

PD-ABT-487

109289/04287

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February 29, 2000

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**Subject: Final Report, Central Asia Trade and Investment Project**

**Reference: Contract No. EPE-0014-I-00-5071-00, Task Order No. OUT-EPE-I-800-95-00071**

Dear Dr. Linden:

Booz-Allen & Hamilton is pleased to submit the final report for the Central Asia Trade and Investment Project.

The enclosed report, authored by the long- and short-term staff on the project, details how the Booz-Allen team assisted USAID by providing expertise and resources to improve the trade and investment climate of Kazakhstan, the Kyrgyz Republic, Uzbekistan, and Turkmenistan over the above contract period. Additionally, a CD at the back of the report contains all reports, training materials and key memoranda produced under the project.

The Booz-Allen & Hamilton team looks forward to continued work with the Central Asia Mission. If you have any questions concerning this report, please contact me at telephone number (703) 902-5896.

Sincerely,



Norm Kirsch  
Program Manager

Enclosure: As stated

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International Client Service Team

UNITED STATES OF AGENCY  
FOR INTERNATIONAL DEVELOPMENT

Contract No. OUT-EPE-I-800-95-00071  
Task Order No. 800

Central Asia Trade & Investment Project

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**Completion report**

**Commercial Law Program Task Order  
Trade & Investment III**

**Kazakhstan, the Kyrgyz Republic,  
Uzbekistan & Turkmenistan**

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Submitted to:

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Ted LaFarge  
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TRADE AND INVESTMENT III:**

**KAZAKHSTAN, THE KYRGYZ REPUBLIC,  
UZBEKISTAN AND TURKMENISTAN**

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**Executive Summary**

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This report summarizes the results of the USAID/CAR Trade and Investment Project ("Project") in the Republics of Kazakhstan, the Kyrgyz Republic, Uzbekistan and Turkmenistan under Contract No. EPE-I-00-95-00071-00, Task Order OUT-EPE-I-800-95-00071-00. The work under this Task Order was implemented by Booz·Allen & Hamilton Inc. between January 1, 1998 and March 31, 1999.

The primary objective of the Project is to improve the legal, regulatory and administrative regime for trade and investment in each the four host countries. Private sector development and World Trade Organization (WTO) membership, which in many respects are closely related, have become key objectives for some of the Central Asian governments. WTO accession requires and locks-in comprehensive reform of the entire system of private sector activity and trade policy and regulation, including taxes and border fees, investment protections and incentives, customs duties and procedures, procurement rules, product standards, and intellectual property rights. The countries that have chosen WTO accession as a strategic objective recognize the advantages of an open, transparent, and stable trade regime in terms of attracting foreign investment, as well as increased and diversified cross-border trade.

The four countries in which the Project operates are at very different stages in their progress toward broad-based trade and investment liberalization. The Kyrgyz Republic, for example, was strongly committed to WTO membership in 1996 and, with intensive Project support, acceded in 1998 in record time. At the other extreme, Turkmenistan has yet to file a formal application for accession. As a consequence, the Project has undertaken very different approaches and legal reform efforts from one country to the next. Thus, in the Kyrgyz Republic, the Project's activity has shifted to support the Government's implementation of WTO obligations (post-accession compliance), while in Turkmenistan the Project has worked toward modernizing the underlying commercial legal framework (such as the Civil Code) to support future WTO-specific legislation.

Some differences in Task Order objectives also contributed to the varied nature of the Project's work from country to country. The Project's activities in Turkmenistan included technical assistance to help reform of the Government budget process and generate support for privatization. In Uzbekistan, the Project's work included capacity development of the Anti-Monopoly Committee's staff by providing much needed technical assistance and training in the area of private sector development, including price controls, the classification of enterprises, and basic principles of market economics.

## **Kazakhstan**

Throughout the relevant period, technical assistance was provided to the Government of Kazakhstan (GOK) in support of its effort to join the WTO. During the period, Kazakhstan participated in one WTO Working Party meeting in Geneva and one round of bilateral negotiations (October 8-9, 1998). To facilitate progress in these key meetings, the Project provided technical assistance to the GOK in the following technical areas:

- Technical advisory support in the preparation of market access offers for both goods and services,
- Research and drafting support in response to two (2) rounds of questions put to the GOK by WTO members;
- Drafting assistance in the preparation of relevant submissions on agricultural support programs;
- Facilitation of communications with the WTO Secretariat, and,
- Technical assistance to the GOK in amending or revising various laws and regulations to bring them into conformity with general WTO principles.

Overall, project lawyers worked on approximately twenty (20) different laws and regulations necessary for WTO membership during 1998.

Significant achievements during the relevant period included the GOK's completion, with USAID assistance, of draft laws incorporating WTO rules on customs, trade remedies (i.e., countervailing duty, safeguards, and antidumping), product standards and certification, and sanitary measures (plant quarantine). All of these reforms have been submitted to Parliament. Some have already been adopted.

Priority assistance was provided in key technical areas such as customs, technical standards, and intellectual property. With respect to customs, project experts worked with GOK Customs officials and the business community in implementing streamlined customs procedures (such as pre-arrival declaration), and completing amendments to the Customs Code to incorporate WTO requirements. The Project also continued to advise customs officials on a day-to-day basis to help ensure proper interpretation and application of customs rules. The Project's expert in technical standards provided assistance in drafting four laws in this key area, and helped the GOK establish a WTO-mandated inquiry point. The Project actively engaged local businesses and business associations, such as the American Chamber of Commerce, in promoting these key reforms.

Kazakhstan is in the late stages of its negotiations for WTO membership. In 1998, Kazakhstan's progress had significantly slowed for various reasons. First, the relocation of the GOK to Astana had a major disruptive impact on the day-to-day activities of our counterparts in various agencies of the GOK. Second, the regional economic downturn that resulted from the Asian financial crisis made perceived economic concessions in the areas of trade and investment more politically controversial than was the case earlier. Third, the GOK had

reached a point in the accession process where the most difficult political and policy questions remain to be addressed. Nevertheless, by late 1998, the GOK's commitment to WTO accession seemed reinvigorated, and work on a number of key legislative reforms was successfully completed by the GOK. Completion of bilateral negotiations and final accession in 2000 remains a possibility, albeit a remote one.

### **The Kyrgyz Republic**

On December 20, 1998, the Kyrgyz Republic became the 133<sup>rd</sup> member of the WTO, and the first CIS country to do so. The Kyrgyz Republic's accession to the WTO took just over two years, a record.

During the reporting period, the Project advised and supported the Kyrgyz Republic (GKR) through the entire WTO accession process. This included support of bilateral negotiations (such as assistance in preparation of the market access offers); research and drafting responses to WTO members' questions about the Kyrgyz Republic's trade laws and policy; facilitating communications with the WTO Secretariat (including notifications of changes in laws), and drafting changes to numerous laws and regulations needed to conform the Kyrgyz legal regime to WTO requirements. In 1998 alone, with intensive support from the Project, the Kyrgyz Parliament and Government enacted twenty-eight (28) separate laws and regulations necessary for WTO accession.

The Project also assisted the State Customs Inspectorate (SCI) to reform the customs legal regime and procedures consistent with WTO obligations. The Project's Customs Specialist advised the SCI on amendments needed to bring the Customs Code into compliance with WTO standards, on regulations to implement WTO valuation provisions, on valuation post-entry control, and on streamlined customs procedures, including a periodic declaration regulation adopted by Customs in late 1998. Project legal experts also provided extensive direct technical support and training to elements of the GKR responsible for technical standards, patents and trademarks, and procurement to help bring those regimes into compliance with relevant WTO disciplines.

A major element of the Project's assistance to the GKR was education. The Project conducted formal and informal training on customs issues, trade remedy laws, and general WTO obligations. This training primarily targeted key decision-makers in the GKR and members of Parliament.

### **Uzbekistan**

Much of the technical assistance provided to Uzbekistan during the relevant period was focused on educating government officials on the benefits and requirements of WTO accession, identifying legal and regulatory reforms required to bring the legal framework into compliance with WTO agreements, and improving the country's overall investment and business environment.

On September 22, 1998 the Government of Uzbekistan (GOU) submitted its Memorandum on Foreign Trade Regime to the WTO, representing the first major substantive step taken in Uzbekistan's WTO accession process. Since the submission of the Memorandum on Foreign

Trade Regime, the Project has assisted the GOU in better understanding the mechanics of WTO accession, including training programs on the preparation of the forms required for negotiation with WTO.

The Project carefully analyzed Uzbekistan's overall legal and regulatory framework for non-WTO compliant provisions and practices that would act as sticking points in future bilateral negotiations with WTO member countries. As a result of this assistance, Uzbekistan made considerable improvements in the areas of customs, intellectual property, trade legislation, government procurement, and foreign direct investment. It is anticipated that the GOU will seek additional technical assistance to improve its general legal framework affecting business and investment activity, especially in the area of commercial law reform.

Technical assistance was provided to help the GOU strengthen its overall trade regime. Key reforms promoted by the Project included:

- Streamlining (if not eliminating) the import contract registration process;
- Enactment and implementation of fair and transparent WTO-consistent import protection laws;
- Adoption of border measures that would help ensure routine acceptance of certificates of conformity from accredited foreign certification bodies;
- Measures permitting temporary importation under bond;
- Modification of the current methodologies for imposing excise taxes on imported products; and,
- Establishment of fast track customs clearance procedures for imported perishable goods.

The Project also conducted a comprehensive constraint analysis to identify barriers to the development of the small- and medium-sized enterprise (SME) sector. Our principal counterpart for this activity was the Uzbek Anti-Monopoly Committee. During the course of this work, intensive training was provided to GOU officials on classification of enterprises as monopolies, basic principles of market economics, the elimination of anti-competitive practices, and "best practices" in competition policy implementation and enforcement.

### **Turkmenistan**

The Project's activities in Turkmenistan varied significantly from those undertaken elsewhere in the region. Unlike the other three countries, Turkmenistan has not yet committed itself to seek WTO membership. As a result, the Project's focus was on promoting reforms that will strengthen the overall legal and regulatory environment for business. Additionally, the Project also implemented budget reform and privatization assistance initiatives at the request of the Government of Turkmenistan (GOT).

The GOT's lack of commitment to WTO accession appears to derive from an unwillingness to accept that broad-based, accelerated reform of trade law and policy that the process requires. Despite this reluctance, the Project was successful in assisting in the reform of discrete but important elements of Turkmenistan's legal and regulatory framework for commercial activity. Chief among these accomplishments was the enactment of Turkmenistan's Civil Code during 1998.

The new Civil Code is a modern and comprehensive foundation law for commercial activity in Turkmenistan. In addition to defining basic rights, duties, and obligations of modern commercial life, the Code also contains important reforms that will simplify the accession process should the GOT later decide to pursue WTO membership aggressively. Most notably, at the Project's suggestion, provisions protecting intellectual property rights were included in the draft Code that was enacted into law.

In addition to our work in Civil Code reform, the Project worked with GOT counterparts to develop important supporting laws on foreign investment, simplified business registration, and the promotion of competition. The Project also made important contributions to modernization of the Customs Code, liberalization of export restrictions, and amendments to the Law on Joint-Stock Companies.

1998's activities in the budget realm likewise produced positive results. During this period, the GOT's capacity to develop a comprehensive budget document was strengthened. A seminar was organized for GOT officials in which the process of national budget development was presented in detail and model formats were discussed and evaluated. As a result of this work, Turkmenistan's FY 1999 national budget, approved in late 1998, includes 95% of all government spending. This is a dramatic achievement in terms of improving transparency and fiscal discipline given that prior annual budgets specified less than 40% of total government spending.

Other significant accomplishments by the Budget team during the period included:

- Successful pilot demonstrations of cost-center based budgeting (on the basis of which, the Ministry of Economy and Finance intends to include the concept in FY 2000 budget);
- Proposal of a draft regulation and budget manual to implement the Budget Systems Law;
- Formal and on-the-job training on rationalized budget expenditure for more than three-hundred (300) GOT officials; and,
- Development of numerous model documents for use by GOT personnel including a model Budget Call, a model capital investment program and budget, sample evaluations of two proposed capital projects, and an alternative 1999 Budget document format to express the values of comprehensiveness, transparency and analysis.

Technical assistance was also provided under the Project to the State Property and Privatization Agency of the Ministry of Economy and Finance. The privatization effort focused on

improving the transparency of the privatization process, reviewing legislation and regulations affecting the privatization program, and making specific recommendations for targeted reforms in these areas. In addition, our expert evaluated the status of state-owned assets subject to privatization, and worked to create a heightened awareness of various privatization techniques and the benefits that competition can produce.

Throughout 1998, our privatization effort concentrated on practical training programs for our counterparts and promoting improved support for this process. To this end, a "white paper" entitled *Privatization Reform in Turkmenistan*, developed and presented during the first session of a privatization roundtable. Nevertheless, by March 1999, it became apparent that GOT support for an ambitious privatization effort was lacking, and our activities in this area were phased out.

## I. Introduction

This report summarizes the results of the USAID/CAR Trade and Investment Project ("Project") in the Republics of Kazakhstan, the Kyrgyz Republic, Uzbekistan and Turkmenistan under Contract No. EPE-I-00-95-00071-00, Task Order OUT-EPE-I-800-95-00071-00. The work under this Task Order was performed between January 1, 1998 and March 31, 1999.

Booz·Allen & Hamilton Inc. (Booz·Allen) has been providing technical and management assistance support to the USAID Mission to the Central Asian Republics since 1995, under the Central Asia Regional Trade and Investment project. Through this effort, the Governments of Kazakhstan, the Kyrgyz Republic, Uzbekistan, and Turkmenistan have deepened their understanding of the benefits of accession to the World Trade Organization (WTO), and made tangible, if uneven, progress in reforming their legal and regulatory regimes to stimulate foreign investment and liberalize trade. While there is still much work to accomplish in this difficult but critical aspect of transition, a number of tangible results have been achieved.

The overarching objective of the Project is to improve the legal and administrative regime for trade and investment in the four subject countries. World Trade Organization (WTO) membership is a key objective for some of the Central Asian governments that this project works with. WTO accession requires and locks-in comprehensive reform of the entire system of trade policy and regulation, including taxes and border fees, investment protections and incentives, customs duties and procedures, procurement rules, product standards, and intellectual property rights. The countries that have chosen WTO accession as a strategic objective recognize the advantages of an open, transparent, and stable trade regime in terms of attracting foreign investment, as well as increased and diversified cross-border trade.

The four countries in which the Project operates are at very different stages in their progress toward broad based trade and investment liberalization. The Kyrgyz Republic, for example, was strongly committed to WTO membership in 1996 and, with intensive Project support, officially acceded in 1998 in record time. At the other extreme, Turkmenistan has yet to file a formal application for accession and has made only incremental progress in liberalizing its legal and regulatory framework governing commercial activity. As a consequence, the Project has undertaken very different approaches and legal reform efforts from one country to the next. Thus, in the Kyrgyz Republic, the Project's activity has shifted to support the government's implementation of WTO obligations (post-accession compliance), while in Turkmenistan the Project has worked toward building the underlying legal framework (such as the Civil Code) to support future WTO-specific legislation.

Some differences in Task Order objectives also contributed to the varied nature of the Project's work from country to country. The Project's activities in Turkmenistan included technical assistance in reform of the government budget process and support of the Government's privatization program. In Uzbekistan, the Project's work included capacity development of the Anti-Monopoly Committee's staff by providing much needed technical training in the areas of price controls, the classification of enterprises as monopolies, and basic principles of market economics.

## **II. Kazakhstan**

Although Kazakhstan's progress towards WTO accession slowed in early- to mid-1998, the Government's commitment to the success of this process seemed revitalized following the October 1998 Working Party meeting in Geneva, Switzerland. Thus, in early 1999, the GOK submitted drafts of a number of laws important to WTO accession, such as the Customs Code, trade remedy laws, and laws on standards. Further, the Inter-Ministerial Commission began to meet on a regular basis to discuss WTO issues. The Government is currently working on all other WTO requirements which include responses to questions from WTO Members, offer on services, offer on goods, and agricultural support tables. These documents will likely be submitted to the WTO in the first half of 1999. This will permit a Working Party meeting to be scheduled in mid- to late- 1999. Assuming that Kazakhstan also resolves the hard political decisions described above, WTO membership is possible in 2000.

### **A. Objectives**

The objectives of the Project in Kazakhstan for the relevant period were to:

1. Assist the GOK in its effort to establish a sound trade and investment environment, including the modification of laws and regulatory provisions relating to international trade and foreign investment.
2. Support the GOK in its effort to make substantial progress toward WTO accession; and,
3. Improvement in the overall investment "climate" in Kazakhstan through the eradication of administrative and bureaucratic barriers to private sector development.

### **B. Key Results**

The following comprise the most significant results and outputs achieved during the reporting period toward Objective 1 for Kazakhstan:

1. The GOK drafted and submitted to Parliament three (3) key WTO-compliant trade remedy laws:
  - Law on Subsidies and Countervailing Measures;
  - Law on Antidumping Measures; and,
  - Law on Safeguard Measures on the Import of Goods (enacted by Parliament in December 1998).
2. Parliament enacted a WTO-compliant phytosanitary law (Law on Quarantine).
3. The Government drafted and submitted to Parliament a WTO-compliant Customs Code, which incorporates WTO principles on customs valuation, rules of origin, transit, and border protection of intellectual property rights.

4. A WTO-compliant inquiry point was developed in the Agency on Standardization, Certification, and Metrology and was officially established by the Government Resolution of the Republic of Kazakhstan on October 2, 1998.

The following comprise the most significant results and outputs achieved during the reporting period toward Object 2 for Kazakhstan:

1. A delegation of the Republic of Kazakhstan participated in a WTO Working Party meeting in October 1998 to discuss Kazakhstan's foreign trade regime.
2. A third round of bilateral negotiations with WTO Members was also conducted in October 1998.

The following comprise the most significant results and outputs achieved during the reporting period toward Object 3 for Kazakhstan:

1. With Project assistance, relevant GOK ministries drafted new laws, or amendments to existing trade-related laws, to bring them into compliance with WTO requirements, including:
  - Law on Standardization;
  - Law on Certification;
  - Law on Selected Breeding Achievements;
  - Law on Patent;
  - Law on Copyright and Associated Rights;
  - Law on Integrated Microcircuits;
  - Law on Trademarks; and,
  - Amendments to the Criminal and Civil Codes to include intellectual property rights enforcement measures.

### **C. Progress**

*Significant Issues* - The GOK has yet to make a number of hard policy decisions that are necessary if Kazakhstan is to become a member of the WTO. These include limitation of the amount of the import processing fees currently collected by Customs, elimination of the customs practice of mandatory temporary storage warehousing of imported goods, and reformation of the current system of applying VAT on imports.

*Major Changes Anticipated in Project Activities* - Due to the expectation that the GOK will continue to pursue accession to the WTO in 1999 at the same steady pace as formerly, no major changes are expected in the Project's activities. The Project will continue to support

the GOK in negotiations on goods and services; continue to provide technical assistance in drafting laws and regulations necessary to conform to WTO standards; and continue to advise on legal measures to improve trade and investment environment. In the event that the Government begins a more vigorous pursuit of WTO membership in 1999, it is possible that the Project in Kazakhstan will turn to WTO implementation and institution building concerns that are now the focus of the Project's effort in the Kyrgyz Republic.

**Major Changes in Government Policy** - At this time, it is expected that the GOK will continue to pursue accession to the WTO at the same steady pace as formerly, without major change in policy. However, this status could change in a moment. For example, there may be stronger pressure from Russia in an effort to reign in its Customs Union partner. At some point, Kazakhstan may be forced to choose between the WTO and the Customs Union, and that point may come soon as the consequences of the Kyrgyz Republic's WTO accession on the Customs Union are felt.

**Devil's Advocate -**

**Q. Should the effort to support the Government's WTO accession effort be curtailed in light of the Government's failure in 1998 to complete work on legal reform necessary to comply with WTO? Does that lack of progress indicate that the Government has reconsidered its interest in WTO accession?**

A. The Government's lack of progress on legal reform in 1998 should not be read as lack of commitment to WTO membership. In large measure, this may be attributable to relocation of the capital to Astana and subsequent reorganization(s) of government agencies. Towards the end of the year significant improvement was made in resuming progress in the WTO accession process. For example, work on the trade remedy laws (antidumping, countervailing, and safeguards) was finally completed by the Government to be submitted to Parliament. Nevertheless, there remains significant political opposition to WTO membership, particularly from those who favor closer integration with the Russian Federation.

**Q. Kazakhstan will not join the WTO until Russia is member, and that is not likely to occur for several years or more. Therefore, why should the Project continue to provide technical assistance to the Government at this time?**

A. If Kazakhstan determined to delay accession in deference to Russia, the purpose of doing so would be to ensure that Kazakhstan and Russia coordinate their offers on market access negotiations in the WTO – that is, to ensure that the two countries negotiated the same tariff bindings in order to preserve the Customs Union. This would not require Kazakhstan to step aside or suspend its accession application. Rather, it could mean that the two countries would simply negotiate jointly with WTO members on market access commitments.

In any event, apart from the market access negotiations, Kazakhstan will be required to assure the WTO that its own trade and investment regime – laws, regulations, policies and procedures – conform to the WTO rules. This obligation of legal reform is not dependent upon the outcome or timing of Russia's accession application. Kazakhstan will be required to demonstrate to the WTO Working Party that its laws are WTO consistent, without regard to Russia's application. This process would continue even if Kazakhstan determined to negotiate jointly

with Russia on market access (it must continue, if Kazakhstan wished to accede at the same time as Russia; if it does not continue, it would delay Kazakhstan's own entry into the WTO a year or more after Russia's). Because the Project's primary work concerns this legal reform, the Project's work would continue to be both relevant and useful.

## **1. WTO Accession Process**

### **a. Overview**

The Project continued throughout the relevant period to support Kazakhstan's application for membership to the WTO. The Project assisted the GOK in preparing market access offers, in responding to questions by WTO members about Kazakhstan's trade laws and policy, in communications with the WTO Secretariat, and in drafting changes to the large number of laws and regulations necessary to conform the legal regime to WTO requirements.

Kazakhstan began the accession process in January 1996. In the two (2) years that followed, the GOK submitted its Memorandum on Foreign Trade Regime, engaged in two rounds of multilateral and bilateral negotiations, and responded to four rounds of questions from WTO members. In 1998, however, Kazakhstan's progress slowed. In part, this was due to disruption caused by the GOK's decision to move the capitol to Astana in late 1997 and subsequent turnover of key personnel in many ministries. The downturn in economic conditions in the region, with resulting pressure towards trade-protection, also may have contributed to the slower pace. In large measure, however, the slower pace may be due simply to the fact that, after two years of progress, negotiations have reached a mature stage where the GOK is faced with the difficult policy and political decisions necessary for WTO membership that it has to date postponed. These hard issues include limitation of WTO-inconsistent import processing fees, reform of the VAT import system, and reduction of protective tariffs on goods and barriers to entry of services.

In early 1999, the GOK appeared to have determined to resolve these remaining issues. Regular meetings of the high-level inter-ministerial WTO commission were organized to consider the outstanding issues. These were most importantly an agreed position on goods and on services, including the problematic issue of financial services and the delicate matter of foreign access to the banking and insurance sectors, telecommunications and transport. In one of the last meetings during the Task period with Mr. Oblasov, the Minister of Energy, Industry and Trade, the Project was informed that government policy was to meet all pre-accession requirements in early 1999, so that the Working Party could meet before the end of the first half of 1999 in Geneva.

### **b. Accession Status**

In 1998, Kazakhstan participated in one Working Party meeting in Geneva with WTO members to discuss the terms of its membership (October 8-9). This was Kazakhstan's third Working Party meeting since it filed its application in 1996 and its first in about a year. At the October 1998 meeting in Geneva, the Kazakhstan delegation also engaged in market access negotiations on goods and services with individual WTO members, its second round of negotiations since 1996. Several members of the Project attended the Working Party meeting

to provide support to the Kazakhstan delegation and to keep advised of the status of negotiations.

**Market Access Offers:** The Project assisted the GOK in preparation of the offers and other documents necessary to enable the October 1998 meetings in Geneva. The offer on goods was submitted to the WTO Secretariat on June 5, 1998, while the offer on services was submitted in September 1998. The Project played a substantial role in the GOK's preparation of both offers, and worked closely with the Government and relevant ministries, including Energy, Industry and Trade; Finance, Transport and Communications, and Education. The Project's work included explaining the principles and rules of GATS to government officials, preparing detailed economic assessments of the likely impact of different offers on particular sectors of the economy, and researching historical levels of trade in certain products to facilitate economic modeling and forecasting. Finally, the Project assisted the GOK in the preparation of the offers themselves to the WTO as well as reports on status of current legislation in the service sector.

At the October 1998 Working Party meeting, WTO members welcomed Kazakhstan's revised offer on goods as a significant improvement over the initial offer. WTO members, however, emphasized the need for further improvements in Kazakhstan's offer, including commitment to the zero-for-zero sector agreements. A number of members submitted specific requests for market access commitments. Additionally with regard to services, a number of countries requested that Kazakhstan submit an improved offer before those countries would begin negotiations. Other countries provided Kazakhstan with specific requests for commitments in the service sector.

Since the October 1998 meeting, the Kazakhstan government has decided upon a policy of bilateral negotiation with member countries regarding its offer on goods. Contacts are being made through diplomatic missions abroad.

Also following the October 1998 meeting, the Project continued to assist the GOK in preparation of revised offers on services. However, personnel changes in some key ministries has meant a delay in approval for some of these offers and the last version on offers is still in the process of being drafted. However it is expected that the new Inter-Ministerial Commission will analyze the offers sector by sector in the first half of the year to allow Kazakhstan to request a Working Party meeting in Geneva in early summer.

**Agriculture Negotiations:** In previous years, the GOK had submitted to the WTO two sets of tables detailing agriculture export subsidies and domestic support (August 1996 and July 1997) with explanatory notes. Following the October 1998 Working Party meeting, WTO-member countries requested that Kazakhstan submit updated versions of these tables using the latest data available. The Project continues to work with the Ministries of Agriculture, Finance, and Energy, Industry and Trade in preparation of this data for the period 1996-1998. This work also includes a significant educational element - explaining the Agreement on Agriculture - as well as technical assistance in putting the relevant tables in the required WTO format and drafting the necessary explanatory notes.

**WTO-Member Questions:** A significant element of the Project's WTO work has been the assistance it provides to the GOK in responding to questions it receives from WTO members

regarding its trade laws and policy. In 1998, the Project assisted the GOK in preparing responses to two (2) such rounds of questions.

In February 1998 the GOK responded to a set of questions from the United States, Australia and the European Union. There were 102 questions in total. These questions arose out of the 1997 Working Party meeting. Subject matter was varied but included customs, intellectual property, standards, agricultural subsidies as well as indirect taxation. The Project's role here has been to translate the questions for the Government, assist in their distribution to the relevant ministry or agency, explain the meaning of the question to relevant ministry staff where necessary, assist in research and formulation of the Government's answer, and translate and compile a single document in WTO-required format for filing with the WTO Secretariat.

Translation has been of particular importance because the GOK lacks the specialized resources in this area and the Project has dealt with a very large volume of technical materials requiring translation. Translations have been attended by necessary technical explanations where requested or required from the Kazakh side.

The second round of questions that the Project worked on in 1998 were received by the GOK following the October 1998 Working Party meeting referenced above. This round included approximately one-hundred (100) questions from the United States, European Union (EU), and Australia that were received in November 1998. The main focus of the questions concerned customs, standards, intellectual property, and agricultural subsidies. It is expected that the GOK's responses to these questions will be submitted to the WTO Secretariat in early 1999.

Apart from responses to these questions, the Project assisted the Government in fulfilling a number of commitments it made during the October 1998 Working Party meeting. Specifically, the Project prepared and sent to the WTO an updated list of excisable goods and excise rates; forwarded translations of WTO-related legislation enacted by Kazakhstan in the prior year; and translated and submitted the Government's report on the economic situation in the Republic of Kazakhstan.

***Education/Training:*** Also throughout 1998, the Project continued its efforts to educate Kazakhstan government officials about WTO, the accession process, and the consequences of WTO membership for Kazakhstan. This was an effort of particular importance given the turnover in government personnel following the move of the capital to Astana. Thus, in late February 1998, shortly after the move of the Government to Astana, the Project presented a half-day seminar to approximately ninety-five (95) high level officials (ministers, deputy ministers, and heads of departments). A second seminar was presented by the Project in September 1998 in Astana for approximately 40 representatives of various government ministries, again to educate new government officials. In early 1999, the Project and government counterparts presented a major seminar in Astana to approximately seventy-five (75) members of Parliament. The purpose of the latter was to educate lawmakers who were considering, or would shortly consider, a large number of pieces of WTO-related legislation. The seminar was the lead news story on the national television news Xabar and was featured in a number of newspapers, including the front page of the newspaper Kazakhstanskaya Pravda.

In support of this education effort, the Project also drafted a number of papers for, and met with, the new, high-officials within the Government concerning the same themes of the benefits and obligations of WTO membership, the process of accession, and the current status of Kazakhstan's application. Similarly, upon the appointment of Mr. Dasayev as the head of the Kazakhstan delegation, the Project sponsored a trip to the WTO in Geneva for Mr. Dasayev to participate as an observer during the Russian Working Party meeting (July 29th and 30th ) and to become familiar with working party procedures and formalities. The Project also sponsored training in WTO trade remedy rules for the Project's lead government counterpart. This training was presented in Moscow by European Union experts.

**Liaison:** Finally, throughout 1998, the Project continued to play its role as a liaison between the WTO Secretariat and the Government. The Project translated all documents submitted by the Government to the Secretariat (approximately 400 pages), including laws, reports, and letters; assisted in scheduling bilateral and multilateral negotiations; and otherwise assisted in exchange of information as needed. The Team revised comments of the Republic of Kazakhstan regarding the Factual Summary of points raised at the first Working Party meeting in order to ensure completeness, accuracy, clarity, and consistency. Comments were submitted to the WTO Secretariat

## 2.WTO Accession: Legislation

**Legislative Reforms** - The Project continued advising various ministries of the Government in revision or creation of laws and regulations necessary to conform to WTO principles and agreements. The details of the Project's work on these laws is described in greater detail elsewhere in this report, but may be summarized as follows:

<u>Law</u>	<u>Status (as of 3/99)</u>	<u>Comments</u>
Law On Standardization (new)	Agency on Standardization, Certification, and Metrology reviewing final version of law to ensure accuracy of Kazakh translation	Law to implement WTO TBT Agreement (use of international standards, non-discrimination, publication/notification of standards, establishment of inquiry point)
Law On Certification (new)	Government submitted draft law to Parliament for enactment 3/99	Law to implement WTO TBT Agreement (use of international standards, non-discrimination, publication/notification of standards, establishment of inquiry point)
Law On Veterinary (amendments)	Draft amendments submitted to Veterinary Department/7-98; awaiting establishment of working group	Amendments to implement WTO SPS Agreement (use of international guidelines, non-discrimination, publication/notification, establishment of inquiry point)
Law On Quarantine (new)	Law adopted on February 11, 1999	Law to implement WTO SPS Agreement; proposed law includes framework principles; regulations to be developed
Customs Code (amendments)	Government draft amendments submitted to Parliament 3/99	Amendments to conform Code to WTO customs agreements (customs valuation, rules of origin, transit, TRIP's).
Law on Anti-Dumping (new)	Draft law under review by Government	Law to implement WTO Dumping Agreement

<u>Law</u>	<u>Status (as of 3/99)</u>	<u>Comments</u>
Law on Countervailing Duties & Subsidies (new)	Draft law under review by Government	Law to implement WTO Agreement on CVD and subsidies
Law on Safeguards (new)	Enacted by Parliament December 28, 1998.	Law to implement WTO agreement on safeguard duties
Law on Copyrights (amendments)	Proposed amendments submitted to Copyright Office/2-98	Proposed amendments held until Kazakhstan accedes to Berne Convention. Agreement to join Berne Convention approved by Majilis 10/2/98, approved by Senate 10/98; signed by President 11/10/98.
Law on Patents	Draft law under review by Parliament.	Law to implement WTO TRIP's requirements.
Law on Trademarks	Draft law under review by Government.	Law to implement WTO TRIP's requirements.
Law on Selective Achievements	Draft law submitted to Parliament, 7/98; Parliamentary Working Group constituted to review draft 11/98	Law to implement WTO TRIP's requirements.
Regulation on Lay-Out Designs of Integrated Circuits	Project's draft amendments submitted to Patent Agency/ 2/98	Law to implement WTO TRIP's requirements.
Law on Commercial Secrets	Draft law under development by Anti-Monopoly Committee 2/99	Law to implement WTO TRIP's requirements.
Civil Code Part II (amendments)	Proposed amendments to Civil Code, including provisions on intellectual property, submitted to Parliament 3/99	Law to implement WTO TRIP's requirements.
Law on Government Procurement (amendments)	Proposed amendments to State Procurement Code submitted to State Procurement Department 9/98	Amendments proposed to conform law to WTO Code (transparency, clarify procedures for protest and awards).
Law on Petroleum (amendment)	Project submitted to USAID comments on Haigler Bailey's proposed amendments to law/2-99	Comments focused on compliance of proposals with international standards – WTO, EU Partnership and Cooperation Agreement, European Energy Treaty – as well as consistency with national legislation.
Law on Subsurface Utilization (amendment)	Project submitted to USAID comments on Haigler Bailey's proposed amendments to law/2-99	Comments focused on compliance of proposals with international standards – WTO, EU Partnership and Cooperation Agreement, European Energy Treaty – as well as consistency with national legislation.

**Intellectual Property Laws** - The Project continued in 1998 to assist the Government in implementing all necessary measures to improve its legal regime and make it compliant with WTO requirements including Trade-Related Aspects of Intellectual Property Rights (TRIPs).

**Trade Remedy Laws** - The Project assisted in drafting proposed laws on anti-dumping, safeguards, and subsidies and countervailing measures. The Project worked closely with the Ministry of Energy Industry and Trade to educate government officials about these laws through memoranda and meetings. The Project reviewed all changes made to the law by the Government and drafted memoranda reviewing these changes. The Law on Safeguards was passed into law on December 28, 1998 and was submitted to the WTO for review in March

1999. The Law on Anti-dumping and the Law on Subsidies and Countervailing Measures is scheduled to be passed into law in early 1999.

**Standards, Certification, and Related Laws** - In 1998, the Government determined to replace the existing "Law on Standardization and Certification" with two new separate laws, one on standardization and the other on certification. The Project assisted the Agency on Standardization, Metrology and Certification (Gosstandard) in drafting these two new laws to ensure compliance with the WTO TBT requirements.

The Project drafted memoranda which presented both proposed language and a rationale for the proposal, its importance, and justification for deletion from the Government's drafts of inconsistent language. A separate memorandum was also prepared for each law which inserted the Project's proposed language into the text of the draft law where appropriate. In each case we reviewed the draft law after numerous rounds of revisions made by the Government. When necessary we prepared further memoranda and held meetings to explain the importance of our proposals.

At the request of officials in the Ministry of Agriculture, the Project researched information on practices of other countries and recommendations of international organizations on standardization, certification and sanitary/phytosanitary measures and translated these documents into Russian.

The Project reviewed the Rules on the Protection of the Territory of the Republic of Kazakhstan Against Pests, Plants, Diseases and Weeds and prepared a memorandum proposing amendments to bring them into compliance with WTO SPS requirements. The Project also presented the Ministry of Agriculture a memorandum explaining the SPS Agreement and the requirements. After receiving the memoranda, the Ministry of Agriculture determined to draft a new law on plant quarantine. The Project assisted in drafting this new law to ensure compliance with WTO requirements by preparing memoranda, through meetings, and through participation in working group meetings of the Parliament.

The new law On Plant Quarantine was adopted into law on February 19, 1999, and submitted in March 1999 to the WTO members for review. The law contains many of the primary WTO SPS requirements. Other SPS WTO requirements will be adopted in regulations that are scheduled to be drafted in 1999.

The Project separately reviewed the existing Law on Veterinary, and drafted a memorandum with proposals to bring the law into compliance with WTO SPS requirements. The Project met on several occasions with the Director of the Ministry of Agriculture and the chief of the department on Veterinary in which they stated that they were prepared to make changes to bring the law into compliance with WTO requirements. However, due to numerous reorganizations and changes in personnel within this Ministry, no further movement has been made by the Government to amend the Law on Veterinary.

The WTO TBT and SPS Agreements require establishment of inquiry points to collect and distribute standards and certification procedures, sanitary and phytosanitary measures and any relevant legislation. These inquiry points also serve to provide notifications to the WTO. To assist the Government of Kazakhstan meet this WTO requirement, the Project prepared an in-

depth memorandum on the requirements of an inquiry point. This memorandum provided information such as the obligations of an inquiry point, resources needed, operating policies, and recommendations on staffing. Also included were copies of all WTO notification forms. A WTO-compliant inquiry point was established based on this memorandum and meetings with officials at Gosstandard.

Over the next year Kazakhstan will continue to develop the legal base for standards and SPS in order to comply with WTO rules. In particular, the Government must ensure passage of the Law on Standardization and the Law on Certification; implement standards and certification laws; provide further assistance in amending the Veterinary Law to bring it into compliance with the WTO SPS Agreement; develop and ensure passage of regulations for the Law on Plant Quarantine; and continue to assist with the development of TBT and SPS inquiry points.

### **3. Customs Reform**

#### **a. Completion of All Required Amendments to the Customs Code**

In March 1999, the Government of Kazakhstan transmitted to Parliament for enactment proposed amendments to the Customs Code (the "Law on Customs Business in the Republic of Kazakhstan of July 20, 1995," Edict No.2368), the basic, 400-article law that covers all aspects of customs regulation and administration. The amendments incorporate changes required to conform to WTO agreements, including WTO valuation rules, rules of origin, and special duties. These WTO-related changes were developed by the Ministry of Finance and the State Customs Committee with the assistance of the Project.

The Project's work on amendments to the Customs Code began in the Spring of 1997; the Government's legislative drafting agenda for that year called for the State Customs Committee to submit amendments by September 1997. Accordingly, in June 1997, shortly after the formation of a working group within Customs, the Project prepared an analysis and proposed amendments to the Customs Code to conform it fully to WTO rules.

Major changes to the Customs Code required for WTO purposes concerned the following: customs valuation (including expansion of certain due process rights for importers, elaboration of transfer pricing rules, and inclusion of prohibitions against Customs use of certain valuation methods); intellectual property (procedures for IP-owners to apply to Customs to detain counterfeit or infringing goods); and rules of origin (strengthening the advance rulings procedure). In addition, provisions in the Customs Code related to transit, customs processing fees, and antidumping, countervailing, and safeguard measures must be eliminated or modified to conform to WTO agreements and GATT 1994 principles. The Project proposed additional changes based on the Kyoto Convention, such as simplification of requirements for certificates of origin and rules for transit under customs escort.

After approximately three to four months of work by Project's lawyers with the State Customs Committee staff in re-drafting and explaining the WTO-purposes of the proposed amendments, the Customs Committee transmitted its amendments to the Government and other ministries for review in the Fall of 1997. However, from that time until early 1999 the continued development of the amendments proceeded by fits and starts. This largely was due

to the move of the Customs Committee from Almaty to Astana in December 1997 and consequent reduction of staff (from about 250 to 75), and by two reorganizations of the Customs Committee, which was first placed under the Ministry of Finance (October 1997) and then under the Ministry of Revenue (October 1998).

In early 1998 the Government opened up the drafting process to involve Kazakhstani business associations in the development of amendments. These associations included the Union of Industrialists and Entrepreneurs and the Almaty Entrepreneurs Association. While the inclusion of these groups did slow the drafting, their input was important. In general, these groups proposed amendments to simplify and expedite import processing, as well as to resolve some existing practical problems that importers have faced in their transactions with Customs. The Project conferred with representatives of these associations and attended, on occasion, meetings of their working groups. Certain of these proposals made by these groups mirrored the Project's (non-WTO) initiatives. For example, these groups proposed that the Customs Code expressly provide for a pre-arrival declaration procedure - a procedure that was established by a Customs Committee regulation drafted with the assistance of the Project. The purpose of incorporation of the procedure in the Code was to eliminate discretion of individual customs officers to apply the procedure and to ensure its full implementation. On behalf of the American Chamber of Commerce, the Project drafted and submitted a letter to the State Customs Committee supporting this amendment.

Throughout 1998 representatives of the Project traveled to Astana to meet with Ministry of Finance staff to discuss ongoing revisions to the proposed amendments, as well as new proposals made by various parties involved in the drafting. For benefit of the Ministry of Finance, the Project prepared in April 1998 a written commentary on these proposals, taking into account WTO consistency. The Project prepared a similar analysis for the USAID mission in Almaty. In addition, the Project translated the successive iterations of the amendments produced by the Ministry of Finance in anticipation of sending a final text to the WTO in Geneva. In November 1998, the Project drafted and submitted additional written comments to Ministry of Revenue, Ministry of Justice, and Ministry of Energy, Industry and Trade. In monthly meetings of the American Chamber of Commerce Customs Working Group, the Project kept member-companies apprised of developments and continued to solicit their input. The Project prepared a written summary of major changes to the Code for Working Group members in February 1999.

In March 1999, at a seminar for Parliament and Senate members on WTO issues, the Project's Customs expert presented a summary of proposed changes to the Customs Code, and relevance to Kazakhstan's accession to the WTO. Project staff later met with Victor Vicneen, a deputy of the Parliament and member of the Committee on Economy, Finance and Budget which will review the Code amendments. The deputy invited the Project's participation in the Committee's work on the Customs Code amendments, which is expected to begin in earnest in mid-April 1999.

**b. Revised Custom's Implementing Regulations & Associated Audit Procedures Implemented in August 1998**

The Project developed and promoted a number of reforms of customs regulation, including regulations that affect customs import processing procedures, customs duty exemptions, customs documentation, valuation, and warehousing.

***Simplified Customs Processing Procedures:*** Throughout 1998, the Project assisted the business community's efforts to ensure proper implementation by the State Customs Committee of the pre-arrival declaration and periodic declaration procedures. As of March 1999, importers now report that the procedures are successfully implemented.

A regulation authorizing these procedures, which was developed by the Project with the State Customs Committee under the prior Task Order, was registered with the Ministry of Justice in August 1997. The pre-arrival declaration procedure, in particular, is of great importance to importers. It allows an importer to file his customs documentation and complete customs processing up to 10 days before the goods arrive to Kazakhstan so that Customs can release the goods immediately. Under the terms of the regulation, an importer that uses the pre-arrival declaration procedure is not required to place his goods in a temporary storage warehouse pending clearance. The procedure is thus an important "loophole" that can be used by importers to avoid the delays and costs resulting from Customs misuse of the temporary storage regime.

Customs full implementation of the regulation on pre-arrival and periodic declaration was in doubt from the date of enactment. According to importers and other sources, efforts were made by the Customs Committee to cancel the regulation perhaps at the behest of owners of temporary storage warehouses. Continued petitions by the U.S. Embassy and the AmCham, however, successfully established the procedure. The Project's role throughout was to provide technical assistance to the Embassy and AmCham to support their political appeals, through drafting letters to the Customs Committee, attending meetings with the Senior Commercial Officer and Customs Committee officials, and providing briefings for members of the business community. To encourage wider circulation of the regulation, the Project featured the regulation in the Import - Export Guide (see below) which was broadly disseminated.

To resolve any further doubts as to the validity of the pre-arrival declaration procedure, the Project proposed a draft amendment to the Customs Code that would establish the pre-arrival declaration procedure in the Code itself. The proposed provision would be self-executing, and not require implementing regulation. In other words, Customs could not refuse to allow an importer to use the procedure. The proposal was accepted by the Ministry of Finance, and is incorporated in the text of amendments to the Code that was submitted to Parliament in March 1999.

***Import-Export Guide:*** In December 1998, the State Customs Committee published in the official Customs Bulletin the first installment of the Project's Guide to Import and Export Procedures in Kazakhstan (Customs Bulletin pp.49-84 (No. 5, 1998). To encourage greater transparency of customs rules and proper implementation of laws, the Project developed the Guide under the first Task Order and updated it under the current Task. In addition to an overview of basic customs procedures, the Guide provides information concerning certain of

the regulatory reforms developed by the Project, including the pre-arrival declaration and periodic declaration procedures, and WTO customs valuation rules. The Guide has detailed appendices, which include texts of legal acts, which the Customs Committee has undertaken to publish in future issues. The Project also prepared and distributed 60 copies of the Guide at a seminar presented by the Almaty Customs Department in May 1998. In January 1998, the Guide was provided to the U.S. Department of Commerce, and has since been published on the Department of Commerce BISNIS Internet site ([www.mac.gov/bisnis/customs.htm](http://www.mac.gov/bisnis/customs.htm)).

**Customs Audit Handbook:** Customs determines the truth and validity of all import declarations at the border during customs processing of imported goods. Most modern customs organizations release goods with minimal checking, subject to the possibility of auditing the importer's books and records at its facility to verify accuracy of the importer's declaration. Kazakhstan now has little or no audit capability – no auditing staff (accountants, auditors, computer analysts, for example), no training in audit techniques, no material resources. As a first step towards establishing audit capability, the Project drafted a 50-page handbook for customs officers on customs audit. The handbook was developed on the basis of the U.S. Customs model, and is intended to assist customs officers in implementation of valuation, classification, and other customs regulations.

**Foreign Investment Duty Exemption:** In mid-1998, the Project drafted and submitted to the Ministry of Finance and State Customs Committee a briefing paper and proposed regulation to implement Article 22 of the Foreign Investment Law. Article 22 provides a customs duty exemption for equipment and spare parts imported as a contribution to Charter Fund of foreign-owned enterprises in Kazakhstan. Although Article 22 was incorporated in the original Foreign Investment Law of 1994, no implementing regulations or instruction had been issued to define the scope and conditions of the exemption. Investors had reported confusion and inconsistent treatment as a result, particularly after the 1997 amendments to the law which narrowed the scope of the customs exemption. Accordingly, the Project developed a regulation that would formalize and simplify the procedure for the customs duty exemption. In May 1998 the Project submitted for comment the draft regulation and briefing paper to companies participating in the U.S. Embassy Oil and Gas Working Group prior to submission to the Ministry of Finance and State Customs Committee.

After the Project submitted the proposed regulation to Customs and Ministry of Finance, a change was made to Kazakhstan's legal regime that significantly reduced the importance of the Article 22 duty exemption for foreign investors, and therefore the need for the proposed regulation. Specifically, in July 1998, Parliament enacted a new law "On Joint Stock Companies" (July 10, 1998, No. 281-1). The new law permits minimal charter fund or authorized capital requirements (about \$800 for a company of the closed type, and about \$5,000 for a company of the open type), and requires capital contributions to be completed within a year of registration of the company. A duty exemption that is tied to the amount of the charter fund, as under Article 22, would now thus appear to be of limited significance. For that reason, further development of the proposed regulation was not pursued.

**Customs Temporary Storage Warehouses:** In February 1998, the Project developed and submitted to the State Customs Committee a proposal to establish a temporary storage area under Customs control at the Almaty 1 railyard, one of just two terminal points in Almaty that receives imported container merchandise. The proposals was developed with company-

members of the American Chamber of Commerce Customs Working Group. Its purpose is to permit containers arriving by rail to be cleared by Customs at their point of arrival in Almaty. It was Customs practice to require containers to be taken off the arriving railcar, trucked outside the yard to a temporary storage warehouse operated by a Customs licensee, and held at the warehouse until customs cleared. The Project's proposal was supported by the U.S.-Kazakhstan November 1998 Joint Commission report, in which Kazakhstan agreed to a U.S. request to establish as a pilot project a voluntary storage at Almaty 1. To that end, project representatives discussed implementation of the proposal with senior Customs Committee officials in Astana (with the U.S. Senior Commercial Service officer) as well as Almaty Customs Department officials.

At present it appears that the Government has rejected the Project's proposal in favor of an alternative. In March 1999, rights to operation of the railyard were given to Kedan Transservice, a company that was created in 1998 by the Government of Kazakhstan for the ostensible purpose of providing technical support for the state customs organization, such as management of the Customs Committee building. The organization is largely staffed by former members of the State Customs Committee. Kedan Transservice's operation of the railyard is not consistent with the Project's proposal, as it is a commercial enterprise – not the Customs body, and therefore not subject to the Government regulation on customs fees – which has taken over the yard and begun assessment of additional fees and controls, but without apparent improvement in the process of customs clearance.

***Customs Currency Control Procedures:*** The Project drafted an analysis and proposed recommendations for changes to a National Bank/Customs Committee regulation on control of currency in import-export operations. The regulation requires importers and exporters to submit a "currency passport" both to Customs and to the importer or exporter's bank before goods may be customs cleared for import or export. The regulation is intended to allow Customs to verify that full and correct currency proceeds are received or paid in international trade transactions. When first implemented in the Summer of 1997, importers complained of significant additional delays and costs in customs clearance. In early 1998 the Project and USAID representatives met with the then-Chairman of the National Bank, Uraz Dzhandosov, to present the proposals. Further meetings to discuss the proposals were held in Astana and Almaty with the Director of the Agency for Strategic Planning and Reform, as well as with Ministry of Finance and National Bank staff. The proposals were also discussed with State Customs Committee in August 1998 with the U.S. Senior Commercial Service officer. At present, the proposals remain under consideration of the National Bank although due to Kazakhstan's worsening economic conditions, it is unlikely that the Bank and Customs will act on the proposals in the short term.

***Tariff Classification:*** The Project advised customs officers on proper implementation of the Harmonized System, the international tariff classification system upon which Kazakhstan's tariff nomenclature is based, by providing guidance on problems presented by actual importations (e.g., the tariff classification of scouring powders).

***Customs Enforcement of Intellectual Property Rights:*** Under the prior Task the Project provided the State Customs Committee with model rules/procedures for border enforcement of intellectual property rights developed by the World Customs Organization ("WCO"). However, because Kazakhstan's Customs Code does not include the provisions necessary to

allow customs officers to take action against imports of counterfeit and infringing goods, enactment of the implementing regulations must wait until the necessary legislative base is established. As noted above, the Project developed with the Customs Committee and Ministry of Finance the necessary amendments to the Customs Code for IPR protection, and these amendments were transmitted to Parliament in March 1999. Once the Customs Code amendments are enacted, these model rules can be used by Customs Committee as the basis for its implementing regulations.

**Customs Valuation Instruction:** Also under the prior Task, the Project provided the State Customs Committee with a draft regulation incorporating the interpretative notes to the WTO Valuation Agreement, with the Project's commentary. In the course of Kazakhstan's negotiations for accession to the WTO, WTO members have requested that Kazakhstan enact these interpretative notes in the form of a normative legal act. Again, however, the regulation depends upon enactment of the necessary legislative base. The amendments to the Customs Code presented to Parliament in March 1999, which were developed with the assistance of the Project, will provide that base. In any event, the State Customs Committee published, as an information document (not a normative legal act) the Project's commentary and proposed regulation in late 1997 in the official customs bulletin. Customs Bulletin, pp. 56-76 (No. 5, 1997).

**Institutional Development:** The Project provided advice on an informal basis to customs officers and Ministry of Finance staff, and AmCham company members on a number issues, including customs valuation (examples of operation of the valuation law), tariff classification, customs organizational structure (relationship to state tax authorities), and importation of pharmaceuticals. Under this Task, a formal training program was not delivered on customs issues in Kazakhstan.

#### 4. Private Sector Development

**Project Background in Private Sector Development:** Prior to the current Task Order, during the period 1996 – 1998, the Project engaged in research and analysis designed to identify legal and regulatory constraints to the development of local and international private business activity, as well as to provide recommendations for improvements.

The Project participated actively in eight meetings of the Oil and Gas Working Group, which took place during the period of 1996-1997. Among the purposes of the meetings was to clarify the problems in issuing of licenses in Kazakhstan (with special emphasis on licensing of smaller businesses and suppliers in the oil and gas sector). Recommendations were made regarding the implementation of the Law on Licensing and as to issues related to the Law on Petroleum and the Law on Subsurface Utilization.

In 1997, Project staff produced small business surveys and "constraints analyses" during visits to Karaganda, Semipalatinsk, Atyrau and Almaty City. The visits included meetings with small business representatives, business associations and governments officials. Questionnaires requesting participants to describe the most difficult constraints were distributed in the each region. The analyses based on the survey results and the continuing review of existing legislation undertaken by the Project were presented through a final memorandum and presentation at the Atyrau Small Business Workshop on October 7, 1997.

***Private Sector Development Work in the Current Task Order:*** In addition to the surveys and constraints analyses in Karaganda, Semipalatinsk, Atyrau and Almaty City in 1997, in the current Task Order period (in the month of March 1998), 60 enterprises were interviewed in Chimkent Region and Almaty City concerning peculiarities of the region and the city in terms of trade activity and private enterprise opportunities to participate in State Procurements. As in the earlier 1996 and 1997 surveys and constraints analyses, major constraints identified included problems in the issuance of business licenses, lack of access to legislation or implementing regulations, difficulties in understanding legislation, and contradictions between regulations and local government practices and national legislation.

During 1998, reviews of national legislation and national and local implementing regulations (or the lack thereof) continued, as did frequent meetings and interviews with small businesses and local and national government officials concerned with private sector business activities. Based on this continuing work in Private Sector Development, the Project made a presentation, "The Legal Environment for Development of the SME Sector," in Almaty on October 13, 1998, at "The Roundtable on Small and Medium-Sized Business in Kazakhstan."

At the close of the current task order period, the Project made an international presentation on the SME sector in Kazakhstan at the "Regional Conference on SME Development for the 21<sup>st</sup> Century," held in Sofia, Bulgaria on February 17<sup>th</sup> – 18<sup>th</sup>, 1999. The report included a profile of the SME sector in Kazakhstan and an analysis of major legal and regulatory constraints to private sector development, as well as recommendations for improvements. Based on the Project's background in private sector development work in the region and the continuing terms of reference requirements of the next Task Order, the Project intends to continue and to expand its work in private sector development and the improvement of the legal and regulatory environment for development of the SME sector in Kazakhstan.

### **III. The Kyrgyz Republic**

#### **A. Objectives**

1. Establish a sound trade and investment environment, including the modification of laws and regulatory provisions relating to international trade and foreign investment. Enhance the legal/regulatory framework for foreign trade and investment to conform to global standards and to facilitate rather than impede foreign trade and investment;
2. Accession to the WTO; and,
3. Enhance the overall investment "climate" through eradication of administrative/bureaucratic barriers to business development, including business registration/licensing requirements, which artificially restrict market entry and restrictions on company profit margins and product profiles, which impede efficient investment flows.

#### **B. Significant Results of Project Assistance**

##### **Significant Successes**

1. On December 20, 1998, the Kyrgyz Republic became the 133<sup>rd</sup> member of the World Trade Organization, the first CIS country to do so. The Project supported the Kyrgyz Republic's application for membership from the date it was filed in 1996, including technical assistance in reform of laws and policies necessary to conform to WTO rules, and support in market access negotiations.
2. The Kyrgyz Republic adopted the following laws and regulations in 1998, which were drafted with the assistance of the Project, and which are important to WTO accession:
  - Civil Code, Part 2 (Intellectual Property), January 5, 1998;
  - Criminal Code (section "Intellectual Property") of January 1 1998;
  - Law "On Copyright and Neighboring Rights" of January 1998;
  - Law "On Trademark, Service Marks and Appellations of Places of Origin of Goods" of January 14, 1998;
  - Law "On Patent" of January 14, 1998;
  - Law "On Commercial Secret" of March 30, 1998;
  - Law "On Legal Protection of Software and Database" of March 31, 1998;
  - Law "On Breeding Achievements" of June 13, 1998;

- Law on Amendments and Supplements to Some Legislative Acts of the Kyrgyz Republic of June 8, 1998 (Amendments to the Law on Certification of April 2, 1996 and Law on Standardization of April 2, 1996);
- Law "On Introducing Amendments into the Law On Plant Quarantine" of June 2, 1998;
- Law "On Introducing Amendments into the Law On Veterinary" of June 2, 1998;
- Cabinet of Ministers Regulation on Intellectual Property Fees of June 12, 1998;
- Law "On Introducing Amendments into the Customs Code" of August 27, 1998;
- Law "On Introducing Amendments into Some Legislative Acts" of June 16, 1998 (The law "On Normative Legal Acts" and "On the Procedure of Publishing Laws");
- Resolution of the Legislative Assembly of the Jogorku Kenesh "On Approving of the Procedure of Registration and Issuance of Licenses for Carrying Out Importing-Exporting Operations" of June 8, 1998;
- Law "On Introducing Amendments into the "Law On Commercial Secret of the KR"" of June 26, 1998;
- Order of the State Customs Inspectorate regarding the Customs Valuation of Carrier Medium Bearing Software and Interest Charges of June 17, 1998;
- Regulations on the Establishment of the Amount of the Fees for Customs Clearance and Certificate of Origin of June 19, 1998;
- Law "On Introducing Amendments to the Law On State Procurement in the Kyrgyz Republic", November 28, 1998;
- Regulation "On the Tender Among Consultative Firms," November 4, 1998;
- Regulation "On Forming a Database on Unreliable Suppliers (Contractors) and the Procedure of Applying It", December 15, 1998;
- Regulation "On the Procedure of Considering Administrative Infringements and on Imposing Administrative Penalties for Violating the Legislation on State Procurement of Goods, Works and Services", November 17, 1998;
- Regulation "On Granting a Compulsory License for an Invention and its Use", December 24, 1998;
- Resolution "On Introducing Amendments into Some Decisions of the Government" (Regulation on Free Economic Zones in the Kyrgyz Republic)", June 23, 1998;
- Law "On the Basic rates of Excise taxes", February 3, 1999;

- Law "On Safeguard Measures" of October 31, 1998;
- Law "On Subsidies and Countervailing Measures" of October 31, 1998; and,
- Law "On Antidumping" of October 31, 1998.

### **Significant Issues**

Implementation of the WTO obligations includes support for the institutions that will be required to carry out the existing and future obligations of a WTO member. Assistance in implementation includes:

- Assist Government in creation and operation of governmental body responsible for monitoring compliance with WTO obligations and responsibilities (developing laws to establish the body and developing procedures for post-accession reporting and notification obligations);
- Support government participation/negotiations in WTO bodies, such as Trade Policy Review Body, Council on Trade in Goods/Services, Dispute Settlement Body;
- Provide technical legal and trade policy support to government bodies implementing specific WTO obligations (Customs Committee, Standards Committee, Patent Office, *etc.*);
- Train government bodies in application of laws and regulations implementing the above substantive WTO agreements, and in legal responsibilities of the above-mentioned WTO-related institutions; and,
- Provide technical legal assistance in WTO review of the Kyrgyz Republic's customs union and free-trade arrangements.

### **Major Changes Anticipated in Project Activities**

Since the Kyrgyz Republic became a member of the WTO on December 20, 1998, the focus of the project activities will turn from legal reform to post-accession compliance. It is anticipated that the activities in the implementation phase will be those described above under "*Significant Issues.*"

### **Major Changes in Government Policy**

Under the best conditions, the implementation of WTO obligations presents challenges. In the Kyrgyz Republic at this time, however, there are the added economic and political factors due to the financial crisis and the sensitivities involved with the Kyrgyz Republic's participation in the Customs Union. As the President has placed much of his political capital in WTO membership, it is imperative that concrete results be forthcoming. If USAID's efforts to provide post-accession assistance are to be curtailed at this stage, any trade benefits flowing to the Kyrgyz Republic from its membership are likely to be diminished.

The Government is currently struggling with policy decisions brought to the fore by the pending economic crisis. The absence of foreign investment to the Kyrgyz Republic and the loss of revenues from imports have forced the Government to take a serious look at barriers to trade and investment. In its efforts to encourage participation in the economy the Government is turning to USAID more than ever to find ways to accommodate business and remove onerous requirements on the business community. As a result, USAID is uniquely positioned at this moment to have its recommendations and proposed policies adopted.

### **Devil's Advocate**

**Q. The Kyrgyz Republic is now a member of the World Trade Organization. Because accession has been achieved, and all laws, regulations, policies conform to WTO rules, USAID assistance is no longer necessary.**

A. The Kyrgyz Republic's accession to the TWO was one of the fastest in recent times. The Republic became a WTO member is just over two years from the date it filed its application for membership. While the speed with which the Kyrgyz Republic made the necessary changes to its legal and trade policy regime to conform to WTO rules may be commended, the meaning and consequences of the significant changes to the legal regime may not be well understood by all government officers responsible for carrying out these new obligations. Moreover, now that it is a member of the WTO, the Kyrgyz Republic has certain reporting and notification obligations to the WTO that must be met, and may be called upon to participate in WTO institutions. For these reasons, the Kyrgyz Republic will continue to require significant technical WTO assistance to ensure that it does not fail in its new WTO obligations.

## **C. Progress**

### **1. WTO Accession: Process**

The process leading up to the Kyrgyz Republic's becoming the 133<sup>rd</sup> member of the WTO was the culmination of three years of intensive work by the Kyrgyz Republic, with support from the Project, to reform the legislative and institutional base of the Kyrgyz Republic to conform to the many and varied WTO membership conditions. Because of the Kyrgyz Republic Government's unflagging commitment to WTO membership and the Project's close coordination and assistance throughout the process, the Kyrgyz Republic was able to obtain membership in just over two years for the filing of its Memorandum on Foreign Trade Regime. In recent times, no other country had acceded in such a short period.

The Kyrgyz Republic concluded all of its bilateral and multilateral treaties associated with its accession to the World Trade Organization by July 17, 1998. At the General Council Meeting on October 14, 1998 the plenary body voted unanimously to adopt the Working Party's Report. On that day the Kyrgyz Republic signed the Protocol of Accession. The Protocol was ratified by the Legislative Assembly and the People's Representatives Assembly on November 5 and 6, respectively. It was signed by the President on the 17th of November 1998 and deposited with the WTO Secretariat in Geneva on the 20<sup>th</sup> of November 1998. The Agreement formally came into effect on the thirtieth day after deposit-- December 20, 1998.

## **Accession to the WTO**

Membership in the Kyrgyz Republic Working Party was open to all WTO countries. On average, however, twenty countries participated in the Working Party meetings. The regular participants were: Australia, the Czech Republic, the European Union, France, Japan, Germany, Mexico, Poland, the Slovak Republic, Spain, Switzerland, the United Kingdom and the United States. In addition, the Working Party was open to all WTO observers. In this category, representatives of China, Estonia, the IMF, Latvia, the Russian Federation, UNCTAD, and the World Bank were regular attendees.

The purpose of Working Party meetings is to examine the foreign trade regime of the acceding country for compliance with the legal requirements of the WTO various agreements. The Working Party concludes its work by preparing the report of the Working Party summarizing the results of the meetings and outlining all specific commitments, culminating in the Protocol of Accession.

The purpose of the bilateral meetings is to negotiate the acceding country's market access terms on goods and services. Lists of specific commitments on goods and services resulting from the bilateral negotiations are consolidated in the Schedule of Commitments on Goods and the Schedule of Specific Commitments on Services. The terms contained in these two schedules will be granted automatically upon accession to all WTO member countries according to the Most Favored Nation principle.

The Kyrgyz Republic engaged in bilateral negotiations on market access on goods with Australia, the Czech Republic, Cuba, Japan, Mexico, the Slovak Republic, Switzerland, the European Union, and the United States. Only the European Union, Switzerland, Australia, and the United States had substantive negotiations for market access in the service sector.

The Kyrgyz Republic delegation attending Working Party meetings and conducting bilateral negotiations was led by Ambassador Esengul Omuraliev and comprised top officials from key ministries and state bodies of the Kyrgyz Republic including officials from: the Office of the President, the Cabinet of Ministers, the Ministry of Finance, the Ministry of Justice, the State Customs Inspectorate, the State Agency on Intellectual Property, the State Agency on Standardization and Metrology, the Ministry of Agriculture, the Ministry of Foreign Trade and Industry and the Ministry of Foreign Affairs. In addition, the Kyrgyz Republic Ambassador to the United Nations in Geneva, Mr. Erin Makeev, attended all of the meetings. A short chronology of key dates in the Kyrgyz Republic's accession process, including the dates of all the Working Party meetings and bilateral negotiations, is detailed in Appendix I.

## **Training and Educational Activities**

The Project undertook a variety of training and educational activities during the current task. The primary focus of these activities was in educating members of parliament and other government officials on the substance of the WTO agreements and the corresponding domestic legislation necessary to fulfill these agreements. A series of seminars were held for Parliament on the laws of Anti-dumping, Countervailing and Safeguards. After the October 14, 1998 General Council Meeting in Geneva, and during the Kyrgyz Republic ratification debate, the Project prepared and delivered extensive briefing materials for presentation by Am-

bassador Omouraliev to both chambers of Parliament on the details of the accession. In addition, the Project's Custom's Advisor held a series of seminars and workshops over the year on customs valuation control and advanced customs procedures.

## **2. WTO Accession: Legislation**

### **Project Support**

The Project provided substantial assistance and support to the Kyrgyz Republic in preparing for both its bilateral and Working Party meetings. Accession to the WTO can be viewed as a lengthy and detail-oriented dialogue between the acceding country and the members of the Working Party. Many questions were put to the Kyrgyz Republic on aspects of its foreign trade regime and the legal basis underlying this regime. Some of the questions were requests for clarification but many more flagged deficiencies in the Kyrgyz Republic's legal and regulatory environment as it related to one or more of the WTO agreements. Commitments were made by the KR, and reflected in the Draft Report on Accession, to correct the noted deficiencies.

The Project assisted in the process of proposing amendments to the legislation at issue and in commenting on draft legislation. To this end the Project also undertook efforts to educate parliamentarians, and other officials responsible for the legislation, as to the rationale underpinning the recommendations and their relation to the WTO agreements. The Project met routinely with Kyrgyz Republic officials in an effort to track the legislation as it moved through the Government and Parliament and urged its timely adoption according to the commitments made to the Working Party.

It must be remembered that only English, Spanish and French are official WTO languages. As a result, all documents related to the accession, including copies of enacted and draft legislation had to be translated into English. This was not an insignificant task of the Project as the Kyrgyz Republic is largely without the wherewithal to provide quality translations of the scope needed in the time required.

Moreover, it must be stressed that although the Project provided substantial assistance to the Kyrgyz Republic throughout the accession process, it at no time took any role in advising the Government as to positions it should take with respect to tariff rates or other specifics that were the subject matter of substantive negotiations in the bilateral or multilateral context. The following sections highlight the technical assistance provided to the Government on intellectual property, standards and customs in terms of the Kyrgyz Republic's accession to the WTO.

### **Standards, Certification and Related Laws**

The Project assisted the Government in amending laws of the Kyrgyz Republic to meet the requirements of the WTO Technical Barriers to Trade Agreement (TBT) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS).

The Project assisted the State Inspectorate of Standardization and Metrology in bringing both the Law on Standardization and the Law on Certification into compliance with the WTO

Technical Barriers to Trade Agreement (TBT). The required amendments included, among other changes, provisions for use of international standards, publication of proposed standards with a comment period, and appeal of decisions.

The Project also worked closely with the Ministry of Agriculture to bring two additional laws - the Law on Veterinary and the Law on Plant Quarantine - into compliance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). As required by the SPS Agreement, these laws now incorporate provisions to ensure that phytosanitary measures are based on sufficient scientific evidence and international standards, guidelines or recommendations; they are transparent; that comment periods will be given when new measures are adopted, and that measures of other countries will be accepted if they meet the same level of SPS protection.

With respect to each law, the Project submitted memoranda with proposed language accompanied by explanatory notes explaining the proposal and its importance. It was recommended that language that was inconsistent with WTO requirements be removed from the law, with explanations as to how it was inconsistent. A separate memorandum was also prepared for each law, which inserted the Project's proposed language into the text of the draft law in the most appropriate article. In each case, the Project reviewed the draft law, following every round of revisions made by the Government until adopted into law. When necessary the Project prepared further memoranda and held meetings to explain the importance of our proposals.

The WTO TBT and SPS Agreements also require the establishment of inquiry points to collect and distribute standards and certification procedures, sanitary and phytosanitary measures and any relevant legislation. This inquiry point also serves to provide notifications to the WTO. The Project prepared an in-depth memorandum to assist in the establishment of the inquiry point. This memorandum provided information such as the obligations of an inquiry point, resources needed, operating policies, and recommendations on staffing. Also included were copies of all WTO notification forms. A WTO-compliant inquiry point was established based on this memorandum and meetings with officials at Kyrgyzstandard.

The Project prepared a memorandum explaining the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and how it differs from the WTO Agreement on Technical Barriers to Trade. This memorandum was presented with our proposed amendments to the plant quarantine and veterinary laws.

### **The Legal Regime**

Work was directed at conforming the legal regime to the requirements of the WTO agreements was initiated in 1996 and continued through the current task order. The list set out above under the heading "Significant Successes" summarizes the legal measures taken in order to bring the foreign trade regime of the Kyrgyz Republic into conformity with WTO requirements.

### 3. Customs Reform

#### **Completion of all required amendments to the customs code to ensure compliance with WTO including valuation rules, rules of origin, and special duties.**

Work on all required amendments to the customs code to ensure compliance with WTO, including valuation rules, rules of origin, and special duties, was completed on August 27, 1998, the date that the President Akaev of the Kyrgyz Republic signed the last of the required amendments into law.

The amendments to the customs code to incorporate these changes were made in two stages. In early 1997, the Project participated with the State Customs Inspectorate in drafting amendments to the Customs Code that were necessary to conform the Code to all WTO requirements, including the WTO agreement on customs valuation, the WTO Agreement on Rules of Origin, the WTO TRIP's Agreement (customs border enforcement provisions), and GATT 1994 rules on transit. The proposed amendments also eliminated the existing customs code provisions on special duties, which did not conform to WTO disciplines on antidumping, countervailing, and safeguard measures. (These measures were made the subject of separate laws that was developed with the technical assistance of the Project.)

In May 1997, Parliament passed a new Customs Code, which took effect in October 1997. The new law included most, but not all of the Project's recommendations. In particular, Parliament failed to include fully in the law WTO rules for customs valuation of merchandise that is transferred between related parties. Those are the rules that concern the conditions under which prices between related parties, such as parent and subsidiary, may be accepted as a basis for duty assessment.

Accordingly, in June 1997, when this omission became apparent, the Project submitted to the State Customs Inspectorate additional proposed amendments. An additional submission was made in mid-February 1998. Based largely on those submissions, the Customs Inspectorate completed a draft in late February 1998 ("On Making Amendments and Supplements to the Customs Code of the Kyrgyz Republic"). In February and March 1998, Project representatives met with Customs Inspectorate staff to further refine the required language. The Customs Inspectorate completed work on the amendments in mid-March, and submitted the law to the Government, which in turn transferred the amendments to Parliament.

In June 1998, Project staff met with members of the Committee on Taxes, Customs Duties and Fees, and Banks and Banking in Parliament to discuss the amendments with members of the Customs Inspectorate. The Committee approved the amendments in June, and on June 10<sup>th</sup> the Legislative Assembly of the Parliament adopted the amendments without change. On August 27, 1998 President Akaev signed the amendments into law. "On Introducing Amendments into the Customs Code," Law of the Kyrgyz Republic of August 27, 1998.

#### ***Revised Custom's implementing regulations and associated audit procedures***

Regulations implementing Customs Code provisions on customs valuation, border enforcement of intellectual property rights, and streamlined customs clearance procedures were de-

veloped, submitted to the State Customs Inspectorate, and promoted by the Project. Certain of the regulations have been implemented, others continue under review of the Customs Inspectorate or the Government. With regard to audit, the Project provided training and manuals to the Customs Inspectorate staff on customs audit and control. As explained below, however, the Customs Inspectorate needs significant material resources, additional personnel, and technical expertise before it can be said to have implemented a legitimate post-importation audit capacity.

On valuation, the Project prepared and submitted to the State Customs Inspectorate in July 1998 a draft regulation to implement the customs valuation provisions of the Customs Code. The regulation included, at its core, the interpretative notes to the WTO Valuation Agreement. In addition, the draft regulation incorporated a number of practical examples of operation of the value law for the guidance of customs officers and importers. After extensive discussions and revisions of the proposed text with members of the Project, in August 1998 the State Customs Inspectorate submitted the proposed regulation to the Government. On August 29, 1998, the Government issued the regulation as drafted by the State Customs Inspectorate. "Regulation on Customs Value of Goods Imported to the Kyrgyz Republic," Adopted by the Cabinet of Ministers on August 29, 1998.

In support of proper implementation of customs valuation rules, the Project's customs expert presented half-day seminars at eight customs houses in and around Bishkek. The seminars were presented to customs officers responsible for checking valued declarations, with the purpose to review the rules of valuation by working through practical cases, discuss specific real problems in valuation that arise in day-to-day work, and evaluate the officers' understanding of the rules. Based on results of that evaluation, the Project drafted a report to the State Customs Committee which included recommendations for certain measures to improve customs processing (including adoption of a pre-arrival and periodic declaration procedure – see below). The report was presented on July 1, 1998 to Ms. Janil, the then-Chief of the Training Center of the State Customs Inspectorate.

In addition to the foregoing work on customs valuation, the Project assisted the State Customs Inspectorate in drafting instructions implementing two decisions of the WTO Valuation Committee. This fulfilled a promise that the Kyrgyz Republic made during its WTO accession negotiations to incorporate these decisions into national law. The first decision concerns valuation of imported computer software (such as diskettes) and requires in effect that customs duty should be charged only on the value of the diskette, the physical goods, not the (much greater) value of the software, the intangible. Under the second decision, the WTO ruled that financing charges that an importer pays to a foreign seller for delayed payment for imported goods should not be included in the dutiable value of the goods, under certain conditions. The Project drafted a proposed instruction for the State Customs Inspectorate, and met with the Inspectorate staff to discuss the meaning and implications of the decisions. On June 17, 1998, the State Customs Inspectorate issued the instruction. "Regarding the Customs Valuation of Carrier Medium Bearing Software and Interest Charges," State Customs Inspectorate Order No. 15-12/250 (June 17, 1998).

On December 15, 1998, the State Customs Inspectorate adopted a Regulation on Periodic Declaration. The regulation, which allows an importer to file one declaration per month for

all import shipments of the same or similar merchandise, is intended to simplify the customs clearance procedures and is based on a proposal submitted by the Project. "Regulation on Periodic Declaration," Customs Inspectorate Order No. 15-7/532.

The Project also provided the Customs Inspectorate with a draft regulation to implement a pre-arrival declaration procedure, based on a Kazakhstan regulation that was developed by the Project. This draft regulation continues to be under review by the Customs Inspectorate. In February 1999, the Customs Inspectorate advised the Project that further action concerning pre-arrival declaration procedure would be delayed pending the Government's decision on a pre-shipment inspection regime. Upon learning that customs pre-shipment inspection was under consideration, the Project provided the Government with a research paper on advantages and disadvantages of PSI. As of March 1999, the Government had not made a decision to use PSI.

Under the October 1997 Customs Code amendments, provision is made to allow Customs to detain goods suspected of violating intellectual property rights as provided by the WTO TRIP's Agreement. These amendments, drafted with the assistance of the Project under the prior Task Order, require implementation by regulation. Accordingly, the Project provided both the State Customs Inspectorate as well as Kyrgyz Patent Office with model rules/procedures for border enforcement of intellectual property rights developed by the World Customs Organization ("WCO"). Work on regulations to implement the TRIP's border enforcement provisions is also being undertaken by CIS countries under auspices of the CIS customs cooperation agreements. (Principles of Customs Legislation (February 10, 1995), and Cooperation and Mutual Assistance in the Customs Business (April 15, 1994)). In May 1997, a formal decision was made that a CIS working group would develop rules for implementation of the TRIP's border enforcement provisions on the basis of the WCO model. In August 1998, the Project prepared and submitted comments to the State Customs Inspectorate and Kyrgyz Patent on a draft regulation produced by the CIS working group. In January 1999, the State Customs Inspectorate formed a working group to further develop a regulation and invited participation of the Project. The Project has met with the working group within Customs as well as staff in Kyrgyz Patent, although the regulation has not yet been finalized. The Project's work on the draft regulation with Kyrgyz Patent and Customs is expected to continue in the next Task Order.

At present, Customs determines the truth and validity of all import declarations at the border during customs processing of imported goods. Most modern customs organizations release goods with minimal checking, subject to the possibility of auditing the importer's books and records at its facility to verify accuracy of the importer's declaration. The Kyrgyz Republic now has little or no audit capability – no auditing staff (accountants, auditors, computer analysts, for example), no training in audit techniques, no material resources. As a first step to assist Customs in developing audit capability, the Project prepared a 50-page audit manual for customs based largely on the U.S. Customs audit handbook. The manual was translated and presented to the State Customs Inspectorate.

To further encourage development of Customs post-entry control/audit capability, the Project presented a seminar to 12 Customs officers in March 1998 at the State Customs Inspectorate on methods of control of customs value, focusing, in particular, on post-importation methods

of control. A manual was developed for purposes of the seminar based on the World Customs Organization's Valuation Control Handbook.

**Institutional Development**

The Project provided advice on an informal basis to customs officers on a number of customs issues, including customs valuation (examples of operation of the valuation law), rules of origin in Free Economic Zones, and customs procedures. Advice was given to staff of the State Customs Inspectorate – particularly, members of the Revenue and Legal Departments, who are the Project's main counterparts within the Customs organization. To support the development of the State Customs Inspectorate training center, the Project continued to provide Customs with translations of World Customs Organization training manuals. The Project also provided the following formal training programs:

Title	Topic	Duration	Source of Participants	Number of Participants	Follow-On Needs
Customs Valuation Control	Methods of determining accuracy of customs valuation	1 day	State Customs Inspectorate	12	Training and material support (e.g., computers) to establish a effective post-importation audit function within Customs
Customs Valuation	Methods of determining accuracy of customs valuation	1 day at each customs house	Chui Oblast Customs-houses (Bishkek, Bishkek North (Rail), Bishkek Free Economic Zone, Manas Airport, Tokmak, Kara Balta, Talas, Bishkek North (Contra-band)	About 10 from each customs house	Training and material support (e.g., computers) to establish a effective post-importation audit function within Customs

**D. Summary**

The Project successfully completed all elements of the Task Order set for the Kyrgyz Republic. That is, completion of the negotiations of all bilateral and multilateral treaties in compliance with WTO requirements; final accession to the WTO; adoption of all amendments to Customs Code required to ensure compliance with WTO, and adoption of regulations to implement provisions of the new Customs Code.

Following the formal accession of the Kyrgyz Republic to the WTO in December 1998, the Project shifted the focus of its assistance to matters of post-accession implementation. During the Fall of 1998 the financial crisis which beset the Russian Federation was making itself felt in the Kyrgyz Republic and its neighboring countries. To combat and minimize the effects of the financial crisis the Kyrgyz Republic and the countries of the CIS contemplated a variety of measures related to trade policy. The Kyrgyz Republic Government has relied heavily on the Trade and Investment Project for *ad hoc* advice on how certain policy initiatives relate to the Kyrgyz Republic's WTO commitments. Chief among these issues was con-

flicts over Kyrgyz Republic's participation in the Customs Union contrasted with its new obligations under the WTO.

Other post-accession issues that have come to the fore, and with which the Project has provided assistance, have been: the contemplation of the Kyrgyz Republic in entering into a pre-shipment inspection arrangement, the introduction of land ownership restrictions for foreigners, the introduction of a ban on the export of non-fermented tobacco, and rendering advice on different anti crisis measures affecting trade, including options available to the Kyrgyz Republic under balance of payments restrictions.

Moreover, during the first part of 1999, the Project developed a post-accession work plan which will be implemented during in the follow-on task order. Central to this plan has been assistance to the Ministry of Foreign Trade and Industry in the creation and support of the newly created WTO Oversight Body and assistance to the various ministries and agencies in meeting the myriad of WTO notification obligations.

## IV. UZBEKISTAN

### A. Objectives

1. Assist in the establishment of a sound trade and investment environment, including the modification of laws and regulatory provisions relating to international trade and foreign investment. Enhance the legal/regulatory framework for foreign trade and investment to conform to global standards and to facilitate rather than impede foreign trade and investment;
2. Assist in the accession process to the WTO; and,
3. Enhance the overall investment "climate" through eradication of administrative/ bureaucratic barriers to private sector business development, including business registration/ licensing requirements which artificially restrict market entry and restrictions on company profit margins and product profiles which impede efficient investment flows.

### B. Significant Successes and Issues

#### Significant Successes

The Government submitted its Memorandum on Foreign Trade Regime to the WTO on September 22, 1998. The Memorandum is a 225-page document that was developed with the Project's assistance, and details Uzbekistan's trade and investment policy and rules. The submission of the Memorandum represents the first major substantive step taken by Uzbekistan in its WTO accession process.

With the Project's assistance, new laws and regulations, and amendments to existing laws and regulations, were drafted by the Government to bring the legal framework of Uzbekistan to compliance with WTO agreements. These include amendments or draft new laws on:

- Government procurement;
- Customs (Customs Code; Customs Tariff Law; "On Customs Service," "On Marking of Imported Articles and Containers," "Law to Give Customs Powers to Enforce Intellectual Property Rights on Importation and Explorations");
- Trade remedies ("On Anti-Dumping," "On Countervailing Duties & Subsidies" and "On Safeguards");
- Intellectual property ("On Inventions, Utility Models and Industrial Designs," "On Trademarks And Service Marks," "On Selection Achievements," "On Legal Protection Of Computer Programs And Database," "On Legal Protection Of Topology (Layout Designs) of Integrated Circuits; "On Copyright and Neighboring Rights," "On Unfair Competition." "On Trade Secrets," "On Advertising," "On Competition and Restriction of Monopolistic Activity," and Civil and Criminal Codes (intellectual property provisions);

- New laws on foreign investment (“On Foreign Investment” and “On Guarantees and Protections of Foreign Investors Rights”) were enacted in April 1998. The laws were drafted with Project assistance, and established a new regime extending basic protections and guarantees for foreign investors;
- Decrees were issued limiting the inspection authority of government officials and promoting the development of small and medium-sized enterprises;
- Project assisted the Government in developing new draft procedures to establish a “one-stop shop” business registration procedures; and,
- Project assisted the Government in developing draft laws on general investor protection (foreign and domestic).

### **Significant Issues**

- Reorganization of the inter-governmental WTO working group needed to ensure the most efficient pursuit of the WTO accession process;
- Additional documentation required for accession negotiations remain to be finalized and submitted to the WTO, including the Government’s answers to WTO-members questions concerning the Memorandum and, most problematic, the document providing information on the types of and extent of Uzbekistan’s governmental support for agriculture;
- Uzbekistan’s WTO offers on goods and services must be prepared and negotiated with WTO members;
- Further significant improvement in business and investment environment, the fact that many GOU officials now recognize this need, and actively solicit on a regular basis the Project’s comments, is a highly positive development; and,
- Improving the drafting and substantive provisions of these laws and decrees remains a significant issue, as well as ensuring that they are implemented as written.

### **Major Changes Anticipated in Project Activities**

The Government failed until recently to push forward on the procedural elements of WTO accession (e.g., the Memorandum, which had been substantially completed by June of 1997, was not submitted until late September 1998) for more than a year. The Project concentrated more of its efforts on the improvement of the investment environment of the country. Efforts also included bringing various specific aspects of its legal regime into conformity with the requirements of various WTO agreements. Now that the Memorandum has been submitted, the Project must redirect its efforts toward assisting the Government in pursuing the procedure of WTO accession. These efforts will include assisting in the answering of questions to the Memorandum, assisting in the preparation of other WTO informational materials, conducting several WTO training programs, including negotiation training, assisting in the preparation of the *form* - not the substance - of the Government’s offers on goods and services, and

providing other WTO-related advice on an ongoing basis). The team will also continue its efforts directed at educating officials about, and bringing the country's legal regime into compliance with, the manifold substantive requirements of the WTO agreements.

Furthermore, because of the Project's success over the past year in raising the awareness of the Government of the need to radically improve the country's investment and business environment, including the difficult task of reigning in a bureaucracy that is primarily interested in rent-seeking, many government officials have come to rely on the Project's ongoing advice and assistance in this area. Therefore, in addition to the increased workload that will now come as a result the process of WTO accession, it is anticipated that the Project will be asked for substantially increased advice and assistance in the Government's efforts to improve its general legal framework affecting business and investment activity, especially in the area of commercial law reform.

### **Major Changes in Government Policy**

Despite the official statistics and the public statements of Government officials to the contrary, the country's slide into economic crisis appears to be accelerating. This fact appears to be widely recognized throughout the Government and the population as a whole. In 1997 and most of 1998, the black market exchange rate for the local currency was generally about two times the official exchange rate; however, for the past two months the black market rate has been in the range of three to three and one half times the official rate, with many people expecting the black market rate to move to four to five times the official rate within the next six months.

The government has insufficient foreign reserves and domestic revenues to cover its budgetary needs, a fact that has been strongly exacerbated by the bad 1998 cotton harvest and low world prices for gold. It has therefore been relying very heavily on international lenders, like the World Bank, the IFC and various export credit agencies, to finance construction projects and imports. Many of the obligations to these lenders are guaranteed by the Government-owned National Bank of Uzbekistan (NBU), which is suspected to have a large number of such off-book contingent obligations. The Government also raised the "minimum salary" in the late Spring and began printing money to cover its obligations. In addition, the crisis in Russia has decreased the availability of dollars throughout the CIS. This has resulted in substantial, if not officially recognized, inflation in Uzbekistan.

The President appears to be responding to this crisis, not as an economist, but as a populist politician. He understands the potential that this crisis has for increasing political instability. As a result, rather than make major macro-economic policy changes at this time, he appears to be using the crisis as a basis for further consolidating his hold on power by blaming the bureaucracy as a whole (playing on the population's general dislike of government bureaucrats) and by removing a number of high-ranking government officials, especially those that have strong ties to the clan system. (Mr. Karimov, who is half Tajik, has no clan of his own, and it is speculated that he views the clan system with suspicion - the source of a possible threat to his hold on power.) The President has therefore removed many high level Government officials who have reputations for corruption or other business-restricting/harassing activity; and taken steps to reign in the bureaucracy's ability to use its authority to harass private citizens and private businesses.

Although major macro-economic policy changes are not yet on the horizon, there does appear to be a genuine desire to substantially improve and expand the legal framework affecting business and investment activity, with a very heavy emphasis on giving private businesses legal protections against a predatory bureaucracy. In connection with this effort, officials have come to recognize that badly drafted laws and normative acts not only impede the Government's ability to implement its policies (especially policies aimed at liberalizing the trade and investment environment), they also enable corruption. Therefore, many officials, including the President, have indicated that raising the quality and scope of the country's laws, regulations and other normative acts governing business and investment activity has become a government priority. This has ultimately led certain officials to express a desire in receiving training in legal drafting, a subject that receives no attention in the country's law schools.

### **Devil's Advocate**

**Q. Despite the significant progress in legal reform of the trade and investment regime, it might be argued that the GOU has responded in a half-hearted manner to the Project's advice. Certain that the new laws and decrees do not go far enough, and where they do contain favorable or appropriate provisions, those provisions are not all being implemented. Therefore, one might conclude that the GOU really does not want the Project's advice, it simply wants the presence of the Project as a political overture to the US Government.**

**A.** As Uzbekistan slides further into economic crisis, its readiness to take steps to change the current system is becoming increasingly apparent. Uzbekistan is currently beginning to confront the kind of crisis that a resource-rich developing country generally needs to face before it will undertake real reforms. We are now seeing a number of desperate attempts to make changes at the margin, including the dismissal of some reactionary and/or rent-seeking officials.

Many officials of the GOU have become actively solicitous of the Project's input, and the Project's contacts in the GOU continue to expand and reach ever-higher levels. Furthermore, we believe that many officials have overcome their instinctive suspicion of the Project's activities and are coming to trust the advice and assistance being provided. This trust-building effort has taken time. Given the widening economic crisis, the GOU's increasing willingness to solicit advice from foreign advisors, and the trust the Project has earned, the Project is currently in a very good position to provide advice and assistance that will be used by the GOU and ultimately have a positive impact in the real world.

## **C. Progress**

### **1. Improvement of the Trade and Investment Environment**

In an effort to identify and eliminate obstacles to trade and investment and regulatory barriers to business development and operations, the Project conducted – and continues to conduct – ongoing reviews of the policy, legal and regulatory trade and investment environment that both foreign and domestic investors must deal with in registering, operating and liquidating a

business. Such activities resulted in the development of many recommendations aimed at improving Uzbekistan's trade and investment policy, legal, and regulatory regime as follows:

### **Improvement of Uzbekistan's Trade Regime**

The Project assisted the Government of Uzbekistan in improving its trade regime by providing recommendations in the following areas: (a) pending its anticipated elimination when current account convertibility is introduced, proposed measures aimed at streamlining the process of import contract registration; (b) continued to advise the GOU on the need for and the content of fair and transparent WTO-consistent import protection laws (anti-dumping duties, countervailing duties, and safeguard measures); (c) advised the GOU on the need to establish border measures ensuring the routine and uneventful acceptance of certificates of conformity from accredited foreign certification bodies; (d) temporary importation under bond, (e) the modification of the current methodology for the imposition of excise taxes on imported products; and (f) the need to establish fast track customs clearance procedures for imported perishable goods.

*a. Import contract registration.* The Project succeeded in convincing the GOU that the current system of import contract registration was intended as a tactical measure to ensure that currency conversion is not provided for "unnecessary" or "overpriced" imports. The system is intended to avoid a balance of payments crisis and capital flight. The system had been applied to all imports; however the Project convinced the GOU that the application of this system made no sense if the imports were not financed with hard currency obtained in a conversion transaction and if the imported goods were not intended for resale in the domestic market (thereby generating local currency receipts that would need to be converted into hard currency).

The President issued a decree exempting such items from import contract registration in mid-1998. Note: the Project also registered its recommendation that the import contract registration requirement be abolished as an extraordinary burdensome non-tariff barrier to trade in conflict with a number of WTO agreements. However, the Project recognizes that such recommendation will not be acted upon until the GOU eliminates the real source of the problem: the highly overvalued official exchange rate.

*b. WTO-consistent import protection laws:* The Project continued to provide the GOU with advice on the three draft laws previously supplied by the Project: Antidumping Duties Law, Countervailing Duties Law and a Safeguards Law. The draft laws are based on the requirements of the relevant WTO agreements.

*c. Acceptance of certificates of conformity.* The Project determined that standards officials at the border were routinely finding reasons to reject obviously genuine certificates of conformity issued by accredited foreign testing laboratories and certification bodies. This practice was being used by officials to support rent-seeking activities and to enable Customs and Standards officials to take large samples of the concerned goods "for testing." The Project identified the existence of this problem and reminded the GOU of its obligations, established under domestic law and certain international agreements, to ensure the routine acceptance of such certificates. THE GOU undertook an investigation of this issue.

*d. Temporary importation under bond.* The Project also encouraged the GOU to establish procedures providing for the temporary importation of goods under bond. The law, the Customs Code, provides for such importation; however, no procedures had been promulgated to implement this provision. The GOU is now drafting such provisions.

*e. Methodology for the application of excise taxes on imported products.* The Project identified a flaw in the methodology being used by the State Tax Committee to assess excise taxes on imported excisable products. The flaw resulted in the assessment of effective excise tax rates that at times were actually substantial multiples of the published nominal rates. The Project recommended the adoption of a methodology that is consistent with international norms. Note: the Project also noted that the establishment of excise tax rates for imported goods that are higher than those applied to similar domestic products is contrary to the WTO principle of national treatment.

*f. Fast track customs clearance procedures for imported perishable goods.* The Project recommended the establishment of several customs border posts that are capable of warehousing and clearing perishable goods quickly. The Project's advice was modeled on the basis of the U.S. "Aphis" system.

### **Investment and Business Regulatory Environment**

The Project conducted a comprehensive review of the investment and business regulatory climate in Uzbekistan. As part of this review the Project interviewed and surveyed more than 50 foreign investors to ascertain the existence of business constraints. The results of the Project's efforts resulted in a paper that formed the basis of the American Chamber of Commerce in Uzbekistan's Report on the obstacles to foreign investment in Uzbekistan. This AMCHAM White Paper was extensively used by both the US and Uzbek representatives in the first annual meeting of the newly created US-UZBEK Joint Commission.

As a result of the attention drawn to the obstacles faced by foreign investors, the GOU undertook a number of initiatives, utilizing Project assistance, aimed at improving the investment environment for foreign and domestic investors. These initiatives include the following:

- *Two new laws on foreign investment.* Using the Project's draft foreign investment law as basis, the GOU passed two new laws on foreign investment on April 30, 1998. The new laws were drafted with substantial input from both the Project and AMCHAM. (As a result of the Project's influence, AMCHAM increasingly became aware of its ability to successfully lobby the GOU for pro-investment changes in the legal and regulatory regime. This transformation of AMCHAM into a lobbying organization is a key and sustainable achievement of the Project's activities.)
- *Law on Investment Activity.* A new general law on investment activity was drafted by the Project in response to a request by several GOU officials. Using the Project's draft as a basis, the GOU drafted a new law on Investment Activity that went through first reading in The Parliament in December 1998. The new law was expected to be finalized and passed in April 1999.

- *Law on Entrepreneurs.* The GOU drafted a new law on entrepreneurs that was provided to the Project for review and comment. The new law went through first reading in The Parliament in December 1998. The new law was expected to be finalized and passed in April 1999.
- *Law on Non-Governmental Non-Commercial Organizations.* The GOU drafted a new law on non-governmental non-commercial organizations that was provided to the Project for review and comment. The new law went through first reading in The Parliament in December 1998. The new law was expected to be finalized and passed in April 1999.
- *Anti-Inspection Decree.* In November of 1998, the president issued a decree imposing limits on the inspection authority of ministries and state bodies. The decree substantially limited the frequency and extent of such inspection. The decree appears to have been based on a memorandum supplied in July 1998 by the Project to the GOU on the issue of inspections.
- *Business Registration Procedures.* The Project continued its efforts aimed at streamlining the procedures and easing the restrictions faced by foreign investors in registering a business in Uzbekistan. In particular the Project regularly recommended that the GOU (i) lower the minimum capital requirements applicable to enterprises with foreign investment (currently \$150,000); (ii) create a one-stop shop for business registration; (iii) remove and or streamline many of the business registration procedures currently facing foreign investors. The Project delivered a comprehensive memo on this issue to the Cabinet of Ministers in June 1998. The Project has since participated actively in a Cabinet of Ministers working group, formed in September 1998, aimed at reforming the business registration requirements applicable to both domestic and foreign investors.
- *Small and Medium Sized Enterprises.* The Project engaged in ongoing efforts to educate the GOU about the critical role of SMEs in market economy countries. As a result of the efforts of the Project, and other GOU advisors, the President issued several decrees aimed at promoting SME creation and operation.

### **Anti-Monopoly Regime**

Technical assistance and training was provided to the Uzbek Anti-Monopoly Committee (AMC) on the elimination of price control, the classification of enterprises as monopolies, concepts of market economy and the elimination of objectionable practices and use of best practices. There has been substantial improvement in the AMC's understanding of and attitude toward their responsibilities, particularly with regard to the promotion of competition, the protection of consumers' rights, the development of de-monopolization tactics and the restructuring of the AMC's control over business conduct. The following section provides some background information on the AMC, discusses their new policies, highlights issues and problems in the AMC, raises some comments and recommendations, and finally introduces next steps to assist the AMC

## Background on the AMC

Uzbekistan's AMC stated policy is to develop competition and entrepreneurship, and to protect consumers rights by prevention and banning of monopolistic activity, business entities abuses of their dominant position in financial markets and markets for goods as well as application of measures to cease unfair competition and infringements of consumer rights. The AMC is responsible for the "State Register of Enterprises-Monopolies" and state control over natural monopolies. Enterprises-monopolies are those with dominant position and are defined as more than 65%, and between 35% and 65% under certain conditions (attachment 1).

The majority of the country's large enterprises presently have to register with the AMC and all registered enterprises must register (declare) their prices and profits for AMC approval and/or control. There are presently [October 1998] officially registered 655 enterprises with 2,686 products including as well 91 national enterprises with 197 products. This is down from 828 firms and 5,186 products in January 1997 or a drop of 21% in the number of enterprises registered and more importantly a 48% reduction of products. Approximately 85% of these enterprises declare their prices and the remaining 15% have profit declaration and/or controls.

The AMC is organized in 14 regional offices and a national committee office. The AMC uses a variety of instruments and methods in promoting competition, entrepreneurship and protecting consumer rights. The committee has elaborated and approved programs for de-monopolization; elaborated and approved methodological recommendations for regional programs for de-monopolization and development of competition within regional markets. 624 securities purchase-sale transaction have been checked for their compliance with the antimonopoly legislation. 179 markets have been analyzed as well as 1,103 business charters checked and 22 industry programs for de-monopolization have been elaborated. The general method used for enterprises-monopolies is for them to agree with their buyers on prices, volume and delivery time and conditions and then register these with the AMC along with their expected profits.

The AMC also is involved in the promotion of competition in selective economic sectors. This is done with the local committees and governments. An example would be requiring a systems of "public tenders" for public services such as local transportation and/or supplying products for government programs such as construction. Some of the regional AMC also promote investments in specific areas as well as working with banks to develop loan programs for small and medium enterprises. The AMC has direct involvement in determining prices and profits when necessary.

The anti-monopoly policy in Uzbekistan is specific, the laws may be similar to other countries, but the policy is unique in itself. Different regional AMC offices are conducting very efficient but individual experiments in specific areas. This work is not consistent over the country, differing in both the concept and the methodology used. It is necessary for the regional management bodies to exchange their experience. The AMC should base its national policy on these individual positive experience of the regions and expand these experiences nationally to all subdivisions and time schedule for implementation of these new national policies needs to be included.

### **AMC's new Policies**

There is a very recent and important government anti-monopoly policy. The AMC has made it an explicit goal *to eliminate all price and profit fixing and declaring by the end of year 2000 and rely completely on a system of monitoring.* This goal is set in its program to improve its operations as stated in *"Major Strategic Measures to Improve the Operations of the Committee for De-Monopolization and Competition Development under the Ministry of Finance of the Republic of Uzbekistan For 1999-2000".*

1. Approve a new procedure to declare prices and tariffs for products of monopolistic enterprises;
2. Introduce a new procedure to oversee operations of small and medium enterprises with dominant market positions;
3. Introduce a new procedure to organize and exercise oversight including analysis of commodity markets, sectoral management structures; and, inspections;
4. Develop implementing legal documents "On Advertising";
5. Prepare the draft law of amendments and changes of the law "On Competition and Restriction of Monopolistic Activities in the Commodity Markets (Markets for Goods);
6. Develop proposals to restructure and re-orientation of enterprises in terms of product and goods;
7. Develop proposals to improve and streamline the oversight over operations of monopolies;
8. Develop proposals to improve to improve methods of regulation of operations of natural (governmental) monopolies; and,
9. Develop specific (concrete) proposals to transition from the method of declaring contractual (free) prices and tariffs for product provided by monopolies towards the method of monitoring.

These measures will make the AMC into a more effective and important agent of Uzbek economic development of market liberalization and promotion of investment and growth. Within this same policy there is also a priority for *"the creation of a class of entrepreneurs and property owners with real rights and powers"* and *"creating conditions which enable the new owners to implement their rights and exploit opportunities through reform of the laws regulation economic relations."*

### **Issues and Problems**

Based on visits to eight AMC regional offices and several dozens enterprises a list of issues and problems were identified. The general overall conclusions are the following:

1. some of the AMC regional offices' staff do not fully understand the concepts of competition and market economics;
2. some of the AMC regional staff do not have the technical skills to provide pro-competition promotion programs;
3. the AMC regional offices do not have complete understanding of concepts nor the definitions in the AMC's "Methodological Recommendations" manual;
4. the regional offices do not fully use the "Commodity (Goods) Market Competition Evaluation Procedure" due to lack of understanding and also statistical information;
5. due to the above they use strait quantitative rules to define share and monopolies and therefore include enterprises that should not be considered monopolies;
6. the regional offices use only statistical data for definitions of markets, competition and others thereby limiting the quality of their work and again as above over including enterprises;
7. the offices do not do analytic work in areas such as elasticity, cross-elasticity, demand curves and others again limiting the quality of their work;
8. the concepts of substitutes and market entry are not well defined nor fully understood and therefore not utilized causing the same problems as above in items 4 and 5;
9. the determination of the composition of buyers and sellers is limited to official data and formal markets;
10. the distinction between geographical boundaries as well as between national and regional markets are not well defined nor understood causing the same problems as above in items 5;
11. through the system of price registration and declaration in reality the enterprises' prices are effectively controlled by the AMC;
12. large JSCs and natural monopolies in general set prices on an agreed basics with their customers and suppliers for both their selling and buying of goods and services; this process is overseen and effectively controlled by the AMC;
13. the majority of the 2,686 products registered by the AMC are repeated in each of the 14 regional offices, thereby given an effective list of only several hundred products and not thousands; also these products are in reality sub-products.
14. There is general confusion of the goals, objectives and means of implementation of the AMC's activities: the aim (goal) is to "set up efficiently functioning com-

petition ...”; the purpose (objective) is the “prevention, restriction and limitation of *monopolistic activities* and *unfair competition*,” the means to do this are first the identification of *monopolistic activities* and *unfair competition* and not the identification of market dominants per se;

### **Comments and Recommendations**

The AMC has produced a manual “*Methodological Recommendations*,” *Tashkent 1996* that is logical and very well organized. The objective is the classification of enterprises by monopoly power and dominant market position. It is comprehensive and detailed; in fact it is overly detailed, complicated and obscure, thereby not comprehensible; more importantly the more technical aspects of the methodological recommendations are not utilized. An other major problem is the reliance on official data for economic evaluations and analysis. Official data at best are do not reflex a complete picture of the economy and with only such data it would be impossible to measure all real economic activities. In order to implement the AMC’s manual considerable additional research would be required, including literature reviews, investigations, data collection, surveys, studies and analyses. All of this extra research would necessitate additional costs and time.

The AMC would be better served by adopting a simpler anti-monopoly methodology that is less costly and time-consuming. The AMC should change from a system of “a priori” classification of monopolies to a system of responding to abuses of monopoly practices. The AMC’s planned change to a system of monitoring will be a major improvement in this direction.

The AMC needs to develop a group of central technical units to support its national and regional offices. These should be small groups of experts that:

- are responsible for the definitions of monopolies and monopoly abuses;
- are responsible for the identification of monopolies and monopoly abuses;
- access the economic cost of monopoly abuses;
- develop de-monopolization proposals and competition promotions programs;
- promote an enabling environment for enterprises.

Specific comments and recommendations to the manual are detailed in Appendix IV.

### **Next Steps**

1. The T&I team continues support and participation in its staff training on economics and anti-monopoly policy.
2. To participate in conducting consultative work with heads of monopoly enterprises with regard to the issues of de-monopolization and restructuring.
3. It is necessary to analyze the legal constraints in business and entrepreneurship due to the necessity of reforming the legal basis of the economic (commercial) law. The analysis has to be carried out at the level of regional divisions of AMC with the obligatory participation of the private sector, civil society and governmental institutions.
4. To participate in the development of AMC’s methodology of tracking market abuses among enterprises.

5. To participate in developing and conducting training seminars on the new methodology, and consultations on its efficient introduction into the AMC's activity.
6. To conduct analysis of the existing problems related to the market abuses based on the competition strategy that has been developed at the regional seminars. To classify the problems by terms of eliminating abuses, and to develop a program of the promotion of competition in sectors for short and middle term periods.
7. To take part in developing small and medium business promotion programs.
8. To participate in working out a program of organizing and developing professional associations of enterprises of the private sector, that is designed to increase effective business lobbying capacity.
9. To participate in developing an anti-trust policy, especially for 'trusts', holdings, associations, and interlocking directorships.
10. To participate in the development of recommendations on developing a judicial system that is to ensure implementation of contractual obligations and settlement of disputes and conflicts.
11. To participate in developing measures of promulgating the Law on Protecting Rights of Consumers Among the Population, as well as the Law on Competition Among Entrepreneurs and Businessmen.
12. To participate in the development of measures on improving the organizational structure of the administration (headquarters) of the Committee on De-monopolization and Development of Competition.

Specific training needs of AMC staff is as follows:

1. Sampling techniques, using time series and other statistical analysis methods.
2. Elasticity studies:
  - market;
  - demand on price;
  - supply on price;
  - cross elasticity etc. applied to product and geographical market analysis.
3. Calculation to determine market power and dominance of buyers and sellers.
4. AMC methodology of market analysis.
5. Market concentration indicators and their use in defining market abuses.
6. Production costs and factors influencing analysis. Also applying the results to qualitative indicators analysis.
7. Calculation of economic damages incurred by consumers, suppliers and competitors of market abuses.
8. Restructuring and de-monopolization methods.
9. Computer use soft-ware spread sheets.
10. Market economics: returns to investment and the role of profits in market economics.

## 2. WTO Accession: Process

The following highlights the technical assistance provided to the Government of Uzbekistan to educate and assist in their accession to the WTO:

- Assisted in development of an Interministerial Working Group (IWG) which consists of 18 state bodies with the main function of preparing all necessary materials, including the Memorandum on the Foreign Trade Regime ("Memorandum"), for accession to the WTO.
- Held a series of ongoing meetings with the more focused WTO working groups that exist in each of the 18 state bodies that are members of the general IWG. Identified areas where the particular members of these WTO working groups need additional information, training, and/or assistance.
- Assisted the IWG in preparing and finalizing the Memorandum and reviewing draft versions to ensure clarity, completeness, accuracy, and consistency. The Memorandum was approved and submitted to the WTO by the Cabinet of Ministers in September of 1998.
- Assisted the IWG in translating into English more than 200 laws, legal acts, regulations, instructions, internal orders, and international/regional agreements.
- Provided ongoing education to the members of the IWG and other GOU officials and members of the public about the contents and requirements of the WTO agreements, the history and organization of the WTO as an organization, the economic rationale for trade liberalization (the purpose of the WTO), the potential benefits and adjustment costs associated with WTO membership, and the WTO accession process. The education was provided in both formal training seminars and in small focus group discussions with IWG and other officials from various state bodies. The education was also provided through the dissemination of educational materials prepared by the Project.
- Produced substantial new material and or translated into Russian existing material on the contents and requirements of the WTO agreements, the history and organization of the WTO as an organization, the economic rationale for trade liberalization (the purpose of the WTO), the potential benefits and adjustment costs associated with WTO membership, and the WTO accession process. Provided this material to the general public, members of the IWG and other GOU officials - including four advisors to the President.
- Facilitated communications and coordination between the IWG and the WTO.
- In addition to the aforementioned economic/legal review, the Project conducted routine ongoing interviews with government officials, foreign and local business leaders, and foreign and local practicing attorneys in order to fully understand the legal regime and its implementation in Uzbekistan.
- The results of the economic and legal reviews and the interviews were used by the Project in providing assistance to the IWG in editing, updating, correcting and refining the

Memorandum prior to its submission in September 1998. The submission of the Memorandum constitutes the first substantive step in the process of WTO accession.

- The results of the legal review were also used to prepare drafts of other WTO-required informational documents: WT/ACC/5, Information on Policy Measures Affecting Trade in Services, and WT/ACC/4, a document providing information on the extent of the subsidization of the economy. Both documents are currently under preparation by the concerned members of the IWG.

### **3. WTO Accession: Legislation**

#### **Conformity to WTO Requirements**

The team continually reviewed the legal and regulatory framework to identify those aspects that are not in compliance with the mandatory requirements of the WTO agreements or that may present substantial difficulty in the bilateral negotiations with WTO member countries. The review focused, in particular, on the law and regulations affecting the following areas:

- currency conversion restrictions;
- impediments to importing, including import contract registration and discriminatory and excessive excise taxes on imported goods;
- impediments to exports, including the use of discriminatory and excessive excise taxes;
- customs issues;
- intellectual property matters;
- foreign and local investment laws and regulations;
- business registration and licensing issues;
- price controls/price liberalization;
- competition policy and monopolies, especially government-sanctioned monopolies and state-trading enterprises;
- banking activities;
- other financial services;
- telecommunications services;
- government procurement;
- standards and other technical barriers to trade, such as sanitary and phytosanitary requirements; and
- government subsidies, especially export subsidies and agricultural subsidies.

Drafted and provided to IWG members memos discussing the results of the above review. The Project continually conducted work directed at bringing many of these substantive areas into conformity with WTO requirements. In particular, the Project reviewed and proposed changes to existing laws and regulations, and in some cases drafted new laws and regulations, directed at bringing many of these substantive areas into conformity with WTO requirements. Areas where such work was accomplished include: intellectual property, customs, antidumping, safeguards, countervailing duties, government procurement, foreign investment, business licensing, business registration, antimonopoly, and price controls.

The Project has succeeded in convincing high-ranking legal specialists inside the Cabinet of Ministers and the Presidential Apparatus about the need to review all existing and proposed legislation for WTO compliance. The Project is now in the process of working with the senior legal specialist in the Presidential Apparatus to establish a WTO compliance review process for all existing and proposed laws, decrees and resolutions affecting trade and investment. In addition, the Project continues to attempt to institute control mechanisms and procedures at each of the various ministries and state agencies to ensure that all existing and proposed regulations, instructions, implementing procedures and practices undergo some degree of review at the agency level in order to identify WTO compliance issues. To this end, the Project intends to conduct mini-seminars for each of the WTO working groups located at each of the ministries and state agencies.

In connection with the above goal, the Project prepared and/or translated a series of educational papers summarizing the provisions and implications of each of the major WTO Agreements. The Project provided these papers to the concerned members of the WTO working groups at the ministries and state agencies. This has helped the Project in its efforts to educate many Government officials about the strict nature of the requirements of the WTO Agreements and the complexity of the WTO accession process.

#### **Institutional Development: AmCham, FIPC, and Legal Drafting**

The Project assisted in establishing a number of new institutions. The Project also assisted in strengthening the capabilities and/or expanding the role of several existing institutions.

**1. *Interministerial Working Group on Accession to the WTO (IWG).*** The Project continues to provide recommendations aimed at efficiently organizing the IWG and strengthening the capabilities of the IWG members (more than 18 state bodies) to comprehend the nature and requirements of the WTO and the process of accession, including the negotiation process. The Project has also recommended the need to institutionalize the IWG, and to create offices of WTO compliance at each state body, to ensure that WTO requirements are complied with on an ongoing basis, even after accession. The Project routinely engages in WTO training of IWG officials aimed at educating these officials in understanding (i) the organization and operation of the WTO, (ii) the organization and process of negotiating accession, and (iii) the requirements and other content of all WTO agreements.

**2. *AMCHAM.*** The Project was directly responsible for encouraging the AMCHAM to take on the role of a lobbying organization. It was absolutely necessary that the GOU hear about the existence of trade and investment problems not just from technical assistance providers but also from actual foreign investors.

**3. *Antimonopoly Committee.*** The Project conducted ongoing intensive training of the staff of both central and regional antimonopoly committees. The training was directed at imparting market-based accepted methodologies for identifying and dealing with monopolies.

**4. *The Association of Advocates.*** The Project gave a number of talks to the Association of Advocates aimed at encouraging them to play a critical role in creating a rule of law society by ensuring that the activities of state bodies and officials of the GOU conform strictly to promulgated legal requirements.

5. *The Association of Judges.* The Project gave a number of talks to the Association of Judges aimed at encouraging the judges to serve as the primary guarantor of the rule of law, and to undertake seriously their new role of providing an independent check on the activities of officials and state bodies.

6. *The Supreme Economic Court.* The Project gave a number of speeches and talks to the Supreme Economic Court on the critical role that the rule of law, which is primarily guaranteed by the court system, plays in economic development.

7. *The Association of Local Entrepreneurs.* The Project gave a number of speeches to this local chamber of commerce to encourage them to actively engage in a dialogue with GOU officials to identify and mutually resolve problems in the local business and investment environment.

8. *TBT/SPS Inquiry Point.* The Project continues to encourage the establishment of a TBT/SPS Inquiry Point. The Project followed up on its earlier memoranda explaining the need for and purpose of a WTO-compliant inquiry point for standards and sanitary/phytosanitary measures. The memorandum summarized WTO requirements for such an inquiry point. Uzgosstandard agreed to establish such an inquiry point in 1999 and asked for additional Project assistance in establishing such an inquiry point.

9. *GATS Inquiry Point.* The Project assisted in the establishment of a GATS Inquiry Point and submitted a proposal for establishing an inquiry point in conformity with the WTO General Agreement on Trade in Services (GATS). Work towards establishing such an inquiry point at the Ministry of Foreign Economic Relations was initiated; however, the work was put on hold until the construction of the new GOU commercial center, where the inquiry point will be located, is finished in mid- 999.

### **Intellectual Property Regime**

The IP team had three designated counterparts: the Patent Office, the Copyright Agency, and the Ministry of Finance's Anti-Monopoly Committee. The first priority, similar to the cases in the three other CAR countries, was to review the current laws and regulations and to identify existing problems and determine proposed solutions. While each of these laws are discussed in detail in Appendix III, below is a general synopsis of the proposed necessary reforms. If only minor modifications were suggested, they were *not* included below.

### **Law on Commercial Trade Secrets**

In order for a country to become a member of the WTO and a signatory to its agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), it is mandatory that the applicant have all its laws in strict compliance with WTO and TRIPs.

Specifically under Article 1 of TRIPs, "members shall give effect to the provisions of this Agreement," meaning that the country wishing to belong to WTO/TRIPs must take affirmative steps to ensure that its laws meet these requirements. In some instances, a law may only

need a modification; in other instances, it will require the drafting and approval of an entirely new law.

One particular area mandated by TRIPs is the granting of protection against unauthorized disclosure of trade/commercial secrets (Section 7, Article 39). After examining the relevant laws that now exist in Uzbekistan, the Project concludes that Uzbekistan currently lacks the required protection dictated under TRIPs Article 7 and that Uzbekistan needs a new law with respect to the protection of trade secrets.

The enclosed draft law complies with the principles contained within Article 39; therefore, the Project recommends that the Anti-Monopoly Committee of the Republic of Uzbekistan, the Government of the Republic of Uzbekistan, and the Parliament of the Republic of Uzbekistan consider it favorably, as part of the process towards meeting the legal requirements of WTO and TRIPs. See Appendix III for detailed information on the draft law which was submitted for initial review by the Anti-Monopoly Committee in Tashkent.

### **Law on Competition and Unfair Competition Law**

The current *Law on Competition and Restriction of Monopolistic Activity on Markets for Goods* should be amended so that all provisions relating to Unfair Competition and Commercial Secrets are deleted from this law. Instead, these provisions should be placed in separate laws specifically dedicated to Unfair Competition and to Commercial Secrets.

While the purpose behind the *Law on Competition* seemingly serves the public policy of Uzbekistan, the law also contains provisions totally separate from anti-monopolistic concerns. Specifically, there are provisions relating to Unfair Competition and Trade Secrets, two subject-areas covered by the WTO TRIPs agreement and the Paris Convention. While much of the *Law on Competition's* unfair competition provisions parallel those required under the Paris Convention and thus TRIPs, a closer analysis of those agreements indicates that Uzbekistan still needs to reform its laws in order to be in compliance with WTO mandates.

The reforms needed involve both tightening the law's definitions of what constitutes unfair competition as well as what constitutes a trade secret. The *Law on Competition* refers to the unauthorized use of trade or commercial secrets, yet the provisions relating to commercial secrets are not defined in the *Competition Law* itself.

In terms of what constitutes unfair competition, even though the *Law on Competition* attempts to confront that question, the law falls short nonetheless. Article 39(2) of the WTO/TRIPs agreement states that, "Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to *honest commercial practices*..."

Uzbekistan's *Competition Law*, however, uses a weaker standard—instead of "honest commercial practices," the law uses "normal business practices," which are not the same. In determining what constitutes such dishonest practices, both the Paris Convention and TRIPs offer certain guidance.

Moreover, in this world of global comparative advertising, where one trademark-protected brand competes against another similar product, the law on unfair competition must protect the right of the competitor to use the trademark of the other without the need for prior authorization in the context of comparative advertising. The current law is quite vague and uncertain in this respect.

In addition, Article 2 of the *Law on Competition* is contrary to the TRIPs agreement by placing restrictions on the use of WTO-protected intellectual property: "This Law does not cover...except cases, when deliberate use of the rights results in restriction of competition."

Under TRIPs, the rights-holder of any protected intellectual property has an exclusive right to use or not to use it, as he or she or the legal entity permits. The law, as written, would question this right of total control by the rights-holder.

Clearly since TRIPs does not put a limitation on the use of one's own trademark, copyright, or patent, this clause is open to abuse and misinterpretation by the legal authorities. There are two alternatives to resolve this problem:

1. to amend the existing *Law on Competition* to include appropriate WTO required provisions on Unfair Competition and Commercial Secrets (undisclosed information) which would make it a cumbersome law; or,
2. to amend the existing *Law on Competition* by removing all provisions relating to Commercial Secrets and Unfair Competition, and then prepare separate laws that will address each concern separately.

The latter approach is the better alternative for two main reasons. First, the concept of Unfair Competition (as used in TRIPs) and one of its derivatives, commercial secrets/undisclosed information (as used in the Paris Convention) is totally separate and distinct from that of a law relating to anti-monopolistic behavior by legal entities and thus the proposed law on Unfair Competition and proposed law on Commercial Secrets should be separate from the existing *Law on Competition*. Second, the definitions and concepts used within the context of WTO/TRIPs may not be totally compatible with existing laws that are not related to WTO requirements, and thus the use of dual meaning terms within one law would cause unnecessary confusion. (It is important to note that the attorney-advisor's role did *not* involve reviewing laws and policies on anti-monopolistic practices. Therefore, the lack of analyses and comments relating to those provisions of the *Law on Competition* should not be construed as an approval of such provisions. This task remains to be completed by an expert on anti-monopoly and anti-trust practices. The shortcomings in the existing law are, however, addressed from the perspective of WTO, TRIPs, and the protection of intellectual property rights. The need for replacing the shortcomings in the form of an additional law on Unfair Competition and a law on Trade Secrets has been discussed.) Appendix III provides details on suggested Amendments for articles that should be amended and/or deleted from the current *Law on Competition*.

### **Advertising Law**

The proposed *Law on Advertising*, as written, needed to be substantially amended prior to a final vote on the proposed law, and indeed such a re-working of the proposed law occurred

prior to its eventual passage in December 1998. The proposed *Law on Advertising*, as drafted, discouraged the development of both the advertising and media industries, both in terms of local and foreign investment.

A law on advertising should reflect a balance between the interests of the consuming public and the business community—to ensure that honest information relating to goods and services are available to the consuming public; to prevent undue and/or excessive advertising pressure vis-à-vis those which are the least vulnerable in our (Uzbek) society, e.g., those under five years old who lack the intellectual ability to discern fact from 'puff'; to encourage growth and creativity in the business areas of media and advertising; and, to limit the role of government, on all levels, to those instances of extreme and reckless disregard towards the purchasing consumer as well as the competing business entity.

In the final analysis, the best kind of law on advertising should be that law which provides and encourages self-regulation, a methodology that has been practiced successfully in countries such as the United States and Great Britain. The role of government should step in where self-regulation fails to protect the consumer.

As it turned out, a public awareness campaign took place in which the Government reached out for public comment on this important new law. For the most part, a consensus was reached without the need for further suggested modifications in the proposed law, which was eventually passed in December 1998 on its second and last reading.

### **Copyright Law**

The definition of "Author" needs to be modified to reflect international norms relating to motion pictures and to be consistent with the Berne Convention. The law only protects citizens of Uzbekistan and requires changing the term used from "citizen" to "natural persons and legal entities." The law does not provide for an exception that allows critical comment and/or satire relating to the protected work. Thus, Article 20(2) should be amended to provide such protection. The law allows the author to unilaterally breach a contract, which clearly violates TRIPs Article 13.

### **Selection Breeding Law**

The law seemingly violates TRIPs National Treatment because the law, as currently written, makes a legal distinction between those foreign nationals residing in Uzbekistan and those not residing in Uzbekistan, requiring the latter to use the services of a local patent agent. The law does not provide enough safeguards—as demanded by TRIPs—relating to compulsory licensing.

### ***Criminal Code (Anti-Piracy, Anti-Bootlegging, & Anti-Counterfeiting)***

Presently, the Criminal Code of the Republic of Uzbekistan does not provide for harsh penalties to counter the widespread manufacturing and the trafficking of counterfeit goods nor the manufacturing and trafficking of counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works, as required under WTO/TRIPs Article 61.

This part of the task completion report discusses the legal and political aspects of this requirement together with a specific legislative language to remedy this current inconsistency with WTO/TRIPs. The proposed amendment to the Uzbekistan criminal code will reflect the following:

- Articulating the precise behavior that is criminal;
- Replacing nominal financial penalties with substantial, world-standard, monetary penalties;
- Defining what constitutes willful commercial infringement; and,
- Specifying which rights are protected under the criminal code.

It is important to note that WTO/TRIPs does *not* exempt corporations and/or other legal entities from having criminal sanctions applied against them. Thus, it will be necessary for purposes of this law, that corporations and other legal entities be held criminally responsible for their actions. In this situation, the corporation may be financially liable while the "inside" directors and key management, under certain circumstances, may be held criminally responsible as well.

Article 61 of the WTO/TRIPS Agreement requires that member countries enact criminal penalties which are "*sufficient to provide a deterrent*," for those involved in "willful trademark counterfeiting or copyright piracy on a *commercial scale*."

#### **Specific Requirement of the Law**

For such a law to be effective, three issues must be considered:

1. It is important to note that the criminal law must focus on those responsible for massive, wide-scale piracy and counterfeiting and not the individual consumer or small businessman which may be classified as "innocent infringers."
2. The law must provide for stringent financial penalties sufficient enough to have a deterrent effect on those involved in widespread counterfeiting and piracy.
3. There must be additional supplemental penalties to discourage "willful trademark counterfeiting or copyright piracy on a *commercial scale*," such as mandatory seizure of the infringing goods at the border or warehouse level, the subsequent forfeiture and destruction of the infringing goods or of "any materials and implements the predominant use of which has been in the commission of the offense."

#### **Meaningful and Substantive Monetary Penalties**

The key phrase in WTO/TRIPs Article 61 is that such penalties *be "sufficient to provide a deterrent*, consistently with the level of penalties applied for crimes of a corresponding gravity." It is necessary to have monetary penalties punitive enough to discourage illegal behavior on a global scale. In other words, for a businessman conducting widespread piracy and/or counterfeiting, financial and economic penalties should not be so nominal, by international standards, that the criminal infringer will calculate these modest fines as just an additional "cost of doing business," thereby having no real impact on such illicit, criminal behavior.

In terms of actual penalties, besides imprisonment and/or monetary fines, Article 61 requires (by use of the phrase, *shall also include*) members of the WTO to provide, "in appropriate cases" other such remedies as seizure, forfeiture, and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense."

While such remedies might possibly be part of the Uzbekistan criminal code, elsewhere, these criminal remedies and/or sanctions should also be included in the actual criminal code dealing with intellectual property. In summary, the proposed amendment to the Uzbekistan criminal code reflected the following:

- Articulating the precise behavior that is criminal;
- Replacing nominal financial penalties with substantial, world-standard, monetary penalties;
- Defining what constitutes willful commercial infringement; and,
- Specifying which rights are protected under the criminal code.

The criminal code lacks any penalties relating to "commercial scale" copyright piracy and trademark counterfeiting as required by TRIPS.

#### ***Patent Law***

The Patent Law's definition of "novel" conflicts with TRIPs since the law only uses a local standard rather than an international standard—e.g., new vis-à-vis the world and not just in Uzbekistan. The law's provisions relating to compulsory licensing conflicts with TRIPs due to their insufficient protection to the patent holder.

The law's provision of what constitutes non-infringement of patent rights is in conflict with TRIPs, specifically when it grants permission to create a patented medication without the authorization of the patent-holder. The law contains mandatory license registration provisions, which can be interpreted as being contrary to the spirit of TRIPs.

#### **Trademark Law**

The Trademark Law is overly broad relating to the protection of colors as a trademark and needs to be revised. There is a problem with the trademark law in that it makes a legal distinction between those foreign nationals residing in Uzbekistan and those not residing in Uzbekistan, requiring the latter to use the services of a local patent agent. This distinction seemingly goes against the National Treatment requirement of TRIPs. The present language of the law makes the use of the trademark warning mark voluntary, thus depriving the public of both adequate notice that the mark is registered and information on its owner.

#### **Software and Databases Law**

The process known as reverse engineering or "decompilation" in Uzbekistan is deemed a copyright infringement, which, while not technically against TRIPs, contradicts the interna-

tional norm. The law needs to prevent the unauthorized rental of computer software, required under Article 11 of TRIPs.

### **Intellectual Property Law Seminars**

The IP team organized weekly, interactive seminars. The 15 seminars—which focussed on all aspects of intellectual property legal principles, including those found in WTO/TRIPs, the Paris Convention, and the Berne Convention—took place at the National Patent Library. The average weekly attendance was more than (30) participants.

Representing all aspects of Uzbek intellectual life—academics, inventors, artists, governmental officials—the attendees were reminded before each seminar session that the burden of thought and expression was on the student and that the class would not be a typical "spoon-fed" lecture. In other words, the message was "be prepared to participate on a very high level of intellectual thought."

The topics of the seminars varied. While some topics required several sessions, most topics were covered in one two-hour session. The topics included:

- Trade/Commercial Secrets
- Unfair Competition, Use of Competing Trademarks
- Requirements of a Patent: Novelty, etc.
- Trademarks (including border enforcement)
- TRIPs & The Issue of Compulsory Licensing and IPR
- Copyright Piracy, Label Bootlegging, and Trademark Counterfeiting
- Berne Convention
- Protection of Software and Databases (Conference on Databases review)

### **Government Procurement Regime**

The Project assisted Uzbekistan in drafting a government procurement law that establishes a process (bidding process, review of bids, and contract award) that is competitive and transparent. In this regard, the Project:

1. Provided the Working Group, established at the Cabinet of Ministers, with background materials in English and Russian regarding the UNCITRAL Model Government Procurement Law and the WTO Government Procurement Agreement (GPA).
2. Participated in the Working Group's efforts to draft a government procurement law that meets the requirements of the World Bank and the WTO.
3. Reviewed and commented on several drafts of the GOU's Procurement Law and provided comments and amendment to correct deficiencies where the draft failed to conform with the WTO GPA.
4. Continued to participate in the working group throughout 1998.

5. Provided material and memos intended to assist the GOU in the creation of a state procurement agency for the administration of the new state procurement agency.

### **Standards**

The WTO TBT Agreement requires the establishment of an inquiry point to collect and distribute standards and certification procedures and any relevant legislation. This inquiry point also serves to provide notifications to the WTO concerning the development of new standards and certification procedures or relevant legislation. The Project prepared an in-depth memorandum to assist in the establishment of the inquiry point. This memorandum provided information such as the obligations of an inquiry point, resources needed, operating policies, and recommendations on staffing. Also included were copies of all WTO notification forms. A WTO TBT-compliant inquiry point was established based on this memorandum and meetings with officials at the Uzbek State Center of Standardization, Metrology and Certification .

The Project presented a 1/2 day seminar on the WTO Agreement on Technical Barriers to Trade, the WTO Agreement On the Application of Sanitary and Phytosanitary Measures and WTO Inquiry Points, to approximately 80 students of the Presidents Academy and government officers in Tashkent Uzbekistan.

Future technical assistance required in standards for Uzbekistan includes: assisting in amending the laws pertaining to standardization and certification to ensure compliance with WTO TBT requirements; assisting in amending the laws pertaining to sanitary and phytosanitary measures to ensure compliance with WTO SPS requirements; monitoring the TBT inquiry point; and assisting in the establishment of an SPS-compliant inquiry point.

### **4. Customs**

The Uzbekistan Customs Code took effect on March 1, 1998. The Project Customs Team assisted in the drafting, commenting on, explaining to the Cabinet of Ministers, and enacting into law by the Oliy Majlis (parliament) a Customs Code of Uzbekistan. The Customs Code replaced 1992 Instructions (regulations) issued by the State Customs Committee. The Customs Code sets forth by seventeen (17) customs regimes, procedures and enforcement authority of the State Customs Committee of Uzbekistan. The Customs Code closely follows Kyoto Convention (International Convention on the Simplification and Harmonization of Customs Procedures, more commonly referred to as the "Kyoto Convention") procedures and transit rules which are in conformity with the WTO. The Customs Code was adopted by the Parliament in December 1997 and went into effect on March 1, 1998.

A Customs Tariff Law took effect on January 1, 1998. This was a first ever Customs Tariff Law for Uzbekistan. The Project Customs Team had input into the content by assisting in the drafting, commenting on, and enacting into law a Customs Tariff Law of Uzbekistan. The Customs Tariff Law incorporated conforming principles of WTO Agreements relating to customs valuation and rules of origin. In addition, it included provisions on other significant areas of trade such as tariff preferences, customs duties and types of rates of duty, and impact of international agreements. The Customs Tariff Law took effect on January 1, 1998. Sea-

sonal duties as stated in the Law do not present a problem. Provisions regarding special purpose duties, anti-dumping, countervailing, and safeguard duties will be eliminated as soon as anti-dumping, countervailing, and safeguard laws are enacted.

The project team analyzed and commented on the Law "On creation of the State Customs Committee of the Republic of Uzbekistan." The State Customs Committee became a separate agency from the State Tax Committee early September 1997, and the Chairman of the State Customs Committee is now a member of the Cabinet of Ministers, and reports directly to the President of Uzbekistan.

The Project Customs Team worked in close cooperation with the Uzbek State Customs Committee in drafting and implementing Instructions (regulations) concerning customs valuation. These regulations were issued in April 1998.

The Team also assisted in the drafting and implementing of Instructions (regulations) on rules of origin. The issuance of the rules of origin regulations brings the Uzbek law and regulations into conformity with the WTO Rules of Origin Agreement and the Kyoto Convention standards.

The Customs Project Team worked with the Legal Department of the State Customs Committee in drafting and implementing Instructions (regulations) on the following Customs Regimes: customs valuation; completing the customs valuation declaration; determining country of origin; customs processing for free circulation of goods and products for industrial and technical purposes. The Team also assisted in the drafting of the following Instructions (regulations) which are pending implementation: transit; warehouses; duty free shops; goods for free circulation; and processing on the territory of Uzbekistan.

The Team studied import and export transaction fees. In conjunction with the Tariff Regulations Department, Team made specific proposals to bring the Uzbek Customs processing fees into conformity with Article 8 of the GATT Agreement. These recommendations included a 0.2% customs processing fee as well as a minimum and maximum fee.

The Project also assisted in the drafting of a law empowering the Customs Authorities of Uzbekistan to enforce intellectual property rights at the border. This draft law was provided to the Oliy Majlis (Parliament).

The Project Team reviewed the Uzbek Customs Declaration, and Customs processing and clearance procedures. Observations and recommendations were incorporated into a "Customs Procedures Manual" which was created and disseminated to Uzbek Customs Regional Administrations, Customs Posts, Customs Training Center and Uzbek Customs Headquarters.

Elimination/clarification of seasonal and specific-purpose duties were being worked on by the Project Customs Team by assisting the Cabinet of Ministers in drafting and passage of three (3) unfair trade provisions of law: (1) Law on Anti-dumping; (2) Law on Countervailing Duty; and (3) Law on Safeguard Measures. Project Customs Team submitted draft laws to the Cabinet of Ministers, and an Interministerial Working Group was created to finalize these laws for submission to the Oliy Majlis (parliament). Laws will be in conformity with WTO

Requirements of the Anti-Dumping Agreement, the Subsidies and Countervailing Duty Agreement, and Agreement on Safeguard Measures.

Upon passage of the above-mentioned unfair trade laws, the Team will commence work on implementing Instructions (regulations) containing clear and precise definitions, which ensure transparent and fair investigations, procedures, and fair rules for determining dumping duties.

### **Customs Training**

This is an area of unqualified success for the Project Customs Team. A "train-the-trainer" Customs Valuation training seminar was delivered to 85 Uzbek Customs Officers in January 1998, within two weeks after passage of the new Uzbek Customs Valuations provisions contained in the Customs Tariff Law. A Customs Valuation training manual (in English as well as Russian) was created by the Team and disseminated to Uzbek Customs Regional offices and Customs Posts. The manual is being used to ensure uniformity of valuation procedures throughout Uzbekistan, and in resolving valuation disputes between Uzbek Customs and importers/declarants.

The Customs Valuation training seminar was approved and funded by Global Training for Development (GTD) for a class of 35 participants. Because Customs Valuation was a new subject for most Customs Officers, the State Customs Committee wanted to train as many officers as possible. On the first day of the seminar, 55 Uzbek Customs Officers showed up for training. On day two, there were almost 70 persons in attendance, and by day three, the number was up to almost 85 trainees. The Project Customs Team worked with GTD in getting approval and funding for the additional trainees, and having manuals prepared for each participant. The interest level as well as student participation was very high. Quizzes and practical exercises were given to the participants. 78 certificates for successful completion of the training seminar were given to those students demonstrating knowledge of the customs valuation principles.

The second major "train-the-trainer" seminar was on the Harmonized System "HS." All WTO member countries (currently 132 countries) for duty determination purpose as well as the submission of trade data to WTO use the international customs classification known as the Harmonized System. A Harmonized System manual based on the 1996 version of the Harmonized System was prepared by the Project Customs Team and disseminated to all Uzbek Customs Regional offices and Customs Posts. Again, the manual was in both English and Russian. This seminar was approved and funded by GTD for 35 Customs Officers. The seminar was given to class of 45 participants.

The third training seminar was on Customs Procedures, and based on international customs standards and procedures agreed to in the Kyoto Convention (International Agreement on the Simplification and Harmonization of Customs Procedures). A Customs Procedures manual in English and Russian was prepared by the Project Customs Team and disseminated to all Customs Regional offices and Customs Posts. The manual covered all major areas of customs operations, including declarations, processing and clearance, transit, warehouses, foreign trade zones, drawback, selectivity, audit, customs control and "red-green" corridors in airports and border crossings. This seminar was approved and funded by GTD for 45 at-

tendeers and the Project Customs Team advised the Chairman of the State Customs Committee that only 45 Customs Officers could participate.

Upon request of the State Customs Committee and a Customs Brokers Association, the Project Customs Team conducted two customs valuation training seminars for customs brokers and declarants. Brokers/declarants are responsible for preparation and accuracy of data in the declaration. Thus, brokers/declarants needed training in principles of the new Uzbek customs valuation provisions. Approximately 150 customs brokers/declarants were trained in customs valuation (based on the WTO Customs Valuation Agreement).

The Project Customs Team was asked by the State Customs Committee to perform surveys or audits of Uzbek Customs Post to evaluate conformity to laws, instructions and procedures. Survey/audits were carried out at the following Uzbek Customs Posts: Tashkent Aero Complex, Tashkent Airport Cargo Complex, Tashkent Railroad Complex, Sammarkand Regional Administration and Zhartepo Border Complex, Navoi Regional Administration, Bukhara Regional Customs Administration and Alat Border Complex. Reports were submitted to the Chairman of the State Customs Committee.

Although the Customs Code contains a provision permitting "Preliminary Decisions" by Uzbek Customs officials, in fact no Instructions (regulations) have been prepared or issued. Project Customs Team worked closely with the Head of Customs Central Laboratory in preparing and issuing tariff classification ruling letters. The classification ruling letters were intended as samples to be used in a future ruling system.

#### Customs and Improvement to the Trade Regime

The Project Customs Team assisted Uzbekistan in improving its trade regime, including assisting the Government in (i) establishing a fair and transparent anti-dumping regime and countervailing regime, (ii) establishing of a regime for proper application of safeguard measures, and (iii) establishing an import and export transaction fee structure ("customs processing fees") which reflect the cost of services rendered.

1. Anti-dumping Regime. The Project Customs Team provided the Interministerial injury, and (iv) provides rules for the imposition and collection of anti-dumping Working Group ("IWG") of the Cabinet of Ministers with a draft Anti-Dumping Law and held many discussions and training sessions with the IWG toward finalizing and approving this Law. This draft Law is based on the WTO Agreement on Anti-Dumping and ensures the existence of fair and transparent investigation rules and dumping duties determination rules. It (i) clearly defines dumping, (ii) provides fair rules for determining that a product is dumped and for establishing the dumping margin, (iii) provides rules for determining material duties.

Countervailing Regime. The Project Customs Team provided the IWG of the Cabinet of Ministers with a draft law on countervailing measures in conformity with the WTO Agreement on Subsidies and Countervailing Measures. It (i) clearly defines countervailing, (ii) provides fair rules for determining whether or not there is a material injury, and (iii) provides rules for the imposition and collection of countervailing duties.

**Safeguard Regime.** The Project Customs Team provided the IWG of the Cabinet of Ministers with a draft law on safeguards in conformity with the WTO Agreement on Safeguards. It clearly (i) defines the conditions under which safeguard action may be taken, (ii) provides fair rules for the determination of serious injury, and (iii) provides rules for the application of safeguard measures.

**Import/Export Transaction (customs processing fees).** The customs processing fees for import and export transaction is *ad valorem* (0.15%) and may not reflect the cost of services rendered. The Project Team provided the Uzbek Customs with a methodology to change such fee in order to reflect the cost of services rendered.

#### Other Work/Task Assignments

The Project Customs Team completed all work/task assignments with the exception of excise tax. In Uzbekistan, excise tax laws and regulations are administered by the State Tax Committee. Uzbek Customs merely collects applicable excise tax on imported goods. Tax matters are within the structure of the State Tax Committee.

The Customs Team worked closely with the State Customs Committee in drafting and issuing Instructions (regulations) on six of the 17 Uzbek Customs Regimes. Follow-on work/task assignments should concentrate on drafting and issuance of Instructions (regulations) for the remaining Customs Regimes, on creating transparent Customs procedures, and on training which upgrades technical proficiency of Customs officers and instilling pride and professionalism in officers of the Uzbek Customs Service.

### **Customs Training in Other Central Asian Countries**

The Uzbek Project Customs Team joined the Project Customs lawyers from Kazakhstan and Kyrgyzstan to deliver a six-day "train-the trainers" on customs procedures. International standards, as set forth in the Kyoto Convention, were used as the basis of course instruction and the "Customs Procedures Training Manual" that was prepared and given to each seminar participant. There were 35 Kyrgyz Customs officers in attendance, and all were presented with certificates denoting successful completion of the course and mastery of the course materials.

#### Customs In-House Training

The Project Customs Team worked to strengthen the institutional abilities of the State Customs Committee of Uzbekistan. As part of the ongoing effort, the Team:

held regular meetings with the Chairman of the State Customs Committee as well as department heads, such as the Tariff Regulations Department, the International Relations Department, Customs Control and the Customs Central Laboratory;

provided site surveys and post inspections to assess compliance with Uzbek law and regulations (instructions), and provide reports to the Chairman;

in coordination with Global Training for Development, constructed and assisted in getting approval for an "Executive Observation Training Program" designed for decision-level, pol-

icy-making Uzbek Customs officials. The Program consists of three (3) two week modules as follow: (i) module 1 is for the Chairman, head of the Customs College, head of International Relations and head of the Law Department to meet with their counterparts in U.S. Customs, Washington, D.C., and then a week at the Federal Law Enforcement Training Center in Glynco, Georgia; (ii) module 2 is for 4 Uzbek Customs officials to visit an appropriate U.S. Customs border location (Laredo, Texas suggested as it closely approximates conditions and types of customs activities experienced at Uzbek customs border locations); and (iii) module 3 is for four Uzbek Customs officials to visit an appropriate medium-sized U.S. Customs airport operation which handles both international passengers as well as international (or transit) cargo operations; and

acted as liaison between U.S. Embassy and Uzbek State Customs Committee in matters dealing with narcotics matters, procurement of equipment supplied by or being procured by the U.S. Embassy or the U.S. Department of Defense, or other matters or issues of interest to the U.S. Embassy of the Uzbek State Customs Committee.

#### **D. Summary**

While Uzbekistan has taken a substantive measure with the submission of the Memorandum on Foreign Trade Regime to the WTO in September 1998 and made considerable progress in its improvement of customs regulations, intellectual property, trade legislation, government procurement and foreign investment legislation, political obstacles to accession remain. The government appears to be divided in its commitment to the legal and regulatory reform necessary to accede to the WTO. The team has gained a great deal of trust from the Government officials, as many have begun to actively solicit technical assistance from the Project. It is anticipated that the Government will seek additional technical assistance to improve its general legal framework affecting business and investment activity, especially in the area of commercial law reform.

### **V. TURKMENISTAN**

#### **A. Objectives**

1. Assist in the establishment of a sound trade and investment environment, including the modification of laws and regulatory provisions relating to international trade and foreign investment. Enhance the legal/regulatory framework for foreign trade and investment to conform to global standards and to facilitate rather than impede foreign trade and investment;
2. Assist in the introduction of the process of accession to the WTO;
3. Enhance the overall investment "climate" through the identification of administrative/bureaucratic barriers to business development, including business registration/licensing requirements which artificially restrict market entry and restrictions on company profit margins and product profiles which impede efficient investment flows;
4. Develop and stabilize the budgetary system, including 1) budget identification and classification, 2) classification of expenditures and revenues, 3) rationalization of the public

investment planning process, and 4) recommendations designed to strengthen the financial management and control system; and

5. Assist in the development and implementation a privatization plan for the GOT that supports the development of a favorable trade and investment environment, is consistent with WTO accession, and facilitates the rapid and efficient transfer of state owned assets to the private sector.

## **B. Significant Results of Project Assistance**

### **Significant Successes**

- Enactment of amendments to Civil Code, including provisions to conform intellectual property rights to WTO requirements, which were drafted with the assistance of the Project, in July 1998.
- Issuance of a Presidential Decree to abolish various administrative barriers to trade. The decree incorporates Project's recommendations to the Government set out in the Project's November 1997 report "Assessment of Turkmenistan's Foreign Trade Regime."
- Issuance of a Presidential Decree (April 1998) which approves a discounted cash flow ("DCF") method of valuing enterprises to be privatized as well as the use of the "Dutch method" of conducting public auctions. These were in accordance with recommendations of the Project. The Project assisted in implementation of the methodology through training and preparation of a model spreadsheet.
- Valuation by the Project of a number of State-owned enterprises using the new DCF valuation method

### **Significant Issues**

- Need of the Project to secure an official counterpart within the Turkmen Government (including the Medjlis).
- Government's reluctance, to date, to: (i) file an application for accession to WTO and (ii) appoint a central executive coordinating body to lead the WTO accession effort.
- Competing state entities involved in privatization and divided responsibilities (SPPA, CP/SAFI, MOAWR, line ministries, industry associations) and overlapping oversight (various deputy chairmen of Cabinet of Ministers).
- Lack of clear political commitment to privatization from highest government authorities; government's privatization program essentially "voluntary."
- Inadequate legislative and regulatory base for privatization, outmoded Soviet-style accounting standards; inconsistent application of existing policies and rules; excessive bureaucracy and control mechanisms; delays and procrastination;

- No securities/capital markets to facilitate privatization; unrealistic valuations and expectations of price; onerous payment terms; unnecessary restrictions on buyer's operation of the business; holding on to State's participation in joint ventures and residual shareholdings; large inter-company/inter-government debts being settled by off-sets and barter; large non-performing loans of banking sector; State Commodity Exchange actually hinders exports and diminishes potential export earnings from privatized companies.

### **Major Changes Anticipated in Project Activities (Modifications, Phase-Out, New)**

The Project anticipates targeting greater effort towards legal reform in areas of customs and intellectual property in view of Customs and Patent Office officials' openness to change and to international standards.

### **Major Changes in Government Policy**

Major changes in Government policy in the trade and investment area are not expected.

### **Devil's Advocate**

**Q. After a 1 ½ years effort, should the Project scale down its trade and investment program in view of the failure of the Turkmen Government to declare formally its intention to accede to the WTO?**

No, because: (i) legal reform in 1998, particularly the Civil Code, provides a base upon which may be built reforms of WTO-related commercial legislation (i.e.: foreign investment, registration); (ii) the Government has generally demonstrated an interest in modernization of legislation particularly in those areas where international codes have been developed (i.e., intellectual property and customs); (iii) the Project may profitably concentrate on reform of the non-WTO aspects of Turkmenistan trade and investment regime. For example, a state's business registration practices are not regulated by any WTO code, but such practices nevertheless can have a direct and adverse impact on the investment environment.

## **C. Progress**

### **1. Improvement of Trade and Investment**

The Project has had some successes in improvement of legal environment for trade and investment. The most significant accomplishment was the Project's work on the new Civil Code, the bedrock for all subsequent reform efforts in commercial legislation. The Project's trade and investment specialist actively participated with other donors in drafting the new Code and, as discussed further below, Parliament accepted nearly all of the Project's recommendations. These proposals involved most importantly, reform of the intellectual property provisions.

In addition to this work on the Civil Code, the Project analyzed and prepared recommendations to abolish or significantly curtail certain administrative barriers to trade. These recommendations are now under the consideration of the office of the President. The Project has

also secured substantial agreement from Government technical specialists on the Project's model laws on foreign investment (providing greater protections and clearer enforcement remedies for foreign investors), business registration (providing a simplified and more transparent procedure), and competition. Such accomplishments in the absence of a formal Government sponsor attest to the Government's recognition of the quality and soundness of Project's work and the Project's sensitivity to the limits to which reform can now be taken in Turkmenistan.

Progress toward the establishment of a simple, amenable market-oriented legal and policy regime for trade and investment has been difficult in Turkmenistan, for several reasons. There have been frequent changes in government officials. Since the Project arrived in Turkmenistan in February 1997, the Minister with responsibility for trade and investment issues has been changed three times, and the Deputy Chairman has been changed once. The accompanying realignments in a Government staffed with executives having multiple responsibilities has resulted in constant shifts in Government priorities.

More important is the Government's view of economic development policy generally, to say little of reform policy. The Government tends to view the exploitation of two or three key resources as the means to national wealth that will be sufficient to sustain Turkmenistan's small population - and the existing political order. Consequently, the Turkmen Government has not considered reform of the trade and investment regime a high priority. The Project thus has had difficulty in finding an audience within the Government for its proposals.

## **2. WTO Accession: Process**

In February 1997, the Project began the process of educating Turkmen government officials and members of the Medjlis about the benefits and obligations of WTO membership. Efforts to inform and educate members of the Government on WTO and issues of reform continued throughout 1998. In total, the Project has engaged and instructed twelve Government bodies as well as four parliamentary committees on matters of trade and investment reform. Still, there is not yet a core body within the Government dedicated to a study of WTO accession and its requirements.

As a result of the presentation of the Project's November, 1997 Economic Merits and Assessment Reports, the then-Ministry of Foreign Economic Relations created a Department of International Organizations, the agenda of which was largely devoted to an analysis of WTO requirements. It also recommended positive steps to WTO accession. The Project will press in 1999 for the continuation of this endeavor on an organizational basis with the Ministry of Trade and Foreign Economic Relations and will encourage the development of similar and complementary expertise in the Cabinet of Ministers, the country's central coordinating body and as such that governmental body best equipped as an institution to lead a WTO accession effort.

To date, the Government has been hesitant to act decisively on a comprehensive reform package such as accession to the World Trade Organization. This may be true for three reasons:

- a) WTO is a comprehensive reform package in a country that, historically, has made reforms only incrementally.

- b) WTO membership cannot guarantee immediate relief from economic hardship and, therefore, there will be no immediate pay back to political elites for undertaking difficult reform efforts.
- c) WTO is a highly sophisticated reform package that requires an institutional commitment. Many governments logically tie trade to investment policy; Turkmenistan bifurcates them thus frustrating a coordinated policy initiative on WTO.

Because of these political constraints, the Project has shifted focus to the general trade and investment reform initiatives described above. These activities have proven of value in their own right in advancing reform in Turkmenistan. While these initiatives may fall outside the category of those deliverables under the contract directly related to WTO accession, they will prove of immense value in facilitating Turkmenistan's accession once the Government decides to take that step.

### **3. WTO Accession: Legislation**

**Civil Code:** Turkmenistan's Civil Code is perhaps second only to the Constitution in regard to scope of application: it is the basic law that governs all commercial transactions and relations conducted in Turkmenistan. Its provisions provide the basis for subsequent elaboration of detailed laws in the areas of contracts and sales, property transfer and investment, and intellectual property, among others. All are essential for WTO accession.

The Project's involvement in the development of the Code was at the invitation of the Chairman of the Legal Committee of the Medjlis, following a presentation of Project capabilities in late May 1998. That committee received over 2,000 comments on the draft code and extensively incorporated the comments of but a handful of jurists, Government leaders and donors. In fact, the Medjlis adopted some 95% of the Project suggestions verbatim. The most direct impact was in the area of copyright, but the committee also incorporated Project remarks in the areas of insurance and agency as well.

In addition to ensuring that the Civil Code incorporated the appropriate language, the Project had more far-reaching goal in its work with the Medjlis. That was to use the Code drafting exercise as an opportunity to influence the drafting of subsequent legislation in the trade and investment area. The Project demonstrated weaknesses in three key current laws given the enactment of the reform Civil Code – the Law on Enterprises, the Law on Entrepreneurial Activity, and the Law on Foreign Investments. As a result, the Medjlis is committed as an institution to review all of these laws.

Last, it should be noted that the Civil Code drafting exercise was a model of donor cooperation. Within two weeks of arrival in July, 1997, the Project established relations with German Technical Assistance (GTZ) who had been active in code revision since 1996. The Project followed drafting changes over a period of seven months and publicly participated with GTZ in a discussion of key economic reform provisions. This corroboration enabled the donor community to support fully the Project's recommendations and to secure the desired result.

**Presidential Decree on Trade Liberalization:** On May 28, 1998, the President issued Decree No. 3724 eliminating various barriers to export trade in the interests of advancing national

economic policy, and charging certain state bodies with responsibility for development of further proposals to facilitate exports. This decree was developed with the advice of the then-Ministry of Foreign Economic Relations, which in turn used the Project's WTO Assessment Report of November 1997 as the "Bible" to identify various certificates and other administrative barriers to trade

The Project was asked by a governmental Working Group comprised of four key executive agencies for advice on implementation of the Decree. Consistent with its WTO Assessment Report, the Project pressed for elimination or significant reform of five documentary or administrative barriers to trade. These reforms would significantly change the way at least five government bodies - the State Commodities and Raw Materials Exchange (SCRME), the State Agency for Foreign Investment (SAFI), the Main State Inspectorate, the newly consolidated Ministry of Trade and Foreign Economic Relations, and the Customs Committee - do business. The resulting change will be distinctly in favor of trade liberalization. The Working Group accepted all five Project recommendations in this area as a basis for elaborating upon the Presidential Decree. It is expected that further work by the Government toward implementation of the Decree will take place in 1999.

***Proposed Laws on Foreign Investment and Business Registration:*** Since 1992-93 legislative sessions, the Medjlis of Turkmenistan had enacted no economic policy legislation. As a result of months of discussion, an informal understanding was reached with the Government in November and December 1998 that the Government would propose to the Medjlis reform legislation in two key trade and investment areas: foreign investment and business registration. The Government reached this decision as a result of assembling a special "task force" to respond to Project model laws in these areas that had been submitted in April 1998.

The formation of this internal legal reform unit, composed of attorneys from three different Government bodies came as a result of painstaking Project research into Turkmen law and the adaptation of legal principles from other transitional countries to the realities of Turkmen transition. Formal legislative action on foreign investment and business registration is expected in 1999.

The Project has persuaded legal specialists within the Government that a reform Law on Foreign Investment will yield simplification of the current legal regime by eliminating the need for three additional laws currently existing, thereby enhancing transparency. Conversely, the enactment of a Law on Registration would enhance transparency by giving Turkmen businesses something they have never had: a simple guide to business registration that will reduce:

- the number of agencies and departments from five to one
- the number of registration documents from 12-15 (depending on the case) to three

***Legislative Agenda of the Medjlis:*** Throughout the summer of 1998, the Project leveraged off its success in civil code reform (discussed supra) to establish working relations with four of the seven committees of the Medjlis: the Committees on Legal Affairs, Economic and Social Policy, Science Education, and Culture, and Legislation. Together, these committees have accounted for initiation of 100% of the economic reform legislation enacted in Turkmenistan.

As noted, the Project's initial success in securing the adoption of exact language was chiefly in the Civil Code provisions on copyright. But this was in the area of highly technical legislation in which there was near universal agreement to secure conformity with international standards. Nonetheless, the Project's reputation for quality led to influence in the more domestic, politically sensitive areas of foreign investment, registration and competition policy. As a result of Project effort, the Medjlis proposed in Fall of 1998 the possibility of a formal relationship in which the Project would be the chief outside advisor on trade and investment questions. It is expected that USAID will make the formal request to the Medjlis for this relationship in 1999. It is hoped that this unique opportunity will lead to further influence on the priority as well as content of key reform legislation.

***Proposed Law on Competition:*** The implications that the honest enforcement of competition policy would have for a state controlled economy in Turkmenistan forced the abolition of a nascent antimonopoly committee in 1993. Accordingly, the Project was sensitive to the fact that it was tackling an immensely difficult task in proposing a draft Law on Competition with the Government in October, 1998. This draft frankly attributed most monopolistic and anti competitive practices to the state sector. Despite this, the Task Force mentioned *supra* also addressed the Project draft law on competition and acknowledged the need for reform in the area and a law setting the need for significant reform in the state sector as a basis. This acknowledgement came by official letter of December 14 to the local USAID office from a Vice- Chairman of SAFI.

This achievement is all the more remarkable with the realization that in early November, the President attacked anti-competition policies in neighboring countries as counterproductive. The Project accomplished a turn around in but a few weeks by patient dialogue with the Government. These efforts secured agreement from official representatives on such questions as the need for the state to enforce an antimonopoly law against its own entities and the need for strict conflict of interest provisions in the composition of an antimonopoly committee.

***Revised Law on Joint Stock Companies:*** The Project arrived in July, 1997, to find a Law on Joint Stock Companies that was neither workable, given current realities, nor consistent with the need to execute progressive privatization and foreign investment policies. From the outset, the Project teamed up with privatization experts from the World Bank to press for the drafting of a more effective Law on Joint Stock Companies at ministerial level. The draft law went from the Ministry of Economy and Finance to parliamentary committee in early 1998.

The Project has used its influence in the Medjlis to monitor and press for still more reforms in the draft law focusing on minority shareholder rights, prohibitions against self dealing by corporate executives and a more orderly and understandable handling of charter capital. It is hoped that the Medjlis will enact an improved law incorporating the Project's recommendations in 1999.

***New York Convention:*** A country's participation in the New York Convention is viewed as a bellwether issue for foreign investors. Membership means that a country's domestic court system will honor and execute upon judgements of foreign courts. Prior to the commencement of the Project in July 1997, there was considerable internal debate in Turkmenistan on this issue, with the Government generally rejecting the idea of membership against the rec-

ommendation of the Ministry of Justice. Support was lacking among Government bodies responsible for economic policy.

The Project took this issue up anew in the Fall of 1997. The WTO Assessment Report of November, 1997 recommended that Turkmenistan become a member of the Convention. The Project reinforced the message in early 1998 when it submitted the draft model Law on Foreign Investment described above. As a result of persistent, patient dialogue through the Summer of 1998 with the State Agency for Foreign Investment, that Agency recommended membership to the Ministry for Foreign Affairs in late 1998.

**Customs Code:** Turkmenistan currently has an anachronistic, Soviet style Customs Code. The November 1997 WTO Assessment Report highlighted the need for reform in the area. The Project leveraged off its participation in the Working Group for trade liberalization in the summer of 1998 to build relations with the Customs Committee. At the request of the Customs Committee, the Project provided the Committee with customs codes of other Central Asian countries (notably, the Kyrgyz Republic, the sole CIS WTO member). A short-term advisor assisted the Customs Committee in beginning analysis and drafting of proposed amendments.

As a result, within a period of but three months, the Project began important dialogue with the Customs Committee concerning the elements the reform Customs Code must have to conform to WTO standards. It is expected that the Project will continue to assist the Customs Committee with this drafting work in 1999 so that a revised, WTO-compliant Code may be submitted to the Medjilis in the second half of that year.

#### **4. Development and Stabilization of the Budgetary System**

Turkmenistan's Budget Reform Program is a critical area of its country's development toward a market reform economy. This report first highlights outcomes in terms of implementation processes and results for the tasks designed to implement the budget reform program in Turkmenistan. Second, lessons learned are summarized in terms of budget composition, skill development, legal foundation, budgeting processes and computerization. Third, program initiatives address basic problem areas in the budget process, including the legal foundation, the composition of the budget and the budget document, the central budget unit organization, budget formats and formulation procedures inhibiting analysis and expenditure rationalization and budgetary accounting and control capabilities. After a brief conclusion, a table details the essential characteristics of a reformed budget and budget process.

##### **Results**

The Project's Budget Reform team addressed 10 tasks concerning Turkmenistan's budget and budget process:

Increase to approximately 80% the percentage of expenditures included in the National Budget, including all items specified as "off-budget;"

Complete and implement a budget expenditure and revenue classification system;

Draft and present a Budget Systems Law to the Ministry of Finance;

Train approximately 60 GOT staff in budget and program analysis;

Make recommendations to rationalize the composition of the total actual budget and, based on this examination, recommendations regarding priority areas for immediate expenditure rationalization;

Develop recommendations to rationalize the public investment planning process;

Develop instructions for preparation of a multi-year investment budget;

Incorporate results in the guidance that calls for preparation of annual budget;

Develop and implement a procedure for updating multi-year investment budget estimates through the application of basic cost/benefit analysis concepts to major categories of physical infrastructure investment; and

Examine expenditure determination process for key line ministries, rationalize expenditures in critical areas such as health care and education; develop and implement a system for preparation of annual operating plans for individual ministries and for the Government overall.

**a) Increase to approximately 80% the percentage of expenditures included in the National Budget, including all items specified as “off-budget.”**

**Implementation.** The team provided recommendations concerning the establishment of a comprehensive budget document, including: 1) a formal presentation on the subject at a government-wide seminar, 2) submission of criteria for placing GOT entities in the annual budget document, and 3) submission of a model format which included a section for the presentation of annual financial plans of special purpose funds and state-owned enterprises.

**Results.** The FY1999 Medjlis appropriation is reported to span 95% of all GOT spending, with the GOT committed to include the remainder. If supported by sufficient detail in the Budget document, and sustained by comprehensive accounting and reporting procedures, the Turkmenistan Budget would meet internationally recognized standards of coverage, if not transparency. (Granting a high mark for transparency depends on the elimination of “netting” and barter among GOT agencies.) A qualified judgment on compliance must wait, however, until later in the fiscal period when the entire Budget document will be available for analysis and reporting fidelity can be assessed. Furthermore, it must be pointed out that the Mejlis appropriation included special purpose funds and public enterprises. As recommended in best practice, the financial plans of such agencies should be included in the Budget document, providing an opportunity for legislative review of these plans for conformity to general policies, but should not be subject to appropriation.

**b) Complete and implement a budget expenditure and revenue classification system.**

**Implementation.** The GOT adopted internationally recognized expenditure and revenue classifications and codes prior to the work of the Budget Reform Team. The classifications identify GOT entities with functions such as Health, Education, etc. Within the entities, expenditures are classified only by economic concepts, such as salaries, equipment, etc. Thus, the classification structure within GOT entities identifies only items of expenditure, unrelated to organizational units or activities. Consequently, the annual budget document is almost entirely an assembly of accounting statements. The 1998 document includes entity budgets which are compilations of numbers identified solely by economic classifications unaccompanied by commentaries providing evidence of program and performance analysis. This is a very serious deficiency. The documentation of each entity’s budget should include: 1) an array of expenditures assigned to cost center(s); 2) an array of revenues related to the entity’s

services; 3) an array of performance data related to the entity's services; and 4) a commentary interpreting the relationship of expenditures to expected performance. Since the cost center is the fundamental classification concept of results-oriented budgeting and a reformed budget and budget process associated with performance data, the cost center concept of classification was strongly recommended.

**Results.** To demonstrate the application of the cost center concept, the Budget Reform Team assisted GOT staff to formulate model budgets for the Ministries of Health (Polyclinic #11) and Education (School # 16) and the City of Ashgabat. Impressed by these models, the MEF plans to initiate the introduction of cost center formats in the FY2000 budget process.

**c) Draft and Present a Budget Systems Law to the Ministry of Finance.**

**Implementation.** In consultation with a working group established by the Ministry of Economy and Finance, the Budget Reform Team, under the leadership of Ercis Kurtulus, prepared three successive drafts of a new Budget System Law. In June, 1998, however, the MEF Minister deferred further consideration regarding a new Law in favor of developing regulations to implement the current law. Within this context, the Budget Director also requested that the Budget Reform Team develop a Budget Manual.

**Results.** Pursuant to the Minister's request, the Team developed and submitted a draft of proposed regulations, including the following features:

Comprehensive joint Ministry of Economy and Finance/Central Bank budget planning prior to the annual Budget Call;

Annual revenue policy and management action planning

Ministry and agency budget formulation based on cost centers, performance indicators and analytical interpretation

Budget implementation based on work plans, allotments and quarterly performance reviews

At the end of March, 1999, the draft regulations were under consideration by an MEF Working Group. Work on the draft Budget Manual was nearly complete at that time.

**d) Train approximately 60 GOT staff in budget and program analysis.**

**Implementation.** The general dearth of performance data in budget documents and the meager response to requests for program commentaries from MEF sectoral staff suggests serious deficiencies in required analytical skill. The Budget Department functions as a compiler/consolidator, rather than a reviewer/evaluator/adjuster of budget estimates. This latter function is assigned to a set of "sectoral" departments within the Ministry, reporting to various Deputy Ministers. It is generally acknowledged that the analytical capability of the Budget Department and the "sectoral" Departments is very weak. Obviously, the efficacy of a reformed budget and budget process rests upon skilled practitioners, not only in the MEF, but also in every agency. The Budget Director is fully aware of this requirement, and its implications. In attacking the skill deficiency problem, the Budget Reform Team conducted a

task-oriented program of formal and on-the-job training to enable the GOT to introduce recommended procedures and techniques. The institutionalization of results-oriented budgeting will take many years, given strong, persistent leadership by the Budget Director, supported by a staff qualified to teach its values and techniques throughout the GOT. Consequently, the intellectual and programmatic development of the Budget Department deserved, and received constant attention from the Budget Reform Team.

**Results.** By March 31, 1999, a total of 303 GOT officials attended five formal training sessions conducted by the Budget Reform Team. Additionally, on-the-job training was provided as the occasion demanded during the development of the pilot projects and technical assistance assignments.

**e) Make recommendations to rationalize the composition of the total actual budget and, based on this examination, recommendations regarding priority areas for immediate expenditure rationalization.**

**Implementation.** Given the general dearth of performance data in budget documents, and the meager response to requests for program information, the Budget Reform Team did not advance specific recommendations concerning expenditure rationalization. Within this constraint, the Team pursued a strategy of demonstration, providing examples of the application of analytical techniques and products.

**Results.** Examples, models and pilot projects were prepared and submitted to demonstrate the recommended formats and techniques, and to provide training materials. These included a model Budget Call, featuring a sample multi-year projection, budget improvement pilot projects in the Ministries of Health and Education and the City of Ashgabat, a model capital investment program and budget, sample evaluations of two proposed capital projects, and an alternative 1999 Budget document format to express the values of comprehensiveness, transparency and analysis. Additionally, the draft budget regulations submitted by the Budget Reform Team included many provisions designed to encourage and facilitate program analysis as the basis for budget allocations.

**f) Develop Recommendations to Rationalize the Public Investment Planning Process.**

**Implementation.** A specialist was added to the Team to develop a model Capital Investment Program and Budget and a Manual of Procedures, and to provide training and technical assistance.

**Results.** A model multi-year capital investment program and budget and a supporting manual of procedures were formulated and submitted. Also, the submitted budget regulations draft included provisions specifically related to investment programming and budgeting. The training and technical assistance program included two workshops, many on-the-job training sessions, and the development of two sample evaluations of two proposed capital projects.

**g) Develop Instructions for Preparation of a Multi-year Investment Budget.**

See letter f above.

**h) Incorporate Results in the Guidance that calls for Preparation of the Annual Budget.**

**Implementation.** The formulation of a model budget call for use in the development of the Year 2000 budget was deemed the most effective method of encouraging the GOT to improve the quality of its budget call document.

**Results.** A model budget call was formulated and submitted, complete with a sample multi-year projection and reform-oriented budget formulation instructions, including a set of instructions devoted to the multi-year investment budget.

**i) Develop and implement a procedure for updating multi-year investment budget estimates through the application of basic cost/benefit analysis concepts to major categories of physical infrastructure investment.**

See section f above.

**j) Examine expenditure determination process for key line ministries, rationalize expenditures in critical areas such as health care and education; develop and implement a system for preparation of annual operating plans for individual ministries and for the Government overall.**

**Implementation.** The expenditure determination process is very fragmented, especially with regard to capital investments. The expansion in budget document coverage for FY1999 was a significant step toward enabling the Budget Department to undertake a comprehensive examination expenditure priorities across the whole system. As noted in the report on Task 5, the Budget Reform Team was not in position to advance specific recommendations concerning expenditure rationalization.

Instead, the Team developed products which illustrate how the GOT should conduct the budget allocation process. These products, especially the budget regulations draft, expressed the following key characteristics of a reformed budget and budget process:

Budget planning by the MEF/Central Bank prior to the annual Budget Call;

Agency budget formulation based on cost centers, performance indicators and analytical interpretation; and

Budget implementation based on work plans, allotments and quarterly performance reviews.

**Results.** In pursuing a strategy of demonstration, the Budget Reform Team provided examples of the application of analytical techniques and products. Examples, models and pilot projects were prepared and submitted to demonstrate the recommended formats and techniques, and to provide training materials. These included a model Budget Call, featuring a sample multi-year projection; budget improvement pilot projects in the Ministries of Health and Education and the City of Ashgabat; a model capital investment program and budget; sample evaluations of two proposed capital projects; and an alternative 1999 Budget docu-

ment format expressing the values of comprehensiveness, transparency and analysis. Additionally, the draft budget regulations submitted by the Budget Reform Team included many provisions designed to encourage and facilitate program analysis as the basis for budget allocations. The draft also includes provisions for the formulation of work plans and quarterly performance reviews thereon.

### **Lessons Learned**

Edward Lehan assumed responsibility for the Turkmenistan Budget Reform Program on June 4, 1998. Under the previous Budget Advisor, Ercis Kurtulis, the Team produced an Action Plan, conducted training sessions in budget concepts and computer operations, assisted in the expansion of budget documentation and composed three drafts of a proposed new Budget Law.

In June, 1998, following an initial set of meetings with Ministry officials, the Project pursued a strategy of demonstration, favoring the development of examples and models based on existing budgets. Because the Project sought to involve GOT staff as much as possible, the work progressed slowly, but solidly, with close attention to format aesthetics and the construction of informative data arrays. As completed, the products of this effort were distributed as widely as possible to broaden the potential base of support should the GOT leaders decide to introduce results-oriented budgeting during the FY2000 budget cycle.

Based on favorable official reaction to the examples and models, and a series of GOT actions since November, 1998, there is reason for optimism about the GOT's commitment and willingness to proceed with budget reform. These recent actions are briefly summarized, as follows:

#### **a) Budget Composition**

On December 10, 1998, the Medjlis adopted a 1999 Budget totaling 20,838,829 million manat, approximately 3 times the 6,807,985 million manat adopted for 1998. This extraordinary increase reflected the President's decision to make the budget comprehensive. (In general the direction of this move is consistent with the standing recommendations of the IMF, the World Bank and the UN, but varied significantly concerning the appropriation status of special purpose funds and public enterprises.) According to Mr. Khudiakuli, Budget Director, the FY1999 Appropriation covers an estimated 95% of all GOT agencies. He also indicated that the remaining 5% were small agencies, which will be eventually included. The accounting and reporting implications of this expansion have been discussed with the responsible MEF officials. Thus far, the Project has learned that the officials plan no changes in accounting practice during FY1999, but intend to enforce monthly reporting by all agencies to MEF, and thence to the President. Recognizing the problem facing the GOT, the Project offered to assist the leaders of the budget and treasury departments with the development and institutionalization of the required reporting system. Further, the Project broached the possibility of USAID-funded study of GOT accounting arrangements, this study to explore the feasibility of installing a computer-based, controllership form of accounting and budget control covering the entire GOT.

#### **b) Skill Development**

After many delays, the GOT permitted our long-planned two-day training event for GOT staff concerned with the sensitive topic of capital investment programming and budgeting. By all accounts, the workshop was well received.

#### **c) Legal Foundation**

In June 1998, the MEF Minister requested assistance in developing regulations to implement the Budget System Law. Pursuant to this request, the Team developed and submitted a draft of proposed regulations. In January, the Project was informed that the MEF desired to move forward quickly with the adoption of Budget Regulations.

#### **d) Budgeting Practices**

The team plans to shift from a strategy of demonstration to active participation in budget dynamics. Referencing the concepts incorporated in the Project's draft Budget Regulations, the Project plans to provide a combination of reform-oriented formal training, on-the-job training and technical assistance during the FY2000 budget cycle. This work is to center on the introduction of results-oriented budgeting in the Ministries of Health, Education and the City of Ashgabat. On March 11, 1999, Khudaikuli, Budget Director, indicated that the GOT wished to proceed with the Project's proposed program.

#### **e) Computerization**

On January 26, 1999, the Budget Director requested assistance concerning further computerization of the budget process, submitting an outline of software requirements.

#### **Program Initiatives**

Starting in April 1999, the Budget Reform Team expects to move from its reliance on the so-far successful strategy of demonstration to active engagement in budget dynamics. Looking forward, a successful reform program must address acknowledged problem areas of the budget and budget process, listed as follows:

- Legal foundation;
- Composition of the budget (appropriated funds) and the budget document, including key issues of coverage and transparency;
- Central budget unit organization, staffing and procedures;
- Budget formats and formulation procedures inhibiting analysis and expenditure rationalization; and
- Budgetary accounting and control capabilities.

Consequently, a reformed budget and budget process must eliminate or substantially ameliorate key deficiencies in each of these inter-related problem areas. A brief discussion of each problem area follows:

#### **a) Legal Foundation**

Turkmenistan has a Budget System Law, adopted June 18, 1996. Totalling ten pages (English translation), this law is deemed to provide a satisfactory framework for the budget process. Significantly, the Law provides that the Minister of Economy and Finance develop implementing regulations, evidence that its architects understood that the Law was to provide general, rather than detailed guidance. The team developed and submitted a draft of proposed regulations which include the elements described above (section 4, "Development and Stabilization of the Budgetary System: Results"). However, to date, regulations have not been adopted. If the draft regulations are adopted substantially as recommended, with the requirements cited above, the legal base of budgeting in Turkmenistan will be more than adequate.

**b) Composition of the Budget (appropriated funds) and the budget document, including key issues of coverage and transparency**

See discussion above (section 4, "Development and Stabilization of the Budgetary System: Results: Increase to approximately 80% the percentage of expenditures included in the National Budget, including all items specified as "off-budget.").

**c) Central budget unit organization, staffing and procedures**

The Budget Department has three divisions, Expenditure, Revenue and Local Government, and in total employs a staff of 10. The Director of the Budget Department reports to a Deputy Minister. The Minister of Economy and Finance is not a member of the Cabinet of Ministers, but reports to a Cabinet member charged with supervision of the Ministry of Economy and Finance. Clearly, the structural position of the Budget Department is weak.

Further, and even more important, the Budget Department functions as a compiler/consolidator, rather than a reviewer/evaluator/adjuster of budget estimates. This latter function is assigned to a set of "sectoral" departments within the Ministry, reporting to various Deputy Ministers. It is generally acknowledged that the analytical capability of the "sectoral" Departments is very weak.

Additionally, the Ministry is not organized along functional lines as its existing 20 departments could be more logically grouped together under the following concepts: Ministry Management, Financial Policy and Financial Management. The staff resources and responsibilities now assigned to the "sectoral" departments should be placed under the leadership of the Budget Director, as is common practice throughout the world. Equally important, the GOT should establish an accounting unit under a controller, thus separating the accounting function from treasury operations, also common practice. This subject of MEF organization is complex and is proving difficult to approach. At this point, suffice it to say that the reform of the budget and the budget process will ultimately require a fundamental realignment of MEF.

With reference to technology, USAID has provided computer resources, including software and training. Currently, the staff of all three divisions of the Budget Department currently has at least minimum access to desktop computers, and is using them with increasing confidence. As indicated above, the Department is interested in further improving its technological base.

The general dearth of performance data in budget documents, and the meager response to the Project's recent request for program commentaries from MEF sectoral staff, suggests serious

deficiencies in required analytical skill. Obviously, the efficacy of a reformed budget and budget process rests upon skilled practitioners, not only in the MEF, but also in every agency. The Budget Director is fully aware of this requirement, and its implications. As a first step to attack the skill deficiency problem, the Project is planning a task-oriented program of formal and on-the-job training to enable the GOT to introduce recommended procedures and techniques in the FY2000 budget cycle, starting in the spring of 1999. However, we must not harbor any illusions that this one-shot consultant-led training program will be sufficient. The skill deficiency problem cannot be satisfactorily addressed within the term of the Budget Reform Project. The institutionalization of results-oriented budgeting will take many years, given strong, persistent leadership by the Budget Director, supported by a staff qualified to teach its values and techniques throughout the GOT. Consequently, the intellectual and programmatic development of the Budget Department deserves, and is receiving the Project's constant attention.

**d) Budget formats and formulation procedures inhibiting analysis and expenditure rationalization**

First, it should be noted that the GOT adopted internationally recognized expenditure and revenue classifications and codes prior to the advent of the Budget Reform Project. Second, for the first time, the FY1998 Budget document included expenditure details of 92 agency budgets. These two steps provide a base for the establishment of "cost center" budgets within agencies. The cost center, associated with performance data, is the fundamental classification concept of results-oriented budgeting and a reformed budget and budget process. Currently, agency budgets are a compilation of numbers identified solely by economic classifications, unaccompanied by commentaries providing evidence of program and performance analysis. Agency officials responsible for budget formulation are not required to provide commentaries justifying their proposals by reference to programmatic and performance information.

A reformed budget and budget process should have the following key characteristics: a) budget planning by the MEF/Central Bank prior to the annual Budget Call; b) agency budget formulation based on cost centers, performance indicators and analytical interpretation; and c) budget implementation based on work plans, allotments and quarterly performance reviews. Examples, models and pilot projects have been prepared and submitted to demonstrate the recommended formats and techniques, and to provide training materials. These include a model Budget Call, featuring a sample multi-year projection, budget improvement pilot projects in the Ministries of Health and Education and the City of Ashgabat, a model capital investment program and budget and an alternative 1999 Budget document format to express the values of comprehensiveness, transparency and analysis.

**e) Budgetary Accounting and Control Capabilities**

The existing state of GOT accounting organization, technology and methodology makes very difficult, if not impossible, to introduce and maintain results-oriented budgeting throughout GOT without significant upgrading of accounting practice. This, in turn, depends on equipping the GOT/MEF with appropriate computer facilities. Given appropriate computer facilities, the GOT can acquire a proven multi-module financial management software package, installed on a turn-key basis.

In late 1997, the GOT accepted the recommendations of a computer feasibility study, but tied implementation to World Bank financing, which has been withheld by the Bank due to charges of corruption in activities unrelated to the computer acquisition. It is unlikely that this impasse will be broken soon enough to provide centralized, country-wide computerized accounting required to support results-oriented budgeting during the term of the Budget Reform Project. Further, the problem facing the GOT is as much institutional as it is technological.

Within this context, what can be done to help establish the foundations of accounting support for results-oriented budgeting? First, address the formidable organizational and procedural problems of accounting reform by conducting a study of institutional requirements to support a computer-based, controller-ship form of accounting which supports results-oriented budgeting. Second, using desk-top computers and available software, conduct pilot accounting and reporting projects in those entities installing results-oriented budgeting in the FY2000 budget cycle.

### **Conclusion**

Budget Reform is a condition precedent to significant, badly needed, enhancements in infrastructure and improvements in service effectiveness and efficiency. One makes no mistake in stating that reform of the budget system is a crucial determinant of Turkmenistan's success in increasing private-sector investment and production. By committing itself to Budget Reform, the GOT (and the citizenry) may expect the following benefits:

Budget reform, featuring 1) comprehensiveness and 2) transparency, is an essential component of overall changes in government policy and procedures that will permit foreign and domestic investors to assess and minimize risk.

Budget reform, featuring a) strong preliminary planning by the MEF/Central Bank, and b) a definitive Budget Call, including a multi-year projection of revenue, expenditure and loan requirements, will permit the GOT to establish sound expenditure ceilings and control the size of possible deficits.

Budget reform, featuring agency budgets justified by analytical documentation, will permit GOT to rationalize its allocations for operations, maintenance and capital investment.

It can be forcefully argued that the implementation of the recommended reforms will significantly help the GOT establish and maintain: 1) firmer control over the allocation of its scarce resources (an extremely important capability because it can lead to lower costs for services delivered more efficiently and effectively), and 2) a stable, predictable financial climate for investors, facilitating Turkmenistan's entry into the world economy.

Additional information entitled, *Toward A Reformed Budget and Budget Process* is included in Appendix IV. Covering seven inter-related dimensions of the budget system, this exhibit was submitted to the Ministry of Economy and Finance. In the interests of a coordinated reform effort, this exhibit has also been referred to representatives of concerned international organizations, including IMF, World Bank, UNDP and TACIS.

## **5. Development and Implementation of a Privatization Plan**

### **Background**

In August 1997 the Privatization Team was assigned to the State Property & Privatization Agency (SPPA) of the Ministry of Economy and Finance (MOEF), which became its official counterpart. A Center for Preparation of Industrial Enterprises for Corporatization and Privatization (Center) was created in January 1998 reporting to the State Agency for Foreign Investments at President of Turkmenistan (SAFI). The team established a working relationship with the Center as well. In September 1998, another Center for Privatization was created under the Ministry of Agriculture and Water Resources (MOAWR) to undertake corporatization of the agro-industrial associations and privatization of agri-businesses. The team also established a working relationship with this Center.

The Government of Turkmenistan (GOT) already had in place a State Privatization Program approved by the Parliament in November 1994 (and supplemented by Presidential Decrees 3090, 3091, 3092 of April 1997, among others). Thereafter, effort was focused towards improving implementation of the existing plan and moving it towards being as consistent as possible with the requirements of the World Trade Organization (WTO). To accomplish this, the Team worked in four main directions: 1) improving the transparency of the process, 2) reviewing legislation and regulations affecting the privatization program and making recommendations for improvements (e.g. use of discounted cash flow valuations and Dutch auctions), 3) evaluating the status of state-owned assets subject to privatization, and 4) promoting the benefits and techniques of privatization and the free market economy at every opportunity through reports, training, meetings, etc.

The team provided on-going technical assistance to the GOT's bodies involved in privatization, its three counterparts, namely the SPPA at MOEF, the Center at SAFI and the Center at MOAWR, in many areas including procedures, regulations, methodologies, valuations, transparency and investment memoranda. A database of transactions was developed to keep track of progress in privatization. To accomplish these tasks the Project undertook the following activities.

### **Legal and Regulatory Acts**

The team reviewed relevant laws, decrees and regulations and commented on the drafts of these (see Appendix VI for a list of decrees and regulations reviewed). Decree 3676 of April 14, 1998, incorporated a number of very significant points on issues proposed by the Project, including authorizing the use of the discounted cash flow (DCF) method of valuation in addition to adjusted book value and the use of the Dutch method of auctions in addition to the English method, providing for leasing, segmentation and liquidation of nonviable SOEs and clarifying the relationship between the SPPA and the Center at SAFI.

Subsequently, in mid 1998 the Project provided comments to the SPPA on regulations relating to auction procedures, tender regulations and DCF valuations. In February 1999 we also commented to the Center at SAFI on its proposed purchase-sale agreement and tender procedures.

The team advised the Center at MOAWR on its Stage-by-Stage Agri-Business Corporatization and Privatization Strategy paper in August 1998, which was subsequently approved by the President.

### **Assessment of 18 Enterprises**

Presidential Decree 3490 dated January 14, 1998, assigned to the Center for Corporatization and Privatization at SAFI 18 objects. Based on prior visits to many of the enterprises, the Project made an assessment of their status and issues affecting their disposition. All but two of those not visited earlier were inspected in January and February 1998.

Ashgabat Glass Plant  
Byusmein Building Materials Plant  
Byusmein Cement Plant  
Tedjen Building Materials Plant  
Mary "Stroidetal" Wood Products Plant  
Tashauz Ferro-Concrete Plant  
Chardjew Ferro-Concrete Plant  
Ashgabat Cotton Plant  
Seidi Cotton Ginning Plant  
Ashgabat Plastic Goods Plant  
Ashgabat Gas Appliances Plant  
Chardjew Meat Processing Plant  
Mary Dairy  
Turkmenbashy Soft Drinks Plant  
Nebitdag Meat Processing Plant  
Nebitdag Dairy  
Kyzylarvat Dairy (unfinished)  
Takhtabazar Meat Processing Plant (unfinished)

### **Valuation of Enterprises**

The team developed a financial valuation model, which was later modified in August 1998. The team valued 14 enterprises using the discounted cash flow method and prepared investment reports on the enterprises listed below. Since October 1998, local team staff have been included as members of "working commissions" of both the SPPA and the Center at SAFI and have been instrumental in training them in use of the DCF method. The duties of the commissions include valuing and preparing SOEs for corporatization and/or privatization.

October – December 1997 by Igor Mandel

Ashgabat Confectionery Plant  
Ashgabat Consumer Goods Plant  
Byuzmein Cement Plant  
Byuzmein Building Materials Plant

December 1997 – May 1998 by Gulnara Durdymamedova

Ashgabat Glass Plant

Ashgabat Plastic Goods Plant  
Ashgabat Gas Appliances Plant  
Mary Maksat-Deri Tannery

August – September 1998 Revalued using revised model  
Ashgabat Glass Plant  
Ashgabat Plastic Goods Plant  
Byuzmein Building Materials Plant

October 1998 – February 1999 by Gulnara Durdymamedova  
Bairamali Sewing Factory (jointly with team from SPPA)  
Nebitdag Meat Processing Plant (jointly with team from CP-SAFI)  
Nebitdag Dairy (jointly with team from CP-SAFI)

October 1998 – February 1999 by Dmitry Trusilov  
Ashgabat Cotton Plant (jointly with team from CP-SAFI)  
Chardjew Ferro-Concrete Plant (jointly with team from CP-SAFI)  
Chardjew Tomato Cannery (jointly with team from SPPA)

The Ashgabat Confectionery Plant valuation was conducted at the specific request of the deputy minister of MOEF as a pilot project to demonstrate the new techniques.

### **Survey of Legal and Business Impediments**

The team made a survey in January-April 1998 of problems encountered by the private sector in conducting business operations in Turkmenistan. Responses to interviews and questionnaires received from 28 companies were tabulated regarding their experience with the State Agency for Foreign Investments (SAFI), State Commodity and Raw Materials Exchange (SCRME), Customs, local authorities (*hakimliks*), banks, licenses/permits and legal system. Many impediments were identified and the conclusion was that the investment/business environment is not favorable.

### **Preparation of Reports**

One of the major reports was a “White Paper” prepared in July 1998, entitled *Privatization Reform in Turkmenistan*. This paper, 45 pages in length, analyzed the status and conduct of privatization, identified problems and obstacles, and made recommendations for improvement. It covered the experiences of five other countries: Mongolia, Kazakhstan, Uzbekistan, Georgia and the Kyrgyz Republic. It also reviewed general concepts of market economics and the benefits of privatization of state-owned assets. The paper was translated and circulated to government officials. A summary was distributed to invitees to the February 1999 Roundtable.

Other reports and papers have included a checklist for attracting foreign investors (October 1997), an outline of what should appear in an investment memorandum (June 1998) and a list of due diligence questions to be used when preparing a prospectus (June 1998). We also prepared a paper on the rationale behind setting a discount rate and the appropriate rate to be used in valuing going concerns in Turkmenistan using the discounted cash flow method (De-

ember 1998). Additionally, a study was made of "success stories" of several small-scale privatizations (May-June 1998).

### **Privatization Roundtable**

In September 1998, one of the deputy chairman of the Government's Cabinet of Ministers (E Gurbanmuradov) suggested that USAID organize a "roundtable" on privatization for policy-making and program management officials. We had wanted to put on such a seminar and decided to use this opportunity to bring to the attention of the highest levels of government the issues involved, to identify the problems and obstacles being encountered, and to attempt to move the process forward more effectively. The Roundtable was scheduled to take place the third week of November, but we were unable to obtain approval of the proposed arrangements. After considerable effort we succeeded and the Roundtable was rescheduled to February 5-6, 1999, with a follow-on session February 13. The official sponsors were the Ministry of Economy and Finance and USAID, the latter of which made all the preparations and defrayed the expenses, while the former provided interface to the Government.

As part of our preparation for the roundtable, we conducted a needs assessment by visiting about a dozen potential invitees, ranging from ministers to agricultural association heads and cabinet staff members.

The Roundtable was to consist of two sessions: the first for second level officials (deputy ministers, association heads, program managers, etc) and prominent private sector representatives, and the second for first level officials (cabinet deputy chairman and ministers). Of the 39 invitees, 28 registered. Most of the agricultural related people were involved in activities ordered by the President and did not attend. The keynote speaker, the Minister of Economy and Finance, also was diverted by presidential business at the last minute. Unfortunately, the Government called off the second session the evening before and to date has not rescheduled it. Consequently, no actions have been taken as of now, although, apparently, the Roundtable has prompted considerable discussion at the highest levels of government.

Opening remarks were made by the US Ambassador. The program was moderated by a Russian speaking USAID consultant. It consisted of presentations by the three local privatization program managers, and other presentations by USAID sponsored speakers on the problems and obstacles in Turkmenistan's privatization program, the privatization experiences of three other countries (Macedonia, Kazakhstan and Russia), privatization of the agro-industrial complex and securities markets in transition economies. It concluded with a discussion which proposed recommended changes in Turkmenistan's procedures and approaches to privatization. A four-page paper summarizing the conclusions and recommendations was circulated to the 10 cabinet members invited to the later aborted second session.

### Computerization of Select SPPA Activities

USAID funded a project to computerize various activities at SPPA during August-October 1998, which was supervised by the Project. A local contractor was hired to install a documents registry and search query information system, a database of privatization objects and a registry of shares in corporatized enterprises. In addition, a system was installed permitting communication by modem of SPPA headquarters with each of its five branches in the *velayats*, as well as access to an Internet service provider for electronic mail and Internet. The agency is making very good use of these facilities.

### Databases of Privatization Activity and Enterprise Profiles

The team designed a database which tracks privatization activity by method of sale, by type of object, by number of objects and by sales price. It has three components reflecting the three bodies responsible for privatization activities. Presented below is a summary table of the status of the Turkmenistan privatization program from inception in 1994 through the end of February 1999, the closing date of the task order. Since June 1998 we have reported in every Monthly Report on the transactions that occurred in that month.

It should be noted that the sales prices reported do not necessarily represent cash collected, since many of the larger sized objects are sold on terms of up to five years. We have translated the local currency, the manat, to the US dollar at the official rate of exchange in force at the time of the sales transaction. There is a large spread between the official and street rates, so the dollar figures are overstated in real terms.

Program to-date

	Number of privatized objects by method					Sales Price	
	Auction	Tender	Direct Sale	MEBO	Total	Manat Million	USD Thousand
<b>TOTAL</b>	<b>471</b>	<b>0</b>	<b>7</b>	<b>1484</b>	<b>1.962</b>	<b>57820.8</b>	<b>24.336</b>
<b>Consumer Services</b>	<b>75</b>	<b>0</b>	<b>0</b>	<b>1.189</b>	<b>1.264</b>	<b>496.6</b>	<b>4.204</b>
<b>Trade and Catering</b>	<b>329</b>	<b>0</b>	<b>0</b>	<b>293</b>	<b>622</b>	<b>4382.1</b>	<b>7.694</b>
Industry (total)	18	0	7	2	27	52,093.0	12.260
a) agricultural processing	3	0	2	1	6	3,329.1	502
b) building materials	0	0	1	0	1	1,022.0	253
c) consumer electronics	6	0	0	1	7	1,320.3	333
d) textiles	9	0	4	0	13	46,421.6	11.172
<b>Unfinished Construction</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>719.3</b>	<b>146</b>
<b>Motor Vehicles</b>	<b>48</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>48</b>	<b>129.8</b>	<b>33</b>

Data includes majority privately owned enterprises

The team also maintains a database of industrial enterprises and unfinished construction objects, which contains such information as a brief description, summary data, valuation data, etc. At present it consists of 148 industrial enterprises and 54 unfinished construction objects for a total of 202 separate entities.

## **Coordination with Other International Organizations**

The team maintains contact with several other international organizations that have a presence in Ashgabat, including the International Monetary Fund (IMF), European Union's Technical Assistance to the Commonwealth of Independent States (EU/TACIS), European Bank for Reconstruction and Development (EBRD), World Bank (IBRD), Central Asian-American Enterprise Fund (CAAEF), International Executive Service Corps (IESC) and United Nations (UN).

## **Assistance to Visitors and Visiting Missions**

In addition to meeting with visitors from organizations and companies who want to be briefed on local conditions, the Project provided briefs and assistance to various missions during their visits to Turkmenistan, including the following:

World Bank: I Goldberg, I Artemiev  
September 1997, February 1998, July 1998

USAID: C G Twyman, August 1998 (one week), Privatization Strategy Study  
(Made appointments, accompanied to meetings, etc.)

USAID/BAH: W Valletta, I E Ford, S Dobrilovic, October-November 1998 (one month);  
Land Privatization Study at request of Turkmen Government  
(Researched legal and regulatory base, sent documents in advance for review, provided interpreters, etc.)

USAID: R S Singletary, R Gurley, C G Twyman, January-February 1999 (two weeks); Capital Markets Investigation at request of Turkmen Government  
(Researched legal and regulatory base, sent documents in advance for review, provided interpreters, etc.)

In addition, the Project assisted as requested periodic visits by USAID personnel from the Central Asian Republics (CAR) office in Almaty, Kazakhstan and from headquarters in Washington DC. We attend the monthly meeting held by the USAID regional representative in Turkmenistan for USAID contractors and grantees. We maintain liaison with these other projects as appropriate.

The team attended the Private Sector Development Trade Fair held October 9-10, 1998 in Ashgabat, at which we assisted in the US Embassy sponsored booth and were available to talk to visiting businessmen.

## **Training**

The team has organized or sponsored a number of formal training activities, seven of which are summarized below. Informal training takes place on a daily basis as we interact with our counterparts and others in the Government and business community. We provide a role model for dedication to the work ethic and achieving results, taking responsibility and showing ini-

tiative, besides constantly explaining the concepts and benefits of a free market and the tools for operating in it. A list of the privatization training activities is detailed in Appendix VI.

### **Lessons Learned**

The team learned many things about trying to advance the cause of privatization in Turkmenistan. Turkmenistan carries over many features from the former Soviet political and communist economic systems, under which it was in effect a colony for 67 years or nearly three generations. Before that it was a virtual vassal state for 37 years ruled by the Czars of imperial Russia. It still has an authoritarian political and security structure, though with the trappings of democratic features, and a predominantly state-oriented economy. (Only 22% of GDP originates from the private sector.) All major decisions flow from the head of state, who considers himself the father of the country knowing what is best for his people. He really is propagating a cult of personality. Dissent is not tolerated. Citizens are not even free to travel abroad without government permission. Police (uniformed and not) are a very visible and intrusive presence.

The country has purposely adopted a path of neutrality, officially recognized by the United Nations, and independent development. It is very proud of constructing a unique "Turkmen model" for pursuing its own course, taking advantage of progressive international experience when appropriate, and building on its own material, social and cultural heritage and the unique religious and moral situation in Turkmenistan. The government position is that since independence in 1991 when the Soviet unified economy disintegrated, significant political and economic reforms have been carried out, creating the conditions for political and social stability, preventing a precipitous decline in industrial and agricultural production, and laying the groundwork for a market economy. In fact, they are determined not to repeat the mistakes of other countries in transition, which means progressing at a snail's pace, if at all. These policies have placed Turkmenistan at the bottom of all the other CIS countries by the various statistical yardsticks used by the EBRD to measure progress on reform.

Their bywords of reform are to build on a centralized base in the creation of market structures, and to maintain the leading role of state property, while creating a mixed economy. One can also say that order and stability are of paramount importance when the impact of any reform is considered. They are fearful of any social unrest which might upset the power structure. The uneven wealth created by market economies is a threat to order and stability. The interests of the state come first and state planning is better than unruly and uncontrolled market forces. The various government bodies (ministries and associations) that run state-owned enterprises are loath to give up their power and perquisites. The interests arrayed against reform and privatization are formidable. Since privatization has not been carried out quickly and decisively, they have been able to marshal all their forces in opposition.

Still living in a command society, it also is true that the Turkmen are afraid to take initiative, to show responsibility, to make mistakes. They are a passive people. Only the boss speaks at meetings. Decision-making is painfully slow. These are not the personal qualities required for private sector development, which demands not only intelligence and a desire to accumulate wealth, but also a certain aggressiveness, risk taking and swift reaction to market signals.

The Turkmen do not react quickly to foreign advice or assistance. They object to pushy and impatient know-it-all advisors. They take their time getting to know you and weighing all the consequences of any proposal. Only after a long time spent gaining their confidence, of study and consultation among themselves, do they respond.

Until such time as the top hierarchy decides reform is in its best interest and in the people's, or they are forced by circumstances beyond their control to accept reforms imposed by international donor and aid organizations as conditions for assistance, there is little likelihood that significant progress will be made.

Only with the requisite political support will privatization become a viable instrument of policy. At present the responsibilities for privatization are dispersed among several deputy chairmen of the cabinet and ministers and divided among three implementing bodies. There is a great deal of jealousy among the various staff of the three organizations. Material progress is unlikely until a single body is empowered to undertake privatization.

In the course of its work the Project has identified a number of problems and obstacles which impede privatization. For details refer to the appendix.

#### **Recommendations/Future Work**

The team is adequately staffed given the present circumstances. With the current level of resources the Project can respond acceptably to requests for assistance from the counterparts and initiate actions as appropriate.

Should activity in the areas of agri-business privatization and/or transport privatization and/or securities markets development and/or housing privatization or any other take off, then it would be necessary to add a third local professional to the present staff of two.

Meanwhile, the Project should consider incremental approaches to privatization, for example on solutions to the detailed problems identified in the appendix, since no major breakthroughs are anticipated. In addition, it should introduce the idea to ministerial personnel that the proper function of the state be more directed at regulatory aspects than macro-economic planning and management of business activities.

Since progress is so very glacial and expectations of accelerating that are low, it is recommended that the Project as presently constituted be maintained in place during the life of the add-on contract.

#### **D. Summary**

As noted above, WTO accession presents peculiar problems for Turkmenistan. Over the months, the Project has developed various approaches to these barriers so that the WTO initiative might be presented in a more favorable light. Here is how the Project has responded to each of these three problems

- WTO is a comprehensive reform package in a country that is, generously put, incremental - the job of the Project here is to seek reform agendas that parallel and complement WTO

in breadth and to support them to the extent our resources and mission permit. The most obvious example here is the Civil Code initiative of Summer, 1998. This work not only builds credibility with the host Government but has enabled the Project to show how key trade and investment themes and WTO accession are a logical extension of the Civil Code reform.

- WTO offers no immediate relief to economic hardship and hence no immediate pay back to political elites for reform efforts - the job here is to locate economic growth themes sounded by the Government and to show how expanded international trade can support them. One obvious example is with respect to the presidential trade liberalization initiative discussed *supra*. This initiative has mixed implications for reform but the Project has worked hard to emphasize the positive aspects of lessening Government regulation with the successes mentioned.
- WTO is a highly sophisticated reform package even the bare essentials no which no single Government body can grasp without a commitment to do so - the job for the Project here is to build bridges across the trade and investment divide within the Turkmen Government mentioned above. Again, the presidential initiative on trade liberalization provides a good example. The Working Group assembled was comprised mainly of members who report to the investment specialist in the Cabinet of Ministers. However, the Project used its advice to extend its influence to the Customs Committee, a group in the Government reporting to the trade specialist in the Cabinet of Ministers. The result is an opportunity to build cohesive policy themes and thereby establish some consistency in Government policy.

The above examples of Project innovation are on the "tactical" level; lessons learned tend to be in the "strategic" category. Ideally, a project would work the way this Project has in the other three countries of Central Asia. That is to say, to varying degrees in each of these countries, the Project worked to a specific well-defined objectives - private sector development and WTO accession - containing many sophisticated and important components. As should be apparent, this model has not applied, and is unlikely ever to apply, in Turkmenistan. But the alternative need not be - and has not been - "seat of the pants" flying. Rather, it consists in constantly gaining a feel for that which is realizable and expanding the audience in the Government to gain influence.

Since the summer of 1998, the Project in Turkmenistan has done this. But this is only half the job. The other half is to thematically weave the successes together to both relate a better, more coherent story to the Turkmen government on why WTO accession is important for Turkmenistan here and now. The Project now has the requisite on ground experience effecting reform to do this (the Project did not have this vital experience one year ago). From the general story, however, the Project must work with USAID to the concrete. This means working with USAID to establish a WTO accession plan, the most important ingredients of which are realistic benchmarks of progress to trade and investment reform. It is not only imperative that these be monitored on a quarterly basis but that the Turkmen Government and the Medjlis see the Project and USAID as partners with them. USAID and the Project need to articulate the benchmarks together, in each other's presence before the Government, to underline specificity and seriousness of purpose. As illustrated by the Project's accomplish-

ments to date, flexibility and persistence are key to assisting Turkmenistan in their next stage of development.

## Appendix I

### Key Dates in the Kyrgyz Republic's Accession Process

*February 13, 1996:* the Kyrgyz Republic submitted its letter of intent to the WTO officially expressing its interest in joining as a full member.

*April 16, 1996:* the Kyrgyz Republic received observer status and a Working Party was formed to examine its accession to the WTO.

*January to July 1996:* the Memorandum on Foreign Trade Regime, the principal background document, was prepared.

*July 24, 1996:* the Memorandum, in English, was forwarded to the WTO Secretariat.

*August 23, 1996:* the Memorandum was circulated to all WTO member countries.

*October 10 1996 and February 6, 1997:* replies to questions regarding the Memorandum raised by the United States, the European Union, Japan and Switzerland were prepared and forwarded to the WTO for circulation to member countries.

*March 10-11, 1997:* the first Working Party meeting was held in Geneva with the main purpose of examining the Memorandum.

*April-June 1997:* the initial offers on goods and services were prepared and forwarded to the WTO; replies to additional questions raised by the United States and the European Union were prepared and forwarded to the WTO for membership circulation.

*July 18, 1997:* the second Working Party meeting was held in Geneva to examine the responses to the questions raised at the first Working Party meeting.

*July 1997:* first round of bilateral negotiations was held in Geneva.

*August- October 1997:* replies to additional questions raised by the United States were prepared and forwarded to the WTO for membership circulation; revised offer on goods and services was prepared and submitted.

*October 1997:* second round of bilateral negotiations was held in Geneva.

*November 1997:* revised offer on goods and services was prepared and submitted.

*December 1997:* third round of bilateral negotiations was held in Geneva.

*February 1998:* fourth round of bilateral negotiations was held in Geneva.

*February 3, 1998:* the protocol on the conclusion of bilateral negotiations on goods and services was signed between the Kyrgyz Republic and the Czech Republic; the protocol on the conclusion of bilateral negotiations on goods and services was signed between the Kyrgyz Republic and the Slovak Republic.

*February 5, 1998:* the third Working Party meeting was held to review the Draft Report on the Accession of the Kyrgyz Republic to the WTO, the principal working document for the multilateral negotiations.

*February 27, 1998:* responses to the European Union's concerns raised by the Kyrgyz Republic draft law on antidumping were submitted to the WTO.

*March 2, 1998:* the protocol on the conclusion of bilateral negotiations on goods was signed between the Kyrgyz Republic and Switzerland.

*March 10, 1998:* comments to the elements of the Draft Report on the Accession of the Kyrgyz Republic were submitted to the WTO.

*March 16, 1998:* responses to questions by Japan on the accession of the Kyrgyz Republic were submitted to the WTO.

*March 25, 1998:* replies to questions raised by the United States at the third Working Party meeting were submitted to the WTO.

*April 1, 1998:* the Kyrgyz Republic comments to questions from Australia to elements of the Draft Report of March were submitted to the WTO.

*April 3, 1998:* the protocol on the conclusion of bilateral negotiations on goods and services was signed between the Kyrgyz Republic and Japan; the protocol on the conclusion of bilateral negotiations on goods and services was signed between the Kyrgyz Republic and Cuba.

*April 10, 1998:* comments of the Kyrgyz Republic to the Draft Report of March 5, 1998 were filed with the WTO Secretariat.

*April 16, 1998:* consolidated replies to the questions raised at the third Working Party meeting were submitted to the WTO.

*April 24, 1998:* an informal Working Party meeting was held in Geneva to refine the language of the Draft Report and to resolve outstanding issues related to the Report.

*April 24, 1998:* the protocol on the conclusion of bilateral negotiations on goods and services was signed between the Kyrgyz Republic and Mexico; the protocol on the conclusion of bilateral negotiations on goods and services was signed between the Kyrgyz Republic and Australia.

*April 25, 1998:* additional comments to the Draft Report on Accession of the Kyrgyz Republic to the WTO were submitted to the WTO.

*April 27, 1998:* the protocol on the conclusion of bilateral negotiations on services was signed between the Kyrgyz Republic and Switzerland.

*May 4, 1998:* the protocol on the conclusion of bilateral negotiations on services was signed between the Kyrgyz Republic and Turkey.

*May 6, 1998:* the fourth Working Party meeting was held in Geneva.

*May 7, 1998:* the protocol on the conclusion of bilateral negotiations on goods and services was signed between the Kyrgyz Republic and the United States.

*May 14, 1998:* comments of the Kyrgyz Republic regarding the Draft Report of the Working Party on Accession of the Kyrgyz Republic of March 30th were submitted to the WTO.

*May 15, 1998:* comments on the Draft Report as requested by the WTO on May 14<sup>th</sup> were submitted to the WTO.

*May 20, 1998:* outstanding comments of the Kyrgyz Republic on the Draft Report of the Working Party on the Accession of the Kyrgyz Republic were submitted to the WTO.

*June 5, 1998:* an informal Working Party meeting was held in Geneva to refine the language of the Draft Report and to resolve outstanding issues related to the Report.

*June 13, 1998:* the Kyrgyz Republic's responses and comments to the issues raised by the WTO Secretariat to the Draft Report on Accession of the Kyrgyz Republic to the WTO were prepared and forwarded to the WTO Secretariat.

*June 18, 1998:* tables describing support measures in agriculture of the Kyrgyz Republic for the 1997 calendar year were prepared and forwarded to the WTO Secretariat.

*June 19, 1998:* the Kyrgyz Republic's comments to revisions and proposals to the Draft Report on the Accession of the Kyrgyz Republic of May 28 suggested by the European Commission were prepared and forwarded to the WTO Secretariat.

*June 23, 1998:* an informal Working Party meeting was held in Geneva to finalize the text of the Report and was followed by the fifth Working Party meeting which was held for the purpose of adopting the Kyrgyz Republic's Schedule of Concessions and Commitments on Goods and Schedule of Commitments on Services; the schedules were adopted *ad referendum*.

*June 25, 1998:* reply to the United States comments on the Draft Report on the Accession of the Kyrgyz Republic to the WTO was submitted to the WTO.

*June 29, 1998:* comments to the Draft Report subsequent to the meeting of June 23 were submitted to the WTO; an updated schedule of domestic support of agriculture (94-96) was submitted to the WTO.

*July 17, 1998:* the sixth, and final, Working Party meeting was held with the purpose of adopting the Report of the Working Party on the Accession of the KR. The Report and the Protocol of Accession were adopted *ad referendum*.

*September 25, 1998:* the Working Party posed additional requests for modification of the Report that were incorporated into the Report by way of a Corrigendum.

*October 14, 1998:* the WTO General Council adopted the Working Party Report and the Protocol on Accession of the Kyrgyz Republic and, by reference, the associated WTO bilateral and multilateral agreements. The Protocol was signed on the same day.

*November 5, 1998:* the Kyrgyz Republic Legislative Assembly ratified the Protocol on Accession to the WTO.

*November 6, 1998:* the Kyrgyz Republic chamber of Peoples' Representatives ratified the Protocol on Accession to the WTO.

*November 17, 1998:* the Protocol on Accession to the WTO was signed by the President of the Kyrgyz Republic.

*November 20, 1998:* the Kyrgyz Republic Protocol on Accession to the WTO was deposited with the WTO Secretariat in Geneva.

*December 20, 1998:* WTO membership became effective thirty days after the deposit of the Protocol on Accession with the Secretariat, consequently, on this date the Kyrgyz Republic became the 133<sup>rd</sup> member of the WTO.

## Appendix II

### Proposed Amendments to the Intellectual Property Regime in Uzbekistan

#### LAW ON COMMERCIAL (TRADE) SECRETS

##### **Article 1. Definitions Used In This Law**

The following definitions shall apply to this law and other relevant laws, including the *Law on Unfair Competition*.

**Commercial (Trade) Secrets:** information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**Improper:** Unethical and/or illegal acts such as theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means.

**Misappropriation:** Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret; or at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

- A) derived from or through a person who had utilized improper means to acquire it;
- B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or,
- C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

**Person:** a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

**Article 2 Application and Scope of this Law**

This law shall extend to legal and natural persons, governmental bodies and local authorities of the Republic of Uzbekistan, and foreign legal persons, and shall be used in all legal and business relations.

**Article 3 Trade Secret Legislation**

The legislation on trade secrets shall be based on the Constitution of the Republic of Uzbekistan and shall encompass the provisions of the Civil Code of the Republic of Uzbekistan, this Law, and other normative acts of the Republic of Uzbekistan that are published pursuant to the aforementioned.

**Article 4 Acts Constituting Unauthorized Disclosure of Commercial Secrets**

1. The following acts shall constitute unauthorized disclosing of commercial information and shall be prohibited:
  - a. Misappropriation or acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means.
  - b. Disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret.
  - c. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was derived from or through a person who had utilized improper means to acquire it; acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.
  - d. Secret or confidential information derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.
  - e. Breach of contract, breach of confidence and inducement to breach; and the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

**Article 5 Civil Liability for Unauthorized Disclosure of Protected Commercial Secrets**

1. Legal entities and individual businessmen and their employees as well as the state bodies and bodies of local self governance and their employees shall be held liable pursuant to the relevant legislative acts of the Republic of Uzbekistan for actions that limit free competition as a result of the unauthorized disclosure of protected commercial secrets.

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2. In the event of violation of this Law, individuals, legal entities, state bodies and bodies of local self government shall be obligated to:

- 1) compensate to those harmed for losses (damages) resulted from unauthorized disclosure of a protected commercial secret;
- 2) pursuant to injunctions of the authorized body, terminate violations related to unauthorized disclosure of a protected commercial secret, sever or change agreements (coordinated actions) destined to limit or eradicate free competition or undertake any other actions as ordered by the authorized body.

**Article 6 Authorities of the Authorized Body to Eradicate Unauthorized disclosure of a protected commercial secret**

The Government of the Republic of Uzbekistan shall empower an authorized body to enforce the state policy to facilitate and develop competition as well as prevent, limit and enjoin unauthorized disclosure of a protected commercial secret.

The Authorized body shall have the right to:

- 1) issue injunctions on unauthorized disclosure of a protected commercial secret and elimination of its consequences that are mandatory for subjects of market relations;
- 2) request and obtain information, including written and oral explanations from legal entities and natural persons as well as from the state bodies and bodies of local self governance, their employees, that is necessary to review instances of unauthorized disclosure of a protected commercial secret;
- 3) pursuant to the statutory procedure, review cases of unauthorized disclosure of a protected commercial secret and adopt decisions to impose administrative penalties, to grant injunctions obligating the guilty to terminate their infringing actions that limit or eradicate free competition;
- 4) grant injunctions mandatory for the state bodies and bodies of local self governance requiring them to nullify or amend their normative acts that illegitimately limit or eliminate free competition;
- 5) file cases with Court to remedy unauthorized disclosure of a protected commercial secret and eradicate its consequences, to seize profits resulted from unauthorized disclosure of a protected commercial secret in favor of the state budget as well as to recover losses inflicted upon legal entities or individual businessmen and consumers due to unauthorized disclosure of a protected commercial secret;
- 6) send materials to the law enforcement agencies requesting to begin criminal proceedings on facts of unauthorized disclosure of a protected commercial secret;
- 7) enforce other powers vested thereto by the Legislation of the Republic of Uzbekistan.

**Article 7      Seizure of Illicitly Received Profits and Compensation for Losses Resulted from Unauthorized Disclosure of a Protected Commercial Secret**

Losses inflicted upon a legal entity or an individual businessman as well as consumers as a result of unauthorized disclosure of a protected commercial secret shall be subject to compensation as ordered by Court.

As ordered by Court, a fine shall be imposed for actions limiting or eliminating free competition in the amount of losses inflicted upon a legal entity or an individual businessman as well as consumers.

The courts shall have the discretion of awarding compensatory as well as punitive damages if a showing of malicious intent to harm the legitimate owner of such commercial secret by the unauthorized purveyors of the commercial secret.

**Article 8      Procedure to Contest Decisions, Injunctions and Resolutions Adopted by the Authorized Body**

Legal entities and individual businessmen, the state bodies and bodies of local government as well as interested parties shall have the right to contest in court to invalidate in full or in part decisions, injunctions and resolutions adopted by the authorized body on imposition of administrative penalties.

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## **LAW ON COMPETITION AND UNFAIR COMPETITION LAW**

### **Law on Competition**

The following articles should be amended and/or deleted from the current *Law on Competition*:

#### **Article 2, Paragraph 2 (Coverage of the Law)**

✓ **Delete:**

~~"This law does not cover the relations, regulated by norms of enforcement with regard to inventions, industrial designs, trade marks, selection achievements and copyrights except cases, when deliberate use of the rights results in restriction of competition."~~

#### **Article 3, Paragraph 6 (The Basic Concepts)**

✓ **Delete:**

~~"Unfair competition means actions by business entities directed at taking advantages in entrepreneurial activity contradicting to the existing legislation and normal business practices that exclude competition between them and give an opportunity to business entities engaged in such activity to influence general conditions of goods circulation on the relevant market for goods."~~

#### **Article 3, Paragraph 13 (The Basic Concepts)**

✓ **Delete:**

~~"Incorrect comparison means a comparison or statement, discrediting an individual competitor or the competitors as a whole, and also manufactured and/or sold goods against those of other business capacities"~~

#### **Article 8, All Paragraphs (Acts Constituting Unfair Competition)**

✓ **Delete:**

~~"Unfair competition, including the following, is not allowed:~~

~~"Distribution of the false, inexact or deformed items of information, capable to cause the losses to other business entity or to bring damage to its business reputation;~~

~~"Sales of goods with illegal use of results of intellectual activity or items equal to it of an individualism of another legal entity, individualism of production, execution of services;~~

~~"Misinformation of the consumers, on the subject of the method and place of manufacturing, consumer properties and quality of the goods;~~

~~"Reception, use or disclosure of the technological, industrial or trade information, including trade secrets, without the consent of the owner;~~

~~"Prevention of the access to the market of goods and services to a new business entity."~~

### **Law on Unfair Competition**

The following new Law on Unfair Competition is recommended:

This Law determines unfair competition actions and lays down a mechanism to prevent and eradicate unfair competition and its consequences as well as liability for such actions.

#### **Article 1. Unfair Competition Legislation**

1. The Legislation on unfair competition is based on the Constitution of the Republic of Uzbekistan and consists of this Law, the Civil Code of the Republic of Uzbekistan and other normative acts of the Republic of Uzbekistan, enacted in compliance herewith.

1. If international treaties ratified by the Republic of Uzbekistan set forth rules other than those envisaged in the Legislation on unfair competition, then the rules of international treaties shall supersede.

#### **Article 2. Application Scope of this Law**

This Law shall extend to natural persons and legal entities, state bodies and bodies of local self governance of the Republic of Uzbekistan as well as foreign legal entities, whose actions limit or enjoin free competition in the commodity markets of the Republic of Uzbekistan.

#### **Article 3. Basic Notions**

The following notions are used in this Law:

**like goods, works, services (hereinafter: like goods)**—a group of goods, which are substitutable because of their functional purposes (application/use), quality, and technical properties;

**discredit** - a willful action meant to distrust, undermine, or diminish the goodwill of a competitor, its goods, works, and services;

**(market) competitor** - a subject of market relations whose actions targeted to change the scale of its operations decreases or increases the market share of another subject of market relations;

**unfair competition** - any action (dormancy) of a legal entity and/or an individual businessman or its employees as well as state bodies and bodies of local self governance that is designed to gain unreasonable competitive advantages in business by way of limiting or enjoining competition;

**similar goods** - one and the same type of goods, works, and services produced by different subjects of market relations;

**subjects of market relations** - a natural person or a legal entity engaging in entrepreneurial activities and participating in commerce;

**authorized body** - a body nominated by the Government of the Republic of Uzbekistan to pursue the state policy to assist and develop competition and to prevent, limit, and eradicate unfair competition.

#### **Article 4. Limitations and Eradication of Competition**

1. Unfair competition shall be prohibited herein.

1. Any actions to limit or eradicate competition by way of infringing the rights of other businessmen in free competition as well as infringing the right and legal interests of consumers shall not be allowed.

2. This Law and other legislative acts of the Republic of Uzbekistan shall provide for liability of those engaged in actions limiting or eradicating free competition.

#### **Article 5. Unfair Competition**

The following actions shall be deemed to be unfair competition:

1) illegal use of a trade name, trademark, service mark, and/or any other trade designation of a businessman that confuses or may confuse consumers as to the producer or the distributor of goods in question (works, services);

2) imitation of a competitor by way of direct reproduction of the externals of its goods, its trade name, its marking of goods, its trademark, and any other trade designation, as well as its advertisement materials, its trade packaging, shape, and other externals of its goods that confuse or may confuse consumers as to their producer or distributor of goods in question (works, services);

3) distribution of false information and statements with respect to a competitor's goods (works, services), including their place of origin, producer, and distributor, as well as their quality, utilitarian properties, purposes, method, and place of production of such goods (works, services) and other false information discrediting such goods (works, services), the good name and goodwill of the competitor;

4) imposition of additional terms of purchase, which are irrelevant to the subject of an acquisition agreement, on consumers by a distributor who does not have competitors;

5) dissemination of advertisement and other information containing spurious comparison with the goods (works, services) or operations of another businessman;

- 6) conclusion and execution of any agreements between competitors on prices, market shares, elimination of other businessmen and on any other terms targeted to enjoin or significantly limit competition;
- 7) horizontal merging of subjects of market relations resulting in significant limitation or elimination of competition;
- 8) appropriation, use, and disclosure of scientific and technical, production and other information constituting a trade secret or a confidential work product without the consent of its owner;
- 9) other actions that limit or eradicate competition, acquisition and/or provision of unreasonable competitive advantages.

#### **Article 6. Acts of State Bodies Meant To Enjoin or Significantly Limit Competition**

The state bodies and bodies of local self governance shall be prohibited from adopting normative legal and other acts and/or committing actions aimed to create favorable or discriminative conditions for operations of certain subjects of market relations or their groups, to limit or eradicate competition, and to infringe the rights and interests of consumers, unless otherwise is provided by legislative acts.

#### **Article 7. Liability for Unfair Competition**

1. Legal entities and individual businessmen and their employees as well as the state bodies and bodies of local self governance and their employees shall be held liable pursuant to the relevant legislative acts of the Republic of Uzbekistan for actions (dormancy) limiting free competition.
2. In the event of violation of this Law, subjects of market relations, the state bodies and bodies of local-self governance, and their employees shall be obligated to:
  - 1) compensate for losses (damages) resulted from unfair competition;
  - 2) pursuant to injunctions of the authorized body, terminate violations related to unfair competition, sever or change agreements (coordinated actions) destined to limit or eradicate free competition, or undertake any other actions as ordered by the authorized body.

#### **Article 8. Authorities of the Authorized Body To Eradicate Unfair Competition**

The Government of the Republic of Uzbekistan shall empower an authorized body to enforce the state policy to facilitate and develop competition as well as prevent, limit, and enjoin unfair competition.

The Authorized body shall have the right to:

- 1) issue injunctions on unfair competition and elimination of its consequences that are mandatory for subjects of market relations;

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- 2) request and obtain information—including written and oral explanations from legal entities and natural persons, the state bodies and bodies of local self governance, and their respective employees—that is necessary to review instances of unfair competition;
- 3) pursuant to the statutory procedure, review cases of unfair competition and adopt decisions to impose administrative penalties, and to grant injunctions obligating the guilty to terminate their infringing actions that limit or eradicate free competition;
- 4) grant injunctions mandatory for the state bodies and bodies of local self governance requiring them to nullify or amend their normative acts that illegitimately limit or eliminate free competition;
- 5) file cases with Court to remedy unfair competition and eradicate its consequences, to seize profits resulted from unfair competition in favor of the state budget, and to recover losses inflicted upon legal entities or individual businessmen and consumers due to unfair competition;
- 6) send materials to the law enforcement agencies requesting to begin criminal proceedings on facts of unfair competition;
- 7) enforce other powers vested thereto by the Legislation of the Republic of Uzbekistan.

**Article 9. Seizure of Illicitly Received Profits and Compensation for Losses Resulted from Unfair Competition**

Losses inflicted upon a legal entity, an individual businessman, or consumers as a result of unfair competition shall be subject to compensation as ordered by Court.

As ordered by Court, a fine shall be imposed for actions limiting or eliminating free competition in the amount of losses inflicted upon a legal entity, an individual businessman, or consumers.

**Article 10. Procedure To Contest Decisions, Injunctions, and Resolutions Adopted by the Authorized Body**

Legal entities, individual businessmen, the state bodies and bodies of local self governance, and other interested parties shall have the right to contest in court to invalidate in full or in part decisions, injunctions, and resolutions adopted by the authorized body on imposition of administrative penalties.

## **ADVERTISING LAW**

### **Article 6**

The law on advertising needs to be dynamic and not constraining. It is both burdensome and unfair to dictate to a privately owned enterprise and/or media outlet (newspaper, radio, billboard, television, internet) which language it should use in its advertisements absent a compelling interest by the state for such a regulation.

A business that wishes to reach the Uzbek consumer will ensure that its advertising message will get through in which language is most useful. Moreover, the law, as written, puts a burden on media as well as the creative artist who is author of such work.

Thus, as a general rule, the law should allow advertisements in any language appearing in or broadcasting on any privately owned media, *providing that if a warning notice is required within the advertisement, such warning must be in Russian and Uzbek.*

If there is a concern about the use of the Uzbek language in advertising as a national cultural policy, an alternative is to *require all state-owned media* to utilize the Uzbek language in their advertising, but not privately owned media.

### **Article 7**

Subliminal or hidden advertising is not only improper but goes against the principle of fairness and openness. It should be a criminal offense as well as an administrative offense, and thus the law should provide for separate criminal sanctions as well as substantial administrative penalties that will deter and/or discourage potential advertisers from even contemplating such an anti-consumer act such as subliminal or hidden advertising.

### **Article 8**

This article on "General Requirements" needs to be substantially modified.

#### **Article 8: Paragraph 2, Point 1**

Under this heading, the law would prohibit the advertising of any and all products currently banned in Uzbekistan. This law clearly is open to abuse and political manipulation and corruption. The consumer has the right to be informed about any product that does not cause injury to general public health and safety.

Such a ban on information regarding such a product should only be applicable if the product is illegal due to public health and safety concerns only (e.g., guns, narcotics, and things of those categories). In other words, unless a banned product poses a threat to public health and safety, there should not be a ban on the advertisement of such a product.

Point 1 should be modified to incorporate the concerns listed above.

#### **Article 8 Paragraph 2, Point 7**

This clause will discourage the broadcast and telecast of important news by imposing an unreasonable constraint on the privately owned and operated electronic media. If there is a concern about the coverage of state officials in the media, an alternative (albeit not one that is advocated by this expert) is to *require all 100% state-owned radio and television* which broadcast or telecast live governmental meetings, sessions, speeches, etc. to do so without a commercial break.

**Article 8 Paragraph 2, Point 9**

There is no legal definition of what constitutes pornography. In most countries, pornography is legal, as opposed to obscenity which is illegal. An example of permitted pornography would be a motion picture consisting of sexual intercourse between consenting adults (over the age of 18), while obscenity would be a motion picture consisting of sexual intercourse between a minor (under the age of 18 or appearing to be under the age of 18) and adults (over the age of 18).

Before such a clause is included in the law, there should be a precise legal definition. If such a clause is still desired prior to the drafting of a precise legal definition that would not be discriminatory to those with other beliefs, then the clause should reflect a banning of advertisements which utilize sexual intercourse behavior of minors with or without accompanying adults.

**Article 8 Paragraph 2, Point 10**

The existing wording of this clause should be totally repealed for it is redundant to existing laws on copyright. Moreover, the principle of enforcement against such infringements is primarily the responsibility of the copyright holder and the infringer.

What should be replaced is a provision that says that the advertising media containing the infringing advertisement is liable for infringement together with the advertiser which produced and/or commissioned such an advertisement.

**Article 12 Paragraph 1**

This paragraph is lacking in two respects: 1) it does not provide for "social advertising" (public service announcements/PSAs) by non-profit organizations, but refers only to "information published by state bodies" and 2) this article does not specifically forbid or exclude "political" social advertising. It is important that no political entity nor individual take advantage of "social advertising" by issuing them for political advantage.

Thus, specifically, Paragraph 1 should be amended to:

1) replace the phrase "shall be" with "shall include," since social advertising (public service announcements) can also originate from both commercial and non-commercial enterprises and organizations.

and,

2) to read "other non-political information of a non-commercial nature."

### **Article 13**

This article imposes restrictions on advertising content that serves no useful purpose, either to the consumer nor to those involved in advertising (be they the sellers of products shown in commercials, those whose creativity is used to produce these commercials, or the owners/operators of the radio and television stations), and for the most part, be either deleted or substantially amended.

As stated earlier, the best kind of *Law on Advertising* should be that law which provides and encourages self-regulation, and which recognizes and encourages a balance between the consumer and those owning/operating the electronic media. Article 13 attempts such balance, but it also imposes unreasonable restraints that should be "determined by the marketplace."

Specifically, the term "determined by the marketplace" means that absent a fraudulent intent to mislead or cause confusion, the consumer, in an open and balanced marketplace, will eventually determine who succeeds and who fails.

This is especially true in the sphere of advertising. The consumer will ignore the company that does not serve his or her needs. In the case of the electronic media, it is the television and radio stations that will suffer if they do not perform according to the standards and wishes of the Uzbek consumer.

#### **Article 13 Paragraph 1**

As a matter of policy, the time allocated for advertising should be left to the discretion of the particular television station. This principle of self-regulation is already seen by virtue of the fact that the second sentence of paragraph one provides for an exception to this policy by saying that such a "requirement shall not apply to specialized advertising channels."

Thus it is recommended that paragraph 1 be deleted from Article 13.

#### **Article 13 Paragraph 2**

When an attempt is made to regulate when a commercial advertisement may or may not be inserted in a television show or movie, it is best to keep in mind that these advertising breaks are paying the costs of the entertainment and thus a station should have the flexibility to program the station as they see fit.

As in the case with time allocated for advertising, the guiding policy for deciding when a television station should have its advertising breaks should be self-regulation. A station which constantly interrupts its programming will eventually lose its Uzbek television viewers and radio listeners.

Moreover, such a requirement interferes with the desires of the program producer, director and/or distributor.

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In terms of the creative intention of the director or film-maker, in many cases a movie or television is designed for commercial breaks at certain moments, which are called "teasers" in the TV industry, and are designed to encourage the viewer to continue watching after a commercial break.

In terms of distribution agreements, the growing trend is to provide a limited amount of "barter" advertising—that is, pre-sold advertisements already inserted into the television program by the rights-holder for telecasting in various markets worldwide.

Thus, paragraph 2 should be deleted as well.

### **Article 13 Paragraph 3**

This paragraph should be amended to substitute the age of 16 for that of "pre-schoolers" or "children under 5" and to concurrently consider the possibility of introducing a TV program rating system which would then have certain restrictions regarding the kinds or types of advertising. This rating system would be developed jointly with the government, those in the television programming and advertising industries, and representatives of community organizations. This expert would be prepared to assist in such an undertaking in 1999.

The decision to impose a restriction on who may be the target of television advertising has been accepted in principle by most industrialized countries. However, the restrictions imposed have generally been consistent with self-regulation, except in a few highly specialized areas (e.g., television programming designed for children under five years old).

The problem with prohibiting advertising geared towards young adults under the age of 16 are multi-faceted:

Such a restriction will create a severe financial burden on television and radio stations in terms of advertising income;

Such a restriction will create a severe financial burden on those industries whose product lines are geared towards young adults and those under age 16;

Most products currently advertised do not make a legal or marketing distinction between those young adults who might be 14 and those who are 18. For example, does a maker of cosmetics who sells lipstick or hair shampoo limit their intended audience by age?

In conclusion, this paragraph should be amended to reflect an age of 5 rather than 16 together with the intention to develop a regulatory structure as suggested in the beginning of this discussion.

#### **Article 14**

This article relates to advertising requirements in the print medium. As a private endeavor, there should be no government regulations relating to advertising content. The only determining factor should be the marketplace. If a magazine has too many pages of advertising compared to editorial space, and the readership objects to such an arrangement, the consumer will not purchase or subscribe to the publication. This principle is accepted in paragraph 1 of Article 14.

#### **Article 14 Paragraph 2**

A reading of the first paragraph in Article 14 clearly stipulates that the volume of advertising shall be determined by its own management, but yet, in paragraph 2 of the same article, an attempt is made to regulate the proportion of advertising that of editorial. Thus, paragraph 2 of Article 14 should be deleted as being inconsistent with the principle enunciated in paragraph 1 of Article 14.

#### **Article 15**

Article 15 seems to be related to telemarketing, with the emphasis being on both the internet and the fax machine. While the general intent of such a regulation is praise-worthy, the drafting of the clause needs improvement both in language and in policy with respect towards the regulation on the use of fax telemarketing.

#### **Article 15 Paragraph 1**

There is a growing concern about the invasion of the fax machine into the lives of the consumers. Unfortunately, this law, as written, is misplaced. It does not make a distinction between the business entity and the home consumer.

The business entity benefits from unsolicited telemarketing as oppose to the consumer which sees it as an intrusion into their homes. In reality, the practice of international telemarketing by using the fax is impossible to regulate or control. The only partial solution is to attempt to regulate it on a local basis. However, such regulation must use as its foundation the protection of the consumer at home.

Thus, it is suggested that the wording of Paragraph 1 be amended to reflect this concern. The language of Paragraph 1 should refer specifically to a home telephone number and allow business-to-business telemarketing to continue without interference from the state or governmental bodies.

#### **Article 21**

This article regulates the advertising of tobacco and liquor products. There are only two suggested amendments relating to this article: permitted medium to advertise tobacco and the age to which advertising and promotion of tobacco products are aimed.

#### ***Tobacco Products on Uzbek Radio and Television***

Specifically, Article 21 permits the use of tobacco advertisements (cigarettes, chewing tobacco, cigar, pipe tobacco, etc.) to be aired (broadcast on radio, telecast on television, Multiple Distribution Systems/wireless cable and cable)—a policy which runs counter to both American law and EU directives.

It is clear that cigarette smoking (as well as the use of other tobacco products) is both a health threat to the user and to society-at-large. While there are substantial public policy reasons for limiting the advertising of tobacco as well as encouraging both young people and the entire citizenry of Uzbekistan to stop smoking, any substantive reasons for the allowing of tobacco advertising on Uzbekistan's airwaves (both radio and television) are lacking.

**Thus, it is being suggested that Article 21 specifically mandates that *advertising of tobacco products on radio and television (including cable and wireless cable/MDS) in the Republic of Uzbekistan is prohibited.***

#### ***Target Age of Consumers***

As part of Uzbekistan's public policy of discouraging cigarette smoking by young adults, it is recommended that Article 21 *amend the minimum age relating to the marketing and merchandising of tobacco products from the current 18 to that of 21.* This is being suggested so that all teenagers get the message that smoking is unhealthy for both the smoker and those around him/her.

#### **Article 30**

This law is designed to regulate advertising in the Republic of Uzbekistan, and the recognized legal body that is responsible for the enforcement of such law is the Anti-Monopoly Committee; and that the Anti-Monopoly Committee is the only competent agency to administer the law.

Unfortunately, the law, as written in Article 30, extends this compliance jurisdiction to virtually every governmental body in Uzbekistan, a situation which is open to corruption and abuse by all levels of authority.

Thus, it is highly recommended that Article 30 delete all references to "Local State Authorities and Administrations."

#### **Article 31**

As currently written, Article 31 which grants all employees of the Anti-Monopoly Committee "free access" to all the work product of an advertisement, including those owned and in the possession of the creators, producers, distributors, and other related personal, is much too broad and is possibly *in conflict with Article 53 of the Uzbek Constitution* which says that "private property, along with other types of property, shall be inviolable and protected by the state."

Furthermore, Article 27 of the Uzbek Constitution protects a person from searches by the state unless such searches are in conformity with lawful procedures that are designed to protect the person against "*encroachments on his honor, dignity and interference.*"

Thus, this article needs to be re-written to ensure such safeguards. Such protections should include:

- Requiring the Anti-Monopoly Commission to obtain a court order to access information;
- Requiring that request for such information must have a reasonable cause for inspecting the work product of any particular advertising;
- Showing that the advertising in question was, on its face (prima facie), contrary to the Law on Advertising and not merely a complaint or suggestion that such advertisement was illegally aired or published contrary to *the Law on Advertising*;
- Requiring that only authorized officials of the Anti-Monopoly Committee has the right to request documents, with such authorization being approved by a senior official of the Anti-Monopoly Committee and that such authorization is given in written form.

#### **CIVIL CODE PROVISIONS (TRADEMARK )**

After reviewing the relevant sections of the Uzbek Civil Code relating to Patent, Trademark, Plant Varieties, Trade Secrets, Trade Names (Chapters 62 through 65; Articles 1082-1111, inclusively) with respect towards WTO/TRIPs compliance issues, the conclusion is that these chapters are in substantial compliance with WTO/TRIPs— with the exception of just two articles. The two articles in question all relate to the issue of nullifying and/or invalidating licensing agreements that are not registered with the patent office. It was agreed to remove such restrictions from the laws and concurrently from the Civil Code.

An additional analysis relating to the Civil Code provisions on Copyright is being prepared separately and will be submitted directly to the Uzbek Office of Copyright.

#### **Specific Recommendations**

Specifically, the following amendments are recommended:

#### **Article 1089, Licensing Agreement To Use an Invention, Utility Model, or Industrial Design**

As currently written:

*A licensing agreement or a sub-licensing agreement shall be concluded in writing and registered with the Patent office. Failure to conclude such an agreement in writing or failure to register it appropriately shall invalidate such an agreement.*

As proposed to be written:

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"A licensing agreement or a sub-licensing agreement shall be concluded in writing and registered with the Patent office." ~~Failure to conclude such an agreement in writing or failure to register it appropriately shall invalidate such an agreement.~~

**Article 1106, Agreement To Assign the Right in a Trademark**

As currently written:

*An agreement to assign the right in a trademark or to grant a license shall be concluded in writing and registered with the Patent office.*

*Failure to conclude such an agreement in writing or register it appropriately shall invalidate such an agreement.*

As proposed to be written:

*An agreement to assign the right in a trademark ~~or to grant a license~~ shall be concluded in writing and registered with the Patent office.*

*Failure to conclude such an assignment in a trademark **agreement** in writing or register it appropriately shall invalidate such an assignment **agreement**.*

## **COPYRIGHT LAW**

### **Article 1**

- **Author**

The definition of "Author" needs to be modified to reflect both international norms relating to motion pictures and to be consistent with the Berne Convention. Under the Berne Convention, the author of a motion picture may be the producer, which is oftentimes the production company itself, rather than an individual person. Thus, the following modification is required:

- ✓ **Add**

"Author—except as stipulated below, an author is defined as a natural person or legal entity, whose creative work qualifies for copyright protection; for purposes of audio-visual works, an author is defined as a person or legal entity whose creative work makes the production as a whole."

- **Copyright**

A working definition should be included in Article 1.

- ✓ **Add**

"Copyright means property rights of the author or his/her assignee as well as personal non-property rights of the author."

### **Article 10**

Even though the term "citizen" is used in its broadest context to include individuals etc. al. who are foreign nationals and stateless persons, the term should be replaced with the phrase "natural persons and legal entities" in order to avoid confusion.

- ✓ **Amend**

"Natural persons and legal entities who have created a work through his/her/its creative effort shall be deemed the author of such work."

### **Article 12**

As noted in paragraph two of Article 12, there may be separate authors for the various components of a motion picture subject to the requirement that "their works have independent and individual meaning autonomously of their authorship in the film as a whole." However, when one considers the motion picture as a single entity, there is generally one author-of-record, irrespective of the component parts that made up the project. Naturally, if the producer

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stipulates in the employment agreement that other creative artists shall also be deemed as authors, then that is strictly between the parties.

The law as written gives the status of author to all the component parts irrespective of an agreement allowing for such. Thus, the law should be amended as follows:

✓ **Amend**

The following may be deemed the authors of a motion picture, television film, or a video film as a whole (co-authors) *subject to an agreement in writing between the parties listed below. Absent such a written agreement, the producer is presumed to be the author unless proven otherwise in a court of law.*

**Article 14**

As written, Article 14 is too strict and goes against the right of the people to be informed as well as to protect the inherent rights of a free press in a democracy. There should be an exception that gives the press the right to use any interview of a public official and/or newsworthy individual or representative of a legal entity.

✓ **Add**

"Unless specifically agreed to, in writing, prior to the actual interview, the results of any interview may be used for publication and broadcast.

"Publication and broadcast of an interview of a public official and/or newsworthy individual or representative of a legal entity shall be allowed without the consent of the interviewee.

"Publication and broadcast of an interview of a public official and/or newsworthy individual or representative of a legal entity shall not be protected by copyright unless specifically agreed to in writing, prior to the actual interview.

"A interview with a public official shall be deemed in the public domain."

**Article 15**

Article 15(1) is legally incorrect as stipulated and should be modified. People' organization the creation of works are deemed the authors of the works and should be protected.

✓ **Amend**

"Persons organizing creation of works (encyclopedia publishers, producers, etc.) shall be deemed authors of concerned works, and shall be vested with the exclusive right to exploit such works."

The term "film-maker" in Article 15(5) is too vague as used in this context. The correct phrase is that of "film producer." If one also wishes to protect the film director, then the separate category should also be included.

✓ **Amend**

" *Film producer* shall be entitled to indicate or demand an indication of his/her name every time the work is exploited."

The term "author" is used incorrectly in Article 15(6). The correct term is "composer." Moreover, the term "demonstrated" should be replaced with the word "performed."

"The composer of a music piece with or without text shall retain the right to receive his/her remuneration for public performance of his/her work when the motion picture for which the piece has been created is publicly performed..."

✓ **Amend**

The wording in Article 15(7) is not precise and should be made clear.

"No destruction of the final version of a film *master negative* (original) shall be allowed without the consent of the author and any other owners of economic rights in respect of the film."

### **Article 16**

This article gives the author the option of putting the universal copyright notice © on the protected work. It is suggested that this article be amended to provide an incentive for including the © notice on the protected work.

Thus, Article 16 should be amended to include the following clause:

✓ **Add**

"The notice, if to be used, shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright as determined by the Office of Copyright. If a notice of copyright in the form and position specified by the Office of Copyright appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, providing that such copyright notice was also filed with the Copyright office."

### **Article 20**

Article 20(2) does not provide for an exception that allows critical comment and/or satire relating to the protected work. Thus, Article 20(2) should be amended to provide such protection.

✓ **Amend**

"In publications, public performances, or any other exploitation of the work, making any changes to the work itself, its designation, or the author's name shall be consented by the author unless such changes or modifications were done as part of satire and/or critical comment relating to the protected work."

As drafted, Article 20(3) might cause legal and contractual problems since it takes away some creative discretion from those wanting to use an author's work. It is suggested that the language be changed to say the following

✓ **Add**

«It shall be prohibited to amend or change the protected work of the author without consent of the author or his/her heirs.»

**Article 21**

Article 21(3), which allows the author to unilaterally breach a contract, clearly violates TRIPs Article 13. Article 13 says that domestic laws should not «conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.» It is important to note that Article 13 does not mention authors' rights but rather the «right holder.» Moreover, this law would infringe on public ownership of such published works. For example, the public libraries would be forced to stop circulating certain literary titles if the author so demanded.

If it is necessary to provide the author with this right of recall prior to publication, there should be tight limitations or restraints. However, such a right should not be granted once a work is published. Thus, the following should replace the current Article 21(3):

✓ **Add**

"Author shall have a right to rescind the contract to publish his work providing that such rescission be made within 72 hours of the signing of the contract."

**Article 35**

A strict reading of article 35(4), allows the author/employee to unilaterally breach a contract even if the word "may" rather than "shall" is used in the text. Under such writing, this clause clearly violates TRIPs Article 13.

✓ **Add**

"During the first ten years of the protected work, the employer shall have exclusive right to use and exploit the work created by the employee. Thereafter, should the employer wish to continue to use the protected work, he must negotiate a new licensing agreement with the author of the protected works."

**Article 38**

Article 38(6) provides for additional protection which amounts to 100 years plus the lifetime of the author.

Since copyright attaches from the moment of its creation and not its publication, in order to be consistent, the protection should expire fifty years after the death of the author, even if the work was not published during this period of time.

Thus, Article 38 (6) should be deleted.

**Article 41**

Article 41(7) takes away the right of the author (and/or his/her heirs) to decline compensation for use of their creative product. Clearly this restriction on the author goes against the spirit, if not the precise wording of TRIPs, and thus should be deleted.

TRIPs Article 13 says that domestic laws should not «conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.» If the author, in this instance, is also the rights-holder, then his/her right is unreasonably prejudiced by the restriction imposed by Article 41(7).

Thus, Article 41(7) should be deleted.

**Article 44**

Article 44(2) conflicts with Article 44(1) which clearly stipulates that a copyright licensing agreement shall be valid by the terms of the actual agreement. The only exception under 44(1) is that the licensing agreement may not extend beyond the life of the underlying copyright itself.

Moreover, the language of Article 44(2), which allows the author the option to unilaterally breach a contract after every ten-year period (providing six months notice is given), clearly violates TRIPs Article 13.

To reiterate, TRIPs Article 13 says that domestic laws should not «conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.» It is important to note that Article 13 does not mention author's rights but rather the «right holder.»

**Article 50**

At the present time, the only obligation relating to the performer under WTO/TRIPs is that of Article 14(1) which requires protection against unauthorized "fixation of their unfixed performances and the reproduction of such fixation."

The purpose of Article 14(1) is to prevent the illegal recording of a live performance and to stop the manufacturing of that illegal recording for possible sales.

There is a proposed treaty to give the performer equal treatment with the producer, but until there is a general global consensus, it is suggested that Article 50(2) be amended as follows:

✓ **Add**

"The right to use a performance shall encompass the right to permit the following:

*--the right to authorize the fixation of their unfixed performance."*

**Article 53**

Article 53(2) mandates that separate payments shall be made for every use of a performance. Clearly, this requirement goes against TRIPs Article 13.

TRIPs Article 13 says that domestic laws should not «conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.»

Moreover, Article 53(2) infringes on the right of the performers as stipulated in Article 52 which allows the performers to exploit their right of performance as they wish.

**Article 54**

A close reading of Articles 54(3)(3) and 54(3)(4) would seem to indicate that they conflict with Article 22(5), relating to the goods that have been "legally alienated". Thus, for purposes of consistency and protection of the parties, the wording of Article 22(5) should be included in this Article as well.

✓ **Add**

*"If copies of the work have been legally alienated, their further distribution shall be allowed without the consent of the author and/or producer and without payments of remuneration."*

## **BREEDING ACHIEVEMENTS**

### **Article 13**

Under the TRIPs agreement, a patent should have a life of twenty (20) years from the date of application. Article 13(7) properly reflects that requirement. However, Article 13(8) goes beyond that and authorizes an extension of the patent and certificate by an additional ten years. There are no limits vis-à-vis TRIPs relating to a certificate; there is relating to a patent. Thus, Article 13(8) should be amended to reflect this legal distinction.

#### **✓ Amend**

"The effective period of a certificate may be extended on demand of the *certificate-holder* but not for more than ten years."

### **Article 15**

This article relates to the submission of application for patents and certificates. There is a problem with Article 15(3) which makes a legal distinction between those foreign nationals residing in Uzbekistan and those not residing in Uzbekistan, requiring the latter to use the services of a local patent agent.

This distinction seemingly goes against the *National Treatment* requirement stipulated in Article 3 of TRIPs, which says that each member "shall accord to the nationals of other Members treatment no less favorable than it accords to its own nationals with regard to the protection of intellectual property..."

Thus, Article 15(3) should be amended as follows:

#### **✓ Amend**

"An application may be submitted personally, through a patent agent registered with the Patent office or through an authorized representative. Applicants who nationals of *non-WTO members and/or non-members of the Paris Convention* foreign countries and juridical persons of *non-WTO members and/or non-members of the Paris Convention* without permanent residence or location in Uzbekistan, *must use the services of their local* patent agents and authorized representatives to obtain protective documents and to maintain patents through patent agents of Uzbekistan. The Jurisdiction of a patent agent shall be attested by a power of attorney issued to him by the applicant or his/her representative."

### **Article 37**

Specifically, there should be a statutory period such as 5 years from which time the patent is declared unchallengeable absent compelling proof to the contrary such as proof of underlying fraud or other actions contrary to public policy. Moreover, the term "reasonable" should be more precise to include certain elements.

A clause should be added:

✓ **Add**

" Any person may request the Patent Office to invalidate the granted patent on legally justified grounds such as the patent not meeting the novelty and distinction requirement or that the person identified in the patent as its holder did not have the legal rights to receive the patent. The request shall be accompanied by proof of payment of the prescribed fee."

**Article 41**

This article is not in full compliance with TRIPs Article 31 (*Other Use Without Authorization of the Right Holder*), and should be re-written.

For example, TRIPs requires that an attempt must include offering the patent owner "reasonable commercial terms and conditions". Thus it is imperative to add that requirement to proposed Article 41

In addition, Article 41 is weak in its parameter of the compulsory license. Article 31 specifically states the limitations of such a license. Those include:

- ⇒ The scope and duration of such a license shall be limited to the purpose for which it was authorized;
- ⇒ The use shall be non-exclusive and non-assignable;
- ⇒ The use shall not be for export; that its use is to supply the domestic market;
- ⇒ The use shall be terminated when the circumstances which led to the compulsory licensing has ceased; and
- ⇒ The payment for such use shall be based on the economic value of the patent as well as being "adequate" with respect towards normal exploitation of the patent.

It appears that those protections are lacking.

There is no requirement that the compulsory license be non-exclusive as required by TRIPs. Article 41 should provide for that as well.

In addition, the proposed law does not mandate that the use of the patent be 'predominately for the supply of the domestic market' of the Republic of Kazakhstan and not for export. That limitation, as well, should be stipulated in the law.

Clearly, the law in these areas should also be re-written to ensure that the above limitations or restrictions are guaranteed.

Furthermore, Article 41 is fatally flawed with respect to judicial oversight which is required under TRIPs. The proposed law does not meet the standards stipulated in Articles 31(i) and 31(j), which deals with 1) the actual granting of the compulsory license and 2) the actual compensation paid the patent owner for such a compulsory license.

Under 31(i) there must be guaranteed within the law, a requirement that "the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other

independent review by a higher distinct higher authority." The law does *not* supply such protection to the patent owner under Article 20.

Under 31(j), a similar judicial oversight and review is required "relating to the remuneration provided in respect of such use" of the compulsory license. Once again, Article 41 fails in this respect. Clearly, the law does *not* supply such protection to the patent owner under Article 41.

It is recommended that Article 41 be amended to read as follows:

✓ **Amend**

"If the patentee does not use a breeding achievement in Uzbekistan within three years from the date of patent or certificate and refuses to enter into licensing agreements, and if the non-use of a given breeding achievement affects the public interests, any person willing to use that breeding achievement may apply to court to request a compulsory non-exclusive license. A compulsory license shall provide its owner with the right to obtain the initial seeds, planting or pedigree material from the patentee.

"A compulsory license does not preclude the patentee from using the protected breeding achievement or licensing other persons.

"The Patent office shall publish information on granted compulsory licenses.

"A compulsory license shall be granted only to a person able to use a breeding achievement properly and as required by the license providing that the following provisions or conditions are met:

- (u) authorization of such use shall be considered on its individual merits;
- (v) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (w) the scope and duration of such use shall be limited to the purpose for which it was authorized;
- (x) such use shall be non-exclusive;
- (y) such use shall be non-assignable;
- (z) any such use shall be authorized predominantly for the supply of the domestic market of the Republic of Kazakhstan authorizing such use;
- (aa) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur.
- (bb) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (cc) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in the Republic of Kazakhstan; and,

- (dd) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in the Republic of Kazakhstan.

## PATENT LAW

The initial analysis required the proposed changes as listed below. After several months of discussions with the director and the assigned working group, a consensus was reached in which most of the concerned issues were resolved. Part 1 shows initial comments while Part 2 reflects the status as presently reached.

### PART 1

#### Article 7

Article 7(2) as originally drafted meets the intent of TRIPs Article 25 which says that "members shall provide for the protection of independently created industrial designs that are new or original."

Since TRIPs reflects an international standard, it is reasonable to infer that the phrase "new or original" not only means new in a member's country, but new or original internationally.

Thus, Article 7(2), as proposed, should be amended as follows:

#### ✓ Add

"An industrial design shall not be recognized as new or original if the differences between the industrial design sought to be protected and the prior art are such that the industrial design as a whole have been obvious at the time the industrial design was made to a person having ordinary in the art to which the industrial design pertains."

#### Article 11

Articles 11(9) and 11(10) are not in full compliance with TRIPs Article 31 (*Other Use Without Authorization of the Right Holder*), and should be re-written.

For example, TRIPs requires that an attempt must include offering the patent owner "reasonable commercial terms and conditions." Thus it is imperative to add that requirement to Article 11.

In addition, Article 11 is weak in its parameter of the compulsory license. Article 31 specifically states the limitations of such a license. Those include:

- ⇒ The scope and duration of such a license shall be limited to the purpose for which it was authorized;
- ⇒ The use shall be non-exclusive and non-assignable;
- ⇒ The use shall not be for export; that its use is to supply the domestic market;
- ⇒ The use shall be terminated when the circumstances which led to the compulsory licensing has ceased; and,
- ⇒ The payment for such use shall be based on the economic value of the patent as well as being "adequate" with respect towards normal exploitation of the patent.

It appears that those protections are lacking.

There is no requirement that the compulsory license be non-exclusive as required by TRIPS. Article 11 should provide for that as well.

In addition, the proposed law does not mandate that the use of the patent be predominately for the supply of the domestic market of the Republic of Uzbekistan and not for export. That limitation, as well, should be stipulated in the law.

Clearly, the law in these areas should also be re-written to ensure that the above limitations or restrictions are guaranteed.

Furthermore, Article 11 is fatally flawed with respect to judicial oversight which is required under TRIPs. The proposed law does not meet the standards stipulated in Articles 31(i) and 31(j), which deals with 1) the actual granting of the compulsory license and 2) the actual compensation paid the patent owner for such a compulsory license.

Under 31(i) there must be guaranteed within the law, a requirement that "the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a higher distinct higher authority." The law does *not* supply such protection to the patent owner under Article 11.

Under 31(j), a similar judicial oversight and review is required "relating to the remuneration provided in respect of such use" of the compulsory license. Once again, Article 11 fails in this respect. Clearly, the law does *not* supply such protection to the patent owner under Article 11.

It is recommended that Article 11 be amended to read as follows:

✓ **Add**

"If the patentee does not use an object of industrial property within three years from the date of patent or certificate and refuses to enter into licensing agreements, and if the non-use affects the public interests, any person willing to use that patent may apply to court to request a compulsory non-exclusive license.

"A compulsory license does not preclude the patentee from using the object of industrial property or licensing the patent to other persons.

"The Patent office shall publish information on granted compulsory licenses.

"A compulsory license shall be granted only to a person able to use the object of industrial property properly and as required by the license providing that the following provisions or conditions are met:

(a) authorization of such use shall be considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. In the case of public non-commercial use, where the government or contractor,

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- without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable;
- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Republic of Uzbekistan authorizing such use;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in the Republic of Uzbekistan; and,
- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in the Republic of Uzbekistan.

## **Article 12**

Article 12(5) clearly violates TRIPs Article 30 which says that any "limited exceptions to the exclusive rights conferred by a patent" must "not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner."

Providing permission to prepare a patented medication without the permission of the patent owner clearly is prohibited. Thus, Article 12(5) must be deleted from the law in order to be in compliance with WTO/TRIPs.

## **Article 13**

This clause provides the remedies for infringement of the patent holder. The only problem with it is that Article 13(4) leaves out the role of the court. Thus, the law should be amended to read as follows:

### **✓ Amend**

"Persons using an object of industrial property in contradiction with the provisions stipulated in Articles 11 and 31 of this law, are obligated, at the request of the patent holder and with the approval of the court, to:"

## **Article 18**

This clause should reflect the eventual entry of Uzbekistan into the World Trade Organization and TRIPs. Thus, Article 18(2)(1) should be amended to reflect this eventuality.

✓ **Amend**

"by the filing date of an earlier application filed in another state--a participant of the Paris Convention on Protection of Industrial Property or national of a member of the World Trade Organization (WTO) if an application for invention, utility model entered Patent Office within twelve months from the respective date..."

**Article 31**

Article 31(2) not only violates the spirit, if not the precise wording of TRIPs Articles 28 and 30, it also creates extra legal and administrative burdens on the patent office, the courts, and the inventors as well as the potential rights-holders of inventions.

TRIPs Article 28(2) says that patent owners "shall ...have the right ...to conclude licensing agreements." Clearly that is an absolute right with no condition that it must be registered in order to be legally valid.

Moreover, TRIPs Article 30 says that any exception to Article 28 must not "conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner..."

In the final analysis, there is no compelling state interest to require a licensing or sub-licensing agreement to be registered with the Patent Office. While such a registration might have tangible benefits to those involved, such a procedure should be voluntary and *not* mandatory.

✓ **Delete Article 31(2)**

✓ **Add**

"License agreement and sub-license agreement on the use of the invention, the utility model, industrial design shall be signed in the written form and may be registered with the Patent Office. Non-observation of the registration requirements shall not lead to invalidity of the agreement."

Article 31(6), as written, is too vague, lacks certain mandatory protection, and thus directly conflicts with TRIPs Articles 28, 30, and 31.

TRIPs Article 30 says that any exception to Article 28 must not "conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner....," while Article 31 stipulates what must be done "where the law of a Member allows for other use of the subject matter of a patent without the authorization of the right holder, including use by the government...."

For example, TRIPs requires that an attempt must include offering the patent owner "reasonable commercial terms and conditions." Thus it is imperative to add that requirement to Article 31.

In addition, Article 31 is weak in its parameter of the compulsory license. Article 31 specifically states the limitations of such a license. Those include:

- ⇒ The scope and duration of such a license shall be limited to the purpose for which it was authorized;
- ⇒ The use shall be non-exclusive and non-assignable;
- ⇒ The use shall not be for export; that its use is to supply the domestic market;
- ⇒ The use shall be terminated when the circumstances which led to the compulsory licensing has ceased; and
- ⇒ The payment for such use shall be based on the economic value of the patent as well as being "adequate" with respect towards normal exploitation of the patent.

It appears that those protections are lacking.

There is no requirement that the compulsory license be non-exclusive as required by TRIPS. Article 31 should provide for that as well.

In addition, the proposed law does not mandate that the use of the patent be predominately for the supply of the domestic market of the Republic of Uzbekistan and not for export. That limitation, as well, should be stipulated in the law.

Clearly, the law in these areas should also be re-written to ensure that the above limitations or restrictions are guaranteed.

Furthermore, Article 31 is fatally flawed with respect to judicial oversight which is required under TRIPs. The proposed law does not meet the standards stipulated in Articles 31(i) and 31(j), which deals with 1) the actual granting of the compulsory license and 2) the actual compensation paid the patent owner for such a compulsory license.

Under 31(i) there must be guaranteed within the law, a requirement that "the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a higher distinct higher authority." The law does *not* supply such protection to the patent owner under Article 31.

Under TRIPs Article 31(j), a similar judicial oversight and review is required "relating to the remuneration provided in respect of such use" of the compulsory license. Once again, Article 31 fails in this respect. Clearly, the law does *not* supply such protection to the patent owner under Article 31.

It is recommended that Article 31 be amended to read as follows:

✓ **Amend Article 31(6)**

"In the interests of national security, the Cabinet of Ministers may allow the use of an object of industrial property without the consent of the patent office, but with permission and

authorization by the Supreme Court while paying him a proportionate remuneration providing a compelling showing of a national emergency requires such compulsory license and that the Cabinet of Ministers attempted to negotiate in good faith with the patent or rights-holder.

If in event that a compulsory license is issued under this provision of the law, the licensing terms must contain or reflect the following:

- A compulsory license does not preclude the patentee from using the object of industrial property or licensing the patent to other persons;
- The Patent office shall publish information on granted compulsory licenses.
- Such use shall be non-exclusive and shall be non-assignable;
- Such use shall be authorized predominantly for use in and for Republic of Uzbekistan authorizing such use;
- Authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur
- the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in the Republic of Uzbekistan; and,
- any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in the Republic of Uzbekistan

### **Article 32**

This article gives "preferential conditions of taxation and crediting" for those who develop and use in their businesses "objects of industrial property" as well as "other benefits" In a democratic society, the law should not grant an author of an invention "special rights, privileges and social advantages" other than a statutory monopoly on the use of his object of industrial property (invention) for a fixed period of time consistent with WTO/TRIPs.

Thus, Article 32 should be deleted.

### **Article 39**

Article 39(2) not only violates the spirit, if not the precise wording of TRIPs Articles 28 and 30, it also creates extra legal and administrative burdens on the patent office, the courts, and the inventors, as well as the potential rights-holders of inventions.

TRIPs Article 28(2) says that patent owners "shall ...have the right ...to conclude licensing agreements. Clearly that is an absolute right with no condition that it must be registered in order to be legally valid.

Moreover, TRIPs Article 30 says that any exception to Article 28 must not "conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner..."

In the final analysis, there is no compelling state interest to require an Uzbek inventor to patent his objects of industrial property in Uzbekistan prior to patenting it overseas—outside of the Republic of Uzbekistan. While such a registration might have tangible benefits to those involved, such a procedure should be voluntary and *not* mandatory.

## PART 2

After detailed review of the proposed *Law on Inventions, etc.*, with the exception of two clauses in Article 11, the law complies with WTO and all international standards. Article 11 relates to the granting of compulsory licenses and needs to recognize certain international protections and rights of the authors and rights-holders.

Article 11, Paragraph ten (10) should be re-amended to read as follows:

"If the patent holder cannot prove that a non-use or insufficient use of an object of industrial property is caused by valid excuse, the court shall issue the compulsory license consistent with obligations arising from any international agreement to which the Republic of Uzbekistan is a party. Such a license shall be issued with specific defined limits of the use of the object, the amount of payments, time limits and schedule of payments. The amount of payments ~~may~~ shall not be lower than the (prevailing international) market price of such license.

"For the sake of national security, the Cabinet of Ministers may permit the use of an object of industrial property without the authorization of its patent-holder, provided the compulsory license is consistent with obligations arising from any international agreement to which the Republic of Uzbekistan is a party including providing that adequate prevailing international market price compensation is paid to the patent-holder for such use."

## TRADEMARK LAW

### Article 4

While it is now almost universally recognized that colors may form part of a trademark, it is important not to grant a "blanket" license to use color as a mark. Article 15 of TRIPs states that unless the color is inherently capable of distinguishing the relevant goods or services, a country may require distinctiveness (also known as 'secondary meaning') and non-functionality. It is important because there are only a limited number of colors and the burden on competitors would be too great. Thus Article 4(4) should be amended as follows.

#### ✓ Amend 4(4)

*"A trademark may be registered in any color or color combination providing that such colors are inherently capable of distinguishing the relevant goods or services. Where the color is not inherently capable of distinguishing the relevant goods or services, registrability shall depend on distinctiveness (secondary meaning) acquired through use."*

### Article 7

This article relates to the submission of application for trademarks. There is a problem with Article 7(2)(1) and Article 7(2)(2) in that they makes a legal distinction between those foreign nationals residing in Uzbekistan and those not residing in Uzbekistan, requiring the latter to use the services of a local patent agent.

This distinction seemingly goes against the *National Treatment* requirement stipulated in Article 3 of TRIPs, which says that each member "shall accord to the nationals of other Members treatment no less favorable than it accords to its own nationals with regard to the protection of intellectual property..."

While it is true that Article 3(2) of TRIPs does permit an exception relating to administrative procedures, such an exception is permissible "only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade."

Since Article 7(2) permits natural persons, who are permanently domiciled in Uzbekistan to file for trademarks even though they are not lawyers or even certified as patent agents, the exception permitted under TRIPs Article 3(2) is clearly not applicable.

Thus, to eliminate possible future law suits by foreign legal entities or natural persons domiciled permanently outside the Republic of Uzbekistan, but doing business in Uzbekistan, challenging this mandatory use of a local patent agent to file for trademark protection, it is suggested that the Article 7(2)(1) and Article 7(2)(2) be modified at this point in time.

✓ Amend

"Foreign legal entities or physical entities domiciled permanently outside of the Republic of Uzbekistan or their patent agents shall engage in activities related to the registration of trademarks either through patent agents registered with the Patent Office or by themselves. The authorities of a patent agent shall be attested by a proxy issued to him/her by the applicant or his/her representative.

"Physical entities domiciled in the Republic of Uzbekistan permanently, however, who are temporarily outside of the Republic of Uzbekistan, shall communicate the Patent Office through their patent agents or without them."

The intent of Article 7(3)(2) is to allow an application to be made in a foreign language provided that a translation in either Russian or Uzbek is enclosed with the original. However, the clause does not precisely stipulate that requirement. Thus it is recommended that it be amended as follows.

✓ Amend

"Documents attached to the application may be filed in any language, including Uzbek and Russian. However, if the original documents are filed in a language other than Uzbek and Russian, a certified translation conducted in Russian or Uzbek must accompany the original documentation."

**Article 9**

When discussing trademark priority dates, reference is made only to the Paris Convention. Since it is the goal of the Republic of Uzbekistan to become a member of the WTO and TRIPs, it is suggested that Article 9(2) be amended to reflect that goal.

✓ Amend

"The priority of a trademark may be established by the date of submission of the first application within a country which is a member of the World Trade Organization/TRIPs or the Paris Convention for the Protection of Industrial Property, provided that the application was filed in the Patent Office within six months after the indicated date."

**Article 20**

The present language of Article 20 makes the use of the trademark warning mark voluntary. It is suggested that the mark be mandatory in order to give the public-at-large adequate notice that the mark is registered and also to provide information as to the owner is. Thus, Article 20 should be amended to read as follows:

✓ Amend

"The owner of a trademark shall apply a warning mark near the trademark in the form of the letter "R" or "R" in a circle ® indicating that the designation affixed onto the goods or the

package is a trademark registered in the Republic of Uzbekistan. In addition to the warning mark, the name of the owner of the mark together with the phrase 'is the registered trademark of [owner]' shall be imprinted in close proximity to the mark itself."

### **Article 21**

While Article 21(3)(1) is technically in compliance with WTO and TRIPs, the law, nonetheless, is contrary to the international practice of permitting the licensor and the licensee negotiate their own terms and conditions.

While Article 21(4) is technically in compliance with WTO and TRIPs, from a public policy as well as from a 'user-friendly' perspective, it serves no useful purpose to require a licensing agreement to be registered with the Patent Office. Thus, Article 21(4) should be amended as follows:

✓ **Amend**

"The assignment agreement concerning a trademark shall be registered by the Patent Office upon payment of the established duties. The trademark assignment agreement shall not be effective without registration."

### **Article 28**

Although not required by WTO/TRIPs, a non-use provision that will cancel the trademark in the event of non-use by the owner should be included.

✓ **Add**

"Registration of the mark (trade, service, collective, etc) shall be cancelled by the Patent Office on grounds of non-use of the mark in commerce provided that the mark was not used for an uninterrupted period of three (3) years unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitutes an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

"When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration."

### **Article 31**

While Article 31 is technically in compliance with WTO and TRIPs, from a public policy as well as from a 'user-friendly' perspective, it serves no useful purpose to require the trademark of Uzbek legal entities and natural persons to be registered with the Patent Office before being registered outside the Republic of Uzbekistan. Thus, Article 31(2) should be deleted.

## INTEGRATED CIRCUITS (TOPOGRAPHIES)

After detailed review of the proposed *Law on the Protection of Integrated Circuits*, the law complies with WTO and all international standards—with the exception of one clause in Article 11. Article 11 relates to the protection and rights and should concern itself with only that issue and not introduce a non-related issue.

Thus, Article 11, entitled *Protection of Rights in a Topography* should be amended by removing point four (4) of paragraph one, which reads as follows:

"The author and any other right-holders shall be entitled to require:

--In addition to the compensation for losses, a fine may be imposed, at the court's discretion, in the amount equal to the amount of the losses with such funds going to the state budget of the Republic of Uzbekistan."

This clause should be removed from the proposed draft law.

*--In addition to the compensation for losses, a fine may be imposed, at the court's discretion, in the amount equal to the amount of the losses with such funds going to the state budget of the Republic of Uzbekistan."*

The original comments were limited to the following:

✓ **Add**

Add to Article 9(8), the following language:

9(8). " Notwithstanding written agreements to the contrary, the exclusive rights-holder or a successor in interest shall be required to mark on the circuit board on which the protected circuit is located, in bold, Latin capital letters, one of the following: [INSERT HERE] together with the name of the rights-holder and the year in which the chip became protected.

" Should the warning mark be missing, and not registered with the Uzbekistan Patent Office, the law shall presume that any infringer, absent a showing to the contrary, shall be deemed an innocent infringer, as understood within the context of this law and the Treaty on Intellectual Property in Respect of Integrated Circuits."

## SOFTWARE & DATABASES

### Article 4

This article gives the author the option of putting the universal copyright notice © on the protected work. It is suggested that this article be amended to make provide an incentive for including the © notice on the protected work.

Thus, Article 4 should be amended to include the following clause:

✓ **Add**

"The notice, if to be used, shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright as determined by the Office of Copyright. If a notice of copyright in the form and position specified by the Office of Copyright appears on the published copy or copies of the software or database to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, providing that such copyright notice was also filed with the Copyright office as stipulated in Article 9 of this law."

### Article 5

Article 5 is too vague as written; therefore, it should be replaced.

✓ **Add**

"Copyright shall be valid within the period of life of an author and 50 years upon his/her death starting January 1 of the year following the year of death."

"Copyright of a work created in co-authorship shall be effective within the period of lives of all co-authors and 50 years upon the death of the last surviving co-author."

"Copyright of a work published under a pen-name or anonymously shall be effective within 50 years starting January 1 of the year following the year of its first publication."

"If the identity of an anonymous author or a pen-named author is discovered within the aforementioned period of time, then the provisions of the first paragraph of this article shall become applicable to such cases."

"Copyright shall be inherited by the author's heirs or his/her legal successors within the time period stipulated in paragraph 1 of this article. Copyright obtained under agreements with the author of a work shall also be inherited by the right owner's heirs and legal successors."

### **Article 10**

Article 10(2) should be deleted because it puts an unreasonable restriction on the exploitation rights of the author. In other words, it goes against Article 13 of TRIPs which says that domestic laws should not «conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.»

### **Article 12**

The process known as reverse engineering or "decompilation" is universally considered a non-infringing activity of copyright. Thus the law should be amended to allow such behavior irrespective of the author's permission.

#### **✓ Amend**

"A person who legally owns a copy of a computer program may decompile it with the purpose of studying its code and structure without the permission of the copyright holder."

### **Article 13**

There needs to be an exception to Article 13 to prevent the unauthorized rental of computer software which is required under Article 11 of TRIPs, providing that such rentals to not apply where the programs themselves are not the essential object of the rental, such as video games.

#### **✓ Add**

"A person or legal entity shall not rent computer software without the authorization of the copyright holder. For purposes of Article 13, this clause shall not apply where the programs themselves are not the essential object of the rental, such as video games."

## **PROPOSED CHAPTER OF CRIMINAL CODE**

### **Article 1 (Copyright Piracy)**

- 1) The intentional, fraudulent, and unauthorized attribution of being the author or licensee of somebody else's copyrighted protected work for profit and/or personal financial and/or economic gain is prohibited and punishable under law. The minimum penalty for each such illegal copyright attribution will be the equivalent of US\$10,000 with the maximum fine being the equivalent of US\$250,000. Copyrighted protected work is defined as work that is registered under the laws of the Republic of Uzbekistan.
- 2) The intentional, fraudulent, and unauthorized act of claiming authorship of another's copyrighted work for profit and/or personal financial and/or economic gain is hereby prohibited and punishable by fine no less than the equivalent of US\$10,000 with the maximum fine being the equivalent of US\$250,000. Copyrighted protected work is defined as work that is registered under the laws of the Republic of Uzbekistan.
- 3) The intentional, fraudulent, and unauthorized act of representing another's copyrighted work as his or her own work for profit and/or personal financial and/or economic gain is here prohibited and punishable by fine no less than the equivalent of US\$10,000 with the maximum fine being the equivalent of US\$250,000. Copyrighted protected work is defined as work that is registered under the laws of the Republic of Uzbekistan.
- 4) Criminal infringement. Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain on a wide-scale basis:
  - A. shall be imprisoned not more than five years or fined not more than the equivalent of US\$100,000, or both, if the offense consists of the reproduction or distribution, during any 180-day period, of at least 1000 copies or phonorecords, of one or more copyrighted works, including motion pictures and other audiovisual works with a retail or fair market value of more than the equivalent of US\$100,000;
  - B. shall be imprisoned not more than 10 years, or fined more than the equivalent of US\$250,000, or both, if the offense is a second or subsequent offense under section (A); and,
  - C. shall be imprisoned not more than one year, or fined the equivalent of US\$10,000 in any other case.
- 5) The owner of copyright under this Article has the exclusive rights to do and to authorize any of the following:
  - A. to reproduce the copyrighted work in copies or phonorecords, including motion pictures and other audiovisual works;
  - B. to prepare derivative works based upon the copyrighted work;
  - C. to distribute copies or phonorecords of the copyrighted work to the public by sales or other transfer of ownership, or by rental, lease, or lending;
  - D. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

- E. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and,
- F. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.
- 6) Forfeiture and Destruction. When any person is convicted of any violation of subsection (1), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.
- 7) Fraudulent Copyright Notice. Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than the equivalent of US\$2,500.
- 8) Fraudulent Removal of Copyright Notice. Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than the equivalent of US\$2,500.
- 9) False Representation. Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than the equivalent of US\$2,500.
- 10) Criminal Proceedings. No criminal proceeding shall be maintained under the provisions of this title unless it is commenced within three years after the cause of action arose.

## **Article 2 (Trademark counterfeiting)**

- 1) Whoever intentionally transports, transfers, or otherwise disposes of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer, or dispose of in goods or services (hereby known as «*trafficking*») and knowingly uses a counterfeit mark on or in connection with such goods or services, shall, if an individual, be fined not more than the equivalent of US\$2,000,000 (two million) or imprisoned not more than 10 year, or both, and if a person other than an individual, be fined not more than the equivalent of US\$5,000,000 (five million).
- 2) In the case of an offense by a person that occurs after that person is convicted of another offense under this Article, the person convicted, if an individual, shall be fined not more than the equivalent of US\$5,000,000 (five million) or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than the equivalent of US\$15,000,000 (fifteen million).
- 3) Upon a determination by a preponderance of the evidence that any articles in the possession of a defendant in a prosecution under this Article bear counterfeit marks, the

Republic of Uzbekistan may obtain an order for the destruction of such articles.

- 4) In a prosecution under this Article, the defendant shall have the burden of proof, by a preponderance of the evidence, of he or she uses an «affirmative defense».
- 5) For purposes of this Article, the term «counterfeit mark» means a spurious mark—
  - (a) that is used in connection with trafficking in goods or services;
  - (b) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services in the Republic of Uzbekistan, and in use, whether or not the defendant knew such mark was so registered; and
  - (c) the use of which is likely to caused confusion, to cause mistake, or to deceive.

## Appendix III

### Technical Assistance Provided to the Uzbek Anti-Monopoly Committee (AMC) Tashkent, Uzbekistan

#### WORK PLAN

This report covers the USAID/T&I project work with Uzbekistan's Anti-Monopoly Committee (AMC) from October 1998 through the end of March 1999. The WORK PLAN for this project with the AMC was to help:

1. Develop and utilize a sound market analysis methodology;
2. Provide formal training to national and Oblast AMC staff on how to apply the new methodology;
3. Provide on-the-job training and support to national and Oblast AMC personnel as they apply the new methodology on a pilot basis (for 10 representative products) and by doing so, help reduce the number of products subject to price/profitability control by up to one third;
4. Advocate elimination of profitability and price control by preparing a white paper or conducting seminars highlighting the benefits of price liberalization.

An extension through the end of March was approved with the following tasks:

1. Complete the critical analysis of the AMC's current methodology for classifying enterprises as monopolies;
2. Develop a new methodology for the classification of monopolies that will severely restrict the number of enterprises subject to such classification. The new methodology will require the AMC, before it may classify an enterprise as a monopoly, to conduct an appropriate assessment of (i) the relevant market (currently, the market definition being used is too narrow, resulting in the classification of many non-monopoly enterprises as monopolies); (ii) the availability of substitutes, using appropriate market analytical tools; and (iii) the factors affecting market entry.
3. Complete a critical analysis of the existing practices of the regional AMC offices to identify both objectionable and appropriate (i.e. «best») practices; developing - where appropriate - case studies for use in training programs.
4. Develop and provide 5-6 regional training programs for AMC staff specialists in order to introduce the new methodology, market economy concepts, and to promote the elimination of objectionable practices and the use of best practices.

## ACCOMPLISHMENTS

In accordance with the Work Plan the following were developed, executed and/or completed:

1. A critical analysis of the AMC's methodology for classifying enterprises as monopolies, and evaluation of product and geographic markets, and competition was completed and discussed with AMC's Methodology Department.
2. Based on this analysis a working draft of comments and recommendations for new methods and procedures was developed. All AMC's departments were provided with the working drafts for their review. The main objective was to change the majority of registered products from being considered in regional product markets and therefore being classified as regional monopolies. With the change these products will be considered part of the national market and therefore eliminating the majority of them from the state register. The methodical and procedural changes also included correctly using market entry as criteria for competition in order to eliminate products from monopoly registration especially firms characterized as small and medium enterprises. Furthermore the changes included correctly using products substitution and elasticity as criteria for competition in order to eliminate yet more products from monopoly registration (Comments and Recommendations draft attached).
3. Training visits of 1 to 2 days each for 8 of the AMC regional offices were executed to provide better understanding of competition concepts and anti-monopoly practices as well as on site solutions for actual anti-monopoly cases. Also a critical analysis of existing practices of the regional AMC offices to identify both objectionable and appropriate practices was completed (attached).
4. Regional seminar training programs of 2 days for the AMC staff were developed and provided in 6 regional centers for all 14 regional offices. 160 specialists were trained in market economics, anti-monopoly and competition policy and methodology.

## FINAL STATUS OF BENCHMARKS

Based on the Work Plan and the tasks, all the work was completed.

The project was to «help reduce the number of products subject to price/profitability control by to up to one third».

The number of products was in fact reduced by 23.5% from the beginning of the T&I consultancy or from 2,686 in October 1998 to 2,054 by January 1, 1999.

## RESULTS

*The results of the work are more than just the completion of the Work Plan and tasks. There has been a significant improvement in the AMC staff's understanding, and attitudes of their responsibilities. There has been a major change in the AMC's program of being just a controller of monopolist and monopolist power through price and profit controls to becoming a promoter of competition, protector of consumers' rights, developer of de-monopolization and restructuring and controller over business conduct.*

*A strong professional relationship was established between the officials of the AMC and the specialists of the T&I project. This has greatly facilitated the acceptance of the T&I*

consultancy and has provided the basis of long-term cooperation for the committee's structural improvement and its anti-monopoly activities, in the following areas:

1. development of explicit anti-monopoly policy that is consistent within a market economy;
2. recommendations for improvements in legislation and regulation needed for competition law;
3. recommendations for reorganization of the AMC committee's structure and a redefinition and redistribution of its functions and responsibilities;
4. promotion of a legal and regulatory reform program to create an improved business enabling environment
5. develop programs of promotion of competition, de-monopolization and restructuring of enterprises;
6. promotion of programs to develop small and medium business;
7. gradual transition from a system of price and profit controls to one of control of permanent or long-term contractual arrangements, and control of business conduct including control over abuse of market power and market dominant position.

*An «AMC Activities Improvement Program» was developed in cooperation of the AMC leading officials and the specialists of TIP/USAID. This is a new program that is a product of a national 2-day round-table seminar that produced a document of proposed legal and regulatory reforms, anti-monopoly methodology improvements for the short- and medium-term, and a program of staff training (attached).*

Following a marked reduction of 48% in the number of products on the State Register of Monopolistic Enterprises and Products from January 1997 to October 1998 there was little change and even some increases in Oblast product registration. The last quarter of 1998 the total number of products on the register was reduced by only **2.5%** from 2,686 to 2,619.

After the TIP/USAID team's initial 8 training visits to the regional offices and the 6 training seminars for all of the regional offices the number of products was significant reduced.

*There was a reduction of 21.6% of products on the State Register between January 1, 1999 and March 1, 1999 or from 2,619 to 2,054 products.*

*The AMC has programmed and is financing a special training program for all of its staff. The training will cover the basic concepts of market economics and anti-monopoly and competition policy. This training is a direct result of the «training needs» agenda produced by the T&I training seminars and the national round-table. The agenda and topics of the training were developed in cooperation with the T&I project specialists and Republican Banking Training Center (RBTC) , which will be providing the training.*

## **INSTITUTIONAL DEVELOPMENT**

### **Training**

1. Regional Training visits of one to two days each for eight of the AMC regional offices were executed.

#### Agenda:

- 1) Discussion of issues related with the practical work of the Department.
- 2) Visit enterprises subject to the AMC Oblast Register of monopolies and discussion of issues related to their practical work.
- 3) Providing training for better understanding markets analysis methodology.

- 4) Providing training for better understanding of competition concepts and ways to promote competition.
- 5) Providing consulting for better understanding anti-monopoly practices as well as on site solutions for actual anti-monopoly cases

Date: November 1998 to January 1999.  
Participants: 40  
Next Steps: Regional Training Seminars

2. Regional training seminar programs of 2 days for AMC staff were developed and provided in 6 regional centers for all 14 regional offices.

Agenda:

First day: Morning:  
Background.

- 1) Objectives of antimonopoly policy:
  - promote government economic policy;
  - promote economic growth and development;
  - promote a market economy;
  - promote competition;
  - protect consumers;
  - control natural monopolies.
- 2) Command economy vs Market economy:
  - central planning (quantity, quality, production, distribution, investment, cost / price);
  - individual enterprise planning;
  - planners are kings;
  - consumers are king(?)
- 3) Definition of market economy terms:
  - economics (the study of the production and its distribution);
  - economic growth (increased production, main factors - land, labor and capital);
  - economic development (increased productivity);
  - productivity as economic category (specialization, trade - comparative advantage, creative destruction - new processes, new products).
- 4) antimonopoly - definition of terms:
  - competition;
  - monopoly;
  - monopolistic power and abuses;
  - market geographic limits (regional, national, international);
  - perishable goods and durable goods;
  - transportation;
  - market entry;
  - substitutes;
  - elasticity.

First day: Afternoon:

- Comparative antimonopoly systems:
- USA;
  - Germany;
  - Japan;
  - UK;

- Other countries.

Second day: Morning:

Case studies and discussion on regional departments experience.

Second day: Afternoon:

Recommendation and strategy.

- small enterprises limited from registration;
- regional registration limited;
- all regional monopolies resolved by either break-up, new entries, public tenders, national competition or other acts;
- others.

Date: January 28, 1999 to February 25, 1999.  
Participants: 160  
Next Steps: National Roundtable Seminar

3. A National Roundtable Seminar was held with the Central AMC staff and specialists.

Agenda:

- 1) Discussion of anti-monopoly policy issues.
- 2) Discussion of the draft «Comments and Recommendations» in order to improve methodology.
- 3) Discussion of the AMC's staff training needs.
- 4) Discussion of the AMC's legal and regulatory reform.

Date: March 11-12, 1999.  
Participants: 14  
Next Steps: Special training program for all AMC staff.

4. Special training program for all AMC staff.

Agenda:

ECONOMICS

1) Market Economy - Concepts and General Characteristics:

- Economic systems
- Role of government in a economy
- Market Economy

Competition

Profits

Allocation of resources - Investment

Basis of production

Three general problems' solution of what to produce, how to produce, and for whom to produce in different systems

- Formation of a market economy
- Goods and services
- The theory of marginal utility and welfare economics
- Product distribution
- Growth and development theory
- International trade:

⇒ reasons for trade - the theory of comparative advantage

2) Market Performance - Perfect and Non-Perfect Competition:

Perfect Competition

- The basic elements of market mechanism in pure competition
- Price, demand and supply
- Elasticity of demand and supply
- Demand and utility
- Supply and production costs
- Advantages and disadvantages of a market economy. Kouz Theorem.

Non-Perfect Competition

- Basic types of the market structures in non-perfect competition
- Profits maximization in the conditions of non-perfect competition
- Pricing in oligopoly conditions
- Monopsony
- Profits maximization and price discrimination
- Losses from non-perfect competition
- Antimonopoly (antitrust) legislation and regulation of the economy
- 

3) Organization Forms of Economic Activities:

- State enterprises
- Private enterprise
- Partnership (with the full, mixed and limited liability)
- Joint stock company (closed, open)
- Small enterprises,
- joint ventures, trusts, holdings, cartels, associations and cooperatives

4) Macroeconomics Basic Indicators and Basic Policy Instruments

- Gross national product and its composition
- Inflation.
- Employment.
- Balance of Payments.
- Government Budget.
- Social Indicators.
- Investment-savings
- Growth rates.
- Policy instruments: fiscal, monetary policies.

5) Problems of Transition to a Market Economy:

- Basic features and problems of market transition. Formation of a market structure
- Privatization
- Macroeconomics stabilization
- The role of the state in the formation of market structures
- Microeconomics: de-nationalization of state enterprises
- External economic relations
- System of social protection
- Role of antimonopoly and competition law

ANTI-MONOPOLY & COMPETITION POLICY

1) Basic Theory of the Firm. Costs Concepts:

- Theory of the firm
  - target of the firm;
  - transaction costs and vertical mergers (opportunistic behavior, high transaction costs, monitoring costs, motivating workers);
  - organization within firms (hierarchies, internal organization of large firms);
  - ownership and control (forms of ownership, separation of ownership and control);
  - creation of firms
- Cost concepts
  - types of costs, concepts;
  - economies of scale (reasons for arising, measurement measures);
  - cost concepts for multiproduct firms;

## 2) Structures of the Market:

- Competition
  - perfect competition (assumptions, behavior of a single firm, the competitive industry);
  - elasticity and the residual demand curve;
  - efficiency and welfare;
  - entry and exit from the market (restriction on entry, competition with few firms, definition of barriers to entry, identification of barriers to entry, the size of entry barriers by industry);
  - externalities/external effects (property rights, pollution, the rights for common use);
  - limitations of perfect competition
- Monopolies, monopsonies and dominant firms
  - monopoly behavior (profit maximization, monopoly power, the incentive for efficient operation);
  - costs and benefits of monopoly (the deadweight loss of monopoly, rent seeking behavior, the positive aspects of monopoly, monopoly and externalities);
  - the relationships between profits and monopoly;
  - natural monopolies;
  - monopsony;
  - dominant firms with a competitive fringe;
- Cartels
  - the reason for formation of cartels;
  - creation and development of cartels (factors that facilitate the formation of cartels, realization of a cartel agreement, cartel and price wars);
  - consumers gain as cartels fail;
  - legislation provisions on price maintenance and price fixing
- Monopolistic competition
  - differentiated products (the effect of differentiation on the firms residual demand curve, preferences for characteristics of products);
  - the representative consumer model (under condition of undifferentiated and differentiated products);
  - location models;
  - hybrid models.
- The structure of the market and its functioning
  - theories of price markups and profits;
  - structure – conduct – performance (measures of market performance, measures of market structure, the relationships of structure and performance);

- modern approaches to measuring performance.

3) Business practices:

- Strategic behavior
- Price discrimination
- Vertical integration and vertical restrictions
- Horizontal integration and horizontal restrictions

4) Government Policies and their Effects upon Competition and Economic Development:

- Enabling Environment
  - Government policies
  - Trade policies
  - Business laws and regulations
  - Judicial system to resolve conflict and enforce contracts
  - business associations
- Anti-monopoly laws and policy:
  - anti-monopoly laws and their purposes;
  - market power and the definition of markets;
  - cooperation among competitors;
  - exclusionary actions and other strategic behavior;
  - price discrimination;
  - effects of anti-monopoly laws on the organization of firms.
- Regulation:
  - objectives of regulators (market inefficiencies, capture theory and interest-group theory);
  - making monopolies more competitive (government ownership, franchise bidding, price controls, rate-of-return regulation, quality effects);
  - making competitive industries more monopolistic (limiting entry, agricultural regulations);
  - deregulation.

Date: March 29 - April 9, 1999  
Participants: 20 for each course (about 400 will be retrained)  
Next steps: Staff training in application of new methodology for all 400 of the AMC technical personnel

**Comments and Recommendations  
to the *Methodological Recommendations Manual***

1. GENERAL PROVISIONS: gives a good explanation of the use of the methodologies, it should also put this in context of the overall goal and the strategic objective of the AMC.

**Recommendation:** There needs to be a full explanation of the AMC's goals, objectives and directions with the procedures and schedule to reach them. This should include item 9 «...transition from the method of declaring contractual (free) prices and tariffs for product provided by monopolies towards the method of monitoring» in its **«Major Strategic Measures to Improve the Operations of the Committee for Demonopolization and Competition Development under the Ministry of Finance of the Republic of Uzbekistan For 1999-2000»** document.

2. BASIC TERMS AND DEFINITIONS: is section is necessary and extremely useful.

**Recommendation:** Some terms need to be more precisely defined, others need corrections and others need to be added. For example, oligopoly, market concentration, and market elasticity concepts need to be redefined. Also there should be an expansion of some terms such as in market elasticity. Price elasticity of demand, price elasticity of supply, supply elasticity of price (flexibility) and cross elasticity of substitutes are all important and necessary concepts for the AMC to do its job and should be included. The definition of terms is both very important and problematic. Terms such as «boundaries of a market» (substitutable products), «geographical boundaries», «access barriers», and others need to have precise economic definitions based on the existing literature and detailed surveys. The definitions should be broad and simple and not restrictive.

1. COMMODITY MARKET COMPETITION EVALUATION PROCEDURE: is detailed and complete. The procedures are in fact too detailed and there is too much reliance on official data and simple consumer information. The non-specialized and non-registered suppliers as well as small and artisan (informal) market is a real and important part of the economy and their non-inclusion distorts market competition evaluations.

**Recommendation:** Market share needs to be correctly calculated. Not only registered importation, but also actual and personal imports (i.e. contact lenses), as well as potential imports given proper market conditions need to be included. The potential for entry into the market by direct and indirect competitions (local markets selling cakes and macaroni) needs to be estimated.

2. PRODUCT (GOODS/COMMODITY) BOUNDARIES OF A MARKET: Due consideration for substitutes is necessary to determine the extent of market domination. There are different degrees of substitutability.

**Recommendation:** The AMC should do **cross elasticity testing for substitutability** taking into due consideration time lags for response. Close substitutes such as different brands of foods as well as different bakeries for bread normally have high degree of cross demand elasticity of price. Other products that are not such close substitutes normally have an existing price differential and any change in price in one will also cause a change in demand for both. New products and services can come into the market in response to raising prices of a product. If a dry cleaning service becomes too expensive

people may choose to send some of their garments to a laundry and even do some at home while only using the dry cleaners for their fine suits. In response to the increase in demand a new industry of small laundries might spring up.

- i) close substitutes with normally a high degree of cross demand elasticity of price:
  - different brands of the same generic product;
  - bakeries;
- ii) intermitted substitutes of interchangeable products and services;
  - butter and margarine;
  - beef and chicken;
  - taxi and bus.
- iii) new products and services;
  - dry cleaning to laundries; or
  - dry cleaning to home washing

Due consideration also for substitution of products between as well as within geographic regions is necessary to determine the extent of market domination. The AMC should do **elasticity testing for substitutability between geographic regions**. This should include international as well as national market.

- i) transportation cost;
- ii) regulations and licensing;
- iii) import tariffs and duties;
- iv) import quotas and other limits.

In general the whole of Uzbekistan should be consider the market for goods unless otherwise proven.

5. **DETERMINATION OF THE COMPOSITION OF BUYERS AND SELLERS IN THE MARKET AT ISSUE:**

**Recommendation:** The definitions be inclusive of all buyers and sellers in the market as a whole and of all supply and demand not just those that are formally registered. This means the following:

- i) including not only registered imports, but also legally non registered actual imports as well as the legal possibility or potential for imports;
- ii) non specialized and non registered suppliers such as contact lenses supplied by private medical clinics and doctors; and
- iii) informal suppliers, such as small home bakery and other informal producers of cakes and macaroni.

6. **GEOGRAPHICAL (TERRITORIAL) BOUNDARIES OF A COMMODITY MARKET:**

**Recommendation:** The geographic limit of a market is determined by answering the question of whether an increase in price in one location substantially affects the price in another. If so, then both locations are in the same market. Also definitions must be concerned with the market as a whole and all of supply and not just the formal registered suppliers. This means considering the whole national as a single market for perishable goods; and not allowing market geographic division by «cartels» such as the textile industry. Price for monopolies should not be set so low that they limit and restrict the incentive for investment, entry and competition (thereby protecting the

monopolies' position). Consider potential competition based on not just actual, but using minimal entry cost and profit potential;

1. DETERMINATION OF THE VOLUME OF PRODUCT (COMMODITY) RESOURCES OF THE MARKET AND THE SHARE OF A BUSINESS ENTITY:  
The formulas for calculating of gross sales of goods and market volume are different and need to be corrected. There is a degree of uncertainty in some of the references.  
**Recommendation:** In general the document needs to be simplified. The calculation of market share is only as good as the data that goes into it. Without full information from the non-register sectors these calculations will be incomplete.
  
8. QUANTITATIVE INDICATORS OF THE STRUCTURE OF A COMMODITY MARKET:  
Again the problem is not with the idea, but with the information and data used in the calculations.  
**Recommendation:** To repeat the calculations is only as good as the data that goes into them. Without full information from the non-register sectors these calculations will be incomplete.
  
2. QUALITATIVE STRUCTURAL INDICATORS: There are concepts such as «demand curves» and «criminal factors» and other information requirements, which would require in-depth research and analyze. These necessitate specialized staff and support, which are costly and time consuming. Determining concepts such as «closeness or openness» of a market based on actual registered imports or sales is incomplete. Imports may be limited due to low local prices imposed by the Oblast AMC, thereby obstructing competition.  
**Recommendation:** This section be used where there are identified cases of anti-competitive abuses and practices of enterprises. Also competition analyses and determination of monopoly positions should be after identification and not to classify «a priori» monopolies enterprises. This would greatly decrease the AMC's work and cost, while only dealing with results or the actual problems of anti-competition. The section should moreover include a sub-section to evaluate the economic impact and injury (monetary cost) on consumers, producers, supplies and competitors.
  
10. MARKET POWER OF A BUSINESS ENTITY: A firm has market power if it is profitably able to charge a price above that which would prevail under competition, which is usually taken to be marginal cost. It is difficult to measure marginal cost and therefore difficult to measure the deviation between price and marginal cost. An alternative approach is to estimate the price elasticity of the residual demand (the market demand net of the quantity supplied by other firms) facing an individual firm (or group of firms). This elasticity of residual demand facing a firm summarized the ability of a firm to exercise market power. The price-cost margin equals the negative of the inverse of the elasticity of demand. Also the measure of market power should not be based on factors such as the potential «ability to establishing higher prices», but on actual higher prices. The results of monopoly power such as higher prices, is more important than «obvious» market power and the fact that an entity « could use its power to encroach on the rights of its competition». Price elasticity and market share are imperfect indicators of market power, so additional analyses of the economic conditions is necessary before one can reach a conclusion about market power.

If entry is easy, then the industry pricing is severely constrained regardless of whether an existing firm has a large market share.

**Recommendation:** It's the abuses of power and not power itself that needs to be controlled. If there are abuses, then the control or limiting of that power may be appropriate. There is also the concern about elasticity studies and use of registered official data for analysis as well as analyzing «pricing models». These are difficult and costly activities where as monitoring the results of anti-competition are more efficient and cost effective.

The price elasticity of the residual demand (the market demand net of the quantity supplied by other firms) facing an individual firm (or group of firms) should be used to measure actual market power.

The most important factor to be considered is the ease of entry.

### **Other Recommendations**

The AMC's goal of promoting a competitive and liberal economic environment requires not only analytic and evaluation methodology, but also the organizational structure to perform its work. The AMC should begin to phase in this new system of monitoring and at the same time phase out the system of registration and being concerned with pre-classification of enterprises. In order to facilitate in the AMC in reaching its objective of eliminating all price and profit controls and declaring by the end of year 2000 and rely completely on a system of monitoring, there are the following additional recommendations:

the creation of:

1. a **Monopolistic Practices Monitoring Unit** to:
  - i) identify abuse of anti-competitive practice;
  - ii) evaluate their economic impact and injury; and require the qualified AMC unit to
  - iii) determine competitive and monopoly positions.
2. an **Economic Impact and Injury Evaluation Unit** to:
  - i) calculate loss and cost to consumers, producers and competitors.
3. a **Competition Analysis and Monopoly Positions Unit** to:
  - i) determine, assess, define, measure, calculate and identify monopolies.
4. a **De-Monopolistic and Competition Development Unit in order** to:
  - i) devise alternatives and/or restructuring programs for de-monopolization;
  - ii) eliminate obstruction and barriers to entry; and
  - iii) promote competition in all industries especially public services.
5. an **Entrepreneur and property Owners Promotion Unit** to:
  - i) development of an enabling environment for enterprises;

The AMC principle and efforts should focus on limitation of the results and abuse through the promotion of competition and limitation of monopoly power. Specifically it should do this through limiting of obstacles to entry and the promotion of opening of the market to competition as well as development of an enabling environment and regulatory conditions that promote enterprises.

The specifics of the above recommendations include the following:

1. a **Monopolistic Practices Monitoring Unit** to:
  - i) identify abuses of anti-competitive practices through a system of **monitoring and investigating complaints** from customers, suppliers,

competitors and relevant government bodies and regulatory agencies. Abuses include the following:

- a. excessive prices;
- b. restricting output;
- c. forcing customers to buy additional products they do not want;
- d. dumping;
- e. restricting market entry;
- f. distribution controls;
- g. cartels; and
- h. others.

An example would be an increase in price of a given good or service caused by a drop in supply and after a lag of time (a year for example) there is no corresponding increase in supply.

An other example would be the requirement that for each purchase of a bottle of spirits, the customer must buy a bottle of a soft drink.

Note: it is not an abuse just to be large or a dominant enterprise i itself. Nor are all wrong actions, such as environment damages or quality control, by enterprises anti competitive practices.

2. an **Economic Impact and Injury Evaluation Unit:**

- i) Where anti-competitive abuses and practices has been identified, the AMC **should evaluate their economic impact and injury** on consumers, producers and competitors including the following:
  - a. loss of income to suppliers;
  - b. additional cost customers;
  - c. income loss to competitors due to decline in sales or price reduction or additional cost of operation;
  - d. loss of revenue to the government because of tax loss;
  - e. the social cost of limit to supply of a product and /or service.

3. a **Competition Analysis and Monopoly Positions Unit:**

- i) Where anti-competitive abuses and practices have been identified and the economic impact and injury evaluated, the AMC's appropriate unit **should do competition analysis and determine monopoly positions**. These include doing the following:
  - a. assessing the limits and barriers to entry and exit of potential competitors;
  - b. defining the relevant geographic and product markets;
  - c. measure and calculate market share and concentration;
  - d. identify government bureaucratic, regulations and licenses barriers;
  - e. identify substitutes;
  - f. identify trade barriers;
  - g. availability of raw materials and other inputs;
  - h. access to systems of distribution;
  - i. identify collusion to restrain competition through:
    - management continuity;
    - common ownership;
    - vertical integration
    - active government involvement in the market;

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- j. cost of developing new sources of inputs and distribution networks;
  - k. investment cost;
  - l. size of operation; and
  - m. time to start -up.
- ii) This process needs to be **phased it** and it is recommended that the first stage be as follows:
- a. the AMC only register firms with market share of more than 65% and only consider firms between 35% and 65% as monopolist if they have been investigated by the **Monopolistic Practices Monitoring Unit** and there are proven anti-competitive abuses and practices.
  - b. after a period of time (one year) extend this policy to all enterprises that are not natural or state monopolies, that is the AMC will only act when there are proven abuses.

The AMC should not restrict prices nor profits if there are not both proven abuses and barriers to entry. The high price and profits expectations are absolutely necessary to attract investment from both new competitor and expansion of existing enterprises. Economic development requires investment and there can only be investment if there is an expectation of profits. In market economies, profits are essential to attract investment, which is itself, the most essential requirement for economic growth and development.

When the AMC has identified and proven anti-competitive abuses and practices, determined their economic and injury, and limits and confirmed barriers to entry confirmed, the principal objective should be to eliminate these abuses and he obstacles to the market and /or open entry and access to other competitors. The next recommendation addresses this objective.

4. a **De-monopolistic and Competition Development Unit** to:

- i) **devise alternative and/or restructuring for de-monopolization**, including:
  - a. breaking- up of horizontal as well as vertical integration where necessary;
  - b. promote entry of competitors;
  - c. supporting imports;
  - d. promote substitutes services;
  - e. merging of business entities; and
  - f. enjoiment of unfair competition injunctions
- ii) **eliminate obstacles and barriers to market entry and access of other competitors**. That is the AMC remove the barriers to competition so that the market can work and promote competition:
  - a. limitation or limiting of government bureaucracy, restrictions and regulations;
  - b. limitation or lowering of import tariffs and duties;
  - c. lifting or raising of import quotas;
  - d. break up of exclusive contracts for sales and buying;
  - e. restraining orders to cease and desist illegal acts;
    - refusal to buy or sell;
    - other bad act.
- iii) promote competition in all industries and especially open up to competition all possible **Public Service** by devising alternatives and restructuring plans such as:

- a. breaking-up of horizontal as well as vertical integration, that is break-up of the service into as many as possible parts;
  - b. using of renewable public tenders for a fixed period of time with given conditions for each;
  - c. promoting entry of private firms; and
  - d. promoting substitutes services.
- iv) This process also needs to be **phased in** and should:
- a. start with the easiest industries such as
    - transportation; dividing bus route into single units, and promoting private taxis into the market as well as truck cargo shipping; and
    - vehicle fuel distribution (service stations): divesting oil and gasoline refiners of direct distribution systems (service stations), while maintaining state monopoly price controls over wholesale fuel from the government natural monopoly to brokers, jobbers, transportation enterprises. But there should be no price or profit controls over the retailer's price of fuel from service stations.
  - b. The program of de-monopolizing of public services should be expanded to all public serves industries that are not natural monopolies within a fixed period of time (one year).

The AMC, based on the Uzbekistan «Guiding Principles» policy of **«creating and promoting a class of entrepreneurs and property owners»**, should make one of its **priority the development of an enabling environment and regulatory conditions that fosters the growth of this class.** The AMC needs to prepare and recommend the changing of laws, regulations, and license requirements that promotes economic freedom of action as well as eliminating restrictions to a growing class of entrepreneurs, enterprises and industries. The initial target groups for these actions should be industries characterized by small and medium enterprise.

5. an **Entrepreneur and Property Owners Promotion Unit** to:

- i) development of an enabling environment for enterprises by preparing laws, regulations and license requirements in order to:
  - a. exclude from its activities business enterprises in industries that are characterize by many small firms and have relatively low investment cost as well as easy entry such as the following industries:
    - Agricultural and agro-industrial products both food and non food (except cotton and wheat);
    - Food and processed food products (except wheat, oil, whole milk)
    - small and medium commercial activities (bazaars);
    - Small and medium services industry (including dry cleaning, auto repair, laundry ext.);
    - Light machine-building;
    - Chemical industries; and
    - Road-building and operation works;
  - b. exclude from its activities business enterprises that have an **annual gross sales with less** than a fixed minimum (such as 4,000 minimum salaries should);

- c. exclude from its activities business enterprises have an **investment capital requirements less** than a fixed minimum (such as 4,000 minimum salaries should) and
  - d. exclude from its activities business enterprises that are in financial difficulties.
- ii) This process also needs to be **phased in** and it is recommended that the first stage be as follows:
- a. start with the smallest industries and enterprises and over a period of time (two year) extend this policy to all industries and enterprises that are not natural monopolies, that is the AMC will only act when there are proven abuses.

**Uzbek Anti-Monopoly Committee (AMC)  
TIP/USAID Consultancy  
Representative Case Studies  
(current practices of oblast AMC's activity  
in the Republic of Uzbekistan)**

**Training Seminar in Fergana, 1/28 to 1/29/99**

**Participated:**

**Fergana, Andijan, and Namangan**

1) Milk Production

*Problems:*

*Solutions:*

- # Creation of Small and Medium Size Enterprises
- # Creation of Private Farms
- # Private Sector Processing

*Time Frame:* 1 year

2) Uzdonmahsulot (Grain and Bread Products)

*Problems:*

*Solutions:*

- # Breaking Up Vertical Integration
- # Tendering
- # Promoting Private and Small Enterprises
- # Removing State Distribution System
- # Encouraging Imports (Legislation)

*Time Frame:* 1-3 years                      5 years

3) Pasta (Macaroni) Production

*Problems:*

*Solutions:*

- # Creating Small Enterprises
- # Tendering Raw Materials (Law)
- # Breaking Up Vertical Integration
- # Easy Market Entry

*Time Frame:* 1 year

4) Beverage Production

*Problems:*

*Solutions:*

- # National Market
- # Changing Procedure of Determining Monopoly Products

*Time frame:* n/a

5) Transportation Services

*Problems:*

*Solutions:*

- # Tendering Bus Routes
- # Sale of Automobiles Through Auctions
- # Privatization
- # Association of Drivers-Entrepreneurs

Freightage

- # Sale of Trucks to Private Persons
  - # Privatization
  - # Public Tender
- Time Frame: n/a*

**Training Seminar in Termez, 2/1 to 2/2/99**

**Participated:**

**Kashkadarya and Surkhandarya**

1) Manufacture of Construction Materials

*Problems:*

- # Collusion
- # Barriers to Market Entry
- # Resale Price Maintenance

*Solutions:*

- # Notification
- # Break Up Monopoly

*Time Frame: n/a*

2) MUPTK (Distribution of Different Construction Materials)

*Problems:*

- # Price Discrimination
- # Refusal to Deal
- # Full Line Forcing
- # Tying

*Solutions:*

- # Notification
- # Break Up Monopoly

*Time Frame: n/a*

3) Plastic Production

*Problems:*

*Solutions:*

- # Elasticity Study (by Republican Committee)
- # Determining Product and Geographic Markets

*Time Frame: n/a*

4) Cheese Production

*Problems:*

*Solutions:*

- # Promotion of Competition through the Creation of Small Enterprises/ New Products/ Substitutes/ Importation)
- # Elasticity Study
- # Determining Market Share

*Time Frame: n/a*

5) Ceramics Production

*Problems:*

*Solutions:*

*Time Frame: n/a*

**6) Taxi Cabs**

*Problems:*

*Solutions:*

# Tendering (routes)

*Time Frame: n/a*

**7) Medical Services**

*Problems:*

*Solutions:*

*Time Frame: n/a*

**Training Seminar in Nukus, 2/6 to 2/7/99**

**Participated:**

**Karakalpakstan and Khorezm**

**1) «Karakalpakstan Grain and Bread Products» JSC (Rice Processing)**

*Problems: the same as in case of Khorazm*

*Solutions: the same as in case of Khorazm*

*Time Frame: 15 days*

**2) Building and Manufacturing Construction Materials**

*Problems:*

# Exclusionary Practices

# Collusion

# Price Discrimination

# Price Fixing

# Trust

*Solutions:*

# Notification

# Seizure

# Recommendation to AMC Central Apparatus

# In- Depth Analysis of Activities

*Time Frame: 1 month*

**2) Manufacture of Telephone Sets**

*Problems:*

# Abuse of Negotiating Position

# Exclusive Dealing

*Solutions:*

# Notification

# Seizure

*Time Frame: 15 days*

**3) Carpet Manufacture**

*Problems:*

# Price Fixing

*Solutions:*

# Notification

- # Seizure
  - # Elasticity Analysis
- Time Frame: 1 month*

#### 4) Production of Rice and Feed

*Problems:*

- # Price Fixing

*Solutions:*

- # Notification
- # Seizure

*Time Frame: 15 days*

#### 5) Wine and Vodka Production

*Problems:*

- # Price Fixing
- # Resale Price Maintenance in Own Shops

*Solutions:*

- # Notification
- # Seizure
- # Market Analysis

*Time Frame: n/a*

#### 6) Supply of Spare Parts and Agricultural Machinery

*Problems:*

- # Exclusive Dealing
- # Price Discrimination
- # Abuse of Market Power

*Solutions:*

- # Notification
- # Seizure
- # Market Study

*Time Frame: 3 months*

#### 7) Production of Meat Products

*Problems:*

- # Abuse of Market Power

*Solutions:*

- # Breaking Up Monopoly
- # Creating Small Production Units
- # Promotion of Competition

*Time Frame: 1 year*

#### 8) Manufacture of Reinforced Concrete

*Problems:*

- # Dominance

*Solutions:*

- # Product Market Analysis
- # Removal from the Concerned Register
- # Promotion of Competition

*Time Frame: 1 month*

**Training Seminar in Bukhara, 2/8 to 2/9/99**

**Participated:**

**Bukhara and Navoi**

1) Poultry

*Problems:*

- # Collusion
- # Price Fixing
- # Restraint of Output

*Solutions:*

- # Notification and Seizure
- # Promotion of Competition
- # Encouragement of Importation

*Time Frame:* 1 year

2) Supply of Chemicals

*Problems:*

- # Market Division
- # Restraints on Entry
- # Resale Price Maintenance
- # Collusion and Exchange of Information

*Solutions:*

- # Sale through Tender
- # Notification and Seizure
- # Request to Central Apparatus of AMC

*Time Frame:* 6 months

3) Manufacture of Cement

*Problems:*

- # Exclusive dealing
- # Tying

*Solutions:*

- # Breaking Up

*Time Frame:* 3 months

4) Production of Mixed Fodder

*Problems:*

- # Refusal to Deal
- # Territorial Restraint

*Solutions:*

- # Breaking Up
- # Enabling Competitive Environment

*Time Frame:* 1 year

5) Medical Equipment

*Problems:*

- # Resale Price Maintenance

*Solutions:*

- # Request to the Government
- # Breaking Up Monopoly Provided that Importation is Not Restricted

*Time Frame:* 1 year

6) Manufacture of Construction Materials

*Problems:*

*Solutions:*

# Privatization

# Breaking Up

*Time Frame:* 1 year

7) «Uzbekbirlashuv» (Consumers' Cooperation)

*Problems:*

# Territorial Restraint

*Solutions:*

# Liquidation

*Time Frame:* 2 years

8) Brick Manufacture

*Problems:*

# Price Fixing

# Collusion

*Solutions:*

# Promotion of Competition

# Tendering

# Encouragement of Slag Blocks

# Notification

*Time Frame:* 2-3 months

9) Oil Products

*Problems:*

# Price Fixing

# Price Discrimination

*Solutions:*

# Political Decisions

*Time Frame:* n/a

10) BukhoroTex (Textile Industry)

*Problems:*

# Price Fixing

# Exclusionary Practices

*Solutions:*

# Breaking Up Vertical Integration

# Breaking Up Horizontal Integration

# Promotion of Competition

*Time Frame:* 3-5 years

11) Car Servicing

*Problems:*

# Tying

# Problem of Trust

*Solutions:*

# Promotion of Competition

# Notification  
*Time Frame: n/a*

12) Taxi Cabs

*Problems:*

*Solutions:*

# Promotion of Competition  
*Time Frame: n/a*

13) Beer Production

*Problems:*

# Price Fixing

*Solutions:*

# Promotion of Competition  
*Time Frame: n/a*

**Training Seminar in Samarkand, 2/11 to 2/12/99**

**Participated:**

**Samarkand, Djizakh, and Syrdarya**

1) Freightage

*Problems:*

# Price Discrimination

# Exclusive Dealing

*Solutions:*

# Notification

# Seizure

# Government's Decision

*Time Frame: 5 years*

2) Coal Industry

*Problems:*

# Price Discrimination

*Solutions:*

# Notification

# Seizure

# Liquidation of Trust

# Request to Government Regarding Removal of State Allocation Fund System

*Time Frame: 1 month*

3) Building Hydraulic Structures

*Problems:*

# Price Fixing

*Solutions:*

# Notification

# Seizure

# Liquidation

*Time Frame: 2 months*

4) Samarkand Hydraulic Structures

*Problems:*

- # Resale Price Maintenance

*Solutions:*

- # Notification
- # Seizure
- # Liquidation of Trust
- # Request to AMC Central Apparatus Regarding Restructuring the System

*Time Frame:* 4 months

5) Zilola-Tex

*Problems:*

- # Pricing
- # Restructuring

*Solutions:*

- # Removal from the Concerned Register
- # Promotion of Competition and Enterprise Restructuring

*Time Frame:* 1 year

6) JSC «Meat and Milk Processing»

*Problems:*

- # Tying

*Solutions:*

- # Notification
- # Seizure

*Time Frame:* 1 week

7) «Zarafshon» Joint Venture (Vodka Production)

*Problems:*

- # Conscious Parallelism
- # Determination of Geographic Market

*Solutions:*

- # Elasticity Analysis
- # Determination of Geographic Market

*Time Frame:* 2 months

8) Building Industry

*Problems:*

- # Price Discrimination

*Solutions:*

- # Notification
- # Seizure

*Time Frame:* 1 month

9) JSC «Jizak Milk» (Milk Production)

*Problems:*

*Solutions:*

*Time Frame:* n/a

**Training Seminar in Tashkent, 2/24 to 2/25/99**

**Participated:**

## City of Tashkent and Tashkent Oblast

### 1) Milk Processing

*Problems:*

- # Price Fixing
- # Price Discrimination
- # Tying
- # Trust

*Solutions:*

- # Promotion of Competition
- # Breaking Up Monopoly
- # Tendering
- # Solution Regarding Trust System

*Time Frame:* 1-2 years; 3-4 years

### 2) Roofing Manufacture

*Problems:*

- # Exclusive Dealing
- # Price Discrimination

*Solutions:*

- # Notification to Shut Down Trading House

*Time Frame:* 1.5 month

### 3) JSC «Nerudnik» (Sand and Gravel)

*Problems:*

- # Price Discrimination

*Solutions:*

- # Breaking Up Mines
- # Discussion and Solution of Trust Problem

*Time Frame:* n/a

### 4) Passenger Transportation

*Problems:*

- # Monopoly Power
- # Price Fixing
- # Restraint on Market Entry

*Solutions:*

- # Breaking Up Monopoly
- # Notification
- # Elimination of Trust
- # Tender of Routes
- # Discussion of Collusion Behavior
- # Market Elasticity Study

*Time Frame:* 3 years

### 5) JSC «Grain and Bread Products»

*Problems:*

- # Price Fixing
- # Collusion
- # Trust
- # Distribution Network

# Allocation of Flour through Fund System

*Solutions:*

*Time Frame: n/a*

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## **ANTI-MONOPOLY & COMPETITION: GOALS, OBJECTIVES AND POLICIES**

A national roundtable was held with the Central AMC staff using the results of the 8 training visits and the 6 regional training seminars. The national roundtable has resulted in significant changes in overall policy, strategy and operational methodology of the AMC as well as proposals for training. A legal and regulation reform program has been proposed.

The roundtable set the AMC's work under overall Uzbek national economic policy. They defined the main goal of Uzbekistan's economic development policy is to promote the improvement of social-economic welfare of the society by way of the development of a market economy and the maximization of sustainable economic growth.

To achieve this goal the AMC of Uzbekistan has set the following objectives:

- Development of competition
- protection of consumers' rights;
- control over the activity of natural monopolies; and
- De-monopolization of non-natural monopolies.

### **AMC POLICY**

In order for the AMC to reach its goals and objectives, the national roundtable proposed the following new AMC policies:

- 1) As Uzbekistan is transitioning from a command administrative economy towards a market economy, the AMC evolve from the system of control over monopolies based on a market share, and control over prices, profitability and output. The AMC is to develop a policy of control of permanent or long-term contractual responsibilities among suppliers, both formal and informal and to use de-monopolization and restructuring as a major instrument. Also the AMC is to develop the capacity to control the conduct of business subjects, including control over abuse of market power and market dominant position.
- 2) The AMC is to promote the development of a judicial system (subdivisions in the system of economic courts on violation of antitrust legislation) as a complement to the current administrative system. The judicial system provides that persons and legal entities as well as governmental and non-governmental organizations can bring legal action against violation of anti-monopoly legislation with the right to recover the injury.
- 3) The AMC is promote and participate in the development of strategy and normative legislative basis for government procurements. Government procurements shall include the purchase of all the goods and services for the needs of the state as well as the sale of these goods and services to the state agencies, institutions, third parties and economic agents. This policy has to be consistent with the AMC policy and legislation on competition as well as promote competition.
- 4) The AMC is promote the development of strategy and normative legislative basis for control and elimination of all cartels, trusts, holdings, inter-linked directorships, associations and other formal and informal agreements that abuse market power and market dominance. Any organizations or agreements of this type have to be considered as vertical and/or horizontal integrated enterprises.

- 5) The AMC is to develop clear definition of laws and other normative acts to prove monopoly abuses, especially collusion.
- 6) AMC will promote integration of anti-monopoly policies of the Central Asian countries, which are the parties to the Agreement on antimonopoly policy.
- 7) The AMC will not consider products as regional or Oblast monopoly unless proven. Regional or Oblast market share shall not constitute prove unless there are restraints to entry the market or transportation is not feasible.
- 8) AMC will de-monopolize all non-natural monopolies with market share:
  - 66% and more within 2 year
  - 65% and less within 1 year
- 9) AMC will promote development of a strategy and normative legal basis in order to create competitive environment in financial markets including bank, savings, loans and credit unions, non-banking financial and other institutions.

#### **AMC METHODOLOGY IMPROVEMENT**

The national roundtable also made recommendations on improvements of the AMC's methodology.

In general, the recommendations of USAID/Trade and Investment project have been adopted and are to be incorporated into the AMC's Methodology. Below are the comments and additions to these recommendations.

First of all the title «Methodological recommendations on the analysis and evaluation of condition for competitive environment in the commodity markets» needs editing and the word «recommendations» should be deleted.

1. **GENERAL PROVISIONS:** The goals, tasks and directions of the AMC's activity should be explained in details. «The transition from the method of declaration of agreed (free) prices and tariffs for the monopolists products to the method of monitoring » shall be included as a strategic goal that is indicated in «The basic strategic measures on improvement of the activity of Committee on de-monopolization and competition development under the Ministry of Finance of Uzbekistan Republic for 1999-2000».
2. **BASIC TERMS AND REQUIREMENTS:** It is necessary to establish definition for a commodity market, geographic market, buyers of the goods, oligopoly, concentration of a market, entry and exit barriers, demand elasticity of price, price offering, cross elasticity and etc., it is useful to develop the national dictionary of antimonopoly terms in accordance with the international terminology.
3. **COMPETITION EVALUATION PROCEDURE IN THE COMMODITY MARKETS:** It is useful to introduce the notion of horizontal and vertical integration for better understanding of the criteria for competitive environment evaluation. The methodology for evaluation of the competition at a corporate level of branch production organization structure should be also provided.

4. **COMMODITY MARKETS:** The elasticity indicators are used to reveal goods substitutes as well as to expose geographic market borders. The close goods substitutes such as different types of marks for food products as well as different kinds of roll and buns products usually have the high level of demand cross elasticity of price. Other goods that are not close substitutes usually have the different in price, though any change in price for one of them shall entail the change in demand for both goods. The new goods and services may appear in the market as a response to product price increases. So, the goods substitutes may be classified into three groups:

- a) the close goods substitutes with the high level of demand cross elasticity of price as different marks of one and the same good;
- b) intermediate substitutes of interchangeable goods and services such as butter and margarine, beef and lamb, taxi and bus and etc.;
- c) new goods and services able to substitute the existing ones, such as dry cleaning and laundry;

The analyses and geographic market must include the following four factors: 1) transportation costs; 2) regulatory provisions and licensing; 3) import tariffs and fees; and 4) import quotas and other limitations.

For better understanding the application of elasticity indicators in the analyses of commodity and geographic markets it is useful to introduce the demonstrative example;

5. **DETERMINATION OF THE COMPOSITION OF BUYERS AND SELLERS IN THE SURVEYED MARKET:** It is recommended to use the information not only on formal but on informal markets as well. For that purpose it is necessary to present methods of data collection and analyses of the information in order to determine composition of buyers and sellers as well as the method to expose potential buyers and sellers.

6. **GEOGRAPHIC COMMODITY MARKETS:** The borders of geographic market are determined while answering the question 'does the change of price for the good in one territory provide the significant influence on the prices in the other territory?' If the answer is positive, it means that both territories are the parts of one market. Again, the elasticity is a device for analyses. The last paragraph of the recommendations of the Trade and Investment Project should be related to financial bodies because the prices are declared not with the AMC, but with financial bodies. For better methodology clearness demonstrative examples on geographical markets determination need to be included;

7. **DETERMINATION OF THE VOLUME OF COMMODITY MARKET RESOURCES AND THE MARKET SHARE OF A BUSINESS ENTITY:** First of all it is necessary to provide an explanation for the necessity of calculation of the market share of a business entity, The calculation formula requires clarification.

8. **QUANTITATIVE INDICATORS OF THE STRUCTURE OF A COMMODITY MARKET:** The name of the sub-section itself needs to be changed, because the volume of product resources is also a quantitative indicator of market structure. Besides, it is necessary to provide the ground for the use of the listed quantitative indicators of a market structure and the methodology to expose the market power abuses by the enterprises on this basis.

9. **QUALITATIVE INDICATORS OF THE STRUCTURE:** It is necessary to justify the need for the use of quantitative indicators in the analyses of the commodity markets structure. Besides that, there are factors and indicators the study of which requires deep surveys and analyses. That is why it is recommended to use this part of methodology for market analyses in those cases when there are clear cases of abuses and the actions of

enterprises are targeted against competition. In general, it is useful to list the possible sources of information on prospective competitors in this sub-section, present the demonstrative examples of the analyses of different barriers to entry and exit the market as well as the methodology for evaluation of the economic input and the harm caused to the consumers, producers and competitors.

10. **MARKET POWER OF A BUSINESS ENTITY:** The firm has the power in the market when it can establish the price for its goods higher than the price that could have been set in the competitive conditions, that means higher than the level of maximum costs. It is hard to measure maximum costs, which means that it is complicated to measure the difference between the price and maximum costs. The alternative approach is in determination of price elasticity of residual demand of this firm (or a group of firms) that means the net demand for the product supplied to the market by other enterprises. If the elasticity is high - the firm has a weak market power. This indicator of the firm's elasticity of residual demand allows making a conclusion on the firm's opportunity to use a market power.

### **NEW METHODOLOGY RECOMMENDATIONS**

The AMC, based on T&I recommends, is to evolve from the system of price and profit controls to a policy of «control of structure of economic markets' through de-monopolization and re-structuring. Also the AMC is to develop the capacity to 'control conduct of business', including control of abuse of market power and market dominant position. This is a strategic decision of the AMC and a improvement in their ability to promote competition and control monopoly power and abuses. In order to make these changes the T&I project has recommended new methodology for analyses and evaluation of competitive environment. The recommendation are the following:

- 1) Methodology for de-monopolization and restructuring of monopolists enterprises for both horizontal and vertical integration;
- 2) Methodology for using survey sampling for market analyses;
- 3) Methodology for analyses of 'market power' and 'dominant position' of trusts, holdings, associations and inter-locked directorships;
- 4) Methodology for the analyses of planned mergers, acquisition of assets as well as asset transfers;
- 5) Methodology for the exposure of abuses of 'market power' by enterprises;
- 6) Methodology for calculation of economic damage caused to the consumers, suppliers and competitors by abuses of market power.

### Appendix IV Toward a Reformed Budget Process

DIMENSION	ESSENTIAL CHARACTERISTICS	PROGRAM (3/31/99)	NEW INITIATIVES
<p><b>BUDGET DOCUMENT</b></p> <p><b><u>CONTENTS</u></b></p> <p>A. Budget Message</p> <p>B. Summaries</p> <p>C. Financing Plan</p> <ul style="list-style-type: none"> <li>➤ Central Government</li> <li>➤ Local Government</li> </ul> <p>D. Current Expenditures</p> <ul style="list-style-type: none"> <li>➤ Central Government</li> <li>➤ Local Government</li> </ul> <p>E. Capital Expenditure</p> <ul style="list-style-type: none"> <li>➤ Central Government</li> <li>➤ Local Government</li> </ul> <p>F. Budget Law</p> <p>G. Financial Plans of Special Purpose Funds and State-Owned Enterprises</p>	<p>1) The appropriated section of the Annual Budget embraces the budgets of GOT entities with characteristics which satisfy one, or more, of the following criteria:</p> <ul style="list-style-type: none"> <li>➤ Entity disbursements are defined by law as subject to appropriation.</li> <li>➤ Entity is defined by law as a «Ministry.»</li> <li>➤ Entity provides services free, or substantially free.</li> <li>➤ Entity collects revenues from taxes and other compulsory exactions.</li> </ul> <p>2) The non-appropriated section of the Annual Budget includes the financial plans of GOT entities with characteristics which satisfy one, or more, of the following criteria:</p> <ul style="list-style-type: none"> <li>➤ Entity provides services which could be privatized, but currently requires subsidy or tax and regulatory relief.</li> <li>➤ Entity receipts and disbursements are charged to bank account(s) designated for entity purposes.</li> <li>➤ Entity pays taxes and dividends to the Government.</li> <li>➤ Entity receives GOT capital infusions, subsidies or loans.</li> </ul> <p>Entity is responsible for the payment of principal and interest on debt guaranteed by the Government.</p>	<ul style="list-style-type: none"> <li>■ Parallel FY1999 Budget Document Model</li> <li>■ Budget Document Coverage Criteria</li> <li>■ Regulations – Current Expenditure Budget Process</li> <li>■ Regulations – Capital Budget Process</li> <li>■ Budget Manual (Draft)</li> <li>■ One Formal Training Session</li> <li>■ On-the-job Training</li> </ul>	<ul style="list-style-type: none"> <li>■ Technical Assistance and Training - Format and Content of FY2000 Budget Document</li> </ul>

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DIMENSION	ESSENTIAL CHARACTERISTICS	PROGRAM (3/31/99)	NEW INITIATIVES
<p><b>BUDGET POLICY PLANNING</b></p> <p>The membership of the inter-agency Budget Policy Planning team should include representatives of the Central Bank, MEF and other appropriate institutions</p>	<p>Advised by a Policy Planning Team, the MEF Minister's annual call for estimates for the coming fiscal year includes:</p> <ul style="list-style-type: none"> <li>➤ A concise statement outlining key issues, problems and opportunities facing the Nation</li> <li>➤ A multi-year financial capability statement covering the upcoming Budget, and at least two years beyond</li> <li>➤ A concise statement of potential program and project initiatives to be considered for inclusion in the upcoming Budget</li> <li>➤ A budget calendar</li> <li>➤ <b><i>Budget Formulation Methodology</i></b></li> </ul>	<ul style="list-style-type: none"> <li>■ Model Budget Call</li> </ul>	<ul style="list-style-type: none"> <li>■ <b>Technical Assistance and Training – Formulation of FY2000 Budget Call</b></li> </ul>

DIMENSION	ESSENTIAL CHARACTERISTICS	PROGRAM (3/31/99)	NEW INITIATIVES
<p>BUDGET FORMULATION</p>	<p><b>REVENUE ESTIMATES ARE PROPOSED BY A REVENUE COLLECTION ACTION PLAN TEAM, SUCH RECOMMENDATIONS TO BE BASED ON:</b></p> <ol style="list-style-type: none"> <li>1) Coverage Studies (Revenue Effectiveness)</li> <li>2) Cost of Collection Studies (Revenue Efficiency)</li> <li>3) Cost of Service Studies (Revenue Effectiveness)</li> <li>4) Proposed Revisions of Revenue Measures</li> </ol> <p><b>EXPENDITURE ESTIMATES AT ALL LEVELS THROUGHOUT THE GOVERNMENT ARE JUSTIFIED BY THE FOLLOWING ANALYTICAL DOCUMENTATION:</b></p> <ol style="list-style-type: none"> <li>1) Problem Definition</li> <li>2) Goal(s)</li> <li>3) Collaborators and Interested Parties</li> <li>4) Conditions of Performance</li> <li>5) Work Plan</li> <li>6) Alternatives</li> <li>7) Budget, formatted as follows:                             <ul style="list-style-type: none"> <li>➤ Cost Centers</li> <li>➤ Financing Plan</li> <li>➤ Performance Data</li> <li>➤ Interpretative Commentaries</li> </ul> </li> </ol> <p>All appropriations are based on «gross» estimates of cost</p> <p>All Capital Project Appropriations equal gross project cost</p>	<ul style="list-style-type: none"> <li>■ Regulations – Current Expenditure Budget Process</li> <li>■ Regulations – Capital Budget Process</li> <li>■ Budget Manual (Draft)</li> <li>■ Performance Budget Model – MOH, Polyclinic # 11</li> <li>■ Performance Budget Model – MOE, School # 16</li> <li>■ Performance Budget Model – City of Ashgabat</li> <li>■ Model – Multi-year Capital Program and Budget</li> <li>■ Four Formal Training Sessions</li> <li>■ On-the-job Training</li> </ul>	<ul style="list-style-type: none"> <li>■ Technical Assistance and Training – Formulation of FY2000 Budget:                             <ul style="list-style-type: none"> <li>➤ Ministry of Health (Performance Budget in detail)</li> <li>➤ Ministry of Education (Performance Budget in detail)</li> <li>➤ City of Ashgabat (Performance Budget in detail)</li> <li>➤ Additional Ministries (Performance Budget, Summary only)</li> </ul> </li> </ul>

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DIMENSION	ESSENTIAL CHARACTERISTICS	PROGRAM (3/31/99)	NEW INITIATIVES
ALLOCATION POLICIES	<p>Estimated current revenue equals or exceeds appropriations for current expenditure (balanced budget principle).</p> <p><b><i>Loans are used only to finance Capital Projects.</i></b></p> <p>Formal evaluation methods strongly influence current expenditure allocation decisions, including the application of</p> <ul style="list-style-type: none"> <li>➤ Unit Measures</li> <li>➤ Investment Returns</li> <li>➤ Weighting and Scoring</li> <li>➤ Modeling</li> </ul> <p><b><i>Capital Projects are evaluated by means of Net Present Value and Internal Rate of Return calculations, if appropriate, and ranked by means of Project Evaluation Criteria.</i></b></p>	<ul style="list-style-type: none"> <li>■ Capital Project Evaluation Model</li> <li>■ Regulations – Current Expenditure Budget Process</li> <li>■ Regulations – Capital Budget Process</li> <li>■ Budget Manual (Draft)</li> </ul>	<ul style="list-style-type: none"> <li>■ Technical Assistance and Training – Formulation of FY2000 Budget</li> </ul>

DIMENSION	ESSENTIAL CHARACTERISTICS	PROGRAM (3/31/99)	NEW INITIATIVES
<p><b>BUDGET IMPLEMENTATION</b></p> <p>Effective budget implementation depends on the integrated employment of 1) budgetary accounting, 2) cash flow monitoring, 3) work plans, 4) quarterly allotments, and 5) quarterly performance reviews.</p>	<p><b>BUDGETARY ACCOUNTING</b></p> <ul style="list-style-type: none"> <li>➤ Obligation/Commitment/Encumbrance Recognition</li> <li>➤ Current Expenditure Appropriations lapse annually</li> <li>➤ Capital Project Appropriations lapse at completion</li> <li>➤ Performance Data accountability</li> <li>➤ Timely reporting</li> </ul> <p><b>MONTHLY CASH FLOW PROJECTIONS TO FISCAL YEAR END</b></p> <p>Work Plans for every cost center embrace the following elements:</p> <ul style="list-style-type: none"> <li>➤ Activities/Tasks</li> <li>➤ Effort (Work hours, and, if available, costs)</li> <li>➤ Outputs (Targets)</li> <li>➤ Checkpoints (Milestones)</li> <li>➤ Performance Ratios</li> </ul> <p>Allotments issued quarterly, based on Work Plans</p> <p>Performance Reviews conducted quarterly</p>	<ul style="list-style-type: none"> <li>■ Regulations – Current Expenditure Budget Process</li> <li>■ Regulations – Capital Budget Process</li> <li>■ Budget Manual (Draft)</li> </ul>	<ul style="list-style-type: none"> <li>■ Formal Training Sessions</li> <li>■ On-the-job Training</li> <li>■ Proposed Study of Accounting Support for a Reformed Budget and Budget Process</li> </ul>

DIMENSION	ESSENTIAL CHARACTERISTICS	PROGRAM (3/31/99)	NEW INITIATIVES
BUDGET ORGANIZATION	<p>Functions and staff of the current «sectoral» Department are assigned to the Budget Department</p> <p>Budget staff is strictly qualified by education and experience to evaluate and compare the merits of proposed allocations</p> <p><b><i>Budget Department staff are systematically reassigned to increase their knowledge of GOT problems and programs</i></b></p>	<ul style="list-style-type: none"> <li>■ Model MEF Cost Center Format (Draft)</li> <li>■ USAID Provision of Computer Equipment/Software</li> </ul>	<ul style="list-style-type: none"> <li>■ <b>GOT Proposal for Additional Equipment/Software</b></li> <li>■ Recommendations on Budget Organization</li> </ul>

DIMENSION	ESSENTIAL CHARACTERISTICS	PROGRAM (3/31/99)	NEW INITIATIVES
ACCOUNTING ORGANIZATION	<p><b><i>«Fund» accountability provides the basic organizing principle of the accounting system. Established Funds include:</i></b></p> <ul style="list-style-type: none"> <li>➤ <b><i>General Fund</i></b></li> <li>➤ <b><i>Special Purpose Fund</i></b></li> <li>➤ <b><i>Capital Projects Fund</i></b></li> <li>➤ <b><i>Debt Service Fund</i></b></li> <li>➤ <b><i>Public Enterprise Funds</i></b></li> </ul> <p><b><i>Computerized controllership form of accounting and budget control serves entire GOT</i></b></p> <p>General Ledger includes Appropriations and Estimated Revenue</p> <p>Chart of Accounts facilitates use of cost centers by all entities</p>	<ul style="list-style-type: none"> <li>■ Regulations – Current Expenditure Budget Process</li> <li>■ Regulations – Capital Budget Process</li> </ul>	<ul style="list-style-type: none"> <li>■ Proposed Study of Accounting Support for a Reformed Budget and Budget Process</li> </ul>

## Appendix V

### Privatization

List of the relevant laws, decrees and regulations pertaining to privatization:

- Law on Lease and Leasing Arrangements (October 1990)
- Law on Denationalization and Privatization (February 1992; amended June 1997)
- Law on Property (October 1993)
- Law on Enterprises (October 1993)
- Law on Joint Stock Companies (October 1993)
- Law on Securities and Stock Market (December 1993)
- Law on Bankruptcy (October 1993)
- Law on Land Property Rights for Agricultural Production (December 1996)
  
- Decree on proper use of state property and management of privatization process (July 28, 1993, #1389)
- Decree on measures to denationalize and privatize state property (November 11, 1993, # 1618)
- Decree on the transfer process of state enterprises and agencies, its structural units, branches, departments, buildings and constructions (December 15, 1993, #1623)
- Decree on measures to modernize the management of household/consumer services sector (February 25, 1994, #1670)
- Mejlis Decree on State Privatization Program (November 23, 1994, #960-XII)
- Decree on privatization of unfinished construction sites belonging to state enterprises (April 7, 1997, #3090)
- Decree on corporatization of Ashgabat Glass Plant, Byuzmein Building Materials Plant and Byuzmein Cement Plant (April 7, 1997, #3091)
- Decree on denationalization and privatization of industrial enterprises (April 7, 1997, PP-2179)
- Decree on measures to speed up the privatization process of industrial enterprises (April 7, 1997, #3092)
- Decree on establishing the Central Commission on denationalization and privatization of industrial enterprises (May 22, 1997, #3160)
- Decree on privatization of Nebitdag knitting factory (June 2, 1997, #3137)
- Decree on setting up labor market exchanges (June 2, 1997, #3171)
- Decree on lease payments (June 30, 1997, #3268)
- Decree on the measures to denationalize and privatize state property (August 20, 1997, #3322)
- Decree on the privatization of unfinished construction site of «Yashyl Depe» brick plant in Gyaur Etrap (October 7, 1997, #3337)
- Decree on the privatization of unfinished construction site of oxygen station in Ashgabat (October 7, 1997, #3338)
- Decree on privatization of Tashauz canning factory (October 7, 1997, #3341)
- Decree on privatization of «Maksat Deri» company of Mary Power Plant (October 11, 1997, # 3343)
- Decree on land use in state sector (October 15, 1997, #3347)
- Decree on auctioning of state property (October 21, 1997, #3406)
- Decree on privatization of unfinished construction site of Tagta sports school (October 24, #3412)
- Decree on organizational structure of Turkmenoil State Concern (January 5, 1998, #3476)
- Decree on measures to corporatize industrial enterprises (January 14, 1998, #3490)

Decree on the privatization of unfinished construction sites belonging to state enterprises (February 5, 1998, #3538)

Decree on the appointment of the Investment Department of «Deutsche Morgan Grenfell» as investment and financial adviser to the Government of Turkmenistan (February 16, 1998, #3596)

Decree on the improvement of the services of sanatorium and resort facilities (April 6, 1998, #3672)

Decree on the transformation and sale of state enterprises (April 14, 1998, #3676)

Decree on «Aina» Glass Container plant in Ovadan Depe (May 22, 1998, #3706)

Decree on the privatization of unfinished construction sites belonging to state enterprises (May 26, 1998, #3718)

Decree on the privatization of state-owned unfinished construction objects (January 4, 1999, #4010)

Decree on the approval of the stage-by-stage privatization program of agro-industrial enterprises (January 13, 1999, #4038)

Resolution of the President (May 17, 1997, PB-1516)

Resolution of the Deputy Chairman of Cabinet of Ministers (May 26, 1997, #17)

Resolution of the Deputy Chairman of Cabinet of Ministers (November 14, 1997, #30)

Resolution of the Deputy Chairman of Cabinet of Ministers (November 25, 1997, #31)

Resolution of the President (January 26, 1998, PB-1563)

### **Trips to Visit Enterprises**

Trips by various team members outside of Ashgabat to visit and assess the condition of enterprises and other objects, both privatized and to be privatized, and to meet with local officials of the *Velayats* and regional SPPA offices, included the following. The principal investigator's initials are indicated (DN = Don Nicholson, BD = Brendan Dallas, RD = Richard Draves, GD = Gulnara Durdymamedova, DT = Dmitry Trusilov). The town and district (*Velayat*) names are shown.

DN	October 15-16, 1997	Tashauz, Tashauz <i>Velayat</i> (aka Dashkhovuz)
DN	October 29-31, 1997	Krasnovodsk (now Turkmenbashy), Balkan <i>Velayat</i>
DN	November 13-17, 1997	Tashkent, Uzbekistan (with World Bank mission)
DN	November 20-22, 1997	Mary, Bairamali, Mary <i>Velayat</i>
DN	December 9, 1997	Karakala, Balkan <i>Velayat</i>
DN	December 16-17, 1997	Chardjew, Lebap <i>Velayat</i>
GD	January 5, 1998	Tedjen, Ahal <i>Velayat</i>
DN	January 29-30, 1998	Nebitdag & Kyzylarvat, Balkan <i>Velayat</i>
DN	February 3, 1998	Kaka, Ahal <i>Velayat</i>
DN	February 9-10, 1998	Mary, Mary <i>Velayat</i> & Tedjen, Ahal <i>Velayat</i>
BD	March 16, 1998	Turkmenbashy, Balkan <i>Velayat</i>
DN	March 30, 1998	Bakharden, Ahal <i>Velayat</i>
RD	July 16-18, 1998	Mary, Bairamali, Mary <i>Velayat</i>
RD	August 25-28, 1998	Kyzylarvat, Nebitdag, Turkmenbashy, Balkan <i>Velayat</i>
GD	September 15-18, 1998	Bairamali, Mary <i>Velayat</i> (to value enterprises)
GD	November 16-21, 1998	Nebitdag, Balkan <i>Velayat</i> (to value enterprises)
DT	November 17-27, 1998	Chardjew, Lebap <i>Velayat</i> (to value enterprises)



	Mary Tomato Cannery	Mary, Mary Velayat	
	Bairamali "Ovadan" Sewing Factory	Bairamali, Mary Velayat	
	Bairamali Dairy Plant	Bairamali, Mary Velayat	
BD	Beauty Salon Agata	Ashgabat, Ahal Velayat	Jun 10, 1998
BD	Istanbul Restaurant	Ashgabat, Ahal Velayat	Jun 3, 1998
DN	Ashgabat Cotton Factory (Visit #3)	Ashgabat, Ahal Velayat	Mar 30, 1998
	Prod Assn of Consumer Goods Mfg Cotton Blankets	Bakharden, Ahal Velayat	
	Prod Assn of Cons Goods Mfg Elastic Ribbons/Bands	Bakharden, Ahal Velayat	
BD	Turkmenbashy Soft Drinks Plant	Turkmenbashy, Balkan	Mar 16, 1998
		vel	
DN	Ashgabat Cotton Factory (Visit #2)	Ashgabat, Ahal Velayat	Mar 5, 1998
DN	"Kopet-Dag-Lada" JSC	Ashgabat, Ahal Velayat	Feb 23, 1998
	SADEX International Ltd.	Ashgabat, Ahal Velayat	
DN	"Stroydetal Factory" in Mary	Mary, Mary Velayat	Feb 9-11, 1998
	"Maksat-Dery" Tannery in Mary	Mary, Mary Velayat	
	Mary Dairy Plant	Mary, Mary Velayat	
	Metro Express Cotton Plant in Bairamali	Bairamali, Mary Velayat	
	Building Materials Plant in Tedjen	Tedjen, Ahal Velayat	
DN	KaKa Dairy Plant	KaKa, Ahal Velayat	Feb 3, 1998
DN	Nebit-Dag Dairy Plant	Nebit-Dag, Velayat	Balkan Jan 29-30, 1998
	Nebit-Dag Meat Plant	Nebit-Dag, Velayat	Balkan
	Nebit-Dag Knitting Factory	Nebit-Dag, Velayat	Balkan
	Kyzyl-Arvat Dairy Plant	Kyzyl-Arvat, Velayat	Balkan
DN	Ashgabat Cotton Factory (Visit #1)	Ashgabat, Ahal Velayat	Jan 27, 1998
	Ashgabat Gas Equipment Plant	Ashgabat, Ahal Velayat	
	Ashgabat Chemical Factory	Ashgabat, Ahal Velayat	
DN	Unfinished Glass Bottle Factory	Ovadan-Depe, Velayat	Ahal Jan 26, 1998
DN	Ashgabat Furniture JSC	Ashgabat, Ahal Velayat	Jan 19, 1998
GD	Tedjen Tomato Cannery	Tedjen, Ahal Velayat	Jan 5, 1998
	Tedjen Branch of Consumer Goods Prod Assn	Tedjen, Ahal Velayat	
	Tedjen Branch of Ashgabat Spinning Plant	Tedjen, Ahal Velayat	
	Babadaikhan Branch of Ashgabat Production Assn	Babadaikhan, Ahal Velayat	
	Kaka Felt Factory	Kaka, Ahal Velayat	
DN	Chardjev Brick Plant	Chardjev, Lebap Velayat	Dec 16-17, 1997
	Chardjev Cannery	Chardjev, Lebap Velayat	
	Cardjev Brewery	Chardjev, Lebap Velayat	
DN	Etrapkombinat Production Center	Garrygala, Velayat	Balkan Dec 9, 1997
	Garrygala Cannery	Garrygala, Velayat	Balkan
DN	Ashgabat Production Assn Consumer Goods	Ashgabat, Ahal Velayat	Dec 5, 1997

	Ashgabat Silicate-Lime Plant	Ashgabat, Ahal Velayat		
DN	Mary Brewery Plant	Mary, Mary Velayat	Nov 1997	20-22,
	"Maksat-Dery" Tannery in Mary	Mary, Mary Velayat		
	Mary Canning Plant	Mary, Mary Velayat		
	Mary Meat Plant	Mary, Mary Velayat		
	Mary Dairy Plant	Mary, Mary Velayat		
	"Ovadan" Textile Factory	Bairamali, Mary Velayat		
	Bairamali Dairy Plant	Bairamali, Mary Velayat		
DN	Consumer Goods Factory	Turkmenbashy, Balkan Velayat	Oct 1997	29-31,
	Balkanbalyk Fishing Company	Turkmenbashy, Balkan Velayat		
	Turkmenbashy Dairy Plant	Turkmenbashy, Balkan Velayat		
	Building Materials Combinat	Turkmenbashy, Balkan Velayat		
	INTERGAS	Turkmenbashy, Balkan Velayat		
DN	Dashkhovuz Cannery Plant	Dashkhovuz, Dashkhovuz vel	Oct 1997	15-16,
	Dashkhovuz Meat Plant	Dashkhovuz, Dashkhovuz vel		
	Dashkhovuz Confectionery Plant	Dashkhovuz, Dashkhovuz vel		
	Niyazovsk Garment Plant	Dashkhovuz, Dashkhovuz vel		
	Dashkhovuz Facing Materials	Dashkhovuz, Dashkhovuz vel		
	Garant Repair Center	Dashkhovuz, Dashkhovuz vel		
DN	Ashgabat Confectionery Plant	Ashgabat, Ahal Velayat	Oct 5, 1997	
DN	Ashgabat Dairy Plant	Ashgabat, Ahal Velayat	Sep 23, 1997	
	Ashgabat Soft Drinks Plant	Ashgabat, Ahal Velayat		
	Ashgabat Ceramics Plant #1	Ashgabat, Ahal Velayat		
	Ashgabat Knitting Plant	Ashgabat, Ahal Velayat		
	Bakharden Tomato Cannery	Bakharden, Ahal Velayat		
DN	Ashgabat Glass Factory	Ashgabat, Ahal Velayat	Sep 12, 1997	
DN	Byuzmein Cement Plant	Byuzmein, Ahal Velayat	Sep 10, 1997	
DN	Byuzmein Building Materials Factory	Byuzmein, Ahal Velayat	Sep 4, 1997	

### List of Privatization Training Activities

Title:

Study Trip to Kazakhstan

Topics/Issues Addressed:

Privatization and securities market experience of Kazakhstan

Location:

Almaty, Kazakhstan

Dates/Duration:

August 22-28, 1997

Participants:

Headquarters and regional staff of State Property & Privatization Agency of MOEF  
Team Leader of USAID Privatization Component

Number of Participants:

7 from Turkmenistan

#### 3.1.2

Title:

Study Trip to Uzbekistan  
(organized by the Center for International and Private Enterprise, facilitated by USAID)

Topics/Issues Addressed:

Business organization and think tanks as engines for economic reform

Location:

Tashkent, Uzbekistan

Dates/Duration:

October 23-24, 1997

Participants:

Head of State Property & Privatization Agency of MOEF

Number of Participants:

1 from Turkmenistan

#### 3.1.3

Title:

Corporate Finance and Legal Issues Seminar  
(organized by the Privatization Component)

Topics/Issues Addressed:

Corporatization, corporate finance and corporate governance

Location:

Ashgabat

Dates/Duration:

November 27, 1997

Participants:

Headquarters and regional staff of State Property & Privatization Agency of MOEF

Number of Participants:

22

#### 3.1.4

Title:

Valuation Seminar  
(organized by the Privatization Component)

Topics/Issues Addressed:

Valuation techniques, particularly discounted cash flow

Location:

Ashgabat

Dates/Duration:

December 25, 1997

Participants:

Headquarters and regional staff of State Property & Privatization Agency of MOEF

Number of Participants:

30

3.1.5

Title:

Valuation Seminars

Topics/Issues Addressed:

Enterprise and asset valuation techniques, including fair market value and discounted cash flow; financial analysis; principles of market economy

Location:

Ashgabat, Turkmenistan

Dates/Duration:

April 27-30, 1998 (4 days)

May 4-7, 1998 (4 days)

Participants:

Headquarters and regional staff of State Property & Privatization Agency of MOEF

Ministry of Economy & Finance (MOEF)

Center for Corporatization and Privatization at SAFI

Statistics and Forecasting Institute

Food Processing Association

Ministry of Textiles

Ministry of Water

Ministry of Building Materials Industry

Ministry of Transport

etc

Number of Participants:

(43+41) total 84

Follow-up:

Team members participate on SPPA and Center valuation commissions, which affords an opportunity to continue to train and inculcate the discounted cash flow method of valuation as distinct from the adjusted book value method practiced almost exclusively.

3.1.6

Title:

OECD Regional Advisory Group on Privatization Workshop

Topics/Issues Addressed:

Review of privatization policies in Central Asia, the Transcaucasus and Mongolia

Location:

Istanbul, Turkey

Dates/Duration:

June 23-24, 1998 (2 days)

Participants:

Director & Deputy Director of State Property & Privatization Agency of MOEF

Team Leader & Economic Assistant of USAID Privatization Component

Number of Participants:

2 (from Turkmenistan, plus the 2 from USAID)

Follow-up:

Material collected was very useful in subsequent preparation of «White Paper» on  
*Privatization Reform in Turkmenistan*

3.1.7

Title:

Privatization Roundtable

Topics/Issues Addressed:

Review of status of privatization in Turkmenistan, experiences of other countries (Macedonia, Kazakhstan, Russia), problems and obstacles, securities markets, agro-industrial complex, recommendations to improve the process and implementation of privatization.

Location:

Ashgabat, Turkmenistan

Dates/Duration:

February 5-6, 1999 (originally scheduled for November 17-18, 1998)

Participants:

State Property & Privatization Agency of Ministry of Economy & Finance  
Center for Corporatization and Privatization at SAFI  
Cabinet of Ministers staff  
Parliament (*mejlis*) members and staff  
Statistics and Forecasting Institute  
Fruit & Vegetable Trade Association  
Ministry of Agriculture  
Ministry of Energy & Industry  
Ministry of Building Materials  
Deputy Governors of *Velayats*  
Bankers and private businessmen  
etc

Number of Participants:

28 (39 invited) plus some 15 international observers and 6 presenters from abroad

Follow-up:

A second session to report the findings and recommendations of the first session was to be held on February 13, 1999, with the Cabinet, but was called off by the Government the evening before. We are waiting to hear if it is to be rescheduled. There was good press coverage (print and TV) and the seminar has prompted more attention to be given to privatization by the highest levels of the Government. We will continue to work to accelerate and improve the process. Potential participants were interviewed beforehand as part of a needs assessment. Follow-up visits are being conducted.

## Appendix VI Project Library Directory\*

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2.	Memorandum to Gary Linden, USAID, regarding proposal to National Bank to simplify or eliminate currency passport regulation; January 25, 1998	KAZ-CUS-03.doc
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4.	Memorandum to John Davidson, USAID, regarding Government's legislative drafting agenda for 1998; January 28, 1998	KAZ-CUS-07.doc
5.	Comparison of Tax and Customs Enforcement Bodies (submitted to USAID Fiscal Policy Program); January 1998	KAZ-CUS-02.doc
6.	Proposal to National Bank to simplify or eliminate currency passport regulation; January 1998	KAZ-CUS-04.doc
7.	Memorandum to Gary Linden, USAID, regarding meeting in Akmola with Minister Utambayev; January 1998	KAZ-CUS-05.doc
8.	Memorandum to Michael Lally, U.S. Foreign Commercial Service, regarding proposals on temporary storage warehouses, currency	KAZ-CUS-08.doc

\* Please note that all of these documents are available on the enclosed compact disk (CD) immediately following this list.

	passport, and electronic declarations; February 1, 1998	
9.	Memorandum to Paul Davis, USAID, regarding temporary storage warehouse proposal; February 2, 1998	KAZ-CUS-09.doc
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11.	Memorandum to Michael Lally, U.S. Foreign Commercial Service, regarding proposals on temporary storage warehouses, currency passport, and electronic declarations; February 10, 1998	KAZ-CUS-12.doc
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15.	Outline of seminar on customs valuation control; February 1998	KAZ-CUS-16.doc
16.	Proposal to State Customs Committee to establish temporary storage area at Almaty Railyard; February 1998	KAZ-CUS-10.doc
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18.	Memorandum to Usmanova Fahra, Agency for Strategic Planning and Reform, regarding organization of customs and tax authorities; March 17, 1998	KAZ-CUS-18.doc
19.	Memorandum to USAID regarding chronology of amendments to Customs Code; March 28, 1998	KAZ-CUS-19.doc
20.	Memorandum to USAID regarding status of work on amendments to the Customs Code; April 24, 1998	KAZ-CUS-20.doc
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23.	Memorandum to Gary Linden, USAID, regarding status of outstanding issues raised in the U.S.-Kazakhstan Customs Working Group; June 12, 1998	KAZ-CUS-25.doc
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28.	Accession of Kazakhstan to WTO - Legislative issues. Customs matters – the customs code of the republic of Kazakhstan and WTO requirements; March 22, 1999	brian9.doc
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3.	Amendments to: The Patent Law; January 13, 1998	Pat-Amendkz.doc
4.	Public Policy, Economic benefits & needed legislative reform for a strong Intellectual Property Law Regime for Kazakhstan; February 19, 1998	ip-benefits1.doc
5.	Language Amendments for Law on Copyright of the Republic of Kazakhstan; February 24, 1998	©law1-kz.doc
6.	Problems with Pending Civil Code, Section V, Intellectual Property; March 6, 1998	temp-only.doc
7.	Summary of Special 301 Meeting with Copyright Office; March 13, 1998	special301a.doc
8.	Proposed Amended Patent Law Effective; April 16, 1998	patentnew98kz.doc
9.	Patent Law Articles 35 and 36; April 17, 1998	Patamend2-498kz.doc
10.	Office of the United States Trade Representative Executive Office of the President Washington, D.C. 20506. USTR Announces Results of special 301 annual review; May 1, 1998	Kaz-301status.doc
11.	Report on the trip to Astana; September 3, 1998	Jerry-astana-update1.doc
12.	Proposed Law "On Commercial Secrets & Undisclosed Information"	tradescret98-1.doc
13.	Copyright Protection and Kazakhstan--what's in it for us? An American Law Perspective	speech-kz1a.doc
14.	Plant varieties	Plants1.doc
15.	Patent Office. Minutes of the meeting held at the office of the Deputy Director of the Office of the Prime-minister of the Republic	Kzpo.doc

	of Kazakhstan, Mr. Kotlov A. N.	
16.	Laws. Current status.	IPLAWS-status1.doc
17.	August report for Kazakhstan	Steve-IP-August98.doc
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3.	Talking Points for US Ambassador to Kazakhstan Re Concessions Government Procurement, and Natural Monopolies; August 5 1998	Tp.doc
4.	Provisions of Selected Laws Directly or Indirectly Affecting the Establishment of Oil and Gas Operations in Kazakhstan; October 14, 1998	LawsSyn1.doc

5.	Status of Laws; December 1998	report r-4 for USAID.doc
6.	Recommendations the Special Part of the Civil Code	civcode-ltr- part- kz.doc
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3.	Proposed Amendments to Sanitary and Phytosanitary Laws of the Republic of Kazakhstan; May 20, 1998	Sps1.doc
4.	Proposed amendments to the regulation of the Republic of Kazakhstan About restructuring the Kazakh Soviet Socialist Republic's State inspectorate on plant quarantine under gosagroprom of the USSR into the principal state inspectorate on plant quarantine under the Ministry of Agriculture of the Republic of Kazakhstan; May 1998	Sps4.doc
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12.	Draft law of the Republic of Kazakhstan On plant quarantine With WTO-compliant amendments proposed by the us aid trade and investment project inserted in italics; September 1998	Lawquarse p.doc
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5.	Regional Investment Initiative; September 1, 1998	Linden2_In vestment Center.doc
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7.	SME Initiative; September 9, 1998	Sme3.doc
8.	SME roundtable. USAID Trade and Investment Project presentation; October 13, 1998	SMEtalkpt. doc
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12.	Miscellaneous - Small Business Paper; February 11, 1999	SMEmisc. doc
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17.	Comments on the SME development	smallbus es.doc
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5.	Review of Amendments of The law of the Republic of Kazakhstan «On Standardization and Certification»; June 30, 1998	Std4.doc
6.	Review of Amendments of The law of the Republic of Kazakhstan «On Standardization and Certification»; June 30, 1998	amend to std and cert - min of Justice June 1998.doc
7.	Review of the new draft laws of the Republic of Kazakhstan «On Standardization» and «On Certification»; September 8, 1998	Stdsert.doc
8.	Review of the new draft laws of the Republic of Kazakhstan «On Standardization» and «On Certification»; September 8, 1998	review of STD and cert SEPT1998.doc
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8.	Economic merits of Kazakhstan joining the World Trade Organization; September 15, 1998	Kazwtobnf.doc
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10.	TALKING POINTS Glenn Anders -- Meeting with Minister Oblyazov September 1998 Astana, Kazakhstan	Tpglenobliz.doc
11.	Summary of Kazakhstan's Second Round of Bilateral Negotiation: and Third Working Party Meeting; October 10, 1998	kazwp1098.doc
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28.	Letter of Mr. Omuraliev to Prime-Minister of the Kyrgyz Republic K.Jumaliev; September 16, 1998	Jumal-ExpNote.doc
29.	Customs commitments of the Kyrgyz Republic will change when the Customs union establishes a Common Tariff Rate; September 29, 1998	Cust.commitm.doc
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6.	Phase I (Evaluation) Commercial Law Implementation Plan; May 10, 1998	implementation evaluation.doc
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10.	The March to WTO Accession: Kyrgyzstan president signs three major Intellectual Property Laws	usaidnews.doc
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6.	The Economic Rationale For Trade Liberalization; March 20, 1998	WTO-EC1.doc
7.	Safeguard Measures Project; March 31, 1998	Safeguard3.doc
8.	Rules of Origin - Regulations (or Instructions); April 1, 1998	Kamilov4.doc
9.	Comments on Trade and Investment issues in Uzbekistan; May 10, 1998	Amcham1.Doc
10.	Unfair Trade Measures Legislation; June 10, 1998	Legislat.doc
11.	Safeguard Measures - Interministerial Working Group Meeting; August 11, 1998	Aaidsafe.doc
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13.	Safeguard Measures - First Meeting of Interministerial Working Group; August 18, 1998	Aaidsafe2.doc
14.	List of members of the working group on preparation of draft laws of the Republic of Uzbekistan «On antidumping», «On countervailing measures» and «On safeguards»; August 1998	Alistof.doc
15.	Anti-Dumping Duty	AD-WTO.Doc
16.	Action against Anti-Dumping	AD-WTOSEM.Doc
17.	Antidumping and Countervailing Duties	ADCVD.Doc
18.	Anti-Dumping Law	Aduze.doc
19.	Countervailing Duties	CVD-WTO.Doc
20.	Subsidies and countervailing measures	SVD-WTO.Sem
21.	Draft Countervailing Law	Cvduze.doc
22.	Introduction to International Law	Intila1.Doc
23.	Law on marking of imported articles and containers	Marklaw1.Doc
24.	Rules of origin	Origrule.doc

25.	Policies affecting trade in service	Overhead7.doc
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27.	Safeguard Measures	Overhead13.doc
28.	Safeguard Measures (Emergency Protection from Imports)	Safegard.doc
29.	Law of Safeguards	Safeuze.Doc
30.	Safeguard measures	Safegard2.doc
31.	Agreement on Technical Barriers to trade	Tbt.doc
<b>XX.</b>	<b>TRAINING</b>	
1.	Unfair Trade Laws Seminars	adcvdsg(1).doc
<b>XXI.</b>	<b>WTO</b>	
1.	Text of Introductory Speech for Seminar on WTO Issues; February 18, 1998	WTOspe1.doc
2.	Services Trade And The Uruguay Round: A Summary; February 27, 1998	GATS.doc
3.	Text of Speech on Dispute Settlement; March 1, 1998	WTO-DS1.doc
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5.	Draft Program on WTO Accession for Uzbekistan; April 7, 1998	Ganiev1.doc
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7.	Final Report on WTO Lecture Series; May 18, 1998	XXXTRA1doc
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10.	USAID Trade and Investment Project WTO - related activities: Uzbekistan	muhideu.doc
11.	WTO, TRIPS and Uzbekistan-- <i>what's in it for us?</i>	Speech-uz1.doc
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13.	Introduction to the World Trade Organization	Introd1.doc
14.	Uzbekistan and the World Trade Organization	Speech.doc
15.	Memorandum on the foreign trade regime	14 files

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### Trade & Investment

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<b>I. CIVIL CODE</b>		
1.	Comments on Fall, 1997 Draft Civil Code; April 21, 1998	Code_f1.doc
2.	Commentary upon Turkmenistan's draft Civil Code; June 10, 1998	Civil_1.doc
3.	Selected Economic Policy Implications of Turkmenistan's Draft Civil Code	Code_s1.doc
<b>II. COMPETITION</b>		
1.	Proposed Law on Competition (with Annotations) / DRAFT; September 14, 1998	Compannfina.doc
2.	Presentation of Draft Law on Competition; October 8, 1998	MFER_CompE.doc
3.	Contract Registration Procedures (Oil and Gas Sector); November 16, 1998	Oilgas_RegE.doc
<b>III. CUSTOMS</b>		
1.	Analysis of Customs Code of Turkmenistan; September 16, 1997	Turkcust.doc
2.	Turkmenistan Customs Project; October 9, 1998	aidturcu.doc
3.	Turkmenistan Customs; October 9, 1998	turcusme.Doc
4.	Turkmenistan Customs Project; October 28, 1998	oshea.doc
5.	Index Customs Code of Turkmenistan	indexcuscode.doc
6.	Attachment A to the Customs Code of Turkmenistan	
7.	Attachment B to the Customs Code of Turkmenistan	Attachment B.doc
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1.	Analysis of Proposed Civil Code, Part 4, Copyright; June 2, 1998	copyright-tk-95.doc
2.	Analysis of Intellectual Property Law provisions of current Turkmenistan Law	ip-analysis-tk.doc
3.	Part 4. Copyright Section I. General Provisions	copyright-tk-law-e.doc
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1.	Proposals to Improve the Investment Environment in Turkmenistan; March 27, 1998	Imp_in1.doc
2.	Proposals to Improve the Investment Environment in Turkmenistan; April 8, 1998	Prop_i1.doc
3.	Proposed Revision of a Law on Foreign Investments (with Annotations) DRAFT; April 24, 1998	Forinv3.doc
4.	Presentation of Discussion Draft Law on Foreign Investments; April 24, 1998	Forinv1.doc
5.	Law on foreign investment - description table	Comtab1.doc
<b>X.</b>	<b>JOINT STOCK COMPANY</b>	
1.	Review of the Draft Joint Stock Company Law of Turkmenistan; September 6, 1997	Drafr1.doc
2.	Proposed Language for Major Issues Remaining in the Draft Joint Stock Company Law; October 24, 1997	PropInge.doc
3.	Proposed Law on Joint Stock Companies Comments on Articles Concerning Charter Fund; March 4, 1998	Funde.doc
4.	Proposed Legal Reform Concerning Joint Stock Companies; September 15, 1998	jscmed3.doc
<b>XI.</b>	<b>LICENSING</b>	
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1.	Pilot Analyses of Turkmenistan's Commercial and Economic Regulatory Regime / Recommendations and Explanations; January 1999	Pilot_AnalysisE.doc
2.	Draft Legislation - Progress to Date	Draft_YollyE.doc
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1.	Comments on Draft Law «On Procurement of Goods, Works	Proce.doc

	and Services»; March 9, 1998	
2.	Review of Government Procurement Law; April 30, 1998	Proc_r1.doc
3.	Comparative procurement	procurement.doc
<b>XV.</b>	<b>REGISTRATION</b>	
1.	Steering Document and Points for Discussion Draft Law on Registration; April 13, 1998	Regstre1.doc
2.	Proposed Law on Registration (with Annotations) DRAFT - April 21, 1998	Registr_E.Doc
3.	Report on Reform of Turkmenistan Registration Procedure, Attachment A; January 1999	Regist_ReportE.doc
4.	Proposed Law on Registration (with annotations) / Draft 21.04.98 Attachment B/1	Regist_LawE.doc
5.	Registration of Legal Entity (table) Attachment B/2 Simplified Model on Registration Process (table) (G. Kelly)	RegEnt_table.ppt  SimpReg_table.ppt
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1.	Implementation of Selected Elements of Presidential Decree 3724 on Export Promotion; July 2, 1998	Export E.Doc
2.	Response to Tentative Proposals Listed as «Trade Policy» in Implementation of Selected Elements of Presidential Decree 3724; July 16, 1998	Response_3724.doc
<b>XX.</b>	<b>TRAINING/EDUCATION</b>	
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2.	Short Work Plan for Greta Boye and Monatgue Lord; September 16, 1997	Turboywp.Doc
3.	Status of Accession to the WTO of Relevant Countries September 3, 1997	Acc.statusE.doc
4.	Economic Merits of Turkmenistan Joining the WTO; November 27, 1997	EconmerE-old.doc
5.	WTO-Related Issues Raised during Meeting with MFER on January 15, 1998; January 22, 1998	Turtrans.doc

6.	Assessment of Turkmenistan's foreign trade regime for the purpose of membership in the World Trade Organization; August 10, 1998	FinalE_new.doc
7.	A Three-Year Plan for Accession to the WTO by Turkmenistan; January 15, 1998	WTO_PlanE.Doc
8.	A Three Year Plan for Turkmenistan Accession to the WTO January 15, 1998	WTO_TableE.Xls
9.	WTO Issues Raised during Meeting with MFER Staff on January 10, 1998; January 15, 1998	WTO_IssueEdoc
10.	WTO - Related Issues Raised during Meeting with MFER on January 15, 1998; February 3, 1998	WTO_LtrE.Doc
11.	Economic Merits of Turkmenistan joining the World Trade Organization; August 6, 1998	EmeritsE_new.doc
12.	Assessment of Turkmenistan's Foreign Trade Regime for the Purpose of Membership in the WTO; August 10, 1998	Final_Enew
13.	Farhat Talking Points	sapapres.doc
14.	Attachment A. How The WTO Resolves Trade Disputes	WTO_DisputesE.doc
15.	Attachment B. Selected Cases - Dispute Settlement	CasesE.doc
16.	Attachment C (from the GATT 1994). Article V Freedom of Transit	Article5E.Doc

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### Budget

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1.	Annex 1. Law of Turkmenistan on the State Budget of Turkmenistan for 1997	Annexa-1.doc
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3.	Contents. National Taxes	Contents.doc
4.	Internal debt - 1997 incomes and expenditures	TM-Table1.doc
5.	Principal estimates of economic enterprises and organizations of education, culture and mass media for 1997	TM-Table1.doc
6.	1997 principal estimates of economic enterprises and organization of the social-cultural sector	TM-Table3.doc
7.	Principal estimates of line ministries and units of Turkmenistan for 1997	TM-Table5.doc
8.	Principal estimates of the line ministries and units of Turkmenistan for 1997	TM-Table6.doc
9.	Draft of the 1997 budget	TM-Table7.doc
10.	Principal estimates ministry of internal affairs of Turkmenistan for 1997	TM-Table8.doc
11.	Principal estimates of ministries and units of Turkmenistan for 1997	TM-Table9.doc
12.	Principal estimates of housing and communal services department for 1997	TM-Table10.doc
13.	Other taxes and duties (detailed draft for 1997)	TM-Table11.doc
14.	Budget appropriations under the item «operational expenditures»	TM-Table12.doc
15.	Appropriations from the budget under the item «operational expenditures»	TM-Table14.doc
16.	Appropriations from the budget under the item «state subsidy»	TM-Table15.doc
17.	In-detail expenditures of the housing and communal services department	TM-Table16.doc
18.	Budget appropriations for the «other expenditures» item	TM-Table17.doc
19.	The report of Razhapov M.R., minister of economy and finance, to the Mejlis of Turkmenistan VIII session of the first convocation on the state budget of Turkmenistan for 1997	TN-Razhapov.doc

20.	Comparative table N 2 of the state budget for 1997	TM-Table97.doc
21.	Information note to the 1997 draft state budget of Turkmenistan	TM=inform note.doc
22.	Estimates of incomes and expenditures (financial plan) for 1997 a consolidated balance of state enterprises and organizations	Tm-bal-1.doc
23.	Annex A Law of Turkmenistan on the state budget of Turkmenistan for 1997	Tm-bud-1.doc
24.	Composition of state budget of Turkmenistan for 1997	Tm-bud-2.doc
25.	Off-budget organizations	Tm-off-1.doc
26.	Draft plan estimates of income tax collected from individuals of Turkmenistan in 1997	Tm-ta-10.doc
<b>II. BUDGET 1998</b>		
1.	Law of Turkmenistan On the State Budget of Turkmenistan for 1998	Budget 2.doc
2.	Expenditures	Budget Call-1998.doc
3.	To all Government Entities Ministries, Government Organizations, Units, State Economic Enterprises, Funds, Non-Government Organizations, and Others In accordance with 1998 Budget Law of Turkmenistan, approved by the Parliament	Questi1.doc
4.	To Ministries Entities In accordance with Article 12 of the Law on Budget Systems of Turkmenistan, we need information about the legal status of each Government entity in order to determine the legal status of the budgetary spending agencies	Questi2.doc
5.	To President's Apparatus, Parliament, Cabinet of Ministers, High Governmental Bodies, Ministries In accordance with Article 12 of the Law on Budget Systems of Turkmenistan, we need information about the legal status of each Government entity	Questi3.doc
6.	To President's Apparatus, Parliament, Cabinet of Ministers, High Governmental Bodies, Ministries In accordance with Article 12 of the Law on Budget Systems of Turkmenistan, we need information about the legal status of each Government entity	Questi4.doc
7.	Budget call - 1999 ministry of economy and finance	Budget Call 99.doc
8.	Project Treasury Development in Turkmenistan Next Steps S.V.S. Sharma International Monetary Fund; April 1997	TM-Sharma.doc
9.	State budget of Turkmenistan for 1998. Contents	Budget98-1W.doc
10.	1998 State budget of Turkmenistan	Budget98-1E.doc
11.	1998 state budget of Turkmenistan	Budjet98-2.doc
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1.	Budget Formulation Methodology	Format.doc
2.	State Budget of Turkmenistan - 1999 Budget Call - 1999 (forms)	Forms-99.doc

3.	Revenue policy and management Action Plan (RP&MAP)	TurkFinCap.xls
4.	Budget Model of Ashgabad city; September 2, 1998	2Ashgabad.xls
5.	Policlinic #11. Summary; September 17, 1998	2policlinic.doc
6.	A model budget call; September 23, 1998	1budgetcall.doc
7.	Financial Planing Model Featuring; September 23, 1998	2TurkFinCap.doc
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1.	State Budget Department Geldiyeva Ogulshaker Head of the Consolidated State Budget Unit. Information on Computerization Program; March 10, 1998	budgetnote.doc
2.	The appraisal report of the State Budget Department on testing the software product (installed by the software developers from Kazakhstan; August 11, 1998	Budget Report.doc
3.	Final acceptance report On the software development to automate the Turkmenistan State Budget preparation process; August 27, 1998	Accept25%.doc
4.	Appropriations to finance capital repair works	Software Formats.doc
<b>V. ECONOMIC PROGRAMMS</b>		
1.	Projected social and economic development policy of Turkmenistan in 1998; July 10, 1998	Economic Projects-1998-.doc
2.	Halk Maslakhaty (People's Council) – VIII Meeting Dashkhovouz, Turkmenistan, First Day; July 16 – 19, 1998	Halk Maslakhaty.doc
3.	Halk Maslakhaty (People's Council) – VIII Meeting Dashkhovouz, Turkmenistan, Second Day; July 16 – 19, 1998	Halk Maslakhaty-2.Doc
4.	Major estimates of economic development of Turkmenistan in 1997 - 2001	Major estimates of economic development.xls
<b>VI. FUNDS</b>		
1.	Legal status of the state own enterprises in regard to a)budgetary process; b)revenue contribution to the budget from their profit apart from tax payments; c) their commercial wise management	Fund.doc
2.	Program Work meetings of the International Monetary Fund Mission	TM-IMFProgram.doc
<b>VII. INVESTMENT PROGRAM</b>		
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2.	The draft of the «Investment Program of Turkmenistan for 1998 from Deputy Minister of Economy and Finance Mr. Atagarriyev; April 16, 1998	Atagarriyev.doc
3.	Information on J.Kelley; September 10, 1998	1cip-top.doc
4.	Capital Project Financing: Reservation; September 14, 1998	2Westport.xls
5.	Capital investment programming and budgeting; September 17, 1998	1cappro&bud.doc
6.	Investment program of Turkmenistan for 1998 (main estimates)	Investment-98.doc
7.	List of construction projects implemented with the participation of direct foreign investments	TM-Listfor.doc
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<b>VIII.</b>	<b>LEGISLATION</b>	
1.	Regulations on the treasury department of the ministry of economy and finance of Turkmenistan N 1492, September 15, 1993	TM-Treasury.doc
2.	Regulations of the Unit of Defense, Judicial Entities and State Power and Management Bodies Financing N 41; July 16, 1996	Exaple.doc
3.	Regulations N41 Agro-Industrial Sector Economy Department; July 19, 1996	Regul-APK.doc
4.	Regulations N 41 Interstate Settlements and Debt Management Unit; July 19, 1996	Regul Interstate.doc
5.	Regulations N 41 of the Unit of Defense, Judicial Entities and State Power and Management Bodies Financing; July 19, 1996	Regul-Defence.doc
6.	Regulations N 41 Department of Social and Cultural Sector Development of the Ministry of Economy and Finance of Turkmenistan; July 19, 1996	Regul-Social.doc
7.	Statute of the department for consolidating economic development programs; July 19, 1996	TM-Anayeva.doc
8.	Statute on the State Budget and Finance Department of the Ministry of Economy and Finance; July 19, 1996	TM-Regulations
9.	Regulations N41Capital Markets and Audit Division; July 19, 1996	Regul-Audit.doc
10.	Resolution of the President of Turkmenistan Ashgabat, April 7, 1997, N 3084 On regulating labor payment policy of enterprises and organizations; April 7, 1997	Res-Wage.doc
11.	Resolution of the President of Turkmenistan Ashgabat, April 7, 1997, No 3089 On the improvement of production efficiency and financial recovery of the economy of Turkmenistan; April 7, 1997	Resol-Product.doc
12.	Ministries and Agencies, main Economy and Finance Departments of velayats and city of Ashgabat; July 22, 1997	Order.doc
13.	The view of the profits of SOE is regulated by MEF's circulars as below: subject instruction of MEF N 4/1263, on profit	Funds.doc

	distribution of SOE; July 22, 1997	
14.	Annex A Law of Turkmenistan On the state budget of Turkmenistan for 1997	Annex A 1.doc
15.	Annex A Law of Turkmenistan on the State Budget of Turkmenistan for 1997	Annex A.doc
16.	0001 (027) office of the President Management Department appropriations from the centralized budget	Budget2for mats.xls
17.	Order of establishing special Funds and the rates of their profit distribution between the ministries and agencies for 1997 with regard to their sectoral specificity	Order1.doc
18.	National statistics and Forecasts Institute of Turkmenistan (Turkmenstatprognoz). Excerpts from the resolution of the President of Turkmenistan Saparmurat Turkmenbashi N 3423 On the issues of national statistics and forecasts institute of Turkmenistan; December 15, 1997	Statistics.doc
19.	Order no 2 On improving the current state budget organizational structure and budgetary system; January 23, 1998	15january.doc
20.	Extraction from the Resolution of the President of Turkmenistan No. PB-1588; February 18, 1998	Resolution-98
21.	Order On preparation of the draft State Budget of Turkmenistan for 1999; June 18, 1998	Budget-99-Order.doc
22.	Draft Resolution of the President of Turkmenistan On measures to realize the Law of Turkmenistan «On the State Budget of Turkmenistan for 1998»	Draft Res Last.doc
23.	Draft Resolution of the President of Turkmenistan On measures to realize the Budget Reform Program started by the Ministry of Economy and Finance	Draft Resol1.doc
24.	Resolution of the President of Turkmenistan On measures to realize the Law of Turkmenistan «On the State Budget of Turkmenistan for 1998»	draft resolution.doc
25.	The Law of Turkmenistan «On Khyakims»	Khyakims Law.doc
26.	The law of Turkmenistan on budgetary system	present budget law.doc
27.	Regulations to guide the state budget of Turkmenistan preparation and execution	Regulations 99.doc
28.	Ministry of economy and finance of Turkmenistan: Collection of acts, regulations, orders and amendments	TM-MEF-ACTS.doc
29.	Decree of the President of Turkmenistan No. 3762 On the minimum wage rate; June 26, 1998	Decree of the President.doc
30.	Regulations on the State Budget of Turkmenistan preparation and execution; July 1998	Regulations 99.doc
31.	Budget Regulations (draft) - August 1998	Reglations.doc
32.	Order No. 18, July 31, 1998 On amendments to the Budget Classification of Turkmenistan	Order18.doc
<b>IX.</b>	<b>LETTERS</b>	
1.	To Mr. Ilaman Shikhiev Deputy Chairman of the Cabinet of Ministers	embas.doc

	Ashgabat from the Embassy of the United States of America Ashgabat, Turkmenistan; December 13, 1996	
2.	To the International Monetary Fund; September 25, 1997	IMF- Letter.doc
3.	Deputy Chairman of the Cabinet of Ministers of Turkmenistan Sardzhayev B.K.; November 3, 1997	LTR- Funds.doc
4.	To the Ambassador Yigit Alpogan, Embassy of Turkey Baku/Azerbaijan; December 3, 1997	minister2.d oc
5.	To the Ambassador Yigit Alpogan Embassy of Turkey Ashgabat; February 4, 1998	minister1. doc
6.	His Excellency Ambassador Yigit Alpogan Embassy of Turkey Ashgabat; February 12, 1998	minister4. doc
7.	To the Deputy Minister of the Economy and Finance of Turkmenistan; February 24, 1998	English Training.do c
8.	Ms. Delphia Dirks USAID Representative; April 17, 1998	Seminar list foreigners. doc
9.	To Chairman of Cabinet of Ministers of Turkmenistan Gurbanmuradov E.A.	To Chairman of Cabinet.doc
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1.	Meeting in the MEF with Paul Davis, Mr. Kurtulus, Mrs. Kurtulus, Deputy Minister Agayev O., Head of the State Budget Department Kurbankuliyev H., Gauhar and Eleonora - interpreters; January 23, 1998	PaulDavis. doc
2.	Classification of enterprises by ministries and indications of self- financial (yes), budgetary (no) category	Goscomstat doc
3.	Turkmenistan- Government Ministries, Departments, Institution, and Organizations	Sas.doc
4.	Putting into operation the under-construction entities of the social sector	TM- 1996.doc
5.	Note on marketing volumes of natural gas for 1997	TM- Gasoil.doc
<b>XI.</b>	<b>RECOMMENDATIONS TO THE BUDGET SYSTEM LAW</b>	
1.	Didenko G. - Deputy Head of the Unit (Financial Policy, Accounting and Methodology Unit). Comments on the draft Law of Turkmenistan "On Budget System" prepared by Mr. Kurtulus (version of March 12); March 30, 1998	Didenko G.
2.	Review of the draft Budget Law System Geldiyeva Ogulsheker, Head of the Consolidated State Budget Unit. The remarks on the draft «Budget System Law» of Turkmenistan developed by Mr. Ercis Kurtulus – the USAID/BAH Budget Advisor; May 4, 1998	Recommen d- Ogulsheker. doc
3.	Review of the draft Budget Law System B. Taganov. Acts as a Head of the Economy and Finance Main Department. Proposals to the draft «Budget System Law» of Turkmenistan; May 4, 1998	Recommen d- Taganov.do c

4.	Review of the draft Budget Law System Begliyeva Mariya Yuzbashevna Head of the Local Budgets Unit . Proposals to the draft «Budget System Law» of Turkmenistan; May 4, 1998	Recommend Begliyeva.doc
5.	Draft Budget System Law. Review of the draft Budget Law System Mamedov A., Head of the unit - Deputy Head of the Treasury Department; May 4, 1998	mamedov-recom.doc
6.	Draft Budget System Law Atadurdiyev K., Head of the Economy and Finance Main Department The City of Ashgabat (The letter of May 1, 1998, No. 255/05). Proposals to the draft «Budget System Law» of Turkmenistan; May 12, 1998	Recommend Atadurdiyev.doc
7.	Draft budget system Law of Turkmenistan Taganov K., head of the main economy and finance department, Ahal Velayat (letter no. 4/94, may 1, 1998). The remarks on the 2-nd draft «budget system law» of Turkmenistan developed by Mr.. Ercis Kurtulus – the USAID/BAH budget advisor; May 29, 1998	Recommend d.doc
8.	Taganov K.Head of the Main Economy and Finance Department , Ahal velayat (Letter No. 4/94, May 1, 1998). The Remarks on the 2-nd draft «Budget System Law» of Turkmenistan developed by Mr. Ercis Kurtulus – the USAID/BAH, Budget Advisor; May 29, 1998	Recommend Taganov.doc
9.	Initiation of Work Related to Objective E – 5.4, Multi-year Investment Budget; August 1, 1998	Cip-tor.doc
10.	Draft version of some articles to the Law on State Budget System (prepared on the basis of recommendations and proposals of the working group members)	Recommendations.doc
11.	Model budget call. Letter of transmittal, issues, problems and opportunities	Budgetcall aug.doc
<b>XII. SEMINARS</b>		
1.	List of participants for the budget seminar Ministry of Economy and Finance of Turkmenistan; 1998	Training List.doc
2.	Program of the seminar organized by the US Agency for International Development (USAID) within the framework of the "Budget Reform" Project; February 1998	LTR-Shikhiuev.doc
3.	Agenda of Seminar; March 9-12, 1998	Ltr-Seminar.doc
4.	Agenda of Seminar; March 9-12, 1998	Ltr-Seminar1.doc
5.	Seminar Budget Reform and techniques of budget preparation Ogulbairam Tagiyeva, deputy head of treasury department; March 19, 1998 (the speech was not made)	Seminar-Tagiyeva.doc
6.	List of high-level officials invited to seminar	high-levels to Seminar.doc
7.	Questionnaire for participants of seminar	questionnaire.doc
8.	Final Interrogation results of the participants for the programs implemented outside the U.S.A. USAID Central Asia Regional Training Program Ashgabat Office International Development Training Project	Evaluation List.doc

	United States Agency for International Development; March 16-19, 1998	
9.	Seminar program budget reform and techniques of budget preparation; April 1998	prog eng.doc
10.	Seminar budget reform and techniques of budget preparation Andreyeva Lyudmila deputy minister of economy and finance; May 4 -7, 1998	Siminar-Andreeva. Doc
11.	Seminar Budget reform project and techniques of budget preparation Atagarriyev G.B. first deputy minister of Turkmenistan; May 4-7, 1998	Seminar-Atagarriyev. Doc
12.	Seminar budget reform project and techniques of budget preparation Khudaikuly Kurbankuliyev head of the state budget department ministry of economy and finance of Turkmenistan ; May 4 – 7, 1998	Seminar-Kurbankuliyev.doc
13.	Attendance registration list of participants for the budget seminar; May 4-7, 1998	final list of participants. Doc
14.	Address to the participants on the major approaches, principles and action steps of the state budget preparation of Turkmenistan by Yalkapov Annakuli Yalkapovich, head of the financial and tax policy and methodology department of the ministry of economy and finance of Turkmenistan; May 4 - 7, 1998	Seminar-Yalkapov. Doc
15.	Technical vocational education and training	TechnVocat Educ.doc
16.	Budget reform project Training program (draft)September 1 through December 31, 1998	Traning (August).doc
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## Turkmenistan

### Privatization

	Name of the document	File name
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58.	Explanatory note on stage-by-stage restructurization and privatization of associations of the agro-industrial sector	Expnote.doc

59.	Privatization Reform in Turkmenistan	WPE3a.doc
60.	Memorandum on the national seminar On private sector development and privatization	Memorandum on the national seminar.doc
61.	Brief for ambassador Mann	MannBrief.doc
62.	Agenda of the second session of the Privatization Roundtable	Cabinet of Ministers outline.doc
63.	Main topics to be covered in a speech on cabinet of ministries	SpeechCabMin.doc
<b>XII. WORK PLANS</b>		
1.	WORK PLAN Budget Reform Component USAID Trade and Investment Project Ministry of Economy and Finance Ashgabat, Turkmenistan Erci Kurtulush; September 19, 1997	WP.doc
2.	Business trip schedule Balkan Velayat; August 25-27 , 1998	Balkan Companies.doc
3.	Business trip schedule Balkan Velayat; October 20-21, 998	Lebap Companies eng.doc
4.	WORK PLAN For the Privatization Component	Work Plan.doc
5.	WORK PLAN For the Privatization Component	Work Plan.xls
6.	List of Tasks for Privatization Component	Tasks.doc
7.	Activities schedule of the Center for Privatization	AUCTION eng.final.MPP

## Turkmenistan

### Land Reform

	<b>Name of the document</b>	<b>File name</b>
1.	The First Phase of Agricultural Land Reform in Turkmenistan	Ad Land Reform Turkmen.doc
2.	Appendix 1. The Evolution of Turkmeni Land Legislation from Soviet to Civil Law	Appx1.doc
3.	Appendix 2. Institutional Structure for Land Reform in Turkmenistan	Appx2.doc
4.	Appendix 3. The Process for Distribution of Agricultural Land	Appx3.doc
5.	Figure 1. Procedure to Convert Leasehold Land to Private Land	Appx3Chart.doc
6.	Appendix 4: The Structure of Citizen Land Holding in Turkmenistan Source: National Institute of Statistics and Forecasting, 1997	Appx4.doc
7.	Appendix 5. Approaches to Land Reform in Five Republics of the Former Soviet Union and China	Appx5.doc
8.	Appendix 6. Proposal for a Pilot Project Turkmenistan Agricultural Land Ownership	Appx6.doc
9.	Appendix 7. Regulation of Urban Market Sales of Fruits, Vegetables and Other Products	Appx7.doc
10.	Appendix 8. Other Donor Programs	Appx8.doc
11.	Appendix 9. Sources of Information	Appx9.doc