

# **WORLD TRADE ORGANIZATION**

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**Working Party on the  
Accession of Ukraine**

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## **ACCESSION OF UKRAINE**

### Additional Questions and Replies

The Governmental Commission on Ukraine's Accession has submitted the following responses to additional questions from members of the Working Party with the request that it be circulated.

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## II. ECONOMIC POLICIES

### - Foreign Exchange and Payments

#### Question 1

**We note a reference to Article 3 of the Law of Ukraine on the Procedure of Payments in Foreign Currency. In particular, Ukraine requires that purchased foreign currency must be remitted by a resident in pursuance of its obligations to a non-resident within five business days following the date of such amount entering into the currency account of the resident. This regulation accords imported goods less favourable treatment than goods produced domestically and hence violates Article III:4 of GATT.**

**We request that Ukraine abolish this requirement.**

#### Answer:

Article 3 of the Law of Ukraine "On the Procedure of Payments in Foreign Currency", which requires that purchased foreign currency must be remitted by a resident in pursuance of its obligations to a non-resident within five business days following the date of such amount entering into the currency account of the resident, does not impose less favourable treatment for residents paying for imported goods as compared with payments for domestically produced goods, since it does not restrict the residents' right to make payments with non-residents in terms set forth in contracts.

Residents can buy necessary foreign currency with national currency, and within the term set by the agreement transfer this money to the foreign supplier of the goods, including the day of its purchase, but not later than 5 days after the date of purchase.

In addition, we inform that during numerous missions of the International Monetary Fund, the most recent of which took place on 16-20 December 2003, the above mentioned provision of the Law of Ukraine "On the Procedure of Payments in Foreign Currency" did not give rise to questions from experts from the IMF.

### - Investment Regime

#### Question 2

**We seek clarification of several aspects of Ukraine's investment regime, and how they might impact on its ability to schedule commitments in the services sector. In paragraph 15, it is noted that foreign investment "may be made in any object, except those prohibited by the Laws of Ukraine". We request a detailed list of prohibited activities under Ukrainian Law.**

**Further in paragraph 15 it stated that registration of foreign investment may be 'refused only when the investment would contradict Ukraine's legislation'. We seek clarification of cases when investment would 'contradict' Ukraine's legislation and how they are assessed.**

#### Answer:

According to the Law of Ukraine "On Investment Activity" No. 1560-XII of 18 January 1991 investment is forbidden into objects, establishment and utilization of which contradicts to sanitary, hygienic, radiological, ecological, architectural and other norms of national legislation, violates rights and interests of citizens, business entities and state protected by the law. There is no specific list of enterprises forbidden for investment in Ukraine.

- **State Ownership and Privatization**

**Question 3**

**We kindly ask representatives of Ukrainian delegation to specify the meaning of an enterprise, which is transferred into collective form of ownership.**

**Paragraph 16 does not mention the share of privatized enterprises among all the enterprises registered within State Register. Please provide us with that information regarding abovementioned share of privatized enterprises, and also with the information regarding the share of capital, following the example of Table 2 regarding industrial enterprises.**

Answer:

The revised version of paragraphs 16 and 17 should read as follows:

16. In response to questions concerning Ukraine's privatization programme, the portion of enterprises privatized, in the process of privatization, and still state-owned and the future plans including the on nature and size of those parts of the economy that would not be privatized, the representative of Ukraine said that during the years of privatization, as of 1 January 2003, 83,953 entities changed the form of ownership, including 61,293 of communal entities and 22,660 of state entities. Almost 24,000 private enterprises had been formed.

By types of economic activity, the privatization process had covered principally wholesale and retail trading businesses, including businesses engaged in sales of motor vehicles and motor vehicle repair services (33,453); rendering of collective, public and personal services (14,040); industrial (8,126) sectors.

One hundred and seventy nine large state-owned enterprises with capital assets valued at more than UAH 170 million have been privatized over the past ten years. Not less than 40 per cent of the shares in 132 companies had been sold. As of the beginning of 2003, more than 11.5 thousand medium- and large-size enterprises were privatized with depth of not less than 70 per cent, among which almost 47 per cent constitute industrial enterprises.

Table 1

Plans for the Future - Privatization of Enterprises in 2003

Sectors of the economy	Number of enterprises whose controlling or blocking packages of shares are planned for sale on the stock market and at auctions	Balance sheet value of capital assets, million UAH	Number of employees, persons
Oil and gas complex	4	45.94	29,675
Energy sector	3	167.10	10,985
Agriculture	32	329.76	6,662
Metallurgy	9	3,373.11	70,255
Machine building and metal-working	49	154,139	96,601
Aircraft industry	1	20.84	854
Shipbuilding industry	2	6.22	6,167

Sectors of the economy	Number of enterprises whose controlling or blocking packages of shares are planned for sale on the stock market and at auctions	Balance sheet value of capital assets, million UAH	Number of employees, persons
Sector of communications devices	4	392.54	4,213
Chemical industry	6	1,947.94	11,510
Petrochemical industry	3	73.86	6,002
Transport	27	203.86	6,015

17. The representative of Ukraine said that according to the data of the State Statistics Committee of Ukraine the output of industrial enterprises that changed their ownership form was UAH 66.6 million as of 1 October 2002, which is 53.9 per cent of the total output. The number of joint-stock companies set up on the basis of state enterprises and the share of private capital in total capital may be seen in the following table.

Table 2  
Number of enterprises (as of 1 April 2003)

Industry	Total	Percentage of private capital in total capital			
		up to 25%	25% to 50%	50% to 75%	75% to 100%
Power engineering	34	8	10	7	9
Fuel industry	13	4	1	2	6
Ferrous metallurgy	96	8	5	7	76
Chemical and petrochemical	108	14	7	9	78
Machine building and metal processing	1,254	91	61	114	988
Woodwork, and pulp and paper industry	171	9	2	5	155
Light industry	221	13	3	9	196
Food industry	842	65	6	46	725
Transport	909	57	5	128	719
Construction	78	7			71
Other industries	4,526	377	67	420	3,662
Total:	8,252	653	167	747	6,685

## - Pricing Policies

### Question 4

**We kindly ask Ukraine to reduce the extent of pricing control and to abolish market forces' limiting provisions, that are provided in Working Party's Draft Report, Annex 4, and to minimize the influence of state in the regulation of market.**

**We ask to reduce the pricing regulation and to ensure pricing policies to be in accordance with Article 9, III of General Agreement on Tariffs and Trade, 1994 (GATT 1994).**

Answer:

Ukraine will ensure the compliance of pricing policies with Article 9, III of General Agreement on Tariffs and Trade, 1994 (GATT 1994)

**Question 5**

**Minimum prices on imported or local goods – the attached table (Annex 1) does not make clear whether price regulations are applied to local goods, imported goods or both. We request Ukraine clarify the scope of application of its price control measures.**

Answer:

State regulation of prices applies to goods that are sold in the territory of Ukraine, irrespective of their origin.

**Question 6**

**Minimum prices for imported vodka and alcoholic products – the application of minimum prices on imported products violates Articles XI of GATT 1994. We request that Ukraine abolish these requirements.**

Answer:

Ukraine does not regard the application of minimum prices to imported products as a violation of the provisions of Article XI GATT 1994. Ukraine understands its commitments as a Member of the WTO. Ukraine will continue to act in strict compliance with the commitments it assumes in the course of preparing the Report of the Working Party.

**Question 7**

**Minimum price regulations on domestic beet and refined sugar. In particular, we wish to note that minimum internal prices for refined sugar and beet sugar are employed by Ukraine as a means of providing a subsidy to domestic beet sugar production and refining of local beet sugar in Ukraine. The use of such minimum prices in parallel with the restrictions applied to imports of raw cane sugar (i.e., requirement that sugar produced from imported raw cane sugar be exported) violate GATT Article III:4 by according considerably less favourable treatment to imported raw sugar vis-à-vis its domestic competitor – sugar of beet origin.) Furthermore, under Ukraine's minimum price policies (as a means of delivering a subsidy to sugar producers) support is provided to sugar processors contingent on the use of local input (beet sugar). This appears to constitute a prohibited subsidy in the meaning of Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures, as well as a prohibited TRIM in the meaning of Article 1(a). We request that Ukraine acknowledge the WTO inconsistencies of its minimum price regulations in relation to sugar and agree to remove them.**

Answer:

Ukraine cannot acknowledge any inconsistencies in internal regulations of the sugar market relating to the setting of minimum prices for sugar with the provisions of Article III:4 GATT, as is asserted by this Member.

Raw cane sugar is imported into Ukraine for further processing (refining) and production of processed (refined) sugar, i.e., it is not a finished product, but a raw material which is not supplied directly for sale to retail and wholesale stores as it is the case with sugar. In such a situation, internal regulations



of the sugar market must comply with Article III.5 GATT 1947: *"No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources"*. Ukraine believes that internal regulations of the sugar market fully comply with this Article of GATT.

Pursuant to the Law of Ukraine "On State Regulation of Sugar Production and Sale", dated 17 June 1999, under No. 758-XIV, the minimum price for sugar is the lower level of the price at the time of conclusion of sale-purchase agreements on Ukraine's domestic market within the limit of the A Quota, whereas the quota of sugar supply onto the domestic market (the "A Quota") means a maximum quantity of sugar to be supplied onto the domestic market as from the 1 September of the current year till the 1 September of next year, in order to satisfy domestic needs. Ukraine's setting of minimum prices for sugar is in compliance with Article 6 and Annex 3:8 of the WTO Agreement on Agriculture. The minimum prices for sugar have an impact on an increase of profitability of sugar beet production in Ukraine. Ukraine does not see in this measure any discriminatory conditions with respect to the internal sale and purchase of raw cane sugar and, on the contrary, these minimum prices for sugar, which are set at a level that is two times higher than the value of 1 ton of imported raw sugar, create a highly favourable situation for raw cane sugar imports on the domestic sugar market, even if a 50 per cent import duty, which was agreed during negotiations, is paid on imports in excess of the tariff quota.

Besides, minimum prices, which are set to support producers of refined sugar, exist in other WTO Members, for example in the EU, through a mechanism of intervention prices, and in the USA – for cane sugar through a mechanism of loan rates.

As regards the existence in Ukraine of the prohibited TRIMs measure in the meaning of Article 1(a), as is believed by this Member, through the setting of minimum prices for sugar contingent on the use of local input (beet sugar), Ukraine would like to note that effective domestic law in Ukraine that regulates the sugar market does not require "the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production", as is indicated in paragraph 1(a) of the Annex to the TRIMs Agreement, which contains references to commitments with respect to national treatment as is contemplated in Article III:4 GATT 1994.

As regards the prohibited subsidy in the meaning of Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures, Ukraine notifies that all matters relating to internal regulations of production of agricultural products (namely, setting of quotas for sugar production, setting of support prices, provision of domestic support/subsidies) are governed by the Articles of the Agreement on Agriculture. The minimum prices for sugar in Ukraine are set irrespective of which raw sugar such sugar is refined from – sugar beets or raw cane sugar, but they have a direct impact upon Ukrainian domestic producers of sugar beets rather than upon producers of sugar cane, as sugar cane is not grown in the country. If the nature and climate conditions allowed the Ukrainian producers to grow sugar cane instead of sugar beets, then effective Ukrainian law would provide an economic benefit (subsidy) specifically to sugar cane rather than to sugar beets.

At the same time, the liberal regime of regulation of raw cane sugar imports through setting a tariff quota, as suggested by Ukraine, is in full compliance with the requirements set out in Article 4 of the Agreement on Agriculture.

Ukraine sees the only (but indirect) inconsistency between the requirement of Ukrainian law and the WTO requirements concerning the requirement to export sugar refined from imported raw materials. Pursuant to Article 3.11 of the Law of Ukraine "On State Regulation of Sugar Production and Sale",

dated 17 June 1999, under No. 758-XIV, production of sugar in Ukraine from imported raw materials is permitted exclusively on condition that finished products will be exported in full out of Ukraine within time periods specified by Ukrainian law. Article XI:1 of GATT 1994 "General Elimination of Quantitative Restrictions" and Article 4 of the Agreement on Agriculture "Market access" point out that: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party". The government will prepare and offer corresponding amendments to the Law of Ukraine "On State Regulation of Sugar Production and Sale" regarding the abolishment of this requirement.

#### **Question 8**

**Ukraine should indicate whether the customs value of exported products subject to such "indicative prices" are based on such prices.**

##### Answer:

Pursuant to Article 274 of the Customs Code of Ukraine, dated 11 July 2002, under No. 92-IV, which entered into force as from 1 January 2004, in the event that price restrictions are set for exportation of certain products (indicative prices, maximum levels of prices, prices set as a result of antidumping investigations etc.), the customs value of such products is determined – in case of their exportation from Ukraine – by the provisions setting forth procedures for applying the said restrictions.

#### **Question 9**

**Ukraine should indicate any linkage of customs fees and charges, licence fees, activity licensing requirements, internal taxes or other taxes or other trade-related fees, formalities or requirements, to the observance or non-observance of such indicative prices.**

##### Answer:

In accordance with the Regulation on the Methodology for Formation and Application of Indicative Prices, approved by Order No. 506 of the Ministry of Foreign Economic Relations and Trade of Ukraine, dated 8 August 1996, under No. 506, there are no restrictions connected with application of indicative prices, except for inspections of:

- compliance of prices for products if foreign economic agreements for such products are subject to registration or require a licence from the Ministry of Economy Ukraine with indicative prices by specialists from the Ministry of Economy; and
- compliance of prices for products if foreign economic agreements for such products are not subject to registration and do not require a licence from the Ministry of Economy Ukraine with indicative prices by specialists from customs authorities of Ukraine.

#### **Question 10**

**If export prices are subject to any such requirements, bracketed paragraph 21 should include a legal reference to conformity with GATT Articles VIII and XI and any other relevant WTO provisions.**

Answer:

Ukraine understands its commitments as a Member of the WTO. Ukraine will continue to act in strict compliance with the commitments it assumes in the course of preparing the Report of the Working Party.

**Question 11**

**There appear to be plans, and there may be measures in place, pursuant to the Agreement on Single Agricultural Market (SAM), to "coordinate .. pricing policies" in relation to agricultural products in the CIS area (paragraph 150).**

- **Ukraine should include in this section details of: the provisions of the Agreement on Single Agricultural Market relating to pricing policies; the provisions of any agreements, protocols, understandings, laws and regulations pursuant to this Agreement; and any measures, in force or planned, resulting there-from; and**
- **Ukraine should also provide a full explanation the nature and purpose of coordinating pricing policies in the CIS. Why were these provisions agreed, and what does Ukraine expect such coordination of pricing policy to achieve? Are the policies affected those relating to external prices or internal prices, or both? Are the pricing measures applicable to trade involving parties to the Agreement, or trade with third countries as well? Which products have been or will be affected? How are the provisions reflected in Ukraine's policies towards these products? For example, are they reflected in any mandatory minimum internal prices, or price support policies, or "indicative export prices", or customs valuation measures, or anything else, and if so how? If Ukraine has not been participating in the coordination of pricing policies because the coordination process has been dormant, is it expecting to do so in the future in the event of these provisions being activated? Is Ukraine bound by the treaty or other instruments to participate in the coordination of pricing policy in the CIS area, or can it opt out while remaining under the treaty?**

Answer:

The Agreement on the Common Agrarian Market of the Commonwealth of Independent States (hereinafter referred to, as the "Agreement") was signed on 6 March 1998. The date of its entry into force for Ukraine is 29 January 2001. The Agreement is intended to establish in a stage-by-stage manner the Common agrarian market of the State Members of the Commonwealth of Independent States, which will ensure the free movements of agricultural products, foodstuffs, Research and Development products, technologies, means of production and services of domestic origin for the agricultural sector.

The Common agrarian market shall be established by the Parties on the basis of voluntarily assumed obligations and equality of rights. Article 6 of the Agreement provides that in the course of establishing the Common agrarian market the Parties shall coordinate price policies and, at the stage of establishing the common customs territory, shall transfer to a conciliatory system for the regulation of prices for products and services pursuant to market principles. However, according to the reservation made by Ukraine at the time the Agreement was signed, the provisions of Article 6 regarding the establishment of the common customs territory shall not apply to Ukraine.

### III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

#### Question 12

**This section would benefit from greater detail on the degree to which WTO agreements will take precedence over national laws, and where administrative appeals in relation to implementation of those agreements can be heard in Ukraine's legal/administrative system. We request that Ukraine provide this additional information.**

Answer:

- Regarding the matter of precedence of the WTO Agreements over national laws

Pursuant to Article 9 of the Ukrainian Constitution, international treaties that are in force, and that are agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. Article 17 of the Law of Ukraine "On International Treaties of Ukraine" provides that international treaties concluded and duly ratified in the form of a law shall be part of Ukraine's national legislation and shall be applied pursuant to procedures specified for provisions of national legislation. In the event that an international treaty of Ukraine, which has been concluded in the form of a law, sets out rules other than rules established by Ukrainian law, the rules of the international treaty of Ukraine shall apply.

Thus, the Agreements of the World Trade Organization will become part of the national legislation upon Ukraine's accession to this Organization.

- Regarding hearings of administrative appeals

Pursuant to Article 55 of the Ukrainian Constitution, human and citizens' rights and freedoms are protected by the court. Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organizations of which Ukraine is a member or participant.

Pursuant to Article 287 of the Ukrainian Code on Administrative Violations (hereinafter referred to as, the "Code"), a resolution in a case involving an administrative violation may be appealed by a person, against whom such resolution has been adopted, or an injured party.

The resolution of a rayon, municipal district, city or inter-district court (judge), whereby an administrative sanction has been imposed, is final and may not be appealed under procedures applicable to proceedings in cases involving administrative violations, except as otherwise provided by laws of Ukraine.

Pursuant to Article 288 of the of the Code, a resolution in a case involving an administrative violation may be appealed:

- a resolution of an administrative commission can be appealed to the executive committee of the competent Rada or with the rayon, municipal district, city or inter-district court whose decision is final;
- a decision of the executive committee of a village, town or city Rada can be appealed to the applicable Rada or with the rayon, municipal district, city or inter-district court whose decision is final; and

- a resolution of another government authority (officer) to impose an administrative sanction can be appealed to higher government authority (high-ranking officer) or with the rayon, municipal district, city or inter-district court whose decision is final.

An appeal is to be filed with the authority (officer), who has adopted a resolution in a case involving an administrative violation, unless otherwise provided by Ukrainian law. The appeal that was filed must be transferred within three days, together with the case records, to the authority (officer) empowered to hear it pursuant to this Article (Article 289 of the Code).

The resolution in a case involving an administrative violation may be protested by the prosecutor (Article 290 of the Code).

### Question 13

**Paragraph 24 states that according to Constitution, Ukrainian parliament (Supreme Rada) has a right to approve the list of "state property not subject to privatization". Has such a list already been approved? Which property has the Parliament declared to be "not subject to privatization"? What are the reasons considered for such a decision?**

#### Answer:

In accordance with the Law of Ukraine "On State Property Privatization" No. 2163-XII of 17 September 2003 the following objects shall not be subject to privatization:

- objects of national importance, as well as the State property. Objects of national importance include property complexes of the enterprises, their structural sub-divisions, the main function of which is the manufacture of goods (works, services) of national importance.

Of national importance are:

- objects, which provide for fulfilment by the State of its functions, provide for protective ability of the State, its economic independence, and objects which belong to the Ukrainian people, property constituting the value basis of Ukrainian independence;
- objects, functioning of which provides for social development, preservation and escalation of cultural, scientific potential, cultural wealth;
- objects, which if controlled by the State, guarantee for the protection of citizens from being influenced by consequence of non-controlled production, use or sale of hazardous products, services and dangerous production.

Pursuant to the above Law the list of state-owned objects not subject to privatization shall be approved by the Verkhovna Rada upon proposal of the Cabinet of Ministers of Ukraine.

To implement this norm of the Law of Ukraine "On Privatization of Public Property" the Verkhovna Rada of Ukraine passed the Law of Ukraine "On List of State Property Assets not Subject to Privatization" No. 847-XIV of 7 July 1999, which determines a specific list of enterprises not subject to privatization. This list runs to over 100 pages containing the names of the firms organized by oblast. The list can be made available to members of the Working party if requested.

#### **IV. POLICIES AFFECTING TRADE IN GOODS**

##### **- Trading Rights**

##### **Question 14**

**We welcome Ukraine's provision of a complete Questionnaire on Import Licensing Procedures (WT/ACC/UKR/99/Rev.1). We note on page 11 of that paper that importers seeking special licenses (i.e., under 'special licensing systems with quotas of imports on goods') 'may not exceed 35 per cent of the size of the quota period or such other period envisaged by the relevant decision of the Commission'.**

**We seek clarification of what is meant by "35 per cent of the quota period". Does Ukraine intend to limit volumes under the licence to individual importers to 35 per cent of the quota available in a particular period?**

**If there is limited import demand (e.g., only 1 or 2 importers) in a particular period, this 35 per cent requirement could artificially restrict trade and lead to non-utilization of the quota. A truly First-Come-First-Served method of quota allocation would not place such restrictions on the volumes of individual importers, but would seek to ensure full utilization of the quota by redistributing any quota unutilized by importers.**

**We question the consistency of this requirement with Article 3:5(h) of the Agreement on Import Licensing Procedures.**

Answer:

The norm on establishing the 35 per cent volume of the quota period comes from the antimonopoly legislation of Ukraine.

With the purpose of ensuring fair distribution between importers of import quota volumes and avoiding "monopoly" in their use the 35 per cent restriction has been established for quota receiving within the determined total volume of import quota for any single application.

However, an importer that has applied and been granted 35 per cent of the initial quota period may, once it has utilized its 35 per cent, apply again for a licence within the same quota period. If quota remains, its application will be satisfied. In a like manner, further applications of the importer will be satisfied so long as quota remains available.

##### **Question 15**

**Please either include or refer to a more concrete list of activities subject to activity licensing.**

Answer:

The list of all types of economic activity subject to licensing in Ukraine is provided for by Law of Ukraine No. 1775-III of 1 June 2000 "On Licensing of Certain Types of Economic Activity" (with changes and amendments). The list of more than 60 activities subject to licensing may be found in Articles 2 and 9 of the said Law, which was submitted the secretariat (See document WT/ACC/UKR/98/Add.9). Types of economic activity, except for cases provided by Articles 2 and 9 of the said Law are not subject to licensing.

### Question 16

**The different rules applying to activity licensing as opposed to licensing related to import/export operations should be made clearer.**

Answer:

The system of licensing of types of economic activities is aimed at certifying the right of a business entity to perform the activities, indicated in its licence. Law of Ukraine No. 1775-III of 1 June 2000 "On Licensing of Certain Types of Economic Activity" establishes the list of activities subject to licensing, the procedure for filing and considering licence applications (see the above). The terms of licensing of each individual type of activity are stipulated by relevant Laws, Resolutions of the Cabinet of Minister of Ukraine, normative acts of ministries and departments.

The Law "On Foreign Economic Activity" No.959-XII of 16 April 1991, as amended, specifies as follows the circumstances in which quantitative restrictions may be imposed:

Imports licensing is introduced in the event of:

- drastic deterioration of the state of the payment balance and external payments (if other measures proved inefficient);
- sharp decrease or minimal size of gold and currency reserves;
- necessity to secure protection of the life of human beings, animals or plants, environment, public morale, national wealth of art, historical or archeological importance, or protection of intellectual property rights, as well as to comply with the requirements of national security;
- imports of precious metals, except for banking metals;
- necessity to apply measures of protection of the domestic producer;
- necessity to ensure protection of patents, trademarks and copyright; and
- necessity to ensure the fulfilment of international treaties of Ukraine.

Exports licensing is introduced in the event of:

- considerable imbalance with respect to certain goods on the internal market, particularly agricultural goods, goods of fishery, foodstuffs and common industrial goods of first priority, as well as other goods of vital importance to life in Ukraine;
- necessity to secure protection of the life of human beings, animals or plants, environment, public morale, national wealth of art, historical or archeological importance, or protection of intellectual property rights, as well as to comply with the requirements of national security;
- exports of precious metals, except for banking metals;
- necessity apply measures of protection of the domestic producer;
- necessity to ensure protection of patents, trademarks and copyright; and
- necessity to ensure the fulfilment of international treaties of Ukraine.

### A. IMPORT REGULATION

- **Customs Tariff**

### Question 17

**In paragraph 38, Ukraine notes that Article III of the Law of Ukraine No. 2097-XII of 5 February 1992 provides for a non-regular duty and special duty. We would appreciate**

**clarification of the nature of these duties and their relationship to appropriate GATT disciplines.**

Answer:

Article 11 of the Law of Ukraine "On the Single Customs Tariff," No. 2097, dated 5 February 1992, provides for collection of special types of duty, namely:

- antidumping (the Law of Ukraine "On Protection of the National Producer from Dumping Import," No. 330-XIX, dated 22 December 1998) pursuant to the requirements of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
- countervailing (the Law of Ukraine "On Protection of the National Producer from Subsidized Import," No. 331-XIX, dated 22 December 1998) pursuant to the requirements of the Agreement on Subsidies and Countervailing Measures; and
- special (the Law of Ukraine "On Application of Special Measures as to Import into Ukraine," No. 332, dated 22 December 1998) pursuant to the requirements of the Agreement on Safeguards.

#### **Question 18**

**The section should indicate the legislative basis for the customs tariff and the tariff nomenclature, and the version of the HS used and any other nomenclature systems on which the tariff nomenclature is based. We request that this be included.**

Answer:

Customs Tariff of Ukraine is approved by the Law of Ukraine "On Customs Code of Ukraine" of 5 April 2001 No. 2371-III. Tariff nomenclature of the Customs Tariff is based on the Ukrainian Foreign Economic Activity Classification of Goods, build on the Harmonized system of description and codification of goods 1996 (HS 1996) and Combined Nomenclature of the European Communities.

- **Other duties and charges levied on imports but not on domestic production**

#### **Question 19**

**We note the last sentence of this paragraph. Article II:1(b) of GATT 1994 does not provide any flexibility in relation to commitments on ODCs. We would appreciate advice on what Ukraine is intending to propose in relation to ODCs.**

Answer:

The representative of Ukraine stated that all other duties and charges covered by Article II:1(b) of the GATT 1994 would be bound at the level of zero. The Working Party took note of this commitment.

#### **Question 20**

**Paragraph 29. The list of activities subject to activity licensing includes "operations on the import and export of spirits, alcoholic beverages and tobacco goods, and others". We ask that what is covered by "and others" be fully enumerated.**



Answer:

The phrase "operations on the export of spirits, alcoholic beverages and tobacco goods, and others" means that licensing is requirement for such types of activities as production, import, export, wholesale and retail trade in spirits, alcoholic beverages and tobacco goods. Thus, the word "other" in the context of "import, export of spirits, alcoholic beverages and tobacco goods" means not other goods, but other types of activities licensed in Ukraine according to Law of Ukraine No. 1775-III of 1 June 2000 "Licensing of Certain Types of Economic Activity". This Law contains the list of all types of economic activity subject to licensing in Ukraine.

The list of activities does not include any activity licensing requirements for the production of agricultural products as defined at Annex 1 of the Agreement on Agriculture.

**Question 21**

**Could Ukraine include in the list any activity licensing requirements which may exist in relation to the production and internal and external sale/purchase of such agricultural products?**

Answer:

The requirements for obtaining a licence to engage production, import, export, wholesale and retail trade in spirits, alcoholic beverages and tobacco goods as a type of activity are described in the answer to question 34.

**Question 22**

**At the end of paragraph 29, a reference to a list of goods requiring licenses should be made.**

Answer:

In addition to question 29 we hereby inform that import operations with the following goods are subject to licensing in 2004:

Description	HS Code
Insecticides (except for veterinary medicines), fungicides, herbicides, other anti-sprouting products and plant-growth regulators, rodenticides (except veterinary medicines), as well similar remedies	3808 10, 3808 20, 3808 30, 3808 90 (except for individual consignments, imported free of charge upon permission of the Ministry of Ecologic Resources exclusively for state testing, academic research and demonstrative experiments)
Unused postage, excise labels and similar products being in circulation or have to be in circulation in the country of destination; stamp-impressed paper	4907 00 10 00, 4907 00 91 00, 4907 00 99 00
Optical polycarbonates for production of discs for laser reading systems	3907 40 00 00
Copper sulphate	2833 25 00 00
Products, which may contain ozone-depleting substances and are imported in aerosol package	2710 00 98 00, 3004, 3208, 3209, 3212, 3214, 3304, 3305, 3306, 3307, 3402, 3403, 3405, 3506 91 00 00, 3808, 3809, 3811, 3812, 3814 00, 3820 00 00 00, 3824 90 70 00, 3824 90 95 00, 3910 00 00,
Products, which may contain ozone-depleting substances	8415, 8418, 8424 10, 8476 21 00 00, 8476 81 00 00, 9304 00 00 00

Description	HS Code
Ozone-depleting substances	2903 14 00 00, 2903 19 10 00, 2903 30 33 00, 2903 41 00 00, 2903 42 00 00, 2903 43 00 00, 2903 44 10 00, 2903 44 10 00, 2903 44 90 00, 2903 45 10 00, 2903 45 15 00, 2903 45 25 00, 2903 45 30 00, 2903 45 30 00, 2903 45 35 00, 2903 45 40 00, 2903 45 45 00, 2903 45 50 00, 2903 45 55 00, 2903 45 90 00, 2903 46 10 00, 2903 46 20 00, 2903 46 90 00, 2903 49 10 00, 2903 49 30 00, 3824 71 00 00, 3824 79 00 00, 3824 90 95 00, 2903 14 00 00

### Question 23

**Generally, please clarify which fees, if any, apply to which type of licensing.**

Answer:

The following lists goods, the import or export of which require an activity licence. Except for polycarbonates, no import licence is required and there is no restriction on the volume of imports. In the case of polycarbonate, an import licence, which does not restrict the volume of imports, is also required.

Product	HS	Licensing Body	Eligibility	Cost of licence
Laser-readable discs; polycarbonate for production of optical information storage devices; equipment for laser-readable discs	3907 40 00 00, 8523, 8524	Ministry of Economy and European Integration	All agents of economic activity	UAH 340
Holographic protection elements	The list of documents and goods, holographic elements of which are subject to protection, is approved by Resolution of the Cabinet of Ministers of Ukraine No. 932 of 5 July 2002	Security Service of Ukraine	All agents of economic activity	UAH 340
Narcotics, psychotropic substances and precursors	3001-3006	State Department for Supervision over Quality, Safety and Production of Medicines and Articles for medical Use	Only a body authorized by the Cabinet of Ministers	UAH 340
Cryptosystems and means for cryptographic protection	Note <sup>1</sup>	Security Service of Ukraine	All agents of economic activity	UAH 340

<sup>1</sup>. Development of hardware, hardware and software means for cryptographic protection of information and cryptosystems.

Development of software means for cryptographic protection of information and cryptosystems.

Product	HS	Licensing Body	Eligibility	Cost of licence
Ethyl alcohol, cognac, fruit spirits	2207, 2208 202900, 2208 208900	Ministry of Economy and European Integration	Only designated state enterprises	UAH 170,000
Alcoholic beverages	2204, 2205, 2206, 2208	Ministry of Economy and European Integration	All agents of economic activity	UAH 250,000
Tobacco products	2402, 2403	Ministry of Economy and European Integration	All agents of economic activity	UAH 250,000

The following goods are subject to licensing in support of Safeguard actions establishing quantitative restraints on imports from certain sources. Licenses are issued by the Ministry of Economy and European Integration. The licence fee is UAH 255.

Goods	HS	Originating in	Date applied
Baking soda	2836 30 00 00	Russian Federation	10 July 2002
Needle and non-needle syringes made of plastic materials with volume of 2, 5, 10, 20ml	901831 1000	Russian Federation, Slovakia, the Kingdom of Belgium, Ireland, Poland, the Federal Republic of Germany and the Kingdom of Spain	21 June 2001
New cars	870322 1900	Russian Federation	12 December 2002
Portland cement	2523 29 0000	Russian Federation	10 October 2003

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Production of hardware, hardware and software means for cryptographic protection of information and cryptosystems.

Production of software means for cryptographic protection of information and cryptosystems.

Production and operation of means for cryptographic protection of information and cryptosystems.

Certification tests and exert examination of cryptosystems and means for crypto-graphic protection of information.

Thematic research of means for cryptographic protection of information and cryptosystems.

Provision of services in the area of cryptographic protection of information.

Importation and exportation of means for cryptographic protection of information and cryptosystems.

Trading in means for cryptographic protection of information and cryptosystems.

The following table lists goods subject to mandatory licensing in 2004 without quantitative limitations. All licenses are issued by the Ministry of Economy and European Integration, except for unused postage, excise labels and similar products being in circulation or have to be in circulation in the country of destination; stamp-impressed paper which are issued by the National Bank of Ukraine. The licence fee is UAH 255.

Product	HS	Prior approval from:
Insecticides, rodenticides, fungicides, herbicides	3808 10,380820,380830	The main State Inspection for Plant Protection of the Ministry of Agrarian Policy of Ukraine
Anti-sprouting products and plant-growth regulators	3808 90	The State Technological Centre for Protection of Fertility of Soil of the Ministry of Agrarian Policy of Ukraine
Unused postage, excise labels and similar products being in circulation or have to be in circulation in the country of destination; stamp-impressed paper	4907 00 10 00, 4907 00 91 00, 4907 00 99 00	The licence is issued by the National Bank of Ukraine without any prior approval
Optical polycarbonates for production of discs for laser reading systems	3907 40 00 00	Ministry of Education and Science of Ukraine
Copper sulphate	2833 25 00 00	No prior approval
Products, which may contain ozone-depleting substances and are imported in aerosol package	2710 00 98 00, 3004, 3208, 3209, 3212, 3214, 3304, 3305, 3306, 3307, 3402, 3403, 3405, 3506 91 00 00, 3808, 3809, 3811, 3812, 3814 00, 3820 00 00 00, 3824 90 70 00, 3824 90 95 00, 3910 00 00	The State Ecological Inspection of the Ministry of Ecology and Natural Resources
Products which may contain ozone-depleting substances	8415, 8418, 8424 10, 8476 21 00 00, 8476 81 00 00, 9304 00 00 00	The State Ecological Inspection of the Ministry of Ecology and Natural Resources
Ozone-depleting substances	2903 14 00 00, 2903 19 10 00, 2903 30 33 00, 2903 41 00 00, 2903 42 00 00, 2903 43 00 00, 2903 44 10 00, 2903 44 10 00, 2903 44 90 00, 2903 45 10 00, 2903 45 15 00, 2903 45 25 00, 2903 45 30 00, 2903 45 30 00, 2903 45 35 00, 2903 45 40 00, 2903 45 45 00, 2903 45 50 00, 2903 45 55 00, 2903 45 90 00, 2903 46 10 00, 2903 46 20 00, 2903 46 90 00, 2903 49 10 00, 2903 49 30 00, 3824 71 00 00, 3824 79 00 00, 3824 90 95 00, 2903 14 00 00	

#### Question 24

**In paragraph 34, please clarify what criteria are applied by the Cabinet of Ministers of Ukraine when granting authorisation to organisations other than state-owned enterprises to import or export alcoholic products.**

Answer:

Import, export of ethyl alcohol, cognac and fruit spirits and alcoholic beverages is a type of activity subject to licensing. Import, export of ethyl alcohol and fruit spirits is carried out only by public enterprises with an import (export) activity licence. Import, export of cognac spirit is carried out only by specialized cognac enterprises with an import (export) activity licence. Import, export of alcoholic beverages and tobacco products may be carried out by any business entity in the presence of an individual licence for each type of activity (individual for import and individual for export, individual for alcohol and individual for tobacco products).

#### Question 25

**Paragraph 36 seems to overlap with paragraph 33 to some extent, and some streamlining would be useful. In paragraph 36, please specify the length of validity of state registration for medicines.**

Answer:

The revised version of paragraph 33 should read as follows:

The representative of Ukraine said that the production of medicines, wholesale and retail trade in medicines shall be effectuated on the basis of a licence for the given activity. Applications for licenses to carry out these activities shall be submitted to the State Department for Control over Quality, Safety and Production of Medicines and Articles of Medical Purpose. In order to obtain a licence, a business agent shall submit an application in the established form to the State Department for Control over Quality, Safety and Production of Medicines and Articles of Medical Purpose. The application must contain the following information:

- name of the legal entity with all its subsidiaries and branches, and its location;
- surname, name, patronymic and passport details (series, number, issuing authority, date of issuance and residence) – for a physical person;
- identification code for a legal entity (identification number for a physical person);
- type of activity;
- location of effectuation of the activity; and
- obligations concerning the fulfilment of licensing terms and conditions.

At the same time, a copy of the certificate of state registration of the agent of entrepreneurial activity or copy of the certificate of its inclusion into the Unified State Register of Enterprises and Organizations of Ukraine certified by a notary or by the authority which issued the original must be attached to the application form.

The term of a licence for carrying out the above business activity shall be three years. The following shall be the grounds for refusal of a licence:

- false information submitted by an applicant; and
- discrepancy between the submitted documents and Licensing Terms and Conditions established for the given business activity.

In case of refusal of a licence on the basis of discovered false information in the submitted documents, a new application shall be accepted not earlier than three months from the date of making decision on refusal in a licence issuance. An agent of business activity, while carrying out activities on production of medicines, wholesale and retail trade in such medicines, must ensure observance of consumer rights and effectuate its activities in accordance with the Law of Ukraine "On Enterprises in Ukraine" and "On Ensuring of Sanitary and Epidemiological Well-being of Population." Business agents may carry out production of medicines, wholesale and retail trade in medicines on the basis of a licence on the given activity, if they meet qualifying, organizational and other special requirements as established by licensing terms and conditions. Medicines may be produced after their registration. Only medicines registered in Ukraine shall be allowed in wholesale and retail trade. These medicines must also have a quality certificate issued by the producer.

According to Article 9 of the Law of Ukraine "On Medicines," the Cabinet of Ministers of Ukraine shall determine the procedure for state registration of medicines. The Resolution of the Cabinet of Ministers of Ukraine "On the Approval of the Procedure for State Registration (Re-registration) of Medicines and Fees for State Registration (Re-registration) of a Medicine," No. 1422, dated September 2000, as changed and amended by the Resolution of the Cabinet of Ministers of Ukraine, No. 678, dated 21 June 2001, established the following fees for state registration (re-registration) of a medicine. The applicant shall pay a fee for state registration (re-registration) of a medicine to the State budget of Ukraine. A fee for state registration (re-registration) of a medicine shall be paid in Hryvnias or in a foreign currency. Conversion into Hryvnias shall be effectuated pursuant to the official exchange rate of the National Bank of Ukraine as of the date of state registration (re-registration) of a medicine. A fee for state registration (re-registration) of a medicine shall be charged in Hryvnias in the following amounts:

for state registration:

- of a medicine (except for radioactive medicines, diagnostic means and simple or complex (halenic) preparations of plant medical raw materials) – in the amount equal to € 1,000 for each medical form, € 100 for each next dose and € 100 for each next package of a medicine; and
- of a radioactive medicine, diagnostic means and simple or complex (halenic) preparations of plant medical raw materials – in the amount equal to € 500 for each medical form, € 50 for each next dose and € 50 for each next package of a medicine.

for re-registration:

- of a medicine (except for radioactive medicines, diagnostic means and simple or complex (halenic) preparations of plant medical raw materials) – in the amount equal to € 500 for each medical form, € 50 for each next dose and € 50 for each next package of a medicine; and
- of a radioactive medicine, diagnostic means and simple or complex (halenic) preparations of plant medical raw materials – in the amount equal to € 250 for each medical form, € 25 for each next dose and € 25 for each next package of a medicine.

for state registration (re-registration):

- of a medicine supplied in bulk, as well as of medicine packed up in Ukraine from in bulk supply – in the amount equal to € 25 for each medical form and € 25 for each next package of a medicine; and

- of substances (active and auxiliary matters) – in the amount equal to € 25 for each item.

Medicines may be used during five years from the date of their registration in Ukraine. After five years period will be over the using of medicines shall be allowed only after their re-registration. Trade in medicines shall be carried out only through chemist's shops and pharmaceutical centres (warehouses) which must pass state accreditation within a year from the date of a licence issuance. The production of medicines shall be carried out following technical and technological regulations for production of medicines, and analytical normative documentation (pharmacopoeia Article and technical terms and conditions) worked out in accordance with normative documents and standards applied in medical and microbiological industry. Wholesale trade in medicines shall be effectuated only through pharmaceutical centres (warehouses). It is mandatory for a pharmaceutical centre (warehouse) to have a valid State Pharmacopoeia, normative and technical and normative and legal documents, and special reference literature on the issues of dose, control over quality, storage, and procedure for distribution (shipment) of medicines. Retail trade in medicines shall be effectuated only through chemist's shops and their structural units (pharmaceutical points and pharmaceutical stands). Chemist's shop fronts or their separate structural unit fronts should have the appropriate signboard, indicating the name of business agent and its owner or the owner's authorized body. Individuals who are directly engaged in production, wholesale and retail trade must have the relevant education and meet the unified qualifying requirements. Such individuals must possess the following documents:

- diploma of state standard on pharmaceutical education; and
- certificate on awarding (acknowledgement) of pharmacist rank of general type (for specialists graduated from academies (universities) after 1992).

Specialists who passed special training in educational institutions of foreign countries shall be allowed to carry out professional activities after examination of their qualification. Specialists who do not work within three years on a specialty indicated in their diplomas and certificates shall be allowed to carry out activities on production of medicines, wholesale and retail trade in medicine only after passing through retraining. The term of a licence for carrying out the above business activity shall be three years.

**- Tariff rate quotas, tariff exemptions**

**Question 26**

**There is no section on tariff quotas. In such a section, there should be at least a brief reference to tariff quotas which have been applied and which currently apply. Where the tariff quotas are in relation to agricultural products (such as for raw cane sugar), there should be a reference to the paragraphs/section where they are discussed in detail. Any others which may exist should be elaborated in detail under the new section.**

Answer:

In the opinion of the Ukrainian party, there is no need to elaborate "tariff quotas" in detail in a separate section due to the fact that there is a tariff quota only for one product position "raw cane sugar" in Ukraine.

- **Fees and charges for services rendered**

**Question 27**

**Please confirm that the *ad valorem* component for customs clearance fees for goods with a value of more than US\$ 1,000 will no longer be applied as of 1 January 2004 (following entry into force of Customs Code), as stated in section 41 of the Report.**

**We welcome the information provided on the Unified Fee [point 41 (3)]. We understand that fees are the same for domestic and foreign operators but would welcome confirmation. We further note that the amount of the fee depends on the type of vehicle and not the type of cargo carried by the respective vehicle, even though the fee includes sanitary, veterinary, phytosanitary, radiological and environmental controls. Please clarify how this corresponds to the cost of the service rendered, as it appears that the types of control would differ depending on the type of goods to be controlled.**

**With reference to point 43, for the Working Party Report, we would expect a clear commitment by Ukraine to bring all fees in line with WTO rules by the time of accession.**

**Answer:**

The new Customs Code of Ukraine adopted by the Supreme Rada of Ukraine on 11 July 2002, No. 92-IV (Article 71) envisages only "fees for customs clearance of goods beyond the location of customs authorities or out of working time" as of 1 January 2005.

Pursuant to the Law of Ukraine "On the Introduction of the Unified Fee Collected at Entry Points on the Ukrainian State Border" No. 2659-III of 12 July 2001, the unified fee is charged at the state border crossing points of Ukraine and is applied to motor vehicles of national and foreign owners. This fee consists of the fees for performing the customs control in accordance with legislation of Ukraine for transit freight and means of transportation, as well as sanitary, veterinary, phytosanitary, radiological and ecological control, and payments for passing of means of transportation, and other automobiles and mechanisms on the automobile roads of Ukraine. The amount of fee does not depend on the type of control performed for a given product due to the fact that the rates of unified fee do not exceed the average cost for conducting all types of control at the state border.

The above-mentioned procedure significantly simplifies the process of crossing of the customs border. The system of the unified fee is applied in a number of countries, i.e. Poland, Hungary and Romania.

**Question 28**

**In paragraph 41, Ukraine notes that its Law "On the Single Customs Tariff" allows for the establishment of quotas for preferential importation of goods and other items. We seek full clarity in relation to this provision – in particular, its consistency with relevant GATT provisions including those contained in Articles I, III, VIII, XI, XIII, and Article 4 of the Agreement on Agriculture.**

**We note that Table 5 makes reference to several customs charges levied on an *ad valorem* basis, inconsistent with Article VIII of GATT 1994. We request that Ukraine acknowledge these inconsistencies and make a commitment to remove them.**



Answer:

Ukraine will do its best to meet the requirements of Article VIII of GATT 1994. Pursuant to the Law of Ukraine No. 1344 of 27 November 2003 and the Resolution of the Cabinet of Ministers of Ukraine No. 1995 of 24 December 2003 the customs fees in question shall be abolished starting from 1 January 2005.

**Question 29**

**We note in paragraph 41, on page 23, that the customs clearance fees applied to metal scrap exports are applied at the rate of five times the rate applicable to other similar products. How does Ukraine justify this, as the fees clearly do not approximate the cost of providing the service as required by GATT Article VIII?**

Answer:

Pursuant to the Resolution of the Cabinet of Ministers of Ukraine No. 285 of 3 March 1998, during the customs clearance of exported scrap metal and wastes of ferrous and non-ferrous metals the customs fees for customs clearance, staying under customs control and calling for the customs officer are paid by subjects of entrepreneurial activity in the amount five times exceeding the established customs fee rates of this kind, except for subjects of entrepreneurial activity who export these goods pursuant to the State Program of Utilization of the Common Types Ammunition not Suitable for Further Use and Storage.

The above Resolution was adopted in order to regulate the entrepreneurial activity related to exports of scrap metal and wastes of ferrous and non-ferrous metals.

Pursuant to the Law of Ukraine No. 1344 of 27 November 2003 and the Resolution of the cabinet of Ministers of Ukraine No. 1995 of 24 December 2003 the above fees shall be eliminated starting from 1 January 2005.

**Question 30**

**In relation to Resolution No. 1460 referred to in paragraph 41, we seek clarification of the "additional customs fee" applied to imported oil products and its consistency with GATT Articles III, VIII and XI. We seek commitment language to remove this requirement, as Ukraine has indicated it would do in its response to Item 37 of WT/ACC/UKR/110/Add.2.**

Answer:

The Resolution of the Cabinet of Ministers of Ukraine No. 1460 of 18 September 1998 establishes a new customs fee for the customs clearance of oil products, which are imported into the customs territory of Ukraine and are subject to excise in the amount of European Currency Unit (ECU) 0.01 per 1 kilogram, with accrual to the State Budget and with the purpose of transferring to the Pension Fund. This Resolution does not apply to oil products manufactured and sold in Ukraine.

Additional customs fee for customs clearance of oil products charged in pursuance to the Law of Ukraine No. 1344 of 27 November 2003 and the Resolution of the Cabinet of Ministers of Ukraine No. 1995 of 24 December 2003 shall be abolished starting from 1 January 2005.

**Question 31**

**We note that the application of a ECU 0.01 per kilo excise duty to imported goods does not appear to be applied to domestic production, in violation of Article III. We request that this be removed.**

Answer:

Additional customs fee for customs clearance of oil products charged in pursuance to the Law of Ukraine No. 1344 of 27 November 2003 and the Resolution of the Cabinet of Ministers of Ukraine No. 1995 of 24 December 2003 shall be abolished starting from 1 January 2005.

**Question 32**

**Ukraine notes that vessels from countries with which Ukraine has entered into international treaties and agreements are charged preferential rates on port fees. We request that Ukraine remove its two-fee system (i.e., ordinary and privileged) upon accession, to achieve consistency with Articles I, II and VIII of GATT 1994.**

Answer:

With the aim to settle the issue of two-fee system Cabinet of Ministers of Ukraine adopted Resolution No. 1069 of 17 July 2003, "On amendments to the Regulation on port fees". The Resolution envisages establishment of the same amount of ship fee for foreign vessels not depending on the flag of vessel.

- **Application of internal taxes to imports**

- **Excise Taxes**

**Question 33**

**In paragraphs 44-45, Ukraine acknowledges WTO inconsistencies in its excise laws, and advises that legislation changes are being made to address this. Can Ukraine provide an update, including a commitment that GATT Article III will be fully observed from the date of accession?**

Answer:

The Law of Ukraine, dated 22 May 2003, under No. 849-IV, "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for the Year 2003" and certain other Legislative Acts" introduces three types of excise duty rates for tobacco products: *ad valorem* rates (in per cents to a base of taxation), specific rates (in fixed amounts per one unit of weight, volume, quantity or other natural value), mixed rates (concurrently in per cents to the base of taxation and in fixed amounts). The Law has repealed temporary privileges for wine products made in Ukraine, improved a system of exemptions from excise duty payments in the event of sale for export of excisable products.

In accordance with of the Law of Ukraine "On the State Budget of Ukraine for the Year 2004", dated 27 November 2003, under No. 1344-IV, the effect of Parts 1 – 4 in Article 3 of the Law of Ukraine "On Excise Duty Rates for Ethyl Spirit and Alcohol Beverages", dated 7 May 1996, under No. 178/96-VR, is suspended (with respect to the privileged excise duty rate for ethyl spirit that is used by health care institutions and organizations to ensure the performance of the treatment and diagnosis process and laboratory research, and by manufacturers, which are business entities, to

produce explosive substances, perfumes, nitrocellulose, spirit vinegar, medicines (including blood components and preparations made there-from), except for medicines in the form of balsams; for ethyl spirit that is used by the National Production and Agrarian Association "Massandra" within limits of quotas set by the Cabinet of Ministers of Ukraine, to produce vintage grape wines, as well as for ethyl spirit denatured (technical spirit), which is used to make products pursuant to a list that is approved by the Cabinet of Ministers of Ukraine).

The draft Law of Ukraine "On Amendments to certain Legislative Acts of Ukraine in connection with the Adoption of the Law of Ukraine "On the State Budget of Ukraine for the Year 2004" (Registration No. 4000-1), adopted in the first reading, provides for the setting of differentiated excise duty rates for ethyl spirit that is used:

- by health care institutions and organizations to ensure the performance of the treatment and diagnosis process and laboratory research, as well as by business entities to produce medicines (including blood components and preparations made therefrom), except for medicines in the form of balsams within limits of quotas set by the Cabinet of Ministers of Ukraine, - an excise duty rate in the amount of UAH 2.0 for 1 litre of 100 per cent spirit;
- by enterprises engaged in secondary wine-making to produce grape, fruit and other wines, - an excise duty rate in the amount of UAH 16 for 1 litre of 100 per cent spirit;
- by business entities to produce spirit vinegar, explosive substances, perfumes and nitrocellulose within the quotas set by the Cabinet of Ministers of Ukraine, - an excise duty rate in the amount of UAH 3.0 for 1 litre of 100 per cent spirit;
- temporarily, until the 1 of January 2006, for ethyl spirit denatured (technical spirit), which is used to make products pursuant to the list approved by the Cabinet of Ministers of Ukraine within limits of the quotas set by the Cabinet of Ministers of Ukraine, - an excise duty rate in the amount of 3.0 for 1 litre of 100 per cent spirit.

Also, the draft Law contemplates repealing Article 7 of the Law, which temporarily sets – until Ukraine has acceded to the World Trade Organization – raised excise duty rates for alcoholic beverages that are imported into Ukraine.

The draft Law provides for establishing a mixed system for excise duty taxation of all excisable products.

The draft Law provides that privileges applicable to payments of excise duties shall not apply to operations concerned with importation of excisable products into territories of Special Economic Zones, as well as under the special regime of investment activity within Priority Development Territories.

In addition, there was adopted in the first reading a draft Law of Ukraine "On the Excise Duty" (Registration No. 3017), which consolidates in itself provisions of all effective laws that govern matters of excise duty taxation, including with respect to a list of excisable products and excise duty rates, and which should become a separate chapter in the Tax Code.

#### Question 34

**Please confirm that the discriminatory excise tax rates for certain domestically produced wine products and brandies will indeed be terminated on 1 January 2004. Which legislation foresees this? In this context, does Ukraine also plan to abolish the "excise stamps" which are required to be placed on each bottle before importation into Ukraine, whereas domestic producers only have to issue it before commercialisation, thereby benefiting from a longer period for commercialisation?**

**We welcome the draft legislation on automobiles, which, inter alia, eliminates the privileges for domestic enterprises. When will the new legislation be adopted and enter into force? We note that the issue of automobiles is also treated in various parts of the document, and would welcome some streamlining.**

**Will the new Tax Code enter into force in January 2004 as planned?**

**With reference to point 49, we reserve our right to ask for additional detailed language at a later stage of the drafting process.**

Answer:

The Law of Ukraine, dated 22 May 2003, under No. 849-IV, "On Amendments to the Law of Ukraine "On the State Budget of Ukraine for the Year 2003" and certain other Legislative Acts" introduces three types of excise duty rates for tobacco products: *ad valorem* rates (in per cents to a base of taxation), specific rates (in fixed amounts per one unit of weight, volume, quantity or other natural value), mixed rates (concurrently in per cents to the base of taxation and in fixed amounts). The Law has repealed temporary privileges for wine products made in Ukraine, improved a system of exemptions from excise duty payments in the event of sale for export of excisable products.

In accordance with of the Law of Ukraine "On the State Budget of Ukraine for the Year 2004", dated 27 November 2003, under No. 1344-IV, the effect of Parts 1 – 4 in Article 3 of the Law of Ukraine "On Excise Duty Rates for Ethyl Spirit and Alcohol Beverages", dated 7 May 1996, under No. 178/96-VR, is suspended (with respect to the privileged excise duty rate for ethyl spirit that is used by health care institutions and organizations to ensure the performance of the treatment and diagnosis process and laboratory research, and by manufacturers, which are business entities, to produce explosive substances, perfumes, nitrocellulose, spirit vinegar, medicines (including blood components and preparations made therefrom), except for medicines in the form of balsams; for ethyl spirit that is used by the National Production and Agrarian Association "Massandra" within limits of quotas set by the Cabinet of Ministers of Ukraine, to produce vintage grape wines, as well as for ethyl spirit denatured (technical spirit), which is used to make products pursuant to a list that is approved by the Cabinet of Ministers of Ukraine).

The draft Law of Ukraine "On Amendments to certain Legislative Acts of Ukraine in connection with the Adoption of the Law of Ukraine "On the State Budget of Ukraine for the Year 2004" (Registration No. 4000-1), adopted in the first reading, provides for the setting of differentiated excise duty rates for ethyl spirit that is used:

- by health care institutions and organizations to ensure the performance of the treatment and diagnosis process and laboratory research, as well as by business entities to produce medicines (including blood components and preparations made therefrom), except for medicines in the form of balsams within limits of quotas set by the Cabinet of Ministers of Ukraine, an excise duty rate in the amount of UAH 2.0 for 1 litre of 100 per cent spirit;
- by enterprises engaged in secondary wine-making to produce grape, fruit and other wines, an excise duty rate in the amount of UAH 16 for 1 litre of 100 per cent spirit;
- by business entities to produce spirit vinegar, explosive substances, perfumes and nitrocellulose within the quotas set by the Cabinet of Ministers of Ukraine, - an excise duty rate in the amount of UAH 3.0 for 1 litre of 100 per cent spirit; and
- temporarily, until the 1 January 2006, for ethyl spirit denatured (technical spirit), which is used to make products pursuant to the list approved by the Cabinet of Ministers of Ukraine within limits of the quotas set by the Cabinet of Ministers of Ukraine, an excise duty rate in the amount of 3.0 for 1 litre of 100 per cent spirit.

Also, the draft Law contemplates repealing Article 7 of the Law, which temporarily sets – until Ukraine has acceded to the World Trade Organization – raised excise duty rates for alcoholic beverages that are imported into Ukraine. The draft Law provides for establishing a mixed system for excise duty taxation of all excisable products.

The draft Law provides that privileges applicable to payments of excise duties shall not apply to operations concerned with importation of excisable products into territories of Special Economic Zones, as well as under the special regime of investment activity within Priority Development Territories.

In addition, there was adopted in the first reading a draft Law of Ukraine "On the Excise Duty" (Registration No. 3017), which consolidates in itself provisions of all effective laws that govern matters of excise duty taxation, including with respect to a list of excisable products and excise duty rates, and which should become a separate chapter in the Tax Code.

- VAT

**Question 35**

**We seek clarification of the statement that "in the event of selling agricultural products (services) of own production by the subject of entrepreneurial activity to registered VAT payers, the charge shall be established in the size of 6 per cent for agriculture, and 4 per cent for products of forestry or fishing from the selling price, instead of the VAT zero rate". What is the level of VAT applied to imported goods of an identical nature?**

Answer:

This statement related the provision in the draft Law "On the State Budget of Ukraine for the Year 2004". This provision was not included in the Law of Ukraine "On the State Budget of Ukraine for the Year 2004", dated 27 November 2003, under No. 1344-IV, as adopted by the Supreme Rada of Ukraine. Special mechanisms of VAT payment by Ukrainian agricultural enterprises remain without changes go per the Law of Ukraine "On the Prolongation of Effect of certain Provisions in the Law of Ukraine "On the Value Added Tax", dated 28 November 2003, under No. 1352-IV, which entered into force as from the 1 January 2004. Pursuant to this Law, the term, within which the special mechanisms of VAT payment by Ukrainian agricultural enterprises will be in effect, shall be extended up to the 1 January 2005.

**Question 36**

**In paragraph 48, Ukraine describes several forms of VAT exemption to agricultural producers that are inconsistent with Article III of GATT 1994, irrespective of whether they constitute a form of domestic support to local producers. We request that this be noted in the next draft, as well as the need for Ukraine to repeal these policies.**

Answer:

Special mechanisms of VAT payment by agricultural enterprises are applied in Ukraine, which mechanisms are not *per se* exemptions from payment of VAT. VAT is assessed on all agricultural products that are sold agricultural enterprises, and is also paid by agricultural enterprises when they purchase inputs. That is, agricultural products go onto the domestic market with VAT. The difference between the amount of the value added tax received by agricultural enterprises from buyers and the amount of the value added tax paid by them to suppliers is transferred by the agricultural enterprises from the current account into a separate account within time periods specified for transfers

of VAT amounts into the budget for payment of grants. This type of support through the mechanism of accumulation of funds to pay out subsidies for purchases of inputs for agricultural production, wherein the VAT is a source of financing due to the lack of direct disbursements out of the State budget that are sufficient therefore, is governed by Article 6 of the WTO Agreement on Agriculture and Annex 3:2 to this Agreement. Pursuant to these provisions of the WTO Agreement on Agriculture, subsidies shall include both budgetary outlays and revenue foregone by governments or their agents for the benefit of agricultural producers.

- **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

#### **Question 37**

**Understanding the necessity of licensing for products and services, we ask Ukraine to undertake the application of an automatic licensing procedure (in the meaning of Article 2 of WTO Agreement on Import Licensing Procedures) and to define occasions, which are specified in Paragraph 29, as exemptions from automatic licensing. We ask to reduce gradually the number of such exemptions.**

**We kindly ask representatives of Ukrainian delegation to specify what are the conditions for import licensing for agricultural products?**

#### Answer:

Paragraph 29 deals with activity licensing, and not with import licensing. Ukraine applies non-automatic import licensing only in support of safeguard actions, as allowed by WTO rules. Such actions are described in Table 14. All other import licenses are automatic in the sense of Article 2 of the WTO Agreement on Import Licensing Procedures.' Ukraine does not apply import licensing to agricultural produce.

#### **Question 38**

**We note reference under paragraph 50 the rights under Ukraine's Law "On Foreign Economic Activity" to introduce licensing and "quotas" applicable to exports and imports. We request the inclusion of full information on the conditions under which "quotas" can be introduced, and how these provisions meet relevant GATT provisions. We understand Ukraine is applying quotas as a GATT Article XIX measure as part of its Safeguard regime, but we require clarification that quotas (prohibited under Article XI of GATT 1994) cannot be introduced more generally under Ukraine's legislation.**

#### Answer:

A decision to apply a quota regime is made by the Cabinet of Ministers of Ukraine. In the event of application of antidumping, countervailing or special measures – a decision on introduction of the quota regime is made by the Interdepartmental Commission for International Trade.

The Law of Ukraine "On Foreign Economic Activity" No.959-XII of 16 April 1991, as amended, specifies that:

- the quota regime with respect to export of goods is introduced in Ukraine in the event of:
  - considerable imbalance with respect to certain goods on the internal market, particularly agricultural goods, goods of fishery, foodstuffs and common industrial goods of first

- priority, as well as other goods of vital importance of the life activity in Ukraine, which is in accord of the provisions of Article XI of GATT;
- necessity to secure protection of the life of human beings, animals or plants, environment, public morale, national wealth of art, historical or archeological importance, or protection of intellectual property rights, as well as to comply with the requirements of national security, which is in accord with items (b), (f) of Article XX of GATT, TRIPS Agreement and Article XXI of GATT;
  - exports of precious metals, except for banking metals, which is in accord with the provision of item (c) of Article XX of GATT;
  - necessity of application of measures of protection of the domestic producer, which is in accord with the provisions of Article XIX of GATT;
  - necessity to ensure protection of patents, trademarks and copyrights, which is in accord with the provision of item (d) of Article XX of GATT; and
  - necessity to ensure fulfilment of international treaties of Ukraine.
- the quota regime with respect to imports of goods is introduced in Ukraine the event of:
- drastic deterioration of the state of the payment balance and external payments (if other measures proved inefficient), which is in accord with the provisions of Article XII of GATT;
  - sharp decrease or minimal size of gold and currency reserves, which is in accord with Article XII of GATT;
  - necessity to secure protection of the life of human beings, animals or plants, environment, public morale, national wealth of art, historical or archeological importance, or protection of intellectual property rights, as well as to comply with the requirements of national security, which is in accord with the provisions of items (b), (f) of Article XX of GATT, TRIPS Agreement and Article XXI of GATT.
  - imports of precious metals, except for banking metals, which is in accord with the provision of item (c) of Article XX of GATT;
  - necessity of application of measures of protection of the domestic producer, which is in accord with the provisions of Article XIX of GATT;
  - necessity to ensure protection of patents, trademarks and copyrights, which is in accord with the provision of item (d) of Article XX of GATT; and
  - necessity to ensure fulfilment of international treaties of Ukraine.

### Question 39

**Ukraine notes in paragraph 103 that under the Law No. 468/97 of July 1997 "On State Regulation of Agricultural Imports", subsequently amended by Law No. 32/98 of January 1998, livestock imports were restricted through annual quotas from 1997-2003. In recent responses to questions raised by Members (Page 96 of WT/ACC/UKR/110/Add.2), Ukraine notes that "Article 3 of the Law of Ukraine "On State Regulation of Agricultural Product Import", whereby quotas on the importation of products were introduced till 1 January 2003, has lost its effect." We seek a commitment from Ukraine that it will not maintain, introduce or revert to any such quotas or any other quantitative restrictions that have no valid WTO justification after accession and that it will conform with the provisions of Article XI:1 of GATT 1994 and Article 4 of the Agriculture Agreement.**

**We note some inconsistencies between information provided in this section on goods subject to quantitative limitations *vis-à-vis* material on page 31 of the document and Ukraine's Questionnaire on Import Licensing Procedures (WT/ACC/UKR/99/Rev.1). In particular:**

- **Restrictions on newsprint (Table 9), iron ores (Table 9), electrical light bulbs and synthetic fur, are not reflected in Ukraine's Questionnaire on Import Licensing (i.e., page 8 covering "special licensing system").**
- **Limitations contained under Table 10 on chemical means for plant protection, and agricultural chemicals are also not reflected in the relevant section of the Questionnaire (page 2).**

**We seek clarification for the differences in the information provided in the two documents.**

Answer:

No quantitative restrictions or licensing requirements exist for newsprint, or iron ores. Safeguard quotas on electric light bulbs and synthetic fur were terminated on 22 May 2003.

- Imports of chemicals of crop protection and agrochemicals do not fall under the system of licensing with quantitative restrictions (safeguard licensing), but under the system of import licensing of goods, the list of which is annually established by the Cabinet of Ministers of Ukraine (page 1, 2 of the Questionnaire), import of which is subject to licensing with no quantitative restrictions, i.e. application is approved in all cases on condition of observation by the applicant of the legal requirements of Ukraine, which is in compliance with Article 2 of the Agreement on Import Licensing Procedures.

The peculiarity of licensing of import of chemical crop protection products and agrochemicals lies the need to obtain a prior approval from the relevant administrative authority, which is necessary for securing the licence for import of the said products.

#### **Question 40**

**Paragraph 51 states that only activity licenses are required to export and import alcohol and alcoholic beverages, whereas paragraph 34 does not specify which type of licence is required. Please ensure coherence in the information provided.**

Answer:

Import, export of ethyl alcohol, cognac and fruit spirits and alcoholic beverages is subject only to activity licensing. Licenses to engage in import and export as a type of activity are issued individually for each type of activity, i.e. – individually for export, and individually for import.

#### **Question 41**

**We note that non-automatic import licensing is still applied for a number of products (for example, crop protection products, personal hygiene products in aerosol form), where the same products are also subject to registration and certification. We find these procedures unnecessarily cumbersome and would, with reference to point 56, seek further clarification as to their justification.**

Answer:

Import of chemical crop protection products and agrochemicals, ozone-depleting substances, products that may contain ozone-depleting substances and are imported in aerosol package is subject to the system of automatic licensing of products, import of which is subject to licensing with no quantitative restrictions, i.e. approval of the licence application is given in all cases to any applicant on condition of compliance with the legal requirements being in place in Ukraine. The peculiarity of licensing of



import of chemical crop protection products and agrochemicals lies in the need to obtain the prior approval of a relevant administrative authority, which is necessary for securing the licence for import of the said products.

#### Question 42

**In paragraph 54, please specify if there are any exceptions where natural persons may not obtain import licenses (see our comment on paragraph 34).**

##### Answer:

Any natural person (with no exceptions) that has undertaken arrangements required for carrying out business activities in Ukraine may obtain the import licence.

#### Question 43

**This section of the report should indicate which products, if any, are subject to automatic licensing. This section also lacks any reference to non-automatic import licensing applicable to agricultural products other than tobacco, tobacco products, ethyl alcohol and alcoholic beverages. Other sections of the report seem to imply that non-automatic import licensing might be used to maintain restrictions on the importation of live stock products (paragraphs 103, 107) and sugar (paragraph 104). Full details of any such licensing requirements should be included.**

##### Answer:

According to Resolution of the Cabinet of Ministers of Ukraine No. 1996 of 24 December 2003 "On the List of Goods, Export and Import of Which is Subject to Licensing, and Which Fall under the Quota Regime in 2004", the following goods are subject to automatic import licensing in 2004:

Description	HS Code
Insecticides (except for veterinary medicines), fungicides, herbicides, other anti-sprouting products and plant-growth regulators, rodenticides (except veterinary medicines), as well similar remedies	3808 10, 3808 20, 3808 30, 3808 90 (except for individual consignments, imported free of charge upon permission of the Ministry of Ecologic Resources exclusively for state testing, academic research and demonstrative experiments)
Unused postage, excise labels and similar products being in circulation or have to be in circulation in the country of destination; stamp-impressed paper	4907 00 10 00, 4907 00 91 00, 4907 00 99 00
Optical polycarbonates for production of discs for laser reading systems	3907 40 00 00
Copper sulphate	2833 25 00 00
Products, which may contain ozone-depleting substances and are imported in aerosol package	2710 00 98 00, 3004, 3208, 3209, 3212, 3214, 3304, 3305, 3306, 3307, 3402, 3403, 3405, 3506 91 00 00, 3808, 3809, 3811, 3812, 3814 00, 3820 00 00 00, 3824 90 70 00, 3824 90 95 00, 3910 00 00,
Products, which may contain ozone-depleting substances	8415, 8418, 8424 10, 8476 21 00 00, 8476 81 00 00, 9304 00 00 00
Ozone-depleting substances	2903 14 00 00, 2903 19 10 00, 2903 30 33 00, 2903 41 00 00, 2903 42 00 00, 2903 43 00 00, 2903 44 10 00, 2903 44 10 00, 2903 44 90 00, 2903 45 10 00, 2903 45 15 00, 2903 45 25 00, 2903 45 30 00, 2903 45 30 00, 2903 45 35 00, 2903 45 40 00, 2903 45 45 00, 2903 45 50 00,

Description	HS Code
	2903 45 55 00, 2903 45 90 00, 2903 46 10 00, 2903 46 20 00, 2903 46 90 00, 2903 49 10 00, 2903 49 30 00, 3824 71 00 00, 3824 79 00 00, 3824 90 95 00, 2903 14 00 00

[Note: the Resolution does not establish any import quotas.]

In order to obtain a licence to import the above listed products, the importer should first receive a permit of the relevant administrative agency. Expert conclusions are issued depending on the type of product by the following institutions:

The Main State Inspection on Plant Protection of the Ministry of Agricultural Policy of Ukraine	Imports of herbicides (code 3808 10, 3808 20, 3808 30)
The State Technological Center for protection of Land Fertility of the Ministry of Agricultural Policy of Ukraine	Imports of agrochemicals (plant growth regulators – code 3808 90)
Ministry of Science and Education	Imports of optical polycarbonate for production of discs and laser reading systems (code 3907 40 00 00)
Ministry of Environmental Protection	Import of ozone-depleting substances and products, which may contain ozone-depleting substances, and are packed in aerosol packaging (code 2106, 3208, 3209, 3210 00, 3212, 3214, 3304, 3305, 3306, 3307, 3402, 3403, 3405, 3506 91 00 00, 3808, 3809, 3811, 3812, 3813 00 00 00, 3814 00, 3820 00 00 00, 3824 90 70 00 - 3824 90 95 00, 3910 00 00; 8415, 8418, 8424 10, 8476 21 00 00, 8476 81 00 00, 9304 00 00 00)

Processing of applications is carried out by the Ministry of Economy and European Integration of Ukraine or, within their competencies, by the Ministry of Economy of the Autonomous Republic of Crimea, relevant division of oblast, Kiev and Sevastopol city state administrations that issue licenses for import/export of goods by business entities registered in relevant regions, and the accounting value of which under agreements (contracts) does not exceed US\$ 300,000.

The state duty in the size of UAH 255 (approximately US\$ 45) is established for issuing of the import licence.

Ukraine does not apply licensing of imports of agricultural products except for spirit, alcoholic beverage, and tobacco goods.

#### Question 44

**Table 9 in paragraph 50 lists a number of products on which quantitative restrictions are in place. Please provide further details, including anticipated lengths of the measures, and plans for their elimination.**

Answer:

Commodity subject to investigation	HS	Legal basis for the application of measures	Expected length	Measures taken
Baking soda originating from the Russian Federation	2836 30 00 00	Protective measures taken in accordance with the decision of the Interdepartmental Commission for International Trade	from 10 July 2002 to 10 July 2006	No liberalization was performed
Needle and non-needle syringes made of plastic materials with volume of 2, 5, 10, 20ml originating from the Russian Federation, Slovakia, Belgium, Ireland, Poland, Germany and Spain.	9018 31 10 00	Protective measures taken in accordance with the decision of the Interdepartmental Commission for International Trade	from 21 June 2001 to 21 June 2005	3 July 2002 protection measures were liberalised by 5%, 28 August 2003 – by another 5% vs. the initial quota level
Portland cement originating from the Russian Federation	2523 29 00 00	Protective measures taken in accordance with the decision of the Interdepartmental Commission for International Trade	from 10 October 2002 to 10 October 2006	1 October 2003 protection measures were liberalized by 5%
New cars originating from the Russian Federation	8703 22 19 00	Protective measures taken in accordance with the decision of the Interdepartmental Commission for International Trade	from 12 December 2002 to 8 December 2006	17 October 2003 safeguard quota was increased by 10%

- **Customs valuation**

#### Question 45

**Interpretative Notes: the Interpretative Notes to the WTO Agreement form part of the Agreement and should be included in national legislation. Ukraine say they will only include these Notes as part of a Commentary to their Customs Code (see paragraph 58). This is not a satisfactory approach.**

Answer:

Currently, the issue of including the Interpretative Notes to the WTO Agreement on Application of GATT Article VII into the national legislation of Ukraine is being worked on. With this purpose, the State Customs Service prepares the Draft Law of Ukraine on amendment of the Section of the Customs Code of Ukraine regulating the issue of customs value.

#### Question 46

**Article 11 of the WTO Agreement provides for an initial right of appeal to an authority within the customs administration. However, this seems to be not available in Ukraine. (Paragraph 59 refers only to a right of appeal in Ukraine in the context of an action in commercial courts).**

Answer:

The right to appeal the decision of the customs authority is stipulated by the Customs Code of Ukraine.

In accordance with part 5 of Article 264 of the Customs Code of Ukraine, the final decision made by a higher customs authority or a court to the effect of applying the customs valuation as performed by the Declarant, the customs authority in question must reimburse to the Declarant the amount equal to the excess of taxes and charges payment.

In accordance with part 4 of Article 265 of the Customs Code of Ukraine, a customs authority's decision to the effect of the goods customs value determination may be appealed against following the procedure set by applicable laws.

The procedure for consideration of disputes on the above decisions is established by the Commercial-Procedural Code of Ukraine.

**Question 47**

**Publication of rules, decisions etc: it seems that judicial decisions are not published at present (paragraph 58). This practice is not in line with Article 12 of the WTO Agreement.**

Answer:

Decisions of the court bodies on the tried cases, in particular – in customs valuation area, shall be placed on the Internet site of the State Customs Service of Ukraine.

**Question 48**

**Application of the methods of customs value: the provisions of the WTO Agreement relating to certain valuation methods seem to be not fully correct. However, this may be due to linguistic factors and may be resolved when the actual text of the customs Code is received.**

Answer:

The full text of the Customs Code of Ukraine was submitted to the WTO Secretariat (see document WT/ACC/UKR/98/Add.10). But for the evident inaccuracies in the translation, the current Customs Code of Ukraine shall be translated again.

**- Other customs formalities**

**Question 49**

**We note the reference in paragraph 65 to a licence to import. The nature and purpose of this licence is unclear. In particular, it is unclear whether this is a reference to:**

- a general licence to import – applied to all importers and irrespective of the goods imported;**
- a specific import licence applied in relation to the importation of a particular product (i.e. covered under the section on "registration requirements" for importation.**

**We seek full details of the purpose and application of this licence, and the relationship of these licences to other forms of import licences.**

Answer:

The passage should read "licence to import, if the good in question is subject to licensing".

- **Anti-dumping, countervailing duties, safeguard regimes**

#### **Question 50**

**We would seek a commitment in the Working Party Report that all existing trade defence measures will be reviewed with regard to their WTO compliance upon accession.**

**With reference to paragraph 69, we also reserve our right to ask for additional detailed language at a later stage of the drafting process.**

Answer:

Ukraine expects to deal fully with the questions of its commitments in the context of preparation of the draft Report of the Working Party.

#### **Question 51**

**Ukraine has expressed its desire to bring its safeguards regime into conformity with WTO requirements on accession. What is the timetable for the implementation of such domestic legislation?**

Answer:

In order to bring the Law of Ukraine "On Application of Safeguard Measures as to Imports into Ukraine," into conformity with the General Agreement on Tariffs and Trade and Agreement on Safeguards, the draft Law aimed at improvement of regulation of legal relationships in the field of carrying out special investigations has been drafted.

The draft provides for bringing applicable Law of Ukraine "On Application of Safeguard Measures to Imports into Ukraine" into conformity with the international standards, in particular:

- bringing the preamble and the first part of Article 2 of the said Law into conformity with the requirements of the second part of Article 2 of the Agreement on Safeguards, i.e., determination of the field of application of the Law only to import into Ukraine of any goods, irrespective of their country of origin and export;
- bringing the second part of Article 13 of the said Law into conformity with the provisions of the second part of Article 4 of the Agreement on Safeguards, i.e., determination of inclusion to the factors reviewed during the evaluation of the national producer's status such factors as labour productivity, use of the fixed assets and amount of losses;
- bringing the sixth part of Article 16 of the said Law into conformity with the provisions of the first part of Article 5 of the Agreement on Safeguards, i.e., determination of the amount of safeguard quota as a number that can not be lower than average value of imports of goods, which is not subject to safeguard investigation, during last three years. Current wording of the Law indicates that the amount of safeguard quota can not be higher; and

- bringing the first and fourth parts of Article 18 and the first part of Article 19 of the said Law into conformity with the provisions of Article 7 of the Agreement on Safeguards in the part of terms and procedures for review and liberalization of safeguard measures.

The draft Law also suggested to make certain amendments in order to eliminate internal discrepancies. Currently, the said draft Law is under consideration of the Verkhovna Rada of Ukraine.

#### **Question 52**

**We note that Ukraine intends to address the issue of commitments in the framework of the drafting of the actual Working Party Report. We thus reserve our right to come back to these points at a later stage and to contribute to the drafting of commitments as appropriate.**

#### Answer:

Ukraine expects to deal fully with the questions of its commitments in the context of preparation of the draft Report of the Working Party.

#### **Question 53**

**We derive from paragraph 68 of the elements of a draft Report that Ukraine has not established the practice to inform the authorities of the exporting countries of the initiation of an antidumping investigation and will do this only after the accession to the WTO. We note also that Tables 13 and 14 of the Report list virtually only those investigations, which have been concluded with positive determinations and where measures have been applied. Therefore, we would like to ask the representative of Ukraine, whether there have been other initiations of proceedings (special investigations and antidumping) than those listed in tables, i.e., proceedings currently underway, proceedings which have ended with negative determinations or decision not to apply measures. If there have been or are such kind of investigations, please kindly provide the Members with a list of them, containing names of the exporting countries, products concerned, initiation dates and explanation of reasons for negative determinations or non-application of measures.**

**We kindly ask representatives of Ukrainian delegation to explain in more detail, what is understood under "special investigations" in paragraph 68 of the elements of a Report? How do they differ from "antidumping investigations"?**

#### Answer:

According to Article 12 paragraph 13 of the Law of Ukraine "On Protection of National Producer from Dumped Import" the Ministry of Economy informs exporters, importers, well-known unions (associations) of importers or exporters, competent relevant authorities of the country of export as well as declarants of the initiation of the anti-dumping investigation".

Safeguard investigation – investigation of the facts of increase of imports to Ukraine, which cause serious injury or threat to cause serious injury to the domestic industry, that produces like or directly competitive products.

Antidumping investigation – investigation conducted with the purpose of determination of the fact of products imported at dumped prices, which causes or threatens to cause serious injury or materially

retards the establishment or growth of a domestic production of a like or directly competitive products.

Table 13

Commodity that is subject to the Antidumping Investigation	Country of Origin of the Commodity	Results of Investigation and Measures Taken
<b>Completed Anti-dumping Investigations</b>		
<ul style="list-style-type: none"> <li>- Artificial fur and articles thereof (HS code – 4304 00 00)</li> <li>- Pile fabrics and terry fabrics (HS code - 6001)</li> </ul>	Republic of Belarus	On 23 February 2001, by Decision No. AD-15/2001/52-54 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty for artificial fur – 179.70%; pile fabrics – 53.29% (of the customs value of the commodity, were introduced for a period of five years.
Electric filament lamps (HS code – 8539 22 90 00)	Russian Federation	On 7 December 2000, by Decision No. AD-11/2000/52-39A of the Interdepartmental Commission on International Trade, final anti-dumping measures in the form of a anti-dumping duty in the amount 97.50% of the customs value of the commodity, were introduced for a period of five years.
Fibreboard of wood (HS code- 4411 11 00 00)	Republic of Belarus	On 12 July 2002, Decision No. AD-45/2002/52-61 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty in the amount of 68.75% of the customs value of the commodity, were introduced for a period of five years.
Crossing pieces (HS code - 8608 00 10 00)	Russian Federation	On 5 July 2002, by Decision No. AD-43/2002/52-63 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty in the amount of 59.4% of the customs value of the commodity, were introduced for a period of five years.
Ruberoid (HS code- 6807 10 1000)	Republic of Belarus	On 12 July 2002, by Decision No. AD-47/2002/52-62 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty in the amount of 75% of the customs value of the commodity, were introduced for a period of five years.
Electric lamps (HS code – 8539 22 90 10)	Kyrgyz Republic	On 27 December 2002, by Decision No. AD-62/2002/52-65 of the Interdepartmental Commission on International Trade, final anti-dumping measures, in the form of an anti-dumping duty in the amount of 38.31% of the customs value of the commodity, were introduced for a period of five years.
Matches (HS code – 3605 00 00 00)	Russian Federation Republic of Belarus	<p>On 12 September 2003, by Decision No. AD-81/2003/52-123 of the Interdepartmental Commission on International Trade anti-dumping measures were taken in the form of an anti-dumping duty in the amount:</p> <p>for commodities originating from the Russian Federation:</p> <ul style="list-style-type: none"> <li>- production of Private JSC "Plitsichprom" (Balabanovo) – 0%;</li> <li>- other producers – 8.8%;</li> </ul> <p>for commodities originating from the Republic of Belarus:</p> <ul style="list-style-type: none"> <li>- production of Private JSC "Pinskdiv" (Pinsk)- 31.8%;</li> </ul>

Commodity that is subject to the Antidumping Investigation	Country of Origin of the Commodity	Results of Investigation and Measures Taken
		<ul style="list-style-type: none"> <li>- production of Public JSC "Borisovdrev" (Borisov) – 68.7%;</li> <li>- other producers – 95.7%.</li> </ul> <p>The term of antidumping measures expires in five years.</p>
<b>Ongoing Anti-dumping Investigations</b>		
Fibre sheets (HS code – 4411 19 00 00)	Poland	On 20 August 2003, by Decision No. AD-76/2003/52-122 of the Interdepartmental Commission on International Trade, preliminary anti-dumping measures were introduced in the form of an anti-dumping duty in the amount of 20.31% of the customs value of the commodity. The term of preliminary antidumping measures expires in one hundred and twenty days.
Sewer pipes of cast-iron (HS code – 7303 00 90 00)	Russian Federation	Investigation instituted by Decision No. AD-74/2003/52-126 of 6 May 2003. Investigation is going on.
Citric acid (HS code – 2918 14 00 00)	People's Republic of China	On 10 October 2003, by Decision No. AD-82/2003/52-125 of the Interdepartmental Commission on International Trade, preliminary anti-dumping measures were introduced in the form of an anti-dumping duty in the amount of 130% of the customs value of the commodity. The term of preliminary antidumping measures expires in one hundred and twenty days..



Table 14

Country	Commodity - subject of investigation		Investigation started	Investigation completed	Measures taken	
1	2	3	4	5	6	7
		Date and number of decision	Date of publication of decision	Date and number of decision	Date of publication of decision	Size of annual safeguard quota
<b>Completed Safeguard Investigations</b>						
Russian Federation, Slovak Republic, Kingdom of Belgium, Ireland, Poland, Germany and Kingdom of Spain	Syringes with or without needles of plastic materials	Decision No.SP-13/2001/52-61 dated 12 January 2001	18 January 2001	Decision No.SP-17/2001/52-44 dated 8 June 2001	21 June 2001	893464.3 kg
Russian Federation	Baking soda	Decision No.SP-24/2001/52-46 dated 7 November 2001	14 November 2001	Decision No.SP-44/2002/52-46 dated 5 July 2002	10 July 2002	2,500 tons
Russian Federation	Portland cement	Decision No.SP-25/2001/52-48 dated 13 December 2001	19 December 2001	Decision No.SP-49/2002/52-48 dated 7 October 2002	10 October 2002	157,500 tons
Russian Federation	New cars	Decision No.SP-28/2002/52-49 dated 8 January 2002	11 January 2002	Decision No.SP-54/2002/52-49 dated 6 December 2002	12 December 2002	15,777 units
Irrespective of country of origin	Biscuit products	Decision No.SP-59/2002/52-54 dated 6 December 2002	11 December 2002	Decision No.SP-85/2003/52-99	30 December 2003	Safeguard measures were introduced in the form of a duty in the amount of 18.3% of the customs value of the commodity but not less than € 0.3 per kilo (for products with value not exceeding US\$ 1.5 per kilo)
Republic of Belarus, Russian Federation, Hungary, People's Republic of China (including Hong Kong (Siangan), Macao (Aomin), Taiwan)	Artificial fur Pile fabrics	Decision No.2/99 dated 14 May 1999	20 May 1999	Decision No.SP-67/2003/52-48 dated 6 May 2003 (published on 14 May 2003)	Protection measures have been terminated due to the expiry of their term	
Republic of Belarus, Poland, Russian Federation, Hungary	Electric lamps	Decision No.3/99	20 May 1999	Decision No.SP-70/2003/52-47 dated 6 May 2003 (published on 14 May 2003)	Protection measures have been terminated due to the expiry of their term	

Country	Commodity - subject of investigation		Investigation started	Investigation completed	Measures taken	
1	2	3	4	5	6	7
		Date and number of decision	Date of publication of decision	Date and number of decision	Date of publication of decision	Size of annual safeguard quota
Russian Federation, Slovak Republic, Germany	Magnesia fire refractory products	Decision No.SP-7/2000/52-47 dated 7 September 2000	20 September 2000	Decision No.SP-16/2001/52-43 dated 5 June 2001 (published on 15 August 2001)	Investigation has been completed without protection measures due to lack of evidence of causing damage to the national producer by import of the said commodity	
Republic of Estonia, Republic of Lithuania, Republic of Latvia, Russian Federation, Republic of Belarus, Poland, Czech Republic, Hungary	Polyurethane sheets, tape, plates (foam-rubber)	Decision No.SP-9/1999 dated 27 September 1999	2 October 1999	Decision No.SP-83/2003/52-49 dated 8 October 2003 (published on 15 October 2003)	Protection measures have been terminated due to the expiry of their term	
Irrespective of country of origin	Instant coffee	Decision No.SP-51/2002/52-52 dated 7 October 2002	16 October 2002	Decision No.SP-75/2003/52-97 dated 6 May 2003 (published on 16 May 2003)	Investigation has been completed without protection measures due to lack of evidence of causing damage to the national producer by import of the said commodity	
Ongoing Safeguard Investigations						
Irrespective of country of origin	Caustic soda	Decision SP-51/2002/52-52 dated 7 October 2002	16 October 2002	Supervision measures taken according to Decision No.SP-72/2003/52-96 dated 6 May 2003	14 May 2003	Surveillance system
Irrespective of country of origin	Packing technical cloths	Decision No.SP-56/2002/52-53 dated 6 December 2002	11 December 2002	Investigation is going on		
Irrespective of country of origin	Ammonium nitrate	Decision No.SP-60/2002/52-55 dated 10 December 2002	20 December 2002	Supervision measures taken according to Decision No.SP-68/2003/52-100 dated 6 May 2003	16 May 2002	Supervision measures taken
Irrespective of country of origin	Phosphorous-content mineral fertilizers	Decision No.SP-63/2002/52-56 dated 27 December 2002	17 January 2003	Supervision measures taken according to Decision No.SP-69/2003/52-101 dated 6 May 2003	29 May 2003	Supervision measures taken
Irrespective of country of origin	Pipe billet of alloyed steel	Decision No.SP-64/2002/52-57 dated 27 December 1002	17 January 2003	Investigation is going on		

## **B. EXPORT REGULATIONS**

### **Question 54**

**We welcome the detailed information provided on the various export duties charged by Ukraine and other restrictions imposed. However, we note that there continues to be a number of export duties and other restrictions in place.**

**We would ask Ukraine to further phase out the export duties, which are high for some products and, in some case, prohibitive for trade. Please keep the Working Party informed of any plans to reduce and eliminate the various duties and other measures.**

#### Answer:

The export duty does not have a strong distorting impact on trade, because the Law of Ukraine "On Import (Export) Duty on Live Animals and Raw Hides Materials" allows the agricultural producers, who are legal entities, to export live cattle (except for young cattle weighing 350 kg and less) and raw hides of their own production without payment of the export duty.

Ukraine's policy shall be to gradually reduce the export duty rate. Thus, the Customs Council of Ukraine approved the Draft Law "On Amendment of Some Legislative acts of Ukraine (on Export of Raw Hides)", which envisages the reduction of duty rate for commodity group 4101 from 30 per cent, but not less than € 400 per ton, to 10 per cent, but not less than € 100 per ton. The Draft is being considered by the Verkhovna Rada.

### **Question 55**

**Table 15 contains customs tariffs on cattle hides, sheep or lambs skin and pigskin. We ask to abolish export tariffs (e.g. on hides and skins, metal scrap, etc.)**

#### Answer:

Domestic consumption of meat and meat products is still a problem to be solved in Ukraine, because average per capita meat consumption had dropped from 68 kg to 30 kg in the last decade, and in industrial regions to 23-26 kg (the minimum approved by the Ministry of Health in its Order No. 272 from 18 November 1999 is 60 kg). The introduction of an export duty on hides has resulted in a substantial improvement of the structure of hides export. While in 1995 (prior to the introduction of the duty) the export consisted of US\$ 85.5 million worth of hides and only US\$ 19.1 million worth of semi-finished goods and finished leather, in 2001 these numbers were US\$ 26.8 million and US\$ 82.0 million, respectively. Therefore, while hide resources have generally diminished, revenue had increased due to the rise in the export of processed goods, improving the situation in the leather and shoe industry. The utilisation of leather factories' capacity had increased from 15-20 per cent to 60-70 per cent. Ukraine still exports some hides on preferential terms to countries with which it has Free Trade Agreements, which means that Ukraine has reoriented its export towards the CIS and the Baltic nations. In 2001, domestic cattle and hide prices approached world prices, so producers can now profitably sell their goods in Ukraine. Cattle export went down from 16,700 heads in 2000 to only 3,300 heads in 2001, and hide exports decreased from 23,800 tons in 2000 to 15,900 tons in 2001. Finally, the law currently in force allows agricultural producers that are legal entities to export cattle (with the exception of young cattle weighing 350 kg and less) and hides of their own production without export duty.

Article XI:1 of GATT 1994 does not apply to bans or restrictions on exports that are temporarily applied in order to prevent a serious shortage of products that are of critical importance for an

exporting country. According to GATT 1994 Article XX(d), (g), and (i), Ukraine applied export restrictions with regard to non-ferrous metal (export duty), and prohibited the export of scrap ferrous metal. Licensing was not applied. Ukraine believed that at this time it would be premature to consider the elimination of export duties on oilseeds cultures. Export duties on sunflower seeds were introduced by Law No. 1033, dated 10 September 1999, as a temporary measure till 1 July 2002. Pursuant to the Law of Ukraine No. 2555, dated 21 June 2001, the level of rates of export duties on sunflower seeds was reduced to 17 per cent; however, the term of effect of such export duties is not currently restricted. The Government would prepare amendments to Law No. 1033, to specify a term of effect for export duties, in order to reinstate the temporary nature of such duties.

#### **Question 56**

**We note that Ukraine's very high export duties on live animals and hides and skins provide a subsidy to Ukraine's processing industry, and that they have a strong trade-distorting impact on the market within Ukraine and on Ukraine's exports of processed products, as well as a detrimental impact on the importation of meat and other products. We request that these export duties be eliminated by the date of accession and that Ukraine commit not to apply such export duties after accession.**

#### Answer:

The export duty does not have a strong distorting impact on trade, because the Law of Ukraine "On Import (Export) Duty on Live Animals and Raw Hides Materials" allows the agricultural producers, who are legal entities, to export live cattle (except for young cattle weighing 350 kg and less) and raw hides of their own production without payment of the export duty.

Ukraine's policy shall be to gradually reduce the export duty rate. Thus, the Customs Council of Ukraine approved the Draft Law "On Amendment of Some Legislative acts of Ukraine (on Export of Raw Hides)", which envisages the reduction of duty rate for commodity group 4101 from 30 per cent, but not less than € 400 per ton, to 10 per cent, but not less than € 100 per ton. The Draft is being considered by the Verkhovna Rada.

#### **- Export restrictions**

#### **Question 57**

**In paragraph 74, Ukraine notes that Article XI:1 of GATT 1994 does not apply to bans or restrictions on exports that are temporarily applied in order to prevent a serious shortage of products of crucial importance for an exporting country. We request full information indicating the basis on which Ukraine has assessed that a serious shortage of products of crucial importance to the exporting country still exists.**

#### Answer:

Currently, Ukraine has a critical shortage of scrap ferrous metals, which is a raw material base for the needs of Ukrainian metallurgy. A permanent decline in scrap ferrous metal is observed on the Ukrainian market (from 9.9 million tons in 2001 to 8.9 million tons in 2002, and 7.7 million tons - in 2003). This accounts for the shortage situation, and the scope of meeting the needs of metallurgy enterprises declined. Along with this, the needs of domestic metallurgy grow due to an increase in steel smelting output. This shortage poses a threat to the stable work of Ukrainian industry.

As of 2003, the output of scrap storage by scrap-storage enterprises in Ukraine decreased by 13.9 per cent and constituted 7,711.2 thousand tons, which is 1,241.6 thousand tons less compared to

2002 (from 9,053.3 thousand tons to 7,711.2 thousand tons). It should be mentioned that the year 2001 showed a tendency of the average annual 10 per cent decline in scrap metal storage: 2001 – 9,912 thousand tons, 2002 – 8,953.3 thousand tons, 2003 – 7,711.2 thousand tons.

To prevent the negative factors in ensuring the needs of metallurgy enterprises in scrap metal the Cabinet of Ministers and Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Export Duty for Waste and Scrap Ferrous Metal" No.216-IV of 24 October.

Enactment of the Law of Ukraine No. 216-IV of 24 October "On Export Duty for Waste and Scrap Ferrous Metal" on 1 January 2003 made it possible to increase the supply of scrap metal into the domestic market, and by the end of 2003 this figure reached 5,906.4 thousand tons. This allowed to meet the production needs of metallurgy enterprises by 91.2 per cent (the total need for scrap metal imported into Ukraine in 2003, according to the norms established by the Ministry, was 6,475.4 thousand tons with the actual steel output of 36,992 million tons).

Judging by the offer of metallurgy enterprises, the total steel output in 2004 may reach 38,637 tons, which is to require 14,139 tons of scrap metal, including 6,333 tons of the domestic and 7,806 tons of imported scrap-metal.

In order to further liberalize the export of scrap metal, to prevent the impediments associated with the WTO accession, and to satisfy the needs of domestic enterprises in scrap metal, the Cabinet of Ministers of Ukraine drafted Law of Ukraine "On Amendment of the Law of Ukraine "On Export Duty for Waste and Scrap of Ferrous Metal", which provides for gradual increase in export duty rate for waste and scrap ferrous metal.

Amendments to the current legislation concerning the reduction of the import duty for the said products, upon proposal by the Ministry of Industrial Policy, are to be considered in February 2004 following the review of performance of the metallurgy complex enterprises in 2003.

#### **Question 58**

**Further in paragraph 74, Ukraine indicates that export restrictions on non-ferrous metals are justified by GATT Article XX, (d), (g), and (i). We see no justification under these articles for the measures applied by Ukraine.**

**We request information on measures that are applied to domestic production (required to justify measures under Article XX(g)) and on the government stabilisation plans that are in place (required to justify measures under Article XX(i)). Otherwise, Ukraine's export restrictions in relation to non-ferrous metals and scrap metal need to be eliminated by the date of accession.**

#### Answer:

According to Article 9 of Law of Ukraine No.619-XIV of 5 May 1999 "On Scrap Metal" (in the wording of Law of Ukraine No.359-IV of 25 December 2002) export of scrap non-ferrous metal from Ukraine is prohibited. Aluminium and copper alloys by 60-70 per cent, soft lead and its alloys almost by 95 per cent are produced of scrap metal in Ukraine. Judging from the above, scrap and wastes containing copper, aluminium, lead and nickel should be regarded as the strategic raw materials, the balance in production and consumption of which ensures the independence of the state as regards the raw materials.

Ukraine does not have its own raw material base for the production of pure aluminium and partially – for the production of virgin alloys, and the need in bauxites is met exclusively at the account of

imports. Another source of raw materials is the scrap metal, which satisfies the needs of cast alloy and deoxidizer producers by 90 per cent.

It should be noted that the shortage of scrap metal and non-ferrous metals explains the use of a considerable amount of give-and-take raw materials in the non-ferrous metallurgy, where its volume in 2001 accounted for 44.8 per cent of the output.

For the time being, Article 9 of the foregoing Law of Ukraine cannot be amended due to the several reasons:

- scrap and wastes of non-ferrous metals are the strategic raw materials, the balanced production/consumption of which ensures the independence of Ukraine as regards the raw materials, since there are no ore raw materials to support the by key groups of non-ferrous metals. The ban on export of scrap non-ferrous metal is justified by the economic safety of the state; and
- Ukraine has a sufficient number of specialized metallurgy enterprises, which use scrap non-ferrous metals as technologically determined raw materials.

Regarding the status of the Draft Law on liberalization of export of non-ferrous metal. The Cabinet of Ministers of Ukraine drafted the Law of Ukraine "On Amendment of Article 9 of the Law of Ukraine "On Scrap Metal". The Draft Law provides that export of non-ferrous scrap metal, as well as import of scrap non-ferrous metals outside the customs territory of Ukraine as give-and-take raw materials is prohibited for the period up to 1 January 2010. It is taken into account that Ukraine has almost no own raw material base for production of most of non-ferrous metals, so the only internal source of their replenishment is scrap and wastes.

On 3 December 2003 the Governmental Committee for Economic Development and European Integration made a decision to consider the said Draft Law upon its additional revision with the purpose of identification of a reasonable term of the ban on export of non-ferrous scrap metal, and its important outside the customs territory of Ukraine as give-and-take raw materials.

#### **Question 59**

**We seek inclusion of material in the Draft Report in relation to internal production quotas set by Ukraine in relation to domestically refined sugar. In particular, Ukraine's Quota A establishes shares for producers to produce refined sugar required to be sold on the domestic market and not exported. The measure is intended to restrict the export of sugar and ensure national needs for refined sugar are met from domestic production. As this measure serves to restrict exports as well as discourage imports (through displacement in the local market), it constitutes a prohibited restriction under Article XI of GATT 1994. It also constitutes a prohibited TRIMs in the meaning of Annex 2 (c) of the TRIMs Agreement which restricts the sale for export of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production. We seek inclusion of material in this section that identifies this issue, and request the abolition of this prohibited restriction.**

#### Answer:

Domestic law sets a quota on production (the "A Quota") of processed (refined) sugar from sugar beets, which sugar must be sold, pursuant to requirements, on the domestic market and must not be exported. In addition to the A Quota, however, there exist the B Quota and the C Quota under effective law. The B Quota relates to supplies of sugar outside Ukraine in accordance with international treaties, and the C Quota concerns the sugar that has been produced in excess of the A

Quota and the B Quota and is intended for sale by its owners exclusively outside the country. Due to this, the A Quota may not be regarded as a restriction on exports and a hindrance to imports. In addition to the above referenced Quotas, the tariff quota for raw cane sugar is also allocated.

#### **Question 60**

**Minimum "indicative" export prices are enumerated towards the end of paragraph 20 and listed at Annex 4. Ukraine needs to supply sufficient information to clarify why these should not be considered export restrictions, or related to export restrictions.**

#### Answer:

Clause 4 in Article 189 of the Commercial Code of Ukraine, dated 16 January 2003, under No. 436-IV, which entered into force as from 1 January 2004, provides that in payments under export and import transactions with foreign partners shall be applied contract (foreign trade) prices that are formed pursuant to prices and conditions on the world market and indicative prices.

Pursuant to the Decree of the Ukrainian President, dated 10 February 1996, under No. 124/96, "On Measures aimed to improve Market and Price Policies in the Area of Foreign Activities", contract prices in the area of foreign economic activities are determined by Ukrainian subjects engaged in foreign economic activities [business entities and persons engaged in foreign trade] on a contractual basis, taking account of supply and demand and other factors existing on applicable markets at the time of entry into foreign economic agreements (contracts) and, in cases specified by this Decree, pursuant to indicative prices. The said indicative prices are set by the Ministry of Economy and on Issues of European Integration of Ukraine.

Indicative prices mean prices for products that correspond to prices, which have developed or are developing for a specific product on an export or import market at the time an export (import) transaction is accomplished, taking account of delivery terms and payment conditions specified by Ukrainian law.

Indicative prices are binding on business entities [subjects of entrepreneurial activity] when they enter into sale-purchase contracts.

While setting the indicative prices, the Ministry takes account of product quality standards in effect in Ukraine, delivery and payment terms that are recognized in world practice and provided by Ukrainian law, the situation on external and internal markets, information on prices (average prices that have developed on a given geographic market and forecasts on possible price fluctuations), contractual practices with respect to a specific product and other situation- and price-related information.

Indicative prices are set for the following products:

- in relation to exports of which products there have been prescribed anti-dumping measures or there have been commenced anti-dumping investigations or procedures within or without Ukraine;
- in relation to which products there are applied special import procedures pursuant to Article 19 of the Law of Ukraine "On Foreign Economic Activities";
- in relation to exports of which products there has been imposed a regime of quotas, licensing;
- in relation to exports of which products there have been imposed special regimes;
- products that are exported pursuant to procedures specified in Article 20 of the Law of Ukraine "On Foreign Economic Activities"; and
- in other instances in implementation of Ukraine's international commitments.

In accordance with effective law, the indicative prices are set for the following products:

- for live cattle and leather raw materials (Law of Ukraine No. 180/96-VR, dated 7 May 1996, "On the Export Duty for Live Cattle and Leather Raw Materials"; and
- for sunflower seeds, flax and rye (Law of Ukraine No. 1033-XIV, dated 10 September 1999, "On Export Duty Rates for Seeds of Some Oil Crops").

In accordance with Section IV.D of the Agreement suspending the antidumping investigation on products from cut carbon rolled steel from Ukraine entered into between the US Department of Commerce and Ukraine in 1997, indicative prices shall be set for products from cut carbon sheets.

The list of products originating from Ukraine, which fall under anti-dumping procedures, include: ferrosilicium, ferrochrome silicon, ferromagnesium silicon, carbamide, rolled steel, heavy sheet rolled metal, ammonia and ferroconcrete reinforcements.

Contract prices for all other products in the area of foreign economic activities are determined by Ukrainian subjects engaged into foreign economic activities [business entities and persons engaged in foreign trade] on a contractual basis and taking account of supply and demand and other factors existing on applicable markets at the time of entry into foreign economic agreements (contracts).

#### **Question 61**

**Ukraine should outline all consequences that may follow from failure to export these products at these prices, and whether such failure would lead to prohibition of export, any other border restriction applicable to exports (including, e.g., a voluntary export restraint), or any internal measure on the exporter.**

#### Answer:

In accordance with Order No. 547-a of the Ministry of Foreign Economic Relations and Trade, dated 31 August 1998, in the event that the price of an agreement deviates from an indicative price for products, which deviation may result from factors that have a direct impact upon the price (the type of agreement, product delivery terms, deviation of product quality indicators from a Ukrainian standard, other factors that have an essential impact upon conditions under which transactions are carried out), for purposes of customs clearance of such products it is necessary to provide an expert conclusion of the State Informational and Analytical Centre for Monitoring of External Commodity Markets (Derzhzovnishform), which is authorized, pursuant to the Decree of the Ukrainian President, dated 10 February 1996, under No. 124/96, to provide expert assistance to enterprises, institutions and organizations in the course of their engagement into foreign economic activities on the basis of additional documents furnished by an applicant, which documents confirm the validity of such deviation.

Hence, products, for which indicative prices are set, may be exported from Ukraine at prices that differ from indicative prices.

#### **- Export Licensing Procedures**

#### **Question 62**

**We support the request for Ukraine to remove, by the date of accession, WTO-inconsistent policies in relation to exports of live animals, hides and skins, non-ferrous metal scrap and sunflower seeds and commit not to introduce or revert to any such export restrictions after accession.**



Answer:

Ukraine understands its commitments as a Member of the WTO. Ukraine will continue to act in strict compliance with the commitments it assumes in the course of preparing the Report of the Working Party.

**Question 63**

**Like other WTO Members, we would like to stress our interest regarding the abolition of Ukrainian export licensing on live animals, hides and skins, and non-ferrous metal scrap (Paragraph 76)**

Answer:

Export of live cattle, hides and scrap non-ferrous metals are not subject to licensing in Ukraine. In the context of paragraphs (g), (i) of GATT Article XX, export on scrap non-ferrous metals is prohibited in Ukraine.

- **Export subsidies**

**Question 64**

**We welcome the commitment by Ukraine to bind export subsidies at zero upon accession. This undertaking by Ukraine relates to agricultural products, and should be reflected under the heading 'Policies affecting Foreign Trade in Agricultural Products', rather than in this section. We propose it be moved to the correct Section of the Report.**

Answer:

These comments will be taken into account in the course of preparing the final version of the Report of the Working Party.

**C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS**

- **Industrial policy, including subsidies**

**Question 65**

**A lot of information is already contained in the text in various sections. With reference to paragraph 47, we would, however, request that like other countries in the accession process, Ukraine provides a subsidy notification according to Article 25 ASCM.**

Answer:

Ukraine is developing a draft notification on the existing subsidies in compliance with the requirements of Article 25.1 of the Agreement on Subsidies and Countervailing Measures, which will be provided to the WTO Secretariat.

**Question 66**

**With regard to paragraph 80, we will seek clear commitments from Ukraine.**

Answer:

Ukraine expects to deal fully with the questions of its commitments in the context of preparation of the draft Report of the Working Party.

**Question 67**

**Joining to the request expressed by other WTO Members, we ask Ukraine to undertake commitments not to apply subsidies (including also export subsidies), which are regarded prohibited in the meaning of Article 3 of WTO Agreement on Subsidies and Countervailing Measures.**

**Taking into account the interest of Latvian entrepreneurs that operate in the field of ship building and repairing, only subsidies that are designed to environment protection, research, restructuring or regional development, in the meaning of Article 8 of Agreement on Subsidies and Countervailing Measures, in this field are to be supported.**

Answer:

Ukraine is fully aware of the obligations resulting from its membership in the WTO and stands ready to come to an agreement about the size of obligations in the process of preparation of the final draft of the Working Party Report.

Taking in to account the interest of Latvian entrepreneurs, who operate in the area ship-building, we would like to inform of the following. Draft Law of Ukraine "On State Budget of Ukraine for 2004" envisages introduction of amendments to certain provisions of the Law of Ukraine "On Value Added Tax", related with subsidization of Ukrainian industry. In particular, the provision will be abolished which foresees VAT exemption for transactions of importation (shipment) into the Customs Territory of Ukraine of materials, equipment and assembling parts (hereinafter – goods), used for purposes of ship building (except for excisable goods), in case such goods are not produced by enterprises within the territory of Ukraine or in case such produced goods do not comply with the Certification requirements of the International classification partnerships or do not comply with the requirements of the Clients and with the identified Contract provisions. The draft law is expected to be adopted in early 2004.

**Question 68**

**Subsidies to the Coal Mining Enterprises: In paragraph 78 (on page 53) Ukraine states that the Resolution of the Cabinet of Ministers of Ukraine No. 1733 of 27 December 2001 "On approval of procedure for identification and provision of the State support to the Coal Mining Enterprises" will provide state support to coal mining enterprises with substantial production reserves of quality coal but which are unable to support production with their own funding. Can Ukraine provide information of how such assessments are made? Can Ukraine confirm whether subsidies are paid to enterprises that would normally not be commercially viable or all enterprises are eligible for assistance?**

Answer:

Resolution No. 1311 of the Cabinet of Ministers of Ukraine, dated 21 August 2003, approved Procedures for Provision and Identification of Amounts of State Support to Coal Mining Enterprises for Partial Coverage of Production Cost and Construction and Technical Re-equipment of Enterprises producing Coal, Lignite (Brown Coal) and Peat. This Resolution suspended the effect of Cabinet of

Ministers of Ukraine Resolution No. 1733, dated 27 December 2001, whose provisions caused questions from this Member.

Amounts of State support are determined on the basis of assessment of enterprises' performance pursuant to economic indicators and production potential, as well as according to programs of enterprises' operations for a given year.

The main economic indicators used to determine amounts of State support are volumes of coal products and expenses associated with their production.

Volumes of marketable coal products are determined for coal mining enterprises based on planned range of products and approved quality indicators, as well as from maximum levels of prices that developed on the coal market in the previous year.

Expenses related to costs of production of marketable coal products shall be determined for coal producing enterprises pursuant to specific percentages of expenses relating to material-technical resources and human resources and production-related services, which expenses are to be calculated for the past year, as well as prices for these resources and services in the domestic market.

Amounts of State support shall be allocated, within the allowed limits of relevant budget lines, by the Industry Commission established by the Ministry of Fuel and Energy. Decisions of the Commission must be approved by the Ministry of Fuel and Energy.

On the basis of reported indicators for the enterprises' production and financial operations, at least once a month the said Commission shall assess the efficiency with which funds are used, and shall furnish to the Ministry of Fuel and Energy proposals on adjustments to the amounts of State support for the next period.

State support for partial coverage of expenses related to the cost of production of coal products is provided to coal mining enterprises (except for coal mining enterprises that must be prepared for liquidation), irrespective of their forms of ownership, whose coal products are included onto a demand balance sheet and a forecast on domestic coal that is prepared by the Ministry of Fuel and Energy, and which enterprises are obligated to ensure an increase of efficiency in coal mining if such support is provided, in particular to reduce production expenditures and to improve work productivity. State support is provided on a condition that the volume of marketable coal products in forecast sale prices does not cover production expenditures.

#### **Question 69**

**Ukraine also states that subsidies will be provided directly to enterprises reimbursing them for production costs and expenses related to capital investments. What is the level of reimbursement and what are the eligibility criteria for such subsidies?**

#### Answer:

State support to mining enterprises is provided according to State policies in the area of mineral mining regulation and principles of State policies for the mineral mining industry that are governed by the Mining Law of Ukraine.

Pursuant to the above referenced indicators, an average level of actual coverage of production costs with State support for all eligible enterprises totalled 10 per cent according to the results for nine months of 2003.

Pursuant to the Concept for Restructuring of the System of State Subsidies for Industries of the National Economy, as approved by Order No. 182-p of the Cabinet of Ministers of Ukraine, dated 31 March 2003, the total amount of subsidies must not exceed 5 per cent of the cost of products.

Due to a policy undertaken to stabilize and structurally reorganize the coal industry, where re-organization commenced in 2002-2003, there is a possibility to achieve a full financial balance both in the entire industry and with respect to each state-owned coal mining enterprise on the condition of implementation and realization in full of the program "Ukrainian Coal", approved by Resolution No. 1205 of the Cabinet of Ministers of Ukraine, dated 19 September 2001. All measures must lead thereafter to a decrease in the coverage of costs of production of coal products through State support.

Pursuant to the Regulation, as approved by Resolution No. 1311 of the Cabinet of Ministers of Ukraine, dated 21 August 2003, eligibility to receive State support is determined by the Industry Commission subject to the condition that:

- The enterprise has considerable production reserves of quality coal;
- The enterprise is unable to support production with its own funding, if the modernization of such production is advisable;
- The enterprise posts losses as a result of its operations during the last reporting year; and
- The enterprise has provided objective information on its financial and economic position.

In order to ensure transparency in the course of determination of eligibility to and amounts of State support, specialists from the Ministry of Fuel and Energy have been preparing a mechanism, whereby State support will be provided to coal mining enterprises.

#### **Question 70**

**The Ministry of Fuel and Energy identifies the planned cost of production and the scope of expenditures for capital investment, including on the basis of targets for production of coal products. Can Ukraine elaborate on the basis for the identification of target amounts for the production of coal products, and how much of the production assisted by the subsidies is exported?**

#### Answer:

Proceeding from a production balance sheet and an allocation by main directions of the use of coal products from resources of enterprises of the Ministry for each year, the Ministry of Fuel and Energy identifies deficit types of coal each year. State support for construction and technical re-equipment is provided to cover the deficit through an increase of production of such types of coal.

According to the results for nine months of the year 2003, actual production of ready coal totalled 44.6 million tons, out of which 1.1 million tons was exported, which totals approximately 2.5 per cent. Sixty-seven per cent of energy coal exported from Ukraine was exported by mines that do not receive State support to cover expenses relating to costs of production of coal products or that received such support for a short period of time at the beginning of 2003. Thirty-three per cent (363.5 thousand tons) of coal was exported by mines that received State support, which support costs at the level of 9 per cent. In this respect, according to the results for nine months, 77 per cent of total costs were covered by enterprises' own revenues, 9 per cent were covered by state support and 14 per cent were not covered (losses).

- **Technical barriers to trade, sanitary and phytosanitary measures**

**Question 71**

**We welcome the additional information provided by Ukraine in relation to its TBT regime (WT/ACC/UKR/113). We note that according to WT/ACC/UKR/113, Ukrainian legislation does not appear to reflect fully the TBT provisions. In particular:**

**(i) Article 2.3 on the procedure of application of technical regulations**

**The principle that technical regulations shall not be maintained if their objectives can be addressed in a less trade-restrictive manner does not appear to be reflected in Ukrainian legislation. Can Ukraine indicate other relevant provisions of regulations that may embody this principle?**

Answer:

Depending on an area of application of technical regulations on conformity assessment, the provisions of Article 2.3 of the TBT Agreement are taken account of in specific technical regulations if it is provided by an applicable EU directive.

In particular, Clause 8.6 of the Technical Regulation on Conformity Assessment for Lifts provides:

"Not later than the 30 June 2008, following consultations with central agencies of executive power and on the basis of reports from authorized agencies, the State Committee of Ukraine for Technical Regulation and Consumer Policy must revise the procedures prescribed by this Technical Regulation and, if need be, must formulate proposals regarding the necessary amendments".

At present, the process of improving the system of technical regulation is underway in Ukraine taking into account international practice, in particular a transition from mandatory standards to voluntary standards, adoption of regulations (technical regulations on conformity assessment), wherein mandatory requirements for certain types of products are prescribed.

Currently, the first 11 technical regulations on conformity assessment prepared on the basis of the European Union Directives of the New Approach are only being implemented into Ukraine's legislation (one of them was approved by Resolution No. 1585 of the Cabinet of Ministers of Ukraine, dated 7 October 2003, and the remaining 10 technical regulations, including the technical regulation on lifts, were approved by Orders of the State Committee of Ukraine for Technical Regulation and Consumer Policy, dated 31 December 2003, in accordance with Resolution No. 2022 of the Cabinet of Ministers of Ukraine, dated 26 December 2003, whereby the State Committee of Ukraine for Technical Regulation and Consumer Policy was delegated relevant powers). The said documents undergo preparation to be submitted to the Justice Ministry of Ukraine for State registration.

Following the acquisition of some experience as to how technical regulations work, there will be additionally prepared a procedure for revising the said documents in accordance with the provisions of Article 2.3 of the TBT Agreement.

We would be grateful for information on such procedures in the Members of the Working Party considering Ukraine's application for accession to the WTO.

**(ii) Article 2.7**

**Ukraine indicates adoption of technical regulations of other WTO members is considered at the bilateral basis and through participation in international (regional) certification systems. Article 2.7 addresses recognition of other Member's regulations as 'equivalent' rather than 'adoption' of regulations of others. Ukraine refers to Article 6 of its Law "On Conformity Assessment" and scope under it to conclude international agreements on conformity assessment. It does not indicate whether this provides scope for recognition of equivalence of another Member's technical regulation(s). Can Ukraine indicate relevant provisions which provide for the recognition of regulations of other members?**

Answer:

Article 2.7 of the TBT Agreement specifically provides for a possibility to recognize other WTO Members' regulations as equivalent rather than adopt them. Ukrainian law provides for recognition of other countries' technical regulations as equivalent, in first place, of internationally recognized ones (Article 5 of the Law of Ukraine "On Conformity Assessment", paragraphs 4, 6).

Pursuant to the TBT Agreement, technical regulations, which are being drafted in Ukraine, lay down requirements that must be obligatorily complied with (paragraph 15 in Article 1 of the Law of Ukraine "On Conformity Assessment" and paragraph 1 in Article 13 of the Law of Ukraine "On Standardization").

It is possible for technical regulations to contain references to standards, the voluntary application of which may be regarded as proof of conformity of products with the technical regulations.

Articles 6 and 21 of the Law of Ukraine "On Conformity Assessment" deal with the conclusion of international agreements (treaties) in the area of conformity assessment for the recognition of results of conformity assessment work, whose basis may be constituted by the requirements of applicable technical regulations.

**(iii) Article 2.9**

**We note reference in this section to Standard DSTU 1.12-2002 on "Rules of providing notifications to trade partners of Ukraine". Can Ukraine indicate whether this regulation captures the requirements of Article 2.9.1.-2.9.4 of the TBT Agreement?**

Answer:

Yes, this standard captures the requirements of Article 2.9.1-2.9.4 of the TBT Agreement.

This standard lays down the basic provisions dealing with the processing of notifications to trade partners of Ukraine regarding technical regulations and standards or conformity assessment procedures, which are in effect or are developed in Ukraine and which may affect trade relations with other countries.

**(iv) Article 3.1-3.5**

**Ukraine's response and legislative references do not indicate how Ukraine meets its requirements under these provisions in relation to local government and non-government bodies within their territories. We seek greater explanation of how these provisions are reflected in Ukrainian law or regulations.**

Answer:

The Law of Ukraine "On Standardization" provides that a technical regulation shall mean a rule that is enacted by a government authority.

Pursuant to the Law of Ukraine "On Conformity Assessment", technical regulations on conformity assessment shall be prepared by central agencies of executive power. Lists of central agencies of executive power that are charged with functions of technical regulation in designated areas and functions of drafting of technical regulations are approved by Resolution No. 288 of the Cabinet of Ministers of Ukraine, dated 13 March 2002.

Pursuant to Ukrainian law, local government and non-government bodies are not authorized to adopt technical regulations, which may affect foreign trade.

**Question 72**

**Ukraine notes in paragraph 85 that "with transition period... prior to the introduction of technical regulations, the UkrSEPRO certification system shall operate". We seek clarification of the transition periods referred to and note that Ukraine will be expected to meet the provisions of the TBT Agreement upon accession without transition periods.**

Answer:

Pursuant to the Law of Ukraine "On Conformity Assessment", conformity of products must be assessed in accordance with technical regulations on conformity assessment that are developed on the basis of international standards. Here, procedures for assessing the conformity of imported products are applied on conditions that are not less favourable than those that are provided for suppliers of similar products of domestic origin, which complies with clauses 2.1; 2.2 in Article 2 and clause 5.1.1 in Article 5 of the Agreement on Technical Barriers to Trade.

The UkrSEPRO certification system, which operates in Ukraine pursuant to the requirements of Decree No. 46-93 of the Cabinet of Ministers of Ukraine, dated 10 May 1993, "On Standardization and Certification" (in the part relating to provisions dealing with certification) prior to the introduction of technical regulations, is also directed at complying with the basic provisions of the TBT Agreement, in particular at ensuring national treatment and most favoured nation treatment for products that are imported.

**Question 73**

**We note that Ukraine intends to address the issue of commitments in the framework of the drafting of the actual Working Party Report. We thus reserve our right to come back to these points at a later stage and to contribute to the drafting of commitments as appropriate.**

Answer:

Ukraine expects to deal fully with the questions of its commitments in the context of preparation of the draft Report of the Working Party.

- **Sanitary and phytosanitary measures**

**Question 74**

**We note that Ukraine intends to address the issue of commitments in the framework of the drafting of the actual Working Party Report. We thus reserve our right to come back to these points at a later stage and to contribute to the drafting of commitments as appropriate.**

Answer:

Ukraine expects to deal fully with the questions of its commitments in the context of preparation of the draft Report of the Working Party.

- **Trade-related investment measures**

**Question 75**

**We seek the reflection of additional prohibited TRIMS applied by Ukraine in relation to its sugar market regulation. These include:**

- **Ukraine's policy of mandatory exportation of sugar refined domestically from raw sugar of foreign origin (as confirmed by Ukraine on page 98 of WT/ACC/UKR/110/Add.2 of 20 June 2003). This constitutes a violation of Article 2.1 of the TRIMs Agreement in that it: (i) requires the use by an enterprise of goods of domestic origin in terms of the value or volume of local production; and (ii) limits an enterprise's purchases or use of imported raw sugar to the volume of local products exported. We note the need for Ukraine to abolish this requirement upon accession.**
- **Ukraine's minimum price policies (as a means of delivering a subsidy to sugar producers), which constitute a prohibited TRIMs in the meaning of Annex 1(a) in that the purchase or use by an enterprise of products of domestic origin (e.g. beet) is required to obtain an advantage on the sale of refined sugar. We seek the removal of minimum internal prices on sugar.**

Answer:

Minimum prices for sugar in Ukraine are set irrespective of which raw sugar such sugar is refined from – sugar beets or raw cane sugar, but they have a direct impact upon Ukrainian domestic producers of sugar beets rather than upon producers of sugar cane, as this agricultural crop just is not grown in the country. The application of minimum prices for support of agricultural products is in compliance with Article 6 of the Agreement on Agriculture and, therefore, Ukraine does not understand a request from this Member to abolish minimum prices for refined sugar.

Minimum prices, which are set to support producers of refined sugar, exist in other WTO Members, for example in the European Union, through a mechanism of intervention prices, and in the United States of America – for cane sugar through a mechanism of loan rates. Ukraine, similarly to this Member, believes that such a mechanism of loan rates and intervention prices, like the Ukrainian minimum prices for sugar, are trade-distorting measures that hinder imports (by way of ousting thereof from the domestic market with domestic products), but Ukraine understands, in contrast to Australia, that these regulations have a right to exist and comply with the requirements of the WTO Agreements and, in particular, the WTO Agreement on Agriculture. Hence, Ukraine sees no



prohibited TRIMs measure in the meaning of Article 1(a) (paragraph 1a) in the setting of the minimum prices for refined sugar.

#### **Question 76**

**Ukraine's internal production quota for sugar under which producers are required to sell a fixed quantity of refined sugar on the domestic market. The measure was intended to restrict the export of sugar and ensure national needs for refined sugar were met from domestic production. As this measure serves to restrict exports as well as discourage imports (through displacement in the local market), it constitutes a prohibited TRIMs in the meaning of Annex 2 (c) of the TRIMs Agreement in that it restricts the sale for export of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production. We seek inclusion of this issue in this section and request the abolition of this prohibited restriction.**

#### Answer:

Domestic law sets a quota on production (the "A Quota") of processed (refined) sugar from sugar beets, which sugar must be sold, pursuant to requirements, on the domestic market and must not be exported. In addition to the A Quota, however, there exist the B Quota and the C Quota under effective law. The B Quota relates to supplies of sugar outside Ukraine in accordance with international treaties, and the C Quota concerns the sugar that has been produced in excess of the A Quota and the B Quota and is intended for sale by its owners exclusively outside the country. Due to this, the A Quota may not be regarded as a restriction on exports and a hindrance to imports. In addition to the above referenced Quotas, the tariff quota for raw cane sugar is also allocated. Consequently, the request of Australia is groundless.

#### **- State-trading entities**

#### **Question 77**

**We kindly ask representatives of Ukrainian delegation to specify the areas of national economy, where enterprises mentioned in paragraph 95 operate, we also request to characterize shortly fields of their activity.**

#### Answer:

With respect to the enterprises mentioned in paragraph 95 it should be stated that though the above-mentioned enterprises contain the wording "state enterprise", they actually do not enjoy any exclusive or special privileges in the meaning of Article XVII GATT 1994. The Draft Report will contain information on the following enterprises.

#### **Question 78**

**We look forward to receiving further information, as stated in paragraph 97.**

#### Answer:

The appropriate information mentioned in the paragraph 97 has been provided to the Secretariat for dissemination among the Working Party Members.

- **Free zones, special economic areas**

#### **Question 79**

**We attach great importance to the commitments as phrased in paragraph 117. Ukraine must ensure that Special Economic Zones and Priority Development areas are fully subject to WTO obligations. In particular:**

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

#### **Answer:**

Draft Law of Ukraine "On Imposing the Moratorium for Consideration and Approval (Confirmation) of New Investment Projects in Special (Free) Economic Zones and Territories with Special Regime of Investment Activity" No. 4229 was submitted by the Cabinet of Ministers of Ukraine to Verkhovna Rada for consideration on 6 October 2003. The draft Law provides for:

- elimination of practices whereby the subjects operating within the special territories try to obtain the increase in the scope of benefits by way of changing the projects that are being implemented. It is proposed to define in the draft Law the conditions and procedures for making changes to an approved investment project and an executed agreement (contract) for its implementation;
- augmenting of export orientation of production in Special Economic Zones. It is proposed to make changes to the customs regime established in the SEZ "Azov", the SEZ "Donetsk" and the SEZ "Zakarpattia", in order to orient the production of goods therein for export;
- improvement of regulation of the privileged regime of taxation within the special territories. It is proposed in the draft Law to include an additional rule specifying a term, within which the benefits are effective in the course of implementation of the investment projects in the special territories: with the beginning being when an agreement (contract) for implementation of the project is entered into, and the end being when the amount of benefits granted reaches the amount of investments; and to provide that the privileged regime for corporate profit taxation begins to operate as from the date, on which the minimum amount of an investment pursuant to law is made;
- discontinuance of grants of tax benefits relating to the imports of goods with a high taxation level. It is proposed to cancel all privileges that are applicable to imports (exports) of goods and other articles for excisable goods and products in Groups 1-24 of the Ukrainian Classification of Goods for Foreign Economic Activity within the Special Economic Zones with the special customs zone regime (the SEZ "Azov", the SEZ "Donetsk", the SEZ "Reni", the SEZ "Porto-Franco", the SEZ "Krakovets", the SEZ "Zakarpattia", the SEZ "Port Krim"), as well as to cancel the import duty benefits for raw materials and value added tax benefits applicable to the imports of machinery (equipment) and component parts thereto;
- establishment of sanctions for an investor for a failure to fulfil the terms and conditions of an agreement (contract) in the course of implementation of an investment project in the special territories. For this purpose, the scope of liability of the investor is determined in

- the event of the investor's failure to fulfil obligations as are set out in the agreement (contract) for implementation of the investment project; and
- prevention of importation of outdated equipment under the privileged regime. For this purpose, it is proposed to introduce a rule that no tax benefits and customs regulation shall apply to the importation into Ukraine's customs territory of machinery, equipment and component parts thereto manufactured three years ago.

In addition, the Draft Law envisages that until the 1 January 2010 there shall be introduced a moratorium upon the establishment of new Special (Free) Economic Zones and upon the introduction of the special regime for investment activities within new territories. Also, there has been prepared a Draft Law "On the Approval of Moratoria upon Reviews and Approvals (Ratification) of New Investment Projects in Special (Free) Economic Zones and Priority Development Areas", whereby reviews and approvals (ratification) of new investment projects in the Special Economic Zones and Priority Development areas shall be suspended until the 1 January 2010.

For purposes of ensuring that conditions for the functioning of the Special Economic Zones and Priority Development areas are optimized, the following Resolutions of the Cabinet of Ministers of Ukraine have been adopted:

- "On Amendments to the Sample Agreement (Contract) for Implementation of an Investment Project within a Priority Development Area or in a Special (Free) Economic Zone", dated 15 May 2003, under No.704;
- "On Amendments to certain Resolutions of the Cabinet of Ministers of Ukraine", dated 27 August 2003, under No. 1368, laying down the rules providing:
  - that mandatory expert examinations of all changes to the projects must be carried out by central agencies of executive power. In this respect, changes should not relate to an increase of volumes of imports of goods and products under Groups 1-24 of the Ukrainian Classification of Goods for Foreign Economic Activity;
  - that decisions approving (ratifying) investment projects may be adopted exclusively in the event that there are conclusions therefore from all central agencies of executive power that are involved into the performance of expert examinations of such projects; and
  - the guarantees for subjects operating in the Special Economic Zones and Priority Development areas with respect to settlement of disputes that arise in the course of implementation of the approved investment projects in the event that the list of priority types has been changed.
- "On Restrictions on Imports of Certain Types of Goods from the Territory of the Special Economic Zone "Donetsk" into the Customs Territory of Ukraine in 2003", dated 10 September 2003, under No. 1435, which establishes maximum volumes of imports of certain types of meat products fully produced or sufficiently worked over or processed within the SEZ "Donetsk" into the customs territory of Ukraine."

Article 9 of the Law of Ukraine "On the State Budget of Ukraine for 2004" introduces a moratorium upon establishment of new, and expansion of existing, special (free) economic zones, special regimes of investment activities in new territories and technological parks, and a moratorium upon reviews and approvals (ratification) of new investment and innovation projects in special (free) economic zones and within the territories with special regime and investment activities, and new investment projects in technological parks.

#### **Question 80**

**In paragraph 116, Ukraine states that an investor may "in the course of an investment project implementation, attribute preference to products (works, services) of Ukrainian origin on equal conditions applying to price, terms of competition, quality, and compliance with international standards". This statement was in response to our earlier question as to whether tax benefits and preference to entities in free zones were contingent on local content or export performance. While Ukraine notes it does not link the provision of such benefits to export performance, it has not provided a sufficiently clear response in relation to local content. We seek clarification as to whether eligibility for tax preferences or incentives for firms within free zones is made dependent on their purchase or use of products of domestic origin.**

Answer:

The legislative provision to the effect that "an investor may in the course of an investment project implementation, attribute preference to products (works, services) of Ukrainian origin on equal conditions applying to price, terms of completion, quality, compliance with international standards" is of a recommendatory nature. Business entities within territories of special (free) economic zones, which use products of foreign origin in the course of investment project implementation are also granted all available tax exemptions and incentive measures without application of any discriminatory measures. Thus, rights to privileges or incentive measures for firms operating within free zones do not depend on their acquisition or use of goods of national origin.

- **Government procurement**

#### **Question 81**

**We note that Ukraine intends to address the issue of commitments in the framework of the drafting of the actual Working Party Report. We thus reserve our right to come back to these points at a later stage and to contribute to the drafting of commitments as appropriate.**

Answer:

Ukraine expects to deal fully with the questions of its commitments in the context of preparation of the draft Report of the Working Party.

- **Transit**

#### **Question 82**

**With regard to the compliance of Ukraine's transit regime with Article V GATT, we would like to seek the following further clarifications at this stage:**

**Article V:1: The Ukrainian law refers to "transport vehicles of cargoes". Is this in any way limited in respect of transport means, as Article V:1 encompasses all means of transport?**

Answer:

Ukrainian side informs that the Law has the term "transport means", which has the following meaning under the Customs Code of Ukraine:

- transport means – any means of air, water, railroad or automobile transport, used exclusively for transportation of passengers and cargos through the customs territory of Ukraine

### Question 83

**Please clarify further the notion of "transit through one point of entry" – is this related to storage of goods in transit on Ukrainian territory?**

Answer:

The term "transit through one point of entry" as is used in the Law means the goods in transit placed in the warehouses for temporary storage, in customs terminals, etc., when it is caused by such factors as forming of a goods consignment, reloading, change of a vehicle, etc., and then these goods are exported into another country through this very point of entry.

### Question 84

**What is the definition of "shipment" – does it mean "good"? Article V:1 also includes transit without goods, e.g. if an empty lorry drives back. Would this also be covered?**

Answer:

According to the Resolution of the Cabinet of Ministers of Ukraine No. 574 of 9 June 1997 "shipment" means:

- the goods moved to the address of one consignee under one shipment document (waybill, bill of lading, etc.); and
- goods belonging to legal entities or natural persons (business entities) and are moved as hand luggage by one natural person in a passenger cabin (saloon) of a vehicle, on board of which such person is going.

Pursuant to the Procedure of Carrying out Customs Control and Customs Clearance of Goods and Other Items with Customs Declaration, approved by the Order of the State Customs Service of Ukraine No. 561 of 14 October 2002, "shipment of goods" means:

- goods and other items, which are sent to the address of a recipient with one shipping document (invoice, bill of lading etc.) or forwarded with one bill of parcels or moved as hand luggage by one person crossing the customs border of Ukraine; and
- goods and other items, arriving at destination point at the same time as one dispatch to the address of recipient from one sender and one point of dispatch.

In the case indicated by the European Union delegation an empty lorry that transits through the customs territory of Ukraine is deemed to be moving under the transit customs regime, but the cargo customs declaration is not issued in this case.

According to Article 200 of the Customs Code of Ukraine "Transit" is the customs regime when the goods and vehicles under the customs control are transferred from one customs authority to another (or within the activity zone of the same customs authority) without any use of such goods and vehicles within the customs border of Ukraine.

**Question 85**

**Article V:2: Ukrainian law does not appear to place any restrictions based on the flags of "ships". Is this as broad as the term "vessels" used in Article V:2?**

Answer:

Yes, we hereby confirm that Ukrainian law does not place any restrictions based on the flags of "ships", but draw your attention that in the given context the term "vessels" should be used, as it is used in Article V:2 GATT. Pursuant to Article 3 of the Law of Ukraine "On Cargo Transit" freedom of transit is guaranteed by means of absence of any discrimination of participants.

**Question 86**

**Article V:3, 4: The reference to Article 157 of the new Customs Code and the carriage along the routes most convenient falls under Article V:2 but not V:3, 4 GATT. The latter rather provides for customs formalities, such as for instance no unnecessary delays or restrictions. Is this regulated in Ukrainian law?**

Answer:

In pursuance to Article 9 of the Law of Ukraine "On Cargo Transit", the control of transit cargoes and processing of their accompanying documentation is performed according to the technological schemes for admission of the relevant transport means for crossing the state border of Ukraine, which stipulate the terms of such admission and regulate actions of officers of specially authorized governmental executive bodies. The requirements for control of transit cargo are as follows:

- clear regulation of the control procedure and actions of officers of specially authorized governmental executive bodies exclusively by legal acts;
- competent officers of specially authorized governmental executive bodies are financed exclusively from the state budget;
- availability of necessary certified means of control;
- simplified and express control procedure; and
- complex, simultaneous and uninterrupted procedure of all types of control; once there are agreements with the relevant bodies of the neighbouring states - control is performed jointly.

Pursuant to Article 3 of the Law of Ukraine 'On Cargo Transit' freedom of transit is guaranteed by means of absence of unjustified delays and restrictions, including those relating to the means of transit and exemption from any other charges, except for the unified fee charged at the state border crossing points of Ukraine.

**Question 87**

**Please provide further information on the limitation for excisable goods.**

Answer:

According to Article 161 of the Customs Code of Ukraine, one of the following guarantees may be applied to delivery to the destination customs authority of goods and vehicles under customs control and transferred between the customs authorities:

- the owner of goods and vehicles or an authorized person issues a guarantee to the customs authority;
- the customs authority ensures security and escorts the goods;
- carriage of goods by the customs carrier;
- transportation of goods under conditions of the Customs Convention on TIR under TIR carnet 1975 (1975 Convention on TIR).

In addition, the Cabinet of Ministers of Ukraine established the following limitations on the transit of excisable goods:

- transportation of excisable goods (alcoholic beverages and tobacco products) shall be performed only via the roads and in directions of transit through the territory of Ukraine and through the established checkpoints at the customs border as determined by Resolutions of the Cabinet of Ministers of Ukraine No. 484 of 6 May 1996 and No. 938 of 12 August 1996; and
- Resolution of the Cabinet of Ministers of Ukraine No. 484 of 6 June 1996 on the transit of excisable goods by automobile and railroad transport through the territory of Ukraine establishes the limit terms of transit.

Transit shall not be charged with duties, taxes and fees with the exception of the unified fee consistent with the costs associated with transit. Pursuant to Article 165 of the Customs Code of Ukraine measures of guaranteeing the delivery of goods are compulsory for excisable goods.

#### **Question 88**

**Are the deadline for the transit "reasonable" under Article V:4?**

Answer:

Yes they are. According to Article 158 of the Customs Code of Ukraine, the time period for the shipment of goods to the corresponding customs authority of destination shall be established by the dispatching customs authority in accordance with the effective Ukrainian standards for cargo transportation based on the type of transport, the itinerary, the distance to the final destination point and other shipment conditions. This time period shall not include the storage time at the warehouses in case of reloading from one type of transport facility into another, nor the time period required for other cargo handling operations allowed by the customs authorities.

#### **Question 89**

**Article V:5, 6: Please clarify further the notion of "equal terms".**

Answer:

"Equal terms" – means application of identical customs procedures and conditions of customs clearance to goods in transit originating in different countries.

- **Agricultural policies**

#### **Question 90**

**We note the discussion of Ukraine's regulatory policies in relation to sugar in paragraph 104 does not reflect our full concerns in relation to their consistency with GATT disciplines. We request that the following issues be reflected in the text of the report:**

- **Mandatory exportation of sugar refined domestically from raw sugar of foreign origin**
- **Ukraine's requirement that sugar refined locally from raw sugar of foreign origin be exported (as confirmed by Ukraine on page 98 of WT/ACC/UKR/110/Add.2 of June 2003) sets a condition on the use of raw sugar of imported origin which confers more favourable treatment to domestic beet sugar (a competitor), and therefore is in violation of GATT Article III:4.**
- **It also constitutes a violation of Article 2.1 of the TRIMS Agreement in that it: (i) requires the use by an enterprise of goods of domestic origin in terms of the value or volume of local production; and (ii) limits an enterprise's purchases or use of imported raw sugar to the volume of local products exported.**
- **We note the need for Ukraine to abolish this requirement upon accession.**

Answer:

Pursuant to Article 3.11 of the Law of Ukraine "On State Regulation of Sugar Production and Sale", dated 17 June 1999, under No. 758-XIV, production of sugar in Ukraine from imported raw materials is permitted exclusively on condition that finished products will be exported in full out of Ukraine within time periods specified by Ukrainian law. Article XI:1 of GATT 1994 "General Elimination of Quantitative Restrictions" and Article 4 of the Agreement on Agriculture "Market access" point out that: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party". The government will prepare and propose corresponding amendments to the Law of Ukraine "On State Regulation of Sugar Production and Sale" regarding the abolishment of this requirement.

**Question 91**

**We note that in 2001 (and beyond) Ukraine implemented an exception to this restriction (i.e., mandatory exportation) – providing for 260,000 tonnes of raw sugar (under a TRQ arrangement) to be sold on the domestic market to cover the "deficit of sugar in the home market". We seek further information on the price at which raw sugar can be sold on the domestic market. A requirement to sell such sugar at a minimum price would be contrary to Article III of GATT 1994 in that it affords protection to domestic production.**

Answer:

Pursuant to effective law, minimum prices (prices for support) are set for refined sugar rather than for raw cane sugar.

**Question 92**

**Ukraine employs minimum internal prices for refined sugar and beet sugar as a means of providing a subsidy to domestic beet sugar production and refining of local beet sugar in Ukraine (Ukraine has argued in its recent replies to questions that this is consistent with Article 6 of the Agreement on Agriculture). However, the use of such minimum prices in parallel with the restrictions applied to imports of raw cane sugar (i.e., the export requirement mentioned above), violates GATT Article III:4 by according considerably less favourable treatment to imported raw sugar vis-à-vis its competitor – sugar of beet origin. Furthermore, Ukraine's minimum price policies (as a means of delivering a subsidy to sugar producers) affords support to sugar processors contingent on the use of local input (beet sugar). This constitutes a prohibited subsidy in the meaning of Article 3.1(b) of the Agreement on Subsidies**



**and Countervailing Measures, as well as a prohibited TRIMs in the meaning of Annex 1(a). We seek the removal of minimum internal prices on sugar.**

Answer:

Ukraine sees no inconsistency of minimum domestic prices for refined sugar and sugar beets with the provisions of Article 4 of the Agreement on Agriculture, Article III:4, XI:4 GATT and Article 3.1(b) of the Agreement on Subsidies and Countervailing Measures, as well as with paragraph 1(a) of the TRIMs Annex (see the explanation above).

**Question 93**

**Domestic Quota on Consumption:** As we have noted under paragraph 74, irrespective of how Ukraine implements this domestic quota, it acts to restrict the level of domestic refined sugar exported and hence discourages the importation of refined sugar. The quota therefore constitutes a prohibited Quantitative Restriction under Article XI of GATT 1994 and a prohibited TRIM. We request the elimination of this internal quota.

Answer:

Pursuant to effective law, there is no quota on consumption. Domestic law sets a quota on production (the "A Quota") of processed (refined) sugar from sugar beets, which sugar must be sold, pursuant to requirements, on the domestic market and must not be exported. In addition to the A Quota, however, there exist the B Quota and the C Quota under effective law. The B Quota relates to supplies of sugar outside Ukraine in accordance with international treaties, and the C Quota concerns the sugar that has been produced in excess of the A Quota and the B Quota and is intended for sale by its owners exclusively outside the country. Due to this, the A Quota may not be regarded as a restriction on exports and a hindrance to imports. In addition to the above referenced Quotas, the tariff quota for raw cane sugar is also allocated. Hence, this Member's request to eliminate the internal quota on consumption is groundless.

**Question 94**

**Paragraph 104:** This paragraph lacks appropriate factual information on the sugar regime.

- We request the inclusion of factual information indicating that a tariff-rate quota based policy regime had not existed until recently. This information should: (1) acknowledge that import quota restrictions had been applied; (2) indicate when the import quotas were eliminated and what they were replaced with; (3) provide details of the quota volumes that had been applied during the years up until the elimination of such import quotas; (4) fully enumerate the laws and regulations under which such quotas had been maintained; (5) indicate that the provisions of the relevant laws and regulations underpinning the quota regime are no longer used; and (6) state whether or not the relevant provisions of those laws and regulations exist any longer.
- We also seek the inclusion of details of the two tariff-rate quota arrangements for raw cane sugar in existence during the sugar year commencing 1 September 2002, including quantities, in-quota and out-of-quota rates, allocation methods, other administration aspects, and the entry into force and duration of, and the legal basis for, the arrangements. Similar details of all subsequent arrangements should be included.

**In the context of this requested information we also request the inclusion of:**

- **The observation by this Member that the regulation of the market through import quotas had been an important means by which Ukraine had sought to implement the objective of maintaining minimum internal prices of sugar refined from beets and thereby provide support for beet producers.**
- **And a statement by this Member that it welcomed the abandonment of such means for maintaining minimum internal prices of sugar refined from beets, which are inconsistent with GATT Articles III:4 and XI:4 and Article 4 of the Agriculture Agreement.**

Answer:

Ukraine sees no inconsistency of minimum domestic prices for refined sugar and sugar beets with the provisions of Article 4 of the Agreement on Agriculture, Article III:4 and XI:4 GATT (see the explanation above).

**Question 95**

**The additional observation by this Member that Ukraine had sought, and continues to seek, to apply mandatory minimum prices for the sale of domestic sugar refined from beets maintained by means of registration requirements for sugar refiners, an inspection regime and penalties applied for non-compliance with the mandatory minimum prices.**

Answer:

Pursuant to Resolution No. 494-p of the Cabinet of Ministers of Ukraine, dated 29 August 2002, "On Measures aimed to ensure that the Domestic Market is supplied with Domestic Sugar and is protected against Unauthorized Imports", there are specified, among other measures, measures "to ensure that producers and allocated sugar quantities are registered, and to ensure permanent control over wholesale prices for sugar". Pursuant to Order No. 335 of the Ukrainian Ministry of Agrarian Policy, dated 17 October 2002, "On Amendments to Order No. 186 of the Ukrainian Ministry of Agrarian Policy of Ukraine" of 20 September 2000 ("On Measures aimed to ensure that the Domestic Market is supplied with Domestic Sugar and is protected against Unauthorized Imports"), State registration of sugar producers was introduced. Pursuant to this act, sugar refining plants, which have undergone State registration and obtained State Registration Certificates for Sugar Refining Plants within the A and B Quotas on the basis of comprehensive inspection findings and attestation, are eligible to participate in a tender involving allocations of sugar production within the A and B Quotas.

Contenders shall be subject to comprehensive inspections once every five years. Elements of a comprehensive inspection must contain:

- an analysis of the production process (growing, gathering, acceptance and storage of sugar beets, improvement of technological processes, an energy balance and thermal indicators of the processes, a water balance and use of water, a degree of production automation, organization of labour, environmental purity of production); and
- proposals of inspectors as to improvements and development of production (a system for growing of sugar beets, a sugar beet acceptance and storage scheme, a technological schema of production, a heat and water usage scheme, a comprehensive automation scheme, a labour organization system, technical solutions that ensure environmental purity of production).

Contenders are certified on an annual basis by the Commission for Attestation and State Registration of Sugar Refining Plants – Producers within the A and B Quotas (hereinafter referred to as, the "Attestation Commission"), which Commission may include representatives from Chief Departments

for Agriculture and Food, State Technical Supervision Inspectorates of Oblast State Administrations, oblast Sugar Industry Associations, the State Sanitary and Epidemiological Service and, if necessary, other specialists, advisors and experts (per their consent), depending on the territorial location of sugar refining plants.

Ukraine believes that these measures are aimed, in the first place, at improving sugar production technologies and sugar beet processing in Ukraine, and they cannot be regarded as restrictions on the importation of raw cane sugar (for the production of specific quantities of refined sugar) and on the exportation of refined sugar.

#### **Question 96**

**And a statement that this Member expected the elimination of such mandatory minimum prices and the system for maintaining them upon accession, given their inconsistency with GATT Article III:4.**

#### Answer:

The application of minimum prices for support of agricultural products is in compliance with the provisions of Article 6 of the Agreement on Agriculture and, therefore, Ukraine does not understand this Member's expectation regarding the elimination of minimum prices for refined sugar and the system for their support.

#### **Question 97**

**Paragraph 105: We cannot support Ukraine's claim that 1994-1996 represents the future conditions of the functioning of the agriculture sector in Ukraine given the significant improvement in the macroeconomic position in the early 2000s, significant structural reform and change since 1994-1996 and exchange rate stability. We also note Ukraine has provided initial information on agricultural domestic support programs for 2000-2002 in WT/ACC/4 format. We request use of the 2000-2002 period as this would be consistent with WTO requirements and WTO accession guidelines.**

#### Answer:

In selecting a period as the base period Ukraine was guided by guidelines set out in the technical note of the Secretariat in the document WT/ACC/4, which note indicates that information on support programs is normally provided for each of the last three years. Having commenced negotiations on agriculture within the framework of the Working Party dealing with Ukraine's accession to the WTO in 1997, and since four years had passed after the country filed an application for its accession to the WTO, the years 1994 - 1996 were specifically the last years and were thus the basis on which the information on the level of agricultural support was prepared.

As regards comments whether it was appropriate to use the 2000-2002 period as a base period, as this would be consistent with WTO requirements and WTO guidelines, and comments on updating the period in the event that the WTO accession process is extended for several years, it should be noted that the Uruguay Round negotiations had lasted from August 1986 and ended in April 1994, but the period adopted for commitments to reduce agricultural support for countries that signed the Marrakech Agreement – the 1986-1988 period – was not revised, although the negotiations had lasted for eight years. In addition, the WTO Agreement on Agriculture does not contain clear guidelines as to which time period should be adopted as a "base" period.

Appropriate state support is needed for purposes of stabilization and further development of Ukraine's agrarian sector. This need results from objective particularities in the functioning of agriculture that are common both for Ukraine and developed countries, from deficiencies of domestic agriculture in comparison with that of the developed countries in terms of technological levels of production, and rationalization of the use of natural resources, as well as from a need to resolve problems specific for the Ukrainian agrarian sector that have accumulated over the years of crisis-ridden development. Last years' experience shows that the agrarian sector is not able to resolve these problems without an increase of State support.

It is important for Ukraine to obtain a right to provide "amber" support above the *de minimis* level, especially for certain products, which, in turn, will ensure the achievement of strategic domestic goals in the agrarian sector and the economy in general. Thus, the State's funding of loan-rate procurements of grain (pursuant to the Law of Ukraine "On Stimulation of Agricultural Development for the Years 2001-2004", dated 18 January 2001, under No. 2238-III, whereby support for and of producers' revenues through the introduction of loan rates for agricultural products was entrenched), will exceed 5 per cent of grain production costs (i.e., the *de minimis* level of support), and will be equal approximately to 10-12 per cent of the grain production costs for certain grain crops.

As regards "hyper-inflation", which took place in 1993 and 1994, Ukraine used an annual average exchange rate of Ukrainian currency against the US dollar in order to calculate the AMS level for the base period of 1994 -1996. This annual average exchange rate was correlative with the average exchange rate that existed during the period when payments for products procured by the State were due, and State payments under other support measures were equal during the year. Therefore, applying the annual average exchange rate of the Ukrainian currency against the US dollar for measuring the AMS level during the base years is acceptable. The annual average exchange rate of the Ukrainian Karbovanets (1994-1995) and the Ukrainian hryvnia (1996) against the US dollar set by the National Bank of Ukraine (annual average) was used for the calculations. This methodical approach is compatible with the procedures specified in the Agreement on Agriculture and with WTO practices.

Growth in gross production of agricultural products in all categories of farms in 2001 and 2002 is, in the first place, the result of favourable weather conditions, due to which the gross yield of grain increased in 2001-2002. However, a significant decrease in the yield of grain crops took place in 2003, especially of bread wheat. Secondly, the privileged taxation regime for agricultural enterprises (introduction of the fixed agricultural tax) and write-off of tax debts for reformed enterprises in the sector in 2000-2002 encouraged, to a certain extent, a flow of investments into agricultural production, which also promoted an increase of gross production of agricultural products. However, positive achievements in increasing production, in particular of grain and products of animal origin, did not, unfortunately, bring about the expected financial results. Thus, production of grain, bovine meat, milk and eggs suffered a material fall in the level of profitability as a result of a drop of sale prices for agricultural products sold by agricultural enterprises. In 2002, 54.0 per cent of enterprises posted losses in their activities (in 2001 – 43.9 per cent). Net results of all agricultural enterprises' activities totalled UAH 294.6 million in losses for 2002 (in 2001 – UAH 834.1 million in profits), and the level of profitability in general totalled minus 1.9 per cent as compared with 5.0 per cent in 2001.

As regards land reform, a large number of efforts to reform land relations were accomplished in 2001, as a result whereof changes in these relations became irreversible. However, the final goal – economically efficient and environmentally safe use of lands in Ukraine, has not been achieved. Positive achievements in the accomplishment of land reform have not yet led to the radical and efficient renewal of agricultural production, reinvigoration of investment processes in other production industries as well as the raising of public welfare. There is thus a need for a comprehensive approach towards resolving a problem of land reform on a market basis, in close

junction with economic reforms implemented in the country in general and changes in policies of agriculture support.

**Question 98**

**Quantitative restrictions on the internal purchase and sale of agricultural products:** Ukraine should enumerate the agricultural products that are subject to internal quantitative restrictions on purchase and sale, provide details of those restrictions, and explain why those products are subject to those restrictions. Details should be included in the Report, including how do those restrictions affect the internal purchase and sale of imported products? How do they affect the export of domestically produced products?

Answer:

No internal quantitative restrictions exist in Ukraine on the purchase and sale of agricultural products.

**V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

**Question 99**

**Paragraph 118:** Have any reservations been made with regard to the listed Conventions?

**Paragraph 125:** It appears that there are problems with regard to efficient border control on the border with Russia, the border checkpoints being easily circumventable, even for heavy trucks. Please inform the Working Party of any measures taken or planned to address this problem.

**Paragraph 128:** Ukraine's reservation concerning Article 18(3) of the Berne Convention will have to be withdrawn upon accession.

**Paragraph 129:** The new Law on Advertising (Article 6) foresees that all advertising (including the use of trademarks) must be in Ukrainian. How will this be applied in practice?

**Paragraph 135:** How is Ukraine planning to implement Art. 39(3) TRIPS? What period is foreseen for data exclusivity?

With reference to paragraph 141, we reserve our right to ask for additional detailed language at a later stage of the drafting process.

Answer:

Draft Report of the Working Party on Ukraine's Accession to WTO to be prepared and circulated in the near future will address all of the above-mentioned issues.

**POLICIES AFFECTING TRADE IN SERVICES**

**Question 100**

**Paragraph 143 – Professional services**

Ukraine applies the following restriction in legal services: only Ukrainian nationals may represent clients in criminal cases.

**Ukraine's commitment distinguishes between criminal and other fields of law. Could Ukraine please explain whether there are different qualifications for criminal lawyers and for other lawyers?**

**We reserve our right to come back to other paragraphs in the services section of the document at a later stage.**

Answer:

Limitations on market access, which are established in the sector of legal advisory and representation services concerning criminal law (CPC86111), require further work thereon, because not only advocate [attorneys] have the right to supply the indicated services, as has been repeatedly notified.

Thus, pursuant to Decision No. 13-пн/2000 of the Constitutional Court of Ukraine, dated 16 November 2000, it was recognized that the provisions of Part 1 in Article 44 of the Code of Criminal Procedure of Ukraine and Part 1 in Article 268 of the Code on Administrative Violations did not comply with the Constitution of Ukraine, as such provisions limited the right of a person, who is criminally prosecuted or subjected to administrative sanctions, to freely choose a specialist (other than an advocat [attorney]) in the area of law, who is authorized by law to provide legal assistance personally or according to a power of attorney from a legal entity, to protect such person's rights. Thus, the limitation, whereby the rights of persons criminally prosecuted or subjected to administrative sanctions could be protected only by an advocate [attorney], i.e. by a citizen of Ukraine, has been removed.

The Law of Ukraine "On Amendments to the Code of Criminal Procedure of Ukraine", dated 21 June 2001, under No. 2533-III, introduced amendments to Article 44 of the above reference Code, and Part 2 in this Article, as restated, provided that persons, who are authorized to engage in advocate [attorney] practice in Ukraine, and other specialists in the area of law, who are authorized by law to provide legal assistance personally or according to a power of attorney from a legal entity, are permitted to act as legal representatives. When and as provided by this Code, close relatives of an accused person, a defendant, a convicted person or an acquitted person, and his guardians or curators are permitted to act as legal representatives.

Relevant changes will be made to the Schedule of Specific Commitments in the Services Sector – under modes of supply 1) and 3) the commitment will be included as "None".

**- Trade Agreements**

**Question 101**

**We request that information in this section clearly indicate each of the arrangements for goods trade on a non-MFN basis, and include, for each such arrangement, details of the nature of the departure from MFN including:**

- the coverage of products subject to preferential access (imported into and exported from Ukraine); and
- the precise nature of the preferential access provided for imports and exports (full or partial elimination of customs duties; full or partial elimination of quantitative restrictions; whether the full or partial elimination of customs duties or quantitative restrictions is unconditional or conditional, and if conditional the nature of the conditionality; details of any special arrangements or procedures for the import or export of particular products, including, e.g., tariff quotas, pricing policies).

**We understand that, under applicable free-trade area agreements, trade in wheat between Ukraine and other CIS countries is not subject to duties or quantitative restrictions of any kind. Is this correct? Is the unrestricted trade in wheat unconditional?**

**We seek the inclusion in this section of the report clarification by Ukraine of the arrangements under which it purchased and was sold wheat from Russia and Kazakhstan during the second half of 2003. In particular, we would like to know whether such purchases/sales were normal commercial transactions between non-official buyers and sellers. We seek details of any official or political intervention involved in these purchases, and of the nature of and basis for such intervention. Under the circumstances in which they had taken place, could have such purchases by Ukraine or sales by Russia or Kazakhstan taken place in the amounts and on the terms that applied without official or political intervention? If not, why not?**

Answer:

Trade (trade and economic) agreements between the Government of Ukraine and Governments of other countries, which have approved the most favoured nation status and, accordingly, extend, on a reciprocal basis, MFN rates of import duty for goods originating from these countries, do not provide for exceptions of individual goods from this status, that is the MFN extends to the whole range of goods. Products from countries that have not signed trade agreements with Ukraine do not enjoy MFN rates, but pay duties at a higher rate.

Ukraine has effective bilateral free trade agreements with CIS countries (Azerbaijan, Belarus, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan), Baltic states (Latvia, Lithuania and Estonia. The Baltic States have formally notified Ukraine of their intention to revoke their free trade agreements with Ukraine on 1 May 2004) and the Republic of Macedonia. These agreements provide that goods originating from these countries, on a reciprocal basis, are unconditionally subject to import duty at zero rate, and that export restrictions will not be imposed. Both parties to the agreements may agree to exceptions from the free trade regime. Then such goods are subject to the MFN rate or export restrictions.

In general, export of goods from Ukraine is restriction-free, except for individual goods which are subject to export duty or export of which is prohibited (for example, ferrous alloy metal scrap, non-ferrous metal scrap, products of initial metal processing – ingots, pig metal, plates and other semi-finished products from non-refined (raw) copper, metal scrap originating from military formations: (Law of Ukraine "On Metal scrap" of 5 May 1999).

Contractual parties of free trade agreements have agreed not to use quantitative restrictions except the cases stipulated by the GATT.

Detail regarding exemptions from this general rule may be found below.

A number of free trade agreements (with Belarus, Kazakhstan, Latvia, Lithuania, Macedonia, Moldova, Russia and Uzbekistan) contain lists of goods exempted from the free trade regime, or establish a separate import procedure. Agreements with other countries (Azerbaijan, Armenia, Georgia, Estonia, Kyrgyzstan, Tajikistan and Turkmenistan) do not contain such exceptions. The exceptions are listed below.

- The Republic of Belarus

In accordance with Article 1 of the Free Trade Agreement between Ukraine's Government and Belarus' Government of 17 December 1992, "the Parties shall not apply duties, taxes or fees having the equivalent effect on export and/or import of goods originating from the territory of one of the state and bound to the other state's customs territory".

Exceptions from the free trade regime are as follows:

In accordance with Article 1 of Free trade regime exceptions Protocol between the Government of Ukraine and the Government of the Republic of Belarus (effective since 28 April 1999), the Contracting States have exempted from the free trade regime the goods to which Ukraine's Law "On export duty for live animals and raw leather materials" of 7 May 1996 No.180/96-BP (VR) applies.

Range of goods, which are exempted from free trade regime governing exports when exported from Ukraine to Belarus:

Code in the Classification of goods for foreign economic activities	Description
01.02.90100	young bovine animals
01.02.90310	heifers
01.02.90330	cows
01.02.90350	bulls
01.02.90370	oxen
01.02.90900	and other
01.04.10	live sheep
41.01	hide of bovine animals
41.02	hide of sheep or lambs
41.03.90000	only hide of swine

Cabinet of Ministers of Ukraine's Resolution No.1304 of 10 October 2001 "On temporary exception of sugar from free trade regime with the Republic of Belarus" as amended by Cabinet of Ministers of Ukraine's Resolution No. 1081 of 26 July 2002, has temporarily removed sugar (according to the Ukrainian Classification of Goods for Foreign Economic Activities, codes 1701 and 1702) from the free trade regime with the Republic of Belarus until Ukraine and Belarus take a joint decision.

- The Republic of Kazakhstan

In accordance with Article 1 of 17 September 1994 Agreement between the Government of Ukraine and the Government of the Republic of Kazakhstan on free trade, "the Parties shall not apply duty, taxes or fees having the equivalent effect on export and/or import of goods originating from the territory of one of the Parties and bound to the other Party's customs territory. Exceptions from this trade regime concerning an agreed range of goods may be stated in a separate Protocol, provided the Parties find it necessary".

Exceptions from the free trade regime:

The Free trade regime exceptions Protocol to 17 September 1994 Agreement between the Government of Ukraine and the Government of the Republic of Kazakhstan on free trade contains the following list of goods which when exported from Ukraine to the Republic of Kazakhstan, are subject to exceptions from the free trade regime.

Range of goods, which are exempted from free trade regime governing exports when exported from Ukraine to the Republic of Kazakhstan:

Description	Code in the Classification of goods for foreign economic activities
Live bovine animals: (young bovine animals)	01.02.90100
Heifers, cows, bulls, oxen and other	01.02.90310 - 01.02.90900



Live sheep	01.04.10
Hide (skins):	

List of goods subject to exception by Kazakhstan from the free trade regime when imported from Ukraine:

Description	Code in 1993 Classification of goods for foreign economic activities
Alcoholic and non-alcoholic beverages	group 22. (except for 22.01, 22.02 and 22.09)
Tobacco and manufactured tobacco substitutes	group 24.

- The Republic of Moldova

In accordance with Article 2 of 29 August 1995 Agreement between the Government of Ukraine and the Government of the Republic of Moldova on free trade, "the Contracting States shall not apply duties, taxes or fees having the equivalent effect on export and/or import of goods originating from the territory of one of the Contracting States and bound to the other Contracting State's customs territory".

Exceptions from the free trade regime:

Cabinet of Ministers of Ukraine's Resolution No. 344 of 14 March 2002 "On temporary exception of sugar from free trade regime with the Republic of Moldova" as amended by Cabinet of Ministers of Ukraine's Resolution No. 1081 of 26 July 2002, has temporarily exempted sugar (according to the Ukrainian Classification of Goods for Foreign Economic Activities, codes 1701 and 1702) from the free trade regime with the Republic of Moldova until Ukraine and Moldova take a joint decision.

- The Russian Federation

In accordance with Article 1 of 24 June 1993 Agreement between the Government of Ukraine and the Government of the Russian Federation on free trade, "the Contracting States shall not apply duty, taxes or fees having the equivalent effect on export and/or import of goods originating from the territory of one of the Contracting States and bound to the other Contracting State's customs territory".

Exceptions from the free trade regime:

In accordance with Article 1 of the Protocol to 24 June 1993 Agreement between the Government of Ukraine and the Government of the Russian Federation on free trade, exceptions under Article 1 of the Agreement extend to goods which are subject to the Ukrainian legislation on export tariff, and to goods export licensing and legislation on import and export quotas effective on the moment of the customs clearance of goods being exported from Ukraine to the Russian Federation. As of today these goods are listed in Cabinet of Ministers' Resolution No. 1996 of 24 December 2003 "On the List of goods whose export and import are subject to licensing and quotas in 2004". Beside these goods, exceptions apply to the following:

The list of goods which are imported from Ukraine into the Russian Federation's customs territory and to which exceptions from the free trade regime apply:

Code in CIS Classification of goods for foreign economic activities	Description
1701 99 100 0	White sugar

2207 10 0000	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher;
2207 20 0000	Ethyl alcohol and denatured spirituous beverages of any strength
	Undenatured ethyl alcohol of alcoholic strength by volume of 80% vol or higher in containers holding
2208 90 910	- 2 litres or less
2208 90 990	- over 2 litres
2402	Cigars, cheroots, cigarillos and cigars, of tobacco or of tobacco substitutes

Range of goods to which, when imported from the Russian Federation to Ukraine, the free trade regime does not apply:

Code in CIS Classification of goods for foreign economic activities	Description
1701 991000	White sugar
	Sugar confectionery (including white chocolate), not containing cocoa
1704 903000	- white chocolate;
1704 907100	- Boiled sweets, whether or not filled;
1704 907500	- toffee, caramels and analogous sweets
1704 908100	- the same in the form of compressed tablets
	Chocolate and other food products containing cocoa:
1806 31000	- filled;
1806 32900	- not filled
1905 301900	Sweet biscuits, waffles
2402	Cigars, cheroots, cigarillos and cigars, of tobacco or of tobacco substitutes

- The Republic of Uzbekistan

In accordance with Article 1 of 29 December 1994 Agreement between the Government of Ukraine and the Government of the Republic of Uzbekistan on free trade, "the Contracting States shall not apply quantitative restrictions, or duties, taxes or fees having the equivalent effect on export and/or import of goods originating from the territory of one of the Contracting States and bound to the other Contracting State's customs territory. Exceptions from the mentioned trade regime for an agreed range of goods shall be stated in documents which are integral parts of this Agreement".

Exceptions from the free trade regime:

Range of goods subject to exceptions by Ukraine from free trade when imported from or exported to the Republic of Uzbekistan:

Description	Code in the Classification of goods for foreign economic activities
Grain crops	10.01 – 10.08(except for 10.08 30000)
Precious and semiprecious stones, precious metals, metals clad with precious metals, their products	25.30 90000 (amber), 71.02 - 71.04, 71.05 (only from natural diamonds) 71.06, 71.08 - 71.11, 71.13 - 71.16, 71.18 (only from precious metals), 82.07 (only from natural diamonds), 82.15, 91.11 10000, 91.13 10100, 97.02, 97.05
Waste and scrap of precious metals and of metals clad with precious metals	71.12
Ferrous and non-ferrous metal scrap and waste	72.04, 74.04, 75.03, 76.02, 78.02, 79.02, 80.02

Description	Code in the Classification of goods for foreign economic activities
Granulated slag, slag, dross, scalings and other waste from the manufacture of cast iron or steel, ash and other residues containing metals or their compounds	26.18 – 26.20 (except for 26.20 40000), 39.15
Medicines, poisons, narcotics and psychotropic substances	13.02, 29.38.29.41, 30.06, 38.22 90
Chemicals for plant protection	38.08
Precious metals, alloys, their articles (products from them), ores, concentrates (only from precious metals, scrap and waste of precious metals), precious natural stones and their articles, waste, powders and recuperator of precious natural stones, pearls and their articles, amber and its articles	26.16, 28.43, 30.06 40 71.06 - 71.15 71.18 (only from precious metals) 90.03 19100, 90.21 29100, 91.01, 91.11 10000, 91.13 10000, 96.08 39100, 97.05 (only coins of precious metals) 25.30 90000 (only amber). 71.01 - 71.03, 71.05 (only form precious natural stones), 71.16 (only form pearls and precious natural stones). 96.02 (only worked amber and its articles)
Meat and edible offal	02
Cattle, poultry (except for decorative)	01
Flour, meal	10, 11.01 - 11.04
Butter	04.05
Sugar	17.01, 17.02
Raw tea, tea	09.02
Defatted milk powder	04.02 10
Ethyl alcohol	22.07
Goods exempted by Ukraine from free trade when exported to the Republic of Uzbekistan:	
Live bovine animals: young bovine animals	01.02.90100
Heifers, cows, bulls, oxen and other	01.02.90210-01.02.90900
Live sheep	01.04.10
Hides and skins:	
of bovine animals	41.01
of sheep or lambs	41.02
of pigs only	41.03.90000
Precious metal ores and concentrates, colloidal precious metals, organic and inorganic compounds of precious metals	26.16, 28.43
Precious stones, precious metals, whether or not worked	25.30.90000 (amber), 71.02, 71.03, 71.06, 71.08, 71.10, 71.18
Waste and scrap of precious metals and of metals clad with precious metals	71.12

Range of goods subject to exceptions by the Republic of Uzbekistan from free trade when imported from or exported to Ukraine

Description	Code in the Classification of goods for foreign economic activities
Mixed fodder (including schrott)	23.02 - 23.06, 23.08, 23.09, 12.08
Vegetable oil	15.07 - 15.15, 15.16 20 (except for its fractions)
Non-ferrous metal ores, concentrates	26.02 - 26.17, 26.20
Non-ferrous metals, rolled products from non-ferrous metals, scrap and waste of non-ferrous metals	28.05, 74.01 - 74.11, 75.01 - 75.06, 76.01 - 76.13, 76.15, 78.01 - 78.04, 79.01 - 79.05, 80.01 - 80.05, 81.01 - 81.12
Crude oil, gas condensate, petroleum oils, semi-products and waste of oil refining and of petrochemical manufacture, including components	27.09, 27.10, 27.12 10, 27.12 90, 27.13, 27.14, 29.20 10, 38.23 20, 38.23 90
Natural gas, solid paraffin	27.11 29, 27.12 20, 27.11 11, 27.11 21,

Description	Code in the Classification of goods for foreign economic activities
Cotton fibres, cotton waste, cotton seeds	52.01 - 52.03, 14.04 20 000, 12.07 20
Ferrous metal rolled products, scrap and waste of ferrous metals	26.19 00 910, 26.19 00 950, 26.19 00 990, 72.04, 72.08 - 72.29, 73.01 - 73.06
Cables and conductors	74.13, 76.14, 85.44, 90.01 10
Hides, skins, leather	41 (except for non-standard)
Mineral fertilizers, synthetic ammonia	31.02, 31.03, 31.05, 28.14
Electrical energy	27.16
Precious and semi-precious stones, their powder and dust, precious metals	71.02 - 71.16
Alcohol, spirits	22.07, 22.08
Goods exempted from free trade by Uzbekistan when exported to Ukraine	
1. Non-ferrous metals, non-ferrous rolled products, scrap and waste of non-ferrous metals	28.05, 74.01-74.11, 74.13, 75.01-75.06, 76.01-76.15, 78.01-78.04, 79.01-79.05, 80.01-80.05, 81.03-81.12
2. Crude oil, gas condensate, petrol, gas-oils (Diesel fuel )	27.09, 27.10.00250, 27.10.00390, 27.10.00510 27.10.00590
3. Cotton fibres, cotton linters	52.01, 52.03, 14.04.20000
4. Precious metals, their alloys, articles, ores, concentrates, scrap and waste of precious metals, precious natural stones and their articles, waste, powder and recuperator of precious natural stones, pearls and their articles, amber and its articles	28.43, 30.06.40 (only from precious metals), 71.06-71.15, 71.18 (only from precious metals), 90.03.19.100, 90.21.29.100, 91.01, 91.11.10.000, 91.13.10.000, 96.08.10.300, 96.08.39.100, 97.05 (only coins of precious metals), 71.16 (only from pearls and precious natural stones), 96.02 (only worked amber and its articles)
Goods exempted from free trade by Uzbekistan when imported from Ukraine	
5. Medicines, poisons, narcotics, psychotropic substances, chemicals for plant protection	29.38, 29.41, 30.03, 30.02, 30.04, 30.06.60, 38.08

- The Republic of Latvia

Exemption from duties is carried out in accordance with Articles 7 and 8 of 21 November 1995 Free Trade Agreement between Ukraine and the Latvia: "Import or export duties or fees having the equivalent effect, must not be applied in trade between the Parties".

Exceptions from the free trade regime:

List of agricultural products originating from Ukraine which, when arriving in the Latvia, are exempted from free trade between the countries.

Code, CN. 1998	Description
0203	Meat of swine, chilled or frozen
	Meat and edible offal of poultry, stated in heading 0105, fresh, chilled or frozen:
	- Carcasses of fowls Gallus domesticus:
020711	- Not cut in pieces, fresh or chilled
020712	- Not cut in pieces, frozen
020713	- Cuts and offal, fresh or chilled
020714	- Cuts and offal, frozen
0401	Milk and cream, unconcentrated and without added sugar or other sweetening matter
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter
0405	Butter and other fats and oils derived from milk; dairy spreads
0406	Curd and cheese

Code, CN. 1998	Description
	Birds' eggs, in shell, fresh, preserved or boiled:
	- Of poultry:
0407 00 300	- Other
0407 00 900	- Other
	Potatoes, fresh or chilled
0701 90	- Other
	Tomatoes, fresh or chilled:
0702 00 003	- from 1 June till 30 July
0702 00 004	- from 1 July till 30 August
0702 00 005	- from 1 September till 31 October
	Cabbages, cauliflowers, kohlrabi, kale and other edible brassicas, fresh or chilled:
0704 90	- Other
0706 10 000	- Carrots and turnips
	- Cucumbers:
0707 00 053	- from 1 may till 30 June
0707 00 054	- from 1 July till 30 September
	Wheat and meslin:
1001 90	- Other
1002 00 000	Rye
1003 00	Barley
1004 00 000	Oat
	- Other grain crops:
1008 90 900	- Other
	- Wheat flour:
1101 00 150	- of common wheat and spelt
1101 00 900	- Meslin flour
	Cereal flour other than of wheat and meslin:
1102 10 000	- Rye flour
1102 90	- Other
	- Meals:
1103 11	- of wheat
1103 12 000	- of oats
1103 19	- of other cereals
	- Pellets:
1103 21 000	- of wheat
1103 29	- of other cereals
	-Rolled or flaked cereals:
1104 11	- barley
1104 12	- oats
	- Other cereals:
1104 19 100	- of wheat
1104 19 300	- of rye
	- Other worked grains (for example, hulled, kibbled):
1104 21	- of barley
1104 22	- of oats
1104 29	- of other cereals
1104 30	- Germ of cereals, whole, rolled, flaked or ground
1601 00	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products
1602	Other prepared or preserved meat, meat offal or blood
1701	Cane or beet sugar and chemically pure sucrose, in solid form:
1704 90 750	- Toffee, caramels and similar sweets
	Chocolate and other food preparations containing cocoa:

Code, CN. 1998	Description
	- Other, in bars, plates or slabs:
1806 31 000	- filled
1806 32	- not filled
1806 90	- Other
1905	Bread and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, waffles, wafers, rice paper and similar products
2203 00	Beer made from malt
2204 10 110	- Champagne wine
2204 10 190	- Other
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher; ethyl alcohol and other spirits, denatured, of any strength:
2208 60	-Vodka
2208 90	- Other
	Preparations of a kind used in animal feeding:
2309 90	- Other

List of agricultural products originating from the Latvia which, when arriving in Ukraine, are exempted from free trade between the countries and subject to import duty

TN VED, 1994 (Classification of goods for foreign economic activities, 1994)	Description
	Meat and edible offal, poultry stated in heading 0105, fresh or frozen:
	- Parts of carcasses, offal of poultry (including liver), fresh or chilled:
0207 39 130	- - - Halves or quarters
0207 39 230	- - - Legs or cuts thereof
	- - - Parts of carcasses, offal of poultry (except for liver), fresh or chilled
0207 41 110	- - - Halves or quarters
0207 41 510	- - - Legs or cuts thereof
0405 00	Butter and other dairy fats
0901	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion:
1604	Prepared or preserved fish; black caviar and caviar substitutes made from berries
	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved
1605 10 000	- Crabs
1605 20 000	- Shrimps
1605 30 000	- Lobsters
1605 40 000	- Other crustaceans
	Chocolate and other food preparations containing cocoa:
	- Other:
	- Chocolate and chocolate products:
	- Chocolate filled or not filled:
1806 90 110	- Containing alcohol
1806 90 190	- Other
1806 90 310	- - filled
1806 90 390	- - not filled
Ex 2101 10 110	- Instant coffee
2203 00	Beer made from malt
2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading <sup>1</sup> 2009:
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances

2206	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol.; spirits, liqueurs and other spirituous beverages
2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
2403 10 000	- Smoking tobacco, whether or not containing tobacco substitutes in any proportion
2403 99 100	- Chewing tobacco and snuff

List of goods originating from Ukraine which, when exported to the Latvian Republic, are subject to export duty

Code in the Classification of goods for foreign economic activities, 1994	Description
0102 90	Other live bovine animals
0104 10	Live sheep

- The Republic of Lithuania

In accordance with Article 2 of 4 August 1993 Free Trade Agreement between the Government of Ukraine and the Government of the Lithuania, "the Contracting States shall not apply duties, taxes or fees having the equivalent effect on export and/or import of goods originating from the customs territory of one of the States and bound to the other State's customs territory".

Exceptions from the free trade regime:

Article 1 of Free Trade Exceptions Protocol to 4 August 1993 Free Trade Agreement between the Government of Ukraine and the Government of the Lithuania excepts, from free trade, the range of goods as stated below.

Range of goods to which, when imported from the Lithuania to Ukraine, the free trade regime shall not apply

Code in the Classification of goods for foreign economic activities	Description
0201 - 02050	Meat of bovine animals, of swine, of sheep, other meat: fresh or frozen
02071011 - 02072390 02073911 - 02073925 02073931 - 02073947 02073953 - 02073983 02074110 - 02074171 02074210 - 02074271 02074311 - 02074381	Poultry meat
03053011 - 03053019	Fish fillet dry-cured, salted or in brine (exclus. smoked)
03054930 - 03054990	Fish dry-cured, salted or in brine
03055930	Fish, cold or hot smoked
0401 - 04022199 04022915 - 0404	Milk and dairy products

Code in the Classification of goods for foreign economic activities	Description
0406	
0405	Butter and other dairy fats
0407 - 0408	Eggs
0409	Natural honey
0410	Edible products of animal origin, not elsewhere specified or included
0701	Potatoes
07020090	Tomatoes (15 May – 31 October)
07070019	Cucumbers (16 May – 31 October)
08081010, 08081091	Apples
08094011	Plums
08101010	Strawberries (1 May - 31 July)
100190 - 1008 except 1005	Cereals (except for maize)
1101 - 1102	flour
1107	Malt
1501 - 1503	Pig fat, fats, stearin
1601 - 1602	Sausages and similar meat products, preserved meat
1701	Sugar
1704	Sugar confectioneries not containing cocoa
180620 - 180690	Chocolate and similar products containing cocoa
190510 - 19059020, 19059040 - 19059090	Pastries not containing cocoa
2001 - 2104, 2106	Prepared vegetables, fruit, nuts or edible parts of plants
2201 - 2202	Non-alcoholic beverages
2203	Beer made from malt
22041011 - 22042110, 22042910	Champagne wine, sparkling wine, pressurized wine
2207 - 2208	Undenatured ethyl alcohol, denatured ethyl alcohol, vodka, liqueur and other alcoholic
2402	Cigars, cigarettes with tobacco or its substitutes

Range of goods to which, when imported from Ukraine to the Lithuania, the free trade regime shall not apply

Code in the Classification of goods for foreign economic activities	Description
0201-02050	Meat of bovine animals, of swine, of sheep, other meat: fresh and frozen
02071011-02072390 02073911-02073925 02073931-02073947 02073953-02073983 02074110-02074171 02074210-02074271 02074311-02074381	Poultry meat
03053011-03053019 03053090-030542 03054930-03054990 03055930 03055990-030562 03055690	Fish, dry-cured, salted, smoked
0401-04022199	Milk and dairy products



Code in the Classification of goods for foreign economic activities	Description
04022915-0404 0406, 0408, 0410	
0405	Butter and other dairy products
0407	Eggs
0409	Natural honey
0701, except for 070110	Potatoes except for seed potatoes
07020090	Tomatoes (15 May – 31 October)
07070019	Cucumbers (16 May – 31 October)
08081010	Apples for production of cider (16 September – 15 December)
08081091	Apples (1 August – 31 December)
08094011	Plums (1 July – 30 September)
08101010	Strawberries (1 May – 31 July)
100190-1004	Cereals
1101-110210	Flour
110710	Malt
1601-1602	Sausages and similar prepared and preserved meat
160411-160420	Preserved fish
1701	Sugar
17041011-17049051 17049061-17049099	Sugar confectioneries not containing cocoa
180620-180690	Chocolate and other similar products containing cocoa
190510-190520 19059040-19059090	Pastries
2001-2005, 2007, except for 200791, 20079920, 20079951, 2009, except for 200911, 200920, 200940, 200950, 200960, 200980, 210320, 21033090, 2106	Products from vegetables, fruit, nuts or parts of other plants; various foodstuffs
2201-2202	Non-alcoholic beverages
2203	Beer made from malt
22041011-22042110 22042910	Champagne wine, sparkling wine, wine
2207-2208	Undenatured ethyl alcohol, denatured ethyl alcohol, vodka, liqueur and other alcoholic beverages
2402	Cigars, cigarettes with tobacco or its substitutes

Range of goods originating from Ukraine to which, when exported from Ukraine to the Lithuania, the free trade regime shall not apply

Code in the Ukrainian classification of goods for foreign economic activities	Description	Volumes of exported goods exempted from duty (in thousands of tons per year)
4101	Raw hides and skins of bovine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired	2.5

Code in the Ukrainian classification of goods for foreign economic activities	Description	Volumes of exported goods exempted from duty (in thousands of tons per year)
4102	Raw skins of sheep or lambs (fresh, or salted, dried, limed, treated with ash, nicked or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not with wool on	
410390000	Only skins of swine	
204	Ferrous metal waste and scrap; iron or steel waste in form of ingots for re-melting (re-melting ingots)	1.5

- The Republic of Macedonia

The Agreement between the Republic of Macedonia and Ukraine on free trade applies only to goods, which are included in Chapters 25-97 of the Harmonized System for the description and coding of goods except for products as follows:

Code	Short description
2905 43	Mannitol
2905 44	D-glucitol (sorbitol)
3302 10 29	Other mixtures of odoriferous substances and of mixtures
3501 10	Casein
3501 10 10	For manufacture or inferior textile fibres
3501 10 50	For industrial uses other than the manufacture of foodstuffs or fodder
3501 90 90	Other
3501 90	Other
3501 10 90	Other
3502	Albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter), albuminates and other albumin derivatives
3505	Dextrins and other modified starches, glues based on starches.
3809	Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations
4501	Natural cork, raw or simply prepared; waste cork; crushed, granulated or ground cork
5201 00	Cotton, not carded or combed
5301	Flax, raw or processed but not spun; flax tow and waste (including yarn waste and garnetted stock)
5302	True hemp ( <i>Cannabis sativa</i> L.), raw or processed but not spun; tow and waste of true hemp (including yarn waste and garnetted stock)

As for agricultural products and food industry products, the free trade regime between Ukraine and the Republic of Macedonia applies only to individual headings and their import volumes as stated below.

Products enjoying preferences (no duty to be paid) when imported from Ukraine to the Republic of Macedonia

Tariff code/Ukrainian customs tariff	Tariff code/Macedonian customs tariff	Tariff quota
0201	0201	1,000 tons
0202	0202	
0203 21	0203 21	300 tons
0203 22	0203 22	
0203 29	0203 29	
0402	0402	400 tons
1003 00	1003 00 00 30	5,000 tons
1005 90 000	1005 90 00 10	20,000 tons
1512	1512 11 00 00	10,000,000 litres
1701 12	1701 12 00 00	15,000 tons
1704	1704	100 tons
1806	1806	100 tons
1905 30 000	1905 30 00 00	50 tons
2007	2007	100 tons
2201	2201	100,000 litres
2209	2209	100,000 litres

Products enjoying preferences (no duty to be paid) when imported from the Republic of Macedonia to Ukraine

Tariff code/Ukrainian customs tariff	Tariff code/Macedonian customs tariff	Tariff quota
0204	0204	500 tons
0709 60	0709 60	5,000 tons
0712	0712	500 tons
0813	0813	200 tons
0904	0904	500 tons
1211 90	1211 90	500 tons
1704	1704	500 tons
1806	1806	500 tons
1904	1904	500 tons
1905 30 000	1905 30 00 00	100 tons
2001	2001	6,000 tons
2002	2002	4,000 tons
2005	2005	3,000 tons
2007	2007	100 tons
2008	2008	500 tons
2009	2009	3,000,000 litres
2103	2103	3,000 tons
2204	2204	40,000,000 litres
2208 20	2208 20 00 00	100,000 litres
2208 90	2208 90	100,000 litres
2209	2209	100,000 litres
2401 10	2401 10	10,000 tons

In Ukraine, pricing is carried out on market principles. But there are some groups of goods to which indicative prices apply. For instance, in accordance with Article 2 of Law of Ukraine "On export duty rates for seeds of some oil crops", the Cabinet of Ministers of Ukraine should, every month, establish indicative prices for seeds of those oil crops, which are stated in this Law, taking account of the sale price levels in the world market. The seeds being exported from Ukraine's customs territory, are sold at prices which may not be lower than indicative prices set by the Cabinet of Ministers of Ukraine.

The Law of Ukraine "On export duty rates for live bovine animals and raw skins" establishes that the export prices on bovine animals, sheep and raw skins may not be lower than indicative prices set by the Cabinet of Minister of Ukraine. This applies fully to all exports including those with which Ukraine has Free Trade Agreements.

Ukraine's representative has informed that currently, there are 11 free trade agreements in force between Ukraine and CIS countries. All these agreements apply to grain trade, though with exceptions. For example, this commodity is excepted from free trade with the Republic of Uzbekistan. However, all the agreements on free trade contain rules saying that in case unfavourable conditions take place in the trade in any product or commodity, the Parties may except, under a joint arrangement, from free trade such product or commodity, including wheat. Accordingly, the Parties agree on such exceptions in Protocols.

The trade between Ukraine and CIS countries does not enjoy any other preferential conditions (arrangements). As far as trade in grain in the second half of 2003 is concerned, we state that Ukraine did not sign a single formal agreement with Russia or Kazakhstan. There were only oral arrangements that the stated purchases may take place.

In order to stabilize the grain market, 23 October 2003 Law of Ukraine "On amending some laws of Ukraine on issues of taxation in relation with grain crops" has been adopted". The Law provides for zero rates of import duty for wheat and rye regardless of country of origin. The Law shall be effective till 1 July 2004.

Grain imports were caused by low harvests of grain crops in 2003 resulting from difficult weather conditions and absence of stabilization stocks of grain able to regulate (balance) the demand and supply in the market. Companies of any ownership type imported grain on equal terms. Please see Annex 1 below.

## **Question 102**

**This section needs to be updated, for example as concerns recent developments on the Common Economic Space etc.**

### Answer:

The declaration on the formation of the Common Economic Space (hereinafter, the "CES") was made by the President of the Republic of Belarus, the President of the Republic of Kazakhstan, the President of the Russian Federation and the President of Ukraine on 23 February 2003 in Moscow. Pursuant to the declaration, the final goal of cooperation in the area of CES formation is to establish an Organization for Regional Integration.

The Agreement on the Formation of the Common Economic Space was signed by the President of the Republic of Belarus, the President of the Republic of Kazakhstan, the President of the Russian Federation and the President of Ukraine on the 19 September 2003 in the city of Jalta during the Summit of the Heads of the CIS Member States. Ukraine signed the said Agreement with the following reservation: "Ukraine shall participate in the formation and functioning of the Common Economic Space within limits that comply with the Constitution of Ukraine".

The signed Agreement on the Formation of the CES provides that the obligations assumed by the Parties to the Agreement are intended to ensure conditions for stable and effective development of their economies, strengthening of the integration processes, and to promote social and economic progress of the peoples of the Member States of the CES. The Agreement also stipulates a possibility

for Member States to move ahead in different formats and with different pace towards integration into this Organization for Regional Integration.

Article 1 of the Agreement provides that development of trade and investments between the Parties, which will ensure the stable development of the Parties' economies, shall be promoted on the basis of generally recognized principles and rules of international law, as well as pursuant to the rules and principles of the WTO.

It should be noted in this respect that the Agreement on the Formation of the CES and the Concept for the Formation of the Common Economic Space, which pursuant to Article 3 of the Agreement is an inseparable part thereof, are documents that lay down a general structure of cooperation and only outline the intentions of the Member States, which are involved into the CES formation project, with respect to the reform of economic relations.

In expansion of the signed Agreement, and pursuant to the Complex of the Main Measures on Formation of the Common Economic Space, a regulatory and legal framework for CES formation should be prepared and adopted, which will govern the relations between the Member States of the CES in certain areas and spheres of economic cooperation.

The position of Ukraine regarding the formation of the CES between Belarus, Kazakhstan, the Russian Federation and Ukraine, which is defined, among others, in the 17 September 2003 Declaration of the Supreme Rada of Ukraine, is that the CES has to be created in forms and within the limits that are not inconsistent with Ukraine's course towards the European and Euro-Atlantic integration, and has to promote Ukraine's soonest accession to the WTO. Ukraine has stressed in this respect that the main goal of CES formation that corresponds to Ukraine's national interests should be the establishment of a free trade zone without exceptions and restrictions, and that the executed Agreement on the Formation of the CES must comply with the Constitution, laws and international commitments of Ukraine.

### **Question 103**

**List of legislation: An up-to-date list of legislation submitted to the Working Party needs to be attached to the report. Can this be included?**

Answer:

The up-to-date list of legislation and draft legislation relating to Ukraine's accession to the WTO has been provided to the Secretariat for dissemination among the Members of the Working Party.

## ANNEX 1

### Agreements signed by Ukraine, and establishing the most favoured nation treatment or free trade regime

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
1	Australia	036-AUS	6 July 1999 Agreement between the Government of Ukraine and the Government of Australia on trade and economic cooperation		Art. 3. Most favoured nation treatment (MFN) with exceptions for border trade, free trade zones (FTZ), customs unions (Art. 4).
2	Austria	040-AUT	1 November 1995 Agreement between Ukraine and the Austrian Republic on bilateral trade and economic relations		Art. 2. MFN with exceptions for border trade, preferential trade, customs union and FTZ, and also as part of multilateral agreements with third countries.
3	Azerbaijan	031-AZE		28 July 1995 Agreement between the Government of Ukraine and the Government of the Azerbaijani Republic on free trade	Exceptions are established by Articles 3 and 4.
4	Algeria	012-DZA	1 July 1993 Agreement between the Government of Ukraine and the Government of the Algerian People's Democratic Republic		MFN is established by Art. 7.
5	Argentina	032-ARG	27 October 1995 Agreement between the Government of Ukraine and the Government of the Argentine Republic on economic cooperation		Exceptions from MFN are set out in Art. 3
6	Belgium	056-BEL	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
7	Belarus	112-BLR		17 December 1992 Agreement between the Government of Ukraine and the Government of the Republic of Belarus on free trade	Exceptions are established by Art.3

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
8.	Bulgaria	100-BGR	20 November 1995 Agreement between the Government of Ukraine and the Government of the Republic of Bulgaria on trade and economic cooperation		MFN in Art. 1.2, exceptions in Art. 1.3
9	Brazil	076-BRA	25 October 1995 Agreement between the Government of Ukraine and the Government of the Federal Republic of Brazil on trade and economic cooperation		MFN is to be given to one another upon Ukraine's accession to the WTO (Art. 2) with exceptions (Art. 3)
10	Vietnam	704-VNM	23 January 1992 Agreement between the Government of Ukraine and the Government of the Socialist Republic of Vietnam on trade and economic relations		Art. 5. Unconditional MFN with exceptions for border trade and integrationist formations
11	Great Britain	826-GBR	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
12	Armenia	051-ARM		7 October 1994 Agreement between the Government of Ukraine and the Government of the Republic of Armenia on free trade	The Parties may unilaterally establish quantity restrictions or other special restrictions but these restrictions may be applied only in cases provided for by agreements as part of the GATT (Art. 3).
13	Guinea	324-GIN	4 November 1994 Agreement between the Government of Ukraine and the Government of the Republic of Guinea on trade and economic, science and technology, and cultural cooperation		MFN is established by Art. 2.
14	Honk-Kong	344-HKG	8 August 1992 Agreement between the Government of Ukraine and the Government of the People's Republic of China on trade and economic cooperation		MFN is applied, except for border trade, customs unions and free economic zones (Art. 2)
15	Greece	300-GRC	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
16	Georgia	268-GEO		9 January 1995 Agreement between the Government of Ukraine and the Government of the Republic of Georgia on free trade	The Parties may unilaterally establish quantity restrictions or other special restrictions but these restrictions may be applied only in cases provided for by agreements as part of the GATT (Art. 3).
17	Denmark	208-DNK	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
18	the Dominican Republic	214-DOM	25 September 2002 Agreement between the Government of Ukraine and the Government of the Dominican Republic on trade and economic cooperation		the Parties give one another MFN (Art. 2) except for customs union, FTZ and border trade
19	Estonia	233-EST		24 May 1995 Agreement between Ukraine and the Estonian Republic on free trade	Free trade is established by Articles 5, 6, 7, and general exceptions are established by Art. 8. On 1 May 2004 the Agreement becomes ineffective because of Estonia's accession to the EU.
20	Egypt	818-EGY	22 December 1992 Agreement between the Government of Ukraine and the Government of the Arab Republic of Egypt on trade		Art. 2 – MFN and exceptions from it (customs union, FTZ, border trade, other bilateral agreements).
21	Israel	376-ISR	11 July 1995 Agreement between the Government of Ukraine and the Government of the State of Israel		MFN and exceptions from it in Art. 2
22	India	356-IND	27 March 1992 Agreement between the Government of Ukraine and the Government of the Republic of India on trade and economic cooperation		MFN is established by Art. 2, and exceptions from it – by Art. 3.
23	Indonesia	360-IDN	11 April 1994 Agreement between the Government of Ukraine and the Government of the Republic of Indonesia on trade		MFN (Art. 2), exceptions from MFN (Art. 3) – border trade, customs unions, FTZ.



No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
24	Iraq	368-IRQ	9 October 2000 Agreement between the Government of Ukraine and the Government of the Republic of Iraq on trade, economic, science and technology cooperation		The Parties give one another MFN with exceptions (Art. 2)
25	Iran	364-IRN	6 February 2001 Agreement between the Government of Ukraine and the Government of the Islamic Republic of Iran on trade		MFN and exceptions from it are established by Art.5.
26	Ireland	372-IRL	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
27	Spain	724-ESP	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
28	Italy	380-ITA	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
29	Jordan	400-JOR	23 April 2002 Agreement between the Government of Ukraine and the Government of the Kingdom of Jordan on trade and economic cooperation		The Parties apply duties and other fees for export and import of goods, not less favourable than those established for any other country in accordance with WTO principles (Art. 2).
30	Kazakhstan	398-KAZ		17 September 1994 Agreement between the Government of Ukraine and the Government of the Republic of Kazakhstan on free trade	Exceptions from free trade regime are established by Art. 3.
31	Canada	124-CAN	31 March 1994 Agreement between the Government of Ukraine and the Government of Canada on trade and commercial relations		MFN and exceptions within the GATT are established by Art. 3.

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
32	Cyprus	196-CYP	21 February 2000 Trade Agreement between the Government of Ukraine and the Government of the Republic of Cyprus		The Parties shall give one another MFN (Art. 2), except for border trade, customs union or FTZ (Art. 3).
33	Kyrgyzstan	417-KGZ		26 May 1995 Agreement between the Government of Ukraine and the Government of the Kyrgyz Republic on free trade	The Parties may unilaterally impose quantity restrictions and other special restrictions (exceptions of Art. 3).
34	China	156-CHN	8 August 1992 Agreement between the Government of Ukraine and the Government of the People's Republic of China on trade and economic cooperation		MFN is applied except for border trade, customs unions, free economic zones (Art. 2).
35	North Korea	408-PRK	15 June 1992 Agreement between the Government of Ukraine and the Government of the Korean People Democratic Republic on trade and economic cooperation		MFN is applied except for border trade, customs unions, free economic zones (Art. 2).
36	South Korea	410-KOR	30 November 1995 Agreement between the Government of Ukraine and the Government of the Republic of Korea on trade		MFN shall not extend to border trade, customs unions or FTZ, or privileges given to developing countries (Art.2).
37	Cuba	192-CUB	20 December 1991 Agreement between Ukraine and the Republic of Cuba on trade and cooperation		MFN (Art.2) shall not extend to border trade, customs unions or FTZ, or privileges to be given to developing countries and former Soviet Union countries (Art. 3).
38	Latvia	428-LVA		21 November 1995 Agreement between Ukraine and the Latvian Republic on free trade	Cancellation of duties and quantity restrictions is established by Articles 7, 8, 9, and general exceptions established by Art. 10. On 1 May 2004 the Agreement becomes ineffective because of Latvia's accession to the EU.
39	Lebanon	422-LBN	25 March 1995 Agreement between the Government of Ukraine and the Government of the Lebanese Republic on trade and economic cooperation		MFN (Art. 2) shall not extend to border trade, integrationist unions or privileges given to members of the League of Arab States (Art. 3).

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
40	Libya	434-LBY	18 January 1995 Agreement between the Government of Ukraine and the Great Socialist People's Libyan Arab Dzhamaikhria (Republic) on trade and economic cooperation		MFN (Art. 3) shall not be applied to border trade, customs unions, FTZ or privileges which may be given to countries of the Union of Arab Magrib in future (Art. 4).
41	Liechtenstein	438-LIE	20 July 1995 Agreement between Ukraine and the Swiss Confederation on trade and economic cooperation		The Agreement shall extend to the Principality of Liechtenstein until the customs union agreement (Art.20) between this country and the Swiss Confederation is in force.
42	Lithuania	440-LTU		20 July 1995 Agreement between the Government of the Lithuanian Republic and the Government of Ukraine on free trade	Exceptions from the free trade regime are stated in Art. 4. On 1 May 2004 the agreement becomes ineffective because of Lithuania's accession to the EU.
43	Luxembourg	442-LUX	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
44	Macedonia	807-MKD	3 June 1997 Agreement between the Government of Ukraine and the Government of Macedonia on trade and economic cooperation	18 January 2001 Agreement between Ukraine and the Republic of Macedonia on free trade	The Contracting States will gradually create the free trade zone for the transition period which is not to exceed 10 years starting on the moment that this Agreement comes into force, in accordance with this Agreement's regulations and with definitions set out in Article XXIV of the GATT of 1994
45	Morocco	504-MAR	24 December 2001 Agreement between the Government of Ukraine and the Government of the Kingdom of Morocco on trade		The Parties must give one another the most favoured nation treatment as to customs duties, taxes and other assessments (Art. 1). However, MFN shall not be applied as far as border trade, customs union or free trade zone, bilateral or multilateral agreements are concerned. (Art. 2).

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
46	Moldova	498-MDA		29 August 1995 Agreement between the Government of Ukraine and the Government of the Republic of Moldova on free trade	The Most favoured nation treatment is provided by Art. 1. Possible prohibitions or restrictions must be of non-discriminatory nature, strictly substantiated and within necessary measures as to both volumes and time periods (Art. 4).
47	Mongolia	496-MNG	19 May 1992 Agreement between the Government of Ukraine and the Government of Mongolia		According to Art. 2, the Contracting States give one another MFN. Exceptions are border trade, customs unions, free trade zones (Art. 3).
48	the Netherlands	528-NDL	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
49	Germany	276-DEU	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
50	Norway	578-NOR	27 January 1998 Agreement between the Government of Ukraine and the Government of the Kingdom of Norway on trade relations and economic cooperation		The Parties give MFN in trade and economic cooperation on a mutual basis, in accordance with Art. 1, paragraph 1, GATT of 1994.
51	the United Arab Emirates	784-ARE	22 January 2003 Agreement between the Government of Ukraine and the Government of the United Arab Emirates on economic, trade and technology cooperation		MFN is established.
52	the Republic of South Africa	710-ZAF	23 November 1998 Agreement between the Government of Ukraine and the Government of the Republic of South Africa on trade		Each Party shall guarantee the other the MFN in accordance with principles contained in the WTO Agreement (Art. 2). Exceptions are governed by Art. 3.
53	Poland	616-POL	4 October 1991 Agreement between the Government of Ukraine and the Government of the Republic of Poland		The Contracting States shall give one another MFN. It shall not extend to border trade or integrationist groupings (Art. 3).

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
54	Portugal	620-PRT	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
55	Russia	643-RUS		24 June 1993 Agreement between the Government of Ukraine and the Government of the Russian Federation on free trade	General exceptions are set out in Art. 3.
56	Romania	642-ROM	28 July 1992 Agreement between the Government of Ukraine and the Government of Romania on trade and economic, science and technology cooperation		MFN shall not extend to border trade, customs unions or free economic zones (Art. 3).
57	Syria	760-SYR	22 April 2002 Agreement between the Government of Ukraine and the Government of the Syrian Arab Republic on trade, economic and technology cooperation		The Parties give one another MFN (Art. 3), except for border trade, customs union, free trade zones, agreements with developing countries, or privileges which have been or may be given by the Syrian Arab Republic to any of Arab states in future (Art. 2).
58	Slovakia	703-SVK	25 May 1992 Amendments to the Agreement between the Government of the Ukrainian Soviet Socialist Republic and the Government of the Czech and Slovak Federal Republic on trade and economic relations, science and technology cooperation of 30 July 1991		The Contracting States agree to give one another unconditional MFN in all the issues related to trade in goods (Art. 1). MFN shall not extend to border trade, customs unions or free trade zones (Art. 2).
59	Slovenia	705-SVN	28 August 1996 Agreement between the Government of Ukraine and the Government of the Republic of Slovenia on trade and economic cooperation		The Contracting Parties shall give one another MFN as to goods and services with exceptions (Art. 2).
60	the USA	840-USA	6 May 1992 Agreement between Ukraine and the United States of America on trade relations		According to Art. 1, the countries give one another unconditional MFN with exceptions as to customs unions, FTZ, border trade or privileges to developing countries.

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
61	Tadjikistan	762-TJK		6 July 2001 Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Tadjikistan on free trade	The Parties may establish exceptions from the free trade regime for the agreed range of goods/services (Art. 1).
62	Taiwan (as part of China)	158-TWN	8 August 1992 Agreement between the Government of Ukraine and the Government of the People's Republic of China on trade and economic cooperation		MFN is applied except for border trade, customs unions, free economic zones (Art. 2).
63	Tunisia	788-TUN	7 December 1993 Agreement between the Government of Ukraine and the Government of the Tunisian Republic on trade and economic cooperation		The Contracting States shall give one another the MFN (Art. 2). MFN shall not extend to border trade, customs unions or free trade zones (Art. 3).
64	Turkey	792-TUR	4 May 1992 Agreement between the Government of Ukraine and the Government of the Turkish Republic on trade and economic cooperation		The Contracting States shall give one another the MFN. It shall not extend to border trade, customs unions, free trade zones or agreements signed with developing countries (Art. 2).
65	Turkmenistan	795-TKM		5 November 1994 Agreement between the Government of Ukraine and the Government of Turkmenistan on free trade	The Parties may establish quantity restrictions or other restrictions which are of exceptional nature and used in cases provided for by the GATT.
66	Hungary	348-HUN	22 May 1991 Agreement between the Government of the Ukrainian Soviet Socialist Republic and the Government of the Hungarian Republic on trade and economic relations, and science and technology cooperation		The Parties shall ensure favourable economic and legal conditions for economic, including commercial, activities, and shall not apply, in mutual economic relations, any measures discriminatory toward the other Party (Art. 2).
67	Uzbekistan	860-UZB		29 December 1994 Agreement between the Government of Ukraine and the Government of the Republic of Uzbekistan on free trade	The Parties give one another the free trade regime (Art. 1). The countries may establish restrictions provided by agreements as part of the GATT/WTO (Art. 3).

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
68	Finland	246-FIN	14 May 1992 Agreement between the Government of Ukraine and the Government of the Finnish Republic on trade and economic cooperation		The Parties shall give one another the MFN. It shall not extend to agreements with developing countries, customs unions, free trade zones or border trade (Art. 3).
69	France	250-FRA	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2
70	Croatia	191-HRV	20 May 1991 Agreement between the Government of the Ukrainian Soviet Socialist Republic and the Government of the Republic of Croatia on trade and economic relations, and science and technology cooperation		Participants of the activities work in all the spheres of trade and economic relations in accordance with principles which are applied in the world trade and financial practice (Art. 1).
71	the Czech Republic	203-CZE	17 March 1993 Agreement between the Government of Ukraine and the Government of the Czech Republic on trade and economic relations, and science and technology cooperation		The Contracting States shall give one another the MFN (Art. 1) which shall not extend to customs unions, free trade zones, border trade or interregional trade (Art. 2).
72	Chile	152-CHL	3 May 1999 Agreement between the Government of Ukraine and the Government of the Republic of Chile on trade and economic cooperation		According to Art. 3, the Parties agree to give one another the MFN. Exceptions from MFN are established by Art. 4.
73	Switzerland	756-CHE	20 July 1995 Agreement between Ukraine and the Swiss Confederation on trade and economic cooperation		The Parties shall give one another the MFN with exceptions as to customs union or free trade zone, border trade or privileges to developing countries (Art. 3 ).
74	Sweden	752-SWE	14 June 1994 Agreement between Ukraine and the European Community and its member states on partnership and cooperation		MFN is established by Art. 10.1 with exceptions as to border trade, customs unions, FTZ in Art. 10.2

No.	Country	Country classifier	Agreement establishing the most favoured nation treatment	Free trade agreement	Notes
75	Sri-Lanka	144-LKA	10 August 1999 Agreement between the Government of Ukraine and the Government of the Democratic Socialist Republic of Sri-Lanka on trade and economic, and technology cooperation		The Contracting Parties give MFN on a mutual basis in accordance with Art. 1, paragraph 1 of GATT-94. Exceptions apply to free trade zones, customs unions, border trade and developing countries' preferences (Art. 2).
76	Yugoslavia	891-YUG	1 August 1995 Agreement between the Government of Ukraine and the Union Government of the Union Republic of Yugoslavia on trade and economic cooperation		In accordance with GATT/WTO the Parties shall give one another the MFN which shall not extend to border trade, agreements on customs union or free trade zone, or agreements with developing countries (Art. 2).
77	Japan	392-JPN	6 December 1957 Trade Agreement between the Union of the Soviet Socialist Republics and Japan		The Parties give one another the most favoured nation treatment (Art. 2).