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ფონდი



Sida

**IMPLEMENTATION OF EUROPEAN  
NEIGHBOURHOOD POLICY ACTION PLAN  
FOR GEORGIA  
IN TRADE AND SOME  
TRADE RELATED AREAS  
IN 2010**

**(Report Summary)**

Tbilisi  
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*The original version of the report was prepared in Georgian. The English-language version of the report is abridged. It consists only of the introduction, a brief overview of the progress that has been made in the implementation of the obligations assumed under the European Neighbourhood Policy Action Plan and precedent conditions for the commencement of negotiations on the Deep and Comprehensive Free Trade Agreement, as well as conclusions and recommendations.*

## ***Introduction***

European integration has been one of Georgia's foreign policy priorities over the past decade. The Partnership and Cooperation Agreement (PCA) between Georgia and the European Union (EU), which entered into force back in 1999, envisaged a set of fundamental reforms designed to facilitate the introduction of European values and the convergence of Georgian laws and institutions with EU standards.

Georgia's involvement in the European Neighbourhood Policy (ENP) opened up new prospects for the country's deeper integration with the EU. Similar to the PCA, the ENP Action Plan (ENP AP)<sup>1</sup>, signed in November 2006, also defined trade relations as one of priority areas of cooperation (Chapter 4.5 Trade-related issues, market and regulatory reform). Unlike the PCA, which envisaged only a gradual approximation of legislation in trade-related areas (PCA, Article 43), the ENP AP established a list of appropriate measures in all of this sphere. Here again, the convergence of Georgia's regulatory framework with EU standards was a decisive aspect.

Although initially the government of Georgia was determined to fulfil the Action Plan within three years instead of five, it has become clear that, despite certain achievements, much of the originally planned work still needs to be accomplished. It should be highlighted that, in a number of trade-related areas (food safety, technical regulations, intellectual property rights, competition policy, etc.), the vision of the Georgian government differs from the EU approach. Maximum economic deregulation – the course chosen by the government – often runs counter to the policy of harmonization with the EU legislation.

The prospect of signing the Deep and Comprehensive Free Trade Agreement (DCFTA) between Georgia and the EU gave a fresh impetus to enact reforms in trade-related spheres. EU readiness to step up activity in this direction was expressed in the European Council Conclusions of 1 September 2008<sup>2</sup>. In the autumn of 2008, the European Commission (EC) was tasked with assessing Georgia's degree of preparedness regarding DCFTA negotiations. In March 2009, the EC unveiled to Tbilisi the official document evaluating Georgia's preparedness to start negotiations on DCFTA, together with a package of recommendations. The fulfilment of these recommendations was actually set as a precondition for starting negotiations. The measures outlined in this document echo the EU-Georgian ENP AP and in some instances, provide further explanation and clarification of ENP AP provisions. Although a year and half has passed since the setting of this precondition, the government of Georgia has failed yet to achieve a desired result. Negotiations concerning the EU-Georgia Association Agreement<sup>3</sup> were opened in July 2010, and one of most important issues raised in this Agreement – free trade – remains unresolved.

The path towards EU integration generally enjoys broad support from Georgian society<sup>4</sup> and every step taken in this direction functions as a matter of increasing interest. Nevertheless, reforms launched by the Government to achieve the aims of the ENP (and now also for those of DCFTA) have not been characterized by a high involvement of civil society. For example, Governmental strategies in the areas of food safety, technical regulation and competition policy were made public only after they had been approved. Therefore, the civil sector is deprived of the opportunity to make a contribution to the development of state policy. An assessment carried

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<sup>1</sup> European Neighbourhood Policy Action Plan. European Union-Georgia. <http://eu-integration.gov.ge/ENPAP.pdf>

<sup>2</sup> Presidency Conclusions, Extraordinary European Council, Brussels, 1 September 2008.

<sup>3</sup> The Association Agreement is set to replace the PCA.

<sup>4</sup> This was proved by a public opinion survey commissioned by the Eurasia Partnership Foundation in Georgia, Georgia Public Opinion, Attitudes towards European Integration, which was conducted in October 2009.

out by an independent expert would be more accurate in describing the real state of Georgia's professed EU obligations and would be more effective in informing the general public and actively engage it in these processes.

The aim of the present report is to:

- Analyze the dynamics and structure of Georgia-EU trade relations from 2008 through 2010;
- Review steps taken by the Government of Georgia in 2010 in the trade as well as some important trade-related areas (investments, customs procedures, sanitary and phytosanitary measures, public procurements, intellectual property rights);
- Assess the above-mentioned steps in the context of ENP AP implementation and the launch of DCFTA negotiations;
- Draw conclusions and develop recommendations.

As the convergence of Georgia's legislative and institutional framework towards EU standards is a priority of almost every trade-related area, this report places special emphasis on analyzing the changes which have been implemented in legislative, institutional or administrative practice.

It should be noted that obligations assumed under ENP AP are often of a rather general nature, which makes it difficult to give a clear-cut assessment of their implementation. Therefore, in drafting this report, the following documents were used: the 2009 EC Progress Report on the implementation of ENP AP by Georgia<sup>5</sup>; the 2010 Implementation Program for ENP AP of the government of Georgia (APIP)<sup>6</sup>; and a six-month report of the Government (July 2010)<sup>7</sup>. These papers specify provisions of the above-mentioned guiding documents, moving them into a more practical dimension. In addition, various reports prepared by donor and non-governmental organizations, other analytical materials and statistical data were used in the preparation of this report.

Reforms that are underway in corresponding spheres are analyzed from various perspectives. The report reflects the opinions of the governmental sector, business, including small and medium size business, as well as the non-governmental sector and independent experts.

The report consists of an introduction and six chapters. The first chapter is dedicated to trade relations. It provides analysis of Georgia-EU trade from 2008 through 2010, an overview of Georgia's trade policy priorities and institutional changes, focuses on a preparatory stage for DCFTA negotiations and the prospects for launching these negotiations. Chapter Two analyses the dynamics and structure of the EU's FDI in Georgia. It reviews objectives and institutional aspects of Georgia's investment policy and the factors of the investment climate. Chapter Three provides an analysis of the amendments made to customs legislation in 2010 and provides an overview of the attitudes of businesspeople to these changes as well as identifies current problems in the institutional development of the customs sphere. Chapter Four recaps legislative changes in the sanitary and phytosanitary sphere with special emphasis placed on the full enactment of the Law on Food Safety and Quality and corresponding institutional arrangement. It also evaluates the first results of the enactment of the suspended provisions of the law. Chapter Five reviews reforms implemented in the sphere of public procurement and provides the first assessment of a newly introduced electronic procurement system. Chapter Six focuses on the

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<sup>5</sup> Implementation of the European Neighbourhood Policy Action Plan in 2009: Georgia Progress Report, Brussels, 12/05/2010 ([http://ec.europa.eu/world/enp/progress2010/sec10\\_518\\_en.pdf](http://ec.europa.eu/world/enp/progress2010/sec10_518_en.pdf)).

<sup>6</sup> <http://eu-integration.gov.ge/uploads/ENPAP-Plan-2010-Geo-8-Final.doc>.

<sup>7</sup> [http://eu-integration.gov.ge/uploads/ENPREPORT2010January-June\\_FINAL.doc](http://eu-integration.gov.ge/uploads/ENPREPORT2010January-June_FINAL.doc)

progress of reforms in the area of intellectual property rights and reviews the results of these reforms.

Each chapter of the report ends with conclusions and corresponding recommendations. The fulfilment of these recommendations will, in the view of authors of the report, help increase the efficiency of government policy in trade-related areas and its further convergence with European approaches.

The report was prepared with the involvement of Merab Kakulia (Chapters I and II) and Nino Chokheli (Chapters IV and V), senior fellows at the Georgian Foundation for Strategic and International Studies (GFSIS), as well as the independent scholars Bondo Bolkvadze (Chapter III) and Nino Evgenidze (Chapter VI).

## *I Trade*

### *Preparations for the commencement of negotiations with the European Union on the Deep and Comprehensive Free Trade Agreement (DCFTA)*

The possibility of concluding a Free Trade Agreement between Georgia and the European Union (EU) was first mentioned in the European Neighbourhood Policy Action Plan (ENP AP) four years ago. Informal preparatory stage of negotiations on the Deep and Comprehensive Free Trade Agreement (DCFTA) between Georgia and the EU started in October 2008 after the EU Council tasked the European Commission (EC) to evaluate Georgia's level of preparedness to launch these negotiations.<sup>8</sup> In March 2009, the EC finalized and presented the Georgian side with a document evaluating Georgia's preparedness for the DCFTA negotiations, along with a package of recommendations<sup>9</sup>.

Initially, the evaluation document and corresponding recommendations covered 11 areas<sup>10</sup>. In early 2010, however, four key areas deemed crucial by the EU for starting negotiations were singled out. These areas were: Technical Barriers to Trade (TBTs), Sanitary and Phytosanitary (SPS) Measures, Intellectual Property Rights (IPR), and Competition.

In July 2010, the Government of Georgia (GoG) published an official response to the recommendations provided in the document evaluating Georgia's preparedness for DCFTA negotiations<sup>11</sup>. According to GoG, by the end of 2010 significant progress had been achieved in all areas, including the above-mentioned four key areas.

In the area of Technical Barriers to Trade, the EU's key recommendation to Georgia was to adopt and start implementing a Governmental Programme of adoption of technical regulations in line with EU acquis, in the priority industrial sectors.

On 25 August 2010, the GoG approved the Governmental Programme on Legislative Reform and Adoption of Technical Regulations in Standardization, Accreditation, Conformity Assessment, Technical Regulation and Metrology<sup>12</sup>, which had been agreed upon with the EC services in advance. Earlier, on 16 July the GoG adopted a corresponding Strategy which had not been set as a precondition for negotiations by the EC.

In accordance with the above key EC recommendation, the GoG has started the implementation of the Governmental Program. In particular, the drafting of the Code on Safety and Free Movement of Products has started; a comparative analysis of respective EU new and global approach directives, as well as the General Product Safety Directive and the Directive for

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<sup>8</sup> Presidency Conclusions, Extraordinary European Council, Brussels, 1 September, 2008.

<sup>9</sup> Preparatory process for future negotiations of a deep and comprehensive free trade agreement (DCFTA) between the EU and Georgia; Follow-up of the Commission services' fact-finding trade mission to Georgia on 13-15 October 2008; Overview of issues where additional progress is necessary, March, 2009.

<sup>10</sup> These spheres are: general issues for coordination of negotiations, tariff and non-tariff barriers (NTB), technical barriers to trade (TBTs), sanitary and phytosanitary control (SPS), trade promotion and customs administration, rules of origin (RoO), service sphere and investments, intellectual property rights (IPR), public procurements, competition and sustainable development.

<sup>11</sup> Georgia's response to EU Commission's Recommendations regarding Georgia's Preparedness for the DCFTA Negotiations. Prime Minister's Office ([http://eu-integration.gov.ge/uploads/DanartiII-DCFTA\\_-\\_Preparedness\\_Matrix.doc](http://eu-integration.gov.ge/uploads/DanartiII-DCFTA_-_Preparedness_Matrix.doc)).

<sup>12</sup> Decree N1140 of the Government of Georgia, dated 25 August 2010, On the Approval of the Governmental Programme on Legislative Reform and Adoption of Technical Regulations in the area of Standardization, Accreditation, Conformity Assessment, Technical Regulation and Metrology.

Liability for Defective Products has already been conducted and a Regulatory Impact Assessment (RIA) has been prepared.

As a precursor for launching DCFTA negotiations, the EC also demanded that the GoG achieve progress in the establishment of a domestic institutional system for technical regulation, standardization, accreditation, metrology and conformity assessment. The Government responded to this requirement by providing detailed measures in the relevant Strategy designed to strengthen national institutions in the above-mentioned areas. However, no essential shifts occurred in 2010, except for the establishment of the Technical and Construction Inspection Agency for market surveillance and the Institutional Gap Assessment in the national accreditation body – the Georgian Accreditation Centre (GAC) and in the National Agency for Standards, Technical Regulations and Metrology (GEOSTM).

Thus, although the GoG adopted a Governmental Programme and Strategy conforming with the EC recommendations in the area of Technical Barriers to Trade, it could not demonstrate the satisfactory progress in institutional development.

In the area of Sanitary and Phytosanitary Measures the EU, first and foremost, required that suspended articles of the Law on Food Safety and Quality, adopted in 2005, be enforced<sup>13</sup>. The year 2010 saw the enactment of only those articles which regulate inspection and traceability of export-oriented companies. Inspection of food product manufacturers intended for export to the EU started from July. On 17 December 2010, the Parliament of Georgia approved changes to the Law providing for the enactment of other suspended articles from 1 January 2011; in particular, the inspection shall apply to any food business operator.

Another key EU recommendation in this area concerned the adoption of a Comprehensive Strategy and Legislative Approximation Programme for the establishment of an effective food safety system in Georgia. This Strategy and Programme, which were agreed upon with the relevant EC services in advance, were approved by the Government on 28 December 2010<sup>14</sup>.

It can be said that by the end of 2010 the Georgian authorities, although belatedly, but still fulfilled all the major recommendations in the field of Sanitary and Phytosanitary Measures, which the EC had put forward after the launch of the preparatory stage of DCFTA negotiations.

The key EU recommendation in the field of Intellectual Property Rights referred to the significant improvement in the implementation and enforcement of the existing IPR legislation; notably the fight against piracy and counterfeiting through the launch of a study identifying the scale of these phenomena in Georgia and ensuring an effective dialogue with the holders of intellectual property rights. This research, conducted with the assistance of UNDP, was completed in June 2010.

Furthermore, the EC recommended that Georgia adopts a separate Law on Design, which would be consistent with the EU acquis, and legislative amendments related to the Supplementary Protection Certificate. On 4 May 2010, the Parliament adopted the Law of Georgia on Design and amendments were made to the Patent Law regarding the Supplementary Protection Certificate. A normative act has also been adopted concerning the rule of registration of design.

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<sup>13</sup> On 25 December 2009, changes were made to interim provisions of this Law, stipulating for a stage-by-stage enactment of a number of articles until before 2018.

<sup>14</sup> Decree N1756 of the Government of Georgia, dated 28 December 2010, On the Approval of the Comprehensive Strategy and Legislative Approximation Programme in Food Safety.



The EC is especially concerned about the poor enforcement of legislation in the field of intellectual property rights, which is expressed by the low number of corresponding court cases. In 2010, the Government set up an Inter-Agency Coordinating Council on Copyright Protection<sup>15</sup>, which included, among others, representatives of law enforcement bodies. It seems that this measure alone will not be sufficient for the EC: the progress in this area will be evaluated by concrete results of the fight against piracy and counterfeiting.

The key EC requirement for the GoG in the field of Competition Policy was that it demonstrates a genuine commitment to the implementation of a modern competition policy, consistent with relevant EU standards, through the development of a Comprehensive Strategy in this field. That strategy was to take into account: a) the independence of the Agency for Free Trade and Competition and its full investigative powers, both in the area of antitrust and state aid; b) the drafting and adopting of a general competition law, including antitrust regulation; c) rapid enforcement of this law, including adequate institutional and capacity building measures for the Agency for Free Trade and Competition.

The GoG approved the above-mentioned Strategy and corresponding operational programme on 3 December 2010<sup>16</sup>, after the relevant draft had been agreed upon with the EC services. Prior to that, amendments were made to the Law of Georgia on Free Trade and Competition (in March 2010) abolishing a structural unit of the Ministry of Economic Development of Georgia – the Agency for Free Trade and Competition – and granting its powers to a namesake legal entity of public law established by decree of the Georgian President (February 2010). The head of the Agency is appointed and dismissed by the country's Prime-Minister. This legislative change does not, in fact, enhance the administrative and financial independence of the Agency.

With regard to an effective investigative function, according to the Strategy, it will be implemented at the next stage of the reform. Much will depend on a draft of Framework Competition law which has already entered its final phase of drafting.

Thus, on the preparatory stage of DCFTA negotiations, the Georgian side mainly focused on the development of strategic documents. The entry into force of the mentioned documents, after having been agreed upon with the EC in advance, is proof that through discussions the Georgian side succeeded in moving its strategic visions toward the EC requirements. Nevertheless, it is apparent that, before engaging into negotiations, the EC expects to see concrete steps taken by the Georgian side towards the implementation of adopted strategic and programme documents.

### ***Georgia-EU Agreement on Mutual Protection of Geographical Indications of Agricultural Products and Other Foodstuffs***

The European Neighbourhood Policy Action Plan (ENP AP) envisaged the initiation of a dialogue to explore the possibility of negotiations regarding a bilateral agreement on geographical indications, including in the wine and spirits sector (Section 4, paragraph 4.5.1). This dialogue was completed successfully. On 29 July 2010, negotiations between Georgia and the European Union concerning the Agreement on the Mutual Protection of Geographical Indications of Agricultural Products and Other Foodstuff ended. At present, both parties are carrying out the procedures necessary for the execution of this agreement.

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<sup>15</sup> Decree N912 of the President of Georgia, dated 12 November 2010, On the Establishment of Interagency Coordination Council on Copyright Protection and Approval of its Charter.

<sup>16</sup> Decree N1551 of the Government of Georgia, dated 3 December 2010, On the Approval of the Comprehensive Strategy in Competition Policy.

Before initialling the agreement, the EC officially published a list of protected geographical indications for Georgian products (in February 2010), which was followed by the publication of EU-protected geographical indications in Georgia (in March 2010). After the passing of a two-month trial period designed to allow for possible complaint procedures, the parties declared that they had no claims to sort out with each other (May 2010).

After the agreement enters into force, the geographical indications will be protected from misuse. This includes using the reputation of a geographical appellation, or imitating it and thus misleading consumers about the genuine origin of a product.

According to the initialled agreement, the parties will deny the registration of trademarks or will cancel those trademarks that enjoy the status of geographical indication under the agreement.

The agreement covers 3,000 indications of agricultural products from the EU countries and only 18 indications of Georgia agricultural products. After the enforcement of the agreement, the list of Georgian products may be extended.

All of the 18 Georgian geographical indications represent wine production (including Khvanchkara, Tvishi, Kindzmarauli, Saperavi, Tsinandali, Mukuzani, Manavi, Gurjaani, etc.)<sup>17</sup>. Their recognition in accordance with international standards will help increase the awareness of Georgian wines and promote their export to the EU market; it will improve the quality of wine production in Georgia; and help develop tourism in those regions of the country that are locally famous for their traditions in wine production.

The enactment of the Agreement on Mutual Protection of Geographical Indications for Agricultural Products and Other Foodstuffs will create a mechanism for regular consultations concerning the incorporation of new products on the list of geographical indications.

### ***Conclusions and Recommendations***

The Georgian trade policy that was reflected in the Government's programme documents (United Georgia without Poverty (July 2010) and Basic Data and Directions for 2011-2014 (2010)) is consistent with the ENP AP but needs to be formulated in more systemic way and with a clearer definition of priorities.

Within the format of the preparatory stage for the DCFTA negotiations, the Government of Georgia, by the end of 2010, managed to bring its strategic visions in line with the EC recommendations, although this proved to be insufficient for launching the official negotiations.

In order to secure an approval from the EC for commencing the DCFTA negotiations in the shortest possible time, a number of policies should be undertaken:

- In the field of Technical Barriers to Trade, it is necessary, first and foremost, to take more convincing steps in institutional development for the strengthening the National Agency for Standards, Technical Regulations and Metrology (GEOSTM);
- In the field of Sanitary and Phytosanitary Measures it is necessary to demonstrate a political will in the enforcement of the newly enacted articles (that were suspended earlier) of the Law of Georgia on Food Safety and Quality; in particular, to launch the

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<sup>17</sup> The total of 1800 geographical indications of wine are registered in the European Union.

inspection of all food business operators in accordance with the best international practices;

- In the field of the protection of Intellectual Property Rights it is necessary to create an effective mechanism for the enforcement of the existing legislation, which should translate into concrete results in the fight against piracy and counterfeiting (such as a substantial increase in court cases);
- In the field of Competition Policy it is necessary to finalize the development of the draft Framework Law on Competition and agree it with relevant EC services before submitting it to the Parliament (regardless the fact that this is not set as a precondition for the commencement of DCFTA negotiations).

To promote Georgian exports to EU countries, it is necessary to carry out the procedures needed for signing the Agreement on Mutual Protection of Geographical Indications of Agricultural Products and Other Foodstuff as soon as possible. At the same time, negotiations on extending the list of geographical indications to include new products must be conducted.

Excise duty rates for locally manufactured and imported tobacco products have now been equalled and thus Georgia has met its previously unfulfilled obligation to the World Trade Organization (WTO).

Given the limited financial and human resources of the Georgian National Investment Agency (GNIA), the merger of export and investment promotion activities under GNIA will not bring desired results. It would therefore be expedient to enhance the export promotion service of this Agency with qualified personnel as well as with the funding needed for the fulfilment of this function.

The export promotion service of the National Investment Agency should step up its efforts to ensure a better use of possibilities available within the framework of preferential trade regimes; in particular, it is recommended that an action plan for the diversification and increase of Georgian exports to EU countries under the GSP+ scheme be drawn up and a corresponding pilot project implemented with the assistance of donors.

## ***II Investments***

### ***Factors of the Current Investment Climate***

The investment climate largely depends on the country's macroeconomic stability – which is one of the top priorities of the ENP AP (Priority area 3). In Georgia, after the 2009 economic crisis, the year 2010 saw a significant increase in business activity: a Real GDP growth in the first three quarters of the year comprising 6.5 percent as compared to the corresponding period of 2009. However, foreign direct investments over the same period fell by 6.8 percent, which casts doubt on the sustainability of economic growth in the long term. Moreover, the second half of the year saw an upward trend in inflation (the inflation rate in 2010 was 11.2 percent) caused by both external (a rise in world food prices) and internal (an increase in money aggregates) factors.

In accordance with the ENP AP (Priority area 2), the Government of Georgia tried to improve the investment climate by alleviating the fiscal administration burden, although the existing Tax Code with its complexities and ambiguous wording, was a point of dissatisfaction for investors. A new Tax Code, which was adopted in September 2010 and entered into force on 1 January

2011, consolidated the tax and customs legislation and at first blush, made key provisions easier to comprehend. Nonetheless, business sector representatives have doubts about the simplicity of the new Tax Code and the efficiency of its innovations (benefits to small business, principle of Good Faith, the so-called “Foregone Decision” rule, the institutes of tax agent and tax ombudsman, etc.). Experts contend that the new Code will be unable to substantially alleviate the burden faced by the tax administration<sup>18</sup>.

A liberal trade regime is an important attribute of Georgia’s investment climate. Its further enhancement through the creation of a free trade zone with the EU is a cornerstone of the GoG’s declared trade policy. Nevertheless, the negotiations on DCFTA failed to start in 2010 due to a rather critical approach of the EC to the progress achieved by Georgia in meeting the outlined preconditions. According to the assessment of foreign experts, the timely execution of DCFTA will qualitatively improve Georgia’s investment climate as it will turn the country into a completely new investment destination<sup>19</sup>.

In assessing the investment climate in 2010, one cannot disregard labour relations. The Labour Code of Georgia, although often an object of criticism due to its asymmetry with relevant EU regulations, is attractive for investors – especially for foreign investors. This has been proven as well by such a renowned international organization as The Heritage Foundation<sup>20</sup>. As regards to the qualification of Georgia’s workforce, despite its generally high educational status, it falls short of many investors’ requirements. Therefore, the relatively qualified workforce in Georgia is not cheap and consequently not very advantageous for investors. Furthermore, the system of higher and vocational education is not well adapted to the future demands of the labour market, although this is a requirement of the ENP AP (Section 4, paragraph 4.7.1).

Finally, a significant feature of any investment climate is the respect and protection of property rights. Continued reform aimed at achieving significant improvement in this area was one of the EC recommendations regarding Georgia’s Preparedness for the DCFTA negotiations. In 2010 the situation did not change much in this respect – both local and foreign citizens have noted that the court system is not reliable when it comes to protecting the rights of property owners<sup>21</sup>.

### ***Bilateral Agreements on Investment Promotion and Protection and Avoidance of Double Taxation***

An important factor contributing to the attractiveness of Georgia’s investment climate is the Bilateral Agreements on Investment Promotion and Protection which, together with the investment legislation, provides foreign investors with additional guarantees<sup>22</sup>. By the end of 2010, Georgia had such agreements with 32 countries, 17 of which are EU member countries.

Negotiations on similar agreements are in progress with 24 countries, eight of which are from the European Union (Cyprus, Denmark, Ireland, Malta, Portugal, Slovakia, Slovenia and Spain).

Another important factor in Georgia’s investment climate is the Bilateral Agreements on Avoidance of Double Taxation. The completion of this agreement with EU countries is also

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<sup>18</sup> See: Audit, Accounting, Finances Magazine; Issue N10 (30), 2010, pp. 3-12.

<sup>19</sup> CASE/Global Insight. “Economic Feasibility, General Economic Impact and Implications of a Free Trade Agreement between the European Union and Georgia.” Final Report. May 8. 2008

<sup>20</sup> The Heritage Foundation. 2010 Index of Economic Freedom ([www.heritage.org](http://www.heritage.org)).

<sup>21</sup> Ibidem.

<sup>22</sup> The ENPAP (Section 4, paragraph 4.5.3) makes Georgia responsible for the protection of direct and other foreign investments; for ensuring the liquidation and repatriation of profits and capital. Additional guarantees for ensuring all this are reflected in the Bilateral Agreements on Investments Promotion and Protection.

envisaged by the ENP AP (Section 4, paragraph 4.5.5). By the end of 2010, Georgia had such agreements with 36 countries, 21 of which are EU member states.

In 2010, Georgia completed four such agreements (with Israel, the Arab Republic of Egypt, the Kingdom of Spain and the Swiss Confederation). Moreover, changes were made to similar agreements signed earlier with the United Kingdom and Estonia. All these agreements are in line with the OECD Model Tax Convention.

According to the Georgian Ministry of Finance, Bilateral Agreements on Avoidance of Double Taxation were initialled with seven countries in 2010 (Cyprus, Slovenia, Slovakia, United Arab Emirates, Qatar, Bahrain and India). Negotiations are in progress with 14 countries, three of which are EU member states (Hungary, Sweden and Portugal).

### ***Conclusions and Recommendations***

Georgia's investment policy priorities that are formulated in the Government programme document – United Georgia without Poverty (July 2010) – largely comply with the provisions of ENP AP. This clearly shows a political will to improve the country's investment climate in general, and in particular for the promotion of foreign direct investments. Besides, the format of the abovementioned program document does not allow for a more systemic and clearer description of the government policy.

The efficiency of the Georgian National Investment Agency largely depends on its financial and human resources. The funding of this institution in 2010 was not adequate to its functions. The increase in Agency's program budget in 2011 was a necessary but insufficient move – the strengthening of the GNIA requires both a reasonable increase in personnel and their provision with wages.

Setting up a Board of Advisors to the National Investment Agency under the chairmanship of the Prime-Minister means, in fact, subordinating this institution directly to the Prime-Minister, which may contribute to the institutional enhancement of the Agency. It is expedient to give a legal form to this institutional change or, in other words, to make amendments to the Law on National Investment Agency, which will subordinate the Agency to the Prime-Minister by the law too and the Board of Advisors would be granted the status of a government investment council.

To further improve the attractiveness of the investment climate, taking into consideration the provisions of the ENP AP, it is necessary:

- To ensure the country's macroeconomic stability, including a more fruitful cooperation between the Government and the National Bank of Georgia with the aim of controlling inflation and, in particular, for a rational monetization of means received from International Financial Institutions and other donors through the budget and other channels;
- To set up a mechanism for the regular analysis of the consequences of the new Tax Code which will allow the consideration of assessments of investors, independent experts and civil society representatives;
- To start negotiations on the DCFTA with the EU as soon as possible; conduct these in a timely manner and demonstrate the positive results of the negotiations (especially, concerning the convergence of the regulatory framework) in an international arena;

- To carry out research on the assessment of a real situation with regard to workforce qualification and price-wise competitiveness;
- To implement active measures for the protection of property rights, including intellectual property rights, in particular through the increase of the degree of judicial independence and the improvement of the qualification of judges;
- To complete Bilateral Agreements on Investment promotion and Protection with those 24 countries which are now engaged in negotiations. To sign Bilateral Agreements on the Avoidance of Double Taxation with those seven countries with which these agreements have been initialled and to execute agreements with those 14 countries which are now engaged in negotiations;
- To regularly monitor obligations assumed by foreign companies administering free industrial as well as tourist zones and in case of a breach of assumed obligations, to immediately undertake the measures envisaged under the agreements and the law.

### ***III Customs Procedures***

A legislative initiative implemented by the Revenue Service, which was expressed in the merging of the Tax and Customs Codes, cannot be evaluated as conforming with the best international practice. This change could have been considered more or less acceptable if for not one flagrant problem: norms regulating customs activity have been minimized in the new Code, retaining only the provisions of a general nature. The removal of a great number of fundamental provisions from the law into a bylaw has upset the balance which was established between the Customs Code adopted in 2006 and its corresponding secondary legislation. I would note here that the 2006 Customs Code was drawn up on the basis of the EU Tax Code and was almost identical to it in structure. International practice shows that having main provisions which define basic principles of operation and activities of the customs service are better regulated by code. Such an approach ensures a higher stability of legislation which, for its part, is very important for the private sector.

At this stage the function of issuing a certificate of origin has not yet been fully transferred to customs bodies. This is a requirement underlined in the ENP AP (section 4, paragraph 4.5.1). Nonetheless, several important steps have already been made in this direction and it is obvious that the customs body has started institutional development with the aim of assuming the above-mentioned function. To this end, the customs system needs to develop standards of corresponding service, on the one hand, and establish a mechanism for controlling the legitimacy of the issuance of certificates, on the other. As regards the legal aspect, we can say that the platform is ready, which is fully supportive of customs bodies as the ones which exclusively fulfil the function of issuance of certificates of origin.

According to the WTO rules<sup>23</sup>, a WTO member state is prohibited from applying minimal Value towards the aim of controlling the customs value of imported goods. Nevertheless, the Georgian customs service is forced to apply such measures in order to prevent importers from evading customs duties. A good alternative solution would be the development of Post Clearance Customs Control that would spare importers from problems related to the determination of customs value during customs clearance and also identify tax evaders through risk-based control.

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<sup>23</sup> Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade.

It is noteworthy that according to ENP AP (Priority area 2), customs has the obligation to apply the principles of risk-based customs control in double-checking customs valuation. It should be noted that the creation of an effective customs audit is a long-term objective and the problem cannot be solved instantly. The function of customs valuation control must be delegated to a post clearance customs audit group.

Georgia's integrated tariff, developed in 2010, makes the job of customs officer much easier: the time spent for customs procedures is sharply decreased while the efficiency of control increases. The development of an integrated tariff was directly recommended in the ENP AP (Priority area 2). It can be said that the integrated tariff is an important tool in customs administration, qualitatively harmonizing Georgia's customs with European standards. It is also worth mentioning that a huge amount of resources (human, labour) were spent toward acquiring this goal but the achieved results justify the means.

The tax service is well aware that the weakest link in the customs system is the post-clearance audit. Of the steps to be taken to address this issue the first should be the development of an action plan for the post-clearance customs audit. The initial action must involve the prioritization of audit areas, which should cover: customs valuation audit; the audit of customs warehouses; the audit of a product's certificates of origin; duty relief and duty suspension. Other important steps should also include: the preparation of manual of audit procedures; the introduction of risk-based control; and the training of auditors.

With regard to the post-clearance audit, it should be emphasized that, in contrast to other spheres, this area needs not just modernization but a fundamental overhaul. This activity should be completely restarted with a clean slate as the customs service lacks any valuable experience with respect to the audit.

The ENP AP pays great attention to the broad application of a risk-based control programme (section 4, paragraph 4.5.1). It can be claimed that the customs service has already set a successful precedent for the implementation of risk-based control procedures, although, only in one area of customs activity. It is necessary to introduce risk-based control in every area, including passenger control and customs audit areas. At the same time, risk criteria need to be updated regularly.

In accordance with the ENP AP (section 4, paragraph 4.5.1), the Georgian customs service must focus its customs-trade cooperation programme on rendering service to law-abiding, and reliable companies which adhere to high standards. To this end, it is necessary to establish a pre- and post-authorization audit as well as elaborate company assessment criteria. The differences between the Customs-Trade Cooperation Programme operating in Georgia and European programs of Authorized Economic Operators are fundamental: 1) participation in the customs-trade cooperation programme is easy not only for a law-abiding company but also a company with a poor tax record; 2) the customs-trade cooperation programme envisages benefits only for importers and not for any other subject involved in international trade; 3) the customs-trade cooperation programme is still limited to the simplification of import and export regimes alone and does not cover other customs procedures.

The establishment of the Inland Clearance Depot (ICD) can also be assessed as a step forward. In fact, these are state-owned terminals which will attract all cargo entering Georgia and all customs clearance procedures will be performed there. If all the goods entering the country are cleared entirely at ICDs controlled by the customs, the risk of contraband will be reduced. However, certain measures are necessary to undertake the regulation of service tariffs. Many countries, including EU member states, operate facilities similar to the ICDs in Georgia, but

customs service fees in those countries are set at reasonable levels. Moreover, a sharp downward trend in these service fees has been clearly observed.

New rules for customs declaration is the most fundamental change that has been implemented in the past year. The management of the revenue service believes that the function of declaration can be entrusted to the customs service and the obligations of importers and exporters can be limited to the submission of corresponding commercial documents alone. This change must be clearly evaluated as an experiment which is not based on the best international practice. Such an approach poses high risks which we have already discussed in a corresponding subchapter.

In terms of institutional development, an important aspect is the reform of human resource management. In 2010, a high personnel turnover was again apparent. The management has failed so far to ensure the creation of a stable staff that would grow and develop into a group; a core of professionals. With a cadre of professional and stable personnel it would be much easier to simplify and improve any customs procedure. As regard to training, which is crucial to the reform, the customs administration realizes its importance and labels it as a high priority. Much remains to be done in this area.

Any reform would be incomplete without the development of advanced information technologies. The introduction of the software programmes ASYCUDA World and Tracker System is a huge step forward but it should be noted that both programmes require further elaboration.

A memorandum signed with Turkey towards the aim of introducing an integrated border management must be assessed as a positive development. This memorandum envisages cooperation in the area of border checkpoint control. Such types of cooperation are always conducive to the expansion of trade relations. Georgia's customs administration is clearly willing to establish such cooperation with other neighbouring states as well.

### ***Conclusions and Recommendations***

Reforms in the customs sphere in 2010 were largely implemented in compliance with the requirements of the ENP AP. At the same time, conceptually controversial changes of an experimental nature were undertaken in some areas, including a new practice of customs declaration.

The merger of tax and customs legislation into a new Tax Code led to the reduction of customs provisions with most of them removed into normative acts. Such a disturbance of balance between basic law and normative acts is unjustified as it undermines the stability of the law.

To further approximate the customs procedures with the best practice, including the practice of EU member states, it is necessary:

- In the field of certificate of origin issuance – to gradually transfer the entire function of the issuance of certificates of origin to customs services;
- In the field of the post-clearance audit: (1) to develop an action plan for the introduction of an efficient audit. In parallel to its stage-by-stage implementation, to downsize current control procedures and strengthen post-clearance control; (2) to form the fundamentals of a risk-based management system; (3) to develop a manual for conducting audits and, (4) to conduct appropriate training for customs officers;



- In the field of customs valuation: to reject the existing system of customs value determination and bring it in line with WTO rules;
- In the field of taxpayer service: to cut down taxpayer service fees making them commensurate to the volume of provided service;
- In the field of risk management: (1) to establish a risk-oriented control in areas such as passenger control and border customs control and; (2) to regularly update risk criteria;
- In the field of customs declaration rules: (1) to ensure easy access to customs service for the private sector; (2) to regulate customs declaration rules through legislation; (3) to develop relevant procedural manuals; (4) to offer training on the declaration of rules to the private sector;
- In the field of human resources management: to develop a human resources management strategy which will regulate personnel motivation, professional development, performance evaluation and other related issues;
- In the field of information technology: to complete IT programmes, the introduction of which have been already launched; to speed up the automation of customs procedures;
- In the field of customs-trade cooperation: to improve the Golden List to the maximum possible extent in accordance with the European model of Authorized Economic Operators, with the aim of supporting law-abiding companies with good tax histories.

#### ***IV Sanitary and Phytosanitary Measures***

Since 2006, Georgia has fulfilled a set of commitments in the sphere of sanitary and phytosanitary (SPS) control, envisaged in the ENP AP: in 2006, pieces of secondary legislation reflecting EU SPS control principles were adopted; in 2007, Georgia joined the International Plant Protection Convention; in 2008, Georgia started interconnection with the EU Rapid Alert System for Food and Feed (RASFF). However, during all that period, the European Commission placed its emphasis on the suspension of food safety control. Therefore, the full enactment of the Law on Food Safety and Quality was set as a major precondition for starting DCFTA negotiations.

The prospects of launching DCFTA negotiations, which was a key priority of the state trade policy, gave a fresh impetus to reforms in the sphere of SPS control. It can be asserted that the policy, legislative and institutional measures taken throughout 2010 were first and foremost geared toward meeting DCFTA preconditions which, by and in itself, means the fulfilment of the ENP Action Plan.

As already explained above, one of key conditions for starting DCFTA negotiations was the enforcement of the Law on Food Safety and Quality. Accordingly, a stage-by-stage enforcement of the law started from 2010.

A requirement for the registration of foodstuff producers entered into force in February 2010. As of December 2010, the National Agency of Public Registry has already registered 16,250 foodstuff-related enterprises. However, the corresponding legislative framework and procedures need further improvement. For example, the law does not define a term for the registration of enterprises that already exist as foodstuff producers and, accordingly, lacks a sanction for the

violation of this obligation. The form of the questionnaire which is used for the registration of enterprises also needs further elaboration. A database created on the basis of the current questionnaire cannot be sufficient, without further processing and the requesting of additional information, for the food safety service to plan and implement a risk-analysis-based state control.

Starting from July 2010, a state control, as well as traceability and HACCP requirements for enterprises exporting food to the EU has been enforced. In 2010, 51 companies were subject to inspection. These inspections did not reveal any instances of gross non-compliance. Such a result can be explained by the fact that the companies that export to the EU are the leading companies in their field and have already introduced international food safety management systems. That is why the first experience of inspection does not provide an opportunity to generalize the situation in the sector and evaluate the effectiveness of inspection itself.

The amendments made on 17 December 2010, finally abandoned the “seven-year plan” for the enforcement of the law and the control, traceability and HACCP requirements have fully entered into force in 2011 for both food and feed producers.

One of the main obligations envisaged by the ENP AP in the SPS area is the approximation of Georgian legislation with EU law. In this regard, a set of normative acts adopted during the reporting period are worth mentioning. A new rule for the state control of food safety<sup>24</sup>, adopted in June 2010, reflects the principles of EU Regulation N882/2004<sup>25</sup> and is regarded to be satisfactory at the initial stage of control implementation. The main shortcoming is the requirement to obtain a court order for conducting inspections and the notification of business operators of forthcoming inspections. Hygiene Requirements, defined by the same rule, reflected provisions of EU regulation N852/2004<sup>26</sup>. Principles of EU Regulation N852/2004<sup>27</sup> were partially followed in the Simplified Hygiene Rule which was adopted by the government on 10 September 2010<sup>28</sup>. The Rule on Food Labelling<sup>29</sup> was developed in accordance with requirements of EU Directive 2000/13/EC<sup>30</sup> and principles of Codex Alimentarius. The same normative act streamlined the rule of the labelling of food containing genetically modified organisms in accordance with EU Regulation 1829/2003<sup>31</sup>.

Another precondition for starting DCFTA negotiations, in addition to the enforcement of the law on food safety, was to build up and strengthen the institutional capacity of all relevant services. It should be noted that the government also took a number of steps in this direction. Institutional reforms were implemented in both state entities responsible for SPS control. The Food Safety Service and the Revenues Service were reorganized into legal persons of public law, a status which grants a higher degree of independence and the possibility of receiving revenues from

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<sup>24</sup> Decree N143 of the Government of Georgia, dated 25 June 2010, On the General Hygiene Rule for Food/Feed Producer Enterprise/Distributor and the Rule for Implementation of Supervision, Monitoring and State Control in the Fields of Food Safety, Veterinary and Plant Protection.

<sup>25</sup> Regulation of the European Parliament and of the Council No 882/2004 of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

<sup>26</sup> Regulation of the European Parliament and of the Council No 852/2004 of 29 April 2004 on the hygiene of foodstuffs.

<sup>27</sup> Regulation of the European Parliament and of the Council No 852/2004 of 29 April 2004 on the hygiene of foodstuffs.

<sup>28</sup> Decree N282 of the Government of Georgia, dated 10 September 2010, On Simplified Hygiene Rule for Food/Feed Producer Enterprise/Distributor.

<sup>29</sup> Decree N2-231 of the Minister of Agriculture of Georgia, dated 11 December 2009, On the Approval of Additional Requirements for Labelling.

<sup>30</sup> Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

<sup>31</sup> Regulation (EC) N1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed.

sources other than the state budget alone. A separate structural unit – the Department for Food and Feed Inspection – was set up within the Food Safety Service. This department was entrusted with the exclusive power of inspecting business operators countrywide. However, this department has only a 16-member staff. Such a small number of personnel coupled with reduced state funding (funding for 2011 is down by 37 percent from that of the previous year) are likely to adversely affect the effectiveness of the Service.

And finally, to meet one more precondition for launching DCFTA negotiations, the government of Georgia developed and adopted the Comprehensive Strategy and Legislative Approximation Programme in Food Safety<sup>32</sup> in late 2010. This is the first government programme document defining the principles and priorities in the development of this sphere and sets forth a detailed schedule for the implementation of legislative reforms. It is also noteworthy that together with strategies for technical regulations and competition, the food safety strategy represents the first attempt of the government since 2004 to give a systemic nature to the convergence of the Georgian legislation with the EU legislation – a move that echoes with the provisions of the ENP AP. With this document the government has demonstrated that it assumes the responsibility for the improvement of the legislative framework on food safety and its convergence with EU legislation.

### ***Conclusions and Recommendations***

In 2010, the Georgian Government took a number of important steps for the improvement of the SPS control in the country. These steps largely complied with the ENP AP and almost fully met the preconditions for launching DCFTA negotiations.

The preconditions for launching DCFTA negotiations will be considered fully met only after the GoG has effectively enforced the Food Safety Law. The GoG must clearly demonstrate that it is truly committed to establishing a modern and sustainable system of food safety.

To continue with the fulfilment of the ENP AP in the field of SPS control and establish a sustainable system of food safety in the country, the GoG should:

- Demonstrate progress in the establishment of effective control mechanisms for food safety;
- Enhance information campaigns designed to raise the awareness of companies, especially in the regions, about legislative requirements;
- In parallel to the implementation of the food safety strategy, develop sectoral strategies and state programmes mitigating the negative effects of the introduction of a new system;
- Enhance capacities of food safety service in terms of human resources as well as material and financial resources in order to ensure the continuity of state control of food safety;
- Pay special attention to the enhancement of the capacities of food safety laboratories and select relevant reference laboratories in a timely manner;
- In parallel to the enhancement of control on the domestic market and local food producers, toughen control on imported food as well, in order to protect local companies from unfair competition;

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<sup>32</sup> Decree N1756 of the Government of Georgia, dated 28 December 2010, On the Approval of the Comprehensive Strategy and Legislative Approximation Programme in Food Safety.

- Ensure the transparency of the policy making process and the higher involvement of business circles and civil society in this process;

It is also recommended that civil society develop a mechanism for monitoring the implementation of the Comprehensive Strategy and Legislative Approximation Programme in Food Safety and prepare periodic evaluations of the efficiency of the policy implemented in this field.

## ***V Public Procurement***

In the field of public procurement, one of the key priorities in the ENP AP was the increase in transparency, non-discrimination and competition of the public procurement system. The aim of the Law on State Procurement is also to ensure the rational spending of public funds, develop fair competition, create a fair and non-discriminative environment for participants in procurement procedures, ensure the publicity of public procurement, establish a uniform electronic system of public procurement and build trust in it among society.

As a result of recently implemented reforms, the public procurement system has advanced towards the achievement of all the above-mentioned goals. Below are described a few fundamental changes which represent forward steps in the fight against corruption, and in ensuring a greater transparency of procurement, accessibility of information and efficient spending of public funds:

- The introduction of international classification for the aim of identifying a procurement object: in describing an object of procurement, a procuring organization is obliged to use the classification under which each commodity, service and/or work is assigned a concrete identifying code. The classification is based on the Common Procurement Vocabulary of the European Union<sup>33</sup>.

This innovation enables an economic operator to receive accurate information on the object to be procured. Another important aspect of classification is the use of the classification for identifying homogeneous objects of procurement. A procuring organization can no longer artificially split procurement objects when selecting a procurement method for the aim of avoiding monetary thresholds.

- The restriction of non-competitive procurement methods: direct contracting as a method of procurement has been abolished. Simplified procurement can be carried out only in cases strictly defined in the legislation.
- The reduction of procurement-related costs: costs incurred by the procuring organization during procurement have been reduced owing to a few factors. A tender announcement is placed, free of charge, in a unified electronic system and a fixed price is set for its publication in a newspaper after the announcement is automatically sent to the print media outlet. The settlement of accounts with the State Procurement Agency has become entirely electronic, significantly reducing costs related to the submission of hard copy documents. Costs of participation in procurement have been similarly reduced for the

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<sup>33</sup> Commission Regulation (EC) N213/2008 of 28 November 2007 amending Regulation (EC) N2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV.

private sector. Participation in procurement procedures is possible without physically going to the procuring entity. Tender documentation can be downloaded from a unified electronic procurement system. A tender proposal and accompanying documents are also submitted electronically and only the winner of the tender is required to submit the originals of the electronically submitted documents to be awarded a contract. The tender participation fee (GEL 200) has been abolished and a GEL 50 fee has been introduced for submitting a tender proposal, which is also paid electronically through a bank card.

- The accessibility of information: any information related to public procurement is available from a unified electronic system. A participant in a public procurement activity, when registering on the electronic system, can automatically receive notification at an indicated email address about any tender announced on the object of his/her interest.
- Non-discrimination: a requirement stipulating that the use of a local workforce be at least 70 percent has been abolished. On the other hand, however, this move is not justified given the country's high unemployment rate.

In cases of large procurements (goods and services whose total value exceeds GEL 500,000; and construction works worth over GEL 1 million), it is compulsory to publish a tender announcement in English as well.

- Civil society involvement: a procurement-related complaint review board has been in operation in the State Procurement Agency since 6 December 2010. It has been manned with representative of the State Procurement Agency and civil society on a parity basis. Out of six members on the council three are from the civil society sector and are selected by non-governmental organizations themselves. A complaint can be submitted to the complaint review board electronically through the Agency's webpage<sup>34</sup>.

### ***Conclusions and Recommendations***

Reforms implemented in the public procurement system in 2009 and 2010 are consistent with the principles set out in the ENP AP (transparency, non-discrimination and competitiveness). Nevertheless, the improvement of remaining shortcomings will increase the efficiency of the system in the medium- and long-term perspective; in particular:

- Because of many amendments introduced over the years, the Law on State Procurement is difficult to comprehend and therefore, it is desirable to adopt a new law which will be brought in line with the WTO provisions of the agreement on public procurements<sup>35</sup> (scope of the law, exceptions, terms, sequence of stages, etc.);
- Established exceptions from the law need to be revised. For example, moneys spent from the reserve funds of the President of Georgia, the Government of Georgia and the Tbilisi Mayor's Office do not fall under the scope of the law even though significant budget means are spent from these funds;
- To avoid conflicts of interest, it is expedient to set up an independent complaints body concerning the review of complaints related to public procurements;

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<sup>34</sup> [http://procurement.gov.ge/index.php?lang\\_id=GEO&sec\\_id=10&info\\_id=204](http://procurement.gov.ge/index.php?lang_id=GEO&sec_id=10&info_id=204)

<sup>35</sup> The Government Procurement Agreement (GPA), World Trade Organization. 1994

- The State Procurement Agency should not be a body which implements consolidated procurements as it represents a body regulating and controlling the procurement system in general;
- To ensure the effective monitoring of information available in the field of procurement, the common electronic system of public procurements should be hooked up to those external electronic systems which are operated in connection with budget planning, contract registration and contractual payments;
- It is desirable to develop and put into operation modules for electronic planning, electronic payments and electronic processing of data;
- For the fully-fledged operation of an electronic system of procurements it is expedient to develop and enforce electronic ordering (e-ordering), electronic purchasing (e-purchasing) and electronic catalogues (e-catalogues);
- To enhance the role of procurement coordinators of procuring organizations in the electronic system of procurements, it is necessary to introduce the specialty of procurement coordinator, and to create a mechanism for the periodic certification/upgrade of their qualification;
- The State Procurement Agency must lead an information campaign to educate society on the essence of an effective and open public procurement system, its positive results and possible difficulties;
- All the material related to the procurement system – regulatory legislation, manuals, explanations – should be posted on the Procurement Agency webpage in Georgian and English languages and be easily accessible;
- Due to the priority of price criterion, a risk of quality deterioration of procurements exists and therefore it is necessary to ensure a continuous monitoring of the system, to conduct a proper study and analysis of the results and, in case of need, make appropriate corrections to the system.

## ***VI Intellectual Property Rights***

Obligations assumed under the 2010 Action Plan of the European Neighbourhood Policy cover three areas:

*First priority: an obligation to revise existing agreements on intellectual property rights with third country authorities and to enter into such agreement for the aim of consolidating the relevant institutional structures, as well as of the offices for industrial property rights, copyright protection and collecting societies, and extending cooperation with third country authorities and industry associations.*

According to the information provided by the Georgian National Centre for Intellectual Property, Sakpatenti, this entity is engaged in negotiations for bilateral agreements on the mutual recognition and protection of geographical indications mainly with non-EU member states.

In 2010, however, the EU-Georgia Agreement on the Protection of Geographical Indications for Agricultural Products and Foodstuffs was initialled.

Negotiations are also in progress for signing memorandums of cooperation between patent offices and a part of these memorandums has already been signed.

The status of corresponding mutual relations with EU countries is different:

- A draft memorandum on mutual cooperation with the European patent office has been completed and is ready for signing;
- A memorandum on mutual cooperation with Hungary has been signed;
- Memorandums with patent offices in Denmark, Sweden, Turkey and Israel – negotiations are in progress;

As the above information reveals, the completion of international agreements with EU countries continues to remain a problem.

*Second priority – an obligation to undertake measures to increase public awareness in the field of intellectual and industrial property protection; to establish an efficient system of use of patent information for enterprises.*

To increase public awareness in the field of intellectual and industrial property rights, the Georgian National Centre for Intellectual Property, Sakpatenti, issued a number of publications in 2010, including:

- The Vienna Agreement (brochure) – the latest publication of translations of international agreements administered by World Intellectual Property Organization (WIPO), which are distributed at events organized by Sakpatenti;
- Appellations of the Origin of Georgian Wine – a special edition of an official bulletin was distributed at international seminars attended by Sakpatenti representatives, as well as in governmental agencies;
- The Georgian translation of the 9th Edition of the Nice International Classification of Goods and Services (two parts – an alphabetical list of goods and services and a list by classes), which is intended for trademark experts and patent attorneys as well as applicants, judges and lawyers;
- Presentation booklets of inventors, with accompanying descriptions of inventions, showing who participated in the exhibition “Made in Tbilisi” held in the Expo-Georgia exhibition pavilion;
- Intellectual Property – a publication in Georgian and English languages was distributed at the above-mentioned exhibition;
- A 2011 calendar dedicated to the topic: Intellectual Property Rights Protection in Georgia, with accompanying explanations;
- A Georgian and foreign-language (English-Russian) edition of Industrial Property Official Bulletin has changed its style and become more informative. This edition is designed for experts, patent attorneys, applicants, judges and lawyers;

- The 2009 Annual Report – statistical data on the performance of each department of Sakpatenti;
- Information brochures – “Young Inventor”, for Tbilisi State University and the private Demirel College, was issued within the framework of memorandums signed with higher educational institutions;
- A Georgian-language edition of the Vienna Classification.

To facilitate the implementation of the Law of Georgia on Design, adopted in 2010, the Government of Georgia issued decree N.262 on 25 August 2010, “On the Approval of Instruction for the Registration of Design”. The Instruction consists of 31 paragraphs providing a detailed description of rules for the registration procedures that are specified in Article 35 of the Law on Design, as well as other provisions of the Law regulating registration procedure. As the Instruction answers the absolute majority of the questions related to the practical implementation of the Law, it is, in fact, a practical tool for the interpretation of the Law.

At present, a similar project on the development of the instruction for patent registration procedures is entering its final phase of implementation.

In 2010, training sessions on the protection of intellectual property rights were conducted for journalists and members of business associations.

In 2010, the Georgian National Centre for Intellectual Property, Sakpatenti, also undertook measures to increase public awareness. However, a step-up in this activity is needed, especially for the establishment of a systemic practice of training and consultation. Although the Centre runs quite an informative website, it is necessary to carry out further explanatory works.

Moreover, target groups for training should include not only customers but also controllers, court representatives and those agencies that are in charge of carrying out measures for the protection of intellectual property rights. At the same time, target groups should be extended and not be limited to large businesses alone. A comprehensive public awareness campaign also needs to be conducted in order to make society realize that the violation of intellectual property rights is a real crime.

*Third priority – to conduct a study on piracy and counterfeiting in Georgia and ensure effective dialogue with rights holders; to this end to conduct a study on violations of copyright and counterfeiting.*

Within the framework of the above-mentioned priority, the UN Development Program launched a Study on Counterfeiting and Piracy in Georgia in late 2009. The study was published in September 2010. This thorough study provides an analysis of the situation regarding counterfeiting and intellectual property protection in Georgia as it was at the end of 2009.

The study notes that piracy and counterfeiting is a serious problem in Georgia, as well as worldwide, and that the key challenge for Georgia today is the implementation of the rights that are ensured by the national legislation and international agreements. The Georgian government responded to the study by setting up an interagency commission which will start operation in 2011 and the actual results of the activities of this commission will be seen in 2011.

It is worth noting that among the findings of the study are the following: the study notes that Georgia is no exception to the rule and counterfeiting and piracy are present here as well. As the



Georgian economy becomes more advanced, however, new threats to intellectual property rights could materialize. It is therefore appropriate to raise intellectual property rights protection at the level of protection granted to other fundamental rights. The population, as shown in the survey, is prepared for such an evolution. According to the authors of the study, time has come to make the themes of intellectual property rights as a priority in Georgia. The study also contains the authors' opinions on how to achieve this. (See, Study on Counterfeiting and Piracy in Georgia, 10.09.2010. [www.undp.org.ge](http://www.undp.org.ge))

In addition to establishing this interagency commission, the Government of Georgia, before the study had been completed, made amendments to the Law on Design and the Law on Patents, thus already ensuring during 2010 the fulfilment of part of the recommendations provided in the study.

### ***Circumstances Impeding the Fulfilment of Assumed Obligations***

The monitoring revealed that the Georgian legislation in the field of intellectual property rights which existed by 2010 was basically consistent and in harmony with international agreements and EU normative acts.

The monitoring revealed that the government of Georgia undertook concrete steps in 2010: in particular, up to 20 fundamental changes were made to the effective legislation of Georgia in the field of intellectual property rights (laws, relevant normative acts of the President and Government of Georgia).

Moreover, according to Article 81 of the Law on Patents, the chairman of Sakpatenti was vested with the power of issuing normative acts. Based on this power, Sakpatenti drafted a decree of the Sakpatenti Chairman on the Approval of the Charter of Patent Attorneys of Georgia. Moreover, Sakpatenti is drafting the Charter of the Appeals Chamber. The Instruction for the Procedure of Registration, Submission of Application for Invention and Useful Model and Issuance of Patent is also being drafted.

The analysis of the legislative framework revealed that the legislation is largely harmonized with EU normative acts. The study also showed that the main problem, according to experts and business representatives, is not the content of the law but its enforcement.

In analyzing the problems related to implementation of the law, it was revealed that the problem does not stem from legislative shortcomings but is a complex one consisting of various economic and social issues.

### ***Economic Environment, Social Environment and Public Awareness***

Groups of respondents who were connected to the issue of Intellectual Property Rights by their line of duty, mode of business and other reasons were interviewed during the monitoring.

When discussing the economic and social environment, respondents underlined that, in the existing economic and social situation, the efforts of the state to fully enforce the law might entail certain social and political risks (for example, in the case of Microsoft products, a problem of access to computers, the Internet and information may emerge with corresponding social consequences, etc.). Therefore, respondents felt that further improvement and development of the economic environment would contribute to the elimination of such problems.

Moreover, respondents thought that, one of the factors discouraging holders of intellectual property rights from applying to courts in defence of their rights is court fees and the large inconsistency between economic risk and the benefit they may gain in case of winning the court case.

Another reason explaining the scarcities of disputes regarding the matter of the protection of intellectual property were the high court dues (and deposits) that discouraged an intellectual property holder (if it is not a large company) from applying to the legal system.

One important factor is still the issue of public awareness, including businessmen (especially small and medium size businessmen) and the population at large.

Therefore, it was suggested that various governmental bodies should undertake a coordinated effort for the implementation of comprehensive measures.

In this respect, it is important to note that in 2010 a decision was made to set up an interagency coordination council on copyright protection. It should be noted that the need of coordinating activities of intellectual property rights bodies was one of the main recommendations provided in the UNDP study On Piracy and Counterfeiting, conducted in 2009-2010. This recommendation concerned the need to review complex problems related to enforcement.

It is also noteworthy that concerning the legislation that survey, as well as interviews conducted by us, revealed a need for the strengthening of the sanctions envisaged in the Criminal Code in order to place the violation of intellectual property rights on the same level with the violation of other property rights (for example, theft).

Under the current legislation, article 189 of the Criminal Code qualifies misappropriation of the authorship of a creative work, as well as coercion into co-authorship, illegal multiplication of objects of copyright and neighbouring rights for the aim of receiving gains, the purchase, import, storage, sale, rental of contrafactual copies or other infringements on the rights of owners of copyright and neighbouring rights as a criminal offence.

The Criminal Code provides sanctions for the violation of industrial property rights as well. In particular, article 189 qualifies misappropriation of the authorship of an invention, useful model, industrial pattern, topology of integral micro-scheme or coercion into co-authorship as well as illegal use of invention, useful model, industrial pattern, topology of integral micro-scheme for the aim of receiving gains as a criminal offence.

According to Article 196 of the Criminal Code, illegal use or reproduction of another's trademark or the name of origin of a product or geographical indication, that has caused substantial damage, as well as the use of an unregistered trademark, or the indication of a false warning sign together with the illegal use of a name of origin of a product or geographical indication, is a punishable action.

Under the Criminal Code, the punishments for above offences are fine or restriction of liberty or imprisonment. The Code on Administrative Offences of Georgia envisages a fine for the violation of the rights of holders of copyright and neighbouring rights and holders of trademarks, while for the repetition of the same action within one year's time of the imposition of the administrative fine, the Code envisages, along with an increased fine, confiscation of the materials, equipment and technical means applied in committing the offence. Moreover, the Georgian legislation envisages a civil responsibility for the infringement of copyright and neighbouring rights. According to article 59 of the Law of Georgia on Copyright and

Neighbouring Rights, holders of copyright and neighbouring rights and the creator of a database have the right to demand from a violator compensation of damages and recognition of their right.

The survey identified the expert opinion that for the improvement of public awareness about the seriousness of a crime related to the infringement of intellectual property rights, it is necessary to heighten the sanctions envisaged for this crime in the Criminal Code of Georgia and educate the public on this issue to the maximum extent possible. However, the need for the improvement of the law enforcement system has also been identified, including the need for setting precedents of complaints which may prove to become a real basis for the enforcement of the law.

### ***Conclusions and Recommendations***

The Georgian legislation in the field of intellectual property rights basically complies and is in step with international agreements and EU normative acts.

The problem is the enforcement of the law. The data on filing complaints to courts for the protection of intellectual property rights is also low. The cause of this problem goes beyond the narrow field of the protection of intellectual property rights and stems from the economic environment and social situation; it is also contains social threats.

However, the findings of the UNDP's comprehensive study published in 2010 indicate that the situation is mature in Georgia for undertaking concrete and active steps toward the protection of intellectual property rights.

Throughout 2010, 11 amendments to the legislation on intellectual property rights were made; normative acts were issued serving the aim of eliminating shortcomings in the enforcement of the law as well as synthesizing Georgian and European legislation.

In late 2010, an interagency coordination council on copyright protection was set up to make complex decisions on the issue of intellectual property rights.

In 2010, the Government of Georgia took active steps for the aim of performing obligations assumed under the ENP Action Plan for 2010. In particular: existing agreements on intellectual property rights with third country authorities were revised and such agreement were signed in 2010. However, a few problems still remain, such as the finalization of international agreements with a number of countries.

In 2010, the Georgian National Centre for Intellectual Property Rights, Sakpatenti, quite actively undertook measures to increase public awareness. However, it was also revealed that a step-up in this activity is needed, especially for the establishment of a systemic practice of training and consultation.

The Government of Georgia fulfilled the obligation of conducting a study on the violations of copyright and counterfeiting – a comprehensive study on counterfeiting and piracy was conducted. The ongoing monitoring revealed that in 2010, the Government of Georgia eliminated several problems identified by the abovementioned UNDP study, in particular, an interagency coordination council on copyright protection was set up and amendments to the Law made.

According to the opinion of a segment of interviewed experts and the results of the study, to improve the awareness of the greater public about the seriousness of a crime related to the infringement of intellectual property rights, sanctions envisaged for this crime in the Criminal

Code of Georgia must be heightened (for example, putting it on the same level with punishing norms envisaged for the violation of other type of rights) and the public be educated on this issue to the maximum possible extent. However, the need for the improvement of the law enforcement system has also been identified, including for setting precedents of complaints that may prove to become a real basis for the enforcement of the law.

It was also identified that one of the factors discouraging holders of intellectual property rights from applying to courts in defence of their rights is court fees and the large inconsistency between economic risk and the benefit they may gain in case of winning the court case.

At present a special importance is attached to the enhancement of public awareness about issues of intellectual property rights and to government will.

Since the interagency coordination council on copyright protection was established at the end of 2010, the estimation and research of those social and economic risks which may result from the full enforcement of the law must be a matter of interest throughout 2011. The year 2011 should also see the development of a plan which should demonstrate a government will for actual enforcement of the law.

Efforts should be undertaken to raise public awareness. To this end, we deem it necessary to focus on three target groups:

1. Representatives of state entities (Sakpatenti, the police, the prosecutor's office, the courts, the customs service, etc.). The upgrade of their qualification in issues of legislation on intellectual property rights is a necessary precondition for the enforcement of the law;
2. Representatives of business circles, especially small and medium-sized businesses, who may find it especially difficult to get a clear understanding of intellectual property rights issues; large businesses may have sufficient resources for this;
3. The greater public which may benefit from trainings conducted for journalists or from PR campaigns with corresponding explanations concerning the protection of intellectual property rights as well as legal sanctions in cases where such rights are violated.

A complex, coordinated programme needs to be developed, which should cover these target groups. We believe that donors should pay special attention to this area.

Efforts should be undertaken to stimulate the activity of intellectual property rights watchdogs.

An issue of levelling sanctions envisaged for the violation of intellectual property rights with the punishment provided in the Criminal Code for the violation of other property rights should be considered.

The activities of civil society organizations should be promoted in order to increase the number of court cases on the protection of intellectual property rights and to set precedents for such complaints.

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