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Additional Questions and Replies

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II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

Question 1

Paragraph 13 of WT/ACC/SPEC/VNM/5 indicates that Viet Nam intends to enact a new Law on Personal Income Tax consistent with international rules which would introduce a single tax system and provide for a clearer definition of residents and non-residents. This new law does not appear on Viet Nam's Legislative Action Plan. When does Viet Nam envision bringing a draft to the National Assembly?

Answer:

Up to now, Viet Nam has not yet applied a uniform personal income tax system for Vietnamese citizens and foreigners residing in Viet Nam. However, the discrimination between foreigners and Vietnamese is in favour of foreigners.

Recently, the National Assembly's Standing Committee promulgated the Ordinance No.14/2004/PL-UBTVQH11 dated 24 March 2004 on amendments of and supplements to some Articles of the Ordinance on Income Tax of High-income earners. The revised Ordinance has been warmly welcome, and, therefore, no further amendment is planned.

In addition, as Viet Nam understands, personal income tax is not subject to WTO's rules, no legislative plan is foreseen in the Legislative Action Plan that Viet Nam submitted to the Working Party in this regard.

Question 2

In paragraph 13 of WT/ACC/SPEC/VNM/5 Viet Nam has provided details of changes to the tax system to remove the defects of the current system. Viet Nam states that in the long term the Ordinance on Income Tax of High Income Earners would be replaced by a Law on Personal Income Tax consistent with international rules, which would introduce a single tax system, broaden the scope of application of the personal income tax, and provide for a clearer definition of residents and non-residents.

We would appreciate clarification on when it is proposed that the Law on Personal Income Tax will be enacted.

Answer:

Recently, the National Assembly's Standing Committee promulgated the Ordinance No.14/2004/PL-UBTVQH11 dated 24 March 2004 on amendments of and supplements to some Articles of the Ordinance on Income Tax of High-income earners. The revised Ordinance has been warmly welcome, and, therefore, no further amendment is planned.

In addition, as Viet Nam understands, personal income tax is not subject to WTO's rules, no legislative plan is foreseen in the Legislative Action Plan that Viet Nam submitted to the Working Party in this regard.

- **Foreign Exchange and Payments**

Question 3

Paragraph 18 stated that the Decree providing amendment of Decree No. 63/1998/ND-CP dated 17 August 1998 on foreign exchange control is expected to be promulgated by the end of 2004. Please clarify if this amendment repeal all foreign exchange controls or only surrender requirements? Has it been promulgated? When does Viet Nam plan to adopt Article VIII of the IMF Articles of Agreement which certifies that Viet Nam maintains no restrictions on the making of payments for current account transactions?

Answer:

The Ordinance on Foreign Exchange is being drafted. This Ordinance is an important legal document which is formulated towards international economic integration and compliance with Article VIII of the IMF Articles of Agreement on liberalizing current account transactions. The Ordinance on Foreign Exchange is scheduled to be promulgated in accordance with Viet Nam's Legislation Action Plan already submitted to the Working Party.

After meetings between the IMF team and the State Bank of Viet Nam and relevant ministries and agencies from 21 to 25 February 2005, Viet Nam is completing necessary procedures to request the IMF's official announcement of Viet Nam's adoption of Article VIII of the IMF Articles of Agreement.

Question 4

Paragraph 18 states that all current account restrictions have now been removed. Is it now possible for importers to freely purchase the foreign exchange necessary in Viet Nam to pay for imports? What restrictions, if any, remain on the repatriation of profits by foreign investors?

Answer:

According to the Circular No. 08/2003/TT-NHNN of the State Bank of Viet Nam dated 21 May 2003 providing guidelines for the implementation of obligations to sell and rights to purchase foreign currency with respect to current transactions by residents being organizations, importers in Viet Nam are entitled to purchase foreign currency at authorized banks to conduct current transactions and other permitted transactions.

Currently Viet Nam maintains no restriction on the repatriation of profits and other legal income of foreign investors, provided that they have fulfilled taxation and other financial obligations to the Government.

Question 5

We would appreciate if Viet Nam would confirm that after accession, it will not use foreign exchange surrender and balance requirements

Answer:

Pursuant to Article 1 of the Decision No. 46/2003/QĐ-TTg of the Prime Minister dated 2 April 2003 on percentage of foreign currency revenue from current transactions that residents being economic or social Organizations are obliged to sell, the percentage of current revenue in foreign currency required to be sold to Vietnamese banks was set at 0 per cent.

In accordance with the Article 12 of the Decree No.27/2003/ND-CP of the Government dated 19 March 2003 on amendments of and supplements to some Articles of the Decree No.24/2000/ND-CP on detailed provisions to implement the Law on Foreign Investment in Viet Nam, the foreign exchange self-balancing requirement was abolished.

Viet Nam confirms its intention that foreign invested enterprises shall not be required to self-balance their foreign exchange needs and the percentage of current revenue in foreign currency obliged to be sold to Vietnamese banks shall be maintained at 0 per cent after its accession to the WTO.

Question 6

Paragraph 22 of WT/ACC/VNM/5 indicates that Viet Nam eliminated foreign exchange self-balancing requirements in June 2000. In paragraph 23, subject document notes that the "Government was considering guaranteeing the balancing of foreign currency needs for foreign investors investing in important projects identified in government programmes, and supporting foreign currency balancing for infrastructure projects and some other projects in case the authorized banks could not meet all foreign currency needs. Please explain the apparent contradiction of the two statements.

Answer:

Viet Nam sees no contradiction in the paragraphs 22 and 23, because:

Before 2000, the Law on Foreign Investment required enterprises to self-balance their foreign exchange needs. Paragraph 22 indicates Viet Nam's efforts in abolishing the foreign exchange self-balancing requirement so as to allow foreign-invested enterprises to have access to foreign exchange sources of commercial banks.

Paragraph 23 continuously demonstrates Viet Nam's above-mentioned effort. In addition to allowing all foreign-invested enterprises to have access to foreign exchange sources of commercial banks, the Government also guarantees the balancing of foreign currency needs for foreign investors investing in important projects identified in government's programmes, and considers to provide its assistance in terms of foreign currency to balance for investors investing in infrastructures and some other projects in cases that commercial banks would not provide sufficient foreign exchange required by such investors.

- Investment Regime

Question 7

Paragraph 25 indicates that the Law on Enterprises prohibits certain sectors to investors for reasons of national security, public order, social morals, human health, tradition, environment, etc. Please provide a definitive list of sectors prohibited for private investment with an explanation for the exclusion.

Answer:

These sectors/lines of business are:

- a. Trading in weapons, ammunition, military equipment, military items and specialised military technical equipment of the armed forces;
- b. Trading in explosives, toxic chemicals, and radioactive substances;
- c. Trading in drugs of addiction;
- d. Prostitution, organizing prostitution services and trading in women and children;

- e. Providing gambling services or operating gambling venues;
- f. Trading in chemical substances of high toxicity;
- g. Trading in any items which belong to the historical, cultural or museum heritage;
- h. Trading in reactionary cultural products, pornographic or superstitious items, or items which have an adverse effect on personal development;
- i. Trading in all types of firecrackers;
- j. Trading in wild plants and animals which are listed in international treaties to which Viet Nam is a signatory or a participant, and trading in other rare and precious species of flora and fauna which require protection; and
- k. Trading in toys which have an adverse effect on personal development or health of children or which have an adverse effect on social order, security and safety.

Trading in those sectors/lines of business are prohibited for the protection of national defence, national security, public order and safety, historical and cultural traditions, morals, traditional custom and human health.

Question 8

Referring to paragraph 25's discussion of the Law on Enterprise's division of business sectors, please define "conditional business sectors."

Answer:

"Conditional business sectors" are sectors that enterprises are eligible to conduct business only if they have fully satisfied all requirements specified in applicable laws, ordinances and decrees. Conditional business sectors are categorized into sectors requiring business licenses and those not requiring business licenses.

Regarding conditional business sectors where business licenses are required, enterprises are entitled to conduct business upon being granted business licenses. For conditional business sectors where business licenses are not required, enterprises are entitled to conduct business upon having fully satisfied stipulated requirements.

Question 9

Paragraph 25 notes that business registration for sector categories one through five is not automatic. For each category requiring a non-automatic business licence, please describe the registration process and the criteria by which government officials grant the licence. Is the business licence granted by the Ministry of Trade or a local government office or both?

Answer:

The sectors/lines of business which require practising certificates are:

- 1. Legal services businesses;
- 2. Medical examination and treatment businesses, trading in pharmaceutical products;
- 3. Project design and architectural services businesses;
- 4. Auditing services businesses;
- 5. Securities brokering services businesses;
- 6. Manufacturing, processing, bottling, packaging and trading pesticides;
- 7. Design for means of transport; and
- 8. Trading heritage, antiques, national secrets.

Ministry of Justice, Ministry of Health, Ministry of Agriculture and Rural Development, Ministry of Construction, Ministry of Finance, Ministry of Transportation and Ministry of Culture and Information implement State administration to the respective practising licence and provide guidelines on procedures, conditions, criteria, duration and authority of issuing such practising licence.

In the case of those enterprises conducting the lines of business which require practising licence, at the time of business registration, the additional conditions on practising certificates stipulated below must be satisfied:

- In respect of limited liability companies and shareholding companies, one of the managers of the enterprise must have a practising certificate, or in respect of partnerships, all unlimited liability partners must have practising certificates; in respect of private enterprises, the owner of the enterprise or the managing director of the enterprise must have a practising certificate. People who have practising certificates can only register in business registration documents of only one business.
- In business registration documents, in addition to common documents for business registration, there must be legitimate copy of practising certificates of individuals respective to different types of business as mentioned above.

Question 10

In Paragraph 27, the draft report indicates that foreign investment projects are subject to minimum wage regulations. Are domestic investment projects also subject to minimum wage regulations?

Answer:

All investment projects, regardless of their type of investment and business, have to comply with the regulations on minimum wage.

Minimum wage regulations are also applicable to enterprises operating under Law on State-owned Enterprises and the Law on Enterprises.

Question 11

We note that in paragraph 28 of document WT/ACC/SPEC/VNM/5 Viet Nam still indicates that foreign investment in some sectors is only allowed in the form of joint venture or business cooperation contract. In paragraph 29, Viet Nam states that the Government had abolished most regulations discriminating between domestic and foreign investment and there were generally no substantial differences between these two categories of investment. Viet Nam notes that differences in the fees and charges rates applied had been eliminated, except for electricity where dual pricing would be abolished by 31 December 2005. Viet Nam also states that the scope of other discriminatory regulations, which concerned establishment procedures and management organisation, would be reduced progressively and eliminated under the unified Law on Investment and the Law on Enterprises, which were expected to be submitted to the National Assembly in 2006. These two laws were being drafted towards applying uniformly to domestic and foreign investors and to all enterprises irrespective of economic sector and form of ownership in compliance with WTO rules.

We would be grateful for further advice on the new Law on Investment and the Law on Enterprises, and when a copy of the draft laws will be made available to the Working Party.

Answer:

A common Investment Law and a uniform Enterprise Law are currently being drafted and scheduled to be submitted to the National Assembly's 8th Session in October 2005 for consideration in accordance with the National Assembly's Program for Enacting Laws and Ordinances in 2005 provided in the Resolution No.35/2004/QH11 dated 25 November 2004 of the National Assembly. The Government of Viet Nam has requested the National Assembly to pass, instead of consider, these two laws at its 8th Session in October 2005 (i.e. requested an earlier approval). The draft Laws planned for submission to the National Assembly shall be submitted to the Working Party as soon as they are ready.

Question 12

Paragraph 29 of document WT/ACC/SPEC/VNM/5 indicates that Viet Nam's new investment and enterprise laws should be sent to the National Assembly in 2006. In light of the discussion of Viet Nam's Legislative Action Plan during the ninth meeting of the Working Party, when does Viet Nam anticipate sending these laws to the National Assembly? When does Viet Nam expect to provide translations of the draft laws to the Working Party?

Answer:

A common Investment Law and a uniform Enterprise Law are currently being drafted and scheduled to be submitted to the National Assembly's 8th Session in October 2005 for consideration in accordance with the National Assembly's Program for Enacting Laws and Ordinances in 2005 provided in the Resolution No.35/2004/QH11 dated 25 November 2004 of the National Assembly. The Government of Viet Nam has requested the National Assembly to pass, instead of consider, these two laws at its 8th Session in October 2005 (i.e. requested an earlier approval). The draft Laws planned for submission to the National Assembly shall be submitted to the Working Party as soon as they are ready.

Question 13

Paragraph 30 identifies subsidy programs available to foreign investors that export. Are the subsidies to which an investor is entitled, including their duration, specifically identified in a company's investment licence? Does the investment licence specifically link provision of subsidies to export performance or use of domestic inputs? Does Viet Nam consider an investment licence to be a contractual obligation?

Answer:

Tax incentives to export enterprises or enterprises using local materials, as well as applicable duration are specified in the investment licenses issued to the investors.

The current Vietnamese laws have no detailed provisions on the concept of contractual obligation between the Government and foreign investors. As the concept is not clear, Viet Nam would highly appreciate more clarification on this question.

Question 14

Since Viet Nam initiated its WTO accession, has it issued investment licenses that guarantee subsidies prohibited by the WTO's Agreement on Subsidies and Countervailing Measures to foreign or domestic firms?

Answer:

Even prior to Viet Nam's WTO accession application, Viet Nam has applied some prohibited subsidies in the form of investment incentives to domestic and foreign investors.

Question 15

Please confirm that the draft investment and enterprise laws will not contain incentives that operate as prohibited subsidies.

Answer:

Such provisions in the common Investment Law would be designed in accordance with Viet Nam's accession commitments with respect to the SCM Agreement.

Question 16

Please confirm that the new investment law will not require that personnel and financial decisions in joint-venture companies be unanimous.

Answer:

It is expected that such requirements would not be introduced in the common Investment Law.

Question 17

In paragraph 30, the last line of this section in document WT/ACC/SPEC/VNM/4/Rev.1 stated "The Government maintained additional measures granting more favourable conditions for export-oriented enterprises." In SPEC/VNM/5, however this information has been removed. Why?

Answer:

The above-mentioned sentence is not clear. In fact, Viet Nam has notified all subsidies and their detailed descriptions in its subsidies Notification.

Question 18

Specific problems in the mining sector are referred to in paragraph 33 of document WT/ACC/SPEC/VNM/5. We note that, in paragraph 38, responsibility for management of foreign investment in mineral exploration had been transferred to local authorities to improve the effectiveness of FDI management in this sector.

We note that the Mining Law has been revised and would appreciate clarification as to whether it provides for investment licenses to be granted at the exploration stage.

Answer:

The Mineral Law was passed by the National Assembly of the Socialist Republic of Viet Nam on 20 March 1996 and is still in effect. The Law on amendments of and supplements to some articles of the Mineral Law is planned to be submitted for approval by the 11th National Assembly at its 7th Session in 2005.

The related issues on the investment licence granted to foreign organizations or individuals and a joint venture with a foreign party are stipulated in Article 31.4 of the Mineral Law as follows: "In the cases where a foreign organisation or individual or a joint venture with a foreign party applies for a mining licence, the mining licence shall be issued at the same time as, or subsequent to, the issuance of an investment licence in accordance with the Law on Foreign Investment in Viet Nam". Furthermore, Article 52.4 of the Decree No.76/2000/ND-CP dated 15 December 2000 of the Government on the implementation of the Mineral Law provides that: "An investment licence granted to a foreign organisation, individual or a joint venture with foreign party for the execution of a mining project may cover the mineral exploration, mining and processing activities."

Therefore, as Viet Nam has repeatedly confirmed, investment licence could be issued at the stage of exploration.

Question 19

We thank Viet Nam for the reference in its reply to Question 3 of WT/ACC/VNM/33 to the five areas "(i), (ii), (iii), (iv) and (v)" which the Decree No. 27/2003/ND-CP has been promulgated for.

It would be helpful if further details could be provided on each of these five areas in its investment regime.

Answer:

The Government Decree No. 27/2003/ND-CP has introduced a number of new improvements, namely:

- (i) The scope of activities where foreign investment is encouraged has been expanded to include production of high-quality steel, alloy, non-ferrous metal, special metal, steel billet, sponge iron; iron metallurgy; manufacturing of machinery, equipment and component packs for oil and gas exploitation, mining, and energy fields; manufacturing of large-scale lifting equipment; manufacturing machine tools for metal processing, metallurgy equipment; producing medical equipment for analytical and extractive technologies in medical sector; manufacturing equipment for testing toxicity in foodstuffs; manufacturing information technology products; etc.
- (ii) The scope of conditional investment projects has been narrowed by removing the following projects from lists of investment projects which will only be licensed in the form of a joint venture enterprise or business cooperation contracts: projects for printing of technical material, printing on packaging, printing of labels of goods, and printing on textiles and garments, leather and footwear; printing of computer graphics onto animated films; entertainment and sports areas;
- (iii) The restrictions in terms of labour recruitment have been eliminated: The Decree No. 27/2003/ND-CP now permits foreign invested enterprises to recruit directly Vietnamese employees instead of recruiting via local labour agencies as previously required in the Decree No. 24/2000/ND-CP.
- (iv) The scope of investment projects subject to registration regime for obtaining investment licence has been expanded by including specially encouraged investment projects located in an industrial zone.
- (v) The limitation on technology transfer has been eliminated: The Decree No. 27/2003/ND-CP now provides that the value of technology to be contributed as capital in a joint venture enterprise is only subject to the agreement by the Parties, and is no longer subject to the value limit of 20 per cent of legal capital as previously required by the Decree No. 24/2000/ND-CP.

Question 20

We appreciate Viet Nam's undertaking in the reply to Question 7 of WT/ACC/VNM/33 to not subject additional products to the export ratio requirement.

We would be grateful for a current list of the products that are subject to the export ratio requirement.

We would also be grateful for details of Viet Nam's plans to eliminate the export ratio requirement applied to those products.

Answer:

List of industrial products subject to at least 80 per cent export ratio requirement was provided in paragraph 218 of the document WT/ACC/SPEC/VNM/5.

Upon accession, Viet Nam will abolish the Decision No.718/2001/QD-BKH dated 7 December 2001 stipulated the list of industrial products that are subject to at least 80 per cent export ratio and will not apply such requirement in investment licence, including those are issued prior to accession.

Question 21

Decree No. 76/2000/ND-CP of 15 December 2000 referred to in the reply to Question 9 of WT/ACC/VNM/33 does not appear to be listed in Annex 1 of WT/ACC/SPEC/VNM/5.

We would be grateful if a copy of the Decree could be submitted for consideration by the Working Party and included in Annex 1 of the report.

Answer:

Please see document WT/ACC/VNM/36/Add.2.

- **State Ownership and Privatization**

Question 22

Paragraphs 39, 43 and 364: The intention is to continue state ownership of national and international telecommunications gateways and networks (group 1, paragraph 43). It is stated that different types of ownership are equal before the laws (paragraph 39). Accordingly, the Ordinance on Posts and Telecommunications (as well as measures implementing it; paragraph 364) should apply also to state-owned enterprises with gateways and networks. What does the Ordinance provide as regards the use of gateways and networks (for example, non-discrimination of operators using leased lines)?

Answer:

Viet Nam has fully committed to the GATS Annex on Telecommunications, in which the Paragraph 5 states that the access to and use of public telecommunications transport networks and services by operators of any Member be provided on the basis of non-discrimination. The Ordinance on Posts and Telecommunications (Article 43) and the Decree on detailed provisions to implement the Ordinance on Posts and Telecommunications (Chapter IV and X) also provide details on the implementation of this issue.

Question 23

In paragraph 43 of WT/ACC/SPEC/VNM/5, we note that there is now no reference to enterprises that would remain state owned including: those undertaking exploitation and protection of irrigation works; production of original plants and animals; publication and distribution of newsreels, documentary films, and films for children; the production and supply of salt; and the production and supply of other products and services in accordance with the State's social policies.

We would be grateful for clarification as to whether it is still the intention of the Government that these enterprises will remain state-owned.

Answer:

According to the Decision No.155/2004/QD-TTG dated 24 August 2004 of the Prime Minister, the State still holds 100 per cent of capital in film production including production of scientific films, newsreels, documentaries and films for children. Other industries (such as management and operation of irrigation works; plant varieties/seeds and animal breeding; salt production and distribution) will be equitized with the State retaining controlling equity.

Question 24

Paragraphs 44-46: The telecommunications services sector is mentioned as one in which the state would retain special interest or control shares (group 2, paragraph 44). Further, foreign investors would not be allowed to participate in equitization process in this sector (paragraph 45). While it appears that the latter restriction is limited only to the initial privatization process, even further on foreign ownership in a previously state-owned enterprise could not exceed 30 per cent. Are there any intentions to increase this cap or phase it out?

Answer:

According to the Decision No. 155/2004/QD-Ttg dated 24 August 2004 of the Prime Minister on the criteria and classification lists of state-owned companies and independent accounting member companies of state-owned general corporations, telecommunication companies will be equitized with the State holding controlling shares.

For a joint-stock company which was converted from a state-owned enterprise, foreign investors are entitled to buy shares, including shares of telecommunication services companies in which the Government maintains controlling shares or special shares. However, in accordance with generally applicable regulation on limitations of capital contribution and share holding by foreign investors in a Vietnamese company, the maximum amount of shares which could be held by foreign investors is 30 per cent of the chartered capital of that company.

Question 25

Paragraph 50: Please provide further clarification on when the ongoing process of ensuring that Vietnamese state-owned enterprises will compete with other enterprises on an equal basis will be concluded?

Answer:

According to the Law on State-owned Enterprises (2003), provisions on establishment, business registration, rights and obligations in operating, closing and bankruptcy of the State-owned enterprises

are based upon market principles, which are on the same footing as those applicable to other enterprises.

Question 26

In paragraph 50 of WT/ACC/SPEC/VNM/5 Viet Nam said that a new Government Decree on Production and Provision of Public Services was being drafted, and there would be a definition of goods and services considered public services. We understand the Decree was planned to be promulgated in January 2005 and once promulgated would be lodged with Secretariat without delay.

We would be grateful if Viet Nam could provide more information on what is covered by "goods and services socially and economically essential for the country or a particular community".

Answer:

Such products and services would include: electricity supply and distribution in rural areas; management and operation of small and medium irrigation works; production and preservation of plant varieties/seeds and animal breeds; protection of natural forests, etc.

Question 27

We understand that the activities related to the provision of goods and services that fall to the category of "public services" are restricted to certain enterprises.

- **We would be grateful if Viet Nam could indicate the rationale for restricting the enterprises that may provide "public services".**
- **We would be grateful for details of the bidding procedures that apply to suppliers of "public services".**
- **We would be grateful for details of the state orders that apply to suppliers of "public services".**

Answer:

The Government's draft Decree on the production and distribution of public goods and services only provides restrictions to production and distribution in the field of national security and defence. However, in reality, private firms are not interested in or difficult to operate in some sectors. Therefore, state-owned enterprises have to provide these goods and services (e.g. in the area of textbook publication.)

After the promulgation of the Government's Decree on production and distribution of public goods and services, the Government will instruct the responsible agencies to issue guiding circular providing detailed guidance on the application of bidding and ordering procedures in the procurement of public goods and services.

Question 28

Could Viet Nam clarify whether the production and sale of salt fall to "public services" category?

Answer:

Production and supply of salt may no longer be included in the list of public goods and services.

Question 29

We would be grateful if Viet Nam could provide a comprehensive list of SOEs indicating those where the Government holds 100 per cent of the capital and those where the Government holds a majority share of the capital other than 100 per cent. We would be grateful if the list could also indicate the main activities of those SOEs (by product or sector).

Answer:

Currently, there are around 150,000 enterprises in Viet Nam, of which 3,364 are state-owned enterprises.

The Decision No. 155/2004/QĐ-TTg dated 24 August 2004 of the Prime Minister on the criteria and classification lists of state-owned companies and independent accounting member companies of state-owned general corporations provides for the sectors where the State still maintains 100 per cent ownership or controlling shares in the equitized enterprises.

The State shall hold 100 per cent of capital with respect to companies engaged in the following industries and sectors:

1. Companies engaged in a number of important sectors:
 - Production and supply of explosives;
 - Production and supply of toxic chemicals;
 - Production and supply of radioactive substances;
 - The national power transmission system;
 - International and national communication backbone networks;
 - Production of cigarettes;
 - Flight control;
 - Navigation direction;
 - Manufacture and repair of weapons, military equipment and specialized equipment used for national defence and security; equipment and technical documents and provision of services for keeping confidentiality of information by coding techniques;
 - Companies which are assigned to perform duties of national defence or security, and companies located in strategic areas important in both economic and national defence aspects as decided by the Prime Minister;
 - Printing of currency and valuable papers; production of coins;
 - Construction lotteries;
 - Publishing houses;
 - Production of scientific films, newsreels, documentaries and films for children;
 - Mapping;
 - Management and maintenance of the national network of railways or airports and seaports of a large size in important locations as decided by the Prime Minister;
 - Management and operation of upstream irrigation works or irrigation works of a large size;
 - Afforestation and protection of upstream forests, protective forests or specialized forests;
 - Drainage in large urban areas;
 - Urban lighting; and
 - Other important sectors as decided by the Prime Minister.
2. Companies ensuring essential needs for development of production and improvement of the material and spiritual life of ethnic minorities living in mountainous, remote or distant areas.

3. Companies satisfying all of the following conditions: possessing 30 billion or more Dong of State owned capital; having made an average annual payment of three billion or more Dong to the State Budget in the last three years; leading in the application of cutting edge technology or high-technology; making an important contribution to stabilization of the macroscopic economy and operations in the following industries and sectors:
 - Processing of petroleum;
 - Exploitation of ores containing radioactive substances;
 - Building and repair of means of transportation by air;
 - Printing of political books or newspapers;
 - Wholesale trade of medicines for disease prevention and treatment and pharmaceutical chemistry;
 - Wholesale trade of foods;
 - Wholesale trade of petrol and oil;
 - Transportation by air or rail.

Companies in which the State holds more than 50 per cent of the total shares upon equitization.

1. Companies possessing 20 billion Dong or more of State owned capital; having made an average annual payment of 2 billion Dong or more to the State Budget in the last three years; operating in the industries and sectors specified in clause 3 of Section I mentioned above and in the following industries and sectors:
 - Generation of electricity;
 - Exploitation of important minerals: coal, bauxite, copper ores, iron ores, tin ores, gold and precious stones;
 - Manufacture of the following mechanical products: electrical equipment and materials; specialized industrial machinery; machinery and equipment serving agriculture, forestry and fishery; building and repair of means of transportation by sea or rail;
 - Provision of infrastructure of telecommunications networks;
 - Manufacture of ferrous metals (cast iron and steel) with a capacity of more than 100,000 tons per annum;
 - Manufacture of high-quality cement by a modern technology with a designed capacity of more than 1.5 million tons per annum;
 - Production of fertilizers and pesticides;
 - Production of the following consumer goods and foods: table salt; milk; beer with a capacity of more than 50 million litres per annum; alcohol and spirits with a capacity of more than 10 million litres per annum;
 - Exploitation, filtering and supply of clean water in large cities;
 - Maritime transportation;
 - Monetary or insurance business.
2. Other companies:
 - Production of domestic animal breeding stock, cultivated plant seeds and frozen sperm;
 - Services for deep-sea fishing;
 - Management and maintenance of networks of important roads and waterways;
 - Management and operation of irrigation works;
 - Services for labour cooperation;
 - Operation of floors of fairs or exhibitions.

Currently, ministries and local authorities have been reviewing, classifying state-owned enterprises as regulated in the Decision No. 155/2004/QĐ-TTg to submit to the Prime Minister, therefore the lists of enterprises which the State holds 100 per cent of capital and controlling share are not available.

Question 30

Approximately what portion of Viet Nam's (1) output; (2) exports; and (3) imports are accounted for by state owned firms, e.g., firms where government equity ownership is 50 per cent or above or firms in which the state may hold a minority stake in the company but retains effective management control? Please identify which ministry or ministries own the shares of the companies. Indicate in general terms in what sectors these firms are found.

Answer:

Currently, there are around 150,000 enterprises in Viet Nam, of which 3,364 are State-owned enterprises. However, detailed statistics on output, export and import value of State-owned enterprises by ratios of State equity ownership (i.e. statistics broken into SOEs where government equity ownership is 50 per cent or above or SOEs in which the State may hold a minority stake in the company but retains effective management control) are not available.

Best available statistics of industrial production, import and export values of enterprises by forms of enterprises that could be obtained are presented in Annex 5 of this document.

Presently, the State-owned shares in an enterprise are held by a line ministry or People's Committee mandated to be responsible for the management of the State equity in the enterprise, whether the enterprise is owned by the line ministry or the provincial People's Committee respectively.

Question 31

Please identify ministries that have regulatory responsibilities for industries in which these ministries own state enterprises.

Answer:

Ministries and agencies that are owners of State-owned enterprises operating in sectors/lines of business under their State management authority include: Ministry of Industry, Ministry of Construction, Ministry of Transportation, Ministry of Agriculture and Rural Development, Ministry of Trade, Ministry of Posts and Telecommunication, Ministry of Fishery, Ministry of Culture and Information, General Department of Tourism.

However, State-owned enterprises operating in sectors/lines of business under the State management authority of the above ministries and agencies have been and will be equitized. In addition, policies applicable to enterprises are uniform and consistent, regardless they are State-owned enterprises or enterprises governed by the Law on Enterprises, ministries and People's Committees are enterprise owners but do not intervene in enterprises' business operation. They only exercise the supervision of the State capital in the SOEs.

Question 32

What proportion of Viet Nam's textile and garment industry is wholly or partially state-owned or otherwise state-controlled (e.g., golden share, management responsibility, etc.)?

Answer:

Detailed statistics as requested are currently not available. However, according to unofficial statistics, all garment companies have been equitized, except Viet Tien Garment Company that has now been transformed into the holding company and subsidiaries business model.

Question 33

What proportion of Viet Nam's fertilizer industry is state-owned or otherwise state-controlled (e.g., golden share, management responsibility, etc.)?

Answer:

Since all economic sectors are entitled to engage in production and trading of fertilizers and no discrimination between economic sectors exists, detailed statistics as requested are not available in Viet Nam. However, so far only the State-owned enterprises are involved in the production of nitrogenous fertilizer because of the capital-intensive characteristics of this industry. The Government of Viet Nam does not maintain any restriction on the participation of private enterprises in fertilizer production.

Question 34

What rules govern procurement by state-owned enterprises?

Answer:

Capital investments by state-owned enterprises are normally conducted through competitive bidding (as regulated by the Decree No.52/1999/ND-CP dated 8 July 1999; the Decree No. 88/1999/ND-CP dated 1 September 1999; the Decree No.07/2003/ND-CP 30 January 2003).

Question 35

Paragraph 48: We believe it would be useful for Viet Nam to provide the chart requested, indicating major economic sectors of the equitized firms, and demonstrating the progress of equitization over time.

Answer:

List of sectors, and lines of business which are equitized, transferred or sold are governed by the Decision No. 155/2004/QD-TTg dated 24 August 2004 of the Prime Minister on the criteria and classification lists of state-owned companies and independent accounting member companies of state-owned general corporations.

Up to 31 December 2004, 2,242 State-owned enterprises have been equitized in Viet Nam. Among them, SOEs possessing less than 5 billion VND of State-owned capital are 1,327 enterprises, accounting for 59.2 per cent and the majority of which is in construction, production of consumer goods, trade and services and agricultural processing industries; SOEs possessing from VND 5 to 10 billion of State-owned capital are 500 enterprises, accounting for 22.3 per cent; and the remaining 415 enterprises are SOEs possessing more than VND 10 billion of State-owned capital, accounting for 18.5 per cent. Among those equitized enterprises, there are also big ones such as Viet Nam Dairy Products Company (VINAMILK - of which the value of enterprise is VND 2,500 billion and State-owned capital is VND 1,500 billion), Song Hinh-Vinh Son Hydroelectric Plant (of which the value of enterprise is VND 2,114 billion and State-owned capital is VND 1,253 billion), Hochiminh City Insurance Company (BAO MINH – of which the value of enterprise is VND 1,311 billion and State-owned capital is VND 650 billion), etc. On average, the State holds 46.5 per cent of equitized enterprises' charter capital, employees hold 38.1 per cent and other shareholders altogether hold 15.4 per cent. The State holds controlling shares (i.e. of 50 per cent or over of enterprise's charter capital) in 661 enterprises, which account for 29.5 per cent of numbers of already equitized enterprises.

So far 26 shareholding companies converted from SOEs through equitization process have listed on Viet Nam's exchange market.

From 2005 onward, 1,460 state-owned enterprises are planned to be equitized or otherwise transferred, sold, closed or subject to bankruptcy.

More detailed information is provided in Annex 6 of this document.

Question 36

Paragraph 43: WT/ACC/SPEC/VNM/4/Rev.1 described enterprises where 100 per cent government ownership was intended to remain, citing Decree No. 56 of 2 October 1996. The description of its provisions has been excluded from WT/ACC/SPEC/VNM/5, and replaced by description referring to Decision No. 155/2004/QD-TTg, which outlines a somewhat different list of exempted sectors. Does Decision No. 155 replace Decree No. 56? What is the essential difference between the two pieces of legislation?

Answer:

The Decision No. 155/2004/QD-TTg does not replace the Decree No. 56/CP dated 2 October 1996 of the Government on state-owned enterprises operating in public services.

According to the Decision No. 155, the scope of business lines/sectors where SOEs equitization will not take place or the State will retain its controlling shares has been narrowed down considerably. In particular, the State only holds 100 per cent of capital of enterprises engaged in: production of explosives, toxic chemicals, radioactive substances; the national power transmission system; manufacture of weapons, military equipment and specialized equipment used for national defence and security; international and national communication backbone networks; flight control; printing of currency and valuable papers; construction lotteries; publishing houses; urban lighting; drainage in large urban areas; etc. SOEs ensuring essential needs for development of production and improvement of the social life of ethnic minorities living in mountainous, remote or distant areas are also included in the list of 100 per cent state-owned enterprises.

Question 37

Please clarify whether there are any Group 2 enterprises that have been equitized, and list them. What portion of equitized enterprises to date has been moved to Group 3?

Answer:

Up to 31 December 2004, there remain 3,364 State-owned enterprises in Viet Nam after the equitization of 2,242 State-owned enterprises. All equitized SOEs belong to Group 2. None of equitized enterprises has been moved to Group 3.

Question 38

How many of the firms equitized to date have had foreign investor participation? Have any equitized firms to date been transformed into FDI joint ventures? Please answer in as much detail as possible and provide examples.

Answer:

There are 18 equitized enterprises which have foreign investors' participation in Viet Nam. None of equitized enterprises has been transformed into FDI joint ventures so far.

Question 39

Describe the management structure of equitized firms. What roles does the state continue to play? Is any part of the board of directors or the management of these firms appointed by the government? In equitized firms in which employees own shares, who represents employee owners? How is that representative chosen? Please answer in as much detail as possible and provide examples.

Answer:

State-owned enterprise equitization are carried out in line with market principles. Shares are widely sold to public. Enterprises are converted to joint-stock enterprises which are governed by the Enterprise Law as all other joint-stock enterprises. The management structure includes the General Meeting of Shareholders; Board of Management voted by the General Meeting of Shareholders and Director (General Director) assigned by the Board of Management.

The relation between the State and shareholding enterprises are as follows:

- To shareholding enterprise without the State's capital, the State only acts as regulator, does not intervene in the affairs of the enterprise.
- Relation between the State (as a shareholder) to shareholding enterprise only exists in case the enterprise is partially or wholly owned by the State. The State, as other shareholders, has the rights and obligations corresponding to their capital contribution in the enterprise's charter capital. The State (as a shareholder) does not directly assign the management of shareholding enterprises. Such assignment is the responsibility of the General Meeting of Shareholders, Board of Management or Director/General Director, regardless the State holds controlling share or not.
- In case the State holds more than 10 per cent of the popular shares, the State as a shareholder nominates representative for the approval of the General Meeting of Shareholders to be a member of Board of Management. In case of the General Meeting of Shareholders' disapproval, the State would not have representative in Board of Management.

Concerning representative of the employees in equitized enterprises: In equitized enterprises in which the employees hold enterprises' shares, these employees are the owners of the shares without any representative. These employees implement their rights and obligations as shareholders. To implement the rights of a group of shareholders, they can organise the group and assign their representative. The current legislation does not have detailed provisions on shares of group of employees in equitized enterprise. Hence, representative of a group of employees' shares are not addressed by laws in Viet Nam. In some big shareholding companies, there have been cases where employees or their representative are involved in the management of the companies.

Question 40

In those equitized firms where the state maintains a controlling interest, does it appoint management? Does the top management of such firms report to a Ministry?

Answer:

The State (as a shareholder) does not appoint management in shareholding companies. Such appointment is the responsibility of the General Meeting of Shareholders, Board of Management or Director/General Director, regardless of the State holding controlling shares or not. Similarly, current legislation does not provide that the management of the shareholding companies has to report to an administrative ministry. Shareholding companies are only obliged to report as other companies.

In case the State holds controlling shares, the State would nominate its representative to be elected to the Board of Management. The representative is not automatically a member of the Board of Management, but is subject to the approval of the General Meeting of Shareholders. In case the representative is elected to the Board of Management and then assigned to be the Chairman, the General Director (Director) or other management titles, he/she has to report company operation to those he/she represents, not to any other agencies.

Question 41

We understand Viet Nam is considering raising the foreign ownership cap on equitized firms. Please advise the share percentages Viet Nam is considering allowing foreigners to buy? Is the government considering allowing foreign investor purchase of 100 per cent equity of equitizing firms in the future? What mechanism(s) will the government use to transfer/sell shares in a firm under equitization?

Answer:

According to the current regulations on the limitation applicable to shares purchased by foreign investors in a Vietnamese company, the maximum level is 30 per cent of the chartered capital of the company. This regulation is also applied to equitized enterprises. The List of business lines that foreign investors are entitled to purchase shares is issued by the Prime Minister. Raising the maximum level of shares purchased by foreign investors in some particular business lines could be considered in the future.

Mechanism for share sales to foreign investors applicable to equitized enterprises is stipulated in Regulation on capital contribution, share purchase of foreign investors in Vietnamese companies is attached to the Prime Minister's Decision No. 36/2003/QD-TTg dated 11 March 2003.

Question 42

Press reports on the issue indicate the government is considering discounting the price of shares of equitizing firms for "strategic investors" and "workers." Please define these terms. Please describe the transparency provisions the government is considering to insure that all potential investors have a fair chance to purchase shares in an equitizing company?

Answer:

The Decree No.187/2004/ND-CP dated 16 November 2004 of the Government on Transformation of State-owned enterprises into shareholding companies states that:

- Strategic investors are domestic investors such as: manufacturers and frequent suppliers of inputs to the enterprise; persons committed to purchase the enterprise's product over long term; persons who have long-term strategic interest closely related to the enterprise's products; persons who have long-term strategic interest closely related to the enterprise's business

operation and possess financial potentials and management competence (Article 26.2, Article 27.3 and Article 28.2).

- Employees in an equitized enterprise are those whose names are on the list of the enterprise's frequent employees at the time when the decision on its equitization is made.
- Strategic investors and employees are both eligible to purchase shares at discount in a newly-equitized SOEs subject to certain terms and conditions. Specifically, employees are entitled to purchase up to 100 shares (the par value of one share is set at VND 10,000) for each year of employment in the State sector at discount of 40 per cent of average auction price, and strategic domestic investors are entitled to purchase up to 20 per cent of number of shares for sale at discount of 20 per cent of average auction price.
- All the remaining shares after deducting the shares held by the State and the shares sold at discount to enterprise's employees and strategic domestic investors must be publicly auctioned to investors. These remaining shares must be equivalent to minimum of 20 per cent of charter capital according to Article 27.4. Accordingly, all other investors enjoy equal opportunity in purchasing shares.

Question 43

Are the shares of already equitized firms available for sale or resale? If so, when, and where? If the Government wishes to sell more of its shares in equitized firms, how does it do this?

Answer:

Shareholders of shareholding companies, including equitized enterprises, are free to transfer their shares to other investors, with the following exceptions:

- Strategic shareholders are not allowed to transfer their shares that have been purchased at discount within three years from the date when business registration is granted to the shareholding company. In special cases, these shares could be transferred prior to that date only upon the approval of the Board of Management (Article 38.2.b of the Decree No.187/2004/ND-CP). Shares transfer must be carried out at the shareholding company or at intermediate financial institutions via public auction.
- Shareholders who possess preferential voting shares (if any) are not allowed to transfer such shares to other investors.
- In the first three years from the date when business registration is granted to the shareholding company, common stocks of founding shareholders could be transferred to non-shareholders upon the approval of the General Meeting of Shareholders. The General Meeting of Shareholders makes decision on these transfers of shares without the votes of the shareholders who intend to sell their shares.

Share offers and transfers are subject to the current Law on Enterprises.

Regarding the State's shares in equitized enterprises, the State can transfer its shares as founding shareholders in the first three years; and after that as other common shareholders. Share transfers made by the State is subject to the above-mentioned general regulations.

If the shareholders being the State or SOEs want to sell more of their shares, the sales will be taken place in form of public auction at intermediate financial institutions or securities exchange. The Government of Viet Nam encourage eligible equitized enterprises of which the State holds controlling shares to list in the securities exchange.

Question 44

Paragraph 44 of WT/ACC/SPEC/VNM/5 identifies telecommunications as a sector where the state "should retain special interest or controlling shares when equitizing". Does this policy extend to value-added telecommunications firms? Please provide a list of state-owned operators subject to this policy, the level of equitization achieved to date among these operators, and future equitization plans for these operators.

Answer:

The Prime Minister's Decision No. 155/2004/QĐ-TTg also applies to the equitization of State-owned existing facilities-based telecommunications providers.

As the above-mentioned Decision has just been recently promulgated (the end of August 2004), Viet Nam is now in the process of classification and assessment of all telecommunications providers for equitization. The detailed information will be provided as soon as available.

Question 45

Paragraph 50 of WT/ACC/SPEC/VNM/5 that 2003 Law on State-owned Enterprises provides for the "progressive elimination of subsidies granted to State-owned Enterprises (freezing and elimination of debts and preferential credits) and limited the involvement of the State in asset evaluation and approval in the mobilization of capital." Please list and describe the subsidies the 2003 law specifies for "progressive elimination." Please provide the timetable for subsidy elimination set by the law.

Answer:

- Paragraph 50 of the document WT/ACC/SPEC/VNM/5 merely presents illustrative examples for legal principles concerning business operation of State-owned enterprises as stated in the Law on State-owned Enterprises of 2003. Currently, there is no longer any subsidy that only restricted to SOEs. The Law on SOEs does not include any detailed provisions for that principle regarding subsidies to SOEs. Hence, the revised law does not provide for concrete actions relating to the progressive elimination of subsidies granted to State-owned Enterprises.
- Asset valuation: according to current regulations, the Government does not intervene in asset valuation process. The value of an asset is determined by the market and asset purchases and sales are required to be conducted through competitive tendering and are decided by the enterprises themselves. Asset valuation is provided by consultancy organizations and valuation centres subject to market mechanism and via auction.
- The Law on State-owned Enterprises of 2003 decentralizes decision-making power in regard of capital mobilization in SOEs as follows: the Board of Management (if applicable) or the representative of the owner of the State equity makes decision on capital mobilization if the value of proposed project's capital is greater than the enterprise's chartered capital, while other projects are decided by the General Director or the Director of the enterprise (in accordance with the Decree No. 199/2004/ND-CP on Regulation on Financial Management of State-owned enterprises and Management of State equity in other enterprises).

Question 46

What "limits" does the law place on the State's involvement in asset evaluation and approval of capital mobilization? How does the law allow the State to intervene in the management of state-owned enterprises?

Answer:

With respect to "limits" placed by the law on the State's involvement in asset evaluation and approval of capital mobilization:

- Asset valuation: according to current regulations, the Government does not intervene in asset valuation process. The value of an asset is determined by the market and asset purchases and sales are required to be conducted through competitive tendering and are decided by the enterprises themselves. Asset valuation is provided by consultancy organizations and valuation centres subject to market mechanism and via auction.
- The Law on State-owned Enterprises of 2003 decentralizes decision-making power in regard of capital mobilization in SOEs as follows: the Board of Management (if applicable) or the representative of the owner of the State equity makes decision on capital mobilization if the value of proposed project's capital is greater than the enterprise's chartered capital, while other projects are decided by the General Director or the Director of the enterprise. (in accordance with the Decree No. 199/2004/ND-CP on Regulation on Financial Management of State-owned enterprises and Management of State equity in other enterprises).
- The Law on State-owned Enterprises of 2003 states that the Government is the representative of the State ownership, and the Board of Management is the direct representative of the State ownership in SOEs. The Government does not directly intervene in enterprises' business operation but confines its role to managing the State equity in enterprises, supervising and evaluating the efficiency of the State capital employment in SOEs in accordance with uniform and consistent criteria.
- The State is responsible to assure enterprises' autonomy and self-accountability in conducting business. It does not intervene in issues under the authority of the Board of Management, the General Director, the Director and the management bodies of SOEs. Only certain organisations and individuals who are mandated to represent the State ownership in SOEs are entitled to make decisions on certain issues relating to the SOEs in the same manner as shareholders in joint-stock companies, capital contributors in limited liability companies and sole owner in private companies. The decision-making power of these organisations and individuals are stipulated as follows:
 - Director of state-owned enterprise which does not have Board of Management is entitled to make decisions on investment projects of values less than 30 per cent of the total remaining asset value in the accounting book of the enterprise or of values in smaller proportion than that specified in the enterprise's Charter and on borrowing, lending, leasing and other economic contracts of values less than the enterprise's charter capital.
 - Board of Management in State-owned enterprise is entitled to make decisions on investment projects of values less than 50 per cent of the total remaining asset value in the accounting book of the enterprise or of values in smaller proportion than that specified in the enterprise's Charter and on borrowing, lending, leasing and other economic contracts of values greater than the enterprise's charter capital.
 - Investment projects or economic contracts of values over the above-mentioned levels are also signed by the legal representative of the enterprise upon the approval of the State owner.
- The decision-making authority in an equitized SOE rests upon its Board of Management.

Question 47

In paragraph 50, WT/ACC/SPEC/VNM/5 foresees the restructuring of "public-interest enterprise" through a new "Government Decree on Production and provision of Public Services." What changes are under consideration? What government agency or agencies would determine if goods and services are "socially and economically essential, or their

production was not viable under market conditions?" What criteria would be used to make such determinations?

Answer:

The most important change foreseen in the draft Decree which is under consideration is to expand the number of enterprises participating in the production and distribution of public goods and services. In order to do so, the State will procure these goods and services through orders and bidding.

Criteria for identifying public goods and services are as follows:

- Goods and services which are essential to economic-social life of the whole population or of a community of a region, or to the national security and defence (these criteria would be detailed in the draft Decree and would cover sectors such as production of weapons, explosives, chemicals for the national security and defence; electricity supply and distribution in rural areas, in mountainous and remote areas, in islands or borderlands; management and operation of small and medium irrigation works; production and preservation of plant varieties/seeds and animal breeds, protection of natural forests, etc.)
- Goods and services that may not be profitable to produce and distribute.
- Goods and services that are ordered or put up in a tender at the price or fee that is regulated by the State.

Upon these criteria, Provincial People's Committee, ministries, agencies would propose the list of particular goods and services to the Ministry of Planning and Investment to submit to Government for the official list of public goods and services.

Question 48

When will this decree be provided to the Working Party?

Answer:

The Decree shall be submitted to the Working Party as soon as it is promulgated and the translation is completed.

Question 49

We recommend that in the interest of transparency and clarity, the section on State-Owned Enterprises be combined with the section on State Trading Enterprises with a separate section on Privatization (equitization).

Answer:

As it is a technical matter, Viet Nam would like the Secretariat to consider this suggestion in accordance with the practice in other accessions.

Question 50

We will request a commitment for a combined section on SOEs and STEs and will provide draft language for Viet Nam's consideration.

Answer:

Viet Nam looks forward to receiving the draft language as soon as possible.

- **Pricing Policies**

Question 51

Paragraph 51: There are price controls on telecommunications services. In this context, how will services provided cross-border (Mode 1) be treated?

Answer:

In principle, Viet Nam respects the autonomy of businesses to set prices as well as the competition in terms of prices among telecom providers in a fair manner (i.e. consistent with the applicable laws and regulations).

Price controls only apply to local subscription charge, charge for using local fix subscription line, universal service charge, and services charge imposed by those providers with dominant market share, regardless the modes of supply. The service charges then must be submitted to the Ministry of Posts and Telematics for consideration and approval on the basis of appropriate costs and in consistency with general regulations on financial controls (details are provided in the Prime Minister's Decision No. 217/2003/QĐ-TTg dated 27 October 2003)

Question 52

We would be grateful for the inclusion of the following text after paragraph 52 of WT/ACC/SPEC/VNM/5:

52A. The representative of Viet Nam said that cotton and sugar processing plants were required to purchase domestic raw cotton and sugar cane at minimum prices and that selected trading enterprises received interest rate subsidies to encourage purchases from domestic producers at times of price weakness aimed at supporting the internal prices of pork, sugar and rice.

Answer:

The request of inclusion of the above text after paragraph 52 should be addressed to the Secretariat for consideration. Viet Nam does not oppose to the inclusion of the mentioned text if it deems necessary to do so. We, however, would note that this issue would be more appropriately included in the section on agricultural policies to avoid confusion.

Question 53

We are pleased to see that in paragraph 56 of WT/ACC/SPEC/VNM/5 the square brackets have been removed from the commitment to apply any price controls in a WTO-consistent fashion.

We would wish to see the square brackets removed from the commitment to publish any changes to the list of goods and services subject to State price control in the Official gazette.

Answer:

Viet Nam agrees to remove the brackets.

- **Competition Policy**

Question 54

Do the provisions of the new Competition Law explicitly address whether wholly or partially State-owned firms retain under law competitive privileges compared to other enterprises?

Answer:

The Competition Law applies to enterprises of all forms of ownership. There is no provision of this Law addressing that wholly or partially State-owned firms retain under law competitive privileges compared to other enterprises

Question 55

Paragraph 58 of WT/ACC/SPEC/VNM/5 indicates the new Competition Law can be downloaded from the Ministry of Trade website. Please provide the URL for the English-language version.

Answer:

An English-language version of the new Competition Law can be downloaded from the following address: <http://www.mot.gov.vn/en/Files/1727D5D2C1F.PDF>

Question 56

What is the process outlined in the new competition law by which private and/or equitized firms can seek redress for anti-competitive behaviour by state enterprises?

Answer:

Private and/or equitized firms can, under Article 58(1), file a complaint directly to Competition Administration Agency when they believe that their legitimate rights and interest are being violated by anti-competitive behaviours of state-owned enterprises.

The Competition Administration Agency is responsible for initiating a preliminary investigation (Article 59 and 86). The Competition Administration Agency will make a decision on an official investigation if there is an evidence on the violation of the Competition Law or otherwise suspend the investigation (Article 87).

After finishing the official investigation, the Competition Administration Agency will transfer the investigation report and file to the Competition Council (Article 93).

The Competition Council will set up a Tribunal for handling the competition case and the Tribunal will decide either to open an hearing, or to return the file to the Competition Administration Agency for supplementary investigation, or suspend the handling of that specific competition case (Article 99).

Upon the decision on opening a hearing, a hearing will be held openly and the Tribunal will discuss and cast secret ballots and make a decision by majority after having heard the parties at the hearing presenting their opinions and arguments (Article 104).

Decision on resolution of competition case will take legal effects in 30 days after the signing date if during that period of time no complaint has been lodged against it in accordance with Article 107 (Article 106).

If any parties do not agree with the decision on resolution of competition case in whole or in parts, they can lodge a complaint with the Competition Council (Article 107).

If the complainants do not agree with the decision on resolution of complaint by the Competition Council, they can initiate an administrative law suit to the competent provincial-level people's courts against one part of or the whole decision on resolution of complaint (Article 115).

Question 57

We reserve the right to seek commitment language for this section.

Answer:

Viet Nam takes note of the above comment and would also like to note that the WTO has not developed rules governing competition policy.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 58

In paragraph 62, the draft Report states that "It (the central Government) exercised administrative power at all levels of the administrative system, i.e. central government, provinces and cities directly under the central government, districts, precincts and ward communes." In addition to this, it also states that "The Government ensured uniform nationwide implementation of the legal system." We would like to seek clarification on the concrete mechanism of ensuring such uniform implementation of the legal system.

Answer:

According to Article 18(2) of the Law on Government Organization, the government exercises tasks and power in deciding direction measures, in examining the implementation of the constitution, laws and governmental decisions of State agencies, economic organizations, social organizations and people's armed forces and citizens; in organizing and guiding propagation and education of the Constitution and laws and in reporting to the National Assembly on prevention against legal infringement and crime. Furthermore, the legal enforcement mechanism for local authorities is stipulated in the Law on People's Council and People's Committee Organization and the issuance of legal documents to implement the documents of the National Assembly and the National Assembly Standing Committee (central authorities) is laid down in the Law on the Promulgation of Legal Normative Documents and the Law on the Promulgation of Legal Normative Documents of People's Councils and People's Committees. None of administrative authorities from the provincial level downwards is permitted to issue provisions contrary to those issued by the Central Government. The People's Procuracies of all levels are responsible for supervising the promulgation and implementation of legal documents of local administrative agencies to ensure the uniform enforcement of laws.

Question 59

In paragraph 65, the draft Report states that "Viet Nam's legislation neither provided for direct application of international treaties in the national legal system nor did it ban the direct application of such treaties.... many (but not all) Vietnamese legal documents included a general provision that "in case that treaties to which Viet Nam is a party stipulate otherwise, the

provisions of those treaties shall prevail"... the new Law on Treaties would clarify further the hierarchical order of treaties in the legal system of Viet Nam." Furthermore, in paragraph 76, Viet Nam made a commitment that "Viet Nam would ensure uniform application of its commitments upon accession to the WTO. His Government would implement measures as necessary to carry out its obligations required by the WTO and the obligation of Viet Nam stipulated in its accession Protocol." Since how the WTO Agreements are to be adopted in the domestic legal regime does not seem to be clear by these explanations, we would like to seek clarification on this point and it should be reflected in the Report.

Answer:

Viet Nam will strictly observe the WTO Agreements through the following mechanisms:

1. Viet Nam's legislation on international treaties (Articles 23 and 24 of the Ordinance on Conclusion and Implementation of International Treaties of 20 August 1998) provides for Viet Nam's commitments to implement international treaties to which Viet Nam is a party. Furthermore, as a party to the 1969 Vienna Convention on the Law of Treaties, Viet Nam is liable to observe this Convention and obligated to ensure the implementation of international commitments made by Viet Nam, including commitments within the WTO framework.
2. WTO Agreements shall prevail in case of conflicts between the provisions of domestic legal documents and the provisions of WTO Agreements to which Viet Nam is a party (in accordance with the provisions of many Laws, Ordinances and Decrees concerning the prevailing of international treaties).
3. Amendment, supplement, annulment or promulgation of national legal documents as required for the implementation of WTO Agreements shall be carried out (in accordance with Paragraph 5 Article 24 of the Ordinance on Conclusion and Implementation of International Treaties of 1998).

The draft Law on Conclusion, Accession and Implementation of International Treaties, scheduled to be submitted to the National Assembly for approval in May 2005, stipulates measures to ensure the implementation of international treaties in the following directions:

- International treaties shall prevail in case of conflicts between the provisions of national legal documents and the provisions of international treaties on the same subjects (it will not be necessary to repeat this provision in every specialized legal documents to be promulgated after the entry into force of this draft law).
- International treaties in force with respect to Viet Nam shall be directly applied in accordance with the decisions of competent authorities.
- The competent authorities shall make decisions or recommendations on the promulgation of such legal documents as required for the implementation of international treaties.

Question 60

Paragraph 65: Has the Law on Treaties been submitted to the National Assembly (planned for end 2004)? What will be the status of the WTO Agreements in the domestic legal order?

Answer:

The draft Law on Conclusion, Accession and Implementation of International Treaties was submitted to the National Assembly for comments during its 6th session in November 2004 and is currently being completed for submission to the National Assembly for approval at its 7th session scheduled to be held in May 2005.

Regarding the status of WTO Agreements in the Vietnamese legal system:

Existing provisions and present practices:

- In most of Laws and Ordinances enacted in Viet Nam governing various issues, the provision of giving priority to the application of international treaties is common wherein it is stated that in case that treaties to which Viet Nam is a party stipulate otherwise, the provisions of those treaties shall prevail.
- Article 23 and 24 of the Ordinance on Conclusion and Implementation of International Treaties of 20 August 1998 guarantee the implementation of international treaties with the key provisions as follows:
 - Viet Nam shall strictly observes international treaties it has concluded or participated.
 - The agencies that have made recommendation on the conclusion of international treaties shall have to submit to the Government plans on the implementation of the concluded international treaties.
 - The concerned ministries or branches shall, within their functions, tasks and powers, have to implement the international treaties already concluded by the Socialist Republic of Viet Nam.
 - In cases where an international treaty is breached, the agency that has made recommendation on the conclusion of such treaty or the concerned State agency shall coordinate with the Ministry of Foreign Affairs in recommending to the Government necessary measures to protect the legitimate rights and interests of the Socialist Republic of Viet Nam.
 - Annually and when requested, the agencies that have made recommendation on the conclusion of international treaties and the relevant State agencies shall submit to the Government and the State President reports on the implementation of the concluded international treaties.
 - In cases where the implementation of an international treaty requires that legal document(s) of the Socialist Republic of Viet Nam be amended, supplemented, annulled or promulgated, the agency that has made recommendation on the conclusion of such international treaty and the relevant State agencies shall by themselves have to or propose the competent State agencies to promptly amend, supplement, annul or promulgate such legal document(s).
- The draft Law on Conclusion, Accession and Implementation of International Treaties has the key provisions as follows:
 - In the event of conflicts between provisions of an international treaty to which Viet Nam is a party and those of domestic legal documents regarding the same subject, the provision of the international treaty shall prevail (this provision shall not be repeated in individual specialized legal documents enacted after the date of effect of this Law);
 - Viet Nam shall strictly observes international treaties to which it is a party.
 - Direct applicability of some provisions of international treaties is possible in accordance with decisions made by the State authorities and if it is impossible, the relevant authority when deciding to sign, ratify or accede to those international treaties must enact legal documents to implement such treaties.

In short, the common spirit of the existing legislation, present practices as well as the draft Law on Conclusion, Accession and Implementation of International Treaties is that Viet Nam shall strictly observes the WTO Agreements which Viet Nam accedes to and agrees to be bound by and in the event of a conflict between a provision of any of these WTO Agreements and that of domestic legislation, the provision of that WTO Agreement shall prevail.

Question 61

Paragraphs 66 and 67 of SPEC/VNM/5 describe a court system that is subordinate to the executive and legislative branches of government. Does Viet Nam's law require that all judges be members of the Communist Party of Viet Nam?

Answer:

According to Article 2 of the Constitution of 1992 that was amended and supplemented in 2001, the power of the Socialist Republic of Viet Nam is uniform, and the State bodies are assigned and coordinate with one another in exercising the legislative, executive and judicial rights.

According to Article 5(1) of the Ordinance on Judges and People's Jurors (Ordinance No. 02/2002/PL-UBTVQH11 dated 4 October 2002), "Viet Nam's citizens who are faithful to the fatherland and the Constitution of the Socialist Republic of Viet Nam, good in moral sense, upright, honest, determined to protect the socialist legal system, having legal Bachelor's degree, being trained about judging, experienced, capable of doing judgement in accordance with the Ordinance, good in health to fulfil tasks assigned can be selected and designated as judges".

Question 62

Since the courts are subordinate to Viet Nam's political leadership, what guarantees exist that a private company in an economic dispute with a government entity or a state-owned enterprise would receive an impartial hearing?

Answer:

Viet Nam's legal system has various provisions to ensure impartial hearing in economic cases as follows:

Article 132 of the Constitution states:

"The defending right of the accused is assured. The accused can defend by himself/herself or request another person to defend him.

The lawyer organizations are set up to help the accused and the persons concerned to protect their legitimate rights and interests and help protect the socialist legal system."

The Civil Procedures Code promulgated in 2004 provides for the principle on the equality in rights and obligations in civil procedures, by which all of agencies and organizations are equal, regardless of the form of organization, the form of ownership and other issues (Article 8). The principle on judging independence and only abiding by the laws of judges and the People's Jurors is set forth in Article 12 of the Civil Procedures Code and Article 4 of the Ordinance on Judges and People's Jurors. In order to ensure impartial judgment made by judges and People's jurors, the Civil Procedures Code provides that they are not allowed to judge if valid reasons are found to show that they might be prejudiced to fulfil their tasks and authority (Article 16). Articles 46 and 47 of the Civil Procedures Code explicitly lay down the cases where judges and People's jurors have to refuse judgement or are changed to assure impartial hearing. Related persons are allowed to ask for changing judges and People's jurors if proof is found to show that they might not be impartial to judge (Article 58). The Civil Procedures Code also clearly stipulates the supervision on legal compliance in civil procedure, by which the People's Procuracies execute the requesting, appealing and petition rights in accordance with the laws to ensure that civil cases are settled timely and in consistency with the laws. Furthermore, the Civil

Procedures Code provides for the complaint and denouncement mechanism in civil procedure in which individuals, agencies and organizations can complain and denounce illegal acts of persons who carry out civil proceedings.

Question 63

According to Paragraph 70 of WT/ACC/SPEC/VNM/5, a court of first instance hearing is conducted by a "council of trial comprising two judges and one juror, deciding by majority vote." How is the "council of trial" selected? Do plaintiff and defendant have any role in the process?

Answer:

According to the Law on the Organization of People's Courts, the tribunal presidents of courts at all levels are entitled to organize trial activities in their courts. The power to assign judges and people's jurors for specific cases rests upon the tribunal presidents. Related persons are not allowed to participate in the process of forming the Council of Trial. They are, however, allowed to request for changing judges and People's jurors if having evidence to show that the latter might not be impartial in performing their duties (Articles 46, 47, 58, 213 and 214 of the Civil Procedures Code.)

In addition, Article 172 of the Civil Procedures Code provides that:

"The tribunal president must assign one judge for the case within three working days from the date of handling the case.

During the process of settling the case, if the judge assigned is not able to continue his/her duties, the tribunal president must assign another judge to perform such duties. If the stand-in judge is not available while the case is being settled, the case must be settled again from the beginning"

Question 64

Paragraph 70 of SPEC/VNM/5 indicates that the loser of a court of first instance decision has only 10 days from the date of the court's declaration to file an appeal. Does Viet Nam intend to provide a longer period for the loser of a court of first instance decision to file an appeal?

Answer:

According to the Civil Procedures Code promulgated in 2004, the duration for appeal against judgement made by the court of first instance is 15 days from the date of giving the judgement. For related who are absent from the trial, the duration is counted from the date when the judgement is given to them or listed. In cases where the appeal is sent via post, the duration for appeal is counted from the date when the sending post stamps on the envelop (Article 245).

Question 65

Paragraph 71 states that Article 11 of the Ordinance on Procedures of Settlement of Administrative Cases issues relating to customs, taxes, licensing fees and charges were all under the purview of administrative courts. What courts are available for appeals from administrative decisions in other areas covered by WTO provisions, e.g., trade remedy rulings, actions dealing with quota administration, licensing (other than fees) and including the granting of activity licensing, TBT and SPS rulings on conformity with technical regulations, corporate registration, actions of state trading enterprises, intellectual property rights, etc.?

Answer:

According to the current provisions of Viet Nam's laws, both administrative decisions and acts can be challenged through legal proceedings with administrative courts (belong to Viet Nam's system of People's courts) after the petition has been filed for the first time to agencies and individuals having administrative decisions or acts which are being complained. Therefore, administrative decisions concerning the contents mentioned in the question can be challenged at administrative courts.

Question 66

Referring to paragraph 72 of WT/ACC/SPEC/VNM/5, is Viet Nam planning legislative changes to allow full use of administrative appeals prior to recourse to the courts? Would any such new law ensure that participation in one process would not preclude recourse to the other?

Answer:

The draft Law on Complaint and Denunciation (amended) has recently been added to the Program for Enacting Laws and Ordinances in 2005 of the National Assembly Legislature XI (2002-2007) in accordance with the Resolution of the National Assembly No. 35/2004/QH11 dated 25 November 2004. The Government has requested the National Assembly to consider and pass the Law on Complaint and Denouncement (amended) at its 8th Session in October 2005. The National Assembly will make its decision in its 7th Session in May 2005.

Question 67

We would appreciate advice from Viet Nam on its consideration of allowing recourse to both administrative and legal appeals referred to in paragraph 72 of WT/ACC/SPEC/VNM/5.

Answer:

Viet Nam is currently in the process of studying to improve laws so as to allow parties involved in administrative disputes to bring administrative disputes before the court to be settled at any stage of the process of settling administrative complaints.

Question 68

Paragraph 73 indicates that "judgments or decisions of the People's court" are "enforced in accordance with the Ordinance on implementation of civil judgments." How would Viet Nam deal with the situation in which the loser of a civil economic case failed to comply with a court's judgment?

Answer:

According to the Ordinance on Civil Judgment Execution (Ordinance No.13/2004/PC-UBTVQH11 dated 25 December 2001), judgment creditor (the party in whose favour the judgment was made) is entitled to ask the judgment execution authority to issue a writ of judgment execution if judgment debtor (the party against whom judgment execution is sought) did not voluntarily pay the judgment. The judgment execution authority is entitled to take compulsory measures against judgment debtors who are able to pay the judgment but not voluntary to do so within the stipulated time-limit. Stipulated compulsory measures consist of account deducting; money deducting; withdrawing valuable documents of the judgment debtor; judgment debtor's income deducting; property seizing; forcing obligations of transferring property, moving houses and transferring the land use right and forcing to do or not to do certain activities as stated in the verdict or in the court's decision. The

judgment execution staff are allowed to take compulsory measures timely as set forth in the Ordinance on Civil Judgment Execution in cases where they are necessary to prevent judgment debtors from dispersing or destroying property or not implement the judgement. In particular, the Criminal Code provides for crime against implementation of the verdict according to which those who do not implement the Court's effective verdict or decision will, in addition to having been taken necessary compulsory measures against, be sentenced three years' non-imprisonment punishment for re-education or sentenced six months to three years' imprisonment.

Question 69

Paragraph 74 of WT/ACC/SPEC/VNM/5 summarizes arbitration procedures in Viet Nam. Can a private company seek arbitration to resolve an economic dispute with the government or state-owned enterprise? Has the government or state-owned enterprises consented to arbitration to solve a dispute? Has an arbitration panel ever ruled against a government entity or state-owned enterprise?

Answer:

According to Article 1 of the Ordinance on Commercial Arbitration, the Ordinance provides regulations on the organisation of arbitration and the conduct of arbitration proceedings to resolve disputes arising from commercial activities upon agreement of the parties involved. Both private and state-owned enterprises can be the parties to the process of settling disputes at domestic and foreign arbitration tribunals. In addition, the Ordinance has no discriminatory treatment in handling at the arbitration tribunals.

As stipulated by laws, arbitration proceedings are not open. Therefore, statistics as requested are not available.

Question 70

According to paragraph 74 of WT/ACC/SPEC/VNM/5, "domestic and international arbitration judgments had immediate effect in Viet Nam." What is the basis in law for this statement? How are arbitral judgments enforced? Since creation of the domestic arbitration system, have arbitration decisions been enforced? Have arbitration decisions against the government or state-owned enterprises been enforced? If so, please provide case examples.

Answer:

Please revise the paragraph as follows:

As for awards made by domestic arbitrators, Article 5 of the Ordinance on Commercial Arbitration states "In circumstances where the agreement on arbitration has been made, if a party initiates legal proceedings with the court, then the court must refuse to handle the case, except for the cases where the agreement on arbitration is void." According to Article 44.4, arbitration awards take effect from the date of announcement. Article 45(1) of the Ordinance on Commercial Arbitration provides that "Arbitration awards can be announced at the final session or afterwards, but within 60 days from the date of closing the final session at the latest. The complete arbitration awards in writing must be sent to the parties immediately after the date of announcement." The party that requests the enforcement of arbitration awards must file a request for award enforcement in writing to a provincial judgment execution agency if the awards made by domestic arbitrators are not voluntarily carried out within 30 days from the date of announcement. The detailed procedures are set forth in the Ordinance on Civil Judgment Execution. Since the establishment of the domestic arbitration system, a number of arbitration awards have been carried out.

Question 71

Paragraph 74 of WT/ACC/SPEC/VNM/5 notes that if a party to an arbitration proceeding did not accept the decisions of the arbitrators, it could request an authorized People's Court to try the case. Could the People's Court decline to try the case?

Answer:

Please revise the paragraph as follows:

According to the Ordinance on Commercial Arbitration, awards made by domestic arbitrators can be nullified by the Court in certain cases which are listed in the reply to Question 72. In cases where arbitration awards are nullified and the parties involved have no other agreement, the dispute can be brought to the court.

Question 72

Paragraph 74 also indicates that Ordinance No. 08/2003/PL-UBTVQH on Commercial Arbitration stipulated that decisions of an arbitrator would be final and binding, unless nullified by a court according to the provisions of this Ordinance. Please identify the circumstances under which a court could nullify the decisions of an arbitrator.

Answer:

According to Article 54 of the Ordinance on Commercial Arbitration, a court could nullify the arbitration awards in the following cases:

- An agreement on arbitration does not exist;
- The agreement on arbitration is void under the Ordinance;
- The members of the arbitration tribunal and arbitration proceedings are not in consistency with the agreement of the parties according to the provisions of the Ordinance;
- The dispute does not fall under the authority of the arbitration tribunal. In cases where the arbitration award is partly not under the authority of the arbitration tribunal, it will be nullified;
- The requesting party proves that there is an arbitrator violating the obligations of the arbitrator as laid down in the Ordinance; and
- The arbitration award is contrary to the public interests of the Socialist Republic of Viet Nam.

Question 73

Does Viet Nam intend to become a party to the Washington Convention on the Settlement of Investment Disputes? If so, When?

Answer:

With technical assistance from some Working Party Members, Viet Nam is considering to become a party to the Convention.

Question 74

We would like to propose the following commitment language for this section. We reserve the right to propose further modifications to commitment language for this section.

"The representative of Viet Nam confirmed that the provisions of the WTO Agreement would be applied uniformly throughout its customs territory, including in SEZs and other areas where special regimes for tariffs, taxes and regulations were established and at all levels of government. The Working Party took note of this commitment."

"The representative of Viet Nam further confirmed that it would revise its relevant laws and regulations so that its relevant domestic laws and regulations would be consistent with the requirements of the WTO Agreement on procedures for judicial review of administrative actions. He further stated that the tribunals responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement, and would not have any substantial interest in the outcome of the matter. The Working Party took note of these commitments."

Answer:

As the proposed language is not final, Viet Nam is willing to discuss in details the commitment language for this section.

Question 75

Paragraph 77: Could a commitment paragraph be added to this section? We suggest:

"The representative of Viet Nam confirmed that the provisions of the WTO Agreement should be applied uniformly throughout the Vietnamese customs territory, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations were established.

He added that, when informed of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts."

Answer:

Viet Nam agrees with paragraph 1 of the commitment proposal that: "The representative of Viet Nam confirmed that the provisions of the WTO Agreement should be applied uniformly throughout the Vietnamese customs territory, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations were established."

However, Viet Nam does not agree with paragraph 2 of the commitment proposal since in the WTO, only the Dispute Settlement Body is entitled to decide whether a Member is in violation of the WTO Agreements.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 76

We thank Viet Nam for the improvements in its proposed commitments on trading rights, set out in Annex 2 of Table 1 of WT/ACC/SPEC/VNM/5. We are pleased to see that Viet Nam now proposes trading rights from accession for meat, dairy products, citrus fruits, maize, wheat and plant oils. However, we are disappointed to note that there are still a number of areas that would be unbound (including: rice; tobacco; petroleum; motion picture film; printed books,

newspapers, brochures and leaflets; printing machines; records, tapes and other recorded media), while trading rights for certain goods (including wine, sugar and motor vehicles) would not commence until 2010. We note that Viet Nam makes commitments on joint ventures, but that it is only from 1 January 2009, that 100 per cent foreign directly invested enterprises will be allowed to engage in import and export activities.

- **We urge Viet Nam to reconsider the timeframes proposed and make commitments so that, from the date of accession, any natural or legal person, domestic or foreign, will have the right to be the importer or exporter of record in relation to any product allowed to be imported into or exported from Viet Nam, and in the case of importation, will have the right to sell those products to any legal or natural person, domestic or foreign, who has the right to distribute them.**

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in the Schedule of Commitments on import and export trading rights in Annex 2 of this document.

Question 77

With regard to equipment for mineral exploitation and processing of agricultural products and aquatic products mentioned in the sixth line from the bottom of paragraph 82, we would like to clarify the detail of such equipment.

Answer:

The followings are some examples of such equipment:

1. All kind of soil and stone borer; excavator; bulldozer; gas compressor, truck for carrying ore; ore feeder, crusher (jaw crusher, hammer crusher, rotor crusher, cone crusher, roll crusher); slurry pump; flotation machine; magnetic separator; electric separator; filter; thickener; feeder; mill; spiral separator, centrifugal separator; flocculant dosing; autoclave digester; acid pump; metallurgical furnaces; ore analyse equipment; combined cutter; dense media separator; gasproff transformation station; other kind of excavators; electric locomotive TY7H; locomotive of a power exceeding 1,000 CV;
2. Excavator (for multipurpose using and specialized in agriculture and forestry) of a power exceeding 35 CV; internal combustion engines of a power exceeding 150 CV including hydraulic machine for fishing boat; agricultural processing line (milk, coffee, meat, fruit and vegetable), high speed separated equipment (exceeding 4,000 v/minute); cattle-feed tablet machine exceeding 6 T/hour.

Question 78

Many Members raise the issue pertaining to trading rights. In particular, the right to import does not seem to be recognized as "autonomous right" and it has a meaning only in relation to the right to distribution. Many Members take issue with the Vietnamese side on such treatment of trading rights by Viet Nam from the point of its consistency with Articles 3 and 11 of GATT 1994. We would like to seek once again a detailed explanation by the Vietnamese side on this point from the legal point of views.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document, whereby the trading rights have been addressed towards being recognised as an "autonomous right".

Question 79

With regard to paragraphs 85 and 86, it is indispensable that upon the Vietnamese accession to the WTO, foreign enterprises as well as Vietnamese Joint Venture companies with foreign enterprises are entitled to engage in commercial activities in Viet Nam with the same rights as Vietnamese companies enjoy. In light of this, we fully shares the concerns expressed in paragraph 88 and would like to request the Vietnamese side to rectify, prior to its accession the WTO, the current situation where foreign companies are only allowed to engage in export activities.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document, whereby the trading rights have been opened to foreign enterprises under a schedule contained therein.

Question 80

Paragraph 88: We again take note of Viet Nam's responses to the questions regarding this issue in WT/ACC/VNM/32, WT/ACC/VNM/33 and WT/ACC/SPEC/VNM/5 and the offer in Annex 1 to gradually implement Articles III and XI and grant trading rights to firms and individuals through 2011. We think this can be done in a manner that addresses Viet Nam's concerns to safeguard its economy, in ways applied by other Members of the WTO.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document, whereby no items are excluded (i.e., unbound).

Question 81

While we note Viet Nam has requested transitions, our preference remains for Viet Nam to commit that from the date of accession, any natural or legal person, domestic or foreign, will have the right to be the importer of record of any product allowed to be imported into Viet Nam, whether it is all types of media or autos, for example, and to make those products available for purchase and distribution by any legal or natural person, domestic or foreign, having the right to engage in distribution in Viet Nam's market.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document.

Question 82

We again reinforce our concerns that Viet Nam places WTO inconsistent restrictions on imports by limiting a foreign company's right to import solely to goods needed for their own consumption or production activities, whereas no such restrictions are in place for purchases of domestic manufactures by these firms. This is a clear violation of Article XI and Article III of the GATT 1994.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document.

Question 83

We acknowledge that the right to import is distinct from the right to distribute and seek only to achieve for imported goods access to Viet Nam's channels of distribution on the same terms as domestic goods.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document.

Question 84

Can Viet Nam confirm that, after the completion of the action plan to provide trading rights in the identified sectors, any individual or firm will be able to be the importer of record without further requirement to be invested in Viet Nam? What other requirements, if any, will there be for firms and individuals seeking to import, i.e., to be the importer of record?

Answer:

Viet Nam has adjusted our commitments on trading rights as detailed in Annex 2 of this document.

Question 85

Paragraph 89 We take note of Viet Nam's intention to request a transitional period for granting full national treatment for trading rights. From table 1, we understand that for some products, this period is envisaged until 2010. We reserve our right to take a position on this request at a later stage; a priori, granting a transitional period will be difficult, and the proposed end in 2010 is definitely too long.

In terms of commitment language, we agree to the suggestion of another Member as referred to in paragraph 88.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document.

Question 86

In paragraph 89, the draft Report states that "time was required to merge the import trading rights systems for foreign and domestic legal persons, promulgate the necessary regulations, and strengthen the management/administrative capacity of the Government's agency involved." This statement seems to be rather abstract. Therefore, we would like to request the Vietnamese side to provide detailed explanations concerning each respective restriction on trading rights in each individual field. In any event, since there still remain many unclear points concerning trading rights issue, we need to seek further clarification from the Vietnamese side on this issue by holding plurilateral meetings of the Working Party.

Answer:

Regarding the issue of phasing out the restrictions on trading rights applicable to foreign invested enterprises, please refer to the Schedule of Commitments on import and export trading rights in Annex 2 of this document.

Viet Nam is willing to explain in detail the above commitments as well as its difficulties in the Working Party meetings.

Question 87

In addition to the points mentioned above, with regard to trading rights concerning each respective item, we noticed certain improvements in schedules for abolishing regulations on items subject to import restriction set out in Table 1 of WT/ACC/SPEC/VNM/5, comparing with previous schedules set out in Table-A of WT/ACC/VNM/32, for which we appreciate the Vietnamese efforts. However, transition periods for each of these items seem to be still long in light of ensuring conformity with the basic articles such as Articles 3 and 11 of GATT 1994. We would therefore like to request the Government of Viet Nam to make further efforts in this regard and would like to seek information on how the Government of Viet Nam has been working for this issue. In particular, as mentioned in Question 23 in WT/ACC/VNM/32, we would like to request the Government of Viet Nam to abolish, upon accession, any restriction on trading rights pertaining to automobile, motorcycles and motorcycles' spare parts.

Answer:

Viet Nam has adjusted its commitments on trading rights as detailed in Annex 2 of this document. The adjustments have shown Viet Nam's efforts in meeting Working Party Members' interests while taking into account our situation.

A. IMPORT REGULATIONS

- **Ordinary customs duties**

Question 88

We request that Viet Nam provide its latest trade data at the HS 8-digit level.

Answer:

Due to technical and infrastructure difficulties in information and statistical system at Customs offices, Viet Nam is not able to gather and compile trade data at HS 8-digit level.

Question 89

Paragraph 91: Could Viet Nam please update the statistic in paragraph 91 on its current trade-weighted average?

Answer:

The current trade-weighted average tariff of Viet Nam is 15.2 per cent (as of 2003).

Question 90

Could Viet Nam provide some additional detail on the tariff structure recommended by the IMF?

Answer:

Recommendations by IMF on customs reform in Viet Nam (primarily for period prior to 2000) were as follows:

- SAC/ESAF programs (concluded in 1997): Viet Nam and the IMF agreed to a reform program which implemented important trade reforms such as: removal of non-tariff barriers; reduction of the number of tariff rates; reduction of the maximum tariff rate (specifically the maximum tariff rate was reduced to 60 per cent by 1996, with exceptions for some sensitive products); the IMF recommended a reduction of maximum tariff rate to be coupled with upward adjustments to tariff rates of agricultural import inputs which were previously subject to the lowest tariff rate.
- PRGF program (Viet Nam and the IMF agreed upon the program in 4/2001): worked out a specific roadmap to remove non-tariff barriers and convert those non-tariff barriers into tariffs; in addition, in this program, structural reform measures did not focus mainly on trade liberalization, but rather, it emphasized on Statebudget transparency, state-owned enterprises and banking system reform.

Question 91

In each of the last three years, how much revenue did Viet Nam collect through tariffs? How much did it collect from taxes collected at the border (e.g. VAT, Special Consumption Tax (SCT), and excise taxes)?

Answer:

In regards of latest three year average, Viet Nam collected taxes as follows:

Average of period 1999-2001:

- Import tax: VND 12,583 billion.
- VAT on imports collected at border: VND 4,020 billion.
- Excise tax on imports collected at border: VND 1,126 billion.

Average of period 2002-2004:

- Import tax: VND 17,826 billion.
- VAT on imports collected at border: VND 12,266 billion.
- Excise tax on imports collected at border: VND 2,017 billion.

US\$/VND exchange rate: approximately 15,000 and 15,500 for 1999-2001 and 2002-2004 respectively.

Question 92

Paragraph 93: The relationship between Viet Nam's current statutory rates of duty and its commitments as part of its accession are unclear. Please clarify how these current statutory rates of duty will relate to Viet Nam's final package of binding tariff commitments.

Answer:

According to the current Law on Import and Export Duties, the Standing Committee of the National Assembly promulgates the statutory Most-Favoured-Nation tariff ceilings. On the basis of these ceilings, the Government decides on the specific MFN as well as the non-MFN tariff rate applicable to a particular product (non-MFN tariff rate would not in any case higher than MFN rate by more than 70 per cent).

After the accession to WTO, in conducting its tariff policy, the Government of Viet Nam will abide by Viet Nam's commitments and the rules of the WTO, including its tariff commitments and rules applicable to application of import duties in special cases. In addition, the ceilings set by the National Assembly's Standing Committee will continue to serve as domestic legal basis and would not be in conflict with WTO's rules.

Question 93

In paragraph 93, the draft Report explains that frequent changes in the tariff rates are due to the fact that Vietnamese economy is undergoing transition and restructuring and provides its assurance that it will make best efforts to publish the tariff rates prior to application. We are of the view that frequent changes in the tariff rates place the exports to Viet Nam in a very risky position and therefore that a system under which notice to other countries will be given well in advance of actual changes in the tariff rates should be establish with a view to avoiding such risk.

Answer:

Since the promulgation of new tariff schedule which followed the ASEAN Harmonized Tariff Nomenclature (AHTN) in September 2003 and after the process of conversion of a number of non-tariff measures into tariff in 2000, Viet Nam has restrained itself from frequent changes to its import tariff schedule, gradually incorporated import surcharges into tariff with a view to eliminating import surcharges and published decisions on tariffs on the Official Gazette and other mass media (e.g., financial magazines and journals, websites...) in order to improve the transparency of policies.

Question 94

We note that, in paragraph 93 of WT/ACC/SPEC/VNM/5, Viet Nam states that "... Viet Nam would make best efforts to publish the rates prior to application and ...".

Bearing in mind the obligatory character of Article X:2 of GATT 1994, we would urge Viet Nam to amend its assurance to read "... Viet Nam would ~~make best efforts to publish the rates prior to application and ...~~".

Answer:

In accordance with the Law on the Promulgation of Legal Normative Documents of Viet Nam, all legal documents are subject to publication in the Official Gazette and would generally come into effect 15 days from the date of publication.

Question 95

We note that, in paragraph 94 of WT/ACC/SPEC/VNM/5, Viet Nam still wishes to have the option of applying specific or compound duties in the future, even though proposing *ad valorem* tariff bindings. We appreciate the concerns that Viet Nam has relating to customs fraud, but our concerns remain at the possibility of GATT Article XXVIII negotiations in the future.

We would urge Viet Nam to bind its tariffs in the form that it intends to apply them, but in doing so keep specific, compound or mixed tariff bindings to the smallest possible number of products.

Answer:

Viet Nam would like to express high appreciation of the recommendation. Viet Nam is negotiating specific duty rates for these tariff lines with interested Members under bilateral market access negotiation framework and attempting to limit the number of tariff lines subject to compound/combined specific duties.

Question 96

Paragraph 94 discusses Viet Nam's plans for conversion of bound *ad valorem* rates to specific rates after accession. Please list the 100 or so tariff lines where Viet Nam does not expect to be able to maintain the *ad valorem* rates negotiated during its accession process.

Answer:

Viet Nam has indicated its intention to apply specific duties on some products with an aim to counter trade frauds. The tariff lines were indicated clearly (at HS 8-digit level) in the fourth Tariff Offer that Viet Nam submitted to the Working Party in April 2004.

Viet Nam is negotiating specific duty rates for these tariff lines with interested Members under bilateral market access negotiation framework.

Question 97

In paragraph 94, the draft Report states that specific or compound duty rates on certain items are required to counter customs fraud. We would like to seek information on the current status of specific and compound duty (e.g. number of tariff lines applicable to such duty, detail of items subject to such duty). Such information should be reflected in the Report in a concise manner.

Answer:

Viet Nam has indicated its intention to apply specific duties on some products with an aim to counter trade frauds. The tariff lines were indicated clearly (at HS 8-digit level) in the fourth Tariff Offer that Viet Nam submitted to the Working Party in April 2004.

Viet Nam is negotiating specific duty rates for these tariff lines with interested Members under bilateral market access negotiation framework.

Question 98

Paragraph 95 discusses the application of "special preferential" (preferential), "preferential" (MFN), and "standard" tariff rates to imported goods. Please list all current and prospective WTO members (i.e., that have applied for accession) where Viet Nam now applies standard rates of duty, i.e., rates at 150 per cent of the MFN rate. Please confirm that Viet Nam will apply MFN rates to WTO members after accession, and will extend MFN without need for further agreements.

Answer:

Please see the List of countries and territories to which Viet Nam has extended MFN treatment in trade relation in Annex 3 and the List of countries and territories with which Viet Nam has had special preferential agreements in trade relation in Annex 4. Viet Nam will accord the MFN status to WTO Members in accordance with its WTO obligations without requiring further agreements after accession.

- **Other duties and charges**

Question 99

Paragraph 101: Please include a statement in this section committing to bind all other duties and charges at zero upon accession. We would suggest the following language:

"The representative of Viet Nam confirmed that Viet Nam had agreed to bind at zero other duties and charges in its Schedule of Concessions and Commitments, pursuant to Article II:1(b) of the GATT 1994. The Working Party took note of this commitment."

Answer:

Viet Nam accepts the language as recommended.

Question 100

We would encourage Viet Nam to accept the square bracketed commitments in paragraph 101 of WT/ACC/SPEC/VNM/5, and bind other duties and charges in its schedule of commitments at zero.

Answer:

Viet Nam commits to bind all other duties and charges (ODC) at zero upon accession.

- **Tariff rate quotas, tariff exemptions**

Question 101

We thank Viet Nam for the information on TRQ administration provided in Annex 4 of WT/ACC/VNM/33. It should be updated (e.g., to eliminate reference to cotton and corn, where the TRQs were reported eliminated in paragraph 103) and appended to the draft Working Party report.

Answer:

Annex 4 of WT/ACC/VNM/33 just mentions to the quota allocation mechanism in accordance with Circular 09/2003/TT-BTM dated 15 December 2003 guiding the implementation of the Decision No. 91/2003/QD-TTg dated 9 May 2003 of the Prime Minister on application of TRQ on imports in Viet Nam in 2004. At that time, maize and cotton were still subject to TRQs.

Viet Nam agrees to update information on Viet Nam's current list of commodities subject to TRQ as follows: On 3 March 2005, the Prime Minister issued the Decision No. 46/2005/QD-TTg on adjusting the List of imports subject to TRQs, which abolishes TRQ on dairy products, maize and cotton from 1 April 2005.

Question 102

Paragraph 103: Could Viet Nam please explain the rationale for its TRQ provisions on salt and whether or not it intends to phase this out as part of its accession? Could some of the TRQs currently being applied be replaced by non-automatic import licensing?

Answer:

Salt is considered an important commodity in Viet Nam since it is the main source of income for hundreds of thousands of poor farmers living in coastal areas where the transformation of land to agricultural cultivation is almost impractical. Viet Nam applies tariff rate quota to salt with a view to securing employment and ensuring income stability for those farmers producing salt. Furthermore, tariff rate quotas appears to be the most efficient measure to satisfy this objective in comparison with other import restrictions including non-automatic import licensing.

Question 103

We would suggest that this sub-section of the report be divided into separate sub-sections for Tariff Rate Quotas and for Tariff Exemptions.

We note that the role (if any) of tariff rate quotas (TRQs) in Viet Nam's accession package is yet to be finalized and, given that this area can only be discussed provisionally at this stage, we reserve our rights in relation to this sub-section. Notwithstanding this, we seek the insertion of the following sentence after the final sentence of paragraph 102 of WT/ACC/SPEC/VNM/5:

"Viet Nam accordingly would be requested to adopt detailed commitments relating to the allocation of tariff quota and other aspects of tariff rate quota administration."

Answer:

Viet Nam agrees that the issue of tariff rate quotas remains under negotiations and will be completed subject to the negotiations' outcome. Viet Nam commits to allocate and administer tariff rate quotas in full conformity with the WTO applicable rules.

Question 104

We thank Viet Nam for the indications provided of its preparedness to review its earlier plans, and we would like to take stock of where matters stand on the product scope of currently applied and proposed bound TRQs. We are pleased that paragraph 103 of WT/ACC/SPEC/VNM/5 confirms that the TRQs on cotton and maize have been eliminated, and welcome that Viet Nam has removed the proposal from its tariff offer to apply and bind TRQs on dairy products.

We would be grateful for confirmation from Viet Nam that TRQs for these products are no longer applied and there will be no bound TRQs for these products in its goods schedule.

Answer:

The Prime Minister issued the Decision No. 46/2005/QĐ-TTg dated 3 March 2005 on revisions of the List of imported goods subject to tariff rate quotas wherein the tariff rate quotas on dairy products, maize and cotton will be eliminated from 1 April 2005. The TRQ Offer of Viet Nam has also been revised accordingly.

Question 105

We would encourage Viet Nam to consider eliminating the applied TRQs on tobacco materials and salt and to not bind TRQs for these products under the WTO. While we are pleased that Viet Nam proposes to remove discretionary licensing for imports of sugar, we would encourage Viet Nam to consider a tariff-only approach, rather than for a TRQ to be put in place upon accession.

Answer:

Viet Nam has limited its application of tariff rate quotas to the minimum extent and demonstrated its goodwill by considerably narrowing the coverage of products subject to tariff rate quotas. Viet Nam looks forward to the reciprocal approach from Working Party's Members in the bilateral negotiations with Viet Nam.

Question 106

We also thank Viet Nam for the information provided on the allocation mechanism of TRQs provided in Annex 4 of WT/ACC/VNM/33.

- **We seek reconfirmation of the products to which TRQs are currently applied, as Annex 4 includes dairy products, cotton and maize but paragraph 103 of WT/ACC/SPEC/VNM/5 states that TRQs on cotton and maize have been eliminated, and, on dairy, it has been our understanding that TRQs would not be applied.**
- **We would also be grateful if Viet Nam could provide details of the TRQ arrangements currently in place, including the products actually subject to tariff quotas, the annual quota volumes, the in-quota and out-of-quota rates, and the methods for allocating quota and administering the arrangements.**

Answer:

Annex 4 of the document WT/ACC/VNM/33 has included the detailed description of the mechanism of tariff rate quota allocation in accordance with the Decision No. 91/2003/QD-TTg dated 9 May 2003.

With respect to the coverage of products currently subject to tariff rate quotas, the Prime Minister issued the Decision No. 46/2005/QD-TTg dated 3 March 2005 on revisions of the List of imported goods subject to tariff rate quotas wherein the tariff rate quotas on dairy products, maize and cotton will be eliminated from 1 April 2005.

TRQ volumes, in-quota and out-of-quota rates, TRQ allocation methods and other information have been included in Viet Nam's Offer on Tariff rate quotas (document WT/ACC/SPEC/VNM/1/Rev.3/Add.1).

Question 107

In Annex 4 of WT/ACC/VNM/33, Viet Nam notes that the current discretionary licensing scheme applied to sugar would be converted to a TRQ.

We seek advice on when Viet Nam plans to introduce a TRQ on sugar. We also seek details of administrative arrangements it would intend to apply to the sugar TRQ.

Answer:

The discretionary import licensing regime applied to sugar shall be converted to TRQ upon Viet Nam's accession to the WTO in accordance with Viet Nam's WTO commitments.

Viet Nam wishes to apply TRQ on sugar since sugarcanes are grown in disadvantaged areas with adverse natural conditions and diversification from growing sugarcanes into other crops is often very difficult for farmers.

Question 108

In the case of salt, Annex 4 of WT/ACC/VNM/33 indicates the tariff quota is allocated to companies that use salt in their production and that general corporations are the designated focal points to receive quotas for subsidiaries. We would appreciate Viet Nam providing details of how it allocates quota to companies and general corporations. What criteria are used in the allocation of quota? Can salt for human consumption be imported directly by companies that do not use salt in their production?

Answer:

Tariff rate quota allocation mechanism has been described in Annex 4 of the document WT/ACC/VNM/33:

- Salt quota is allocated to traders who have demand for imported salt to use in their production as certified by the line-ministry administering the industry (demand for salt corresponds to production capacity). On that basis and in accordance with the TRQ allocation criteria, the Ministry of Trade considers to grant import licenses. Traders are required to present the import licenses issued by the Ministry of Trade to the customs when importing salt to enjoy the in-quota import tariff rates (Circular No.09/2003/TT-BTM dated 15 December 2003).
- TRQ allocation criteria: Quotas are allocated on the basis of import performance.
- Salt can be imported directly by enterprises that do not use salt in their production but it is subject to out-of-quota import tariff rates.

Question 109

We would be grateful for information on the roles that (a) the Ministry of Agriculture and Rural Development (MARD), and (b) the Viet Nam Salt Corporation, play in the TRQ for salt in respect of government policy, the determination of quota volumes, decision-making on tariff quota allocation, and tariff quota administration. Also is MARD one of the line ministries referred to in Section II of Annex 4 of WT/ACC/VNM/33? Would the Viet Nam Salt Corporation import salt under the tariff quota? Does the Viet Nam Salt Corporation have any special rights or privileges in relation to the internal purchase, internal sale, importation or exportation of salt?

Answer:

Import tariff rate quotas are allocated to all enterprises having demand for salt to use in their production.

The Ministry of Trade is responsible for general management, supervision and administration of TRQ, including TRQ on salt.

Pursuant to the Decree No. 86/2003/ND-CP dated 18 July 2003, the Ministry of Agriculture and Rural Development is mandated to be responsible for line management of salt. It accordingly plays a decisive role in formulating the general policies for this commodity as well as in determining the annual import TRQ volumes of salt and providing regulations on allocation and administration of the TRQ on salt.

In the domestic market, the General Corporation of Salt operates on the basis of market mechanism. Traders of all economic sectors are non-discriminatorily encouraged to export and distribute salt.

Viet Nam General Corporation of Salt does not have any role in either determining the TRQ volume or allocating or administering TRQ. With respect to the importation of salt in general and the fulfilment of TRQ in particular, the General Corporation of Salt is merely an enterprise trading in salt. It imports salt in accordance with regulations on TRQ and is not granted any preference or privilege relating to the purchase, sale, importation or exportation of salt.

Question 110

We are concerned that Viet Nam states that additional quotas may be considered where they are used to manufacture for export (paragraph 5 of Section III on the administration of TRQs, in Annex 4). This suggests that more quota would be available if the products were used in exports and were not destined for the domestic market. We would have concerns with such an approach, and with its consistency with WTO obligations.

While final commitments on the allocation and other administration of TRQs will need to await a number of clarifications (as well as the finalization of all market access negotiations for goods), we nevertheless welcome Viet Nam's expression of its preparedness in paragraph 103 of WT/ACC/SPEC/VNM/5 to apply and administer tariff rate quotas in conformity with applicable WTO rules and regulations, including the MFN and national treatment provisions of the GATT. We would suggest at this stage the inclusion of some preliminary new language (after paragraph 103) that would be developed further in the light of clarification of current policies and planned future policies in this area:

103A. A Member raised concerns over a proposal by Viet Nam to use auctioning as a method of allocating tariff quota. In the view of this Member, auctioning of tariff quota would be inconsistent with a number of WTO provisions including Articles II, X and XI of GATT 1994 and Article 4 of the Agriculture Agreement, as bindings for in-quota rates could be breached by additional imposts, auction prices would represent minimum prices payable by purchasers of imports, appropriate standards of transparency and predictability with respect to the terms of importation would not be met, and any starting prices would themselves represent minimum import prices. The Member concerned also raised concerns over any non-automatic licensing associated with the allocation or other administration of tariff quotas that would have trade-restrictive or -distortive effects on imports additional to those occasioned by the quantity-limited in-quota rate and the out-of-quota rate, contrary to the provisions of the Agreement on Import Licensing Procedures.

103B. The Member raised further concerns over certain requirements proposed by Viet Nam: to relate amounts of tariff quota allocated to each importer's levels of domestic production and export, inconsistently with the WTO's prohibitions on such measures under Article XI of GATT 1994, Article 4 of the Agriculture Agreement and Article 2 of the Agreement on Trade-related Investment Measures; to allocate tariff quota contingent upon the approval of import plans by the government, inconsistently with Article XI of GATT 1994

and Article 4 of the Agriculture Agreement; to allocate tariff quota on the conditions that the importer uses amounts imported only for its own production, inconsistently with Articles III and XI of GATT 1994 and Article 4 of the Agriculture Agreement, and that the importer refrains from internal resale of product imported under the quota, inconsistently with Article III of GATT 1994; to deprive intending traders that do not have a particular kind of business registration of the right to be importers of record in relation to the amounts imported under the quota and of the right to become quota holders, inconsistently with Articles III and XI of GATT 1994; to require that a quota holder must send quarterly reports on tariff quota usage to the Ministry of Trade (when such data would be readily available to the government through official customs statistics), inconsistently with Article XI of GATT 1994 and Article 4 of the Agriculture Agreement; and to prohibit the sale, purchase and transfer of allocated quota quantities to other parties, inconsistently with Article XI of GATT 1994 and Article 4 of the Agriculture Agreement. The Member called upon Viet Nam to allocate tariff quota consistently with the WTO from the date of accession.

103C. The representative of Viet Nam said that from the date of accession Viet Nam would allocate tariff quota, administer tariff rate quota arrangements and apply internal measures to products that have entered its territory under such arrangements only in conformity with the WTO Agreement, including Articles I, II, III, VIII, X, XI and XIII of GATT 1994, Article 4 of the Agriculture Agreement, Article 2 of the Agreement on Trade-related Investment Measures, the Agreement on Import Licensing Procedures and other WTO provisions. The Working Party took note of these commitments.

[To be completed]

Answer:

Vietnam would like to clarify that TRQ is rather a two-tier tariff scheme than a quota system *per se* whereby imports cannot be allowed over some certain amount.

In accordance with guidelines specified in the Circulars No. 09/2003/TT-BTM and No.10/2004/TT-BTM, traders having demand for imported commodities specified in the List of import goods subject to tariff rate quotas to use in their production for export are also considered to be allocated TRQ. As importers of inputs for production of export would be in effect exempted all import duties for their inputs through duty drawback scheme anyway, this is merely an administrative arrangement rather than a preferential arrangement in terms of the duties paid.

Viet Nam commits to apply TRQs on imported goods in conformity with its WTO obligations and the WTO applicable rules and regulations. With a view to further affirming its commitments to comply with the WTO applicable rules and regulations, Viet Nam accepts to add the paragraph 103.C as proposed.

The provision that TRQs are only allocated to enterprises which import goods to use in their production is only applicable to salt and un-manufactured tobacco. In essence, this provision means the allocation of TRQs to end-users and is not inconsistent with the WTO rules and regulations.

The provision that TRQs are allocated to enterprises having trading activities is in compliance with Viet Nam's current import management policies. This provision does not in breach of any WTO rule and regulation since enterprises are free to register their own business lines and activities.

The provision that enterprises are required to send a report on import performance of TRQs to the Ministry of Trade by each quarter-end is aimed at guaranteeing the up-to-date and accurate source of information so as to enable the authority to adjust the TRQs when enterprises need so. Due to capacity restraints, the source of information consolidated by the General Department of Customs is often not up-to-date.

Viet Nam does not hold the view that its provisions of TRQ allocation and administration are inconsistent with the WTO rules and regulations.

Question 111

With respect to the import duty exemptions identified in paragraph 104 of WT/ACC/SPEC/VNM/5, how much money does the Government refund each year? What proportion of total duties collected is this? What percentage of this amount is refunded to state enterprises? How much is refunded to foreign invested firms? How much to non-state-owned domestic companies?

Answer:

Due to technical difficulties and resources restraints, Viet Nam is not able to provide detailed data about import duty refund by categories of importers. However, it should be noted that all importers satisfying criteria set for refunding import duties are eligible to receive import duty refund, regardless of their forms of ownership.

Question 112

Are the import duty exemptions identified in paragraph 104 subject to export requirements, export ratios, or local content requirements?

Answer:

Import duty exemptions and reductions mentioned in paragraph 104 are not contingent on export performance, export ratio requirement or local content requirement.

Question 113

Paragraph 104 states that "in regions where investment was especially encouraged, the import duty exemption for raw materials, equipment, and components was valid for five years following the commencement of production." Are their duration limits for the import duty exemptions authorized under Article 11 of the Law amending and supplementing the Law on Import-Export Duties, Article 47 of the Law on Foreign Investment, and Article 25 of the Law on Promoting Domestic Investment?

Answer:

Yes. Import duty exemptions for raw materials, equipment, and components for five years following the commencement of production are provided for in accordance with the Article 11 of the Law on amendments of and supplements to some Articles of the Law on Export and Import Duties, Article 47 of the Law on Foreign Investment and Article 25 of the Law on Promotion of Domestic Investment.

Question 114

We would like to propose the following commitment language for this section: "The representative of Viet Nam confirmed that upon accession, Viet Nam would adopt and apply

tariff reductions and exemptions so as to ensure MFN treatment for imported goods. The Working Party took note of this commitment."

Answer:

Viet Nam agrees to the commitment language for this section as proposed.

- Fees and charges for services rendered

Question 115

We appreciate Viet Nam's assurances concerning the relationship of the fee for the importation of foreign exchange to the cost of the service rendered and its reduced level of application. However, we do not see how a fee so clearly structured to be based on the value of the foreign exchange imported can, except by accident, be related to the cost of the service.

Answer:

Currently, Viet Nam collects "customs clearance fees" which are applicable to all goods ranging from normal goods to gold, precious gems and foreign currencies, to cover the costs of services rendered to imports and exports. With regard to the importation and exportation of foreign currencies, the customs clearance fee should not be deemed as import or export tax; rather, it is merely a fee collected to cover services rendered in exchange monitoring when there occurs the movements of the physical foreign currencies (i.e., foreign currency notes) across the border and in preventing counterfeit currencies.

Specifically, for services rendered in exchange monitoring when there occurs either the importation or the exportation of foreign currencies, the payable fee is VND 100,000 (equivalent to US\$ 6.3) for the first US\$ 100,000 that goes through customs. In case that the value of foreign currencies exceeds US\$ 100,000 in each clearance case, additional fee of VND 80,000 (equivalent to US\$ 5) shall be collected for every extra US\$ 100,000. However, the maximum amount of fees (or the cap) payable on an individual case shall in no case exceed VND 1.5 million (equivalent to roughly US\$ 100).

In essence, the fee is set at a very low level, if not negligible. Hence, it should be seen neither as a protection nor revenue measure. It is in full compliance with Article VIII of GATT 1994. The stipulation of the ceiling limit of VND 1.5 million (US\$ 100) in each clearance case shows that the fee payable is generally US\$ 100 for each individual case. Additional fees are provided for only to lessen the amount of fees payable by those persons having small value of foreign currencies brought across the border, i.e. persons having lesser value of foreign currencies would be subject to lower fees.

Question 116

Please clarify why such a fee is necessary in any case. Why would Viet Nam want to tax the importation of foreign exchange? Is such a fee applied to foreign exchange exports?

Answer:

As mentioned in the answer to Question 115, this customs fee is merely for the purpose of exchange monitoring and preventing counterfeit currencies. It is not a tax on the importation of foreign exchange and is applicable to all physical movements of foreign currencies into or out of the country through customs.

Please see also the answer to Question 115.

Question 117

This fee does not meet the requirements of Article VIII of the GATT. It should be eliminated or revised to meet the criteria for Article VIII.

Answer:

In our view, the fee is not in violation of the requirements of the GATT. Please see also the answer to Question 115.

Question 118

Appropriate revision could be a flat fee for the processing of each application to import foreign exchange would be a more WTO-compatible method.

Answer:

In our view, the fee is not in violation of the requirements of the GATT. Please see also the answer to Question 115.

Question 119

We appreciate the tables attached to the draft report laying out Viet Nam's charges and fees applied at the border, and we note that customs processing fees are based on the quantity of imports, by weight and form of transportation.

Answer:

In general, fees including customs fees (customs sealing fees, customs warehouse fees; customs clearance fees; customs escorting fees) are formulated based on the principles stated in the Ordinance on Fees and Charges that "fees are the amount of money that individuals or organizations are required to pay for the State administration services rendered by governmental agencies or bodies entrusted by governmental agencies". These fees are not aimed at either protection or generation of revenue for the State budget.

With regard to customs fees, specific fees are determined so as to ensure to cover costs and expenses incurred by customs authority in rendering services related to the importation and exportation of cargos and vehicles (for example, inspection, supervision, document-related costs, office expenses, etc.). Inspection and supervision may directly relate to forms of transportation, quantities of cargos, hence customs fees are categorized into fees applicable to different forms of transportation, volumes of imports or exports respectively and not applied on an *ad valorem* basis. The stipulation that fees are levied in proportion to volumes of imports or exports is aimed at lessening the fees payable by those persons having small quantities of imports or exports, i.e. importers or exporters having smaller volumes of imports or exports shall be subject to lower fees. It is noteworthy that those persons having significant quantities or volume of imports or exports shall however be subject to the same level of fees thanks to the stipulation of the ceiling limits on fees payable for each form of customs fees.

Question 120

We would appreciate Viet Nam's explanation of how customs processing, which mostly involves checking of customs documents, can be related to the volume of imports and mode of transportation.

Answer:

Please see the answer to Question 119.

Question 121

Paragraph 106 notes that "administrative fees for re-certification of customs documents" are fees collected. What sort of certification of customs documents is necessary? Who performs that certification? The re-certification? Are these fees collected prior to export by consulates in the exporting country? What is the fee structure? Why can't customs officials certify the documents at the time of import entry?

Answer:

- The re-certification of customs documents in this regulation occurs in cases that the original documents are lost or importers request the re-certification for other reasons.
- Customs documents which could be re-certified include documents related to customs procedures, documents or invoices related to import or export duties, documents related to imported or exported goods.
- Customs authority is assigned to be responsible for the re-certification of customs documents. Fees for re-certification is currently set at 12,000 VND (equivalent to US\$ 0.8) for a re-certification request.

Question 122

In paragraph 106, the draft Report states that "The fee had been adjusted for inflation to ensure that they were maintained at a level approximate to the cost of the customs services rendered." We would like to clarify the detail of the fees for customs services rendered and like to include them in the Report for the purpose of increasing transparency. We would also like to request the Government of Viet Nam to maintain the fees at an appropriate level.

Answer:

With regard to customs fees, Viet Nam has submitted the Inter-ministerial Circular No. 71/2000/TTLT/BTC-TCHQ dated 19 July 2000 of the Ministry of Finance and the General Department of Customs providing for regulations on forms of customs fees and specific levels of customs fees. This Circular has been incorporated in the document WT/ACC/SPEC/VNM/5 as Table 2 in Annex 2.

Fundamental direction in formulating policies of fees and charges of Viet Nam is to ensure that fees are charged at an appropriate level, approximate the cost of services rendered and are not aimed at generating revenue for the State budget.

Question 123

Paragraph 107: We agree with those Members who consider port fees to be too high, and encourage further reductions.

Answer:

With regard to sea port fees, the Government of Viet Nam has worked out a roadmap to reduce sea port fees starting from 2003. Specifically, from 2003 to 31 December 2004, the levels of maritime

fees and charges was reduced by from 30 per cent to 50 per cent (according to the Decisions No. 61/2003/QD-BTC and No. 62/2003/QD-BTC dated 25 April 2003).

Taking into account recommendations of some Members of the Working Party, Viet Nam has conducted a comparative study across a number of countries in the region, of which the coverage includes geographical location features, infrastructural investments, specific levels of sea port fees with the aim to aligning Viet Nam's sea port fees at appropriate levels. On the one hand, the levels of fees need to be based on geographical location features and infrastructural investments so as to ensure to cover investment costs. On the other hand, the levels of fees should also be comparable to those levied by other countries in the region so as to facilitate and promote importation and exportation. Guiding by this direction, Viet Nam issued the Decision No. 88/2004/QD-BTC dated 19 November 2004 to replace the above mentioned Decisions No. 61/2003/QD-BTC and No. 62/2003/QD-BTC and continue reducing the levels of sea port fees. According to this Decision, from 1 January 2005, weight fees would be further reduced by 45 per cent, marine assurance fees by 52 per cent; navigation fees by between 12 per cent and 30 per cent, quay fees by 10 per cent and from 1 January 2006, marine assurance fees would be collected as of 75 per cent of the applied level in 2005.

By the virtue of the Decision No. 88/2004/QD-BTC, the levels of sea port fees in Viet Nam has been made generally comparable to those in Thailand, which has similar characteristics with Viet Nam such as a great number of sea ports (contrary to cases of some other countries in the region which have a small number of sea or entré ports located almost right on sea paths, hence very low sea port fees).

Question 124

Paragraph 109: Viet Nam applies a customs fee for the purchase or sale of foreign exchange which varies according to the value of the transfer. This fee does not meet the requirements of Article VIII of the GATT 1994 and should be eliminated or revised to meet the criteria of Article VIII. The answer of the Vietnamese authorities seems not sufficient since the fee still remains in function of the value.

Answer:

Currently, Viet Nam collects "customs clearance fees" which are applicable to all goods ranging from normal goods to gold, precious gems and foreign currencies, to cover the costs of services rendered to imports and exports. With regard to the importation and exportation of foreign currencies, the customs clearance fee should not be deemed as import or export tax; rather, it is merely a fee collected to cover services rendered in exchange monitoring when there occurs the movements of the physical foreign currencies (i.e., foreign currency notes) across the border and in preventing counterfeit currencies.

Specifically, for services rendered in exchange monitoring when there occurs either the importation or the exportation of foreign currencies, the payable fee is VND 100,000 (equivalent to US\$ 6.3) for the first US\$ 100,000 that goes through customs. In case that the value of foreign currencies exceeds US\$ 100,000 in each clearance case, additional fee of VND 80,000 (equivalent to US\$ 5) shall be collected for every extra US\$ 100,000. However, the maximum amount of fees (or the cap) payable on an individual case shall in no case exceed VND 1.5 million (equivalent to roughly US\$ 100).

In essence, the fee is set at a very low level, if not negligible. Hence, it should be seen neither as a protection nor revenue measure. It is in full compliance with Article VIII of GATT 1994. The stipulation of the ceiling limit of VND 1.5 million (US\$ 100) in each clearance case shows that the fee payable is generally US\$ 100 for each individual case. Additional fees are provided for only to lessen

the amount of fees payable by those persons having small value of foreign currencies brought across the border, i.e. persons having lesser value of foreign currencies would be subject to lower fees.

Viet Nam agrees to commit that all fees and charges for services rendered shall be applied in conformity with Article VIII of the GATT 1994 from the date of accession.

Question 125

A commitment paragraph should be added after this section, covering fees and charges for services rendered.

Answer:

Viet Nam agrees to commit that all fees and charges for services rendered shall be applied in conformity with Article VIII of the GATT 1994 from the date of accession.

Question 126

We would like to propose the following language for this section:

"Members of the Working Party sought a commitment from Viet Nam to undertake a commitment to ensure conformity of customs fees and charges with Article VIII of the GATT 1994.

The representative of Viet Nam confirmed that from the date of accession all fees and charges for services rendered, including those discussed in paras xx – yy above, would be applied to imports in accordance with Article VIII of GATT 1994. In particular, fees that vary based on the value or volume of imports or applied for revenue purposes would be eliminated upon accession or revised to conform with the provisions of Article VIII. The Working Party took note of this commitment."

Answer:

Viet Nam agrees to commit that all fees and charges for services rendered shall be applied in conformity with Article VIII of the GATT 1994 from the date of accession.

Viet Nam takes the view that it is not necessary to mention specific fees as suggested in the proposed commitment language by a Working Party's Member since the mentioned fees have been in compliance with Article VIII of the GATT 1994.

- **Application of internal taxes to imports**

Question 127

Paragraph 115: We note the commitment by Viet Nam to phase-out the discriminatory excise tax on automobiles in WT/ACC/VNM/5 and WT/ACC/VNM/33 to bring it into conformity with Article III of GATT 94. However, we request that Viet Nam commit to eliminate the discriminatory excise tax on automobiles by the date of accession.

Answer:

With regard to excise tax on domestically manufactured or assembled automobiles, Viet Nam expects Members' consent to a transition period until 1 January 2007 for Viet Nam on the basis of

understanding of the factual situation of the automobile industry in Viet Nam. Automobile industry in Viet Nam is an infant industry, into which significant investments have just been injected during recent years (roughly ten years). In order to encourage and promote development of the industry, the Government has granted investors (most of them are foreign investors) certain tax incentives (namely, import duties and some internal indirect taxes) upon the commencement of the investment projects. The incentive scheme has been gradually phased out, and by now, incentives are mainly in the form of excise tax reductions. Viet Nam has informed the Working Party that these excise tax incentives are intended to be phased out by 1 January 2007 in accordance with the amended Law on Excise Tax of 2003. Given the fact that tariff for automobiles is under negotiation between Viet Nam and WTO Members for gradual reductions, and with the aim to avoid abrupt changes which might adversely affected the domestic automobile industry, Viet Nam would like to seek for the Working Party's consent to the transition period requested by Viet Nam of which the remaining time is not long until 1 January 2007.

Question 128

In paragraph 118, the draft Report states that imported unprocessed and semi-processed agricultural and aquatic products are placed in a discriminatory position with respect to VAT, comparing with those products sold by individuals and organizations in Viet Nam. Uniform treatment on VAT between domestic unprocessed and semi-processed agricultural and aquatic products and imported ones and also between products sold by individuals and those sold by organizations need to be accomplished by the time of the Vietnamese accession to the WTO. We would also like to seek information on VAT imposed on agricultural products.

Answer:

Viet Nam is of the view that the treatment on unprocessed and raw agricultural products provided for in its Law on Value-Added Tax does not violate the principle of National Treatment. Although these agricultural products are not subject to VAT at the first stage, they would be subject to VAT at the subsequent stage of processing/trading chain over the total value added. Viet Nam is currently facing difficulties in VAT administration in agricultural sector where small-scaled farmers account for a predominant proportion of the population participating in agricultural production. Hence, it is infeasible and impossible to employ accounting invoice system for taxation management purpose. In addition, there is no discrimination between domestic and foreign producers as well as between individuals and organizations under the Law on VAT.

Question 129

Paragraph 118 deals with Viet Nam's VAT exemption for domestic farm production. We remain concerned that, if not extended to imports as well, it is a violation of Article III of the GATT 1994.

Answer:

Viet Nam is of the view that the treatment on unprocessed and raw agricultural products provided for in its Law on Value-Added Tax does not violate the principle of National Treatment. Although these agricultural products are not subject to VAT at the first stage, they would be subject to VAT at the subsequent stage of processing/trading chain over the total value added.

Question 130

We also note that Viet Nam's application of discriminatory excise taxes on imported beer is a violation of Article III of GATT 1994. When and how does Viet Nam intend to equalize excise taxes applied to domestic and imported beer?

Answer:

In fact, draft beer and draught beer are different types of beer in Viet Nam, hence, they are subject to different excise tax rates respectively. Accordingly, there is no different excise tax treatment between domestically produced and imported beers. The excise tax measure should not be deemed as a discrimination inconsistent with Article III of the GATT 1994.

Question 131

We note that Table 3 (Goods and services subject to excise taxes) on page 39 of WT/ACC/SPEC/VNM/5 shows different rates for "draught beer" and "draft beer", and that there is some reference to the differences in paragraph 115.

- **We would appreciate further details as the explanations provided do not show that "draft beer" and "draught beer" are not in a competitive relationship to each other and therefore do not show that the excise rates satisfy the non-discrimination requirements of GATT Article III.**
- **But we would welcome a commitment to equalize the rates of excise for beer upon accession and advice of the steps that will be taken to achieve this.**

Answer:

Currently, Viet Nam imposes different excise tax rates on draft beer and draught beer respectively. Both types of beer can be produced domestically. However, imports of draft beer has not been present due to the fact that this type of beer is only good for consumption within a very short period of time and is not popularly brew in other countries. Import value of draught beer in Viet Nam is insignificant (available import statistics do not break down by types of beers, but total value of all types of beer imported was around US\$ 0.7 million in 2004, of which canned and bottled beer accounts for the major share). In Viet Nam, draught and draft beer are two different types of beer that have distinctive features of quality, alcoholic content (approximately 5 per cent in case of draught beer and 3 per cent in case draft beer), production costs, selling price, and consumer preferences. Draught beer has higher quality, higher alcoholic content, significantly higher production costs and selling price in comparison with draft beer. Hence, its consumption is usually confined to a small segment of high-income population; whereas draft beer, which is cheap and popularly consumed, is often opted for by most of consumers, including low-income earners. From the perspectives of Excise tax, higher tax rate on draught beer in comparison with draft beer intends to direct consumption pattern, as the draught beer is luxurious and high-class product taking into account average level of income of the population. The taxation does not intend to discriminate between a type of beer thought to be produced domestically and a type of beer assumed to be mainly imported. Consequently, as a luxury commodity in comparison with the average level of income of the population, draught beer is imposed higher excise tax rate than draft beer for the purpose of guiding consumption. It is not aimed at discriminating between domestically produced and imported beer.

Question 132

WT/ACC/VNM/33, Question 47: As regards beer, Viet Nam confirms that it applies a different duty rate for "draft" and "draught" beer. The information provided by Viet Nam is still not sufficient to rule out a possible discriminatory treatment under Article III. In fact, it is mentioned that draft beer (taxed at 30 per cent) needs to be consumed within one day, which makes it likely that it is produced locally by Vietnamese producers, whereas draught beer (taxed at 75 per cent) can be consumed over a longer period of time, which allows for transportation and importation. These two products seem highly substitutable and competitors, regardless of the argued different production process. No information is provided as to

production/import pattern of the two products: therefore, it is not possible to determine (although it seems likely) whether the different tax rate results in a de facto discrimination vis-à-vis imported beer.

Answer:

Currently, Viet Nam imposes different excise tax rates on draft beer and draught beer respectively. Both types of beer can be produced domestically. However, imports of draft beer has not been present due to the fact that this type of beer is only good for consumption within a very short period of time and is not popularly brew in other countries. Import value of draught beer in Viet Nam is insignificant (available import statistics do not break down by types of beers, but total value of all types of beer imported was around US\$ 0.7 million in 2004, of which canned and bottled beer accounts for the major share). In Viet Nam, draught and draft beer are two different types of beer that have distinctive features of quality, alcoholic content (approximately 5 per cent in case of draught beer and 3 per cent in case draft beer), production costs, selling price, and consumer preferences. Draught beer has higher quality, higher alcoholic content, significantly higher production costs and selling price in comparison with draft beer. Hence, its consumption is usually confined to a small segment of high-income population; whereas draft beer, which is cheap and popularly consumed, is often opted for by most of consumers, including low-income earners. From the perspectives of Excise tax, higher tax rate on draught beer in comparison with draft beer intends to direct consumption pattern, as the draught beer is luxurious and high-class product taking into account average level of income of the population. The taxation does not intend to discriminate between a type of beer thought to be produced domestically and a type of beer assumed to be mainly imported. Consequently, as a luxury commodity in comparison with the average level of income of the population, draught beer is imposed higher excise tax rate than draft beer for the purpose of guiding consumption. It is not aimed at discriminating between domestically produced and imported beer.

Question 133

As regards the duty rate applied on "herbal and medicinal alcohol", the information available is still not sufficient to assess whether this results in discrimination under Article III. In fact, it is not clear whether this product is an alcoholic drink of the same type as liquors, etc, or whether (as Viet Nam states in its reply to Question 47) it is used for "medical" purposes. If the latter is the case, the reduced excise rate might be justified, as not being in direct competition with other alcoholic products. This aspect needs further clarifications from Viet Nam.

Answer:

Medicinal alcohol is a type of alcohol made by traditional processing methods peculiar to Asian countries, including Viet Nam, and used for medication purposes rather than as an ordinary alcoholic beverage. Medicinal alcohol is generally made by immersing special plants, herbs and/or animal ingredients in alcohol to get a highly concentrated solution known as tinctures. It is used as an effective traditional medicine to treat or cure illness. The amount of medicinal alcohol produced and consumed is insignificant. The excise tax rate applicable to medicinal alcohol is set low since its sole usage is for medication and it is not in direct competition with other alcoholic products.

Question 134

Paragraph 120: A commitment paragraph should be added after this section, covering other excise taxes and VAT.

We take note of Viet Nam's intention to request a transitional period for automobiles/excise tax until 2007 and reserve our right to take a position on this request at a later stage.

Answer:

Viet Nam agrees to add a commitment paragraph after this section covering internal taxes, after a common understanding and agreement on specific contents are achieved.

Question 135

We would like to propose the following commitment language for this section: "The representative of Viet Nam confirmed that from the date of accession, Viet Nam would ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports would be in full conformity with its WTO obligations, in particular Article III of GATT 1994, and that it would implement such laws, regulations and other measures in full conformity with those obligations. The Working Party took note of this commitment."

Answer:

Viet Nam agrees to add a commitment paragraph after this section covering internal taxes, after a common understanding and agreement on specific contents are achieved.

- **Quantitative import restrictions, including prohibitions, quotas, and licensing systems**

Question 136

We thank Viet Nam for the efforts it has made to provide further information on quantitative import restrictions.

- **We would, however, appreciate more information concerning line management measures, including the measures to be retained after accession, and the WTO justification for the retention of the measure.**
- **We would also be grateful if Viet Nam could provide details of the licensing used, including whether the licenses are non-automatic, or are automatic within the meaning of the relevant provisions of Articles 1 and 2 of the Agreement on Import Licensing Procedures.**

Answer:

The Prime Minister issued the Decision No. 41/2005/QD-TTg dated 2 March 2005 on promulgation of the Import Licensing Regulation that is strictly based on the WTO rules and regulations. This Decision shall take effect from 1 September 2005. Pursuant to Viet Nam's regulations, line-management measures are not allowed to constitute quantitative import restrictions and is in compliance with the Agreement on Import Licensing Procedures.

Question 137

Paragraph 121: We would like to seek clarification on payment method restrictions on products listed in Table 4(c). Are these restrictions still applied? If yes, does Viet Nam have any plans for their elimination?

Answer:

According to the Decision No. 254/1998/QD-TTg dated 30 December 1998 of the Prime Minister, enterprises that import consumer goods listed in Table 4(c) of the document WT/ACC/SPEC/VNM/5 were required to self-balance its foreign exchange needs and not to use deferred payment method to

pay for their imports. This provision was abolished as from 1 May 2001 by the Decision No. 46/2001/QD-TTg dated 4 April 2001 of the Prime Minister on import-export management for the period 2001-2005.

Question 138

Paragraph 124: The application of import prohibitions is too trade-restrictive of a measure to apply to commercially-traded goods such as toys and motorcycles. We recommend Viet Nam consider using an import-licensing regime rather than an import prohibition to regulate trade in these products, if there are safety or health concerns.

Answer:

The responsibility of providing children with protection and care with a view to ensuring their development in a sound environment without violence rests upon the government of every nation in the world. Therefore, it is a noble task to keep children away from games that might adversely affected their education, morality and dignity development process. Viet Nam only prohibits the importation of toys that have negative impacts on dignity education and social order. All other toys are freely imported upon demand without any restriction.

Motorcycles with engine capacity exceeding 175cc is subject to regulations on eligible users (i.e., only for special and no-commercial purposes including the police, armed forces and for sport competition). The so-called de facto import prohibition of motorcycles with engine capacity exceeding 175 cm³ results from the restricted domestic registration and is applied on a non-discriminatory basis. Viet Nam neither has domestic production nor permits trading of motorcycles with engine capacity exceeding 175 cm³ in the domestic market. All other kinds of motorcycle are freely imported upon demand without any restriction.

Question 139

In paragraphs 125 and 126, the draft Report refers to the prohibition of import of motorcycles with engine capacity exceeding 175 cm³ as well as import of second-hand clothing which are of special interest to some Members. The Vietnamese side explains that the reason for subjecting such motorcycles to import prohibition is to ensure traffic safety and that their domestic registration is not permitted. We are of the view that such import prohibition measure may causes a problem from the point of its consistency with Article 11 of GATT 1994 and may also damage the interests of the Vietnamese consumers. Therefore, we would like to request the Government of Viet Nam to abolish such measure, upon its accession to the WTO.

Answer:

Motorcycles with engine capacity exceeding 175cc is subject to regulations on eligible users (i.e., only for special and no-commercial purposes including the police, armed forces and for sport competition). The so-called de facto import prohibition of motorcycles with engine capacity exceeding 175 cm³ results from the restricted domestic registration and is applied on a non-discriminatory basis. Viet Nam neither has domestic production nor permits trading of motorcycles with engine capacity exceeding 175 cm³ in the domestic market. All other kinds of motorcycle are freely imported upon demand without any restriction.

Import prohibition of second-hand clothing is targeted at the protection of public health and environment against epidemics.

Question 140

Paragraph 128 states that quantitative restrictions are applied to imports of cotton and maize. Are these restrictions in place of the TRQs that Viet Nam reported were eliminated in paragraph 103?

Answer:

The Prime Minister issued the Decision No. 46/2005/QD-TTg dated 3 March 2005 on revisions of the List of imported goods subject to tariff rate quotas wherein the tariff rate quotas on dairy products, maize and cotton would be eliminated from 1 April 2005.

Viet Nam has committed to eliminate all discretionary licensing as mentioned in paragraph 128 upon accession.

Question 141

Table 4(a): The prohibition of used articles, such as listed in table 4(a) is not justifiable under WTO provisions. Similar domestic articles are traded in Viet Nam without any such restriction. If there are concerns for health or safety, less restrictive, technical requirements applicable to both domestic and imported products should be developed.

Answer:

Viet Nam takes note of the above comments.

Viet Nam commits to eliminate its import prohibition on used motor-vehicles from the date of accession (detailed commitment is presented in Annex 1 of this document) and to apply technical measures to used motor-vehicles in compliance with the TBT Agreement.

Viet Nam is developing a system of quality standards for traffic, environment and human health safety applicable to means of transportation and shall promptly issue these regulations to ensure that this commitment is enforced.

However, due to the low level of its management capability, import prohibition on other second-hand goods appears to be the only effective alternative to protect health, environment and safety. Viet Nam seeks for the understanding of the Working Party's Members on its factual situation, especially when some WTO Members with much higher level of development still maintain import prohibition on certain used items.

Question 142

Please provide HS numbers for the second-hand goods on this list. Is this list of banned second-hand goods comprehensive?

Answer:

The list of used consumer goods subject to import prohibition by HS codes is attached to the Circular No. 11/2001/TT-BTM dated 18 April 2001 in Annex 1B and has been submitted to the Working Party as an Annex to the document WT/ACC/VNM/33.

Question 143

The ban on imports of large motorcycles should be lifted upon accession.

Answer:

Motorcycles with engine capacity exceeding 175cc is subject to regulations on eligible users (i.e., only for special and no-commercial purposes including the police, armed forces and for sport competition). The so-called de facto import prohibition of motorcycles with engine capacity exceeding 175 cm³ results from the restricted domestic registration and is applied on a non-discriminatory basis. Viet Nam neither has domestic production nor permits trading of motorcycles with engine capacity exceeding 175 cm³ in the domestic market. All other kinds of motorcycle are freely imported upon demand without any restriction.

Question 144

In paragraph 128 of the draft Report, there is reference to the Vietnamese import licensing system. For the purpose of confirming the consistency of such import licensing system with the WTO Agreements, we would like to seek the detailed information concerning the import licence on each agricultural and fishery product.

Answer:

The List of imported goods subject to restrictive import licenses together with a phasing-out schedule has been submitted to the Working Party as Annex 2 of the document WT/ACC/VNM/33. Viet Nam commits to eliminate all quantitative import restrictions upon accession and to apply import licenses in conformity with the WTO rules and regulations, including the Agreement on Import Licensing Procedures, from the date of accession.

Question 145

In paragraph 129, the draft Report states that the Vietnamese Government would eliminate all quantitative import restrictions in the form of quotas or restrictive licenses upon accession. With regard to importation of SKD and CKD for assembly of automobiles and motorbikes, there is a description in Annex 3 of WT/ACC/VNM/3/Add.1 that they are exception to such elimination, which seems to indicate the possibility of imposing quantitative restriction on importation of such SKD and CKD. On the other hand, there is a description in Table 2 (List of goods Subject to Quantitative Restriction and Phasing out Schedule) of WT/ACC/VNM/33 that SKD and CKD for assembly of automobiles will excluded from the restriction from 1 May 2005, and those of motorbikes will be excluded from 1 January 2003 respectively. We need to seek clarification from the Vietnamese side on the points mentioned above. In any event, we are of the view that production quantity of automobiles and motorbikes should be freely determined according to demand in the Vietnamese market, which would be indispensable to facilitate the enterprises' sound production activities. Therefore we would like to request the Government of Viet Nam to ensure that SKD and CKD for assembly of automobiles and motorbikes should not be subject to quantitative import restriction.

Answer:

Please refer to Table 2 (List of Imported Goods Subject to Quantitative Restrictions and Phasing-out Schedule) in Annex 2 of the document WT/ACC/VNM/33, wherein import prohibition on automobile components in the form of SKD and CKD1 was abolished from 1 May 2001 and on two-wheel and three-wheel motorcycle components in form of SKD and CKD was abolished from 1 January 2003.

Enterprises manufacturing and assembling automobiles and motorcycles are no longer required to apply for quotas or licenses to import automobile and motorcycle components in the form of SKD and CKD or to import automobiles and motorcycles. Manufacturers can import automobiles, motorcycles and their components in the form of SKD and CKD upon demand for these products without any quantitative import restriction.

Question 146

Paragraph 129: Have the QRs listed in Table 4(b) been eliminated according to the schedule given?

Answer:

Most of the items listed in Table 4(b) have been removed from the List of imported goods subject to quantitative restrictions of Viet Nam and the removal time as well as legislation providing for the removal has been explicitly stated.

With respect to a very few remaining items, Viet Nam shall eliminate quantitative restrictions upon accession in full compliance with its WTO commitments.

Question 147

We note that in paragraph 130 of WT/ACC/SPEC/VNM/5 Viet Nam states the products subject to line management for the period 2001-2005 are listed in Table 6. However, the list was not definitive and could be revised when needed.

- **We would be grateful for advice on whether there are other products subject to line management that have not been included on the list, and the criteria for revising the list. We would also be grateful if Viet Nam could provide a definitive list of products that would be subject to line management after accession.**
- **Could Viet Nam clarify the relationship between the line management measures scheduled for phase out in section C of Table 4b (List of goods subject to quantitative restrictions and phase-out schedule) and those listed in Table 6 (Products subject to line management by line Ministry)?**
- **We would appreciate advice on the purpose of line management measures for agricultural products, if they are not intended to restrict the quantity of imports.**
- **Could Viet Nam advise whether licenses are automatically issued by line Ministries?**

Answer:

Please refer to Annex 3 of the document WT/ACC/VNM/33 providing the Current List of imported goods subject to line management for the period 2001-2005 and management methods and management principles applicable to these goods. This Annex includes all relevant information such as full list of products, rationale for line management and management methods, etc. During the period 2001-2005, the regime of line management of imports and exports has in fact changed towards further elimination of items subject to licenses without any new addition to the list. The lists of goods subject to line management issued by line ministries are fundamentally developed on the basis of the multilateral arrangements that Viet Nam is a participant such as Wildlife Protection Fund, Treaty on Ammunition Ban, internationally recognized list of endangered and extinct species of animals and plants, etc.

As a principle, line import and export licenses do not impose quantitative restrictions on imports and exports.

Goods subject to line management are those peculiar to environment protection, human health, labour safety, national security, food safety and hygiene. Line ministries issue licenses to import for the purpose of testing/experiments new items not yet permitted to use in Viet Nam, to ensure compliance with standards and conformity with regulations. These goods are imported upon importers' demand.

Viet Nam commits to apply its line management measures in conformity with the WTO rules and regulations from the date of accession.

Question 148

Table 4c contains a list of products subject to payment method restrictions.

- **Could Viet Nam provide advice on the nature and purpose of these restrictions?**
- **We would appreciate clarification as to whether all of these restrictions have been eliminated.**

Answer:

Restriction in payment method mentioned in Table 4(c) of the document WT/ACC/VNM/5 means importers of goods listed in this Table are not allowed to pay by deferred L/C for their imports. As stated in Section D of Table 4(b) of the document WT/ACC/VNM/5, the restriction in terms of payment method was already abolished on 1 May 2001.

Question 149

We note that Viet Nam prohibits the import of used materials and equipment, including used machines, tyres and engines (table 4a), on the grounds of traffic safety. It also has import restrictions on a range of second-hand consumer goods, including textiles and clothing, electrical goods and furniture. We would strongly encourage Viet Nam to look to less trade-restrictive ways of addressing its legitimate product safety concerns. Safety-related regulations in respect of, for example, engines, tyres, electrical goods or clothing, applied to both domestic and imported goods alike, would be a more WTO consistent approach than import bans. We note that Viet Nam is developing a system of safety certification for consumer products, which could equally be applied to ensure the safety of used goods and equipment. We would also urge Viet Nam to reconsider its ban on the importation of motor cycles with engine capacity exceeding 175 cm³. Safety concerns would be more appropriately addressed through technical regulation and certification.

Answer:

Viet Nam commits to eliminate its import prohibition on used motor-vehicles from the date of accession (detailed commitment is presented in Annex 1 of this document) and to apply technical measures to used motor-vehicles in compliance with the TBT Agreement.

Viet Nam is developing a system of quality standards for traffic, environment and human health safety applicable to means of transportation and shall promptly issue these regulation to ensure that this commitment is enforced.

However, due to the low level of its management capability, import prohibition on other second-hand goods appears to be the only effective alternative to protect health, environment and safety. Viet Nam seeks for the understanding of the Working Party's Members on its factual situation, especially when some WTO Members with much higher level of development still maintain import prohibition on certain used items.

Question 150

We note that Table 4b (List of goods subject to quantitative restrictions and phase-out schedule) indicates that quantitative restrictions on a number of agricultural products were to be phased out (by May 2001 in the case of livestock, oilseeds and cereals; by January 2002 for vegetable oils) or replaced by TRQs (from May 2003 in the case of sugar, dairy products and eggs). However, comments in paragraph 128 suggest that discretionary licensing may still be used.

- We would be grateful for clarification concerning quantitative restrictions and discretionary licensing measures affecting agricultural products.

Answer:

Paragraph 128 quotes the comments from one Member, not a statement from Viet Nam.

Viet Nam commits to eliminate quantitative import restrictions on agricultural products from the date of accession.

Question 151

A number of measures notified in Annex 4 of WT/ACC/VNM/33 may have been applied.

We would be grateful if the following measures notified there be listed appropriately as non-tariff measures: (1) any measures relating amounts of tariff quota allocated to importers' levels of domestic production; (2) any measures relating amounts of tariff quota allocated to importers' levels of exports; (3) any measures allocating tariff quota contingent upon the approval of import plans by the government; (4) any measures allocating tariff quota on the conditions that the importer uses amounts imported only for its own production; (5) any measures requiring that the importer refrains from internal resale of product imported under the quota; (6) any measures depriving intending traders that do not have a particular kind of business registration of the right to be importers of record in relation to the amounts imported under the quota and of the right to become quota holders; (7) any requirements that a quota holder must send quarterly reports on tariff quota usage to the Ministry of Trade (when such data would be readily available to the government through official customs statistics); and (8) any requirements prohibiting the sale, purchase and transfer of allocated tariff quota quantities to other parties.

Answer:

For the purpose of clarification, the discussion on these points would be more appropriately presented in the section on TRQs. Please see also the answer to Question 110 where the same issues have been raised and responded.

Question 152

Please confirm that the planned timetable for enacting a WTO consistent import licensing system by 1 January 2005 is still on course. Please provide a copy of the implementing legislation for the new system as soon as possible for WP review.

Answer:

The Prime Minister issued the Decision No. 41/2005/QD-TTg dated 2 March 2005 on promulgation of the Import Licensing Regulation that is strictly based on the WTO rules and regulations. This

Decision will take effect from 1 September 2005. A detailed comparison between the provisions of this Decision and the WTO's Agreement on Import Licensing Procedures will be sent to the Working Party as soon as possible.

Question 153

We will need more specific information on the fees charged for import licenses, prior to finalization of this section.

Answer:

Viet Nam does not collect a licensing fee on all imports, but rather, it collects licensing fee on particular products involved in importation and exportation for which a written permission is requested for the importation or exportation. For instance: import/export licensing fee for goods deemed as cultural publication/particle is VND 50,000 (approximately US\$ 3.2) for a licence in case of formal trade; VND 2,000 (approximately US\$ 0.13) for a licence in case of informal trade (the Decision No. 203/2000/QD-BTC dated 12 December 2000).

Question 154

We take note of the commitment in paragraph 135.

Answer:

We thank you for the comment.

Question 155

Paragraph 135: The commitment paragraph should also cover other existing import prohibitions in addition to cigarettes and cigars.

Answer:

In addition to cigarettes and cigars, Viet Nam commits to eliminate the import prohibition on used motor-vehicles from the date of accession to the WTO as detailed in Annex 1 of this document and to apply technical regulations in conformity with the TBT Agreement on these products.

Question 156

We note that the commitment in paragraph 135 of WT/ACC/SPEC/VNM/5 on fully complying with the Agreement on Import Licensing is in square brackets. We would encourage Viet Nam to accept this commitment.

Answer:

Viet Nam agrees to delete the brackets.

Question 157

We would suggest a single comprehensive list of non-tariff measures applicable to imports be tabulated for inclusion in the report, and that the Secretariat assist Viet Nam in compiling such a list for inclusion in the forthcoming draft. Such a list would assist Members' understanding of the measures applied by Viet Nam and the Working Party's evaluation and discussion of NTMs. Under such a comprehensive list:

- **The listing of non-tariff measures would be complete and permanent. All non-tariff measures of all kinds applicable to imports from 2001 onwards would be listed, including all such measures that have since been eliminated or reformed (so Members will know what has happened), that currently remain in place with an appropriate justification (so Members will know where matters stand) and that will be eliminated or reformed in the future (so Members will know what Viet Nam intends to do). All products, including agricultural products, subject to non-tariff measures would be listed.**
- **The list would have separate columns for: 1. tariff line; 2. product description; 3. description of the measure (giving a brief description of the nature of the measure, e.g., import ban, quota, tariff quota, discretionary licensing requirement, non-automatic licensing requirement, approval requirement, line management requirement, trading rights restriction, local content requirement, mixing regulation, minimum customs value, etc.) and the rationale; 4. the entity (or entities) responsible for applying the measure; 5. the legal basis for the measure; 6. WTO justification for the measure or date of elimination.**
- **All products concerned would be listed in the numerical order of their HS-based code.**
- **There would, subject to the above, be a consolidation into such a single list of: all information already supplied in Tables 1, 4a, 4b, 4c, 5a, 5b, 6, 7, 11 of Annex 2 of WT/ACC/SPEC/VNM/5 and in Annex 4 of WT/ACC/VNM/33; all additional information needed to be provided by Viet Nam to complete the tabulation of such measures under the six columns; and all additional information sought by Members in connection with any other non-tariff measures applied by Viet Nam.**
- **We would however support the retention of some separate lists for as long as this is considered appropriate (even if the information was duplicated), provided that all information in those lists is, and will remain, fully consistent with information in the consolidated list.**

Answer:

Viet Nam has provided detailed lists of all non-tariff measures that had been applied and their phasing-out schedules in Tables 4(a), (b), (c), 5(a), 5(b), 6 and 7 of Annex 2, WT/ACC/SPEC/VNM/5. Viet Nam considers that these lists have fully provided the information required. In addition, Viet Nam has committed to eliminate all quantitative import restrictions that are inconsistent with the WTO's regulations from the date of accession to the WTO.

Question 158

We would note that there is no Table 3 in Annex 2 of WT/ACC/SPEC/VNM/5. Is there a missing table?

Answer:

The WTO Secretariat will consider this comment.

Question 159

In paragraph 268 of the draft Report, the Vietnamese side states that import prohibition of second-hand consumer products including second-hand clothing is required to protect human health. We are also of the view that unless there is a convincing scientific basis for imposing such import prohibition measure, such measure may cause a problem from the point of its consistency with Article 11 of GATT 1994. In this regard, we need to seek clarification from the Vietnamese side on how such second-hand clothing is treated in Viet Nam (e.g. whether or not

its resale as well as distribution in Viet Nam is prohibited). The Vietnamese side explains that there is no enforceable internal mechanism concerning such clothing. If that is the case, the Government of Viet Nam should develop such internal mechanism in an expeditious manner and make its best efforts to abolish the import prohibition measure. We would like to seek an explanation on the Vietnamese efforts in this regard.

Answer:

Viet Nam takes note of the above-mentioned comments. However, while none of processing and quarantine facilities for used clothing has been set up in Viet Nam and due to the low level of management capability, import prohibition on second-hand clothing appears to be the only effective alternative to protect public health and environment against epidemics. Viet Nam seeks for the understanding from the Working Party's Members on its situation, especially when some WTO Members with much higher level of development still maintain import prohibition on certain used items.

- **Customs valuation**

Question 160

Paragraph 137: We note the statement by Viet Nam regarding "measures to combat commercial fraud and transfer pricing ". We have to assume that Viet Nam does not mean to refer to a need to "combat" transfer pricing.

Answer:

In reality, regarding the tax administration at border gates as well as in domestic markets, the capacity of Viet Nam in applying measures against trade frauds and transfer pricing is still weak and need further improvement. This is one of the areas that Viet Nam expects developed Members to extend their technical assistance.

Question 161

We thank Viet Nam for the additional information provided on customs valuation, and on the commitment in the update note to fully implement the Customs Valuation Agreement at the date of accession. We also note in paragraph 139 of WT/ACC/SPEC/VNM/5 Viet Nam says that it will phase out minimum import values by the date of accession and that in paragraph 143 further states that the minimum values affecting imports of goods in Annex 7 have been eliminated. However, we note that Viet Nam's action plan for the implementation of the Customs Valuation Agreement (WT/ACC/VNM/20/Rev.1) provides for the progressive phase-out of minimum values up to 1 July 2007. We also note that, in the Circular providing Guidelines on Decree No. 60-2002-ND-CP on Determining Dutiable Value of Imported Goods, in Chapter 1.III (methods for determining dutiable value of imported goods and order of applicability), there is a reference to the calculated price and deductible price not temporarily applying, and not setting any timeframe for their application.

- **We would appreciate clarification on the timetable for the elimination of minimum values.**
- **We would be grateful for advice as to whether Viet Nam is still seeking transition periods for the implementation of the Customs Valuation Agreement.**
- **We hope that Viet Nam will be in a position to agree to accept the commitment in the first square bracketed text in paragraph 144 of WT/ACC/SPEC/VNM/5 to fully apply the provisions of the Customs Valuation Agreement from the date of accession.**

Answer:

Regarding presentation, there was a typing error in paragraph 143 of the WT/ACC/SPEC/VNM/5 at the 9th Working Party meeting, which specifically mentioned that minimum price list applicable to import, appeared as Annex 7, has been eliminated, while this content was already reflected originally at paragraph 139 that Viet Nam will abolish the minimum price list from the date of accession.

However, Viet Nam, in fact, had abolished the minimum price list since September 2004 (by virtue of Circular No.87/2004/TT-BTC dated 31 August 2004). Therefore, this content in the Draft Report of the Working Party will be updated accordingly.

According to the Circular No. 118/2003/TT-BTC guiding the implementation of the Decree No. 60/2002/ND-CP, two methods of customs valuation, which are part of deducted value in case of further processing and computed value, temporarily have not been applied (as mentioned in paragraph 143 of the WT/ACC/SPEC/VNM/5) due to certain technical difficulties. However, in the updated action plan to implement the Customs Valuation Agreement (WT/ACC/VNM/20/Rev.2), Viet Nam committed to implement fully these two methods upon accession.

Thus, basically, Viet Nam will fully comply with the Customs Valuation Agreement from the date of accession. Detailed commitment language will be discussed to reflect this compliance.

Question 162

Paragraph 140: We note that Viet Nam, in order to comply fully with Article 11 of the Agreement on Customs Valuation, has drafted new amendments to the Ordinance on Procedures for Settlement of Administrative Disputes, which were expected to be adopted by the National Assembly during the fourth quarter of 2004. Have these amendments been adopted and when will they come into force?

Answer:

Viet Nam's existing legislation permits importers or any other person responsible for paying import duty to bring a case regarding the decisions made by the customs authority before the Administrative Court after having appealed the disputed decision to the customs authority issuing the decision.

It is proposed that the Ordinance on amendment of and supplement to some Articles of the Ordinance on Procedures for Settlement of Administrative Disputes, which is expected to be adopted by the National Assembly in 2005, will permit an appeal against an administrative decision before the court even after this decision had been appealed to the highest level of administrative authority.

Question 163

We note the assurances in paragraph 143 of the draft report "that the minimum customs values stipulated in accordance with Decisions No. 164/2000/QD-BTC of 10 October 2000, No. 136/2001/QD-BTC of 18 December 2001 and No. 164/2002/QD-BTC of 27 December 2002, affecting imports of goods enumerated in Table 7, had been eliminated and that the new customs valuation system would apply to all imports upon accession."

Answer:

In fact, the minimum price list had been abolished since September 2004 according to the Circular No. 87/2004/TT-BTC dated 31 August 2004 and Viet Nam will fully comply with the Customs Valuation Agreement from the date of accession.

Question 164

We are reviewing the information in WT/ACC/VNM/34 and WT/ACC/VNM/35 on Viet Nam's implementation of the Agreement on Customs Valuation. We will have additional comments and questions when that review is completed.

Answer:

Viet Nam is willing to answer questions to clarify the issues that are interested by the Members of the Working Party.

Question 165

We would like to see evidence of the actual implementation of these assurances prior to the approval of Viet Nam's accession package by the Working Party. We seek to review the provisions with a view to making useful comments, as necessary.

Answer:

Viet Nam has abolished the minimum price list according to the Circular No. 87/2004/TT-BTC dated 31 August 2004.

Question 166

We note the duelling commitment language in paragraph 144. The language in the second set of brackets is more acceptable, but may need further revision.

Answer:

Viet Nam agrees to discuss appropriate commitment language.

- **Rules of origin**

Question 167

Paragraph 147: Please add "The Working Party took note of this commitment" at the end of the paragraph.

Answer:

Viet Nam agrees with this suggestion.

Question 168

We take note of the assurance in paragraph 147 of the draft report that Viet Nam will fully implement the Agreement upon accession, but look for specific evidence prior to accession of legislation addressing both broader implementation of the agreement and the provisions of Article 2(h) and paragraph 3(d) of Annex II of the WTO Agreement on Rules of Origin, i.e.:

- (a) that for both non-preferential and preferential trade, upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin that would be accorded to a good are issued as soon as possible but no later than 150 days after the request;
- (b) that requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time; and

- (c) **that such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable.**

Answer:

The Decree on Rules of Origin in accordance with the Commercial Law which is scheduled to be passed by the National Assembly at its 8th Session in May 2005 is being drafted and expected to be finalized by the end of 2005. Ministry of Trade is responsible for the drafting in co-ordination with relevant Ministries and agencies. In principle, the draft Decree shall be based on the WTO's Agreement on Rules of Origin and Agreement on Customs Valuation.

Question 169

We would like to see the draft law that will establish or confirm the existence of this service prior to finalization of Viet Nam's accession documents.

Answer:

The Decree on Rules of Origin in accordance with the Commercial Law which is scheduled to be passed by the National Assembly at its 8th Session in May 2005 is being drafted and expected to be finalized by the end of 2005. Ministry of Trade is responsible for the drafting in co-ordination with relevant Ministries and agencies. In principle, the draft Decree shall be based on the WTO's Agreement on Rules of Origin and Agreement on Customs Valuation.

Question 170

We look forward to Viet Nam's enactment of its new Commercial Law and to an opportunity to review its provisions for conformity with appropriate WTO rules and disciplines, including those found in the Agreement on Rules of Origin.

Answer:

According to the Program for Enacting Laws and Ordinances in 2005 of the National Assembly, the Commercial Law (amended) is scheduled to be passed at the National Assembly's 7th session in May 2005. One of the guiding principles in drafting the revised Commercial Law is to ensure its compliance with international treaties to which Viet Nam is a party, to be in line with the WTO principles and international trade rules and practices so as to facilitate Viet Nam's participation in the world trade system. During the drafting process, the draft Law has taken into account comments from international experts thanks to the technical programs funded by Members of the Working Party.

An unofficial English version of the draft revised Commercial Law shall be submitted to the Working Party as soon as the translation is completed.

- **Other customs formalities**

Question 171

Does Viet Nam intend to become a member of the International Convention on the Simplification and Harmonization of Customs Procedures?

Answer:

The General Department of Customs is putting every effort to prepare all necessary conditions in order to participate in the International Convention on the Simplification and Harmonization of Customs Procedures.

Question 172

With regard to paragraphs 148 and 149, we are of the view that since customs procedures which are not transparent would severely damage the smooth exportation, the effective measures for ensuring transparent customs procedures by the Government of Viet Nam is required. The issues pertaining to customs procedures are of great importance and therefore the Vietnamese commitment to the effect that they will be applied in a uniform and impartial manner and in conformity with the WTO Agreements is required.

Answer:

The Customs Law (in Chapter III) clearly stipulates rights and obligations of importers, as well as rights and obligations of customs officers in implementing the Customs Law. Generally, provisions of the Customs Law are consistent with common set of rules and procedures recommended by the Revised Kyoto Convention of 1999 on harmonization and simplification of customs procedures.

Customs procedures in Viet Nam have been reformed to be more facilitative to trade, investment and to ensure full compliance with international obligations committed by Viet Nam.

To that end, the Customs Law of Viet Nam is currently under process of amendments and supplements before it would be submitted to the National Assembly for approval (tentatively in May 2005). Specifically, the amendments and supplements would include: transparency of customs procedures, compliance and standardization of customs procedures in accordance with the Revised Kyoto Convention; simplification and harmonization of customs procedures to reduce number of documents required; application of electronic customs declaration and clearance (expected to begin in 2005); application of risk management and post-clearance audit system.

Question 173

In paragraph 149, the draft Report provides that customs procedures are publicly known and transparent. We would like to seek clarification on how such publication and transparency will be implemented and ensured. Also we would like to seek the detailed information on "hot line" communication system mentioned in the same paragraph.

Answer:

Regarding reform on legal document formulation process: Viet Nam consults opinions of stakeholders in the process of legal document formulation to check and ensure the feasibility. Legal documents once accomplished would be subject to publication in the Official Gazette to all interested individuals and entities. There is a reasonable time frame for stakeholders to understand the regulation before it actually takes effect (a legal document would take effect in 15 days after the date of publication in the Official Gazette).

Customs procedures, regulations and policies relating to importation and exportation are disclosed officially through mass media devices: Customs news, Customs Journal, website of the General Department of Customs (www.customs.gov.vn). At every provincial and city customs departments, there is a grievance settlement team which could be contacted through telephone hotlines.

- **Preshipment inspection**

Question 174

We renew our request that Viet Nam accept the proposed commitment language contained in paragraph 152 of the draft report.

Answer:

Viet Nam agrees with the commitment written in the first sentence of paragraph 152 of the Draft Report with certain adjustment. We would like to propose the detailed language as follows: "The representative of Viet Nam stated that if preshipment inspection requirements were introduced, they would be in conformity with the requirements of the Agreement on Preshipment Inspection and other WTO relevant agreements."

- **Anti-dumping, countervailing duties, safeguard regimes**

Question 175

Paragraph 156 of WT/ACC/SPEC/VNM/5, which is in square brackets, contains a commitment to apply safeguards, anti-dumping and countervailing measures in conformity with the relevant WTO agreements upon accession. Alternatively, in the absence of any legislative authority at the time of accession, Viet Nam would not apply such measures until legislation in conformity with the provisions of these WTO Agreements was implemented.

- **We hope Viet Nam will be in a position to accept this commitment.**

Answer:

Viet Nam commits to apply safeguards, anti-dumping and countervailing measures in conformity with WTO rules upon accession.

Question 176

We have conducted a preliminary examination of Viet Nam's new anti-dumping and countervailing duty legislation and has prepared the following written questions and comments for Viet Nam's review and response.

Answer:

Viet Nam welcomes the comments on our Ordinance Against Dumping of Imported Goods into Viet Nam and the Ordinance Against Subsidized Imported Goods into Viet Nam and is willing to provide necessary clarification.

Question 177

We look forward to Viet Nam's responses, and suggest that additional legislation may be necessary to address the deficiencies identified.

Answer:

The Ordinance Against Dumping of Imported Goods into Viet Nam was drafted in compliance with WTO's regulations on anti-dumping and is not inconsistent with the WTO Agreement on Anti-Dumping.

Viet Nam commits to apply safeguards, anti-dumping and countervailing measures in conformity with WTO rules.

Question 178

The following comments and questions refer to Viet Nam's Ordinance Against Dumping of Imported Goods into Viet Nam and are provided for written submission only.

In general, the Ordinance attempts to follow the provisions of the WTO Antidumping Agreement (AD Agreement). However, the language used in many of the Ordinance's provisions is confusing and/or ambiguous and requires clarification (although some of the confusion may be due to poor translation). For instance, in its initial explanation of terms used throughout the ordinance, Viet Nam defines "dumping margin" as the "difference calculable between the normal market price of goods imported into Viet Nam and the *cost of exporting* such goods to Viet Nam" (italics added). Further, several provisions of the AD Agreement are not reflected in the Ordinance. A preliminary list of concerns is presented below.

- Viet Nam's Ordinance makes no provision for determining individual AD rates for each known exporter or producer, nor does it discuss methodology for 'sampling' in cases of large numbers of exporters or producers, as called for in AD Article 6.10.
- In Article 7 of the Ordinance, it should be made clear whether the council determining injury reports to the Minister of Trade or whether it is an independent entity.
- Articles 8 and 9, which outline requirements for petitions, omit the requirement of AD Agreement Article 5.2 (ii) to include a list of known persons importing the product to be investigated.
- Article 13 of the Ordinance does not completely address AD Agreement Article 6.1 which requires that all interested parties shall be given notice of the information which the authorities require and ample opportunity to provide written evidence. The Ordinance merely states that parties shall be responsible to provide authentic information and data on request of the investigating agency. No detail is provided on the amount of time that exporters or foreign producers will have to respond. Furthermore nowhere in the ordinance is it confirmed that parties concerned with the investigative process, as outlined in Article 11, will be able to present information orally, in addition to submitting such information in writing, in accordance with Article 6 of the AD Agreement.
- The Ordinance does not specify the amount of time that parties have to register as a "person concerned with the investigation" in a proceeding. Nor does it specify the consequences for not registering – if an exporter or manufacturer does not register as a concerned party and is not contacted by the administering authority, how will that party be treated once final measures are put in place (i.e. what dumping margins will be effective for products from that entity)? Furthermore, there is no indication of how new entrants to the market will be treated per AD Agreement Article 9.5.
- There is no provision in the Ordinance that requires parties submitting confidential information to submit non-confidential summaries thereof, in accordance with Article 6.5 of the AD Agreement. Viet Nam should be urged to establish rules for the dissemination to interested parties of adequate non-confidential summaries of all information submitted to the administering authority.

- Viet Nam needs a more detailed explanation of how it will make a fair comparison between normal value and export prices as envisioned by Article 2 of the AD Agreement.
- Viet Nam's regulations do not provide any indication of how the administering authority will verify information consistent with Article 6.6 and 6.7 of the AD Agreement.
- Viet Nam needs to specify more clearly conditions under which they will use facts available, consistent with Annex 2 of the Agreement.

Other Specific Areas of Concern:

- Chapter I, Article 3, No. 3: Viet Nam should confirm whether it will have a preference for using third country export prices or constructed value if there is not a viable domestic market upon which to base normal value.
- Chapter I, Article 3, No. 3: Viet Nam should confirm how the authorities will determine a product's country of origin, particularly when the merchandise is shipped through third countries.
- Chapter I, Article 4, No. 2: This article suggests that price undertakings may be negotiated directly between the exporting companies and the Vietnamese petitioners, a situation not condoned under Article 8 of the AD Agreement.
- Chapter II, Article 8: It is not clear from this article whether injury determinations will be announced at the same time as dumping determinations or whether the investigations will run on different timetables.
- Chapter II, Article 15: We urge Viet Nam to institute clearly defined procedures for ensuring the confidentiality of information submitted by parties in the course of a countervailing proceeding.
- Chapter II, Article 18, No. 2: We urge Viet Nam to issue clear rules on when parties will receive the essential facts under consideration as well as clear rules regarding opportunities for parties to submit information and make arguments to the administering authority.
- Chapter II, Article 19: This article makes no mention of causal link between dumped imports and injury, a requirement to being able to apply antidumping measures.

Answer:

In the unofficial English version of this Ordinance, which was provided to the WTO Secretariat prior to the 9th Session, some technical terms were not translated precisely. Viet Nam would like to provide another unofficial English version of the Ordinance Against Dumping of Imported Goods into Viet Nam (please see document WT/ACC/VNM/36/Add.2).

Like many other WTO Members, Viet Nam's Ordinance would not incorporate all provisions of the AD Agreement. Detailed regulations on specific issues such as determination of individual anti-dumping duty rates for each exporter or producer, procedures for conducting investigation and application of anti-dumping measures, comparison between normal value and export price, etc. will be stipulated in the documents guiding the implementation of the Ordinance.

According to the Article 7 of the Ordinance, the Anti-Dumping Council shall operate as an independent entity in considering the reports made by investigation authority, determine, based on majority vote, whether exists dumped imports into Viet Nam and such dumping causes or threatens to cause a material injury to the domestic industry. This Council is entitled to recommend the Minister of Trade to issue his decision on whether to impose anti-dumping duty.

Articles 14 and 15 of the Ordinance clearly stipulate the rights of related parties to an anti-dumping case to have access to information during the investigation process, to present and provide

information and evidence for the defence of their interests. Detailed regulations on the procedures for conducting investigation and application of anti-dumping measures etc. will be stipulated in the documents guiding the implementation of the Ordinance.

Article 10 of the Ordinance stipulates the public notice of the decision to initiate an anti-dumping investigation. At the same time, this decision will be sent to organisations and individuals producing and exporting goods subject to investigation, relevant authorities of the country or territory exporting the goods subject to investigation. Exporters are therefore known of all the information and have to prepare actively for participation to the investigation in order to defend their interests. In addition, they shall automatically become related parties according to the provisions of Article 11 of the Ordinance and have the same rights and obligations as those of other related parties.

The Ordinance also stipulates the review as requested by exporters or related parties and determinations may be issued based on the result of this review. This issue would be stipulated in further details in the documents guiding the implementation of the Ordinance.

Article 15 of the Ordinance stipulates the submission of confidential information. Paragraph 1 of this Article stipulates that related parties shall have to provide the investigation authority with non-confidential summaries of confidential information (according to paragraph 2) for dissemination to related parties.

Related parties may choose any of the two methods of determination. However, they are obliged to provide information to defend their view and arguments during the consultation process as stipulated in Article 14.

It would be confirmed that Article 4 of the Ordinance does not permit exporters to negotiate directly with domestic producers for price undertakings commitments for avoiding anti-dumping duty. Price undertakings must be made voluntarily by exporters and submitted to competent authority for consideration. This undertaking will be announced publicly, and related parties are entitled to present their comments to the competent authority (either in written form or in consultation meeting) on whether they support or request an adjustment to the price undertakings made by exporters, to submit evidence proving the possibility of existence or termination of injury when the undertaking implemented. The competent authority shall consider and decide whether or not to accept price undertakings made by exporters.

The determination of injury will be announced at the same time with the determination of dumping. Please refer to Articles 12, 17 and 18 of the Ordinance for more details.

Article 15 stipulates that related parties have the right to require the competent investigation authority to ensure the confidentiality of the information submitted by them. Keeping confidentiality is an obligation of the investigation authority.

The regulation on when parties will receive the essential facts under consideration and opportunities for parties to submit information and make arguments to the competent administering authority would be further stipulated in the documents guiding the implementation of the Ordinance.

During the investigation process, the competent authority is responsible for verifying the factors subject to investigation according to the Article 12 of the Ordinance and may conclude that a causal link does not exist. This determination is very complicated and should be considered carefully due to the fact that the existence of both dumping and material injury may be determined. Therefore, According to the Article 7 of the Ordinance, only the Anti-Dumping Council is entitled to the above determination and to recommend the Minister of Trade to decide whether to apply an anti-dumping measure or not.

Question 179

The following questions refer to the Ordinance on measures against subsidized products imported into Viet Nam (no. 22-2004-pl-ubtvqh11) and are provided for written submission only.

General Provisions

- Page 1, Article 2, *Interpretation of Terms*, paragraph 4 - Under this provision, "material injury to a domestic industry" is defined as, *inter alia*, "a situation leading to difficulty for the formation of a domestic industry." Please explain how Viet Nam will assess this difficulty.
- Chapter 1, Article 2, No. 8 - When considering whether a subsidy is specific, will the governing body take into consideration the specificity of the subsidy as it relates to the granting authority's jurisdiction in accordance with Article 2 of the SCM Agreement?
- Chapter 1, Article 12 - Will parties concerned with the investigative process, as outlined in Article 11, be able to present information orally, in addition to submitting such information in writing, in accordance with Article 12 of the SCM Agreement?
- Article 13 of the Ordinance does not completely address AD Agreement Article 6.1 which requires that all interested parties shall be given notice of the information which the authorities require and ample opportunity to provide written evidence. The Article merely states that parties shall be responsible to provide authentic information and data on request of the investigating agency. No detail is provided on the amount of time that exporters or foreign producers will have to respond.
- Page 2, Article 3, Forms of Subsidy, paragraph 5 - Under this provision, "other forms of subsidy" outside the categories enumerated are to be determined "in a way which is fair, reasonable and not contrary to international practice." We urge Viet Nam to provide an illustrative list of these other forms of subsidy in an annex to the Ordinance or in an implementing regulation.

Investigation Into the Imposition of Countervailing Measures

- Page 5, Article 11, Parties concerned with investigative process, paragraph 11 - Among those defined as parties to a countervailing proceeding under this provision are "any other organizations or individuals with rights and interests involved in the investigative process." How are these rights and interests determined by the investigative agency? We suggest that Viet Nam provide an illustrative list of these rights and interests, or of the organizations or individuals with such rights and interests, in an annex to the Ordinance or in an implementing regulation.
- Page 6, Article 14, Determination of subsidy, paragraph 2(b), (c), (d) - In determining the subsidy amount where the subsidy is a loan, loan guarantee or government purchase of goods and services, how is the benchmark, or comparable market price, determined by the investigative agency?
- Page 7, Article 17, Confidentiality of information - We urge Viet Nam to institute clearly defined procedures for ensuring the confidentiality of information submitted by parties in the course of a countervailing proceeding.

Imposition of Countervailing Measures

- Page 8, Article 22, Temporary imposition of countervailing tax, paragraph 1 - This provision stipulates that a decision temporarily imposing countervailing tax may be issued within 60 days from the date of the decision to conduct an investigation, "based on the preliminary conclusion." However, we note that, under Article 19, the

preliminary conclusion may not be announced for up to 90 or 150 days from the date of the decision to conduct an investigation. Can Viet Nam explain how the timelines in these two provisions are not inconsistent with each other?

- **Page 9, Article 25, Imposition of countervailing tax with retrospective effect, Paragraph 4-5 - With regard to the refund of any taxes not owed following the final conclusion of a countervailing proceeding, does Viet Nam contemplate returning those taxes with interest?**
- **General Comment: With regard to various provisions of the Ordinance where the competent governmental body is required to publicly announce relevant information or decisions, or notify the parties concerned regarding relevant information or decisions, we urge Viet Nam to identify clear avenues and provide clear procedures for such announcements and notifications in any related implementing regulations.**

Answer:

The Ordinance Against Subsidized Imported Goods into Viet Nam was promulgated in compliance with the WTO's regulations. However, like in many other countries, the highest effective legislation on countervailing measures only stipulates general principles and norms in accordance with the WTO's regulations. Viet Nam is now drafting documents guiding in details the implementation of this Ordinance.

B. EXPORT REGULATIONS

- **Export restrictions**

Question 180

Paragraph 158: We remain concerned about the export duties imposed on ferrous and non-ferrous scrap exports. Export taxes on scrap metal distort the free flow of raw materials and put pressures on prices to increase. We request that Viet Nam eliminate the export duties imposed on ferrous and non-ferrous scrap exports by the date of accession.

Answer:

Rationales behind the fact that an export duty is imposed on this product include:

- This is an important material input for manufacturing of metal to meet the demand of various industries in Viet Nam;
- Domestic market is currently running short of the product and it is also difficult to import the product; and
- Viet Nam believes that imposition of export duty on ferrous and non-ferrous scrap (with negligible incidence of the tax) would not affect the trade flow of the raw material in general and would not cause any pressure on price to increase. Viet Nam also believes that the export duty imposition would not incur any violation of WTO rules. A number of WTO Members have raised their export duties, hence, the prices of ferrous materials and scraps. Obviously, it is not fair to require Viet Nam to eliminate its export duties imposed on ferrous and non-ferrous scrap exports.

Question 181

Paragraph 158: Does Viet Nam intend to phase out its export duties?

Answer:

Viet Nam believes that imposition of export duty at a reasonable level will not create a stumbling block to trade nor it would incur any violation of WTO rules.

Question 182

We note that in paragraph 166 of WT/ACC/SPEC/VNM/5 Viet Nam states that under the flexible control mechanism for rice, the Government would announce an "indicative" export volume to all enterprises, based on annual production forecasts. Viet Nam also states that enterprises would be free to sign rice export contracts.

- **We would appreciate further details on how the annual production forecasts on rice are calculated and the export volumes are determined.**
- **Could Viet Nam advise on whether there are criteria governing enterprises entering into rice export contracts?**

Answer:

Viet Nam is a major rice consuming country. Viet Nam only exports an surplus quantity of rice after balancing its food security. Every year, the Ministry of Agriculture and Rural Development checks the total area of rice fields, estimates total rice productivity based on cultivated area and productivity of each harvest. According to the production capability and domestic demand on rice, taking into account the food security needs, the Government will announce an indicative export volume of rice. This announcement is merely an guidance, not a restriction, to domestic enterprises for their reference so that they can decide their business plans in a most effective manner. Therefore, it is not necessary to allocate the indicative export volume of rice to each enterprise.

Since the elimination of export quota and authorized importers of rice, Viet Nam has not been applying any restriction on rice export. Traders who have registered their business scopes are entitled to export and sign contracts for exporting rice. No enterprises are granted exclusive rights and privileges in exporting rice.

Question 183

We understand that exports of rice, textiles and garments in quota-regulated markets are subject to ad hoc quotas (e.g., see the IMF Annual Report on Exchange Arrangements and Exchange Restrictions – 2004, page 1046, based on information current at 31 January 2004).

We appreciate that some policy changes have occurred in the last year. However, we would be grateful for details of any such restrictions that may currently be in place.

Answer:

All enterprises are entitled to export rice without obtaining licence or quota.

Viet Nam encourages the exportation of textiles and garments. The reason why Viet Nam allocates export quota to domestic enterprises exporting these products is that some countries are still imposing quotas on Vietnamese exports of textiles and garments. We would also very much like to see these countries abolishing all quotas on Vietnamese products so that our Government can remove this restriction accordingly.

Question 184

In the reply to Question 93 of WT/ACC/VNM/33 it is stated that the rice export quota and focal point exporting enterprises for rice have been eliminated, the right to export rice is now open to all enterprises, and Viet Nam each year will announce indicative export volumes to all enterprises. Given that the "flexible control mechanism" has not been introduced, we would be interested in details of the export regime for rice since the elimination of the quota. Have any other export quotas or other export restrictions been introduced since that time? Are there now any enterprises that have exclusive or special rights and privileges that may affect the level and direction of exports of rice?

Answer:

According to the production capability and domestic demand on rice, the Government will announce an indicative export volume of rice. This announcement is merely an indicative guidance, not a restriction, to domestic enterprises for their reference so that they can decide their business plans at their discretion in a most effective manner. Since the elimination of export quota and authorized importers of rice, Viet Nam has not been applying any restriction on rice export. Traders who have registered their business scopes are entitled to export and sign contracts for exporting rice. No enterprises are granted exclusive rights and privileges in exporting rice.

Question 185

We note that the reply to Question 93 of WT/ACC/VNM/33 states that at the beginning of each year the government will announce the indicative export volume in that year to all enterprises. How would an enterprise identify itself to the government as an intending exporter of rice so that an indicative export volume may be issued? How is the indicative export volume determined for each enterprise?

Answer:

As the indicative export volume of rice is only an indication of domestic food security, this volume is not based on individual export capability of enterprises, but on aggregate data on annual productivity, consumption and reserved volume (mostly based on previous years' data). The Government's announcement on indicative export volume of rice is merely an indicative guidance to domestic enterprises for their reference so that they can decide their business plans at their discretion in a most effective manner. Traders will find their export markets and partners by themselves to determine their own export capability.

The indicative export volume applies to the economy as a whole and not to each enterprise separately. The Government does not allocate indicative export volume of rice to each enterprise. Traders who have registered their business scopes are entitled to export and sign contracts for exporting rice. As we have answered very clearly in Question 93, WT/ACC/VNM/33, enterprises are entitled to sign rice export contracts at their own discretion. The Government would only otherwise act when food security is endangered.

Question 186

We would be grateful for clarification of the usage of indicative export volumes by exporters of rice. Can an enterprise export rice without an indicative export volume being issued to it? Are there any obligations an enterprise must fulfil in relation to its indicative export volume? May an enterprise export an amount that exceeds its indicative export volume? What would be the consequences (e.g., for future indicative export volumes) if an enterprise's rice exports exceeded its indicative export volume for a particular year?

Answer:

Every year, the Government announces an indicative volume of rice that Viet Nam may export based on annual productivity and consumption as an indicative guidance to domestic enterprises for their reference so that they can decide their business plans at their discretion in a most effective manner. The indicative export volume applies to the economy as a whole and not to each enterprise separately. The Government does not allocate indicative export volume of rice to each enterprise and no obligations are imposed on enterprises.

Enterprises are entitled to sign rice export contracts at their own discretion and but they need to notify these contracts to the Viet Nam Food Association. This Association is responsible for informing enterprises the updated data on accumulated contracted export volume.

Question 187

We would be grateful if further details of the Viet Nam Food Association could be provided. We would be interested to know whether it is a private association, a government body, or a private body entrusted to carry out government policies. If it carries out government policies, we would be interested in details of the policies is it entrusted to carry out.

Answer:

According to the Charter of the Viet Nam Foods Association, "the Viet Nam Foods Association is a social organisation of the enterprises under all forms of ownership operating in production, processing, trading foods, agricultural products and products processed from foods; this Association was established voluntarily by these enterprises in order to protect legitimate interests of its members, to take part in ensuring foods security to meet domestic demand and to import, export foods from and to the world's market in accordance with the State's regulations. The Association also promotes the production development, the building of infrastructure of foods industry in order to improve quality and business effectiveness of this industry."

Thus, the Viet Nam Foods Association is a social – professional organisation (or non-governmental organisation) operating under the principles of voluntary participation, self administration, self finance and self responsibility before the laws. The Association's scope of activities, as stated in its Charter, were agreed unanimously by its members in accordance with the Vietnamese laws. The Association is not a governmental body, does not function as a State administration nor are authorised to implement the State's policy. The Association proposes to the Government, on behalf of its members, policies relating to foods production and trade. The Association set up the best policies to ensure interests of its members in different periods, including encouraging the alignment of members and non-members, supervising the implementation of the Association's resolution by its members.

Question 188

We would hope Viet Nam would be in a position to accept the commitment in paragraph 167 of WT/ACC/SPEC/VNM/5, currently in square brackets, to apply any export restrictions in a manner fully consistent with WTO provisions.

Answer:

Viet Nam is willing to commit as requested. The text would reads as follows: "The representative of Viet Nam confirmed that, upon accession, any remaining export restrictions and management measures would be applied in a manner fully consistent with WTO provisions."

- **Export subsidies**

Question 189

We are of the view that export subsidies are the most trade distortional measure in the agricultural, fishery and forestry field and that all forms of export promotion measures which have the same effect with export credits, export state trade and export subsidies. Furthermore, Viet Nam is classified neither as "developing countries Members" nor as "Net food importing developing country" stipulated in Article 27 of the Agreement on Subsidies and Countervailing Measures. Therefore, although the draft Report states in paragraph 174 that "Viet Nam would abolish subsidies in the form of direct payments contingent on export performance within three years from the date of accession the WTO", we would like to invite the Government of Viet Nam to completely abolish export subsidies upon accession. In this connection, we note that the representative of Viet Nam made a commitment in the last Working Party meeting in December 2004 that it would abolish export subsidies upon its accession to the WTO, which we would like to welcome. We would like to request that such commitment should be duly included in the Report.

Answer:

Viet Nam is a low-income developing country at a very low level of development and would like to seek the recognition by Members of the Working Party of this fact.

Viet Nam has committed to eliminate export subsidies on agricultural products, with the exception of forms of agricultural export subsidies that developing countries are eligible to maintain, from the date of accession. It means that all existing agricultural export subsidies as notified in Viet Nam's Notification on domestic support and export subsidies in agriculture will be eliminated from the date of accession to the WTO.

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO; and
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Question 190

Paragraph 32 of WT/ACC/SPEC/VNM/5: We remain interested in receiving information about how subsidies contingent upon export performance will be eliminated, e.g., will the government introduce legislation in the near term? Can these measures be eliminated by administrative decree?

Answer:

As answered in the 9th Session of the Working Party, the export subsidies in the form of direct payment contingent upon export performance are mainly regulated on a yearly basis. Therefore, they will be eliminated when governmental competent authorities cease to issue legal document providing for these kinds of subsidies for the year.

Question 191

Does Viet Nam consider the granting of these subsidies to be a contractual obligation?

Answer:

The current Vietnamese laws have no detailed provisions on the concept of contractual obligation between the Government and foreign investors. As the concept is not clear, Viet Nam would highly appreciate more clarification on this question.

Question 192

Referring to paragraph 168 of WT/ACC/SPEC/VNM/5, what are the total amounts disbursed under the Export Promotion Fund for the years 2001-2004? Please provide a table indicating amounts disbursed by industry.

Answer:

Please find all the available data in Viet Nam's Notification on Subsidies according to the SCM Agreement (WT/ACC/VNM/13/Add.2).

Question 193

What is the total amount disbursed on an annual basis through the Export Awards Program discussed in Paragraph 169? Please provide a table indicating amounts disbursed by industry.

Answer:

Please find all the available data in Viet Nam's Notification on Subsidies according to the SCM Agreement (WT/ACC/VNM/13/Add.2).

Question 194

What terms and conditions apply to loans provided through the Development Assistance Funds Export Credit Programme mentioned in paragraph 171 of WT/ACC/SPEC/VNM/5?

Answer:

Please find all the available data in Viet Nam's Notification on Subsidies according to the SCM Agreement (WT/ACC/VNM/13/Add.2).

Question 195

Page 59, paragraph 174 - With regard to the proposition that Viet Nam abolish subsidies contingent on export performance within three years from the date of accession to the WTO, we restate our position that, upon accession, Viet Nam is under obligation to adhere to all the provisions of the SCM Agreement, which includes the prohibition of subsidies contingent on export performance, as set forth under Article 3.1(a).

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO; and
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Question 196

Paragraph 174: We applaud Viet Nam's commitment to eliminate prohibited export subsidies. We would like to see all such measures eliminated upon accession. We request that Viet Nam modify its commitment language to specify exactly which programs it will terminate by accession.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO;
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Question 197

Paragraph 174: Viet Nam seems to seek a three-year transitional period to abolish export subsidies in the form of direct payments contingent on export performance. A priori, this is not acceptable, as the provisions of Article 27 of the ASCM that Viet Nam refers to do not apply to Viet Nam.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO; and
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Question 198

We note in paragraph 175 of WT/ACC/SPEC/VNM/5 that Viet Nam has agreed to the elimination of the export ratio requirement and subsidies contingent on localization ratios and the use of domestic over imported goods upon accession, and we welcome this commitment. Viet Nam, however, is seeking a three year transition period to abolish subsidies in the form of direct payments contingent on export performance. We would wish to see these subsidies eliminated upon accession.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO;
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Question 199

Page 64, paragraph 189 - Concerning Viet Nam's request to maintain incentives applied to export-oriented production, based on the special and differential treatment provisions of the WTO, we reiterate our view that the prohibition exemptions provided under Article 27 of the SCM Agreement have either expired or do not apply to Viet Nam. We seek Viet Nam's commitment to eliminate these subsidies upon accession.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO;
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 200

In each paragraph of the present section, the draft Report includes incentive measures in each individual area and item of the Vietnamese industries. We would like to seek clarification from

the Vietnamese side on these measures' consistency with the WTO Agreements. At present, the relationship between these measures and the WTO Agreements are mentioned only in paragraphs 189 and 190, much clear and detailed description should be provided in the Report, for example by clarifying each item's consistency with the WTO Agreements.

Answer:

Viet Nam is of the view that except for the subsidies that Viet Nam has committed to eliminate, the application of the investment incentives stated in these paragraphs is not inconsistent with the WTO Agreement on SCM.

Question 201

Paragraph 178 on page 58 of WT/ACC/SPEC/VNM/5 indicates that labour-intensive domestic enterprises are eligible for "exemption or reduction of land rental and land use tax." Are these two separate taxes? How does a company qualify for exemption? How does it qualify for reduction? Please estimate the value of the subsidy. Please identify the number companies that qualify for this subsidy by sector.

Answer:

Land use tax and land rental are two different type of collectibles on land: land use tax is a tax that the Government collects annually on the use of land which has been allocated by the Government to entities or individuals on a long term basis for the purpose of agricultural production, residence, construction or doing business; meanwhile, land rental is an annual collectible on the use of land which is allocated on the basis of termed land rent contract. As such, there are differences between the land use tax and land rental in terms of payers, rates, land use right, and right to decide on land and property on the land.

The criteria for land rental and land use tax exemption and reduction were stated in the Notification on Industrial Subsidies (WT/ACC/VNM/13/Add.2). According to legal documents governing domestic investment promotion, in order to be entitled for exemption from or reduction of land use tax or land rental, an investor should have a project satisfying requirements on the number of employees or the location or region of investment should fall under the list of prioritized areas for investment.

Regarding the requirement on number of employees that a project in any sector should meet in order to be entitled for exemption from or reduction of land use tax or land rental, specific regulation is as follows:

- Urban areas of grades 1 and 2: 100 employees;
- Regions under List B or C: 20 employees; and
- Other areas: 50 employees.

With respect to the estimation of the incentive value and the number of companies that qualify for this subsidy by sector, Viet Nam still cannot provide these data and figures due to the difficulties in statistical works.

Question 202

The same paragraph indicates that labour-intensive domestic enterprises are eligible for extended corporate income tax exemption and reduction. What is "extended corporate income tax?" How do companies qualify for an exemption? How do companies qualify for reduction?

What is the value of the subsidy? Please identify by sector the number of companies that benefit from this subsidy.

Answer:

"Extended Corporate Tax" is an additional incentive for labour-intensive enterprises. According to the current Law on Corporate Income Tax, labour-intensive factor is one of the criteria for corporate income tax exemption and reduction (two year exemption and 50 per cent reduction in three subsequent years). An enterprise shall be eligible for extended corporate income tax exemption and reduction if it satisfies both requirements on the number of employees and sectors, location of investment.

Please refer to the Notification on Industrial Subsidies (WT/ACC/VNM/13/Add.2) for detailed criteria. Regarding the requirement on number of employees that a project in any sector should meet in order to be entitled for corporate income tax exemption and reduction is as follows:

- Urban areas of grades 1 and 2: 100 employees;
- Regions under List B or C: 20 employees;
- Other areas: 50 employees.

With respect to the estimation of the incentive value and the number of companies that qualify for this subsidy by sector, Viet Nam cannot provide the data and figures due to the difficulties in statistical works.

Question 203

Paragraph 178 also indicates that domestic labour-intensive enterprises could also deduct expenses related to the employment of female workers from taxable income. What is the value of this subsidy? Please identify by sector the number of companies that benefit from this subsidy.

Answer:

Enterprises using large number of female employees are entitled to the deduction of costs related to these employees in determining the taxable income; in addition, these enterprises are also entitled for corporate income tax reduction on the amount of income equivalent to the actual costs paid to female employees. This is a uniform policy applicable to all enterprises, regardless of domestic or foreign ownership, sector and location of the project.

With respect to the estimation of the incentive value and the number of companies that qualify for this subsidy by sector, Viet Nam cannot provide the data and figures due to the difficulties in statistical works.

Question 204

The following questions refer to paragraph 180 on page 59 of WT/ACC/SPEC/VNM/5. For each subsidy program – exemption or reduction of land use payment, land rental, and land use tax; preferential corporate income tax rates; extended corporate income tax exemption and reduction; exemption or reduction of corporate income tax payable on the income attributable to expansion and/or enhancement investments; exemption from supplementary corporate income tax; import duty exemption on equipment and machinery constituting the enterprise's fixed assets; and additional preferential treatment with respect to corporate income tax – please provide:

- **the estimated total value of the subsidy; and**
- **the number of companies by sector that benefit from the subsidy.**

Answer:

With regard to estimated total of the subsidy and the number of companies by sector that benefit from the subsidy, Viet Nam could not provide the data and figures due to limitations in statistical capacity.

Question 205

Does Viet Nam consider the granting of these subsidies to be a contractual obligation?

Answer:

The current legal system of Viet Nam does not have any concrete provisions or definitions on contractual obligations between the Government and investors. Therefore, Viet Nam hopes to receive clearer explanation of the question.

Question 206

Please confirm that all direct subsidies available to state-owned enterprises are also available to private companies.

Answer:

Viet Nam confirms that there is no discrimination between state-owned enterprises and other types of enterprises in the implementation of all above direct subsidies.

Question 207

With respect to page 60-64, paragraph 176-188, we appreciate the information provided by Viet Nam on its industrial development subsidy programs as enumerated in the Notification on Industrial Subsidies and discussed in several paragraphs of the report. We join with other Members in raising concerns about these programs to the extent these programs may be contingent upon export performance and, therefore, prohibited under Article 3.1 of the SCM Agreement. We will seek Viet Nam's commitment, consistent with its accession obligation to honour the prohibitions under Article 3.1 of the SCM Agreement, to eliminate upon accession any direct subsidies dependent upon export performance. We reserve the right to ask further questions and/or seek further commitments.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO;
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Question 208

Paragraph 190: Viet Nam seems to seek two transitional periods in relation to industrial subsidies: three years to abolish subsidies in the form of direct payments contingent upon export performance and nine years for subsidies in the form of investment incentives. A priori, this is not acceptable.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
 - to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO;
 - to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.
- **Technical barriers to trade**

Question 209

Viet Nam's adapting its TBT system to meet WTO requirements by accession is an essential requirement.

We seek a Vietnamese TBT system that is transparent and non-discriminatory, possesses a known focal point for coordinating the system, and has basic institutions in place enforcing legislation that meets WTO requirements.

Mandatory technical regulations must be brought into conformity with WTO principles by the date of accession.

The system in place cannot require MRAs as the sole vehicle for conformity assessment; Viet Nam needs to implement transparent and non-discriminatory conformity assessment procedures that allow acceptance of test results from recognized foreign laboratories.

Answer:

- The focal point for coordinating Viet Nam's TBT system is the Ministry of Science and Technology. As an authorized body of this Ministry, the Directorate for Standards and Quality is responsible for such coordination.
- Conformity assessment procedures that allowed the acceptance of test results from recognized foreign laboratories were considered and included in the system of export-import quality inspection and system of safety certification as mentioned in paragraph 197 and 198 of the document WT/ACC/SPEC/VNM/5.

Question 210

The Ministry of Science and Technology (which includes STAMEQ—the national standards body) is identified as the "focal point" in the Action Plan, while the Ministry of Trade, and

other concerned ministries, "to coordinate." What does this mean? Does MOST/STAMEQ have a policy role, or is it a technical one? Does STAMEQ develop regulations (mandatory standards)? What is MOST/STAMEQ's role in regulatory policy, if any? MOT's?

Answer:

As the focal point for TBT issue in Viet Nam, Ministry of Science and Technology (MOST) is also functioning as a focal point to carry out Viet Nam's Action Plan on the implementation of TBT Agreement. Other ministries, including the Ministry of Trade (MOT), has responsibility to cooperate with the MOST to develop, revise and implement the Action Plan in their concerned areas.

As the government bodies, MOST and STAMEQ have the policy-making role. Under the Law on the Promulgation of Legal Normative Documents, however, MOST has the power to issue legal documents while STAMEQ does not. STAMEQ studies TBT policies and submits them to MOST or the Government for approval. Apart from the policy-making role, STAMEQ has technical role (for example testing, certification, inspection, etc.). Before the TBT policies are promulgated, all the relevant issues are consulted with parties concerned, including line ministries.

Question 211

What is its relationship to the Department of Justice which is also identified as a focal point (in the WP report)? Is there one agency with central oversight responsibility?

Answer:

The Ministry of Justice is an agency with central oversight responsibility to appraise the drafts of legal documents submitted by the authorized bodies before these drafts are submitted to the Government and the National Assembly for approval.

Question 212

How will STAMEQ fulfil the TBT responsibilities for notification and publication prior to implementation for comment? The U.S. notification authority reviews the Federal Register on a daily basis to identify relevant proposals for notification to the WTO Secretariat. It appears that Viet Nam, in contrast, does not have a single publication to rely upon –in addition to STAMEQ's Bulletin, there are also publications of ministries and branches, and local governments. Is this correct? Are there plans to require publication of notices of proposals in a single publication?

Answer:

To fulfil the TBT Agreement's obligation of notifying proposals of technical regulations prior to implementation for comment, STAMEQ will rely on its Bulletin and other publications of ministries and local authorities. To facilitate this work, a network of TBT notification bodies and enquiry points is under the consideration to be set up in the concerned ministries and local authorities. They will support the central TBT notification body and enquiry point (Viet Nam TBT Office) to fulfil this function timely as required by the WTO TBT Agreement. Publication of notices of proposed technical regulations in a single publication may be considered in the future.

Question 213

Is there a law, regulation, decree or other administrative guidance which requires agencies (and local authorities) to publish notice of proposed standards, technical regulations and conformity assessment procedures and to give due consideration to comments received? If so, please

identify. (In our country we have the Administrative Procedures Act). Comment: The WP report (paragraph 188) indicates Viet Nam is "considering the issue of publication of draft standards and technical regulations."

Answer:

Publication of notices of the proposed legal documents including technical regulations and conformity assessment procedures is stipulated in the Law on the Promulgation of Legal Normative Documents.

Publication of notices of the proposed standards (or the work program for these) is available on the website of Viet Nam Standards Centre (www.vsc.org.vn), STAMEQ. Under this program, the title of each standard, the name of technical committee and the form of adoption are provided. The schedule of development will be considered and added to this program.

Question 214

Is there a law, regulation, decree or other administrative guidance to ensure quality and integrity in the development of regulations and conformity assessment procedures generally? For example, in our country we have a Presidential Executive Order on regulatory planning and review which sets out common expectations about when and how to regulate applicable to all federal agencies, including, for example, preference for performance-based regulation, regulatory impact analysis, etc. Are these types of issues addressed in the Law on the Enactment of Legal Documents? [Could we obtain a copy of this Law, as well as the Ordinance on Goods Quality.]

Answer:

The issue of ensuring the quality and integrity in the development of legal document, including technical regulations and conformity assessment procedures, is provided for in the Law on the Promulgation of Legal Normative Documents. An English version of this Law has already been submitted to the Working Party.

Question 215

The Working Party Report indicates a new Ordinance on Standardization will be developed and introduced in 2007. What is the anticipated need for the new Ordinance? What deficiencies will be addressed?

Answer:

The proposed Ordinance on Standardization will focus on such issues as the development and application of standards, conformity assessment procedures as well as technical regulations. It will be a framework legal document on standardization to cover all related issues currently contained in the different legal documents such as the Ordinances on Measurement, Goods Quality, Food Safety and Hygiene, Plant Protection, Veterinary, Consumer Protection, etc.

Question 216

The Working Party Report (paragraph 187) indicates STAMEQ posts an annual standards preparation program on the internet and interested parties can request copies of draft standards for consideration and comment. What plans does STAMEQ have to publish its work program every six months, as foreseen in the WTO TBT Agreement's Code of Good Practice?

In addition to the annual program, are notices published when a draft of a specific standard is available?

Answer:

Publication of notices of proposed standards work program is available on the website of Viet Nam Standards Centre (www.vsc.org.vn), STAMEQ. This program is announced at the beginning of the year; and revised and re-announced in the second part (in the 3rd quarter, generally) of the year. Under this program, the title of each standard, the name of technical committee and the international standard(s) and/or other standard(s) to be used are provided. The schedule of standards development will be considered and added to this program.

Question 217

Viet Nam appears to have done a lot of work to develop a comprehensive website on standards and regulations, which includes the information in English, and we welcome this effort. Currently, however, it is not clear what documents are voluntary, and which are mandatory. In Viet Nam, are all STAMEQ documents (standards) voluntary unless specifically referenced in a regulation?

Answer:

In fact, a standard (the whole or some parts) will become mandatory if it is specified in a regulation issued by the authorized bodies.

Question 218

The website foresees the availability of the following documents under the general category "laws and regulations": circular, decision, directive, decree, ordinance, regulation, official document, law, order, rule, resolution, guide and notice. It would be helpful to have a clear understanding of the differences between these documents, their status (i.e., are they all legally binding?), and whether any particular category is more likely to fall within the WTO TBT definitions for standard, technical regulation and conformity assessment procedure (e.g., Decisions?). [Is there a general explanation elsewhere in the WP report?]

Comment: The website indicates it now has 746 documents, clearly more work needs to be done for this to be a comprehensive data base –reportedly STAMEQ has 5,600 national standards, 231 of which are mandatory, and about 8 other ministries appear to have authority to establish technical regulations.

Answer:

As defined in the Agreement on TBT, "technical regulations" is a part of the legal document (laws and regulations) system of the country. According to the Law on the Promulgation of Legal Normative Documents, the different types of legal documents are issued by the different authorized bodies. And as part of laws and regulations system, technical regulations including the procedure for assessment of conformity to technical regulations will be issued by the authorized bodies as defined in this Law.

Question 219

The Action Plan indicates Viet Nam regularly reviews existing regulations to ensure compliance with WTO obligations. Please explain how this is done and whether any regulations have been amended and/or rescinded as a result.

Answer:

In principle, the review of regulations is carried out under an annual plan. Each government agency has its own annual plan to do this. Besides, for any arising specific or urgent needs, the Government develops and implements a specific legal document reviewing program involving all relevant ministries and local authorities. As a result, the regulations that do not meet the socio-economic requirements, including those to fulfil the WTO obligations, will be amended or rescinded. Technical regulations are also reviewed in such manner.

Question 220

In response to questions raised, Viet Nam has indicated there is a low level of harmonization of Viet Nam standards with international standards in certain sectors (e.g., garments). Are there plans to harmonize in those sectors?

Answer:

A low level of harmonization with international standards in certain sectors (e.g., garments, etc.) is explained by some reasons. For example, for the garments sector, reasons may be unpredicted consumers' needs, changeable fashion market. Therefore, harmonization of garments standards is focusing on materials and auxiliary parts of garments. In this context, Viet Nam harmonizes the materials and auxiliary parts of garments standards supporting garments industry.

Question 221

We welcome the commitment by Viet Nam to apply the Agreement on Technical Barriers to Trade fully from the date of accession without any transition periods.

We welcome the moves to simplify conformity assessment procedures, notably the increased use of type-testing and acceptance of supplier's declaration of conformity. We look forward to the provision by Viet Nam of the revised list of goods subject to mandatory quality inspection (referred to in paragraph 198 of WT/ACC/SPEC/VNM/5).

- **We would be grateful if Viet Nam could provide a list of products subject to mandatory safety certification (paragraph 197).**

Answer:

- The list of goods subject to mandatory quality inspection (referred to in paragraph 198 of the document WT/ACC/SPEC/VNM/5) is still under revision and will be provided as soon as it is promulgated.
- The list of products subject to mandatory safety certification (paragraph 197) was postponed in the year of 2001 for revision. It will be provided as soon as it is promulgated.
- **Sanitary and phytosanitary measures**

Question 222

We greatly appreciate receiving Viet Nam's list of 64 SPS measures and 897 national standards. This is a major step forward in transparency.

As both sides will need a considerable amount of time to translate and review these standards, we hope that we can both complete this review and resolution of SPS concerns that may be contained in these regulations by the end of calendar year 2005.

We also welcome Viet Nam's clarification of its intention to harmonize its level of protection with international standards.

We are concerned, however, of the lengthy time period that Viet Nam is requesting with respect to harmonization, equivalence, and control vis-a-vis Codex, IPPC, and OIE in particular and the SPS Agreement in general. We feel that with the translation of the measures and standards that Viet Nam has submitted, this process could be greatly expedited.

We also congratulate Viet Nam on establishing web sites for tracking SPS regulatory developments.

We are concerned, however, that Viet Nam's Official Gazette, will publish only final rules rather than proposed regulations. In paragraph 213 of WT/ACC/SPEC/VNM/5, we find that Viet Nam's "Law on the Promulgation of Legal Documents" sets a minimum of only 15 days before entry into force upon publication. What provision does Viet Nam to make to legally ensure that draft and interim regulations are also published in its Official Gazette for comment and review prior to adoption and enforcement? How will Viet Nam harmonize its current 15 day limitation with the normative 60-day comment periods that WTO Members grant to their trade partners?

Answer:

Viet Nam needs technical assistance from WTO members to translate and review these standards. The measures and standards of Veterinary and Plant protection services will be found in DAH's Website (www.mard.gov.vn/dah) and PPD's Website (www.ppd.gov.vn).

Viet Nam shall define the time for comments and review of drafts and interim regulations in the Government Decision which announce the establishment of the Office for SPS Notification and Enquiry Point.

According to Article 3 of the Law on the Promulgation of Legal Normative Documents (revised in 2002), in the process of preparation of new legal normative documents, the drafting body is required obtain opinions from all relevant bodies, organizations and individuals, and in particular, from subjects directly affected by the legal instrument. This process is to be conducted in a suitable form and to a reasonable extent.

Article 75 of this Law also provides that legal normative documents of the Government, the Prime Minister, Ministers, Heads of ministerial equivalent bodies, the Supreme Court, the People's Supreme Procuracy and joint legal documents will be effective after 15 days from the date on which they are published in the official Gazette unless a later effective date is stipulated in the legal instrument. In the case of a legal instrument of the Government or of the Prime Minister which provides for implementing measures in an emergency situation, the legal instrument may provide for an earlier effective date.

Question 223

We recognize Viet Nam's request for technical assistance. We are already in discussion with your SPS National Notification Authority and Enquiry Point concerning training needs.

We feel, that again with the translation and review of the nearly 1,000 SPS relevant measures, we can more quickly identify Viet Nam's specific technical assistance needs with respect to risk analysis, sampling, inspection, labelling, risk analysis, information systems and control procedures. It is in this regard we hope that to expedite Viet Nam's accession and compliance with SPS measures to early 2006 in lieu of the requested 2008 commitment.

Answer:

Viet Nam has committed to fully implement the SPS Agreement upon accession. Still, it needs the technical assistance from WTO Members to implement its obligations.

Question 224

Paragraph 205 - You have indicated that Viet Nam and other ASEAN members are developing a harmonization framework for phytosanitary procedures comprising ten agricultural products at the outset and applicable to ASEAN members only.

Answer:

The harmonization process in ASEAN framework should not be contrary to national and international standards.

Question 225

Could you explicitly clarify the relationship between Viet Nam's national phytosanitary standards and the ASEAN harmonization framework on the one hand, and international phytosanitary standards and the harmonization framework on the other? You state that this framework will be notified to the WTO.

Answer:

The harmonization process in ASEAN framework should be in line with national and international standards. We understand that ASEAN Members who are WTO Members are fully committed to the notification obligation.

Question 226

Who will notify the framework exactly, and how?

Answer:

We understand that ASEAN Members who are WTO Members are fully committed to the notification obligation.

Question 227

In paragraph 209, the draft Report explains that poultry meat importers are required to obtain a sanitary certificate issued by the authority of the exporting countries, certifying that (i) the meat originated from healthy poultry slaughtered in disease free zones, (ii) the poultry has been examined anti-mortem and post-mortem and found free from every infectious disease, etc. We would like to clarify whether these anti-mortem and post-mortem examination are also applicable in Viet Nam.

Answer:

It is confirmed that the ante-mortem and post-mortem examinations are also applicable in Viet Nam.

Question 228

In paragraph 211, the draft Report explains that Viet Nam would gradually improve the techniques and procedures for conducting risk assessment in cooperation with international organizations and WTO Members and that Viet Nam would be expected to comply with Articles 22.2, 5.1, 5.2 and 5.3 of the SPS Agreement upon its accession to the WTO. In this connection, Action Plan (WT/ACC/VNM/11/Rev.5) also provides that although Viet Nam has difficulties in this field under the Vietnamese existing system, the timeframe for completion of the SPS Agreement's conformity will be upon accession. We would like to seek the detailed information concerning the Vietnamese work plans on how it will overcome these difficulties and accomplish conformity with Articles 5.1 to 5.3 of the SPS Agreement.

Answer:

Viet Nam has the following work plan on risk assessment:

- Training two staff in risk assessment (2005);
- Equipping computers to Animal Quarantine and Inspection Divisions, six Regional Veterinary centres and five Quarantine Stations at major border gates, set up or purchase a risk assessment software;
- Setting up a data base for risk assessment; and
- Establishing a risk assessment unit in Head Quarter of Department of Animal Health.

In recent years, Viet Nam has set up a national pest analysis group comprising of 14 staff from the Plant Protection Department (8 of them have been trained on pest risk assessment (PRA) in Australia, Malaysia, etc.). It has established a Vietnamese standard in pest risk analysis guideline (in line with the international standard No. 2), and collected guideline documents and pest risk analysis reports from New Zealand, Australia, US, EU and websites as reference and information input for pest risk assessment in Viet Nam. It is also conducting a program to set up a database of plant health control for pest risk analysis purpose, and in particular, lists of pests on each plant in accordance with international standards. This program has been financed by NZAID with a computer system (National Phytosanitary Database Management).

In addition, Viet Nam has started to conduct pest risk assessment on a number of imported plants, establish a network of specialists in plant protection to support PAR and collaborate with institutes, universities to conduct surveys and collect information about plant pests in the field and in stores. However, the outcomes of these activities are still limited.

We have found the following difficulties in PRA area:

- Lack of experts in PRA
- Inadequate database for PAR
- Difficulty in collecting information from exporting countries.
- Different approaches to PRA in various countries.
- Lack of legal basis on PRA field

In order to overcome these difficulties in accordance with Article 5.1 to 5.3 of the SPS Agreement, we need more technical assistance from international organizations and developed countries to carry out the following activities:

- Continuing to seek internal and external resources to strengthen the capacity in pests risk analysis, particularly staff training.
- Promoting staff training in this field in other countries.
- Organizing domestic training courses on PRA with the assistance from international experts.
- Continuing to survey and update the plant epidemic lists to complete the plant health database for PRA and make it consistent with international standards.
- Continuing to establish PRA standards with regard to quarantine pests, etc.
- Supplementing some vital articles concerning to PRA field to the existing legal system.
- Completing the system of phytosanitary certificate management.

Question 229

In paragraph 214, the draft Report states that "His Government would therefore require a transitional period [until 1 July 2008] to complete work to comply with the provisions of the SPS Agreement in respect of harmonization (Article 3.1, 3.3 and 3.4), equivalence (Article 4) and control, inspection and approval procedures (Article 8 and Annex C)." In addition to these, with regard to standstill, Action Plan (WT/ACC/VNM/11/Rev.5) provides that Ordinance on Standization will be submitted to the standing Committee of the National Assembly in the first quarter of 2007. On the other hand, the representative of Viet Nam confirmed in the Working Party in December 2004 that Viet Nam would comply with the SPS Agreement upon its accession to the WTO. We would like to seek the detailed information on the concrete schedules for accomplishing measures to implement all the obligations of the SPS Agreement by the time of its accession to the WTO.

Answer:

Viet Nam has committed to comply with the SPS Agreement upon its accession to the WTO. Regarding the concrete schedules to implement all the obligations of the SPS Agreement by the time of its accession to the WTO, please refer to the Progress Report on implementing the SPS Agreement at Plurilateral session on SPS in October 2004, which has been circulated to the Working Party's Members.

Question 230

Paragraph 214 - You have indicated that your government requires a transitional period until 1 July 2008, to come into full compliance with the SPS Agreement.

Answer:

Viet Nam has committed to comply with the SPS Agreement upon its accession to the WTO. The needs for technical assistance have been developed for each area (please refer to the Progress Report on implementing the SPS Agreement at Plurilateral session on SPS in October 2004, which has been circulated to the Working Party's Members).

Question 231

Assume that a transition period is not possible. Please identify the exact types of technical assistance your government would need in order to implement its SPS obligations fully upon accession into the WTO. In other words, can you designate technical benchmarks accompanied by a timeline to come into full compliance with the SPS agreement upon accession?

Answer:

Viet Nam has committed to comply with the SPS Agreement upon its accession to the WTO. The needs for technical assistance have been developed for each area (please refer to the Progress Report on implementing the SPS Agreement at Plurilateral session on SPS in October 2004, which has been circulated to the Working Party's Members).

Question 232

We note in paragraph 214 of WT/ACC/SPEC/VNM/5 that Viet Nam states it would need a transition period until 1 July 2008 to fully implement provisions of the SPS Agreement in respect of harmonisation, equivalence, and control, inspection and approval procedures.

We hope that Viet Nam can confirm the indication it has provided to fully apply the Agreement on Sanitary and Phytosanitary Measures from the date of accession.

Answer:

Viet Nam confirms to comply with the SPS Agreement from the date of accession to the WTO.

Question 233

We thank Viet Nam for the information provided concerning the use of international standards and note the references to an ASEAN harmonisation framework for phytosanitary procedures.

We would be grateful for further information on the ASEAN harmonisation framework for phytosanitary procedures and whether it seeks to develop regional standards as an alternative to international standards.

Answer:

Viet Nam is participating in harmonization framework of phytosanitary procedures among ASEAN countries. In fact, the progress in developing regional standard is limited and not effective, therefore this standard could not be an alternative to international standards

Question 234

We would appreciate a status report on Viet Nam's efforts to join the International Plant Protection Convention (IPPC).

Answer:

Viet Nam has completed all domestic procedures and addressed the official letter to Director General of FAO to join the IPPC.

- **Trade-related investment measures**

Question 235

In paragraph 215, the draft Report states that "Furthermore, Viet Nam was asked to abolish the regulations restricting the maximum level of motorcycle production for foreign-invested enterprises." We would like to seek information on the efforts by the Government of Viet Nam to meet this request. If the Vietnamese side stands ready to make a commitment that it will not

impose any restriction on motorcycle production in the future, it should be duly included in the Report.

Answer:

The restriction on the maximum level of motorcycle production was applied in parallel with the quantitative restriction on imported motorcycles. This restriction, however, was no longer maintained when the quantitative restriction on imported motorcycles was removed. However, Viet Nam is of the view that this restriction is not a TRIMs measure, and therefore, not covered by the WTO Agreements.

Question 236

We would like to see Viet Nam accept the commitment in square brackets in paragraph 223 of WT/ACC/SPEC/VNM/5, that until the date of accession, Viet Nam would not introduce any new measures inconsistent with the provisions of the TRIMs Agreement or re-introduce phased-out TRIMs, and that it would fully comply with the TRIMs Agreement upon accession.

Answer:

Viet Nam would accept the commitment in square brackets in paragraph 233 of the document WT/ACC/SPEC/VNM/5 provided that the commitment would only take effect from the date of accession (the language in the paragraph is ambiguous as it refers also to the time prior to accession).

- **State-trading enterprises**

Question 237

We would like to clarify the difference between State Trading Entities (STEs) and Non-STEs in Viet Nam and also like to know the definition of STEs.

Answer:

Viet Nam has no definition of State trading enterprises on its own. Such definition is understood exactly as specified in Article XVII of GATT and the Understanding on the Interpretation of this Article.

Question 238

In paragraph 228, the draft Report notes that a Member enquires the relationship between the right to trade and STEs. The response by the Vietnamese side to this enquiry in the same paragraph does not seem to clarify the point well. Therefore, we would like to seek a clear response from the Vietnamese side on the relationship between the restriction imposed on the right to trade in Viet Nam and operation or activities of STEs in the country.

Answer:

These are two different concepts. Trading right means the right to import and export. Regulations on trading rights in Viet Nam focus on the management over the importation activities of domestic and foreign invested enterprises. Meanwhile, the concept of State trading enterprises is clearly defined under GATT, and accordingly, differs from the concept of trading right.

Question 239

In the draft report, Viet Nam provided a list of its state trading enterprises for 2002 in Table 13. The enterprises in the table deal with only five products, as compared to 13 products for which state trading enterprises were notified in WT/ACC/VNM/14. Products, such as rice and fertilizer, as well as state trading enterprises engaged in selling them, are not listed in Table 13. Viet Nam has previously stated that this is because state trading activities are no longer present in those products. For enterprises trading in each of the eight products notified for state trading in WT/ACC/VNM/14, but not in Table 13 of the draft report, please describe in detail, the process and reforms undertaken to eliminate state trading activities, such as equitization of state-owned enterprises, revocation of special trading privileges, etc. Please provide examples.

Answer:

The updated list of State trading enterprises was provided in the document WT/ACC/VNM/14/Add.1. Compared to its previous list, there are 8 areas that have been moved out of the list. For these areas, the Government has removed all privileges that had been granted to them such as eliminating the designation for the exportation of rice and importation of fertilizer.

Question 240

Please provide data regarding the state owned companies' current market share in trading of each of the eight products removed from the state trading list, including export share. For equitized companies trading in these eight products, please describe what level of involvement and control, if any, does the Government of Viet Nam or any of its agencies and officials, retain in their commercial decisions, management, and voting power.

Answer:

At present, Viet Nam does not have updated information on these enterprises. Please refer to the information already provided in the document WT/ACC/VNM/14. The Government of Viet Nam does not have any intervention in the trading activities of enterprises in these eight product areas.

Question 241

Please describe what legal recourse a private or equitized firm has to appeal against a state trading enterprise operating on a non-commercial basis or engaged in anti-competitive behaviour. Provide examples of such actions, if any.

Answer:

- According to Article 15(2) of the newly promulgated Competition Law, enterprises (including both state-owned and private enterprises) operating in the public sector are under control of the State by ways of placing orders or bidding under the prices or fees specified by the State. Therefore, these enterprises would not have a chance to perform any anti-competitive behaviours or violate the rights and interests of other enterprises, because there will be no other enterprises that can supply goods and services in the public sector without close supervision by the State.
- If there is anti-competitive behaviours engaged by these State trading enterprises, such behaviours can only occur in the fields outside the public goods or services. All these behaviours will be subject to other provisions of the Competition Law (Article 15(3)). In other words, private and/or equitized firms can seek the redress in according to the process analyzed in the answer to Question 56 above.

- Apart from the process under the Competition Law, private and/or equitized enterprises can seek redress according to Chapter V of the Civil Code 1996 (Article 609 to 633). They can initiate a civil law suit against these State owned enterprises for compensation of non-contract damages. Until now, there has been no such actions in Viet Nam.

Question 242

Please describe the current process and regulations governing the importation, and distribution, and sale of fertilizer in Viet Nam, including any involvement by state-owned or state-controlled terms.

Answer:

Pursuant to the Decision No.46/2001/QD-TTg dated 4 April 2001, Viet Nam abolished the quota allocation mechanism for fertilizer importation and enterprises who have registered to trade in fertilizer are permitted to import fertilizer and responsible for their own business.

According to current regulations, trading fertilizer is not subject to conditional business. Therefore, this item is freely circulated in the market. Fertilizer trading companies only have to register their business and then organize their own production, importation and trade accordingly.

At present, the only one state-owned fertilizer trader is the Agricultural Materials Corporation (under Ministry of Agriculture and Rural Development). There are about 4 to 5 other companies under the provinces. Beside that, all the fertilizer importation and distribution activities are conducted by private enterprises.

Question 243

It appears from information provided by Viet Nam in document WT/ACC/VNM/14 that several state trading enterprises in Viet Nam, such as those involved in importation of fertilizer, printing equipment, printed material, and cinematographic works, are not operating on the basis of commercial considerations. Please discuss steps that Viet Nam will take to deal with this situation

Answer:

These enterprises operate on the basis of commercial considerations.

Question 244

Some of Viet Nam's enterprises, such as Petrovietnam, appear to be involved in trade as well as industry regulation, thus playing the role of both competitor and regulator vis-à-vis other enterprises. We look forward to discussing measures necessary to ensure non-discriminatory treatment.

Answer:

The Ministry of Industry is the State-authorized body, or the regulator, of the industry. PetroVietnam does not have functions of either formulating policies or regulating other enterprises.

Question 245

Please provide assurances that no state trading enterprises are exercising regulatory functions in the industry in which they operate.

Answer:

Viet Nam would like to confirm that there is no State-trading enterprise in Viet Nam that has the regulatory functions in the industry in which it operates. The regulatory functions are under the authority of the Government agencies.

Question 246

What rules govern procurement by state trading enterprises?

Answer:

Viet Nam has no rules governing the procurement activities of State trading enterprises. All their decisions to purchase or import are based on their actual demand and are made on commercial considerations and via a bidding process.

Question 247

We thank Viet Nam for the information provided on state trading entities in WT/ACC/VNM/33.

- **We would appreciate clarification from Viet Nam on whether VINACAFE and VINATEA, which we note are still owned by the State, have their commercial operations underwritten by the State.**
- **Could Viet Nam provide further advice on the role of companies such as VINACAFE, VINATEA, VINAMILK and the Viet Nam Salt Corporation in fulfilling the policies of the State, such as through import purchases and/or export sales.**

Answer:

VINAMILK has been equitized. VINACAFE, VINATEA and the Salt General Corporation of Viet Nam are State-owned enterprises. However, equitization is under way among member enterprises of each of these corporations. Additionally, their production and trade activities are on equal terms with others and are not subject to any particular intervention from the Government. As Viet Nam has notified earlier, these enterprises are not State-trading enterprises. Neither do they have any commercial operations underwritten by the State.

Question 248

Paragraph 229: The alternative commitment suggested in the second set of brackets is not adequate. We believe the first formulation is a better first draft as it provides a commitment to apply the WTO to all state-owned as well as state trading enterprises. However, given our recommendation that the sections on state-owned enterprises and state trading enterprises be combined, we reserve the right to suggest further changes to the commitment language for such a combined section.

Answer:

Viet Nam wishes to receive the suggested commitment language for such section.

Question 249

We note that commitment language on state trading entities in paragraph 229 of WT/ACC/SPEC/VNM/5 is still in square brackets. However, we also note that in the answer to Question 132 of WT/ACC/VNM/33 Viet Nam "commits that the operation of state trading enterprises in Viet Nam will comply with WTO's provisions, including Article XVII of the GATT and the Understanding on the interpretation of this Article. Viet Nam also commits to the obligation on notifying state trading enterprises in accordance with the regulations of the WTO".

We would therefore request that Viet Nam agree to the removal of the square brackets around the commitment language in paragraph 229.

Answer:

Viet Nam commits that the operation of State trading enterprises in Viet Nam shall comply with WTO's provisions, including Article XVII of the GATT and the Understanding on the interpretation of this Article. Viet Nam also commits to the obligation on notifying State trading enterprises in accordance with the regulations of the WTO.

- **Free zones, special economic areas**

Question 250

What proportion of firms in the export processing zones and industrial zones are privately owned, if any, as opposed to firms owned and operated by the state?

Answer:

By the end of 2004, export processing zones and industrial zones have attracted a total of 3,612 investment projects (of which, 1,773 are foreign investment and 1,839 are domestic investment). Ninety-two per cent of these projects are from private investment source (both foreign and domestic investors), only 8 per cent of these projects are invested by State-owned enterprises.

Question 251

Does the investment licence granting a company the right to operate in a free zone or special economic area specifically identify the subsidies to which the company will be entitled and the duration of those subsidies? Do the investment licenses specifically make qualification for subsidies dependent on export performance and/or use of domestic inputs? Does Viet Nam consider its investment licence and the subsidies provided to be a contractual obligation?

Answer:

Investment licenses specify the type of investment incentives as well as the duration for such incentives to be granted to projects in export processing zones, industrial zones and other special economic areas, regardless of the export performance or the use of domestic inputs. (According to international practices, projects operating in export processing zones are required to export 100 per cent of their production output).

Viet Nam currently has no specific legal provision on the concept of contractual obligation arising between the Government and the investors. Viet Nam expects to receive clarification on this question.

Question 252

Since Viet Nam began its WTO accession, has Viet Nam issued investment licenses granting companies subsidies prohibited by the Agreement on Subsidies and Countervailing Measures?

Answer:

Even prior to Viet Nam's WTO accession application, Viet Nam has applied some prohibited subsidies in the form of investment incentives to domestic and foreign investors.

Question 253

We note the duelling commitments in this section and the need to work to reach consensus. We reserve our rights to provide additional and/or alternate material.

Answer:

Viet Nam will consider this issue in line with our proposal on the transitional period for the elimination of prohibited subsidies under the Agreement on Subsidies and Countervailing Measures.

Question 254

Paragraph 235: We understand that Viet Nam is considering requesting a nine-year transitional period to phase out WTO-inconsistent measures in export processing zones. A priori, this is not acceptable.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO;
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Question 255

We hope that Viet Nam would be in a position to accept proposed commitment language, currently in square brackets in paragraph 235 of WT/ACC/SPEC/VNM/5, that from the date of accession Viet Nam would ensure enforcement of its WTO obligations in export processing zones and industrial zones, and that any requirements for establishment in such zones being contingent on the use of local goods or export performance had been eliminated.

We would not find acceptable the square bracketed text that provided that subsidies in the form of incentives for domestic and foreign investments would only be eliminated within nine years from the date of accession.

Answer:

With respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance within three years from the date of accession to the WTO;
- to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within nine years from the date of accession to the WTO. These subsidies are conducive to the national economic development and contribute to create employment. Many WTO Members at even higher level of development than Viet Nam are also maintaining these subsidies.

Requirement for establishment in such zones is not contingent on export ratio requirements and use of domestic inputs (under the international practices, enterprises established in export processing zones automatically export 100 per cent of their output).

- **Government procurement**

Question 256

We renew our request that Viet Nam consider joining the Government Procurement Agreement.

Answer:

Viet Nam will consider joining the Agreement on Government Procurement after WTO accession. Viet Nam expects the assistance from the Members to improve Viet Nam's understanding of the GPA Agreement.

Question 257

Paragraph 242: We support the position of other Members expressed in this paragraph, namely that accession to the GPA would be desirable and a commitment could be made before accession to the WTO.

Answer:

Viet Nam will consider joining the Agreement on Government Procurement after WTO accession. Viet Nam expects the assistance from the Members to improve Viet Nam's understanding of the GPA Agreement.

- **Agricultural policies**

(a) **Imports (description of the types of border protection maintained)**

Question 258

In paragraph 253, the draft Report states that "The simple average tariff on imports of agricultural products was 17.7 per cent (document WT/ACC/SPEC/VNM/3), and had been increased to 27.1 per cent in 2004." We would like to know the reason for such increase.

Answer:

The simple average tariff on imports of agricultural products was 17.7 per cent in 1996 and had been increased to 27.1 per cent (in 2004) due to:

- Technical reason: In 2003, Viet Nam changed its tariff schedule to be in conformity with the ASEAN Harmonized Tariff Nomenclature (AHTN). As a result, the total number of tariff lines increased from 6,512 to more than 10,000, out of which number of tariff lines of agricultural products increased from 572 to 1,219 lines. The increase in the number of tariff lines was mainly due to separation of a single original HS product into more than one new AHTN products at 8-digit level. The average tariff also increased because there was an addition of high-tariff products subject to separation into more AHTN products at 8-digit level.
- Policy reason: Since 2000, Viet Nam has carried out important program to convert non-tariff barriers in to tariff, and incorporating ODCs into tariff and abolishing ODCs under the Miyazawa Program. Therefore, some tariff lines were changed with higher tariff, leading to a higher average tariff rate.

Question 259

We would like to seek information on requirements for imports of rice to Viet Nam.

Answer:

Viet Nam commits to eliminate import quantitative restrictions upon the date of accession to WTO. Therefore, there would be no import quantitative restrictions on rice. Requirements for imports of rice would be in conformity with Viet Nam commitments on Trading Rights (Please refer to Annex 2 of this document).

(b) Exports

Question 260

In paragraph 255, the draft Report states that the Export Promotion Fund have superseded the Price Stabilization Fund in October 1999. We would like to seek the detailed information on the Price Stabilization Fund such as its mechanism and operation as well as the difference from the Export Promotion Fund.

Answer:

Details on Price Stabilization Fund: was established by virtue of the Decision No. 151/TTg in 1993. The Fund aimed to stabilize prices for smooth interaction of supply and demand relationship, and therefore stabilizing the State budget.

Resources of the Fund had been mobilized from:

- For imports, a part to the difference between external price and domestic price when the external price is higher than the domestic price.
- For exports, a part to the difference between external price and domestic price when the external price is higher than the domestic buying price.
- For product manufactured and consumed domestically, a part of extra profit of the producers which were operating with advantageous conditions in comparison with other producers of the same product.

Price Stabilization Fund had been utilized to:

- Support important product lines reserves in order to ensure sufficient and stable supply of and demand for the product for a smooth operation of distribution system.
- Enhance financial capacity of businesses to acquire products of which production and consumption were mainly seasonal .
- Support businesses with additional financial assistance in cases of abrupt price fluctuation.
- Extend spending on behalf of the State budget whenever directed by an Order of the Prime Minister.

Differences between the Price Stabilization Fund and Export Promotion Fund:

- In terms of purposes for establishment: the Price Stabilization Fund was established to regulate and stabilize domestic prices, while the Export Promotion Fund was established to support, encourage export, expand markets and strengthen competitiveness of products
- In terms of mobilized resources:
 - Price Stabilization Fund mobilizes funds not only from exports and imports arising price differences due to the objective reasons being in the import-export enterprises favour, but also from extra profit that advantageous business could earn higher than the average profit prevailed in the industry.
 - Export Promotion Fund mobilizes funds from surcharges of imports and exports (however, recently, as the Government has eliminated most of surcharges, this fund has been decreasing gradually); additional resources granted from the State budget annually.
- Regarding the use of the Fund:
 - Price Stabilization Fund was established for domestic price stabilization, therefore the Fund aims to provide assistance's in order to achieve this objective.
 - Export Promotion Fund has been used to support and encourage businesses in exporting and enhancing quality of export products through trade promotion and export performance awards, etc.

(c) Internal policies – i.e. description of, and the budgetary expenditure and any revenue foregone involved in each of the domestic support measures in place

Question 261

We note this section of the report will need to be updated once Working Party members and Viet Nam have resolved outstanding issues in relation to this area of work.

We nevertheless welcome the information that Viet Nam has provided that it is committed to eliminating export subsidies upon accession. We would hope that Viet Nam would therefore be in a position to a make a commitment on eliminating export subsidies in paragraph 264 of WT/ACC/SPEC/VNM/5.

Answer:

Viet Nam has committed to eliminate export subsidies on agricultural products, with the exception of forms of agricultural export subsidies that developing countries are eligible to maintain, from the date of accession. It means that all existing agricultural export subsidies as notified in Viet Nam's

Notification on domestic support and export subsidies in agriculture will be eliminated from the date of accession to the WTO.

Question 262

The content of this section will be developed once work on the WT/ACC/4 tables is completed.

Answer:

Viet Nam agrees with this suggestion.

Question 263

With regard to rice, we would like to know whether Viet Nam adopts rice production adjustment policy. If so, we would like to know the detail of its methods.

Answer:

Viet Nam promulgated rice production adjustment policy. It includes:

- Investing in irrigation for high productivity rice cultivating areas.
- Supporting in irrigation for low-productivity and uncertain rice cultivating areas to encourage shifting to producing aquatic products or growing fruit crops.
- Providing extension services to farmers for implementing the above transformation.

Question 264

In paragraph 264, there is a description that "[with the exception of several kinds of agricultural export subsidies that developing countries were eligible to maintain]". We would like to see such description to be deleted.

Answer:

Viet Nam has committed to eliminate export subsidies on agricultural products, with the exception of forms of agricultural export subsidies that developing countries are eligible to maintain, from the date of accession. It means that all existing agricultural export subsidies as notified in Viet Nam's Notification on domestic support and export subsidies in agriculture will be eliminated from the date of accession to the WTO.

Core Labour Standards

Question 265

We note the brackets on this text and wish to clarify that this information contains no commitment language. It only relates factual material. We believe including it enhances the quality of the report and believe it should be retained.

We would entertain suggestions on renaming the section or relocating it to another section of the report.

Answer:

Referring to the Singapore Ministerial Conference Declaration in 1996, the International Labour Organization is suitable body to advise upon issues related to international labour standards. It is also

noted that the section on Core Labour Standards is not included in the Working Party Report of any acceding countries.

In addition, questions from the Members in this section were mainly relating to the relationship between the ILO and Viet Nam rather than addressing trade, investment and commercial activities.

- **Trade in civil aircraft**

Question 266

Paragraph 245: We note the commitment made by Viet Nam in WT/ACC/SPEC/VNM/5 to consider joining the Agreement on Civil Aircraft after accession. However, we would again request that Viet Nam consider joining the Agreement upon accession.

Answer:

Viet Nam will consider joining the Agreement on Civil Aircraft after WTO accession as Viet Nam has been focusing resources to implement fully the multilateral agreements of the WTO.

V. TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

- **GENERAL**

- **Participation in international intellectual property agreements**

Question 267

In paragraph 279, the draft Report notes that Viet Nam was planned to join the Geneva Convention, the Rome Convention, the International Union for the Protection of New Varieties of Plants (UPOV) Convention and the Brussels Convention in 2004. We would like to seek information on the current state of play concerning joining in these four Conventions.

Answer:

The accession to the Berne Convention was completed on 26 October 2004.

The President of Viet Nam issued the Decision No. 492/2004/QD-CTN of 30 July 2004 on the accession to the Rome Convention. The diplomatic procedure for the accession to the Rome Convention is now underway.

The accession to the Rome Convention shall be followed by the accession to the Geneva Convention.

Regarding the International Union for the Protection of New Varieties of Plants (UPOV) Convention, Viet Nam has so far issued the List of 15 plant species subject to this Convention's protection and the necessary procedures for the accession to this Convention in the early half of 2005 is under way.

- **SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS**
- **Copyright and related rights**

Question 268

In paragraph 290, the draft Report states that protection of pre-programme and encrypted signals will be considered in the preparation of the appropriate legal documents. As these are not required in the TRIPS Agreement, please tell us whether this consideration is intended to meet the contents of the draft Treaty on the Protection of Broadcasting Organizations which are now under preparation within the framework of WIPO or it is intended to establish its own regime concerning protection of pre-programme and encrypted signals. If the answer is the latter, please explain the detail of the Government's consideration.

Answer:

The protection of pre-programme and encrypted signals is to be studied for appropriate solution.

Question 269

In paragraph 301, the draft Report states that "Amendments required to implement the TRIPS Agreement properly were in preparation, but the timeframe had not yet to be determined." We would like to seek information on the current state of play concerning the preparation of such amendments.

Answer:

The amendments of the Copyrights Law as required by TRIPS are now under preparation in the process of drafting the Law on Intellectual Property.

Question 270

Paragraph 301 and preceding paragraphs of WT/ACC/SPEC/VNM/5 recognize that Viet Nam's copyright laws are not TRIPS compliant in several respects. Please describe Viet Nam's plans for implementing the TRIPS Agreement in the area of Copyright and Related Rights.

Answer:

Viet Nam's plans for implementing the TRIPS Agreement in the area of copyrights and related rights are now under preparation in the process of drafting the Law on Intellectual Property.

Question 271

We congratulate Viet Nam on joining the Berne Convention. Viet Nam's copyright laws, however, still contain provisions that are in violation of the Berne Convention. Please describe the steps that Viet Nam will take to implement relevant sections of the Berne Convention, as required by TRIPS.

Answer:

The amendments of the Copyrights Law to be in line with the Berne Convention, as required by TRIPS, are now under preparation in the process of drafting the Law on Intellectual Property.

Question 272

Please provide a timeline for completion of the unfinished items from the 1996 Action Plan with respect to the protection of Copyright and Related Rights.

Answer:

Regarding the protection of Copyrights and Related Rights under the 1996 Action Plan, Viet Nam has been making efforts in order to implement the obligations under the TRIPS Agreement upon its accession to the WTO.

- **Trademarks and Geographical Indications**

Question 273

With regard to trademarks referred to the paragraphs starting from 302, we understand that Articles 8 and 9 of the Vietnamese Commercial Law prohibits; (i) acts infringing trademarks and industrial property rights of other persons engaged in commercial activities, (ii) acts of fraudulence of a person who has commercial transactions and/or acts confusing such person, (iii) acts of selling counterfeiting goods, and (iv) acts of displaying false advertisement. We would like to clarify the above elements concerning the Vietnamese Commercial Law. The clarified points should be included in the Report as they seem to be fundamental elements concerning protection of trademarks in Viet Nam.

Answer:

Article 8 of the Commercial Law of 1997 prohibits acts of infringing trademarks and industrial property rights of other traders; and Article 9 of the Law prohibits traders from acts of (i) deceiving and confusing customers; (ii) selling counterfeiting goods; (iii) displaying false advertisements. Provisions in the Commercial Law concerning trademarks in particular, and industrial property in general, only show the principle that commercial activities shall not violate laws and regulations on the protection of industrial property rights including rights in trademarks. Viet Nam agrees that those points be included in the Paragraph 302 of the Draft Report.

Question 274

In following upon on Viet Nam's responses to Question 156 (WT/ACC/WNM/33), by what means does Viet Nam protect, as required by TRIPS Article 24(5), pre-existing trademarks that are similar or identical to geographical indications?

Answer:

According to Article 785 of Civil Code and Article 6.1.f of the Decree No. 63/CP (as amended and supplemented by the Decree No. 06/2001/ND-CP), a trademark shall be protected only if it is not identical with, or confusingly similar to, geographical indications (including appellations of origin) being protected in Viet Nam. The time to be taken into consideration of the protection of geographical indications is the priority date of the trademark application, or the date of requesting recognition of well-known trademark. Pursuant to the said provision, a trademark, which is identical with or similar to a geographical indication, has been filed or granted prior to the date the geographical indication obtained protection in Viet Nam, the rights derived from the trademark shall not be affected by the protection of the geographical indication or appellation of origin, because of the purpose and nature of protection with respect to these subjects matters are different. The trademark owner has the rights to exclude other persons from using any signs, include geographical indications,

if such use would cause confusion as to commercial origin of goods or services. Meanwhile the nature of geographical indications protection is that, that prevent using signs, which would cause confusion as to geographical origin of goods and the distinct characteristics of goods, which originate from the territory pertaining to that geographical indication. Furthermore, if a trademark, that is identical with or similar to a geographical indication, becomes distinguishable through the process of use of trademark, the trademark will be able to be protected (registered). Thus, the prevailing law and regulations of Viet Nam are consistent with the provisions under Article 24.5 of the TRIPS Agreement.

- **Patents**

Question 275

Paragraph 329: Has the Joint Circular, which contains provisions to shift the burden of proof from the plaintiff to the defendant, been promulgated in late 2004 as planned?

Answer:

The Law on Intellectual Property has recently been added to the National Assembly's Program for Enacting Laws and Ordinances in 2005 in accordance with the Resolution No. 35/2004-QH1 dated 25 November 2004. Consequently, the Joint Circular of the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Science and Technology guiding the settlement of disputes relating to industrial property rights at the Supreme People's Court will not be promulgated. Provisions on shifting burden of proof from the plaintiff to the defendant will accordingly be introduced in the Law on Intellectual Property which is scheduled to be considered at the National Assembly's 7th Session in May 2005 and passed at its 8th Session in October 2005.

- **Requirements on undisclosed information, including trade secrets and test data**

Question 276

Paragraph 335: Has the Joint Circular, which contains provisions on the principles of non-disclosure and non-reliance, been promulgated in late 2004 as planned?

Answer:

The Law on Competition (Law No. 27/2004/QH11) passed by the National Assembly on 3 December 2004 contains provisions for the protection against industrial property related unfair competition (Article 39) and the protection of undisclosed tests and other data (Article 41.4) in its Chapter 5 - Unfair Competitive Acts. Consequently, the plan to issue a Circular guiding the implementation of the Decree No. 54/2000/ND-CP has been cancelled.

- **Enforcement**

Question 277

In relation to "Enforcement" section of the draft Report, we understand that the Ministry of Justice of Viet Nam is now preparing a draft Law on Enforcement of Judgments. We would like to seek information concerning the preparation of the draft Law and if appropriate such information should be included in the Report.

Answer:

So far the revised Ordinance on Civil Judgment Execution of 2004 remains the highest legislation in the field of enforcement of civil judgements. However, a Code on Judgement Execution is being drafted and expected to be submitted to the Government in May 2005 and then to the National Assembly for consideration at the end of 2005. The draft Code has no specific provisions on the intellectual property enforcement.

Question 278

On the burden of proof in patent infringement actions, we understand that the Draft joint Circular between People's Supreme Court, People's Supreme Prosecution Institute and Ministry of Science and Technology guiding the judgment of cases relating to industrial property rights will be promulgated at the end of 2004. Please let us know if a copy is available for our review, and if not, when it is expected to become available.

Answer:

The Law on Intellectual Property has recently been added to the National Assembly's Enactment Program for Laws and Ordinances in 2005 in accordance with the Resolution No. 35/2004-QH1 dated 25 November 2004. Consequently, the joint Circular of Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology guiding the judgment of cases relating to industrial property rights at the Supreme People's Court will not be promulgated. Provisions on shifting burden of proof from the plaintiff to the defendant will be introduced in the Law on Intellectual Property which will be promulgated in 2005.

Question 279

From Viet Nam's updated Legislative Action Plan (WT/ACC/VNM/31/Rev.2), we understand that a number of legislative acts to achieve compliance with the TRIPS Agreement are planned for submission to the Parliament only in 2006. We expect Viet Nam's legislation to be fully in line with the TRIPS Agreement upon accession to the WTO.

How does this legislative scheduling fit with Viet Nam's commitment in paragraph 359 of the Working Party Report to fully apply the TRIPS Agreement upon accession?

Answer:

The Law on Intellectual Property, which has been included in the National Assembly's Program for Enacting Laws and Ordinances in 2005 and is scheduled to be considered for approval at the Session in the end of 2005. The provisions of major international treaties in the field of intellectual property including the TRIPS Agreement shall be incorporated into the draft Law. Accordingly, it is confirmed that Viet Nam's legislative schedule be in line with its commitment in the paragraph 359 in the Working Party Report to fully apply the TRIPS Agreement upon accession to the WTO.

Question 280

In paragraph 346 of the section of "Administrative procedures and remedies", the draft Report refers to market control organization. We understand that market control organizations in the Ministry of Commerce in Viet Nam has the competence of monitoring compliance of trade laws by traders, of discovering smuggling of goods as well as prohibited goods and counterfeiting goods distributed in the market, and of imposing administrative penalty on those who are violating laws. We would like to clarify those points and the clarified points should be included

in the Report. Likewise, we understand that the Economic Police (and officials of the Economic Police) is in a superior position to other Government Ministries with respect to handling of IPR infringement because it has the competence of; (i) searching or investigating the houses of those who deem to be violating laws under certain circumstances, and (ii) suspending the business licenses of those who are violating laws under certain circumstances. We would like to clarify those points and they should be included in the Report.

Answer:

In respect of the enforcement of intellectual property rights in administrative procedures, market control forces have the competence of handling acts infringing intellectual property rights which are considered administrative violations in production, trade and service in the domestic market. The Economic Police has the competence of investigation and handling acts of infringing intellectual property rights which are considered administrative violations in all fields of production and business. The Economic Police has competence of: (i) searching the houses of those who hide violating instruments and evidences in case they have grounds to affirm that; (ii) suspending business licenses in case of serious violation of provisions on the use of such business licenses. Viet Nam agrees that those points should be included in the Draft Report.

However, in the process of preparing the Intellectual Property Law and amending the Decree on administrative measures against violation in the field of industrial property, issues related to administrative measures and competence of handling violations in the industrial property field with such administrative measures have been reconsidered to avoid the overlap of competence and abuse of public (administrative) intervention into the civil relationship.

Question 281

In relation to the section of "Special border measures" starting from paragraph 352, we would like to clarify whether the Customs Code and its related laws and regulations contain the definition of "Counterfeit of trademarks" and "Piratical Acts".

Answer:

The issues of "Counterfeit of trademarks" and "Piratical Acts" are included in: the Law on Customs (Article 57, 58, 59), relevant Interministerial Circulars No. 58/TTLT-BVHTT-BTC dated 17 October 2003 of Ministry of Culture and Information and Ministry of Finance giving the guidelines for copyrights protection, No. 129/TTLT/BTC-BKHCHN dated 29 December 2004 of Ministry of Finance and Ministry of Science and Technology on protection of industrial intellectual property rights at border do provide for specific customs procedures (such as provision for temporary halt of customs procedures and other relevant provisions) to deal with imports or exports for which there are request to protect involved copyright or intellectual property rights.

The Circular No. 129/2004/TTLT-BTC-BKHCHN of the Ministry of Finance and the Ministry of Science and Technology of 29 December 2004 on the border control measures in respect of industrial property rights over imported and exported goods defines that "counterfeit trademark goods" are imported and exported goods, including packaging, labels, decals that bear a trademark which is identical with or which cannot be distinguished in its essential aspects from the protected trademarks for identical goods and services without the authorization of the trademark's owner.

The joint Circular No. 58/2003/TTLT-BVHTT-BTC on 17 October 2003 guiding the protection of copyright at customs agencies for imported and exported goods has no definition of "piratical acts" but defines "copyright infringing imported and exported goods" as imported and exported goods infringing moral rights, economic rights of the author, the owner of the work, including imported and

exported goods are (i) copies of work of which the production and/or the circulation is not authorized by the owner of the work; (ii) copies of the work which include infringing contents of copyright.

Question 282

In relation to the section of "Criminal procedures" starting from paragraph 354, there is no description explaining a flow of criminal proceeding procedures in Viet Nam. Therefore, a description of a flow of such procedures starting from initiating criminal proceeding should be included in the Report. Also the facts that the provincial People's Court has the jurisdiction as the first instance over the offences of not more than seven years imprisonment except those harmful to national security should be concisely included in the Report.

Answer:

According to the Criminal Procedures Code (amended in 2003), criminal procedure including the following stages: (i) initiation of legal proceedings; (ii) investigation; (iii) prosecution; (iv) judgement and execution.

Under the Article 170, please revise the jurisdiction as the first instance of the provincial People's Court as follows:

"1. The district People's Courts and the Local Military Courts have jurisdiction as the first instance over not very serious, serious and very serious offences excluding:

- a) Violation of national security;
- b) Offences against the peace, crime against humanity and war crime;
- c) Offences under the Article 93, 95, 96, 172, 216, 218, 219, 221, 222, 223, 224, 225, 226, 263, 293, 294, 295, 296, 322 and 323 of the Criminal Code.

In sum, the district People's Courts have jurisdiction as the first instance over offences in respect of intellectual property rights. Criminal proceeding procedures for intellectual property infringement cases are the same as for other criminal cases, which includes the denouncement of crime before the competent police, investigation, transfer of file to the prosecution agency (Supreme People's Prosecution Institute), initiating criminal proceeding at the competent courts, judgment and enforcement of the judgment.

2. The Provincial People's Courts and the Regional Military Courts have jurisdiction as the first instance over criminal cases beyond the authority of the district People's Courts and the Local Military Courts or those cases under the authority of its lower-level courts."

Viet Nam agrees to include the above content in the Draft Report.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 283

The text of this section will need to be adjusted to conform to final schedules and should be used to provide explanations for certain measures adopted in the schedules.

Paragraph 361 - Please explain why Representative offices are allowed establishment, but may not "engage in any direct profit-making activities." Are representative offices ever a mandatory requirement for investment?

Answer:

In our view, the text of this section mainly reflects the current regime in some sectors and sub-sectors, not the commitments in these services. As such, it seems to be unnecessary to adjust this section to conform to the final Schedule.

This regulation is currently under horizontal commitment reservation in Viet Nam's Schedule of Specific Commitments. The establishment of a representative office is not compulsory to investors. Representative offices are only permitted to carry out market research and survey and certain trade promotion activities.

Question 284

Please clarify when branching is permitted by foreign and by domestic investors Viet Nam's horizontal schedule indicates branching is unbound, but permitted for foreign suppliers in individual sectors. Which sectors?

Answer:

This regulation is now stipulated in Viet Nam's Schedule of Specific Commitments. Therefore, Viet Nam understands that this issue should be dealt with in the framework of the bilateral negotiations.

Question 285

Paragraph 362 - Please explain why professional services companies are limited to a maximum of two branches: Is there a geographic limitation for branching as well? Can both branches be in the same city?

Answer:

This regulation is now stipulated in Viet Nam's Schedule of Specific Commitments. Therefore, Viet Nam understands that this issue should be dealt with in the framework of the bilateral negotiations.

Question 286

We would appreciate further explanation of the requirements for legal professionals to become licensed or permitted to practice in Viet Nam. The term "lawyers practising organization" needs to be changed or defined in the WP report.

Answer:

The requirements for establishment, operation, rights and obligations of legal professionals practising in Viet Nam are specified in the Decree No. 87/2003/ND-CP of the Government dated 22 July 2003 on Practice by Foreign Lawyer Organizations and Foreign Lawyers in Viet Nam.

"Lawyers practising organizations" are all forms of practising organizations of lawyers. Thus, under the Decree No. 87/2003/ND-CP, foreign lawyers and foreign lawyer organizations are permitted to practice in Viet Nam in the following forms:

- Branch of foreign lawyer organizations;
- Foreign law firm; and
- Foreign-Vietnamese law partnership.

Regarding to Vietnamese lawyers, under the Ordinance on Lawyers, practising forms are Lawyers Office and Law partnership

The practising conditions of the foreign lawyer organizations were regulated under the Article 7 of the Decree No. 87/2003/ND-CP, "a foreign lawyer organization lawfully established and currently operating overseas may be permitted to operate in Viet Nam subject to the sole condition that it "has goodwill towards the State of Viet Nam"

Legal practising conditions of the foreign lawyers in Viet Nam (specified under the Article 41 of the Decree No. 87/2003/ND-CP):

- (i) Has a current practising certificate issued by a competent foreign agency or organization;
- (ii) Has goodwill towards the State of Viet Nam; and
- (iii) Is employed by a foreign law practice in Viet Nam or a Vietnamese lawyer organization.

Question 287

Paragraph 363 - What is meant by "projects within a list of registered design works?"

Answer:

Viet Nam would like to correct this sentence to ensure the accuracy of translating the Vietnamese content into English as well as to update the provisions on conditions to grant Architectural Practising Certificate/Engineering Practising Certificate in accordance with the Decree No. 16/2005/ND-CP dated 7 February 2005 on "Management of investment projects to construct works" as follows:

"Architects/Engineers, who are granted Architectural Practising Certificate/Engineering Practising Certificate, have to possess a Bachelor Degree or higher of Architectural/Planning (for Architects) or Engineering disciplines in accordance with registered scope of work (for Engineers), and should have at least five years experience in the field registered, and have participated in architectural design of at least five projects or construction planning of at least five projects (for Architects), in design or survey work of at least five projects (for Engineers) within registered scope of work."

Question 288

We request elaboration from Viet Nam on the criteria used to determine whether a wholesale and retail establishment may establish a commercial presence.

Answer:

This regulation is now stipulated in Viet Nam's Schedule of Specific Commitments. Therefore, Viet Nam understands that this issue should be dealt with in the framework of the bilateral negotiations.

Question 289

Paragraph 365 - Please remove the reference to the economic needs test. Viet Nam's economic needs test was removed from the schedule of commitments and the Working Party report should reflect this change.

Answer:

Viet Nam understands that the measures specified in the Schedule of Specific Commitments reflects the commitments Viet Nam must take after accession to the WTO, not the present policy of Viet Nam. Therefore, we do not think it is essential to adjust the Draft Report to conform to the Schedule.

Question 290

Information regarding subsidies related to trade in services is needed in the WP report part on trade-related services regime.

Answer:

Viet Nam understands that subsidies are not clearly specified in the GATS and are now under services negotiations in the New Round of the WTO. Therefore, we are not able to provide information about subsidies related to trade in services. We would appreciate the technical assistance from the Members of the Working Party in this regard.

Question 291

Could Viet Nam describe the general framework of the privatisation process. Some specification of this regime is needed in the part concerning trade-related services regime.

Could Viet Nam specify the limitations imposed on foreign service suppliers as regards the privatisation of companies engaging in trade in services?

In particular, could Viet Nam clarify which is the definition of "Viet Nam's enterprises" (Horizontal section, Mode 3 , Market access, 30 per cent foreign-ownership cap) ?

Answer:

Viet Nam is implementing equitization, assignment and sale of State-owned enterprises in order to transform these enterprises from 100 per cent State-owned enterprises into joint-stock companies, limited liability companies and private enterprises, in which the State may or may not retain controlling shares.

The total value of shares sold to the foreign investors should in no case exceed 30 per cent of registered capital of the equitized enterprises in service sectors

"Viet Nam's enterprises" in the Horizontal section are all kinds of enterprises registering and operating under the Law on Enterprises and Law on State-owned Enterprises and other legal entities wholly owned and/or controlled by the Vietnamese individuals and/or organizations.

Question 292

Urban planning services: What is the definition of "social stability" referred to? Does it correspond to the public order exception of GATS Article XIV?

Answer:

The phrase "social stability" in Viet Nam's Schedule of Commitments should be corrected as "social safety and order" for precise meaning in translation. It correspond to the public order exception of GATS Article XIV.

Question 293

Recreational services: What is the definition of "electronic games business" ?

Answer:

The Circular No. 08/2000/TT-BVHTT dated 28 April 2000 of the Ministry of Culture and Information and other relevant legal documents define "Electronic games business is the provision of services by an organization, enterprise or private individual, household to conduct electronic games between human and machines used for the game with a built-in electronic games programme, inclusive of:

1. Machines with preinstalled electronic games or entertainment games based on electronic technology.
2. Tapes, disks or accessories containing electronic games content/software.
3. Transmitters, equipment displaying electronic games.
4. Computers, computer networks with the content of electronic games.

Individuals and organizations using or commercializing electronic games services are only allowed to use machines, tapes, disks or accessories with the content of healthy entertainment games to contribute to physical human development and improving people's aesthetic awareness. The organization of electronic games with prizes in cash or kind of a gambling nature is strictly prohibited."

However, in order to attract foreign tourists and create entertainment activities for foreigners in Viet Nam with a view to improving Viet Nam's foreign investment environment, the Prime Minister issued the Decision No. 32/2003/QĐ-TTg of 27 February 2003 on the Regulation on conducting business of electronic games with prizes restricted to foreigner players, wherein it is stated that "Electronic games business with prizes is the provision of services by an enterprise to conduct games between human and electronic machinery used for the game with a built-in automatic prize payment programme. The business of electronic games with prizes is very sensitive and of conditional business sector. Its development is not encouraged and it is only additional to the main business activities of the enterprise. For all these reasons, the number of licensed enterprises to conduct the business of electronic games with prizes should be limited and any application for a licence to conduct such a business should be submitted by the Ministry of Planning and Investment to the Prime Minister for consideration and decision only after being evaluated by the former."

Question 294

Licensing: We request Viet Nam to guarantee transparency of licensing requirements and procedures, qualification requirements and procedures as well as of other authorisation requirements, in particular with respect to obtaining, extending, renewing, denying and

terminating licenses and other approvals required to provide services in Viet Nam's market and appeals of such actions. Viet Nam's licensing procedures and conditions should not in themselves act as a barrier to market access and should not be more trade restrictive than necessary.

Viet Nam should publish (1) a list of authorities responsible for authorising, approving or regulating those service sectors in which Viet Nam makes specific commitments and (2) Viet Nam's licensing procedures and conditions. Viet Nam should ensure that these procedures and conditions are:

- pre-established, publicly available, and based on objective criteria;
- identify activities, terms and conditions;
- include all critical information for valid completion of applications;
- include relevant timeframe and critical deadlines (at least indicative ones);
- identify the competent authority.

More specifically, we request that for those services included in Viet Nam's Schedule of Specific Commitments, Viet Nam will ensure that:

- Viet Nam's licensing procedures and conditions will be published prior to becoming effective;
- In that publication, Viet Nam will specify reasonable time frames for review and decision by all relevant authorities in Viet Nam's licensing procedures and conditions;
- Applicants will be able to request licensing without individual invitation;
- Any fees charged, which are not deemed to include fees determined through auction or a tendering process, will be commensurate with the administrative cost of processing an application;
- The competent authorities of Viet Nam will, after receipt of an application, inform the applicant whether the application is considered complete under Viet Nam's domestic laws and regulations and in the case of incomplete applications, will identify the additional information that is required to complete the application and provide the opportunity to cure deficiencies;
- Decisions will be taken promptly on all applications;
- If an application is terminated or denied, the applicant will be informed in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application that addressed the reasons for termination or denial;
- Where Viet Nam requires an examination to licence professionals, such examinations will be scheduled at reasonable intervals.

Answer:

Please refer to paragraph 361 of Draft Report (document WT/ACC/SPEC/VNM/5) for the list of Ministries and Agencies responsible for sectors and sub-sectors specified in the Schedule of Specific Commitments.

Regarding the transparency in licensing procedures, Viet Nam understands that this issue are clearly stipulated in Article III and VI of the GATS. Therefore, without prejudice to the conditions specified in the Schedule of Specific Commitments, Viet Nam shall fully comply with the obligations indicated in these Articles of the GATS.

Question 295

Independence of the regulator: We would ask Viet Nam to guarantee that for those services that will be included in Viet Nam's Schedule of Specific Commitments, relevant regulatory authorities will be separate from, and not accountable to any service suppliers they regulate.

Answer:

Regarding services specified in the Schedule of Specific Commitments, Viet Nam ensures to fully comply with GATS rules in regulating services activities.

Question 296

Choice of Partner: We would ask Viet Nam to guarantee that the foreign suppliers remain free to choose their partners.

Answer:

Regarding the committed services sectors, Viet Nam has no limitation on choosing partners of the foreign suppliers, unless it is otherwise specified in the Schedule of Specific Commitments.

VII. TRANSPARENCY

Question 297

This section will require extensive work as we get closer to completing the negotiations.

Viet Nam should consider adoption of a comprehensive regulatory review mechanism that would guarantee transparency in the development of laws and regulations governing trade in goods and services, and intellectual property.

Answer:

In order to guarantee transparency of the legal system, Viet Nam has so far promulgated the Law on the Promulgation of Legal Normative Documents, accordingly all legal documents shall be appraised before enacting. The appraisal is undertaken with a view to securing uniformity and synchronism of the legal system and its conformity with Viet Nam's international commitments. In addition, according to the Law and the Decree No. 104/2004/NĐ-CP dated 23 March 2004 on Official Gazette of the Socialist Republic of Viet Nam, all legal normative documents and international treaties that already entering in to effect for Viet Nam shall be published on this Gazette.

VIII. TRADE AGREEMENTS

Question 298

In the interest of transparency, we would appreciate Viet Nam's description in the text of the Working Party report of the goods market access and services commitments it has made as part of the ASEAN – China Free Trade Agreement.

Answer:

The specific commitments on goods and services market access in the framework of ASEAN – China Free Trade Agreement are currently finalized so Viet Nam is not yet able to notify these commitments

to the Working Party. Viet Nam would make an arrangement with other ASEAN members and China regarding the notification of the agreement in conformity with WTO rules.

- **Legislative Action Plan**

Question 299

We applaud Viet Nam's acceleration of its Legislative Action Plan; however, we note that the Working Party will need to review all new trade legislation for conformity with WTO rules and disciplines prior to completion of negotiations.

WT/ACC/VNM/31/Rev.2 indicates that Viet Nam should have enacted the following laws in November: Law on Competition, Law on Enacting Normative Legal Documents of the Local Government, Ordinance on Tender, the Law on Electricity, the Law on Publication, and the Ordinance on Procedures for Settlement of Administrative Cases. Have they been enacted? If so, when do you expect to provide the Working Party with copies?

Answer:

Viet Nam would take note of the above comment.

Up to date, Viet Nam has enacted the following laws: Law on Competition (No. 27/2004/QH11 dated 14 December 2004); Law on Electricity (No. 28/2004/QH11 dated 14 December 2004); Law on Publication (No. 30/2004/QH11 dated 14 December 2004); Law on the Promulgation of Legal Normative Documents of Local Government (No. 31/2004/QH11 dated 14 December 2004).

The Ordinance on Procedures for Settlement of Administrative Cases has also been enacted and its amendment in 2005 is currently taken into consideration by the National Assembly.

The Ordinance on Tendering is scheduled for consideration by the Standing Committee of the National Assembly to be enacted in 2005.

Question 300

WT/ACC/VNM/31/Rev.2 indicates that Article 8 of the Law on VAT and Articles 7 and 16 of the Law on Excise Tax are scheduled for action in 2005. However, they do not appear on the 2005 National Assembly Program. The LAP indicates these amendments to these laws are necessary to bring the two laws into conformity with WTO requirements. When does Viet Nam plan to enact them?

Answer:

The amendments to the Law on VAT and Law on Excise Tax are currently studied by relevant bodies of Viet Nam so as to have adjustments for conformity with WTO rules prior to Viet Nam's accession to the WTO.

Question 301

We also note that the Ordinance on Foreign Exchange and the Ordinance on Standardization are placed in the "Preparatory" section of the 2005 Law Program. Most of the Ordinances scheduled for action in 2005 appear to have no relation to WTO accession. Will these two ordinances be enacted as scheduled on the LAP? Can they be made a higher priority?

Answer:

The Ordinance on Foreign Exchange and Ordinance on Standardization have been placed in the "Preparatory" section of the 2005 LP by the National Assembly. At present, Viet Nam is making the best effort to accelerate the schedule of drafting and promulgating these two ordinances.

Specifically, the draft Ordinance on Standardization is being actively established to be submitted for consideration by the Standing Committee of the National Assembly in July or August of year 2005 due to its imperativeness.

Also, the Ordinance on Foreign Exchange is being actively drafted. The content of this Ordinance shall be developed towards Viet Nam's international economic integration wherein the compliance with Article VIII on liberalizing current account transactions is guaranteed. The Ordinance on Foreign Exchange is scheduled to be promulgated in accordance with Viet Nam's Legislation Action Plan already submitted to the WTO Secretariat.

Question 302

We note that seven of the eleven items the National Assembly program for the November 2005 session do not appear to be related to WTO accession. If necessary, would Viet Nam be able to move laws necessary for WTO accession onto the November 2005 calendar?

Answer:

In Viet Nam's National Assembly Legislation Program, there are included legal documents of various sectors with a view to accommodating the needs of socio-economic, cultural development, of security and defence, etc., in particular the requirements of international economic integration. In the National Assembly Legislation Program of the past years, most particularly the 2005 Legislation Program, the National Assembly has given and will continue to give a priority to considering and adopting draft laws proposed for the WTO accession. Whenever the case is necessary, the National Assembly would be able to consider adding to the program draft laws and ordinances to be enacted in 2005. Relevant bodies of Viet Nam are seeking measures to further accelerate the enactment of those relating to WTO rules.

In reference with Viet Nam's National Assembly Legislation Program which it transmitted to the Working Party, in the Session of November 2005, the National Assembly will give a priority to taking some draft laws into consideration and adoption such as those on intellectual property, on electronic transaction.

The common Investment Law and uniform Enterprise Law are currently being drafted and scheduled to be submitted to the National Assembly's 8th Session in October 2005 for consideration in accordance with the National Assembly's Program for Enacting Laws and Ordinances in 2005 provided in the Resolution No. 35/2004/QH11 dated 25 November 2004 of the National Assembly. The Government of Viet Nam has requested the National Assembly to pass, instead, these two laws at its 8th Session in October 2005 (i.e. requested an earlier approval). The National Assembly will make the decision in its 7th Session in May 2005. The draft Laws planned for submission to the National Assembly shall be submitted to the Working Party as soon as they are completed.

In addition to these laws, the Standing Committee will consider and adopt draft ordinances proposed for the above requirements.

Question 303

In reviewing the complete history of Viet Nam's LAP's, we discovered an item in WT/ACC/VNM/15/Add.3, the Law on Enterprise Income Tax that disappeared in WT/ACC/VNM/31 and has not reappeared in Viet Nam's documentation since. Please explain the fate of this law.

Answer:

The revised Law on Corporate Income Tax was adopted in 1 January 2004. The current provision of enterprise income tax are not inconsistent to the WTO provisions. Consequently, it is not necessarily to indicate them in Viet Nam's Legislation Action Plan submitted to the Working Party.
