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Additional Questions and Replies

The Ministry of Commerce of the Kingdom of Saudi Arabia has submitted additional replies to questions raised after the first meeting of the Working Party held on 2-3 May 1996, with the request that they be circulated to the Members of the Working Party. The questions and replies are reproduced hereunder.

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

1. Economy

(b) Current economic situation

Q 1. Please provide national income accounts data for 1994 and fiscal data (actual revenue and expenditure) for 1995.

Reply

Saudi Arabian National Accounts Data for 1994: (preliminary estimates as percent of total in current prices)

By Sector of Origin	% GDP
Oil Sector	35.7
Non-oil Sector	64.3
of which	
Private Sector	38.1
Government Sector	26.2
Total	100.0
By Expenditure	% GDP
Gross Fixed Investment	22.2
Final Consumption	77.8
of which	
Private Sector	48.2
Government Sector	29.6
Total GDP	100.0

Note: Total GDP is SR 441.7 billions for 1994 and actual fiscal data for 1995 is not available at this time.

Q 2. Please update the response to question 43 regarding the portion of Saudi Arabia's governmental revenues supplied by import tariffs.

Reply

The most recent published data on Tariff revenues is 1993; import tariffs represent 6.5 per cent of government revenues.

Q 3. Please indicate the portion of government revenue not related to the production and export of petroleum accounted for by import tariffs.

Reply

The most recent published data is for 1993. For that year tariff revenues represented 26 per cent of non-oil government revenues.

2. Economic Policies

(a) Main directions

Q 4. In the response to question 20(c) (L/7645/Add.1), it is stated that, “One of the specific objectives of the Fifth Development Plan was to maximize the domestic transformation of domestically produced raw materials and intermediate products, particularly petroleum derivatives and petrochemicals”.

Annex 2A, Decree No. 142 of 19/11/1413(H), lists the Strategic Principles of the Sixth Development Plan. Among the “General Objectives and Strategic Bases” for the Plan, items 7 and 8 are, “To reduce dependence on the production and export of crude oil as the main source of national income; and to continue restructuring the Kingdom’s economy through continuing diversification of the economic base, particularly through laying more emphasis on industry and agriculture.”

In this regard, will Saudi Arabia state categorically that it will use measures consistent with the provisions of the WTO to implement these goals and objectives and its Development Plans?

Reply

Yes.

Q 5. Saudi Arabia notes in the responses to question 13 and 21 (L/7645/Add.1) that it is “in the preliminary stages of a programme to privatize productive organizations through the flotation of shares of those companies deemed to be ready for privatization”.

Annex 2A, Decree No. 142 of 19/11/1413 (H), lists the Strategic Principles of the Sixth Development Plan. In the second section, paragraph 2(d) states that one priority for the Plan is “Considering the feasibility of privatizing some Government business-oriented activities.” Paragraph 2 of the Third Basic Principle and paragraph 1(c) of the Eleventh Basic Principle contain similar references to the goal of increasing the role of the private sector in the Saudi Economy through privatization, through the issuance of shares.

What is the status of the privatization programme? What concrete steps have been taken to date in the direction of operationalizing the privatization objectives referred to in the responses to questions 13, 21, and 42? Please cite decrees, legislation, or other governmental proclamations that implement the privatization programme.

Reply

The sixth Development Plan calls for consideration of possibility of privatizing selected government owned facilities at the appropriate time provided that such privatization will be of real benefit to the national economy. The Plan provides for the gradual sale to the private sector of government shares in joint stock companies, following in-depth studies of each individual case, so that the social and economic costs and benefits can be properly evaluated and timing can be determined when appropriate conditions prevail. The programme of privatization is in its initial stages and the Ministerial committee has as yet taken no specific privatization decisions.

Q 6. Please list those firms, enterprises, institutions, and sectors being considered for the privatization process. Please indicate if these include those listed in question 21 of

L/7645/Add.1, i.e., the telephone/telegraph system, the national airline (SAUDIA) and Saudi Basic Industries (SABIC), Build-Operate-Transfer (BOT), and Export Credit.

Reply

In principle, entities to be considered for privatization will include Telecommunications, Saudia and SABIC. There is no national export credit agency to be privatized.

Q 7. Please describe the process by which enterprises are selected for privatization, including the Ministries involved, provisions for transparency and general participation, and other procedural aspects of the programme.

Reply

The process of selecting enterprises for privatization involves case by case consideration of the relevant factors by the Ministerial Committee.

Q 8. Please elaborate on how firms and enterprises selected will be valued and otherwise prepared for public purchase?

Reply

Market assessment will be taken into consideration when valuing shares of enterprises selected for privatization.

Q 9. Please describe how the public will be given access to this process and elaborate on the methods established or contemplated to carry out the privatization programme.

Reply

Extent of publicity given to decisions to privatize depend on circumstances surrounding particular sale.

Q 10. In addition to selling shares, are other methods of privatization contemplated?

Reply

Privatization may be achieved through tender, direct negotiated sale to a selected buyer, or sale of shares.

Q 11. Will foreign firms be permitted to participate in the privatization programme on an equal basis with Saudi citizens or establishments? What differences are contemplated?

Reply

Decisions on whether to include foreign firms in privatization projects are taken case-by-case and are based on factors such as technology needs and liquidity in Saudi equity market.

- (b) **Monetary and fiscal policies**
Taxation régime (Paragraph 45, L/7489)

Q 12. The corporate taxation system applies a different tax régime for non-Saudi businesses. As the Zakat is applied only to liquid assets and at a rate sharply below that applied to the income of non-Saudis, it would appear that non-Saudis bear a higher tax burden than Saudi citizens.

What portion of national tax revenues are accounted for by (a) the income tax on foreign entities and (b) the Zakat applied to the liquid assets of Saudi citizens?

Reply

We refer to our reply to question 5 in WT/ACC/SAU/6. The tax paid from Zakat is not comparable to income tax. The Zakat is paid from the time an asset is acquired and does not depend on economic performance, while the income tax is paid only after a time interval of up to 10 years and then is paid out of profits. The result may imply an advantage for either one, a company which is not profitable is still obligated for the Zakat but not for income tax. The larger the ratio of capital or assets to production, the larger the burden of the Zakat compared to income tax.

- (d) **Foreign and domestic investment policies**

Q 13. The Investment of Foreign Capital Regulation requires “foreign technical expertise” as a necessary condition of investment.

What constitutes foreign technical expertise? What form must this expertise take? This condition would appear to be a technology transfer requirement. What is the manner in which this expertise must be shared or transferred?

Reply

The condition of “foreign technical expertise” does not necessarily mean a technology transfer requirement. The “foreign technical expertise” term includes technical know-how and management know-how, depending on project/sector technical needs or requirements.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING TRADE
3. Division of Authority

Q 14. In The reply to question No. 44 (L/7645/Add.1) states that international agreements such are submitted to the Council of Ministers, then to the Consultative Council in the form of resolutions. Upon approval of the King, agreements are enacted.

Is this approval enacted through a Royal Decree?

Is this the procedure that Saudi Arabia intends to follow for approval of its accession to the WTO? Please describe how Saudi Arabia will consider and approve the accession package of protocol and market access schedules.

Do such approved resolutions have the force of law, and if so, to what extent to they overrule previous laws?

Reply

As for international agreements, when the Kingdom of Saudi Arabia signs an international agreement it is submitted to the Council of Ministers for the final approval to be signed by the Custodian of the Two Holy Mosques, The King, as the President of the Council of Ministers.

Article 70 of the Basic Rule of Law states that “laws, conventions, international agreements and privileges are issued and ratified by Royal Decree. It is clear from this article that conventions and international agreements are issued by Royal Decree after revision by both the Consultative Council and the council of ministers. Article 2 of the Ministers Council law affirms this by stating that “...laws, conventions, international agreements and privileges are issued by Royal Decrees after revision by the Ministers’ Council.”. This procedure is a compulsory method for all agreements and international conventions and that is the method which would be followed by Saudi Arabia for its accession to WTO. Conventions and international agreements which are ratified have the force of the law as national laws.

Article 71 of The Basic Rule of Law states that laws are published in the official gazette (Um Al-Qura) and are implemented from the date of publishing. This means that publishing is considered a must condition for the enforcement of the law and for the public knowledge. There are no exceptions to this rule.

4. Laws and Legal Acts

Q 15. Under the Commercial Agencies Regulations, in-country commercial agents must be registered with the Ministry of Commerce which is restricted to Saudi nationals.

What is the rationale for restricting this activity to Saudi nationals? Is Saudi Arabia considering on relaxing this trade barrier.

In what manner are domestic goods subject to similar restrictions for their domestic distribution?

Reply

The commercial agencies law does not make it mandatory for foreign suppliers to appoint commercial agents in Saudi Arabia. The Law only stipulates that if a supplier appoints a commercial agent, it should be a Saudi national.

The Commercial Agencies Law does not distinguish between imported products and products of national origin and there is no discrimination against imported goods. If domestic producers appoint commercial agents, the agents have to be Saudi nationals.

According to our understanding of GATT, there is no violation of Article III as there is no departure from the principle of national treatment.

The rationale for the system of commercial agents is already provided in reply 264 at page 95 of document L/7645/Add.1.

Q 16. Concerning the reply to question 265(L/7645/Add.1), we would appreciate more information on entities other than Saudi nationals and firms and commercial agents that can import goods.

Reply

All business enterprises which are officially licensed and registered to operate in Saudi Arabia may import goods.

Q 17. Please provide details and English translations of regulations requiring agent distributor arrangements for exports to Saudi Arabia (e.g., Saudi Commercial Agency Regulations).

Reply

Please see the English text of the Commercial Agencies Law that is already submitted to the WTO Secretariat, Annex 14 to document L/7645/Add.1.

Q 18. Are there any laws, regulations, decrees, decisions, Ministerial orders, or any other measures having similar effect concerning trade in goods and services that can become law without being published in the Um Al-Qura? If so, please list them.

Reply

No.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import regulations

(b) Characteristics of national tariff

Q 19. Approximately what portion of Saudi Arabia's goods imports are exempted from tariffs?

Reply

The percentage of the imports exempted from tariffs in 1994 amounted to 18.04 per cent as indicated in the revised memo (WT/ACC/SAU/4) para. 67.

Q 20. Concerning reply No. 60 (L/7645/Add.1), is there any domestic production of tobacco products? If so, please describe the industry, e.g., are manufacturers State-owned or privately held, what portion of domestic consumption is supplied by imports, are these products subject to the same charges as imports as listed in Article 63 of the Customs Regulations, etc.?

Reply

There is no domestic production of tobacco products.

Tariff preferences

Arab League

Q 21. Saudi Arabia notes in its response to question 74 (L/7645/Add.1) that all Arab League members grant and receive trade preferences from Saudi Arabia for products in a number of HS chapters, and that the preferences are confined to tariff relief.

Please provide a complete list from Saudi Arabia's tariff schedule of the tariff lines covered by the Arab League tariff preferences. Please list these items by tariff line item, not HS tariff chapter.

Reply

Article 6 of the Agreement on Facilitation and Development of Trade Exchange among the Arab League Members provided, as a preliminary phase toward establishing a duty-free Arab Market, that Arab products shall be exempted from customs duties and taxes and non-customs restrictions on imports to be gradually applied to:

- (a) agricultural and animal products in their primary form or after effecting changes to them to render them suitable for human consumption;
- (b) raw metallic and non-metallic materials in primary form or in appropriate form for processing;
- (c) semi-manufactured goods listed in the list approved by the Council to be incorporated in the production of industrial articles;
- (d) agreed manufactured goods.

List of the commodities included in Article 6.1 and 6.2 of the Agreement on facilitation and Development of Trade Exchange among Arab League Members:

I. Commodities covered under Article 6.1:

Agricultural and animal products in primary form or after effecting changes thereon to render them suitable for human consumption:

- 1. Chapter 1 (excluding heading 01.03, swine);
- 2. Chapter 2 (excluding heading 02.05, meat of swine);
- 3. Chapter 3;
- 4. Chapter 4 (heading 04.01-04.06);
- 5. Chapter 5;
- 6. Chapter 6;
- 7. Chapter 7;
- 8. Chapter 8 (headings 08.01-08.013);
- 9. Chapter 9 Coffee and husks, unroasted (heading 09.01);
- 10. Chapter 10;
- 11. Chapter 11 (headings 11.01, 11.07, 11.9);
- 12. Chapter 12;
- 13. Chapter 13 (heading 13.02);
- 14. Chapter 14;
- 15. Chapter 15 (heading 15.02 fats, raw; heading 15.07 raw vegetable oils).

II. Commodities covered under Article 6.2:

Mineral and non-mineral raw substances in primary form or in a form appropriate for processing:

- 1. Chapter 23 (headings 23.01-23.07 excluding prepared food for dogs, cats and ornamental fish and birds);

2. Chapter 25 salt (heading 25.01), crude sulphur (heading 25.03), graphite (heading 25.04), natural sands (heading 25.05), products of headings 25.06, 25.07, 25.08, 25.10, 25.11, 25.13, 25.14, 25.15 (raw marble, in blocks), 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22, 25.27, 25.28;
3. Chapter 26;
4. Chapter 27 (products of headings 27.01, 27.02, 27.03, 27.04);
5. Chapter 40 (products of headings 40.01, 40.04);
6. Chapter 41 (products of headings 41.01, 41.09);
7. Chapter 43 (products of heading 43.03);
8. Chapter 44 (products of headings 44.01, 44.02, 44.03, 44.04, 44.05, 44.12);
9. Chapter 45 (products of heading 45.01);
10. Chapter 47;
11. Chapter 50 (products of headings 50.01, 50.02, 50.03);
12. Chapter 53 (products of headings 53.01, 53.02, 53.04);
13. Chapter 54 (products of headings 54.01, 54.02);
14. Chapter 55 (products of headings 55.02, 55.03, 55.44);
15. Chapter 57 (products of headings 57.01, 57.02 (grape), 57.03 (jute));
16. Chapter 73 (products of headings 73.01-73.05);
17. Chapter 74 (products of headings 74.01, 74.02);
18. Chapter 75 (heading 75.01);
19. Chapter 76 (heading 76.01 "Aluminum, crude");
20. Chapter 77 (heading 77.01 "Magnesium, crude");
21. Chapter 78 (heading 78.01 "Lead, crude");
22. Chapter 79 (heading 79.01 "Zinc, crude");
23. Chapter 80 (heading 80.01 "Tin, crude");
24. Chapter 81 (crude products of the chapter).

Q 22. The response to question 74 (L/7645/Add.1) states that the preference excludes "manufactured and semi-manufactured products." Does it mean that no imports of manufactures or semi-manufactures are covered, other than those processed to make them "suitable for human consumption"? Is the tariff preference granted on these items a full exemption from the tariff, or something less?

Is the list of products covered by the preferences granted by Saudi Arabia applied by all Arab League members, i.e., mandated under the agreement, or are the specific preferences granted negotiated bilaterally?

Reply

The preferential treatment among the Arab countries under the Agreement on the Facilitation and Development of Trade Exchange (AFDTE) includes manufactured and semi-manufactured, but is subject to bilateral negotiations. Preferences take the form of full exemptions.

In addition to that, Article 3 of the "AFDTE" provides as follows: "...every member country has the right to grant further benefits and preferences to any Arab country(s) through bilateral or multilateral agreements."

Therefore, the bilateral agreements among the Arab countries are an extension to the "AFDTE" and the schedules annexed to those agreements include manufactured and semi-manufactured goods.

Q 23. Please indicate how these limited preferences meet the "substantially all trade" requirements in Article XXIV?

Reply

In Saudi Arabia's view, these preferences would be covered by the Enabling Clause.

Q 24. In addition to manufactures and semi-manufactures, are there any types or categories of products specifically excluded from inclusion in the preference system at the present time? For the tariff items included, are there any limitations on the scope of the preferential access offered, e.g., amount of trade or level of tariff preference?

Reply

There are no types or categories of products specifically excluded from the preference system. For the tariff items included, there are no limitations on the scope of preferential access by way of quantitative limits or level of tariff preference.

Q 25. Does Saudi Arabia maintain any tariff rate quotas on the preferential trade conducted with other Arab League members?

Reply

No.

Q 26. What concrete steps have been taken within the last five years to move towards the Arab Common Market contemplated by this preferential system, e.g., has the list of items covered been expanded, has a date been set for construction of a plan to move towards a free trade agreement as an interim step? Does a plan exist with specific time limits to establish the Arab Common Market?

Reply

During the last five years there has been no expansion of the list covered by the Arab Common Market, but there is a plan (without a specific time limit) to move towards a free trade agreement.

Q 27. What connection is there, institutionally or otherwise, between the GCC establishment of a free trade area and efforts to establish a common external tariff and the Arab League preferences?

Reply

There is no connection institutionally between the GCC free trade area and efforts to establish the Arab Common Market.

GCC Customs Union

Q 28. Please report on the steps taken during the last two years within the GCC to establish a common external tariff and elaborate on any timetables or schedules for achieving this?

Reply

Please refer to reply 184 of WT/ACC/SAU/6.

Q 29. Concerning reply No. 62 (L/7645/Add.1), it would greatly facilitate the work of the Working Party if Saudi Arabia could provide direct responses to the questions, rather than referring the Member to information in the Annexes.

Reply

According to the Customs Law, the following warehouse dues shall be collected (per kilogram gross or part of a kilogram, regardless of packing, wrapping or filling in method):

- 1 halalla for every day during the first month.
- 2 halallas per day during the second month.
- 4 halallas per day for third and following months.
- 50 per cent of the above shall be levied on transit goods.
- Containers and trolleys containing goods will be treated in the same way as those in transit, in respect of the period from the date of completion of unloading the goods until the re-export of the containers and trolleys, in as much as regards warehouse dues (charges).

Regarding portorage charges or dues:

- a package weighing 1 to 5 kgs will not be liable to pay portorage dues;
- a package weighing 5 to 25 kgs will be charged two piastres (10 halallas);
- a package weighing 25 to 50 kgs will be charged four piastres (20 halallas);
- a package weighing more than 50 kgs will be charged 8 piastres (40 halallas);
- a part of a kilo is considered a kilo.

Supervision charges:

Every operation which is requested to be carried out by an interested party and approved by the Customs Authority shall be chargeable to supervision dues for the account of the treasury as follows:

- special supervision of the opening of crates containing motor cars and readying them for operation with the Customs area: SR 4 per motor vehicle;
- change of containers, cladding sacks or other such goods incoming in bulk or in sacks with the Customs area: SR 4 per day or part;
- other operations, such as weighing inspection or otherwise: SR 2 per hour.

Upon written application filed by an interested party, the Customs authority will allow, in consideration of the charge hereinafter prescribed, approval of shipping or unshipping or both such operations or any other operations to be carried out outside the formal hours of work:

- ships which are moored at the draft of the shamadoura which work at night outside business hours will not be subject to levying overtime work;
- dhows and barges which are moored on quays for unshipping the cargo of a ship outside the business hours; charges will be levied with respect to all such craft which will be deemed to be one unit: SR 25 per hour per ship;
- ships per hour or part which load or unload or carry out both loading and unloading operations on quays: a charge of SR 30 per hour;
- ships carrying cattle and animals: SR 5 per ship per hour or art;

- for sail ships and other means of land and maritime transportation there is a charge for every one hour or part with respect to every sail ship Maritime means of transportation, motor vehicle or other means transportation, which has not been mentioned in any other place which carries out an operation of loading or unloading; or both such operations: a charge of SR 5;
- for providing ship with fuel and otherwise, there is a charge per one hour or part with respect to every ship being provided with liquid and other fuel. This consideration shall not be exacted if the operation of such provisioning is carried out during the shipping or unloading of goods with respect to which overtime charges of SR 15 have been extracted for every hour;
- SR 30 shall be levied in respect of the entire operation of shipping petroleum during other than the formal hours of business;
- the opening of stores per hour or part in consideration of opening every store for clearing or shipping goods on railway wagons or motor vehicles, inclusive of the opening of the door: SR 30;
- the opening of stores per hour or part in consideration of opening every store for completion of formalities of goods in respect of which no dues have been paid and for withdrawing them either on railway wagons or on motor vehicles: SR 30;
- the opening of stores per hour or part, for receiving the income or outgoing goods: SR 20 per store;
- opening the cashier's office for payment of dues after the prescribed time limit: SR 10;
- completion of formalities in respect to goods the dues of which have not been paid, inclusive of the withdrawal or export operation of the various kinds of vegetables, fruit, meat and such other perishable items, and animals: SR 30 per hour or part;
- embarking and disembarking of ship's passengers and effects before or after business hours: SR 50 per hour per ship;
- embarking and disembarking of passengers and their effects outside of official hours: SR 25 per sail boat or other maritime means of transport other than ships;
- inspection of goods exported from the depot of Aramco. Dhahran, after normal hours: SR 30 per employee;
- inspection of the company's goods in carriages destined to carry frozen goods, in the depots of the company in Dhahran, outside business hours: SR 20 per employee;
- disembarkation and travel of passengers from aircraft or the passing of and travel of passengers in motor vehicles and other land means of transport with their effects, outside business hours will be exempt from overtime charges;
- clearing of goods which arrive on aircraft or which are intended to be shipped on aircraft departing outside business hours: SR 30;
- ships, aircraft's, and other means of transport which move the pilgrims during the pilgrimage season shall be exempt from paying overtime charges.

(e) Quantitative import restrictions

Q 30. Please provide a comprehensive list of all charges, fees, tariffs, taxes, and other border charges on imports.

Reply

The only border charges are customs tariffs. The tariff levels are 0 per cent, 7 per cent, 12 per cent, 20 per cent, 50 per cent. As for fees and charges for services rendered, please see reply 29 above.

Q 31. In this regard, Article 57 of the Customs Regulations indicate that all imports pay a wharfage fee of 3 per cent of customs duties, with certain exemptions. Neither the wharfage fee nor the exemptions appear to be related to the cost of landing imports. The fee appears to be based on the value of the duties collected, not on any criteria related to import processing.

Is this correct? Is it also correct that wharfage fees are not collected on exports?

Are these fees used for any particular budgetary purpose related to customs processing or storage at the port of entry, or do the revenues go to general revenue?

If, as it appears, this fee is not consistent with the provisions of Article VIII of the GATT 1994 that require that it be related to the approximate cost of services rendered, how does Saudi Arabia amend its law to bring the fee into WTO conformity?

Reply

Article 57 of the Implementation Rules of the Customs Law (IRCL) has been cancelled. Now there is no wharfage fee.

Q 32. Articles 60 and 61 of the Customs Regulations indicate that a Municipal Fee of 6 per cent and a Special Contribution for al-Falah Schools of 1 per cent, respectively, of the total Customs duties is collected on all imported goods.

What are the purposes of these import fees?

Are they both applied to domestic goods as well? If so, at what point of sale? If not, will Saudi Arabia explain how they are consistent with the national treatment provisions of Article III of the GATT 1994?

Reply

These customs regulations were cancelled. Now there is no municipal fee and no special contributions for Al-Falah Schools, as mentioned in reply 27 of WT/ACC/SAU/6.

Q 33. Regarding the duties on licensing and certification for automobiles in Article 62, Is there any production or assembly of automobiles in the Kingdom?

Are these charges at all related to import tariffs on automobiles. Are they applied only to imports of new automobiles, or to used ones as well?

Are used automobiles resold within the Kingdom after importation subject to these fees when they are registered with their new owner?

Reply

There are no production or assembly plants for automobiles currently in the Kingdom, there do exist truck and bus assembly plants, however.

There are no charges related to the import of new or used automobiles except regular customs duty. Article 62 has been cancelled.

Non-Tariff Measures

Q 34. Saudi Arabia states in the response to questions 78 and 91 of L/7645/Add.1 that it maintains no non-tariff import restrictions. Information supplied by Saudi Arabia elsewhere in its documentation indicates, however, that non-tariff measures, including import bans, are in effect for a variety of products.

It is likely that some of these restrictions can be justified under specific WTO provisions, e.g., the import ban on alcoholic beverages and pork products on religious grounds. These items are listed in Annex 7D. We need, however, a more precise idea of the scope of other non-tariff import restrictions and requirements and the WTO provisions that cover them.

Please provide a comprehensive list of non-tariff measures not listed in Annex 7D, by HS line item, with a description of the specific measure in place, and indicating the specific WTO provision which permits the restriction/requirement. In this regard, please include on the list all items that require standards inspection, sanitary registration, or any other form of prior authorization or certification by the Government of Saudi Arabia prior to importation. (Note: the response to this question should be coordinated with additional information provided in an expanded submission of Annex 16, as requested below.)

Reply

Non-tariff measures can be divided into five groups as follows:

- there are the restrictions on dates (HS 08041010-08041090) and long-validity pasteurized milk in containers of more than one litre. There is no specific HS eight-digit number for this product, but it would fall into one of the line items HS 04011010-0429920. It should be noted, however, that there is no quantitative restriction on long-validity pasteurized liquid milk in containers of one litre or less, nor is there any restriction on imports of other types of milk, such as powdered milk. Imports of dates are banned except for squ'i dates which are permitted to be imported from 22 November to 21 June. Saudi Arabia would consider converting the quantitative restrictions on the two agricultural items, dates and liquid milk, into tariffs, in accordance with the principle of "tariffication";
- there are the specific items which are banned for reasons of health, security, and public morality which are presented in the Saudi Arabian harmonized code system at the eight-digit level. These are presented in the Annex on Non-tariff Requirements which includes prohibited and restricted or licensed goods;

- there are items that are prohibited due to the intended illegal use of the product, and which cannot be distinguished at the eight digit level alone. These include the following:
 - equipment intended to be used for distillation of liquors and substances solely used for liquor distillation. Such equipment and substances could be in any variety of eight-digit line items but primarily those in Chapters 39-40 (plastics/rubber), 44-46 (wood products), 70 (glass), 73-83 (metals), 84-85 (equipment), and 90 (instruments). The appropriate WTO justification is GATT 1994 Article XX(a);
 - publicity material for all kinds of cigarettes. Such equipment and substances could be in any variety of eight-digit line items but primarily those in Chapters 47-49 (paper products). The appropriate WTO justification is GATT 1994 Article XX(b);
 - night binoculars which enable vision in the dark and binoculars which take photographs in the dark. These would be included in HS 90051000 - 90059000. The appropriate WTO justification is GATT 1994 Article XXI;
 - tools and machines designed for gambling excluding those for innocent amusement. These would be included in Chapter 95. The appropriate WTO justification is GATT 1994 Article XX(a);
 - three-dimensional pictures which contradict Shariah and public morality imported for the purpose of sale in commercial quantities. These would also be included in Chapter 95. The appropriate WTO justification is GATT 1994 Article XX(a).
 - articles designed for floor covering or for clothing bearing the wording of Allah or Quranic verses or prophet's sayings. Such articles could be in any variety of eight-digit line items but primarily those in Chapters 50-63 (textiles and textile products), 64-67 (clothing accessories), and 68-70 (stone and glass products). The appropriate WTO justification is GATT 1994 Article XX(a);
 - crosses and commodities bearing the cross and any pictures, inscriptions, drawings, quotations, expressions, or publications of books and other printed matters, films and tapes violating the Islamic Shariah or Islamic morality or the printed matter regulation. Such articles could be in any variety of eight digit line items but primarily those in Chapters 47-49 (paper products). The appropriate WTO justification is GATT 1994 Article XX(a);
 - items that fail to meet the appropriate Saudi standards are excluded in accordance with GATT Article XX (b);

There are items subject to licensing covered elsewhere.

Q 35. In L/7489 and in response to question 86 in L/7645/Add.1, Saudi Arabia indicates that the import bans on dates and long-validity pasteurized milk can be justified under GATT 1994 Article XX(b) and (d). The explanation given in the response, however, would appear to indicate that the bans are provided for the sole purpose of protecting domestic production, inconsistent with WTO provisions.

Please demonstrate precisely how Article XX(b) and (d) apply.

Please describe the measures and methods Saudi Arabia intends to use to bring these measures and others of a similar nature into conformity with WTO provisions.

Reply

Please see reply 28 in WT/ACC/SAU/6.

Q 36. Article 7 of The Law for the Protection and Encouragement of National Industry (Annex 3A) requires that the Ministry of Trade and Industry make recommendations to protect local industry by, inter alia, “restricting or banning [of] foreign imports which are similar to the local production.” This provision does not seem entirely consistent with the response to question 145 in L/7645/Add.1 which states that the policy in this Law “is consistent with the GATT.”

Does the protection contemplated under Article 7 go beyond the concessions involved in market access negotiations (tariff and NTM)? If so, then how is this provision consistent with WTO obligations (e.g., imposition of import bans to protect local industry from import competition)?

Will Saudi Arabia alter the provisions of this law to ensure conformity with the provisions of the WTO?

Reply

The Law for the Protection and Encouragement of National Industry will be reviewed to ensure its consistency with WTO commitments of Saudi Arabia.

Q 37. Article 9 of The Law for the Protection and Encouragement of National Industry (Annex 3A) restricts the coverage of this Law from industrial firms that have “privileges and special conditions” except under certain circumstances.

Please explain the meaning of Article 9, and what are the “privileges and special conditions” referred to?

Reply

Industrial firms established under other laws are excluded from the coverage of Article 9 of the Law for the Protection and Encouragement of National Industry. Examples are firms operating in the petroleum and mining sectors. The “privileges and special conditions” referred to are those itemized in the above article.

(f) Import licensing procedures

Q 38. (Qu. 5, L/7489) Can Saudi Arabia provide a translated copy of Decree No.77 dated 28/1/1395 AH, and No.50 dated 17/3/1410, issued by the Council of Ministers?

Reply

The unofficial translation is as follows:

- (a) Decision No: 50 dated 17/3/1410 A.H.

The Council of Ministers decides:

First: The Ministry of Agriculture (Agricultural and Veterinary Quarantine Branch) is fully responsible for examining and then authorizing Customs to permit entry of those agricultural and animal shipments described below. The Branch has the authority to decide what certificates and other documents are to be provided with shipment, and to review, classify and accept those documents according to the Saudi standards.

Unless it coordinates in advance with the Ministry of Finance and National Economy, where there is no Saudi standard, the Ministry of Agriculture shall not impose any restrictions upon imported agricultural and animal products or shipments.

A) Animal products and shipments:

All kinds of live animals (all edible kinds) that are considered legally eatable.

All ferocious and undomesticated animals.

All kinds of live poultry and rabbits.

All kinds of decorative birds.

All kinds of decorative fish.

Hatching eggs.

Sperms.

Unprocessed leather, hair, and wool of animal origin.

Concentrates of animal feeds and vitamins (animal feeds concentrates would be tasted for hormone residuals).

Veterinary vaccine.

Veterinary medicine: shall not be permitted unless it is approved by the authorized committee at the Ministry of Health according to the Royal Decree No: M/18 dated 18/3/1398.

B) Agricultural shipments:

Organic and bitmus fertilizers.

Agricultural plants.

Decorative plants.

Bees packages.

Fresh fruit, vegetable and dates.

Grain and other materials that are used as feed for animals such as barley, corn, millet, soybean, etc.

Seeds and seedlings.

Agricultural pesticides and dry or liquid fertilizers.

The Ministry of Agriculture will undertake its functions after establishing laboratories with equipment needed to perform radiation examinations upon materials listed in (A, B) above and informs the Ministry of Commerce and the Ministry of Finance (represented by the Customs Department) of the starting date.

Second: The Ministry of Finance shall allocate funds to establish The Agricultural and Veterinary Quarantines Branch as soon as possible in order to enable The Ministry of Agriculture to carry out functions stated in this decision.

Third: As to other products or shipments not listed in provision (A & B), the authority of examination belongs to the Ministry of Commerce (Quality Control Laboratory).

With respect to all kinds of cold and frozen meat:

- meat shall not be imported from countries inflected with animal diseases according to Saudi standards.
- the Ministry of Agriculture shall inform the Ministry of Commerce of such countries and provide information and reports issued by international organizations specializing in such matters, for example, International Epidemic Office in Paris, World Health Organization, and Food and Agricultural Organization.
- the Ministry of Commerce shall thoroughly inspect meat in order to ensure that it is not infected with diseases communicable to humans and animals. The Ministry of Agriculture shall provide The Ministry of Commerce with a list of such diseases and countries in which they are present and from which Saudi Arabia import.

Fourth: As to nutrients treated with hormones, growth inducers, antibiotics, and any cancerous substances, the following measures shall be taken into consideration:

- all necessary support should be provided to the Ministry of Commerce and the Ministry of Agriculture to detect any traces of hormones and growth inducers.
- the Saudi Arabian Standards Organization shall include in Saudi standards necessary conditions to monitor these products to ensure that they are free from these substances and prepare Saudi standards to detect it.

Fifth: This regulation shall invalidate other regulations that contradict with it.

(b) Council of Minister's Decision No: 77 dated 28/1/1395 A. H.

This regulation supersedes decisions No. 85 dated 20/10/1373 A. H. and decision No. 85 dated 23/7/1374 A.H., and replace them with the following regulation:

Article-1 It is not allowed to import Agricultural machines including water pumps or their engines which are used in agriculture unless they are of the kinds authorized by the Minister of Agriculture. The Ministry of Agriculture shall review requests for import licences within a month of submitting the date of request.

Article-2 The following is considered a merchant: producer of the agriculture machine, its importer, their representatives, and any individual considers selling the machine for profit on his own or another's account.

Article-3 Any attachments to the agricultural machine mentioned in the factory invoice shall be considered part of the machine and the price shall be inclusive even if the sale contract does not so indicate. Additionally, any agreement in the contrary of that shall be held invalid.

Article-4 All persons mentioned in Article No. 2 shall be held responsible in providing all spare parts needed to repair the machines. The purchaser has the right of recourse against any one of them for damages caused by non availability of spare parts. The Minister of Agriculture outlines the quantity (or proportion) of spare parts that should be imported with the machine or the quantity of such parts that should be always available in the market.

Article-5 Both the importer of the machine and his agent in the area nearest where the machine is located shall be held responsible for providing maintenance regardless whether the machine was bought from them or not. The Minister of Agriculture should issue a decision to implement this article.

Article-6 The direct seller is under the obligation to install the machine for the purchaser and run it for at least 20 hours continuously to ensure its performance, in return for 5 per cent of the machine price. The purchaser has to pay for any installation materials and he has the right to exempt, in writing, the direct seller from any obligations from the installation.

Article-7 Any manufacturing defect or defect due to the installation or after receiving the machine by the purchaser, is the responsibility of the seller and he has to repair it free of charge or replace the machine, or return its price, if repair or replacement is not possible. This purchaser's right will be abated unless he reports the defect within 15 days to both the dealer and the Ministry of Agriculture (nearest office) and the Ministry of Agriculture has the authority to redress, investigate and settle cases related to these matters.

Article-8 In addition to a maximum profit of 20 per cent of c.i.f. of the machine price, the dealer has the right to charge the purchaser for delivering and handling. The expenses for delivering and handling shall be determined by a committee consisting of the Ministry of Agriculture, Ministry of Finance and National Economy and Ministry of Commerce. Ministry of Agriculture supervises and ensures this process. As to the spare parts, the dealer is entitled to a maximum profit of 25 per cent of the parts price. All document related to origin price of the machine, its spare part, and other expenses mentioned previously shall be under the supervision and the approval of the Ministry of Agriculture.

Article-9 Taking into consideration other valid laws, if the dealer raises the price of either the machine or its spare parts contrary to Article No. 8, he shall be compelled by the Minister of Agriculture and Water, or his agent, to return the difference to the purchaser. In addition, the dealer is levied a fine that equals twice the difference which shall be considered as a governmental revenue. In the case of repetition, the Minister of Agriculture has the right to ban the dealer from trading in agricultural machines and their spare parts. This ban shall not exempt the dealer of any obligation toward the purchaser of the machine or the spare parts sold previously.

Article-10 The Ministry of Agriculture has the absolute and direct supervision over stores in which agricultural machines are sold or fixed. In addition, it has the right to issue regulations related to organizing the work in these stores.

Article-11 This decision shall invalidate any other previous decisions that contradict with it.

Article-12 The Ministry of Agriculture shall implement this decision, and this decision shall be effective from the date of its publication in the official gazette.

Q 39. We seek an expanded submission from Saudi Arabia addressing the additional products listed at the end of Annex 16 and, to the extent applicable, the issues raised by these questions. In expanding on the information on Saudi Arabia's licensing system provided in Annex 16, response to the questionnaire on import licensing procedures, G/LIC/2, please address the following:

For each licensing purpose, e.g., seeds and the other products listed at the end of the Annex, list all products by HS tariff line number in Saudi Arabia's import schedule (or category or sub-category if all lines are included, that are subject to any form of import licensing, permit, or authorization.

Reply

Please see reply 34 above.

Q 40. Please include an quantitative restrictions maintained through licensing requirements on any product. For all such products, please list the products and the level of import permitted or the nature of the discretionary limitation, e.g., when domestic production has been fully consumed.

Reply

There are no quantitative restrictions on imports into the Kingdom, maintained through licensing requirements.

Q 41. Please list separately any licences granted on an automatic basis, the criteria used to grant the licence, and the reasons for the measure.

Reply

There is no automatic licensing.

Q 42. Please describe in some detail the approval process required for licensed imports, including seeds, food products, livestock, books, periodicals, movies, chemicals, pharmaceuticals, etc.

Reply

Different ministries and agencies dealing with different subjects have different procedures for approval.

Q 43. Please provide information on the time limits involved (a) to apply for a licence prior to export; (b) to receive approval; and (c) to receive the licence.

Reply

There is no export licensing system in Saudi Arabia.

Q 44. Please indicate the criteria used by the relevant Ministry or institution to grant the licence for each category listed. Are these criteria published and available to traders?

Reply

Different ministries and agencies dealing with different subjects have different criteria.

Q 45. Please supply WTO justification for each form of non-automatic licensing.

Reply

Please see reply 31 of document WT/ACC/SAU/6, and Annex 16 to document L/7645/Add.1.

Q 46. For example, Saudi Arabia indicates in Annex 16 that the purpose of its licensing for seeds is to ensure the quality of imported seeds and ensure that the “quantity must be proportionate to the quantity required for cultivation”.

This rationale appears to effectively restrict the quantity of imported seeds. Yet Saudi Arabia indicates that the quantities of imported products are not restricted by its licensing requirements. Please explain the apparent inconsistency.

How is it determined that the quantity of seed imports is proportionate to the quantity required for cultivation, who makes this decision, and how are quantities above this level restricted?

Reply

There is no restriction in the quantity of imported seed, but to ensure the quality of imported seed and to meet the grain requirement.

Q 47. With reference to the response to question 77 (L/7645/Add.1), Saudi Arabia notes that certain goods require an examination by government ministries.

Please provide a more detailed description of the process and legal and regulatory framework for obtaining import authorizations or import licences for chemicals, pharmaceutical products, films, livestock, and books and periodicals.

Please explain the reason for the review of these items. What constitutes an “examination”. Is this examination procedure different from the procedures used for obtaining import licence approval? Are there published procedures for these examinations?

Reply

Different ministries and agencies dealing with different subjects have different examination procedures for approval.

(h) Customs valuation

Q 48. The documentation presented appears to indicate that Saudi customs valuation procedures are not fully in line with the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement).

It is essential that Saudi Arabia submit comprehensive information to the Working Party on its customs valuation practices. The information requested in section B.2 of G/VAL/5 includes notification under Article 22 of the Agreement and the Checklist of Issues annexed to the document. We seek Saudi Arabia’s response to these questions prior to the next meeting of the Working Party.

Reply

Saudi Arabia’s existing laws, regulations and procedures on customs valuation are not in full conformity with the provisions of the Agreement on Customs Valuation. These will be brought into conformity at the appropriate time after the Kingdom becomes a WTO member. Please see Annex 4

(Information on Implementation and Administration of Customs Valuation Agreement) to document WT/ACC/SAU/4.

Q 49. How are the minimum prices for cars and yeast determined? Please explain with reference to specific WTO provisions how these minimum prices are consistent with, e.g., the Valuation Agreement.

Reply

There are no minimum prices for vehicles.

As to yeast, the customs authority has set a f.o.b. value (SR 10 per kilo) for the calculation of customs duties. In Saudi Arabia's view, this is justified with reference to para. 2 of Annex III to the Customs Valuation Agreement.

Q 50. Does Saudi Arabia intend to eliminate this practice, as it has for other products? If so, please indicate within what time period.

Reply

Please see reply 44 of WT/ACC/SAU/6.

(I) Rules of origin (paragraph 54, L/7489)

Q 51. Article 5 (c) of the Saudi Arabia-Jordan bilateral agreement and Article 4 of the Saudi Arabia-Tunisia bilateral agreement state that certificates of origin "should be issued by a responsible authority in the exporting country."

Please explain, along with examples, what is a considered to be "responsible authority."

Reply

The responsible authority would be the relevant Ministry or Department of the exporting country or the Chamber of Commerce and Industry in the exporting country.

Q 52. Annex II.3 (d) of the WTO Agreement on Rule of Origin requires that Members are to ensure that exporters, importers, or any person with justifiable cause will be provided upon request assessments of preferential origin as soon as possible but no later than 150 days after a request for such an assessment is made. A similar requirement exists in Article 2(h) of the WTO Agreement for rules of origin applicable to non-preferential trade régimes.

Please describe in detail the process by which Saudi Arabia provides such assessments in compliance with the WTO Agreement on Rules of Origin.

Please describe how such assessments are publicly available, as also required under Article 2(h) of the WTO Agreement.

Reply

These procedures are not available at present. The Kingdom of Saudi Arabia would fulfil its obligations under these provisions upon joining the WTO.

Q 53. In response to Q 104, it is stated that “as the Kingdom extends MFN treatment to all imports, there are no specific rules of origin for MFN trade.” However, in response to Q 102, it is stated that “Saudi Arabia requires that goods sold or otherwise placed in commerce in Saudi Arabia be marked with respect to country of origin.” According to Article I.2 of the WTO Agreement on Rules of Origin, non-preferential rules of origin includes those rules used for origin marking requirements. In this regard, Saudi Arabia does enforce rules of origin for MFN trade.

What rules of origin are used by Saudi Arabia to determine if a good is marked with the correct country of origin? Are the rules applicable to imported goods different from those used for determining if goods placed in commerce can be marked with “Saudi Arabia”?

Reply

There are no rules of origin for origin marking requirements. An origin certificate issued by a responsible agency of the exporting country is accepted.

Q 54. In response 104, it is stated that in all cases “the method for determining the origin of the good is examination of the certificate of origin.”

If so, how does Saudi Arabia ensure compliance with Article 2 (d) of the WTO Agreement on Rules of Origin, which states that rules of origin applied to imports and exports are not more stringent than the rules of origin applied for determining whether a good is domestic?

If so, there are no rules of origin applicable to MFN trade other than review of a certificate of origin, how does Saudi Arabia ensure compliance with Article 2 (e) of the WTO Agreement, which requires that rules of origin are administered in a uniform manner, such as in a situation whereby countries are issuing certificates of origin using different standards?

Reply

The Kingdom of Saudi Arabia would review its rules of origin to ensure consistency with the Agreement on Rules of Origin.

Q 55. Please describe in detail the procedures that provide prompt independent review of administrative actions taken by Saudi Arabia in relation to determinations of origin, as required under Annex II.3 (f) and Article 2(j) of the WTO Agreement on Rules of Origin

Reply

The first avenue for seeking review is to approach a special committee of the Customs Department. The Committee, consisting of experts, would review the administrative action. If the importer is not satisfied with the decision of the Committee, he can go in appeal to the Board of Grievances.

2. Export Regulation
(f) Export financing, subsidy and promotion policies

Q 56. Saudi Arabia notes that it prevents the export of goods benefiting from domestic subsidies.

Please indicate specifically what products have exports restricted in this manner. How are such products restricted? What products are prohibited from export? What products require governmental approval or special permit for export?

How is this statement that the government prevents the export of subsidized products consistent with the government's export of subsidized grain through GSFMO?

Reply

The Saudi Arabian government exercises some restrictions on exports to prevent goods that are benefiting from domestic subsidies from leaving the Kingdom, thereby protecting the National Treasury. Prohibited exports include female livestock, baby formula, medicines, and animal fodder.

Firms that export goods which have received a subsidy must obtain in a certificate from the Ministry of Finance confirming that they have repaid the amount of the subsidy contained in their exports.

Q 57. Please confirm that all the incentives discussed in this section are generally available and that none is contingent upon export.

Reply

We confirm that all incentives discussed under Section 2(f) are generally available and that none is contingent upon export.

Q 58. Are any of the supports and privileges granted under the Law for the Protection and Encouragement of National Industry restricted to specific industries or sectors of the economy?

Reply

No, all supports and privileges granted under the Law for the Protection and Encouragement of National Industry are generally available for all sectors of the industry.

Q 59. Article 5 of the Law for the Protection and Encouragement of National Industry states that raw materials, semi-manufactures, and packaging imported by eligible firms may be exempted from customs duties if "unavailable in the Kingdom in sufficient quantities." This would appear to mean that firms wishing to use the benefits provided must first seek and use local materials.

How is Article 5 administered? What is the role of the Ministry of Trade and Industry and the Industrial Technical Office in enforcing this provision?

Reply

The purpose of Article 5 is to provide for suspension of import duties on industrial inputs in circumstances in which there is an inadequate supply of domestically produced inputs. It is understood that this is a common international practice and does not conflict with the Subsidies Agreement or any other WTO instrument.

3. Internal Policies Affecting Foreign Trade in Goods**(a) Industrial policies**

Q 60. Please supply export statistics for Saudi Arabia's international sales of (a) petroleum, (b) refined petroleum and (c) downstream petrochemical products, by HS line-item, by country of destination for the last 5 years.

Reply

Below is the latest available statistics:

	N. America	S. America	W. Europe	Middle East	Africa	Asia & Far East	Oceania	Bunkers
1991								
crude	663,885	72,351	623,095	78,796	61,446	861,780	20,752	
product	36,374	8,021	67,822	46,390	16,077	255,133	15,716	2,701
1992								
crude	614,844	67,668	636,236	78,195	35,484	958,196	18,357	
product	46,015	18,206	65,048	44,077	18,919	264,538	13,473	2,610
1993								
crude	487,753	61,507	628,368	74,686	33,962	986,397	24,246	
product	47,540	45,516	76,277	60,142	17,369	246,875	12,070	10,257
1994								
crude	521,408	60,356	601,769	81,518	35,153	957,365	17,695	
product	36,645	35,100	64,223	56,634	18,415	281,418	3,960	1,785
1995								
crude	504,017	53,300	598,370	80,540	34,967	1,006,308	18,631	
product	24,105	17,294	33,537	53,186	14,877	323,922	15,461	

* Note: Oil product includes LPG/LNG.

Q 61. Please supply additional information on current and proposed programmes designed to stimulate exports of downstream petrochemical products.

Reply

There are no specific current or proposed plans to stimulate exports of downstream petrochemical products.

Q 62. Please indicate the level of refined and petrochemical capacity proposed in the Sixth Development Plan.

Reply

There are no specific capacity targets in the Plan.

Q 63. Please provide information on the level of productive capacity that has actually been approved, built, or is in the process of approval or construction.

Reply

Actual crude petroleum capacity in Saudi Arabia stands at 10.00 mbd and refined capacity is at 1.7 mbd, at the end of 1995.

Q 64. What specific means of support (subsidies, dual energy pricing, etc.) have been approved/sanctioned for actual projects involving the creation of production capacity for refined petroleum and petrochemical products.

Reply

There are no particular means of support available to refined products whether in terms of subsidies or dual pricing.

Q 65. Response 144(b) (L/7645/Add.1) indicates that “feed stock pricing, particularly propane, butane, and naphtha is based on international prices with necessary adjustments for domestic users”.

Please explain the policy rationale for this system of price discrimination. Please elaborate on the users of these lower-price feedstocks. Are these feedstocks available to all domestic industries and sectors?

Reply

Kindly see paragraph 5 of the statement by Deputy Minister of Petroleum and Mineral Resources at the first Working Party contained in page 4 of WT/ACC/SAU/3.

Q 66. Reply 144(b) (L/7645/Add.1) also states that “foreign partners have access to feed stocks and energy resources as well as other facilities and advantages.”

Do foreign partners operating in Saudi Arabia have access to feed stocks at the same prices as “domestic users”?

Reply

Yes, foreign partners operating in Saudi Arabia have access to feedstock at the same prices as “domestic users”.

(b) Technical regulations and standards (paragraphs 57-59, L/7489)

Q 67. Saudi Arabia notes that SASO develops standards that take -into account the “harsh environment” of the nation. We would appreciate a more detailed description of Saudi standards systems.

Is compliance with SASO standards voluntary or mandatory? Which Ministries (other than the Ministry of Health) have authority to regulate products; or is the protection of human, animal and plant life and health, and the environment exclusively the responsibility of SASO and the Ministry of Health?

Reply

In regards to compliance, some of SASO's standards are voluntary and others are mandatory. The Ministry of Finance (Customs), Ministry of Commerce, Ministry of Municipality, and Ministry of Agriculture & Water Resources are involved in enforcement as are the Ministry of Health and SASO.

Q 68. How do the standards for safety and suitability that Saudi Arabia has implemented for autos and auto parts reflect the environmental conditions?.

Reply

Reflecting Saudi Arabia's harsh desert climate, exhaust emission standards, radiator standards, cooling efficiency standards, and other test methods for autos and auto have been established at appropriate high levels, e.g., with respect to evaporative emission standards and requirement for large size radiators. For this reason some Saudi standards differ from international standards.

Q 69. We note that in many cases, Saudi Arabia has adopted standards which differ from existing international standards, and continues to develop new national standards.

To what extent does Saudi Arabia use international standards? Is it a matter of policy or practice for SASO and other Ministries (e.g., Health) to routinely identify and consider international standards when developing new, or changes to, standards and technical regulations?

Reply

Saudi Arabia's SASO makes use of international standards very extensively. Some international standards are adopted as they are without any modification. Some of them are used as main references and some are not used if found unsuitable for Saudi environment due to the special requirements such as religion, climate, culture, etc.

Q 70. How does Saudi Arabia determine that international standards are insufficient to meet Saudi needs?

Reply

Please see reply 69 above.

Q 71. Are domestic goods subject to the same standards and inspection procedures?

Reply

Domestic goods are subject to the same standards and domestic inspection procedures as imports. Preshipment inspection applies to imports regulated by the ICCP.

Q 72. Replies 108 and 112 (L/7645/Add.1) indicate that SASO standards are circulated in draft to other standards organizations (presumably ISO/IEC member bodies) for comment prior to finalization.

Are SASO standards published in draft? Where? Are technical regulations proposed by the Ministry of Health or other Ministries also published in draft for comment by interested parties in the world market? (Reply 112 indicates information on regulations

can be found in Um Al-Qura, but it is not clear if this information includes that on draft technical regulations, or changes to existing ones).

Reply

For standards developed by SASO staff, there are two drafts (first draft and second draft). The first draft is circulated internally and internationally to concerned parties. In the Kingdom, they are circulated to embassies, manufacturers, importers, government bodies for comments within three months. The second draft is circulated for comments within one month. When accepted, suggestion received are incorporated in the final standard.

For standards developed by a technical committee, which include private sector experts, one draft is circulated for comment.

Q 73. Saudi Arabia requires inspection and prior approval for a variety of products.

Are the Saudi conformity assessment procedures based on international standards? If so, which ones?

Are certification and other conformity assessment procedures published in draft form and an opportunity for comment by interested parties (whether based in the Kingdom or not) and publicly available in advance of their implementation?

Reply

The Saudi conformity assessment procedures are mostly based on the internationally recognized ISO/IEC Guides and other ISO guidelines. The Saudi ISO 9000 series of standards, the procedures too, therefore, are based on the requirements of these standards.

Yes, certification and conformity assessment procedures are published in draft form and an opportunity is given to all concerned to submit comments, which are duly taken into account before finalizing and implementing the procedures. These are publicly available in advance of their implementation.

Q 74. To what extent does Saudi Arabia recognize certification, testing, inspection or other conformity assessment procedures performed by entities located in other countries? How is this done?

Reply

Saudi Arabia recognizes many international quality 'marks' on imported products when such marks are approved by the recognized foreign authority. Products bearing such marks enjoy a reduced level of testing that may be required under the Saudi standards.

SASO accreditation requirements are based on ISO regulations and guides such as ISO Guide 25. Recognition of testing laboratories and their certification is based either on SASO's own assessment or accreditation by recognized body with which SASO has a bilateral mutual recognition agreement.

Q 75. Reply no. 40 states that the "Saudi Meteorology and Environmental Protection Administration has used some general standards" in discouraging import of "highly polluting capital equipment" and encouraging "imports of non-polluting equipment."

Is this system administered through import licensing? If so, please include information on this point in the revised Annex 16.

Please specify the criteria applied to imports to meet the objective, if these criteria are published and available to traders and how similar norms are enforced on sale of domestic goods.

Reply

Answer will be provided later.

Q 76. Concerning reply 108(L/7645/Add.1): Saudi Arabia states that it is its practice to distribute draft standards to all interested countries prior to finalization.

By what procedure would a country receive the documentation? Is there a set time-frame between the opening of the comment period and issuance of the final standard?

If a comment is rejected, what is the process of notifying a country of that rejection? Is it policy or practice to respond in writing to comments received, or to publish a response to them with the final rule?

Reply

For procedure, please see reply 72 above.

Accepted suggestions are incorporated in the final standard. There is no formal procedure for advising countries when suggestions are rejected.

Q 77. Concerning reply 111 (L/7645/Add.1): The U.S. would appreciate clarification as to which agencies within the Government of Saudi Arabia have standards and certification regulatory responsibility for both imported and domestic goods, including but not limited to agricultural products. What is the authority and function of each regulating agency?

Reply

In addition to SASO and MOC, the Ministry of Municipality is responsible for regulating perishable foods in the market and the Ministry of Health is responsible for regulating drugs and medical devices, etc. and follows up in the market. The Ministry of Finance (Customs) enforces standards compliance at the border.

Q 78. Concerning reply 112 (L/7645/Add.1): By what procedure and how often does Saudi Arabia disseminate updates on the list of standards and certification procedures? Is this a comprehensive listing of current standards and conformity assessment procedures, which supplements publication of individual proposals and notices of final rules?

Reply

The SASO Information Centre prepares a comprehensive listing of approved standards (SASO Standards Catalogue) and distributes it to all ISO members and to any interested parties periodically depending on the need and the amendments.

Q 79. In reply 113 (L/7645/Add.1), Saudi Arabia states that should there be a problem with an existing standard, there is a process by which to appeal the standard.

Please explain the process by which a trading partner requests a revision/amendment to an existing standard?

Reply

The process by which a trading partner may request a revision or amendment to an existing standard starts by the trading partner sending a request accompanied by comments, latest evidences, references, etc. to SASO's General Directorate of Standards or to the Ministry of Commerce for review. After internal examination and where appropriate consultation with other interested parties, SASO approves any modification to a standard.

Q 80. What is the mechanism for dispute settlement relating to standards in Saudi Arabia? How is it determined which regulatory agency is in charge of the dispute settlement process? What is the time-frame for the resolution of disputes?

Reply

Appeals against particular conformity assessments may be raised either with SASO or the Ministry of Commerce. Appellants should write giving the fullest details, reasoning, etc. An appropriate technical committee within SASO will review the appeal and ensure that an appropriate response is communicated to the party that appealed within a reasonable time frame depending upon complexity of the appeal.

Q 81 Concerning reply 116(b) (L/7645/Add.1): We note that Saudi Arabia's shelf-life standards for some processed food products (e.g., eggs, baby food) are for shorter time periods than adopted in international standards.

- (a) What is the scientific basis for these shorter Saudi shelf-life standards? How does Saudi Arabia determine that an international standard is not sufficient to ensure an adequate level of protection?**
- (b) Please provide detailed information regarding how the shelf-life of food products is evaluated by the Saudi Government, in particular baby food, processed cheese, and canned fruits and vegetables.**
- (c) Have scientifically-based shelf-life studies been conducted that support the shelf-life standards SASO has established? If so, can copies be made available to the Working Party?**

Reply

(a & b) The scientific basis for shorter of Saudi shelf-life standard depends upon the following:

- climatic conditions in the Kingdom;
- storage, handling, and transportation conditions;
- type of packaging;
- composition of the product;
- methods of preservation used, if any;
- scientific data on the subject, including international standards and comments of food and health authorities in Saudi Arabia.

(c) Scientifically-based shelf-life studies have been conducted that support the shelf-life SASO standards such as:

- product - life of Domestic and Imported Chilled Shipments in Saudi Arabia;
- shelf-life of Labna.

Yes, copies are available from SASO.

Q 82. Please explain the process by which SASO revises its shelf-life standards.

Reply

SASO revises its shelf-life standards by receiving new technical comments and in light of any problems arising during implementation. All comments received are reviewed by a technical committee in addition to some research or studies carried out on the subject.

Q 83. In its evaluations establishing shelf-life standards, how does the SASO take into consideration changes in technology, packaging, etc., which could impact the selling life of a product?

Reply

By updating the technical information and carrying out research work.

International Conformity Certification Programme (ICCP)

Q 84. We understand that the implementing regulations for the International Conformity Certification Programme (ICCP), which requires pre-shipment inspection of many of Saudi Arabia's imports, are currently under review, and have undergone at least seven revisions to date. Based on available information, we have a number of questions about the programme, and concerns about its consistency with a number of WTO provisions, e.g., regarding transparency, due-process, and WTO Agreements on TBT, SPS, Import Licensing, and Preshipment Inspection.

When does Saudi Arabia anticipate releasing the final text of the ICCP? Will Saudi Arabia provide a period for comments and review prior to final release of the Programme? What is the underlying rationale for the programme? Does it have a relationship to international standards, if so, please identify.

Reply

The SASO's ICCP Programme has been implemented since 8 November 1995. The Programme has undergone major re-structuring since its introduction. These changes have been adopted as a result of comments and inputs from various parties.

The current version is number 7 and at present we do not anticipate any major changes to the Programme.

The ICCP was introduced to ensure proper enforcement of SASO's standards in accordance with ISO/IEC Guides.

Under the previous system of self-certification, with SASO issuing certificates of conformity valid for one or two years, many abuses occurred and the system failed to provide adequate protection of local consumers.

It was determined that to insure proper enforcement of standards for products found to be particularly susceptible to sub-standard imports, it would be necessary to obtain certification of standards compliance for every shipment.

However, Saudi Arabia's domestic laboratory testing capacity was, and remains, inadequate to deal with this enhanced level of standards conformity assessment. Accordingly, it was decided to move, with respect to imports, to a system of pre-shipment certifications by SASO approved enterprises in country of export/manufacture.

Q 85. Would Saudi please explain the system for assessing fees to imported shipments under the proposed ICCP? Please describe the rationale for assessing fees based on the fob value of the shipment, as opposed to establishing fixed prices which is the international practice? This does not appear to be consistent with Article VIII of the GATT 1994.

Reply

For reasons of equity and administrative efficiency, the ICCP fee structure is based on ad valorem percentage of declared f.o.b. value. Fees charged under the ICCP programme are equitable in relation to fees charged for conformity assessments of products of national origin. ICCP fees are low by international standards, and are transparent, predictable, and non-discriminatory.

On the other hand, the international practice for laboratory testing is fixed prices. Under ICCP, when testing is applicable, fixed prices apply at standard competitive rates.

In the view of Saudi Arabia the ICCP fee structure conforms to GATT Article VIII:1. The ICCP rate of 0.5 per cent ad valorem compares well with the 1 per cent normally charged for PSI, it approximates the cost of services rendered, does not afford indirect protection to domestic products, and does not constitute taxation of imports.

Q 86. According to the proposed ICCP, the Programme is designed to benefit both exporters and importers by ensuring a "streamlined customs process which allows goods to clear more quickly and without risk of rejection."

Since regulated products are subject to pre-inspection procedures, will such shipments be subject to additional inspections upon entry into a Saudi port?

Reply

No. However, from time to time, a few random samples may be taken so as to insure that products match relevant certificates.

Q 87. Will inspection and certification conducted by foreign-based entities in lieu of the body designated by Saudi be accepted? Please explain.

Reply

SASO will accept inspection and certification by foreign inspection and certification agencies approved by SASO, please also see reply 74 above.

(c) Sanitary and phytosanitary measures

Q 88. Please outline for the Working Party the provisions of Saudi Arabia's existing laws, decrees, and regulations governing policy and implementation of sanitary and phytosanitary measures, comparing them with the provisions of the SPS agreement, and indicating what measures Saudi Arabia intends to take to ensure conformity of its régime with the SPS Agreement.

Reply

Saudi Arabia applies the Implementation Code for Animal and Plant Quarantine which was issued by the Council of Ministers Resolutions No. 207 and 208 of 1396 A.H. This code has now been amended in accordance with the requirements of the International Agreement for Plant Protection, the new Quarantine Principles issued by the FAO and the OIE code, in addition to the TBT Agreement. The new system for Animal and Plant Quarantine would appear to comply with the SPS Agreement.

This code is under review by the concerned bodies. The final version will be made available after approval by the Council of Ministers.

Q 89. In this regard, it would be helpful if Saudi Arabia provided information on its SPS régime similar to that required under the TBT Agreement, i.e., as outlined in G/TBT/1/Rev.2 for basic transparency, notification procedures, enquiry points, etc.

Reply

Please see reply 88 above.

(e) State-trading practices

Q 90. Saudi Arabia notes that Aramco and the Grain Silos and Flour Mills Organization (GSFMO) are examples of State-trading enterprises directly involved in trade.

We request that Saudi Arabia supply the basic information required by the questionnaire on State-trading under Article XVII of the GATT 1994 for Saudi Aramco and GSFMO.

Reply

Annex 6 (Information on State Trading) of the Memorandum on Foreign Trade Regime (WT/ACC/SAU/4) contains the needed information.

Q 91. Reply 215 states that imports of grains are controlled by State-trading mechanisms.

Is Saudi Arabia prepared to liberalize its import régime for wheat and other grains? Explain how Saudi Arabia intends to make the operations of the GSFMO more transparent and consistent with GATT Article XVII.

Reply

Wheat and other grain imports are liberalized in Saudi Arabia.

Q 92. Saudi Arabia notes State-trading enterprises that are wholly-owned by the government.

Are there any entities that are not wholly-owned by the government which benefit from special rights or privileges? Does the Saudi import licensing and inspection system operate in a way that confers special rights or State-trading arrangements upon select Saudi enterprises?

Reply

No, there are no other entities which benefit from special rights or privileges.

Q 93. Paragraph 90 of L/7489 implies that other State-trading enterprises exist.

Please describe the activities of other such State-owned enterprises and those not wholly-owned referred to in the previous question. Please review GATT Article XVII with the aim of providing information in the format of the required questionnaire/notification on the trade of these additional enterprises as well.

Reply

Please see reply 92 above.

Q 94. With regard to reply 216, besides the GSFMO, are there any other wholly or partially-owned State enterprises engaged in the trade of agricultural commodities/products?

Reply

None.

Q 95. Does reply 220(a) mean the only products that fall under the control of the GSFMO are grains, wheat flour and fodder?

Reply

Our answer to 220(a) can be read as follows: There are no products exclusively controlled by GSFMO. In addition to its international trading activities, GSFMO is involved in the domestic storage, purchase and sale of wheat and barley.

Q 96. Is the GSFMO the sole marketer of grains, wheat flour and fodder in Saudi Arabia? Are producers of these products required to sell directly to the GSFMO?

Reply

No. But GSFMO is the only government entity that markets wheat and barley. The producers of these products are not required to sale directly to GSFMO.

Q 97. Please respond to question 218(b) concerning how State-traded products are distributed domestically and internationally. Please indicate in what way Aramco and GSFMO should not be considered State-trading entities within the meaning of Article XVII. Please list by HS number the products traded by State-trading enterprises. Please give information on State-trading firms and products in the format of the questionnaire on State-trading.

Reply

Annex 6 (State Trading) of the Memorandum on Foreign Trade Regime (WT/ACC/SAU/4) contains the needed information.

Q 98. In response 219, Saudi Arabia states that it sells surplus wheat on the world market, and that domestic prices for wheat and barley are generally higher than world prices.

If this is the case, how is Saudi Arabia able to sell on the world market, i.e., how is the difference between the domestic price and the international price maintained and who absorbs the cost of international sales made below the cost of production?

Reply

Saudi Arabia has no wheat surplus to export.

(i) Government procurement

Q 99. The response to question 87 states that qualified Saudi nationals and wholly Saudi-owned firms are given priority for contracts, followed by mixed Saudi-foreign establishments, and finally, wholly foreign-owned firms. In addition, products produced within the Kingdom are given preference over foreign goods in supply contracts.

What precisely does "priority" mean in this context? Does it mean all other firms are excluded if one wholly Saudi owned firm places a bid, or is there some fixed scoring value or level of preference given to Saudi suppliers? What is meant by the term qualified Saudi nationals?

Reply

Bids are evaluated by the Bid Examination Committee for consistency with relevant conditions and specifications, for reasonableness and for qualifications. These things being equal, then preference will be given to Saudi bidders; however, no bidder is precluded automatically. Any bidder must be licensed, classified and registered with Zakat and Income Tax Department and with the Chamber of Commerce. These criteria and procedures apply to bidders in the case where bids are advertised in the official gazette.

Q 100. The documentation supplied on government procurement by Saudi Arabia seems to apply only to goods contracts and construction.

What procurement rules apply to other kinds of service, i.e., telecommunications services or consulting services etc.?

Reply

Please see paragraphs 46 to 48 of WT/ACC/SAU/5.

Q 101. Please provide a detailed description of the services procurement market.

Reply

The market of the services rendered to government bodies has been progressively growing. After the dominance of the market of construction works since 1393 A.H., the period of starting the construction of the infrastructures, and after this significant period, some need has emerged for rendering various services to maintain infrastructure projects such as contracts of maintenance and cleaning services, and those required according to the economic and social advancement in the Kingdom such as administration and operation of government hospitals, catering services, and various constructive services together with other services whereas the market of services is now representing a significant centre in the domestic economic activity. The contracts of services with government bodies represent a big proportion if compared to the contracts of procurement of goods or those of construction.

Q 102. The Government Purchases Law provides for the advertisement of tender notices except when letters inviting tender bids are sent out.

In what types of instances are specific firms invited to submit a bid on a tender? In general, are awards of tender published in the Official Gazette? Is there a bid-challenge system in the Saudi procurement régime? If so, please describe the procedures to challenge a tender award.

Reply

Royal Directive No. 9751 dated 26.4.1403 A.H. superseded Article III of the Government Purchases Law, and provides for the advertisement of public tender notices for all works, purchases and services in local newspapers including the official Um-Al-Qura.

If a bid is excluded on grounds of non responsiveness which are not accepted by the bidders, the bidder shall be entitled to resort to the relevant Minister to challenge exclusion decision. If a resolution of the dispute issue is not made, the bidder shall have the right to resort to the Board of Grievances, which adjudicates dispute to which the government is a party.

Q 103. What are the licensing requirements mentioned in Article 1(d) of the Government Purchases Law?

Reply

All firms whether wholly owned by nationals or joint venture companies must be registered or licensed to operate in the Kingdom.

Q 104. Please provide any statistics collected by the Saudi government on its government procurement market.

Reply

No statistics are available on government procurement.

Q 105. (Reply 179, L/7645/Add.1) Please describe in detail the practice and need for production subsidies, in particular payments for poultry and dairy farm equipment, and inputs such as animal feed and potato seed. When were these policies implemented?

Does Saudi Arabia intend to complete this review in light of its efforts to conclude negotiations on an agricultural country schedule for accession to the WTO?

Reply

Answer will be provided later.

Q 106. Regarding Saudi Arabia's system of guaranteed prices: Are wheat and barley the only commodities for which such prices are established? Please describe how the price guarantee system operates?

Reply

Please see Annex 6 (Information on State Trading) of the Memorandum on Foreign Trade Regime (WT/ACC/SAU/4).

Q 107. What is GSFMO's rationale for establishing different purchase prices based on the size of the seller, such as in the case of wheat purchases? Please describe in detail the policies and practice of fixed guaranteed prices.

Reply

No different purchase price is based on the size of the seller.

Q 108. Regarding reply 184 (L/7645/Add.1), Is Saudi Arabia prepared to liberalize the GSFMO upon accession to the WTO? How can GSFMO's system of fixed guaranteed prices be consistent with GATT Article XVII, which states that State-trading enterprises must make sales and purchases "in accordance with commercial considerations"?

Reply

GSFMO makes sales and purchases in accordance with commercial consideration.

Q 109. Reply 188 states that loans made by the Saudi Agricultural Bank are not subject to interest payments. This method of granting loans appears to constitute a domestic subsidy.

Reply

Islamic Law prohibits charging of interest. Service charges may also be construed as disguised interest payments and therefore are avoided by the Saudi Arabian Agriculture Bank.

Q 110. Please describe in detail the system of fees charged to loan recipients, and explain how the SAG intends to include the cost of providing loans, including foregone interest payments, in its calculation of total domestic support?

Reply

The capital loans of the SAAB are designated for lending. SAAB finances its loans from the instalments due which are collected from former loans. Therefore, the bank capital is tuned over by re-lending what has been collected from borrowers.

Q 111. Please provide information on the payback history of these loans.

Reply

Answer will be provided later.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Patents

Q 112. It appears that Saudi Arabian patent law does not presently grant a patent owner the right to prevent others from using the invention.

What changes will Saudi Arabia make in its patent law to meet TRIPS obligations in this regard?

What other exceptions and limitations are there on the rights conferred on a patent owner under current law?

Reply

No, Saudi Arabian Patent Law (Article 22) does grant a patent owner the right to prevent others from “using” the invention. There are no other exemptions and limitations

Q 113. What is the term of patent protection granted under the Saudi patent law?

Reply

Term of patent protection granted is fifteen years from grant; it is extendable for another 5 years. Please refer to Article 27 of the Patent Law.

Q 114. Does an invention have to be worked or maintenance fees paid for patent protection to extend for the entire term of protection?

Reply

Yes, the invention must be industrially worked in Saudi Arabia and maintenance fees must be paid to enjoy the protection.

Q 115. Is there a provision for reversal of the burden of proof in patent cases where the patent infringed is a patented process? If so, how does this process work?

Reply

There is no provision in the Patents Law for reversal of the burden of proof.

Q 116. If an assignment or transfer of a patent is not registered or the fee is not paid what is the penalty? In this circumstance, is the assignment or transfer void?

Reply

Assignments of patents are considered valid without registration in the Patent Register. There is no penalty for non-registration of the assignment and it does not become void.

However, if the assignee later approaches the King Abdulaziz City for Science and Technology (KACST), e.g., for extension of the term or for any other purpose, then KACST will require the assignment to be registered, and fee to be paid, before the case of the assignee is entertained.

Q 117. What subject matter is considered to be not patentable under the current Saudi patent law?

Reply

Articles 8 and 9 of the Patent Law cover the subject matters which are considered not patentable.

Copyright and related rights

Q 118. Are there any formalities that must be met before a person is granted copyright protection in Saudi Arabia? For instance, does a person have to deposit the work with a national library or register the work with a government agency before copyright protection is granted to that work?

Reply

Before granting the copyright protection, a person must prove the property of his work and that he did not assign his rights related to his work to others.

Saudi authors or those wishing to publish their works in Saudi Arabia are required to deposit one copy of the written classified works at King Fahad National Library in Riyadh. Non-Saudi authors publishing their works outside the Kingdom are not required to do so.

Q 119. What is the term of protection for copyright works and sound recordings in Saudi Arabia?

Reply

The term of protection granted to an author for the classified works shall continue during his lifetime and for a period of fifty years after his death.

In regard to sound recording, the period shall be for twenty-five years from the date of publication (Article 24 of the Copyrights Law).

Q 120. L/7645/Add.1 stated that it takes an average of three to six months to litigate a copyright infringement case.

Is this time period measured from the time the action is filed with a court to the time a decision is rendered by a court? If not, what is the time period?

Can you explain how the procedure for bringing a copyright infringement case and how long each step in the process takes?

Reply

The time period to litigate a copyright infringement case would not necessarily take three to six months. Some cases take a shorter period of time. More complicated cases which require documentation and clarification take six months or more. Such cases are infrequent in Saudi Arabia.

The procedure for bringing a copyright infringement case is as follows. It is difficult to give time frame for each step, as it varies from case to case.

The rightholder should present an allegation of infringement stating the name of infringer. He should also prove the ownership of the infringed work.

The competent authority review and follow-up the allegation and take all the necessary measures to verify the alleged infringement and submit a report in this regard.

If infringement is proved, the infringer states his defense and presents his documents, then, the infringed work could be seized by the head of the committee.

The Department of Copyrights offers conciliation to parties involved. If they fail to do that, the allegation goes on the committee issues a decision of punishment and remedy besides confiscating, destroying or selling the infringing work for the benefit of the rightholder. After the ratification of the Minister of Information, these decisions become effective.

The two disputed parties have the right to appeal at Board of Grievances within 60 days. The seizure measures taken by the Ministry remain in effect until a final decision is reached by the Board of Grievances, either confirming, refusing, or modifying the decision of the Ministry.

Q 121. Please indicate what subject matter is not protectable under the Saudi Arabia's copyright law. Are computer programs protected as literary works or as separate works?

Reply

The works not covered by the Copyrights Law are all the intellectual works that lost their protection due to the expiration of the period of protection, in addition to the unpublished works as the protection is basically provided for the published works. Computer programs are protected as intellectual works.

Q 122. We understand that Saudi Arabia is not currently a member of the Berne convention. Does Saudi Arabia intend to join the Berne Convention? If so, when will Saudi Arabia join? If not, what are Saudi Arabia's objections to doing so?

If Saudi Arabia does not join the Berne Convention, how will Saudi Arabia meet the obligations of Articles 1-21 of the Berne Convention as required by TRIPS?

Without membership in the Berne Convention, how does Saudi Arabia extend protection for foreign works of non-GCC Member nationals?

Reply

All foreign works of the Universal Copyrights Convention member nationals are granted the protection required by the Convention which means that Saudi Arabia provides now the same degree of protection to foreign authors as to Saudi authors. However, the accession of Saudi Arabia to the TRIPS Agreement will engage Saudi Arabia to meet the requirements of this Agreement.

Q 123. Saudi Arabia does not currently provide protection for performers and producers of phonograms.

Reply

Saudi Arabia applies the protection for performers and producers of phonograms according to the provisions of the Universal Copyright Convention. Saudi Arabia will meet the obligations required by the TRIPS Agreement.

Q 124. How will Saudi Arabia meet these obligations, which are required by the TRIPS Agreement?

Reply

By reviewing its laws and ensuring their conformity with the TRIPS Agreement.

Database protection

Q 125. What is required for a data base to be protected under the Saudi copyright law?

Reply

Applicant has to show that the data base is an original one.

Q 126. Are data bases protectable when they are based on information that is in the public domain or otherwise not protectable?

Reply

Data bases and information included are protected.

Q 127. What rights are the copyright owners granted? What are the exceptions and limitations on these rights?

Reply

The rights of the copyright owners are stipulated under Article 7 of Copyrights Law. As for the limitations, there are no exceptions or limitations resulted from the author's responsibility towards others.

Q 128. Is the copyright owner granted a right to prevent others from renting the copyright work? If so, for what works does this rental right apply (e.g., to computer programs? sound recordings? audiovisual works?)

Reply

Yes, for all categories falling under copyright protection. Please see para. 10 of Saudi Arabia's Memorandum, WTO/ACC/SAU/5.

VI. TRADE-RELATED SERVICES REGIME

Q 129. Please indicate in detail the justification for a mandatory import agent system in light of the provisions of Article III of the GATT.

Is Saudi Arabia prepared to allow foreign individuals and firms this ability on a non-discriminatory basis in the context of its accession to the WTO?

Reply

Please see reply 15 above.

Non-financial services and insurance

Q 130. Regarding restrictions on the cross-border provision of services (reply 26, L/7645/Add.1), we note Saudi Arabia's statements that it does not place any restrictions on cross-border delivery of services, except for callback services, and that foreign service suppliers are allowed to sell services to State-trading enterprises in the same manner that they are allowed to sell services to non-State-trading enterprises.

- (a) Does Saudi Arabia recognize Foreign Legal Consultants, who are permitted to practice the law of their home country, and in some cases, international law?
- (b) Does Saudi Arabia apply an "economic needs test" to the approval of foreign investment applications? If this is the case, are the standards for applying the needs test published or are they left to the discretion of an investment review agency?

Reply

- (a) Reply 25 to the document WT/ACC/SAU/6/Add.3 states:

Council of Ministers decision No. 116 dated 12/7/1400 A.H. states that "licence to practice law and legal consultation is restricted to those who are Saudi nationals."

Article (2) of the Ministerial decision No. 1190 dated 16/2/1402 A.H. states that "The conditions to grant a licence to offer legal consultations are as follows: The applicant must be (1) A Saudi national, ... (4) Resides in the Kingdom continuously.

Article (6) of the same decision states that it is prohibited for non-Saudis, individuals or companies to offer legal consultation in the Kingdom either individually or in association with a Saudi individual or office.

It is clear from these articles that offering legal consultation is restricted to Saudi nationals and is prohibited for non-Saudis to offer such consultation.

However, Saudi legal consultants may themselves procure the services of foreign legal consultants to obtain advice on matters pertaining to foreign country or international law.

- (b) All foreign projects have to satisfy the conditions of being a development" project as defined in Reply (313), and of having foreign technical expertise.

With respect to cross-border services, the "economic needs test" may or may not be applied, depending on the service sector concerned. The standards are sector-specific, and therefore vary from one sector to another.

Q 131. The Law on Certified Accountants stipulates that only Saudi nationals can be registered as certified accountants within Saudi Arabia. At the same time, many foreign investors

are interested in accountants familiar with accounting for international transactions, both inter-and intra-firm. The number of Saudi accountants with this kind of experience, however, may be limited.

Can foreign accounting firms establish partnerships/corporations to provide accounting services if they hire Saudi CPAs?

Saudi law permits the issuance of work permits for foreign personnel that fill positions for which no Saudi worker is available. Does Saudi Arabia plan to liberalize the implementing regulations for the Accounting Law to allow employment of foreign accountants under these conditions?

Reply

Certified Saudi professionals are allowed to enter into partnership with foreign professional companies according to the terms and conditions set forth by the Ministry of Commerce (Professional Companies Law). These conditions are specified in Article 2 of the Implementing Rules for Professional Companies.

The licence for establishing a professional company between a Saudi national and a non-Saudi is obtained by a resolution from the Minister of Commerce and is as follows:

- the foreign company should be reputable and well recognized in the field of its profession.
- the foreign company should be established and registered for at least ten years and practising in the field successfully.
- the foreign company should participate in training and building Saudi nationals' experience as well as introducing its technical technology.

This Article has been amended by Ministerial Resolution No. 929 of 29.8.1416 A.H. to become as follows:

- the foreign company should employ or have at least one prominent representative in the Kingdom, this representative should:
 - stay in the Kingdom for a period not less than 9 months per year;
 - have at least a university degree in the field of the company specialization;
 - have an experience not less than 10 years successfully.
- in order to practice its profession in the Kingdom, the foreign company should adjust itself with these conditions, maximally, within one year from the date of implementing this resolution;
- the foreign company should provide an attested and translated copy of its registration contract;
- the transference of a Saudi share to non-Saudi share should not result in reducing the shares of Saudi shareholders, less than 25 per cent of the total capital.

Q 132. Saudi law and regulation concerning legal services appears to mirror that for accounting.

Does Saudi Arabia plan to liberalize the implementing regulations for the Legal Consultancy Law to allow limited foreign investment in law partnerships and practice by foreign law partnerships and practice by foreign lawyers?

Reply

No. Please also refer to reply 130(a) above.

Q 133. Concerning the supply of services for environmental protection and conservation, the response to question 40 indicates that these are “subject to the Procurement of Government Purchases Law...or the Standard Rules for Government Purchases.”

Does this mean that there is no possibility for the private purchase of environmental services? Please explain.

Reply

Trade-related environmental policies are of three types. First, the import and export of wildlife is licensed by the National Commission for Wildlife Conservation and Development. Second, the Saudi Meteorology and Environmental Protection Administration has used some general standards to provide appropriate bases for the evaluation and regulation of industrial and urban activities that currently exist in the Kingdom in order to, among other things, help protect the Kingdom's environment. As a result of these standards, imports of highly polluting capital equipment are implicitly discouraged while imports of more benign equipment are encouraged. Third, the Saudi Arabian Standards Organization considers environmental issues when formulating standards which may subsequently be enforced at the border.

Within the context of these observations, there is no outright prohibition of private purchases of environmental services.

Q 134. Please supply additional information on services preferences in the following bilateral and regional agreements:

Jordan and Egypt - trucking and public transportation

Tunisia and Egypt - transport

Syria, Turkey, and Lebanon - transport

Morocco - air transport

GCC - unspecified preferences, including movement of capital and labour

Arab League - bilateral agreements with unspecified countries offering unspecified preferences

Reply

Land and Marine Transportation Agreements between the Kingdom of Saudi Arabia and Egypt.

These agreements aim at organizing and coordinating Land and Marine transport activities between the Kingdom of Saudi Arabia and Egypt. The two Agreements were ratified by Royal Decrees Nos. M/10 dated 19/8/1411 H. and M/11 dated 19/8/1411 H. These Agreements were initiated within the context of the Economic Cooperation Agreement between the two countries which was ratified by Royal Decree No. M/4 dated 9/4/1411H.

Regarding Land Transport, the Agreement took into consideration the protection of National Carriers, the designation of loading, unloading and access points in both countries based on public interest. The Agreement also obligated the carriers of each country to abide by the rules, regulations and vehicle specifications in force in each country regarding allowable truck weights and sizes and to refrain from engaging in domestic transport activities in each other's territory or transport to a third country.

Regarding Marine Transport, the Agreement aims at strengthening the cooperation between the two countries in the merchant marine field according to mutual sovereignty, benefit and principles of marine safety on the high seas. This Agreement also aims at increasing the market share of national merchant marine fleets in transporting goods among the ports of both countries such that each country's share would not be less than 40 per cent of all trade volumes transported by sea between the two countries. Each party reserved the right to transport its exports to the other country on its national fleet, and to provide necessary facilities and assistance to the ships of the other side.

Economic Agreement between the Kingdom of Saudi Arabia and Jordan

This Agreement aims at improving and strengthening Economic cooperation between The Kingdom of Saudi Arabia and Jordan. The Economic Agreement was signed in 1382 H. and ratified by Royal Decree No. 42 dated 11/9/1382H. Article 9 organized transport operations by trucks and common passenger carriers for each country and the reciprocal exemption from fees and customs duty for carriers operating between the two countries.

Transport Agreements with Turkey, Lebanon, Tunisia and Syria

There is no ratified transport agreement between the Kingdom of Saudi Arabia on the one hand and Turkey, Lebanon and Tunisia on the other. But there exists a proposed draft for two Agreements for Land and Marine transport between the Kingdom of Saudi Arabia and Turkey. These are the subject of continuing study and review.

Concerning Syria, cooperation in the field of transport is governed by the Commercial and Economic Agreement between the two countries which was ratified in 1392H., and within the context of the Arab Transit Agreement. Article (7) of the Commercial and Economic Agreement obligates the two parties to work towards facilitating Transit operations through their respective countries and exempting carriers crossing each other's territories, whether full or partially full, from all restrictions, transit fees and customs duty.

Transport Between the Kingdom of Saudi Arabia and the GCC Countries.

Article (18) of the Economic Agreement among the GCC countries which has been ratified by Royal Decree M/12 dated 21/3/1402H states in effect that member States shall treat passenger and freight transportation vehicles owned by citizens of one member State and passing through the territories of another or destined to it, the same treatment as passenger and freight transportation vehicles owned by its own citizens, including exemption from all fees and taxes, provided that such vehicles do not engage in domestic passenger or freight transport in the other State.

Transport Within the Context of the Arab League Agreements.

The Transit Agreement, which regulates transit operations among the Arab League member States and which was ratified by the Kingdom of Saudi Arabia, includes many articles concerned with transport among the member States which facilitates the transit movement of transport vehicles over the roads of these countries.

Financial services (excluding insurance)

Q 135. We appreciate Saudi Arabia's replies to questions regarding its régime in services. While many of the issues raised in the following questions have been addressed to some extent, we seek confirmation of the measures that apply to financial services (excluding insurance) and

an elaboration of licensing conditions that may be inconsistent with the obligations of the GATS, including the Understanding on Commitments in Financial Services.

For example, where licensing of a bank branch or joint venture is determined by the Council of Ministers upon the recommendation of the Minister of Finance and National Economy, we seek an elaboration of the criteria that apply to those determinations and the scope for discretion that is available to the Minister or Council to deny a licence (i.e., where criteria for approval are broad, non-prudential in nature or undefined).

Reply

The Council of Ministers has not had the occasion to consider approval of a new licence for the last many years as no recommendation was made by SAMA and the Minister of Finance and National Economy. In the past, the main factor in deciding on such applications were the recommendations of the Minister of Finance and National Economy which in turn were based on recommendations of SAMA.

Q 136. With respect to banking, securities and other financial services, are there any measures of a horizontal nature (affecting all or many sectors) that limit market access or national treatment in the financial services sector, such as for investment authorizations, reciprocity measures, or other discriminatory practices, including those involved in privatization of State-owned enterprises? If so, please describe the content of any horizontal measures that currently would limit, or that you anticipate would limit, foreign participation in Saudi Arabia in financial services (as defined in para. 5(a)(v) through (xvi) of the Annex on Financial Services).

Reply

There is a limitation on the type of legal entity: only joint stock companies incorporated in Saudi Arabia can be licensed as financial entities. There is also a limitation on participation of foreign capital: the share of foreign nationals and foreign juridical persons is limited to 40 per cent of the equity.

However, in Saudi Arabia, the authorities have encouraged banks to use the universal banking model under which they provide various financial services to their customers. Consequently, most financial services as defined in para. (a)(v) to (xvi) of the Annex are provided only by licensed banks or money changers in the Kingdom. This policy protects the interest of investors and depositors and takes into consideration the fact that banks have high levels of capital, reputable directors and officers, large pools of financial expertise, and the ability to invest in technology to support and control operations. The government also did not wish to encourage proliferation of weak, inefficient, inadequately capitalized institutions without sufficient human and technical resources. This prudent policy has ensured that while the market has been well-served, no financial disaster has occurred.

Q 137.(a) Are there any financial services as defined in para. 5(a)(v) through (xvi) of the Annex on Financial Services that are not currently provided by the private sector in Saudi Arabia?

- (b) Are any such services provided by State-owned institutions alone or in competition with privately-owned financial institutions in Saudi Arabia?**
- (c) Are there any monopoly suppliers of financial services?**
- (d) In addition to securities underwriting and currency exchange operations are there any other financial services in which foreign investment is prohibited?**

Reply

(a) The private sector is allowed to provide all services listed in 5(a)(v) through (xvi) of the Annex on Financial Services. The Saudi authorities encourage the private sector to develop new financial products and services for their customers.

(b) Under the law, private sector can provide all financial services. However, due to practical reasons related to large initial investment, risk management, credibility of the financial system, equitable treatment, etc., the clearing and settlement services for checks, securities and ATMs are currently provided by the Saudi Arabian Monetary Agency.

(c) There are no monopoly suppliers of financial services.

(d) Foreign investment in the financial services industry are not prohibited including underwriting and currency exchange operations. However, a foreign entity, wishing to provide such services, must obtain permission from the authorities.

Q 138. Please describe the specific content of any laws, regulations, or practices which limit in any way:

(a) **the ability of a non-resident financial service provider to provide cross-border into the territory of your country advisory and other auxiliary financial services, the provision and transfer of financial information, and financial data processing (as defined in para. 5 of the Annex on Financial Services);**

(b) **the ability of residents of your country to purchase financial services in the territory of another party.**

Reply

(a) Financial advisory and auxiliary financial services are considered as banking business and are covered under the provisions of the Banking Control Law.

Consequently, such services may only be provided by a banking institution licensed to provide such services in the Kingdom. As far as provision of transfer of financial information and financial data processing, there are no specific laws or regulations preventing supply of these services on a cross-border basis, and currently foreign companies do provide such services.

(b) There are no laws, regulations and practices preventing residents of Saudi Arabia to purchase such services in other jurisdictions. Saudi resident and corporations are free to access such services in the international markets.

Q 139. With respect to financial services (as defined in para. 5(a)(v) through (xvi) of the Annex on Financial Services), please describe the criteria for licensing or approvals or the specific content of any measures that would limit in any way:

(a) **the ability of a non-resident financial service provider to establish and expand a commercial presence in your country as a branch, an agency, a representative office, and as a wholly-owned subsidiary, either through de novo investment or through acquisition of existing enterprises;**

- (b) **or deny national treatment to foreign financial institutions that seek to establish, expand or acquire an existing financial institution in Saudi Arabia; or**
- (c) **the ability of a foreign-owned financial service provider established in your country to compete to supply financial services on terms and conditions that are no less favourable than those applied to financial service providers of your country in like circumstances (including the opportunity to participate in any self-regulatory body, securities or futures exchange or market, clearing agency or other organization or association).**

Reply

- (a) Under Article 3 of the Banking Control Law, licences are granted by Minister of Finance and National Economy on the recommendation of SAMA. National banks are required to be Saudi Arabian joint stock companies and their directors must be of good reputation. The licensing of foreign bank branches by the Minister must be approved by the Council of Ministers. Since 1976, SAMA policy has been not to issue new bank licences as the Agency considered the local market to be well served by 11 banks. However, in 1988, a local money changer was given banking licence to convert his business into a bank. Since then, the limit on the number of banks at 12 has been maintained.
- (b) There are no discriminatory laws, rules or regulations aimed at foreign participants, except for limitations mentioned in reply 136 above.
- (c) Following the licensing of a bank with foreign participant by Saudi authority, there is no limit on competition by such bank with other financial service providers. The terms and conditions under which they operate are no less favourable than those applied to other banks and financial institutions.

Q 140. Are any of the financial services as defined in para. 5(a)(v) through (xvi) of the Annex on Financial Services not considered “development enterprises” for the purposes of the Investment of Foreign Capital Regulation?

Reply

All financial services are considered as “development enterprises”.

Q 141. What must a foreign investor in financial services do to satisfy the criterion that the investment is accompanied by foreign technical expertise?

Reply

The criterion would be satisfied if the foreign investor provides technical know-how and management know-how.

Q 142. Please describe the content of any restrictions on the temporary entry of the personnel, particularly managers executives or specialists, of a financial services provider that is establishing or has established a commercial presence in your country.

Reply

There are no special rules for financial services. As for general regulations, please see paragraphs 54 to 56 of Saudi Arabia’s Supplementary Memorandum, WT/ACC/SAU/5.