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Additional Questions and Replies

The following submission is being circulated at the request of the Delegation of the Republic of Tajikistan.

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

1. Economy

(b) Current economic situation

Question 1

Please describe the restrictions on land use that result from the constitutional ban on private property on land.

Answer:

The Constitution of the Republic of Tajikistan, Article 13 stipulates that the state exclusively owns land in the Republic of Tajikistan and guarantees the efficient use of land in the interests of the people.

In conformity with the Land Code, Article 10, land users in the Republic of Tajikistan may be legal and physical persons, who also may be primary and secondary land users.

Primary land users may be legal and physical persons having land plots in unlimited, short term, or inherited life use. According to Article 11 of the Code, Enterprises with foreign participation are allowed to become primary land users with unlimited term of use. Secondary land users are legal entities or physical persons renting land from the primary users. There are no restrictions to foreigners to become secondary land users.

Question 2

Does the ban on private property on land apply to both Tajikistan persons and foreign persons in a like manner? Please describe any differences in treatment.

Answer:

The Constitution of the Republic of Tajikistan prohibits the private ownership of land for both citizens of Tajikistan and foreign nationals.

The Land Code, Article 105 specifies that if international agreements of the Republic of Tajikistan determine other rules than those stipulated by the Land Code of the Republic of Tajikistan, then the rules of international agreements shall be applied.

Article 32 of the Foreign Investment Law of 10 March 1992 provides for the right of foreign investors and enterprises with foreign participation for use of land including rental rights.

2. Economic Policies

(a) Main directions of the ongoing economic policies

- Sectoral Priorities

Question 3

According to the Memorandum, in January 2002, the Ministry of Industry of the Republic of Tajikistan was established which is responsible for industrial policy of the country. At the same time, the industrial policy is aimed at promoting the sustainable growth of production.

What is meant by "industrial policy" and how is sustainable growth of production promoted by industrial policy?

Answer:

By "industrial policy" is meant the following:

- development and implementation of industrial policies, interstate, state, and sectoral programs;
- preparation of sector development forecasts;
- participation in drafting and preparation of the State Budget, for justification of financial resources needed for industrial enterprises to fulfil the Government Work;
- methodological management and methodological support to enterprises;
- participation in the tariff policies development for the industrial complex and making proposals regarding budget subsidies; and
- development of legislative and other normative-legal acts envisaging the procedures for functioning and development of industries, as well as attracting investment.

For instance, under the initiative of the Ministry of Industry and given the requests of industrial enterprises, the Law of the Republic of Tajikistan on Foreign Investment, the Law of the Republic of Tajikistan on Customs Tariff, and the Tax Code were amended in parts relating to benefit extension when establishing enterprises with foreign investment. By determining priority industries and assessing specific projects, the Ministry of Industry promotes the interests of state enterprises through the Government, i.e. prepares and supports Governmental decisions, pertaining to production development, development of new products, etc, accounting for, first of all, the introduction of new technology.

Question 4

Please identify any measures, other than those listed on pages 13 and 14 of the Memorandum on Foreign Trade Regime, used to promote domestic industry, pursuant to "industrial policy."

Answer:

Pages 13 and 14, of the Memorandum on Foreign Trade Regime describes a broad range of policies and measures that are to promote various domestic industries and activities in Tajikistan. Tax policies and the operation of the customs tariff are expected to play an important role in industrial policies.

(c) Foreign exchange and payments system

Question 5

According to the Memorandum, all exporters, regardless of patterns of ownership, including physical persons, are obliged to provide the transfer of the exchange earnings from sales of goods outside the Republic of Tajikistan, to foreign currency accounts of their servicing bank in the Republic of Tajikistan.

Please describe this obligation. What is the purpose of this requirement?

Answer:

The purpose of this requirement is to ensure an inflow to the Republic of a needed foreign exchange amount, which would allow the Government to fulfil its debt obligations, help stabilize the balance of payment, and ensure sufficient import needs.

Foreign currency earnings from export of goods have to be returned (repatriated) to the Republic by exporters to their own foreign currency accounts placed with banks of the Republic of Tajikistan, but not to accounts of servicing banks as it is put in item (c) of the questionnaire.

All foreign currency earnings from export of goods are transferred to correspondent accounts of foreign servicing banks for the benefit of exporter. Foreign currency earnings placed with an exporters' foreign currency account is the property of the exporters. It is exempt from any additional payments and charges and is not subject to compulsory sales in the domestic market. Exporters may use these earnings at their own discretion.

Question 6

Are exporters required to transfer all the proceeds from the sale of goods outside Tajikistan to their servicing bank in Tajikistan, or only required to transfer the earnings component attributable to the foreign exchange transactions (not the underlying sale of merchandise)?

Answer:

Exporters are required to transfer all earnings.

Question 7

Does this requirement also apply to exchange earnings from sales of services outside the Republic of Tajikistan?

Answer:

Yes, this requirement also applies to any form of export exchange earnings.

3. Foreign trade in goods and services

Question 8

According to the Memorandum, the economic strategy of Tajikistan is based on policies to increase export-based and import-replacing industries.

What measures are being used by the government of Tajikistan to encourage exports and import replacement?

Answer:

There are no specific measures to stimulate the export and import substitution. The Tax and Customs Codes of the Republic of Tajikistan, as well as Resolution No. 450 on the Customs Tariff of the Government of the Republic of Tajikistan of 25 October 2003 lay down all the relevant measures. In particular, these documents settle the issues of VAT and zero-rated exports; export, import duties in the customs tariff are set with a view to ensuring some protection for domestic producers. Resolution No. 406 of the Government of the Republic of Tajikistan of 2 September 1997 establishes export duties.

- Export and imports

Question 9

According to the Memorandum, in order to avoid payment of customs duties, participants in foreign economic activity deliberately reduced declared prices for imported goods. In this regard, it is necessary to continue the improvement of the order of carrying out procedures of export-import operations and its regulation by the government.

Please describe the procedures and regulations that are currently being used by the Government of Tajikistan to deal with false customs declarations. Are criminal sanctions imposed for fraudulent customs declarations?

Answer:

As for false customs declarations, it should be noted that the customs legislation of the Republic of Tajikistan, in particular, the Customs Code of the Republic of Tajikistan defines the relevant regulations and procedures.

It should be mentioned that the Customs Code of the Republic of Tajikistan envisages both criminal and administrative responsibility in case of movement of commodities and vehicles with fraudulent documents or customs identification means. Administrative responsibility in case of the abovementioned customs offence is implied only if the features of contraband are not fulfilled.

The Customs Code of the Republic of Tajikistan, Article 219, 278, and 279 define the above-stated norms (document WT/ACC/TJK/6/Add.1).

In addition, Article 289 of the Criminal Code of the Republic of Tajikistan is also relevant. It reads as follows: Contraband i.e. large-scale movement of commodities and other items via the customs border of the Republic of Tajikistan, except for the cases stated in Paragraph 2 of this Article, made aside or concealed from customs control, or with fraudulent use of documents or customs identification means, or connected with non-declaration or inauthentic declaration shall be punished by deprivation of liberty for up to five years.

Question 10

Does the Government of Tajikistan use minimum import values or reference prices for the purposes of customs valuation?

Answer:

Minimum import values or reference prices are not used.

The customs regulation, in particular, the Law of the Republic of Tajikistan on Customs Tariff, regulates the issue of the definition and application of customs valuation, which is in line with GATT/WTO standards with only few minor exceptions. The proposed Customs Code which is currently being developed will eliminate these minor deficiencies.

The main method of customs valuation of commodities as determined by the Law referred to above is customs valuation of commodities at the value of the transaction of the imported goods.

It should be noted that the methods of application of customs valuation according to the Law referred to above and other aspects, such as the issue of customs valuation methods in the Republic of Tajikistan and their compliance with international standards are described in detail in the

Memorandum of the Republic of Tajikistan on Foreign Trade, Part IV, Chapter 1, Item h. and Annex 4.

Question 11

The Memorandum says one of the main objectives of joint ventures on the territory of the Republic of Tajikistan should be use of advanced technology.

What policies are used by the government to accomplish the use of advanced technologies by joint ventures?

Answer:

The System of tax, customs, and other incentives for enterprises with foreign investment

No.	Incentives	Enterprises	Measures	Law
1	Exemption from value added tax	All enterprises	The following shall be exempt from VAT: production of technology equipment and its components imported into the Republic of Tajikistan to form (to enlarge) the statutory fund of an enterprise within a year from the moment of state registration of the enterprise (re-registration if the statutory fund is enlarged), provided that the property is directly used for production of goods, accomplishment of works, and provision of services according to the statutory documents of the enterprise and the property does not relate to the category of goods subject to excise. If such an enterprise is liquidated, or the above mentioned property imported in the Republic of Tajikistan is transferred to another body within four years from the moment of state registration of the enterprise (re-registration if the statutory fund is enlarged), VAT on imported production technology equipment and its components, which has not been paid consistent with the present item, shall be subject to levy to the State Budget.	The Tax Code of the Republic of Tajikistan (Article 187, Item m)
2	Zero-rated tax operations	All enterprises	Exported goods (works, and services) shall be subject to zero-rated VAT, except for the supply of goods (works, and services) to the states applying the VAT on goods (works, and services) exported to the Republic of Tajikistan.	The Tax Code of the Republic of Tajikistan (Article 189)
3	Exempt from VAT	All enterprises	The enterprises set up in the area of material production, except for enterprises to process and use natural resources, starting from the year when an enterprise shows balance profits and actually contributes investment to the statutory fund as below: <ul style="list-style-type: none"> - for two years if investment is equal up to US\$ 500,000; - for three years if investment is equal to from US\$ 500,000 to US \$2 million; - for four years if investment is equal to starting from US\$ 2 million to US\$ 5 million; - for five years if investment is equal to more than US\$ 5 million. 	The Tax Code of the Republic of Tajikistan (Article 129)
4	Exempt from customs duties	Natural persons	Goods imported to the customs territory of the Republic of Tajikistan, or exported from the customs territory by the representatives of foreign states for official or private use, by natural persons having the right to duty free importation of such items based on international agreements of the Republic of Tajikistan, or the legislation of the Republic of Tajikistan.	The Law of the Republic of Tajikistan on the Customs Tariff (Article 35, Item c)

No.	Incentives	Enterprises	Measures	Law
5	Exempt from customs duties	Enterprises with foreign investment	Property imported into the customs territory of the Republic of Tajikistan as a contribution to the statutory funds of enterprises with foreign investment and foreign enterprises, also specific goods of own production exported by these enterprises in the cases envisaged by the agreements on production sharing concluded between the Government of the Republic of Tajikistan, or its authorized body consistent with the laws of the Republic of Tajikistan, or within the pay-back period for foreign investment under the procedure determined by the Majlisi Oli (Parliament) of the Republic of Tajikistan.	The Law of the Republic of Tajikistan on the Customs Tariff (Article 35, Item d)
6	Exempt from customs duties	Investors	Production technology equipment and its components (a complete set without which production technology equipment would not operate) imported into the Republic of Tajikistan to directly form the statutory fund of an enterprise, or technically modernize the existing production.	The Law of the Republic of Tajikistan on the Customs Tariff (Article 35)
7	Exempt from customs duties	All	Import of goods for targeted projects implemented with the help of loans and credits, grants, and technical assistance.	The Law of the Republic of Tajikistan on the Customs Tariff (Article 35)

Question 12

Is there an approval process for joint ventures? If yes, please describe the approval process for joint ventures. Is the use of advanced technologies a requirement for obtaining approval?

Answer:

In compliance with Resolution No. 136 of the Government of the Republic of Tajikistan of 4 April 1996, the newly established enterprises of all forms of ownership are subject to scientific expert examination to check their economic appropriateness, technical and technology novelty. There is a simplified registration process of legal entities for both enterprises with foreign investment and national enterprises. Currently, the Ministry of Justice of the Republic of Tajikistan, as well as regional and Dushanbe legal bodies register legal entities within ten days. In compliance with the Law of the Republic of Tajikistan on State Registration of a Legal Entity, the list of the documents required for registration of a legal entity is minimized.

According to Article 13 of the Foreign Investment Law of Tajikistan of 10 March 1992, establishment of enterprises with foreign participation related to large-scale construction and reconstruction requires preliminary expert examination.

"Joint ventures" as a legal institutional form does not appear in the legislation of the Republic of Tajikistan.

The Civil Code of the Republic of Tajikistan provides for the following legal forms of establishment which, can be used by foreign and domestic persons alike: a full partnership, a limited partnership, a special stock partnership, a limited liability company, a company with additional liability, and a joint-stock company (closed and open) with foreign investment.

Permits for enterprises with foreign investments and with the use of modern technology are not required in the Republic of Tajikistan.

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

3. Division of authority between central and sub-central governments

Question 13

Does the Gorno-Badakhshan Autonomous Oblast have any authority for making or enforcing policies affecting trade? If so, please describe.

Answer:

In accordance with Article 7 of the Constitution of the Republic of Tajikistan, the territory of the Republic of Tajikistan is integral/indivisible; and in compliance with Article 81 of the Constitution of the Republic of Tajikistan, the GBAO is a constituent integral part of the Republic of Tajikistan. Consistent with Articles 12 and 13 of the Constitutional Law on the Gorno-Badakhshan Autonomous Oblast, the Assembly (Majlis) of People's Deputies of Gorno-Badakhshan Autonomous Oblast:

- shall adopt a regulation for the Majlis of People's Deputies;
- shall approve the appointment and dismissal of the Chairperson of the Gorno-Badakhshan Autonomous Oblast;
- shall approve the appointment and dismissal of the First Deputy Chairperson and Deputy Chairpersons of the Gorno-Badakhshan Autonomous Oblast;
- shall adopt the Regulation of Permanent and Other Commissions of the Majlis of People's Deputies of the Gorno-Badakhshan Autonomous Oblast;
- shall set up, elect, and disband permanent and ad hoc commissions, and other bodies of the Majlis of People's Deputies; shall change their membership; and shall hear their reports on their activities;
- based on the proposal of the Chairperson, shall approve the budget of the Gorno-Badakhshan Autonomous Oblast and the budget execution report, the economic and social development program for the Oblast, the Master Plan, and the area development rules;
- shall establish local tax and duty rates, identify tax incentives for local taxes, duties and fees transferred to the local budget pursuant to the legislation;
- shall approve the total costs related to the activities of the Majlis of People's Deputies; shall make decisions for the terms to issue local loans, bonds and lotteries;
- shall hear the reports of the heads of departments, committees, units, and other structural divisions of the executive bodies;
- shall consider interpellations (enquiries) made by the People's Deputies and shall make appropriate decisions;
- shall cancel the decisions made by the inferior Majlisies of People's Deputies if they contradict the Constitution and legislation of the Republic of Tajikistan;
- shall be authorized to initiate legislation. One of the Chairpersons of the Commission of the Majlis of People's Deputies for the Gorno-Badakhshan Autonomous Oblast may work on a permanent basis;
- shall acknowledge the people's deputies powers and may discontinue them ahead of the appointed time, shall give consent for having people's deputies liable in legal cases, and following the procedure, as established by the legislation;
- by secret ballot of two-thirds of votes of the total number of the people's deputies shall provide vote of no confidence to the chiefs of a local government (Khukumat) structural division, and shall raise the issue of the discharge from his/her office to be considered by the Chairperson who shall make a relevant decision and shall inform the Majlisies of People's Deputies of the decision made;

- shall issue its publication and shall have other mass media involved consistent with the legislation of the Republic of Tajikistan; and
- shall address other issues within its powers in compliance with the Constitution of the Republic of Tajikistan, the present Constitutional Law, and other laws of the Republic of Tajikistan.

Question 14

Does the Gorno-Badakshan Autonomous Oblast have any authority for making or enforcing policies relating to the protection of intellectual property rights? If so, please describe.

Answer:

No. Please refer to the answer 13.

6. Description of judicial, arbitral or administrative tribunals or procedures

- Judicial procedures

Question 15

According to the Memorandum, "in some cases, economic courts can also use foreign legislation (Article 12 of Economic-procedural Code)."

Please provide a translated copy of the text of Article 12 of the Economic-procedural Code to the Secretariat for review by the Working Party.

Answer:

Article 12 of the Economic Procedures Code of the Republic of Tajikistan reads as follows:

"In case of a foreign law is applied, the economic law determines the existence and content of its norms in accordance with their interpretation and application in practice in the respective foreign country.

In order to determine the existence and content of norms of the foreign law the Economic Court, following the established procedure, can consult with competent bodies and organizations of the Republic of Tajikistan and abroad for assistance and explanation, or may have specialists involved.

If in spite of the measures taken, the existence and content of the norms of the Economic Court have not been determined, the Economic Court can apply appropriate norms of laws of the Republic of Tajikistan".

Question 16

Does this mean that foreign firms operating in Tajikistan could be subject to the laws of a third country? Under what circumstances would the economic court use foreign legislation?

Answer:

Please refer to answer 15. According to the Article 11 of the Economic-procedural Code, Economic Court applies laws of other countries if it is referred for under the law or international agreement of the Republic of Tajikistan.

- Arbitral procedures

Question 17

The Memorandum says foreign investors have the right to settle disputes through a court of arbitration, if there was a written agreement reached between the disputing parties about handing the dispute over to a court of arbitration.

Must the written agreement be a part of the underlying investment contract, or may the disputing parties agree subsequently to refer a particular dispute to the court of arbitration pursuant to a written agreement?

Answer:

The rule of law in question applies if stipulated by the agreement. The Foreign Investment Law allows the written agreement in this case to be either a part of the underlying investment contract, or the disputing parties can agree subsequently to refer a particular dispute to the court of arbitration pursuant to a written agreement. It is further confirmed by the Regulation No. 426 On Arbitral Court for Settling Economic Disputes in the Republic of Tajikistan of 15 May 1997.

Question 18

As the Court of Arbitration is not a sitting court, but is an ad hoc court, who handles administrative matters related to the arbitration?

Answer:

This issue never came up yet since the Courts of Arbitration have never been established.

Question 19

Can foreign investors specify in the contract for arbitral proceedings to be held in a different jurisdiction?

Answer:

Article 36 of the Foreign Investment Law provides for such a right of a foreign investor if agreed with other parties. Disputes between foreign investor and the state shall be referred to courts in the Republic of Tajikistan, if not otherwise provided in the international agreements.

Question 20

If so, does the High Economic Court enforce decisions reached by arbitrators operating outside of Tajikistan?

Answer:

According to Article 215 of the Economic Procedure Code the Economic Court shall carry out decisions of courts of foreign states to perform certain procedural actions (to serve a subpoena and other documents, to obtain written evidence, to conduct an examination, an inspection on the spot, etc.).

The decision shall not be implemented:

- if its execution conflicts with the sovereignty of the Republic of Tajikistan, or jeopardizes security of the Republic of Tajikistan; and
- if the execution of a decision is beyond the Economic Court powers.

The Economic Court shall carry out decisions of foreign courts to perform certain procedural actions based on the procedure established by this Code if otherwise is not stipulated by the international agreements of the Republic of Tajikistan.

The Economic Courts may request foreign courts to perform certain procedural actions, following the established procedure.

Question 21

As it would appear that only Tajikistan citizens may be considered lawyers, are their limitations on the use of foreign lawyers in a non-judicial proceeding, such as an arbitration or mediation proceeding?

Answer:

Article 210 of the Economic-procedural Code provides for equal procedural rights for foreign persons and organization and citizens of the Republic of Tajikistan. Currently, the new Law On Licensing of Certain Types of Activities which is under consideration before the Parliament, provides for licensing of legal services. Implementing regulations, to be developed following the adoption of the law will specify provisions relating to the use of foreign lawyers.

Question 22

Could Tajikistan make available summaries, including the outcomes, of arbitral proceedings involving foreign investors?

Answer:

In 1999, the American Central Asia Fund of Entrepreneurship Support lodged a claim to recognize Ahliddin Production Commercial Firm bankrupt. As a result, by Court Decision of 1 January 2000, the claim was not satisfied.

In 2000, the Fund placed a claim to recognize Amina Production Commercial Firm and Sitara Production Commercial Firm bankrupt. By court decisions, both the claims were satisfied.

In 2000, the Fund lodged a claim to collect US\$ 43,824.91 from Hizmat Production Association. As a result, by Court Decision of 23 November 2000, the claim was satisfied, and the defendant was ordered to pay US\$ 11,335 for the benefit of the claimant.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Registration requirements for engaging in importing

Question 23

According to the Memorandum, participants of foreign economic activity are required to have a "Certificate of participant in foreign economic activity" and a "registration card" issued for a "certain period of time" by the Ministry of economy and trade.

In compliance with Resolution No. 389 of 1 September 2003 of the Government of the Republic of Tajikistan, draft Law of the Republic of Tajikistan on Amendments to the Law of the Republic of Tajikistan on Foreign Economic Activities of the Republic of Tajikistan was submitted to Majlisi Oli. At present, this Law is being considered by Majlisi Oli, and in case this Law is adopted, registration of subjects of foreign economic activities will be cancelled.

Are foreign exporters also required to have these documents to sell into Tajikistan?

Answer:

Foreign exporters residing abroad are not required to obtain this certificate in order to be able to export to Tajikistan. Importing partner in Tajikistan shall obtain the certificate.

Question 24

Are importers and exporters required to be physically present in Tajikistan to obtain and use these documents?

Answer:

Please refer to WT/ACC/TJK/5 Answer 5.

Question 25

How long is the registration card valid., i.e., what is the "certain period of time?" Is the Certificate of participant in foreign economic activity valid indefinitely?

Answer:

Please refer to WT/ACC/TJK/5 Answer 6.

Question 26

Are participants in foreign economic activity required to re-register in Tajikistan or can the re-registration take place elsewhere?

Answer:

Participants in foreign economic activity are required to re-register in Tajikistan and cannot re-register out side of Tajikistan.

Question 27

What are the procedures and fees for obtaining the Certificate of participant in foreign economic activity and the registration card?

Answer:

Please refer to WT/ACC/TJK/5 Answer 6 and 7

(b) Characteristics of national tariff

- Customs duty rates and order of duty setting

Question 28

Please identify any countries, other than those identified on page 47 of the Memorandum, whose products receive tariff benefits when imported into the Republic of Tajikistan.

Answer:

The Law of the Republic of Tajikistan on Customs Tariff, Article 36 stipulates the provision of customs tariff benefits (preferences). This Article reads:

"In trade and political relations with foreign states, preferences in the customs regime of the Republic of Tajikistan are allowed as exemptions from duty payments, reduced duty rates, or determination of tariff quotas for the preferential importation exportation of goods:

- originating from the states, which along with the Republic of Tajikistan form a free trade zone or a customs union, or which have signed an agreement aimed at establishing of such a zone or such a union; and
- originating from developing countries in accordance with the national system of preferences of the Republic of Tajikistan, which is revised by the Government of the Republic of Tajikistan not less than once in five years."

Currently, in accordance with the above mentioned Law, Article 36, Paragraph 2, the Republic of Tajikistan being a member of the Customs Union, at present called The EUROASIAN Economic Community, envisages customs tariff preferences as exemption of customs duty payments for commodities brought in from the EUROASIAN Economic Community member-states (the other member-states are the Russian Federation, the Republic of Kazakhstan, the Kyrgyz Republic, and the Republic of Belarus).

In compliance with the above-mentioned Law, Article 36, Paragraph 3, the Government of the Republic of Tajikistan approved the Governmental Resolution of the Republic of Tajikistan No. 450 of 25 October 2003 on Customs Tariff (document WT/ACC/TJK/6/Add.1), which contains the List of the Least Developed Countries, from which Commodities enjoy zero Customs Duties. When imported into the Customs Territory of the Republic of Tajikistan.

The List of the Least Developed Countries on Commodities from which Zero Customs Duties are Applied When Importing them into the Customs Territory of the Republic of Tajikistan:

- Afghanistan;
- Benin;
- Burkina Faso;
- Burundi;
- Botswana;
- Bhutan;
- Vanuatu;
- Haiti;
- Guinea;
- Guinea-Bissau;
- Djibouti;
- Zaire;
- Zambia;
- Cape Verde;
- Cambodia;
- Kiribati;
- Comoros;

- Laos;
- Lesotho;
- Liberia;
- Mauritania;
- Madagascar;
- Malawi;
- Mali;
- Maldives;
- Mozambique;
- Myanmar;
- Nepal;
- Niger;
- Rwanda;
- Samoa;
- San-Tome and Principe;
- Solomon Islands;
- Somalia;
- Sudan;
- Sierra-Leone;
- Tanzania;
- Togo;
- Tuvalu;
- Uganda;
- The Central African Republic;
- Chad;
- Equatorial Guinea;
- Ethiopia; and
- Gambia.

Question 29

According to the Memorandum, special duties are applied as a protective measure, if commodities are imported in quantities and on the condition, which cause or threaten damage to domestic producers of similar or directly competitive commodities; or as a reciprocal measure to discrimination or other actions infringing upon interests of the Republic of Tajikistan by other countries or their unions.

Please provide a translated copy of the special customs duties legislation to the Secretariat for review by the Working Party.

Answer:

The Law of the Republic of Tajikistan on Customs Tariff has a provision envisaging the use of special customs duties. Articles 8 and 11 of this Law define the concept and the procedure for use of such duties (document WT/ACC/TJK/6/Add.1).

Question 30

Does Tajikistan intend to revise its legislation for special duties to bring into conformity with the GATT Article XIX and the WTO Agreement on Safeguards prior to accession?

Answer:

The safeguards regime in the Republic of Tajikistan already meets the essential provisions of the GATT and the Government will be taking measures to bring the regulations on the use of safeguards fully in compliance with international standards, in particular, with the relevant GATT provisions and the WTO agreement on Safeguards.

Question 31

What is the WTO rationale for using special duties as a reciprocal measure to discrimination or other actions infringing upon interests of the Republic of Tajikistan by other countries or their unions? What conditions are required to be satisfied to apply reciprocal special duties? Who determines whether there has been discrimination or other actions infringing upon interests of the Republic of Tajikistan?

Answer:

In accordance with the Law on Customs Tariff, Article 8, a reciprocal measure to discrimination or other actions infringing upon interests of the Republic of Tajikistan by other countries or their unions is a measure applied in the form of special customs duties in case of discrimination or other actions, such as the unilateral use of unjustified special safeguards, antidumping, countervailing, or other measures negatively affecting the foreign trade policies of the Republic of Tajikistan.

The Law on Customs Tariff, Article 11 provides that action against discrimination infringing upon interests of the Republic of Tajikistan shall call for the following procedures to apply:

"The use of special (safeguards, antidumping, and countervailing) duties is preceded by an investigation conducted by the Ministry of Public Revenues and Charges on its own initiative or the initiative of other public management bodies of the Republic of Tajikistan."

Investigation decisions shall be based on quantitatively measurable data.

The Government of the Republic of Tajikistan determines that the rates of relevant duties, based on ad hoc investigation results shall correspond to the dumping margins of subsidies, and damages established by an investigations.

Please refer also to WT/ACC/TJK/5, answer 29.

(c) Tariff quotas, tariff exemptions

Question 32

Please identify any products, for which the government of Tajikistan is considering the use of tariff quotas or tariff exemptions.

Answer:

It should be noted that the customs legislation of the Republic of Tajikistan, in particular, the Law on Customs Tariff envisages the use of tariff quotas but this mechanism has so far not been applied with regard to the regulation of foreign trade.

Question 33

If Tajikistan decides to use tariff quotas or tariff exemptions, what steps will it take to ensure that importers receive appropriate advance notice of the change?

Answer:

The Ministry of Public Revenues and Charges of the Republic of Tajikistan, when implementing the customs policies, in particular informing and consulting on customs issues with subjects of foreign economic activities, is responsible for these activities. For this purpose, there has been established the Advisory Committee for Participants of Foreign Economic Activities under the Ministry of Public Revenues and Charges of the Republic of Tajikistan. In addition, the customs service is being modernized and it is planned to set up a Web site of the Ministry where all the required information will be placed, including information on the existing customs and tariff policies in Republic of Tajikistan.

(d) Other duties and charges

Question 34

According to the Memorandum, the Customs bodies collect customs charges for rendering services of 0.15 per cent of the customs value of imports. However, GATT Article VIII provides that customs-related fees must be approximate to the cost of the service rendered, and therefore cannot, by definition, cannot be based on *ad valorem* calculations.

Please indicate how application of Tajikistan's customs fees will be brought into conformity with GATT Article VIII.

Answer:

It should be noted that the customs legislation of the Republic of Tajikistan collects customs charges (charges for customs services) based on *ad valorem* calculations only for one type of customs services, i.e. is customs clearance of goods and vehicles amounting to 0.15 per cent of the customs value (the Customs Code of the Republic of Tajikistan, Article 114 - document WT/ACC/TJK/6/Add.1).

For other customs services listed below (the Customs Code of the Republic of Tajikistan, Article 110) (document WT/ACC/TJK/6/Add.1):

- charges for the issue of licence by customs bodies and licence renewal;
- charges for the issue of a certification of competence of the specialist on customs clearance and renewal of the certification;
- charges for storage;
- charges for customs convoy of goods;
- payment of preliminary decision-making;
- payment in customs auctions;

the actual cost of services provided is collected according to Resolution No. 199 of the Majlisi Oli (the Parliament) of the Republic of Tajikistan of 4 November 1995 (document WT/ACC/TJK/6/Add.1) on fees, charges and other payments, and also by joint orders of the Ministries of Public Revenues and Charges, and of Finance of the Republic of Tajikistan.

Currently, in the context of the development of the new draft Customs Code of the Republic of Tajikistan, the issue of changing the calculation of a customs charge (a charge for customs services) from an *ad valorem* basis to the actual cost of services rendered is being considered.

Question 35

The Memorandum also identifies seven other duties for customs services, including charges for issuing licence and renewal; charges for issuing the certification of competence of the specialist on customs legalization; charges for storage; charges for customs convoy goods; payment for informing and consulting; payment of preliminary decision-making; and payment in customs auctions.

What is a "certificate of competence of the specialist on customs legitimization" and what is the fee for it?

Answer:

The issue of a "certificate of competence of the specialist on customs legitimization" is determined in the Customs Code of the Republic of Tajikistan, Chapter 24 (Articles 161 and 162) and the Resolution of the Majlisi Oli of the Republic of 4 November 1995 on the Customs Code.

According to this clearance, a certificate of competence of a specialist on customs clearance (legitimization) is a document issued by the Ministry of Public Revenues and Charges of the Republic of Tajikistan for an individual, who has had appropriate training and passed exams on customs basics.

When an individual receives a certificate of competence of a specialist on customs clearance, the individual has the right to perform actions on customs clearance as a customs broker i.e. a specialist on customs clearance is also a customs broker performing under licence issued by the Ministry of Public Revenues and Charges of the Republic of Tajikistan. In other words, obtaining the certificate is mandatory for engaging in brokerage services.

The size of payment for a certificate of competence of a specialist on customs clearance and for a licence for a customs broker activity are defined in the Resolution of the Majlisi Oli of the Republic of Tajikistan on the Customs Code of the Republic of Tajikistan of 4 November 1995.

The fee for issuing a certificate of competence of a specialist on customs clearance amounts to 20 minimum monthly wages and the size of the minimum wage is determined by the law. The charge for issuing a licence for a customs broker's activity amounts to 500 minimum wages. Currently the minimum monthly wage is 6 Somoni (TJS).

Question 36

What are consulting and informing and what is the payment? Who provides this service?

Answer:

The Customs Code of the Republic of Tajikistan, Chapter 52 (Articles 387-392) defines the informing and consulting (document WT/ACC/TJK/6/Add.1).

The informing and consulting means rendering information and consulting on customs issues with the persons concerned, i.e. publishing, informing, and consulting on customs legal acts. The Ministry of Public Revenues and Charges of the Republic of Tajikistan performs publishing, informing, and consulting on customs issues.

In accordance with the Customs Code of the Republic of Tajikistan, Articles 390 and 391, the informing and consulting is charged as determined by the Ministry of Public Revenues and Charges in coordination with the Ministry of Finance of the Republic of Tajikistan.

The Regulation on the Informing and Consulting on Customs Issues approved by Order No. 23 of the Customs Committee of the Government of the Republic of Tajikistan of 24 February 1997 determines differentiated payments ranging from US\$ 0.2 to US\$ 50.00 depending on timing, material costs, and type of service rendered concerning informing and consulting.

Question 37

What is the preliminary decision-making and why is a payment required to receive it. Who provides this service?

Answer:

The issue of preliminary decision-making is defined in the Customs Code of the Republic of Tajikistan, Chapter 53 Articles 393-396 (document WT/ACC/TJK/6/Add.1).

The definition "preliminary decision-making" means that a person interested in decisions to be taken may request in writing to a customs body of the Ministry of Public Revenues and Charges of the Republic of Tajikistan to make an advanced ruling regarding classification of goods, their customs value, the country of origin, the size of customs payments, and other customs issues prior to the arrival of the shipments.

In compliance with the Customs Code of the Republic of Tajikistan, Article 393, customs bodies of the Ministry of Public Revenues and Charges make preliminary decisions and the Ministry of Public Revenues and Charges in coordination with the Ministry of Finance determines the size of the payment for a preliminary decision.

For making a preliminary decision, the payment determined is two minimum wages, the minimum wage is specified by the legislation. See also answer 35.

Question 38

What is the customs auction?

Answer:

The Customs Code of the Republic of Tajikistan, Chapter 54 regulates the issue of customs auctions (Article 398) (document WT/ACC/TJK/6/Add.1).

By customs auction is understood a form of marketing and sale of goods when the state owns them after customs bodies have confiscated them for contraband and customs offence.

The participation fee regarding customs auctions is two minimum wages, the size of the minimum wage is specified by the legislation. See also answer 35.

Question 39

Are importers required to bid for licenses (e.g. in an auction)?

Answer:

Importers are not required to bid for licenses, including in an auction. Participation of persons in customs auctions is not subject to licensing.

(e) Quantitative import restrictions

Question 40

Does Tajikistan intend to remove the quantitative import restrictions on ethyl alcohol, alcoholic drinks, and tobacco goods prior to WTO accession?

Answer:

No.

(f) Import licensing procedures

Question 41

According to the Memorandum, alcohol, tobacco and legal traffic of drugs, psychotropic substances and precursors are subject to import licenses. Annex 3 does not state whether these products are subject to automatic or non-automatic licensing. Applications for automatic licenses shall be processed immediately, but no longer than 10 working days, and applications for non-automatic licenses shall be processed within 30 or 60 days, depending upon whether or not the non-automatic licensing applications are considered simultaneously.

Please confirm that no other products are subject to import licensing procedures.

Answer:

The current legislation of the Republic of Tajikistan on non-tariff regulation of foreign economic activities states that the following goods are subject to import licensing:

- ethyl alcohol and alcohol products (the Law of the Republic of Tajikistan on State Regulation of Production and Turnover of Ethyl Alcohol and Alcohol Products, Resolutions of the Government of the Republic of Tajikistan No. 48 of 19 February 1999; No. 131 of 7 April 1999; No. 453 of 27 October 1999).
- tobacco products (Resolution No. 453 of the Government of the Republic of Tajikistan of 27 October 1999 (in the redaction of Resolution No. 491 of the Government of the Republic of Tajikistan of 3 November 2003) on Complex Measures of State Regulation of Import, Export, and Wholesale Sale of Tobacco Products determines the procedure for the issue of licenses and quotas for tobacco products).
- narcotics, psychotropic substances, and precursors (Resolution No. 465 of the Government of the Republic of Tajikistan of 9 November 2000 on Approval of the Procedure of the Issue of Licenses Regarding Legal Movement of Narcotics, Psychotropic Substances, and Precursors).

Question 42

Please provide the HS number and description for all products subject to import licensing. Also, please include the ministry/agency responsible for granting the licence.

Answer:

The EVRAZES (Eurasian Economic Community) Commodity Coding of Foreign Economic Activities (ten digits) is used in the Republic of Tajikistan. This Commodity Coding is developed on the basis of international norms, in particular, the Harmonized System of Description and Coding of Goods.

GROUP 22 – Alcohol and Soft Drinks, and Vinegar

220300	Malt beer
2204	Grape wines, natural wines, including fortified; stum, except for mentioned in merchandise position 2009 (including wine materials);
2205	Vermouths and natural wines, other wines with vegetation and aromatic substances;
2206 00	Other fermented drinks (for example, cider, pear cider, and honey drink); mixes from fermented drinks, and mixes from fermented drinks and soft drinks not listed somewhere else;
2207	Ethyl non-denatured alcohol with ethyl concentration of no less than 80% or more; ethyl alcohol and other denatured alcohols of any concentration;
2207 10 000 0	Ethyl non-denatured alcohol with ethyl concentration of no less than 80% or more;
2207 20 000 0	Ethyl alcohol, other denatured alcohols of any concentration;
2208	Ethyl non-denatured alcohol with ethyl concentration of no less than 80%; alcohol liqueurs, liqueurs, and other alcoholic drinks;

GROUP 24

2402	Cigars, cigars with cut ends, cigarillos (thin cigars), and cigarettes from tobacco or its substitutes;
2402 10 000 0	Cigars, cigars with cut ends, and cigarillos containing tobacco;
2402 20	Filter cigars containing tobacco;
2402 20 100 0	Containing cloves;
2402 20 900 0	Others;
2402 90 900 0	Others;
2403	Other industrially produced tobacco and industrial tobacco substitutes; "homogenized" or "restored"; tobacco extracts and essence;

Hurokvori Corporation of Food Industry, Horticulture, and Viticulture of the Republic of Tajikistan is responsible for the issue of licenses on import of ethyl alcohol, alcohol and tobacco products.

Classification of Drugs, Psychotropic Substances, and Precursors Consistent with the Commodity Classification of Foreign Economic Activities of the Eurasian Economic Community

Drugs and Psychotropic Substances

Natural and Semisynthetic Drugs	
1302 11 000 0	opium
2939 91 110 0	unrefined cocaine
2939 11 000 0	concentrates from poppy straws; buprenorphine (INN), codeine, dihydrocodeine (INN), ethylmorphine, ethorphine (INN), heroin, hydrocodone (INN), hydromorphone (INN), morphine, nicomorphine (INN), oxycodone (INN), oxymorphone (INN), folcodine (INN), tebacone (INN), and tebaine; salts of these compounds;
2939 91	cocaine, ecgonine, levometamphethamine, metamphethamine (INN), metamphethamine racemate; salts, esters, and other derivative substances; cocaine and its salts;
Drastic and Tenuous Synthetic Drugs	
2922 14 000 0	dextropropoxiphen (INN) and its salts;
2922 31 000 0	amphedramone (INN), metadone (INN), and normetadone (INN); salts of these compounds;
2922 44 000 0	tilidine (INN) and its salts;
2926 30 000 0	phenoproporex (INN) and its salts; metadone (INN) –an interim product (4-cyano-2-dimethylamino-4.4-diphenylbutane);
2933 33 000 0	alfentanil (INN), anileridine (INN), bezitramide (INN), bromazepam (INN), diphenoxine (INN), diphenoxilate (INN), dipipanone (INN), fentanyl (INN), ketobemidone (INN), methylphenidate (INN), pentazocine (INN), pethidine (INN), pethidine (INN) – an interim A product, phencyclidine (INN) (PCP), phenoperidine (INN), pipradrol (INN), piritramide (INN), propirame (INN), and trimeperidine (INN); salts of these compounds;
2933 11 100 0	propiphenazone (INN)
Precursors	
2915 24 000 0	acetic anhydride
2922 43 000 0	anthranilic acid and its salts
2914 11 000 0	acetone
2924 29	others: (acetylanthranilic acid)
2924 29 100 0	lidocaine (INN)
2924 29 300 0	paracetamol (INN)
2932 91 000 0	isoflural
2939 63 000 0	lysergic acid and its salts
2932 92 000 0	1-(1.3-benzodioxole-5-yl) propane-2-on
2914 12 000 0	butanone (methyl ethyl ketone)
2933 32 000 0	piperidine and its salts
2932 93 000 0	piperonal
2841 61 000 0	potassium permanganate
2939 42 000 0	pseudoephedrine (INN) and its salts
2932 94 000 0	safrole
2807 00 100 0	sulphuric acid
2806 10 100 0	hydrogen chloride (hydrochloric acid)
2902 30	toluol
2916 34 000 0	phenylacetic acid and its salts
2914 31 000 0	phenylacetone (phenylpropane-2-on)
2939 41 000 0	ephedrine and its salts
2939 61 000 0	ergometrine (INN) and its salts
2939 62 000 0	ergotamine (INN) and its salts
2909 11 000 0	diethyl ether

Note:

1. The Classification of Drugs, Psychotropic Substances, and Precursors is mostly defined in Groups 13, 28, and 29 of the Commodity Classification of Foreign Economic Activities of the Eurasian Economic Community.
2. It should be noted that in addition to the Commodity Classification of Foreign Economic Activities of the Eurasian Economic Community, the mentioned substances are also classified according to the Codes as below:
 - CN Code - a code of a chemical substance consistent with the classification used by the Commission of the European Community and in the United States;
 - CC Code - a code of the agreed system. The World Customs Organization proposed to introduce into international practice the new denotations of the agreed code for substances controlled under the 1998 UN Convention since 1996;
 - COX registration number - a registration number of the Chemical Abstracts Service;
 - Tables I and II, the 1988 Convention - Table I and Table II of precursors under international control pursuant to the 1998 UN Convention on Combat with Illegal Traffic of Drugs and Psychotropic Substances; and
 - List 4, Tables I and II, the 2000 National List - List 4 of precursors, drugs, and psychotropic substances included in the Table I and Table II of the National List of Drugs, Psychotropic Substances, and Precursors approved by Resolution No. 390 of the Government of the Republic of Tajikistan of 21 September 2000.
3. It is appropriate to mention that the issues of classification, codification, and licensing for drugs, psychotropic substances, and precursors according to the legislation of the Republic of Tajikistan is the competence of the Drugs Control Agency under the President of the Republic of Tajikistan. In particular, the Division on Legal Drugs Traffic Control of the said Agency determines the issues of the legal traffic of drugs.

Question 43

For each product, indicate whether the licensing procedure is automatic or non-automatic, and the length of time allowed for processing of an import licensing application.

Answer:

The licensing procedure regarding ethyl alcohol, alcohol products, tobacco, and tobacco products is automatic. An application is considered for up to 15 days from the time of the submission of the application provided that all relevant documents required for issuing the licence are submitted.

Question 44

As the applicant is responsible for authenticating the documents submitted for import licenses, what type of authenticity is appropriate?

Answer:

As the applicant is responsible for authenticity of documents, these documents shall be authenticated by a notary.

Question 45

Does the Government of Tajikistan intend to submit an import licensing notification, through the completion of an import-licensing questionnaire, to the WTO on an annual basis?

Answer:

The Government of the Republic of Tajikistan will submit to WTO information on changes in the licensing system as required by the Agreement on Import Licensing.

(g) Other border measures

Question 46

Is the Certificate of commodity origin, issued by the Chamber of commerce of the Republic of Tajikistan, required for both imports and exports? Is the Chamber of commerce of Tajikistan a governmental body? What is the amount of the fee, if any, that is charged for this Certificate? Do the proceeds of the fee go to the state treasury of the Republic of Tajikistan?

Answer:

In accordance with the Law on the Chamber of Commerce and Industry of the Republic of Tajikistan, Article 1, the Chamber of Commerce and Industry of the Republic of Tajikistan (the Chamber) is a non-state and non-commercial entity uniting enterprises and entrepreneurs of the Republic of Tajikistan.

For the carrying out of export operations, a certificate of the origin of a good is required, which is issued by the Chamber. The fee for the issue of a certificate of the origin of a good is 0.1 per cent of the producers' proceeds from the particular transaction. The revenues coming from the certificate fee are not transferred directly to the Treasury of the Republic of Tajikistan but through ordinary tax payments.

Question 47

Is a Certificate of quality, issued by Tajikgostandart, required for all products imported into and exported from Tajikistan?

Answer:

Please refer to WT/ACC/TJK/5 Answer 15.

Question 48

Please explain why the Republic of Tajikistan requires a "banking confirmation about full advance payment on the list of goods according to Decree No. 424 of the President of the Republic of Tajikistan of 24 February 1996". Please provide a translated copy of this decree to the Secretariat for review by the Working Party. What products are currently included on the list?

Answer:

Under the conditions of constant deficit on accounts of current transactions and non-stability of the balance of payments, absence of efficient economic leverage for the return of foreign currency proceeds from export of these goods, which are about two thirds of all state exports, and a high non-payment risk, a full advance payment is the most effective measure to resist a capital leakage from the republic. The list of such merchandise includes cotton fibre and its processed products (lint, ulyuk, and cyclone lint), primary aluminium and its products, ores, concentrates and precious metals waste, precious natural stones and products from them, scrap and waste of ferrous and non-ferrous

metals, leather raw materials and leather, fertilizers, geranium oil, and natural honey (document WT/ACC/TJK/6/Add.1).

Question 49

What is a passport of the bank on guarantee of implementation of settlement of accounts during 120 days, according to Decree No. 1249 of the President of the Republic of Tajikistan of 13 July 1999? Please explain the purpose of this passport. Is it required for both import and export transactions? Does it apply to all products?

Answer:

Decree No. 1249 of the President of the Republic of Tajikistan of 13 July 1999 includes no provision about "a passport of the bank on guarantee of implementation of settlement of accounts during 120 days". This Decree only amended Decree No. 424 of the President of the Republic of Tajikistan of 26 February 1996, which determined a limited time of 120 days to transfer export hard currency proceeds back to Tajikistan.

This refers to subparagraph 2 of paragraph 6 of Decree No. 424 of the President of the Republic of Tajikistan of 26 February 1996, which states that exporting goods not listed by this Decree is possible on submission of a confirmation of an authorized bank.

Due to the lack of mechanism providing such guarantees, this requirement of the Decree was not fulfilled in practice. In compliance with Item 8 of this Decree, which authorized the Government along with the National Bank of Tajikistan to define a procedure for control of hard currency export earnings, such a mechanism of customs and banking control of return of export hard currency earnings on terms determined by the Decree was developed and put into effect.

It was the Regulation on the Procedure to Implement Hard Currency Control on Exchange Earnings in the Republic of Tajikistan coming from Export of Merchandise (approved by a Joint Order No. 38 of the National Bank of Tajikistan and the Customs Committee No. 132 of 14 August 1996), which determined the procedure to implement export exchange control and contained the term "a passport of a transaction".

A passport of a transaction is a standard form (similar to a cargo customs declaration) to be filled in by an exporter based on a contract (agreement), which contains data on the exporter, importer, particulars of servicing banks and numbers of currency accounts of all transaction participants, all substantial provisions of the contract, and the terms of settlement of the transaction.

The exporter submits this form to the servicing bank and to the customs body clearing the commodity. The bank and the customs body exchange information on the passport. When export exchange earnings are transferred to the exporter's account, the passport of a transaction is expired.

A passport of a transaction serves as a mechanism to ensure return of exchange proceeds by exporters and has proved its effectiveness. A passport is prepared for export of merchandise not listed in the List of Merchandise Requiring Advance Payment. It should be noted that this list covers only seven to ten percent of merchandise exported from Republic of Tajikistan.

A passport of a transaction is not required when exporting works and services, as well as importing goods, works, and services.

To liberalize the foreign trade regime of the Republic of Tajikistan, the National Bank of Tajikistan and the Ministry of Public Revenues and Charges of the Republic of Tajikistan by their Joint Order No. 85/OII and No. 219 of 15 September 2003, cancelled the Regulation on the Procedure to Exert

Currency Control on Justification of Foreign Currency Payments for Goods Imported into the Republic of Tajikistan.

Therefore, the authorized banks upon payments on foreign contracts shall require from clients, legal and natural persons involved in individual entrepreneurship, the following supporting documentation:

- Upon prepayment, an original or a copy of a contract (agreement) for import of goods (works and services) certified by a manager having the right of the first signature and sealed by the importing entity;
- In case under a contract (agreement), the period of importation of goods (provision of services, accomplishment of works) into the customs territory of the Republic of Tajikistan exceeds 180 days from the day of prepayment, a permission of the National Bank of Tajikistan for the carrying out of a currency transaction relating to the capital movement is required;
- Upon importation of a good into the customs territory of the Republic of Tajikistan, the copies of a contract (agreement), the copies of a cargo customs declaration on importation of a good, and other supporting documents confirming importation of a good; and
- Upon importation of works and services, a contract (agreement), the invoices, the acts of the works accomplished, a cargo customs declaration on importation of logistics means required for accomplishment of works, provisions of services, etc.

Question 50

What is the current sales tax rates on export for cotton and aluminium? Do domestic consumers of these products need to obtain a confirmation of the taxation bodies on collection of the sales tax? Do the same sales tax rates apply to sales for export as for sales for domestic consumption? If not, why not?

Answer:

The Tax Code of the Republic of Tajikistan, Chapter 44 (Articles 282-287) determines the issue of sales tax. (document WT/ACC/TJK/6/Add.1)

In compliance with these Articles of the Tax Code of the Republic of Tajikistan, only two products are subject to sales tax. These are aluminium and cotton fibre. Currently, the sales tax for cotton fibre is 10 per cent, and for aluminium it is 2 per cent. These sales tax rates are the same both for export and domestic taxation.

Question 51

Please identify all products, including HS numbers, that require an insurance policy for export by state trading enterprises. What does the insurance policy cover?

Answer:

In conformity with Resolution No. 547 of the Government of the Republic of Tajikistan dated 31 December 1998 on Some Measures to Improve Insurance Activities in the Republic of Tajikistan, all kinds of cargo to be shipped outside of the Republic of Tajikistan by state entities shall be subject to mandatory insurance.

The insurance payment rate relating to state mandatory insurance of cargo to be shipped outside of the republic shall not exceed 0.2 per cent of the value of exported cargo.

Tajikinvest State Company on Investment Insurance under the Government of the Republic of Tajikistan is responsible for insurance of cargo to be exported outside of the republic.

Question 52

Why is authorization from the Ministry of Industry required for exportation and importation of precious and semi-precious metals, alloys, goods from them, ores, concentrates, scrap iron and waste of precious metals, rare and rare-earth metals, raw material for producing alloys, compounds, and goods according to the Decree No. 88 of 12 February 1997 of the Government of the Republic of Tajikistan? Is this authorization automatically granted to all applicants? If not, what criteria are used to determine whether or not to grant such authorization. Please describe any procedures and fees that apply with respect to obtaining such authorization. Please provide a translated copy of Decree No. 88 of 12 February 1997, to the Secretariat for review by the Working Party.

Answer:

The current measures and procedure will be adjusted to conform to WTO requirements (document WT/ACC/TJK/6/Add.1 - see in this context also reply to question on WT/ACC/TJK/5 Answer 16).

Question 53

Please explain why there are two decrees, Decree No, 88 of 12 February 1997, and Decree No. 357 of 7 August 1997 for the authorization from the Ministry of Industry for the export and import of precious and semi-precious stones.

Answer:

Resolution No. 88 of 12 February 1997 approved the Regulation on the Procedure to Sell Precious Metals. Precious metals are exported by manufacturing enterprises as agreed with the Ministry of Industry within the approved and additional quotas established annually by the Government Republic of Tajikistan. The Ministry of Finance and National Bank shall have a priority right to purchase precious metals in the form of refined gold and silver.

Regulation No. 357 of 7 August 1997 relates to marketing and exportation of precious stones and raw materials thereof. In compliance with this Regulation, raw materials are exported and marketed outside of the Republic by legal and physical persons, organizations and enterprises of all property forms only if appropriate permit is available.

Question 54

Please describe Corporation "Khurokvori," the entity responsible for the issuance of quotas and licenses for export and import of alcohol production (spirit) and tobacco goods. Is this entity part of the Government of the Republic of Tajikistan or is it a private entity? Does Corporation "Khurokvori" charge fees for the issuance of quotas and licenses?

Answer:

Khurokvori Food and Processing Industry Corporation of the Republic of Tajikistan, hereinafter referred to as the Corporation, was established in accordance with the Founding Agreement of 24 July 1997 and in compliance with the Government Resolution of 15 July 1997. The Corporation is a legal successor of Tajikpischeprom Food and Processing Industry Committee under the Government of the Republic of Tajikistan.

Currently, the Corporation consists of contracted enterprises, associations, organizations, and farms belonging to the food and processing industry, to the agro-industrial complex, as well as other sectors of the economy relating to food and processing enterprises, regardless of the forms of ownership.

The Corporation is created to coordinate activities, protect rights, and present common interests of the Corporation constituents in government and other organizations, companies and firms in the Republic of Tajikistan, and outside the republic.

The Corporation, being a voluntarily centralized entity, performs the functions of technical and productive development, material and technical provision, marketing, investment, financial, and foreign economic activities.

A licence fee is to be paid in conformity with the Government Resolutions of the Republic of Tajikistan No. 131 dated 7 April 1999 and No. 453 dated 27 October 1999.

Question 55

What is the rationale for requiring the authorization from the Ministry of Communications of the Republic of Tajikistan for the import of radio-electronic facilities and high-frequency devices?

Answer:

Import permit for radio electronic means and high frequency devices is issued by the State Communications Inspection under the Ministry of Communications (SCI) of the Republic of Tajikistan with the following purposes:

- to check conformity of emission and reception parameters of radio electronic means imported into the territory of the Republic of Tajikistan with state standards and norms, as well as to analyze and calculate electromagnetic compatibility with existing and planned radio electronic means (REM) and high frequency devices (HFD);
- to import certified REM and HFD for consumers' rights protection and prevent marketing of REM and HFD, which are of poor quality and /or detrimental for health of the population;
- to regulate lawful and systematic use of the radio frequency spectrum and to provide radio connections without interference for all REM and HFD user categories;
- to ensure accounting for imported and functioning REM and HFD to define their life term (depreciation periods) in the available network and to possibly convert (release) of channels (frequency spectrum) for new technology REM;
- to prevent illegal radio frequency use, which is a limited national resource;
- to secure REM and HFD use within the Government, common, aircraft and railway frequencies; and
- to secure mutually connected networks.

Question 56

From the list provided on page 51 of the Memorandum on Foreign Trade Regime, it appears that most of the major industrial products produced in Tajikistan are required to be sold on the Tajik Universal Commodity Exchange.

Please provide a translated copy of the Decision of the Tajik Universal Commodity Exchange, in accordance with the Decree No. 237 of 8 June 2001. "On measures on improvement of promotion of domestically produced goods on the foreign market," to the WTO Secretariat for review by the Working Party.

Answer:

In accordance with the Government Resolution on Measures to Improve and Promote Domestic Goods in External Markets No. 237 of 8 June 2001, (document WT/ACC/TJK/6/Add.1) Tajik Universal Commodity Exchange decided:

It shall ensure the efficient use of export capacity, promotion of the competitiveness of domestic products and goods, as well as saturating the domestic consumer market based on bilateral agreements, provision of marketing information and analytical services facilitating sales of goods, raw materials, and products. Tajikistan Universal Commodity Exchange shall be guided in full by the above mentioned Government Resolution of 8 June 2001 as well as by Appendix 1 to this Resolution No. 237, i.e. by the list of goods, raw materials, and products produced by commodity producers, which are subject to compulsory sales through Tajikistan Universal Commodity Exchange, and coded under the CCFEA CIS (HS).

Question 57

Are any products, other than those listed on page 51 of the Foreign Trade Memorandum, subject to the Decision of the Tajik Universal Commodity Exchange, requiring mandatory sale through the commodity exchange? Please describe the Tajik Universal Commodity Exchange and how it operates. Is it a part of the Government of the Republic of Tajikistan or a private entity? Does it enter into import or export transactions? What is the rationale for requiring that the products be sold through the Tajik universal commodity exchange?

Answer:

Tajikistan Universal Commodity Exchange is a legal entity reporting to the Ministry of Economy and Trade of the Republic of Tajikistan.

The Exchange acts are based on the Law on Commodity Exchange and Exchange Trade No. 453 of 23 December 1991, other laws, and Rules on Exchange Trade of the Republic of Tajikistan laws.

The Exchange is a regular market of mass products sold by standard or sample.

Commodity Exchanges and exchange trading contribute to setting up conditions for market shaping, accelerated development of trading infrastructure, concentration of supply and demand, and market-regulated pricing.

The objective of the Commodity Exchange is to provide broker services on trade bargaining, to streamline commodity trade, regulate trade operations, settle trade disputes, collect and disseminate data on prices, information on the situation in the industry, trade, transport, and other factors affecting price dynamics.

The Exchange has not been involved in import and export operations yet.

If sellers and buyers apply to the Exchange to auction goods, raw materials, and products, not listed among goods, raw materials, and products produced by national manufacturers and which are subject to compulsory sales through Tajikistan Universal Commodity Exchange, they may be sold through the Exchange.

In accordance with Appendix 1 of the Government Resolution No. 237 of 8 June 2001 of the Republic of Tajikistan, materials, and products produced by commodity producers, which are subject to compulsory sales through Tajikistan Universal Commodity Exchange, are considered strategic. The Exchange is responsible for operative accounts, protection of price policies and market.

Question 58

Please explain the rationale for requiring a decision of the government of the Republic of Tajikistan to export information about deposits of mineral resources and oilfields and their location on the territory of the Republic of Tajikistan?

Answer:

Data on the country's sub-surface resources, capacity and mineral stocks in the country's grounds, on prospected resources and mining, and other characteristics of deposits of a specific site are permitted to be published and defined by the Main Geological Department under the Government as agreed with the Main Department on State Secrets under the Government of the Republic of Tajikistan; as for raw semiprecious stone materials - with the Ministry of Industry. Such matters can include information that is considered to be state secret.

(i) Other customs formalities

Question 59

Please describe the information that is required for the declaration of control and correction of the customs value and explain its purpose. Can the importer provide this declaration directly to customs, or is the importer obliged to use a customs broker? What are the requirements for becoming customs brokers?

Answer:

For the issue of "the declaration of control and correction of the customs value," the customs bodies of the Ministry of Public Revenues and Charges of the Republic of Tajikistan use the declaration of the customs value (DCV) (Forms DCV 1 and DCV 2) and the correction of the customs value (CCV) (Forms CCV 1 and CCV 2).

The declaration of the customs value (Forms DCV 1 and DCV 2) is an attachment to the main cargo customs declaration (CCD), and the CCD is not valid without a DCV. The declaring person (a customs broker (agent)) submits the DCV with a CCD to a customs body carrying out the customs clearance. The customs body checks a DCV according to the Instruction How to Fill out DCV (approved by a Decree of the Ministry of Public Revenues and Charges of the Republic of Tajikistan) and taking into account the specifics conditions of estimated transaction.

The correction of the customs value (CCV) (Forms CCV 1 and CCV 2) is also an integral part of the cargo customs declaration if:

- in the process of the customs value control, arithmetic errors are found and corrected in DCV 1 (addition, conversion of the exchange rate errors, etc.), which affect the declared customs value;
- in the process of the customs value control, discrepancies between the amount and the structure of the customs value and the supporting documents, or the price actually paid or due to be paid, and additional charges or deductions affecting the amount of the customs value (the relevant DCV 1 sections and lines) are revealed;
- an interim (conditional) customs valuation is required to allow the declaring person to use a good in compliance with the Regulations when the customs value may not be accepted by the customs body;
- the customs value is determined based on additional information presented by the declaring person, or (in case of lack of such information) a customs body conducts the customs valuation of goods; and

- in other cases stipulated by other normative acts of the Republic of Tajikistan CCV 1 and CCV 2 Forms).

The declaring person (a customs broker (agent)) submits a CCV with a CCD to the customs body carrying out the customs clearance, which checks whether a DCV has been filled out properly.

An importer is entitled to submit a CCD, DCV, and CCV himself, or to have a declaring person (a customs broker (agent)) involved.

The Customs Code of the Republic of Tajikistan, Chapter 24 (Articles 157, 158, 159, 160, and 163) regulates the issue of "the customs agent."

- Article 24. The Customs Broker
- Article 157. The Customs Broker
- Article 158. Licence to Perform the Custom's Broker Activities
- Article 159. Rights and Responsibilities of the Customs Broker
- Article 160. The State Registry of Customs Brokers
- Article 161. The Specialist on Customs Legitimization
- Article 162. Charges for the Issue of a Licence, a Certificate of Competence and Their Renewal;
- Article 163. Treatment of the Customs Broker and His Staff in respect of Information Received from the Declaring Person;

For the text of these Articles see document WT/ACC/TJK/6/Add.1

Question 60

Please describe the procedures for obtaining a passport of a transaction for foreign exchange control. Does this require the deposit of foreign currency? If so, how much is required? How long is the passport valid and what is the fee for obtaining such a passport?

Answer:

For purposes of currency exchange supervision on receipt of foreign currency proceeds from export of goods from the Republic of Tajikistan, the customs legislation envisages a passport of an export transaction drawn up by an exporter.

The procedure to fill out a passport of a transaction is determined in the Regulation on the Procedure to Exert Foreign Currency Control on Receipt of the Foreign Currency Earnings from Export of Goods approved by the National Bank and the Ministry of Public Revenues and Charges of the Republic of Tajikistan.

Consistent with the above-mentioned Regulation, a passport of a transaction is a basic document of foreign exchange control drawn up by an exporter in the bank and containing the data on a foreign economic transaction required for exerting control.

While drawing up a passport of a transaction, it is not required to deposit a foreign currency.

In accordance with Decree No. 424 of the President of the Republic of Tajikistan of 24 February 1996 on Liberalization of Currency and Export Operations and Measures to Ensure Complete Return of the Currency Proceeds to the Republic of Tajikistan, the period of payment for exports shall be not more than 120 days, except for the goods specified in the Decree (100 per cent prepaid goods). Based there on, the controlling time limit to close a passport of a transaction is 120 days. When the controlling

time limit expires, the issues of the closing a passport of a transaction are considered as force-majure and other private circumstances, as well as breach of the currency exchange legislation.

For legalization and the performing of functions of a currency control agent, an authorized bank charges 0.01 per cent of the contract value based on which a passport of a transaction is drawn up.

(j) Pre-shipment inspection

Question 61

Why is the government of Tajikistan considering the introduction of a pre-shipment inspection regime in foreign trade?

Answer:

Up to date, customs bodies of the Republic of Tajikistan have not had recourse to and, therefore, not developed the mechanism and the procedure for the use of pre-shipment inspection.

(k) Application of internal taxes on imports

Question 62

Please identify all countries from which imports are excluded from the Tajikistan value-added tax.

Answer:

When levying VAT for imports, the Republic of Tajikistan applies the principle of "a destination country" when levying an indirect tax. This principle applies to all the countries with which the Republic of Tajikistan conducts bilateral trade. The use of the principle is based on bilateral and multilateral agreements to avoid double taxation and levying indirect tax under the "destination country" principle. Currently, there are no countries imports from which are excluded from VAT.

Question 63

Please explain how the government of Republic of Tajikistan intends to operate its VAT regime in a manner consistent with the most-favoured nation treatment of GATT Article I.

Answer:

The current import taxation regime in the Republic of Tajikistan corresponds to GATT Article I and III (Items 2 and 4). In particular, indirect taxes as VAT and excises have the same rates both for import goods and domestic goods. The proposed Tax Code will no longer contain exclusions provided for in the Article 187 of the existing Tax Code.

Question 64

Why does the Republic of Tajikistan impose a higher excise tax rate on the imported alcoholic products listed in document WT/ACC/TJK/6/Add.1 than on like domestically produced products?

Answer:

Tajikistan no longer applies higher excise tax on such imports.

Please refer to the document WT/ACC/TJK/5 replies to the questions 24 and 25.

Question 65

How does the Republic of Tajikistan intend to bring its excise tax regime into conformity with the national treatment requirements of GATT Article III?

Answer:

See reply 64 above

(m) Anti-dumping regime

Question 66

Please provide a translated copy of the Law on Customs Tariff of the Republic of Tajikistan, Article 9, relating to anti-dumping duties, to the WTO Secretariat for review by the Working Party.

Answer:

For an English version of the Law on Customs Tariff of the Republic of Tajikistan see document WT/ACC/TJK/6/Add.1.

Question 67

We note that Tajikistan intends to not apply antidumping duties until further detailed provisions have been adopted.

Answer:

It should be noted that the anti-dumping regime has never been used in customs practice but the current norms correspond substantially to the GATT rules. When developing further detailed provisions, the norms and standards of the relevant WTO agreement will be fully taken into account.

(n) Countervailing duty regime

Question 68

Please provide a translated copy of the Law on Customs Tariff of the Republic of Tajikistan, Article 10, relating to countervailing duties, to the WTO Secretariat for review by the Working Party.

Answer:

For the English version of the Law on Customs Tariff of the Republic of Tajikistan see document WT/ACC/TJK/6/Add.1.

Question 69

We note that Tajikistan intends to not apply countervailing duties until further detailed provisions have been adopted.

Answer:

It should be noted that countervailing duties have never been used in customs practice but the current norms correspond substantially to the GATT norms and standards. When developing further detailed provisions, the norms and standards of the relevant WTO agreements will be fully taken into account.

(o) Safeguard regime

Question 70

Please provide a translated copy of the Law on Customs Tariff of the Republic of Tajikistan, Article 8, relating to special duties, to the WTO Secretariat for review by the Working Party.

Answer:

Please see document WT/ACC/TJK/6/Add.1.

Question 71

Does the Republic of Tajikistan currently apply any special duties? If so, please identify the product; describe the special duty applied, and the countries whose imports are subject to such duties.

Answer:

At present, no special duties are applied in the Republic of Tajikistan.

Question 72

We note that the Republic of Tajikistan does not intend to apply antidumping or countervailing duties until further detailed provisions have been adopted. Does the Republic of Tajikistan likewise intend to not apply special safeguards until its legislation is brought into conformity with GATT Article XIX and the WTO Agreement on Safeguards?

Answer:

It should be noted that the basic legal provisions concerning special duties substantially correspond to the GATT norms and standards. The rules of the relevant WTO agreements will be fully taken into account when developing further detailed provisions.

2. Export Regulation

(c) Quantitative export restrictions

Question 73

Please provide a translated copy of "the customs legislation that envisages introduction of quantitative export restrictions" to the WTO Secretariat for review by the Working Party. Please provide a description of this legislation, for example, is the scope of quantitative export restrictions limited to specific products, is the application of the restrictions discretionary?

Answer:

The Law on Foreign Economic Activities and the Law on State Regulation of Foreign Trade Activities of the Republic of Tajikistan regulate quantitative export restrictions, including bans, the systems of quotas and licensing.

At present, there are neither Government-mandated quantitative restrictions for export of goods, nor any bans.

The system of quotas and licensing for exports is analogous to the system of quotas and licensing for imports (see Item IV.1.(f) above).

(h) Import duty drawback schemes

Question 74

Please provide a translated copy of Article 63 of the Customs Code, relating to duty drawback, to the WTO Secretariat for review by the Working Party.

Answer:

As for the issue of duty drawback in accordance with the Customs Code of the Republic of Tajikistan, Article 63, it should be noted that this Article in Chapter 9 has provisions determining goods processing in the customs territory:

- The Customs Code of the Republic of Tajikistan, Chapter 9, Article 58; and
- The Customs Code of the Republic of Tajikistan, Chapter 9, Article 63.

See document WT/ACC/TJK/6/Add.1.

Question 75

Please explain how Tajikistan calculates the amount of import customs duties and taxes to be remitted under the Customs Code.

Answer:

The Customs Code of the Republic of Tajikistan envisages that customs duties and taxes are essentially remitted when using specific customs regimes (re-import, re-export, and processing in the customs territory) and overpayment of customs duties (the Customs Code of the Republic of Tajikistan, Articles 32, 58, 100, and 125). The Instruction on Collection of Customs Duties approved by a Decree of the Ministry of Public Revenues and Charges of the Republic of Tajikistan also determines the duty repayment schemes.

Question 76

How does Tajikistan ensure that the duties and taxes remitted are not in excess of what is paid by the exporter.

Answer:

The Tax and Customs Codes of the Republic of Tajikistan determine that the amounts of repaid duties and the tax paid by the exporters shall not be exceeded. For instance, Article 206 on Operations with the Budget in Case the Tax Collected Exceeds the Tax Calculated for the Reporting Period, Item 3

stipulates that if certain amounts have been returned to the taxpayers by mistake, a tax body may demand the reimbursement amounts under the tax collection procedure.

The Customs Code of the Republic of Tajikistan, Article 125 determines that the amounts of customs duties excessively paid or levied shall be subject to repayment on demand of the body within one year from the moment of payment or exemption of such duties. The Customs Committee, in coordination with the Ministry of Finance of the Republic of Tajikistan, determines the procedure for repayment of such duties excessively paid or levied.

Question 77

Please explain how you determine and track whether an overpayment has been made under Article 125.

Answer:

The Customs Code of the Republic of Tajikistan, Article 125 determines the relevant procedures. (See document WT/ACC/TJK/6/Add.1).

Overpaid amounts are determined and declared both by the person who paid the amount and a customs body. When clearing goods, in particular checking whether the declaration of customs value is properly drawn up, the customs also checks the correctness of customs duty calculations. In addition, the practice of customs of the Ministry of Public Revenues and Charges of the Republic of Tajikistan envisages post-entry control, which also may be established in cases of overpaid customs duties.

3. Internal policies affecting foreign trade in goods

(a) Industrial policy

Question 78

Please explain and provide further details regarding the "measures of indirect subsidizing of production and sales of certain goods forming the basis of export potential".

Answer:

There are no indirect subsidies from the State Budget of the Republic for products and sales of specific goods, within an export capacity framework.

Question 79

What types of measures are used to subsidize this production? Which industry sectors benefit from these measures? Is exportation a requirement in order to qualify for these measures? If not, please describe the eligibility requirements.

Answer:

Funds for geological prospecting to be executed by oil and gas extracting, coal and mining enterprises under the Ministries of Energy and Industry are annually factored into the State Budget of Tajikistan. These funds are mostly allocated for prospecting and additional prospecting of mineral resources and accounting for thereof by the state. Exportation is not a requirement in order to qualify for such measures.

Question 80

Please explain how much of the budget is allocated for mining and chemical industry? How and to whom are these subsidies allocated?

Answer:

In 2002, for geological prospecting for oil, gas extracting and coal industries, the Ministry of Energy of the Republic of Tajikistan was actually allocated TJS 363.8 thousand from the State Budget. In 2003, for these purposes TJS 417.3 thousand was envisaged.

In addition, the Budget envisages around US\$ 120,000 annually for the Ministry of Industry of the Republic of Tajikistan to maintain temporarily idle facilities belonging to Zarya Vostoka State Unitary Enterprise. These amounts are not considered as subsidies for the industry.

In general, subsidies from the 2003 Budget were TJS 202,000, including Takobskii GOK Joint Stock Company (a mining enterprise) – TJS 8.6 thousand, AO Anzobskii GOK Joint Stock Company (a mining enterprise) – TJS 19.5 thousand, Adrasmskii Joint Stock Company (a mining enterprise) – TJS 85.6 thousand, Jamast State Unitary Enterprise (a mining enterprise) – TJS 85.6 thousand, and Tajikhhimprom Joint Stock Company (a chemical enterprise) – TJS 2.7 thousand.

The coal industry of the Ministry of Industry of the Republic of Tajikistan is not profitable. For strengthening fuel independence of the republic, the industry has been subsidized from the State Budget starting from 2003. The subsidies amount to TJS 150,000 and are allocated to strengthen the material and technical basis of the industry.

Subsidies from the State Budget are allocated within the breakdown approved by the Ministries of Industry and Energy directly to each enterprise through the Central Treasury of the Ministry of Finance of the Republic of Tajikistan. Currently, the chemical industry is not subsidized from the Budget.

Moreover, in conformity with the Law of the Republic of Tajikistan on the Earth's Interior, Article 46, Par 2 approved by Decision No. 983 of 20 July 1994, tax paid to the State Budget by enterprises for bonuses and royalty to estimate the mineral resource basis are reimbursed or decreased by an amount of actual financing from enterprises' funds based on geological prospecting estimates approved by appropriate state authorities.

Question 81

Please explain what industry branches receive preferential loans and micro-credits. What criteria are used for selecting companies to receive preferential loans or micro-credits?

Answer:

Currently, no industrial sectors get preferential loans and micro credits.

Question 82

What is the difference between the sales tax and the VAT in Tajikistan?

Answer:

The source is the Tax Code of the Republic of Tajikistan

	Sales Tax ¹	VAT
Payers	Natural and legal persons supplying cotton fibre and primary aluminium to the foreign and domestic market.	A body registered or which is obliged to get registered a VAT payer (if the body is involved in economic activities and if the volume of taxable operations for the previous 12 months has exceeded 12,000 non-taxable minimum incomes), the body shall get registered as a VAT payer not later than ten days after the completion of the stated period. The bodies involved in the taxable import operations shall also be subject to the VAT.
Tax rate	for cotton fibre –10 per cent for primary aluminium –2 per cent	20 per cent
Object of taxation	the cost of goods of own production, sold goods, exchanged for other goods, given for free or partially paid, collateralized, on future (forward) deals, given as raw materials, or relating to the change of owners (processors).	Taxable operations (the supply of goods, accomplishment of works, and the provision of services, except for the supply of goods, accomplishment of works, and the provision of services exempt from the VAT in compliance with the Tax Code of the Republic of Tajikistan) and taxable imports.
Specifics	The tax is exceptional and a temporary and it is planned to cancel it shortly.	The export of goods (works, and services) is VAT zero-rated, except for the supply of goods (works and services) to the states, which apply the VAT on goods (works and services) exported to the Republic of Tajikistan.

Question 83

Please explain whether all deliveries of cotton and primary aluminium are exempted from VAT, whether sold domestically or for export. Are these the only two products that are exempt from VAT in Tajikistan? Are these or any other products also exempt from the sales tax or any other taxes?

Answer:

As mentioned earlier, the Tax Code of the Republic of Tajikistan, Chapter 44 (Articles 282-287) determines the issue of sales tax. In accordance with the above mentioned Tax Code only two commodities are subject to sales tax. These are aluminium and cotton fibre.

For cotton fibre the sales tax is ten percent, and for aluminium sales tax rate is 2 per cent. These sales tax rates are the same both for export and domestic sales.

The Tax Code of the Republic of Tajikistan, Chapters 24-31 (Articles 176-202) determine the issue of value-added tax and fixes the value-added tax rate at 20 per cent.

As for the issue of value-added tax for cotton fibre and aluminium, the commodities, which are subject to sales tax, are exempt from value-added tax whether sold domestically or for export. The Tax Code of the Republic of Tajikistan, Article 187 determines the issue of VAT exemption.

Question 84

WT/ACC/TJK/3 states that under the state budget, funds are allocated for exploration work by mining enterprises as well as enterprises using local raw materials.

Are these funds only available to companies that use local raw materials?

¹ Sales tax is only levied on cotton fibre and primary aluminium

Answer:

Yes, these funds are allocated for enterprises, which use local raw materials.

(e) State trading practices

Question 85

Please describe the restrictions specified in items (e), (f) and (g), "Import Regulation," that apply to private or state enterprise or establishment in the Republic of Tajikistan.

Answer:

Section IV.1 "Import Regulation" of the Memorandum described all regulations affecting imports in various ways, including those under item (e), (f) and (g) in that section. Measures applied by private or state enterprises or establishments in Tajikistan may include measures described there.

(j) Government-mandated counter-trade and barter

Question 86

According to the Memorandum, sales of all types of goods abroad are carried out without restrictions for foreign exchange at prices fixed on the National commodity exchange (auctions) taking into account world prices.

Please explain how the national commodity exchange auction operates. How are the world prices taken into account? How does the national commodity exchange auction reconcile differences between local prices and world prices for the commodities?

Answer:

The auctions at the Tajik Universal Commodity Exchange are conducted on certain days of the week. Commodities and raw materials of both local and foreign producers are up for an auction sale. To participate in an auction, a broker-seller fills out an auction application indicating all the necessary data, including the name of the commodity, the quantity, the starting price, the terms of payment, the 2000 INCOTERMS delivery terms, and the location of the commodity. A broker-buyer, who offers the highest price at an auction sale, buys a commodity.

The world prices for goods and raw materials are accounted for based on the prices of large world specialized exchanges as the Liverpool Cotton Association, the London Metal Exchange, the data from CIS countries, and from Internet.

If a seller has concluded a contract at a price, which is much less than the world price, a broker-buyer having a client offering a higher price for a commodity buys it.

Question 87

According to the Memorandum, 100 per cent pre-payment is a mandatory requirement for export of cotton and processed goods, primary aluminium and goods, ores, concentrates and residues of precious metals, fermented tobacco, hides and leather, fertilizers, geranium oil, natural honey, herbs and snake venom.

Is 100 per cent pre-payment a mandatory requirement for purchases of these products for domestic consumption? If not, why not?

Answer:

In accordance with Decree No. 424 of The President of The Republic of Tajikistan of 24 February 1996 on Liberalization of Currency and Export Operations and Measures to Ensure Complete Return of the Currency Proceeds to the Republic of Tajikistan, export of these commodities is made only under the condition of 100 per cent pre-payment. Therefore, pre-payment requirement is not mandatory for purchases of these products for domestic consumption. The condition of 100 per cent pre-payment is imposed because these commodities are strategic and export-oriented and the necessity of such form of payment is to ensure the currency proceeds of export of the commodities.

Barter operations are permitted for primary aluminium sales by the Tajik Aluminium Plant for production purposes (purchases of raw materials and technological equipment).

Question 88

Is the Tajik Aluminium Plant subject to any export performance or import substitution requirements?

Answer:

Tajik Aluminium Plant is not subject to any export performance or import substitution requirements as such. As explained in the Memorandum page 64, TADAZ must observe limited barter volume obligations laid down by the Government and the Ministry of Economy and Trade of the Republic of Tajikistan.

(I) Government Procurement Practices

Question 89

Does Tajikistan intend to sign the WTO Agreement on government procurement?

Answer:

Please refer to WT/ACC/TJK/5 Answer 38.

Question 90

WT/ACC/TJK/3 states that Tajikistan uses alternative procurement methods, such as requests for proposals, requests for quotations, and single source procurement.

In what cases would Tajikistan uses these alternative methods?

Answer::

The choice of the method depends on a broad range of factors and criteria such as the size and volume of the procurement contract, its duration and the type of product or service involved, the characteristics of the market concerned etc.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

(c) Membership in international intellectual property conventions and regional or bilateral agreements

Question 91

This section of WT/ACC/TJK/3 indicates that Tajikistan is a member of "The World Copyright Convention."

Should this reference instead be to Tajikistan's membership in the "Universal Copyright Convention (UCC)?"

Answer:

Yes.

Question 92

Tajikistan is not a member of the Convention on the Protection of the Interests of Producers of Phonograms from Illegal Broadcasting of their Phonograms (the "Geneva Convention"); the International Convention on the Protection of the Rights of Performers, Producers of Phonograms and Broadcasting Organizations (the "Rome Convention"), and the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (the "Satellites Convention).

Please describe Tajikistan's plan to accede to these conventions.

Answer:

Taking into consideration the increasing role of copyright at present, specialists of the Agency for Copyright and Related Rights of the Ministry of Culture of the Republic of Tajikistan explore the possibilities of accession to the WIPO Copyright Treaty (Geneva, 1996), the WIPO Performances and Phonograms Treaty (Geneva, 1996), Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva Convention, 1971), International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention, 1961) and Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels, 1974) with the aim of the development of the process of the integration into the world association and protection of rights of foreign and Tajikistan right holders.

For accession to any international convention certain measures must be taken to ensure real fulfilment of its obligation. In 2000 the Republic of Tajikistan acceded to the Berne Convention for the Protection of Literary and Artistic Works, now the work for improvement of the mechanism of the protection of interests of phonogram right holders continues.

First, the work follows the line of perfecting the legislation and bringing it into in line with the conditions of the conventions: second, by means of carrying out measures on their application in practice.

With the aim of accession to the international convention the Agency for Copyright and Related Rights of the Ministry of Culture of the Republic of Tajikistan prepared complex recommendations

for fighting against unauthorized use of audiovisual works and phonograms. The following topics are included in it:

Exposing of counterfeit copies on outward appearance of cases of CD-ROMs and audiocassettes, polygraphical design of loose booklets and design of the CD-ROMs and audiocassettes.

Application of measures on exposure of unauthorized producing and selling of counterfeit production in cooperation with law-enforcement bodies. They are the following:

- checking of some trade enterprises;
- exposure of places of producing of counterfeit production;
- suppression of illegal transferring of counterfeit copies of works cross the customs border of the Republic of Tajikistan; and
- establishment of an effective mechanism for the protection of infringed rights.

The application of these measures permits the Republic of Tajikistan to have an effective mechanism for the protection of copyright and related rights with the aim of the accession to the above mentioned conventions.

Question 93

Tajikistan has not acceded to the WIPO Copyright Treaty ("WCT") and the WIPO Performances and Phonograms Treaty ("WPPT"), commonly called the "WIPO Internet Treaties."

Please describe Tajikistan's plan to accede to these conventions.

Answer:

Please refer to the answer 92.

Question 94

Tajikistan indicates that it is "represented" in the International Union for the Protection of New Varieties of Plants (UPOV), but is not a member of UPOV.

Does Tajikistan have current plans to accede to UPOV and how are those plans, if any, progressing?

Answer:

The Republic of Tajikistan is ready to enter the UPOV in full compliance with TRIPS, Article 3 "National Treatment".

(e) Fees and taxes

Question 95

Tajikistan applies different methods of calculating fees for nationals and foreign nationals.

Please explain how this practice complies with the requirement to of TRIPS Article 3 to provide national treatment.

Answer:

Please refer to WT/ACC/TJK/5 Answer 42.

2. Substantive standards of protection

(a) Copyright and related rights

Question 96

In this section, Tajikistan lists a number of intellectual property conventions to which it belongs, which are not listed in Section I (c) of the Memorandum on the Foreign Trade Regime (FTM).

Please provide a consolidated list of the conventions and agreements in the area of intellectual property to which Tajikistan belongs and indicate plans for membership in additional such conventions and agreements.

Answer:

The Republic of Tajikistan is a member of the following conventions and agreement:

- World Convention on Copyrights (1992);
- Bern Convention on Protection of Works of Literature and Art (2000); and
- Agreement on Cooperation on Suppression of Infringements in the Field of Intellectual Property (1998).

Question 97

With regard to the CIS Agreement on Cooperation in Suppression of Violations of the Law in the Area of Intellectual Property (1998); the Joint working Commission of the States; the CIS Agreement on Cooperation in Suppression of Violations of the Law in the Area of Intellectual Property (20 June 2000); and the CIS Interstate Council on intellectual property (23 November 2000):

Please provide copies of these agreements and briefly describe how each operates.

Answer:

The Agreement on Cooperation in Suppression of Violations of the Law in the Area of Intellectual Property was signed to create favourable conditions for the harmonized development of mutual trade and economic, industrial, and scientific cooperation. To implement these purposes, the Parties set up a joint Working Commission under this Agreement (Article 7 of this Agreement).

The cooperation is carried out through:

- the exchange of information on suppression of violations of the law in the area of intellectual property;
- the creation of the common database on suppression of violations of the law in the area of intellectual property;
- the arrangement of the activities on prevention, identification, suppression, and solution of crime in the area of intellectual property;
- the exchange of experience on prevention, identification, suppression, and solution of violations of the law in the area of intellectual property;
- the exchange of training, methodological, and special literature;
- the arrangement of joint working surveys, workshops, and conferences;
- the facilitation in the preparation and staff professional improvement; and
- upon requests of the Parties, the provision of normative acts regulating the activities in the area of intellectual property.

In addition, the Parties will bring their national legislations in compliance with the international standards in the area of protection of intellectual property rights and put into effect the relevant procedures that endow the customs bodies to suspend across the customs borders of the Parties the movement of goods produced or acquired with violations of intellectual property rights, and/or bearing some violations of the said rights.

The joint Working Commission set up for practical implementation of the Agreement on Cooperation in Suppression of Violations of the Law in the Area of Intellectual Property should:

- develop the practical measures to implement the provisions of the mentioned Agreement;
- coordinate the activities of the authorized bodies of the Parties to prevent and suppress violations of the law in the area of intellectual property; and
- conduct regular sessions of the authorized bodies of the Parties to develop action plans to control the implementation of the decisions made and to provide methodological assistance to the authorized bodies of the Parties.

See document WT/ACC/TJK/6/Add.1.

Question 98

With regard to the Bilateral Agreements with the copyright organizations of CIS members countries (Russian Federation, Moldova, Kazakhstan, Kyrgyz Republic, Uzbekistan): Please outline the provisions of these agreements and briefly describe how each operates.

Answer:

The subject of the bilateral agreements between the states of the Commonwealth of Independent States (Russian Federation, Moldova, Kazakhstan, Kyrgyz Republic, and Republic of Uzbekistan) is protection of rights of authors and owners of rights of the parties being represented and being protected in the person of their authorized bodies in accordance with the legislation of each state. The bodies concerned transferred to each other authority according with the provisions of the agreements.

Operation of these agreements is realized in the following way:

- where necessary the parties cooperate in the field of preparation of projects of legislative and normative legislation on copyright;

- the parties timely inform each other about new normative legislation concerning rights of others adopted in the Republic of Tajikistan and in the above mentioned states, as well as exchange copies of such normative legislation and information about their use in practice;
- where necessary the parties have reciprocal exchange of visits of specialists to get acquainted with methods and practical experience and for participation at seminars and other measures on copyright problems;
- the parties cooperate at rendering legal assistance in concrete cases in connection with infringement of copyright through reciprocal commissions;
- legal assistance in the sphere of economic rights is rendered on the basis of commissions from collection and distributing of royalties without additional payment;
- the amount of commissions for conducting judicial proceedings connected with restoration of infringed rights of authors will be fixed in each case by special agreements between the declarant and the party which renders legal assistance;
- payment for giving other kinds of assistance is made by transferring the amount which is fixed under the agreement to the account of the party which renders legal assistance. Contracting parties come to an agreement with each other about the texts of contracts and will assist each other in order to conclude and to realize the contracts; and
- the agreements come into force from the date of their signing by both parties and will be valid for five years.

After the expiry of its period of validity, if neither party notifies in writing of its desire to terminate the agreement or to alter the terms and conditions, the agreement is automatically extended for five years.

Question 99

Tajikistan states that the Law "On Copyright and related rights" of 13 November 1999, as amended, is the current, governing law in the field of copyrights and related rights.

Please confirm this statement and provide a copy of the law and all amendments.

Answer:

Tajikistan confirms that the Law "On Copyright and related rights" of 13 November 1999, as amended, is the current, governing law in the field of copyrights and related rights.

Question 100

With respect to national treatment, Tajikistan states: "Foreign copyright owners in protection of their works, performances, audio records (soundtracks), programmes of regular and cable broadcasting have the same regime as it is provided to the citizens of the Republic of Tajikistan."

Please describe more fully how Tajikistan satisfies the international minimum standards for national treatment required by the TRIPS Agreement.

Answer:

The principle of national regime provided by the legislation of the Republic of Tajikistan specifies that nationals of other member-states shall enjoy in the Republic of Tajikistan the same rights to the protection of intellectual property as nationals of Tajikistan (Article 3 of the TRIPS Agreement) taking into consideration the demands of the international conventions on the protection of intellectual property. Article 4 of the Law "On Copyright and related rights" of 13 November 1999 provides:

"By virtue of this Law, copyright extends to works:

- authors of which are nationals of the Republic of Tajikistan or have permanent residence within the territory of the Republic of Tajikistan;
- first published within the territory of the Republic of Tajikistan (including works first published in another country within 30 days of its first publication within the Republic of Tajikistan), or unpublished but existing in an objective form within the territory of the Republic of Tajikistan irrespective of nationality or permanent place of residence of their authors; and
- that is granted protection under international treaties to which the Republic of Tajikistan is party".

Article 30 of the Law provides with respect to related rights:

"The provisions of this Law on protection of rights of performers apply to:

1. performers who are nationals of the Republic of Tajikistan; and
2. performers who are not nationals of the Republic of Tajikistan, but their performances:
 - first occurred on the territory of the Republic of Tajikistan;
 - the performances have been recorded on a phonogram protected under the provisions of this Article Law; and
 - the performances have not been recorded on a phonogram but is included in a program broadcast or transmitted by cable that is protected under this Law.

The provisions of this Law on protection of rights of phonogram producers apply to:

- Phonogram producers who are nationals of the Republic of Tajikistan or legal entities with headquarters located on the territory of the Republic of Tajikistan; and
- phonogram producers who are not nationals of the Republic of Tajikistan or legal entities with headquarters located on the territory of the Republic of Tajikistan, but when the first publication of the phonograms occurred on the territory of the Republic of Tajikistan or the phonograms were published on the territory of the Republic of Tajikistan within 30 days from the date of the first publication in another country.

The provisions of this Law on protection of rights of the broadcasting or cable distribution organizations apply broadcasting by a broadcasting or cable distribution organization if this organization has its headquarters on the territory of the Republic of Tajikistan and broadcasts with the aid of transmitters located on the territory of the Republic of Tajikistan.

The provisions of this Law also apply to performers, phonograms and broadcasting by a broadcasting or cable distribution organization that is granted protection under international treaties to which the Republic of Tajikistan is party".

Thus, paragraph 2-3 of Article 4; paragraph 2 part 2 and part 4 of Article 30 of the Law provide national treatment for foreign authors and owners of rights.

Question 101

What are the points of attachment for foreign works of authorship and sound recordings (including statutory references)?

Answer:

See reply to question 100

Question 102

Does Tajikistan's Law on Copyright and Related Rights contain an independent provision clearly extending national treatment to foreign authors and rights holders?

Answer:

See reply to question 100

Question 103

Tajikistan states that copyrights are transferable "in full or in part" either "on an exclusive or non-exclusive basis." Nonetheless, copyright and related rights contracts seem to be subject to extensive government regulation. For example, the FTM at V2 (a) states that the "minimal amount of royalty [for author's contracts] is determined by the Government of the Republic of Tajikistan and is indexed simultaneously with indexation of the minimal wage."

Please describe all instances of governmental regulation of copyright and related rights contracts, including statutory references.

Answer:

The minimum amounts of author's remuneration are not implemented for author's contracts but for the use of objects of copyright for the aim of the protection of the interest of owners of rights, taking into consideration the difficulties of the transition period in the economy of the Republic of Tajikistan. Due to the implementation of the minimum amounts of author's remuneration, the rate of royalties may not be lower than the fixed level. This measure is not an infringement of author's rights because the upper limit of the amount of author's remuneration is not limited as fixed in part 6 Article 26 of the Law:

The author's contract shall specify remuneration in the form of a percentage of the revenue derived from exploitation of the work by the intended means or, where that is not possible in view of the nature of the work or the particular circumstances of the exploitation thereof, in the form of a lump sum or in any other manner but not lower than the minimum rates for the remuneration of the author; as well as:

- in the Decree of the Government of the Republic of Tajikistan On the Minimum Amounts of Author's Remuneration for Publication of Works of Science, Literature, Art and Implementation of Orders on Creation of Drama, Musical, Musical and Drama and Literary Works for Public Performance or for the Right of the First Public Performance of Unpublished Works of 1 July 1999. No. 251, point 3: The concrete amount of the remuneration of the author, the procedure and the period for its payment are established by interested parties when concluding the contract;
- in the Decree of the Government of the Republic of Tajikistan On the Minimum Amounts of Author's Remuneration for Public Performance of Works of Literature and Art, Reproduction of Work in Sound (Mechanical) Recording and Distribution of Copies of Phonograms and Audiovisual Works and Reproduction of Works of Fine Arts and Reproduction of Works of Applied Art in an Industrial Process of 1 July 1999. No. 252, point 2: The concrete amount of the remuneration of the author, the procedure and the

- period for its payment are established by the interested parties when concluding the contract; and
- in the Decree of the Government of the Republic of Tajikistan On the Minimum Amounts of Author's Remuneration for Artistic and Graphic and Photographic Works for Printing of 4 February 2002. No. 37, point 2: To establish the concrete amount of the remuneration of author, the procedure and the period for its payment are established by the interested parties when concluding the contract.

In practice the state regulating is limited to implementing the minimum amounts of author's remuneration and protecting the rights of authors in case the users try to pay the author's remuneration below the minimum rates. In all other cases the state does not regulate amounts of author's remuneration when concluding contracts.

Question 104

In practice, how do these regulatory mechanisms operate?

Answer:

See reply to question 103.

Question 105

Tajikistan identifies a number of instances of governmental regulation of royalty rate-setting in the context of the collective administration of certain rights, including establishing minimum rates under Government Decrees of 1 July 1999 No. 251; 1 July 1999 No. 252; and 4 February 2002 No. 37.

Please provide copies of these decrees.

Answer:

The text of Decrees of the Government of the Republic of Tajikistan of 1 July 1999, No. 251; 1 July 1999, No. 252; and 4 February 2002, No. 37 are available through document WT/ACC/TJK/6/Add.1.

Question 106

Please describe how these rate-setting mechanisms operate in practice.

Answer:

In practice amounts of author's remuneration are fixed by mutual agreement when concluding an author's contract, taking into consideration the following:

- type of work;
- difficulty of work;
- volume of work;
- significance of work; and
- qualification of the author.

In case of need to define the type of work and amounts of author's remuneration corresponding to it, interested parties may apply for consultation at the Ministry of Culture of the Republic of Tajikistan (document WT/ACC/TJK/6/Add.1).

Amounts of author's remuneration provided are minimum, and they are implemented unless otherwise provided in an agreement between interested parties.

- All government and non-government enterprises, organizations and offices, as well as natural persons which are involved with production and distribution of phonograms and copies of audiovisual works are payers of author's remuneration.
- Enterprises, organizations and offices which are involved with production and distribution of phonograms and copies of audiovisual works must submit the necessary documents by order of the authorized organization that is responsible for the protection of author's economic rights.
- All payers must get permission (licence) for appropriate use of the work from authors, their successors of rights or the organization for the collective administration of the economic rights of authors.

The procedure for implementing minimum amounts of author's remuneration for reproduction of works of fine arts and reproduction of works of applied art in an industrial process:

- author's remuneration for reproduction of works of fine arts and reproduction of works of applied art in an industrial process is paid in addition to author's remuneration for creation of the work. The amount of the author's remuneration for creation of works of fine arts and reproduction of works of applied art in an industrial process is fixed by mutual agreement;
- the amounts of the author's remuneration are minimum, and they are implemented unless otherwise provided in an agreement between interested parties;
- an author, who created a model of work of fine art or applied art for reproduction or reproduction in an industrial process in the course of his duty obligations or in the performance of an assignment expressly given by the employer (service-related work) receives the author's remuneration for reproduction or reproduction in an industrial process of such work under the norms unless otherwise provided in an agreement between interested parties (document WT/ACC/TJK/6/Add.1);
- a legal entity or natural person carrying out the reproduction of works of fine arts or applied art is responsible for paying the author's remuneration;
- the amount of author's remuneration is specified in the form of a percentage of the selling price of each copy of the manufactured articles handed over for sale by the payer; and
- an author of a work may ensure the right for receiving one additional copy, paying it at cost price, with the exceptions of manufactured articles made of precious metals and with precious stones.

An author may purchase copies of manufactured articles representing measuring materials (clothes, oil clothes, etc.) in a number that is necessary for their demonstration at exhibitions according to its conditions.

Question 107

Berne Article 18(1) extends the Convention's requirements "to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection," Article 14(6) of the TRIPS Agreement applies Berne's retroactivity principle to the protection of sound recordings.

Does Tajikistan's Law on Copyright and Related Rights expressly provide for full retroactive protection for foreign works and sound recordings?

Answer:

There is no separate provision about retroactive protection of foreign works in the Law, but it is indicated in Article 2 of the Law that "The legislation of the Republic of Tajikistan on copyright and related rights is based on the Constitution of the Republic of Tajikistan and consists of this Law, other legislative texts of the Republic of Tajikistan that are enacted pursuant to this Law, as well as international agreements recognized by Tajikistan". On that ground the Republic of Tajikistan observes paragraphs 1, 2 of Article 18 of Berne Convention for the Protection of Literary and Artistic Works. According to Article 493, Section IV of Civil Code of the Tajik SSR of 1965 the term of copyright was 25 years. Thus the works, the 25 years term of protection of which had not yet expired by 13 November 1998, fall under the effect of the Law of 1998.

Question 108

Please explain how Tajikistan provides protection for existing works at the moment that treaty obligations become effective.

Answer:

See reply to question 107.

Question 109

How does Tajikistan ensure that the full term of protection is accorded for existing works?

Answer:

Providing of protection of existing works during the term of copyright is realized on basis of Article 17 and Article 42 of the Law:

Article 17: Term of Copyright

Copyright shall have effect throughout the lifetime of the author and for 50 years after his death and it is transferable by succession except as provided in this Article.

The author's right to claim authorship of his work, his right to be named as such and his right to protection for his reputation shall be protected without limitation in time.

The author may, according to legislative order, specify the person to whom he entrusts the protection of the right of authorship, the right to be named and the right to protection for his reputation after his death. That person shall fulfil his mandate throughout his life.

Where no such person has been named, the protection of the right of authorship, the right to be named as author and right to protection for the author's reputation shall be ensured either by his heirs, in case of absence of heirs or after lapsing the heirs' copyright it shall be ensured by the authorised agency.

The copyright in a work of joint authorship shall have effect until the death of the last surviving co-author and for 50 years thereafter.

The copyright in an anonymous or pseudonymous work shall have effect for 50 years following the date of the lawful disclosure thereof. If, in the course of that period, the author of the anonymous or pseudonymous work reveals his/her identity, or if that identity is no longer in doubt, the provisions of the first part of this Article shall be applicable.

Copyright in a work first published during thirty years after the copyright holder death shall have effect for 50 years following the lawful publication of the work.

Any period under this Article shall be calculated as from 1 January of the year following that in which the legal act occurred that marks the starting point of the period.

Article 42: Term of Related Rights

The rights of the performer under this Law shall have effect for 50 years following the first performance.

The performer's rights to be named and to have the performance protected against any distortion or other derogatory act, laid down in Article 34 of this Law, shall be protected without limitation in time, but are not inheritable.

The rights of the phonogram producer under this Law shall have effect for 50 years following the first publication of the phonogram, or for 50 years following the first recording thereof if it has not been published in the course of that period.

The rights of the broadcasting organization under this Law shall have effect for 50 years following the date of the first broadcast effected by the organization.

The rights of a cable distribution organization under this Law shall be protected for 50 years following the date of the first cable transmission made by the organization.

Any period under this Law shall be calculated as from 1 January of the year following that in which the legal act occurred that marks the starting point of the period.

The right to authorize the use of the performance, phonogram or broadcast or cabled program and the right to remuneration shall pass to the heirs (in the case of a legal entity, to the successors in title) of the performer, phonogram producer or broadcasting or cable distribution organization for the duration of the non-elapsed portion of the terms specified in this Article.

(b) Trademarks

Question 110

Please provide a copy of Tajikistan's Trademark Law No. 456, enacted December 1991, and any updates or amendments to this legislation.

Answer::

See document WT/ACC/TJK/6/Add.1 for annexes which contain the copy of the Tajikistan's Trademark Law No. 456, enacted December 1991. There were no updates and amendments made since the law was adopted.

Question 111

In what way will well-known marks be protected, consistent with Article 16(2) of the TRIPS Agreement?

Answer:

It is planned to make changes to some provisions of the Law of the Republic of Tajikistan on Trade Marks and Service Marks. According to Article 16 items 2, of the TRIPS Agreement, the Article 6*bis* of the Paris convention shall be used to define the status of well-known marks. In this connection it is planned to add to Article 7.1, "Other Grounds for Rejection of Registration", the following point:

- "with well-known trademarks, recognized in the order established in the Republic of Tajikistan. Determination whether a trademark is well known in the Republic of Tajikistan is established by Patent Office".

Question 112

Please supply any implementing regulations for protection of well-known marks, both those currently enacted or pending.

Answer:

At present, no implementing regulations for protection of well-known marks exist in Tajikistan.

Question 113

While the Law on Trademarks and Service Marks does not contain provisions mentioning compulsory licenses, TRIPS Article 21 specifies that the compulsory licensing of trademarks shall not be permitted.

Is there any provision of the Law on Trademarks and Service Marks or provision of any other statute or regulation that permits the compulsory licensing of a trademark in Tajikistan?

Answer:

There are no provisions in the legislation of Tajikistan that permit the compulsory licensing of a trademark in Tajikistan.

Question 114

What is the effect of publication of a trademark registration during a period of six months counted from the date of registration?

Answer:

This was connected with the periodicity of the publication of the Official Gazette, which is currently issued on a quarterly basis. With the development of technical facilities this term will be reduced.

Question 115

Are third parties given the opportunity to object only during this six-month period?

Answer:

According to Article 29.1 of the Law of the Republic of Tajikistan on Trademarks and Services Marks, the opportunity to object to the registration of a trademark, is given to third parties, only after the publication of data on registration of a trademark in the Official Gazette. There are two time

frames indicated in this Article: during the entire term of the validity or during five year from the date of publication.

Question 116

Is there any provision to objection by third parties before a mark is registered?

Answer:

No.

Question 117

Article 24 of the Law on Trademarks and Services Marks allows for cancellation of a registration by court decision made upon a declaration of an interested legal entity or person due to five years of uninterrupted non-use of the mark.

On what other grounds can a mark be cancelled, either by court decision or by the NCPI?

Answer:

The grounds on which a trademark can be cancelled are as follows (Article 30 Law of the Republic of Tajikistan on Trademarks and Services Marks):

- in connection with the expiration of its term provided in Article 16 of this Law;
- if it is recognized invalid in compliance with Article 29 of this Law;
- when the legal entity, owner of the trademark, is liquidated;
- following the decisions of a law-court on its termination on the grounds of non-use of the trademark in compliance with Article 24 of this Law; and
- if the trademark owner surrenders it.

(c) Geographical indications

Question 118

Please provide a translated copy of the draft legislation concerning geographical indications.

Answer:

A translated copy of the draft legislation concerning geographical indications has been provided to the WTO Secretariat (WT/ACC/TJK/6/Add.1).

Question 119

In what way will Tajikistan provide geographical-indications protection in general, as required under Article 22 of the TRIPS Agreement, and geographical-indications protection in particular for wines and spirits, as required under Article 23 of the TRIPS Agreement?

Answer:

According to paragraph 3, Article 2 of the draft Law of the Republic of Tajikistan on geographical indications legal protection of an indication of source is provided on the basis of the use of the indication. Legal protection of the indication of source consists in non-admission of the use of

deceptive (false) indications of source and also of indications that are capable of confusing consumers in respect of the true origin of the good. Appellation of source is not subject to State registration.

According to the "temporary Regulations of the Republic of Tajikistan on Appellation of Origin and Grant of the Right to use it" the legal protection of an appellation of origin arises on the basis of its registration or by virtue of the international treaties of the Republic of Tajikistan.

The registration of a trademark containing a geographical indication but which has not claim to a geographical origin, will not be approved by virtue of the fact that such trademarks are qualified according to Article 6 of the Law of the Republic of Tajikistan "on trademarks and service marks" as marks that are misleading or capable of confusing consumers in respect of good or its manufacturer.

Concerning Article 23 TRIPS additional protection of geographical indications for wines and spirits is not provided by legislation of the Republic of Tajikistan on geographical indications. Geographical indications for wines and spirits are protected in accordance with general practice.

Question 120

Specifically, what are the legal means provided to interested parties to prevent the misleading use of a geographical indication or any use that constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention?

Answer:

Interested persons who detect acts of unfair competition as determined by Article 10bis of the Paris convention, and by Article 7 of the Law of the Republic of Tajikistan "On competition and restriction of monopolistic activity in the commodity markets" have an opportunity to file a petition with the State antimonopoly body of the Republic of Tajikistan which considers the infringements of the antimonopoly law and makes decisions within the limits of its competence (Article 20 of the Law of the Republic of Tajikistan "On competition and restriction of monopolistic activity in the commodity markets").

Question 121

What procedures are in place for the protection of third-country geographical indications, whether via registration or by other means?

We are prepared to offer technical assistance to the Republic of Tajikistan in conjunction with the development of legislation regarding geographical indications and with respect to compliance with WTO requirements.

Answer:

According to paragraph 3 Article 3 of the draft Law of the Republic of Tajikistan On Geographical Indications legal protection of an appellation of origin registered in another country shall be granted in the Republic of Tajikistan if that appellation of origin is registered in the country of origin of the good and in the Republic of Tajikistan in accordance with legislation.

The Republic of Tajikistan is grateful for the offer of technical assistance in conjunction with the development of legislation regarding geographical indication and proposes to organize a national seminar on geographical indications for the examiners of the Tajikistan's Patent Office (National Centre for Patents and Information of the Republic of Tajikistan).

(d) Industrial designs

Question 122

This section indicates that Tajikistan provides an additional criterion of "industrial applicability" for industrial designs.

Please explain how this complies with TRIPS Article 25 that requires that members provide for the protection of industrial designs that are "new or original."

Answer:

The condition of patentability in accordance with Article 4 of the draft Law of the Republic of Tajikistan on Industrial Designs includes only "novelty and originality" without industrial applicability which satisfies requirements of Article 25 TRIPS.

Question 123

Please provide a translated copy of the law on industrial designs, and any implementing regulations.

Answer:

A translated copy of the draft Law of the Republic of Tajikistan on Industrial Designs has been provided to the WTO Secretariat (WT/ACC/TJK/6/Add.1).

(e) Patents

Question 124

This section of WT/ACC/TJK/3 states that "solutions contrary to public order or morality" are not deemed to be an invention.

Please explain how this satisfies exception of TRIPS Article 27.2 that only inventions the "commercial exploitation of which is necessary to protect ordre public or morality" are permitted to be excluded and that such exclusion must "not be made merely because the exploitation is prohibited by law."

Answer:

According to the Article 6 draft of the Law of the Republic of Tajikistan on Inventions the solutions contrary to public order and morality are not recognized to be the patentable inventions. A draft Law on inventions has been provided to the WTO Secretariat (WT/ACC/TJK/6/Add.1).

Question 125

The list given of exceptions to patentability includes mathematical methods and methods of doing business.

Please explain how this complies with the requirement to make patents available for any inventions in all fields of technology of TRIPS Article 27.

Answer:

Mathematical methods and methods of organization and management of economy are not recognized as the patentable inventions in accordance with Article 6 of the draft Law on Inventions of the Republic of Tajikistan. Therefore, "methods of doing business" should read as "methods of organization and management of economy".

Question 126

For example, does Tajikistan patent methods of doing business having a "technical character"?

Answer:

See answer to the questions 125.

Question 127

The current information regarding compulsory licensing does not list how the law complies with each of the requirements of TRIPS Article 31,

Please explain how the compulsory licensing regime, with respect to patents, in Tajikistan complies with TRIPS Articles 31 (a) - (1),

Answer:

Articles 25-27 of the draft Law on inventions of the Republic of Tajikistan provide compulsory licensing in accordance with Article 31 (a)-(1) of TRIPS.

Question 128

Please provide a copy of the Temporary Regulations on Inventions, Utility Models and Industrial Designs, as well as the draft Law on inventions mentioned in this section.

Answer:

A copy of the Temporary Regulations on Inventions, Utility Models and Industrial Designs, as well as the draft Law on Inventions will be provided to the WTO Secretariat.

(f) Plant variety protection

Question 129

Please provide a copy of the Law on Plant Varieties, and any implementing regulations, and describe how Tajikistan meets the requirement of protecting plant varieties by either patents or an effective *sui generis* system according to TRIPS Article 27(3)(b).

Answer:

The Law of the Republic of Tajikistan on Selection Achievements of Agricultural Crops No. 119 of 4 November 1995, the Regulation of the State Commission on Sort Tests of Agricultural Crops and Protection of Plants, the Law on Quarantine of Plants of the Republic of Tajikistan No. 25 of 19 May 2001, and the Regulation on State Service on Quarantine of Plants of the Republic of

Tajikistan approved by the Republic of Tajikistan Governmental Resolution No. 38 of 4 February 2002. (document WT/ACC/TJK/6/Add.1).

In accordance with recommendations of the UPOV Secretary General of 25 October 1999 and TRIPS, Article 27(3) (b), amendments to the Law of the Republic of Tajikistan on Selection Achievements Regarding Agricultural Crops of 4 November 1995 were considered and approved in the Parliament of the Republic of Tajikistan on 2 December 2002. (document WT/ACC/TJK/6/Add.1).

A patent is issued for selection achievements meeting the criteria of protection abilities and relating to plant species, the list of which is approved by the State Commission.

The objective of the Law on Quarantine of Plants is to ensure the protection of plants and products of plant origin in quarantine sites in the territory of the Republic of Tajikistan.

(g) Layout designs of integrated circuits

Question 130

According to the Memorandum, protection for the layout designs of integrated circuits is not available currently.

How does Tajikistan plan to meet this TRIPS obligation?

Answer:

A law of the Republic of Tajikistan on the protection of layout designs of integrated circuits is planned to be drafted.

(h) Requirements for undisclosed information, including trade secrets and test data

Question 131

Please explain how Tajikistan protects undisclosed data from "unfair commercial use" of required test or other data regarding the marketing of pharmaceutical or agricultural products which utilize new chemical entities in line with the requirements of TRIPS Article 39.3.

Answer:

All data relating to marketing of pharmaceutical products and their tests are kept at the Pharmacology Centre of State Medication Examination Centre in the manner approved by the Ministry of Health of the Republic of Tajikistan.

For marketing of pharmaceutical products using new chemicals, as well as protection from unfair commercial use, and in compliance with Government Resolution No. 391 of October 2002, of the Republic of Tajikistan, the State Laboratories on Standardization, Certification, and Licensing of veterinary Drugs were set up.

In accordance with the Regulation on the Procedure to Licence Veterinary Activities in the Republic of Tajikistan approved by the Ministry of Agriculture of the Republic of Tajikistan of 7 October 2003, only legal (physical) persons having licence to sell veterinary drugs are eligible for marketing of veterinary drugs and other means for cattle-breeding and veterinary activities.

The Main Veterinary Department of the Republic of Tajikistan approved the Regulation on the Procedure to Examine, Test, and Register Veterinary Drugs of 7 April 2003.

Question 132

For example, do Article 153 of the Civil Code and Article 7 of the Competition Law, referred to in this section, require the government to preclude reliance by a second applicant for registration of a drug on the data submitted by the first applicant for marketing approval?

Answer:

These Articles do not preclude such reliance. The copies of the provisions are annexed (document WT/ACC/TJK/6/Add.1).

Question 133

Please provide copies of the provisions referred to in this section.

Answer:

Please refer to answer 131.

(i) Any other categories of intellectual property

Question 134

How are "appellations of origin" defined in Tajikistan under the Temporary Regulations of the Republic of Tajikistan on Appellation of Origin and Grant of the Right to Use It?

Answer:

Under the regulation "an appellation of origin of goods is the name of a country, settlement, locality or other geographic area which is used to designate to goods special properties which are defined, exclusively or prevailingly, by natural conditions or human factors specific for this area, or jointly by natural conditions and human factors".

Question 135

While the aforementioned Temporary Regulations of the Republic of Tajikistan govern the registration of appellations of origin and the issuance of certificates of registration, how does this regulation, or any other statute or regulation, provide legal means for interested parties to prevent the use of a geographical indication identifying wines or spirits not originating in the place indicated under TRIPS Article 23(a)?

Answer:

The requirements of the Article 10*bis* of the Paris Convention are satisfied also on the basis of the Law of the Republic of Tajikistan "About competition and restriction of monopolistic activity in the commodity markets" according to Article 7 of which "Introduction of consumers in error concerning the character, the way and a place of manufacturing of goods" is qualified as an unfair act and consequently is forbidden.

See also answer to question 120.

4. Enforcement

(a) Civil judicial procedures and remedies

Question 136

Please provide translated copies of the provisions in the Civil Code that pertain to: orders that evidence be produced by the opposing party; damages awarded for violation of intellectual property rights; seizure of infringing goods and destruction of infringing goods.

Answer:

There are no provisions regarding collection of evidence in the Civil Code of the Republic of Tajikistan. These provisions are contained in the Criminal Procedure Code of the Republic of Tajikistan (Article 63) and Civil Procedure Code of the Republic of Tajikistan (Articles 33, 39, 40, and 41); (document WT/ACC/TJK/6/Add.1).

The protection of results of intellectual activity according to the Civil Code of the Republic of Tajikistan is ensured on basis of Articles 15 and 152:

Article 15

"1. A person whose rights are infringed may demand complete indemnification if a more limited indemnification at a lesser rate is not provided by legislation or contract.

Losses mean expenses which were borne or will have to be borne for restoration of the infringed right, for losses or damage to his/her property (real damage) by a person whose right was infringed, as well as non-received income which the person would have received in normal conditions of business, if his right had not been infringed (lost profit).

If the person who infringed the right, received income as a result of the infringement, the person whose right was infringed has the right to demand indemnification of the lost profit to an extent not less than such income in addition to other losses.

Article 152: Protected Results of Intellectual Activity

In case and according to the order provided by this Code and other laws, an exclusive right is recognized of a citizen or legal entity on objectively expressed results of intellectual property and corresponding means of individualization of the production of a natural person or a legal entity, to works or services being achieved by them (trade mark, firm's name, mark of service, etc.)

Using the results of intellectual activity and the means of individualization, which is the exclusive right of the party concerned may be implemented by third parties only with the permission of the owner of the right".

Indemnification for the infringement of copyright and related rights as well as measures being taken with respect to counterfeit copies are provided by Article 48 of the Law On Copyright and Related Rights.

Article 48: Protection of Copyright and Related Rights

The owners of exclusive rights, whether copyright or related rights, may demand of the infringer of his rights:

- recognition of the said rights;
- restoration of the situation existing prior to the infringement of the said rights and the cessation of the acts that infringe or are liable to infringe them;
- payment of damages, including loss of earnings;
- the surrender, in place of the payment of damages, of revenue derived by the infringer from the infringement; and
- the adoption of such other measures provided for in the legislative texts that are recognized for the defence of the rights of the owner.

The choice between the measures referred to in paragraph 3 - 4 of this Article shall be made by the owner of the copyright or related rights.

Counterfeit copies of the work or phonogram, may be handed over on request to the owner of the copyright or related rights.

Counterfeit copies of the work or phonogram shall be destroyed if the owner of the copyright or related rights has not demanded that they be handed over.

(b) Provisional measures

Question 137

With regard to provisional measures: Please indicate legislative amendments that are planned to provide judicial authorities with the power to order provisional measures.

Answer:

In conformity with the Civil Procedure Code (Articles 140-147), a court or a judge, at request of the bodies involved in the case, or on its/his own initiative, may take measures to satisfy a claim.

The measures to satisfy a claim may be:

- Seizure of property or funds belonging to the defendant, which are available with the defendant or other bodies;
- Prohibition for the defendant to perform certain actions;
- Prohibition for other bodies to transfer property to the defendant, or fulfil other commitments relating to the defendant, etc.; and
- The securing of a claim is allowed at any state of a case if non- application of securing measures may complicate or may make it impossible to execute a court decision.

(c) Any administrative procedures and remedies

Question 138

Please indicate the role that administrative remedies play in connection with civil, criminal and border remedies.

Answer:

In accordance with Article 47 of the Law on Copyright and Related Rights, the bodies guilty of violation of the present Law shall be subject to responsibility pursuant to the Law. The legislation of the Republic of Tajikistan envisages administrative responsibility for law offence if this violation in its nature does not entail criminal responsibility consistent with the existing legislation.

Question 139

Please describe the manner in which the fines provided for under Article 9 of the Law on Competition are assessed in practice.

Answer:

In compliance with Article 16 of the Law On Competition and Restriction of Monopolistic Activity, the following fines shall be assessed:

Article 16: Responsibilities of Economic Entities

Commercial and non-commercial entities shall bear the responsibility in the form of a fine for the following violations:

- non-execution of a directive of a state antimonopoly body - 50 minimum wages for each day of delay for execution of a directive, but not more than five thousand minimum wages;
- non-presentation to a state antimonopoly body of petitions or applications stipulated by Articles 11 and 12 of the present Law - 500 minimum wages;
- non-execution of decisions of a state antimonopoly body as specified by Part 4 of Article 11 and Part 11 of Article 12 of the present Law – 1,000 minimum wages;
- non-presentation in time upon demand of a state antimonopoly body of documents or any other information subject to presentation consistent with Articles 11 and 12 of the present Law – 50 minimum wages for each day of non-meeting the deadline, but not more than 1,000 minimum wages;
- presentation to a state antimonopoly body of spurious data – 100 minimum wages;

Individual entrepreneurs shall be responsible:

- if they do not present the documents or any other information on their activities by the deadline specified by a directive of a state antimonopoly body, they shall be subject to administrative responsibility in the form of a warning or a fine amounting to 20 minimum wages;
- if they perform an action (or do not perform) infringing the procedure specified by Articles 11 and 12 of the present Law in a two-month period from the day of revelation of a similar action by a state antimonopoly body, they shall be subject to administrative responsibility in the form of a warning or a fine amounting to 20 minimum wages;
- if they do not fulfil the requirements of a state antimonopoly body specified by Articles 11 and 12 of the present Law, they shall be subject to administrative on responsibility in the form of a warning or a fine amounting to 30 minimum wages; and

Upon the payment of a fine, an economic entity shall not be relieved from the execution of an order of a state antimonopoly body.

Question 140

Please describe how the procedures in Article 158.2 of the Administrative Code are put into practice.

Answer:

In case the copies of works or phonograms are counterfeit pursuant to the legislation of the Republic of Tajikistan on copyright and related rights, or the copies of works or phonograms bear false information on their production and the place of their production, as well as other information that may mislead the consumers, or the mark of protection of copyright or related rights on the copies of works, or phonograms put by an owner of copyright or related rights has been changed or destroyed, a

court shall impose a fine on individual violators amounting from ten to 20 minimum wages, on officials amounting from 20 to 30 minimum wages, with confiscation of such works or phonograms.

Upon the repeated violation of the aforementioned norms, the fine is increased: on individuals amounting from ten to 20 minimum wages, on officials amounting from 40 to 50 minimum wages, with confiscation of such works or phonograms.

Question 141

Are these administrative fines routinely assessed?

Answer:

Violations of copyright and related rights lead to administrative and criminal liability.

This is covered by Article 158.2 Sale, Renting and other Illegal Use of Copies of Works or Phonograms with Commercial Aims in the Administrative Code of the Republic of Tajikistan. In other cases Articles 156 and 294 of the Criminal Code of the Republic of Tajikistan may be applied. Results of operation and investigation activities are of great importance for the making of a decision about the application of the suitable Article.

In particular when information or application for administrative infringement of the Law provided by Article 158.2 is received, it is necessary to get answers to the following questions:

- Whose rights are infringed, the owners of rights or the consumers;
- How is the violation committed, by sale, renting or by an other type of use of the work;
- Whether the Article is an object of copyright or related rights; and
- Whether copyright or related rights on the object in question are protected?

The next step is verification of the facts and then taking measures for suppression of the infringement of the law.

It is necessary:

- to chose a place and time for making a control purchase;
- to control whether there is a systematic character of the sale of counterfeit products, additional places of their keeping and the buyers at the trade outlet;
- to settle questions of cooperation of the participants when withdrawing, transporting and storing of the products; to make an arrangement with the owner of the right or the organization representing the interests by rendering practical assistance for controlling purchases and participation of specialists;
- to determine functions of participants when making a control purchase;
- to provide the group with necessary documents and forms such as forms for control purchase, examination records of withdrawal and examination; forms for explanations by the salesman, paper strip for sealing withdrawn products with impression of seal of subdivision, sticky transparent tape, carbon-paper, etc. Before the execution of the measure it is expedient to prepare a plan of the location of trade outlets and approaches to them; and
- to instruct the participants.

The next important stage is the making of a control purchase. This action must be done in the following way:

- to purchase some copies of the counterfeit products (1 – 2 copies of each brand name);

- to draw up a statement of the control purchase, to indicate information about salesmen and customers (representatives of the public), quantity and brand name of the purchased products and the sum of payment for them. If cash-desk apparatus was used, this fact must be reflected with the data of the receipts received by customers;
- examination of the shopping premises, counterfeit products, which are shown in the counter; the premises must be identified in the examination records with information about price and name; it is necessary to note that the products are intended for sale;
- withdrawal of all documents relating to the counterfeit products which contain information about quantity, assortment, sources of receipt and channels of circulation of counterfeit products. If for the discovered counterfeit products, the quantity of the goods (not for individual use) is established, they should be put in a special container (tare), packed, sealed up and countersigned by the participants of the control purchase. In the examination records it must be noted that admittance to withdrawn products is forbidden;
- withdrawal of price-lists, advertisement booklets and other documents (goods and way bills, checks) shall be reflected in the examination record;
- a salesperson and/or a leader of the trade outlet shall get a written explanation of the control of the sale of the counterfeit products. As a rule a sale of counterfeit products is accompanied by a range of other violations, such as illegal enterprises, deception of consumers, swindle, illegal using of trademark, etc. These violations must be exposed and listed in the relevant documents;
- it is necessary to control and establish the existence of documents giving permission to this type of activity, lease of the premises, information on the registration of the enterprise, availability of licenses and other documents, when withdrawing the counterfeit products; and
- to draw up an examination record for administrative infringement of the law.

In the stage of preparing the materials for the court it is necessary:

- to unpack withdrawn counterfeit copies of a work in presence of attesting witnesses;
- to draw up an examination record of the examination of withdrawn counterfeit copies or audiovisual works. Safety of packing shall be mentioned in it. The record must contain the following:
 - brand name of counterfeit productions, and
 - quantity under each name with identification sign such as a general view of polygraphical packing (cardboard or plastic box, availability of cellophaning, special holographic mark of owner of right with description), date of production, name of foreign company, notice of copyright or related rights.
- transmit counterfeit products purchased and withdrawn at the examination.

The salesperson who has been conveyed to the Department of Internal Affairs, shall get an explanation that the materials of administrative infringement of the law will be fully prepared for consideration by the court when experts have made a criminal examination of the withdrawn products and the corresponding written conclusions have been prepared.

The following actions must be implemented when sending the materials regarding administrative infringement of the law to the court:

- the leader of a body of Internal Affairs in the area of perpetration of the infringement of the law shall take a decision to send the materials regarding administrative infringement of the law;
- purchased and withdrawn exhibits (counterfeit copies of works) are passed to the court; and; and

- the presence at the court of the infringer of the law is ensured and an expert is notified about the place and time of the consideration of the case.

In course of preparing the materials regarding administrative infringements of the law for the court, it is necessary to take into consideration the terms; according to Article 37 of the Administrative Code of the Republic of Tajikistan, an administrative penalty is imposed not less than two months from the date of committing the infringements of the law and not less than one month after the refusal to institute a criminal procedure as the signs indicate administrative infringements of the law.

A decision shall be taken to call to administrative responsibility as well as confiscation of withdrawn counterfeit copies with the aim of destruction or transfer to the owner of rights on the basis of the provisions of the Administrative Code.

If a resolution is passed regarding the refusal to call to administrative responsibility, a judge shall pass a resolution regarding the confiscation of counterfeit copies, transfer to the owner of rights or destruction according to part 3 and 4 of the Law.

For the calling of infringers of copyright and related rights to criminal responsibility under Article 156 and 294 of the Criminal Code it is necessary to carry out a preliminary investigation according to Article 121 of the Criminal Procedure Code of the Republic of Tajikistan. It is carried out by investigators of the Office of the Public Prosecutor (Article 122 of the Criminal Procedure Code of the Republic of Tajikistan). That is why it is necessary to cooperate with investigators of the Office of the Public Prosecutor in all stages of investigation.

As a rule the main problem can arise in the stage of submitting the results of the operation and investigation activity to the investigator and taking a decision about bringing a criminal action.

The essence of the matter is that the measures of investigation as primary information received is limited to the frequent carrying out of public controlling purchases at a trade outlet, withdrawing of discovered counterfeit products and accounting documents and interrogation of workers and owners of the trade outlet. It does not always give a possibility to get indisputable evidences of availability of *corpus delicti*. For example it is difficult to prove the existence of intention of the owner of the trade outlet when distributing counterfeit products because the Law permits distribution of lawfully published works put into circulation by means of sale without authorization of the author and payment of remuneration.

The next reason for a refusal to begin a criminal action or its termination is that the operation and investigation activities have not been properly carried out and there is incomplete reflection of the actions in the documents. To avoid that it happens when carrying out official registration of the operation and investigation measures, it is necessary to take into consideration the following circumstances:

- in the course of carrying out a control purchase, an operative officer shall indicate the time of it, and the presence of cash-desk apparatus in the examination shall be recorded;
- an examination record of the inspection of the scene of action shall be drawn up; withdrawal of goods, checks, availability of financial resources shall be documented and officially registered;
- availability of way-bill licenses and other documents shall be controlled;
- operative officers shall carry out primary outside observation for confirmation of the systematic character of the sale of counterfeit products, expose their sources, issue receipts and document results;
- from market information, it is necessary to obtain information for how long the inspected person sells such products;

- to establish whether the inspected person has motor transport and to carry out an examination of it to verify it has been used for transport of counterfeit products;
- when requesting explanations, it shall be established for how long the inspected person has been occupied within the trade, whether he is registered, where he receives the goods from how he prepares official registration and payment documents, how he makes payments, who is the owner of an article, how much and what sort of Article the person owns on the day of arrest; what is the price of the sold Article and how much was sold, whether the inspected person was aware that he was trading with counterfeit articles, etc.; and
- when withdrawing the Article it shall be packed in a proper way, notes shall be made about sealing of the Article with signatures of the officer, the salesperson and the attesting witness.

The practice of fighting against piracy shows that valuable results of operational and investigation measures can be achieved when the preparation of the measures are carried out properly and there is full document registration of the criminal activities.

Thus, the strengthening of cooperation between all elements of law-enforcement bodies and the copyright agency is a necessary condition for effective fighting against piracy and implementation of operative and investigation measures on a high quality level.

Approximate list of questions which shall be included in the form for explanation by the person inspected:

- How long has the person been active with the business? What type of activity is the person carrying out?
- Whether the person is registered as private businessperson, and where, when and how it can be confirmed?
- How long has the person been active in the trade with videocassettes or any other articles concerned? What does the person know about the products being sold?
- Who is the owner of the article?
- Where is the Article purchased from? How does he pay it? How is the income and expenditure declared?
- What quantity of the article, and under what brand name, did the trader have at the beginning of the trading day? Exactly how many were sold? What price are these articles sold for?
- Which exactly are his/her trading days? And what are the average receipts per day?
- Total sum of receipts at the moment of inspection (if the trader has no money, to clear up where are the receipts?).
- Why does the trader sell counterfeit copies of works?
- Whether the trader knows about administrative responsibility for infringement of copyright and related rights.
- Whether the trader has been arrested for analogous infringement of the law; and
- What documents on the Article does the trader not have? Where are they kept?

Question 142

Please provide information on the role of Article 18 on the Law on Competition in assessing damages.

Answer:

Article 18 of the Law of the Republic of Tajikistan on Competition and limitation of Monopoly Activities at the Commodity Markets refers to the Civil Law, namely: Articles 10, 15, 423, 425, 1115,

and 1116 of the Civil Code, which stipulates the obligation of a abuser of a right to indemnify for the damage incurred by the aggrieved.

A legal/natural person whose right has been violated may claim full indemnification for the loss inflicted unless under the law or an agreement, indemnification of a lesser damage is stipulated.

The damage shall be understood as the expenses incurred or to be incurred by a legal/natural person whose right has been violated to restore the right infringed, the loss of, or the damage of its/his/her property (actual damage), as well as the profit not obtained, which the person would have obtained under the ordinary civil relations if his/her right had not been abused (lost profit).

If the infringer has obtained profit due to abuse of the right, a legal/natural person whose right has been violated may claim indemnification of the profit lost in an amount no less than the profit obtained by the infringer.

The debtor in default shall indemnify the creditor for the losses incurred because of the debtor's default (Article 15 of this Code). The recovery of a contractual sanction shall be regulated by the rules in Article 424 of this Code.

An agreement reached, prior to the default, between the parties releasing the debtor from the obligation to indemnify for the damage resulting from the default/infringe shall not be effective; however, the parties, by mutual consent, may limit a penalty to the indemnification for the actual damage to the property only.

If otherwise is not stipulated by the legislation or an agreement, the amount of damage shall be calculated based on the prices at a place where the obligation should have been performed on the day the debtor has voluntarily met the creditor's claim for damages; if the claim has not been met – on the day the sue has been placed.

Depending on the circumstances, the court may treat a claim for damages taking into account the prices either on the day the court has made a decision, or on the day actual payment has been made.

The amount of the profit lost shall be calculated taking into consideration the measures taken by the creditor to obtain it and all the relevant preparations made.

The creditor shall enjoy the right to demand adjudging non-legitimate any action taken by the debtor if the creditor can prove that the above action has been taken to dodge the responsibility for the default.

The moral damage (physical or moral sufferings) inflicted to a citizen by the default shall be indemnified in addition to the loss stipulated in Article 423 of the Code.

The moral damage shall be indemnified by the infringer in case of his/her fault except for the cases stipulated in Part 2 of this Article.

The moral damage shall be indemnified irrespective of the infringer's fault if:

- the damage has been inflicted on the life and health of a citizen by a source of higher hazard;
- the damage has been inflicted on the life and health of a citizen resulting from his/her false conviction, illegitimate institution of legal proceedings against him/her, illegitimate keeping in custody or denial of the right to leave as a measure of restraint, illegitimate administrative penalty, or correctional work;

- the damage has been inflicted by spreading information that casts a slur on a person's honour, dignity, and business reputation; and
- as well as in other cases stipulated by the legislation.

The moral damage inflicted through actions (non-action) infringing property rights of a citizen shall not be indemnified except for the cases stipulated by the legislation.

Moral damage shall be indemnified in cash.

The court based on the nature of the physical and moral suffering and the extent of the infringer's fault in cases when the fault is the grounds for indemnification shall establish the amount of the moral damage. The amount of the damage shall be calculated based on rationality and fairness.

The nature of the physical and moral suffering shall be identified by the court based on the actual circumstances under which the suffering has been inflicted and individual characteristics of the aggrieved.

Question 143

Please provide copies of these laws.

Answer:

See document WT/ACC/TJK/6/Add.1 for the text of Article 158.2 of the Administrative Code of the Republic of Tajikistan.

(d) Any special border measures

Question 144

Please provide a copy of Resolution No 185 "On approving the decision on Regulations for Customs Control of Transfer Across the Customs Border of Goods Containing Intellectual Property Objects."

Answer:

It should be noted that Resolution No 185 of the Government of the Republic of Tajikistan of 30 April 2002 approved the Decision on Rules for Customs Control of Transfer across the Customs Border of Goods Containing Intellectual Property Objects adopted by the Council of CIS Government Heads (document WT/ACC/TJK/6/Add.1).

Question 145

May Customs take action relating to the exportation of counterfeit or piratical goods?

Answer:

Item 10 of the Decision on Rules for Customs Control of Transfer across the Customs Border of Goods Containing Intellectual Property Objects approved by Resolution No 185 of the Government of the Republic of Tajikistan of 30 April 2002 determines that customs bodies are entitled to suspend release of goods, withdraw, and take measures with regard to goods containing intellectual property and not incorporated in the registry, if there is enough evidence available that these goods are counterfeit.

Question 146

May Customs take action relating to the in transit movement of counterfeit or piratical goods?

Answer:

Transit movement of goods via the customs territory of the Republic of Tajikistan is carried out without limitations, excluding the cases stipulated in the Government Resolution No. 111 on Measures Improving Foreign Economic Activities in the Republic of Tajikistan of 2 February 1997 as well as in the Regulation on the list of Goods, Works and Services Exported, Imported and in Transit, consistent with Decisions of the Government. Measures provided by the Resolution No. 185 of the Government of the Republic of Tajikistan of 30 April 2002 approved the Decision on Rules for Customs Control of Transfer across the Customs Border of Goods Containing Intellectual Property Objects also apply to transit movement of counterfeit or piratical goods. This rule may not be applied with respect to goods transiting in international postal shipments.

Question 147

Please describe the procedure by which a right holder submits collateral to Customs.

Answer:

The Decision on Rules for Customs Control of Transfer across the Customs Border of Goods Containing Intellectual Property Objects envisages that an application for protection of intellectual property rights must be accompanied by collateral, the transfer of an appropriate amount to a deposit account, a guarantee commitment of an applicant guaranteeing refund of costs of a customs body and compensation to an importer. In addition, consistent with this rule, the procedure of setting the size of the collateral and refund of costs incurred by a custom body is being developed.

Question 148

Are decisions on the merits of the case made by Customs or referred to a judicial or administrative authority?

Answer:

Decisions on the merits of the case referred to a judicial authority. In case of violation of the customs rules when goods are imported into the customs territory of the Republic of Tajikistan, consistent with the requirements of Articles 274-279 of the Customs Code, a person may be subject to administrative responsibility.

Question 149

Where a determination has been made that goods are counterfeit or piratical, may a court order destruction?

Answer:

In accordance with Article 158 of the Administrative Violations Code of the Republic of Tajikistan, a sale, a rental, and other forms of illegal use of works or sound-tracks shall, if:

- the works and sound-tracks are acknowledged counterfeit according to the legislation of the Republic of Tajikistan on copyright and related rights, or the replicas and sound-tracks bear spurious information of their fabrication (including a place of fabrication) and

other information that may mislead consumers, or the "copyright (or other related rights) reserved" label put by a holder of the copyright (or other related rights) has been destroyed, or changed,

- result in imposing a penalty on the citizens in the amount from ten to twenty (and on officials from twenty to thirty) minimum wages with the above works and sound-tracks to be seized.

Repeated actions enumerated in Part 1 of the Article, within a year:

- shall lead to a penalty on the citizens in the amount from twenty to thirty (on the officials from forty to fifty) minimum wages with the counterfeit replicas and soundtracks to be seized.

Question 150

Please describe the amount of the fee for Customs assistance.

Answer:

At present, this issue is being developed and agreed with the relevant Ministries and Agencies of the Republic of Tajikistan.

Question 151

Please describe customs procedures providing for a right of inspection and information and the manner in which a right holder may inspect goods to determine if they are infringing.

Answer:

Consistent with Article 135 of the Customs Code of the Republic of Tajikistan and Item 8 of the Decision on Rules for Customs Control of Transfer across the Customs Border of Goods Containing Intellectual Property Objects, an applicant or declarant may take probes and samples of goods for an examination (expertise) of goods, suspected to be infringing.

(e) Criminal procedures

Question 152

Please provide a copy of the relevant articles in the Criminal Code pertaining to the prosecution of intellectual property crime.

Answer:

Excerpt from the Criminal Code of the Republic of Tajikistan:

Article 156: Infringement of Copyright, Related Rights, and the Rights of a Patent Holder

The issue in somebody else's name of someone's scientific or literary work, musical composition, or a work of art as well as the computer software or a database, or any appropriation of the authorship for the above or for any invention shall be subject to penalty in the amount from 200 to 500 minimum wages, or to corrective works for up to two years.

The illegal use of copyright or related rights, or the illegitimate use of an invention, a utility model or industrial design (pattern), the computer software or a database, disclosure of the information of the substance of an invention, the utility model or industrial design, without an author's or claimant's consent, including official publication, if the above actions (both intentional or incautious) have

inflicted a considerable damage, shall be subject to penalty in the amount of 500 to 1,000 minimum wages, or to confinement for up to two years.

The actions stipulated in Part 1 or Part 2 of this Article implemented by a group of people on prior collusion shall be subject to the penalty in the amount of 1,000 – 1,500 minimum wages or to confinement for two to five years.

Article 275: Illegal Use of Trademark

1. Illegal usage of alien's trade mark, service mark, firm name, name of trade origin, trade marking of competitor or relevant signs for similar goods and services, if this action done repeatedly after imposition of administrative penalty or did large damage - is penalizing by fine in the size of one up to 1,000 minimal size of salary or disciplinary works with the period of one year, or arrest for the period to six months.

2. Illegal usage of preventive marking regarding non-registered in Republic of Tajikistan trade mark or name, trade origin, if this action done repeatedly after imposition of administrative penalty or did large damage - is penalizing by fine in the size of one up to 2,000 minimal size of salary or disciplinary works with the period of two years, or arrest for the period to six months.

Question 153

Please describe the level of infringing activity required to initiate criminal prosecution for each type of intellectual property right infringement and the level of infringing activity required for imprisonment to be ordered.

Answer:

The level of counterfeit activity, which is required for initiating criminal proceedings for every type of infringement of rights of intellectual property and the level of counterfeit activity required for imprisonment is not directly determined in the legislation.

Question 154

Please describe the level of criminal fines assessed and jail time ordered in criminal cases.

Answer:

See reply to the question 153. With reference to answers 152 , 153, 154 see extracts from the Criminal Code of the Republic of Tajikistan in WT/ACC/TJK/6/Add.1.

5. Laws, decrees, regulations and other legal acts relating to the above

Question 155

Please confirm that this listing is complete and up-to-date. Are there new laws or regulations that should be added?

Answer:

This listing is complete and up-to-date.

Question 156

Please provide copies of all laws, decrees, regulations and other legal acts governing intellectual property rights. As appropriate, please provide the relevant portions of the legal texts, e.g., in the case of Customs, Civil, and Criminal Codes.

Answer:

See document WT/ACC/TJK/6/Add.1 which contains extracts from the legislation of Tajikistan concerning copyright.

- 6. Statistical data on applications for grants of intellectual property rights, as well as any statistical data on their enforcement**

Question 157

Please provide statistical data on enforcement proceedings in Tajikistan to the extent possible, such as the number of civil and criminal cases initiated, and their outcome.

Answer:

The Republic of Tajikistan has the necessary normative basis for legal protection of infringed rights of authors. There are punishments for administrative infringements of the law, as well as civil law measures (document WT/ACC/TJK/6/Add.1).

In compliance with the statistics of national courts (except for the Supreme Court of the Republic of Tajikistan and the Higher Economic Court of the Republic of Tajikistan), in total in the last three years, three cases of criminal proceedings on enforcement of intellectual property rights were started. As a result, all the pleas were accepted.

VI. TRADE-RELATED SERVICES REGIME

1. General

Question 158

Are foreign law firms permitted to open offices in Tajikistan to provide advice to clients on United States law, third country law and international law?

Answer:

In conformity with the Civil Code of the Republic of Tajikistan, foreign legal entities shall enjoy the right to set up affiliates and representative offices in the Republic of Tajikistan.

According to Article 33 of the Law On Advocacy of 4 November 1995, Tajikistan recognizes on mutual basis rights of foreign lawyers to provide legal services on its territory without a right to open legal offices.

Question 159

Are foreign law firms permitted to form joint ventures with local law firms, hire local lawyers, and use their home country firm names?

Answer:

Please refer to answer 158.

Question 160

Are foreign lawyers permitted to work for local lawyers as long as they do not appear in local courts?

Answer:

No.

Question 161

Are foreign lawyers able to apply and obtain licenses to practice in Tajikistan, as long as they meet the same requirements as local candidates? Is temporary licensing of foreign lawyers permitted?

Answer:

Consistent with the existing legislation of the Republic of Tajikistan, in such a case a diploma is required certifying higher education in law obtained in the Republic of Tajikistan, or in other CIS countries and acknowledged by the Republic of Tajikistan.

Question 162

The Memorandum describes licensing requirements for banking services under the National Bank of Tajikistan.

Are the same standards applied to domestic and foreign banks?

Answer:

Yes, the same standards and requirements are applied.

3. Market Access and National Treatment

(d) Limitations on the total number of natural persons that may be employed in a particular service sector

Question 163

The Memorandum says that under the law of Tajikistan "it is foreseen that participation of nationals of the Republic of Tajikistan working at the enterprises with foreign investment should be mandatory and no less than 70 percent of total number of employees."

Please provide more detail about this law and its application. How is the law enforced?

Answer:

The Law on Foreign Investment of the Republic of Tajikistan, Article 27 stipulates the following:

"Participation of representatives of the Republic of Tajikistan, working in enterprises with foreign investments is mandatory and shall be not less than 70 per cent of total number of workers. Minimal

size of the wage for the citizens of the Republic of Tajikistan, working in enterprises with foreign investments is established by the Government of the Republic of Tajikistan."

Question 164

Does the 70 per cent requirement apply only to enterprises with foreign investment, rather than to domestic enterprises?

Answer:

The 70 per cent requirement does not apply to domestic enterprises.

ANNEX 3: INFORMATION ON IMPORT LICENSING PROCEDURES

VI. DOCUMENTATION AND OTHER REQUIREMENTS FOR APPLICATION FOR LICENCE

Question 165

Many aspects of Tajikistan's current regime raise concerns in light of WTO provisions: e.g., the number and level of customs related fees, the number of prior registrations required, and the observance of WTO import licensing procedure requirements in the issuance of fire-fighting, energy and sanitary inspections required as a prerequisite for applying for an import licence.

Please ensure that a revised response to the import licensing questionnaire is provided after reforms have been made to the import licensing regime.

Answer:

Please refer to WT/ACC/TJK/5 Answer 14.

Question 166

- 1. What information is required in applications?

How long are the licenses valid for narcotics and psycho-tropic substances?

Answer:

The validity of licenses for narcotics and psychotropic substances is one year.

Question 167

- 2. What documents are required upon actual importation?

What constitutes a notarized document? Is there an international notary? Or must it be notarized in Tajikistan?

Answer:

There are no foreign notaries in the Republic of Tajikistan as Article 12 of the Law on Notary Public Office stipulates that only a citizen of the Republic of Tajikistan who has obtained higher education in law, has been trained in a Notary Public Office for at least one year, and has passed a qualification examination shall be eligible to work as a public notary officer.

Pursuant to Articles 90 and 92 of the Law on Notary Public Office of the Republic of Tajikistan, the Constitution, legislation of the Republic of Tajikistan, and international legal acts recognized by the Republic of Tajikistan, a public notary officer shall apply international law.

A notary public officer shall accept the documents prepared in compliance with the international legal acts, and shall as well make certifying notes according to the format stipulated by the legislation of other countries if this does not contradict the international legal acts recognized by the Republic of Tajikistan. The documents prepared outside the Republic of Tajikistan with the involvement of foreign officials or competent authorities of other countries, or coming from those, shall be accepted by a public notary officer provided that these documents have been legalized by the bodies of the Ministry of Foreign Affairs of the Republic of Tajikistan.

A public notary officer shall accept the above documents without a need for them to be legalized only in the cases stipulated by the legislation of the Republic of Tajikistan and international legal acts recognized by the Republic of Tajikistan.

Question 168

To what Ministry or governmental body does an importer apply for a licence for tobacco products?

Answer:

To get a licence, an importer has to apply to Khurokvori Corporation.

Question 169

Is the State Standardization Committee housed under the Ministry of Agriculture or the Ministry of Economy and Trade or is it another government office?

Answer:

The State Standardization Committee is under the Ministry of Economy and Trade.

Question 170

WT/ACC/TJK/3 states that licence fees are to be paid upon receipt of notification that the licence has been issued. However, one of the terms and conditions of issuing licence for tobacco products are "document confirming payments of fees to consider an application for issuing a licence."

Can Tajikistan please provide further details on these fees and how they are the same or different than a licensing fee.

Answer:

A licence is issued after the Working Expert Group has considered an application, and checks the authenticity of appropriate documents, and an importer has presented a document confirming a licence-fee payment.

Question 171

What are the procedures for getting a licence for pharmaceutical activities from the Ministry of Health?

Answer:

In accordance with Governmental Resolution of the Republic of Tajikistan No. 245 of 5 July 2002 approving the Regulation on the Licensing Procedure Regarding Pharmaceutical Activities in the Republic of Tajikistan, an applicant for a licence submits to the Ministry of Health the following documents:

- an application for licence in the format established by the Ministry of Health and indicating an exact title, a legal address, banking particulars (two copies);
- copies of founding documents and a notarized certificate of state registration of a legal person;
- copies of documents confirming, following an appropriate legal procedure, rights of an applicant for a licence to use production premises;
- an opinion of a territorial Sanitary and Epidemiological Station;
- an opinion of the Fire Oversight Service;
- a certificate of premise conformity;
- staff pattern certified by the manager and sealed by the applicant for the licence in the format approved by the Ministry of Health;
- the original of the licence issued previously (when revalidating a licence);
- data on pharmaceutical activities in the format approved by the Ministry of Health (when revalidating licence).

For receiving a licence to produce and market medicines and medical goods, an applicant has to submit additionally the following documents:

- a copy of acceptance certificate (for newly established subjects of licensing) or inspection certificate (for functioning enterprises) issued by a body, which is authorized by the Government of the Republic of Tajikistan to exert state oversight regarding pharmaceutical activities the licensing of, in the format approved by the Ministry of Health;
- launching or production time limits for a newly established pharmaceutical facility in conformity with standards and requirements approved by the Ministry of Health of the Republic of Tajikistan (for pharmaceutical production – instruction on medication production);
- copies of documents confirming compliance of pharmaceutical equipment to be used by the applicant for a licence (for newly established applicants);
- a technology and quality plan regarding medicines and medical goods;
- a certificate on metrology provision;
- a certificate on internal control availability over production of medicines and medical goods issued by a body authorized by the Government of the Republic of Tajikistan to exert state oversight regarding pharmaceutical activities;
- information on the number of staff having qualifications for pharmaceutical activities.

Question 172

What are the steps for getting a decision from the Territorial interior department on conditions to store narcotics and psychotropic substances?

Answer:

In order to receive a decision by a Territorial Interior Department regarding storing conditions for narcotics and psychotropic substances, a licensee's premises should meet the requirement stipulated by the Joint Order of the Ministry of Health and the Interior Ministry of the Republic of Tajikistan No. 202/437 of 25 July 2001.

A premise for drugs shall have: walls equal, in terms of thickness, to brick walls no less than 510 mm; floors and coverings equal, in terms of endurance, to ferro-concrete plates no less 100 mm thick. The walls, ceiling coverings, and floors, which do not meet the stated requirements, shall be reinforced from inside across the space with steel bars with a bar diameter no less than ten mm and a cell size no more than 150 x 150 mm; the bars to be welded to walls or covering plates with anchors, the diameter of which is no less than twelve mm with a step of 500 x 500 mm. If impossible to build in anchors, it is allowed to adjust parts from a steel 100 x 50 x 6 mm band to ferro-concrete or concrete surfaces by four butt dowels.

Entrance doors of narcotics storages shall be, well fit with the doorframe, solid, no less than 40 mm thick, and have no less than two non self-snappy cut-in locks. The doors shall be covered from both sides with sheet iron no less than 0.6 mm thick, with the sheet margins folded over the inner surface of the door or the sheet butt-end overlapped. The doorframe from inside shall be additionally protected by metal doors produced from a steel rod with a diameter of no less than 16 mm, with cells of no more than 150 x 150mm welded in each intersection. A doorframe shall be made from a steel profile. It is allowed to have wooden boxes reinforced with steel corners of 30 x 40 mm, no less than five mm thick, built into the wall with reinforcing steel pins with a diameter of 10 x 12 mm and 120 x 150 mm long.

Window frames of narcotics storages, from inside or between the frames, shall be equipped with metal bars with a diameter of no less than 16 mm and a distance between horizontal and vertical bars of no more than 150 mm. The bar ends shall be built into the wall not less than 80 mm deep and to be covered with concrete.

Narcotics storages shall be equipped with a multi-channel security alarm system with each channel to be connected to separate points of centralized surveillance. Narcotic substances must be kept in safes.

Question 173

Tajikistan indicates that importers are required to have a certificate of state registration of an enterprise.

Is this the same as the "certificate of participant" or "registration card" mentioned earlier in document WT/ACC/TJK/3, If not. What are the steps for getting a certificate of state registration?

Answer:

Yes, the certificate of state registration of an enterprise is the certificate of a participant. (See comments to Question 27).

Question 174

Is there any licensing or administrative charge? If so, what is the amount of the fee or charge?

Is there information published and publicly available on the overall amount of ethyl alcohol quotas, along with the opening and closing dates, within the time periods specified in paragraph 4 Article 1 of the Agreement on Import Licensing Procedures?

Answer:

An annual resolution of the Government of the Republic of Tajikistan determines quotas (quantitative) for importation of ethyl alcohol and alcohol products. Upon approval by the Government, the resolutions are officially published in the press.

Question 175

Will Tajikistan inform other Members promptly regarding allocating quotas to Members having an interest in supplying the product concerned with the quota, by quantity or value, to the various supplying countries and publish this information in a timely manner so that other governments and traders can get acquainted with them?

Answer:

The Republic of Tajikistan practices exchange of information within the Euroasian Economic Community, in particular, with regard to adjustment of decisions on foreign trade regulation. An extension of this practice will allow settling the issues of information on tariff and non-tariff regulation of the Republic of Tajikistan within the WTO.
