

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

L/7043/Rev.1

4 May 1993

Limited Distribution

Original: English

ACCESSION OF MONGOLIA

Questions and Replies Concerning the Memorandum on the Foreign Trade Régime (L/6943)

Revision

In a communication dated 17 June 1991, circulated as L/6886, the Government of Mongolia applied for accession to the General Agreement pursuant to Article XXXIII. At its meeting on 8 October 1991, the Council set up a Working Party to examine Mongolia's application for accession. The present document sets forth the questions submitted by contracting parties in connection with Mongolia's foreign trade régime and the replies thereto provided by the authorities of Mongolia.

Delegations wishing to raise additional questions concerning Mongolia's foreign trade régime might inform the delegation of that country (with a copy to the secretariat) of such questions in advance of the meetings of the Working Party, so that considered replies can be made available by Mongolia to members at the time of the Working Party meeting.

INDEX

	<u>Questions</u>	<u>Page</u>
PART 1 ECONOMIC SITUATION IN MONGOLIA		
Reform measures	1-2	3
Price reform	3-5	4
PART 2 EXTERNAL SECTOR		
Foreign exchange régime	6-10	5-6
Privatization programme	11-19	6-9
PART 3 ECONOMIC AND TRADE POLICY INSTRUMENTS		
Law on Business Entities	20-22	9-10
Trade régime	23-24	11
Tariff régime	25-32	11-14
Import surcharges	33-34	14
Taxes and fees	35-36	14-15
Export duties	37	15
Customs procedures	38-42	15-16
Customs valuation	43-47	16-17
Non tariff measures	48-50	18-19
Licensing system	51-56	19-20
Export incentives	57	21
State trading	58	21
MTN Codes	59	22
Trade agreements	60-62	22
Foreign investment	63-67	23-25
TRIPS	68	25
Services	69-70	25-26

PART 1 ECONOMIC SITUATION IN MONGOLIA

Reform measures

Question 1:

The Memorandum demonstrates the critical situation of the Mongolian economy, at both macro- and microeconomic levels. How are living conditions affected and which measures are being taken by the Mongolian Government to balance the negative effects of a necessary and unavoidable adjustment programme.

Reply:

The standard of living of the population worsened as a result of production decrease and price liberalization. But the Government is taking measures aimed at mitigation of negative impacts of the transition period. The profit-making State enterprises were allowed to make their own wage decisions. Since 1 January 1992, the Government will increase monthly pensions by 500 tugriks, scholarships - by 350 tugriks, and paid leave for maternity and child care by 300 tugriks.

A fund for supporting the poor (aged and disabled persons, pensioner, orphans, mothers heads of large families, unemployed etc.) has been created, and the Government has donated Tug 150 mln as an initial contribution. The fund will be distributed to the poor on the basis of application through local administrative organizations. In addition, it was decided to create the national currency fund with the aim to help the poor with the assistance of Asian Development Bank.

The Ministries of Finance, Demographic Policy and Labour have been entrusted to work out and submit for consideration proposals on changing monthly salaries, pensions and allowances in accordance with the price index, starting from 1 January 1993.

Question 2:

Paragraph 33: What means "where appropriate" are foreseen for the reduction and monitoring of expenditures in various sectors?

Reply:

It means "as far as possible". Expenditures on wages, health care, education and investment are being carefully monitored and reduced as far as possible by reducing administrative costs, by introducing paid services in public health, education etc. Enterprises cover their investment needs out of their own resources or with borrowed funds, reducing budget outlay.

Price reform

Question 3:

What is the régime that applies to prices at the present time?

Reply:

As Mongolia moves towards a market economy, the Government is pursuing the policy of releasing all prices step by step taking into account the needs of the population.

Question 4:

Paragraphs 105-113 indicate that until recently, prices continued to be largely dictated by the Government. Paragraph 143 indicates that currently State price controls exist only on a certain number of goods, such as oil products, coal, children's food, meat, flour, sugar, and rice. It further indicates that all prices will become free at the end of 1992. Will this latter measure entail a complete move to a market pricing system, or will some prices remain subject to "broad guidelines" and "administrative controls"?

Reply:

In 1992 the prices of such goods as children's clothes, children's food, meat, sugar, rice, butter, vegetable oil, gasoline, diesel fuel, some kinds of medicine, tariffs on road, rail and air traffic, and telephone subscriptions were freed. At that time, State-fixed prices existed on a short list of goods, such as flour, certain kinds of bread, coal and energy for household use, rents on housing, public transport which affect the living standards of the population.

Question 5:

Paragraph 35: It is stated that "the majority of remaining State-controlled prices will be freed." How does Mongolia intend to proceed with this reform? Is there any specific plan or goal? To which extent have State-controlled prices been freed? Which products will remain under price control?

Reply:

As of 1 April 1992, the Government freed 90 per cent of the prices of goods and services. As a result of the Government policy of releasing prices from the State control the price of flour, meat and bread have been freed since 1 October 1992. The price of energy for household use and public transport fees were increased by three to five times. At present, State fixed prices exist on a short list of commodities and services such as coal, firewood, clean and waste water for household use, heating, certain types of medicine and rent on housing. Currently, all other product prices are freely determined by the market.

PART 2 EXTERNAL SECTOR

Foreign exchange régime

Question 6:

What is the present situation as regards the exchange rate and its régime?

Reply:

The Banking Law was adopted by the Parliament in May 1991. To promote exports and to take steps towards reducing the difference between the official and the parallel market rate, the Government devalued the tugrik from Tug 7.1 per US\$1 to Tug 40 per US\$1. But up to April 1992 the exchange rate of Tug 15 per US\$1 was used in barter trade with the former USSR. Now a uniform exchange rate of Tug 40 per US\$1 is being used in all kinds of foreign trade transactions. In addition, from April 1991 all branches of MONGOLBANK (Central Bank) and commercial banks were permitted to buy and sell foreign exchange at the parallel market rate. The MONGOLBANK announces the exchange rate of the tugrik to the dollar and other foreign currencies every two weeks on the basis of international market rates. MONGOLBANK has to stabilize the tugrik because the parallel market has been higher than the official rate by 4-5 times. Therefore, MONGOLBANK is pursuing the policy of increasing interest rates and will set interest rates taking into account the real level of inflation.

Question 7:

Paragraph 38: Has any timing been adopted for the introduction of a convertible currency.

Reply:

No particular timing for the introduction of a convertible currency has been adopted. But the Government has indicated its intention, in its programme for action, to adopt a floating exchange rate system.

Question 8:

Paragraph 79: Please describe the foreign exchange retention scheme. Does the scheme have no trade distorting effects whatsoever? Is the scheme applied on m.f.n. basis?

Reply:

A fixed percentage of export earnings from the most important items of the State enterprises is bought by the Government at the official exchange rate due to the shortage of hard currency and difficulties related to import payments. For example 55 per cent of export earnings from copper

and molybdenum concentrates, 50 per cent from fur garments, 40 per cent from carpets was sold by the enterprises to the Government in 1992. That amount is channelled to finance imports of spare parts and materials for vitally important industries, basic foodstuffs, medicines, gasoline, diesel fuel, etc. It should be noted that this is a temporary measure and with the improving of the economy the percentage of export earnings which can be retained by the State enterprises will be increased. The scheme has no trade distorting effects.

Question 9:

Paragraph 54: Is there any differential treatment between the former CMEA countries and other countries in the foreign exchange system? If any, what kind of differential treatment?

Reply:

Until the end of 1990, transactions with the former CMEA members were effected through the clearing mechanism of the IBEC on the basis of transferable roubles. Since the beginning of 1991, all trade with the former CMEA members has been conducted at world prices on the basis of convertible currencies.

Question 10:

Paragraph 131-145: Are foreigners treated without any discrimination within the monetary régime?

Reply:

All foreigners are treated without any discrimination within the existing monetary régime.

Privatization programme

Question 11:

Paragraphs 44-46 and 99-104: Mongolia's privatization programme is outlined in paragraphs 44 to 46, and 99 to 104 of the Memorandum on Foreign Trade Régime (L/6943). Can Mongolia advise what progress is being made in the privatization process?

Question 12:

Paragraph 99: Has a first programme of privatization been adopted under the 1991 Privatization Law?

Question 13:

What is the part of the economy and the sectors presently controlled directly or indirectly by the State, including foreign trade?

Question 14:

What share of the economy remains under State and co-operative management at the present time? Were all shops, other small assets and assets in the agricultural sector transferred to private owners by the end of 1991? What share of other State assets have been transferred to private owners?

Reply:

The Law on Privatization was adopted by the Parliament in July 1991. Since then, the legal environment for privatization has been established. The privatization commission has been established in each aimag and somon (administration units). Besides this, the Mongolian Stock Exchange and many brokerage companies began trading operations throughout the country.

The Government intends to privatize approximately 65-70 per cent of the State-owned property. Forty-four per cent out of that will be privatized through investment coupons distributed to citizens of Mongolia who were born before or on the day of enforcement of the Privatization Law. The transfer of the remaining part of State property to be privatized into private ownership shall be carried out on the basis of payment in cash and the use of classic methods of privatization.

As of 10 September 1992, 72 per cent or Tug 14.3 billion of the State-owned property to be privatized through the investment coupons had been privatized. It means that more than 430 enterprises worth Tug 10.6 billion in the framework of large privatization and more than three thousand enterprises with Tug 3.7 billion in the framework of small privatization have been transferred into private ownership.

Currently, the Government intends to accelerate and complete small privatization as well as privatization of agricultural cooperatives, State and fodder farms. In addition, the secondary market for securities is expected to be opened. The large privatization through the investment coupons will be completed in 1993.

As of 1 September 1992, the Government controlled some 61 per cent of industry, 4 per cent of agriculture, 14 per cent of trade and services and about 90 per cent of foreign trade.

Question 15:

Paragraphs 44-49: Please provide more specific information on the current results and the prospects of the privatization process. Please provide a list of State trading enterprises which Article XVII of the General Agreement stipulates and items which are imported or exported by these enterprises.

Reply:

More specific information about the privatization process was given in the previous reply. There are no State trading enterprises as stipulated under Article XVII of the General Agreement. According to the Business Entity Law, both state and private business entities, have equal rights.

Question 16:

Paragraph 44: Please provide more specific information on "State and cooperative management". How is cooperative management controlled by the Mongolian authorities?

Reply:

"State and cooperative management" means that 95 per cent of the economy was governed by the State and agricultural cooperatives. At present more than 70 per cent of State-owned property are to be privatized through investment coupons and about 96 per cent of agricultural cooperatives as well as State farms have been privatized. Even though the Government has no control over the activities of shareholding companies and privatized cooperatives it renders technical and organizational assistance to their work.

Question 17:

Paragraphs 44-46 indicate Mongolia's intention to privatize small State and co-operative assets and assets in its agricultural sector before December 1991. By December 1992 Mongolia intends to have privatized 65 per cent of all other State assets. This would include some 550 large State enterprises but exclude military and certain natural monopolies. Can Mongolia clarify what entities would be covered by this exception?

Reply:

The defense sector, public air transport, railway, institutions of health services, education, and science organizations would be covered by this exception. However, the Government will support all activities aimed at the establishment of private entities.

Question 18:

To what extent have commercial banks been privatized?

Reply:

Commercial banks have not been privatized yet.

Question 19:

Paragraph 104: It is stated that, "foreigners and persons without citizenship may obtain State-owned property only by way of sale with payment." What does "sale with payment" mean? Can we assume that this system has no discriminatory effects towards foreigners and non-residents?

Reply:

Under the Privatization Law investment coupons are distributed to citizens of Mongolia who were born before or on the day of enforcement of this law. The transfer of State-owned property and shares of enterprises into the private ownership of citizens of Mongolia is carried out both through the investment coupons and on a payment basis in cash. Foreign citizens as well as persons without citizenship can only purchase property and shares of enterprises. Thus, the word "sale with payment" means the acquisition of State-owned property and shares of the enterprises on payment basis. This system has no discriminatory effects towards foreigners and non-residents.

PART 3 ECONOMIC AND TRADE POLICY INSTRUMENTS

Law on Business Entities

Question 20:

Paragraph 91 indicates that the Law on Business Entities assures parallel treatment for public and private enterprises. Does this Law discriminate in any way against foreign-owned private enterprises (e.g., with regard to capitalization requirements, taxation of profits, access to government procurement and industrial incentive programmes, etc.) or place any conditions or restrictions on business acquisitions by foreign investors (e.g., sectoral exclusions)?

Reply:

The Law on Business Entities provides equal treatment for national and foreign owned private enterprises and it does not provide any discriminations with regard to capitalization requirements, taxation of profits, access to government procurement and industrial incentive programmes.

Under Article 4, Chapter I, of the Law on Business Entities, foreign citizens, organizations or any other persons without citizenship of Mongolia may establish a business entity within the territory of Mongolia unless otherwise stipulated under Mongolian law and international agreements of Mongolia.

Foreign investment is prohibited by the Government Decree No. 207 in the following fields: national security, defense industry; communications; mass media; gold and silver deposits.

This Decree restricts foreign investment up to 49 per cent in the field of extraction and manufacture of agricultural raw materials and up to 30 per cent in the field of national culture and arms.

Prior approval by the Government to foreign investment should be obtained in the following fields: tobacco and alcohol manufacturing;

production of explosive and poisonous substances; investigation and extraction of minerals.

Question 21:

Paragraph 91: It is stated that the Law on Business Entities "assures parallel treatment for public and private enterprises so as to maintain a level playing field for conducting economic activity." In what ways is this parallel treatment enforced?

Reply:

The Law on Business Entities sets up the fundamental principles of establishment of business entities irrespective of the form of property. This law gives equal treatment to public and private enterprises. The equal treatment is enforced in the following ways:

- The competent State organs, business entities and citizens may establish a business entity under Article 2 of the law on Business Entities.
- Any business entity irrespective of its form of property is subject to registration by the State Tax Authorities.
- The business entities are entitled to carry out foreign trade activities.
- The business entities irrespective of the form of property are liable with their own property for the obligations arising from their own activities.
- The Law on Business Entities provides no differential treatment against private enterprises.

Question 22:

Paragraph 88: How are business entities using their right to go into foreign trade? What are the first results from this reform?

Reply:

According to the Business Entity Law of Mongolia all business entities are entitled to carry out foreign trade transactions. Overall foreign trade turnover increased by 21 per cent during the first ten months of 1992 as compared with the same period of the last year. The share of private enterprises in foreign trade turnover increased by three times as compared with 1 April 1992.

Trade régime

Question 23:

Paragraph 80: What steps are envisaged to promote an outward oriented trade régime?

Reply:

Since the collapse of trade with former CMEA countries, Mongolia pursues the policy of developing trade with all interested countries on the principles of equality and mutual benefit. In order to attain this objective great importance is attached to increasing the production of export goods and the creation of export enterprises. A programme of reconstruction of transport facilities on the Mongolian-Chinese border is being worked out in collaboration with Japan. Also Mongolian-Chinese-Hong Kong joint vessels have begun to carry out the shipment of Mongolian commodities to and from the port of Tian Jin in China.

Question 24:

Paragraph 55: With the collapse of foreign trade with the former USSR, what is the present situation in Mongolia regarding the financing of basic imports such as spare parts and raw materials? Has any form of cooperation been implemented with other trading partners, and/or with international organizations?

Reply:

In order to support democracy in Mongolia and its movement towards a market economy, from 1991 foreign countries as well as international organizations began to make available soft loans and assistance. Tokyo and Ulaanbaatar meetings of donor countries such as Denmark, France, Germany, Japan, Netherlands, Republic of Korea, United Kingdom, United States etc. and international organizations including ADB, EEC, IMF, UNDP, IBRD are held regularly twice a year. These countries and organizations made the decision to render to Mongolia financial assistance amounting to more than US\$ 600 million from September 1991 till January 1994. The aid is channelled to finance critical imports of gasoline, diesel fuel and spare parts and materials for vitally important industries, such as power and coal mining, transportation, agriculture, construction, small and medium scale enterprises. In addition, donor and other countries which support Mongolia render humanitarian assistance in the form of foodstuffs, medicine and consumer goods.

Tariff régime

Question 25:

To what extent is the purpose of the customs tariff to produce Government revenue?

Reply:

Nowadays, customs duties are expected to be one of the main sources of Government revenue in Mongolia. However, in 1991, the revenue from

customs duties did not reach its expected amount because of the following circumstances: the trade volume in 1991, especially imports was sharply reduced in comparison with the previous years; customs duties started to be levied from 1 March 1991; the exchange rate was changed from time to time; exported goods were exempted from customs duties from 20 June 1991; a certain part of imported goods were exempted from customs duties (according to Article 15 of the Customs Law).

Thus, in 1991, the revenue from customs duties accounted for 5 per cent of total Government revenue.

As of 1 May 1992, the customs duty income reached about 160 million tugriks. In 1992 the customs duty income is expected to reach 20 per cent of Government revenue.

Question 26:

What is at the present time the import tariff?

Reply:

At the present time the import customs tariff rate is uniform, 15 per cent for all imported goods.

Question 27:

Paragraph 120: How has the new import tariff been implemented?

Reply:

The Mongolian Customs has only one year experience of collecting customs duties. Mongolian Customs used to face the problems of evasion from customs duty payment, delay of payment, etc. but currently, the Customs has the right to withdraw money from the payer's account.

Question 28:

Paragraph 114 indicates that the new Mongolian Customs Law was enacted effective 1 March 1991, and paragraph 120 indicates that at the end of June 1991, a uniform import tariff rate of 15 per cent was adopted to replace the previous system of multiple rates. Under this new system, does the Government of Mongolia intend to bind its entire tariff, and, if so, would it be willing to negotiate specific bindings at appropriate rates for individual tariff items as part of its accession exercise? Paragraph 119: Does Mongolia intend to bind its tariff? Paragraph 120: Does Mongolia intend to bind all items at 15 per cent at the time of its accession?

Reply:

Mongolia does not intend to bind the current tariff. Tariff bindings will be negotiated. Mongolia is planning to introduce, as far as possible, multiple tariff rates at the time of accession to the GATT.

Question 29:

Could Mongolia explain in more detail its plans for tariff reform? Has Mongolia approached the Customs Cooperation Council in order to get technical assistance for the reform and transposition of its tariff into the HS system?

Reply:

The uniform tariff was introduced since July 1991 in order to replace the multiple tariff rates. The first National Seminar on the HS was organized with the CCC/Japan Customs Technical Cooperation in early June 1992, so as to familiarize the Mongolian customs officers with the HS. It is expected to get further technical assistance in this area from the CCC, IMF and the Japanese Customs Administration. The implementation of the ASYCUDA customs computer system is planned for 1993, the transposition of the tariff into the HS system will be done beforehand.

Question 30:

Paragraph 115 notes that the Government of Mongolia has not yet converted its customs tariff to the Harmonized Commodity Description and Coding System, the Convention of which Mongolia is a signatory. What time-frame is envisaged for conversion to this system? Does the Government of Mongolia intend to adopt the Harmonized System and, if so, by what time?

Reply:

Mongolia became a signatory to the Convention on the Harmonized Commodity Description and Coding System in September 1991. The present customs tariff has not been converted to the HS. The Convention will enter into force in respect of Mongolia on 1 January 1993. At present Mongolia uses this system partially for statistical needs only. The translation of the HS from English into Mongolian is in its final stages.

Question 31:

Paragraph 117: What are the names of the "two conventions in this field"?

Reply:

1. Convention on the Harmonized Commodity Description and Coding System.
2. Convention establishing the C.C.C.

Question 32:

Paragraph 142: This paragraph indicates that Mongolia will take a number of measures, including "a slight increase of customs taxes in order to increase budget revenue." Please provide more specific information on this plan.

Reply:

The Parliament is discussing the draft of the new Taxation Law so as to reduce the budget deficit. The uniform customs tariff will be replaced by multiple tariff rates in 1993.

Import surcharges

Question 33:

Was the 10 per cent import surcharge introduced?

Reply:

The Government has introduced 10 per cent import surcharge and the excise tax on liquor, gold, silver jewellery and tobacco. The excise tax will be introduced on lubricants in the coming months. A uniform exchange rate of the tugrik to the US\$ was introduced in April 1992. The Government was planning to introduce a sales tax on domestic goods from July 1992. Expenditures on wages, health care, and education are being reduced by introducing step by step such measures as paid services.

Question 34:

Paragraph 33: On what basis is a 10 per cent import surcharge calculated?

Reply:

A 10 per cent import surcharge is calculated on the basis of the price determined as a sum of the contract value of imported items converted into tugriks at the official exchange rate and a 15 per cent customs duty.

Taxes and fees

Question 35:

Are there any other types of taxes or fees which are imposed on imports or exports in addition to those mentioned in the basic documentation and legislation?

Reply:

Under the orders of the Minister of Finance an excise tax is imposed on imported tobacco products and liquors. The collection of excise tax by the Customs organizations started from 15 March 1992 .

Question 36:

To what extent are there discretionary elements in the imposition of the sales tax and, if any, on what grounds is this done?

Reply:

According to the Article 14, provision 3 of the Customs Law, since 15 October 1991 Customs organizations began to collect sales tax from goods imported by State enterprises. The calculation of duty payable value shall be based on the contract price of imported goods converted into the franco-mongolian border value plus the customs duty. The sales tax rate is uniform for all imported goods at 10 per cent. There are some items exempted from sales tax such as paper, medicine, children clothes, etc.

Export duties

Question 37:

Are there any export duties presently?

Reply:

Presently Mongolia has no customs duty on exported goods.

Customs procedures

Question 38:

What intentions does Mongolia have for the revision and completion of its customs law to ensure that all relevant areas of importation and exportation are covered?

Reply:

The Mongolian Customs General Administration intends to review the Customs Law of Mongolia in order to establish more precise criteria for goods to be exempted from customs duties, determining the value of goods for customs purposes, introducing abatements, refunds, a drawback system, etc.

Question 39:

To what extent are there already more detailed provisions and procedures enacted by e.g. governmental statutes and administrative decisions?

Reply:

The resolutions on articles prohibited from exportation and importation without special permission of authorized organizations, the introduction of the sales tax, the establishment of new Custom-house and customs offices, the introduction of ASYCUDA etc., were issued by the cabinet. More detailed provisions were enacted at administrative level on the following subjects: customs clearance procedure on export and import; imposition and assessment of customs duties, sales and excise tax; customs control compliance; determination of customs fees; determination of duty free allowance in personal effects; customs clearance procedures for temporary admission (fair, exhibition, samples etc.).

Question 40:

What means do the importers have to get clear instructions and detailed information on customs clearance procedures?

Reply:

The Customs Law of Mongolia was published in the form of brochures and is available free of charge to every importer. All other rules and regulations issued by Mongolian Customs General Administration on customs clearance procedures are published by the Government central publications immediately after their approval.

Question 41:

What plans does Mongolia have for acceding to various international customs conventions, such as the Kyoto Convention, which would give additional impetus for reforms in its domestic customs practices?

Reply: Mongolia is examining the possibilities for acceding to various international customs conventions, including the Kyoto and Nairobi Conventions.

Question 42:

What intentions does Mongolia have for revising its tariff legislation in order to provide more accurate and predictable basis for the imposition of tariffs?

Reply:

The establishment of a core group of customs tariff and valuation administrators will be an unavoidable step for the performance of correct tariff classification. A provision empowering Customs officers to perform tariff classification and determination should be added into the Customs Law of Mongolia.

Customs valuation

Question 43:

What intentions does Mongolia have for abiding by the internationally agreed procedures and rules for customs valuation?

Reply:

Mongolia will endeavour to adhere to internationally agreed procedures and rules for customs valuation.

Question 44:

Paragraph 125 states that the Mongolian Customs General Administration is studying how to implement an internationally accepted method of valuing

goods for customs tariff purposes. Mongolia indicates that it is a signatory to the Convention establishing the Customs Co-operation Council and that it became a member of that organization in 1991. Does Mongolia envisage adherence to the GATT Customs Valuation Code (and, if so, when)? What steps does Mongolia envisage which might make this possible?

Reply:

The Mongolian Customs General Administration is studying now the general methods of valuation for customs purposes. Mongolian customs officers have no experience in valuation matters. In many cases, Mongolian trade organizations do not duly declare the value of goods, i.e. they do not submit an invoice to the Customs. This is the main obstacle which causes the Customs trouble in valuing goods for customs purposes. Particular measures are being taken to remove those difficulties. The matter of implementation of internationally accepted valuation methods is under consideration. For this purpose, the Customs General Administration decided to invite customs experts in this field.

Question 45:

Paragraph 124: It is noted that Mongolia is not a signatory of any international conventions on customs valuation. Does Mongolia intend to join the GATT Customs Valuation Code?

Reply:

Yes, the Customs General Administration is studying the possibility of joining the GATT Customs Valuation Code.

Question 46:

Paragraph 124: Can Mongolia commit itself to accede to the Customs Valuation Code?

Reply:

Mongolia can commit itself to accede to the Customs Valuation Code as a developing country.

Question 47:

What are the applied rules and criteria for defining the origin of products and what possible plans are there for the development of these rules?

Reply:

Currently, we do not have rules for defining the origin of imported products into Mongolia. These rules have to be worked out. For the products manufactured in Mongolia, the Mongolian Chamber of Commerce and Industry issues certificates of origin.

Non tariff measures

Question 48:

To which extent have import and export licence requirements, other quantitative restrictions and the system of foreign currency retention requirements been abolished?

Reply:

Measures for the liberalization of foreign trade are being taken. As part of this process most export restrictions have been abolished with the exception of rare and protected animals and plants. At the present time, temporary restrictions have been introduced on certain animal skins, scrap of non-ferrous metals and steel.

Private entities have been permitted to retain all foreign exchange earnings from their activities. State enterprises can retain a share of foreign exchange earnings from exports according to the rate fixed by the Government and this rate was increased recently. For example, the share of export earnings from copper, molybdenum-concentrate, fluorspar and its concentrates which State-enterprises could retain has increased from 26 per cent to 45 per cent.

Question 49:

Paragraph 37 states that during the next two years, Mongolia intends to abolish all import and export license requirements, other quantitative restrictions, and its system of foreign currency retention requirements. Under this new régime, how will any balance-of-payments problems be dealt with?

Reply:

The Government is pursuing strong financial policies as a decisive element of the stabilization process. All export, import and other operations with foreign exchange are to be fixed and supervised by the Central Bank. Taking into account the deterioration of the external environment, the Government considers that it is necessary to accelerate reforms aimed at promoting domestic savings to finance investment as well as diversifying trade and increasing exports.

Question 50:

Paragraph 37: It is stated that "all import and export licence requirements, other quantitative restrictions, ... will be abolished during the next two years." Please list the items which are subject to quantitative restrictions. Please provide the specific schedule of this process towards the total abolition of quantitative restrictions. Can we assume that Mongolia plans to eliminate and tariffy all quantitative restrictions? In the case of tariffication, what level of tariff protection does Mongolia expect to impose on each of these items? Can we

assume that Mongolia does not intend to invoke Article XVIII:B of the General Agreement when it becomes a member of GATT?

Reply:

The following items are subject to quantitative restrictions: wood, antler, copper scrap, meat, steel scrap, all types of hides and skins, cashmere.

Currently, there is no intention to abolish quantitative restrictions and Mongolia intends to invoke Article XVIII:B of the General Agreement when it becomes a member of GATT.

Licensing system

Question 51:

Which part of export and imports require licences? Are these licences automatic or discretionary?

Reply:

Rare and protected animals and plants and at the present time, temporarily, animal skins as well as the scrap of non-ferrous metal and steel require export licences. Licences are not required for imported commodities. Licences are automatically issued on application.

Question 52:

Paragraph 37: The Memorandum on Foreign Trade Régime notes that all import licence requirements will be abolished during the next two years, while paragraph 129 lists the types of goods which will be subject to licensing from the beginning of 1992. Will Mongolia remove import licensing applied for protective reasons?

Reply:

Due to the shortage of foodstuffs, consumer goods and spare parts in the domestic market, there are no restrictions on imported goods, with the exemption of weapons, chemical goods for the military sector and narcotics. There is no need to import goods such as live animals, meat, raw materials of animal origin and goods thereof, minerals, wood and others, mentioned in paragraph 129, which because of their abundance are exported. Mongolia imports wheat, medicines and metals. Taking into account the food problems, Mongolia will not export wheat in 1992 (winter) as well as in 1993 (spring). In order to protect the natural environment of Mongolia, the Ministry of Trade and Industry has introduced temporary quantitative restrictions on the export of items such as wood, antler elk's blood horn and others. (See answers to the preceding questions).

Currently, import licensing for protective reasons has not been introduced.

Question 53:

Paragraph 127-130: Please provide more specific information on the Mongolian license systems.

Reply:

The Regulation on the registration of entities authorized to carry out external economic activities as well as issuance of permission (licence) for sale and purchase of goods and services abroad regulates the rights and responsibilities of the License Bureau and license issuing procedure.

This Regulation was adopted by an order of the Minister for Trade and Industry in August 1991. Article 1.1 provides that the permission (license) for sale and purchase of goods and services abroad shall be issued by the License Bureau of the Ministry of Trade and Industry or its representatives in provinces on the basis of a valid contract with signature of both parties concluded with a foreign legal entity.

In order to obtain a license the entity submits an application for the issuance of license and a contract concluded with a foreign partner. (See also reply to the following question)

Question 54:

Paragraph 129: Can we assume that any goods, other than those listed in this paragraph, can be imported and exported without any licensing requirements?

Reply:

Any goods, other than those listed in the answer to the preceding questions, can be imported and exported freely.

Question 55:

Paragraph 129: The list of products submitted to a licensing system is quite important; which trade relevant products will be exempted from this régime?

Reply:

Please see the reply to the preceding question.

Question 56:

Does Mongolia intend to accede to the GATT Import Licensing Code as a result of its accession to the GATT?

Reply:

Mongolia intends to accede to the GATT Import Licensing Code as a result of its accession to the GATT.

Export incentives

Question 57:

What domestic and export subsidies are made available by the Mongolian Government? To what extent does Mongolia provide subsidies which have as their express purpose or as their effect the enhancement of domestic production and/or exports? Were the producer subsidies reduced?

Reply:

No subsidies are made available by the Government. There are no subsidies for covering any losses of enterprises but subsidies for supporting export and domestic production may take place.

State trading

Question 58:

Paragraph 88 states that the Government of Mongolia is moving to decentralize foreign trade activity through the issuance of trade licenses to private and public enterprises in addition to State trading corporations. In this regard, could Mongolia please indicate (a) a percentage breakdown of foreign trade currently handled by State-trading organizations, other public enterprises, and private enterprises, (b) whether availability of trade licenses is automatic (i.e. issued on application), conditional, or otherwise discretionary and (c) whether private enterprises are able to engage in foreign trade activities on an equal footing with State enterprises (for example, with regard to the granting of import/export permits, access to foreign exchange, etc.).

Reply:

- (a) Percentage breakdown of foreign trade
(first quarter of 1992)

	Export	Import
1. State trading and other public enterprises	96%	99%
2. Private enterprises	4%	1%

(b) The availability of trade licenses is automatic (i.e. issued on application).

(c) Private enterprises are able to engage in foreign trade activities on an equal footing with State enterprises.

Taking into account the little experience of nascent private entities, the Government institutions are helping them to deal with foreign trade and are also implementing control over certain export products as well as import of a limited range of consumer goods and industrial raw materials.

MTN Codes

Question 59:

What MTN Codes does Mongolia intend to sign?

Reply:

Currently, Mongolia does not intend to sign any MTN Codes other than those mentioned in the replies 46 and 56 above.

Trade agreements

Question 60:

Which are the trading partners to which Mongolia grants MFN treatment?

Reply:

Mongolia has agreements in the field of trade with Austria, Bulgaria, China, Finland, Japan, Laos, Nepal, People's Democratic Republic of Korea, Poland, Republic of Korea, Romania, the United States and Vietnam, according to which the parties shall accord each other MFN treatment. In connection with the disintegration of the former Soviet Union, the trade agreements with Russia and other independent Republics are under negotiation.

Question 61:

Paragraph 51: Mongolia has trade agreements with the countries listed at page 59 of document L/6943. Is Mongolia party to any free-trade agreements? If so, are they compatible with Article XXIV of the GATT? What is the status of Mongolia's Trade Agreements/Arrangements with former CMEA countries?

Reply:

Currently, Mongolia is not party to any free-trade agreements. Mongolia's Trade Agreements with the former CMEA countries have been terminated and negotiations for new Agreements are going on.

Question 62:

It is stated that, "negotiations for such status (m.f.n.) with several other developed countries are going on and are expected to be approved soon." Please provide more specific information on these negotiations.

Reply:

An agreement on Trade and Economic Cooperation between the European Economic Community and Mongolia was signed in September 1992. Under this Agreement the two parties shall accord each other most-favoured-nation treatment.

Foreign investment

Question 63:

Paragraph 68: How has the Foreign Investment Law, enacted in March 1990, been implemented?

Reply:

After the adoption of the Foreign Investment Law, eleven enterprises with foreign capital participation and sixty-eight enterprises were established in 1990 and 1991, respectively. Sixty-seven entities business obtained permission to establish during the first half of 1992. The contributions which will be made by the foreign partners to the legal capital is valued at more than US\$ thirty million.

Question 64:

What is the present situation as regards foreign investment?

Reply:

Before the enactment of the Foreign Investment Law, there were the following joint ventures with foreign capital participation:

- Mongolian-Soviet (former) copper and molybdenum concentrate plant;
- "Mongolsovtsvetmetal" Corporation;
- "Ulaanbaatar Railway" joint stock venture;
- "Mongolczechoslovakmetal" Corporation;
- "Mongolbulgarmetal" Corporation (ceased activities)
- Mongolian-Hong Kong Colour Photo Laboratory;
- Mongolian-British Wind Energy Aggregates Production Plant.

After the adoption of the Foreign Investment Law, eleven enterprises in 1990 and sixty-eight in 1991 obtained permission to start their activities. As of 1 January 1992, eighty-four enterprises with participation and full investment of foreign firms and companies from seventeen countries have been registered. Foreign participants of enterprises established in 1990-1991 are investing US \$22 million. Forty-two enterprises established during the past two years are operating in the field of production of consumer goods and food stuffs, twenty-three in the development of the tourist industry and all corresponding services, seven in the production of medicines and household articles, six in the production of construction materials as well as the construction of buildings.

It is necessary to note that Mongolia faces difficulties such as a landlocked situation, the small size of the internal market, a low level of infrastructure development, backwardness of transport and communications facilities, shortages of financial resources and the devaluation of the national currency.

Currently, measures are being taken to overcome the difficulties in implementing the foreign investment policy, creating the legal basis for foreign investment, improving the mechanisms to encourage and promote foreign investment, setting up free economic zones and training specialists.

There are no partners to which Mongolia grants MFN treatment concerning foreign investment.

Question 65:

With regard to paragraph 92 of the Law on Business Entities describe how the Law "establishes favoured conditions to investors", especially with respect to such issues as taxation, repatriation of profits, and invested capital, which would appear to be covered by the Foreign Investment Law referred to in paragraph 49.

Reply:

"Entities with foreign capital participation may be exempted from profit taxes during the first three years of their activities" under Article 8(2) of the Foreign Investment Law of Mongolia.

Article 8(3) of this law states that "a foreign participant shall be exempted from any taxes on repatriation of its share of profits abroad".

In compliance with Article 8(4), goods exported and imported by an entity with foreign capital participation for its production needs shall be exempted from customs duties. Article 15, Chapter 3, of the Customs Law of Mongolia provides that "goods to be brought into the registered capital or required for the production of enterprises set up in the territory of Mongolia and financed by foreign capital shall be exempted from customs duty".

Article 10(3) of the Foreign Investment Law of Mongolia provides that "foreign employees of entities with foreign capital participation may transfer abroad tax-free salaries and other income".

Article 4(2) of this law provides legal guarantees for foreign investors stating that "Mongolia shall protect rights and interests of foreign investors in compliance with its legislation and internationally recognized norms as well as foundation documents of the entity with foreign capital participation. Foreign capital in Mongolia shall not be nationalized".

Question 66:

Paragraph 68: Is there any provision which stipulates differential treatment against foreign investors in the Foreign Investment Law? Is there any regulation on the remittance of foreign investors' profits to their home countries? If any, does Mongolia intend to eliminate the regulation?

Reply:

Article 4 (2) of the Foreign Investment Law of Mongolia provides legal guarantees for foreign investors stating that "Mongolia shall protect the rights and interests of foreign investors in compliance with its legislation and internationally recognized norms as well as foundation documents of the entity with foreign capital participation. Foreign capital in Mongolia shall not be nationalized".

At present Mongolia does not have any special regulation on the remittance of foreign investors' profits to their home countries. The new draft of the Foreign Investment Law more favourable to foreign investors being discussed at the Parliament and contains an article that guarantees free remittance of foreign investors' profits to their home countries according to the current market exchange rate.

Article 10 (3) of this law provides that "Foreign employees of entities with foreign capital participation may transfer abroad tax - free salaries and other income".

Question 67:

Paragraph 128: What is the meaning of "foreign justified persons"? Are there any criteria to decide the qualifications necessary to be "foreign justified persons"?

Reply:

"Foreign legal entity" (foreign justified persons) means any physical persons as well as juridical bodies including companies, corporations, associations, firms and other business entities duly constituted and incorporated in foreign States.

TRIPS

Question 68:

Paragraph 84 states that citizens of Mongolia may possess as private property, land, means of production and other property, including intellectual property (IP). Paragraph 86 indicates further that foreign citizens enjoy national treatment with respect to ownership of property, except as otherwise stipulated under Mongolian law. Could Mongolia please elaborate on (a) the scope of IP rights available to foreign persons and (b) any limitations on private property rights of foreign investors?

Reply: Amendments to the Civil Code of Mongolia provide that "foreign persons have equal rights to possess objects of property with the citizens of Mongolia within the territory of Mongolia unless otherwise stipulated under Mongolian law and international agreements of Mongolia" (Article 99, Chapter Y).

The objects of property that may be possessed are goods and intellectual property (Article 61, Chapter I).

The Civil Code does not indicate the scope of intellectual property rights available to foreign persons and does not provide any limitations for foreign investors on private property rights.

Services

Question 69:

Does Mongolia intend to accede to the agreements, including the General Agreement of Trade in Services, which are being negotiated in the Uruguay Round after its conclusion?

Reply:

Mongolia endeavours to accede to all agreements which will promote the development of Mongolia's foreign trade and the expansion of international trade.

Question 70:

Paragraph 131: Have new commercial banks started their activity and, more specifically, how are these banks operating to support the production and the creation of new private enterprises?

Reply:

In accordance with the Banking Law ten commercial banks have been established and have started their activities. These commercial banks give loans to new private enterprises in order to promote their activities with their own resources, in particular export oriented enterprises.