised in Paris in 1971 and in the annex to the Berne Convention on the Protection of Literary and Artistic Works.

Under Algerian legislation, any work intended for school or university teaching or for research may be subject to:

- A compulsory translation licence if it has not been translated into the official language and published in Algeria one year after its first publication;
- a compulsory reproduction licence if it has not been published in Algeria three years after its first publication in the case of a scientific work, seven years after its first publication in the case of a work of fiction and five years after first publication for other categories of works.

The National Copyright Office is empowered to issue these licences, with due regard for the conditions and formalities laid down in the international conventions ratified by Algeria.

Compulsory translation and reproduction licences are neither transferable nor exclusive. They are granted solely for exploitation of the work on national territory.

They cease to be valid if the rights holder publishes the work concerned in Algeria.

Question 121

Does Algeria grant protection ('rental rights') for computer software and cinematographic works as required under Article 11 of the TRIPS Agreement (page 75, WT/ACC/DZA/1)?

Reply

Algerian legislation grants the author an exclusive right to authorise or prohibit the use of his work, particularly in the form of rental of the original or copies of the audiovisual work and computer software for personal use.

Contrary to Article 11 of the TRIPS Agreement, the principle of exclusive rental right conferred on the author of an audiovisual work or computer software is not subject to exception.

(b) Trade marks, including service marks

Question 122

Article 19.1 of the TRIPS Agreement provides that, if the use of a mark is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use. The Algerian government states that "in order to remain valid, the mark filed must be used during the year following filing". Does the Algerian government intend to change its law in accordance with the above-mentioned article after it joins the WTO? If not, why?

Reply

Article 5 of Order No. 66-57 of 19 March 1966 on marks was framed in conformity with the provisions of Article 5.C of the Paris Convention for the Protection of Industrial Property.

This latter Article does not in fact lay down the duration of non-use of the mark and leaves States completely free to determine this period, which must be "equitable".

However, a new Bill on marks has already been framed to take account of the requirements of Article 19 of the TRIPS Agreement and will shortly be submitted to the government; the period has been extended to three years, which brings it into line with WTO requirements.

Question 123

As regards the conditions for using trade marks, does Algerian legislation provide valid reasons why a trade mark may not be used by the owner of the mark (e.g. import restrictions or other conditions)?

Reply

Article 5 of Order No. 66-57 of 19 March 1966 on trade marks provides that "The applicant is required to use his trade mark in the year following the application, except in exceptional cases and on justified grounds; in the event of non-use of the mark and after the above period, the application shall no longer be effective."

Exceptional cases are not defined and are left to the judgement of the competent authority in accordance with current legislation.

Under Article 10 of the Customs Code, "An interministerial order issued jointly by the Minister for Finance and Minister for Trade may regulate or suspend the import or export of certain goods from or to one or more countries."

Question 124

Article 19.1 of the TRIPS Agreement provides that, if the use of a mark is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use. Why does Algeria require use within a period of only one year for it to remain valid (page 76)?

Reply

Article 5 of Order No. 66-57 of 19 March 1966 on marks was drafted in conformity with the provisions of Article 5.C of the Paris Convention for the Protection of Industrial Property.

This Article does not in fact fix the duration of non-use of the mark and leaves States completely free to determine this period, which must be "equitable".

However, taking account of the requirements of Article 19 of the TRIPS Agreement, the new Bill on marks which has been drafted and will be submitted shortly for adoption by the appropriate parliamentary body has already extended this period to three years, which will thus bring it into line with the requirements of the relevant WTO Agreement.

(c) Geographical indications, including appellations of origin

Question 125

Can the Algerian Government explain in greater detail how geographical indications are protected?

Reply

Appellations of origin, which must be regulated, are registered pursuant either to Algerian legislation on appellations of origin or to the Lisbon Arrangement on the international registration of appellations of origin. They are protected in Algeria against any usurpation or imitation.

With regard to non-regulated geographical indications, namely indications of source allocated to products in order to show where they come from, these are protected under the following provisions:

- The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods applicable to Algeria permits the seizure on importation of products bearing a false or deceptive indication of source;
- Penal Code: Article 429 of Order No. 75-47 of 17 June 1975 contains specific provisions on fraud regarding kind or origin in the sale of goods;
- Law No. 89-02 of 7 February 1989 on the general rules for consumer protection: Article 3 provides that "The product must meet the legitimate expectations of the consumer regarding particularly its nature, kind and origin, etc. ..." and refers to the Penal Code as regards the sanctions applicable to those who violate this provision;
- Article 24 of the Customs Code on prohibitions relating to false declarations of origin.

Question 126

Does Algerian legislation provide for additional protection for wines and spirits as provided for in Article 23 of the TRIPS Agreement?

Reply

No particular legislation exists for the protection of wines and spirits; geographical indications concerning these products are protected in the same way as those for other products under Order No. 76-65 of 16 July 1976 on appellations of origin.

Question 127

Does Algeria also protect geographical indications of origin of a good where its reputation (or some other characteristics) is attributable to its geographical origin (page 71, WT/ACC/DZA/1)?

Reply

Regulated appellations of origin which are registered pursuant either to Algerian legislation on appellations of origin or to the Lisbon Arrangement applicable to Algeria are protected in Algeria against any usurpation or imitation.

With regard to non-regulated geographical indications, namely indications of source allocated to products in order to show where they come from, these are the subject of protection under the following provisions:

- The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, which permits the seizure on importation of products bearing a false or deceptive indication of source;
- the Penal Code, which contains, in Article 429 of Order No. 75-47 of 17 June 1975, specific provisions on fraud with respect to kind or origin in the sale of goods;
- Law No. 89-02 of 7 February 1989 on the general rules for consumer protection, which provides in Article 3 that "The product must meet the legitimate expectations of the consumer regarding particularly its nature, kind and origin etc." and refers to the Penal Code as regards the sanctions applicable to those who violate this provision;
- Article 24 of the Customs Code on false declarations of origin.

(d) Industrial designs and models

Question 128

Reorganize this section by separating the information.

Reply

Protection can be extended by means of a patent to new inventions resulting from an inventive activity and capable of being applied at the industrial level (Article 3 of Legislative Decree No. 93-17 of 7 December 1993 on the protection of inventions).

An invention may relate to a product or a process.

A patent may not be validly be obtained for:

- Plant varieties or animal breeds, or the essentially biological processes for producing plants or animals (and not "and processes for producing them" as given on page 77 of the memorandum on Algeria's foreign trade regime);
- strains of micro-organisms (the reasons for excluding them from patent protection are given in the reply to question 131);
- foodstuffs, pharmaceuticals, cosmetics and chemicals, excluding the processes for producing them.

After examination (assessment of conformity with legislative requirements) showing whether the application for a patent conforms to internationally recognized procedures/formalities, the patent (or addition certificate possibly attached to it) is issued. Titles (for patents and addition certificates) are subsequently published in the Official Industrial Property Bulletin (BOPI) by the INAPI.

The BOPI is widely circulated for consultation purposes among enterprises, universities, research centres and even abroad.

The BOPI is regularly sent to:

- Industrial-property bodies in the countries of the Arab Maghreb Union (UMA);
- certain industrial-property offices of European countries, which send us their bulletins;
- WIPO and the EPO.

The validity of a patent is 20 years, subject to payment by the holder of the annual taxes on maintenance of the patent, the amounts of which are laid down in the Finance Law.

Question 129

Can the Algerian Government describe its patent legislation?

Reply

Texts governing inventions in Algeria	<ul style="list-style-type: none"> - Order No. 66-54 of 3 March 1966 on inventor certificates and patents; - Legislative Decree No. 93.17 of 7 December 1993 on the protection of inventions, repealing the previous order; - texts implementing the aforementioned Legislative Decree: in the draft stage at the supervisory (MIR) level of the INAPI.
Titles issued	<ul style="list-style-type: none"> - Patent of invention; - addition certificate.
Duration of protection	<ul style="list-style-type: none"> - 20 years for the patent, from the date of filing of the protection application; - the validity of the addition certificate ends with the main patent(s) to which it refers; - the validity of the titles is dependent on payment of the relevant charges.
Subject of the invention	<ul style="list-style-type: none"> - An invention may relate either to a product or to a process.

Patentability criteria	<ul style="list-style-type: none"> - Novelty; - non-obviousness (inventive activity); - industrial applicability of the invention.
Patent protection does not cover inventions relating to:	<ul style="list-style-type: none"> - Plant varieties or animal breeds, and the essentially biological processes for producing plants or animals; - strains of micro-organisms; - foodstuffs, pharmaceuticals, cosmetics and chemicals, excluding the processes by which they are produced.
Transfer of rights	<ul style="list-style-type: none"> - By contractual licence: any holder of an application for a patent, a patent and/or an addition certificate may voluntarily and by contract waive part or all of his rights for the benefit of a third party. - by compulsory licence: from the third year after issue of the patent or from the fourth year after filing of the application, any person may obtain from the competent court a (compulsory) exploitation licence by reason of the total or partial failure to exploit the invention patented. <p>A compulsory licence may also be issued when required by the public interest, in accordance with regulation procedures.</p>

Question 130

Are there any restrictions on or exceptions to patents of invention? What are these exceptions and what are their legal bases?

Reply

Algerian legislation on patents, in this case Legislative Decree No. 93-17 of 7 December 1993 on the protection of inventions, has been used for the first time since 1966 to repeal Order No. 66-54 of 1 March 1966 on inventor certificates and patents of inventions.

Thus, patents, which were formerly reserved for foreign applicants, are henceforth granted to all applicants for the protection of inventions. Moreover, previous applications for inventor certificates filed under the 1966 legislation by nationals and foreign residents can, through the implementation of Article 37 of the aforementioned Legislative Decree No. 93-17, be converted into applications for patents and be considered as such.

Anyone wishing to have an invention protected in Algeria must make a specific application for this purpose to the INAPI (Article 19).

Only inventions which are new, which result from an inventive activity and which can be applied industrially can be protected by a patent.

Patent protection excludes:

- Plant varieties or animal breeds, and the essentially biological processes for producing plants or animals (and not ... "and the processes for producing them" (page 77 of the memorandum);
- strains of micro-organisms;
- foodstuffs, pharmaceuticals, cosmetics and chemicals, excluding the processes by which they are produced.

The formalities for filing applications for the protection of inventions and the procedures for examining the form in which patents and addition certificates should be issued and protection titles published are carried out in accordance with international standards applied by the World Intellectual Property Organization (WIPO).

The patents and addition certificates issued are published in the Official Industrial Property Bulletin (BOPI). The BOPI is published by the INAPI and is widely circulated for consultation and research purposes to universities, research centres, public and private enterprises and in foreign countries.

(e) Patents

Question 131

It seems that part (the beginning) of the section concerning patents is missing (page 76, WT/ACC/DZA/1).

Reply

Algerian legislation on patents, in this case Legislative Decree No. 93-17 of 7 December 1993 on the protection of inventions, has been used for the first time since 1966 to repeal Order No. 66-54 of 1 March 1966 on inventor certificates and patents.

Thus, patents, which were formerly reserved for foreign applicants, are henceforth granted to all applicants for the protection of inventions. Moreover, previous applications for inventor certificates filed under the 1966 legislation by nationals and foreign residents can, through the implementation of Article 37 of the aforementioned Legislative Decree No. 93-17, be converted into applications for patents and be considered as such.

Anyone wishing to have an invention protected in Algeria must make a specific application for this purpose to the INAPI (Article 19).

Only inventions which are new, which result from an inventive activity and which can be applied industrially can be protected by a patent.

Patent protection excludes:

- Plant varieties or animal breeds, and the essentially biological processes for producing plants or animals (and not ... "and the processes for producing them" (page 77 of the memorandum);
- strains of micro-organisms;
- foodstuffs, pharmaceuticals, cosmetics and chemicals, excluding the processes by which they are produced.

The formalities for filing applications for the protection of inventions and the procedures for examining the form in which patents and addition certificates should be issued and protection titles published are carried out in accordance with international standard applied by the World Intellectual Property Organization (WIPO).

The patents and addition certificates issued are published in the Official Industrial Property Bulletin (BOPI). The BOPI is published by the INAPI and is widely circulated for consultation and research purposes to universities, research centres, public and private enterprises and in foreign countries.

Question 132

Why does Algeria exclude from patentability, micro-organisms, foodstuffs, pharmaceuticals, cosmetics and chemicals, all of which cannot, under Article 27, paragraphs 2 and 3, of the TRIPS Agreement, be excluded (page 77, WT/ACC/DZA/1)?

Reply

1. Micro-organisms

The reference treaty in this connection is the 1977 Budapest Treaty (24 member States) on the international recognition of the deposit of micro-organisms for the purposes of the patent procedure.

This Treaty is open to the States party to the Paris Convention. The instruments of ratification or accession must be lodged with the WIPO Director-General.

This Treaty stipulates that "The disclosure of the invention is a condition for the issue of patents." An invention is normally disclosed by means of a written description. When an invention involves a micro-organism, disclosure is not possible in written form but can be effected by depositing a sample of the micro-organism with a specialised institution open to the public.

It is sufficient to effect a deposit on one occasion only with an "international deposit authority" to claim to be protected in all contracting States (if the authority concerned states that it recognizes the Treaty).

In a recent statement, the European Patents Office (EPO) stated, "The international deposit authority is a scientific institution - like a "culture collection" - capable of conserving micro-organisms."

In 1993, there were 25 international deposit authorities, seven in the United Kingdom, three in the Russian Federation, two in the United States and in the Republic of Korea and one in Germany, Australia, Belgium, Bulgaria, Spain, France, Hungary, Japan, Holland, Czech Republic and Slovakia.

The Treaty is of advantage mainly to the depositor:

- Who has submitted patent applications in several contracting States;
- deposit will save him expense and provide him with greater security.

2. Exclusion of foodstuffs, pharmaceuticals, cosmetics and chemicals from patentability

However strategic for the national economy, some techniques must be excluded from monopoly, particularly when they are held by foreign holders (their exclusion from patent protection can often be explained in the case of some of them, such as plant and/or animal products, by their failure to comply with patentability requirements).

For foodstuffs and pharmaceuticals, non-patentability is justified on public safety and health grounds, although the procedure is not extended to the processes for producing them.

Moreover, because of our sometimes pronounced dependence on foreign countries in these particular domains, any grant of a patent conferring a quasi-monopoly on its holder in the domain covered by the invention inevitably results in a considerable limitation in the range of supply in regard to importation of the product concerned.

Granting patents protecting foodstuffs and pharmaceuticals would seriously hamper the freedom to import them even if they were offered on conditions advantageous to the country.

Nevertheless, other (legal) arrangements will be introduced later in order to regulate specific fields, such as the utility model for pharmaceuticals and the producer's certificate for plant varieties or products.

(f) Protection of plant varieties

Question 133

The Algerian Government has mentioned a list of "uncultivated plants".

- **What is the legal effect of this list?**
- **What sorts of plants appear on the list?**

Reply

Uncultivated plant species are protected throughout the national territory. Preserving them in the natural state is of national importance.

Uncultivated plants include plant species which have not been modified by human selection and which are:

- Threatened with extinction;
- are of general interest in the fields of genetics, agronomy, economics, culture and science.

Question 134

Who is in a position to draw up the list of uncultivated plant species?

Reply

In accordance with Law No. 83-13 on protection of the environment, this task devolves on the Ministry of Environmental Protection, which currently comes under the Ministry of the Interior, and on the Ministry of Agriculture and Fisheries.

(g) Layout designs of integrated circuits

Question 135

How are they protected?

Reply

Under existing Algerian legislation, integrated circuits do not enjoy protection under copyright and neighbouring rights because they are not regarded as literary and artistic works.

(h) Requirements concerning undisclosed information, including trade secrets and test data

Question 136

Who authorizes an employee to communicate information on trade secrets?

Reply

Under no circumstances is an employee empowered to communicate information relating to an enterprise's trade secrets. This responsibility belongs solely to the head of the enterprise.

The Algerian Penal Code provides for penalties against any person committing this offence under its provisions on the disclosure of trade secrets.

Question 137

Does protection exist for undisclosed tests or other data in the context of the authorization to place pharmaceutical products and agricultural chemicals on the market? How is such protection provided and on what legal basis?

Reply

No protection relating to undisclosed tests exists at present. This in no way precludes such protection being introduced in the future if necessary, in accordance with the relevant international practices.

Question 138

Algeria appears to impose a blanket prohibition on the disclosure of confidential information (page 77, WT/ACC/DZA/1). Would it be possible to have details on how it is intended to comply with the obligations of Article 39 of the TRIPS Agreement?

Reply

Confidential information such as manufacturing or trade secrets are not expressly protected by the Paris Convention; legislation on industrial-property protection has therefore not made any particular provision in this respect.

However, under Article 10*bis* of this convention, any act of competition contrary to fair industrial or commercial practice must be prohibited.

Article 302 of the Algerian Penal Code provides that any person who works in an enterprise and who discloses or attempts to disclose the enterprise's secrets to foreigners or Algerians shall be punished by, *inter alia*, imprisonment or a fine.

Such confidential information is the subject of specific clauses in the contracts binding the natural or legal persons concerned on the occasion of transfers of technology.

In general, the competent services recommend the persons concerned to write extremely precise clauses into their licensing contracts or technology-transfer agreements in order to prevent the disclosure of such information.

4. Means of enforcing observance of rights

Question 139

What procedures and sanctions are applied under criminal law in the event of an offence or of violation of intellectual property rights?

Reply

(a) Regarding copyright and neighbouring rights:

Algerian legislation provides for criminal sanctions in the event of counterfeiting of a work protected by copyright or of a service protected under neighbouring rights (Articles 147-151 of the draft Order on copyright and neighbouring rights).

A counterfeiter, a person who assists with counterfeiting and a person who deliberately refuses to pay the fee due to the owner of the rights are liable to a prison sentence of from six months to three years and a fine ranging from DA 100,000 to DA 500,000.

For a second offence, these penalties are doubled and the establishments operated by the counterfeiter and his accomplices may be temporarily closed for one to six months or permanently closed.

In all the above-mentioned cases of counterfeiting, the guilty parties are sentenced to confiscation of the proceeds resulting from the illicit exploitation of the works and of the equipment specially installed for such exploitation, as well as of all counterfeit objects and copies.

The court may also order that the judgement should be published in newspapers and that these should be displayed at the expense of the offenders.

The criminal procedures applicable in the event of violation of copyright or neighbouring rights fall under the appropriate common law.

The owner of the rights harmed by a counterfeit or his representatives may refer the matter to the criminal court and file a civil action in accordance with the provisions of the supplemented and amended Order No. 66-155 of 8 June 1966 on the Code of Criminal Procedure.

(b) Regarding marks:

Algerian legislation gives the owner of an industrial-property right the opportunity of taking action either before the civil court or before the criminal court in order to bring about an end to the infringements of his right; "civil actions relating to marks shall be brought before the courts. In the event of criminal proceedings, the competent court shall rule on the plea relating to ownership of the mark" (Article 38 of Order No. 66-57 on marks).

Article 28 states that "The following persons shall be punished by a fine of DA 1,000 to DA 20,000 and by imprisonment of three months to three years, or by only one of these two penalties:

- Those who have counterfeited a mark or used a counterfeit mark;
- those who have fraudulently affixed a mark belonging to someone else to their products or to products traded by them;
- those who have knowingly sold or put up for sale one or more products bearing a counterfeit or fraudulently affixed mark".

Article 29 states that "The following persons shall be punished by a fine of DA 1,000 to DA 15,000 and by imprisonment of one month to one year, or by only one of the two penalties:

- Those who, although not counterfeiting a mark, have imitated it in a fraudulent way so as to deceive the buyer or have made use of a fraudulently imitated mark;
- those who have made use of a mark bearing information likely to deceive the buyer as to the nature of the product;
- those who have knowingly sold or put up for sale one or more products bearing a mark that has been fraudulently imitated or that carries information likely to deceive the buyer as to the nature of the product".

Article 30 provides that "The following persons shall be punished by a fine ranging from DA 500 to DA 7,500 and imprisonment ranging from 15 days to six months, or by only one of the two penalties:

- Those who have not affixed to their products a mark which has been declared compulsory;
- those who have knowingly sold or put up for sale one or more products not bearing the mark which has been declared compulsory for this type of product;
- those who have infringed the provisions of Articles 9 and 10".

Article 32 provides for the penalties to be doubled in the event of subsequent offences or when the rights of State sectors have been harmed.

Article 35 states that "In addition to the penalties laid down in Articles 28, 29 and 30, the court may order:

- Display of the judgement and its publication in the press at the expense of the guilty parties;
- confiscation of the products and instruments involved in the offence;
- destruction of the plates and models of the mark concerned, in all cases".

Criminal sanctions such as fines or imprisonment may be supplemented by civil penalties (deprivation of electoral rights, award of damages pursuant to Articles 34 and 39).

With regard to establishment of proof of the different facts connected with usurpation of the mark, the legislation on marks provides for a special procedure in Article 38, as follows:

"Under an order of the president of the court, the owner of a mark may arrange, with the possible assistance of an expert, for a detailed description, with or without seizure, of the products which he alleges have been marked to his detriment."

The Order is issued on request and following proof that the mark has been registered.

When seizure is required, the court may demand that the petitioner provide security. Such security is always required of foreigners, who are required to deposit it.

The holders of the objects described or seized are given a copy of the order and, where necessary, of the act recording deposit of the security on pain of voidance of the claim and the payment of damages.

(c) Regarding designs and models

Similar provisions have been adopted in order to sanction any infringement of the owner's rights (Article 23-28 of Order No. 66-86 on designs).

(d) Regarding appellations of origin

Articles 28 and 29 of Order No. 76-65 on appellations of origin determine the offence and permit any person giving proof of a legitimate interest to obtain a legal order to bring an end to the illicit use of a registered appellation of origin or to have its use forbidden if this is imminent.

The penalties are laid down in Article 30 without prejudice to the sanctions provided by the laws and regulations on the punishment of fraud.

Furthermore, at the expense of the guilty party, the court may order the judgement to be displayed in such places as it will decide and to be wholly or partly included in those newspapers which it selects.

Question 140

Algeria has supplied very little information on provisional measures (page 79, WT/ACC/DZA/1). Would it be possible to have further details on the implementation (actual or planned) of the obligations provided for in Article 50 of the TRIPS Agreement?

Reply

1. Regarding marks and models:

Order No. 66-57 of 19 March 1996 on marks provides in Articles 38 and 39 for the following measures:

"Under an order of the president of the court, the owner of a mark may arrange for the carrying out, with the possible assistance of an expert, of a detailed description, with or without seizure, of the products which he alleges have been marked to his detriment.

The Order is issued on request and after proof that the mark has been registered.

When seizure is required, the court may demand that the petitioner provide security. Such security is always required of foreigners, who are required to deposit it.

A copy of the Order is given to the holders of the objects described or seized, on pain of avoidance and payment of damages." (Article 38).

"Should the petitioner fail to appeal through either the civil or criminal courts within a period of a month, the description or seizure shall be automatically null and void, without prejudice to any damages that may be claimed." (Article 39).

With regard to models, similar provisions are laid down in Articles 26 and 27 of Order No. 66-86 of 28 April 1966 on designs and models, as follows:

"The injured party may arrange for any sworn agent to carry out a detailed description, with or without seizure, of the objects or instruments mentioned in Article 24 under an order issued by the president of the court within whose jurisdiction the operations must be performed. The Order is issued on request and after proof of deposit has been provided.

The President is empowered to demand that the petitioner provide security, which the petitioner must deposit before seizure.

A copy of the order must be provided of the holders to the objects described or seized, on pain of avoidance and payment of damages" (Article 26).

"Should the petitioner fail to refer the matter to the competent court within a month, the description and seizure shall become null and void. Damages may be claimed and the objects seized must be returned" (Article 27).

The provisions of Article 50 of the TRIPS Agreement are thus observed in practice as regards the procedure and maximum time-period of 31 calendar days.

2. Regarding copyright and neighbouring rights:

Algerian legislation on copyright and neighbouring rights provides for interim protective measures for the same objectives as those covered by Article 50 of the TRIPS Agreement.

The injured owner of the rights may request the court to implement interim protective measures designed to impede the imminent infringement of his rights or to bring an end to the infringement noted.

In addition, when the infringement of rights is officially noted by officers of the Criminal Investigation Department or sworn agents of the National Office for Copyright and Neighbouring Rights, these persons are empowered to withdraw the counterfeit copies or examples as a precautionary measure.

In such a case, the matter must be immediately referred to the appropriate court, which must give its judgement within three days from referral.

Question 141

There is no mention of any provision on compulsory licensing. Does this mean that Algeria does not intend to introduce compulsory licensing in its law, or is it merely that this is covered by the missing part of the document? If compulsory licensing were introduced, would it comply with the obligations of Article 31 of the TRIPS Agreement?

Reply

Further to the proposed replies to questions 116, 128 and 129 on the industrial-property aspects of patents of invention, it should be made clear that under Article 12 of Legislative Decree No. 93-17 of 7 December 1993 the rights resulting from a patent extend only to acts accomplished for industrial or commercial purposes.

No prohibition (resulting from the rights of the patentee) may be applied to a person who uses the patented invention for scientific research.

On the other hand, the rights conferred by any one of the titles (patent, addition certificate) may be wholly or partly transferred for the benefit of third parties.

Moreover, any holder of a patent may, by means of a contract, authorize another person to exploit his invention.

However, a compulsory licence, which falls outside the control of the patentee, may be granted if the invention is not exploited or insufficiently exploited within the prescribed periods and particularly in the following cases:

- The patented invention which could be exploited in the country is inadequately exploited;
- demand for the patented product is not satisfied in the country on equitable terms;
- exploitation of the invention in Algeria is impeded or prevented by the fact that the patented product is imported;
- refusal by the patent holder to grant licences on equitable terms;
- a substantial market for export of the patented product manufactured in the country is not supplied;
- the establishment or development of commercial or industrial activities in the country is substantially impeded.

A compulsory licence may also be granted when required by the public interest.

Nevertheless, in all cases the applicant for a compulsory licence must provide proof that he has previously applied to the patent holder and has been unable to obtain a contractual licence from him on equitable terms.

A compulsory licence can be granted only on a paying basis.

Some of these provisions and measures are still under study or in the draft stage and are therefore liable to amendment and/or addition.

Question 142

Many of the laws listed in section 5 (pages 80-82, WT/ACC/DZA/1) came into force some years ago (in 1966 or 1973, for example). Subsequent amendment or additions are mentioned for some of them. Where no amendment or addition is mentioned, does this mean that they have remained in their original form, and if so, how are they compatible with the TRIPS Agreement?

Reply

1. Regarding marks, designs and models:

Algerian legislation on marks, designs and models dates back to 1966 whereas that on appellations of origin dates back to 1976.

These three sets of legislation took account of the obligations of the Paris Convention for the Protection of Industrial Property, which itself has remained virtually unchanged since 1967, the date of the last Act (Stockholm Act) to which Algeria is party.

The TRIPS Agreement is also based on these same provisions of the Paris Convention and clarifies them where necessary.

However, it should be mentioned that a bill and its implementing decree have already been drafted as regards marks and will be adopted by the Algerian Government well before the five-year period laid down by the WTO expires.

With regard to models and appellations of origin, these texts require updating, even though in their present form they are not contrary to WTO requirements.

There is thus no basic obstacle to all the above-mentioned texts being adapted and harmonized within the five years laid down by the WTO.

2. Regarding copyright:

Order No. 73-14 of 3 April 1973 on copyright has undergone recasting, which resulted in the adoption early in 1997 of new legal arrangements governing copyright and neighbouring rights.

The provisions of this new legislation are in conformity with those of the Berne Convention for the protection of literary and artistic works which WTO Member countries are required to observe.

VI. TRADE-RELATED SERVICES REGIME

1. General

Transport sector

Question 143

State monopolies currently exist in the maritime, air and rail transport sectors and it is noted on page 84 (WT/ACC/DZA/1) that the network concessions already made in these sectors have gone to State enterprises.

- **What type of legislation is planned with a view to competition in these sectors and in associated activities?**
- **What is the plan for adopting it and bringing it into force?**

Reply

The provisions establishing competition in the maritime, port and air transport sectors and their related activities are legislative in nature.

These provisions, which apply the principle of liberalization, define the general rules and framework concerning demonopolization, the opening up of activities to national and/or foreign individuals and corporations governed by Algerian law and, consequently, competition between air, maritime and port activities and services of a commercial nature. It should be noted that air, maritime and port services will be operated on the basis of concessions and with proper heed for the conditions set out in the contract specifications.

With regard to railway activity, this subsector is currently excluded from competition because it is still a State monopoly.

The deadline for adopting and implementing these provisions is the beginning of 1997.

With regard to Algeria's commitments to put transport liberalization into practice, these can be summarized as follows:

- The liberalization of passenger and goods transport by road dates back to 1988 (Law No. 88-17 of 10 May 1988);
- the amended air-transport legislation was adopted in November 1996 by the Government and submitted to Parliament for adoption;
- bilateral maritime agreements establishing unimpeded freedom of access to maritime traffic.

Question 144

It is mentioned that Algeria acceded to the TIR Convention in 1989. What conditions are applied to foreign hauliers who seek a foothold in the Algerian road transport market - independently or in association with national operators? Are they allowed to operate on the same conditions as Algerian operators?

Reply

The TIR Convention is a customs agreement designed to facilitate the transit operations of road-haulage vehicles at border posts.

The movement and transit of foreign vehicles in Algeria are governed by bilateral conventions. In the absence of these, national legislation applies on Algerian territory (e.g. transit and/or movement authorization).

Foreigners are allowed to carry out road-haulage operations on the same conditions as Algerian nationals provided their businesses are considered to be governed by Algerian law (registered office in Algeria, vehicles registered in Algeria).

As regards the possibility of foreigners establishing themselves on the Algerian market for road haulage and related activities, foreigners must comply with the following conditions and provisions:

- The Investment Code;
- Law No. 88-17 of 10 May 1988 on the orientation and organization of surface transport; and
- Executive Decree No. 94-231 of 17 July 1994 laying down the conditions and procedures for exercising the professions of freight broker and road-haulage agent and Decree No. 91-195 of 1 June 1991 laying down the conditions for carrying out passenger and goods road-transport activities.

Telecommunications

Question 145

What telecommunications services are open to the private sector and under what conditions?

What is the situation regarding telephony, mobile telecommunications and added-value services?

Reply

Value-added services are open and are not subject to any restriction.

Commercial voice telephony, both fixed and mobile, is a reserved service and is thus operated exclusively by the State.

Question 146

What exactly does the telephone installation include?

Reply

The private sector participates in the construction of long-distance and local links, including the distribution and connection of telephone subscribers.

Question 147

What aspects of the postal service are open to the private sector? Does postal transport include the courier services?

Reply

The private sector is authorized to collect, carry and deliver international high-speed mail to and from foreign countries.

The carriage of telegrams includes the mail services.

Question 148

Can mail be collected and delivered directly at the clients' premises?

Reply

Direct collection and delivery is authorized for users of high-speed international mail (see reply to question 147).

Question 149

Telecommunications (page 84, WT/ACC/DZA/1); are there plans to open the telecommunications market to the private sector, and if so, what would be the timetable?

Reply

1. As regards installation:

The private sector already takes part in the work:

- Of laying wiring and long-distance and local cable networks, including the distribution and connection of subscribers;
- installing public telephone exchanges;
- installing and maintaining private telephone exchanges.

2. At commercial level:

The private sector markets:

- Private telephone exchanges (PABX);
- telephone terminals, including the mobile radio telephone network.

3. At industrial level:

In the framework of a mixed company with foreign capital, the private sector takes part in the manufacture of public digital telephone exchanges of all capacities.

4. At operating level:

The Postal and Telecommunications Administration authorizes "private law" persons to operate terminal points in the public telecommunications network.

Added-value services are open and are not subject to any restriction.

Tourism

Question 150

It is noted that certain tourist businesses and activities are regulated, travel and tourist agencies included.

Can you supply a complete list of these businesses and activities and indicate for each business the nature of the conditions for obtaining authorization.

Reply

Regulated activities in the tourism sector concern:

1. Travel agencies: approval to exercise this activity must be obtained both by nationals and by foreigners.

Approval is issued by central government under Law No. 90-05 on tourism and travel agencies which introduces, *inter alia*, a nationality precondition for the exercise of this activity.

However, it has been proposed that this precondition be lifted under a law, now being finalized, amending and supplementing the above Law No. 90-05.

2. Exercise of the activity of manager of a tourist establishment supplying accommodation services.

This activity is subject to approval issued by central government under the Ministerial Order of 7 September 1992 on the approval of managers of tourism establishments supplying accommodation services, which states in Article 1:

"The approval of managers of tourism establishments supplying accommodation services introduced by Article 9 of Executive Decree No. 92.101 of 3 March 1992 amending and supplementing Decree No. 85-12 of 26 February 1985 defining and organizing hotel and tourist activities is issued by the Ministry for Tourism and Craft Industries."

3. Profession of tourist guide. The exercise of this profession is governed by Executive Decree No. 92-121 of 14 March 1992 regulating the profession of tourist guide.

Question 151

In what field is professional competence tested in this sector, and is authorization granted to foreigners on the same conditions as Algerian nationals?

Reply

Professional competence is tested in the hotel field, in which authorizations have been issued to foreigners to carry out the function of "manager" on the same conditions as for Algerian nationals.

Financial services/banking operations

Question 152

Give information about legislation concerning market access in this sector. Can you give further details about Regulations 91-19, 92-05 and 93-01 and forward them to the WTO?

Reply

The setting up of banks, financial institutions and branches of foreign banks in Algeria is governed by Law No. 90-10 of 10 April 1990 on money and credit, as well as by regulations issued by the Money and Credit Council further to that law.

The setting-up in Algeria of the above-mentioned financial institutions is, in fact, subject to two important conditions relating to:

- The minimum subscribed capital of these institutions (Regulation No. 90-01 of 4 July 1990);
- the good repute, good character and professionalism of the founder members and managerial staff of these institutions (Regulation No. 92-05 of 22 March 1992).

In this connection, Regulation No. 93-01 of 3 January 1993 and Instruction No. 06-96 of 22 October 1996 lay down the conditions for establishing banks and financial institutions and for setting up branches of foreign financial institutions.

Banks and financial institutions governed by Algerian law must be incorporated in the form of joint-stock companies. There is no ceiling on the participation of non-residents in the capital of financial institutions. The latter may be wholly composed of non-residents or may be formed in association between residents and non-residents in a ratio freely decided on by the partners.

The minimum authorized capital which must be subscribed by banks and financial institutions is set at:

- DA 500 million for banks;
- DA 100 million for financial institutions.

The minimum authorized capital thus set must be released up to at least 25 per cent on incorporation of the company and wholly released not later than the end of the fifth year after approval was granted.

In the light of existing prudential rules (Regulations No. 91-09 of 14 August 1991 and No. 95-04 of 20 April 1995), the minimum capital should be considered in conjunction with the prospects for growth in the activity of the bank or financial institution. By way of illustration, own funds should represent a level of risk coverage of not less than 8 per cent.

Banks and financial institutions whose registered office is in a foreign country are required to allocate a sum to their branches in Algeria at least equal to the minimum capital required of similar banks and financial institutions coming under Algerian law.

A bank or financial institution may start its activities provided it obtains:

- An incorporation authorization issued by the Money and Credit Council;
- and approval given by the Governor of the Bank of Algeria.

The setting up of branches of foreign financial institutions is subject to the same procedure as for Algerian financial institutions. The request for authorization to establish a bank or financial institution and to set up a branch of a foreign bank or financial institution must be supported by a dossier containing information on:

- The work programme;
- the financial and technical means proposed;
- the occupation and good reputation of shareholders and their possible guarantors;
- the list of the principal managers;
- the draft statutes if a bank or financial institution is being set up;
- the statutes of the bank and financial institution if it is proposed to open a branch of a foreign bank or financial institution;
- the internal organization.

The decision concerning the request for authorization is made known to the applicant no later than two months after reception of a properly completed dossier. An appeal can be made against a refusal to grant authorization.

A bank or financial institution and a branch of a bank or financial institution which has obtained authorization is required to request the above-mentioned approval of the Governor of the Bank of Algeria within a period not exceeding 12 months. All banking transactions are prohibited until approval is obtained.

Approval is granted by decision of the Governor of the Bank of Algeria if the applicant has fulfilled all the conditions required for incorporation or establishment depending on the case, as determined by existing laws and regulations and any special conditions attached to the authorization.

Approval does not qualify the recipient to act as an approved intermediary for transactions with foreign countries. Obtaining this capacity is governed by the provisions of Regulation No. 92-04 of 22 March 1992 mentioned above.

The Law on Money and Credit and its implementing texts thus establish:

- Freedom for banks and financial institutions to be set up by resident and non-resident promoters alone or in association within mixed enterprises;
- freedom to set up branches of foreign financial institutions;
- equality of treatment between nationals and foreigners.

The law in fact accords equal treatment to residents and non-residents regardless of their nationality.

By the end of December 1996 authorization had been issued for the incorporation of only one financial institution, the Union Bank, on the basis of one resident and one non-resident partner.

With regard to operations by foreign banks in Algeria, no opening of a branch has been recorded to date. Nevertheless, certain foreign financial institutions have opened representation offices in Algiers. These are the National Bank of Paris, Crédit Lyonnais, Société Générale, City Bank and the Arab Banking Corporation.

The opening of representation offices is also subject to authorization by the Money and Credit Council (Regulation No. 91-10 of 14 August 1991).

Regulations Nos. 90-01, 92-05 and 93-01 and the instructions on implementing the last-named are attached hereto.

Question 153

It is understood that foreign banks wishing to establish themselves in Algeria have not noted the existence of any discriminatory measures. Can Algeria confirm that this is actually the case and that no other condition (e.g. capitalization) is laid down?

Reply

The legal and regulatory framework governing the conditions of establishment of banks and financial institutions (BFI) or of foreign BFI is based on the non-discriminatory treatment of foreign banks, which enjoy the same conditions as those applied to Algerian banks.

Algerian legislation makes no distinction as to the origin of funds: banks authorized to operate in Algeria become Algerian in that they are subject to Algerian common law.

In other words, the existing legal and regulatory framework in no case makes the operations of foreign banks more difficult or costly than for Algerian banks.

Separate capitalization is necessary for branches of a bank or financial institution. The law puts branches of non-resident financial institutions on the same footing as resident financial institutions.

Question 154

What criteria are taken into account by the Money and Credit Council when it examines a request by a foreign bank wishing to establish itself in Algeria?

Reply

The information required of a resident or non-resident for the assessment of a bank project is the same. It concerns, among other things, the occupation and good repute of the initiators and managerial staff and the parameters resulting from the feasibility study.

Question 155

Banks (page 85, WT/ACC/DZA/1). Is it also possible to establish subsidiaries?

Reply

The establishment of subsidiaries is also permitted by the law. The banking regulations relating to approval make no distinction between branches and subsidiaries.

Question 156

Can banking services be supplied on a cross-border basis? If so, which?

Reply

As the cross-border basis is understood as a situation in which the supplier is not present on the territory of the member where the service is provided, certain banking services may be provided according to this method.

The services concerned relate to international banking activity: foreign financing, opening of documentary transactions (documentary credit, documentary rebate), guarantee operations (sureties, guarantees) in addition to cash-management transactions for Algerian commercial banks.

Question 157

In the case of bank branch offices, is the capital of the parent establishment recognized or must the branch office have its own separate capitalization?

Reply

Separate capitalization is necessary for the branch office of a bank or financial institution. The law places branch offices of non-resident financial institutions on the same footing as resident financial institutions.

In this connection, the minimum authorized capital to be subscribed is set at:

- DA 500 million for foreign banks and branch offices; and
- DA 100 million for foreign financial institutions and their branch offices.

Question 158

Do legislative or other measures make the activities of foreign banks more difficult or costly than for Algerian banks?

Reply

The legal and regulatory arrangements governing the conditions for the establishment of foreign banks and financial institutions (BFI) or branches of foreign BFI is based on non-discriminatory treatment of foreign banks. These enjoy the same conditions as those applied to Algerian banks.

Algerian law makes no distinction as to the origin of funds: banks authorized to exercise their activities in Algeria become Algerian in that they are subject to Algerian common law.

In other words, the existing legal and regulatory arrangements in no case make the activities of foreign banks more difficult or costly than for Algerian banks.

Insurance

Question 159

Explain the criteria followed by the Ministry of Finance in approving insurance companies. Are these criteria applied to nationals and foreigners in an identical manner?

Reply

The conditions for establishing insurance companies are laid down by:

- Law No. 95-07 of 25 January 1995 (Articles 204, 215 *et seq.*);
- Decree No. 95-344 of 3 August 1996 determining the conditions and procedures for granting approval to insurance and/or reinsurance companies.

Essentially these conditions relate to:

- The form of the company;
- the formation fund or authorized capital;
- approval.

(a) Form of company:

Article 215 of Law No. 95-07 provides for two forms:

- joint-stock company;
- mutual company.

(b) Authorized capital:

Decree No. 95-344 fixes the capital according to the form of the company and the branches of activity chosen.

(c) Approval:

The conditions are laid down in Articles 2-10 of Decree No. 96-267 of 3 August 1996.

The Decree makes no distinction between national and foreign companies. There are no discriminatory provisions in any of the legislation or regulations.

The only exception appears in Article 12 of Decree No. 96-267 above, which concerns foreign companies which operated in Algeria prior to Order No. 66-127 of 27 May 1996. Before receiving approval, these are required to balance their commitments.

Question 160

Insurance (page 85). Can insurance services (in particular, reinsurance) be offered on a cross-border basis?

Reply

Reinsurance services can be offered on a cross-border basis on the following conditions:

- Observance of the legal cession provided for in Article 208 of Order No. 95.07 of 25 January 1995 on insurance and Decree No. 95.409 of 9 December 1995 fixing minimum rates and the beneficiary of compulsory cession (Articles 1-4);
- Approved insurance and/or reinsurance companies may carry out cession or acceptance transactions only with specified enterprises or enterprises belonging to a particular country, on the basis of a list drawn up by the competent Algerian administration (Article 211 of Order No. 95.07 of 25 January 1995).

Question 161

Does the fact that companies "may be freely established" include the possibility of establishing branches, or are only subsidiaries allowed?

Reply

Article 215 of Order No. 95.07 of 25 January 1995 states that insurance and/or reinsurance companies must be governed by Algerian law and take one of the two following forms:

- Joint-stock company;
- mutual company.

A branch is a commercial establishment set up by an enterprise or company which enjoys autonomy with respect to the main enterprise or company without being legally distinct from it.

A branch can therefore only be set up by a properly approved Algerian company having one of the above-mentioned forms.

Subsidiaries are allowed.

Question 162

Do legislative or other measures make the activities of foreign insurance companies more difficult or costly than for Algerian insurance companies?

Reply

Foreign and Algerian enterprises are subject to similar obligations.

The activities of one category are therefore no more difficult or costly than the activities of the other.

There are no discriminatory provisions in any laws or regulations.

Legal services

Question 163

Is there a system in Algeria in which foreign lawyers are allowed to provide legal services? If there is such a system, could Algeria explain the requirements for foreign lawyers to provide legal services, the scope of the legal services allowed and the limitations on foreign lawyers' legal activities?

Reply

A foreign lawyer of any nationality is allowed to exercise his profession in Algeria in connection with a case to which he has been properly appointed. In this capacity he can represent, assist and defend his client in any Algerian court.

The procedure concerned is quite simple, amounting to obtaining authorization from the President of the local Bar and choosing domicile on the premises of a colleague who practises within the jurisdiction of the court. This authorization can be withdrawn only in the same way.

The conditions under which a foreign lawyer may practise in Algeria are laid down in Article 6 of Law No. 91/04 of 18 January 1991 on organization of the profession of lawyer.

That Article states that "Except where otherwise provided by international conventions and professional customs, a lawyer belonging to a foreign Bar may assist, defend or represent the parties before an Algerian court after receiving special authorization for this purpose from the President of the local Bar and after choosing as domicile the office of a lawyer practising within the jurisdiction of the court. This authorization may be revoked in the same way at any point in the procedure."

It should be noted that under legal conventions concluded between Algeria and certain of its partners, for example Tunisia and France, Tunisian or French lawyers may practise freely in Algeria provided only that they choose as domicile the office of a lawyer practising within the jurisdiction of the competent court.

Furthermore, under such bilateral agreements a foreign lawyer may ask to be enrolled in one of the Algerian Bars with a view to practising his profession therein.

Business services

Question 164

In the context of business services, can you specify the services which are subject to restrictions and explain the conditions applied in order to guarantee standards of qualification and professional competence?

Reply

In the field of insurance:

The activities subject to restrictions concern:

- loss adjusters;
- insurance intermediaries.

I. PROFESSION OF LOSS ADJUSTER

The practice of the profession of loss adjuster is provided for in Articles 269-273 of Order No. 95-07 of 25 January 1995 and is subject to approval in accordance with Decree No. 96-46 which lays down the conditions for granting such approval.

The profession is open to natural and legal persons. In order to receive approval, the applicant must fulfil the following conditions:

- Nationality (Algerian);
- age;
- professional qualification.

He must attach the following documents to his application:

- Nationality certificate;
- birth certificate;
- copies of qualifications, diplomas or any other document relating to the proposed speciality and his professional experience.

With regard to legal persons, these must be governed by Algerian law and submit a dossier containing *inter alia* the staff rules, qualifications and diplomas proving the qualifications of the staff involved.

II. INSURANCE INTERMEDIARIES

The professions of broker and general agent are covered by Articles 252-268 of Order No. 95-07 of 25 January 1995 on insurance and are subject to the granting of prior approval in accordance with Decree No. 95-340 of 30 October 1995 (Articles 4-21).

While a broker is approved by order of the Minister for Finance, an insurance agent is approved by the insurance company.

1. Broker

Under Articles 4-7 of the Decree, the applicant must fulfil the following conditions, *inter alia*:

- Algerian nationality;
- be at least 25 years of age;
- possess the required professional qualifications as laid down in Articles 18 and 19 of the above Decree;
- be able to show financial guarantees (DA 150,000 on deposit with the Treasury or a bank guarantee for the same amount).

Legal persons are subject to the following conditions:

- Managers must: be of good character;
- be at least 25 years of age;
- be of Algerian nationality;
- possess the required professional qualifications (Articles 18 and 19).

Partners must:

- be of good character;
- be of Algerian nationality;
- be resident in Algeria;
- be able to show the required financial guarantees (DA 1,500,000 each);
- have released the authorized capital as provided for by current legislation.

2. Insurance agent

The approval conditions are laid down in Articles 15-21 of the above Decree. Like brokers, insurance agents must meet the following conditions:

- Nationality;
- age;
- good character;
- financial guarantees (DA 500,000);
- professional qualifications (Articles 18 and 19).

3. Impediments and incompatibilities

Article 263 of the Order of 27 January 1995 lists the impediments to the practice of the profession of insurance intermediary.

Article 264 considers the profession of insurance intermediary to be incompatible with any commercial activity or activity regarded as such by the law.

Question 165

In the fields where these conditions are applied, to what criteria must foreign suppliers conform in order to meet those conditions?

Reply

Foreign suppliers not meeting the criteria listed in the reply to question No. 164 are excluded.

Question 166

Can Algeria enter into commitments in those sectors which are completely liberalized?

Reply

Algeria can enter into commitments in those sectors which it has completely liberalized.

2. Policies affecting trade in services

Question 167

Can you identify all the services mentioned in section VI.2(a) - Services restricted for safety or public order reasons.

Reply

The services mentioned in section VI.2(a) in connection with services which are restricted for safety or public-order reasons are the following:

- Classified installations;
- security activities and the transport of funds and sensitive products;
- bars;
- gaming rooms;
- the activity of public writer.

Question 168

Are foreign service providers wishing to provide a service involving recourse to a State industry, public property or public lands (as mentioned in section IV.2(a) treated in the same way as national providers in the same sector?

Reply

Under Law No. 93-12 of 5 October 1993 on investment promotion, the same treatment is accorded to foreign service providers without any discrimination compared with Algerian nationals.

Question 169

Can Algeria specify which services concerned with public health, education or the environment are subject to authorization or concession? Are authorizations applied to foreign and national companies in the same way?

Reply

In the health sector, activities carried out on a private basis by doctors, pharmacists, general and specialist dental surgeons and medical auxiliaries (paramedics) are regarded as health-sector regulated activities.

All these activities are subject to prior authorization. They are carried out under the conditions laid down by Article 208 of Law No. 85-05 of 16 February 1985 on health protection and promotion, amended and supplemented by Law No. 88-15 of 3 May 1988 and Law No. 90-17 of 31 July 1990.

In the education sector, all levels of education are provided for by the State, except for certain regulated services connected with vocational training.

In the environmental sector, sanitation, highways maintenance and refuse-disposal services are for the most part the subject of public-service concessions granted by responsible local authorities.

Local authorities are gradually reducing their involvement in these services, in the light *inter alia* of the level of control exercised by private entrepreneurs over the terms and conditions of concessions, as well as their capabilities and powers of initiative in this field.

Question 170

Policies affecting trade in services (pages 86-89): how is the general preference in favour of resident service supplies regulated? What are the preferential measures granted? Is the publication of government procurement orders guaranteed?

Reply

The publication of invitations to tender is guaranteed. It is carried out via the press or legal notice. An open invitation to tender allows any candidate to submit an offer. Assessment of the tenders is based on different criteria laid down in Article 49 of Decree No. 91-434 of 9 November 1991. These criteria are:

- Technical and financial guarantees;
- price, quality and period of implementation;
- integration into the national economy;
- financing terms offered by foreign enterprises;
- commercial guarantees and product-support conditions (after-sales service, maintenance and training).

It must be stressed that Articles 20 and 21 of Executive Decree No. 91-434 of 9 November 1991 on the regulation of government procurement give priority to national production. The principle of giving preference to national production is accepted by the international financial institutions which provide funding for projects in Algeria.

Questions 171

What are the other tax exemptions or rebates granted under the finance acts in the context of the promotion of exports of services?

Reply

The 1996 Finance Law allows tax exemption on company profits for five years in respect of sales transactions and export services, with the exception of surface, sea and air transport, reinsurance and banks (Article 12 of the 1996 Finance Law).

This exemption also covers, for three years, tourist and travel agencies and hotels in respect of the foreign-exchange proportion of the turnover.

The 1996 Finance Law confirmed the tax advantages provided for on this point in the Investment Promotion Law.

Question 172

Please indicate the established number and required qualifications under the labour legislation in the case of movement of natural persons supplying services.

Reply

Algerian legislation on the conditions of employment of foreign workers (Law No. 81-10 of 11 July 1981) places no limit on the number of foreign workers who may be covered by the right of movement of natural persons supplying goods or services.

On the other hand, as regards the required qualifications, Article 3 of the above Law stipulates that the qualification level must be at least equivalent to that of "technician", with the exception of nationals of a State with which Algeria has concluded a treaty or convention on the subject, as well as persons enjoying the status of political refugees.

The same Article provides, however, that the employment administration may grant exceptional derogations on the basis of a detailed report by the employing body.

Any foreigner due to carry out a paid activity in Algeria must hold a work permit or temporary work authorization issued by the appropriate office of the authority responsible for the work.

3. Market access and national treatment

Question 173

It is noted that no limitation exists on the number of service suppliers but it is also noted that labour legislation uniformly makes the number of natural persons subject to prior authorization for all services. How is the number of natural persons supplying a service assessed?

Reply

Algerian legislation on the conditions of employment of foreign workers (Law No. 81-10 of 11 July 1981) contains no special provision for assessing the number of natural persons supplying a service.

Article 1 of the above-mentioned Law leaves the employer completely free in this respect inasmuch as the only quantitative reference mentioned is: "... depending on national-development needs".

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

(b) Trade and tariff conventions

Question 174

Please make a list (HS 6-digit) of all products enjoying tariff exemptions under Arab Maghreb Union agreements.

Reply

There is no list of products enjoying tariff exemptions under Arab Maghreb Union agreements.

The products to which the tariff exemption regime applies are those meeting the origin and source conditions.

Question 175

Does Algeria plan to conclude other preferential trade agreements in future (next three years)?

Reply

Algeria does not rule out the possibility of concluding other preferential trade agreements in the years to come.