



Trade Cooperation Programme in Tajikistan Component ONE: Policy Advice and Capacity Building

Study trade obstacles faced by Tajikistan's private sector in exporting their goods and services to selected markets

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TABLE OF CONTENTS

- I. BACKGROUND AND DESCRIPTION OF THE ASSIGNMENT
- II. SURVEY RESULTS AND INTERVIEWS
- III. ISSUES IDENTIFIED:
 - III.1 TRADE PROBLEMS IN SELECTED MARKETS
 - III.2. ISSUES THAT APPEAR NOT TO BE IN VIOLATION
 - III.3. OTHER ISSUES IDENTIFIED
- IV. WTO TOOLS AND PROCEDURES FOR HANDLING TRADE ISSUES
 - Accession negotiations**
 - Trade policy review**
 - Work in the relevant WTO committees**
 - Dispute Settlement**
 - Participation in the new round of negotiations**

ATTACHMENT: **Survey questionnaire**

I. BACKGROUND AND DESCRIPTION OF THE ASSIGNMENT

1. This study was conducted as part of the activities to support Tajikistan's WTO accession and post accession implementation efforts under the component ONE of SECO's Trade Cooperation Programme (TCP) in Tajikistan, which started in 2012 and is planned to last for three years. Tajikistan completed its accession negotiations on 26 October 2012, when the Working Party adopted the accession package. The General Council approved the accession on 10 December 2012. Tajikistan officially became the 159th WTO member on 2 March 2013.

2. Tajikistan being a WTO member, it is now in a position to put requests to countries in accession that reflect the concerns of its private sector. It may also address some of the issues its private sector faces while exporting in other WTO members, through the technical working groups established within the WTO Secretariat. The Ministry for Economy and Trade of Tajikistan (MEDT), therefore, has requested assistance in identifying the concerns of the Tajik private sector, which can be address within the ambit of the WTO.

3. Main tasks under the study was to conduct the survey of Tajik exporters and analyze the results of the survey so as to identify what issues are to be addressed within the domain of the WTO and suggest how. The answers to the questionnaire are grouped into this study with the aim to identify the main trade obstacles faced by Tajik businesses and to provide useful negotiating material to the Tajik's mission in WTO.

4. This study represents results of the activities taken to implement the task conducted during the months of June - July and October 2013 and which included:

- Preparation and dissemination of a survey questionnaire meant for the relevant Tajik business associations and enterprises to identify, at the WTO relevance level, the main obstacles they face while exporting to Kazakhstan and Afghanistan (acceding countries) and to China and Kyrgyzstan (WTO Members);
- Interviews with select business associations and firms;
- Discussions of the exporter's problems with representatives of the private sector during the series of WTO awareness seminars organized by ITC/TCP in Dushanbe, Kurgan-Tyube and Khujand in October 2013.

5. Upon request of the Ministry of Economic Development and Trade, in addition to the four selected markets under the current task, Iran was included as part of the study. According to the Tajik National Statistics Agency, in 2011 the Tajik shares of exports into the abovementioned selected markets were of:

Countries	Volume in Mln. USD	Share in total exports
China	254,0	20.2%
Afghanistan	94.9	7.3%
Kazakhstan	47.2	3.8%
Iran	42.3	3.4%
Kyrgyzstan	3.1	0.25%

6. The following key priority sectors, exporting and with potential for exports of goods and/or services, to be covered by the study were identified by Tajikistan's MEDT in relation to trade in goods and services:

- a. Food industry;
- b. Light industry (textile, clothing, yarn, footwear, carpets, etc.);
- c. Agricultural production;
- d. Metallurgy;
- e. Construction; and
- f. Transport.

II. SURVEY RESULTS AND INTERVIEWS

1. The survey's questionnaire was drafted to allow the identification of business obstacles that Tajikistan's businesses face while exporting to the markets covered by the study. The concepts and language used in the questionnaire were deliberately kept simple, as one of the key objectives was for the businesses to understand the questionnaire and to answer it. A brief introduction was also prepared to explain the background of the questionnaire. A copy of the questionnaire is provided as an Attachment to this study.

2. Parviz Kamoliddinov, TCP's national trade expert provided support in translating the survey into Russian and disseminating it. The Tajik Chamber of Commerce and Industry (TCCI) kindly agreed to provide support in disseminating the questionnaire among its members and the other relevant businesses and business associations. Unfortunately, no responses to the questionnaire were received.

3. Therefore, in order to obtain a good understanding of the trade obstacles faced by the Tajik businesses we had to rely on personal interviews. In June and July 2013, two missions were undertaken to Dushanbe, Tajikistan in order to conduct meetings and interviews with the Ministry of Economic Development and Trade, the TCCI as well as with other business associations and firms. TCP National Project Coordinator, Saidmumin Kamolov and National Trade expert Parviz Kamoliddinov were very helpful in identifying and arranging interviews with representatives of business associations and exporting firms.

4. Interviews and discussions were also conducted during the three WTO awareness seminars conducted in Dushanbe on 16 October, in Kurgan-Tyube on 17 October and in Khujand on 19 October. The questionnaires were used during the seminar to obtain information from representatives of the exporting companies participating in the seminars.

5. In addition, TCCI has kindly offered its premises for interviews of exporters. Consultant was located in TCCI for two days and had the opportunity to interview several applicants who were at the TCCI to obtain certificates of origin for exporting their products.

6. Most of the interviewed companies had concerns about confidentiality and expressed a wish not to be named. The list of business associations and companies/sectors interviewed included:¹

- The Tajik Chamber of Commerce and Industry;
- The Association of Road Transporters – ABBAT;
- Tajik Aluminum Company;
- Importer of alcohol products into Tajikistan;
- Can food factory;

¹ No construction companies were identified that had export interests.

- Footwear production company;
- Yarn manufacturer/exporter;
- Yarn exporters;
- Textile clothing companies;
- Cotton export companies;
- Fresh fruit exporters;
- Canned food producers;
- Construction stones producer;
- Precious and semi-precious stone exporters.

III. ISSUES IDENTIFIED

1. Based on the interviews a number of issues were identified as potential WTO compliance related measures. They are described in section III.1 below. For each issue the following structure has been followed: (i) a description of the problem; (ii) its WTO relevance/compliance, and (iii) proposals for handling of the problem are provided.

2. A number of issues raised during the interviews were analyzed in light of the WTO general rules as well as the relevant country's commitments undertaken in their protocols of accession and found not to be in violation. These are briefly described in Section III.2.

3. Most of the interviewees have indicated internal export procedures and requirements in Tajikistan as major trade obstacles. In some cases, it became apparent that requirements that have officially been eliminated during the accession process are still being applied. The list of these issues is provided in Section III.3.

4. Many exporters were not aware of the procedures/issues in export markets because their partners in the importing countries were responsible for handling them. Some traders regularly exporting to certain markets knew all the requirements and faced no problems. For the first time exporters were advised to contact the MEDT if they faced problems while trying to export their products in other WTO members' markets.

5. General information about various tools for handling trade issues available within the framework of the WTO is provided in Section IV of this report.

III.1 TRADE PROBLEMS IN SELECT MARKETS

III.1.1 Kyrgyzstan - Freedom of Transit

Description of the problem

China is a major trading partner for Tajikistan with over 20 percent of all exports in 2011.² Tajikistan, as a land locked country, is interested in diversifying its transit connections with the regional and world markets. In recent years, with the support from the Asian Development Bank, Tajikistan and Kyrgyzstan have made significant investments to road infrastructure that connects Tajikistan to China through Kyrgyzstan. This road is the best and least costly alternative for Tajikistan in trading with China. However, Kyrgyzstan keeps the border crossing point Karamyk on this route closed for international transit. It argues that under the 2004 bilateral agreement this border crossing point is intended for bilateral trade and not for international trade. Currently, road transport traffic from Tajikistan to China and back is carried out through the Kulma pass between Tajikistan and China or through an international border crossing point between Tajikistan and Kyrgyzstan in the north of Tajikistan. Both of these alternatives are more lengthy and costly for transport operators. Tajikistan has been negotiating this issue with Kyrgyzstan unsuccessfully during the recent years. Moreover, Tajikistan has already unilaterally changed the status of the border crossing point from bilateral to international.

WTO relevance – compliance

This situation appears to be impairing the freedom of transit recognized by Article V of the GATT 1994: “There shall *be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit*, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport” (emphasis added).

Handling the problem

Bilateral consultations could be initiated to discuss this issue within the existing WTO mechanism for settling disputes.

Note that the counter argument could be used by making a reference to Article V.3: “Any contracting party may require that traffic in transit through its territory be entered at the *proper customs house*, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered” (emphasis added). In this case, Tajikistan could argue that determining the *proper customs house* located in significantly far location from *the most convenient route* would still be a violation of the Article V.

Note, however, that Article V has never been invoked in dispute proceedings and therefore, there is no relevant WTO practice on this issue.

² Source: National Statistics Agency of the Republic of Tajikistan

III.1.2. Iran – application of internal taxes on imports.

Description of the problem

One of the issues mentioned as a problem was the possible application of discriminatory VAT on imports of yarn into Iran – cotton yarn of Tajik origin was subject to VAT at the rate of 30 percent, whereas, the rate for Turkmen and Uzbek origin yarn was only 18 percent. However, interviews with yarn exporters could not confirm if this was the case since their exports were limited mainly due to currency exchange and payment restrictions in Iran. If this indeed is confirmed - it puts Tajik exporters in a far less competitive position in the Iranian market *vis-à-vis* Turkmen and Uzbek suppliers.

WTO relevance – compliance

Non-discrimination is the core principle of the WTO system. If confirmed, the application of different rates of taxes on imports between countries is a clear violation of Article I of the GATT 1994. This Article states: “With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, [...] any advantage, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”

In this case, according to the most-favored nation (MFN) principle, the lower rate of VAT applied on imports of yarn shall be extended to Tajikistan imports as well.

In its Memorandum on Foreign Trade Regime (MFTR) (WT/ACC/IRN/3) submitted in 2009 Iran has stated that there were no internal taxes applied on import in Iran:

“IV.1. (k) Application of internal taxes on imports

Since the ratification of the “Act on Consolidation of Duties” in the Iranian year 1382 (March 2003), no taxes or charges other than import duties are levied on imports” (emphasis added).

Therefore no description of the VAT regime on imports was provided, although Iran’s VAT Law was enacted already on 8 June 2008. It came into force on 22 September 2008 for importers, exporters and companies with a turnover of at least IRR 3,000 million in the period 21 March 2007 to 19 March 2008, or a turnover of at least IRR 1,250 million in the first 5 months of the period 20 March 2008 to 21 August 2008. For most other companies, including branches of foreign companies, the VAT Act came into force on 23 September 2009. It provides for gradual increase of VAT rates.

As internal tax applied on imports VAT has to be described in MFTR. Application of internal taxes has to be carefully examined in order to ensure its compliance with the WTO rules, in particular, with MFN and National Treatment (NT) principles.

Handling the problem

It has been four years since Iran submitted its MFTR (document WT/ACC/IRN/3 dated 24 November 2009). The replies to the first set of questions were submitted in December 2011. However, no further progress was made in the accession process. There might be a need for updated information to be submitted by Iran – possibly in the form of a revised foreign trade memorandum.

Therefore the issue may be brought up by Tajikistan when Iran's accession process revives and after review of the new revised document that could be submitted by Iran. Nevertheless, the approach in describing the VAT in the current document indicates that Iran is not considering VAT as internal tax applied on imports. Therefore, it would be necessary to bring up the VAT issue into negotiations as internal tax on imports. We did not have access to Iran's replies to the first round of questions submitted in December 2011. If the question regarding the VAT was not already raised and satisfactory replies received, then there might be a need to raise a question as described below.

Below is the suggested formulation of the question to be raised, subject to reformulation as necessary:

"In Section II.1.(b) Monetary and fiscal policies of the Foreign Trade Memorandum (Document WT/ACC/IRN/3) Value Added Tax regime is described. It indicates that VAT is applied also with respect to imports. We understand that this is a case of internal tax being applied on import. However, in Section IV.1.(k) it is stated that "...no taxes or charges other than import duties are levied on imports." Since VAT is applied on imports, in our view it had to be described as an internal tax on imports.

- Please describe in detail the application of the VAT on imports. Please explain if VAT is applied equally for domestic and imported goods and on Most Favored Nation Basis for all imports. Please also describe any exemptions to these principles."

III.1.3 Iran – payments and currency regulations

Description of the problem

During the interviews some of the cotton yarn exporters have indicated that there were significant problems in exporting to Iran. Problems were due to difficulties related to international payments and currency regulation requirements in Iran. Tajik exporters faced problems with timely payments for their goods supplied to Iran. In particular, Iranian importers were required not to make pre-payments and were obliged to issue letters of credit; they had limited access to foreign currency exchange; there was an official exchange rate and “market rates” that significantly differed. Trying to avoid payment difficulties, some traders were forced to engage in barter trade.

This is apparently a serious impediment to Tajik exports to Iran. Most of the exporters had to stop export operations after attempting one or two deals. Although this issue was raised by the cotton yarn exporters, however, currency and payment regulations affect all other existing and potential Tajik exports to Iran.

WTO relevance – compliance

While foreign exchange issues are within the jurisdiction of the International Monetary Fund (IMF) and trade policy questions within the competence of the WTO, foreign exchange questions and trade policy questions are interrelated. Of most direct relevance to the WTO is whether foreign exchange is freely available for payments for current account transactions, as exporters need to know how they will be paid. The GATT 1994 provides that Members must not, by exchange action, frustrate the intent of its provisions and that they must either be members of the IMF or enter into a special exchange agreement with the WTO.

Although Iran is a member of the IMF and have accepted Article 8 of its Articles of Agreement which requires Iran to eliminate exchange restrictions when regulating their exchange policies. Article VII of its Articles of Agreement provides that “no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions”. However, Iran continues to maintain temporary arrangements in order to impose certain exchange restrictions under Article 14. The IMF annually publishes a report on such restrictions, called “exchange arrangements restrictions”.

Handling the problem

Engage in accession negotiations of Iran and request to implement provisions of Article VIII of Articles of IMF Agreement in full. Note that Iran applied for WTO membership in 1996 and the Working Party on its accession was established in 2005. No significant progress was made since then. Iran has submitted its Memorandum of Foreign Trade Regime in 1999 but the Working Party has never met. There could be a need for revision of the outdated information provided.

III.1.4 Iran - market access

Description of the problem

Some cotton yarn exporters indicated that there were high tariffs/taxes charged on imports into Iran. They could not, however, specify the nature and compositions of the import payments. Nevertheless they felt this was a significant obstacle for expanding their exports.

WTO relevance - compliance

Negotiations on market access conditions for goods under Article II of the GATT 1994 are one of the important elements of the accession process. Customs duties and other duties and charges on imports will have to be negotiated and bound.

Handling the problem

Iran is still in its initial stages of accession negotiations. Iran is yet to submit its initial offer on market access on goods and therefore no bilateral negotiations have been initiated. Tajikistan could engage in negotiations once it is initiated and after the review of the initial offer to be submitted by Iran. Although cotton yarn exporters raised the issue, Tajikistan may wish to engage in bilateral market access negotiations on a wider range of goods that are of interest to its economy.

III.1.5 Afghanistan – tax/charge for Tajik vehicles

1. Description of the problem

Transport operators indicated that Afghanistan recently introduced a new tax in the amount of \$450.00 per Tajik truck entering Afghanistan. Its nature, however, whether it is a national or local tax/or charge, or fee for road use, was unclear. For Tajikistan's transport operators, this adds significant extra cost to their services. It is a serious impediment for Tajikistan's international trade as a whole, which is looking into developing cheaper and more efficient transit alternatives.

2. WTO relevance – compliance

Article V of the GATT 1994 requires that any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and *shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit*, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered. It further requires that all charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

The fee (tax?) charged on Tajik vehicles is apparently not cost related. Therefore, it does violate the provisions of Article V of GATT. On the other hand, apparently there is no official decision, at least at the Afghan central government level, for introduction of such a transit fee. It may have been introduced at the local levels. However, as stated in the memorandum on Foreign Trade Regime of Afghanistan, local governments are not delegated any economic authority. Local governments do not have taxation authority and cannot tax imported goods. All goods are taxed upon entry into the country (customs duties).

3. Handling the problem

This issue could be raised at the multilateral negotiations on accession of Afghanistan. The following formulation is suggested:

“We understand that Afghanistan has recently introduced a charge for Tajik vehicles entering Afghanistan in the amount of approximately \$450.00.

- **Please describe the nature of the payment and how it is applied?**
- **How does this charge/fee comply with the provisions of Article V:3 and Article V:4 of GATT 1994?**
- **Is this fee being applied on an MFN basis?”**

According to Afghan Constitution local governments are not delegated any economic authority. Local governments do not have taxation authority and cannot tax imported goods.

- **Please confirm that upon accession all measures applied by local authorities that are not mandated by the central government and that are inconsistent with the WTO rules and Afghanistan's commitments would be eliminated.**

III.1.6 Afghanistan – transit

1. Description of the problem

One of the textile exporters highlighted the problem of transiting their goods through Afghanistan. In some cases Afghan customs required them to clear goods for free circulation although the trader had no intention of selling their products on the Afghan market. This constitutes an unnecessary extra cost for the traders since they had to clear goods again in Tajikistan.

2. WTO relevance – compliance

WTO requires its members to provide freedom of transit. Article V:3 of GATT requires Contracting Parties:

“...traffic (in transit) coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and *shall be exempt from customs duties and from all transit duties* or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.”

Hence the requirement to pay customs duties and taxes on imports for transit goods is a clear violation of the Article V requirements.

3. Handling the problem

During the accession negotiations Afghanistan stated that it did not restrict trade in transit for any country except for trade in transit for prohibited goods (e.g. pork, alcohol). Moreover, the representative of Afghanistan stated that, notwithstanding current Agreements on transit between Afghanistan and other countries, Afghanistan would provide transit conditions as established under Article V of the GATT 1994 to WTO Members on an MFN basis.

Therefore this apparent violation does not seem to reflect the official policy of the Afghan government but rather isolated cases, likely to happen when customs offices are trying to find different ways to collect more revenue. This issue could be discussed and handled informally and bilaterally with Afghanistan without raising it at the multilateral level.

III.1.7 Afghanistan - Market access

Description of the problem

One of the local companies in Khujand recently launched a new production of paints and they are already exporting to Kazakhstan and Kyrgyzstan where they receive duty free treatment under Tajikistan's free trade arrangements. Now they are interested in expanding into the Afghan market. When learned about Tajikistan's rights to negotiate import duty rates of Afghanistan they requested the MEDT to negotiate market access for their products as well.

WTO relevance – compliance

Negotiations on market access conditions for goods under Article II of the GATT 1994 are part of the important elements of the accession process. Customs duties and other duties and charges on imports will have to be negotiated and bound.

Handling the problem

Obviously MEDT is aware of the list of goods that is of interest for Tajikistan in market access negotiations with the other acceding countries. However, this may not be the case in relation to a new production. HS codes of the products they are producing and interested in exporting to Afghanistan are provided below:

As informed by the producer and as far they are aware, current applied rates for such products in Afghanistan was 5 percent.

Description of Goods	GN FEA (HS) Code
Paint & varnish from synth etc polymers aqueous md	3 209 900 000 3 209 100 009
Non-refractory Surfacing Preparations for Facades, Indoor Walls, Floors, Ceilings or the Like	3 214 900 009

III.2. ISSUES THAT APPEAR NOT TO BE IN VIOLATION

1. There were a few other issues that were raised during the interviews with business representatives and discussions with the Ministry of Economy revealed that they are not in violation or relevant to WTO rules. These are analyzed and described below.

Kazakhstan - export duties:

2. Kazakhstan has reserved the right to introduce export duties on certain goods as part of the exemption from the free trade regime with CIS countries, except for the Customs Union member-states. The list of such goods includes: soybeans, rape or colza seeds and sunflower seeds, crude oil, light, medium and heavy oils, bitumen, natural and coal gases, petroleum gases and other gaseous hydrocarbons, raw hides and skins of bovine, sheep and lambs, wool and animal hair, ferrous, copper, and aluminum waste and scrap, rail, crossing piece, iron/steel, part of railway locomotives, certain aluminum products (i.e. powders and flakes, bars and profiles, foil, tubes, pipes, etc.). A question was raised to establish whether these measures did comply with WTO requirements.

3. Article XXIV of the GATT 1994 provides that free trade regime should cover *substantially* all the trade between the parties to such arrangements. According to WTO rules there is no established limit as to what percentage of trade that constitutes *substantially* all the trade. No agreement is reached so far on the interpretation of the term 'substantially' in this provision. It is clear, though, that 'substantially all the trade' is not the same as *all* the trade, and also that 'substantially all the trade' is something considerably more than merely *some* of the trade. As noted in Appellate Body Report, Turkey – Textiles, Para 48: "We note also that the terms of sub-paragraph 8(a)(i) provide that members of a customs union may maintain, where necessary, in their internal trade, certain restrictive regulations of commerce that are otherwise permitted under Articles XI through XV and under Article XX of the GATT 1994. Thus, we agree with the Panel that the terms of sub-paragraph 8(a)(i) offer 'some flexibility' to the constituent members of a customs union when liberalizing their internal trade in accordance with this subparagraph. Yet we caution that the degree of 'flexibility' that sub-paragraph 8(a)(i) allows is limited by the requirement that 'duties and other restrictive regulations of commerce' be 'eliminated with respect to substantially all' internal trade."

4. In paragraph 488 of the draft Report of the Working Party on Kazakhstan (document - WT/ACC/SPEC/KAZ/9/Rev.8, the representative of Kazakhstan stated that "export duty exemptions applied to CIS countries were applied in accordance with Article XXIV of the GATT 1994. In particular, the volume of Kazakhstan's exports to CIS countries subject to export duties was less than 1% of the total volume of goods exported to CIS countries. She held the view that Kazakhstan's participation in FTAs was in compliance with Article XXIV:8(b) since the duties were eliminated on substantially all the trade between the FTA's participants."

5. Oil was of particular interest to Tajikistan and one of the most significant import items from Kazakhstan. According to 2011 data³ total imports from Kazakhstan was 423.6 Mln., whereas oil imports from Kazakhstan were USD12.04 mln., - or less than 3%. Although Kazakhstan has reserved the right to apply export duties, so far it has not utilized this provision. Therefore, there is no formal issue related to compliance with the substantially all the trade requirement. However, if and when actually introduced an evaluation has to be conducted to identify what percentage of the bilateral trade is affected by such restrictions.

³ National Statistics Agency of the Republic of Tajikistan

Kazakhstan – requirement for deposit for alcohol for transit?

6. There is a requirement for deposit as a security measure for transit of alcohol products through Kazakhstan. A question was raised if this requirement violated the WTO rules. Provision of customs security is a legitimate requirement recognized under international norms, namely, in the Revised Kyoto Convention. Usually traders are provided with freedom of choice with respect to the type of security to be supplied to Customs authorities. However, in certain cases, where customs authorities deem that transiting goods pose higher level of risk, they may require a specific type of security to be provided. It is common that alcohol and tobacco products are generally considered high-risk categories, given the level of import duties and excise taxes charged. For example, under the TIR Convention the amount of the guarantees required for tobacco and alcohol products are around USD 200.000, whereas, for other goods it is much less – about USD 60.000.

7. Therefore, the mere fact that deposit requirement exists for transit does not appear to be a violation of WTO rules. However, the administration of the system, if it poses a significant burden and delays, could be questioned under Article V:3, which states: "... traffic (in transit) coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions...". To understand how this mechanism is being applied in Kazakhstan a question could be raised with a request to describe the transit regime for alcohol and tobacco products. Please note, however, that alcohol importers in Tajikistan have indicted that they do not face any problems in transiting through Kazakhstan. Their main concerns regarding transit of alcohol were related to Uzbekistan's transit regime.

Kazakhstan –customs valuation

8. Complaint was that Kazakhstani customs maintains indicative customs values. If the declared value was lower than the indicative value – submission of additional documents to prove the declared price was required. This is not in violation of the WTO CVA, since customs does not formally refuse to accept the declared value and the importers have the right to prove their declared value.

China – tariff quotas for imports of cotton

9. Some of the Tajik cotton exporters have indicted that there was an annual tariff quota applied by China on imports of cotton and questioned if this was in compliance with China's obligations as a WTO member. China has described its tariff rates quota regime in the Working Party Report on its accession. This issue was re-examined during the Trade Policy of China in 2012. Currently the sliding duty is still in force. The sliding duty is a tentative rate applied to out-of-quota imports of cotton. Its maximum rate is 40% - which does not exceed the duty rate limit. Since the implementation of the sliding duty, no import duty rate higher than 40% has been adopted. The in-quota (894,000 tonnes) import rate is 1%, which is consistent with the rate limit promised by China.

III.3. OTHER ISSUES IDENTIFIED

There were a number of issues raised by the exporters that are outside of the scope of this study. They were related to the following topics:

- a. Although it is officially called "recommended" prices, the fixed prices are used by Russian customs in valuation of Tajik textile imports contrary to the provisions of Article 7.2 of the WTO Customs Valuation Agreement;

- b. The implementation of the TIR Convention - Uzbekistan practices more frequent opening and inspection of sealed TIR trucks, despite the requirement of Article 5 of the Convention which states that goods carried under the TIR procedure in sealed road vehicles, combinations of vehicles or containers shall not as a general rule be subjected to examination at Customs offices en route. Customs authorities may in *exceptional* cases, and particularly when irregularity is suspected, carry out an examination of the goods at such offices.
- c. The absence of a road transport agreement with Uzbekistan, which creates significant difficulties for Tajik transit transport through Uzbekistan.
- d. The complicated export procedures for raw cotton in Tajikistan. The sales tax on exports of cotton makes the determination of the customs value particularly important. Exporters are forced to approach multiple customs offices to verify the price and procedures were complicated and time consuming.
- e. Some of the exporters have indicated that Tajik Customs continues to require mandatory pre-payment for prior to release of goods for exports. Although the mandatory pre-payment and repatriation of export proceeds requirements had been eliminated with Presidential Decree No. 911 of 26 August 2010 repealing the Decree No. 424.
- f. Some of the exporters indicated that customs authorities are still requiring certificates of origin to be presented for exports in all cases.
- g. The Governmental commission for registration of veterinary and plan medicines is not operational since 2004. Therefore, no new medicines could be registered for imports.
- h. Customs authorities require goods to be cleared in the amount indicted in the invoice, although sometimes for various reasons actual amount goods imported were less then indicated in the invoice.
- i. Increased costs of rail transport through Uzbekistan for Khujand traders – 8 times during last 8 years.
- j. Certain goods are prohibited for transit through Uzbekistan – e.g – tires.
- k. Some businesses have indicted that they had difficulties in obtaining regulatory and market information in export markets of interest.
- l. Certification of the products was required for each sale – instead of periodic confirmation of compliance – e.g – paints.
- m. Although textile equipment imports were exempt from import duties, their spare parts were not – request was made to include spare parts for duty free regime as well.
- n. There was a possibility of obtaining a status of company with a “full-cycle processing of cotton” which provided for certain duty and tax benefits. However, process of obtaining this status was complicated and lengthy.

IV. WTO TOOLS AND PROCEDURES FOR HANDLING TRADE ISSUES

1. As the complaints are received from the private sector, there is a need to verify the information from traders. In some cases information maybe outdated or misinterpreted. Therefore, to obtain official response and information from the respective WTO member state or an acceding country can be sent. It can help clarify the situation as to the nature of the problems and its WTO relevance. Information could be obtained in WTO member’s official documents, such as working party reports on accession (or draft report in case of an acceding country) and trade policy review reports of the WTO members. There is also a mechanism for

monitoring any changes to trade regulatory regime through notifications. Tajikistan may submit its comments to proposed measures notified by the other WTO members.

2. Moreover, each WTO member maintains Contact and Enquiry points where information can be obtained on specific trade subjects such as services, technical barriers to trade and sanitary and phytosanitary measures and etc. Lists of such enquiry points are available at the WTO website.

3. There are several mechanisms within the structure of the WTO through which Tajikistan may raise and handle trade problems and obstacles posed by the other WTO members or acceding countries. These are briefly described below.

Accession negotiations

4. Tajikistan, as a full-fledged WTO member, can take part in examining all aspects of the existing trade and legal regimes of the acceding government as well as the substantive part of the multilateral negotiations involved in accessions. Thus, it will be involved in determining the terms and conditions of entry for the applicant government.

5. As a recently acceded WTO member Tajikistan is well aware of the accession process. Tajikistan is already using its membership status to engage in working parties for certain acceding countries. This includes taking part in Working Party meetings and posing of questions based on the information provided by an acceding country. At the same time, Tajikistan can be engaged in bilateral negotiations on concessions and commitments on market access for goods and services with the acceding governments of interest to Tajikistan.

Trade policy review

6. One of the WTO instruments used for monitoring national trade policies is the Trade Policy Review Mechanism (TPRM). Reviews are conducted by the Trade Policy Review Body (TPRB) on the basis of a policy statement by the Member under review and a report prepared by economists in the Secretariat's Trade Policy Review Division. The TPRB's debate is stimulated by two discussants, selected beforehand for this purpose. In preparing its report, the Secretariat seeks the cooperation of the Member, but has the sole responsibility for the facts presented and views expressed. The reports consist of detailed chapters examining the trade policies and practices of the Member and describing trade policymaking institutions and the macroeconomic situation.

7. All WTO members are reviewed, the frequency of each country's review varying according to its share of world trade. Four Members with the largest shares of world trade (currently the European Communities, the United States, Japan and China) are to be reviewed each two years, the next 16 be reviewed each four years, and others be reviewed each six years. A longer period may be fixed for least-developed country Members.

8. Tajikistan could use the trade policy reviews of the other WTO member countries to raise particular concerns of exporters through questions and answers sessions. The fourth trade policy review of China was conducted on 12 and 14 June 2012. The next review would be conducted in about approximately one year from now. The trade policy review for Kyrgyzstan is scheduled for 19-21 November 2013 and the next review for it will be conducted in approximately six years after that date.

Work in the relevant WTO committees

9. There are number of committees, working parties in the WTO system that deal with various aspects of the international trade issues covered by the WTO agreement. Membership in such groups is open to all Members indicating their wish to serve on it. Regular reviews of the implementation of various WTO agreements are included in the mandates of such groups. Thus, participation in such groups is another opportunity to scrutinize the implementation/compliance of a country of interest for Tajikistan in relevant subjects.

10. Below are the few illustrative examples of such groups:

- The working party on state trading enterprises is mandated, *inter alia*, to review notifications on the operation of the state trading enterprises submitted by the WTO members and counter-notifications by the other interested members.
- The Committee on Safeguards monitors, and reports annually to the Goods Council, on the general implementation of the agreement. A member affected by a safeguard measure may ask the committee to make a finding on whether the measure complies with the agreement's procedural requirements. At the request of members, the committee may assist consultations, or review proposals for retaliatory action.
- The Committee on Customs Valuation reviews national legislation on Customs Valuation of the Members that have notified them.

Dispute settlement

11. The dispute settlement system of the WTO is generally considered to be one of the cornerstones of the multilateral trade order. Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible. Thus Dispute Settlement Understanding (DSU) requires a Member to enter into consultations within 30 days of a request for consultations from another Member. If after 60 days from the request for consultations there is no settlement, the complaining party may request the establishment of a panel. Where consultations are denied, the complaining party may move directly to request a panel. The parties may voluntarily agree to follow alternative means of dispute settlement, including good offices, conciliation, mediation and arbitration.

12. Where a dispute is not settled through consultations, the DSU requires the establishment of a panel, at the latest, at the meeting of the DSB following that at which a request is made, unless the DSB decides by consensus against establishment. The DSU also sets out specific rules and deadlines for deciding the terms of reference and composition of panels. Standard terms of reference will apply unless the parties agree to special terms within 20 days of the panel's establishment. And where the parties do not agree on the composition of the panel within the same 20 days, this can be decided by the Director-General. Panels normally consist of three persons of appropriate background and experience from countries not party to the dispute. The Secretariat will maintain a list of experts satisfying the criteria.

13. Panel procedures are set out in detail in the DSU. It is envisaged that a panel will normally complete its work within six months or, in cases of urgency, within three months. Panel reports may be considered by the DSB for adoption 20 days after they are issued to Members. Within 60 days of their issuance, they will be adopted, unless the DSB decides by consensus not to adopt the report or one of the parties notifies the DSB of its intention to appeal.

14. The concept of appellate review is an important feature of the DSU. An Appellate Body will

be established, composed of seven members, three of whom will serve on any one case. An appeal will be limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings shall not exceed 60 days from the date a party formally notifies its decision to appeal. The resulting report shall be adopted by the DSB and unconditionally accepted by the parties within 30 days following its issuance to Members, unless the DSB decides by consensus against its adoption.

15. Once the panel report or the Appellate Body report is adopted, the party concerned will have to notify its intentions with respect to implementation of adopted recommendations. If it is impracticable to comply immediately, the party concerned shall be given a reasonable period of time, the latter to be decided either by agreement of the parties and approval by the DSB within 45 days of adoption of the report or through arbitration within 90 days of adoption. In any event, the DSB will keep the implementation under regular surveillance until the issue is resolved.

16. Further provisions set out rules for compensation or the suspension of concessions in the event of non-implementation. Within a specified time-frame, parties can enter into negotiations to agree on mutually acceptable compensation. Where this has not been agreed, a party to the dispute may request authorization of the DSB to suspend concessions or other obligations to the other party concerned. The DSB will grant such authorization within 30 days of the expiry of the agreed time-frame for implementation. Disagreements over the proposed level of suspension may be referred to arbitration. In principle, concessions should be suspended in the same sector as that in issue in the panel case. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may be made under another agreement.

17. One of the central provisions of the DSU reaffirms that Members shall not themselves make determinations of violations or suspend concessions, but shall make use of the dispute settlement rules and procedures of the DSU.

Participation in the new round of negotiations

18. Current WTO rules cover a wide range of issues in international trade. Note, however, that there are still issues that are not resolved in the current rules of the WTO agreements or member's commitments. The Doha Round is the latest round of trade negotiations among the WTO membership. Its aim is to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules. The work programme covers about 20 areas of trade. The Round is also known semi-officially as the Doha Development Agenda as a fundamental objective is to improve the trading prospects of developing countries. In particular, Tajikistan could participate in trade facilitations negotiations, which is important subject for land-locked Tajikistan. Trade facilitation negotiations aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.

ATTACHMENT: Survey questionnaire

**Survey of Tajikistan's Private Sector
On Obstacles Faced in Exporting Their Goods and
Services and that are
Relevant to the WTO Provisions**

MINISTRY OF ECONOMIC DEVELOPMENT AND TRADE
OF THE REPUBLIC OF TAJIKISTAN

SECO/ITC TRADE COOPERATION PROGRAMME IN TAJIKISTAN

June 2013

Introduction

After a decade-long negotiations and trade policy related reforms undertaken Tajikistan became a full-fledged member of the World Trade Organization on March 02, 2013. Tajikistan is now committed to following its rules and its own obligations undertaken during the negotiations. The Government has taken this important step in its economic policy, first and foremost, in order to gain predictable access to international markets and to ensure fair and equal treatment of its exporters.

Among the main functions of the WTO is to serve as the forum for trade negotiations, monitoring of the implementation of the commitments by its members and to settle disputes among them. The Ministry of Economic Development and Trade of Tajikistan is currently working on settling its trade issues with WTO members as well as with countries that are in the process of accession to the WTO. In particular, Tajikistan is and plans to be involved in the WTO Working Parties (a group of WTO member countries) tasked to review compliance and develop terms and conditions for accession of Afghanistan, Kazakhstan and Iran.

Membership in the WTO provides better opportunity to resolve trade obstacles and the Ministry is keen to use this tool to help remove barriers that Tajikistan's exporters are facing in importing countries. At the initial stage the following five countries are selected as subject of this survey: Afghanistan, Kazakhstan and Iran as acceding countries; as well as China and Kyrgyzstan as members of the WTO.

Problems and obstacles described in responses to the survey will be reviewed carefully in order to identify whether they:

- Are the result of the respective foreign country's trade policy regulatory and administrative measures;
- Are relevant to WTO rules and obligations of the respective countries and whether,
- They do violate such rules.

Responses to all questions will provide the Ministry opportunity to raise the identified issue in the appropriate format within the domain of the WTO.

For your convenience and in order to help you responding, we have provided brief background/explanation related to respective WTO rules and provisions.

Most of the trade obstacles are complex issues that are difficult to describe in this brief questionnaire. Therefore, we may request individual meeting to clarify certain issues described and would appreciate this opportunity.

Please provide your answers by Tuesday, June 18, 2013.

Thank you in advance for your valuable inputs and cooperation!

Questionnaire:

Question 1

Does your company export (or plan to export) to Afghanistan, Kazakhstan, Iran, China and/or Kyrgyzstan?

Yes

No

If yes, please list which country/ies: _____

If no, please describe the obstacles you face with other countries in the answer to question 15.

Question 2

Note: Since regulatory measures differ between various types of products it is important, for the purposes of review of compliance, to know the types of products that are being subject to regulations.

What kind of products does your company export (or plan to)? Please list indicating respective HS codes, if possible.

#	Description of product	HS Codes
1		
2		
3		
4		
5		

Question 3

Note: WTO members are obliged not to discriminate between the members of the WTO:

- *with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and*
- *with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation,*
- *with respect to internal taxes or other internal charges, and*
- *in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.*

Do you think your products are being treated differently than similar products of other countries in the importing country with respect to issues described in the note above?

- Yes
- No

If yes - please briefly explain and make reference (if known) to the relevant law or regulation:

Question 4

Note: One of the main principles of the WTO is National Treatment - the products of Tajikistan imported into the territory of any other WTO member country shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner as to afford protection to domestic production.

Do your products face different treatment with respect to taxes and charges as oppose to domestic products of the importing country?

- Yes
- No

If yes - please explain how?

Question 5

Note: WTO member countries are bound by their obligations with respect to the level of customs duties they will not exceed on imports from the other members of the WTO. Information on what

duties your products are being actually subject to will provide for a possibility to check the compliance.

What level of customs duties are your goods subject to in the importing country?

#	Description of product	HS Codes	Rates of import duties paid
1			
2			
3			
4			
5			

Question 6

Note: WTO members shall not impose duties and charges on imports, other than customs duties, except otherwise was specifically agreed in a country's commitments. This does not apply fees and charges for services provided and that are commensurate with the cost of the services (these relate to Question 10 below) and to internal taxes that are applicable similarly both to imported and domestic products.

What other duties and charges (ODCs) are your products subject to upon importation? Please indicate their rates?

#	Description of product	HS Codes	Name of the ODC	Rates of ODC's
1				
2				
3				
4				
5				

Question 7

Note: WTO members have agreed on market access conditions by bounding level of import customs duties they charge. In order to make sure that the imposition of some form of other charges and fees does not undermine these commitments, Article VIII of GATT limits the amount of fees and charges for services rendered to the approximate cost of the services rendered. One of the indicators that the fees are not related to costs is ad "valorem fees" – i.e. based on the percentage from the cost of the goods.

Please indicate if your imports are subject to fees and charges for services rendered that are unreasonably high. Please explain why you think that they are too high? Please indicate if such fees and charges are “ad valorem”.

1. Fees: _____ Rate: _____

Explain why do you think it is high: _____

2. Fees: _____ Rate: _____

Explain why do you think it is high: _____

3. Fees: _____ Rate: _____

Explain why do you think it is high: _____

Question 8

Note: Determination of the actual value of the imported goods is important for both the customs authorities as well as the importers. The higher the value – the more will have to be paid in duties. Therefore, customs would be interested in higher value in order to collect more revenue, whereas, traders would naturally prefer a lower value so that they can decrease their business costs. WTO establishes detailed rules how to determine the fair actual value, which all member countries must follow.

Do you think your goods are being valued in importing country unfairly – higher than it actually costs? Do fixed prices (such as catalogues and etc.) used by customs in importing country in evaluating your goods?

Yes

No

If yes, please explain:

Question 9

Note: All importing countries use technical regulations and standards for the purposes of protection of life and health, environment and other interests of the consumers. WTO Agreement on Technical Barriers to Trade establishes basic rules and principles and rules how such regulations and standards must be developed and applied. They should be risk based, scientifically justified, transparent and applied equally for imported and domestic products.

Do you think your products are being treated unfairly or being subject to burdensome rules and procedures?

- Yes
 No

If yes, please explain:

Question 10

Note: WTO recognizes the right of the Members to regulate and take measures to ensure safety of food products and to control pests and diseases of plants and animals. Such measures, however, shall be scientifically justified, applied only to the extent necessary to protect the life and health of humans, animals and plants.

Do you think that sanitary and phytosanitary measures are being applied unfairly or unnecessarily burdensome?

- Yes
 No

If yes, please explain:

Question 11

Note: WTO requires that import licensing (any administrative procedure required as a prior condition for importation) should be simple, transparent and predictable. For example, the Import Licensing Agreement requires governments to publish sufficient information for traders to know how and why the licences are granted. The agreement tries to minimize the importers' burden in applying for licences, so that the administrative work does not in itself restrict or distort imports.

If your products are subject to import licenses (permits), do you think that the procedures are burdensome and distort your trade?

- Yes
 No

If yes, please explain:

Question 12

Note: WTO establishes freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

Do you think that the freedom of transit, as described above, is being limited or undermined by policies and practices in countries in transit?

- Yes
 No

If yes, please explain:

Question 13

WTO covers many aspects of the international trade issues, which cannot be fully covered in a brief questionnaire. Please explain the substance of the any other problems/obstacles faced in the importing country. Review of the issue will be conducted in order to determine if such problems relate to WTO provisions, and therefore, could be handled using the WTO mechanisms.

Please describe any other obstacles faced and not covered under any of the questions above.
