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Consolidated Questions and Replies
to the Memorandum on the Foreign Trade Régime
(Documents WT/ACC/KGZ/5 and WT/ACC/KGZ/5/Add.2)

The consolidated list of questions submitted by Members and the replies thereto provided by the authorities of the Kyrgyz Republic are reproduced hereunder. The annexes mentioned in this document are available in the Secretariat (Accessions Division, Room 1126) for consultation.

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II. ECONOMY, POLICIES AND FOREIGN TRADE

1. Economy

(a) General description (WT/ACC/KGZ/5/Add.2, Qu.1-6)

Question 1.

Please confirm whether the private sector contributed 77 or 87 per cent of the Republic's total agricultural production in 1995.

Answer:

The accurate amount is seventy-five point four per cent (75.4%).

Question 2.

Please identify and describe the non-private entities which contributed the remaining share of agricultural production.

Answer:

The figure in the Memorandum indicating that 78 per cent (75.4%) of agricultural production in 1995 was contributed by the private sector needs clarification. According to a resolution of the Cabinet of Ministers "On Agriculture", agricultural producers are to be divided into three categories: (i) State agricultural enterprises, kolkholzes and peasant farm associations; (ii) personal farms; and (iii) peasant farms. In accordance with this resolution, the Ministry of Agriculture collects gross statistics for each of the three specified categories. Producers falling into the latter two categories, which are entirely private, contributed 75.4 per cent (75.4%) of agricultural production in 1995. The 150 enterprises falling within the first category contributed the remaining 24.6 per cent (24.6%).

However, it must be noted that kolkholzes and peasant farm associations (PFA's), which are included within the first category, are also entirely private agricultural entities. They are completely owned and controlled by their respective members. The State does not own or control their operations, property or resources. Furthermore, they receive no State support. A PFA is usually a kolkhoz that has been reorganized by its members. The difference between a kolkhoz and a PFA is that, in a kolkhoz each member owns an undivided share in the entire enterprise, and in a PFA each member has the exclusive right to work a specified parcel of land and has an exclusive ownership right in certain specified productive assets (such as buildings and/or equipment).

Only goskhozes are still State-owned; however, any member of a goskhoz may take a parcel representing his share in the goskhoz and withdraw this from the goskhoz, thereby creating a private farm. This is an on-going process as more and more members of goskhozes take advantage of this right. Although all goskhozes are supposed to receive some State support, due to a lack of funds, the State has been unable to provide this support, except to those few goskhozes engaged in animal breeding or seed production. Due to the lack of State support, it is believed that the resources of the other goskhozes will be completely privatized by their members within the next few years.

Question 3.

Do State-owned means of agricultural production (i.e., collective farms) continue to exist in the Kyrgyz agricultural sector?

Answer:

Yes

Question 4.

If so, what is their share of total agriculture production?

Answer:

Somewhat less than 10 per cent (10%). See answer to question 2 above.

Question 5.

Does the Kyrgyz Republic intend to privatize further its collective farming system?

Answer:

Yes

Question 6.

When does the Kyrgyz Republic believe that it will have completed its privatization programme?

Answer:

Currently, the privatization programme for 1997 is being developed. During 1997 the privatization programme for 1998 and 1999 will be developed. It is too early to predict the date on which the entire programme will have been completed, but it is envisaged that the programme will be completed before 2005

(b) Current economic situation

Question 7. (WT/ACC/KGZ/5, Qu.1)

Could you specify what is meant by the “six natural monopolies” for which prices have not been liberalized?

Answer:

Actually, seven entities have now been so classified:

- Kyrgyz Energy Company (electric power and thermal energy);
- Management Department of Kyrgyz Railroad (intra-republic passenger and goods transportation);
- “Kyrgyzgas” (natural and liquefied natural gas);
- Ministry of Communication (telecommunication services rendered to the public);
- “Kyrgyzjilkommunsojuz” (thermal energy, water-pipe water and sewage);
- “Kyrgyzalco” (alcohol and alcohol products, other than beer); and
- “Kyrgyztamekesi” (tobacco fermentation, manufacture of tobacco products, sale of fermented tobacco).

2 Economic Policies**(a) Main directions of ongoing economic policies****Question 8. (WT/ACC/KGZ/5, Qu.2)**

Are any goods (as opposed to companies) subject to price control?

Answer:

No goods - as opposed to companies - are subject to price control.

Question 9. (WT/ACC/KGZ/5, Qu.3)

Could you specify the “sound and workable bankruptcy process” (page 5)?

Answer:

With the assistance of foreign advisers, bankruptcy laws, regulations and procedures that are modeled after the similar laws, regulations and procedures of developed countries are being promulgated and implemented.

Question 10. (WT/ACC/KGZ/5/Add.2, Qu.7)

The Memorandum states that considerable progress has been achieved with regard to the privatization of medium and large enterprises, and that the process of privatization will continue under the 1996-1997 programme. Does the Kyrgyz Republic consider the privatization of small enterprises to now be complete?

Answer:

Privatization of small enterprises engaged in the production or offering of goods has been completed; however, the situation is different for service enterprises. Such enterprises include the following types of service providers: educational institutions, scientific institutions, cultural institutions, recreational and entertainment facilities, tourism service providers, hotels, health resorts, sports facilities and health care providers. In accordance with the Denationalization and Privatization Programme for 1996-1997, the State is to retain a 70 per cent interest in these entities. Privatization of all small enterprises is planned to be finished by 1999.

Question 11. (WT/ACC/KGZ/5/Add.2, Qu.8)

The Memorandum states that the privatization process is open to foreign and domestic participation according to the same rules. Are the current procedures published and where can they be found?

Answer:

The procedures applicable to privatization are developed and maintained by the State Property Fund. Although such procedures are not usually formally “published,” they are made available by the SPF to any interested person upon request. Currently, several private publishers and data base companies routinely collect and publish such procedures, as well as laws, resolutions, decrees, regulations and rules.

Question 12. (WT/ACC/KGZ/5/Add.2, Qu.9)

The Memorandum states that the land privatization programme will resume in the autumn of 1996, and that an element of the plan is to create private ownership of land. What is the current status of the land reform programme? What is the status of the Parliamentary consideration of a law to create the right to private ownership of land?

Answer:

The Memorandum discusses land reform only within the context of the privatization of agriculture. For a description of the current situation regarding agricultural privatization, see the answers to questions 2 and 5 on Part II, Section 1(a) above.

The Cabinet of Ministers is currently considering a new draft of a law entitled "On Property Rights in Land." The draft law was developed by the governmental working group on the matter created pursuant to Instruction No. 105-p of the Cabinet of Ministers of 22 April 1996. This draft law establishes private property rights in land; however, even if approved by the Cabinet of Ministers and submitted to and passed by the Parliament, this law cannot come into effect until the current constitutional prohibition on the private ownership of land has been eliminated. Therefore, it is unlikely that such a law will come into effect until 1999, at the earliest.

Question 13. (WT/ACC/KGZ/5/Add.2, Qu.10)

When does the Kyrgyz Republic believe that it will have completed its privatization programme?

Answer:

We assume this question is directed to agricultural privatization. For a description of the current situation regarding agricultural privatization, see the answer to question 2 on Part II, Section 1(a) above. For non-agricultural privatization, the Privatization Programme for 1998-1999 will be developed in 1997. It is too early to predict the date on which the entire privatization programme will have been completed, but it is envisaged that the programme will be completed before 2005.

(d) Foreign and domestic investment policy

Question 14. (WT/ACC/KGZ/5, Qu.5)

Are there any restrictions to the national treatment principle?

Answer:

There are no general restrictions on the principle of national treatment. Nevertheless, in certain very specific instances, an applicable law or regulation subjects a foreign product, service, citizen or legal entity to a condition or requirement that differs from that applicable to a Kyrgyz citizen and/or legal entity. In certain instances, such condition or requirement treats foreign persons less favourably than Kyrgyz citizens (e.g., the existing fee structure for the registration of intellectual property rights); in other instances, foreign persons receive more favourable treatment (e.g., certain tax exemptions are only made available to Kyrgyz legal entities which have substantial foreign participation). Those laws and regulations that subject foreign persons to conditions or requirements that differ from those

applicable to Kyrgyz citizens are described in the Memorandum on Foreign Trade Regime. (See also, the Memorandum at VI.3(g), page 54)

Question 15. (WT/ACC/KGZ/5, Qu.6)

Can foreign investors freely repatriate their investments made in the Kyrgyz Republic in freely convertible currency?

Answer:

Yes.

Question 16. (WT/ACC/KGZ/5, Qu.7)

Is there any domestic legal protection for foreign investors in cases of expropriation?

Answer:

In accordance with Article 7 of the “Law On Foreign Investments in the Kyrgyz Republic” of 28 June 1991, foreign investments are protected from nationalization except where: (i) a nationalization is necessary to protect the health and/or lives of the population or to ensure State and/or public security from a threat created by the investment, and (ii) the foreign investor has refused or is not able to comply with an order of the responsible State body to eliminate the threat within the time specified in such order. In any event, foreign investments are accorded national treatment in this respect; i.e. they can be subject to requisition or confiscation only for the same reasons and according to the same procedure applicable to Kyrgyz citizens and legal entities. Furthermore, in the event of a nationalization or requisition of a foreign investment, the Law on Foreign Investments requires that the foreign investor be paid compensation in an amount commensurate with the real cost of the concerned property. Such compensation is to be made in the currency in which the investment was made or - if the investor agrees - in the national currency of the Kyrgyz Republic. The Law on Foreign Investments creates rights that are enforceable against the Government and State bodies in the commercial courts of the Kyrgyz Republic.

Question 17. (WT/ACC/KGZ/5, Qu. 8)

Under what circumstances would foreign investors be restricted from participating in privatization?

Answer:

As stated in the Memorandum on Foreign Trade Regime (Part II, Section 2 (d)), the Cabinet of Ministers has the authority to restrict or otherwise limit foreign investors from participating in the privatization of certain industries; however the Cabinet of Ministers has not yet exercised this authority. Nevertheless, the source of that authority, paragraph 26 of the Law on Denationalization of State Property of 12 January 1994, states that “In the process of denationalization and privatization of objects of certain sectors of the national economy, the Cabinet of Ministers may reduce the number of purchasers to guarantee the priority rights of citizens and legal entities of the Kyrgyz Republic.”

Question 18. (WT/ACC/KGZ/5, Qu. 10)

It is stated that the Cabinet of Ministers has the authority under the 1994 Privatization Law to restrict foreign investors from participating in the privatization of certain sectors. To which sector does this restriction apply? Could the Kyrgyz Republic explain the background behind the introduction of such a provision?

Answer:

See answer to Question 17 above.

Question 19. (WT/ACC/KGZ/5, Qu. 9)

Are foreign investors free to acquire real estate linked to the establishment?

Answer:

Foreign citizens and legal entities may purchase residential immovable property - such as apartments and houses - only with the specific permission of the Cabinet of Ministers. Foreign citizens and legal entities may rent such immovable property on the same basis as Kyrgyz citizens and legal entities. No private person or legal entity, either foreign or local, may yet acquire ownership rights in land.

(e) Competition policy

Question 20. (WT/ACC/KGZ/5, Qu. 11)

Does the Kyrgyz Republic intend to notify any of its “natural” monopolies listed in this section, under Article XVII of the GATT 1994 of Article VIII of the GATS? If not, why not?

Answer:

The Government of the Kyrgyz Republic is reviewing the operations, legal status and rights of the below-listed natural monopolies to determine whether they must be notified as “State trading” entities within the meaning of Article VIII of the GATS or Article XVII of the GATT. If the Government determines that an entity falls within the definition of a “State-trading” enterprise, that entity will be notified as such to the WTO. If the Government determines that an entity does not meet that definition, it will supply the WTO with a statement as to why it believes that such entity does not meet the definition and, therefore, need not be notified to the WTO.

- Management Department of Kyrgyzrailroad (intra-republic passenger and goods transportation);
- Ministry of Communication (telecommunication services rendered to public);
- Kyrgyz Energy Holding Company (electric power and thermal energy);
- “Kyrgyzgas” (natural and liquefied natural gas);
- “Kyrgyzjilkommunsojuz” (thermal energy, water-pipe water and sewage);
- “Kyrgyzalco” (alcohol and alcohol products, other than beer); and
- “Kyrgyztamekesi” (tobacco fermentation, manufacture of tobacco products, sale of fermented tobacco).

Question 21. (WT/ACC/KGZ/5/Add.2, Qu. 11)

The Memorandum states that “open competition currently exist in almost all sectors of the economy, “but that “natural,” “permitted” and “temporary” monopolies exist, with the various categories of “natural” monopolies specifically mentioned. Please identify the sectors characterized by the dominance of “permitted” and “temporary” monopolies.

Answer:

The following are “permitted” monopolies:

- “Kyrgyzstan Aba Zholdoru” (air transportation - to be privatized in 1997);
- State Joint Stock Company “Kyrgyzmunaizat” (oil company);
- Jalal-Abad Oil Processing Plant;
- State concern “Uchkun” (printing house);
- State concern “Akyl” (printing house);
- Production Association “Kyrgyzkomur” (coal);
- State concern “Kyrgyzaltyn” (gold).

“Temporary” monopolies, numbering 31, predominate in machine-building, textiles and food industries.

Question 22. (WT/ACC/KGZ/5/Add.2, Qu. 12)

How many entities characterized as “permitted” and “temporary” monopolies are currently regulated by the Anti-monopoly Department of the Ministry of Economy?

Answer:

At this time the Anti-monopoly Department regulate the following “permitted” monopolies:

- the national air company “Kyrgyzstan Aba Joldoru”;
- SJSC “Kyrgyzmunaizat” (oil company);
- State concern “Uchkun” (printing house);
- State concern “Akyl” (printing house).

The rest “permitted” monopolies are being studied.

None of the “temporary” monopolies is currently regulated; however, the activities and prices of each are monitored to ensure that it does not abuse its dominant position.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES

2. Government Entities Responsible for Making and Implementing Policies Affecting Foreign Trade

Question 23. (WT/ACC/KGZ/5, Qu. 12)

What process will be needed to complete national procedures relating to WTO accession? Will implementing legislation be required?

Answer:

The Government will designate a negotiating team to conduct the accession negotiations. Upon the approval of the resulting terms of accession by the Cabinet of Ministers, an official of minister rank will be authorized to execute the agreement setting forth the terms of accession. The agreement will then be submitted to the Parliament for ratification. If Parliament ratifies the agreement, then - to the extent that the terms of accession require changes to existing legal acts or the enactment of new legal acts - these acts will be drafted and put into effect in accordance with the time tables set forth in the terms of accession.

3. Division of Authority Between Central and Sub-central Governments

Question 24. (WT/ACC/KGZ/5, Qu. 13)

It is stated in the second paragraph that “the local governmental policy affecting trade in goods and services is almost exclusively determined by the central Government”. Please describe all exceptions to this principle.

Answer:

This issue has been reviewed and it has been determined that the central Government and the Parliament have the exclusive authority to set policy and to issue laws and regulations concerning matters affecting trade in goods and services falling within the scope of the agreements administered by the WTO.

4. Legislative Programmes or Plans to Change the Regulatory Régime

Question 25. (WT/ACC/KGZ/5, Qu. 14)

Please provide an up-date on the progress in completing the Parliament’s legislative work programme for 1996. Which of the acts listed in this section have now been enacted?

Answer:

The list of laws mentioned in this section includes only those which affect the foreign trade regime. Parliament adopted several laws since July 1996, but not all of them were listed in this section. The following laws have been adopted by Parliament since July 1996:

- Law on the Quarantine of Plants;
- Law on Power Engineering; and

- Law on Amendments and Changes to the Tax Code.

Question 26. (WT/ACC/KGZ/5/Add.2, Qu. 13)

According to the Memorandum, the Parliament's work programme for 1996 includes, inter alia, preparation of the following legislation: On the Procurement of Goods (Works) and Services, On State Enterprises, On Patent Rights, On Trademarks, Service Marks and Appellations of Origin, On Copyright and Related Rights, On Foreign Investment, a Customs Code and Amendments to the law On General Principles of Denationalization, Privatization and Entrepreneurship. With regard to the aforementioned legislative changes in particular, what is the time frame for the completion of each? We request that the Kyrgyz Republic furnish drafts of these legislative changes for Working Party review.

Answer:

All above mentioned draft laws are included into the plan of the Parliament's work for 1997. Time frame to complete the work on each of these legislative acts has not been determined.

Drafts of these legislative acts are given in Attachments A1 - A6, and C1 - C3.

Question 27. (WT/ACC/KGZ/5/Add.2, Qu. 14)

Does the Government of the Kyrgyz Republic publish drafts of new, revised or amended laws seeking public comment? If so, in which publications might they appear?

Answer:

The law does not bind the Parliament or the Government to publish drafts of new, revised or amended laws for public comment. Usually, draft laws are published in the following official publications: Vedomosti Jogorku Kenesha, Slovo Kyrgyzstana, Erkin Too and Nasha Gazetta.

We support and encourage the Kyrgyz Republic's use of WTO Agreements and the commitments contained therein in the drafting of changes to its legal environment and foreign trade regime.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

- (b) Characteristics of national tariff, customs tariff nomenclature (HS), types of duties, general description of the customs tariff structure, weighted average level of duties on main customs tariff groupings, application of m.f.n. tariff rates, tariff preferences

Question 28. (WT/ACC/KGZ/5, Qu. 15)

When does the Kyrgyz Republic intend to bring its tariff nomenclature into line with the HS 96 system?

Answer:

The Kyrgyz Republic does not have its own tariff nomenclature, but instead uses the tariff nomenclature in force in Russia. Russia was scheduled to have adopted the Harmonized Tariff System

by 1 January 1997. If and when Russia has adopted that system, the Kyrgyz Republic will use the HS nomenclature.

Question 29. (WT/ACC/KGZ/5/Add.2, Qu. 17)

WT/ACC/KGZ/3 notes that there are some structural and coding differences between the existing tariff nomenclature and the International Harmonized System.

Answer:

See answer to Question 28 above.

Question 30. (WT/ACC/KGZ/5/Add.2, Qu. 15)

What is the legislative status of the proposed Customs Tariff Law, which was to have been introduced by the Cabinet of Ministers by 30 September 1996?

Answer:

It is under consideration by a Parliamentary committee. Once approved by the committee, it will go before the Parliament as a whole for approval. It is included in the 1997 work plan for the Parliament but no specific time schedule for adoption has been set.

Question 31. (WT/ACC/KGZ/5/Add.2, Qu. 16)

When does the Kyrgyz Republic anticipate completing its new tariff schedule? Please provide a copy of it to the Working Party.

Answer:

It is currently before the Cabinet of Ministers. The draft of new the tariff schedule is provided in Annex 10 of WT/ACC/KGZ/3.

Question 32. (WT/ACC/KGZ/5/Add.2, Qu. 18)

Will the new tariff regime retain the existing import nomenclature?

Answer:

See the preceding answer.

Question 33. (WT/ACC/KGZ/5/Add.2, Qu. 19)

Will these differences be eliminated under the proposed Customs Tariff Law?

Answer:

See the answer to Question 28 above.

(c) Tariff quotas, tariff exemptions

Question 34. (WT/ACC/KGZ/5, Qu. 16)

With regard to the exemption granted to some products originating in CIS countries; Article I of the GATT 1994 requires application of the m.f.n. principle, whilst Article XXIV allows for exceptions for regional integration initiatives where these are compatible with the requirements of Article XXIV and of the Understanding on that Article. Is the Kyrgyz Republic prepared to undertake that exemptions will only be given to third countries in the context of a WTO compatible Free Trade Agreement or Customs Union Agreement?

Answer:

Yes.

Question 35. (WT/ACC/KGZ/5, Qu. 17)

Are the Free Economic Zones under the Law on Free Economic Zones of 16 December 1992 bonded zones? Could the Kyrgyz Republic explain the zones?

Answer:

The Free Economic Zones are not bonded zones. The customs authorities do not require security for the admission of goods to such a zone. These zones are described in Part IV, Section 3(g) (page 35) of WT/ACC/KGZ/3.

Question 36. (WT/ACC/KGZ/5/Add.2, Qu. 20)

WT/ACC/KGZ/3 reports that technical equipment, raw materials, materials, reagents, components, replacements, spare parts, semi-manufactures and other articles, that are exempt from customs duties when they are imported by domestic business enterprises for the production of final products. Will the proposed Customs Tariff Law retain these duty exemptions?

Answer:

Yes

Question 37. (WT/ACC/KGZ/5/Add.2, Qu. 21)

Please identify, by HS tariff line numbers, the items and tariff categories eligible for these exemptions.

Answer:

Individual domestic business enterprises must apply to the Ministry of Industry and Foreign Trade to receive these exemptions.

Question 38. (WT/ACC/KGZ/5/Add.2, Qu. 22)

Please indicate approximately what portion of the Kyrgyz Republic's imports in a recent representative period made use of these exemptions.

Answer:

There are no statistics available on the portion of imports entered under this exemption.

(d) Other duties and charges, specifying any charges for services rendered

Question 39. (WT/ACC/KGZ/5, Qu. 18)

As an ad valorem fee, the Customs Clearance does not appear to be consistent with Article VIII of GATT 1994, which requires that fees and charges related to importation be limited to the cost of services rendered. What steps does the Kyrgyz Republic intend to take to bring its system into line with GATT practice?

Answer:

The Kyrgyz Republic is considering altering the current customs clearance fee from an ad valorem fee into a fee that tracks the actual cost of the service provided. The Kyrgyz Republic is currently seeking advice from foreign customs advisors on how such a fee structure can be put into place in a manner acceptable to the WTO.

Question 40. (WT/ACC/KGZ/5, Qu. 19)

How will the Kyrgyz Republic ensure that fees and charges related to importation are limited to the cost of services rendered, if this is not covered expressly in the proposed new Customs Code?

Answer:

Under Article VIII, all fees and charges related to importation are required to be limited to the cost of the services rendered. The Kyrgyz Republic will introduce changes to the proposed Customs Code that will ensure that all fees and charges related to importation reflect the cost of services rendered. The Kyrgyz Republic is currently attempting to calculate the actual cost of the services rendered in connection with importation.

Question 41. (WT/ACC/KGZ/5, Qu. 20)

Under Kyrgyz law, is the imposition of seasonal taxes limited to certain product sectors?

Answer:

The Kyrgyz Customs Code provides for seasonal taxes; but these are not expressly limited to particular product sectors.

Question 42. (WT/ACC/KGZ/5/Add.2, Qu. 23)

Both the existing and proposed Customs Codes provide for the payment of customs service fees based upon a stated percentage of the value of goods imported. This method of charging customs fees is not consistent with Article VIII of the GATT 1994 which limits the amount of fees to the approximate cost of services rendered. What has the Kyrgyz Republic done to modify this fee structure to bring it into conformity with WTO provisions?

Answer:

The Government intends to amend the proposed Customs Code to ensure that fees and charges related to importation are limited in amount to the cost of services provided as required by Article VIII of the GATT.

Question 43. (WT/ACC/KGZ/5/Add.2, Qu. 24)

The proposed Customs Code also applies different service fees to commercial and non-commercial importations. What is the basis for the difference in fees for commercial versus non-commercial importations? What criteria are used to distinguish commercial from non-commercial importations?

Answer:

Cost of processing for non-commercial importations is less than for commercial ones. Non-commercial importations are items imported for personal use and not for resale. Since this distinction is found in the proposed Customs Code, which has not yet been passed, no criteria have yet been established by the State Customs Inspectorate for the practical implementation of this provision.

Question 44. (WT/ACC/KGZ/5/Add.2, Qu. 25)

The Memorandum states that, as opposed to the existing Customs Code, the “Proposed Customs Code” currently does not contain the requirement that fees for licences, customs brokers, storage, goods escort, information and consultancy, and participation in customs auctions, not exceed the approximate value of services rendered. Does the Kyrgyz Republic plan to incorporate this requirement into the final version of the new Customs Code?

Answer:

Yes

Question 45. (WT/ACC/KGZ/5/Add.2, Qu. 26)

Why was this provision dropped?

Answer:

It is unclear.

All fees and charges related to customs services, e.g., customs processing, licensing, sanitary and standards certification, must conform to the provisions of Article VIII of the GATT 1994, e.g., that they not constitute a barrier to trade and that they approximate the cost of the services

rendered for the individual import transaction. Fees applied without functional justification or that generate revenue in excess of the cost of the service are not compatible with WTO. (Note: The findings of the GATT 1947 panel on the U.S. Customs User Fee are also relevant in this regard.)

We expect that all service fees applied to imports will be reviewed and amended to meet the WTO criteria prior to the date of accession.

Question 46. (WT/ACC/KGZ/5/Add.2, Qu. 27)

The Memorandum notes that anti-dumping, countervailing and special-purpose duties are authorized under the existing Customs Tariff Law and similar duties are provided for in the proposed Customs Tariff Law. To what extent are these duties also provided for in Article 23 of the Customs Code of 2 July 1992?

Answer:

These duties were not provided for in Article 23 of the Customs Code of July 1992.

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

Question 47. (WT/ACC/KGZ/5, Qu. 21)

Can the Kyrgyz Republic confirm that it does not intend in the future to introduce import quotas of any sort?

Answer:

The Kyrgyz Republic confirms that it does not plan to introduce import quotas in the near future.

(f) Import licensing procedures (Annex 3 refers)

Question 48. (WT/ACC/KGZ/5, Qu. 22)

There is an administrative charge for issuing a licence of US\$75. Could the Kyrgyz Republic give more precise indications on how exactly these charges are calculated to cover the services rendered (GATT Art. VIII) ?

Answer:

The fee charged for a licence is established at 10 “minimum salaries”. This currently equals 750 soms (approximately US\$45 as of 10 January 1997). The amount of the fee is not currently based on the cost of services rendered. Income from licence fees is transferred into the State budget

Question 49. (WT/ACC/KGZ/5/Add.2, Qu. 28)

Section II.1(b) (Current economic situation) of the Memorandum states that the Kyrgyz Republic has eliminated import and export licensing for the vast majority of goods. Annex 3 of WT/ACC/KGZ/3 indicates that the only licensing requirements left are applied on imports for health, consumer or environmental welfare and safety, and national security purposes. Please

provide a list of any agricultural and food commodities that are currently subject to import licensing for any reason, e.g., safety certification, sanitary regulations, etc.

Answer:

Agricultural and food commodities are not subject to licensing. All items subject to licensing are listed in Table 3-1 of Annex 3 to the Memorandum. Food items that are subject to safety certification as described in Part IV Section 3(b) are as follows:

Products of agriculture and food industry subject to safety certification

0201-0210	Meat and edible meat sub-products
0301-0307	Fish and crustaceans, shellfish and other water invertebrates
0401-0410	Milk and milk products, poultry eggs, natural honey, food products of animal origin
0701-0714	Vegetables, edible tuber crops and root-crops
0901-0910	Coffee, tea, spices
0801-0814	Edible fruit and nuts, citrus and water-melon crop peel
1001-1108	Grain bread
1101-1109	Products of flour-and-cereals industry, malt, starch, inuline, wheat gluten
1501-1522	Lard and oil of animal and vegetable origin, products of their decomposition
1601-1605	Products made of meat, fish, crustaceans, shellfish, other water invertebrates
1701-1704	Sugar and confectionery made of sugar
1801-1806	Cocoa and its products
1901-1905	Products made of grain, flour, starch and milk, flour confectionery products
2001-2009	Products made of processed vegetables, fruit and nuts
2101-2106	Other food stuff
2201-2209	Alcoholic and soft drinks, vinegar
2401-2403	Tobacco and industrial tobacco substitutes
2501	Salt
2301-2309	Products of fodder industry

Question 50. (WT/ACC/KGZ/5/Add.2, Qu.29)

Please describe in detail the administration of the import licensing system.

Answer:

Applications must be obtained from the Office of the Ministry of Industry and Foreign Trade. Then the importer must submit the application to the appropriate expert State body for approval. Once approved by the expert State body, the form must then be returned to the Ministry of Industry and Foreign Trade and submitted with all other required documents for final approval.

The import licensing system is described in further detail in Annex 3 to the Memorandum.

Question 51. (WT/ACC/KGZ/5/Add.2, Qu. 30)

We seek confirmation of any areas of the WTO Agreement on Import Licensing Procedures where the Kyrgyz Republic believes it is not now able to fully implement the Agreement from the date of accession. For example, Kyrgyz administrative guidance suggests approval of licence applications within 20 days - whereas the WTO Agreement on Import Licensing Procedures calls for a maximum

of 10 days for all automatic licences. Another problem is the requirement that importers obtain multiple “expert” certifications from various different Government entities prior to being able to obtain an import licence from the Ministry of Industry and Trade.

Please indicate how this and any other deficiencies will be addressed prior to WTO accession.

Answer:

The Government will revise its import licensing system to ensure conformity with the WTO Agreement on Import Licensing Procedures. The Kyrgyz Republic believes that it will be able to fully implement the Agreement from the date of accession.

Question 52. (WT/ACC/KGZ/5/Add.2, Qu. 31)

WT/ACC/KGZ/3 paragraph IV(c)(xii) notes that imports of technical equipment, raw materials, materials, reagents, components, replacements, spare parts, semi-manufactures and other articles, which are imported by domestic business enterprises for the production of final products in the Kyrgyz Republic, are exempted from customs duties. Please describe the licensing process for obtaining this duty exemption, in the form of a response to the Questionnaire on import licensing procedures.

Answer:

To receive this exemption, a request must be made by the domestic business enterprise to the Ministry of Industry and Foreign Trade. The Ministry of Industry and Foreign Trade generally only reviews the type of product and the quantity to be imported. Once approved by the Ministry of Industry and Foreign Trade, final approval must be obtained by the Cabinet of Ministers. If such approval is obtained, the Cabinet of Ministers will issue a resolution specifying the particular product, the quantity and the importing company. The country of origin of the merchandise is not a consideration in the granting of the licence.

Question 53. (WT/ACC/KGZ/5/Add.2, Qu. 32)

Are the administrative procedures and guidelines for the Kyrgyz import licensing system published and available to the public? If so, in what publication are the procedures found?

Answer:

Yes, they are published in the monthly scientific journal Economics, which publishes the normative acts of the Kyrgyz Republic.

Question 54. (WT/ACC/KGZ/5/Add.2, Qu. 33)

We understand that there are additional licensing provisions in the Russia-Belarus-Kazakhstan Customs Union Agreement concerning the importation of precious metals and stones. Please indicate any other proposed licensing provisions in the Agreement, describe the need for these requirements, and provide information on their application such as that provided for the Kyrgyz Republic’s current import licences in Annex 3.

Answer:

To our knowledge, there are no import or export licensing requirements in the actual RBK Customs Union Agreement, or in the agreement providing for the joining of the Kyrgyz Republic. However, pursuant to the “Agreement between the Government of the Kyrgyz Republic and the Government of the Russian Federation on the Common Order of Regulating Foreign Economic Activity,” the Cabinet of Ministers issued Resolution No. 56 of 6 February 1996 describing the items for which an import licensing regime is envisaged. Note that Resolution No. 56, by its own terms, does not become effective until the Agreement providing for the joining of the Kyrgyz Republic to the Customs Union has been ratified.

Resolution No. 56 provides for the introduction of an import licensing regime for precious metals and stones, industrial wastes, pharmaceuticals, medical and veterinary equipment, chemical plant protection substances, military uniforms and decoding equipment.

Resolution No. 56 also provides for the introduction of an export licensing regime for: (i) certain specified seafood products (e.g., fish, molluscs, crabs, caviar); (ii) decoding equipment; (iii) palaeontology artifacts; (iv) geology and mineralogy samples; (v) precious metals and articles thereof; (vi) precious and semi-precious stones and articles thereof; (vii) wild animals, wild plants, ivory, horns, hooves, coral, and the like; (viii) organic raw material for the production of pharmaceuticals; (ix) weapons and spare parts therefor; (x) explosives; (xi) nuclear materials; (xii) military works and services; (xiii) antiquities; (xiv) information on mineral and fossil fuel deposits; (xv) narcotics, psychotropic items, poisons; (xvi) material and raw material, equipment, technologies and information of a military character; (xvii) dual-use material, equipment and technologies; (xviii) pharmaceuticals; (xix) means of protection from military poisons e.g., gas and biologic weapons, and the parts therefor; (xx) military uniforms and attributes thereof.

The above licensing requirements are intended to further health, safety and/or national security purposes.

As Resolution No. 56 is contingent upon the ratification of the Customs Union Agreement, the implementing regulations have not yet been developed.

Discretionary import licensing for protective purposes is prohibited by the WTO except when specifically justified, Adoption by the Kyrgyz Republic of licensing requirements that cannot be justified on health, safety, or national security grounds will complicate its accession process.

(h) Customs valuation (Annex 4 refers)

Question 55. (WT/ACC/KGZ/5/Add.2, Qu. 34)

Annex 4 to WT/ACC/KGZ/3 states that current legislation neither incorporates nor otherwise provides for implementation of key provisions of the WTO Agreement on the Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement), e.g., that the prohibitions of Article 7.2(b), (c), (d) and (f) of the WTO Agreement on Customs Valuation are not expressly delineated in the Proposed Customs Code, that there is no provision to use the hierarchy of valuation methods, that certain transparency provisions are also not included. It also states, however, that a new Customs Code, now before the legislature, will include the necessary provisions to address these concerns and to fully implement the WTO Agreement. What is the current legislative status of the proposed Customs Code?

Answer:

It is under consideration by one of the Parliamentary Committees. Once approved by the committee it will go before the Parliament for approval. It is included in the 1997 work plan for the parliament but no specific time schedule has been set.

Question 56. (WT/ACC/KGZ/5/Add.2, Qu. 35)

How long before the new law is implemented?

Answer:

Parliament is due to consider this new proposed law this year. The Parliament will define the implementation period.

Question 57. (WT/ACC/KGZ/5/Add.2, Qu. 36)

What difficulties are foreseen in implementing the customs valuation provisions of the new Customs Code law?

Answer:

We anticipate no difficulties other than those usually inherent in the implementation of a new customs procedure, such as the education of the customs officers and the importing public.

Question 58. (WT/ACC/KGZ/5/Add.2, Qu. 37)

We believe that the draft Customs Law should be submitted for review to the Working Party as soon as possible, in order to ensure that its provisions address the aspects of Customs Valuation covered by the WTO Agreement.

Answer:

The proposed Customs Code is attached as Attachment A4.

Question 59. (WT/ACC/KGZ/5/Add.2, Qu. 38)

We seek a commitment from the Kyrgyz Republic to implement the WTO Customs Valuation Agreement from the date of accession.

Answer:

The Kyrgyz Republic confirms that it will implement the WTO Customs Valuation Agreement from the date of accession.

(i) Other customs formalities

Question 60. (WT/ACC/KGZ/5/Add.2, Qu. 39)

Article VIII of GATT 1947 states that fees associated with imports must be limited to the cost of services rendered and shall not indirectly provide protection for domestic products. Listed as one of the “other customs formalities” is a fee to be paid at the moment of filing the import declaration.

Answer:

The fee referred to under “other customs formalities” refers to the clearance fee of 0.15 per cent.

Question 61. (WT/ACC/KGZ/5/Add.2, Qu. 40)

Please list, describe, and explain the reason for application of all fees involved in importing a product. Please describe in detail the relationship of the amount of the fee to the pricing structure for the associated service.

Answer:

- clearance fee: 0.15%;
- import licence: 750 soms (currently, about US\$45) - the amount currently equal to “ten minimum salaries”;
- licence extension: 350 soms (currently, about US\$20);
- certificate of compliance: 600-1500 soms (currently, about US\$35-90), depending on the type of laboratory tests required;
- phytosanitary certificate: 76-166 soms depending on the type of product. If the total weight of the product is less than 300kg the required payment will be 10 per cent of the otherwise applicable amount. If the weight is from 300kg-1000kg the required payment will be 50 per cent of the otherwise applicable amount;
- veterinary certificate: for goods having a value equal to or less than 5000 soms, a fee equal to 0.5 per cent of the value is assessed; for goods having a value exceeding 80,000 soms, a fee equal to 350 soms plus 0.1 per cent of the value is assessed; for goods having a value in excess of 5000 soms but less than 80,000 soms, a variety of formulas are applied that gradually reduce the amount of the fee in ad valorem terms;.
- hygienic certificate: 70-800 soms depending on the type of laboratory tests required.

(j) Pre-shipment inspection

Question 62. (WT/ACC/KGZ/5, Qu. 23)

Will the Kyrgyz Republic undertake that, should any preshipment inspection system be introduced in the future, the operation of such a system will be consistent with the relevant WTO Agreements, in particular, on Preshipment Inspection and Customs Valuation?

Answer:

The Kyrgyz Republic has no plans to introduce any preshipment inspection requirements; however, if such requirements are introduced, the Kyrgyz Republic commits that it will ensure that such requirements are consistent with the relevant WTO Agreements.

(k) Application of internal taxes on imports

Question 63. (WT/ACC/KGZ/5, Qu. 25)

The Memorandum mentions the Kyrgyz Republic's policy on national treatment on internal taxation but not on regulatory aspects of sale, offering for sale, purchase, transportation, distribution or use. What is the content of the Kyrgyz Republic's policy in this area? Please explain how it complies with Article III.4 of GATT?

Answer:

Imported goods are subject to national treatment on all regulatory aspects of sale, offering for sale, purchase, transportation, distribution and use. It is the policy of the Kyrgyz Republic to maintain this national treatment regime for imported products. Both law and policy in this area conform to Article III.4 of the GATT.

Question 64. (WT/ACC/KGZ/5, Qu. 26)

Are VAT exemptions applied with full respect for the national treatment and m.f.n. principles?

Answer:

Yes.

Question 65. (WT/ACC/KGZ/5, Qu. 27)

Does the Kyrgyz Republic accept that its current excise tax system (with its different levels and/or methods of calculation for imported and domestically produced goods) is not compatible with Article III of the GATT 1994?

Answer:

Yes, the existing system of excise taxes stipulates different methods of calculation for imported and domestic goods. The necessity for using two methods for calculating excise taxes is caused by the fact that imported goods often have prices that are higher than those of similar domestic goods. In this respect, equal absolute rates of excise tax for imported and domestic products would mean

relatively higher rates for domestic products. Excise rates in percentages are higher for almost all domestic goods in comparison with rates for imported goods. This situation provides a relative price advantage in the market of imported goods over domestic production.

Question 66. (WT/ACC/KGZ/5/Add.2, Qu. 47)

Article III of the GATT 1994 (national treatment) stipulates that taxes on imported goods should be no higher than such taxes on domestic production. Article I (m.f.n.) requires that taxes applied to imports from WTO members should be no higher than those applied to imports from non-WTO sources. In Annex 9, the Kyrgyz Republic indicates that there is a considerable disparity in the rates of excise tax for imported and domestic goods. We note that the new Tax Code, which came into effect on 1 July 1996, continues this discriminatory treatment for a large number of products. What are the Kyrgyz Republic's plans for the elimination of this discriminatory treatment?

Answer:

See answer to Question 65 above.

Question 67. (WT/ACC/KGZ/5, Qu. 28)

What measures is the Kyrgyz Republic taking to bring its excise tax system into line with the national treatment principle? What is the anticipated timetable?

Answer:

Currently, in accordance with the Tax Code, new excise tax rates for imported and domestic goods have been developed (see answer to question 69 below). The policy of the Kyrgyz Republic in the sphere of excise tax is aimed at the creation of one equal excise tax regime for imported and domestically produced goods. It is expected that this matter will be resolved by 1 January 1998.

Question 68. (WT/ACC/KGZ/5, Qu. 29)

Please confirm that, except for VAT and excise tax, no other internal taxes are levied on imported goods.

Answer:

Currently, the only internal taxes to which imported goods are subject are the VAT and excise taxes.

Question 69. (WT/ACC/KGZ/5, Qu. 30)

For Annex 9, please provide the full list of tariff headings (to HS 6 or 8-digits) of all items subject to excise tax.

Answer:

On 24 December 1996, the Legislative Assembly, one of the two chambers of Parliament, approved the following table of excise tax rates. The matter is now pending before the other chamber, the Assembly of People's Representatives. The Government believes that, although the excise tax rates

applicable to certain items may change before final adoption and approval by the President, the description of goods and the applicable tariff code numbers, with the exception of the possible elimination of coffee and cocoa, will not change .

Proposed excise tax régime

Goods	Domestic Rates	Import Rates	Codes
Ethyl alcohol and purified ethyl alcohol produced from raw materials (except those imported by special consumers within stipulated limits)	\$1.4 /litre	\$1.4/litre	2207
Vodka	\$0.90/litre	\$0.90/litre	220890110-220890390
Liqueurs and vodka products	\$0.90/litre	\$0.90/litre	220810, 220830, 220890510-220890790, 220890910, 220890990
Alcoholized beverages, juice and balsam ¹	\$0.90/litre	\$0.90/litre	220840-220850
Grape wine other wines	\$0.35/litre \$0.29/litre		
Wine		\$0.35/litre	220421-220429, 2205, 2206
Cognac	\$0.60/litre	\$0.80/litre	220820100
Sparkling wines	\$0.40/litre	\$0.45/litre	220410
Beer: - packaged - unpackaged	\$0.08/litre \$0.05/litre	\$0.25/litre	2203
Raw materials for wine production	\$0.15/litre	\$0.20/litre	220430
Tobacco products - filter cigarettes - unfiltered cigarettes	\$1.5/1000 each \$0.75/1000 each	\$5/1000 each \$2/1000 each	2402 2402
Other tobacco-containing items, including fermented tobacco		12%	240110, 240120, 2403
Golden, platinum or silver jewellery	20%	30%	7113-7118
Processed and raw fur hides (other than mole, rabbit, deer, dog and sheep skin)	0%	10%	4110, 4103-4104, 4106-4109

¹Excise tax rates are calculated based on the content of ethyl alcohol in such items, the base being a beverage containing 45 per cent alcohol.

Goods	Domestic Rates	Import Rates	Codes
Wearing apparel made of natural fur, including coats, short-coats, jackets, capes, stoles, scarves, headgear, collars, fur coats and fur pieces (other than apparel made of hides of mole, rabbit, dog, deer or sheep skin)	0%	10%	4303
Coats, short-coats, jackets and capes trimmed with fur (other than mole, rabbit, dog, deer or sheep skin)	0%	10%	4303
Clothing made of natural leather	0%	10%	4203
Crystalware	0%	30%	701321, 701331, 701391
Firearms and gas weapons (other than those acquired for the needs of State agencies)	10%	20%	9301-9393, 9305-9306
Oil products: - gasoline, soft and medium distillates	\$45/ton	\$45/ton	2707, 271000330, 271000350, 271000390, 271000110, 271000150, 271000210, 271000250, 271000410, 271000450
Aircraft fuel		\$45/ton	271000510-27100 0590
Diesel fuel	\$0/ton	\$45/ton	271000610-, 271000650, 271000690
Black oil	\$0/ton	\$0/ton	271000710, 271000750, 271000790
Other	\$0/ton	\$0/ton	271000550, 271000910, 271000930, 271000990
Coffee and cocoa products		10%	0901, 1801, 1803-1805
Carpets and rugs (except floor coverings)	0%	35%	57

Question 70. (WT/ACC/KGZ/5/Add.2, Qu. 49)

For those items made subject to excise taxation by the new Tax Code, which came into effect on 1 July 1996, when does the Kyrgyz Republic expect to submit the applicable excise tax rates to Parliament?

Answer:

See answer to Question 69 above.

Question 71. (WT/ACC/KGZ/5/Add.2, Qu. 41)

Please identify, including HS tariff number, those imported capital goods eligible for VAT exemption, due to their importation by a legal entity or entrepreneur for use in its/his productive economic activity. Please describe the criteria applied in determining eligibility for this VAT exemption.

Answer:

Criteria for eligibility of this VAT exemption is that they must be capital goods and not for resale. Capital good are goods that cost more than 45 minimum salaries (one minimum salary is currently 75 som) (45 minimum salaries is approximately US\$200) and the capital good must have a life of more than one year.

Capital goods do not include raw materials.

Question 72. (WT/ACC/KGZ/5/Add.2, Qu. 42)

Please identify, including HS tariff number, any imported products that have been specified as VAT-exempt by the State Customs Inspectorate. What were the reasons for the exclusion of these products from VAT?

Answer:

Although the Tax Code provides for such an exemption, this exemption has not yet been implemented.

Question 73. (WT/ACC/KGZ/5/Add.2, Qu. 43)

The Memorandum states that CIS countries charge a VAT on exports to other CIS countries. Does this mean that imports from CIS countries in the Kyrgyz Republic do not pay VAT taxes at the time of importation?

Answer:

The VAT is not assessed at the time of importation on imports originating from a CIS country. If the importer then sells the goods in the Kyrgyz Republic, the VAT is assessed at the time of sale; however, the importer is entitled to claim a VAT credit in the amount of the VAT paid on the goods in another CIS country.

Question 74. (WT/ACC/KGZ/5/Add.2, Qu. 44)

Does the Kyrgyz Republic rebate VAT taxes on exports (a) to CIS countries; and/or (b) to other countries?

Answer:

VAT taxes are rebated on exports to non-CIS countries, but not on exports to CIS countries.

Question 75. (WT/ACC/KGZ/5/Add.2, Qu. 45)

WT/ACC/KGZ/3 states that goods subject to excise taxes are exempt from customs duties. However, it appears that a number of goods in Annexes 9 and 10 are provisionally subject to both excise taxes and customs duties. Please explain this apparent contradiction.

Answer:

Currently, all goods subject to excise taxes are exempt from customs duties. Note that Annex 10 to WT/ACC/KGZ/3 contains a proposed tariff schedule. If and when a new tariff schedule is adopted, it will provide for rates of duties on all products, including those subject to excise taxes; however, the notes to that tariff schedule will make it clear that those rates are not to be applied to goods that are subject to excise taxes.

Question 76. (WT/ACC/KGZ/5/Add.2, Qu. 46)

Will customs duties be eliminated on those items?

Answer:

See answer above.

Question 77. (WT/ACC/KGZ/5/Add.2, Qu. 48)

We understand that neither VAT nor excise taxes are applied to imports from CIS countries. Please indicate how this will be altered prior to accession.

Answer:

Excise taxes are applied to the concerned imports from all countries, including CIS countries.

The Kyrgyz Republic currently supports the concept of bringing its VAT system into conformity with accepted world practice: i.e. applying the VAT to all goods sold or imported into the Kyrgyz Republic regardless of their country of origin, and exempting exported goods regardless of their country of destination. Nevertheless, it should be noted that the agreement of other CIS countries must be obtained to accomplish this. Uncoordinated unilateral transition may lead to a situation of double taxation on CIS imports, thereby causing a re-orientation of trade and the possible imposition of reciprocal measures by CIS countries on Kyrgyz exports.

This issue is the theme of the discussion of experts at meetings of the Inter-State Council and the Integration Committee and currently it is impossible to determine the concrete terms of when or how the transition will be accomplished.

Question 78. (WT/ACC/KGZ/5, Qu. 24)

Article XXIV of the GATT 1994 does not exempt Regional Integration Agreements from application of the m.f.n. principle with regard to internal taxation. Please indicate when the Kyrgyz Republic

intends to bring its system of VAT application into line with Article I of the GATT 1994, so that it is applied equally to imports from all third countries.

Answer:

See answer to Question 77 above.

(l) Rules of origin

Question 79. (WT/ACC/KGZ/5, Qu. 31)

Does the Kyrgyz Republic have any legislation requiring that goods (imported or domestically produced) must be marked with respect to country of origin?

Answer:

The Kyrgyz Republic currently has no country of origin marking requirement.

Question 80. (WT/ACC/KGZ/5, Qu. 32)

Is proof of origin required for products originating from all countries or only from those countries exporting to the Kyrgyz Republic under a preferential scheme?

Answer:

Certificates of origin are required for all imported goods.

Question 81. (WT/ACC/KGZ/5, Qu. 33)

Where proof of origin is required, what constitutes that proof?

Answer:

A certificate of origin that is certified by an authorized governmental body in the country of origin.

Question 82. (WT/ACC/KGZ/5, Qu. 34)

Please provide a more detailed explanation of how the country of origin is ascertained.

Answer:

Currently, the Kyrgyz Republic relies almost entirely on the certificate of origin. However, the proposed Customs Code includes the methods specified in the Kyoto Convention Annex. Assuming that the proposed Customs Code is passed by Parliament in its current form, the Kyrgyz Republic will need to develop regulations on the implementation of the country of origin methods. It is envisaged that the primary method to be used will be the tariff shift method.

Question 83. (WT/ACC/KGZ/5, Qu. 35)

Has the Kyrgyz Republic adopted specific criteria and formula of calculation with respect to the criteria of (ii) and (iii) on page 30?

Answer:

With respect to criterion (ii), the proposed Customs Code contains a list of operations that are considered as insufficient to confer origin. A list of operations that would be considered as sufficient to confer origin has not been developed. No other specific implementing regulations or rules have as yet been developed.

With respect to criterion (iii), no specific implementing regulations or rules have as yet been developed.

Question 84. (WT/ACC/KGZ/5/Add.2, Qu. 50)

The Kyrgyz Republic states that its Customs laws generally follow the transitional disciplines governing rules of origin. Does the Kyrgyz Republic intend to adopt in law the rules of origin that are being developed in the WTO?

Answer:

The Kyrgyz Republic does intend to adopt in law the rules of origin that are being developed in the WTO.

(m) Anti-dumping régime

Question 85. (WT/ACC/KGZ/5, Qu. 36)

Could the Kyrgyz Republic please provide a copy of its Customs Tariff Law provisions applying in the case of dumping practices and any other rule which may enter play in antidumping enforcement, including the Proposed Customs Code?

Answer:

The provisions of the Customs Tariff Law applicable to dumping, third country subsidization, safeguards, warning measures and retaliatory trade measures are included in Attachment A7 hereto. The corresponding provisions of the Proposed Customs Tariff Law are included in Attachment A8.

Question 86. (WT/ACC/KGZ/5, Qu. 37)

One member of the Working Party notes that Kyrgyz anti-dumping rules' injury standard ("damage") and definition of domestic manufactures ("manufacturers of similar or directly competing goods") as described in the Memorandum (para. IV.1(m)) differ from the definitions in the WTO Anti-Dumping Agreement. Could the Kyrgyz Republic please comment on the WTO-compatibility of those requirements?

Answer:

The Government of the Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

Question 87. (WT/ACC/KGZ/5/Add.2, Qu. 51)

Both the Customs Tariff Law and the proposed Customs Code provide for the imposition of anti-dumping duties in an amount "... that does not exceed the difference between the price of the dumped goods at the moment of export and the average price of like or directly competitive goods in the Kyrgyz market." However, GATT Article VI limits the amount of duties to the amount of the margin of dumping, which is the difference between the price of the dumped good and the price for the like product destined for consumption in the exporting country, or, in the absence of such domestic price, the highest comparable price for the like product for export to any third country, or the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit. It appears that the legislation of the Kyrgyz Republic does not at present fully conform to WTO provisions in this area. Have efforts commenced to amend proposed Customs Code to bring it into conformity with GATT Article VI and the WTO Agreement on Antidumping?

Answer:

The provisions relating to the imposition of dumping duties have never been utilized or fully developed in detail. The Government of the Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

(n) Countervailing duty regime**Question 88. (WT/ACC/KGZ/5, Qu. 38)**

Could the Kyrgyz Republic provide a copy of its Customs Tariff Law provisions and any other rules applicable in the case of third country subsidization, including the Proposed Customs Code?

Answer:

See Attachments A7 and A8.

Question 89. (WT/ACC/KGZ/5, Qu. 39)

One member of the Working Party notes that Kyrgyz CAD rules' injury standard ("damage") and definition of domestic manufactures ("manufactures of similar or directly competing goods") as described in the Memorandum (para. IV.1(n)) differ from the definitions in the WTO SCM Agreement. Could the Kyrgyz Republic please comment on the WTO-compatibility of those requirements?

Answer:

The Government of the Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

Question 90. (WT/ACC/KGZ/5/Add.2, Qu. 52)

Do the Customs Tariff Law and the proposed Customs Code limit the countervailing duties to the amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of the product in the country of origin or exportation, including any special subsidy to the transportation of a particular product? Please discuss how the Kyrgyz Republic intends to incorporate WTO provisions in this area in its legislation.

Answer:

The provisions relating to the imposition of countervailing duties have never been utilized or fully developed in detail. The Government of the Kyrgyz Republic is in the process of drafting a more detailed WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

(o) Special purpose duties

Question 91. (WT/ACC/KGZ/5, Qu. 40)

Could the Kyrgyz Republic provide a copy of its Customs Tariff Law provisions and any other rules applicable in the area of safeguard measures, including the Proposed Customs Tariff Law?

Answer:

See Attachments A7 and A8.

Question 92. (WT/ACC/KGZ/5, Qu. 41)

One member of the Working Party notes that Kyrgyz safeguard rules' injury standard ("damage"), as described in the Memorandum (para. IV.1(n)) differs from the definitions of the WTO SCM Agreement. Could the Kyrgyz Republic please comment on the WTO-compatibility of those requirements? Furthermore, could it confirm that no quantitative restrictions are imposed as safeguard measures?

Answer:

The Government of the Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. Furthermore, the Government of the Kyrgyz Republic confirms that no quantitative restrictions are or will be used as safeguards. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

Question 93. (WT/ACC/KGZ/5, Qu. 42)

Could the Kyrgyz Republic please elaborate on its warning measures and retaliation measures? How do the two measures differ in scope, substantive requirements and procedures leading to their adopting? What sort of national interests may be considered as justifying their adoption? How would they relate to WTO dispute settlement procedures?

Answer:

The Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions.

Question 94. (WT/ACC/KGZ/5/Add.2, Qu. 53)

Are the provisions of the Customs Tariff Law and the Proposed Customs Tariff Law authorizing the imposition of “special purpose duties” consistent with the requirements of the WTO Agreement on Safeguards? Please describe fully any provisions that are not in conformity with the requirements of the Safeguards Agreement.

Answer:

The provisions relating to the imposition of special purpose duties have never been utilized or fully developed in detail. The Government of the Kyrgyz Republic is in the process of drafting a WTO-compliant law on extraordinary trade measures that will contain detailed provisions on anti-dumping, countervailing duty and safeguard actions. Furthermore, the Government of the Kyrgyz Republic confirms that no quantitative restrictions are or will be used as safeguards. The Kyrgyz Republic will provide a copy of the draft law when it is finalized.

Question 95. (WT/ACC/KGZ/5/Add.2, Qu. 54)

Will the Warning Measures provided by the existing Customs Tariff Law continue in effect after enactment of the proposed Customs Tariff Law? What is meant by the term “violating the interests of the country”?

Answer:

No. The proposed Customs Tariff Law, as currently drafted, does not contain provisions on warning measures. The adoption of the proposed Customs Tariff Law will repeal the existing Customs Tariff Law. The warning measures provided for in the existing Customs Tariff Law have never been utilized or fully developed in detail. Therefore, it is not possible to provide a definition of “violating the interests of the country”.

Question 96. (WT/ACC/KGZ/5/Add.2, Qu. 55)

Are there any provisions of the Anti-Monopoly Law specifically applicable to foreign firms or imported products?

Answer:

No

Question 97. (WT/ACC/KGZ/5/Add.2, Qu. 56)

Are the special purpose duties authorized by the existing and proposed Customs Tariff Laws equal to the penalties assessed on domestic firms engaged in unfair competition pursuant to the Anti-monopoly Law?

Answer:

No.

Question 98. (WT/ACC/KGZ/5/Add.2, Qu. 57)

Please describe the applicable provisions of the Anti-monopoly Law.

Answer:

The Anti-monopoly Law has no specific provisions to address unfair foreign trade practices. The proposed law on extraordinary trade measures may include specific provisions addressing unfair trade practices by foreign firms.

2. Export Regulation**(d) Export licensing procedures****Question 99. (WT/ACC/KGZ/5, Qu. 43)**

Does the principle of national treatment apply for issuing export licences?

Answer:

Yes.

Question 100. (WT/ACC/KGZ/5, Qu. 44)

Please provide a more detailed explanation of how the export licensing system for metals operates.

Answer:

As noted in the Memorandum, the exportation of ferrous, precious and rare-earth metals extracted and/or processed in the Kyrgyz Republic requires an export licence. Any manufacturing/mining entity or intermediary entity (regardless of form or ownership) is eligible to apply. The licence application must be submitted to the Ministry of Industry and Trade. When applying for an export licence, an applicant must submit: (i) an application on a standard form; (ii) a copy of the export contract; (iii) a copy of the applicable bilateral agreement on deliveries, if any; and (iv) a short description of how the transaction benefits the Kyrgyz Republic.

The licence is to be prepared and granted within 20 days after the receipt of the application and all required supporting documentation. The licence is non-transferable. Once the licence has been granted, the recipient must provide it to the State Customs Inspectorate together with a customs declaration. A “single shipment” licence must be used within six months from the date of issuance. A “multiple shipment” licence must be used within 12 months.

Question 101. (WT/ACC/KGZ/5/Add.2, Qu. 58)

Cabinet of Ministers Resolution No. 56 of 6 February 1996 provides for licensing requirements and controls on exports. These include licensing restrictions for textile goods, wearing apparel, silicon carbide, ammonium nitrate, and raw aluminum, required by bilateral agreements between the Russian Federation and the European Union, and for general exports of precious stones, precious metals, articles containing precious metals, and precious metal waste. Are these requirements currently in effect in the Kyrgyz Republic? If not, please elaborate on the timing of their implementation?

Answer:

Currently, Cabinet Ministers Resolution No. 56 of 6 February 1996 is not in effect. This resolution will come into force if and when the Customs Union Agreement is ratified by Parliament.

Question 102. (WT/ACC/KGZ/5/Add.2, Qu. 59)

What is the functional justification for these restrictions and how will the Kyrgyz Republic justify them under WTO provisions?

Answer:

These restrictions will come into force only if the Kyrgyz Republic becomes a member of the Customs Union. In that event, internal customs barriers between and among Russia, Belarus, Kazakhstan and the Kyrgyz Republic will gradually be dismantled. In the current transitional period, such a situation could provide a large opportunity for the misappropriation and export of certain high-value commodities of the member countries. Therefore, these export licensing requirements are intended to provide some degree of control over such unlawful activity. From our perspective, these measures - which are intended to last for the transitional period - are justifiable national security controls.

Question 103. (WT/ACC/KGZ/5/Add.2, Qu. 60)

Is Cabinet of Ministers Resolution No. 373, adopted on 25 August 1995, On Increasing the Liability for Unauthorized Purchase and Sale of the Fragments and Waste of Non-Ferrous and Ferrous Metals and their Industrial Fragments (Resolution No. 373) still in effect?

Answer:

Yes

Question 104. (WT/ACC/KGZ/5/Add.2, Qu. 61)

Please describe the law that is being considered by Parliament which deals with this subject matter.

Answer:

The goal of the draft law is to protect electric transmission and communication lines and ferrous and non-ferrous metal items from theft by persons desiring to resell those metals to scrap metal processing firms. According to the draft law, a person desiring to purchase and/or export such items must hold a licence. Under the draft law, licensed persons may purchase only those items that are specified by the Cabinet Ministers in an implementing resolution. Under the draft law, any company that produces

waste of ferrous or non-ferrous metals is obligated to report the kind and amount of such waste. The export and import of such items must be licensed. Engaging in such activity without a licence is punishable by monetary fines and the confiscation of illegally purchased or used wastes.

Question 105. (WT/ACC/KGZ/5/Add.2, Qu. 62)

Please identify, including HS tariff number, the ferrous and nonferrous metal fragments and wastes which are subject to the export licensing requirement.

Answer:

It must first be noted that ferrous metal fragments and waste are not subject to export licensing. The following is a list of the non-ferrous metal and wastes and scrap thereof, and HS tariff number, subject to export licensing:

7404	Copper wastes and scrap
7503	Nickel wastes and scrap
7802	Lead wastes and scrap
7602	Aluminum wastes and scrap
9702	Zinc wastes and scrap
8002	Tin wastes and scrap
8101	Wolfram and articles thereof, including wastes and scrap
2611	
2825	
8102	Molybdenum and articles thereof, including wastes and scrap
2613	
2825	
8103	Tantalum wastes and scrap
8104	Magnum wastes and scrap
8105	Cobalt wastes and scrap
8106	Bismuth wastes and scrap
8107	Cadmium wastes and scrap
8108	Titanium wastes and scrap
8109	Zirconium wastes and scrap
8110	Antimony and articles thereof, including wastes and scrap
2617	Antimony concentrates
2825	Antimony oxides
8111	Manganese wastes and scrap
8112	Rhenium and articles thereof, including wastes and scrap
8112	Chrome, germanium, vanadium, beryllium and niobium wastes and scrap

(f) Export financing, subsidy, and promotion policies

Question 106. (WT/ACC/KGZ/5, Qu. 45)

Can the Kyrgyz Republic confirm that it does not maintain, and has no intention of introducing in the future, any export subsidies?

Answer:

Except for the profits tax reduction described in Section IV.3(d) of the Memorandum on the Foreign Trade Regime, the Kyrgyz Republic confirms that it does not currently and will not in the future maintain any export subsidies.

Question 107. (WT/ACC/KGZ/5/Add.2 -)

We note that the Kyrgyz Republic has no policies or measures to finance exports.

Question 108. (WT/ACC/KGZ/5/Add.2 -)

Because export subsidies are the most trade distorting forms of support, we strongly encourage you to commit to binding export subsidies at zero for all products.

3. Internal Policies Affecting Foreign Trade in Goods

(a) Industrial policy, including subsidy policy

Question 109. (WT/ACC/KGZ/5, Qu. 46)

Please provide the Working Party with a copy of the Report on Domestic Support Measures mentioned in this Section.

Answer:

This report has already been submitted.

(b) Technical regulations and standards, including border measures

Question 110. (WT/ACC/KGZ/5, Qu. 47)

Does the Kyrgyz Republic anticipate any difficulties in applying the TBT Agreement in full on accessing?

Answer:

Yes. The most significant difficulties will be the following:

- Receiving and transmitting the necessary information in one of the accepted languages of the WTO.
- For implementation of point 6 of Article 2, the Kyrgyz Republic will not have the ability to participate fully in the work of international organizations on standardization due to:
(i) insufficient financing for this work; (ii) a lack of specialists experienced in the development

of international standards; and (iii) the slow pace of establishing the infrastructure needed to develop standards and technical regulations.

- Organizational difficulties are expected in implementing point 11 of Article 2, regarding timely publication or notification of technical regulations.
- The inquiry point on standards and technical regulations required by point 10.1.1 of Article 10 is only in the initial stage of formation.
- Membership in ISONET poses organizational-technical and financial difficulties for Kyrgyzstandard at this time.

Question 111. (WT/ACC/KGZ/5, Qu. 48)

Could the Kyrgyz Republic please provide an overview of regulations relating to different products/product areas.

Answer:

An overview of the various regulations relating to different products and product areas is provided in Annex 5 to the Memorandum on Foreign Trade Regime of the Kyrgyz Republic.

Question 112. (WT/ACC/KGZ/5, Qu. 49)

Are the standards used in the Kyrgyz Republic voluntary or mandatory; if mandatory, could the Kyrgyz Republic please state the rational behind this?

Answer:

According to Law “On Protection of Consumers’ Rights”, requirements for products which by their nature pose a substantial potential threat to the environment or the safety, lives and/or health of citizens are mandatory and are established in normative documents on standardization which are mandatory.

Other requirements (indications) are voluntary.

Question 113. (WT/ACC/KGZ/5, Qu. 50)

Has the Kyrgyz Republic the intention of gradually moving from the use of GOST-standards to the use of international standards; if so, what is the timetable and the priorities for this change-over?

Answer:

Yes. The Kyrgyz Republic is a member of the CIS Inter-Governmental Council on Standardization, Metrology and Certification. This organization has been recognized by ISO as a regional organization acting in compliance with its requirements. Membership in this organization ensures the eventual implementation and usage of international standards in the Kyrgyz Republic. A specific timetable for and the priorities in this change-over has not yet been developed.

Question 114. (WT/ACC/KGZ/5, Qu. 51)

Could the Kyrgyz Republic please provide more in-depth information on the procedures and requirements connected with the mandatory and the voluntary system of certification. For example: Does the Kyrgyz Republic certification system contain the possibility of using a manufactures' declaration? Does the Kyrgyz Republic use pre-market certification in any product areas?

Answer:

In addition to the information on certification provided in Annex 5 to the Memorandum, it should be noted that the system of certification in effect in the Kyrgyz Republic is harmonized with the systems of certification in effect in the Russian Federation and other CIS countries, and with the regulations of ISO/IEC and European standards of serial No. EN 45000. The certification rules and regulations of the Kyrgyz Republic are set forth in 44 different sets of regulations, of which 20 have general applicability and 24 apply to specific products or product groups. These documents contain detailed information on the procedures and requirements related to mandatory and voluntary certification.

Goods for which State standards have been established for the purpose of protecting the environment or the life, health and property of citizens are subject to mandatory certification by the appropriate ministry or State body, and the subsequent issuance by Kyrgyzstandard of a certificate of conformity and a licence to mark the concerned goods with a "mark of conformity." Sale or import of such goods in the Kyrgyz Republic without such prior certification and marking is prohibited. List of goods that are subject to mandatory certification is developed by Kyrgyzstandard.

Goods that are not subject to mandatory certification in accordance with the legislation of the Kyrgyz Republic may be certified on a voluntary basis. Such certification is carried out on the basis of an agreement between the applicant and Kyrgyzstandard. Voluntary certification can also be done by any body authorized by the Kyrgyzstandard to do so. The method of voluntary certification is chosen by the applicant from those accepted by Kyrgyzstandard.

Generally, the issuance of a certificate and mark of conformity requires: (i) the filing of an application with the responsible ministry or State body; (ii) a review of the application, including the choice of certification method; (iii) the identification and selection of samples and their testing; (iv) a review of the test results and a comparison with the applicable standards; and (v) the issuance of a certificate of conformity and a licence to use the mark of conformity.

Generally, in the Kyrgyz Republic it is possible for the certifying body to accept the declaration of a manufacturer or producer. At this time, the acceptability of such a declaration is within the discretion of the ministry or State body responsible for certifying the conformity of the goods in question.

In the Kyrgyz Republic, regulations providing for pre-market certification are currently in draft form.

Question 115. (WT/ACC/KGZ/5, Qu. 52)

Does the Kyrgyz Republic accept as equivalent, certificates from third country certification bodies?

Answer:

The acceptance of certificates issued by foreign certification bodies is generally dependent on the existence of a bilateral or multilateral agreement on the matter.

In absence of an applicable bilateral or multilateral agreement, the Kyrgyz Republic will generally accept a certificate issued by a manufacturer or certification body widely recognized as having a reputation for quality. The determination of such firms and organizations remains within the discretion of the Kyrgyz Republic.

As a rule, foreign certificates are accepted only for products originating in the country where the certificate was issued.

The acceptability of foreign certificates and the form and method of evaluating compliance is established for each product on a case-by-case basis.

Question 116. (WT/ACC/KGZ/5, Qu. 53)

Has the Kyrgyz Republic developed a quality assurance system? Could the Kyrgyz Republic please provide further information on this system or on any plan to develop such a system.

Answer:

No. Currently, work is being conducted that is aimed at introducing the ISO-9000 standards.

Question 117. (WT/ACC/KGZ/5, Qu. 54)

Could the Kyrgyz Republic also please provide further information on its accreditation system?

Answer:

In the State system of certification, three sets of regulations establish the requirements and the procedure for accrediting test laboratories and certification bodies. These regulations cover: (i) products and services; (ii) systems of quality; and (iii) production methods. These documents are also harmonized with similar documents of the system of certification of the Russian Federation, the regulations of ISO/IEC and European standards of serial No. EN 45000.

Accreditation of a certification and testing organization is done by Kyrgyzstandard and other State bodies authorized to conduct mandatory certification within their area of competence (for example, the Kyrgyz Ministry of Construction and Architecture is responsible for certifying the compliance of construction materials). All types of organizations are eligible for accreditation if they meet the requirements. An applicant must provide Kyrgyzstandard with its organizational documents, the desired scope of accreditation, a brief description of its legal status, as well as a description of its organizational structure. An organization applying for an accreditation must: (i) be independent and unbiased; and (ii) be sufficiently competent, i.e. possess sufficient means, qualified professionals, etc.

Question 118. (WT/ACC/KGZ/5, Qu. 63)

Annex 5 states that the State Inspection on Standardization and Metrology (Kyrgyzstandard) performs the State administration of standardization, including the establishment of rules governing the application of international standards. Are there regulations or administrative procedures which provide guidance to Kyrgyzstandard, or other agencies such as the Ministry of Architecture and Construction and Ministry of Environmental Protection, to publish draft standards for comment?

Answer:

No, there are not. In the Kyrgyz Republic, draft standards are normally sent for review and comment to interested organizations.

Question 119. (WT/ACC/KGZ/5, Qu. 64)

Is there guidance on a recommended period to allow for public comment?

Answer:

Draft standards are not required to be submitted for public review and comment. Therefore, there is no recommended period of time for public comment.

Question 120. (WT/ACC/KGZ/5/Add.2, Qu. 65)

Is there guidance for agencies to consider the use of appropriate international standards?

Answer:

Yes. In the Kyrgyz Republic, international standards are to be applied in accordance with the instructions of the State Standardization System of the Kyrgyz Republic.

Question 121. (WT/ACC/KGZ/5/Add.2, Qu. 66)

Does the Bulletin of Current Information of Kyrgyzstandard provide announcements for all Kyrgyz (including other Ministries) draft standards, technical regulations and conformity assessment procedures, so that interested parties may provide comments?

Answer:

Draft standards, technical regulations, and conformity assessment procedures are not published for public comment.

Question 122. (WT/ACC/KGZ/5/Add.2, Qu. 67)

In what specific publication(s) are final standards, technical regulations and conformity assessment procedures published?

Answer:

Final standards, technical regulations and conformity assessment procedures are published in Kyrgyzstandard's the official Bulletin of State Standards and Technical Regulations, published on a quarterly and annual basis.

Question 123. (WT/ACC/KGZ/5/Add.2, Qu. 68)

Annex 5 states that a "certificate of conformity" is required for the importation of select regulated products. Kyrgyzstandard is to review documents issued by "national certification bodies" which assert compliance with applicable safety requirements. Are such certificates only accepted from Kyrgyzstandard-accredited certification bodies and testing laboratories?

Answer:

Certificates issued by foreign certification bodies are accepted if a bilateral or multilateral agreement exists that provides for their acceptance.

In the absence of an applicable bilateral or multilateral agreement, the Kyrgyz Republic will generally review and accept a certificate issued by a manufacturer or certification body widely recognized as having a reputation for quality. Such certification body does not necessarily have to be accredited by Kyrgyzstandard. The determination of such firms and organizations remains within the discretion of the Kyrgyz Republic.

As a rule, foreign certificates are accepted only for products originating in the country where the certificate was issued.

Question 124. (WT/ACC/KGZ/5/Add.2, Qu. 69)

Do you have a list of these products together with the standards they must meet?

Answer:

That list is attached as Attachment B.

Question 125. (WT/ACC/KGZ/5/Add.2, Qu. 70)

What is the legal basis for certification? Do you have copies of the laws and the normative regulations?

Answer:

The legal basis for certification is described in Annex 5 to the Memorandum. Copies of the applicable laws and normative regulations on standardization and certification, all of which are referred to in Annex 5, have already been submitted to the WTO on diskette.

Question 126. (WT/ACC/KGZ/5/Add.2, Qu. 71)

How can an importer gain access to the standards affecting his product?

Answer:

An importer can gain access to all standards affecting his product by submitting a request to Kyrgyzstandard, or by reviewing the official bulletins of Kyrgyzstandard.

Question 127. (WT/ACC/KGZ/5/Add.2, Qu. 72)

Does the Kyrgyz Republic recognize any external, regional or international standards?

Answer:

Yes. Standards developed on the basis of the international standards of ISO, MEK, CMEA are applied in the Kyrgyz Republic. For example, GOST 28397-91 has been developed on the basis of ISO 2382-15-85, GOST 28397-91 (ISO 2382-15-85), GOST 29106-91 (MEK 748-1-84), GOST 28312-89 (CMEA 6415-88, MEK 417-73) and others. (The full list can be found in the Comments

of Kyrgyzstandard for 1996 which is available in the Information-Analytical Department of Kyrgyzstandard.)

Question 128. (WT/ACC/KGZ/5/Add.2, Qu. 73)

Has it identified any equivalencies between standards in the Kyrgyz Republic and these external standards? If so, which ones: ISO? MEK? ASME? API? CE? Others?

Answer:

As described in the answer to the above question, standards in the Kyrgyz Republic have equivalencies with ISO, MEK and CMEA. As for other external standards they have not yet been considered for equivalency.

Question 129. (WT/ACC/KGZ/5/Add.2, Qu. 74)

Are there plans to recognize such equivalencies as a basis for automatic certification?

Answer:

Currently Government of Kyrgyz Republic has no plans to recognize such equivalencies as a basis for automatic certification.

Question 130. (WT/ACC/KGZ/5/Add.2, Qu. 75)

Are there provisions for notice if the list of products requiring mandatory certification changes?

Answer:

No. There are no formal notice requirements. However, within the CIS, regulations have been developed that operate like notice provisions. The CIS Inter-Governmental Counsel for standardization, methodology and certification (ICS) has developed regulations allowing for the import and sale in an ICS-member country, without a certificate, of a product that is otherwise subject to mandatory certification if: (i) the product originated in an ICS-member country; and (ii) and the importation occurs within six months from the date of the introduction of the mandatory certification requirement.

With respect to non-ICS-member countries, the Kyrgyz Republic may resolve this issue on the basis of an international agreement.

Question 131. (WT/ACC/KGZ/5/Add.2, Qu. 76)

What is the fee structure for certification of these product types? If you maintain a standard fee schedule, may we have a copy?

Answer:

- certificate of compliance: 600-1500 soms (currently, about US\$35-90), depending on the type of laboratory tests required;
- phytosanitary certificate: 76-166 soms depending on the type of product. If the total weight of the product is less than 300kg the required payment will be 10 per cent of the otherwise

applicable amount. If the weight is from 300kg-1000kg the required payment will be 50 per cent of the otherwise applicable amount.

- veterinary certificate: for goods having a value equal to or less than 5000 soms, a fee equal to 0.5 per cent of the value is assessed; for goods having a value exceeding 80,000 soms, a fee equal to 350 soms plus 0.1 per cent of the value is assessed; for goods having a value in excess of 5000 soms but less than 80,000 soms, a variety of formulas are applied that gradually reduce the amount of the fee in ad valorem terms;.
- hygienic certificate: 70-800 soms depending on the type of laboratory tests required.
- a certificate setting forth the determination of State ecology experts that the product has met applicable environmental standards: amount of fee defined on case by case basis based on cost of the laboratory tests.

Question 132. (WT/ACC/KGZ/5/Add.2, Qu. 77)

What is the procedure that importers of products and equipment into the Kyrgyz Republic should follow in order to obtain a certificate?

Answer:

The procedure of controlling products imported to the Kyrgyz Republic is regulated by the Resolution of the Cabinet of Ministers of the Kyrgyz Republic of 12/02/95, No. 520.

Work on certification in the Kyrgyz Republic is implemented within the developed National system of certification. The order and procedure of work on certification is established by standards of this system - KMC 40.03-96- and procedures of certification of similar categories of products (at this time twenty of them are in effect. They continue to be worked out). There is also a normative document establishing the procedure of recognizing foreign certificates of compliance in the System.

Question 133. (WT/ACC/KGZ/5/Add.2, Qu. 78)

Do products imported for personal use or as part of a foreign assistance programme require certification?

Answer:

All products specified in the list, including those imported as humanitarian aid are subject to certification. Goods imported for personal use do not require certification.

Question 134. (WT/ACC/KGZ/5/Add.2, Qu. 79)

What are the “national certification bodies”?

Answer:

“National certification bodies” are bodies authorized to maintain a common government policy in the area of certification. The National certification body of the Kyrgyz Republic is Kyrgyzstandard.

Question 135. (WT/ACC/KGZ/5/Add.2, Qu. 80)

How do the national certification bodies relate to each other and to the State customs service and the industry ministries and Goskominvest?

Answer:

Cabinet of Ministers Resolution No. 12 of 6 January 1997 established an Inter-Departmental Counsel on the Certification of Products and Services. The resolution also established its composition. The Counsel includes the following State bodies especially authorized to work on certification of products:

- Kyrgyzstandard;
- Ministry of Architecture and Construction of the Kyrgyz Republic;
- Ministry of Health of the Kyrgyz Republic;
- Ministry of Transportation and Communication of the Kyrgyz Republic
- Ministry of Interim of the Kyrgyz Republic;
- State Agency for Tourism and Sports under the Cabinet of Ministers of the Kyrgyz Republic;
- and
- Kyrgyz Energy Holding Company.

The purpose of its creation is to ensure the coordination of State certification bodies having the authority to issue certificates and/or to accredit other certificate-issuing organizations. Relation of State bodies to the State Customs Inspectorate is established by the Resolution of the Cabinet of Ministers of the Kyrgyz Republic of 12/02/95, No. 520. In the importation of products, the State Customs Inspectorate checks the presence of necessary certificates issued by the mentioned agencies, and also every month it informs these bodies of the delivery of products which are subject to mandatory certification to the Kyrgyz Republic.

Question 136. (WT/ACC/KGZ/5/Add.2, Qu. 81)

Are there pre-requisites for certification such as the requirement to obtain internal use licences from industry sector inspectorates, ministries, and/or agencies?

Answer:

No.

(c) Sanitary and phytosanitary measures

Question 137. (WT/ACC/KGZ/5, Qu. 55)

Does the Kyrgyz Republic anticipate any difficulties in applying the SPS Agreement in full on accession?

Answer:

The Kyrgyz Republic expects no difficulties in applying the SPS Agreement in full on accession.

Question 138. (WT/ACC/KGZ/5/Add.2, Qu. 82)

Are the Kyrgyz Republic's procedures for adopting trade measures relating to concerns with human, animal and plant health in line with the requirements of the SPS Agreement?

Answer:

The appropriate ministries and State bodies (particularly, the Ministry of Health, the Ministry of Agriculture and Food, the Ministry of Environmental Protection, and the Veterinary-Sanitary Supervisory Office) are reviewing the provisions of the SPS Agreement for the purpose of bringing their respective procedures into compliance with the SPS.

Question 139. (WT/ACC/KGZ/5/Add.2, Qu. 83)

Are all proposals for such measures published in advance, and is there an opportunity for public comment by interested parties, both domestic and foreign?

Answer:

State bodies can publish such measures in advance seeking for the public comment, but it is not obligatory.

Question 140. (WT/ACC/KGZ/5/Add.2, Qu. 84)

Is there a requirement and are there guidelines for conducting risk assessments prior to the adoption of SPS measures, including a requirement that such measures be based on scientific evidence?

Answer:

There is a requirement that any SPS measure be based on scientific evidence, but no requirements or guidelines for the conduct of risk assessments.

Question 141. (WT/ACC/KGZ/5/Add.2, Qu. 85)

According to the information provided in WT/ACC/KGZ/3, Cabinet of Ministers Resolution No. 260 requires that safety certificates be obtained for imports of “agricultural and food industry products.” Are all types of agricultural and food products subject to this requirement? If not, please provide a complete list of agricultural and food products subject to compulsory safety certificates.

Answer:

See above, the answer to Question 49 on Part IV, Section 1(f).

Question 142. (WT/ACC/KGZ/5/Add.2, Qu. 86)

On what scientific evidence or risk assessments is Resolution No. 260 based?

Answer:

Resolution No. 260 is based on the evaluation of the possibility of entry of pest and disease and potential biological consequences. Certification requirements for items listed in Resolution No. 260 are based on scientific studies and are imposed only to the extent necessary to protect human life and health, environment.

Question 143. (WT/ACC/KGZ/5/Add.2, Qu. 87)

Is there any other legislative or administrative authority for specific SPS measures affecting imported agricultural and food products?

Answer:

- The Law “On Quarantine of Plants of the Kyrgyz Republic,” of 7 June 1996; and
- Cabinet of Ministers Resolution No. 520 of 2 December 1995 (described in Annex 5 to the Memorandum at page 143).

Question 144. (WT/ACC/KGZ/5/Add.2, Qu. 88)

Are the sanitary and phytosanitary standards in the Kyrgyz Republic in conformity with applicable international standards, in particular those developed by the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention?

Answer:

The appropriate ministries and State bodies (particularly, the Ministry of Health, the Ministry of Agriculture and Food, the Ministry of Environmental Protection, and the Veterinary-Sanitary Supervisory Office) are reviewing the provisions of these standards for the purpose of bringing their respective standards into conformity therewith.

(d) Trade-related investment measures

Question 145. (WT/ACC/KGZ/5, Qu. 56)

Please indicate whether or not there are any domestic content or export performance requirements linked to granting the tax exemptions mentioned in this section.

Answer:

There are no domestic content or export performance requirements linked to granting the tax exemptions mentioned in this section.

Question 146. (WT/ACC/KGZ/5, Qu. 57)

Please elaborate on the tax incentives granted to foreign-owned legal entities, particularly on their consistency with the SCM Agreement and with the TRIMs Agreement?

Answer:

These tax incentives are primarily directed at encouraging foreign investment in the Kyrgyz Republic. These tax incentives involve an initial 2-5 year exemption from the profits tax, and - thereafter

- a reduction of the profits tax by:

- for all taxable profits reinvested in the Kyrgyz Republic;
 - if at least 50 per cent of entity's products and services are exported;
 - if at least 50 per cent of production is derived from imported raw materials or components;
- and

- if at least 20 per cent of taxable profits are spent for professional training.

None of these tax incentives are inconsistent with the TRIMs Agreement.

With one exception, none of these incentives are inconsistent with the SCM Agreement. The exception is the 25 per cent reduction in the otherwise applicable profits tax if 50 per cent or more of the entity's products and services are exported. The Kyrgyz Republic understands that this tax reduction is a prohibited export subsidy within the meaning of Section 3.1(a) of the SCM Agreement.

Question 147. (WT/ACC/KGZ/5, Qu. 58)

Please confirm that the Kyrgyz Republic maintains no other TRIMs Agreement inconsistent measures.

Answer:

The Kyrgyz Republic confirms that it maintains no other measures inconsistent with the TRIM's Agreement.

Question 148. (WT/ACC/KGZ/5/Add.2, Qu. 89)

According to the Memorandum, bids are scored according to a number of factors for the privatization of medium and large State-owned enterprises. Included among the factors considered is the commitment by the bidder "to maintain certain employment levels". How does the Kyrgyz Republic justify this examination of a bidder's ability to hire locally, in light of commitments in the TRIMs Agreement? Please list and describe all other factors used to rate bids in the privatization process.

Answer:

Giving weight to a bidder's willingness to make a commitment to maintain a certain employment level does not contradict the TRIMs Agreement. There is no trade-related aspect imposed by the State on the buyer in connection with this commitment. The State is currently the major stock-holder in these entities, and in that role may require a potential purchaser to maintain certain employment levels as part of the deal. The imposition of such a requirement is not unknown in wholly private transactions involving the sale of a business. Furthermore, a requirement to maintain employment levels does not mean that a buyer will be required to use only local labour. The requirement is imposed on the buyer for the purpose of avoiding de-stabilizing simultaneous mass lay-offs during this period of initial transition and mass privatization. This requirement always terminates or phases out within a limited time after the transaction has closed. Nothing in these arrangements violates the TRIMs Agreement.

Other factors which may be used to rate bids in the privatization process are applied with due regard for the m.f.n. and national treatment principles. These factors include:

- the amount and term of investment;
- keeping the company profile and/or production volume within a period of time specified by a bidding commission;
- the commitment to hire a highly professional staff;
- maintaining environmental protection measures;
- maintenance and use of social programmes and cultural objects, which are a part of the commercial property, under privatization;
- prohibition of certain actions in respect of a bidding property;

The bidding commission can establish other factors to rate bids.

(e) State-trading practices

Question 149. (WT/ACC/KGZ/5/Add.2, Qu. 90)

The Kyrgyz Republic notes that 29 enterprises have been granted exclusive rights by the Government to purchase and export scrap metals. Annex 6 also notes that the list of enterprises is temporary (under Resolution No. 373), pending the enactment of a law by Parliament in late 1996. What is the status of this anticipated law. How does the Government exercise control over the scrap metal exports of these enterprises?

Answer:

This Draft Law is in the Parliament's work plan for 1997. See answer below.

Question 150. (WT/ACC/KGZ/5/Add.2, Qu. 91)

Annex 6 states no criteria exist for determining the quantities to be exported. If this is the case, how does the Government ensure that this exclusive system of scrap metals exporters does not "plunder" domestic supplies?

Answer:

This resolution is intended to prevent the plunder of domestic resources of waste and scrap metal and to protect the existing infrastructure from being cut up and sold. The Government has licensed only 29 companies to engage in the business of purchasing and processing waste and scrap metal. These companies must regularly provide to the Ministry of Industry and Foreign Trade information about the quantities and sources of purchases. This is only a temporary measure taken to prevent the theft and exportation of the country's resources. Resolution No. 373 contains an exclusive list of items made of ferrous and non-ferrous metals which these companies can purchase domestically on a cash basis.

Question 151. (-)

We request that Kyrgyz Republic submit notifications for this programme under the provisions of GATT Article XVII.

(f) Free zones

Question 152. (WT/ACC/KGZ/5, Qu. 59)

Please confirm whether or not any free zones established in the future will be fully subject to the coverage of the Kyrgyz Republic's future commitments as a WTO member.

Answer:

The Kyrgyz Republic confirms that all free zones in the Kyrgyz Republic will be fully subject to the coverage of the commitments undertaken by the Kyrgyz Republic as a member of the WTO.

Question 153. (WT/ACC/KGZ/5, Qu. 60)

Please indicate whether or not goods produced or imported into free zones under the special tax and tariff regimes envisaged for these zones will be subject to normal customs formalities, taxes and tariffs when entering the rest of the Kyrgyz Republic.

Answer:

The Kyrgyz Republic confirms that all goods produced or imported into free zones will be subject to normal customs formalities, taxes and tariffs when entering the customs territory of the Kyrgyz Republic.

(g) Free economic zones

Question 154. (WT/ACC/KGZ/5, Qu. 61)

Please confirm whether or not free economic zones will be fully subject to the coverage of the Kyrgyz Republic's future commitments as a WTO member.

Answer:

The Kyrgyz Republic confirms that all free economic zones in the Kyrgyz Republic will be fully subject to the coverage of the commitments undertaken by the Kyrgyz Republic as a member of the WTO.

Question 155. (WT/ACC/KGZ/5, Qu. 62)

Please indicate whether or not goods produced or imported into free economic zones under the special tax and tariff regimes envisaged for these zones are subject to normal customs formalities, taxes and tariffs when entering the rest of the Kyrgyz Republic.

Answer:

The Kyrgyz Republic confirms that all goods produced or imported into free economic zones will be subject to normal customs formalities, taxes and tariffs when entering the customs territory of the Kyrgyz Republic.

(h) Trade-related environmental policies

Question 156. (WT/ACC/KGZ/5, Qu. 63)

The third paragraph under this heading states that products from a country suffering from a disease requiring quarantine measures must accompanied by documents of safety. Please confirm that such measures only apply to products which are affected by the disease in question, and not to all imports from that country.

Answer:

The Kyrgyz Republic confirms that such measures apply only to products which could reasonably be expected to be affected by the disease in question, and not to all imports from that country.

Question 157. (WT/ACC/KGZ/5/Add.2, Qu. 92)

Please describe the mandatory product standards that the Kyrgyz Republic has established to protect the environment of the life, health or property of Kyrgyz citizens.

Answer:

In addition to the information on certification provided in Annex 5 to the Memorandum, it should be noted that the system of certification in effect in the Kyrgyz Republic is harmonized with the systems of certification in effect in the Russian Federation and other CIS countries, and with the regulations of ISO/IEC and European standards of serial No. EN 45000. The certification rules and regulations of the Kyrgyz Republic are set forth in 44 different sets of regulations, of which 20 have general applicability and 24 apply to specific products or product groups. These documents contain detailed information on the procedures and requirements related to mandatory and voluntary certification.

Goods for which State standards have been established for the purpose of protecting the environment or the life, health and property of citizens are subject to mandatory certification by the appropriate ministry or State body, and the subsequent issuance by Kyrgyzstandard of a certificate of conformity and a licence to mark the concerned goods with a “mark of conformity.” Sale or import of such goods in the Kyrgyz Republic without such prior certification and marking is prohibited. List of goods that are subject to mandatory certification is developed by Kyrgyzstandard.

Question 158. (WT/ACC/KGZ/5/Add.2, Qu. 93)

What documentation and information is required to “confirm the safety of the products imported” from countries having a significant incidence of a disease requiring quarantine measures?

Answer:

It can be any document certifying the safety of imported products that is issued by an authorized body of a country having a disease problem.

Question 159. (WT/ACC/KGZ/5/Add.2, Qu. 94)

Cabinet Ministers Decision No. 260 on the Approved List of Goods Locally Produced or Imported into the Kyrgyz Republic that are Subject to Compulsory Safety Certification, as amended, appears to reserve much of the economy for compulsory certification for health, safety or environmental reasons. The Decision covers capital goods (machinery, building, electrotechnical and instrument making industries), agriculture/food, light industry, raw materials, wood processing and medical products.

Answer:

Although Cabinet of Ministers Resolution No. 260 covers many industries, it only covers a limited range of products within each industry. The text of the resolution has already been submitted to the WTO on diskette. The resolution contains an item-by-item list of the specific products subject to compulsory certification. Therefore, only a small class of goods is subject to compulsory certification.

Question 160. (WT/ACC/KGZ/5/Add.2, Qu. 95)

What significant sectors of the economy remain outside the scope of this Decision?

Answer:

Sectors of the economy that are outside of the scope of this resolution include ferrous metals, mining, most types of construction materials, fuel industry, tourism industry, scientific institutions, production of feed for livestock and flour mills.

Question 161. (WT/ACC/KGZ/5/Add.2, Qu. 96)

What has been the experience with the Decision No. 260? Is the certification process sufficiently rapid so as to ensure the infusion of new goods and/or technologies into the economy? What is the time line for certification?

Answer:

Cabinet of Ministers Resolution No. 260 applies to a relatively small range of products. The few goods subject to compulsory certification obtain that certification within a relatively brief period of time provided the required documentation is provided.

Question 162. (WT/ACC/KGZ/5/Add.2, Qu. 97)

Does the certification requirement apply to each shipment or import? Is there an inspection requirement for each shipment or import?

Answer:

The certification requirement applies to every shipment of goods subject to mandatory certification. One certificate may be issued to cover a large shipment to be imported over time in pieces or lots, but the term of its validity cannot exceed 3 years.

(j) Government-mandated countertrade and barter

Question 163. (WT/ACC/KGZ/5/Add.2, Qu. 98)

Does the Government maintain statistics on the value and quantity of goods imported into and exported from the Kyrgyz Republic through counter-trade and bartering, particularly within the CIS? If so, please furnish these statistics to the Working Party. If not, please describe, to the extent possible, the portion of the economy accounted for by counter-trade and bartering, as well as the general categories of products traded in this manner.

Answer:

According to customs accounting, barter transactions were carried with 30 countries in 1996, mainly with Russia, Kazakhstan, Uzbekistan and China. The total value of barter transactions in 1996 is estimated at US\$92.9 million.

In barter trade with the CIS countries, the value of exported products was US\$45 million, and imported products US\$36.1 million. Tobacco, sugar, textile products, electro-technical equipment and parts therefor were the main barter exports, while oil products, non-precious metals and articles of thereof, raw sugar, timber and articles thereof constituted the major barter imports.

Commodity exchange with non-CIS countries had a non-balanced character: the value of barter exports was more than twice the value of barter imports. Barter trade was mainly carried out with China,

Cyprus, Austria and Rumania. Wool, cotton-fibre, raw leather were the main exports in this trade, and food products and raw materials for their production, machines, equipment and instruments were the main imports.

(k) Trade agreements leading to country-specific quotas allocation

Question 164. (WT/ACC/KGZ/5, Qu. 64)

Are all countertrade and barter arrangements subject to customs formalities, tariffs and taxes in the same way as other imports?

Answer:

Yes.

(l) Government procurement practices

Question 165. (WT/ACC/KGZ/5, Qu. 65)

Does the Kyrgyz Republic plan to accede to the Agreement on Government Procurement (GPA)? If not, why not?

Answer:

Yes.

Question 166. (WT/ACC/KGZ/5, Qu. 66)

Does the Kyrgyz Government collect statistics on procurement?

Answer:

Statistics on procurement are not separately collected. Statistics on procurement using international donor funds are collected by Consultative Agency on International Procurement. See also Tables 1-29 and 1-30 of Annex 1 to the Memorandum.

Question 167. (WT/ACC/KGZ/5, Qu. 67)

What is the overall value of public sector purchasing in the Kyrgyz Republic?

Answer:

At this time, the Tables 1-29 and 1-30 of Annex 1 to the Memorandum provide this information to the best extent possible.

Question 168. (WT/ACC/KGZ/5, Qu. 68)

Please provide a breakdown of the public procurement market both by contracting entity and product type.

Answer:

For the best available information on this matter, see Tables 1-29 and 1-30 of Annex 1 to the Memorandum.

Question 169. (WT/ACC/KGZ/5, Qu. 69)

How are bids evaluated by the Examination Committee? Is price the only criterion or are contracts also evaluated by reference to an “economically most advantageous offer approach? If so, under what conditions are the different evaluation methods used?

Answer:

Under the proposed law on government procurement, procedures and criteria for the evaluation of bids are set forth in the solicitation documents issued for each procurement. The proposed law requires procuring entities to act in strict accordance with the applicable solicitation documents.

Price, subject to any margin of preference applied pursuant to the law, is the only criterion unless the solicitation documents state that the award will be based on other objective and quantifiable criteria. Alternative criteria must be specified in advance in the solicitation documents.

Question 170. (WT/ACC/KGZ/5, Qu. 70)

Is there a central agency that controls the application of the legal system, supervises the decisions of the committees and monitors infringement of public law?

Answer:

The Kyrgyz Government plans to create a new Government Procurement Agency within the Ministry of Finance in the first half of 1997. (Please note that under a recent reorganization of the Government, the Ministries of Economy and Finance were merged, and the resulting entity is called the Ministry of Finance). This new central agency will control the application of the legal system, supervise the decisions of all purchasing organizations, monitor infringements of public law and settle disputes.

Question 171. (WT/ACC/KGZ/5, Qu. 71)

Can suppliers who dispute the award of a contract seek redress through national courts or a tribunal system?

Answer:

Yes. Under the proposed law on government procurement, such a dispute may be pursued in the economic court system; however, judicial redress is generally available only after the exhaustion of administrative remedies. Note, however, that the following matters are not subject to judicial review:

- the selection of the method of procurement;
- the choice of a selection procedure;
- the limitation of procurement proceedings on the basis of nationality;
- a decision by the procuring entity to reject all tenders, proposals, offers, or quotations;
- a refusal by the procuring entity to respond to an expression of interest to participate in request-for-proposal proceedings; and

- an omission of reference to laws and regulations in the solicitation documents.

Question 172. (WT/ACC/KGZ/5, Qu. 72)

What remedies are available?

Answer:

Under the proposed law on government procurement, one or more of the following remedies are available to suppliers disputing the award of a contract:

- a determination of the rules applicable to the complaint;
- an order prohibiting the procuring entity from carrying out unlawful actions, decision or procedures;
- an order requiring the procuring entity to carry out lawful actions or decisions;
- the annulment of an unlawful act or decision by a procuring entity, other than any act which resulted in a procurement contract;
- the revision of an unlawful decision taken by a procuring entity, or the substitution of the reviewing body's own decision for an unlawful decision, other than any decision which resulted in a procurement contract;
- an award of compensation for reasonable costs incurred by a supplier in submitting a complaint; and
- an order to terminate procurement proceedings.

Provisional remedies are also available. In some cases, the submission of a complaint and request for administrative review results in the temporary suspension of ongoing procurement proceedings. Where a contract has already been awarded at the time of the complaint, performance of the contract may be temporarily suspended.

Question 173. (WT/ACC/KGZ/5, Qu. 73)

Is there an offset policy and, if so, how often are offset arrangements negotiated on a case-by-case basis?

Answer:

The Kyrgyz Government maintains no offset policy.

Question 174. (WT/ACC/KGZ/5, Qu. 74)

Does a policy to support local industry exist in the Kyrgyz Republic?

Answer:

Under the proposed law on government procurement, with respect to public procurement, there are limited legal provisions to support local industry. See response to Question 175 below.

Question 175. (WT/ACC/KGZ/5, Qu. 75)

Is the procurement of certain products reserved for local industry? If so, is a list of these products available?

Answer:

The current proposed procurement law does not contain a list of certain products whose procurement is reserved for local industry. However, the proposed law allows for the possibility that particular proceedings may be limited to domestic bidders (for example, where the procuring entity determines that the value of the contract to be awarded is so low that only domestic bidders are likely to be interested). Also, in limited cases, a procuring entity may, in evaluating tenders, grant a margin of preference for the benefit of tenders for domestic contractors, domestically produced goods, or domestic suppliers of services.

Question 176. (WT/ACC/KGZ/5, Qu. 76)

What are the procedures and the criteria to short-list candidates in the cases of limited tendering?

Answer:

The proposed law sets out two circumstances under which restricted tendering is permitted. The “short list” procedures and criteria employed in a given case depend on which of the two circumstances is applicable.

First, a procuring entity may conduct restricted tendering where the goods, works or services to be procured are highly complex or specialized, and therefore available only from a limited number of suppliers. In that case, the entity must solicit tenders from all suppliers from whom the goods, works or services are available.

Alternatively, a procuring entity may conduct restricted tendering when it determines that the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or services to be procured. In that case, the proposed law provides that the procuring entity must select suppliers or contractors from whom to select tenders “in a nondiscriminatory manner, “and that it shall “select a sufficient number of suppliers or contractors to ensure effective competition.”

In both cases, the procuring entity must publish a notice of its restricted tendering in the official gazette.

Question 177. (WT/ACC/KGZ/5, Qu. 77)

Does the Kyrgyz Republic have any trade agreements with other countries with cover public procurement? If so, which countries?

Answer:

No.

Question 178. (WT/ACC/KGZ/5, Qu. 78)

Under the Government Procurement Law which is under the preparation, how will the National Treatment principle and Most Favoured Nation principle be ensured for foreign products and service providers?

Answer:

With respect to the m.f.n. principle, the proposed law does not permit the procuring entity to discriminate among foreign bidders.

With respect to the national treatment principle, the proposed law allows for the possibility that particular proceedings may be limited to domestic bidders (for example, where the procuring entity determines that the value of the contract to be awarded is so low that only domestic bidders are likely to be interested). Also, in limited cases, a procuring entity may, in evaluating tenders, grant a margin of preference for the benefit of tenders for domestic contractors, domestically produced goods, or domestic suppliers of services.

Question 179. (WT/ACC/KGZ/5, Qu. 79)

According to the new law in preparation, will foreign bidders be treated in a non-discriminatory manner and will there be a challenge procedure open also for foreign bidders?

Answer:

According to the proposed law, foreign bidders are permitted to participate in procurement, except in cases when a procuring entity decides on grounds specified in the procurement regulations or according to other provisions of the law to limit participation in procurement proceedings to local bidders. If foreigners are not permitted to participate, a procuring entity shall include in the record of the procurement proceedings a statement of the grounds and circumstances which this limitation is relied on. Also, in limited cases, a procuring entity may, in evaluating tenders, grant a margin of preference for the benefit of tenders for domestic contractors, domestically produced goods, or domestic suppliers of services. There are not yet any regulations specifying the acceptable grounds for establishing such limitations or preference margins.

The law provides for no other exceptions to the national treatment principle, and for no exceptions to the m.f.n. principle. Therefore, in all other aspects, foreign bidders are to be treated according to the national treatment and m.f.n. principles, including challenge procedures.

Question 180. (WT/ACC/KGZ/5/Add.2, Qu. 99)

The Kyrgyz Republic notes that it is drafting a law on government procurement entitled “On the Procurement of Goods, Works and Services”.

Please submit a copy of the draft law to the Working Party.

Answer:

A copy of the draft law is provided in Attachment A1.

Question 181. (WT/ACC/KGZ/5/Add.2, Qu. 99bis)

We encourage the Kyrgyz Republic to use the WTO Government Procurement Agreement (GPA) as a guide in drafting this law.

Question 182. (WT/ACC/KGZ/5/Add.2, Qu. 99bis bis)

As a part of its protocol accession commitments, we seek a commitment from the Kyrgyz Republic to accede to the Government Procurement Agreement and submit a schedule of commitments to the GPA Committee to initiate negotiations no later than 3 months after the date of accession to the WTO.

4. Policies Affecting Foreign Trade in Agricultural Products
(a) Imports

Question 183. (WT/ACC/KGZ/5/Add.2, Qu. 100)

Why did the Kyrgyz Republic decide to change its flat 10 per cent customs duty on agricultural products to a new tariff regime that will have rates of duty ranging from zero to 25 per cent?

Answer:

The current tariff regime, characterized by a flat 10 per cent rate applicable to almost all imports, was never intended to be a permanent system. It was instituted shortly after independence in order to provide our relatively new national customs service with an easy to administer system. Today, after several years of economic reforms, the Kyrgyz Government has decided to develop a more economically sophisticated system that is based on a better understanding of our trade flows and the needs of our still fledgling market economy.

Question 184. (WT/ACC/KGZ/5/Add.2, Qu. 101)

Will the average tariff rate for agricultural products under the new tariff regime exceed the existing ten per cent average rate?

Answer:

The average tariff rate for agricultural products under the proposed tariff regime will remain at about 10 per cent.

(b) Exports

Question 185. (WT/ACC/KGZ/5/Add.2, Qu. 102)

The Kyrgyz Republic is to be commended for its liberal trade regime for agricultural exports. We would like to see this regime bound in the accession commitments. Is the Kyrgyz Republic prepared to bind its export subsidies for agricultural products at zero?

Answer:

The Government of the Kyrgyz Republic is considering the effects of binding export subsidies for agricultural products at zero.

Question 186. (WT/ACC/KGZ/5/Add.2, Qu. 103)

Is the Kyrgyz Republic prepared to bind the existing policies of not requiring licences for export of agricultural products and not imposing tariffs or quotas on the export of agricultural products?

Answer:

Yes, the Kyrgyz Republic is prepared to temporarily bind the existing policies regarding agricultural exports.

(e) Internal policies

Question 187. (WT/ACC/KGZ/5, Qu. 80)

Please provide the information requested in WT/ACC/4 on domestic support and export subsidies.

Answer:

This has already been submitted.

Question 188. (WT/ACC/KGZ/5, Qu. 81)

What is the state of play regarding the law providing for private ownership of land which the Parliament was to consider in autumn 1996?

Answer:

The governmental working group created pursuant to Instruction No. 105-p of the Cabinet of Ministers of 22 April 1996 has developed and submitted a draft law "On Property Rights in Land" to the Cabinet of Ministers.

Question 189. (WT/ACC/KGZ/5/Add.2, Qu. 104)

The Government's programme for the reform of the agriculture sector provides for the complete cessation - as of 1995 - of direct State financial payments to all agricultural enterprises, with the exception of 6 special animal breeding and 26 seed producing farms. Does the Government intend to cease the direct State financial support payments to the special animal breeding and seed producing farms in the future? What is the time frame for the cessation of these support payments?

Answer:

Due to a lack of financial resources, the State currently provides no support to the above-mentioned farms. Breeding farms engaged in raising pedigree horses have been able to cover their costs without State assistance, but farms for the production of seeds are supported by the European Commission on Technical Issues. The assistance rendered in 1995 was an estimated 15-20 million soms. In 1997 assistance for such farms is provided for in a government programme for sheep breeding.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

(a) Intellectual property policy

Question 190. (WT/ACC/KGZ/5, Qu. 82)

The Government of the Kyrgyz Republic explains that the Kyrgyz Republic is still undergoing a transition process from the system inherited from the former Soviet Union. The Kyrgyz Republic

is therefore still in the process of adopting several laws (e.g. Civil Code, “various additional specialized laws” etc.) linked to intellectual property. Against this background, could the Kyrgyz Government specify the laws and time frame(s) for their adoption?

Answer:

The intellectual property laws currently in draft form and the legislative status of each are as follows:

- The Patent Law (under consideration by Parliament; adoption is planned for the first half of 1997);
- The law “On Trade Marks, Service Marks and Appellations of Origin” (under consideration by Parliament; adoption is planned for the first half of 1997);
- The law “On the Legal Protection of Software and Databases” (under review by the Government; exact time of consideration will depend on Parliament’s workload);
- The law “On Legal Protection of Integrated Circuit Topographies” (under review by the Government; exact time of consideration will depend on Parliament’s workload);
- The law “On Selection Achievements” (under review by the Government; exact time of consideration will depend on Parliament’s workload); and
- The law “On Copyrights and Neighbouring Rights” (under consideration by Parliament; adoption is planned for the first half of 1997).

Copies of all draft laws are attached in Attachments C1 through C6.

Question 191. (WT/ACC/KGZ/5/Add.2, Qu. 105)

We applaud the desire of the Kyrgyz Republic to put in place a system of intellectual property protection modeled on the systems found in developed market economy countries. We note that the Kyrgyz Republic is in the process of adopting Civil Code provisions to establish basic intellectual property rights and protection and the various additional specialized laws, dealing with specific types of intellectual property.

Please provide the Working Party with texts of these draft laws at the earliest opportunity. What is the legislative status of each of these bills?

Answer:

See answer to Question 190 above.

Question 192. (WT/ACC/KGZ/5, Qu. 84)

Does the Government of the Kyrgyz Republic intend to adhere to international intellectual property conventions-such as the Rome or Berne Convention-other than those mentioned in WT/ACC/KGZ/3? If yes, what are they and what is the time frame?

Answer:

The Kyrgyz Government is currently considering adhering to the Rome and Berne Conventions, as well as the Nice Agreement Concerning the International Classification of Goods and Services (1957) and the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989). However, there is no available estimate as to when the Government may sign on to these international agreements.

It should also be noted that the Kyrgyz Government now adheres to the Universal Copyright Convention.

Question 193. (WT/ACC/KGZ/5/Add.2, Qu. 106)

We seek adoption and implementation of a TRIPS-consistent intellectual property regime prior to WTO accession. Does the Kyrgyz Republic foresee any problems in accomplishing this?

Answer:

The obvious problem is delay in adopting the draft laws. The above-referenced drafts have already been under consideration by the Parliament for four years. However, it is anticipated that at least three of the draft laws will be adopted in the first half of 1997, and that Parliament will consider the other draft laws within a reasonable time thereafter.

(b) Responsible agencies for policy formulation and implementation

Question 194. (WT/ACC/KGZ/5, Qu. 83)

Is the State Agency for Intellectual Property (also known as Kyrgyzpatent) already put in place?

Answer:

Yes.

(c) Membership of international intellectual property conventions

Question 195. (WT/ACC/KGZ/5/Add.2, Qu. 107)

Does the Kyrgyz Republic intend to join the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Convention on the Protection of Producers of Phonograms? If not, how will their requirements incorporated in the WTO be implemented in the regime of the Kyrgyz Republic?

Answer:

The Kyrgyz Republic intends to join the Berne Convention (1971). The State Agency for Intellectual Property ("SIPA") is currently conducting preparatory work necessary for joining that Convention.

For the time being, the Kyrgyz Republic is not considering joining the Geneva Convention on the Protection of Producers of Phonograms. The rights of producers of phonograms will be protected by the Law "On Copyright and Neighbouring Rights", which includes basic provisions protecting the rights of these producers in compliance with applicable WTO requirements.

Question 196. (WT/ACC/KGZ/5/Add.2, Qu. 108)

Concerning intellectual property obligations the Kyrgyz Republic has assumed pursuant to its accession to the Eurasian Patent Convention and through its signing of a bilateral agreement with the Government of the Russian Federation on Cooperation in the Sphere of Protection of Industrial Property. Please list and describe any such obligations.

Answer:

The obligations of the Parties on the basis of the referenced bilateral agreements are as follows:

- providing physical and legal persons of one party with the rights and privileges provided to local physical and legal persons of the other party;
- recognition on the territory of the country of the protection documents of the USSR; payment of royalties in accordance with the Law of the party using the inventions; the possibility of converting protection documents of the USSR into those of the Kyrgyz Republic;
- granting of the right of prior use of an invention or industrial design without execution of a licence agreement, with payment of a royalty in accordance with the law of the party using the invention or design;
- granting of the right to conduct business activities after the receipt of protection documents, and the right to maintain their validity directly with the patent agencies of the parties, without a patent attorney;
- granting of the right to pay fees for conducting legally significant activities related to the protection of industrial property in compliance with applicable regulations, currency and amounts provided for the national applicants of the parties;
- harmonisation national legislative acts; and
- exchange of patent information, legislative and other documents, experience, and experts in the area of industrial property protection.

Question 197. (WT/ACC/KGZ/5/Add.2, Qu. 109)

Are the intellectual property benefits provided by these agreements also granted to third country nationals on a most favoured nation basis?

Answer:

No. Benefits provided by these agreements are not granted to third country nationals on a most-favoured-nation basis.

(d) Application of national and m.f.n. treatment to foreign nationals

Question 198. (WT/ACC/KGZ/5, Qu. 85)

In which way does the Kyrgyz Republic intend to deal with the listed exceptions to the national treatment policy when it accedes to the WTO Agreement under Article XII, i.e. how does the Kyrgyz Republic intend to comply with Article 4 of the TRIPS Agreement?

Answer:

In order to ensure national treatment, the State Agency for Intellectual Property (“Kyrgyzpatent”) is now reviewing all laws and regulations to eliminate, or propose the elimination of, all prohibited differences in the treatment of foreign persons and Kyrgyz citizens. For example, a uniform fee structure is currently being developed.

With respect to the m.f.n. principle, the Kyrgyz Republic intends to follow the requirements of Article 4 of the TRIPS Agreement. All draft laws mentioned above in the answer to Question 190 on Part V, Section 1(a), have been drafted by Kyrgyzpatent with regard to the requirements of Article 4.

Question 199. (WT/ACC/KGZ/5/Add.2, Qu. 110)

Footnote 17 of WT/ACC/KGZ/3 states that the Kyrgyz Republic intends to eliminate, in due course, the discriminatory treatment in the method of calculating application, registration, renewal and other fees paid by domestic, foreign and CIS holders of intellectual property rights. Article 2 of the Paris Convention for the Protection of Industrial Property (the Paris Convention), which is incorporated by reference in Article 2.1 of the TRIPS Agreement, provides for national treatment. Does the Kyrgyz Republic intend to provide national treatment, through the reduction or elimination of fees for intellectual property protection, to foreigners who are members of certain specified classes, specifically, veterans of the Great Patriotic War, students and disabled persons?

Answer:

The Kyrgyz Republic intends to apply the same fee structure to foreign students and disabled persons as it applies to Kyrgyz students and disabled persons, thus assuring national treatment for those classes. Currently, the issue on privileges related to fees granted to veterans of the Great Patriotic War has not been definitively resolved, because this privilege provided favourable treatment for citizens of the USSR.

Question 200. (WT/ACC/KGZ/5/Add.2, Qu. 111)

What is the plan to eliminate the practice of charging higher fees for non-CIS nationals, in light of the Kyrgyz Republic’s membership in the Paris Convention?

Answer:

Kyrgyzpatent intends to introduce a single-fee system for all local and foreign applicants. The new system will be put into place after the adoption of draft laws which comply with the Paris Convention.

2. Substantive Standards of Protection**Question 201. (WT/ACC/KGZ/5, Qu. 86)**

When will the “additional provisions in later parts of the Civil Code” (not yet adopted) enter into force? Please specify these “other specialized laws”.

Answer:

Part II of the Civil Code is still under preparation and is expected to be submitted to the Parliament at the end of 1997. The “other specialized laws” are enumerated above in the answer to Question 190 on Part V, Section 1(a).

Question 202. (WT/ACC/KGZ/5, Qu. 112)

Section V.2 of the Memorandum outlines provisions of Part I of the Kyrgyz Republic’s Civil Code that refer to the existence of rights in certain forms of intellectual property and states that these rights will be developed and refined by additional provisions in later parts of the Civil Code and other specialized laws. Please describe these additional provisions and specialized laws, and provide a time table for their introduction and implementation.

Answer:

A full section on intellectual property is contained in Part III of the Civil Code. Part III is currently under consideration by a special Parliamentary Committee. It is anticipated that final discussion and adoption of Part III will take place in 1997.

The intellectual property section of Civil Code Part III consists of seven chapters (Chapter 54-Chapter 60). Chapter 54 covers general topics, including: (i) objects of intellectual property and their legal protection; (ii) property and non-property rights; (iii) exclusive rights of authorship; (iv) agreements on the creation and exploitation of works; and (v) means of protection, including withdrawal and publication.

Chapter 55 covers copyrights. The chapter addresses: (i) objects of copyright; (ii) works that are not objects of copyright; (iii) authorship; (iv) free and unlicensed use of works; (v) the territorial and temporal scope of copyright; (vi) author’s agreements; and (vii) liability for infringement.

Chapter 56 governs neighbouring rights, and specifically mentions: (i) objects and entities of neighbouring rights; and (ii) rights of performers, producers of phonograms, and air and cable broadcast organizations.

Chapter 57 covers industrial property rights, including: (i) protection of inventions, utility models and industrial designs; (ii) exclusive rights; (iii) authorship; (iv) work-for-hire and licence agreements; and (v) liability for patent infringement.

Chapter 58 addresses selection achievements, including: (i) protection of rights to selection achievements; and (ii) the rights and obligations of a patent-holder.

Chapter 59 governs the protection of undisclosed (confidential) information. This chapter specifically mentions: (i) rights to protection of undisclosed (confidential) information; and (ii) liability for illegal use of such information.

Finally, Chapter 60 covers trademarks and related issues, in particular: (i) trade names; (ii) trademarks; and (iii) appellations of origin.

In addition to the intellectual property provisions of Civil Code Part II, there are six draft specialized laws currently under consideration by Parliament:

- The draft Patent Law consists of nine sections. Section 1 covers general concepts. Section 2 defines conditions of patentability for inventions, industrial designs and utility models. Section 3 defines entities which are accorded rights under the law. Section 4 defines exclusive rights to objects of industrial property. Section 5 sets forth procedures for obtaining a patent, preliminary patent or certificate. Section 6 covers termination of preliminary patents, patents and certificates. Section 7 defines the rights and benefits of authors and patent-holders. Section 8 governs the enforcement of those rights. Section 9 contains miscellaneous final provisions.
- The draft law “On Trade Marks, Service Marks and Appellations of Origin” comprises ten chapters. Chapter 1 defines general trade mark concepts, including exclusive rights and grounds for refusal of registration. Chapter 2 covers registration procedures, including making an application, expert examinations, appeals of examination decisions, registration, publication, issuance of certificates, and trade mark terms. Chapter 3 deals with collective marks. Chapter 4 governs the use of trademarks, and consequences of non-use. Chapter 5 covers transfers of marks. Chapter 6 defines how trademark protection may be lost. Chapter 7 covers general concepts related to appellations of origin. Chapter 8 sets out registration procedures for appellations of origin. Chapter 9 covers the use of appellations of origin. Chapter 10 defines how legal protection for an appellation of origin may be lost.
- The law “On Legal Protection of Software and Databases” consists of four chapters. Chapter 1 sets out the main concepts used in the law; terms of copyright; and temporal and territorial limits of protection. Chapter 2 defines property (economic) and non-property (moral) rights, as well as registration procedures. Chapter 3 defines the grounds for use of software and databases. Chapter 4 deals with infringement, elements of protection, and international cooperation.
- The law “On Legal Protection of Integrated Circuit Topographies” consists of fourteen Articles. Article 1 defines various terms used in the law. Article 2 defines the relationships regulated by the law. Article 3 defines the objects of legal protection. Article 4 deals with authorship. Article 5 covers economic (property) rights. Article 6 governs the assignment of those rights. Article 7 deals with work-for-hire and commissioned works. Article 8 defines actions not recognized as infringement. Article 9 governs registration and notification. Article 10 sets out terms for exclusive rights. Article 11 sets out the rights of the author or other owner of the rights in a topography. Articles 12-14 deal with international protection issues.
- The draft law “On Selection Achievements” consists of seventeen sections. Section 1 covers general concepts. Section 2 deals with protectability of selection achievements. Section 3 describes patent application procedures. Section 4 covers protection of selection achievements. Section 5 defines the rights and obligations of a patent-holder. Section 6 governs licence agreements, including open and compulsory licences. Section 7 defines authorship. Section 8 covers invalidity and nullification. Section 9 deals with registration and publication. Section 10 discusses governmental encouragement of the creation and use of selection achievements. Section 11 governs appeals. Section 12 covers selection achievement certificates. Section 13 sets out patent fees. Section 14 governs enforcement of patent rights. Section 15 explains the genetic fund of the Kyrgyz Republic. Section 16 governs import and export controls on selection achievements. Section 17 deals with international protection issues.
- The draft law “On Copyrights and Neighbouring Rights” consists of five sections, including 50 articles. Section 1 defines the subject of regulation and basic concepts used in the law. Section 2 covers the objects of copyright, authorship, authors’ rights, transfers of property rights, and terms of copyright. Section 3, which covers neighbouring rights, defines entities

of neighbouring rights, their rights, and the terms of neighbouring rights. Section 4 deals with collective management of property rights by organizations created to provide property rights for the holders of copyrights and neighbouring rights in cases where exploitation on an individual basis is difficult. Section 5 sets forth civil and other enforcement measures.

Each of the draft laws provides that foreign persons and entities enjoy the same rights as local persons and entities.

The legislative status of each of the foregoing draft laws is provided above in response to Question 190, Section 1(a).

Question 203. (WT/ACC/KGZ/5/Add.2, Qu. 113)

Section V.2 of the Memorandum also refers to existing protection for trademarks and trade secrets contained in section 5 of the Anti-monopoly Law. Please describe in detail the procedure for invoking this protection, the process followed by the body responsible for reviewing such matters, and the remedies available in the event of a favourable decision.

Answer:

Special procedures for invoking this protection have not yet been established. Violations are now identified through auditing conducted by the Department on Antimonopoly Policy.

(a) Copyright and related rights

Question 204. (WT/ACC/KGZ/5, Qu. 87)

The Kyrgyz Government explains that a draft law on Copyright and Related Rights is currently pending before the Parliament. What is the timeframe for the adoption of the law?

Answer:

It is scheduled to be voted on by Parliament within the first half of 1997.

What are its main elements? (WT/ACC/KGZ/5, Qu. 88)

Answer:

The draft law "On Copyright and Related Rights" of the Kyrgyz Republic consists of five basic chapters, divided into a total of 50 articles. A summary of the chapters is as follows:

- Chapter 1. - "General" - establishes the subject of regulation and basic concepts used in the law.
- Chapter 2. - "Copyright" - establishes the objects of copyright, defines the author of the creative work, his property and non-property rights, the transferability of property rights, as well as the period of validity of copyrights.
- Chapter 3. - "Related Rights" establishes the subjects of related rights (performers, producers of phonograms (recordings), organizations of air and cable broadcasts), their rights, as well as the period of validity of related rights.

- Chapter 4. - “Collective Management of Property Rights” provides for the creation by owners of copyrights and related rights of organizations for the management of property rights on a collective basis. Such organizations are created for the purpose of providing copyright and related rights holders with property rights in cases where it is difficult to realize their rights separately.
- Chapter 5. - “Protection of Copyrights and Related Rights” establishes civil-legislative and other measures for the enforcement of copyrights and related rights.

Could the Kyrgyz Government provide a copy of the draft? (WT/ACC/KGZ/5, Qu. 89)

Answer:

The draft is attached as Attachment C3.

Question 205. (WT/ACC/KGZ/5, Qu. 90)

Does the current copyright legislation provide for rental rights? If yes, please explain. If no, are rental rights foreseen in the draft law? If yes, how?

Answer:

The current law only requires that an exhibitor, producer, performer, broadcaster or publisher obtain the consent of the copyright holder. There are no provisions specifically covering rental rights.

The draft law contains a provision covering rental rights at Article 16. The draft law is attached at Attachment C3.

Question 206. (WT/ACC/KGZ/5, Qu. 91)

In which way will the Kyrgyz Republic comply with Art. 9 (1) of the TRIPS agreement? Does the Kyrgyz Republic intend to accede to the Berne Convention of 1971?

Answer:

The draft Law of the Kyrgyz Republic “On Copyright and Related Rights” has been developed with regard to the requirements of the Berne Convention. Therefore, after this law comes into force, the requirements of the Berne Convention and of Article 9 those of the TRIPS Agreement will be observed.

The Kyrgyz Republic intends to join the Berne Convention (1971). Currently, the terms of accession are being considered in detail; however exact terms of accession have not yet been established.

Question 207. (WT/ACC/KGZ/5, Qu. 92)

When is the entering into force of the law “On Copyright and Related Rights” to be expected?

Answer:

Consideration of the draft Law “On Copyright and Related Rights” by Parliament is planned for the first half of 1997.

Question 208. (WT/ACC/KGZ/5, Qu. 93)

Does the draft copyright law comply with Art. 14 of the TRIPS Agreement?

Answer:

Yes.

Question 209. (WT/ACC/KGZ/5/Add.2, Qu. 114)

Concerning the draft law “On Copyrights and Related Rights”. Please provide the Working Party with a copy of this draft legislation.

Answer:

A copy of the draft legislation is provided in Attachment C3.

Question 210. (WT/ACC/KGZ/5/Add.2, Qu. 115)

Are the provisions of this draft law in conformity with the requirements of the Berne Convention for the Protection of Literary and Artistic Works? Please identify and describe any provisions that are not consistent with Berne Convention requirements.

Answer:

The draft law is currently undergoing two minor amendments to ensure compliance with the Berne Convention. Article 27(5), which currently grants longer copyright terms to Kyrgyz war veterans, is being deleted to ensure compliance with the Berne Convention’s national treatment provision. A similar provision at Article 43, which grants longer neighbouring rights terms to Kyrgyz veterans, is also being deleted. Otherwise, the draft law “On Protection of Copyrights and Neighbouring Rights” complies with the requirements of the Berne Convention.

Question 211. (WT/ACC/KGZ/5/Add.2, Qu. 116)

Will the draft law “On Copyrights and Related Rights” protect compilations of data or other material?

Answer:

Yes.

Question 212. (WT/ACC/KGZ/5/Add.2, Qu. 117)

Section V.1(b) of the Memorandum refers to registration of copyrights in the State Agency for Intellectual Property. The Berne Convention for the Protection of Literary and Artistic Works, incorporated by reference in Article 9.1 of the TRIPS Agreement, prohibits any formalities as a condition for protection of copyrights. Is registration of foreign copyrights required to obtain protection in the Kyrgyz Republic and, if so, how is this justified in light of the provisions of the TRIPS Agreement?

Answer:

No; registration is optional and is not a prerequisite to protection.

Question 213. (WT/ACC/KGZ/5/Add.2, Qu. 118)

The section of your Memorandum on foreign trade V.2(a) mentions protection for the rights of performers, producers of phonograms, and broadcast organizations only in relation to the draft copyright law. Is protection currently available to performers, producers of phonograms, and broadcast organizations under the Civil Code or any temporary regulations? If so, what rights are provided, for how long, and how may these rights be enforced?

Answer:

Legislation currently in force does not specifically provide for any protection of rights of performers, producers of phonograms and broadcast organizations. However, the draft legislation which grants the protection is expected to come into force this year.

Question 214. (WT/ACC/KGZ/5/Add.2, Qu. 119)

Article 18 of the Berne Convention, incorporated by reference in Article 9.1 of the TRIPS Agreement, requires that protection under the Convention apply to all works that are not in the public domain in their country of origin and that have not had a full term of protection in the country applying the Berne Convention. How will this obligation be implemented under the Kyrgyz Republic's proposed copyright law for both copyrighted works and sound recordings?

Answer:

The draft law "On Copyright and Neighbouring Rights" contains the following provision dealing with this issue:

If an international agreement to which the Kyrgyz Republic is a signatory establishes standards other than those contained in this law, then the rules of the international agreement shall be applied.

The referenced provision in Article 18 of the Berne Convention shall be applied through this general provision.

Question 215. (WT/ACC/KGZ/5/Add.2, Qu. 120)

Articles 11 and 14.4 of the TRIPS Agreement require that rental rights be provided at least for computer programs, cinematographic works (except in certain circumstances), and sound recordings. Are rental rights currently available under the Civil Code or any temporary regulations? If so, what rights are provided, for how long, and how may these rights be enforced?

Answer:

The Civil Code of the Kyrgyz Republic sets out a definition of exploitation of a work of an author by another person (Article 501). The definition of exploitation is understood to include leasing relationships, although they are not directly specified in the Civil Code. Article 517 of the Civil Code provides for the possibility of concluding authors' agreements on transfer of works of literature, science, or art, for exploitation in different ways. The list of authors' agreements given in this Article is not exhaustive.

Question 216. (WT/ACC/KGZ/5/Add.2, Qu. 121)

How will this obligation be implemented under the Kyrgyz Republic's proposed copyright law for both copyrighted works and sound recordings?

Answer:

The draft law "On Copyright and Neighbouring Rights" (at Article 16) specifically provides for rental rights. Under that Article, an owner of an audiovisual work, software, database, or musical composition in the form of a music text has the right to distribute that work through leasing, regardless of the ownership of actual copies of the work.

Question 217. (WT/ACC/KGZ/5/Add.2, Qu. 122)

Section V.1(d) of the Memorandum refers to fees for the registration of computer programs, databases. Article 10 of the TRIPS requires that computer programs be protected as literary works and that compilations of data, including computer databases, be protected under copyright law. The Berne Convention for the Protection of Literary and Artistic Works, incorporated by reference in Article 9.1 of the TRIPS Agreement, prohibits any formalities as a condition for protection of copyrights. What, if any, benefits are accorded to the owners of registered computer programs or databases that are not available to unregistered owners of computer programs databases?

Answer:

The Temporary Regulation on the Legal Protection of Software, Databases and Topographies of Integrated Circuits (at paragraph 2.2) provides that software is protected as a literary work.

There are no benefits accorded to the owners of registered programs that are not also available to owners of unregistered programs.

(b) Trademarks, including service marks

Question 218. (WT/ACC/KGZ/5, Qu. 94)

How are well-known marks protected?

Answer:

In compliance with the Paris Convention, no registration of well-known trade marks is required. However, voluntary registration for well-known trade marks is possible.

At present, in making expert examinations and resolving issues regarding refusals of registration, where a generally-known trade mark is involved, experts of the Trade Mark Expert Examination Department follow only their personal knowledge.

Under the current "Temporary Regulation on Industrial Property," the owner of a registered well-known mark may file a civil action in civil court against an unauthorized user of the mark. The only judicial remedies currently available are: (i) an injunction; (ii) an award of compensation for losses; and (iii) an assessment of a penalty.

The draft trademark law also provides for civil enforcement, and for the judicial remedies available under the existing regulations. In addition, the court can authorize a court official to seize the offending goods. The draft trademark law also provides for criminal penalties in the event of ongoing violations of the trademark law.

The law is the same for well-known marks.

Question 219. (WT/ACC/KGZ/5, Qu. 95)

In the section on trademarks in WT/ACC/KGZ/3 it is said that trademarks are protected for a period of ten years. Does this mean that after this period has elapsed no further protection is granted?

Answer:

Registration of a trademark is valid for ten years from the priority date. The validity term of the trademark may be extended pursuant to the owner's application submitted within the last year of the trademark's validity, for successive ten-year periods, on the condition that the required fee is paid.

Question 220. (WT/ACC/KGZ/5, Qu. 96)

A more comprehensive draft trade mark law is currently pending before the Parliament. Could the Kyrgyz Government explain its main elements?

Answer:

The draft trademark law is attached as Attachment C2.

When is it expected to enter into force? (WT/ACC/KGZ/5, Qu. 97)

Answer:

Enforcement of the law will be established by the Law "On Enforcement of the Law of the Kyrgyz Republic "On Trade Marks, Service Marks and Appellations of Origin". Consideration of the draft law on trade marks by Parliament is planned for the first half of 1997.

Could the Kyrgyz Government provide a copy of the law? (WT/ACC/KGZ/5, Qu. 98)

Answer:

The draft is attached as Attachment C2.

Question 221. (WT/ACC/KGZ/5, Qu. 99)

Does the "more comprehensive draft trade mark law" currently pending before the Parliament, comply with Art. 15-21 of the TRIPS Agreement?

Answer:

Yes.

When is the entering into force to be expected? (WT/ACC/KGZ/5, Qu. 100)

Answer:

It is scheduled to be voted by Parliament in the first half of 1997.

Question 222. (WT/ACC/KGZ/5/Add.2, Qu. 123)

Please provide the Working Party with a copy of the draft trademark law, currently pending before Parliament.

Answer:

The draft law is included in Attachment C2.

Question 223. (WT/ACC/KGZ/5/Add.2, Qu. 124)

Do the Temporary Regulations and draft Trademark Law provide for cancellation of a trademark application for non-use?

Answer:

The Temporary Regulations currently in force do not provide for cancellation based on non-use. However, Article 21 of the draft Trademark Law provides for cancellation of a mark that has not been used for 3 years.

Question 224. (WT/ACC/KGZ/5/Add.2, Qu. 125)

Article bis of the Paris Convention, incorporated by reference in Article 2.1 of the TRIPS Agreement, requires that well-known marks be protected. Is protection for well-known marks currently available under the Civil Code or any temporary regulations? How will this obligations be implemented under the Kyrgyz Republic's proposed law on trademarks, service marks and appellations of origin?

Answer:

Civil Code Part I, which is currently in place, contains no specific provisions on well-known marks.

The current "Temporary Regulations on Industrial Property," in compliance with the Paris Convention, do not require registration of well-known marks. However, voluntary registration for well-known marks is possible. At present, SIPA is carrying out work to develop methods to determine whether a trademark is well-known, and is investigating the experience of other countries. To enforce rights in a trademark, including a well-known mark, the owner of the mark may file a civil action in civil court against an unauthorized user of the mark. The only judicial remedies currently available are (i) an injunction, (ii) an award of compensation for losses and (iii) an assessment of a penalty.

The Kyrgyz Republic's proposed law "On Trademarks, Service Marks and Appellations of Origin" was drafted to ensure compliance with the Paris Convention. Like the temporary regulations, the draft law does not require registration of well-known marks, but voluntary registration for well-known marks remains possible. In compliance with Article 6bis of the Paris Convention, the draft law (at

Article 6) provides that “marks may not be registered as trademarks if they are identical or sufficiently similar as to cause confusion with a well-known mark in the territory of the Kyrgyz Republic.”

To ensure that holders of well-known marks can enforce their rights, the draft law provides for the same judicial remedies available under the existing regulations. In addition, the draft law provides that a court may order seizure of counterfeit goods, as well as criminal penalties for ongoing violations. The provisions apply equally to cases involving well-known and ordinary marks.

Question 225. (WT/ACC/KGZ/5/Add.2, Qu. 126)

Is priority currently granted to applicants of Paris Convention countries, if they apply for registration in the Kyrgyz Republic within six months of the national filing?

Answer:

Yes.

Question 226. (WT/ACC/KGZ/5/Add.2, Qu. 127)

Under the Civil Code or temporary regulations on industrial property, is it possible to oppose registration of a mark or to seek its cancellation, if it has already been registered? What are the procedures for opposing registration or cancellation?

Answer:

The Civil Code currently in force does not deal with opposition or cancellation.

Under the “Temporary Regulations on Industrial Property,” (at Article 16), any person or legal entity may oppose the registration of a mark, or seek cancellation of a registered mark. In both cases, a petition must be filed with the Appeals Board of SIPA. The Appeals Board must consider the petition within 6 months from the date of its receipt. Both the petitioner and the owner of the mark have the right to participate in the Appeals Board’s consideration of the petition.

Question 227. (WT/ACC/KGZ/5/Add.2, Qu. 128)

Please describe the nature of the marks that are eligible for registration.

Answer:

In general, a mark is eligible for registration if it serves to distinguish the goods and services of one person or entity from similar goods and services of other persons or entities. Verbal, graphic, volumetric and other signs or their combinations may be registered as trade marks.

Non-registrable marks include marks which are not distinctive; national symbols, flags, and emblems; official names of States, emblems, abbreviated or full names of international or intergovernmental organizations, official, control, guarantee stamps and hallmarks, seals, and decorations; marks generally applicable as marks of goods of a certain kind (i.e., generic marks); generally accepted terms and symbols; and marks which are purely indications of appearance, quality, quantity, characteristics, purpose, value of goods, or of the place and time of their production or sale (i.e., descriptive marks). Moreover, no mark may be registered which is false or liable to cause consumer confusion regarding the goods or their manufacturer. Marks contradicting the public interest, principles of humanity and morality are also not eligible for registration.

Marks may also not be registered if they are so similar or identical as to cause confusion with:

- trademarks previously registered or filed for registration in the Kyrgyz Republic under the name of another person in relation to identical goods;
- trademarks of other persons which are protected without registration under the international agreements of the Kyrgyz Republic;
- trade names (or their components) belonging to other persons who obtained the right to these designations before the receipt of an application for a trademark in relation to identical goods;
- appellations of origin of goods protected in the Kyrgyz Republic, except in cases in which they are included as an unprotected element in a trademark, registered to the individual who has the right to use such a designation.

Designations shall not be registrable as trademarks where they present:

- industrial designs the rights, to which belong to other persons in the Kyrgyz Republic;
- names of well-known works of science, art or literature or quotations therefrom, or works of art or their components, without consent of the copyright author or an appropriate competent body;
- names, pseudonyms and their derivatives, portraits and facsimiles of famous persons, without consent of their heirs or an appropriate competent body.

(c) Geographical indications, including appellations of origin

Question 228. (WT/ACC/KGZ/5, Qu. 101)

Could the Kyrgyz Government explain the main elements of the protection of geographical indications and appellations of origin as foreseen in the draft trademark law?

Answer:

See Attachment C2.

Question 229. (WT/ACC/KGZ/5, Qu. 102)

Does the draft trade mark law pending before Parliament accomplish the requirements of Article 22.2 of the TRIPS Agreement?

Answer:

Yes.

Question 230. (WT/ACC/KGZ/5/Add.2, Qu. 129)

Please describe the nature of the rights to be provided geographical indications in the proposed draft trademark law.

Answer:

Under the draft law “On Trade Marks, Service Marks and Appellations of Origin,” legal protection of an appellation of origin arises on the basis of registration. An appellation of origin may be registered by one or more entities or persons who (i) are located in the geographical location indicated by the appellation of origin; and (ii) produce goods that have special characteristics which

are exclusively or mainly determined by natural conditions and/or human factors characteristic of the geographical place indicated in the appellation. Registration is valid for an unlimited period of time.

A party who registers an appellation of origin obtains the right to affix the appellation to his goods, provided that his goods have the special characteristics indicated above. The holder of a registration document may place a warning mark near the appellation of origin, indicating that the designation used is an appellation of origin registered in the Kyrgyz Republic. The holder of a registration document may not licence the use of the appellation to other persons.

A registered appellation of origin may not be used by parties who do not have a registration document. Also, no one may affix a registered appellation to goods which are similar to those for which registration was granted, because such use is likely to lead to consumer confusion.

It should be noted that the draft trade mark law treats appellations of origin distinctly from mere geographical indications. Under Article 5(6) of the draft law, purported marks which merely describe a good's place of manufacture or sale are barred from registration. Moreover, a mark which includes deceptively misdescriptive geographical terms would be non-registrable under Article 5(7) of the same law, which prohibits the registration of marks which are false or misleading as to the goods or their manufacturer.

Question 231. (WT/ACC/KGZ/5/Add.2, Qu. 130)

Is protection currently available for geographical indications, including appellations of origin, under the Anti-Monopoly law?

Answer:

Yes. Under the Law "On Restricting a Monopolistic Activity, Development and Protection of Competition" (at Section 5, Article 19) appellations of origin are protected. Remedies for infringement of protected appellations of origin include: (i) disgorgement of illegal profits; (ii) indemnification, including indemnification for lost profits; and (iii) punitive damages.

(d) Industrial designs

Question 232. (WT/ACC/KGZ/5, Qu. 103)

Could the Government of the Kyrgyz Republic explain whether textile designs are protected? If yes, how?

Answer:

Yes, they are protected. Legal protection of industrial designs is regulated by the Temporary Regulation "On Industrial Property of the Kyrgyz Republic."

An application on an industrial design may be submitted through a patent attorney registered in Kyrgyzpatent.

Patent information, upon which a patent examination has relied in determining the compliance of the industrial design to the conditions of patentability, is published in the official bulletin of Kyrgyzpatent. The publication is made within 6 months from the registration date in the State Register of Industrial Property of the Kyrgyz Republic

After deciding to grant a protection document, but before the information is published, Kyrgyzpatent includes information into the State Register of Industrial Property of the Kyrgyz Republic and grants to the patent-holder an appropriate protection document.

Kyrgyzpatent grants a protection document on the basis of its registration within a 6-month period after receiving a document on payment of the required fee.

An industrial design patent is valid for ten years from the priority date. A preliminary industrial design patent is valid for 3 years from the date of priority (application registration date with Kyrgyzpatent).

The patent-holder has the exclusive right to use and to licence the use of the design. The unauthorized manufacture, use, import, offer for sale, sale and other introduction of a product containing the design into commerce is considered to be violation of the patent-holder's rights.

Question 233. (WT/ACC/KGZ/5/Add.2, Qu. 131)

Under the Temporary Regulations on Industrial Property, are industrial designs registered or is examination of applications required?

Answer:

Both; industrial designs are registered, and examination of applications, according to procedures established by the Temporary Regulations, is a prerequisite for registration.

Question 234. (WT/ACC/KGZ/5/Add.2, Qu. 132)

Please describe the rights acquired in industrial designs and how may they be enforced?

Answer:

The holder of a patent to an industrial design has the exclusive right to manufacture, import, offer for sale, sell and otherwise introduce the design into commerce. Unauthorized manufacture, importation, offer for sale, sale or introduction of a protected design into commerce constitutes infringement.

The following do not constitute infringement:

- the use of mechanisms containing patented industrial designs in the construction or use of transport vehicles of other countries, where such vehicles are temporarily or incidentally in the territory of the Kyrgyz Republic;
- the conduct of scientific research or experiments using a mechanism containing a patented industrial design;
- the use of mechanisms containing patented industrial designs in response to natural disasters, catastrophes, epidemics and other extreme situations, as long as compensation is later made to the patent-holder;
- the private, non-commercial use of a mechanism containing a patented industrial design; or

- the use of a mechanism containing a patented industrial design, where the mechanism has been legally introduced into commerce.

(e) Patents

Question 235. (WT/ACC/KGZ/5, Qu. 104)

Are there any provisions on compulsory licensing and government use? If yes, could the Kyrgyz Government explain them?

Answer:

Yes.

The “Temporary Regulations on Industrial Property” (Article 6, paragraph 6.3) provide for compulsory licensing in certain circumstances, specifically: (i) in the event of non-use or insufficient use by: (i) the patent-holder of an invention within the first four years, or (ii) by the holder of a utility model certificate within the first three years, from the date of the issuance of the patent or certificate. If the holder refuses to conclude a licensing agreement, any person desiring and prepared to use the protected object may apply to an economic court for a compulsory licence. If the holder does not provide valid reasons for the non-use or insufficient use, the court may grant the requested licence and impose - within its discretion - limits on its terms, including a payment obligation.

In addition, para. 6.5 of those same temporary regulations provides for the unlicensed use of protected inventions, utility models and industrial designs in certain emergency situations (e.g., natural disasters, catastrophes, epidemics, etc.), with a subsequent payment of appropriate compensation to the holder.

According to item 5.6 of the “Temporary Regulations on the Procedure of Handling Secret Inventions, Utility Models and Industrial Designs” of the Minister of Education and Science of 29 August 1995, the Cabinet of Ministers has the right “for the purpose of the security of the Kyrgyz Republic” to authorize the use of secret inventions, utility models and industrial designs - without the consent of the holder - if appropriate compensation is paid to the holder.

Question 236. (WT/ACC/KGZ/5, Qu. 105)

Does the importation of goods which are protected by a patent fulfil the condition of “working that patent”?

Answer:

Yes.

Question 237. (WT/ACC/KGZ/5, Qu. 106)

How does the Government of the Kyrgyz Republic define “public interest” and “principles of humanity” in the context of exceptions to patentability?

Answer:

Reasons for exclusion from patentability are based on only moral principles supported by force of public opinion.

Denial of patentability because of contradiction to principles of humanity and morals is not now based on official normative documents and may be only accompanied by references to sources which have a statement of humane ideas and moral-ethic standards formed in the society, in conformity with the international standards set forth in the applicable international agreements.

Question 238. (WT/ACC/KGZ/5, Qu. 107)

Please define the patentable matter in the Kyrgyz Republic as provided for Art. 27 of the TRIPS Agreement.

Answer:

In accordance with Article 27 of the TRIPS Agreement, the “Temporary Regulations on Industrial Property” provide that: “An invention is given legal protection if it is new, contains inventive level, and is applicable for production.” The draft patent law provides the same.

Question 239. (WT/ACC/KGZ/5, Qu. 108)

Do the Temporary Regulations on Industrial Property foresee the possibility for other use of the subject matter of a patent without the authorization of the right holder according to Art. 31 of the TRIPS Agreement?

Answer:

According to item 6.3 of Temporary Regulation on Industrial Property, “If a patented invention is not used, or is used below its capacity, for a period of four years, or a utility model for a period of three years, from the time of the issuance of the patent or certificate, any person willing and ready to use the protected object of industrial property, upon refusal by the patent holder to enter into a licensing agreement, may apply to the court of the Kyrgyz Republic [under Article 21 of the present provisions] with a petition to obtain a compulsory licence. If the patent holder does not prove that his insufficient use of the object of industrial property is caused by serious reasons, the Court shall provide for the specified licence, along with a determination of the limits of use, and the amount, terms and order of payments. Licence fees shall be established at a level not less than market price of the licence.”

According to item 6.5 of the same Regulation, infringement of the exclusive right to use an object of industrial property does not include:

- the use of devices containing protected inventions, utility models or industrial designs, where the use occurs in the construction or use of transportation vehicles from other countries, or support equipment for such vehicles, where such transportation vehicles are temporarily or incidentally present on the territory of the Kyrgyz Republic. Such actions are not recognized as violation of the exclusive right to exploit the objects of industrial property if the transportation vehicles are owned by citizens or legal entities of countries providing the same rights to citizens and legal entities of the Kyrgyz Republic;
- use for the purpose of conducting scientific experimentation or research on a device containing a protected invention, utility model or industrial design;
- single preparations of medicines in pharmacies upon a doctor’s prescription;

- use of devices containing protected inventions, utility models or industrial designs in conditions of natural disasters, catastrophes, epidemics and other emergency circumstances, with a subsequent payment of reasonable compensation to the patent holder;
- personal, non-commercial use of devices containing protected inventions, utility models or industrial designs; or
- use of devices containing protected inventions, utility models or industrial designs, where such devices are legally introduced into commerce.

Article 14 of the draft Patent Law of the Kyrgyz Republic, entitled “Actions Not Considered as Violation of the Exclusive Right of the Patent Holder,” contains provisions similar to item 6.5 of the Temporary Regulation on Industrial Property of the Kyrgyz Republic, except for the following passages: “single preparation of medicines in pharmacies a doctor’s prescription” and “personal, non-commercial use of devices containing protected inventions, utility models or industrial designs.” The sixth passage of item 6.5 of the Temporary Regulation on Industrial Property of the Kyrgyz Republic is repeated in the draft Patent Law, as follows: “Use of devices containing an invention, utility model or industrial design protected by a preliminary patent, patent or certificate, if such devices are legally put into commerce according to rights granted by the patent holder. Further, a person who, with the permission of the patent holder, purchases a device containing invention, utility model or industrial design or manufactured with application of the patented method has the right to use or own this device without additional permission, unless otherwise stipulated by the agreement.”

According to item 7 of the Temporary Regulation on Industrial Property of the Kyrgyz Republic: “Any citizen or legal entity who, before the date of the priority of invention, utility model, industrial design and independently from its author has designed and used a device on the territory of the Kyrgyz Republic identical to the invention, or has made required preparations for its use, retains the right for future free use, without permission to expand its scope.

“The right of prior use may be transferred to an individual or legal entity only together with the production line which has been used for its production, or has been prepared for its production.”

Question 240. (WT/ACC/KGZ/5/Add.2, Qu. 133)

Please provide a copy of the draft patent law and advise its status in the legislative process.

Answer:

The draft law is included in Attachment C1. Its legislative status is explained in the response to Question 190 above.

Question 241. (WT/ACC/KGZ/5/Add.2, Qu. 134)

The Temporary Regulations provide for patent protection for a period of twenty years from the “priority date”. TRIPS Article 33 provides patent protection for twenty years from the date of filing. How is the term “priority date” defined for purposes of the Temporary Regulations and the draft patent law?

Answer:

Under both the Temporary Regulations and the draft Patent Law, the term “priority date” is defined as date on which the patent application is filed with SIPA.

Question 242. (WT/ACC/KGZ/5/Add.2, Qu. 135)

How long is the grace period referred to in section V.2(e)?

Answer:

The grace period is 12 months. If the application is made within 12 months from the date of disclosure, the disclosure shall not influence the patentability of the invention.

Question 243. (WT/ACC/KGZ/5/Add.2, Qu. 136)

Please describe any compulsory licensing provisions in the temporary regulations, including any that would permit a second patentee to use the technology patented by another, if it were necessary to do so in order to exploit the second patent. Please describe how the temporary regulations and draft patent law will ensure that each of the conditions of Article 31 of the TRIPS Agreement is met before a compulsory licence can be granted?

Answer:

The temporary regulations do not contain compulsory licensing provisions related to second patents, as referenced in Article 31(1) of the TRIPS Agreement. Nor do the temporary provisions provide specifically for non-assignability (as referenced in Article 31(e)), or for domestic supply restrictions (as referenced in Article 31(f)). However, the temporary regulations take into account each of the other requirements of Article 31 of the TRIPS Agreement. Article 6(3) of the temporary regulations provides for compulsory licensing in certain circumstances, specifically in the event of non-use or insufficient use by (i) the patent-holder of an invention within the first four years, or (ii) by the holder of a utility model certificate within the first three years, from the date of the issuance of the patent or certificate. If the holder refuses to conclude a licensing agreement, any person desiring and prepared to use the protected object may apply to the court for a compulsory licence. If the holder does not provide valid reasons for the non-use or insufficient use, the court may grant the requested licence and impose, within its discretion, limits on its terms, including a payment obligation.

The draft Patent Law also takes into account each of the requirements of Article 31 of the TRIPS Agreement. The draft Patent Law (at Article 13) contains compulsory licence provisions similar to those in the temporary regulations. However, the draft Patent Law contains an additional provision allowing for the unlicensed use of protected inventions, utility models and industrial designs in certain emergency situations (e.g., natural disasters, catastrophes, epidemics, etc.), with a subsequent payment of appropriate compensation to the holder.

Question 244. (WT/ACC/KGZ/5/Add.2, Qu. 137)

Article 27.1 of the TRIPS Agreement requires that patents be available in all fields of technology with the exception of those indicated in paragraphs 2 and 3. Integrated circuit topologies is not among the listed exceptions. Will the draft patent law eliminate the exclusion from patentability now applied to integrated circuit topologies?

Answer:

No, the draft patent law will not eliminate the exclusion. However, integrated circuit topographies are covered by a separate draft law, and are patentable under that law.

Question 245. (WT/ACC/KGZ/5/Add.2, Qu. 138)

Please describe the rights acquired by a patentee with the grant of his patent.

Answer:

Under the draft Patent Law, a patent-holder has the exclusive right to manufacture, import, offer for sale, sell and otherwise introduce the design into commerce, and to prohibit these activities by others. A patent-holder also has the right to own, use and dispose of the patent itself.

(f) Plant variety protection

Question 246. (WT/ACC/KGZ/5, Qu. 109)

Could the Kyrgyz Government explain the main elements of its protection in the “Temporary Regulations on Breeding Achievements”?

Answer:

These regulations have already been submitted to the WTO.

A patent protecting a breeding achievement (also translated as “selection achievement”) that meets the requirements of the regulations may be issued to the creator thereof. The patent certifies the exclusive right of the patent-holder to use and to licence the use of the breeding achievement. A breeding achievement is a new variety of plant or animal.

If the result of the preliminary examination of the application is positive, a preliminary patent valid for five years is issued. The term of a patent on a variety of plant is 20 years; on a variety of grape, ornamental plant, fruit crop or forestry species, as well as their stocks, 30 years; and on a variety of animal, 25 years. The term begins on the date that the application was submitted.

A patentable breeding achievement must be: (i) novel, (ii) distinguishable, (iii) homogeneous and (iv) stable.

A patent-holder has the exclusive right to use and licence the use of the achievement, including its (i) production and reproduction, (ii) planting, (iii) offer for sale, (iv) sale or other transfer (v) import or export, and (v) storage for such purposes.

Question 247. (WT/ACC/KGZ/5/Add.2, Qu. 139)

Do the Temporary Regulations on Industrial Property or the Temporary Regulations on Breeding Achievements provide patent protection for plant microorganisms, and for non-biological processes for the production of plants? Does the Republic of Kyrgyz provide similar patent protection for animal microorganisms, and for non-biological processes for the production of animals?

Answer:

Yes; the Temporary Regulations on Industrial Property protect plant and animal microorganisms, as well as non-biological processes for the production of plants and animals. The Temporary Regulations on Breeding Achievements protects the same microorganisms and processes.

Question 248. (WT/ACC/KGZ/5/Add.2, Qu. 140)

Section V.2(f) refers to protection for plant varieties and animal breeds under the Temporary Regulations on Industrial Property.

Please describe the nature of the rights provided, including any limitations, and how they are acquired.

Answer:

The holder of a patent to a selection achievement has the exclusive right to conduct the following activities with respect to the patented material:

- production and reproduction;
- bringing to maturity for reproduction;
- offer for sale;
- sale and other types of distribution;
- import and export from the territory of the Kyrgyz Republic; and
- storage for the above-mentioned purposes.

The patent-holder may licence these rights to third parties, or prohibit their conduct by third parties.

(g) Layout designs of integrated circuits

Question 249. (WT/ACC/KGZ/5/Add.2, Qu. 141)

Please provide to the Working Party a copy of the draft law “On the Legal Protection of Integrated Circuit Technologies.”

Answer:

The draft law is included in Attachment C4.

Question 250. (WT/ACC/KGZ/5/Add.2, Qu. 142)

Please describe the nature of the rights acquired under the draft law and under the Temporary Regulations On the Legal Protection of Computer Programs, Databases and Integrated Circuits, and indicate the term of these rights.

Answer:

Under the draft law, the creator of a computer program, database or integrated circuit has the following author's (moral) rights: the right to claim authorship (the right of paternity); the right to decide whether the author's name will appear on the work; and the right to inviolability. The creator also has the exclusive economic right to exploit his/her topography at his/her discretion, through manufacturing, distributing (which includes the notion of copying), and prohibiting the exploitation of the work by others without permission.

The creator's moral rights are valid without time limitation. The creator's exclusive economic rights are valid for ten years from the date of first use, or from the date of registration of the work with SIPA.

Question 251. (WT/ACC/KGZ/5/Add.2, Qu. 143)

Please describe the procedure for obtaining the certificate referred to in Section V.2(g).

Answer:

The procedure to obtain the certificate consists of several steps:

- submission of an application for registration, which complies with applicable requirements;
- examination of the application to ensure compliance with the requirements;
- if the examination's results are positive, data are included in a Register;
- grant of the certificate; and
- publication of data in the SIPA bulletin.

Question 252. (WT/ACC/KGZ/5/Add.2, Qu. 144)

Please describe any provisions in the draft law and under the Temporary Regulations relating to compulsory licensing for integrated circuits.

Answer:

There are no such provisions in the draft law or the Temporary Regulations.

Question 253. (WT/ACC/KGZ/5/Add.2, Qu. 145)

Would a product containing infringing integrated circuits be considered to violate the rights of the owner of the certificate protecting the integrated circuit?

Answer:

Yes; a product containing infringing integrated circuits would violate the rights of the owner of the certificate protecting the integrated circuit, except where the user of the product did not know, and should not have known, that the product contained such infringing integrated circuits.

Question 254. (WT/ACC/KGZ/5/Add.2, Qu. 146)

Do the draft law and Temporary Regulations provide protection against products that include infringing integrated circuits, as is required by Article 37.1 of the TRIPS Agreement?

Answer:

Yes; the draft law "On Legal Protection of Integrated Circuit Topographies" (at Article 8) and the Temporary Regulations (at paragraph 21.1) comply with to the requirements of Article 37.1 of the TRIPS Agreement.

(h) Requirements on undisclosed information

Question 255. (WT/ACC/KGZ/5/Add.2, Qu. 147)

Are damages the only remedy available against persons who have misappropriated undisclosed information? If not, please describe the other remedies that would be available to the owner of the undisclosed information.

Answer:

No, damages are not the only available remedy. There are also criminal penalties for misappropriation of undisclosed information (at Article 165(2) of the Criminal Code). Also, injunctive relief is available.

Question 256. (WT/ACC/KGZ/5/Add.2, Qu. 148)

Please describe the actions that can be taken against a party who acquires undisclosed information and who knew, or should have known, that the information belonged to another party who intended that it be kept secret because it had commercial value. If such actions are not available currently, how will such actions be made available in the future?

Answer:

The Code of the Kyrgyz Republic on Administrative Violations provides for remedies against a party who receives undisclosed information under such circumstances. Specifically, Article 151 of the Code sets out a fine of ten times the minimum monthly wage for unauthorized use or disclosure of confidential scientific, technical, productive or trade information.

Question 257. (WT/ACC/KGZ/5/Add.2, Qu. 149)

Please describe the manner in which the criminal penalties referred to in section V.2(h) can be invoked.

Answer:

Article 165(2) of the Criminal Code provides that the theft of a data base, program, or software by means of unauthorized copying, printing, or any other means is punishable by imprisonment for up to two years, or by a fine of 50 - 150 times the minimum monthly wage.

(i) Any other categories of intellectual property

Question 258. (WT/ACC/KGZ/5/Add.2, Qu. 150)

Section V.2(i) states that the draft law “On Trade Marks, Service Marks and Appellations of Origin” will prohibit the registration of marks that reproduce company names owned by others. Please describe the manner in which the Kyrgyz Republic ensures that company names, or parts thereof, do not reproduce trademarks, service marks, and appellations of origin known in the Kyrgyz Republic.

Answer:

The Draft Provisions on Trade Names have been prepared, and are expected to be adopted by the Government. Paragraph 2.3 of these Draft Provisions provides that trade names which coincide with verbal trademarks and service marks of other owners protected on the territory of the Kyrgyz Republic shall not be registrable. Further, trade names which include well-known names shall not be subject to registration.

In compliance with Paragraph 4.4.6 of the Temporary Provisions on Industrial Property of the Kyrgyz Republic, designations which are similar or identical to existing marks, to the extent of causing confusion with existing trademarks (or their components), and which belong to other persons

who obtained the right to the name before the receipt of the application for the trademark in relation to the same goods cannot be registered as trademarks.

3. Measures to Control Abuse of Intellectual Property Rights

Question 259. (WT/ACC/KGZ/5/Add.2, Qu. 151)

Does importation satisfy the working requirement for patented inventions, as provided by section 6.3 of the Temporary Regulations on Industrial Property? Importation must satisfy the working requirement in order for the use requirement to satisfy national treatment requirements.

Answer:

Yes; importation satisfies the working requirement contained in paragraph 6.3 of the Temporary Regulations on Industrial Property.

4. Enforcement

(a) Civil judicial procedures and remedies

Question 260. (WT/ACC/KGZ/5, Qu. 113)

Please specify if enforcement procedures as specified in Part III of the TRIPS Agreement are or will be available under Kyrgyz law. Does Kyrgyz law comply with articles 42-49 of the TRIPS Agreement concerning the organization of civil and administrative procedures?

Answer:

Existing legislation of the Kyrgyz Republic regulating civil and administrative procedures and remedies in connection with the enforcement of intellectual property rights complies with Articles 42-49 of the TRIPS Agreement, except Article 46. The draft Administrative and Criminal Codes take into account the provisions of Article 46.

The Kyrgyz Republic commits that it will review and propose all necessary amendments to the relevant legislation and regulations for the purpose of bringing them into compliance with the requirements of Part III of the TRIPS Agreement.

Question 261. (WT/ACC/KGZ/5/Add.2, Qu. 152)

Are injunctions available in the Kyrgyz Republic to stop infringement in addition to damages? What are the requirements for obtaining an injunction?

Answer:

Yes, injunctions are available. The basic requirement is to establish the fact of illegal use. Currently, SIPA is considering developing more detailed requirements.

Question 262. (WT/ACC/KGZ/5/Add.2, Qu. 153)

May judges or administrative officials order the seizure and destruction of inventories of infringing goods and of the equipment used to produce the infringing goods? What procedures must be followed and what evidence presented to obtain such remedies?

Answer:

Yes. In compliance with legislation in force (Civil Procedural Code, Article 135.1) judges may, upon the request of a plaintiff or within their own discretion, order the seizure of infringing goods. The draft laws provide for further measures, such as confiscation and destruction of infringing goods and equipment used to produce infringing goods. To obtain such remedies, it is necessary to submit to the court an application that indicates obvious infringement.

(b) Provisional measures**Question 263. (WT/ACC/KGZ/5, Qu. 114)**

Does Kyrgyz law comply with the requirements of provisional measures according to Article 50 of the TRIPS Agreement?

Answer:

With the exception of Article 50.1(a), the judicial authorities of the Kyrgyz Republic have the authority under existing law to take all of the actions specified in Article 50 of the TRIPS Agreement. In order to comply with Article 50.1(a), an amendment to the proposed Customs Code will be drafted..

Question 264. (WT/ACC/KGZ/5/Add.2, Qu. 154)

It is not clear from section V.4(b) of the Memorandum whether judicial and administrative authorities have the authority to provide temporary remedies during a legal proceeding in order to prevent serious injury or to preserve evidence. Please describe any legal means that exist providing for such provisional relief and what circumstances must be shown to invoke such relief.

Answer:

Judicial and administrative authorities do have the authority to provide temporary remedies during a legal proceedings in order to prevent injury or to preserve evidence. In accordance with Article 134 of the Civil Procedural Code of the Kyrgyz Republic:

The court or a judge, at the request of the persons participating in the proceeding, or at [the court or judge's] own initiative, may take actions to provide provisional remedies. Provisional remedy is permitted at any stage of the proceeding, if the failure to provide such remedy will render it difficult or impossible to execute the final decision of the court.

One of the provisional remedies available under the Civil Procedural Code (at Article 135) is the freezing of the defendant's assets pending litigation.

(d) Any special border measures**Question 265. (WT/ACC/KGZ/5, Qu. 110)**

In WT/ACC/KGZ/3 it is said that Kyrgyz law does not provide any special border measures. When does the Kyrgyz Government intend to amend its legislation accordingly?

Answer:

Kyrgyzpatent, within the Cabinet of Ministers of the Kyrgyz Republic, is currently studying the experience of other countries in controlling import and export of intellectual property, for the purpose of submitting proposals to the Cabinet of Ministers of the Kyrgyz Republic on the necessity of legal regulation of import and export and the control by the State.

Question 266. (WT/ACC/KGZ/5, Qu. 115)

Since Kyrgyz law does not currently provide any special border measures related to intellectual property, when will it comply with Articles 51.1 of the TRIPS Agreement?

Answer:

See above answer.

Question 267. (WT/ACC/KGZ/5/Add.2, Qu. 155)

Please describe the Kyrgyz Republic's plans for providing border enforcement, at list with respect to counterfeit trademarked goods and pirated copyrighted works.

Answer:

SIPA and the State Customs Inspectorate are currently considering these issues. Border measures are currently being drafted.

(e) Criminal procedures

Question 268. (WT/ACC/KGZ/5, Qu. 111)

The document also states that the Kyrgyz Republic is considering the adoption of a new criminal law. Is there any concrete timeframe for such a law?

Answer:

Currently, a draft of the new Criminal Code is under consideration by Parliament. It will probably be considered in the first half of 1997. It is impossible to predict a definite time of enactment of the resolution, as this depends on the workload of Parliament.

Question 269. (WT/ACC/KGZ/5, Qu. 112)

Does the current criminal law contain any specific measures against counterfeit trademark or pirated copyright goods?

Answer:

The current Criminal Code of the Kyrgyz Republic contains two articles which contemplate criminal liability for illegal actions infringing intellectual property: Article 137, titled "Breach of the Author's and Inventor's Rights"; and Article 158(5), titled "Illegal Usage of the Trade Marks."

Article 137 provides:

“Issuance under one’s own name, or any other misappropriation of the author’s rights on another’s scientific, literary, musical or artistic work; as well as unauthorized reproduction or distribution of such work of art, is illegal and punishable by imprisonment for up to two years, or by a fine of up to six minimum wage rates.

“A claim of invention without the consent of the inventor, a misappropriation of the author’s rights on the invention, as well as a misappropriation of the author’s rights on a technological improvement, is illegal and punishable by imprisonment for up to two years, or by a fine of up to six minimum wage rates.”

Article 158(5) provides:

“Illegal use of another’s trademark, production mark or company name, repeated after an administrative punishment imposed for the same and earlier actions, is punishable by a fine of up to seventy minimum wage rates.”

Kyrgyzpatent, one of the drafters of the new Criminal Code, has proposed amendments and supplements in the draft Criminal Code to the Government of the Kyrgyz Republic. Article 151 of the Code of the Kyrgyz Republic on Administrative violations states: “Illegal use of another’s trademark, product mark, or company name shall result in a fine...”

Question 270. (WT/ACC/KGZ/5/Add.2, Qu. 156)

Please describe the criminal penalties provided by the current proposed Criminal Codes for copyright and patent infringement, unauthorized use of a trademark or company name, commercial espionage, and disclosure of trade secrets.

Answer:

The current Criminal Code of the Kyrgyz Republic contains articles providing for criminal penalties for illegal actions which infringe intellectual property rights, specifically, Article 137 (“Violations of copyright and invention rights”) and Article 158(5) (“Illegal exploitation of trade marks”).

Article 137 provides as follows:

Manufacturing under one’s own name, or other misappropriation of copyright to another’s work of science, literature, music or art, or illegal re-production and distribution of such work, shall be punishable by mandatory community service for up to two years, or a fine of up to six minimum monthly wages.

Disclosure of an invention before registration and without the inventor’s permission, misappropriation of authorship, and misappropriation of copyright to another’s utility model shall be punishable by mandatory community service for up to two years, or a fine of up to 6 minimum monthly wages.

Article 158(5) provides:

Illegal use of another’s trade mark, brand or company name upon application of administrative remedies shall be punishable by a fine of up to 7 minimum monthly wages.

Further, Article 165(2) of the Criminal Code of the Kyrgyz Republic provides that misappropriation of information, software, and integrated circuits by illegal copying or reproduction shall be punishable by imprisonment for up to two years, or a fine ranging from 50 to 150 minimum monthly wages.

The draft Criminal Code (at Article 187) imposes liability for the illegal use of a trade mark, where the use is repeated or causes significant damage. Criminal sanctions consist of possible imprisonment for up to six months. Further, the illegal usage of a preventive marking carries a penalty of possible imprisonment for up to four months.

The draft Code (at Article 158(5)) also makes illegal use of trademarks punishable by a fine of up to 70 times the minimum monthly wage. There are also penalties for the production of substandard goods (at Article 152); consumer fraud (Article 158); the sale of poor quality goods (Article 159); the violation of copyright or inventor's rights (Article 150); intentional false advertising (Article 181); illegal receipt of commercial or banking secrets (Article 182); commercial graft (Article 184); and illegal acquisition of computer information (Article 202).

5. Laws, Decrees, Regulations and Other Legal Acts Relating to the Above

Question 271. (WT/ACC/KGZ/5, Qu. 116)

Please specify when the draft laws under consideration by the Parliament will enter into force.

Answer:

See above, answer to Question 190 on Part V, Section 1(a).

VI. TRADE-RELATED SERVICES REGIME

1. General

Question 272. (WT/ACC/KGZ/5, Qu. 117)

The Kyrgyz Republic is requested to provide the Working Party as soon as possible with a substantial initial offer on services in the GATS framework, binding liberal market access conditions and treatment guarantees on an m.f.n. basis for foreign service suppliers.

Answer:

The Government is preparing such a proposal.

2. Policy Affecting Trade in Services

(a) Government departments, agencies or other bodies

Question 273. (WT/ACC/KGZ/5, Qu. 118)

At the end of para 1 it is stated that the regulatory system, with relatively few minor exceptions, is imposed equally on both foreign domestic suppliers. Are these exceptions the ones indicated in Section 3 of the Memorandum? If not, could you please indicate all the exceptions to national treatment that exist in addition to the ones listed under Section 3?

Answer:

Yes, all exceptions are mentioned in Section 3 of Part VI of the Memorandum.

(d) Provisions governing the existence and operation of monopolies or exclusive service suppliers

Question 274. (WT/ACC/KGZ/5, Qu. 119)

Para. 1: Three classes of monopolies are distinguished: “natural”, “permitted” and “temporary”. Can you explain the difference between a “temporary” and a “natural” monopoly?

Answer:

This distinction is fully described in Section 2(e) of Part II of the Memorandum.

3. Market Access and National Treatment

(e) Restriction on, or requirements of specific types of legal entity through which a service may be supplied

Question 275. (WT/ACC/KGZ/5, Qu. 120)

Para. 1: Can you please specify the term “open joint-stock company”.

Answer:

An “open joint-stock company” is a joint-stock company, the shareholders of which have the right to sell or otherwise to transfer its shares to any person without obtaining the permission of the other shareholders.

(f) Limitations on the participation of foreign capital

Question 276. (WT/ACC/KGZ/5/Add.2, Qu. 157)

Do the foreign capital ownership limitations of the provision of air transportation services for passengers or goods, as provided by Article 113 of the Air Code of 15 April 1994, apply to the legal entities offering computerized reservation system services?

Answer:

No.

Question 277. (WT/ACC/KGZ/5/Add.2, Qu. 159)

The bilateral investment treaty (BIT) between the United States and the Kyrgyz Republic does not allow restrictions to national treatment, such as those listed under paragraphs VI.3.(f) and (g), specifically pertaining to air transportation, banking and professional services, to be placed on United States' investors. The Kyrgyz Republic did not carve out any sectors from national treatment under the BIT. How does the Kyrgyz Republic view commitments under the BIT in relation to the statements made in these paragraphs of its Memorandum?

Answer:

The Kyrgyz Republic will honour the commitment to the United States, as provided in the BIT, to not to apply the restrictions discussed in parts VI.3(f) and (g) of the Memorandum to United States' service suppliers.

- (g) **Measures providing for less than the treatment accorded to national services or service suppliers**

Question 278. (WT/ACC/KGZ/5, Qu. 121)

Para. 1: What is the reason for the requirement, that a Kyrgyz legal entity that offers banking services and is at least 20 per cent foreign-owned must have a minimum fund that is twice as large as the one required for banks having less than 20 per cent foreign-ownership. Do there also exist requirements regarding a minimum fund for other forms of establishment such as branches and subsidiaries? What are the criteria to qualify as "first class" foreign bank?

Answer:

The National Bank of the Kyrgyz Republic has calculated the optimal amount of the minimum charter capital for commercial banks operating on the territory of the Kyrgyz Republic. The lower minimum fund requirement for banks that are predominantly locally owned was made necessary by the need to develop a domestic network of financial institutions and a domestic financial market capable of maximizing the attraction of the free monetary resources of Kyrgyz legal entities and natural persons.

On 13 September 1996, a resolution of the National Bank established new regulations on minimum fund requirements. These regulations provide as follows:

For banks with less than 20 per cent foreign participation operating as of 13 September 1996:

15 million Som by 31 December 1997
20 million Som by 31 December 1998
25 million Som by 31 December 1999
30 million Som by 31 December 2000

For banks with less than 20 per cent foreign participation commencing operations after 13 December 1996:

15 million Som by 31 December 1997
25 million Som by 31 December 1998
35 million Som by 31 December 1999
45 million Som by 31 December 2000

For banks with 20 per cent or more foreign participation and branches of foreign banks:

30 million Som by 31 December 1997
40 million Som by 31 December 1998
45 million Som by 31 December 1999
50 million Som by 31 December 2000.

The minimum fund requirements for branches and subsidiaries of foreign banks are the same as for a local bank 20 per cent or more owned by foreigners. Until 31 December 1997, the existing

minimum fund requirements remain valid: 10 million Som for a bank with less than 20 per cent foreign participation and 20 million Som for a bank with 20 per cent or more foreign participation or a branch of a foreign bank.

The determination as to whether a foreign bank is a “first class” bank is made on the basis of the MOODY’S rating established in accordance with international banking practice.

Question 279. (WT/ACC/KGZ/5/Add.2, Qu. 158)

The capital requirement for Kyrgyz Republic legal entities offering banking services is twice as large for entities with at least 20 per cent foreign ownership than it is for entities which have less than 20 per cent foreign ownership. What is the reason for this different capital requirement?

Answer:

The National Bank of the Kyrgyz Republic has calculated the optimal amount of the minimum charter capital for commercial banks operating on the territory of the Kyrgyz Republic. The lower minimum fund requirement for banks that are predominantly locally owned was made necessary by the need to develop a domestic network of financial institutions and a domestic financial market capable of maximizing the attraction of the free monetary resources of Kyrgyz legal entities and natural persons.

Question 280. (WT/ACC/KGZ/5/Add.2, Qu. 159)

The bilateral investment treaty (BIT) between the United States and the Kyrgyz Republic does not allow restrictions to national treatment, such as those listed under paragraphs VI.3.(f) and (g), specifically pertaining to air transportation, banking and professional services, to be placed on United States' investors. The Kyrgyz Republic did not carve out any sectors from national treatment under the BIT. How does the Kyrgyz Republic view commitments under the BIT in relation to the statements made in these paragraphs of its Memorandum?

Answer:

The Kyrgyz Republic will honour the commitment to the United States, as provided in the BIT, to not to apply the restrictions discussed in parts VI.3(f) and (g) of the Memorandum to United States' service suppliers.

5. Description of the Market and the Mechanism for Regulating the Most Prominent Service Sectors

(a) Legal services

Question 281. (WT/ACC/KGZ/5, Qu. 122)

The Memorandum notes that lawyers with three years experience may apply for a licence to offer non-criminal legal services-and are required to take an oral exam-is this also the case for lawyers seeking only to offer advice on international law or the law of their own country?

Answer:

Yes.

Question 282. (WT/ACC/KGZ/5, Qu. 123)

Para.1: Can foreign persons engage in all three categories of lawyers (including “government” and “in-house” lawyers)?

Answer:

Foreign citizens may not serve as government lawyers. They may, however, engage in all other non-criminal legal activities.

Question 283. (WT/ACC/KGZ/5, Qu. 124)

Do only “private practice lawyers” need a licence to offer legal services to the public?

Answer:

Yes.

(b) Telecommunications services

Question 284. (WT/ACC/KGZ/5, Qu. 125)

Does Kyrgyztelecom have a monopoly for long-distance and international communications or only for long-distance and international voice?

Answer:

Kyrgyztelecom has a monopoly for all international and long-distance communications services.

Question 285. (WT/ACC/KGZ/5, Qu. 126)

Is there a date foreseen for the end of the Kyrgyztelecom monopoly for inter-city and international lines?

Answer:

According to Resolution No. 167 of the Cabinet of Ministers of 16 May 1995, the termination date of Kyrgyztelecom’s monopoly for long-distance and international lines is provided to occur in 2008.

Question 286. (WT/ACC/KGZ/5, Qu. 127)

Is the regulator independent from the operator Kyrgyztelecom?

Answer:

Yes.

Question 287. (WT/ACC/KGZ/5, Qu. 128)

Is there a regime for non-discriminatory cost-based interconnection?

Answer:

Yes.

Question 288. (WT/ACC/KGZ/5, Qu. 129)

Is there a regime for transparent and non-discriminatory licensing procedures?

Answer:

Yes.

Question 289. (WT/ACC/KGZ/5, Qu. 130)

Are there competition obligations on the abuse of dominant positions, cross-subsidies and misuse of information?

Answer:

The general statutory provisions establishing liabilities for the abuse of dominant position in a goods or services market are applicable to telecommunications service providers.

Question 290. (WT/ACC/KGZ/5, Qu. 131)

Para. 1: In the first sentence, it is stated that telephone services are almost wholly provided by Kyrgyztelecom. Could you please describe the economic structure of the telecommunications market in a more detailed manner (e.g. listing of monopoly and exclusive rights, precise scope of the monopoly of Kyrgyztelecom, number of existing suppliers besides Kyrgyztelecom etc.)?

Answer:

Kyrgyztelecom enjoys the exclusive right to render all long-distance and international telephone communication services until the year 2008.

In addition to Kyrgyztelecom, a number of enterprises rendering services on cellular, paging and other types of communication operate in the telecommunication network of the country. There are about 10 such companies. In the sphere of telecommunications, the most significant are: (i) the joint venture Katel, an operator of cellular communications; (ii) the joint venture Areopag-Bishkek, an operator of pager and mobile radio communications; (iii) the joint venture Smart-Com, an operator of pager communications; and (iv) the joint venture Geliopag, an operator of pager communications. In the sphere of data transmission, the most significant is Svyaz-Info.

Do there exist any plans to liberalize the telecommunications market? (WT/ACC/KGZ/5, Qu. 132)

Answer:

In order to liberalize the telecommunications market, the privatization of Kyrgyztelecom is planned to occur in 1997. The current plan for the privatization of Kyrgyztelecom stipulates that the State will maintain a controlling interest (51%). About 40 per cent of the shares will be placed through the organization of a competitive tender, and the remaining shares will be reserved for the work collective and for sale at coupon auctions.

Question 291. (WT/ACC/KGZ/5, Qu. 133)

In the last sentence it is stated, that “other firms desiring to offer telecommunication services utilizing these lines must enter into an agreement with Kyrgyztelecom”. What is the meaning of “enter into agreement”? Is Kyrgyztelecom free to set the conditions of these “agreements”?

Answer:

A firm wishing to render telecommunications services must obtain a licence from the Ministry of Communication; and in case such firm desires to utilize any of the equipment of Kyrgyztelecom, it should “conclude an agreement” on that utilization with Kyrgyztelecom. “To conclude an agreement” means that the concerned firm should negotiate the conditions and the terms of utilization of the equipment belonging to Kyrgyztelecom.

Question 292. (WT/ACC/KGZ/5, Qu. 134)

Do the exclusive rights of Kyrgyztelecom include all kinds of infrastructure? What about, e.g., providers of services provided over radio frequencies? Do they also have to enter an agreement with Kyrgyztelecom?

Answer:

Exclusive rights of Kyrgyztelecom are valid only in relation to the services of telephone long distance and international electronic communications. The Decree of the President on 28 February 1996, No. VP-179, created the Committee on Radio Frequencies for the purpose of assigning the radio frequency spectrum.. In order to use radio frequencies, there is no requirement to conclude an agreement with Kyrgyztelecom .

Question 293. (WT/ACC/KGZ/5/Add.2, Qu. 160)

Telecommunications services are included among the “natural monopolies” discussed in paragraph I.2.(e) of the Memorandum (on competition policy). Competition policy officials and regulators have found that technological advancement facilitates the fostering of competition even in industries that previously had been considered natural monopolies, such as the provision of telecommunications services. Competition was accomplished by allowing separation of the provision of the infrastructure (e.g., the telecommunications network), which remains a regulated monopoly, from the provision of services over that network (e.g., competition among first long-distance and then local phone service providers). This has led to significant improvements in the efficiency of services provided as well as lower costs to consumers. Has any thought been given to a similar policy for telecommunication services in the Kyrgyz Republic?

Answer:

Yes. However, under the terms of a World Bank loan, the monopoly position of Kyrgyztelecom on long distance and international telecommunications has been guaranteed until the year 2008. Even if Kyrgyztelecom is privatized prior to that time, its monopoly position will still remain intact until 2008. Therefore, the liberalization of the telecommunication market cannot truly take place prior to 2008.

Question 294. (WT/ACC/KGZ/5/Add.2, Qu. 161)

Does the Republic of Kyrgyz intend to privatize the State-owned telephone companies Kyrgyztelecom or Kyrgyzpost?

Answer:

The Kyrgyz Republic is now developing the concept of privatizing Kyrgyztelecom.

(e) Banking services

Question 295. (WT/ACC/KGZ/5, Qu. 135)

It is stated that the establishment of a branch of a “first class” foreign bank needs a licence similar to that required for domestic banks. What is the definition of “first class banks”? Can we understand that such a measure does not have legal basis? Will the Kyrgyz Republic introduce provisions concerning the establishment of foreign banks?

Answer:

The determination as to whether a foreign bank is a “first class” bank is made on the basis of the MOODY’S rating established in accordance with international banking practice.

The National Bank of the Kyrgyz Republic has promulgated regulations concerning the establishment of branches of foreign banks. These regulations are attached as Attachment E.

Question 296. (WT/ACC/KGZ/5, Qu. 136)

Para 4: What is meant by “the State has a minority ownership interest”? Does the State hold 10 per cent of the shares in all the commercial banks? Is this a minimum requirement to be fulfilled for every commercial bank in order to be licensed?

Answer:

This statement simply describes the current situation, which is the result of the privatization of certain former State-owned banking entities. The State does not hold a 10 per cent ownership interest in all commercial banks. Most commercial banks now in operation are 100 per cent private-owned. There is no requirement that the State have an ownership interest in a banking entity.

Question 297. (WT/ACC/KGZ/5, Qu. 137)

Last paragraph (p.60): Why do branches of a foreign bank need a minimum capital which is higher than branches of domestic banks?

Answer:

See the answer to Question 278 to Part VI, Section 3(g).

(f) Transport services

Question 298. (WT/ACC/KGZ/5/Add.2, Qu. 162)

Could the Kyrgyz Republic please outline its current regime in air services, with particular emphasis on the role of foreign air service suppliers and the degree of market access that exists for them?

Answer:

The current regime in a air services is outlined in the Memorandum on page 62. In addition it should be noted that the President has issued a decree ordering the privatization of the Kyrgyz Republic Aba Zholduru (the Kyrgyz Republic Airlines). A more detailed description of the current regime in air services and a description of the current market will be included in the substantial initial offer on services in the GATS framework which will be submitted to the Working Party in near future.

VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

- 1. Bilateral, Plurilateral and Multilateral Agreements Relating to Foreign Trade in Goods and Trade in Services**
- (b) Plurilateral agreements relating to foreign trade in goods and trade in services (Annex 8b refers)**

Question 299. (WT/ACC/KGZ/5/Add.2 -)

We seek a commitment from the Kyrgyz Republic that it will adhere to the WTO Agreement on Trade in Civil Aircraft from the date of accession.

- 2. Economic Integration, Customs Union and Free Trade Agreements**
- (b) Customs Union Agreements (Annex 8c refers)**

Question 300. (WT/ACC/KGZ/5, Qu. 138)

When does the Kyrgyz Republic expect to ratify the Customs Union Agreement?

Answer:

The agreement providing for the joining of the Kyrgyz Republic to the Customs Union among Russia, Kazakstan and Belarus was submitted to the Parliament in 1996. Parliament intends to consider this issue during 1997. At the same time, Parliament will consider the Government's policy of acceding to the WTO.

Question 301. (WT/ACC/KGZ/5, Qu. 139)

To what extent does the Kyrgyz Republic consider that it will remain a "Customs Territory" within the WTO definition once the Customs Union Agreement with Russia, Belarus and Kazakstan is ratified?

Answer:

If the Customs Union Agreement is ratified, it is likely the Kyrgyz Republic will become part of a larger single (united) customs territory where a common external tariff will operate.

Question 302. (WT/ACC/KGZ/5, Qu. 140)

Please provide the Working Party with the text of the Customs Union Agreement and all related legislative and administrative acts.

Answer:

The Customs Union Agreement, other related international agreements, and all related legislative and administrative acts that have not already been submitted to the WTO are attached in Attachment F.

The following acts which relate to the Customs Union Agreement have already been submitted to the WTO:

- Resolution No. 56 of the Cabinet of Ministers “On the Procedure of Export and Import of Goods (works and services) on the territory of the Kyrgyz Republic,” of 6 February 1996. (It will come into force from the date of ratification of the Customs Union Agreement by the Parliament);
- Resolution No. 119 of the Cabinet of Ministers “On Approving Rules for the Equipping of Transport Facilities (Containers) for Transportation of Goods with Customs Seals,” of 20 March 1996.
- Resolution of the Cabinet of Ministers “On Approving the List of Countries-Users of the Preferences Scheme of the Kyrgyz Republic,” of 6 February 1996.
- Instructions No. 05-06/12 of the State Customs Inspectorate “On the Procedure for Controlling Goods Exported from the Territory of the Customs Union,” of 24 January 1996.

Question 303. (WT/ACC/KGZ/5, Qu. 141)

The Kyrgyz Republic is committed to introducing a common external tariff with its Customs Union partners. How, in the light of this commitment, does the Kyrgyz Republic intend to proceed with respect to that aspect of the accession negotiations pertaining to tariffs?

Answer:

Pending the outcome of the ratification process, the Kyrgyz Republic will remain entirely in control of its own tariff regime, and will proceed to negotiate on that basis.

Question 304. (WT/ACC/KGZ/5, Qu. 142)

Please provide detailed information on the timetable foreseen in the Customs Union for harmonizing legislation affecting foreign trade. How will future amendments or new legislation be dealt with by the Customs Union? How does the Kyrgyz Republic intend to proceed in the Working Party discussions in the light of this commitment to harmonize legislation?

Answer:

There is no precise time table foreseen. The existence of the commitment to harmonize legislation is entirely dependent on the future ratification of the Customs Union Agreement. The Kyrgyz Republic intends to consult with its potential Customs Union partners with respect to any commitments undertaken with the WTO to ensure that such commitments will ultimately be reflected in the legislation of all such partners.

Question 305. (WT/ACC/KGZ/5/Add.2, Qu. 163)

What is the status of Parliamentary ratification of the customs union agreement with Russia, Belarus and Kazakhstan?

Answer:

The agreement providing for the joining of the Kyrgyz Republic to the Customs Union among Russia, Kazakhstan and Belarus was submitted to the Parliament in 1996. Parliament intends to consider this issue during 1997. At the same time, Parliament will consider the Government's policy of acceding to the WTO.

Question 306. (WT/ACC/KGZ/5/Add.2, Qu. 164)

Once ratified, when will the customs union agreement enter in force?

Answer:

The moment of entry into force will be defined in Parliamentary resolution to be passed if and when the customs union agreement is ratified.

Question 307. (WT/ACC/KGZ/5/Add.2, Qu. 165)

Please identify any non-tariff trade barriers that will be created or increased, with respect to imports into the Kyrgyz Republic, from countries which are not parties to the customs union agreement.

Answer:

There are additional import licensing requirements proposed for industrial wastes, pharmaceuticals, medical and veterinary equipment, chemical plant protection substances, military uniforms and deciphering equipment. However, these requirements will be imposed on imports from all countries, including Customs Union countries.

Question 308. (WT/ACC/KGZ/5/Add.2, Qu. 166)

Cabinet of Ministers Resolution No. 56 of 6 February 1996 for the implementation of this agreement. Please outline its provisions, in particular with respect to changes it proposes to the current trade regime of the Kyrgyz Republic.

Answer:

This Resolution would introduce certain changes to the current foreign trade regime. If it comes into force, it would:

- reduce the time within which an export or import licence application must be acted upon by the Ministry of Industry and Foreign Trade to 10 days;
- require the establishment of an export contract registration system;
- establish new lists of items subject to import and/or export licensing; and
- introduce a list of goods, the export of which is governed by international agreements.

Question 309. (WT/ACC/KGZ/5/Add.2, Qu. 167)

Please describe the provisions relating to the need for the registration of contracts involving exports, listing the products covered, describing the registration process, noting the specific criteria that must be met to have exports registered and the basis for rejecting the registration application, identifying the Ministries involved in the administration of the system, how the registration requirement is enforced, and the penalties imposed for non-conformance.

Answer:

The export contract registration requirement of Resolution No. 56 applies only to contracts for the export of certain products. These are listed immediately below. There is no specific criteria that must be met in order to register an export contract for these goods. This export contract registration system is to serve the purpose of providing the Government with information about such export contracts, e.g., to identify the seller, the buyer, the quantity, the purchase price, etc. This information is necessary so that the Government can control the misappropriation (i.e. theft) and export of strategically significant goods. Exporters simply must supply a copy of the export contract to the Ministry of Foreign Trade and Industry. Although this requirement must be fulfilled in order to export, the ministry has no authority to reject the registration; however, questionable contracts may result in the initiation of an investigation to assure their legitimacy. Specific regulations governing this process have not yet been developed. The following items are subject to export contract registration:

List of strategically significant goods, contracts for which are registered

Commodity Name	CL FEA Code No.
Fish alive, fresh, cold, frozen, reprocessed products of cod, sturgeon, salmon species, cancrroid, caviar	030199110, 030212000, 030270000, (only caviar) 030321000, 030322000, 030329000, 030380000, (only caviar), 030410110, 030410130, 030520000, (only caviar) 030530300, 160411000, 160419100, 160420100, 160420300, 160430, 1605 030310000
Grain	1001-1005, 100610 1000810
Seeds of soy-bean and sun-flower	1201, 1206
Ethyl non-denatured alcohol	220710000
Raw material for non-ferrous and ferrous metals	2603, 2604, 2606-2610
Natural gas	271111000, 271121000, 271112110, 271113900
Electric power	271600000
Mineral and chemical nitrous fertilizers, (except ammonium, sulphate and nitrate)	3102 (except 310221000, 310230900, 310240900)
Mineral or chemical potash fertilizers	3104
Mineral or chemical fertilizers with two and three nutrient elements, nitrogen, phosphorus, potassium, other fertilizers	3105

Commodity Name	CL FEA Code No.
Casein	3501 (except 350190100)
Leather raw material	4101-4107
Business timber (coniferous species)	440310100, 440310910, 440320
Coniferous saw-timber	440710100-440710500, 440710910, 440710930
Oak saw-timber and lumber	440391, 440791
Wool	5101, 5105
Cotton	5201, 5203
Linen fiber	5301
Tobacco	2401
Silk	5001-5003
Non-ferrous metals	7401-7403, 7405, 7501, 7502, 7504, 7601, 7603, 7801, 7901, 7903, 8001, 8104
Cobalt and other semi-products of Cobalt metallurgy; cobalt and articles, including waste and fragments	8105
Ferro alloy	7202 (except 720299)
Alumina	281820000
Ferrous and non-ferrous waste and fragments	281820000, 7204, 7404, 7802, 7902, 7503, 7602, 8002, 8109109, 8113001, 720210900, 860719910
Sparse, Sparse ground metals, raw material for production, alloy, compound and articles	2611-2615, 2804, 2805, 282330, 282619000, 284170, 2844-2846, 7110, 8103, 8106, 8108, 8109, 8110, 8112, 8113, 280540100

Question 310. (WT/ACC/KGZ/5/Add.2, Qu. 168)

Export registration that is non-automatic or discretionary may constitute a violation of Article XI of the GATT 1994 unless the substantive criteria applied are consistent with WTO provisions. We seek assistance from the Kyrgyz Republic in better understanding the nature of this requirement and its substantive justification under WTO provisions.

Answer:

Registration is automatic. See answer above.

Question 311. (WT/ACC/KGZ/5/Add.2, Qu. 169)

Will the trade-weighted average tariff rate for the Kyrgyz Republic increase as a result of the implementation of the common external tariff?

Answer:

The common external tariff will possibly cause changes in import patterns that will affect the average-weighted tariff. The Government is studying these changes in order to predict the average-weighted tariff.

Question 312. (WT/ACC/KGZ/5/Add.2, Qu. 170)

Please identify any goods, including HS tariff number, that the Republic of Kyrgyz intends to exclude from the common external tariff.

Answer:

A list of exclusions has not been developed. Annex 10 provides a summary of the new tariff schedule.

(c) Free Trade Area Agreements (Annex 8f refers)

Question 313. (WT/ACC/KGZ/5, Qu. 143)

Please provide the Working Party with the texts of all FTA's to which the Kyrgyz Republic is a Party.

Answer:

The Agreements are attached as Attachment G.

Question 314. (WT/ACC/KGZ/5, Qu. 144)

For each FTA, please provide details of the % trade overall and in each major sector which is excluded from the free trade regime.

Answer:

The Ministry of Industry and Trade will attempt to provide this information.

Question 315. (WT/ACC/KGZ/5/Add.2, Qu. 171)

Is the CIS Free Trade Area Agreement currently in effect in the Kyrgyz Republic?

Answer:

Yes.

Question 316. (WT/ACC/KGZ/5/Add.2, Qu. 172)

Does the Kyrgyz Republic presently provide duty free entry for imports of products from the Azerbaijan Republic, Turkmenistan, Republic of Belarus, Republic of Georgia or Republic of Tajikistan?

Answer:

Yes, except products from Georgia.

Question 317. (WT/ACC/KGZ/5/Add.2, Qu. 173)

What is the status of the negotiation of the CIS Free Trade Area Agreement protocol, which will specify the goods excluded from the free trade regime?

Answer:

The protocol has not been drafted and it is not currently being negotiated.

Question 318. (WT/ACC/KGZ/5/Add.2, Qu. 174)

Please identify, including HS tariff number, those products that the Kyrgyz Republic will exclude from the CIS free trade regime.

Answer:

Such a list has not been developed yet.

Question 319. (WT/ACC/KGZ/5/Add.2, Qu. 175)

Please identify the products, including tariff numbers, that the Kyrgyz Republic excludes from coverage under its bilateral free trade agreements with Armenia, Kazakhstan, Moldova, the Russian Federation and Ukraine.

Answer:

Armenia. No products have been withdrawn from the free trade regime.

Kazakhstan. According to the Protocol to the Agreement with Kazakhstan, Kazakhstan has withdrawn several categories of goods: (i) goods, the export of which is subject to contract registration in Kazakhstan; (ii) goods requiring an export or import licence under the law of Kazakhstan; and (iii) goods identified as strategically important under the law of Kazakhstan. The Kyrgyz Republic has withdrawn only exports that are subject to an export tariff, export licence or export quota under the law of the Kyrgyz Republic. Currently, there are no export quotas or tariffs in the Kyrgyz Republic. Therefore, only goods requiring an export licence have been withdrawn. These goods are listed in Cabinet of Ministers Resolution No. 408. A summary of this list is attached as Attachment D.

Goods fallen under the effect of the Kyrgyz legislation on export tariff, and legislation on licensing and quoting of exportation of goods (works, services) which is in force at the moment of goods customs clearance when the goods are exported from the Kyrgyz Republic to the Republic of Kazakhstan.

Moldova. No products have been withdrawn from the free trade regime.

Ukraine. No products have been withdrawn from the free trade regime.

Russia. According to the Protocol to the Agreement with Russia, Russia has withdrawn goods subject to an export tariff, export quota or export licensing requirement under the law of the Russian Federation. The Kyrgyz Republic has withdrawn only exports that are subject to an export tariff or export licensing requirement. Currently, there are no export tariffs in the Kyrgyz Republic. Therefore, only goods requiring an export licence have been withdrawn. These goods are listed in Cabinet of Ministers Resolution No. 408. A summary of this list is attached as Attachment D.

Question 320. (WT/ACC/KGZ/5/Add.2, Qu. 176)

Please identify the products, if any, including tariff numbers, that the Kyrgyz Republic excludes from free trade coverage, which are imported from countries which are parties to the CIS Free Trade Area Agreement, but with whom the Kyrgyz Republic does not have a bilateral free trade agreement.

Answer:

The CIS Free Trade Agreement is in effect; however, the Kyrgyz Republic has not withdrawn any goods from its coverage.

ANNEX 5 INFORMATION ON TECHNICAL BARRIERS TO TRADE

2. Information Regarding:

- (b) The names and addresses of the enquiry points foreseen in Articles 10.1 and 10.3 of the WTO Agreement on technical barriers to trade (the Agreement) with an indication as to whether they are fully operational**

Question 321. (WT/ACC/KGZ/5, Qu. 145)

On page 144, the inquiry points related to the TBT Agreement are indicated. Has the Kyrgyz Republic established inquiry points according to Article 7 and annex B of the SPS Agreement?

Answer:

The establishment of the inquiry point required by Article 10.1 of the TBT Agreement is in process. The State Fund of Standards, classifiers of technical-economic information, international (regional) standards, rules and recommendations on standardization, and the national standards of foreign countries, which will perform the function of the required inquiry point is now being established. The legal document on the establishment of this State Fund of Standards has been developed and presented to the Cabinet of Ministers for adoption in a draft resolution entitled “On the Organization of the Work on Standardization, Maintaining Unity of Measurement, and the Certification of Goods and Services.”

The implementation of the SPS Agreement is within the competence of the Ministry of Health and Ministry of Agriculture. Plans for the creation of the required inquiry points are still under development.