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COMPLETION REPORT 1 AUGUST 2001 – 30 APRIL 2009

WTO ACCESSION PROJECT FOR SERBIA AND MONTENEGRO

Contract: PCE-I-00-98-0017-00

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1 AUGUST 2001 – 30 APRIL 2009

May 2009

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I. INTRODUCTION

The Government of the former Federal Republic of Yugoslavia (FRY) submitted a request for accession to the World Trade Organization (WTO) on January 24, 2001. Almost immediately afterwards, on February 9, 2001, the General Council of the WTO accepted the request and began establishing a Working Party for the FRY accession. The objective of WTO membership was central to national economic policy, which was focused on integration with Euro-Atlantic political and economic institutions, including the European Union. The process of acceding to the WTO was seen as an incentive to the FRY to follow through on necessary legal reform to enter the global economic arena as a viable player.

The WTO Accession Project was established under the Agreement between the governments of the USA and the (former) Federal Republic of Yugoslavia (FRY) of March 6, 2001. The United States Agency for International Development (USAID) competed the Project under the SEGIR Global Business Trade and Investment vehicle and awarded to the consortium primed by PricewaterhouseCoopers and its implementation partner The Services Group. USAID originally designed the Project to assist the government of the FRY with a smooth and efficient accession to the WTO. Initial activities of the Project started in May 2001 and full time operation began in August 2001. Due to changing political developments in the country, the Project had to adjust its operation to meet the new political conditions. When the former FRY was transformed into the State Union of Serbia and Montenegro, the Project continued to assist the Union Council of Ministers, gradually shifting the focus of assistance to Member States' governments. The Project's office in Podgorica (Montenegro) was established in 2003 in order to ensure a direct and efficient relation with and assistance to the Government of Montenegro.

In 2005, the so called "twin-track approach" was approved by the WTO, the initial joint application was withdrawn and Serbia and Montenegro resumed their accession efforts as separate customs territories.

In June 2006, Montenegro declared independence, and since then Serbia and Montenegro have been acceding to the WTO as two independent countries. With the agreement of USAID, and the Project continued to provide technical and advisory assistance to both countries in their respective accessions to the WTO.

The Project was implemented by AECOM International Development, Inc. (formerly The Services Group) under a prime contract with Abt Associates, Inc. (formerly PricewaterhouseCoopers and IBM Business Consulting Services).

The Project had four principal activities:

- Support for accession (assisting governments in preparing of accession documents);
- Legal reform (drafting of new legislation and review of current and proposed legislation for the purpose of ensuring WTO compliance);
- Capacity building (training government officials and preparing the governments for WTO negotiations); and
- Public education/awareness on WTO issues.

This report provides an overview on the activities conducted over the period of Project's life, starting in August 2001 and ending on 30 April 2009. Its main focus is the period from 2003 on, and provides distinct information on Serbia and Montenegro and the activities related to their respective accessions to the WTO.

II. SUMMARY OF ACCOMPLISHMENTS

The following section summarizes the Project activities in each country.

II. I. ACCOMPLISHMENTS IN SERBIA

During its accession to the WTO, Serbia has experienced several political crises and turbulences that have significantly slowed down the accession process including the assassination of the Prime Minister Zoran Djindjic, and three parliamentary and one presidential elections. Each time during one of these political crises, the accession process was stalled for a period of six to nine months. Oftentimes, parliamentary obstruction caused by the nationalistic opposition also prevented WTO relevant laws to be passed by the parliament, which additionally slowed down the process. Despite these various political challenges, the Project has continued its assistance and Serbia has succeeded to bring the accession process to its final stages. The required legal reform has been mostly completed and multilateral as well as bilateral negotiations are moving forward. The government officials working on accession remain committed and technical work on the process is expected to be finished by the end of 2009, setting the foundation to enable Serbia to become a WTO member some time in 2010.

The Project assisted in preparation of all the major accession documents, notably:

- Memorandum on the Foreign Trade Regime;
- ACC/4, ACC/5, ACC/8, ACC/9;
- Legislative Action Plan for achieving compliance with the WTO rules;
- Market Access Offers for agricultural and industrial goods;
- Draft Final Report; and
- Responses to seven rounds of questions asked by WTO Members.

Legal reform activities included participation in drafting of the following laws and regulations:

- Intellectual Property laws;
- Law on Foreign Trade Transactions and its implementing regulations;
- Customs Law and its implementing regulations;
- Technical Barriers to Trade (TBT) laws and regulations governing technical regulations;
- Conformity Assessment procedures and standardization; and
- Sanitary and Phyto-Sanitary (SPS) laws (Veterinary Law, Food Safety Law and Law on Plant Health).

In addition, a number of laws, regulations and draft regulations prepared by the government and/or other donor projects have been reviewed by the Project to ensure WTO compliance including those governing seeds, seedlings and planting material, fertilizers, pesticides, tobacco, foreign investment, telecommunications and environmental protection.

The Project has organized several seminars and workshops for government officials, the private sector, academia and the general public, in order to raise awareness of the WTO rules and principles as well as the importance and benefits of the WTO membership.

In addition, the Project provided assistance to the government of Serbia in preparations for the Working Party meetings held in the WTO headquarters in Geneva, Switzerland (in October 2005, June 2006, December 2006, November 2007, May 2008, December 2008).

II.2. ACCOMPLISHMENTS IN MONTENEGRO

Montenegro was a reluctant member of the former FRY and (subsequently) of the State Union of Serbia and Montenegro, and consequently, not very active in WTO accession while the process was governed by the former federal/union government. However, when the “twin-track approach” was approved in 2005 and Montenegro re-started its accession as an independent customs territory, the WTO accession process took a new course. The commitment was further reinforced after the declaration of independence of Montenegro in 2006. Montenegro has demonstrated its commitment to undertake all the necessary legal reforms and finalize multilateral and bilateral negotiations without any delay. Thus, by the end of 2008, when the Project ended its activities in Montenegro, all the technical work for the accession was completed. Multilateral negotiations were finished, bilateral agreements with interested members completed and signed and the accession package (Final Report, Consolidated Schedule for Goods and Services, Accession Protocol) ready for adoption by the WTO General Council. However, at the last minute, for the reasons that cannot be explained or understood, Ukraine effectively blocked Montenegro’s accession. Once this obstacle is removed, Montenegro will become full fledged WTO member, most likely sometime late in 2009.

The Project assisted in preparation of all the major accession documents, notably:

- Memorandum on the Foreign Trade Regime;
- ACC/4, ACC/5, ACC/8, ACC/9;
- Legislative Action Plan for achieving compliance with the WTO rules;
- Market Access Offers for agricultural and industrial goods;
- Draft Final Report; and
- Responses to eight rounds of questions asked by WTO Members.

Legal reform activities included participation in drafting of the following laws and regulations:

- Intellectual property laws;
- Law on Foreign Trade Transactions and its implementing regulations;
- Customs Law and its implementing regulations;
- TBT laws and regulations governing technical regulations, conformity assessment procedures and standardization; and
- SPS laws (Veterinary Law, Food Safety Law and Law on Plant Health).

In addition, a number of laws, regulations and draft regulations prepared by the government and/or other donor projects have been reviewed to ensure WTO compliance (including those governing seeds, seedlings and planting material, fertilizers, pesticides, tobacco, foreign investment, telecommunications etc.).

The Project has organized several seminars and workshops for the government officials, private sector, academia and the general public, in order to raise awareness of the WTO rules and principles, and the importance and benefits of the WTO membership. In addition, in cooperation with the American Chamber of Commerce of Serbia and Montenegro, the Project has organized and/or participated in a number of conferences, seminars and training events related to protection of intellectual property rights in Montenegro.

In addition, the Project provided assistance to the government of Montenegro in preparations for the Working Party meetings held in the WTO headquarters in Geneva, Switzerland (October 2005, July 2006, February 2007, July 2007, February 2008, July 2008, and November 2008).

III. TECHNICAL ACTIVITIES

III. I. SERBIA

III. I. I. SUPPORT FOR THE ACCESSION

The Project has supported Serbia's accession effort by providing assistance in preparation of the accession documents, providing assistance to Serbian delegation

during Working Party meetings and by advising and providing information to key officials on the WTO related matters.

III.I.1.1. ACCESSION DOCUMENTS

The Project provided assistance in preparation of the following accession documents:

1. Memorandum on the Foreign Trade Regime (MFTR) – document that provides the comprehensive information on the legal and economic systems of the acceding country. Initial MFTR was the one prepared for the FRY, followed by one prepared for the Union. The final MFTR, which reflected the “twin track approach” and the accession of Serbia as an independent customs territory was prepared and submitted in 2005;
2. ACC/4 – document outlining domestic support programs and export subsidies in agriculture;
3. ACC/5 – document providing information on policy measures affecting trade in services;
4. ACC/8 – checklist of issues related to technical barriers to trade (TBT) and sanitary, veterinary and phyto-sanitary measures (SPS);
5. ACC/9 – overview of the regulations in the domain of intellectual property rights;
6. Import Licensing Questionnaire – document providing detailed information on import licensing procedures for 14 groups of products subject to licensing in Serbia;
7. Legislative Action Plan for achieving compliance with the WTO rules and principles and its subsequent revisions; and
8. Responses to seven rounds of questions.

III.I.1.2. NEGOTIATIONS

Multilateral negotiations in the accession process take the form of Working Party (WP) meetings, where all interested WTO members have the opportunity to ask questions related to documents and information submitted by the acceding country. During the WP meetings, the Project staff provided on site assistance and support to the Serbian delegation. There were six WP meetings, notably on: 7 October 2005, 8 June 2006, 6 December 2006, 27 November 2007, 8 May 2008, and 17 December 2008.

Serbia negotiated bilaterally with the US, EU, China, Switzerland, Canada, Norway, Japan, Korea, Ecuador and Ukraine. Bilateral negotiations are tough, but they are moving forward. With the support of the Project, negotiations on goods (customs tariffs) have been completed with Switzerland and Norway and bilateral protocols with these two countries are expected to be signed before the seventh Working Party meeting. Decisions that have to be made by the acceding country in bilateral negotiations are mostly political. Therefore, the Project was not involved directly in the process, but rather supported through specific technical assistance and the advice to the Serbian negotiators during the process, in particular in providing them with an understanding of

the process and the consequences of the concessions requested by negotiating partners.

Bilateral negotiations will remain the focus of Serbia's accession activities after the completion of the Project. It is believed that bilateral negotiations could be finalized by the end of 2009.

III.1.2. LEGAL REFORM

The Project has assisted Serbia in achieving compliance with WTO rules and disciplines in the following key areas: foreign trade, customs, intellectual property rights, sanitary and phyto-sanitary measures, standards, and technical regulations. The assistance included drafting of WTO compliant model legislation, participation in drafting groups established for preparation of particular laws and/or regulations, and review of the existing or newly prepared laws and/or regulations for the WTO compliance.

III.1.2.1. FOREIGN TRADE

The Project was instrumental in preparation of the following laws/regulations that regulate trade in general, both foreign and internal:

- Foreign Trade Law (2005); and
- Implementing Regulations for the Foreign Trade Law (2006), including:
 - Regulation on Antidumping Measures;
 - Regulation on Countervailing Measures;
 - Regulation on Safeguard Measures;
 - Regulation on Importation of Motor Vehicles; and
 - Decision on Goods Subject to Conditions on Exportation, Importation and Transit.

In addition, the Project has prepared the translations into English of the above laws and regulations.

The Project collaborated with the Ministry of Economy and Regional Development in preparation of the Licensing Action Plan (Action Plan for Amending Legislation in the Area of Import and Export Licensing System and Other Administrative Procedures Preceding Export, Import or Transit of Goods Aimed at Harmonization with the WTO Rules and Principles), identifying problems, and providing solutions that would bring the licensing regime in line with the WTO rules and principles. Based on this Action Plan, an appropriate plan of legislative activities, which includes deadlines for amendment or adoption of relevant regulations, has been prepared and subsequently adopted by the Government. The approved action plan was submitted to the WTO Secretariat.

III.1.2.2. CUSTOMS

Project experts, in cooperation and participation of experts from the Customs Administration of Serbia and an EU donor project, have prepared the new Serbian Customs Law (2003) and its Implementing Regulation (2004) in order to provide full compliance with the relevant WTO Agreements (Rules of Origin, Custom Valuation, TRIPs).

III.1.2.3. INTELLECTUAL PROPERTY RIGHTS (IPR)

The Project had a key role in improving a concept of IPR protection in Serbia, notably:

- Participated in drafting substantive Union IP laws applicable in Serbia (Copyright, Trademark, Patent, Design, Topographies of Integrated Circuits, Geographical Indications), notably provisions on enforcement (2004-2005);
- Reviewed drafts of the above laws for TRIPs compliance;
- Prepared the draft of the Intellectual Property Enforcement Law (The Law on Special Powers for the Efficient Protection of Intellectual Property Rights), which provided necessary powers to Serbian authorities to act in case of IPR infringement as well as fines for the offenders (2006);
- Prepared the draft amendments to Serbian Penal Code that provide proper penal protection of Intellectual Property Rights and ex officio prosecution (2005);
- Prepared the draft of the Optical Discs Law for Serbia which should regulate production and commercial duplication of optical discs and circulation of equipment and raw materials used in production of optical discs (prepared in 2006, still pending adoption); and
- Prepared the draft of the Law on Protection of Undisclosed Information, which should regulate protection of undisclosed information as a specific intellectual property right in accordance with TRIPs Article 39 (prepared in 2006, still pending adoption).

In addition, the Project has prepared the translations into English of the above laws and regulations.

III.1.2.4. SANITARY AND PHYTO-SANITARY MEASURES (SPS)

The Project was instrumental in establishing a WTO compliant SPS system in Serbia, notably in preparation of the following laws/regulations:

- Food Safety Law (2005- 2009);
- Veterinary Law (2005);
- Law on Plant Health (2008); and
- Regulation on SPS Notification and Enquiry Point (2008).

The Project has also prepared the translations into English of the above laws and regulation.

In addition the Project has reviewed a number of SPS related laws for WTO compliance, including the Law on Fertilizers, the Law on Pesticides, the laws governing seeds, seedlings and planting material, and the Law on Genetically Modified Organisms (GMO).

III.I.2.5. TECHNICAL BARRIERS TO TRADE (TBT)

The Project was instrumental in establishing a WTO compliant TBT system in Serbia, notably in preparation of the following:

- TBT Action Plan for Serbia – a list of actions that have to be taken in order to regulate TBT in accordance with relevant WTO Agreements and ensure expedite WTO Accession;
- Law on Technical Requirements for Products and Conformity Assessment of Products with the Prescribed Requirements (2005);
- Law on Standardization (2005); and
- Regulation on TBT Notification and Enquiry Point (2008).

The Project has reviewed a number of (draft) regulations in this area, including Law on Metrology, Law on Accreditation, WTO relevant by-laws adopted based on the Law on Technical Requirements for Products and Conformity Assessment of Products with the Prescribed Requirements.

The Project has also prepared the translations into English of the above laws and regulations.

III.I.3. CAPACITY BUILDING /PUBLIC EDUCATION /AWARENESS

From the very beginning of its operation, the Project was active in capacity building, public education and raising awareness in Serbia about WTO accession. The activities included the following:

- Prepared 10 one-page summaries of WTO agreements and general information in English and Serbian (January 2002);
- Prepared information brochure describing the Project (January 2002);
- Senior attorney participated in an information seminar for commercial court judges organized under USAID Commercial Law Project (January 2002);
- Prepared 27 2-8 page documents on WTO topics and agreements in both English and Serbian to be distributed at the WTO Conference (March 2002);
- Organized 9-day conference on the WTO and WTO agreements. The daily activities and key points made were reported in the local press each day. Attendance on the first day, to hear Vice Prime Minister and the US Ambassador,

consisted of 200-250 persons and on the remaining days attendance ranged from 60-100 persons daily with a core group of about 30 persons that attended all sessions. In addition, about 20 judges and numerous private attorneys attended the sessions on intellectual property (March 2002);

- Organized 1-day training event on ACC5. The training was attended by 50 persons from Federal, Serbian and Montenegrin governments plus private sector representatives. The training focused on concepts contained within GATS and ACC/5, the report on the legislative environment governing trade in services (March 2002);
- Participated and held presentation in the Economists' Counselling in Budva, organized by the Union of Economists of the FRY, on the subject: "Economic Functions of the New State" (25-27 June 2002);
- Funded the participation of two Federal and two Montenegrin Government officials and two Project staff members in the Council for Services meetings in Geneva (July 2002);
- Funded the participation of two Serbian Government officials at a WTO Seminar on Accession, highlighting the experiences of recently acceded and currently acceding countries, which included attendance at the Working Party meeting for Uzbekistan (July 2002);
- Organized 2-1/2 day training event with WTO Counselors in the Trade in Services Division, Pierre Latrille and Mireille Cossy, on GATS and scheduling of the offer on services. The training focused on the process of scheduling commitments in services sectors (September 2002);
- Funded the participation of three officials from the Customs Administration at the World Customs Organization (WCO) conference on Border Enforcement of Intellectual Property Rights (October 2002);
- Funded the participation of two officials from the Customs Administration at the World Customs Organization (WCO) conference on Customs Valuation (October 2002);
- Funded the participation of an official from the Serbian Ministry for International Economic Relations and the Montenegrin Ministry of Finance at a WTO Council on Services and Subsidies Notification Seminar (October 2002);
- Organized 2 half-day seminars: "Why Yugoslavia is joining the WTO" and "What WTO membership will mean for Yugoslavia", targeted at academics, business parliamentarians and the media (November 2002);
- Funded the participation of an official from the Serbian Ministry for International Economic Relations and the Montenegrin Government at a Geneva Week at the WTO (November 2002);
- Funded the participation of six officials from the Serbian and Montenegrin Governments at the WTO Technical Assistance Seminar on SPS matters, an informal session on equivalence of the Committee on SPS, and the two-day Committee meeting a Geneva Week at the WTO (November 2002);
- Organized a workshop on preparing ACC/4 (November 2002);
- Organized a workshop on institutional structure necessary to implement the SPS Agreement (November 2002);

- Organized second workshop on preparing ACC/4 (December 2002);
- Funded the participation of two officials from the Customs Administration at the continuation of the WCO conference on border enforcement of intellectual property rights (December 2002);
- Established a contact with Serbian Chamber of Commerce (PKS) in order to further the public education campaign, which has resulted in an agreement with PKS to conduct training events at their facilities, with each event focusing on one aspect of WTO accession but from the perspective of business (February 2003);
- COP Kim Hjort¹ and Senior Attorney Jovan Jekic attended the meeting organized by AMCHAM to discuss matters related to protection of intellectual property rights with industry representatives and AMCHAM members. The result of this meeting was the extraordinary cooperation between the Project and the AMCHAM IPR Committee on IPR related matters until the end of the Project (March 2004);
- Delivered a two day seminar to PKS staff on the WTO agreements;
- Prepared, in cooperation with AMCHAM IPR Committee, a seminar on intellectual property issues (June 2004);
- Participated on the Seminar on WTO Accession held in Lepenski Vir, organized by the Ministry of International Economic Relations of Serbia and the Swiss Cooperation Office in Serbia and Montenegro, and presented on import licensing (14–16 April 2005);
- Participated in a training seminar on intellectual property enforcement for Serbian market inspectors in Belgrade (18 April 2006) and in Zlatibor (11 May 2006). The seminars were arranged by the AMCHAM in cooperation with the ministry concerned;
- Together with Assistant Minister Ana Blagojevic (MIER) and officials from the Ministry of Finance, DCOP Jovan Jekic presented the new Foreign Trade Transactions Law to the Regional Chamber of Commerce in Novi Sad (17 March 2006);
- Held presentation on the WTO rules on licensing and overview of the problems in this area in Serbia to the responsible ministry officials at the seminar at Banja Vrujci (6-7 April 2006);
- Participated in a IP law enforcement training seminar for judges and prosecutors in Zrenjanin (June 2006);
- Participated in the IPR conference, organized by the AMCHAM IPR Committee on the Mt. Kosmaj. The audience were officials from enforcement agencies – police, market inspectors, judges, prosecutors. COP Jovan Jekic had a presentation on legal issues related to IPR protection (18-19 September 2006);
- Participated in the conference organized by the Serbian Tourist Inspectorate on the Mt. Kopaonik. COP Jovan Jekic had a presentation on the role of tourist inspectors in the IPR protection under the recently enacted legislation (21 September 2006);

¹ The title of any persons mentioned in this report reflect the title at the point of achievement.

- COP Jovan Jekic was the guest in the morning show of the Serbian national television Channel 1 to talk about the 18-19 September 2006 IPR Conference and IPR Protection;
- Attended the Conference on Accession of Serbia to the WTO, organized by the International Trade Centre (UNCTAD) and Serbian Chamber of Commerce (19 October 2006);
- Participated on the two-week seminar on import licensing held in the Ministry of International Economic Relations (April 2007);
- Participated in a round table discussion organized by the International Trademark Association (INTA) on “Importance of European Integrations in Enforcement of Trademark Law” and in a seminar organized by AMCHAM Serbia on “Cyber Crime Prevention and IT Security” (May 2007);
- Participated in the IPR Conference organized by the IPR Committee of AMCHAM Serbia. The purpose of the conference was to discuss issues related to enforcement of intellectual property rights, with officials of the enforcement authorities (police, prosecutors, judges, market and tax inspectors, tax police), and to provide information and training (December 2007);
- Participated in the training session organized by the IPR Committee of AMCHAM Serbia for tax inspectors and tax police in Belgrade. The purpose of the training was to explain methods and means for recognition of legal software (December 2007); and
- Participated in the panel discussion on the conference “The Silk Road – Information Highway of the 21st Century” Supply Chain Operational Management and International Logistics held at the Faculty of Traffic and Traffic Engineering in Belgrade. The conference was organized by the Customs Administrations of the Republic of Macedonia and the Republic of Serbia, in cooperation with Inner Circle Logistics, Inc. (ICLogistics) and the University of Belgrade. The conference was held in conjunction with the completion of the USTDA funded South East Europe Trade Facilitation Project being implemented through Customs Administration Republic of Macedonia (CARM) to improve cross-border trade facilitation and regional business competitiveness (1-3 October 2008).

The project did not conduct an independent assessment of the effectiveness of the impact of its various public communication efforts.

III.2. MONTENEGRO

Since the beginning of the Project, Montenegro has demonstrated its reluctance to participate in the WTO accession related activities with the federal and Serbian governments. As early as May 2002, the Project’s COP and a team from the US embassy in Belgrade traveled to Podgorica (capital of Montenegro) to discuss engagement of Montenegro’s government in the WTO accession process. As a result, key counterparts were identified and activities planned, however only on a technical level. The commitment in Montenegro toward WTO accession has always been strong given the perspective of future independence.

In order to better communicate with Montenegrin officials and facilitate activities related to the WTO accession, the Project has opened its office in Podgorica, which became fully operational in October 2003.

By mid-2004, it became increasingly clear that WTO accession by the State Union was likely to require far-reaching changes to the constitutional structure of Serbia & Montenegro—changes that would give the Union authority in many of the areas that were the responsibility of the Member States. But Montenegro, which feared domination by the much larger Serbia, was unwilling to vest such powers in the Union government. In addition, even in the areas in which the Union had nominal competence to legislate—intellectual property law and standards law—it had not done so. WTO compliant drafts of the major laws in these areas had been pending at the Union level for months and years. It was apparent that neither Member State really wanted the Union to act in an effective manner. Instead, the general view appeared to be that the Union was a temporary phenomenon that would disappear within a few years at most, leaving two fully-independent states as its successors. In addition, the Montenegrin government had made it increasingly clear that it intended to organize a referendum on independence and expected that independence would be accomplished by the summer of 2006.

Such a situation brought the accession process to an almost complete halt. In October 2004, the EU approved a “two track” policy with respect to EU accession for Serbia and Montenegro, that also meant the acceptance of separate accessions to the WTO for Serbia and Montenegro, as separate customs territories.

As a consequence, the Union application was withdrawn in November 2004, and a new application was submitted by Montenegro and Serbia. From that moment on, the accession of Montenegro accelerated and kept the pace all the way until the end of the accession process.

III.2.1. SUPPORT FOR THE ACCESSION

The Project has supported Montenegro’s accession effort by providing assistance in preparation of the accession documents, providing assistance to Montenegrin delegation during Working Party meetings as well as advising and providing information to key officials on the WTO related matters.

III.2.1.1. ACCESSION DOCUMENTS

The Project provided assistance in preparation of the following accession documents:

1. Memorandum on the Foreign Trade Regime (MFTR) – document that provides the comprehensive information on the legal and economic systems of the acceding country;
2. ACC/4 – document outlining domestic support programs and export subsidies agriculture;

3. ACC/5 – overview of trade policies in the services sector;
4. ACC/8 – checklist of issues related to technical barriers to trade (TBT) and sanitary, veterinary, and phyto-sanitary measures (SPS);
5. ACC/9 – overview of the regulations in the domain of intellectual property rights;
6. Import Licensing Questionnaire - an accession document providing detailed information on import licensing procedures for all product groups subject to licensing in Montenegro;
7. Legislative Action Plan for achieving compliance with the WTO rules and principles and its subsequent revisions;
8. Answers to eight rounds of questions; and
9. Market access offers for goods and services (including initial and revised versions of the offers).

III.2.1.2. NEGOTIATIONS

Multilateral negotiations in the accession process take the form of Working Party (WP) meetings, where all interested WTO members have the opportunity to ask questions related to documents and information submitted by the acceding country. During the WP meetings, the Project staff provided on site assistance and support to the Montenegrin delegation. There were seven WP meetings, notably on: 4 October 2005, 6 July 2006, 27 February 2007, 19 July 2007, 28 February 2008, 18 July 2008, and 7 November 2008.

Montenegro negotiated bilaterally with the US, EU, China, Switzerland, Canada, Norway, Japan and Brazil. Although negotiations were tough, they have all been successfully finalized. Bilateral agreements with all the interested member countries have been signed. Decisions that have to be made by the acceding country in bilateral negotiations are mostly political. Therefore, the Project has provided necessary technical assistance and the advice to the Montenegrin negotiators during the process, in particular in understanding the process and the consequences of the concessions requested by negotiating partners.

However, when the negotiating process was completed, in December 2008, Ukraine has requested bilateral negotiations with Montenegro, thus effectively blocking Montenegro's accession. The reasons for such an action cannot be explained or understood, particularly considering that trade between two countries is negligible. However, it is believed that this obstacle will be removed and that Montenegro will become WTO member sometime in 2009.

III.2.2. LEGAL REFORM

The Project has assisted Montenegro in achieving compliance with WTO rules and disciplines in all the key areas – foreign trade, customs, intellectual property rights, sanitary and phyto-sanitary measures, standards and technical regulations. The

assistance included drafting of WTO compliant model legislation, participation in drafting groups established for preparation of particular laws and/or regulations, and review of the existing or newly prepared laws and/or regulations for the WTO compliance.

III.2.2.1. FOREIGN TRADE

The Project was instrumental in preparation of the following laws/regulations that regulate trade in general, both foreign and domestic:

- Foreign Trade Law (2004);
- Implementing Regulation for the Foreign Trade Law (2004);
- Regulation on Importation of Motor Vehicles (2004); and
- Law on Internal Trade (2008).

In addition, the Project has prepared the translations into English of the above laws and regulations.

III.2.2.2. CUSTOMS

Project experts, in cooperation and participation of experts from the Customs Administration of Montenegro and an EU-funded project, have prepared amendments to the Montenegrin Customs Law and its Implementing Regulation (2005-2006) in order to provide full compliance with the relevant WTO Agreements (Rules of Origin, Custom Valuation, TRIPs) and resolve the issue of the importer of record (2008) raised by the US Trade Representative (USTR).

III.2.2.3. INTELLECTUAL PROPERTY RIGHTS (IPR)

The Project had a key role in establishing a concept of IPR protection in Montenegro and making it operational, notably:

- Prepared the draft of the IP Enforcement Law, which provided necessary powers to Montenegrin authorities to act in case of IPR infringement as well as fines for the offenders (2005);
- Prepared the draft of the Regulation on TRIPs Border Measures providing powers for the customs authorities to act in case of IPR infringement discovered in the course of any customs procedure (2005);
- Prepared the draft amendments to Montenegrin Penal Code that provided proper penal protection of IPRs and *ex officio* prosecution (2005);
- Prepared the draft of the Optical Discs Law for Montenegro which regulated production and commercial duplication of optical discs and circulation of equipment and raw materials used in production of optical discs (2006);
- Prepared the draft of the Law on Protection of Undisclosed Information, which regulated protection of undisclosed information as a specific intellectual property right in accordance with TRIPs Article 39 (2006);

- Prepared the draft of the Law on Protection of Plant Varieties -UPOV Law (2008);
- Prepared the Strategy for IPR Protection in Montenegro. The purpose of the Strategy is to make sure that after the declaration of independence the system of IPR protection is properly set and that no lacuna has been left (2006);
- Subsequent to the independence of Montenegro, drafted the Regulation on Recognition of Individual Intellectual Property Rights, which regulates recognition of individual IPRs registered in the former Union IP Office in Belgrade and those registered through the system of international registration. The Regulation was approved by the Government and became effective in September 2007;
- Prepared the draft of the new Law on Indications of Geographical Origin for Montenegro (2008); and
- Participated in preparation of the new Patent Law for Montenegro (2008).

In addition, the Project has prepared the translations into English of the above laws and regulations.

III.2.2.4. SANITARY AND PHYTO-SANITARY MEASURES (SPS)

The Project was instrumental in establishing a WTO compliant SPS system in Montenegro, notably in preparation of the following laws/regulations:

- Food Safety Law (2007); and
- Regulation on SPS Notification and Enquiry Point (2008).

The Project has also prepared the translations into English of the above law and regulation.

In addition the Project has reviewed a number of SPS-related laws for WTO compliance, including the Law on Health Protection of Plants, Veterinary Law, Law on Fertilizers, Law on Pesticides, the Law on Seeds of Agricultural Plants, Law on Planting Materials, and the Law on Genetically Modified Organisms (GMO).

III.2.2.5. TECHNICAL BARRIERS TO TRADE (TBT)

The Project was instrumental establishing a WTO compliant TBT system in Montenegro, notably in preparation of the following:

- TBT Action Plan for Montenegro – a list of actions that have to be taken in order to regulate TBT in independent Montenegro in accordance with relevant WTO Agreements and ensure WTO Accession (2006);
- Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements (2008);
- Law on Standardization (2008);
- Law on Metrology (2008); and
- Regulation on TBT Notification and Enquiry Point (2008).

III.2.3. CAPACITY BUILDING/PUBLIC EDUCATION/AWARENESS

From the very beginning of its operation, the Project was active in capacity building, public education and raising awareness in Montenegro. The activities included the following:

- WTO introduction conference, where the Project staff presented material (September 2002);
- Seminar on intellectual property issues in Podgorica, jointly sponsored by the Ministers of Culture (responsible for copyright issues) and of the Ministry for International Economic Relations (MIER) with excellent press and TV coverage (June 2004);
- Seminar on agricultural issues in cooperation with the Ministry of Agriculture and the attendance of the Deputy Prime Minister (June 2004);
- Sponsoring two Montenegrin officials who completed a training program at the USPTO in Washington DC (October 2004);
- Project staff participated in a seminar on "Professional Media and the Protection of Copyright and Related Rights in Montenegro". The object was to clarify the legal framework for the copyright protection in Montenegro, and in particular to involve the Montenegrin Broadcasting Agency in enforcing copyright on broadcasters. Project-prepared material on Special 301, TRIPs Agreement and WTO Accession were given to participants (September 2004);
- DCOP Jovan Jekic participated in a training seminars on intellectual property enforcement for market inspectors in Montenegro (December 2005 and again in April 2006);
- IPR Conference, organized by the AmCham IPR Committee and the Ministry of Justice of Montenegro (Budva, Montenegro). The audience were judges and prosecutors who were expected to be involved in IPR-related cases after the amendments to the Montenegrin Penal Code. COP Jovan Jekic presented on legal aspects of IP Protection in Montenegro under the new circumstances (September 2006);
- COP Jovan Jekic gave an interview for a Montenegrin TV channel, discussing problems of IPR protection in Montenegro (October 2006);
- Upon the invitation Ministry for International Economic Relations and European Integration, Milica Popovic, Project Director in Montenegro, attended the Conference on Geographical Indications (held in the coastal resort of Becici) sponsored by CARDS;
- The Project was active in all phases of establishing the Intellectual Property Office of Montenegro, and assisted the Government of Montenegro in preparing the legal framework for its operation, which began May 2008;
- COP Jovan Jekic assisted relevant authorities of Montenegro in acceding to key international agreements that regulate protection of intellectual property rights and become member of World Intellectual Property Organization (WIPO); and
- COP Jovan Jekic assisted Ministry of Agriculture of Montenegro in achieving membership in UPOV (May-October 2008).

IV. CONCLUSION

After eight years of activity, the assistance provided by the United States Agency for International Development through the Project has left the lasting impact in both Serbia and Montenegro.

Montenegro has practically finished its WTO accession process. Full WTO compliance of its legal system has been achieved. Both multilateral and bilateral negotiations have been finalized and bilateral agreements signed with interested WTO members. However, the accession process has been blocked in the last minute by Ukraine, for no apparent reason. As soon as this obstacle is removed, which will most likely happen sometime in 2009, Montenegro will become the full fledged member of the World Trade Organization.

In Serbia, due to several political crises and turbulences over the life of the Project, the accession process has been significantly slowed down. Oftentimes, parliamentary obstruction caused by the nationalistic opposition has prevented WTO relevant laws to be passed by the parliament, which additionally slowed down the process. However, with the assistance of the Project, Serbia has succeeded in bringing the accession process to its final stages. Necessary legal reform was mostly completed. Some of the WTO relevant laws are pending parliamentary passage. The remaining laws that have to be adopted, most notably the Law on Optical Discs and the Law on Protection of Undisclosed Information, could be prepared and passed soon. If the problem of inefficiency of the Serbian Parliament is resolved, the legal reform could be finalized within the short period of time. The key element Serbia has to focus now is finalization of bilateral negotiations. If Serbia remains focused on the WTO accession, all the technical work could be finished by the end of 2009 and Serbia could become full fledged member of the World Trade Organization sometime in 2010.

IV.1. REMAINING STEPS

IV.1.1. SERBIA

In order to accede to the WTO, Serbia must finalize:

- Its legal reform by adopting few remaining laws and regulations, most notably the Optical Discs and the Law on Protection of Undisclosed Information;
- Bilateral negotiations and sign agreements with interested members of the Working Party.

In the final stages of the accession process, the Consolidated Schedule of Commitments for goods and services, Final Report and the Protocol of Accession (the Accession Package) will have to be finalized and approved by the Working Party. The approved Accession Package will be then adopted by the WTO General Council,

Serbia will have to ratify the Accession Package in the Parliament. Serbia will become a WTO member thirty days after the submission of the instruments of ratification to the WTO Secretariat.

IV.I.II MONTENEGRO

Montenegro has finalized its accession process. The Accession Package is ready for approval by the Working Party. The final remaining step is to remove the blockage caused by Ukraine's request to further negotiate with Montenegro and to find a mutually acceptable solution.

In the final stage of the accession process the Accession Package will have to be approved by the Working Party. The approved Accession Package will then be adopted by the WTO General Council.

Montenegro will have to ratify the Accession Package by the Parliament. Montenegro will become a WTO member thirty days after the submission of the instruments of ratification to the WTO Secretariat.

IV.II. LESSONS LEARNED

The following provide some of the general "lessons learned" through the implementation of this Project and are offered here to contribute to any future work USAID may be considering in this area. These lessons learned are based on observations and reflections of the implementers and are not based on rigorous independent assessments or research. The following provides an overview of the general lessons learned:

1. **Assure political leadership and commitment.** The difference in level of accession that the Project in Montenegro was able to achieve as compared to Serbia underscores the importance of political commitment. Montenegro not only recognized the importance of accession, the Deputy Prime Minister had a personal commitment to accession and the political power to assure the work progressed. In addition, the political parties (members of the ruling coalition) were also in support of her initiative. By comparison, accession was not high on the Serbian political agenda, there was never a committed champion for the accession process and the jockeying for power among various political parties delayed or hindered the accession related work. To assure achievement of project objectives, we therefore recommend USAID or the project attempt to assess the level of political commitment and leadership to project goals both at the early design phase as well as throughout the life of the project. Our observation is such commitment is evident when a person with sufficient political power assumes ownership and serves as a public champion for the process.

2. **Avoid the “legal tradition” trap.** Accession to the WTO requires the acceptance of and adherence to international governing standards. Governments need to accept this fact and not attempt to use their particular legal traditions as a foundation for trying to modify these international standards to better conform with their legal traditions. Ultimately, conformity with the international standards will be required by the WTO and such attempts only delay the accession process. Achieving clarity and acceptance of the need to comply with international standards from the Government from the initial design is therefore essential to improving the projects ability to deliver results.
3. **Assure reasonable time frame for implementation.** This project started on the optimistic premise that WTO accession could be achieved by the project for Serbia and Montenegro within two years. This timeframe was based on the untested assumption that there was strong political commitment and the project would perform all of the necessary work based on a general Government approval and limited engagement. As this final report indicates, the realities on the ground have proven otherwise. Unforeseen political events arose and prevented the accession within the initial optimistic timeframe. Based on our experience in Montenegro after it split from Serbia, we suggest considering a more realistic time frame with political commitment. of approximately three to four years for WTO accession
4. **Engage counterparts.** We strongly recommend engaging local counterparts in a collaborative effort in the drafting of the accession documents as opposed to relying solely on project professionals. While this might delay the accession process somewhat, our observation is such engagement is essential to building commitment and establishes the foundation for the essential work of post-accession implementation.
5. **Conduct public communication.** In order to support political commitment, we suggest developing a public communication strategy to provide regular communication efforts focused at various stakeholder groups on the accession process and its implications.

ANNEXES

I. DOCUMENTS/LEGISLATION FOR SERBIA

Annex 1: ACC/4 document

Annex 2: Draft ACC/5 document

Annex 3: SPS related ACC/8 document

Annex 4: TBT related ACC/8 document

Annex 5: ACC/9 document

Annex 6: Action Plan for Amending Legislation in the Area of Import and Export Licensing System and Other Administrative Procedures Preceding Export, Import, or Transit of Goods Aimed at Harmonization with the WTO Rules and Principles

Annex 7: TBT and SPS Action Plan

Annex 8: Annexes to Memorandum on the Foreign Trade Regime

Annex 9: Decision on Determining Goods Subject to Conditions on Importation, Exportation and Transit

Annex 10: Decree on Importation of Motor Vehicles

Annex 11: Draft Food Safety Law

Annex 12: Import Licensing Questionnaire

Annex 13: Legislative Action Plan

Annex 14: Law on Standardization

Annex 15: Law on Technical Requirements for Products and Conformity Assessment of Products with Prescribed Requirements

Annex 16: Memorandum on the Foreign Trade Regime

Annex 17: Draft Law on Plant Health

Annex 18: Customs Law

Annex 19: Draft Regulation on the Procedure for Notification of Sanitary and Phytosanitary Measures

Annex 20: Law on Special Powers for the Purpose of Efficient Protection of Intellectual Property Rights

Annex 21: Regulation on the Manner of Providing Information and Notification of Technical Regulations, Standards and Conformity Assessment

Annex 22: Regulation on Detailed Conditions for Implementation of Antidumping Measures

Annex 23: Regulation on Detailed Conditions for Implementation of Countervailing Measures

Annex 24: Regulation on Detailed Conditions for Implementation of Safeguard Measures Pertaining to Excessive Imports

Annex 25: Law on Copyright and Related Rights

Annex 26: Law on Foreign Trade Transactions

Annex 27: Law on Indications of Geographical Origin

Annex 28: Law on Legal Protection of Design

Annex 29: Law on Protection of Topographies of Integrated Circuits

Annex 30: Patent Law

Annex 31: Law on Trademarks

Annex 32: Veterinary Law

II. DOCUMENTS/LEGISLATION FOR MONTENEGRO

Annex 33: ACC/4 document

Annex 34: ACC/5 document

Annex 35: SPS related ACC/8 document

Annex 36: TBT related ACC/8 document

Annex 37: TBT and SPS Action Plan

Annex 38: Memorandum on the Foreign Trade Regime

Annex 39: Annexes to Memorandum on the Foreign Trade Regime

Annex 40: Action Plan for the Protection of Intellectual Property Rights in the Republic of Montenegro

Annex 41: Law on Indications of Geographical Origin

Annex 42: Law on Internal Trade

Annex 43: Law on Protection of Plant Varieties

Annex 44: Law on Standardization

Annex 45: Law on Technical Requirements and Conformity Assessment of Products with Prescribed Requirements

Annex 46: Patent Law

Annex 47: Questionnaire on Import Licensing Procedures

Annex 48: Regulation on Providing the Application of Intellectual Property Rights

Annex 49: Regulation on the Procedure for Notification of Technical Regulations, Standards and Conformity Assessment Procedures

Annex 50: Foreign Trade Law

Annex 51: Regulation on Implementation of the Foreign Trade Law

Annex 52: Law on Enforcement of the Legislation That Regulates Protection of Intellectual Property Rights

Annex 53: Law on Optical Discs

Annex 54: Customs Law

Annex 55: Law on Protection of Undisclosed Information