

WORLD TRADE ORGANIZATION

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ACCESSION OF UKRAINE

Questions and Replies to the Memorandum on Foreign Trade Regime (L/7499)

In a communication circulated as PC/W/30, the Government of Ukraine applied for accession to the World Trade Organization (WTO) pursuant to Article XII of the Agreement Establishing the WTO. At its meeting on 21 December 1994, the Preparatory Committee agreed that the existing GATT 1947 Working Party examine the Ukraine's application for accession to the WTO. The present document sets forth the questions submitted by Members in connection with the Ukraine's foreign trade régime and the replies thereto provided by the authorities of the Ukraine. An update of developments in the foreign trade of Ukraine appears on pages 146 onwards.

II. Economy and Foreign Trade

Question 1.

Please describe the State supports provided to strategic areas of the economy referred to in this section [Economy and Foreign Trade - Main Directions]. Please list any areas other than power engineering, metallurgy, coal, and chemicals that receive this type of support.

Reply 1.

The State budget of Ukraine approved for 1994 envisaged subsidies granted to the production of coal and gas. In connection with the implementation of the Programme of the President, measures are being taken to cut subsidies to enterprises and to the population (liberalization of retail and wholesale prices), the released funds being directed to social protection of people of no means.

The programme of State supports for strategic areas of the national economy and of encouragement for the export of domestic products is implemented by using State measures for supporting production and export rather than through the granting of subsidies. These State measures will include elimination of customs tariffs and value-added tax on Ukrainian exports; creating a unified currency exchange rate. Also, setting lower income taxes for the export of high-technology and high-quality finished products than the taxes on the export of raw materials and intermediate goods will be effected. At the same time, limited State funding is intended for basic scientific research and development of high level technological products. And, in addition, implementing marketing studies to encourage the access of Ukrainian products in foreign markets.

Question 2.

Please elaborate on how the Government of Ukraine specifically intends to reduce the negative trade balance to no more than 5 percent of GDP. How will the "substantial cuts" in non-critical imports be achieved?

Reply 2.

The reduction of the negative trade balance will be facilitated by liberalization of the export of goods and services and unification of exchange rates. The problem will be addressed by the following two methods: an overall encouragement to export (1994 exports were 1/3 the level of 1991) and a temporary limitation on non-essential imports.

To reduce the negative trade balance by a considerable reduction in non-essential imports, the Decree of the President "On Measures to Implement an Integrated State Policy of Import Regulations," 21 September 1994, created a Governmental Commission on problems of import regulation. The primary objectives of this Committee are the preparation of proposals, their implementation and the introduction of measures related to:

- reduction of the negative trade balance and improvement of the balance of payments;
- protection of the interests of enterprises of Ukraine against unfair competition, prevention of such competition by enterprises, both Ukrainian and foreign, that import goods and services into Ukraine;
- reduction of the volume of non-essential imports, determination of the list of essential imports and creation of favourable conditions for them as well;
- elaboration of a mechanism for putting into practice the use of unilateral constraints on imports in compliance with GATT/WTO Article XIX standards and principles;
- compiling a list of non-essential imports for particular sectors of the national economy;
- identification of goods currently imported which could be produced in Ukraine and preparation of proposals on preferential tax and credit terms for domestic producers of these goods;
- developing a method to define whether there is conformity of prices for imported goods and services with the fair market price established in the domestic market; developing a mechanism during the transition to a market economy for starting the use of tariff regulation in the case of unfair, overvalued prices.

It will be necessary to make optimum use of currency policy. This is accomplished by the Decree of the President of 22 September 1994, "On Perfection of Currency Regulation" and by implementing the Presidential Decree "On Measures to Implement a Unified Policy of Import Regulations" of 21 September 1994. In compliance with the latter, in purchasing technological and similar equipment to be incorporated into the capital of the state-owned enterprises and the products/services to be imported at the expense of State budget, if these equipment, products and services cost over US\$100,000, the deals are to be realized on the basis of international norms of competitive bidding.

Question 3.

Please describe the "lease relations" between the State and other entities referred to in this section.

Reply 3.

Lease regulations in Ukraine are governed by the Law of Ukraine "On Leasing of the Property of State-Owned Enterprises and Organizations" of 10 April 1992, No. 2269-XII, Law of Ukraine "On Leasing of the Property of State-Owned Enterprises and Organizations" of 10 April 1992, No. 2269-XII. In compliance with this law, leasing is a prerogative of the Fund of the State Property in the case of integrated property complexes, i.e. those with a portion of ownership belonging to the State, enterprises, organizations and their structural branches that make up the State property; the bodies authorized by the Supreme Rada of the Republic of Crimea and local Radas of peoples' deputies to exercise control over property owned by either the Republic of Crimea or the local Radas; and state-owned enterprises and organizations in the case of integrated property complexes which can lease their structural branches (subsidiaries, workshops).

Anyone can be a leaseholder. The leaseholders can be organizations made up of members of work collectives of a state-owned enterprise or organization or their structural branches. Leaseholders can also be citizens and juridical persons of Ukraine, foreign States and international organizations.
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Question 4.

Please elaborate in great detail regarding how Ukraine will promote the development and international competitiveness of its industries.

Will Ukraine rely primarily on government supports and State aids designed to assist industry in technology upgrades and transfers and R&D, or will it rely primarily on supports designed to increase the price competitiveness of Ukrainian producers?

Will Ukraine's approach vary by industry or sector and, if so, how?

How will Ukraine's policies toward nascent and established industries differ?

In carrying out its industrial development objectives, what other policy tools will Ukraine employ in terms of resource and capital allocations?

Reply 4.

Ukraine will depend, first of all, upon the price competitiveness of Ukrainian manufacturers. Ukraine will support the operation of enterprises able to compete in the world market. Ukraine will encourage any activity of any enterprise by making use of economic methods that constitute and protect market economy fundamentals, e.g., economic freedom, private property and the principle of competition, and protection against misuse of power, monopolies and unfair competition. Priorities in industrial policy of the State will be subject to the strategy of structurally allocated investments, yet, at different stages of economic reform, the solution of tactical problems may necessitate the support of particular industrial sectors, branches or enterprises.

In implementing the tasks of the industrial development of Ukraine, the distribution of material and financial resources will be related, first and foremost, to provide for the national independence

of Ukraine. Here, because of the internationalization and decentralization of a number of branches of economic activity and the reduction in the fraction of State demand on the gross domestic product, the emphasis will be placed on enterprises that have the opportunity to participate and be competitive in the world market.

The development and international competitiveness of Ukrainian industries will be promoted by creation of an export financial and insurance system. The absence of low-rate, easily-available credit creates a major problem for supporting exports. Measures aimed at establishing an improved system of State-granted export and investment guarantees will be worked out by the Government. It is necessary to create the conditions to overcome the barriers in foreign countries by increasing the quality of Ukrainian goods. To this end, a system of quality certification and control will be formed and certificates issued for Ukrainian products that meet world standards.

The Government plans to create an efficient and easily accessible foreign trade data system.

The Government will support the development of high-technology branches of the machine building industry (electronic and electrotechnical industries, control instrument industry, aircraft and spacecraft industries, automobile industry, bearing industry, machine tool industry, electric welding hardware industry), which is specified in Reply 1. When Ukrainian production in the machine tool, electrotechnical and other branches of industry reach world standards of quality, it will be easier for Ukraine to establish its position in the world market. The foreign trade policy will be aimed at increasing the percentage of machine building production which goes into export; 20 per cent at present, 50 per cent as a goal.

Established industries in the national economy, as opposed to new industries, will have to stand the market test. There will be only minor State interference, if any, in the operation of the markets for both traditional and nascent industries.

Industrial enterprises can not count on State subsidies in the development of modern technologies and modernization of production. The Government aims to ensure the competitiveness of prices for the products of the metallurgical, chemical and wood processing industries and plans to attract foreign investments and technologies in those industrial branches that are not able to compete in the world market.

The Government makes every effort to render every industrial branch a competitive one by implementing integrated R&D conversion programmes comprising 22 directions approved by the Resolution No. 229 of 25 March 1994, "On the Use of the R&D and Production Potential of Military-Industrial Complex for Development of the National Economy". The R&D work is supported at the expense of the State budget and that of the enterprises of the Military-Industrial Complex. Commercial bank credits are used to support the reorientation of the production of the ex-defence enterprises. Further on, fundamental research will be supported by using the revenues of enterprises to form a special R&D support fund.

Pricing Policy

Question 5.

Please provide a list of the goods that are subject to indicative prices. How are these prices implemented?

Reply 5.

Indicative prices are set for goods of stable export from Ukraine, the volume of which have exchange earnings that significantly affect the economic situation of the State, as the whole, and on external payments balance in particular. Indicative prices are set in absolute figures in US\$ for goods, produced in compliance with current Ukrainian quality standards, for the f.o.b. or DAF (delivered at frontier) delivery basis (according to INCOTERMS 90) and LC (letter of credit) payment terms.

Indicative prices are set based on the results of analysis of data of the level of traditional prices with a due allowance for weighted average freight from Ukrainian ports, the level of profits obtained by traditional international trading firms and with allowance for a quality index of domestic goods compared to goods of other manufacturers present in the market.

Indicative Prices Recommended for use in Concluding Foreign Trade Deals

Export Prices		
Products	Price, \$/t	TN ZED Code
<u>Ferrous Metals</u>		
Cast iron	116-120	720100000
Ferrous metal wastes	112-120	
<u>Chemical Industry Products</u>		
Carbamide (in bulk)	136-140	310210000
Dehydrated ammonium	176-180	281410000
Monoammonium phosphate (in bulk)	173-180	283521000
Ammonium sulphate	45-50	283329900
Methanol	350-380	290511000
<u>Agricultural Products</u>		
Frozen meat with no bones	1900-2000	0201-0202
Dried fatless milk	950-1000	040210990
Salt (in bulk)	21-25	250100910
Pea (in bulk)	170-175	110319900
Margarine	610-670	151700000

Butter	1150-1200	040500100
Ethyl alcohol, 96%	600-630	220710000
Vegetable oil	610-620	151219910
Wheat	130-135	100190000
Casein	2500-2700	
Corn	135-140	100590000
Sugar	325-350	170199100

Import Prices		
Products	Price, \$/t	TN ZED Code
<u>Fuel and Lubricants (CIS-production)</u>		
Gasoline A-93	175-180	27100000
Gasoline A-76	165-170	27100000
Diesel fuel (S-0.3)	155-160	27100000
Black oil (Sulphur content: 3.5%)	62-65	27100000

Question 6.

Which wholesale or retail food prices are regulated or subject to subsidies? Please provide details on their scope and operation.

Reply 6.

The wholesale and retail prices for food products were regulated by application of marginal markups. The marginal markups were eliminated by the end of 1994.

Privatization

Question 7.

Please explain how Parliament's July 1994 resolution suspending privatization will impact the Government's privatization programme. What plans does the Government of Ukraine have to assist the privatization effort?

Reply 7.

The Resolution of the Supreme Rada of 29 July 1994, "On Perfection of the Mechanism of Privatization in Ukraine and Strengthening of the Control Over Its Implementation" suspended the concluding of contracts for sale or lease with redemption to ownership of the objects of privatization. This was a temporary measure which has been taken until the Supreme Rada approves the List of Objects Not Subject to Privatization. However, preparation for privatization is continuing by the Fund of the State Property in compliance with the directions set up by the State Privatization Programme.

To accelerate privatization, the Government is drawing up a number of drafts of amendments and supplements to the current law of privatization. The State Programme of Privatization for 1994 specified the following high-priority goals in implementation of the purposes of the Government in privatization:

- large-scale privatization of the trade enterprises;
- initiation of privatization of industrial enterprises;
- involvement of the Ukrainian citizens into privatization by means of privatization deposit accounts;
- development of the market infrastructure;
- creation of the conditions to speed up privatization and after-privatization operation of enterprises;
- creation of favourable conditions for foreign investors to participate in privatization.

The Resolution of the Supreme Rada of 29 July 1994, "On Perfection of the Mechanism of Privatization and Strengthening of Control over its Implementation" suspended the conclusion of contracts for sale or lease with redemption to ownership of State enterprises so that the mechanism of privatization can be perfected. To implement this Resolution, the Government has drawn up the following draft laws and resolutions:

- Resolution of the Supreme Rada "On Adoption of the List of Entities not Subject to Privatization";
- The Law of Ukraine "On Amendments and Supplements to Legal Regulations with regard to Privatization";
- The Law of Ukraine "On Lease of the Property of State-owned Enterprises and Organizations";
- The Resolution of the Cabinet of Ministers "On Amendments to Methods of Evaluation of the Costs of Privatization Objects".

The decision on new regulations regarding contracts for the sale of privatization objects will be taken by the Supreme Rada after it examines the laws and resolutions above.

Question 8.

Please provide the percentage of small-and-medium scale enterprises that have been privatized. What is the percentage of large state-owned enterprises that have been privatized? How many enterprises in each category are expected to be privatized during the next year?

Reply 8.

During the first nine months of 1994, 43.9 per cent of small scale and 22.8 per cent of medium- and large-scale enterprises were privatized in compliance with the provisions of the State Programme of Privatization to be implemented in 1994. New privatization quotas will now be set by the State Privatization Programme. At present 10,214 enterprises have been privatized, 6,328 small-scale enterprises included. In 1995 it is planned to complete small-scale privatization. Also, large-scale and medium-scale state-owned enterprises will be converted into public corporations in compliance with the Decree of the President "On Corporatization of Enterprises".

Question 9.

Please elaborate on the privatization of former Ukrainian agricultural trade organizations. Which of those still dominate in trade in the major agricultural commodity groups? What percentage of imports, by commodity, do they provide?

Reply 9.

The privatization of agricultural and food processing enterprises will be effected in compliance with the Decree of the President of Ukraine "On Peculiarities of Privatization of Property in Agro-Industrial Complex". It establishes that enterprises that process agricultural products or maintain agricultural enterprises be privatized mainly by the conversion into public corporations, the major shareholding being distributed between producers of agricultural products; the state-owned agricultural enterprises be converted in privatization into collective agricultural enterprises. In this case the members of such enterprises will get compensation for property owned by a collective and conveyed free of charge to the State. It is planned that all state-owned agricultural enterprises will be privatized. About 3,757 state-owned trade and public catering enterprises have been privatized as of 1 October 1994. During the same period 179 state-owned agricultural enterprises were privatized which accounted for 13 per cent of their total number. A higher rate of privatization was observed in the food industry. Thus, in the milk canning industry, cigarette, vegetable oil and beer production, approximately half of the enterprises have been privatized.

III. Foreign Trade Regime

1. Imports Regulation

Tariff Regulation Development

Question 10.

Please clarify if Ukraine's 1993 tariff schedule and the provisions of Resolution 285 that revise that schedule are the latest information on Ukraine's tariff rates. If there is more current information, please provide it as well as import data by tariff line and supplier country.

Reply 10.

The changes into preferential or full rates of import duties of the Unified Customs Tariffs of Ukraine that cover particular goods were introduced by the Resolutions of the Cabinet of Ministers No. 575 of 22 August 1994 and No. 285 of 3 May 1994, (the latter provides not only for an increase in import duty rates for some goods but for a significant decrease in them for a considerable portion of the goods). Also, some goods are exempted from import duties by the Ukrainian President's Decree No. 502/94 of 7 September 1994, "On Measures to Regulate Prices on Particular Periodicals". The data are the latest information on changes in the rates. The rest of the schedule remains unchanged. A new tariff schedule is currently being prepared and should be finalized in early 1995. Trade data at the level of detail currently maintained is attached.

LIST

Of Particular Types of Goods for which Customs Duty Have Been Changed

(In compliance with Resolution 285)

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
01.02 10000	Live bovine animals (pure-bred)	0	10
01.03 10000		"	"
01.04 10100		"	"
01.04 20100		"	"
02.01	Meat of bovine animals, fresh or chilled	15	30
02.02	Meat of bovine animals, frozen	20	50
02.03	Meat of swine, fresh, chilled or frozen	20	50
02.04	Meat of sheep or goats, fresh, chilled or frozen	15	30
02.05	Meat of horses, asses, mules or hinnies, fresh, chilled or frozen	15	30
02.06	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh chilled or frozen	20	50
02.07	Meat of edible offal, of the poultry of heading No. 0105, fresh, chilled or frozen	20	50
02.08	Other meat and edible meat offal, fresh, chilled or frozen	5	30
02.09	Pig fat free of lean meat and poultry fat (not rendered), fresh, chilled, frozen, salted, in brine, dried or smoked	20	50

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
02.10	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal	20	50
03.02 70000	Caviar and caviar substitutes (sturgeon roe, salmon roe, other fish and sea products)	20	70
03.03 80000		"	"
03.05 20000		"	"
16.04 20900		"	"
16.04 30100		"	"
04.01	Milk and cream, not concentrated nor containing added sugar or other sweetening matter	20	50
04.02	Milk and cream, concentrated or containing added sugar or other sweetening matter	20	50
Except			
04.02 10110	Preparations for infant use, put up for retail sale	0	5
04.02 10990		"	"
04.02 21110		"	"
04.02 29990		"	"
19.01 10000		"	"
04.05	Butter and other fats and oils derived from milk	40	80
04.06	Cheese and curd	20	40
04.07	Bird's eggs, in shell, fresh, preserved or cooked	20	50
09.01	Coffee	5	30
09.01 11000	Coffee, not roasted	0	10
09.01 12000		"	"
10.01 10100	Wheat and meslin (seeds)	0	20
10.05 10110		"	"
10.05 10130		"	"
10.05 10150		"	"
12.04 00100		0	5

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
12.05 00100		"	"
12.09		"	"
12.14		0	10
12.08	Flours and meals of oil seed or oleaginous fruits	0	5
12.11	Plants and parts of plants, seeds and fruits, of a kind used primarily in pharmacy	0	10
15.12	Sunflowerseed, sunflower or cottonseed oil and fractions thereof, whether or not refined	30	60
15.16	Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated	20	50
15.17	Margarine, other than edible fats or oils or their fractions of heading No. 15.16	30	60
15.20	Glycerol (glycerine), including pure, glycerol waters and lyes	0	20
16.01 00990	Sausages cooked	50	100
17.01	Cane or beet sugar and chemically pure sucrose, in solid form	30	60
18.01 00000	Cocoa beans, whole or broken	0	10
18.06	Chocolate and other food preparations containing cocoa	50	100
21.01 10110	Concentrates of coffee and preparations on a basis of these products (solid)	10	50
22.03	Beer	30	200
22.04 22.05	Wine, champagne	30	200
22.06	Wine of an actual alcoholic strength by volume not less than 12% and dessert beverages (including sparkling wine)	30	60
22.07	Ethyl alcohol spirit (without undenatured ethyl alcohol spirit)	30	350
22.07 20000	Ethyl alcohol and other spirits used to prepare spirituous juices	30	350
22.08 90910		"	"
22.08 90990		"	"
22.08	Spirits, liqueurs and other spirituous beverages	50	350
Except 22.08 90910			

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
22.08 90990			
22.08	Cognac	50	300
24.01	Tobacco	0	50
24.02	Tobacco products	30	200
25.03	Sulphur	60	100
25.10	Natural calcium phosphates	0	5
26.06	Aluminium ores and concentrates	0	5
27.01	Coal	0	10
27.02 27.03	Coke, peat, lignite	0	5
27.04			
27.07	Oils and other products of the distillation of high temperature coal tar	0	5
27.09 27.10	Petroleum and petroleum oils	0	0
27.11	Petroleum gases and other gaseous hydrocarbons	0	5
28.04	Helium	0	10
28.06 10000	Hydrogen chloride (hydrochloric acid)	15	30
28.09 20000	Phosphoric acid and polyphosphoric acids	0	10
28.10	Oxides of boron; boric acid	0	10
28.11	Other inorganic acids	0	10
28.12 10900	Halides	0	10
28.15	Sodium hydroxide (caustic soda); potassium hydroxide (caustic potash); peroxides of sodium and potassium	0	10
28.25	Hydrazine and hydroxylamine and their inorganic salts	0	10
28.26 90900	Complex fluorine salts (fluorides) others	0	10
28.27 10000	Ammonium chloride	15	30
28.30 90190	Sulphides; polysulphides others	0	10
28.33	Sulphates; alums; peroxosulphates	0	10
28.35 23000	Phosphate of trisodium	0	10
28.36 40000	Potassium carbonates	0	10
28.41 60000	Manganites, manganates and permanganates	0	10

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
28.42 10000	Double or complex silicates	0	10
28.43 10900	Colloidal precious metals others	0	10
28.49 10000	Carbide of calcium	0	10
29.10 10900	Acyclic hydrocarbons for other purposes	0	15
29.01 23000	Butene (butylene) and isomers thereof	0	15
29.02 20900	Benzene	0	15
29.02 30900	Toluene	0	15
29.02 41000	Xylenes	0	15
29.02 42000		"	"
29.02 43000		"	"
29.02 50000	Styrene	0	15
29.03 22000	Trichloroethylene	0	15
29.04	Derivatives of hydrocarbons	0	15
29.05 13000	Butane 1-ol., 2-Ethylhexan - 1-ol	0	15
29.05 16100		"	"
29.07 11000	Phenol	0	15
29.14 11000	Acetone	0	15
29.14 22000	Cyclohexanone	0	15
29.15 31000	Ethyl acetate	0	15
29.16 11100	Acrylic and methacrylic acid	0	15
29.16 11900		"	"
29.16 12000		"	"
29.16 13000		"	"
29.16 14000		"	"
29.22 11000	Monoethanolamin	0	15
29.25 19900		"	"
29.33 51900	Piperidine	0	15
29.33 71000	6-Hexanelactam (epsilon-caprolactam)	0	15
29.42	Other organic compounds	0	15
31.04 10000	Potassium chloride	0	10
32.08 10100	Varnishes	0	10

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
32.08 10900		"	"
32.08 90990		"	"
34.02	Organic surface-active agents, whether or not put up for retail sale	0	20
34.03 19910	Preparations for lubricating machines, appliances and vehicles	0	20
38.02	Activated carbon	0	10
38.11	Anti-knock preparations	0	10
38.12	Prepared rubber accelerators; compound plasticisers for rubber or plastics not elsewhere specified or included; anti-oxidising preparations and other compound stabilizers for rubber or plastics	0	10
39.01 20000	Polyethylene	0	10
39.02 10000	Polypropylene	0	10
39.03	Polymers of styrene, in primary forms	0	10
39.04	Polymers of vinyl chloride	0	10
39.07 30000	Polycarbonate, epoxide resins	0	10
39.07 40000		"	"
39.09 40000	Phenolic resins	0	10
39.11 10000	Petroleum resins, coumarone, indene or coumarone-indene resins and polyterpens	0	10
39.12	Cellulose	0	10
39.14	Ion-exchanging resins	0	10
39.19 10510	Film of polymers of vinyl chloride	0	10
39.20 51000	Plastic glass	0	10
40.01	Natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, in primary forms or in plates, sheets or strips	0	10
40.21	Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any products of heading No. 4001 with any product of this heading, in primary forms or in plates, sheets or strip	0	10
40.09	Rubber tubes, pipes and hoses	0	10
40.10	Conveyor, transmission belts	0	10

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
41.04-41.09 42.03	Leather of bovine animals, articles of apparel of leather	5	50
43.01, 43.02 43.03	Raw furskins, articles of apparel of furskins	20	50
44.01 10000	Wood and articles of wood	0	5
44.03 10910		"	"
44.03 10990		"	"
44.03 91000		"	"
44.03 99900		"	"
44.07-44.12		"	"
47.01-47.07	Mechanical wood pulp, pulps of other fibrous material, waste and scrap of paper or paperboard	0	5
48.01, 48.02	Paper, paperboard	0	10
48.04, 48.05		"	"
48.10		"	"
48.06 10000	Vegetable parchment	0	10
48.06 40100	Glassine papers	0	10
48.08 20000	Sack kraft paper, creped or crinkled, whether or not embossed or perforated	0	10
48.20 20000	Exercise books	0	5
51.01	Wool	0	5
51.06, 51.07	Wool yarn, cotton yarn	0	5
52.07, 52.05		"	"
52.06		"	"
51.11, 51.12	Fabrics	0	10
52.08-52.12		"	"
54.07, 54.08		"	"
55.12-55.16		"	"
56.03		"	"
52.01	Cotton	0	10
53.03	Jute fibre	0	5

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
54.01-54.06	Synthetic thread and yarn	0	10
55.01-55.11		"	"
57.01-57.05	Carpets and other textile floor coverings, knotted	20	60
69.13 10000	Ceramic articles of porcelain or china	5	40
69.14 10000		"	"
70.13 21110	Crystal articles gathered by hand	10	50
70.13 21190		"	"
70.13 31100		"	"
70.13 99100		"	"
71.13, 71.14 71.16	Articles of jewellery and parts thereof, including articles with diamonds, precious or semi-precious stones	50	150
71.13 20000	Kitchenware of base metal clad with silver or gold	20	60
71.14 20000		"	"
71.15 90900		"	"
71.15 10000	Other articles of precious metal clad with precious metal	0	30
71.15 90100		"	"
73.04 20100	Drill pipe	0	20
73.06 20000	Casing and tubing of a kind used in drilling for oil or gas	0	20
73.08	Structures (excluding prefabricated buildings of heading No. 9406) and parts of structures of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel	0	5
74.01-74.04	Copper, copper waste and scrap	0	5
74.07, 74.09	Copper bars, rods and profiles	0	5
75.01-85.03	Nickel, nickel waste and scrap	0	5
75.05, 75.06	Nickel bars, rods, profiles and wire	0	5
76.01	Aluminium	0	5
76.02	Aluminium waste and scrap	0	5
76.04, 76.06	Aluminium bars, rods and profiles	0	5
76.08	Aluminium foil	0	5

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
78.01	Lead	0	5
78.02	Lead waste and scrap	0	5
79.01	Zinc	0	5
79.02	Zinc waste and scrap	0	5
79.04, 79.05	Zinc bars, rods, profiles and wire	0	5
80.01-80.04	Tin, tin waste, tin bars, rods, profiles	0	5
81.01	Tungsten (wolfram) and articles thereof, including waste and scrap	0	5
81.02	Molybdenum and articles thereof, including waste and scrap	0	5
81.04	Magnesium and articles thereof, including waste and scrap	0	5
81.05	Cobalt matters, including waste and scrap	0	5
81.06	Bismuth and articles thereof, including waste and scrap	0	5
81.07	Cadmium and articles thereof, including waste and scrap	0	10
81.11	Manganese and articles thereof, including waste and scrap	0	10
81.12	Gallium and articles thereof, including waste and scrap	0	10
84.01	Nuclear reactors; fuel elements (cartridges) non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation	0	10
84.08	Parts suitable for use in agricultural machines (excluding positions 87.03, 87.04)	0	10
84.09 91000		"	"
84.32 90900		"	"
84.33 90000		"	"
84.34 90000		"	"
84.36 90000		"	"
84.09	Parts suitable for use solely or principally with the engines	0	10
84.11	Turbo-jets, turbo-propellers and other gas turbines	0	10

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
84.13	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators	0	10
84.18	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps	5	30
84.19	Machinery, plant or laboratory equipment whether or not electrically heated, for the treatment of materials by a process involving a change of temperature	5	30
84.22	Dish-washing machines; machinery for cleaning or drying containers; machinery for filling and closing bottles	5	30
84.24	Mechanical appliances (whether or not hand-operated) for spraying liquids or powders	5	30
84.25	Pulley tackle and hoists other than skip hoists; winches and capstans; jacks	5	30
84.27	Fork-lift trucks; other works trucks fitted with lifting or handling equipment	5	30
84.28	Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors)	5	30
84.29	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers	5	30
84.30	Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machines	5	30
84.30 49000	Drilling, oil and gas equipment, spare parts	0	10
84.31 43000		"	"
84.38 90000	Parts	0	10
84.45-84.49	Machines for light industry	0	10
84.51-84.53		"	"
84.65	Machine-tools for working wood, cork, bone, hard rubber, hard plastics or similar hard materials	5	30
84.67	Tools for working in the hand, pneumatic or with self-contained non-electric motor	5	30
84.68	Machinery and apparatus for welding other than those of heading No. 85.15	5	30
84.69	Typewriters	10	40

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
84.70	Calculating machines; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device	10	20
84.71	Automatic data-processing machines and units thereof; magnetic or optical readers	10	40
84.72	Other office machines (hectograph or stencil duplicating machines, automatic banknote dispensers, coinsorting machines)	10	40
84.81	Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves	0	10
85.01 53910	Electric multiphase engines of an output over 75 kw but not exceeding 750 kw	0	10
85.07	Electric accumulators, including separators	0	10
85.16 50000	Microwave ovens	10	40
85.17	Electrical apparatus for line telephony or line telegraphy	10	40
85.18	Microphones and stands thereof; loudspeakers	10	40
85.19	Turntables (record-desks), record-players, cassette-players and other sound reproducing apparatus, not incorporating a sound-recording device	10	40
85.20	Magnetic tape recorders and other sound recording apparatus	10	40
85.21	Video recording or reproducing apparatus	10	40
85.22	Parts and accessories of apparatus of heading 85.19-85.21	10	40
85.23	Prepared unrecorded media for sound recording or similar recording of other phenomena	10	40
85.44 11100	Insulated wire of copper, lacquered or enamelled	0	5
86.01	Rail locomotives	0	10
86.02	Other rail locomotives; locomotive tenders	0	10
86.03	Self-propelled railway or tramway coaches	0	10
86.04	Railway or tramway maintenance or service vehicles	0	10
86.05	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled	0	10

HS Code	Description of Goods According HS	Rates of Duty	
		Favourable	Full
86.06	Railway or tramway goods vans and wagons not self-propelled	0	5
86.07	Parts of railway or tramway locomotives or rolling-stocks	0	5
86.08	Railway or tramway tracks fixtures and fittings	0	5
87.02	Motor vehicles for the transport (trolley buses)	0	30
87.03	Motor cars and other motor vehicles principally designed for the transport of persons	0	20
87.06 Except	Chassis fitted with engines for motor vehicles	0	20
87.06 00910			
87.07 Except	Bodies (including cabs) for the motor vehicles	0	20
87.07 10100			
87.07 10900			
87.08 (only for positions 87.02, 87.05)	Parts and accessories of the motor vehicles	0	20
88.02	Aircraft (aeroplane, helicopters)	0	20
88.05	Aircraft launching gear; deck-arrestors or similar gear; ground flying trainers; parts of the foregoing articles	0	20
89.05 20000	Floating and submersible drilling or production platforms	0	10
89.08	Vessels and other floating structures for breaking up	0	10
90.26	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases	0	10
90.23	Instruments, apparatus and models, designed for demonstrational purposes, unsuitable for other uses	0	10
90.27 20100	Chromatographes	0	10
90.30	Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring and checking electrical quantities; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations.	0	10

Question 11.

Please explain the sudden and dramatic increase in commodity tariffs effective 3 May 1994, that resulted from Resolution 285 of the Cabinet of Ministers of Ukraine. What is Ukraine's phase out plan for these tariff increases?

Have other resolutions or legal instruments been promulgated that further affect Ukraine's tariff treatment of imports?

Reply 11.

In compliance with the Programme of Economic Reform of the President the Government took on responsibility to reduce the maximum tariff rate to, generally, 30 per cent by 1 March 1995.

The General Description of the Customs Tariff Structure

Question 12.

What is the statutory basis and administrative procedure for the establishment and review of various types of duties and taxes including ad valorem, seasonal customs taxes, "special duties", and excise taxes?

Which government agencies play a role in setting various duties and taxes? Does Parliament have any jurisdiction over this issue?

How are changes in duties announced? Is there an appeals procedure or provision for public comment?

Reply 12.

In compliance with the Law of Ukraine of 28 January 1994, "On Amendments to the Decrees of the Cabinet of Ministers on Customs Duties Regulation" the tax rates provided for by the Unified Customs Tariff of Ukraine may be changed only in relation to customs taxation subjects. Here, it is established that draft laws on custom duty and tax regulations including those covering the setting and changing of, or exempting from, such taxes or duties be submitted for consideration by the Cabinet of Ministers only after consideration and approval by the Customs Tariff Council. This Law established this procedure until 1 January 1995. Since then any amendments to tariff rates must be approved by the Supreme Rada.

The Law "On Unified Customs Tariff" establishes that any amendments to the tariff rates should be officially published in accessible media at least 45 days before these amendments are made effective. The official publication is made in official periodicals: "Golos Ukrainy" or "Uryadovy Kurier", the organs of the Supreme Rada and the Cabinet of Ministers, respectively.

The Customs Tariff Council was formed in compliance with Article 5 of the Law of Ukraine "On the Unified Customs Tariff" and the Resolution of the Cabinet of Ministers No. 62 of 7 February 1994, "On the Customs Tariff Council of Ukraine". The Customs Tariff Council is a collegiate body with the Cabinet of Ministers. The Resolution of the Cabinet of Ministers

No. 343-p of 16 May 1994, established that the Secretariat of the Customs Tariff Council be formed under The State Customs Committee to provide for organizational support of the Council operation.

Question 13.

It is stated in this section [General Description of the Customs Tariff Structure] that certain imported products are assessed a specific or a combined ad valorem/specific rate of duty. However, neither Ukraine's 1993 Harmonized Tariff Schedule now Resolution 258 includes reference to specific or combined av/specific rates. Please provide a list in HS format of the products that face such rates.

Reply 13.

The Law of Ukraine "On the Unified Customs Tariff" provides for seasonal customs duties (Clause 10) and special kinds of customs duties (Clauses 11 through 15). At present these duties do not exist. The mechanism of the collection of a seasonal customs duty is being developed by the Ministry of Agriculture and Food and that for collection of an anti-dumping duty by the Ministry of Foreign Economic Relations.

Clause 7 of the Law of Ukraine "On the Unified Customs Tariff" authorises ad valorem, specific and combined duties. The specific and combined customs duties have not been established so far in practice.

Question 14.

Please provide clarification of the Statement in this section that "seasonal customs taxes may be established for a period not exceeding four months".

Please provide a complete list by HS number of the tariff items that were subject to seasonal taxes in 1993 and 1994.

How does Ukraine plan to phase-out such actions given its prospective obligations under the GATT/WTO?

Reply 14.

The use of seasonal duties will be conformed to the GATT/WTO requirements by the Governmental Commission of Import Regulations. Seasonal duties have not so far been applied.

Question 15.

Ukraine states that "special duties" may be assessed on imports in certain circumstances, including as safeguards in the traditional GATT sense, as A/D measures, as CVD measures, and as national security measures. Could Ukraine provide an explanation of how it intends to conform these special duties to the requirements of the GATT/WTO related safeguards, A/D, CVD, and national security?

Please provide a complete list by HS number of the tariff items that currently are subject to "special" duties.

Are "special" duties established for a fixed time or indefinitely?

Please further describe the test that is used for determining "substantial damage to producers of similar goods" regarding the application of special duties. How is the status of "similar" established in this process?

Reply 15.

In compliance with the Law of Ukraine "On Unified Customs Tariff", irrespective of the other types of customs duties, specific types of customs duties are established to be applied in particular cases when commodities are delivered in the territory of Ukraine and moved therefrom. These specific customs duties include special duties, anti-dumping duties and countervailing duties.

These special duties will be assessed on imports in certain circumstances only in the traditional GATT/WTO sense and as national security measures.

The anti-dumping duties are to be applied in compliance with Article VI GATT and the Anti-Dumping Code of the Uruguay Round.

The countervailing duties are to be applied in the cases provided for by the Agreement on Subsidies and Countervailing Measures.

The mechanism of application of the given types of special duties as a safeguard in the traditional GATT/WTO sense does not exist, this is why it is being developed by the Commission on Import Regulation and the Commission on Governmental Commission on Anti-Dumping Investigations in Relation to the Export of the Ukrainian-origin Goods.

None of these types of duties has been applied to date.

Question 16.

Please describe the instances when Ukraine has applied the "special rates" of duty described in this section as a response to another country's attempt "to initiate unfair competition". Has Ukraine considered that such action should actually be handled under existing or prospective anti-dumping law?

Reply 16.

There are no such instances.

"Yes" to the second half of the question, under our prospective anti-dumping law.

Question 17.

It is stated in this section [General Description of the Customs Tariff Structure] that "The anti-dumping duty is, as a rule, levied upon the import of goods under the conditions stipulated

by Article VI of the GATT ..." Please elaborate on what is meant by "as a rule". Are there instances when the duty is not assessed in accordance with the GATT?

How does the application of Ukraine's CVD law relate to its future GATT/WTO obligations?

Which government agencies have jurisdiction over the application of Ukraine's anti-dumping laws?

Please describe the past cases in terms of product, supplier, and duty percentage in which Ukraine has applied anti-dumping duties.

Reply 17.

The expression "as a rule" must be considered an erroneous one and should be replaced with "...is levied upon...".

In compliance with the Law "On Unified Customs Tariff", to establish the facts allowing the special anti-dumping and countervailing duties to be levied, investigations are to be initiated. The investigations are to be carried out by the Ministry of Foreign Economic Relations on application of the Ukrainian or foreign State institutions, trade enterprises and organizations, as well as on the initiative of the Customs Tariff Council. Proceeding from the results of these investigations the above-specified duties can be applied.

Also, in compliance with the Presidential Decree "On Measures to Prevent the Export of the Ukrainian-origin Goods at prices that can be considered dumping ones and to settle trade disputes" of 25 August 1994, a Governmental Commission on Anti-Dumping Investigations in Relation to the Export of the Ukrainian-origin Goods, which is entrusted with carrying out of investigations of the dumping cases and application of protective sanctions provided for by the Laws of Ukraine proceeding from the results of anti-dumping investigations. The Commission has also to draw up and submit for consideration of the Supreme Rada the draft laws on bringing the Laws of Ukraine into conformity with the GATT regulations concerning anti-dumping procedures.

There have been to date no dumping or countervailing duty cases in Ukraine.

Question 18.

Does Ukraine plan to propose any safeguard measure to curtail imports?

Reply 18.

Yes. The Governmental Commission on Import Regulation is drawing up a Draft Law on Import Regime to bring it in conformity to Article XIX of GATT.

Question 19.

The introduction to Ukraine's 1993 Harmonized Tariff Schedule states that "goods imported under a formal State contract are not subject to duty". Please provide further clarification of the scope of imports subject to this exclusion.

Reply 19.

Goods imported into Ukraine will be exempt from customs duty, provided they are delivered under State contracts or orders, which is stipulated by the Decree of the Cabinet of Ministers "On Unified Customs Tariff" in compliance with the Cabinet Decree "On Liberalization of Foreign Economic Activities". At the same time, the Resolution of the Cabinet of Ministers No. 932 of 12 November 1993, "On the Formation and Distribution of State Contracts and State Orders in 1994" establishes that the goods being imported under State orders are exempt from import duties. The level of imports covered by this provision for January-August 1994 amounted to approximately US\$1 billion. The State contracts covered by this provision are only for government procurement.

Question 20.

The introduction to the 1993 Harmonized Tariff Schedule states that "the rates of duty for articles intended for children are reduced by 50 per cent" over the normal rates of duty. Please explain the procedures for determining that goods are for children. Please provide a full list of the articles that would be granted the 50 per cent reduction in duties.

Reply 20.

The list of products intended for children for which the rates of import duties are reduced by 50 per cent as compared with the general customs duty are contained in the Annex to the Instructions "On Taxability of Goods Imported into Ukraine" approved by the Resolution of the State Customs Duty Committee" No. 132 of 31 May 1993.

List of Goods for Children

Goods	TN ZED Code
Special milk for infants	04. 02 29 110
Homogenized tinned meat	16. 02 10 000
Children's foodstuffs for retail trade	19. 01 10 000
Homogenized vegetables	20. 05 10 000
Homogenized jams and jellies	20. 07 10 000 20. 07 10 900
Homogenized mixes of foodstuffs	21. 04 10 000 21. 04 20 000
Nappies	48. 18 40 910 48. 18 49 990
Children's wear	61. 01-64.14
Children's footwear	64. 01-64.03

Question 21.

Please provide an updated list of the countries which benefit from Ukraine's special rates of import duty.

Reply 21.

In compliance with the Decree of the Cabinet of Ministers "On Unified Customs Tariff" of 11 January 1993, for goods produced in countries which are members together with Ukraine of customs unions or forming with it free-trade areas, and for goods produced in developing countries, except for those included in the commodity groups 25-97, preferential tariff rates are applied. For goods produced in countries or economic unions enjoying most-favoured-nation's status, and for goods produced in developing countries (in commodity groups 25-97), tariff rates corresponding to the rates of the most-favoured-nation's regime in the traditional GATT/WTO sense are applied. For the goods of other countries full tariff rates are applied. At present such countries are Israel and the Republic of South Africa.

The number of the developing countries is 145, that of countries that enjoy the most-favoured-nation regime is 30 plus the FSU States.

Question 22.

Please clarify whether the new, higher rates specified in Resolution 285 apply to CIS countries or not. Are the exports of any other country exempt from the scope of this Resolution?

Reply 22.

The new, higher rates specified in Resolution 285 do apply to CIS countries, in relation to which the most-favoured-nation regime has been established. Which means that it applies to all the FSU States except for Belarus and the Russian Federation.

Question 23.

Please provide a list of those products by HS tariff line for which exemption from duty is granted as described in this section [General Description of the Customs Tariff Structure]? Does Ukraine grant these exemptions to imports from all nations?

Reply 23.

International agreements providing for exemptions from Customs duty for all products:

1. Agreement between Ukraine and the Russian Federation on free trade (24 June 1993).

Goods coming from the Russian Federation are exempt from customs duties.

2. Similar agreement with Belarus (17 December 1992).

These exemptions are not granted to all nations.

Question 24.

Does Ukraine intend to bind all of its applied duty-free tariff rates, particularly those on farm products?

Reply 24.

Yes, it does. However, in the framework of Ukraine's accession to GATT/WTO this issue will be a subject for future negotiation.

Question 25.

Does Ukraine rebate the customs tax paid on inputs that are not consumed in the production of goods for export, such as machinery and equipment? Are VAT and excise duties rebated on such inputs as well?

Reply 25.

The VAT and excise duties are not rebated in these situations.

Question 26.

Given the requirements of Article VIII of the GATT, Ukraine's customs processing fee does not appear to be in compliance with GATT provisions requiring that such fees must reflect the actual cost of services rendered for an individual entry or export. (See GATT panel on United States Customs User Fee.) How does Ukraine plan to conform its customs policies to GATT provisions?

Reply 26.

Collection of customs fees related to the execution by the Customs of their services is provided for by the Customs Fee Code (Articles 76 through 80). The rates of customs fees are established by the Resolution of the Cabinet of Ministers No. 133 of 2 April 1994, "On Changing the Customs Fees".

In compliance with Article 77 of the Customs Fee Code the rates of customs fees to be paid for services in customs matters will not exceed the actual cost of the customs services.

See Reply 136.

The Imports Taxation Regime

Question 27.

Please provide an updated list of the legal instruments currently in effect that pertain to Ukraine's import taxation regime, including excise taxes and value-added taxes. What is the administrative procedure for review of various types of taxes?

Reply 27.

The Law "On State Budget for 1994" No. 3898-XII of 1 February 1994;

The Resolution of the Supreme Rada "On the List of Goods (Products) to be Levied with Excise Taxes and the Rates of These Taxes" No. 3951-XII of 4 February 1994;

The Resolution of the Cabinet of Ministers No. 526 of 5 August 1994, "On Introduction of Changes to the List of Goods to be Levied with Excise Taxes and the Rates of These Taxes";

The Instruction "On the Procedure of Evaluation and Payment of the VAT and Excise Tax Levied on the Goods Imported into Ukraine and Exported from it" approved by the Resolution of the State Main Taxation Inspectorate on 31 May 1994, No. 44;

The Instructions "On Procedure of Applying the VAT and Excise Duties on Imported Goods", approved by the Resolution by the State Customs Committee No. 202 of 7 July 1994.

These Instructions establish that the VAT is calculated proceeding from the customs valuation of imported goods with due allowance for actually paid customs fees, duties and excise taxes for goods subject to excise taxation.

Question 28.

Please provide updated information on Ukraine's value-added tax structure. Is the value-added tax applied on a non-discriminatory basis for both domestically produced and imported goods? Are there any exceptions in application for preferential or other trade?

Is the 28 per cent VAT tax collected only on imports? What level of VAT is collected on domestic goods? Is the VAT assessed on the import price only, or on the duty imposed as well?

Is the value-added tax applied to all food and agricultural products? What is the reason for the VAT on food imports? When will the VAT be reduced?

Reply 28.

The VAT is applied on a non-discriminatory basis to both domestically produced and imported goods.

Also, see Reply 27.

The VAT is applied to all food and agricultural products.

In compliance with the programme of reforms the VAT will be reduced for all products (to 20 per cent) starting from the beginning of 1995. The VAT is applied to the cost of the goods plus the duty.

Question 29.

The description of the 17 March 1994, Decree on Additional Measures to Stabilize the Financial Position of Enterprises exempts from the VAT: imports of raw materials, intermediate

goods and other goods used in industrial or agricultural production. Please confirm for the record that this description is fully accurate.

Reply 29.

This Decree exempts from the VAT the import of raw materials, assembly units and parts of the equipment imported by residents for their production demands. It was made effective on 1 April 1994. It also extends to energy carriers (oil, oil products, gas) and material resources for agricultural product processing.

This description is fully accurate.

Question 30.

Please provide information on Ukraine's excise tax structure, including a list by HS number and tax rate applied to the products subject to excise taxes.

Are these taxes applied in all instances in a non-discriminatory fashion on both domestically produced and imported goods? If not, which excise taxes are applied only to imports?

Do the excise taxes apply to the imports of CIS countries or preferential trading partners?

Reply 30.

The goods being imported to Ukraine are levied with excise duty at rates approved by the Resolution of the Supreme Rada of Ukraine No. 3951/12 of 4 February 1994, "On the List of the Goods to which apply Excise Duties and their Rates". This list includes the subsequent amendments introduced thereto by the Resolution of the Cabinet of Ministers No. 526 of 5 August 1994.

In compliance with the legal acts above excise duties have been applied in a discriminatory manner to imported goods to protect the interests of domestic producers.

Allowing for the GATT/WTO principles and rules and in the framework of the programme of reforms coordinated with the World Bank, starting from the beginning of 1995 the excise duties will be equal for both domestic and imported goods.

The goods subject to excise duties include:

alcoholic drinks (HS numbers: 2207, 2208, 2204, 2205, 2203, 2206);

food essences (2101, 2209);

chocolate (1806);

coffee (0901);

delicacies of the meat and sea products (16010091, 16042010, 16042030, 16051000, 16052000);

sugar (1701);

tobacco products (24022000, 24009000, 24031000);

video hardware and TV sets (85281011, 85281019, 85281030, 85281090, 85282010, 85282071, 85282073, 85282079, 852820900);

car, buses and trucks (8703);

tyres (401110000);

jewellery (7113);

porcelain (69131000);

cut glass products (70139910, 70133991);

fur products (4302, 4303, 6506, 9200);

natural leather and the products thereof (41004-4109, 4203);

carpets (5701, 5702, apart from 57021000);

microwave electrical furnaces (851420910);

kitchenware made from metals coated with silver and gold (8215, 8603, 21000).

Yes, the excise taxes apply to the imports of CIS countries and preferential trading partners.

Question 31.

What indirect domestic taxes other than the VAT and the excise tax are applied to imports?

Reply 31.

There are no other such taxes.

Question 32.

Please explain Ukraine's reasons for maintaining substantial taxes on imported processed and unprocessed agricultural products. Is Ukraine prepared to eliminate these taxes upon GATT accession or apply them equally to domestic production?

Reply 32.

Such substantial taxes are applied in order to protect domestic producers and reduce the State budget deficit. In the framework of the implementation of the programme of economic reforms coordinated with the IMF and World Bank and of the Ukraine's accession to the GATT/WTO, during 1995 these taxes will be made equal for both domestic and foreign producers.

Customs Valuation

Question 33.

Please complete the questionnaire on the application of the Customs Valuation Agreement contained in VAL/2/Rev. 2, 'Information on Implementation and Administration of the Agreement'. What part of Ukraine's customs valuation practices do not conform to the requirement of the Customs Valuation Code?

Reply 33.

Customs valuation is subject to the requirements of Article 16 of the Law "On the Unified Customs Tariff ". The order of customs evaluation conforms to the rules of Article VII of GATT.

At present the Governmental Commission for the Ukraine's accession to GATT is drawing up a draft law on customs valuation on the basis of the Customs Valuation Agreement of the Uruguay Round. Answers to the questionnaire will be provided shortly.

Settlements and Duty Payment

Question 34.

Please explain Ukraine's reasons for requiring payment in convertible currencies by non-residents. Under what circumstances might such a requirement to pay duties in convertible currency be necessary?

Reply 34.

In compliance with the Resolution of the Cabinet of Ministers of Ukraine "On Introduction of Changes to Customs Fee Rates" No. 133 of 2 March 1994, customs fees for customs services are set in absolute units in US\$. This measure was adopted because of the high inflation rate and fast variation in customs fees rates to cope with the inflation rate. After stabilization of national currency this measure will be eliminated.

In compliance with Article 3, Clause 1 of the Resolution of the Cabinet of Ministers No. 15-93 of 19 February 1993, "On the System of Currency Regulation and Currency Control", the national currency of Ukraine is the only legitimate means of payment in the territory of Ukraine. In compliance with Article 17 of the Law of Ukraine "On Unified Customs Tariff" and the Decree of the Cabinet of Ministers No. 4-93 of 11 January 1993, the customs duties levied by the customs should be paid in the national currency of Ukraine.

Question 35.

Please confirm that the Ministry of Foreign Economic Relations in conjunction with the Cabinet of Ministers of Ukraine has the sole authority for determining, maintaining and modifying Ukraine's quota and licensing regime.

Reply 35.

The Decree of the Cabinet of Ministers "On Setting Quotas for and Licensing of Goods and Services" of 12 January 1993, No. 6-93 establishes that the quotas and licensing regime be set and

maintained by the Cabinet of Ministers on presentation of the Ministry of Economics which should specify the lists of particular goods/services subject to quotas and licensing and the term of its validity.

In compliance with the Resolution of the Cabinet of Ministers No. 734 of 24 October 1994, "On Liberalization of Export Operations", in order to implement particular provisions of the Report of the Ukrainian President "On Primary Directions of the Economic and Social Policy" approved by the Supreme Rada of Ukraine, starting from 1 November 1994, the following will be subject to quotas and licensing:

- grains;
- coal;
- wastes of ferrous metals;
- pig cast iron.

In compliance with the programme of economic reforms, in 1995 quotas and licences for export of goods will be eliminated. At present the licences for export are granted by the Ministry of Foreign Economic Relations.

Non-tariff Measures, Quotas and Licensing Regime

Question 36.

It is stated in this section [Non-tariff measures, quotas and licensing system] that Resolution 146 terminated the list of goods subject to import licences or quotas and that currently no imports are subject to licences or quotas. Is this understanding correct? If not, please provide a complete list by HS tariff line of products that currently are subject to import quotas or import licensing.

Reply 36.

Decision of the Cabinet of Ministers, No. 1046 of 7 December 1993, contained the list of goods subject to export/import quotas and licensing in 1994. However, the decision of the Cabinet of Ministers, No. 146 of 4 March 1994, "On Amendments to the Decision No. 1046 of the Cabinet of Ministers dated 17 December 1993, cancelled the implementation of Annex 3 of Decision No. 1046, which listed the goods subject to quotas and licensing in 1994. At present no import quotas are applied.

Question 37.

Please explain in detail the procedures for setting import quotas and update the list of legal instruments and authorities.

How are present quotas allocated?

What plans does Ukraine have for eliminating these quotas and ending the policy of using quotas to protect home industry, inasmuch as this violates GATT?

Reply 37.

The Presidential Decree "On the Measures to Implement an Integrated State Policy of Import Regulation" of 21 September 1994, established a special Governmental Commission to regulate import

matters. It is entrusted with the development and implementation of the mechanism of application of import restrictions in conformity to the GATT/WTO principles and rules. At present, the Commission is drawing up a draft law which provides for a mechanism allowing for non-tariff import regulation to be effected in compliance with Article XIX of GATT.

At present there are no import quotas.

Question 38.

Please provide a complete list by HS number of the products that currently are subject to prior import approval requirements. Which products require mandatory import licences?

Reply 38.

See Reply 36.

Question 39.

Does Ukraine apply any licences to imports for any reason? Would Ukraine please complete the "Questionnaire on Import Licensing Procedures" contained in L/5640/Rev. 10?

Reply 39.

In compliance with Article 18 of the Law "On Foreign Economic Activities", the import of only those goods that have such technical, pharmaceutical, phytosanitary and ecological parameters which meet the requirements of Ukrainian standards is permitted. Also, the import in and transit through the Ukrainian territory of secondary raw materials is subject to licences. Pursuant to the Resolution of the Cabinet of Ministers No. 117 of February 1994, the granting of the import or transit permit is entrusted to the Ministry of Nature and Environmental Protection.

See Reply 36.

The questionnaire will be answered shortly.

Question 40.

For processed goods, two criteria are listed in this section: (1) change of tariff classification and; (2) 50 per cent or more value-added. Is meeting one of these tests alone sufficient, or must both be met?

Reply 40.

One of the criteria is sufficient.

Question 41.

What is meant by the statement "goods safety during their transportation or storage"?

Reply 41.

It means such a level of protection which brings about no damage to goods in both transportation and storage. The protection of safety of goods will not be considered as substantial transformation.

Definition of Country of Origin of Goods

Question 42.

Upon accession to the GATT/WTO, Ukraine will have to adhere to the Agreement on Rules of Origin and apply its precepts and guidelines. What steps does Ukraine anticipate will be necessary to take toward meeting these obligations?

Reply 42.

The Ukrainian Government, in the framework of economic reforms carried out in Ukraine, will take every measure to implement all the agreements of the Uruguay Round into national legislation so that the foreign trade regime could be harmonized with GATT principles and rules.

Currently the Governmental Commissions on Import Regime Regulation and Ukraine's Accession to GATT have initiated the work on the preparation of a draft law on bringing the rules of origin into conformity with the Uruguay Round Agreement on Rules of Origin.

Standards and Certification

Question 43.

Please describe any border measures other than custom duties that Ukraine maintains as well as the products covered by these restrictions.

Reply 43.

In compliance with the Laws of Ukraine, products to be imported and certified in Ukraine if they meet Ukrainian standards, shall be provided with an obligatory certificate showing compliance with the requirements of the standards of Ukraine as to safety relating to life, health, property of citizens and environmental protection. This certificate shall be approved by an authorized certification body of Ukraine designated by the State Standards Committee for each branch of industry. "The list of products required to be certified in Ukraine has been sent to trade representatives and embassies of Ukraine". The list is not yet complete, but covers metal working machinery, synthetic fibres, toys. All standards are published and are publicly available. Plans for developing standards are circulated to relevant ministries and are available upon request.

The Laws of Ukraine establish that the certification is a must for products for which the standards exist applying requirements regarding safety of life, people's health and their property as well as environmental protection.

The lists of products subject to certification in Ukraine are to be approved by the State Standardization Body acting as a National Certification Body and, then, registered by the Ministry of Justice. The certification of products included in the lists applies to similar import products. The main certification regulations are as follows:

1. To effect the certification of the product in the UkrCEPRO (State Certification System) system, an applicant (a foreign one included) must submit an application in due form to an accredited body (if foreign organizations have no requisites of the above certification body it may address the National Certification Agency).
2. The certification body will, no later than one month after the receipt of the application, let the applicant know about its decision that must specify the following certification conditions:
 - 2.1. The name and sign of a standard the requirements of which must be met by the applicant's products;
 - 2.2. Selection, together with the applicant, of a particular manner (model) of certification;
 - 2.3. Selection of the test lab to test products; samples;
 - 2.4. Selection of an organization to supervise the production of certified goods (if required to, and if "yes", technical supervision will be carried out in compliance with the selected manner (model)).
3. Solely the certification body has the right to grant the conformance certificate.
4. The conformance certificates issued by foreign organizations can be recognized valid solely and directly by certification bodies accredited in the UkrCEPRO system.

These foreign conformance certificates can be recognized valid proceeding from the results of tests carried out in test labs accredited in the above system.

The MEC, ICO standards and 18900 GOSTs (CIS Interstates Standards) are effective in Ukraine now. Approximately 40 per cent of them are harmonized with the international standards. Some 60 per cent of the standards drawn up and adopted in Ukraine are harmonized with international standards.

Products to be certified in the UkrCEPRO system:

1. Household and similar electrical hardware, assembly units and parts.
2. Lighting appliances, assembly units and parts.
3. Manual electromechanical tools and portable worktables.
4. Video, TV and display sets.
5. Household radio electronics.
6. Electrically-driven construction and assembly tools.
7. Food processing equipment.
8. Medical equipment.
9. Toys.

10. Synthetic detergents.
11. Miniature tractors and powered equipment.
12. Engines of tractors and agricultural machinery.
13. Metal and wood machining equipment.
14. Electrical welding equipment.
15. Electrical machines.
16. Bicycles, prams.
17. Security and fire alarm systems.
18. Telephone sets.
19. Cinema and photo equipment.
20. Kitchenware made from ferrous and non-ferrous metals, faience and porcelain.
21. Units of automation and mechanization of accounting operations.
22. Household mechanisms operating on solid, gaseous and liquid fuel.
23. Road vehicles.
24. Agricultural machinery.
25. Inflammable electrical, equipment intended for its operation and repair.
26. Light sources.
27. Textiles for children.
28. Food industry products.
29. Photography chemicals.
30. Petroleum products.

Question 44.

Are any agricultural products in particular highly restricted or banned? Please provide the justification for the ban on each item.

Reply 44.

The national system of standards and certification of Ukraine does not provide for a ban or limitation on the use of any products if they meet current requirements of standards as to safety for

life, health and environmental protection. There are currently no highly restricted or banned agricultural products.

Question 45.

Could Ukraine complete the questionnaire on standards practices contained in TBT/16/Rev?

Reply 45.

Answers to the questionnaire will be provided shortly.

Question 46.

Are the standards and certification requirements applied to imported products also required of domestic goods?

Reply 46.

Requirements as to standards and certification of imports do not differ from the requirements for domestic products.

Question 47.

Which of the government bodies listed in this section would serve as a central point for the purposes of the collection and notification to international bodies of standards and the handling of inquiries? Please describe the mechanisms that exist or are anticipated to enable foreign participation and comments on standards that are under development.

Reply 47.

A Ukrainian Information Centre of Standards, Certification and Technical Barriers to Trade shall be created on the base of the National Fund of Standards.

Foreign organizations may, if agreed upon with the State Committee of Ukraine for Standardization, Metrology and Certification, take part in the development of the standards of Ukraine if they are members of technical committees on standards. Any foreign organization may become a member of the Ukrainian Technical Committee on Standardization. To do so it must submit an application to the Technical Committee for consideration which will, then, present it to the State Committee for Standardization, Metrology and Certification for approval.

Question 48.

If Ukraine is not already a member of Codex Alimentarius Commission (CODEX) and the International Plant Protection Convention (IPPC), when does it plan to join? Do Ukraine's standards for sanitary and phytosanitary measures differ from international standards established by these organizations?

Reply 48.

On 3 April 1993, Ukraine joined the International and Mediterranean Plant Protection Organization. The Ukraine's Phytosanitary Measures are based on international recommendations and standards drawn up in the framework of the Organization above. Ukraine uses international standards

for plants' quarantine complying with the FAO Secretariat requirements (Rome, 1994, Glossary of FAO phytosanitary terms, IPPC for 1994). The Laws of Ukraine regulating phytosanitary measures are the Law "On Plants' Quarantine " adopted by the Supreme Rada on 10 June 1993, No. 3348-XII, and Statute of the Governmental Body on "Plants' Quarantine" approved by the Resolution of the Cabinet of Ministers of Ukraine No. 992 of 29 October 1993.

In compliance with the Law "On Provision of Sanitary and Epidemic Safety of the Population", of 24 February 1994, life and health safety requirements are required to be incorporated in standards for finished products, raw materials and technologies. Drafts of these standards are to be subjected to expert examination by the State Health Protection Bodies to check if they meet the requirements of international organizations.

The improvement of sanitary standards is within the competence of the Ministry of Health Protection, phytosanitary standards are handled by the "Main State Quarantine Inspectorate".

The legislative basis of the State Epidemic Supervision over imported agricultural commodities includes the following documents:

the above-mentioned Law;

the Instructions on the State Sanitary Supervision over Imported Foodstuffs of 28 April 1994, No. 5.08.12/418;

the Medical and Biological Standards for Quality of Foodstuffs of 1 August 1989, No. 5061-89;

the Sanitary Rules for Use of Nutrition Additives of 29 March 1978, No. 1923-78.

The State Sanitary and Epidemic Services of the Health Ministry, proceeding from the documents above implement State supervision and control over imported goods.

The National Standards covering these products have been drawn up with consideration of the international standards and recommendations of CODEX, FAO/WHO Commission.

Because of the complicated situation caused by the consequences of the Chernobyl disaster, the Laws of Ukraine provide for more rigid requirements as to safety of food products, in particular for babies, women in pregnancy, people of poor health and elders.

In the certification of imported foodstuffs of the Health Ministry will use the national standards unless otherwise specified by international agreements.

In compliance with the Law above, the food products covered by the standards as to safety of health and life should be certified and subjected to the State Hygienic Examination to be carried out by the authorized bodies of the Health Ministry.

Hygienic certificates for imported products shall be issued after conformity to the standards of Ukraine have been demonstrated. Hygienic certificates should be obtained by an exporter prior to delivery of the commodities in the Ukrainian territory. The term of validity of the certificate is subject to the particular type of products, their purpose and the conclusion of the sanitary hygienic examination body.

Ukraine is not a member of the FAO/WHO Commission on Standardization of Food Products. However, the Health Ministry is developing the national standards to comply with the Commission

Recommendations. Here in some cases there is a divergence from the CODE on Standards ISO/MEC because of the consequences of the Chernobyl disaster.

The Health Ministry presents the data on the standards and imported food safety programmes for the population by regular publication in the mass media.

2. Export Regulation

Question 49.

What percentage and which products fall under the State contract system for exports? Do exporters under the system receive government subsidies for production or export?

Reply 49.

The Resolution of the Cabinet of Ministers of 2 April 1994, No. 140, "On Provision of Export of Goods Under the State Contract for 1994" specified the volume of goods to be exported under State Contract.

Because of deficient deliveries of goods under State Contract planned for export, the Cabinet of Ministers reduced the volume of deliveries of ferrous metal products by 1,170 tons during the first half of the 1994 year, Resolution No. 620 of 23 August 1994. The State centralized hard currency funds have been formed during 1993 to 1994 primarily from revenues gained from the export of the products under State contracts. The Resolution of the Cabinet of Ministers of Ukraine No. 212 of 22 March 1993, established general regulations with regard to export to be carried out under State orders, quotas for this export in 1993, and a list of the enterprises authorized to export goods under State contract. The Resolution of the Cabinet of Ministers No. 421 of 5 June 1993, laid down the procedure of payments for export carried out under State contracts. This Resolution allows the authorized foreign-trade organizations to buy, at the expense of the State budget, the products at internal market prices and to export them. In this case, the authorized organizations above will be financed every month by the Finance Ministry so that the orders for which the budget envisages allocations can be fulfilled. In their turn, the foreign trade organizations direct the hard currency returns on the Finance Ministry foreign currency account intended for State contracts. This is an integrated source of financing foreign policy spending associated with the Ukraine's obligations in foreign relations, payments to International Organizations, payments of credits earned on the Government's guarantee.

The Resolution of the Cabinet of Ministers No. 140 of 2 April 1994, sets forth the limits of quotas for export of the goods under the State contract for 1994. Within these limits the major share belongs to the products of metallurgy shipped via the UKRZOVNISHPROM foreign trade association. This Resolution introduces, also, some amendments to the general procedure of the export of goods under State contracts, in particular, those regarding the priority of the production and shipment of the products to be carried out under State contracts. It also exempts such goods from compulsory advance payments for costs of raw materials, power consumption, and transportation services.

Allowing for a low efficiency of export carried out under State contracts, negative effects of the export operations during 1993-1994 and faults in financial policy, the Programme of the Government coordinated with the IMF envisages a revocation of the centralized formation of the State foreign currency funds at the expense of the export of goods under State contracts. This Programme establishes that these funds will be formed at the expense of the State budget in buying foreign currency in the inter-bank foreign currency market of Ukraine.

The Resolution of the Cabinet of Ministers of Ukraine of 2 April 1994, No. 140, "On Provision of Export of the Goods under the State Contract for 1994" specifies the volume of goods to be exported under State contract.

<u>Products</u>	<u>Unit of measurement</u>	<u>Export volume total</u>	<u>State contract</u>	<u>%</u>
Ferrous metallurgy	thous. t	20,674	7,220	39.4
Wastes of ferrous metals	ditto	405	150	37
Non-ferrous metals	ditto	318.37	80	25
Chemical products	ditto	3,805.2	2,091	54.9
Chemical products	mil. dl	28.7	2.5	8.7
Salt	thous. t	3,700	30	0.8

This export mechanism will cease to exist with privatization.

Question 50.

What is the purpose and role of the Ukreneshtorg (foreign trade) Concern established by the Council of Ministers in May 1994; and what is its relationship to government ministries? How will this new entity affect the role played by the former "special exporters"?

Reply 50.

The Ukzovnishtorg Concern was terminated by the Decree of the President of Ukraine No. 412/94 of 27 July 1994, which rescinded Resolution No. 292 of the Cabinet of Ministers of 6 May 1994.

In addition, the regulation of the regime of export control over critical goods/technologies is effected by the Governmental Commission authorized by the Decree of the President of 3 January 1993, the Resolution of the Cabinet of Ministers No. 160 of 4 April 1993, and the Letter of the Cabinet of Ministers of 11 February 1994. The Governmental Commission is authorized to license and establish quotas for defence products. A working body of the Commission, the Expert Technical Board, has drawn up draft laws establishing the regime of control over non-proliferation of missile technologies/enumeration of defence goods to be subjected to export control, control regulations to be exercised over export-import and transit of defence goods and the State control regulations to ensure that the said defence goods are used as obligated by the declaration in the control application. These draft laws are to be approved by the Cabinet of Ministers.

To implement particular provisions of the Report of the President on the main principles of economic and social policy and further encouragement of export, the Cabinet of Ministers adopted Resolution No. 734 of 24 October 1994, "On Liberalization of Export" which preserved quotas and licences for only four items:

grains;

steel-making pig iron;

coal;

wastes of ferrous, non-ferrous and noble metals.

Question 51.

Please describe in further detail Resolution 212 (22 March 1993) and Resolution 421 (5 June 1993) regarding the financing of producers of exportable goods and the goods' export. Is this done through a system of purchase under government contract? What are the terms?

Reply 51.

The Resolution of the Cabinet of Ministers No. 421 of 5 May 1993, "On Payments in Exports under State Contract" established the order of payments by the exporting enterprises and organizations. This Resolution directs the Finance Ministry to carry out advance payment for the products purchased by authorized organizations from the organization's suppliers of the products.

The authorized organizations export the purchased products in compliance with the Resolution, export them and transfer the revenues obtained from the export to the State budget less 0.5 per cent of commission. The Finance Ministry and the Ministry of Economics are entrusted to supervise the execution of this Resolution. Actually, this makes a stimulation mechanism for industrial branches operating for export.

Resolution No. 212 of 22 March 1993, applied only to State contracts and orders for 1993 and now it is not effective.

Question 52.

For subsidized agricultural exports over the past ten years, please provide the quantity, procurement and export prices, and budgetary outlays. Does Ukraine maintain any current agricultural export subsidies?

Reply 52.

At present Ukraine does not maintain agricultural export subsidies.

See Reply 55.

Question 53.

What subsidies are currently available to exporters of agricultural products? Please provide the types, quantities, values and reasons for each.

Reply 53.

See Replies 52, 55 and 129.

Question 54.

What steps does Ukraine plan to take to bring its subsidies regime into conformity with GATT/WTO obligations?

Reply 54.

See Reply 52.

Question 55.

In this section [Exports Stimulation Measures, including Subsidies], Ukraine provides information on its quota related to certain purchases. Are these quotas and government contracts and orders specified solely in terms of quantity sold or exported, e.g., intermediaries must export a percentage of Ukraine's production of a given good in a given year or fiscal period? Or are these quotas specified in terms of total export revenue/foreign currency received?

Reply 55.

In 1994 three Presidential Decrees, three Resolutions of the Cabinet of Ministers and the Resolution of the Supreme Rada "On Overcoming the Crisis in Agro-industrial Complex" of 17 July 1994, introduced changes into the purchase of agricultural products and payments for them, financial support to and credit policy in agricultural production, preferences to be granted to agricultural commodity producers, and pricing mechanism.

In foreign economic activities, the agricultural commodity producers are granted the following advantages:

- The export of agricultural products, raw materials and the goods resulting from their processing are not subject to quotas nor licences if it is effected under the State contracts and orders for supply of these products to State resources;
- Agricultural commodity producers are exempt from a compulsory selling of 50 per cent of foreign currency (except for 10 per cent to be obligatorily credited to the National Bank) gained from the export carried out under State orders and contracts of the commodities of their own production. They are also exempt from the export and import duties in barter operations with the commodities of their own production, if they import oil products, fertilizers, plant protection means, agricultural machinery required for agricultural production;
- In addition, in compliance with Resolution of the Cabinet of Ministers "On State Contracts and Orders for Agricultural Commodity, Raw Materials and Food Products for 1994", agricultural commodity producers that fulfilled their obligations under State contracts and orders are exempt from VAT in selling the commodities produced above the volume of the State contract and order in Ukraine and abroad.

Question 56.

Please explain the progress on privatization in the farm economy, particularly on the collective and State farms. When does Ukraine plan to privatize its entire food procurement and processing system?

Reply 56.

Ownership relations in the agrarian sector are reformed by transforming the State property of the State-owned farms and the collective property of the collective farms into private property, providing for freedom for farmers to make their own choice of economic activities creating on this

basis a multitype economy. The Government brings no pressure on collective and State farms in reorganizing them. In a case, when a State farm is suffering losses in revenues, no compensations are provided for. Property sharing in collective agricultural enterprises is to be mainly completed in 1995. Property of State farms is expected to be privatized during 1995-1997.

Only the trade of fruit and vegetable products and potatoes relates to the system of the Ministry of Agricultural Production of Ukraine, which is represented by 109 wholesale and retail fruit and vegetable integrated enterprises. Together with specialized fruit and vegetable farms, transport, procurement, processing and trade enterprises they are forming a single fruit and vegetable complex, 2,500 tons of vegetables, 1,500 tons of potatoes and about 800,000 tons of fruits, grapes and gourds were annually sold through the wholesale and retail fruit and vegetable enterprises.

In compliance with the Presidential Decree all the shops of fruit and vegetable trade were commercialized in 1993, so they obtained a corporate status. As a result of this the intensive process of their despecialization began. They began to sell alcohols, non-foods and other goods. The fruit and vegetable complex has become broken. The fruit and vegetable integrated enterprises reduced purchases of fruits and vegetables produced and the farms reduced land under cultivation for vegetables. The sales of fruits and vegetables and potatoes fell three to four times.

As the market relations develop, firm-organized trade of agricultural products and products of their processing becomes more widely used. There already are about 1,500 such shops in operation, which function mainly as structural branches and other structural bodies. The firm-organized trade demonstrates its competitiveness and sells at lower prices thanks to lower markups, creates conditions for timely arrangements with suppliers.

Only three of the trade enterprises of the Ministry of Agricultural Production are privatized.

In compliance with the Decision of the Government, free pricing of agricultural products was adopted in 1992. Prices are set by producers themselves irrespective of the form of ownership by the agreement with buyers, the supply and demand being taken into account. The so-called guiding purchasing prices set by the Ministry of Agricultural Production and coordinated with the Ministry of Economics for the products, which are sold by the producers under State orders (grain, sunflower seed and sugar-beet), are a sort of recommendation only and are not compulsory for payments.

As for wholesale and retail prices, they are also formed allowing for supply and demand conditions. At the same time, the governmental price control is introduced for some types of foods. Thus, upper limit of profitability and VAT are set for flour, bread and bakery products (except higher quality products). Every change in prices for meat and products of meat and milk and milk products which depends on external factors, should be declared to the regional executive authorities. The Presidential Decree sets forth a general limit of profitability for industrial enterprises (up to 45 per cent of cost value) and of mercantile addition to the price (up to 55 per cent of producer price).

Sharing is an important pre-condition for further farmership development. About 28,000 farms are already registered, which obtained 558,000 ha of agricultural land. Predominant majority of farms is actively participating in the formation of State resources of agricultural products and raw materials.

As the experience of recent years has shown, farmership formation is restrained by a series of artificial and objective causes. About 40 per cent of farms are privatized and use up to 10 ha of land, which cannot provide efficient farming in the majority of the Ukrainian regions. The level of technical facilities of the farms is very low. This is caused mainly by high prices of agricultural machines, equipment and materials, soft crediting stoppage for these farms, State budget limitations.

Question 57.

In addition to requiring licences for importers and exporters, what other measures does the Government of Ukraine use to control trade in processed and unprocessed agricultural products? What are the requirements and costs of these import and export licences?

Reply 57.

In consistence with the Cabinet Decree No. 734 of 24 October 1994, "On Liberalization of Export Operations" the list of goods for which export is subject to quotas and licensing in 1994 includes grains only. Agricultural export is export duty-free. The Cabinet Decree No. 285 of 3 May 1994, "On Changes in Rates of Import Duty for Some Types of Goods" establishes the rates of import duty for agricultural products to protect domestic producers. Licences are granted by the Ministry of Foreign Economic Relations for a fee equal to 0.1 per cent of the value of the exports. Licences are issued on the basis of the applications, the form of which is determined by the Ministry of Foreign Economic Relations of Ukraine. A copy of the contract is attached to the application and also the document which evidences the receipt of quota from the Ministry of Agriculture must be attached. The licence issues within three days and the reason for any denial of a licence must be clarified in written form. This decision can be appealed in Arbitration Court according to the Civil Procedure Code.

See Reply 10.

Question 58.

Please describe any farm support programmes that are available to Ukrainian farmers. Please provide the types, quantities, values and reasons for each. How and when does Ukraine plan to phase out any such plans under its market reform efforts?

Reply 58.

To socially protect the population in the inflationary conditions the Government may set extra payments for some products at the expense of budgetary funds. Such extras for example, are set beginning from 1 July 1994 for a ton of milk, cattle and poultry sold in the framework of State procurement. Their share in the product price is 15 per cent to 30 per cent.

See Replies 55, 56.

Question 59.

Please explain how agricultural commodity producers qualify for government sponsored credit programmes. Are funds allocated on established credit worthiness standards or are other criteria used? Please provide the difference between interest rates and loan terms for government-sponsored versus commercial loans? What is the default rate on government-sponsored loans to commodity producers?

Reply 59.

The credits to the agro-industrial complex enterprises and organizations are given at 30 per cent interest for them to produce, store, process and supply agricultural commodities under State contracts and orders and, in compliance with the Letter of the National Bank of 5 July 1994, at approximately 250 per cent interest for implementation of the programmes other than those carried out under State

contracts and orders. The requirements of this Letter as to the lower interest do not extend to those agreements that were concluded or prolonged before 1 July 1994. The terms of such agreements may be changed if agreed upon between the two sides. If a bank does not consent to the decrease in the interest to be paid for the credit obtained before 1 July 1994, then the terms of the credit agreement should be observed. Enterprises can be exempt from fines to be imposed due to default of payment as envisaged in the Letter.

Taxation Regime

Question 60.

Does Ukraine's taxation regime assess rates for foreign-owned establishments higher than Ukraine-owned firms?

Reply 60.

No. Moreover, foreign investors are granted preferential taxation terms in compliance with the Laws of Ukraine (Decree of the Cabinet of Ministers "On Foreign Investments Regime" of 20 May 1993, No. 55-93, Law of Ukraine "On the State Programme of Promotion of Foreign Investments" of 19 December 1993, Resolution of the Cabinet of Ministers of Ukraine "On Measures to Implement the Law of Ukraine on the State Programme of Promotion of Foreign Investments" of 31 March 1994, No. 203).

Question 61.

Please provide a complete list by HS number of the imports that are subject to the 10 per cent excise tax. Is the same excise tax applied to domestically produced equivalent products?

Reply 61.

See Reply 30. Also, below listed are the products subject to 10 per cent excise tax.

Ordinary wines (HS 2204, 2205):

domestically produced	10%
imported	200%

Filterless and filter cigarettes, tobacco-pipe tobacco (24022000, 24029000, 24031000):

domestically produced	10%
imported	150%

B&W and colour TV sets, for both categories 10%.

IV. Other Policies Related to Foreign Trade

Exchange Controls and System of Settlements

Question 62.

Please describe how Ukraine complies with the provisions of GATT Article XV.

Reply 62.

The Ukrainian Cabinet Decree "On Currency Regulation System and Exchange Control" of 19 February 1993, (Article 7) establishes that foreign currency may be used as a medium of payment for payments between residents and non-residents.

Since on 28 June 1994, Ukraine officially passed to the GATT Secretariat the "Memorandum on Ukrainian Foreign Trade Regime", which is a constituent part of the GATT/WTO accession procedure, Ukraine has undertaken to fulfil the requirements of Article XV of the General Agreement ("Exchange Arrangements").

Question 63.

Do any Ukrainian laws or regulations differentiate between exporters and other firms in currency exchange rates, availability, or in other manners?

Reply 63.

According to the legislation in force, exporters of any organization and legal forms and irrespective of the form of ownership are not differentiated between as far as currency exchange rate is concerned i.e. they all enjoy equal economic rights. As to importers, the enterprises may buy hard currency at an official exchange rate to effect payments under contracts on some types of products (The decision of the Governmental Committee on Problems of the Use of Hard Currency). This mechanism will be effective until the official Ukrainian Karbovanets exchange rate matches (approaches) the market one.

Question 64.

What are Ukraine's plans regarding the unification of official and market exchange rates and mandatory exchange requirements?

Reply 64.

According to the Presidential Decree of 22 August 1994, "On Perfection of Currency Regulation", a gradual convergence and unification of the official and market exchange rates of Ukrainian Karbovanets was concluded on 1 November 1994.

See Reply 129.

5. Investment Policies

Question 65.

Are there any measures under current laws that are inconsistent with the Uruguay Round TRIMs Agreement or Article III of the GATT? If so, what are Ukraine's plans to bring them into compliance?

Reply 65.

We consider that there are no contradictions with the Agreement on Trade-Related Investment Measures.

The current law on investment policy in Ukraine, in particular the Decree "On Foreign Investment Policy" stipulates that foreign investments, like any other economic activity, are governed by the provisions of the National Investment Policy with some exceptions specifically provided for in the Decree "On Foreign Investment Policy" and "other laws and international agreements" of Ukraine. The law of Ukraine allows the designation of areas where no foreign investors or enterprises are allowed or, if allowed, their activities are limited for reasons of national security (Decree "On Foreign Investment Policy", Clause 7). No such designations have been made to date.

Contributions of foreign investments into the ownership fund of an enterprise which has foreign investment will be exempted from customs and import taxes. (Decree "On Foreign Investment Policy.")

The creation of enterprises which include foreign investors will be governed by the same regulations that cover the establishment of domestic enterprises. (Clauses 19 through 26.)

As to the trade in the internal Ukrainian market, it should be emphasized that particular measures of State regulation of prices for particular goods will apply on equal terms to both residents and non-residents. There are no minimum required investment levels in order to obtain national treatment.

Question 66.

Will Ukraine commit to making consistent with GATT TRIMs provisions any future export incentives in the form of taxes and customs treatment?

Reply 66.

Yes, as soon as economic conditions permit. Currently, the export of products manufactured by companies with foreign investment are covered by the standard provisions of the Law "On Foreign Trade". The export of products manufactured by enterprises with foreign investment shall be granted a certificate on this enterprise's product that will exempt it from either quota or licence requirements.

It should be pointed out that Ukraine intends to create a permanent programme to stimulate exports by enterprises with foreign investments.

Question 67.

Does the State Programme of Encouragement of Foreign Investments in Ukraine of 1993 apply to existing investment or new investment only?

Reply 67.

The Law "On the State Programme of Protection of Foreign Investments in Ukraine" extends to all established enterprises with foreign investments and those to be established in the future. However, such enterprises with foreign investments that bid for preferential duties and guarantees provided for by the Programme must establish their participation in a high-priority industry and, otherwise, meet the criteria established by the Programme.

The State Programme on Encouragement of Foreign Investments in Ukraine of 1993 applies to all foreign investments carried out in Ukraine prior to and after adoption of this Law.

The State Programme of Encouragement of Foreign Investments States clearly the following high-priority spheres for foreign investments to be carried out:

- Agro-industrial complex;
- light industry [fibres, textiles, apparel, footwear];
- timber industry;
- machine building industry;
- medical equipment production;
- metallurgy and production of materials;
- fuel and power production complex;
- transport infrastructure;
- communications;
- chemical and petroleum industry;
- social infrastructure.

In compliance with the Programme, foreign investors putting capital into the above designated sectors, provided that they meet particular qualifying requirements, will have the right to:

- faster equipment depreciation standards;
- longer income tax deduction term by 1, 2, 3 or 5 years depending on the level of investment (Decree "On Foreign Investment Policy," Clause 31).

Question 68.

Is national treatment applied to investors across the board in all economic sectors? Please provide a list of all exceptions to national treatment and the legal basis for these exceptions.

Reply 68.

In compliance with the Decree of the Cabinet of Ministers "On the Regime of Foreign Investments," Section II, Clause 7, a national regime of investment and economic activities has been established as to foreign investments and the forms for their implementation except for cases provided for by the Decree. The national regime can also be modified by international agreements, "On Encouragement and Mutual Protection of Investments" which can be concluded on a reciprocal basis between States regulating the use of this regime and exceptions to it.

Such exceptions were provided for in the Agreement between Ukraine and the United States of America "On Encouragement and Mutual Protection of Investments" and the Agreement between Ukraine and Canada "On Encouragement and Protection of Investments". Thus, the contracting parties enjoy the right to establish or preserve exceptions within the scope of some spheres and problems related to national interests and to reduce these exceptions to a minimum.

The legal basis for such exceptions is formed by the State Programme of Privatization that regulates the rights of both domestic and foreign enterprises related to privatization and the Land Code that prohibits foreign citizens from owning land.

Also, the Agreement between the Ukrainian and Vietnamese Governments "On Encouragement and Protection of Investments" has not established the national regime at all. Investment activities are regulated by the Ukrainian party subject to the Decree of the Cabinet of Ministers "On the Regime of Foreign Investments" and by the Vietnamese party subject to their laws on foreign investments.

In some cases foreign investors get better than national treatment under the bilateral agreements.

Question 69.

Which government bodies play a role in regulating foreign investment? Please describe the areas over which each has jurisdiction.

Reply 69.

A major body handling the problem of investment policy is the Ministry of Economics that works out the directions of investment policy for particular branches of the national economy; supervises the implementation of investment programmes required by the restructuring of the national economy; and draws up recommendations on attracting foreign investments into Ukraine, as a whole and for particular regions and branches of the economy. It also analyzes and forecasts the process of investment and its social and economic effects. Apart from this Ministry, the Ministry of Foreign Economic Relations also takes part in the formulation and implementation of the policy on foreign investment. It registers the foreign representatives and derives conclusions based on the data of their activities. In addition, the Finance Ministry issues certificates to foreign investors granting them the right to obtain the benefits provided for by the programme of encouragement of foreign investments.

Question 70.

What recourse do foreign investors have in the case of disputes with Ukrainian partners that are also State enterprises? What are the remedies in cases where government policies constitute indirect expropriation?

Reply 70.

Any disputes between foreign investors and the government over State regulation of foreign investments will be treated by the Ukrainian courts in compliance with the Decree of the Cabinet of Ministers "On Foreign Investments." However, if agreed upon between the parties and if provided for by the international agreement on protection of foreign investments which covers the particular investment, the dispute can be heard in arbitration (commercial) courts including foreign ones. Thus, the international agreements "On Protection of Investments" will regulate the disputes between an investor and another party to the contract. These agreements designate the procedures for the settlement of these disputes.

The Decree of the Cabinet of Ministers "On the Regime of Foreign Investments" (clauses 9 and 10) establishes the measures to protect the investors' rights in the case of an indirect confiscation. In the first place, these measures are designed to ensure against forced takings and unlawful actions of governmental bodies and their officials, as well as compensation for any damage suffered by an investor. Also, the measure of compensation for any damage is governed by a particular provision of the international agreement, "On Encouragement and Mutual Protection of Investments."

Question 71.

What role, if any, does the Agency for International Cooperation and Investments play in assisting prospective and current investors in gaining necessary government approvals related to their investments? Does it have a role in dispute mediation?

Reply 71.

At present, the Ukrainian government is taking measures to delegate the investment activity functions to the Ministry of Economics and the Ministry of Foreign Economic Relations. Earlier, these functions were fulfilled by the Agency of International Cooperation and Investments. This agency does not have a role in dispute mediation.

Question 72.

Please describe any government support, State aids, tax and fiscal incentives, or other measures designed to encourage investment, foreign or otherwise, in production geared for or dedicated to export markets.

Reply 72.

See Replies 1, 4.

6. State Procurement

Question 73.

Please confirm that in all cases of State procurement, foreign suppliers enjoy the same rights as domestic suppliers. What are these rights? Do they extend across all sectors of economic activity?

Reply 73.

In the case of government procurement, foreign suppliers will be governed by the same laws as domestic suppliers. Exceptions extend only to special purchases of defense goods, subject to special regulations of the Ukrainian government. In the case of government procurement, the products provided by foreign suppliers must meet Ukrainian standards and quality requirements. There are no other constraints on foreign suppliers.

Question 74.

What procedures are in place to ensure that State procurements are transparent and competitive?

Reply 74.

The standards related to government procurement (The Decree of the President, Resolution of the Cabinet of Ministers "On the Formation and Distribution of State Procurement Orders") will be published. These documents provide for competitions to take place between would be contractors in which any enterprise can participate irrespective of their form of ownership.

Question 75.

Does Ukraine intend to become a member of the WTO Agreement on Government Procurement?

Reply 75.

Yes.

Question 76.

How soon does Ukraine expect that privatization of State owned trading enterprises will be completed? What portion of Ukraine's trade, import and export, is accounted for by State-owned enterprises? What is this portion if entities granted exclusive or special privileges to engage in trade are added?

What percentage of industrial imports enter Ukraine through a State trading entity?

Reply 76.

At present, 3.7 thousand trade and public catering enterprises are privatized (total value amounted to 1,009.2 bln. karb., including 281.3 bln. karb. through privatization certificates. A large number of the trade and public catering enterprises (up to 20 percent) have been leased with the possibility of redemption to ownership. Yet the Resolution of the Cabinet of Ministers No. 604 of 31 August 1994, "On Perfection of the Mechanism of Privatization in Ukraine and Strengthening of Control Over Its Implementation" suspended the privatization of the trade enterprises.

Allowing for an incomplete privatization (20 per cent) carried out in 1994 and the fact that the privatization programme for 1995 has not been adopted yet, it is not possible to predict the date of completion of privatization.

For January-June 1994 State owned trading enterprises accounted for about 8.5 per cent of total exports at US\$200 million. Adding trade by entities granted exclusive or special privileges to engage in trade raises this number to about 12 per cent. The percentage of total imports through State trading entities is not more than 15 per cent.

Question 77.

Does Ukraine maintain any State importing agencies? If so, how do domestic wholesale prices for agricultural commodities compare with import prices? Assuming State trading corporations import at world market prices then sell at local prices, how is the price differential accounted for? How are the profits used and losses funded?

Reply 77.

Yes. However, currently there are no significant levels of agricultural imports by State trading companies. As was specified in the Memorandum on the Foreign Trade Regime of Ukraine, the regulations concerning the establishment of the State importing agencies are spelled out in the Decree of the Cabinet of Ministers "On Management of Organizations in State Property" of 15 February 1992 and "On Regulation of Operations of Organizations Involving State Enterprises Participation" of 31 December 1992.

Until recently, the prices for agricultural products were subjected to State regulation. In conformity with the Presidential Decree "On Measures to Decelerate the Growth of Prices" No. 508 of 3 November 1993, the final selling price must not exceed the sum of the production cost plus a 55 per cent marketing margin. Pricing of foreign-origin products is subject only to market conditions.

Question 78.

Please give several examples of State procurement of goods for reprocessing and sale or resale to the general population. Does the government or the enterprise set the export price? On what basis is the export price set? Does the government or the enterprise set export volumes? On what basis are export volumes set?

Reply 78.

From the institutional point of view, the term "government procurement" was understood to mean, until recently, a system of State purchases effected under State contracts and orders. The procedure of the governmental export contract is the following: the producer obtains a credit from the Finance Ministry and sells the produced goods at the internal price to the foreign trade organization which is authorized to export them for world price. After deducting its commission fees the foreign trade organization transmits the resulting export earnings to the State exim bank. The objective of the export carried out on State contracts is to finance essential imports through convertible currency earnings from export of the products which could be marketed relatively easily at the world market and controlled by the Government.

The objective of exports on State orders is to fulfil governmental trade commitments resulting from inter-governmental agreements. In addition, the enterprises concerned have access to imports required for export production. In compliance with the programme of economic reform coordinated with the IMF and World Bank, this system of the export contract and order will be transformed, in

the beginning of 1995, into the Public Procurement System meeting requirements of the Government Procurement Agreement.

Also see Reply 49.

Question 79.

Please provide the estimated volume of inter-enterprise trade in industry and agriculture. Is such trade subject to market forces or government regulation? Please elaborate in good detail how this trade affects the transition to market economic structures. Does inter-enterprise trade provide hidden or implicit subsidies to industry or agriculture?

Reply 79.

The trade between enterprises in industry and agriculture is carried out on the basis of deliveries at free market prices and is not controlled by the Government. It completely conforms to market economy relations. This form excludes the hiding of subsidies. During this transitional period it is not possible to make a valid estimate as to the level of this trade because of the lack of data.

8. Special Economic Zones

Question 80.

Please describe any government support, State aids, tax and fiscal incentives, or other measures designed to encourage investment and production in special economic zones (SEZs). Are these benefits contingent on export? Are firms in SEZs subject to foreign exchange balancing requirements? Are firms in SEZs subject to foreign exchange import substitution or domestic content requirements? How are domestic sales from SEZs taxed? What are the applicable tax rates? Are domestic sales from SEZs subject to taxes that non-SEZ domestic sales are not? If so, please describe these taxes.

Reply 80.

Actually, at present there are no special economic zones.

9. Policies Concerning Intellectual Property Rights

Question 81.

How does Ukraine's current regulation and enforcement of IPR match WTO requirements?

Reply 81.

See Reply 83.

Question 82.

What subject matter is excluded from patentability under Ukrainian law?

Reply 82.

In compliance with the Law "On Protection of Rights on Inventions and Useful Models" (Article 3, clause 3) the following subject matters are excluded from patentability:

Discoveries, scientific theories and mathematical methods;

economy organization and management methods;

plans, conventional signs, schedules, rules;
methods of mental operation ;

computer programmes;

artistic design results;

layouts of integrated circuits;

plant varieties and animal breeds.

Question 83.

Is Ukrainian law currently in conformity with the TRIPS Agreement? If not, what plans does Ukraine have to bring its system into conformity, and in what time frame?

Reply 83.

The current Ukrainian patent legislation is based on the Model Patent Law, which was developed by the World Intellectual Property Organization. It, as a whole, complies with the conditions of Trade-Related Aspects Agreement. The Law contains an article on international agreements, according to which if the rules, established by an international agreement of Ukraine differ from the rules, established by Ukrainian legislation, then the internationally agreed rules are applied (Article 3).

Question 84.

Does Ukrainian patent law provide all the rights listed in Article 28 of TRIPS with respect to product and process patents? If not, what rights are not available?

Reply 84.

The Law provides granting of all the rights, which are cited in Article 28 of Trade-Related Aspects Agreement (Article 23).

Question 85.

Are there any restrictions on a patent owner's rights to assign, transfer, licence rights under a patent?

Reply 85.

There are no restrictions on a patent owner's right to assign and transfer rights.

Question 86.

Under what conditions may compulsory licences, including those for use by the government or third parties authorized by the government, be granted? Will modifications be needed to implement the provisions outlined in Article 31 of TRIPs?

Reply 86.

A patent owner is obliged to grant an allowance (to grant a licence) for use of an invention (or useful model) to an owner of a later-dated patent, if the invention (or useful model) of the latter is designed to achieve another purpose or possesses substantial technological-economic advantages and cannot be used without infringement of the first owner's rights. At this, granting of such an allowance may be conditioned by appropriate allowance from the later-dated patent owner's side, which is obliged to grant an allowance, if his invention (useful model) improves the invention (useful model) of the earlier patent owner or is designed to achieve the same purpose. The allowance is granted in the scope essential for use of the invention (useful model) by the patent owner, which demanded such an allowance.

Disputes regarding licences are settled judicially.

Ukrainian regulations to implement the provisions, described in Article 31 of Trade-Related Aspects Agreement, need no changes.

Question 87.

What is the size of the examining core in Ukraine's Patent Office? How many applications are submitted annually? What is the average pendency period for an application?

Reply 87.

Examination of applications for granting a patent in Ukraine for inventions and useful models is executed by the Patent Examination Centre (PEC), consisting of 40-staff persons. Patents (patent deeds) are executed and issued by the Register Board of the State Patent Office of Ukraine.

309 patent applications were filed in 1992, 10,596 in 1993, 12,718 in 1994. Actually the PEC does not yet execute examinations. Application examination is conducted within eight to 10 months.

*Question 88.

How many patents have been issued to date? In what technological categories?

Reply 88.

At this time about 7,200 patents for inventions are registered.

Question 89.

How long has the patent office been in operation?

Reply 89.

The State Patent Office of Ukraine is in operation since the beginning of 1992.

Question 90.

What opportunities exist for judicial review of a decision to revoke a patent, as required by Article 32 of TRIPS?

Reply 90.

Opportunities for judicial review of patent revocation are stated in Articles 28 and 30 of the Law: Article 28. "Patent revocation".

1. A patent may be revoked fully or partially in a case of:

Disparity between patented invention (useful model) and conditions for patentability, defined by this Law;

presence of features in invention (useful model) claims, which were absent in the application filed;

infringement of clause 2, Article 32 of this Law.

2. Any person is eligible to submit objection against a patent to the Appeal Council during six months after patent grant notice publication date. It must be examined in the Appeal Council during six months after the date it was received. A patent owner must be acquainted with the objection. The Appeal Council examines the objection in the frames of reasons stated in it. The person, which submitted an objection, as well as the patent owner may participate in its examination. The Appeal Council verdict may be appealed judicially.

If objection against patent granting was not received in the Appeal Council during the term stated, the patent may be revoked judicially only.

The patent or its part, which are revoked, are considered as void from the patent grant notice publication date".

"Article 30. Disputes settled judicially.

1. The disputes, related to application of this Law, are settled by a court, or a court of arbitration as it is established by Ukrainian legislation.
2. Courts, according to their jurisdiction, examine the disputes concerning: authorship to invention (useful model); determination of patent owner; infringement of patent owner's property rights; entering and execution of licence agreements; right for previous use; inventor remuneration; recompenses.

Courts examine also other disputes, related to protection of rights, given by this Law".

Question 91.

Please provide a description of Ukraine's laws on copyright protection. What works are covered? What is the term of protection? Is copyright protection afforded on a national treatment basis, and, if it is not, what are the exceptions?

Reply 91.

Ukraine's Law "On Copyright and Associated Rights" passed by the Supreme Rada on 23 December 1993, was enforced on the day of its publication, 23 February 1994, and won practical approval of the World Intellectual Property Organization (WIPO).

In compliance with Article 5 of the said Law, protection is provided for works of science, literature and arts, including:

1. Written literary works of fictional, scientific, technical or practical nature (books, booklets, articles, computer programmes etc.);
2. Orations, lectures, speeches, sermons and other oral works;
3. Musical works with or without words;
4. Dramatic and musical dramatic works, pantomimes, works of choreography and other works created for stage presentation;
5. Audio-visual works;
6. Sculptures, paintings, drawings, engravings and other pictorial works of art;
7. Architectural works;
8. Photographs;
9. Works of applied art if they are not protected by a special law on industrial property;
10. Illustrations, maps, plans, sketches, plastic works pertaining to geography, geology, topography, architecture and other branches of science;
11. Adaptation for the stage of works mentioned in paragraph 1 of this Article and reworking of folklore for theatrical performance;
12. Translations, adaptations, arrangements and other kinds of remaking or works and folklore (derivative productions) without detriment to the protection of original works serving as a basis for such works;
13. Collections of works, collections of folklore adaptations, encyclopedias and anthologies, collections of common data including the databases and other composite works, provided they are the result of creative effort aimed at selecting, adjusting or regulating the contents without detriment to the protection of works contained therein;
14. Other works.

The said Law protects both published and unpublished works of science, literature and arts, irrespective of their purpose, genre, quality, size and aim (education, information, popularization, entertainment etc.), and the method of reproduction in oral, written or any other form.

In compliance with Article 24 of this Law, copyright protection is ensured during the whole of the author's life and 50 years after his/her death.

Copyright is granted on a national basis. In keeping with Article 8, the author's right is protected irrespective of citizenship and residence, if his/her works have been first published or unpublished but are present in an objective form in the territory of Ukraine.

Question 92.

Does Ukraine plan to join the Berne Convention? What changes in the copyright law would have to be made to meet the requirements of the Berne Convention?

Reply 92.

Ukraine is planning to join the Berne Convention on Protection of Literary and Artistic Works. The problem had been discussed with the WIPO which resolved that Ukraine's Law "On Copyright and Associated Rights" was fully in line with the Berne Convention requirements. Ukraine's State Agency for Copyright and Associated Rights (SACAR) has prepared material for Ukraine's accession to the Bern Convention; the material is being studied by the Foreign Ministry and will then be submitted for consideration by the President and Supreme Rada.

Question 93.

What changes in Ukraine's copyright laws would be needed to meet the requirements of the TRIPS Agreement? What is the status of efforts to bring Ukraine's law into compliance with TRIPS?

Reply 93.

The Ukraine's Law "On Copyright and Associated Rights" meets the requirements stipulated by Chapter I, part II, of the Agreement on Aspects Concerning Trade in Intellectual Property Rights (ACTIPR).

Question 94.

What system is in place now for the enforcement of copyright, in both civil and criminal law? What is the average time frame for litigations of copyright infringement suits?

Reply 94.

On 4 February 1994, the Supreme Rada adopted the Law "On Introduction of Changes in the Civil Code of the Ukrainian RSR" which effected the following amendments to the Civil Code:

"Article 472. Ukraine's Legislation on Copyright and Associated Rights.

The Law of Ukraine protects personal (non-property) and property rights of authors and their legal successors, related to the creation and utilization of the works of science, literature and arts (copyright) and the rights of performers, phonogram manufacturers and broadcasting agencies (associated rights).

Relations promoted by the creation and utilization of the objects of copyright and associated rights are regulated by the Ukraine's Law "On Copyright and Associated Rights" and other legislative acts of Ukraine".

In view of the preparation of the Ukraine's new Criminal Code, on 20 January 1994, the Ukraine's SACAR submitted to the Attorney General of Ukraine a proposal to formulate Article 136 of the Ukraine's Criminal Code in force in the following way:

"Article 136. Violation of Copyright and Associated Rights".

Unlawful reproduction of works and objects of associated rights (counterfeiting), compulsive authorship, misappropriation of authorship (plagiarism) are punishable by up to five-year imprisonment or a fine between 100 and 50,000 salaries established by the Ukraine's legislation".

Court proceedings against violation of copyright take up four to five months on the average, while consideration of cases involving additional expertise lasts nearly one year.

Question 95.

How are sound recordings, database compilations, and computer software protected?

Reply 95.

In compliance with Article 34 of the said Law, manufacturers of phonograms have an exclusive right to allow or prohibit their reproduction, distribution of copies by way of first sale or other kind of alienation, or by leasing, hiring out, rental and other means of transfer, regardless of first sale, as well as alteration and import of phonograms.

Article 37 of the Law regulates the use of phonograms issued for commercial use. Such phonograms may be utilized without the consent of their manufacturers or performers recorded therein but with due remuneration in case of:

1. Public use of phonograms;
2. Broadcast of phonograms;
3. Transmission of phonograms by wire.

The collection, distribution and payment of remuneration are effected by one of the agencies controlling the rights of programme manufacturers and performers on a collective basis in compliance with the agreements between such agencies.

The amount of remuneration and the terms of payment are specified by an agreement between the user of phonograms or an association of such users on the one hand and the agencies controlling the rights of programme manufacturers and performers on the other hand.

The size of remuneration is set for each kind of phonogram application.

In compliance with the Directive of the CEC (Council of the European Communities) on Legal Protection of Computer Programmes as of 14 May 1991, Article 5 of the Ukraine's Law "On Copyright and Associated Rights" stipulates that databases and computer programmes be treated with due regard to the requirements of the said CEC Directive.

Question 96.

How does Ukraine's law treat rental rights? What works are subject to the requirement that authors and their successors in title may authorize or prohibit the commercial rental of originals or copies of their works?

Reply 96.

The Ukraine's Law contains no such concept as "leasing rights". Instead, Article 4 uses the term "hiring out", meaning that "ownership rights" to the original or copy of a work or phonogram may be transferred for a certain period with the aim of deriving direct or indirect commercial benefit. Used in the same Article is the term "person in possession of copyright and associated rights" implying "an author or performer in the event that property rights are possessed by the author or performer, as well as a physical or legal entity to which property rights have been transferred".

Article 27 of the Law speaks of the transfer (cession) of copyright: "Property rights may be transferred (ceded) by the author or another person in possession of copyright to another person. The author or another person in possession of copyright (licensor) may also give a licence to another person (licensee) for the use of the work in accordance with such a licence. The transfer (cession) of copyright and the issue of a licence are to be officially registered in a copyright agreement".

Question 97.

What is the scope of compulsory licensing of copyrightable works? Under what conditions would compulsory licences be granted?

Reply 97.

Article 39 of the Ukraine's Law makes a provision for a collective control of property rights: "To secure property rights authors and persons may entrust control of their property rights on a collective basis to agencies not authorized to engage in commercial activities. "Such agencies operate on the basis and within the framework of authority voluntarily delegated to them by authors and other persons in possession of copyright and associated rights". The activities of agencies in control of property rights on a collective basis are specified in Article 40 of the Law, which, among other things, says that: "Agencies which control property rights on a collective basis may be authorized to issue licences to users of works and objects of associated rights".

"All claims of ownership that may be lodged by persons in possession of copyright and associated rights against users as regards utilization of licences are to be considered by agencies which issue such licenses."

Question 98.

What changes in Ukrainian law are necessary for compliance with TRIPs trademark obligations? When will such changes be made?

Reply 98.

The Law "On Trademark Right Protection". The Law was examined in the World Intellectual Property Organization (WIPO) and as a whole complies with the Trade-Related Aspects. Amendments to the Law are not currently expected. In addition, the Law includes an article on international agreements

(Article 3), according to which if the rules, established by international agreement of Ukraine, differ from the rules, which are provided by the Ukrainian legislation, the rules of international agreement are used.

Question 99.

To what extent do well-known marks receive protection under the existing law, and future amendments, if any? What is the definition and scope of protection of a well-known mark?

Reply 99.

Well-known trademarks receive protection according to Article 6 of the Law: "Article 6. Grounds for refusal in protection of the rights".

Question 100.

To what extent does a well-known mark not registered in Ukraine receive protection? What specific rights does the owner of an unregistered mark have?

Reply 100.

A mark cannot be registered as a trademark, if it is identical or similar to the extent, that it may be confused, with:

- the marks, registered earlier or submitted for registration in Ukraine under another person's name for similar goods and services;
- marks of other persons, if these marks are protected without registration on the basis of international agreements, where Ukraine is a participant;
- firm-names, which are well-known in Ukraine and belong to other persons, which obtained their rights before the application was submitted to the Office about similar goods and services;
- appellation of origin, except for cases, when they are included into the mark as non-protected elements and are registered by person's name, which have the right to use this name;
- certificate marks, registered as required.

Protection of world-known marks not registered in Ukraine is accomplished according to the Ukrainian Law "On Restriction of Monopolism and Prevention of Unfair Competition" (Article 7)

Question 101.

What is the role of the Trademark Registrar in infringement actions? Is his approval/opinion required?

Reply 101.

An authorized executive body, being informed by the State Patent Office of Ukraine about the said infringements, may use actions listed in Article 164 of "Ukrainian Code on Administrative

Infringements", according to which "illegitimate use of invention, process patent, industrial design, trademark, service mark, collective trademark, firm-naming or marking of goods entails a fine of up to 50 minimum salaries with forfeiture of the goods produced, instruments of production and raw materials or without it". According to the Ukrainian Cabinet Decree the fine is made 10 times higher.

Question 102.

What are the grounds on which the registrar may refuse to register a mark?

Reply 102.

The grounds for the refusal of mark registration may be disparity between the mark and the conditions for right protection granting, which are outlined in Article 5 (Clause 1) as well as the grounds, put forth in Article 6.

"Article 5. Conditions for granting right protection

1. Right protection is granted to the mark, which does not contradict public interests, principles of humanity and morals and which does not fall under the grounds for refusal in granting right protection, established by this law."

"Article 6. Grounds for refusal in granting right protection

1. According to this Law the signs, that could not be granted right protection, depict:

State insignias, flags and emblems;

official names of States;

emblems, abbreviated or full names of international intergovernmental organizations;

official control, guarantee and assay marks, stamps;

decorations and other distinctions.

Such signs may be introduced into the mark as non-protected elements, if there is a consent of proper authority or their owners.

2. According to this Law the signs which also could not be granted right protection, are the ones, which:

Have no distinctive ability;

are widely used for marking of goods and services of some kind;

indicate kind, quality, quantity, properties, purpose, value of goods and services as well as place and time of good production or sale or giving service;

are deceptive or may cause deception regarding goods, service or person, which produces the goods and provides services;

are commonly used as symbols and terms.

The signs from paragraphs 2, 3, 4, 6 of this clause may be introduced into a mark as non protected elements, if they do not dominate in the mark depiction.

3. A mark cannot be registered as a trademark, if it is identical or similar to the extent, that it may be confused, with:

Marks, which were registered earlier or submitted for registration in Ukraine under another person's name for similar goods and services;

marks of other persons, if these marks are protected without registration on base of international agreements, where Ukraine is a participant;

firm-names, which are well-known in Ukraine and belong to other persons, which obtained their rights before the application was submitted to the Office for similar goods and services;

appellation of origin, except for cases, when they are included into a mark as non-protected elements and are registered under person's name, which have right to use these names; certificate marks, registered in proper order."

4. Signs which reproduce the following, are not registered as marks:

Industrial designs, rights on which belong to other persons in Ukraine;

names of well-known in Ukraine works of science, literature and art or quotations and characters from them, works of art and their fragments without consent of copyright owners or their subsequent owners;

surnames, names, pseudonyms and derivatives from them, portraits and facsimile of well-known persons in Ukraine without their consent."

Question 103.

Are there minimum/maximum limits on penalties for trademark infringement?

Reply 103. *

See Clause 4, Section II of this Addenda.

Question 104.

Does registration of a mark satisfy notice of the exclusive right of the right holder to potential infringers? Does a right holder have to give actual notice to an infringer before the infringer is liable? Or is registration of the mark sufficient?

Reply 104.

These questions are regulated by Articles 12 and 15 of the Law:

"Article 12. Publications about certificate issue

1. The Office publishes in its official bulletin notices, defined by it, about certificate issue on base of decision about mark registration and if there is a document about payment of certificate issue duties.

If the document about payment of certificate issue duties is not received by the Office during three months after the date on which an applicant received decision about certificate issue, then publication is not implemented and application is considered recalled.

2. After notice publication about certificate issue any person is eligible to be acquainted with application materials in a way, that is determined by the Office."

"Article 16. Rights implied by certificate

3. Certificate gives to its holder right to ban for other persons to use registered mark without his consent, except for cases, when according to this Law using of mark is not considered to be infringement of certificate holder's rights."

Question 105.

For what period of time are trademark registrations valid? May registration be renewed indefinitely?

Reply 105.

This question is regulated by Article 5:

"Article 5. Conditions of the granting of right protection

Mark ownership is certified by certificate. Duration of certificate is 10 years after date of application submission to the Office and is extended by the Office on holder's application, submitted during the last year of certificate duration, every time for 10 years. The procedure for extension of certificate term is established by the Office. Effect of certificate is terminated before its term under conditions, listed in Article 18 of this Law."

Question 106.

Does Ukrainian law contain a use requirement to maintain trademark rights?

Reply 106.

This question is regulated by Article 17:

"Article 17. Duties implied by certificate

Certificate holder is obliged to fairly use exclusive right, implied by certificate. If a mark is not used or is not sufficiently used in Ukraine during three years after certificate issue notice publication date or after date, when mark use was terminated, any person may turn to a court (court of arbitration) with an application about termination of certificate effect before its term.

When examining this question a court (court of arbitration) may take into consideration the certificate holder's proofs, that the mark was not used owing to circumstances beyond his control."

Question 107.

Does Ukrainian law allow for registration of identical or similar marks for the same or related goods to different parties?

Reply 107.

No, it does not. These questions are regulated by Article 6 (Clauses 2, 3):

"Article 6. Grounds for refusal in granting right protection. According to this Law the signs, which also cannot be granted right protection are the ones, which:

Have no distinctive ability;

are widely used for marking of goods and services of some kind;

indicate kind, quality, quantity, properties, purpose, value of goods and services as well as place and time of good production or sale or giving service;

are deceptive or may cause deception regarding goods, service or person, which produces the goods and gives services;

are commonly used as symbols and terms.

The signs from paragraphs 2, 3, 4, 6 of this clause may be introduced into a mark as non-protected elements, if they do not dominate in the mark depiction.

A mark could not be registered as a trademark, if it is identical or similar to the extent, that it may be confused, with:

marks, which were registered earlier or submitted for registration in Ukraine under another person's name for similar goods and services;

marks of other persons, if these marks are protected without registration on base of international agreements, where Ukraine is a participant;

firm-names, which are well-known in Ukraine and belong to other persons, which obtained their rights before the application was submitted to the Office about similar goods and services; appellation of origin, except for cases, when they are included into a mark as non-protected elements and are registered under person's name, which have the right to use these names;

certificate marks, registered in proper way."

Question 108.

Is the recordation of an assignment mandatory? If so, what are the ramifications of not recording an assignment?

Reply 108.

Yes, right assignment recordation is mandatory (Article 16, Clause 6): "Article 16. Rights implied by the certificate".

Mark ownership assignment contract and licence contract are considered to be valid if they are composed in writing and are signed by parties. Said contracts enter into force regarding any other person after their recordation in the Office only.

Question 109.

To what extent may decisions of the trademark registrar be appealed in a court of law?

Reply 109.

Decisions may be appealed according to article 19, clause 2:

"Article 19. Certificate revocation

Any person may submit an objection against certificate issue to the Appeal Council during the six months after certificate issue notice publication date. The objection must be examined by the Appeal Council during six months after it is received. Certificate holder must be acquainted with the objection. The Appeal Council examines the objection in frames of reasons stated in it. The person, who subjected the objection as well as a certificate holder may participate in its examination. The Appeal Council decision may be appealed judicially.

If the objection against certificate issue was not received by the Appeal Council during specified term, the certificate may be revoked judicially only.

Revoked certificate or its part are considered void from application filing date.

Question 110.

What form of protection does Ukraine provide for industrial designs? Does it expect to make any modifications to its laws to implement the industrial design provisions of TRIPs?

Reply 110.

Under the Ukrainian Law "On Industrial Design Right Protection" the ownership of industrial design is certified by patent.

The duration of an industrial design patent is 10 years from the date of application filing to the Office and is extended by the Office on patent owner's application, but for not more than five years (Article 5, Clause 5).

The Ukrainian Law was examined by the World Intellectual Property Organization (WIPO) and complies as a whole with the Trade-Related Aspects. Amendments to the Law are not currently expected.

Question 111.

Does Ukraine now protect layout designs? Are there any changes necessary to implement TRIPS? (Including obligations on compulsory licensing, border control and royalties)? In what form is this protection provided?

Reply 111.

In compliance with the Law "On Protection of Rights on Inventions and Useful Models" (Article 3, clause 3) the following subject matters are excluded from patentability:

Layout designs.

This surely will require appropriate amendments in implementing the TRIPS obligations.

Question 112.

Does Ukraine provide the full range of relief required by TRIPS, including injunctive relief, damages, seizure and destruction of infringing goods, provisional relief, border relief and criminal sanctions? In each case, indicate under what law such protection is provided, and whether amendments will be required to fully implement Articles 41-61 of TRIPS?

Reply 112.

See Replies 86 and 90.

Question 113.

Does Ukraine protect trade secrets? If so, in what form? Are changes necessary to implement the TRIPS obligations?

Reply 113.

Yes it does. In compliance with the Law of Ukraine "On Commercial Secrets" and the Law of Ukraine "On Enterprises in Ukraine" of 18 September 1992 (Article 30), the protection of commercial secrets makes an integral part of the complex of security measures for a particular enterprise. A commercial secret is understood to be the data on trade activities allowing certain preferences. Such data should be in possession of a private person. Exceptions are made by the data making up a state secret, as well as subjects of intellectual property protected by the patent and copyright laws.

Question 114.

Does Ukraine have any laws that would fall into the anticompetitive practices provisions of Article 40 of TRIPS? If so, please specify?

Reply 114.

No it does not.

Question 115.

Are there any restrictions on the licensing of intellectual property, on either domestic or foreign nationals?

Reply 115.

There are no such restrictions.

V. Institutional Board of Trade and Economic Relations

1. Bilateral Agreements

Question 116.

Please provide information on the agricultural provisions of the future free-trade intent with the EU, especially how and when it will be implemented and what preferences will be given to which EU products?

Reply 116.

The Agreement on partnership and cooperation between Ukraine and EU provides for discussion of the establishment of a free-trade regime in 1998 or when Ukraine becomes a member of the WTO.

Question 117.

Please provide an updated list of countries that Ukraine has on bilateral or multilateral trade agreements. What are the specific trade provisions granted through these agreements?

Reply 117.

Foreign economic relations with Baltic countries, Moldova, Belarus were based in the first half 1994 on the bilateral international basis. According to the acting legislation, exporters of any organization and legal forms and irrespective of the form of ownership are not differentiated between as far as currency exchange rate is concerned i.e. they all enjoy equal rights.

Now more than 93 inter-State bilateral agreements and protocols between Ukraine and regional countries are signed, of them 31 with Belarus, 30 with Moldova, four with Latvia, 20 with Lithuania, nine with Estonia (66 of them on intergovernmental level: 21, 18, 4, 16, 8, respectively).

Agreements on trade and economic cooperation with addenda on mutual supplies of basic types of products (goods) for 1994 are signed with all the regional countries, except Estonia. Of this quantity two agreements and a protocol were signed with Lithuania:

On friendship and co-operation;

on encouragement and mutual protection of investments;

on trade and economic cooperation.

Two agreements were signed with Estonia:

On travelling of diplomatic passport holders;

on cooperation in fields of education, culture, science and technologies.

The Ukrainian Ministry of Communications and the Belarus Ministry of Communications and Informatics signed the following agreements: on problems of interchange, post transportation and mutual arrangements for post transportation and handling; on cooperation in periodicals delivery; on building of fibre-optic communication line Gomel-Kiev.

The National Bank of Republic of Moldova and the National Bank of Ukraine signed an agreement on organization of mutual arrangements in connection with introduction of national currency in the Republic of Moldova (Lei).

In addition, the Government formed and confirmed the composition of the Ukrainian part of bilateral Ukrainian-Moldovian, Ukrainian-Lithuanian and Ukrainian-Estonian Intergovernmental Commissions on Trade and Economic Cooperation.

The free-trade agreements, which were signed earlier with Belarus and Lithuania, are not ratified by the Ukrainian Supreme Rada. The problem of accelerating the ratification of these agreements is urgent. The agreement with Belarus is ready for ratification and work on agreement with Lithuania is going on.

In particular, the Rules of Origin and the Protocol on Exclusion from Free-Trade Regime, which constitutes an integral part of the Agreement between the Ukrainian Government and the Government of Lithuanian Republic on Free Trade of 4 August 1993, were signed with the Lithuanian side.

Draft Protocol between the Ukrainian Government and the Government of the Lithuanian Republic on Trade and Economic Cooperation is worked out and passed over to the Lithuanian Side. A mechanism for mutual arrangements and national debt service is being worked out by the Ukrainian and Belarusian National Banks (the works on the debt liquidation project, initiated by the Belarusian side, are directed by the Ukrainian Ministry of Finance).

Draft agreements on encouragement and mutual protection of investments are developed and forwarded to the Moldovian, Latvian and Estonian sides, the draft will be sent to Belarus in the nearest future.

Draft intergovernmental bilateral agreements on cooperation of bordering Ukrainian and Belarusian regions and, respectively, administrative-territorial units of the Republic of Moldova are forwarded to the Belarusian and Moldovian sides.

The developed Draft Agreement between the Ukrainian Government and the Government of the Republic of Moldova on trade and economic cooperation is under examination in appropriate ministries and offices. Then, it will be forwarded to Moldova.

The following draft agreements, prepared by some other ministries and offices, were also coordinated:

with Belarus:

On labour and social security of expatriate workers;

on military-technical cooperation;

on conditions of national debt service as a result of trade and economic relations in 1992-1993;

on non-commercial payments;

on cooperation in environmental protection;

with Moldova:

On cooperation in the field of industrial property protection;

on guarantee of rights in the field of pensions;

on rights acknowledgement and regulations on ownership relations for former USSR property;

on hail-protective works in bordering regions;

on mutual acknowledgement of state licences to construction activities issued by licence centres of Ukraine and the Republic of Moldova.

In addition, draft agreements on forming of intergovernmental Ukrainian-Belarusian, Ukrainian-Moldovian and Ukrainian-Latvian commission on problems of trade and economic cooperation are developed and sent to relevant sides.

Work on expansion of bilateral cooperation in all branches of national economy with regional countries is going on.

The following factors will facilitate intensification of foreign trade activities and primarily expansion of trade and economic relations:

Acceleration of ratification of multilateral agreement on free trade within CIS, signed in Moscow on 15 April 1994, by governments of 12 countries;

expansion of mutual relation between Ukrainian banks and regional countries;

development of foreign-trade relations directly between economy subjects of all ownership types;

further liberalization and simplification of export-import operations between these countries;

stabilization of currency-financial system in both Ukraine and former USSR countries.

List of Agreements Signed between Ukraine and Some Foreign States concluded with a Direct Mediation of the Ministry of Foreign Economic Relations of Ukraine

<u>State</u>	<u>Trade agreement</u>	<u>Investment agreement</u>	<u>Mixed commission</u>
Croatia	00.05.94	-	-
Hungary	31.05.91	11.10.94	22.05.92
Czechoslovakia	30.07.91	-	-

<u>State</u>	<u>Trade agreement</u>	<u>Investment agreement</u>	<u>Mixed commission</u>
Poland	04.10.91	12.01.93	12/01/93
Cuba	20/12.91	-	-
Greece	15.01.94	31.08.94	31.08.94
Vietnam	23.01.92	-	17.11.93
India	27.03.92	-	04.94
Iran	26.04.92	-	-
Turkey	02.05.92	-	-
USA	06.05.92	OPIC 05.03.94	05.03.94
Finland	14.05.92	14.05.92	-
Mongolia	18.05.92	05.11.92	05.11.92
Estonia	26.05.92	-	06.07.93
Romania	28.07.92	-	19.04.94
Georgia	06.08.92	-	-
China	08.08.92	31.08.92	31.10.92
Bulgaria	05.10.92	-	11.03.93
Denmark	14.06.94	23.10.92	-
Russian Federation	24.05.93 (Foreign trade)		
Great Britain	14.06.94	10.02.93	-
Germany	14.06.94	15.02.93	-
Egypt	24.12.92	24.12.92	24.12.92
Belarus	16.11.92 (Foreign trade)		
Moldova	20/03.93	-	-
PRC	15.06.93	-	08.06.94
Algeria	01.07.93	-	-
Lithuania	04.08.93 (Foreign trade)	08.02.94	-
Slovak Republic	26.08.93	-	-
Austria	31.08.93	-	-
Uzbekistan	-	20.02.93	-
Kazakhstan	23.12.93	-	-
Kirgiziya			
Azerbaijan	30.12.93		
Turkmenistan	08.02.94		
Tunisia	07.12.93		
Czech Republic	17.03.94	17.03.94	
Canada	31.03.94		
France	14.06.94	03.05.94	
Spain	14.06.94		
Italy	14.06.94		
Portugal	14.06.94		
Ireland	14.06.94		
Netherlands	14.06.94	14.07.94	

<u>State</u>	<u>Trade agreement</u>	<u>Investment agreement</u>	<u>Mixed commission</u>
Belgium	14.06.94		
Luxembourg	14.06.94		
Israel		16.06.94	
Armenia	07.10.94 (Foreign trade)	07.10.94	

Question 118.

Please provide information on all current or planned trade agreements with FSU countries.

Reply 118.

List of bilateral current and planned agreements between Ukraine and Transcaucasian and Central Asian States.

(as of 25 October 1994)

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
<u>Azerbaijani Republic</u>						
1.	Agreement between Government and Azeri Government on Free Trade (draft).					Regime: free trade, No exclusions. No duties, taxes nor charges.
2.	Agreement between Ukrainian Government and Azeri Government on trade and economic cooperation for 1994.	Vice Prime Minister - Shmarov.	30 December 1993, Kiev	31 December 1994		Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according Add. No. 1 and No. 2.
3.	Agreement between Ukrainian Government and Azeri Government on trade and economic cooperation in 1995 (draft).					Products and goods supply defined in Add. Nos 1 and 2. Exemptions from export and import duties for supplies according to Add. Nos 1 and 2.

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
4.	Agreement on interbank settlements between Ukrainian and Azeri National Banks in connection with introduction of Azeri national currency.	Deputy Administrative Head - Mityukov	18 March 1994, Kiev		Not defined	Defines mechanism for mutual settlements.
<u>Republic of Georgia</u>						
1.	Agreement between Ukrainian Government and Georgian Government on Free Trade (draft).					Regime: free trade, no exclusions. No duties, taxes nor charges.

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
2.	Agreement on development of trade and economic cooperation. Between Ukraine and Georgian Government.	PM Fokin	6 August 1992 Tbilisi	5 years		Most favourable treatment
3.	Protocol to Agreement on development of trade and economic cooperation between Ukrainian and Georgian Government of 6 August 1992 on mutual support of products and goods in 1994.	Acting Prime Minister	13 April 1994, Kiev	To 31 December 1994		Supplies of products and goods according to Add. Nos. 1, 2, 3 and 4. Supplies according to Add Nos. 3 and 4 are on clearing base and are exemptions from export and import duties.
4.	Protocol to Agreement on development of trade and economic cooperation between Ukrainian and Georgian Government of 6 August 1992 on mutual supplies of products and goods in 1995 draft.					Supplies of products and goods according to Add. Nos. 1 and 2 are exempted from export and import duties, taxes and charges.
5.	Agreement on settlement organization between Ukrainian and Georgian National Banks in 1994.	National Bank of Ukraine	13 January 1994 Kiev	To 31 December 1994		Defines mutual settlement mechanism.
<u>Republic of Armenia</u>						
1.	Agreement between Ukrainian Government and Armenian Government on Free Trade.	Prime Minister - Masol	7 October 1994		Not defined	Regime-free trade, no exclusions. No duties, taxes nor charges.

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
2.	Agreement between Ukrainian Government and Armenian Government on trade and economic cooperation in 1994.	Vice Prime Minister - Landyk	24 December 1993 Ashgabat	31 December 1994		Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.
3.	Agreement between Ukrainian Government and Armenian Government on trade and economic cooperation in 1995.	Prime Minister Masol	7 October 1994 Kiev	31 December 1995		Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2. Ukrainian State Committee on Resources and Armenian Ministry of Material Resources are responsible for the supplies.
4.	Agreement on settlement organization between Ukrainian and Armenian National Banks in 1994.	Deputy Administrative Head - Mityukov	23 September 1994		Not defined	Defines mutual settlement mechanism.
<u>Republic of Kazakhstan</u>						
1.	Agreement between Ukrainian Government and Kazakhi Government on Free Trade.	For Ukrainian Government - Masol	17 September 1994 Almaty		Not defined	Regime-free trade, no exceptions. No duties, taxes and charges.

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
2.	Agreement between Ukrainian Government and Kazakhi Government on trade and economic cooperation in 1994.	For Ukrainian Government - Zvyagilskyi	23 December 1993, Ashgabat	31 December 1994		Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.
3.	Agreement on settlement organization between Ukrainian and Kazakhi National Banks and Governments in 1994. (draft)	Acting Prime Minister Zvyagilskyi - Head of National Bank Yushchenko	23 September 1994	31 December 1994		
4.	Addendum No. 1 to Agreement on settlement on organization and Kazakhi National Banks and Governments in 1994 of 20 January 1994.	First Deputy Head of Ukrainian National Bank Veselovskyi	2 September 1994, Almaty			
5.	Agreement between Ukrainian Government on trade and economic cooperation in 1995 (draft).					Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from import duty for supplies according to Add. No. 1 and No. 2.
<u>Kyrgyz Republic</u>						
1.	Agreement between Ukrainian Government and Kyrgyzi Government on trade and economic cooperation in 1994.	Acting Prime Minister - Zvyagilskyi	24 December 1993, Ashgabat	31 December 1994		Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
2.	Agreement between Ukrainian Government and Kyrgyzi Government on Free Trade.	For Ukrainian Government - Masol	17 September 1994, Almaty		Not defined	Regime-free trade, no exceptions. No duties, taxes and charges.
3.	Agreement between Ukrainian Government and Kyrgyzi Government on trade and economic cooperation in 1995 (draft).					Products and goods defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.
<u>Republic of Tadjikistan</u>						
1.	Agreement between Ukrainian Government and Tadjiki Government on trade and economic cooperation in 1995 (draft).					Products and goods supply defined in Add. No. 1 and No. 2 . Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.
<u>Turkmenistan</u>						
1.	Agreement between Ukrainian Government and Turkmeni Government on trade and economic cooperation in 1994	Acting Prime Minister - Zvyagilskyi	8 February 1994, Kiev	31 December 1994		Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
2.	Agreement on interbank settlements between Ukrainian and Turkmeni National Banks in connection with introduction of Turkmeni national currency.	For Ukrainian National Bank First Deputy Head - Veselovskyi	29 October 1993, Ashgabat		Not defined	
3.	Agreement between Ukrainian Government and Turkmeni Government on Free Trade (draft).					Regime-free trade, no exceptions. Nor duties, taxes and charges.
4.	Agreement between Ukrainian Government and Turkmeni Government on trade and economic cooperation in 1995 (draft).					Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.
<u>Republic of Uzbekistan</u>						
1.	Agreement between Ukrainian Government and Uzbeki Government on trade and economic cooperation in IV quarter of 1994.	Head of Ukrainian State Delegation - Golubchenko	6 September 1994, Tashkent		IV Quarter 1994	Products and goods supply defined in Add. No. 1, 2, 3, 4. Exemptions from export and import duty for supplies according to Add. No. 1, 2, 3 and 4.
2.	Agreement on settlement organization between Ukrainian and Uzbeki National Banks.	Head of Ukrainian State Delegation - Golubchenko First Deputy Head of Ukrainian Bank - Veselovskyi	6 September 1994, Tashkent		Not defined	

No.	Name of document	Signed by	Date and Place	Term	Ratification date	Comments
3.	Agreement between Ukrainian Government and Uzbeki Government on Free Trade (draft).					Regime-free trade, no exceptions. No duties, taxes and charges.
4.	Agreement between Ukrainian Government and Uzbeki Government on trade and economic cooperation in 1995 (draft).					Products and goods supply defined in Add. No. 1 and No. 2. Exemptions from export and import duty for supplies according to Add. No. 1 and No. 2.

VI. Laws and Legal Acts

1. Laws Regulating the Functions of the Customs

Question 119.

Art.2 - Jurisdiction of the Law

Paragraph 2. Please further describe the "special customs zones" that exist in Ukraine in terms of geographic areas involved and annual value of trade handled.

Reply 119.

There are no special customs zones in Ukraine.

Question 120.

Art. 3 - The Single Customs Tariff of Ukraine

Paragraph 5. Please provide a list of the exceptions to the uniform rates referred to in this paragraph.

Reply 120.

There are no exceptions.

Question 121.

Art. 7 - Types and Rates of Customs Duties

Paragraph 1. Please provide a list of goods on which combined ad valorem and specific rates are applied and provide a justification for this practice.

Reply 121.

There are no goods on which combined ad valorem and specific rates are applied.

Question 122.

Art. 11 - Special Types of Customs Duties

Paragraph 1. Are there types of "special customs duties" other than those described in Articles 12, 13, and 14?

Reply 122.

There are no such special types of customs duties.

Question 123.

Art. 12 - Special Customs Duties

Paragraph 2. Please elaborate on and provide examples of foreign economic activity that would violate "statewide interests" as referred to in this paragraph.

Reply 123.

There are no such examples.

Question 124.

Art. 12 - Special Customs Duties

Paragraph 4. Please describe in good detail the process of establishing the rate of special customs duties referred to in this paragraph.

Reply 124.

Such a process has not so far been established.

Question 125.

Art. 13 - Anti-Dumping Customs Duties

Paragraph 1. Does Ukraine's law allow for the imposition of anti-dumping duties in addition to the special duties described in Article 12?

Reply 125.

It does not.

Question 126.

Art. 13 - Anti-Dumping Customs Duties

Paragraph 3. Please describe and give examples of how the exit of excessively low-priced commodities would harm the statewide interests of Ukraine to such a degree to warrant the imposition of anti-dumping duties on them.

Reply 126.

So far there were no such cases.

Question 127.

Art. 15 - Procedure for Applying Special, Anti-Dumping, and Compensatory Customs Duties

Paragraph 1. Please elaborate in greater detail on the process of investigating anti-dumping claims and calculating injury margins.

Reply 127.

The procedure of calculating injury margins is being worked out by the Governmental Commission for the Problems of Anti-dumping Investigations with regard to the Ukrainian-origin goods.

Question 128.

Art. 16 - The Customs Value

Paragraph 2. Please describe how Ukraine determines charges in the areas of transportation, loading, unloading, reloading and insurance as they relate to the determination of customs value. Does Ukraine apply ad valorem rates or flat rates?

Reply 128.

Customs valuation is calculated on the basis of the cost declared to the customs administration as specified in the invoice, are taken into consideration:

costs of transportation, loading shipment, unloading and insurance up to the final destination of import in Ukraine;

commission and broker's fees;

value of intellectual property used during the production of goods, which has to be directly or indirectly paid by the importer or exporter as a necessary precondition for import or export of goods.

Question 129.

Art. 17 - Calculation and Payment of Customs Duties

Paragraph 3. Is the exchange rate that the National Bank of Ukraine uses consistent with the Articles of Agreement of the international Monetary Fund (whether in the use of par values or otherwise)?

Reply 129.

In compliance with the Presidential Decree "On Perfection of Monetary Regulation" of 22 August 1994, a unified carbovanets to foreign currency exchange rate has been established

The unified official carbovanets to dollar exchange rate is set up proceeding from the results of sales in the Ukrainian interbank currency market. The carbovanets-to-other currencies exchange rate is set up using the cross-rates of the Frankfurt Currency Market. The official rate as to the currencies of the FSU States is set up using the cross-rate of the National Bank of Russia, while that relative to the other currencies is set up using the cross-rates published by the Financial Times newspaper.

Question 130.

Art. 19 - Customs Duties Exemptions

(f) Please describe the category of persons and items that receive customs duties exemptions.

Reply 130.

Tariff exemptions apply to the following items:

transport equipment used for regular international shipments of goods, accessories and equipment for operation thereof, fuel, foodstuffs and other goods used for consumption during the travel and the stops; the goods purchased abroad for repairs and maintenance of transport equipment;

goods for accessories, fuel, raw materials for industrial production, foodstuffs and other products transported from Ukraine's customs territory for fishing and fish-processing vessels leased by Ukrainian firms; the production of these vessels;

Ukrainian and foreign currency and securities (for example, bonds and/or shareholder's certificates);

products transferred to Ukrainian ownership on the basis of Ukrainian legislation;

goods for personal consumption imported by organizations according to international agreements and Ukraine's laws on free-tax imports and exports;

goods of Ukrainian origin re-imported in the territory without sufficient processing abroad so that these goods could not be considered to be of foreign origin;

goods of foreign origin which are exported from Ukraine's customs territory without processing.

Question 131.

Art. 21 - Customs Duties Levied when Crossing the Borders of Special Customs Zones

Paragraph 2. What are the special customs zones referred to in this article, and throughout the statute?

Reply 131.

There are no special customs zones.

3.) Agency Customs Tariff

Question 132.

It is stated that "the Agency Customs Tariff of Ukraine... evolves in the direction of maximum compliance with universally accepted principles and rules of customs practice".

Are there any part of the customs system which have not yet complied with universally accepted principles and rules of customs practice? If any, please describe such parts specifically.
Reply 132.

See Reply 12

Duties Imposition Regime

Question 133.

Three different types of special duties are indicated on page 15. What is the relationship between these kinds of special duties and anti-dumping and countervailing duties as stipulated in the GATT/WTO agreements?

With respect to each of these three types, please explain what kind of duties fall in each of the three categories with some specific examples?

Specifically, what is meant by the terms, such as "regular hostile actions", "inimical actions against other States", "counteractions against powers" and "economic groups or customs unions which hinder the foreign trade activity of Ukrainian enterprises".

Reply 133.

In compliance with the Law "On Unified Customs Tariff" special duties can be changed as a safeguard for domestic market as stipulated in Article XIX of GATT 1947.

Also, the Law envisages that special duties can be used as a measure responding to discriminatory actions against Ukraine undertaken by separate countries or unions which limit the implementation of the rights and interests of the Ukrainian enterprises participating in foreign economic activities. This Law envisages the application of the anti-dumping and countervailing duties in the cases provided for by the GATT/WTO regulations and rules. There have been no cases of the application of the anti-dumping and countervailing duties, hence there the mechanism of their application is being developed on the base of UR AD.

Question 134.

It is stated that the "anti-dumping duty should exceed the difference between the general sale price of dumping goods in the exporting country and the declared import price". Why should the AD exceed the above-mentioned difference? Is this consistent with the current Uruguay Round Anti-Dumping Agreement?

Reply 134.

See Replies 12 and 17

Question 135.

There is a reference to "customs unions". Has Ukraine concluded any free-trade agreements or customs unions? If so, please provide the relevant information which allows us to look into them in light of the relevant GATT Articles? If not, does Ukraine have any plans to conclude them? Please describe such plans. If not, what is meant by this reference?

Can Ukraine specifically explain what are "agreements on a special system of preferences with the consideration for the provisions of international arrangements"? In particular, what is meant by "with the consideration for the provisions of international arrangements"? What is the intention of Ukraine as to how to deal with these preferences in market access negotiations in the context of its accession to the GATT/WTO? For example, does Ukraine intend to integrate all preferential treatments to the MFN binding commitment?

Does Ukraine intend to conclude, or has it already concluded, a preferential trade arrangement with Russia? Is Russia eligible to be under Ukraine's special system of preferences?

It is stated that imports of goods, except HS Chapter 25-97, from developing countries are eligible for preferential duties, including the exemption from the payment of duties. Why are the goods in HS Chapter 25-97 excluded from this scheme? What is the objective of this policy? What is the scope for developing countries here? Are the countries in transition included in this scope?

Reply 135.

See Replies 117, 118.

Question 136.

What is the view of Ukraine on the consistency of the "customs duty in amount of 0.15 per cent of customs value of the goods for executing required customs procedures" with Article VIII of the GATT?

Reply 136.

Customs fees related to executions of the customs obligations including for execution of the commodities that cross the customs borders have been established by the Customs Code, Article 76. The size of these fees is established by the Cabinet of Ministers. At present the customs fees are imposed established by the Resolution of the Cabinet of Ministers No. 133 of 2 March 1994. In compliance with this Resolution the fee equal to 0.15 per cent is imposed for customs services of the customs value of the goods but not less than equivalent of US\$20, which actually contradicts Article VIII of the GATT. This contradiction will be eliminated when Ukraine is accessed to GATT.

Question 137.

Is value-added tax only levied on imported goods? Is the rate of 28 per cent applied to any imported goods, or are there any other rates considered as value-added tax?

Is the excise tax levied only on imported goods? If not, please, indicate the scope of the goods subject to the excise tax?

It is stated that, "the object of taxation in this case is the customs value of imported goods plus actually paid sums of all customs duties (and excise duty, for goods subject there to). In subsequent sale of imported goods the object of taxation is the difference between the selling price and the customs value plus customs duties, VAT and excise duty". The explanation here seems rather unclear. Could Ukraine explain further what this scheme is? Does this scheme correspond to something like "variable levies"?

Reply 137.

See Replies 28 and 30.

Question 138.

What is the view of Ukraine on the consistency of its customs valuation scheme with Article VII of the GATT?

Reply 138.

See Reply 33.

Question 139.

It is stated that "all customs duties, customs taxes and taxes shall be paid in Ukraine currency by residents and in freely convertible currency by non-residents". What are the rationales for distinguishing the types of currency to pay customs duties, customs taxes and taxes between residents and non-residents? Does Ukraine have the intention to ensure that non-residents can

use Ukraine currency to pay customs duties, customs taxes and taxes? In what ways does Ukraine ensure national treatment in terms of payment of all customs duties, customs taxes and taxes?

Reply 139.

See Reply 34.

Question 140.

Could Ukraine provide an HS based line-by-line list of all the items which are currently subject to quotas, licensing and other non-tariff measures both on imports and exports with appropriate GATT justifications?

Reply 140.

See Reply 38.

The regime of the control over export of sensitive products and technologies is effected proceeding from the Presidential Decree No. 3/93 of 1 January 1994 and Resolution of the Cabinet of Ministers No. 159 of March 1993.

These decisions point out that all problems associated with setting of quotas and licensing as regards the export of armaments, military equipment, appliances, technologies, raw materials and those of double purpose are entrusted to the Governmental Commission for export control and its working body, a technical committee of experts under the Cabinet of Ministers.

Question 141.

Could Ukraine explain about the actual management of sovkhoses? When a sovkhose suffers loss in profit, does the Government compensate for it?

Please provide a list of state-trading enterprises, which would fall into the scope of Article 17 of the GATT, with indication of the specific items and the trade volume dealt by those enterprises. What is the percentage of total imports and exports which are conducted by these State trading enterprises? Could Ukraine explain their capacity and relationship with the Government?

Could Ukraine provide information on the following points:

The mechanism under which wholesale prices and retail prices of major agricultural commodities, including grains, are determined.

The mechanism under which government purchasing prices of major agricultural commodities, including grains, from the producers such as sovkhoses and other, are determined.

The Government involvement in internal sale, offering for sale, purchase, transportation, distribution or use with regard to major agricultural commodities, including grains.

Reply 141.

The State foreign trade organizations keep an independent balance sheet, dispose separate banking accounts and are legally responsible for their activities. At the beginning of 1994 there were the following main State foreign trade organizations in Ukraine:

- Ukrzovinshprom (State Concern)
- Intermetbiznes (the Ministry of Industry)
- Slavutich-Ruda (the Ministry of Industry)
- Slavutich-Stal (the Ministry of Industry)
- Urkzovnishhimprom (State Concern)
- Ukrtekhmashimpex (State Concern)
- Ukrbarimex (State Committee for Resources)
- Zarubinaftogaz (State Committee for Oil and Gas)
- Ukrexpilis (Ministry of Industry)
- Ukrpidshipnick (Machine-Building Industry)
- Ukrvugilgazbud (State Committee for Coal Industry)
- Ukrzaliznichpostach (Ministry of Transport)
- Ukragrotekhservice (Ministry of Agriculture)
- Ukroboronservice (Ministry of Foreign Economic Relations)
- Riznoexport (Ministry of Foreign Economic Relations)
- Ukrspirt (State Agro-food Committee)
- Ukrsil (State Agro-food Committee)
- Share-holding Company "AG Ukraina"
- Share-holding Company "Ukrimpex".

See Replies 55,56.

Question 142.

Please provide more information on the Agreement on Joining the Economic Union of the CIS. In particular, what is the scope of the commodities subject to "a gradual abolishment of duties and other charges on import - export operations." Are VAT and excise tax levied on imports also to be gradually abolished, together with duties and other charges? What is the time-frame of this "gradual abolishment?"

Reply 142.

Ukraine did not sign the Agreement of 24 September 1993. On 15 April 1994, Ukraine acceded to the economic union as an associated member. In the framework of the economic union, it is planned to create a free-trade zone which was agreed upon on 15 April 1994. This agreement envisages eliminating all export-import restrictions in the trade between the CIS States. However till now no one of these States which signed the agreement proved able to ratify this agreement or create the conditions for making this agreement effective. The mechanism of removing the trade restrictions has been left undefined.

Question 143.

The memorandum states that "further formation and enhancement of market infrastructure (goods and stock exchanges, investment funds, trust and insurance companies), the development

of primary and secondary markets of securities will be progressing." Could Ukraine please elaborate on this? What are the specific plans and the schedule for developing this part of the financial infrastructure?

Reply 143.

In compliance with the Programme of Economic Reforms of the President approved by the Supreme Rada one of the top-priority directions is the deepening of reforming of the banking system, promotion of the trade mediation activities and widening of the market infrastructure.

The President should develop a complex problem intended to up the role of commercial banks, to eliminate the discriminatory taxation system, to ensure a legislative basis for commercial banks to take part in the privatization process, to rehabilitate unprofitable enterprises, to ensure the merging of the industrial and financial capital for the national competitive financial capital to be formed.

During the period of 1995-1997 specialized bank organizations should be formed: the National Land Bank, the National Pledge Credit Corporation, the Ukrainian Dwelling Construction Credit Bank, the Specialized Farm, Small-scale Business etc., Credit Organizations.

It is planned to ensure a fast development of the fund market: creation of a special State securities commission to ensure the regulation of relations in the exchange market, creation of the fund exchange securities electronic circulation system.

Question 144.

The memorandum states that a main direction of Ukraine's economic policy is a "reduction of the negative trade balance (current balance of payments) to a level of no more than 5 per cent of GDP through making substantial cuts in non-critical imports and expanding exports. "How are these cuts to non-critical imports to be implemented? What import categories would be affected by the restrictions?

Reply 144.

See Reply 2.

Question 145.

The memorandum refers to the "stage-by-stage transition to market pricing system in all spheres of economic activity". However, in the next sentence there is also a reference to an exception for what appears to be basic consumption goods for the less well off segment of the population. What specific products are in this group of goods subject to exceptions? What percentage of the population qualifies for these "consumption" goods? What is the nature of the existing pricing structure for the products excluded from market pricing? Is it planned that this sector will also be converted to market pricing? If so, when?

Reply 145.

To implement the Programme of Economic Reforms proposed by the President Kuchma, the Cabinet of Ministers of Ukraine approved the Resolution "On Pricing in the Period of Reforms" No. 733 of 21 October 1994. In compliance with this Resolution, considerably cut were the volumes of State-

regulated prices and tariffs, thus reducing the State regulation to some natural and artificial monopolies. In this connection, the State goes on regulating the prices for communal services, municipal transport, coal and gas for heating and lighting, electric power supply, bread, flour, baby's food products.

Also, compensations are envisaged for the population for dwelling and communal services' costs and those for transportation (municipal transport). For all the other commodities and services the market pricing was initiated. A complete market pricing depends upon the conditions of economic stabilization expected in 1996 - 1997 in compliance with the Programme of Economic Reforms.

The Government will continue price liberalization in 1995. For example, municipal electric power consumption prices will be increased to approach approximately 40 per cent of production costs. Also, dwelling prices will increase significantly as well.

Question 146.

The memorandum States that "For the time being subsidizing prices for all products and goods has been terminated. "Does this imply that it might be brought back? What is meant by "subsidizing prices"? Are prices market determined but some consumers receive direct subsidies to reduce the price they actually pay. Or are prices fixed to consumers, and producers paid a subsidy.

Reply 146.

See Reply 145.

Question 147.

It is stated that "In sectors other than State-controlled sector only free prices are effective...". What proportion of GDP is being produced by the State-controlled sector?

Reply 147.

See Reply 145.

Despite the privatization and development of private sector, the State-owned enterprises make up a considerable part of the Ukrainian economy. Also, see Reply 8.

Question 148.

It is stated that "The number of State-owned enterprises' goods and services whose prices are not regulated by the State". It appears that the sentence was not completed. Could Ukraine provide the data and/or details which were apparently omitted?

Reply 148.

The omitted part reads: The number of the State-owned enterprises...will be continuously increasing.

Question 149.

Would Ukraine provide details on "bedrock" and "indicative" prices, as they pertain to all exports, and in particular agricultural exports? How are they set, and how are they used?

Reply 149.

See Reply 5.

Question 150.

The memorandum States that "significant inflation rates (about 50 per cent per month) caused by the drop in production and progression of other crisis phenomena compelled the Government of the Ukraine to undertake a series of steps aimed at strengthening the degree of State influence upon the dynamics of prices by means of introduction of stiffer regulation in the spheres of production and circulation". The memorandum also identifies examples of such stiffer regulation: "limitation of the profit rate in the production and cut of the amount of surcharges and markups in the circulation spheres, and notes that "with the view of an admission of export from Ukraine at dumping prices, the Governmental Committee has determined bedrock prices for many types of exported products effective as of January 1993". How are these various economic factors affecting the regulation of competition in the Ukraine?

Reply 150.

In compliance with the Programme of Economic Reforms, the main objective in pricing policy consists in a considerable decrease of the State interference in the price regulation process. At the end of October 1994 the Ukrainian Government eliminated most mechanisms of the State influence on pricing: a direct control over prices, a preliminary declaration on the change in prices including those of the products and services produced by monopolists. In industry, the State regulation of prices will be left only for those products and services where a monopolism of producers is of a natural nature (electric power production, gas, heating, water supply and sewage systems, public transport and apartments rent). In trading enterprises, only bread prices are regulated by the State. Also all markups were eliminated for the domestic origin goods. For indicative prices see Reply 5.

Question 151.

The memorandum states that the priorities for 1994 include the "full-fledged realization of privatization of small-scale state-owned enterprises" and the "expansion of privatization of medium-scale and large-scale state-owned enterprises". Does this mean that all small-sized State-owned enterprises (SOEs) will be privatized by the end of 1994? Are there any sectors that will not be privatized. Will foreigners be allowed to purchase privatized SOEs, either wholly or in part?

Reply 151.

See Reply 9.

Question 152.

What agricultural goods do Ukraine export ? What are the principal export markets for these exports?

Reply 152.

Agricultural goods make approximately 10 per cent of the total volume of export.

Agricultural goods exported from Ukraine include:

	<u>HS Nomenclature</u>
Frozen meat with no bones	0201-0202
Dried fatless milk	040210990
Salt (in bulk)	250100910
	<u>HS Nomenclature</u>
Pea (in bulk)	110319900
Margarine	151700000
Butter	040500100
Ethyl alcohol, 96%	220710000
Vegetable oil	151219910
Wheat	100190000
Casein	
Corn	100590000
Sugar	170199100

Question 153.

Are there any market access or national treatment restrictions on the supply of services by foreigners through any of the four modes of supply (i.e., cross-border supply; consumption abroad; commercial presence or the presence of natural persons)?

Reply 153.

In compliance with the Law of Ukraine "On Foreign Economic Activities", there are no restrictions on supply of services by foreigners in the part of four above-mentioned modes of supply.

Question 154.

Are there any market access or national treatment restrictions on the foreign supply of professional services, business services, computer services, environmental services, enhanced telecommunications services, financial services or transportation services?

Reply 154.

See Reply 248.

Question 155.

The memorandum states that "the rates of the Agency Customs Tariff of Ukraine are common for all subjects of the foreign trade activity except for cases envisaged by laws of Ukraine and international agreements". Would Ukraine please elaborate on the exceptions?

Reply 155.

See Reply 23.

Question 156.

It is stated that Ukraine uses ad valorem duties; specific duties; and combined duties, using both of the two other types. What percentages of tariff lines are found in each of these three categories? What percentages of customs collections are accounted for by each of them? What percentages by value of imports fall under each of the three categories?

Reply 156.

See Reply 13.

Question 157.

The Memorandum noted that anti-dumping duties are levied under the conditions stipulated by Article VI of the GATT. However, the Memorandum also states that "the anti-dumping duty should exceed the difference between the general sale price of dumping goods in the exporting country and the declared import price, or the difference between the dumping price of the exported good and the average export price of competitive goods of Ukraine origin during a certain period". Given normal GATT practice, should not this Statement rather read; " the anti-dumping duty should not exceed the difference between the general sale price and the declared import price.."? Finally, what is meant by "competitive goods"?

Reply 157.

See Replies 15, 16, 17.

Question 158.

Could Ukraine provide a brief description of an anti-dumping procedure (including inquiry)? For example, what are the initiation criteria? Are there causal and material injury tests?

Reply 158.

See Replies 15, 16, 17.

Question 159.

The memorandum states that "special duties" may be imposed on imports which could "inflict substantial damage on producers of similar goods". Could the authorities provide an elaboration of the compatibility of Ukraine's safeguard regime with the requirements of GATT Article XIX? Are causal and material injury tests applied when determining if imported goods "inflict substantial damage to producers of similar goods"?

Reply 159.

See Replies 15, 16, 17.

Question 160.

The Memorandum states that "special duties may be levied as the means to combat regular hostile actions directed against the general interests of Ukraine". What is meant by "combat regular hostile actions" and by the "general interests of Ukraine"? Does this refer to something other than "material injury" as defined in the Anti-dumping Code? Does it go beyond the economic interests of Ukrainian producers/firms/industry, and if so, how are those interests determinable? What are the operational steps involved in imposing such a duty? Have any such duties been imposed to date? Are anti-dumping duties included under the category of "special duties"?

Reply 160.

See Replies 15, 16, 17.

Question 161.

The Memorandum states that "special duties may be levied as protective measures against discriminatory or inimical actions against other States, or as counteractions against powers, economic groups or customs unions which hinder the foreign economic activity of Ukrainian enterprises". Have any such duties been imposed to date? Are anti-dumping duties included under the category of "special duties"?

Would these duties be restricted to imports that are related to any such dispute? Would there be clear provisions to establish a causal link between any "inimical actions" and material injury to any Ukrainian firm or industry? What steps would be involved in order to put an inquiry into operation?

Reply 161.

See Replies 15, 16, 17.

Question 162.

Has the "special duty" been applied to agricultural imports and, if so, at what rates? Are there any special duties currently in effect in the agricultural sector? How does Ukraine plan to adjust this policy in light of WTO requirements governing the use of anti-dumping, countervail or safeguard trade remedies?

Reply 162.

See Replies 10, 15, 16, 17.

Question 163.

The Memorandum states that "the anti-dumping duty can be levied on export of goods from Ukraine if their price is considerably lower than the price of the similar good exported from Ukraine. While it is laudatory that some of these measures aim to maintain competitive conditions in Ukraine, it is unusual to find export control provisions within trade remedy measures. Could Ukraine please provide an elaboration of why and how the system is used for export control?"

Reply 163.

The position of the Government on the liberalization of foreign economic activities is based on the concept consisting in that, at the present stage of the implementation of the economic stabilization programme, under conditions of the beginning of privatization of production enterprises and foreign trade enterprises, when domestic prices for raw materials and products are still lower than the world ones and there is no reliable system of the control over export and foreign currency returns, when there still exists a threat of a deficit of raw materials and products in the domestic market, the export liberalization should be a derivative element of the market reforming process. One of the most urgent problems of the strengthening of economic bonds with the developed countries of the world consists in application of trade restrictions on Ukrainian-origin goods in the world market. Here, most widely used are restrictions involving the application of anti-dumping procedures. Recent initiatives of the Government aimed at eliminating a compulsory exchange of foreign currency at an artificially lowered rate and elimination of all the export quotas and licenses (except for licences for wastes of ferrous and non-ferrous metals, pig iron, coal, grains and the goods subject to voluntary restrictions) bring about a positive effect on the development of export. The Resolution of the Cabinet of Ministers "On Liberalization of Export Operations" of 24 October 1994 No. 734, the Presidential Decrees "On the System of Registration of Some Types of Contracts" of 7 November 1994 and "On Indicative Prices for Goods in Foreign Economic Activities" of 18 November 1994 annulled the non-tariff regulation system and formed a basis for a reliable preliminary monitoring of foreign economic activities and their forecasting, and for control over foreign currency returns from foreign trade operations. This system has already allowed preventing rude violations by exporters of the Ukrainian Laws, applying discriminatory anti-dumping measures against the Ukrainian-origin goods and using an objective analysis of the development of foreign trade activities.

Question 164.

How does Ukraine define a "subsidy" when levying a countervailing duty? Must a subsidy be found to be specific (in the WTO Subsidies Agreement sense) before countervail can be imposed? If so, how is specificity defined? What is meant by "direct" and "indirect" subsidization? Does the proposed foreign trade regime envisage countermeasures other than countervailing duties? What conditions must be satisfied before countervailing duties may be imposed (e.g., evidence of a subsidy, causal link between subsidy and material injury)? What are the criteria that define the prevention of the development of production in Ukraine? How is "competitive goods" defined?

Reply 164.

See Replies 15, 16, 17.

Question 165.

The Memorandum states that preferential rates are applied to goods "shipped from the developing countries except for goods attributed to commodity groups 25-97 of the Harmonized System (HS)". Therefore, preferential rates apply to agricultural imports in Chapters 1-24 of the HS from developing countries. Which agricultural products have preferential rates available for imports from developing countries, and which developing countries enjoy such preferential rates?

Reply 165.

See Reply 21.

Question 166.

Is the "weighted average duty rate" of 11.9 per cent based on imports from all sources? Is the "reduced weighted average duty rate" of 6.3 per cent based on MFN sources?

Reply 166.

Yes to both questions.

Question 167.

It is stated that Ukraine collects "a customs duty in amount of 0.15 per cent of customs value of the goods for executing required customs procedures". Ad valorem customs fees have been found to be inconsistent with GATT Articles II and VIII by a GATT Panel (United States - Customs User Fee: Panel Report: 2 February 1988). What plans does Ukraine have to convert its system to one based on the actual cost of service per individual entry?

Reply 167.

See Replies 26, 34, 136.

Question 168.

Are the value-added tax of 28 per cent and the excise duties applied equally to domestic goods and to imports? If there are differences in treatment, please provide details.

Reply 168.

See Replies 27, 28.

Question 169.

It is stated that imported goods which are "supplied as a result of barter operations" are exempted from value-added tax. What proportion of Ukraine's imports are traded within the framework of barter operations?

Reply 169.

The preliminary monitoring system formed by the Presidential Decree "On the System Registration of Some Types of Foreign Activity Contracts" of 7 November 1994 has verified the forecast as to the avalanche barterization prevailing in foreign trade activities under conditions of liberalization of the export regime. In particular, in November-December 1994 80 per cent of contracts, on the average, are barter operations and, in some regions, one hundred per cent of contracts are barter operations.

Question 170.

How does Ukraine's system of customs valuation compare with the international Customs Valuation Code?

Reply 170.

See Reply 33.

Question 171.

Provision is made, under specified circumstances, to "determine the customs value on the basis of the value of the similar item in the dominant country". What criteria does Ukraine use to select the "dominant" country?

Reply 171.

"Dominant" country means in the context of the Memorandum a country - a leader in the export of a given commodity/service.

Question 172.

It is stated that "The customs taxes are deducted to the budget of Ukraine". Is the term "deducted" intended to read "credited"?

Reply 172.

Yes.

Question 173.

It is specified that non-residents must pay customs duties and taxes in freely-convertible currency. Would this apply to a non-resident being paid in local currency? Or to a business enterprise receiving its proceeds in local currency ?

Reply 173.

See Reply 34.

Question 174.

Please provide a list of goods for which import quotas and licences apply. How does Ukraine plan to adjust its policy of quantitative restrictions in light of WTO requirement ?

Reply 174.

See Replies 36, 37, 38, 39.

Question 175.

Would Ukraine please elaborate on what is meant by "vessels of the given country and vessels leased (freighted by it)" as stated in the Memorandum?

Reply 175.

This concerns the determination of a country of origin: "the vessels of a country and/or vessels freighted by this country .

Question 176.

The Memorandum states that "the processing and reprocessing shall be deemed sufficient if:

The declared goods are classified for their manufacture;

**the value of the declared goods contains the share of the value added
constituting at least 50 per cent."**

Reply 176.

See Reply 40.

Question 177.

Would Ukraine please clarify whether both conditions have to be met or whether if a good does not meet the first condition the second standard can be applied i.e., whether the two conditions are connected by an "and" or an "or".

Reply 177.

See Reply 40.

Question 178.

With regard to the second standard, would Ukraine please confirm that 50 per cent of the "added value" refers to cost of production, and if so, what is the basis for the calculation of cost of production?

Reply 178.

See Reply 40.

In compliance with the Law "On Unified Customs Tariff" a country of origin is a country wherein a product was fully produced or subjected to a complete processing or reprocessing. A sufficient processing or reprocessing is considered as such when a declared good cost includes at least 50 per cent added value. The method used for this purposes allows for all costs of processing jobs used in production. Insufficient are the following processing jobs:

Storage of goods;

preparation for sale and transportation;

simple storehouse jobs;

mixing of goods or their components that do not impart to the final product the properties which considerably differ them from initial components.

Question 179.

The Memorandum states that "simple assembly" and "mixing" do not necessarily constitute sufficient reprocessing. Could Ukraine please elaborate on these two requirements in the determination of country of origin?

Reply 179.

See Reply 178.

Question 180.

Is Ukraine following an active policy of adopting international standards and joining international standards bodies? If so, please provide details.

Reply 180.

See Replies 43 through 48.

Question 181.

In principle, the application to imports of the "minimum conditions of the standards and requirements effective in Ukraine", as referred to in the memorandum, is a valid and acceptable approach in full compliance with the Agreement on Sanitary and Phytosanitary Measures in the Final Act of the Uruguay Round. How does Ukraine ensure readily available and transparent disclosure of these standards and domestic control programmes for imports of, *inter alia*, live animals, animal semen and animal embryos?

Reply 181.

In compliance with the Law "On Provision of Sanitary and Epidemic Safety of the Population", life and health safety requirements are required to be incorporated in standards for finished products, raw materials and technologies. Drafts of these standards are to be subjected to expert examination by the State Health Protection Bodies to check if they meet the requirements of international organizations.

In the process of Ukraine's accession to the GATT/WTO system, Ukraine intends to implement the Agreement of Sanitary and Phytosanitary Standards. In this connection the Government will take a complex of measures to form required protection standards.

***Question 182.**

With reference to the use of "foreign standards and requirements effective in leading countries-exporters", please describe the process and criteria under which health protocols with Ukraine's trading partners are established. What is the correlation between the health status of the country of origin of materials, or the integrity of the veterinary infrastructure and credibility of the diagnostic capability, with the nature of the health protocols established?

Reply 182.

Question 183.

Is Ukraine a member of the Codex Alimentarius Commission under the FAO, the International Plant Protection Convention, and the Office Internationale des Epizooties? If so, does Ukraine apply the relevant standards? In particular, is Ukraine prepared to use adherence to the animal health code and recommendations of the Office Internationale des Epizooties (O.I.E.) as the basis for development of scientifically validated and uniform health certification requirements regarding the international movement of animals, semen, and embryo?

Reply 183.

See Reply 48.

Ukraine joined the International and Mediterranean Plants' Protection Convention on 3 April 1994. Also, it should be mentioned that the FSU States were the members of the IPPC and FAO. At present Ukraine is not the FAO nor CODEX member.

The Ukrainian Government plans to join FAO in 1995. The problems involved are those of a pure financial nature.

Question 184.

What are Ukraine's intentions to further liberalize its export regulation scheme?

Reply 184.

See Reply 163.

Question 185.

What export quotas are currently in effect, in particular for agricultural products? If there are no export quotas in place at the present time for agricultural and food products, are they subject to the imposition of such export quotas?

Reply 185.

See Replies 35, 36, 163.

Question 186.

Please elaborate on the "system of government contract" to which exports have been subject since March 1993. How are export prices determined? Does this amount to providing export subsidies? Are other export subsidies provided to agricultural products?

Reply 186.

See Replies 55, 78.

Question 187.

The Memorandum states that "the export of goods (works, services) from Ukraine is exempt from VAT and excise duty". For clarification, does this mean that all production or processing for export and all services involved in preparing that product for export would be exempt from the VAT?

Reply 187.

No, they do not.

Question 188.

Does Ukraine have any technology programmes, e.g., programmes for the support or promotion of research and development, or for the commercialization of technology? If so, would it provide a description of these?

Reply 188.

See reply 4.

Question 189.

Would Ukraine please describe the development of its competition policy. The following are specific areas of interest:

- (a) **How does the competition policy regime in Ukraine fit in with broader government economic policies and programmes (e.g. State trading, privatization)?**
- (b) **Although the Anti-Monopoly Committee of the Government of the Ukraine has been in existence for only a short period of time, we would appreciate a brief summary of the make-up of the Committee, their experience to date (e.g. legal, economic, regulatory) and a description of their activities.**
- (c) **Has the enforced break-up of State enterprises been effective in practice?**
- (d) **How has Ukraine implemented competition policy in areas such as: countering abuse of dominance; criminal activity (e.g. conspiracy); and misleading advertising?**
- (e) **Could Ukraine provide information on any current or proposed enforcement efforts related to competition policy? If so, how effective have these been in locating or deterring anti-competitive activity in Ukraine?**

Reply 189.

See Replies 1, 2, 4, 7, 8, 9, 49, 50, 56.

Question 190.

Could Ukraine provide an elaboration of its overall policies and programmes which pertain to the agricultural sector (e.g., subsidy (domestic and export) programmes)?

Reply 190.

See Replies 9, 55, 56.

Question 191.

The Memorandum states that the "private sector in agriculture will account for almost 39 per cent of the gross output". Please elaborate on the basis for this Statement. What share of gross output does private sector agricultural production now account for? What is the programme and time-frame for the privatization of the agricultural sector? What privatization has taken place to date?

Reply 191.

See Replies 9, 55, 56.

Question 192.

While the trend may be toward privatization of individual farms, to what extent do the distribution channels (processing, wholesale distribution, and retail) used by farmers to market their product operate under free market conditions?

Reply 192.

See Replies 9, 55, 56.

Question 193.

Regarding planned production levels for 1994, what are the typical previous production levels for grain, sugar beets, sunflower seeds, milk, meat and poultry?

Reply 193.

Production of Agricultural Commodities (thousand)

	<u>1986-1990</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Grains	47,431	51,009	36,764	38,537	45,623
Sugar beets	43,845	44,264	36,168	28,783	33,717
Sunflower seeds	2,602	2,571	2,311	2,127	2,075
Flax (fibres)	110	108	106	105	73
Soya bean	95	99	135	76	61
Potatoes	17,965	16,732	14,550	20,277	21,009
Vegetables	7,449	6,666	5,932	5,310	6,055
Meat	4,309	4,358	4,029	3,401	2,919
Milk (miot)	23.0	24.5	22.4	19.1	18.1

Question 194.

The Memorandum states that "...it is essential to expand cooperation with the countries that have more efficient agricultural technologies." In what forms does Ukraine envisage the implementation of this cooperation?

Reply 194.

The main direction in cooperation in agricultural production consists in the attraction of foreign investments in this production for which purpose the State agricultural production support programmes have been drawn up. For further details. This programme covers the top-priority branches of the agro-industrial complex, including the production of grains, flax, oil crops and sugar beet as well as processing industry. Also the Programme envisages their export orientation.

See Reply 67.

Question 195.

The Memorandum states that the agro-industrial sector receives preferential treatment through an income tax rate of 11 per cent versus rates varying from 22 per cent to 75 per cent in other sectors. Does this rate apply to farms as well as farm supply firms?

Reply 195.

This rate extends only to farms producing agricultural commodities.

Question 196.

The Memorandum states that "the introduction of a rule requiring that 50 per cent of export receipts in hard currency be sold to the State has paved the way to a gradual transition to full internal convertibility of the national currency". How will the Systemic Transformation Facility with the IMF alter the current foreign exchange system? How will the new currency regulations (decree signed by President Kuchma in August 1994) which, *inter alia*, provide for the gradual unification of official and market rates based on a coefficient of divergence, and a reduction of the 50 per cent surrender requirement to 40 per cent (30 per cent at the fixed rate and 10 per cent at the market rate) alter the current foreign exchange system. What is the timetable for full convertibility of the national currency? What are the requirements to obtain a licence from the National Bank of Ukraine to extend credits and loans in hard currency and to remit capital in foreign financial market? Will foreign banks be permitted to carry out exchange operations?

Reply 196.

In compliance with the Agreement "On Systematic Transformation Facility' with the IMF, to promote export, the Government undertook important measures to reform foreign trade. On 5 October 1994, resumed were the operations in the Interbank Currency Market. Official rate intended for compulsory deduction of foreign currency receipts for the State budget was annulled on 26 October 1994, the exchange rate was unified to be now set up from the results of the Interbank auction. All commercial banks possessing a licence of the National Bank have the right to participate in currency sales. In close perspective, it is planned to implement currency reform in the framework of which the fixed grivna (a new national currency to replace carbovanets) rate will be introduced relative to one of the hard currencies, any foreign currency used as a payment medium will be prohibited, a compulsory exchange of hard currency into grivna will be introduced. The grivna stabilization fund will attract the IMF credits, and those of the other foreign investors.

Also See Replies 63, 64.

Question 197.

The Memorandum states that the State Programme of Encouraging Foreign Investments in Ukraine sets forth priorities for foreign investment in several sectors including "power park". What does this term mean? Is it meant to refer to installations involved in the generation of electricity? What are the "additional benefits" referred to in the same paragraph for foreign investments in priority sectors of the economy and social development?

Reply 197.

The expression, used in an extremely awkward sense, means actually "power generation facilities".

For the details see Reply 67.

Question 198.

What will be the relationship between Ukrainian Bank for Reconstruction and Development and the Agency for International Cooperation and Investments?

Reply 198.

The Agency for International Cooperation and Investments is responsible for only technical assistance to Ukraine. The Ukrainian Bank for Reconstruction and Development has not been created so far.

Question 199.

The Memorandum states that the Ukrainian Bank for Reconstruction and Development will facilitate the provision of guarantees to entities. What will be the nature of guarantees provided to foreign investors by the Ukrainian Bank for Reconstruction and Development?

Reply 199.

See Reply 198.

Question 200.

The Memorandum states that Ukraine's legislation "generally" provides national treatment for foreign investors. What are Ukraine's exceptions to national treatment? Is national treatment provided to only select sectors identified in the relevant laws? Are the conditions and requirements to benefit from national treatment outlined in the laws? In sectors where no additional benefits would be provided, is there an investment threshold applied for national treatment purposes (i.e. the note refers for example to a 20 per cent minimum of at least US\$50,000 plus equipment or an intellectual property). Are such requirements clearly spelled out?

Reply 200.

In compliance with the Resolution of the Cabinet of Ministers "On the Foreign Investments Regime" which proceeds from the objectives and principles of the Law of Ukraine "On Foreign Economic Activities" and "On Foreign Investments", a national regime for foreign investments and any other economic activity has been established in the territory of Ukraine except for the cases provided for by international agreements.

For foreign investments in top-priority branches and social sphere the State programmes can set forth additional advantages. The Laws of Ukraine can define specific territories wherein foreign investment activities are limited proceeding from the considerations of national security.

Question 201.

Would Ukraine please provide summary descriptions of the legal acts which form the basis for the economic activities of foreign investors in Ukraine as referred to in the memorandum? Does Ukraine foresee any changes to its current foreign investment regime. If so, what would be the nature of and timetable for any legislative changes?

Reply 201.

See Replies 65 through 70.

Question 202.

The Memorandum lists the guarantees that Ukraine extends to foreign investors including an "exemption from nationalization and sequestration"? Are there any circumstances under which this exemption would not apply? How would "foreign investor" be defined? What does "sequestration" mean here? Is it to be understood in a legal sense of "to seize temporary possession of" (such as a debtor's estate), or does it simply mean "to confiscate" or "to appropriate"?

Reply 202.

See Replies 65 through 70.

Question 203.

The Memorandum states that Ukraine guarantees "compensation for loss or damage incurred by foreign investors as a result of actions or default of public bodies and their officials". The Memorandum also states that "reimbursing foreign investors for the loss incurred by them as a result of acts or failure to act on the part of public bodies" needs to be resolved. What distinction is made between these two apparently conflicting statements?

Reply 203.

See Replies 65 through 70.

Question 204.

Do foreign investors have to apply to the Agency for International Cooperation and Investments for approval of foreign investment projects? Does the Agency have the power to disallow foreign investments and if so, what reasons could be used to reach such a decision? Has such a refusal ever been issued?

Reply 204.

In compliance with the Law of Ukraine "On the State Programme of Attraction of Foreign Investments" of 18 December 1993, for additional advantages in making investments in top-priorities spheres, as-defined by this Programme, to be obtained by foreign investors they have the right for additional privileges.

For details see Reply 65-70.

For additional privileges, an investor must submit an application to the International Agency for Cooperation and Investments.

The Agency has the right to disallow additional privileges envisaged by the Law above.

Question 205.

Does Ukraine have any trade-related investment measures that are inconsistent with the TRIMS Agreement and related GATT Articles III and XI. Is Ukraine willing to notify officially such inconsistent measures upon entry into the WTO and to eliminate them within the two-year time period, as stipulated in Article 5(2) of the TRIMS Agreement?

Reply 205.

See Replies 65 through 70.

Question 206.

The Memorandum states that various bodies such as ministries and regional State administrations have competence in the area of investment. Would Ukraine please elaborate on the roles and responsibilities of these various bodies?

Reply 206.

See Reply 67.

Question 207.

What specific incentives have been offered by Ukraine to attract foreign investment?

Reply 207.

See Replies 65 through 70.

Question 208.

How are government procurement activities regulated? When would Ukraine envisage adhering to the GATT/ WTO Government Procurement Code?

Reply 208.

See Replies 58, 73 through 75.

Question 209.

The Memorandum lists the goals and objectives of state-owned trade enterprises. Do state-owned enterprises have a monopoly on these activities? Are foreign firms permitted to provide some of the services listed (e.g., advertising, freight and shipment services)?

Reply 209.

See Replies 76, 77.

Question 210.

What proportions of imports and exports are traded through these state-owned trade enterprises? Please provide a list of the company names and commodities traded by each. Do these organizations have exclusive or special privileges with respect to the export and/or import of certain products or do they compete with private sector alternatives in Ukraine?

Reply 210.

See Replies 76, 77.

Question 211.

The Memorandum states that special economic zones (SEZs) fall into various categories, including foreign trade, research and development, tourism and recreation, banking and insurance (off-shore), and cross-border trade. Under what conditions will foreign investors and firms be permitted to operate in these SEZs? Also, will foreigners be able to offer these services in areas that are not designated as SEZs?

Reply 211.

As stated in the Memorandum, special economic zones are defined by the Law of Ukraine "On General Principles of Formation and Operation of Special (Free) Economic Zones" that establishes the principles and the order of the formation of these zones in Ukraine and describes their types. At the same time, the Law sets forth that a decision on the formation of every particular economic zone must be approved by the Supreme Rada. At present there are no SEZs running which is why it is not possible to elaborate on whatever privileges.

Question 212.

Are imports from the SEZs which enter into the commerce of Ukraine (i.e. sold in Ukraine) subject to the usual import charges and regulation? If there are exceptions, please provide details.

Reply 212.

In compliance with the Law of Ukraine "On Unified Customs Tariff" (Article 21) duty-free import operations are allowed for products carried into these zones for final consumption and export from these zones in the Ukrainian territory and outside from the territory above if these products have the origin of these zones. The size of the privileges and the order of their granting are set forth by the Supreme Rada by adopting a law on every such zone. The details can hardly be specified because of the absence of such zones in Ukraine.

Question 213.

What is Ukraine's current legislation with regard to copyright and related rights, trademark rights, rights related to geographical indications, rights to industrial designs, patent rights, rights related to layout-designs (topographies) of integrated circuits, and rights related to the protection of undisclosed information? Are there any planned legislative changes, and if so, what is the status of these?

Reply 213.

See Replies 82 through 110.

Question 214.

What is the basis on which foreigners have access to the facilities offered by the domestic regime?

Reply 214.

The basis is the Laws "On Foreign Investments", "On Foreign Economic Activities", "On Investments", "On the State Programme of Encouragement of Foreign Investments", and the legislation that regulates economic activities in Ukraine (The Civil Code of Ukraine etc.).

***Question 215.**

Are there any for which Ukraine does not now accord national treatment to foreigners?

Reply 215.

Question 216.

Does Ukraine grant to the nationals of any country any advantage, favour, privilege, or immunity which Ukraine does not grant to nationals of other foreign countries? If so, please describe and indicate on what basis the nationals of one or more countries are more favoured than the nationals of other countries.

Reply 216.

No Ukraine does not grant any privileges to nationals which it does not grant to nationals of the other foreign country.

Question 217.

What are the civil, criminal and administrative procedures for the enforcement of intellectual property rights?

Reply 217.

See Replies 82 through 110.

Question 218.

With regard to the enforcement of intellectual property rights, are there any instances in which Ukraine does not now accord national treatment to foreign right holders i.e. treatment no less favourable than Ukraine accords to its own nationals?

Reply 218.

See Replies 82 through 110.

Question 219.

With regard to the enforcement of intellectual property rights, are there instances in which Ukraine accords to foreign right holders from one or more countries access to rights and remedies denied to foreign right holders from other countries? If such differential treatment exists, please describe the basis on which this more-favoured treatment is currently offered.

Reply 219.

No, there is no differential treatment, see Replies 82 through 110.

Question 220.

Could Ukraine elaborate on the nature of its preferential trading arrangements with the Russian Federation, Belarus, Lithuania, and the Economic Union of the CIS? Please give details regarding the margins of preference and product coverage. What percentages of imports from the subject countries receive duty-free treatment? Which trade agreements await ratification? When is ratification of these agreements expected?

Reply 220.

In compliance with the Law "On International Agreements of Ukraine" all agreements that require the changing of trade regime should be ratified by the Supreme Rada. Nevertheless, the agreements on free trade with Russia and Byelorussia (concluded before adoption of this Law) are effective, while the agreements with the CIS States and Lithuania are not ratified and are not effective. Only 25 per cent of the import from Russian Federation are duty-free. Most important products imported

to Ukraine (oil, gas, wood, non-ferrous metals) make an exclusion from the free-trade regime conditions.

See Replies 117, 118.

Question 221.

The Memorandum states that the "Organization of the Black Sea Economic Cooperation is neither a payments union nor a free trade zone, though one of its objectives is the establishment of such zones." Please elaborate on the current role of the Organization of Black Sea Economic Cooperation, and how it operates. What is the expected future role of this organization, including the potential for and time-frame for the establishment of any such free trade area(s)?

Reply 221.

The Black Sea Economic Cooperation was formed by the initiative of Turkey on June 25 1992 proceeding from the Declaration signed by eleven States of the Black Sea zone, including Ukraine.. One of the major objectives of this Organization consists in creation of the conditions for free movement of the goods, services and capitals in the framework of this Organization. No agreements have been concluded for achievement of this goal. In connection with notable political, economic and other differences between the member States, Ukraine considers this Organization to make an important stabilizing factor in the Black Sea Region and is interested in implementation of some industrial and investment projects in its framework. In November 1993 Ukraine submitted for consideration of this Organization a costal trade project incorporating the elements of a free trade zone. So far this project failed to find approval among member States.

Question 222.

Can Ukraine give an indication of the range of goods and services in the state-controlled sector whose prices are still regulated by the State?

Reply 222.

See Reply 150.

Question 223.

Under what circumstances may "seasonal customs taxes" be applied? Would Ukraine confirm that these customs taxes are in lieu of ordinary import duties? Are any seasonal customs taxes currently applied? If so, please provide the details. How long before the application of such customs taxes is an official announcement published to acquaint traders etc. of the change?

Reply 223.

See Reply 12.

Question 224.

Would Ukraine please provide a summary of tariff lines subject to specific or mixed duties?

Reply 224.

There are no specific or mixed duties.

Question 225.

Special duties, additional to import duties, may be levied in certain circumstances including where goods are imported under conditions which can inflict substantial damage to producers of similar goods. Could Ukraine please explain in greater detail how the market circumstances under which these duties would be applied differ from those for the application of anti-dumping and countervailing duties? What are the "special laws" which cover the application of special duties? How are these measures consistent with the GATT's various safeguard provisions?

Reply 225.

See Replies 12, 13.

Question 226.

Do the Ukrainian laws governing the application of anti-dumping duties take into account relevant GATT provisions?

Reply 226.

See Reply 17.

Question 227.

How is the ad valorem fee for executing required customs procedures consistent with the requirement of GATT Article VIII that such fees shall be limited "in amount" to the approximate cost of services rendered?

Reply 227.

See Replies 26, 34, 136.

Question 228.

Would Ukraine please confirm that the 28 per cent VAT and the excise duties referred to at page 17 are also applied to like domestic products?

Reply 228.

See Reply 28.

Question 229.

Import quotas and licensing applied to goods for calendar year 1994 were terminated in March 1994. Can Ukraine provide a summary of the goods subject to these non-tariff barriers? Could Ukraine give an assurance that import quotas would not be used as from accession and that import licensing would be applied in accordance with the Agreement on Import Licensing Procedures?

Reply 229.

See Reply 38.

Question 230.

Are there any other non-tariff measures placed on the importation of goods? If so, please provide details.

Reply 230.

No, there are no such measures.

Question 231.

Does Ukraine consider that its sanitary and phytosanitary measures would meet the provisions of the WTO Agreement on Sanitary and Phytosanitary Measures?

Reply 231.

See Reply 48.

Question 232.

Does Ukraine maintain any export subsidies? If so, could details be provided, including the time-frame for their removal?

Reply 232.

See Replies 52, 55, 186.

Question 233.

The "Special Regime for Exports" would appear to act as a barrier to exports and a deterrent to foreign investment in the resources sector. How does the Ukraine Government intend to bring this regime into GATT conformity?

Reply 233.

See Reply 54.

Question 234.

On pages 22-23 reference is made to "export stimulation measures, including subsidies" implemented under Resolution 212 of 22 March 1993 and Resolution 421 of 5 June 1993. Would Ukraine provide details of the operation of these measures including the sectors/industries benefiting from them?

Reply 234.

See Reply 51.

Question 235.

Are any other assistance measures provided to companies and State-controlled enterprises involved in foreign trade in order to promote exports of goods?

Reply 235.

See Replies 51, 52, 55.

Question 236.

5.8 per cent of expenditure in the 1994 budget is allocated to financing the intermediaries that export goods purchased from producers. What form does this financing take?

Reply 236.

See Reply 51.

Question 237.

Are the measures referred to in the previous questions consistent with GATT Article XVI and the relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures?

Reply 237.

See Reply 54.

Question 238.

**Could Ukraine please provide a description of its agricultural policies?
This should include:**

the nature and degree of State control; the type and level of domestic support for various sectors; the State pricing and purchasing systems; limits on free trade including import and export barriers; and, plans for privatization and liberalization.

In addition to the following specific questions, we may submit further questions in the future.

Reply 238.

See Reply 55, 56, 58.

Question 239.

What role does the Ukraine Government play in the production and marketing of food? Does the Ukraine government control the production and marketing of food? Does the Ukraine government subsidize the price of flour and bread for domestic consumption?

Reply 239.

See Replies 55, 56.

Question 240.

Does the Ukraine Government subsidize farming input, such as seeds, fertilizer, fuel, machinery, transport, handling and storage? What is the total cost of the support regime for the Ukraine wheat and coarse grains industry?

To what extent do Ukraine farmers benefit from this assistance? Who are the major beneficiaries of this support regime?

What does the Ukraine Government intend to do to reduce this support in the context of its GATT/WTO accession?

Reply 240.

See Replies 55, 56, 59.

Question 241.

Does the Ukraine Government subsidize grain exports?

Page 24 notes the Ukraine plans to export 5 million tons of grain in 1994

What is the average difference between the domestic procurement price for wheat and coarse grains and the price at which grain exports are made?

What is the role of "bedrock" and "indicative" prices in determining domestic and export prices of grain?

Is the trade to be conducted for cash or will it involve barter and/or credit arrangements?

Reply 241.

See Replies 5, 55.

Question 242.

Are imports of wheat and coarse grains subject to import quotas and licensing? How does the Ukraine Government plan to handle these measures in the context of its accession?

Reply 242.

See Replies 10, 35, 36, 37.

***Question 243.**

Will planned agricultural exports for 1994 include dairy products? Would Ukraine also provide details on any export subsidization arrangements for dairy?

Reply 243.

Question 244.

Would Ukraine please provide up-to-date statistics on Ukrainian dairy production, consumption and trade?

Reply 244.

See Replies 59, 78, 193.

Annual Consumption of Dairy Products (kg. per head)

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Meat and meat products	68	65	53	46
Milk and milk products	373	346	285	275

Annual Consumption of Dairy Products (kg. per head) (cont'd)

	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Eggs (pcs per head)	272	256	227	193

Annual Sale of Dairy Products (thousand tons)

Meat and meat products	2,384	2,012	1,521	1,113
Milk and milk products	6,416	5,503	3,933	2,552
Eggs (mio pcs)	6,883	5,408	4,463	3,146

Question 245.

We would also be interested to receive information on any non-tariff import barriers to dairy imports.

Reply 245.

Special non-tariff measures limiting the import of dairy products do not exist. There are technical barriers which consist in a compulsory certification of the food industry products and sanitary standards.

See Reply 43 and 48.

Question 246.

What proportion of Ukraine's imports are subject to tariff exemptions or reductions as a consequence of Ukraine's trade agreements?

Reply 246.

At present effective are trade agreements with Russia and Byelorussia. Import from Byelorussia and Russia for 10 months of 1994 made 4.1 per cent and 78 per cent of the total volume of import, respectively.

Allowing for the fact that all supplies of raw materials and energy carriers from Russian Federation made 80 per cent of the above figure that are not covered by the free-trade exemption regime.

Question 247.

Are any of Ukraine's services sectors closed completely to foreign suppliers?

Reply 247.

No, there are no such sectors.

Question 248.

Are any sectors open to foreigners only if they form a joint venture with Ukraine-owned companies?

Reply 248.

In compliance with the Law "On Entrepreneurship" the National Treatment Regime extends equally to foreigners. The Law introduces restrictions on some types of economic activities irrespective of nationality. In particular, the production of narcotics, armaments, explosives, securities and bills can be carried out only by the state-owned enterprises. With no licence issued by the Cabinet of Ministers or by authorized bodies no economic activity can be carried out in the following spheres:

- prospecting and operation of deposits of raw materials;
- repair of sport, hunting and other arms;
- production and sale of medical preparations;
- production of alcoholic both strong and light drinks;
- production of cigarettes;
- health protection practice;
- veterinary practice;
- legal practice;
- running gambling business;
- sale of alcoholic drinks;
- production, purchase and operation of communications systems operated in the framework of the National integrated communications system;
- domestic and international cargo and passengers transportation services;
- topographic surveying;
- production of production control instrumentation;
- production of radioactive substances and ionization radiation sources;
- design, construction and operation of nuclear power stations;
- mediation on dealings with privatization certificates.

To carry out economic activities, the subjects of these activities should be registered as required by the Laws of Ukraine.

Question 249.

Are there any service sectors subject to restrictions on modes of supply (cross-border supply, commercial presence, etc.)?

Reply 249.

There are no such sectors.

Question 250

What rules and regulations apply to imports of financial, telecommunications, health, education and professional services?

Reply 250

See Reply 248.

***Question 251.**

Is Ukraine a party to any agreements concerning the mutual recognition of qualifications of service supplier?

Reply 251.

Question 252.

What are the rules concerning temporary residence in Ukraine by foreigners engaged in trade in service?

Reply 252.

According to the legislation, the following entities could be involved in foreign trade activities in Ukraine:

- legal entities having the permanent residence in Ukraine and being registered on this territory; foreign legal entities, their affiliates, departments having the permanent residence in Ukraine;
- physical persons either the citizens of Ukraine or the persons without Ukrainian citizenship, which have the permanent residence on the territory of Ukraine;
- groups of physical persons and legal entities, which have not legal status in Ukraine, but have the permanent residence on the territory of Ukraine;
- joint ventures.

All above mentioned entities, irrespective of their form of ownership, have the equivalent rights for all foreign trade activities, which are not expressly forbidden by law. The same treatment applies to foreign companies. The creation and functioning of enterprises with foreign participation are determined by the Law "On Economic Companies". Foreign firms could be established either as

100 per cent foreign owned firms or joint ventures or as a result of acquisition by foreign investor of a part of a previously existing firm. These companies are registered by the governmental local authorities of the region or city where the company is located. The Ministry of Finance establishes and updates the register of joint ventures.

According to the Law of Ukraine "On Foreign Economic Activities" a foreign legal entity involved in economic activities in Ukraine and having there its permanent representation, must register and obtain a certificate from the Ministry of Foreign Economic Relations of Ukraine. In addition to a registration fee of US\$2,500, the following documents, officially certified and legalised in the consulates of the Embassies of Ukraine, are requested:

- the application and the request for registration;
- the letter from the trade register of the country where the foreign entity has the officially registered office;
- bank information;
- the authorization for representative functions.

Furthermore, within one month of starting its activities, the foreign legal entity must register and receive a certificate from the Main Ukrainian Tax Inspection as well as register with the local tax inspection in the location of its representation office, regardless of the fact whether the firm is subject to taxation in Ukraine. The control of economic activities of these entities is carried out by the Tax Inspection and the State Customs Committee.

Question 253.

Which of the bilateral economic, technical cooperation and trade agreements signed by Ukraine cover trade in services?

Reply 253.

See Replies 117, 118.

Question 254.

Do any of these agreements confer preferred or reciprocal supplier status on companies from signatory countries?

Reply 254.

See Replies 117, 118.

Question 255.

How and within what time-frame does the Ukraine propose to implement its obligations under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)?

Reply 255.

See Reply 90, 91, 110, 111, 112.

Question 256.

Does Ukraine consider the current domestic legal framework to be sufficient for the adequate and effective protection of intellectual property rights? How does Ukraine propose to cover any deficiencies?

Reply 256.

See Replies 83, 90, 91.

Question 257.

What steps will Ukraine take in regard to obligations under the TRIPS Agreement relating to enforcement of intellectual property rights in Ukraine?

Reply 257.

See Replies 83, 90, 91.

Question 258.

As we understand that Ukraine is not a party to the Berne Convention, we would be interested in details of copyright protection afforded by present Ukrainian Law.

Reply 258.

See Reply 92.

Question 259.

Ukraine's economic policy is said to include State support to strategic areas of the economy: power engineering, metallurgy, coal and chemical industries. Please specify how this State support is implemented (through subsidies, price controls, procurement practices or other measures) and whether plans exist for its phasing out.

Reply 259.

See Reply 1.

Question 260.

How does the Government of Ukraine intend to make the "substantial cuts in non-critical imports in order to reduce the trade deficit below 5 per cent of GDP"?

Reply 260.

See Reply 2.

Question 261.

Is the attraction of private investment limited in any way? Are any sectors excluded from foreign investment?

Reply 261.

See Replies 197, 200, 244.

Question 262.

Which staple diet products are still subject to subsidization at the retail market level?

Reply 262.

See Reply 145.

Question 263.

Please provide a list of products still subject to State-pricing and indicate whether there are any plans to phase these out.

Reply 263.

See Reply 145.

Question 264.

What sectors are still State-controlled? What is the pricing-policy of state-owned enterprises? To what extent do they benefit from any kind of subsidies, direct or indirect?

Reply 264.

See Replies 145, 244.

Question 265.

How does the system of prior declaration of price alterations work and to what sectors does it apply?

Reply 265.

See Reply 145.

Question 266.

It seems a system of administrative controlling of prices is being set up. Please explain more specifically how this system is to be implemented, in particular how the mark-up will be limited to 55 per cent of the manufacturer's price regardless of the price of a good. Please elaborate on the influence of progressive taxation on prices restriction.

Reply 266.

See Reply 150.

Question 267.

In order to prevent the export from Ukraine of products at dumping prices, bedrock prices have been determined for major types of exported goods. Indicative prices have also been for goods subject to quoting and licensing. Please provide bedrock prices for major types of exported products, in particular steel. Please explain the procedures used to calculate and administer bedrock and indicative prices as well as their adjustment.

Reply 267.

See Reply 5.

Question 268.

Although the attraction of foreign investment is a part of government policy, it appears that the process of corporatisation, in its first stage, does not encourage foreign ownership of shares. Are any policy changes expected to encourage greater foreign participation in the privatization process?

Reply 268.

See Replies 65 through 70, 214.

Question 269.

Goods imported into the Ukraine are subject to import duties. Please indicate whether there are maximum levels of import duties authorized by law and who is empowered to modify them.

Reply 269.

See Replies 10, 19, 20, 55, 117, 225.

Question 270.

Please provide more details on the fees related to customs clearance.

Reply 270.

See Replies 26, 34, 136.

Question 271.

Please expand on the circumstances within which a "special duty" may be levied in excess of normal customs duties. Do the conditions, which need to be fulfilled, conform to the Agreement on Safeguards included in the Final Act? Is the imposition of a special duty as a "protective measures against discriminatory or inimical action of other States" compatible with WTO provisions? What are "regular hostile actions directed against general interests of Ukraine"?

Reply 271.

See Reply 12.

Question 272.

Please provide a copy of domestic anti-dumping, countervailing duty or safeguard laws, if these have been enacted. If such relevant laws do not (yet) exist, by which means does Ukraine expect to abide by WTO laws? Would the provisions of WTO and its annexed Agreements have direct effect (i.e. be directly applicable) within Ukraine?

Reply 272.

See Reply 17.

Question 273.

How can anti-dumping duty be imposed on the export of goods? Can this be done autonomously or only after the initiation of anti-dumping proceedings in another importing country? Is such a duty imposed on an MFN basis or only on exports destined a specific import market?

Reply 273.

See Replies 12, 13, 15, 133.

Question 274.

Please provide more details on the levying of "seasonal customs taxes". What is the economic rationale behind them.

Reply 274.

See Reply 12, 133.

Question 275.

Please indicate fully with which Republics of the ex-USSR Ukraine has preferential relations, and what their character is (i.e. customs union, free-trade area). What is meant by the formation

of "special customs zones" with Ukraine? Would these Agreement comply with the provisions of the WTO (i.e. Article XXIV GATT 1994, Article V CATS)?

Reply 275.

See Replies 117, 118.

Question 276.

When a customs tax remains unpaid penalty sanctions can be taken without the right to appeal. Please justify the absence of a right to appeal.

Reply 276.

In compliance with the Law "On Unified Customs Tariff" (Article 25), one has the right to appeal as to penalty sanctions. In case customs duty is not timely paid it should be paid on a decision of the Customs bodies with no right to appeal.

Question 277.

Is the valued-added tax of 28 per cent levied before or after imposition of the customs duty? Is the 28 per cent VAT levied equally on all products regardless of their origin, and on all domestic products? Can the VAT paid upon importation under all circumstances be deducted from VAT to be paid at later stages of processing or sale?

Reply 277.

See Reply 28.

Question 278.

Are excise duties and other taxes applied in the same manner and equally on all imported products regardless of their origin and on all domestic products? If there is any discrimination, what time-table is foreseen for its phasing out?

Reply 278.

See Reply 30.

Question 279.

We would appreciate provision of a list indicating the products on which an excise duty is levied and the rates imposed.

Reply 279.

See Reply 30.

Question 280.

Please explain why residents are free to pay customs taxes in local currency whereas non-residents must pay such taxes in freely convertible currencies. Is there a time-frame to end this form of discrimination?

Reply 280.

See Reply 34.

Question 281.

Please confirm that no quotas or licensing are applied to goods subject to imports, as decided in December 1993.

Reply 281.

See Reply 38.

Question 282.

Is the term "considerable processing" the same as the criterium of the "last substantial transformation" to which the Final Act refers?

Reply 282.

See Reply 178.

Question 283.

A certificate must accompany imported products and confirm compliance of the products with the obligatory requirements of the respective regulations that are effective in Ukraine. The certification agency issues and recognizes these documents. Please provide more details about the application procedures. Please explain whether the Ukrainian system takes account of international standards.

Reply 283.

See Reply 43.

Question 284.

Which products are subject to mandatory certification upon importation in Ukraine?

Reply 284.

See Reply 43.

Question 285.

Referring to the second paragraph, the Final Act provides for a procedure opposite to that applied in Ukraine: only if international standards are inappropriate in a clearly defined and limited number of cases may national standards apply. Please indicate which initiatives will be taken in the near future to foster the adoption of international standards in Ukraine.

Reply 285.

See Reply 48.

Question 286.

Please indicate the compatibility of group and individual quota's with GATT/WTO rules, including with respect to non-discrimination (Articles I and XIII).

Reply 286.

The use of export/import quotas is a safeguard measure taken in extreme conditions in compliance with Articles XI, XII, XIX, XX of GATT (The Law on Foreign Economic Activities, Article XIX).

Question 287.

The list of products subject to export licensing and quota's in 1994 is extensive. Please provide at HS 6 digit level latest list of products which are involved, and the applicable quota for each product. Is there a time-table to phase-out these restrictions?

Reply 287.

See Reply 10.

Question 288.

What proportion of total exports from Ukraine is subject to export licensing?

Reply 288.

See Replies 49, 50.

The following products are subject to export licensing:

Grains 1001-1008 (except for 1008.3.0000);

Coals 2701;

Wastes of noble metals or metals engraved with noble metals 7112;

Pig iron 7201;

Wastes of ferrous and non-ferrous metals 7204, 7404, 7503, 7602, 7802, 7902, 8002.

The volume of export products subject to quotas and licences makes 4 per cent of the total volume of export for the first six months of 1994.

Question 289.

The law on the Foreign Economic Activity of Ukraine, in particular its Article 16, includes provisions which are substantially different to those incorporated in the WTO. Specific mention can be made of:

The conditions under which a trade restrictive measure may be taken to safeguard the Balance of Payments.

The conditions under which an export restrictive measure may be taken, which Article XI GATT limits to temporary cases of critical shortages of foodstuffs or other products essential to the exporting contracting party.

A withdrawal of concessions can only be implemented after the relevant WTO dispute settlement procedures have been respected and such authorization is granted.

When does the Government of Ukraine intend to modify, where necessary, the relevant parts of the law on the Foreign Economic Activity? Will Members of the Working Party be given a draft in due course?

Reply 289.

Allowing for the Ukraine's accession to GATT/WTO, an important factor of the economic reforms in Ukraine, the Ukrainian Government is being drawn up draft legislative regulations related with bringing of Ukrainian Laws into conformity to the GATT/WTO principles and rules. The Law on Foreign Economic Activities was one of the first laws adopted in independent Ukraine. At present, it is subjected to a considerable revision.

The draft law can be presented given to the Members of the Working Party after the work over it is completed.

Question 290.

Will the system of special or exclusive trading with respect to the specified products be phased out? The foreign exchange and trade balancing requirements contradict WTO rules and principles. When will these be phased out?

Reply 290.

In compliance with the anti-monopolism measures in Foreign Economic Activities, (Article 20 of the Law "On Foreign Economic Activities"), only specially authorized organizations are allowed to effect export/import of armaments, explosives, nuclear materials, noble metals and alloys, precious stones, narcotic materials, fine art pieces and antique items from the museum funds. The permit for export/import of these goods falls into competence of the Cabinet of Ministers, which does not contradict Articles XX and XI.

In compliance with the Decrees of the Cabinet of Ministers "On Special Regime of the Export of Some Goods" No. 16-92 of 31 December 1992 and "On State Regulation of Production, Trade and Export of Spirit", a special exporters regime has been established for the export of coals, spirits, non-ferrous metals, rare-earth metals including powders, wastes, noble metals ore, petroleum products,

electric power which does not contradict Articles XX, XI of GATT. This regime is effective now as well. For the period these Decrees were effective, a number of organizations irrespective of the form of ownership, including foreign and mixed ventures, were authorized to export the above-specified goods.

Question 291.

Does the system of "government contracts" apply only to goods subject to export quotas? If so, will the government contracting system be eliminated in parallel to a phasing-out of export restrictive measures?

Reply 291.

See Replies 55, 58, 78.

Question 292.

Are the intermediaries the same as the enterprises referred to under the "Special Regime for Exports"? If not, which are the criteria on which intermediaries are designated?

Reply 292.

Yes, they are the enterprises referred to the "Special Regimes for Exports".

Question 293.

Please specify more precisely whether any legal or other restrictions exist on goods in transit, or whether freedom of transit is guaranteed. What is meant by the term "under customs control"? Is there a difference in treatment between goods originating in the Independent States which are in transit and goods from other third countries? If there is a different treatment, please explain its functioning and effects.

Reply 293.

In compliance with the Laws of Ukraine the freedom of transit is guaranteed except for cases specified in Reply 39. Also, no transit is permitted for the goods prohibited for export and import for considerations of national security.

There is no difference in treatment between goods originating from CIS countries which are in transit and goods from the other third countries.

See Replies 117, 118.

Question 294.

What internal agricultural support mechanisms exist and for which products? What direct or indirect subsidies are given for agricultural production? How does the value of such support compare to the total value of agricultural production?

Reply 294.

See Reply 58.

Question 295.

What export subsidies are given for which agricultural products? Can everyone export with a refund or only certain agencies?

Reply 295.

See Replies 55, 56, 58.

Question 296.

We would appreciate the supply of a list of all tariff and non-tariff measures for agricultural products for each tariff line. For which products do quotas and licensing agreements exist? How are these administrated?

Reply 296.

See Replies 13, 38, 163.

Question 297.

We would appreciate more information on the application of' special duties to agricultural products.

Reply 297.

See Replies 12, 13, 15, 16, 17.

Question 298.

For which products does State-trading exist? Please describe extensively what trading organizations play, and how they operate.

Reply 298.

For list of the State Trading Enterprises see Reply 141.

The State External Trade Enterprises are intended for sale of products under State contracts and orders (see Reply 78). The volume of export under States contracts approximated to 10.2 per cent of the total volume of export in 1993 and in the first half of 1993 it made 8.5 per cent.

Also See Reply 51.

Question 299.

Companies of the agro-industrial sector benefit from a preferential 11 per cent income tax rate as against a normal 22 per cent rate. Do foreign companies also benefit from this?

Reply 299.

Yes, these conditions extend to foreign companies as well.

Question 300.

What period of time is considered necessary for the Ukrainian Government to maintain the present system of multiple exchange rates?

Reply 300.

See Replies 64, 129, 196.

Question 301.

What period of time does the Ukrainian Government envisage to need before the unifying exchange rate, eliminating the 50 per cent surrender requirement, and establishing an integrated exchange market?

Reply 301.

See Replies 64, 129, 196.

Question 302.

Is the present electronic system of interbank payments integrated, i.e. can banks freely supply each other with foreign currency and is the exchange rate identical in all parts of Ukraine?

Reply 302.

As described by the Memorandum, the banking system in Ukraine incorporates the National Bank of Ukraine and commercial banks. The competence of the National Bank extends to emission, State credit policy, stabilization of the national currency and supervision over the banking system. The National Bank is a subordinate to the Supreme Rada and enjoys a law-making right.

Commercial transactions are effected by the commercial banks. In operations involving foreign currency, a commercial bank has to obtain a special permit from the National Bank. Depending upon a specific type of the permit the banks can carry out operations either in the domestic currency market or set up correspondence accounts with foreign banks.

See Reply 129.

Yes to the second half of the question.

Question 303.

When does Ukraine expect to be in a position to move towards Article VIII IMF Membership, i.e. full external current account convertibility, including the remittance of profits?

Reply 303.

In compliance with Presidential Decree "On Perfection of Monetary Regulation", starting from 1 November 1994, an official carbovanets-to-foreign currency convertibility has been established including the remittance of profits.

Also See Reply 129.

Question 304.

What are the exact rules of the National Bank of Ukraine regarding the remittance abroad of profits of firms? Does a distinction exist between foreign investment covered by the State Programme for Encouraging Investment in Ukraine and other investment?

Reply 304.

See Replies 4, 60, 65, 67, 68, 69, 70, 129, 200, 204, 214, 303.

Question 305.

Please elaborate on the present restrictions with respect to private ownership of land, both as regards domestic and foreign natural or legal persons.

Reply 305.

The right of private ownership of land for Ukrainian citizens is provided for by the Land Code of Ukraine (Article 6): a citizen can be given land to ownership for farming purposes, construction of a house, service facilities, gardening, and for construction of a country cottage and garage. The Presidential Decree "On Measures to Accelerate Reforms in Agricultural Production" has made up a new feature. The decree has established the order of privatization of land used by agricultural enterprises and organizations.

A farmer may get a 50 ha. land of agricultural land or 100 ha. of whatever land into private ownership from the local self-government bodies in the order that is being developed by the Cabinet of Ministers.

In the same manner the lands can be given to the members of the collective farms, joint-stock companies that would decide to go into farming.

This Decree allows the owners of the lands may voluntarily form agricultural enterprises, joint-stock companies and the other collective enterprises, exchange, lease and sell land etc, but without changing the above-designated purpose of the land and only to citizens of Ukraine. Thus, the Laws of Ukraine do not provide for private ownership of land for foreign natural and legal persons.

Question 306.

We would greatly appreciate more extensive information regarding Government Procurement in Ukraine. Generally, are these laws governing procurement and, if so, could these be provided? Could the present procurement system be described and how it is expected to evolve?

Reply 306.

See Replies 74 and 75.

Question 307.

Please provide a complete list of the purchasing authorities mentioned and referred to as "State bodies of government as well as local councils of people's deputies". We would appreciate provision, in addition of a list of those entities involved in foreign economic activities which on voluntary basis are authorized to execute government contracts. Finally please indicate the administrative level (central, regional or local) associated to the authorities mentioned above.

Reply 307.

See Reply 141.

In compliance with the Resolution No. 421 of 5 May 1993 "On Payments for Export of the Products under State Orders" and Resolution No. 212 of 22 March 1993, the State contracts with enterprises that produce export products can be concluded by the following governmental bodies and their subordinates:

Health Ministry:	Ukrmedbioprom (concern) Ukrphytotherapy (consortium) Ecosorb (consortium)
Ministry of Industry:	enterprises of Ukrexpolis enterprises of Ukrzovnishprom enterprises of Slavutich Ruda enterprises of Slavutich Stal enterprises of Kryvorizhmarket
Ministry of Agricultural Production:	concern "Ukragrotekhservis" concern Ukrmyaso Association Ukragrokhim Association Ukragrobiovet Association Ukrplemobyednaniie concern Ukrmolprom
State Committee for Resources:	firm Ukrbarimpex firm Odessapromashimport

Under intergovernmental agreements:

Ukrainian State Departments for the Supply of Materials.

The State Committee for Food Industry

Ukrzukur

Ukrspirt

Ukrselprom

Ukroilyazhirprom

Ukrkonservmoloko

The Kiev City State Administration:

Kiev Commercial Centre

Ukoopspilka

Ukrimpex

Ukrmistsevprom

Ukrbud

Here, it should be mentioned that the Resolution No. 212 was annulled in 1994 (this Resolution defined the authorized organizations), while Resolution No. 421 establishing the order of payments was effective till the end of 1994. In the framework of economic reforms initiated by President Kuchma, the State contracts system should be replaced with the Government Procurement System. The order of placing State orders has not been decided on.

Question 308.

Please confirm that public purchasing is carried out in an open, competitive and not discriminatory basis with respect to foreign suppliers. Please indicate how the invitations to tender for a public contract are called and what are the criteria applied to ensure such competitive tendering. Do interested bidders have access to information on tendering procedures, technical specifications, evaluation criteria and results of the tendering process? Is there any possibility to contest the awarding of a contract?

Reply 308.

In compliance with the Resolution of the Cabinet of Ministers "On Approval of the Provisions on International Sales (Tenders) in Ukraine" No. 871 of 21 December 1993, public imports purchasing is carried out in Ukraine in an open, competitive and not discriminatory basis with respect to foreign suppliers. Invitations for open sales are published in the newspapers "Golos Ukrainy" and "Uryadovy Kurier" at least 45 days before their opening, while in the case of closed sales, at least 45 days before opening the Tender Committee must dispatch the invitations to would-be participants.

Foreign and Ukrainian enterprises irrespective of the form of ownership may participate in tenders. The Ministry of Foreign Economic Relations is responsible for the conformity of the tenders' organization to the effective laws. Organization of tenders is executed by a customer or entrusted organization.

To hold the tenders, a tender committee should be formed incorporating the representatives of Ministries or departments and other interested organizations.

The decisions of the tender committee should be taken by simple majority.

Question 309.

Is procurement by utilities subject to any regulation?

Reply 309.

The Civil Code of Ukraine regulates the contractual-basis contracts. The supplies under State contracts carried out during 1994 were regulated by the Presidential Decree "On State Contracts and Orders for 1994" No. 489/93 of 28 October 1993 and a number of Resolutions aimed to ensure implementation of the Decree above.

Also See Replies 51, 78, 79.

Question 310.

Please give some information regarding procurement rules and practices in relation to construction works and services in general. Please include statistical information on the volume of procurement operated at the central, regional, and local level with respect to goods, works and services.

Reply 310.

See Reply 309.

Question 311.

Are state-owned trade enterprises different to the "entities involved in foreign economic activities" that are mentioned above? Could we have a complete list of those enterprises as well as a description of its purchasing regime?

Reply 311.

See Replies 51, 52, 141, 311.

Question 312.

Regarding Special (free) Economic Zones who would be the authorities responsible of procurement in these zones, the Ministries at the central level or the regional administration? Is there any specific procurement regime applying to these areas?

Reply 312.

Since there are no free economic zones in Ukraine, this question is left open.

Question 313.

Please provide a list of those State-trading enterprises which are granted exclusive or special rights to import or export, and the product groups for which such rights are established.

Reply 313.

See Reply 290.

Question 314.

Will the executive or special right to import or export in certain categories of products be progressively liberalized and, if so, will the ability of new firms to engage in such trade be granted according to objective and published criteria?

Reply 314.

In the framework of economic reforms, the Cabinet of Ministers is considering the possibility of eliminating the special exporters regime described in Reply 290.

Question 315.

Please specify what customs and tax preferences are granted to firms establishing themselves in a special economic zone.

Reply 315.

Preferences are determined individually for every particular economic zone. So far no free-economic zones have been created in the territory of Ukraine.

Question 316.

Are any tax or other advantages, granted to firms investing in the special economic zones made contingent on either local content requirements or on export performance?

Reply 316.

See Reply 315.

Question 317.

Are goods produced in a special economic zone free to be transported and sold within Ukraine? Are any customs or other duty applied on such goods, when they are transported out of a special economic zone into Ukraine?

Reply 317.

In compliance with Article 24 of the Unified Customs Tariff, admissible is a duty-free export and import of goods which:

Are imported into special economic zones for final consumption therein;

originate and are exported from special economic zones for consumption outside the customs' territory of Ukraine;

originally are exported from special economic zones in the territory of Ukraine;

every particular case should be dealt with by the Supreme Rada. See Reply 315.

Question 318.

Please set out the precise legal condition with respect to offshore banking and insurance, as well as cross-border trade.

Reply 318.

Ukraine will answer this question after further clarification between our government agencies.

Question 319.

Do current rules in Ukraine on compulsory and non-voluntary licences for patent comply with the provisions of Article 31 of the TRIPS Agreement?

Reply 319.

Yes, they do.

Question 320.

Does Ukraine protect geographical indications? Under which precise legislative act? Is the legislation in accordance with Articles 22 to 24 of the TRIPS Agreement?

Reply 320.

Yes it does in compliance with the Law of Ukraine "On Copyright and Related Rights" conforming to Articles 22 to 24 of the TRIPS Agreement.

Question 321.

Is there any protection of layout-designs (topographies) of integrated circuits? If so, are there any registration requirements? Which is the body responsible for these matters? Which is the legislative act ruling the legal protection of topographies of integrated circuits?

Reply 321.

See Reply 111.

Question 322.

Is the State Patent Committee of Ukraine responsible not only for industrial property but also for copyrights and related rights? If this is not the case, which is the body responsible for these rights?

Reply 322.

The State Committee for Copyright and Related Rights does.

Question 323.

Is the protection of copyrights and related rights in Ukraine fully in line with the Article 9 to 14 of the TRIPS Agreement?

Reply 323.

See Replies 90, 91, 110, 111, 112.

Question 324.

Does Ukraine copyright legislation provide for rental and lending rights? Who may enjoy these rights and to what extent?

Reply 324.

See Reply 96.

Question 325.

Are computer programmes protected as literary works? How are databases protected and to what extent?

Reply 325.

The computer programmes are not protected as literary works, nor are databases.

Question 326.

Are there any legislative provisions in Ukraine for the protection of trade secrets and undisclosed information, notably in view of Article 39 of the TRIPS Agreement?

Reply 326.

See Replies 86 through 90. Reply 113.

Question 327.

Are there any legislative provisions in Ukraine on the protection against unfair competition?

Reply 327.

In compliance with the Laws of Ukraine, unfair competition in foreign economic activities is understood to be:

Dumping;
illegal application or production of false trade marks or industrial designs;

circulation of false information as to the goods;

comparison with any goods of competing producers in advertising.

The disclosure of dumping is to be made exclusively judicially on suit of the Ministry of Foreign Economic Relations or enterprises the interests of which were encroached upon.

In all the other cases penalty sanctions can be applied in compliance with Article 38 of the Law "On Foreign Economic Activities" (fines, anti-dumping procedures, individual licensing treatment of the foreign economic activities, temporary termination of foreign economic activities).

Question 328.

Under III. Imports Regulation, General Description of the Customs Tariff Structure, the Memo states i.e. that "seasonal customs taxes may be established for the period not exceeding four months". Could the Ukrainian delegation please explain in some detail what products are involved, and under what circumstances these customs taxes are levied?

Reply 328.

See Reply 12, 133.

Question 329.

Under the same heading is also stated that special duties may be levied "as the means to combat regular hostile actions directed against general interests of Ukraine, or in the event of attempts to initiate unfair competition". Could the Ukraine delegation please elaborate on this. What is meant by "regular hostile actions"?

Reply 329.

See Reply 12.

Question 330.

We would appreciate receiving a list of products that are subject to excise duty. Certain products are exempt from VAT in order to protect manufacturers. Is this not a discriminatory practice?

Reply 330.

See Reply 28, 30, 137.

Question 331.

Equally, we would appreciate receiving lists indicating which products are subject to non-tariff measures (licences, import/export prohibition etc.).

Reply 331.

See Reply 48, 50, 288.

Question 332.

Concerning rules of origin we would like to know whether the Ukraine intends to adjust its regulations to international standards.

Reply 332.

See Reply 42.

Question 333.

How do Ukraine's SPS regulations comply with international regulations?

Reply 333.

See Reply 48.

Question 334.

From the explanations under III. Export Regulations, one is given to understand that all exports of raw materials are subject to quota and licensing procedures. When does the Ukraine Government consider that these regulations can be abolished?

Reply 334.

In compliance with the programme of reforms these quotas and licences can be abolished to the end of 1995, when privatization of industry will be completed and internal prices reach the world level.

Till this period, in conformity to Article XX(i) of GATT, the Government reserves the right of applying restrictions on export of raw materials.

Question 335.

The Ukraine has a system of export quotas including licences. Only certain companies are allowed to export. The country also has a unique way of handling fiscal transactions related to export (through a government account system). Is this in compliance with GATT?

Reply 335.

See Reply 36.

To promote export and open Ukraine market for foreign trade, the Government implemented drastic measures in foreign trade.

In compliance with the programme of reforms, starting from 1 November 1994, all export quotas and licences were eliminated except for quotas for wastes of ferrous and non-ferrous metals, pig iron, coals, grains and the goods subject to voluntary export restrictions.

Also see Reply 129.

Question 336.

Resolution of disputes with the government or governmental representatives:

In case of a conflict between a foreign exporter and Ukraine government institutions as to the interpretation of current rules and regulations; or

in the case of bureaucratic mistakes etc., what are the legal procedures under which such disputes may be resolved?

Reply 336.

Protection of the rights and interests of foreign exporters is guaranteed by the provisions of the Civil Code, Administrative Code, the law "On Foreign Economic Activities" and other legislative acts. Protection of the rights violated is effected in compliance with the Arbitration Legal Procedure Code of Ukraine in courts and arbitration courts.

In compliance with Code above, the right of appeal to the arbitration court is granted to all organizations irrespective of the form of ownership and State they belong.

Also, see Replies 17, 70.

Question 337.

Along the same lines, what are the procedures for resolving a dispute involving a foreign investor who for some reason finds himself in conflict with a state-owned enterprise or a governmental regulatory body?

Reply 337.

See Replies 17, 70.

Question 338.

With regard to IV.7, please explain whether publicly-owned enterprises are obliged to publish annual or semi-annual accounts, and whether such accounts are established in a manner which allows for accurate estimates of production or operating costs?

Reply 338.

In compliance with the Laws of Ukraine, publicly-owned enterprises are not obliged to publish annual or semi-annual accounts as regards accurate estimation of production or operating costs.

Question 339.

A very large number of stores, kiosks and catering facilities are controlled by the State. Does the Government encourage private ownership and operations in this area and, if that is the case, with what incentives?

Reply 339.

See Reply 76.

Question 340.

We would like to point out that in the text concerning state-owned trade enterprises there is no indication of any ambition to comply with Article XVII of the GATT. An elaboration on this would be appreciated.

Reply 340.

In compliance with the programme of reforms and in the process of privatization, the state-owned enterprises will be brought into compliance to Article XVII of GATT.

Question 341.

Re IV.9., it is not clear from the chapter on TRIPS whether Ukraine is a signatory to the Rome or Bern Conventions. If this is not the case, does the Ukraine plan to sign these conventions?

Reply 341.

Yes, it does.

Question 342.

What are the basis for introduction of seasonal customs taxes?

In which forms are these taxes applied?

Reply 342.

See Replies 12, 133.

Question 343.

Request for elaboration of the system of special duties. Poland would welcome clarifications of the meaning and interpretation of the following terms: (a) "in the event of protective

reservations" and conditions which "can inflict substantial damage to producers of similar goods"; (b) "as the means to combat regular hostile actions"; (c) "attempts to initiate the unfair competition"; (d) "counteractions against powers, economic groups ... "which hinder the foreign economic activity of Ukrainian enterprises"; i.e. "application or special tariffs shall be subject to provisions of special laws".

Reply 343.

See Replies 12, 133.

Question 344.

Request for elaboration of the system of anti-dumping duties. Poland would welcome information on the meaning and interpretation of the "general sale price of dumping goods".

Reply 344.

See Reply 17.

Question 345.

Request for elaboration of the system of countervailing duties. Poland would welcome clarifications on which basis Ukrainian authorities consider that "production or exports of these goods was subsidized directly or indirectly" and the meaning of the wording "prevents from the development of production of such goods in Ukraine".

Reply 345.

See Reply 17.

Question 346.

Which countries have "special customs zones with Ukraine"?

What are the provisions of these zones?

Reply 346.

See Replies 117, 118, 119.

Question 347.

Poland would like to know on what basis it was calculated that the "weighted average duty rates amount to 11.9 per cent of the customs value"?

Reply 347.

See Reply 166.

Question 348.

Is the value added-tax levied on imported goods (28 per cent) and an "excise duty" also applied to domestic goods?

Reply 348.

See Replies 28 and 30.

Question 349.

Request for elaboration on the sentence that "the value of intellectual property employed during the goods manufacturing process, and which an importer must pay directly or indirectly as a mandatory precondition for imports or exports shall be included in the calculation of customs value?"

Reply 349.

In compliance with the Unified Customs Tariff of Ukraine, the value of intellectual property is used as stated in the question and is included in the calculation of customs duty.

Question 350.

Poland requests the list of products subject to import quotas?

Reply 350.

See Reply 38.

Question 351.

What is the basis and precise modalities of export subsidies?

Reply 351.

There are no export subsidies in Ukraine.

Also, see Replies 1, 49, 50, 51.

Question 352.

Request for elaboration of the system of allocation of foreign currency to importers (p. 26). Poland would like to have clarification especially of the meaning and interpretation of the following terms:

- (a) "residents have the right to purchase freely convertible currency for the national currency of Ukraine, via Tender and at the actual rate of such a Tender";
- (b) "Non-residents may extend credits and loans in hard currency subject to the rules of the National Bank of Ukraine and upon procurement of license from same".

Reply 352.

See Reply 34.

Note: Replies on the Questions marked with asterisks will be submitted in addition shortly.

FOREIGN TRADE IN UKRAINE IN JANUARY-SEPTEMBER 1994

A crisis phenomenon was continuing in the Ukrainian economy, with real declines in production. For the period January to September 1994 compared to the same period in 1993, GDP declined by 18 per cent, national income - by 19.8 per cent.

The development of foreign trade was achieved under very difficult conditions. For the period January to September 1994 the total volume of Ukrainian foreign trade in goods and services was US\$16.7 billion, including export - US\$8.5 billion, import - US\$8.2 billion, resulting in a positive balance in the amount of US\$0.3 billion.

Foreign trade in goods

The main part of the foreign trade turnover (93 per cent) results from trade in goods. It is necessary to underline that in the last few years the export of goods fell behind imports, and because of it we have had a negative trade balance, which makes the financial state of the country more difficult.

The above-mentioned tendency continued in 1994. For the January-September period Ukraine's export of goods was US\$7.6 billion, import of goods - US\$8 billion. A negative balance was primarily a result of the state of trade of CIS and Baltic States, which make up two thirds of the total turnover in trade of goods. Beginning in 1992 exports to CIS and Baltic States fell behind imports by 6.6 per cent in, 1993 - by 29.6 per cent, for the nine-month period of 1994 - by 15.6 per cent.

The situation was intensified by the delivery of oil and gas into Ukraine from the Russian Federation and Turkmenistan, prices which increased year-by-year. These two countries contribute about 90 per cent of import of goods from CIS and Baltic States and 58.8 per cent of total imports into Ukraine. In 1992 energy complex imports compared to total imports of goods from CIS and Baltic States accounted to 42.3 per cent, in 1993 - 98.6 per cent, for the nine-month period of 1994 - 66.1 per cent.

Ukrainian exports to the CIS and Baltic States consist primarily of products of ferrous and non-ferrous metallurgy, machine-building and metal processing industry and the food industry, but their total value fell significantly behind the value of energy complex imported products. During the period of January-September 1994 the value of energy complex imported products exceeded the combined value of ferrous and non-ferrous metallurgy, machine building and metal processing industry, and the food industry's exported products by US\$1.9 billion.

The reduction of physical volumes of traditional types of exported products delivered to CIS and Baltic States took place throughout this period. Though, for the nine-month period of 1994 compared to the same period of 1993 export of ferrous metals decreased on 2,225.6 thousand tons or 61.9 per cent, metal tubes - by 773.9 thousand tons (61.6 per cent), processed pig iron - by 275.5 thousand tons (65 per cent), trucks - on 2.8 thousand pieces (32.9 per cent), etc.

The result of these changes is that the amount of Ukraine's negative balance with the CIS and Baltic States is now US\$1.6 billion.

Ukraine's foreign trade in goods with other countries covers 33.7 per cent of the total foreign trade turnover. For the period January-September 1994 Ukraine's trade with these countries had a positive balance in the amount of US\$1.1 billion, which covered 70 per cent of the negative balance in trade with the CIS and Baltic States.

There is a positive trend of volumes increasing in the export of goods to these other countries. In 1992 exports to these countries exceeded imports by 26 per cent, in 1993 - by 19 per cent, and for the nine-month period of 1994 by 22 per cent.

There are some changes in the geographical structure of trade in goods with non-CIS and Baltic countries. While in 1992 the main export partners of goods from Ukraine were European countries which accounted for more than 70 per cent of total exports, for the nine-month period of 1994 they covered only 53.2 per cent. Exports to the countries of Asia correspondingly rose from 19 per cent to 35.3 per cent. The main partners in export of goods for the nine-month period of 1994 - China (US\$415.3 million), Switzerland (US\$225.6 million), United States (US\$204.7 million).

Among the importers of goods into Ukraine Europe continues to be the main supplier with 84.9 per cent of imports, imports from the countries of Asia reduced from 14.3 per cent in 1991 to 5.6 per cent for the nine-month period in 1994 and imports increased from 3.1 per cent to 7.3 per cent - from the countries of America. The largest volumes of imported goods came from Germany (US\$897 million), Poland (US\$134.6 million), United States (US\$114.1 million).

During the last few years the structure of foreign trade has changed in negative ways. There was a substantial reduction of energy complex exports, if in 1991 specific gravity of these products was 10.5 per cent, in the nine-month period of 1994, only 4 per cent, machine-building products, correspondingly, 28.7 per cent and 8 per cent. But there have been substantial increases on the part of ferrous and non-ferrous metallurgy products from 39.2 per cent to 62.3 per cent, chemical and petroleum industry - from 8.3 per cent to 14.4 per cent. Only for the period of January-September of 1994 compared with the same period of 1993 export of iron to foreign countries increased by 9,905.9 thousand tons or two times higher, fertilizers - by 11,560.9 thousand tons (two times higher), ferrous metals - by 1,607.2 thousand tons (36.9 per cent). Though, in Ukraine's exports raw materials take a major place.

And visa versa there is an increase in the imports in the energy complex from 0.6 per cent in 1991 to 8.3 per cent - for the nine-month period of 1994, machine-building and metal processing industry, correspondingly, from 55.4 per cent to 61.3 per cent.

The analysis of foreign trade in goods by method of payment shows that only 35.9 per cent of goods exported from Ukraine were sold for freely-convertible currency, and the portion sold by barter exchange has increased. For the nine-month period of 1994 specific gravity of barter operations in export deliveries was 40.8 per cent versus 22 per cent for the same period of 1993, two thirds of barter sales were between Ukraine and CIS and Baltic States. The increase in barter operations testifies further to the decrease in export effectiveness. It is a result of poor taxation policy, currency-financial policy, and aggravation of payment and sell crisis.

Foreign trade in services

For the nine-month period of 1994 foreign trade turnover in services as US\$1,139.8 million; taking into account exports - US\$937.5 million, imports - US\$202.3 million, a positive balance of US\$735.2 million was received. In the total turnover of foreign trade in goods and services, services volume covers only 6.8 per cent. But the positive balance of trade in services covered the negative balance for trade in goods, and as a result of the balance in trade of goods and services became positive at US\$271.2 million.

Ukraine mainly conducts trade in services with non-CIS and Baltic countries (74.6 per cent) and only a quarter of its turnover covers CIS and Baltic States. Main trade partners among non-CIS and Baltic countries are - India, Germany, Romania, United States, among CIS and Baltic States - Russian Federation, Belarus, Uzbekistan, Moldova.

It is necessary to underline, that Ukraine does not employ the potential of this type of trade well enough. Transportation services account for the major portion of export/import of service (74.2 per cent of exports, 50 per cent of imports), including ocean transport (50.5 per cent of exports, 41.6 per cent of imports). Export of active informal services (patents, licences, know-how) covers only 0.1 per cent when Ukraine has sufficient science and intellectual potential (Ukraine contributes one-fifth of scientific researches among CIS and Baltic States).

STATISTICAL DATA

(a) Main economic indices

1. Gross Domestic Product (billions of ukr. karb.).

Table No. 1

(thousand ukr. karb.)

	1992	1993	9-months of 1994
G.D.P. (in actual prices)	5,033	141,477	573,017
per person	96.5	2,711.4	11,027.7
Rates of exchange			
average	208.36	4,883.86	45,000.00
at the end of 1992, 1993, 9-months of 1994 (Ukr. karb. to US\$)	647.00 (by 20.11.1992)	12,610.00 (by 25.12 1993)	104,000.00 (by 25.12 1994)

2. Gross National Product and National Income in comparison with last two years (in billion of ukr.karb. and per cent)

Table No. 2

	1992	1993	9-months of 1994
Gross National Product (in actual prices)	9434	317,155	1,157,090
in % to the previous year	89.8	92.1	75.3*
per person (thousand ukr.karb.)	180.9	6,078.2	22,268.1
in % to the previous year	89.5	92.1	*
National Income (in actual prices)	3,887	118,237	536,452
in % to the previous year	82.5	81.2	78.1*)
per person (thousand ukr.karb.)	74.5	2,266	10,324
in % to the previous year	82.2	81.1	*

*In % to the nine-months period of 1993

3. Rates of increasing (decreasing) of the agricultural and industrial production in comparison with last two years (in per cent).

Table No. 3

	1992	1993	9 months 1994
Agricultural production	91.7	101.5	83.4
Industrial production	93.6	92.0	72.3

(b) Foreign trade statistics

1. Trade relations with CIS and Baltic States in January-September 1994 (in actual prices, US\$ million).

Table No. 4

	Volume	Share %
Foreign trade turnover with CIS and Baltic States	10,638.8	63.6%
Export	4,606.0	54.1%
Import	6,032.8	73.3%
Balance	-1,426.8	

2. Geographical structure of export/import with CIS and Baltic States in 1993 (in actual prices, billion ukr. krb.).

Table No. 5

States	Export	Import	Balance
Total volume	22,965.1	34,683.4	-11,718.3
Azerbaijan	904.7	272.2	+ 632.5
Belarus	1,708.0	1,407.5	+ 300.5
Armenia	45.0	25.9	+ 19.1
Georgia	69.5	63.1	+ 6.4
Kazakhstan	557.9	399.7	+ 158.2
Kyrgyzstan	42.3	41.5	+ 0.8
Latvia	163.7	153.3	+ 10.4
Lithuania	304.4	816.7	-512.7
Moldova	1,369.1	160.6	+ 208.5
Russian Federation	17,312.4	24,414.4	-7,102.0
Tajikistan	27.9	20.7	+ 7.2
Turkmenistan	950.9	6,539.7	-5,588.8
Uzbekistan	453.9	260.6	+ 193.3
Estonia	55.8	107.5	-51.7

3. Geographical structure of export/import with CIS and Baltic States in 1992 - January-September 1994 (in per cent).

Table No. 6

States	1992		1993		9-months 1994	
	Export	Import	Export	Import	Export	Import
Total volume	100.0	100.0	100.0	100.0	100.0	100.0
Azerbaijan	2.7	0.8	3.9	0.8	1.6	0.6
Belarus	9.1	7.6	7.4	4.0	9.9	4.1
Armenia	0.4	0.4	2.4	1.2	0.1	0.02
Georgia	1.1	0.5	0.3	0.2	0.2	0.03
Kazakhstan	4.7	3.0	2.4	1.2	2.2	2.7
Kyrgyzstan	0.5	0.6	0.2	0.1	0.1	0.1
Latvia	1.0	0.6	0.7	0.4	1.9	0.8
Lithuania	1.6	1.2	1.3	2.3	3.7	0.8
Moldova	2.3	1.6	1.6	0.5	9.8	2.0
Russian Federation	72.1	77.5	75.4	70.4	68.2	78.0
Tadjikistan	0.5	0.2	0.1	0.1	0.1	0.1
Turkmenistan	0.7	4.5	4.2	18.8	0.7	10.0
Uzbekistan	3.0	1.3	2.0	0.8	1.2	0.7
Estonia	0.3	0.2	0.3	0.3	0.3	0.1

4. Export/import structure with CIS and Baltic States, by sectors, in 1992 - January-September 1994 (in per cent).*

Table No. 7

Branch	Export			Import		
	1992	1993	Jan.-Sept. 1994	1992	1993	Jan.-Sept. 1994
Total volume including:	100.0	100.0	100.0	100.0	100.0	100.0
Energy complex	2.9	0.9	1.5	42.3	68.6	66.1
Ferrous and non-ferrous metallurgy	33.5	26.0	25.9	9.6	5.5	4.5
Machine building and metal processing	25.0	29.5	35.8	13.6	10.3	12.4
Chemical and oil-chemical industry	7.7	7.6	8.9	8.3	6.0	7.6
Light industry	6.6	8.6	4.8	8.2	1.9	2.5
Agro-industrial complex	7.8	22.6	12.1	2.4	1.1	1.2
Others	17.0	4.8	11.0	15.6	6.6	5.7

*Excluding services

5. Foreign trade turnover with CIS and Baltic States in January-September 1994 (in contract prices, US\$ million).

Table No. 8

	Total volume*	Goods	Services
Foreign trade turnover	16,741.0	15,601.2	1,139.8
Export	8,506.1	7,568.6	937.5
Import	8,234.9	8,032.6	202.3
Balance	+ 271.2	-464.0	+ 735.2

*Including export/import operations of joint ventures

6. Export/import geographical picture and its structure in January-September 1994.

Table No. 9

	Foreign trade vol.		Export		Import	
	US\$ million	Share %	US\$ million	Share %	US\$ million	Share %
Total vol. including:	15,601.2	100.0	7,568.6	100.0	8,032.6	100.0
CIS and Baltic States	10,347.1	66.3	4,368.2	57.7	5,978.9	74.4
Other States of the world	5,254.1	33.7	3,200.4	42.3	2,053.7	25.6
Europe	3,446.2	22.1	1,703.6	22.5	1,742.6	21.7
Asia	1,242.4	8.0	1,228.3	14.9	114.1	1.4
America	406.7	2.6	256.2	3.4	150.5	1.9
Africa	141.0	0.9	27.4	1.3	43.6	0.5
Australia	17.8	0.1	14.9	0.2	2.9	0.1

7. Main partners of Ukraine from foreign states in foreign trade in January-September 1994 (excluding CIS and Baltic States).

Table No. 10

Export			Import		
	US\$ million	Share %		US\$ million	Share %
Countries			Countries		
Europe	1,703.6	100.0	Europe	1,742.6	100.0
Switzerland	225.6	13.2	Germany	897.0	51.5
Italy	187.9	11.0	Poland	134.6	7.7
Hungary	170.9	10.0	Czech Rep.	99.0	5.7
Germany	168.4	9.9	Switzerland	76.1	4.4
Austria	136.4	8.0	Italy	61.4	3.5
Asia	1,128.3	100.0	Asia	114.1	100.0
China	415.3	36.8	Japan	20.4	17.9
Turkey	99.9	8.9	India	19.9	17.9
Thailand	85.9	7.6	China	17.3	15.1
Chinese Taipei	82.5	7.3	Cyprus	12.1	10.6
Africa	97.4	100.0	Africa	43.6	100.0
Egypt	49.4	50.7	Liberia	19.9	45.6
Liberia	16.6	17.0	Guinea	15.5	35.6
Tunisia	13.3	13.7	Egypt	7.5	17.2
America	256.0	100.0	America	150.5	100.0
United States	204.7	80.0	United States	114.1	75.8
Canada	21.6	8.4	England (Britain)	15.7	10.4
			Canada	11.2	7.5
Australia	14.9	100.0	Australia	2.9	100.0
New Zealand	9.8	65.8			
Australia	4.5	30.2	Australia	2.8	98.7

8. Export/import structure with foreign States, by sectors, in 1992 - January-September 1994 (in per cent) (excluding CIS and Baltic States).

Table No. 11

Branches	Export			Import		
	1992	1993	Jan.-Sept. 1994	1992	1993	Jan.-Sept. 1994
Total volume	100.0	100.0	100.0	100.0	100.0	100.0
Energy complex	15.7	5.4	4.1	3.7	6.3	8.3
Ferrous and non-ferrous metallurgy	35.3	65.4	62.3	4.2	16.3	3.6
Machine building and metal processing	12.7	13.3	8.0	45.5	38.9	61.3
Chemical and oil-chemical industry	27.4	8.4	14.4	7.7	6.8	8.3
Light industry	2.4	2.0	3.9	20.5	5.4	6.5
Agro-industrial complex	3.8	3.4	4.8	9.9	18.7	7.8
Others	2.5	2.1	2.5	8.5	7.6	4.2