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Additional Questions and Replies

The Permanent Mission of the Russian Federation has submitted replies to questions raised after the meeting of the Working Party held on 30-31 May 1996, with the request that they be circulated to the members of the Working Party. The questions and replies are reproduced hereunder.

Question 1

Re. Question 4 (WT/ACC/RUS/9) Since 8 February 1996, the goods and services subject to federal price regulation have included vodka and liquors with a strength of over 28 per cent produced in or imported into Russia. Does the Russian Federation expect this to be a long-term measure?

Answer

Under current economic conditions, Russia is not planning to abolish price regulation in the near future with respect to the specified products.

See the separate Russian Federation document on agriculture and non-tariff measures.

Question 2

Re. Question 8 (WT/ACC/RUS/9) Could we have further clarification concerning the "maturity date"? In other words, what are the conditions necessary for a share to be regarded as having "reached its maturity date" and what are the average periods usually necessary in this respect?

Answer

The conditions and time frames for preserving share holdings in State- and municipally-owned companies differ depending on the sectoral affiliations of such companies, their sizes, etc., and may be changed by a decision of the Government of the Russian Federation (the base period for which share holdings are retained in federal ownership is three years).

The general principles for the privatization of State-owned enterprises, and the procedures, conditions, and time frames for keeping their shares in federal ownership are regulated by:

- (a) the State Programme for the Privatization of State- and Municipally-owned Enterprises in the Russian Federation (as approved by Russian Presidential Decree No. 2284, dated 24 December 1993, and amended on 14 March 1996); and

- (b) the Basic Provisions of the Programme for the Privatization of State- and Municipally-owned Enterprises After 1 July 1994 (as approved by Russian Presidential Decree No. 1535, dated 22 July 1995).

Question 3

Regarding the answer 13 of WT/ACC/RUS/9, are there additional criteria such as amount of capital other than the number of employees or equity share, to define "small enterprises"?

It is stated that "should a small enterprise exceed the staffing limit, such enterprise shall lose those benefits which are stipulated by legislation". Could Russia explain the procedures for cutting benefits? What are the benefits granted to small enterprises?

Answer

According to Federal Law On State support for small entrepreneurship in the Russian Federation No. 88-FZ of 16 June 1995 (submitted to the WTO Secretariat), Article 3, small entrepreneurs are understood to be physical persons engaged in entrepreneurial activity without establishing a legal entity.

Small enterprises that are engaged in several types of activity (multi profile) are categorized on the basis of the type of activity the share of which is the largest in the annual turnover or in the annual volume of profit.

A separate paragraph (paragraph 3) of that Article stipulates that if the small enterprise at a certain point exceeds its size, it loses the benefits which the legislation grants to small enterprises.

In accordance with the above mentioned Federal Law, several benefits to small entrepreneurs are proposed, including;

- the introduction of a simplified procedure of registration, of licensing of activity, of the certification of the products of the small entrepreneurs, and of reporting to the State in accordance with Articles 4, 5 of the Law (the decision of the Government of the Russian Federation On the licensing of individual types of activity of 24 December 1994 No. 1418 is also in force now);
- support for the foreign economic activity of small entrepreneurs is aimed at the creation of favourable conditions for small enterprises and entrepreneurs for the development of foreign ties and cooperation with foreign partners;

Article 15 of the law defines in general terms the implementation of the measures by federal executive bodies and by executive bodies of the subjects of the Federation related to the participation of small entrepreneurs in foreign economic activity and of reimbursement for expenses resulting from such activity;

- the arranging of training, re-training and advanced training for personnel of small enterprises means the development by the federal executive authorities and the executive bodies of the regional governments of the Russian Federation, as well as by local authorities of the appropriate systems for providing such training. Article 18 of this Law sets out that norm in general terms;

- the rules of taxation, of providing tax exemptions for the subjects of small entrepreneurship, of granting grace periods and arrangements for paying taxes by instalments are established in accordance with tax legislation by Article 9 of the said Law;
- the special feature of Article 9 is that the Article enables the small entrepreneurships during the first four years of their activity, in case of an increase in the tax burden during that period, to apply the tax rules which were in effect at the time of their registration with the State. Paragraph 2 of the Article provides for the establishment by the laws of the Russian Federation and regional governments of the Russian Federation of favourable taxation treatment for small enterprises and entrepreneurs that promotes the development of the legal system for the improvement of the tax system in the Russian Federation with a view to creating more favourable conditions for small entrepreneur ships; and
- in accordance with Article 10 of Federal Law No. 88-FZ, small entrepreneurships have the right to accelerated depreciation rates for capital assets, and a right to charge expenses against the cost of production at a rate which is twice as high as the rates that would otherwise apply.

Besides the application of the mechanism of accelerated depreciation, small entrepreneurships can additionally write off as depreciation up to 50 percent of the initial value of capital assets which have a service life of over three years.

- In accordance with Article 11 of the Federal Law, credit loans to small entrepreneurships are provided on favourable conditions with the funding for low cost loans provided through credit organization through the government. The organizations that provide credits to small entrepreneurships on favourable conditions enjoy benefits pursuant to the legislation of the Russian Federation and the legislation of regional governments.
- In accordance with Article 13 of the Federal law, insurance for small entrepreneurships is provided on favourable terms. The insurance organizations that provide insurance for small entrepreneurships enjoy benefits in conformity with the legislation in force.

In addition, the Federal Programme of State Support for Small Entrepreneurship in the Russian Federation for the period from 1996 to 1997 which was approved by the Decision of the Government of the Russian Federation of 18 December 1995 No. 1256 provides for financing of small enterprises from the federal and regional funds for the support of small entrepreneurship and the promotion of competition.

Question 4

Re. Question 21 (WT/ACC/RUS/9) The elements of the system of government regulation of industrial production include incentives to attract investment. What specifically are the incentive measures involved?

Answer

Government incentives to stimulate investment activity in Russia include a range of different measures and of grounds for their application. A brief list would include:

- tax and customs benefits (full or partial tax exemptions granted either with respect to specific taxes or with respect to tax recipients);

- government involvement in private capital financing (through a system of tenders, the provision of government guarantees, the acquisition of ownership interests in the capital of private companies, etc.);
- preferential credits (through authorized commercial banks);
- government orders to build specific facilities and to manufacture specific products; and
- incentives to encourage key projects and investment in priority areas under special programmes (this includes various combinations of the above incentives and benefits).

Question 5

Re. Question 28 (WT/ACC/RUS/9) Does Russia intend its mechanism of minimum guaranteed purchase prices (for agricultural products, raw materials and foodstuffs for the needs of the State) introduced in 1995 to be maintained over the long term?

With respect to the answer to question 28, the minimum guaranteed price is set by the Ministry of Economy, the Ministry of Agriculture and the Ministry of Finance. Could Russia indicate which Ministry will make the final decision?

Answer

The producers of agricultural produce that sell such produce to meet the needs of the State set their prices on the basis of agreement with the purchasing agents. The State guarantees to them prices which cannot drop below that level. In 1995 the level of guaranteed prices was set by the decision of the Government of the Russian Federation of 10 March 1995 No. 240 On economic conditions of the functioning of the agro-industrial complex of the Russian Federation in 1995.

In 1996, in accordance with the decision of the Government of the Russian Federation of 7 February 1996 No. 135 On measures to stabilize the economic situation in the agro-industrial complex of the Russian Federation in 1996 the Ministry of Economy of Russia, the Ministry of Agriculture and Foodstuffs of Russia and the Ministry of Finance of Russia were charged with setting the level of guaranteed prices which is recorded in the protocol of agreement. The protocol of agreement of the three ministries is the final document on the matter of setting the minimum guaranteed purchase prices.

It is planned to extend the period during which the guaranteed purchase prices for agricultural produce, raw materials and foodstuffs for the needs of the State will be in effect as a form of support for the agricultural producer during the period of the adaptation of the agrarian sector to the market economy.

Question 6

Re. Question 38 (WT/ACC/RUS/9) Up until now, Russia has not submitted information on domestic support and export subsidy on agricultural products. According to the answer to the answer 38 of WT/ACC/RUS/9, Russia has begun the work of calculating the Aggregate Measurement of Support.

We would like to draw your attention to the technical note by the Secretariat titled Information to be Provided on Domestic Support and Export Subsidies in Agriculture (WT/ACC/4). This note was produced to supplement the note by the Secretariat titled Procedures for Negotiation

under Article 12 (WT/ACC/1), especially its relevant part of the Outline Format for a Memorandum.

Although this note on domestic support and export subsidies in agriculture was made after Russia requested to accede to the WTO, there is no reason we should not make use of this note, because it is very useful both for an acceding country and WTO Members. Therefore, we would like to request Russia to submit relevant information following the guidance of this note.

Answer

The Russian delegation will provide the WTO Secretariat with a document on agricultural policy, which includes data normally required by document WT/ACC/4.

Question 7

Re. Question 41 (WT/ACC/RUS/9) Could we have further details on the Federal exports development programme up to the year 2005 (content, objectives, specific measures proposed for ensuring the transparency of the provisions)?

Answer

The Federal Programme for the development of exports until the year 2005 is aimed at:

- increasing the value of the volume of Russian exports; and
- increasing the share of exports of engineering, technological and science-intensive products.

To achieve those aims, the programme provides for:

- the development of the mechanism of State insurance of export operations from political risks;
- the establishment, with the assistance of the State, of a system of insurance related to export operations to protect such from long-term commercial risks;
- the development of the mechanism of State guarantees with the aim of attracting foreign investments for the expansion of Russian export-oriented production;
- the providing of State support to improve access for Russian goods to world markets by means of providing assistance in conducting marketing research, dissemination of information on trade legislation of foreign countries; providing information on the current international regime for trade and the provisions of the WTO, etc.;
- the providing of State support for the prevention and settlement of international trade disputes; and
- the exercising of State support for the training and education of personnel for the sphere of foreign economic relations.

In the opinion of the Russian delegation such measures are in conformity with the Agreement of the WTO on Subsidies and Countervailing Measures, as well as with other agreements and provisions of the WTO.

Question 8

Re. Question 60 (WT/ACC/RUS/9) When does Russia intend to make use of the appropriate implementation provisions of the WTO Agreement on Subsidies and Countervailing Measures (in particular the "non-actionability" criteria of Article 8.2)?

Answer

The Russian Federation intends to respect the provisions of Article 8.2 of the WTO Agreement on Subsidies and Countervailing Measures with respect to conduct by other WTO members from the moment of her accession to the WTO. Whether, or for how long, the Russian Federation will require a transition period under Article 29 of that WTO Agreement is still under consideration.

Question 9

Re. Question 64 (WT/ACC/RUS/9) What are the types and the number of enterprises forming part of the "limited number of enterprises which should be notified to the Council for Trade in Goods"?

Answer

A preliminary list of such enterprises is provided in Answer 12 of WT/ACC/RUS/9. An updated list will be submitted at a later date once all data has been compiled.

Question 10

Re. Question 67 (WT/ACC/RUS/9) According to Federal Law No. 174-FZ, for the establishment of commercial organizations with foreign investment involved in construction, expansion and technical renovation projects it is mandatory to have passed the State ecological expert examination. Exactly what does this examination involve?

Answer

Articles 11, 12, and 14 of the Federal Law On Environmental Expert Assessments, dated 19 June 1995, require State environmental expert assessments for "materials regarding the establishment of organizations by nationals or legal entities of the Russian Federation with the involvement of foreign nationals or foreign legal entities."

The documents which are to be submitted for a State environmental expert assessment to the Russian Federation Ministry for the Protection of the Environment and Natural Resources during the establishment and registration of those enterprises with the provision thereto of rights to undertake business and use natural resources the amount of foreign investment in which exceeds \$500,000 include:

- written application for an expert assessment of materials regarding the respective enterprise;
- notarized copies of its foundation documents (the charter and the agreement on the establishment of the joint venture, which must include the chapter "Environmental Protection");
- certificates of incorporation of the Russian legal entities and their foreign partners which are founding the enterprise;

- feasibility studies regarding the establishment of the enterprise, which must include the chapter "Ecological Substantiation";
- letter of consent from the regional committee for the protection of the environment and natural resources;
- letter of consent from the regional administration;
- letter of consent from the regional agency of the State service for supervision over subsoil uses; and
- copy of the founders' licences to use subsoil (if even one of the founders has such a licence) and to undertake specific activities.

The list of documents to be submitted for State environmental expert assessments to the Russian Federation Ministry for the Protection of the Environment and Natural Resources during the establishment and registration of those enterprises, the amount of foreign investment in which does not exceed \$500,000 is similar to the above list, but is established by regulatory legal acts of the Russian Federation's regional governments.

Russian enterprises have to undergo a similar procedure for undergoing State environmental expert assessments. The list of requisite documents is also determined by the type of the respective enterprise and the nature of the impact its operations have on the environment.

Question 11

Re. Question 69 (WT/ACC/RUS/9) Russia has taken several measures to protect foreign investors from criminals. These include a draft federal law on the legalization of criminal incomes. What are the specific provisions of this law (in particular as regards money laundering) and when does Russia expect this new law to be finally adopted? In addition, what concrete measures have been taken by the Ministry of the Interior to provide greater protection for national and foreign entrepreneurs?

Answer

The draft Law On Liability for Laundering Criminal Income still has to be finalized, which is why it is not possible to forecast what will be the final provisions and when it will be enacted by the State Duma of the Russian Federation.

Question 12

Re. Question 91 (WT/ACC/RUS/9) How will the new Land Code under consideration modify the provisions currently in force?

Answer

The State Duma of the Federal Assembly of the Russian Federation on 22 May 1996 adopted on the third reading, the Land Code of the Russian Federation. However, the Federation Council has rejected the Land Code. To reconcile the differences, a conciliatory commission has been formed which will be concerned with enhancing the protection of peasants' rights to land shares, promoting land turnover, and bringing into compliance with the Constitution of the Russian Federation, legal provisions

related to the division of authority between the Russian Federation and its territorial subjects with respect to regulation of land relations and other issues. See also Answer 14 (WT/ACC/RUS/9).

Question 13

Re. Question 99 (WT/ACC/RUS/9) In the course of a few days (from 6 May to 12 May 1995) the weighted average rate of import duties on food products went up from 11.46 per cent to 15.32 per cent. Why does Russia mention this specific increase when the question relates primarily to an average increase and what is the explanation, in general terms, for the increase in import duties?

Answer

The text of question 99 of WT/ACC/RUS/9 related only and solely to the increase of import tariffs for agricultural products. In this sense, Answer 99 presented by the Russian delegation in WT/ACC/RUS/9 is fully in accordance with the formulated question.

The changing of import tariff rates in Russia, as elsewhere, is influenced by many different and competing factors such as the need for government revenue, the provision of transparent measures for the preservation of national industry, as well as the requirements for the integration of the national economy into the system of world economic relations.

It should also be pointed out that from the introduction of new import tariffs in Russia (6 May 1995) various rates of duties have been reviewed, and in some cases reduced to reflect the ongoing structural adjustments in sectors of the Russian economy.

Question 14

Re. Question 111 (WT/ACC/RUS/9) Could we have more information concerning the opening up of the government procurement market to foreign tenderers?

Answer

There is at present, no statutory general preference in effect for Russian suppliers which applies to all sectors. In Article 4 of Russian Government Decision No. 549, of 26 June 1995 On the Preparation and Conclusion of State Contracts for the Purchase and Delivery of Products for Federal State Need, it is stipulated that all participants in a federal tender for State needs are to participate on equal conditions and to benefit from openness in the tendering process. However, Article 20 of the same Decision does provide that State contracts are to provide inter alia, for the development of domestic production capacity in line with government policy, as well as the maintenance of national defense capabilities.

There are currently in effect certain preferences for the purchase of domestically produced farm products, raw materials and foodstuffs for government use under the provisions of the Law On Purchases and Deliveries of Farm Products, Raw Materials and Foodstuffs to Meet State Needs of 2 December 1994. Likewise, when foreign construction companies win tenders to build facilities with Russian government financing, the Russian Government Decision No. 531 of 8 June 1993 On the Streamlining in the Russian Federation of the Construction of Facilities at the Expense of State Foreign Currency Funds and State Foreign Investment Credits stipulates that a maximum amount of equipment and material produced in the Russian Federation should be employed by such contractors, and that not less than 30 per cent of labour and other service contracts should be awarded to Russian subcontractors.

Question 15

Re. Question 120 (WT/ACC/RUS/9) Does Russia envisage amending, in the medium term, its strict prohibition on foreigners manufacturing narcotics?

Answer

No. Article 5 of Chapter 1 of the draft Federal Law On Narcotic Drugs and Psychotropic Agents provides for "the State monopoly in the development, production and manufacture...of narcotic drugs".

Question 16

Re. Question 123 (WT/ACC/RUS/9) Could Russia explain the meaning 'applied indirectly'? When applied indirectly, are they Russian standards or harmonized standards?

Could Russia also in this context provide information on what rules it applies to or intend to introduce on food additives. Has Russia drawn up a list of allowed or prohibited additives, and in such case, what are the additives on the list?

Answer

As far as the application of international standards is concerned, the Russian Federation acts in accordance with Guide ISO/JEC 21, "Adoption of International Standards in National Standards." The direct use of international standards in the Russian Federation means the adoption as State standards, of Russian translations of the authentic texts of international standards, with or without the establishment of additional requirements reflecting the specific needs of the domestic economy.

Data regarding the use of an international or regional standard as a State standard of the Russian Federation is published in the preamble on the back of the respective standard's title page.

The indirect use of international standards in the Russian Federation means the incorporation of individual provisions from such international standards during the drafting of State standards.

All of the above-mentioned normative documents on standards are harmonized with international standards.

The State Committee on Sanitary and Epidemiological Supervision (Goskomsanepidnadzor) has approved the "Food Additives" supplement to the "Medico-biological Requirements and Sanitary Norms for the Quality of Raw Food Materials and Foodstuffs," which includes a List of food additives permitted to be used in the food industry in the Russian Federation, a List of food additives not covered by authorizations permitting the use of food additives in the food industry of the Russian Federation, and a List of food additives prohibited for use in the food industry of the Russian Federation. Upon accession to WTO, appropriate notification will be made under the Agreement on the Application of Sanitary and Phytosanitary Measures.

Question 17

Re. Question 125 (WT/ACC/RUS/9) When referring to 'international regulations' does Russia mean the Codex Alimentarius? If not, what other international regulations are referred to?

Could Russia provide more detailed information about the Law on the Quality and Safety of Foodstuffs and the timetable for its adoption and planned entry into force. In particular we would like to know:

- **Does this draft law foresee the removal of pre-market third-party certification?**
- **Will it apply to all foodstuffs or just certain specified product areas?**

Answer

The "international regulations" were meant to include the CODEX ALIMENTARIUS standards, the ISO standards, the CEN standards, and the UN ECE rules.

A draft Law On the Quality and Safety of Foodstuffs is slated to be examined by the Government in the fourth quarter of 1996.

The draft Law provides for the certification of foodstuffs by the bodies and agencies of State inspection, as well as by the bodies of the Gosstandart of Russia engaged in the certification of quality and safety. It is assumed that the said Law would cover all foodstuffs, perfumes and cosmetic products.

The current rules for the certification of foodstuffs and unprocessed food provide for pre-market certification, and this requirement continues to be in effect.

Question 18

Re. Question 126 (WT/ACC/RUS/9) Could Russia (i) clarify what the "supplement" of international standards means, (ii) explain how these modified international standards are applied and, specifically, to what sectors they apply?

Could Russia be more specific in its answer and describe the extent to which, and in which sectors, international standards are either referred to or may be followed by producers in order to conform to Russian regulations. Can Russia also identify the sectors in which deviations from international standards exist?

Russia states that by the year 2000 national standards in conformity with international standards will account for 50 per cent of all federal standards applied in Russia. Could Russia indicate what sectors will be given priority in order to reach this goal?

Answer

In accordance with Guide ISO/JEC 21, "supplements" to international standards (technical deviations) are understood to mean additional requirements reflecting the specific needs of the domestic economy.

International and regional standards (once the Russian Federation has acceded to them) are used on its territory as State standards.

They apply to items subject to standardization in any sector of the domestic economy. In some industries (electrical engineering, the aerospace industry, and the automotive industry), the rate of harmonization with international standards stands at around 70 per cent.

If an applicable international or regional standard refers to any other international or regional standards which are not used in the Russian Federation and if there are no equivalent State standards, then, before such standard is enforced, the issue is decided whether to use those international or regional standards to which it refers.

It is permitted to manufacture and export Russian products in accordance with the requirements of international and regional standards, the national standards of other countries, or the standards of foreign firms, as requested by the specific foreign consumer (customer), on a contractual basis.

Under certification rules in effect in Russia, conformity assessments are carried out in accordance with requirements set by Russian standards. Thus, if an international standard is used as a Russian standard, it may be used by a manufacturer to comply with Russian regulations.

The following areas of standardization have been chosen as priorities for the period until the year 2000:

- the safety of products, services, and production processes for the environment, public health, and human life;
- labour protection, improvements in working conditions, and the cultivation of a convenient living environment for the handicapped;
- information technologies; and
- resource conservation.

These priorities are consistent with documents of the UN Economic Commission for Europe.

Question 19

Re. Question 131 (WT/ACC/RUS/9) Could Russia provide more detailed information about the Principles Governing the Mutual Recognition of Certification and in particular on (i) the types of conformity results accepted, and (ii) the conditions for recognition of third country bodies and their conformity assessment?

Answer

In order to ensure that conformity certificates and marks are accepted abroad, the certification rules and recommendations in effect in the Russian Federation correspond to those international norms and rules which are set forth in the ISO and IEC guides, the international ISO 9000 and 1000 standards, the European 45000 and 29000 standards, and documents of other regional certification organizations.

Foreign conformity assessment bodies' and test laboratories' accreditation, as well as foreign conformity certificates and marks, are recognized in Russia (and comparable Russian accreditation, certificates, and marks are accepted abroad) on the basis of multilateral and bilateral agreements to which the Russian Federation is a party.

Question 20

Re. Question 133 (WT/ACC/RUS/9/Add.2) Russia's answer covers only the first two points in question no 133. We would like information also on the last two points:

- the types of risks which the certification procedure is addressing;
- the nature of the conformity assessment procedure (e.g. inspection, production of test reports, product type-approval, quality systems certification, or combinations of these).

Could Russia provide us with the text of Law No.2 FZ On the Protection of Consumers' Rights of 9 January 1996?

Answer

Statutory requirements or standards concerning consumer and environmental safety aim to prevent damage to consumers' property, as well as facilitate consumer safety. The products which are subject to such requirements must be certified in accordance with the established procedure.

The nature of certification schemes and their descriptions are to be found in the certification rules entitled Procedure for Product Certification in the Russian Federation (already submitted to the WTO Secretariat).

The text of Russian Law No. 2-FZ On the Protection of Consumers' Rights has also been submitted to the WTO Secretariat.

Question 21

Re. Question 134 (WT/ACC/RUS/9) Could Russia provide further details on the scope and timing of the draft Law on Changes on Additions to the Russian Federation Law on the Certification of Products and Services?

Answer

The draft Law On Changes and Additions to the Russian Federation Law On the Certification of Products and Services is to be examined by the Government in the fall of 1996, after which it will be put before the State Duma. After the draft Law is enacted, the text of the new Law will be submitted to the WTO Secretariat.

Question 22

Re. Question 135 (WT/ACC/RUS/9) According to our information there exists no Russian law regulating the responsibility of the producer, any rules directed towards products as such. The Russian Committee on Commerce, exercising control through the State Trade Inspectorate, also seems to have a very limited responsibility ("issues explanation ... in response to queries"). Could Russia explain (i) in more detail how the State Trade Inspectorate exercises its control function, (ii) if the Committee's statute covers actions directed towards both products and producers and (iii) if legal sanctions are available to the Committee or Inspectorate?

Answer

The Russian Federation does not have a separate law on manufacturers' liability. But the liability of manufacturers is determined partly by the Laws On the Protection of Consumers' Rights and On the Certification of Products and Services, in other laws, and in the Civil and Criminal Codes.

At present, the Federal Law On the protection of consumer rights is in effect in Russia. The Law regulates the relations among consumers and producers, executors, and sellers in the process of

selling goods; it establishes the rights of consumers to the purchasing of goods of proper quality and safe for the life and health of consumers, the collection of information on goods and on their producers, and determines the responsibility of producers.

One of the organizations that exercises control over the implementation of this Law is the State Inspectorate on Trade, Quality of Goods and the Protection of Consumer Rights (Gostorginspektzia) of the Committee of the Russian Federation on Commerce (Roskomtorg) which, in accordance with Article 43 of the said Law, is entitled to impose fines on the producer for failing to implement or to implement in time its instructions, as well as for causing damage to consumers by goods which do not correspond to safety requirements, for the sale of goods, including imports, without certificates confirming their compliance with the mandatory requirements.

Gostorginspektzia, in accordance with the Regulations approved by the Decision of the Government of the Russian Federation of 27 May 1993 No. 501 exercises control over compliance with the norms and the rules of trading, and the quality and the safety of consumer goods. The objects of control by the Gostorginspektzia are the enterprises, agencies, organizations irrespective of the form of ownership, and citizens who are engaged in selling and producing goods.

The rules for the sale of individual types of foodstuffs and non-foodstuffs shall be approved by the Government of the Russian Federation.

The established violations of the rules of trading, the sale of goods of improper quality or in violation of sanitary and other rules are punished by the bodies of the GOSTORGINSPEKTSIA of the ROSKOMTORG in accordance with the RSFSR Code On Administrative Offences by applying measures of administrative penalty such as imposing a fine on the guilty persons.

Question 23

Re. Question 136 (WT/ACC/RUS/9) Could Russian relate its answer that the "Russian legislation does not recognize mandatory standards" to the present situations within, for example, the automobile sector, where there is in practice no choice between Russian standards and others?

Answer

State standards are indeed no longer mandatory in accordance with Russian legislation (Law On Standardization, dated 10 June 1993).

However, in accordance with Clause 2 of Article 7 of this Law, "those requirements which are established by State standards to ensure the safety of products, work, and services for the environment and for the life, health, and property of consumers, and also to ensure the technical and information compatibility and interchangeability of products, the uniformity of methods for their testing, and the uniformity of markings, as well as other requirements established by legislation of the Russian Federation, shall be obligatory for governmental administrative agencies and economic agents."

The conformity of products and services to such requirements of State standards is determined in accordance with the procedure established by legislation of the Russian Federation on the obligatory certification of products and services.

Other requirements made by State standards on products, work, and services must at all times be observed by economic agents if this is dictated by a contract or by the technical documentation of the manufacturer (supplier) of the products, the performer of the work, or the provider of the services. The conformity of products and services to the requirements of State standards may be determined

in accordance with the procedure established by legislation of the Russian Federation on the voluntary certification of products and services.

As far as the automotive sector is concerned, the Russian Federation has acceded to 72 rules of the UN Economic Commission for Europe Committee on Internal Transport which are applied in Russia directly by the cover method in accordance with Guide 21. In addition, the Russian Federation has State standards in effect regulating the certain specific requirements (which are mostly due to Russia's distinctive natural and climatic features) for motor vehicle use in the country.

Question 24

It is said that a general review of tariff rates is planned in the summer of this year. It is not desirable to change tariff rates frequently during the course of accession negotiations. In particular, raising tariff rates is not desirable. In this context, could Russia explain its views on what year should be designated as the base year for the base rates for tariff negotiations?

Answer

No general revision of import tariff rates took place in the summer of the current year in Russia. However, under the current economic conditions, Russia had to make several amendments to different tariff lines, including full removal of export duties. As to the question about the base year for base rates for the negotiations on tariffs, the answer to that question will be formulated in the course of the corresponding bilateral consultations and negotiations which Russia intends to embark upon at the earliest opportunity.

Question 25

Clarification with regard to the discrimination of excise taxes imposed on alcoholic beverage and tobacco:

- (a) Please explain the outline of the excise tax system imposed on alcoholic beverage and tobacco, both for domestically produced ones and imported ones (e.g. regarding each kind of alcoholic beverage and tobacco, what kind of taxes are imposed with what tax rates). If the excise taxes are not imposed only on alcoholic beverages and tobacco, but on certain selected items as indicated in Russia's reply in WT/ACC/RUS/9, what are the reasons for imposing excise taxes on only certain selected items? And what are the ad valorem equivalent percentages of specific taxes levied to the imported items? Please indicate the HS number of each items on which excise taxes are imposed.**
- (b) We understand that the excise tax rates imposed on domestic alcoholic beverage and tobacco are different from those imposed on imported ones by "some technical reasons" for the collection of the taxes. If it is so, what are those "technical reasons".**
- (c) It was expressed by Russia that the discrimination is to be cut down by adjustment of tax rates. Please explain concretely how to adjust the rates.**

Answer

Pursuant to current legislation on excise taxes, which is also applicable to domestic alcoholic and tobacco products, ad valorem rates have been introduced (as a percentage of the cost of the goods at the selling price taking into account the excise). With respect to alcoholic and tobacco products imported into the Russian Federation, there have been introduced specific excise rates in fixed monetary

units (ECU) for defined quantities of goods. In terms of aggregate amounts, excise taxes on imported goods, as a rule, do not exceed those on analogous domestic goods.

The existence of different excise rates (ad valorem and specific) is explained by the fact that the excisable turnover of domestic goods is determined on the basis of established excise rates and selling prices which incorporate the amount of excise tax, and with respect to imported goods, the excisable base value used for excise calculation is the customs value of goods determined without account of excise taxes.

A draft Law is currently being considered by the State Duma of the Russian Federation on excise tax which provides for a uniform method of excise tax collection and introduction of uniform excise rates for both domestic goods and goods imported into the Russian Federation.

Question 26

Are there policies or practices followed by State trading enterprises, at central or sub-federal level, with the aim of encouraging purchase of domestically produced goods, or any limitations on incorporation of imported product? If so, what are the details of the arrangements and in which sectors do they apply? Are there any quantitative restrictions placed on such enterprises on the import or export of products?

Answer

This question will be answered in full upon completion of the questionnaire on State-trading enterprises. For issues related to government procurement see Answer 14 herein.

Question 27

What are the procedures for fixing and changing the import duties?

Answer

Any Russian participant in foreign economic activity has the right to introduce proposals on the establishment of, or a change in, import duty rates. For that, he should present his proposals accompanied by a detailed feasibility study to the Ministry of Foreign Economic Relations, the Ministry of the Economy, the Ministry of Finance, State Customs Committee of Russia and to the ministry or agency of the corresponding industry. The Ministry of Foreign Economic Relations of Russia would thereafter prepare a combined resolution and present it for consideration to the Commission of the Government of the Russian Federation for Customs and Tariff Issues.

In case of a positive decision by that Commission, the Ministry of Foreign Economic Relations of Russia would prepare a draft of a corresponding decision of the Government and submit it to the Government of the Russian Federation which would take the final decision.

This procedure is described in detail in the decision of the Government of the Russian Federation of 28 April 1995 No. 436 On the Commission of the Government of the Russian Federation for Customs and Tariff Issues which was submitted to the WTO Secretariat.

Question 28

Please provide the legislative procedures which can and will consider and pass the legislations on Anti-dumping and Countervailing Measures and the Safeguards Measures. Is it different from the standard procedures for domestic law?

Answer

The procedures for the introduction of safeguard, anti-dumping and countervailing measures are set forth in Article 18 of the Federal Law On the State regulation of foreign trade activity and in the Procedure of conducting investigation prior to the introduction of protective measures. Both documents have been submitted to the WTO Secretariat. The procedures for adopting these laws do not differ from the usual procedures in Russian law.

Question 29

In the event that new legislations on the AD/CVD and Safeguards is inconsistent to the WTO rules, how does the system deal with the amendment and which rules supersede in the event of persistent conflict?

Answer

In the opinion of the Government of the Russian Federation, Legislative and other normative acts that are in effect in that sphere in Russia are not inconsistent with the provisions of Articles VI, XVI and XIX of the GATT 1994, as well as to the provisions of the corresponding agreements of the WTO.

In developing further legislation related to the safeguard, anti-dumping and countervailing duty measures, Russia intends to continue to be guided by the appropriate rules and disciplines of the WTO. For instance, a draft Federal Law On the protection of the economic interests of the Russian Federation in exercising foreign trade in goods, that has completed its third reading in the State Duma will, when enacted, further elaborate the legal norms of the documents listed in the above Answer 28 and also will not be to inconsistent with the requirements of the WTO Agreements.

Question 30

In answering Questions 234-238 (WT/ACC/RUS/2), the answer stated that the Law on Customs Tariffs in its present form cannot be directly applied for AD/CVD. What measures are installed to handle the matter and how are they administrated, though the measures have never been invoked?

Answer

The legislative and normative acts referred in Answer 28 above were applied and implemented by the Commission of the Government of the Russian Federation on Protective Measures in Foreign Trade in 1996 during the course of conducting an investigation into whether serious injury was suffered by the domestic industry as a result of increased imports of specific categories of goods. Documents on non-tariff measures, submitted to the Fourth Session of the Working Party on Russia's Accession to the WTO, contain information on the results of those investigations.

Question 31

To obtain the sanitation certification, imported goods may be subjected to an "expert study" undertaken by the Russian State Sanitation Committee. Please provide details on the procedures of such study and, if any, what are the operational framework, particularly with respect to time and cost, that the study follows?

Answer

The correct name of the certificate issued by the agencies of the State sanitary and epidemiological service of the Russian Federation is the Certificate of Hygiene (a copy of which has been submitted to the WTO Secretariat). The details of the procedure of drawing up the certificate of hygiene are set forth in the Regulations on the procedure related to the issuing of certificates of hygiene for products that was approved by the Decision of the State Committee on sanitary and epidemiological inspection of Russia of 05.01.93 No. 1 (submitted to the WTO Secretariat).

Question 32

With respect to the issuance of safety certificates (Questions 341-343 of WT/ACC/RUS/2), please clarify the procedures used for the purpose of certifying imported goods, particularly with regard to the checking and sampling techniques?

Answer

The procedures used during the certification of imported goods are similar to those used for the certification of Russian-made products. A description of such procedures is to be found in the Procedure for Product Certification in the Russian Federation. See answer 20 above.

Question 33

Is there any requirement on labelling for goods and foodstuff imported for consumption in the Russian Federation? If so, is there any difference from the requirement for local products?

Answer

The labelling requirements for goods and foodstuffs imported to the Russian Federation are similar to those requirements which apply to Russian-made products.

These requirements are determined by Article 10 of the Federal Law On Changes and Additions to the Russian Federation Law On the Protection of Consumers' Rights adopted on 9 January 1996 and by the RSFSR Code On Administrative Offenses, adopted on 20 June 1984 in accordance with which a label must contain the following data:

- designations of standards to whose requirements the product must conform;
- in the case of foodstuffs, data regarding their composition, i.e. the list of other products and food additives used in their production, their weight, volume, and calorific value, and the content of noxious substances compared with the obligatory requirements of applicable standards, as well as contraindications for those suffering from specific diseases;
- rules and conditions for effective and safe use; and

- application period, and data regarding the steps the consumer must take upon the expiry of such a period, and the consequences of a failure to take such steps if the product in question comes to pose a danger to the consumer's health, life, and property upon the expiry of the said period or becomes unfit for use as designated.

Labels must be in the Russian language.

Question 34

It is understood that there are three governmental agencies handling matters related to sanitary and phytosanitary, i.e. the State Committee on Sanitary Epidemiological Surveillance, the Dated Committee for Standardization, Metrology and Certification, and the Veterinary Department, Ministry of Agriculture. How are these agencies related and is there any plan to centralize for simplicity? If so what is the plan?

Answer

In addition to the listed agencies, the Russian Federation has a State Plant Quarantine Inspectorate (Rosgoskarantin) of the Ministry of Agriculture and Food.

The activity of the said agencies involved in the inspection (control) of the foodstuffs imported from abroad is carried out on the basis of the laws of the Russian Federation (including: No. 4979 On veterinary of 14 May 1993; No. 5151-1 On the certification of products and services of 10 June 1993; No. 2-FZ On protection of the rights of consumers of 9 January 1996, as well as proceeding from the Provisions on the said agencies and services approved by the decisions of the Government of the Russian Federation).

An agreement among the listed agencies stipulates that:

- The State Committee on Sanitary and Epidemiological Supervision (Goskomsanepidnadzor) establishes sanitary norms and rules for foodstuffs and food raw materials;
- the Veterinary Department of the Ministry of Agriculture and Food establishes veterinary and sanitary requirements for livestock products;
- Rosgoskarantin establishes a list of quarantine weeds and diseases; and
- Gosstandard analyses all documents required to prepare a uniform standard setting forth safety and quality requirements for foodstuffs and food raw materials.

Question 35

Presently, the Sanitary and Phytosanitary certifications are to be completed in Russian by foreign exporters. Is there any intention by the Russian Government to standardize the forms and incorporate English as part of the language in these forms?

Answer

At the present time, the exporters of foodstuffs must obtain the certificate of hygiene in the established form at the stage of signing the contract documents related to the delivery of products from abroad. The said document must be filed in the Russian language.

Question 36

Re. Question 6 (WT/ACC/RUS/4):

- (a) Russia has indicated that “on the whole” the pricing of electricity for the aluminum industry is determined as described in the response. What percentage of the electricity consumed by the Russian aluminum industry is priced in another manner? What procedures, other than the one outlined in the response, are used to establish the price of electricity for the aluminum industry?**
- (b) Russia has indicated in its response that electricity prices are set so as to allow for “... a profit for industrial and social development of power plants and systems and pay a definite dividend on shares of stock.” Could Russia please indicate more precisely what level of profit is normally provided and what a “definite dividend” is? In addition, what is meant by the “social development” of power plants?**
- (c) What percentage of the stock of regional power-generating joint stock companies is privately held?**
- (d) Do the regional power-generating companies negotiate their electricity prices with aluminum producers?**
- (e) Russia has stated that aluminum plants fall in the category of industrial consumers with connected capacity above 750 KVA. What are the other classifications of industrial consumers? How do their rates compare with those for aluminum producers?**
- (f) How are the members of the Regional Energy Commissions selected?**

Answer

According to the Federal Law of the Russian Federation On State regulation of prices for electrical and thermal energy in the Russian Federation regional energy commissions are subject to terms of reference that set economically justified prices for electrical and thermal energy provided by local power generating organizations, with the exception of consumers that have access to the federal (all-Russia) wholesale market for electrical energy (power).

The regulation of prices for electrical and thermal energy is done after review of presentations by the energy suppliers of energy and power in the Joint Energy System (JES), of the level of prices for fuel, and other material resources, and equipment, etc.

The regulation by the State of prices for electrical and thermal energy is based on market conditions in order to develop a single approach to the calculation of the level of prices on the territory of the Russian Federation. State regulation is aimed at promoting the functioning and the development of the energy supplying organizations. It arises from the need for electrical energy, for reserves of generating capacities sufficient for sustainable supply of energy to the national economy and the domestic population, and to provide to energy supplying organizations profits sufficient to attract capital investment to the energy sector.

Representatives of local authorities, energy supplying organizations and of electrical and thermal energy consumers can become members of regional energy commissions.

Regional energy commissions approve prices for electrical and thermal energy supplied:

- from the networks of territorial joint stock companies of energy and electrification to consumers and re-sellers of the corresponding region;
- from the networks of re-sellers to consumers; and
- from bloc-stations to the network of the regional joint stock company and to outside consumers.

At present, the Federal Energy Commission of the Russian Federation, the Ministry of Fuel and Energy of Russia, and the regional joint stock company "JES of Russia" are working on the improvement of the tariff structure for electrical energy supplied to the aluminum industry with a view to establishing for the aluminum enterprises and other industries both economically justified prices for electrical energy, and the creation for them of an all-Russia wholesale market of electrical energy.

Question 37

Re. Question 43 (WT/ACC/RUS/4):

- (a) **How is the forest resource quota set for State-owned forest products industries?**
- (b) **Has a time-frame been set for privatizing the forest products industry? If so, please provide details.**
- (c) **Is the compensation paid by private companies different from that paid by State-owned companies? If so, please provide details.**
- (d) **What percentage of the State-owned forest products industry is, by output, accounted for by Roslesprom?**

Answer

Pending

Question 38

Re. Question 179 (WT/ACC/RUS/4):

- (a) **Which sectors of the metallurgical industry, by end product, were or are the beneficiaries of the privileged credits?**
- (b) **Is there a repayment schedule for the credits? Will the recipients be charged interest on the deferred payments?**
- (c) **Are any similar deferred payments, or other subsidies, being provided to the metallurgical industry in 1996?**

Answer

Preferential credits were not granted through the Ministry of Finance to metallurgical enterprises.

In responses to questions submitted by the Working Party, Russia has stated that it does not apply any investment measures inconsistent with the WTO Agreement on Trade-Related Investment

Measures (TRIMs) and has not offered any documentation that suggests the presence of TRIMs in Russia's current investment regime.

Question 39

We would appreciate additional information in the following areas:

- (a) Has Russia submitted a copy of its Federal Law on Production Sharing Agreements (No. 225-FZ) in translation to the WTO Secretariat?**
- (b) Could you please clarify the provisions of the Law on Production Sharing Agreements regarding the use of Russian-manufactured equipment and the conditions for exemptions from VAT, excise tax, and customs duties for equipment and services imported by PSA operating companies?**
- (c) Does this law contain any measures that would be considered a TRIM according to the WTO Agreement on TRIMs, in particular any requirement of domestic content or domestic content linked to other advantages?**

Answer

(a)(c) The text of Federal Law No. 225-FZ On Production-sharing Agreements, dated 30 December 1995, has been submitted to the WTO Secretariat.

(b) This Law does not contain any provisions making the conclusion of a production-sharing agreement (PSA) and the granting of related tax benefits directly conditional on the concessionaire's use of any proportion of Russian equipment, raw and other materials, and labour (local content).

Question 40

Russia has stated that it will submit a copy of the "Russian Federation Industrial Policy Guidance for 1995-1997". In addition, on 22 March 1996, the Russian Government has issued Resolution No. 324, approving a Comprehensive Plan of Action that will implement the Presidential Address to the federal Assembly and also the Russian Government Programme for "Russian Economic Reform and Development in 1995-97.

- (a) Is there anything in either of these documents, i.e., the "Industrial Policy Guidance" or in Resolution No. 324, that addresses investment incentives, especially those for foreign investment?**
- (b) Do provisions in either document call for or foresee measures that require domestic content or export performance in investment, or offer benefits in exchange for investment?**

Answer

(a) In order to update legislation on investment policy and economic restructuring, the Russian Government plans to submit to the State Duma the federal draft law On the Licensing of Individual Activities and On the Organization of Tenders for the Purchase of Goods, Construction Works, and Services to Meet State Needs. As has already been noted in documents earlier provided, Russia applies, with due regard for its national security interests, the principle of non-discrimination towards foreign investors and entrepreneurs, which will continue to be observed also during the implementation of the Comprehensive Plan of Action.

- (b) In principle, the Government of the Russian Federation does not plan to adopt measures which would contravene the provisions of the TRIMs Agreement.

The WTO Secretariat will be provided with the above mentioned documents in due course.

Question 41

The WTO TRIMs Agreement prohibits the use of investment measures inconsistent with Articles III and XI of the GATT of 1994.

- (a) **Are there any measures in place at this time, provided for either in federal or subfederal legislation, that would engage these provisions of the TRIMs Agreement?**
- (b) **What is the role of subfederal authorities, e.g., in the autonomous republics and oblasts, in establishing TRIMs for investment in their areas?**
- (c) **If so, Russia should provide the Working Party with a list of such subfederal measures, of general or specific application, indicating each instance where such measures are applied, along with their principle features.**
- (d) **If such measures are provided or and administered under law by subfederal authorities, will Russia eliminate them so as to conform with the provisions of the TRIMs agreement?**

Answer

- (a) The Russian delegation has already supplied the federal legislation and has expressed the view that, in its opinion, its regime is not inconsistent with the TRIMs Agreement. See also Answers to questions 74, 75, and 81 of WT/ACC/RUS/9.
- (b) Under the Constitution of the Russian Federation, federal authorities establish general norms for the conduct and regulation of entrepreneurial activities throughout Russia. A territorial subject of the Russian Federation may, within the limits of its authority, regulate entrepreneurial activities. For instance, it may vary the rates of local taxes and charges within its own share of tax receipts and without any discrimination against entrepreneurs from other regions and against foreign investors compared with local producers.
- (c) The Russian Government does not collect data on subfederal measures in the area of TRIMs.
- (d) The Russian Federation will meet its WTO obligations under its Protocol of Accession in accordance with Article XXIV (12) of the GATT 1994.

Question 42

If Russia does not apply any measures not in conformity with the TRIMs Agreement, we would appreciate confirmation of that from the Russian delegation, and a commitment that Russia will not introduce any such measures during the negotiation.

- (a) **We seek a commitment from Russia that it will not seek any transitional arrangements for the elimination of such measures over a period of time after accession to the WTO.**
- (b) **The US and Russia have concluded a Bilateral Investment Treaty. The provisions of this agreement include WTO TRIMs obligations regarding local content and trade-balancing**

measures and go beyond the WTO TRIMs Agreement in prohibiting the use of export performance requirements investment regulations. We would expect that Russia would not depart from this agreement in formulating its investment rules.

Answer

The conditions for the Russian Federation's accession to the WTO and the duration of any transitional period will be the subject matter of negotiations. Therefore, the Russian delegation cannot, at this stage, make specific commitments beyond a general declaration of intent to observe the TRIMs provisions, as well as its international obligations under bilateral agreements on the protection and promotion of capital investment which have entered into force after ratification by the State Duma of the Russian Federation.

Question 43

The response to question 71 (WT/ACC/RUS/9) states that Russia retains the right to apply certain exemptions to national treatment “at the stage of granting access (entry) to foreign investors” to ensure national defence, State security, protection of public order, protection of the internal market, and fulfilment of international obligations of the Russian Federation. With reference to "protection of the internal market and fulfilment of international obligations of the Russian Federation", what exemptions to national treatment are foreseen? With respect to the "internal market", what sectors would be affected? With reference to Russia's "international obligations", what legal provisions would be related to the exceptions which would be needed?

Answer

Explanations regarding the interpretation of the Russian Federation's application of the principle of granting to foreign investors national treatment with some exemptions were provided in the Answers to questions 67, 71, 72, and 75 in WT/ACC/RUS/9. The practical experience of enforcement in this connection of the RSFSR Law On Foreign Investment in the RSFSR, dated 4 July 1991, as well as of intergovernmental agreements on the encouragement and mutual protection of capital investment, has demonstrated that it is necessary to regulate the substance and forms of such exemptions, particularly prohibitions and restrictions, and to clarify the scope of their application.

The answers provided earlier (in particular, the Answer to question 67 in WT/ACC/RUS/9) pointed out that it is very difficult at present to compile an exhaustive list of exemptions from national treatment. This is why the Government of the Russian Federation has drafted the Federal Law On a List of Economic Sectors, Production Operations, Activities, and Territories Where the Activities of Foreign Investors Are Prohibited or Limited.

Prohibitions and restrictions are expected to be imposed only by federal laws and applied only to new investment. These restrictions may be of two types, namely: a licence to make foreign investment, and the establishment of a limit on foreign equity participation (by one or several foreign investors) in the charter capital of a commercial organization, or on total foreign equity participation in the combined capital of all Russian economic agents engaging in a specific activity. Until the adoption of this law by the State Duma of the Russian Federation, it is not possible to provide a detailed list of those areas of investment to which it will apply.

Question 44

Could Russia please expand on the so-called “post-investment stage” exceptions for legal regulation of foreign investors or enterprises with foreign investment?

Answer

The Russian Federation does not in principle intend to make any exceptions from national treatment at the post-investment stage after investment has already been made and companies with foreign equity participation are already in operation, since this would violate the rights and interests of foreign investors. To date the imposition in 1993 of a 12 per cent limit on foreign capital participation in banking business has not affected those Russian banks with foreign equity participation and branches of foreign banks which were already in business on the Russian market, because their total share did not exceed the established limit.

Question 44A

Does Russia maintain the measures described in the illustrative list attached to the TRIMs Agreement?

If so, we would like to receive a comprehensive list of such measures. Does Russia have any intention to abolish such measures? If so, when will Russia abolish them completely? If not, can Russia commit itself not to introduce the measures listed in the illustrative list attached to the TRIMs Agreement?

Answer

See the Answer to question 41 (a) herein and the Answer to question 75 in WT/ACC/RUS/9.

Question 44B

We are interested in what types of conditions foreign and domestic investors may be asked to accept in exchange for being allowed to invest or to carry on their investment activities. For example:

- (a) During the discussions or negotiations of pre- or post-establishment investment projects, do Russian authorities require an enterprise, whether partly- or wholly-owned by a foreign investor or foreign investors, to agree to specific conditions or conduct, for example, to buy a certain amount of domestic factors of production or to attain certain levels of exports? Are such conditions ever applied to domestic investment projects?**
- (b) Do foreign investors have to comply with such conditions to be able to receive benefits in return, such as to obtain grants, subsidies, tax reductions, licences, access to infrastructure facilities or to other regulatory benefits? Are such conditions ever applied to domestic investors?**
- (c) If such conditions apply (to either foreign or domestic investors), are there differences in their application with regard to:**
 - specific sectors;**
 - sub-federal governments; or,**
 - preferential trade agreements (eg: with CIS States)?**

Answer

(a)(b) No permission from State agencies is required to make investments. The investor may decide to invest at his own risk and at his own discretion without the participation of the State.

The system of governmental involvement in investment in Russia includes the State's involvement in the financing of private capital investment, provided that the investor fulfils established requirements (regarding recoupment periods and scope of investment).

The Government of the Russian Federation has established a procedure for the distribution of its budgetary resources to finance private investment on Russian territory pursuant to Russian Presidential Decree No. 1928 On Private Investment in the Russian Federation, dated 17 September 1994, and Russian Government Resolutions No. 744 On the Procedure for the Distribution of Centralized Investment Resources on the Basis of Tenders, dated 22 June 1994, and No. 534 On Additional Incentives for Private Investment in the Russian Federation, dated 1 May 1996. This procedure stipulates, in particular, that government guarantees may be given for projects when the share of exported products exceeds established criteria.

Foreign investors operating in Russia enjoy equal rights with Russian investors to receive benefits and incentives provided for in the above mentioned legislation.

(c) The Russian system of incentives and benefits for investors and entrepreneurs is differentiated depending on the economic sector and recipient. It should be noted that a full description of arrangements for the regulation, support, and encouragement of entrepreneurs and investors is not possible in a single answer. Details of such arrangements and their assessment with respect to GATT and TRIMs provisions were provided in answers (WT/ACC/RUS/4, WT/ACC/RUS/5, WT/ACC/RUS/9), Laws and Treaties earlier submitted by the Russian Federation.

Question 45

Re. Question 139 (WT/ACC/RUS/9) Does the answer in paragraphs 2 and 3 mean that Russia grants to individuals and legal entities of the countries which are parties to the international agreements (Paris Convention, Berne Convention) the same rights as it does to the Russian right holder and the right holders from countries with which bilateral agreements on intellectual property protection have been concluded?

Answer

The Russian Federation has obligations, under bilateral agreements, to grant some privileges (in particular, retroactive protection for works which are covered by copyright and related rights) to Nationals of countries which are parties to these agreements. Substantially the same privileges will be accorded in Russian legislation to all WTO member countries after the Russian Federation has acceded to the WTO. In particular, negotiations on the terms of such accession should decide the issue of the date from which the reservation made during Russia's accession to the Berne Convention will not apply to the WTO member countries.

On the other hand, bilateral intergovernmental agreements on IPR protection have been signed and are being fulfilled with a number of CIS countries. Such agreements, for instance, have been concluded between the Russian Federation and the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzia, the Republic of Moldova, the Republic of Tadzhikistan, the Republic of Turkmenistan, the Republic of Uzbekistan, and Ukraine. Under these agreements, which entered into force before 1 January 1995, nationals and legal entities of the signatory countries are permitted, on the basis of reciprocity, to obtain and maintain patents without the use of patent agents as intermediaries. Applicants from those countries which have concluded international agreements with the Russian Federation on mutual settlements in Russian rubles pay patent fees in Russian rubles. After the accession of the Russian Federation to the WTO, the above

agreements will be notified to the Council for TRIPS in accordance with paragraph (d) of Article 4 of the TRIPS Agreement.

Question 45B

It appears from Russia's response to question 139 that the extension of protection for pre-1973 works to right-holders from certain countries, but not others, is inconsistent with non-discriminatory treatment.

What legislative changes are being contemplated to address this concern?

Answer

See answer 45 herein.

Question 46

Re. Question 143 (WT/ACC/RUS/9) Please provide more detailed information on how Russia plans to make provisional administrative border measures more effective.

With regard to border measures, how is Russia implementing Articles 51 to 60 of the TRIPS Agreement?

Answer

The only legal means of enforcing border measures against counterfeit goods at present is the adoption of provisional measures on the basis of a right holder's lawsuit filed together with a petition for remedies such as, for instance, the impounding of property under customs control.

Such petitions are considered by courts without the service of prior notice or summons to defendants.

This makes Russian legislation consistent, in particular, with Article 51 of the TRIPS Agreement. The establishment of an administrative procedure for this purpose is currently being considered in order to make these arrangements more effective.

Question 46A

The response to question 140 (WT/ACC/RUS/9) addresses the degree of protection of data on pharmaceutical or chemical products against unfair commercial use.

Do the Ministry of Health and Medical Industry, Rospatent, the Ministry of Justice or other State organizations, either independently or in cooperation with one another, take measures to deny (or revoke) registration of pharmaceutical preparations in cases when the applicant (or registrant) markets (or proposes to market) such preparations in violation of valid Russian patent rights already held by another producer? If so, please describe these procedures.

Answer

Since the registration of pharmaceuticals in Russia requires only their testing for effectiveness and safety, there is no legal connection between such registration and the entirely separate analysis of protection from infringement of patent rights.

Question 47

Re. Question 144 (WT/ACC/RUS/9). When will the Criminal Code of the Russian Federation become effective?

Up until the adoption and implementation of the new Criminal Code, how will Russia fill the gap between current criminal procedures and the new procedures?

Answer

The Criminal Code of the Russian Federation, which was adopted by the State Duma in 17 June 1996, will, in accordance with the established procedure, enter into force as of 1 January 1997. The provisions of the new Criminal Code which stipulate criminal liability for infringements of copyright and related rights, patent rights, and trademark rights provide for much stiffer penalties for such offenses, including substantial fines, corrective labour for up to two years, and imprisonment for up to 5 years.

Question 48

Re. Question 145 (WT/ACC/RUS/9) Could Russia clarify its response to Q145 (page 63) in light of its stated intention to join the WTO as a developed country? In particular, could Russia confirm that it does not intend to make use of any transitional period for implementation of TRIPS?

What kind of technical cooperation does Russia need to implement the TRIPS Agreement?

Answer

At present, we proceed from the assumption that Russia will need a transitional period in order to fulfil certain obligations stipulated in the TRIPS Agreement.

In our opinion, this issue should be discussed in greater detail during negotiations on the terms of Russia's accession to the WTO.

The technical cooperation needed to implement the TRIPS Agreement is currently under discussion with WTO Members.

Question 49

Re. Question 147 (WT/ACC/RUS/9) Since the Russian Federation realizes that the reservation cannot be applicable to WTO Member countries, does it intend to withdraw the reservation?

Answer

See Answer 45 herein.

Question 50

Re. Question 149, 189 and 190 (WT/ACC/RUS/9) Can we understand that Russia wishes to accede to the WTO as nation in the process of transition from a centrally planned economy into a market-free-enterprise economy?

Answer

See Answer 48 herein.

Question 51

Re. Question 151 (WT/ACC/RUS/9) Have any specific problems occurred regarding CIS countries in trying to protect IPR?

Answer

See Answer 45 herein.

Question 52

Re. Question 152 (WT/ACC/RUS/9) Does the Russian Federation intend to avail itself of Article 6 of the Berne Convention?

Answer

Russia currently has no specific plans to exercise of rights granted by Article 6 of the Berne Convention.

Question 52A

Are the fees mentioned in the response to question 155 the same for foreign and domestic applicants?

Answer

Since foreign applicants (except those from countries with which settlements are possible in rubles) and Russian applicants pay duties in different currencies, duty rates for foreign applicants are established separately.

Question 53

Re. Question 157 (WT/ACC/RUS/9) With regard to the protection of trademarks, if a consumer complains about a decision by the Russian authorities which approved a trademark, will the authorities reconsider the decision? What are the procedures for such reconsideration?

In the Article 11 of the Russian Patent Law of 1992, there is a provision that is not considered to be an infringement of exclusive rights of patent holders. Has this provision been amended? If not, is this provision within the scope of discretion provided for in Article 30 of the TRIPS Agreement?

Answer

In accordance with the Russian Federation Law On Trademarks, Service Marks, and Appellations of Origin (Articles 28 and 29), the registration of a trademark may be contested and invalidated on the basis of an application from any party, including a consumer, provided that legal grounds are in evidence for taking such a decision.

The provisions of Article 11 of the Russian Federation Patent Law, providing for exceptions from the list of actions which are deemed to be infringements of patentees' exclusive rights in accordance with this Law, have not been amended since 1992. In our opinion, they are fully consistent with Article 30 of the TRIPS Agreement, since none of them unreasonably conflicts with the normal exploitation of the patent or unreasonably prejudices the legitimate interests of patent owners.

Question 54

Re. Question 162 (WT/ACC/RUS/9) In relation to Q162 (page 67), how will the provisions of the TRIPS Agreement relating to the protection of well-known trademarks be applied in Russia? Does Russia intend to enact legislation relating to and defining well-known trademarks? If so, when will that legislation be enacted?

Answer

Upon the Russian Federation's accession to the WTO, the TRIPS Agreement will, in accordance with Russian legislation, become part of the Russian legal system, which will make it possible to provide broader protection for well-known trademarks.

Russia currently does not have any specific plans to adopt special legislation on the protection of well-known marks.

Question 55

Re. Question 164 (WT/ACC/RUS/9) Does the answer to Question 164 mean that the Russian Law No. 3520-1 fulfils all requirements of Article 23 TRIPS?

Answer

It is the view of the Russian delegation that Russian legislation (including the Laws On Trademarks, Service Marks, and Appellations of Origin, On the Protection of Consumers' Rights, and On Competition and the Limitation of Monopolistic Activities on Commodity Markets) is consistent with the requirements set forth in TRIPS Article 23 with due regard for exceptions stipulated in TRIPS Article 24.

Question 56

Re. Question 167 (WT/ACC/RUS/9) Will the application for a patent not be accepted before the translations of the documents are submitted? Or will a given acceptance be revoked if the required translations are not submitted within the 30-day period?

Answer

In accordance with the established procedure, for the materials of an application submitted to the Patent Office to be registered, they must include a petition for a Russian Federation patent in the Russian language. If such materials do not include translations of other documents into the Russian language, the applicant is notified of the need to provide such translations within two months after the materials' submission. Unless such translations are provided by the above deadline, the materials of the application are deemed not to have been filed and are returned to the applicant.

Question 57

Re. Question 170 (WT/ACC/RUS/9) If the provisions of the Russian Law No. 3517-1 on compulsory licensing are "generally" consistent with Article 31 TRIPS, does this include the requirement that the proposed user of a patent has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. (Article 31(b) TRIPS)?

Answer

The Patent Law of the Russian Federation provides for such procedure and conditions as do not, on the whole, contradict the requirements of TRIPS Article 31 for the granting of a compulsory non-exclusive licence to any person who is ready and willing to use a patented invention, whose offer to conclude a licensing agreement has been rejected by the patent owner and who has applied for such licence to the Higher Patent Chamber if it is proved that the respective patented invention has not been used for four years after granting a patent. A compulsory non-exclusive licence must be granted by the Higher Patent Chamber (which has still to be established) in the event of non-use or insufficient use of a patented asset and must define the limits of use, the amount of licence fees which may not be less than the market price of the licence, and the procedure and time frame for effecting such payments. A compulsory non-exclusive licence will be denied if the patent owner proves that his non-use has been due to valid reasons. In order to do away with the ambiguity of these provisions and make them more clearly consistent with the TRIPS Agreement, it is planned to make amendments to the existing Patent Law, in particular, to its clauses on compulsory licensing.

Question 58

Re. Question 171 (WT/ACC/RUS/9) When is the federal bill on trade secrecy expected to enter into force?

Answer

It is not possible to predict the date on which this draft law will be enacted by the Russian Parliament nor the date on which it will enter into force.

Question 59

Re. Question 180 (WT/ACC/RUS/9) Could Russia explain about the following:

- (a) To what degree is Russia examining the procedures for suspending the release of those goods whose importation will infringe IPR?**
- (b) What are the procedures to suspend the importation or exportation of goods which will infringe IPR?**
- (c) What are the procedures to file a complaint against action by customs officers?**
- (d) How do the Russian departments or agencies concerned cooperate with each other to suspend the release?**

Answer

- (a)(b) See Answer 46.

(c) Importers may challenge actions by customs officers either with higher customs agencies or in court by filing a claim.

(d) For the purposes of suspending the issuance of goods for free circulation, the Russian State Customs Committee closely cooperates, in accordance with interdepartmental documents, with the Interior Ministry of the Russian Federation, the State Tax Service of the Russian Federation, and the Russian Federation State Committee on Antimonopoly Policy and Support for New Economic Entities by conducting joint operations and exchanging information.

Question 60

Re. Question 181 (WT/ACC/RUS/9) In criminal procedures are remedies available that include seizure, forfeiture and the destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence (Article 61 TRIPS)?

Answer

Article 175 of the Code of Criminal Procedure of the Russian Federation provides for the seizure of property as well as for the destruction of property used in the commission of a crime or items prohibited for circulation, or alternatively for their transfer to appropriate institutions.

Question 61

Re. Question 392 (WT/ACC/RUS/7) In reply to this question, given also addressed in questions 145 and 60, Russia informed that “such amendments could be adopted upon the entry into force of the Russian Protocol of Accession to the WTO”. However, we feel that at least some provisions of the TRIPS Agreement have to be enforced at the moment of the accession at the latest. We ask further clarifications whether the Russian authorities will seek to invoke special provision of Article 65:3 of the TRIPS Agreement providing for the country in the process of transformation the possibility to delay application of the provisions of this Agreement other than Articles 3-5.

Answer

See Answer 48.

Question 62

What kind of system, national or international, of the exhaustion of intellectual property rights is the Russian Federation using, especially in terms of patents and trademarks?

Answer

While Russian legislation does not give a direct answer to this question, it does provide for the right to import goods as part of an exclusive right, it therefore appears to be a national system of exhaustion.

Question 63

Although such a requirement is not stipulated in the TRIPS Agreement, does the Russian Federation intend to introduce the institution of supplementary protection certificate for pharmaceutical products and agricultural chemical products which is becoming a common practice in Western Europe?

Answer

There are no plans currently in Russia to introduce supplementary protection certificates for pharmaceutical and agricultural chemical products.

Question 64

Please inform whether Russia anticipates to accede to those international conventions on intellectual property rights to which it is not a party yet. If so, to which ones? Particularly, does Russia intend to become a party to the Protocol to the Madrid Agreement on International Registration of Marks, Madrid 1989 and the International Convention on Protection of Artists, Performers, Producers of Phonograms and Radio and TV Broadcasters of 26 October 1961 (so called Rome Convention).

Answer

While the necessary documentation for Russia accession to the Protocol to the Madrid Agreement are currently being prepared, a final decision on this matter has yet to be taken.

The issue of Russia's accession to the Rome Convention is under active discussion.

Question 65

We require clarification in relation to Section 35 in Chapter VIII of the Patent Law, 1992. Does this section mean that a person cannot file for a patent, for example, under the Patent Cooperation Treaty, until three months after a patent application has been filed in Russia?

Answer

In accordance with Article 35 of the Patent Law, the patenting abroad of inventions, utility models, and industrial designs created in the Russian Federation may not be carried out earlier than three months after the filing of the respective application with the Russian Patent Office (Rospatent). Where necessary, for instance, in order to obtain a patent for an asset which is not patentable under Russian legislation, the Patent Office may authorize the patenting of such asset abroad earlier than stipulated by the Patent Law.

As far as applications according to the procedure stipulated by the Agreement on Patent Cooperation are concerned, they may be filed with Rospatent. If an application names Russia as one of the patenting countries, the prior filing of a national application is not required.

Question 66

Does the Russian Government intend to meet the enforcement provisions of the TRIPS Agreement? Does the Government have any plans for public education about the meaning and value of IPRS? Are additional resources to be allocated to the relevant agencies which are responsible for the enforcement of IPRS?

Answer

See Answer 47 herein.

Question 67

We understand that the Department for Protection Against Unfair Competition in the Russian Anti-Monopoly Committee is responsible for the investigation and prosecution of IPR breaches throughout Russia. Please explain the structure and mandate of this department. What other government bodies are responsible for the enforcement of IPRS in Russia?

Answer

In accordance with Article 10 of the Law of the RSFSR On competition and Restriction of Monopoly Activity on commodity Markets dated 22 March 1991, unfair competition is not permitted, including the sale of goods with the illegal use of the results of intellectual property assets, as well as the obtaining, use, or disclosure of scientific, technological, production and commercial information, including commercial secrets, without the consent of their owners.

According to Article 12 of the Law of the RSFSR On competition and Restriction of Monopoly Activity on commodity Markets dated 22 March 1991 the federal anti-monopoly authority is entitled to direct persons engaged in economic activity to cease violations of the anti-monopoly legislation and/or to eliminate the consequences of such violations, to restore affected persons to their original position, to void or modify agreements which conflict with the anti-monopoly legislation, to transfer to the federal treasury revenues received as a result of the violation of the anti-monopoly legislation, as well as to impose penalties on commercial and non-commercial organizations and to impose administrative sanctions on persons or entities which fail to comply with the directives of the State Anti-Monopoly Committee of Russia (SAMC).

A Directorate for control of unfair competition was created within the SAMC on 1 January 1996. The Directorate consists of the following sections:

- methodology;
- trade in goods;
- trade in services; and
- regulation of advertising practices.

The principal tasks of the Directorate are the suppression of unfair competition pursuant to Article 10 of Law of the RSFSR On competition and Restriction of Monopoly Activity on commodity Markets dated 22 March 1991, control of the observance of the legislation on advertising, the drafting of proposals aimed at the improvement of the anti-monopoly legislation on the said issues.

In line with the above, the Directorate carries out the following functions:

- conducts investigations, institutes proceedings, participates in the hearing of cases related to unfair competition, including those dealing with violations of exclusive rights within the terms of reference of the anti-monopoly authorities;
- drafts methodological materials related to the consideration of applications with regard to unfair competition, including violations of rights under the jurisdiction of the anti-monopoly authorities;
- reviews and comments on normative acts of the federal executive authorities, of the executive authorities of the regional governments of the Russian Federation and of local authorities with

regard to the prevention, limitation and suppression of unfair competition and the observance of exclusive rights within the jurisdiction of the anti-monopoly authorities; and

- ensures compliance of advertisements with requirements of the legislation, participates in the investigation of cases related to violations of the legislation on advertising.

Cases dealing with violations of the anti-monopoly legislation are initiated on the basis of a claim being filed with the Committee or on the initiative of the SAMC of Russia itself in accordance with the Order of the Chairman of the SAMC No. 53 of 12 May 1994. In cases of a violation, the Chairman of the Committee may establish a Commission for the consideration of the specific case. Having examined the case before it, the Commission will take a decisions and issue an instruction on the matter.

The SAMC, a federal executive body, considers cases related to violations of the anti-monopoly legislation in the framework of administrative justice. A decision or an instruction of the SAMC of Russia can be appealed in court or a court of arbitration fully or partially.

Territorial directorates of the SAMC of Russia also institute proceedings related to alleged violations of Article 10 (unfair competition) of the Law "On competition..." within the terms of reference granted to them by the Regulations on territorial directorates of the SAMC of Russia approved by the Order of the Chairman of the SAMC of Russia of 13 November 1995.

Rospatent, the Ministry of Justice, The State Customs Committee of Russia, the Ministry of Interior and other ministries and agencies also protect intellectual property under their terms of reference.

Question 68

We understand that improved enforcement measures are proposed in relation to fake and imitation products. Does Russia intend to extend these measures to cover trade marks?

Answer

In accordance with Russian Federation Law No. Z 20-1 On Trademarks, Service Marks, and Appellations of Origin, dated 23 September 1992, the right to intellectual property protection extends to trademarks.

Question 69

In document WT/ACC/RUS/7, at the top of page 27, it is stated in brackets that in courts of general jurisdiction, the rule for requests for provisional measures to be taken up on the day when they are received is often broken because judges are either absent or too busy dealing with other cases. Does this mean that, in fact, in these cases effective provisional measures do not exist?

Answer

Provisional measures exist (Article 133-140 of the RSFSR Code of Civil Procedure) and are applied if and when necessary.

Question 70

Is the Government taking steps to improve the judiciary's capacity to decide on cases involving intellectual property rights?

Answer

Yes. For example, the Government posts educational seminars for the Russian judiciary on the enforcement of intellectual property rights on a regular basis.

Based on Russia's good existing legal framework for the protection of intellectual property rights, we expect Russia to fully implement the TRIPS agreement upon accession.

It would be extremely difficult for the US to agree to a transition for any TRIPS obligation that is also covered by our bilateral trade agreement. Given the extensive overlap of commitments between our trade agreement and TRIPS we do not believe that there are many areas where transitions would be feasible.

We strongly urge Russia to use the time remaining in the accession process to bring its IPR regime into full conformity with the TRIPS obligations.

Question 71

Is there a particular agency that is responsible for reviewing the TRIPS Agreement's obligations to ensure that Russian law conforms? If not, how is coordination of the review being handled?

Answer

Coordination is carried out through the Interdepartmental Commission for the Enforcement of Intellectual Property Rights.

Question 72

Although the Berne Conventions came into force for the Russian Federation on 13 March 1995, Russia has not yet restored retroactive copyright protection, in accordance with Article 18 of the Berne Convention, for copyrighted works that have not received a full term of protection in Russia and are still protected in their country of origin.

Are there plans to correct this inconsistency and, if so, please describe them.

Answer

See Answer 45.

Question 73

Likewise, Russia has not provided protection for sound recordings created prior to the date on which the Geneva Phonograms Convention came into force for the Russian Federation, also 13 March 1995. The TRIPS Agreement applies the obligations under Article 18 of the Berne Convention to sound recordings, requiring the Russian Federation to protect all sound recordings created after 1945 if they are still protected in their country of origin and have not had a full term of protection in the Russian Federation.

- (a) What steps is Russia taking to address this aspect of its prospective TRIPS obligations?**
- (b) What plans are there to implement this provision?**

Answer

At present, existing legislation in the Russian Federation does not prevent the grant of retroactive protection for audio recordings, provided that this is stipulated by an international agreement.

Retroactive protection for audio recordings will be provided from a date to be determined in the course of negotiations on Russia's accession to the WTO.

Question 74

The protection for well-known marks under Article 7(1) of the Russian trademark law prohibiting registration of signs or indications that are identical or confusingly similar to trademarks of third parties does not protect the owners of certain well known marks from registration by unauthorized parties of confusingly similar marks and, in some instances, from having the well known mark cancelled.

We believe that this is inconsistent with Article 6bis of the Paris Convention for the Protection of Industrial Property which is incorporated by reference into the TRIPS Agreement in Article 2.1.

What plans does Russia have to strengthen the protection for well known marks?

Answer

See Answer 54 herein.

Question 75

On the patent side, Russia's patent law expressly excludes protection for plant varieties. The TRIPS Agreement requires that where such an exclusion exists, the country must provide an effective sui generis system for protecting plant varieties

We would be interested to learn if Russia intends to join the Convention for Protection of New Varieties of Plants, and if not, what form of alternative protection Russia will provide for plant varieties of foreign nationals consistent with the TRIPS Agreement.

Answer

Russian legislation on selection attainments provides for the protection of plant varieties.

In Russia, patent protection for selection attainments are understood to mean new plant varieties and animal breeds.

The Russian Federation Law No. 5605-1 On Selection Attainments dated 6 August 1993 (which has been made submitted to the WTO Secretariat) provides for the filing of applications for patents for selection attainments.

A patent for a selection attainment gives its holder the exclusive right to use the respective selection attainment on the territory of the Russian Federation, as well as the right of protection to the intellectual property in question.

If a breeder has obtained a new plant variety or animal breed as a result (in the course) of his employment, the applicant (patentee) is the employer who is liable to pay compensation to the author of such variety or breed throughout the validity period of the licence.

The Russian Federation Law On Selection Attainments is consistent with the provisions of the International Convention on the Protection of New Plant Varieties and has been examined and approved by a meeting of the International Union for the Protection of New Plant Varieties in Geneva.

Russia is currently considering filing an application for accession to the International Convention on the Protection of New Plant Varieties.

See also answer 21 in WT/ACC/RUS/9.

Question 76

The protection for undisclosed information under Article 139 of the Civil Code of the Russian Federation and under Article 10 on the Law on Competition and the Limitation of Monopolistic Activity in the Marketing of Goods does not appear to apply to third parties who might acquire such information and use it in situations in which they knew or should have known that the information was obtained or disclosed without the authorization of the owner of the information.

- (a) Are there any plans to enact legislation specifically to protect undisclosed information from such acquisition and use by third parties?**
- (b) How does Russia intend to bring its laws and practice up to TRIPS Agreement standards in this area?**

Answer

The Law of the RSFSR of 22 March 1991 On Competition and on the Limitation of Monopolistic Activities on Commodity Markets in the RSFSR also covers those cases where unfair competition manifests itself in actions by third parties who receive and use unpublished information

Question 77

Concerning enforcement of copyrights against piracy and trademarks against counterfeiting, it appears that Russia is not in conformity with TRIPS in several areas:

What plans are there to give Customs officials authorization to act to stop imports or piratical copies of copyrighted works and Phonograms and to stop imports of counterfeit trademarked goods?

Answer

See Answer 46.

Question 78

The fact the intellectual property cases can be brought in the general civil courts, if individuals are involved, or the arbitration courts, if juridical entities are involved could create a problem of interpretation of intellectual property laws in Russia since there is no court with authority to review decisions from both court systems and resolve differences of interpretation.

We understand that thought is being given to creating a court just for IPR cases. Is this the case? If so, we would be interested to learn the status of this effort and the time frame within which Russia contemplates its enactment in law.

Answer

The judicial system of the Russian Federation does not include any specialized courts for the protection of intellectual property rights nor is their establishment contemplated in the draft of the Federal Law On the Judicial System in the Russian Federation.

Question 79

Article 61 of the TRIPS Agreement requires that criminal penalties be available at least for cases of wilful trademark counterfeiting and copyright piracy. These penalties, including imprisonment and monetary fines, are to be sufficient to act as a deterrent. Currently, the penalties in Russia's Criminal Code are insufficient to deter the rampant piracy and counterfeiting taking place in the marketplace.

What steps is Russia willing to take to address this deficiency?

Answer

See Answer 47.

Question 80

We understand that a Presidential Decree was published a week ago that bolsters the role of the Ministry of Justice in overseeing the implementation of State policy where intellectual property is concerned.

- (a) Please describe the provisions of this decree with particular attention to their correspondence with the provisions of the TRIPS Agreement.**
- (b) What is the implementation of the role of the Ministry of Justice in overseeing the implementation of State policy where intellectual property is concerned.**
- (c) Please describe the provisions of this decree with particular attention to their correspondence with the provisions of the TRIPS Agreement.**
- (d) What is the implementation status of the decree?**
- (e) What are Russia's expectations in the IPR field for enactment of a new Criminal Code, and when?**

Answer

The President of the Russian Federation on 2 May 1996, issued a Decree On Measures to Develop Justice Agencies of the Russian Federation, which entrusted the Ministry of Justice with the implement of State policy on the protection of intellectual property. In accordance with this Decree, the Ministry is currently working out a Conceptual Plan for the Development of Justice Agencies and drafting the Federal Law On Justice Agencies, which will detail the role of the Ministry of Justice

in exercising supervision over the implementation of State policy with respect to the defence of intellectual property rights.

As far as the Criminal Code of the Russian Federation is concerned, it was, as has already been reported, adopted on 17 June 1996, and will enter into force on 1 January 1997. It contains a number of additional legal norms contributing to a better protection of copyright and a more effective fight against intellectual property piracy.

See also Answer 47.

Question 81

Under TRIPS Article 27, either a patent system or sui generis system must provide IP protection for plant varieties. The Russian system appears to be some kind of sui generis system, but the terminology is somewhat unclear. Could Russia provide more details in this area?

Answer

See Answer 75.

Question 82

TRIPS Article 27 relates to patentable subject matter. Does Russia's patent system provide that the following are patentable: genes (of known function); pharmaceuticals.

Answer

A pharmaceutical preparation or a gene may be patented in Russia. As a rule, they are patented as a substance.

Question 83

Article 30 of the Agreement permits some exceptions to patent rights. Does the Russian Federation provide for any such exceptions?

Answer

The Patent Law of the Russian Federation (Article 11) provides for certain exceptions from the patentee's exclusive rights which are consistent with Article 30 of the TRIPS Agreement. See also Answer 53.

Question 84

Article 31 permits some use of patents without authorization of the patent holder. The document states that a patent holder may require another patentee to enter into a licensing agreement with him, if he is unable to use his invention without infringing the other patentee's rights. What are the provisions and specific procedures?

Answer

This matter is currently dealt with in fairly general form by Article 10, paragraph 5 of the Russian Patent Law. The issue of amending this clause to specify the procedure and conditions for the enforcement of the respective provision is currently being discussed.

Question 85

Article 50 provides for provisional remedies. With reference to Q. 177, could Russia provide more details on provisional remedies, including ex parte remedies?

Answer

See Answer 46.

Question 86

What are the grounds to challenge a patent, once issued? Are they restricted to patent validity? May there be opposition on the grounds of morality or public interest?

Answer

In accordance with Article 29 of the Patent Law of the Russian Federation, a patent may be challenged in keeping with the procedure established in this Article and invalidated (in full or in part) on the following grounds:

- failure of the patented industrial property asset to meet the conditions of patentability (including correspondence to public interests and the principles of humanity and morality) established by the Patent Law (Articles 4(3) and 6(2));
- if the claims of a patented invention or utility model or the totality of the essential attributes of an industrial design includes features which were absent in the initial materials of the application; or
- if the patent wrongly names the author or patentee.